

## MUTUAL ACCESS AGREEMENT

**THIS MUTUAL ACCESS AGREEMENT** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between the City of Lawrence, Kansas, a municipal corporation, and the University of Kansas, a state-supported institution of higher education and agency of the State of Kansas.

### RECITALS

- A.** The University of Kansas, a state-supported institution of higher education and agency of the State of Kansas ("University") is the owner of that real property, commonly known as 1500 W 15th Street, Lawrence, Douglas County, Kansas, and upon which Learned Hall and the School of Engineering is located ("the Property"), more fully described as 36-12-19 BEG AT PT 93.5 RDS E OF SW COR SD SEC ON S LINE SD SEC & 381.54 FT N TH E 192.27 FT N 150 FT W 192.27 FT S 150 FT TO PT BEG; ALSO BEG AT PT 93.5 RDS E OF SW COR SD SEC ON S LINE SD SEC TH N 381.54 FT E 192.27 FT N 150 FT E 589.33 FT S 531.42 FT TO S LINE SD SEC TH W TO PT BEG 8.35A).
- B.** The City of Lawrence, Kansas, a municipal corporation ("City"), in conjunction with the Project governed by the Cost-sharing Agreement of this same date, seeks access to the Property to install a sanitary sewer on Crescent Road and to connect to existing sewer utility services, including a sanitary sewer manhole (the "Services") (map showing the location of the "Services" are affixed hereto as Exhibits A and B and are incorporated herein by reference).
- C.** The University, in conjunction with the Cost-sharing Agreement of this same date seeks access to the City's Right of Way located at the southeast corner of the intersection of Naismith Drive and Crescent Road ("City's Right of Way") in order to install a fire hydrant and attendant facilities ("Hydrant Project") (a map showing the location of the fire hydrant is affixed hereto as Exhibit C and is incorporated herein by reference).
- D.** The City and the University have determined that it is in the best interests of the City and the University for the City to have access to the Property to perform the Services and for the University to have access to the City's Right of Way to complete the Hydrant Project and, for those reasons, enter into this Mutual Access Agreement ("Agreement").

### TERMS

**NOW, THEREFORE,** in light of the mutual promises and obligations contained herein, and in exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

**1. The City's Right of Access.**

- (a)** The University has the authority to, and does hereby grant to the City (including its employees, agents and subcontractors) access to the Property, solely for the purpose of performing the Services, which shall occur between the Effective Date and the Expiration Date, as those terms are defined in Section 3 of this Agreement.
- (b)** The University will not interfere with the City's performance of the Services or undertake any actions regarding the use of the Property that would endanger the health, safety, or welfare of the City's employees, agents or subcontractors, or damage their equipment, materials, or property.
- (c)** Upon completion of the Services and activities authorized by this Agreement, the City will remove from the Property all materials and equipment used by the City in performing the Services.
- (d)** The City will only access the Property along the access route defined in Exhibit A.
- (e)** The City shall not, without the University's prior written consent, make any alteration to the Property or use the Property for any purpose other than to perform the Services permitted by this Agreement.
- (f)** The City or the City's subcontractors shall solely be responsible for any injury and liability resulting from any activity permitted by this Agreement and shall indemnify and hold harmless the University for any such injury or liability relating to its use of the Property.
- (g)** The City will restore any areas disturbed to like conditions prior to the Services performed under this Agreement. The parties acknowledge that, as part of its Services, the City plans to install the sanitary sewer through open trench construction.
- (h)** The City shall provide no less than forty-eight (48) hours' notice to the University, prior to the disruption of utility services for the purposes of reconnection of any utility services to the Property.
- (i)** The City will maintain access to the surface parking lots surrounding the School of Engineering.

- (j) The City at all times shall enforce strict discipline and good order among the City employees, agents, contractors, and other persons carrying out the Services. In addition, if the City receives notice from the University regarding any contractor, subcontractor, or employee who engages in sexually harassing or otherwise discriminatory behavior or other misconduct (as determined solely by KU) directed towards University students or employees, the City shall remedy such complaint without delay.
- (k) The City shall confine operations at the site to construction limits acceptable to the University and permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and shall not unreasonably encumber the Property or interfere with University operations. The City acknowledges that the Services are to be performed on and/or near an active university campus and agrees to restrict access by students, faculty, and others to the area within the construction limits and minimize construction traffic and other interference with activities outside the construction limits. The City shall not permit any workers to use any existing University facilities at the site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by KU.
- (l) The City shall not remove any trees from the Property without the University's written approval. If any tree is removed, the City will replace each tree removed by planting two trees of species and at planting locations chosen by the University.

## **2. The University's Right of Access.**

- (a) The City has the authority to, and does hereby grant to the University (including its employees, agents and subcontractors) access to the City's Right of Way for the purpose of performing the Hydrant Project, which shall occur in conjunction with the Project identified in the Cost-sharing Agreement of this same date and which shall occur between the Effective Date and the Expiration Date, as those terms are defined in Section 3 of this Agreement.
- (b) The City will not interfere with the University's use of the City's Right of Way in performing the Hydrant Project or undertake any actions regarding the use of the City's Right of Way that would endanger the health, safety, or welfare of the University's employees, agents or subcontractors, or damage their equipment, materials, or property.
- (c) Upon completion of the Hydrant Project authorized by this Agreement, the University will remove from the City's Right of Way all materials and equipment used by the University in performing the Hydrant Project.

