

A. **CALL TO ORDER/ROLL CALL**  
\_\_ Scofield \_\_ Cokeley \_\_ Nisly \_\_ Brislin \_\_ Griffin \_\_ Vacant

B. **PLEDGE OF ALLEGIANCE**

C. **APPROVAL OF AGENDA (ADDITIONS/DELETIONS)**

D. **CITIZEN COMMENTS**

E. **APPOINTEMENT OF CITY COUNCILMEMBER**

1. Appoint of Robert E. Wylie to City Council

Motion \_\_\_\_\_ Second \_\_\_\_\_ Vote \_\_\_\_\_

F. **CONSENT AGENDA**

1. Approval of Minutes – Regular Council Meeting, April 8, 2024
2. Approval of Invoices
3. Approval of Cereal Malt Beverage License (PlazaGo Truck Stop, 1515 S Main St)
4. Approval to appoint Judy Gallispie (441 N Washinton St, Apt 306) to the South Hutchinson Housing Authority with her term set to expire January 2026.

Motion \_\_\_\_\_ Second \_\_\_\_\_ Vote \_\_\_\_\_

G. **ACTION ITEMS**

1. Approve resolution of support for a Transportation Alternatives Program Application and Maintenance Commitment.

Motion \_\_\_\_\_ Second \_\_\_\_\_ Vote \_\_\_\_\_

2. Approve purchase of new Submersible Raws Water Pump for the WWTF.

Motion \_\_\_\_\_ Second \_\_\_\_\_ Vote \_\_\_\_\_

3. Approve contract with Plot Marketing for Phase 2 of the rebranding.

Motion \_\_\_\_\_ Second \_\_\_\_\_ Vote \_\_\_\_\_

H. **DISCUSSION ITEMS**

I. **CITY ADMINISTRATOR'S REPORT**

J. **GOVERNING BODY COMMENTS**

K. **ADJOURNMENT**

**SUBMITTED BY:** Jeff Schenk, City Administrator

**MEETING DATE:** April 22, 2024

**AGENDA ITEM:** Consent Agenda

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**BACKGROUND:**

Consent agendas are designed to take routine business items, non-controversial items, and other matters where a consensus has been reached and combine them into one single motion and vote.

**DESCRIPTION:**

Items on the consent agenda should not be discussed or debated by the governing body. Any member of the governing body may elect to pull an item from the consent agenda for a separate vote.

**PROPOSED ITEMS:**

- Approval of Minutes from the following meetings:
  - April 8, 2024, Regular Council Meeting
- Approval of Invoices
- Approval of Cereal Malt Beverage License (PlazaGo Truck Stop, 1515 S Main St)
- Approval to appoint Judy Gallispie (441 N Washinton St, Apt 306) to the South Hutchinson Housing Authority with her term set to expire January 2026.

**RECOMMENDATION:**

Motion to approve the consent agenda as presented.

**ATTACHMENTS:**

**Exhibit A** - Minutes from April 8, 2024, Regular Council Meeting

**Exhibit B** - AP Invoices

A. **CALL TO ORDER/ROLL CALL**  
\_X\_Scofield \_X\_Cokeley \_X\_Nisly \_X\_Brislin \_X\_Griffin \_\_ Vacant

B. **PLEDGE OF ALLEGIANCE**

C. **APPROVAL OF AGENDA (ADDITIONS/DELETIONS)**

D. **CITIZEN COMMENTS**

E. **CONSENT AGENDA**

1. Approval of Minutes – Regular Council Meeting, March 25, 2024
2. Approval of Invoices

Motion Nisly Second Brislin Vote 4-0

F. **ACTION ITEMS**

1. Approve 24-04 determining the advisability of issuing industrial revenue bonds.

Motion Cokeley Second Brislin Vote 4-0

2. Approve contract with JEO Consultants to act as the City's engineer.

Motion Nisly Second Cokeley Vote 4-0

This contract will allow us to use outside firms for other projects. They are offering pro-bono work for grant writing. The caveat is that if the grant is approved JEO will be awarded the project.

G. **DISCUSSION ITEMS**

H. **CITY ADMINISTRATOR'S REPORT**

1. KDOT lighting project – Expected to take 2 weeks at US 50 / Scott Blvd.
2. Grants -  
Safe Streets 4 All grant (Drive to 0 Accidents) Currently applying for. Will almost be completely paid for by the state. Planning grant. Allows a consultant to review our city and present plans to increase safety.

Transportation Alternative grant – To connect nature trail to Avenue C nature trail. 80% coverage grant. Preliminary application was accepted. Working on submitting full grant.

I. **GOVERNING BODY COMMENTS**

Cokeley – asked about PD / Fire grants. City Admin Jeff Schenk advised that we are working on hiring a court clerk and then we will discuss where to go from there.

Scofield – Requested update about street signs project. City Admin Schenk advised that they should take 1 week to complete once the project is started. The company was supposed to start at the beginning of March, then was moved to the end of March but he has not heard anything yet. He will contact them tomorrow to check on progress and the start date.

J. **EXECUTIVE SESSION**

K. **ADJOURNMENT**

Matt Nisly motioned for adjournment at 6:14 p.m.

