

**CITY COMMISSION MEETING
Winfield, Kansas**

DATE: Monday, June 05, 2017
TIME: 5:30 p.m.
PLACE: City Commission – Community Council Room – First Floor – City Building

AGENDA

CALL TO ORDERMayor Brenda K. Butters
ROLL CALL.....City Clerk, Brenda Peters
MINUTES OF PRECEDING MEETING.....Monday, May 15, 2017

PRESENTATION

-Chief Alan Stoll - Retirement

OATHS OF OFFICE

-Winfield Police Department
Bradley Gamber
John Adams

BUSINESS FROM THE FLOOR

-Citizens to be heard

NEW BUSINESS

Ordinances & Resolutions

Bill No. 1734 - A Resolution - Fixing the time and place and providing for notice of a public hearing before the Governing Body of the City of Winfield, Kansas, regarding the condemnation of a certain structures, a house in the City of Winfield, Cowley County, Kansas. (1012 Lowry)

Bill No. 1735 - A Resolution - Fixing the time and place and providing for notice of a public hearing before the Governing Body of the City of Winfield, Kansas, regarding the condemnation of a certain structures, a house in the City of Winfield, Cowley County, Kansas. (420 Soward)

Bill No. 1736 - A Resolution - Determining the existence of certain nuisances in the City of Winfield, Kansas, and authorizing further action pursuant to the City Code of said City. (1316 Mansfield)

Bill No. 1737 - A Resolution - Authorizing and directing the Mayor and Clerk of the City of Winfield, Kansas, to execute Bridge Replacement Project Agreement No. 39-17 between the City and the Secretary of the Kansas Department of Transportation, relating to Federal Aid for the replacement of a bridge in the City.

Bill No. 1738 - A Resolution - Authorizing and directing the Mayor and Clerk of the City of Winfield, Kansas, to execute a contract for Project No. 17-TI830 for asphalt street improvements between the City of Winfield, Kansas and APAC-Kansas, Inc. Shears Division, Wichita, Kansas.

Bill No. 1739 - A Resolution - of the City of Winfield, Kansas authorizing the signing of a contract with the Kansas Power Pool (KPP) for the purchase of power and energy and the associated transmission service.

OTHER BUSINESS

-Consider Engineering Services Agreement with Certified Engineering Design, P.A. for a lagoon at the Water Treatment Plant

ADJOURNMENT

-Next Commission work session 4:00 p.m. Thursday, June 15, 2017.
-Next regular meeting 5:30 p.m. Monday, June 19, 2017.

CITY COMMISSION MEETING MINUTES
Winfield, Kansas
May 15, 2017

The Board of City Commissioners met in regular session, Monday, May 15, 2017 at 5:30 p.m. in the City Commission-Community Council Meeting Room, City Hall; Mayor Brenda K. Butters presiding. Commissioners Ronald E. Hutto and Gregory N. Thompson were also present. Also in attendance were Jeremy Willmoth, 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 Community Development and Mark Olney, Director of Parks and Public Land.

City Clerk Peters called roll.

Commissioner Thompson moved that the minutes of the May 1, 2017 meeting be approved. Commissioner Hutto seconded the motion. With all Commissioners voting aye, motion carried.

PROCLAMATION

Mayor Brenda K. Butters presented a proclamation recognizing the Winfield Area Chamber of Commerce, the Kansas Sampler Festival-Winfield Steering Committee, and the over 400 volunteers who worked together as one to successfully showcase our park, community, and state.

PRESENTATIONS

-Mayor Butters recognized the City's Park Department represented by Parks Director Olney for receiving the Best of Cowley County award for the best golf course and campgrounds, and for the Vietnam Memorial.

BUSINESS FROM THE FLOOR

NEW BUSINESS

Bill No. 1730 – A Resolution – Authorizing and directing the Mayor of the City of Winfield, Kansas to execute an agreement between the City of Winfield, Kansas and Alexander Home Elements, LLC, Mahlon E. Alexander, President, for providing the construction of certain improvements for County Club Villas, a residential development. Community Development Director Steward explains that this resolution considers a development agreement between the City and Alexander Home Elements, L.L.C. The agreement sets forth parameters of future development of the Country Club Villas by outlining what is expected from both the City and the Developer. Steward explains that approval of this agreement will lead to future agreements and petitions for the proposed future improvements that will also require Commission action. Upon motion by Commissioner Hutto, seconded by Commissioner Thompson all Commissioners voting aye, Bill No. 1730 was adopted and numbered Resolution No. 2617.

Bill No. 1731 – A Resolution – Determining the existence of certain nuisances in the City of Winfield, Kansas, and authorizing further action pursuant to the City Code of said City. Community Development Director Steward explains that this resolution was to be considered in order for clean up to occur on property located at 328 N. Michigan Street. Steward asks that this

resolution either be stricken or not acted upon, as the property owners have come into compliance with the City's requirements. Bill No. 1731 died due to lack of a motion.

Bill No. 1732 – A Resolution – Determining the existence of certain nuisances in the City of Winfield, Kansas, and authorizing further action pursuant to the City Code of said City. Community Development Director Steward explains that this resolution is for the purpose of determining a nuisance at 332 N. Massachusetts Street. Steward explains that staff has not been successful in working with the owner to bring the property into compliance, so further action by the City will be necessary. Upon motion by Commissioner Thompson, seconded by Commissioner Hutto all Commissioners voting aye, Bill No. 1732 was adopted and numbered Resolution No. 2817.

Bill No. 1733 – A Resolution – Authorizing and directing the Mayor and Clerk of the City of Winfield, Kansas, to execute an Extension to an Interlocal Cooperation Agreement between the City of Winfield, Kansas, the City of Arkansas City, Kansas, Cowley County Board of Commissioners, Cowley College and Business Partners represented by RCB Bank and Union State Bank, for the provision of Countywide Economic Development Services. City Manager Willmoth explains that Cowley First had presented an agreement extending the interlocal cooperative agreement between certain entities including the City of Winfield to provide economic development activities in Cowley County. It was later determined by the State of Kansas that since the prior agreement had already expired when the previous agreement was executed, that a new agreement would have to be considered by all parties involved. Bill No. 1733 is the new agreement that would need Commission approval. The proposed agreement will expire in December of 2022. Upon motion by Commissioner Hutto, seconded by Commissioner Thompson all Commissioners voting aye, Bill No. 1733 was adopted and numbered Resolution No. 2917.

OTHER BUSINESS

-Executive Session to discuss non-elected personnel

Commissioner Thompson made a motion that the Commission move into executive session for a period not to exceed 10 minutes for the purpose of discussing non-elected personnel. Motion was seconded by Commissioner Hutto. With all Commissioners voting aye, motion carried.

Regular Session resumed at 5 :52 p.m.

ADJOURNMENT

Upon motion by Commissioner Thompson, seconded by Commissioner Hutto, all Commissioners voting aye, the meeting adjourned at 5:52 p.m.

Signed and sealed this 31st day of May 2017.

Signed and approved this 5th day of June 2017.

Brenda Peters, City Clerk

Brenda K. Butters, Mayor

SERVICE RECOGNITION AWARD

WHEREAS, Chief Alan Stoll has enjoyed a more than twenty-eight year career in the fire protection/emergency medical service, including more than 6 1/2 years serving as Fire/EMS Chief for the City of Winfield; and,

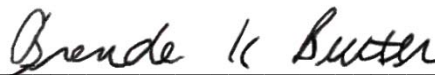
WHEREAS, Chief Stoll has announced his retirement effective June 17, 2017; and,

WHEREAS, Chief Stoll has been a well respected leader in the City of Winfield's organization and a valued member of the City's management team; and

WHEREAS, being Fire/EMS Chief requires a great deal of personal sacrifice, the City of Winfield wishes to join Chief Stoll in thanking his wife Dee Dee and son Rigan for their support and understanding during his career.

NOW, THEREFORE, I, Brenda K. Butters, Mayor of the City of Winfield, Kansas, do hereby recognize Chief Alan Stoll and thank him on behalf of the City of Winfield, the City Commission and our Community for his dedicated service, and wish him well on his much deserved retirement.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Winfield, Kansas, to be affixed this 5th day of June, 2017.



Brenda K. Butters, Mayor

ATTEST:



Brenda Peters, City Clerk

A RESOLUTION

FIXING the time and place and providing for notice of a public hearing before the Governing Body of the City of Winfield, Kansas, regarding the condemnation of a certain structures, a house in the City of Winfield, Cowley County, Kansas.

WHEREAS, on May 14, 2017, the Code Enforcement Inspector of the City of Winfield, Kansas, acting as the enforcing officer pursuant to K.S.A. 12-1750 Supp. et. Seq., filed with the Governing Body of said City, a statement in writing that certain structures hereinafter described are unsafe for human habitation and/or dangerous.

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

Section 1. A hearing will be held on July 17th, 2017 at 5:30 p.m. in the Community Council Room, City Hall, 200 East Ninth Avenue, Winfield, Kansas, at which time the owners, their agents, lien holders of record and any occupants of said structures legally described below:

- 1) A house on a tract of land legally described as: *Lot 9, and the South 10 feet of Lot 10, Block 30 , Manning's Addition, to the City of Winfield, Kansas.* Commonly known as 1012 Lowry St. Recorded in Book 0893 Page 0679, Instrument No. 000954 in the Office of the Register of Deeds of Cowley County, Kansas

may appear and show cause why said structures should not be condemned as unsafe and dangerous and ordered repaired or demolished.

Section 2. The enforcing officer is hereby directed to have this resolution published twice in the official city newspaper and shall give notice to said person or persons in the manner provided by K.S.A. 12-1750 Supp. et. seq.

Section 3. This resolution shall be in full force and effect from and after its adoption and publication in the official city newspaper.

ADOPTED this 5th day of June, 2017.

(SEAL)

ATTEST:

Brenda K. Butters, Mayor

Brenda Peters, City Clerk

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

Approved for Commission action: _____
Jeremy Willmoth, City Manager/ja

A RESOLUTION

FIXING the time and place and providing for notice of a public hearing before the Governing Body of the City of Winfield, Kansas, regarding the condemnation of a certain structures, a house in the City of Winfield, Cowley County, Kansas.

WHEREAS, on May 24, 2017, the Code Enforcement Inspector of the City of Winfield, Kansas, acting as the enforcing officer pursuant to K.S.A. 12-1750 Supp. et. Seq., filed with the Governing Body of said City, a statement in writing that certain structures hereinafter described are unsafe for human habitation and/or dangerous.

