

Agenda

City Commission of the City of Neodesha, KS

July 22, 2024 4:30 p.m.

ZOOM Online Access: <https://us02web.zoom.us/j/6203252828>

Item 1: Opening Session

- Call to Order
- Roll Call
- Invocation
- Pledge of Allegiance
- Additions/Deletions to the Agenda
- Civic Organization Reports

Item 2: Public Comments

Item 3: Consent Agenda (Routine agenda items can be approved with unanimous consent of the City Commission. Any item can be removed and placed in items of business.)

- Approval of July 10, 2024 Minutes
- Appropriation (2024) 13

Item 4: Business Items to Consider

- A. Proclamation: National Night Out 2024
- B. Ordinance: ROW Management
- C. Ordinance: Rankin Library Board
- D. Resolution: Intent to Issue Revenue Bonds
- E. Resolution: KS Homeland Security Region H Hazard Mitigation Plan
- F. Resolution: Dangerous Structures; 315 S 7th; Set Public Hearing Date
- G. Consider Consulting Agreement: BG Consultants; SKOL RR Crossing Natural Gas Line
- H. Consider Encroachment Agreement: Southern Star Central Gas Pipeline Inc
- I. Consider Class IV Water Certification Consulting Agreement
- J. Consider Lease Agreement for Drone Services
- K. P&Z: Consider Variance; 606 Illinois
- L. P&Z: Appointment to Board

Item 5: Administration Reports & Comments

- Mayor's Report
- Commissioner's Reports
- City Administrator's Comments
- Community Development Director Report
- Financial Reports Distributed

Item 5: Date/Time of Next Regular Meeting

Wednesday, August 14, 2024 at 2:00 p.m. – Regular Meeting, City Hall

Item 6: Executive Session: Non-elected Personnel

Item 7: Adjournment

AGENDA COMMENTS
CITY COMMISSION MEETING
July 22, 2024

Additions to the Agenda

RECOMMENDED MOTION: *I move to approve the agenda as presented.*

Consent Agenda

RECOMMENDED MOTION: *I move to approve the consent agenda as presented.*

Business Items to Consider

4.A: Proclamation: National Night Out 2024

4.B: Ordinance: ROW Management

This ordinance is part of the on-going updates to the franchise agreements with the city. This ordinance sets cost associated with work being done in our easements.

RECOMMENDED MOTION: *I move to adopt Ordinance 1805 as presented.*

4.C: Ordinance: Rankin Library Board

The library board has informed us that they would like to proceed as a seven-member governing board. This ordinance allows them to do this. If this ordinance is passed, we will then schedule appointments and terms for the next commission meeting.

RECOMMENDED MOTION: *I move to adopt Ordinance 1806 as presented setting the Rankin Library Board at 7 members.*

4.D: Resolution: Intent to Issue Revenue Bonds

This ordinance is for Griffith Developments, the city would be holding the bonds for the re-development of the Brown Hotel.

RECOMMENDED MOTION: *I move to approve Resolution 24-16 as presented.*

4.E: Resolution: KS Homeland Security Region H Hazard Mitigation Plan

Adopting the Region H Hazard mitigation plan.

RECOMMENDED MOTION: *I move to approve Resolution 24-17 as presented.*

4.F: Resolution: Dangerous Structures; 315 S 7th; Set Public Hearing Date

This is a smaller house that is considered a vacant building under the city codes. The property has been vacant for sometime and is currently sitting in a state of decay.

RECOMMENDED MOTION: *I move approve Resolution 24-18 as presented, setting a public hearing date for September 11, 2024, at 2:00 p.m. for the structures located at 315 S 7th.*

4.G: Consider Consulting Agreement: BG Consultants; SKOL RR Crossing Natural Gas Line

BG has presented us with an agreement for their services to design the gas line casing project that has to be done to meet the needs of the UP-railroad project at 11th and Main.

RECOMMENDED MOTION: *I move to approve the agreement with BG Consultants as presented.*

4.H: Consider Encroachment Agreement: Southern Star Central Gas Pipeline Inc

This agreement stems from the creation of the RV Park and Riverwalk Park. We built our access road to these sits over an existing Southern Star pipeline. This agreement basically states if any work had to be done in the area Southern Star is not responsible for any damages that our road could sustain.

RECOMMENDED MOTION: *I move to approve the agreement with Southern Star Central Gas Pipeline Inc as presented.*

4.I: Consider Class IV Water Certification Consulting Agreement

This agreement allows the City of Neodesha to continue operating under the licenses held by J.W. Bair until we have a certified operator on staff. We have an employee testing for this certification August 3rd.

RECOMMENDED MOTION: *I move to approve the Class IV Water Certification Consulting Agreement with JW Bair as presented.*

4.J: Consider Lease Agreement for Drone Services

This lease agreement is between the City of Neodesha and Officer Joe Reyes for use of his personal drone by the city police department.

RECOMMENDED MOTION: *I move to approve the lease agreement with Joseph Reyes for drone services for the Neodesha Police Department as presented.*

4.K: P&Z: Consider Variance; 606 Illinois

Planning and Zoning has recommended the approval of a variance to 606 Illinois for a carport/storage shed to be built on the property.

RECOMMENDED MOTION: *I move to approve the zoning variance for Seth Westmoreland located at 606 Illinois.*

4.L: P&Z: Appointment to Board

Planning and zoning would like to recommend the appointment of Marty Millis to the planning and zoning board.

RECOMMENDED MOTION: *I move to appoint Marty Millis to the Planning & Zoning Commission Board to fill an unexpired term with a term ending date of 12/31/2026.*

EXECUTIVE SESSION: Non-Elected Personnel

I move to recess to an Executive Session including the Governing Body, City Administrator, Police Chief, and City Clerk to discuss an individual employee's performance pursuant to the non-elected personnel matter exception, KSA 75-4319(b)(1) because if this matter were discussed in open-session it might invade the privacy of those discussed. The open meeting will resume in the Commission Room at ____ p.m.

I move to recess to an Executive Session including the Governing Body, City Administrator, Public Works Director, and City Clerk to discuss an individual employee's performance pursuant to the non-elected personnel matter exception, KSA 75-4319(b)(1) because if this matter were discussed in open-session it might invade the privacy of those discussed. The open meeting will resume in the Commission Room at ____ p.m.

July 10, 2024

The Board of Commissioners met in regular session at 2:00 p.m., on Wednesday, July 10, 2024, in the Commission Room at City Hall conducting the meeting by live streaming with Zoom with Mayor Johnson presiding and Commissioners Banzet and Vail-Keller present.

Commissioner Vail-Keller moved to approve the agenda as presented with the addition of Business Items 4G: Discuss 922 N 8th Street; and 4N: Consider Moving Date and/or Time of July 24th Commission Meeting. Seconded by Commissioner Banzet. Motion carried.

Civic organization reports were invited and heard.

Public comments were invited and heard.

Commissioner Banzet moved to approve the consent agenda as presented consisting of minutes from the June 26, 2024 meeting; minutes from the July 1, 2024 Special Call Meeting; and Appropriation (2024) 12. Seconded by Commissioner Vail-Keller. Motion carried.

This being the time and date published in the official newspaper for the hearing on the Dangerous Structures located at 1008 Tank, the public hearing was opened. Building Inspector Tommy John informed the Commission that the property was demolished by the homeowner therefore is now in compliance. The hearing was then closed. No action taken.

This being the time and date published in the official newspaper for the hearing on the Dangerous Structures located at 1007 Seward, the public hearing was opened. Owner Stan Reynolds was in attendance to visit with the Commission regarding this property. Discussion held. The hearing was then closed.

RESOLUTION NO. 24-14

A RESOLUTION FINDING THAT THE STRUCTURE LOCATED AT 1007 Seward, LEGAL DESCRIPTION: LOTS 3 & 4, BLOCK 2, BLAKESLEE's 2ND ADDITION, CITY OF NEODESHA, IS UNSAFE OR DANGEROUS AND DIRECTING THE STRUCTURE TO BE REPAIRED OR REMOVED AND THE PREMISES MADE SAFE AND SECURE.

WHEREAS, the Enforcing Officer of the City of Neodesha, Kansas did on the 1st day of February, 2024 file with the governing body of said City a statement in writing that a certain structure, hereinafter described, was unsafe and dangerous; and

WHEREAS, the governing body did by Resolution dated the 8th day of May, 2024, fix the time and place of a hearing at which the owner, his or her agent, any lienholders of record and any occupant of such structure could appear and show cause why such structure should not be condemned and ordered repaired or demolished, and provided for giving notice thereof as provided by law; and

WHEREAS, such Resolution was published in the official city paper on the 30th day of May, 2024, and on the 6th day of June, 2024, and a copy of such Resolution was served on all persons entitled thereto in all respects as provided by law; and

WHEREAS, on this 10th day of July, 2024, the governing body has heard all evidence submitted by the enforcing officer of the city, the owners, agents, lienholders, and occupants of such structure (having appeared or having failed to appear);

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF NEODESHA,

THAT said governing body hereby finds that the structure is unsafe and dangerous and hereby directs such structure **LOCATED AT 1007 Seward, LEGAL DESCRIPTION: LOTS 3 & 4, BLOCK 2, BLAKESLEE's 2ND ADDITION, CITY OF NEODESHA**, to be repaired or removed and the premises made safe and secure. The owner of such structure is hereby given **120 days** from the date of publication of this Resolution within which to commence the repair or removal of such structure within the time stated or fails to diligently prosecute the same until the work is completed, said governing body will cause the structure to be repaired or razed and removed and the costs of such repair, razing and removing, less salvage if any, to be assessed as a special assessment against the lot or parcel of land upon which the structure is located as provided by law.

BE IT FURTHER RESOLVED, that the City Clerk shall cause this Resolution to be published once in the official city paper and a copy mailed to the owners, agents, lienholders and occupants as provided by law.

Commissioner Vail-Keller moved to approve Resolution 24-14 declaring the property located at 1007 Seward Street as unsafe or dangerous, and allow the property owner 120 days to repair or remove the structures and make the property safe and secure. Seconded by Commissioner Banzet. Motion carried.

This being the time and date published in the official newspaper for the hearing on the Dangerous Structures located at 1024 Seward, the public hearing was opened. Owner Anthony Garcia was at the June 26, 2024 Meeting to inform the Commission of his intent with the property and that he would be out of town for the public hearing. Discussion held. The hearing was then closed.

Commissioner Vail-Keller moved to table this item until the September 25, 2024 meeting. Seconded by Commissioner Banzet. Motion carried.

Administrator Jones addressed the Commission regarding a resolution to set a public hearing on the dangerous structures located at 127 Mill. The owner's aunt, Alvina Ostrander, was in attendance for the discussion.

RESOLUTION NO. 24-15

A RESOLUTION FIXING A TIME AND PLACE AND PROVIDING FOR NOTICE OF A HEARING BEFORE THE GOVERNING BODY OF THE CITY OF NEODESHA, KANSAS AT WHICH TIME THE OWNER, HIS AGENT, LIENHOLDERS OF RECORD AND OCCUPANTS OF THE STRUCTURE LOCATED AT 127 Mill Street, Neodesha KS 66757; LEGAL DESCRIPTION: Beginning 250 feet East of the NW corner of that part of Block 75, City of Neodesha, that part

(continued on next page)

of the block of South Mill Street, thence East 75 feet, thence South to the South side of the block, thence West 75 feet, thence North to point of beginning. **MAY APPEAR AND SHOW CAUSE WHY SUCH STRUCTURE SHOULD NOT BE CONDEMNED AND ORDERED REPAIRED OR DEMOLISHED AS AN UNSAFE OR DANGEROUS STRUCTURE.**

WHEREAS, Brogan Jones, the Enforcement Officer of the City of Neodesha, did on the 24th day of June, 2024, file with the Governing Body of said City a statement in writing that certain unoccupied structures hereinafter described are unsafe and dangerous;

NOW, THEREFORE, BE IT RESOLVED by the Governing body of the City of Neodesha that a hearing will be held on the 23rd day of October, 2024, before the Governing Body of the City at 2:00 p.m. in the Commission Room of City Hall, 1407 N. 8th; at which time the owner, his agent, any lien holder of record and any occupant of the structure located at **127 Mill Street, Neodesha KS 66757** may appear and show cause why such structure should not be condemned as an unsafe or dangerous structure and ordered repaired or demolished.

BE IT FURTHER RESOLVED that the City Clerk shall cause this Resolution to be published two consecutive times and shall give notice of the aforesaid hearing in the manner provided by law.

Commissioner Banzet moved to approve Resolution 24-15 setting a public hearing for October 23, 2024 as presented for the property located at 127 Mill Street. Seconded by Commissioner Vail-Keller. Motion carried.

Administrator Jones addressed the Commission regarding the approval of the Letter of Engagement with Jarred, Gilmore & Phillips PA for the completion of the 2024 Audit. Discussion held.

Commissioner Vail-Keller moved to approve the engagement letter with Jarred, Gilmore & Phillips PA, for the completion of the 2024 Audit in an amount not to exceed \$12,300. Seconded by Commissioner Banzet. Motion carried.

Administrator Jones addressed the Commission regarding the continued participation in the National Opioid Settlement cases. The new settlement involves Kroger. Discussion held.

Commissioner Banzet moved to approve the City of Neodesha participation in the new National Opioid Settlement, and authorize the City Administrator to sign. Seconded by Commissioner Vail-Keller. Motion carried.

The Governing Body welcomed Clayton Wheeler; homeowner of Immediate Hazard property located at 922 N 8th Street. Mr. Wheeler requested an audience with the Governing Body to discuss the fate of the property. Discussion held. No action taken.

Administrator Jones addressed the Commission regarding the Notice of Award bids that were received for the Immediate Hazard property located at 922 N 8th Street. One bid was received from REcrete Designs. Discussion held.

Commissioner Vail-Keller moved to table the Notice of Award agenda item to the August 14, 2024 meeting. Seconded by Commissioner Banzet. Motion carried.

Due to the Notice of Award bid being tabled, the Notice to Proceed for the demolition of Immediate Hazard property located at 922 N 8th Street was discussed to table as well.

Commissioner Vail-Keller moved to table the Notice to Proceed agenda item to the August 14, 2024 meeting. Seconded by Commissioner Banzet. Motion carried.

Administrator Jones addressed the Commission regarding the resignation of Water Superintendent Jay Bair. Discussion held.

Commissioner Banzet moved to accept the resignation of JW Bair effective July 19, 2024. Seconded by Commissioner Vail-Keller. Motion carried. The Governing Body thanked Jay for his dedicated years of service and, along with City Staff, wished him the best with his new endeavor.

Administrator Jones along with City Clerk Stephanie Fyfe addressed the Commission regarding additional information that has come to light since the 2025 Budget Worksession held on July 1, 2024. Discussion held. No action taken.

Administrator Jones addressed the Commission regarding the approval of the publication of the Combined Notice of Public Hearing to Exceed the Revenue Neutral Rate and Budget Hearing for the 2025 Budget. Discussion held.

Commissioner Banzet moved to approve publication of the Combined Notice of Public Hearing to Exceed the Revenue Neutral Rate and Budget Hearing, setting the date for the hearing on Wednesday, August 28, 2024 at 2:00 p.m. Seconded by Commissioner Vail-Keller. Motion carried.

Administrator Jones addressed the Commission regarding the notice document required to submit to the County Clerk showing intent to exceed the Revenue Neutral Rate for the 2025 Budget. Discussion held.

Commissioner Vail-Keller moved to approve the Notice of Revenue Neutral Rate Intent as presented. Seconded by Commissioner Banzet. Motion carried.

Administrator Jones addressed the Commission regarding a request from Commissioner Vail-Keller to change the meeting date of the July 24, 2024 Commission Meeting as she would not be available to be present. Discussion held.

Commissioner Vail-Keller moved to change the next Commission Meeting, July 24, 2024, to July 22, 2024 at 4:30 p.m. Seconded by Commissioner Banzet. Motion carried.

Commission reports were heard.

City Administrator reports were heard.

Community Development Director Reports were heard.

Financial reports were distributed.

(continued on next page)

Commissioner Banzet moved to recess to an Executive Session to include the Governing Body, City Administrator, City Clerk and Police Chief in the Commission Room to discuss an individual employee's performance pursuant to the non-elected personnel matter exception KSA 75-4319(b)(1) because if this matter were discussed in open session, it might invade the privacy of those discussed. The open meeting will resume in the Commission Room at 4:55 p.m. Seconded by Commissioner Vail-Keller. Motion carried. The live streamed Zoom meeting was then placed on hold with audio, video and recording ceased.

At 4:55 p.m. the regular meeting of the Governing Body reconvened in the Commission Room at City Hall. The live streamed Zoom meeting then resumed with audio, video and recording. No action taken.