Motion Nisly          Second Brislin          Vote 4-0

**INVOICES PAID (4/22/2024)**

<b>Gen Gov</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>	<b>Ck Date</b>
101-101-7005	Reimbursement-Quit Claim Deed	Jeff Schenk	\$21.00	4/22/2024
101-101-7004	Governing Body Handbook, 2024	League of Kansas Municipalities	\$259.83	4/22/2024
101-101-7001	City Leaders Academy: Foundational Program	League of Kansas Municipalities	\$175.00	4/22/2024
101-101-7001	City Leaders Academy: Foundational Program	League of Kansas Municipalities	\$175.00	4/22/2024
101-101-6002	Legal Publication	Prairie Publications Inc	\$99.90	4/22/2024
101-101-6000	Monthly TV Service	Cox Business	\$16.78	4/22/2024
101-101-6011	Membership Renewal	ICMA	\$468.00	4/22/2024
101-101-6001	Insurance	ProValue Insurance	\$6,628.59	4/22/2024
101-101-5001	Health Insurance	Blue Cross Blue Shield	\$97.48	4/22/2024
101-101-6000	Electricity	Evergny	\$265.38	4/22/2024
101-101-6000	Gas	Kansas Gas Service	\$124.37	4/22/2024
101-101-6002	Monthly Computer Support	Leading Edge Technology Partners	\$314.79	4/22/2024
			<b>\$8,646.12</b>	

<b>Police</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>	<b>Ck Date</b>
101-102-7002	Water & Delivery	Culligan Water	\$26.00	4/22/2024
101-102-7002	Paper	Office Plus	\$142.77	4/22/2024
101-102-5000	Vision Care – Employee Benefit	Vision Care Direct	\$77.78	4/22/2024
101-102-6000	Monthly TV Service	Cox Business	\$50.36	4/22/2024
101-102-6001	Insurance	ProValue Insurance	\$22,577.37	4/22/2024
101-102-5001	Health Insurance	Blue Cross Blue Shield	\$4,622.44	4/22/2024
101-102-6000	Electricity	Evergny	\$485.22	4/22/2024
101-102-6008	Install New 40 Gallon Power Vent	Gibbys Plumbing Solutions	\$1,264.13	4/22/2024
101-102-6000	Gas	Kansas Gas Service	\$400.41	4/22/2024
101-102-6002	Monthly Computer Support	Leading Edge Technology Partners	\$370.04	4/22/2024
101-102-6005	Cell Phone Service	Verizon	\$339.38	4/22/2024
101-102-6005	Cell Phone Service	Verizon	\$240.06	4/22/2024
			<b>\$30,595.96</b>	

<b>Street</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>	<b>Ck Date</b>
101-103-7004	HP ER Cold Patch Bag	CRAFCO, INC	\$750.00	4/22/2024
101-103-7002	Vactor Seal Kit	PrairieLane Partners	\$22.69	4/22/2024
101-103-7004	Ranger Pro	Van Diest Supply Company	\$261.45	4/22/2024
101-103-7002	Loader Fuel Filter	AgriCenter	\$42.34	4/22/2024
101-103-6001	Insurance	ProValue Insurance	\$11,279.59	4/22/2024
101-103-5001	Health Insurance	Blue Cross Blue Shield	\$1,425.95	4/22/2024
101-103-6000	Electricity	Evergny	\$498.64	4/22/2024
101-103-6000	Gas	Kansas Gas Service	\$326.99	4/22/2024
101-103-6002	Monthly Computer Support	Leading Edge Technology Partners	\$289.79	4/22/2024
101-103-6002	Uniforms	UniFirst	\$26.36	4/22/2024
101-103-6002	Uniforms	UniFirst	\$26.37	4/22/2024
			<b>\$14,950.17</b>	

<b>Fire</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>	<b>Ck Date</b>
101-104-7009	Firedex Dex-Pro 3d Structure Gloves	1 <sup>st</sup> Due Emergency Response Solutio	\$537.99	4/22/2024
101-104-6001	Insurance	ProValue Insurance	\$10,044.66	4/22/2024
101-104-6000	Electricity	Evergny	\$290.34	4/22/2024
101-104-7002	Install New 40 Gallon Power Vent	Gibbys Plumbing Solutions	\$1,264.13	4/22/2024
101-104-6000	Gas	Kansas Gas Service	\$115.25	4/22/2024
101-104-6002	Monthly Computer Support	Leading Edge Technology Partners	\$289.79	4/22/2024
101-104-6005	Cell Phone Service	Verizon	\$144.33	4/22/2024
			<b>\$12,686.49</b>	

<b>Parks</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>	<b>Ck Date</b>
101-105-6000	Electricity	Evergny	\$126.75	4/22/2024
			<b>\$126.75</b>	

<b>Court</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>	<b>Ck Date</b>
101-106-6017	Housed Inmates	Reno County Sheriff's Office	\$1,760.00	4/22/2024
101-106-6018	Monthly Billing – April	StrongPoint Law	\$900.00	4/22/2024
101-106-6004	Medical Services	Wichita Radiological Group PA	\$125.00	4/22/2024
			<b>\$2,785.00</b>	

**GENERAL TOTAL** **\$69,790.49**

<b>Water</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>	<b>Ck Date</b>
201-000-7002	Water Well Filters	CarQuest	\$21.62	4/22/2024
201-000-7002	Water Trailer – STT Lamp	CarQuest	\$14.27	4/22/2024
201-000-7002	Water Parts	Core & Main LP	\$1,044.35	4/22/2024
201-000-7002	OMNI Water Meter	Core & Main LP	\$516.65	4/22/2024
201-000-7002	Hydrant Oil	Core & Main LP	\$154.58	4/22/2024
201-000-6002	Water Samples	Kansas Health & Environmental Lab	\$832.00	4/22/2024
201-000-6001	Insurance	ProValue Insurance	\$12,034.34	4/22/2024
201-000-5001	Health Insurance	Blue Cross Blue Shield	\$1,226.54	4/22/2024
201-000-6000	Electricity	Evergy	\$3,295.16	4/22/2024
201-000-6002	Regular Locate Fee	Kansas One-Call System Inc	\$22.20	4/22/2024
201-000-6002	Monthly Computer Support	Leading Edge Technology Partners	\$289.80	4/22/2024
201-000-6002	Uniforms	UniFirst	\$26.36	4/22/2024
201-000-6002	Uniforms	UniFirst	\$26.36	4/22/2024
201-000-6005	Cell Phone Service	Verizon	\$154.92	4/22/2024
			<b>\$19,659.15</b>	

