

OSAWATOMIE CITY COUNCIL
AGENDA

January 12, 2023

6:30 p.m. | Memorial Hall | 411 11th Street

1. Call to Order
2. Roll Call
3. Pledge of Allegiance
4. Invocation
5. Consent Agenda

Consent Agenda items will be acted upon by one motion unless a Council member requests an item be removed for discussion and separate action.

 - A. January 12, 2023 Agenda
 - B. December 22, 2022 Meeting Minutes
 - C. Pay Application(s) – Western Consultants - \$3,388.50 – WWTP
 - D. Pay Application (s) – BG Consultants, Inc.
 - Water Treatment Plant - \$81,224.00
 - Water Distribution - \$ 79,235.48
 - Wastewater Treatment Plant - \$7,552.50
 - Various Street Designs - \$50,953.50
6. Comments from the Public

Citizen participation will be limited to 5 minutes. Stand & be recognized by the Mayor.
7. Public Hearing
8. Presentations, Proclamations, and Appointments
9. Unfinished Business
 - A. Resolution 1088 – Authorization to Sign Cost Share Agreement with KDOT
 - B. Resolution 1090 – Accepting Bid from Tantalus for AMI System
10. New Business
 - A. Resolution 1089 – Authorizing Purchase of Bucket Truck
 - B. Resolution 1091 – Establishing process and calendar for filling vacant term of City Councilmember
 - C. Resolution 1092 – Approving Engineering Agreement with BG Consultant for John Brown and Levee Loop Trail project (KDOT-TA)
 - D. Resolution 1093 – Directing staff to submit an application for the expanded PSP Grant for the Flint Hills to KATY connection.
 - E. Resolution 1095 – Declaring Osawatomie PRIDE a Continuing Chapter of Kansas PRIDE Program. **(PROVIDED LATER)**
11. Executive Session
 - A. Financial Affairs or Trade Secrets of Corporations, Partnerships, Trusts, and Individual Proprietorships K.S.A. 75-4319(b)(4)
 - B. Non-Elected Personnel Pursuant to K.S.A. 75-4319(b)(1)
12. Council Report
13. Mayor's Report
14. City Manager & Staff Report
15. Adjourn

NEXT REGULAR MEETING – January 26, 2023

Osawatomie, Kansas. **December 23, 2022.** The Council Meeting was held at City Hall located at 439 Main Street. Mayor Nick Hampson called the meeting to order at 11:00 a.m. Council members present were: Wright, Diehm, Dickinson, LaDuex, Bratton, and Caldwell. Council members Macke and Filipin were absent. City Staff present at the meeting were City Manager Mike Scanlon, Deputy City Manager Bret Glendening, City Clerk Tammy Seamands City Attorney Jeff Deane, Assistant to the City Manager Sam Moon, and Public Works Director Michele Silsbee. Members of the public were: George Pretz.

CONSENT AGENDA. Approval of December 23rd Agenda, December 8th Council Meeting Minutes, Pay Application – Crossland Heavy Contractors - \$208,687.45, WWTP, Pay Application – Crossland Heavy Contractors - \$135,855.70 – WWTP, 2022-11 Council Report, CMB Applications – Casey’s-Main Street, Casey’s – 6th Street, Gas Mart, Whistle Stop, Golf Course. **Motion** made by LaDuex, seconded by Wright to approve the consent agenda as presented. Yeas: All.

COMMENTS FROM THE PUBLIC. – George Pretz thanked the council for their service. I know that its not easy but we have a dedicated group here. Congratulations on the progress this year, its really starting to show. Our Miami County Economic Development Staff is really been busy with Osawatomie. The county will be starting their new budget and has new projects that they will be working on. I am here to help Osawatomie anytime.

PUBLIC HEARINGS. – AMENDMENT TO THE 2022 OSAWATOMIE, KANSAS BUDGGET. The mayor opened the public hearing at 11:08 a.m. and asked if there were any comments from the public. They mayor asked a second time if there were any comments from the public. The mayor asked a third time if there were any comments from the public. Hearing no comments, the hearing was closed at 11:09 a.m.

PRESENTATIONS, PROCLAMATIONS AND APPOINTMENTS. – None.

UNFINISHED BUSINESS.

RESOLUTION 1075 –ADOPTING AGREEMENT WITH RWD #1 TO TRANSFER SERVICE TERRITORY– Approximately in 2005/2006 the City of Osawatomie annexed 327 acres of property that was transferred to the City for “Economic Development Purposes”. The city notified service providers but had no intention at that time of providing either electric or water to the properties. The struggle with development of these properties has been (among other things) the provision of water to the land. This has become even more critical with “Project 335” and most recently, Projects SSP, Great Dragon and Helianthus.

In October of 2022 Glendening attended the RWD #1 board meeting, and requested they allow us to serve this property. The board was receptive but requested a month to think about it. The resolution and agreement begin this process. At the board’s December 8th meeting they voted again to allow the chairman to sign the joint agreement dated December 8, 2022. That agreement is before us tonight. Upon signing this agreement, the process will be to file it with Miami County and get it recorded so maps can get updated. **Motion** made by LaDuex, seconded by

Dickinson to approve Resolution 1075 – A joint resolution adopting an agreement between the City of Osawatomie, Kansas and Miami County RWD #1 for the transfer of 327 acres of city-owned property to the city's water service territory as presented. Yeas: All.

RESOLUTION 1085– RFP FOR EV CHARGING STATION The City received a grant from the Department of Energy through the Metropolitan Energy Center to purchase 24 charging stations. The city received 5 quotes for these charging stations, 3 of which did not meet all the RFP qualifications. The 2 bids that meet all the qualifications were Lilypad and Sema.

- Lilypad's quote for option 1 (city purchase outright) was for \$175,504.00 this included all network fees, shipping and 5-year extended warranty.
- Lilypad's quote for option 2 (Lease) was for \$36,120.00 for the first year, this includes network fees, warranty, and shipping. \$33,600.00 for years 2-5.
- Sema's quote for option 1 (city purchase outright) was for \$100,450.00 this included all network fees and 5-year extended warranty. This does not include shipping; shipping price was not given.
- Sema's quote for option 2 (Lease) was for \$25,368.00 annually, this included all network fees, warranty, but not shipping.

Motion made by Dickinson, seconded by Caldwell to approve Resolution 1085 – Authorizing the purchase of EV charging stations as presented. Yeas: All.

ORDINANCE 3821 – ADOPTING THE 2023 BUDGET & AMENDING THE 2022 BUDGET – **Motion** made by LaDuex, seconded by Bratton to approve Ordinance 3821 – Adopting the 2023 line-item budget and authorizing the expenditure of funds in accordance thereof, and amending the 2022 budget of the City of Osawatomie, Kansas as presented.

RESOLUTION 1084 – BLIGHT RESOLUTION FOR 525 MAIN STREET - There are three steps in declaring a building blighted. The first is for the city council to declare that a building is blighted and to set a date for a public hearing which we did in February. The next step is to hold the public hearing. The hearing was held in April. Then to come back with a resolution that codifies that you held a public hearing and that there was no disagreement on what the original assessment was. As we were putting the application together, we noticed that we had not completed the last step. **Motion** made by Caldwell, seconded by Wright to approve Resolution 1084 – Declaring two buildings blighted with respect to the Kansas Small Cities Community Development Block Grant (CDBG) Program as presented. Yeas: All.

NEW BUSINESS.

RESOLUTION 1081 –5TH STREET TERRACE ENGINEERING RFQ – City staff requested sealed qualifications from qualified engineering firms for the 5th Street Terrace housing project. City staff received proposals from Lamp Rynearson and McClure

Staff reviewed the proposals and ranked both firms. Although both firms presented relevant proposals, city staff chose Lamp Rynearson, this firm appeared to have a better all-around understanding of the project.

The Lamp Rynearson lump sum quote for the engineering of 5th Street Terrace is \$69,800.00

Motion made by Dickinson, seconded by Bratton to approve Resolution 1081– Accepting the proposal from Lamp Rynearson for qualified engineering design services from 5th Street Terrace as presented. Yeas: All

ORDINANCE 3818 –CHAPTER XVIII – NEGLECTED STRUCTURES - This Ordinance was created for the purpose of decreasing the number of Neglected Structures and ensuring the safety of property and individuals in the City of Osawatomie. **Motion** made by LaDuex, seconded by Bratton to approve Ordinance 3818 – Creating Chapter 18 of the City’s codified ordinances for the purpose of decreasing the number of neglected structures and ensuring the safety of property and individuals in the City of Osawatomie, Kansas and to be titled “Neglected Structures” as presented. Yeas: All.

RESOLUTION 1086 – ACCEPTING BIDS FOR DEMOLITION OF CONDEMNED PROPERTIES– City staff requested sealed bids for the demolition and removal of condemned properties. The following bids were received.

- | | |
|---|--------------|
| 1. Harvey Brothers Trucking and Wrecking Company, | \$ 50,500.00 |
| 2. Gowing Construction, | \$ 53,800.00 |
| 3. Lewis Construction, | \$ 54,700.00 |

Motion made by Bratton, seconded by Wright to approve Resolution 1086 –Accepting the bid from Harvey Brothers Trucking and Wrecking Company for the demolition and removal of condemned properties as presented. Yeas: All.

RESOLUTION 1087 – HISTORIC ECONOMIC DEVELOPMENT ACTIVITIES – This resolution directs staff to negotiate an agreement with Stan Herd for a natural earth art work to highlight the story of John Brown and Osawatomie, KS. The goal is for this to assist the city in achieving the goal of creating a National Historic Park Site in the City of Osawatomie. The agreement not to exceed \$42,000 with a boarding stipend (or donation). This will be paid in part by Greater Osawatomie (\$21,000) and we will seek a grant from Hawkins Foundation to both reimburse Greater Osawatomie and the City. **Motion** made by Caldwell, seconded by LaDuex to approve Resolution 1087 – Adopting an economic development strategic plan for the City of Osawatomie and directing staff to negotiate an agreement with Stan Herd for a natural earth art work related to goal area 1 historic area economic development as presented. Yeas: All.

COUNCIL REPORTS

Karen LaDuex ~ thanked George Pretz for the effort that he made in helping to provide some of the money for the Ghost Structure. Michele and her crew did a great job. They put in

temporary gravel and the driveway is two lanes with a turnaround spot. We want to be the Gateway of History of Osawatomie.

Kenny Diehm ~ Asked Michele how long the crews have been out.

Cathy Caldwell ~ Thank you for the Wright's, Glendening's, and Moon's for opening up their homes on the Christmas Tour. The tour included a stop at the Ghost Structure. She thanked Michele's crew for all that they have done. Thank you, Tammy, for being active in the community and for your fundraising efforts.

Dale Bratton ~ It has been a true honor working with each of you this past year.

Kirk Wright ~ I also have enjoyed working with you all. I have decided to resign from the City Council because there are several projects that are going to require my company to work closely on with the city. We are also building a home that will be outside of my current ward that we will be moving into later next year.

MAYOR'S REPORT – Thank you Kirk for your service. I wish you well and thank you for everything that you are doing around town.

The Mayor's Christmas tree fund made a donation to the Osawatomie Food Pantry, the Ministerial Alliance and to Osawatomie Pride.

CITY MANAGER & STAFF REPORTS.

Scanlon – other things that George did and that you don't see is - we had a meeting a week ago with George and Shane at the county. There is a little money left over and they are trying to leverage it for more grants for the communities.

The amount of work we get from Janet McCrae is probably about 70-80% of her time.

How do you know when you are making a difference? You inspire people to do more.

Bret Glendening – Keep in the line crew in your thoughts this weekend. With the cold temperatures there is a good chance that we will need to generate electricity. This was Michele's first winter storm and her and her crews have done a fantastic job.

Levy Certification – There will be a Consultation Coordination Officer meeting on January 24th at 1:00 p.m. at Memorial Hall. This is an administrative meeting with community officials to familiarize you with the process phase of the project that will lead us up to the new map becoming official.

OTHER DISCUSSION/MOTIONS.

Motion made by Caldwell seconded by Bratton to adjourn. Yeas: All. The mayor declared the meeting adjourned at 12:20 p.m.

/s/ Tammy Seamands
Tammy Seamands, City Clerk

Western Consultants

PO Box 187
Lawrence, KS 66044
816.805.9183

Date: 12/1/22 – 12/31/22

Bill To: City of Osawatomie
439 Main St
Osawatomie, KS 66064

**For: Wastewater Treatment Plant Improvements
CDBG 21-PF-027**

| DESCRIPTION | AMOUNT |
|---|-------------------|
| Continual Correspondence with general contractor regarding payrolls | |
| Review of sub contractor payrolls – correspondence regarding UEI needed and Section 3 forms | |
| Continued to contact Triangle Builders to resolve payrolls issues | |
| File Updates & Section 3 labor tracking hours logged | |
| Bookkeeping updates | |
| Received restitution letters from Crossland – sent to Linda at KDOC – approval received | |
| Prepared CDBG draw #1 | |
| Preliminary monitoring prep | |
| Misc. tasks | |
| 27 hrs @ \$125.50 per hour | \$3,388.50 |
| TOTAL | \$3,388.50 |

***Please make check payable to Western Consultants**



BG CONSULTANTS

ENGINEERS · ARCHITECTS · SURVEYORS

* **by email only** *

City of Osawatomie
Attn: Bret Glendening, Deputy City Manager
439 Main Street
Osawatomie, KS 66064

January 4, 2023

INVOICE #9

Re: 2023 Osawatomie WTP Improvements
Osawatomie, Kansas

BG Project No. 22-1194L

-----**Invoice for Consulting Services**-----

This Invoice is for services performed during the month of December 2022 as follows:

| | Lump Sum Amount | % Complete Progress | Subtotal |
|-------------------------|--------------------|------------------------|----------------------|
| Basic Services | | | |
| Preliminary Design..... | \$ 1,015,300.00 | 55.00% | \$ 558,415.00 |
| Final Design..... | \$ 835,700.00 | 0.00% | \$ - |
| Bidding..... | \$ 25,000.00 | 0.00% | \$ - |
| Construction Phase..... | \$ 532,500.00 | 0.00% | \$ - |
| Post-Construction..... | \$ 7,500.00 | 0.00% | \$ - |
| | | Subtotal #1 = | \$ 558,415.00 |

Resident Project Representative (RPR)

| | | | |
|---|-------------------------|-----------|------------|
| RPR Services (Not to Exceed)..... | \$ 980,000.00 | | |
| Engineer IV..... | 0.0 hrs @ \$ 144.00 /hr | \$ | - |
| Engineer II..... | 0.0 hrs @ \$ 130.00 /hr | \$ | - |
| Senior Construction Observer..... | 0.0 hrs @ \$ 120.00 /hr | \$ | - |
| Certified Construction Observer..... | 0.0 hrs @ \$ 103.00 /hr | \$ | - |
| | Subtotal #2 = | \$ | - |
| Total Construction Observation Services Billed Thru this Invoice..... | | \$ | - |
| Contract Value of Construction Observation Services Remaining..... | | \$ | 980,000.00 |

| | |
|--|---------------|
| Total Amount of Services Complete (Subtotals #1 + #2)..... | \$ 558,415.00 |
| Less Previous Amount Billed (Thru Invoices: #8)..... | \$ 477,191.00 |
| Total Amount Owed this Invoice..... | \$ 81,224.00 |
| Plus Previous Invoices Unpaid (<i>none</i>)..... | \$ - |
| Total Amount Owed to Date..... | \$ 81,224.00 |

| | |
|--------------------------------------|---------------------|
| TOTAL AMOUNT DUE THIS INVOICE | \$ 81,224.00 |
|--------------------------------------|---------------------|

For questions, please contact me at 785-749-4474 or paul.owings@bgcons.com.

