

**CITY COMMISSION MEETING  
Winfield, Kansas**

DATE: Monday, January 07, 2019  
TIME: 5:30 p.m.  
PLACE: City Commission – Community Council Room – First Floor – City Building

***AGENDA***

CALL TO ORDER .....Mayor Ronald E. Hutto  
ROLL CALL.....City Clerk, Brenda Peters  
MINUTES OF PRECEDING MEETING.....Monday, December 16, 2019

**OATHS OF OFFICE**

-Nomination and election of Mayor  
-Nomination and election of Presiding Officer

**PROCLAMATION**

-Proclaiming January 2020 as a time for celebration for Arbor Day

**BUSINESS FROM THE FLOOR**

-Citizens to be heard

**NEW BUSINESS**

Ordinances & Resolutions

**Bill No. 2001 – A Resolution** – Declaring the results of the General Municipal Election held in the City of Winfield, Kansas, on November 5, 2019.

**Bill No. 2002 – A Resolution** – Accepting a 2019 Urgent Need Community Development Block Grant (Walnut River Water Line).

**OTHER BUSINESS**

-Consider approving an Environmental Review Report for the 2019 Urgent Need Community Development Block Grant (Walnut River Water Line) Grant #19-IT-002  
-Consider approving an agreement with Midland GIS Solutions, providing for the inspection of approximately 190,000 linear feet of 6” and 8” sanitary sewer main.  
-Consider Cereal Malt Beverage License for Umi One, 822 Main St

**ADJOURNMENT**

-Next regular work session Thursday January 16, 2020 at 4:00 p.m.  
-Next regular meeting Tuesday, January 21, 2020.

**CITY COMMISSION MEETING MINUTES**  
**Winfield, Kansas**  
**December 16, 2019**

The Board of City Commissioners met in regular session, Monday, December 16, 2019 at 5:30 p.m. in the City Commission-Community Council Meeting Room, City Hall; Mayor Ronald E. Hutto presiding. Commissioners Phillip R. Jarvis and Gregory N Thompson were also present. Also in attendance were, Taggart Wall, City Manager; Brenda Peters, City Clerk; and William E. Muret, City Attorney. Other staff members present were Gary Mangus, Assistant to the City Manager; Patrick Steward, Director of Public Improvements; and Vincent Warren, Fire Chief.

City Clerk Peters called roll.

Commissioner Jarvis moved that the minutes of the December 2, 2019 meeting be approved. Commissioner Thompson seconded the motion. With all Commissioners voting aye, motion carried.

**PUBLIC HEARING**

-Consider Amendments to the Annual Budget for 2019. Mayor Hutto opened a public hearing regarding amendments to the 2019 annual budget for the City of Winfield. With no one present to comment, Mayor Hutto closed the public hearing.

**NEW BUSINESS**

**Bill No. 1987 – An Ordinance** – Amending the Annual Budget for the City of Winfield, Kansas, for the year ending December 31, 2019, and the Ordinance adopting said budget providing for expenditures not to exceed amounts stated herein. City Manager Taggart explains that this Ordinance will amend two funds, Special Street and Highway Fund and the Natural Gas Utility Fund. Upon motion by Commissioner Thompson, seconded by Commissioner Jarvis, all Commissioners voting aye, Bill No. 1987 was adopted and numbered Ordinance No. 4122.

**Bill No. 1988 – A Resolution** – Declaring the entire boundary of the City of Winfield, Kansas. Director of Public Improvements Steward explains that there was a change to the City's boundary, an annexation adjacent to Country Club Estates. Upon motion by Commissioner Jarvis, seconded by Commissioner Thompson, all Commissioners voting aye, Bill No. 1988 was adopted and numbered Resolution No. 6819.

**Bill No. 1989 – A Resolution** – Authorizing the execution of an agreement for engineering services for improvements on US160 (9th Ave.) between College Street and Wheat Road, Project No. 160-18 KA-5421-01 between the City of Winfield, Kansas and MKEC Engineering, Inc. Director of Public Improvements Steward explains that this Resolution authorizes entering into an agreement with MKEC Engineering, Inc., of Wichita for engineering design services for the CCLIP project on East 9th Ave from College St to Wheat Rd. Upon motion by Commissioner Thompson, seconded by Commissioner Jarvis, all Commissioners voting aye, Bill No. 1989 was adopted and numbered Resolution No. 6919.

