

CITY OF SILVER LAKE COUNCIL MEETING

CITY HALL

May 20, 2024

5:30 P.M.

ORDER OF BUSINESS MEETING

Pledge of Allegiance

Public Comments

Minutes

Appropriation Ordinance

Business Items:

1. Verizon Tower Rent Discussion
2. Library Road Closure Request
3. Blacksmith Event Centre Road Closure Request
4. Blacksmith Event Centre Resolution for Temporary Premise Extension
5. Public Works Spending Request
6. Stormwater Drainage Improvement Discussion
7. Executive Session

\*\*\*\*PLEASE NOTE: This agenda is subject to additions or changes as may be necessary.

**DRAFT**  
**City of Silver Lake**  
**Regular Session Minutes**  
**Monday, May 6, 2024**

The Governing Body of the City of Silver Lake met in regular session at City Hall on Monday evening April 15, 2024, at 5:30 PM with Mayor Jonah Bishop conducting the meeting and the following Councilmembers present: Brad Byant, Jake Fisher, Michael Hamilton, Larry Ross, and Kenneth Wade (5). Also present was City Attorney Todd Luckman, Public Works Superintendent Cary Deiter, Police Chief Marc McCune, Police Officer Doug Ashcraft and Assistant Clerk Marie Beam.

Local Resident, Katie Fisher was present during public comment to inform Council that the Ball Association has not received the Donation approved by Council at the April 1, 2024 Council meeting.

A motion was made by Councilmember Ross to approve the minutes of the April 15, 2024 meeting as written. The motion was seconded by Councilmember Wade and carried.

A motion was made by Councilmember Ross to approve the minutes of the April 29, 2024 Special Meeting as written. The motion was seconded by Councilmember Hamilton and carried.

Councilmember Bryant presented the monthly financial report.

Claim vouchers in the amount of \$79,835.71 were submitted to the Council for appropriation. An Ordinance entitled "An Ordinance Appropriating Money to Pay Certain Claims" was introduced. A motion was made by Councilmember Bryant and seconded by Councilmember Ross that said Ordinance be accepted as read and was then placed on final passage by a roll call vote: AYE: Brad Bryant, Jake Fisher, Michael Hamilton, Larry Ross, and Kenneth Wade. (5) NAY: None. With no further discussion the Ordinance was declared passed and was given No. 2603.

Police Chief McCune presented a revised Letter of Retirement with a new last day. Councilmember Ross made a motion to accept the revised letter. The motion was seconded by Councilmember Fisher and passed.

Councilmember Wade compiled examples of a job posting for the Police Chief position. Councilmember Fisher made a motion to place the post on the City of Silver Lake website, in the Topeka Metro News and with the Kansas Peace Officers Association. The motion was seconded by Councilmember Hamilton and carried.

The Quarterly Financial statement was presented.

The City's Donation process was discussed, including a request to reach out to Organizations that have received donations in the past. Councilmember Ross made a motion to approve the proposed form for donations, to add the form to the website as well as to continue to accept requests throughout the year. Councilmember Wade seconded the motion and the motion passed.

Public Works Superintendent Dieter presented a bid to replace the current water treatment system with a new safer system. Councilmember Fisher made a motion to approve the purchase not to exceed \$5900. The motion was seconded by Councilmember Ross and passed. Deiter requested to hire 2 part time summer help positions to replace one current part time position. Council had no objections. Superintendent Deiter also requested to replace the chlorine pump at Well House #4. Councilmember Bryant Made the motion to have the pump replaced by Alexander Pump LLC, not to exceed a cost of \$2000. The motion was seconded by Councilmember Fisher and passed.

The monthly Police report was presented.

The monthly Public Works Report was presented.

Councilmember Bryant made a motion that the City Council (along with Mayor Bishop, City Attorney Luckman and Assistant Clerk Beam) recess into executive session, for 10 minutes, to discuss a non-elected personnel matter pursuant to the nonelected personnel exemption, K.S.A. 75-4319(b)(1). The

open meeting will resume at City Hall at 6:07 PM. The motion was seconded by Councilmember Hamilton and carried.

The public meeting reconvened at 6:07 PM.