The next regular meeting of the Governing Body will be held at City Hall on Monday, July 22, 2024 at 4:30 p.m.

At 4:55 p.m. Commissioner Banzet moved to adjourn. Seconded by Commissioner Vail-Keller. Motion carried.

ATTEST:

Devin Johnson, Mayor

Stephanie Fyfe, City Clerk

APPROPRIATIONS REPORT**ORDINANCE NO 13****7/22/2024**

<u>VENDOR</u>	<u>REFERENCE</u>	<u>AMOUNT</u>	<u>CHECK NO</u>	<u>CHECK DATE</u>
A T & T	PHONE CHARGES	445.01	74230	7/22/2024
BMI	MUSIC LICENSE FEE	435.00	74231	7/22/2024
CANON FINANCIAL SERVICES	PRINTER LEASE	181.00	74232	7/22/2024
CINTAS	FIRST AID SUPPLIES	589.49	74233	7/22/2024
CJ'S THREADS	EMBROIDERY	30.00	74234	7/22/2024
SHELBY J CONNER	WINDOW CLEANING	70.00	74235	7/22/2024
COLLECTION BUREAU OF KS	JUNE COLLECTION FEES	1,165.52	74236	7/22/2024
CORNERSTONE REGIONAL SURVEYING	BOUNDRY SURVEY SERVICE	1,800.00	74237	7/22/2024
ENVIROLINE CO INC	PREVENTATIVE MAINTENANCE SVC	750.00	74238	7/22/2024
FIREX-MARMIC FIRE & SAFETY CO	EXTINGUISHER INSPECTION	1,256.00	74239	7/22/2024
FORSYTHE'S HEATING & ELECTRIC	SERVICE CALL	170.00	74240	7/22/2024
HAWKINS INC	CHEMICALS	11,361.34	74241	7/22/2024
TOMMY JOHN	CLEANING SERVICES	200.00	74242	7/22/2024
KANSAS DEPARTMENT OF REVENUE	2024 WTP FEES	866.30	74243	7/22/2024
KANSAS DEPT OF HEALTH & ENVIRO	CERT RENEWAL	20.00	74244	7/22/2024
LANDIS+GYR TECHNOLOGY INC	JUNE 2024 AMR	1,195.00	74245	7/22/2024
MEDICLAIMS INC	AMBULANCE COLLECTION FEES	1,622.30	74246	7/22/2024
MID-AMERICA PUMP	PUMP	31,365.00	74247	7/22/2024
MIDWEST COMPUTER SALES	ONLINE BACKUP SOLUTION	29.95	74248	7/22/2024
NDB NEODESHA	AIRPORT LIABILITY	5,517.25	74249	7/22/2024
NEODESHA AUTO SUPPLY	SUPPLIES	545.67	74251	7/22/2024
NEODESHA TIRE & AUTO	TIRES	297.00	74252	7/22/2024
O'REILLY AUTOMOTIVE INC	PARTS & SUPPLIES	594.30	74253	7/22/2024
PENMAC PERSONNEL SERVICES INC	TEMPORARY PERSONNEL SVC	1,431.43	74254	7/22/2024
PITNEY BOWES	POSTAGE FOR METER	1,064.68	74255	7/22/2024
QUALITY MOTORS	AUTO PARTS	453.12	74256	7/22/2024
QUILL LLC	OFFICE SUPPLIES	175.32	74257	7/22/2024
ROYAL T CONSTRUCTION	GUTTERING	2,842.50	74258	7/22/2024
S & S EQUIPMENT CO, INC	COMPRESSOR	2,406.26	74259	7/22/2024

SOUTHERN STAR CENTRAL GP INC	JUNE BILLING	5,288.74	74260	7/22/2024
STANION WHOLESALE ELECTRIC	BULBS & FUSES	760.99	74261	7/22/2024
SUPERIOR BOWEN	COLD MIX	3,102.50	74262	7/22/2024
SUPERIOR E R VEHICLES	EQUIPMENT INSTALLATION	2,701.50	74263	7/22/2024
TBS ELECTRONICS INC	REMOTE SPEAKER MIC	1,475.00	74264	7/22/2024
THOMPSON BROTHERS SUPPLY INC	O2/CYLINDER LEASE	241.50	74265	7/22/2024
TLC GROUNDSKEEPING INC	MOWING/LANDSCAPE MAINTENANCE	5,676.28	74266	7/22/2024
UNIFIRST CORPORATION	RUG/CLEANING SUPPLY	321.24	74267	7/22/2024
WESTERN AUTO	SUPPLIES	224.95	74268	7/22/2024
WRIGHT SIGNS	VINYL REMOVAL & INSTALLATION	350.00	74269	7/22/2024
SUPERIOR E R VEHICLES	2023 DODGE DURANGO PURSUIT AWD	55,011.13	73996	6/14/2024
RURAL WATER DISTRICT #4	AIRPORT RURAL WATER	28.60	73997	6/14/2024
SPARKLIGHT	INTERNET SERVICE	190.06	73998	6/14/2024
SPARKLIGHT	INTERNET SERVICE	97.20	73999	6/14/2024
INDEPENDENCE READY MIX	CEMENT	399.00	74000	6/14/2024
VISA	SUPPLIES, TRAINING, MEMBER DUES	12,260.06	74001	6/14/2024
HANDLE BAR HOME REPAIRS LLC	DOWN PYMT 1/2 FOR CH/CC REPAIR	3,312.50	74002	6/14/2024
SOUTHERN STAR CENTRAL GP INC	MAY BILLING	11,751.20	74003	6/14/2024
JEFF HULL'S PAVING & SEAL COAT	DOWN PYMT 1/2 ROAD WORK	34,262.00	74073	6/21/2024
A T & T	PHONE CHARGES	459.96	74074	6/21/2024
ROYAL T CONSTRUCTION	FIRE STATION NORTH WALL REPAIR	18,675.00	74075	6/21/2024
CHRIS BAUMAN	REIMBURSE BANNER EXPENSE	595.00	74076	6/21/2024
COMMUNITY NATIONAL BANK	PUMPER TRUCK	90,000.00	74077	6/21/2024
****TOTAL****		316,063.85		

ACH ELECTRIC ENERGY STATEMENTS BILLED JULY 2024
--

KMEA - SPA Hyrdro Project	June 2024 Service	3,745.00
KMEA - GRDA Power Supply Project	August 2024 Service	101,660.00
KMEA - Energy Mgmt Project No 3	June 2024 Service	132,794.00
TOTAL ACH Electric Energy Statements		238,199.00



CITY OF NEODESHA PROCLAMATION

The National Association of Town Watch (NATW) is sponsoring a unique, nationwide “lights on” campaign and celebration against crime, drug, and violence on August 6th, 2024 entitled, National Night Out; and

WHEREAS; National Night Out provides a unique opportunity for the City of Neodesha to join forces with 38 million people and over 16,000 communities from all fifty states, U.S. territories, Canadian cities, and military bases in promoting cooperative, police-community crime prevention efforts; and

WHEREAS; The Governing Body plays a vital role in assisting the Neodesha Police Department through joint crime, drug, and violence prevention efforts in the City of Neodesha and is supporting National Night Out 2024 locally; and

WHEREAS; It is essential that all citizens of the City of Neodesha be aware of the importance of crime prevention programs and impact that their participation can have on reducing crime, drugs, and violence in Neodesha; and

WHEREAS; Police-Community partnerships, neighborhood safety, awareness, and camaraderie are important themes of the National Night Out program:

NOW, THEREFORE, I, Devin Johnson, by virtue of the authority vested in me as Mayor of the City of Neodesha, State of Kansas, do hereby proclaim Tuesday, August 6th, 2024 as

National Night Out 2024 in the City of Neodesha

And urge all citizens of the City of Neodesha to join the Neodesha Police Department, the National Association of Town Watch and their sponsors in supporting National Night Out on August 6th, 2024.

ATTEST:

Devin Johnson, Mayor

Stephanie Fyfe, City Clerk

ORDINANCE NO. 1805

CHAPTER 32, ADDING ARTICLE VI, OF THE CODE OF ORDINANCES, CITY OF NEODESHA, KANSAS IS HEREBY AMENDED; AND CHAPTER 16, AMENDING SECTION 16-32, OF THE CODE OF ORDINANCES, CITY OF NEODESHA, KANSAS IS HEREBY AMENDED:

WHEREAS, the City of Neodesha, Kansas (“City”) has specifically been granted authority including K.S.A. 17-1902, to establish permitting requirements for structures or equipment in the public Right-of-Way (“ROW”) and the City desires to reaffirm its intent to regulate and enforce permitting requirements for use of its ROW; and

WHEREAS, the City Commission’s legislative findings include that: (a) the ROW is a unique and physically limited resource; (b) the ROW is critical to the travel and transportation of persons and property in the City; (c) the ROW is intended for public uses and must be managed and controlled consistent with that intent and can be partially occupied by facilities and public service entities to the enhancement of the health, welfare, and general economic well-being of the City and its citizens; and (d) such findings require adoption of regulations to ensure coordination of users, maximize available space, reduce maintenance and costs to the public, and facilitate entry of a maximum most efficient number of ROW users that will serve the public interest; and

WHEREAS, the City has been granted the authority to enact legislation to regulate the construction, placement, and operation of facilities within and using the ROW pursuant to its zoning powers established in K.S.A. 12-753 and additionally, pursuant to its general and specific powers established by the Kansas Constitution Art. 12, § 5, and K.S.A. 12-121; and

WHEREAS, consistent with state and federal law and the City Commission’s legislative findings, the City Commission desires to enact new regulations for use of the ROW.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF NEODESHA, KANSAS, AS FOLLOWS:

Article 1. Chapter 32 is amended, and Article VI is enacted herein to read substantially in the form of Exhibit 1, attached hereto and incorporated herein by reference.

Article 2. Chapter 16, Section 16-32, is amended herein to read substantially in the form of Exhibit 2, attached hereto and incorporated herein by reference.

Article 3. The provisions of these ordinances are severable and if any provision hereof is declared invalid, unconstitutional, or unenforceable, such determination shall not affect the validity of the remainder of these ordinances.

Article 4. This ordinance shall be in full force and effect from and after the date of their passage and approval.

PASSED BY THE CITY COMMISSION OF THE CITY OF NEODESHA, KANSAS AND APPROVED BY THE MAYOR THIS 22nd DAY OF July 2024.

ATTEST:

Devin Johnson, Mayor

Stephanie Fyfe, City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT 1

CHAPTER 32

ARTICLE VI – RIGHT-OF-WAY (“ROW”) USE AND MANAGEMENT GENERALLY

Sec. 32-155 Applicability And Administration. This Article shall apply to all persons desiring to construct, reconstruct, restore, repair, replace, operate, maintain, excavate, occupy, or obtain any easement on any public ROW within the City. The Public Works Director is authorized to administer ROW permits for work, occupation, and excavations made in the ROW, and is authorized to adopt and promulgate rules and regulations to interpret and implement the provisions of this Article to secure the intent thereof and to promote the public health, safety, and general welfare. The rights granted to use the ROW shall be for the sole use of the ROW user and are limited to the use as set forth by the ROW user in its permit application and related documents filed with the Public Works Department in accordance with this Article. Except as otherwise expressly permitted by State or Federal law, no other person may use the ROW user's right, unless authorized by the City. All ROW users shall be subject to all rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power, and are subject to all applicable laws, orders, rules, and regulations adopted by governmental entities now or hereafter having jurisdiction. In addition, the ROW users shall be subject to all technical specifications, design criteria, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its municipal power relating to permits and fees, sidewalk and pavement cuts, utility location, construction coordination, surface restoration, and other requirements on the use of the ROW.

Sec. 32-156 Definitions And Word Usage. For the purposes of this Article, the following terms, phrases, words, and abbreviations shall have the meanings given herein which are in addition to those given in Section 1-2 of this Article 32:

ABANDONED FACILITIES

Those facilities, owned by the ROW user, that are not in use and will not be utilized by the owner in the future.

ACCESSORY EQUIPMENT

Any equipment serving or being used in conjunction with a wireless facility or wireless support structure including, but not limited to, utility or transmission equipment, power supplies, generators, batteries, cables equipment buildings, cabinets and storage sheds, shelters, or similar structures.

ANTENNA

Communications equipment that transmits or receives electromagnetic radio signals used in the provision of wireless services, including without limitation, telecommunications, cable and broadband.

APPLICANT

Any person requesting permission to occupy, use, or to excavate the ROW.

COLLOCATION

The mounting or installation of wireless facilities on a building, structure, wireless support structure, tower, utility pole, cell tower or existing structure for the purposes of transmitting or receiving radio frequency signals for communication, cable, or broadband purposes.

CONSTRUCT

To construct, install, erect, build, affix, collocate, or otherwise place any fixed structure or object in, on, under, through or above the ROW.

PUBLIC WORKS DIRECTOR

The designated Public Works Director for the City, or any authorized representative thereof.

EMERGENCY

A situation exists which, in the reasonable discretion of the City or ROW User, if not remedied immediately,

poses an imminent threat to public health, life, safety, damage to property or an electric service outage.

EXCAVATE

Any cutting, digging, excavating, tunneling, boring, grading, or other alteration of the surface or subsurface material or earth in the ROW.

FACILITY OR FACILITIES

Lines, pipes, irrigation systems, wires, cables, fiber, conduit facilities, poles, towers, vaults, pedestals, boxes, appliances, antennae, transmitters, gates, meters, rails, appurtenances, or other equipment.

PAVEMENT

Includes Portland cement concrete pavement, asphalt concrete pavement, asphalt treated road surfaces, and any aggregate base material.

PERMITTEE

Any person to whom a ROW permit is issued.

PUBLIC IMPROVEMENT

Any project undertaken by the City for construction, reconstruction, maintenance, or repair of any public infrastructure.

REGISTRATION

The permit application process of a service provider, the approval of the application by the City, and the authorization for the service provider to use a portion of the ROW within the City to provide service within the City limits.

REPAIR

The temporary construction work necessary to restore the ROW to a usable condition.

RESTORATION

The process by which an excavated or occupied ROW and surrounding area, including pavement and foundation, is returned to the same or better condition that existed before the commencement of the work.

RIGHT-OF-WAY or ROW

The area on, below or above the present and future City streets, alleys, bridges, bikeways, tree lawn or green space, sidewalks, curbs, and aprons.

ROW MANAGEMENT COSTS

The fee charged by the City to recover its cost incurred for ROW management, including, but not limited to, costs associated with registering applicants; issuing, processing, and verifying ROW permit applications; inspecting job sites; restoration of projects; protecting or moving user construction equipment; restoring ROW work inadequately performed, determining the adequacy of ROW restoration or occupation; revoking ROW permits; and other costs the City may incur in managing the ROW.

ROW PERMIT

authorization to occupy or excavate for the construction, installation, repair, restoration, or maintenance of any type of facility within the ROW.

ROW USER

A person or entity that uses or occupies the ROW for purposes of work, excavation, provision of services, or to install, construct, maintain or repair facilities thereon.

SERVICE

A commodity provided to a person by means of a delivery system that is comprised of facilities located or to

be located in the ROW, including, but not limited to, gas, telephone, cable television, broadband/internet services, alarm systems, electric, water, transportation systems, data transmission, sanitary sewerage, or other utility or service.

SERVICE PROVIDER

Any entity that is a provider of infrastructure or a service for, or without, a fee.

SMALL CELL WIRELESS FACILITY

A wireless facility that meets both of the following qualifications: (1) Each antenna is located inside an enclosure of no more than six (6) cubic feet in volume, or in the case of an antenna that has exposed elements, the antenna and all of the antenna's exposed elements could fit within an imaginary enclosure of no more than six (6) cubic feet; and (2) primary equipment enclosures that are no larger than seventeen (17) cubic feet in volume, or facilities comprised of such higher limits as the Federal Communications Commission has excluded from review pursuant to 54 U.S.C. §306108. Associated equipment may be located outside the primary equipment, and if so located, is not to be included in the calculation of equipment volume. Associated equipment includes, but is not limited to, any electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, cut-off switch and vertical cable runs for the connection of power and other services.

TREE LAWN OR GREEN SPACE

The area between a property line and the street curb, sometimes called boulevard, tree-shelf, or snow-shelf.

UTILITY POLE

A structure owned or operated by a public utility as defined in K.S.A. 66-104, and amendments thereto, the City, or an electric cooperative as defined in K.S.A. 2022 Supp. 17-4652, and amendments thereto, that is designed specifically for and used to carry lines, cables or wires for telecommunications, cable, broadband, electricity, or to provide lighting.

WIRELESS FACILITY

Equipment at a fixed location that enable wireless communications, cable or broadband between users equipment and a network, including, but not limited to: (1) Equipment associated with wireless services such as private, broadcast, and public safety services, as well as unlicensed wireless services, and fixed wireless services such as microwave backhouse; and (2) radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies and comparable equipment, regardless of technological configuration. "Wireless facility" includes small cell wireless facilities.

