



**CITY OF WESTWOOD
City Council Meeting
June 11, 2020 - 7:00 p.m.**

Note: In an effort to mitigate the spread of COVID19, this meeting will be held remotely via Zoom. As a result of the remote-holding of the City Council meeting, there will not be open Comment on Non-Agenda Items. Any comments for the City Council on non-agenda items must be submitted in writing to abby.schneweis@westwoodks.org prior to 5:00 PM on Thursday, June 11, 2020, to be shared at the meeting. Comments must be limited to five minutes in length, as read.

Access Online

<https://us02web.zoom.us/j/89695460810?pwd=cmZpR0R0RUN3BPdVZ6M3pDTGYwL2dhUT09>

Password: 268639

or

Access by Phone

(312) 626-6799

Webinar ID: 896 9546 0810

Password: 268639

Agenda Items

- I. Call to Order – Mayor David E. Waters
- II. Presentation of Westwood Foundation Scholarship – Westwood Foundation President, Robert Thompson
- III. Comment on Non-Agenda Items
- IV. Approval of Meeting Minutes
 - A. [May 14, 2020 Regular City Council Meeting](#)
 - B. [June 2, 2020 Special City Council Meeting](#)
- V. City Treasurer's Report
 - A. [Financial Statement – May 2020](#)
 - B. [Appropriation Ordinance #715](#)
- VI. City Attorney Report – City Attorney Ryan Denk
 - A. [Consideration of Fifth Amendment to Land and Building Sublease Agreement with Woodside relating to Westwood resident access to Club facilities](#)

- VII. [Administrative Report – City Clerk Leslie Herring](#)
- VIII. [Police/Court Report – Chief Greg O'Halloran](#)
- IX. [Public Works Report – Public Works Director John Sullivan](#)
 - A. [Consideration of interlocal agreement with the Unified Government of Wyandotte County-KCK for 47th Street Complete Streets project](#)
 - B. [Consideration of agreement with KDOT for Roadway Improvement Project](#)
- X. Committee Reports
 - A. Administration & Compensation Committee Report
 - B. Business & Community Affairs Committee Report
 - C. Public Safety Committee Report
 - D. Public Works Committee Report
 - E. Parks & Recreation Committee Report
 - F. Mayor's Report
- XI. Adjournment

City of Westwood, Kansas

**City Council Meeting
4700 Rainbow Boulevard
May 14, 2020 – 7:00 p.m.
Held Remotely Via Zoom**

Council Present: David E. Waters, Mayor
Jeff Harris, Council President
Lisa Cummins, Councilmember
Jason Hannaman, Councilmember
Laura Steele, Councilmember
Holly Wimer, Councilmember

Council Absent: None

Staff Present: Leslie Herring, CAO/City Clerk
Greg O'Halloran, Chief of Police
John Sullivan, Director of Public Works
Ryan Denk, City Attorney
Abby Schneweis, Assistant City Clerk

Call to Order

Mayor David E. Waters called the meeting to order at 7:00 p.m. on May 14, 2020. The Assistant City Clerk called the roll. A quorum was present.

Comment on Non-Agenda Items

Any comments for the Governing Body on non-agenda items were to be submitted to Ms. Schneweis by 5:00 pm on Thursday, May 14, 2020 to be shared during the meeting. Comments were to be limited to five minutes in length, as read.

No comments were submitted.

Appointment and Swearing In of City Clerk

Motion by Councilmember Harris to appoint Leslie Herring to serve as City Clerk for an indefinite term and for Assistant City Clerk Abby Schneweis to administer the oath of office to Mrs. Herring. Second by Councilmember Hannaman. Motion carried by a 5-0 voice vote.

Ms. Schneweis administered the Oath of Office to Mrs. Herring.

Approval of April 9, 2020 City Council Meeting Minutes

Motion by Councilmember Harris to approve the April 9, 2020 City Council Meeting minutes as submitted. Second by Councilmember Cummins. Motion carried by a 5-0 voice vote.

Treasurer's Report

Approval of Financial Statement –March & April 2020 Mr. Mills referred to the Treasurer's Report for March and April 2020 and offered to answer any questions.

March 2020 revenues for the general fund were in the amount of \$193,966 and expenses for the month were in the amount of \$254,523 with a decrease of \$60,557 in the fund balance.

April 2020 revenues for the general fund were in the amount of \$137,693 and expenses for the month were in the amount of \$201,238 with a decrease of \$63,544 in the fund balance.

Chief O'Halloran noted that the Friday, May 1st payroll was processed at the bank on Thursday, April 30th and reflects on the April 2020 financial statements, rather than the May 2020 statements.

Appropriation Ordinance 713 Motion by Councilmember Harris to approve appropriation ordinance #713 in the amount of \$616,512.65. Second by Councilmember Wimer. Motion carried by a 5-0 voice vote.

Appropriation Ordinance 714 Motion by Councilmember Cummins to approve appropriation ordinance #714 in the amount of \$302,003.33 with the stipulation that staff reflect the May 1, 2020 payroll numbers on the Appropriation Ordinance to be considered at the June 11, 2020 City Council Meeting. Second by Councilmember Harris. Motion carried by a 5-0 voice vote.

City Attorney Report

Mr. Denk noted that Blair Tanner, Woodside Health & Fitness Club, made a request to the Governing Body at the April 9, 2020 City Council meeting to abate rent payments of \$20,000.00 per month for the months of May, June and July 2020 and defer rent payments in the same amount for the months of August, September and October 2020. After the last City Council meeting, Woodside received federal stimulus money in the amount of \$930,000.00, which could be used toward rent payments. There are no proposed lease amendments or memorandum of understanding for the lease agreement to be considered by the Governing Body currently. Mayor Waters noted that Woodside paid rent in full for April and May 2020.

Mr. Denk said he is working with Mayor Waters and Mrs. Herring on getting more information from Mr. Tanner about social distancing during the summer pool season at Woodside.

Administrative Report

A. GO Bonds Series 2020A Post Issuance Disclosure Services

On March 26, 2020, the City issued its \$3,370,000 General Obligation Improvement Bonds, Series 2020A. As required by federal securities laws, the City entered into a Continuing Disclosure Undertaking in relation to the bonds that requires the City to fulfill certain ongoing disclosure obligations throughout the term of the bonds.

Gilmore & Bell, P.C., the City's bond counsel, has offered to assist the City in meeting its continuing disclosure obligations. The specific scope and terms of the engagement are included in the Disclosure Compliance Services Proposal.

Motion by Councilmember Cummins to retain Gilmore & Bell to perform post-issuance disclosure compliance services for GO Bonds, Series 2020A and to authorize the mayor to execute the Scope of Engagement contract term of five years at the amount of \$1,200 per year. Second by Councilmember Steele. Motion carried by a 5-0 voice vote

B. Waste Disposal Service Contract

The City's solid waste disposal service is currently contracted through a Solid Waste Residential Disposal Contract (the "Agreement") initiated in 2018 between WCA and Mid-America Regional Council ("MARC") through its Joint Purchasing Alliance. This Agreement provides for services in Fairway, Roeland Park, and Westwood and is effective for a three-year term with two one-year renewal options. As the Agreement term ends December 31, 2020, the partnering cities began conversations to plan for the expiration of the current Agreement. As the service provided by WCA has largely been reported to be satisfactory, the partnering cities engaged WCA – through MARC – in a conversation about renewal opportunities.

The option developed by MARC and WCA is a five-year contract with two one-year renewal options (i.e. January 2021 – December 2025). This option allows the partnering cities to lock-in lower user fees for the period of the Agreement than may otherwise be attainable. Under this new Agreement, the user fee increases from the 2020 rate of \$15.17 per month per house to \$15.45 per month per house in 2021. For 2022 through 2025, a \$0.30/month per house increase proposed in the fee in each of the four successive years.

Motion by Councilmember Harris to authorize David Warm, executive Director of Mid America Regional Council, to execute the Solid Waste Residential Disposal Services Contract with Waste Corporation of Missouri, LLC (aka WCA) for a contract period of January 1, 2021 to December 31, 2025. Second by Councilmember Cummins. Motion carried by a 5-0 voice vote.

C. Fence Variance Request – 2820 W 50th St

Rodney Bell recently purchased the house at 2820 W 50th Street and is requesting a fence variance to place a new fence 14 feet closer to Fairway Road than allowed without a variance being granted. The new fence would be a 4' height black metal fence and located ten feet from the right of way.

Mayor Waters asked if the homeowner was in attendance at the virtual meeting to address the Governing Body. Leslie stated he was not. Mayor Waters asked if the proposed fence was replacing an existing fence, Mr. Sullivan said it was not, but confirmed the proposed fence would tie into a fence at an adjoining property on the northeast corner of the lot.

Councilmember Cummins asked if Mr. Bell had contacted his neighbors about the proposed fence, Mrs. Herring said staff had not received clear confirmation on whether or not Mr. Bell had provided notice of the planned fence to his neighbors.

Mr. Sullivan noted that in the application for variance, Mr. Bell proposed the fence be placed ten feet from the street, and it would be best to place the fence ten feet from the right of way to provide space for utility work. Mr. Bell had the property surveyed.

Councilmember Steele asked if a tree located near the driveway on Mr. Bell's property would be affected by the fence installation, no staff nor members of the Governing Body could provide an answer to the question.

Councilmember Harris said he would like some confirmation from Mr. Bell that neighbors are aware of his plans to install a fence on his property. Councilmember Harris also said he would like to make sure Mr. Bell understands that his fence must be placed ten feet from the right of way, rather than the curb. Councilmember Harris said he would need confirmation about these matters before he would consider approving the variance request. Councilmembers Cummins, Hannaman, Steele and Wimer agreed.

Motion by Councilmember Cummins to table the variance request for 2820 W 50th Street made by Rodney Bell until the next City Council meeting, and to instruct staff to advise Mr. Bell of the concerns that were raised about the proposed fence during the meeting. Second by Councilmember Wimer. Motion carried by a 5-0 voice vote.

Public Safety Report

Chief O'Halloran referred to the April 2020 Public Safety report and offered to answer any questions.

A. All City Management Services Contract

Motion by Councilmember Harris to authorize the Mayor to renew the contract with All City Management Services Inc. to provide crossing guard services in the 2020-2021 school year. Second by Councilmember Steele. Motion carried by a 5-0 voice vote.

Public Works Report

Mr. Sullivan referred to the April 2020 Public Works report and offered to answer any questions.

A. CARS Program

The City of Westwood on an annual basis adopts by resolution a proposed five-year County Assistance Road System (CARS) Program Project Plan. The CARS Program is administered by Johnson County to allocate the distribution of motor fuel taxes within the County to be used on specific designated roads.

Motion by Councilmember Harris to adopt Resolution No. 82-2020 approving the 2021 to 2025 County Assistance Road System Program for road improvements within the City of Westwood. Second by Councilmember Cummins. Motion carried by a 5-0 voice vote.

B. Interlocal Agreement – Improvements to W 47th Street/Ave

The City of Westwood has contracted with CFS Engineers to design a "stripe only project" for the W. 47th Street/W. 47th Avenue Corridor to demonstrate the "Road Diet" concept and Complete Streets concept. The goal of this project is to demonstrate the effectiveness of a three lane profile with bike lanes prior to the design for the actual project scheduled for 2022 utilizing Federal STP Funds. The plans for this demonstration project are complete and ready to go to bid. The Cost Sharing Agreement determines the estimated cost associated with the improvement based on the Engineers Scope of Work and the Estimated Cost of Construction for each party.

Motion by Councilmember Hannaman to authorize the Mayor to sign the Project Cost Sharing Agreement between the City of Westwood and the Unified Government of Wyandotte County/Kansas City, Kansas providing the agreement is accepted by the Unified Government. Second by Councilmember Wimer. Motion carried by a 5-0 voice vote.