The public meeting resumed with the Appointment of Officers: Interim City Clerk – Marie Beam, Public Works Superintendent – Cary Dieter, Police Chief – Marc McCune, City Attorney – Todd Luckman, City Judge – Alan Streit, Council President – Kenneth Wade, Finance Commissioner – Brad Bryant, Police Commissioner – Larry Ross, Park Commissioner – Michael Hamilton, Water Commissioner – Jake Fisher, Street Commissioner – Kenneth Wade, Public Officer – Cary Dieter. Councilmember Fisher made the motion to approve the Slate of Appointments. The motion was seconded by Councilmember Hamilton and approved.

With no further business to come before Council, Councilmember Wade made a motion to adjourn the meeting at 6:09 PM. Councilmember Hamilton seconded the motion, and with no further discussion, the meeting was adjourned.

Marie Beam, Interim City Clerk

**City of Silver Lake  
Record of Ordinance #2604  
May 20, 2024**

An Ordinance making appropriation for the payment of certain claims. Be it ordained by the Governing Body of the City of Silver Lake, Kansas. That in order to pay the claims hereinafter stated which have been properly audited and approved, there is hereby appropriated out of the respective funds in the City Treasury the sum required for each claim.

**General Operating**

**General Fund**

EFT	GEN	Silver Lake Ball Association	Donation	-2,500.00
8807	GEN	DBI GreenPoint	Dumpster for Clean up Day	-483.00
8810	GEN	Heinen Repair Service	Vanguard Mower (after Trade in)	-2,177.00
EFT	GEN	Verizon Wireless	Cell Service	-134.35
EFT	GEN	Evergy	Electricity	-857.17
8811	GEN	Menards	parts for repairs	-358.69
<b>Total General Fund</b>				<b>-6,510.21</b>

**Law Enforcement**

8813	LAW	Specialty Vehicle Source	Outfit 2021 Durango	-2,448.75
8805	LAW	Century Business Technologies, Inc.	IT Service	-75.00
8814	LAW	The Topeka Metro News	Chief Position Ad	-100.00
EFT	LAW	Verizon Wireless	Cell Service	-243.83
EFT	LAW	Evergy	Electricity	-133.92
<b>Total Law Enforcement</b>				<b>-3,001.50</b>

**Street**

8808	SDP	Dreasher Trucking	Crushed Asphalt	-1,050.00
EFT	SDP	Evergy	Electricity	-1,119.40
<b>Total Street</b>				<b>-2,169.40</b>

**Park**

EFT	PRK	FreeState Electric Cooperative	Electricity	-105.50
<b>Total Park</b>				<b>-105.50</b>

**Street Lighting**

EFT	STL	FreeState Electric Cooperative	Electricity	-221.50
EFT	STL	Evergy	Electricity	-479.74
<b>Total Street Lighting</b>				<b>-701.24</b>
<b>Total General Fund</b>				<b>-12,487.85</b>

**Waterworks Fund**

8809	WW	Gary Taylor	Water Operator	-773.61
EFT	WW	FreeState Electric Cooperative	Electricity	-409.00
8812	WW	Schulte Supply, Inc.	Water Parts USD 372	-2,327.28
EFT	WW	Verizon Wireless	Cell Service	-81.46
EFT	WW	Evergy	Electricity	-799.45
8815	WW	Universal Chemical LLC	gloves	-121.32
8811	WW	Menards	water pump and parts	-387.35
8806	WW	Continental Research Corporation	HP Plus	-324.82
<b>Total Waterworks Fund</b>				<b>-5,224.29</b>
<b>TOTAL</b>				<b>-17,712.14</b>

That this Ordinance shall take effect and be in force from and after its passage.

Passed this 20th day of May, 2024

Signed or Approved this 20th day of May, 2024

**Attest:**

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor



May 3, 2024

CITY OF SILVER LAKE

**Site Name: TOPSILVERLK**

**Site ID: 128577**

Dear Landlord,

I am following up with you regarding our recent telephone conversation setting forth Verizon Wireless's Lease Optimization Program. As discussed during our conversation, Verizon Wireless is interested in making certain modifications to the cell site lease regarding the Verizon Wireless communications facility on your property. These lease modifications will allow the cell site on your property to better meet Verizon Wireless's current operational needs and enhance its long-term value to the overall network.

#### **Criteria for Cell Site Retention**

As we discussed, Verizon Wireless would like to include this site in its long-term portfolio under the following terms:

- **New Rent Amount:** \$1,600.00 per month, commencing on (11/1/2024)
  - **New Rent Escalator:** Ten Percent (10%) every 5 years (next increase on 11/1/2029)
  - **Additional Renewal Terms:** Five (5) additional five (5) year renewal terms
- 

- **Lump Sum Payment Option:** Provide a one-time lump sum payment of **\$418,000.00**. In return, you will grant a ninety-nine (99) year easement on your property.