<b>Sewer</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>	<b>Ck Date</b>
301-000-7002	Spreader Truck Filters	CarQuest	\$96.65	4/22/2024
301-000-7002	Parts - #6	CarQuest	\$30.38	4/22/2024
301-000-7001	Wastewater Course for Matt Mock	Dale Vanderhoof	\$1,850.00	4/22/2024
301-000-6002	Battery Backup for Gen Transfer Switch	DESS LLC	\$199.99	4/22/2024
301-000-7002	Cleaning Supplies – Sewer Plant	Janitorial Supply	\$15.36	4/22/2024
301-000-6002	Wastewater Grit	Reno County Solid Waste	\$168.00	4/22/2024
301-000-6002	Lab Analysis	SDK Laboratories	\$670.00	4/22/2024
301-000-7011	Lab Chemicals	USABlueBook	\$94.17	4/22/2024
301-000-6002	Service Call	Zenor Electric Company Inc	\$512.50	4/22/2024
301-000-6001	Insurance	ProValue Insurance	\$43,138.45	4/22/2024
301-000-5001	Health Insurance	Blue Cross Blue Shield	\$1,297.35	4/22/2024
301-000-6000	Electricity	Evergy	\$9,642.84	4/22/2024
301-000-6002	Regular Locate Fee	Kansas One-Call System Inc	\$22.20	4/22/2024
301-000-6002	Monthly Computer Support	Leading Edge Technology Partners	\$289.80	4/22/2024
301-000-6002	Uniforms	UniFirst	\$26.37	4/22/2024
301-000-6002	Uniforms	UniFirst	\$26.36	4/22/2024
301-000-6005	Cell Phone Service	Verizon	\$66.31	4/22/2024
301-000-6005	Cell Phone Service	Verizon	\$298.08	4/22/2024
			<b>\$58,444.81</b>	

<b>Non-Departmental</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>	<b>Ck Date</b>
101-109-6000	Electricity	Evergy	\$6,099.50	4/22/2024
			<b>\$6,099.50</b>	

<b>ASAP</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>	<b>Ck Date</b>
801-000-6004	Forfeit Cash Bond	South Hutch Municipal Court	\$210.00	4/22/2024
801-000-6004	Forfeit Cash Bond	Jessica Reta	\$40.00	4/22/2024
801-000-6004	Forfeit Cash Bond	South Hutch Municipal Court	\$100.00	4/22/2024
			<b>\$350.00</b>	

<b>Community Center</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>	<b>Ck Date</b>
811-000-6000	Electricity	Evergy	\$192.80	4/22/2024
811-000-6000	Gas	Kansas Gas Service	\$132.02	4/22/2024
			<b>\$324.82</b>	

<b>Technology</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>	<b>Ck Date</b>
812-000-7004	Annual Software Assurance & Support	Advantage Computer	\$675.00	4/22/2024
			<b>\$675.00</b>	

**GRAND TOTAL** **\$155,343.77**

## RESOLUTION OF SUPPORT

### For a Transportation Alternatives Program Application and Maintenance Commitment

A RESOLUTION DECLARING THE ELIGIBILITY OF THE CITY OF SOUTH HUTCHINSON TO SUBMIT AN APPLICATION TO THE KANSAS DEPARTMENT OF TRANSPORTATION FOR USE OF TRANSPORTATION ALTERNATIVES PROGRAM FUNDS FOR THE SOUTH HUTCHINSON PEDESTRIAN CORRIDOR PROJECT IN SOUTH HUTCHINSON, KS AND AUTHORIZING THE CITY ADMINISTRATOR TO SIGN THIS APPLICATION.

**Whereas**, the City of South Hutchinson, Kansas, has the legal authority to apply for, receive, and administer federal, state, and other monies through Home Rule Power under the Constitution of the State of Kansas and authorized by K.S.A. 12-1662, regarding the expenditure of federal-aid to public agencies; and

**Whereas**, the City of South Hutchinson, Kansas, is submitting an application to the Kansas Department of Transportation for Transportation Alternatives (TA) Program funds in the amount of \$212,800 as outlined in KDOT's Transportation Alternatives Program Guidance & Application Packet for Federal Fiscal Year 2023-24; and

**Whereas**, the City of South Hutchinson, Kansas, is participating as an eligible Project Sponsor in the Kansas Department of Transportation's TA Program; and

**Whereas**, Federal monies are available under a Transportation Alternatives Program, administered by the State of Kansas, Department of Transportation, for the purpose of creating and promoting the planning and development of active transportation facilities and programs in Kansas; and

**Whereas**, the City of South Hutchinson, Kansas, acknowledges availability of the required local match of no less than 20% and the availability of funds to pay all upfront costs, since the TA Program is a cost reimbursement program; and,

**Whereas**, the City of South Hutchinson, Kansas, agrees to pay any costs that exceed the project amount if the application is selected for funding; and,

**Whereas**, after appropriate public input and due consideration, the Governing Body of City of South Hutchinson, Kansas, has recommended that an application be submitted to the State of Kansas for the South Hutchinson Pedestrian Corridor project.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF SOUTH HUTCHINSON, KANSAS:

SECTION 1. That the City of South Hutchinson, Kansas, does hereby authorize the City Administrator to submit an application to the Kansas Department of Transportation for Transportation Alternatives Program funds on behalf of the citizens of City of South Hutchinson, Kansas.