Sincerely,

Paul Owings, P.E.
Project Manager



BG CONSULTANTS

ENGINEERS · ARCHITECTS · SURVEYORS

* **by email only** *

City of Osawatomie
Attn: Bret Glendening, Deputy City Manager
439 Main Street
Osawatomie, KS 66064

January 4, 2023

INVOICE #6

Re: 2023 Osawatomie Water Distribution Improvements
Osawatomie, Kansas

BG Project No. 22-1195L

-----**Invoice for Consulting Services**-----

This Invoice is for services performed during the month of December 2022 as follows:

| | Lump Sum | % Complete | |
|-------------------------|---------------|----------------------|----------------------|
| | Amount | Progress | Subtotal |
| Basic Services | | | |
| Preliminary Design..... | \$ 613,800.00 | 62.00% | \$ 380,556.00 |
| Final Design..... | \$ 502,200.00 | 6.00% | \$ 30,132.00 |
| Bidding..... | \$ 40,000.00 | 0.00% | \$ - |
| Construction Phase..... | \$ 229,000.00 | 0.00% | \$ - |
| Post-Construction..... | \$ 15,000.00 | 0.00% | \$ - |
| | | Subtotal #1 = | \$ 410,688.00 |

Resident Project Representative (RPR)

| | | | |
|---|-------------------------|-----------|------------|
| RPR Services (Not to Exceed)..... | \$ 974,000.00 | | |
| Engineer IV..... | 0.0 hrs @ \$ 144.00 /hr | \$ | - |
| Engineer II..... | 0.0 hrs @ \$ 130.00 /hr | \$ | - |
| Senior Construction Observer..... | 0.0 hrs @ \$ 120.00 /hr | \$ | - |
| Certified Construction Observer..... | 0.0 hrs @ \$ 103.00 /hr | \$ | - |
| | Subtotal #2 = | \$ | - |
| Total Construction Observation Services Billed Thru this Invoice..... | | \$ | - |
| Contract Value of Construction Observation Services Remaining..... | | \$ | 974,000.00 |

| | |
|--|-------------------------|
| Total Amount of Services Complete (Subtotals #1 + #2)..... | \$ 410,688.00 |
| Less Previous Amount Billed (Thru Invoices: #5)..... | \$ 331,452.00 |
| Total Amount Owed this Invoice..... | \$ 79,236.00 |
| Plus Previous Invoices Unpaid (<i>none</i>)..... | \$ - |
| Total Amount Owed to Date..... | \$ 79,236.00 |
| | CREDIT \$ (0.52) |
| TOTAL AMOUNT DUE THIS INVOICE | \$ 79,235.48 |

For questions, please contact me at 785-749-4474 or paul.owings@bgcons.com.

Sincerely,

Paul Owings, P.E.
Project Manager



INVOICE NO. 26

January 5, 2023

Bret Glendening, Deputy City Manager
City of Osawatomie, Kansas
439 Main Street
Osawatomie, KS 66064

Re: 20-1414L - Osawatomie WWTP Improvements

-----Invoice for Consulting Services-----

This invoice is for services which were performed during the month of December as follows:

Engineering Services:

| <u>Task</u> | <u>Lump Sum Amount</u> | <u>Completion Progress</u> | <u>Total</u> |
|--|-------------------------------|-----------------------------------|---------------------|
| 1. Preliminary Design Phase | \$117,000.00 | 100.0% | \$117,000.00 |
| 2. Final Design Phase* | \$92,000.00 | 100.0% | \$92,000.00 |
| 3. Bidding and Negotiating Phase | \$20,000.00 | 100.0% | \$20,000.00 |
| 4. Approvals and Permitting | \$15,000.00 | 100.0% | \$15,000.00 |
| 5. Construction Substantial Completion | \$5,000.00 | 0.0% | \$0.00 |

*Updated, refer to Contract Amendment 01

Subtotal Amount Due: \$0.00
Total Completed to date: \$244,000.00
Prior Billings to Date: \$244,000.00

Resident Project Observation

| | | | |
|------------------------|-----------|-------------------|-----|
| Contract Amount | \$ | 234,000.00 | |
| Work Completed to Date | \$ | 91,268.97 | 39% |
| Work Previously Billed | \$ | 83,716.47 | |
| Subtotal | | \$7,552.50 | |

Additional Services

| | | | |
|------------------------|-----------|--------------------------|-------------------|
| Contract Amount | \$ | 5,000.00 | |
| Work Completed to Date | \$ | 5,000.00 | 100% |
| Work Previously Billed | \$ | 5,000.00 | |
| Subtotal | | \$0.00 | |
| | | Total Amount Due: | \$7,552.50 |

Sincerely,

BG CONSULTANTS, INC.

Paul Owings, P.E.
Project Engineer

Construction Administration and Observation

| Position | Hours/Miles/Units | Hourly Rate | Total Cost | |
|---------------------------------|-------------------|-------------|------------|-------------|
| Principal | | \$ | 222.00 | \$ - |
| Project Engineer 4 | 4.0 | \$ | 177.00 | \$ 708.00 |
| Project Engineer 3 | 12.5 | \$ | 167.00 | \$ 2,087.50 |
| Project Engineer 1 | | \$ | 135.00 | \$ - |
| Design Engineer | | \$ | 128.00 | \$ - |
| Architect | | \$ | 185.00 | \$ - |
| Design Architect | | \$ | 117.00 | \$ - |
| Technician II | | \$ | 99.50 | \$ - |
| Senior Construction Observer | 1.0 | \$ | 140.00 | \$ 140.00 |
| Certified Construction Observer | 40.5 | \$ | 114.00 | \$ 4,617.00 |
| Drexel Planroom Expense | | \$ | 201.56 | \$ - |
| Mileage | | \$ | 0.63 | \$ - |
| Total | | | \$ | 7,552.50 |

Additional Services

| Position | Hours | Hourly Rate | Total Cost | |
|---------------------------------|-------|-------------|------------|------|
| Principal | | \$ | 222.00 | \$ - |
| Project Engineer 4 | | \$ | 177.00 | \$ - |
| Project Engineer 3 | | \$ | 167.00 | \$ - |
| Project Engineer 1 | | \$ | 135.00 | \$ - |
| Architect | | \$ | 185.00 | \$ - |
| Design Architect | | \$ | 117.00 | \$ - |
| Technician II | | \$ | 99.50 | \$ - |
| Senior Construction Observer | | \$ | 140.00 | \$ - |
| Certified Construction Observer | | \$ | 114.00 | \$ - |
| Mileage | | \$ | 0.63 | \$ - |
| Total | | | \$ | - |

Notes:

Construction phase services.

* **by email only** *

City of Osawatomie

Attn: Bret Glendening, Deputy City Manager

439 Main Street

January 6, 2023

INVOICE #11

Re: Brown Street Improvements (16th to 18th Street) BG Project No. 22-1139L
 Main Street Terrace (18th Street to 16th Street) / Walnut Avenue (6th Street to 4th Street)
 18th Street (Main Street to Brown Avenue) / Brown Avenue (12th Street to 7th Street)
 6th Street (Lincoln Avenue to Kelly Avenue)
 Osawatomie, Kansas

-----**Invoice for Consulting Services**-----

This Invoice is for services performed during the month of December 2022 as follows:

| <u>Design Phase Services</u> | Lump Sum Amount | % Complete Progress | Subtotal |
|---|--------------------|------------------------|----------------------|
| Design, Bid, and Const. Eng. Services (Lump Sum Fee)..... | \$ 760,500.00 | 61.70% | \$ 469,228.50 |
| | | Subtotal #1 = | \$ 469,228.50 |
| Contract Value of Design Phase Services Remaining..... | | | \$ 291,271.50 |

Construction Observation

| | | | |
|---|-------------------------|-----------|------------|
| Observation Services (Not to Exceed)..... | \$ 120,000.00 | | |
| Principal II..... | 0.0 hrs @ \$ 226.00 /hr | \$ | - |
| Engineer IV..... | 0.0 hrs @ \$ 144.00 /hr | \$ | - |
| Engineer II..... | 0.0 hrs @ \$ 130.00 /hr | \$ | - |
| Engineer I..... | 0.0 hrs @ \$ 111.00 /hr | \$ | - |
| Senior Construction Observer..... | 0.0 hrs @ \$ 120.00 /hr | \$ | - |
| Certified Construction Observer..... | 0.0 hrs @ \$ 103.00 /hr | \$ | - |
| | Subtotal #2 = | \$ | - |
| Total Construction Observation Services Billed Thru this Invoice..... | | \$ | - |
| Contract Value of Construction Observation Services Remaining..... | | \$ | 120,000.00 |

Reimbursable Expenses

| | | |
|----------------------|----------------------|-------------|
| None this month..... | \$ | - |
| | Subtotal #3 = | \$ - |


| | |
|---|---------------|
| Total Amount of Services Complete (Subtotals #1 + #2 + #3)..... | \$ 469,228.50 |
| Less Previous Amount Billed (Thru Invoices: #10)..... | \$ 418,275.00 |
| Total Amount Owed this Invoice..... | \$ 50,953.50 |
| Plus Previous Invoices Unpaid (<i>none</i>)..... | \$ - |
| Total Amount Owed to Date..... | \$ 50,953.50 |

| | |
|--------------------------------------|---------------------|
| TOTAL AMOUNT DUE THIS INVOICE | \$ 50,953.50 |
|--------------------------------------|---------------------|

For questions, please contact me at 785-749-4474 or diane.rosebaugh@bgcons.com.

Sincerely,

Diane Rosebaugh


Diane Rosebaugh, P.E.
Project Manager | Associate Principal



| | | |
|----------------------------|--------------|-----------------|
| ACTION ITEM SUMMARY | Item Number: | 9.B |
| | Date: | January 3, 2023 |
| Deputy City Manager | From: | Bret Glendening |

RE: Resolution 1088 – Authorizing the Mayor to sign the cost share grant agreement with KDOT.

RECOMMENDATION: Approve Resolution 1088

DETAILS: The city approved Resolution 973 on February 17, 2022 which directed city staff to apply for cost share funds to offset the cost of construction for 6th Street from the northern limits of the city (roughly Lincoln Ave.) to the southern limits of the city (roughly Kelly Ave.). The city applied unsuccessfully in the Spring of 2022 but reapplied in the Fall and was successful in being awarded \$1,500,000 to aid in the costs of reconstructing the main thoroughfare.

The current cost estimate for the 6th Street project is \$3.9 million dollars. With this \$1.5M grant and the city's portion of the county sales tax for roads and bridges in the amount of \$500,000, the city's portion will be \$1.9M which will come from the proceeds of the bonds issued in March of 2022. Keep in mind that the city has committed \$1,734,521 for the 18th Street, Main Street Terrace and Walnut Ave. which are currently under contract. Furthermore, the current cost estimate for Brown Avenue from 7th to 12th is \$2.5M and remaining proceeds from the bond issue are slightly more than \$4.1M. All this being said, the costs of construction are based on the engineer's estimates which have historically been higher than where bids have come in and we will continue to look for ways to reduce the costs of construction.

I mention all of this so the council is aware that we may need to go to the bond market for additional funds and there is not going to be a lot of room in the budget to add amenities like decorative street lights, new traffic signals, etc.

| | |
|-----------------------------------|----------|
| Related Statute / City Ordinances | 918, 973 |
| Line-Item Code/Description | N/A |
| Available Budget: | N/A |

RESOLUTION NO. 1088

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN THE 2023 COST SHARE AGREEMENT WITH THE KANSAS DEPARTMENT OF TRANSPORTATION

WHEREAS, the council approved a property tax rate increase from 63.236 to 80.000 mills for the 2022 fiscal year by Resolution 918; and

WHEREAS, the citizens of Osawatomie also voted in favor of a ½ cent sales tax also dedicated to street projects; and

WHEREAS, the council approved Resolution 973 directing staff to apply for a cost share grant through the Kansas Department of Transportation on February 17, 2022; and

WHEREAS, city staff did apply for a cost share grant for both the Spring and Fall of 2022 rounds of the program and were ultimately successful in being awarded a cost share grant in the amount of \$1,500,000 during the Fall of 2022 round; and

WHEREAS, the city has received the cost share grant agreement, city staff has reviewed the agreement and have no concerns with the language of the document.

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF OSAWATOMIE, KANSAS:

SECTION 1. The Governing Body of the City of Osawatomie, Kansas hereby authorizes the Mayor to sign the Cost Share Grant Agreement with the Kansas Department of Transportation.

SECTION 2. The Governing Body of the City of Osawatomie, Kansas further authorizes city staff to execute any administrative documents in support of the Cost Share Grant Agreement.

PASSED AND APPROVED by the Governing Body of the City of Osawatomie, Kansas, this 12th day of January, 2023, a majority voting in favor of.

APPROVED and signed by the Mayor.

Nick Hampson, Mayor

(SEAL)

ATTEST:

Tammy Seamands, City Clerk

PROJECT NO. U-2460-01
COST SHARE PROGRAM
6th STREET RECONSTRUCTION
CITY OF OSAWATOMIE, KANSAS

AGREEMENT

This Agreement is between the **Secretary of Transportation**, Kansas Department of Transportation (KDOT) (the “Secretary”) and the **City of Osawatomie, Kansas** (“LPA”), collectively, the “Parties.”

RECITALS:

- A. The Kansas Legislature, through K.S.A. §§ 68-2314b and 68-2314c, authorized the Secretary to provide funding for programs to assist local units of government in the administration of transportation projects including construction, preservation, expansion, and modernization throughout the state. The KDOT Cost Share Program has been authorized by the Governor of the State of Kansas and the Kansas Secretary of Transportation under this legislation.
- B. The LPA applied for, and the Secretary has selected, a road improvement project to participate in the Cost Share Program, as further described in this Agreement.
- C. The Secretary and the LPA are empowered by the laws of Kansas to enter into agreements for the construction of transportation projects in the state of Kansas.
- D. Cities and counties are, under certain circumstances, entitled to receive assistance in the financing of the construction and reconstruction of streets and state highways, provided however, to be eligible for such state aid, such work is required to be done in accordance with the laws of Kansas.

NOW THEREFORE, in consideration of these premises and the mutual covenants set forth herein, the Parties agree to the following terms and provisions.

ARTICLE I

DEFINITIONS: The following terms as used in this Agreement have the designated meanings:

- 1. **“Agreement”** means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.
- 2. **“Construction”** means the work done on the Project after Letting, consisting of building, altering, repairing, improving, or demolishing any structure, building or highway; any drainage, dredging, excavation, grading or similar work upon real property.

