

**EDGERTON CITY COUNCIL
MEETING AGENDA
CITY HALL, 404 EAST NELSON STREET
April 28, 2016**

Call to Order

1. **Roll Call** ____ Roberts ____ Longanecker ____ Crooks ____ Troutner ____ Brown ____ Crist
2. **Welcome**
3. **Pledge of Allegiance**

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

4. Agenda Approval
5. Approve City Council Meeting Minutes April 14, 2016

Regular Agenda

6. **Public Comments.** Persons who wish to address the City Council regarding items not on the agenda and that are under the jurisdiction of the City Council may do so when called upon by the Mayor. Comments on personnel matters and matters pending before court or other outside tribunals are not permitted. Please notify the City Clerk before the meeting if you wish to speak. Speakers are limited to three (3) minutes. Any presentation is for informational purposes only. No action will be taken.
7. **Declaration.** At this time Council members may declare any conflict or communication they have had that might influence their ability to impartially consider today's issues.

Business Requiring Action

8. **CONSIDER THE 2015 AUDIT OF FINANCIAL STATEMENTS AS PRESENTED BY VARNEY & ASSOCIATES**

Motion: _____ Second: _____ Vote: _____

9. **CONSIDER MASTER AGREEMENT FOR PROFESSIONAL SERVICES WITH SHAFER, KLINE, AND WARREN, INC. (SKW) FOR PLANNING AND ENGINEERING SERVICES**

Motion: _____ Second: _____ Vote: _____

10. **PUBLIC HEARING REGARDING A REQUEST BY THE FRONTIER DAYS ASSOCIATION FOR A WAIVER (AS ALLOWED PURSUANT TO SECTION 3-202 OF ARTICLE 1 OF CHAPTER III OF THE CITY CODE) OF THE PROHIBITION AGAINST SERVING ALCOHOLIC LIQUOR WITHIN 300 FEET OF THE LIBRARY FOR THE JUNE 17 AND 18, 2016 FOR THE ANNUAL FRONTIER DAYS FESTIVAL**
11. **CONSIDER RESOLUTION NO. 04-28-16A TEMPORARILY WAIVING CITY PROHIBITION AS TO THE SALE AND CONSUMPTION OF ALCOHOLIC LIQUOR ON CERTAIN PUBLIC PROPERTY, AND RECOGNIZING FRONTIER DAYS AS A "PUBLIC FESTIVAL" FOR PURPOSES OF THE CITY'S NOISE RESTRICTIONS**

Motion: _____ Second: _____ Vote: _____

12. CONSIDER RESOLUTION NO. 04-28-16B AUTHORIZING SPECIAL EVENT PERMIT FOR SALE AND CONSUMPTION OF ALCOHOLIC LIQUOR ON CERTAIN PUBLIC PROPERTY WITHIN THE CITY OF EDGERTON, KANSAS

Motion: _____ Second: _____ Vote: _____

13. PUBLIC HEARING REGARDING RESOLUTION NO 04-28-16C CONSENTING TO THE PARTIAL ASSIGNMENT OF A RESOLUTION OF INTENT FROM EDGERTON LAND HOLDING COMPANY, LLC TO ELHC XXXI, LLC, OR ITS SUCCESSORS IN INTEREST

14. CONSIDER RESOLUTION NO 04-28-16C CONSENTING TO THE PARTIAL ASSIGNMENT OF A RESOLUTION OF INTENT FROM EDGERTON LAND HOLDING COMPANY, LLC TO ELHC XXXI, LLC, OR ITS SUCCESSORS IN INTEREST

Motion: _____ Second: _____ Vote: _____

15. CONSIDER ORDINANCE NO. 1015 AMENDING ARTICLE 7 OF CHAPTER IV OF THE EDGERTON, KANSAS MUNICIPAL CODE TO REVISE PROVISIONS PERTAINING TO LICENSING REQUIREMENTS OF CONTRACTORS ENGAGED IN NON-RESIDENTIAL CONSTRUCTION WORK WITHIN THE CITY

Motion: _____ Second: _____ Vote: _____

16. CONSIDER STREET MAINTENANCE PROGRAM FOR 2016 & 2017

Motion: _____ Second: _____ Vote: _____

17. CONSIDER PROPOSAL FROM HARBOUR CONSTRUCTION, INC. FOR 2016 CHIP AND SEAL PROGRAM

Motion: _____ Second: _____ Vote: _____

18. Report by the City Administrator

- Ribbon Cutting Manor Park

19. Report by the Mayor

20. Future Meeting/Event Reminders:

- April 30th – Citywide Garage Sale
- May 4th 4:00 PM – 7:00 PM – Learning & Career Center Hiring Fair
- May 7th – Citywide Cleanup
- May 10th 7:00 PM – Planning Commission Meeting
- May 12th 7:00 PM – City Council Meeting
- May 18th Noon – Senior Lunch
- May 26th 7:00 PM – City Council Meeting

21. **CONSIDER RECESSING INTO EXECUTIVE SESSION PURSUANT TO K.S.A. 75-4319 (b) (6) FOR PRELIMINARY DISCUSSION RELATED TO ACQUISITION OF REAL PROPERTY TO INCLUDE CITY ATTORNEY AND CITY ADMINISTRATOR**

Motion: _____ Second: _____ Vote: _____

RECONVENE INTO OPEN SESSION

22. **CONSIDER RECESSING INTO EXECUTIVE SESSION PURSUANT TO K.S.A. 75-4319 (b) (1) PERSONNEL MATTERS OF NONELECTED PERSONNEL TO INCLUDE CITY ATTORNEY**

Motion: _____ Second: _____ Vote: _____

RECONVENE INTO OPEN SESSION

23. **Adjourn** Motion: _____ Second: _____ Vote: _____

City of Edgerton, Kansas
Minutes of City Council Regular Session
April 14, 2016

A Regular Session of the City Council was held in the Edgerton City Hall, 404 E. Nelson, Edgerton, Kansas on April 14, 2016. The meeting convened at 7:00 p.m. with Mayor Roberts presiding, and City Clerk Janeice L. Rawles recording.

1. ROLL CALL

Charlie Troutner	present
Clay Longanecker	present
Darius Crist	present
Jody Brown	present
Cindy Crooks	present

With a quorum present, the meeting commenced.

Staff in attendance:

- City Administrator Beth Linn
- Community Development Director Kenny Cook
- City Attorney Patrick Reavey
- Public Works Superintendent Trey Whitaker
- Johnson County Sheriff Department Representative
- Johnson County Fire District No. 1 Representative

2. WELCOME

3. PLEDGE OF ALLEGIANCE

PROCLAMATION

Mayor Roberts presented and read a proclamation, proclaiming "April 2016 is National Autism Awareness Month". There were several guests from the community present and joined the Mayor and Council in a group picture.

CONSENT AGENDA

MEETING AGENDA

4. Proposed agenda was considered with the removal of item nine. Item nine to approve Resolution No. 04-14-16C-Approving the closure of the public streets named herein during the Edgerton Summer Kickoff Block Party.

Motion by Longanecker, seconded by Crist, to approve the consent agenda without item nine.

Motion was approved, 5-0.

Item nine from the consent agenda was considered separately. The Mayor explained about the event the Park and Recreation Department has planned for the Edgerton Summer Kickoff Block Party. He also explained the need to close certain streets for the event.

Motion by Crooks, seconded by Brown, to close public streets for the Edgerton Summer Kickoff Block Party.

Motion was approved, 5-0.

PUBLIC COMMENTS

5. PUBLIC COMMENTS

Mary Pritchard was present to discuss the Edgerton food pantry that is located at the Methodist Church parsonage. The day of the week is being changed to the third Saturday, and the hours will be from ten o'clock a.m. to noon. This will all change in May, need to let everyone know. Mary also informed all present that the food pantry is low on everything except green beans and corn. There will be an article in the next newsletter about the changes. Mayor Roberts thanked Mary Pritchard for a job well done.

Lonnie Pannell was present to discuss with Mayor and Council the feral cat issue in his neighborhood. City Administrator Beth Linn explained that we are making owners responsible and the current program is to remove the cats from town, like a relocate program. Next item he asked about is fire pits and if there is a certain distance from structures for a fire pit. He has called the fire department before put is now asking for help from the city council. The Mayor will look into the ordinance concerning fires and fire pits. The third item was Fireworks, he wanted some clarification about what is legal and what is not. Mr. Pannell also wanted to understand what days are legal for the selling of fireworks and the actual shooting of fireworks.

6. DECLARATION

None

BUSINESS REQUIRING ACTION

CHARTER ORDINANCE NO 22

7. CONSIDER CHARTER ORDINANCE NO. 22 EXEMPTING THE CITY OF EDGERTON, KANSAS, FROM THE PROVISIONS OF K.S.A. 12-617 ET SEQ. AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT RELATING TO SEWER IMPROVEMENTS AND THE ISSUANCE OF BONDS FOR THE PURPOSE OF PAYING FOR SAID IMPROVEMENTS WAS CONSIDERED.

Beth Linn, City Administrator, gave some background information on the preliminary design build agreement with Burns & McDonnell/CAS Constructors LLC for the Edgerton Wastewater Treatment Plant Conversion project. Along with the design-build team the city has also been working with Raftelis Financial Consultants, Inc (RFC) to complete a comprehensive rate analysis for both water and sewer. As part of that study, RFC recommended the City consider using General Obligation Bonds (GO Bonds) to finance the Edgerton Wastewater Treatment Plant project. This method of financing will provide the City of Edgerton more flexibility in structuring the timing and inclination of the debt.

Motion by Longanecker, seconded by Brown, to approve Charter Ordinance No 22 exemption the City of Edgerton from the provisions of K.S.A. 12-617 ET Seq. and providing substitute and additional provisions on the same subject relating to sewer improvements and the issuance of bonds for the purpose of paying for said improvements.

Motion was approved, 6-0, including the Mayor's vote.

RESOLUTION NO 04-14-16D

8. RESOLUTION NO. 04-14-16D AUTHORIZING CONDITIONAL NOTICE OF PREPAYMENT OF A LOAN RELATED TO SEWER SYSTEM IMPROVEMENTS OF THE CITY OF EDGERTON, KANSAS WAS CONSIDERED.

Beth Linn, City Administrator and Jeff White, Financial Consultant for the City of Edgerton presented information about the Resolution No. 04-14-16D. The outstanding amount for a loan that originated in 2007 for the belt press is to be retired and the G.O. Bonds will be used to finance the costs of all improvements.

Motion by Crooks, seconded by Longanecker, to approve Resolution No. 04-14-16D.

Motion was approved, 5-0.

RESOLUTION NO. 04-14-16E

9. RESOLUTION NO. 04-14-16E AUTHORIZING THE OFFERING FOR SALE OF GENERAL OBLIGATION BONDS, SERIES 2016, OF THE CITY OF EDGERTON, KANSAS WAS CONSIDERED.

This Resolution No. 04-14-16E authorizes the City and its agents to carry out the sale of the Bonds. Any G.O. Bonds issued under the authority of this Resolution may be used to reimburse expenditures made on or after the date that is sixty days before the date of adoption of this Resolution.

Motion by Crooks, seconded by Longanecker, to approve Resolution No 04-14-16E authorizing the offering for sale of general obligation bonds, series 2016 of, The City of Edgerton, Kansas.

Motion was approved, 5-0.

PURCHASE OF SKID STEER

10. THE PURCHASE OF SKID STEER WAS CONSIDERED.

The 2016 vehicle and equipment replacement schedule identified the Case 1840 unloader for replacement. The Unloader is 20 years old and will be transferred from the Water/Sewer Equipment reserve funds to the general equipment reserve fund to be used in the Utilities Department. City staff recommends purchasing a Bobcat Skid Steer and tool bucket attachment from K.C. Bobcat.

Motion by Longanecker, seconded by Crist, to approve the purchase of a Bobcat Skid Steer from K.C. Bobcat.

Motion was approved, 5-0.

APPLICATION FP2016-01

11. APPLICATION FP2016-01, FINAL PLAT, LOGISTICS PARK KANSAS CITY PHASE IV, SECOND PLAT WAS CONSIDERED.

Kenneth Cook, Community Development Director presented the background information about the final plat of the Logistics Park Kansas City Phase IV, 2nd Plat which is located at the Northwest corner of 196th street and Waverly Road. The Edgerton Planning Commission recommended approval of Application FP2016-01 on March 8, 2016, subject to compliance with stipulations as listed in the staff report dated March 1, 2016.

Motion by Brown, seconded by Longanecker, to approve Application FP2016-01, Final Plat, Logistics Park Kansas City Phase IV, Second Plat located northwest of 196th Street and Waverly Road.

Motion was approved, 5-0.

12. REPORT BY THE CITY ADMINISTRATOR

- Reminder of the Job Fair at the Learning and Career Center on Wed, May 4th from 4:00PM -7:00 PM
- Kansas Open Meeting Act Meeting at Johnson County District Office/ April 29th at 3:00 PM
- Chamber Annual Dinner on May 3rd - Trains, Planes and Automobiles is the theme

13. REPORT BY THE MAYOR

Announcement about the Gardner Grange is having a potluck get together on Sunday May 1st from 1:00PM- 3:00 PM. Everyone is welcome, this is a time to meet and greet.

14. FUTURE MEETING/EVENT REMINDERS:

- April 20th Noon – Senior Lunch
- April 28th 7:00 PM – City Council Meeting
- April 30th – Citywide Garage Sale
- May 4th 4:00 PM- 7:00 PM – Learning & Career Center Hiring Fair
- May 7th – Citywide Cleanup

EXECUTIVE SESSION

15. RECESS INTO EXECUTIVE SESSION PURSUANT TO K.S.A. 75-4319 (b)(2) CONSULTATION WITH AN ATTORNEY DEEMED PRIVILEGED IN THE ATTORNEY-CLIENT RELATIONSHIP TO INCLUDE CITY ATTORNEY, CITY ADMINISTRATOR AND FINANCIAL ADVISOR WAS CONSIDERED.

Motion by Crooks, seconded by Crist, to recess into executive session for twenty minutes under the Attorney-Client relationship to include City Attorney, City Administrator and Financial Advisor.

Motion was approved, 5-0.

Meeting recessed at 7:67 PM.

Motion by Crooks, seconded by Brown, to return from executive session with no action taken.

Motion was approved, 5-0.

Meeting reconvened at 8:17 PM

Motion by Crooks, seconded by Crist, to recess into executive session for ten minutes under the same reason as before.

Motion was approved, 5-0.

Meeting recessed at 8:17 PM.

Motion by Crooks, seconded by Longanecker, to return from executive session with no action taken.

Motion was approved, 5-0.

Meeting reconvened at 8:29 PM.

EXECUTIVE SESSION

16. RECESS INTO EXECUTIVE SESSION PURSUANT TO K.S.A. 75-4319 (b)(6) FOR PRELIMINARY DISCUSSION RELATED TO ACQUISITION OF REAL PROPERTY TO INCLUDE CITY ATTORNEY AND CITY ADMINISTRATOR WAS CONSIDERED.

Motion by Brown, seconded by Crist to recess into executive session for ten minutes under K.S.A. 75-4319 (b)(6) acquisition of real property.

Motion was approved, 5-0.

Meeting recessed at 8:32 PM.

Motion by Brown, seconded by Crist, to return from executive session with no action taken.

Motion was approved, 5-0.

Meeting reconvened at 8:42 PM.

Motion by Longanecker, seconded by Crist, to recess into executive session for five minutes under the same reason as before.

Motion was approved, 5-0.

Meeting recessed at 8:43 PM.

Motion by Crist, seconded by Longanecker, to return from executive session with no action taken.

Motion was approved, 5-0.

Meeting reconvened at 8:50 PM.

EXECUTIVE SESSION

Motion by Crist, seconded by Brown, for executive session for the purpose of non elected personal matters, to include City Attorney only, for five minutes.

Motion was approved, 5-0.

Meeting recessed at 8:52 PM.

Motion by Longanecker, seconded by Brown, to return from executive session with no action taken.

Motion was approved, 5-0.

Meeting reconvened at 8:59PM.

22. ADJOURNMENT

Motion by Crooks, seconded by Crist, to adjourn the meeting.

Motion was approved, 5-0.

Meeting adjourned at 9:01 pm.

Janeice L. Rawles, CMC

Approved by the Governing Body on _____

AGENDA ITEM INFORMATION FORM

Agenda Item: Consider the 2015 Audit of Financial Statements as Presented by Varney & Associates

Department: Administration

Background/Description of Item: In August 2015, the City of Edgerton issued an RFP for audit services. Staff recommended, and Council approved, a contract with Varney & Associates, CPAs, LLC, for the audit of the 2015 financial statements. A single audit was not required since the City did not receive federal funds in 2015. The 2015 Audit of Financial Statements is now complete.

The objective of the audit is the expression of an opinion as to whether the City's financial statements are fairly presented, in all material respects, in conformity with the Kansas prescribed basis of accounting. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. The auditors perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws and governmental regulations that are attributable to the entity or to acts by management or employees acting on behalf of the entity.

The audit procedures include tests of documentary evidence supporting the transactions recorded in the accounts and may include direct confirmation of certain assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. The audit also included obtaining an understanding of the entity and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures.

A representative from Varney & Associates will present their findings to the City Council on April 28, 2016. The final Audit of Financial Statements will be provided to City Council that evening.

Related Ordinance(s) or Statute(s): N/A

Recommendation: Accept the 2015 Audit of Financial Statements as Presented by Varney Associates.

Funding Source: N/A

Prepared by: Karen Kindle, Accountant
Date: April 18, 2016

AGENDA ITEM INFORMATION FORM

Agenda Item: Consider an Master Agreement for Professional Services with Shafer, Kline, and Warren, Inc. (SKW) For Planning and Engineering Services

Department: Community Development

Background/Description of Item: Staff is recommending the City Council consider entering into an agreement with SKW to provide planning and engineering services on an on-call basis. The attached agreement provides staff with the ability to receive assistance at times when numerous or complex projects are submitted for consideration at the same time and also provides the backup if staff is unavailable. The specific services that staff has discussed with SKW include: Planning Reviews (Plats, Site Plan), Regulation Updates, Building Code Review, and Building Inspection.

Due to the large number of projects that have been submitted and which are anticipated to continue, staff has had concern of our ability to perform all reviews in the timely manner. This concern can be compounded as consideration is also given to times when staff might not be in the office due to training, vacation or sickness or when other job duties require additional time. The attached agreement allows for the City to work with SKW to perform these services as compared to requiring the City to hire additional employees to cover times when additional capacity is needed. It also allows for the City to leverage SKW's extensive staff and their experience when unique situations occur or as the City is looking at updating portions of our Unified Development Code or Comprehensive Plan.

Staff met with representatives from SKW to discuss their services and our ability to partner with them on April 19, 2016. Staff has also met with GBA on April 25, 2016 to discuss their abilities to provide similar services for the City. Staff is anticipating that an additional agreement with GBA will be brought back in the future and allow for the City to work with both organizations on different projects. SKW performs similar on-call services for other agencies and has worked for many smaller municipalities throughout Kansas. Additional information about SKW can be found on their website at <http://www.skw-inc.com/>.

Enclosed with the packet is a draft Master Agreement for Professional Services. This agreement is structured very similar to the agreement for City Engineer services. It allows the staff to contact SKW for assistance. Together the Community Development Director and the Project Manager at SKW determine the best staff member to provide service. The City pays for the staff member hours used based on hourly rate schedule in the agreement.

Agreement has been reviewed and approved by City Attorney.

Enclosure: Draft Master Agreement for Professional Services

Related Ordinance(s) or Statute(s): N/A

Recommendation: Approve Agreement with Shafer, Kline, and Warren, Inc. (SKW) For Planning and Engineering Services

Funding Source: General – Community Development – Professional Services

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

THIS MASTER AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is made as of the 28 day of April, 2016, by and between the **City of Edgerton, Kansas**, its successors and assigns, hereinafter called the CITY, and Shafer, Kline, and Warren, Inc. (SKW), a Corporation of Kansas, hereinafter called the CONSULTANT.

WITNESSETH:

WHEREAS, the CITY is authorized and empowered to contract with the CONSULTANT for provisions of professional planning and engineering services as hereinafter described; and

WHEREAS, the CONSULTANT (a Kansas Corporation with offices at 11250 Corporate Avenue, Lenexa, Kansas 66219) is registered and in good standing in accordance with the laws of the State of Kansas and is qualified to provide the professional planning and engineering services desired by the CITY.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties hereto agree as follows:

INTRODUCTORY SCOPE AND TASK ORDERS

This Agreement is applicable to all services provided by CONSULTANT during the term of this Agreement, which services are or shall be set forth in a Statement of Work or Professional Services Task Order executed by the parties. The actual work to be performed by CONSULTANT in any specific engagement, and the fees to be paid by CITY for such engagement, will be set forth in the applicable Statement of Work or Professional Services Task Order, and may be referred to herein as a "Project."

PART A - SERVICES TO BE PROVIDED BY THE CONSULTANT

The CONSULTANT will serve as the CITY'S Professional Planning and Engineering representative in those phases of the Project to which this Agreement applies and will give consultation and advice to the CITY during the performance of its services.

After the CITY issues a notice to proceed and executes a Statement of Work or Professional Services Task Order, the CONSULTANT shall proceed with the following services:

- a. As assigned perform planning and engineering reviews of site plans, studies and reports submitted for City approval.
- b. Consult with City staff.
- c. Consult with City Officials.
- d. Provide consultant services to the Planning Commission and Board of Zoning Appeals.

- e. Attend City Council meetings, Planning Commission meetings, Committee of the Whole meetings, or other meetings as required.
- f. Assist in the development of applications for Federal, State, County and other funding opportunities.
- g. Perform small engineering studies including, Traffic Engineering Services, but not limited to intersection capacity analyses, pedestrian crossing studies, intersection control studies, localized drainage studies, in-field review of streets, sidewalks, drainage structures, or other street appurtenances.
- h. Develop and/or review annual roadway maintenance practices and provide guidance for recommended methods of roadway repairs.
- i. Assist in field observation of CITY permitted projects.
- j. Other miscellaneous consulting planning and/or engineering services, as mutually agreed upon by the CITY and CONSULTANT.

In the event additional services are required through changes in the scope of the Project, or unusual or unforeseen circumstances are encountered, or the CITY desires other design services for significant projects, the CONSULTANT shall, upon written authorization by the CITY, perform the additional services as mutually agreed upon by both parties by supplemental Statement of Work or Professional Services Task Order.

PART B - INSPECTIONS, CONFERENCES, AND APPROVALS

Representatives of the CITY shall have the right to inspect and review the work being done by the CONSULTANT and consult with the CONSULTANT at any time. Conferences are to be held at the request of the CITY or CONSULTANT.

PART C – COMPENSATION

Except as otherwise set forth in a Statement of Work or Professional Services Task Order, the CITY agrees to pay the CONSULTANT as compensation for all the services stipulated in PARTS A and B herein as follows:

Billing will be based on the schedule of charges used for general consultation, which is attached hereto and made part hereof (EXHIBIT A).

CONSULTANT shall submit all invoices for design related services and for construction related services on forms approved by the CITY.

CONSULTANT shall invoice CITY monthly for all services rendered and expenses incurred during the previous month.

All invoices for services shall be accompanied by a documented breakdown of expenses incurred with location to which this Agreement applies. This documentation shall include project personnel by job classification, hourly rate, and number of hours.

Payment will be made monthly on the basis of statements submitted by the CONSULTANT subject to the CITY'S review thereof.

The term "direct non-salary costs" shall include the CONSULTANT'S payments to others in connection with the PROJECT, transportation, and reproduction work. Transportation, including use of survey vehicle or automobile in connection with the PROJECT will be charged in accordance with EXHIBIT A - Hourly Rate Schedule. Blue line prints on white paper made at the CONSULTANT'S office will be included at the CONSULTANT'S cost in accordance with EXHIBIT A - Hourly Rate Schedule. Other reproduction work and materials required will be charged at actual cost.

PART D - OBLIGATIONS OF CITY

CITY, at its own expense, will provide the following:

1. Make available to CONSULTANT on request with reasonable notice, at CITY'S offices, all existing records, maps, plans and other data possessed by the CITY when such are necessary, advisable or helpful to the CONSULTANT in the prosecution of its work under this AGREEMENT.
2. Designate in writing a person to act as the CITY'S representative with respect to the services to be performed or furnished by the CONSULTANT under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define the CITY'S policies and decisions with respect to the CONSULTANT'S services for the Project. In the absence of any such designation, or until such designation is made by CITY, its City Manager shall serve as the designated representative.

PART E - TERMINATION OF THE AGREEMENT

The CITY shall have the right to terminate the services of the CONSULTANT, irrespective of whether the CONSULTANT is in default, upon such date as shall be specified in a notice to be delivered in writing to the CONSULTANT. This Agreement may not be terminated by CONSULTANT except in the event of substantial failure by CITY to perform in accordance with the terms hereof through no fault of CONSULTANT and failure of CITY to cure such default within a reasonable period of time. In the case of any termination, the CONSULTANT, to the extent not in default, shall be paid for all services actually rendered and all costs reasonably incurred up to the time of termination on the basis of the payment provisions of this Agreement. Copies of all completed or partially completed designs, plans and specifications prepared under this Agreement shall be delivered to the CITY when, and if, this Agreement is terminated, but it is mutually agreed by the parties that the CITY will use them in accordance with the provisions in Part G, Section 4 of this Agreement.

No such termination shall be deemed to release the CONSULTANT or any insurer from obligations under part G, Sections 2 and 3 of this Agreement for liability arising from or out of anything occurring or arising on or prior to such termination.

PART F - COMMISSIONS AND FEES

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon resulting from the award or making of the Agreement. For breach or violation of this warranty, the CITY shall have the right to annul this Agreement without liability, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee.

PART G - GENERAL CONSIDERATIONS

1. Insurance

The CONSULTANT shall secure and maintain insurance for protection from claims under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or diseases or death of any and all employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom. The CONSULTANT shall list the CITY as an additional insured on the CONSULTANT'S general liability insurance policy.

The CONSULTANT, its agent, representatives, and employees shall also secure and maintain professional liability insurance for protection from claims arising out of the performance of this Agreement. Such insurance shall provide protection from claims arising out of this Agreement caused by any error, omission, or act of the CONSULTANT or its employees, agents or representatives in at least the amounts hereunder set forth as desirable.

The insurance provided shall contain provisions that it cannot be canceled or modified or fail to be renewed except upon 30 days prior written notice to the CITY from the insurer(s) at risk, and shall be in at least the following minimum amounts:

- a. Professional Liability insurance in the amount of One Million Dollars (\$1,000,000.00) per claim and annual aggregate (including contractual liability coverage, with all coverage retroactive to the earlier of the date of this Agreement and the commencement of CONSULTANT'S services in relation to the Project) covering personal injury, bodily injury and property damages, which coverage shall be maintained for a period of three (3) years after the date of final payment under this Agreement, if reasonably available and in the reasonable opinion of the CONSULTANT affordable.

- b. Commercial General Liability Insurance (including broad-form contractual liability and completed operations), covering personal injury, bodily injury, death and property damage in the following amounts:
- | | |
|---|-------------|
| Each Occurrence | \$1,000,000 |
| Personal & Adv Injury | \$1,000,000 |
| Products/Completed Operations Aggregate | \$2,000,000 |
| General Aggregate | \$2,000,000 |
- The completed operations coverage shall extend for three (3) years after completion of CONSULTANT'S services.
- c. Comprehensive Automobile Liability Insurance, including owned, hired and non-owned vehicles, if any, in the amount of One Million Dollars (\$1,000,000.00), combined single limit, covering personal injury, bodily injury, death and property damage.
- d. Workers Compensation Insurance (and to the extent such is not applicable, Employers Liability Insurance) which shall fully comply with applicable law, and employer's liability insurance with limits of not less than the greater of (i) statutory requirements or (ii) One Hundred Thousand Dollars (\$100,000.00) per occurrence. CONSULTANT shall provide a valid waiver executed by workers compensation and employer's liability insurance carriers) of any right of subrogation against CITY or its employees for any injury to a covered employee working on CITY'S premises.

All liability insurance, except professional liability insurance, shall be written on an occurrence basis with form(s) and carrier(s) acceptable to CITY.

2. Indemnity

Indemnification: (a) CONSULTANT shall insure specifically the indemnification by it contained in this Agreement, and shall include the Indemnities (defined below) as additional insureds on the Commercial General Liability Insurance and the Comprehensive Automobile Liability Insurance policies described above. The insurance coverage afforded under these policies shall be (i) primary to any insurance carried independently by the Indemnities and (ii) not deemed to limit CONSULTANT'S liability under this Agreement. Prior to CITY'S execution of this Agreement, CONSULTANT shall provide to CITY Certificates of Insurance reflecting the required coverages. The Certificate shall specify the date when such insurance expires. The insurance policies shall provide that CITY shall be given not less than thirty (30) days written notice from the insurer(s) at risk before cancellation, non-renewal or material modification of coverage of such insurance. A renewal certificate shall be furnished to CITY prior to the expiration date of any coverage, and CONSULTANT shall give CITY written notice of any proposed reduction or other material modification in such insurance no later than thirty (30) days prior to such change. Cancellation,

nonrenewal or material modification of coverage of any such insurance shall constitute a failure to perform within the meaning of this Agreement.

