



AGENDA OF THE SPECIAL SESSION OF THE  
COUNCIL OF THE CITY OF WASHINGTON, IA  
TO BE HELD IN THE  
**COUNCIL CHAMBERS**  
**215 E. WASHINGTON STREET**  
AT 6:00 P.M., TUESDAY, September 14, 2021

**Call to Order**

**Pledge of Allegiance**

**Roll call**

Agenda for the Special Session to be held at 6:00 P.M., Tuesday, September 14, 2021 to be approved as proposed or amended.

**PRESENTATION FROM THE PUBLIC** – Please limit comments to 3 Minutes.

**NEW BUSINESS**

1. Discussion and Consideration of Washington County Minibus Agreement
2. Discussion and Consideration of Engineering Services Agreement with Garden & Associates, Ltd. (MSJ Sewer Boring)
3. Closed Session per Iowa Code 21.5(1)(i) – *to evaluate the professional competency of an individual whose appointment, hiring, performance, or discharge is being considered when necessary to prevent needless and irreparable injury to that individual's reputation and that individual requests a closed session*

**DEPARTMENTAL REPORTS**

Police Department  
City Attorney  
Interim City Administrators

**MAYOR & COUNCILPERSONS**

Jaron Rosien, Mayor  
Illa Earnest  
Steven Gault  
Elaine Moore  
Danielle Pettit-Majewski  
Fran Stigers  
Millie Youngquist

**ADJOURNMENT**

*Jaron Rosien, Mayor  
Sally Hart, City Clerk  
Kevin Olson, City Attorney  
Kelsey Brown, Finance Director*



*215 East Washington Street  
Washington, Iowa 52353  
(319) 653-6584 Phone  
(319) 653-5273 Fax*

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## **Memorandum**

September 10, 2021

To: Mayor & City Council  
CC: Sally Hart, City Clerk

From: Kelsey Brown  
Finance Director

Re: Washington County Minibus Agreement

The Washington County Minibus has applied for a PTIG (Public Transit Infrastructure Grant) through ECICOG (East Central Iowa Council of Governments) allowing them to use this grant for their new building. The grant requires the agreement to be between governments (ECICOG to City) thus the City is partnering with Minibus to achieve this goal. The "lease" for the building will be between the City and ECICOG for 30 years and the City will designate the use of the building for public transit purposes only to the Washington County Minibus. After 2051 the deed will transfer from ECICOG back to the minibus.

## AGREEMENT

**THIS AGREEMENT** (“Contract”) is made on this \_\_\_ day of \_\_\_\_\_, 2021, by and between **EAST CENTRAL IOWA COUNCIL OF GOVERNMENTS** (“ECICOG”), and **the CITY OF WASHINGTON, IOWA** (“City of Washington”), and the **WASHINGTON COUNTY MINI BUS INCORPORATED**. (“Mini Bus”).

## RECITAL

It is the mutual desire of all parties to collaborate in the construction of a building, together with driveways and parking and the maintenance of said property to be used by the Mini Bus, a nonprofit transportation provider that operates under contract with ECICOG and provides local transportation in Washington County, Iowa.

It is agreed between the parties, in consideration of their mutual agreements, as follows:

1. **Transfer of Real Estate to ECICOG.** In consideration of the terms hereof and other good and valuable consideration, Mini Bus agrees to transfer to ECICOG and subject to the provisions of this Contract, including Sections 4, 11 and 13, ECICOG agrees to accept all of Mini Bus’s right, title and interest in and to certain real property located in Washington County, Iowa, hereinafter referred to as “Real Estate”, subject to easements, covenants, restrictions and zoning of record, if any. Said Real Estate is legally described on Exhibit “A”. Mini Bus shall cause, at its expense, the Real Estate to be final platted prior to the delivery of the abstract pursuant to Section 5(c). The plat of the Real Estate shall provide access to public street(s) by either direct access or by easement. The transfer shall occur at such time as is required by the Iowa Department of Transportation (“IDOT”) under the Public Transit Infrastructure Grant (“PTIG”) program administered by IDOT, to enable ECICOG to obtain PTIG funds pursuant to the Transit Joint Participation Agreement (the “PTIG Grant Agreement”) by and between ECICOG and IDOT. The PTIG Grant Agreement is incorporated into this Agreement in the form attached as Exhibit “B”.

2. **Construction of Building.** Mini Bus further agrees:

(A) To contract for the work and materials needed for the erection of a building and related improvements on the Real Estate in accordance with building plans and specifications to be prepared by an architect or engineer and when approved by Mini Bus and ECICOG is to be attached hereto and incorporated as part of this Contract. The exhibits attached to this Contract and incorporated herein include Exhibit “A”, PTIG Grant Agreement; “B”, Real Estate; “C”, Plans and Specifications; “D”, Form of Change to Plans and Specifications; and “E”, Memorandum of Understanding. Following Mini

Bus' written acknowledgement that all conditions precedent to Mini Bus' obligations under this Contract have been satisfied or waived in full, Mini Bus shall proceed with reasonable diligence to cause the building to be constructed on the Real Estate with any other improvements, including parking lot and outdoor lighting, reasonably needed. Mini Bus shall proceed, upon written concurrence of ECICOG, with reasonable diligence to finalize the plans, arrange for public bids, award the construction contract and cause the completion of the building and improvements on the Real Estate. Construction of the building and improvements on the Real Estate shall be subject to oversight by ECICOG. The completed building and improvements shall not be accepted by Mini Bus without the prior written concurrence of ECICOG.