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

Section 1. A hearing will be held on July 17th, 2017 at 5:30 p.m. in the Community Council Room, City Hall, 200 East Ninth Avenue, Winfield, Kansas, at which time the owners, their agents, lien holders of record and any occupants of said structures legally described below:

1) A house on a tract of land legally described as: ***Lot 7 and 8, Block 14, College Hill Addition, Winfield, Kansas.*** Commonly known as **420 Soward St.** Recorded in **Book 0578 Page 154,** in the Office of the Register of Deeds of Cowley County, Kansas, may appear and show cause why said structures should not be condemned as unsafe and dangerous and ordered repaired or demolished.

Section 2. The enforcing officer is hereby directed to have this resolution published twice in the official city newspaper and shall give notice to said person or persons in the manner provided by K.S.A. 12-1750 Supp. et. seq.

Section 3. This resolution shall be in full force and effect from and after its adoption and publication in the official city newspaper.

ADOPTED this 5th day of June, 2017.

(SEAL)

ATTEST:

Brenda K. Butters, Mayor

Brenda Peters, City Clerk

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

Approved for Commission action: _____
Jeremy Willmoth, City Manager/ja

A RESOLUTION

DETERMINING the existence of certain nuisances in the City of Winfield, Kansas, and authorizing further action pursuant to the City Code of said City.

WHEREAS, under the provisions of Section 54-3 and 70-2 of the Winfield City Code, Winfield, Kansas, adopted pursuant to K.S.A. 12-1617e, the Governing Body has the power to remove or abate from any lot or parcel of ground within the City any nuisance thereon, upon a finding and determination thereof by said Governing Body; and,

WHEREAS, the City’s inspector, on or about the 9th day of May, 2017 and on prior and subsequent times, inspected the premises described below and observed the following conditions as set forth below;

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

Section 1. The conditions hereinafter described are hereby found to be nuisances, and determined to be a menace and dangerous to the health of the inhabitants of the city or of any neighborhood, family or resident of the city, to wit:

(1) Owner: Wendi M. Miller
127 Rainbow Hill LN.
Reeds Spring, MO 66737

Occupant: Vacant
Property Address: 1316 Mansfield
Legal Description: Lot 9 and the North Half of Lot 8, Block 73, Read's Addition to the City of Winfield.

Nature of Nuisance: A nuisance consisting of miscellaneous debris, trash, and junk as well as overgrown vegetation.

Disposition of Items: Property items determined by the City to be of value will be impounded and stored at the City impound lot. Such items may be retrieved after appropriate impound fees and other incurred expenses have been paid by the owners.

Section 2. The clerk of the City of Winfield, Kansas is hereby authorized to issue notice for the removal and abatement of said nuisances and take any remedial action as authorized under Section 54-2 of the Winfield City Code, Winfield, Kansas.

Section 3. This resolution shall be in full force and effect from and after its passage and approval.

ADOPTED this 5th day of June, 2017.

(SEAL)

Brenda K. Butters, Mayor

ATTEST:

Brenda Peters, City Clerk

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

Approved for Commission action: _____
Jeremy Willmoth, City Manager/ja

A RESOLUTION

AUTHORIZING and directing the Mayor and Clerk of the City of Winfield, Kansas, to execute Bridge Replacement Project Agreement No. 39-17 between the City and the Secretary of the Kansas Department of Transportation, relating to Federal Aid for the replacement of a bridge in the City.

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

Section 1. The Mayor and Clerk are authorized and directed to execute for and on behalf of the City of Winfield, Kansas, Bridge Replacement Project Agreement No. 39-17 between the City and Kansas Department of Transportation giving the Secretary of Transportation of the State of Kansas authority to act for the City, and in its place and stead, to obtain for the City the benefits of Federal Aid and obtain the benefits of such legislation for the City on the terms and conditions set in such agreement as may be prepared and approved by the Secretary of Transportation to construct a bridge replacement project for the 14th Avenue bridge over the Walnut River, known as project No. 18 U-0681-01, STP-U068(101).

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

ADOPTED this 5th day of June, 2017

(SEAL)

Brenda K. Butters, Mayor

ATTEST:

Brenda Peters, City Clerk

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

Approved for Commission action: _____
Jeremy Willmoth, City Manager/rt

PROJECT NO. 18 U-0681-01
STP-U068(101)
BRIDGE REPLACEMENT
CITY OF WINFIELD, KANSAS

AGREEMENT

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

RECITALS:

- A. The City has requested and Secretary has authorized a bridge replacement Project, as further described in this Agreement.
- B. The Secretary and the City are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of city bridges utilizing federal funds.
- C. The Secretary and the City desire to construct the Project.
- D. Cities are, under certain circumstances, entitled to receive assistance in the financing of the construction and reconstruction of streets, bridges and state highways, provided however, in order to be eligible for such federal aid, such work is required to be done in accordance with the laws of Kansas.

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

ARTICLE I

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

- 1. **“Agreement”** means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.
- 2. **“City”** means the City of Winfield, Kansas, with its place of business at 200 E. 9th, PO Box 646, Winfield, KS 67156.
- 3. **“Construction”** means the work done on the Project after Letting, consisting of building, altering, repairing, improving or demolishing any structure, building or highway; any drainage, dredging, excavation, grading or similar work upon real property.
- 4. **“Construction Contingency Items”** mean unforeseeable elements of cost within the defined project scope identified after the Construction phase commences.

5. **“Construction Engineering”** means inspection services, material testing, engineering consultation and other reengineering activities required during Construction of the Project.
6. **“Consultant”** means any engineering firm or other entity retained to perform services for the Project.
7. **“Contractor”** means the entity awarded the Construction contract for the Project and any subcontractors working for the Contractor with respect to the Project.
8. **“Design Plans”** means design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies necessary for the Project under this Agreement.
9. **“Effective Date”** means the date this Agreement is signed by the Secretary or the Secretary’s designee.
10. **“Encroachment”** means any building, structure, farming, vehicle parking, storage or other object or thing, including but not limited to signs, posters, billboards, roadside stands, fences, or other private installations, not authorized to be located within the Right of Way which may or may not require removal during Construction pursuant to the Design Plans.
11. **“FHWA”** means the Federal Highway Administration, a federal agency of the United States.
12. **“Hazardous Waste”** includes, but is not limited to, any substance which meets the test of hazardous waste characteristics by exhibiting flammability, corrosivity, or reactivity, or which is defined by state and federal laws and regulations, and any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, including but not limited to leaking underground storage tanks. Any hazardous waste as defined by state and federal laws and regulations and amendments occurring after November 11, 1991, is incorporated by reference and includes but is not limited to: (1) 40 C.F.R. § 261 *et seq.*, Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristics Revisions; Final Rule; (2) 40 C.F.R. § 280 *et seq.*, Underground Storage Tanks; Technical Requirements and State Program Approval; Final Rules; (3) 40 C.F.R. § 300, National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule; and (4) K.S.A. 65-3430 *et seq.*, Hazardous Waste.
13. **“KDOT”** means the Kansas Department of Transportation, an agency of the state of Kansas, with its principal place of business located at 700 SW Harrison Street, Topeka, KS, 66603-3745.
14. **“Letting” or “Let”** means the process of receiving bids prior to any award of a Construction contract for any portion of the Project.

15. **“Non-Participating Costs”** means the costs of any items or services which the Secretary, acting on the Secretary’s own behalf and on behalf of the FHWA, reasonably determines are not Participating Costs.
16. **“Participating Costs”** means expenditures for items or services which are an integral part of highway, bridge and road construction projects, as reasonably determined by the Secretary.
17. **“Parties”** means the Secretary of Transportation and KDOT, individually and collectively, and the City.
18. **“Preliminary Engineering”** means pre-construction activities, including but not limited to design work, generally performed by a consulting engineering firm that takes place before Letting.
19. **“Project”** means all phases and aspects of the Construction endeavor to be undertaken by the City, as and when authorized by the Secretary prior to Letting, being: **Bridge Replacement at 1 mile West of US-77 on 14th Avenue over Walnut River in Winfield, Kansas**, and is the subject of this Agreement.
20. **“Project Limits”** means that area of Construction for the Project, including all areas between and within the Right of Way boundaries as shown on the Design Plans.
21. **“Responsible Bidder”** means one who makes an offer to construct the Project in response to a request for bid with the technical capability, financial capacity, human resources, equipment, and performance record required to perform the contractual services.
22. **“Right of Way”** means the real property and interests therein necessary for Construction of the Project, including fee simple title, dedications, permanent and temporary easements, and access rights, as shown on the Design Plans.
23. **“Secretary”** means the Secretary of Transportation of the state of Kansas, and his or her successors and assigns.
24. **“Utilities” or “Utility”** means all privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, and other similar commodities, including non-transportation fire and police communication systems which directly or indirectly serve the public.

ARTICLE II

SECRETARY RESPONSIBILITIES:

1. **Technical Information on Right of Way Acquisition.** The Secretary will provide technical information upon request to help the City acquire Right of Way in accordance with the

laws and with procedures established by KDOT's Bureau of Right of Way and the Office of Chief Counsel and as required by FHWA directives to obtain participation of federal funds in the cost of the Project.

2. **Letting and Administration by KDOT.** The Secretary shall Let the contract for the Project and shall award the contract to the lowest Responsible Bidder upon concurrence in the award by the City. The Secretary further agrees, as agent for the City, to administer the Construction of the Project in accordance with the final Design Plans, as required by FHWA, to negotiate with and report to the FHWA and administer the payments due the Contractor or the Consultant, including the portion of the cost borne by the City.

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

4. **Payment of Costs.** The Secretary agrees to be responsible for eighty percent (80%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering, but not to exceed \$1,000,000.00 for the Project. The Secretary shall not be responsible for the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering that exceed \$1,250,000.00 for the Project. The Secretary shall not be responsible for the total actual costs of Preliminary Engineering, Right of Way, and Utility adjustments for the Project.

5. **Final Billing.** After receipt of FHWA acknowledgement of final voucher claim, the Secretary's Chief of Fiscal Services will, in a timely manner, prepare a complete and final billing of all Project costs for which the City is responsible and shall then transmit the complete and final billing to the City.

ARTICLE III

CITY RESPONSIBILITIES:

1. **Secretary Authorization.** The Project shall be undertaken, prosecuted and completed for and on behalf of the City by the Secretary acting in all things as its agent, and the City hereby constitutes and appoints the Secretary as its agent, and all things hereinafter done by the Secretary in connection with the Project are hereby by the City authorized, adopted, ratified and confirmed to the same extent and with the same effect as though done directly by the City acting in its own individual corporate capacity instead of by its agent. The Secretary is authorized by the City to take such steps as are deemed by the Secretary to be necessary or advisable for the purpose of securing the benefits of the current Federal-Aid Transportation Act for this Project.