3. **“Construction Contingency Items”** mean unforeseeable elements of cost within the defined project scope identified after the Construction phase commences.

4. **“Construction Engineering”** means inspection services, material testing, engineering consultation, and other reengineering activities required during Construction of the Project.

5. **“Consultant”** means any engineering firm or other entity retained to perform services for the Project.

6. **“Contractor”** means the entity awarded the Construction contract for the Project and any subcontractors working for the Contractor with respect to the Project.

7. **“Design Plans”** means design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies necessary for the Project under this Agreement.

8. **“Effective Date”** means the date the Secretary or the Secretary’s designee signs this Agreement.

9. **“Encroachment”** means any building, structure, farming, vehicle parking, storage or other object or thing including, but not limited to, signs, posters, billboards, roadside stands, fences, or other private installations, not authorized to be located within the Right of Way which may or may not require removal during Construction pursuant to the Design Plans.

10. **“Hazardous Waste”** includes, but is not limited to, any substance which meets the test of hazardous waste characteristics by exhibiting flammability, corrosivity, or reactivity, or which is defined by state and federal laws and regulations, and any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, including but not limited to leaking underground storage tanks. Any hazardous waste as defined by state and federal laws and regulations and amendments occurring after November 11, 1991, is incorporated by reference and includes but is not limited to: (1) 40 C.F.R. § 261, *et seq.*, Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristics Revisions; Final Rule; (2) 40 C.F.R. § 280, *et seq.*, Underground Storage Tanks; Technical Requirements and State Program Approval; Final Rules; (3) 40 C.F.R. § 300, National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule; and (4) K.S.A. § 65-3430, *et seq.*, Hazardous Waste.

11. **“KDOT”** means the Kansas Department of Transportation, an agency of the State of Kansas, with its principal place of business located at 700 SW Harrison Street, Topeka, KS, 66603-3745.

12. **“Letting” or “Let”** means the process of receiving bids prior to any award of a Construction contract for any portion of the Project.

13. **“Local Public Authority” or “LPA”** means the City of Osawatomie, Kansas, with its place of business at 439 Main Street, Osawatomie, KS 66064.

14. **“MUTCD”** means the latest version of the Manual on Uniform Traffic Control Devices as adopted by the Secretary.

15. **“Non-Participating Costs”** means the costs of any items or services which the Secretary, acting on the Secretary’s own behalf, reasonably determines are not an integral part of the Construction of the Project.

16. **“Participating Costs”** means expenditures for items or services which are an integral part of highway, bridge, and road construction projects, as reasonably determined by the Secretary.

17. **“Parties”** means the Secretary of Transportation and KDOT, individually and collectively, and the LPA.

18. **“Preliminary Engineering”** means pre-construction activities including, but not limited to, design work generally performed by a consulting engineering firm that takes place before Letting.

19. **“Project”** means all phases and aspects of the Construction endeavor that is the subject of this Agreement to be undertaken by the LPA, as and when authorized by the Secretary prior to Letting, being: **Complete replacement of curb and gutter, sidewalk, lighting, and ADA ramps at 6th Street from Kelly Avenue north to the Union Pacific RR overpass/Lincoln Avenue in Miami County, Kansas.**

20. **“Project Limits”** means that area of Construction for the Project, including all areas between and within the Right of Way boundaries as shown on the Design Plans.

21. **“Responsible Bidder”** means one who makes an offer to construct the Project in response to a request for bid with the technical capability, financial capacity, human resources, equipment, and performance record required to perform the contractual services.

22. **“Right of Way”** means the real property and interests therein necessary for Construction of the Project, including fee simple title, dedications, permanent and temporary easements, and access rights, as shown on the Design Plans.

23. **“Secretary”** means the Secretary of Transportation of the State of Kansas, and the Secretary’s successors and assigns.

24. **“Utilities” or “Utility”** means all privately, publicly, or cooperatively owned lines, facilities, and systems for producing, transmitting, or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, and other similar commodities, including non-transportation fire and police communication systems which directly or indirectly

serve the public.

ARTICLE II: FUNDING

1. **Funding.** The table below reflects the funding commitments of each Party. The Total Actual Costs of Construction include Construction Contingency Items. The Parties agree estimated costs and contributions are to be used for encumbrance purposes and may be subject to change.

| Party | Responsibility |
|-----------|---|
| Secretary | 44% of Total Actual Costs of Construction; Total Contribution to Actual Costs of Construction not to exceed \$1,500,000. |
| LPA | XX% of Total Actual Costs of Construction until Secretary's funding limit is reached; 100% of Total Actual Costs of Construction after Secretary's funding limit is reached; 100% of Cost of Preliminary Engineering, Construction Engineering, Right of Way, and Utility Adjustments; 100% Non-Participating Costs. |

ARTICLE III: SECRETARY RESPONSIBILITIES

1. **Technical Information on Right of Way Acquisition.** Upon a request from the LPA, the Secretary will provide technical information to help the LPA acquire Right of Way in accordance with the laws of the State of Kansas.

2. **Reimbursement Payments.** The Secretary agrees to make partial payments to the LPA for amounts not less than \$1,000.00 and no more frequently than monthly. Such payments will be made after receipt of proper billing and approval by a licensed professional engineer, a licensed professional architect, and/or licensed landscape architect, as applicable, employed by the LPA that the Project is being constructed within substantial compliance of the Design Plans.

ARTICLE IV: LPA RESPONSIBILITIES

1. **Access Control.** The LPA shall maintain the control of access rights and prohibit the construction or use of any entrances or access points along the Project within the LPA other than those shown on the final Design Plans unless prior approval is obtained from the Secretary.

2. **Accounting.** Upon request by the Secretary and in order to enable the Secretary to report all costs of the Project to the legislature, the LPA shall provide the Secretary an accounting of all actual Non-Participating Costs which are paid directly by the LPA to any party outside of the Secretary and all costs incurred by the LPA not to be reimbursed by the Secretary for Preliminary Engineering, Right of Way, Utility adjustments, Construction, and Construction Engineering work phases, or any other major expense associated with the Project.

3. **Audit.** The LPA shall participate and cooperate with the Secretary in an annual audit of the Project. The LPA shall make its records and books available to representatives of the Secretary for audit for a period of five (5) years after date of final payment under this Agreement. If any such audits reveal payments have been made with state funds by the LPA for items considered Non-Participating Costs, the LPA shall promptly reimburse the Secretary for such items upon notification by the Secretary.

4. **Authorization of Signatory.** The LPA shall authorize a duly appointed representative to sign for the LPA any or all routine reports as may be required or requested by the Secretary in the completion of the Project.

5. **Cancellation by LPA.** If the LPA cancels the Project, it shall reimburse the Secretary for any costs incurred by the Secretary prior to the cancellation of the Project. The LPA agrees to reimburse the Secretary within thirty (30) days after receipt by the LPA of the Secretary's statement of the cost incurred by the Secretary prior to the cancellation of the Project.

6. **Conformity with State, Local, and Federal Requirements.** The LPA shall be responsible to design the Project or contract to have the Project designed in conformity with the state, local, and federal design criteria appropriate for the Project as well as in conformity with state, local, and federal law appropriate for the Project.

7. **Consultant Contract Language.** The LPA shall include language requiring conformity with Article IV, paragraph 6 above, in all contracts between the LPA and any Consultant with whom the LPA has contracted to perform services for the Project. In addition, any contract between the LPA and any Consultant retained by them to perform any of the services described or referenced in this paragraph for the Project covered by this Agreement shall contain language requiring conformity with Article IV, paragraph 6 above. In addition, any contract between the LPA and any Consultant with whom the LPA has contracted to prepare and certify Design Plans for the Project covered by this Agreement shall also contain the following provisions:

(a) **Completion of Design.** Language requiring completion of all plan development stages no later than the current Project schedule's due dates as issued by KDOT, exclusive of delays beyond the Consultant's control.

(b) **Progress Reports.** Language requiring the Consultant to submit to the LPA (and to the Secretary upon request) progress reports at monthly or at mutually agreed intervals in conformity with the official Project schedule.

(c) **Third-Party Beneficiary.** Language making the Secretary a third-party beneficiary in the agreement between the LPA and the Consultant. Such language shall read:

“Because of the Secretary of Transportation of the State of Kansas’
(Secretary’s) obligation to administer state funds, federal funds, or

both, the Secretary shall be a third-party beneficiary to this agreement between the LPA and the Consultant. This third-party beneficiary status is for the limited purpose of seeking payment or reimbursement for damages and costs the Secretary, the LPA, or both, incurred or will incur because the Consultant failed to comply with its contract obligations under this Agreement or because of the Consultant's negligent acts, errors, or omissions. Nothing in this provision precludes the LPA from seeking recovery or settling any dispute with the Consultant as long as such settlement does not restrict the Secretary's right to payment or reimbursement."

8. **Corrective Work.** Representatives of the Secretary may make periodic inspection of the Project and the records of the LPA as may be deemed necessary or desirable. The LPA shall direct or cause its contractor to accomplish any corrective action or work required by the Secretary's representative as needed for a determination of state participation. The Secretary does not undertake (for the benefit of the LPA, the Contractor, the Consultant, or any third party) the duty to perform day-to-day detailed inspection of the Project or to catch the Contractor's errors, omissions, or deviations from the final Design Plans.

9. **Design and Specifications.** The LPA shall be responsible to make or contract to have made Design Plans for the Project.

10. **Future Encroachments.** Except as provided by state, local, and federal laws, the LPA agrees it shall not in the future permit Encroachments upon the Right of Way of the Project, and specifically shall require any gas and fuel dispensing pumps erected, moved, or installed along the Project be placed a distance from the Right of Way line no less than the distance permitted by the National Fire Code.

11. **Hazardous Waste.** The LPA agrees to the following regarding Hazardous Waste:

(a) **Removal of Hazardous Waste.** The LPA shall locate and be responsible for remediation and cleanup of any Hazardous Waste discovered within the Project Limits. The LPA shall take appropriate action to cleanup and remediate any identified Hazardous Waste prior to Letting. The LPA shall also investigate all Hazardous Waste discovered during Construction and shall take appropriate action to clean up and remediate Hazardous Waste. The standards to establish cleanup and remediation of Hazardous Waste include, but are not limited to, federal programs administered by the Environmental Protection Agency (EPA), State of Kansas environmental laws and regulations, and City and County standards where the Hazardous Waste is located.

(b) **Responsibility for Hazardous Waste Remediation Costs.** The LPA shall be responsible for all damages, fines or penalties, expenses, fees, claims, and costs incurred from remediation and cleanup of any Hazardous Waste within the Project Limits which is discovered prior to Letting or during Construction.

(c) Hazardous Waste Indemnification. The LPA shall hold harmless, defend, and indemnify the Secretary, the Secretary's agents, and employees from all claims, including contract claims and associated expenses, and from all fines, penalties, fees, or costs imposed under state or federal laws arising out of or related to any act of omission by the LPA in undertaking cleanup or remediation for any Hazardous Waste.

(d) No Waiver. By signing this Agreement, the LPA has not repudiated, abandoned, surrendered, waived, or forfeited its right to bring any action, seek indemnification or seek any other form of recovery or remedy against any third party responsible for any Hazardous Waste on any Right of Way within the Project Limits. The LPA reserves the right to bring any action against any third party for any Hazardous Waste on any Right of Way within the Project Limits.

12. **Indemnification.**

(a) General Indemnification. To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act (K.S.A. § 75-6101, *et seq.*) as applicable, the LPA shall defend, indemnify, hold harmless, and save the Secretary and the Secretary's authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property, or claims of any nature whatsoever arising out of or in connection with the provisions or performance of this Agreement by the LPA, the LPA's employees, agents, subcontractors or its consultants. The LPA shall not be required to defend, indemnify, or hold the Secretary harmless for negligent acts or omissions of the Secretary or the Secretary's authorized representatives or employees.

(b) Indemnification by Contractors. The LPA agrees to require the Contractor to indemnify, hold harmless, and save the Secretary and the LPA from personal injury and property damage claims arising out of the act or omission of the Contractor, the Contractor's agent, subcontractors (at any tier), or suppliers (at any tier). If the Secretary or the LPA defends a third party's claim, the Contractor shall indemnify the Secretary and the LPA for damages paid to the third party and all related expenses either the Secretary or the LPA or both incur in defending the claim.

13. **Inspections.** The LPA is responsible for providing Construction Engineering for the Project in accordance with any applicable state and local rules and guidelines.

(a) By LPA personnel. LPA personnel who are fully qualified to perform the inspection services in a competent and professional manner may be utilized by the LPA to inspect the Project, in which case the LPA shall provide the Secretary with a list of such personnel who will act as the assigned inspectors and their certifications.

(b) By a Consultant. If the LPA does not have sufficient qualified engineering employees to accomplish the Construction Engineering on this Project, it may engage the professional services of a qualified consulting engineering firm to do the necessary services. The Consultant retained shall represent it is in good standing and full compliance

with the statutes of the State of Kansas for registration of professional engineers (K.S.A. § 74-7021), the FHWA and all federal agencies, provide personnel who are fully qualified to perform the services in a competent and professional manner, and provide the Secretary with a list of assigned inspectors and their certifications.

(c) **Protective Clothing.** The LPA shall require at a minimum all LPA personnel and all Consultant personnel performing Construction Engineering to comply with the high visibility requirements of the MUTCD, Chapter 6E.02, High-Visibility Safety Apparel. If the LPA executes an agreement for Construction Engineering, the agreement shall contain this requirement as a minimum. The LPA may set additional clothing requirements for adequate visibility of personnel.

14. **Legal Authority.** The LPA agrees to adopt all necessary ordinances and/or resolutions and to take such administrative or legal steps as may be required to give full effect to the terms of this Agreement.

15. **Letting and Administration by LPA.** The LPA shall Let the contract for the Project and shall award the contract to the lowest Responsible Bidder upon concurrence in the award by the Secretary. The LPA further agrees to administer the Construction of the Project in accordance with the Design Plans, and the current version of the LPA's currently approved procedures, and administer the payments due the Contractor, including the portion of the cost borne by the Secretary.

16. **Maintenance.** When the Project is completed and final acceptance is issued, the LPA shall, at its own cost and expense, maintain the Project and shall make ample provision each year for such maintenance. If notified by the State Transportation Engineer of any unsatisfactory maintenance condition, the LPA shall begin the necessary repairs within thirty (30) days and shall prosecute the work continuously until it is satisfactorily completed.

17. **Performance Bond.** The LPA agrees to require the Contractor to provide a performance bond in a sum not less than the amount of the contract as awarded.

18. **Period of Performance.** The LPA shall commence implementation of the Project upon receipt of a Notice to Proceed and complete the Project within two (2) years of the Letting date the Notice to Proceed was issued to the LPA.

19. **Plan Retention.** The LPA shall maintain a complete set of final Design Plans reproducible, as-built prints, approved shop drawings, and structural materials certification for five (5) years after the Project's completion. The LPA further agrees to make such reproducible, prints, drawings, and certifications available for inspection by the Secretary upon request. The LPA shall provide access to or copies of all the above-mentioned documents to the Secretary.