WIRELESS SUPPORT STRUCTURE

A freestanding structure, such as a monopole, guyed or self-supporting tower, a cell tower, or other suitable existing or alternative structure designed to support or capable of supporting wireless facilities. "Wireless support structure" shall not include any telephone or electrical utility pole or any tower used for the distribution or transmission of electrical service.

Sec. 32-157 Agreement Required.

- A. ROW agreement, franchise agreement, pole attachment agreement, and/or small cell wireless agreement required. No person may own, control, lease, maintain, use, collocate, or install facilities in the ROW without a valid agreement with the City as provided herein:
 1. A ROW agreement, franchise agreement, pole attachment agreement, and/or small cell wireless agreement is to be executed in conformance with all applicable franchise procedures for any ROW user seeking to use the ROW for the purpose of providing, transporting, or distributing electricity, gas, water, steam, lighting, energy, sewer, telecommunication, cable, or broadband service to any person or area within the City's limits and boundaries.
 2. In the event a city franchise is not granted, a ROW agreement shall be required for use of the ROW, except as provided herein or otherwise required by law. A ROW agreement shall conform to all applicable laws

and requirements, including as provided herein, but shall not be subject to procedures applicable only to franchises.

3. Persons desiring to install an incidental use, which includes installation of temporary structures or minor incidental uses in the ROW, such as driveway aprons, ingress or egress facilities, and similar incidental uses, that utilize a small area of the ROW and serves the principal structure, may be permitted without a franchise or ROW agreement pursuant to a permit issued by the Public Works Director. The Public Works Director shall have discretion to establish such application, requirements, and conditions applicable to such uses consistent with the purposes of this Chapter or as otherwise established by law. Any person granted a permit hereunder shall be subject to the applicable requirements of this Chapter. Unless otherwise stated in the permit, such a permit shall be for an indefinite term and shall be revocable at any time on written notice by the City.

Sec. 32-158 Application Required.

- A. An application for any agreement pursuant to Sec. 32-157 shall be provided to the City, on City forms, and shall include all such information as is required by this Section and as determined necessary by the Public Works Director. An application deposit as assessed by the City is hereby established and shall be submitted with the application, which shall be utilized to, at least partly, offset the City's costs in reviewing and issuing an agreement, consistent with applicable law; any amount not used by the City for its actual lawfully reimbursable costs will be refunded upon request after execution of an agreement. If applicable, the applicant shall be obligated to reimburse the City for its reasonable expenses associated with the review, negotiation, and adoption of an appropriate agreement that may reasonably exceed the application deposit amount. The ROW user shall be responsible for accurately maintaining the information in the application during the term of any agreement and shall be responsible for all costs incurred by the City due to the failure to provide or maintain as accurate any application information required herein.
- B. No ROW permit may be issued unless such person has a valid agreement with the City.
- C. The authority granted by the City in any agreement or permit shall be for non-exclusive use of the ROW. Such grant does not in any way limit the continuing authority of the City through the proper exercise of its statutory powers to adopt and enforce ordinances necessary to provide for the health, safety, and welfare of the public. The City specifically reserves the right to grant, at any time, such additional agreements, or other rights, to use the ROW for any purpose and to any other person, including itself, as it deems appropriate, subject to all applicable laws. The granting of any agreement or permit shall not be deemed to create any property interest of any kind in favor of the ROW user nor shall it create any relationship of agency, partnership, joint venture, or employment between the parties. All such agreements and permits shall be approved by ordinance or resolution of the City Commission on a non-discriminatory basis provided that the person is in compliance with all applicable requirements.
- D. The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of facilities on any particular segment of ROW and shall not be liable for any damage therefrom. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the ROW user. The ROW user shall be solely liable for any damages to facilities or other property due to excavation or other ROW work performed prior to obtaining the location of all facilities within the work area. The ROW user shall not make or attempt to make repairs, relocation, or replacement of damaged or disturbed facilities without the approval of the owner of the facilities.
- E. No agreement or permit shall grant the right to use facilities owned or controlled by the City or a third party, and no such use shall occur, without the express written consent of such party (on file with the City and subject to other applicable requirements), nor shall any agreement or permit excuse such person from first obtaining a pole attachment agreement or other express consent for such right or use before locating on the facilities controlled or owned by the City or a third party.
- F. Unless otherwise provided, use or installation of any facilities in non-ROW public property of the City shall be permitted only if a lease agreement or other separate written approval has been negotiated and approved by the

City with such reasonable terms as the City may require.

Sec. 32-159 Fees.

- A. ROW Fees. Unless otherwise established by the City Commission or applicable law, each ROW user shall pay to the City as compensation for the use of the ROW and/or the right to provide services within the City, a fee as follows:
1. Linear Foot Fee: ROW users with underground facilities, not providing services within the City, are subject to a linear foot fee based on the linear feet of facilities located within the ROW. City Commission is authorized to set the linear foot fee so as to ensure appropriate compensation to the City, as well as non-discrimination among the ROW users.
 2. Gross Receipts/Franchise Fee. For ROW users exercising the right to provide services within the city limits or boundaries, are subject to a gross receipts/franchise fee not to exceed the amount authorized by state law.
 3. Timing of Payment of User Fees. Unless otherwise agreed to in writing, all ROW user fees shall be due and payable by January 15th of each calendar year.
 4. Interest On Late Payments and Under Payments. If any ROW user fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest on the payment and interest on the unpaid balance shall accrue from the due date until received, at the rate of one and one-half percent (1.5%) per month, of the total amount past due, unless such other maximum rate is established by law.
 5. Fee Statement. Each ROW user fee payment shall be accompanied by a statement prepared by the ROW user, certified as true, showing the manner in which the ROW user fee was calculated including the total number of feet of ROW occupied by the ROW user's facilities and the per foot linear foot rate applied, the number of antennas in the ROW and the small cell wireless attachment rate, the number of access line/pole attachments and the access line/pole attachment fees applied, any credit or adjustment taken (including setting forth the prior year's gross revenue and describing what revenues or receipts were included and excluded in the fee paid), and the payment of the user fee made. If any fee statement is determined to understate the fee owed, then such additional amount owed shall be made with a corrected statement, including interest on said amount as provided herein. No refund, credit or offset shall be granted for any claimed payment or overstatement of the amount due or certification of facilities reported, provided that a corrected payment or report may be filed within the time for the original time for payment.
 6. No Accord and Satisfaction. No acceptance by the City of any use or gross receipts/franchise fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any use or gross receipts/franchise fee payment be construed as a release of any claim of the City.
 7. Maintain Records. ROW users shall at all times maintain complete and accurate books of account and records of the business, ownership, and operations of the ROW user with respect to the facilities in a manner that allows the City to determine whether the ROW user has properly calculated its user fee in compliance with this Article and state law. Should the City reasonably determine that the records are not being maintained in such manner, the ROW user shall correct the manner in which the books and/or records are maintained so that the ROW user comes into compliance with this Article. All financial books and records which are maintained in accordance with FCC regulations and the regulations of any governmental entity that regulates utilities in Kansas, and generally accepted accounting principles shall be deemed to be acceptable under this Article. Such books and records shall be maintained for a period of at least three (3) years.
 8. Right of Inspection. The City or its designated representatives shall have the right to inspect, examine, or audit, during normal business hours and upon seven (7) days' notice, all documents, records, or other

information that pertains to the facilities within the ROW and/or ROW user's fee obligations. In addition to access to the records of the ROW user for inspections, upon request, ROW user shall provide reasonable access to records necessary to verify compliance with the terms of this Article.

9. **Fees and Compensation Not a Tax.** The fees and costs provided for in this Article, and any compensation charged and paid for the use of the ROW or right to provide services as provided for in this Article, are separate from, and additional to, any and all Federal, State, City, or other local taxes as may be levied, imposed, or due.

Sec. 32-160 No Cause of Action Against the City.

No ROW user shall have any damages remedy or monetary recourse whatsoever against the City for any loss, cost, expense, or damage arising from any of the provisions or requirements of any agreement, permit, license, or other written authorization or because of the enforcement thereof by said City, or from the use of the ROW. Nothing herein shall preclude the ROW user from seeking injunctive or declaratory judgment relief against the City where such relief is otherwise available, and the requirements therefore are otherwise satisfied.

Sec. 32-161 Compliance With Laws.

Each ROW user shall comply with all applicable federal and state laws, regulations, and rules, as well as all City ordinances, resolutions, rules, and regulations heretofore and hereafter adopted or established. ROW users shall at all times be subject to the lawful exercise of the powers of the City, including but not limited to all powers regarding zoning, supervision of the restoration of the ROW, building and safety regulations, and control of the ROW. Installation of all facilities in the ROW are subject to and must be in compliance with all zoning, safety, and building code requirements. For applications for installation of wireless facilities in the ROW: (1) the most restrictive adjacent underlying zoning district classification shall apply unless otherwise specifically zoned and designated on the official zoning map, and (2) no application shall be submitted for approval without attaching the small cell wireless agreement which shows City's consent to use the ROW for the specific construction application.

Sec. 32-162 Indemnification.

Every ROW user, as a condition of use of the ROW, shall at its sole cost and expense fully indemnify, protect, defend (with counsel for the City or outside counsel acceptable to the City) and hold harmless the City, its municipal officials, officers, employees, and agents, from and against any and all claims, demands, suits, proceedings, and actions, liability, and judgment by other persons for damages, losses, costs, and expenses, including attorney fees, arising, directly or indirectly, in whole or in part, from the action or inaction of the ROW user, its agents, representatives, employees, contractors, subcontractors, or any other person for whose acts the ROW user may be liable, in constructing, operating, maintaining, repairing, restoring or removing facilities, or use of the ROW or the activities performed, or failed to be performed, by the ROW user under this Article, applicable law, or otherwise, except to the extent arising from or caused by the sole gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents, or contractors. Nothing herein shall be deemed to prevent the City or any agent from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not, under any circumstances, relieve the person from the duty to defend against liability or its duty to pay any judgment entered against the City or its agents.

Sec. 32-163 ROW User Responsible for Costs.

All ROW users shall be responsible for all reasonable costs borne by the City that are directly associated with ROW user's installation, maintenance, repair, operation, use, and replacement of its facilities in the ROW that are not otherwise accounted for as part of a permit fee, to the extent permitted by law. All such costs shall be itemized, and the City's books and records related to these costs shall be made available for inspection upon request of the ROW user.

Sec. 32-164 ROW Permit Required.

- A. No ROW user may excavate or occupy any ROW or conduct any repair, collocation, construction, or reconstruction of facilities located within the ROW without first having obtained the appropriate ROW permit. No person shall make or cause to be made, or help, aid, or assist another person make, any excavation on any ROW, before an application is made to make the excavation and after a written permit to make the excavation is issued by the Public Works Director.
- B. No person owning or occupying any land abutting on the ROW shall construct, maintain, or permit in or on the portion of the ROW to which such land is adjacent any fixed structure, material or object other than a U.S. mailbox without having obtained the appropriate ROW permit. Owners of property fronting upon or adjoining any ROW, at their own expense, may grade, construct or reconstruct the curbing, roadway, paving or sidewalk paving of the ROW only with the permission of the Public Works Director. All plans and specifications must be approved by the Public Works Director.
- C. No person shall construct, alter, or repair a building or facility or cause the same to be done, or help, aid, or assist another person construct, alter, or repair a building or facility upon the ROW, before a written permit to do such work is issued by the Public Works Director, after application is made therefor.
- D. A ROW permit is required for emergency situations. If, due to an emergency, it is necessary for the ROW user to immediately perform work in the ROW, and it is impractical for the ROW user to first get the appropriate permit, the work may be performed, and the required permit shall be obtained during the next business day. The ROW user shall call the Public Works Department and give notification of the emergency on the day it occurs, and on the next business day after, the ROW user shall apply for a ROW permit (all applicable fees apply) in order to continue working.
- E. A ROW permit is not required for the following:
 - 1. Routine maintenance on previously approved small cell wireless facilities;
 - 2. Replacement of such small cell wireless facilities that are the same or smaller in size, weight, and height; or
 - 3. Installation, placement, maintenance, operation, or replacement of micro wireless facilities, that are strung on cables between utility poles in compliance with applicable safety and building codes;
 - 4. When such work will not involve excavation, affect traffic patterns, obstruct traffic in the ROW, or materially impede the use of a sidewalk, and provided the ROW user submits as-builts of such new small cell wireless facilities or micro wireless facilities so the City may maintain an accurate inventory of facilities installed in the ROW.

Sec. 32-165 Permit Applications.

- A. Application for a ROW permit shall be submitted to the Public Works Director by the person who will do the work and/or excavation in the ROW. The Public Works Director shall have the right to review and approve the location, design, and nature of the facility/project prior to installation and issuance of a permit. A ROW user shall not construct or reconstruct any of its facilities located upon, over, under or within the ROW without first having submitted in writing a description of its planned improvement to the Public Works Director and having received a permit for such improvement. The ROW user shall coordinate the placement of facilities in a manner that minimizes adverse impact on any public improvement, as determined by the Public Works Director. The ROW user's use of the ROW shall in all matters be subordinate to the City's use or occupation of the ROW.

- B. ROW permit applications shall contain and be considered complete only upon receipt of the following: Submission of a completed permit application form, including all required attachments and drawings showing the location and area of the proposed project and the location of all existing and proposed facilities at such locations, and any other project information requested by the Public Works Director; a traffic control plan; payment of all money due to the City for permit fees and costs, and for the current permit and prior permit costs, and for any loss, damage, or expense suffered by the City because of the applicant's prior excavations of the ROW, or for any emergency actions taken by the City, unless the payment of such money is in dispute and timely appealed as provided hereafter; and a commitment from the applicant to contact the Kansas One Call program or comparable successor program.

Sec. 32-166 Liability Insurance.

- A. Except as provided in this Article, each ROW user shall provide, at its sole expense, and maintain during the term of an agreement or permit, commercial general liability insurance with a reputable, qualified, and financially sound company licensed to do business in the State of Kansas, and unless otherwise approved by the City, with a rating by Best of not less than "A," that shall protect the ROW user, the City, and the City's officials, officers, and employees from claims which may arise from operations under an agreement or permit, whether such operations are by the ROW user, its officers, directors, employees and agents, or any contractors or subcontractors of the ROW user. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from all ROW user operations, products, services or use of automobiles, or construction equipment. The amount of insurance for single-limit coverage applying to bodily and personal injury and property damage shall be at least two million dollars (\$2,000,000.00) or such higher amounts as the Public Works Director deems appropriate.
- B. Nothing herein shall be deemed to waive the City's sovereign immunity or limitation of liability as the state statutes may provide.
- C. An endorsement shall be provided which states that the City is listed as an additional insured. and stating that the policy shall not be cancelled or materially modified so as to be out of compliance with the requirements of this Article, or not renewed without thirty (30) days' written notice of such event being given to the Public Works Director.
- D. The City's additional insured coverage shall have no deductible.
- E. If the person is self-insured, it shall provide City proof of compliance regarding its ability to self-insure and proof of its ability to provide coverage in the above amounts. The person shall file annually with the City Clerk an affidavit certifying that the ROW user has twenty-five million dollars (\$25,000,000.00) in net assets.
- F. A copy of the liability insurance certificate, or certificate of net assets value, or such other proof of compliance if otherwise requested by the City shall be delivered by the ROW user to the City Clerk.

Sec. 32-167 ROW Permit Fees.

- A. The applicant shall pay to the City a non-refundable permit filing fee in an amount set by the Public Works Director as authorized by the City Commission. The amount of the permit filing fee may be adjusted by the Public Works Director from time to time to reflect the average cost of the actual time expended and costs incurred in the administration, inspection, and superintendence of such work.
- B. The applicant shall pay an excavation fee to the City equal to one dollar (\$1.00) per square foot not to exceed five hundred dollars (\$500.00). The excavation fee may be adjusted by the Public Works Director from time to time to reflect changes in the average cost to manage and inspect the ROW.
- C. The applicant shall pay additional management, administrative, and inspection fees to be determined by the Public Works Director based on the actual time expended and costs incurred in the management, administration,

inspection, and superintendence of such work. A current fee schedule shall be maintained by the City and available to the public and all applicants upon request to the Public Works Director.

- D. The applicant shall pay an additional fair and reasonable linear foot fee and/or antenna/small cell wireless fee for use of the ROW. A current fee schedule shall be maintained by the City and available to the public and all applicants upon request to the Public Works Director.

Sec. 32-168 Deposits and Performance Bond Requirements.