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

3. **Conformity with State and Federal Requirements.** The City shall be responsible to design the Project or contract to have the Project designed in conformity with the state and federal design criteria appropriate for the Project in accordance with the current Local Projects LPA Project Development Manual, Bureau of Local Project's (BLP's) project memorandums, memos, the KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Road Design's road memorandums, the latest version, as adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD), the current version of the Bureau of Transportation Safety and Technology's Traffic Engineering Guidelines, and the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and any necessary Project Special Provisions, and with the rules and regulations of the FHWA pertaining to the Project.

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

5. **Submission of Design Plans to Secretary.** Upon their completion, the City shall have the Design Plans submitted to the Secretary by a licensed professional engineer attesting to the conformity of the Design Plans with the items in Article III, paragraph 3 above. The Design Plans must be signed and sealed by the licensed professional engineer responsible for preparation of the Design Plans. In addition, geological investigations or studies must be signed and sealed by either a licensed geologist or licensed professional engineer in accordance with K.S.A. 74-7042, who is responsible for the preparation of the geological investigations or studies.

6. **Consultant Contract Language.** The City shall include language requiring conformity with Article III, paragraph 3 above, in all contracts between the City and any Consultant with whom the City has contracted to perform services for the Project. In addition, any contract between the City and any Consultant retained by them to perform any of the services described or referenced in this paragraph for the Project covered by this Agreement must contain language requiring conformity with Article III, paragraph 3 above. In addition, any contract between the City and any Consultant with whom the City has contracted to prepare and certify Design Plans for the Project covered by this Agreement must also contain the following provisions:

- (a) **Completion of Design.** Language requiring completion of all plan development stages no later than the current Project schedule's due dates as issued by KDOT, exclusive of delays beyond the Consultant's control.
- (b) **Progress Reports.** Language requiring the Consultant to submit to the City (and to the Secretary upon request) progress reports at monthly or at mutually agreed intervals in conformity with the official Project schedule.

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

“Because of the Secretary of Transportation of the State of Kansas’ (Secretary’s) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party beneficiary to this agreement between the City and the Consultant. This third party beneficiary status is for the limited purpose of seeking payment or reimbursement for damages and costs the Secretary or the City or both incurred or will incur because the Consultant failed to comply with its contract obligations under this Agreement or because of the Consultant’s negligent acts, errors, or omissions. Nothing in this provision precludes the City from seeking recovery or settling any dispute with the Consultant as long as such settlement does not restrict the Secretary’s right to payment or reimbursement.”

7. **Responsibility for Adequacy of Design.** The City shall be responsible for and require any Consultant retained by it to be responsible for the adequacy and accuracy of the Design Plans for the Project. Any review of these items performed by the Secretary or the Secretary’s representatives is not intended to and shall not be construed to be an undertaking of the City’s and its Consultant’s duty to provide adequate and accurate Design Plans for the Project. Reviews by the Secretary are not done for the benefit of the Consultant, the construction Contractor, the City, any other political subdivision, or the traveling public. The Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the Design Plans for the Project, or any other work performed by the Consultant or the City.

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

9. **Right of Way.** The City agrees to the following with regard to Right of Way:

(a) **Right of Way Acquisition.** The City will, in its own name, as provided by law, acquire by purchase, dedication or condemnation all the Right of Way shown on the final Design Plans in accordance with the schedule established by KDOT. The City agrees the necessary Right of Way shall be acquired in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and administrative regulations contained in 49 C.F.R. Part 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. The City shall certify to the Secretary, on forms provided by the KDOT’s Bureau of Local Projects, such Right of Way has been acquired. The City further agrees it will have recorded in the Office of the Register of Deeds all Right of Way, deeds, dedications, permanent easements and temporary easements.

(b) Right of Way Documentation. The City will provide all legal descriptions required for Right of Way acquisition work. Right of Way descriptions must be signed and sealed by a licensed land surveyor responsible for the preparation of the Right of Way descriptions. The City further agrees to acquire Right of Way in accordance with the laws and with procedures established by KDOT's Bureau of Right of Way and the Office of Chief Counsel and as required by FHWA directives for the participation of federal funds in the cost of the Project. The City agrees copies of all documents, including recommendations and coordination for appeals, bills, contracts, journal entries, case files, or documentation requested by the Office of Chief Counsel will be delivered within the time limits set by the Secretary.

(c) Relocation Assistance. The City will contact the Secretary if there will be any displaced person on the Project prior to making the offer for the property. The Parties mutually agree the Secretary will provide relocation assistance for eligible persons as defined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and as provided in 49 C.F.R. Part 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, and in general accordance with K.S.A. 58-3501 to 58-3507, inclusive, and Kansas Administrative Regulations 36-16-1 *et seq.*

(d) Non-Highway Use of Right of Way. Except as otherwise provided, all Right of Way provided for the Project shall be used solely for public street purposes. If federal funds are used in the acquisition of Right of Way, any disposal of or change in the use of Right of Way or in access after Construction of the Project will require prior written approval by the Secretary.

(e) Trails and Sidewalks on KDOT Right of Way. Intentionally Deleted.

(f) Use of City Right of Way. The Secretary shall have the right to utilize any land owned or controlled by the City, lying inside or outside the limits of the City as shown on the final Design Plans, for the purpose of constructing the Project.

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

11. **Future Encroachments.** Except as provided by state and federal laws, the City agrees it will not in the future permit Encroachments upon the Right of Way of the Project, and specifically will require any gas and fuel dispensing pumps erected, moved, or installed along the

Project be placed a distance from the Right of Way line no less than the distance permitted by the National Fire Code.

12. **Utilities.** The City agrees to the following with regard to Utilities:

(a) **Utility Relocation.** The City will move or adjust, or cause to be moved or adjusted, and will be responsible for such removal or adjustment of all existing Utilities necessary to construct the Project in accordance with the final Design Plans. New or existing Utilities to be installed, moved, or adjusted will be located or relocated in accordance with the current version of the **KDOT Utility Accommodation Policy (UAP)**, as amended or supplemented.

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

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

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

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

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

13. **Hazardous Waste.** The City agrees to the following with regard to Hazardous Waste:

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

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

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

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

14. **Inspections.** The City is responsible to provide Construction Engineering for the Project in accordance with the rules and guidelines developed for the current KDOT approved construction engineering program and in accordance with the current edition of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions and any necessary Project Special Provisions. The detailed inspection is to be performed by the City or the Consultant. The Secretary does not undertake for the benefit of the City, the Contractor, the Consultant or any third party the duty to perform the day-to-day detailed inspection of the Project, or to catch the Contractor's errors, omissions, or deviations from the final Design Plans. The City will require at a minimum all personnel performing Construction Engineering to comply with the high visibility apparel requirements of the KDOT Safety Manual, Chapter 4, Section 8 Fluorescent Vests. The agreement for inspection services must contain this requirement as a minimum. The City may require additional clothing requirements for adequate visibility of personnel.

15. **Traffic Control.** The City agrees to the following with regard to traffic control for the Project:

(a) **Temporary Traffic Control.** The City shall provide a temporary traffic control plan within the Design Plans, which includes the City's plan for handling multi-modal traffic during Construction, including detour routes and road closings, if necessary, and installation of alternate or temporary pedestrian accessible paths to pedestrian facilities in the public Right of Way within the Project Limits. The City's temporary traffic control plan must be in conformity with the latest version of the Manual on Uniform Traffic Control Devices (MUTCD), as adopted by the Secretary, and be in compliance with the American Disabilities Act of 1990 (ADA) and its implementing regulations at 28 C.F.R. Part 35, and FHWA rules, regulations, and guidance pertaining to the same. The Secretary or the Secretary's authorized representative may act as the City's agent with full authority to determine the dates when any road closings will commence and terminate. The Secretary or the Secretary's authorized representative shall notify the City of the determinations made pursuant to this section.

(b) **Permanent Traffic Control.** The location, form and character of informational, regulatory and warning signs, of traffic signals and of curb and pavement or other markings installed or placed by any public authority, or other agency as authorized by K.S.A. 8-2005, must conform to the manual and specifications adopted under K.S.A. 8-2003, and any amendments thereto are incorporated by reference and shall be subject to FHWA approval.

(c) **Parking Control.** The City will control parking of vehicles on the city streets throughout the length of the Project covered by this Agreement. On-street parking will be permitted until such time as parking interferes with the orderly flow of traffic along the street.

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

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

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

18. **Financial Obligation.** The City will be responsible for twenty percent (20%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering, up to \$1,250,000.00 for the Project. In addition, the City agrees to be responsible for one hundred percent (100%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering that exceed \$1,250,000.00 for the Project. Further, the City agrees to be responsible for one hundred percent (100%) of the total actual costs of Preliminary Engineering, Right of Way, and Utility adjustments for the Project. The City shall also pay for any Non-Participating Costs incurred for the Project along with the associated Non-Participating Construction Engineering costs.

19. **Remittance of Estimated Share.** The City shall deposit with the Secretary its estimated share of the total Project expenses based upon estimated approved contract quantities. The City will remit its estimated share by the date indicated on the resolution form Authorization to Award Contract, Commitment of City Funds received by the City from the Secretary. The date indicated for the City to deposit its estimated share of the total Project expenses is fifty (50) days after the Letting date.

20. **Payment of Final Billing.** If any payment is due to the Secretary, such payment shall be made within thirty (30) days after receipt of a complete and final billing from the Secretary's Chief of Fiscal Services.

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

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

ARTICLE IV

GENERAL PROVISIONS:

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

2. **Civil Rights Act.** The "Special Attachment No. 1," pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.

3. **Contractual Provisions.** The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part hereof.

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

5. **Binding Agreement.** This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary and the City and their successors in office.

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

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

ATTEST:

THE CITY OF WINFIELD, KANSAS

CITY CLERK (Date)

MAYOR

(SEAL)

Kansas Department of Transportation
Secretary of Transportation

By: _____
Catherine M. Patrick, P.E. (Date)
State Transportation Engineer

CONTRACTUAL PROVISIONS ATTACHMENT

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

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

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

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

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

KANSAS DEPARTMENT OF TRANSPORTATION

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

NOTE: Whenever this Special Attachment conflicts with provisions of the Document to which it is attached, this Special Attachment shall govern.