20. **Responsibility for Adequacy of Design.** The LPA shall be responsible for and require any Consultant retained by it to be responsible for the adequacy and accuracy of the Design Plans for the Project. Any review of these items performed by the Secretary or the Secretary's

representatives is not intended to and shall not be construed to be an undertaking of the LPA's and its Consultant's duty to provide adequate and accurate Design Plans for the Project. Reviews by the Secretary are not done for the benefit of the Consultant, the construction Contractor, the LPA, any other political subdivision, or the traveling public. The Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the Design Plans for the Project, or any other work performed by the Consultant or the LPA.

21. **Removal of Encroachments.** The LPA shall initiate and proceed with diligence to remove or require the removal of all Encroachments either on or above the limits of the Right of Way within its jurisdiction as shown on the final Design Plans for this Project. It is further agreed all such Encroachments shall be removed before the Project is advertised for Letting; except the Secretary may permit the Project to be advertised for Letting before such Encroachment is fully removed if the Secretary determines the LPA and the owner of the Encroachment have fully provided for the physical removal of the Encroachment and such removal shall be accomplished within a time sufficiently short to present no hindrance or delay to the Construction of the Project.

22. **Right of Way.** The LPA agrees to the following regarding Right of Way:

(a) **Right of Way Acquisition.** Any and all acquisitions of any Right of Way shown on the final Design Plans for the project shall be done in accordance with law, including the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and as provided in 49 C.F.R. Part 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, and K.S.A. §§ 58-3501 to 58-3507, and in accordance with the schedule established by the LPA. The LPA shall certify to the Secretary, on forms provided by the KDOT's Bureau of Local Projects, such Right of Way has been acquired. Further, the LPA shall have recorded in the Office of the Register of Deeds all Right of Way, deeds, dedications, permanent easements, and temporary easements.

(b) **Right of Way Documentation.** The LPA shall provide all legal descriptions required for Right of Way acquisition work. Right of Way descriptions shall be signed and sealed by a licensed land surveyor responsible for the preparation of the Right of Way descriptions. The LPA agrees copies of all documents, including recommendations and coordination for appeals, bills, contracts, journal entries, case files, or documentation requested by the Office of Chief Counsel shall be delivered within the time limits set by the Secretary.

(c) **Highway Use Permit.** If the Project necessitates the LPA to work on Right of Way that is owned by the Secretary, the LPA shall submit a Highway Use Permit (KDOT Form 304) to the local KDOT District Office for review and approval. A copy of the Highway Use Permit may be found at https://www.ksdot.org/Assets/wwwksdotorg/dot_304_hwy_permit.pdf.

(d) **Relocation Assistance.** The LPA shall contact the Secretary if there will be any displaced person on the Project prior to making the offer for the property. The Parties

mutually agree the LPA shall undertake the relocation of eligible persons as defined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and as provided in 49 C.F.R. Part 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, and in general accordance with K.S.A. §§ 58-3501 to 58-3507, inclusive, and Kansas Administrative Regulations 36-16-1, *et seq.* The Secretary will provide information, guidance, and oversight to the LPA for any relocations required by the Project.

23. **Secretary Authorization.** The Secretary is authorized by the LPA to take such steps as deemed necessary or advisable by the Secretary to secure the benefits of state aid for this Project.

24. **Submission of Design Plans to Secretary.** Upon their completion, the LPA shall have the Design Plans submitted to the Secretary by a licensed professional engineer, a licensed professional architect, and/or licensed landscape architect, as applicable, attesting to the conformity of the Design Plans with Article IV, paragraph 5. The Design Plans shall be signed and sealed by the licensed professional engineer, licensed professional architect, and/or licensed landscape architect, as applicable, responsible for preparation of the Design Plans. In addition, geological investigations or studies shall be signed and sealed by either a licensed geologist or licensed professional engineer who is responsible for the preparation of the geological investigations or studies. All technical professionals involved in the Project are required to meet the applicable licensing and/or certification requirements as stated in K.S.A. § 74-7001, *et seq.*

25. **Traffic Control.** The LPA agrees to the following regarding traffic control for the Project:

(a) **Temporary Traffic Control.** The LPA shall provide a temporary traffic control plan within the Design Plans, which includes the LPA's plan for handling multi-modal traffic during Construction, including detour routes and road closings, if necessary, and installation of alternate or temporary pedestrian accessible paths to pedestrian facilities in the public Right of Way within the Project Limits. The LPA's temporary traffic control plan shall conform to the latest version of the MUTCD, as adopted by the Secretary, and comply with the American Disabilities Act of 1990 (ADA) as amended by the ADA Amendments Act of 2008, implementing regulations at 28 C.F.R. Part 35, and FHWA rules, regulations, and guidance pertaining to the same.

(b) **Permanent Traffic Control.** The location, form, and character of informational, regulatory, and warning signs, of traffic signals and of curb and pavement or other markings installed or placed by any public authority, or other agency as authorized by K.S.A. § 8-2005, shall conform to the latest version of the MUTCD as adopted by the Secretary.

(c) **Parking Control.** The LPA shall control parking of vehicles on the city streets throughout the length of the Project covered by this Agreement. On-street parking

will be permitted until such time as parking interferes with the orderly flow of traffic along the street.

(d) Traffic Movements. The arterial characteristics inherent in the Project require uniformity in information and regulations to the end that traffic may be safely and expeditiously served. The LPA shall adopt and enforce rules and regulations governing traffic movements as may be deemed necessary or desirable by the Secretary and the FHWA.

26. Utilities. The LPA agrees to the following regarding Utilities:

(a) Utility Relocation. The LPA shall move or adjust, or cause to be moved or adjusted, and shall be responsible for such removal or adjustment of all existing Utilities necessary to construct the Project in accordance with the final Design Plans. New or existing Utilities to be installed, moved, or adjusted shall be located or relocated in accordance with the current version of the LPA's standard procedures.

(b) Status of Utilities. The LPA shall furnish the Secretary a list identifying existing and known Utilities affected, together with locations and proposed adjustments of the same and designate a representative to be responsible for coordinating the necessary removal or adjustment of Utilities.

(c) Time of Relocation. The LPA shall expeditiously take such steps as are necessary to facilitate the early adjustment of any Utilities, initiate the removal or adjustment of the Utilities, and proceed with reasonable diligence to prosecute this work to completion. The LPA shall certify to the Secretary on forms supplied by the Secretary that all Utilities required to be moved prior to Construction have either been moved or a date provided by the LPA as to when, prior to the scheduled Letting and Construction, Utilities will be moved. The LPA shall move, adjust, or cause to be moved or adjusted all necessary Utilities within the time specified in the LPA's certified form except those necessary to be moved or adjusted during Construction and those which would disturb the existing street surface. The LPA shall initiate and proceed to complete adjusting the remaining Utilities not required to be moved during Construction so as not to delay the Contractor in Construction of the Project.

(d) Permitting of Private Utilities. The LPA shall certify to the Secretary all privately owned Utilities occupying public Right of Way required for the Construction of the Project are permitted at the location by franchise, ordinance, agreement or permit and the instrument shall include a statement as to which party shall bear the cost of future adjustments or relocations required as a result of street or highway improvements.

(e) Indemnification. To the extent permitted by law, the LPA shall indemnify, hold harmless, and save the Secretary and the Contractor for damages incurred by the Secretary and Contractor because identified Utilities have not been moved or adjusted timely or accurately.

(f) Cost of Relocation. Except as provided by state and federal laws, the expense of the removal or adjustment of the Utilities located on public Right of Way shall be borne by the owners. The expense of the removal or adjustment of privately-owned Utilities located on private Right of Way or easements shall be borne by the LPA except as provided by state and federal laws.

ARTICLE V: SPECIAL PROGRAM REQUIREMENTS

1. Letting Deadline. The LPA shall Let the Project no later than six (6) months after March 2023 The LPA may make a written request to the Secretary to extend the Project's Letting deadline. In the Secretary's sole discretion, the Secretary may either grant or deny the LPA's request to extend the Letting deadline. If the LPA does not Let the Project within six (6) months after March 2023, the Secretary may cancel this Agreement.

2. Recapture of State Investment. The Parties agree to the following terms regarding the recapture of the Secretary's share:

(a) Recapture Period. The Parties agree the recapture period of the Project is ten (10) years, commencing on the date the Secretary or the LPA gives notice of final acceptance of the Project.

(b) Insurance. If the Project includes improvements to a building, the LPA shall purchase and maintain insurance for property damage to the building continuously during the Useful Life Period of the Project in an amount equal to or in excess of the funds expended on the Project.

(c) Change in Public Use. After the Project is completed and during the entire recapture period, any change in the public use of the real property for the Project shall require written approval from the Secretary.

(d) Recapture Formula. If the Project is not used for the purpose set forth in this Agreement or other use approved by the Secretary, the LPA shall pay back to the Secretary a percentage of the Secretary's share as follows:

- | | |
|--|-------------------------------|
| 1) Violates in 1 st year of 10-year period: | 100% of the Secretary's Share |
| 2) Violates in 2 nd year of 10-year period: | 90% of the Secretary's Share |
| 3) Violates in 3 rd year of 10-year period: | 80% of the Secretary's Share |
| 4) Violates in 4 th year of 10-year period: | 70% of the Secretary's Share |
| 5) Violates in 5 th year of 10-year period: | 60% of the Secretary's Share |
| 6) Violates in 6 th year of 10-year period: | 50% of the Secretary's Share |
| 7) Violates in 7 th year of 10-year period: | 40% of the Secretary's Share |
| 8) Violates in 8 th year of 10-year period: | 30% of the Secretary's Share |
| 9) Violates in 9 th year of 10-year period: | 20% of the Secretary's Share |
| 10) Violates in 10 th year of 10-year period: | 10% of the Secretary's Share |

Any payments due to the Secretary pursuant to this subparagraph (d) shall be made within ninety (90) days after receipt of billing from the Secretary's Chief of Fiscal Services.

ARTICLE VI: GENERAL PROVISIONS

1. **Acceptance.** No contract provision or use of items by the Secretary shall constitute acceptance or relieve the LPA of liability in respect to any expressed or implied warranties.
2. **Amendment.** Any amendment to this Agreement shall be in writing and signed by the Parties.
3. **Binding Agreement.** This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary and the LPA and their successors in office.
4. **Civil Rights Act.** The "Special Attachment No. 1, Rev. 09.20.17" pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.
5. **Compliance with Federal and State Laws.** The LPA shall comply with all applicable state and federal laws and regulations. The LPA represents and warrants that any Contractor and/or Consultant performing any services on the Project shall also comply with all applicable state and federal laws and regulations.
6. **Contractual Provisions.** The provisions found in the current version of the "Contractual Provisions Attachment (Form DA-146a)," which is attached, are hereby incorporated into, and made a part of this Agreement.
7. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same agreement.
8. **Debarment of State Contractors.** Any Contractor who defaults on delivery or does not perform in a satisfactory manner as defined in this Agreement may be barred for up to a period of three (3) years, pursuant to K.S.A. § 75-37,103, or have its work evaluated for pre-qualification purposes. Contractors retained by the LPA for the Project shall disclose any conviction or judgment for a criminal or civil offense of any employee, individual or entity which controls a company or organization or will perform work under this Agreement that indicates a lack of business integrity or business honesty. This includes (1) conviction of a criminal offense for obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract; (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, or receiving stolen property; (3) conviction under state or federal antitrust statutes; and (4) any other offense to be so serious and compelling as to affect responsibility as a state contractor. An individual or entity shall be presumed to have control of a company or organization if the individual or entity directly or

indirectly, or acting in concert with one or more individuals or entities, owns or controls 25 % or more of its equity, or otherwise controls its management or policies. Failure to disclose an offense may result in a breach of this Agreement for cause.

9. **Entire Agreement.** This Agreement, with all attached exhibits, expresses the entire agreement between the Parties with respect to the Project. No representations, promises, or warranties have been made by the Parties that are not fully expressed or incorporated by reference in this Agreement.

10. **Headings.** All headings in this Agreement have been included for convenience of reference only and are not to be deemed to control or affect the meaning or construction or the provisions herein.

11. **Incorporation of Design Plans.** The final Design Plans for the Project are by this reference made a part of this Agreement.

12. **Independent Contractor Relationship.** The relationship of the Secretary and the LPA shall be that of an independent contractor, and nothing in this Agreement shall be construed to create a partnership, joint venture, or employee-employer relationship. The LPA is not the agent of the Secretary and is not authorized to make any representation, contract, or commitment on behalf of the Secretary. It is expressly understood that any individual performing services under this Agreement on behalf of the LPA shall not be deemed to be an employee or independent contractor of the Secretary, and such individual shall not be entitled to tax withholding, workers' compensation, unemployment compensation or any employee benefits, statutory or otherwise, from the Secretary. The LPA agrees that it is solely responsible for the reporting and payment of income, social security, and other employment taxes due to the proper taxing authorities with respect to such personnel. The LPA agrees to indemnify, defend and hold harmless the Secretary and its directors, officers, employees, and agents from and against any and all costs, losses, damages, liabilities, expenses, demands, and judgments, including court costs and attorney's fees, relating to the reporting and payment of income, social security, and other employment taxes and the provision of employee benefits (including but not limited to workers' compensation, unemployment insurance, and health insurance coverage or assessable payments required under state or federal) with respect to such individual performing services under this Agreement on behalf of the LPA. This provision shall survive the expiration or termination of this Agreement.

13. **Industry Standards.** Where not otherwise provided in this Agreement, materials or work called for in this Agreement shall be furnished and performed in accordance with best established practice and standards recognized by the contracted industry and comply with all applicable federal, state, and local laws and rules and regulations promulgated thereunder.

14. **No Third-Party Beneficiaries.** No third-party beneficiaries are intended to be created by this Agreement and nothing in this Agreement authorizes third parties to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

15. **Nondiscrimination and Workplace Safety.** The LPA shall comply with all

federal, state, and local laws, and rules and regulations prohibiting discrimination in employment and controlling workplace safety. Any violations of applicable laws, rules, or regulations may result in termination of this Agreement.

16. **Notices.** Any notice required or submitted under this Agreement shall be deemed given if personally delivered or mailed by registered or certified mail, return receipt requested and postage prepaid, to the following addresses of the Parties or such other addresses as either party shall from time to time designate by written notice.

The Secretary:
Kansas Department of Transportation
Attn: Michelle Needham
Division of Fiscal & Asset Management
700 SW Harrison Street, 2nd Floor West
Topeka, KS 66603-3754

The LPA:
City of Osawatomie, KS
Attn: Bret Glendening
439 Main Street, PO Box 37
Osawatomie, KS 66064

17. **Restriction on State Lobbying.** Funds provided by the Secretary under this Agreement shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this Agreement shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

18. **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected, and each provision of this Agreement shall be enforced to the fullest extent permitted by law.

19. **Technical Advice and Assistance; Limitations.** Technical advice, assistance, or both, provided by the Secretary under this Agreement shall not be construed as an undertaking by the Secretary of the duties of the LPA or any other individual or entity, or the duties of any Consultant, Contractor, licensed professional engineer, or inspector hired by the LPA.

20. **Termination.** If, in the judgment of the Secretary, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, the Secretary may terminate this Agreement at the end of its current fiscal year. The Secretary will participate in all costs approved by the Secretary incurred prior to the termination of the Agreement.