**Bill No. 1990 – A Resolution** – Approving issuance by the Board of County Commissioners of the Cowley County, Kansas of its Taxable Industrial Revenue Bonds to pay the costs of the acquisition, improving and equipping of an existing commercial facility to be leased to 22765 Smyer Street LLC,

which facility is located within the limits of Strother Field Airport/Industrial Park. City Clerk Peters explains that this Resolution will approve issuance of Cowley County Taxable Industrial Revenue Bonds, up to an amount of \$900,000. Since this project is located at Strother Field, both Arkansas City and Winfield would need to approve the bond issuance. Upon motion by Commissioner Jarvis, seconded by Commissioner Thompson, all Commissioners voting aye, Bill No. 1990 was adopted and numbered Resolution No. 7019.

#### **OTHER BUSINESS**

-Consider 2020 CMB License Applications – City Clerk Peters presented the following list of applicants for CMB licenses for 2020. Peters asks the Commission to approve all applications.

Petro Stop – Babi & Co.	2124 E 9 <sup>th</sup> Ave.
Casey's General Store	219 W. 9 <sup>th</sup> Ave.
Dillons	2310 Main St.
One Stop LLC	221 E. 9 <sup>th</sup> Ave.
Food Mart	1500 Main St.
Walmart Store #369	2202 Pike Rd.
Boss Hoggs Bar BQ	314 W. 8 <sup>th</sup> Ave
New China Wok Buffet	1620 Main St.
Quail Ridge Golf Course	3805 Quail Ridge Dr.
Pizza Hut	1902 Main St.
Jumpstart Shamrock	1318 Main St.

Commissioner Thompson made a motion that the CMB license applications for 2020 CMB be approved as presented. Motion was seconded by Commissioner Jarvis. With all Commissioners voting aye, motion carried.

-Consider purchase of a 6 X 6 Military 5-ton Cargo Truck for the Fire Department. Fire Chief Warren asked the Commission to approve the purchase of a 6 X 6 Military 5-ton Cargo Truck. Commissioner Jarvis made a motion to approve the purchase. Motion was seconded by Commissioner Thompson. With all Commissioners voting aye, motion carried.

#### **ADJOURNMENT**

Upon motion by Commissioner Thompson, seconded by Commissioner Jarvis, all Commissioners voting aye, the meeting adjourned at 5:40 p.m.

Signed and sealed this 3<sup>rd</sup> day of January 2020.

Signed and approved this 6<sup>th</sup> day of January 2020.

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Carina Anderson, Deputy City Clerk

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Ronald E. Hutto, Mayor

## **PROCLAMATION**

WHEREAS, in 1872 J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees; and,

WHEREAS, this day, called **Arbor Day**, was first observed with the planting of more than one million trees in Nebraska, and is now observed through the nation and world; and,

WHEREAS, Arbor Day is now observed on different dates throughout the year based on best tree planting times throughout the nation and the world; and,

WHEREAS, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce life-giving oxygen, and provide habitat for wildlife; and

WHEREAS, trees are a renewable resource giving us paper, wood for our home, fuel for our fires, and countless other wood products; and,

WHEREAS, trees in Winfield increase property values, enhance the economic vitality of business areas, and beautify our community; and,

WHEREAS, trees, when and wherever they are planted, are a source of joy and spiritual renewal; and,

NOW, THEREFORE, I, Phillip R. Jarvis, Mayor of the City of Winfield, Kansas, do hereby proclaim January 2020, as a time of celebration for:

### **ARBOR DAY**

in Winfield and urge all citizens to consider planting trees and support efforts to protect our trees and woodlands, and to support Winfield's urban forestry program.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Winfield, Kansas, to be affixed this 6th day of January 2020.