Indemnity - Commercial General Liability/Non Professional:

CONSULTANT hereby agrees to indemnify, defend and hold CITY, its officers, employees and agents (collectively the "Indemnitees") harmless from and against any and all losses, judgments, injuries, damages and expenses (including but not limited to reasonable attorney's fees, expenses of litigation, fines and penalties) that the Indemnities, or anyone or more of them, may incur by reason of any injury, sickness, disease or death to any person or any damage or injury to any property (including but not limited to property of anyone or more of the Indemnities) to the extent arising out of or occurring in connection with the services performed by CONSULTANT under this Agreement or any of CONSULTANT'S acts or omissions. CONSULTANT further agrees that its obligation to indemnify and defend the Indemnities shall include, but not be limited to, liability for damages resulting from the personal injury, sickness, disease or death of any of CONSULTANT'S employees, regardless of whether CONSULTANT has paid the employee under the provisions of any workers compensation statute or law, or any similar federal or state legislation with protection of employees and that CONSULTANT'S obligation to indemnify and defend the Indemnities shall apply regardless of any contributory or concurrent negligence of any Indemnatee or Indemnities. Nothing in this section shall be deemed to impose liability on CONSULTANT to indemnify the Indemnitees to the extent the cause of any loss is the negligence or other actionable fault of one or more of the Indemnites. In the event the loss is caused by the joint or concurrent negligence of CONSULTANT and one or more of the Indemnites, the loss shall be borne by each party in proportion to its negligence.

Indemnity - Professional Liability: CONSULTANT shall, to the fullest extent permitted by law, hold harmless and indemnify the CITY, its Governing Body and each member thereof, and CITY'S officers, employees, commission members, representatives and their successors and assigns from any and all losses, damages, expenses and costs, including reasonable attorney's fees and costs, to the extent caused by CONSULTANT'S negligent performance or negligent omission of performance of professional services under this Agreement and those of CONSULTANT'S subconsultants or anyone for whom CONSULTANT is legally liable.

3. **Successor and Assigns**

The CITY and the CONSULTANT each binds itself and its principals, successors, executors, administrators and assigns to the other party of this Agreement and to the principals, successors, executors, administrators and assigns of such other party in respect to all covenants of the Agreement; provided that, neither the CITY nor the CONSULTANT will assign, sublet or transfer its interest in this Agreement without the written consent of the other. CONSULTANT shall not assign the right to any payments to be received hereunder, without the prior written consent of the CITY. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be party hereto, nor shall it be construed as giving

any rights or benefits hereunder to anyone other than the CITY and the CONSULTANT.

4. Ownership of Documents

The CITY acknowledges the CONSULTANT'S plans and specifications as instruments of professional service. Nevertheless, the plans and specifications prepared under this Agreement shall become the property of the CITY upon completion of the work or as provided in Part E, above and the final version of any document shall be submitted to the CITY electronically in format acceptable to the CITY. The CITY recognizes that new circumstances, not the least of which is the passage of time, may make reuse of such plans and specifications not advisable. If and to the extent necessary for the CITY'S ownership of such plans and specifications and all other contract documents, CONSULTANT hereby assigns all copyright rights therein to the CITY and, if and to the extent such rights are not so assignable, grants an irrevocable exclusive right and license to use thereof by CITY without payment of any additional compensation.

The only parties interested in this Agreement are named herein and this Agreement is made without collusion with any person, firm or corporation. No member of the City Council, officer or agent of the CITY is directly or indirectly financially interested in the Agreement.

PART H - NON DISCRIMINATION

1. CONSULTANT shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under this Agreement because of race, religion, color, sex, disability, national origin, or ancestry. In all solicitations or advertisements for employees, CONSULTANT shall include the phrase "Equal Opportunity Employer" or a similar phrase approved by the Kansas Human Rights Commission.
2. If CONSULTANT fails to comply with the manner in which CONSULTANT reports to the Kansas Human Rights Commission in accordance with the Provisions of K.S.A. 44-1031 and amendments thereto, CONSULTANT shall be deemed to have breached this Agreement and the Agreement may be cancelled, terminated, or suspended, in whole or in part by CITY.
3. If CONSULTANT is found guilty of violation of the Kansas Act Against Discrimination under decision or order of the Kansas Human Rights Commission which has become final, CONSULTANT shall be deemed to have breached the Agreement and this Agreement may be canceled, terminated or suspended in whole or in part by CITY.
4. CONSULTANT shall include provisions comparable to paragraph 1, 2, 3, and this paragraph in every subcontract and purchase order so that such provisions will be binding upon each such subcontractor or vender.
5. Notwithstanding anything expressed or implied elsewhere in this AGREEMENT, if CITY exercises any of its rights under the provisions of the preceding four

paragraphs, CONSULTANT shall have no right to recompense or additional payments by reason of such action by CITY.

PART I – MISCELLANEOUS

1. Severability

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the CITY and the CONSULTANT, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

2. Notices

Any notice required under this Agreement will be in writing, addressed to the appropriated party at the address which appears on the signature page to this Agreement (as modified in writing from item to time by such party) and given personally, by registered or certified mail, return receipt requested, by facsimile or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

3. Controlling Law

This Agreement is to be governed by the law of the State of Kansas.

4. The project manager for CONSULTANT will be Victor C. Burks, III, AICP

5. CONSULTANT represents that the engineering services to be provided hereunder shall be performed by or under the direct supervision of an engineer duly licensed under the laws of the state of Kansas. Furthermore, CONSULTANT represents that all engineering documents and all services provided hereunder shall comply with all applicable laws, statues, building and zoning codes, ordinances, rules and regulations and industry standards.

6. CONSULTANT shall perform all services in a manner consistent with that level of care and skill ordinarily exercised by members of the engineering profession currently practicing in Johnson County under similar conditions.

7. The intent of the CITY and CONSULTANT is that CONSULTANT shall perform its services under this agreement in all respects as an independent contractor. CONSULTANT shall employ and direct all persons performing any work hereunder, and such persons shall be and remain the sole employees of and subject to the control and direction of CONSULTANT, and shall not be the employees or subject to the direction of CITY, it being the intention of the parties hereto that CONSULTANT shall be and remain an independent contractor, and nothing herein contained shall be construed as inconsistent with that status.

8. The scope of work to be done under this Agreement shall be subject to modification and supplementation upon the written agreement of the duly authorized representatives of the contracting parties. The CONSULTANT shall have no obligation to perform services in connection with a change in the scope of work unless the cost thereof shall be agreed to under this paragraph.
9. The term of this Agreement shall be for one (1) year, with up to three (3) one (1) year extensions. Approximately 30 days prior to the end of each one (1) year period, a meeting will be held between SKW and the CITY of Edgerton staff for the purposes of conducting a performance review, revising the scope and/or language of the agreement, and submitting SKW's most current Hourly Rate Schedule. Each annual extension must be approved by the CITY.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

SHAFER, KLINE & WARREN, INC.

CITY OF EDGERTON, KANSAS

By _____
Larry D. Graham, P.E., P.L.S., CFedS
Title: President, Infrastructure & Development

Address:
11250 Corporate Avenue
Lenexa, Kansas 66219
Facsimile: (913) 888-7868

By _____
Donald Roberts
Title: Mayor

Address:
404 E. Nelson
Edgerton, Kansas 66021
Facsimile: (913) 893-6232

ATTEST:

Janice Rawles, City Clerk

Approved as to form:

Patrick G. Reavey, City Attorney



HOURLY RATE SCHEDULE

Project or Construction Manager		Engineer, Surveyor, GIS Consultant, Specialist, Landscape Architect, Designer, Planner or Programmer	
PM 10	\$ 190.00	A8	\$ 170.00
PM 9	180.00	A7	160.00
PM 8	170.00	A6	150.00
PM 7	160.00	A5	140.00
PM 6	155.00	A4	130.00
PM 5	140.00	A3	120.00
PM 4	130.00	A2	110.00
PM 3	120.00	A1	100.00
PM 2	110.00	A0	90.00
PM 1	100.00		
Construction Observer or Engineering / Survey / Corrosion / Data - Technician		Survey Crew	
T7	\$ 120.00	3 SC	\$ 165.00
T6	110.00	2 SC	145.00
T5	100.00	1 SC	100.00
T4	90.00		
T3	80.00		
T2	70.00		
T1	60.00		
T0	50.00		
Survey Truck Mileage		Passenger Car, Truck Mileage	
TMILE	Federal rate plus \$0.30/mile	PMILE	Based on Federal Guidelines
Per Diem		Expenses	
PERD	Based on Federal Guidelines Per Location or Agreed to Rate (average is currently \$140/day)	EXPENSES	Cost + 10% unless otherwise noted

Effective: January 1, 2016

AGENDA ITEM INFORMATION FORM

Agenda Item: Consider Resolution No. 04-28-16A Temporarily Waiving City Prohibition As To The Sale And Consumption Of Alcoholic Liquor On Certain Public Property, And Recognizing Frontier Days As A "Public Festival" For Purposes Of The City's Noise Restrictions

Department: Administration

Background/Description of Item: Edgerton Frontier Days will be held June 17-18, 2016. The Edgerton Frontier Days Committee has requested permission to sell and serve alcoholic liquor (i.e. alcoholic beverages other than 3.2% beer [a/k/a cereal malt beverage]) at the Festival. During most recent years, Frontier Days Association has served cereal malt beverages.

Chapter III, Article I, Section 3-202 of the Code of the City of Edgerton prohibits serving cereal malt beverages or alcoholic liquor within 300 feet of a library (as well as other buildings/institutions). This prohibition may be waived by the governing body after public notice, followed by a hearing and finding by the governing body that the proximity of the location, where the cereal malt beverage or alcoholic liquor will be served, is not adverse to the public welfare or safety.

City Council will hold a Public Hearing on Thursday, April 28th at 7:00 PM prior to considering this resolution.

If approved, Resolution No. 04-28-16A would grant the waiver requested by the Frontier Days Association, with the following stipulations:

- The sale and consumption of alcoholic liquor shall be allowed in an area on Nelson Street between East Third Street and East Fourth Street (specifically designated and approved by the City Administrator)
- Between the hours of 6:00 pm and 11:59 pm on June 17, 2016
- Between the hours of 2:00 pm and 11:59 pm on June 18, 2016.
- Point of sale for alcoholic liquor shall be 307 E. Nelson Street by properly licensed individuals or groups only
- No alcoholic liquor may be sold or dispensed in glass bottles or containers, only plastic, paper cups or cans may be used.

Also within this same resolution is permission to waive the City's noise restrictions in order for all to enjoy music as part of the festival on Friday June 17 and Saturday June 18. It is anticipated that both concerts will be completed by 11:59 p.m. each evening.

City staff will inform the Johnson County Sheriff's Office of the proposed request to serve alcoholic liquor on the above dates and hours as well as the request to waive the City's noise restrictions.

Enclosure: Resolution 04-25-16A

Related Ordinance(s) or Statute(s): Edgerton City Code Chapter III, Article 1, Section 3-202 and Chapter XI, Article 6

Recommendation: Approve Resolution No. 04-28-16A Temporarily Waiving City Prohibition As To The Sale And Consumption Of Alcoholic Liquor On Certain Public Property, And Recognizing Frontier Days As A "Public Festival" For Purposes Of The City's Noise Restrictions

Funding Source: N/A

Prepared by: Beth Linn, City Administrator
Date: April 25, 2016

RESOLUTION NO. 04-28-16A

RESOLUTION TEMPORARILY WAIVING CITY PROHIBITION AS TO THE SALE AND CONSUMPTION OF ALCOHOLIC LIQUOR ON CERTAIN PUBLIC PROPERTY, AND RECOGNIZING FRONTIER DAYS AS A “PUBLIC FESTIVAL” FOR PURPOSES OF THE CITY’S NOISE RESTRICTIONS

WHEREAS, the 2016 annual celebration known as Frontier Days will be June 17 through June 18 in the City of Edgerton, Kansas; and

WHEREAS, a request has been received by the City of Edgerton from the Edgerton Frontier Days Association for permission to sell and serve alcoholic liquor (i.e. alcoholic beverages other than 3.2% beer [a/k/a cereal malt beverage]) at its annual festival; and

WHEREAS, Chapter III, Article 1, Section 3-202 of the Code of the City of Edgerton prohibits serving cereal malt beverages or alcoholic liquor within 300 feet of a library (as well as other buildings/institutions), but said prohibition may be waived by the governing body after public notice, followed by a hearing and finding by the governing body that the proximity of the location, where the cereal malt beverage or alcoholic liquor will be served, is not adverse to the public welfare or safety; and

WHEREAS, Article 6 of Chapter XI of the Code of the City of Edgerton regulates the levels of noise and sound within the City but said regulations do not apply when the governing body recognizes the event where the noise and sound is to occur as a “public festival”.

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

SECTION ONE: Finding: That the Governing Body, after receiving a request from the Frontier Days Association, does hereby find and conclude that the proximity of the requested location for the sale and consumption of alcoholic liquor is not adverse to the public welfare or safety and the Governing Body's conclusion in this regard is supported by the fact that the Frontier Days Association has served cereal malt beverages in this location for several years without any adversity to the public welfare or safety.

SECTION TWO: Waiver Granted: That the Governing Body, pursuant to Chapter III, Article I, Section 3-202 of the Edgerton City Code, hereby grants the waiver requested by the Frontier Days Association, with the following stipulations:

- a) The sale and consumption of alcoholic liquor shall be allowed in an area on Nelson Street between East Third Street and East Fourth Street (specifically designated and approved by the City Administrator) between the hours of 6:00 pm and 11:59 pm on June 17, 2016 and between the hours of 2:00 pm and 11:59 pm on June 18, 2016.
- b) The location of the point of sale for alcoholic liquor shall be 307 E. Nelson Street by properly licensed individuals or groups only.

- c) No alcoholic liquor may be sold or dispensed in glass bottles or containers, only plastic, paper cups or cans may be used.

SECTION THREE: Frontier Days a "Public Festival": Edgerton Frontier Days is recognized as a public festival and, therefore, the noise restrictions contained within Article 6 of Chapter XI of the Code of the City of Edgerton shall not apply to noise and sounds made or generated by the 2016 public festival on June 17 and 18.

SECTION FOUR - Effective Date: This Resolution shall take effect and be in full force immediately after its adoption by the Governing Body.

ADOPTED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR OF THE CITY OF EDGERTON, KANSAS ON THE 28th DAY OF APRIL 2016.

ATTEST:

CITY OF EDGERTON, KANSAS

Janeice Rawles, City Clerk

By: _____
Donald Roberts, Mayor

APPROVED AS TO FORM:

Patrick G. Reavey, City Attorney

AGENDA ITEM INFORMATION FORM

Agenda Item: Consider Resolution No. 04-28-16B Authorizing Special Event Permit For Sale And Consumption Of Alcoholic Liquor On Certain Public Property Within The City Of Edgerton, Kansas

Department: Administration

Background/Description of Item: Edgerton Frontier Days will be held June 17-18, 2016. The Edgerton Frontier Days Committee has requested permission to sell and serve alcoholic liquor (i.e. alcoholic beverages other than 3.2% beer [a/k/a cereal malt beverage]) at the Festival.

Chapter III, Article 5 of the Edgerton City Code requires that an entity desiring to sell and serve alcoholic liquor on public property at an event open to the public, in addition to obtaining the required permit from the State of Kansas, must also apply and obtain a Special Event Permit from the City.

If approved, Resolution No. 04-28-16B would authorize the City Clerk to issue the Frontier Days Association a Special Event Permit for sale and consumption of alcoholic liquor per the requirements contained within Article 5 and with the following additional stipulations:

- The sale and consumption of alcoholic liquor shall be allowed in an area on Nelson Street between East Third Street and East Fourth Street (specifically designated and approved by the City Administrator)
- Between the hours of 6:00 pm and 11:59 pm on June 17, 2016
- Between the hours of 2:00 pm and 11:59 pm on June 18, 2016.
- Point of sale for alcoholic liquor shall be 307 E. Nelson Street by properly licensed individuals or groups only
- No alcoholic liquor may be sold or dispensed in glass bottles or containers, only plastic, paper cups or cans may be used.

Additionally, the resolution states that in appreciation for the many benefits enjoyed by the community from the annual Frontier Days festival, waives any City application or permit fees for issuance of the Special Event Permit.

Enclosure: Resolution 04-28-16B

Related Ordinance(s) or Statute(s): Edgerton City Code Chapter III, Article 5

Recommendation: Approve Resolution No. 04-28-16B Authorizing Special Event Permit For Sale And Consumption Of Alcoholic Liquor On Certain Public Property Within The City Of Edgerton, Kansas

Funding Source: N/A

Prepared by: Beth Linn, City Administrator
Date: April 25, 2016

RESOLUTION NO. 04-28-16B

RESOLUTION AUTHORIZING SPECIAL EVENT PERMIT FOR SALE AND CONSUMPTION OF ALCOHOLIC LIQUOR ON CERTAIN PUBLIC PROPERTY WITHIN THE CITY OF EDGERTON, KANSAS

WHEREAS, the 2016 annual celebration known as Frontier Days is scheduled for June 17 through June 18 in the City of Edgerton, Kansas; and

WHEREAS, Article 5 of Chapter III of the Code of the City of Edgerton requires that an entity desiring to sell and serve alcoholic liquor on public property at an event open to the public, in addition to obtaining the required permit from the State of Kansas, must also apply and obtain a Special Event Permit from the City; and

WHEREAS, a request has been received by the City of Edgerton from the Edgerton Frontier Days Association for a Special Event Permit to sell and serve alcoholic liquor (i.e. alcoholic beverages other than 3.2% beer [a/k/a cereal malt beverage]) at its annual festival on June 17 and 18, 2016.

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

SECTION ONE: Special Event Permit Authorized: That the Governing Body does hereby authorize the City Clerk, in accordance with Article 5 of Chapter III of the Edgerton City Code, to issue the Frontier Days Association a Special Event Permit for sale and consumption of alcoholic liquor per the requirements contained within Article 5 and with the following additional stipulations:

- a) The Special Event Permit provided for herein is only valid if the required permit from the State of Kansas is obtained by the Frontier Days Association.
- b) The sale and consumption of alcoholic liquor shall be allowed in an area on Nelson Street between East Third Street and East Fourth Street (specifically designated and approved by the City Administrator) between the hours of 6:00 pm and 11:59 pm on June 17, 2016 and between the hours of 2:00 pm and 11:59 pm on June 18, 2016.
- c) The location of the point of sale for alcoholic liquor shall be 307 E. Nelson Street by properly licensed individuals or groups only.
- d) No alcoholic liquor may be sold or dispensed in glass bottles or containers, only plastic, paper cups or cans may be used.

SECTION TWO: Waiver of Application Fees: The City of Edgerton, in appreciation for the many benefits enjoyed by the community from the annual Frontier Days festival, waives any City application or permit fees for issuance of the Special Event Permit.

SECTION THREE - Effective Date: This Resolution shall take effect and be in full force immediately after its adoption by the Governing Body.

ADOPTED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR OF THE CITY OF EDGERTON,
KANSAS ON THE 28th DAY OF APRIL 2016.

ATTEST:

CITY OF EDGERTON, KANSAS

Janeice Rawles, City Clerk

By: _____
Donald Roberts, Mayor

APPROVED AS TO FORM:

Patrick G. Reavey, City Attorney

CITY OF EDGERTON, KANSAS

COUNCIL AGENDA ITEM

Council Meeting Date: April 28, 2016

Agenda Item: Public Hearing
Partial Assignment of Resolution of Intent

Subject: Property Tax Abatement for ELHC XXXI, LLC Project

Hearing Notice Published: April 28, 2016 in the *Gardner News*

Summary:

The City has received an application for property tax abatement from ELHC XXXI, LLC. ELHC XXXI desires to construct an approximately 378,000 sq. ft. spec warehouse and distribution facility to be located at 31800 W. 196th Street in Edgerton, Kansas. In order for the City to grant property tax abatement, the City must first hold a public hearing, consider the cost-benefit report and then approve a partial assignment of the Master Resolution of Intent.

Public Hearing

A notice of the public hearing has been published at least seven days prior to the date of this meeting. Written notice of the public hearing has also been provided to the County and the School District. The Council should take comments from the public.

Cost-Benefit Report

Columbia Capital Management, LLC has prepared a cost-benefit report for the proposed project. The Council should consider the cost-benefit report and ask any questions the Council may have about the report.

Partial Assignment of Resolution of Intent

The City previously adopted a Master Resolution of Intent for the benefit of Edgerton Land Holding Company, LLC (“Edgerton Land”) for constructing various projects in the Logistics Park-Kansas City, and provided for the issuance of up to \$1,000,000,000 in industrial revenue bonds. The Master Resolution of Intent allows Edgerton Land to assign portions of the Master Resolution of Intent to various companies that locate within the park. The partial assignment of the Master Resolution of Intent assigns \$26,500,000 of the Master Resolution of Intent to ELHC XXXI for the purpose of constructing this project.

RESOLUTION NO. 04-28-16C

**RESOLUTION CONSENTING TO THE PARTIAL ASSIGNMENT OF A
RESOLUTION OF INTENT FROM EDGERTON LAND HOLDING COMPANY,
LLC TO ELHC XXXI, LLC, OR ITS SUCCESSORS IN INTEREST**

WHEREAS, the City of Edgerton, Kansas (the “City”), desires to promote, stimulate and develop the general welfare and economic prosperity of the City and its inhabitants and thereby to further promote, stimulate and develop the general welfare and economic prosperity of the State of Kansas; and

WHEREAS, the City is authorized and empowered under the provisions of K.S.A. 12-1740 to 12-1749d, inclusive (the “Act”), to issue industrial revenue bonds to pay the cost of certain facilities (as defined in the Act) for the purposes set forth in the Act and to lease such facilities to private persons, firms or corporations; and

WHEREAS, the City adopted Resolution No. 07-08-10A on July 8, 2010, as amended by Resolution No. 04-25-13A adopted on April 25, 2013 and Resolution No. 04-09-15A adopted on April 9, 2015 (collectively, the “Resolution of Intent”) determining the intent of the City to issue its industrial revenue bonds in multiple series, the aggregate amount of all series not to exceed \$1,000,000,000 (the “Bonds”), to finance the costs of acquiring, constructing, reconstructing, improving and equipping the Logistics Park Projects (as defined in the Resolution of Intent) for the benefit of Edgerton Land Holding Company, LLC (the “Developer”); and

WHEREAS, the Resolution of Intent permits the Developer, with the consent of the City, to assign a portion of its interest in the Resolution of Intent to another entity, thereby conferring on such entity the benefits of the Resolution of Intent and the proceedings related thereto; and

WHEREAS, the Developer desires to assign \$26,500,000 of its interest in the Resolution of Intent to ELHC XXXI, LLC, a Kansas limited liability company (the “Company”), for the purposes of permitting the Company to acquire, construct and equip a commercial project, consisting of an approximately 378,000 sq. ft. warehouse and distribution facility (the “ELHC Project”), to be located at 31800 W. 196th Street in Edgerton, Kansas; and

WHEREAS, the City desires to consent to such partial assignment of the Resolution of Intent to the Company.

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

Section 1. Partial Assignment of Resolution of Intent. The Governing Body of the City hereby consents to the assignment by the Developer of \$26,500,000 of the Developer’s interest in the Resolution of Intent to the Company for the purposes of completing the ELHC Project, which is a Logistics Park Project. The City agrees that the Company will now be entitled to the benefits of the Resolution of Intent to the same extent and on the same terms as the Developer with respect to the ELHC Project.

Section 2. Authorization to Proceed. The Company is authorized to proceed with the acquiring, constructing and equipping of the ELHC Project, and to advance such funds as may be necessary to

accomplish such purposes, and, to the extent permitted by law, the City will reimburse the Company for all expenditures paid or incurred therefor out of the proceeds of the Bonds.

Section 3. Benefit of Resolution. This Resolution will inure to the benefit of the City and the Company. The Company may, with the prior written consent of the City, assign its interest in this Resolution and the Resolution of Intent to another entity, and such assignee will be entitled to the benefits of this Resolution, the Resolution of Intent and the proceedings related hereto.

Section 4. Effective Date. This Resolution shall take effect and be in full force immediately after its adoption by the Governing Body of the City.

ADOPTED this 28th day of April, 2016.

CITY OF EDGERTON, KANSAS

[SEAL]

By: _____
Donald Roberts, Mayor

ATTEST:

Janeice Rawles, City Clerk

Approved as to form:

Scott W. Anderson, Bond Counsel



6330 Lamar
Suite 200
Overland Park, Kansas 66202
Jeff White, Principal
913.312.8077
jwhite@columbiacapital.com

April 20, 2016

Ms. Beth Linn
City Administrator
City of Edgerton
404 East Nelson
Edgerton, Kansas 66021

RE: Cost-Benefit Analysis for ELHC XXXI, LLC

Dear Beth:

Please find attached the results of our cost-benefit analysis related to the projected property tax abatement to be granted by the City to applicant ELHC XXXI, LLC, related to the construction of a new 378,000 square foot warehousing facility in Logistics Park Kansas City (LPKC). The purpose of this analysis is to satisfy the City's requirement pursuant to KSA 12-1749d or KSA 79-251(a)(1) to undertake a cost-benefit analysis before granting a property tax abatement. This analysis assumes the City grants a 100% property tax abatement for 10 years with the applicant paying an annual payment-in-lieu-of-taxes equal to \$0.21 per square foot on the building to be constructed.

KSA 12-1749d(2) requires notification of anticipated abatements only to counties or school districts affected. As a result, our analysis focuses on financial impacts to the City, Johnson County and the Gardner/Edgerton schools. We have not calculated the cost-benefit on other taxing jurisdictions. State law also requires the analysis to include "the effect of the exemption on state revenues." Our modeling includes such an estimate.

Our proprietary cost-benefit modeling relies on a number of key assumptions in the calculation of net present value benefit to the City, Johnson County and USD 231. Most of our assumptions are derived from public information, although some inputs are based upon dialogue with subject matter experts, including staff of the Kansas Department of Revenue. Some of these key assumptions include:

- An evaluation of the direct costs and benefits of the project. Columbia's model does not include indirect or "spin-off" effects as a result of input-output multipliers.
- A ten-year analysis timeframe for each individual project, matching the maximum permitted term of the abatement.
- Direct costs to the City, the County, the school district and the State as estimated by Columbia based upon the financial reports, expert analysis and/or conversations with key staff members within those agencies and at the State of

Kansas. Please note our analysis assumes the return of a school finance formula that provides aid to districts on a per pupil basis.

- Where applicable, reliance upon statistical data as reported in the 2010 US Census.
- The use of a discount rate comprised of two components: a risk-free rate of return (the current yield of the on-the-run 10-year US Treasury) plus a risk premium of two (2) percent. The value of the discount rate is a proxy for the opportunity cost of the City (and other agencies) of foregoing the future property and/or sales tax revenues that would be generated by the development. Thought of another way, if the City had those revenues in hand and placed them in an alternative investment with the same risk characteristics, what would be its expected rate of return?

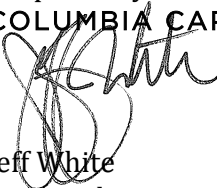
The output of the model is presented as the net present value benefit/(cost) of the project for the City, County and school district over the 10-year life of the abatement on each project. The net benefit (or, if negative, cost) of the incentive package is presented in today's dollars. The estimated impact on State revenues is presented in nominal (future value) terms. We also provide an estimated future value project contribution to the City's Public Infrastructure Fund (PIF). While the modeling shows a significant net present value benefit to the City, it is important to note that *the majority of the City's net benefit is reinvested in LPKC through the PIF.*

In the preparation of this cost-benefit analysis, Columbia has relied upon the information provided to it by applicant and has not independently verified or validated these data. The City must draw its own conclusions as to the reliability of these data.

Finally, the intent of this analysis and of the applicable statutes is to inform the governing body's policy debate about the value of the abatement incentive it is providing to the applicant. The project's generation of a net present value benefit to the agencies affected should be but one of the many factors in the governing body's decision about whether and how much incentive to provide to any applicant.

Thank you in advance for your thoughtful consideration of the analysis attached. Please let me know if you have any questions.