(B) To arrange for and pay for all costs of construction of the building, including labor, materials, supplies, subcontracting, equipment, appliances, tools, freight, permits, and other items required for such construction of the building during the period of construction.

(C) To finish construction of the building and deliver up the building substantially complete (as defined in paragraph 6 herein) in every respect according to the building plans and specifications, as the same may be changed pursuant to Section 3(C) below, within 10 days of issuance of an Occupancy Certificate (the "Completion Date") unless that day or time shall be extended as provided below by agreement attached to this Contract and signed by the parties; and then, in such case, on or before the extended day or time.

(D) To give all requisite notices to the proper authorities, obtain all official inspections, permits, certificates and licenses made necessary by the construction contemplated by this Contract, and pay all proper fees.

(E) To maintain such insurance as will protect ECICOG from claims under workers' compensation acts and from any other claims for damages for personal injury, including death, which may arise from operations under this Contract, whether such operations be by Mini Bus or by any contractor or anyone directly or indirectly employed by either of them. To effect and maintain fire and casualty insurance on the entire building on which the work of this Contract is to be done and on all materials, in or adjacent to and intended for use in the building. Certificates of insurance shall be filed with ECICOG, and shall be subject to its reasonable approval for adequacy of protection.

(F) In the event additional design work is required in order to construct the building in accordance with the attached Plans and Specifications, Mini Bus shall be responsible for the completion of said design work.

3. **Cost of Construction.** The cost of construction of the building and other improvements shall not exceed \$472,456, plus the local match and any additional amount needed which shall be the sole responsibility of Mini Bus.

(A) Changes may be made in the plans and specifications, Exhibit "C", only by a written Change Order signed by ECICOG, the City of Washington and Mini Bus. All changes shall be described in a "Change Order" similar to the form attached as Exhibit "D". ECICOG, the City of Washington and Mini Bus agree to execute such a Change Order prior to implementing any change.

(B) Payment of the cost of the building shall be made by Mini Bus in accordance with its contract for the construction of the building and improvements. At the time final payment is made Mini Bus shall provide ECICOG with the contractor's final waiver of any lien or claim, and with the final waivers from all subcontractors, materialmen and suppliers who have supplied labor, materials, supplies, services or other items for the construction of the building; releasing ECICOG, the building and the Real Estate from all claims under chapter 573 of the Iowa Code.

(C) On the Completion Date, the improvements to the Real Estate shall be transferred to ECICOG by Mini Bus by Warranty Deed.

4. **ECICOG's Contingencies.** This Contract is contingent upon the availability of the PTIG funds pursuant to the PTIG Grant Agreement. Promptly upon execution of this Agreement ECICOG and Mini Bus shall proceed diligently and in good faith to finalize the Plans and Specifications, arrange for public bidding, and award a contract for construction of the building and improvements. This Contract is further contingent upon the ECICOG receiving and reviewing the updated abstract for the Real Estate continued through December 31, 2022. That review shall be performed prior to ECICOG acquiring title to the Real Estate or undertaking any other obligation under this Contract. ECICOG shall raise any objection regarding the status of the title or any liens or encumbrances on the Real Estate not later than ten (10) days from the date ECICOG receives the abstract. If ECICOG fails to raise any objections, ECICOG shall be considered to have accepted the condition of the title of the Real Estate as of the date of certification of the abstract. This Contract is further contingent on City of Washington as tenant and ECICOG as landlord entering into a written

agreement for the exclusive use and occupancy of the Real Estate and improvements, solely for the purposes permitted under the PTIG Grant Agreement, until such time as the obligations of ECICOG under the PTIG Grant Agreement are satisfied and ECICOG may transfer title to the Real Estate and improvements free and clear of the PTIG Grant Agreement.

5. **Closing Conditions.** The obligation of ECICOG to, solely from the proceeds of the PTIG Grant, reimburse Mini Bus for a portion of the cost of construction in accordance with this Contract is subject to the satisfaction of the conditions set forth below:

(A) All representations and warranties of Mini Bus in this Contract or in any written statement or document provided to ECICOG in accordance with this Contract shall be true in all material respects on the First Closing Date and as of the Completion Date as though made at that time.

(B) At the first closing, there shall be no outstanding lien, claim or encumbrance on the Real Estate that did not exist at the time of the ECICOG's previous review of the abstract under Section 4 above, or that ECICOG had objected to in connection with its review under Section 4 above.

(C) Mini Bus, at its expense shall update the abstract of title to the Real Estate continued through at least the date of transfer of the Real Estate to ECICOG and deliver it to ECICOG's attorney for examination. It shall show merchantable title in ECICOG in conformity with this agreement, Iowa law, and Title Standards of the Iowa State Bar Association, provided that ECICOG may not object to any title condition that was not objected to in connection with ECICOG's attorney's review of the previous continuation of the abstract under Section 4 above nor any title condition that is attributed to ECICOG. Mini Bus shall make every reasonable effort to promptly perfect title. If transfer of the Real Estate is delayed due to Mini Bus' inability to provide marketable title, this Contract shall continue in force and effect. The abstract shall become the property of ECICOG at the first Closing. Mini Bus shall pay the costs of any additional abstracting and title work due to any act or omission of Mini Bus.