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Phillip R. Jarvis, Mayor

ATTEST:

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Brenda Peters, City Clerk

**A RESOLUTION**

**DECLARING** the results of the General Municipal Election held in the City of Winfield, Kansas, on November 5, 2019

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**WHEREAS**, the General Municipal Election of the City of Winfield, Kansas, for the election of two (2) Commissioners was held on November 5, 2019, and:

**WHEREAS**, the County Clerk of Cowley County, Kansas, has certified the election results as determined by the County Board of Canvassers, said results being as follows:

Ronald E. Hutto 906  
Gregory N. Thompson 900

and;

**WHEREAS**, according to K.S.A. 12-005a, the person receiving the largest number of votes at said election shall thereby be elected to a four-year term of office and the person receiving the next largest number of votes at said election shall thereby be elected to a two-year term,

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

**Section 1.** It is hereby declared that the results of the General Municipal Election held on November 5, 2019, are as follows:

- a. Ronald E. Hutto who received 906 votes has been elected to a four-year term of office as a member of the governing Body of the City of Winfield, Kansas,
- b. Gregory N. Thompson who received 900 votes has been elected to a two-year term of office as a member of the Governing Body of the City of Winfield, Kansas,
- c. Said terms shall commence at this first regular meeting of the Governing Body following certification of said election, upon taking and subscribing to an oath or affirmation as specified in K.S.A. 54-106.

**Section 2.** This resolution shall be in full force and effect from and after its passage and approval.

**ADOPTED** this 6<sup>th</sup> day of January 2020.

(SEAL)

\_\_\_\_\_  
Phillip R. Jarvis, Mayor

ATTEST:

\_\_\_\_\_  
Brenda Peters, City Clerk

Approved as to form: \_\_\_\_\_  
William E. Muret, City Attorney

Approved for Commission action: \_\_\_\_\_  
Taggart Wall, City Manager

**A RESOLUTION**

**ACCEPTING** a 2019 Urgent Need Community Development Block Grant  
(Walnut River Water Line).

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**WHEREAS**, the City of Winfield applied for assistance through the Kansas Department of Commerce for 2019 Urgent Need Community Development Block Grant funding; and

**WHEREAS**, the Kansas Department of Commerce notified the City of Winfield that it had been selected to receive a water line replacement project grant in the amount of \$180,135.

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

**Section 1.** The Governing Body of the City Winfield, Kansas, does hereby accept Grant No. 19-IT-002, a 2019 Urgent Need Community Development Block Grant, in the amount of \$180,135. The Mayor of the City of Winfield, Kansas, is authorized and directed to execute a Grant Agreement, as well as, various documents in accord with the rules and procedures set forth by the Kansas Department of Commerce; a copy of which is attached hereto and made a part hereof.

**Section 2.** This resolution shall be in full force and effect from and after its passage and approval.

**ADOPTED** this 6<sup>th</sup> day of January 2020.

(SEAL)

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Phillip R. Jarvis, Mayor

ATTEST:

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Brenda Peters, City Clerk

Approved as to form: \_\_\_\_\_  
William E. Muret, City Attorney

Approved for Commission action: \_\_\_\_\_  
Taggart Wall, City Manager

STATE OF KANSAS  
GRANT AGREEMENT NO. 19-IT-002  
between the

STATE OF KANSAS  
DEPARTMENT OF COMMERCE

and the

City of Winfield

**I. Grant Agreement**

- A. This Grant Agreement, hereinafter called "Agreement," is between the State of Kansas, Department of Commerce, and its representative, hereinafter called "Department" and the **City of Winfield**, Kansas, hereinafter called the "Grantee." This Agreement consists of the body and the following: CONDITION LETTER (attached hereto as Attachment A), SPECIAL CONDITIONS (attached hereto as Attachment B), and the Grantee's APPROVED PROJECT APPLICATION dated December 23, 2019, (attached and incorporated by reference as Attachment C, a copy of which shall be maintained and available in the Department's files) and the GRANTEE HANDBOOK (which is attached and incorporated by reference as Attachment D).