The foregoing proposal does not constitute a binding offer to amend the lease. No legal obligation is created by this letter or any other written or oral communications until a written amendment to the lease has been signed by both Landlord and Verizon Wireless. Verizon Wireless will continue to abide by the terms of the current lease until an amendment has been executed or the existing lease has been terminated or expires. Verizon Wireless values its affiliation with you and hopes that you choose to secure your site(s) to continue a long and mutually profitable relationship in the years to come. After having reviewed this proposal, please contact me prior to **May 9<sup>th</sup>, 2024**.

Sincerely,

**Nicholas Politz**  
Lease Consultant  
Lease Optimization - CENREV

0 469.342.3078

180 Washington Valley Road, Bedminster, NJ 07921

# MD7

Thursday, May 9th, 2024

City of Silver Lake  
218 W Railroad  
Silver Lake, KS 66539

Dear Landlord,

MD7 (including its affiliates, the "Buyer") hereby tenders the following offer:

1. Acquisition. The Buyer offers to acquire a 99-year easement under and around the communication tower located on the premises of 502 Lake Street, Silver Lake, KS 66539 and all related assets and improvements, including interests in the Verizon tenant lease and all other property related to the communications tower (collectively, the "Assets") owned by City of Silver Lake (the "Seller") in exchange for **\$418,000.00** in immediately available funds. As of the closing, the Assets shall be free from any liens or encumbrances. The Buyer will not assume any liabilities or obligations with regard to the real property other than for the period following closing.
2. No Financing Contingency. The offer made in Section 1 of this letter is not subject to any financing contingency.
3. Definitive Agreement. The transaction will be embodied in a definitive agreement containing all of the terms and conditions thereof, with such representations and warranties, covenants, indemnities, and conditions as are customary to transactions of this nature, including a condition that no material adverse change shall have occurred in the assets, the operation, the financial condition, or the prospects of the Assets.
4. Due Diligence; Exclusivity. The consummation of the transaction is conditioned upon the Buyer being satisfied with the results of a due diligence review in which the Buyer and its representatives shall be afforded access at mutually-agreeable times to all facilities of and information regarding the Assets. For a period of 30 days from the date this letter of intent is counter-signed by Seller, the Seller and its representatives will not, directly or indirectly, solicit, accept or negotiate any competing offers or provide any confidential information regarding the Assets to any third party. If the Buyer has delivered a draft definitive agreement within the 30 day period, the exclusivity period will be extended by an additional 30 days so that the parties can finalize their negotiations.
5. Operation of the Assets. Between the date of this letter and the closing of the transaction, each Seller will (a) in all material respects, operate the Assets only in the ordinary course and not enter into any contracts or leases which are not in the ordinary course and customary conduct of the Assets; (b) maintain the Assets in sufficient operating condition and repair to enable them to operate in all material respects in the manner in which they are currently operated; (c) not sell or encumber any of the Assets; (d) use its commercially reasonable efforts to continue all material existing insurance policies (or comparable insurance) of or relating to the Assets in full force and effect; (e) use its commercially reasonable efforts to preserve its relationship with its tenants and others having material business dealings with each Seller; (f) maintain its books of account related to the Assets in accordance with historical practices; and (g) materially comply with applicable rules and regulations related to the Assets.
6. Binding and Non-binding Provisions. It is understood that Section 1 of this letter represents an expression of our mutual intent to agree only. No party shall in any way be bound to enter into the transaction until definitive agreements are executed and all other conditions to the consummation of the transaction have been fulfilled, including approval by the Buyer's Board of Directors. Notwithstanding the foregoing, the parties agree that none of the provisions of this letter except Sections 4 and 7 are binding on the parties.

# MD7

7. **Broker; Expenses; Public Announcements.** The parties agree that, except as set forth in definitive agreements, each will be responsible for its own legal, broker's commissions, consulting fees and other expenses and that neither will make any public release of information concerning the transaction (other than as required by law after consultation with the other party).
8. **Timing of a Transaction.** The Buyer is prepared to move expeditiously and close as soon as all conditions in the definitive agreement are fulfilled.
9. **Entire Agreement.** This letter contains the entire agreement between the parties with respect to its subject matter and supersedes all negotiations, prior discussions, agreements, arrangements, and understandings, written or oral, relating to the subject matter of this letter.
10. **Expiration of Offer.** If this letter accurately reflects our understanding with respect to the matters covered hereby, please sign, date, and return a copy to us at the undersigned's email address, BBDA@md7.com. If this letter is not accepted within 30 days from the date, this proposal will expire.