C. BMP Cost Share

The Johnson County Public Works Department administers a stormwater best management practices (BMP) cost-share program with cities in the county to provide residents a chance to apply for financial reimbursement incentives for installing a variety of different stormwater improvements.

The program will reimburse applicants up to 50% of eligible expenses, not to exceed a project reimbursement cap for the proper installation of the following best management practices.

Project Type Reimbursement Cap:

- Rain Barrel \$75.00 per barrel, up to two
- Native tree planting \$150.00 per tree, up to two
- Pollinator/Native plan garden \$1,000.00
- Rain Garden (must have pre-approval) \$1,000.00

Johnson County is providing \$5,000.00 to the City of Westwood for this program, which will run from May 1, 2020 to January 31, 2021.

Motion by Councilmember Harris to authorize the Mayor to sign the agreement with Johnson County Public Works Department for the Stormwater BMP Cost Share Program. Second by Councilmember Steele. Motion carried by a 5-0 voice vote.

D. Independence Day Fireworks Display

Annually the fireworks display is held jointly with the City of Fairway and the City of Roeland Park with contributions from Westwood Hills and Mission Woods. Staff conducted a Zoom virtual meeting organized by the City of Fairway to discuss the event. All three cities were represented by staff.

With the existence of the COVID19 pandemic and the State and County's reopening schedules pushing the July 3rd display date, it was decided that it would be too great of a risk to public health as well as the health of the first responders to hold the large gathering that is associated with the display. The timing of the contract also is a factor due largely to the uncertainty of the phased opening of the State of Kansas. It is assumed various venues will begin opening as dictated by the phasing plan but if an uptick in the number of COVID19 cases becomes apparent then the phasing plan may need to be modified or extended.

All members of the Governing Body agreed that it would not be wise to go forward with a fireworks display that draws a large crowd during the COVID19 pandemic and instructed staff not to pursue arranging a contract for 2020.

Committee Reports

a. Administration & Compensation Committee

Councilmember Hannaman thanked staff for covering and assisting with the process of hiring Mrs. Herring.

Councilmember Hannaman noted he is working with Mrs. Herring on revenue projections for the 2021 budget planning session.

b. Business & Community Affairs Committee

Councilmember Cummins said she will work with Councilmember Steele to coordinate a meeting to prepare for the 2021 budget planning session.

c. Public Safety Committee

Councilmember Harris thanked Councilmembers Steele and Wimer for their patience throughout their onboarding process as new Council Members.

d. Public Works Committee

Councilmember Steele provided notes from the most recent Public Works Committee Meeting.

e. Parks & Recreation Committee

Councilmember Wimer noted that the Westwood Women's Club has begun work on their Belinder Beautification project at the intersection of 48th Terrace and Belinder.

Councilmember Wimer noted the Committee is working with resident Karen Johnson to compile a historic walking tour of Westwood and will work with staff to push that information out as soon as it is ready.

Mayor's Report

Mayor Waters proclaimed Friday, May 15, 2020 as Peace Officer's Memorial Day in Westwood.

Mayor Waters proclaimed the Week of May 17 through May 23, 2020 as National Public Works Week in Westwood.

Mayor Waters proclaimed the month of May 2020 as Bike Month in Westwood.

Adjournment

Motion by councilmember Hannaman to adjourn the meeting. Second by Councilmember Wimer. Motion carried by a 5-0 voice vote. The meeting adjourned at 9:29 pm.

APPROVED: _____
David E. Waters, Mayor

ATTEST: _____
Leslie Herring, City Clerk

City of Westwood, Kansas
Special City Council Meeting
4700 Rainbow Boulevard
June 2, 2020 – 4:00 p.m.
Held Remotely Via Zoom

Council Present: David E. Waters, Mayor
Jeff Harris, Council President
Lisa Cummins, Councilmember
Jason Hannaman, Councilmember
Laura Steele, Councilmember
Holly Wimer, Councilmember

Council Absent: None

Staff Present: Leslie Herring, CAO/City Clerk
Greg O'Halloran, Chief of Police
John Sullivan, Director of Public Works
Ryan Denk, City Attorney

Call to Order

Mayor David E. Waters called the meeting to order at 4:00 p.m. on June 2, 2020. City Clerk Leslie Herring called the roll. A quorum was present.

Comment on Non-Agenda Items

Any comments for the Governing Body on non-agenda items were to be submitted to Ms. Schneweis by 3:00 pm on Tuesday, June 2, 2020 to be shared during the meeting. Comments were to be limited to five minutes in length, as read.

No comments were submitted.

Fence Variance Request – 2820 W 50th Street

On May 14, 2020, the City Council considered a request for a fence variance filed by Rodney Bell, for his home at 2820 W. 50th Street. At that meeting, the Council asked questions of staff regarding certain impacts and placement of the fence that staff could not answer without Mr. Bell, who was not present at the meeting. Following the meeting, Mr. Bell provided responses to the questions posed and requested that the Council reconsider the matter prior to its next regularly scheduled meeting on June 11, 2020, as his fence is scheduled to be installed the week of June 8th. Mr. Bell had answered the questions that arose during the May 14, 2020 meeting. He has spoken with his neighbors about his plans to install the fence. He does not plan to remove a tree located near his driveway. Mr. Bell is aware that the fence must be placed ten feet from the right of way. Mr. Bell was not present at the meeting.

Motion by Councilmember Harris to approve the request for a fence variance at 2820 W 50th Street made by Rodney Bell. Second by Councilmember Cummins. Mrs. Herring performed a roll call vote, the motion carried with a 5-0 vote.

5050 Rainbow Boulevard Parking Lot Demolition

The property at 5050 Rainbow Boulevard is scheduled for demolition. The existing parking lot at this location is in poor condition, and the original plan was to remove the parking lot as part of the demolition to allow for more green space. Three alternative parking lot layouts created by Uhl Engineering were provided to the Governing Body to review and consider. The Public Works Committee came to a consensus to remove the parking lot with the demolition and open the area up to green space.

The Council came to a consensus to direct staff to seek bids for the removal of the parking lot at 5050 Rainbow Boulevard during the demolition of the structure at that location and leave the entire area open to green space.

Adjournment

Motion by Councilmember Cummins to adjourn the meeting. Second by Councilmember Wimer. Motion carried by a 5-0 voice vote. The meeting adjourned at 4:39 pm.

APPROVED: _____
David E. Waters, Mayor

ATTEST: _____
Leslie Herring, City Clerk

CITY OF WESTWOOD
PROJECTED RESULTS OF OPERATIONS
FOR THE YEAR ENDING DECEMBER 31, 2020
AS OF MAY 31, 2020

FUND DESCRIPTION	MONTHLY MAY 2020	--YTD ACTIVITY THRU-- MAY 2020	MAY 2019	2020 BUDGET	PROJECTED 2020	PROJECTED VARIANCE
<u>GENERAL FUND ONLY:</u>						
REVENUE	116,091.44	1,172,825.88	1,303,424.52	2,796,904.00	2,796,904.00	0.00
TOTAL REVENUE	116,091.44	1,172,825.88	1,303,424.52	2,796,904.00	2,796,904.00	0.00
ADMIN EXPENSE	23,694.39	136,955.26	119,946.73	310,254.00	310,254.00	0.00
PUBLIC WORKS	34,883.18	196,710.94	205,208.11	530,702.00	530,702.00	0.00
POLICE EXPENSE	80,336.73	445,351.07	447,561.05	1,221,383.00	1,221,383.00	0.00
GENERAL OVERHEAD	10,245.21	250,994.73	249,787.51	750,365.00	750,365.00	0.00
PARKS & REC	2,656.58	14,379.23	22,678.46	74,050.00	74,050.00	0.00
TOTAL EXPENSES	151,816.09	1,044,391.23	1,045,181.86	2,886,754.00	2,886,754.00	0.00
INCREASE (DECREASE) IN FUND BALANCE	(35,724.65)	128,434.65	258,242.66	(89,850.00)	(89,850.00)	0.00

GENERAL FUND ANALYSIS:

SPENDING INCREASE (DECREASE) OVER PRIOR YEAR	-0.08%
REVENUE INCREASE (DECREASE) OVER PRIOR YEAR	-10.02%

CITY OF WESTWOOD
STATEMENT OF OPERATIONS
GENERAL FUND
FOR THE FIVE PERIODS ENDED MAY 31, 2020

	PERIOD TO DATE	YEAR TO DATE			
	ACTUAL	ACTUAL	PRIOR YEAR	ANNUAL BUDGT	ANN BDGT VAR
REVENUES					
6002-01 ADVALOREM TAX		333,877.93	308,422.14	556,946.00	(223,068.07)
6004-01 WOODSIDE RENT	20,000.00	100,000.00	100,000.00	240,000.00	(140,000.00)
6006-01 MOTOR VEHICLE TAX		15,578.41	14,560.03	56,692.00	(41,113.59)
6016-01 UTILITY FRANCHISE TAXES	4,700.86	69,347.02	83,964.11	210,000.00	(140,652.98)
6018-01 BUSINESS LICENSE & PERMIT		7,708.69	8,945.74	16,000.00	(8,291.31)
6020-01 NON BUS LICENSE & PERMIT	10.00	102.00	112.75	200.00	(98.00)
6021-01 BUILDING PERMIT FEES-WW	1,860.00	9,020.00	16,239.83	30,000.00	(20,980.00)
6022-01 CONTINGENT BLDG PERMIT FEES				135,000.00	(135,000.00)
6023-01 BUILDING PERMIT FEES-WWH	215.00	1,737.00	1,603.50		1,737.00
6024-01 BUILDING PERMIT FEES - MW	117.00	3,638.50	6,535.00		3,638.50
6034-01 STATE HIGHWAY MAINTENANCE		3,735.45	4,433.82	14,820.00	(11,084.55)
6035-01 SPECIAL HIGHWAY -				45,140.00	(45,140.00)
6038-01 CITY SALES & USE TAX	46,013.85	226,137.28	206,657.50	508,000.00	(281,862.72)
6039-01 CITY SALES & USE TAX - SPECIAL			103,328.76		
6040-01 COUNTY SALES & USE TAX	20,041.06	110,012.49	121,737.25	267,000.00	(156,987.51)
6042-01 LIQUOR GROSS RECEIPTS TAX		13,048.93	11,536.34	65,000.00	(51,951.07)
6048-01 POLICE SVC WESTWOOD HILLS	12,916.67	64,583.35	51,666.68	155,000.00	(90,416.65)
6050-01 POLICE SVC MISSION WOODS	10,416.67	52,083.35	52,083.35	125,000.00	(72,916.65)
6051-01 POLICE SERV-CROSSING GUARD	495.75	1,110.48	1,366.78	2,500.00	(1,389.52)
6052-01 POLICE SERV-EXTRA PATROL		6,678.38	12,394.43	45,000.00	(38,321.62)
6058-01 MUNICIPAL COURT FINES	(1,663.00)	57,568.00	79,434.50	140,000.00	(82,432.00)
6059-01 CITY HALL USE - MW	175.00	875.00	875.00	2,100.00	(1,225.00)
6060-01 CITY HALL USE - WWH	175.00	875.00	875.00	2,100.00	(1,225.00)
6064-01 INTEREST EARNINGS	100.83	522.65	678.81	300.00	222.65
6068-01 SPECIAL ASSESSMENTS		78,262.80	76,170.08	133,956.00	(55,693.20)
6070-01 SALE OF TRASH BAGS		161.25	85.00	250.00	(88.75)
6071-01 COMMUNITY ROOM FEES		1,605.00	4,140.00	5,000.00	(3,395.00)
6072-01 OTHER INCOME	5.50	2,132.47	7,052.90	2,500.00	(367.53)
6073-01 PUBLIC WORKS SERVICES		9,588.20	15,790.21	15,000.00	(5,411.80)
6074-01 MW - CITY CLERK SERVICES	450.00	2,250.00	1,800.00	5,400.00	(3,150.00)
6076-01 SWIMMING POOL FEES			8,636.04	14,000.00	(14,000.00)
6078-01 INSPECTION FEES	17.50	542.50	2,298.97	4,000.00	(3,457.50)
6080-01 HERITAGE GRANT RECEIPTS	43.75	43.75			43.75
TOTAL REVENUES	116,091.44	1,172,825.88	1,303,424.52	2,796,904.00	(1,624,078.12)