THE CIVIL RIGHTS ACT OF 1964, and any amendments thereto,
REHABILITATION ACT OF 1973, and any amendments thereto,
AMERICANS WITH DISABILITIES ACT OF 1990, and any amendments thereto,
AGE DISCRIMINATION ACT OF 1975, and any amendments thereto,
EXECUTIVE ORDER 12898, FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY
POPULATIONS AND LOW INCOME POPULATIONS 1994, and any amendments thereto,
49 C.F.R. Part 26.1 (DBE Program), and any amendments thereto

NOTIFICATION

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (78 Stat. 252), §504 of the Rehabilitation Act of 1973 (87 Stat. 355) and the Americans with Disabilities Act of 1990 (42 USC 12101), the Age Discrimination Act of 1975 (42 USC 6101), the regulations of the U.S. Department of Transportation (49 C.F.R., Part 21, 23, and 27), issued pursuant to such Act, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (1994), and the DBE Program (49 C.F.R., Part 26.1), hereby notifies all contracting parties that, the contracting parties will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, religion, color, gender, age, disability, national origin, or minority populations and low income populations as more specifically set out in the following "Nondiscrimination Clauses".

CLARIFICATION

Where the term "Consultant" appears in the following "Nondiscrimination Clauses", the term "Consultant" is understood to include all parties to contracts or agreements with the Secretary of Transportation of the State of Kansas.

Nondiscrimination Clauses

During the performance of this contract, the Consultant, or the Consultant's assignees and successors in interest (hereinafter referred to as the "Consultant"), agrees as follows:

- 1) Compliance with regulations: The Consultant will comply with the regulations of the U.S. Department of Transportation relating to nondiscrimination in its federally-assisted programs and codified at Title 49, Code of Federal Regulations, Parts 21, 23 and 27, (hereinafter referred to as the "Regulations"). The Regulations are herein incorporated by reference and made a part of this contract.
- 2) Nondiscrimination: The Consultant, with regard to the work performed by the Consultant after award and prior to the completion of the contract work, will not discriminate on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations in the selection and retention of subcontractors, including in the procurements of materials and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- 3) Solicitations for Subcontractors, including Procurements of Material and Equipment: In all solicitations, either competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract including procurements of materials and equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations.

- 4) Information and Reports: The Consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and the Secretary of the Transportation of the State of Kansas will be permitted access to the Consultant's books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.
- 5) Employment: The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, gender, age, disability, or national origin.
- 6) Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the State of Kansas may determine to be appropriate, including, but not limited to,
 - (a) withholding of payments to the Consultant under the contract until the Consultant complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- 7) Disadvantaged Business Obligation
 - (a) Disadvantaged Business as defined in the Regulations shall have a level playing field to compete for contracts financed in whole or in part with federal funds under this contract.
 - (b) All necessary and reasonable steps shall be taken in accordance with the Regulations to ensure that Disadvantaged Businesses have equal opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, color, gender, or national origin in the award and performance of federally-assisted contracts.
 - (c) The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of Federally-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.
- 8) Executive Order 12898
 - (a) To the extent permitted by existing law, and whenever practical and appropriate, all necessary and reasonable steps shall be taken in accordance with Executive Order 12898 to collect, maintain, and analyze information on the race, color, national origin and income level of persons affected by programs, policies and activities of the Secretary of Transportation of the State of Kansas and use such information in complying with Executive Order 12898.
- 9) Incorporation of Provisions: The Consultant will include the provisions of paragraphs (1) through (8) in every subcontract, including procurements of materials and equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The Consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, however, that, in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the State to enter into such litigation to protect the interests of the State.

A RESOLUTION

AUTHORIZING and directing the Mayor and Clerk of the City of Winfield, Kansas, to execute a contract for Project No. 17-TI830 for asphalt street improvements between the City of Winfield, Kansas and APAC-Kansas, Inc. Shears Division, Wichita, Kansas.

WHEREAS, bids for the street improvements were requested and accepted; and,

WHEREAS, APAC-Kansas, Inc. Shears Division, Wichita, Kansas, submitted the apparent lowest proposal;

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

Section 1. The Mayor and Clerk of the City of Winfield, Kansas are hereby authorized and directed to execute a contract for the amount of three hundred seventeen thousand one hundred forty-seven dollars and fifty cents (\$317,147.50) for Project No. 17-TI830 for street improvements for various locations, between the City of Winfield and APAC-Kansas, Inc. Shears Division, Wichita, Kansas, a copy of which is attached hereto and made a part hereof the same as if fully set forth herein.

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

ADOPTED this 5th day of June, 2017.

(SEAL)

Brenda K. Butters, Mayor

ATTEST:

Brenda Peters, City Clerk

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

Approved for Commission action: _____
Jeremy Willmoth, City Manager/rt

CONTRACT

THIS AGREEMENT, made and entered into this 5th day of June, 2017, by and between the City of Winfield, Kansas, Party of the First Part, hereinafter called the Owner, and APAC-Kansas, Inc., Shears Division, Party of the Second Part, hereinafter called the Contractor.

WITNESSETH, that the Contractor and the Owner, in consideration of the mutual promises and payments as set forth herein, agree as follows:

1. The Contractor shall furnish all labor, equipment, accessories, and material and shall perform all work necessary to construct and complete the project entitled:

2017 Asphalt Street Improvements, 17-TI 830

City of Winfield, Kansas

in a good, substantial, and workmanlike manner, ready for use and in strict accordance with the contract drawings and specifications as approved and filed, pursuant to law, in the office of the Owner.

2. The Owner shall pay the Contractor the sum of \$ 317,147.50 due him by reason of faithful performance of the work, at stated intervals, and in amounts certified by the Engineer.
3. Upon completion of the work and after its acceptance by the Owner, the Owner shall pay the Contractor all sums due the Contractor by reason of his faithful completion of the work done in the completion of the project and at the prices set forth in the proposal as accepted by the Owner.
4. It is hereby further agreed that the words "he" or "him" wherever used herein as referring to the Contractor shall be deemed to refer to said Contractor, whether a corporation, partnership, or individual, and this contract and all covenants and agreements thereof shall be binding upon and for the benefit of the heirs, executors, administrators, successors, and assigns of said Contractor.
5. It is hereby further agreed that any reference herein to the "Contract" shall include all contract documents, which are incorporated by reference herein and made a part of this contract. The construction contract documents consist of the drawings and a project manual containing:
 - a. Invitation to bid
 - b. Instructions to bidders
 - c. Bid forms
 - d. Bond forms
 - e. Form of agreement
 - f. General conditions of the contract for construction
 - g. Supplementary conditions

h. Addenda (if issued)

IN WITNESS WHEREOF, the Party of the First Part and the Party of the Second Part, respectively, have caused this agreement to be duly executed, in quadruplicate, the date and year first herein written; all copies of which, to all intents and purposes, shall be considered the original.

OWNER, Party of the First Part
City of Winfield, Kansas

By _____

Mayor

ATTEST:

CONTRACTOR,
Party of the Second Part
APAC-Kansas, Inc., Shears Division

By _____

(Print or Type Name)

(Office or Position of Signer)

(SEAL)
If Contractor be a
Corporation

ATTEST:

A RESOLUTION

A RESOLUTION OF THE CITY OF WINFIELD, KANSAS AUTHORIZING THE SIGNING OF A CONTRACT WITH THE KANSAS POWER POOL (KPP) FOR THE PURCHASE OF POWER AND ENERGY AND THE ASSOCIATED TRANSMISSION SERVICE.

WHEREAS, the City of Winfield has entered into an Operating Agreement with KPP that provides for the sale of power and energy and the purchase of associated transmission service, and

WHEREAS, the City of Winfield had previously entered into a contract for the purchase of power and energy and the associated transmission service on September 6, 2011 by approval of Resolution No. 5711; and

WHEREAS, KPP needs a longer term of commitment from its member cities to secure advantageous financing arrangements for its various activities on behalf of the member cities; and

WHEREAS, KPP also needs a longer term of commitment from its member cities to secure advantageous power supply arrangements on behalf of the member cities.

THEREFORE, be it resolved by the governing body of the city of Winfield, Kansas that:

Section 1. Approval of this resolution will repeal Resolution No. 5711.

Section 2. It is in the best interest of the city of Winfield, Kansas to enter into a contract with KPP that provides for a power purchase commitment for a period ending on the later of twenty (20) years from the effective date or the date upon which the principal of, premium, if any, and interest on all Bonds are paid in full and Bonds are retired; notwithstanding any provision to the contrary, the Term shall continue until all indebtedness incurred with regard to the Project is paid in full; provided however, the term shall not exceed forty (40) years from the effective date.

Section 3. The Mayor and Clerk are therefore hereby authorized to sign a new contract with KPP in the form presented to the governing body this date. This contract shall be referred to as the Power Purchase Contract with KPP.

Section 4. This Resolution shall take effect and be in full force from and after its adoption by the governing body of the City.

Adopted by the governing body of the city of Winfield, Kansas on the 5th day of June, 2017.

SEAL:

Brenda K. Butters, Mayor

Attested: _____
Brenda Peters, City Clerk

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

Approved for Commission Action: _____
Jeremy Willmoth, City Manager

POWER PURCHASE CONTRACT

BY AND BETWEEN

KANSAS POWER POOL

AND

CITY OF _____, KANSAS

DATED _____, 20__

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Schedule 1 – Form of Project Schedule

POWER PURCHASE CONTRACT

THIS POWER PURCHASE CONTRACT (the “Power Purchase Contract”) dated as of and effective as of _____, 20__ (the “Effective Date”) by and between the Kansas Power Pool, a municipal energy agency, a quasi-municipal corporation duly organized and existing under and by the laws of the State of Kansas (the “KPP”) and the City of _____, Kansas (the “Participant”), a municipal corporation duly organized and existing under the laws of the State of Kansas.

WITNESSETH:

WHEREAS, the KPP is a municipal energy agency duly organized and existing under the laws of the State of Kansas, including particularly K.S.A. 12-885, *et seq.* (the “Act”), consisting of member-cities located in the State of Kansas, including Participant; and

WHEREAS, the KPP is authorized by the Act to, *inter alia*, plan, finance, construct, purchase, operate, maintain, use, share costs of, own, lease, sell, and participate in any facilities used or useful in the generation, production, transmission, purchase, sale, exchange or interchange of electric energy or any interest therein or capacity thereof; and

WHEREAS, Participant is authorized to enter into contracts for the supply of electricity from any person, firm, corporation or other municipalities for a period not in excess of forty (40) years, under K.S.A. 12-825(j); and

WHEREAS, in order to secure an adequate, economic and reliable supply of electric power and energy for the Participant’s requirements, the KPP and the Participant have determined that the KPP will sell to the Participant, and the Participant will purchase from the KPP, power and energy and other services on the terms and conditions set forth herein; and

WHEREAS, through the establishment of long-term power purchase contracts with its members, the KPP is able to achieve significant economies of scale with respect to the purchase, generation, and transmission of electrical power, the benefit of which the KPP can pass along to said members; and

WHEREAS, the Participant, as a Participant under this Power Purchase Contract, shall be entitled to receive the benefit of such economies in the form of lower costs of power; and

WHEREAS, the KPP may from time to time build certain specified electric facilities, which are hereinafter referred to as “Projects”, in order to effectively supply power to one or more specified Participants, and said Projects specifically allocable to Participant, if any, shall be set forth on Schedule I to this Power Purchase Contract; and

WHEREAS, the KPP is authorized and empowered under the Act to borrow money by the issuance of revenue bonds to provide sufficient funds to construct any Project; and

WHEREAS, in order to provide economies of scale in the provision of electricity to its members and to enable the KPP to issue its revenue bonds to pay the cost of constructing such Projects, it is necessary for the KPP to have binding contracts with the Participant and each of the other Participants and to pledge the payment required to be made under such contracts as security for the payment of any such bonds.