21. **Waiver.** A Party's failure to exercise or delay in exercising any right, power, or privilege under this Agreement shall not operate as a waiver. Further, no single or partial exercise of any right, power, or privilege shall preclude any other or further exercise thereof.

IN WITNESS WHEREOF the Parties have caused this Agreement to be signed by their duly authorized officers as of the Effective Date.

ATTEST:

THE CITY OF OSAWATOMIE, KANSAS

CITY CLERK (Date)

MAYOR

(SEAL)

Kansas Department of Transportation
Secretary of Transportation

By:

Calvin E. Reed, P.E. (Date)
Acting Secretary of
Transportation

| |
|--|
| <p>Form Approved</p> <p>By _____</p> <p>Legal Dept. KDOT</p> |
|--|

KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment
To Contracts or Agreements Entered Into
By the Secretary of Transportation of the State of Kansas

PREAMBLE

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. § 2000d to 2000d-4) and other nondiscrimination requirements and the Regulations, hereby notifies all contracting parties that it will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, color, national origin, sex, age, disability, income-level or Limited English Proficiency (“LEP”).

CLARIFICATION

Where the term “contractor” appears in the following “Nondiscrimination Clauses”, the term “contractor” is understood to include all parties to contracts or agreements with the Secretary of Transportation, Kansas Department of Transportation. This Special Attachment shall govern should this Special Attachment conflict with provisions of the Document to which it is attached.

ASSURANCE APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the “contractor”), agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in its Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration (FHWA), the Federal Transit Administration (“FTA”) or the Federal Aviation Administration (“FAA”) as they may be amended from time to time which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontractors, Including Procurements of Material and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor will be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA, Federal Transit Administration (“FTA”), or Federal Aviation Administration (“FAA”) to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or, the FHWA, FTA, or FAA as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor’s noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA, FTA, or FAA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of the paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any

subcontract or procurement as the Recipient or the FHWA, FTA, or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

ASSURANCE APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- The Federal Aid Highway Act of 1973 (23 U.S.C. § 324 et. seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et. seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et. seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL No. 100-259), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with LEP, and resulting agency guidance, national origin discrimination includes discrimination because of LEP. To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681)

State of Kansas
Department of Administration DA-146a
(Rev. 07-19)

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 07-19), which is attached hereto, are hereby incorporated in this contract and made a part thereof.

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least thirty (30) days prior to the end of its current fiscal year and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101, *et seq.*).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001, *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111, *et seq.*) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101, *et seq.*) (ADA), and Kansas Executive Order No. 19-02, and to not discriminate against any person because of race, color, gender, sexual orientation, gender identity or expression, religion, national origin, ancestry, age, military or veteran status, disability status, marital or family status, genetic information, or political affiliation that is unrelated to the person's ability to reasonably perform the duties of a particular job or position; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to

comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) Contractor agrees to comply with all applicable state and federal anti-discrimination laws and regulations; (g) Contractor agrees all hiring must be on the basis of individual merit and qualifications, and discrimination or harassment of persons for the reasons stated above is prohibited; and (h) if it is determined that the contractor has violated the provisions of any portion of this paragraph, such violation shall constitute a breach of contract and the contract may be canceled, terminated, or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

6. **Acceptance of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority to Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility for Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101, *et seq.*), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101, *et seq.*
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

CERTIFICATION BY PARTICIPANTS AS TO CURRENT HISTORY
REGARDING DEBARMENT, ELIGIBILITY, INDICTMENTS, CONVICTIONS, OR
CIVIL JUDGMENTS

By signing this certificate, the Participant certifies that neither it nor its principals (owner, partner, director, officer, principal investigator, project director, manager, auditor, or any other position involving the administration of federal funds) is:

- (1) not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- (2) has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
- (3) does not have a proposed debarment pending;
- (4) and has not been indicted, convicted, or had a civil judgment rendered against (it) by a court of competent jurisdiction in any manner involving fraud or official misconduct within the past three years.

List any exceptions here: _____

Exceptions will not necessarily result in denial of award, but will be considered in determining bidder or respondent responsibility. For any exceptions noted, indicate below to whom it applies, initiating agency, and dates of action.

Providing false information may result in criminal prosecution or administrative sanctions.

Participant/Firm's Name: _____

Address: _____

City/State/Zip: _____

Authorized Company Official's Name and Title: _____
(Typed or Printed)

Signature of Authorized Representative: _____
(Date)



| | | |
|----------------------------|--------------|-----------------|
| ACTION ITEM SUMMARY | Item Number: | 9.B. |
| Resolution 1090 | Date: | January 12,2023 |
| Director of Utilities | From: | Terry Upshaw |

RE: Accepting bids for AMI system

RECOMMENDATION: Osawatomie City Council accept the proposal from Wesco (Tantalus).

DETAILS: City staff requested proposals for the replacement of all electric meters, water meters, and an AMI system to collect data from those meters. This is to replace the current system that was installed in 2006. The city currently has approximately 2003 electric meters and 1638 water meters. A new AMI system will provide more data such as alerts for high daily usage, tampering, outage reports, power restore, and real time reads. Data will be more accurate. All meters would be read from City Hall instead of our current drive by system. It will also have the capabilities of remotely disconnecting electric meters for non-payment or customer requested disconnection. This will free up staff in the distribution fields to focus on other job tasks. All water and electric meters would be replaced, which should potentially allow the city to capture more accurate reads and reduce our water and electric losses. With more data and real time reads it will also potentially identify water leaks on customer side sooner which will save customers money.

City staff received four bids from the request, the bids were from:

| | | |
|------------------|-----------------------|---------------------------------|
| Wesco (Tantalus) | \$1,456,189.00 year 1 | \$67,906.82 annual after year 1 |
| OATI | \$481,490.00 year 1 | \$18,456.00 annual after year 1 |
| Eaton | \$697,050.00 year 1 | \$21,820.00 annual after year 1 |
| Veolia | \$2,051,256.50 year 1 | \$67,840.00 annual after year 1 |

RESOLUTION NO. 1090

**A RESOLUTION AUTHORIZING THE PURCHASE OF AMI METERING SYSTEM
FOR THE CITY OF OSAWATOMIE**

WHEREAS, the City of Osawatomie, Kansas, owns and operates the electric and water utility; and to ensure it is metering those utilities accurately the city needs to replace its current meters and AMI system.

WHEREAS, the City of Osawatomie, Kansas, is seeking ways increase the efficiency in which they read meters, collect data, and minimize the labor required to do so. A new AMI system would show real time data, help identify inaccuracies, and capture more accurate information. The intent is to reduce losses, which will mitigate the need for future rate adjustments.

WHEREAS, the city has requested proposals for the replacement of both water and electric meters and an AMI system to collect data from those meters.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF OSAWATOMIE, KANSAS:

SECTION 1. The City Council hereby authorizes the award of the AMI system to Wesco (Tantalus).

PASSED AND ADOPTED by the Governing Body of the City of Osawatomie, Kansas this 12th day of January, 2023, a majority being in favor thereof.

APPROVED AND SIGNED by the Mayor.

Nick Hampson, Mayor

(SEAL)

ATTEST:

Tammy Seamands, City Clerk

AMI RFP SUMMARY

The City currently has approximately 2003 electric meters and 1638 water meters, most of which were installed in 2006. The average life expectancy of water meters is 20 years or 1,000,000 gallons of usage and the average life expectancy of electric meters is 20 years. The current meters system the city operates is Sensus. At the time of installation Sensus did not have any 3 phase electric meters available for the AMI system therefore no 3 phase meters were replaced at the time of installation. Water meters bigger than 5/8" was not replaced due to cost at the time. The city currently has some water and electric meters that are 20 plus years old and may not be as accurate the industry standard of 2%, this could result in a loss of revenue. Since installation Sensus has discontinued the electric meters supported by our AMI system. We currently have a small stock of electric meters that we have purchased from other cities, depending on the failure rate of current meters it is estimated that we have enough electric meters on hand to last around 1-year. Because of technology changes most utilities look at their metering system every 10-15-years, to insure they are staying current and to reduce loss of revenue. For these reasons, the city sent out an RFP for a new AMI system. We received responses from Tantalus (Wesco/Anixter), Oati, Eaton, and Veolia.

Tantalus:

- True mesh network, they would install 4 gateways, 4 pole mount repeaters, and 2 streetlight repeaters. Water meters send data to electric meters which send data to a repeater or gateway whichever is the best pathway. If a repeater or gateway goes down, the meters simply find the next best path way, this ensures a 98.5% data collection.
- 3,000,000 meters installed with 260 utility companies, with 80 years- experience in the utility industry.
- Works with Tyler Tech our billing software.
- Software support is 15-years.
- Electric meters have a 3-year warranty and water meter warranty is 100% for 10-years, 60% for years 10-14, 40% for years 15-17, and 20% for years 17-20.
- KMEA members with Tantalus share the cost for hosting server, the more members that deploy the system the cheaper the annual does become.
- Operates on 900 MHZ radio frequency.
- Proposed Itron electric meters and Badger water meters. System can work with other meter manufactures.
- Fully upgradeable, we can add other features in the future at additional cost. (St. light controls, regulator controls and capacitor controls)

OATI:

- Install 2 gateways on city water towers, water meters send data to electric meter which send all data through 1 of the gateways.
- 26-years' experience with over 2,500 customers.
- Works with Tyler Tech our billing software.
- Electric meters come with year warranty. Proposal did not include water meters, instead just replacing the MIU which send the data to the electric meter.
- Operates on 900 MHZ radio frequency.
- Proposed Vision electric meters. No water meters in proposal. Vision meters are they only meters currently that will work with their system.
- Fully upgradeable, we can add other features in the future at additional cost. (St. light controls, regulator controls and capacitor controls)
- No installation proposed for electric meters.

Eaton:

- True mesh network, they would install 2 gateways, backhaul units, and 10 pole mounted repeater. Water meters send data to electric meters which send data to a repeater or gateway whichever is the best pathway. If a repeater or gateway goes down, the meters simply find the next best path way, this ensures a 99.5% data collection.
- Eaton is recognized as an industry leader in utility products, they have over 5.5 million meters deployed with over 300 customers.
- Works with Tyler Tech our billing software.
- Electric meters have a 3-year warranty.
- Operates on 900 MHZ radio frequency.
- Proposed Itron electric meters and water nodes, no replacement of water meters included in proposal. Meters from other manufactures are supported with this system.
- Fully upgradeable, we can add other features in the future at additional cost. (St. light controls, regulator controls and capacitor controls)

Veolia:

- Install 3 collecting units, water meters send data to electric meters which send data to the collector, ensures 98.5% data collection.
- Over 650,000 water meters nationwide.
- Works with Tyler Tech our billing software.
- Electric meters have 1-year from installation warranty or an 18- month warranty from date received. Water meters have a 20-year warranty.

- Operates on a 450-470 frequency, this is a licensed frequency which would be owned by the City. This means less chance of interference and less power required to transmit data.
- Proposed Aclara/GE electric meters and Diehl water meters. Meters from other manufactures are supported with this system.
- Fully upgradeable, we can add other features in the future at additional cost. (St. light controls, regulator controls and capacitor controls)

Pricing: All pricing was based on the data provided at the time the RFP was sent out, meter #'s may change and installation may change depending on the condition of the meter sockets and or meter setters, or if meter info is wrong in our system.

- **Tantalus:**

| | |
|--|----------------------------|
| Equipment | 393,350.94 |
| Meters including installation | 994,931.32 |
| Annual fees | 67,906.82 |
| <u>TOTAL YEAR 1</u> | <u>1,456,189.08</u> |
| <u>TOTAL ANNUAL REOCCURRING</u> | <u>67,906.82</u> |

This annual price cover 24/7/365 support through a service center, for an additional \$15,000 per year we would have a dedicated project manager to help resolve issues.

- **OATI:**

| | |
|--|--------------------------|
| Equipment | 59,168.00 |
| Meters <u>not</u> including installation | 403,866.00 |
| Annual fees | 18,456.00 |
| <u>TOTAL YEAR 1</u> | <u>481,490.00</u> |
| <u>TOTAL ANNUAL REOCCURRING</u> | <u>18,456.00</u> |

- **Eaton:**

| | |
|--|--------------------------|
| Equipment | 117,700.00 |
| Meters <u>not</u> including installation | 557,530.00 |
| Annual fees | 21,820.00 |
| <u>TOTAL YEAR 1</u> | <u>697,050.00</u> |
| <u>TOTAL ANNUAL REOCCURRING</u> | <u>21,820.00</u> |

- **Veolia:**

| | |
|-------------------------------|--------------|
| Equipment | 500,795.00 |
| Meters including installation | 1,482,621.50 |
| Annual fees | 67,840.00 |

| | |
|--|----------------------------|
| <u>TOTAL YEAR 1</u> | <u>2,051,256.50</u> |
| <u>TOTAL ANNUAL REOCCURRING</u> | <u>67,840.00</u> |

Conclusion

All proposed systems would come with remote disconnect on residential electric meters, which means they can be turned off, or on from City Hall, no need to spend 2-3 days sending a truck to every address on the shut off list. This would also eliminate face to face confrontation with residents. Also, all meters can be read from City Hall within minutes of sending out the request, this would eliminate the need to roll a truck to addresses needing an occupancy change.

Vendor Choice:

OATI did not include water meters and the installation price, and they only support electric meters from Vision, they meet the least number of requirements from the RFP.

Eaton is a very well know company and makes many great products, but they did not include replacing water meters in their proposal. If we were just replacing electric meters, they would be staff's choice.

Veolia meets all the requirements of the RFP and offer a few extras including operating at a different frequency. Veolia would maintain the system for the 15-year warranty, meaning any data collection problems they would cover including replacing equipment at no charge to us. Staff believes it would be a robust system and would be a good choice, however the price is considerable.

Tantalus meets all the requirements of the RFP, I think them installing 4 gateways, 4 pole mount repeaters, and 2 streetlight repeaters is a true mesh system and would provide the City with redundancy and ensure data collection, however after the initial 1-year equipment warranty the City would be responsible for replacing an equipment failure. Also, since KMEA host the server, our annual fees will decrease as more customers come online.

Staff believes with the information provided at this time **Tantalus** is the best option to replace the City's AMI system. Below is the order the staff would rank the proposals.

- 1. TANTALUS**
- 2. VEOLIA**
- 3. EATON**
- 4. OATI**



| | | |
|----------------------------|--------------|------------------|
| ACTION ITEM SUMMARY | Item Number: | 10.A. |
| Resolution 1089 | Date: | January 11, 2023 |
| Director of Utilities | From: | Terry Upshaw |

RE: Approve the purchase of a used bucket truck

RECOMMENDATION: Authorize city staff to locate and purchase a 2013 or newer bucket truck.

