

**This is a business meeting of the governing body for the City of Herington. There is no implied or expressed right for persons outside the governing body to speak or voice their opinion unless specifically recognized by the chair.**

**Regular Meeting  
February 16, 2021  
5:30 p.m.**

1. Pledge of Allegiance

2. Call to Order

3. Consider Minutes of the Regular Meeting January 2, 2021

Motion \_\_\_\_\_ Seconded \_\_\_\_\_ Action \_\_\_\_\_  
Commissioner Castleberry, Commissioner Donahue, Commissioner Hartman,  
Commissioner Bell, Mayor Urbanek

4. Public Forum

5. Additional Agenda Items

6. Approval of Agenda

Motion \_\_\_\_\_ Seconded \_\_\_\_\_ Action \_\_\_\_\_  
Commissioner Castleberry, Commissioner Donahue, Commissioner Hartman,  
Commissioner Bell, Mayor Urbanek

7. Financials

8. COVID-19 Update

9. Budget Presentation by CVB Board

10. Discussion and Action on EMC Representative for City Insurance Policy

Motion \_\_\_\_\_ Seconded \_\_\_\_\_ Action \_\_\_\_\_  
Commissioner Castleberry, Commissioner Donahue, Commissioner Hartman,  
Commissioner Bell, Mayor Urbanek

11. Discuss and Action on KDOT Resurfacing Project Grant

Motion \_\_\_\_\_ Seconded \_\_\_\_\_ Action \_\_\_\_\_  
Commissioner Castleberry, Commissioner Donahue, Commissioner Hartman,  
Commissioner Bell, Mayor Urbanek

12. Discussion and Action on Appointing Mitch Gehrke as Voting Delegate of Kansas Rural Water Association

Motion \_\_\_\_\_ Seconded \_\_\_\_\_ Action \_\_\_\_\_  
Commissioner Castleberry, Commissioner Donahue, Commissioner Hartman,  
Commissioner Bell, Mayor Urbanek

13. Discuss and Consider Kindness Proclamation

Motion \_\_\_\_\_ Seconded \_\_\_\_\_ Action \_\_\_\_\_  
Commissioner Castleberry, Commissioner Donahue, Commissioner Hartman,  
Commissioner Bell, Mayor Urbanek

14. Discuss and Action on Herington Municipal Hospital Opportunity

Motion \_\_\_\_\_ Seconded \_\_\_\_\_ Action \_\_\_\_\_  
Commissioner Castleberry, Commissioner Donahue, Commissioner Hartman,  
Commissioner Bell, Mayor Urbanek

15. Discuss and Action on Water Treatment Plant Change Order Price Increase

Motion \_\_\_\_\_ Seconded \_\_\_\_\_ Action \_\_\_\_\_  
Commissioner Castleberry, Commissioner Donahue, Commissioner Hartman,  
Commissioner Bell, Mayor Urbanek

16. Executive Session- I move the City Commission recess into executive session pursuant to the: Consultation with an attorney on matters that would be deemed privileged in the attorney-client relationship exception, for potential litigation KSA 75-4319(b)(2).

To Include:

- Governing Body
- City Attorney
- City Manager
- City Clerk
- \_\_\_\_\_

The open meeting to resume at \_\_\_\_\_.

Motion \_\_\_\_\_ Seconded \_\_\_\_\_ Action \_\_\_\_\_  
Commissioner Castleberry, Commissioner Donahue, Commissioner Hartman,  
Commissioner Bell, Mayor Urbanek

17. City Manager and City Commission Comments

18. Adjourn.

Motion \_\_\_\_\_ Seconded \_\_\_\_\_ Action \_\_\_\_\_  
Commissioner Castleberry, Commissioner Donahue, Commissioner Hartman,  
Commissioner Bell, Commissioner Urbanek

**PUBLIC ATTENDANCE OF CITY COMMISSION MEETINGS BY TELECOMMUNICATION IS ENCOURAGED. ATTENDANCE WILL BE LIMITED TO THE FIRST 6 MEMBERS OF THE PUBLIC TO ARRIVE DUE TO SOCIAL DISTANCING REQUIREMENTS.**

**To join the City Commission meetings from your computer, tablet, or smartphone, go to**  
<https://www.youtube.com/channel/UCbvSBw6l4w85XQHSX0S1BXg>

Public Forum Comments can be dropped in the deposit box or emailed to [cityoffice@cityofherington.com](mailto:cityoffice@cityofherington.com).  
Must be received before 8:00AM the day of the meeting. Please keep statement to a maximum of 3 minutes.

**Regular Meeting**  
**February 2, 2021**  
**5:30 p.m.**

The Board of City Commissioners for the City of Herington, Kansas met at City Hall at 5:30 p.m. on the above date - the following being present: Mayor Debi Urbanek, Commissioner Bell, Commissioner Curtis Hartman, Commissioner Vance Donahue, Commissioner Castleberry, City Manager Branden Dross, City Attorney Brad Jantz and City Clerk Megan Lawrenz. Also, in attendance were Chief of Police John Matula, Assistant Chief of Policy Curtis Trya, Interim Fire Chief Kyler Schlesener, Allie Hawkes, Carl Urbanek, Larry Mann, Eric Gares, Herschel West and Mike Walsh.

The meeting opened with the Pledge of Allegiance. Mayor Urbanek called the meeting to order. A motion was made by Commissioner Bell, seconded by Commissioner Castleberry to approve the Minutes of the Regular Meeting January 19, 2020. Motion carried 5-0.

