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CITY OF PITTSBURG, KANSAS
COMMISSION AGENDA
Tuesday, June 23, 2020
5:30 PM

CALL TO ORDER BY THE MAYOR:

- a. Flag Salute Led by the Mayor
- b. Public Input

CONSENT AGENDA:

- a. Approval of the June 9, 2020, City Commission meeting minutes.
- b. Approval of Ordinance No. G-1313, amending subsection (f) of Section 78-33 of the Pittsburg City Code decreasing the maximum speed limit on East Atkinson Road from Michigan Street to the east City limits from 35 miles per hour to 30 miles per hour, and authorize the Mayor to sign the Ordinance on behalf of the City.
- c. Approval of staff recommendation to enter into an Engineering Services Agreement with Olsson Inc., of Pittsburg, in an amount not to exceed \$70,500.00 in which Olsson Inc. will perform inspections and testing for the 14th Street Bridge Replacement Project, and authorize the Mayor and staff to sign the Engineering Services Agreement on behalf of the City.
- d. Approval of the Appropriation Ordinance for the period ending June 23, 2020, subject to the release of HUD expenditures when funds are received.

ROLL CALL VOTE.

SPECIAL PRESENTATION:

- a. FIVE YEAR FINANCIAL FORECAST - Finance Director Jamie Clarkson and Deputy Finance Director Larissa Bowman will provide information regarding the City's five year financial forecast. **Receive for file.**

CONSIDER THE FOLLOWING:

- a. RESOLUTION NO. 1236 - Consider staff recommendation to adopt Resolution No. 1236, determining that the City is considering establishing a Rural Housing Incentive District within the City and adopting a plan for the development of housing and public facilities in such proposed district; establishing the date and time of a public hearing on such matter, and providing for the giving of notice of such public hearing (Creekside East - Phase 1 Rural Housing Incentive District). **Approve or disapprove staff recommendation and, if approved, authorize the Mayor to sign the Resolution on behalf of the City.**

CITY OF PITTSBURG, KANSAS
COMMISSION AGENDA
Tuesday, June 23, 2020
5:30 PM

- b. MEMORANDUM OF UNDERSTANDING - CRAWFORD COUNTY, KANSAS - Consider a Memorandum of Understanding between Crawford County, Kansas, and the City of Pittsburg, Kansas, setting forth a collaborative effort to provide for the installation, operation, maintenance and a mechanism for activating the storm siren to be placed in Chicopee, Kansas. **Approve or disapprove the Memorandum of Understanding and, if approved, authorize the Mayor to execute the Memorandum of Understanding on behalf of the City.**

- c. PROFESSIONAL SERVICES AGREEMENT - EARLES ENGINEERING AND INSPECTION, INC. - Consider staff recommendation to enter into a Professional Services Agreement with Earles Engineering and Inspection, Inc., of Pittsburg, Kansas, for the preliminary and final design of the City's Wastewater Treatment Plant including the Sugar Creek Pump Station and Force Main. **Approve or disapprove staff recommendation and, if approved, authorize the Mayor to sign the Agreement on behalf of the City.**

- d. GRANT AGREEMENT - KANSAS DEPARTMENT OF COMMERCE - Consider staff recommendation to enter into a Grant Agreement with the Kansas Department of Commerce in which the Kansas Department of Commerce will provide the City a grant in the total sum of \$170,300 through the Community Development Block Grant Coronavirus Response Supplement (CDBG-CV) administered by the Kansas Department of Commerce with funds allocated from the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act. **Approve or disapprove staff recommendation and, if approved, authorize the Mayor to sign the agreement on behalf of the City.**

NON-AGENDA REPORTS & REQUESTS:

ADJOURNMENT

OFFICIAL MINUTES
OF THE MEETING OF THE
GOVERNING BODY OF THE
CITY OF PITTSBURG, KANSAS
June 9th, 2020

A Regular Session of the Board of Commissioners was held at 5:30 p.m. on Tuesday, June 9th, 2020, in the City Commission Room, located in the Law Enforcement Center, 201 North Pine, with President of the Board Chuck Munsell presiding and the following members present: Cheryl Brooks, Larry Fields and Patrick O'Bryan. Mayor Dawn McNay was absent.

President of the Board Munsell led the flag salute.

President of the Board Munsell announced that he would be presiding over the meeting in Mayor McNay's absence.

PUBLIC INPUT -

Sydney Anselmi, 1503 South Pine, downtown business owner and Chairman of the Downtown Advisory Committee, encouraged everyone to vote for their favorite design to be used on the new City flag.

APPROVAL OF MINUTES – On motion of Fields, seconded by O'Bryan, the Governing Body approved the May 26th, 2020, City Commission Meeting minutes as presented. Motion carried. Absent: McNay.

KANSAS HOUSING RESOURCES CORPORATION TENANT BASED RENTAL ASSISTANCE GRANT APPLICATION – On motion of Fields, seconded by O'Bryan, the Governing Body approved staff request to submit an application to the Kansas Housing Resources Corporation's (KHRC) Tenant Based Rental Assistance (TBRA) program for a grant in the amount of \$100,000 to be used to provide security deposit assistance to income eligible households and authorized the Mayor to sign the appropriate documents on behalf of the City. Motion carried. Absent: McNay.

FORGIVABLE LOAN – DR. CHAD STEWART – On motion of Fields, seconded by O'Bryan, the Governing Body approved the recommendation of the Economic Development Advisory Committee (EDAC) to forgive the \$16,000 loan to Dr. Chad Stewart, as Dr. Stewart has fully complied with the City's requirement for loan forgiveness and authorized the Mayor to sign the necessary documents on behalf of the City. Motion carried. Absent: McNay.

APPROPRIATION ORDINANCE – On motion of Fields, seconded by O'Bryan, the Governing Body approved the Appropriation Ordinance for the period ending June 9th, 2020, subject to the release of HUD expenditures when funds are received with the following roll call vote: Yea: Brooks, Fields, Munsell and O'Bryan. Motion carried. Absent: McNay.

2019 COMPREHENSIVE ANNUAL FINANCIAL REPORT (CAFR) - Stacey Hammond of BT&Co. P.A., the City's auditing firm, presented the City's 2019 audit and Comprehensive Annual Financial Report (CAFR). Absent: McNay.

OFFICIAL MINUTES
OF THE MEETING OF THE
GOVERNING BODY OF THE
CITY OF PITTSBURG, KANSAS
June 9th, 2020

ECONOMIC DEVELOPMENT QUARTERLY REPORT - Director of Economic Development Blake Benson and Pittsburg State University Executive Director, Operations, Business Development, & Economic Engagement Darrell Pulliam, presented the quarterly Economic Development Report. Absent: McNay.

GRANT REQUEST - COMMUNITY HEALTH CENTER OF SOUTHEAST KANSAS – On motion of O'Bryan, seconded by Brooks, the Governing Body approved the recommendation of the Economic Development Advisory Committee (EDAC) to provide a non-repayable grant to the Community Health Center of Southeast Kansas (CHCSEK), for 10% of the project value of expanding to create the new Family Medicine Rural Residency Program in Pittsburg, with the grant amount not to exceed \$600,000, and authorized the Mayor to sign the necessary documents on behalf of the City. Motion carried. Absent: McNay.

Prior to voting, Commissioner O'Bryan disclosed that he serves as a board member for the Community Health Center of Southeast Kansas.

GRANT REQUEST - THF, LLC – On motion of Fields, seconded by O'Bryan, the Governing Body approved the recommendation of the Economic Development Advisory Committee (EDAC) to provide a non-repayable grant to Colby Terlip, owner of THF, LLC, dba Sunflower Hemp Company, located at 3002 North Rotary Terrace, for 10% of the Sunflower Hemp Company project value, with the grant amount not to exceed \$100,000, and authorized the Mayor to sign the necessary documents on behalf of the City. Motion carried. Absent: McNay.

GRANT REQUEST - ARCK CONSTRUCTION, CONSULTING AND MANAGEMENT – On motion of Fields, seconded by O'Bryan, the Governing Body approved the recommendation of the Economic Development Advisory Committee (EDAC) to provide a non-repayable grant to Dane Arck, on behalf of Arck Construction, Consulting and Management, for 10% of the redevelopment cost for the property located at 812 North Broadway, with the grant amount not to exceed \$7,000, and authorized the Mayor to sign the necessary documents on behalf of the City. Motion carried. Absent: McNay.

SPLASH PAD PROJECT AWARD – On motion of O'Bryan, seconded by Brooks, the Governing Body approved staff recommendation to award the Schlanger Park Splash Pad project to Sunscape Pool & Backyard, a Division of Home Center Construction, Inc., of Pittsburg, Kansas, in the amount of \$270,412.10, and authorized the Mayor to sign the necessary documents on behalf of the City. Motion carried. Absent: McNay.

ORDINANCE NO. G-1312 – On motion of Fields, seconded by O'Bryan, the Governing Body adopted Ordinance No. G-1312, amending Sections 6-141, 74-1 and 74-2 of the Pittsburg City Code to permit restaurants to enter into a temporary license agreement authorizing the obstruction of a portion of the public sidewalks in order to permit the consumption of food and beverages thereon; and to create new Sections 74-12, 74-13, 74-14 and 74-15 regulating temporary license agreements issued to restaurants authorizing the use of a portion of public sidewalks for the consumption of food and beverages thereon, and authorized the Mayor to sign the Ordinance on behalf of the City. Motion carried. Absent: McNay.

OFFICIAL MINUTES
OF THE MEETING OF THE
GOVERNING BODY OF THE
CITY OF PITTSBURG, KANSAS
June 9th, 2020

NON-AGENDA REPORTS AND REQUESTS:

CLOSURE OF AQUATIC CENTER AND CANCELLATION OF 4th OF JULY FIREWORKS DISPLAY – City Manager Daron Hall discussed the recent decisions to close the Aquatic Center for the 2020 season and the cancellation of the 2020 4th of July fireworks display. Mr. Hall cited financial and safety factors that were considered when making the decisions.

ADJOURNMENT: On motion of O'Bryan, seconded by Brooks, the Governing Body adjourned the meeting at 6:46 p.m. Motion carried. Absent: McNay.

Chuck Munsell, President of the Board

ATTEST:

Tammy Nagel, City Clerk



DEPARTMENT OF PUBLIC WORKS

201 West 4th Street · Pittsburg KS 66762

(620) 231-4170

www.pittks.org

Interoffice Memorandum

TO: DARON HALL
City Manager

FROM: CAMERON ALDEN
Director of Public Works

DATE: June 17, 2020

SUBJECT: Memo Agenda Item – June 23, 2020
Ordinance No. G-1313 which amends Section 33 of the Standard
Traffic Ordinance; maximum speed limits.

A request was made to reduce the speed limit on Atkinson Road from Michigan Street to the east City limits from 35 mph to 30 mph. The City staff has reviewed the request and as a result of the review, the Traffic Advisory Board is recommending that the speed limit be decreased from 35 mph to 30 mph on Atkinson Road from Michigan Street and the east City limits. In this regard, Ordinance No. G-1313 has been prepared to reflect this change in speed limit.

Would you please place this item on the agenda for the City Commission meeting scheduled for Tuesday, June 23, 2020. Action being requested is approval of Ordinance No. G-1313.

Attachment: Ordinance No. G-1313

(Summary Published in The Morning Sun on _____, 2020)

ORDINANCE NO. G-1313

AN ORDINANCE amending subsection (f) of Section 78-33 of the Pittsburg City Code decreasing the maximum speed limit on East Atkinson Road from Michigan Street to the east City limits from 35 miles per hour to 30 miles per hour.

BE IT THEREFORE ORDAINED BY THE GOVERNING BODY OF THE CITY OF PITTSBURG, KANSAS:

Section 1: Sec. 78-33. - Amendment to Section 33 of the Standard Traffic Ordinance; maximum speed limits.

(a) Except as set forth herein, and when a special hazard exists that requires lower speed for compliance with Section 78-32, the limits specified in this Section or established as authorized in this Section shall be maximum lawful speeds, and no person shall drive a vehicle at a speed in excess of such maximum limits:

- (1) 20 miles per hour in the planned central business district;
- (2) 20 miles per hour in or adjacent to any park; except for East 4th Street next to Schlanger Park;
- (3) 55 miles per hour on U.S. Highway 69; and
- (4) 30 miles per hour in all other locations.

The maximum speed limit established by or pursuant to this subsection shall be of force and effect regardless of whether signs are posted giving notice thereof.

(b) No person shall drive a school bus to or from school or interschool or interschool functions or activities at a speed greater than 45 miles per hour on any roadway having dirt, sand or gravel surface, and in no event shall a school bus be driven to and from school or activities in excess of 55 miles per hour, notwithstanding any maximum speed limit in excess thereof. The provisions of this subsection shall apply to buses used for the transportation of students enrolled in community junior colleges or area vocational schools when such buses are transporting students to or from school functions or activities.

(c) The Governing Body having determined upon the basis of an engineering and traffic investigation that the speed limit permitted under state law and subsection (a) of this Section is greater than is reasonable or safe under the conditions found to exist upon the following streets and/or parts of streets, declares that the reasonable and safe speed limit on the streets and/or parts of streets herein designated to be 20 miles per hour and when appropriate signs are erected giving notice of such speed limit, no person shall drive a vehicle in excess of 20 miles per hour on the following streets and/or parts of streets:

- (1) On East Lindburg Avenue between South Broadway Street and south Joplin Avenue;
- (2) On South Joplin Avenue between Miller Street and Suncrest Drive;
- (3) On East Cleveland Avenue between South Joplin Avenue and South Broadway Street;

- (4) On South Joplin Avenue between Carlton Avenue and Ford Avenue;
 - (5) On North Michigan Street between East 14th and East 17th Streets; and
 - (6) On Memorial Drive between North Walnut Street and North Catalpa Avenue.
 - (7) On Broadway Street between 11th Street and 14th Street.
- (d) The Governing Body having determined upon the basis of an engineering and traffic investigation that the speed limit permitted under state law and subsection (a) of this Section is less than is reasonable or safe under the conditions found to exist upon such streets, declares that the reasonable and safe speed limit on the streets and/or parts of the streets designated to be 30 miles per hour and when appropriate signs are erected giving notice of such speed limit, no person shall drive a vehicle in excess of 30 miles per hour on Broadway Street between 2nd Street and Kansas Street.
- (e) The Governing Body having determined upon the basis of an engineering and traffic investigation that the speed limit permitted under state law and subsection (a) of this Section is less than is reasonable or safe under the conditions found to exist upon such streets, declares that the reasonable and safe speed limit on the streets and/or parts of the streets designated to be 40 miles per hour and when appropriate signs are erected giving notice of such speed limit, no person shall drive a vehicle in excess of 40 miles per hour on the following streets and/or parts of streets:
- (1) On East 4th Street from Water Street to the east City limits;
 - (2) On North Broadway Street from West 24th Street to the north City limits; and
 - (3) On East Quincy Avenue from a point 330 feet east of Bitner Terrace to the easternmost City limit.
- (f) The reasonable and safe speed limit on the streets and/or parts of streets designated shall be 35 miles per hour, and, when appropriate signs are erected giving notice of such speed limit, no person shall drive a vehicle in excess of 35 miles per hour on the following streets and/or parts of streets:
- (1) On Joplin Street from Washington Street to Quincy Street;
 - (2) On Michigan Street from 20th Street to Atkinson Road;
 - (3) On Joplin Street from 20th Street to Atkinson Road;
 - (4) On East 27th Street between Rouse Street and the east City limits;
 - (5) On Rotary Terrace in the Pittsburg Regional Industrial Park;
 - (6) On Free King Highway from 4th Street to the north City limits;
 - (7) On North Broadway Street from 14th Street to mid-block between 23rd Street and 24th Street;
 - (8) On South Rouse Avenue from Centennial Drive the north City limits; and
 - (9) On Centennial Drive from California Street to the east City limits;
- (g) The Governing Body having determined, upon the basis of an engineering and traffic investigation, that the speed limit permitted under state law and subsection (a) of this Section

is greater than is reasonable or safe under the conditions found to exist upon streets and/or parts of streets abutting and/or adjacent to school property, declares that the reasonable and safe speed limit on such streets and/or parts of streets to be 20 miles per hour and when appropriate signs are erected giving notice of such speed limit, no person shall drive a vehicle in excess of 20 miles per hour between the hours of 7:30 a.m. to 4:30 p.m. on such abutting and/or adjacent streets as well as on the following streets and/or parts of streets:

George Nettels Zone:

West from the intersection of Deill and Homer to Fieldcrest Drive;

One-half block west of the intersection of Ford and Homer;

One-half block east of the intersection of Deill and Homer;

One-half block east of the intersection of Deill and Normal;

One-half block east of the intersection of Ford and Homer;

One-half block south of the intersection of Deill and Homer;

One-half block north of the intersection of Ford and Homer

Lakeside Zone:

One-half block south of the intersection of Adams and College and the intersection of Adams and Olive;

One-half block north of the intersection of Washington and College and the intersection of Washington and Olive;

One-half block west of the intersection of College and Adams and the intersection of College and Washington;

One-half block east of the intersection of Olive and Adams and the intersection of Olive and Washington.

Westside Zone:

One-half block south of the intersection of 5th and Miles;

One-half block north of the intersection of 6th and Miles;

One-half block west of the intersection of Miles and 5th and the intersection of Miles and 6th;

Between West 5th and West 6th on Olive.

Pittsburg Middle School Zone:

One-half block north of the intersection of 14th and Elm;

One-half block east of the intersection of 14th and Elm;

One-half block east of the intersection of 13th and Joplin;
One-half block west of the intersections of North Broadway and 12th, 13th, and 14th;
From East 11th Street to one-half block north of East 14th Street on Broadway;
From East 11th Street to one-half block north of East 14th Street on Joplin.

Meadowlark Zone:

Three-quarter block south of the intersections of 20th Street and Home;
One-half block east of the intersections of 20th Street and Home;
One-half block west of the intersections of 20th Street and Home.

Colgan-St. Mary's Zone:

One-half block south of the intersection of 9th and Locust and 9th and Elm;
One-half block north of the intersections of 10th and Locust and 10th and Elm;
One-half block east of the intersections of Elm and 10th and Elm and 9th;
One-half block west of the intersections of Locust and 10th and Locust and 9th.

- (h) The Governing Body having determined upon the basis of an engineering and traffic investigation that the maximum speed limit allowed under state law on Free King Highway from the intersection of East 4th Street to the center of the intersection with Countryside Drive is less than is reasonable or safe under the conditions found to exist upon such street, declares that the reasonable and safe speed limit on such street to be 35 miles per hour and when appropriate signs are erected giving notice of such speed limit, no person shall drive a vehicle in excess of 35 miles per hour thereon.
- (i) The Governing Body having determined upon the basis of an engineering and traffic investigation that the maximum speed limit allowed under state law is less than is reasonable or safe under the conditions found to exist upon the following streets, declares that the reasonable and safe maximum speed limit on the streets or parts of streets herein designated to be 45 miles per hour and when appropriate signs are erected giving notice of such speed limit, no person shall drive a vehicle in excess of 45 miles per hour thereon:
 - (1) On Atkinson Road from the west line of U.S. 69 Highway to the center of the intersection with 200th Street; and
 - (2) On Free King Highway from the center of the intersection with Countryside Drive to the center of the intersection with Atkinson Road.

Section 2: This Ordinance shall take force and effect following the publication of its summary in the official city paper.

PASSED AND APPROVED this ____ day of _____, 2020.

Mayor – Dawn McNay

ATTEST:

Interoffice Memorandum

TO: DARON HALL
City Manager

FROM: CAMERON ALDEN
Director of Public Works

DATE: June 17, 2020

SUBJECT: Agenda Item – June 23, 2020
14th Street Bridge – Construction Engineering Services

The City of Pittsburg has awarded the construction of the 14th Street Bridge Replacement Project to Mission Construction of St. Paul, Kansas. The City will be responsible for the construction engineering for the project. Staff recommends hiring Olsson, of Pittsburg, to perform the construction engineering for the project. Olsson has performed construction inspections for several of the City's past projects. The proposed fee for the Construction Engineering Services is not to exceed Seventy Thousand, Five Hundred Dollars (\$70,500.00). The Construction Engineering Services will be paid from the Stormwater Funds.

In this regard, would you please place this item on the agenda for the City Commission meeting scheduled for Tuesday, June 23, 2020. Action being requested is to approve or disapprove staff's request, and, if approved, authorize the Mayor and staff to sign the appropriate documents on behalf of the City of Pittsburg.

If you have any questions concerning this matter, please do not hesitate to contact me.

Attachments: Agreement

Cc: Tammy Nagel, City Clerk
Project File
Memo File



MASTER AGREEMENT WORK ORDER #_____

This exhibit dated June 17, 2020 is hereby attached to and made a part of the Master Agreement for Professional Services dated November 28, 2017 between the City of Pittsburg, Kansas ("Client") and Olsson, Inc. ("Olsson") providing for professional services. Olsson's Scope of Services for the Agreement is as indicated below.

GENERAL

Olsson has acquainted itself with the information provided by Client relative to the project and based upon such information offers to provide the services described below for the project. Client warrants that it is either the legal owner of the property to be improved by this Project or that Client is acting as the duly authorized agent of the legal owner of such property.

PROJECT DESCRIPTION AND LOCATION

Project will be located at: East 14th Street Bridge – Between Lakewood Dr & Home Ave in Pittsburg, Kansas

Project Description: Construction Observation Services for Bridge Replacement

SCOPE OF SERVICES

Olsson shall provide the following services (Scope of Services) to Client for the Project:

Phase 100 – Construction Observation / Materials Testing Services

Olsson will furnish a field services representative to provide full-time construction observation of the project. Olsson's scope of services assumes that the full-time construction observation will require 120 calendar days (based on Notice to Proceed issued week of 06/15/2020 and having the project ready for substantial completion within 120 calendar days thereafter). If Contractor's schedule exceeds 120 calendar days for substantial completion, Olsson's scope & fee will require amendment for the additional time. Olsson's construction observer will operate in accordance with the authority described in 'EJCDC Exhibit B' regarding the Resident Project Representative.

Olsson will provide construction materials testing for the various materials incorporated in the project, including soils testing, aggregate testing, concrete testing, and asphalt testing. Testing services will be performed at the hourly rates assigned to the Olsson lab personnel, with no additional expense being charged for usage of lab equipment.

Should Client request work in addition to the Scope of Services, Olsson shall invoice Client for such additional services (Optional Additional Services) at the standard hourly billing labor rate charged for those employees actually performing the work, plus reimbursable expenses if any. Olsson shall not commence work on Optional Additional Services without Client's prior written approval.

Olsson agrees to provide all of its services in a timely, competent and professional manner, in accordance with applicable standards of care, for projects of similar geographic location, quality and scope.

SCHEDULE FOR OLSSON'S SERVICES

Unless otherwise agreed, Olsson expects to perform its services under the Agreement as follows:

Anticipated Start Date: Week of June 15th, or upon Notice to Proceed
Anticipated Completion Date: 120 Calendar Days following Notice to Proceed

Olsson will endeavor to start its services on the Anticipated Start Date and to complete its services on the Anticipated Completion Date. However, the Anticipated Start Date, the Anticipated Completion Date, and any milestone dates are approximate only, and Olsson reserves the right to adjust its schedule and any or all of those dates at its sole discretion, for any reason, including, but not limited to, delays caused by Client or delays caused by third parties.

COMPENSATION

Client shall pay to Olsson for the performance of the Scope of Services, the actual time of personnel performing such services in accordance with the Labor Billing Rate Schedule(s), and all actual reimbursable expenses in accordance with the Reimbursable Expense Schedule attached to this agreement. Olsson shall submit invoices on a monthly basis, and payment is due within 30 calendar days of invoice date.

Olsson's Scope of Services will be provided on a time-and-expense basis not to exceed Seventy Thousand Five Hundred Dollars (\$70,500.00).

TERMS AND CONDITIONS OF SERVICE

We have discussed with you the risks, rewards and benefits of the Project, the Scope of Services, and our fees for such services and the Agreement represents the entire understanding between Client and Olsson with respect to the Project. The Agreement may only be modified in writing signed by both parties.

Client's designated Project Representative shall be Cameron Alden, PE.

If this Work Order satisfactorily sets forth your understanding of our agreement, please sign in the space provided below. Retain a copy for your files and return an executed original to Olsson. This proposal will be open for acceptance for a period of 30 days from the date set forth above, unless changed by us in writing.

OLSSON, INC.

By 

Nick Calton
Field Services Team Leader

By 

Brian Coomes, PE
Project Engineer

By signing below, you acknowledge that you have full authority to bind Client to the terms of the Agreement. If you accept this Work Order, please sign:

CITY OF PITTSBURG, KANSAS

By _____
Signature

Print Name _____

Title _____

Dated: _____

Attachments

EJCDC Exhibit B – Resident Project Representative Duties
Standard Labor Billing Rate Schedule
Reimbursable Expense Schedule

**A LISTING OF THE DUTIES, RESPONSIBILITIES
AND LIMITATIONS OF AUTHORITY OF THE
RESIDENT PROJECT REPRESENTATIVE**

ENGINEER shall furnish a Resident Project Representative (RPR), assistants and other field staff to assist ENGINEER in observing performance of the work of CONTRACTOR.

Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the work of CONTRACTOR; but, the furnishing of such services will not make ENGINEER responsible for or give ENGINEER control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or responsibility for CONTRACTOR's failure to perform the Work in accordance with Contract Documents and in particular the specific limitations set forth in the Agreement as applicable.

The duties and responsibilities of the RPR are limited to those of ENGINEER in ENGINEER's agreement with the OWNER and in the construction Contract Documents, and are further limited and described as follows:

A. General

RPR is ENGINEER's agent at the site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR's actions. RPR's dealing in matters pertaining to the on-site work shall in general be with ENGINEER and CONTRACTOR keeping OWNER advised as necessary. RPR's dealing with subcontractor shall only be through or with the full knowledge and approval of CONTRACTOR. RPR shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.

B. Duties and Responsibilities of RPR

1. Schedules: Review the progress schedule, schedule of Shop Drawing submittals and schedule of values prepared by CONTRACTOR and consult with ENGINEER concerning acceptability.
2. Conferences and Meetings: Attend meeting with CONTRACTOR, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
3. Liaison:
 - a. Serve as ENGINEER's liaison with CONTRACTOR, working principally through CONTRACTOR's superintendent and assist in understanding the intent of the Contract Documents; and assist the ENGINEER in serving as OWNER's liaison with CONTRACTOR when CONTRACTOR's operations affect OWNER's on-site operations.
4. Shop Drawings and Samples:
 - a. Record date of receipt of Shop Drawings and samples.
 - b. Receive samples which are furnished at the site by CONTRACTOR, and notify ENGINEER of availability of samples for examination.
 - c. Advise ENGINEER and CONTRACTOR of the commencement of any Work requiring a Shop Drawing or sample if the submittal has not been approved by ENGINEER.

5. Review of Work, Rejection of Defective Work, Inspections and Tests:
 - a. Conduct on-site observations of the Work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to ENGINEER whenever RPR believes that any Work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of Work that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
 - c. Verify that tests, equipment and systems startups and operating and maintenance training are conducted in the presence of appropriate personnel, and that CONTRACTOR maintains adequate records thereof; and observe, record and report to ENGINEER appropriate details relative to the test procedures and startups.
 - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to ENGINEER.
6. Interpretation of Contract Documents: Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to CONTRACTOR clarifications and interpretations as issued by ENGINEER.
7. Modifications: Consider and evaluate CONTRACTOR's suggestions for modifications in Drawings and Specifications and report with RPR's recommendations to ENGINEER. Transmit to CONTRACTOR decisions as issued by ENGINEER.
8. Records:
 - a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and samples, reproductions of original Contract documents including all Work Directive Changes, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, and other Project related documents.
 - b. Keep a diary or log book, recording CONTRACTOR hours on the job site, weather conditions, data relative to questions of Work Directive Changes, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to ENGINEER.
9. Reports:
 - a. Furnish ENGINEER periodic reports as required of progress of the Work and of CONTRACTOR's compliance with the progress schedule and schedule of Shop Drawing and sample submittals.
 - b. Consult with ENGINEER in advance of scheduled major tests, inspections or start of important phases of the Work.
 - c. Draft proposed Change Orders and Work Directive Changes, obtaining backup material from CONTRACTOR and recommend to ENGINEER Change Orders, Work Directive Changes, and Field Orders.
 - d. Report immediately to ENGINEER and OWNER upon the occurrence of any accident.
10. Payment Requests: Review applications for payment with CONTRACTOR for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, Work completed and materials and equipment delivered at the site but not incorporated in the Work.

11. Certificates, Maintenance and Operation Manuals: During the course of the Work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by CONTRACTOR are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to ENGINEER for review and forwarding to OWNER prior to final payment for the Work.
12. Completion:
 - a. Before ENGINEER issues a Certificate of Substantial Completion, submit to CONTRACTOR a list of observed items requiring completion or correction.
 - b. Conduct final inspection in the company of ENGINEER, OWNER, and CONTRACTOR and prepare a final list of items to be completed or corrected.
 - c. Observe that all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance.

C. Limitations of Authority

Resident Project Representative:

1. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment, unless authorized by ENGINEER.
2. Shall not exceed limitations of ENGINEER's authority as set forth in the Agreement or the Contract Documents.
3. Shall not undertake any of the responsibilities of CONTRACTOR, subcontractors or CONTRACTOR's superintendent.
4. Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
5. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.
6. Shall not accept Shop Drawing or sample submittals from anyone other than CONTRACTOR.
7. Shall not authorize OWNER to occupy the Project in whole or in part.
8. Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by ENGINEER.

Olsson Billing Rate Schedule
2020 Labor Rates

<u>Description</u>	<u>Range</u>		
Principal	118.00	-	381.00
Project Manager	114.00	-	195.00
Project Professional	110.00	-	174.00
Assistant Professional	64.00	-	143.00
Designer	80.00	-	216.00
CAD Operator	43.00	-	118.00
Survey	46.00	-	187.00
Construction Services	43.00	-	193.00
Administrative/Clerical	29.00	-	130.00

Note:

1. Special Services not included in above categories will be provided on a Special Labor Rate Schedule
2. Rates subject to change based upon updates to Billing Rates for upcoming year.

REIMBURSABLE EXPENSE SCHEDULE

The expenses incurred by Olsson or Olsson's independent professional associates or consultants directly or indirectly in connection with the Project shall be included in periodic billing as follows:

<u>Classification</u>	<u>Cost</u>
Automobiles (Personal Vehicle)	\$0.575/mile*
Suburban's and Pick-Ups	\$0.75/mile*
Automobiles (Olsson Vehicle)	\$85.00/day
Other Travel or Lodging Cost	Actual Cost
Meals	Actual Cost
Printing and Duplication including Mylars and Linens	
In-House	Actual Cost
Outside	Actual Cost+10%
Postage & Shipping Charges for Project Related Materials including Express Mail and Special Delivery	Actual Cost
Film and Photo Developing	Actual Cost+10%
Telephone and Fax Transmissions	Actual Cost+10%
Miscellaneous Materials & Supplies Applicable to this Project	Actual Cost+10%
Copies of Deeds, Easements or other Project Related Documents	Actual Cost+10%
Fees for Applications or Permits	Actual Cost+10%
Sub-Consultants	Actual Cost+10%
Taxes Levied on Services and Reimbursable Expenses	Actual Cost

*Rates consistent with the IRS Mileage Rate Reimbursement Guidelines (Subject to Change).

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
C-CHECK	VOID CHECK	V	6/05/2020			186906		
C-CHECK	VOID CHECK	V	6/05/2020			186907		
C-CHECK	VOID CHECK	V	6/05/2020			186917		
C-CHECK	VOID CHECK	V	6/05/2020			186918		
C-CHECK	VOID CHECK	V	6/05/2020			186919		
C-CHECK	VOID CHECK	V	6/05/2020			186936		
C-CHECK	VOID CHECK	V	6/05/2020			186937		
C-CHECK	VOID CHECK	V	6/05/2020			186938		
C-CHECK	VOID CHECK	V	6/05/2020			186941		
C-CHECK	VOID CHECK	V	6/05/2020			186942		

* * T O T A L S * *	NO	INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
REGULAR CHECKS:	0	0.00	0.00	0.00
HAND CHECKS:	0	0.00	0.00	0.00
DRAFTS:	0	0.00	0.00	0.00
EFT:	0	0.00	0.00	0.00
NON CHECKS:	0	0.00	0.00	0.00
VOID CHECKS:	10 VOID DEBITS	0.00		
	VOID CREDITS	0.00	0.00	

TOTAL ERRORS: 0

VENDOR SET: 99	BANK:	TOTALS:	NO	INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
			10	0.00	0.00	0.00
BANK:		TOTALS:	10	0.00	0.00	0.00

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
0224	KDOR	D	6/04/2020			000000		825.49
0224	KDOR	D	6/05/2020			000000		4,836.74
0321	KP&F	D	6/12/2020			000000		44,717.09
0728	ICMA	D	6/12/2020			000000		550.00
1050	KPERS	D	6/12/2020			000000		38,096.64
3570	AMERICAN EXPRESS, INC	D	6/04/2020			000000		257.38
5677	BANK OF AMERICA, INC	D	6/03/2020			000000		26.78
5904	TASC	D	6/12/2020			000000		6,151.96
6415	GREAT WEST TANDEM KPERS 457	D	6/12/2020			000000		4,644.83
7290	DELTA DENTAL OF KANSAS INC	D	6/05/2020			000000		3,229.70
7290	DELTA DENTAL OF KANSAS INC	D	6/12/2020			000000		4,105.89
7877	TRUSTMARK HEALTH BENEFITS INC	D	6/04/2020			000000		18,454.42
7877	TRUSTMARK HEALTH BENEFITS INC	D	6/11/2020			000000		14,404.78
0748	CONRAD FIRE EQUIPMENT	E	6/08/2020			008403		144.59
2004	AIRE-MASTER OF AMERICA, INC.	E	6/08/2020			008404		8.61
6059	CBIZ BENEFITS & INSURANCE SERV	E	6/08/2020			008405		850.00
8202	PETROLEUM TRADERS CORPORATION	E	6/08/2020			008406		10,982.66
8205	MRI SOFTWARE LLC	E	6/08/2020			008407		940.00
0046	ETTINGERS OFFICE SUPPLY	E	6/08/2020			008408		378.13
0055	JOHN'S SPORT CENTER, INC.	E	6/08/2020			008409		164.00
0105	PITTSBURG AUTOMOTIVE	E	6/08/2020			008410		788.32
0112	MARRONES INC	E	6/08/2020			008411		24.78

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
0117	GATEHOUSE MEDIA KANSAS HOLDING	E	6/08/2020			008412		26.69
0142	HECKERT CONSTRUCTION CO INC	E	6/08/2020			008413		12,735.70
0194	KANSAS STATE TREASURER	E	6/08/2020			008414		2,988.00
0306	CASTAGNO OIL CO INC	E	6/08/2020			008415		598.00
0328	KANSAS ONE-CALL SYSTEM, INC	E	6/08/2020			008416		336.00
0345	THE VICTOR L PHILLIPS CO	E	6/08/2020			008417		1,096.68
0409	WISEMAN'S DISCOUNT TIRE INC	E	6/08/2020			008418		41.00
0455	LARRY BARRETT BODY * FRAME * T	E	6/08/2020			008419		4,874.62
0534	TYLER TECHNOLOGIES INC	E	6/08/2020			008420		390.00
0597	CORNEJO & SONS LLC	E	6/08/2020			008421		408.59
0628	BERRY COMPANIES, INC.	E	6/08/2020			008422		518.90
0726	PITTSBURG STATE UNIVERSITY	E	6/08/2020			008423		239.88
1033	BOLLINGER GROUP, LLC	E	6/08/2020			008424		100.00
1792	B&L WATERWORKS SUPPLY, LLC	E	6/08/2020			008425		1,192.35
2025	SOUTHERN UNIFORM & EQUIPMENT L	E	6/08/2020			008426		199.96
2707	THE LAWNSCAPE COMPANY, INC.	E	6/08/2020			008427		702.50
2921	DATAPROSE LLC	E	6/08/2020			008428		3,779.63
3802	BRENNTAG MID-SOUTH INC	E	6/08/2020			008429		2,259.00
4618	TRESA LYNNE MILLER	E	6/08/2020			008430		1,170.00
5049	CRH COFFEE INC	E	6/08/2020			008431		42.90
5552	NATIONAL SIGN CO INC	E	6/08/2020			008432		276.84
5640	WELLPATH LLC	E	6/08/2020			008433		72.00

VENDOR SET: 99 City of Pittsburg, KS

BANK: 80144 BMO HARRIS BANK

DATE RANGE: 6/03/2020 THRU 6/16/2020

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
5855	STERICYCLE, INC.	E	6/08/2020			008434		54.40
6090	RANDAL BENNEFELD	E	6/08/2020			008435		725.00
6175	HENRY C MENGHINI	E	6/08/2020			008436		608.40
6198	CHARLES HOSMAN	E	6/08/2020			008437		1,500.00
6298	L. KEVAN SCHUPBACH	E	6/08/2020			008438		1,700.00
7028	MATTHEW L. FRYE	E	6/08/2020			008439		400.00
7407	LIMELIGHT MARKETING LLC	E	6/08/2020			008440		1,190.00
7427	OLSSON INC	E	6/08/2020			008441		7,123.25
7559	MEGAN LYNN MUNGER	E	6/08/2020			008442		201.00
7629	EARLES ENGINEERING & INSPECTIO	E	6/08/2020			008443		4,425.50
7705	JOANNA L DERFELT	E	6/08/2020			008444		1,000.00
7735	ELIZABETH KING	E	6/08/2020			008445		30.00
7743	JACKIE D COLTRANE	E	6/08/2020			008446		19.00
7744	DARREN L SWARTZ	E	6/08/2020			008447		128.00
7749	CHARLIE PHILLIPS	E	6/08/2020			008448		57.00
7751	MATTHEW DEMOSS	E	6/08/2020			008449		22.00
7806	CORE & MAIN LP	E	6/08/2020			008450		2,007.13
7852	TRIA HEALTH, LLC	E	6/08/2020			008451		1,399.88
7959	ALL ABOARD FOUNDATION	E	6/08/2020			008452		2,485.06
8046	CONVERGEONE, INC.	E	6/08/2020			008453		450.00
8147	CHEM-AQUA, INC.	E	6/08/2020			008454		395.00
8216	CUSTOM TRUCK ONE SOURCE, L.P.	E	6/08/2020			008455		465.83

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
0046	ETTINGERS OFFICE SUPPLY	E	6/15/2020			008457		152.87
0087	FORMS ONE, LLC	E	6/15/2020			008458		275.00
0105	PITTSBURG AUTOMOTIVE	E	6/15/2020			008459		620.54
0112	MARRONES INC	E	6/15/2020			008460		171.10
0117	GATEHOUSE MEDIA KANSAS HOLDING	E	6/15/2020			008461		27.42
0128	ASCENSION VIA CHRISTI HOSPITAL	E	6/15/2020			008462		189.00
0133	JIM RADELL CONSTRUCTION COMPAN	E	6/15/2020			008463		2,450.00
0202	CLIFF HIX ENGINEERING INC	E	6/15/2020			008464		440.00
0478	VIETTI AUTO BODY INC	E	6/15/2020			008465		2,148.00
0516	AMERICAN CONCRETE CO INC	E	6/15/2020			008466		1,297.53
0577	KANSAS GAS SERVICE	E	6/15/2020			008467		6,785.04
0711	HAYNES EQUIPMENT CO INC	E	6/15/2020			008468		1,164.79
0746	CDL ELECTRIC COMPANY INC	E	6/15/2020			008469		137.50
0753	COUNTY OF CRAWFORD	E	6/15/2020			008470		12,500.00
0788	SCHREIBER LLC	E	6/15/2020			008471		1,286.00
0866	AVFUEL CORPORATION	E	6/15/2020			008472		12,200.39
0961	KANSAS JUDICIAL COUNCIL	E	6/15/2020			008473		235.00
1478	KANSASLAND TIRE #1828	E	6/15/2020			008474		28.00
2025	SOUTHERN UNIFORM & EQUIPMENT L	E	6/15/2020			008475		167.90
2960	PACE ANALYTICAL SERVICES LLC	E	6/15/2020			008476		8,181.00
4354	LIFESTYLE LEASING INC	E	6/15/2020			008477		1,260.00
4956	YAMAHA COMMERCIAL FINANCE, U.S	E	6/15/2020			008478		17,100.00

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
5275	US LIME COMPANY-ST CLAIR	E	6/15/2020			008479		4,857.20
7038	SIGNET COFFEE ROASTERS	E	6/15/2020			008480		41.25
7239	JERRY MILLER	E	6/15/2020			008481		565.00
7284	TRANSYSTEMS CORPORATION	E	6/15/2020			008482		825.00
7629	EARLES ENGINEERING & INSPECTIO	E	6/15/2020			008483		17,760.00
7839	VISION SERVICE PLAN INSURANCE	E	6/15/2020			008484		1,731.86
8198	PHILLIPS FAMILY ENTERPRISES LL	E	6/15/2020			008485		46,980.66
8200	PLUNKETT'S PEST CONTROL INC	E	6/15/2020			008486		530.00
8246	BETHANY ANN BROOKS	E	6/15/2020			008487		547.00
0523	AT&T	R	6/05/2020			186905		7,688.62
5480	BITNER MOTORS	R	6/05/2020			186908		108.89
7422	CITY OF GIRARD	R	6/05/2020			186909		150.00
4263	COX COMMUNICATIONS KANSAS LLC	R	6/05/2020			186910		90.85
4263	COX COMMUNICATIONS KANSAS LLC	R	6/05/2020			186911		1,406.67
4263	COX COMMUNICATIONS KANSAS LLC	R	6/05/2020			186912		13.44
4263	COX COMMUNICATIONS KANSAS LLC	R	6/05/2020			186913		29.40
7517	CRAW-KAN TELEPHONE COOPERATIVE	R	6/05/2020			186914		1,119.94
8247	DAG INSTALL LLC	R	6/05/2020			186915		653.00
1108	EVERGY KANSAS CENTRAL INC	R	6/05/2020			186916		88,422.73
8199	PRINTER'S INK LLC	R	6/05/2020			186920		705.00
7935	CANDACE MICHAEL BREWSTER	R	6/05/2020			186921		1,000.00
6923	HUGO'S INDUSTRIAL SUPPLY INC	R	6/05/2020			186922		1,092.45

VENDOR SET: 99 City of Pittsburg, KS

BANK: 80144 BMO HARRIS BANK

DATE RANGE: 6/03/2020 THRU 6/16/2020

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
5248	KCDAA	R	6/05/2020			186923		438.00
7903	TAMMY L KLENKLEN	R	6/05/2020			186924		70.00
6119	LACAL EQUIPMENT INC	R	6/05/2020			186925		491.71
7904	MICHELLE MCCLURE	R	6/05/2020			186926		34.00
6697	PITTSBURG EMERGENCY PHYSICIAN,	R	6/05/2020			186927		39.31
7151	QUADIENT FINANCE USA INC	R	6/05/2020			186928		1,000.00
8103	ANDY ROBERTS	R	6/05/2020			186929		89.00
1	SCHROEDER, MARC	R	6/05/2020			186930		2,000.00
8037	SEELICKFIX INC	R	6/05/2020			186931		13,800.00
8248	SIGN BROTHERS	R	6/05/2020			186932		528.00
1	SMITH, GARY	R	6/05/2020			186933		2,494.34
6730	DJB INVESTMENTS, LLC	R	6/05/2020			186934		4,750.00
5589	VERIZON WIRELESS SERVICES, LLC	R	6/05/2020			186935		9,070.95
3069	VIA CHRISTI PROFESSIONAL SERVI	R	6/05/2020			186939		145.95
2350	WCA WASTE SYSTEMS INC	R	6/05/2020			186940		1,543.29
6154	4 STATE MAINTENANCE SUPPLY INC	R	6/12/2020			186959		424.69
2876	A-PLUS DRY CLEANERS	R	6/12/2020			186960		280.50
7856	BARDAVON HEALTH INNOVATIONS, L	R	6/12/2020			186961		375.00
5480	BITNER MOTORS	R	6/12/2020			186962		207.81
5759	COMMUNITY HEALTH CENTER OF SEK	R	6/12/2020			186963		10,000.00
7657	COPY PRODUCTS, INC.	R	6/12/2020			186964		137.08
4263	COX COMMUNICATIONS KANSAS LLC	R	6/12/2020			186965		95.06

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
4263	COX COMMUNICATIONS KANSAS LLC	R	6/12/2020			186966		79.86
0375	WICHITA WATER CONDITIONING	R	6/12/2020			186967		7.50
1	DAVIS, BRENDA	R	6/12/2020			186968		90.00
8209	DPC ENTERPRISES LP	R	6/12/2020			186969		1,368.00
0845	JOCK'S NITCH	R	6/12/2020			186970		256.00
7190	LEXISNEXIS RISK DATA MANAGEMEN	R	6/12/2020			186971		381.92
7938	ROSANO DEL PILAR MENDEZ	R	6/12/2020			186972		50.00
8208	MICHAEL JOHNSON	R	6/12/2020			186973		80.00
7392	ASSURECO RISK MANAGEMENT & REG	R	6/12/2020			186974		350.00
8249	NATALEE MORRIS	R	6/12/2020			186975		200.00
7151	QUADIENT FINANCE USA INC	R	6/12/2020			186976		500.00
0175	REGISTER OF DEEDS	R	6/12/2020			186977		20.00
7270	SECURITY 1ST TITLE, LLC	R	6/12/2020			186978		270.00
8089	JORAN STOUT-MITCHELL	R	6/12/2020			186979		200.00
2335	UNITED STATES TREASURY	R	6/12/2020			186980		1,146.60
8165	VANESSA DE LUNA	R	6/12/2020			186981		43.75
8203	VB OPCO LLC	R	6/12/2020			186982		2,100.00
5589	VERIZON WIRELESS SERVICES, LLC	R	6/12/2020			186983		364.50

* * T O T A L S * *	NO	INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
REGULAR CHECKS:	53	158,003.81	0.00	158,003.81
HAND CHECKS:	0	0.00	0.00	0.00
DRAFTS:	13	140,301.70	0.00	140,301.70
EFT:	84	217,371.83	0.00	217,371.83
NON CHECKS:	0	0.00	0.00	0.00
VOID CHECKS:	0 VOID DEBITS	0.00		
	VOID CREDITS	0.00	0.00	0.00
TOTAL ERRORS:	0			

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
				INVOICE AMOUNT		DISCOUNTS		CHECK AMOUNT
VENDOR SET: 99	BANK: 80144	TOTALS:	NO 150	515,677.34		0.00		515,677.34
BANK: 80144	TOTALS:		150	515,677.34		0.00		515,677.34
REPORT TOTALS:			150	515,677.34		0.00		515,677.34

Passed and approved this 23rd day of June, 2020.

