

## MEMORANDUM OF AGREEMENT

This AGREEMENT is entered into this (1<sup>st</sup> day of, January 2021) by and between (City of Wichita, KS, 455 N Main Wichita KS 67202) (hereinafter referred to as "Sponsor") and Kansas State University, 2 Fairchild Hall, 1601 Vattier St., Manhattan, KS, 66506-1103 (hereinafter referred to as the "University"). Work will be performed at Kansas State University in the Kansas Center for Agricultural Resources (KCARE).

WHEREAS, the project contemplated by this Agreement is of mutual interest and benefit to University and to Sponsor and will further instructional and research project objectives of University in a manner consistent with its status as a non-profit, tax-exempt educational institution.

NOW, THEREFORE, the parties hereto agree as follows:

1. **STATEMENT OF WORK.** The University agrees to use its best efforts to perform the project as described in Appendix A hereof.
2. **PRINCIPAL INVESTIGATOR/PROJECT DIRECTOR.** The project will be directed by Dr. Trisha Moore. If, for any reason, (s)he is unable to continue to serve as principal investigator/project director and a mutually acceptable successor is not available, University and/or Sponsor shall have the option to terminate said program in accordance with Clause 15 - TERMINATION.
3. **PERIOD OF PERFORMANCE.** The project shall be conducted during the period of January 1, 2021 to December 31, 2021 and will be subject to renewal only by mutual agreement of the parties.
4. **PROJECT COSTS AND PAYMENT.** In consideration of the foregoing, Sponsor will pay University for costs incurred in the performance of the project, without an itemized accounting. Payment shall not exceed the total estimated cost of \$25,000 USD. Sponsor shall make payment (within thirty (30) days of the receipt of an invoice from University. University will email invoices in PDF format to Jim Hardesty; JHardesty@wichita.gov
5. **REPORTS/DELIVERABLES.** Progress reports of the project will be made annually, due Jan. 31, by University to Sponsor and a final report will be rendered on completion of the project. "Deliverables" mean the report(s) submitted to Sponsor by University which contains the resulting data generated from the project evaluation. The parties agree that Sponsor owns any such Deliverables provided in accordance with this Agreement and Appendix A and thus may use such for any purpose without any further remuneration to University. Notwithstanding the foregoing, the parties understand and agree that University retains the right to (a) utilize the Deliverables for its academic, educational and research purposes, subject to the confidentiality provisions outlined herein, and (b) publish project results as permitted per Clause 12 – CONFIDENTIALITY/PUBLICATIONS. During the term of this Agreement, representatives of University will consult and/or meet with representatives of Sponsor to discuss progress and results, as well as on going plans of the project and University will provide project information to Sponsor as reasonably requested.
6. **FACILITIES.** The University will provide the utilities and office, laboratory and field space needed for the project.
7. **PROPERTY.** All equipment detailed in the project budget and purchased from this fund shall be the property of the University.

8. **PUBLICITY.** Sponsor will not use the name of University, nor of any member of University's project staff, in any publicity, advertising, or news release without the prior written approval of an authorized representative of University. University will not use the name of Sponsor, nor any employee of Sponsor, in any publicity, advertising, or news release without the prior written approval of Sponsor.
9. **LIABILITY.** The Kansas Tort Claims Act (K.S.A. 75-6101 et seq.) sets forth the liability limits of University as an agency of the State of Kansas for the negligent or wrongful acts or omissions of its employees while acting within the scope of their employment by University.
10. **BACKGROUND INTELLECTUAL PROPERTY.** "Background Intellectual Property" means property and the legal right therein of either or both parties developed before or independent of this Agreement including inventions, patent applications, patents, copyrights, trademarks, mask works, trade secrets and any information embodying proprietary data such as technical data and computer software.

Both parties agree to provide the Background Intellectual Property necessary to complete the objectives of the project. Both parties shall retain all rights to their respective Background Intellectual Property provided for this purpose. Neither party shall assume any rights in the other party's Background Intellectual Property provided for this project other than the right to use said Background Intellectual Property to achieve the objectives of this project.