Public Forum – Allie Hawkes – 603 N A St. Herington, KS 67449 – Allie spoke about the benefits of keeping Mike Walsh with M&K Trash Service for the trash provider for the City of Herington.

Additional Agenda Items – None

Approval of Agenda – Mayor Urbanek motioned to approve the Agenda, seconded by Commissioner Bell. Motion carried 5-0.

Police Update – Chief of Police John Matula advised there was 1 misdemeanor arrest, 1 warrant arrest, 24 traffic stops, and 154 calls for service in January. The police department met with the school district to discuss the implementation of a SRO program; members of the school board were not in favor.

Fire Update – Interim Fire Chief Kyler Schlesener reported 24 calls, 2 grass fires, 2 structure fires, 1 car fire, 2 outside/other fires, 1 wreck/extrication, 5 EMS assist, 1 CO and 11 good intent/service calls. January training was over blood borne pathogens and hazmat changes in 2020 ERG. Fire Chief interviews have been started. HFD is going to do a zoom-based training FF1 class with Blue Township FD in Pott County, 7 or 8 of our volunteer firefighters will participate.

City Clerk Update – City hall staff worked on the credit card fees and gave notice to Visa and Mastercard of our intent to charge. Notice must be given 30 days in advance so fees should start March 1, 2021. We have hired a court clerk. She will start February 18, 2021. Year end reports and tax documents are complete. There was discussion about trying to take advantage of the low interest rates for some of our bonds, but we are not able to refinance until March 2022. The Department of Labor was here to inspect our buildings, clerk will give an update once we receive the report. Financials for December will be provided at the next meeting. Mayor Urbanek requested that an expenditure report with budget amounts be provided with the financials.

City Update of COVID-19 – Staff had the first dose of the vaccine last Monday. With the second vaccine to be given in 28 days. Mask mandate extended to March, but it anticipated to be extended longer.

Discussion and Action on Publishing of City Meeting Agenda Packets – Previous Commissioners wrote requesting that the supporting documents for the agenda be published prior to the Commission Meetings. Commissioner Bell motioned to keep using the same process as we do now, that supporting documents are available after the meeting. Seconded by Mayor Urbanek, motion failed 2-3 with Commissioner Hartman, Commissioner Donahue and Commissioner Castleberry casting the dissenting votes. Commissioner Donahue motioned to allow City Manager Dross and City Clerk Lawrenz to use their judgement to post non-sensitive agenda supporting documents prior to the meeting with the agenda. Seconded by Commissioner Castleberry. Motion carried 4-1 with Commissioner Bell casting the dissenting vote.

Discuss and Action on Trash Service – The current contract with M&K Trash Service was up for renewal. City Manager Dross presented two contracts for the Commissioners to consider. M&K and Salina Waste Service. After much discussion Commissioner Castleberry motioned to renew with M&K Trash Service, seconded by Commissioner Hartman. Motion carried 5-0.

Discussion on Commission Oversight on Boards and Committees – Mayor Urbanek asked City Attorney Jantz for some clarification on Commission oversight on boards and committees. Jantz said that most of the boards and committees are sponsored by or created by the City so they have oversight. Mayor Urbanek is concerned that none of our boards have guidelines or expectations set. City Manager Dross said he should serve as ex officio on all the boards to offer communication back to the Commissioners. Mayor Urbanek would like to set clear expectations out for all boards, so members know what their responsibilities are.

Discuss and Action on Herington Housing Authority Application – Linda Herbel – Term to expire 12/31/2024 – Mayor Urbanek made a motion to approve Linda Herbel to the Herington Housing Authority term to expire 12/31/2024, seconded by Commissioner Hartman. Motion carried 5-0.

Discuss and Action on Planning Commission Application – Catherine Stinnett – Term to expire 12/31/2023. Mayor Urbanek made a motion to approve Catherine Stinnett to the Planning Commission term to expire 12/31/2023 seconded by Commissioner Hartman. Motion carried 5-0.

Discuss and Action on Board of Zoning Appeals – Ron Strickland – Term to expire 10/24/2023 – Mayor Urbanek made a motion to approve Ron Strickland to the Board of Zoning Appeals – Term to expire 10/23/2023, seconded by Commissioner Hartman. Motion carried 5-0.

Discuss and Action on Resolution for the City Manager to Execute Contracts – Mayor Urbanek made a motion to approve Resolution 936 for the City Manager to Execute Real Estate Land Contracts for Logan Pointe after revisions are made by City Attorney Jantz, seconded by Commissioner Castleberry. Motion carried 5-0.

Update on Airport Lease Negotiations – City Attorney is drafting a lease addendum to include the property recently vacated by Midway Farms.

Update on Grant for Back-up Generator – North Central Regional Planning Committee said that there is a grant for \$600,000.00 but we would have to forbid discussion on a new fire house. There are also grants with USDA. Mayor Urbanek offered some clarity that the proposed back up generator would service the whole town. Businesses and residents would keep power. It would not just benefit City Hall.

Update on Lake Reservation Software – Leo and Julie took training. Needing to fill the Host position. Once they are on board, they will also take the training.

Update on UPTICC Grant – Approved one application. Have received more that staff are reviewing may deny one. Commissioner Bell asked if we could allow more money for the program if it is working. Would have to move money from reserves.

A motion was made by Mayor Urbanek, seconded by Commissioner Bell to recess into executive session K.S.A. 75-4319(b)(2) pursuant to the consultation with an attorney on matters that would be deemed privileged in the attorney-client relationship to discuss potential litigation to include the Governing Body, City Attorney, City Manager and City Clerk with the regularly scheduled meeting to resume at 7:21pm. Motion carried with all Commissioners voting “Aye”. No action taken.