Very truly yours,  
MD7



By: Ben Estes  
Title: Vice President

## ACCEPTED AND AGREED:

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

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

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

# MD7

Thursday, May 9th, 2024

City of Silver Lake  
218 W Railroad  
Silver Lake, KS 66539

Dear Landlord,

MD7 (including its affiliates, the "Buyer") hereby tenders the following offer:

1. Acquisition. The Buyer offers to acquire a 45-year easement under and around the communication tower located on the premises of 502 Lake Street, Silver Lake, KS 66539 and all related assets and improvements, including interests in the Verizon tenant lease and all other property related to the communications tower (collectively, the "Assets") owned by City of Silver Lake (the "Seller") in exchange for **\$364,000.00** in immediately available funds. As of the closing, the Assets shall be free from any liens or encumbrances. The Buyer will not assume any liabilities or obligations with regard to the real property other than for the period following closing.
2. No Financing Contingency. The offer made in Section 1 of this letter is not subject to any financing contingency.
3. Definitive Agreement. The transaction will be embodied in a definitive agreement containing all of the terms and conditions thereof, with such representations and warranties, covenants, indemnities, and conditions as are customary to transactions of this nature, including a condition that no material adverse change shall have occurred in the assets, the operation, the financial condition, or the prospects of the Assets.
4. Due Diligence; Exclusivity. The consummation of the transaction is conditioned upon the Buyer being satisfied with the results of a due diligence review in which the Buyer and its representatives shall be afforded access at mutually-agreeable times to all facilities of and information regarding the Assets. For a period of 30 days from the date this letter of intent is counter-signed by Seller, the Seller and its representatives will not, directly or indirectly, solicit, accept or negotiate any competing offers or provide any confidential information regarding the Assets to any third party. If the Buyer has delivered a draft definitive agreement within the 30 day period, the exclusivity period will be extended by an additional 30 days so that the parties can finalize their negotiations.
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6. Binding and Non-binding Provisions. It is understood that Section 1 of this letter represents an expression of our mutual intent to agree only. No party shall in any way be bound to enter into the transaction until definitive agreements are executed and all other conditions to the consummation of the transaction have been fulfilled, including approval by the Buyer's Board of Directors. Notwithstanding the foregoing, the parties agree that none of the provisions of this letter except Sections 4 and 7 are binding on the parties.



# MD7

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9. **Entire Agreement.** This letter contains the entire agreement between the parties with respect to its subject matter and supersedes all negotiations, prior discussions, agreements, arrangements, and understandings, written or oral, relating to the subject matter of this letter.
10. **Expiration of Offer.** If this letter accurately reflects our understanding with respect to the matters covered hereby, please sign, date, and return a copy to us at the undersigned's email address, BBDA@md7.com. If this letter is not accepted within 30 days from the date, this proposal will expire.

Very truly yours,  
MD7



By: Ben Estes  
Title: Vice President

**ACCEPTED AND AGREED:**

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

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

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

# City of Silver Lake

PO Box 92  
218 W. Railroad St.  
Silver Lake, KS 66539



## APPLICATION FOR TEMPORARY STREET CLOSING PERMIT

Responsible Party:

Brynne Lassiter/Silver Lake Library, 203 Railroad St.  
(Name in Print) (Address/Zip Code)

785-582-5141  
(Telephone)

I, the undersigned, do hereby petition for the closure of:

Madore Street  
(Street Name)

Between Railroad Street and Madore Street (at the end of the library  
(crossing street names)

on Every Tuesday, June 4<sup>th</sup> - August 27<sup>th</sup> From 5:30 P.M. to 8:30 P.M.  
(Date) (Time) (Time)

for purpose of:

Our annual Farmer's Market, where locals and other  
(Detailed Description of Event)

Kansans are free to sell their products.