- A. Before a permit is issued, the applicant shall deposit with the Public Works Director a sum of cash, and shall file with the Public Works Director a continuing bond with good and sufficient sureties payable to the City, both conditional upon the performance of all the requirements of the permit and the law, and the restoration, to the satisfaction of the Public Works Director, of the public street, avenue, highway, alley, tree, lawn or other public place, easement or ROW in as good a condition as it was, or better, before the work was done. Each permit shall have a separate cash deposit and performance bond to guarantee backfilling, paving, and/or site restoration of the particular project. The performance bond shall list the specific project for which the applicant is requesting a permit. The bond shall continue in full force and effect for a period of forty-eight (48) months following completion of the work. The bond shall be issued by a surety with an "A" or better rating of insurance in Best's Key Rating Guide, Property/Casualty Edition, shall be subject to the approval of the City's Attorney and shall contain the following endorsement: "This bond may not be canceled or allowed to lapse until sixty (60) days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."
1. The approximate cost of granular backfill, repaving operations, and general site restoration will be estimated by the Public Works Director at the time an application for a ROW permit is submitted, and the cost so estimated shall be deposited with the City prior to permit issuance.
 2. The amount of the deposit shall be reasonably sufficient to secure the City against any damage or expense that may result from the applicant's failure to comply with the provisions of the permit. The amount of such deposit shall be based upon the location, purpose, and extent of the work.
 3. The amount of the cash deposit and bond shall vary. The minimum deposit shall be two hundred fifty dollars (\$250.00). The minimum bond shall be at least one thousand dollars (\$1,000.00). Any occupation/blockage of the ROW for four (4) hours or longer shall result in a minimum deposit of two hundred fifty dollars (\$250.00) and a minimum bond of three thousand dollars (\$3,000.00).
 4. The individual permit bond requirement may be waived for applicants having on file with the City an unexpired annual bond of at least ten thousand dollars (\$10,000.00) for work requiring ROW permits in the City, with good and sufficient sureties payable to the City.
 5. If a ROW user fails to complete the work in a safe, timely, and competent manner or if the completed restorative work fails without remediation (as determined by the Public Works Director) within the time period for the bond, then after notice and a reasonable opportunity to cure, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the ROW user and the cost of completing work in or restoring the ROW, up to the full amount of the bond.
 6. The City may also recover against the bond any amount recoverable against a security fund or letter of credit where such amount exceeds that available under a security fund or letter of credit.
 7. ROW users with twenty-five million dollars (\$25,000,000.00) in net assets and who do not have a history of permitting non-compliance within the City as defined by the Public Works Director may self-insure and will not be required to provide construction performance bonds or liability insurance coverage.

Sec. 32-169 Issuance of Permit.

- A. If the Public Works Director determines that the applicant has satisfied all requirements, the Public Works Director shall issue a ROW permit. The Public Works Director may impose conditions upon the issuance of a ROW permit and the performance of the permittee in order to protect the public health, safety, and welfare; to ensure the structural integrity of the ROW; to protect the property and safety of other users of the ROW; and to minimize the disruption and inconvenience to the public. A ROW permit shall have an effective date and an expiration date specific to when all excavation shall cease. Establishment of the expiration date shall be in the discretion of the Public Works Director, which discretion shall be reasonably exercised to achieve the City's policy of minimizing disruption of the public ROW. No permittee may excavate the ROW beyond the date or dates specified in the ROW permit unless the permittee makes a request for an extension of the ROW permit before the expiration of the initial permit and a new ROW permit or permit extension is granted. ROW permits issued shall be conspicuously displayed by the permittee at all times at the indicated work site and shall be available for inspection by the Public Works Director, other City employees and the public. Installation and collocation of a small cell wireless facility shall be completed within one (1) year of issuance of the ROW permit, or the ROW permit shall become null and void and shall no longer authorize installation or collocation of the small cell wireless facility.
- B. *Permitted Work Hours.* The permittee shall comply with all the rules and regulations set forth by the Public Works Director. Work is permitted Monday through Friday from 7:00 A.M. until 8:00 P.M., unless permission is granted by the Public Works Director for other work hours.

Sec. 32-170 ROW Repair And Restoration.

- A. All earth, materials, sidewalks, paving, crossing, utilities, public improvements, or improvements of any kind removed or damaged by the permittee shall be fully repaired or replaced promptly by the ROW user at its sole expense and to the satisfaction of the Public Works Director. If the permittee fails to restore the ROW in the manner and to the condition required by the Public Works Director, or fails to satisfactorily and timely complete all restoration, the City may complete the work at the expense of the permittee, and the permittee and its surety shall be liable to the City for any and all cost incurred by the City by reason of such completion.
1. Every ROW user to whom a ROW permit has been granted shall guarantee for a period of four (4) years the restoration of the ROW in the area where such ROW user conducted excavation and performed the restoration.
 2. In the event the restoration is not completed within the time established by the Public Works Director, the permittee shall pay to the City the sum of one hundred dollars (\$100.00) per day as liquidated damages, and not as a penalty, to be deducted from the deposit of the permittee, if sufficient.

Sec. 32-171 Stop Work Orders.

- A. Any excavation, backfilling, repair, restoration, and all other work performed in the ROW shall be done in conformance with the City's rules and standards as promulgated by the Public Works Director. The Public Works Director may issue a citation to the permittee or ROW user for any work which does not conform to the applicable standards, conditions, code, or terms of the permit. The Public Works Director may choose to inspect the ongoing permitted work in the ROW at any time to ensure that all requirements of the approved permit are being met by the permittee.
- B. Any ROW user who is found to be working in the public ROW without a permit or contrary to the permit requirements will be directed to stop work until a permit is issued and properly posted at the work site, or until the permit requirements are met to the satisfaction of the Public Works Director. Any permittee found to be

working without providing for required safety and traffic control will be directed to stop work until the appropriate measures are implemented in accordance with the current edition of the Manual on Uniform Traffic Control Devices. The Public Works Director may order the immediate cessation of any work which poses a threat to the life, health, safety, or well-being of the public.

Sec. 32-172 Denial, Revocation And Appeal Of Permit.

- A. Permit Denial. The Public Works Director may deny a permit to protect the public health, safety, and welfare; to prevent interference with the safety and convenience of ordinary travel over the ROW; or when necessary, to protect the ROW and its users. Except in the case of an emergency, the Public Works Director may automatically deny a permit for an applicant in the following events:
1. Facilities work is sought which requires excavation of any portion of the paved public ROW which was constructed or reconstructed in the preceding five (5) years, or has a Pavement Surface Evaluation and Rating (PASER) system surface rating of nine (9) or above, as determined by the Public Works Director; or
 2. The applicant, contractor or facilities owner owes undisputed past-due fees from prior permits, or is in violation of the provisions of this Article; or
 3. The applicant, contractor or facilities owner has failed to return the public ROW to its previous and acceptable condition under previous permits; or
 4. The facilities work will cause undue disruption to existing or planned utilities, transportation, public or City use; or
 5. Failure to pay for damages caused to any City facilities from prior facilities work by the applicant or facilities owner.
- B. The Public Works Director, at his or her discretion, may consider one (1) or more of the following factors in denial of the permit:
1. The extent to which the ROW space where the permit is sought is available;
 2. The competing demands for the particular space in the ROW;
 3. The availability of other locations in the affected ROW or in other ROW for the facilities of the applicant;
 4. The applicability of any ordinance or other regulations that affect location of facilities in the ROW;
 5. The degree of compliance of the applicant with the terms and conditions of any ROW use agreement with the City, this Article and other applicable ordinances and regulations;
 6. The degree of disruption to surrounding communities and businesses that will result from the use of that part of the ROW;
 7. The condition and age of the ROW, and whether the ROW was constructed or reconstructed within the preceding five (5) years;
 8. The balancing of the costs of disruption to the public and damage to the ROW, against the benefits to that part of the public served by the construction in the ROW;

9. Whether the applicant has failed within the last three (3) years to comply with, or is presently not in full compliance with, the requirements of this Article;
 10. Whether the applicant owes monies to the City;
 11. Whether the issuance of a ROW permit for the particular dates and/or time requested would cause a conflict or interfere with an exhibition, celebration, festival, or any other event.
 12. In exercising this discretion, the Public Works Director shall be guided by the safety and convenience of anticipated travel of the public over the ROW.
- C. Notwithstanding the above provisions, the Public Works Director may, in his or her discretion, issue a ROW permit in any case where the permit is necessary to prevent substantial economic hardship to a user of the applicant's service, and allow such user to materially improve the service provided by the applicant.
- D. Permit Revocation.
- i. The Public Works Director may revoke any ROW permit, without refund of the permit fee, in the event of a substantial breach of the terms and conditions of any law or the ROW permit.
 - ii. A substantial breach shall include, but not be limited to, the following:
 - a. The violation of any material provision of the ROW permit; or
 - b. An evasion or attempt to evade any material provision of the ROW permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its residents; or
 - c. Any material misrepresentation of any fact in the permit application; or
 - d. The failure to maintain the required bond or insurance; or
 - e. The failure to complete the work in a timely manner; or
 - f. The failure to correct a condition indicated on an order issued by the Public Works Director; or
 - g. Repeated traffic control violations; or
 - h. Failure to repair facilities damaged in the ROW to the satisfaction of the Public Works Director.
- i. If a ROW permit is revoked, the permittee shall reimburse the City for the City's reasonable costs, including administrative costs, restoration costs, the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.
- C. Permit Appeal. Whenever a permittee shall deem itself aggrieved by any decision or action taken by the Public Works Director, the permittee may file an appeal to the City. The permittee shall be afforded a hearing on the matter before the City Administrator within thirty (30) days of filing the appeal. The City Administrator's decision shall be final.
- D. The violation of any provision of this Article is hereby deemed to be grounds for revocation of any City issued permits and denial of future permits by the City.

Sec. 32-172 State Public ROW Law.

If any provision of this Article or a rule or regulation adopted pursuant to this Article conflicts with State law on the public ROW, such State law shall prevail to the extent required by law, and the City's authority shall be limited to that permitted thereunder.

Sec. 32-173 Location, Type, and Design of Facilities Subject to Approval.

- a. Exclusion Of Certain Locations/Facilities. To the extent permitted by applicable law, the Public Works Director may designate certain locations or facilities in the ROW to be excluded from use by the ROW user, including, but not limited to, ornamental or similar specially designed street lights or other facilities or locations which, in the reasonable judgment of the Public Works Director, cannot safely bear the weight or wind loading thereof, or any other facility or location that in the reasonable judgment of the Public Works Director would be rendered unsafe or unstable by the installation. The Public Works Director may further exclude certain other facilities that have been designated or planned for other use or are not otherwise available for use by the ROW user due to engineering, technological, proprietary, legal, or other limitations or restrictions as may be reasonably determined by the City.
 - i. In the event such exclusions conflict with the reasonable requirements of the ROW user, the City will cooperate in good faith with the ROW user to attempt to find suitable alternatives, if available, provided that the City shall not be required to incur financial cost nor require the City to acquire new locations for the ROW user.
- b. Review Required. The design, location, and nature of all facilities shall be subject to the review and approval of the Public Works Director to the extent permitted by law. Such review shall be on a non-discriminatory basis in application of City policy, and approvals shall not be unreasonably withheld or delayed. City height limitations, applicable zoning restrictions, and general City policies with regard to all users of the ROW shall be applicable to all facilities. The Public Works Director may establish regulations or policies as may be deemed necessary or appropriate to affect this provision.
- c. Underground and Collocation of Facilities Required; Exceptions. Except as provided herein or where prohibited by applicable law, no person may erect, construct, or install facilities above the surface of the ROW without the written permission of the City based on good cause established by the applicant and found by the City. In addition, all new fiber optics, coaxial, and similar cable facilities shall be located within existing conduit, trenches, or other facilities to minimize unnecessary use of ROW space, reduce potential existing or future interference and obstructions, and to reduce the cost to the public or others therefrom, and to maximize the public's ability to use and permit appropriate private or public uses of the ROW in the public interest except where preempted by law or where good cause is established and written permission granted by the City.
 - i. Such permission may be granted by the City Commission when other similar facilities exist above ground and conditions are such that underground construction is impossible, impractical or unfeasible, as determined by the City, and when in the City's judgment the aboveground construction has minimal aesthetic impact on the area where the construction is proposed.
 - ii. Where reasonable and appropriate and where adequate ROW exists, the ROW user shall place aboveground facilities underground in conjunction with City capital improvement projects and/or at specific locations requested by the City, provided that such placement is practical, efficient, and economically feasible.
 - iii. New utility poles and related ground-mounted equipment shall be permitted to be installed above ground; provided, however, that to ensure unobstructed pedestrian use and City maintenance of the ROW and minimize visual obstructions for vehicular traffic, a new utility pole and any ground-mounted equipment related to that utility pole

or the equipment thereon shall not be installed within two hundred (200) feet of another utility pole or other ground-mounted equipment on the same side of the ROW.

- a. A replacement utility pole that is installed in lieu of an existing utility pole and is installed within ten (10) feet of the existing utility pole shall not be considered a new utility pole subject to the spacing requirements herein. Such spacing regulations as applied to that specific site may be altered by the Public Works Director upon good cause shown by the applicant, including:
 - i. When and where nearby utility poles exist that are spaced closer than two hundred feet (200') apart; and
 - ii. When conditions are such that no existing structure is available for placement of facilities; and
 - iii. The utility pole can be placed to be minimally visually intrusive.

32-174 Wireless Antennas And Small Cell Wireless Facilities.

- A. Pursuant to City authority and to properly manage the limited space in the ROW, minimize obstructions and interference with the use of the ROW by the public and to ensure public safety, while also seeking to facilitate delivery of broadband technologies to City residents and businesses, wireless facilities shall be permitted in the ROW in compliance with the requirements applicable to other facilities and users in the ROW, and the additional requirements set forth in this Subsection for wireless antennas and small cell wireless facilities.

B. General Conditions.

1. Any wireless facility in the ROW shall be subject to conditions relating to the location (including prohibited or limited locations), design, height, appearance, safety, radio-frequency, and other interference issues as may be lawfully imposed by the City where necessary or appropriate to protect the public, and to conform to policies and interests of the public as may be set forth in special district plans, historic areas, or other policies as may be reasonably adopted by the Public Works Director to address changing infrastructure, technology, and uses of the ROW and/or City facilities.
2. A wireless facility shall not be located or installed in a manner that results in interference with or impairs the operation of existing utility facilities, City attachments, or third-party attachments.
3. Wireless antennas or small cell wireless facilities shall further comply with all applicable requirements for installation of any facilities in the ROW as set forth in this Articles VI herein, including appropriate agreements and permits as applicable.
4. Requirements for installation of wireless antennas and small cell wireless facilities include those set forth in K.S.A. 66-2019, the City's applicable zoning, building and other regulations and codes, as well as such other approvals as required by the City.

C. Specific Conditions.

1. Small Cell Wireless Facilities. Any small cell wireless facility meeting the requirements as defined in K.S.A. 66-2019(b)(14) shall be authorized to be located in the ROW subject to the approval of the Public Works Director and subject to the following additional requirements:
 - i. If proposing to install a new utility pole, compliance with the spacing requirements in Section 32-173C of this Article;
 - ii. The facility will not materially interfere with the safe operation of traffic control equipment and will not materially interfere with the City's or any third-party's communications equipment;

- iii. The facility will not materially interfere with sightlines or clear zones for transportation, pedestrians, or nonmotorized vehicles;
- iv. The facility will not materially obstruct the legal use of the ROW by the City, a utility, or other third-party;
- v. The ROW user shall comply with reasonable and nondiscriminatory spacing requirements of general application adopted by ordinance or regulations promulgated by the Kansas Department of Transportation that concern the location of ground mounted equipment and new utility poles.
- vi. The ROW user shall comply with applicable codes, including nationally recognized engineering standards for utility poles or wireless support structures;
- vii. The ROW user shall comply with the reasonably objective and documented aesthetics of a decorative pole and the ROW user does not agree to pay to match the applicable decorative elements; and
- viii. The ROW user shall comply with reasonable and nondiscriminatory undergrounding requirements contained in the City's ordinances, or subsequently enacted for new developments, that require all utility facilities in the area to be placed underground and prohibit the installation of new or the modification of existing utility poles in a ROW without prior approval;
- ix. For all collocations on City utility poles, the ROW user shall provide all make-ready estimates for the utility pole, including replacement costs where necessary for the safety and reliability of the utility pole, as determined by the City; and
- x. Any other requirements which may be applicable to the proposed small cell wireless facility pursuant to K.S.A. 66-2019.