(D) Mini Bus shall have performed, satisfied and complied in all material respects with all covenants, agreements, terms and conditions required by this Contract to be performed, satisfied or complied with on or before the Completion Date.

(E) If any one or more of the above conditions are not satisfied, ECICOG has the option of waiving such items at closing or declaring the transaction null and void.

6. **Completion.** Mini Bus shall commence the construction of the building on the Real Estate within ninety (90) days of the written release of the contingencies as provided in paragraph 4. The

construction work shall proceed as rapidly as is consistent with good construction practices. Mini Bus shall cause the construction of the building to be completed within a reasonable period of time, provided that such time shall be extended for delays caused by abnormal weather conditions, lack of or unavailability of materials or labor, the acts or omissions of ECICOG, unusual subsoil conditions, casualty losses or other causes not within Mini Bus' reasonable control. The building shall be deemed to be "completed" when it is substantially completed (although minor items of work, not affecting habitability, may remain to be performed), or when an occupancy permit is issued for the building, or when Mini Bus occupies the building with ECICOG's consent, whichever shall first occur.

7. **Standard of Performance/Punch List.** Mini Bus agrees to cause completion of the construction of the building in accordance with the plans and specifications, as may be modified pursuant to Paragraph 3 herein. All work shall be performed in a good and workmanlike manner, and should be of good quality, and shall be free from faults and defects. All work shall be in conformance with all applicable provisions of the building codes and zoning ordinances of any governmental authority having jurisdiction over the building. All materials, equipment and installations shall be new, and shall be of good quality. Upon substantial completion of the building and prior to Mini Bus occupancy, Mini Bus and ECICOG agree to make an inspection of the building, and shall prepare the "Punch List", which shall list all items not then complete, and all defects. Such Punch List shall be dated and signed by each party, and each party shall retain one copy.

8. **Warranty.** Mini Bus agrees that all labor and workmanship necessary under this Contract for the completion of the construction of the building as specified in Paragraph 7 above shall be of good quality and shall be performed with good workmanship. Mini Bus hereby warrants that the building plans and specifications will be sufficient for the construction of a building in Washington, Iowa. In addition, Mini Bus shall assign to ECICOG all transferable manufacturers' and dealers' appliance and equipment warranties furnished to Mini Bus as a part of the construction of said building. In the event defects appear in any appliance or equipment for which manufactures' or dealers' warranties have been assigned to ECICOG, the responsibility for indemnification and recovery for such deficiencies shall be the sole responsibility of Mini Bus. ECICOG shall, however, cooperate with Mini Bus by furnishing Mini Bus with any information previously made available to ECICOG

9. **Possession by ECICOG and Mini Bus.** Mini Bus shall not fully occupy or take possession of the building or any part thereof, nor shall it be permitted to move any items of personalty on to the Real

Estate or any part thereof until construction is substantially completed, as defined in paragraph 6 of this Contract, the Punch List referred to at paragraph 7 herein has been prepared, and final payment has been made by Mini Bus to the contractor, as provided in paragraph 3(D).

10. **Closing Documents.** The transfer of the Real Estate shall be consummated on the First Closing Date by Mini Bus delivering to ECICOG's possession a warranty deed for the Real Estate.

11. **Marketable Title.** Mini Bus represents and warrants that the Real Estate shall be free and clear of all liens, interests, judgments and encumbrances at the time of the transfer; provided that ECICOG shall be considered to have accepted all exceptions to or violations of this representation and warranty that are set forth in the abstract of title provided in Sections 4 and 5 and that ECICOG does not object to as provided in said Sections.

12. **Real Estate Transfer and Taxes:**

(A) At the time Mini Bus transfers to ECICOG the Real Estate, shall be free and clear of taxes and special assessments, except those taxes for the period from and after July 1, 2022.

(B) Mini Bus shall pay in full all special assessments which are a lien on the Real Estate as of the date ECICOG acquires title to the real estate.

(C) All charges for solid waste removal, sewage and maintenance that are attributable to any party's period of ownership, including those for which assessments arise after closing, shall be paid by Mini Bus.

(D) All standard and reasonable costs incurred by ECICOG in acquiring the Real Estate shall be considered costs and added to the Project Costs under Section 3 above. Such costs shall include but not be limited to, recording fees, abstracting fees and attorney fees.

(E) All taxes for the period from and after July 1, 2022, shall be paid by Mini Bus or shall be abated in accordance with Iowa law. ECICOG shall not be responsible for payment of any taxes.

13. **Environmental Warranties.** Mini Bus warrants that Mini Bus has done nothing to contaminate the Real Estate with hazardous wastes or substances. Mini Bus hereby assigns to ECICOG all representations and warranties regarding the environmental condition of the Real Estate that are provided to Mini Bus by the individual or entity that Mini Bus acquired title from, to the extent such representations and warranties are assignable.



14. **Independent Parties.** It is mutually understood and agreed that neither Mini Bus and its officials; any employees of Mini Bus; nor any contractors procured by Mini Bus shall be deemed to be agents of ECICOG. They shall, instead, be deemed to be independent parties.

15. **Reimbursement of Costs of Real Estate and Improvements.** ECICOG agrees, solely from proceeds of the PTIG Grant pursuant to the PTIG Grant Agreement, to reimburse Mini Bus for 80% of allowable costs incurred related to the project or the maximum dollar amount of the PTIG Grant, whichever is less. Allowable costs shall be determined in accord with the PTIG Grant Agreement. Requests for reimbursement shall be made in such manner as to enable ECICOG to request funds under the PTIG Grant Agreement. Requests by Mini Bus for reimbursement may be made as often as ECICOG may in turn make requests for funds under the PTIG Grant Agreement.