11. **PROJECT INTELLECTUAL PROPERTY.** "Project Intellectual Property" means the legal rights relating to inventions (including Subject Inventions as defined in 37 CFR 401), patent applications, patents, copyrights, trademarks, mask works, trade secrets and any other legally protectable information, including computer software, first made or generated during the performance of this Agreement.

Ownership of Project Intellectual Property shall vest in the party whose personnel conceived the subject matter and diligently pursued reducing the subject matter to practice, and such party may perfect legal protection therein in its own name and at its own expense. Jointly made or generated Project Intellectual Property shall be jointly owned by the parties unless otherwise agreed in writing.

The parties agree to disclose to each other, in writing, each and every invention which may be patentable or otherwise protectable under the United States Patent laws in Title 35, United States Code. The parties acknowledge that they will disclose inventions to each other and the awarding agency within two (2) months after their respective inventor(s) first disclose the invention in writing to the person(s) responsible for patent matters of the disclosing party. All written disclosures of such inventions shall contain sufficient detail of the invention, identification of any statutory bars, and shall be marked confidential, in accordance with 35 U.S.C. 205.

Sponsor shall receive the first option to negotiate for a license to commercialize the Project Intellectual Property of University, subject to any rights of the Government therein. Sponsor is hereby granted an exclusive option to negotiate the terms for a license to Project Intellectual Property of University, for an initial option period of three (3) months after such invention has been reported to Sponsor.

The terms of subsequent licensing agreements for University owned and/or jointly owned Intellectual Property will be negotiated in good faith and by mutual agreement by the Parties to this Agreement.

12. **CONFIDENTIALITY/PUBLICATIONS.** During the term of this Agreement, and for a period of five (5) years thereafter, each party will maintain in confidence all confidential Background Intellectual Property and Project Intellectual Property of a party, as well as all other Confidential Information of a party disclosed by that party to the other in connection with this Project. Neither party will use, disclose or grant use of such Confidential Information except as required to perform under this Agreement. Each party will use at least the same standard of care as it uses to protect its own Confidential Information to insure that students, interns, employees, agents and consultants do not disclose or make any unauthorized use of such Confidential Information. Any student, intern, employee, agent or consultant of the receiving party must be notified of the restrictions on the use of the disclosing party's Confidential Information and must agree with those restrictions before being allowed access to the Confidential Information. Each party will promptly notify the other upon discovery of any unauthorized use or disclosure of the Confidential Information.

Either party may publish its results from this project. However, the publishing party will provide the other party a thirty (30) day period in which to review proposed publications, identify proprietary or confidential information, and submit comments. The publishing party will not publish or otherwise disclose proprietary or confidential information in accordance with the procedures described in this article and the publishing party will give full consideration to all comments before publication. Furthermore, upon request of the reviewing party, publication will be deferred for up to sixty (60) additional days for preparation and filing of a Patent application which the reviewing party has the right to file or to have filed at its request by the publishing party.

13. **EXPORT CONTROLS.** Each party acknowledges that the transfer of materials, software, technology, and/or technical information may be subject to the import, export control, and economic sanctions laws and regulations of the United States and/or other countries. The disclosing party shall notify the receiving party prior to transfer if the Materials are export controlled. The parties agree that any export controlled materials, software, technology, and/or technical information which is shared with the other party will be clearly marked as export controlled and if disclosed initially in oral form, to identify same as export controlled at the time of disclosure and to reduce to writing promptly the export controlled materials, software, technology, and/or technical information orally disclosed. The United States maintains robust trade embargos or economic sanctions against several countries and regions, including but not limited to Cuba, Iran, North Korea, Sudan, Syria, and the Crimea Region of Ukraine. Therefore, it is important that the parties do not export, re-export, or transfer, any materials, software, technology, or technical information, which either party shares with the other in contravention of any applicable import, export control, or economic sanctions laws and regulations. The parties agree to obtain any and all such registrations, licenses, agreements, approvals and/or certifications, as may be required by U.S. regulations for the export of the products, services, and/or technical data being provided or developed under this Agreement before initiating any such transfer or disclosure.
14. **MODIFICATION.** Any agreement to change the terms of this Agreement in any way shall be valid when the change is made in writing and approved by authorized representatives of the parties hereto.
15. **REPRESENTATIVES.** Designated representatives for the parties are:

	Sponsor:	University:
If Technical	Jim Hardesty 455 N Main, 8 <sup>th</sup> St	Dr. Trisha Moore Kansas State University 153 Seaton Hall

Wichita KS 67202  
(316)268-4545  
Email: JHardesty@wichita.gov

Manhattan, KS 66506  
(785) 532-2911  
Email: tlcmoore@ksu.edu

If Contractual

Same as Above  
Insert Address  
Insert Phone  
Email:

Paul R. Lowe  
Associate Vice President for Research  
Kansas State University  
2 Fairchild Hall, 1601 Vattier St.  
Manhattan, KS 66506-1103  
(785) 532-6804  
Email: [research@ksu.edu](mailto:research@ksu.edu)

If Financial

Same as Above  
Insert Address  
Insert Phone  
Email:

Shannon Fisher  
Director, Sponsored Programs Accounting  
Kansas State University  
Division of Financial Services  
Unger Complex  
2323 Anderson Avenue, Suite 600  
Manhattan, KS 66502  
(785) 532-6207  
Email: [spaaccts@ksu.edu](mailto:spaaccts@ksu.edu)

16. TERMINATION. Performance under this Agreement may be terminated by Sponsor upon a thirty day advance, written notice. In the event of early termination of this Agreement by Sponsor, Sponsor shall pay all costs accrued by University as of the date of the notice of termination, including non-cancelable obligations, which shall include all non-cancelable contracts and fellowships or postdoctoral associate appointments called for in Appendix A. In addition, Sponsor will pay all other reasonable costs incurred by the University during the time period between the notification date and the termination date, which are necessary to terminate the project. Any obligation of sponsor for fellowships or postdoctoral associates shall end no later than the end of University's academic year following termination. Reimbursement for incurred costs and obligations will not exceed the total estimated project cost as shown in Clause 4.

Performance may be terminated by University upon a thirty day advance, written notice if circumstances beyond its control preclude continuation of the project.

IN WITNESS WHEREOF, the parties have caused these presents to be executed in duplicate as of the day and year first written above.

SPONSOR:

KANSAS STATE UNIVERSITY:

*Hannah Lang*  
By: *Hannah Lang*  
Title: Senior Buyer

*Paul R. Lowe*  
By: Paul R. Lowe  
Title: Associate Vice President for Research

Date: 12/29/20

Date: 11/12/2020

FEIN: \_\_\_\_\_

ATTEST:

*Jamie Buster*  
Jamie Buster, Deputy City Clerk



APPROVED AS TO FORM:

*Jennifer Magaña*  
Jennifer Magaña, City Attorney and Director  
of Law

## APPENDIX A

The work to be completed under this agreement will be carried out by the City of Wichita, Kansas, hereinafter called "City" and Kansas State University, hereinafter called "Contractor." Both parties agree to maintain the general terms and compensation structure outlined in the existing Memorandum of Agreement (the period of performance for which extended from Jan. 1, 2016 to Dec. 31, 2020) for an additional year. During this year, the contractor agrees to increase the size of the sediment reserve through the enrollment of 300 additional no-till acres (from 500 acres to 800 acres) and continue to perform the necessary administrative services, with a total cost not to exceed of \$25,000 for the year. The annual report will contain descriptions of offsite BMPs and associated sediment credits enrolled during 2021 and maintained from previous program years, BMP contract (including atrazine BMPs) and inspection documentation, account of funds expended, and other information pertaining to the offsite BMP program as needed for the City to meet their MS4 permit reporting requirements.