- (d) The University shall not, without the City's prior written consent, make any alteration to the City's Right of Way or place in the City's Right of Way anything other than those items necessary to complete the Hydrant Project.
- (e) The University or the University's subcontractors shall solely be responsible for any injury and liability resulting from the University's use of the City's Right of Way and shall indemnify and hold harmless the City for any such injury or liability relating to its use of the City's Right of Way.
- (f) The University will restore any areas disturbed to like conditions prior to the Hydrant Project performed under this Agreement.

**3. Term; Termination.**

- (a) This Agreement shall be effective at 6:00 a.m. on May 15, 2017 ("Effective Date"), and shall expire at 11:59 p.m. on August 12, 2017, or the completion of the Services and Hydrant Project, whichever shall occur earlier ("Expiration Date"). Each party, however, shall have the right to immediately terminate this Agreement at its sole and absolute discretion in the event of any breach of this Agreement by the other. Upon the termination of this Agreement, the terminating party shall have the right to order the other to immediately cease all activities authorized by this Agreement.
- (b) Upon the expiration or earlier termination of this Agreement, the parties' rights under this Agreement shall be null and void. Notwithstanding any provision contained in this Agreement, the mutual indemnifications provided in Section 5 and all other obligations of the parties under this Agreement shall survive the Expiration Date or earlier termination of this Access Agreement.

**4. Representation and Warranties.**

- (a) The University makes no representations or warranties of any kind with respect to the Property, including, without limitation, the condition of the Property or the fitness of the Property for the permitted use. The City agrees that it shall have access to the Property until the Expiration Date, or any earlier termination of this Agreement, "as is" with all faults.
- (b) The City makes no representations or warranties of any kind with respect to the City's Right of Way, including, without limitation, the condition of the City's Right of Way or its fitness for the Hydrant Project. The University agrees that it shall have access to the City's Right of Way for the Hydrant

Project until the Expiration Date, or any earlier termination of this Agreement, "as is" with all faults.

5. **Indemnity and Damages.** Subject to the limitations set forth in the Kansas Tort Claims Act of 1979, K.S.A. 75-6101 *et seq.*, as amended, the City and KU agree to be responsible for their own negligent actions and those of their own governing bodies, officers, agents, and employees. The City and KU agree to use reasonable care to avoid causing damage to the property and facilities of the other and to be responsible for and to reimburse the other for all damages caused to property and facilities of the other by their agents, officers, employees, and contractors during the installation, repair, replacement, or other work done arising from the Services and the Hydrant Project.
6. **Compliance with Applicable Laws.** The City and the University shall comply, in all material respects, with all applicable federal, state, and local laws and existing regulations promulgated thereunder in its use and activities permitted under this Agreement.
7. **No Limitation of Remedies.** The various rights and remedies contained in this Agreement and reserved to the parties, except as otherwise provided in this Agreement, shall not be considered as exclusive of any other right or remedy, but shall be construed as cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity, or by statute. No delay or omission of the right to exercise any power or remedy shall impair any such right, power, or remedy or be construed as a waiver of any default or non-performance or as acquiescence therein.
8. **Venue.** The parties agree that, should any dispute arise that cannot be resolved through negotiations and by mutual consent concerning the validity and effect of this Agreement, or of any breach of the Agreement herein, venue of action concerning such dispute shall be in the District Court of Douglas County, Kansas.
9. **Entire Agreement; Amendment.** This Agreement constitutes the entire agreement between the City and the University with respect to this transaction and the Project, and it expressly supersedes all previous written, email, and oral communications between the parties. No amendment, alteration, or modification of this Agreement shall be valid unless executed in writing by all the parties.
10. **Force Majeure.** No party shall be liable for any failure to perform its obligations where such failure is a result of acts of God, fire, strikes, riots, floods, war, and other disasters or events beyond the City's or the University's reasonable control.

11. **Authorization.** By signing this Agreement, the representative of each party represents that such person is duly authorized to execute this Agreement on behalf of that party and that the party agrees to be bound by its provisions.
12. **Severability.** If any section, sentence, clause, or phrase of this Agreement is found to be invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining provision of this Agreement.
13. **Governing Law.** This Agreement shall be construed and enforced in accordance with and shall be governed by the laws of the state of Kansas.

*[SIGNATURE PAGES FOLLOW]*

**IN WITNESS WHEREOF**, the undersigned have caused this Mutual Access Agreement to be executed as of the date noted above.

**CITY:**  
**CITY OF LAWRENCE, KANSAS, a**  
**municipal corporation**

\_\_\_\_\_  
THOMAS M. MARKUS  
City Manager

**ACKNOWLEDGMENT**

THE STATE OF KANSAS            )  
  )     ss:  
THE COUNTY OF DOUGLAS        )

**BE IT REMEMBERED**, that on this \_\_\_\_ day of \_\_\_\_\_, 2017, before me the undersigned, a notary public in and for the County and State aforesaid, came Thomas M. Markus, as City Manager of the City of Lawrence, Kansas, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my notarial seal, the day and year last written above.