**II. Authority**

- A. This Agreement is financed in part through a grant provided to the Department by the United States Department of Housing and Urban Development (HUD) under Title I of the Federal Housing and Community Development Act of 1974, as amended (42 USC 5301 et. seq.), hereinafter called "the Federal Act." As provided in the Federal Act, the State of Kansas, through the Department, has elected to administer the federal program of Small Cities Community Development Block Grants.
- B. The Department, in accordance with the provisions of K.S.A. 74-5001 et. seq., hereinafter called "the State Act," has approved the application of the Grantee and awarded funds for the purpose of supporting the Grantee's Community Development Program.
- C. In the event of changes in any applicable Federal regulations and/or law, this Agreement shall be deemed to be amended when required to comply with any law so amended.
- D. Federal Program – Community Development Block Grant Cluster (CDBG) (CFDA No. 14.228).

**III. Description of Activities**

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

**IV. Period of Performance**

The period of performance for all activities assisted by this Agreement shall commence on **JANUARY 15, 2020**, hereinafter called the "Commencement Date," and shall be complete on **JANUARY 14, 2021**, hereinafter called the "Completion Date," except those activities required for close-out and final audit.

**V. Compensation**

- A. In consideration of the Grantee's satisfactory performance of the work required under this Agreement and the Grantee's compliance with the terms of this Agreement, the Department shall provide the Grantee the total sum of **\$180,185** in Community Development Block Grant funds. Such funds shall be used by the Grantee in accordance with the Activities listed and budgeted on the APPROVED PROJECT APPLICATION and the CONTRACT PROJECT BUDGET FORM.
- B. In addition, the Grantee shall provide **\$17,000** in other sources of funds to this Community Development Program and such funds shall be used by the Grantee in accordance with the Activities and budget on the APPROVED PROJECT APPLICATION.
- C. It is expressly understood and agreed that in no event will the total program funds provided by the Department exceed the sum of **\$180,185**. Any additional funds required to complete the program activities set forth in this Agreement will be the sole responsibility of the Grantee, and not the responsibility of the Department.



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

#### **VI. Indemnification**

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

#### **VII. Obligations of Grantee**

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

#### **VIII. Environmental Review Compliance**

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

#### **IX. Program Costs**

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

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

**X. Requisition of Grant Funds**

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

**XI. Depositories for Program Funds**

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

## **XII. Financial Management**

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

## **XIII. Monitoring and Reporting**

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

## **XIV. Procurement Procedures**

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

## **XV. Bonding Requirements**

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

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

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

#### **XVI. Program Income**

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

#### **XVII. Program Close-out Procedures**

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

#### **XVIII. Termination for Convenience**

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

## **XIX. Suspension or Termination-for-Cause**

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

## **XX. Audit Requirements**

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

## **XXI. Retention of and Access to Records**

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

## **XXII. Conflict of Interest**

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

## **XXIII. Equal Opportunity**

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

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

## **XXIV. Waiver of Enforcement**

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

## **XXV. Reversion of Assets**

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

## **XXVI. Budget Amendments and Other Changes**

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

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

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

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

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

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

DATED BY THE DEPARTMENT OF COMMERCE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20 \_\_\_\_.

STATE OF KANSAS  
DEPARTMENT OF COMMERCE

By: \_\_\_\_\_  
CDBG Program  
Kansas Department of Commerce

By: \_\_\_\_\_  
Notary Public, State of Kansas

City of Winfield Kansas  
(Grantee)

By: \_\_\_\_\_  
(Name) (Title)

(SEAL)

ATTEST: \_\_\_\_\_  
(For the Grantee)