DETAILS: The electric distribution currently has 2 bucket trucks, 2005 Altec on a Freightliner chassis, and 2008 Versa-lift on a Ford 650 chassis. Altec currently preforms all maintenance and repairs on these trucks. Staff was informed by Altec that they will no longer be able to service or repair the 2008 Versa-lift because of their policy of not working on other manufacturers equipment that is 15-years or older. For this reason, staff wants to replace the 2008 Versa-lift truck. City staff budgeted \$230,000 for the purchase of a bucket truck for electric distribution. Staff has been informed that new trucks from Altec if ordered today would not be available until 2027 and the cost currently ranges from \$285,000 to \$325,000, depending on features. Staff has vendors looking for a used truck that meets our requirements. If a truck becomes available it typically is sold within 5-10 days. For this reason, staff is asking Council to approve the purchase of a truck not to exceed the amount of \$230,000.

Staff has located a 2014 Altec truck on an international chassis that will be available later this month. Staff intends on inspecting this vehicle once it is made available to determine its condition. Cost of this truck is \$120,000. Staff also has been in contact with Altec to determine the trade in value of the 2008 versa-lift and Altec has offered \$20,000 for it.

RESOLUTION NO. 1089

**A RESOLUTION AUTHORIZING THE PURCHASE OF A USED BUCKET TRUCK
FOR THE ELECTRIC DEPARTMENT**

WHEREAS, the City of Osawatomie, Kansas, owns and operates the electric distribution system; and

WHEREAS, the line crew needs certain specialized equipment on-hand to operate and maintain the distribution system; and

WHEREAS, that equipment needs to be replaced at regular intervals. The replacement of such equipment helps ensure safety of staff and maintenance of the distribution system; and

WHEREAS, the department's budget contains \$230,000.00 to replace existing equipment with newer more reliable equipment.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE
CITY OF OSAWATOMIE, KANSAS:**

SECTION 1. The City Council hereby authorizes the purchase of a newer bucket truck, not to exceed the amount of \$230,000.00.

PASSED AND ADOPTED by the Governing Body of the City of Osawatomie, Kansas this 12th day of January, 2023, a majority being in favor thereof.

APPROVED AND SIGNED by the Mayor.

Nick Hampson, Mayor

(SEAL)

ATTEST:

Tammy Seamands, City Clerk



| | | |
|----------------------------|--------------|------------------|
| ACTION ITEM SUMMARY | Item Number: | 10.B |
| | Date: | January 11, 2022 |
| City Manager | From: | Mike Scanlon |

RE: Resolution 1091 – Sets the calendar for the for filling the vacant seat of City Councilmember Kirk Wright.

RECOMMENDATION: That the City Council approve Resolution 1091 setting the calendar for the for filling the vacant seat of City Councilmember Kirk Wright.

DETAILS: Per City Code:

1-207. Vacancies in governing body; how filled.

A vacancy occurring in the office of a City Council member, whether such vacancy occurs by reason of the removal of the council member from their ward or by reason of their death, resignation, failure of the council member to qualify for office, or the disqualification of a council member from holding such office, shall be filled by an election held among the remaining members of the City Council. Whenever such vacancy occurs in the office of a City Council member, the Mayor shall at a regular or special meeting of the Council inform the Council of the vacancy and form a nominating committee, composed of the Mayor, the President of the Council, and the council member remaining in the ward affected to seek out candidate(s) from the ward affected to fill such vacancy. Within forty (40) days of the Mayor informing the Council of a vacancy, the nominating committee shall recommend candidate(s) to the Council. Individual Council members may also recommend candidates to fill such vacancy. Following receipt of the recommendation of the nominating committee at a regular meeting of the Council or at a special meeting duly called for the purpose of filling such vacancy, the Council may by motion nominate a person or persons for consideration of the Council. Any successor in office elected by the Council to fill such vacancy must be elected by a majority of the remaining elected council members of said City.

(Ord. 3605, Sec. 1; Code 2008)

To comply with the code, we are tentatively scheduling times for the nominating committee to meet with potential candidates in the coming 10 days – based on availability. Our goal is that the nominating committee have a recommendation available to the City Council at their January 26, 2023 regular City Council meeting.

We will be posting information regarding this vacancy on the City's web site and Facebook. Our hope is to meet with potential candidates on January 23-25th. City staff will be working with the nominating committee to finalize times and dates.

| | |
|-----------------------------------|---|
| Related Statute / City Ordinances | City Code Chapter 1, Article 2, Section 1-207 |
| Line-Item Code/Description | |
| Available Budget: | |

RESOLUTION NO. 1091

**A RESOLUTION OF THE CITY OF OSAWATOMIE, KANSAS
SETTING THE CALENDAR FOR THE SELECTION OF
CANDIDATE TO FILL THE UNEXPIRED TERM OF
COUNCILMEMBER KIRK WRIGHT.**

WHEREAS, Mayor Hampson has received the resignation of Councilmember Kirk Wright; and

WHEREAS, the City Code requires that within 40 days of notification of resignation that the position of City Councilmember be filled; and

WHEREAS, the City Code outlines the process for this nomination including that the nominating committee will consist of the Mayor Hampson, Council President Lawrence Dickinson, and Councilmember Dan Macek; and

WHEREAS, given the time-frame identified in the code we plan on setting meetings for the nominating committee in the near term.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF OSAWATOMIE, KANSAS:

SECTION ONE: That the Nominating Committee set between January 23-25th to interview candidates for the City Council vacancy and that Mike Scanlon, City Manager serve as the staff member organizing and collecting information for the Committee.

PASSED AND APPROVED by the Governing Body of the City of Osawatomie, Kansas this 12th day of January 2023, a majority being in favor thereof.

APPROVED AND SIGNED by the Mayor.

Nick Hampson, Mayor

(SEAL)

ATTEST:

Tammy Seamands, City Clerk



| | | |
|----------------------------|--------------|------------------|
| ACTION ITEM SUMMARY | Item Number: | 10.C |
| | Date: | January 11, 2023 |
| City Manager | From: | Mike Scanlon |

RE: Resolution 1092 – Authorizing an Engineering Contract with BG Consultants, Inc. for the design of South Levee and John Brown Loops in the City of Osawatomie and creation of a five-year capital improvement plan for non-utility investments.

RECOMMENDATION: That the City Council approve Resolution 1092 authorizing an Engineering Contract with BG Consultants, Inc. for the design of South Levee and John Brown Loops in the City of Osawatomie and creation of a five-year capital improvement plan for non-utility investments.

DETAILS: As a community we have five primary goals. Two of those goals are ***creating economic development*** and ***investing and maintain soft infrastructure***. This contract and the resulting construction of the South Levee and John Brown Loops will help in achieving those goals. Additionally, this is a project that a majority of the funding is coming from a \$1.5 million dollar Kansas Department of Transportation (KDOT) Transportation Alternative (TA) grant.

| | |
|-----------------------------------|---|
| Related Statute / City Ordinances | City Code Chapter 1, Article 2, Section 1-207 |
| Line-Item Code/Description | |
| Available Budget: | |

RESOLUTION NO. 1092

A RESOLUTION AUTHORIZING AN ENGINEERING CONTRACT WITH BG CONSULTANTS, INC. FOR THE DESIGN OF SOUTH LEVEE AND JOHN BROWN LOOPS IN THE CITY OF OSAWAOTMIE.

WHEREAS, the City of Osawatomie, Kansas, through the Mid-America Regional Council (MARC) Planning Sustainable Places (PSP) identified specific trail loops that could improve bike/ped mobility in our community; and

WHEREAS, in addition to improved mobility these loops could create connections to and magnify the Flint Hills trailhead and various historical sites within our community; and

WHEREAS, the city submitted and received \$1.5 million for the construction of these proposed loops through a Kansas Department of Transportation (KDOT) – Transportation Alternative (TA) Grant, whereby 80% of the construction and construction engineering costs are paid by the KDOT.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF OSAWATOMIE, KANSAS:

SECTION 1. The City Council hereby authorizes the execution of an Engineering Agreement with BG Consultants, Inc in the amount of \$214,200.

SECTION 2. That the City Manager prepare a long-term Capital Financing budget to address this and all other non-utility projects to be financed by the city in the next five-years.

PASSED AND ADOPTED by the Governing Body of the City of Osawatomie, Kansas this 12th day of January, 2023, a majority being in favor thereof.

APPROVED AND SIGNED by the Mayor.

Nick Hampson, Mayor

(SEAL)

ATTEST:

Tammy Seamands, City Clerk



AGREEMENT CONSULTANT-CLIENT

THIS AGREEMENT made and entered into by and between BG CONSULTANTS, INC., party of the first part, (hereinafter called the CONSULTANT), and Osawatomie, Kansas, party of the second part, (hereinafter called the CLIENT).

WITNESSETH:

WHEREAS, the CLIENT is authorized and empowered to contract with the CONSULTANT for the purpose of obtaining Services for the following improvement:

John Brown and South Levee Loop

Osawatomie, Kansas

WHEREAS, the CONSULTANT is licensed in accordance with the laws of the State of Kansas and is qualified to perform the Professional Services desired by the CLIENT now therefore:

IT IS AGREED by and between the two parties aforesaid as follows:

SECTION 1 – DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed herein unless otherwise stated or reasonably required by this contract, and other forms of any defined words shall have a meaning parallel thereto.

- 1.1 “Additional Services” means any Services requested by the CLIENT which are not covered by Exhibit 1 of this Agreement.
- 1.2 “Agreement” means this contract and includes change orders issued in writing.
- 1.3 “CLIENT” or “Client” means the agency, business or person identified on page 1 as “CLIENT” and is responsible for ordering and payment for work on this project.
- 1.4 “CONSULTANT” or “Consultant” means the company identified on page 1. CONSULTANT shall employ for the Services rendered, engineers, architects and surveyors licensed, as applicable, by the Kansas State Board of Technical Professions.
- 1.5 “Contract Documents” means those documents so identified in the Agreement for this Project, including Engineering, Architectural and/or Survey documents under this Agreement. Terms defined in General Conditions shall have the same meaning when used in this Agreement unless otherwise specifically stated or in the case of a conflict in which case the definition used in this Agreement shall prevail in the interpretation of this Agreement.
- 1.6 “Engineering Documents” or “Architectural Documents” or “Survey Documents” means plans, specifications, reports, drawings, tracings, designs, calculations, computer models, sketches, notes, memorandums or correspondence related to the work described in Exhibit 1 attached hereto.

- 1.7 “Consulting Services” or “Engineering Services” or “Architectural Services” or “Survey Services” means the professional services, labor, materials, supplies, testing and other acts or duties required of the CONSULTANT under this Agreement, together with Additional Services as CLIENT may request and evidenced by a supplemental agreement pursuant to the terms of this Agreement.
- 1.8 “Services” is a description of the required work as shown in **Exhibit 1**.
- 1.9 “Subsurface Borings and Testing” means borings, probings and subsurface explorations, laboratory tests and inspection of samples, materials and equipment; and appropriate professional interpretations of all the foregoing.

SECTION 2 – RESPONSIBILITIES OF CONSULTANT

- 2.1 SCOPE OF SERVICES: The CONSULTANT shall furnish and perform the various Professional Services of the Project to which this Agreement applies, as specifically provided in **Exhibit 1** for the completion of the Project.

2.2 GENERAL DUTIES AND RESPONSIBILITIES

- 2.2.1. **Personnel:** The CONSULTANT shall assign qualified personnel to perform professional Services concerning the Project. At the time of execution of this Agreement, the parties anticipate that the following individual will perform as the principal point of contact on this Project.

| | |
|----------|------------------------|
| Name: | Diane Rosebaugh, P.E. |
| Address: | 1405 Wakarusa Drive |
| | Lawrence, Kansas 66049 |
| Phone: | (785) 727-7673 |

- 2.2.2. **Standard of Care:** In the performance of professional Services, CONSULTANT will use that level of care and skill ordinarily exercised by reputable members of CONSULTANT’s profession currently practicing in the same locality under similar conditions. No other representation, guarantee or warranty, express or implied, is included or intended in this agreement or in any communication (oral or written) report, opinion, document or instrument of service.
- 2.2.3. **Independent Contractor:** The CONSULTANT is an independent contractor and as such is not an employee of the Client.
- 2.2.4. **Insurance:** CONSULTANT will maintain insurance for this Agreement in the following types: (i) worker’s compensation insurance as required by applicable law, (ii) comprehensive general liability insurance (CGL), (iii) automobile liability insurance and (iv) Professional liability insurance.
- 2.2.5. **Subsurface Borings and Material Testing:** If tests additional to those provided in Exhibit 1 are necessary for design, the CONSULTANT shall prepare a request for the necessary additional borings and procure at least two proposals, including cost, from Geotechnical firms who engage in providing Subsurface Borings and Testing Services. The CONSULTANT will provide this information to the Client and the Client will contract directly with the Geotechnical firm. The CONSULTANT will not charge an add-on percentage for the Geotechnical firm’s work. The Client will pay the Geotechnical firm separately from this Agreement.

- 2.2.6. **Service by and Payment to Others:** Any work authorized in writing by the Client and performed by a third party, other than the CONSULTANT or their subconsultants in connection with the proposed Project, shall be contracted for and paid for by the Client directly to the third party or parties. Fees for extra work shall be subject to negotiation between the CLIENT and the third party. Fees shall be approved by the CLIENT prior to the execution of any extra work. Although the CONSULTANT may assist the CLIENT in procuring such Services of third parties. Where any design services are provided by persons or entities not under CONSULTANT's direct control, CONSULTANT's role shall be limited to its evaluation of the general conformance with the design intent and the interface with CONSULTANT's design and portion of the project. Except to the extent it is actually aware of a deficiency, error, or omission in such design by others, CONSULTANT shall have no responsibility for such design and may rely upon its adequacy, accuracy, and completeness in all respects.
- 2.2.7. **Subcontracting of Service:** The CONSULTANT shall not subcontract or assign any of the architectural, engineering, surveying or consulting Services to be performed under this Agreement without first obtaining the approval of the Client regarding the Services to be subcontracted or assigned and the firm or person proposed to perform the Services. Neither the CLIENT nor the CONSULTANT shall assign any rights or duties under this Agreement without the prior consent of the other party.
- 2.2.8. **Endorsement:** The CONSULTANT shall sign and seal final plans, specifications, estimates and data furnished by the CONSULTANT according to Kansas Statutes and Rules and Regulations.
- 2.2.9. **Force Majeure:** Should performance of Services by CONSULTANT be affected by causes beyond its reasonable control, Force Majeure results. Force Majeure includes, but is not restricted to, acts of God; acts of a legislative, administrative or judicial entity; acts of contractors other than contractors engaged directly by CONSULTANT; fires; floods; labor disturbances; epidemics; and unusually severe weather. CONSULTANT will be granted a time extension and the parties will negotiate an equitable adjustment to the price of any affected Work Order, where appropriate, based upon the effect of the Force Majeure on performance by CONSULTANT.
- 2.2.10. **Inspection of Documents:** The CONSULTANT shall maintain Project records for inspection by the CLIENT during the contract period and for three (3) years from the date of final payment.
- 2.2.11. **No Fiduciary Duty:** The CONSULTANT shall perform its services consistent with the professional skill and care ordinarily provided by consultants practicing in the same or similar locality under the same or similar circumstances ("Standard of Care"). The CONSULTANT shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. CONSULTANT makes no warranties or guarantees, express or implied, under this Agreement or otherwise in connection with CONSULTANT's services. Notwithstanding any other representations made elsewhere in this Agreement or in the execution of the Project, this Standard of Care shall not be modified. The CONSULTANT shall act as an independent contractor at all times during the performance of its services, and no term of this Agreement, either expressed or implied, shall create an agency or fiduciary relationship.