Respectfully submitted,
COLUMBIA CAPITAL MANAGEMENT, LLC



Jeff White
Principal



SUMMARY OF COSTS AND BENEFITS
City of Edgerton, Kansas

APPLICANT INFORMATION:

Application Date:	4/20/16	Summary of Incentives Provided:	100% real property tax abatement for a 10 year period, as well as a construction sales tax exemption for materials, with a PILOT payment of \$0.21/s.f. per year.
Firm Name:	ELHC XXXI, LLC		
Firm Address:	5015 NW Canal St., Suite 200 Riverside, Missouri 64150		
Firm Contact:	Patrick Robinson 913.915.7150		

SUMMARY OF INCENTIVE PACKAGE (LOCAL GOVERNMENT IMPACTS ONLY):

Year	Property Tax Abatement		Construction Sales Tax Abatement		Direct Incentives		
	(%)	(\$)	(%)	(\$)	City	County	School
2	100	519,204	100	48,694	0	0	0
3	100	519,204	100	0	0	0	0
4	100	519,204	100	0	0	0	0
5	100	519,204	100	0	0	0	0
6	100	519,204	100	0	0	0	0
7	100	519,204	100	0	0	0	0
8	100	519,204	100	0	0	0	0
9	100	519,204	100	0	0	0	0
10	100	519,204	100	0	0	0	0
11	100	519,204	100	0	0	0	0

PAYMENT IN LIEU OF TAXES RECEIPTS:

City	County	School
Year	Year	Year
17,072	9,943	35,129
17,072	9,943	35,129
17,072	9,943	35,129
17,072	9,943	35,129
17,072	9,943	35,129
17,072	9,943	35,129
17,072	9,943	35,129
17,072	9,943	35,129
17,072	9,943	35,129
17,072	9,943	35,129
17,072	9,943	35,129

SUMMARY OF PRESENT VALUE BENEFITS:

City Summary				
Year	Total Benefits	Total Costs	Net Benefit	Net PV Benefit
2	332,652	-163,752	168,899	156,820
3	331,897	-163,752	168,144	150,432
4	331,935	-163,752	168,183	144,987
5	331,976	-163,752	168,224	139,740
6	332,019	-163,752	168,267	134,684
7	332,064	-163,752	168,312	129,813
8	332,111	-163,752	168,359	125,120
9	332,161	-163,752	168,408	120,598
10	332,213	-163,752	168,460	116,241
11	332,267	-163,752	168,515	112,044
	3,321,294	-1,637,523	1,683,772	1,330,479

County Summary			
Total Benefits	Total Costs	Net Benefit	Net PV Benefit
145,125	-149,553	-4,428	-4,112
95,514	-100,859	-5,346	-4,783
95,569	-100,859	-5,290	-4,561
95,627	-100,859	-5,232	-4,346
95,689	-100,859	-5,171	-4,139
95,753	-100,859	-5,107	-3,939
95,820	-100,859	-5,039	-3,745
95,891	-100,859	-4,969	-3,558
95,965	-100,859	-4,894	-3,377
96,043	-100,859	-4,816	-3,202
1,006,996	-1,057,287	-50,292	-39,760

School District Summary			
Total Benefits	Total Costs	Net Benefit	Net PV Benefit
342,273	-312,330	29,943	27,802
342,273	-312,330	29,943	26,789
342,273	-312,330	29,943	25,813
342,273	-312,330	29,943	24,873
342,273	-312,330	29,943	23,967
342,273	-312,330	29,943	23,094
342,273	-312,330	29,943	22,253
342,273	-312,330	29,943	21,442
342,273	-312,330	29,943	20,661
342,273	-312,330	29,943	19,909
3,422,729	-3,123,299	299,430	236,603

SUMMARY OF ECONOMIC IMPACT (over 10-year period):

Number of jobs to be created : 325

Number of new residents:

City	6
County	7
School District	7

Expected 10-year contribution to PIF: \$ 1,353,500

Impact of exemption on state revenues: \$ (63,634)

AGENDA ITEM INFORMATION FORM

Agenda Item: Consider Ordinance No. 1015 Amending Article 7 Of Chapter IV Of The Edgerton, Kansas Municipal Code To Revise Provisions Pertaining To Licensing Requirements Of Contractors Engaged In Non-Residential Construction Work Within The City

Department: Community Development

Background/Description of Item:

Contractor Licensing Regulation Adoption: Community Development Department is returning to present proposed Ordinance language for Contractor Licensing Regulations as was discussed at the City Council's January 28, 2016 meeting. The goal of this regulation is to safeguard life, health, and property, and to promote the public welfare by requiring contractors applying for building permits to first obtain a Johnson County Contractors License for the type of work they propose to complete. This language would replace wording that is currently in Chapter IV, Article 7 of the Edgerton Municipal Code for the "Licensing of Building Trades" and which has not been enforced for a number of years.

Information: Staff was directed to provide language for the adoption of Contractor Licensing for Industrial and Commercial work. The wording of Industrial and Commercial are not occupancy types listed in the adopted construction codes and so staff has drafted wording that follows the direction that was received from City Council. Staff's proposed wording is currently for the exemption of all residential work with the intent to bring back the item for future discussion in regards to what types of residential work should require licensed contractors and what should be exempt. Staff suggests for the City Council to consider the scheduling of a work session to discuss the issue of licensing of residential contractors. This work session would also provide a good opportunity for the initial discussion on updates to the building code and allow for the City Council to have further discussions on the types of activities that require applications for building permits.

A copy of the proposed ordinance is attached to this Agenda Item Information Form and has been reviewed by the City Attorney.

Enclosure: Ordinance No. 1015

Related Ordinance(s) or Statute(s): Edgerton City Code Chapter IV, Article 7

Recommendation: Approve Ordinance No. 1015 Amending Article 7 Of Chapter IV Of The Edgerton, Kansas Municipal Code To Revise Provisions Pertaining To Licensing Requirements Of Contractors Engaged In Non-Residential Construction Work Within The City

Funding Source: N/A

Prepared by: Kenneth Wiseman, Building Inspector
Kenneth Cook, Community Development Director
Date: April 25, 2016

ORDINANCE NO. 1015

AN ORDINANCE AMENDING ARTICLE 7 OF CHAPTER IV OF THE EDGERTON, KANSAS MUNICIPAL CODE TO REVISE PROVISIONS PERTAINING TO LICENSING REQUIREMENTS OF CONTRACTORS ENGAGED IN NON-RESIDENTIAL CONSTRUCTION WORK WITHIN THE CITY

WHEREAS, the governing body believes it is in the best interest and safety of residents within the City that certain proficiency standards are required of contractors engaged in construction activity within the City; and

WHEREAS, Johnson County, Kansas administers a comprehensive contractor licensing program that has been implemented, or required as part of obtaining a building permit, by most Johnson County cities; and

WHEREAS, the City believes conditioning City building permits upon a showing by the applicant that they hold a valid license issued through the Johnson County Contractor licensing program will eventually enhance the proficiency of construction activity within the City; and

WHEREAS, given that the licensing requirement may be a new expense, and/or require additional coursework or training, not currently required by contractors working within the City, the City believes the best approach to implementation of the licensing requirement is to initially impose it upon non-residential contractors and then continue to analyze whether it makes sense to impose it upon all contractor construction within the City.

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

SECTION 1: Article 7 of Chapter IV of the Edgerton, Kansas Municipal Code is hereby amended to state the following:

ARTICLE 7. CONTRACTOR LICENSING

4-701. COUNTY LICENSE REQUIRED. (a) All persons undertaking work which requires a building permit as provided in Section 4-109, or seeking to obtain that permit from the City, are required to have a currently valid Johnson County, Kansas contractor's license. That County license shall have been issued by the County in accordance with the provisions of the Johnson County Contractors Licensing program and the Contractor Licensing Regulations adopted by the Board of County Commissioners by Resolution 058-01 on August 9, 2001, and any regulations subsequently adopted by the Contractor Licensing Review Board as authorized by said County Licensing

Regulations, as said Resolution and regulations may be amended from time to time by said Boards.

(b) The following shall be exempt from the licensing requirement of Section 4-701(a) herein above:

- (1) Installation, repair or replacement of fences or decks.
- (2) Installation, repair or replacement of driveways or other flatwork.
- (3) Industrial Permittees who supervise their employees for Mechanical, Electrical and Plumbing installations and who assume charge of the repair, improvement, movement, putting up, tearing down, and maintenance of these systems, for use by such owner and which systems will not be for sale or rent, and the control of access to said systems are controlled by the owner so that only employees and nonpublic invitees are allowed access to them, and such employees shall possess the necessary qualifications, training, experience, and technical knowledge to properly maintain, repair and install these systems.
- (4) The Building Inspector may waive the provisions of this section where it can be established that no license exists for the installations, alteration, or repair of a certain type of work requiring a permit, or due to other unique circumstances.
- (5) Construction, repair or replacement of structures used for Residential Purposes.

SECTION 2: Repeal. Former Article 7 of Chapter IV of the Edgerton Municipal Code is hereby repealed.

SECTION 3: Effective Date. This Ordinance shall be effective after its passage, approval and publication once in the City's official paper.

ADOPTED BY THE GOVERNING BODY AND APPROVED BY THE MAYOR OF EDGERTON, KANSAS ON THE 28 DAY OF APRIL, 2016.

Donald Roberts, Mayor

ATTEST:

Janeice Rawles, City Clerk

APPROVED AS TO FORM:

Patrick G. Reavey, City Attorney

AGENDA ITEM INFORMATION FORM

Agenda Item: Consider Street Maintenance Program for 2016 & 2017

Department: Public Works

Background/Description of Item: In May 2014, staff presented a five-year street maintenance program. At that time, City Council chose to accelerated several streets for chip and seal in 2014. Additionally, the City partnered with Johnson County for completion of an asphalt overly of 207th Street and West 8th Street in 2015.

To prepare recommendation for 2016 and 2017 Street Maintenance Program, staff along with BG Consultants took a comprehensive look the current condition of the roadway network in Edgerton. In addition to this initial inventory, Public Works Staff will collect information on an on-going basis, this will help to better refine and prioritize the needs of the street maintenance program on an annual basis. Staff has spent time designating repair and maintenance needs for the 2016 and 2017 Street Programs.

2016 Chip Seal Program: Due to the current condition of our roadway network, it is the recommendation of the Public Works Department that we utilize Granite Chip Seal process. This process is the most effective and efficient seal treatment for our current roadway network. The use of 1/4" aggregate on residential roadways provides the better ride quality and aesthetics for residential proposes; shot rate and sweeping procedures have been modified to reduce the amount of aggregate shedding, which helps to prevent the excess aggregate.

Implementation of Geotechnical Sampling: This sampling helps us to determine the sections of roadway that are accepting of a mill and overlay and/or Ultra-thin Bonded Asphalt Surface (UBAS). This sampling will be performed by the Public Works Staff.

Ultra-thin Bonded Asphalt Surface (UBAS): Preventative maintenance tool that is used to extend the useful life of a roadway. This is done by placing a thin, course aggregate hot mix of a special asphalt membrane. This membrane prevents water leakage and provides a superior bond to the existing asphalt. UBAS can be installed quickly and has a longer life span than a basic seal.

2017 Street Program Outline: This program is tentative and will be used as a baseline to start from. The data from the sampling program will be the deciding factor for the major repair work (mill and overlay and UBAS). Staff has tentatively identified the sections of roadway slated for chip seal for 2017.

Enclosure: Completed Maintenance Map
2016 Street Maintenance Program Map
Geotechnical Sampling Map
2017 Street Maintenance Program Map

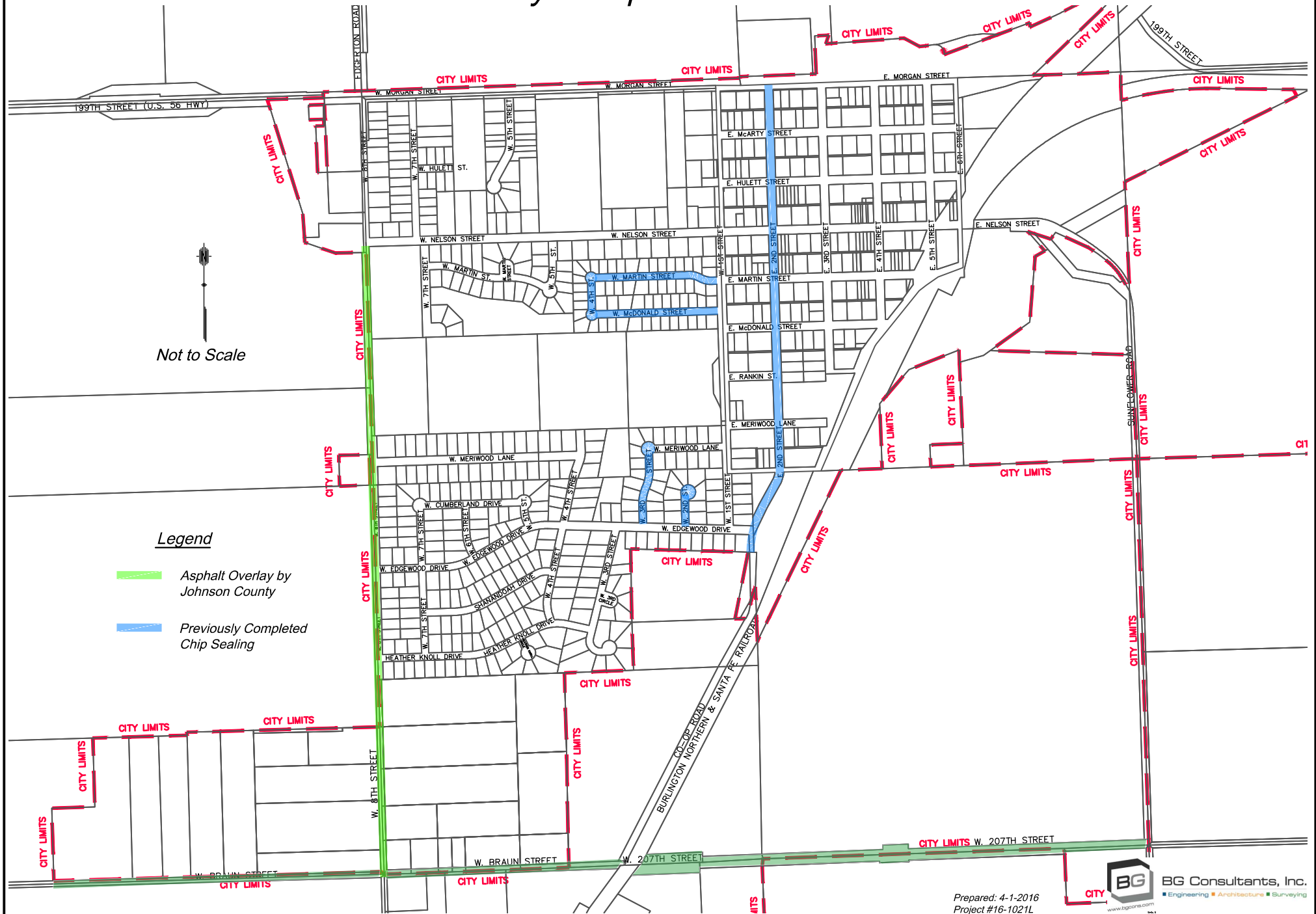
Recommendation: Approve the 2016 & 2017 Street Maintenance Program

Funding Source: N/A

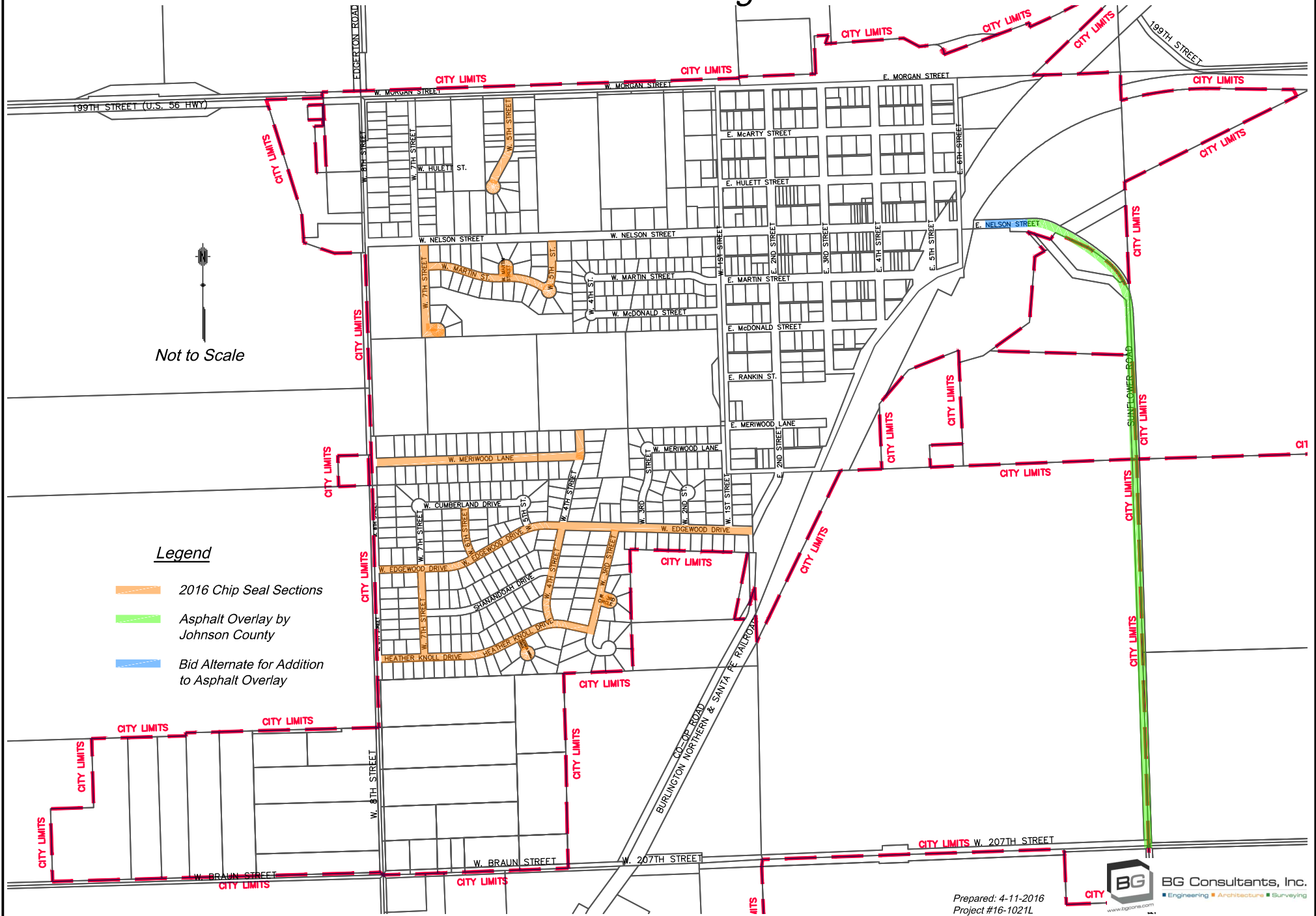
Prepared by: Karen Kindle, Accountant and Trey Whitaker, Public Works Superintendent
Date: April 25, 2016

City of Edgerton Kansas

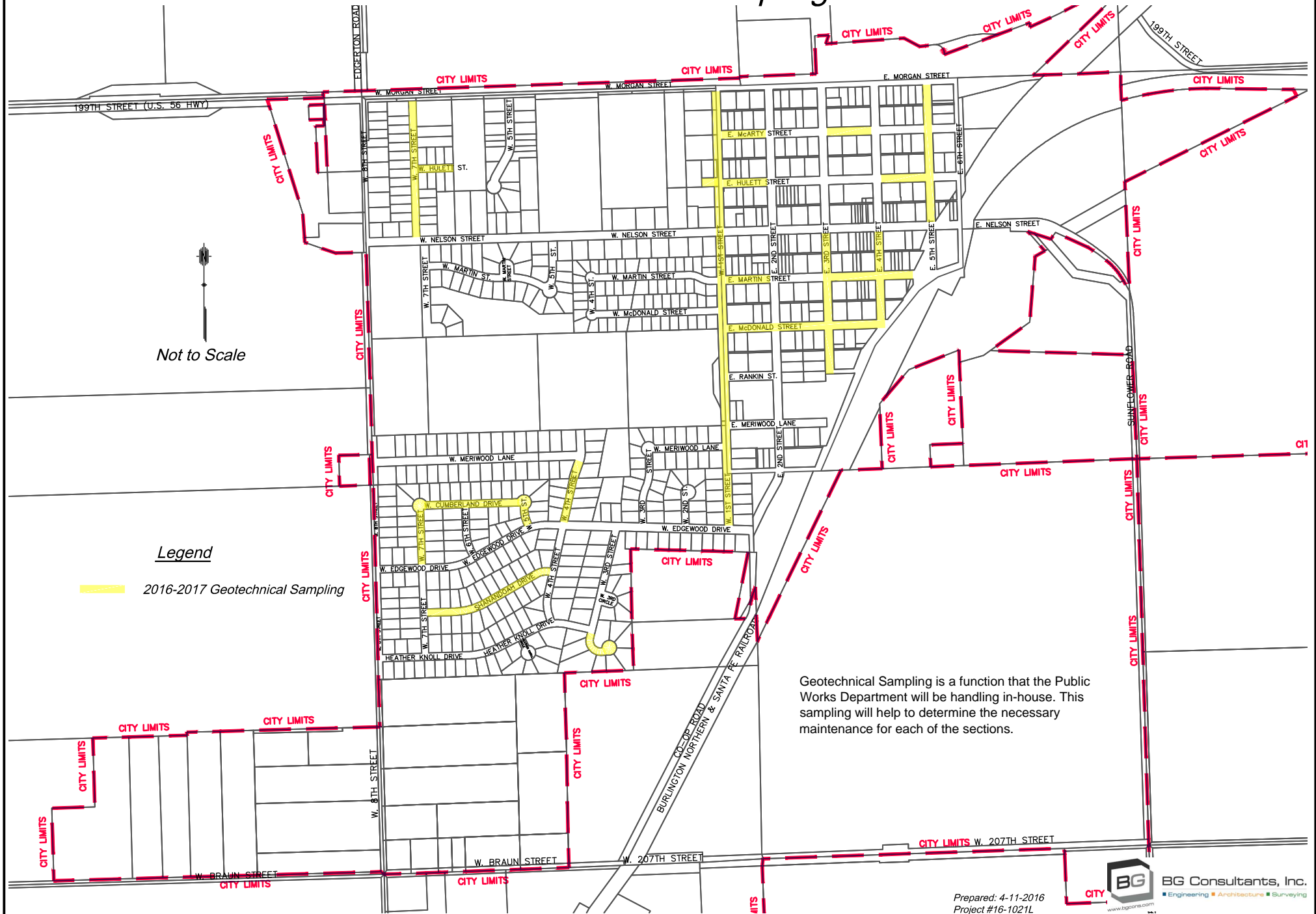
Previously Completed Maintenance



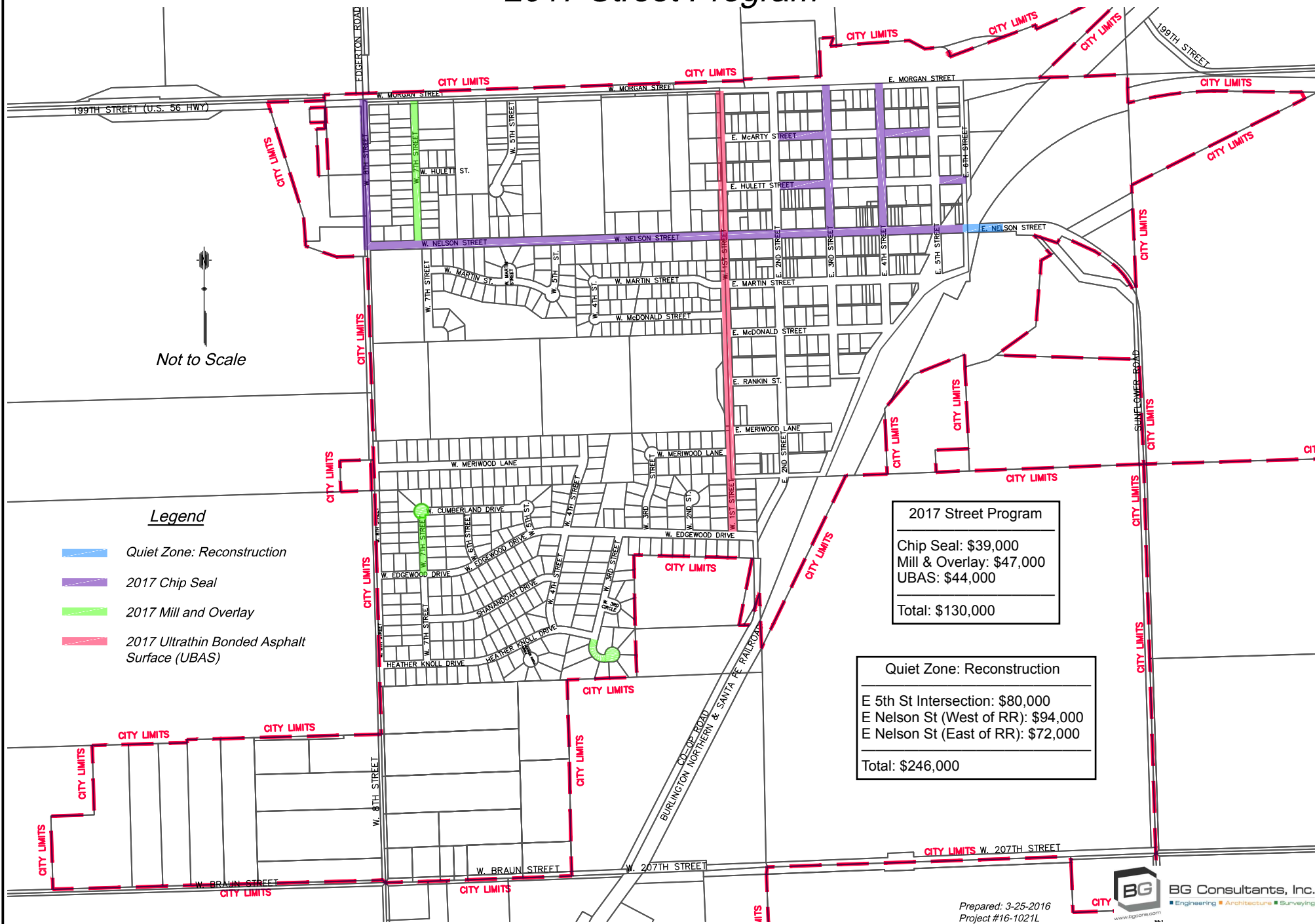
City of Edgerton, Kansas
2016 Street Program



City of Edgerton Kansas Geotechnical Sampling



*City of Edgerton Kansas
2017 Street Program*



AGENDA ITEM INFORMATION FORM

Agenda Item: Consider Proposal from Harbour Construction, Inc. for 2016 Chip and Seal Program

Department: Public Works

Background/Description of Item: The City of Edgerton has previously struggled to entice chip and seal contractors to bid the annual street maintenance project due to size of the project. In 2014, the City only received one bid for the annual street maintenance project. The City's purchasing policy allows and encourages the practice of cooperative purchases, used most frequently with vehicles and equipment. The City's purchasing policy allows for the City to "piggy-back" on contracts entered into by other jurisdictions.

For 2016, staff has identified cooperative purchasing provisions in the City of Lenexa Chip and Seal contract with Harbour Construction, Inc. Harbour Construction agreed in its contract with the City of Lenexa to "sell under the prices and terms of this Contract to any Municipal, County Public Utility, Hospital, or Educational Institution having membership in the Mid-America Council of Public Purchasing and located within the Greater Kansas City Metropolitan Trade Area." This language allows the City of Edgerton to take advantage of the competitive, public bid process used by the City of Lenexa. It does require the City of Edgerton to use the same technical specifications for the work.

Due to the current condition of our roadway network, it is the recommendation of the Public Works Department that we utilize Granite Chip Seal process. This process is the most effective and efficient seal treatment for our current roadway network. The use of 1/4" aggregate on residential roadways provides the better ride quality and aesthetics for residential proposes, shot rate and sweeping procedures have been modified to reduce the amount of aggregate shedding, which helps to prevent the excess aggregate from entering the stromwater pipes, boxes and channels.

The approved 2016 Special Highway Fund Budget allocated \$106,124 for 2016 Street Maintenance Program. Staff has updated the budget reflect \$80,315 of that amount allocated to chip and seal with the remaining \$25,809 allocated to prep work.

City Attorney has reviewed and approved proposal.

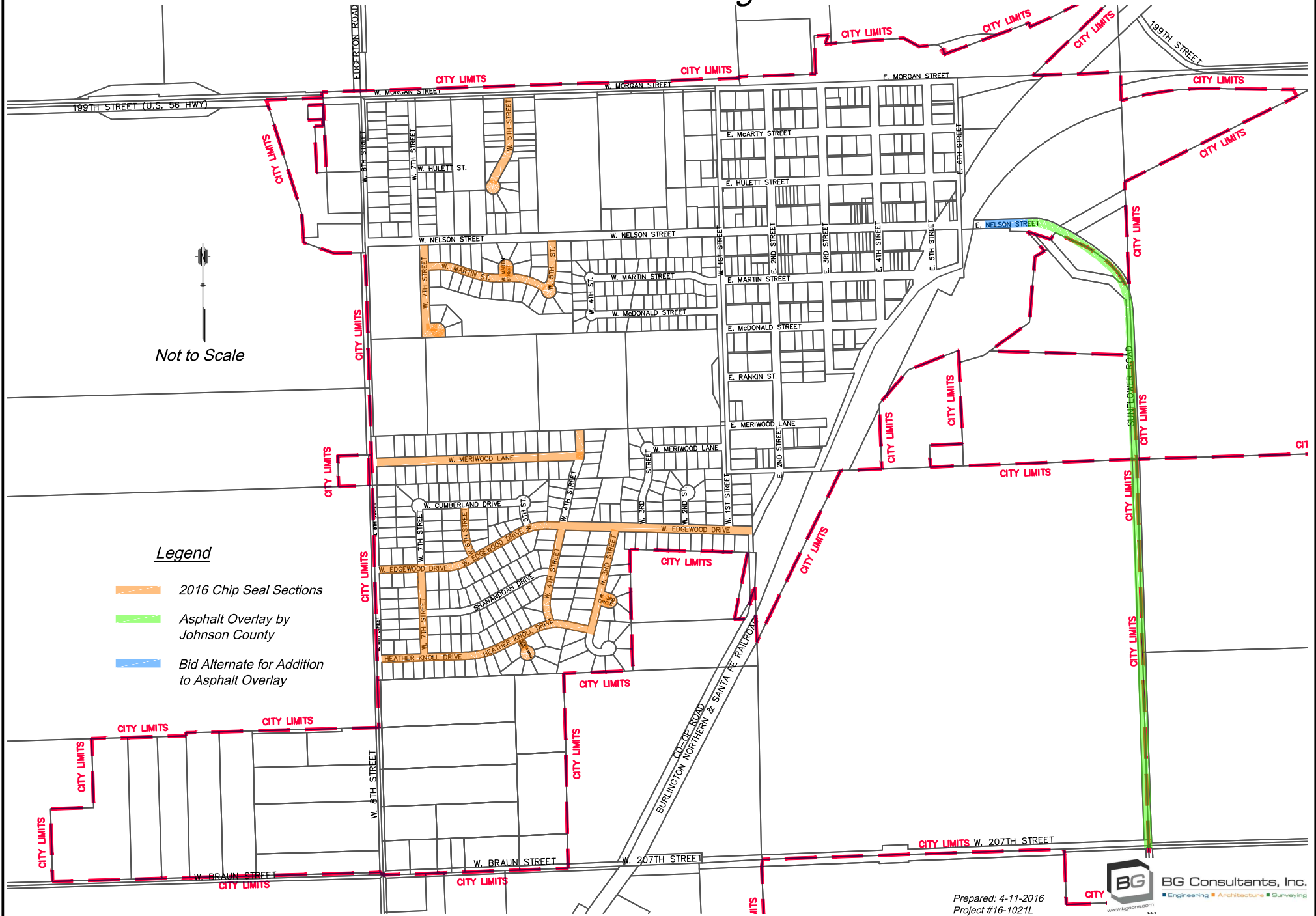
Enclosure: 2016 Chip Seal Program Maps
Proposal from Harbour Construction, Inc.
Special Highway Fund
Lenexa Chip Seal Contract

Recommendation: Approve Proposal from Harbour Construction, Inc. for 2016 Chip and Seal Program in the Amount of \$ 80,314.55.