2. All Other Wireless Facilities in the ROW.

- a. Any wireless facility located on a utility pole or existing structure as defined in Section 32-156 of this Article 32, but not meeting the requirements of Subsection 32-174C above, may be approved, subject to conditions as may be imposed consistent with the purposes of this Article, only upon approval by the City Commission upon a determination by the City Commission that such small cell wireless facility is:
 - i. In the public interest to provide a needed service to persons within the City; and
 - ii. Cannot feasibly meet all of the requirements of a small cell wireless facility, but varies from such requirements to the minimum extent necessary; and
 - iii. Does not negatively impact appearance or property values in light of the location, design, and circumstances to be approved; and
 - iv. Does not create any reasonable safety risk; and
 - v. Complies with all zoning, ROW, and other applicable requirements.

D. Wireless Facility Compensation. If the wireless facility is to be located on a City-owned structure or utility pole, an annual payment of two hundred seventy dollars (\$270.00) per attachment shall be required. Nothing herein shall limit, waive, or otherwise affect the applicability of linear foot fees as may be required pursuant to this Article 32.

E. Wireless Facility Application Requirements. Any application that includes one (1) or more wireless antennas or wireless facilities shall include all requirements for:

- 1. Installation of any facilities in the ROW as set forth in this Article;
- 2. The requirements of this Section 32-174, and

3. Requirements for installation of wireless antennas and wireless facilities set forth in K.S.A. 66-2019, and
4. Written proof of consent of the landowner and written proof of consent of the structure owner (document authorizing use of the structure) to include, but be limited to a copy of the easement, ROW agreement, Small Cell Wireless Agreement and/or Pole Attachment Agreement, as applicable.

32-175 Mapping Of Facilities.

Upon completion of the ROW work involving installation of new facilities, the ROW user shall supply the City copies of as-built and detailed maps showing the exact location of facilities installed in the ROW. As a condition of continued ROW use, all ROW users shall, on an annual basis, provide the City with as-builts or other detailed maps of the ROW user's current facilities. Such annual requirement may be waived by the Public Works Director upon written request.

32-176 No Interference.

- A. All ROW users shall construct and maintain its facilities so as not to interfere with other users of the ROW. The ROW user shall not interfere with or alter the facilities of the City or other ROW user without their consent and shall be solely responsible for such.
- B. Except as may otherwise be provided, or as determined by the Public Works Director, the ROW user shall, prior to commencement of work, execute a City-approved resident-notification plan to notify residents affected by the proposed work.
- C. All construction and maintenance by the ROW user or its subcontractors shall be performed in accordance with industry standards.
- D. The ROW user shall, in the performance of any excavation, facilities maintenance, or other ROW work, limit such work to that necessary for efficient operation and so as not to interfere with other users of the ROW.
 1. All facilities and other structures shall be installed and located to cause minimum interference with the rights and convenience of property owners, ROW users, and the City.
 2. Facilities and other structures shall not be placed where they will disrupt or interfere with other facilities, structures, or public improvements or obstruct or hinder in any manner the various utilities serving the residents and businesses in the City or public improvements.
 3. Above-ground facilities shall be constructed and maintained in such a manner so as not to emit any unnecessary or intrusive noise.
- F. When reasonable and necessary to accomplish such purposes, the Public Works Director may require as alternatives to the proposed work either less disruptive methods or different locations for facilities consistent with applicable law.

32-177 Subordinate Uses.

The ROW user's use shall be in all situations subordinate and subject to the City's use.

32-178 Sight Triangle Maintained.

ROW users shall comply with the requirements of sight triangles, and nothing shall be erected, placed, planted, or allowed to grow in such a manner as to materially impede vision within the triangular area formed by the ROW lines and a line connecting them at points thirty (30) feet from their point of intersection or at equivalent points on a private street.

32-179 Relocation.

- A. City Required Relocation. The ROW user shall promptly remove, relocate, or adjust any facilities located in the ROW as directed by the City when such is required by public necessity, public convenience, or security require it, or such other findings in the public interest that may require relocation, adjustment, or removal at the cost of the ROW user. Such removal, relocation, or adjustment shall be performed by the ROW user within the time frames established by the City and at the ROW user's sole expense without any expense to the City, its employees, agents, or authorized contractors and shall be specifically subject to rules, regulations, and schedules of the City pertaining to such.
- B. Emergency Exception. In the event of an emergency or where construction equipment or facilities create or are contributing to an imminent danger to health, safety, or property, the City may, to the extent allowed by law, remove, relay, or relocate such construction equipment or the pertinent parts of such facilities without charge to the City for such action, for restoration, or for repair. The City shall attempt to notify the person having facilities in the ROW prior to taking such action, but the inability to do so shall not prevent same. Thereafter, the City shall notify the person having facilities in the ROW as soon as practicable.
- C. Third-Party Relocation. A person having facilities in the ROW shall, on the reasonable request of any person, other than the City, holding a validly issued permit, after reasonable advance written notice, protect, support, or temporarily disconnect or relocate facilities to accommodate such person, and the actual cost, reasonably incurred, of such actions shall be paid by the person requesting such action. The person having facilities in the ROW taking such action may require such payment in advance.
- D. Abandonment Exception. Rather than relocate facilities as requested or directed, a ROW user may abandon the facilities if approved by the City as provided in Section 32-181 of this Article VI.
- E. ROW User Responsible For Damage. Any damages suffered by the City, its agents or its contractors to the extent caused by the ROW user's failure to timely relocate, remove or adjust its facilities, or failure to properly relocate, remove, or adjust such facilities, shall be borne by the ROW user.
 - 1. In the event the ROW user fails to relocate facilities as required by the City, the City may, but shall not be required to, upon notice to the ROW user, remove the obstructing facilities with or without further delay, and the ROW user shall bear all responsibility and liability for the consequences therefrom, and the City shall bear no responsibility to the ROW user or others for damage resulting from such removal.

32-180 No Vested Rights.

No action hereunder shall be deemed a taking of property, and no person shall be entitled to any compensation therefor. No location of any facilities in the ROW shall be a vested interest or property right.

32-181 Abandoned Facilities; Removal.

- A. A person owning abandoned facilities in the ROW must not later than thirty (30) days of notice, or of abandonment, remove its facilities and replace or restore any damage or disturbance caused by the removal at its own expense.
- B. The Public Works Director may upon written application and written approval allow underground facilities or portions thereof to remain in place, if the Public Works Director determines that it is in the best interest of public health, safety, and general welfare to do so.
- C. The City shall be entitled to all costs of removal and enforcement for any violation of this Section 32-181.
- D. Nuisance. Facilities abandoned or otherwise left unused in violation of this Section 32-181 are deemed to be a

nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to:

1. Abating the nuisance; or
2. Taking possession and ownership of the facility and restoring it to a useable function; or
3. Requiring the removal of the facility by the ROW user.

Section 32-182 to Section 32-195 is Reserved.

EXHIBIT 2

CHAPTER 16

Section 32 – Streets, Sidewalks, and Right-of-Way

In accordance with Chapter 32, Article VI, providing for the City’s management of its Right-of-Way (“ROW”), this section incorporates the reasonable fees and charges established in Chapter 32, Article VI, that are necessary for the management and maintenance of the City’s ROW. Specifically:

1. Underground facilities wherein the owner does not provide services within the City – An annual linear foot fee of one dollar (\$1.00) per linear foot, or one thousand dollars (\$1,000.00), whichever is greater. (Ordinance No. 32-159.A.1).
2. Underground or aerial facilities wherein the owner does provide services within the City – An annual gross receipts/franchise fee in an amount not to exceed that which is authorized by state law. (Ordinance No. 32-159.A.2).
3. Any person seeking to use the ROW, a one-time, non-refundable, Permit Application/Filing fee as determined by the Public Works Director. (Ordinance No. 32-167.A).
4. Any person seeking to excavate any portion of the ROW, a fee based on the number of square feet of the excavation or one dollar (\$1.00) per square foot, with the fee not to exceed five hundred dollars (\$500.00). (Ordinance No. 32-167.B).
5. All additional management, administrative and inspection fees as may be set from time to time by the Public Works Director, specifically for the purpose of the City recouping the expenses incurred by the use, management, and maintenance of the ROW. (Ordinance No. 32-167.C).

ORDINANCE NO. 1806

AN ORDINANCE ESTABLISHING A CITY LIBRARY, AND PROVIDING FOR THE APPOINTMENT OF BOARD MEMBERS THEREOF IN THE CITY OF NEODESHA.

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

Section One: Chapter 2, Article IX, is hereby added to the City of Neodesha code as follows:

ARTICLE IX – CITY LIBRARY

Sec. 2-245. - City library established.

The library of the city of Neodesha shall be known as “W.A. Rankin Memorial Library.”

Sec. 2-246. - Board; appointment; terms; eligibility; vacancies; expenses.

The library board shall consist of seven members who shall be appointed by a majority vote of all the members of the Neodesha board of commissioners. Members shall be appointed for four-year terms expiring on successive years on April 30th or his or her successor takes office. One member shall be appointed for a term expiring the first April 30 following the date of appointment, two for terms expiring the second April 30 following date of appointment, two for terms expiring the third April 30 following date of appointment, and two for terms expiring the fourth April 30 following date of appointment. Five (5) of the seven members of the library board shall be residents of the City of Neodesha, Kansas. Two (2) of the seven members of the library board may be non-residents of the City of Neodesha, Kansas, but must be residents of U.S.D. 461 School District. No person holding any office in the city shall be appointed a member while holding such office. Vacancies occasioned by removal from the city, resignation or otherwise shall be filled by appointment for the unexpired term. No person who has been appointed for two consecutive four-year terms to the library board shall be eligible for further appointment to such board until one year after the expiration of the second term. Members of the library board shall receive no compensation for their services as such but shall be allowed their actual necessary expenses in attending meetings and in carrying out their duties as members.

(K.S.A. 12-1222; C.O. No. 19)

Section Two. EFFECTIVE DATE. This ordinance shall be in full force and effect after its publication in the official city newspaper.

Passed by the Governing Body of the City of Neodesha, Kansas and signed by the Mayor this 22nd day of July, 2024.

ATTEST:

Devin Johnson, Mayor

Stephanie Fyfe, City Clerk

TRIPLETT WOOLF GARRETSON, LLC

RESOLUTION NO. 24-16

OF THE

GOVERNING BODY

OF THE

CITY OF NEODESHA, KANSAS

RELATING TO THE INTENT TO ISSUE
NOT TO EXCEED \$4,800,000
TAXABLE INDUSTRIAL REVENUE BONDS
(GRIFFITH DEVELOPMENT LLC)

RESOLUTION NO. 24-16

A RESOLUTION INDICATING THE INTENT OF THE GOVERNING BODY OF THE CITY OF NEODESHA, KANSAS TO ISSUE CERTAIN TAXABLE INDUSTRIAL REVENUE BONDS IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED FOUR MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$4,800,000) FOR THE PURPOSE OF (1) PURCHASING, ACQUIRING, CONSTRUCTING, FURNISHING AND EQUIPPING A COMMERCIAL FACILITY IN NEODESHA, KANSAS, AND (2) PAYING CERTAIN COSTS OF ISSUANCE THEREOF.

WHEREAS, the governing body of the City of Neodesha, Kansas (the "City") desires to promote, stimulate and develop the general economic welfare and prosperity of the City, and thereby to further promote, stimulate and develop the general economic welfare and prosperity of the State of Kansas; and

WHEREAS, pursuant to the provisions of K.S.A. 12-1740 *et seq.*, all as amended (the "Act"), and all acts amendatory thereof or supplemental thereto, said City County is authorized to issue revenue bonds of the City; and

WHEREAS, Griffith Development LLC, a Nevada limited liability company, or its affiliates (the "Tenant"), has requested the City to provide for the issuance of certain taxable industrial revenue bonds (herein the "Bonds"), in one or more series, pursuant to the Act to pay costs incurred in connection with (1) purchasing, acquiring, constructing, furnishing, and equipping a commercial facility consisting of apartments and non-retail office spaces generally located at 519 and 523 Main Street (Rohr Building) in Neodesha, Kansas (the "Project"), to be owned or leased by the City and leased to the Tenant, and (2) paying certain costs of issuance of the Bonds; and

WHEREAS, the City does not intend this Resolution to include any agreement for ad valorem tax abatement for the Project; said consideration for ad valorem property tax abatement on the Project to be had by the City at a later date, in accordance with the proper publication and notice requirements of the laws of the State of Kansas.

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

SECTION 1. The City intends and is hereby authorized to finance the Project (as defined above) in an amount which will not exceed the cost of \$4,800,000, subject in all respects to the negotiation of satisfactory lease arrangements for the Project with the Tenant (as defined above).

SECTION 2. The City is hereby authorized to provide for the issuance of its Bonds (as defined above), from time to time, in one or more series in an aggregate principal amount of not to exceed Four Million Eight Hundred Thousand Dollars (\$4,800,000) for the purpose of (1) purchasing, acquiring, constructing, furnishing, and equipping the Project, and (2) paying certain

costs of issuance of the Bonds, but subject to the limitations, conditions and requirements of the provisions of the Act and as hereafter set forth.

SECTION 3. The Bonds shall be issued in accordance with the provisions of an Ordinance of the City and a Trust Indenture, a Lease Agreement, and a Guaranty Agreement, or other documents deemed appropriate by the City, which documents shall, among other things, describe in reasonable detail the Project, and all of the terms of which documents shall be mutually satisfactory to the City and to the Tenant. The Bonds shall be issued subject to the approving opinion of Triplett Woolf Garretson, LLC, Bond Counsel, and shall be special limited obligations of the City payable solely from the revenues derived by the City pursuant to the Lease Agreement, or otherwise in connection with the Project. THE BONDS SHALL NOT BE GENERAL OBLIGATIONS OF, OR CONSTITUTE A PLEDGE OF THE FAITH AND CREDIT OF, THE CITY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION AND THE BONDS SHALL NOT BE PAYABLE IN ANY MANNER FROM TAX REVENUES.

SECTION 4. It is contemplated that in order to expedite the process of purchasing, acquiring, constructing, furnishing, and equipping the Project and the realization of the benefits to be derived thereby, the Tenant may, in reliance upon this Resolution, but subject to mutually satisfactory documents as described in the preceding Section 3, incur any temporary indebtedness and expend its own funds in connection with the anticipated Project, prior to the ultimate issuance of said Bonds. The Bonds herein authorized and all interest thereon shall, in any event, be paid solely from the Trust Estate to be created pursuant to the Trust Indenture, as amended and supplemented, including the money and revenue received pursuant to the Lease, as amended and supplemented, of the Project to the Tenant and not from any other fund or source, and nothing contained herein shall obligate the City in any manner except as set out herein.

SECTION 5. The City does not intend this Resolution to include any agreement for ad valorem tax abatement for the Project. The consideration for ad valorem property tax abatement on the Project will be had by the Issuer at appropriate later dates in accordance with the proper publication and notice requirements of the laws of the State of Kansas.

SECTION 6. Any and all expenses incurred, and applicable fees charged, in connection with the issuance of the Bonds including administrative expenses, and legal fees, incurred by the City shall be paid from the proceeds of the Bonds or from the Tenant's funds. Nothing herein contained shall obligate the City in any manner in connection with the costs of the issuance of the Bonds.

SECTION 7. The Mayor and City Clerk are hereby authorized and directed to take all such other actions not inconsistent herewith as may be appropriate or desirable to accomplish the purposes contemplated by this Resolution, including but not limited to, (1) execution on behalf of the City of appropriate notices of proposed issuance of such Bonds with the Kansas Board of Tax Appeals pursuant to K.S.A. 12-1744a, (2) providing applicable notices of public hearings with respect to the proposed issuance of such Bonds in accordance with K.S.A. 12-1749c and/or K.S.A. 12-1749d, (3) cooperation with the Tenant, and execution on behalf of the City of any related agreements or documents, in filing an application for a sales tax exemption certificate with the

Kansas Department of Revenue with respect to Bond-financed property, and (4) any such actions previously taken are hereby ratified.

SECTION 8. This Resolution shall become effective upon its approval and passage by the governing body of the City, and unless otherwise revoked or extended shall expire on December 31, 2025.

[Remainder of Page Intentionally Left Blank]

PASSED, ADOPTED AND APPROVED by the governing body of the City of Neodesha,
Kansas this 22nd day of July, 2024.

CITY OF NEODESHA, KANSAS

[seal]

By _____
Devin Johnson, Mayor

ATTEST:

By _____
Stephanie Fyfe, City Clerk

EXCERPT OF MINUTES

The governing body of the City of Neodesha, Kansas met in regular session, at the usual meeting place in the City on July 22, 2024, at 4:30 p.m., with Mayor Devin Johnson presiding, and the following members of the governing body present:

and the following members absent:

Among other business, there came on for consideration and discussion the following:

A RESOLUTION INDICATING THE INTENT OF THE GOVERNING BODY OF THE CITY OF NEODESHA, KANSAS TO ISSUE CERTAIN TAXABLE INDUSTRIAL REVENUE BONDS IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED FOUR MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$4,800,000) FOR THE PURPOSE OF (1) PURCHASING, ACQUIRING, CONSTRUCTING, FURNISHING AND EQUIPPING A COMMERCIAL FACILITY IN NEODESHA, KANSAS, AND (2) PAYING CERTAIN COSTS OF ISSUANCE THEREOF.