## SPECIAL CONDITIONS

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

1. As provided in Section IX., Program Costs, F., the Notification of Award for the grant under this Agreement is dated **DECEMBER 23, 2019**.
2. As provided in Section XIII., Monitoring and Reporting, B., the Grantee shall submit Quarterly Progress Reports to the Department. The reporting periods consist of January/February/March, April/May/June, July/August/September and October/November/December. Quarterly Progress Reports are to be submitted to the Department on or before ten (10) days after the end of each quarter. A Quarterly Progress Report shall be submitted for each quarter, or portion thereof, during the Period of Performance as provided in Section IV. Any extension of time approved by the Department will require additional Quarterly Progress and Financial Reports to be submitted in accordance with the above-referenced schedule.
3. As provided in Section IV., Period of Performance, all activities assisted by this Agreement shall be completed on **JANUARY 14, 2021** except for those activities required to close out the program, such as the Final Program Report and the Final Audit Report.
4. As provided in Section XIII., Monitoring and Reporting, C., the Grantee shall submit a Final Program Report to the Department on or before **APRIL 14, 2021**.
5. The Grantee shall not use funds that have been granted by HUD under the Federal Act, or which may have been accrued as a consequence of activities supported with such grant funds (program income), in whole or in part for the support of the Activities covered by this Grant Agreement without first having secured the express written approval of HUD.
6. The Grantee shall be permitted to satisfy the program audit requirements of Section XX., Audit Requirements, by conducting a single municipal government-wide financial audit at the time of an annual audit provided for by Kansas law. Said audit will be completed on or before September 30 of each year the grant is open and one year after the grant is closed. Grantees receiving federal assistance in any fiscal year must have an audit made in accordance with 2 CFR Part 200 for such fiscal year unless exempted under 2 CFR Part 200. Those Grantees having expended \$750,000 or more of total federal funds from all sources must have an annual audit.
7. Will require each unit of local government to be distributed Title I funds to adopt and enforce a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations in accordance with Section 519 of Public Law 101-144, (the 1990 HUD Appropriations Act) and prohibiting the barring of entrance or exit to any facility or location which is the subject of such demonstration (Cranston-Gonzales National Affordable Housing Act).
8. In addition to the above certifications, the undersigned also makes the certification required which is attached regarding Lobbying.



## CERTIFICATION REGARDING LOBBYING

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

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

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

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Date

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Official

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

**AUTHORIZATION FOR ELECTRONIC DEPOSIT OF SUPPLIER PAYMENT**  
(Form must be completed by the Supplier. All fields are mandatory for completed sections.)

**Part I: Supplier Information**

SMART Supplier ID (Provided by state agency. Do not enter SSN or TIN.)			
SMART Supplier Name		Contact	
Street			
City		State	Zip
Telephone Number		Email	

**Part II: New Enrollments** All suppliers, individual and business, must include proof of checking or savings account (voided check or bank letter).

Bank Name	Supplier Name as It Appears on Bank Account
Bank Routing Number	Account Number
Account Type (select one): <input type="checkbox"/> Checking Account <input type="checkbox"/> Savings Account	

**Part III: Change in Banking Information** Complete all fields in Part II and Part III for a change in banking information.

Old Bank Name	Supplier Name as It Appears on Bank Account
Old Bank Routing Number	Old Account Number
Date of Recent Payment	Amount of Recent Payment

**Part IV: Signature of Supplier**

I, the undersigned, authorize the State of Kansas to originate future electronic deposit entries directly into my checking or savings account indicated above and to correct any errors which may occur from the transactions. I also authorize the Financial Institution to post these transactions to that account. This authorization is to remain in force until the State of Kansas receives written notice of cancellation from me. I certify under penalty of perjury under the laws of the State of Kansas that the foregoing is true and correct.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Name (printed) \_\_\_\_\_ Job Title \_\_\_\_\_

**Part V: Agency Certification (to be completed by state agency)**

I, the undersigned, certify that I have contacted this supplier and have verified the information is true and correct and that the contact is authorized to make account changes for the supplier.