CITY OF WESTWOOD
STATEMENT OF OPERATIONS
GENERAL FUND
FOR THE FIVE PERIODS ENDED MAY 31, 2020

PERIOD TO DATE ACTUAL	YEAR TO DATE			
	ACTUAL	PRIOR YEAR	ANNUAL BUDGT	ANN BDGT VAR
15,090.02	87,860.99	85,959.05	205,692.00	117,831.01
			4,720.00	4,720.00
1,135.28	6,541.03	6,496.55	18,937.00	12,395.97
1,469.14	8,142.14	8,516.55	20,221.00	12,078.86
2,326.85	11,900.59	10,543.65	31,054.00	19,153.41
123.21	796.78	507.58	1,500.00	703.22
26.22	236.69	509.35	2,500.00	2,263.31
	1,099.00		1,000.00	(99.00)
	21.90		1,000.00	978.10
600.00	1,625.00		1,800.00	175.00
		70.84		
2,761.67	16,643.14	3,080.40	16,030.00	(613.14)
104.00	395.00	67.00	1,000.00	605.00
58.00	1,693.00	3,278.00	1,800.00	107.00
		917.76		
			3,000.00	3,000.00
23,694.39	136,955.26	119,946.73	310,254.00	173,298.74

CITY OF WESTWOOD
STATEMENT OF OPERATIONS
GENERAL FUND
FOR THE FIVE PERIODS ENDED MAY 31, 2020

	PERIOD TO DATE	YEAR TO DATE			
	ACTUAL	ACTUAL	PRIOR YEAR	ANNUAL BUDGT	ANN BDGT VAR
PUBLIC WORKS					
8102-01 SALARIES	18,771.40	112,777.72	110,573.13	246,397.00	133,619.28
8103-01 PW OVERTIME				15,890.00	15,890.00
8104-01 PAYROLL TAXES	1,412.17	8,388.50	8,362.79	23,606.00	15,217.50
8106-01 RETIREMENT	1,830.71	10,146.06	10,368.32	25,206.00	15,059.94
8108-01 HEALTH INSURANCE	5,587.95	28,399.78	27,420.72	77,303.00	48,903.22
8109-01 DOT DRUG TEST ADMINI	16.50	185.00	132.00	500.00	315.00
8110-01 OFFICE SUPPLIES	45.97	117.13	205.23	750.00	632.87
8112-01 OPERATIONS SUPPLY GAS & OIL	367.52	3,709.84	2,663.29	13,500.00	9,790.16
8114-01 OPERATING SUPPLIES OTHER	273.86	3,082.59	3,916.58	8,000.00	4,917.41
8120-01 SMALL TOOL EXPENSE	4.08	630.98	397.20	3,000.00	2,369.02
8122-01 TRAVEL EXPENSE		76.65	431.01	1,200.00	1,123.35
8124-01 TRAINING PROGRAMS				1,200.00	1,200.00
8126-01 STREET LIGHT & TRAF SIGNS	322.00	4,161.60	6,688.95	14,500.00	10,338.40
8136-01 PRINTING				300.00	300.00
8140-01 PUBLIC UTILITIES (PW shop)	334.27	3,554.93	4,431.24	14,000.00	10,445.07
8142-01 WASTE DISPOSAL/DUMPSTER				2,000.00	2,000.00
8144-01 REPAIRS & MAINT VEHICLES	4,780.86	4,799.29	2,120.18	6,600.00	1,800.71
8150-01 REPAIRS & MAINT OTHER		1,331.59	8,801.55	8,000.00	6,668.41
8160-01 DUES & SUBSCRIPTIONS	2.99	2.99	1,515.43	2,000.00	1,997.01
8168-01 UNIFORMS		1,177.59	169.25	1,750.00	572.41
8170-01 BUILDINGS	16.03	1,864.04	1,866.54	3,500.00	1,635.96
8172-01 SAND & SALT		5,157.36	9,569.70	9,500.00	4,342.64
8174-01 MACHINERY & EQUIPMENT	1,116.87	1,116.87		35,000.00	33,883.13
8175-01 PROFESSIONAL FEES		2,615.43		2,000.00	(615.43)
8176-01 PW PROF FEES				2,000.00	2,000.00
8177-01 ENG CONSULTANT TRANSFER		3,415.00	5,575.00	13,000.00	9,585.00
TOTAL PUBLIC WORKS	34,883.18	196,710.94	205,208.11	530,702.00	333,991.06

CITY OF WESTWOOD
STATEMENT OF OPERATIONS
GENERAL FUND
FOR THE FIVE PERIODS ENDED MAY 31, 2020

	PERIOD TO DATE	YEAR TO DATE			
	ACTUAL	ACTUAL	PRIOR YEAR	ANNUAL BUDGT	ANN BDDT VAR
POLICE					
8202-01 SALARIES-Police Personnel Only	42,989.17	240,063.20	241,757.53	537,741.00	297,677.80
8203-01 PS OVERTIME				67,250.00	67,250.00
8204-01 PAYROLL TAXES	3,366.21	18,503.56	18,934.60	54,449.00	35,945.44
8205-01 CAR ALLOWANCE				5,400.00	5,400.00
8206-01 RETIREMENT	6,626.61	38,308.17	43,099.10	91,222.00	52,913.83
8208-01 HEALTH INSURANCE	12,470.50	59,259.99	58,315.56	162,678.00	103,418.01
8210-01 OPERATING SUPPLIES	254.09	2,138.03	2,593.33	8,000.00	5,861.97
8212-01 GAS & OIL	780.68	4,125.74	6,915.07	19,000.00	14,874.26
8214-01 UNIFORMS & CLEANING	(2,341.24)	1,368.29	1,791.60	8,500.00	7,131.71
8218-01 MUNICIPAL COURT COSTS	(3,325.36)	5,672.85	5,180.83	14,000.00	8,327.15
8219-01 RECORDS MGMT SYSTEM	3,481.00	3,770.38		5,000.00	1,229.62
8221-01 MENTAL HEALTH CO-RESONDER		915.73	553.63	5,000.00	4,084.27
8222-01 TRAVEL ALLOWANCE			5.10	4,000.00	4,000.00
8224-01 TRAINING PROGRAMS	65.80	4,956.45	4,749.89	11,500.00	6,543.55
8225-01 SALARIES - Court Clerk only	4,895.35	27,008.92	26,655.09	59,265.00	32,256.08
8226-01 PAYROLL TAXES - Court Clerk	368.47	2,008.49	2,014.54	5,603.00	3,594.51
8227-01 RETIREMENT - Court Clerk	434.10	2,405.87	2,535.62	5,983.00	3,577.13
8229-01 OVERTIME - COURT CLERK				2,992.00	2,992.00
8230-01 PROSECUTOR & JUDGE	1,750.00	9,100.00	9,275.00	23,100.00	14,000.00
8232-01 COMMUNICATIONS	230.67	1,319.29	1,498.88	5,000.00	3,680.71
8234-01 COMPUTER EXPENSE	7,118.50	11,104.12	13,248.54	24,000.00	12,895.88
8236-01 PRINTING	172.00	359.00	1,025.02	2,000.00	1,641.00
8244-01 REPAIRS & MAINT VEHICLES	670.35	2,825.39	2,507.88	7,000.00	4,174.61
8250-01 REPAIRS & MAINT - OTHER	324.50	1,582.50	246.02	4,000.00	2,417.50
8260-01 DUES & SUBSCRIPTIONS		787.85	423.88	2,000.00	1,212.15
8262-01 MISCELLANEOUS	5.33	1,023.02	1,205.32	2,500.00	1,476.98
8264-01 SCHOOL CROSSING GUARD		1,665.72	3,029.02	7,200.00	5,534.28
8266-01 ANIMAL CONTROL				11,000.00	11,000.00
8274-01 MACHINERY & EQUIPMENT		5,078.51		66,000.00	60,921.49
TOTAL POLICE	80,336.73	445,351.07	447,561.05	1,221,383.00	776,031.93

CITY OF WESTWOOD
STATEMENT OF OPERATIONS
GENERAL FUND
FOR THE FIVE PERIODS ENDED MAY 31, 2020

	PERIOD TO DATE	YEAR TO DATE			
	ACTUAL	ACTUAL	PRIOR YEAR	ANNUAL BUDGT	ANN BDGT VAR
GENERAL OVERHEAD					
8310-01 PAYROLL SERVICES	295.03	1,832.41	1,788.39	4,500.00	2,667.59
8314-01 OPERATING SUPPLIES	572.75	3,432.77	3,851.96	7,030.00	3,597.23
8320-01 SALARIES-Governing Body only	1,950.00	9,750.00	9,750.00	23,400.00	13,650.00
8324-01 PAYROLL TAXES-Gov Body only	144.55	724.97	737.18	2,106.00	1,381.03
8325-01 AUDIT EXPENSES		7,175.00		7,000.00	(175.00)
8327-01 LEGAL SERVICES	2,183.00	9,459.00	11,651.23	35,000.00	25,541.00
8330-01 SALARIES-treasurer only	900.00	11,402.50	12,100.00	22,000.00	10,597.50
8331-01 401a Match				11,000.00	11,000.00
8332-01 LEGAL PUB & CLASS ADS		1,763.43	137.60	750.00	(1,013.43)
8334-01 PAYROLL TAXES-treasurer only	66.71	334.59	340.23	972.00	637.41
8336-01 CITY NEWSLETTER/PRINTING		452.00	452.00	3,000.00	2,548.00
8337-01 LEGAL PUB & CLASS ADS		100.00	106.00		(100.00)
8338-01 INSURANCE & BONDS	18.00	96,295.96	85,511.58	86,900.00	(9,395.96)
8342-01 WASTE DISPOSAL	11,104.44	66,626.64	66,626.64	133,253.00	66,626.36
8353-01 BUSINESS/COMMUNITY AFFAIRS			3,063.18	6,750.00	6,750.00
8354-01 BLDG & GROUNDS-CITY HALL MAINT	131.81	3,726.56	5,192.92	13,000.00	9,273.44
8359-01 TELEPHONE	707.14	2,460.83	2,097.13	4,500.00	2,039.17
8360-01 LEASED ST LIGHT/TRAFFIC SIGNAL	4,121.64	15,950.77	13,598.44	42,000.00	26,049.23
8361-01 POSTAGE	300.00	1,200.00	1,507.51	4,000.00	2,800.00
8362-01 CITY HALL UTILITIES	331.22	8,322.45	9,789.38	31,500.00	23,177.55
8370-01 BUILDING MAINT/CLEANING	111.25	6,402.88	8,350.64	19,804.00	13,401.12
8372-01 CONTINGENCY			760.00	15,000.00	15,000.00
8374-01 EQUIPMENT RESERVE TRANSFER				5,000.00	5,000.00
8375-01 STONE WALL MAINT TRANSFER				5,000.00	5,000.00
8376-01 ST HIGHWAY MAINT TRANSFER				14,900.00	14,900.00
8377-01 CIP TRANSFER				85,000.00	85,000.00
8378-01 CONTINGENCY BLDG PMT FEES			8,643.75	135,000.00	135,000.00
8379-01 WV TIF CID SALES TAX Transfer	(12,692.33)			24,000.00	24,000.00
8380-01 OUTSIDE AGENCIES		3,582.00	3,731.75	8,000.00	4,418.00
TOTAL GENERAL OVERHEAD	10,245.21	250,994.76	249,787.51	750,365.00	499,370.24
OTHER					
TOTAL OTHER	.00	.00	.00	.00	.00