SECTION 2. That the City of South Hutchinson, Kansas, hereby assures the Kansas Department of Transportation that sufficient funding for a minimum 20% match and all non-reimbursable expenses, e.g. ROW, utilities, etc. for the South Hutchinson Pedestrian Corridor project is available, as the Transportation Alternatives Program is a reimbursement program.

SECTION 3. That the City of South Hutchinson, Kansas, hereby assures the Kansas Department of Transportation that sufficient funding for the operation and maintenance of the South Hutchinson Pedestrian Corridor project will be available for the life of the project.

SECTION 4. That the City of South Hutchinson, Kansas, hereby assures the Kansas Department of Transportation that the City of South Hutchinson, Kansas, will have title or permanent easement to the South Hutchinson Pedestrian Corridor project by the time of project letting, if necessary.

SECTION 5. That the City Administrator of City of South Hutchinson, Kansas, is authorized to sign the application to the Kansas Department of Transportation for Transportation Alternatives Program funds on behalf of the citizens of City of South Hutchinson, Kansas. The City Administrator is also authorized to submit additional information as may be required and act as the official representative of the City of South Hutchinson in this and subsequent related activities.

SECTION 6. That the City of South Hutchinson, Kansas, hereby assures the Kansas Department of Transportation that the City of South Hutchinson, Kansas, is willing and able to, if the South Hutchinson Pedestrian Corridor project is selected for funding, administer all activities involved with the South Hutchinson Pedestrian Corridor project.

ADOPTED AND PASSED by the Governing Body of the City of South Hutchinson, Kansas, this 4<sup>th</sup> day of April, 2024.

Chief Elected Official: \_\_\_\_\_(print)

\_\_\_\_\_(sign)

ATTEST: <Seal>

# MEMORANDUM

**TO:** Jeff Schenk, City Administrator  
**FROM:** Ronnie Pederson, Public Works Superintendent  
**DATE:** 4/22/24  
**RE:** Flygt 3170 sewage pump

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## BACKGROUND:

The city's wastewater facility has 3 submersible raw water pumps that have been in service for 20 years. One of these pumps has finally failed and needs to be replaced. Due to the harsh environment these pumps operate in it is very impressive to see pumps last this long without any breakdowns or repairs needed. After researching pump options and retrofitting of different pumps the city and Jeo Engineering have determined the Flygt pump is the best option to continue with for this pump replacement.

## PROJECT DESCRIPTION:

City staff recommend replacing the current Flygt raw water pump with the Flygt 3170 pump.

## PROPOSED PURCHASE:

Equipment Reserve Account	Cost of pump	Cost to re-build pump
\$61,614.06	\$43,810	\$46,497

## RECOMMENDATION:

City staff recommends the council approve the purchase of the Flygt 3170 pump from JCI Industries in the amount of \$43,810.00.



**CITY OF SOUTH HUTCHINSON**  
 2 South Main  
 South Hutchinson, Kansas 67505  
 620-663-7104  
 Fax 620-663-7168

## City of South Hutchinson Quote Form

**Please submit to City Administrator with quote documentation attached.**

Date: 4/5/24 Requesting department: (Public Works) Wastewater Plant

Account number: \_\_\_\_\_ Funds in account: \_\_\_\_\_

Description of Item\service\project: Submersible Raw Water Pump

Final quoted price: \$ 43,810.00

Authorizing personnel signature: \_\_\_\_\_

**Quote #1**

Company	JCI Industies
Contact	Doug Allen
Phone Number	(316) 213-2954
Email Address	doug.allen@otcindustrial.com
Price Quote	New Pump \$ 43,810.00

**Quote #2**

Company	JCI Industries
Contact	Doug Allen
Phone Number	(316) 213-2954
Email Address	doug.allen@otcindustrial.com
Price Quote	Rebuild existing pump \$ 46,497.00

**Quote #3**

Company	
Contact	
Phone Number	
Email Address	
Price Quote	





JCI Industries, Inc.  
1335 S. Young  
Wichita, KS 67209  
Tel: 316-942-6200

[www.jciind.com](http://www.jciind.com)

Monday, February 5, 2024

South Hutchinson KS, City of - WWTP  
2 South Main  
South Hutchinson, KS 67505

Phone: 620-663-7104  
Fax: 620-663-7168

**Attention: Ronnie Pederson**

Subject: Flygt 3170 Pump Repair/Replacement

Quotation #: SEQT-78807TM  
Please refer to this number when ordering

Ronnie Pederson:

JCI Industries, Inc. would like to thank you for the opportunity to provide a proposal on the above referenced service. We appreciate the opportunity to provide our equipment and services. Please contact us if you have any questions regarding this offering. Thank you.

Best regards,

*Tanner McCleave*

Tanner McCleave

JCI Industries, Inc.

*Doug Allen*

Doug Allen

Sales Engineer  
JCI Industries, Inc.  
316-213-2954



JCI Industries, Inc.  
 1335 S. Young  
 Wichita, KS 67209  
 Tel: 316-942-6200

[www.jciind.com](http://www.jciind.com)

Monday, February 5, 2024

Quote #: SEQT-78807TM

Item	Description	Qty	Unit Price	Subtotal
1.00	<b>Flygt 3170 Pump Repair</b> Our initial inspection found the following: - Rotor locked up - Stator burnt up - Seal leakage  The following work will be completed: 1. Clean, disassemble and inspect 2. Replace the following purchased parts: - Shaft/Rotor Unit - Stator - Impeller - Repair kit - Motor cable - Wear ring - Lifting handle - FLS detector - Entrance flange - General wear parts 3. Assemble and Test <b>Repair Lead Time: 10-12 Weeks ARO</b>	1	\$46,497.00	\$46,497.00
2.00	<b>Flygt 3170 Pump Replacement</b> Price includes: - New Flygt 3170 Pump - DCI Labor for pump sent in - Freight from Manufacturer <b>New Pump Lead Time: 8-10 Weeks ARO</b>	1	\$43,810.00	\$43,810.00

Terms & Conditions

<b>Lead Time</b> See Above	<b>Payment Terms</b> Net 30
<b>Shipping Method</b> Best Way	<b>Shipping Terms</b> Prepaid and Added to Invoice
<b>F.O.B.</b> Warehouse	Due to current market conditions, please confirm pricing at point of order.