City Manager Comments – The Fire Chief Position has been offered to a candidate. We will announce after they have given their notice. Looking to schedule Commission Retreat possibly in March or April on a Saturday. Will work with Commissioner Bell on hay leases. CVB budget will be presented at the next Commission meeting.

Commissioner Castleberry – Thank you to Branden.

Commissioner Donahue – Noted that he voted no on accepting the gift from the Hospital because he felt that the money designated towards renovating the pool house was a bribe. Thanked Branden and appreciated the fact that he brought an alternate bid for trash service for the Commission to consider.

Commissioner Hartman – None.

Commissioner Bell – Saw that we are hiring a new employee for the street department. Asked if we were short a person, and Branden explained that we wanted to designate a person in the street sweeper all the time. It will also free up Marcus to work on some more grant opportunities.

Mayor Urbanek – Nothing.

Adjourn – Commissioner Hartman made a motion to adjourn. Seconded by Commissioner Castleberry. Motion carried 5-0.

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Megan Lawrenz, City Clerk

DRAFT





**APAC-Kansas, Shears Division**

Herington

16" C900 - Clearwell Connection

**Need as soon as possible.**

BID					
ITEM	DESCRIPTION	UNIT	QTY	\$/UNIT	TOTAL
	16" Oversize Couplings, accessories included	ea	2	\$1,245.76	\$2,491.52
	16" DIP Class 50	LF	18	\$63.78	\$1,148.04
	16" MJ Tee Less accessories	ea	1	\$1,658.51	\$1,658.51
	16" MJ Plug Less accessories	ea	1	\$609.65	\$609.65
	16" MJ retainers with accessories	ea	6	\$169.55	\$1,017.30
	16" MJ 90 Less accessories	ea	2	\$1,065.11	\$2,130.22
	16" DR 18 C900	LF	120	\$34.29	\$4,114.80
	16" Link Seal Connection at Pump Station	ea	1	\$350.00	\$350.00
	Shipping	LS	1	\$375.00	\$375.00
					\$13,895.04

PROJECT NO. 56-21 U-2366-01  
CCLIP (SP) RESURFACING PROJECT  
CMS CONTRACT NO. \_\_\_\_\_  
CITY OF HERINGTON, KANSAS

## AGREEMENT

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

### RECITALS:

- A. The City has applied for and the Secretary has approved a CCLIP (SP) Resurfacing Project.
- B. The Secretary and the City are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of city connecting links of the State Highway System through the City.
- C. The City desires to construct a street resurfacing Project on E. Trapp Street, a city connecting link for the State Highway System, in the City.
- D. The Secretary desires to enter into an Agreement with the City to participate in the cost of the Project by use of State Highway funds.

**NOW, THEREFORE**, the Parties agree as follows:

### ARTICLE I

#### DEFINITIONS:

As used in this Agreement, the capitalized terms below have the following meanings:

**1. CCLIP (SP) Resurfacing Program** - a city connecting link (CCLIP (SP)) resurfacing program that is a part of the KDOT Local Partnership Program with cities and counties. The state’s participation in the cost of construction and construction engineering will be one hundred percent (100%) for cities with a population between 0 to 2,499, ninety-five percent (95%) for cities with a population between 2,500 to 4,999, ninety percent (90%) for cities with a population between 5,000 to 24,999, eighty-five percent (85%) for cities with a population between 25,000 to 49,999, eighty percent (80%) for cities with a population between 50,000 to 99,999, and seventy-five percent (75%) for cities with a population equal to or greater than 100,000, up to a maximum of \$300,000.00 per fiscal year of state funds. The CCLIP (SP) Resurfacing Program is for contract maintenance only.

**2. City Connecting Link** - a route inside the city limits of a city which: (1) connects a state highway through a city; (2) connects a state highway to a city connecting link of another state highway; (3) is a state highway which terminates within such city; (4) connects a state highway with a road or highway under the jurisdiction of the Kansas Turnpike Authority; or (5) begins and ends within a city’s limits and is designated as part of the national system of Interstate and defense highways.

**3. Project** - mill and overlay, reconstruction, minor patching, joint repair, slurry seal, microsurfacing, and any other pre-approved resurfacing methods for the CCLIP (SP) Resurfacing Program for US-56B from S Broadway Street to US-77.

4. **Eligible/Participating Bid Items** - all bid items that pertain to Project resurfacing and striping along the connecting link only. Items eligible for CCLIP (SP) funding include manhole adjustments, milling, overlays, aggregate or paved shoulders (if already existing), concrete pavement, thin bonded concrete overlays, joint repair, slurry seals, bituminous seals, ultra thin bonded overlay, concrete and asphalt pavement patching, subgrade improvement, reconstruction, traffic control, transporting of salvageable material (millings), striping, traffic signal loops on the state highway and that portion of the traffic signal loops that lie inside the return on side streets, and pavement marking on the connecting link. Video-detection systems are participating, except on side streets; however, such systems will require pre-approval, as well as additional details, and a bill of materials to be included in the final design plans. Resurfacing work is participating out to the curb returns on side streets.