16. **Indemnification.** Mini Bus will indemnify and save ECICOG, and its directors, officers, employees and agents, harmless from and against any and all losses, costs, charges, expenses, judgments, and liabilities incurred by it or them while it or they are acting to carry out the transactions contemplated by this Contract or to safeguard its or their interests or ascertain, determine, or carry out its or their interests or ascertain, determine, or carry out its or their obligations under this Contract or any law or contract applicable to the transaction contemplated by this Contract. In case any action shall be brought against one or more of the indemnified parties in respect of which indemnity may be sought against Mini Bus, the indemnified parties shall promptly notify Mini Bus in writing, and Mini Bus shall promptly assume the defense thereof, including the employment of counsel, the payment of all expenses and the right to negotiate and consent to settlement.

17. **Inspection.** Mini Bus agrees that ECICOG or ECICOG's representative may inspect the construction work with Mini Bus once every two (2) weeks at reasonable times and in such a manner as to not interfere with the progress of construction.

18. **Notices.** All notices must be given by certified mail to ECICOG, the City of Washington or Mini Bus. When mailed, the date of notice shall be the date of mailing. Mailing addresses shall be those set forth on the signature page of this Contract.

19. **Clean Up.** Mini Bus shall require the contractor to remove materials, equipment and rubbish at the completion of construction, and to leave the Real Estate and the building in a neat and clean condition.

20. **Enforcement.** If any party to this Contract shall seek to enforce this Contract, or any duties or obligations arising out of this Contract against the other party or parties, by legal or equitable proceedings, then the prevailing party in such proceedings shall receive, in addition to all other rights and remedies to which such party is entitled, such party's reasonable costs and expenses incurred in such proceedings, including reasonable attorney's fees.

21. **Development Requirements.** It is understood by the parties that Mini Bus shall meet any requirements contained in any Subdivider Agreement, Zoning Agreement, Protective Covenants and Restrictions for the subdivision and approved site plans, as may be amended, in which the Real Estate is located, and that, if required by said covenants, the plans and specifications shall be submitted by Mini Bus to the developer or owner's association for its written approval prior to construction. The receipt of all consents and approvals necessary for the construction of the building shall be a condition precedent to either party's duties and obligations under this Agreement.

22. **Agreement to Perform.** The parties agree to execute and deliver all documents and to perform all acts that are or may become necessary to effectuate and carry out the intent and purposes of this Contract.

23. **Non-Assignment/Right to Choose Contractors.** This Contract shall not be assigned by Mini Bus, the City of Washington, or ECICOG without the consent of the other parties, and shall be binding upon, and shall inure to the benefit of, the parties hereto, their heirs, personal representatives, successors and assigns. However, Mini Bus reserves the right to select contractors for all phases of the construction process after securing concurrence of ECICOG.

24. **Complete Agreement.** This document constitutes the complete agreement of the parties hereto and supersedes any prior agreements and representations, whether written or oral. This Contract may be only amended by written agreement signed by both Mini Bus, ECICOG, and City of Washington. The rights of the parties to the occupancy and use of the Real Estate, building and improvements shall be set forth in a written lease between City of Washington and ECICOG. The disposition of the Real Estate, building and improvements shall be subject to this Agreement and the parties shall execute a Memorandum of Agreement in the form attached as Exhibit "E" to be recorded in the office of the Washington County, Iowa Recorder.

25. **Time is of the Essence.** Time is of the essence in this Contract.

26. **Reconveyance of Real Estate and Improvements.**

(A) ECICOG agrees that upon satisfaction of the period of time it must hold title to the Real Estate and improvements under the PTIG Grant Agreement (thirty years), it will convey, by Special Warranty Deed, all right, title and interest to the Real Estate and the improvements to Mini Bus or its designee. The title to the Real Estate shall be marketable except as to any matter attributed to Mini Bus or which was evident at the time of transfer of the Real Estate to ECICOG. Mini Bus shall bear all costs incurred by ECICOG in updating the Abstract of title to the Real Estate, preparing all transfer documents and closing out the PTIG Grant Agreement. Mini Bus agrees that it will accept the conveyance of the Real Estate, and upon its failure to do so, ECICOG may sell the Real Estate and improvements for such consideration as it shall determine and terminate any lease with City of Washington for the Real Estate and improvements.

(B) Upon cessation of use of the Real Estate and improvements for purposes required by the PTIG Grant Agreement (including deemed cessation for failure to maintain the improvements), Mini Bus and the City of Washington shall cooperate with ECICOG in the sale of the Real Estate and improvements, and the termination of this Agreement and the Lease between the City of Washington and ECICOG. Mini Bus and the City of Washington each agree to execute a release of its rights to the Real Estate and the improvements to facilitate a sale of the Real Estate and improvements. All proceeds from the sale of the Real Estate and improvements remaining after reimbursement of the PTIG Grant (in the amount determined in accordance with the PTIG Agreement), if any, shall be distributed as follows:

(1) To Mini Bus, an amount equal to a percentage of such proceeds determined by dividing the contribution by Mini Bus (made during the time of the construction of the improvements) by the total cost of constructing the improvements.

(2) To ECICOG, the remaining proceeds.