Signature \_\_\_\_\_ Date \_\_\_\_\_ Print Name \_\_\_\_\_

Agency Number \_\_\_\_\_ Agency Phone Number \_\_\_\_\_

Supplier Contact Name \_\_\_\_\_ Supplier Contact Phone/Email \_\_\_\_\_

# KANSAS DEPARTMENT OF COMMERCE

DESIGNATION OF DEPOSITORY: DIRECT DEPOSIT

Section 1: DESIGNATION		
GRANTEE		Project No.
STREET ADDRESS		PO BOX
CITY	STATE	ZIP CODE
Please check one of the following: <input type="checkbox"/> a special account has been established; or <input type="checkbox"/> the General account exists for the direct deposit of CDBG Funds at the following bank:		
BANK NAME		
ADDRESS		
CITY	STATE	ZIP CODE
The account number to which all CDBG monies for this project will be deposited is:		
Bank's ABA NO.		ACCOUNT NO.
I certify that this is a non-interest bearing account which shall be maintained on a basis consistent with Fiscal Service, Treasury 31 CFR Ch. 11 Part 205.		
GRANTEE CHIEF ELECTED OFFICIAL'S TYPED NAME		DATE
SIGNATURE OF GRANTEE CHIEF ELECTED OFFICIAL:		
Section 2: CERTIFICATION BY DEPOSITORY		
<p>The account identified in Section 1 has been established with this bank. All necessary documentation including a power of attorney where necessary, which will enable this bank to receive CDBG funds directly from the State of Kansas to the account identified in Section 1 without any endorsement by the payee, has been received and is in this depository's custody.</p> <p>This depository's deposits are insured by: _____</p> <p>Appropriate collateral will be pledged by this bank any time that the depositor's balance exceeds this insurance limit.</p> <p>Immediately upon deposit of CDBG funds we will notify the grantee and, subsequently, provide a copy of the documentation of deposit. Monthly statements that show the checks payee name will be provided to the account holder.</p>		
AUTHORIZED BANK OFFICER'S TYPED NAME		DATE
SIGNATURE OF AUTHORIZED BANK OFFICER:		



## Request for Commission Action

**Date:** December 10, 2019

**Requestor:** Gus Collins, Director of Utilities

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**Action Requested:** Consider approving an agreement with Midland GIS Solutions. Providing for the inspection of approximately 190,000 linear feet of 6” and 8” sanitary sewer main.

**Analysis:** The utilities staff have been preparing a plan to analyze the condition of our older sanitary sewer infrastructure. Annually the City allocates monies to repair certain segments of the pipeline. The difficulty is two-fold; prioritizing the projects by what piping needs replaced and the limited resources to allocate towards those infrastructure replacements. This new technology allows the City to analyze many more feet of sanitary sewer piping at a more affordable cost. Thus, maximizing our budget dollars.

The technology utilizes a “sound frequency” transmitted through each segment of the line from manhole to manhole. The actual details of the information provide a grading of that segment on a 0 – 10 scale. The information provided does not specifically identify the location or issue, but it does determine the condition, good or bad, of the pipe itself. The pipeline recommended for this method is 70 to 80 years old. We also coordinate the location of the use of this method in areas that will be in line with the 2020 (and beyond) street program.

**Fiscal Impact:** Approximately \$30,000. Recommending budgeted monies in 2019 for such professional services. I am recommending funding half in 2019 and the other half from 2020 budget.

**Attachments:**



## Professional Service Agreement

Acoustic Testing Services

Date: December 6, 2019

TO:	
<b>Contact</b>	<b>Beau Bailey</b>
<b>Title</b>	<b>Water/Wastewater Supervisor</b>
<b>Organization</b>	<b>City of Winfield, KS</b>
<b>Address</b>	<b>City Hall, 200 E. 9<sup>th</sup> Avenue Winfield, KS 67156</b>
<b>Phone</b>	<b>(620) 220-5500</b>
FROM:	
<b>Name of Firm</b>	<b>Midland GIS Solutions</b>
<b>Address</b>	<b>501 N. Market St. Maryville, MO 64468</b>
<b>Contact</b>	<b>Erin Allen</b>
<b>Phone</b>	<b>(660) 254-9960</b>
<b>Email</b>	<b><a href="mailto:erin.allen@midlandgis.com">erin.allen@midlandgis.com</a></b>

Thank you for your recent request for acoustic testing services. The following documentation describes Midland's understanding of the project and its proposed Scope of Services.

# Scope of Services

## DATA COLLECTION SPECIFICATIONS

Midland GIS shall perform SL-RAT acoustic inspection services in conformance with the requirements for Acoustic Inspection Equipment for Small Diameter (6" to 18") Gravity-Fed Sanitary Sewer Lines. The receiving unit (microphone) will be set on an open manhole at the other end of the sewer line segment of the sending unit (Speaker).

- The sound will always be transmitted downstream in the sewer line segment.
- Typical acoustic inspection time is approximately 3 minutes once the manhole is opened.
- Midland GIS will mark each manhole with survey marking paint after the pipe segment has been completed.
- If the pipe segment has a drop manhole on both ends, Midland GIS will not be able to perform the acoustic tenting and will note that in the field.