5. **Non-Eligible/Non-Participating Bid Items** - items typically non-eligible for CCLIP (SP) funding include but are not limited to: bridge deck patching, utility adjustments, curb and gutter, overlay of curb and gutter, adjustment or reestablishment of survey markers, drainage appurtenances, driveways, entrances, sidewalks, sidewalk ramps, construction warranties, traffic loop construction outside the return on a side street, video detection on side streets, and construction outside of the curb and gutter. Work performed outside the Project limits on side streets, or outside the city limits is non-eligible for state participation, items with unit price changes from the let price (other than items with price adjustment specification in the bid documents) and any other items deemed non-eligible by the Secretary.

6. **Fiscal Year (FY)** - the state's fiscal year begins July 1 and ends on June 30 of the following calendar year.

## ARTICLE II

### SECRETARY RESPONSIBILITIES:

1. **Reimbursement of Project Costs.** The Secretary agrees to reimburse the City one hundred percent (100%) of the total actual costs of construction (which includes the costs of all construction contingency items) and construction engineering, but not to exceed \$300,000.00, as the Secretary's total share of the cost to construct 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 \$300,000.00. The Secretary shall not be responsible for the total actual costs of preliminary engineering, utility adjustments, or items not participating in the CCLIP (SP) Resurfacing Program.

2. **Reimbursement Payments.** The Secretary will make such payment to the City as soon as reasonably possible after construction of the Project is completed, after receipt of proper billing, and attestation by a licensed professional engineer employed by the City that the Project was constructed within substantial compliance of the final design plans and specifications.

## ARTICLE III

### CITY RESPONSIBILITIES:

1. **Limited Scope.** The Project is limited to roadway resurfacing along the Project location. The Project roadway resurfacing may include all eligible items as defined above. Roadway resurfacing does not include such non-eligible items as defined above and any other items deemed non-eligible by the Secretary. The City will be responsible for construction of any traffic signal and/or sidewalk improvements that are necessary to comply with PROWAG, regardless of whether such improvements are deemed non-eligible/non-participating bid items by the Secretary for reimbursement purposes.

2. **Secretary Authorization.** 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 CCLIP (SP) Resurfacing Program for this Project.

3. **General Indemnification.** To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act, the City will defend, indemnify, hold harmless, and save the Secretary and the Secretary's authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever arising out of or in connection with the provisions or performance of this Agreement by the City, the City's employees, agents, or subcontractors. The City shall not be required to defend, indemnify, hold harmless, and save the Secretary for negligent acts or omissions of the Secretary or the Secretary's authorized representatives or employees.

4. **Indemnification by Contractors.** The City 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 of 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.

5. **Design, Letting, and Administration.** The City will prepare or contract to have prepared, the design plans, specifications, and cost estimate (PS&E) for the Project, let the contract, and award the contract to the lowest responsible bidder. The City agrees to construct or have constructed the Project in accordance with the final design plans and specifications; inspect or have inspected the construction; administer the Project; and make the payments due the contractor, including the portion of cost borne by the Secretary. The City shall design the Project or contract to have the Project designed in conformity with the current version of Section 16.0 City Connecting Links (CCLIP (SP)) Resurfacing Program of the LPA Project Development Manual.

6. **Responsibility for Adequacy of Design.** The City and any consultant retained by the City shall have the sole responsibility for the adequacy and accuracy of the design plans, specifications, and estimates. Any review of these items that may be 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, specifications, and estimates. Such reviews are not done for the benefit of the consultant, the construction contractor, the City, or other political subdivision, nor the traveling public. The Secretary makes no representation, expressed or implied warranty to any person or entity concerning the adequacy or accuracy of the design plans, specifications, and estimates or any other work performed by the consultant or the City.

7. **Design Schedule and Submission to Secretary.** The City will follow a schedule for design and development of plans that will allow the Project to be let to contract in the programmed fiscal year; otherwise, the City agrees the Secretary has the right to withdraw the Secretary's participation in the Project. If the City's Project preliminary plans, specifications, and a cost estimate (PPS&E) are submitted to KDOT's Bureau of Local Projects later than May 1 of the programmed fiscal year, at the Secretary's discretion, the Project may be moved into a future fiscal year.

8. **Movement of Utilities.** 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 structures, pole lines, pipelines, meters, and other utilities, publicly or privately owned, which may be necessary for construction of the Project in accordance with the final design plans. The expense of the removal or adjustment of the utilities and encroachments located on public right of way or easement shall be borne by the owner or the City.

9. **Future Encroachments.** The City will prohibit future erection, installation or construction of encroachments either on or above the right of way, and it will not in the future permit the erection of fuel dispensing pumps upon the right of way of the connecting link. The City further agrees it will require any fuel dispensing pumps erected, moved or installed along the connecting link be placed a distance from the right of way line no less than the distance permitted by the National Fire Code.

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

11. **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 PROWAG, and FHWA rules, regulations, and guidance pertaining to the same.

12. **Permanent Traffic Control.** The City shall conform 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 a public authority, or other agency as authorized by K.S.A. 8-2005, shall 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 the approval of the Secretary.

13. **Access Control.** The City will maintain 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.

14. **Final Design Plans.** The final design plans will depict the entire Project location. The eligible/participating bid items must be shown separated and listed apart from the non-eligible/non-participating bid items on the final design plans, bid documents, and on the detailed billing provided by the City. The City shall have the final design plans signed and sealed by a licensed professional engineer. The City will furnish to KDOT's Bureau of Local Projects an electronic set of final design plans and specifications. The City further agrees the specifications will require the contractor to provide a performance bond in a sum not less than the amount of the contract as awarded.