27. **State Law.** This contract shall be construed in accordance with the laws of the State of Iowa.

28. **Dispute Resolution.** If any dispute or difference shall arise between Mini Bus, the City of Washington and ECICOG, with respect to any matter or thing arising out of, the parties will attempt to resolve any dispute through negotiations or mediation.

29. **Duration of Agreement.** This Agreement shall remain in effect until the Real Estate and improvements are conveyed to Mini Bus, the Real Estate and improvements are sold and proceeds from the sale are disbursed in accordance with the terms of this Agreement, or Mini Bus determines that the total

cost of the improvements exceeds the required twenty percent (20%) local match necessary for the PTIG Grant and it elects to forego the PTIG Grant. Notwithstanding termination, financial obligations to indemnify or pay for enforcement of this Agreement shall survive the termination.

30. **Partial Invalidity.** If any provision of this Agreement, or any covenant, stipulation, obligation, agreement, act or action, or part thereof made, assumed, entered into or taken thereunder or any application thereof, is for any reason held to be illegal or invalid, such illegality or invalidity shall not affect any other provision or any other covenant, stipulation, obligation, agreement, act or action or part thereof, made, assumed, entered into, or taken, each of which shall be construed and enforced as if such illegal or invalid portion were not contained herein. Nor shall such illegality or invalidity of any application thereof affect any legal and valid application thereof, and each such provision, covenant, stipulation, obligation, agreement, act or action, or part shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

31. **PTIG Grant Agreement.** This Agreement shall be subject to the terms of, and all laws and rules applicable to, the PTIG Grant Agreement.

**IN WITNESS WHEREOF**, the parties have hereunto caused this Contract to be executed on the day and year written above.

\_\_\_\_\_  
Woody Harden  
Chairperson  
Washington County Mini Bus  
1010 W 5<sup>th</sup> St Washington, IA

\_\_\_\_\_  
Karen Kurt  
Director  
East Central Iowa Council of Governments  
700 16<sup>th</sup> Street NE Suite 301 Cedar Rapids, IA

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

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Mayor  
City of Washington, Iowa  
215 E Washington St, Washington, IA

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Date

EXHIBIT "A"  
PTIG GRANT AGREEMENT

TBD

EXHIBIT "B"

REAL ESTATE

The East two hundred (200) feet of the following described tract: Commencing at the Northwest corner of the South one-half (S ½) of the Northeast quarter (NE ¼) of Section number eighteen (18), in Township number seventy-five (75) North, Range number seven (7) West of the Fifth (5<sup>th</sup>) Principal Meridian, the point beginning; thence East 453.4 feet to an iron pin; thence South 214.0 feet to an iron pin on the North right of way line of West 5<sup>th</sup> Street; thence Northwesterly 462.77 feet on the North right of way line of West 5<sup>th</sup> Street to an iron pin; thence North 123.0 feet to the point of beginning; in Washington County, Iowa.

EXHIBIT "C"  
PLANS AND SPECIFICATIONS  
**TBD**



EXHIBIT "D"

FORM OF CHANGE TO PLANS AND SPECIFICATIONS

**CONTRACT CHANGE ORDER**

		ORDER NO.	01
CONTRACT FOR	Washington County Mini Bus Storage Building	STATE	IA
OWNER	MINI BUS	COUNTY	Washington
CONTRACTOR		DATE	10/01/2021

You are hereby authorized to make the following changes from the contract plans and specifications:

Description of changes (Supplemental Plans and Specifications Attached)	DECREASE in Contract Price	INCREASE in Contract Price
	\$	\$ 0
	\$	\$
TOTALS	\$	\$ 0
NET CHANGE IN CONTRACT PRICE	\$	\$ 0

JUSTIFICATION:

The amount of the Contract will be increased by the sum of:

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_ 0)

The Contract Total including this and previous Change Orders will be:

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_ 0)

The Contract Period for Completion will be **UNCHANGED**.

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

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

## EXHIBIT “E”

### MEMORANDUM OF UNDERSTANDING

#### SECTION 1: PARTIES

This Memorandum of Understanding (hereinafter “Memorandum”) is between **Washington County Mini Bus** Incorporated (hereinafter “the Provider”), The City of Washington, IA (hereinafter “the Local Government” and **East Central Iowa Council of Governments** (hereinafter “ECICOG”).

#### SECTION 2: PURPOSE

It is the mutual desire of all parties to collaborate in the reconstruction of a building, together with driveways and parking (collectively the “Facility”), and the maintenance of said Facility to be used by Washington County Mini Bus, an entity that operates under contract with ECICOG and provides local transportation in Washington County.

#### SECTION 3: DURATION OF THE AGREEMENT

The term of this Memorandum shall be from the date duly executed until such time as it is terminated by either party, in accordance with the Termination section of this Memorandum.