OTC INDUSTRIAL TECHNOLOGIES COMPANY

JCI Industries, Inc.  
1335 S. Young  
Wichita, KS 67209  
Tel: 316-942-6200

[www.jciind.com](http://www.jciind.com)

## OTC TERMS AND CONDITIONS OF SALE

OTC Industrial Technologies is herein referred to as the "Seller" and the customer or person or entity purchasing goods and/or services ("Goods") and/or parts required for services ("Parts") from Seller is referred to as the "Buyer." These Terms and Conditions, any price list or schedule, quotation, acknowledgment, Seller's scope or statement of work, or invoice from Seller relevant to the sale of the Goods or Parts by Seller, and all associated terms, conditions and documents incorporated by specific reference herein or therein, constitute the complete and exclusive statement of the terms of the agreement ("Agreement") governing the sale of Goods or Parts by Seller to Buyer. Acceptance of any order is subject to credit approval and acceptance of the order by Seller. If credit of the Buyer becomes unsatisfactory to Seller, Seller reserves the right to terminate upon notice to Buyer and without liability to Seller. If Buyer already has an executed Agreement currently in effect with Seller, then the terms of that agreement, together with any terms and conditions of a subsequent purchase or work order issued hereunder, constitute the complete agreement, and (ii) if Buyer does not already have an executed Agreement with Seller, then these terms and conditions and any subsequent purchase or work orders issued hereunder constitute the complete agreement. No other terms or conditions including, without limitation, Buyer's standard printed terms and conditions, whether printed on Buyer's order acknowledgement, purchase order or otherwise, will have any application to any purchase between Buyer and Seller unless specifically accepted in writing by Seller. Acceptance is expressly limited to the terms of the Agreement and Seller objects to any different or additional terms contained in any response by Buyer, including without limitation any instrument requesting or confirming this offer by or on behalf of Buyer. The terms of the Agreement are the sole and exclusive terms and conditions on which the Seller agrees to be bound. Seller reserves the right in its sole discretion to refuse orders.

1. **PRICES:** Unless otherwise specified in writing by Seller, the price quoted or specified by Seller for the Goods or Parts shall remain in effect for thirty (30) days after the date of Seller's quotation, Seller's scope of work or acknowledgment of Buyer's order for the Goods, whichever occurs first, provided an unconditional authorization from Buyer for the shipment or performance of the Goods and/or Parts is received and accepted by Seller within such time period. If such authorization is not received by Seller within such thirty (30) day period, Seller shall have the right to change the price for the Goods or Parts to Seller's price for the Goods or Parts at the time of Seller's shipment or performance thereof. All prices and licensee fees are exclusive of taxes, transportation and insurance, which are to be borne by Buyer. Seller reserves the right to correct any obvious errors in specifications or prices and, in the event of a force majeure event, make equitable adjustments in Seller's price for the Goods or Parts prior to Seller's shipment or performance thereof. Unless otherwise specified by Seller, Parts that are required for the performance of services will be furnished at Seller's then-prevailing prices.

2. **TAXES:** Any current or future tax, duty, tariff or governmental charge (or increase in same) affecting Seller's costs of production, sale, services or delivery or shipment of Goods or Parts or which Seller is otherwise required to pay or collect in connection with the sale, purchase, delivery, performance, storage, processing, use or

consumption of Goods or Parts shall be for Buyer's account and shall be added to the price or billed to Buyer separately, at Seller's election.

3. **TERMS OF PAYMENT:** Unless otherwise specified by Seller, terms are net thirty (30) days from date of Seller's invoice in U.S. currency. Seller shall have the right, among other remedies, either to terminate this Agreement or to suspend further performance under this and/or other agreements with Buyer in the event Buyer fails to make any payment when due, which other agreements Buyer and Seller hereby amend accordingly. Buyer shall be liable for all expenses, including attorneys' fees, relating to the collection of past due amounts. If any payment owed to Seller is not paid when due, it shall bear interest, at a rate to be determined by Seller, which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is paid. Seller may preserve its interests in payment by enforcing any applicable mechanic's, labor, construction or similar lien rights.

4. **SHIPMENT AND DELIVERY:** While Seller will use all reasonable commercial efforts to maintain the delivery date(s) and/or performance dates acknowledged or quoted by Seller, all shipping dates and/or performance dates are approximate and not guaranteed. Seller reserves the right to make partial shipments. Seller, at its option, shall not be bound to tender delivery of any Goods or Parts for which Buyer has not provided shipping instructions and other required information. If the shipment or performance of the Goods or Parts is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse Seller for any and all storage costs and other additional expenses resulting therefrom. For shipments of Goods or Parts per Incoterms® 2020, per FCA will be the approved method for delivery unless otherwise approved by the parties. Any claims for shortages or damages suffered in transit are the responsibility of Buyer and shall be submitted by Buyer directly to the carrier. Notwithstanding the above, risk of loss and legal title to Parts shall transfer to Buyer (i) upon delivery by the Seller, or (ii) at the time Parts are placed in storage due to Buyer's delay or postponement. Shortages or damages must be identified and signed for at the time of delivery. Requests for changes in quoted transportation modes will not be made or accepted on orders already processed unless otherwise mutually agreed upon by Seller and Buyer. Requests for changes in quoted transportation modes to orders already accepted by Seller will be subject to new freight terms and billed at the price in effect at the time of the request for change. Any request for changes to quoted transportation modes must be submitted in writing to Seller and are subject to Seller's acceptance and adjustment in freight price. The transportation costs quoted by Seller may be changed by Seller without notice in order to reflect Seller's prices at the time of shipment and will reflect any market increase in transportation costs.