Dawn McNay, Mayor

ATTEST:

Tammy Nagel, City Clerk



2020 FIVE YEAR FINANCIAL PLAN



Five-Year Financial Plan

May 30, 2020

Introduction:

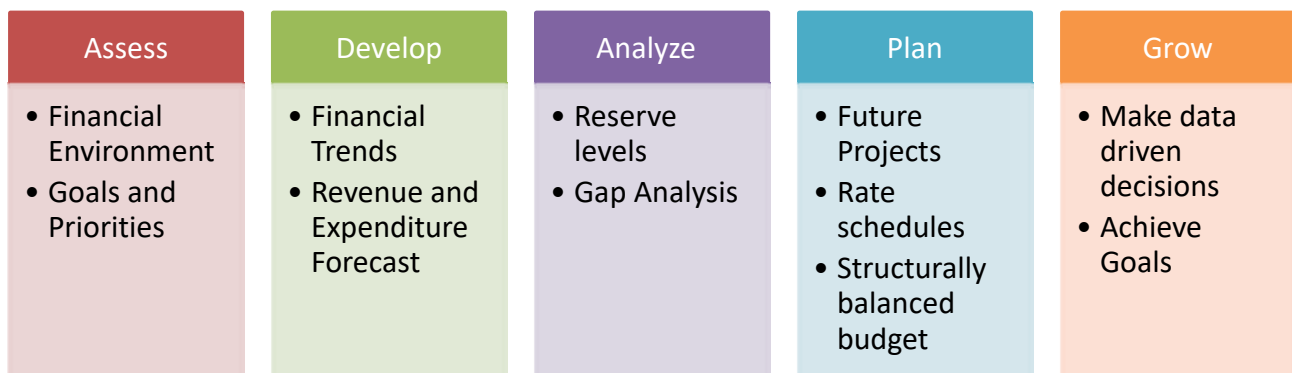
It is the role of the City Commission and the City's management staff to find ways to not just overcome, but also thrive. A long-term financial plan is an important tool that can assist in accomplishing this goal.

There are several reasons to prepare a long-term financial plan.

- Help develop strategies to achieve goals and objectives
- Assess the implications today's decisions have on future financial viability
- Identify programs and services that may be offered or eliminated
- Increase bond ratings by rating agencies
- Analyze revenue and expenditure trends for improved decision-making

A financial forecast is a tool used in developing a long-term financial plan by estimating future revenues and expenditures and identifying the factors that affect them. This forecast is intended to help formulate decisions that encourage financial stability while delivering essential community services.

The information in this forecast includes an analysis of major revenue sources and uses for the primary government and its enterprise funds. The estimates include both quantitative and qualitative information. Quantitative estimates are based on historical data and trends, as well as economic conditions that may affect the City's ability to collect or generate revenue such as the current COVID-19 pandemic. The qualitative estimates are based on the experience and knowledge of management that will indicate the most likely outcome.



Financial forecasts include many economic variables that can and do change frequently. Other things that will affect the accuracy of the forecast include operational changes, the timing of large capital projects, and policy changes.

Executive Summary:

The City constantly looks for ways to maximize limited resources in order to address the priorities set by the City Commission. The current areas of focus are the result of the 2030 Visioning process, updated in 2018. The result is a list of areas of focus that allow the City to attain the overall vision of where Pittsburg should be in the year 2030. These goals will continue to be a priority in the 2020 Budget and subsequent years through 2024.



In addition to these areas of focus, the City Commission and Executive Team identified the following priorities for each:



2019 Recap

During the 2019 working day session, the following recommendations were made. The actual actions approved by the City Commission are noted at the end of each section.

To ensure our future financial stability we must consider:

- Increasing revenues incrementally
- Monitor and control expenditures
- Build reserves
- Practice long term planning
- Monitor and update written policies
- Make data driven decisions

Specifically, we recommended:

1. No change to the General Fund mill rate for years 2020-2023

Action Taken: The City Commission approved the 2020 General Fund with no mill rate increase.

2. Increasing utility rates by

- a. 0% for 2020
- b. 1% for 2021
- c. 1% for 2022
- d. 1% for 2023

Action Taken: The City Commission approved a 0% increase in utility rates for the 2020 budget.

3. Increasing the Debt Service Fund mill rate minimally as needed for the years 2019-2022

Action Taken: The City Commission approved the 2020 Debt Service Fund with no mill rate increase.

4. Adopting the following long-term plans

- a. Five Year Capital Improvements Plan
- b. Five Year Equipment Replacement Plan
- c. Five Year Financial Plan

Action Taken: The City Commission adopted a., b. and c. as presented.

5. Limit salary increases to

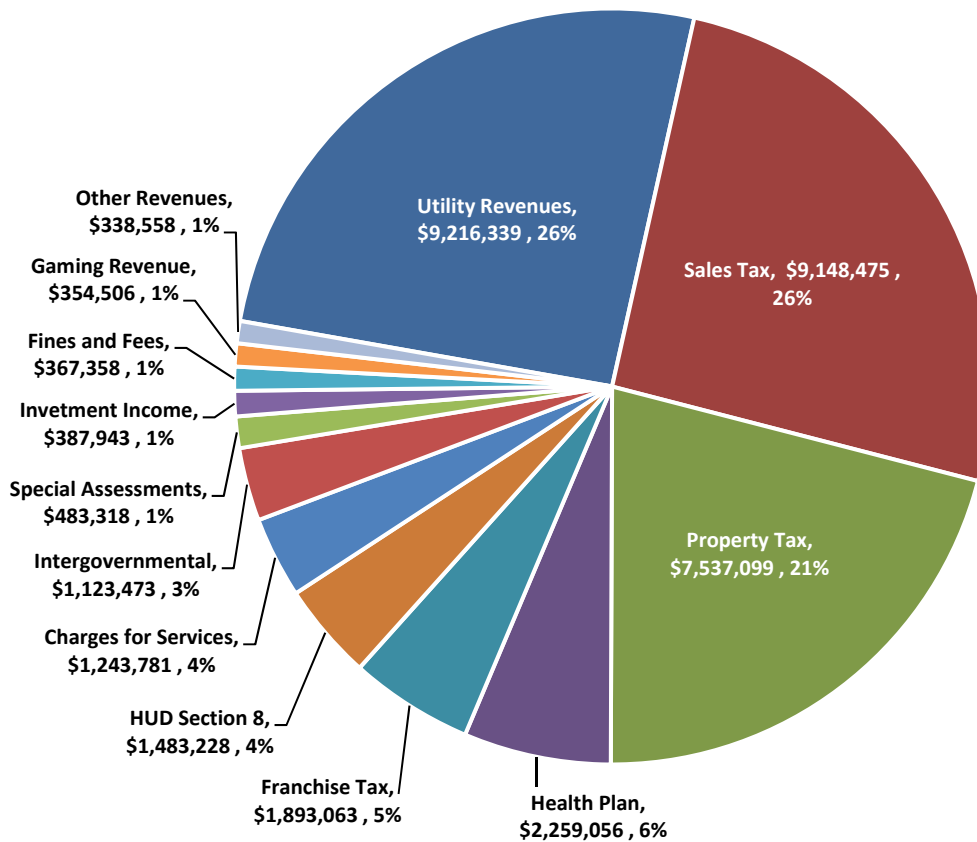
- a. 1.0% COLA in 2020-2023 and 2.0% merit salary increase in 2021 and 2023.

Action Taken: The City Commission approved the 2020 budget with a 1.0% COLA salary increase.

REVENUES

The City of Pittsburg receives revenue from a variety of sources; however, nearly all revenue is collected into two main funds: the general fund and the public utility fund. When compared to 2018 total revenues, 2019 revenues increased by \$728,101. The following pie chart shows the City's 2019 revenues by source and the percentage of total revenues each source represents. Utility revenue, sales tax revenue and property tax revenue comprise 73% of the City's total revenues.

2019 Revenues by Source \$35,836,197



General Fund

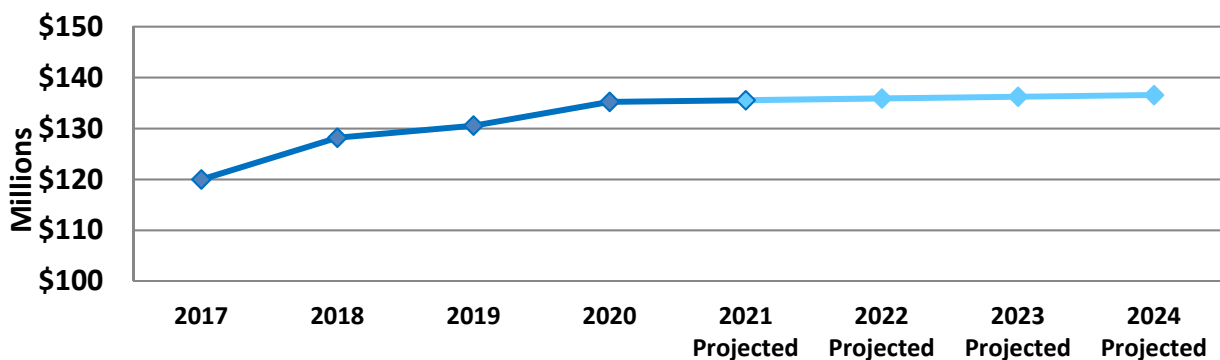
The four main sources of revenue in the general fund are as follows: property tax, sales tax, franchise tax and transfers from the public utility fund. Gaming revenue from the Kansas Crossing Casino is a newer revenue stream in the general fund with the casino opening in April 2017.

Property Tax

The property tax is an ad valorem tax, meaning, it is based on the value of real estate or personal property owned by an individual or company. There are two components for calculating property taxes: property valuations and the mill levy. The City determines the level of service for the upcoming year and sets the property tax rate at an amount, which will pay for those services.

The City's net assessed valuation had remained relatively flat until 2018 when it increased by \$8.2 million or 6.84% which was due to the construction of the Kansas Crossing Casino and Hampton Inn Hotel. In 2019, net assessed valuation increased by \$2.4 million or 1.85% and in 2020 net assessed valuation increased by \$4.7 million or 3.58%. For the years 2021 through 2024, staff is projecting flat minimal growth of 0.25% in the City's net assessed valuation. The graph below shows the projected trend in Pittsburg's net assessed valuation.

Net Assessed Valuation by Year

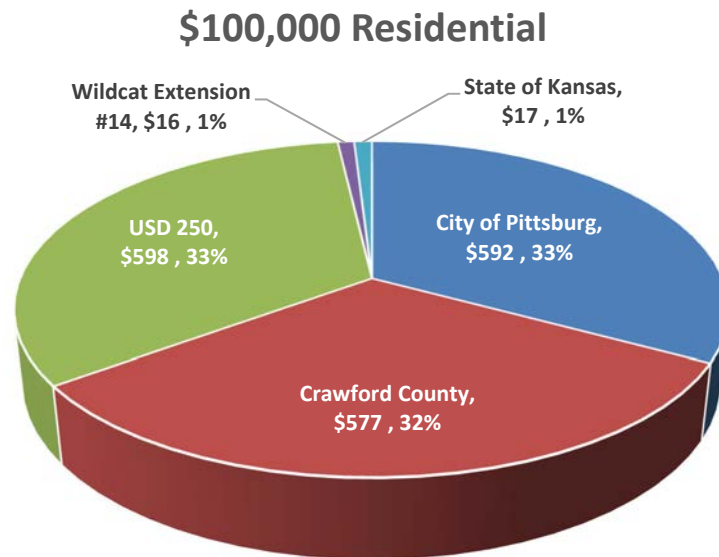


For the 2020 budget year, one mill in the City of Pittsburg generates \$135,225. Historically the City has collected 96% of the taxes levied using the last five-year average. However, for 2020 staff believes the collection percentage of taxes levied will be around 90% due to the COVID-19 pandemic. The table below shows the general fund mill rate and actual tax dollars generated for the last five years and 2020 estimates.

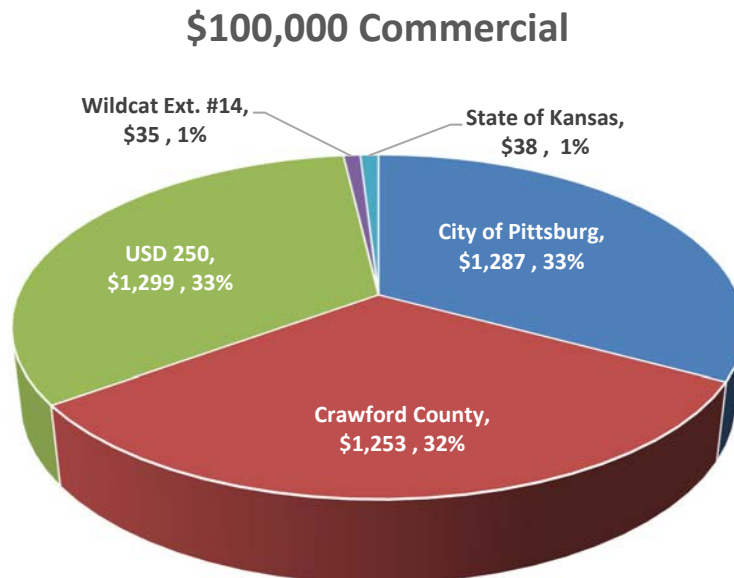
Valued for	Net Valuation	General Fund Mill Rate	Tax Dollars Collected
2015	\$ 118,098,699	33.851	\$ 3,819,508
2016	\$ 118,016,161	33.076	\$ 3,966,486
2017	\$ 119,976,319	36.946	\$ 4,294,357
2018	\$ 128,182,295	36.961	\$ 4,505,260
2019	\$ 130,553,454	36.984	\$ 4,635,218
2020	\$135,225,048	36.967	\$4,498,957 est.

The City receives only a portion of the property taxes paid by residents. The State of Kansas, Crawford County, Unified School District #250 and the Kansas Wildcat Extension #14 also assess taxes on property. One mill on a residential property appraised at \$100,000 will generate \$11.50 in property tax annually while one mill on a commercial property appraised at \$100,000 will generate \$25.00 in property tax annually.

The following pie chart shows the various property tax jurisdictions within Pittsburg and their approximate 2020 cost on a residential property with an appraised value of \$100,000.



The following pie chart shows the various property tax jurisdictions within Pittsburg and their approximate 2020 cost on a commercial property with appraised value of \$100,000.

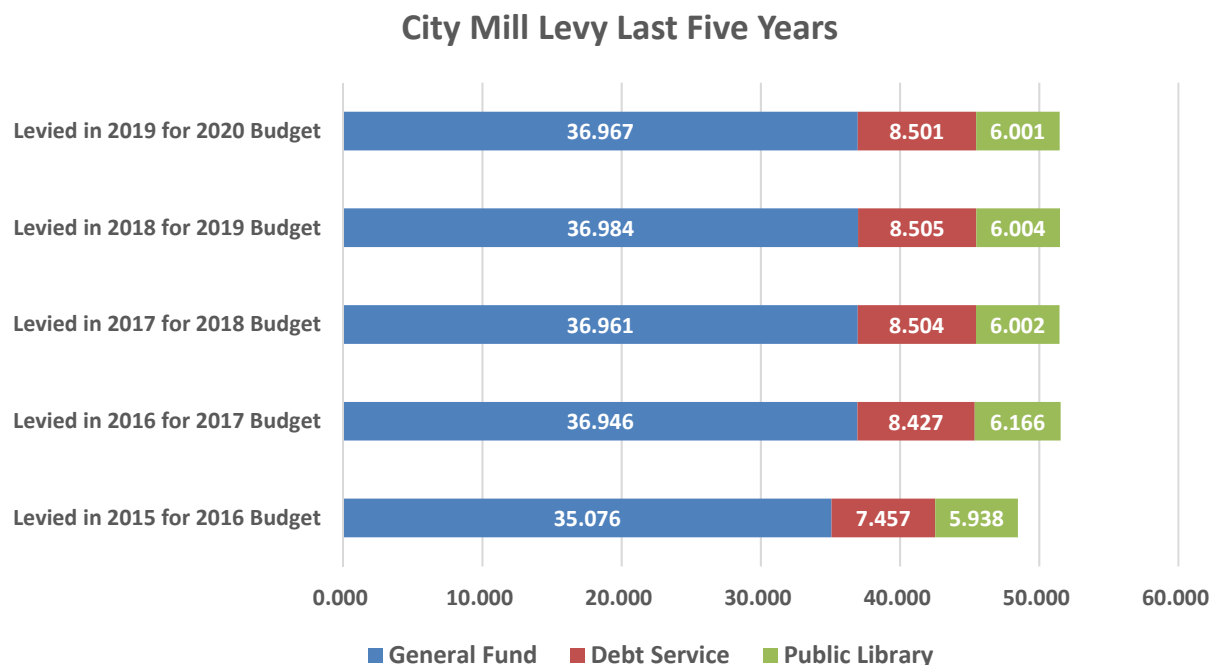


The following table shows the various property tax jurisdictions within Pittsburg and their respective 2020 mill rates.

Entity	Mill Rate
USD 250*	51.967
City of Pittsburg	51.469
Crawford County	50.135
State of Kansas	1.500
Kansas Wildcat Extension #14	1.383
TOTAL	156.454

*Per Kansas statute, Unified School Districts are exempt from the 20 mill statewide Portion of the mill rate which equates to \$46.00 annually

The following graph shows the breakdown of the City property taxes levied for the last five years.

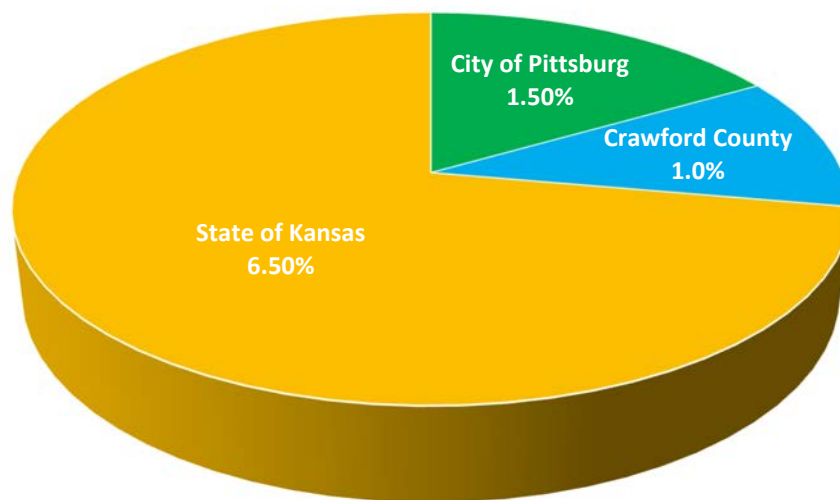


Sales Tax

Sales taxes are a source of revenue paid to a government entity for the sales of certain goods and services. For most sales in Kansas, the law requires the seller to collect the tax from the consumer at the point of sale. Generally, sales tax is collected one month, then the sales tax collected is remitted to the state the following month and then the state remits the appropriate share of the tax to the appropriate governmental entity in the third month.

The following pie chart shows the total sales tax rate within the Pittsburg city limits (excluding the Tax Increment Financing District and Northgate Community Improvement District).

Overall Sales Tax Rate - 9.00%



Sales taxes are the leading sole source revenue stream for the City of Pittsburg. However, all the City sales taxes are earmarked for specific uses. The portion of the Crawford County sales tax received by the City is unrestricted and is used to support the General Fund operations. Staff is projecting the City will receive approximately \$2.05 million of the Crawford County sales tax in 2020. This projection is only 85% of 2019 actual due to the COVID-19 pandemic.

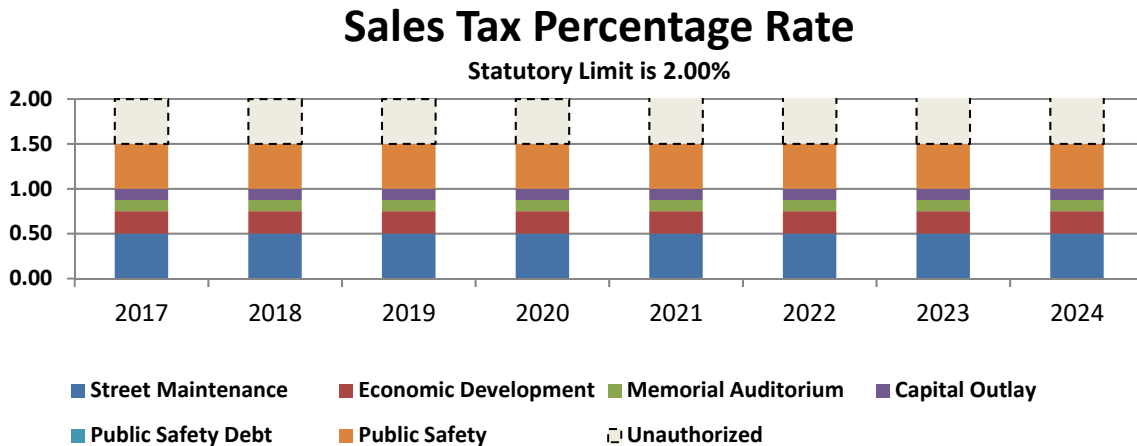
There are five programs funded by dedicated sales taxes in Pittsburg. Three have renewal or end dates. **The original sales tax for street maintenance was approved by voters for another five years in 2015 and will expire March 31, 2021.** An additional quarter-cent street sales tax was approved by voters in 2017 and will expire September 30, 2022. The half-cent sales tax to enhance public safety was approved by voters in 2013 and will expire December 31, 2023. The quarter-cent for economic development and the eighth-cent for the auditorium and capital outlay have no expiration date.

The State of Kansas statutory limit on sales tax rates is two percent for municipalities. The City's portion of the sales tax rate is currently one and a half percent.

Pittsburg Sales Tax Earmarks		
<u>Purpose</u>	<u>Rate</u>	<u>End Date</u>
Street Maintenance	.25	3-31-2021
Street Maintenance	.25	9-30-2022
Public Safety	.50	12-31-2023
Economic Development	.25	Ongoing
Capital Outlay	.125	Ongoing
Memorial Auditorium	.125	Ongoing
Total	1.50	

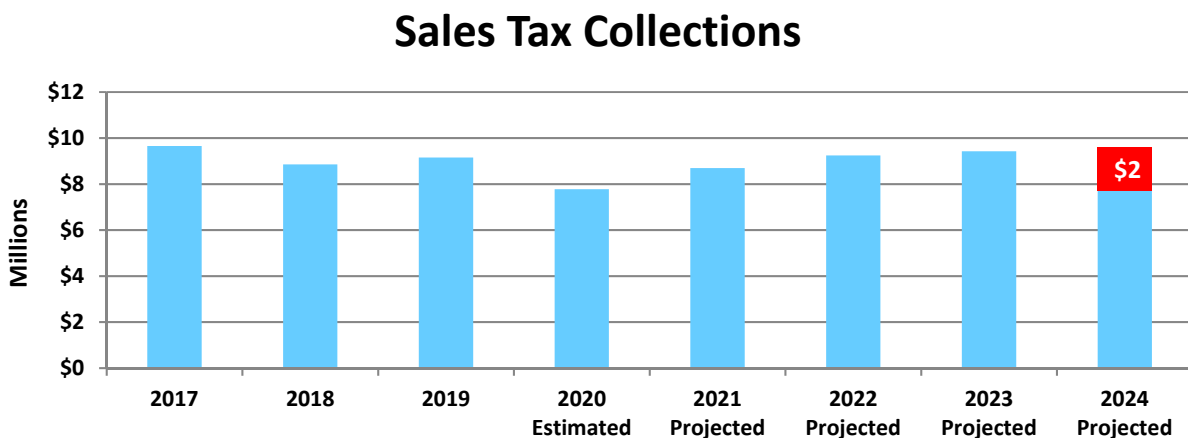
The City's Tax Increment Financing District has an additional .30 sales tax rate and is used to repay the Transportation Development District (TDD) debt which is expected to be retired in 2027. Historically, the TDD sales tax has not been sufficient to pay the annual debt payments and the general fund has to make transfers of \$15,000 to \$30,000 annually.

The graph below shows the City's dedicated sales tax rates over time. The projections assume the street sales taxes will be renewed in 2021.



Sales tax revenue collections for 2019 were up 3.35% when compared to 2018. Due to the COVID-19 pandemic, the revised estimate for 2020 is 85% of 2019 actual and for 2020 to be at the 2019 level. For years 2022-2024 1% growth.

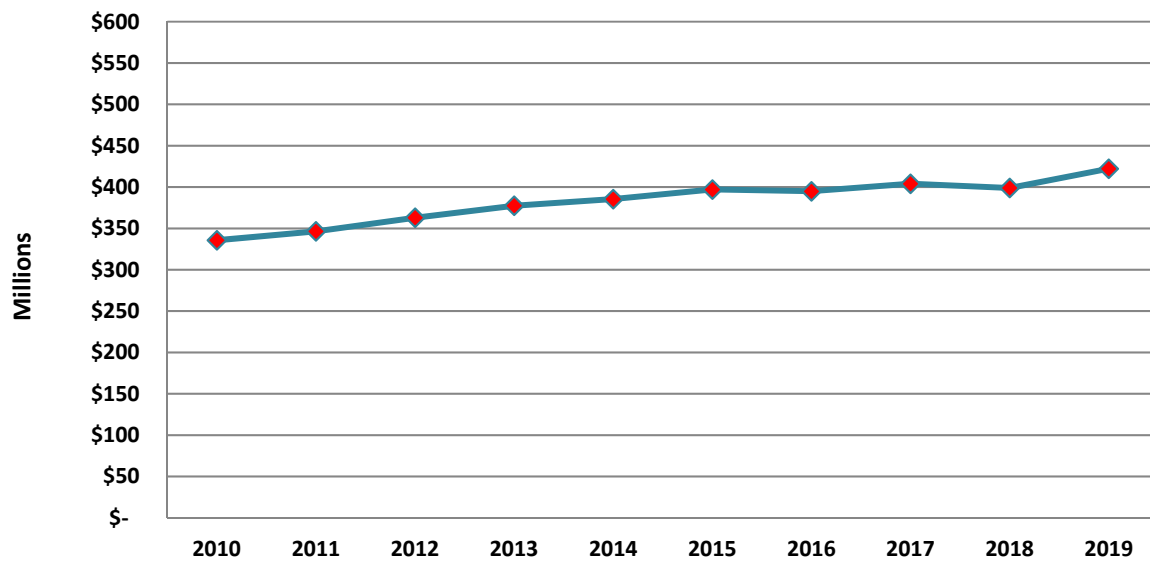
The graph below shows actual and projected sales tax revenue collections for the City through 2024. The drop in sales tax revenue from 2017 to 2018 reflects the Public Safety debt sales tax retirement in the fall of 2017. The drop in 2020 is due to the COVID-19 pandemic. The red in 2024 is the projected amount of sales tax that the City would collect if the public safety sales tax is renewed.



Annual Retail Sales

The following graph shows the City's annual taxable retail sales for the last ten years.

Annual Taxable Retail Sales Last Ten Years



Taxable retail sales have steadily increased. Keep in mind, however, that sales tax collections include costs of inflation, so not all of the taxable sales growth is due to increased volume. Retail sales are a key indicator of the strength of the Pittsburg economy. At this time staff is projecting that the COVID-19 pandemic will have an impact on year 2020 and possibly 2021.

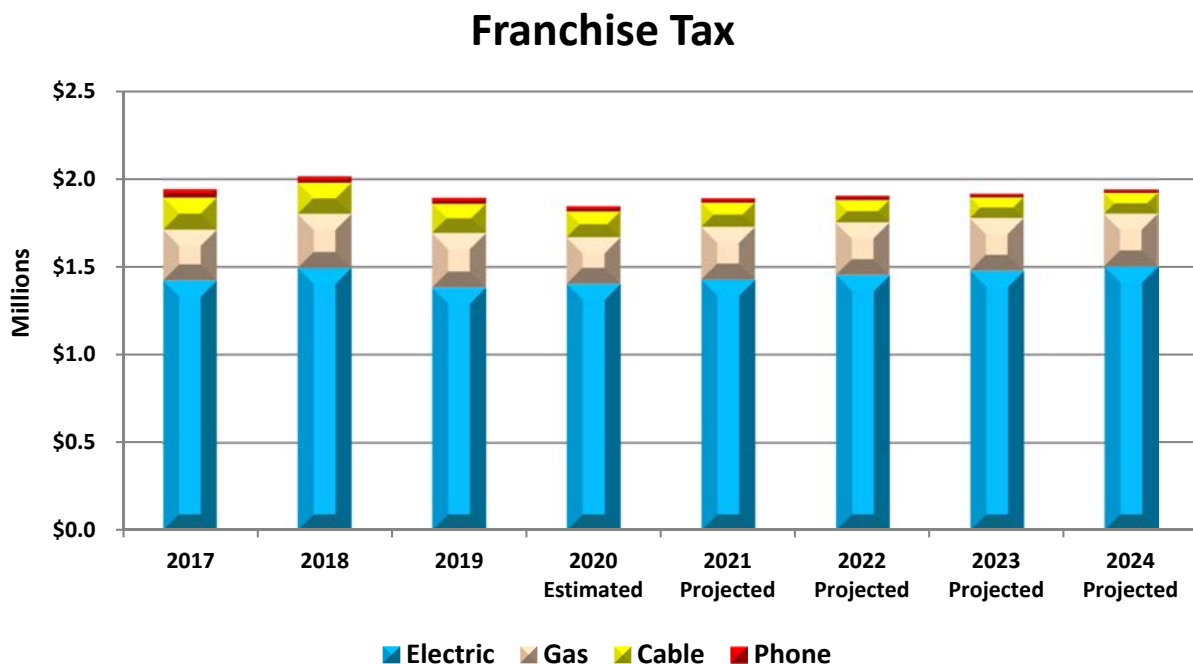
Franchise Taxes

Franchise taxes are the general funds third largest revenue source; and the third largest unrestricted revenue source. Franchise taxes for the City include:

- Electric
- Natural Gas
- Cable
- Telephone

Franchise taxes are not consistent; their unpredictability is based more on annual climatic conditions and the commodities market instead of the economy. The electric franchise taxes comprised 73% of the total franchise taxes collected in 2019 and are specifically driven by the climate and stockholder demands. Natural gas franchise tax collections were flat in 2019 compared to 2018 due to weather conditions and the commodities markets. Cable franchise taxes have been declining for several years and cell phones have reduced the dependence on landline telephones, so that portion of franchise tax continues to decline. Staff is projecting a slight decline in 2020 franchise tax collections due to reduced commercial activity caused by the COVID-19 pandemic. Total franchise collections are expected to remain relatively flat for the period of 2021-2024.

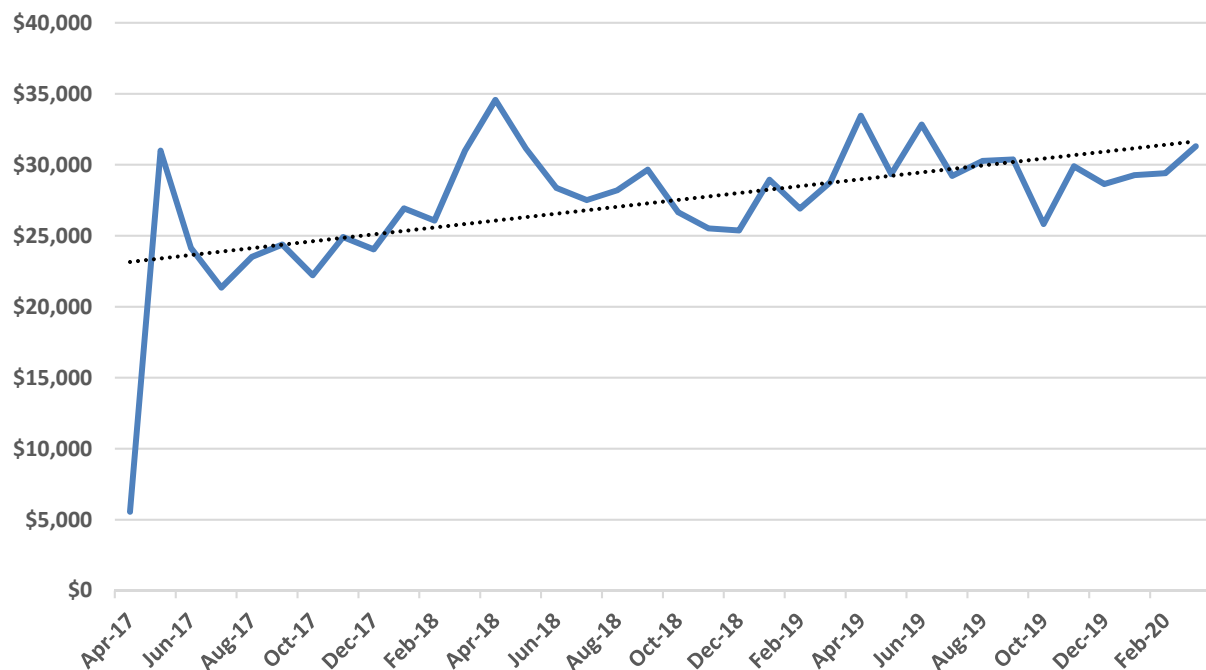
The graph below shows actual and projected franchise tax collections.



Casino Gaming Revenue

The City receives one percent of the gaming revenues generated by the Kansas Crossing Casino plus property taxes and utility charges for service. In 2019, the City collected \$354,506 of gaming revenue. Staff is estimating \$265,880 in gaming revenue for year 2020 which is a 25% reduction due to the COVID-19 pandemic. Due to the casino being closed in mid-March 2020, April was only half a month's gaming revenue and May was \$0. For years 2021-2024 staff is projecting \$355,000 annually.

Casino Gaming Revenues Collections by Month



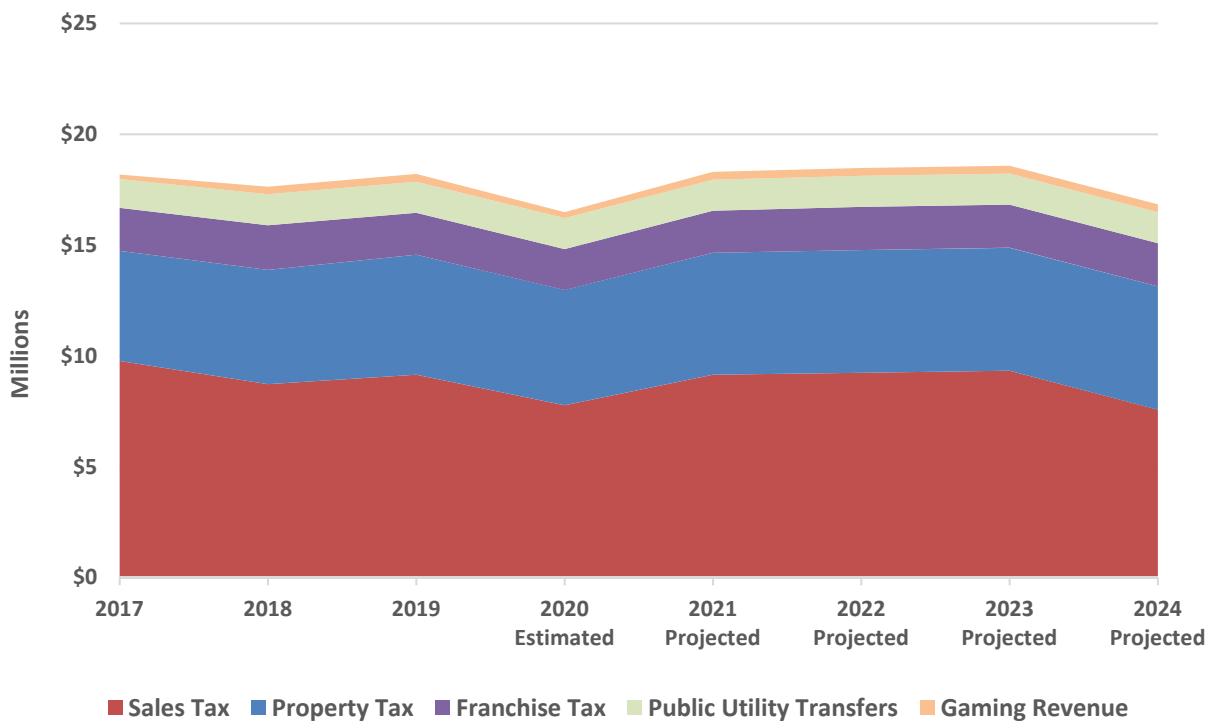
Other Types of Revenues

The City's other general fund revenue sources are:

- Intergovernmental Revenues
- Investment Income
- Fines and Fees
- User fees
- Licenses and permits
- Miscellaneous revenues

The following graph depicts the City's major sources of revenue for the General Fund with sales taxes being the largest source. The dip in 2020 is due to the current projected effect of the COVID-19 pandemic on major general fund revenue sources.