SECTION 3 – CLIENT RESPONSIBILITIES

3.1 GENERAL DUTIES AND RESPONSIBILITIES

- 3.1.1. **Communication:** The CLIENT shall provide to the Consultant information and criteria regarding the CLIENT's requirement for the Project; examine and respond in a timely manner to the Consultant's submissions and give notice to the Consultant whenever the CLIENT observes or otherwise becomes aware of any defect in the Services. The CLIENT represents that all information they provide is accurate. Our review and use of the information will be to the standard of care and any delays or additional costs due to inaccurate information will be the responsibility of the CLIENT.
- 3.1.2. **Access:** The CLIENT will provide access agreements for the Consultant to enter public and private property when necessary.
- 3.1.3. **Duties:** The CLIENT shall furnish and perform the various duties and Services in all phases of the Project which are outlined and designated in Exhibit 1 as the CLIENT's responsibility.
- 3.1.4. **Program and Budget:** The CLIENT shall provide full information stating the CLIENT's objectives, schedule, budget with reasonable contingencies and necessary design criteria so that Consultant is able to fully understand the project requirements.
- 3.1.5. **Testing:** Any additional tests required to supplement the Scope of Services or tests required by law shall be furnished by the CLIENT.
- 3.1.6. **Legal, Insurance, Audit:** The CLIENT shall furnish all legal, accounting and insurance counseling Services as may be necessary at any time for the Project. The CLIENT shall furnish all bond forms required for the Project.
- 3.1.7. **Project Representative:** The CLIENT will assign the person indicated below to represent the CLIENT in coordinating this Project with the CONSULTANT, with authority to transmit instructions and define policies and decisions of the CLIENT.

Name: Bret Glendening, Deputy City Manager
Address: 439 Main Street
Osawatomie, Kansas
Phone: (913) 755-2146

- 3.1.8. **Billing Contact:** In this section, the CLIENT will identify the billing contact and address. The CONSULTANT will submit invoices according to this contract to the CLIENT's billing contact at the address shown:

Name: Bret Glendening, Deputy City Manager
Address: 439 Main Street
Osawatomie, Kansas
Phone: (913) 755-2146

SECTION 4 – PAYMENT

4.1 COMPENSATION

- 4.1.1. **Fee and Expense:** The CLIENT agrees to pay the CONSULTANT a Lump Sum Fee according to **Exhibit 2** of this Agreement. The Lump Sum Fee for this project is a total of **two hundred fourteen thousand, two hundred and NO/100 Dollars (\$214,200.00)** plus reimbursable expenses as outlined in **Exhibit 2** and for the Scope of Services as shown in

Exhibit 1 of this Agreement. Payment of the Lump Sum Fee and reimbursables shall be made by the CLIENT according to the schedule and upon completion of work as shown in **Exhibit 2**. Other methods of compensation are allowed only after written approval by both parties to this Agreement. Payment is due within thirty (30) days of billing by the CONSULTANT and any late payment will incur an interest charge of one and one-half (1½) percent per month.

- 4.1.2. **Hourly Rate:** Any Additional Services which are not set forth in this Agreement will be charged on the basis of BG Consultants, Inc. standard hourly rate schedule in effect at the time of services, unless stated otherwise in a properly executed addendum to this contract for Additional Services. No Additional Services or costs shall be incurred without proper written authorization of the CLIENT.
- 4.1.3. **Annual Rate Adjustment:** The payment amounts listed in this Agreement are based on the work being performed within one year of the contract date. Because of natural time delays that may be encountered in the administration and work to be performed for the project, each value will be increased at the rate of 3%, compounded annually, beginning after one year from the date of the contract and ending when that item is approved for billing.
- 4.1.4. **Reimbursable Expenses:** An estimate of reimbursable expenses plus ten (10) percent shall be included in the total estimate of cost for this project and as shown in **Exhibit 2**. Total estimated cost is calculated as Lump Sum plus reimbursable expenses plus ten (10) percent. Reimbursable expenses include, but are not limited to, expenses of transportation in connection with the Project; expenses in connection with authorized out-of-town travel; expenses of printing and reproductions; postage; expenses of renderings and models requested by the CLIENT and other costs as authorized by the CLIENT. Reimbursable expenses will not include overhead costs or additional insurance premiums.
- 4.1.5. **Sales Tax:** Compensation as provided for herein is exclusive of any sales, use or similar tax imposed by taxing jurisdictions on any amount of compensation, fees or Services. Should such taxes be imposed, the CLIENT shall reimburse the CONSULTANT in addition to the contractual amounts provided. The CLIENT shall provide tax exempt number, if required, and if requested by the CONSULTANT.
- 4.1.6. **Billing:** CONSULTANT shall bill the CLIENT monthly for services and reimbursable expenses according to **Exhibit 2**. The bill submitted by CONSULTANT shall state the services and reimbursable expenses for which payment is requested, notwithstanding any claim for interest or penalty claimed in a CONSULTANT's invoice. The CLIENT agrees to pay within thirty (30) days of billing by the CONSULTANT and any late payment will incur an interest charge of one and one-half (1½) percent per month.
- 4.1.7. **Timing of Services:** CONSULTANT will perform the Services according to Exhibit 2. However, if during their performance, for reasons beyond the control of the CONSULTANT, delays occur, the parties agree that they will negotiate in writing an equitable adjustment of time and compensation, taking in to consideration the impact of such delays. CONSULTANT will endeavor to start its services on the anticipated start date and continue to endeavor to complete its services according to the schedule indicated in Exhibit 2. The start date, completion date and any milestone for project delivery are approximate only and CONSULTANT reserves the right to adjust its schedule and all of those dates at its sole discretion for delays caused by the CLIENT, Owner or third parties.
- 4.1.8. **Change in Scope:** For modifications in authorized scope of services or project scope and/or modifications of drawings and/or specifications previously accepted by the CLIENT, when requested by the CLIENT and through no fault of the CONSULTANT, the CONSULTANT

shall be compensated for time and expense required to incorporate such modifications at CONSULTANT's standard hourly rates. Provided, however, that any increase in contract price or contract time must be requested by the CONSULTANT and must be approved through a written supplemental agreement prior to performing such services. CONSULTANT shall correct or revise errors or deficiencies in its designs, drawings or specifications without additional compensation when due to CONSULTANT's negligence, error or omission.

- 4.1.9. **Additional Services:** The CONSULTANT shall provide, with the CLIENT's concurrence, Services in addition to those listed in Exhibit 1 when such Services are requested in writing by the CLIENT. Prior to providing Additional Services, the CONSULTANT will submit a proposal outlining the Additional Services to be provided, and an hourly or lump sum fee adjustment. Payment to the CONSULTANT, as compensation for these Additional Services, shall be in accordance with the mutually agreed adjustment to the CONSULTANT's fee. Reimbursable expenses incurred in conjunction with Additional Services shall be paid separately and those reimbursable expenses shall be paid at cost plus ten (10) percent. Records of reimbursable expenses and expenses pertaining to Additional Services and Services performed on an hourly basis shall be made available to the CLIENT if so requested in writing.
- 4.1.10. **Supplemental Agreement:** This Agreement may be amended to provide for additions, deletions and revisions in the Services or to modify the terms and conditions thereof by written amendment signed by both parties. The contract price and contract time may only be changed by a written supplemental agreement approved by the CLIENT, unless it is the result of an emergency situation, in which case the CLIENT may give verbal, e-mail or facsimile approval which shall be the same as written and approved supplemental agreement.

SECTION 5 – MUTUAL PROVISIONS

5.1 TERMINATION

- 5.1.1. **Notice:** The CLIENT reserves the right to terminate this Agreement for either cause or for its convenience and without cause or default on the part of the CONSULTANT, by providing written notice of such termination to the CONSULTANT. Such notice will be with Twenty Four (24) hours' notice.

The CONSULTANT reserves the right to terminate this Agreement based on failure of CLIENT to make payments or any material breach by the CLIENT.

If the CLIENT fails to make payments to the CONSULTANT in accordance with this Agreement or fails to meet its other material responsibilities under this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the CONSULTANT's option, cause for suspension of performance of services under this Agreement. If the CONSULTANT elects to suspend services, the CONSULTANT shall give seven (7) days' written notice to the CLIENT before suspending services. In the event of a suspension of services, the CONSULTANT shall have no liability to the CLIENT for delay or damage caused the CLIENT because of such suspension of services. Before resuming services, the CONSULTANT shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the CONSULTANT's services. The CONSULTANT's fees for the remaining services and the time schedules shall be equitably adjusted.

- 5.1.2. **Compensation for Convenience Termination:** If CLIENT shall terminate for its convenience, as herein provided, CLIENT shall compensate CONSULTANT for all Services completed to date prior to receipt of the termination notice.
- 5.1.3. **Compensation for Default Termination:** If the CLIENT shall terminate for cause or default on the part of the CONSULTANT, the CLIENT shall compensate the CONSULTANT for the reasonable cost of Services completed to date of its receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.
- 5.1.4. **Incomplete Documents:** Neither the CONSULTANT, nor its subconsultant, shall be responsible for errors or omissions in documents which are incomplete as a result of an early termination under this section, the CONSULTANT having been deprived of the opportunity to complete such documents and certify them as ready for construction and/or complete.

5.2 DISPUTE RESOLUTION

- 5.2.1. If a claim, dispute or controversy arises out of or relates to the interpretation, application, enforcement or performance of Services under this Agreement, CONSULTANT and CLIENT agree first to try in good faith to settle the dispute by negotiations between senior management of CONSULTANT and CLIENT. If such negotiations are unsuccessful, CONSULTANT and CLIENT agree to attempt to settle the dispute by good faith mediation. If the dispute cannot be settled through mediation, and unless otherwise mutually agreed, the dispute shall be settled by litigation in an appropriate court in Kansas. Except as otherwise provided herein, each party shall be responsible for its own legal costs and attorneys' fees.

5.3 OWNERSHIP OF INSTRUMENTS OF SERVICE

- 5.3.1. All documents prepared or furnished by CONSULTANT pursuant to this Agreement are instruments of CONSULTANT's professional service, and CONSULTANT shall retain ownership and property interest therein, including all copyrights. Upon payment for services rendered, CONSULTANT grants CLIENT a license to use instruments of CONSULTANT's professional service for the purpose of constructing, occupying, or maintaining the project. Reuse or modification of any such documents by CLIENT, without CONSULTANT's written permission, shall be at CLIENT's sole risk, and CLIENT agrees to indemnify, defend, and hold CONSULTANT harmless from all claims, damages, and expenses, including attorneys' fees, arising out of such reuse by CLIENT or by others acting through CLIENT.

5.4 INDEMNIFY AND HOLD HARMLESS

- 5.4.1. CLIENT shall indemnify and hold CONSULTANT, its officers and employees harmless from and against any claim, judgment, demand, or cause of action to the extent caused by: (i) CLIENT's breach of this Agreement; (ii) the negligent acts or omissions of CLIENT or its employees, contractors or agents; (iii) site access or damages to any surface or subterranean structures or any damage necessary for site access.
- 5.4.2. In addition, where the Services include preparation of plans and specifications and/or construction observation activities for CLIENT, CLIENT agrees to have its construction contractors agree in writing to indemnify and hold harmless CONSULTANT from and against loss, damage, or injury attributable to personal injury or property damage to the extent caused by such contractors' performance or nonperformance of their work. The CLIENT will cause the contractor to name BG Consultants, Inc. (CONSULTANT) as additional insured on the contractor's General Liability Policy.

- 5.4.3. CONSULTANT shall indemnify and hold CLIENT and its employees and officials from loss to the extent caused or incurred by the negligence, errors or omissions of the CONSULTANT, its officers or employees in performance of Services pursuant to this Agreement.
- 5.5 ENTIRE AGREEMENT
- 5.5.1. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Agreement.
- 5.6 APPLICABLE LAW
- 5.6.1. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with laws of the State of Kansas.
- 5.7 ASSIGNMENT OF AGREEMENT
- 5.7.1. This Agreement shall not be assigned or transferred by either the CONSULTANT or the CLIENT without the written consent of the other.
- 5.8 NO THIRD PARTY BENEFICIARIES
- 5.8.1. Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.
- 5.9 LIMITATION OF LIABILITY
- 5.9.1. CLIENT's exclusive remedy for any alleged breach of standard of care hereunder shall be to require CONSULTANT to re-perform any defective Services. Notwithstanding any other provision of this Agreement, the total liability of CONSULTANT, its officers, directors and employees for liabilities, claims, judgments, demands and causes of action arising under or related to this Agreement, whether based in contract or tort, shall be limited to the total compensation actually paid to CONSULTANT for the Services. All claims by CLIENT shall be deemed relinquished unless filed within one (1) year after completion of the Services.
- 5.9.2. It is agreed to by the parties to this Agreement that the CONSULTANT's services in connection with the Project shall not subject CONSULTANT's employees, officers, or directors to any personal liability or legal exposure for risks associated with the Project. Therefore, the CLIENT agrees that the CLIENT's sole and exclusive remedy for any claim, demand or suit shall be directed and/or asserted only against the CONSULTANT, a Kansas corporation, and not against any of the CONSULTANT's individual employees, officers or directors.
- 5.9.3. CONSULTANT and CLIENT shall not be responsible to each other for any special, incidental, indirect or consequential damages (including lost profits) incurred by either CONSULTANT or CLIENT or for which either party may be liable to any third party, which damages have been or are occasioned by Services performed or reports prepared or other work performed hereunder.
- 5.10 COMPLIANCE WITH LAWS

- 5.10.1 CONSULTANT shall abide by known applicable federal, state and local laws, ordinances and regulations applicable to this Project until the Consulting Services required by this Agreement are completed consistent with the Professional Standard of Care. CONSULTANT shall secure occupational and professional licenses, permits, etc., from public and private sources necessary for the fulfillment of its obligations under this Agreement.
- 5.11 TITLES, SUBHEADS AND CAPITALIZATION
- 5.11.1 Titles and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Agreement. Some terms are capitalized throughout the Agreement but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.
- 5.12 SEVERABILITY CLAUSE
- 5.12.1. Should any provision of this Agreement be determined to be void, invalid or unenforceable or illegal for whatever reason, such provisions shall be null and void; provided, however that the remaining provisions of this Agreement shall be unaffected hereby and shall continue to be valid and enforceable.
- 5.13 FIELD REPRESENTATION
- 5.13.1. Unless otherwise expressly agreed to in writing, CONSULTANT shall not be responsible for the safety or direction of the means and methods at the contractor's project site or their employees or agents, and the presence of CONSULTANT at the project site will not relieve the contractor of its responsibilities for performing the work in accordance with applicable regulations, or in accordance with project plans and specifications. If necessary, CLIENT will advise any contractors that Consultant's Services are so limited. CONSULTANT will not assume the role of "prime contractor", "constructor", "controlling employer", "supervisor" or their equivalents, unless the scope of such Services are expressly agreed to in writing.
- 5.14 HAZARDOUS MATERIALS
- 5.14.1. The CONSULTANT and the CONSULTANT's subconsultants shall have no responsibility for the discovery, presence, handling, removal or disposal or exposure of persons to hazardous materials in any form at the Project site.
- 5.15 AFFIRMATIVE ACTION
- 5.15.1. The CONSULTANT agrees to comply with the provisions of K.S.A. 44-1030 in the Kansas Acts Against Discrimination.
- 5.16 SPECIAL PROVISIONS
- 5.16.1. Special Provisions may be attached and become a part of this agreement as **Exhibit 3**.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate this _____ day
of _____, 20__.