CITY OF WESTWOOD
STATEMENT OF OPERATIONS
GENERAL FUND
FOR THE FIVE PERIODS ENDED MAY 31, 2020

	PERIOD TO DATE	YEAR TO DATE			
	ACTUAL	ACTUAL	PRIOR YEAR	ANNUAL BUDGT	ANN BDGT VAR
PARKS & RECREATION					
8514-01 OPERATING SUPPLIES OTHER	23.74	26.59	2,000.00	1,976.26	
8540-01 PUBLIC UTILITIES	244.08	4,366.71	5,818.31	18,000.00	13,633.29
8550-01 REPAIRS & MAINT. OTHER	926.04	6,955.59	11,873.76	6,000.00	(955.59)
8552-01 PROJECTS				10,000.00	10,000.00
8554-01 TREE & EASEMENT CARE	69.80	181.79	272.91	15,000.00	14,818.21
8555-01 LANDSCAPING & EASE MAINT	1,416.66	2,476.66	4,127.85	10,000.00	7,523.34
8566-01 COMMUNITY PICNIC				7,000.00	7,000.00
8567-01 FIREWORKS			105.00	3,200.00	3,200.00
8569-01 OTHER EVENTS		270.00	278.77	2,500.00	2,230.00
8574-01 POOL PASSES		104.74	175.27	350.00	245.26
TOTAL PARKS & RECREATION	2,656.58	14,379.23	22,678.46	74,050.00	59,670.77
TOTAL EXPENSES	151,816.09	1,044,391.26	1,045,181.86	2,886,754.00	1,842,362.74
EXCESS REVENUES OVER EXPENSES	(35,724.65)	128,434.62	258,242.66	(89,850.00)	218,284.62

CITY OF WESTWOOD
STATEMENT OF OPERATIONS
WOODSIDE VILLAGE TIF FUND
FOR THE FIVE PERIODS ENDED MAY 31, 2020

	PERIOD TO DATE	YEAR TO DATE			
	ACTUAL	ACTUAL	PRIOR YEAR	ANNUAL BUDGT	ANN BDGT VAR
REVENUES					
6002-06 AD VALOREM TAX		139,910.07	137,361.03		139,910.07
6038-06 CID-1	9,878.72	60,124.49	60,772.73		60,124.49
6040-06 CID-2	4,000.89	29,969.34	28,902.59		29,969.34
TOTAL REVENUES	13,879.61	230,003.90	227,036.35	.00	230,003.90
EXPENSES					
ADMINISTRATIVE					
8006-06 UMB TIF PAYMENT	12,692.33	169,463.62	136,773.38		(169,463.62)
TOTAL ADMINISTRATIVE	12,692.33	169,463.62	136,773.38	.00	(169,463.62)
TOTAL EXPENSES	12,692.33	169,463.62	136,773.38	.00	(169,463.62)
TOTAL REVENUES OVER EXPENSES	1,187.28	60,540.28	90,262.97	.00	60,540.28

CITY OF WESTWOOD
STATEMENT OF OPERATIONS
OTHER FUNDS
FOR THE FIVE PERIODS ENDED MAY 31, 2020

	PERIOD TO DATE	YEAR TO DATE			
	ACTUAL	ACTUAL	PRIOR YEAR	ANNUAL BUDGT	ANN BDGT VAR
REVENUES					
6002-08 STORM WATER FUND		89,681.80	58,522.50		89,681.80
6003-08 AD VALOREM TAX		7,949.66			7,949.66
6006-08 SPECIAL HIGHWAY FUND		26,213.90	22,082.93		26,213.90
6039-08 CITY SALES & USE TAX - SPECIAL	23,006.94	113,068.61			113,068.61
6042-08 BOND PROCEEDS REVENUE		174,908.13			174,908.13
TOTAL REVENUES	23,006.94	411,822.10	80,605.43	.00	411,822.10
EXPENSES					
ADMINISTRATIVE					
8173-08 STORM WATER EXP	17,088.45	54,625.24	14,449.36		(54,625.24)
8175-08 SPECIAL HIGHWAY EXP		131.25			(131.25)
8176-08 CAPITAL IMPROVEMENT EXP	111,569.08	321,311.06	74,245.02		(321,311.06)
8178-08 BOND PROJECT COSTS		669,312.65			(669,312.65)
TOTAL ADMINISTRATIVE	128,657.53	1,045,380.20	88,694.38	.00	(1,045,380.20)
TOTAL EXPENSES	128,657.53	1,045,380.20	88,694.38	.00	(1,045,380.20)
TOTAL REVENUES OVER EXPENSES	(105,650.59)	(633,558.10)	(8,088.95)	.00	(633,558.10)

CITY OF WESTWOOD
BALANCE SHEET
WOODSIDE VILLAGE TIF FUND
MAY 31, 2020

ASSETS

CURRENT ASSETS	
CASH IN BANK-TIF Fund	234,083.04
	<hr/>
TOTAL CURRENT ASSETS	234,083.04
FIXED ASSETS	
	<hr/>
TOTAL FIXED ASSETS	.00
	<hr/>
TOTAL ASSETS	234,083.04
	<hr/> <hr/>

LIABILITIES AND FUND BALANCE

CURRENT LIABILITIES	
	<hr/>
TOTAL CURRENT LIABILITIES	.00
	<hr/>
TOTAL LIABILITIES	.00
FUND BALANCE	
FUND BALANCE - TIF	173,542.76
FUND BALANCE-CURRENT YEAR	60,540.28
	<hr/>
TOTAL FUND BALANCE	234,083.04
	<hr/>
TOTAL LIABILITIES AND FUND BALANCE	234,083.04
	<hr/> <hr/>

CITY OF WESTWOOD
BALANCE SHEET
OTHER FUNDS
MAY 31, 2020

ASSETS

CURRENT ASSETS

Cash in bank - Other Funds

1,082,571.74

TOTAL CURRENT ASSETS

1,082,571.74

FIXED ASSETS

TOTAL FIXED ASSETS

.00

TOTAL ASSETS

1,082,571.74

LIABILITIES AND FUND BALANCE

CURRENT LIABILITIES

TOTAL CURRENT LIABILITIES

.00

TOTAL LIABILITIES

.00

FUND BALANCE

Fund balance - Other Funds

1,716,129.84

FUND BALANCE-CURRENT YEAR

(633,558.10)

TOTAL FUND BALANCE

1,082,571.74

TOTAL LIABILITIES AND FUND BALANCE

1,082,571.74

CITY OF WESTWOOD
BALANCE SHEET
MAY 31, 2020

ASSETS

CURRENT ASSETS

PETTY CASH	\$250.00	
Cash in bank - General	798,848.46	
CASH IN BANK-TIF Fund	234,083.04	
Cash in bank - Other Funds	1,082,571.74	
Cash in bank - Bond Fund	37,129.06	
TOTAL CURRENT ASSETS		2,152,882.30
TOTAL ASSETS		\$2,152,882.30

CITY OF WESTWOOD
BALANCE SHEET
MAY 31, 2020

LIABILITIES AND FUND BALANCE

CURRENT LIABILITIES

RESERVE FOR PETTY CASH	\$250.00	
WOODSIDE VILLAGE DEPOSITS	9.19	
Refundable Bond Deposits	36,719.99	
STATE TAXES PAYABLE	(.01)	
KPERS/KPF	2,476.16	
AFLAC Withheld	(212.70)	
TOTAL CURRENT LIABILITIES		39,242.63
TOTAL LIABILITIES		39,242.63

FUND BALANCE

FUND BALANCE - General	668,550.27	
FUND BALANCE-CURRENT YEAR	(444,583.20)	
FUND BALANCE - TIF	173,542.76	
Fund balance - Other Funds	1,716,129.84	
TOTAL FUND BALANCE		2,113,639.67
TOTAL LIABILITIES AND FUND BALANCE		\$2,152,882.30

APPROPRIATION ORDINANCE NO. 715

AN ORDINANCE APPROPRIATING THE AMOUNTS SET UP IN EACH FUND IN THE BUDGET FOR THE REMAINDER OF CALENDAR YEAR 2020, PROVIDING FOR THE PAYMENT OF ALL CLAIMS AND CHARGES AGAINST THE ACCOUNTS PROVIDED FOR THEREIN.

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

SECTION 1. That there is hereby appropriated the accounts set up in each fund in the budget for the remainder of the fiscal year 2020 for the payment of all claims and charges against each fund. Payments of all claims and charges against each fund shall be made by combination checks and warrants, drawn by the City Clerk and counter-signed by the Treasurer as provided by law; provided, however, that such officers shall at all times comply with the provisions of the Budget Law and Cash Basis Law of the State of Kansas.

SECTION 2. That the payment of all claims and charges against the respective accounts and funds provided in the budget for the year 2020 are hereby authorized, ratified and approved.

SECTION 3. This Ordinance shall take effect from and after its passage.

ADOPTED this 11th day of June, 2020.

MAYOR

ATTEST: CITY CLERK

COUNCIL ACTION FORM

Meeting Date: May 14, 2020

Staff Contact: Leslie Herring, City Clerk

Agenda Item: Consider Fifth Amendment to Land and Building Sublease Agreement with Woodside Racquet Club Management, Inc. d/b/a Woodside Health and Tennis Club

Background / Description of Item:

Due to concerns of Woodside Racquet Club Management relating to the declared pandemic of COVID-19, certain additional health and safety precautions and protocols are deemed necessary to implement at its facilities to ensure the health and safety of Woodside Club (“the Club”) members, and Westwood residents using the Club’s swimming and tennis facilities. As some of these additional health and safety precautions and protocols impact Westwood residents’ access to the swimming and tennis facilities (as they will impact all Woodside Club members), the City and the Club agreed to formalize the temporary impact to Westwood resident access.

Staff Comments/Recommendation:

The draft agreement is enclosed for review and consideration. The main impacts to Westwood residents that the Agreement seeks to memorialize include:

1. No Westwood residents or Club members under the age of 16 are permitted to use the swimming facilities during the 2020 calendar year. If Woodside begins allowing Club members under the age of 16 to use the swimming facilities, the Westwood residents under that age would likewise be permitted.
2. Woodside will use a reservation system to ensure comfortable capacity limits aren’t exceeded. These reservations are to be equally offered to Westwood residents and Club members and if reservations are no longer required for Club members, they should likewise not be required for Westwood residents. To ensure accountability of reservations, the Club may revoke or charge Westwood residents and Club members for failing to show up for a reservation. This policy/practice is expected to be consistently applied to Woodside members and Westwood residents.
3. The Club will issue pool passes this season in order to enroll Westwood residents into their online reservation system for pool access. The Club will then remit the collected pool pass revenues and an accounting to the City.

As a note on Exhibit A of the Agreement, staff has identified a date of Monday, July 13th to serve as the effective date of the half-season reduced pool pass rate.

Recommended Motion:

I move to authorize the Mayor to execute the Fifth Amendment to Land and Building Sublease Agreement with Woodside Racquet Club Management, Inc. d/b/a Woodside Health and Tennis Club.

**FIFTH AMENDMENT TO LAND AND BUILDING
SUBLEASE AGREEMENT**

DATE: JUNE ____, 2020

LANDLORD:

**CITY OF WESTWOOD, KANSAS
A MUNICIPAL CORPORATION OF THE STATE OF KANSAS**

TENANT:

**WOODSIDE RACQUET CLUB MANAGEMENT, INC.,
D/B/A WOODSIDE HEALTH AND TENNIS CLUB,
A KANSAS CORPORATION**

THIS FIFTH AMENDMENT TO LAND AND BUILDING SUBLEASE AGREEMENT (this **“Amendment”**) is made and entered into as of this ____ day of June, 2020, by and among the City of Westwood, Kansas, a municipal corporation of the State of Kansas (**“Landlord” or “City”**) and Woodside Racquet Club Management, Inc., a Kansas corporation (**“WRCM” or “Sub-Tenant”**).