General Fund Major Revenue Trend

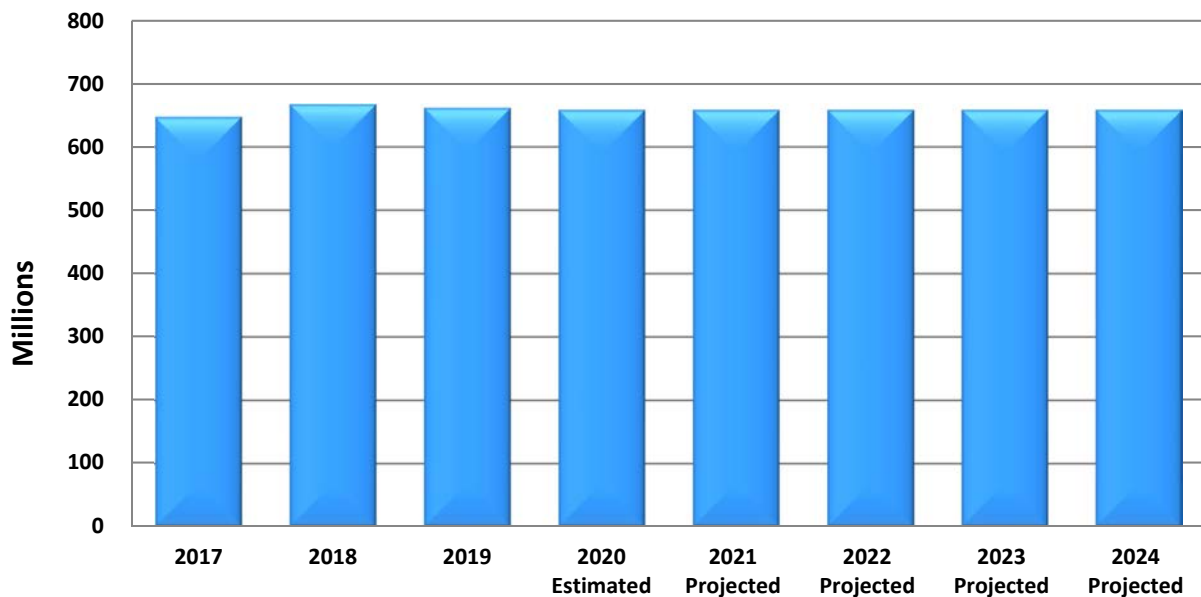


Public Utilities

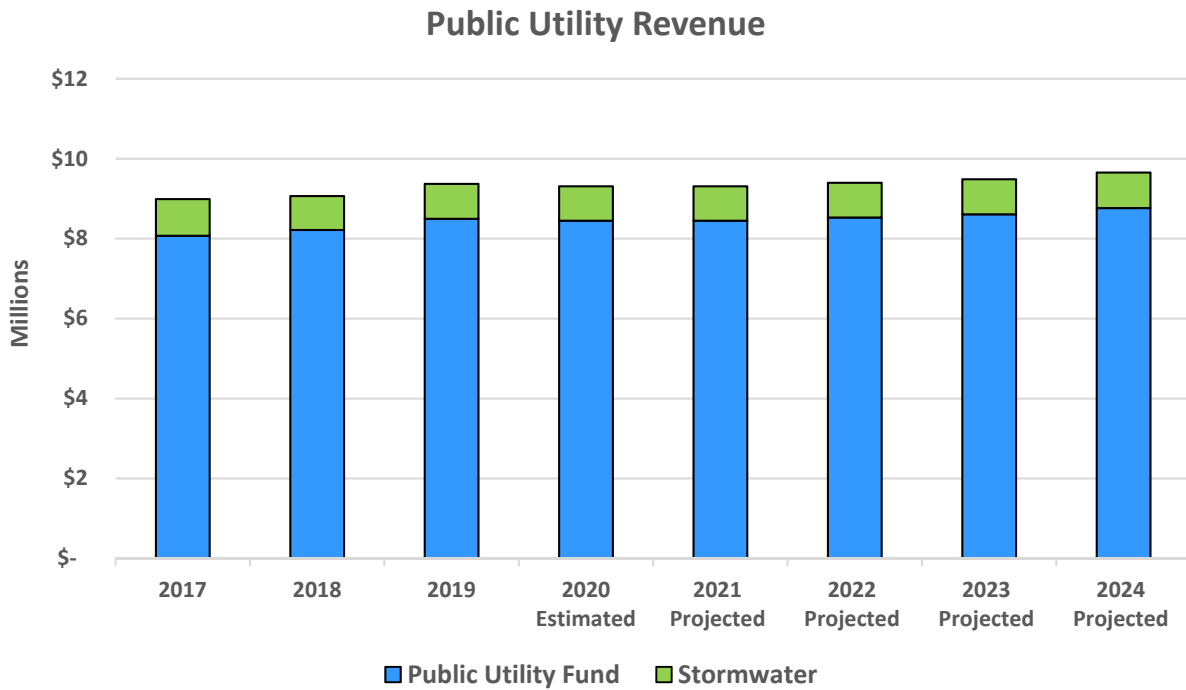
The primary revenue source for public utility activities is user fees. In the case of water and wastewater, the levels of usage are volatile and based on climatic conditions, as well as types of consumer base. Also, if the season is mild and wet, water use is lower than during high heat and drought conditions.

The graph below depicts actual and projected billed water consumption for the City's water utility. Since we cannot predict what climate conditions will be or what economic development will occur to impact water and wastewater usage, consumption is projected to remain at the average of the years 2017 thru 2019 for years 2020 through 2024.

Billed Water Consumption in Gallons



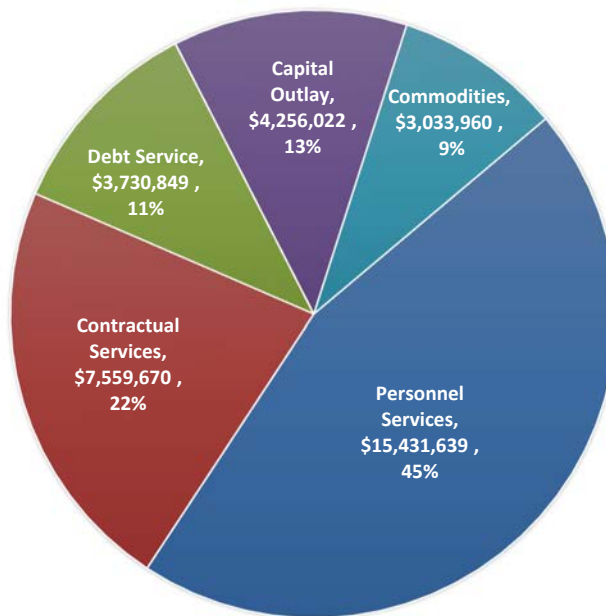
Things that affect utility revenues are annual climate conditions, water loss, whether through aged meters or unidentified leaks, changes in impervious areas, and rate changes. During the 2020 budget process, the City Commission approved a 0% increase in rates. The graph below shows actual and projected utility revenue. The assumptions used in the graph below are no rate increase in 2021 and for years 2022 through 2024 an annual rate increase of 3% to cover annual operating and debt cost increases.



EXPENDITURES

The City directs its financial focus to program-based initiatives and is budgeting expenditures accordingly, in order to accomplish goals. The following chart shows the expenditures by category for 2019 excluding inter-fund transfers.

**2019 Expenditures by
Category \$34,012,140**

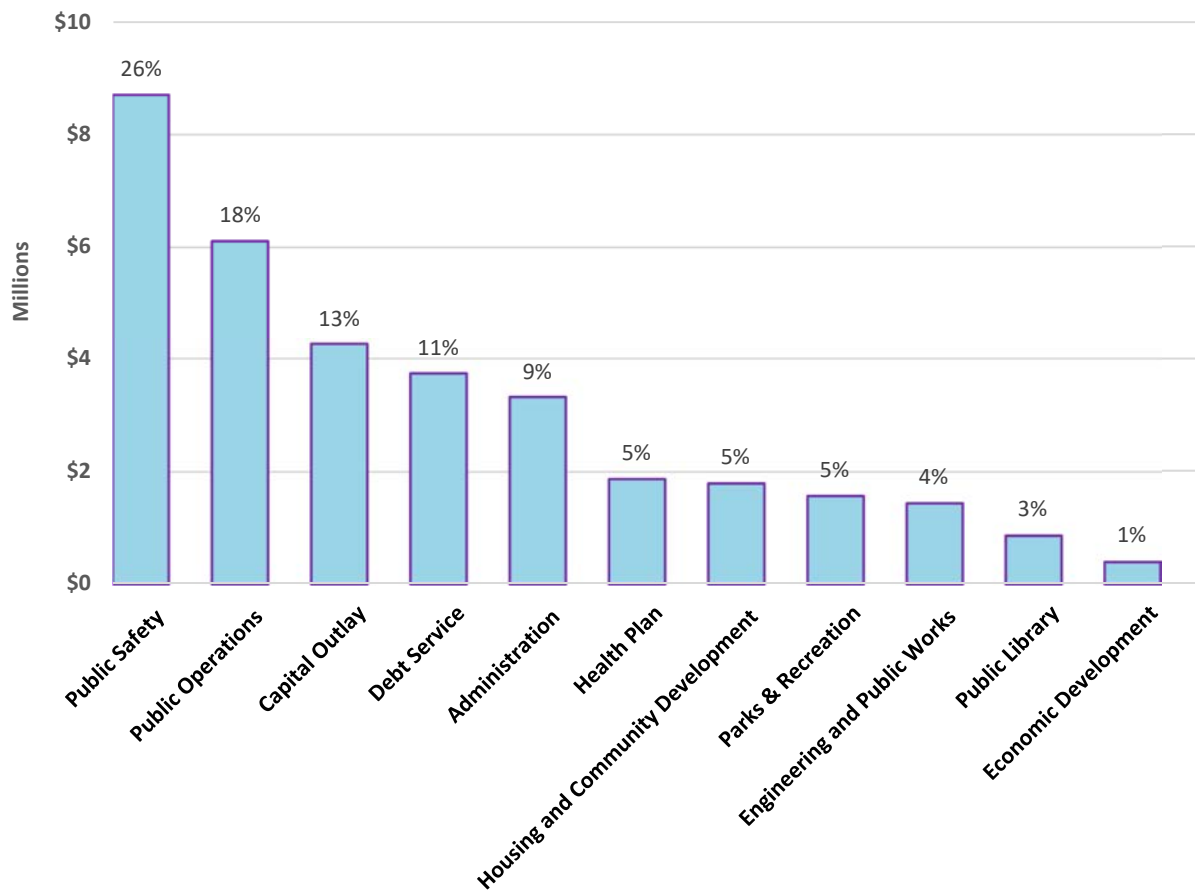


Personnel expenditures, as is the case with most entities, represent the majority of the City's expenditures. The personnel costs include salaries and benefits. The City's benefit costs include health insurance, pensions, social security, worker's compensation insurance, Medicare and unemployment insurance. Contractual services include a variety of expenses including but not limited to property and liability insurance, group health claims expense, software license agreements, utility costs, professional services and lease payments for certain equipment. For 2020 the City has 278 full time equivalent employees (FTE) budgeted, with 242 positions having full time status. The FTE count for 2020 was reduced by 17 due to furloughs and the aquatic center not opening. Also, at this time, several full- time vacancies are being un-filled.

Commodities include operating materials needed to perform City services and include but are not limited to equipment maintenance, gas and oil, chemicals, concrete, rock, computer and network materials, uniforms, janitorial supplies and office supplies.

Another useful way to view the City's expenditures is by program. The 2019 expenditures by program excluding inter-fund transfers are shown below. In 2019 four program categories comprise 68% of City expenditures. They are Public Safety at 26%, Public Operations (utilities and streets) at 18%, Capital Outlay at 13% and Debt Service at 11%.

2019 Expenditures by Program \$34,012,140



City Health Insurance Plan

The City offers health insurance coverage to active employees and their dependents. Retired employees have the option to remain on the City's plan until they are eligible for Medicare or become covered or are eligible to be covered under another plan.

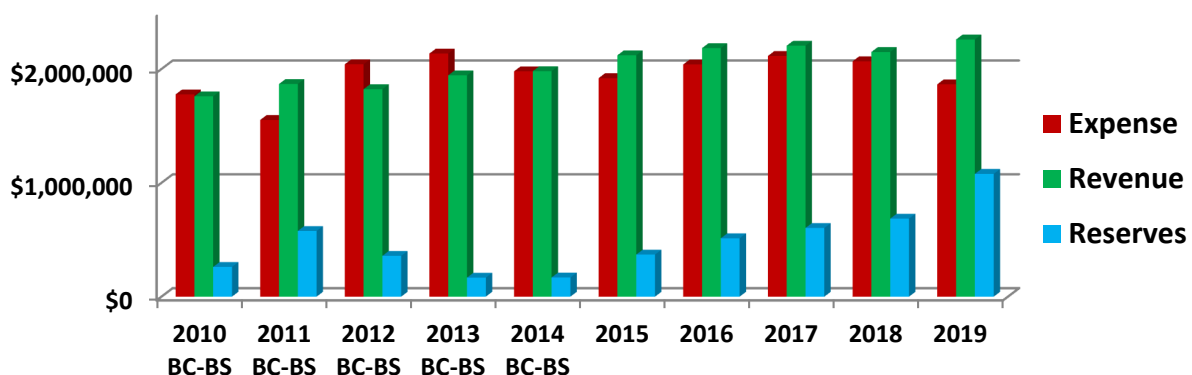
The City's health insurance plan is a self-funded plan paid for by employer and employee contributions to the plan based upon the tier of coverage selected. Self-insured plans are often referred to as "pay as you go." This is because the claims are paid as they are incurred rather than paying premiums. Any balance that is unused stays in the fund to help offset future costs.

While being self-funded has the advantage of paying for only what is used, health care costs generally increase annually. Based on the City's annual costs for the past five years, the average annual increase in health plan costs were three percent.

In 2015, the City changed its health insurance plan from a single provider and carved out the provider's network, the pharmaceutical provider, the dental provider, the stop loss insurance provider and the third party administrator with the expectation of getting better service and saving money. The City's health plan reserves were \$168,669 at the start of 2015 and were \$1,078,789 at the end of 2019, an increase of \$910,120. The Five Year Financial Plan projections are for 3% or less cost increases for years 2019 through 2023. Due to the volatility of health insurance costs, staff will review the City's health plan every fiscal year to address affordability and cost containment.

The graph below shows a comparison of revenues to expenditures for the last ten years of the City's health insurance program.

Health Insurance Analysis - Last Ten Years



Capital Improvements

Capital expenditures are resources used to acquire, maintain, repair, replace, or upgrade fixed assets. Fixed assets are typically those assets with a life span exceeding a normal business cycle and whose cost exceeds a minimum dollar threshold established by management.

These assets are used to provide services to the public and during the course of their lifetime will require maintenance to keep them operating safely and efficiently. The performance and continued use of assets is essential to the health, safety, economic development, and quality of life for the public.

Budgetary pressures often cause maintenance to be delayed due to lack of resources. This is referred to as deferred maintenance. Prolonged deferred maintenance results in higher costs, asset failure, and health and safety issues. Therefore, in order to adequately address these issues, a capital improvement plan is essential.

Currently, the City's fixed assets have a net value of approximately \$104.7 million dollars. It is estimated that the city should spend about 5% of the value of assets annually on maintenance. This equates to approximately \$5.2 million dollars each year.

In the City's 2019 Five Year Capital Improvements Plan, staff identified approximately \$131 million of needs for years 2020 through 2024 and beyond; \$104 million of this total is unfunded. During the 2019 budget year the following major infrastructure needs were completed for approximately \$9.1 million:

- The south Rouse street improvements project was completed, which consists of a new three lane road with center turn lane with curb and gutters from the Centennial and Rouse intersection south to the City limits began - **\$3,000,000**
- Construction was completed on Silverback Way, a new street connecting East Centennial to the planned Silverback Landing housing development - **\$1,500,000**
- Milled and overlay of several residential streets - **\$663,000**
- Milled and overlay North Broadway from 20th to Atkinson - **\$471,000**
- New water meters installed - **\$464,000**
- Construction of two new restroom/concession facilities were completed at the Gutteridge Sports Complex - **\$427,000**
- New Airport parallel taxiway was completed - **\$408,000**
- New block of North Walnut Street between 29th and 30th was completed expanding the development opportunities in the north shopping district- **\$366,000**
- Milled and overlay South Broadway from Ford to Centennial - **\$356,000**

- In conjunction with the south Rouse street project, the new ten-foot wide hike and bike trail on the west side of south Rouse was completed - **\$325,000**
- Airport 4/22 runway improvements were completed - **\$317,000**
- Signalization of Quincy and Rouse intersection completed - **\$227,000**
- New water lines completed - **\$200,000**
- Various sanitary sewer improvements - **\$176,000**
- Wastewater Treatment Plant primary clarifier #2 rebuild - **\$133,000**
- New section of trail crossing KSC RR crossing on South Rouse - **\$85,000**

DEBT SERVICE

Effective financial management includes analyzing several funding mechanisms to determine what option is the most beneficial to the City. In some cases, issuing debt is the best available option. The City of Pittsburg traditionally uses debt for infrastructure improvements, which have a long useful life and are unable to be paid from the operating budget. The revenues for making the debt payments are derived from the following sources based upon the nature of the improvement and the type of debt that has been issued:

- Property Taxes
- Charges for Services
- Sales Taxes
- Special Assessments
- Transfers

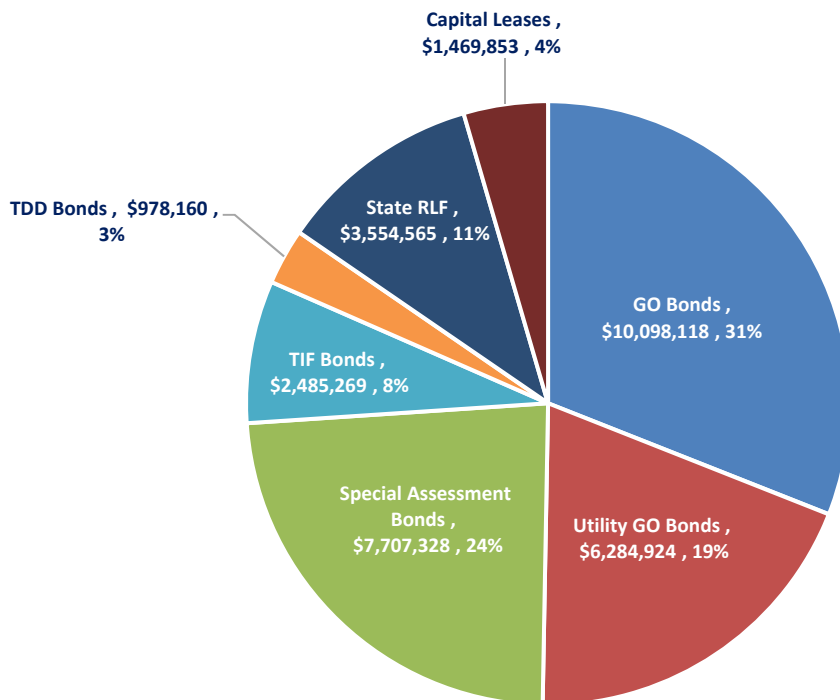
The City's bond rating was upgraded from A+ to AA- by Standard and Poor's in 2015. The upgraded bond rating was due to the City's enhanced financial management practices coupled with stable budgetary performance and projected stability in future years.

The City's current goal for general obligation bonded debt is to keep the debt service fund mill levy rate between 8 and 10 mills annually. This levy is used to fund general obligation debt payments.

Types of Debt

The City of Pittsburg uses several types of debt to pay for capital improvements and expensive equipment. The total debt amount of outstanding debt at December 31, 2019 including principal and interest is \$32,578,217. The graph on the following page shows the type of debt and the category percentage of the City's total debt.

Pittsburg 2019 Outstanding Debt \$32,578,217



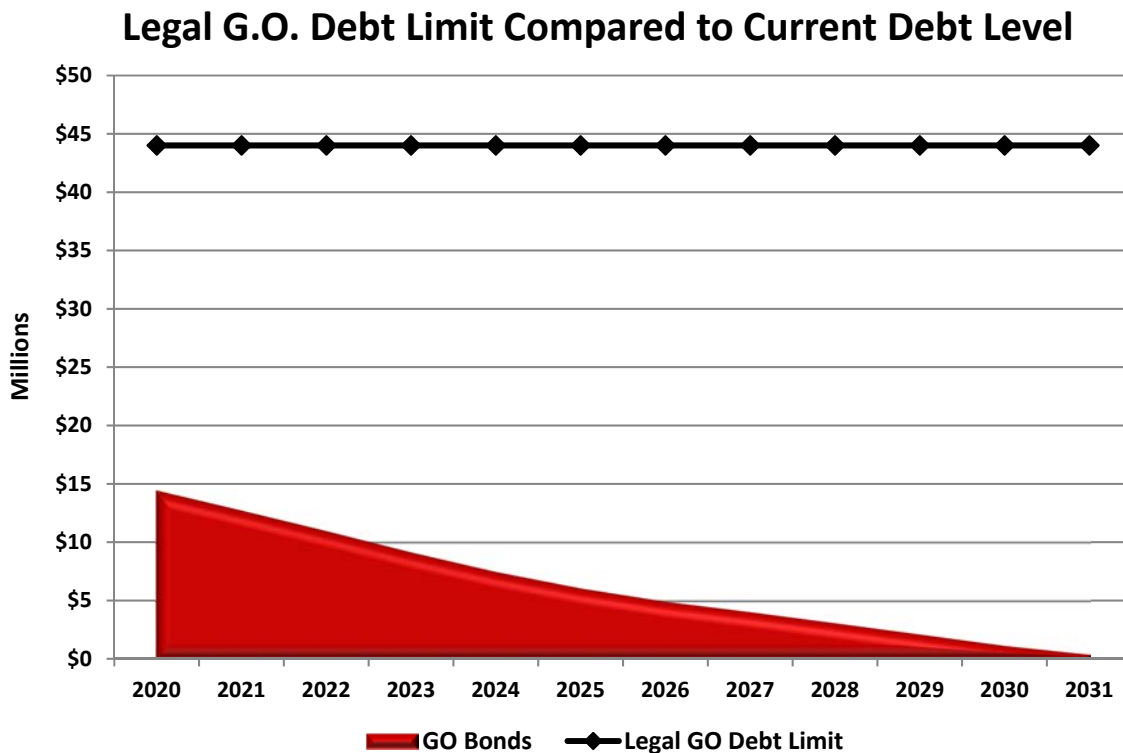
Effective debt management requires monitoring debt levels to ensure the soundness of the City's financial position and continued credit worthiness.

For Fiscal Year 2020

City's property tax supported G.O. debt as a percentage of net assessed valuation	7.5%
City's property tax supported G.O. debt per capita	\$500
Mill Rate	8.501 mills

There are two main types of municipal bonds: general obligation bonds and revenue bonds. A general obligation bond (GO) is a municipal bond backed by the full credit and taxing power of the City. When GO bonds are issued, the City pledges to use all available resources, including general funds and taxes, to repay the bondholders. General obligation bonds are used to finance public projects that do not make money such as parks. Revenue bonds, rather, are used to finance projects with a built-in revenue stream, such as the City's utilities. Revenue bonds are backed by specific sources of revenue. With GO bonds, the City can, and is expected to, use all means necessary to repay bondholders.

Legal G.O. Debt Limit Compares to Current Debt Level

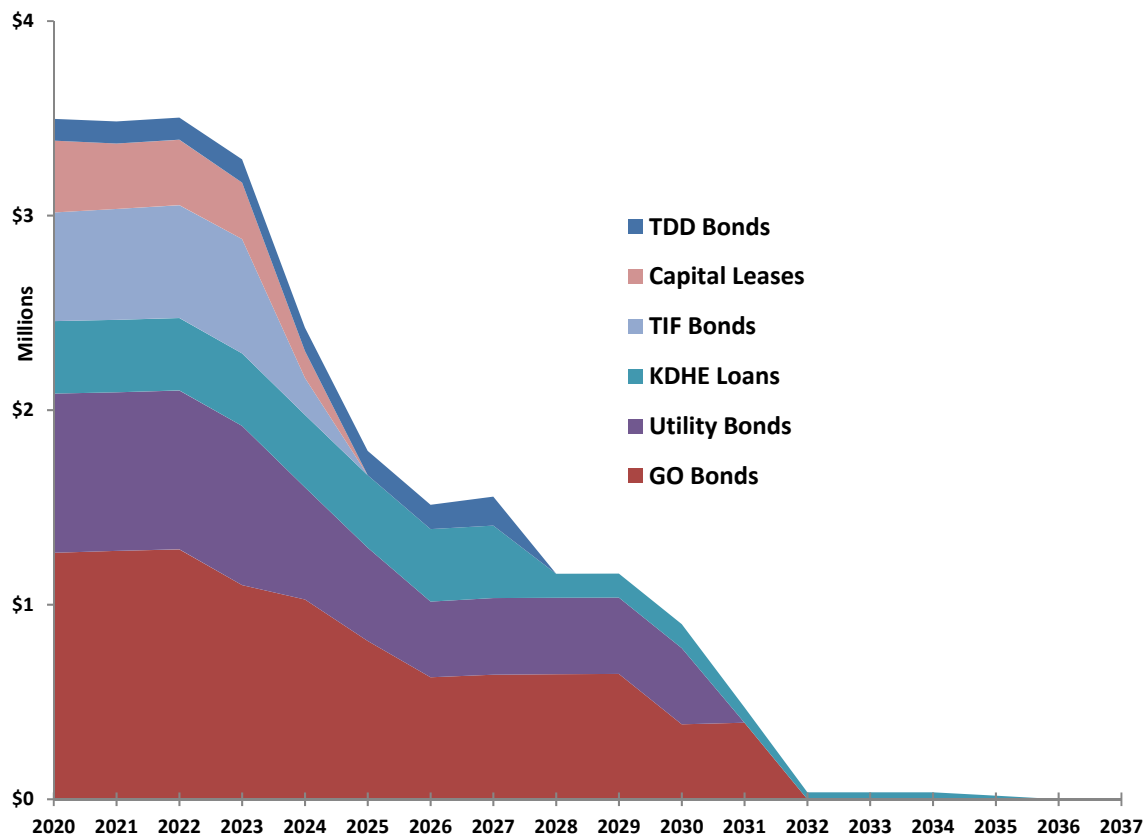


Kansas statutes require general obligation debt to be less than 30% of assessed valuation including motor vehicle. The current legal debt limit is \$44.7 million. The graph above shows the difference between the City's current total outstanding G.O. Debt (principal only) of \$14.4 million compared to what is allowed according to state statutes. The red indicates the City's level of G.O. Debt as compared to the black line which indicates the legal limits (30% of assessed valuation including motor vehicle).

Cumulative Debt

The following graph depicts the City's total annual debt by type and the year the bonds are scheduled to retire. The graph excludes the special assessment bonds being repaid by the Kansas Crossing Casino.

Pittsburg Debt 2020-2035



RESERVES

Reserves are the cornerstone of financial stability and flexibility, providing options to respond to unforeseen risks. The Government Finance Officers Association (GFOA) recommends minimum reserve levels at 16% of revenues or two months of expenditures. The City's goal is two months of expenditures.

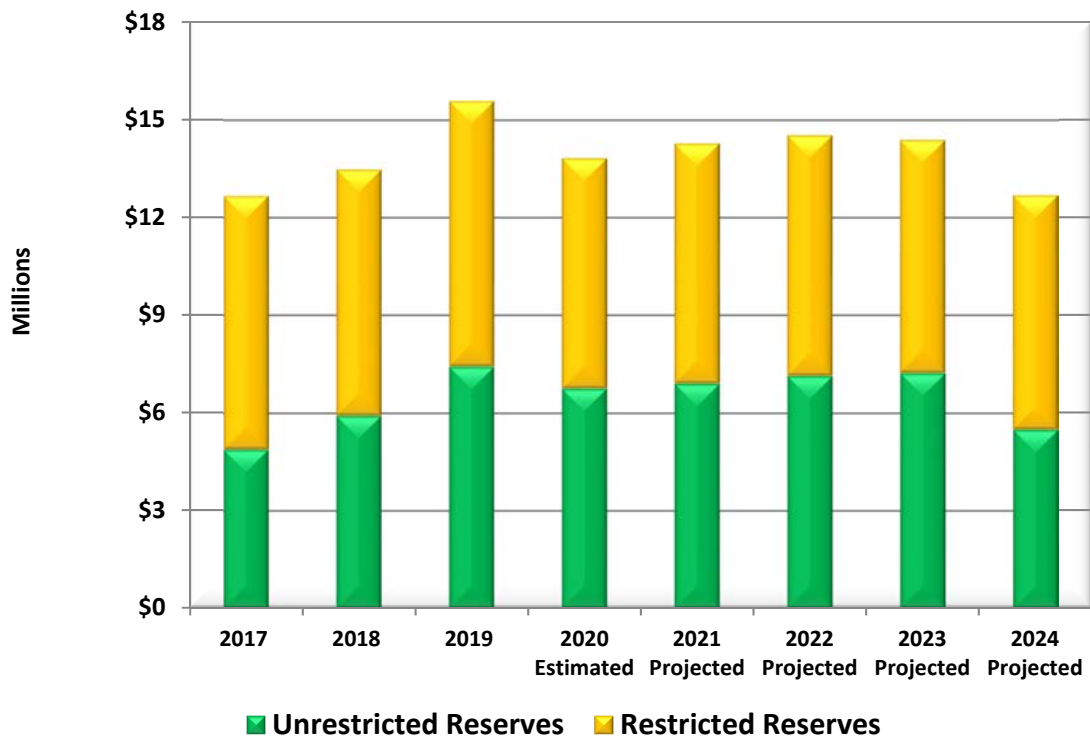
Several risk factors to consider are:

- Revenue volatility
- Infrastructure condition
- Extreme events such as weather and COVID-19 pandemic

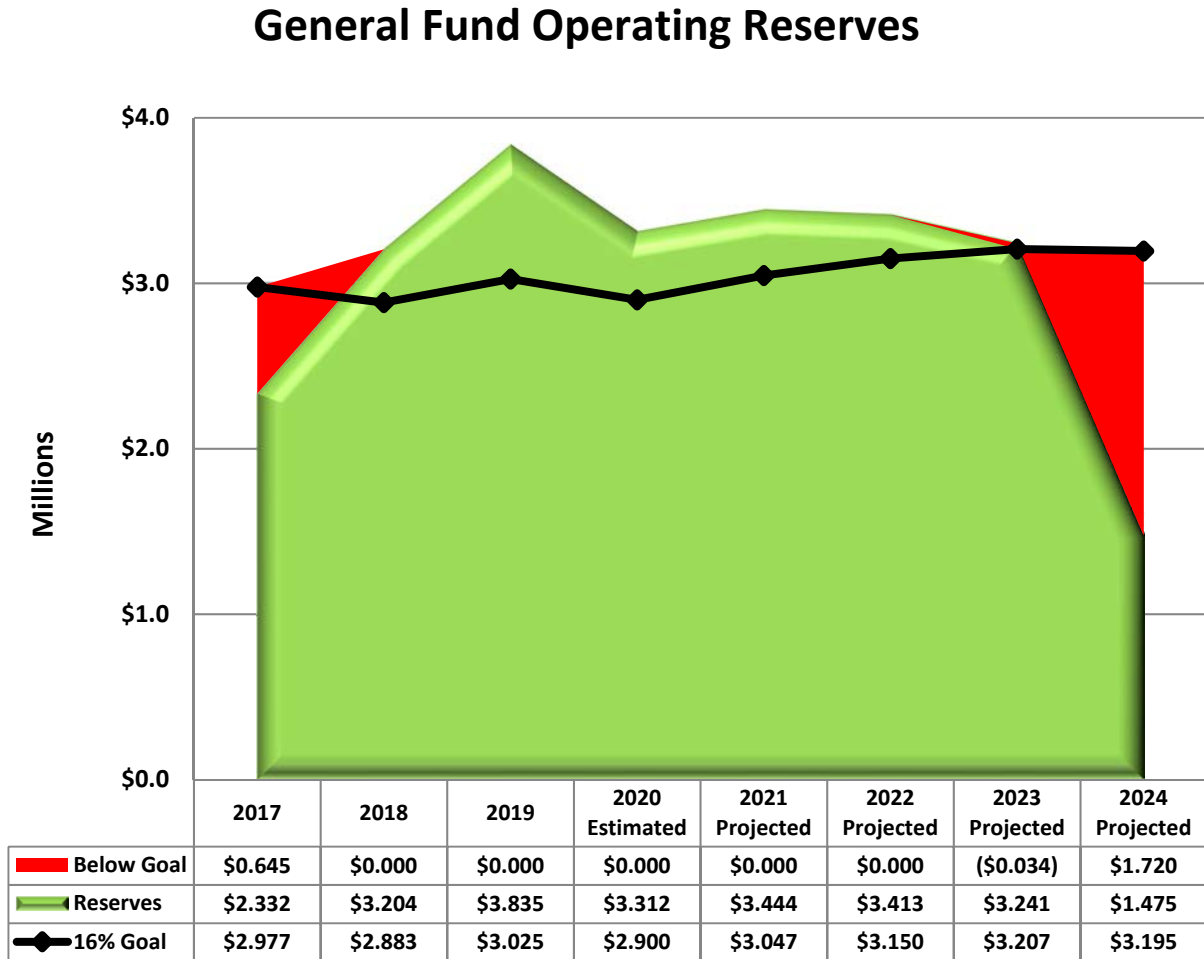
Since the great recession the City has realized growth in community investment with property valuations and sales tax collections increasing each year. At the close of 2019 fund reserve levels for the general fund and utility fund met the City's goal of at least 16% of expenditures. Due to the COVID-19 pandemic of 2020 staff is projecting a decline in City reserves as the result of reduced retail sales and higher unemployment.

The chart below shows the impact of staff projections on restricted and unrestricted reserves. The unrestricted reserves peaked in 2019 and are projected to decline at the end of 2020 due to the COVID-19 pandemic. The decline in 2024 projects the effect of the public safety sales tax not being renewed.

City Wide Restricted and Unrestricted Reserves



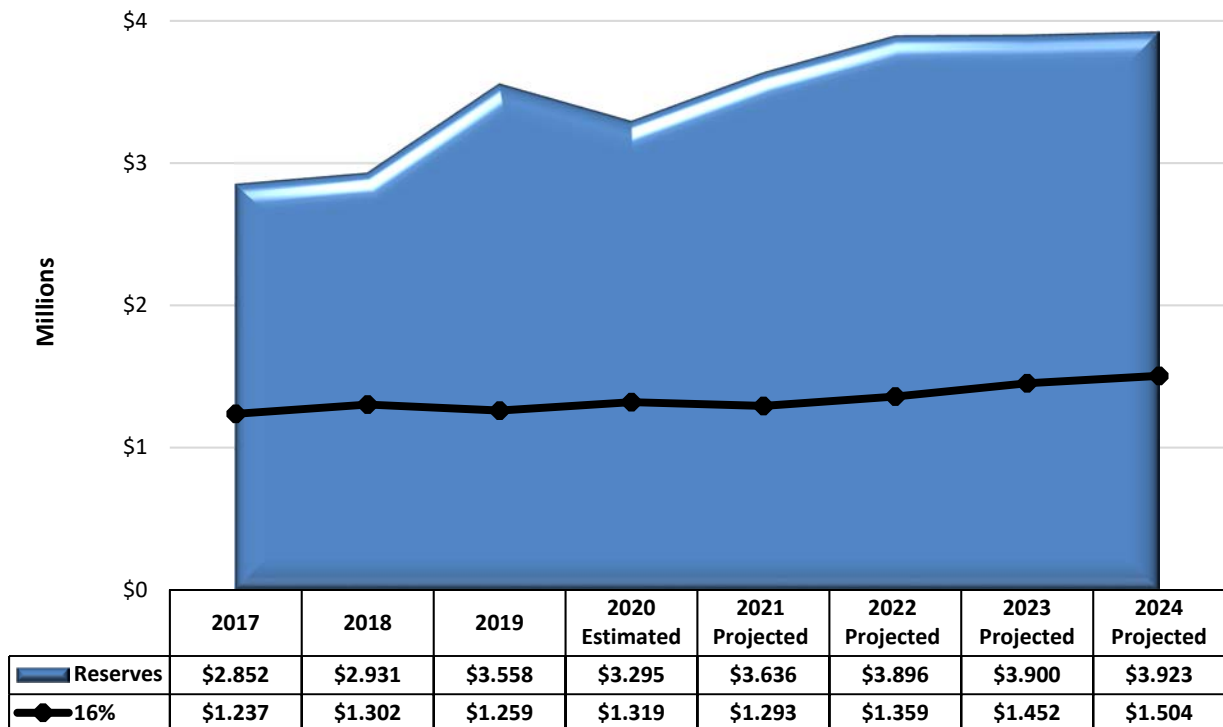
The following graph shows the projected operating reserves of the General Fund compared to the reserve goal of 16% of expenditures.



The red portion shows that the General Fund was not meeting the reserve goal of 16% of expenditures in years 2017 through mid-2018. The end of the 2018 fiscal year is the first time that the reserve goal was met since the great recession. The general fund reserves peaked at the close of 2019 and that was a very good thing as it allowed the City to start the 2020 fiscal year with healthy reserves to help offset the damage being done due to the COVID-19 pandemic. At this time management has adjusted revenue projections and made expenditure adjustments, but it is still too early to accurately quantify the effects of the COVID-19 pandemic. **The above graph projects what will happen if the public safety sales tax is not renewed, as it expires on December 31, 2023.**

The graph below shows the projected operating reserves for the Public Utility compared to the reserve goal of 16% of expenditures.

Public Utility Operating Reserves



The spike in 2018 is from the City holding back reserves gradually to pay for the South Water Tower and the Northeast Industrial Park Water Tower sandblasting and painting project. The decline in 2020 is projected reduced revenues due to the COVID-19 pandemic. The increase from 2021 to 2024 is due to putting aside reserves for future debt costs of the planned new wastewater treatment plant. Permanent financing for this new plant will be through the Kansas Division of Health and Environment loan program. Staff is projecting the Public Utility Fund will meet the 16% of expenditures reserve goal for years 2020-2024.

SUMMARY AND RECOMMENDATION

Current decisions and plans will have a direct impact on the financial stability of the City. External factors are those that the City has very little control over and yet those factors have a significant impact on our financial position. The COVID-19 pandemic has caused issues that haven't been dealt with previously and therefore presents a lot of unknowns that aren't quantifiable at this time. Some other factors are property valuations, extreme or unusual weather, intergovernmental funding source reductions, health insurance costs, property and liability insurance costs, retirement costs, legislative mandates, electricity and natural gas costs and other operating cost increases.

In 2016, the Kansas legislature approved a property tax lid for municipalities, which became effective with the City's 2018 budget. This means, going forward, the City can no longer increase the General Fund tax levy over valuation gains greater than the Consumer Price Index (CPI) change from the prior year without a vote of the people. For 2021, the State of Kansas CPI is set at 1.8% for municipalities. There are some exceptions for new construction values and public safety. This provides yet another mandated challenge to managing the task of providing adequate, affordable services to the citizens of Pittsburg.

Based upon our projections of revenues and expenditures, using historical data and other known factors, this financial plan was prepared using the following assumptions, considerations and recommendations. Staff will continue to review the City's financial position each year and make recommendations to the Five Year Financial Plan for your consideration.

Assumptions

- 2020 sales tax revenue declines 15% from the 2019 level and 2021 declines 5% from the 2019 level; both declines due to the COVID-19 pandemic. For year 2022, 1% growth using the 2019 level and then 2% growth for years 2023-2024 using the prior year's level
- Assessed valuation is projected to be flat for years 2020 and 2021 and then 0.25% growth for years 2022 thru 2024
- Gaming revenue from the Kansas Crossing Casino declines 25% in 2020 due to the COVID-19 pandemic and then returns to \$355,000 annually for years 2021-2024
- No utility rate increases in 2021 and then a 3% rate increase annually for years 2022-2024 to offset the debt expense for the new wastewater treatment plant
- All other revenues project flat to minimal growth
- The City's Health Insurance costs will remain under 3% annually based on the City's last five years average

- Retirement costs will continue to rise in years 2021-2023 with a 0.25% KPERS and 0.25% KPF increases per annum
- Worker's compensation insurance will continue to increase at a rate of 3% annually
- Electric utility expense will continue to rise at an average of 3% annually
- Property and liability insurance will continue to increase at an average rate of 3% annually
- Contractual and commodities expenses are projected to increase 2% annually for years 2021-2024

Considerations

- Adjust revenues based upon historical and current trends
- Monitor and control expenditures
- Maintain a structurally balanced budget
- Maintain minimum reserve levels
- Continue to practice long term planning
- Make data driven decisions
- Provide programs and services guided by the IP2030 goals

Recommendations

- 0% cola and 0% merit increase in year 2021
- 1% cola in years 2022-2024
- 1% merit increase in year 2023
- Minimal changes to the Debt Service Fund mill rate for years 2021-2024
- Increase utility rates by 3% annually for years 2022-2024

RESOLUTION NO. 1236

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF PITTSBURG, KANSAS, DETERMINING THAT THE CITY IS CONSIDERING ESTABLISHING A RURAL HOUSING INCENTIVE DISTRICT WITHIN THE CITY AND ADOPTING A PLAN FOR THE DEVELOPMENT OF HOUSING AND PUBLIC FACILITIES IN SUCH PROPOSED DISTRICT; ESTABLISHING THE DATE AND TIME OF A PUBLIC HEARING ON SUCH MATTER, AND PROVIDING FOR THE GIVING OF NOTICE OF SUCH PUBLIC HEARING (CREEKSIDE EAST-PHASE 1 RURAL HOUSING INCENTIVE DISTRICT)

WHEREAS, K.S.A. 12-5241 *et seq.* (the “Act”) authorizes any city incorporated in accordance with the laws of the state of Kansas (the “State”) with a population of less than 60,000 located in a county with a population of less than 80,000, to designate rural housing incentive districts within such city; and

WHEREAS, the City of Pittsburg, Kansas (the “City”) has an estimated population under 60,000 and is located in Crawford County, Kansas, which has an estimated population under 80,000, and therefore constitutes a city as said term is defined in the Act; and

WHEREAS, the governing body of the City (the “Governing Body”) has performed a Housing Needs Analysis, dated October 2015 (the “Analysis”), a copy of which is on file in the office of the City Clerk; and

WHEREAS, the Governing Body adopted Resolution No. 1178 on November 10, 2015, which made certain findings relating to the need for financial incentives relating to the construction of quality housing within the City, declared it advisable to establish a rural housing incentive district pursuant to the Act, and authorized the submission of such resolution and the Analysis to the Kansas Department of Commerce in accordance with the Act; and

WHEREAS, the Secretary of the Kansas Department of Commerce, pursuant to a letter dated February 5, 2016, authorized the City to proceed with the establishment of a rural housing incentive district pursuant to the Act; and

WHEREAS, the City has caused to be prepared a plan (the “Plan”) for the development or redevelopment of housing and public facilities in the proposed Creekside East-Phase 1 Rural Housing Incentive District (the “District”) in accordance with the provisions of the Act; and

WHEREAS, the Plan includes:

1. The legal description and map required by K.S.A. 12-5244(a).
2. The existing assessed valuation of the real estate in the proposed District listing the land and improvement value separately.
3. A list of the names and addresses of the owners of record of all real estate parcels within the proposed District.
4. A description of the housing and public facilities project or projects that are proposed to be constructed or improved in the proposed District, and the location thereof.

5. A listing of the names, addresses, and specific interests in real estate in the proposed District of the developers responsible for development of the housing and public facilities in the proposed District.
6. The contractual assurances, if any, the Governing Body has received from such developer or developers, guaranteeing the financial feasibility of specific housing tax incentive projects in the proposed District.
7. A comprehensive analysis of the feasibility of providing housing tax incentives in the proposed District as provided in the Act, which shows the public benefit derived from the District will exceed the costs and that the income therefrom, together with all public and private sources of funding, will be sufficient to pay for the public improvements that may be undertaken in the District.

WHEREAS, the Governing Body proposes to continue proceedings necessary to create a Rural Housing Incentive District, in accordance with the provisions of the Act, and adopt the Plan, by calling of a public hearing on such matters.

THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF PITTSBURG, KANSAS AS FOLLOWS:

Section 1. Proposed Rural Housing Incentive District. The Governing Body hereby declares an intent to establish within the City a rural housing incentive district. The District is proposed to be formed within the boundaries of the real estate legally described in *Exhibit A* attached hereto, and shown on the map depicting the existing parcels of land attached hereto as *Exhibit B*. A list of the names and addresses of the owners of record of all real estate parcels within the proposed District and the existing assessed valuation of said real estate, listing the land and improvement values separately, is attached hereto as *Exhibit C*.

Section 2. Proposed Plan; Development Agreement. The Governing Body hereby further declares its intent to adopt the Plan in substantially the form presented to the Governing Body this date. A copy of the Plan shall be filed in the office of the City Clerk and be available for public inspection during normal business hours. A description of the housing and public facilities projects that are proposed to be constructed or improved in the proposed District, and the location thereof are described in *Exhibit D* attached hereto. A summary of the contractual assurances by the developer and the comprehensive feasibility analysis is contained in *Exhibit E* attached hereto.