Thereupon, the Resolution was considered and discussed, and on motion of _____, seconded by _____, the Resolution was adopted by vote of the majority of all members present.

Thereupon, the Resolution, having been adopted by a majority vote of the members of the governing body present, it was given No. 24-16 and was directed to be signed by the Mayor and attested by the City Clerk.

CITY CLERK'S
CERTIFICATION OF EXCERPT OF MINUTES

I hereby certify that the foregoing is a true and correct Excerpt of Minutes of the July 22,
2024 meeting of the governing body of the City of Neodesha, Kansas.

[seal]

Stephanie Fyfe, City Clerk

CITY OF NEODESHA

RESOLUTION NO. 24-17

A RESOLUTION ADOPTING THE KANSAS HOMELAND SECURITY REGION H HAZARD MITIGATION PLAN.

WHEREAS, the City of Neodesha recognizes the threat that natural hazards pose to people and property within our community; and

WHEREAS, undertaking hazard mitigation actions will reduce the potential for harm to people and property from future hazard occurrences; and

WHEREAS, the U.S. Congress passed the Disaster Mitigation Act of 2000 (“Disaster Mitigation Act”) emphasizing the need for pre-disaster mitigation of potential hazards; and

WHEREAS, the Disaster Mitigation Act made available hazard mitigation grants to state and local governments; and

WHEREAS, an adopted Hazard Mitigation Plan is required as a condition of future funding for mitigation projects under multiple Federal Emergency Management Agency (FEMA) pre- and post-disaster mitigation grant programs; and

WHEREAS, the City of Neodesha fully participated in the FEMA prescribed mitigation planning process to prepare this Multi-Hazard Mitigation Plan; and

WHEREAS, the Kansas Division of Emergency Management and FEMA Region VII officials have reviewed the Kansas Homeland Security Region H Hazard Mitigation Plan, and approved it contingent upon this official adoption of the participating governing body; and

WHEREAS, the City of Neodesha desires to comply with the requirements of the Disaster Mitigation Act and to augment its emergency planning efforts by formally adopting the Kansas Homeland Security Region H Hazard Mitigation Plan; and

WHEREAS, adoption by the governing body for the City of Neodesha demonstrates the jurisdictions’ commitment to fulfilling the mitigation goals and objectives outlined in this plan; and

WHEREAS, adoption of this resolution legitimizes the plan and authorizes responsible agencies to carry out their responsibilities under the plan.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF NEODESHA, that said governing body hereby adopts the Kansas Homeland Security Region H Hazard Mitigation Plan; and

BE IT FURTHER RESOLVED, the City of Neodesha will submit this Adoption Resolution to the Kansas Division of Emergency Management and FEMA Region VII officials to enable the plan’s final approval.

ADOPTED AND APPROVED by the governing body of the City of Neodesha, Kansas this 22nd day of July, 2024.

ATTEST:

Devin Johnson, Mayor

Stephanie Fyfe, City Clerk

CITY OF NEODESHA

RESOLUTION NO. 24-18

A RESOLUTION FIXING A TIME AND PLACE AND PROVIDING FOR NOTICE OF A HEARING BEFORE THE GOVERNING BODY OF THE CITY OF NEODESHA, KANSAS AT WHICH TIME THE OWNER, HIS AGENT, LIENHOLDERS OF RECORD AND OCCUPANTS OF THE STRUCTURE LOCATED AT 315 South 7th Street, Neodesha KS 66757; LEGAL DESCRIPTION: Lots Thirteen (13) and Fourteen (14), Block Seventy (70), City of Neodesha, Wilson County, Kansas, MAY APPEAR AND SHOW CAUSE WHY SUCH STRUCTURE SHOULD NOT BE CONDEMNED AND ORDERED REPAIRED OR DEMOLISHED AS AN UNSAFE OR DANGEROUS STRUCTURE.

WHEREAS, Brogan Jones, the Enforcement Officer of the City of Neodesha, did on the 24th day of June, 2024, file with the Governing Body of said City a statement in writing that certain unoccupied structures hereinafter described are unsafe and dangerous;

NOW, THEREFORE, BE IT RESOLVED by the Governing body of the City of Neodesha that a hearing will be held on the 11th day of September, 2024, before the Governing Body of the City at 2:00 p.m. in the Commission Room of City Hall, 1407 N. 8th; at which time the owner, his agent, any lien holder of record and any occupant of the structure located at **315 South 7th Street, Neodesha KS 66757** may appear and show cause why such structure should not be condemned as an unsafe or dangerous structure and ordered repaired or demolished.

BE IT FURTHER RESOLVED that the City Clerk shall cause this Resolution to be published two consecutive times and shall give notice of the aforesaid hearing in the manner provided by law.

ADOPTED AND APPROVED by the governing body of the City of Neodesha, Kansas this 22nd day of July 2024.

ATTEST:

Devin Johnson, Mayor

Stephanie Fyfe, City Clerk



AGREEMENT CONSULTANT-CLIENT

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

WITNESSETH:

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

2024 Natural Gas Line Improvement (24-1270E)

11th Street – SKOL Railroad Crossing

Neodesha, KS

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

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

SECTION 1 – DEFINITIONS

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

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

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

SECTION 2 – RESPONSIBILITIES OF CONSULTANT

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

2.2 GENERAL DUTIES AND RESPONSIBILITIES

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

Name:	Bruce Boettcher
Address:	2508 W. 15 th Ave.
	Emporia, KS 66801
Phone:	620.343.7842

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

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

SECTION 3 – CLIENT RESPONSIBILITIES

3.1 GENERAL DUTIES AND RESPONSIBILITIES

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

Name: Brogan Jones
Address: 1407 N. 8th Street
Neodesha, KS 66757
Phone: 620.325.2828

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

Name: Brogan Jones
Address: 1407 N. 8th Street
Neodesha, KS 66757
Phone: 620.325.2828

SECTION 4 – PAYMENT

4.1 COMPENSATION

- 4.1.1. **Fee and Expense:** The CLIENT agrees to pay the CONSULTANT a Lump Sum Fee according to **Exhibit 2** of this Agreement. The Lump Sum Fee for this project is a total of \$70,500.00 Dollars plus reimbursable expenses as outlined in **Exhibit 2** and for the Scope of Services as shown in **Exhibit 1** of this Agreement. Payment of the Lump

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

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

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

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

SECTION 5 – MUTUAL PROVISIONS

5.1 TERMINATION

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

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

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

- 5.1.2. **Compensation for Convenience Termination:** If CLIENT shall terminate for its convenience, as herein provided, CLIENT shall compensate CONSULTANT for all Services completed to date prior to receipt of the termination notice.

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

5.2 DISPUTE RESOLUTION

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

5.3 OWNERSHIP OF INSTRUMENTS OF SERVICE

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

5.4 INDEMNIFY AND HOLD HARMLESS

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

5.5 ENTIRE AGREEMENT

- 5.5.1. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Agreement.

5.6 APPLICABLE LAW

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

5.7 ASSIGNMENT OF AGREEMENT

- 5.7.1. This Agreement shall not be assigned or transferred by either the CONSULTANT or the CLIENT without the written consent of the other.

5.8 NO THIRD PARTY BENEFICIARIES

- 5.8.1. Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

5.9 LIMITATION OF LIABILITY

- 5.9.1. CLIENT's exclusive remedy for any alleged breach of standard of care hereunder shall be to require CONSULTANT to re-perform any defective Services. Notwithstanding any other provision of this Agreement, the total liability of CONSULTANT, its officers, directors and employees for liabilities, claims, judgments, demands and causes of action arising under or related to this Agreement, whether based in contract or tort, shall be limited to the total compensation actually paid to CONSULTANT for the Services. All claims by CLIENT shall be deemed relinquished unless filed within one (1) year after completion of the Services.
- 5.9.2. It is agreed to by the parties to this Agreement that the CONSULTANT's services in connection with the Project shall not subject CONSULTANT's employees, officers, or directors to any personal liability or legal exposure for risks associated with the Project. Therefore, the CLIENT agrees that the CLIENT's sole and exclusive remedy for any claim, demand or suit shall be directed and/or asserted only against the CONSULTANT, a Kansas corporation, and not against any of the CONSULTANT's individual employees, officers or directors.
- 5.9.3. CONSULTANT and CLIENT shall not be responsible to each other for any special, incidental, indirect or consequential damages (including lost profits) incurred by either CONSULTANT or CLIENT or for which either party may be liable to any third party, which damages have been or are occasioned by Services performed or reports prepared or other work performed hereunder.

5.10 COMPLIANCE WITH LAWS

- 5.10.1 CONSULTANT shall abide by known applicable federal, state and local laws, ordinances and regulations applicable to this Project until the Consulting Services required by this Agreement are completed consistent with the Professional Standard of Care. CONSULTANT shall secure occupational and professional licenses, permits, etc., from public and private sources necessary for the fulfillment of its obligations under this Agreement.

5.11 TITLES, SUBHEADS AND CAPITALIZATION

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

5.12 SEVERABILITY CLAUSE

- 5.12.1. Should any provision of this Agreement be determined to be void, invalid or unenforceable or illegal for whatever reason, such provisions shall be null and void; provided, however that the remaining provisions of this Agreement shall be unaffected hereby and shall continue to be valid and enforceable.

5.13 FIELD REPRESENTATION

- 5.13.1. Unless otherwise expressly agreed to in writing, CONSULTANT shall not be responsible for the safety or direction of the means and methods at the contractor's project site or their employees or agents, and the presence of CONSULTANT at the project site will not relieve the contractor of its responsibilities for performing the work in accordance with applicable regulations, or in accordance with project plans and specifications. If necessary, CLIENT will advise any contractors that Consultant's Services are so limited. CONSULTANT will not assume the role of "prime contractor", "constructor", "controlling employer", "supervisor" or their equivalents, unless the scope of such Services are expressly agreed to in writing.

5.14 HAZARDOUS MATERIALS

- 5.14.1. The CONSULTANT and the CONSULTANT's subconsultants shall have no responsibility for the discovery, presence, handling, removal or disposal or exposure of persons to hazardous materials in any form at the Project site.

5.15 AFFIRMATIVE ACTION

- 5.15.1. The CONSULTANT agrees to comply with the provisions of K.S.A. 44-1030 in the Kansas Acts Against Discrimination.

5.16 SPECIAL PROVISIONS

- 5.16.1. Special Provisions may be attached and become a part of this agreement as **Exhibit 3**.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate this 22nd day
of July 2024

CONSULTANT:

CLIENT:

BG Consultants, Inc.

City of Neodesha, KS

By: _____

By: _____

Printed Name: Bruce Boettcher

Printed Name: Devin Johnson

Title: Vice President

Title: Mayor

END OF CONSULTANT-CLIENT AGREEMENT

EXHIBIT 1

SCOPE OF SERVICES

Project Description

The project includes design of natural gas line replacement on 11th Street to bore a casing under the railroad tracks (SKOL) and replace approximately 350 LF of gas line (reference layout & EOPC dated 6/25/24). Services include:

Scope of Services

CONSULTANT will provide the following Scope of Services:

I. Preliminary Engineering

1. Project Management and Meetings
 - a. Attend a Kick-Off meeting with City Staff to determine specific project needs and general project desires. Also, review and receive available information and plans pertaining to the project.
 - b. Attend a plan review meeting after CLIENT's review of Preliminary plans.
2. Topographic Survey
 - a. Perform design and surveys to provide control, location, and land information to prepare a set of construction plans. Right-of-way and/or easement descriptions if required will be additional services.
 - b. Obtain information from utility companies with infrastructure within the project limits. Utility companies will be required to locate their facilities within the project limits.
3. Project Design
 - a. Design gas line improvements for competitive bidding by contractors.
 - b. Prepare and submit Concept Design to CLIENT.
 - c. Prepare preliminary plans based on the direction received from CLIENT's review of the Concept Design. Submit preliminary plans to CLIENT for review.
 - d. Revise the preliminary plans based on the direction received from CLIENT's review. Submit the revised documents as final plans to CLIENT for review and approval.
 - e. Construction plans will be prepared on 24"x36" plan sheets.
 - f. Plan and profile sheets will have a plan view scale of 1 inch = 20 feet and a profile view scale of 1 inch = 20 feet horizontal and 1 inch = 5 feet vertical.
4. Opinion of Construction Cost
 - a. Prepare opinion of probable construction costs to be submitted to the CLIENT at the following phase of the project: Final Plans.
5. Project Manual (Construction Contract and Project Specifications)
 - a. CONSULTANT will prepare a Project Manual under this Scope of Services.

- b. CONSULTANT will design the project to utilize the City's Standard Specifications, Standard Detail Sheets and the 2007 Edition of the Standard Specifications for State Road and Bridge Construction (Standard Specifications) to the extent possible.
- 6. Utility Coordination
 - a. Prepare utility plans after Field Check and submit the utility plans to each utility owner with utility infrastructure within the project limits.
 - b. Be available via telephone to discuss the project design with utility companies during the utility coordination and relocation phase.
- 7. Permit Applications
 - a. CONSULTANT will prepare KDHE Water Supply Permit Application
 - b. CONSULTANT will prepare KDHE NOI Stormwater Permit Application, if required.
 - c. CONSULTANT will prepare Railroad Permit Applications. All application fees and costs for flaggers for topography survey data collection, construction plan preparation, and construction of improvements shall be the responsibility of the Client.

II. Proposed Project Alignment

- 1. The location of gas line improvement is anticipated to be in the right-of-way of 11th Street, crossing the SKOL Railroad, to the east in the alley south of Main Street. Adjustments to alignment can be reviewed during field check. Railroad permit applications are included within the scope of services (CLIENT provides application fees/cost of permit application at time of submittal).

III. Bid Letting Services

- a. Answer questions from contractors regarding the final plans. If necessary, issue requested addenda.
- b. If requested by the CLIENT, attend a pre-bid meeting to explain any extraordinary conditions or designs and to answer questions regarding the plans.
- c. Attend the bid letting, tabulate bids and provide a recommendation for award.

IV. Property negotiations are NOT included in the proposed scope of services. Legal Descriptions provided as follows:

- a. None anticipated

V. Construction Engineering Services (Construction Administration and Resident Project Representative).

- a. Provide general administration of the construction contract including Resident Construction Observation (full time) and Construction Administration Services (part time) Exhibit A.
- b. Participate and chair the preconstruction conference.

- c. Process contractor equipment and material submittals in accordance with project documents.
- d. Process applications for payment and project change orders in accordance with project documents.
- e. Process completion paperwork including substantial completion and final completion certificates.

End of Exhibit 1

EXHIBIT 2

COST AND SCHEDULE

1. ENGINEERING FEE

The lump sum cost scope of services in Exhibit 1 for Items I-III will be \$54,500.00.

The lump sum cost scope of services in Exhibit 1 for Item V will be \$16,000.00. This fee is based on Five (5) Working Days.

CLIENT will be invoiced in accordance with Section 4 of this AGREEMENT. Monthly invoicing will be based on the percentage of the scope of services performed.

2. ESTIMATED PROJECT SCHEDULE

CONSULTANT will begin performing services after receiving the notice to proceed from the CLIENT. Target schedule is outlined as follows:

Target Schedule:

Notice to Proceed

Field Check

Final Plans

Advertise to Bid

Start of Professional Service

Two (2) months from NTP

One (1) month from City & RR Review and

Approval of Field Check

upon City & RR review & approval

End of Exhibit 2

EXHIBIT 3
SPECIAL PROVISIONS

1. BG Consultants 2024 Standard Hourly Rates
 2. Exhibit A – Construction Engineering Services and Resident Project Representative.
- End Exhibit 3**



BG CONSULTANTS
ENGINEERS • ARCHITECTS • SURVEYORS

2024 BG CONSULTANTS STANDARD HOURLY RATES

<u>POSITION</u>	<u>STANDARD PER HOUR 2024</u>
PRINCIPAL III	\$308.00
PRINCIPAL II	\$267.00
PRINCIPAL I	\$256.00
ENGINEER/ARCHITECT V	\$240.00
ENGINEER/ARCHITECT IV	\$201.00
ENGINEER/ARCHITECT III	\$186.00
ENGINEER/ARCHITECT II	\$176.00
ENGINEER/ARCHITECT I	\$159.00
INTERN ENGINEER/GRADUATE ARCHITECT IV	\$181.00
INTERN ENGINEER/GRADUATE ARCHITECT III	\$168.00
INTERN ENGINEER/GRADUATE ARCHITECT II	\$158.00
INTERN ENGINEER/GRADUATE ARCHITECT I	\$136.00
TECHNICIAN IV	\$156.00
TECHNICIAN III	\$141.00
TECHNICIAN II	\$122.00
TECHNICIAN I	\$110.00
TECHNICIAN	\$88.00

SENIOR CONSTRUCTION OBSERVER	\$153.00
CERTIFIED CONSTRUCTION OBSERVER	\$127.00
CONSTRUCTION OBSERVER	\$111.00
SENIOR PROJECT SURVEYOR	\$200.00
PROJECT SURVEYOR	\$197.00
ASSISTANT PROJECT SURVEYOR	\$131.00
FIELD SUPERVISOR	\$122.00
FIELD SURVEYOR II	\$99.00
FIELD SURVEYOR I	\$86.00
CLERICAL II	\$82.00
CLERICAL I	\$66.00

- Note:
- 1) The hourly rates shown above are effective for services through December 31st of the contract year and are subject to revision annually.
 - 2) For any Federal Wage and Hour Law nonexempt personnel, overtime will be billed at 1.5 times the hourly labor billing rates shown.
 - 3) Expert Witness and Depositions will be charged at 1.5 times the hourly labor billing rates shown.