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

- 1. DEFINITIONS.** In addition to the words and terms elsewhere defined in this Power Purchase Contract and in any Bond Resolution, the following words and terms as used herein, whether or not the words have initial capitals, shall have the following meanings unless the context or use indicates another or different meaning or intent and such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms herein defined.
 - 1.1** “Act” shall mean K.S.A. 12-885 *et seq.*, inclusive, as amended, and all laws amendatory or supplemental thereto.
 - 1.2** “Allocable Portion” shall mean that percentage of any Project which is for the benefit of the Participant as set forth in Schedule I, hereto.
 - 1.3** “Amended Operating Agreement” shall mean that certain agreement dated November 7, 2007, by and between the Kansas Power Pool and its individual member cities, as amended by the Second Amended Operating Agreement was adopted by the KPP Board of Directors on February 19, 2015, and as further amended or restated from time to time.
 - 1.4** “Applicable Laws and Regulations” shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directive, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.
 - 1.5** “Applicable Reliability Standards” shall mean the requirements and guidelines of NERC, the applicable reliability entity and the balancing authority.
 - 1.6** “Bond Counsel” shall mean any attorney or firm of attorneys whose expertise in matters relating to the issuance of obligations by states and political subdivisions is nationally recognized, as selected by the KPP.
 - 1.7** “Bond Resolution” shall mean a resolution of the KPP, as from time to time amended or supplemented in accordance with the terms thereof, authorizing the acquisition and construction of the Project or any additions thereto, or authorizing the issuance of any Bonds.

- 1.8** “Bonds” shall mean bonds, notes or other evidences of indebtedness from time to time issued by the KPP to finance any cost, expense or liability paid or incurred or to be paid or incurred by the KPP, including, but not limited to, costs of acquiring, constructing, installing, equipping and financing any Project, and including any bonds, notes or other evidences of indebtedness issued to refund Bonds.
- 1.9** “Code” shall mean the Internal Revenue Code of 1986, as amended, or such other general Federal tax code as shall be adopted by the United States Congress in substitution therefor, together with Regulations promulgated thereunder by the United States Department of the Treasury.
- 1.10** “Consultant” shall mean (a) an independent engineer or engineering firm or architect or architectural firm qualified and having a favorable reputation for skill and experience in the construction, financing and operation of public utilities, (b) an independent certified public accountant or firm of independent certified accountants, or (c) an independent consultant qualified and having a favorable reputation for skill and experience in financial affairs, all as selected by the Participant and acceptable to the KPP.
- 1.11** “Costs of Issuance” shall mean any and all expenses of whatever nature incurred in connection with the issuance and sale of the Bonds, including, but not limited to underwriting fees and expenses, underwriting discount, printing expenses and legal fees and expenses of counsel.
- 1.12** “Costs of Power” shall mean:
- 1.12.1** The Participant’s Allocable Portion of all operation and maintenance expenses for any Project and for actual and direct expenses related to operating, insuring, maintaining, repairing, and replacing any Project, including reasonable administrative overhead;
- 1.12.2** all costs of producing and delivering to the Participant electric power and energy from time to time under this Power Purchase Contract (including, but not limited to, costs which vary with the amount of electric power produced or delivered, general and administrative expenses, engineering expenses, legal and financial advisory expenses, debt service and covenant requirements of any Bonds, and other costs not otherwise set forth herein);
- 1.12.3** an equitably allocated portion of monthly costs of operating the KPP (including internal personnel costs, rents, administrative and general expenses and working capital, engineering expenses, legal and financial advisory expenses, required payments to pension, retirement, health and hospitalization funds, insurance premiums, and taxes or payments in lieu thereof) all to the extent not directly attributable or traceable to supplying power and energy and other services to the Participants or any other

members, and not included in the costs specified in the other items of this definition;

1.12.4 any and all charges or tariffs for electric power set by any Governmental Authority multiplied by the amount of electric power subject to such charges or tariffs provided to the Participant; and

1.12.5 the Participant's Allocable Portion of all costs and expenses relating to injury and damage claims arising out of the Project and required to be paid by the KPP, and any additional amount not specified in the other items of this definition which must be paid by the KPP.+

1.12.6 Facilities Charges, if any.

1.13 "Debt Service Coverage Ratio" shall mean, for any Fiscal Year, the ratio determined by dividing (a) a numerator equal to the Net Revenues for such Fiscal Year by (b) a denominator equal to the Debt Service Requirements for such Fiscal Year.

1.14 "Debt Service Requirements" shall mean the aggregate principal payments (whether at maturity or pursuant to scheduled mandatory sinking fund redemption requirements) and interest payments on all indebtedness of the Participant secured by any portion of the System or its revenues (including the Bonds issued for any Project, or any interest or principal otherwise payable to the KPP) for the period of time for which calculated; provided, however, that for purposes of calculating such amount, principal and interest shall be excluded from the determination of Debt Service Requirements to the extent that such principal or interest is payable from amounts deposited in trust, escrowed or otherwise set aside for the payment thereof with a trustee, paying agent or other commercial bank or trust company located in the State and having full trust powers.

1.15 "Effective Date" shall mean the date set forth in the preamble to this Power Purchase Contract.

1.16 "Expenses" shall mean all reasonable and necessary expenses of operation, maintenance and repair of the System and keeping the System in good repair and working order (other than Facilities Charges and interest paid on any indebtedness, including the Bonds, any interest or principal due the KPP, and depreciation and amortization charges during the period of determination), determined in accordance with generally accepted accounting principles, including without limiting the generality of the foregoing, current maintenance charges, expenses of reasonable upkeep and repairs, salaries, wages, costs of materials and supplies, paying agent fees and expenses, annual audits, periodic Consultant's reports, properly allocated share of charges for insurance, the cost of purchased water, gas and power, if any, for System operation, obligations (other than for borrowed money or for rents payable under capital leases) incurred in the ordinary course of business, liabilities incurred

by endorsement for collection or deposit of checks or drafts received in the ordinary course of business, short-term obligations incurred and payable within a particular Fiscal Year, other obligations or indebtedness incurred for the purpose of leasing (pursuant to a true or operating lease) equipment, fixtures, inventory or other personal property, and all other expenses incident to the operation of the System, but shall exclude all general administrative expenses of the Participant not related to the operation of the System.

1.17 “Facilities Charge” shall mean (to the extent not recovered by the KPP as Costs of Power):

1.17.1 the Participant’s Allocable Portion of the amount necessary to pay the monthly debt service requirement on any Bonds issued to finance or refinance any Project so as to fully reimburse all actual costs of acquisition, construction and installation of any Project, including, but not limited to, Costs of Issuance, the cost of borrowing, financing costs, interest costs, and out-of-pocket administrative costs associated therewith;

1.17.2 the Participant’s Allocation Portion of any other amount which must be realized by the KPP in order to meet the requirement of any rate or tax compliance covenant made by the Participant or KPP in connection with the issuance of tax-exempt Bonds;

1.17.3 prior the issuance of such Bonds, the amount necessary to pay the monthly interest carrying costs of KPP for funds expended on the Project computed on the basis of the greater of the Carrying Interest Rate set forth on Schedule I for the applicable Project or the highest amount then being incurred by KPP for any borrowed funds; and

1.17.4 the amount necessary to pay the monthly debt service requirement on any funds expended on any Project by the KPP amortized by the KPP so as to fully reimburse all actual costs of acquisition, construction and installation of any Project, including, but not limited to, Costs of Issuance, the cost of borrowing, financing costs, interest costs, and out-of-pocket administrative costs associated therewith.

1.18 “FERC” shall mean the Federal Energy Regulatory Commission or its successor.

1.19 “Fiscal Year” shall mean the fiscal year of the Participant as established from time to time by the Participant, currently being the Twelve (12) months ending each December 31.

1.20 “Force Majeure” shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident by governmental, military or lawfully established civilian authorities, or any other cause

beyond a Party's control. A Force Majeure event does not include acts of negligence or intentional wrongdoing by the Party claiming Force Majeure or economic hardship.

- 1.21** "Good Utility Practice" shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.
- 1.22** "Governmental Authority" shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power.
- 1.23** Interest" shall be calculated in accord with the methodology set forth in FERC's regulations at 18 C.F.R. § 35.19a(a)(2)(iii).
- 1.24** "KPP" shall mean the Kansas Power Pool, a municipal energy agency, a quasi-municipal corporation duly organized and existing under and by the laws of the State of Kansas, its successor and assigns.
- 1.25** "Net Revenues" shall mean all Revenues less all Expenses.
- 1.26** "NERC" shall mean the North American Electric Reliability Council or its successor organization.
- 1.27** "Participant" shall mean the municipality executing this Power Purchase Contract.
- 1.28** "Participants" shall mean the Participant and any other municipalities or public agencies for which the KPP is financing projects through the Bonds.
- 1.29** "Party" or "Parties" shall mean the KPP and the Participant, individually or collectively, as appropriate.
- 1.30** "Payment Date" shall mean that certain day of each calendar month upon which all or any part of the Costs of Power is due, as determined by the KPP under Section 3.2 hereof, during the term of this Power Purchase Contract beginning the next calendar month subsequent to the Effective Date.