In addition, the City has negotiated a development agreement (the “Development Agreement”) between the City and Turnkey Developers LLC (the “Developer”), relating to the Creekside East-Phase 1 Rural Housing Incentive District, the development thereof, and the construction and payment of improvements related thereto. The Development Agreement is hereby approved in substantially the form presented to the Governing Body, with such changes or modifications as may be approved by the City Manager and as may be approved as to form by the City Attorney. Related thereto, the City has also negotiated a funding agreement (the “Funding Agreement”) between the City and the Developer, relating to the Developer providing to the City an initial deposit of money to be used as a source of funds to finance costs incurred by the City for legal, financial, planning, inspection, and other services, or for direct out-of-pocket expenses and other reasonable costs resulting from services rendered to the Developer to review, evaluate, process, and inspect the District and its related housing and public facilities projects. The Mayor is hereby authorized to execute the Development Agreement and the Funding Agreement and such other documents as may be necessary to implement the intent of this Resolution, the Development Agreement and the Funding Agreement, as may be approved by the City Manager and as may be approved as to form by the City Attorney, by and on behalf of the City and the City Clerk is hereby authorized to attest such signature.

Section 3. Public Hearing. Notice is hereby given that a public hearing will be held by the Governing Body of the City to consider the establishment of the District and adoption of the Plan on July 28, 2020, at the Law Enforcement Center, located at 201 North Pine Street, Pittsburg, Kansas, 66762, with the public hearing to commence at 5:30 P.M. or as soon thereafter as the Governing Body can hear the matter. At the public hearing, the Governing Body will receive public comment on such matters, and may, after the conclusion of such public hearing, consider the findings necessary for establishment of the District and adoption of the Plan, all pursuant to the Act. In the event social distancing procedures for the COVID-19 pandemic remain in place on such date and web conference or telephone participation is made available, instructions for participation via these remote alternatives will be posted on the City Commission's agenda for such meeting no later than Monday, July 27, 2020, at www.pittks.org.

Section 4. Notice of Public Hearing. The City Clerk is hereby authorized and directed to provide for notice of the public hearing by taking the following actions:

1. A certified copy of this resolution shall be delivered to:
 - a. The Board of County Commissioners of Crawford County, Kansas;
 - b. The Board of Education of Unified School District No. 250, Crawford County, Kansas (Pittsburg); and
 - c. The Planning Commission of the City of Pittsburg, Kansas.
2. This Resolution, specifically including *Exhibits A* through *E* attached hereto, shall be published at least once in the official newspaper of the City not less than one week nor more than two weeks preceding the date of the public hearing.

Section 5. Further Action. The Mayor, City Clerk, city officials and employees, including the City Attorney, and Gilmore & Bell, P.C., are hereby further authorized and directed to take such other actions as may be appropriate or desirable to accomplish the purposes of this Resolution.

Section 6. Effective Date. This Resolution shall take effect after its adoption by the Governing Body.

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ADOPTED by the governing body of the City of Pittsburg, Kansas, on June 23, 2020.

(SEAL)

Dawn McNay, Mayor

ATTEST:

Tammy Nagel, City Clerk

EXHIBIT A

**LEGAL DESCRIPTION OF PROPOSED
CREEKSIDE EAST-PHASE 1
RURAL HOUSING INCENTIVE DISTRICT**

PART OF A TRACT OF LAND DESCRIBED IN BOOK 309, PAGE 579 IN THE REGISTER OF DEEDS OFFICE IN CRAWFORD COUNTY, KANSAS, BEING PART OF THE EAST HALF OF SECTION 28, TOWNSHIP 30 SOUTH, RANGE 25 EAST, CRAWFORD COUNTY, KANSAS, DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND 1/2" IRON PIN AT THE EAST QUARTER CORNER OF SECTION 28; THENCE SOUTH 86°27'01" WEST, 30.67 FEET TO A FOUND 3/4" PIPE AT THE NORTHEAST CORNER OF A TRACT OF LAND DESCRIBED IN BOOK 386, PAGE 733 IN THE REGISTER OF DEEDS OFFICE IN CRAWFORD COUNTY, KANSAS BEING THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 86°27'01" WEST ALONG THE NORTH LINE OF SAID TRACT OF LAND DESCRIBED IN BOOK 386, PAGE 733, 630.17 FEET TO A FOUND 5/8" IRON PIN AT THE NORTHWEST CORNER OF SAID TRACT OF LAND; THENCE SOUTH 86°19'30" WEST ALONG THE NORTH LINE OF A TRACT OF LAND DESCRIBED IN BOOK 608, PAGE 364 IN THE REGISTER OF DEEDS OFFICE IN CRAWFORD COUNTY, KANSAS, 543.54 FEET; THENCE NORTH 03°40'00" WEST, 135.16 FEET; THENCE SOUTH 86°20'00" WEST, 14.23 FEET; THENCE NORTH 03°40'00" WEST, 153.67 FEET; THENCE 31.50 FEET ALONG A 175.00 FOOT RADIUS CURVE TO THE LEFT WITH A CHORD BEARING NORTH 08°49'26" WEST, A DISTANCE OF 31.46 FEET; THENCE NORTH 86°20'00" EAST, 592.06 FEET; THENCE NORTH 03°40'00" WEST, 109.13 FEET TO A POINT ON THE WEST LINE OF LOT 1 IN REMINGTON SQUARE, A SUBDIVISION OF LAND IN THE CITY OF PITTSBURG, KANSAS AS SHOWN IN PLAT BOOK N, PAGE 88; THENCE SOUTH 51°10'39" EAST ALONG THE WEST LINE OF SAID LOT 1, ALSO BEING THE CENTERLINE OF THE ABANDONED ST. LOUIS AND SAN FRANCISCO RAILROAD, 311.11 FEET TO THE NORTHWEST CORNER OF TRACT A IN SAID REMINGTON SQUARE; THENCE NORTH 87°08'25" EAST ALONG THE NORTH LINE OF SAID TRACT A, 374.38 FEET TO THE NORTHEAST CORNER OF SAID TRACT A; THENCE SOUTH 2°19'21" EAST ALONG THE EAST LINE OF SAID TRACT A, 215.15 FEET TO THE POINT OF BEGINNING.

AND ALSO;

COMMENCING AT A FOUND 1/2" IRON PIN AT THE EAST QUARTER CORNER OF SECTION 28; THENCE SOUTH 86°27'01" WEST, 30.67 FEET TO A FOUND 3/4" PIPE AT THE NORTHEAST CORNER OF A TRACT OF LAND DESCRIBED IN BOOK 386, PAGE 733 IN THE REGISTER OF DEEDS OFFICE IN CRAWFORD COUNTY, KANSAS; THENCE CONTINUING SOUTH 86°27'01" WEST ALONG THE NORTH LINE OF SAID TRACT OF LAND DESCRIBED IN BOOK 386, PAGE 733, 630.17 FEET TO A FOUND 5/8" IRON PIN AT THE NORTHWEST CORNER OF SAID TRACT OF LAND; THENCE SOUTH 86°19'30" WEST ALONG THE NORTH LINE OF A TRACT OF LAND DESCRIBED IN BOOK 608, PAGE 364 IN THE REGISTER OF DEEDS OFFICE IN CRAWFORD COUNTY, KANSAS, 673.76 FEET TO THE NORTHWEST CORNER OF SAID TRACT OF LAND; THENCE SOUTH 86°20'00" WEST, 290.85 FEET; THENCE SOUTH 87°46'00" WEST, 189.60 FEET; THENCE SOUTH 03°42'59" EAST, 511.76 FEET TO THE NORTHWEST CORNER OF PAYTON'S HAMLET, A SUBDIVISION OF LAND IN THE CITY OF PITTSBURG, KANSAS AS SHOWN IN PLAT BOOK N, PAGE 178; THENCE ALONG THE WEST LINE OF SAID PAYTON'S HAMLET SOUTH 03°42'59" EAST, 48.55 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID WEST LINE, SOUTH 03°42'59" EAST, 160.13 FEET; THENCE LEAVING SAID WEST LINE, SOUTH 86°55'52" WEST, 60.00 FEET TO THE WEST RIGHT-OF-WAY OF DEER RUN LANE AS PLATTED IN SAID PAYTON'S HAMLET; THENCE SOUTH 03°42'59" EAST ALONG THE SAID WEST RIGHT-OF-WAY, 259.19 FEET TO THE NORTHEAST CORNER OF A TRACT OF LAND DESCRIBED IN BOOK 603, PAGE 884 IN THE REGISTER OF DEEDS OFFICE IN CRAWFORD

COUNTY, KANSAS; THENCE SOUTH 86°58'29" WEST ALONG THE NORTH LINE OF SAID TRACT OF LAND, 402.10 FEET; THENCE NORTH 02°14'31" WEST, 413.93 FEET; THENCE NORTH 86°17'00" EAST, 451.42 FEET, TO THE POINT OF BEGINNING. CONTAINS A TOTAL OF 11.86 ACRES, MORE OR LESS, SUBJECT TO EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD OR FACT. BEARINGS ARE BASED ON THE KANSAS COORDINATE SYSTEM OF 1983, SOUTH ZONE.

EXHIBIT B

**MAP OF PROPOSED
CREEKSIDE EAST-PHASE 1
RURAL HOUSING INCENTIVE DISTRICT**

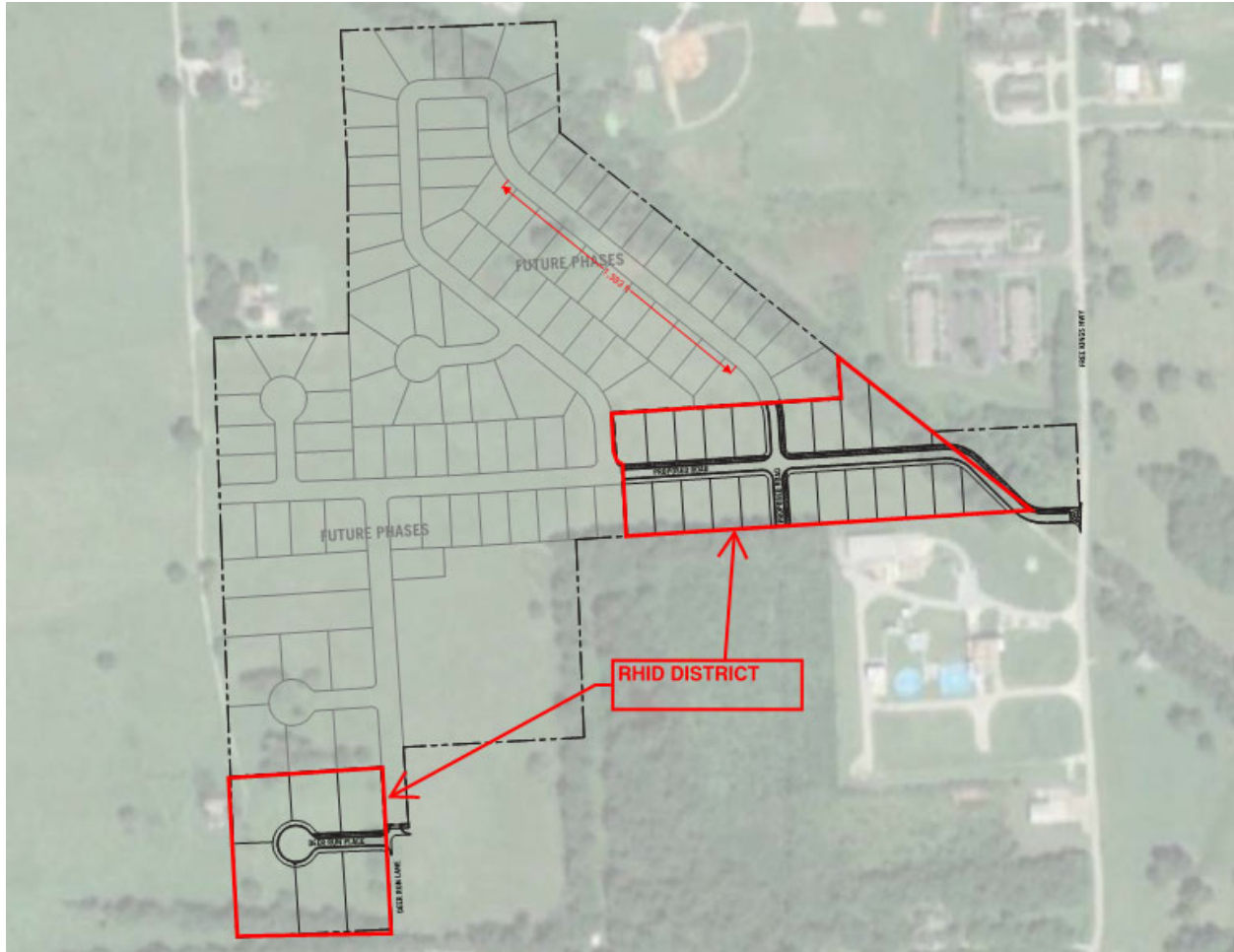


EXHIBIT C

**NAMES AND ADDRESSES OF THE OWNERS OF RECORD
OF ALL REAL ESTATE PARCELS WITHIN THE PROPOSED
CREEKSIDE EAST-PHASE 1
RURAL HOUSING INCENTIVE DISTRICT
AND THE EXISTING ASSESSED VALUATION OF SAID REAL ESTATE PARCELS NAMES
AND ADDRESSES OF THE DEVELOPERS**

Owner of Real Property:	Turnkey Developers LLC 110 E. Oak Street Arma, KS 66712
Developer:	Turnkey Developers LLC 110 E. Oak Street Arma, KS 66712
Existing Assessed Valuation of the District:	Land - \$1,626 Improvements - \$222

EXHIBIT D

DESCRIPTION OF THE HOUSING AND PUBLIC FACILITIES OR PROJECTS THAT ARE PROPOSED TO BE CONSTRUCTED OR IMPROVED IN THE PROPOSED CREEKSIDE EAST-PHASE 1 RURAL HOUSING INCENTIVE DISTRICT

Housing Facilities

The housing facilities will consist of constructing approximately 26 single family residential homes with two to four bedrooms, two to three baths, one or two stories, and two or three car garages. These homes will have the option of a basement, and may range in size from 1,200 square feet to 3,000 square feet. There will be at least three or four floor plans, which can be varied in design to create at least eight different street elevations.

Public Facilities

The public facilities will include the construction of all infrastructure improvements within the District, including electric, gas, water, sewer, storm sewer, and street improvements. These infrastructure improvements will be constructed concurrently with the project.

EXHIBIT E

SUMMARY OF THE CONTRACTUAL ASSURANCES BY THE DEVELOPER AND OF THE COMPREHENSIVE FEASIBILITY ANALYSIS

Contractual Assurances

The Governing Body of the City of Pittsburg, Kansas will enter into a development agreement with Turnkey Developers LLC, the developer. This agreement, as supplemented and amended, includes the project construction schedule, a description of projects to be constructed, financial obligations of the developer and financial and administrative support from the City of Pittsburg, Kansas.

Feasibility Study

The developer has conducted a study to determine whether the public benefits derived from the District will exceed the costs and that the income from the District, together with other sources of revenue provided by the developer, would be sufficient to pay for the public improvements to be undertaken in the District. The analysis estimates the property tax revenues that will be generated from the development, less existing property taxes, to determine the revenue stream available to support the costs of the public infrastructure. The estimates indicate that the revenue realized from the project would be adequate to pay the costs of the public infrastructure.

**DEVELOPMENT AGREEMENT
CREEKSIDE EAST-PHASE 1
RURAL HOUSING INCENTIVE DISTRICT**

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) is entered into effective as of June 23, 2020 (the “**Effective Date**”), by and between the **CITY OF PITTSBURG, KANSAS**, a municipal corporation of the State of Kansas (“**City**”), and **TURNKEY DEVELOPERS LLC**, a Kansas limited liability company engaged in the business of development with its principal office located at 110 East Oak Street, Arma, Kansas 66712 (“**Developer**”). The City and the Developer are each a “**Party**” and collectively the “**Parties**.”

RECITALS

A. Developer has acquired real property located within the boundaries of City and described on *Exhibit A* attached hereto and incorporated herein by reference (the “**Property**”).

B. Developer desires to develop the Property by constructing the “Creekside East-Phase 1” residential development and all related internal infrastructure improvements (“**Creekside East-Phase 1 Development**”), all as more fully described herein.

C. City has determined that the construction of Creekside East-Phase 1 Development will foster the economic development of City and surrounding area of Crawford County, Kansas.

D. The Parties are authorized to enter into this Agreement and to complete the responsibilities set forth herein with respect to Creekside East-Phase 1 Development.

AGREEMENT

NOW THEREFORE, in consideration of the premises and promises contained herein and other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

**ARTICLE I
DEFINITIONS AND RULES OF CONSTRUCTION**

1.1 Definitions. As used in this Agreement, the following words and terms have the meaning set forth below:

“**Agreement**” means this Development Agreement, as the same may be from time to time modified, amended or supplemented in writing by the Parties hereto.

“**City**” means the City of Pittsburg, Kansas.

“**City Expenses**” means all legal and professional costs, fees and expenses incurred by City with regard to the preparation of this Agreement, the Funding Agreement, and any and all other Ordinances, Resolutions or other documents necessary for implementation of the District as well as for representation and appearances of legal counsel at any hearings or proceedings required to implement the District.

“**Concept Site Plan**” means the site development plan prepared by a licensed professional engineer, or firm thereof, acceptable to City, depicting the conceptual program for construction of the Development Project and the Internal Infrastructure Improvements.

“Construction Plans” means plans, drawings, specifications and related documents, and construction schedules for the construction of the Work, together with all supplements, amendments or corrections.

“Developer” means Turnkey Developers LLC, a Kansas limited liability company, or its permitted successors or assigns.

“Development Costs” means the total amount spent or expected to be spent by Developer to construct the Work.

“Development Plan” means the Development Plan prepared by the City in accordance with the provisions of the Rural Housing Incentive District Act and approved by the Developer, a copy of which is attached hereto at *Exhibit F*.

“Development Project” means single family residential units and auxiliary structures to be constructed on the Property in accordance with the Concept Site Plan.

“District” means the Creekside East-Phase 1 Rural Housing Incentive District to be established pursuant the Rural Housing Incentive District Act and the RHID Ordinance.

“Eligible Costs” means the City Expenses, and that portion of the costs of the Internal Infrastructure Improvements which are reimbursable to the Developer pursuant to the provisions of K.S.A. 12-5249, including associated legal, engineering and project finance costs, all as more specifically described on *Exhibit C* attached hereto and incorporated herein by this reference.

“Funding Agreement” means the funding agreement between the City and the Developer, dated June 23, 2020, relating to the Developer providing a source of funds to the City to finance costs incurred by the City for legal, financial, planning, inspection, and other services, or for direct out-of-pocket expenses and other reasonable costs resulting from services rendered to the Developer to review, evaluate, process, and inspect the Project and actions related thereto.

“Governing Body” means the City Commission of the City of Pittsburg, Kansas.

“Internal Infrastructure Improvements” means the electric, gas, water, sewer, storm sewer, and street improvements necessary for Creekside East-Phase 1 Development and located within the boundaries of the Property, including engineering costs, any costs of right-of-way and appurtenances related thereto, as set forth on the approved plat for Creekside East-Phase 1 Development, all as more specifically described on *Exhibit C* attached hereto and incorporated herein by this reference.

“Material Change” means any change in the Concept Site Plan that significantly affects the nature of the Internal Infrastructure Improvements, modifies the number of single family residences, or increases/decreases the cost of the Development Project by \$25,000 or more for each change or \$100,000 in the aggregate.

“Mayor” means the Mayor of the City of Pittsburg, Kansas or their duly authorized agent.

“Plans and Specifications” means the plans and specifications for the Internal Infrastructure Improvements prepared by a licensed professional engineer, or firm thereof, acceptable to City.

“Property” means the real property (including but not limited to fee interests, leasehold interests, tenant-in-common interests, and such other like or similar interests) on which the Development Project will be located, more specifically described in *Exhibit A* attached hereto and depicted on *Exhibit B* attached hereto.

“Related Party” means any party related to the Developer by one of the relationships described in Section 267(b) of the United States Internal Revenue Code of 1986, as amended and any successor entity in which the principals of the Developer (either individually or collectively) or Developer own or control no less than fifty percent (50%) of the voting interest in such successor entity.

“RHID Funds” means those amounts paid from the Crawford County Treasurer to the Treasurer of the City pursuant to K.S.A. 12-5250(b)(2)(A) as a result of Creekside East-Phase 1 Development.

“RHID Ordinance” means the ordinance passed by the Governing Body approving the Development Plan and establishing the District.

“Rural Housing Incentive District Act” means K.S.A. 12-5241 *et seq.*, as amended.

“Substantial Completion” means the stage in the progress of the Work when the Work or designated portions thereof is sufficiently complete in accordance with the Construction Plans, excepting all punch list items so that Developer can occupy or utilize the Work for its intended purpose.

“Work” means all work necessary to prepare the Property and to construct the Development Project and the Internal Infrastructure Improvements, including; (1) demolition and removal of any existing improvements located on the Property, grading and earthwork; (2) construction, reconstruction and/or relocation of utilities; (3) construction of the single family residences and related structures; (4) construction and installation of site landscaping on the Property, as described in the Concept Site Plan; and (5) all other Work described in the Concept Site Plan, or reasonably necessary to effectuate the intent of this Agreement.

1.2 Rules of Construction. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction apply in construing the provisions of this Agreement:

- (a) The terms defined in this Article include the plural as well as the singular.
- (b) All accounting terms not otherwise defined herein have the meanings assigned to them, and all computations herein provided for will be made, in accordance with generally accepted accounting principles.
- (c) All references herein to “generally accepted accounting principles” refer to such principles in effect on the date of the determination, certification, computation or other action to be taken hereunder using or involving such terms.
- (d) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed.
- (e) The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

(f) The Article and Section headings herein are for convenience only and will not affect the construction hereof.

ARTICLE II REPRESENTATIONS AND WARRANTIES

2.1 Representations of the City. The City makes the following representations and warranties, which are true and correct on the date hereof, to the best of the City's knowledge:

(a) ***Due Authority.*** The City has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and this Agreement has been duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal valid and binding obligation of the City, enforceable in accordance with its terms.

(b) ***No Defaults or Violation of Law.*** The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

(c) ***No Litigation.*** There is no litigation, proceeding or investigation pending or, to the knowledge of the City, threatened against the City with respect to this Agreement or affecting the Property. In addition, no litigation, proceeding or investigation is pending or, to the knowledge of the City, threatened against the City seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the City to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the City of the terms and provisions of this Agreement.

(d) ***Governmental or Corporate Consents.*** No consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity in connection with the execution and delivery by the City of this Agreement.

(e) ***No Default.*** No default or Event of Default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an event of default in any material respect on the part of the City under this Agreement.

2.2 Representations of the Developers. The Developer makes the following representations and warranties, which are true and correct on the date hereof, to the best of the Developer's knowledge:

(a) ***Due Authority.*** The Developer has all necessary power and authority to execute and deliver and perform the terms and obligations of this Agreement and to execute and deliver the documents required of the Developer herein, and such execution and delivery has been duly and validly authorized and approved by all necessary proceedings. Accordingly, this Agreement constitutes the legal valid and binding obligation of the Developer, enforceable in accordance with its terms.

(b) ***No Defaults or Violation of Law.*** The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any corporate or organizational restriction or of any agreement or instrument to which they are now a party, and do not and will not constitute a default under any of the foregoing.

(c) **No Litigation.** No litigation, proceeding or investigation is pending or, to the knowledge of the Developer, threatened against Creekside East-Phase 1 Development, or the Developer. In addition, no litigation, proceeding or investigation is pending or, to the knowledge of the Developer, threatened against the Developer seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the Developer to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the Developer, of the terms and provisions of this Agreement.

(d) **No Material Change.** (1) The Developer has not incurred any material liabilities or entered into any material transactions other than in the ordinary course of business except for the transactions contemplated by this Agreement and (2) there has been no material adverse change in the business, financial position, prospects or results of operations of the Developer, which could affect the Developer's ability to perform its obligations pursuant to this Agreement from that shown in the financial information provided by the Developer to the City prior to the execution of this Agreement.

(e) **Governmental or Corporate Consents.** No consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity in connection with the execution, delivery and performance by the Developer of this Agreement other than as set forth herein.

(f) **No Default.** No default or Event of Default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an event of default in any material respect on the part of the Developer under this Agreement, or any other material agreement or material instrument to which the Developer is a party or by which Developer is or may be bound.

(g) **Compliance with Laws.** The Developer is in material compliance with all valid laws, ordinances, orders, decrees, decisions, rules, regulations and requirements of every duly constituted governmental authority, commission and court applicable to any of its affairs, business, operations as contemplated by this Agreement.

(h) **Other Disclosures.** The information furnished to the City by the Developer in connection with the matters covered in this Agreement is true and correct and does not contain any untrue statement of any material fact and does not omit to state any material fact required to be stated therein or necessary to make any statement made therein, in the light of the circumstances under which it was made, not misleading.

2.3 Maintenance of Existence. During the term of this Agreement the Developer (including any permitted successors or assigns) will maintain its legal existence, will continue to be in good standing under the laws of the State of Kansas and will not dissolve, consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it.

2.4 Conditions to the Effectiveness of this Agreement. Contemporaneously with the execution of this Agreement, and as a precondition to the effectiveness of this Agreement, the Developer will submit the following documents to the City:

(a) a copy of the Developer's Articles of Organization and a good standing certificate dated within one month of the date of this Agreement, each certified by the Secretary of State of the State of Kansas;

(b) a certified copy of the Operating Agreement of the Developer;

- (c) a list of the current officers of the Developer; and
- (d) an executed copy of the Funding Agreement.

2.5 Final Approval Required. This Agreement will be void: (a) if the City does not finalize all required steps to create the District pursuant to the Rural Housing Incentive District Act by adoption of the RHID Ordinance within 60 days after the Effective Date; or (b) if the District is nullified in the manner set forth in K.S.A. 12-5246. Until the passage of the RHID Ordinance, the Governing Body retains sole discretion on the Development Project. In addition, the zoning commission and the City retain full discretion within existing ordinances and policy regarding its zoning, planning, permitting and inspection requirements.

ARTICLE III RURAL HOUSING INCENTIVE DISTRICT

3.1 Preliminary Resolution. Governing Body has heretofore adopted Resolution No. 1178 (the "Preliminary Resolution"), which made certain findings pursuant to the Rural Housing Incentive District Act, relative to the need for housing in the City and declaring an intent to establish rural housing incentive districts within the City.

3.2 Department of Commerce Finding. Pursuant to the Preliminary Resolution, the City caused to be prepared a Housing Needs Analysis and forwarded the same with the Preliminary Resolution, to the Kansas Secretary of Commerce. On February 5, 2016, the Kansas Secretary of Commerce issued a letter to the City making certain findings required by the Rural Housing Incentive District Act, and approved the City's ability to establish rural housing incentive districts.

3.3 Further Proceedings. City has caused to be prepared the Development Plan in accordance with the provisions of the Rural Housing Incentive District Act, and plans to consider a resolution calling a public hearing relative to the Development Plan, conduct a public hearing, and consider the RHID Ordinance approving the Development Plan and establishing the District. The District will be deemed to be established at the time the RHID Ordinance is passed by the Governing Body and published as required by law. The Parties acknowledge that the creation of the District is subject to nullification in the manner set forth in K.S.A. 12-5246.

ARTICLE IV CONSTRUCTION

4.1 Concept Site Plan.

(a) Developer, at its cost, has had prepared the Concept Site Plan, which is hereby approved by the Parties. Notwithstanding anything to the contrary herein, the City's acceptance of the Concept Site Plan is not acceptance of the final site plan as required by the City ordinances and the City retains full and complete discretion to review, modify and approve or not approve such final site plan through its normal planning, zoning and permitting process.

(b) Developer will promptly notify City in writing of any proposed Material Changes to the Concept Site Plan at least 30 days prior to the implementation of any such Material Change, including a description of the Material Change and reasons therefore, including any supporting documentation requested by the City. Developer may implement a proposed Material Change to the Concept Site Plan only with the advance written consent of the City.

(c) Developer may make changes which are not Material Changes to the Concept Site Plan or any aspect thereof as site conditions or other issues of feasibility may dictate or as may be necessary or desirable in the sole determination of Developer to enhance the economic viability of the Development Project, with approval from the City's planning and zoning board.

4.2 Schedule. Developer will commence construction of the Internal Infrastructure Improvements not more than 90 days after the RHID Ordinance is passed by the Governing Body. Developer will diligently pursue Substantial Completion of the Internal Infrastructure Improvements and must obtain Substantial Completion of the Internal Infrastructure Improvements within 12 months of approval of the final site plan or the Developer will be in material breach of this Agreement. Developer will diligently pursue Substantial Completion of the Development Project and must obtain Substantial Completion of the Development Project within 5 years of approval of the final site plan or the Developer will be in material breach of this Agreement.

4.3 Development Project Construction.

(a) Developer will construct the Development Project in a good and workmanlike manner in accordance with the terms of the Development Plan and this Agreement and as set forth in the Construction Plans. Notwithstanding anything to the contrary herein, all work on the Development Project will comply with existing City codes, rules and regulations. If Developer or a Related Party serves as general contractor for the Development Project, Developer or such Related Party will not charge more for such services than a third-party contractor would customarily charge for such services. All work on the Development Project will be inspected by City staff during construction as if this Agreement did not exist.

(b) Developer may enter into one or more construction contracts to compete the Development Project. Prior to the commencement of construction of the Development Project, Developer will obtain, or will require that any such contractor obtain, the insurance required in **Section 6.8** hereof and will deliver evidence of such insurance to City.

4.4 Internal Infrastructure Improvements Construction.

(a) Developer will construct, at its cost, the Internal Infrastructure Improvements in a good and workmanlike manner in accordance with the Plans and Specifications approved by City consistent with the construction of the Development Project so that the Substantial Completion of the Internal Infrastructure Improvements associated with the Development Project will be completed on or before Substantial Completion of the Development Project. If Developer or a Related Party serves as general contractor for the Internal Infrastructure Improvements, Developer or such Related Party will not charge more for such services than a third-party contractor would customarily charge for such services.

(b) Developer is responsible for securing any rights-of-way and/or easement rights from private parties necessary to improve or build the Internal Infrastructure Improvements and City will reasonably cooperate with Developer with respect to any such acquisition. All costs associated with the acquisition of rights-of-way and/or easements will be considered an Eligible Cost. City will reasonably cooperate with Developer in obtaining all necessary permits for construction of the Internal Infrastructure Improvements in accordance with the City's standard permitting process.

(c) Developer may enter into one or more construction contracts to compete the Work for the Internal Infrastructure Improvements. Prior to the commencement of construction of the Internal Infrastructure Improvements, Developer will obtain or will require that any such contractor obtain, the insurance required by **Section 6.8** hereof and will deliver evidence of such insurance to City.

(d) Promptly after Substantial Completion of the Work with respect to the Internal Infrastructure Improvements, or a phase thereof, in accordance with the provisions of this Agreement, Developer will furnish to City a Certificate of Substantial Completion in the form attached hereto as **Exhibit D**. The City will, within thirty (30) days following delivery of each Certificate of Substantial Completion, carry out such inspections as it deems necessary to (i) verify reasonable satisfaction with, and the accuracy of, the certifications contained in each Certificate of Substantial Completion, and (ii) verify, in the City's sole discretion, that the Internal Infrastructure Improvements have been constructed to meet or exceed City quality standards and comply with all applicable City code and permitting requirements. Each Certificate of Substantial Completion will be deemed accepted by City unless, prior to the end of such 30-day period after delivery to City of each Certificate of Substantial Completion, City furnishes Developer with specific written objections to the status of the Work, describing such objections and the measures required to correct such objections in reasonable detail.

(e) After Substantial Completion of the Internal Infrastructure Improvements and verification by the City, in the City's sole discretion, that the Internal Infrastructure Improvements have been constructed to meet or exceed City quality standards and comply with all applicable City code and permitting requirements, Developer will dedicate to the City, and the City will accept, title to the Internal Infrastructure Improvements. Following such dedication, City will be responsible, at its sole cost and expense, for all operating and capital costs for the dedicated Internal Infrastructure Improvements from that date forward, and will maintain the dedicated Internal Infrastructure Improvements in a manner consistent with similar public improvements in the City. Notwithstanding the foregoing, Developer may, at its sole discretion and expense, enhance the maintenance of operation of the Internal Infrastructure Improvements for the betterment of the Development Project with prior consent of the City.

ARTICLE V FINANCING OBLIGATIONS

5.1 Financing of Internal Infrastructure Improvements. All costs of the Internal Infrastructure Improvements will be paid in cash, or financed, by Developer. The City will use RHID Funds to reimburse Developer for all or a portion of the Eligible Costs, subject to the terms of this Agreement. Reimbursements will be made solely to the Developer. So long as the total amount of Eligible Costs requested for reimbursement does not exceed the actual amount expended for such use or 110% of the total set forth on **Exhibit C**:

(a) the Developer may seek reimbursement of any particular line item on **Exhibit C** not exceeding 120% of the amount stated therein; and

(b) the Developer will be permitted to adjust the amounts estimated as Eligible Costs within and between each line item with the written consent of the City Representative.

5.2 Request for Reimbursement. The Developer will certify all costs and expenditures to be made in connection with the Eligible Costs in accordance with the following:

(a) The Developer will submit to the City a Request for Reimbursement in the form attached hereto as **Exhibit E** setting forth the amount for which reimbursement is sought and an itemized listing of the related Internal Infrastructure Improvements.

(b) Each Request for Reimbursement will be accompanied by such bills, contracts, invoices, or other evidence reasonably satisfactory to the City to document that payment has been made by the Developer for such Eligible Costs.

5.3 Reimbursement. The City will have 30 calendar days after receipt of any Request for Reimbursement to review and respond by written notice to the Developer. If the submitted documentation demonstrates that: (1) the Request for Reimbursement shows payment of the Eligible Costs; (2) the expense was incurred; (3) the Developer is not in default under this Agreement; and (4) the City has not discovered any fraud on the part of the Developer, then the City will approve the Request for Reimbursement and promptly reimburse the Developer for the Eligible Costs pursuant to the terms of this Agreement if sufficient RHID Funds are available, and quarterly as funds become available in the event that RHID Funds in the City's possession are at that time insufficient. In the event the City does not respond within such 30-day period, the Request for Reimbursement will be deemed approved. If the City disapproves of the Request for Reimbursement, the Parties will meet to resolve any such differences. If a resolution is not found regarding specific cost(s), the denied cost will not be Eligible Costs unless and until a final order from a court of competent jurisdiction is received by the City requiring the cost to be accepted as an Eligible Cost or other written agreement of the Parties. Reimbursements will cease upon the earlier of (a) such time as the Eligible Costs have been fully reimbursed to Developer, or (b) 25 years after the date of the establishment of the District. The City will have no liability and/or responsibility to Developer for any payment greater than the amounts received from the Crawford County Treasurer pursuant to the provisions of K.S.A. 12-5250(b)(2)(A) as a result of the creation of the District.

5.4 Payment of City Expenses. If the Funding Agreement has not already been entered into between the Developer and the City, then upon execution of this Agreement the Developer and City will enter into a Funding Agreement substantially in the form attached as *Exhibit G*, requiring the Developer to reimburse the City for City Expenses. All City Expenses paid by the Developer will be Eligible Costs.

ARTICLE VI GENERAL PROVISIONS

6.1 City's Right to Terminate. In addition to all other rights of termination as provided herein, City may terminate this Agreement at any time if:

(a) Developer defaults in or breaches any material provision of this Agreement and fails to cure such default or breach within thirty (30) days after receipt of written notice from City of such default or breach; or

(b) Developer fails to close on the purchase of the Property within 60 days after the creation of the District.

6.2 Developer's Right to Terminate. In addition to all other rights of termination as provided herein, Developer may terminate this Agreement at any time if City defaults in or breaches any material provision of this Agreement (including any City default under *Article V* hereof) and fails to cure such default or breach within 30 days after receipt of written notice from Developer of such default or breach.

6.3 Successors and Assigns.

(a) This agreement will be binding on and inure to the benefit of the Parties and their respective heirs, administrators, executors, personal representatives, agents, successors and assigns.

(b) Until Substantial Completion of the Development Project has occurred, the obligations of Developer under this Agreement may not be assigned in whole or in part without the prior written approval of City, which approval will not be unreasonably withheld, conditioned, or delayed upon a reasonable demonstration by Developer of the proposed assignee's experience and financial capability to undertake and complete all portions of the Work with respect to the Development Project and the Internal Infrastructure Improvements, all in accordance with this Agreement. Notwithstanding the foregoing, Developer is permitted to subcontract the construction of any portion of the Development Project or Internal Infrastructure Improvements without the consent of City but Developer will remain liable under this Agreement.

(c) The City hereby approves, and no prior consent will be required in connection with:

(1) the right of Developer to encumber or collaterally assign its interest in the Property or any portion thereof or any interest in the Agreement to secure loans, advances or extensions of credit to finance or from time to time refinance all or any part of the Eligible Costs, or the right of the holder of any such encumbrance or transferee of any such collateral assignment;

(2) the right of Developer to assign Developer's rights, duties and obligations under the Agreement to a Related Party; or

(3) the right of Developer to sell or lease individual portions of the Property in the ordinary course of the development of the Development Project;

provided that in each such event Developer named herein will remain liable hereunder for the Substantial Completion of the Development Project, and will be released from such liability hereunder only upon Substantial Completion of the Development Project.

6.4 Remedies.

(a) Except as otherwise provided in this Agreement and subject to Developer's and City's respective rights of termination, in the event of any breach of any term or condition of this Agreement by either Party, or any successor, the breaching Party (or successor) will, upon written notice from the other Party specifying such claimed breach, proceed immediately to cure or remedy such breach, and will, in any event, within 30 days after receipt of notice, cure or remedy such default. If the breach is not cured or remedied, the aggrieved Party may hold the breaching Party in default of this Agreement and there upon may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to proceedings to compel specific performance by the defaulting or breaching Party, withholding funds received pursuant to K.S.A. 12-5250(b)(2)(A) and/or repeal of the ordinance establishing the District. For purposes of this **Section 6.4**, no Party may be deemed in default of this Agreement unless and until it has received notice of any claimed breach and has been given an opportunity to cure the same.

(b) Notwithstanding any other provision of this Agreement, in no event will the Developer or the City ever be liable for any punitive, special, incidental, or consequential damages in connection with this Agreement, or otherwise. For purposes of this **Section 6.4**, consequential damages include, but are not limited to, lost profits, lost tax revenue, or other similar losses which are not direct out-of-pocket costs incurred by the non-defaulting Party. Any monetary damages owed by the City will be limited to and will only be payable from RHID Funds actually received by the City as a result of the creation of the District.

6.5 Force Majeure. Neither City nor Developer nor any successor in interests will be considered in breach or default of their respective obligations under this Agreement, and times for

performance of obligations hereunder will be extended in the event of any delay caused by force majeure, including, without limitation, damage or destruction by fire or casualty; strike; lockout; civil disorder; act of terror; war; restrictive government regulations; lack of issuance of any permits and/or legal authorization by any governmental entity necessary for the Developer to proceed with construction of the Work or any portion thereof, shortage of delay in shipment of material or fuel; acts of God; unusually adverse weather or soil conditions; unforeseen site conditions that render the site economically or physically undevelopable (as a result of additional cost or delay), or any other cause or contingency similarly; or other causes beyond the Parties' reasonable control, including but not limited to, any litigation, court order or judgment resulting from any litigation affecting the validity of this Agreement; provided that such event of force majeure will not be deemed to exist as to any matter initiated or unreasonably sustained by Developer, and further provided that Developer notifies city in writing within thirty (30) days of the commencement of such claimed event of force majeure.

6.6 Notices. Any notice, demand or other communication required by this Agreement to be given by either Party hereto to the other will be in writing and will be sufficiently given or delivered if dispatched by certified United State first class mail, postage prepaid, or delivered personally,

a. In the case of Developer, to:

Turnkey Developers LLC
Attn: Bart Arnett
110 E. Oak Street
Email: bart@arnettglass.com
Phone: (620) 249-4224

b. In the case of City, to:

City of Pittsburg, Kansas
Attention: City Manager
P.O. Box 688
Pittsburg, Kansas 66762
Email: daron.hall@pittks.org
Phone: (620) 231-4100

With a copy to:
City of Pittsburg, Kansas
Attn: City Attorney
P.O. Box 1988
Pittsburg, Kansas 66762
Email: henry.menghini@pittks.org
Phone: (620) 231-6030

Or to such other address with respect to either Party as that Party may, from time to time, designate in writing and forward to the other as provided in this **Section 6.6**.

6.7 Conflict of Interest. No member of the Governing Body or any branch of City's government who has any power of review or approval of any of Developer's undertakings, or of City's contracting for goods or services for Creekside East-Phase 1 Development, will participate in any decisions relating thereto which affect that member's personal interests or the interests of any corporation or partnership in which that member is directly or indirectly interested. Any person having such interests will immediately, upon knowledge of such possible conflict, disclose, in writing, to the Governing Body the nature of such interest and seek a determination by the Governing Body with respect to such interest and, in the meantime, will not participate in any actions or discussions relating to the activities herein proscribed. City represents to Developer that no such conflicts of interest exist as of the date hereof.

6.8 Insurance; Damage or Destruction.

(a) Developer will cause there to be insurance coverage as hereinafter set forth at all times during the process of constructing the Work and, from time to time at the request of City, will furnish City with proof of payment of premiums on:

(1) Builder's Risk insurance, written on the so called "Builder's Risk—Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Work at the date of completion, and with coverage available in non-reporting form on the so called "all risk" form of policy. The interest, if any, of City will be protected in accordance with a clause in form and content satisfactory to City; and,

(2) Comprehensive general liability insurance (including operations, operations of subcontractors, completed operations and contractual liability insurance) together with an owner's contractor's policy, with limits against bodily injury and property damage of not less than Five Million Dollars (\$5,000,000.00) for all claims arising out of a single accident or occurrence and Two Million Dollars (\$2,000,000.00) for any one person in a single accident or occurrence (to accomplish the above required limits, an umbrella excess liability policy may be used); and

(3) Workers Compensation insurance, with statutorily required coverage.

(b) The policies of insurance required pursuant to clauses (1) and (2) above will be in form and content reasonably satisfactory to City and will be placed with financially sound and reputable insurers licensed to transact business in the State of Kansas with general policy holder's rating of not less than A- and a financial rating of A- as rated in the most current available "Best's" insurance reports. The policy of insurance delivered pursuant to clause (1) above will contain an agreement of the insurer to give not less than 30 days advance written notice to the City in the event of cancellation of such policy or change affecting the coverage thereunder. All policies of insurance required pursuant to this section will name City as an additional insured. Developer will deliver to City evidence of all insurance to be maintained hereunder.