5. **LIMITED WARRANTY:** Subject to the limitations of Section 6, Seller's standard warranty that is applicable to the Goods at the time of purchase is the only warranty applicable to the sale of Seller's Goods and its terms, conditions and limitations are incorporated by reference herein. Seller warrants that it will perform the services as described in these terms and conditions and will exercise all reasonable skill, care and due diligence in the performance of the services. Seller warrants that all services performed shall be free from faulty workmanship for a period of thirty (30) days from



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completion of services. Buyer acknowledges that the performance of any service by a Party other than Seller, which alters the manufacturer provided Goods as indicated in the Statement of Work or Work Order may void the manufacturer's warranty. To the extent assignable, Seller assigns to Buyer any warranties that are made by manufacturers and suppliers of the Parts. EXCEPT AS SPECIFIED ABOVE, PARTS FURNISHED HEREUNDER ARE FURNISHED AS-IS, WHERE-IS, WITH NO WARRANTY WHATSOEVER. THE WARRANTY SET FORTH IN THIS SECTION 5 AND THE WARRANTY SET FORTH IN SECTION 8 ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY SELLER WITH RESPECT TO THE GOODS AND ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE.

**SELLER'S WARRANTY EXTENDS ONLY TO PURCHASERS WHO BUY FOR INDUSTRIAL OR COMMERCIAL USE.** This warranty does not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, negligence (other than Seller's), unauthorized modification or alteration, use beyond rated capacity, unsuitable power sources or environmental conditions, improper installation, repair, handling, maintenance or application or any other cause not the fault of Seller. To the extent that Buyer or its agents have supplied specifications, information, representation of operating conditions or other data to Seller in the selection or design of the Goods and the preparation of Seller's quotation, and/or scope of work, and in the event that actual operating conditions or other conditions differ from those represented by Buyer, any warranties or other provisions contained herein that are affected by such conditions shall be null and void. Buyer assumes all other responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Goods or Parts, either alone or in combination with other products/components. Goods sold hereunder are not intended for use in or in connection with (1) any safety application or the containment areas of a nuclear facility, or (2) in a healthcare application, where the Goods have the potential for direct patient contact or where a six (6) foot clearance from a patient cannot be maintained at all times. **THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER SHALL BE LIMITED TO REPAIR, CORRECTION OR REPLACEMENT, OR REFUND OF THE PURCHASE PRICE FOR THE NON-CONFORMING GOODS.**

**6. LIMITATION OF REMEDY AND LIABILITY:** SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND THE REMEDIES OF BUYER SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC GOODS OR PARTS PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION.

**BUYER AGREES THAT SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS SHALL NOT EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES.** The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use, revenue, reputation and data, costs incurred, including without limitation, for capital, fuel, power and loss or damage to property or equipment

**7. INSURANCE:** Seller shall maintain the following insurance or self-insurance coverage. **Worker's Compensation** in accordance with the statutory requirements of the state in which the work is performed. **Employer's Liability** with a limit of liability of \$1,000,000 per occurrence for bodily injury by accident or bodily injury by disease. **Commercial General Liability (CGL)** for bodily injury and property damage with a limit of \$1,000,000 per occurrence and per location aggregate. **Automobile Liability** insurance that covers usage of all owned, non-owned and leased vehicles and which is subject to a combined single limit per occurrence of \$1,000,000. Automobile Liability insurance includes Contractual Liability, but no special endorsements. **Buyer expressly acknowledges and agrees that Seller has set its prices and entered into this Agreement in reliance upon the limitations of liability, insurance coverage, and other terms and conditions specified herein, which allocate the risk between Seller and Buyer and form a basis of this bargain between the parties.**

**8. PATENTS AND COPYRIGHTS:** Subject to the limitations of the second paragraph of Section 6 and any and all associated terms, conditions and documents incorporated by specific reference by Seller, Seller warrants that the Goods sold, except as are made specifically for Buyer according to Buyer's specifications, do not infringe any valid U.S. patent or copyright in existence as of the date of shipment. This warranty is given upon the condition that Buyer promptly notify Seller of any claim or suit involving Buyer in which such infringement is alleged and cooperate fully with Seller and permit Seller to control completely the defense, settlement or compromise of any such allegation of infringement. Seller's warranty as to utility patents only applies to infringement arising solely out of Buyer's operation according to Seller's specifications and instructions of such Goods and/or Software. In the event (i) such Goods are held to infringe such a U.S. patent or copyright in such suit, and the use of such Goods is enjoined, or (ii) a compromise or settlement is made by Seller, Seller shall have the right, at its option and expense, to procure for Buyer the right to continue using such Goods, or replace them with non-infringing Goods and/or Software, or modify same to become non-infringing, or grant Buyer a credit for the depreciated value of such Goods and accept return of them. In the event of the foregoing, Seller may also, at its option, cancel the agreement as to future deliveries of such Goods, without liability. Except as otherwise provided herein, Seller or applicable third party licensor to Seller maintains all right, title and interest in and to the intellectual property in the Goods or Parts.