- 1.31** “Power Purchase Contract” shall mean this Power Purchase Contract by and between the KPP and the Participant.
- 1.32** “Power Purchase Contracts” shall mean, collectively, the Power Purchase Contracts entered into by and between the Participants and the KPP.
- 1.33** “Project” shall mean the acquisition, construction, installation, rehabilitation, and equipment of the KPP’s portion of one or more electrical systems, if any, as set forth in Schedule I, attached hereto and incorporated herein. For the purposes of this Power Purchase Contract, the Project shall be limited to assets owned and financed by the KPP in its sole discretion and shall not include any portion of the transmission segment or other facilities (including any percentage thereof) not owned and financed by the KPP.
- 1.34** “Project Engineer” shall mean the Project Engineer as designated on Schedule I hereto, if any, or such other independent engineer or engineering firm or architect or architectural firm qualified and having a favorable reputation for skill and experience in the construction, financing and operation of public utilities as determined by the KPP and acceptable to Participant.
- 1.35** “Reasonable Efforts” shall mean, with respect to an action required to be attempted or taken by a Party under this Power Purchase Contract, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.
- 1.36** “Revenues” shall mean all income and revenues derived and collected by Participant from the operation and ownership of the System, but excluding any profits or losses on the early extinguishment of debt or on the sale or other disposition, not in the ordinary course of business, of investments or fixed or capital assets.
- 1.37** “SPP” shall mean the Southwest Power Pool, Inc., a regional transmission organization authorized by FERC to act as the sole transmission provider with functional control over transmission facilities within the SPP geographic region.
- 1.38** “State” shall mean the State of Kansas.
- 1.39** “System” shall mean the electric utility system of the Participant, or other integrated utility system of the Participant of which the electric utility system is a part, together with all repairs, alterations, extensions, reconstruction, enlargements or improvements made or acquired by the Participant.
- 1.40** “Term” shall mean the term of this Power Purchase Contract as set forth in Section 2 hereof.

2. CONDITIONS PRECEDENT TO THE EFFECTIVENESS OF THIS POWER PURCHASE CONTRACT

2.1 This Power Purchase Contract shall become effective as of the Effective Date.

2.2 The Term shall begin on the Effective Date and shall continue in force for a period ending on the later of twenty (20) years from the Effective Date or the date upon which the principal of, premium, if any, and interest on all Bonds are paid in full and the Bonds are retired; notwithstanding any provision to the contrary, the Term shall continue until all indebtedness incurred with regard to the Project is paid in full; provided however, the Term shall not exceed forty (40) years from the Effective Date.

3. SALE OF ELECTRIC POWER; PAYMENT OF COSTS OF POWER.

3.1 The KPP hereby agrees to sell, and the Participant hereby agrees to purchase from the KPP, all of the Participant's required electrical power. In consideration, the Participant agrees to pay, exclusively from legally available funds, the Costs of Power on every Payment Date. There shall be credited against each payment of any Facilities Charge any amount required to be so credited under the provisions of the applicable Bond Resolution.

3.2 The KPP shall establish a schedule of billing for Costs of Power which is coordinated with the delivery of electric power to the Participant under this Power Purchase Contract, with payments required to be made under any Bond Resolution, and with the billing of other charges under the Amended Operating Agreement; provided however, the Participant's obligation to pay any amount due under this Power Purchase Contract shall not be relieved by any failure of the KPP to bill the Participant for such amount. All Costs of Power shall be paid in lawful money of the United States of America, by warrant or check drawn against funds of the Participant, at the office of the KPP, or at such other place or places as may be set forth in any Bond Resolution. Any Costs of Power, or portion thereof, which are not paid when due shall remain due and payable until received by the KPP. All Costs of Power which are not paid when due shall bear Interest at the contract rate hereof (the average rate of the outstanding Bonds as of the date of nonpayment) from the date on which the Costs of Power, as the case may be, become due until the same is paid. Notwithstanding any dispute between the KPP and the Participant hereunder, the Participant shall make all payments when due and shall not withhold any payments pending the final resolution of such dispute. In the event of a determination that the Participant was not liable for said Costs of Power or any portion thereof, said payments or excess of payments as the case may be, shall be credited against subsequent Costs of Power due hereunder.

3.3 The Parties acknowledge that they are both signatories to the Amended Operating Agreement, which generally governs the relationship between the KPP and

Participant, and that to the extent any conflict exists between the terms of this Power Purchase Contract and the Amended Operating Agreement, that the provisions of this Power Purchase Contract will govern and be superior.

- 3.4** The covenants on the part of the Participant herein contained shall be deemed to be and shall be construed to be ministerial duties imposed by law and it shall be the ministerial duty of each and every public official of the Participant to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the Participant to carry out and perform the covenants and agreements in this Power Purchase Contract agreed to be carried out and performed by the Participant.

4. ELIGIBLE PROJECTS.

- 4.1** From time to time, when requested by the Participant, the KPP may design, acquire, construct, install and provide financing for, whether directly or through the use of Bonds, Projects for the use of Participant. Projects for the benefit of Participant are set forth at Schedule I hereof. Unless otherwise agreed between the Parties, the KPP shall own all interest in any Project, using Reasonable Efforts to complete the Project within the estimated completion period set forth for such Project on Schedule I. The KPP shall not be required to undertake any action which is inconsistent with standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, and any applicable laws or regulations. In the event the KPP reasonably expects that it will not be able to complete the Project by the specified date, the KPP shall promptly provide written notice to the Participant and shall undertake Reasonable Efforts to meet the earliest dates thereafter. KPP specifically agrees that it will keep Participant informed as to any material change, defined as a delay of thirty (30) days or more in the construction schedule for any Project set forth in Exhibit B to Schedule I hereof or any increase in the costs of design, construction and installation of any Project in the amount of 20% over the estimated pricing schedule set forth in Exhibit A to Schedule I hereof.
- 4.2** During the Term, unless specifically provided otherwise on Schedule I, the KPP shall be responsible for the operation, maintenance, renewal and replacement of any Project at its sole discretion in accordance with Good Utility Practice; provided however, that, in any event, any renewal or replacement shall become a part of such Project pledged to any Bonds, shall be made in accordance with and subject to any restrictions set forth in any lease or agreement entered into with respect to Bonds, and otherwise shall not affect any Bonds or the security therefore. The KPP, or the Participant if provided in Schedule I, shall be allowed to contract for the operation and maintenance necessary to maintain any Project; provided, however, if such Project is financed with or pledged to Bonds, the terms of any such contract shall meet the requirements of Treas. Reg. 1.141-7(g) for the operation of transmission facilities by nongovernmental persons and shall not otherwise affect the exemption of interest on the Bonds from federal or state income tax. The SPP or such other

Regional Transmission Organization authorized by FERC shall maintain functional control of any transmission Project.

- 4.3 The Parties understand and agree that, during construction and installation of any Project, the firm performing construction and all other parties will carry insurance coverage for the protection of the Parties. The Parties further agree that Participant will insure any Project for liability, property damage and such other losses as the Parties hereto may mutually agree and see that said property and Project are continuously insured for all hazards and damages that might occur to the property or Project, in such amount(s) as is satisfactory to the KPP. The Participant will maintain said policy in its name with the KPP named as an additional insured, and said policy shall contain a provision that such insurance may not be canceled or amended by the issuer thereof without at least thirty (30) days' written notice to the KPP and shall be payable to the KPP and Participant.
- 4.4 Unless otherwise agreed between the Parties, upon expiration of the Term and payment in full of all Participant's obligations to the KPP, title to any Projects shall remain in the KPP and Participant shall have no right or interest in the Projects.
- 4.5 To the extent necessary, Participant will, at its own expense, procure from third parties any rights of use, licenses, rights-of-way, easements or other interests in real estate necessary to construct, install, operate and maintain any Project. The KPP agrees to cooperate in all respects with regard to the procurement of such interests. To the extent property owned by Participant is involved in said requirements, Participant, in consideration of this Power Purchase Contract, will provide such necessary interests to the KPP at no cost.
- 4.6 The Parties shall meet and agree to written reporting procedures by and between themselves, the Project Engineer and other third parties.
- 4.7 During the term of this Power Purchase Contract, the KPP may share ownership of the electrical facilities described in Schedule I hereof, if any, with any third party either jointly or on a percentage basis, or any other acceptable form of ownership, all in the KPP's sole discretion.
- 4.8 KPP will be responsible for submitting its respective revenue requirements to SPP for the collection of revenue related to any Project. Distribution of such revenue to KPP will be pursuant to the SPP OATT.
- 4.9 The Parties hereto agree that KPP will file, under the SPP OATT tariff, for approval of zonal funding of any Project; and that said funding, when made available through SPP, will be used, allocated and credited to Participant's Costs of Power due under this Power Purchase Contract.

5. REPRESENTATIONS OF EACH PARTY. Each Party makes the following representations

for itself:

- 5.1** Such Party is duly organized, validly existing and in good standing under the laws of this state; that it is qualified to do business in the State of Kansas; and that it has the corporate power and authority to own its properties, to carry on its business as now being conducted and to enter into this Power Purchase Contract and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Power Purchase Contract.
- 5.2** Such Party has the right, power and authority to enter into this Power Purchase Contract, to become a Party hereto and to perform its obligations hereunder. This Power Purchase Contract is a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforceability is sought in a proceeding in equity or at law).
- 5.3** The execution, delivery and performance of this Power Purchase Contract does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, as amended, of such Party, or any judgment, license, permit, order, material agreement or instrument applicable to or binding upon such Party or any of its assets.
- 5.4** Such Party has sought or obtained, or, in accordance with this Power Purchase Contract will seek or obtain, each consent, approval, authorization, order, or acceptance by any Governmental Authority in connection with the execution, delivery and performance of this Power Purchase Contract, and it will provide to any Governmental Authority notice of any actions under this Power Purchase Contract that are required by applicable laws and regulations.
- 5.5** This Power Purchase Contract is an obligation of the Participant exempt from the Kansas cash basis and budget law set forth in K.S.A. 10-1101 *et seq.* (pursuant to K.S.A. 10-1116b and/or K.S.A. 12-825j), and shall not be subject to appropriations restrictions set forth thereunder.

6. COVENANTS OF THE PARTICIPANT

- 6.1** The Participant agrees to establish, impose, maintain, enforce and collect rates, fees and charges for electric power and energy, including as a part of any integrated utility system, to its consumers which shall provide the Participant Revenues sufficient to (a) meet its obligations to the KPP under this Power Purchase Contract and all other operating expenses, (b) to pay all obligations payable from, or constituting a charge or lien on, the Revenues of its electric system, (c) enable the Participant to have in each Fiscal Year a Debt Service Coverage Ratio of not less than 1.25 on all Bonds at

the time outstanding, and (d) to meet any required financial covenants in connection with the issuance of any Bonds. The Participant shall not be required to make payments under this Power Purchase Contract except from the revenues of the System and from other funds legally available therefore. If in any Fiscal Year, Net Revenues are an amount less than as hereinbefore provided, the Issuer will immediately employ a Consultant to make recommendations with respect to such rates and charges. A copy of the Consultant's report and recommendations shall be filed with the KPP and Participant and the Participant will, to the extent feasible, follow the recommendations of the Consultant.