Funding Source: Special Highway Fund

Prepared by: Karen Kindle, Accountant and Trey Whitaker, Public Works Superintendent
Date: April 25, 2016

*City of Edgerton, Kansas
2016 Street Program*



HARBOUR CONSTRUCTION, INC.

Proposal

GENERAL OFFICE
2717 So. 88th St.
Kansas City, KS 66111

TELEPHONE
Office: (913) 441-2555
Fax: (913) 441-2576

Proposal Date
4.14.16

Estimated By
Bob Harbour Jr.

Page 1 of 1

To: CITY OF EDGERTON, KANSAS
Address:

Job Name: GRANITE SEAL/VARIOUS STREETS
Address: EDGERTON, KANSAS
ATTN: MR. TREY WHITAKER
twhitaker@edgertonks.org

Architect/Engineer

Date of Plans

THE CONTRACTUAL PROMISES AND OBLIGATIONS AGREED TO BETWEEN THE CITY OF LENEXA, KANSAS AND HARBOUR CONSTRUCTION, INC. FOR YEAR 2016, EXCEPT FOR THE ITEMS SPECIFIED BELOW, ARE INCORPORATED HEREIN A PART OF THIS PROPOSAL EXCEPT THAT CITY OF EDGERTON, KANSAS WILL BE SUBSTITUTED IN PLACE OF CITY OF LENEXA, KANSAS.

ESTIMATE: GRANITE SEAL: APPROXIMATELY 34,065 SQUARE YARDS

1. SEAL: \$1.80 PER SQUARE YARD	\$61,317.00
2. 1 ST SWEEP: \$.14 PER SQUARE YARD	\$ 4,769.10
3. 2 ND SWEEP: \$.13 PER SQUARE YARD	\$ 4,428.45
4. MOBILIZATION:	\$ 4,000.00
5. TRAFFIC CONTROL	<u>\$ 5,800.00</u>

TOTAL BID: \$80,314.55

PERFORMANCE AND MAINTENANCE BOND INCLUDED

***SALES TAX WILL BE CHARGED UNLESS A SALES TAX EXEMPT CERTIFICATE IS RECEIVED PRIOR TO START OF JOB.**

The following items are excluded unless stated otherwise in this proposal:

*Fine grading of subgrade	*Subgrade compaction or stability	*Utility adjustment
*Bonds, permits & fees	*Traffic control devices	or relocation

TYPE OF BASE PRICE

TOTAL JOB

TIME & MATERIAL

UNIT PRICE

X

PER TON BASIS

TERMS: Monthly estimates, net 10 days final.

This proposal is void after 30 days.

1.5 % Interest will be charged on past due accounts.

BY: _____

Acceptance of Proposal

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work specified. Payment will be made as outlined.

Signature: _____ **Date Accepted:** _____

Work will not begin until this proposal is signed.

THIS PROPOSAL SHALL BECOME A PART OF ANY SUBCONTRACT AGREEMENT.

City of Edgerton Special Highway Fund

	2013 Actual	2014 Actual	2015 Budget	2015 Estimate	2016 Amend Budget
Balance 1/1	\$ 128,400	\$ 168,128	\$ 131,992	\$ 163,246	\$ 150,951
Revenues:					
Gasoline Tax	42,799	43,992	43,690	44,698	44,120
Total Revenue	\$ 42,799	\$ 43,992	\$ 43,690	\$ 44,698	\$ 44,120
Transfers from Other funds:					
Total	\$ -	\$ -	\$ -	\$ -	\$ -
Total Sources	\$ 42,799	\$ 43,992	\$ 43,690	\$ 44,698	\$ 44,120
Expenditures:					
Public Works	3,071	48,874	100,453	56,993	195,071
Total Expenditures	\$ 3,071	\$ 48,874	\$ 100,453	\$ 56,993	\$ 195,071
Transfers to Other Funds:					
Transfer to Capital Projects Fund	-	-	-	-	-
Total	\$ -	\$ -	\$ -	\$ -	\$ -
Total Uses	\$ 3,071	\$ 48,874	\$ 100,453	\$ 56,993	\$ 195,071
Sources Over(Under) Uses	\$ 39,728	\$ (4,882)	\$ (56,763)	\$ (12,295)	\$ (150,951)
Prior Period Adjustment	-	-	-	-	-
Balance 12/31	\$ 168,128	\$ 163,246	\$ 75,229	\$ 150,951	\$ -

Expenditure Detail:

2014 Chip & Seal	\$ 48,874				
7th/8th St. Cut Outs			\$ 56,993		
2015 Street Maintenance Project		\$ 28,033	\$ -		
CARS Project w/Johnson County (Edgewood/207th)		\$ 42,420	\$ -	\$ 43,947	
2015 Prepwork		\$ 30,000	\$ -		
2016 Prepwork				\$ 25,809	
2016 Street Maintenance Project				\$ 80,315	
CARS Project w/Johnson County (Sunflower Road)				\$ 45,000	
	\$ 48,874	\$ 100,453	\$ 56,993	\$ 195,071	

Funding Sources: State gasoline tax (per gallon)

Expenditures: Maintenance of City streets



Lenexa Municipal Services Department

2016 PMP Chip Seal

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NOTE: SOME DOCUMENTS (*BOLD) REQUIRE A SIGNATURE OF THE CONTRACTOR AT THE TIME OF BID SUBMITTALS. IF REQUIRED DOCUMENTS ARE NOT SIGNED, THE BID WILL BE CONSIDERED IRREGULAR AND NOT READ

CITY OF LENEXA

NOTICE TO BIDDERS

Sealed bids for 2016 PMP Chip Seal will be accepted by the City of Lenexa, Kansas at the Municipal Services Department, 7700 Cottonwood Street, Lenexa, Kansas 66216, until 1:00 pm (local time) on March 1, 2016 at which time bids will be publicly opened and read aloud at the Lenexa Municipal Services facility. Any bid received after the designated closing time will not be considered and will be returned unopened.

All bids shall be submitted to the Municipal Services Department Customer Service Staff in sealed envelopes addressed to the CITY OF LENEXA, KANSAS, ATTENTION: CITY CLERK, and marked "Bid for: 2016 PMP Chip Seal". Copies of plans, specifications, bidding documents and other Contract Documents are on file at:

Drexel Technologies, Inc.
10840 W. 86th Street
Lenexa, KS 66214

Bidders desiring Contract Documents for use in preparing bids may obtain a set of such documents at the address above.

PLANS AND SPECIFICATIONS MAY BE DOWNLOADED FROM THE DREXEL TECHNOLOGIES, INC. WEBSITE SET FORTH BELOW

<http://planroom.drexeltech.com/>

EACH BIDDER WILL BE RESPONSIBLE FOR ENSURING THAT IT HAS RECEIVED ANY AND ALL ADDENDA ISSUED BY CITY IN ACCORDANCE WITH IB-10 OF THE INSTRUCTIONS TO BIDDERS.

CONTRACTORS SHOULD READ AND BE FULLY FAMILIAR WITH ALL CONTRACT DOCUMENTS INCLUDING ADDENDA BEFORE SUBMITTING A BID. IN SUBMITTING A BID, THE BIDDER WARRANTS THAT IT HAS READ THE CONTRACT DOCUMENTS AND IS FULLY FAMILIAR THEREWITH AND THAT IT HAS VISITED THE SITE OF THE WORK TO FULLY INFORM ITSELF AS TO ALL EXISTING CONDITIONS AND LIMITATIONS AND SHALL INCLUDE IN ITS BID A SUM TO COVER THE COST OF ALL ITEMS OF THE WORK AS SPECIFIED IN THE CONTRACT DOCUMENTS.

No oral telegraphic, telephonic proposals or alterations will be considered. Facsimile transmissions will not be accepted.

The following items must be included in the sealed envelope with the Bid:

- a. Bid Form;
- b. 5% Bid Security--Bid Bond, Cashier's Check or Certified Check (see below);
and

c. Acknowledgment of Addenda Issued by City.

Each bidder shall file with its bid a bid bond, a cashier's check or a certified check drawn on an acceptable bank, made payable to City of Lenexa, Kansas, in an amount equal to five percent (5%) of the total bid, which shall be retained by City of Lenexa, Kansas until a Contract for the project has been executed. Bid Bonds will be returned to the bidders, with the exception of the best and lowest and second best and second lowest responsible bidders, within twenty-one (21) days after their bids are rejected. The bid deposit of the lowest and the second lowest responsible bidders will be returned when the Performance Bond, Maintenance Bond and Statutory Bond, each in an amount equal to 100% of the Contract amount; required insurance certificates and other required documents shall have been furnished and the Contract Documents have been executed by the successful bidder.

In the event the low bidder is unable to execute the Contract, for whatever reason, within the time provided in the Notice of Award, City may annul the Notice of Award and the bid deposit may be forfeited and City shall exercise its legal prerogatives, including, but not limited to, enforcement of its rights as to the bid security or specific performance.

City reserves the right to accept or reject any and all bids and to waive any technicalities or irregularities therein. Bids may be modified or withdrawn by written request of the bidder received in the office of City Clerk, prior to the time and date for bid opening.

From and after the release of this Notice, any party intending to bid on the above referenced Project, including their officers, employees, agents, or contractors are specifically prohibited from communicating with any elected or appointed official of the City, directly or indirectly, with regard to the award of the contract for the Project listed above, except as specifically authorized by the Instructions to Bidders. Any such unauthorized communication may result in the automatic disqualification of such bidder.

ALL BIDDERS AGREE THAT REJECTION SHALL CREATE NO LIABILITY ON THE PART OF CITY BECAUSE OF SUCH REJECTION, AND THE FILING OF ANY BID IN RESPONSE TO THIS NOTICE SHALL CONSTITUTE AN AGREEMENT OF THE BIDDER TO THESE CONDITIONS.

If this section is completed, a **Mandatory Pre-Bid Conference** will be held at:

_____, at _____

David F. Bryant III

David F. Bryant III, City Clerk
City of Lenexa, Kansas

**CITY OF LENEXA, KANSAS
AGREEMENT FOR PUBLIC IMPROVEMENTS**

INSTRUCTIONS TO BIDDERS

IB-1 Bids

All Bids shall be made on the forms provided in these Contract Documents and shall be in compliance with the Notice to Bidders. All appropriate blanks shall be filled in, in black ink or typewritten, and shall be signed by the appropriate authorized individual on behalf of him/herself or the entity submitting the Bid as required herein. Each Bid must be enclosed in a sealed envelope plainly marked "Bid for: **2016 PMP Chip Seal**". Pursuant to the Notice to Bidders, Bids shall be addressed to "CITY OF LENEXA, KANSAS, Attention: "City Clerk".

IB-2 Definitions

[See General Conditions Section GC-1].

IB-3 Bidder's Representation

Each Bidder, by submitting its Bid, represents that:

- a. Bidder has read and understands the Bidding Documents, acknowledges that the documents are of sufficient detail and scope to understand the terms and conditions for performance, and its Bid is made in accordance therewith;
- b. Bidder has familiarized itself with Federal, State and local laws, ordinances, rules and regulations which may in any manner affect cost, progress and the complete and timely performance of the Work;
- c. Bidder has visited the site, has familiarized itself with the local conditions under which the Work is to be performed, has reviewed all public reports, inspections and other documents relating to the project and has correlated its observations with the requirements of the proposed Contract Documents;
- d. Bidder's Bid is based upon the materials, systems and equipment required by the Bidding Documents, without exception.

IB-4 Bidding Documents

Bidders may obtain complete sets of the Bidding Documents as set out in the Notice to Bidders

Bidders shall use complete sets of Bidding Documents in preparing Bids. City does not assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

City, in making copies of the Bidding Documents available, does so only for the purpose of obtaining Bids on the Work and does not confer a license or grant for any other use of the Bidding Documents.

IB-5 Execution of Bid

Bids shall be made upon the form provided in these Bidding Documents. The form must be completed in black ink or by typewriter and the completed form shall be without alteration or erasure. If a Bid on all alternates is not required for alternate items, a written indication of "no Bid" on the Bid form is required. The Contract Price shall be stated both in writing and in figures. The Bid must be signed. If the Bid is being submitted by a corporation or a partnership, it must contain the entity's name and be signed by the President or other legally authorized representative if it is a corporation, or by a partner if it is a partnership.

All Bids shall contain an address, telephone number, email address, and a facsimile number, to which communications regarding the Bid may be directed.

IB-6 Execution of Contract Documents

The successful Bidder shall be required to enter into a contract with City. When executing the contract, the following shall apply:

If the successful Bidder is a corporation, the contract must be executed in the corporation's name by the President or Vice-President (or other corporate officer with evidence of authority to sign) and the corporate seal must be affixed and attested by the Secretary or an Assistant Secretary. The corporate address must be shown below the signature. If the successful Bidder is a partnership, the contract must be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.

The successful Bidder shall provide to City a Certificate of Good Standing in the State of Kansas from the Kansas Secretary of State which is valid for the year in which construction is commenced.

All names must be typed or printed below the signature. The address, telephone number and facsimile number to which communications regarding the contract are to be directed must be shown.

If the successful Bidder is a foreign corporation, foreign limited partnership, or foreign limited liability company duly authorized to do business in the State of Kansas, a copy of the authorization, a copy of a Certificate of Good Standing, along with a Letter of Good Standing, issued by the Kansas Secretary of State and valid for the year construction is commenced, shall be filed with City prior to commencement of construction.

Successful Bidders who are not residents of the State of Kansas and are not a foreign corporation, foreign limited partnership, or foreign limited liability company qualified to do business and in good standing in Kansas, are required to appoint an agent for service of process who is a resident of Kansas, accompanied by a filing fee of \$20.00, with a check for this sum payable to the Kansas Secretary of State.

IB-7

Defects in the Bidding Documents or Contract Documents

Bidders shall promptly notify City in writing of any errors, omissions, discrepancies or inconsistencies (hereinafter "defects") which may be discovered upon examination of the Bidding/Contract Documents or of the Project site and location conditions.

Bidders requiring clarification or interpretation of the Bidding/Contract Documents shall make a written request received by City Engineer at least seven (7) calendar days prior to the date of Bid opening.

Any interpretation, correction or change of the Bidding/Contract Documents will be made by written Addendum from City Engineer. Interpretations, corrections or changes to the Bidding/Contract Documents made in any other manner will not be binding and Bidders shall not rely upon such interpretations, corrections and changes. Bidders will not be permitted to take advantage of any such defect.

Insurance

Upon award of this Agreement, the successful Bidder will be required to secure and maintain, throughout the duration of the Agreement, insurance of such types and in at least such amounts as required herein. The successful Bidder will be required to provide certificate(s) of insurance confirming the required protection on the standard Acord insurance certificate forms. The certificate(s) are to be filed with City prior to commencement of any Work. City shall be notified by receipt of written notice from the insurer at least thirty (30) days prior to material modification or cancellation of any policy listed on the certificate.

Contractor, upon receipt of notice of any claim in connection with this Agreement, shall promptly notify City, providing full details thereof, including an estimate of the amount of loss or liability.

Contractor shall also promptly notify City of any reduction in limits of protection afforded under any policy listed in the certificate(s) of insurance in excess of \$50,000.00, whether or not such impairment came about as a result of this Agreement.

If City subsequently determines that Contractor's aggregate limits of protection shall have been impaired or reduced to such extent that City determines such limits inadequate for the balance of the Project, Contractor shall, upon notice from City, promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to City.

Unless otherwise mutually agreed upon by City and Contractor, City will only accept coverage from an insurance carrier who offers proof that it:

- (1) Is licensed to do business in the State of Kansas; and
- (2) Carries a Best's policyholder rating of "A" or better; and
- (3) Carries at least a Class "X" financial rating.

Unless otherwise specified, City shall be shown as an additional insured on a primary and noncontributory basis on all general liability, automobile liability and any applicable umbrella or excess liability policies of insurance.

General Liability**Limits**

Each Occurrence\$ 500,000

Personal & Advertising Injury\$ 500,000

Products/Completed Operations

Aggregate\$ 500,000

General Aggregate\$ 500,000

Policy **MUST** include the following conditions:

- (a) Contractual Liability and Independent Contractors; and
- (b) Explosion, Collapse & Underground, if applicable.

(Certificate must confirm inclusion of “Blasting” coverage, if applicable)

Automobile Liability

Policy shall protect Contractor against claims for bodily injury and/or property damage arising out of the ownership or use of any owned, hired and/or non-owned vehicle and must include protection for Any Auto:

Limits:

Each Accident, Combined Single
Limits, Bodily Injury and
Property Damage:.....\$500,000

Notwithstanding the foregoing, should Contractor not own any automobiles, the automobile liability requirement shall be amended to allow Contractor to maintain only Hired and Non-Owned Autos.

Workers' Compensation

Insurance shall protect Contractor against all claims under applicable state Workers' Compensation laws. Contractor shall be protected against claims for injury, disease or death of employees for which, for any reason, may not fall within the provisions of a Workers' Compensation law. The policy limits shall not be less than the statutory limits currently applicable.

Employers' Liability

Bodily Injury by Accident: \$500,000 Each Accident

Bodily Injury by Disease: \$500,000 Policy Limit

Bodily Injury by Disease: \$500,000 Each Employee

Umbrella Liability

[Establish appropriate limits based on risk factors of contract]

An umbrella or excess liability policy in the minimum amount of \$3,000,000 each occurrence, \$3,000,000 aggregate is required. The umbrella or excess policy must be at least as broad as the underlying policies and include the following protection.

- A) General Liability;
- B) Automobile Liability; and
- C) Employers' Liability.

Owner's Protective Liability

On all contracts in excess of \$ 100,000, Contractor shall take out, pay for and deliver to City an Owner's Protective liability insurance policy, issued on an occurrence basis, naming the City of Lenexa, Kansas, as "named insured". The policy shall be maintained during the life of this Agreement. Limits of protection shall be at least \$500,000 Combined Single Limits, Bodily Injury and Property Damage. The policy shall contain no exclusion relative to any function performed by City or its employees in conjunction with this project. This Owner's Protective liability policy shall be primary insurance for City.

Subcontractors' Insurance

If a part of the Contract is to be sublet, Contractor shall either:

- (1) Cover all subcontractors in Contractor's general liability insurance policy; or
- (2) Require each subcontractor not so covered to secure insurance in the minimum amounts required of Contractor.

IB-9**Substitutions**

The materials, products and equipment described in the Bidding Documents establish a standard of required function, dimension, appearance and quality to be met by any proposed substitution.

No substitution will be considered prior to receipt of Bids unless written request for approval has been received by City Engineer at least seven (7) days prior to the date of Bid opening. Each such request shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitute including drawings, cuts, performance and test data and any other information necessary for an evaluation. A statement setting forth any changes in other materials, equipment or other Work that incorporation of the substitute would require shall be included. The burden of proof of the merit of the proposed substitute is upon the proposer. The City Engineer's decision of approval or disapproval of a proposed substitution shall be final.

If City Engineer approves any proposed substitution prior to receipt of Bids, such approval will be set forth in a written addendum. Bidders shall not rely upon approvals made in any other manner.

IB-10**Addenda**

Each Bidder shall be responsible for obtaining addenda issued by City. Addenda will be available through Drexel Technologies website at <http://planroom.drexeltch.com/>. Bidders may also pick up copies of addenda at the address set out in the Notice to Bidders.

No addenda will be issued later than forty-eight (48) hours prior to the date of Bid opening except an addendum withdrawing the request for Bids or one which includes postponement of the date of Bid opening.

Each Bidder shall ascertain prior to submitting its Bid that it has received all addenda issued, and it shall acknowledge its receipt in its Bid.

IB-11**Taxes**

It is the intent of City to supply Contractor with a Sales and Compensating Tax Exemption Certificate for use in purchasing materials and supplies used on the project. Contractor shall, in preparing its proposal, omit from its computed costs all sales and service taxes. Two copies of State of Kansas Project Completion Certification (Form STD-77) will be furnished to City by the Kansas Department of Revenue upon issuance of a tax exemption number. Two copies of the Project Completion Certification

will be forwarded to Contractor and must be signed and returned to City upon completion of the project. City will forward one (1) copy of the Project Completion Certification to the Kansas Department of Revenue and retain one copy. All invoices must be retained by Contractor for a period of five (5) years and are subject to audit by the Kansas Department of Revenue. Final payment may be held by City until City has received the two Project Completion Certifications from Contractor along with a Consent.

IB-12 Liquidated Damages

In case of failure on the part of Contractor to effect Substantial Completion within the time specified, City shall have the right to deduct from the total compensation otherwise due Contractor as liquidated damages, fixed and agreed to in advance, according to the schedule set forth in Table 1 below:

TABLE 1

CONTRACT AMOUNT			LIQUIDATED DAMAGES
0	to	25,000	75.00
25,001	to	50,000	125.00
50,001	to	100,000	200.00
100,001	to	500,000	400.00
500,001	to	1,000,000	600.00
1,000,001	to	2,000,000	925.00
2,000,001	to	5,000,000	1,375.00
5,000,001	to	10,000,000	2,000.00
10,000,001	and	up	3,000.00

In case of failure on the part of Contractor to effect Final Completion within the time specified, after achieving Substantial Completion, City shall have the right to deduct from the total compensation otherwise due Contractor as liquidated damages, fixed and agreed to in advance, according to the schedule set forth in Table 2 below

TABLE 2

CONTRACT AMOUNT			LIQUIDATED DAMAGES
0	to	25,000	15.00
25,001	to	50,000	25.00
50,001	to	100,000	40.00
100,001	to	500,000	80.00
500,001	to	1,000,000	120.00
1,000,001	to	2,000,000	185.00
2,000,001	to	5,000,000	275.00
5,000,001	to	10,000,000	400.00
10,000,001	and	up	600.00

The amounts shown in Tables 1 and 2 above shall be the sum due for each 24-hour calendar day, including weekends and holidays, the Work remains incomplete over the specified completion time.

In the event moneys being retained by City shall not be sufficient to cover the amount of any liquidated damages, City may sue for and recover compensation for damages for nonperformance of this Contract at the time stipulated herein and provided for.

IB-13

Qualification of Bidders

In evaluating Bids and determining the lowest responsible Bidder, City shall consider qualifications of the Bidders. Each Bidder shall submit on a form provided for that purpose, a Statement of Bidder's Qualifications, when required by City. City may consider the qualification and experience of Bidders and subcontractors and other persons and organizations, including suppliers, proposed to be involved in the project. Operating costs, maintenance considerations, performance data and guarantees of materials and equipment may also be considered by City. Furthermore, when considering the qualifications of a a Bidder, the City may examine whether the Bidder has the skill, judgment, and integrity necessary to the faithful performance of the Contract Documents, as well as sufficient financial resources and ability.

City may conduct such investigation it deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of the Bidders, proposed subcontractors and other persons, organizations and suppliers, to do Work in accordance with the contract documents to City's satisfaction within the prescribed time. The

City reserves the right to reject any bid where investigation of available evidence does not satisfy the City, in its sole discretion, that the Bidder is qualified to carry out properly all terms of the contract and work.

IB-14 Award of Contract

The contract will be awarded to the successful Bidder as determined by City.

City reserves the right to reject any and all Bids; to waive any and all technicalities, irregularities and formalities; to negotiate contract terms with the successful Bidder; and the right to disregard all non-conforming, non-responsive or conditional Bids.

If the contract is awarded, City will give the successful Bidder a Notice of Award within thirty (30) days after the day of the Bid opening.

IB-15 Bonds

The successful Bidder will be required to furnish a Performance Bond, Statutory or Payment Bond, and Maintenance Bond on the forms hereinafter provided, each in an amount equal to one hundred per cent (100%) of the amount of the Contract to be awarded in each case in addition to any other bonds as may be required by the Contract Documents. With each bond there shall be filed with City one copy of a "Power of Attorney" certified to include the date of the bonds. Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in Kansas.

IB-16 Bid Preference

Existing State law (K.S.A. 75-3740a) requires that, to the extent permitted by federal law and regulations, when letting contracts for Bids, City must require any Bidder domiciled outside the State of Kansas to submit a Bid the same per cent less than the lowest Bid submitted by a responsible Kansas Bidder as would be required of such Kansas domiciled Bidder to succeed over the Bidder domiciled outside Kansas on a like contract let in the foreign Bidder's domiciliary state. All Bids are received on this condition, and if it is determined by City that the apparent lowest responsible Bidder is a foreign domiciled Bidder, such Bidder shall be considered the successful Bidder only if such Bidder's Bid complies with

this state law requirement and the Bid is found to be in the best interest of City.

All Bidders domiciled outside of the State of Kansas shall furnish City with a copy of their state's preferential Bidding statutes and the applicable per cent received by in-state Bidders from the state in which the contract is located.

IB-17 Non-discrimination and Affirmative Action

Contractor shall be an equal opportunity employer as defined by Section 2000 (e) of Chapter 21, Title 42, of the United States Code Annotated (USCA), and shall not discriminate on the basis of race, sex, disability, religion, ethnicity, national origin or age.

IB-18 Sexual Harassment

Harassment on the basis of sex is a violation of Sec. 703 of Title VII of the federal Civil Rights Act of 1964. Any such proven harassment of employees or of other persons shall be deemed a breach of the this Agreement and it may be canceled, terminated or suspended, in whole or in part, by City.

Applying general Title VII principles, Contractor is responsible for the acts of its agents, employees, and subcontractors with respect to sexual harassment regardless of whether the specific acts complained of were authorized or forbidden by Contractor and regardless of whether Contractor knew or should have known of their occurrence.

IB-19 Appointment of Agents for Service of Process

K.S.A. 16-113 requires that non-resident contractors (having a principal office located outside the state of Kansas) appoint an agent for the service of process in Kansas. The executed appointment must be filed with the Kansas Secretary of State. Any successful Bidder domiciled outside the State of Kansas must comply with this statutory requirement and provide proof that an agent for service of process in Kansas has been properly filed prior to being issued a Notice to Proceed. No extension in Contract Price or Contract Time shall be granted due to the successful Bidder's failure to timely comply with this section.

IB-20 Subcontracting

Contractor may utilize the services of subcontractors on those parts of the Work which, under normal contracting practices, are performed by subcontractors; provided, however that Contractor shall not award subcontracts which total more than fifty per cent (50%) of the Contract Price.

City may require the apparent successful Bidder and any other Bidder, prior to the Notice of Award, to submit a list of subcontractors. In any event, within seven (7) days after Notice of Award and prior to commencing construction, the successful Bidder shall submit to City a list of the names of all subcontractors proposed for portions of the Work and shall designate which Work each is to perform.

City Engineer shall notify the successful Bidder, in writing, if City, after due investigation, has reasonable objections to any subcontractor on such list, and the successful Bidder shall substitute a subcontractor acceptable to City. If the successful Bidder refuses to submit the name of an acceptable subcontractor City can refuse to award the contract and the Bid security will be forfeited, or if construction has begun, such failure will be grounds to terminate the contract. The failure of City to make objection to the subcontractor within ten (10) days after the list of subcontractors is furnished to City shall constitute an acceptance of such subcontractor, but shall not constitute a waiver of any right of City to reject Defective Work, materials or equipment not in conformance with the requirements of the Contract Documents. The successful Bidder/contractor shall not make any substitution for any subcontractor who has been accepted by City unless City Engineer approves the substitution in writing.

IB-21

Conflict of Interest in the Case of Federal Funds

31 USCA Section 1352 requires all sub-grantees, contractors, subcontractors and consultants who receive federal funds via City to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the award of any federal contract, grant, loan or cooperative agreements.

In addition, contract applicants, recipients and sub-recipients must file a form disclosing any expenditures they make for lobbying out of non-federal funds during the contract period.