#### SECTION 4: DUTIES OF THE PROVIDER and LOCAL GOVERNMENT

- The Provider shall be responsible for the cost of the total project not covered by a Public Transit Infrastructure Grant program (“PTIG grant”).
- The Provider shall be responsible for supplying all information needed by ECICOG to prepare the application for a PTIG grant to be submitted to the Office of Public Transit of the Iowa Department of Transportation.
- The Provider shall be responsible for paying all costs associated with the project, and shall submit paid invoices to ECICOG for reimbursement through the PTIG grant, together with such certificates and proof of payment of contractors, subcontractors and material suppliers as ECICOG shall require.
- The Provider shall, in consultation with ECICOG, be responsible for determining the location, the design of, and securing bids for the reconstruction of the Facility. The Provider shall, in consultation with ECICOG, be responsible for monitoring the reconstruction of the Facility.
- Prior to commencement of the reconstruction of the Facility, the Local Government commits to enter into a lease agreement with ECICOG for the purpose of the Provider using the property for carrying out the duties of Washington County Mini Bus. This lease agreement shall require the Local Government to obtain liability and property insurance (both naming ECICOG as an insured), shall require the Provider to provide for the daily operation and maintenance of the property and pay all fees, costs, charges, assessments and taxes on the property.

- The Provider commits to allow ECICOG the opportunity to monitor the use of the property to ensure that the property is being used in accordance with this Memorandum and all terms, conditions, covenants and restrictions applicable to ECICOG pursuant to the PTIG grant.

## **SECTION 5: DUTIES OF ECICOG**

- ECICOG shall be responsible for the submission of an application for a grant to the Office of Public Transit of the Iowa Department of Transportation for the purpose of obtaining funds for the completion of the project.
- ECICOG shall, solely to the extent funds are available through the PTIG grant to ECICOG, reimburse Washington County Mini Bus for 80% of allowable costs incurred related to the project or the maximum dollar amount of the PTIG grant, whichever is less.
- ECICOG commits to hold the title of said property for the period required under the PTIG grant, or until the time the parties mutually agree to transfer the property to the Provider pursuant to a separate agreement, whichever is shorter. At the time of transfer, ECICOG shall transfer ownership of the property to the Provider at no additional cost to the Provider, provided, the Provider will be responsible for deed preparation, recording and transfer fees, taxes and similar costs.
- Prior to commencement of the construction of the Facility, ECICOG shall enter into an exclusive lease agreement with the Provider for the purpose of using the property for carrying out the duties of Washington County Mini Bus. The lease agreement shall include terms requiring ECICOG to relinquish maintenance authority over said property and for the Provider to assume all financial responsibilities for operation, maintenance, fees, costs, assessments and taxes with respect to the property.

## **SECTION 6: TERMINATION**

This Memorandum may be terminated by mutual agreement of all parties. Termination shall be executed by a written agreement signed and dated by both parties. In the event that this Memorandum is terminated unilaterally, any costs incurred by ECICOG and/or the Provider that are not allowed for reimbursement through the PTIG grant will be the responsibility of the Provider. In the event that this Memorandum is terminated after completion of the project and the Facility is no longer used for transit purposes, the Provider will be responsible for reimbursing the Iowa Department of Transportation the prorated grant award in accordance with the terms of the PTIG grant.

## **SECTION 7: HOLD HARMLESS**

The Provider and Local Government will indemnify and save ECICOG, and its directors, officers and employees, harmless from and against any and all losses, costs, charges, expenses, judgments, and liabilities incurred by it or them while it or they are acting to carry out the transactions contemplated by this Memorandum or to safeguard its or their interests or ascertain, determine, or carry out its or their interests or ascertain, determine, or carry out its or their obligations under this Memorandum or any law or contract applicable to the transaction contemplated by this Memorandum. In case any action shall be brought against one or more of the indemnified parties in respect of which indemnity may be sought

against the Provider, the indemnified parties shall promptly notify the Provider in writing, and the Provider shall promptly assume the defense thereof, including the employment of counsel, the payment of all expenses and the right to negotiate and consent to settlement.

**SECTION 8: APPLICABLE LAWS; SUCCESSORS**

The parties agree that its employees, agents and subcontractors shall comply with all applicable federal, state, and local laws, rules ordinances, regulations and orders when performing the respective obligations of the parties under this Memorandum. In the event litigation is necessary, all parties agree the appropriate jurisdiction is Washington County, IA. This Memorandum shall be binding on the successors of each party.

**SECTION 9: AMENDMENTS**

This Memorandum may be amended in writing from time to time by mutual consent of the parties. All amendments to this Memorandum must be in writing and fully executed by the parties. The parties agree to amend this Memorandum if required by the terms associated with the PTIG grant.

This Memorandum of Understanding is entered into by the Provider and ECICOG on the dates of the signatures below.

\_\_\_\_\_  
Woody Harden  
Chairperson  
Washington County Mini Bus

\_\_\_\_\_  
Karen Kurt  
Director  
East Central Iowa Council of Governments

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mayor  
City of Washington, Iowa

\_\_\_\_\_  
Date

*Jaron P. Rosien, Mayor  
Sally Hart, City Clerk  
Kevin Olson, City Attorney  
Kelsey Brown, Finance Director*



*City of Washington  
215 East Washington Street  
Washington, Iowa 52353  
(319) 653-6584 Phone  
(319) 653-5273 Fax*

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**Memorandum**

September 10, 2021

To: Mayor & Council

From: Sally Y. Hart – City Clerk

Re: MSJ Country Club Area Sewer Boring

Please find attached the proposed Engineering Services Agreement with Garden & Associates, Ltd. for the MSJ Country Club Area Sewer Boring project. This is the next step in the process on the project. As council approved at the last meeting, \$125,000 of the American Rescue Plan Act (ARPA) funds will be used for this project.