15. **Program Administration.** In addition to complying with all requirements contained in Section 16.0 City Connecting Links (CCLIP (SP)) Resurfacing Program of the LPA Project Development Manual:

(a) The City acknowledges that funding for the Project may be cancelled if the City proceeds to advertise, let, or award a contract for the Project, prior to receipt of notification from KDOT's Bureau of Local Projects of its completion of the final review of the plans, specifications, and estimates (PS&E).

(b) The City acknowledges that funding for the Project may be cancelled if the City awards the contract for the Project prior to its receipt of an "Authority to Award" notification from KDOT's Bureau of Local Projects.

(c) The City will provide to KDOT's Bureau of Local Projects an electronic copy of the executed contract, the completed tax exemption form (PR-76 or PR-74a) and the City's Notice of Award.

(d) After the contract for the Project is awarded, the City will promptly notify both the Project Manager of KDOT's Bureau of Local Projects and the KDOT Area Engineer to communicate the date the contractor is anticipated to begin work on the Project.

(e) The City acknowledges that any costs for work completed prior to receipt of a Notice of Actual Start Date from the KDOT Area Engineer are ineligible for participation in the Program, will be deemed non-participating costs, and shall be the responsibility of the City.

**16. Discrimination Laws.** The City will: (a) 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 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) include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; and (d) include those provisions in (a) through (c) in every contract, subcontract or purchase order so they are binding upon such contractor, subcontractor or vendor. If the City fails to comply with any applicable requirements of (a) through (d) above or if the City is found guilty of any violation by federal or state agencies having enforcement jurisdiction for those Acts, such violation will constitute a breach of this Agreement. If the Secretary determines the City has violated applicable provisions of the ADA, the violation will constitute a breach of this Agreement. If any violation under this paragraph occurs, this Agreement may be cancelled, terminated or suspended in whole or in part.

**17. Inspections.** The City will provide the construction engineering/inspection necessary to determine substantial compliance with the final design plans, specifications, and this Agreement. The City will require at a minimum all personnel, whether City or consultant to comply with the high visibility requirements of the MUTCD, Chapter 6E.02, High-Visibility Safety Apparel. If the City executes an agreement for inspection, the agreement must contain this requirement as a minimum. The City may set additional clothing requirements for adequate visibility of personnel.

**18. Corrective Work.** Representatives of the Secretary may make periodic inspection of the Project and the records of the City as may be deemed necessary or desirable. The City will direct or cause its contractor to accomplish any corrective action or work required by the Secretary's representative as needed for a determination of the funding participation in the CCLIP (SP) Resurfacing Program. The Secretary does not undertake (for the benefit of the City, the contractor, the consultant, or any third party) the duty to perform day-to-day detailed inspection of the Project or to catch the contractor's errors, omissions or deviations from the final design plans and specifications.

**19. Attestation.** Upon completion of the Project the City shall have a licensed professional engineer employed by the City attest in an email to the KDOT Area Engineer and the Project Manager for KDOT's Bureau of Local Projects, that the Project was completed in substantial compliance with the final design plans and specifications.

**20. Final Acceptance.** Prior to issuing final payment to the contractor, the City must obtain final acceptance of the Project from the KDOT Area Engineer.

**21. Accounting.** Upon request by the Secretary, the City will provide the Secretary an accounting of all actual non-participating costs which are paid directly by the City to any party outside of KDOT and costs incurred by the City not to be reimbursed by KDOT for preliminary engineering, utility adjustments, or any other major expense associated with the Project. This will enable the Secretary to report all costs of the Project to the legislature.

22. **Reimbursement Request.** The City will request payment from the Secretary after the City has paid the contractor in full, and a licensed professional engineer has attested in writing the Project has been completed in conformance with the plans and specifications.

23. **Audit.** The City will participate and cooperate with the Secretary in an annual audit of the Project. The City shall make its records and books available to representatives of the Secretary for audit for a period of five (5) years after date of final payment under this Agreement. If any such audits reveal payments have been made with state funds by the City for items considered non-participating, the City shall promptly reimburse the Secretary for such items upon notification by the Secretary.

#### ARTICLE IV

##### GENERAL PROVISIONS:

1. **Existing Right of Way.** The Project will be constructed within the limits of the existing right of way.

2. **Incorporation of Final Plans.** The final design plans and specifications are by this reference made a part of this Agreement.

3. **Compliance with Federal and State Laws.** The Parties agree to comply with all appropriate state and federal laws and regulations applicable to this Project.

4. **Project Modification.** Any of the following Project changes require the City to send a formal notice to the Secretary for approval:

- a. Fiscal year the Project is to be let
- b. Project length
- c. Project location
- d. Project scope

**Items b, c, and d require an attached map to scale.**

It is further mutually agreed during construction, the City shall notify the Secretary of any changes in the plans and specifications.

5. **Civil Rights Act.** The “Special Attachment No. 1, Rev. 09.20.17” pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.

6. **Contractual Provisions.** The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 07-19), which is attached hereto, are hereby incorporated in this contract and made a part hereof.

7. **Termination.** If, in the judgment of the Secretary, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, the Secretary may terminate this Agreement at the end of its current fiscal year. The Secretary will participate in all costs approved by the Secretary incurred prior to the termination of the Agreement.

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

9. **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.

10. **Headings.** The captions of the various articles and sections of this Agreement are for convenience and ease of reference only, and do not alter the terms and conditions of any part or parts of this Agreement.

11. **Effective Date.** This Agreement will become effective as of the date signed by the Secretary or designee.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be signed by their duly authorized officers.