Necessary forms are available from City and should be returned to City with the other Contract Documents. It is the responsibility of the general

contractor to obtain executed forms from any subcontractors who fall within the provisions of the Code and to provide City with the same.

IB-22 Pre-Bid Conference

A pre-bid conference may be required. The purpose of this conference is to familiarize Bidders with the project and the documents and to clarify any misunderstandings regarding the same. If the date and time of the pre-bid conference is not identified in the notice to Bidders then City will notify all persons or entities taking out plans on the project by mail or fax to the address or facsimile number which the Bidders provided to City.

IB-23 Bid Mistakes; Procedure for Correction or Withdrawal of Bids

Bids may only be withdrawn or corrected pursuant to the provisions of K.S.A. 75-6901, as amended, et seq.

IB-24 Payment by City.

Payments by the City may be made using any of the following methods of payment, in its sole discretion: (a) automated clearing house ("ACH") or wire transfer; (b) for payments under \$1,000, credit/purchasing cards; or (c) checks. When utilizing the check option, all checks will be mailed to Contractor's place of business, without exception and may not be picked up in person by Contractor. When utilizing the ACH or wire transfer option, the transaction will occur within the timeframe provided by the contract documents with no advance or subsequent notice to the Contractor.

The successful Bidder will be required to submit, in the contract documents required by IB-6, such financial information as shall be required by the City to enable the use of the aforementioned payment methods and to enable the City to properly report such payments as required by federal law. Such information may include, but shall not be limited to, bank account number(s), bank ABA number(s), or a Form W9 – Request for Taxpayer Identification Number and Certification.

**CITY OF LENEXA, KANSAS
AGREEMENT FOR PUBLIC IMPROVEMENTS**

BID FORM

PROJECT: 2016 PMP Chip Seal

TO: CITY OF LENEXA
JOHNSON COUNTY, KANSAS

NOTE: PLEASE DO NOT RETURN THESE DOCUMENTS IF YOU ARE NOT SUBMITTING A BID. YOUR NAME WILL REMAIN ON OUR BIDDERS' LIST UNTIL WE ARE NOTIFIED TO REMOVE IT.

The undersigned Bidder hereby proposes to furnish all material, supplies, transportation, tools, equipment and necessary labor to construct, install, plant and complete all Work stipulated in, required by, and in conformity with the proposed Contract Documents, incorporated herein (including all documents referred to therein) and any and all written addenda thereto, for and in consideration of the unit prices as follows:

Item No.	Description	Unit	Approx. Unit Quantity	Unit Price	Unit Total
1	Chip Seal	SY	440,585	\$ 1.75	\$ 771,023.75
2	First Sweeping	SY	440,585	.12¢	\$ 52,870.20
3	Second Sweeping	SY	424,181	.11¢	\$ 46,659.91
4	Chip Seal Patching	SY	21,807	\$ 2.35	\$ 51,246.45
5	Asphaltic Concrete 2"	SY	2,034	\$ 28.00	\$ 56,952.00
6	Milling 2"	SY	2,034	\$ 18.00	\$ 36,612.00
7	Curb & Gutter	LF	7,860	\$ 31.55	\$ 247,983.00
8	Handicap Ramp	EA	111	\$ 1,350.00	\$ 149,850.00
9	Sidewalk	SF	8,900	\$ 6.75	\$ 60,075.00
10	Pavement Markings, 4" Skip White Line Thermoplastic	LF	225	\$ 1.05	\$ 236.25
11	Pavement Markings, 4" Solid Yellow Line Thermoplastic	LF	83,740	\$ 1.05	\$ 87,927.00
12	Pavement Markings, 4" White Edge Line Thermoplastic	LF	740	\$ 1.05	\$ 777.00
13	Pavement Markings, 6" Solid White Channalization Line Thermoplastic	LF	1,386	\$ 2.10	\$ 2,910.60
14	Pavement Markings, 12" Solid Yellow Crosshatching Thermoplastic	LF	47	\$ 8.50	\$ 399.50
15	Pavement Markings, 24" Solid White Stop Bar Thermoplastic	LF	332	\$ 17.00	\$ 5,644.00

16	Pavement Markings, Railroad Crossing Thermoplastic	LF	4	\$1,100.00	\$4,400.00
17	Pavement Markings, Arrows (Lt. & Rt.) Preformed Thermoplastic	LF	27	\$370.00	\$9,990.00
18	Traffic Control	LS	1	\$73,000.00	\$73,000.00

TOTAL BID: \$ 1,658,556.66

1. The undersigned further agrees to begin upon the date stated in the Notice to Proceed, and to complete the Work, if the successful Bidder in accordance with Special Condition: **SC-1 Completion Date: The calendar completion date for this project is August 31, 2016. No rain days shall be given for this project.**

The undersigned also declares that it understands that if not preset by City, the time to begin construction and to complete the Work will be one factor considered in determining the successful Bidder.

2. In submitting this Bid, the undersigned declares that it is of lawful age and executed this Bid on behalf of the Bidder named herein, and that the undersigned has lawful authority to do so. The undersigned further declares that it has not directly or indirectly entered into any agreement, expressed or implied, with any Bidder or Bidders, having for its object the controlling of the price or amount of such Bid or any Bids, the limiting of the Bid or Bidders, the parceling or farming out to any Bidder or Bidders, or other persons, of any part of the Agreement or any part of the subject matter of the Bid or Bids or of the profits thereof, and that it has not and will not divulge the sealed Bid to any person whomsoever, except those having a partnership or other financial interest with Bidder in said Bid or Bids, until after the sealed Bid or Bids are opened.
3. The undersigned further declares that it has carefully examined the Notice to Bidders, Instructions to Bidders and other Contract Documents, and that it has inspected the actual location of the Work, together with the local sources of supply, and has satisfied itself as to all conditions and quantities, and understands that in signing this Bid Form the undersigned on behalf of the Bidder waives all right to plead any misunderstanding regarding the same.
4. The undersigned hereby agrees to furnish the required bonds and insurance certificates and execute the Agreement within ten (10) calendar days from and after Notice of Award of the Agreement is delivered to the Bidder, and failure of the Bidder to do so shall constitute a default, and the City may thereafter take such steps to protect its legal rights as it deems in its best interest, including, but not limited to, enforcement of its rights as to Bid security.
5. It is understood that the City will pay monthly pay estimates submitted in accordance with the City of Lenexa's claims policy and approved by the City Engineer, all as provided in the Contract Documents.

6. The undersigned acknowledges receipt of the Plans and Specifications for the Project including the following written addenda (insert "none" if none were received):

NONE

7. COOPERATIVE PURCHASING BY OTHER INSTITUTIONS UNDER THIS CONTRACT

If the City awarded you the proposed Contract, would you sell under the prices and terms of this Contract to any Municipal, County Public Utility, Hospital, or Educational Institution having membership in the Mid-America Council of Public Purchasing and located within the Greater Kansas City Metropolitan Trade Area? (All deliveries shall be F.O.B. Destination and there shall be no obligations on the part of any member of said Council to utilize this Contract).

(Check one) Yes X No _____

Initials SH

Enclosed is a certified check, cashier's check or Bid bond in the amount DOLLARS (\$82,927.83) which sum is five percent (5%) of the total Bid submitted. The undersigned agrees this security is subject to being forfeited to City as liquidated damages and not as a penalty, together with other legal remedies the City may choose to invoke, all as set forth in the Instructions to Bidders, should this Bid be accepted and the Contract be awarded to this Bidder and Bidder should fail to enter into an Agreement in the form prescribed and to furnish the required insurance, bonds and other required documents within ten (10) calendar days as above stipulated, otherwise the Bid security shall be returned to the undersigned upon signing of the Agreement and delivery of the approved bonds and other required documents to said City of Lenexa, Kansas.

Dated this 1 day of MARCH, 2016.

HARBOUR CONSTRUCTION, INC.
[Contractor]

By: ROBERT HARBOUR, JR.
PRESIDENT
Title

2717 S. 88TH STREET
Address

KANSAS CITY, KANSAS 66111
City, State, Zip

913-441-2555
Telephone Number

913-441-2576
Facsimile Number [if available]

Project No. 60087

**CITY OF LENEXA, KANSAS
AGREEMENT FOR PUBLIC IMPROVEMENTS**

**AGREEMENT BETWEEN CITY
AND CONTRACTOR**

FOR: 2016 PMP Chip Seal

THIS AGREEMENT BETWEEN CITY AND CONTRACTOR, hereinafter "Agreement," is made and entered into this _____ day of _____, 2016, by and between the City of Lenexa, Kansas, hereinafter "City," and Harbour Construction, Inc., hereinafter "Contractor."

WITNESSETH:

WHEREAS, City has prepared a Notice to Bidders, Instructions to Bidders, Bid Form, this Agreement, General and Special Conditions, Plans, Specifications and other Contract Documents, as defined in the General Conditions, (hereinafter collectively "Contract Documents,") and City has caused to be published, in the manner and for the time required by law, an advertisement inviting sealed Bids for the construction of public improvements in accordance with the terms of this Agreement including, but not limited to, the furnishing of the cost of materials, labor, tools and equipment; and

WHEREAS, Contractor, in response to the advertisement inviting sealed Bids, has submitted to City a sealed Bid in accordance with the terms of this Agreement; and

WHEREAS, City has publicly opened, examined and reviewed the Bids submitted, and as a result has determined and declared Contractor to be the best and lowest most responsible Bidder for the construction of said public improvements, and has duly awarded to Contractor a contract upon the terms and conditions set forth in this Agreement and for the sum or sums named in the Bid, attached hereto and made a part of this Agreement.

NOW THEREFORE, in consideration of the compensation to be paid to Contractor, and of the mutual agreements herein contained, the parties hereto have agreed, and hereby agree, City for itself and its successors, and Contractor for itself, himself/herself or themselves, its, his/her or their successors and assigns, or its, his/her or their executors and administrators, as follows:

ARTICLE I. Contractor shall furnish at its own cost and expense all labor, tools, equipment, materials, transportation, and any other construction accessories, services and facilities required to construct and complete the Work as designated, described and required by the Contract Documents, to wit:

all in accordance with the Contract Documents, including but not limited to, the Notice to Bidders, Instructions to Bidders, Bid, this Agreement, General and Special Conditions, Plans, Specifications and other Contract Documents as defined in paragraph GC-1 of the General Conditions, on file with the City Clerk of Lenexa, Kansas, all of which Contract Documents form this Agreement, and are as fully a part hereof as if repeated verbatim herein; all Work to be done in a good, substantial and workmanlike manner and to the satisfaction of City, and in accordance with the laws of the City of Lenexa, the State of Kansas and the United States of America. All terms used herein shall have the meanings ascribed to them in the General Conditions unless otherwise specified.

ARTICLE II. City shall pay to Contractor for the performance of the Work embraced in this Agreement, and Contractor will accept in full compensation therefore, the sum of One Million Six Hundred Fifty Eight Thousand Five Hundred Fifty Six & 66/100, DOLLARS (\$ 1,658,556.66) referred to as the Contract Price (subject to adjustment as provided by and in accordance with the Contract Documents), for all Work covered by and included in this Agreement, payment thereof to be made in cash or its equivalent and in the manner provided in the Contract Documents. City reserves the right to make additions and deletions to the Contract Documents as provided therein. Without exception, ten per cent (10%) of all partial payments made to Contractor shall be retained until all Work is formally accepted by formal action of the Lenexa City Council.

ARTICLE III. Contractor shall commence Work upon the date stated in the Notice to Proceed, and will complete all Work covered by this Agreement within the time specified in the Notice to Proceed. Time is of the essence. Accordingly, liquidated damages shall be assessed against Contractor, as stipulated liquidated damages and not as a penalty, in an amount as set forth in the General Conditions for each and every 24 hour calendar day the Work remains incomplete over the specified completion time.

ARTICLE IV. Contractor shall not subcontract, sell, transfer, assign or otherwise dispose of this Agreement or any portion hereof, without previous written consent of City. In case such consent is given, Contractor shall be permitted to subcontract a portion thereof, but shall perform with its own organization, Work amounting to not less than fifty per cent (50%) of the total Contract Price. No subcontracts, or other transfer of this Agreement, shall release Contractor of its liability under this Agreement and the bonds applicable hereto.

ARTICLE V. Contractor specifically acknowledges and confirms that: 1.) Contractor has visited the site, made all inspections Contractor deems appropriate and has read and fully understands the Contract Documents, including all obligations and responsibilities undertaken by Contractor as specified herein and in the other Contract Documents and knowingly accepts same; 2.) Contractor has furnished copies of all Contract Documents to Contractor's insurance carrier(s) and its surety(ies); and 3.) Contractor's insurance carrier(s) and surety(ies) agree to be bound as specified in this Agreement, in the Contract Documents, as set forth in the insurance policy(ies) and bonds pertaining to liability and surety coverage.

ARTICLE VI. City and Contractor specifically agree that by executing this Agreement, the Contract Documents are not intended to create any third party beneficiary relationship nor to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement; the duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.

ARTICLE VII. This Agreement, together with the other Contract Documents, constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except as provided herein and the Contract Documents.

ARTICLE VIII. This Agreement is entered into, under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Kansas.

ARTICLE IX. All local, state and federal laws and requirements as described in the Contract Documents and General Conditions which apply to this Agreement shall be incorporated herein by reference.

ARTICLE X. Should any provision of this Agreement or the Contract Documents be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement and/or the other Contract Documents shall be unaffected thereby and shall continue to be valid and enforceable.

IN WITNESS WHEREOF, the City of Lenexa, Kansas has caused this Agreement to be executed on its behalf and Contractor through Contractor's duly authorized officer or representative has executed three (3) counterparts of this Agreement in the prescribed form and manner, the day and year first above written.

CITY OF LENEXA, KANSAS

By: _____
Michael A. Boehm, Mayor

[SEAL]

ATTEST:

David F. Bryant III, City Clerk

APPROVED AS TO FORM:

Sean McLaughlin, Assistant City Attorney

CONTRACTOR

Contractor

BY: _____
Signature

Print Name

Title (SEAL)

Address

City, State, Zip

Phone No.

Facsimile No. (if available)

(If the Contract is not executed by the president of the corporation or general partner of the partnership, Contractor must provide documentation which authorizes the signer to bind the corporation or partnership.

Project No. 60087

Bond No. _____

CITY OF LENEXA, KANSAS

PERFORMANCE BOND

We, the undersigned of Harbour Construction, Inc., as Principal, hereinafter referred to as the "Contractor," and _____, a corporation organized under the laws of the State of _____, and authorized to transact business in the State of Kansas, as surety, are held and firmly bound unto the CITY OF LENEXA, KANSAS hereinafter referred to as "City," in the penal sum One Million Six Hundred Fifty Eight Thousand Five Hundred Fifty Six & 66/100 DOLLARS (\$ 1,658,556.66), lawful money of the United States of America, for the payment of which sum truly to be made to the City of Lenexa, Kansas, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally by these presents:

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

WHEREAS, the above bonded Contractor, has on the _____ day of _____, 2016, executed a written Contract with the City for furnishing in a good, substantial and workmanlike manner all construction labor, materials, equipment, tools, transportation, superintendence, and other facilities and accessories, for and in connection with the satisfactory and timely performance of all Work and construction of certain improvements referred to as 2016 PMP Chip Seal (the Project), more particularly designated, defined and described in the Agreement and the Contract Documents, and in accordance with the Specifications and Plans and other Contract Documents thereto; a copy of said Agreement is made a part hereof by reference as if fully set out herein.

NOW THEREFORE, if Contractor shall in all particulars promptly and faithfully perform each and every covenant, condition, and part of the Agreement, and the Conditions, Specifications, Plans and other Contract Documents hereto attached or by reference made a part hereof, according to the true intent and meaning in each case, and said improvements shall be constructed and completed in strict accordance with the Contract Documents, conditions, specifications, plans and other documents, then this obligation shall be and become null and void; otherwise it shall remain in full force and effect.

Provided further that if Contractor fails to perform and abide by any such obligations hereunder in any respect, the Surety shall either promptly remedy such failure or shall within fourteen (14) days from the date of written notice from the City:

1. commence completion the Work of the Agreement and Contract Documents in accordance with terms and conditions therein; or
2. commence the process of obtaining a bid or bids for completing the Work of the Agreement in accordance with the terms and conditions of the Contract Documents, and upon determination by City and the Surety jointly of the best and lowest responsive, responsible bidder, arrange for a Contract between such bidder and City, and make available as the Work progresses sufficient funds to pay the total costs of completion less the balance of the Contract Price, including other costs and damages for which the Surety may be liable hereunder.
3. pay to City sufficient funds to pay the cost of completion less the balance of the Contract Price and other costs and damages for which the surety may be liable hereunder.

The term "balance of the Contract Price", as used in this paragraph, shall mean the total amount payable by City to Contractor under the Agreement and any amendments thereto, less the amount previously paid by City to Contractor. No right of action shall accrue on this Bond to or for the use of any person or corporation other than City or successors of City.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Agreement, or Contract Documents or the Work to be performed hereunder, or the Specifications accompanying the same, shall in any way affect its obligations on this Performance Bond and it does hereby waive notice of any change, extension of time, alteration, or addition to the terms of the Agreement, or Contract Documents or to the Work, or to the Specifications.

IN TESTIMONY WHEREOF, Contractor has hereunto set his/her hand, and the Surety has caused these presents to be executed in its name; and its corporate seal to be hereunto affixed by its attorney-in-fact duly authorized thereunto so to do on this, the _____ day of _____, 2016 .

[SEAL]

[Contractor/Principal]

[Title]

ATTEST:

[Secretary]

[Surety Company]

[SEAL]

By:

[Attorney-in-fact]

By:

[Kansas Agent]

(Accompany this Bond with Attorney-in-Fact's authority from the surety company certified to include the date of the bond.)

Project No. 60087

Bond No. _____

CITY OF LENEXA, KANSAS

STATUTORY BOND

KNOW ALL MEN BY THESE PRESENTS, that we, Harbour Construction, Inc. as Contractor and Principal, and _____ with general offices in the City of _____, a corporation organized under the laws of the State of _____, and authorized to transact business in the State of Kansas, as Surety, are held and firmly bound unto the State of Kansas, IN THE PENAL SUM OF One Million Six Hundred Fifty Eight Thousand Five Hundred Fifty Six & 66/100 DOLLARS (\$ 1,658,556.66), lawful money of the United States of America, for the payment of which sum well and truly to be made we bind ourselves, and our heirs, executors, administrators, successors and assigns, jointly and severally by these presents:

THE CONDITION OF THE FOREGOING OBLIGATIONS IS SUCH THAT:

WHEREAS, Contractor, has on the _____ day of _____, 2016, entered into an Agreement with the City of Lenexa, Kansas, which is incorporated herein as if fully set forth, for furnishing all tools, equipment, transportation, materials and supplies, performing all labor, and constructing public improvements described in the Agreement and the Contract Documents, all in accordance with the Specifications, and other Contract Documents on file in the office of the City Clerk of Lenexa, Kansas. Said project is more specifically described as:

(2016 PMP Chip Seal)

NOW THEREFORE, if Contractor and all the subcontractors of Contractor shall pay all indebtedness incurred for supplies, materials, transportation, and labor furnished, and equipment used or consumed in connection with or in or about the construction or making of the improvements described in the above-mentioned Contract Documents, this obligation shall be void after the six (6) months statutory claim period following completion of the improvement is expired, otherwise, it shall remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement or the Contract Documents to the Work to be performed thereunder, or to the total Contract Price, the Specifications accompanying the same, shall in any way affect its obligation on this Statutory Bond, and the Surety does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement, the Contract Documents or to the Specifications, including an increase in the total Contract Price. The Surety further agrees that any person to whom there is due any sum for labor

furnished, transportation, materials, equipment and supplies used or consumed in connection with or in or about the construction of said public improvement, as hereinbefore stated or said person's assigns, may bring action on this Statutory Bond for the recovery of said indebtedness; PROVIDED, that no action shall be brought on this Statutory Bond after six (6) months from the completion of said public improvements.

IN TESTIMONY WHEREOF, Contractor has hereunto set his/her hand, and the Surety has caused these presents to be executed in its name; and its corporate seal to be hereunto affixed by its attorney-in-fact duly authorized thereunto so to do on the _____ day of _____, 2016.

[SEAL]

[Contractor/Principal]

[Title]

ATTEST:

[Secretary]

[SEAL]

[Surety Company]

By:

[Attorney-in-fact]

By:

[Kansas Agent]

[Accompany this Bond with Attorney-in-Fact's authority from the surety company certified to include the date of the Bond.]

[A Statutory Bond is required only in connection with a Contract exceeding One Hundred Thousand Dollars and No Cents (\$100,000.00) in accordance with K.S.A. 60-1111, as amended.]

Project No. 60087

Bond No. _____

CITY OF LENEXA, KANSAS

MAINTENANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that we, Harbour Construction, Inc. as the "Principal," hereinafter referred to as "Contractor," and _____ as and hereinafter referred to as the "Surety," a corporation organized under the laws of the State of _____ and authorized to transact business in the State of Kansas, are held and firmly bound unto the CITY OF LENEXA, KANSAS hereinafter referred to as "City," in the penal sum of One Million Six Hundred Fifty Eight Thousand Five Hundred Fifty Six & 66/100 DOLLARS (\$ 1,658,556.66) for the payment of which sum, well and truly to be made, we hereby bind ourselves, our heirs, executors, administrators, successors, and assigns, firmly by these presents:

THE CONDITION OF THIS BOND is such that:

WHEREAS, Contractor has executed a written Agreement, including the Contract Documents, with City to construct certain improvements referred to as **2016 PMP Chip Seal**, more particularly described in the Agreement and the Contract Documents dated _____, 2016, the Agreement and the Contract Documents are made a part hereof by reference as if fully set out herein.

NOW, THEREFORE, if Contractor has constructed and completed or caused to be constructed and completed the entire improvement in strict compliance with the Agreement and Contract Documents, including all documents incorporated therein, between City and Contractor, and all applicable laws, rules, and regulations such as, but not limited to, those set forth in the Code of the City including the Minimum Standards for the Design and Construction of Streets, Sanitary Sewers, and Storm Drainage Improvements, completed to the satisfaction of the City Engineer and with such materials and in such manner that the same shall endure without need of repairs or maintenance for a period of (2) two years from and after the completion and acceptance by City's governing Body; and if said improvement shall actually endure without the need of repairs or maintenance for the period of (2) two years from and after the completion and acceptance thereof as aforesaid, then this obligation shall be null and void.

If the improvement requires repairs or maintenance within such (2) two year period then this obligation shall remain in full force and effect and Contractor and the Surety shall be responsible for the prompt payment of the penal sum to the City for such repairs and/or maintenance including any incidental costs associated therewith, including but not limited to the costs of consultants and/or engineering investigations, testing, analysis and any other costs incurred to determine the cause of defect and/or the necessary repair and maintenance and attorney fees incurred in collection of this Maintenance Bond.

Signed and sealed this ____ day of _____, 2016.

[SEAL]

[Contractor/Principal]

[Title]

ATTEST:

[Secretary]

[Surety Company]

[SEAL]

By:

[Attorney-in-fact]

By:

[Kansas Agent]

(Accompany this Bond with Attorney-in-Fact's authority from the surety company certified to include the date of the Bond.)

PROJECT NO. 60087

CITY OF LENEXA, KANSAS

**APPOINTMENT OF AGENT FOR SERVICE OF PROCESS
FOR OUT OF STATE CONTRACTORS**

Harbour Construction, Inc., as Contractor, having entered into a written agreement with the City of Lenexa, Kansas for the public improvement described as: **2016 PMP Chip Seal**, hereby appoints _____, as its agent in the State of Kansas, upon whom process may be served. The address of the agent is _____, _____ County, Kansas.

This appointment was executed this _____ day of _____, 2016.

Contractor

By: _____

Title

CONSENT TO ACT AS AGENT

I, _____, a resident of the State of Kansas residing at _____, having been duly appointed and designated to act as resident agent for _____, do hereby acknowledge this appointment and declare that I will act as such agent and will accept all service of process that may be brought against Contractor within the State of Kansas.

In testimony whereof, I have hereunto set my hand on this, the _____ day of _____, 2016.

Agent

ACKNOWLEDGMENT

STATE OF KANSAS }
 }
COUNTY OF _____ } ss:

BE IT REMEMBERED that on this ____ day of _____, 2016, before me a notary public in and for said county and state, appeared _____ who acknowledged that he signed the foregoing instrument and further acknowledged the same as his/her voluntary act and deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on the day and year last above written.

Notary Public

My appointment expires: _____

[The Appointment of Agent shall be filed with the Kansas Secretary of State pursuant to K.S.A. 16-113.]

(Contractors who are non-residents of the State of Kansas and are not a foreign corporation, foreign limited partnership, or foreign limited liability company qualified to do business and in good standing in Kansas, are required to appoint an agent for service of process who is a resident of Kansas, accompanied by a filing fee of \$20.00, with a check for this sum payable to the Kansas Secretary of State.)

CITY OF LENEXA, KANSAS

CERTIFICATE OF NONDISCRIMINATION
MANDATORY PROVISIONS

K.S.A. § 44-1030(a) provides that every contract for or on behalf of the City of Lenexa, Kansas for the construction, alteration or repair of any public building or public work or for the acquisition of materials, equipment, supplies or services shall contain provisions by which the contractor agrees to the following:

- (1) that the contractor shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, age, national origin or ancestry;
- (2) that in all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer," or similar phrase as approved by the state commission;
- (3) that if the contractor fails to comply with the manner in which the contractor reports to the state commission in accordance with the provision of K.S.A. § 44-1031 and amendments thereto, the contractor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the City of Lenexa;
- (4) that if the contractor is found guilty of a violation of the Kansas Act Against Discrimination under decision or order of the state commission which has become final, the contractor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the City of Lenexa; and
- (5) that the contractor shall include the provisions of K.S.A. § 44-1030(a) subsections (1) through (4) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

The provisions of K.S.A. § 44-1030(a) shall not apply to a contract entered into by a contractor: (1) who employs fewer than four (4) employees during the term of such contract; or (2) whose contracts with the City of Lenexa cumulatively totals \$5,000 or less during the same fiscal year.

By signing this Certificate of Nondiscrimination, contractor acknowledges inclusion of the requirements of K.S.A. 44-1030(a) in the base contract and in all subcontracts.

DATE: _____

Contractor/Principal

By: _____

Signature

CORPORATE SEAL

(Official Title of Signer)

**CITY OF LENEXA, KANSAS
AGREEMENT FOR PUBLIC IMPROVEMENTS**

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CITY OF LENEXA, KANSAS
AGREEMENT FOR PUBLIC IMPROVEMENTS

GENERAL CONDITIONS

GC-1

Definitions

Every term, definition and clause contained in the General Conditions shall be incorporated into the Agreement between City and Contractor and shall be binding upon the parties hereto, unless stricken by mutual written consent. Whenever used in these General Conditions or in the other Contract Documents, the following terms shall have the meanings indicated which are applicable to both the singular and plural thereof. Work described in words which so applied have a well-known technical or trade meaning shall be held to refer to such recognized standards.

1. Addenda - Written or graphic instruments issued prior to the opening of Bids which clarify, correct or change the Bidding Documents or the Contract Documents and become a part of the Contract Documents; receipt of each addendum shall be acknowledged in the Bid by the Bidder.
2. Agreement - The written Agreement between City and Contractor covering the Work to be performed; Contract Documents are incorporated into the Agreement and are equally binding upon the parties.
3. Alternative Bid (or Alternate Bid) - An amount stated in the Bid to be added to or deducted from the amount of the Base Bid if the corresponding change in the Work, as described in the Bidding Documents, is accepted.
4. Amendment - A change to the Contract Documents, made in writing, signed by City and Contractor on or after the Effective Date of the Agreement.
5. "As shown," "as indicated," "as detailed," or words of similar import refer to the Contract Drawings, unless stated otherwise.
6. Base Bid - The sum stated in the Bid for which the Bidder offers to perform the Work described in the Bidding Documents as the Base, to which Work may be added or from which Work may be deleted for sums stated in Alternative Bids.
7. Bid - Complete and properly executed offers or proposals of Bidders to do the Work, or designated portion thereof, for the price stipulated therein, submitted in accordance with the Bidding Documents.
8. Bidder - Individual or entity who submits a Bid.
9. Bidding Documents - Include the advertisement or Notice to Bidders, Instructions to Bidders, the Bid Form, Plans and Specifications all contract forms and the proposed Contract Documents including any written Addenda issued prior to opening of the Bids. Typically, all Contract Documents issued prior to the opening of Bids.
10. Bonds - Bid, Performance, Payment or Statutory and Maintenance Bonds together with such other instruments of security as may be required by the Contract Documents.