## ENGINEERING SERVICES AGREEMENT

THIS AGREEMENT, made and entered as of this 14th day of September, 2021, by and between the City of Washington, Iowa, a Municipal Corporation, 215 E. Washington Street, Washington, Iowa 52353, hereinafter referred to as the "CITY," and Garden & Associates, Ltd., 1701 3<sup>rd</sup> Street, Suite 1, Oskaloosa, Iowa 52577, hereinafter referred to as the "CONSULTANT".

WHEREAS, the City Council of the City of Washington did heretofore deem it necessary and desirable to construct improvements related to the sanitary sewer extension to the proposed subdivision south of Timber Ridge & Oakwood Village Subdivision (the "Project"); and

WHEREAS, the CITY did heretofore determine that it is necessary and proper to acquire professional engineering services to assist the CITY in the design of the Project; and

WHEREAS, the CONSULTANT is capable of supplying the desired professional services for a fee of not-to-exceed \$21,000.00; and

WHEREAS, accordingly, the CITY has agreed to engage the CONSULTANT as an independent contractor to assist in the design and construction of the Project for a total consulting fee not to exceed \$21,000.00 under the terms and conditions set forth below.

NOW THEREFORE, THE CITY AND THE CONSULTANT, FOR CONSIDERATION HEREINAFTER SET FORTH, DO MUTUALLY AGREE AS FOLLOWS:

### I. SCOPE OF SERVICES.

The CONSULTANT shall perform in a timely and satisfactory manner the consistent with standard, professional practice the engineering services in connection with the Project as set forth in Exhibit "A" attached hereto and incorporated into this Agreement by this reference.

### II. TIME OF COMPLETION.

The CONSULTANT shall complete the services to be rendered hereunder, excluding the construction administration as shown on Exhibit "A" no later than **December 31, 2021**.

### III. GENERAL TERMS AND PROVISIONS.

A. The CONSULTANT shall not commit any of the following employment practices in connection with or while rendering services hereunder and does hereby expressly agree to prohibit the following practices from being committed by any subcontractors engaged by the CONSULTANT in connection with the Project. Upon request, the CONSULTANT shall provide the CITY with a copy of the relevant provisions of any agreement entered into by the CONSULTANT and a subcontractor in connection with the Project to confirm to the satisfaction of the CITY that the requirements under this Subparagraph III(A) have been met.

1. To discharge or refuse to hire any individual because of their race, color, religion, sex, national origin, disability, age, marital status, sexual orientation or gender identity.

2. To discriminate against any individual in terms, conditions or privileges of employment because of their race, color, religion, sex, national origin, disability, age, marital status, sexual orientation or gender identity.

B. The CITY may terminate this Agreement, with or without cause, upon no less than seven (7) calendar days' written notice. In the event that the CITY does so terminate this Agreement, the CONSULTANT shall be paid for all work and services performed up to the time of said termination upon submission to the CITY of a final billing statement and review and approval thereof by the Washington City Council at the next regularly scheduled Council Meeting; provided, however, that any such sum shall not be greater than the total amount to be paid for services rendered hereunder as set forth in Article IV below; and further provided that, in the event the CITY terminates this Agreement with cause, the CITY may, in its sole discretion, elect to withhold payment of an amount sufficient to engage a third party to properly complete the Services in accordance with the terms of this Agreement.

C. This Agreement shall not be assigned or in any manner transferred by the CONSULTANT, without the express written consent of the Washington City Council.

D. It is hereby expressly acknowledged and agreed by both parties hereto that the engagement of the CONSULTANT by the CITY in connection with the Project shall be as an independent contractor and shall be exclusive; provided, however, that the Contractor may retain the services of subcontractors for the purpose of performing its obligations and responsibilities under this Agreement so long as the CONSULTANT has first obtained the written approval of same from the CITY; and further provided that, should the CONSULTANT so engage subcontractors under the terms of this Subparagraph III(D), the CONSULTANT shall be solely responsible for compensating any such subcontractors.

E. The CITY shall make all criteria, design and construction standards, and information regarding the CITY's requirements for the Project available to the CONSULTANT upon reasonable request by the CONSULTANT therefor. The CITY shall furnish reasonable assistance to the CONSULTANT in the use of said information and documentation at the request of CONSULTANT.

F. It is further agreed that neither party to this Agreement shall perform contrary to any federal or state law, rule or regulation, or the Washington City Code of Ordinances.

G. At the request of the CITY, the CONSULTANT shall attend meetings of the City Council that relate to the Project hereunder.

H. The CONSULTANT agrees to certify all reports, specifications, and drawings with the seal of a professional engineer affixed thereto or such other seal as required by State law.

I. Upon termination of this Agreement and request of the CITY, the CONSULTANT shall provide the CITY with copies of all basic notes and sketches, charts, computations, maps, plans, drawings and any other data prepared or obtained by the CONSULTANT pursuant to this Agreement without cost, and without restrictions or limitations as to the use thereof in connection with the Project. Furthermore, should the CONSULTANT prepare or receive any of the data set forth in the immediately preceding sentence in digitized format, the CONSULTANT shall furnish said data in disk form upon termination of this Agreement. It is understood, however, that the CONSULTANT shall not be liable for the CITY's use of such documents, materials or data on other projects.

J. Original drawings prepared by the CONSULTANT under this Agreement shall become the property of the CITY. The CONSULTANT shall be allowed to keep copies for the CONSULTANT's own filing use.