WITNESSETH:

WHEREAS, Landlord (as successor-in-interest to Westwood Foundation, Inc.) and Sub-Tenant entered into a Land and Building Sublease Agreement, dated December 6, 2010, as the same was amended pursuant to that certain First Amendment to Land and Building Sublease Agreement, dated January 12, 2012, as the same was further amended pursuant to that certain Second Amendment to Land and Building Sublease Agreement, dated May 14, 2013, as the same was further amended pursuant to that certain Third Amendment to Land and Building Sublease Agreement, dated February 13, 2014, as the same was amended pursuant to that certain Fourth Amendment to Land and Building Sublease Agreement, dated August 19, 2014, and as the same was assigned to, and assumed by, Landlord pursuant to that certain Assignment and Assumption of Lease and Sublease Rights and Obligations, dated February 13, 2014 (as amended and assigned, the **“Sublease”**);

WHEREAS, pursuant to the terms of the Sublease, WRCM leases from Landlord Lots 1 and 2, Woodside Club Complex, a subdivision in the City of Westwood, Johnson County, Kansas (the **“Property”**);

WHEREAS, Section 4.6 of the Sublease provides as follows, “Use of Property by Residents of the City of Westwood. The Property, improvements situated thereon and the Facility shall be operated for the benefit of (1) the residents of the City (the **“Residents”**) with and only with respect to the swimming facilities and the outdoor tennis facilities which such residents are permitted to use under the terms of (i) a Declaration of Restrictions by the City dated June 21, 1976, and (ii) the membership agreements of the Members and (2) the Members with respect to the swimming, athletic training facilities, indoor and outdoor tennis, dining facilities, exercise facilities and all other facilities now or hereafter constituting part of the Property. Accordingly, during the term of this Sublease, all outdoor tennis facilities and swimming facilities shall be furnished to the City for the benefit of the Residents without charge by the Sub-Tenant, however City shall charge Residents an amount it deems appropriate and require Residents to register with the City;”

WHEREAS, as of the effective date of this Fifth Amendment a world pandemic has been declared due to the prevalence and spread of Covid-19;

WHEREAS, as of the effective date of this Fifth Amendment, the State of Kansas and the County of Johnson County have adopted recommendations relative to safety precautions to observe relative to preventing the further spread of Covid-19, however, none of these recommendations have the force of law;

WHEREAS, the Parties are entering into this Fifth Amendment for the purposes of adjusting their rights and obligations under the Sublease relative to the operation of swimming pool operations at the Property during the 2020 swim season;

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, the sum of One and 00/100 Dollars (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by all parties hereto, it is agreed as follows:

1. Children. The City shall forbear from enforcement of its right pursuant to Section 4.6 of the Sublease to have Children residents under the age of 16 to have access to the swimming facilities at Woodside during the 2020 swim season which is defined for purposes of this Amendment as that period of time during the calendar year 2020 that the outdoor pools at Woodside are open. The City may at its discretion withdraw such forbearance and require compliance of WRCM to allow all residents, including children below the age of 16 to have access to the swimming facilities. The City shall not withdraw such forbearance without prior consultation with WRCM. In the event that WRCM allows WRCM Member children under the age of 16 to have access to the swimming facilities, children of City residents shall similarly be allowed equal access to the swimming facilities.
2. Capacity and Reservations. Capacity at the swimming facilities shall be limited to ensure appropriate social distancing. To accommodate such limited capacity, reservations may be required prior to a City resident's visit to the swimming facilities. Reservations shall be equally available to WRCM Members and City residents. In the event that a City resident fails to show for a pool reservation or fails to timely cancel a pool reservation or any combination of the two on two or more occasions, such resident's pool pass for the 2020 swim season shall be revoked. Failure to timely cancel a pool reservation for purposes of this paragraph shall be deemed to be a cancellation with less than thirty (30) minutes notice. A failure to show for purposes of this paragraph shall mean a failure to physically check-in at the pool front desk within ten (10) minutes of the scheduled reservation. In the event of a revocation as provided for in this paragraph, City shall cause a refund of the resident pool fee as follows: June revocation – 2/3^{ds} of fee returned, July revocation 1/3rd of fee returned, August or later revocation – fee will not be returned. In the alternative to the foregoing no show policy, City residents shall be permitted at the time that they sign up for a pool pass to be covered by WRCM's no show policy as applied to WRCM Members. In the event that capacity is no longer limited due to safety precautions associated with Covid-19, or to the extent that WRCM makes the swimming facilities available without reservation, the foregoing provisions within this paragraph 2 shall not apply and the swimming facilities shall be equally available to City residents and WRCM Members.
3. Pool Pass. The City will not administer issuance of resident pool passes for the 2020 swim season. WRCM shall administer the resident pool passes for the 2020 swim season. WRCM shall provide instructions to the City, which the City will then communicate to City residents for the issuance of pool passes. WRCM shall be permitted to require proof of City residency. In the event that WRCM denies a pool pass based upon a determination that an applicant is not a resident of the City, WRCM shall communicate the basis for such denial to the applicant and shall e-mail Abby Schneweis at abby.schneweis@westwoodks.org and/or such other City staff as may be designated by the City, providing an explanation of the basis for the denial. WRCM shall inform such applicant that they have a right to appeal WRCM's lack of residency determination to the City. In the event of such an appeal, the City's determination of residency shall be final and binding. To the extent that any issues other than residency preclude the issuance of a pool pass to a City resident, WRCM shall inform the City of the issue precluding issuance and the parties agree to work cooperatively to resolve the issue. WRCM shall

collect pool pass fees in accordance with Exhibit A attached hereto and remit such fees to the City. WRCM shall keep an accounting of resident pool pass fees received identifying the fees received by resident and shall make this accounting available to the City for review and inspection. WRCM shall require all City resident pool pass applicants to execute a liability waiver waiving all liability against both WRCM and the City, including a waiver of liability for Covid-19 transmission. Such waiver shall be in substantially the same form as attached hereto as Exhibit B.

4. Pool Use Rules and Regulations. WRCM shall be permitted to adopt such reasonable rules and regulations which shall be binding upon City resident pool pass holders. Such rules and regulations shall include safeguards intended to preclude the transmission of Covid-19. Such rules and regulations shall be equally applicable to WRCM Members. In the event that a City resident pool pass holder knowingly and repeatedly violates such rules and regulations, WRCM shall be permitted to immediately revoke the issued pool pass. WRCM shall communicate any such revocation to the City by e-mail to Abby Schneweis at abby.schneweis@westwoodks.org and/or such other City staff as may be designated by the City, providing an explanation for such revocation. Such revocation may be appealed by the resident to the City. WRCM shall notify resident of their right to appeal such revocation to the City. City shall uphold such pass holder's pool pass revocation unless the pass holder provides clear and convincing evidence that the alleged knowing and repeated rule and regulation violations did not occur. In the event of such an appeal, the City's determination shall be final and binding.
5. All Other Terms Remain Unchanged and Applicable. All other terms and provisions in the Sublease shall remain in full force and effect and the parties hereto acknowledge and reaffirm the applicability and enforceability thereof.
6. Counterparts and Execution. This Amendment may be executed in counterparts, each of which shall be deemed an original but all of which, taken together, shall constitute the same instrument. Each party may rely upon e-mail counterparts of this Amendment signed by the other party with the same effect as if such party had received an original counterpart signed by such other party. Execution and notarization of this Amendment may be conducted remotely in accordance with Kansas Governor's Executive Order 20-20 or similar pronouncement or enactment for the State within which the signatory party signs the Amendment.

IN WITNESS WHEREOF the parties have executed this Amendment as of the date first set forth above.

[Remainder of Page Intentionally Blank]

LANDLORD:
CITY OF WESTWOOD, KANSAS

By: _____
Name: David E. Waters
Title: Mayor

ATTEST:

By: _____
Name: Leslie Herring
Title: City Clerk

Approved as to form:

By: _____
Name: Ryan B. Denk
Title: City Attorney

ACKNOWLEDGEMENT

STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)

On this _____ day of June, 2020, before me, the undersigned, a notary public in and for said county and state, appeared David Waters, Mayor of the City of Westwood, Kansas, known to me to be the person who executed the within Fifth Amendment to Land and Building Sublease Agreement on behalf of the City of Westwood, Kansas and acknowledge to me that he executed the same for the purposes therein stated.

IN TESTIMONY WHEREOF, I have unto subscribed my name and affixed my official seal the day and year last written.

Notary Public

My commission expires:

WOODSIDE RACQUEST CLUB
MANAGEMENT, INC.

ACKNOWLEDGEMENT

STATE OF _____)
) ss:
COUNTY OF _____)

On this _____ day of June, 2020, before me, the undersigned, a notary public in and for said county and state, appeared Blair C. Tanner, President of Woodside Racquet Club Management, Inc., known to me to be the person who executed the within Fifth Amendment to Land and Building Sublease Agreement on behalf of Woodside Racquet Club Management, Inc. and acknowledge to me that he executed the same for the purposes therein stated.

IN TESTIMONY WHEREOF, I have unto subscribed my name and affixed my official seal the day and year last written.

Notary Public

My commission expires:

EXHIBIT A

Full Season Rate

- Individual Membership @ \$40.00
- Family Membership (up to 4 members, maximum of 2 adults 21 years or older) @ \$85.00
- Additional family members after 4 family members \$5.00 per person

Half Season Rate – one week after July 4th

- Individual Membership @\$25.00
- Family Membership (up to 4 members, maximum of 2 adults 21 years or older) @ \$45.00
- Additional family members after 4 family members \$5.00 per person

All Season

- Pool card - \$3.00 per card
- Individual Single Day Pass - \$10.00

EXHIBIT B

[Attach Woodside Waiver]

MAY 2020						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
26	27	28	29	30	1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27 Department head meeting (discuss fund status, share working spreadsheets)	28	29	30
31	1	2	3	4	5	6

JUNE 2020						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
31	1	2	3	4	5	6
7	8	9	10 Department head meeting (status update, identify missing information, questions, concerns)	11 Share budget plan, process, and timeline w/ Council for feedback	12	13
14	15	16	17	18	19	20
21	22	23	24 Department head meeting (discuss revenue picture)	25	26	27
28	29 Begin budget meetings at Council Committee level	30	1	2	3	4

JULY 2020						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
28	29	30	1	2	3	4
5	6	7	8	9 Provide high-level status update to Council	10	11
12	13	14	15 Complete budget meetings at Council Committee level	16	17 Send budget work session packet to Council and department heads	18
19	20	21 Hold budget work session with City Council	22	23	24 Publish notice of budget hearing; advertise through City communication	25
26	27	28 Notice of budget hearing runs in paper	29	30	31	1

AUGUST 2020						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
26	27	28	29	30	31	1
2	3	4	5	6	7	8
9	10	11	12	13 Budget hearing w/ City Council	14	15
16	17	18	19	20	21	22
23	24	25 Adopted budget due to County Clerk	26	27	28	29
30	31	1	2	3	4	5