6.9 Inspection. Developer will allow City and its employees, agents and representatives to inspect, upon request, all architectural, engineering, demolition, construction and other contracts and documents pertaining to the construction of the Work as City determines is reasonable and necessary to verify Developer's compliance with the terms of this Agreement.

6.10 Choice of Law. This Agreement will be deemed to have been fully executed, made by the Parties in, and governed by the laws of State of Kansas for all purposes and intents.

6.11 Entire Agreement; Amendment. The Parties agree that this Agreement, the Development Plan, and the Funding Agreement, collectively constitute the entire agreement between the Parties and that no other agreements or representations other than those contained in this Agreement have been made by the Parties. This Agreement may be amended only in writing and effective when signed by the authorized agents of the Parties.

6.12 Counterparts. This Agreement is executed in multiple counterparts, each of which constitute one and the same instruments.

6.13 Severability. If any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder will continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.

6.14 Representatives Not Personally Liable. No elected or appointed official, agent, employee or representative of City will be personally liable to Developer in the event of any default or breach by any Party under this Agreement or for any amount which may become due to any Party or on any obligations under the terms of this Agreement.

6.15 Legal Actions. If a third party brings an action against City, or any officials, agents, employees or representatives thereof contesting the validity or legality of any of the terms of this Agreement, or the ordinance approving this Agreement, Developer may, at Developer's option but only with City's consent, assume the defense of such claim or action (including without limitation, to settle or compromise any claim or action for which Developer has assumed the defense) with counsel of Developer's choosing. The Parties expressly agree that so long as no conflicts of interest exist between them, the same attorney or attorneys may simultaneously represent City and Developer in any such proceeding; provided, Developer and its counsel will consult with City throughout the course of any such action and Developer will pay all reasonable and necessary costs incurred by City in connection with such action. If such defense is assumed by Developer, all costs of any such action incurred by City will be promptly paid by Developer. If City refuses to permit Developer to assume the defense of any action, then costs incurred by City will be paid by City.

6.16 Release and Indemnification. Notwithstanding the expiration, termination or breach of this Agreement by either Party, the indemnifications and covenants contained in this Section 6.16 will, except as otherwise expressly set forth herein, survive such expiration, termination or breach of this Agreement by Parties hereto.

(a) Notwithstanding anything herein to the contrary, City and its Governing Body members, officers, agents, servants, employees and independent contractors will not be liable to Developer for damages or otherwise in the event that any ordinance, order or resolution adopted in connection with this Agreement is declared invalid or unconstitutional in whole or in part by the final (as to which all rights of appeal have expired or have been exhausted) judgment of any court of competent jurisdiction, and by reason thereof either City is prevented from performing any of the covenants and agreements herein or Developer is prevented from enjoying the rights and privileges hereof.

(b) Developer releases from, agrees to indemnify and hold harmless City, its Governing Body members, officers, agents, servants and employees against, and covenants and agrees that City and its Governing Body members, officers, agents, servants, employees and independent contractors will not be liable for, any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the acquisition of the Property or construction of the Work including any and all claims arising from the acquisition of the Property, including, but not limited to, location of hazardous wastes, hazardous materials or other environmental contaminants on the Property, including all costs of defense, including attorney's fees, except for those matters rising out of the willful and/or wanton negligence of City and its governing body members, officers, agents, servants, and employees.

(c) City and its Governing Body members, officers, agents, servants and employees will not be liable for any damage or injury to the persons or property of Developer or its officers, agents, servants or employees or any other person who may be about the Property or the Work except for matters arising out of the willful and/or wanton negligence of City and its Governing Body members, officers, agents, servants and employees.

(d) All covenants, stipulations, promises, agreements and obligations of City contained herein will be deemed to be the covenants, stipulations, promises, agreements and obligations of City and not of any of its Governing Body members, officers, agents, servants or employees in their individual capacities.

(e) No official, employee or representative of City will be personally liable to Developer in the event of a default or breach by any Party to this Agreement.

(f) Developer releases from and covenants and agrees the City, its Governing Body members, officers, employees, agents and independent contractors will not be liable for, and agrees to indemnify and hold City, its Governing Body, members, officers, employees, agents and independent contractors harmless from and against any and all suits, interest, claims and cost of attorney fees incurred by any of them, resulting from, arising out of, or in any way connected with: (1) the Development Project or its approval, (2) the construction of the Work, (3) the negligence or willful misconduct of Developer, its employees, agents or independent contractors in connection with the management, development, and construction of the Work, (4) the compliance by Developer with all applicable state, federal and local environmental laws, regulations, ordinances and orders, (5) underground storage tanks located on or about the Property, (6) friable asbestos or asbestos-containing materials at, on, or in the Property, (7) the operation of all or any part of the Property, or the condition of the Property, including, without limitation, any environmental cost or liability, or (8) negotiations, inspections, acquisitions, preparations, construction, leasing, operations, and other activities of Developer or its agents in connection with or leading to the Development Project or the Property; except that the foregoing release and indemnification will not apply in the case of such liability arising directly out of the willful and/or wanton negligence of City or its authorized Governing Body members, officers, employees and agents or which arises out of matters undertaken by City following termination of this Agreement.

[BALANCE OF THIS PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, City and Developer have caused this Agreement to be executed in their respective names and City has caused its seal to be affixed thereto, and attested as to the date first above written.

CITY OF PITTSBURG, KANSAS

(SEAL)

By: _____
Mayor

ATTEST:

By: _____
City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS:
COUNTY OF CRAWFORD)

This instrument was acknowledged before me on _____, 2020, by Dawn McNay, Mayor, and Tammy Nagel, Clerk, of the City of Pittsburg, Kansas, a Kansas municipal corporation.

Notary Public

(SEAL)

Typed or Printed Name of Notary Public

My Appointment Expires:

TURNKEY DEVELOPERS LLC

By: _____
Bart Arnett, Authorized Member

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS:
COUNTY OF CRAWFORD)

This instrument was acknowledged before me on _____, 2020, by Bart Arnett, a duly authorized Managing Member of Turnkey Developers LLC, a Kansas limited liability company, on behalf of said limited liability company.

(SEAL)

Notary Public

My Appointment Expires:

Typed or Printed Name of Notary Public

SCHEDULE OF EXHIBITS

Exhibit A	Property Description
Exhibit B	Property Map
Exhibit C	Eligible Costs for Creekside East-Phase 1 Development
Exhibit D	Certification of Substantial Completion Form
Exhibit E	Request for Reimbursement Form
Exhibit F	Development Plan
Exhibit G	Funding Agreement

EXHIBIT A

PROPERTY DESCRIPTION CREEKSIDE EAST-PHASE 1 RURAL HOUSING INCENTIVE DISTRICT

PART OF A TRACT OF LAND DESCRIBED IN BOOK 309, PAGE 579 IN THE REGISTER OF DEEDS OFFICE IN CRAWFORD COUNTY, KANSAS, BEING PART OF THE EAST HALF OF SECTION 28, TOWNSHIP 30 SOUTH, RANGE 25 EAST, CRAWFORD COUNTY, KANSAS, DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND 1/2" IRON PIN AT THE EAST QUARTER CORNER OF SECTION 28; THENCE SOUTH 86°27'01" WEST, 30.67 FEET TO A FOUND 3/4" PIPE AT THE NORTHEAST CORNER OF A TRACT OF LAND DESCRIBED IN BOOK 386, PAGE 733 IN THE REGISTER OF DEEDS OFFICE IN CRAWFORD COUNTY, KANSAS BEING THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 86°27'01" WEST ALONG THE NORTH LINE OF SAID TRACT OF LAND DESCRIBED IN BOOK 386, PAGE 733, 630.17 FEET TO A FOUND 5/8" IRON PIN AT THE NORTHWEST CORNER OF SAID TRACT OF LAND; THENCE SOUTH 86°19'30" WEST ALONG THE NORTH LINE OF A TRACT OF LAND DESCRIBED IN BOOK 608, PAGE 364 IN THE REGISTER OF DEEDS OFFICE IN CRAWFORD COUNTY, KANSAS, 543.54 FEET; THENCE NORTH 03°40'00" WEST, 135.16 FEET; THENCE SOUTH 86°20'00" WEST, 14.23 FEET; THENCE NORTH 03°40'00" WEST, 153.67 FEET; THENCE 31.50 FEET ALONG A 175.00 FOOT RADIUS CURVE TO THE LEFT WITH A CHORD BEARING NORTH 08°49'26" WEST, A DISTANCE OF 31.46 FEET; THENCE NORTH 86°20'00" EAST, 592.06 FEET; THENCE NORTH 03°40'00" WEST, 109.13 FEET TO A POINT ON THE WEST LINE OF LOT 1 IN REMINGTON SQUARE, A SUBDIVISION OF LAND IN THE CITY OF PITTSBURG, KANSAS AS SHOWN IN PLAT BOOK N, PAGE 88; THENCE SOUTH 51°10'39" EAST ALONG THE WEST LINE OF SAID LOT 1, ALSO BEING THE CENTERLINE OF THE ABANDONED ST. LOUIS AND SAN FRANCISCO RAILROAD, 311.11 FEET TO THE NORTHWEST CORNER OF TRACT A IN SAID REMINGTON SQUARE; THENCE NORTH 87°08'25" EAST ALONG THE NORTH LINE OF SAID TRACT A, 374.38 FEET TO THE NORTHEAST CORNER OF SAID TRACT A; THENCE SOUTH 2°19'21" EAST ALONG THE EAST LINE OF SAID TRACT A, 215.15 FEET TO THE POINT OF BEGINNING.

AND ALSO;

COMMENCING AT A FOUND 1/2" IRON PIN AT THE EAST QUARTER CORNER OF SECTION 28; THENCE SOUTH 86°27'01" WEST, 30.67 FEET TO A FOUND 3/4" PIPE AT THE NORTHEAST CORNER OF A TRACT OF LAND DESCRIBED IN BOOK 386, PAGE 733 IN THE REGISTER OF DEEDS OFFICE IN CRAWFORD COUNTY, KANSAS; THENCE CONTINUING SOUTH 86°27'01" WEST ALONG THE NORTH LINE OF SAID TRACT OF LAND DESCRIBED IN BOOK 386, PAGE 733, 630.17 FEET TO A FOUND 5/8" IRON PIN AT THE NORTHWEST CORNER OF SAID TRACT OF LAND; THENCE SOUTH 86°19'30" WEST ALONG THE NORTH LINE OF A TRACT OF LAND DESCRIBED IN BOOK 608, PAGE 364 IN THE REGISTER OF DEEDS OFFICE IN CRAWFORD COUNTY, KANSAS, 673.76 FEET TO THE NORTHWEST CORNER OF SAID TRACT OF LAND; THENCE SOUTH 86°20'00" WEST, 290.85 FEET; THENCE SOUTH 87°46'00" WEST, 189.60 FEET; THENCE SOUTH 03°42'59" EAST, 511.76 FEET TO THE NORTHWEST CORNER OF PAYTON'S HAMLET, A SUBDIVISION OF LAND IN THE CITY OF PITTSBURG, KANSAS AS SHOWN IN PLAT BOOK N, PAGE 178; THENCE ALONG THE WEST

LINE OF SAID PAYTON'S HAMLET SOUTH 03°42'59" EAST, 48.55 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID WEST LINE, SOUTH 03°42'59" EAST, 160.13 FEET; THENCE LEAVING SAID WEST LINE, SOUTH 86°55'52" WEST, 60.00 FEET TO THE WEST RIGHT-OF-WAY OF DEER RUN LANE AS PLATTED IN SAID PAYTON'S HAMLET; THENCE SOUTH 03°42'59" EAST ALONG THE SAID WEST RIGHT-OF-WAY, 259.19 FEET TO THE NORTHEAST CORNER OF A TRACT OF LAND DESCRIBED IN BOOK 603, PAGE 884 IN THE REGISTER OF DEEDS OFFICE IN CRAWFORD COUNTY, KANSAS; THENCE SOUTH 86°58'29" WEST ALONG THE NORTH LINE OF SAID TRACT OF LAND, 402.10 FEET; THENCE NORTH 02°14'31" WEST, 413.93 FEET; THENCE NORTH 86°17'00" EAST, 451.42 FEET, TO THE POINT OF BEGINNING. CONTAINS A TOTAL OF 11.86 ACRES, MORE OR LESS, SUBJECT TO EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD OR FACT. BEARINGS ARE BASED ON THE KANSAS COORDINATE SYSTEM OF 1983, SOUTH ZONE.

EXHIBIT B

**PROPERTY MAP
CREEKSIDE EAST-PHASE 1
RURAL HOUSING INCENTIVE DISTRICT**

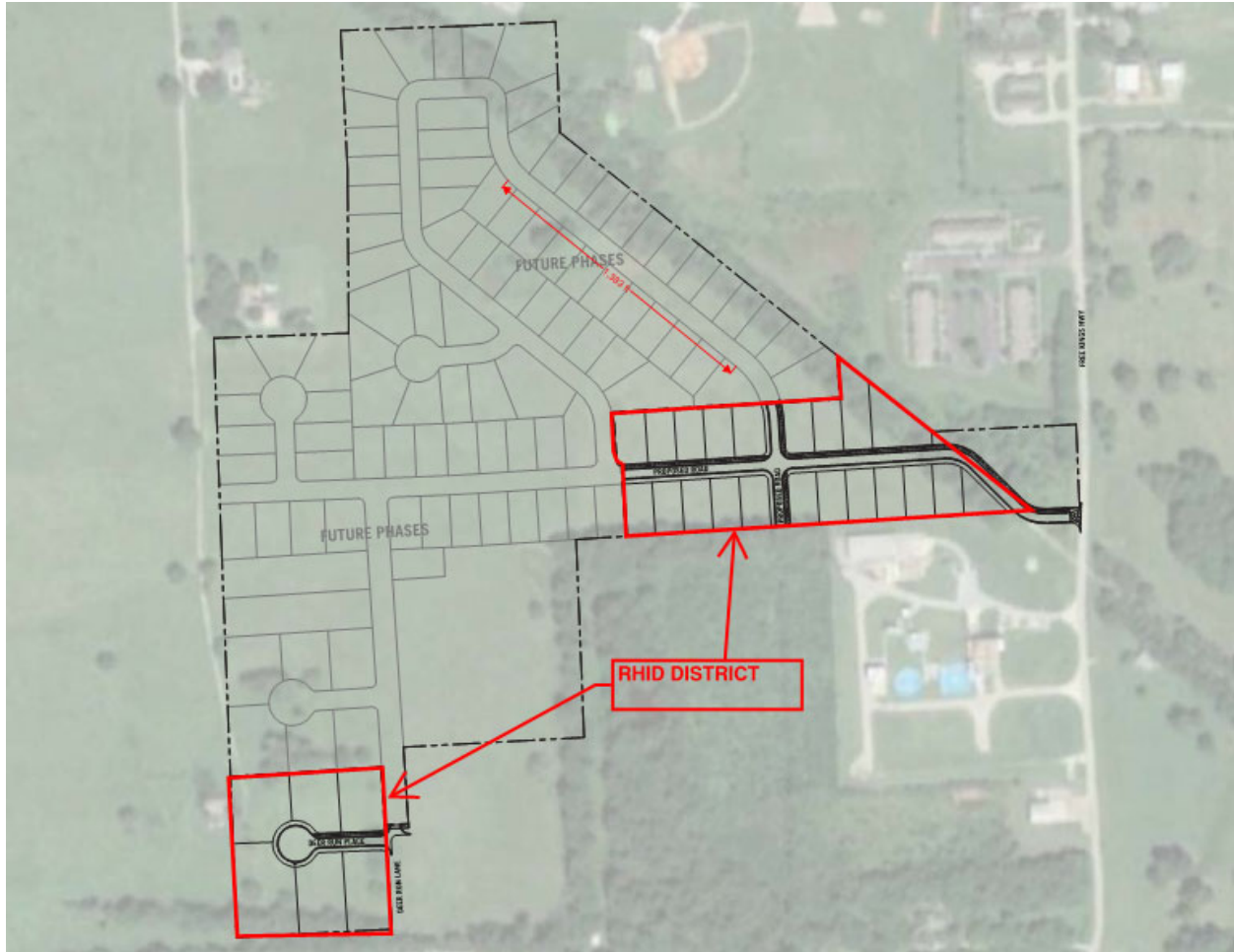


EXHIBIT C

ELIGIBLE COSTS FOR CREEKSIDE EAST-PHASE 1 RURAL HOUSING INCENTIVE DISTRICT

Category	Estimated Amount
Sewers, Streets, and Grading	\$542,000
Electric, Gas and Water Utilities	215,000
Engineering Design, Inspection, Surveying	60,000
Interest Expense and Banking Fees	678,000
Miscellaneous & City Expenses	25,000
Land Acquisition	<u>266,804</u>
Total	<u>\$1,786,804</u>

EXHIBIT D

CERTIFICATION OF SUBSTANTIAL COMPLETION FORM

The undersigned, on behalf of Turnkey Developers LLC (the “Developer”), pursuant to **Section 4.4** of the Development Agreement dated as of June 23, 2020 (the “Development Agreement”) by and among the City of Pittsburg, Kansas, and the Developer, hereby certifies as follows. All capitalized terms used herein have the meaning attributable to such terms in the Development Agreement.

1. The Internal Infrastructure Improvements are sufficiently complete in accordance with the Construction Plans, excepting all punch list items, such that the Developer can occupy or utilize the Work for its intended purpose.
2. Such portion of the Work has been completed in a good and workmanlike manner.
3. There are no mechanic’s or materialmen’s liens or other statutory liens on file encumbering title to the Property; all bills for labor and materials furnished for such portion of the Work which could form the basis of a mechanic’s, materialmen’s or other statutory lien against the Property have been paid in full, and within the past four months no such labor or materials have been furnished which have not been paid for.
4. All applicable building codes have been complied with in connection with the Work.

Dated: _____, 20____

TURNKEY DEVELOPERS LLC

By: _____
Authorized Member

EXHIBIT E
REQUEST FOR REIMBURSEMENT

City of Pittsburg, Kansas
Attention: City Administrator

You are hereby requested by the undersigned, an authorized representative of Turnkey Developers LLC (the “Developer”) to disburse funds held by the City in the special revenue fund created pursuant the authority in K.S.A. 12-5250(b)(2)(A) for the Creekside East-Phase 1 Development project (the “Fund”) and set forth in the Development Agreement between the City of Pittsburg, Kansas and the Developer for the Creekside East-Phase 1 Rural Housing Incentive District dated June 23, 2020 (the “Agreement”) to reimburse expenditures made by the Developer for Eligible Costs (as defined in the Agreement) as described on and in the amounts set forth in the Schedules attached to this invoice and incorporated herein by this reference (the “Schedules”).

I hereby certify that the amounts requested in the attached Schedules have been paid by the Developer in payment of costs that are Eligible Costs, as defined in the Agreement.

I further certify that no part of the amounts set forth in the Schedules have been the basis for any previous withdrawal of any moneys from the Fund.

Attached to the Schedules is a description of the nature of the item billed, a reference to which type of Eligible Cost the expense applies to under the Rural Housing Incentive Act and the Agreement, and a copy of the contract, invoice or other billing for the Eligible Costs for which Developer seeks reimbursement, along with copies of checks, evidence of wire transfers or other evidence of payment by the Developer of such Eligible Costs and hereby certify that such copies are true and accurate copies of the original documents.

Dated: _____, 20____

TURNKEY DEVELOPERS LLC

By: _____
Authorized Member

Invoice Reimbursement Schedule

Pursuant **Section 5.2** of the Agreement, I hereby request reimbursement of the amounts specified below and I certify that the description of the purchase or nature of each payment is reasonable, accurate and complete and that Developer has previously paid such Eligible Costs:

	Payee Name	Date of Payment	Purpose or Nature of Payment	Amount
1.				\$
2.				\$
3.				\$
4.				\$
5.				\$
6.				\$

Total Expenses \$ _____

Developer Signature

Note: Copies of bills, contracts, checks and other evidence reflecting the amounts shown above (as described in Section 5.2 of the Agreement) should be attached to this Schedule.

EXHIBIT F
DEVELOPMENT PLAN

EXHIBIT G
FUNDING AGREEMENT

**FUNDING AGREEMENT
(CREEKSIDE EAST-PHASE 1 RURAL HOUSING INCENTIVE DISTRICT)**

This Funding Agreement (“Agreement”) is entered into as of June 23, 2020, between the **CITY OF PITTSBURG, KANSAS** (“City”), and **TURNKEY DEVELOPERS LLC** (“Developer”).

RECITALS

WHEREAS, the City is a political subdivision organized and existing under the laws of the State of Kansas (the “State”); and

WHEREAS, the Developer is a Kansas limited liability company engaged in the business of development with its principal office located at 110 East Oak Street, Arma, Kansas 66712, and the Developer and the City anticipate negotiating and entering into a Development Plan and Agreement, whereby the Developer will develop real property by constructing approximately 26 single family houses and all related internal infrastructure improvements in one or more phases at a proposed residential development consisting of approximately 15 acres generally located south of 4th Street, west of Free King Highway, and north of Quincy Street (the “Project”); and

WHEREAS, Developer has entered into a real estate purchase contract to acquire the real property where the Project (in one or more phases) will be developed and has requested the City create a rural housing incentive district pursuant to K.S.A. 12-5241 *et seq.* to finance all or a portion of the public infrastructure to serve the Project (the “Request”); and

WHEREAS, the City has requested that the Developer negotiate and enter into a Development Agreement for the Project in exchange for the City performing certain services set forth herein; and

WHEREAS, the City does not have a source of funds to finance costs incurred by the City for legal, financial, planning, inspection, and other services, or for direct out-of-pocket expenses and other reasonable costs resulting from services rendered to the Developer to review, evaluate, process, and inspect the Project and the Request (collectively, the “Charges”); and

WHEREAS, the parties desire to enter into this Agreement to provide for the funding of consultants used by the City to review, evaluate, process and inspect the Project and the Request and to provide an inducement to the Developer to assume such costs.

AGREEMENT

1. Services to be Performed by the City. The City shall:

- A. Consult with the Developer on the Project in a timely manner and prepare or consult with the Developer on the preparation of and consider the Request in accordance with the provisions of State law, give all notices in a timely manner, make all legal publications and hold hearings as required by State law;
- B. Provide necessary staff, legal, financial, and planning assistance to prepare and present the Request to the City Commission and to prepare and present required resolutions and ordinances to the City Commission, including the use of outside counsel and consultants;
- C. If the City Commission approves the Request, to provide the necessary staff, legal, financial, planning and inspection assistance to prepare and negotiate a definitive agreement

between the City and the Developer for the implementation of the Request and the development of the Project (the "Development Agreement");

D. If a Development Agreement is entered into, provide the necessary staff, legal, financial, planning and inspection assistance to administer and carry out the terms of such Development Agreement.

2. Initial Deposit. In order to ensure the prompt and timely payment of the Charges, the Developer shall establish a fund in the initial amount of Fifteen Thousand Dollars (\$15,000.00) (the "Deposit") by paying such amount to the City contemporaneously with the execution of this Agreement. The City shall pay, in accordance with this Agreement, initial Charges from the Deposit, including the charges for preparation of this Agreement, and shall promptly submit an itemized statement therefor to the Developer to re-establish the Deposit so that there is always at least Ten Thousand Dollar (\$10,000.00) cash balance available against which additional charges and payments may be applied on a current basis. The City shall submit monthly statements itemizing the Charges paid from the Deposit during the preceding month.

3. Additional Funding.

A. The City shall submit to Developer an itemized statement for actual and reasonable expenses necessary to perform its obligations hereunder. Such statements shall be submitted on a monthly basis. The Developer shall pay the City the amounts set forth on such statements (the "Additional Funds") within thirty (30) days of receipt thereof. If such funds are not so received, the City may draw upon the Deposit and if, after such draw, there remains an unpaid balance, such unpaid balance shall be subject to a penalty of one percent (1%) per month until paid, but in no event shall such penalty exceed twelve percent (12%) per annum, and City shall, upon thirty (30) days' notice and failure to cure, be relieved of any and all obligations hereunder and under the Development Agreement until paid in full, or may terminate this Agreement pursuant to Section 5.A. Developer shall supply the Additional Funds in a timely manner so that City activities and assistance may continue without interruption.

B. The City and the Developer agree that the Developer shall reimburse the City for the actual and reasonable expenses necessary to perform the City's obligations hereunder including the services of Henry C. Menghini and Gilmore & Bell, P.C. as legal counsel for the City, and such other special consultants and advisors as the City reasonably deems necessary to perform its obligations under this Agreement.

4. Disbursement of Funds. The City shall disburse the Deposit and Additional Funds for reimbursement of costs to the City on or before the thirtieth (30th) day of each month, and for consulting fees and the payment of all out-of-pocket expenses incurred by the City in connection with the performance of its obligations under this Agreement as payment for such expenses become due. Upon reasonable notice, the City shall make its records available for inspection by Developer with respect to such disbursements.

5. Termination.

A. In the event the Developer fails to perform any of its obligations herein, the City may terminate this Agreement, and any other agreement between the parties, at its sole discretion if the Developer fails to cure the default within thirty (30) days after written notice to the Developer of the default. Termination by the City for reasons of an uncured default by Developer shall also terminate any duties and obligations of the City with respect to the Development Agreement, any other agreements between the parties, and the processing of the Developer's Request. Upon such termination, the City shall retain the Deposit and Additional Funds, if any, necessary to reimburse

the City for all reasonable expenses incurred under this Agreement to the date of termination and any monies due and owing to the City pursuant to any other agreements between the parties.

B. The parties hereto acknowledge that the Developer may determine to abandon the Project. Upon notice of abandonment by the Developer, this Agreement shall terminate and the City may terminate any other agreements between the parties and shall retain the Deposit and Additional Funds, if any, necessary to reimburse the City for all expenses incurred under this Agreement to the date of termination and any monies due and owing to the City pursuant to any other agreements between the parties. Any amounts remaining from the Deposit and the Additional Funds after all amounts have either been paid as directed by, or reimbursed to, the City shall be returned to the Developer.

C. In the event the Deposit and Additional Funds are insufficient to reimburse the City for the outstanding expenses of the City payable hereunder, the Developer shall reimburse the City as set forth in Section 3. Any amounts remaining from the Deposit and the Additional Funds after all amounts have either been paid as directed by, or reimbursed to, the City shall be returned to the Developer.

6. Notice. Any notice, approval, request or consent required by or asked to be given under this Agreement shall be deemed to be given if in writing and mailed by United States mail, postage prepaid, or delivered by hand, and addressed as follows:

To the City:

City of Pittsburg
Attn: City Manager
City Hall
201 N. 4th Street
Pittsburg, Kansas 66762

To the Developer:

Turnkey Developers LLC
Attn: Bart Arnett
110 E. Oak Street
Arma, KS 66712

With a copy to:

City of Pittsburg
Attn: City Attorney
P.O. Box 1988
Pittsburg, Kansas 66762

Each party may specify that notice be addressed to any other person or address by giving to the other party ten (10) days prior written notice thereof.

7. Governing Law. This Agreement shall be governed by and construed according to the laws of the State of Kansas.

8. Counterparts. This Agreement may be executed in multiple originals or counterparts, each of which will be an original and when all of the parties to this Agreement have signed at least one (1) copy, such copies will constitute a fully executed and binding Agreement.

The parties hereto have caused this Agreement to be executed by their duly authorized representatives the day and year first above written.

CITY OF PITTSBURG, KANSAS

By: _____
Mayor

ATTEST:

By: _____
City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS:
COUNTY OF CRAWFORD)

This instrument was acknowledged before me on _____, 2020, by Dawn McNay, Mayor, and Tammy Nagel, Clerk, of the City of Pittsburg, Kansas, a Kansas municipal corporation.

(SEAL)

Notary Public

Typed or Printed Name of Notary Public

My Appointment Expires:

TURNKEY DEVELOPERS LLC

By: _____
Bart Arnett, Authorized Member

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS:
COUNTY OF CRAWFORD)

This instrument was acknowledged before me on _____, 2020, by Bart Arnett, a duly authorized Managing Member of Turnkey Developers LLC, a Kansas limited liability company, on behalf of said limited liability company.

(SEAL)

Notary Public

Typed or Printed Name of Notary Public

My Appointment Expires:

Interoffice Memorandum

TO: DARON HALL
City Manager

FROM: MATT BACON
Director of Public Utilities

DATE: June 16, 2020

SUBJECT: Agenda Item – June 23, 2020
Memorandum of Understanding
Between Crawford County, Kansas and the City of Pittsburg, Kansas

Attached is a Memorandum of Understanding (MOU) between Crawford County, Kansas and the City of Pittsburg, Kansas setting forth a collaborative effort between the Board of Crawford County Commissioners and the City of Pittsburg to provide for the installation, operation, maintenance and a mechanism for activating the storm siren to be placed in Chicopee. According to the MOU, Crawford County will purchase and install the storm siren at its sole cost and expense and will be solely responsible for all maintenance, upkeep, and repair while the City of Pittsburg will activate the storm siren when existing storm siren protocols determine storm siren activation is warranted.

In this regard, would you please place this item on the agenda for the City Commission meeting scheduled for Tuesday, June 23, 2020. Action necessary will be approval or disapproval of the MOU and, if approved, authorize the Mayor to execute the MOU on behalf of the City.

If you have any questions concerning this matter, please do not hesitate to contact me.

Attachment: Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING

Between

CRAWFORD COUNTY, KANSAS

and

THE CITY OF PITTSBURG, KANSAS,

This Memorandum of Understanding ("MOU"), entered into this _____ day of _____, 2020, by and between the City of Pittsburg, Kansas and Crawford County, Kansas is made with reference to the following:

A. Purpose:

This MOU sets forth a collaborative effort between the Board of Crawford County Commissioners and the City of Pittsburg to provide for the installation, operation, maintenance and a mechanism for activating the storm siren to be placed in Chicopee.

B. Duties of Crawford County, Kansas:

Crawford County agrees to purchase and install a storm siren in the Chicopee area at its sole cost and expense and further agrees to be solely responsible for all maintenance, upkeep, and repair of the storm siren, tower, repeater and all other related equipment.

C. Duties of the City of Pittsburg, Kansas:

The City of Pittsburg agrees to activate the signal sent to the storm siren repeater which will sound the storm siren in Chicopee. The storm siren shall be activated in conjunction with the storm sirens in the City of Pittsburg. The City of Pittsburg will use its existing storm siren protocols to determine when storm siren activation is warranted.

D. Duration and Termination:

This MOU shall become effective immediately upon execution by each party and may only be modified by mutual written consent of the authorized officials of the City of Pittsburg, and the Board of Crawford County Commissioners. This MOU shall remain in full and effect until such time as it is terminated by either party upon sixty (60) days advance written notice to the other party.

E. Notice:


Any notice required or permitted to be given to the other party in this MOU shall be given in writing and shall be delivered either in person or by certified mail, postage prepaid, return receipt requested and addressed as follows:

Board of County Commissioners
Attn: Chairperson
111 E. Forest Avenue
Girard, KS 66743

City of Pittsburg, Kansas
Attn: City Manager
201 W. 4th Street
Pittsburg, KS 66762

APPROVED, DATED AND AGREED TO BY THE FOLLOWING:

Dawn McNay
Mayor, City of Pittsburg
Date: _____



Bruce Blair, Chairman
Board of Crawford County Commissioners
Date: _____

MEMORANDUM

To: Daron Hall, City Manager

From: Jay Byers, Deputy City Manager

Date: June 16, 2020

Subject: WWTP Design Contract

The City has been planning to replace its wastewater treatment plant for some time. The plant was originally constructed in 1952. It has had numerous additions and improvements over the years but is at the end of its useful life, particularly given new restrictions being established by the EPA and KDHE. A Preliminary Engineering Report has been generated that identifies current and future requirements and potential treatment process options. The next step is to complete the formal design of the plant so that construction bids can be taken.

The new plant is estimated to cost between \$35 and 40 million and take two years to construct. The new plant will have roughly double the capacity of the current plant. The design is complex and estimated to take at least eighteen months. Earlier this year the City released a formal request for qualifications for the design of the new Wastewater Treatment Plant. Submissions from three engineering firms were considered and presented to the City's internal selection committee. Earles Engineering and Inspection, Inc. (EEI) was selected as the design firm. EEI performed the Preliminary Engineering Report for the plant and has been directly involved in planning and discussions with all participants.

Please place the contract with Earles Engineering and Inspection, Inc. for Wastewater Treatment Plant design services on the City Commission agenda for June 23, 2020.

AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

This is an Agreement between **City of Pittsburgh** (Owner) and **Earles Engineering & Inspection, Inc** (Engineer). Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as **Pittsburg Wastewater Treatment Plant** (Project). Other terms used in this Agreement are defined in Article 7. Engineer's services under this Agreement are generally identified as **Preliminary and Final Design of the City of Pittsburgh's Wastewater Treatment Plant including the Sugar Creek Pump Station and Force main**.

Owner and Engineer further agree as follows:

ARTICLE 1—SERVICES OF ENGINEER

1.01 Scope

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.
- B. All phases of service will include Management of Engineering Services as shown in Exhibit A.

ARTICLE 2—OWNER'S RESPONSIBILITIES

2.01 Project Information

- A. To the extent Owner has not already provided the following, or has new, additional, or revised information from that previously provided, Owner shall provide Engineer with information and data needed by Engineer in the performance of Basic and Additional Services, including Owner's:
 - 1. design objectives and constraints;
 - 2. space, capacity, and performance requirements;
 - 3. flexibility and expandability needs;
 - 4. design and construction standards;
 - 5. budgetary limitations; and
 - 6. any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- B. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, Owner shall obtain, furnish, or otherwise make available (if necessary through retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services; or, with consent of Engineer, Owner may authorize the Engineer to obtain or provide all or part of such additional information as Additional Services. Such additional information or data may include the following:
 - 1. Property descriptions.
 - 2. Zoning, deed, and other land use restrictions.
 - 3. Surveys, topographic mapping, and utility documentation.

4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; appropriate professional interpretation of such information or data.
 6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
 7. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- C. Owner shall examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
 - D. Owner shall furnish to Engineer data as to Owner's anticipated costs for services to be provided to Owner by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) so that Engineer may assist Owner in collating the various cost categories that comprise Total Project Costs.
 - E. Owner shall advise Engineer if any invention, design, process, product, or device that Owner has requested, required, or recommended for inclusion in the Drawings or Specifications will be subject to payment (whether by Owner or Contractor) of any license fee or royalty to others, as required by patent rights or copyrights.
 - F. Owner shall inform Engineer as to whether Engineer's assistance is requested with respect to Owner's evaluation of the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
 - G. Owner shall inform Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- 2.02 Owner's Instructions Regarding Bidding/Proposal and Front-End Construction Contract Documents
- A. Owner shall give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable) and Owner's construction contract practices and requirements, and furnish to Engineer (or give specific directions requesting Engineer to use copies already in Engineer's possession) the following:
 1. Owner's standard contract forms, general conditions (if other than the current edition of EJCDC® C-700, Standard General Conditions of the Construction Contract), supplementary conditions, text, and related documents and content for Engineer to include in the draft Bidding/Proposal Documents, and in draft Front-End Construction Contract Documents;
 2. insurance and bonding requirements;
 3. protocols for electronic transmittals during bidding and construction;

4. Owner's safety and security programs applicable to Contractor and other Constructors;
 5. diversity and other social responsibility requirements;
 6. bidding and contract requirements of funding, financing, or regulatory entities;
 7. other specific conditions applicable to the procurement of construction or contract documents;
 8. any other information necessary for Engineer to assist Owner in preparing its Bidding/Proposal Documents and Front-End Construction Contract Documents.
- B. Owner shall have responsibility for the final content of (1) such Bidding/Proposal Documents, and (2) such Front-End Construction Contract Documents, other than content furnished by Engineer concerning the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters.
1. Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. If there will be an advertisement soliciting bids for construction, Owner shall place and pay for such advertisement.

2.03 Owner-Furnished Services

- A. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, Owner shall obtain, as required for the Project:
1. Accounting, bond and financial advisory services (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
 2. Legal services, including attorney review of proposed Construction Contract Documents, legal services required by Owner, legal services needed as a result of issues raised by Contractor, and Project-related legal services reasonably requested by Engineer.
 3. Auditing services, including those needed by Owner to ascertain how or for what purpose Contractor has used money paid to it.
- B.
- C. Owner shall acquire or arrange for acquisition of the Site(s) and any temporary or permanent rights of access, easements, or property rights needed for the Project.
- D. With respect to the portions or phases of the Project designed or specified by Engineer, Owner shall provide, obtain, or arrange for:
1. all required reviews, approvals, consents, and permits from governmental authorities having jurisdiction, and
 2. such reviews, approvals, and consents from others as may be necessary for completion of each portion or phase of the Project.
- E. Owner may delegate to Contractor or others the responsibilities set forth in Paragraphs 2.03.C and D.

2.04 Owner's General Responsibilities

- A. Owner shall inform Engineer of the policies, procedures, and requirements of Owner that are applicable to Engineer's performance of services under this Agreement.
- B. Owner shall provide Engineer with Owner's budget for the Project, including type and source of funding to be used, and will promptly inform Engineer if the budget or funding sources change.
- C. Owner shall inform Engineer in writing of any safety or security programs that are applicable to the personnel of Engineer, its Subconsultants, and Engineer's Subcontractors, as they visit the Site or otherwise perform services under this Agreement.
- D. Owner shall arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under this Agreement.
- E. Owner shall provide necessary direction and make decisions, including prompt review of Engineer's submittals, and carry out its other responsibilities in a timely manner so as not to delay Engineer's performance of its services.
- F. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- G. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
 - 1. any development that affects the scope or time of performance of Engineer's services;
 - 2. the presence at the Site of any Constituent of Concern; or
 - 3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.
- H. Owner shall advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- I. If Owner designates a construction manager, site representative, or any individual or entity other than, or in addition to, Engineer to represent Owner at the Site, Owner shall define and set forth as an exhibit to this Agreement the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- J. Owner shall:
 - 1. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job-related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.

2. Primarily communicate with Engineer's Subcontractors and Subconsultants through the Engineer.
 - a. Promptly inform Engineer of the substance of any communications between Owner and Engineer's Subcontractors or Subconsultants.
 - b. Refrain from directing the services of Engineer's Subcontractors or Subconsultants.
3. Authorize Engineer to provide Additional Services as set forth in Article 2 of Exhibit A of the Agreement, as required.

2.05 Payment

- A. Owner shall pay Engineer as set forth in Article 4 and Exhibit J.
- B. Engineer's compensation is summarized as follows; if there is a conflict between the following summary and the contents of Exhibit J, then Exhibit J will prevail.

Description of Service		Amount	Basis of Compensation
1.	Basic Services (Article 1 of Exhibit A) (Surveying and Design of WWTP and SCF Pumps Station and FM)	\$2,348,328.00	Hourly with Upper Limit
	WWTP Design - \$1,808,485.00		
	Survey -old plant, new site, connections ect. – \$74,700.00		
	Site approval from Wildlife and Parks - \$9,500.00		
	Site approval from FEMA - \$14,500.00		
	Geology - \$9,500.00		
	Liability Insurance increase to \$5,000,000/year for 3 years starting 9/1/2020 estimated at \$16,605/year or three years = \$49,815.00		
	Sugar Creek& Frontenac Pump Station Design - \$281,347.00		
	Survey of Pump Station site and force Main Route – \$80,481.00		
	Easements Descriptions - \$16,500.00		
	Geology - \$3,500.00		
2.	Resident Project Representative Services (For both the WWTP and the SCF Pump St. and FM)	\$2,788,502.00	Hourly with upper limit
	New WWTP - \$2,426,770.00		
	Sugar Creek/Frontenac Pump Station and F. M.- \$361,732.00		
4.	Additional Services (Article 2 of Exhibit A)**		Hourly

on a 24-month continuous construction period.

ARTICLE 3—SCHEDULE FOR RENDERING SERVICES

3.01 Commencement

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 Time for Completion

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit B, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or

suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, will be adjusted equitably.

- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, will be adjusted equitably.
- D. If Engineer fails, for reasons within control of Engineer, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to liquidated damages in an amount not to exceed the amount previously paid to the engineer for work completed and resulting from such failure by Engineer.

ARTICLE 4—INVOICES AND PAYMENTS

4.01 Invoices

- A. Preparation and Submittal of Invoices: Engineer shall prepare invoices in accordance with its standard invoicing practices, the progress reporting and special invoicing requirements (if any) in Exhibit A Paragraph 1.01.A, and the terms of Exhibit J. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 Payments

- A. Application to Interest and Principal: Payment will be credited first to any interest owed to Engineer and then to principal.
- B. Disputed Invoices: If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so; may withhold only that portion so disputed; and must pay the undisputed portion, subject to the terms of Paragraph 4.01. After a disputed item has been resolved, Engineer shall include the agreed-upon amount on a new invoice.
- C. Failure to Pay: If Owner fails to make any undisputed payment due Engineer within 60 days after receipt of Engineer's invoice, then:
 - 1. amounts due Engineer will be increased at the rate of 1.5% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day, and
 - 2. Engineer may, after giving 7 days' written notice to Owner, suspend services under this Agreement until Owner has paid in full amounts due. Owner waives any and all claims against Engineer for any such suspension.
- D. Sales or Use Taxes: If after the Effective Date any governmental entity takes an action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement will be in addition to the compensation to which Engineer is entitled under the terms of Exhibit J.

ARTICLE 5—OPINIONS OF COST

5.01 Opinions of Probable Construction Cost

- A. Engineer's opinions of probable Construction Cost (if any) are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.02 Opinions of Total Project Costs

- A. The services, if any, of Engineer with respect to Total Project Costs will be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6—GENERAL CONSIDERATIONS

6.01 Standards of Performance

- A. **Standard of Care:** The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.
- B. **Technical Accuracy:** Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. **Engineer's Subcontractors and Subconsultants:** Engineer may retain such Engineer's Subcontractors and Subconsultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. **Reliance on Others:** Subject to the standard of care set forth in Paragraph 6.01.A, Engineer may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. **Compliance with Laws and Regulations, and Policies and Procedures**
 - 1. Engineer and Owner shall comply with applicable Laws and Regulations.
 - 2. Engineer shall comply with the policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.

3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date to Laws and Regulations,
 - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures, and
 - c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. General Conditions of Construction Contract: The general conditions for any Construction Contract Documents prepared hereunder are to be the current edition, at time of construction contract bidding, of EJCDC® C-700, Standard General Conditions of the Construction Contract, prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise.
- G. Copies of Drawings and Specifications: The Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one complete electronic copy of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations, and three (3) complete printed copy, duly signed and sealed.
- H. Engineer shall not be required to sign any document, no matter by whom requested, that would result in Engineer having to certify, guarantee, or warrant conditions whose existence Engineer cannot ascertain within the authorized scope of Engineer's services. Owner agrees not to make resolution of any dispute with Engineer or payment of any amount due to Engineer in any way contingent upon Engineer signing any such document.
- I. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor will Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- J. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- K. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer.
- L. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- M. Engineer's services do not include providing legal advice or representation.
- N. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or

other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.