- 6.2** The Participant shall not sell, lease or otherwise dispose of all or substantially all of the System except on ninety (90) days prior written notice to the KPP and, in any event, shall not so sell, lease or otherwise dispose of the same unless the following conditions are met: (1) the Participant shall assign this Power Purchase Contract and its rights and interest hereunder to the purchaser or lessee of the System, and such purchaser or lessee shall assume all obligations of the Participant under this Power Purchase Contract; (2) if and to the extent necessary to reflect such assignment and assumption, the KPP and such purchaser or lessee shall enter into an agreement supplemental to this Power Purchase Contract to clarify the terms on which electric power and other services are to be sold hereunder by the KPP to such purchaser or lessee; (3) the senior debt of such purchaser or lessee shall be rated in one of the four highest whole rating categories by at least one nationally-recognized bond rating agency; if the senior debt of the purchaser or lessee is not rated by any such agency, this condition shall be satisfied if a consultant, nationally recognized as experienced in performing evaluations of the operations of electric utilities, opines that the purchaser or lessee is capable of fulfilling the obligations hereunder which are to be transferred to it; the Participant proposing an electric utility not so rated shall submit to the KPP a list of seven such consultants, and the KPP, within thirty days of receipt of such list, may select one consultant therefrom; and (4) the KPP shall, by resolution of its Board of Directors, determine in its sole discretion, with the written concurrence of Bond Counsel, that such sale, lease or other disposition will not adversely affect the value of this Power Purchase Contract as security for the payment of the Bonds and interest thereon, or affect the eligibility of interest on the Bonds for federal tax-exempt status.
- 6.3** The Participant hereby covenants and agrees to accept any other reasonable financial covenants and requirements as required for the financing of the Project provided that the KPP shall provide written notice of any such covenant at least thirty days prior to the effectiveness of such covenant. If the Participant objects to such covenant within such thirty day period, such covenant will not take effect until agreed to by Participant and the KPP. If Participant fails to object during such thirty day period, such covenant will be deemed to have been accepted and will take effect as provided in the notice provided by the KPP.

- 6.4** The Participant covenants and agrees that it shall take no action, the effect of which would be to prevent, hinder or delay the KPP from the timely fulfillment of its obligations under this Power Purchase Contract, any outstanding Bonds or any Bond Resolution.
- 6.5** Subject to the Debt Service Coverage Ratio requirements of Paragraph 6.1, the Participant may issue bonds, notes or other evidences of indebtedness which, under generally accepted accounting principles, would appear as a liability on its balance sheet, and which shall be payable from the revenues derived from the System after the payment of the operating expenses of such system; provided however, that the Participant shall not issue any such indebtedness pursuant to which the Participant is obligated to make such payments prior to, or on a parity with, the payment of operating expenses or Facilities Charges.
- 6.6** The Participant covenants and agrees that it shall not take any action, use, or permit to be used any of the electric power provided under this Power Purchase Contract in any manner or for any purpose which would cause any Bond to be subject to treatment under subsection (b) of Section 103 of the Code as an obligation not described in subsection (a)(1) of such Section 103. The Participant covenants that, prior to entering into any agreement whereby a person (other than a normal customer) agrees to take and pay for, or to take or pay for, electric power provided under this Power Purchase Contract, the Participant shall notify the KPP of its intent to enter into such agreement. As soon as practicable after receipt of such notice, the KPP shall advise the Participant as to whether, in the opinion of Bond Counsel, the entering of such agreement would result in a violation of the covenants contained herein. The Participant agrees that, if the KPP advises the Participant that such a violation will or might result, the Participant will not enter into such agreement.
- 6.7** The Participant covenants and agrees that it shall (1) at all times operate the System and the business in connection therewith according to all Applicable Laws and Regulations, Applicable Reliability Standards and Good Utility Practice, (2) maintain the System in good repair, working order and condition, (3) conduct audits of the System by an independent certified public accounting firm at least annually, and (4) from time to time, make all necessary and proper repairs, renewals, replacements, additions, betterments and improvements with respect to the System so that, at all times, the business shall be properly and advantageously conducted; provided, however, that this covenant not be construed as requiring the Participant to expend any funds which are derived from sources other than the operation of the System, and provided further that nothing herein shall be construed as preventing the Participant from doing so.

7. INFORMATION.

- 7.1** The KPP and the Participant will promptly furnish to each other such information as may be reasonably requested from time to time in order to carry out more effectively

the intent and purpose of this Power Purchase Contract, or as may be reasonably necessary and convenient in the conduct of the operations of the party requesting such information. Without limiting the generality of the foregoing, the Participant shall, upon request, furnish to the KPP all such information, certificates, engineering reports, feasibility reports, information relating to load forecasts and generation and transmission expansion plans, financial statements, opinions of counsel, official statements and other documents as shall be reasonably necessary in connection with the Project and its financing.

8. REGULATORY REQUIREMENTS.

8.1 The KPP shall make all filings, obtain all certificates, ensure all legal and regulatory obligations are met with regard to any Project, and perform all other actions necessary to fulfill all legal and regulatory obligations set forth by any Governmental Authority. The Participant shall reasonably cooperate with the KPP with respect to such actions and provide any information reasonably requested by the KPP needed to comply with applicable regulatory requirements.

9. DAMAGE BY FIRE, EARTHQUAKE, ETC. In the event of destruction or damage to any Project by fire or earthquake or other casualty or events so that it becomes wholly or partly unusable, the KPP, at its option, may do either of the following:

9.1 Rebuild and repair the Project so that it shall be restored to use, in which case this Power Purchase Contract shall remain and continue uninterrupted and in full force and effect (the Participant shall have no right to abate the Costs of Power hereunder during said period of repairing or rebuilding and shall continue to make the Costs of Power required under Section 3 herein) and any excess of insurance proceeds resulting from such destruction or damage over the amount expended for such repairing or rebuilding, shall be paid to the KPP for deposit into the Project Fund and shall be used as provided in any Bond Resolution; or

9.2 Declare this Power Purchase Contract to be terminated and pay or direct the payment of any money collected from insurance from the destruction of or damage to the Project, to the KPP for satisfaction of any Bonds or indebtedness attributable to the Project.

10. ASSIGNMENT

10.1 Neither this Power Purchase Contract nor any interest of the Participant herein shall, at any time after the date hereof, without the prior written consent of the KPP, be mortgaged, pledged, assigned or transferred by the Participant by voluntary act or by operation of law, or otherwise, except as specifically provided herein. The Participant shall at all times remain liable for the performance of the covenants and conditions on its part to be performed, notwithstanding any assigning or transferring which may be made.

10.2 The KPP shall have the right to assign its interest in this Power Purchase Contract to a trustee for the benefit of the Owners of the Bonds pursuant to any Bond Resolution; and the parties hereto agree to execute any and all documents necessary and proper in connection therewith. In the event of such assignment, any thing required or permitted to be done or performed by the KPP under this Power Purchase Contract may, as so provided under the applicable Bond Resolution, be done or performed by the trustee thereunder.

11. INDEMNITY AND CONSEQUENTIAL DAMAGES

11.1 Indemnity. The Parties shall at all times indemnify, defend, and hold the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or inactions of its obligations under this Power Purchase Contract on behalf of the Indemnifying Party, except in cases of negligence or intentional wrongdoing by the Indemnified Party.

11.1.1 Indemnified Person. If an Indemnified Person is entitled to indemnification under this Section as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed under Section 11.1, to assume the defense of such claim, such Indemnified Person may at the expense of the Indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

11.1.2 Indemnifying Party. If an Indemnifying Party is obligated to indemnify and hold any Indemnified Person harmless under this Section, the amount owing to the Indemnified Person shall be the amount of such Indemnified Person's actual loss, net of any insurance or other recovery.

11.1.3 Indemnity Procedures. Promptly after receipt by an Indemnified Person of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for herein may apply, the Indemnified Person shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the Indemnifying Party.

The Indemnifying Party shall have the right to assume the defense thereof with counsel designated by such Indemnifying Party and reasonably satisfactory to the Indemnified Person. If the defendants in any such action include one or more Indemnified Persons and the Indemnifying Party and if the Indemnified Person reasonably concludes that there may be legal defenses available to it and/or other Indemnified Persons which are different from or additional to those available to the Indemnifying Party, the Indemnified Person shall have the

right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on its own behalf. In such instances, the Indemnifying Party shall only be required to pay the fees and expenses of one additional attorney to represent an Indemnified Person or Indemnified Persons having such differing or additional legal defenses.

The Indemnified Person shall be entitled, at its expense, to participate in any such action, suit or proceeding, the defense of which has been assumed by the Indemnifying Party. Notwithstanding the foregoing, the Indemnifying Party (i) shall not be entitled to assume and control the defense of any such action, suit or proceedings if and to the extent that, in the opinion of the Indemnified Person and its counsel, such action, suit or proceeding involves the potential imposition of criminal liability on the Indemnified Person, or there exists a conflict or adversity of interest between the Indemnified Person and the Indemnifying Party, in such event the Indemnifying Party shall pay the reasonable expenses of the Indemnified Person, and (ii) shall not settle or consent to the entry of any judgment in any action, suit or proceeding without the consent of the Indemnified Person, which shall not be reasonably withheld, conditioned or delayed.

11.2 Consequential Damages. In no event shall either Party be liable under any provision of this Power Purchase Contract for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

11.3 Kansas Tort Claims Act. Nothing in this Power Purchase Contract, nor any section of this Power Purchase Contract, shall constitute a waiver of or consent to be bound by any waiver of individual or personal immunity (whether it be absolute or qualified immunity) granted by law to the officers, administrators, board members, council members, employees or agents of Participant or KPP or its individual member cities, of the provisions of the Kansas Tort Claims Act, K.S.A. 61-6101 et seq, from which municipalities or municipal energy agencies may not exempt themselves.

12. NOTICES

12.1 Unless provided otherwise by this Power Purchase Contract, any notice, request, demand, statement, billing, payment or routine communication allowed or permitted by this Power Purchase Contract or any notice or communications which either Party may desire to give to the other shall be in writing and shall be considered as delivered when received by the primary addressee of the other Party, by certified United States mail addressed to the other Party at its address indicated below, or at such other address as either Party may designate for itself in a notice to the other Party.

If to KPP:

Mark Chesney, General Manager/CEO
Kansas Power Pool
250 W. Douglas, Suite 110
Wichita, Kansas 67202

If to Participant, at the address set forth on the signature page hereto.

- 12.2** In lieu of providing notice by certified mail, any notice, request, demand, statement, billing, payment or communication shall be in writing and shall be considered as delivered when delivered to the primary addressee by prepaid overnight delivery to the other Party by the United States Postal Service, Federal Express, Airborne or United Parcel Service or by personal delivery at the address of the other Party indicated above.
- 12.3** Each Party shall notify the other Party in writing of the identity of the person(s) that it designates as the point(s) of contact with respect to operations and maintenance under this Power Purchase Contract, and any subsequent changes to such designation(s).