WESTWOOD

MAY 2020

ACTIVITIES / OFFEN	May-20	May-19	CHANGE
<i>PART I CRIMES</i>			
MURDER	0	0	0
RAPE	0	0	0
ROBBERY	0	1	-1
<u>BURGLARY</u>			
BUSINESS	1	0	1
RESIDENTIAL	0	0	0
VEHICLE	3	0	3
MOTOR VEH THEFT	0	1	-1
LARCENY / THEFT	2	2	0
ASSAULTS	2	0	2
<u>ARRESTS</u>			
FELONY	0	0	0
MISDEMEANOR	0	0	0
TRAFFIC	0	0	0
DUI	1	0	1
OTHER	0	1	-1
WARRANTS	3	8	-5
CONFINED	1	2	-1
<u>SUMMONS</u>			
HAZARD	28	59	-31
NON-HAZARD	48	171	-123
DUI	1	0	1
ORD. VIOLATION	0	0	0
ACCIDENT 10-47	2	0	2
ACCIDENT 10-48	1	0	1
ADMIN.DUTIES-PD	17	25	-8
ADMIN.DUTIES - CIT	0	0	0
ALARM	2	2	0
ANIMAL	1	0	1
ASSAULT - BATTERY	0		0
ASSIST - POLICE	5	11	-6
ASSIST - PUB MOTOR	10	7	3
BLD. CHECK-SHAKE	5	5	0
BLD. CHECK-PATROL	1220	1350	-130
BUSINESS CHECK	24	24	0
CASUALTY-RESCUE	4	3	1
CIVIL MATTER	2	0	2

ACTIVITIES / OFFENSE	May-20	May-19	CHANGE
CRIMINAL DAMAGE	2	0	2
DISORDERLY CONDUCT	0	0	0
DISTURBANCE-ARMED	0	0	0
DISTURBANCE	1	0	1
FIRE	0	0	0
F.I.F	0	0	0
INFO / INVEST	6	2	4
INTERV / INTEROG	0	0	0
JUVENILE	1	0	1
NATURE UNKNOWN	0	1	-1
NOISE COMPLAINT	1	1	0
OPEN DOOR	2	0	2
ORD. COMPLAINT	0	0	0
ORD. VIOL WARNING	0	0	0
ORD. VIOL LETTER	0	0	0
OTHER	0	0	0
PARK CHECK	0	0	0
PED. CHECK	0	0	0
PROWLER	0	0	0
PUBLIC SERVICE	11	10	1
RECOVERED PROP	0	0	0
		0	
SUSPICIOUS SUBJECT	2	4	-2
SUSP VEH 10-44	3	2	1
SUSP VEH 10-45	1	1	0
TELE. CALL HARASS	0	0	0
TELE. CALL THREAT	0	0	0
		0	
TRAFFIC COMPLAINT	1	0	1
TRAFFIC WARNING	10	37	-27
10-81	26	0	26
WARRANT ATTEMPT	0	36	-36
911 UNFOUNDED	0	0	0
CALLS	89	64	25
REPORTS	27	34	-7
VEH. SERVICE 10-92	11	11	0
TOTALS	1577	1875	-298

<u>ACTIVITIES / OFFENSE</u>	<u>WW</u>	<u>WH</u>	<u>MW</u>	<u>OTHER</u>	<u>TOTAL</u>
<i>PART I CRIMES</i>					
MURDER	0	0	0	0	0
RAPE	0	0	0	0	0
ROBBERY	0	0	0	0	0
<u>BURGLARY</u>					
BUSINESS	1	0	0	0	1
RESIDENTIAL	0	0	0	0	0
VEHICLE	3	0	0	0	3
MOTOR VEH THEFT	0	0	0	0	0
LARCENY / THEFT	2	0	0	1	3
ASSAULTS	2	0	0	0	2
<u>ARRESTS</u>					
FELONY	0	0	0	0	0
MISDEMEANOR	0	0	0	0	0
TRAFFIC	0	0	0	0	0
DUI	1	0	0	0	1
OTHER	0	0	0	0	0
WARRANTS	3	0	0	0	3
CONFINED	1	0	0	0	1
<u>SUMMONS</u>					
HAZARD	28	15	2	0	45
NON-HAZARD	48	16	18	0	82
DUI	1	0	0	0	1
ORD. VIOLATION	0	0	0	0	0
ACCIDENT 10-47	2	0	0	0	2
ACCIDENT 10-48	1	0	0	0	1
ADMIN. DUTIES -PD	17	0	0	0	17
ADMIN. DUTIES - CITY	0	0	0	0	0
ALARM	2	0	1	0	3
ANIMAL	1	1	0	0	2
ASSAULT - BATTERY	0	0	0	0	0
ASSIST - POLICE	5	0	0	3	8
ASSIST - PUB MOTOR	10	0	0	1	11
BLD.CHECK - SHAKE	5	0	0	0	5
BLD.CHECK - PATROL	1220	1120	1060	0	3400
BUSINESS CHECK	24	4	0	0	28
CASUALY - RESCUE	4	0	0	0	4
CIVIL MATTER	2	0	0	1	3
CRIMINAL DAMAGE	2	0	0	0	2

DISORDERLY CONDUCT	0	0	0	0	0
DISTURBANCE - ARMED	0	0	0	0	0
DISTURBANCE	1	0	0	0	1
FIRE	0	0	0	1	1
F.I.F	0	0	0	0	0
INFO / INVEST	6	0	0	0	6
INTERV / INTEROG	0	0	0	0	0
JUVENILE	1	0	0	0	1
NATURE UNKNOWN	0	0	0	0	0
NOISE COMPLAINT	1	4	0	0	5
OPEN DOOR	2	0	0	0	2
ORD. COMPLAINT	0	0	0	0	0
ORD. VIOL. WARNING	0	0	0	0	0
ORD. VIOL. LETTER	0	0	0	0	0
OTHER	0	0	0	0	0
PARK CHECK	0	0	0	0	0
PED. CHECK	0	0	0	0	0
PROWLER	0	0	0	0	0
PUBLIC SERVICE	11	0	1	2	14
RECOVERED PROP	0	0	0	0	0
SPECIAL TALKS	0	0	0	0	0
SUSPICIOUS SUBJECT	2	0	0	1	3
SUSP. VEH 10-44	3	0	0	0	3
SUSP. VEH 10-45	1	0	0	0	1
TELE. CALL HARASS	0	0	0	0	0
TELE. CALL THREAT	0	0	0	0	0
TRAFFIC CONTROL	0	0	0	0	0
TRAFFIC COMPLAINT	1	0	0	0	1
TRAFFIC WARNING	10	0	0	0	10
WARRANT ATTEMPT	0	0	0	0	0
10-81	26	2	2	0	30
CALLS	89	6	6	0	101
REPORTS	27	0	1	0	28
VEH. SERVICE 10-92	11	0	0	0	11
911 UNFOUNDED	0	0	0	0	0
TOTAL	1,577	1168	1091	10	3,846

BURGLARY TO BUSINESS

CASE NO: 20-0133 **LOCATION:** 2801 W 47th St
DATE : 5/17/2020 **VICTIM:**
ACTIVITY: Unknown suspect gained access into the business by cutting a window and took approximately \$800.00.

LARCENY / THEFT

CASE NO: 20-0126 **LOCATION:** 4701 Mission Rd
DATE : 5/14/2020 **VICTIM:**
ACTIVITY: Unknown suspect took several grocery items from the store without paying for them.

CASE NO: 20-0127 **LOCATION:** 4701 Mission Rd
DATE : 5/15/2020 **VICTIM:**
ACTIVITY: Unknown suspect took several grocery items from the store without paying for them. The suspect was arrested and cited for Theft.

CASE NO: **LOCATION:**
DATE : **VICTIM:**
ACTIVITY:

BURGLARY TO AUTO

CASE NO: 20-0122 **LOCATION:** 5175 Rainbow Blvd
DATE : 5/12/2020 **VICTIM:**
ACTIVITY: Unknown suspect removed the coin tray and change from the vehicle without permission.

CASE NO: 20-0123 **LOCATION:** 1900 W 47th Pl
DATE : 5/12/2020 **VICTIM:**
ACTIVITY: Unknown suspect broke into victim's vehicle and removed several items without permission.

CASE NO: 20-0141 **LOCATION:** 1901 W 47th Pl
DATE : 5/26/2020 **VICTIM:**
ACTIVITY: Unknown suspect removed the catalytic converter from the vehicle without permission.

ASSAULT/BATTERY

CASE NO: 20-0119 **LOCATION:** 4707 Rainbow Blvd
DATE : 5/10/2020 **VICTIM:**
ACTIVITY: Suspect kicked the officer while he was being arrested.

CASE NO: 20-0143 **LOCATION:** 2801 W 47th St
DATE: 5/30/2020 **VICTIM:**
ACTIVITY: Suspect slapped the victim on the face during a verbal disturbance.

WESTWOOD
COURT SUMMARY
MAY, 2020

COURT DATE	ARRAIGNMENTS	TRIALS	FINES	LETTERS	WARRANTS
May 01, 2020	44	02	\$ 345.00	66	00
May 15, 2020	65	24	\$ 1,050.00	128	00
May 29, 2020	50	00	\$ 660.00	89	00
TOTALS					
May, 2020	159	26	\$ 2,055.00	283	00
May, 2019	113	13	\$18,654.00	40	32
TOTAL (2,055.00) less					
* Kansas DL fees:					\$ 0.00
* Judges Training Fund:					\$ 10.00
* LET Training Fund:					\$ 225.00
* Seat Belt Fund:					\$ 0.00
May 2020 TOTAL:					\$1,820.00

Y.T.D. TOTALS 2020		Y.T.D. TOTALS 2019	
ARRAIGNMENTS:	763	ARRAIGNMENTS:	652
TRIALS	97	TRIALS:	112
LETTERS:	909	LETTERS:	303
WARRANTS:	65	WARRANTS:	126
FINES:	\$67,634.65	FINES:	\$86,604.00
KS DL FEES:	\$813.00	KS DL FEES:	\$862.00
JUDGES FUND:	\$200.50	JUDGES FUND:	\$429.50
L.E.T.FUND:	\$ 4,497.50	L.E.T FUND:	\$5,802.50
COMM CORRECTIONS:	\$00.00	COMM CORRECTIONS:	\$00.00
SEAT BELT FUND:	\$120.00	SEAT BELT FUND:	\$280.00

To: Governing Body
From: John Sullivan, Director of Public Works
Date: June 8, 2020
Re: Monthly Status Report

- 2019 (formerly 2018) Street and Storm water Improvement Projects: We will be working on the punchlist items over the next month.
- W. 47th Street Project: The KDOT agreement will be considered along with an agreement with the UG at the June 11th Council Meeting.
- Stone Wall Veneer, 4800 Building: The owners of the building have sent a letter with an Engineers report. The letter and report basically are stating that the damage to the underlying concrete wall was caused by the City by applying the stone veneer and trapping water runoff from the parking lot between the stone veneer and the concrete wall causing the concrete wall to deteriorate. I will be proposing a next step at the staff meeting and then to the Public Works Committee.
- Storm Water Infrastructure Survey: The survey work is complete. I am meeting with a representative of Trek Engineering on Wednesday to go over the data. I will then be seeking reimbursement funds from the Johnson County Stormwater Program for the part of the assessment that is eligible for funding.
- KU Crosswalk: This project is on track to be completed by September 1, 2020. Construction is to begin July 14th.
- Paint Only Project on W. 47th Street: I am awaiting a status update from the U.G.
- Belinder CARS Project, UBAS with additional streets: The Project is nearly complete. We are awaiting the stripping. As soon as that is complete I will submit for reimbursement from the CARS Program.
- Annex Street Preliminary Design: Uhl Engineering has submitted the revised drawings for the Annex Street. They have been sent to the Public Works Committee for Comment.

- 5050 Rainbow Demolition Plan: We should be placing this project out for bid next week.