- O. While at the Site, Engineer, its Subconsultants, and Engineer's Subcontractors, and their employees and representatives will comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 Ownership and Use of Documents

- A. All Documents are instruments of service, and Engineer owns the Documents, including all associated copyrights and the right of reuse at the discretion of the Engineer, subject to the following provisions:
 - 1. Upon receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents and subject to the express exclusions that follow, Engineer and any Subconsultants will grant to Owner the ownership of the Documents, including all associated copyrights and the right of reuse.
 - 2. When requested by Owner, Engineer will perform any clerical or administrative acts reasonably necessary to confirm or record the transfer of Engineer's interests in the Documents to the Owner, and Owner will reimburse the Engineer for its costs to comply with the transfer request.
 - 3. Engineer shall have and retain the ownership, title, and property rights, including copyright, patent, intellectual property, and common law rights, in any design elements (including but not limited to standard details, drawings, plans, specifications, methodologies, and engineering computations) used in the Documents, but developed by Engineer or its Subconsultants previous to or independent of this Agreement ("Previously/Independently Created Works"). Engineer shall provide appropriate verification of such previous or independent development upon Owner's request.
 - 4. Upon receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, Engineer will issue to Owner a royalty-free, nonexclusive and irrevocable license to use such Previously/Independently Created Works on the Project or on any extension of the Project.
 - 5. Owner acknowledges that the Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer.
 - 6. Any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants.
 - 7. Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Subconsultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer.
 - 8. Such limited license to Owner shall not create any rights in third parties.

9. Nothing herein limits the Engineer's right of use or reuse of Previously/Independently Created Works or any of Engineer's non-Document work product.
- B. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.
- C. Engineer shall inform Owner if Engineer is aware of any invention, design, process, product, or device specified in the Drawings, Specifications, or other Documents that is subject to payment (whether by Owner or Contractor) of any license fee or royalty to others, as required by patent rights or copyrights. If Engineer's good-faith inclusion in the Drawings, Specifications, or other Documents of new, innovative, or non-standard technologies, for the benefit of Owner and the Project, results in third-party claims of infringement or violation of intellectual property rights, then the Engineer shall cover the costs of defending against, settling, or paying such claims. Owner shall not have any responsibility in the event that Engineer infringes or violates third party intellectual property rights.
- D. Engineer will obtain Owner's consent, which will not be unreasonably withheld, prior to releasing any publicity, including news and press releases, promotional publications, award and prize competition submittals, and other advertising regarding the subject matter of this Agreement. Nothing herein will limit the Engineer's right to include information in statements of qualifications and proposals to others accurately describing its participation and participation of employees in the Project.

6.03 Electronic Transmittals

- A. To the fullest extent practical, Owner and Engineer agree to transmit, and accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with Exhibit F, Electronic Documents Protocol (EDP).
 1. Compliance with the EDP by Engineer shall be considered a Basic Service and no direct or separate compensation will be paid to Engineer for such compliance, unless provisions for separate compensation are expressly set forth in the EDP.
 2. Engineer's costs directly attributable to changes in Engineer's Electronic Documents obligations, after the effective date of this Agreement, necessitated by revisions to Exhibit F, delayed adoption of Exhibit F, or implementation of other Electronic Documents protocols, will be compensated as Additional Services.
- B. If this Agreement does not include Exhibit F or otherwise does not establish or include protocols for transmittal of Electronic Documents by Electronic Means, then Owner and Engineer may operate without specific protocols or may jointly develop such protocols at a later date.
- C. Except as stated otherwise in Exhibit F (if included in this Agreement), when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents, or from those established in applicable protocols.
- D. This Agreement (including the EDP) is not intended to create obligations for Owner or Engineer with respect to transmittals to or from third parties, except as expressly stated in the EDP.

6.04 Insurance

- A. Engineer shall procure \$5,000,000 professional liability policy at the renewal date of 9/1/2020 and maintain insurance as set forth in Exhibit G.
- B. Additional Insureds: The Engineer's commercial general liability, automobile liability, and umbrella or excess liability policies, must:
 - 1. include and list as additional insureds Owner, and any individuals or entities identified as additional insureds in Exhibit G;
 - 2. include coverage for the respective officers, directors, members, partners, and employees of all such additional insureds;
 - 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations); and
 - 4. not seek contribution from insurance maintained by the additional insured.
- C. Owner shall procure and maintain insurance as set forth in Exhibit G.
- D. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer, its Subconsultants, and Engineer's Subcontractors to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project. Owner shall give Engineer access to any certificates of insurance and copies of endorsements and policies obtained by Owner from Contractor.
- E. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G by 9/1/2020. Such certificates must be furnished by September 01, 2020 at renewals thereafter during the life of the Agreement.
 - 1. Upon request by Owner or any other insured, Engineer shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subconsultants and Engineer's Subcontractors. In any documentation furnished under this provision, Engineer may redact (a) any confidential premium or pricing information and (b) any wording specific to projects or jurisdictions other than those applicable to this Agreement.
- F. All construction contracts entered into by Owner with respect to the Project must require builder's risk or similar property insurance.
- G. All policies of property insurance relating to the Project, including but not limited to any builder's risk or similar policy, must allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer, its Subconsultants, or Engineer's Subcontractors. Owner and Engineer waive all rights against each other, Contractor, Engineer's Subcontractors and Subconsultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any such builder's risk or similar policy and

any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.

- H. All policies of insurance must contain a provision or endorsement that the coverage afforded will not be canceled, and that renewal will not be refused, until at least 10 days' prior written notice has been given to the primary insured. Upon receipt of such notice, the primary insured must promptly forward a copy of the notice to the other party to this Agreement and replace the coverage being cancelled or reduced to conform to the requirements of this Agreement.
- I. At any time, Owner may request that Engineer, or Engineer's Subcontractors or Subconsultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require Engineer's Subcontractors or Subconsultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.05 Suspension and Termination

A. Suspension

- 1. By Owner: Owner may suspend Engineer's services for up to 90 days upon 7 days' written notice to Engineer.
- 2. By Engineer: Engineer may, after giving 7 days' written notice to Owner, suspend services under this Agreement:
 - a. if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraphs 4.02.B and 4.02.C;
 - b. in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.09.D; or
 - c. if persistent circumstances beyond the control of Engineer have prevented it from performing its obligations under this Agreement.

- B. Termination at Phase Completion: Owner or Engineer may terminate the Agreement without cause within thirty (30) days of the satisfactory delivery of all deliverables associated with any Phase outlined in Exhibit B.

C. Termination for Cause

- 1. Either party may terminate the Agreement for cause upon 30 days' written notice in the event of substantial failure by the other party to perform in accordance with the terms of the Agreement, through no fault of the terminating party.
 - a. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.C.1 if the party receiving such notice begins, within 7 days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30-day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein will extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. In addition to its termination rights in Paragraph 6.05.C.1, Engineer may terminate this Agreement for cause upon 7 days' written notice:
 - a. if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional;
 - b. if Engineer's services for the Project are delayed or suspended for more than 90 consecutive days for reasons beyond Engineer's control; or
 - c. as the result of the presence at or adjacent to the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.09.E.
 3. Engineer will have no liability to Owner on account of any termination by Engineer for cause.
- D. Termination for Convenience: Owner may terminate this Agreement for convenience, effective upon Engineer's receipt of notice from Owner.
- E. Extension of Effective Date of Termination: If Owner terminates the Agreement for cause or convenience, Owner may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files. Engineer shall be entitled to compensation for such tasks.
- F. Payments Upon Termination: In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination. Upon making such payment, Owner will have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.02.A.
1. If Owner has terminated the Agreement for cause and disputes Engineer's entitlement to compensation for services and reimbursement of expenses, then Engineer's entitlement to payment and Owner's rights to the use of the Documents will be resolved in accordance with the dispute resolution provisions of this Agreement or as otherwise agreed in writing.
 2. If Owner has terminated the Agreement for convenience, or if Engineer has terminated the Agreement for cause, then Engineer will be entitled, in addition to the payments identified above, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Subcontractors or Subconsultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit J.

6.06 Successors, Assigns, and Beneficiaries

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.06.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, claims arising out of this Agreement or money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
 - 1. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
 - 2. Nothing in this Agreement will be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
 - 3. Owner agrees that the substance of the provisions of this Paragraph 6.06.C will appear in the Construction Contract Documents.

6.07 Dispute Resolution

- A. Unless otherwise required by Exhibit H, Owner and Engineer shall resolve all disputes in the following manner:
 - 1. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice, prior to invoking mediation.
 - 2. Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof (“Disputes”) to mediation. Owner and Engineer agree to participate in the mediation process in good faith. The process will be conducted on a confidential basis, and must be completed within 120 days.
 - 3. If the parties fail to resolve a Dispute through negotiations under Paragraph 6.07.A.1 or mediation under Paragraph 6.07.A.2, then:
 - a. ~~either or both may invoke the applicable dispute resolution procedures of Exhibit H for final resolution of Disputes.~~
 - b. Exhibit H is not included, and if no final dispute resolution method can be agreed upon, then the parties may exercise their rights at law.

6.08 Controlling Law; Venue

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.
- B. Venue for any exercise of rights at law will be the state court having jurisdiction at the location of the Project.

6.09 Environmental Condition of Site

- A. Owner represents to Engineer that, as of the Effective Date, to the best of Owner’s knowledge, no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. Undisclosed Constituents of Concern: For purposes of this Paragraph 6.09, the presence at or adjacent to the Site of Constituents of Concern that were not disclosed to Engineer pursuant

to Paragraph 6.09.A, in such quantities or circumstances that such Constituents of Concern may present a danger to persons or property exposed to them, will be referred to as “undisclosed” Constituents of Concern.

1. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of this Agreement or the Construction Contract, are not undisclosed Constituents of Concern.
 2. Constituents of Concern that are to be located, identified, studied, removed, or remediated as part of the services under this Agreement are not undisclosed Constituents of Concern.
 3. Constituents of Concern that are to be located, identified, studied, removed, or remediated as part of the services under another professional services contract for Owner, or as part of the work under a construction or remediation contract, are not undisclosed Constituents of Concern if Engineer has been informed of the general scope of previously prepared Preliminary Engineering Report.
- C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate authorities having jurisdiction if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that Engineer’s scope of services does not include any services related to undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, or if encountered, uncovered, or revealed Constituents of Concern are present in substantially greater quantities or substantially different locations than disclosed or anticipated, or if investigative or remedial action, or other professional services, are necessary or required by applicable Laws and Regulations with respect to such Constituents of Concern, then Engineer may, at its option and without liability for direct, consequential, or any other damages, suspend performance of services on the portion of the Project adversely affected thereby until such portion of the Project is no longer so affected; and Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- E. If the presence at the Site of undisclosed Constituents of Concern, or of Constituents of Concern in substantially greater quantities or in substantially different locations than disclosed or anticipated, adversely affects the performance of Engineer’s services under this Agreement, then:
1. if the adverse effects do not preclude Engineer from completing its Project services in general accordance with this Agreement on unaffected or marginally affected portions of the Project, Engineer may accept an equitable adjustment in its compensation or in the time of completion, or both; and the Agreement will be amended to reflect changes necessitated by the presence of such Constituents of Concern; or
 2. if the adverse effects are of such materiality to the overall performance of Engineer that it cannot complete its services without significant changes to the scope of services, time of completion, and compensation, then Engineer may terminate this Agreement for cause on 7 days’ written notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and will not be required to become an “owner,” “arranger,” “operator,” “generator,” or “transporter” of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which

are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.10 Indemnification and Mutual Waiver

- A. Indemnification by Engineer: To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, Subconsultants, or Engineer's Subcontractors. This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."
- B. Environmental Indemnification: To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer, its Subconsultants, Engineer's Subcontractors, and their officers, directors, members, partners, agents, employees, and subconsultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorney's fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that:
 - 1. any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and
 - 2. nothing in this paragraph obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- C. No Defense Obligation: The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- D. Percentage Share of Negligence: To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, will not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- E. Mutual Waiver: To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's officers, directors, members, partners, agents, employees, subconsultants, and insurers, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes. Such excluded damages include but are not limited to loss of profits or revenue; loss of use or opportunity; loss of good will; cost of substitute facilities, goods, or services; and cost of capital.

6.11 Records Retention

- A. Engineer shall maintain on file in legible form, for a period of ten years following completion or termination of its services, or such other period as required by Laws and

Regulations, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.12 Miscellaneous Provisions

- A. Notices: Any notice required under this Agreement will be in writing, and delivered: in person (by commercial courier or otherwise); by registered or certified mail; . All such notices are effective upon the date of receipt.
- B. Survival: Subject to applicable Laws and Regulations, all express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. Severability: Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Engineer.
- D. No Waiver: A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Agreement.
- E. Accrual of Claims: To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement will be deemed to have accrued, and all statutory periods of limitation will commence, no later than the date of Substantial Completion; or, if Engineer's services do not include Construction Phase services, or the Project is not completed, then no later than the date of Owner's last payment to Engineer.

ARTICLE 7—DEFINITIONS

7.01 Defined Terms

- A. Wherever used in this Agreement (including the exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
 - 1. Addenda—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
 - 2. Additional Services—The services to be performed for or furnished to Owner by Engineer in accordance with Article 2 of Exhibit A of this Agreement.
 - 3. Agreement—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 - 4. Application for Payment—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
 - 5. Basic Services—The services to be performed for or furnished to Owner by Engineer in accordance with Article 1 of Exhibit A of this Agreement.
 - 6. Bidding/Proposal Documents—Documents related to the selection of the Contractor, including advertisements or invitations to bid; requests for proposals; instructions to

bidders or proposers, including any attachments such as lists of available Site-related documents; bid forms; bids; proposal forms; proposals; bidding requirements; and qualifications documents.

7. **Change Order**—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
8. **Change Proposal**—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
9. **Constituents of Concern**—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
10. **Construction Contract**—The entire and integrated written contract between Owner and Contractor concerning the Work.
11. **Construction Contract Documents**—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract. See also definition of “Front-End Construction Contract Documents” below.
12. **Construction Contract Price**—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
13. **Construction Contract Times**—The number of days or the dates by which Contractor must: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
14. **Construction Cost**—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner’s costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
15. **Constructor**—Any person or entity (not including the Engineer, its employees, agents, representatives, or Subconsultants, or Engineer’s Subcontractors), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner’s work forces, utility companies, other contractors, construction managers, design-builders, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.

16. Contractor—The entity or individual with which Owner enters into a Construction Contract.
17. Documents—All documents expressly identified as deliverables in this Agreement, whether in printed or Electronic Document form, required by this Agreement to be provided or furnished by Engineer to Owner. Such specifically required deliverables may include, by way of example, Drawings, Specifications, data, reports, building information models, and civil integrated management models.
18. Drawings—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. Effective Date—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. Electronic Document—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
21. Electronic Means—Electronic mail (e-mail), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Agreement. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.
22. Engineer—The individual or entity named as such in this Agreement.
23. Engineer's Subcontractor—An individual, firm, vendor, or other entity having a contract with Engineer to furnish general services, equipment, or materials with respect to the Project as an independent contractor.
24. Field Order—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
25. Front-End Construction Contract Documents—Those Construction Contract Documents whose primary purpose is to establish legal and contractual terms and conditions, typically including the Owner-Contractor agreement, bonds, general conditions, and supplementary conditions. The term excludes the Drawings and Specifications, and any Construction Contract Documents delivered or issued after the effective date of the Construction Contract.
26. Laws and Regulations; Laws or Regulations—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
27. Owner (City of Pittsburg, KS)—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.

28. **Project**—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
29. **Record Drawings**—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
30. **Resident Project Representative**—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of the RPR.
31. **Samples**—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
32. **Shop Drawings**—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
33. **Site**—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
34. **Specifications**—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
35. **Subconsultant**—An individual, design firm, consultant, or other entity having a contract with Engineer to furnish professional services with respect to the Project as an independent contractor.
36. **Subcontractor**—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
37. **Submittal**—A written or graphic document, prepared by or for Contractor, which the Construction Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Construction Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Construction Contract Documents. Change Proposals, Change Orders, Claims, notices,

Applications for Payment, and requests for interpretation or clarification are not Submittals.

38. Substantial Completion—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
39. Supplier—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
40. Total Project Costs—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties and private utilities (including relocation if not part of Construction Cost), Owner’s costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.
41. Underground Facilities—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
42. Work—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
43. Work Change Directive—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.
44. KDHE – Kansas Department of Health and Environment
45. Frontenac – City of Frontenac, Kansas
46. Sugar Creek Facility – Sugar Creek Packing Company, 1600 W McKay, St. Frontenac, KS
47. FEMA – Federal Emergency Management Agency
48. KDWPT – Kansas Department of Wildlife, Parks and Tourism

- 49. EPA – Environmental Protection Agency
- B. Terminology
 - 1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8—EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits to Agreement

The following exhibits are incorporated by reference and included as part of this Agreement:

- A. Exhibit A, Engineer’s Services.
- B. Exhibit B, Deliverables Schedule.
- C. Exhibit C, Amendment to Owner-Engineer Agreement (form).
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
- E. Exhibit E, EJCDC® C-626, Notice of Acceptability of Work (form).
- F. Exhibit F, Electronic Documents Protocol (EDP).
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution (not applicable).
- I. Exhibit I, Limitations of Liability.
- J. Exhibit J, Payments to Engineer for Services and Reimbursable Expenses.

8.02 Total Agreement

- A. This Agreement (which includes the exhibits listed above) constitutes the entire contractual agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit C to this Agreement.

8.03 Designated Representatives

- A. With the execution of this Agreement, Engineer and Owner shall each designate a specific individual to act as representative under this Agreement. Such an individual must have authority to transmit instructions, receive information, and render decisions with respect to this Agreement on behalf of the party that the individual represents.

8.04 Engineer's Certifications

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;

3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

8.05 Conflict of Interest

- A. Nothing in this Agreement will be construed to create or impose any duty on the part of Engineer that would be in conflict with Engineer's paramount obligations to the public health, safety, and welfare under the professional practice requirements governing Engineer, its Subconsultants, and all licensed professionals employed by Engineer or its Subconsultants.
- B. If during the term of this Agreement a potential or actual conflict of interest arises or is identified:
 1. Engineer and Owner together will make reasonable, good faith efforts to avoid or eliminate the conflict of interest; to mitigate any adverse consequences of the conflict of interest; and, if necessary and feasible, to modify this Agreement to address the conflict of interest and its consequences, such that progress under the Agreement may continue.
 2. Such efforts will be governed by applicable Laws and Regulations and by any pertinent Owner's policies, procedures, and requirements (including any conflict of interest resolution methodologies) provided to Engineer under Paragraph 2.04.A of this Agreement.

This Agreement's Effective Date is **June 23, 2020**

Owner:

City of Pittsburg, KS

(name of organization)

By: _____

(individual's signature)

Date: _____

(date signed)

Name: Dawn McNay

(typed or printed)

Title: Mayor

(typed or printed)

Attach evidence of authority to sign.

Attest: _____

(individual's signature)

Title: City Clerk

(typed or printed)

Address for giving notices:

201 W 4th St

Pittsburg, KS 66762

Designated Representative:

Name: Daron Hall

(typed or printed)

Title: City Manager

(typed or printed)

Address:

201 W 4th St

Pittsburg, KS 66762

Phone: 620-240-5123

Email: Daron.hall@pittks.org

Engineer:

Earles Engineering & Inspection, Inc

(name of organization)

By: _____

(individual's signature)

Date: _____

(date signed)

Name: Peter W Earles

(typed or printed)

Title: CEO

(typed or printed)

Attach evidence of authority to sign.

Attest: _____

(individual's signature)

Title: President/ CFO

(typed or printed)

Address for giving notices:

105 W 7th St

Pittsburg, KS 66762

Designated Representative:

Name: Peter W Earles, PE

(typed or printed)

Title: CEO

(typed or printed)

Address:

105 W 7th St

Pittsburg, KS 66762

Phone: 785-819-0017 (cell)

Email: earlesinc@earleseng.com

EXHIBITS TO AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

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APPENDIX 1: REIMBURSABLE EXPENSES SCHEDULE

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Article 1 of the Agreement, Services of Engineer, is supplemented to include the following provisions:

Baseline Information: Owner has furnished the following Project information to Engineer as of the Effective Date. Engineer’s scope of services has been developed based on this information. As the Project moves forward, some of the information may change or be refined, and additional information will become known, resulting in the possible need to change, refine, or supplement the scope of services.

Owner further agrees to obtain a memorandum of understanding from both Frontenac and Sugar Creek on their intentions as far as being part of the WWTP and their future growth intentions and timing.

Project Title: Pittsburg Wastewater Treatment Plant

Type and Size of Facility: 5.3 MGD

Description of Improvements: Complete a preliminary and final design plans for the construction of a new wastewater treatment plant

Expected Construction Start: 4/15/2022

Prior Studies, Reports, Plans:

- Provide KDHE Process Design Report
 - Work with staff to obtain funding
 - Meet with Staff and finalize the treatment plant equipment and process system
 - Process System
 - Sugar Creek Pump Station and Force Main -
 - Headworks
 - Grit removal
 - Grit Collection
 - Clarifier equipment
 - UV disinfection equipment
 - Sludge Handling
 - Screw Press
 - Storage

- Reuse of existing facilities
 - I&I flow
 - Short Term
 - Long Term
- Create Preliminary Construction Plans
 - Survey
 - WWTP plant both existing and new location
 - Write Easements
 - Sugar Creek Pump Station and Force Main location
 - Write Easements
 - Provide 35% Design Drawings for review
 - Provide new Construction Estimate
 - Projected operational costs
 - Provide Proposed Rate Structure
- Create Final Construction Plans
 - Provide 50% drawings for staff review
 - Provide 75% drawings for Staff and KDHE review
 - Provide 90% drawings for staff review
 - Provide 100% drawings for staff and KDHE review
 - Obtain all necessary permits
 - KDHE plan approval
 - KHDE NOI permit
 - FEMA Permit (if Required)
 - Corps of Engineers Permit (if Required)

Facility Location(s): Pittsburg, KS

Current Project Estimate: \$40,000,000.00

Funding Sources: SRF Loan and others yet to be determined

Known Design Standards: Varies depending on final process design

Known Project Limitations: Flood Zones

Project Assumptions: Project will be constructed just north of existing plant

Other Pertinent Information:

Engineer shall provide Basic and Additional Services as set forth below.

ARTICLE 1—BASIC SERVICES

1.01 Management of Engineering Services

- A. All phases of Engineer's services will include management of Engineer's Project-specific responsibilities, including but not limited to the following management tasks, whether separately tracked and itemized or included as being incidental to other phase and scope task items.
 1. Develop and submit an Engineering Services Schedule. The Engineering Services Schedule will:
 - a. be consistent with and serve as a supplement to the Schedule of Deliverables set forth in Exhibit B.
 - b. be updated on a regular basis, and as required to reflect any programmatic decisions by Owner.

Exhibit A—Engineer's Services.

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- c. include, but not be limited to, an anticipated sequence of tasks; estimates of task duration; interrelationships among tasks; milestone meetings and submittals; anticipated schedule of construction; and other pertinent Project events.
- 2. Develop and submit detailed work plans from Exhibit A tasks.
- 3. Coordinate services within Engineer's internal team, and with Subconsultants and Engineer's Subcontractors.
- 4. Prepare for and participate in meetings with consultants and contractors working on other parts of the Project that may affect, or be affected by, Engineer's services or resulting construction.
- 5. Prepare and submit **monthly** engineering services progress reports to the Owner. Include summary of services performed in period, expected progress in next period, percent completion of current tasks, and a description of major issues or concerns. Engineer will present to Owner's governing body as requested.
- 6. Special Invoicing: Invoicing will be based on percentage complete of various stages of work as indicated on the standard pay voucher attached in Exhibit J
- 7. Conduct ongoing management tasks, including:
 - a. Maintaining communications records and files pertaining to or arising from Engineer's services;
 - b. Assisting with contract service agreements with SugarCreek and Frontenac;
 - c. Assisting with pretreatment permits based on process design
 - d. With respect to Engineer's services and other directly relevant parts of the Project, prepare for and participate in periodic progress meetings with Owner to discuss progress, schedule, budget, issues, potential problems and their resolution; and
 - e. Preparing agendas prior to and minutes following all Engineer-led meetings.
- B. In all phases of Engineer's services, Engineer shall prepare draft and final Drawings in accordance with Engineer's CAD standard, in consultation with Owner's staff.
- C. The source documents for the draft and final Specifications in all phases of Engineer's services will be Engineer's standard specifications, unless otherwise mutually agreed upon by the parties.

1.02 Study and Report Phase

- A. Engineer shall:
 - 1. Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.
 - a. If Owner has already identified one or more potential solutions to meet its Project requirements, then proceed with the study and evaluation of the Owner-identified potential solutions.
 - b. If Owner has not identified specific potential solutions for study and evaluation, then assist Owner in determining whether Owner's requirements, and available data, reports, plans, and evaluations, point to a single potential solution for

Exhibit A—Engineer's Services.

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Engineer's study and evaluation, or are such that it will be necessary for Engineer to identify, study, and evaluate multiple potential solutions.

- c. If it is necessary for Engineer to identify, study, and evaluate multiple potential solutions, then identify various alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree that some other specific number of alternatives should be identified, studied, and evaluated.
2. Identify potential solution(s) to meet Owner's Project requirements, as needed.
3. Study and evaluate the potential solution(s) to meet Owner's Project requirements.
4. Visit the Site, or potential Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.
5. Provide preliminary site layout and floodplain study.
6. Assess initially available Project information and data, including the Baseline Information set forth at the beginning of this Exhibit A.
7. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Project-related information and data, for Engineer's use in the study and evaluation of potential solution(s) to Owner's Project requirements, and preparation of a related report.
8. After consultation with Owner, recommend the solution(s) which in Engineer's judgment meet Owner's requirements for the Project.
9. Identify, consult with, and analyze requirements of authorities having jurisdiction to permit or approve construction or operation of the portions of the Project to be designed or specified by Engineer, including but not limited to impacts and mitigating measures identified in previously prepared environmental assessments for the Project provided to the Engineer or being concurrently prepared for Owner by others.
10. Advise the Owner of any need for Owner to provide data or services of the types described in Article 2 of the Agreement, for use in Project design, or in preparation for Contractor selection and construction.
11. Assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface conditions at the Site; innovative design, contracting, or procurement strategies; project delivery method; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner's facilities. The subject matter of this paragraph will be referred to in Exhibit A as "Project Strategies, Technologies, and Techniques."
12. Assist Owner in identifying opportunities for enhancing the sustainability of the Project, and pursuant to Owner's instructions, plan for the inclusion of sustainable features in the design.
13. Review with Owner the thresholds established in applicable codes, standards, and design criteria specifically governing the ability of the proposed facilities or improvements to perform, and to absorb or avoid damage without suffering complete or substantial failure. Assist with EPA plant design criteria for local limit calculations. As part of the review, identify additional risk assessment studies or tools that are available to evaluate the susceptibility of the facilities or improvements to natural and man-made

events beyond the applicable established thresholds. Upon Owner request, as an additional service, perform additional risk assessment studies or tools to further evaluate system resiliency beyond the applicable established thresholds.

14. Utilities, including Underground Facilities
 - a. Review any utility mapping and surveys and other utilities documentation made available by Owner. Take note of observable utilities during Site visit.
 - b. Identify, in a preliminary manner and to the extent determinable by such mapping or other information provided by Owner, and by observations at the Site, those utilities (whether above-ground utilities of any type, or Underground Facilities) likely to be affected by the Project construction and additional utility facilities or extensions that will be needed to serve the Project.
 - c. If the impact on existing utilities or the need for additional utility facilities or extensions cannot reasonably be determined in a preliminary manner from mapping or other information provided by Owner, or such information was not available from Owner, then assist Owner in evaluating the need to either obtain additional utility mapping and utility documentation during the Study and Report Phase, or undertake other alternative approaches and contingencies to account for utility uncertainties in this phase.
 - d. Advise Owner of additional utility documentation and coordination needed during the design and construction phases to adequately assess, mitigate, and manage the impact of the Project (including any additional utility facilities or extensions needed to serve the Project) on existing utilities.
15. Inquire regarding survey methodologies and technologies that would aid in addressing Owner's Project requirements. Develop a scope of work and survey limits for any topographic and other surveys necessary for design. For recommended survey deliverables, specify a) required technical specifications; b) pertinent datum; c) survey limits, and d) formats of deliverables
16. Prepare a KDHE Process Design Report (the "KDHE Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and Engineer's recommended solution(s).
 - a. For each recommended solution, Engineer will separately tabulate Total Project Cost, itemizing those items and services included within the definition of Total Project Costs.
 - b. For each recommended solution, Engineer will provide an estimate of total construction cost including operations and maintenance.
 - c. Engineer will meet with Owner to discuss the draft Report and receive Owner's comments.
17. Perform or provide the following other Study and Report Phase tasks or deliverables:
 - a. Prepare the KDHE Process Design Report for KDHE approval
 - b. Prepare a preliminary Design Report for the Sugar Creek and Frontenac Pump Station and Force Main

18. Furnish the Report and any other Study and Report Phase deliverables to Owner pursuant to the requirements of the Deliverables Schedule in Exhibit B, and review the deliverables with Owner.
 19. Revise the Report and any other Study and Report Phase deliverables in response to Owner's comments, as appropriate, and submit revised deliverables pursuant to the Deliverables Schedule.
- B. Engineer's services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner and Owner has approved the final Report (as revised) and any other Study and Report Phase deliverables.

1.03 Preliminary Design Phase

- A. After acceptance by Owner of the Report and any other Study and Report Phase deliverables selection by Owner of a recommended solution; issuance by Owner of any instructions for use of Project Strategies, Technologies, and Techniques, or for inclusion of sustainable features in the design, or enhanced resiliency of the design; indication by Owner of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner; and any necessary changes, refinements, and supplementation of the Baseline Information set forth at the beginning of this Exhibit A, Engineer and Owner shall discuss, resolve, and document in writing any necessary revisions to Engineer's scope of services, compensation (through application of the provisions regarding Additional Services, or otherwise), and the time for completion of Engineer's services, resulting from the selected solution, related Project Strategies, Technologies, or Techniques, sustainable design and resiliency instructions, specific modifications to the Project, or changes, refinements, or supplementation of the Baseline Information.
- B. Upon written authorization from Owner, Engineer shall:
1. Review and assess all available Project information and data, including any pertinent reports or studies (whether prepared by Engineer or others) and any related instructions from Owner.
 2. Based on the threshold review and assessment of available information and data, advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer any additional information and data, for Engineer's use in the preparation of a Preliminary Design Phase.
 3. Prepare a Preliminary Design Plans in the KDHE approved format.
 4. The Preliminary Design Plans will consist of final design criteria, preliminary drawings, a preliminary list of expected specifications, and written descriptions of the Project. The Preliminary Design Plans will consider the following matters to the extent applicable to the Project and as necessary to establish the basis of design for proceeding to final design and construction:
 - a. The Project concept, intent, performance criteria, desired outcomes, Owner's standards and Owner directed improvements and facility elements as established in the Study and Report Phase and as expressly set forth in the Baseline Information section of this Exhibit A (collectively the "Project Goals").
 - b. Recommended appropriate design criteria for each primary portion and significant discipline of the design necessary to address the Project Goals.

- c. Site conditions and characterization as known at the time of, or to be determined during, the Preliminary Design Phase, including topography; subsurface information; Constituents of Concern; cultural, historical, and archaeological resources at the Site; wetlands information; and evaluations of flora and fauna that may be affected by the Project.
 - d. The time schedule for completion of the Project in accordance with Project Goals, including any recommended changes to the time required to complete the Final Design Phase (as set forth in Exhibit B, Deliverables Schedule) and estimated schedule(s) for construction.
 - e. Identification of major items of materials and equipment, rationale for selection with consideration of quality, suitability, pricing, sourcing, regulatory, and bidding issues affecting recommended selection.
 - f. Revised opinions of probable Construction Cost.
 - g. The impact of Project Strategies, Technologies, and Techniques, sustainable features, and enhanced resiliency selected by Owner for inclusion in the Project on the Project Goals, schedule and probable Construction Cost, including impact of multiple prime construction contracts, separate procurement of materials or equipment, and other alternate project delivery methods when the Project Goals necessitate and Owner authorizes;
 - h. Construction Phase quality assurance and quality control needs affecting development of Drawings and Specifications and other Final Design and Bidding Phase documents.
 - i. The effect of permits and authorizations by other entities and utility coordination needs on the Project.
 - j. Other matters and information pertinent to addressing the Project Goals.
5. In preparing the Preliminary Design Plans, use any specific applicable Project Strategies, Technologies, and Techniques authorized by Owner during or following the Study and Report Phase, and include sustainable features and enhanced resiliency, as appropriate, pursuant to Owner's instructions.
 6. Visit the Site as needed to prepare the Preliminary Design Plans.
 7. If at any point in the Preliminary Design Phase it becomes apparent to Engineer that additional reports, data, information, or services of the types described in Article 2 are necessary, then so advise Owner, and assist Owner in obtaining such reports, data, information, or services.
 8. Above-Ground Utilities
 - a. Review above-ground utilities information obtained from Owner and from observations at the Site.
 - b. Make recommendations regarding any further identification, investigation, and mapping of above-ground utilities at or adjacent to the Site, for Engineer's design purposes or otherwise.
 - c. Account for above-ground utilities, based on available information, when advancing design during the Preliminary Design Phase.

9. Underground Facilities

- a. Review Underground Facilities data furnished by Owner. Assist Owner in reducing and managing risks associated with Underground Facilities by working together with Owner to jointly establish a procedure (“Underground Facilities Procedure”) for the further identification, investigation, and mapping of Underground Facilities at or adjacent to the Site,
- b. Such Underground Facilities Procedure must take into account the Site and the nature of the Project.
- c. Use the Underground Facilities Procedure to aid in the performance of design services:
 - 1) Account for Underground Facilities, based on available information, when advancing the design during the Preliminary Design Phase.
 - 2) The Underground Facilities Procedure will include a plan to keep Underground Facilities information current as Engineer proceeds with the provision of design services, and to add new or relocated Underground Facilities information to the base utility or Site drawings.
 - 3) To manage the potential impact of design changes on Underground Facilities, Engineer shall work together with Owner to modify or reapply the Underground Facilities Procedure as the design progresses and changes.

10. Mitigation of Utilities Conflicts

- a. Identify potential conflicts between the Project (including existing and new facilities and structures) and above-ground utilities and Underground Facilities as reviewed in Exhibit A Paragraphs 1.03.B.8 and 9 above, and advise Owner regarding the need for resolution of such conflicts with utility and Underground Facilities owners and permit agencies. Identify the potential need for the relocation of existing above-ground utilities and Underground Facilities.
- b. Update the Underground Facilities Procedure as necessary for any Underground Utilities conflicts and relocations.
- c. Working together with Owner, jointly identify which specific parties or other entities will be responsible for implementation of the various specific parts of the Underground Facilities Procedure (including those parts that address resolution of Underground Facilities conflicts), and for resolution of above-ground utilities conflicts. Such identification will take into account Owner’s authority and standing, as owner of the Site, with respect to Underground Facilities and above-ground utilities.
 - 1) To the extent that Owner and Engineer agree that in addition to performing the design-related obligations set forth in Exhibit A Paragraphs 1.03.B.8 and 9, Engineer will also implement any non-design part of the Underground Facilities Procedure (including resolution of Underground Facilities conflicts), or undertake resolution of above-ground utilities conflicts, such additional duties will be Additional Services under Article 2 of this Exhibit A.

11. Surveys, Topographic Mapping, and Utility Documentation
 - a. Coordinate with Owner for the necessary field surveys, topographic mapping, and utility documentation required for Engineer's design purposes, or by the Underground Facilities Procedure.
 - b. If no scope of work and procedure for utility documentation has been established, selected, or authorized, then at a minimum Engineer will contact utility owners and obtain available information. Except as otherwise provided in this Agreement, Owner acknowledges that the information gathered from utility owners may be incorrect, incomplete, outdated, or otherwise flawed, and as to Engineer, bidders, and Contractor, the Owner accepts all associated risks. Owner reserves all associated rights as to recourse against the sources of such flawed information and against third parties.
12. Prepare initial draft of a comprehensive permit document that identifies Owner's permit duties, Engineer's permit duties, and Contractor's permit duties, and the schedule for permitting activities.
13. Continue to assist Owner with Project Strategies, Technologies, and Techniques that Owner has chosen to implement in Exhibit A Paragraph 1.03.A.
14. Obtain Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's Bidding/Proposal Documents and Front-End Construction Contract Documents.
 - a. Also obtain copies of Owner's standard Bidding/Proposal Documents and Front-End Construction Contract Documents and any other related documents or content for Engineer to include in drafts of the Project-specific Bidding/Proposal Documents and Front-End Construction Contract Documents, when applicable.
 - b. Review Owner's instructions regarding procurement, bidding and contracting of construction services with respect to effects on the Project design, schedule and construction and address as needed in the Preliminary Design Phase deliverables.
15. Prepare the Preliminary Design Plans. These plans will consist of, as appropriate, separate or combined submittals in whole or summary, the Preliminary Design Phase documents listed in Exhibit A Paragraph 1.03.B.4, and Engineer's findings and recommendations for advancing the Project to the Final Design Phase (including Engineer's findings and recommendations, if any, regarding permitting, utilities, and Underground Facilities). The submittal will be in the format of plans, or otherwise organized and assembled for ease and practicality of use.
 - a. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and on the basis of information furnished by Owner, assist Owner in tabulating the various cost categories which comprise Total Project Costs.
 - b. Engineer will meet with Owner to discuss the draft Preliminary Design Phase submittal and receive Owner's comments.

16. Furnish the Preliminary Design Plans, (which are 35% complete final plans for both the WWTP and the Sugar Creek/Frontenac Pump Station and Force Main) opinion of probable Construction and Operating and Maintenance Cost, and any other Preliminary Design Phase deliverables to Owner pursuant to the requirements of the Deliverables Schedule in Exhibit B, and review the deliverables with Owner.
 17. Revise the Plans and any other deliverables in response to Owner's comments, as appropriate, and submit revised deliverables pursuant to the Deliverables Schedule.
- C. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner, and Owner has approved, the final Preliminary Design Phase (as revised) and associated documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

1.04 Final Design Phase

- A. After acceptance by Owner of the Preliminary Design Phase and any other Preliminary Design Phase deliverables; issuance by Owner of any instructions for specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner; and any necessary changes, refinements, and supplementation of the Baseline Information set forth at the beginning of this Exhibit A, Engineer and Owner shall discuss, resolve, and document any necessary revisions to Engineer's scope of services, compensation (through application of the provisions regarding Additional Services, or otherwise), and the time for completion of Engineer's services, resulting from specific modifications to the Project, or changes, refinements, or supplementation of the Baseline Information.
1. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is one. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.
 2. If more than one prime construction contract is to be awarded for the Work designed or specified by Engineer, then Owner shall define and set forth (in an exhibit to this Agreement, or in a subsequent document) the duties, responsibilities, and limitations of authority of a person or entity that will have authority and responsibility for coordinating the activities among the various prime Contractors, and any resulting changes in the duties, responsibilities, and authority of Engineer.
 3. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime construction contract, or if Engineer's services are to be separately sequenced with the work of one or more separate design professional consultants or prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding/Proposal, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable under such separate prime construction contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such construction contracts is to proceed concurrently.
- B. Upon written authorization from Owner, Engineer shall prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor, in accordance with the Preliminary Design Phase (as revised) and

other Preliminary Design Phase deliverables. As part of the preparation of the Drawings and Specifications, Engineer shall prepare interim drafts and final Drawings and Specifications as follows, pursuant to the Deliverables Schedule in Exhibit B:

1. First Final Design Phase draft of all Drawings and Specifications.
 2. Second Final Design Phase draft of all Drawings and Specifications, addressing Owner comments and including appropriate design advancement.
 3. Final Drawings and Specifications that address Owner comments; complete the design; are suitable for estimating and pricing by prospective Contractors; and are complete and ready for construction.
- C. In preparing the Specifications (and any bidding, contract, or other documents that are part of Engineer's scope of services), Engineer shall obtain from Owner or Owner's legal counsel any relevant constraints such as requirements for use of domestic steel and iron, other domestic purchasing requirements, statutory restrictions on utilizing proprietary specifying methods, and the like, and comply with or account for such constraints in drafting Specifications, Bidding/Proposal Documents, and other Project documents.
- D. Engineer shall prepare or assemble draft Bidding/Proposal Documents and Front-End Construction Contract Documents as follows:
1. Such documents will be based on the EJCDC Construction Documents, and on the specific bidding or Contractor selection-related instructions and forms, contract forms, text, or other content received from Owner.
 2. When Engineer is required to use other than the EJCDC Construction Documents, then as required in the Preliminary Design Phase Owner will furnish to Engineer a copy of the required documents to be used for the Project's Bidding/Proposal Documents and Front-End Construction Contract Documents. Prior to the first Final Design Phase submittal, Engineer will review the bidding and contracting documents furnished by Owner and provide comments to Owner. Engineer will meet with Owner to discuss Engineer's comments. Owner will consider Engineer's recommendations to revise Owner's documents for the Project.
 3. Engineer will furnish to Owner, for review by Owner's legal counsel, the draft Bidding/Proposal Documents and Front-End Construction Contract Documents. Owner and Owner's legal counsel must transmit to Engineer, in a timely manner, one coordinated set of comments and revisions to the draft documents.
- E. During the Final Design Phase the Engineer shall continue to account for above-ground utilities and Underground Facilities as the design advances and is finalized. This may include:
1. performing the services assigned to Engineer under the Underground Facilities Procedure described in Exhibit A Paragraph 1.03 above, including but not limited to the design-related tasks in Exhibit A Paragraph 1.03.B.9.
 2. addressing required and proposed activities or mitigations identified in the analysis of utilities and by the Underground Facilities Procedure as having an impact on the final design, and considering such in preparing the Drawings and Specifications.
- F. Engineer shall perform or furnish the following other Final Design Phase services:
1. Visit the Site as needed to assist in preparing the final Drawings and Specifications.