CONSULTANT:

CLIENT:

BG Consultants, Inc.

Osawatomie, Kansas

By:  _____

Printed Name: Jason Hoskinson

Title: Corporate Secretary

By: _____

Printed Name: _____

Title: _____

END OF CONSULTANT-CLIENT AGREEMENT

EXHIBIT 1

SCOPE OF SERVICES

The Scope of Services described in this Exhibit 1 is for the survey and engineering design of a Transportation Alternatives funded project to improve the John Brown and South Levee Loop streetscape and pedestrian infrastructure in Osawatomie, Kansas, hereinafter referred to as “PROJECT”. The PROJECT is shown in concept on the attached “PRELIMINARY Project Planning Map” as Project “A”. The Project is funded in part by federal funds through the Transportation Alternatives program administered by the Kansas Department of Transportation (KDOT).

A. DESIGN PHASE SERVICES

CONSULTANT will provide the following Design Phase Services.

1. Receive any available information from CLIENT applicable to the PROJECT.
2. CONSULTANT will perform design of the PROJECT to prepare construction plans and project special provisions referencing the most current edition of the following design guides and specifications:
 - a. A Policy on Geometric Design of Highways and Streets, 7th Edition published by AASHTO.
 - b. Road Design Manual published by KDOT.
 - c. Manual on Uniform Traffic Control Devices (MUTCD) published by the Federal Highway Admin.
 - d. Standard Specifications for State Road and Bridge Construction, 2015 Edition and applicable Special Provisions prepared by KDOT.
 - e. Local Public Authority (LPA) Project Development Manual prepared by KDOT.
3. Perform a topographical survey of the PROJECT location. Topographic survey will be within and immediately adjacent to the apparent rights-of-way of the PROJECT. Within residential areas, topographic survey data will only be collected from the center of the traveled way to the apparent rights-of-way for the side of the street where pedestrian improvements is expected. Along levee routes, minimal topographic survey data will be collected and supplemented with Lidar data. No topographic survey data will be collected along routes designated as a Bike Boulevard (Pacific Avenue from 12th Street to Oscar Street).
4. Receive information from utility companies having facilities within the PROJECT limits. CONSULTANT will contact ONE CALL to request utility companies locate existing utility infrastructure within the area to be surveyed. Existing utilities that are marked at the time of the topographic survey may be included in the topographic survey.
5. Perform engineering design of PROJECT improvements. CONSULTANT and CLIENT anticipate the improvements will primarily include the following:
 - a. Horizontal and vertical alignment of sidewalk and/or shared-use paths.
 - b. Typical sidewalk and/or path section(s).
 - c. Storm sewer improvements.
 - d. Intersection and Entrance details.
 - e. ADA (PROWAG) compliant design of sidewalk and curb ramps.
 - f. Pavement marking and permanent signing improvements.
 - g. Cross sections and earthwork balance.
6. Perform hydrology and hydraulic analysis of storm water conveyance infrastructure for the PROJECT. CLIENT acknowledges existing storm water conveyance features may be present within and/or adjacent to the PROJECT area which have insufficient capacity and may not be included in the PROJECT design scope of services. CLIENT acknowledges that the CONSULTANT’s hydrologic and hydraulic analysis services are limited to the storm water conveyance features included in the PROJECT design scope of services
7. Prepare Storm Water Pollution Prevention Plan details and quantities using KDOT Standard Drawings.

8. Prepare a Permanent Seeding Plan using KDOT Standard Drawings.
9. Perform traffic engineering design for permanent signing and pavement marking improvements.
10. Prepare a temporary traffic control plan which could be used by the Contractor as a general guide to traffic control during construction of the PROJECT.
11. Prepare construction plans on 22"x36" sheets. Construction Plans will be prepared to a Preliminary Check stage to be reviewed by CLIENT. After the Preliminary Check, CONSULTANT will incorporate CLIENT's review comments and process the following stages of plan review through the CLIENT and the KDOT: Field Check, Office Check, Final Check, PS&E, and Bidding plans.
12. Assist the CLIENT with compiling a list of known utilities in the PROJECT limits and summarizing utility adjustment coordination for CLIENT records. Provide one set of construction plans to each utility owner having facilities located within the PROJECT limits.
13. Prepare project special provisions for improvements included in the PROJECT which are not specified in the KDOT Standard Specifications.
14. Prepare an opinion of probable construction costs at the Preliminary Check, Field Check, Office Check and Final Check project development stages.
15. Prepare the permit application and applicable exhibits for known permits required for construction. CONSULTANT will deliver permit application(s) to CLIENT for CLIENT to submit for approval. Permit application fees will be the CLIENT's responsibility. CONSULTANT and CLIENT anticipate the following permits will be needed.
 - i. KDHE NOI Permit.
 - ii. Railroad Permits.
16. Applying for and obtaining a Section 404 Permit from the U.S. Army Corps of Engineers is not anticipated or included in this scope of services.
17. Environmental Assessment or Environmental Impact Statement services concerning the National Environmental Policy Act are specifically excluded from this AGREEMENT. The CONSULTANT does not anticipate these services will be necessary for the PROJECT. Should the need for such services arise, the CONSULTANT can provide these services by supplemental agreement.
18. Geotechnical engineering services are not included within this scope of services. CONSULTANT will assist CLIENT in soliciting proposals for services from geotechnical engineering companies. CLIENT will contract directly with a qualified geotechnical engineering firm to provide geotechnical services.

B. PUBLIC INVOLVEMENT SERVICES

CONSULTANT will provide the following Public Involvement Services.

1. CONSULTANT will attend two (2) Osawatomie Council meeting to provide PROJECT updates.
2. CONSULTANT will attend one (1) Field Check meeting in Osawatomie with CLIENT.
3. All other meetings with the public and/or property owners adjacent to the PROJECT are not included.

C. BID PHASE SERVICES – Bid Phase Services are not included as they will be performed by KDOT.

D. CONSTRUCTION PHASE SERVICES – Construction Phase Services are not included.

E. PROPERTY ACQUISITION SERVICES – Property Acquisition Services are not included. After the PROJECT has achieved Preliminary Check status and the need for additional rights-of-way and/or easements is known, CONSULTANT and CLIENT may incorporate property acquisition assistance services by addendum to this AGREEMENT.

END EXHIBIT 1

EXHIBIT 2
COST AND SCHEDULE

A. FEE

1. CONSULTANT will provide services in Exhibit 1, Items A and B for a lump sum fee of **two hundred fourteen thousand, two hundred and NO/100 Dollars (\$214,200.00)**. CLIENT will be invoiced in accordance with Section 4 of this AGREEMENT. Monthly invoicing will be based on the percentage of the scope of services performed.
2. Reimbursable expenses not included in the Engineering Fee above may include, but are not limited to, expenses such as purchase of maps, expenses of printing and reproductions, expenses to obtain copies of deeds, plots, plats, prints, plans, or other direct costs incurred by CONSULTANT.

B. ESTIMATED SCHEDULE

1. CONSULTANT will perform services in an effort to meet CLIENT scheduling goals to bid the project in the latter part of Federal Fiscal Year 2024. CONSULTANT and CLIENT understand the schedule may be adjusted based on KDOT's actual programmed bid opening date.

END OF EXHIBIT 2

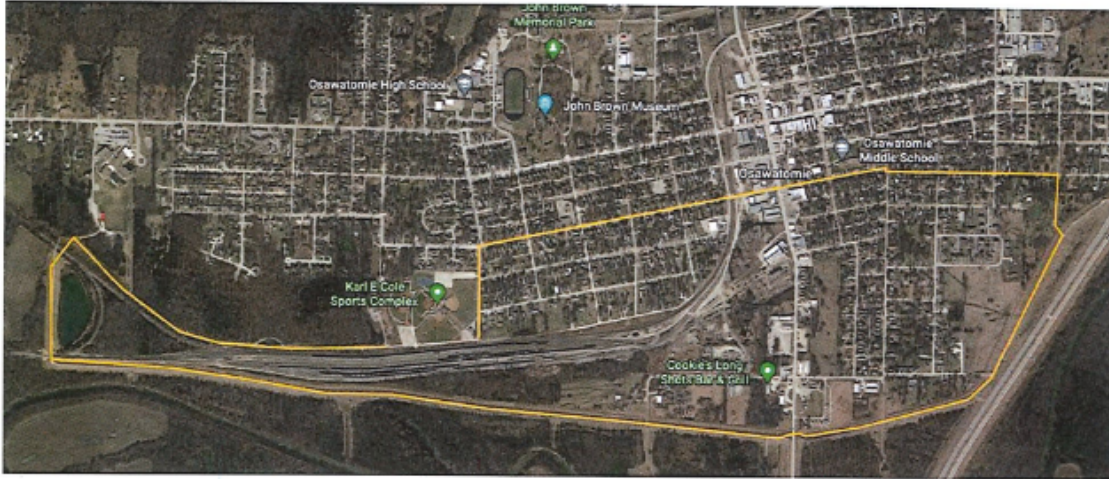
EXHIBIT 3
SPECIAL PROVISIONS

A PROJECT location map is attached to this Agreement immediately following this page.

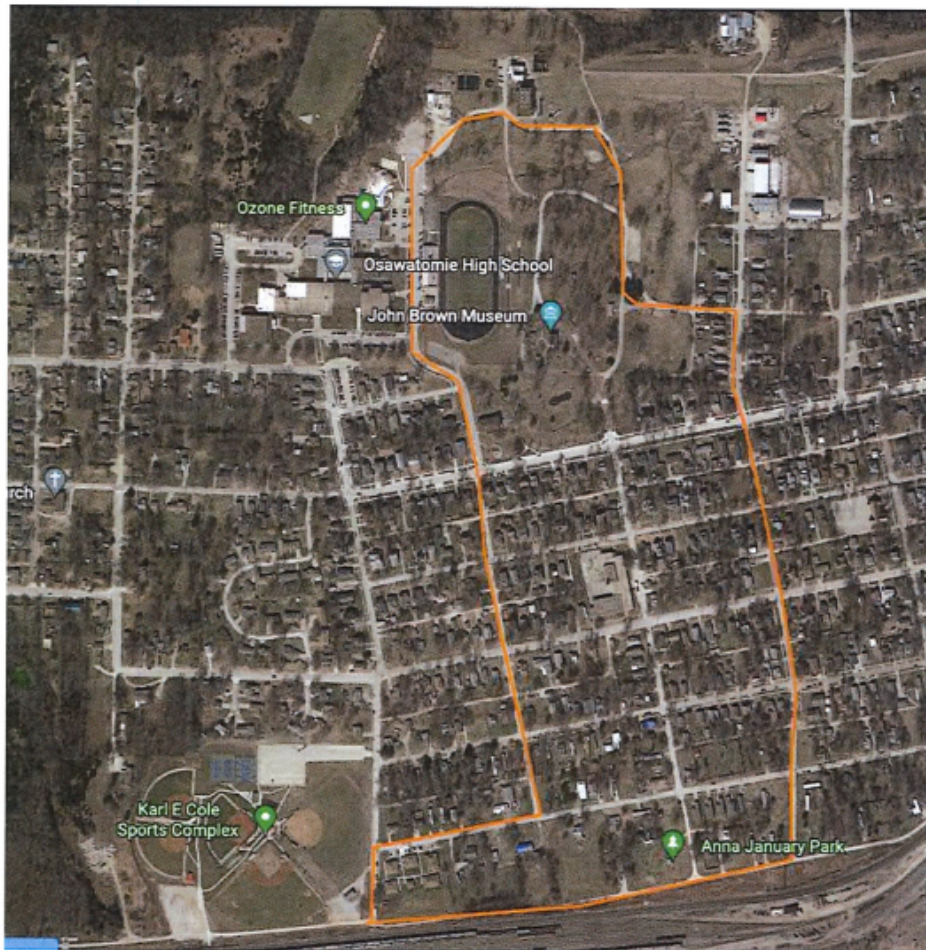
END OF EXHIBIT 3

PRELIMINARY Project Planning Map: PROJECT "A"

South Levee Loop (Google Earth)



John Brown Loop (Google Earth)





| | | |
|----------------------------|--------------|-----------------|
| ACTION ITEM SUMMARY | Item Number: | 10.D |
| | Date: | January 9, 2023 |
| City Manager | From: | Mike Scanlon |

RE: Resolution 1093 – Applying for PSP – Expanded Grant through the Mid-America Regional Council (MARC) for the Flint Trail to KATY Trail connection

RECOMMENDATION: That the City Council approve Resolution 1093 directing the City Manager to apply for a Planning Sustainable Places (PSP) Implementation grant through MARC for the Flint Trail to KATY Trail connection.

DETAILS: City staff is asking the City Council to consider applying for a Planning Sustainable Places (PSP) study that would have three supporters on the application splitting \$20,000 of the local government match (\$5,000 per entity). These are “left-over” funds that KDOT and MARC are taking applications for. This application period ends January 27, 2023. I’ve included the information provided us so far from MARC.

| | |
|-----------------------------------|-----------------------------------|
| Related Statute / City Ordinances | Resolutions 836, 863, 948 and 104 |
| Line-Item Code/Description | |
| Available Budget: | |

RESOLUTION NO. 1093

**A RESOLUTION OF THE CITY OF OSAWATOMIE, KANSAS
DIRECTING THE CITY MANAGER TO APPLY FOR A
PLANNING SUSTAINBLE PLACES (PSP) GRANT FOR THE
PLANNING NECESSARY TO CREATE THE FLINT HILLS
TRAIL TO KATY TRAIL CONNECTION.**

WHEREAS, the City of Osawatomie has received notice that additional Planning Sustainable Places grant funds are being made available through the Mid-America Regional Council (MARC); and

WHEREAS, these funds could be used for the planning necessary for a Flint Hills Trail to KATY Trail connection; and

WHEREAS, this connection to the KATY trail could enhance and expand the ridership on the Flint Hills trail and increase economic vitality for the communities along this connection; and

WHEREAS, the Osawatomie Trails Commission recommends that the city make application for this grant in association with the City of Paola, City of Louisburg, and Kansas Department of Wildlife and Parks.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF OSAWATOMIE, KANSAS:

SECTION ONE: The Governing Body directs the City Manager to apply for a Planning Sustainable Places (PSP) Implementation Grant with the support of other organizations in the study of a Flint Hills Trail to KATY Trail connection.

PASSED AND APPROVED by the Governing Body of the City of Osawatomie, Kansas this 12th day of January 2023, a majority being in favor thereof.

APPROVED AND SIGNED by the Mayor.

Nick Hampson, Mayor

(SEAL)

ATTEST:

Tammy Seamands, City Clerk