Signature of Applicant:

Brynne Lassiter Date 5/13/2024

# City of Silver Lake

PO Box 92  
218 W. Railroad St.  
Silver Lake, KS 66539



## APPLICATION FOR TEMPORARY STREET CLOSING PERMIT

Responsible Party:

Blacksmith Event Centre, 101 W Railroad  
(Name in Print) (Address/Zip Code)  
785-845-8720 Silver Lake, KS  
(Telephone) 66539

I, the undersigned, do hereby petition for the closure of:

Madore St

(Street Name)

~~Between~~ 100 Block ~~and~~  
(crossing street names)

on June 30, 2024 From 5 pm to 9 pm  
(Date) (Time) (Time)

for purpose of:

Fundraiser

(Detailed Description of Event)

Trails for Taygan

Signature of Applicant:

Melinda Field

Date 5/16/24

**CITY OF SILVER LAKE, KANSAS**

**RESOLUTION NO. 2024-01**

**A RESOLUTION AUTHORIZING THE A TEMPORARY EXTENSION OF PREMISE PERMIT FOR BLACKSMITH EVENT CENTRE ON June 30, 2024 FROM 5PM TO 9PM, 100 BLOCK OF MADORE ST.**

**WHEREAS**, Melinda Field of Blacksmith Event Centre has requested the issuance of a temporary extension of premise permit within the City of Silver Lake; and

**WHEREAS**, Kansas law requires the approval of the City for any such temporary Extension of Premise Permit.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The City approves the Application, attached herein as Exhibit "A". The area indicated at the 100 Block of Madore Street, shall be closed to vehicular traffic on the dates and times of June 30<sup>th</sup> from 5PM to 9PM and the Applicant shall be allowed to sell alcoholic and cereal malt beverages as provided in the Permit, subject to the terms of the Permit and Application
2. Further, the Applicant agrees that its representatives will monitor all exits from the event space and ensure that all cereal malt beverages are disposed of prior to individuals leaving the event.

Adopted by the Governing Body of the City of Silver Lake, Kansas, this 20<sup>th</sup> day of May, 2024.

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**Mayor Jonah Bishop**

**Attest:**

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**City Clerk**

Alcoholic Beverage Control  
 109 SW 9th Street, 5th Floor  
 PO Box 3506  
 Topeka KS 66601-3506



Phone: 785-296-7015  
 Fax: 785-296-7185  
 Kdor\_abc.email@ks.gov  
 www.ksrevenue.gov/abc.html

**REQUEST FOR TEMPORARY EXTENSION OF PREMISE APPROVAL**

**Licensee Information**

Business DBA Name <b>Blacksmith Event Centre</b>	License Number <b>12452</b>
Business Location Street Address <b>101 W Railroad St.</b>	City <b>Silver Lake</b>
Contact Phone Person <b>Melinda Field</b>	Phone Number <b>785-845-8720</b>
Event Date(s) <b>June 30, 2024</b>	Event Start Time(s) <b>5pm</b>
	Event End Time(s) <b>9pm</b>
	Email Address <b>Melinda@Blacksmitheventcentre.com</b>
	Zip Code <b>66539</b>

**Temporary Extension Information**

Check all that apply:

I am extending onto unlicensed or unpermitted premises  
 Is the area of the extension under the control of the licensee?  Yes  No  
 I have attached written permission from the owner or city/county.  Yes  No

I am extending onto a temporarily permitted premises.  
 What is the event name? \_\_\_\_\_

I am extending onto any of the following areas: public streets, alleys, roads, sidewalks or highways.

I have attached the ordinance or resolution approved by the local governing body.  Yes  No

**Diagram:** Draw a complete diagram of the premises for which you are seeking approval or attach your drawing. The diagram must indicate the current premise and the temporary extension area. Architectural drawings will not be accepted.

Check one:  Diagram drawn below  8 1/2" X 11" drawing attached on supplemental page



Alcoholic Beverage Control  
 109 SW 9th Street, 5th Floor  
 PO Box 3506  
 Topeka KS 66601-3506



Phone: 785-296-7015  
 Fax: 785-296-7185  
 Kdor\_abc.email@ks.gov  
 www.ksrevenue.gov/abc.html

**Zoning: CERTIFICATE OF CITY, TOWNSHIP OR COUNTY CLERK**

I HEREBY CERTIFY THAT THE PREMISES AT \_\_\_\_\_ IS:  
Location Street Address City Zip

(Check one box in each section below)

CITY LIMITS:  Inside the incorporated city limits  Outside the city limits \_\_\_\_\_  
County

(Seal)

CLERK SIGNATURE \_\_\_\_\_  City Clerk  Township Clerk  County Clerk

PRINTED NAME \_\_\_\_\_ DATE \_\_\_\_\_ PHONE \_\_\_\_\_

I understand that I must maintain a copy of the approved diagram on the licensed premise and it must be available for immediate inspection upon request.