ATTEST:

THE CITY OF HERINGTON, KANSAS

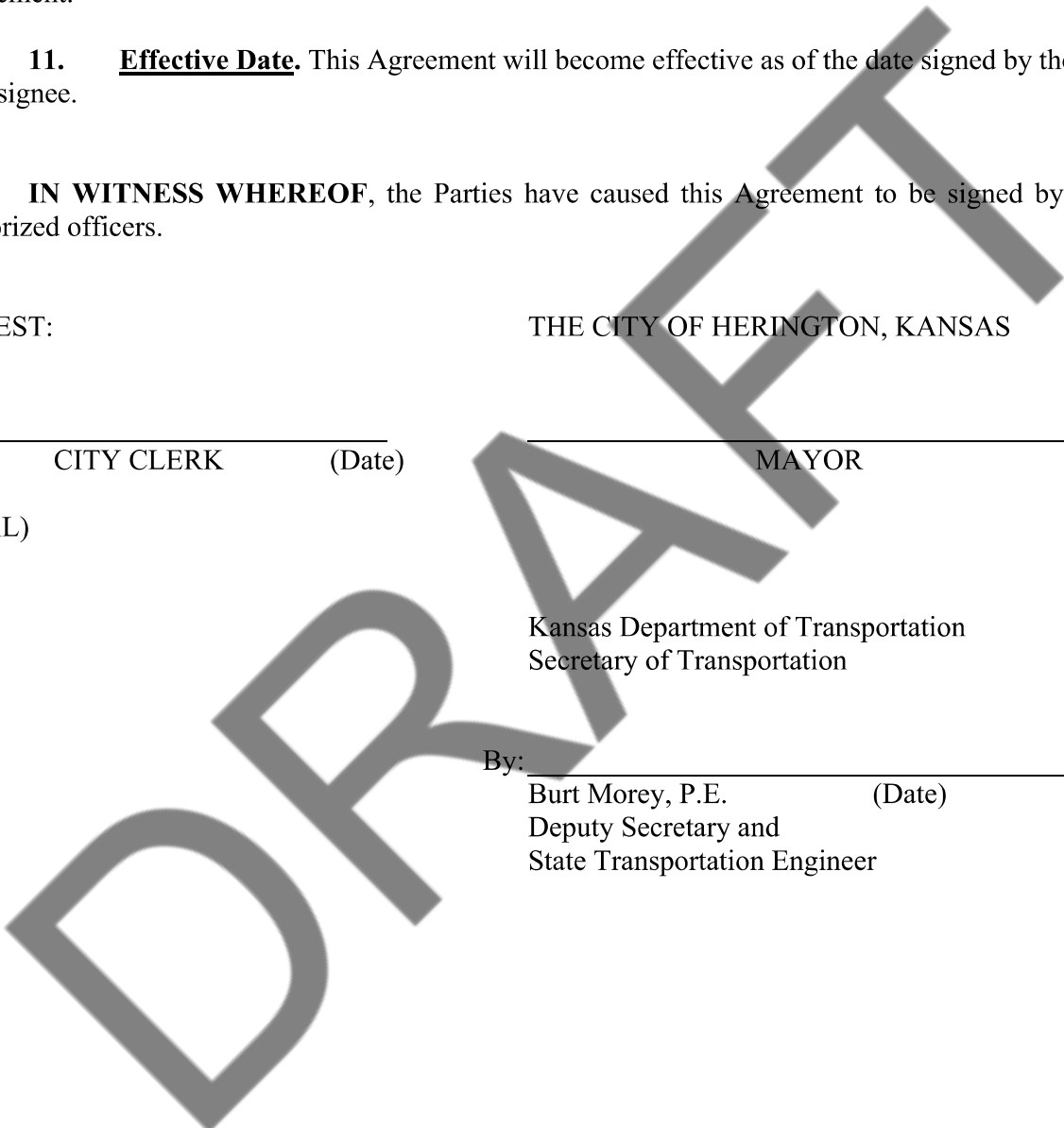
\_\_\_\_\_  
CITY CLERK (Date)

\_\_\_\_\_  
MAYOR

(SEAL)

Kansas Department of Transportation  
Secretary of Transportation

By: \_\_\_\_\_  
Burt Morey, P.E. (Date)  
Deputy Secretary and  
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. 07-19), 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 thirty (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 ninety (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 Kansas Executive Order No. 19-02, and to not discriminate against any person because of race, color, gender, sexual orientation, gender identity or expression, religion, national origin, ancestry, age, military or veteran status, disability status, marital or family status, genetic information, or political affiliation that is unrelated to the person's ability to reasonably perform the duties of a particular job or position; (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) Contractor agrees to comply with all applicable state and federal anti-discrimination laws and regulations; (g) Contractor agrees all hiring must be on the basis of individual merit and qualifications, and discrimination or harassment of persons for the reasons stated above is prohibited; and (h) if it is determined that the contractor has violated the provisions of any portion of this paragraph, such violation shall constitute a breach of contract and the contract may be canceled, terminated, or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

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

### PREAMBLE

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. § 2000d to 2000d-4) and other nondiscrimination requirements and the Regulations, hereby notifies all contracting parties that it will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, color, national origin, sex, age, disability, income-level or Limited English Proficiency (“LEP”).

### CLARIFICATION

Where the term “contractor” appears in the following “Nondiscrimination Clauses”, the term “contractor” is understood to include all parties to contracts or agreements with the Secretary of Transportation, Kansas Department of Transportation. This Special Attachment shall govern should this Special Attachment conflict with provisions of the Document to which it is attached.