## ASSESSMENT

Pipe assessment scaled from 0 to 10 with the following general interpretation will be captured during the acoustic inspections; Block, Poor, Fair, Good.

## CITY REQUIREMENTS

- City will make all manholes accessible for Midland GIS prior to or during the time period field crews are on site.
- Assist Midland GIS where high levels of traffic control are required.
- City will provide Midland GIS a hard copy map, CAD file or GIS data for reference.

## DELIVERY ITEMS (Included in Fee Schedule)

- Esri ArcGIS Desktop 10.x Geodatabase containing sanitary sewer acoustic inspection datasets.
- Microsoft Excel file containing all data collected by the SL-RAT for each line segment
- 36x36 Hard Copy map of acoustic testing results

## FEE SCHEDULE

Services	Quantity	Price
Acoustic Testing – 8" Gravity Main	105,652 ft. @ \$.18 per ft.	\$19,017.36
Acoustic Testing – 6" Gravity Main	84,582 @ \$.18 per ft.	\$15,225.30
<b>TOTAL:</b>		<b>\$34,242.66</b>

## MIDLAND GIS SOLUTIONS

  
\_\_\_\_\_  
**Signature:**

12-06-19

\_\_\_\_\_  
**Date:**

## CITY OF WINFIELD, KANSAS

\_\_\_\_\_  
**Signature:**

\_\_\_\_\_  
**Date:**

## TERMS AND CONDITIONS

The following terms and conditions are incorporated in and become a part of the proposal between Client and Midland GIS Solutions, Inc. Client and Midland GIS Solutions, Inc. agree as follows:

### ACCESS

Client shall arrange for access to and make all provisions for Midland GIS Solutions, Inc. to enter upon all public and private lands as required for Midland GIS Solutions, Inc. to perform its services.

### INVOICES

Client shall be invoiced on a monthly or phased basis as set forth in the proposal. Payment shall be due within 30 days after Client's receipt of an invoice. Client is solely responsible for payment of services. Payment will in no way be conditional upon Client receipt of payment for Client accepted services provided by Midland GIS Solutions, Inc. Interest shall accrue on past due invoices at the rate of 1 ½ percent per month (18% per annum), or the maximum rate allowed by law, whichever is less, from the date that payment was first due. Payments shall be applied first to accrued interest and then to unpaid principal. Client agrees to pay Midland GIS Solutions fees, costs, and other reasonable expenses, including attorney's fees, incurred in any efforts to enforce any provision of this Agreement, including efforts to compel payments of past due amounts. If a project is inactive for more than 45 days, Midland GIS Solutions may suspend the services and bill Client for all services performed to date.

### MIDLAND GIS SOLUTIONS, INC. INSURANCE REQUIREMENTS

Midland GIS Solutions shall maintain in force throughout the term of this Agreement insurance of the types and in the minimum amounts set forth below.

- 1.) WORKERS COMPENSATION: Statutory Coverage, including Employer's Liability with minimum limits of \$1,000,000.
- 2.) COMMERCIAL GENERAL LIABILITY: \$1,000,000 Combined Single Limit per occurrence for Bodily Injury, Personal Injury, and Property Damages, including Contractual Liability covering Midland GIS Solutions, Inc. indemnification obligations in this Agreement.

3.) COMPREHENSIVE AUTOMOBILE LIABILITY: \$1,000,000 Combined Single Limit per accident including any auto, all owned autos, hired autos and non-owned autos.

4.) PROFESSIONAL LIABILITY: \$2,000,000.00

5.) VALUABLE PAPERS: \$150,000.00

### INDEMNITY

Midland GIS Solutions, Inc. agrees to indemnify, defend and hold Client harmless from and against any and all claims, demands, suits, damages, and costs (including attorney's fees and cost of defense) due to bodily injury or property damages arising directly out of Midland GIS Solutions, Inc. negligence, but only to the extent that such indemnity is covered by Midland GIS Solutions, Inc. CGL or Professional Liability insurance.