2. Assist with or prepare applications for permits and approvals, as follows:
 - a. Update comprehensive permit document created in Preliminary Design Phase for Final Design detail.
 - b. Prepare the following applications for Owner's submittal to authorities having jurisdiction over the construction or operation of the Project.
 - c. Confer with Owner regarding revisions, if any, to the application(s), and make appropriate revisions to the application(s) for Owner's resubmittal to the authority having jurisdiction.
 - d. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of the authorities having jurisdiction listed above, including applications for review or approval of the final design.
 - e. Identify and indicate in the Construction Contract Documents the permits and approvals for which Contractor will be responsible, including work permits, building permits, and other permits and approvals that will be Contractor's responsibility; and, in addition, indicate those permits initially obtained by Owner for which Contractor will be a co-permittee, together with associated requirements.
 - f. Unless expressly indicated otherwise, Engineer's scope and budget includes attending one meeting or conference call with each permit and approval-issuing agency to discuss the Project and receive the agency's comments on the application.
 - g. Engineer does not guarantee issuance of any required permit or approval.
 - h. Fees charged by authorities having jurisdiction for such permits or approvals are the responsibility of Owner.
3. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost. Furnish to Owner an updated opinion of probable Construction Cost with the interim and final deliverables of the Drawings and Specifications.
4. After consultation with Owner, include in the Front-End Construction Contract Documents any Electronic Document Protocol addressing specific protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website.
5. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.
6. Review the preliminary schedule for the Construction Phase and advise Owner when initial understanding of the Construction Contract Times must or should be revised, and furnish Owner with recommendations on revisions to the proposed Construction Contract Times.
7. Engineer's project manager and other appropriate staff will participate in the following meetings and conference calls:
 - a. 50% draft design review meeting at Owner's office.

- b. 75% draft design review meeting at Owner's office.
 - c. 90% draft design review meeting at Owner's Office
 - d. 100% draft design review meeting at Owner's Office
 - e. Engineer will prepare and distribute minutes of each such meeting and conference call, indicating attendees, topics discussed, decisions made, and action items for follow-up.
- 8. Perform or provide the following other Final Design Phase activities or deliverables:
 - a. Construction and Operational Cost Estimates and specifications
- G. Engineer shall complete the Final Design Phase as follows:
 - 1. Pursuant to the requirements of the Deliverables Schedule in Exhibit B, furnish for review by Owner, its legal counsel, and other advisors, the final Drawings and Specifications (as set forth in Exhibit A Paragraph 1.04.B.3 above); assembled drafts of other Construction Contract Documents including the draft Front-End Construction Contract Documents; the draft Bidding/Proposal Documents; the most recent opinion of probable Construction Cost; and any other Final Design Phase deliverables, and review the deliverables with Owner.
 - 2. Revise the final Design Phase deliverables in response to Owner's comments, as appropriate, and submit revised deliverables pursuant to the Deliverables Schedule.
 - 3. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications; assembled drafts of the Front-End Construction Contract Documents; the draft Bidding/Proposal Documents; and any other Final Design Phase deliverables, as revised.

1.05 Bidding/Proposal Phase

- A. After acceptance by Owner of the final Drawings and Specifications; assembled drafts of other Construction Contract Documents, including the draft Front-End Construction Contract Documents; the draft Bidding/Proposal Documents; the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and any other Final Design Phase deliverables, and upon written authorization by Owner to proceed, Engineer shall:
 - 1. Assist Owner in advertising for and obtaining bids or proposals for the Work; assist Owner in issuing assembled Bidding/Proposal Documents and proposed Construction Contract Documents to prospective contractors; if applicable, maintain a record of prospective contractors to which documents have been issued; attend pre-bid conferences, if any; and receive and process contractor deposits or charges, if any, for the issued documents.
 - a. Local Paper
 - b. Plan Houses
 - c. City web page
 - 2. Prepare and issue addenda as appropriate to clarify, correct, or change the issued documents.

3. If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related documents (or requests for proposals or other construction procurement documents) prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of Exhibit A Paragraph 2.01.B.2.
4. Attend the bid opening; prepare bid tabulation sheets; and assist Owner in evaluating bids or proposals, assembling final Construction Contracts for the Work for execution by Owner and Contractor, and in preparing notices of award to be issued by Owner for such contracts.
5. Provide information or assistance needed by Owner in the course of any review of bids, proposals, or negotiations with prospective contractors.
6. Consult with Owner as to the qualifications of prospective contractors.
7. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
9. The Bidding/Proposal Phase will be considered complete upon award of Construction Contracts for the Work and commencement of the Construction Phase, or upon cessation of negotiations with prospective contractors.

1.06 Construction Phase

- A. After completion of the Final Design Phase and concurrent with the Bidding/Proposal Phase, and after issuance by Owner of any instructions for specific modifications or changes in the scope, extent, character, design, schedule, number of prime construction contracts, and other construction requirements of the Project during the Construction Phase desired by Owner, the Engineer and Owner shall discuss, resolve, and document any necessary revisions to Engineer's scope of services or compensation (through application of the provisions regarding Additional Services, or otherwise), or the time for completion of Engineer's services, resulting from specific modifications to the Project.
 1. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A Paragraph 1.06, as duly modified. With the exception of such expressly required services, Engineer shall have no design, Submittal (including Shop Drawing) review, or other obligations during construction, and Owner assumes all responsibility for providing or arranging for all other necessary Construction Phase administrative, engineering, and professional services.
 2. Owner waives all claims against Engineer and its officers, directors, members, partners, agents, employees, and Subconsultants, and Engineer's Subcontractors, that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A. Notwithstanding the foregoing waiver, Engineer shall be responsible for any professional opinions and interpretations provided by Engineer to Owner during the Construction Phase or Post-Construction Phase, including interpretations or clarifications of the Construction Contract Documents.

- B. Upon successful completion of the Bidding/Proposal Phase, and upon written authorization from Owner, Engineer shall provide the following services:
1. General Administration of Construction Contract: Consult with Owner and act as Owner's representative as provided in this Agreement and the Construction Contract. Unless otherwise set forth in the scope of Basic Services (as duly modified), the extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC Standard General Conditions of the Construction Contract or other construction general conditions specified in this Agreement. Except as otherwise provided in the Construction Contract, Owner's communications to Contractor will be issued through Engineer.
 - a. If the responsibilities of Engineer as set forth in the Construction Contract are greater than those Construction Phase services expressly required of Engineer in Exhibit A Paragraph 1.06, as duly modified, then Owner shall either (1) expand the scope of the Construction Phase services to match those of the Construction Contract, and compensate Engineer for any related increases in the cost to provide Construction Phase services, pursuant to the provisions for compensating Additional Services, or (2) identify a qualified individual or entity (other than Engineer) responsible for the additional responsibilities in the Construction Contract.
 - b. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, or if Owner requires Engineer's services for construction that extends longer than the anticipated Construction Contract Times, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services, pursuant to the provisions for compensating Additional Services.
 - c. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional.
 2. Field Office: Engineer and Resident Project Representative will be based in engineers Pittsburgh office and will use this as their field office.
 3. Resident Project Representative (RPR): Provide the services of an RPR at the Site to assist Engineer and to provide more extensive observation of Contractor's Work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.
 4. Earles Engineering staff will complete all field testing as required during the construction as part of the RPR portion of the project. All personnel are ACI certified material testers.
 5. Pre-Construction Conference: Participate in a pre-construction conference prior to commencement of Work at the Site; prepare and distribute agenda for the conference and prepare and distribute minutes of such conference.
 6. Electronic Transmittal Protocols: If the Construction Contract does not establish protocols for transmittal of Electronic Documents by Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.

7. Original Documents: If requested by Owner to do so, maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
8. Schedules: Receive, review, and, and, subject to the criteria of the Construction Contract, determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the progress schedule, schedule of submittals, and schedule of values. Advise Contractor in writing of Engineer's comments or acceptance of schedules.
 - a. Schedules will be acceptable to Engineer as to form and substance:
 - 1) Progress Schedule: if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 - 2) Contractor's Schedule of Submittals: if it provides a workable arrangement for reviewing and processing the required Submittals.
 - 3) Contractor's Schedule of Values: if it provides a reasonable allocation of the Contract Price to the component parts of the Work.
9. Baselines and Benchmarks: As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
10. Permits: Provide Owner with copies of technical information and supporting data previously obtained or developed by Engineer for Owner's use, or for Owner to provide to Contractor, in obtaining required permits and licenses delegated to Contractor by Owner.
11. Visits to Site and Observation of Construction: In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of the Work, as Engineer deems necessary, to observe as an experienced and qualified design professional, the progress of Contractor's executed Work. Such visits and observations by Engineer, including its RPR, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by its RPR, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work. Engineer will

make a report of Engineer's visit, summarizing Engineer's general observations and any significant findings.

- b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to by this Agreement and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer will not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor will Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.
12. Defective Work: If, on the basis of Engineer's observations or as indicated in documentation available to Engineer, Engineer believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, Engineer will promptly issue written notice to Contractor (with copy to Owner) of such defective Work. Such notice will communicate the scope, extent (to Engineer's understanding) of defect, and associated provisions of the Construction Contract Documents.
 - a. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting the defective Work in accordance with the provisions of the Construction Contract Documents. Engineer shall give notice to Contractor regarding whether the defective Work should be repaired, replaced, or will be accepted by Owner.
 - b. However, Engineer's authority to provide this information to Owner or Engineer's decision to exercise or not exercise such authority will not give rise to a duty or responsibility of the Engineer to Contractors, Subcontractors, material and equipment suppliers, their agents or employees, or any other person(s) or entities performing any of the Work, including but not limited to any duty or responsibility for Contractors' or Subcontractors' safety precautions and programs incident to the Work.
13. Compatibility with Design Concept: If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.

14. Clarifications and Interpretations: Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.
15. Non-reviewable Matters: If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (a) the performance or acceptability of the Work under the Construction Contract Documents, (b) the design (as set forth in the Drawings, Specifications, or otherwise), or (c) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
16. Field Orders: Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
17. Change Orders and Work Change Directives: Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
18. Change Proposals and Claims
 - a. Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal.
 - b. Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.
19. Differing Site Conditions: Respond to any notice from Contractor of differing site conditions, including conditions relating to Underground Facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use subject to limitations of Engineer's obligations under this Agreement.
20. Contractor's Submittals: Review and approve or take other appropriate action with respect to required Contractor Submittals, but only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Construction Contract Documents, and for compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's Submittal schedule that Engineer has accepted.

21. Substitutes and “Or-equals”: Evaluate and determine the acceptability of substitute or “or-equal” materials and equipment proposed by Contractor, but subject to the provisions of Exhibit A Paragraph 2.01.B.2.
22. Inspections and Tests
 - a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer’s review of such certificates will be for the purpose of determining whether the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.
 - b. Reply to Contractor requests for written concurrence that specific portions of the Work that are to be inspected, tested, or approved may be covered.
 - c. Issue written requests to Contractor that specific portions of the Work remain uncovered.
 - d. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
 - e. Pursuant to the terms of the Construction Contract, require additional inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
23. Contractor’s Applications for Payment: Based on Engineer’s observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
 - a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set offs) based on the provisions for set offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer’s representation to Owner, based on such observations and review, that, within the limits of Engineer’s knowledge, information and belief, Contractor’s Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor’s being entitled to such payment appear to have been fulfilled in so far as it is Engineer’s responsibility to observe the Work. In the case of unit price Work, Engineer’s recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).
 - b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor’s Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor’s Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this

Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

24. Contractor's Completion Documents: Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Exhibit A Paragraph 1.06.B.20. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents will be to check that Contractor has submitted a complete set of those documents that Contractor is required to submit.
25. Substantial Completion: Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, visit the Site in company with Owner and Contractor to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
26. Completion and Acceptability of the Work: After notice from Contractor that the Work is complete:
 - a. visit the Site with Owner and Contractor to determine if the Work is in fact complete and acceptable;
 - b. notify Contractor of any part of the Work that is found during the visit to be incomplete or defective, and subsequently confirm that Contractor has corrected any such deficiencies;
 - c. follow the procedures in the Construction Contract regarding review and response to Contractor's application for final payment and accompanying documentation; and
 - d. if Engineer is satisfied that the Work is complete and acceptable, provide a notice to Owner and Contractor using EJCDC® C-626, Notice of Acceptability of Work (attached as Exhibit E), stating that the Work is acceptable (subject to the provisions of the Notice and this Exhibit A) within the limits of Engineer's

knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.

27. Standards for Certain Construction-Phase Decisions: Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

C. Duration of Construction Phase: The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractor. If the Project involves more than one prime contract as indicated in Exhibit A Paragraph 1.04.A.1, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

1.07 Post-Construction Phase

- A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:
1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.
 2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate 12 months after the commencement of the Construction Contract's correction period.

ARTICLE 2—ADDITIONAL SERVICES

2.01 Additional Services Not Requiring Owner's Written Authorization

- A. Additional services above \$5,000.00 will require formal authorization.
- B. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit J.

1. Substantive design and other technical services in connection with Work Change Directives, Change Proposals, and Change Orders to reflect changes requested by Owner.
2. Services essential to the orderly progress of the Bidding/Proposal and Construction Phases and not wholly quantifiable prior to those Phases or otherwise dependent on the actions of prospective individual bidders or contractors and including:
 - a. making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items;
 - b. services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project;
 - c. evaluation and determination of over three items of proposed "or equals" or substitutions, proposed before award of the Construction Contract; and
 - d. providing to the Contractor or Owner additional or new information not previously prepared or developed by the Engineer for their use in applying for or obtaining required permits and licenses, in responding to agency comments on such applications, or in the administration of any such permits or licenses.
3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
5. Implement coordination of Engineer's services with other parts of the Project that are not planned or designed by Engineer or its Subconsultants, unless Owner furnished to Engineer substantive information about such other parts of the Project prior to the parties' entry into this Agreement, in the Baseline Information section of this Exhibit A, or otherwise in Exhibit A; if such substantive information has been so provided, coordination of Engineer's services will be part of Basic Services.
6. Implement the specific parts of an Underground Facilities Procedure that are assigned to Engineer, or above-ground utilities tasks that are assigned to Engineer as the Project progresses (but not including the design-related services already assigned to Engineer as a Basic Service).
7. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
8. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or RFIs, Change Proposals, or demands.
9. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.

Exhibit A—Engineer's Services.

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10. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.
11. To the extent the Project is subject to Laws and Regulations governing public or government records disclosure or non-disclosure, Engineer will comply with provisions applicable to Engineer, and Owner will compensate Engineer as Additional Services for Engineer's costs to comply with any disclosure or non-disclosure obligations beyond those identified in the Basic Services.
12. Services directly attributable to changes in Engineer's Electronic Documents obligations after the effective date of the Agreement.

2.02 Additional Services Requiring Owner's Written Authorization

- A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit J.
 1. Obtain or provide specified additional Project-related information and data to enable Engineer to complete its Basic and Additional Services.
 2. Preparation of special and customized reporting, invoicing, and related support documentation in addition to that identified to be provided under Basic Services.
 3. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
 4. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
 5. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
 6. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Exhibit A Paragraph 1.02.A.1.
 7. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
 8. Providing renderings or models for Owner's use, including development, management, and other services in support of building information modeling or civil integrated management.

Exhibit A—Engineer's Services.

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9. Undertaking investigations and studies including, but not limited to:
 - a. All-hazards risk assessments and other studies to evaluate the feasibility of enhancing the resiliency of the design;
 - b. detailed consideration of operations, maintenance, and overhead expenses;
 - c. the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;
 - d. preparation of appraisals;
 - e. with respect to proprietary systems or processes requiring licensing, providing services necessary to assist Owner in obtaining such licensing.
 - f. detailed quantity surveys of materials, equipment, and labor; and
 - g. audits or inventories required in connection with construction performed or furnished by Owner.
10. Furnishing services of Subconsultants or Engineer's Subcontractors for other than Basic Services.
11. Providing data or services of the types described in Article 2, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.
12. Providing the following services:
 - a. Services attributable to more prime construction contracts than specified in Exhibit A Paragraph 1.04.A.1.
 - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.
13. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services (Article 1 of Exhibit A).
14. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.
15. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents); preparing pre-qualification procedures and documents, and participating in pre-qualifying prospective Bidders; and preparing Construction Contract Documents for alternate bids.
16. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services.
17. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all addenda and any amendments negotiated by Owner and Contractor.

Exhibit A—Engineer's Services.

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18. Services to assist Owner in developing or modifying protocols for transmittal of Electronic Documents by Electronic Means after the effective date of this Agreement, either by revising or adapting Exhibit F to the Project or implementing other Electronic Documents protocols among Project participants.
19. Any services by Engineer in connection with Owner or Engineer providing a Document to a Requesting Party under Exhibit F Paragraph 1.01.D (see Exhibit F, Electronic Documents Protocol), or any other distribution of a Document to a third party. Such services may include but are not limited to preparing the data contained in the requested Document in a manner deemed appropriate by Engineer; creating or otherwise preparing and distributing the Document in a format necessary to respond to Owner's direction or decision to provide the Document to a requesting party, including Contractor, in a format other than that required for deliverables from Engineer to Owner; and services in connection with obtaining required releases from the third parties to which the Documents will be distributed. Compensation for these Additional Services is not contingent upon Owner's reimbursement from the requesting party.
20. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
21. Preparing Record Drawings, and furnishing such Record Drawings to Owner.
22. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
23. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
24. Preparation of operation, maintenance, and staffing manuals.
25. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
26. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
27. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
28. Preparing to serve or serving as a consultant or witness for, or producing documents for or on behalf of, Owner in any litigation, arbitration, mediation, lien or bond claim, or other legal or administrative proceeding involving the Project (but not including disputes between Owner and Engineer).
29. Overtime work requiring higher than regular rates.
30. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Exhibit A Paragraph 1.06.B.9; any type of property surveys or related engineering services needed for the transfer of interests in real property; providing construction and property surveys to replace reference points or property

Exhibit A—Engineer's Services.

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monuments lost or destroyed during construction; and providing other special field surveys.

31. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
32. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).
33. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

EXHIBIT B—DELIVERABLES SCHEDULE

Paragraphs 2.04.E, 3.02.A, and Exhibit A of the Agreement are supplemented by the following paragraph and table.

Engineer shall furnish Documents to Owner as required in Column 2 of the following table (and as further described in Exhibit A), according to the schedule in Column 4. Owner shall comment or take other identified actions with respect to the Documents as indicated in Column 2 (and as further described in Exhibit A), according to the schedule in Column 4.

Party	Action	Exhibit A Reference	Schedule
Owner	Obtain a memorandum of understanding from Sugar Creek and Frontenac on inclusion into WWTP and future growth intentions	Page 1	Within 60 days of effective date of this contract
Engineer	Submit 3 review copies of the Report for both WWTP and Sugar Creek PS & FM and other Study and Report Phase deliverables to Owner.	1.02.A.18	Within 120 days of the Effective Date.
Owner	Submit comments regarding the Reports and other Study and Report Phase deliverables to Engineer.	1.02.A.19	Within 15 days of the receipt from Engineer of the Report and other Study and Report Phase deliverables.
Engineer	Submit 3 copies of the revised Reports and other Study and Report Phase deliverables to Owner.	1.02.A.19	Within 30 days of the receipt of Owner's comments regarding the Report and other Study and Report Phase deliverables.
Engineer	Submit 3 review copies of the Preliminary Design Plans of both WWTP and Sugar Creek Pump Station and Force Main, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Owner.	1.03.B.17	Within 150 days of Owner's authorization to proceed with Preliminary Process Design Phase services.
Owner	Submit comments regarding Preliminary Design Plans, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Engineer.	1.03.B.18	Within 15 days of the receipt from Engineer of Preliminary Design Report, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables.
Engineer	Submit 3 copies of the revised Preliminary Design Plans, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Owner.	1.03.B.18	Within 30 days of the receipt of Owner's comments regarding the Preliminary Design Report, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables.
Engineer	Submit 3 copies of the 75% Final Design Phase draft of Drawings and Specifications to Owner.	1.04.B.1	Within 180 days of Owner's authorization to proceed with Final Design Phase services.

Exhibit B—Deliverables Schedule.

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Party	Action	Exhibit A Reference	Schedule
Owner	Submit comments and instructions regarding the first Final Design Phase draft of Drawings and Specifications to Engineer.	1.04.B.1	Within 30 days of the receipt of the first final Design Phase drafts of Drawings and Specifications from Engineer.
Engineer	Submit 3 copies of the 90% Final Design Phase drafts of Drawings and Specifications to Owner.	1.04.B.2	Within 90 days of the receipt of Owner's comments and instructions regarding the 75% Final Design Phase drafts of Drawings and Specifications.
Engineer	Submit 3 of copies of draft Bidding/Proposal and Front-End Construction Contract Documents, as required, and any other Final Design Phase deliverables (other than Drawings and Specifications) to Owner.	1.04.D.3; 1.04.F.8	Concurrent with submittal to Owner of the 90% Final Design Phase drafts of Drawings and Specifications.
Owner	Submit comments and instructions regarding the second Final Design Phase drafts of Drawings and Specifications to Engineer.	1.04.B.2	Within 30 days of the receipt from Engineer of the second Final Design Phase drafts of Drawings and Specifications.
Engineer	Submit 3 copies of the final, completed, pricing-ready and construction-ready Drawings and Specifications to Owner.	1.04.B.3 and 1.04.G.1	Within 90 days of the receipt of Owner's comments and instructions regarding the 90% Final Design Phase drafts of Drawings and Specifications.
Owner	Submit comments and instructions regarding the final, completed, pricing-ready and construction-ready Drawings and Specifications to Engineer.	1.04.G.2	Within 30 days of the receipt from Engineer of the final, completed, pricing-ready and construction-ready Drawings and Specifications.
Owner	Submit comments and instructions regarding drafts of Bidding/Proposal and Front-End Construction Contract Documents, and any other Final Design Phase deliverables (other than Drawings and Specifications) to Engineer.	1.04.D.3; 1.04.F.8	Concurrent with Owner's submittal of comments and instructions regarding the final, completed, pricing-ready and construction-ready Drawings and Specifications.
Engineer	Submit to Owner: 3 copies of the revised final, completed, pricing-ready and construction-ready Drawings and Specifications; and 3 of copies of assembled Bidding/Proposal and Front-End Construction Contract Documents, and any other Final Design Phase deliverables.	1.04.G.2 1.04.G.3	Within 30 days of receipt of Owner's final comments and instructions regarding the final, completed, pricing-ready and construction-ready Drawings and Specifications, the Bidding/Proposal and Front-End Construction Contract Documents, and any other Final Design Phase deliverables.
Engineer	Submit 3 copies of Bidding/Proposal Phase deliverables (if any) identified in Exhibit A Paragraph 1.05.A.9.a to Owner.	1.05.A.9.a	Within 30 days of written authorization by Owner to proceed with Bidding/Proposal Phase services.

Exhibit B—Deliverables Schedule.

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EXHIBIT C—AMENDMENT TO OWNER-ENGINEER AGREEMENT

AMENDMENT TO OWNER-ENGINEER AGREEMENT

Amendment No. [Enter Amendment Number]

Owner: **City of Pittsburg, KS**
Engineer: **Earles Engineering & Inspection, Inc**
Project: **Pittsburg Wastewater Treatment Plant**
Effective Date of Owner-Engineer Agreement: **5/26/2020**

Nature of Amendment: (Check those that apply)

- ☐ Additional Services to be performed by Engineer
- ☐ Modifications to services of Engineer
- ☐ Modifications to responsibilities of Owner
- ☐ Modifications of payment to Engineer
- ☐ Modifications to time(s) for rendering services
- ☐ Modifications to other terms and conditions of the Agreement

Description of Modifications:

[Here describe the modifications, in as much specificity and detail as needed. Use an attachment if necessary. Include cost breakdown and documentation, if applicable.]

Agreement Summary:

Original agreement amount: \$
Net change for prior amendments: \$
This amendment amount: \$
Adjusted Agreement amount: \$
Change in time for services (days or date, as applicable):

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. The Effective Date of the Amendment is **[Enter Effective Date of Amendment]**.

Owner

Engineer

(typed or printed name of organization)

(typed or printed name of organization)

By: _____
(individual's signature)

By: _____
(individual's signature)

(Attach evidence of authority to sign.)

(Attach evidence of authority to sign.)

Date: _____
(date signed)

Date: _____
(date signed)

Name: _____
(typed or printed)

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Title: _____
(typed or printed)

EXHIBIT D—DUTIES, RESPONSIBILITIES, AND LIMITATIONS OF AUTHORITY OF RESIDENT PROJECT REPRESENTATIVE

ARTICLE 1—RESIDENT PROJECT REPRESENTATIVE SERVICES

Article 1 of the Agreement, Services of Engineer, and Exhibit A, Engineer's Services, are supplemented to include Exhibit D Paragraphs 1.01, 1.02, and 1.03, as follows:

1.01 Resident Project Representative

- A. Engineer shall furnish a Resident Project Representative ("RPR") to observe progress and quality of the Work. RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions. Owner will review and approve RPR.
- B. The RPR will provide full-time representation
- C. Subject to the scope of RPR's observations of the Work, which may include field checks of materials and installed equipment, Engineer shall endeavor to identify defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, inspect, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor's work in progress, for the coordination of the Constructors' work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A Paragraph 1.06 are applicable.

1.02 Duties and Responsibilities of RPR

- A. The duties and responsibilities of the RPR are as follows:
 - 1. General: RPR's dealings in matters pertaining to the Work in general will be with Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
 - 2. Schedules: Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.
 - 3. Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.
 - 4. Safety Compliance: Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.

5. Liaison
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
6. Clarifications and Interpretations: Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor.
7. Shop Drawings, Samples, and other Submittals
 - a. Receive Samples that are furnished at the Site by Contractor.
 - b. Receive Contractor-approved Shop Drawings.
 - c. Receive other Submittals from Contractor.
 - d. Record date of receipt of Samples, Contractor-approved Shop Drawings, and other Submittals.
 - e. Notify Engineer of availability of Samples for examination, and forward Contractor-approved Shop Drawings and other Submittals to Engineer. When appropriate recommend distribution of Submittal to specified Subconsultants.
 - f. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.
8. Proposed Modifications: Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.
9. Review of Work; Defective Work
 - a. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.
 - b. Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless

not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work.

- c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.

10. Inspections, Tests, and System Start-ups

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.
- e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.
- f. Nothing in this Agreement will be construed to require RPR to conduct inspections.

11. Records

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Proposals, Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, approved Shop Drawing and Sample submittals, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Proposals, Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Upon request from Owner to Engineer, photograph or video Work in progress or Site conditions.
- d. Record and maintain accurate, up-to-date lists of the company names and points of contact for Contractors, Subcontractors, and major Suppliers of materials and equipment.
- e. Maintain records for use in preparing Project documentation.

- f. Upon completion of the Work, furnish original set of all RPR Project documentation to designated recipients.

12. Reports

- a. Furnish periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft responses to or make recommends on Change Proposals, Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately inform appropriate parties of the occurrence of any Site accidents, emergencies, natural catastrophes endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.

13. Payment Requests: Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

14. Certificates, Operation and Maintenance Manuals: During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

15. Completion

- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.
- b. Participate in Engineer's visit to the Site in the company of Owner and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
- c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).

1.03 Limitations of Authority

A. Resident Project Representative shall not:

- 1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
- 2. Exceed limitations of Engineer's authority as set forth in this Agreement.

3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.

EXHIBIT E—EJCDC® C-626, NOTICE OF ACCEPTABILITY OF WORK

NOTICE OF ACCEPTABILITY OF WORK (EJCDC® C-626 2018)

Owner: City of Pittsburg, KS

Engineer: Earles Engineering & Inspection, Inc

Contractor:

Project:

Contract Name:

Owner's Project No.:

Engineer's Project No.:

Contractor's Project No.:

Notice Date:

Effective Date of the
Construction Contract:

The Engineer hereby gives notice to the Owner and Contractor that Engineer recommends final payment to Contractor, and that the Work furnished and performed by Contractor under the Construction Contract is acceptable, expressly subject to the provisions of the Construction Contract's Contract Documents ("Contract Documents") and of the Agreement between Owner and Engineer for Professional Services dated **[date of professional services agreement]** ("Owner Engineer Agreement"). This Notice of Acceptability of Work (Notice) is made expressly subject to the following terms and conditions to which all who receive and rely on said Notice agree:

1. This Notice has been prepared with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the Engineer's professional opinion.
3. This Notice has been prepared to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's Work) under the Owner Engineer Agreement, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Owner Engineer Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents, or to otherwise comply with the Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

Engineer

By (signature): _____

Name (printed): _____

Title: _____

EXHIBIT F—ELECTRONIC DOCUMENTS PROTOCOL (EDP)

ARTICLE 1—ELECTRONIC DOCUMENTS PROTOCOL (EDP)

Paragraph 6.03 of the Agreement is supplemented by the following Exhibit F Paragraph 1.01 and Exhibit F—Attachment 1: Software Requirements for Electronic Document Exchange:

1.01 Electronic Documents Protocol

- A. Electronic Transmittals: The parties shall conform to the following provisions together referred to as the Electronic Documents Protocol ("EDP" or "Protocol") for exchange of electronic transmittals.

1. Basic Requirements

- a. To the fullest extent practical, the parties agree to and will transmit and accept Electronic Documents by Electronic Means using the procedures described in this Protocol. Use of the Electronic Documents and any information contained therein is subject to the requirements of this Protocol and other provisions of the Agreement.
- b. The contents of the information in any Electronic Document will be the responsibility of the transmitting party.
- c. Electronic Documents as exchanged by this Protocol may be used in the same manner as the printed versions of the same documents that are exchanged using non-electronic format and methods, subject to the same governing requirements, limitations, and restrictions, set forth in the Agreement.
- d. Except as otherwise explicitly stated herein, the terms of this Protocol will be incorporated into any other agreement or subcontract between the Owner and Engineer and any third party for any portion of the Project, or any Project-related services, where that third party is, either directly or indirectly, required to exchange Electronic Documents with Owner, Engineer, or any Contractor or other entity directly contracted with the Owner to furnish Program-related services. Nothing herein will modify the requirements of the Agreement and applicable Construction Contract Documents regarding communications between and among the individual third parties and their respective subcontractors and consultants, except to the extent that any respective subcontractor or consultant exchanges Electronic Documents with the Owner or Engineer.
- e. When transmitting Electronic Documents, the transmitting Party makes no representations as to long term compatibility, usability, or readability of the items resulting from the receiving Party's use of software application packages, operating systems, or computer hardware differing from those established in this Protocol.
- f. Nothing herein negates any obligation (1) in the Agreement to create, provide, or maintain an original printed record version of Drawings and Specifications, signed and sealed according to applicable Laws and Regulations; (2) to comply with any applicable Law or Regulation governing the signing and sealing of design documents or the signing and electronic transmission of any other documents; or (3) to comply with any notice requirements limiting or otherwise modifying the acceptance of Electronic Documents for such notice.

2. System Infrastructure for Electronic Document Exchange

- a. Each party will provide hardware, operating system(s) software, internet, e-mail, and large file transfer functions ("System Infrastructure") at its own cost and sufficient for complying with the EDP requirements. With the exception of minimum standards set forth in this EDP and any explicit system requirements specified by attachment to this EDP, it will be the obligation of each party to determine, for itself, its own System Infrastructure.
 - 1) The maximum size of an e-mail attachment for exchange of Electronic Documents under this EDP is **10 MB**. Attachments larger than that may be exchanged using large file transfer functions or physical media.
 - 2) Each Party assumes full and complete responsibility for any and all of its own costs, delays, deficiencies, and errors associated with converting, translating, updating, verifying, licensing, or otherwise enabling its System Infrastructure, including operating systems and software, for use with respect to this EDP.
- b. Each party is responsible for its own system operations, security, back-up, archiving, audits, printing resources, and other Information Technology ("IT") for maintaining operations of its System Infrastructure during the Project, including coordination with the party's individual(s) or entity responsible for managing its System Infrastructure and capable of addressing routine communications and other IT issues affecting the exchange of Electronic Documents.
- c. Each party will operate and maintain industry-standard, industry-accepted, ISO-standard, commercial-grade security software and systems that are intended to protect the other party from: software viruses and other malicious software like worms, trojans, adware; data breaches; loss of confidentiality; and other threats in the transmission to or storage of information from the other parties, including transmission of Electronic Documents by physical media such as CD/DVD/flash drive/hard drive. To the extent that a party maintains and operates such security software and systems, it will not be liable to the other party for any breach of system security.
- d. In the case of disputes, conflicts, or modifications to the EDP required to address issues affecting System Infrastructure, the parties will cooperatively resolve the issues; but, failing resolution, the Owner is authorized to make and require reasonable and necessary changes to the EDP to effectuate its original intent. If the changes cause additional cost or time to Engineer, not reasonably anticipated under the original EDP, Engineer shall be entitled to compensation as Additional Services for its costs associated with the revisions to the EDP, delayed adoption of Exhibit L or implementation of other Electronic Documents protocols.
- e. Each party is responsible for its own back-up and archive of documents sent and received during the term of any Project contract/agreement under this EDP, unless this EDP establishes a Project document archive, either as part of a mandatory Project website or other communications protocol, upon which the Parties may rely for document archiving during the specified term of operation of such project document archive. Further, each party remains solely responsible for its own post-Project back-up and archive of project documents, as each party deems necessary for its own purposes, after the term of contract, or termination of the project document archive, if one is established.

- f. If a receiving party receives an obviously corrupted, damaged, or unreadable Electronic Document, the receiving party will advise the sending party of the incomplete transmission.
- g. The parties will bring any non-conforming Electronic Documents into compliance with the EDP. The parties will attempt to complete a successful transmission of the Electronic Document or use an alternative delivery method to complete the communication.
- h. The **Engineer** will operate a Project information management system (also referred to in this EDP as "Project Website") for use of Owner, Engineer, Contractors, during the Project for exchange and storage of Project-related communications and information. Except as otherwise provided in this EDP or the General Conditions, use of the Project Website by the Parties as described in this paragraph will be mandatory for exchange of Project documents, communications, submittals, and other Project-related information. The following conditions and standards will govern use of the Project Website:
 - 1) Describe the period of time during which the Project Website will be operated and be available for reliance by the Parties.
 - 2) Provide any minimum system infrastructure, software licensing and security standards for access to and use of the Project Website.
 - 3) Describe the types and extent of services to be provided at the Project Website (such as large file transfer, email, communication and document archives, etc.).
 - 4) Include any other Project Website attributes that may be pertinent to the use of the facility by Project-related parties and evaluation by those parties of the functionality and cost of such use.
 - 5) Operation of the Project Website by the Engineer shall be part of Engineer's Basic Services and compensation will be paid on an hourly basis plus expenses associated with operation as detailed in Exhibit C. Total estimated compensation is based on expenses associated with operation for a period of 2 years.

B. Software Requirements for Electronic Document Exchange; Limitations

- 1. Each party will acquire the software and software licenses necessary to create and transmit Electronic Documents and to read and to use any Electronic Documents received from the other party (and if relevant from third parties), using the software formats required in this section of the EDP.
 - a. Prior to using any updated version of the software required in this section for sending Electronic Documents to the other party, the originating party will first notify and receive concurrence from the other party for use of the updated version or adjust its transmission to comply with this EDP.
- 2. The parties agree not to intentionally edit, reverse engineer, decrypt, remove security or encryption features, or convert to another format for modification purposes any Electronic Document or information contained therein that was transmitted in a software data format, including Portable Document Format (PDF), intended by sender

not to be modified, unless the receiving party obtains the permission of the sending party or is citing or quoting excerpts of the Electronic Document for Project purposes.

3. Software and data formats for exchange of Electronic Documents will conform to the requirements set forth in the following Attachment 1 to this EDP, including software version, if listed.

C. Format and Distribution of Deliverables

1. By definition, "Documents" as used in this Agreement are documents expressly identified as deliverables from Engineer to Owner. Exhibit A of the Agreement identifies various Documents that Engineer is required to deliver to Owner as part of Engineer's services; Exhibit B is a schedule of such Documents. Engineer will transmit such Documents to Owner in the formats identified in Attachment 1 to this Protocol. If no specific format is identified for a deliverable Document, the format will be Portable Document Format (PDF).
2. If a Document will be distributed to third parties, such as prospective bidders and contractors, reviewing agencies, or lenders, the transmittal format for distribution will be as identified in Attachment 1 to this Protocol; provided, however, that if a format for distribution of a specific Document is expressly stated in Exhibit A, then the Exhibit A format will take precedence. If no specific format is identified for distribution of a deliverable Document to third parties, the format will be Portable Document Format (PDF).
 - a. If a format for Document distribution other than Portable Document Format (PDF) is specified, Owner shall first obtain a written, signed release from each third party to which the deliverable Document is distributed, establishing agreement to the following conditions:
 - 1) The content included in the Electronic Documents prepared by or for Engineer and covered by the request was prepared as an internal working document for Engineer's purposes solely, and is being provided to the third party on an "AS IS" basis without any warranties of any kind, including, but not limited to any implied warranties of fitness for any purpose. As such, the third party is advised and acknowledges that the content may not be suitable for the third party's application, or may require substantial modification and independent verification by the third party. The content may include limited resolution of models; not-to-scale schematic representations and symbols; use of notes to convey design concepts in lieu of accurate graphics; approximations; graphical simplifications; undocumented intermediate revisions; and other devices that may affect subsequent reuse.
 - 2) Electronic Documents containing text, graphics, metadata, or other types of data that are provided to the Requesting Party are only for the convenience of the third party. Any conclusion or information obtained or derived from such data will be at the third party's sole risk and the third party waives any and all claims against Engineer or Owner arising from the use of the Electronic Documents covered by the request, or of any data contained in such Electronic Documents.
 - 3) The third party shall indemnify and hold harmless Owner, Engineer, and Engineer's Subcontractors and Subconsultants, from all claims, damages, losses, and expenses, including attorneys' fees and defense costs arising out of

Exhibit F—Electronic Documents Protocol (EDP).

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or resulting from the third party's use, adaptation, or distribution of any Electronic Documents provided under the request.

- 4) The third party agrees not to sell, copy, transfer, forward, give away or otherwise distribute this information (in source or modified file format) to any third party without the direct written authorization of Engineer, unless such distribution is specifically identified in the request and is limited to the third party's subcontractors and consultants. The third party warrants that subsequent use by the third party's subcontractors and subconsultants will comply with all terms of the Construction Contract Documents and any specific instructions or conditions established by Owner.

- b. If Engineer is required to assist or participate in obtaining such releases from third parties, such services will be categorized as Additional Services.

D. Requests by Project-Related Parties for Electronic Documents in Other Formats

1. Owner may release (or direct Engineer to release) an Electronic Document version of a Document prepared by or for Engineer, including but not limited to a deliverable Document as set forth in Exhibit F Paragraph 1.01.C, in a format other than those identified in Exhibit F Paragraph 1.01.B or 1.01.C of the Electronic Documents Protocol, or elsewhere in the Agreement, only if (a) a Contractor or other Project-related party (Requesting Party) makes a good faith request for such release, (b) Owner determines in its sole discretion that such release is prudent and will be beneficial to the Project, and (c) Owner obtains Requesting Party's written consent to the four conditions set forth in Exhibit F Paragraph 1.01.C.2.a.1-4 above.
2. Any services by Engineer in connection with Owner or Engineer providing a Document to a Requesting Party under this Exhibit F Paragraph 1.01.D are Additional Services. Such services may include but are not limited to preparing the data in a manner deemed appropriate by Engineer. Owner may require reimbursement from the Requesting Party for the cost of such Additional Services, but compensation by Owner to Engineer for the Additional Services is not contingent upon Owner obtaining reimbursement from the Requesting Party.

EXHIBIT F—ATTACHMENT 1: SOFTWARE REQUIREMENTS FOR ELECTRONIC DOCUMENT EXCHANGE

Item	Electronic Documents	Transmittal Means	Data Format	Note (1)
a.1	General communications, transmittal covers, meeting notices, and responses to general information requests for which there is no specific prescribed form.	Email	Email	
a.2	Meeting agendas; meeting minutes; RFI’s and Responses to RFI’s; and Construction Contract administrative forms.	Email w/Attach	PDF	(2)
a.3	Contractor’s Submittals (Shop Drawings, “Or Equal” requests, Substitute requests, documentation accompanying Sample submittals and other Submittals) to Owner and Engineer; and, Owner’s and Engineer’s Responses to Contractor’s Submittals, Shop Drawings, Correspondence, and Applications for Payment	Email w/Attach	PDF	
a.4	Correspondence; Interim and Final Versions of reports, layouts, Specifications, Drawings, maps, calculations and spreadsheets, Construction Contract, Bidding/Proposal Documents, and Front-End Construction Contract Documents.	Email w/ Attach or LFE	PDF	(3)
a.5	Layouts, plans, maps, and Drawings to be submitted to Owner by Engineer for future use and modification	Email w/ Attach or LFE	DWG & PDF	
a.6	Correspondence, reports, and specifications to be submitted by Engineer to Owner for future word processing use and modification	Email w/ Attach or LFE	DOC	
a.7	Spreadsheets and data to be submitted to Owner by Engineer for future data processing use and modification	Email w/ Attach or LFE	EXC	
a.8	Database files and data to be submitted to Owner for future data processing use and modification	Email w/ Attach or LFE	DB or EXC	
Notes				
(1)	All exchanges and uses of transmitted data are subject to the appropriate provisions of the Agreement and Construction Contract.			
(2)	Transmittal of written notices is governed by requirements of the Agreement and Construction Contract.			
(3)	Transmittal of Bidding/Proposal Documents and Front-End Construction Contract Documents will be in manner selected by Owner in Exhibit A, Paragraph 1.05.A.1.a. Unless otherwise expressly stated, these documents and the Construction Contract will be transmitted in PDF format, including transmittals to bidders and Contractor.			
Key				
EMAIL	Standard Email formats (.htm, .rtf, or .txt). Do not use stationery formatting or other features that impair legibility of content on screen or in printed copies.			
LFE	Agreed upon Large File Exchange method (FTP, CD, DVD, hard drive.)			
PDF	Portable Document Format readable by Adobe® Acrobat Reader Version 8 or later.			
DWG	Autodesk® AutoCAD. dwg format Version 20			
DOC	Microsoft® Word. docx format Version 2016			
EXC	Microsoft® Excel .xlsx or .xml			
DB	Microsoft® Access .mdb			

EXHIBIT G—INSURANCE

ARTICLE 1—INSURANCE

Paragraph 6.04 of the Agreement, Insurance, is supplemented to include the following Exhibit G Paragraphs 1.01 and 1.02:

1.01 Insurance Policies and Limits

- A. In accordance with Paragraph 6.04.A of the Agreement, the insurance that Engineer must procure and maintain, and the policy limits of such insurance, are as follows:

Coverage	Policy limits of not less than:
Workers' Compensation	
State	Statutory
Employer's Liability	
Each accident	\$1,000,000
Each employee	\$1,000,000
Policy limit	\$1,000,000
Commercial General Liability	
General Aggregate	\$4,000,000
Personal and Advertising Injury	\$2,000,000
Bodily Injury and Property Damage—Each Occurrence	\$2,000,000
Automobile Liability	
Bodily Injury	
Each Person	\$1,000,000
Each Accident	\$1,000,000
Property Damage	
Each Accident	\$1,000,000
Or	
Combined Single Limit	
Combined Single Limit (Bodily Injury and Property Damage)	\$1,000,000
Excess or Umbrella Liability	
Each Occurrence	\$1,000,000
General Aggregate	\$1,000,000
Professional Liability	
Each Claim	\$1,000,000
Annual Aggregate	\$5,000,000

- B. In accordance with Paragraph 6.04.C of the Agreement, the insurance that Owner must procure and maintain, and the policy limits of such insurance, are as follows:

Coverage	Policy limits of not less than:
Workers' Compensation	
State	Statutory
Employer's Liability	
Each accident	\$1,000,000
Each employee\$	\$1,000,000
Policy limit	\$1,000,000
Commercial General Liability	
General Aggregate	\$4,000,000
Personal and Advertising Injury	\$2,000,000
Bodily Injury and Property Damage—Each Occurrence	\$2,000,000
Automobile Liability	
Bodily Injury	
Each Person	\$1,000,000
Each Accident	\$1,000,000
Property Damage	
Each Accident	\$1,000,000
Or	
Combined Single Limit	
Combined Single Limit (Bodily Injury and Property Damage)	\$1,000,000
Excess or Umbrella Liability	
Each Occurrence	\$1,000,000
General Aggregate	\$1,000,000

1.02 Additional Insureds

- A. Owner shall cause Engineer, its Subconsultants, and its Engineer's Subcontractors to be listed as additional insureds on any of Owner's general liability policies that are applicable to the Project. The following individuals or entities are to be listed on Owner's general liability policies of insurance (and on Contractor's policies required under Paragraph 6.04.D of the Agreement) as additional insureds:

Name of Additional Insured	Address
Earles Engineering & Inspection,, Inc	105 W 7th St Pittsburg, KS 66762
JGR Architects	730 N 9th St Salina, KS 67401
LST Consulting Engineers	4809 Vue Du Lac PI STE 201 Manhattan, KS 66503
[Other Additional Insured]	[Other Additional Insured's Corporate Address]

- B. During the term of this Agreement the Engineer shall notify Owner of any other Subconsultant or Engineer's Subcontractor to be listed as an additional insured on Owner's and applicable Contractor's general liability policies of insurance.
- C. The Owner must be listed on Engineer's general liability policy as provided in Paragraph 6.04.B.