### ASSURANCE APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the “contractor”), agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in its Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration (FHWA), the Federal Transit Administration (“FTA”) or the Federal Aviation Administration (“FAA”) as they may be amended from time to time which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontractors, Including Procurements of Material and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor will be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA, Federal Transit Administration (“FTA”), or Federal Aviation Administration (“FAA”) to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or, the FHWA, FTA, or FAA as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor’s noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA, FTA, or FAA may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of the paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any

subcontract or procurement as the Recipient or the FHWA, FTA, or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

#### ASSURANCE APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- The Federal Aid Highway Act of 1973 (23 U.S.C. § 324 et. seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et. seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et. seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL No. 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with LEP, and resulting agency guidance, national origin discrimination includes discrimination because of LEP. To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681)

# Proclamation

*Whereas*, the City of Herington recognizes the value of simple acts of kindness performed without prompting or reason and how these acts can positively impact the performer, the recipient, and onlooker of the good deed; and

*Whereas*, people of any age can participate in “Random Acts of Kindness” any time, any place and for the unselfish purpose of spreading goodwill; and

*Whereas*, by providing “Random Acts of Kindness” and reaching out to one another, regardless of social or economic status, education, gender, origin, religious belief, age, lifestyle or abilities, we extend an opportunity for grace, dignity and acceptance that might not otherwise be offered; and

***NOW THEREFORE, BE IT RESOLVED***, I Debi Urbanek, by the authority vested in me by the citizens and city council of Herington, KS do hereby proclaim February 17<sup>th</sup>, 2021 as

## ***RANDOM ACTS OF KINDNESS DAY***

In the City of Herington, KS and ask our residents of our community to join with me to recognize and perform random acts of kindness.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Herington, Kansas to be affixed this

\_\_\_\_\_.

Debi Urbanek  
Mayor

ATTEST:

Megan Laurenz, City Clerk



**Notice of 2021 Annual Meeting of Membership  
Kansas Rural Water Association  
Designation of Voting Delegate**

Notice is hereby given that the 54th annual meeting of the membership of the Kansas Rural Water Association will be held on via GoToWebinar on Thursday, **March 25, 2021** beginning at **8:30 a.m.** Active members of the Association (public and private water systems, current on dues) may appoint a voting delegate to the meeting of membership. Notice will be provided to the delegate via email to then again register for the GoToWebinar meeting.

Please complete the form below and return it to KRWA to certify the appointment of your delegate and alternate. This form must be returned to KRWA by March 10 to ensure the registration of the delegate in the GoToWebinar meeting.

**Agenda**

- Reading and approval of minutes
- Report of officers
- Audit Report
- Report of Nominating Committee, election of directors
- Manager's report
- Unfinished business
- New business
- Adjournment

IT IS ESSENTIAL TO HAVE THE EMAIL ADDRESS FOR THE DELEGATE SO THAT INSTRUCTIONS TO LOG INTO THE MEETING CAN BE PROVIDED TO THE DELEGATE. ENTER THE EMAIL ADDRESS ON THE RETURN FORM BELOW. PLEASE PRINT LEGIBLY.

detach and return to KRWA, PO Box 226, Seneca, KS 66538 by March 10  
YOU MAY ALSO FAX THE FORM TO KRWA AT 785-336-2751

Please print or type --

Name of System: City of Herington County: Dickinson  
Name of Delegate: Mitch Gehrke  
Address: 17 N. Broadway City: Herington Zip: 67449  
Email for delegate: waterplant@cityofherington.com  
Name of Alternate Delegate: \_\_\_\_\_ Alternate's Email: \_\_\_\_\_  
Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_  
**Attest by Signature:**  
Chairman or Mayor: \_\_\_\_\_ Clerk, Secretary: \_\_\_\_\_



100 E Helen Street, Herington, Kansas 67449

February 11, 2021

City Commission of Herington  
17 N. Broadway  
Herington, KS 67449

Re: Letter of Intent Regarding Herington Municipal Hospital

Dear City Commissioners:

As you know, Herington Municipal Hospital (the "Hospital") is a Kansas municipal hospital operating pursuant K.S.A. § 14-604 *et seq.* The Hospital was established for the purpose of providing health care services to the residents of Hospital's service area, which includes residents from the City of Herington, Kansas (the "City"), the Counties of Dickinson, Marion, and Morris, and the surrounding area (collectively, the "Service Area"). The Hospital is legally required to provide emergency medical services to anyone presenting in the emergency room no matter where they reside.

Based upon preliminary discussions with the City, the Board of Trustees of the Hospital (the "Trustees") believe that the Hospital can enhance the availability of medical care to all residents of the Service Area and more effectively provide for the medically indigent of the Service Area by dissolving the relationship between the City and the Hospital and transferring ownership and responsibility for operation of the Hospital to an independent not-for-profit Kansas corporation (the "Transaction"). This will include a formal end to any contribution in the form of sales and *ad valorem* taxes from the public to the Hospital. This Letter of Intent (this "Letter") outlines the expectations of the Trustees and the City with respect to the structure and terms of the Transaction.

1. Definitive Agreement. As soon as practicable after acceptance of this Letter, the Trustees and the City (collectively, the "Parties") will negotiate diligently and in good faith toward the execution of such definitive agreements as are necessary and appropriate to effectuate the Transaction (the "Definitive Agreements"). The Definitive Agreements will set forth in detail the terms and conditions upon which all assets and liabilities of the Hospital are transferred to an independent Kansas not-for-profit corporation, as well as such other representations, warranties, covenants and miscellaneous terms as are customary for similar transaction or upon which the Parties may mutually Agree.