Under penalties of perjury, I declare the information contained in this document a true, accurate and complete disclosure of information.

Melinda Field Melinda Field 5/16/24  
Licensee Signature Printed Name Date

<small>ABC Office Use Only</small>		
<input type="checkbox"/> <b>DIAGRAM APPROVED AS SUBMITTED</b>	<small>Signature of ABC Official</small>	<small>Date</small>
<input type="checkbox"/> <b>DIAGRAM DENIED</b> <small>Reason Denied:</small>		

**Public Works Spending Request for millings to be used in alleys and walking path**

Verbal Quote from Dreasher Trucking

\$600 / load for 5 loads

Total spending request \$3000



**AGREEMENT  
CONSULTANT-CLIENT**

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

WITNESSETH:

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

Storm Water Study

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

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

**SECTION 1 – DEFINITIONS**

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

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



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

## SECTION 2 – RESPONSIBILITIES OF CONSULTANT

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

### 2.2 GENERAL DUTIES AND RESPONSIBILITIES

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

Name:	Brian Foster, P.E.
Address:	4806 Vue Du Lac
	Manhattan KS 66503
Phone:	785-537-7448

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

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

### **SECTION 3 – CLIENT RESPONSIBILITIES**

#### **3.1 GENERAL DUTIES AND RESPONSIBILITIES**

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

Name: Jonah Bishop  
 Address: PO Box 92  
 3.1.8. **Billing**      Silver Lake, KS 66539  
 Phone: 785-582-4280

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

Name: Liz Steckel  
 Address: PO Box 92  
Silver Lake, KS 66539  
 Phone: 785-582-4280

**SECTION 4 - PAYMENT**

**4.1 COMPENSATION**

- 4.1.1. **Fee and Expense:** The CLIENT agrees to pay the CONSULTANT a Lump Sum Fee according to **Exhibit 2** of this Agreement. The Lump Sum Fee for this project is a total of \$19,000.00 Dollars plus reimbursable expenses as outlined in **Exhibit 2** and for the Scope of Services as shown in **Exhibit 1** of this Agreement. Payment of the Lump

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

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

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

4.1.9. **Additional Services:** The CONSULTANT shall provide, with the CLIENT's concurrence, Services in addition to those listed in Exhibit 1 when such Services are requested in writing by the CLIENT. Prior to providing Additional Services, the CONSULTANT will submit a proposal outlining the Additional Services to be provided, and an hourly or lump sum fee adjustment. Payment to the CONSULTANT, as compensation for these Additional Services, shall be in accordance with the mutually agreed adjustment to the CONSULTANT's fee. Reimbursable expenses incurred in conjunction with Additional Services shall be paid separately and those reimbursable expenses shall be paid at cost plus ten (10) percent. Records of reimbursable expenses and expenses pertaining to Additional Services and Services performed on an hourly basis shall be made available to the CLIENT if so requested in writing.

4.1.10. **Supplemental Agreement:** This Agreement may be amended to provide for additions, deletions and revisions in the Services or to modify the terms and conditions thereof by written amendment signed by both parties. The contract price and contract time may only be changed by a written supplemental agreement approved by the CLIENT, unless it is the result of an emergency situation, in which case the CLIENT may give verbal, e-mail or facsimile approval which shall be the same as written and approved supplemental agreement.