**9. EXCUSE OF PERFORMANCE:** Seller shall not be liable for delays in performance or for non-performance due to acts of God, acts of Buyer, war, viral outbreaks, disease, pandemic, widespread sickness, or epidemic, fire, flood, weather, sabotage, strikes or labor disputes, civil disturbances or riots, governmental requests, restrictions, allocations, laws, regulations, orders or actions, unavailability of or delays in transportation, unavailability of or delays in the supply of materials, components, parts or labor required for the design and/or manufacture of Goods or the performance by



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Seller hereunder, default of suppliers, or unforeseen circumstances, acts or omissions of Buyer, or any events or causes beyond Seller's reasonable control. Deliveries or other performance may be suspended for an appropriate period of time or canceled by Seller upon notice to Buyer in the event of any of the foregoing, but the balance of this Agreement shall otherwise remain unaffected as a result of the foregoing. If Seller determines that its ability to supply the total demand for the Goods or Parts, or to obtain material used directly or indirectly in the manufacture of the Goods or Parts is hindered, limited or made impracticable due to causes set forth in this paragraph, Seller may delay or cancel performance, make equitable adjustments in Seller's price for the Goods or Parts and/or allocate its available supply of the Goods or Parts and/or such material (without obligation to acquire other supplies of any such Goods, Parts or material) among its purchasers on such basis as Seller determines to be equitable without liability for any failure of performance which may result therefrom.

**10. CANCELLATION:** Buyer may cancel orders only upon thirty (30) days advance written notice and upon payment to Seller of Seller's cancellation charges which include, among other things, all costs and expenses incurred, and to cover commitments made by the Seller, and a reasonable profit thereon. Seller's determination of such cancellation charges shall be conclusive.

**11. CHANGES:** Buyer may request changes or additions to the Goods or Parts consistent with Seller's specifications and criteria. In the event such changes or additions are accepted by Seller, Seller may revise the price, license fees, and dates of delivery and/or performance dates. Seller reserves the right to change designs and specifications for the Goods or Parts without prior notice to Buyer.

**12. ASSIGNMENT:** Buyer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of Seller, and any such assignment, without such consent, shall be void.

**13. DOCUMENTATION:** Seller shall provide Buyer with that data/documentation which is specifically identified in Seller's quotation. If additional copies of data/documentation are to be provided by Seller, it shall be provided to Buyer at Seller's applicable prices then in effect.

**14. INSPECTION/TESTING:** Buyer shall have ten (10) days from (i) the date of delivery of Goods or Parts and (ii) from the date of completion of each portion of the services to inspect the Goods or Parts and in the event of any non-conformity, Buyer must give written notice to Seller within said period stating why the Goods or Parts are not conforming. Failure by Buyer to give such notice constitutes unqualified acceptance of the Goods or Parts. Buyer's sole remedy for non-conforming services shall be correct performance of services incorrectly performed by Seller.

**15. RETURNED GOODS:** Advance written permission to return Goods or Parts must be obtained from Seller in accordance with Seller's then current Return Material Authorization (RMA) procedures and a return authorization number issued. Such Goods or Parts must be (i) current, unused, catalogued Goods or Parts still in original packaging (ii) free of all liens, encumbrances, or other claims, and (iii) shipped, transportation prepaid, to Seller's specified location. Returns made without proper written permission will not be accepted by Seller. Seller reserves the right to inspect Goods or Parts prior to authorizing return.

**16. BILLABLE SERVICES:** Additional charges will be billed to Buyer at Seller's then prevailing labor rates and Parts prices for any of the following: a) any services not specified in Seller's quotation, Seller's order acknowledgement, Seller's scope of work, or other documents referenced herein and therein; b) any services performed at times other than Seller's normal service hours; c) if timely and reasonable site and/or equipment access is denied the Seller service representative; d) if it is necessary, due to local circumstances, to use union labor or hire an outside contractor, Seller service personnel will provide supervision only and the cost of such union or contract labor will be charged to Buyer; (e) if service or repair is necessary to return equipment to proper operating condition as a result of other than Seller (i) maintenance, repair, or modification (including, without limitation, changes in specifications or incorporation of attachments or other features), (ii) misuse or neglect, (including, without limitation, failure to maintain facilities and equipment in a reasonable manner), (iii) failure to operate equipment in accordance with applicable specifications, and (iv) catastrophe, accident, or other causes external to equipment, (f) Seller's performance is made more burdensome or costly as a result of Buyer's failure to comply with its obligations herein, or (g) any additional obligations or requirements, including but not limited to those related to insurance requirements, service delivery, building entry or technical training.

**17. DRAWINGS:** Seller's documentation, prints and drawings (including without limitation, the underlying technology) furnished by Seller to Buyer in connection with this Agreement are the property of Seller and Seller retains all rights, including without limitation, exclusive rights of use, licensing and sale. Possession of such prints or drawings does not convey to Buyer any rights or license, and Buyer shall return all copies (in whatever medium) of such prints or drawings to Seller immediately upon request therefore. Notwithstanding the foregoing, Buyer may use the documentation, prints and drawings in connection with the use of the Goods, Parts, and/or Software.

**18. BUYER SUPPLIED DATA:** To the extent that Seller has been provided by, or on behalf of, Buyer any specifications, description of operating conditions or other data and information in connection with the selection or design of the Goods or Parts and/or the provision of services, and the actual operating conditions or other circumstances differ from those provided by Buyer and relied upon by Seller, any warranties or other provisions contained herein which are affected by such conditions shall be null and void.

**19. EXPORT/IMPORT:** Buyer agrees that all applicable import and export control laws, regulations, orders and requirements, including without limitation those of the United States and the European Union, and the jurisdictions in which the Seller and Buyer are established or from which Goods or Parts and services may be supplied, will apply to their receipt and use. In no event shall Buyer use, transfer, release, import, export, Goods or Parts in violation of such applicable laws, regulations, orders or requirements.