EXHIBIT A

Portions of:

Exhibit A – Construction Engineering Services and Resident Project Representative.
EJCDC® E-500 (modified excerpts), Agreement Between Owner and Engineer for Professional Services.

SECTION A – CONSTRUCTION ENGINEERING SERVICES

A1.01 *Construction Phase*

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:
1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in this Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.
 2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Section B. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Section B.
 3. *Pre-Construction Conference:* Participate in and chair a pre-construction conference prior to commencement of Work at the Site.
 4. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.
 5. *Original Documents:* Maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including

Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.

6. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
7. *Baselines and Benchmarks:* establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
8. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
 - b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.

- c. The visits described above shall be at least monthly and the Engineer shall document all visits to the project with copies furnished to the Owner
9. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.
10. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
11. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.
12. *Non-reviewable Matters:* If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
13. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
14. *Change Orders and Work Change Directives:* Recommend Change Orders and Work Change Directives to Owner and prepare Change Orders and Work Change Directives as requested.
15. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.
16. *Shop Drawings, Samples, and Other Submittals:* Review and take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews or other action will not extend to means, methods, techniques, sequences, or procedures

of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.

17. *Substitutes and "Or-equal"*: Evaluate and provide recommendation to the owner as the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor. Review of substitutes "or equals" shall be in accordance with the General Conditions of the Construction Contract.
18. *Inspections and Tests*:
 - a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents and performed by OTHERS. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.
 - b. As deemed reasonably necessary, request that Contractor uncover Work that is to be observed, tested, or approved by OTHERS.
 - c. Pursuant to the terms of the Construction Contract, require special observations or testing of the Work by OTHERS, whether or not the Work is fabricated, installed, or completed.
19. *Change Proposals and Claims*: (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, recommend approval to owner in whole, or deny it in part and recommend approval to owner in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.
20. *Applications for Payment*: Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
 - a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions

precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).

- b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed evaluations of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.
21. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.01.A.16. Receive from Contractor and review the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The Engineer shall prepare Record Drawings, and furnish such Record Drawings to Owner.
 22. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
 23. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables:
 - a. Upon Substantial Completion, the Engineer shall provide a copy of the Certificate of Substantial Completion to the Owner.

- b. The Engineer shall prepare Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor, and furnishing 2 copies of such Record Drawings to Owner.
- 24. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to provide opinion as to whether the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.
- 25. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.
- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract then Construction Phase services may be rendered at different times in respect to the separate contracts. Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative Services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.
- C. *Limitation of Responsibilities:* Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor or Supplier, or other individuals or entities performing or furnishing any of the Work, for safety or security at the Site, or for safety precautions and programs incident to Contractor's Work, during the Construction Phase or otherwise. Engineer shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

A1.02 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:
 - 1. Together with Owner, visit the Project to observe apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of known damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of defective Work and needed repairs.
 - 2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of known damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.

3. Perform or provide the following other Post-Construction Phase tasks or deliverables:
 - a. Notify known regulatory agencies of the completion of the project
 - b. Two (2) sets of As-Built Drawings
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

SECTION B – Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

D1.01 *Resident Project Representative*

- A. Engineer shall furnish a Resident Project Representative ("RPR") to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.
- B. Through RPR's observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor's work in progress, for the coordination of the Constructors' work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A, Paragraph A1.01, of this Agreement are applicable.
- C. The duties and responsibilities of the RPR are as follows:
 1. *General:* RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.
 3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but

not including Contractor's safety meetings), and prepare and circulate copies of minutes thereof.

4. *Safety Compliance:* Comply with known Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
5. *Liaison:*
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
6. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor.
7. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
 - b. Receive Samples that are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of known Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.
8. *Proposed Modifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.
9. *Review of Work; Defective Work:*
 - a. Report to Engineer whenever RPR believes that known Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.

- b. Inform Engineer of known Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work. ; and
- c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval by OTHERS.

10. *Inspections, Tests, and System Start-ups:*

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups by OTHERS.
- b. Observe that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including those to be performed by public or known agencies having jurisdiction over the Work.
- e. Accompany visiting inspectors representing public or known agencies having jurisdiction over the Work, record the results of these inspections by OTHERS, and report to Engineer.

11. *Records:*

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

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

12. *Reports:*

- a. Furnish to Engineer periodic reports of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports provided by OTHERS.
- c. Inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of potential differing site condition or Constituent of Concern.

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

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

15. *Completion:*

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

D. Resident Project Representative shall not:

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

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

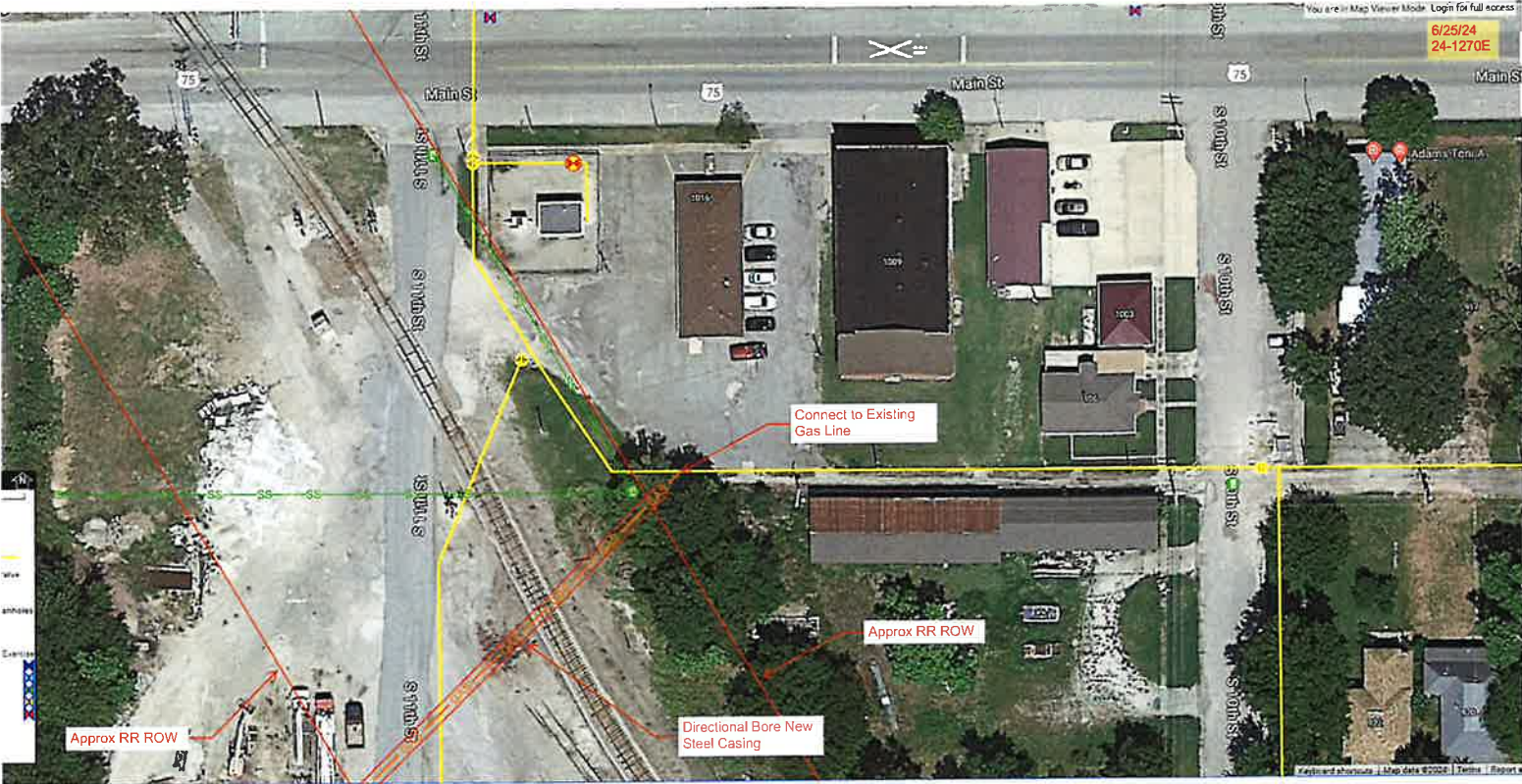
End of Exhibit A

Neodesha Gas Line Rail Road Crossing

Engineer's Opinion of Probable Cost

June 25, 2024

No	Description	Quantity	Units	Unit Price	Total Price
1	Mobilization and Incidentals	1	Each	\$ 20,000.00	\$ 20,000.00
2	8" Steel Casing (Directional Bore)	235	Lin Ft	\$ 500.00	\$ 117,500.00
3	4" HDPE Gasline	350	Lin Ft	\$ 45.00	\$ 15,750.00
4	Connection to Existing	2	Each	\$ 5,000.00	\$ 10,000.00
5	4" Gas Valve	1	Each	\$ 3,500.00	\$ 3,500.00
6	Casing Vent	2	Each	\$ 2,000.00	\$ 4,000.00
7	Surfacing	1	Lump Sum	\$ 10,000.00	\$ 10,000.00
8	Railroad Protective Insurance	1	Lump Sum	\$ 10,000.00	\$ 10,000.00
9	Flagging	1	Lump Sum	\$ 30,000.00	\$ 30,000.00
Construction Contingencies (15%)					\$ 33,112.50
Total Construction Cost					\$ 253,862.50
Preliminary Engineering					\$ 54,500.00
Construction Engineering					\$ 16,000.00
UPRR Application Fee					\$ 3,055.00
UPRR License Fee					\$ 5,000.00
Legal Administration					\$ 6,000.00
Total Opinion of Cost					\$ 338,417.50



STATE OF KANSAS

Tract 37721 & 37722

COUNTY OF WILSON

Line: YB 6"

ENCROACHMENT AGREEMENT

THIS AGREEMENT, entered into by and between **SOUTHERN STAR CENTRAL GAS PIPELINE, INC.**, (formerly Williams Gas Pipelines Central, Inc., Williams Natural Gas Company, Northwest Central Pipeline Corporation and Cities Service Gas Company), a Delaware corporation, whose mailing address is P.O. Box 20010, Owensboro, Kentucky 42304, hereinafter referred to as "Company", and City of Neodesha, a Municipal Corporation whose mailing address is PO Box 336, Neodesha, KS 66757, hereinafter referred to as "Owner".

WHEREAS, Company is the current owner/holder of a valid and subsisting right-of-way(s), easement(s), lease(s), agreement(s) and/or similar rights located in the SE/4 of the SE/4 of Section 19, Township 30S, Range 16E, Wilson County, Kansas pursuant to the instrument recorded with the Register of Deeds in Wilson County, Kansas and as more fully described on **Exhibit A** (the "Pipeline Easement(s)") for the installation, modification and/or operation of Pipeline Facilities defined, without limitation, as being pipelines currently existing on or in the Pipeline Easement(s), together with all substitutions or replacements thereto and together with all appurtenances thereto, including but not limited to compressor stations, pump stations, valves, meters, tanks, fittings, connections, corrosion control and pressure detection devices, wires, cables, pig traps, and any other appurtenances associated with the pipelines.

WHEREAS, Owner is in possession of leases and/or easement rights and/or owns (the "Owner's Tracts") a portion of which cover the parcels listed on **Exhibit B** (the "Property") for the development, construction, operation, maintenance, repair and replacement of CITY OF NEODESHA will construct an access drive (asphalt, concrete, or gravel) and a sidewalk / trail (asphalt, concrete, gravel, etc.) to be located in SE/4 of the SE/4 of Section 19, Township Thirty (30) South, Range Sixteen (16) East, Wilson County, Kansas (the "Project").

Encroachment Agreement between Southern Star Central Gas Pipeline, Inc. & Neodesha Land Bank located in the SE/4 of the SE/4 Section 19 Township 30 S, Range 16 E, Wilson County, Kansas Tract 37721 & 37722.

WHEREAS, Owner has or shall construct certain improvements upon, over or under the Pipeline Easements as part of its Project and as specifically described on **Exhibit C** attached hereto and made a part hereof (collectively referred to herein as the "Encroachments").

WHEREAS, under the terms of this Agreement, Company is willing to permit said encroachments and,

NOW THEREFORE, Company grants Owner a limited right to encroach upon the Pipeline Easements, subject to the terms and conditions set forth herein; and Owner, in consideration of this limited right of Encroachments, agrees to the following covenants and obligations set forth herein:

1. Owner specifically acknowledges Company's need for access to its facilities and recognizes its rights under the Pipeline Easements, which, are to remain in full force and effect notwithstanding this Agreement. As consideration for this Agreement, any cost to Owner or damage to the Encroachments resulting from Company's need to maintain, operate, repair or replace any portion of the Pipeline Facilities, including, but not limited to, costs for the maintenance, replacement or repair of any portion of the Encroachments, will be the sole responsibility of Owner and Company will not, under any circumstances, be responsible for loss or damage to the Encroachments.
2. Owner will cause to be furnished to Company contemporaneously with the execution of this Agreement, detailed plans, including a certified survey, for the construction of the Encroachments upon, over or under the Pipeline Easements. The plans shall be deemed incorporated herein by reference and made a part of this Agreement. Owner agrees that any review or approval by Company of any plans and/or specifications relating to the Encroachments or the identity of any contractors, subcontractors and materialmen is solely for Company's benefit, and without any representation or warranty whatsoever to Owner with respect to the adequacy, correctness or efficiency thereof or otherwise and it is understood that such Company's approval does not absolve Owner of any liability hereunder. Further, Owner, in connection with the construction, maintenance and/or removal of the Encroachments, agrees to observe and fully comply with all laws, rules and regulations of the United States, the State of Kansas, and all agencies and political subdivisions thereof. Owner agrees and acknowledges that all work on the easement shall be performed in a workman like manner.
3. This Agreement shall be terminable by Company in the event of Owner's material noncompliance with the requirements, conditions or specifications of this Agreement and the continuation thereof for a period of thirty (30) days following written notice to Owner or immediately after such written demand by Company if such non-compliance will result in Company's reasonable opinion to a substantial risk to health or safety. Should Company terminate this Agreement, Owner will relocate and/or remove the Encroachments at no expense or risk to Company.

Encroachment Agreement between Southern Star Central Gas Pipeline, Inc. & Neodesha Land Bank located in the SE/4 of the SE/4 Section 19 Township 30 S, Range 16 E, Wilson County, Kansas Tract 37721 & 37722.

4. No permanent structures, including without limitation landscaping, irrigations systems and signage not explicitly approved by this Agreement shall be allowed within Company's easement.
5. Owner agrees and understands that its work and encroachments are to strictly adhere to Company's Land Use and Developers Handbook located on-line at <https://www.southernstar.com/safety/pipeline-safety/>.
6. Owner will restrict all equipment traffic over the Company's pipeline until the pipeline has undergone a load study conducted and approved by Company. In order for that study to be conducted, Owner agrees to submit to Company (at sscencroachments@southernstar.com) a comprehensive list of equipment to be used on the pipeline easement. Owner understands that it shall be financially responsible for any and all outside engineering services required for Company to perform the Load Study and for complying with the requirements of said Load Study.