2. The Transaction. It is the intention of the Parties that the Transaction, if consummated, will be structured in accordance with the following general terms and conditions,



100 E Helen Street, Herington, Kansas 67449

together with such additional terms and conditions as may be set forth in the Definitive Agreements:

a. *Corporation.* The Parties intend to transfer all licenses, property, assets, liabilities, and obligations of the Hospital, along with all attendant rights and responsibility for the future operation of the Hospital, to an independent not-for-profit Kansas corporation (the "Corporation"). The Trustees will evaluate the feasibility of utilizing the not-for-profit corporate entity which previously owned and operated the Hospital, or whether a new not-for-profit corporation should be formed for the Transaction. The Parties will also evaluate alternative structures for the Transaction, such as a long-term lease of the Hospital to the Corporation, in lieu of a full transfer and assignment of Hospital assets.

b. *Consideration.* The transfer of the Hospital's assets to the Corporation will be effectuated without the need for additional consideration from the Corporation, beyond the value of the Hospital's liabilities assumed in full by the Corporation.

c. *Closing.* The Parties intend to diligently proceed with the negotiation of the Definitive Agreements, with the goal of closing the Transaction no later than June 30, 2021 ("Closing").

d. *Ongoing Operations.* Following the Closing of the Transaction, the Corporation, and not the City, shall have sole responsibility for the operation, management, and financial support of the Hospital. The Corporation will be managed by a Board of Directors, which shall be initially comprised of those individuals currently serving as the elected Trustees of the Hospital. All existing municipal finance instruments supporting the Hospital (including but not limited to tax subsidies, sales tax assessments, and mill levies) shall be terminated as of Closing, and the City shall have no further financial responsibility to the Hospital, nor any rights or obligations with respect to the governance of management of the Hospital. The Hospital shall be operated following Closing pursuant to its charitable purpose to provide medical care to residents of the Service Area through its acute care hospital facility and rural health clinic. For a minimum period of ten (10) years following Closing, the Hospital will be operated by the Corporation substantially consistent with the charitable care policies of the Hospital as they exist at Closing and shall maintain its facilities within Dickinson County.





100 E Helen Street, Herington, Kansas 67449

e. *Indemnification.* In partial consideration for the transfer of the Hospital's assets to the Corporation, the Corporation will indemnify and hold City harmless from and against all claims, damages, liabilities, actions, suits, proceedings, assessments, adjustments, demands, costs, and expenses relating to ownership and operation of the Hospital from its inception, whether arising prior to or after Closing.

3. Non-Binding Effect. This Letter is not intended to constitute a binding or enforceable contract. Nothing contained in this Letter imposes on the Parties an enforceable duty or obligation to negotiate toward or conclude any such agreement or commitment. Rather, this Letter is merely a non-binding letter of intent pursuant to which the Parties intend to negotiate toward the execution of the Definitive Agreements until such time as either Party notifies the other in writing that it desires to terminate negotiations and this Letter. This Letter is not meant to set forth, nor shall it be construed as an attempt to define, all of the terms and conditions upon which the Parties may consummate the Transaction. This Letter is intended only to outline certain basic points of business understanding around which definitive legal documentation may be structured. Further negotiations within the general scope of these major points shall not be precluded by the issuance of this Letter and its acceptance, nor shall negotiations to modify such terms be precluded in the event relevant facts and circumstances change.

4. Governing Law. This Letter and each of the transactions consummated pursuant to the Definitive Agreements or otherwise contemplated by this Letter shall be governed by and construed in accordance with the laws of the State of Kansas notwithstanding conflicts of law principles. Each of the parties hereby submits to the jurisdiction of the state and federal courts of Kansas to address any dispute between the parties under this Letter or the Definitive Agreements.

5. Counterparts. This Letter may be executed in multiple counterparts, each of which being deemed an original, and all of which, taken together, constituting one and the same instrument notwithstanding the fact that all Parties are not signatories to the same counterpart.

6. Disclosure. Subject to the requirements of the Kansas Open Meetings Act and the Kansas Open Records Act, before the Closing, neither Party shall disclose to any third party, or make any public release of, information regarding the Transaction or the matters contemplated herein without the express approval of the other Party to the Transaction, except that each may communicate information regarding the matters herein to their respective employees, officers, directors, attorneys, accountants, and other advisors to the extent necessary or appropriate for and not inconsistent with the best interests of the other Party or the prompt consummation of the Transaction contemplated by this Letter, and except as required by law or court order. The



100 E Helen Street, Herington, Kansas 67449

timing and content of any press or news releases concerning the Transaction to the press or other news media will be as determined by agreement of the Parties.

7. Attorney Fees. Each Party will bear responsibility for its own attorney fees incurred in connection with the Transaction.

If the foregoing provisions are acceptable, please so acknowledge by executing and returning the duplicate original(s) of this Letter enclosed herewith to Isabel Schmedemann, CEO at the Herington Municipal Hospital. If an executed copy of this Letter is not received by 5:00 PM on February 18, 2021, this Letter shall be deemed null and void.

Phyllis Bettles  
Phyllis Bettles, Chairwoman

Very truly yours,  
Mike Sullivan  
Mike Sullivan, Secretary

Leslie Mays  
Leslie Mays, Trustee

Howard Hailey  
Howard Hailey, Trustee

Edwin Mueller  
Edwin Mueller, Trustee  
Herington Municipal Hospital Trustees

ACKNOWLEDGED

AND AGREED TO BY:

City of Herington

By: \_\_\_\_\_

Title: \_\_\_\_\_