**20. NON-SOLICITATION:** Buyer shall not solicit, directly or indirectly, or employ any employee of Seller during the period any Goods are being provided to Buyer and for a period of one (1) year after the last provision of Goods.

**21. GENERAL PROVISIONS:** This Agreement supersedes all other communications, negotiations and prior oral or written statements regarding the subject matter of this Agreement. No



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change, modification, rescission, discharge, abandonment, or waiver of these terms and conditions shall be binding upon the Seller unless made in writing and signed on its behalf by a duly authorized representative of Seller. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement this Agreement shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification or additional terms shall be applicable to this Agreement by Seller's receipt, acknowledgment, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. Any such modifications or additional terms are specifically rejected and deemed a material alteration hereof. Seller reserves the right to subcontract services to others. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Seller in any quotation, acknowledgment or publication are subject to correction.

The validity, performance, and all other matters relating to the interpretation and effect of this Agreement shall be governed by the law of the state of Ohio without regard to its conflict of laws principles. Buyer and Seller agree that the proper venue for all actions arising in connection herewith shall be only in Ohio and the parties agree to submit to such jurisdiction. No action, regardless of form, arising out of transactions relating to this contract, may be brought by either party more than two (2) years after the cause of action has accrued. The U.N. Convention on Contracts for the International Sales of Goods shall not apply to this agreement.

**22 ADDITIONAL SERVICE CONDITIONS.** The Buyer shall furnish to Seller, at no cost, suitable working space, storage space, adequate heat, telephone, light, ventilation, regulated electric power and outlets for testing purposes. The facilities shall be within a reasonable distance from where the Goods are to be provided. Seller and its representatives shall have full and free access to the equipment in order to provide the necessary Goods. Buyer authorizes Seller to send a service technician or an authorized agent to access any site requested by Buyer to perform services, including services on different scopes of work and equipment as requested by Buyer. Buyer shall provide the means to shut-off and secure electric power to the equipment and provide safe working conditions. Seller is under no obligation to remove or dispose of Parts or equipment unless specifically agreed upon in Seller's scope of work. Buyer shall immediately inform Seller, in writing, at the time of order placement and thereafter, of any unsafe or hazardous substance or condition at the site, including, but not limited to, the presence of

asbestos or asbestos-containing materials, and shall provide Seller with any applicable Material Data Safety Sheets regarding the same. Any losses, costs, damages, claims and expenses incurred by Seller as a result of Buyer's failure to so advise Seller shall be borne by Buyer. Seller, in its sole discretion and without cost or penalty, reserves the right to cancel its performance under this Agreement or any order immediately upon written notice to Buyer following Seller discovery of unsafe or hazardous site substance or condition or any other circumstance altering Seller's performance hereunder. Buyer shall appoint a representative familiar with the site and the nature of Seller's performance to be accessible at all times that Seller personnel are at the site. Seller shall not be liable for any expenses incurred by Buyer in removing, replacing or refurbishing any Buyer equipment or any part of Buyer's building structure that restricts Seller access. Buyer personnel shall cooperate with and provide all necessary assistance to Seller. Seller shall not be liable or responsible for any work performed by Buyer.

**23 COMPLIANCE WITH LAW.** Buyer shall comply with applicable laws and regulations relating to anti-corruption, including, without limitation, (i) the United States Foreign Corrupt Practices Act (FCPA) (15 U.S.C. §§78dd-1, et. seq.) irrespective of the place of performance, and (ii) laws and regulations implementing the Organization for Economic Cooperation and Development's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the U.N. Convention Against Corruption, and the Inter-American Convention Against Corruption in Buyer's country or any country where performance of this agreement or delivery of Goods will occur.

**24 INDEMNITY:** Each party shall indemnify and hold the other party harmless from loss, damage, liability or expense resulting from damage to personal property of a third party, or injuries, including death, to third parties to the extent caused by a negligent act or omission of the party providing indemnification or that party's subcontractors, agents or employees during performance of services hereunder. Such indemnification shall be reduced to the extent damage or injuries are attributable to others and in no event shall the indemnifying party be obligated to indemnify or insure the other party for the indemnitee's own fault or negligence. The indemnifying party shall defend the other party in accordance with and to the extent of the above indemnification, provided that the indemnifying party is: i) promptly notified by the other party, in writing, of any claims, demands or suits for such damages or injuries; ii) given all reasonable information and assistance by the other party; iii) given full control over any resulting negotiation, arbitration or litigation, including the right to choose counsel and settle claims, or the indemnifying party's obligations herein shall be deemed waived.

The parties hereto agree any orders placed by Buyer for Seller to provide Goods, regardless of any terms and conditions on any quote, purchase order or other documents exchanged, the terms and conditions of this Agreement shall prevail.

**PREPARED BY:** Jeff Schenk, City Administrator

**MEETING DATE:** April 22, 2024

**AGENDA ITEM:** Contract with Plot Marketing for Phase 2 Rebranding

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**BACKGROUND:**

The City of South Hutchinson hired Plot Marketing for Phase 1 of the South Hutchinson rebranding process. That involved community engagement and participation. Using that they were able to compile a good amount of data on who the City is and what direction they would like to see us go.

**DESCRIPTION:**

Plot has given a proposal to move into phase 2 of the rebranding process. This proposal lays out what the phase will entail. Plot is here to discuss this contract as well.

**RECOMMENDATION:**

City staff recommends the council approve the contract with Plot Marketing for phase 2 of the rebranding process and authorize the mayor to sign.