\_\_\_\_\_  
Notary Public

My Appointment Expires:

**UNIVERSITY:**

**UNIVERSITY OF KANSAS, a state-supported institution of higher education and agency of the State of Kansas**

\_\_\_\_\_  
Diane Goddard  
Vice Provost for Administration and Finance

**ACKNOWLEDGMENT**

THE STATE OF KANSAS            )  
  )     ss:  
THE COUNTY OF DOUGLAS        )

**BE IT REMEMBERED**, that on this \_\_\_\_ day of \_\_\_\_\_, 2017, before me the undersigned, a notary public in and for the County and State aforesaid, came \_\_\_\_\_ as \_\_\_\_\_ of the University of Kansas, a state-supported institution of higher education and agency of the State of Kansas, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my notarial seal, the day and year last written above.

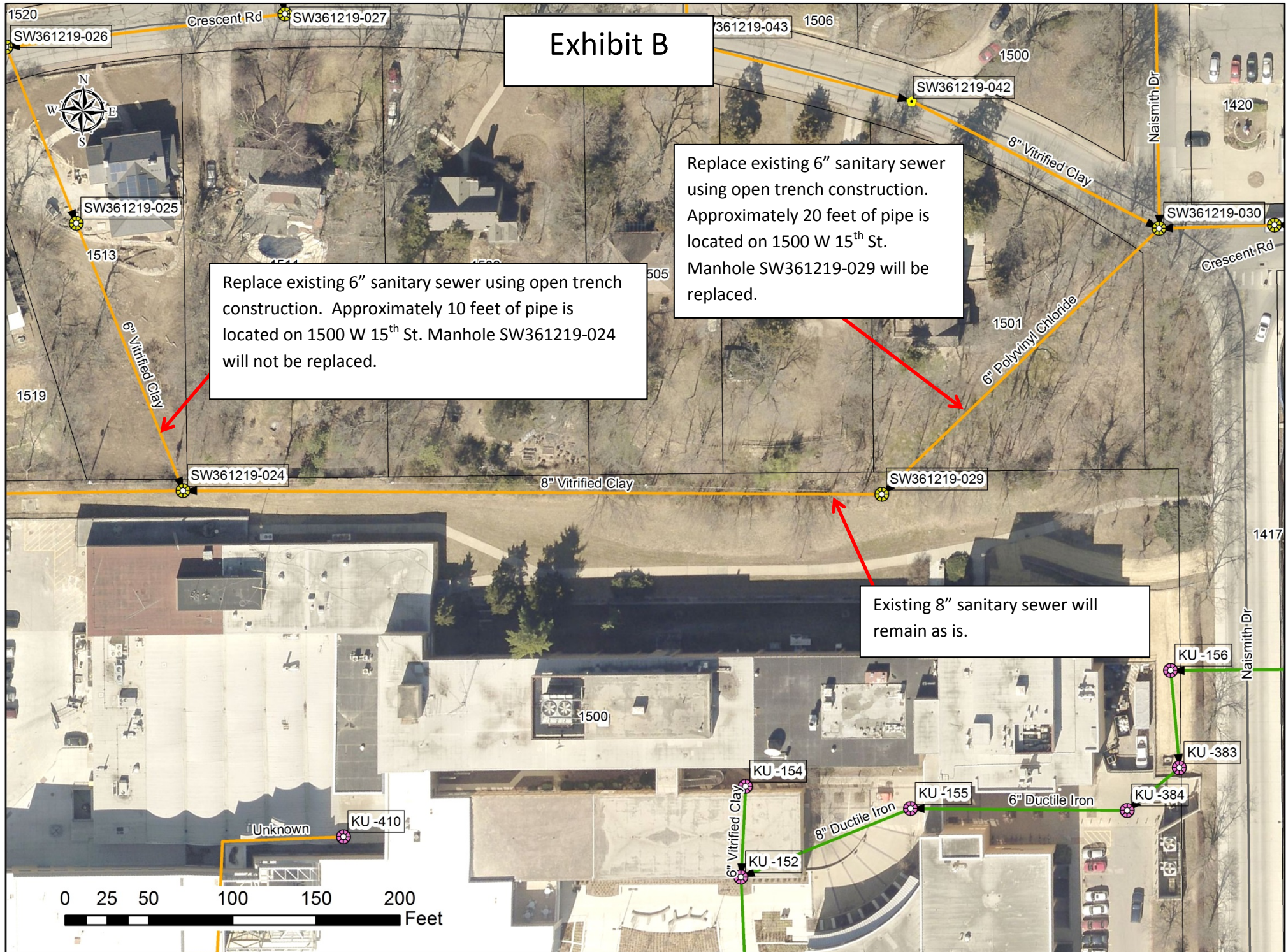
\_\_\_\_\_  
Notary Public

My Appointment Expires:

# Exhibit A



## Exhibit B



# Exhibit C