13. WAIVER.

- 13.1** The waiver by the KPP of any breach by the Participant of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

14. DEFAULT BY THE PARTICIPANT

- 14.1** If (i) the Participant shall fail to make any Costs of Power payment due hereunder within Fifteen (15) days from the date it is due and payable, or (ii) the Participant shall fail to keep any other terms, covenants or conditions contained herein for a period of Sixty (60) days after written notice thereof from the KPP to the Participant, or (iii) the Participant's interest in this Power Purchase Contract or any part thereof shall be assigned or transferred without the written consent of the KPP, either voluntarily or by operation of law, or (iv) the Participant shall file any petition or institute any proceedings wherein or whereby the Participant asks or seeks or prays to be adjudicated a bankrupt, or to be discharged from any or all of its debts or obligations, or offers to the Participant's creditors to effect a composition or extension of time to pay the Participant's debts, or asks, seeks or prays for a reorganization or to effect a plan of reorganization, or for a readjustment of the Participant's debts, or for any other similar relief, or (v) any such petition or any such proceedings of the same or similar kind or character shall be filed, instituted or taken against the Participant, then and in any of such events the Participant shall be deemed to be in default hereunder.

14.2 If the Participant should, after notice of such default, fail to remedy any default, then the KPP shall have the right, at its option, without any further demand or notice (i) to suspend the delivery of electric power provided under this Power Purchase Contract until the amount due has been paid and is given the right to market and dispose of such electric power to other non-defaulting Participants or to other members of the KPP, under the most economically advantageous terms and conditions obtainable as determined in the sole judgment of the KPP; (ii) to terminate this Power Purchase Contract, (iii) to recover from the Participant all damages and expenses resulting from the Participant's default, including, but not limited to, any costs of collection and reasonable attorneys' fees and expenses, (iv) to bring any suit, injunction or action for specific performance, as may be necessary or appropriate to enforce any covenant, agreement or obligation of this Power Purchase Contract against the Participant, and (v) to all other remedies provided the KPP under law and equity. The foregoing remedies of the KPP are in addition to and not exclusive of any other remedy of the KPP. No suspension or termination under this Section shall relieve the Participant from liability for payment of the Costs of Power or other amounts due hereunder.

15. FORCE MAJEURE

15.1 Neither Party shall be considered to be in Default with respect to any obligation hereunder, other than the obligation to pay money when due and the obligations of Section 6.6 hereof, if prevented from fulfilling such obligation by Force Majeure. A Party unable to fulfill any obligation hereunder (other than an obligation to pay money when due and the obligations of Section 6.6 hereof) by reason of Force Majeure shall give notice and the full particulars of such Force Majeure to the other Party in writing or by telephone as soon as reasonably possible after the occurrence of the cause relied upon. Telephone notices given pursuant to this Article shall be confirmed in writing as soon as reasonably possible and shall specifically state full particulars of the Force Majeure, the time and date when the Force Majeure occurred and when the Force Majeure is reasonably expected to cease. The Party affected shall exercise due diligence to remove such disability with reasonable dispatch, but shall not be required to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or other labor disturbance.

16. EXECUTION

16.1 This Power Purchase Contract may be simultaneously executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but all together shall constitute but one and the same Power Purchase Contract, and it is also understood and agreed that separate counterparts of this Power Purchase Contract may be separately executed by the KPP and the Participant, all with the same full force and effect as though the same counterpart had been executed simultaneously by both the KPP and the Participant.

17. VALIDITY

- 17.1** If any one or more of the terms, provisions, promises, covenants or conditions of this Power Purchase Contract shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants and conditions of this Power Purchase Contract shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.
- 17.2** If a trustee is substituted for the KPP pursuant to a Bond Resolution, all references herein to the KPP shall be deemed to mean the trustee as the case may be.

18. AMENDMENTS

- 18.1** Except as expressly provided herein, neither this Power Purchase Contract nor any terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing executed by each party hereto. Furthermore, the Board of Directors of the KPP (a) may not amend the terms of any Power Purchase Contracts without the express written consent of not less than 51% of the Participants and (b) shall not consent or agree to, or permit any rescission of, or amendment to, or otherwise take any action under or in connection with, any Power Purchase Contract which will reduce the payments required thereunder or which will in any manner materially impair or materially adversely affect the rights of the KPP thereunder or the rights or security of the holder(s) of any Bonds under any Bond Resolution. The extension of the term of any Power Purchase Contract shall not constitute an amendment prohibited by either clause (a) or clause (b) above.

19. LAW; JURISDICTION.

- 19.1** The validity, interpretation and performance of this Power Purchase Contract and each of its provisions shall be governed by the laws of the State of Kansas. Exclusive jurisdiction and venue of this Power Purchase Contract shall be in the District Court of Sedgwick County, Kansas.

20. HEADINGS.

- 20.1** Any headings preceding the texts of the several Sections hereof shall be solely for convenience of reference and shall not constitute a part of this Power Purchase Contract, nor shall they affect its meaning, construction or effect.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Power Purchase Contract to be executed and attested by their proper officers thereunto duly authorized, and their official seals to be hereto affixed, all as of the day and year first above written.

CITY OF _____, KANSAS

[seal]

By _____
_____, Mayor

ATTEST:

Address:

By _____
_____, City Clerk

“PARTICIPANT”

ACKNOWLEDGMENT

STATE OF KANSAS)
)
COUNTY OF _____) ss:

On this ____ day of _____, 20__, before me, a Notary Public, in and for the County and State aforesaid, duly sworn, personally appeared _____ and _____, known to me to be Mayor and City Clerk, respectively, of the governing body of the City of _____, Kansas, a municipal corporation, that they executed the within instrument on behalf of said City, therein named as the Participant, and acknowledged to me that they executed the within instrument pursuant to a Resolution of the governing body of said City.

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

Notary Public

My Appointment Expires:

KANSAS POWER POOL

By _____
Mark Chesney, General Manager and CEO

SCHEDULE I

PROJECTS

Project 1:

Incorporated by reference herein in this Schedule I are the following specific exhibits:

Exhibit A - Estimated Costs of the Construction of Project 1.

Exhibit B – Estimated Construction Schedule Project 1.

Participant's Allocable Portion of Project 1 - 100%

Estimated Completion Period for Project 1 – _____, 20__

Project Engineer:

Carrying Interest Rate: _____%

IN WITNESS WHEREOF, the parties hereby supplement the Power Purchase Contract and certify that the above Project shall be incorporated into the Power Purchase Contract as a "Project" within the meaning of Section 1.33 and 4 thereof, executed and attested by their proper officers thereunto duly authorized, and their official seals to be hereto affixed, all as of _____.

CITY OF _____, KANSAS

[seal]

By _____
_____, Mayor

ATTEST:

By _____
_____, City Clerk

KANSAS POWER POOL

[seal]

By _____
_____, _____

ATTEST:

By _____
_____, Secretary

EXHIBIT A

PRELIMINARY OPINION OF PROBABLE COSTS

PROJECT 1

EXAMPLE

EXHIBIT B

PROPOSED SCHEDULE

PROJECT 1

Project 1 is anticipated to be complete by _____, 20__.

EXAMPLE

Memo

To: Jeremy Willmoth
From: Gus Collins
cc: Dan Defore
Date: May 30, 2017
Re: Lagoon Addition

Due to changes in our discharge permit we can no longer meet the maximum discharge limit when we are operating with one lagoon. This takes place every few years when we remove one lagoon from service for cleaning. Lagoon cleaning may take one to two years depending on drying time and the amount of rain fall. The addition of a third lagoon would provide the hold time necessary to reduce the chlorine. It was suggested that a hard surface bottom will aid in the drying time and allow us to clean without the wait needed for a conventional lagoon. The new lagoon will also act as a pre-sedimentation lagoon increasing the time between cleanings of the existing lagoons.

After discussing the discharge permit requirements with engineers Bruce Allman and Estell Johnson with CH2M Hill it was recommended that a local firm could accomplish our needs for less cost than they could. They recommended several local firms for me to contact. After reviewing the list and narrowing it down to a couple I again asked CH2M for information regarding Certified Engineering Design and this was the reply.

Harlan is a good, common sense, civil engineer and should do a great job. CED isn't quite as large as the other firms but well established and has a good reputation. They work throughout the region on various "City – civil engineering" type projects. If I was to guess, CED would be the most cost effective.

Based on recommendation and information provided. I feel they are more than capable and affordable for the project at hand.

The technical equipment line in the 2017 budget should cover the cost of the design.

CERTIFIED ENGINEERING DESIGN, P.A.
1935 West Maple Street
Wichita, KS 67213-3311
(316) 262-8808 Office
(316) 262-1669 Fax

May 22, 2017

Mr Dan Defore, Water Supt.
City of Winfield
200 East 9th Avenue
Winfield, KS 67156

Re: Water Treatment Sludge Lagoon Addition
Winfield, KS

Dan:

Please review the following proposal for civil engineering services for addition of a 1 acre sludge lagoon at the water treatment plant as described below:

Description Lump Sum Fee

Topographic Elevation Survey for Water Treatment Sludge Lagoon Site
(Survey will be direct billed to the City of Winfield) **Survey Services Total..... \$ 3,500**

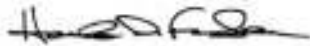
Engineering Design Services by Certified Engineering Design, P.A.
Street Grading Plan for water treatment sludge disposal lagoon and KDHE permitting of the lagoon expansion and piping work needed to connect to the new lagoon..
Design Engineering Services for Plans & Specifications Total(Not to Exceed).. \$ 25,000

Note: This proposal does not include construction administration and inspections services. A soils investigation of the soils at the proposed lagoon site by a geotechnical services company may be required and no fees have been included. I can obtain a proposal for this investigation if you wish for me to do so. Also this s proposal assumes water and sanitary sewer mains and services will not require utility relocation plans. Additional design services for water main and sanitary sewer main relocation projects are excluded and will require additional fees if the project requires. Additional design services required for these projects shall be billed to the City at the hourly rates as follows:

Professional Engineer \$100/hr. CAD technician \$50/hr
Mileage \$0.56/mile

If you decide to accept this proposal, please sign and return one copy of the proposal by fax or by mail. The proposed design fee will be due and payable at the time of delivery of the final plans to you. If you have questions, please call me at (316)262-8808.

Sincerely,



Harlan D. Foraker, P.E., Kansas P.E. No. 10891

CERTIFIED ENGINEERING DESIGN, P.A.

I have read this proposal and by signing hereby accept its' terms,
_____(Signature Dan Defore, City of Winfield),
_____(Printed Name Dan Defore, City of Winfield),
this date, _____, 2017.

Proposal # 20170829