Westwood Public Works Monthly Report

TO: GOVERNING BODY
FROM: JOHN SULLIVAN, DIRECTOR OF PUBLIC WORKS
RE: MONTHLY REPORT, MAY 2020
DATE: JUNE 8, 2020

Some of the activities for Public Works in May include:

1. Daily collection of trash from the City Hall and City Parks.
2. Perform a weekly inspection of the playground equipment and park facilities.
3. Perform a weekly inspection of the traffic control signs throughout the City; replace poles and signs as required.
4. I Prepared the Purchase Orders and documentation for those purchases.
5. Performed routine maintenance at the City Hall to include the servicing of the air handling equipment, re-lamping fixtures and repairing or installing appurtenances including plumbing fixtures.
6. I represented the City at various meetings to include: None
7. Received, via email, Kansas One-Call Locate Requests, advised callers of there status with the City of Westwood in regards to utilities and advised, when appropriate, the need to either get an excavation permit, building permit or fence permit. I provide the building official with a copy of the locate requests for follow-up for any building permits that may be required and answered any questions when asked.
8. We performed routine maintenance on the Public Works vehicles and equipment to include fluid services, cleaning, and general repairs.
9. Routine maintenance of the Public Works Facility to include the air handling equipment, plumbing, electrical, and cleaning.
10. Performed various clerical duties for the Public Works Department's daily functions.
11. I attended Public Works, City Council and Staff and Committee meetings as required.
12. We performed weekly checks on the inside of the 5050 Rainbow property.
13. Observed activities associated with ROW Permits.
14. We marked streetlight utilities when requested by the One-Call System.
15. We swept streets in Westwood.
16. We patched potholes various locations.
17. I attended numerous briefings related to COVID 19 pandemic via Zoom.
18. We removed limbs and sticks from roadway and ROW after storm.
19. We started the decorative fountain at W. 47th Street and Mission Road.
20. We removed the shrubs and plants from the Island at W. 48th Terrace and Belinder in preparation for the Women's Club planting.

21. We installed the rebuilt decorative fountain pump and new motor in the Joe Dennis Park. We rebuilt the lights in the fountain and turned on the fountain for the season.
22. We planted flowers at City Hall and at various locations in the City.
23. We assisted with traffic control at W. 53rd Street and Mission Road.
24. We assisted with traffic control for the 6th grade parade.
25. We repaired the stanchions at City Hall.
26. We re-arranged the City Hall for opening.
27. We cleaned out a storm water pipe in Westwood Hills that was causing flooding to a residence.

This concludes my activities report for some of the activities for Public Works in May.

COUNCIL ACTION FORM

Meeting Date: June 11, 2020

Staff Contact: John Sullivan, Public Works Director

Agenda Item: Authorize the Mayor to sign an interlocal agreement with the Unified Government for Cost Sharing related to Improvements on W. 47th Street/Avenue.

Background / Description of Item:

The City of Westwood has been awarded a Surface Transportation Program funding grant in the amount of \$1,047,000.00 for a "Complete Street Concept" on the W. 47th St./W. 47th Ave. corridor. This corridor is the City and County Line between Johnson County/Westwood and Wyandotte County/Kansas City, Ks i.e. the Unified Government. As established in the Interlocal Agreement that is being presented for your consideration, the grant will fund improvements on the entire corridor and allow a mechanism for the two governments to share in the remaining costs. The agreement has been considered and approved by the Unified Government.

Staff Recommendation:

Staff recommends Council authorize the Mayor to sign the Interlocal Agreement.

Suggested Motion:

I move to authorize the Mayor to execute an agreement with the Unified Government of Wyandotte County/Kansas City, Kansas to memorialize the relationship between the jurisdictions as relates to funding through the State's Surface Transportation Program for improvements in the 47th Street corridor.

AGREEMENT AMONG

The City of Westwood
The Unified Government of Wyandotte County /
Kansas City, Kansas

THIS AGREEMENT made and entered into this _____ day of _____, 2020, by and among the City of Westwood, Kansas, a Municipal Corporation ("Westwood"), and the Unified Government of Wyandotte County / Kansas City, Kansas ("Unified Government" or "U.G."), (collectively referred to as "Parties"), each party having been duly organized and now existing under the laws of the State of Kansas.

WITNESSETH:

WHEREAS, the Cities desire to improve 47th Street from Rainbow Boulevard / US-169 at the Eastern boundary to Mission Road at the Western boundary; and

WHEREAS, the Cities wish to engage in a general project scope to include a road diet, including improvement and reconstruction of sidewalks and roadway, construction of designated bicycle lanes, pedestrian crossings with refuge islands and installation of landscaping ("Project"); and

WHEREAS, in coordination with the Unified Government, Westwood submitted a bid to the Kansas Department of Transportation ("KDOT") through the Mid-America Regional Council ("MARC") requesting grant funding for the Project and was awarded a grant identified by KDOT as Project Number: N-0692-01;

WHEREAS, KDOT has requested that Westwood enter into a contract providing for grant funding and construction of the Project which will require the coordination and cooperation of the Parties as the boundary line between Westwood and the Unified Government generally bisects 47th street at the centerline of the street right-of-way, which contract is attached hereto as Exhibit A ("KDOT Agreement");

WHEREAS, pursuant to the aforementioned KDOT Agreement certain duties and responsibilities must be met by the Parties to receive the funding and benefit of the improvements relating to the Project;

WHEREAS, this Agreement constitutes a contract between municipalities pursuant to K.S.A. 12-2908 to perform a governmental service, activity or undertaking which each party hereto is authorized by law to perform and accordingly shall not be regarded as an interlocal agreement under the provisions of K.S.A. 12-2901, et seq., and amendments thereto;

NOW, THEREFORE, in consideration of the above recitals, the mutual covenants and agreements herein contained, and for other good and valuable consideration, the Cities do hereby agree in detail as follows:

1. RATIFICATION OF KDOT AGREEMENT: The Parties recognize and acknowledge that the KDOT Agreement entered into by Westwood identified as Exhibit A, although the Unified Government is not a party to such KDOT Agreement, has been entered into by Westwood for the mutually beneficial purpose of completion of the Project. Accordingly, with respect to such KDOT Agreement, the Unified Government does hereby agree to perform all acts necessary to enable the City of Westwood to comply with the terms and conditions of such KDOT Agreement. The Unified Government

does hereby authorize Westwood and its agents, representatives and employees to take such action on its behalf as is necessary to ensure compliance with Exhibit A and to ensure completion of the Project.

2. ESTIMATED PROJECT COST AND FUNDING OF THE PROJECT:

A. **Definition of Terms.** Unless otherwise specifically defined within this Agreement, the terms defined within Article I of the KDOT agreement attached hereto as Exhibit A, are specifically incorporated herein by reference. Such relevant definitions include, but are not limited to:

- i. **“Construction”** means the work done on the Project after Letting, consisting of building, altering, repairing, improving or demolishing any structure, building or highway; any drainage, dredging, excavation, grading or similar work upon real property.
- ii. **“Construction Contingency Items”** mean unforeseeable elements of cost within the defined project scope identified after the Construction phase commences.
- iii. **“Construction Engineering”** means inspection services, material testing, engineering consultation and other reengineering activities required during Construction of the Project.
- iv. **“Letting” or “Let”** means the process of receiving bids prior to any award of a Construction contract for any portion of the Project.
- v. **“Non-Participating Costs”** means the costs of any items or services which the Secretary, acting on the Secretary’s own behalf and on behalf of the FHWA, reasonably determines are not Participating Costs.
- vi. **“Participating Costs”** means expenditures for items or services which are an integral part of highway, bridge and road construction projects, as reasonably determined by the Secretary.
- vii. **“Preliminary Engineering”** means pre-construction activities, including but not limited to design work, generally performed by a consulting engineering firm that takes place before Letting.
- viii. **“Right of Way”** means the real property and interests therein necessary for Construction of the Project, including fee simple title, dedications, permanent and temporary easements, and access rights, as shown on the Design Plans.
- ix. **“Utilities” or “Utility”** means all privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, and other similar commodities, including non-transportation fire and police communication systems which directly or indirectly serve the public.

B. **Construction.** The total estimated Construction cost of the Project is \$ 1,497,038.59 as reflected on the opinion of probable cost prepared by CFS Engineers attached hereto as Exhibit B. The parties recognize that this is a cost estimate and that the final Project Construction costs will vary from this estimate. Each party shall be responsible for the total costs of Project Construction within the respective party's jurisdiction. Each party shall have the exclusive control of the scope of Construction of the Project within such party's jurisdiction, provided that the scope of construction must be sufficient to meet the grant requirements which are attached hereto as Exhibit C.

C. **KDOT Funding.** Pursuant to the agreement with KDOT attached hereto as Exhibit A, KDOT has agreed to provide Project Construction funding in an amount not to exceed \$1,047,000.00. The parties recognize that estimated and likely Construction costs exceed the funding provided by KDOT and accordingly, each party shall be required to fund Construction costs within such party's respective jurisdiction in excess of that funding provided by KDOT. Provided that there are sufficient eligible Participating Costs of Construction within each party's respective jurisdiction, the parties agree that the KDOT Project funding shall be divided equally between the Parties with half of such funding expended and applied to Construction costs in each party's respective jurisdiction.

D. **Non-Construction.** The Parties recognize that there are Non-Participating Costs which are outside of the opinion of probable cost reflected on Exhibit B and which are not eligible for KDOT funding. These Non-Participating Costs include but are not limited to Preliminary Engineering, Right of Way acquisition and Utility relocation. Each party agrees to be responsible for such Non-Participating Costs related to the Project within their respective jurisdiction. To the extent that a Non-Participating Cost cannot be allocated to the Project within one of the party's respective jurisdiction, the Parties agree to equally divide payment.

E. **Other Costs.** Any uncovered costs and expenses as described hereinabove shall be allocated among the parties as follows:

(1) The cities shall each pay all actual costs and expenses for construction for uncovered costs and expenses that is within each respective jurisdiction based on actual quantities at the price bid. Charged items, where additional charges, shall be allocated pro rata to the jurisdiction affected based on said jurisdiction's respective percentage of the actual costs of any such change or charge.

(2) Actual in-place, as-built quantities of any uncovered costs and expenses will be provided by the Project Engineer for the project, and final accounting will be based upon those quantities.

F. **Audits and Reimbursement of Non-Participating Costs.** Pursuant to Article III, at Paragraph 22 of Exhibit A, KDOT has the right to conduct an accounting with respect to the Project. The Cities agree to perform such acts as are necessary to comply with any such audits. If any such audit reveals that payments have been made with State or Federal funds by the Cities for items considered Non-Participating or if any such accounting results in the disallowance of costs for other reasons, the Cities shall reimburse KDOT for such items upon notification from KDOT according to the actual costs and expenses for construction that is within each respective jurisdiction.

3. DURATION AND TERMINATION AGREEMENT: The parties agree that this Agreement shall exist until the completion and acceptance of the Project. The parties do not contemplate that any property will be acquired which will require disposal upon partial or complete termination of this agreement. The work described herein shall be deemed completed and this Agreement shall be terminated upon written certification to the parties, by KDOT, that said Project has been accepted as submitted.

4. PLACING AGREEMENT IN FORCE: The Attorneys for the Cities shall cause sufficient copies of this Agreement to be executed to provide each party hereto with a duly executed copy of this Agreement for its official records. Execution of this Agreement by the Cities is authorized by K.S.A. § 12-2908.

IN WITNESS WHEREOF, the above and foregoing Agreement has been executed by each of the parties hereto and made effective on the day and year first above written.

CITY OF WESTWOOD, KANSAS

Mayor David Waters

ATTEST:

City Clerk, Leslie Herring

Approved as to form:

City Attorney, Ryan Denk

UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/
KANSAS CITY, KANSAS

By: _____

Clerk, Bridgette Cobbins

Approved as to form:

Chief Counsel, Ken Moore

COUNCIL ACTION FORM

Meeting Date: June 11, 2020

Staff Contact: John Sullivan, Public Works Director

Agenda Item: KDOT Roadway Improvement Project Agreement – 47th Street.

Background / Description of Item:

The City of Westwood applied for and will be awarded federal Surface Transportation Block Grant Program (STP) Funds in calendar year 2022 for the reconstruction of 47th Street, between Rainbow Blvd and Mission Road. The plan's concept is to implement a complete street "road-diet" in addition to adding significant pedestrian and landscaping amenities along this section of roadway.