## **SECTION 5 – MUTUAL PROVISIONS**

### **5.1 TERMINATION**

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

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

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

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

- 5.1.3. **Compensation for Default Termination:** If the CLIENT shall terminate for cause or default on the part of the CONSULTANT, the CLIENT shall compensate the CONSULTANT for the reasonable cost of Services completed to date of its receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.
- 5.1.4. **Incomplete Documents:** Neither the CONSULTANT, nor its subconsultant, shall be responsible for errors or omissions in documents which are incomplete as a result of an early termination under this section, the CONSULTANT having been deprived of the opportunity to complete such documents and certify them as ready for construction and/or complete.
- 5.2 **DISPUTE RESOLUTION**
  - 5.2.1. If a claim, dispute or controversy arises out of or relates to the interpretation, application, enforcement or performance of Services under this Agreement, CONSULTANT and CLIENT agree first to try in good faith to settle the dispute by negotiations between senior management of CONSULTANT and CLIENT. If such negotiations are unsuccessful, CONSULTANT and CLIENT agree to attempt to settle the dispute by good faith mediation. If the dispute cannot be settled through mediation, and unless otherwise mutually agreed, the dispute shall be settled by litigation in an appropriate court in Kansas. Except as otherwise provided herein, each party shall be responsible for its own legal costs and attorneys' fees.
- 5.3 **OWNERSHIP OF INSTRUMENTS OF SERVICE**
  - 5.3.1. All documents prepared or furnished by CONSULTANT pursuant to this Agreement are instruments of CONSULTANT's professional service, and CONSULTANT shall retain ownership and property interest therein, including all copyrights. Upon payment for services rendered, CONSULTANT grants CLIENT a license to use instruments of CONSULTANT's professional service for the purpose of constructing, occupying, or maintaining the project. Reuse or modification of any such documents by CLIENT, without CONSULTANT's written permission, shall be at CLIENT's sole risk, and CLIENT agrees to indemnify, defend, and hold CONSULTANT harmless from all claims, damages, and expenses, including attorneys' fees, arising out of such reuse by CLIENT or by others acting through CLIENT.
- 5.4 **INDEMNIFY AND HOLD HARMLESS**
  - 5.4.1. CLIENT shall indemnify and hold CONSULTANT, its officers and employees harmless from and against any claim, judgment, demand, or cause of action to the extent caused by: (i) CLIENT's breach of this Agreement; (ii) the negligent acts or omissions of CLIENT or its employees, contractors or agents; (iii) site access or damages to any surface or subterranean structures or any damage necessary for site access.
  - 5.4.2. In addition, where the Services include preparation of plans and specifications and/or construction observation activities for CLIENT, CLIENT agrees to have its construction contractors agree in writing to indemnify and hold harmless CONSULTANT from and against loss, damage, or injury attributable to personal injury or property damage to the extent caused by such contractors' performance or nonperformance of their work. The CLIENT will cause the contractor to name BG Consultants, Inc. (CONSULTANT) as additional insured on the contractor's General Liability Policy.
  - 5.4.3. CONSULTANT shall indemnify and hold CLIENT and its employees and officials from loss to the extent caused or incurred by the negligence, errors or omissions of the CONSULTANT, its officers or employees in performance of Services pursuant to this Agreement.

5.5 ENTIRE AGREEMENT

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

5.6 APPLICABLE LAW

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

5.7 ASSIGNMENT OF AGREEMENT

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

5.8 NO THIRD PARTY BENEFICIARIES

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

5.9 LIMITATION OF LIABILITY

5.9.1. CLIENT's exclusive remedy for any alleged breach of standard of care hereunder shall be to require CONSULTANT to re-perform any defective Services. Notwithstanding any other provision of this Agreement, the total liability of CONSULTANT, its officers, directors and employees for liabilities, claims, judgments, demands and causes of action arising under or related to this Agreement, whether based in contract or tort, shall be limited to the total compensation actually paid to CONSULTANT for the Services. All claims by CLIENT shall be deemed relinquished unless filed within one (1) year after completion of the Services.

5.9.2. It is agreed to by the parties to this Agreement that the CONSULTANT's services in connection with the Project shall not subject CONSULTANT's employees, officers, or directors to any personal liability or legal exposure for risks associated with the Project. Therefore, the CLIENT agrees that the CLIENT's sole and exclusive remedy for any claim, demand or suit shall be directed and/or asserted only against the CONSULTANT, a Kansas corporation, and not against any of the CONSULTANT's individual employees, officers or directors.

5.9.3. CONSULTANT and CLIENT shall not be responsible to each other for any special, incidental, indirect or consequential damages (including lost profits) incurred by either CONSULTANT or CLIENT or for which either party may be liable to any third party, which damages have been or are occasioned by Services performed or reports prepared or other work performed hereunder.