As a material part of the consideration to Midland GIS Solutions, Inc., Midland GIS Solutions assumes all risk of damage to its property or injury to persons, including its agents, contractors and employees in performance of Services hereunder, and Midland GIS Solutions, Inc. hereby waives all claims in respect thereof against Client, except for any claim arising out of Client's negligence or willful misconduct. As used in this Section, the term "Client" shall include Client's employees, agents and contractors, if applicable, and "Midland GIS Solutions, Inc." shall include Midland GIS Solutions, Inc. employees, agents and contractors, if applicable. Client agrees to indemnify, defend and hold Midland GIS Solutions, Inc. harmless from and against any and all claims, demands, suits, damages, and costs (including attorney's fees and cost of defense) due to bodily injury or property damages arising directly out of Client's negligence

### TESTING

Client shall independently verify the accuracy of Midland GIS Solutions, Inc. services prior to using or relying on the same (or providing the same to others for any reason), and in an event no later than six (6) months after completion of the services (the "Claim Period"). If Client fails to take commercially reasonable efforts to verify the accuracy of Midland GIS Solutions, Inc. services as required herein then Client shall be deemed to have waived all claims and rights of recovery against Midland GIS Solutions, Inc., regardless of legal theory.

## **RIGHT TO CURE**

If Client discovers errors in the services within the Claim Period, Client shall promptly notify Midland GIS Solutions, Inc. and Midland GIS Solutions, Inc. shall have the right for ninety (90) days after receipt of Client's notice (or such longer period if 90 days is insufficient) to correct such defects at Midland GIS Solutions, Inc. sole cost.

## **LIMITATION OF LIABILITY**

To the fullest extent permitted by law, Midland GIS Solutions, Inc. total aggregate liability to the Client arising out of this Agreement, whether arising in contract, warranty, tort (including negligence), strict liability, or otherwise, is limited to the Total Price paid to Midland GIS Solutions, Inc.

NOT WITHSTANDING ANYTHING TO THE CONTRARY, NEITHER CLIENT NOR MIDLAND GIS SOLUTIONS, INC. SHALL BE LIABLE TO THE OTHER FOR, AND EACH EXPRESSLY WAIVES THE RIGHT TO RECOVER, CONSEQUENTIAL, INDIRECT, PUNITIVE, SPECIAL OR EXEMPLARY LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

## **OTHER**

Any services being provided to Client by Midland GIS Solutions, Inc. may be terminated by either party upon ten (10) days prior written notice, and in such event Midland GIS Solutions, Inc. shall be paid by Client for all services performed up to and including the termination date, including reimbursable expenses.

Neither Client nor Midland GIS Solutions, Inc. shall be liable to the other for damages or delay in performance caused by acts of God, strikes, labor disputes, accidents or any other event beyond the control of the other or its employee's and agents.

All disputes arising out of or relating to this Agreement shall be decided by arbitration, in accordance with the rules of the American Arbitration Association. The prevailing party shall be awarded attorney's fees and costs.

Midland GIS Solutions, Inc. agrees that all materials, reports, drawings, studies, specifications, estimates,

maps, computer data tapes, computations and other materials prepared by or for Client under the terms of this Agreement shall upon proper payment by Client to Midland GIS Solutions, Inc. be the property of the Client. However, any processes, procedures, programs, software, or similar practices of Midland GIS Solutions, Inc., whether developed prior to or during the project, shall remain the property of Midland GIS Solutions, Inc. until sold or licensed to Client for its use or use by others for separate compensation. Client shall not alter the same in any manner and shall waive any claim against Midland GIS Solutions, Inc. and shall, to the fullest extent permitted by law, indemnify, defend, and hold Midland GIS Solutions, Inc. harmless from any claim or liability for injury or loss arising from unauthorized alteration of Midland GIS Solutions, Inc. work product.

Midland GIS Solutions, Inc. shall keep confidential all information obtained from and designated as confidential by Client and shall not divulge any confidential information concerning the Project to any person or entity (other than Midland GIS Solutions, Inc. subcontractors, employees or other persons or entities to the extent necessary to complete the services) unless written approval is granted by the Client or as ordered by a court of competent jurisdiction.

This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri, without regard to its conflicts of laws rules. Should a conflict of terms arise from agreed to flow down provisions, the terms of this agreement shall prevail.

This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.