11. Calendar Days - When computing time prescribed by the Contract Documents, the day from which the designated period of time begins to run shall not be included, but the last day of the period shall be included, unless it is a Saturday, Sunday or a City Holiday, in which case, the last day shall be the next business day thereafter. A calendar day shall include any day of the week whether the Contractor works or not, and shall not be excluded as a result of inclement weather unless approved in writing, by the Engineer.
12. Change Order - A written document issued by City, which is duly executed by the parties, authorizing an addition, deletion or revision to the Work, or an adjustment (increase or decrease) in the Contract Price or the Contract Time, issued on or after the Effective Date of the Agreement.
13. City - City of Lenexa, Kansas, or Owner.
14. "Contract," "Contract Documents" and "Agreement" shall have the meaning ascribed to them in Paragraph GC-2 of these General Conditions and such terms may be used interchangeably.
15. Contract Price - The total moneys payable by City to Contractor for Final Completion of the Work as per the Contract Documents and as stated in the Agreement.
16. Contract Time - The total number of calendar days stated in the Agreement for the completion of the Work.
17. Contractor - The individual, corporation, partnership, or entity with whom City has entered into the Agreement, together with Contractor's duly authorized agents or legal representatives.
18. Day - A calendar day is twenty-four hours measured from midnight to the next midnight.
19. Defective Work - Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the specified requirements, reference standards, tests or reviews referred to in the Contract Documents, or has been damaged prior to approval of final payment unless responsibility for the damage has been expressly assumed by City at Substantial Completion.
20. Drawings and/or Plans - The Drawings and/or Plans which show the character and scope of the Work to be performed and which have been prepared by the Engineer and are referred to in the Contract Documents.
21. Effective Date of the Agreement - The date indicated in the Agreement on which the Agreement becomes effective, but if no such date is indicated it shall mean the date on which the Agreement is signed by the Mayor of City.
22. Engineer - Engineer shall mean City Engineer or Public Works Director or his designee for City of Lenexa, unless the Contract Documents identify an individual or entity which has been contracted with by City for the performance of professional architectural or engineering services in connection with the Project.
23. Field Order - An oral order issued by the Engineer which orders minor changes in the Work, but which does not involve a change in the Contract Price or the Contract Time.

24. Final Acceptance - The date upon which the construction of the Project is complete in accordance with the Contract Documents, the City has accepted the Project, and no further Work remains to be performed under the Contract Documents.
25. Final Payment – The final payment due to Contractor after Final Acceptance of the Project.
26. General Requirements - Those provisions of the Specifications which apply to the entire Work.
27. Inspector - The authorized representative of the Engineer.
28. Notice of Award - The written notice by City to the apparent Successful Bidder stating that upon compliance by the apparent Successful Bidder with the conditions precedent enumerated in the Bidding Documents and Contract Documents, within the time specified, City will enter the Agreement.
29. Notice to Proceed - A written notice presented by City to Contractor fixing the date on which the Contract Time shall commence and on which Contractor shall start to perform his obligations under the Contract Documents. Without the express written consent of City, Contractor shall do no Work until the date set forth in the Notice to Proceed.
30. Owner - City of Lenexa, Kansas, or City.
31. Partial Utilization - Use of a portion of the Work to be provided under the Contract Documents by City.
32. Payment Request - Also referred to as “Application for Payment.” The form used by Contractor to request a Progress Payment or Final Payment and includes such supporting documentation as required by the Contract Documents.
33. Plans - Includes all drawings which may have been prepared by the Engineer or a professional services contractor of City, and used as a basis for the Bids, all drawings (other than shop drawings) submitted by the Successful Bidder with its Bid or by Contractor to City, if and when approved by the Engineer, and all drawings submitted by City to Contractor during the progress of the Work, which show the character and scope of the Work to be performed.
34. Project - The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.
35. Provide - means to “furnish and install,” according to the requirements of the Contract Documents.
36. Shop Drawings - All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by Contractor, a subcontractor, manufacturer, fabricator, supplier or distributor to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a manufacturer, fabricator, supplier or distributor and submitted by Contractor to illustrate material or equipment for some portion of the Work.

37. Special Conditions - The part of the Contract Documents which amends or supplements these General Conditions.
38. Specifications - Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto. They may include, but are not limited to:
- (1) Design Specifications, such as measurements, tolerances, materials, inspection requirements and other information relative to the Work;
 - (2) Performance Specifications, such as performance characteristics required, if any;
 - (3) Purchase Description Specifications, such as products or equipment required by manufacturer, trade name and/or type; provided, however, equivalent alternatives including aesthetics, warranty and manufacturer reputation, may be substituted upon written request and written approval by City in accordance with the General Conditions;
 - (4) Such other information deemed appropriate by City for inclusion in the Specifications for construction of the Project.
39. Subcontractor - An individual, firm, corporation or other entity having a direct contract with Contractor or with any other subcontractor for the performance of a part of the Work.
40. Substantial Completion - A point in time when the Work (or a specified part thereof) has progressed to the point where, in the opinion of the Engineer, as evidenced by his definitive statement of Substantial Completion, the Work is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it was intended; or if there be no such statement issued, when Final Payment is due. The terms "substantially complete" and "substantially completed" as applied to any Work refer to "Substantial Completion" thereof.
41. Successful Bidder - Individual, corporation, partnership, person or entity that is determined and declared by City to be the lowest responsible Bidder submitting a bid in conformity with the terms of the Bidding Documents, and in the best interest of City.
42. Supplier - An individual, corporation, partnership or entity that is a manufacturer, fabricator, supplier, distributor, material man or vendor.
43. Underground Facilities - All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.
44. Unit Price - An amount stated in the Bid as a price per unit of measurement for material or services as described in the Bidding Documents or in the proposed Contract Documents.
45. Unit Price Work - Work to be paid for on the basis of Unit Price.
46. Work - The completed construction of the various separately identifiable parts of construction required to be furnished under the Contract Documents. Work

is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, as required by the Contract Documents.

47. The words “approved,” “reasonable,” “suitable,” “acceptable,” “properly,” “satisfactory,” or words of like effect, unless otherwise particularly specified herein, shall mean approved, reasonable, suitable, acceptable, proper or satisfactory in the judgment of the Engineer.

GC-2

Contract Documents: Definitions

1. General

The Contract Documents comprise the following general classifications of documents, including all additions, deletions, and modifications incorporated before execution of the Agreement by the Mayor of City or after execution, if in accordance with the procedure set forth herein therefore:

Bidding Documents;
Contract Documents;
Conditions of the Contract;
Specifications;
Drawings and/or Plans;
Breakdown of Trade Wages form.

2. Bidding Documents

The Bidding Documents issued by City to assist Bidders in preparing their Bids may include the following:

- a. Notice to Bidders;
- b. Instructions to Bidders;
- c. The Bid Form;
- d. Any Written Addenda;
- e. Bid Bond or Other Security.

3. Contract Documents

- a. Agreement between City and Contractor;
- b. Bonds -
 - (1) Performance Bond in an amount equal to 100 % percent of the Contract Price;
 - (2) Statutory Bond in an amount equal to 100 % percent of the Contract Price. Applicable to all contracts in which the Contract Price is over \$100,000;
 - (3) Maintenance Bond in an amount equal to 100% percent of the Contract Price;
 - (4) Payment Bond in an amount equal to 100% percent of the Contract Price. Applicable to all contracts in which the Contract Price is \$100,000 or less.
- c. Any written Change Orders or Amendments

4. Conditions of the Agreement

- a. General Conditions of this Agreement, of which this paragraph is a part;

- b. Special Conditions of this Agreement;
- c. All Federal, State and local laws and regulations applicable to this Agreement;
- d. Wage requirements applicable to this Agreement.

5. Specifications and Drawings

- a. The most current version of the City of Lenexa's Technical Specifications in effect as of the date of execution of the Agreement. These Technical Specifications are hereby incorporated by reference into the Contract Documents and can be found on the City's website or may be purchased from the City.
- b. Contract Drawings, including but not limited to, the Contract Drawings listed in the drawing index of the Contract Drawings.

GC-3

Preliminary Matters

1. Delivery of Bonds and Other Documents

When Contractor delivers the executed Agreement to City, Contractor shall also deliver to City such bonds or other security as Contractor may be required to furnish pursuant to the terms of this Agreement. At the same time, Contractor shall also deliver to City certificates of insurance (and other evidence of insurance requested by City) which Contractor is required to purchase and maintain pursuant to the terms of this Agreement, as well as a Certificate of Good Standing in the State of Kansas from the Kansas Secretary of State which is valid for the year in which construction is commenced.

2. Copies of Documents

City shall furnish to Contractor up to five copies (unless otherwise specified) of the Contract Documents. Additional copies will be furnished, upon request, at the cost of reproduction.

3. Commencement of Contract Time; Notice to Proceed

- a. The Contract Time will commence on the date stated in the Notice to Proceed;
- b. No Work shall be done at the site prior to issuance of a Notice to Proceed;
- c. Contractor shall notify the Engineer in writing of its construction schedule prior to commencing the Work;

4. Pre-Construction Conference

Before Contractor commences Work, a Pre-Construction Conference shall be held to review the progress schedules, to establish procedures for handling Shop Drawings and other submittals, and to establish a working understanding among the parties as to the Work to be performed pursuant to the terms of this Agreement.

GC-4

Schedules

1. Progress Schedule

- a. Prior to commencing the Work, City may require Contractor to submit to City an estimated progress schedule indicating the starting and

completion dates of the various phases of the Work, including the projected cost of each phase. The cost projection may serve as the basis for Progress Payments during the Work.

- b. Contractor shall provide an updated progress schedule with each application for payment indicating the Work that has been completed as well as estimated starting and completion dates for all phases of the Work that remain to be completed.
- c. Should the Work fall 20% or more behind schedule, the Contractor shall submit a revised schedule detailing corrective measures to be taken to complete the project within the time limits specified in the Agreement. City may require Contractor to add to his equipment or construction forces, as well as increase the working hours at Contractor's sole cost, if operations fall behind schedule at any time during the construction period. City may require Contractor to reimburse City for all costs, including charges of Engineer and City's professional consultants, caused by any increase in Contractor's allowable working hours as defined below. City may deduct such costs from any payment due Contractor.

2. Adjusting Progress Schedule

Contractor shall submit to the Engineer any adjustments to the progress schedule that reflect the impact of any unanticipated developments; such adjustments shall conform to the progress schedule and shall comply with all provisions of this Agreement.

GC-5 Contract Intent and Interpretation

The intent of this Agreement is to ensure complete, correct and timely execution of the Work. Any Work that is required, implied or inferred by the Contract Documents and is necessary to produce the intended result shall be provided by Contractor for the Contract Price.

When a word, term or phrase is used in this Agreement, it shall be interpreted or construed first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry, and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage. The word "include" and any derivative thereof shall be deemed to be followed by the phrase "without limitation."

Reference to standard specifications, manuals, or codes of any technical society, organization or association, or to the code of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual or code in effect at the time of bid award or at the Effective Date of this Agreement if there were no bids, except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code, whether or not incorporated by reference in the Contract Documents, shall change the duties and responsibilities of City, Contractor, or any of their agents or employees from those set forth in the Contract Documents.

The apparent silence of Plans, Specifications, Special Conditions, or other Contract Documents as to any detail, or the apparent omission from them of a detailed description concerning any point, shall be regarded as meaning only that the best general practice is to be used.

Should anything which is necessary for a clear understanding of the Work be omitted from the Contract Documents, or should it appear that various instructions are in conflict, Contractor shall secure written instructions from City before proceeding with the Work affected by such omissions or discrepancies.

If, during the performance of the Work, Contractor finds a conflict, error or discrepancy in the Contract Documents, Contractor shall, prior to proceeding with the Work affected by such conflict, report the findings to Engineer, in writing, immediately and shall obtain a written interpretation or clarification from the Engineer.

City may have requested an independent architect/engineer to prepare documents for the Project including the Drawings and Specifications for the Project, which should be accurate, adequate, consistent, coordinated and sufficient for completion of the Work. However, City makes no representation or warranty of any nature whatsoever to Contractor concerning such documents. Contractor acknowledges and represents that Contractor has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for completion of the Work, and Contractor has not, does not, and will not rely upon any representation or warranties by City concerning such documents.

In resolving inconsistencies among two or more sections of the Contract Documents, precedence shall be given in the following order:

First	Laws and Regulations
Second	Agreement Between City and Contractor
Third	Amendments
Fourth	Special Conditions
Fifth	General Conditions
Sixth	Specifications
Seventh	Drawings

Figured dimensions on Plans shall take precedence over scaled dimensions. Detailed Plans in the Contract Documents shall take precedence over General Plans.

The titles and headings printed on the Contract Drawings, the General Conditions, the Contract Specifications, and elsewhere in the Contract Documents are inserted for reference only.

GC-6

Amending and Supplementing Contract Documents

1. The Contract Documents may be amended to provide for additions, deletions or revisions to the Work, or to modify the terms and conditions thereof in one or more of the following ways:

- (a) Written Amendment; or
- (b) Change Order.

Contract Price and Contract Time may only be changed by written Amendment or by Change Order.

2. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized by:

- (a) Field Order;
- (b) Engineer's review and approval of a Shop Drawing or Sample;
- (c) Engineer's written interpretation or clarification.

GC-7 Reuse of Documents

Neither Contractor nor any Subcontractor, supplier, or other person or organization performing or furnishing any of the Work under a direct or indirect contract with City shall have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies) furnished and/or prepared by or bearing the seal of the Engineer.

GC-8 Easements and Rights-of-Way

If applicable, permanent and temporary construction easements and rights-of-way will be provided by City as shown on the Plans. Contractor shall confine the Work to the easements provided and shall carefully note where buildings, structures, or other obstructions will limit required working space. In the event that easements and rights-of-way are not available or are not secured, or if entry to property is denied by court order, injunction, litigation or any other reason, Contractor shall cease operations in such area and confine the Work to other areas approved by City. In the event of a delay arising from the securing of easements and rights-of-way, Contractor shall have no claim against City for damages arising from such delay but may request an extension of time pursuant to the terms of this Agreement.

GC-9 Use of Premises

Contractor shall confine the Work to the right-of-way limits and easements provided for the Project. Contractor shall provide, at no cost to City, for all additional lands and access thereto that may be required for temporary construction facilities, storage of materials, and equipment, staging area and field office. Contractor shall assume full responsibility for and indemnify City against any and all claims arising from the use of such additional lands and access.

Throughout the duration of the Work, Contractor shall keep the Work site free from accumulations of waste materials, rubbish, and other debris resulting from the Work. At the completion of the Work, Contractor shall remove all waste material, rubbish, and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials and shall leave the Project site clean and ready for its intended use by City. Contractor shall restore to their original condition those portions of the Project site not designated for alteration by the Contract Documents.

Contractor shall not load nor permit any structure, streets or highways to be loaded with a weight that exceeds applicable load limits.

Contractor shall comply with all Federal, State and local laws and regulations, as well as any specific instructions from City.

If applicable, a laydown area will be provided at the site and shall be selected by City. If required, Contractor will furnish its own dunnage and weather protection.

No City equipment will be taken out of service or put into service without approval of the Engineer.

GC-10 Concealed Conditions

City will furnish to Contractor information in its possession concerning conditions below ground at the project site. Such information is furnished to Contractor only to make complete disclosure and for no other purpose. By furnishing such information, City does not represent, warrant or guarantee the accuracy of such information, either in whole or in part, nor shall City be liable for such information.

Contractor understands that City does not warrant or guarantee the accuracy of the various materials and information, including but not limited to soil tests, bore reports, utility locations and other such data, and as-builts in the case of renovation of, or addition to, existing facilities. Contractor warrants that it has examined the Project site and conducted such tests and examinations as it deems necessary to perform the Work pursuant to the terms of this Agreement.

Should concealed or unknown conditions that differ materially from conditions ordinarily encountered in the area and generally recognized as inherent in the Work of the character provided for in this Agreement be encountered, the Contract Price and Contract Time may be equitably adjusted by Change Order upon written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to any possible City responsibility, Contractor shall give City written notice of, and an opportunity to observe, the concealed or unknown condition. Failure of Contractor to make the written notice and claim as required herein shall constitute a waiver by Contractor of any claim arising out of, or related to such concealed or unknown condition.

GC-11

Reference Points, Permanent Markers and Staking

City shall provide engineering surveys for Work for the purpose of establishing reference points which, in the judgment of the Engineer, are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for all staking of the Work, shall protect and preserve the established reference points, and shall make no changes or relocations without prior written approval of City. All staking shall be performed by a licensed surveyor. Contractor shall report to Engineer whenever any reference point is lost, destroyed, or requires relocation because of changes in grades or locations, and Contractor shall be responsible for the cost of replacement or relocation of such reference points by the Engineer, including the cost of materials, surveyors and assistance as necessary.

Permanent section markers shall be replaced using recognized Kansas surveying procedures.

GC-12

Bonds

Contractor shall, in accordance with GC-3 of these General Conditions, furnish to City a Statutory or Payment Bond, Performance Bond and Maintenance Bond on forms approved by City and secured by a surety company acceptable to City. With each bond there shall be filed with City one copy of a "Power of Attorney" certified to include the date of the bonds. Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in Kansas.

Contractor shall notify and obtain the consent and approval of Contractor's surety for all Change Orders and written amendments, if such notice is required by Contractor's surety or by law. Contractor's execution of a Change Order or written amendments to this Agreement shall constitute Contractor's warranty to City that the surety has been notified and that the surety consents to such Change Order or written amendment;

accordingly surety shall be conclusively deemed to have been notified of such Change Order or written amendment and to have expressly consented thereto.

If Contractor's surety or any Bond furnished by Contractor is declared bankrupt, or becomes insolvent, or its right to do business is terminated in the State of Kansas, or it ceases to meet the requirements herein, Contractor shall within five (5) days thereafter substitute an acceptable surety and appropriate Bond.

GC-13

Insurance

Contractor shall secure and maintain through the duration of this Agreement insurance (on an occurrence basis unless otherwise agreed to) of such types and in such amounts as required herein. Contractor shall provide certificate(s) of insurance confirming the required protection on the standard Acord insurance certificate forms. The certificate(s) are to be filed with City prior to commencement of any Work. City shall be notified by receipt of written notice from the insurer at least thirty (30) days prior to material modification or cancellation of any policy listed on the certificate.

Contractor, upon receipt of notice of any claim in connection with this Agreement, shall promptly notify City, providing full details thereof, including an estimate of the amount of loss or liability.

Contractor shall also promptly notify City of any reduction in limits of protection afforded under any policy listed in the certificate(s) of insurance in excess of \$50,000.00, whether or not such impairment came about as a result of this Agreement.

If City subsequently determines that Contractor's aggregate limits of protection shall have been impaired or reduced to such extent that City determines such limits inadequate for the balance of the Project, Contractor shall, upon notice from City, promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to City.

Unless otherwise mutually agreed upon by City and Contractor, City will only accept coverage from an insurance carrier who offers proof that it:

- (1) Is licensed to do business in the State of Kansas; and
- (2) Carries a Best's policyholder rating of "A" or better; and
- (3) Carries at least a Class "X" financial rating.

Unless otherwise specified, City shall be shown as an additional insured on a primary and noncontributory basis on all general liability, automobile liability and any applicable umbrella or excess liability policies of insurance.

General Liability

Limits

Each Occurrence \$ 500,000

Personal & Advertising Injury \$ 500,000

Products/Completed Operations

Aggregate \$ 500,000

General Aggregate \$ 500,000

Policy **MUST** include the following conditions:

- (a) Contractual Liability and Independent Contractors; and
- (b) Explosion, Collapse & Underground, if applicable.
(Certificate must confirm inclusion of “Blasting” coverage, if applicable)

Automobile Liability

Policy shall protect Contractor against claims for bodily injury and/or property damage arising out of the ownership or use of any owned, hired and/or non-owned vehicle and must include protection for Any Auto.

Notwithstanding the foregoing, should Contractor not own any automobiles, Contractor may request to amend the automobile liability requirement to allow Contractor to maintain only Hired and Non-Owned Autos.

Limits:

Each Accident, Combined Single
Limits, Bodily Injury and
Property Damage:.....\$500,000

Workers' Compensation

Insurance shall protect Contractor against all claims under applicable state Workers' Compensation laws. Contractor shall be protected against claims for injury, disease or death of employees for which, for any reason, may not fall within the provisions of a Workers' Compensation law. The policy limits shall not be less than the statutory limits currently applicable.

Employers' Liability

Bodily Injury by Accident: \$500,000 Each Accident
Bodily Injury by Disease: \$500,000 Policy Limit
Bodily Injury by Disease: \$500,000 Each Employee

Umbrella Liability

[Establish appropriate limits based on risk factors of contract]

An umbrella or excess liability policy in the minimum amount of \$3,000,000 each occurrence, \$ 3,000,000 aggregate is required. The umbrella or excess policy must be at least as broad as the underlying policies and include the following protection.

- A) General Liability;
- B) Automobile Liability; and
- C) Employers' Liability.

Owner's Protective Liability

On all contracts in excess of \$100,000, Contractor shall take out, pay for and deliver to City an Owner's Protective liability insurance policy, issued on an occurrence basis, naming the City of Lenexa, Kansas, as "named insured". The policy shall be maintained during the life of this Agreement. Limits of protection shall be at least \$500,000 Combined Single Limits, Bodily Injury and Property Damage. The policy shall contain no exclusion relative to any function performed by City or its employees in conjunction with this project. This Owner's Protective liability policy shall be primary insurance for City.

Subcontractors' Insurance

If a part of the Contract is to be sublet, Contractor shall either:

- (1) Cover all subcontractors in Contractor's general liability insurance policy; or
- (2) Require each subcontractor not so covered to secure insurance in the minimum amounts required of Contractor.

GC-14

Contractor Supervision

Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of the Work, but Contractor shall not be solely responsible for the negligence of others in the design or selection of a specific means, method, technique, sequence or procedure of the Work which is indicated in and required by the Contract Documents. Contractor shall be responsible to see that the finished work complies accurately with the Contract Documents.

Contractor is solely responsible to City for accomplishing the Work of this Agreement, including any of the Work performed by Subcontractors. Therefore, Contractor shall designate and maintain a resident superintendent on the Work at all times that Work is ongoing, who shall not be replaced without written notice to City. Contractor shall notify City prior to commencing the Work, providing the name of the resident superintendent. The superintendent will be Contractor's representative at the site and shall have authority to act on behalf of Contractor and Subcontractors; the superintendent shall also have the authority to direct Subcontractors at the Project site. All communications given to the superintendent shall be binding as if provided to Contractor and Subcontractors. Upon a finding by City that the superintendent has not adequately performed his/her duties under the Contract Documents, Contractor shall remove such superintendent and designate another resident superintendent that is agreed upon by City.

During Contractor's performance of this Agreement, Contractor shall provide City with the 24-hour telephone number in which the superintendent can be contacted at any time during the Project, fax number and address of the resident superintendent, which address shall be the headquarters of the superintendent authorized to receive drawings, instructions, or other communications, articles or things from City or its agents; and any such item provided to the superintendent or delivered to the resident superintendent's address in superintendent's absence shall be deemed to have been provided to Contractor from the time such item is delivered.

GC-15

Labor, Materials and Equipment

Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work, and perform the Work as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Project site.

Whenever the Engineer shall notify Contractor that any person on the Project is, in his opinion, incompetent, unfaithful, or disorderly or who uses threatening or abusive language to any person representing City when on the Project site or to any citizen, such person shall be immediately discharged from the Work and shall not be re-employed on the Project except with consent of the Engineer.

No Work shall be done between the hours of 6:00 p.m. and 7:00 a.m. nor on Saturdays, Sundays or legal holidays, without the written approval or permission of the Engineer, except such Work as may be necessary for the proper care, maintenance and protection of the Work already performed or of equipment, or in the case of an emergency. Requests for approval of such Work must be submitted to the Engineer two (2) working days prior to the requested start of such Work. Night Work may be established by Contractor, as a regular procedure, with the written permission of the Engineer, such permission however, may be revoked at any time by the Engineer.

Unless otherwise specified in the Contract Documents, Contractor shall furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities, and all other facilities and incidentals necessary for the execution, testing, initial operation and completion of the Work.

Contractor shall be responsible for any damage to the Work, regardless of the cause, prior to Final Acceptance. Contractor shall repair any damage to the Work prior to Final Acceptance.

All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by City, Contractor shall furnish evidence (including reports or required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable supplier, unless otherwise specifically provided in the Contract Documents.

GC-16 Assignment of Contract

In case Contractor assigns all, or any part, of the monies due or to become due under this Agreement, the instrument of assignment shall contain a clause substantially as follows: "It is agreed that the right of the assignee in and to any monies due or to become due to Contractor shall be subject to all prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Agreement and that no money shall be paid to assignee on behalf of Contractor by City until such time as Contractor has discharged its obligations to City under this Agreement. It is expressly understood and agreed that no assignment shall be effective as against City unless the assignment complies with the foregoing."

GC-17 Substitute or Equivalent Items

"Approved Equal," where permitted by the Contract Documents or otherwise made feasible by market conditions, shall be approved as follows:

1. Contractor shall notify the Engineer in writing if it elects to use an approved equal specifically named in the Contract Documents;

2. If Contractor desires to use an "equal" not specifically named in the Contract Documents, it must first inform the Engineer and receive written approval for such substitutions. The Engineer has no obligation to approve such request and is not responsible for any delay or cost incurred caused by Contractor's request.

Contractor shall be solely responsible for design risks, delays and other claims arising out of any Approved Equal.

The Engineer will be allowed a reasonable time within which to evaluate each proposed substitute. The Engineer will be the sole reviewer, and no substitute "equal" will be ordered, installed, or utilized without Engineer's prior written review. City may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute "equal". Whether or not the Engineer reviews a proposed substitute "equal," Contractor shall reimburse City for the charges of the Engineer for evaluating each proposed substitute.

GC-18

Subcontractors, Suppliers and Others

Contractor shall not award subcontracts which total more than fifty percent (50%) of this Agreement and Contractor shall perform within its own organization Work amounting to not less than fifty percent (50%) of the total Contract Price. Should any Subcontractor fail to perform in a satisfactory manner, the work undertaken by such Subcontractor shall be immediately terminated by Contractor. Contractor shall be as fully responsible to City for the acts and omissions of its Subcontractors, and of persons either directly or indirectly employed by the Subcontractors, as Contractor is for the acts and omissions of persons directly employed by Contractor. Approval by the Engineer of any Subcontractor shall not constitute a waiver of any right of City to reject Defective Work, material or equipment, not in compliance with the requirements of the Contract Documents. Contractor shall not make any substitution for any Subcontractor accepted by City unless the Engineer so agrees in writing.

Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to Contractor by the terms of the Contract Documents insofar as applicable to the Work of the Subcontractor and to give Contractor the same power to terminate any Subcontractor as City has to terminate Contractor under the provisions of the Contract Documents.

Nothing contained in the Contract Documents shall create a contractual relationship between any Subcontractor and City, nor shall anything contained in the Contract Documents create any obligation on the part of City to pay sums due any Subcontractor.

Prior to City's approval of this Agreement and no later than seven (7) days after Notice of Award, the Successful Bidder shall submit to City Engineer for City acceptance a list of the names of all Subcontractors and suppliers proposed for portions of the Work and shall designate which Work each Subcontractor is to perform.

The Engineer shall, prior to City's approval of this Agreement, notify the Successful Bidder, in writing, if City, after due investigation, has reasonable objection to any Subcontractor or supplier on such list, and Contractor shall substitute a Subcontractor or supplier acceptable to City at no additional cost to City. The failure of City to make objection to a Subcontractor within ten (10) days after presentation of the list of Subcontractors shall constitute an acceptance of such Subcontractor but shall not constitute a waiver of any right of City to reject Defective Work, material or equipment not in conformance with the requirements of the Contract Documents or to

request removal of a subcontractor during construction pursuant to the Contract Documents.

Contractor shall not make any substitution for any Subcontractor or supplier who has been accepted by City unless the Engineer determines that there is a good cause for doing so. City's disapproval of any Subcontractor shall not, under any circumstance, be the basis for an increase in the Contract Price or a claim for damages caused by such delay.

The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors, or suppliers or delineating the Work to be performed by any specific trade.

GC-19 Patent, Fees and Royalties

Contractor agrees to defend any claim, action or suit that may be brought against City, its governing body, officers, agents or employees for infringement of any Letters Patent of the United States arising out of the performance of this Contract or out of the use or disposal by or for the account of City of supplies furnished or Work performed hereunder, and Contractor further agrees to indemnify and hold harmless City, its governing body, officers, agents, and employees against all judgments, decrees, damages, costs and expenses recovered against it or them or sustained by it or them on account of any such actual or alleged infringement.

It is understood that all royalties and fees for and in connection with patents, or patent infringement, claims for materials, articles, apparatus, devices or equipment used in or furnished for the Work shall be included in the Contract Price. Final Payment to Contractor by City shall not be made while any suit or claim involving infringement or alleged infringement of any patent remains unsettled.

GC-20 Permits and Licenses

Contractor shall obtain and pay for all construction permits and licenses, including a license to do business within the City, unless otherwise stated. City shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of opening Bids, or if there are no Bids on the Effective Date of this Agreement. Contractor shall pay all charges of utility service companies for connections to the Work.

GC-21 Laws and Regulations

The Contract Documents comprise the entire Agreement between City and Contractor concerning the Work. The Contract Documents will be construed in accordance with the laws of the State of Kansas.

Contractor shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the Work.

If Contractor determines that the Specifications or Drawings are at variance with any Laws or Regulations, Contractor shall give City prompt written notice thereof, and any necessary changes will be in accordance with the Contract Documents. If Contractor performs any Work knowing or having reason to know that it is contrary to such Laws or Regulations, and without such notice to the Engineer, Contractor shall bear all costs arising therefrom.