Attached is the proposed Roadway Improvement Project Agreement between the City of Westwood, Kansas and the Kansas Department of Transportation (KDOT).

Project Name: Westwood: 47th Complete Street Project

Federal Project Number: STP-N069(701)

KDOT Project Number: 046 N-0697-01

The agreement establishes the responsibility of KDOT regarding rights-of-way acquisition, contract letting and administration, indemnification by contractors, and payment of project costs. The agreement also lays out the city's responsibilities to conform to relevant state and federal requirements, to secure and pay for the construction design for the project, coordinate utility relocations per the noted standards, pay for and have inspections performed per KDOT standards during construction, and accept maintenance responsibilities for the life-span of the roadway project.

Staff Recommendation:

Authorize the Mayor to sign the Westwood 47th Complete Street Project KDOT Roadway Improvement Project agreement contract.

Suggested Motion:

I move to authorize the Mayor to execute an agreement with the State of Kansas for funding through the KDOT Surface Transportation Program for improvements in the 47th Street corridor.

PROJECT NO. 46 N-0697-01
STP-N069(701)
ROADWAY IMPROVEMENTS
CITY OF WESTWOOD, KANSAS

A G R E E M E N T

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

RECITALS:

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

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

ARTICLE I

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

- 1. **“Agreement”** means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.
- 2. **“City”** means the City of Westwood, Kansas, with its place of business at 4700 Rainbow Blvd, Westwood, KS 66205.
- 3. **“Construction”** means the work done on the Project after Letting, consisting of building, altering, repairing, improving or demolishing any structure, building or highway; any drainage, dredging, excavation, grading or similar work upon real property.
- 4. **“Construction Contingency Items”** mean unforeseeable elements of cost within the defined project scope identified after the Construction phase commences.

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

16. **“Participating Costs”** means expenditures for items or services which are an integral part of highway, bridge and road construction projects, as reasonably determined by the Secretary.
17. **“Parties”** means the Secretary of Transportation and KDOT, individually and collectively, and the City.
18. **“Preliminary Engineering”** means pre-construction activities, including but not limited to design work, generally performed by a consulting engineering firm that takes place before Letting.
19. **“Project”** means all phases and aspects of the Construction endeavor to be undertaken by the City, as and when authorized by the Secretary prior to Letting, being: **reconstructing to include a road diet, sidewalks, designated bicycle lanes, pedestrian crossings with refuge islands, and landscaping on W. 47th Avenue from west of Mission Road to US-169 (Rainbow Blvd) in Westwood, Kansas**, and is the subject of this Agreement.
20. **“Project Limits”** means that area of Construction for the Project, including all areas between and within the Right of Way boundaries as shown on the Design Plans.
21. **“Responsible Bidder”** means one who makes an offer to construct the Project in response to a request for bid with the technical capability, financial capacity, human resources, equipment, and performance record required to perform the contractual services.
22. **“Right of Way”** means the real property and interests therein necessary for Construction of the Project, including fee simple title, dedications, permanent and temporary easements, and access rights, as shown on the Design Plans.
23. **“Secretary”** means the Secretary of Transportation of the state of Kansas, and his or her successors and assigns.
24. **“Utilities” or “Utility”** means all privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, and other similar commodities, including non-transportation fire and police communication systems which directly or indirectly serve the public.

ARTICLE II

SECRETARY RESPONSIBILITIES:

1. **Technical Information on Right of Way Acquisition.** The Secretary will provide technical information upon request to help the City acquire Right of Way in accordance with the laws and with procedures established by KDOT’s Bureau of Right of Way and the Office of Chief Counsel and as required by FHWA directives to obtain participation of federal funds in the cost of the Project.

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

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

4. **Payment of Costs.** The Secretary agrees to be responsible for eighty percent (80%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering, but not to exceed \$1,047,000.00 for the Project. The Secretary shall not be responsible for the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering that exceed \$1,308,750.00 for the Project. The Secretary shall not be responsible for the total actual costs of Preliminary Engineering, Right of Way, and Utility adjustments for the Project.

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

ARTICLE III

CITY RESPONSIBILITIES:

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

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

3. **Conformity with State and Federal Requirements.** The City shall be responsible to design the Project or contract to have the Project designed in conformity with the state and federal design

criteria appropriate for the Project in accordance with the current Local Projects LPA Project Development Manual, Bureau of Local Project's (BLP's) project memorandums, memos, the KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Road Design's road memorandums, the latest version, as adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD), the current version of the Bureau of Transportation Safety and Technology's Traffic Engineering Guidelines, and the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and any necessary Project Special Provisions, and with the rules and regulations of the FHWA pertaining to the Project.

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

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

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

- (a) **Completion of Design.** Language requiring completion of all plan development stages no later than the current Project schedule's due dates as issued by KDOT, exclusive of delays beyond the Consultant's control.
- (b) **Progress Reports.** Language requiring the Consultant to submit to the City (and to the Secretary upon request) progress reports at monthly or at mutually agreed intervals in conformity with the official Project schedule.
- (c) **Third Party Beneficiary.** Language making the Secretary a third party beneficiary in the agreement between the City and the Consultant. Such language shall read:

“Because of the Secretary of Transportation of the State of Kansas’ (Secretary’s) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party beneficiary to this agreement between the City and the Consultant. This third party beneficiary status is for the limited purpose of seeking payment or reimbursement for damages and

costs the Secretary or the City or both incurred or will incur because the Consultant failed to comply with its contract obligations under this Agreement or because of the Consultant's negligent acts, errors, or omissions. Nothing in this provision precludes the City from seeking recovery or settling any dispute with the Consultant as long as such settlement does not restrict the Secretary's right to payment or reimbursement."

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

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

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

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

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

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

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

(e) Trails and Sidewalks on KDOT Right of Way. With regard to any bike or pedestrian paths or sidewalks ("Trail/Sidewalk") constructed pursuant to the Design Plans, the City agrees as follows:

- (i) City Responsible for Repairs and Providing Alternative Accessible Routes. The City agrees that the primary purpose of KDOT Right of Way is for the construction and maintenance of US-169. If the construction or maintenance of US-169 reasonably requires the Trail/Sidewalk on KDOT Right of Way to be damaged or removed, the City shall be responsible for all repairs to the Trail/Sidewalk made necessary as a result of US-169 construction or maintenance. In the event the Trail/Sidewalk on KDOT Right of Way is temporarily closed or removed for any reason and for any length of time, the City will be wholly responsible for providing an alternative accessible path and for compliance with all laws and regulations relating to accessibility.
- (ii) Interference with KDOT Right of Way. If the Secretary, in the Secretary's sole judgment, determines that continued use of the Trail/Sidewalk is or will interfere with KDOT use of its Right of Way or is otherwise rendered impractical, inconvenient, or unsafe for use by the traveling public, the City will remove the Trail/Sidewalk and restore the KDOT Right of Way location to its original condition prior to the Construction of the Trail/Sidewalk.
- (iii) Incorporation of Trail/Sidewalk into Local Transportation System. The City agrees to take all steps necessary to designate the Trail/Sidewalk component of the Project as an integral part of its local transportation system, being primarily for transportation purposes and having only incidental recreational use for purposes of 49 U.S.C. § 303 and 23 C.F.R. 771.135.
- (iv) Maintenance. When the Project is completed and final acceptance is issued, the City, at its own cost and expense, will maintain, including snow removal if required by law, the Trail/Sidewalk on KDOT Right of Way and make ample provision each year for such maintenance. If notified by the State Transportation

Engineer of any unsatisfactory maintenance condition, the City will begin the necessary repairs within a reasonable period and will prosecute the work continuously until it is satisfactorily completed. Any notification by the State Transportation Engineer, however, is not intended to and shall not be construed to be an undertaking of the City's absolute duty and obligation to maintain the Trail/Sidewalk.

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

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

11. **Future Encroachments.** Except as provided by state and federal laws, the City agrees it will not in the future permit Encroachments upon the Right of Way of the Project, and specifically will require any gas and fuel dispensing pumps erected, moved, or installed along the Project be placed a distance from the Right of Way line no less than the distance permitted by the National Fire Code.

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

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

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

(c) Time of Relocation. The City will expeditiously take such steps as are necessary to facilitate the early adjustment of any Utilities, initiate the removal or adjustment of the Utilities, and proceed with reasonable diligence to prosecute this work to completion. The City shall certify to the Secretary on forms supplied by the Secretary that all Utilities required to be moved prior to Construction have either been moved or a date provided by the City as to when, prior to the scheduled Letting and Construction, Utilities will be moved. The City shall move or adjust or cause to be moved or adjusted all necessary Utilities within the time specified in the City's certified form except those necessary to be moved or adjusted during Construction and

those which would disturb the existing street surface. The City will initiate and proceed to complete adjusting the remaining Utilities not required to be moved during Construction so as not to delay the Contractor in Construction of the Project.

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

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

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

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

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

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

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

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

on any Right of Way within the Project Limits. The City reserves the right to bring any action against any third party for any Hazardous Waste on any Right of Way within the Project Limits.

14. **Inspections.** The City is responsible to provide Construction Engineering for the Project in accordance with the rules and guidelines developed for the current KDOT approved construction engineering program and in accordance with the current edition of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions and any necessary Project Special Provisions. The detailed inspection is to be performed by the City or the Consultant. The Secretary does not undertake for the benefit of the City, the Contractor, the Consultant or any third party the duty to perform the day-to-day detailed inspection of the Project, or to catch the Contractor's errors, omissions, or deviations from the final Design Plans. The City will require at a minimum all personnel performing Construction Engineering to comply with the high visibility requirements of the MUTCD, Chapter 6E.02, High-Visibility Safety Apparel. The agreement for inspection services must contain this requirement as a minimum. The City may require additional clothing requirements for adequate visibility of personnel.

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

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

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

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

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

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

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

18. **Financial Obligation.** The City will be responsible for twenty percent (20%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering, up to \$1,308,750.00 for the Project. In addition, the City agrees to be responsible for one hundred percent (100%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering that exceed \$1,308,750.00 for the Project. Further, the City agrees to be responsible for one hundred percent (100%) of the total actual costs of Preliminary Engineering, Right of Way, and Utility adjustments for the Project. The City shall also pay for any Non-Participating Costs incurred for the Project along with the associated Non-Participating Construction Engineering costs.

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

20. **Cap Amount for Project Costs.** The City agrees that the “Not to Exceed” dollar amount above is subject to change as listed in the City’s MPO’s Transportation Improvement Plan (“TIP”). Final “Not to Exceed” dollar amounts will be determined by the Secretary at the time of Letting. Any necessary changes to the “Not to Exceed” amounts will be documented through a supplemental agreement.

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

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

23. **Cancellation by City.** If the City cancels the Project, it will reimburse the Secretary for any costs incurred by the Secretary prior to the cancellation of the Project. The City agrees to reimburse

the Secretary within thirty (30) days after receipt by the City of the Secretary's statement of the cost incurred by the Secretary prior to the cancellation of the Project.

ARTICLE IV

GENERAL PROVISIONS:

1. **Incorporation of Design Plans.** The final Design Plans for the Project are by this reference made a part of this Agreement.
2. **Civil Rights Act.** The "Special Attachment No. 1, Rev. 09.20.17" pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.
3. **Contractual Provisions.** The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 07.16.19), which is attached hereto, are hereby incorporated in this contract and made a part hereof.
4. **Headings.** All headings in this Agreement have been included for convenience of reference only and are not to be deemed to control or affect the meaning or construction or the provisions herein.
5. **Binding Agreement.** This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary and the City and their successors in office.
6. **No Third Party Beneficiaries.** No third party beneficiaries are intended to be created by this Agreement and nothing in this Agreement authorizes third parties to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

The signature page immediately follows this paragraph.

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

ATTEST:

THE CITY OF WESTWOOD, KANSAS

CITY CLERK (Date)

(SEAL)

MAYOR

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, it's 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)