- D. For applicable Contractor's general liability policies of insurance, the additional insured endorsements will include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.
- E. For applicable Contractor's general liability policies of insurance, Contractor shall provide ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent for Engineer, Subconsultants, and other design professional additional insureds.

EXHIBIT H—DISPUTE RESOLUTION – NOT INCLUDED

Exhibit H—Dispute Resolution.

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EXHIBIT I—LIMITATIONS OF LIABILITY

ARTICLE 1—LIMITATIONS OF LIABILITY

Paragraph 6.10 of the Agreement is supplemented to include Exhibit I Paragraph(s) 1.01, Mutual Indemnification; 1.02, Limitation of Engineer's Liability

1.01 Mutual Indemnification

- A. Indemnification by Owner: To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Subconsultants, and Engineer's Subcontractors, from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.
- B. Engineer's Liability Limited to Amount of Insurance Proceeds: Engineer shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by Laws and Regulations, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, Subconsultants, and Engineer's Subcontractors to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever (including but not limited to direct, indirect, special, incidental, punitive, exemplary, or consequential damages) arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, Subconsultants, or Engineer's Subcontractors (hereafter "Owner's Claims"), will be limited to (1) responsibility for payment of all or the applicable portion of any deductibles, either directly to the Engineer's insurers or in settlement or satisfaction, in whole or in part, of Owner's Claims, and (2) total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's applicable insurance policies up to the amount of insurance required under this Agreement.
 - 1. Such limitation will not be reduced, increased, or adjusted on account of legal fees paid, or costs and expenses of investigation, claims adjustment, defense, or appeal.

EXHIBIT J—PAYMENTS TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES

COMPENSATION PACKET BC-2: BASIC SERVICES—STANDARD HOURLY RATES

ARTICLE 2—COMPENSATION PACKET BC-2: BASIC SERVICES—STANDARD HOURLY RATES

Article 2 of the Agreement is supplemented to include the following Exhibit J Paragraphs 1.01, 1.02, and 1.03:

2.01 Compensation for Basic Services (other than Resident Project Representative)—Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A (except for Resident Project Representative services, if any) as follows:

1. An amount equal to the cumulative hours charged to the Project by Engineer's personnel times Standard Hourly Rates for the applicable billing class, plus Reimbursable Expenses, plus Engineer's Subcontractors' and Subconsultants' charges, if any.
2. The Standard Hourly Rates charged by Engineer constitute full and complete compensation for Engineer's services, including labor costs, overhead, and profit; the Standard Hourly Rates do not include Reimbursable Expenses or Engineer's Subcontractor's and Subconsultants' charges.
3. Engineer's Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit J as Appendices 1 and 2.
4. The total compensation for such services is estimated to be **\$2,348,328.00** based on the following estimated distribution of compensation:

a. Study and Report Phase

- | | |
|---|---------------|
| 1) KDHE Process Design Report | \$ 316,000.00 |
| 2) Sugar Creek/Frontenac Pumps Station and F. M. Report | \$ 56,243.00 |

b. Preliminary Design Phase

- | | |
|--|---------------|
| 1) WWTP Survey | \$ 74,700.00 |
| 2) Sugar Creek/Frontenac PS & FM Survey | \$ 80,481.00 |
| 3) SC/F PS & FM Easement Descriptions | \$ 16,500.00 |
| 4) 35 % review Plans for WWTP | \$ 555,398.00 |
| 5) 35% review Plans for SC/F PS & FM | \$ 76,000.00 |
| 6) Site Approval Kansas Wildlife and Parks | \$ 9,500.00 |
| 7) Geology report for WWTP | \$ 9,500.00 |
| 8) Geology Report for SC/F Pump Station | \$ 3,500.00 |
| 9) Liability Insurance for \$5,000,000 | \$ 16,605.00 |

c. Final Design Phase

- | | |
|------------------------------|---------------|
| 1) WWTP 50% Design Complete | \$ 200,097.00 |
| 2) WWTP 75 % Design Complete | \$ 333,495.00 |
| 3) WWTP 90% Design Complete | \$ 200,097.00 |
| 4) WWTP 100% Design Complete | \$ 133,398.00 |

Exhibit J—Payments to Engineer for Services and Reimbursable Expenses.

Compensation Packet BC-1: Basic Services—Lump Sum.

Exhibits to EJCDC® E-500, Agreement between Owner and Engineer for Professional Services.

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- | | |
|---|--------------|
| 5) SC/F PS & FM – 75% Complete | \$ 84,300.00 |
| 6) SC/F Ps & FM – 90% Complete | \$ 31,639.00 |
| 7) SC/F PS & FM – 100% complete | \$ 21,165.00 |
| 8) FEMA Site Approval | \$ 14,500.00 |
| 9) Professional Liability Insurance for \$5,000,000 | \$ 33,210.00 |
- d. Bidding & Negotiations
- | | |
|--|--------------|
| 1) WWTP Bidding & Negotiations | \$ 70,000.00 |
| 2) SC/F PS & FM Bidding & Negotiations | \$ 12,000.00 |
- e. Construction Phase – Part of Resident Project Representative Services
- f. Post-Construction Phase – Part of Resident Project Representative Services
5. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but compensation will not exceed the total estimated compensation amount unless approved in writing by Owner. See also Exhibit J Paragraph 1.03.C.2 below.
6. The total estimated compensation for Engineer's services included in the breakdown by phases incorporates all labor, overhead, profit, Reimbursable Expenses, and Engineer's Subcontractor's and Subconsultants' charges.
7. The amounts billed for Engineer's services under Exhibit J Paragraph 1.01 will be based on the cumulative hours charged to the Project during the billing period by Engineer's employees times Standard Hourly Rates for the applicable billing class, plus Reimbursable Expenses and Engineer's Subcontractor's and Subconsultants' charges.

2.02 Compensation for Reimbursable Expenses

- A. Owner shall reimburse Engineer for Reimbursable Expenses directly related to the provision of Basic Services, using the rates set forth in Appendix 1 to this Exhibit J when applicable.
- B. Reimbursable Expenses include the expenses identified in Appendix 1 and the following: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of **[Enter Factor]**.

2.03 Other Provisions Concerning Payment

- A. Whenever Engineer is entitled to compensation for the charges of Engineer's Subcontractors and Subconsultants, such compensation will be the amounts billed to Engineer by Engineer's Subconsultants times a factor of **1.15**
- B. Factors: The external Reimbursable Expenses and Engineer's Subcontractors' and Subconsultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

C. Estimated Compensation Amounts

1. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
 2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice, Owner and Engineer will promptly review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend the Engineer's services during the negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer will be paid for all services rendered hereunder.
- D. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of **1/1/2021**) to reflect equitable changes in the compensation payable to Engineer.
- E. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

ENGINEER PAY VOUCHER

<i>ITEM</i>	<i>TOTAL AMOUNT</i>	<i>PERCENT COMPLETE</i>	<i>AMOUNT DUE</i>
<i>STUDY REPORT PHASE</i>			
KDHE Process Design Report	\$ 316,000.00		
SC/F PS & FM Preliminary Report	\$ 56,243.00		
<i>PRELIMINARY DESIGN PHASE</i>			
WWTP Survey	\$ 74,700.00		
SC/F PS & FM Survey	\$ 80,481.00		
SC/F PS & FM Easement Descriptions	\$ 16,500.00		
35% Review Plans for WWTP	\$ 555,398.00		
35% Review Plans for SC/F PS & FM	\$ 76,000.00		
Site Approval Wildlife & Parks	\$ 9,500.00		
Geology Report for WWTP	\$ 9,500.00		
Geology Report for PS	\$3,500.00		
Professional Liability Insurance for \$5,000,000	\$ 16,605.00		
<i>FINAL DESIGN PHASE</i>			
WWTP 50% Design Complete	\$ 200,097.00		
WWTP 75% Design Complete	\$ 333,495.00		
WWTP 90% Design Complete	\$ 200,097.00		
WWTP 100% Design Complete	\$ 133,398.00		
SC/F & FM 75% Complete	\$ 84,300.00		
SC/F & FM 90% Complete	\$ 31,639.00		
SC/F & FM 100% Complete	\$ 21,165.00		
FEMA Site Approval	\$ 14,500.00		
Professional Liability Insurance for \$5,000,000	\$ 33,210.00		
<i>BIDDING & NEGOTIATIONS</i>			
WWTP Bidding & Negotiations	\$ 70,000.00		
SC/F PS & FM Bidding & Negotiations	\$12,000.00		
<i>TOTAL COSTS TO DATE</i>	\$2,348,328.00		
<i>PREVIOUSLY PAID AMOUNT</i>			
<u>TOTAL DUE</u>			

EXHIBIT J—PAYMENTS TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES

COMPENSATION PACKET RPR-2: RESIDENT PROJECT REPRESENTATIVE—STANDARD HOURLY RATES

Article 2 of the Agreement is supplemented to include the following Exhibit J Paragraph 2.01:

2.04 Compensation for Resident Project Representative Services—Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Resident Project Representative Services as follows:

1. Resident Project Representative Services: For services of Engineer's Resident Project Representative (RPR), if any, under Exhibits A and D, an amount equal to the cumulative hours charged by each class of Engineer's personnel providing RPR services times Standard Hourly Rates for each applicable billing class, plus RPR-related Reimbursable Expenses and RPR-related Engineer's Subcontractors' and Subconsultants' charges, if any. Standard Hourly Rates are set forth in Appendix 2, Standard Hourly Rates Schedule.
2. The total compensation under this paragraph is estimated to be \$2,426,770 based upon full-time RPR services on an eight-hour workday, Monday through Friday, over a 2-year construction schedule.

B. Compensation for Reimbursable Expenses

1. For those Reimbursable Expenses that are directly related to the provision of RPR services and are not already accounted for in the compensation for Basic Services, Owner shall reimburse Engineer, using the rates set forth in Appendix 1, Reimbursable Expense Schedule, to this Exhibit J when applicable.
2. Such Reimbursable Expenses include, to the extent RPR-related, the expenses identified in Appendix 1 and the following: transportation within 30 miles of project location (including mileage); mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar items. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be those internal expenses related to RPR services that are actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such services, the latter multiplied by a factor of 1.10.

C. Other Provisions Concerning Payment

1. Whenever Engineer is entitled to compensation for the RPR-related charges of Engineer's Subcontractors and Subconsultants, that compensation will be the amounts billed by Engineer's Subcontractors and Subconsultants to Engineer times a factor of 1.20.

2. Factors: The external Reimbursable Expenses and Engineer's Subcontractors' and Subconsultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. Estimated Compensation Amounts
 - a. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
 - b. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice Owner and Engineer will promptly review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend Engineer's services during negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.
4. The Standard Hourly Rates and the Reimbursable Expenses Schedule will be adjusted annually (as of 1/1/2021) to reflect equitable changes in the compensation payable to Engineer for RPR-related services and expenses.
5. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

EXHIBIT J—PAYMENTS TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES

COMPENSATION PACKET AS-1: ADDITIONAL SERVICES—STANDARD HOURLY RATES

ARTICLE 3—COMPENSATION PACKET AS-1: ADDITIONAL SERVICES—STANDARD HOURLY RATES

Article 2 of the Agreement is supplemented to include the following Exhibit J Paragraph 3.01:

3.01 Compensation for Additional Services—Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Additional Services, if any, as follows:

1. For services of Engineer's personnel engaged directly on the Project pursuant to Exhibit A Paragraph 2.01 or 2.02, except for services as a consultant or witness under Exhibit A Paragraph 2.02.A.28 (which if needed will be separately negotiated based on the nature of the required consultation or testimony), an amount equal to the cumulative hours charged by each class of Engineer's personnel providing such Additional Services times Standard Hourly Rates for each applicable billing class, plus Additional Services-related Reimbursable Expenses and Additional Services-related Engineer's Subcontractors' and Subconsultants' charges, if any.

B. Compensation for Reimbursable Expenses

1. For those Reimbursable Expenses that are directly related to the provision of Additional Services, and are not already accounted for in the compensation for Basic Services or RPR-related services, Owner shall reimburse Engineer, using the rates set forth in Appendix 1 to this Exhibit J when applicable.
2. Such Reimbursable Expenses include, to the extent Additional Services-related, the expenses identified in Appendix 1 and the following categories: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar items. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a factor of 1.10.

C. Other Provisions Concerning Payment for Additional Services

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Subcontractors and Subconsultants, such compensation will be the amounts billed by Engineer's Subcontractors and Subconsultants to Engineer times a factor of 1.15.
2. Factors: The external Reimbursable Expenses and Engineer's Subcontractors' and Subconsultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

3. The Standard Hourly Rates and the Reimbursable Expenses Schedule will be adjusted annually (as of 1/1/2021) to reflect equitable changes in the compensation payable to Engineer for Additional Services-related services and expenses.
4. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

EXHIBIT J—PAYMENTS TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES

APPENDIX 1: REIMBURSABLE EXPENSES SCHEDULE

Reimbursable Expenses are subject to review and adjustment per Exhibit J. Rates and charges for Reimbursable Expenses as of the date of the Agreement are:

8"x11" Copies/Impressions	\$ 0.10 page
Copies of Drawings	\$ 1.00 sq. ft.
Mileage (auto)	\$0.54/mile
Air Transportation	at cost
Laboratory Testing	at cost
Meals and Lodging	at cost

Effective January 1, 2020 to December 31, 2020

Standard Rate – Monday thru Friday – 8:00 a.m. to 5:00 p.m.

	Standard Rate	Overtime Rate
FIELD PRICES		
<u>Concrete Testing:</u>		
• No Construction Inspection Required	Tech. Rate	Tech. Rate
• Construction Inspection Required	Tech. Rate	Tech. Rate
(See "Schedule of Rates")		
<u>Soil Testing (Densities):</u>		
• Nuclear Densities	Tech. Rate	Tech. Rate
*Hourly rate plus \$20/hr. of nuclear use		

LAB PRICES

Concrete:

• Cylinder Breaks	\$15.00/ea. + Tech. Rate	N/A
• Concrete Beams	\$30.00/ea. + Tech. Rate	N/A
• Core Breaks	\$35.00/ea. + Tech. Rate	N/A
• Coring	\$15/hr + 2-Tech. Rates	N/A

Soil Tests:

• Proctor	\$285.00/ea.	\$385.00/ea.
• Modified Proctor	\$310.00/ea.	N/A
• Permeability	\$240.00/ea.	\$280.00/ea.
• Permeability w/Bentonite	\$290.00/ea.	N/A
• Sieve Analysis	\$285.00/ea.	\$385.00/ea.
• Plasticity Index	\$260.00/ea.	\$360.00/ea.

Exhibit J—Payments to Engineer for Services and Reimbursable Expenses.

Appendix 1: Reimbursable Expenses Schedule.

Exhibits to EJCDC® E-500, Agreement between Owner and Engineer for Professional Services.
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EXHIBIT J—PAYMENTS TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES

APPENDIX 2: STANDARD HOURLY RATES SCHEDULE

- A. Standard Hourly Rates
 - 1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit J and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
 - 2. The Standard Hourly Rates apply only as specified in Exhibit J.
- B. Schedule: Hourly rates for services performed on or after the date of the Agreement are:

2020 - SCHEDULE OF RATES

Schedule of hourly rates for January 1, 2020 to December 31, 2020

	HOURLY RATE	OVERTIME RATE
Principal	\$180.00	\$180.00
Engineer VI	\$155.00	\$155.00
Engineer V	\$135.00	\$135.00
Engineer IV	\$110.00	\$110.00
Engineer III	\$105.00	\$105.00
Engineer II	\$ 80.00	\$ 80.00
Registered Land Surveyor V	\$155.00	\$155.00
Registered Land Surveyor IV	\$ 95.00	\$ 95.00
Technician VII	\$115.00	\$115.00
Technician VI	\$ 92.00	\$ 92.00
Technician V	\$ 78.00	\$117.00
Technician IV	\$ 67.50	\$101.25
Technician III	\$ 60.00	\$ 99.00
Technician II	\$ 54.00	\$ 81.00
Technician I	\$ 47.00	\$ 70.50
Inspector V	\$ 78.00	\$117.00
Inspector IV	\$ 67.50	\$101.50
Inspector III	\$ 60.00	\$ 90.00
Inspector II	\$ 54.00	\$ 81.00
Inspector I	\$ 47.00	\$ 70.50
Building Inspector III	\$ 67.50	\$101.50
3-Man Survey Crew	\$285.00	\$427.50
2-Man Survey Crew	\$200.00	\$300.00
Surveyor I	\$ 47.00	\$ 70.50
Administrative Assistant	\$145.00	\$145.00
Clerical	\$ 42.00	\$ 63.00

Exhibit J—Payments to Engineer for Services and Reimbursable Expenses.

Appendix 2: Standard Hourly Rates Schedule.

Exhibits to EJCDC® E-500, Agreement between Owner and Engineer for Professional Services.
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STATE OF KANSAS
GRANT AGREEMENT NO. **20-CV-054**
between the

STATE OF KANSAS
DEPARTMENT OF COMMERCE

and the

City of Pittsburg

I. Grant Agreement

- A. This Grant Agreement, hereinafter called “Agreement,” is between the State of Kansas, Department of Commerce, and its representative, hereinafter called “Department” and the **City of Pittsburg**, Kansas, hereinafter called the “Grantee.” This Agreement consists of the body and the following: CONDITION LETTER (attached hereto as Attachment A), SPECIAL CONDITIONS (attached hereto as Attachment B), and the Grantee’s APPROVED PROJECT APPLICATION (incorporated by reference as Attachment C, a copy of which shall be maintained and available in the Department’s files) and the GRANTEE HANDBOOK (which is incorporated by reference as Attachment D).

II. Authority

- A. This Agreement is financed in part through a grant provided to the Department by the United States Department of Housing and Urban Development (HUD) under Title I of the Federal Housing and Community Development Act of 1974, as amended (42 USC 5301 et. seq.), hereinafter called “the Federal Act.” As provided in the Federal Act, the State of Kansas, through the Department, has elected to administer the federal program of Small Cities Community Development Block Grants.
- B. Funding for this Agreement was made available through the Coronavirus Aid, Relief and Economic Security Act (CARES Act)(Public Law 116-136) for grants to prevent, prepare for, and respond to coronavirus (CDBG-CV grants).
- C. The Department, in accordance with the provisions of K.S.A. 74-5001 et. seq., hereinafter called “the State Act,” has approved the application of the Grantee and awarded funds for the purpose of supporting the Grantee’s Community Development Coronavirus Response Program.
- D. In the event of changes in any applicable Federal regulations and/or law, this Agreement shall be deemed to be amended when required to comply with any law so amended.
- E. Federal Program – Community Development Block Grant Cluster (CDBG) (CFDA No. 14.228).

III. Description of Activities

Grantee agrees to perform, or cause to be performed, the work specified in the APPROVED PROJECT APPLICATION.

IV. Period of Performance

The period of performance for all activities assisted by this Agreement shall commence on **JUNE 15, 2020**, hereinafter called the “Commencement Date,” and shall be complete on **JUNE 15, 2021**, hereinafter called the “Completion Date,” except those activities required for close-out and final audit.

V. Compensation

- A. In consideration of the Grantee’s satisfactory performance of the work required under this Agreement and the Grantee’s compliance with the terms of this Agreement, the Department shall provide the Grantee the total sum of **\$170,300** in Community Development Block Grant funds. Such funds shall be used by the Grantee in accordance with the Activities listed and budgeted on the APPROVED PROJECT APPLICATION and the CONTRACT PROJECT BUDGET FORM.
- B. In addition, the Grantee shall provide **\$0** in other sources of funds to this Community Development Coronavirus Response Program and such funds shall be used by the Grantee in accordance with the Activities and budget on the APPROVED PROJECT APPLICATION.
- C. It is expressly understood and agreed that in no event will the total program funds provided by the Department exceed the sum of **\$170,300**. Any additional funds required to complete the program activities set forth in this Agreement will be the sole responsibility of the Grantee, and not the responsibility of the Department.

- D. The Grantee understands that this Agreement is funded in whole or in part by federal funds. In the unlikely event the federal funds supporting this Agreement become unavailable or are reduced, the Department may terminate or amend this Agreement and will not be obligated to pay the Grantee from State revenues.
- E. In the event any portion of any funds required to be provided by the Grantee pursuant to subsection (B) of paragraph V. are not made available or used for activities as listed and budgeted, the Department may, in its discretion, withdraw or reduce proportionately the funds to be provided to the Grantee pursuant to subsection (A) of paragraph V.
- F. The Grantee shall not anticipate future funding from the Department beyond the duration of this Agreement and in no event shall this Agreement be construed as a commitment by the Department to expend funds beyond the termination of this Agreement.

VI. Indemnification

The Grantee shall indemnify, defend, and hold harmless the State and its officers and employees from any liabilities, claims, suits, judgments, and damages arising as a result of the performance of the obligations under this Agreement by the Grantee or any subgrantee, contractor, subcontractor, or person. The liability of the Grantee under this Agreement shall continue after the termination of the Agreement with respect to any liabilities, claims, suits, judgments, and damages resulting from acts occurring prior to termination of this Agreement.

VII. Obligations of Grantee

- A. All of the activities required by this Agreement shall be performed by personnel of the Grantee or by third parties (subgrantees, contractors, or subcontractors) under the direct supervision of the Grantee and in accordance with the terms of written contracts. Any such contracts may be made subject to approval by the Department.
- B. Except as may otherwise be provided in the SPECIAL CONDITIONS, the Grantee may subgrant, contract, or subcontract any of the work or services covered by this Agreement.
- C. The Grantee shall remain fully obligated and liable under the provisions of this Agreement, notwithstanding its designation of any third party or parties for the undertaking of all or any of the program being assisted under this grant.
- D. The Grantee shall require any third party to comply with all lawful requirements necessary to ensure that the program is carried out in accordance with this Agreement.
- E. The Grantee shall comply with all timelines for completion of Grantee's Environmental Review and contracting responsibilities as established by the Department in the CONDITION LETTER.

VIII. Environmental Review Compliance

- A. The obligation and utilization of the funding assistance is subject to the requirements for a release of funds by the State under the Environmental Review procedures at 24 CFR Part 58 for any activities requiring such release.
- B. The Grantee agrees to assume all of the responsibilities for Environmental Review, decision making and action, as specified and required in Section 104(g) of Title I of the Housing and Community Development Act of 1974 (Public Law 93-383), as amended. The Grantee shall not allow any subrecipient to assume the grantee's Environmental Review responsibilities.

IX. Program Costs

- A. The Grantee may only incur such costs as are reasonable and necessary to the Grantee's Program and as are allowable under the Department's Procedures (2 CFR Part 200). Cost items not specifically authorized may only be incurred after written approval by the Department.
- B. Cash and in-kind contributions made by the Grantee shall follow the criteria established by the Department's Procedures.

- C. The total “Small Cities CDBG-CV Funds” expended for “Administration” shown in the Contract Project Budget Form shall not exceed the approved amount unless amended by all parties to this contract.
- D. The Grantee shall not incur costs on any program activity until the Environmental Review required by 24 CFR 58 has been completed and the Department has issued the “Notice of Release of Funds.”
- E. Any program activities performed by the Grantee in the period between notification of award and execution of this Agreement shall be performed at the sole risk of the Grantee. In the event this agreement should not become effective, the Department shall be under no obligation to pay the Grantee for any costs incurred or monies spent in connection with program activities, or to otherwise pay for any activities performed during such period. However, upon execution of this Agreement, all Program Costs incurred in connection with approved activities performed during this period shall be reimbursed in accordance with the terms and conditions of this Agreement.
- F. Grant funds may not, without advance written approval by the Department, be obligated after the Completion Date except for those activities required for close-out. Obligations incurred prior to and still outstanding as of the Completion Date shall be liquidated within ninety (90) days.
- G. At any time during the period of performance under this Agreement, and upon receipt of the progress and financial reports, Final Program Report or Final Audit Report, the Department may review all Program Costs incurred by the Grantee and all payments made to date. Upon such review the Department shall disallow any items of expense which are not determined to be allowable or are determined to be in excess of approved expenditures; and shall, by written notice specifying the disallowed expenditures, inform the Grantee of any such disallowance.
- H. If the Department disallows costs for which payment has not yet been made, it shall refuse to pay such costs. If payment has been made with respect to costs which are subsequently disallowed, the Department may deduct the amount of disallowed costs from any future payments under this Agreement or require that the Grantee refund the amount of the disallowed costs.

X. Requisition of Grant Funds

- A. Requisitions for cash advances shall be made on the established forms and shall not ordinarily be made more frequently than twice a month or in amounts less than \$3,000 and in no cases more than \$200,000.
- B. The Grantee shall establish procedures to ensure that any amounts of cash in excess of the limits set forth in (A) above shall be expended within three (3) days of receipt of the funds in the depository account.
- C. Cash advances made by the Grantee to subgrantees shall conform substantially to the same standards of timing and amount as apply to the Grantee under this Agreement.
- D. Amounts withheld from contractor to assure satisfactory completion of work shall not be paid until the Grantee has received a final payment request from the contractor and has certified the work is complete and satisfactory.
- E. The Department may terminate advance financing and require the Grantee to finance its operations with its own working capital should it be determined that the Grantee is unwilling or unable to establish procedures to minimize the time lapsing between cash advances and disbursement. Payments to the Grantee would then be made only as reimbursement for actual cash disbursements.

XI. Depositories for Program Funds

- A. The Grantee shall maintain a separate record for money received under the Community Development Coronavirus Response Program. Into this fund shall be deposited:
 - 1. Moneys received from the Department.
 - 2. Program income earned through program activities.
- B. Any interest earned, prior to disbursement, on advances of grant funds shall be remitted to the State for subsequent return to the United States Treasury.

XII. Financial Management

- A. Grantees shall establish and maintain a system which assures effective control over and accountability for all funds, property and other assets used in the Community Development Coronavirus Response Program.
- B. Grantees shall either adopt the system recommended by the Department or certify to the Department, in writing, prior to making the first requisition of funds that the alternative system proposed for use shall meet the following standards:
 - 1. Maintenance of separate accounting records and source documentation for the Community Development Coronavirus Response Program;
 - 2. Provision for accurate, current and complete disclosure of the financial status of the Program;
 - 3. Establishment of records of budgets and expenditures for each approved activity;
 - 4. Demonstration of the sequence and status of receipts, obligations, disbursements and fund balance;
 - 5. Provision of financial status reports in the form specified by the Department;
 - 6. Compliance with the Department's audit requirements (2 CFR Part 200); and
 - 7. Consistency with generally accepted accounting principles as specified by the Kansas Department of Administration, unless a waiver of GAAP has been received by the Grantee from the Kansas Director of Accounts and Reports.

XIII. Monitoring and Reporting

- A. The Grantee shall monitor the activities of the Community Development Coronavirus Response Program, including those of contractors and subcontractors, to assure that all program requirements are being met.
- B. The Grantee shall submit progress and financial reports to the Department in accordance with the schedule set forth in the SPECIAL CONDITIONS. These reports shall be in a format prescribed by the Department.
- C. The Grantee shall submit a Final Program Report with the close-out no later than ninety (90) days following the Completion Date.
- D. From time to time, as requested in writing by the Department, the Grantee shall submit such data and other information as the Department may require.
- E. Failure to report as required or respond to requests for data or information in a timely manner may be grounds for suspension or termination of the Grant.

XIV. Procurement Procedures

- A. The Grantee shall use established procurement procedures which reflect applicable State and local laws and regulations and the Department's Procedures for the establishment of procurement systems.
- B. These standards do not relieve the Grantee of any contractual responsibilities under its contracts. The Grantee is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements entered into support of a grant. These include but are not limited to source evaluation, protests, disputes, and claims.

XV. Bonding Requirements

- A. When administering federal grants and subgrants, a Grantee may follow its own requirements and practices with respect to: (1) bonding of employees and contractors, and (2) insurance. Federal grantor agencies are not permitted to impose requirements beyond those listed below. The government-wide grants management common rule, "Uniform Administrative Requirements for Grants to State and Local Governments," contains bonding requirements only for circumstances when a grantee contracts for construction or facility improvement (including alteration and renovation) and the bids and contracts exceed \$25,000. The following types of bonds are required in the "Procurement" section of the common rule:

- A 100 percent “performance bond” on the part of the contractor to secure fulfillment of all the contractor’s obligations under the contract; and
- A 100 percent “payment bond” on the part of the contractor to assure payment, as required by law, of all persons supplying labor and materials as part of work provided under the contract.

- B. The Department reserves the right to promulgate and enforce bonding procedures and requirements applicable to any project.
- C. All bonds shall be procured from a surety company registered and licensed to do business in the State of Kansas and countersigned by its Kansas resident agent.

XVI. Program Income

- A. Program Income, as defined in the Final Statement, means gross income earned by the Grantee from activities supported by grants made by the Department under the provisions of the Federal Act, or as otherwise defined by the Department.
- B. All Program Income from a project funded by this Agreement may be retained by the Grantee (unless specified as a Special Condition to this agreement) and shall be added to funds committed to the support of the program established by this Agreement or for such eligible program activities as may be authorized by the Department. This income shall be disbursed to the maximum extent feasible prior to requisitioning additional funds under this agreement.

XVII. Program Close-out Procedures

- A. Program close-out is the process by which the Department determines that all applicable administrative and financial actions and all required work of the program including audit and resolution of audit findings have been completed or that there are no additional benefits likely to occur by continuation of program activities or costs. All findings from Department monitoring visits must be cleared prior to close-out.
- B. The Completion Date is the date specified in Section IV., Period of Performance, of this Agreement or amendment thereto, on which assistance ends for all program activities except those required to complete the close-out or the date on which the grant is suspended or terminated.
- C. The Grantee shall submit to the Department close-out documents covering the entire program within ninety (90) days of completion date. Additionally, one copy must be placed where other program documents are available for public review, and at least one copy must remain in the Grantee’s files. The Department may grant extensions to the time for submission of these documents when so requested by the Grantee in writing.
- D. The Department retains the right to recover any appropriate amount of unobligated program funds.
- E. The Grantee shall account for any property acquired with grant funds or received from the federal or state government in accordance with the Department’s property management procedures.

XVIII. Termination for Convenience

- A. The Department or Grantee may terminate the grant in whole, or in part, when both parties agree that the continuation of the program would not produce beneficial results commensurate with the further expenditure of funds.
- B. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated.
- C. The Grantee shall not incur new obligations for the terminated portion after the effective date and shall cancel as many outstanding obligations as possible. The Grantee shall be allowed full credit for noncancelable obligations, property incurred prior to termination.

XIX. Suspension or Termination-for-Cause

- A. The Department may suspend the grant, in whole or in part, at any time during the Grant Period, and upon reasonable notice to the Grantee withhold further payments or prohibit the Grantee from incurring additional obligations of grant funds when it is determined that the Grantee has failed to substantially comply with the conditions of this Agreement. This will be done pending corrective action by the Grantee or a decision by the Department to terminate the grant. The Department shall allow all necessary and proper costs which the Grantee could not reasonably avoid during the period of suspension.
- B. The Department, after reasonable notice following procedures pursuant to Final Statement may terminate the grant, in whole or in part, at any time during the Grant Period when it is determined that the Grantee has failed to substantially comply with the conditions of this Agreement. The Department shall promptly notify the Grantee in writing, of the determination and the reasons for the termination, together with the effective date and may initiate procedures to recapture all funds advanced to Grantee.
- C. Payments made to the Grantee or recoveries by the Department under grants which have been suspended or terminated for cause shall be in accord with the legal rights and liabilities of the parties.

XX. Audit Requirements

- A. The Grantee shall arrange for the performance of annual financial/compliance audits of the grant project. All audits must be performed by an independent qualified auditor. The audit period is identical with the Grantee's regular fiscal year. The audit(s) will be conducted in accordance with the requirements set forth in the audit section of the Kansas CDBG Handbook, which are based on 2 CFR Part 200.
 - 1. If the local government expends \$750,000 or more of Federal grant assistance from all programs, it must have an annual audit performed in accordance with 2 CFR Part 200. An audit is a financial and compliance audit that covers the entire operations of the local government, rather than being limited to the CDBG project or other Federal grants.
 - 2. If the local government expends less than \$750,000 in a fiscal year, it will be the option of the Department of Commerce to determine if a project specific audit will be required. If such audit is required, it will be procured and paid for by the Department.
 - 3. Grantee's will be required to submit the "audit information form" to the Department of Commerce each fiscal year. This form must be submitted to the Department by or before May 15th of each fiscal year.
- B. Grantees are required to submit one copy of a fiscal year audit report covering the program. The audit reports shall be sent within 30 days after the completion of the audit, but no later than the nine months after the end of the audit period unless agreed to by the Department.
- C. If any expenditures are disallowed as a result of the Final Audit Report, the obligation for reimbursement to the Kansas Small Cities Community Development Block Grant Program shall rest with the Grantee.

XXI. Retention of and Access to Records

- A. Financial records, supporting documents, statistical records, and all other records pertinent to this program shall be retained in accordance with the Department's Procedures.
- B. Authorized representatives of the Department, the Secretary of HUD, the Inspector General of the United States, or the U.S. General Accounting Office shall have access to all books, accounts, records, reports, files, papers, things, or property belonging to, or in use by, the Grantee pertaining to the administration of this Agreement and the receipt of assistance under the Community Development Coronavirus Response Program as may be necessary to make audits, examinations, excerpts, and transcripts for a period of three years after the entire State CDBG grant year Grantee was awarded from has been closed out by HUD.
- C. Any contract or agreement entered into by the Grantee shall contain language comparable to subsection (B) so as to assure access by authorized parties to the pertinent records of any subgrantee, contractor, or subcontractor.

XXII. Conflict of Interest

- A. In the procurement of supplies, equipment, construction and services by Grantees and subgrantees, the conflict of interest provisions of the Kansas Department of Commerce as provided at 2 CFR Part 200 shall apply.
- B. No member of the Governing Body, officer or employee of the Grantee, or its designees or agents, or any other person who exercises any functions or responsibilities with respect to the program assisted by this Agreement during his tenure or for one year thereafter, shall have any direct interest in any contract or subcontract, or the proceeds thereof, for the work to be performed in connection with the program.
- C. The Grantee shall incorporate, or cause to be incorporated, in all third party agreements, a provision prohibiting such interest pursuant to the purpose of this Section.
- D. The Grantee shall not employ, nor shall permit any third party to employ any employee of the Department.

XXIII. Equal Opportunity

In addition to all equal opportunity provisions and the Assurances incorporated by reference herein, the Grantee agrees to comply with all of the requirements of the Kansas Acts Against Discrimination relating to fair employment practices, to the extent applicable and shall cause the foregoing provisions to be inserted in all contracts with third parties for any work covered by this Agreement so that such provisions will be binding upon such third parties.

Grantee will conduct and administer the grant in conformity with Title VI of the Civil Rights Act of 1964 (42 USC 2000d et seq., as amended) and the Fair Housing Act (42 USC 3601-20) and will affirmatively further fair housing.

XXIV. Waiver of Enforcement

A waiver by the Department of the right to enforce any provision of this Agreement shall not be deemed a waiver of the right to enforce each and all of the provisions herein.

XXV. Reversion of Assets

- A. Consistent with the provisions at 24 CFR 570.703, the Grantee shall transfer any CDBG funds on hand at the time of expiration of the Agreement and any accounts receivable attributable to the use of CDBG funds to the Department.
- B. Any real property under the Grantee's control that was acquired or improved in whole or in part with CDBG funds in excess of \$25,000 shall be used for its original intended purpose for five years after expiration of the agreement. Should the Grantee fail to utilize said property for its intended purpose, the Grantee shall pay the Department an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property.

XXVI. Budget Amendments and Other Changes

- A. During the implementation of the grant project, the Grantee may revise the CDBG activities amounts in the CONTRACT PROJECT BUDGET FORM; provided that:
 - 1. The cumulative effect of the revision is to not make line item budget transfers which exceed ten percent of the total grant or \$10,000 cumulative of CDBG monies, whichever is less.
 - 2. The change does not increase any professional services of the CDBG approved budget;
 - 3. The change will not significantly change the scope, location or objectives of the approved activities; and
 - 4. The change does not add or eliminate any activity.
- B. Any such changes to this Agreement shall constitute an amendment, including time extension of the completion date.

C. The Grantee shall notify the Department if, through the use of other funds, there is an intention to expand, enhance or add to the scope of the program covered by the Agreement, or there is a proposal to undertake activities that will have an impact upon the buildings, areas or activities of this program. The Department reserves the right to require an amendment to this Agreement if such is deemed necessary.

D. Amendments to the terms and conditions of this Agreement shall not become effective unless reduced to writing, applicable standard forms submitted in duplicate, passed by Resolution of the governing body, and signed by the duly authorized representative of the Grantee, and signed by the Department.

E. **I hereby certify that I have knowledge of all activities in the above-referenced grant. I also certify that I am aware that the regulations of the CDBG program prevent the use of any facility built or rehabilitated with CDBG funds, or any portion thereof, to be used for the conduct of official business. By accepting the above-referenced grant award, I certify that no portion of the above grant award violates this regulation.**

Copies or originals of all CDBG recipient files and documentation must be maintained at the recipient's principal place of business.

We, the undersigned, have read and understood the above document and hereby agree to the terms and conditions contained herein.

Dated by the Department of Commerce this _____ day of _____, 20 ____.

STATE OF KANSAS
DEPARTMENT OF COMMERCE

By: _____
CDBG Program
Kansas Department of Commerce

By: _____
Notary Public, State of Kansas

City of Pittsburg Kansas
(Grantee)

By: _____
(Name) (Title)

(SEAL)

ATTEST: _____
(For the Grantee)

SPECIAL CONDITIONS

In addition to the general terms and conditions of this Agreement, the Grantee and the Department hereby agree to the following Special Conditions:

1. As provided in Section IX., Program Costs, F., the Notification of Award for the grant under this Agreement is dated **JUNE 2, 2020**.
2. As provided in Section XIII., Monitoring and Reporting, B., the Grantee shall submit Quarterly Progress Reports to the Department. The reporting periods consist of January/February/March, April/May/June, July/August/September and October/November/December. Quarterly Progress Reports are to be submitted to the Department on or before ten (10) days after the end of each quarter. A Quarterly Progress Report shall be submitted for each quarter, or portion thereof, during the Period of Performance as provided in Section IV. Any extension of time approved by the Department will require additional Quarterly Progress and Financial Reports to be submitted in accordance with the above-referenced schedule.
3. As provided in Section IV., Period of Performance, all activities assisted by this Agreement shall be completed on **JUNE 15, 2021** except for those activities required to close out the program, such as the Final Program Report and the Final Audit Report.
4. As provided in Section XIII., Monitoring and Reporting, C., the Grantee shall submit a Final Program Report to the Department on or before **SEPTEMBER 14, 2021**.
5. The Grantee shall not use funds that have been granted by HUD under the Federal Act, or which may have been accrued as a consequence of activities supported with such grant funds (program income), in whole or in part for the support of the Activities covered by this Grant Agreement without first having secured the express written approval of HUD.
6. The Grantee shall be permitted to satisfy the program audit requirements of Section XX., Audit Requirements, by conducting a single municipal government-wide financial audit at the time of an annual audit provided for by Kansas law. Said audit will be completed on or before September 30 of each year the grant is open and one year after the grant is closed. Grantees receiving federal assistance in any fiscal year must have an audit made in accordance with 2 CFR Part 200 for such fiscal year unless exempted under 2 CFR Part 200. Those Grantees having expended \$750,000 or more of total federal funds from all sources must have an annual audit.
7. Will require each unit of local government to be distributed Title I funds to adopt and enforce a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations in accordance with Section 519 of Public Law 101-144, (the 1990 HUD Appropriations Act) and prohibiting the barring of entrance or exit to any facility or location which is the subject of such demonstration (Cranston-Gonzales National Affordable Housing Act).
8. In addition to the above certifications, the undersigned also makes the certification required which is attached regarding Lobbying.

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Date

Official

Grantees are required to keep records until three years after the entire CDBG grant year from HUD has been closed out.

June 4, 2020

The Honorable Dawn McNay
Mayor, City of Pittsburg
201 W. 4th Street
Pittsburg, KS 66762-0688

Re: Grant No. 20-CV-054

Dear Mayor McNay:

Congratulations on being selected to receive a 2020 Small Cities Community Development Block Grant, CDBG-CV grant, in the amount of \$170,300, which will fund your community's CARES Act project(s).

Attached is your environmental clearance for your meals program, unless the Determination of Level of Review needs corrected. Until Commerce has approved the recipient's request for release of funds and environmental certification for economic development funds, neither the recipient nor any participant in the development process, including public or private nonprofit or for-profit entities, may commit HUD assistance to the project or a project activity.

You are reminded that, should a contract not be made with the state, any cost incurred toward the project would be borne by the recipient.

Contracting between the City/County and the State must occur within 30 days of the award date of June 2, 2020. The contract beginning date of this award is June 15, 2020. All CDBG-CV funds must be expended within one year of the contract start date of June 15, 2020. Failure to meet this deadline may result in withdrawal of this grant.

The Department looks forward to assisting you in the implementation of the project. If you have any questions on the contracting process or are in need of technical assistance, please contact Ginny Eardley of the CDBG staff at (785) 296-3610.

Sincerely,



Kayla Savage
Community Development Director

KS:LH:cav

Enclosure: Contracts