Contractor shall at all times observe and comply with all Federal and State laws and City ordinances and regulations, which in any manner affect the conduct of the Work, and particularly in the handling, transportation, and use of explosives, and shall observe and comply with all orders, laws, ordinances and regulations which exist or which may be enacted later by governmental entities having jurisdiction or authority for such enactment. No plea of misunderstanding or ignorance thereof will be considered. Contractor and his sureties will indemnify and hold harmless City and all City's officers, agents and employees against any claims or liabilities arising from or based on the violation of any law, ordinance, regulation or order, whether by Contractor or its employees, agents or assigns.

GC-22 Taxes

Contractor shall pay all sales, consumer, use and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the Project location which are applicable during the performance of the Work.

GC-23 Record Documents

Contractor shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Field Orders and written interpretations and clarifications in good order. These record documents together with all approved samples and a counterpart of all approved Shop Drawings will be available to City for reference. Upon completion of the Work, these record documents, samples and Shop Drawings shall be delivered to City.

Contractor shall maintain copies of records pertaining to the Work for a period of five (5) years from the date of Final Payment. Such records shall be made available to City for audit and review purposes upon written request therefore from City or its authorized agent(s) during the construction period and the five (5) year period following Final Payment.

GC-24 Safety and Protection; Notification of Property Owners/Occupants

Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

1. All employees on the Project site and other persons who may come in contact with the Work;
2. All Work and all materials or equipment to be incorporated in the Work, whether in storage on or off the site;
3. Other property at the Project site or adjacent thereto, including but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of the Work.

In the performance of this Agreement, Contractor shall comply with all applicable Federal, State and local laws governing safety, health and sanitation. Contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions, or as City may determine reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the Work covered by this Agreement.

Contractor is fully responsible for a safety program and all safety methods and procedures, whether or not City reviewed and/or accepted such safety program.

City may require Contractor to notify nearby property owners or occupants of nearby structures of certain construction activities. When required, Contractor shall provide a written notice, delivered at least 24 hours in advance of such activity, to affected nearby property owners or occupants of nearby structures describing the activity and the proposed activity schedule. Delivery of the notice may be accomplished by affixing the notice to the front entrance of the structure or by mailing the notice to the property owner or occupant of the structure 3 days prior to commencing the activity.

GC-25

Emergencies

In emergencies affecting the safety or protection of persons, the Work, or property at the Project site or adjacent thereto, Contractor, without special instruction or authorization from City, is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give City prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused by such emergencies. If the Engineer determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a written Amendment or Change Order will be issued to document the consequences of the changes or variations. City shall also have the right to immediately cure an emergency without notice to Contractor. In such case, the notice provisions of GC-42 shall not apply. However, all other provisions of GC-42 shall apply.

If City observes a situation in which it believes Contractor has not taken sufficient precaution for the safety of the public or the protection of the Project, City may direct Contractor to take immediate action and Contractor shall immediately respond.

GC-26

Shop Drawings and Samples

Contractor shall submit with such promptness as to cause no delay in its own Work or in the Work of any Subcontractor, or other contractor, five (5) copies of all shop, fabrication, assembly, foundation and other drawings and schedules required by this Agreement. City shall review, respond to, accept or reject such submissions within a reasonable time after receipt. Contractor shall make such revisions as deemed necessary. No Work shall be performed in connection with the fabrication or manufacture of material or equipment shown by any drawing thereof, nor shall any accessory, appurtenance or device not fabricated or manufactured by Contractor or its Subcontractors be purchased, until the drawing or drawings therefore have been approved as stipulated, except at Contractor's own risk and responsibility.

By submitting shop drawings, product data, samples, and similar submittals, Contractor represents that Contractor has determined and verified the materials, field measurements and field construction criteria related thereto and has checked and coordinated the information contained within such submittals with the requirements of the Work and the Contract Documents. All submittals must bear the following certifications, signed and dated by Contractor, and by any subcontractor, sub-subcontractor, or supplier who has prepared the submittal for Contractor:

“I certify that the requirements of the Contract Documents have been met and all dimensions, conditions, and quantities are verified as shown on the attached submittal.”

The foregoing certification will be deemed to have been inserted into any submittal from which it has been omitted.

Review for compliance and/or acceptance by City of drawings submitted by Contractor shall not relieve Contractor from responsibility for errors of any sort in Shop Drawings.

GC-27

Indemnification

To the fullest extent permitted by all applicable Laws and Regulations, Contractor shall indemnify and hold harmless City and their consultants, agents and employees from and against all claims, damages, losses and expenses direct, indirect or consequential (including but not limited to, fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs) arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense: (a) 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 (b) is caused in whole or in part by any negligent act or omission of Contractor, any Subcontractor, any person or organization directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not such liability, claim, damage, loss or expense is caused in part by a party indemnified hereunder.

In any and all claims against City or any of their consultants, agents or employees by any employee of Contractor, any Subcontractor, any person or organization directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation described herein shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

GC-28

Separate Contracts

1. City reserves the right to perform by itself or let other contracts in connection with the Work. Contractor shall afford reasonable opportunity for the introduction and storage of materials and the execution of Work by City or others and shall properly connect and coordinate its Work with the Work of City or others.
2. If any part of Contractor's Work depends upon the Work of City or others, Contractor shall inspect and promptly report to City any defects in any such Work that renders it unsuitable for proper execution or results. Its failure to inspect and report shall constitute an acceptance by it of such other Work as fit and proper for the reception of its Work.

GC-29

Relations with Other Contractors

Contractor shall cooperate with all other contractors or workers who may be performing Work on behalf of City or any other entity, including utility companies, on any Work in the vicinity of the Work to be done under this Agreement, and it shall so conduct its operations as to interfere to the least possible extent with the Work of such contractors or workers. Contractor shall be responsible for any injury or damages that may be sustained by other contractors, workers or their work because of any fault or negligence on Contractor's part, and shall at its own expense repair or pay for such injury or damage. Any difference or conflict which may arise between Contractor and other contractors, in regard to their Work, shall be adjusted and determined by the Engineer. If the Work of Contractor is delayed or damaged because of any acts or omissions of any other contractor or contractors, including utility companies,

Contractor shall have no claim against City on that account; provided, however, City may in its discretion, grant an extension of the Contract Time.

When two or more contracts are being executed at one time in such manner that Work on one Contract may interfere with that of another, the Engineer shall decide which contractor shall cease work and which shall continue, whether the Work on both contracts shall progress at the same time, and in what manner the work is to proceed.

When the territory of one contract is the necessary or convenient means of access for the transportation or movement of men/women, materials or appliances required for the execution of another contract, such privileges of access or any other responsible privilege may be granted by City to Contractor so desiring to the extent which may be reasonably necessary.

In the event that Contractor is performing Work at a Project site on a Project involving City and one or more other private or governmental entities, which have their own contractors on site as well, Contractor shall advise City when it anticipates that there may be interference with the Work of any such other contractor. City shall, to the best of its ability, with input from Contractor as to coordination of the Work, seek to schedule work of the various contractors so as to avoid as much inconvenience and delay as possible; provided, however, that in the event Contractor experiences a delay as a result of the presence of other such contractors, Contractor shall not be entitled to additional compensation or damages for delay, rather, Contractor's only recourse shall be an extension of the Contract Time to be determined by the Engineer.

GC-30 City's Presence During Construction

City reserves the right to have persons present on the Project site during construction, but the presence of such persons does not relieve Contractor of its responsibility to comply with the Contract Documents.

GC-31 Changes in Work or Contract Price

The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to Contractor for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by Contractor shall be at its expense without change in the Contract Price.

Without invalidating this Agreement and without notice to any surety, City may, at any time or from time to time, order additions, deletions, or revisions to the Work; such changes will be authorized by written amendments; Field Orders; or change orders. Upon receipt of any such document or order, Contractor shall promptly proceed with the Work involved which will be performed under the applicable contract conditions unless otherwise specifically provided.

1. Change Orders

City, without invalidating the Contract, may by Change Order direct changes in the Work which may result in an addition to or deduction from the Contract Price and/or changes in the Contract Time. All Change Orders shall be executed under the provisions of the original Contract Documents and shall be in writing signed by both parties. If the Change Order consists of a modification to the Contract Price, the value of such change shall be determined by the Engineer. Where changes in the Work involve a change in the quantity of any bid item, the Contract Price shall be revised by extension

of the quantities and Unit Price of all bid items so changed subject to written approval of the Architect/Engineer. In the event Contractor disagrees as to the increase/decrease in the Contract Price and/or the modification in the Contract Time, Contractor may pursue its rights under the dispute resolution provisions of this Agreement. While such dispute remains unresolved, Contractor shall nevertheless proceed to execute the Work in accordance with the Contract Documents as modified by said Change Order.

Except for Work done as a result of an emergency endangering life or property, no Work resulting in an addition to the Contract Price shall be done by Contractor nor shall a claim for an addition to the Contract Price be made by Contractor unless pursuant to the provisions of a Change Order.

2. Field Orders

City may order minor changes in the Work through Field Orders, which in no specific, concrete or substantial way increase or decrease the Work; and such minor changes in the Work shall not involve an addition or deduction from the Contract Price.

3. Written Amendments

City and Contractor may agree to change the terms of the Contract Documents, including the scope of Work, the Contract Price and Contract Time by executing a written amendment to the Contract Documents that is signed by both parties.

From time to time City may also issue written orders to Contractor for needed clarifications, modifications or corrections.

Should a difference of opinion arise as to whether the order constitutes extra Work for which additional compensation is due, and City insists on its performance, Contractor shall proceed with the Work after making a written request for a Change Order, and it shall keep an accurate account of its costs thereof. Contractor will thereby preserve the right to submit a claim therefore.

The Contract Price and Contract Time may only be adjusted by Change Order or Written Amendment. The value of any change in the Work which results in an addition/deletion to the Contract Price shall be determined at the option of City to be either by agreed lump sum or by unit prices named in this Agreement or subsequently agreed upon. In order to arrive at the value for any deletion, Contractor shall credit City with its projected cost(s), including overhead and fee for any Work which was previously included but which has been excluded by any such change.

No change in the Work shall entitle Contractor an extension to the Contract Time unless the Engineer determines that additional Contract Time is required and specifically so provides in the Change Order. No change in the Work shall entitle Contractor to delay damages. By executing a Change Order or Written Amendment, Contractor represents that Contractor is not entitled to an increase in the Contract Price or an extension of the Contract Time beyond that specified in the Change Order or Written Amendment for the Work to be performed under the Change Order or Written Amendment.

In the event that Unit Prices are provided for in the Contract Documents as to all or a part of the Work, if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed Unit Prices to the quantities of

Work proposed is substantially inequitable to either City or Contractor, the Unit Prices shall be reevaluated and may be adjusted by City.

No claim for extra Work of any kind will be allowed except as provided herein. If extra Work orders are given in accordance with the provisions of this Agreement, such Work shall be considered a part hereof and subject to each and all of the terms and requirements of this Agreement.

Contractor shall be responsible for notifying its surety(ies) of any modifications to the Contract Price or Contract Time, and said surety(ies) shall not seek discharge as a result of any failure on Contractor's part to notify surety(ies).

GC-32 Changes in Contract Time

The Contract Time may only be changed by a Change Order or Written Amendment. Any claim for an extension or shortening of the Contract Time shall be based on written notice delivered by the party requesting the change to the other party promptly and stating the general nature of the claim. A written claim with supporting data shall be delivered within thirty (30) days after such occurrence (unless the Engineer allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Time shall be determined by the Engineer. Consideration may be given to requests for extensions of time due to inclement weather. No claim for an adjustment in the Contract Time will be valid if not submitted in accordance with the requirements of this paragraph.

In executing this Agreement, Contractor expressly covenants and agrees that, in undertaking to complete the Work within the time therein fixed, it has taken into consideration and made allowances for all hindrances and delays incident to such Work, whether growing out of delays in securing materials, workers, weather conditions or otherwise.

GC-33 Liquidated Damages

It is mutually understood and agreed by and between the parties to this Agreement, in signing this Agreement, that time is of the essence of this Agreement, and in the event Contractor shall fail to achieve Substantial Completion of the Work specified and required to be performed within the period of time specified in the Contract Documents binding both parties, after due allowance for any extension or extensions of Contract Time which may be granted pursuant to Change Order, Contractor shall pay to City, as stipulated liquidated damages and not as a penalty, the sum stipulated therefore in Table 1, as set forth later in this section, for each and every day that Contractor shall be in default. The liquidated damages set out in Table 1 shall not apply to any delay in achieving Final Completion after Substantial Completion has been achieved.

It is further mutually understood and agreed by and between the parties to this Agreement, in signing this Agreement, that in the event Contractor, after achieving Substantial Completion, fails to achieve Final Completion of the Work specified and required to be performed within the period of time specified in the Contract Documents binding both parties, after due allowance for any extension or extensions of Contract Time which may be granted pursuant to Change Order, Contractor shall pay to City, as stipulated liquidated damages and not as a penalty, the sum stipulated

therefore in Table 2, as set forth later in this section, for each and every day that Contractor shall be in default.

In the case of joint responsibility for any delay in accomplishing Substantial or Final Completion of the Work covered by this Agreement, where two (2) or more separate contracts are in force at the same time and cover Work on the same project and at the same site, the total amount of liquidated damages assessed against all contractors under such contracts, for any one day of delay in the Substantial or Final Completion of the Work will not be greater than the approximate total of the damages sustained by City by reason of such delay in completion of the Work, and the amount assessed against any one contractor for such one day of delay will be based upon the individual responsibility of such contractor for the aforesaid delay as determined by, and in the judgment of City.

In case of failure on the part of Contractor to effect completion within the Contract Time, City shall have the right to deduct from the total compensation otherwise due Contractor as liquidated damages, fixed and agreed to in advance, an amount according to the following schedules:

TABLE 1

<u>CONTRACT AMOUNT</u>			<u>LIQUIDATED DAMAGES</u>
0	to	25,000	\$ 75.00
25,001	to	50,000	125.00
50,001	to	100,000	200.00
100,001	to	500,000	400.00
500,001	to	1,000,000	600.00
1,000,001	to	2,000,000	925.00
2,000,001	to	5,000,000	1,375.00
5,000,001	to	10,000,000	2,000.00
10,000,001	and	up	3,000.00

TABLE 2

<u>CONTRACT AMOUNT</u>			<u>LIQUIDATED DAMAGES</u>
0	to	25,000	\$ 15.00
25,001	to	50,000	25.00
50,001	to	100,000	40.00
100,001	to	500,000	80.00
500,001	to	1,000,000	120.00
1,000,001	to	2,000,000	185.00
2,000,001	to	5,000,000	275.00
5,000,001	to	10,000,000	400.00
10,000,001	and	up	600.00

The amounts shown in Table 1 and Table 2 above shall be the sum due for each 24 hour calendar day, including weekends and holidays, that the Work remains incomplete over the specified Contract Time.

City shall have the right to deduct said liquidated damages from any moneys in its hands, otherwise due or to come due, to Contractor, or to sue for and recover compensation for damage for nonperformance of this Agreement.

If Contractor shall be delayed at any time in the progress of the Work by any act or omission of City or by any separate contractor employed by City, and over which Contractor has no control, then the Contract Time shall be extended by written Change Order for such reasonable time as City may decide, and no adjustment shall be made in the Contract Price. Additionally, Contractor represents that its bid includes all costs, overhead, and profit which may be incurred throughout the Contract Time. Accordingly, Contractor may not make any claim for delay damages based in whole or in part on the premise that Contractor would have completed the Work prior to the expiration of the Contract Time, but for any claimed delay, whether caused by City or any other cause.

GC-35 Work Stoppage

Contractor warrants to City that there shall be no Work stoppages or interruptions arising out of labor disputes, including, but not limited to, those due to the presence of both union and nonunion workforces at the Project site. Contractor further agrees that in the event of any strike, picket, sympathy strike, work stoppage or other form of labor dispute or picket in connection with the work of Contractor, other contractors, subcontractors, City, or any other person, Contractor will, contingent upon City providing a picket free entrance, continue to perform the Work required herein without interruption or delay. Anything in this Agreement to the contrary notwithstanding, in the event Contractor fails to continue performance of the Work without interruption or delay, because of such picket or labor dispute, City may terminate the services of said Contractor after giving 48 hours written notice to Contractor of its intent to do so, or City may invoke any of the rights set forth elsewhere in the Contract Documents.

GC-36 Warranty and Defective or Unacceptable Work

Contractor warranties and guarantees to City that all Work will be in accordance with the Contract Documents and will not be Defective or otherwise unacceptable. All Work which does not conform to the requirements of the Contract Documents shall be considered unacceptable. Defective Work, whether the result of poor workmanship, use of defective materials, damage through carelessness or any other cause, found to exist within the two (2) year warranty period or such longer time as may be permitted by law, shall be removed immediately and replaced in an acceptable manner. This provision shall have full effect regardless of the fact that the Defective Work may have been done or the defective materials used with the full knowledge of City. No inspection by City of the Work nor Final Acceptance of the project by City shall relieve Contractor of its responsibility to perform pursuant to the Contract Documents and provide acceptable Work.

If City discovers Defective Work, then City shall provide a written notice to Contractor indicating the nature of the Defective Work and setting forth a time period to correct the Work. If Contractor fails to remove Defective Work within the time period set forth in the written notice, the rejected material or Work may be removed and corrected by City pursuant to the provisions of the Contract Documents permitting City to correct the Defective Work.

GC-37 Tests and Observations

Contractor shall give Engineer at least 48 hours prior notice of readiness of the Work for all required observations, tests or reviews.

If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) to specifically be tested, or if the Specifications require any testing or if

such testing is necessary to verify compliance with the Contract Documents then Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish Engineer with the required certificates of inspection, testing or approval. Contractor shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with City's review of fabrication material, or equipment proposed to be incorporated in the Work.

Neither observations by Engineer or inspections, tests or approvals by others shall relieve Contractor from his obligations to perform the Work in accordance with the Contract Documents.

GC-38 Uncovering Work

If any Work that is included in the Contract (including the work of others) that is to be observed or tested is covered without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation. Such uncovering shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover such work and Engineer has not acted with reasonable promptness in response to such notice.

If Engineer considers it necessary or advisable that covered Work that was previously inspected by City be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose or otherwise make available for observation, inspection or testing as Engineer may require, that portion of the work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, Contractor shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, (including but not limited to fees and charges of engineers, architects, attorneys and other professionals), and City shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, Engineer shall determine the amount thereof. If, however, such Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction and, if the parties are unable to agree as to the amount or extent thereof, Engineer shall determine the amount thereof. Nothing in this section shall impair either party's ability to make a claim for compensation as provided in the Contract Documents regarding the increase or decrease in Contract Price caused by uncovering the Work.

GC-39 City's Right to Stop Work

If the Work is Defective, or Contractor fails to supply sufficient skilled workmen or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, City may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of City to stop the Work shall not give rise to any duty on the part of City to exercise this right for the benefit of Contractor or any other party. Further, such order by City shall not result in a claim by Contractor for an increase in Contract Time or Contract Price.

GC-40 Two Year Correction Period

If within two (2) years after the date of Final Acceptance or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be Defective, Contractor shall promptly, without cost to City and in accordance with City's written instructions,

either correct such Defective Work, or, if it has been rejected by City, remove it from the site and replace it with acceptable Work. If Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, City may have the Defective Work corrected or the Defective Work removed and replaced, and all direct and indirect costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by Contractor. In special circumstances where a particular item of equipment is placed in continuous service before Final Acceptance of the Work, the correction period for that item may start to run from an earlier date if so provided in the specifications or by written agreement.

GC-41 Acceptance of Defective Work

If, instead of requiring correction or removal and replacement of Defective Work, City prefers to accept the Defective Work, City may do so. Contractor shall bear all direct, indirect and consequential costs attributable to City's evaluation of and determination to accept such Defective Work (such costs to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals). If any such review occurs prior to City's approval of Final Payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work and City shall be entitled to an appropriate decrease in the Contract Price; and, if the parties are unable to agree as to the amount thereof, City may make a claim therefore. If the review occurs after such recommendation, an appropriate amount will be paid by Contractor to City.

GC-42 City's Right to Cure Defective Work

If Contractor fails to correct Defective Work within the time period set forth in the notice of Defective Work or to remove and replace Defective Work as required by Engineer or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, City may, after seven (7) days written notice to Contractor, correct and remedy any such deficiency. In exercising its right under this paragraph City shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, City may exclude Contractor from all or part of the Project site, take possession of all or part of the Work, and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Project site and incorporate in the Work all materials and equipment stored at the Project site or for which City has paid Contractor but which are stored elsewhere. Contractor shall allow City, City's representatives, agents and employees such access to the Project site as may be necessary to enable City to exercise its rights under this paragraph. All direct, indirect and consequential costs of City in exercising such rights and remedies will be charged against Contractor and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work and City shall be entitled to an appropriate decrease in the Contract Price, and if the parties are unable to agree as to the amount thereof, City may make a claim therefore. Such direct, indirect and consequential costs will include but not be limited to fees and charges of engineers, architects, attorneys and other professionals, all court and arbitration costs and all costs of repair and replacement of Work of others destroyed or damaged by correction, removal or replacement of Contractor's Defective Work. Contractor shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by City of City's rights hereunder.

GC-43 Payments to Contractor

The schedule of values established as provided in the Contract Documents will serve as the basis for progress payments and will be submitted to the Engineer on a form supplied by City. Unit Price Work progress payments will be based on the number of units completed. Contractor shall submit Applications for Payment on a monthly basis. The date the first Application for Payment is submitted shall be as agreed to by the parties.

Contractor shall, during the last week of each monthly pay period, review quantities completed during that month with the assigned Project Inspector and establish the value of the Work performed in accordance with this Agreement since the last estimate was made. Contractor shall submit to Engineer for review an Application for Payment filled out and signed by the Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. All Applications for Payment shall include an updated and/or revised project schedule conforming to the requirements of GC-4. Contractor shall submit the Application for Payment within seven (7) days following the end of the period for which payment is being requested.

Engineer will, within seven (7) days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to City, or return the Application to Contractor indicating in writing Engineer's reason for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application. Engineer will, within seven (7) days, review the resubmitted application as detailed above. Twenty-One (21) days after presentation of the Application for Payment with Engineer's recommendation for approval, the amount recommended will, unless otherwise provided in the Contract Documents, become due and when due will be paid by Owner to Contractor. However, City may refuse to make payment of the full amount recommended by Engineer because claims have been made against City on account of Contractor's performance or furnishing of the Work or Liens have been filed in connection with the Work or there are other items entitling City to a set-off against the amount recommended, but City must give Contractor written notice stating the reasons for such action within 10 days after being presented with the recommended payment.

Payments by the City may be made using any of the following methods of payment, in its sole discretion; (a) automated clearing house ("ACH") or wire transfer; (b) checks; or (c) for payments under \$1,000, credit/purchasing cards. When utilizing the check option, all checks will be mailed to Contractor's place of business, without exception and may not be picked up in person by Contractor. When utilizing the ACH or wire transfer option, the transaction will occur within the timeframe provided herein with no advance or subsequent notice to the Contractor.

Upon presentation of certified copies of purchase bills and freight bills, City will permit inclusion in such monthly estimates payment for materials that will eventually be incorporated in the Project, providing that such material is suitably stored on the site at the time of submission of the estimate for payment. Such materials when so paid for by City will become the property of City and, in case of default on the part of Contractor, City may use or cause to be used by others these materials in construction of the project. However, Contractor shall be responsible for safeguarding such materials against loss or damage of any nature whatsoever, and in case of any loss or damage Contractor shall replace such lost or damaged materials at no cost to City.

City shall require at intervals as it shall determine and at any time before Final Payment is made for the Work specified herein that Contractor furnish City with written acknowledgments by all Subcontractors and vendors who have done Work or labor on, or who have furnished materials for this Project, that they have been fully paid by Contractor for such Work, or labor done or materials furnished by them.

Contractor's failure to furnish said list or to include all such Subcontractors and vendors shall not relieve Contractor or its surety of any obligation assumed under this Contract, nor shall City's request for such list create any obligation on City's part to verify accuracy. City may require, at its option, lien waivers on forms supplied by City. Further, it is agreed that Contractor shall promptly pay each subcontractor out of the amount paid to Contractor on account of such Subcontractor's Work, the amount to which such Subcontractor is entitled. In the event City becomes informed that Contractor has not paid a Subcontractor, City shall have the right, but not the duty, to issue future checks in payment to Contractor of amounts otherwise due hereunder naming Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by City, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit City to this procedure in the future.

Contractor warrants that title to all Work covered by an Application for Payment will pass to City no later than the time of payment. Contractor further warrants that upon submittal of an Application for Payment, all Work for which payments have been received from City shall be free and clear of liens, claims, security interest or other encumbrances in favor of Contractor or any other person or entity whatsoever.

Contractor has, per the Instructions to Bidders, bid this job net of all sales and compensation taxes. No Application for Payment shall include any amount for reimbursement of such taxes paid by Contractor resulting from Contractor's failure to use City's tax exemption certificate for any purchase in connection with the Work. Final Payment will not be made to Contractor until City has received a Project Completion Certification from Contractor along with a consent of surety to Final Payment.

Contractor shall be responsible for the return and/or exchange of surplus materials, and all credits for returned or exchanged materials shall be first submitted to City for approval. Applications for Payment shall reflect any such credits, and the Contract Price shall be adjusted as necessary to reflect such credits. Non-returnable excess materials shall be turned over to City, or, at its option, be removed from the Project site at Contractor's expense.

The acceptance by Contractor of Final Payment shall be and shall operate as a release to City of all claims and all liability to Contractor other than written claims in stated amounts as may be specifically reserved by Contractor for all things done or furnished in connection with this Agreement and for every act and neglect of City and others relating to or arising out of this Agreement. However, payment, final or otherwise, shall not release Contractor or its sureties from any obligations under the Contract Documents, the Bonds or insurance coverage, nor shall it be interpreted to constitute an acceptance of any Work not in accordance with this Agreement.

Applications for payment shall be approved by City, and after such approval, City will pay or cause to be paid an amount equal to the estimated value of the Work performed less a retained amount in accordance with the following schedule:

1. Ten (10) percent until construction is substantially complete;
2. When the Project is substantially complete the retained amount may be reduced to a lesser amount at the discretion of the Engineer.

GC-44

City's Right to Withhold Payment

City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to Contractor, to protect City from loss because of:

1. Defective Work not remedied by Contractor nor, in the opinion of City, likely to be remedied by Contractor;
2. Claims of third parties against City or City's property;
3. Failure by Contractor to pay Subcontractors or others in a prompt and proper fashion;
4. Evidence that the balance of the Work cannot be completed in accordance with this Agreement for the unpaid balance of the Contract Price;
5. Evidence that the Work will not be completed in the Contract Time required for substantial or final completion;
6. Persistent failure to carry out the Work in accordance with this Agreement;
7. Damage to City or a third party to whom City is, or may be, liable;
8. Conditions unfavorable for the prosecution of Work, or because of conditions which, in the opinion of the Engineer, warrant such action.

GC-45

Substantial Completion

When Contractor considers the entire Work ready for its intended use and all final restoration and testing is complete, Contractor shall notify City in writing that the entire Work is substantially complete and request that Engineer issue a statement of Substantial Completion. Within a reasonable time thereafter, City and Contractor shall observe the Work to determine the status of completion. If City does not consider the Work substantially complete, City will notify Contractor in writing, giving its reasons therefore. If City considers the Work substantially complete, City will prepare a tentative statement of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the statement a tentative list of items to be completed or corrected before Final Payment. This list shall be called a Punch List. The statement shall state the responsibilities of City and Contractor for maintenance, utilities, damage to the Work and insurance if any of these items shall be treated differently upon Substantial Completion and shall further state the time within which Contractor shall complete the items on the Punch List attached thereto.

City shall have the right to exclude Contractor from the Work after the date of Substantial Completion, but City shall allow Contractor reasonable access to complete or correct items on the Punch List.

GC-46

Partial Utilization of Work by City

Use by City of any finished part of the Work, which has specifically been identified in the Contract Documents, or which City and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by City without significant interference with Contractor's performance of the remainder of the Work shall be permitted. Such use and operation shall not constitute an acceptance of the Work, and Contractor shall be liable for defects due to faulty construction until the entire Work under this Agreement is finally accepted and for a period of two (2) years or longer thereafter as stipulated in these Contract Documents or by other law or regulation.

GC-47

Completion and Final Payment

Upon written notice from Contractor that Work or an agreed portion thereof is complete, Engineer will make a final inspection with Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to remedy such deficiencies.

If a repeat final inspection(s) is required, Contractor shall bear the cost of such repeat inspection, if any, including engineering and other professional fees. After Contractor

has completed all such corrections and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, marked-up record documents and other documents - all as required by the Contract Documents, and after Engineer has indicated that the Work is complete, Contractor may make application for Final Payment request following the procedure for progress payment requests.

The Final Payment request shall be accompanied by all documentation called for in the Contract Documents, together with complete and legally effective releases or waivers (satisfactory to City) of all liens arising out of or filed in connection with the Work. In lieu thereof and as approved by City, Contractor may furnish receipts or releases in full; an affidavit of Contractor that the releases and receipts include all labor, services, material and equipment for which a lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which City or its property might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to Final Payment. If any Subcontractor or supplier fails to furnish a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to City to indemnify City against any lien.

If, on the basis of Engineer's observation of the Work during construction and final inspection, he determines that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Final Payment certificates together with acceptance certificates will be submitted for payment.

GC-48

Waiver of Claims

Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither payment of any progress or final payment by City, nor the issuance of a certificate of Substantial Completion, nor any use or occupancy of the Work or any part thereof by City, nor any act of acceptance by City nor any failure to do so, nor any correction of Defective Work by City shall constitute an acceptance of Work not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents.