5.10 COMPLIANCE WITH LAWS

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

- 5.11 TITLES, SUBHEADS AND CAPITALIZATION
  - 5.11.1 Titles and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Agreement. Some terms are capitalized throughout the Agreement but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.
- 5.12 SEVERABILITY CLAUSE
  - 5.12.1. Should any provision of this Agreement be determined to be void, invalid or unenforceable or illegal for whatever reason, such provisions shall be null and void; provided, however that the remaining provisions of this Agreement shall be unaffected hereby and shall continue to be valid and enforceable.
- 5.13 FIELD REPRESENTATION
  - 5.13.1. Unless otherwise expressly agreed to in writing, CONSULTANT shall not be responsible for the safety or direction of the means and methods at the contractor's project site or their employees or agents, and the presence of CONSULTANT at the project site will not relieve the contractor of its responsibilities for performing the work in accordance with applicable regulations, or in accordance with project plans and specifications. If necessary, CLIENT will advise any contractors that Consultant's Services are so limited. CONSULTANT will not assume the role of "prime contractor", "constructor", "controlling employer", "supervisor" or their equivalents, unless the scope of such Services are expressly agreed to in writing.
- 5.14 HAZARDOUS MATERIALS
  - 5.14.1. The CONSULTANT and the CONSULTANT's subconsultants shall have no responsibility for the discovery, presence, handling, removal or disposal or exposure of persons to hazardous materials in any form at the Project site.
- 5.15 AFFIRMATIVE ACTION
  - 5.15.1. The CONSULTANT agrees to comply with the provisions of K.S.A. 44-1030 in the Kansas Acts Against Discrimination.
- 5.16 SPECIAL PROVISIONS
  - 5.16.1. Special Provisions may be attached and become a part of this agreement as **Exhibit 3**.



IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CONSULTANT:**

**CLIENT:**

**BG Consultants, Inc.** City of Silver Lake, KS

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

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

Printed Name: Brian J Foster, P.E.

Printed Name: Jonah Bishop

Title: Vice President

Title: Mayor

**END OF CONSULTANT-CLIENT AGREEMENT**

**EXHIBIT 1**  
**SCOPE OF SERVICES**

The Scope of Services described in this Exhibit is for professional services related to improvements to the storm water channel located north and east of Sage Road between Chestnut Street and Highway 24 in Silver Lake, Kansas, hereinafter referred to as "PROJECT". The PROJECT includes study phase services related to improvements to the existing channel.

For the following stages of the Study Phase Services, CONSULTANT will:

**1. DATA COLLECTION AND SURVEY**

- a. Receive any available information from CLIENT applicable to the PROJECT.
- b. Perform a limited land survey of cross sections and landmarks along the channel to be used for study of PROJECT.
- c. Obtain information from government agencies regarding mapped floodplain areas within the PROJECT limits.
- d. Provide USACE Request for CORPS Jurisdictional Determination Application to determine whether the property is within the USACE jurisdiction.

**2. STUDY PHASE**

- a. Complete hydrology of existing and proposed future condition of the basin contributing to the PROJECT.
- b. Complete hydraulic modeling of existing and proposed future conditions of the PROJECT channel utilizing HEC-RAS modeling software.
- c. Provide recommended improvements to PROJECT site and cost estimates for recommended alternatives.
- d. Consultant will meet with Client up to two times to review concept alternatives.
- e. Complete report of recommendations and findings regarding PROJECT improvements.

**Items not included in Services indicated:**

- f. Soil investigation shall be by the owner only.
- g. Full topographic survey.
- h. Environmental assessment, review or reports are not included in the services.
- i. Design of improvements.
- j. Construction documents and specifications.
- k. Additional USACE permitting beyond a Request for CORPS Jurisdictional Determination Application.
- l. DWR Permitting.
- m. Scope beyond that identified above. If additional scope is required, a modification to this contract shall be provided identifying additional scope and fees based upon Standard Hourly Rate schedule.

**END OF EXHIBIT 1**

**EXHIBIT 2**  
**COST AND SCHEDULE**

**ENGINEERING FEE**

1. CONSULTANT will provide services in Exhibit 1, Item 1 Data Collection and Survey for a lump sum fee of **six thousand dollars (\$6,000)**. CLIENT will be invoiced for Exhibit 1, Item 1 services in accordance with Section 4 of this AGREEMENT. Monthly invoicing will be based on the percentage of the scope of services performed.
2. CONSULTANT will provide services in Exhibit 1, Item 2 Study Phase for a lump sum fee of **thirteen thousand dollars (\$13,000.00)**. CLIENT will be invoiced for Exhibit 1, Item 2 services in accordance with Section 4 of this AGREEMENT. Monthly invoicing will be based on the percentage of the scope of services performed.

**ESTIMATED PROJECT SCHEDULE**

CONSULTANT will begin performing services after receiving the notice to proceed from the CLIENT. BG Consultants anticipates the following timeline for delivery milestones.

- Notice to Proceed by Owner: Anticipated 06.01.2024.
- Services will be performed in an effort to complete study phase by 12.31.24 dependent on coordination with USACE.

**End Exhibit 2**