7. Indemnity/Hold Harmless/Insurance.

- (A) To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Company and Company's affiliated companies, partners, shareholders, employees and agents (collectively, "indemnitees") for, from and against any and all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments and reasonably incurred out of pocket expenses (including, without limitation, court costs, reasonable attorneys' fees and costs of investigation) (collectively, "liabilities") of any nature, kind or description of any indemnitee directly or indirectly arising out of, resulting from or related to (in whole or in part): (i) Owner's occupation and use of the existing pipeline easement area; (ii) construction, use, state of repair or presence of the encroachments; or (iii) any act or omission of Owner or Owner's officers, agents, employees, or contractors, or anyone directly or indirectly employed by any of them, or anyone they control or exercise control over, even if such liabilities arise from or are attributed to, in whole or in part, to the negligence of any indemnitee. The only liabilities with respect to which Owner's obligation to indemnify the indemnitees does not apply are liabilities wholly caused by the sole negligence or willful misconduct of an indemnitee.
- (B) Owner acknowledges that having the encroachments, whether permitted or not, on the existing Pipeline Easements provides some risk that the encroachments may be damaged in the course of Company's operations or activities. Therefore, notwithstanding any other provision in this agreement, to the fullest extent permitted by law, Owner releases the indemnitees from any loss, damage and/or claim from loss or damage to their property, including the encroachments, that Owner may have against the indemnitees resulting from the activities of Company in the ordinary course of its operations, provided that such release shall not apply to any loss, damage or claim wholly caused by the gross negligence or willful

misconduct of an indemnitee.

8. Owner shall notify or cause Company to be notified, at least forty-eight (48) hours prior to the performance of any construction or excavation work upon the Pipeline Easement. Owner covenants and agrees to notify or cause its representative to notify the appropriate state one-call center as required by law no less than forty-eight (48) hours prior to the commencement of excavation in or near the existing pipeline easement area. Company shall have the absolute right to perform any work upon, over or under the Pipeline Easements it reasonably deems necessary for the maintenance or operation of its facilities without prior notice to Owner.
9. During the exercise of its easement rights to construct, maintain and operate the pipeline and appurtenances, in the event Company or its contractors destroy or damage the encroachments herein permitted, including without limitation landscaping and/or irrigation systems, all such damages to said permitted items and all costs thereof shall be the sole responsibility of Owner, its successors and assigns, unless such loss, or cost or expense is directly and solely caused by the gross negligence or willful misconduct of Company, its agents, contractors and/or subcontractors.
10. During the exercise of its easement rights to construct, maintain and operate the pipeline and appurtenances, in the event Company or its contractors restrict or block access to the Encroachment or any of its facilities, Company will not be responsible for providing an alternate source of access, liable for the loss of any and all income and/or any and all damages caused by such activities.
11. Prior to commencement of construction of the above referenced work and Encroachment(s), Owner or Owner's contractor, shall provide Company certificates of insurance expressly naming Company as an additional insured and evidencing coverage in the amount of one million dollars (\$1,000,000.00) general liability, one million dollars (\$1,000,000.00) auto liability, and one million dollars (\$1,000,000.00) workers compensation and employers' liability insurance for the construction area described herein, and containing thirty (30) days prior written notice of cancellation. Certificates of Insurance and this signed Agreement will be submitted to the following address:

Southern Star Central Gas Pipeline, Inc.
Attn: Land Department
4700 State Route 56
P.O. Box 20010
Owensboro, KY 42304
12. No failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise of any right, power or privilege hereunder.

Encroachment Agreement between Southern Star Central Gas Pipeline, Inc. & Neodesha Land Bank located in the SE/4 of the SE/4 Section 19 Township 30 S, Range 16 E, Wilson County, Kansas Tract 37721 & 37722.

13. In the event it shall become necessary for either party to commence litigation to enforce any provision of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and attendant expenses in conjunction with such litigation.
14. Owner warrants that it is the current owner of the real property and/or the holder of the easement right(s) described herein and has the right, title and capacity to enter into this Agreement.
15. Under no circumstance shall Company be required to relocate a Pipeline Facility.
16. Owner agrees to abide by the Company's guidelines, procedures and requirements for working in and around Company's easement(s) and/or facilities and failure to do so will be considered a breach of this Agreement.
17. The terms of this Agreement shall constitute covenants running with the land and will be binding upon and inure to the benefit of the parties hereto, or their successors and assigns. The obligations of Owner herein shall survive the termination of this Agreement.

IN WITNESS WHEREOF, we hereunto set our hands and seals on the day and year indicated below our signatures.

COMPANY:

SOUTHERN STAR CENTRAL GAS PIPELINE, INC.

Charles Crews, Executive Vice-President and
Chief Operations Officer

Date: _____

Owner:

CITY OF NEODESHA

Devin Johnson, Mayor

Date: _____

Encroachment Agreement between Southern Star Central Gas Pipeline, Inc. & Neodesha Land Bank located in the SE/4 of the SE/4 Section 19 Township 30 S, Range 16 E, Wilson County, Kansas Tract 37721 & 37722.

CORPORATE ACKNOWLEDGEMENT

COMMONWEALTH OF KENTUCKY

COUNTY OF DAVIESS

Before me, the undersigned, a Notary Public duly commissioned in and for the county and state aforesaid, on this _____ day of _____, 20____, personally appeared Charles Crews, who being by me duly sworn, did say that he is the Executive Vice President and Chief Operations Officer of Southern Star Central Gas Pipeline, Inc., a corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and said Charles Crews acknowledged said instrument to be the free act and deed of said corporation.

In testimony whereof, I have hereunto set my hand and affixed my official seal at my office in said county and state the day and year last above written.

Notary Public

My Commission Expires _____, 20____.

LIMITED LIABILITY COMPANY ACKNOWLEDGEMENT

STATE OF _____

COUNTY OF _____

Before me, the undersigned, a Notary Public duly commissioned in and for the county and state aforesaid, on this _____ day of _____, 20____, personally appeared, _____, Devin Johnson, Mayor for City of Neodesha, known to me to be identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free act and deed of said, Municipal Corporation, for the use and purpose set forth.

Notary Public

My Commission Expires: _____, 20_____.

Exhibit A

Acquired by virtue of that certain Right-of-Way Easement Agreement located in the Southeast Quarter (SE/4) of the Southeast Quarter (SE/4), of Section Nineteen (19), Township Thirty South (T30S), Range Sixteen East (R16E), Wilson County, Kansas, granted by Wilma G Matthews, a single person, to Williams Gas Pipelines Central, Inc. dated October 13, 2000, and recorded in Book 161, on Page(s) 596, State of Kansas-Wilson County Register of Deeds Office.

Acquired by virtue of that certain Right-of-Way Easement Agreement located in the Southeast Quarter (SE/4) of the Southeast Quarter (SE/4), of Section Nineteen (19), Township Thirty South (T30S), Range Sixteen East (R16E), Wilson County, Kansas, granted by City of Neodesha, a Municipal Corporation, to Williams Gas Pipelines Central, Inc. dated December 21, 2000, and recorded in Book 161, on Page(s) 599, State of Kansas-Wilson County Register of Deeds office.

Encroachment Agreement between Southern Star Central Gas Pipeline, Inc. & Neodesha Land Bank located in the SE/4 of the SE/4 Section 19 Township 30 S, Range 16 E, Wilson County, Kansas Tract 37721 & 37722.

Exhibit B

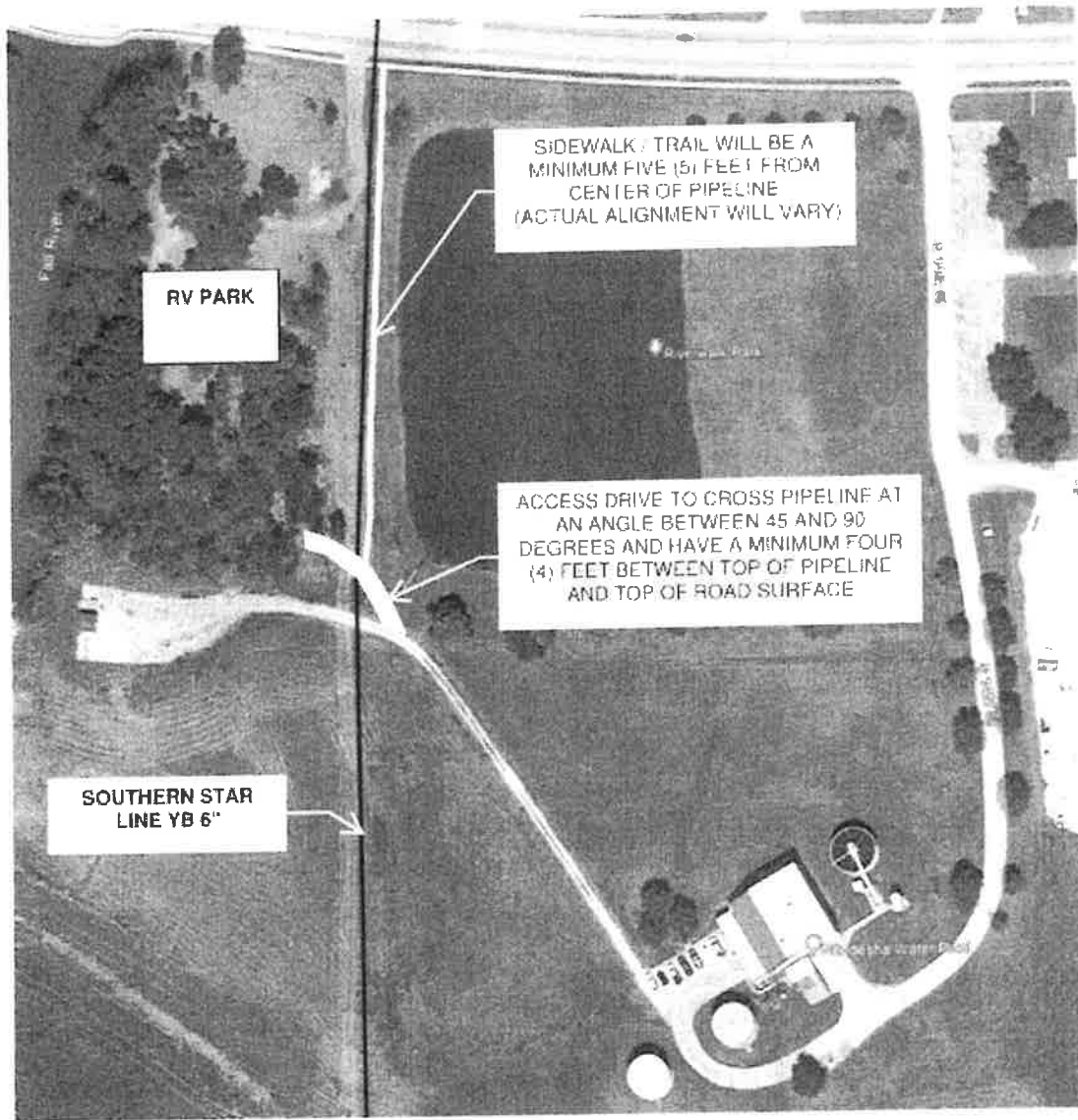
Beginning at a point 131.1 feet West of the Northeast corner of the Southeast Quarter of the Southeast Quarter (SE/4 SE/4) of Section Nineteen (19), Township Thirty (30) S, Range Sixteen (16) East, thence South a distance of 445 feet more or less; thence West a distance of 400 feet more or less to center line of Fall River, thence up stream along the center line of Fall River, a distance of 455.75 feet more or less to center of Neodesha - Fredonia road, thence East along said center of said road 321.80 feet more or less to point of beginning, Wilson County, Kansas.

BEGINNING 825 FEET WEST OF THE NE CORNER OF THE SE ¼ OF THE SE ¼ OF SECTION 19, TOWNSHIP 30, RANGE 16 EAST, THENCE WEST 486', THENCE SOUTH 540', THENCE EAST 486', THENCE NORTH 540' TO POINT OF BEGINNING

Exhibit C
Encroachment Assessment

LINE LETTER	YB 6"
NAME / DESCRIPTION	ACCESS DRIVE TO RV PARK CITY OF NEODESHA
LEGAL DESCRIPTION	SE/4-S19-T30S-R16E WILSON COUNTY, KANSAS
ENGINEER	MIKE DEGRAEVE
DATE	FEBRUARY 27, 2023

CITY OF NEODESHA will construct an access drive (asphalt, concrete, or gravel) and a sidewalk / trail (asphalt, concrete, gravel, etc.) over Southern Star's easement as shown on the exhibit below.



Encroachment Agreement between Southern Star Central Gas Pipeline, Inc. & Neodesha Land Bank located in the SE/4 of the SE/4 Section 19 Township 30 S, Range 16 E, Wilson County, Kansas Tract 37721 & 37722.

CONSULTING AGREEMENT

This Agreement entered into this 22nd day of July, 2024 by and between the CITY OF NEODESHA ("City") and J.W. Bair ("Jay"):

WHEREAS, the City of Neodesha, hereinafter referred to as City, and J.W. Baird, hereinafter referred to as Jay, wish to document a consulting agreement by which Jay will provide certain services to City; and

WHEREAS, the City owns and operates a Municipal Water/Wastewater Plant and is in need of a consultant to advise the City on various utility issues; and

WHEREAS, the Kansas Department of Health and Environment requires the services of a Class I Wastewater Certified Operator to be on hand; and

WHEREAS, Jay has the required certification and experience in this area and has agreed to provide these services under the following terms and conditions:

1. Length of Agreement. The term of this Agreement shall be for one year from the date signed and shall renew automatically each year unless terminated by either party in writing.
2. Scope of Services. To Provide a minimum of a minimum of a Class 4 Water Certification services as required by KDHE.
3. Compensation for Services. At this time no compensation will be made for the above services.
4. Termination. Either party may cancel the contract with a 30-day notice in writing.
5. Indemnification and Notice. Jay agrees and promises to indemnify and hold harmless City of and from any and all claims, demands, losses, causes of action, damage, lawsuits, judgments, including attorneys' fees and costs, to the extent caused by Jay' negligence arising out of or relating to his work as Consultant. The City in turn agrees and promises to indemnify and hold harmless Jay of and from any and all claims, demands, losses, causes of action, damage, lawsuits, judgments, including attorneys' fees and costs, to the extent caused by the City's negligence arising out of or relating to his work as Consultant.

IN WITNESS WHEREOF, in consideration of the material promises above, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

CITY OF NEODESHA, KANSAS

By: _____
Devin Johnson, Mayor

ATTEST:

Stephanie Fyfe, City Clerk

J.W. BAIR

By: _____

STATE OF KANSAS, WILSON COUNTY, SS:

BE IT REMEMBERED that on this 22nd day of July, 2024, before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared J.W. Bair, who is known to me to be the same person who executed the foregoing certificate.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my Notarial Seal the day and year last above written.

Notary Public

Drone Lease Contract Date: July _____, 2024

A Drone owned by Joseph Reyes ("Lessor") is leased by the City of Neodesha, Kansas ("Lessee") on the following terms:

1. Joseph Reyes will lease to Lessee the Drone {2017 DJI S/N: FA3X74KHP7- valued new at \$10,410.00) and related equipment for 25 years from the date of this contract.
2. The Lessee will pay the Lessor a one-time, non-refundable fee of \$1.00 for the use of the Drone and Drone equipment for a period to cover 25 years from the date of this contract.
3. The Lessee is responsible for any upgrades desired by the Lessee, as well as parts replacements or total replacement of the Drone if damaged beyond repair resulting from the Lessee's use of the Drone.
4. The Lessee shall not assign, sell, sublet, encumber, or otherwise transfer this Lease or the Drone or any rights thereto. Lessee shall not alter, disfigure, or cover up any marks of identification displayed on the Drone.
5. The Lessee is responsible for maintaining insurance coverage on the leased drone and equipment to cover repairs or replacement of the Drone if so needed if such needed repairs or replacement result from the Lessee's use of the Drone.
6. The Lessee shall use the Drone carefully and properly and shall comply with all FAA regulations, city ordinances, and regulations relating to the possession, use, or maintenance of the Drone. Lessee further agrees that the leased Drone will be used by Lessee for the ordinary and usual work for which it is designed and shall ensure that it will be used carefully and not be subjected to needless rough usage. Lessee shall neither permit the leased Drone to be operated with safety devices inoperative or removed nor permit personnel to operate the Drone without first having been instructed in its safe and proper use.
7. The operator of the Drone must have in their possession a remote pilot's license as granted by the FAA or a licensed pilot physically with them during operation.
8. Lessee acknowledges it has been properly trained on how to safely use the Drone. Lessee covenants it will not permit any employee, contractor, or person to use the Drone that has not been trained on how to safely operate the Drone and possess the necessary licenses or permits to operate the Drone.
9. The Lessor or the Lessee can terminate this lease at any time for any reason by written notice handed to the other party or notice of termination mailed to the address of the other party set out below. If the lease is terminated the lessor will collect the drone and all equipment that was leased with it effective immediately upon termination of the lease.
10. The Lessor agrees to accept the drone and drone equipment "as is" after the termination of the lease as long as the drone and drone equipment is not damaged. Items such as batteries going bad or normal wear and tear is not considered damage.

Joeseeph Reyes, Lessor

322 N 8th Street
Neodesha, Ks 66757

Date

City of Neodesha Mayor Devin Johnson,

Date