The making and acceptance of final payment shall constitute a waiver of all claims by Contractor against City other than those claims previously made in writing against City by Contractor, pending at the time of final payment and identified in writing by Contractor as unsettled as of the time of request for final payment.

GC-49

Suspension of Work

City may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety (90) days by notice in writing to Contractor which shall fix the date on which Work shall be resumed. Contractor shall resume the Work on the date so fixed. Contractor will not be entitled to an increase in the Contract Price, but may be granted an extension of Contract Time for any suspension of Work made as a result of delays to the Work caused by utility companies, or other contractors outside of the City's control. Contractor will not be allowed an increase in the Contract Price or an extension of the Contract Time, if such suspension is made as the result of an act or omission of Contractor including but not limited to the occurrence of any one or more of the following events:

1. If Contractor fails to supply a qualified superintendent, sufficient skilled workmen, Subcontractors, or suitable materials or equipment;

2. If Contractor repeatedly fails to make prompt payments to Subcontractors or suppliers or for labor, materials, or equipment;
3. If Contractor disregards Laws and Regulations of any public body having jurisdiction;
4. If Contractor otherwise violates in any substantial way any provisions of the Contract Documents City shall have authority to suspend the Work wholly or in part, for such period of time as it may deem necessary, due to conditions unfavorable for the prosecution of the Work, or to conditions which in his opinion warrant such action, or for such time as is necessary by reason of failure on the part of Contractor to carry out orders given, or to perform any or all provisions of the Contract.

If it becomes necessary to suspend Work for an indefinite period of time, Contractor shall store all materials in such manner that they will not obstruct or impede the traveling public unnecessarily or become damaged in any way; take every precaution to prevent damage or deterioration of the Work performed; provide suitable drainage of the roadway and erect temporary structures and protective barriers where necessary. Contractor shall not suspend Work without written authority from City.

GC-50

Right of City to Terminate Contract

Without in any manner limiting the right of City to terminate the Contract or declare Contractor in default thereof for any reason set forth in the Contract Documents, if the Work to be done under this Agreement shall be abandoned by Contractor; or if this Contract shall be assigned by Contractor otherwise than as herein provided; or if Contractor should be adjudicated to be bankrupt; or if a general assignment of its assets should be made for the benefit of its creditors; or if a receiver should be appointed for Contractor or any of its property; or if at any time City believes that the performance of the Work under this Contract is being unnecessarily delayed, that Contractor is violating any of the conditions or covenants of this Agreement or the specifications therefore, that it is executing the same in bad faith or otherwise not in accordance with the terms of said Contract; or if all bid items of the Project are not completed within the Contract Time named for their completion or within the time to which such completion date may be extended; then, in addition to other rights City may choose to exercise, City may, at its option, serve written notice upon Contractor and its surety of City's intention to terminate this Agreement, and, unless within five (5) days after the serving of such notice upon Contractor, a satisfactory arrangement is made for the continuance thereof, this Contract shall cease and terminate. Whether or not a satisfactory arrangement has been proposed by the Contractor shall be in the sole discretion of the City.

In the event of such termination, or in the event that Contractor fails to perform and abide by any obligation set forth herein in any respect, City shall serve notice thereof upon the surety and Contractor within a reasonable time, and the surety shall have the right to take over and complete the Work; provided, however, that if the surety does not commence performance thereof within fourteen (14) days from the date of said notice of termination, City may take over the Work and prosecute same to completion, by contract or otherwise, for the amount and at the expense of Contractor, and Contractor and its surety shall be liable to City for any and all excess cost sustained by City by reason of such prosecution and completion; and in such event City may take possession of, and utilize in completing the Work, all such materials, equipment, tools and plants as may be on the site of the Work and necessary therefore. When Contractor's services have been so terminated, such termination shall not affect any rights or remedies of City against Contractor then existing or which may later accrue. Similarly, any retention or payment of monies due Contractor shall not release Contractor from liability.

City reserves the right, in its sole discretion and for its convenience and without cause or default on the part of Contractor, to terminate the Contract by providing written notice of such termination to Contractor specifying when such termination becomes effective. Upon receipt of such notice from City, Contractor shall: (1) immediately cease all Work; or (2) meet with City and, subject to City's approval, determine what Work shall be required of Contractor in order to bring the Project to a reasonable termination in accordance with the request of City. If City shall terminate for its convenience as herein provided, City shall compensate Contractor for all purchased materials and actual cost of Work completed to date of termination. Contractor agrees that it shall require all its Subcontractor agreements to contain a termination for convenience provision thereby releasing Contractor from its obligations to its subcontractors should City terminate this Agreement for convenience. The provision shall also contain a waiver of liability against City in the event of such termination. If after termination of the Agreement, it is determined that City did not have sufficient grounds to terminate for cause, the rights and obligations of the parties will be the same as if the termination had been for City's convenience.

GC-51 Right of Contractor to Terminate Contract

If, through no act or fault of Contractor, the Work is suspended for a period of more than ninety (90) days by City or under an order of court or other public authority, or City fails to act on any payment request within sixty (60) days after it is submitted, or City fails for thirty (30) days after formal approval by the Governing Body of a pay request to pay Contractor any sum then due, then Contractor may, upon seven (7) days written notice to City, terminate this Agreement and recover from City payment for all work executed. In addition and in lieu of terminating this Agreement, if City has failed to make any payment as aforesaid, Contractor may upon seven (7) days notice to City stop the Work until payment is made for all amounts then due. The provisions of this paragraph shall not relieve Contractor of his obligations to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with City.

GC-52 Dispute Resolution

City and Contractor agree that disputes relative to the Work shall first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute Contractor shall proceed with the Work as per the Contract Documents as if no dispute existed; and provided further that no dispute will be submitted to arbitration without City's express written consent.

In order to preserve its rights to dispute a matter hereunder, Contractor must submit a written notice to City setting forth the basis for its complaint within twenty (20) calendar days following the occurrence giving rise to the claim or dispute.

GC-53 Notice

Whenever any provision of the Contract Documents requires the giving of written notice it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice. Unless otherwise specified in the Contract Documents, notice to Contractor shall be made to the resident superintendent with a copy to the individual who executed the Contract Documents

on behalf of Contractor. Notice to City should be made to City Engineer with a copy to City Attorney.

GC-54 Computation of Time

When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day shall be omitted from the computation.

A calendar day of twenty-four (24) hours measured from midnight to the next midnight shall constitute a day.

GC-55 Remedies Are Not Exclusive

The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, including, but not limited to, the warranties, guarantees and obligations imposed upon Contractor and all of the rights and remedies available to City thereunder, shall be in addition to, and shall not be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph shall be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply. All representations, warranties and guarantees made in the Contract Documents shall survive Final Payment and termination or completion of this Agreement.

GC-56 Street Signs and Traffic Aids; Designation and Maintenance of Haul Roads

Contractor shall be responsible for all preexisting traffic control devices at the project site, including installation, maintenance, removal and storage of such devices. All temporary and permanent traffic control devices supplied by Contractor shall comply with and be installed in accordance with the Manual on Uniform Traffic Control Devices (MUTCD), current edition as revised, and the Traffic Control Devices Handbook both by the U.S. Department of Transportation and the Federal Highway Administration.

City may require Contractor to designate and maintain one or more “Haul Roads” for the purpose of transporting materials and debris to and from the Project site. When required, Contractor shall maintain the designated haul road(s) to the level of maintenance and appearance present before commencement of the Work, as documented by photographs or videotape.

GC-57 Force Majeure Events

Except as otherwise provided in the Contract Documents, no Party shall be liable for any failure to perform its obligations where such failure is as a result of Acts of Nature (including fire, flood, earthquake, storm, tornado, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, or lockout..

Any Party asserting Force Majeure as an excuse shall have the burden of proving that reasonable steps were taken to minimize delay or damages caused by foreseeable

events, that all non-excused obligations were substantially fulfilled, and that the other Party was timely notified of the likelihood or actual occurrence which would justify such an assertion, so that other prudent precautions could be contemplated.

GC-58 **Nondiscrimination**

Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase “equal opportunity employer”; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include the provisions of (a) through (c) above in every subcontract and purchase order so that they are binding upon such subcontractors and vendors; (e) that a failure to comply with any of the requirements set forth above constitutes a breach of this Agreement and City shall have the ability to terminate this Agreement for such breach.

Contractor must execute a Certificate of Nondiscrimination as provided in K.S.A. 44-1030.

GC-59 **EEOC**

Contractor may be required under Section 60-1.40 Title 41, of the C.F.R. to develop a written Affirmative Action Compliance Program if Contractor has two or more employees. If Contractor is so required, it agrees to do so no later than 120 days after the Effective Date of the Contract and to maintain such program until such time as it is no longer required by law or regulations.

Contractor shall be bound by and agrees to the provisions of the Vietnam Era Veteran's Readjustment Act of 1974 and all regulations, rules and orders promulgated thereunder.

Contractor shall be bound by and agrees to the provisions of Section 503 of the Rehabilitation Act of 1973 and all regulations, rules and orders promulgated thereunder.

GC-60 **Sexual Harassment**

Harassment on the basis of sex is a violation of Sec. 703 of Title VII of the federal Civil Rights Act of 1964. Any such proven harassment of employees or of other persons shall be deemed a breach of the present Contract and it may be canceled, terminated or suspended, in whole or in part, by City.

Applying general Title VII principles, Contractor is responsible for the acts of its agents, employees and Subcontractors with respect to sexual harassment regardless of whether the specific acts complained of were authorized or were forbidden by Contractor and regardless of whether Contractor knew or should have known of their occurrence.

Contractor agrees to abide by all other federal, state or local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection with same.

GC-61 Governing Law

The Contract Documents comprise the entire Agreement between City and Contractor concerning the Work. The Contract Documents will be construed in accordance with the laws of the State of Kansas.

GC-62 Titles, Subheads and Capitalization

Titles and subheadings as used herein and other Contract Documents are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Contract Documents. Some terms are capitalized throughout the Contract Documents, but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

GC-63 No Waiver of Rights

No waiver by City of any breach of this Agreement shall be construed to be a waiver of any other or subsequent breach. Additionally, the failure of City to perform any duty required under the Contract Documents shall not act as a waiver of City's right to enforce Contractor's requirements under the Contract Documents.

GC-64 Severability

The parties agree that should any provision of the Contract Documents be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void but that the remaining provisions of the Contract Documents shall be unaffected thereby and shall continue to be valid and enforceable.

GC-65 County Assistance Road System ("CARS") Program Special Provisions

The Project Contractor shall defend, indemnify and save the Board of County Commissioners of Johnson County, Kansas and the City harmless from and against all liability for damages, costs, and expenses arising out of any claim, suit, action or otherwise for injuries and/or damages sustained to persons or property by reason of the negligence or other actionable fault of the Project Contractor, his or her sub-contractors, agents or employees in the performance of this contract.

The Board of County Commissioners of Johnson County, Kansas shall be named as additional insured on all policies of insurance issued to the Project Contractor and required by the terms of his/her agreement with the City.

SPECIAL CONDITIONS – Chip Seal

SC-1 **Completion Date:** The calendar completion date for this project is August 31st, 2016. Refer to **Table 1** for Traffic & Work Restrictions.

SC-2 Restoration of street surface, parkway/lawn areas (including sprinkler systems) and all other areas abutting the construction shall be subsidiary to other items in the project. Contractor will also be responsible for repair or reconstruction of any utilities cut or damaged during construction. Restored parkway/lawn areas shall be sodded unless shown otherwise on the plans. When sprinkler systems are encountered and conflict with the construction, the Contractor shall remove sections of sprinkler systems as necessary to facilitate the construction of the project. The disturbed portion of the sprinkler system shall be capped so the remainder of the system may be operated during the construction period. The Contractor shall replace the removed sections of sprinkler system to existing or better condition after construction has been completed and prior to the installation of the sod. For any City owned sprinkler systems the Contractor shall contact the City parks and Recreation Department prior to removing any sprinkler system components.

SC-3 Traffic Control

- A. The Contractor shall supply flagperson, pilot cars, signs, etc. to control traffic through the work zone when deemed necessary by the Engineer. All traffic control shall conform to Chapter VI of the M.U.T.C.D. Access for local traffic shall be maintained at all times, and shall be included in the lump sum price bid for “Traffic control”. See **Table 1**. For traffic control requirements and work restrictions.

Table 1 – TRAFFIC CONTROL REQUIREMENTS & WORK RESTRICTITONS							
LOCATION			TYPE	WORK WEEK RESTRICTION		REMARKS	VARIABLE MESSAGE BOARD (ONE WEEK PRIOR)
				DAYS	OVERLAY HOURS		
STREET	FROM	TO					
Area 2	79 th Street	Cottonwood	Chip			††	
Area 24	95 th Street	Lackman Rd	Chip			†††	

* All concrete replacements and asphalt patching ‡.

†† All pedestrian and vehicular travel ways shall be unrestricted and no work shall be performed during the following time frames; Chip Seal shall not be place prior to June 1st or after August 31st to avoid Tot Soccer league.

SPECIAL CONDITIONS – Chip Seal

††† All pedestrian and vehicular travel ways shall be unrestricted and no work shall be performed during the following time frames; Chip Seal shall not be place during the week of July 4th. Any new surface asphalt and or crack seal material shall be in place prior to June 29th.

‡ Per Technical Specification S-805 Traffic Control A. 21: *During non-working hours, all lanes of traffic in all directions shall be maintained. During non-peak traffic hours, the Contractor may, with the authorization of the Engineer, close traffic lanes necessary to facilitate construction. **The Contractor shall not perform any work that will restrict traffic in any way between the hours of 7:00 a.m. and 8:30 a.m. or 4:00 p.m. and 6:00 p.m. Monday through Friday.***

SC-4 The Contractor may close the cul-de-sacs to traffic during the work and during the curing period. The Contractor may close the residential streets to traffic during the work, and during the curing period. However, a work schedule must be submitted to the City and approved prior to closure of any streets. Consideration for approval will be the extent of the area affected by any such closure. The area affected at one time shall be held to a minimum.

SC-5 The Contractor shall notify all residents adjacent to the streets to be sealed by means of a doorknob hanger 48 hours in advance of the start of the surface treatment application on each street. The information shall include the day and time of application, the expected period of time when all vehicles, pedestrians, and other traffic of any kind must stay off of the street, and a caution about walking or driving on the product.

SC-6 Twenty-four hours prior to the time of street closure the Contractor shall notify the Lenexa Police Department Dispatcher of the location and time of closure.

SC-7 Streets to receive a “Chip Seal” are shown in the plans.

SC-8 Pavement Markings:

- A. Permanent markings shall be applied within 7 days of re-opening the street/lanes to traffic. Temporary markings shall be applied immediately prior to opening the lanes to traffic. Temporary marking shall be removed prior to applying the permanent markings, but not more than 48 hours prior.
- B. Within 72 hours prior to installing the Chip Seal, the Contractor shall remove all existing pavement markings. Removal of the existing pavement marking shall be subsidiary to installation of the new pavement markings.

SC-9 Section S-303 “CRACK SEALING”, Delete the Method of measurement and the Basis of Payment and ADD the following:

METHOD OF MEASUREMENT: “CRACK SEALING” Shall not be measured separately, but shall be subsidiary to Micro, Scrub Seal and Chip Seal.

SC-10 The Curb and Gutter, Handicap Ramps and Sidewalk removal and replacement portion of the project includes some miscellaneous spot replacement. The Engineer shall mark specific locations in the field.

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- SC-11 Wherever Curb and Gutter, Sidewalk, or Pavement is to be replaced as part of this project, the removal shall be subsidiary to the installation of the new item. See the specification for the particular items for measurement and payment.
- SC-12 Pavement Patching and Base Repair shall be installed in areas designated in the field by the Engineer.
- SC-13 Section S-718 "SODDING": Delete the Method of Measurement and the Basis of Payment, and add the following:
METHOD OF MEASUREMENT: "Sodding" complete and accepted, shall be subsidiary to "Curb and Gutter", and shall not be measured separately.
Basis of Payment: "Sodding" shall not be paid for separately, but shall be subsidiary to "Curb and Gutter". Excavation and soil preparation for the sod; furnishing, transporting, placing, firming, watering, fertilizing, mulching, cultivating, and maintaining the sod; and all labor, tools, equipment, and incidentals necessary to complete the work shall be subsidiary to "Curb and Gutter".
- SC-14 Section S-204 "COMPACTION OF EARTHWORK", Delete the Method of Measurement and the Basis of Payment and ADD the following:

METHOD OF MEASUREMENT: "Compaction of Earthwork" shall not be measured separately for curb backfill, but shall be subsidiary to other items.

BASIS OF PAYMENT: "Compaction of Earthwork" shall be not be paid for separately for curb backfill, but shall be subsidiary to other items.
- SC-15 Section S-211 "UNCLASSIFIED EXCAVATION", Delete the Method of Measurement and the Basis of Payment and ADD the following:

METHOD OF MEASUREMENT: "UNCLASSIFIED EXCAVATION" shall not be measured separately for curb, but shall be subsidiary to the curb.

BASIS OF PAYMENT: "UNCLASSIFIED EXCAVATION" shall not be paid for separately, but shall be subsidiary to the bid item Curb & Gutter, R&R.
- SC-16 Curb and Gutter on the Arterial Streets normally rests on asphalt. In replacing the curb and gutter, it may be necessary to pour additional depth of concrete to achieve a smooth curb profile. Should it be necessary to pour the additional depth of concrete, the additional depth will be subsidiary to the new curb.
- SC-17 Section S-306 "PAVEMENT PATCHING" of the Technical Specifications shall be modified as follows:
Pavement patching shall be for the full depth of the pavement except as designated in the field by the Engineer. In locations designated in the field by the Engineer, patching

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shall conform to the detail for Pavement Patching shown in the plans. Measurement and Payment shall be in accordance with Section S-306.

- SC-18 The Contractor shall notify the occupants of all businesses and residences where curb is to be replaced 48 hours prior to beginning the construction. The form of the notification shall be a door-hanger. The text for the door-hanger shall be approved by the Engineer prior to printing.
- SC-19 All work within or in the vicinity of the Railway right of way shall be performed by the Contractor in a manner satisfactory to the Railway and shall be performed at such time and in such manner as not to interfere unnecessarily with the movement of trains or traffic upon the tracks of the Railway. The Contractor shall use all care and precautions necessary to avoid accident or damage to, or interference with, the Railway's tracks or trains and shall notify the Railway a sufficient time in advance wherever the contractor is about to perform work on or adjacent to the Railway's right of way and tracks to enable the Railway to furnish flagging and such other protective services and devices as in the Railway's judgment may be necessary to insure the safety of Railway operations. The vicinity of the railway shall include any work within 25' of the centerline of the nearest track to the work.

SC-20 CHIP SEAL

A. DESCRIPTION

This work shall consist of applying an emulsified asphalt followed by an application of a cover aggregate, on a previously cleaned and prepared surface with additional requirements as indicated herein and as directed by the Engineer.

1. Interim pavement markings shall be applied to streets after chip seal is completed.
2. Chip Seal will be scheduled to begin on June 1 and be completed by September 30.

B. MATERIALS FOR CHIP SEAL

Chip Sealing shall be done using the following materials in the proportions specified.

1. Aggregate

The aggregate to be used as cover material for bituminous sealing of streets shall be crushed granite, as set forth below:

Percent Retained on Square Mesh Sieves

1/2"	3/8"	#4	#8	#30	Pan
0	0	0-35	35-100	95-100	99-100

Type: Crushed granite no asphalt pre-coat required. Aggregate color for granite shall be gray in color.

a. Aggregate Testing

The Contractor shall furnish the Project Engineer test results as specified under Section 1108 of the Kansas Department of Transportation, Standard Specifications,

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the latest special provisions issued by KDOT. Aggregate must have a minimum soundness of .90 and a maximum wear of 30% as defined in 1108.2b, and should not exceed the allowance for deleterious substances as defined in 1108.2c.

The contractor will also furnish the Project Engineer the results of ASTM-D6928-08 modified as follows:

Aggregate for the test sample shall be an oven-dried sample of 1500 g +/- 5 g as follows:

Passing	Retained	Mass
4.75-mm	2.38-mm	1500 g

Perform procedure 9.3 by running the machine for 95 minutes.

Maximum permitted loss for the finer gradations specified when testing using ASTM-D6298-08 as modified above is 15%. Tests shall be performed from representative samples of the first 500 tons produced, second 1,000 tons produced, and 1,000 tons produced thereafter; at the supplier's expense. The contractor shall have at all times a minimum one day supply of aggregate.

2. Bituminous Material

A copy of the test report on the emulsified asphalt from the oil refinery shall be submitted to the Project Engineer a minimum of 15 days prior to any operations and thereafter a new series of tests shall be provided for every 5,000 gallons of emulsion used. The modified asphalt emulsion shall conform to Special Provision 07-12001-R01 when tested in accordance with the specified test method.

The asphalt emulsion shall be polymer modified as noted and shall be pre-approved or certified CRS-1HP.

C. CONSTRUCTION REQUIREMENTS

1. Preparation of Road Surfaces

Prior to application of bituminous material, the surface to be treated shall be cleaned and swept of all foreign material and dust. Dispersion of dust and debris into the air and surrounding environment shall not be allowed.

2. Protection of Utilities

Utility covers, manholes, grated inlets, curb inlets, and traffic device covers located in the roadway shall be protected from coverage and referenced for prompt location and cleaning following application. The Contractor shall be responsible for covering, locating, removing and cleaning following application. The methods used to protect, reference, locate and clean shall be submitted by the Contractor and shall be subject to approval by the Project Engineer. All such materials shall be removed and properly disposed of by the Contractor at the end of each workday.

3. Maintenance of Traffic

All construction operations shall be coordinated to result in the least practical delay of traffic. One way traffic shall be maintained at all times. The Contractor shall provide traffic control as necessary to conform to the latest revision of the Manual of Uniform

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Traffic Control Devices (MUTCD). The work shall be coordinated so that traffic will be permitted upon the sealed surface within 15 minutes after pneumatic rolling is completed.

4. Temporary Lane Markings

The contractor shall place rubber chip seal markers on existing pavement markings prior to placing the chip seal. The contractor shall ensure both sides of the markers are clearly visible after placing the chip seal. Prior to application of the final pavement markings the chip seal markers shall be removed by cutting flush with the surface of the chip seal.

Payment for these items of work are considered subsidiary to the work.

5. Test Strip

The Contractor shall construct a continuous 500 foot long by lane width test strip. This shall determine the initial optimum bituminous application rate, and aggregate application rate. The Project Engineer will review the test strip the next workday. If the review shows the test strip meets the requirements in Section k then notice to proceed will be issued. Should deficiencies be noted, the Project Engineer may require another test.

6. Weather Limitations

Bituminous sealing shall be done only during the contract period specified. Ambient air temperatures must be a minimum of 60 degrees Fahrenheit and rising. Pavement temperature must be a minimum of 70 degrees Fahrenheit. Chip seal operations shall not be performed if any of the following conditions exist:

- a. Impending weather conditions do not allow for curing or if temperatures are forecasted below 50 degrees Fahrenheit within 24 hours from the time of work.
- b. The existing pavement temperature is 130 degrees Fahrenheit or above.
- c. If pavement has surface water standing and/or pavement surface is saturated.
- d. Within 12 (twelve hours) after a 1/4 inch or more rain.

7. Application of Modified Bituminous Material

Material shall be applied at a minimum rate of .32 (thirty-two hundredths) gallon per square yard. Application temperatures shall be between 150 degrees Fahrenheit and 185 degrees Fahrenheit. If the target application rate is not the optimum application rate due to gradation of the aggregate, the absorption of the aggregate, surface temperature, or due to existing surface conditions of the pavement, immediately notify the Project Inspector and document the starting point of the new rate. Prior to application, ensure sufficient cover aggregate is available for immediate application. The Contractor shall ensure even application volume and profile at start and stop points. All non-machine chip seal applications shall be performed prior to moving to a new subdivision.

The spread length of bituminous material shall not exceed that which can be covered immediately. Under no circumstance shall the bituminous material remain uncovered long enough to impair retention of the cover material.

8. Application of Aggregate

Immediately following the application of the bituminous material, apply cover aggregate uniformly without ridges or laps at a rate of 22 pounds per square yard,

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adjusted as directed by the Project Engineer to produce a minimum of excess loose particles.

Apply cover aggregate at a rate necessary to provide full coverage of the bituminous material and to avoid tracking. If the target application rate is not the optimum application rate due to gradation of the aggregate or due to existing surface conditions of the pavement, immediately notify the Project Engineer and document the starting point of the new rate.

At no time shall tires of the dump trucks or aggregate spreader come in contact with the fresh bituminous material.

Prior to rolling, correct deficiencies in application of cover aggregate in a manner satisfactory to the Project Inspector.

At the time of delivery to the roadway, the moisture content of the cover material shall not exceed 3% by mass (dry unit weight) of the aggregate. In no case shall free moisture be draining from the truck.

After rolling, protect the surface from traffic damage during the period required for the bituminous material to cure sufficiently to prevent dislodging of aggregate particles by normal traffic. During this period correct deficiencies of cover aggregate by spreading additional aggregate or by light brooming.

9. Manipulation

Immediately following the application of the aggregate, the aggregate shall be embedded by pneumatic tired rollers.

Initial rolling of the chip seal shall consist of a minimum of 1 complete coverage and shall begin within 90 seconds after placement of aggregate.

The distance between the rollers and the chip spreader shall at no time exceed 200 feet. A minimum of 3 complete coverages with pneumatic tired rollers shall be made on the chip seal within 10 minutes after application of the cover material. Rollers shall be ballasted to a minimum weight of 10 tons. A minimum of 2 rollers shall be used with each chip spreader.

10. Sweeping

All streets shall be swept at least twice following the chip seal application. Loose aggregate shall be removed from the surface of the street as soon as the bituminous material has cured enough to prevent damage by sweeping within a period not to exceed 24 hours after surface treatment. Loose aggregate displaced on driveways, sidewalks, and side streets shall be blown into the street and curb line shall be mechanically broomed away from the curb prior to the first sweeping. Streets shall be swept again 72 hours or less after the initial sweeping, or as approved by the Project Engineer. Loose aggregate on driveways, sidewalks, and side streets shall be blown into the street prior to the second sweeping. All loose aggregate shall be removed from driveways, sidewalks, side streets, and chip seal surfaces during the second sweeping.

11. Acceptance

During application of chip seal the work will be inspected for deficiencies resulting from poor workmanship, flushing, tracking from equipment, surface patterns, loss of aggregate, sweeping, unsealed areas, minimum overlap on longitudinal joints, and minimum overlap on construction joints.

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The following shall be verified daily:

- a. Finished surface has no more than 4 tears or untreated areas greater than 1 inch wide and 4 inches long in any 120 square yard area.
- b. Joints appear neat and uniform without buildup, uncovered areas, or unsightly appearance.
- c. Longitudinal joints have less than a 2 inch overlap on adjacent passes.
- d. Transverse joints have no more than ¼ inch difference in elevation across the joint as measured with a 6 foot straightedge.
- e. Chip seal edge is neat and uniform along the curb lines.
- f. Chip seal edge has no more than a 2 inch variance in any 100 feet along the curb line.

For project acceptance the Contractor and the Project Engineer will review completed work. The finished work must meet the following requirements:

DEFECT*	SEVERITY
Surface Patterns	Alternate lean and heavy lines (Ridges or streaking over the surface.)
Bleeding / Flushing	Distinctive Appearance (Excess bituminous material on surface.)
Loss of Cover Aggregate	Patches or lines of aggregate lost from surface.

* Defect does not exceed the extent of any surface defect by more than 20% of any 120 square yard area. The beginning of any 120 square yard area will be the start of any individual defect.

D. MEASUREMENT AND PAYMENT

The Engineer will measure Chip Seal, First Sweeping and Second Sweeping by the square yard of completed and accepted work.

Payment for "Chip Seal" of the specified type at the contract unit price bid is full compensation for furnishing all materials, for all labor, tools, equipment and incidentals necessary to complete the work

Payment for "First Sweeping" and "Second Sweeping" at the contract unit prices bid is full compensation for furnishing all materials, for all labor, tools, equipment and incidentals necessary to complete the work.

LIEN WAIVER AND RELEASE

Name of Supplier/Subcontractor

Amount Received

Address

Phone

____/____/____ (Date)

I, the undersigned, on behalf of _____, ("Subcontractor"), which contracted with Harbour Construction, Inc. ("Contractor") to provide labor, services, machinery, tools, equipment, supplies, and/or materials for the benefit of the City of Lenexa, Kansas ("Owner") for a project titled **2016 PMP Chip Seal** ("the Project"), hereby represent that full payment has been received for all labor, services, machinery, tools, equipment, supplies, and/or materials, and in consideration of the aforesaid payment does hereby absolutely waive and release forever the Project property, Owner, and Contractor from any and all liens, statutory or otherwise, which might accrue under the laws of the State of Kansas by virtue of the aforesaid work, labor, services, machinery, tools, equipment, supplies, and/or materials furnished prior to the date of execution of this Lien Waiver.

In execution of this instrument, I hereby testify that the same has been signed by me of my own free will and accord and that I have authority to execute this document on behalf of Subcontractor.

NAME OF SUPPLIER/SUBCONTRACTOR

By: _____
(Signature)

(Printed Name)

(Title)

Attest: _____
(Secretary)