K. Fees paid in order to secure approval of authorities having jurisdiction over the Project shall be paid by the CITY.

L. Upon payment in full in accordance with this Agreement, all instruments of services generated by CONSULTANT shall become the property of the CITY.

M. CONSULTANT shall provide and maintain insurance throughout said Project in the following minimum amounts:

1. Workman's Compensation and occupational disease insurance in accordance with the laws of the State of Iowa covering all employees who perform any of the obligations under this Agreement.



2. Professional Liability or Errors or Omissions Insurance covering all aspects of the Project in the amount of not less than \$1,000,000 per occurrence of \$2,000,000 aggregate coverage.

3. General Liability insurance covering all operations under the Agreement, limits for bodily injury or death not less than one million dollars (\$1,000,000.00) for one person and two million dollars (\$2,000,000.00) for each accident; for property damage not less than one million dollars (\$1,000,000.00) for each accident and two million dollars (\$2,000,000.00) aggregate during such policy period. Said insurance shall name the City of Washington as an Additional Insured under the policy.

4. Automobile liability insurance on all self-propelled vehicles used in connection with the Agreement, whether its own, non-owned or hired; public liability limits of not less than five hundred thousand dollars (\$500,000.00) for one person and one million dollars (\$1,000,000.00) for each accident; property damage limit of two hundred fifty thousand dollars (\$250,000.00) for each accident or a combined single limit of one million dollars (\$1,000,000.00).

CITY shall have the right at any time to require public liability insurance, errors and omissions coverage and/or property damage liability insurance greater than that specified in the above paragraphs. If required, the additional premiums shall be added to the bid price.

The CONSULTANT shall furnish Certificates of Insurance to the CITY made in favor of the CITY prior to commencing work showing compliance with the foregoing requirements. Insurance shall provide notice of cancellation or revocation.

#### IV. COMPENSATION FOR SERVICES.

The CITY shall compensate the CONSULTANT for services rendered under this Agreement for a total fee of \$21,000.00. Said total fee shall be paid by the CITY to the CONSULTANT upon the completion of each of the Items below:

1.	Preliminary & Final Design Bidding Phase (if required)	\$12,000
2.	Construction Staking & Admin, Shop Drawing Review	\$5,500
3.	Easement Plats	\$3,500

Provided, however in express acknowledgement that this Agreement is a COMPLETION DATE CONTRACT without which the CITY would not have engaged the CONSULTANT.

V. INDEMNIFICATION, ENGINEERING STANDARDS.

The CONSULTANT agrees to fully indemnify, save and hold the CITY, its officers, representatives, and employees, harmless from liability to third parties (including reimbursement of reasonable legal fees and costs) arising directly from the negligent act, error or omission of the CONSULTANT, its officers, representatives, agents or employees in connection with the Project.

The CONSULTANT represents to the CITY that it will perform its obligations under this Agreement in conformance with the generally accepted standards of the engineering profession.

VI. HAZARDOUS MATERIALS.

The CONSULTANT hereby represents that the CONSULTANT (i) has not created nor contributed to the creation or existence, (ii) nor will it create or contribute to the creation or existence of any type of hazardous or toxic wastes, materials, chemical compounds, or substances, or any other type of environmental hazard or pollution, whether latent or patent, at the premises of the Project, or in connection with or related to the Project. The CONSULTANT, in addition to the general indemnification set forth in Provision V above, does hereby further fully indemnify, defend, save and hold harmless the CITY, its officers, employees and agents from and against any and all debts, claims, causes of action, administrative orders and notices, costs (including but not limited to, response and/or remedial costs), personal injuries, losses, damages, liabilities, demands, interest, fines, penalties and expenses, including reasonable legal fees and expenses, consultants' fees and expenses, court costs and all other out-of-pocket expenses, suffered or incurred by the CITY, its officers, representatives, agents, contractors, subcontractors, employees and grantees as a result of any breach of this Provision VI.

VII. INTERPRETATION.

This Agreement shall be construed in accordance with the generally accepted standards of the Engineering Profession; provided, however, that it is expressly understood and agreed by both parties that to the extent, if at all, the explicit terms and conditions of this Agreement are in conflict with said generally accepted professional standards, said accepted professional standards shall control in the event of a dispute between the parties hereto.

VIII. SURVIVAL.

All express representations, indemnifications or limitations of liability made in or given in this Agreement shall survive the completion of the services to be rendered by the CONSULTANT hereunder or the termination of this Agreement for any reason.

IX. CONTROLLING LAW.

This Agreement is to be governed by the laws of the State of Iowa. The parties hereto agree that any action, suit or proceeding based upon any matter, claim or controversy arising under this Agreement shall be brought solely in the state courts located in Washington County, Iowa or the federal courts located in Scott County, Iowa. The parties hereto hereby irrevocably waive objection to the venue of the above-mentioned courts, including any claim that such action, suit or proceeding has been brought in an inconvenient forum. Both parties hereto expressly acknowledge and agree that nothing contained in this Agreement shall be construed to require the parties to submit to mandatory arbitration or mediation in the event of a breach or dispute hereunder.

X. HEADINGS.

The headings of sections of this Agreement are for convenient reference only and shall not be deemed to limit, construe, affect, modify or alter the meaning of such sections.

XI. SEVERABILITY.

If any section, subsection, term or provision of this Agreement or the application thereof to the CONSULTANT, the CITY or a particular circumstance shall, to any extent, be invalid or unenforceable, the remainder of said section, subsection, term or provision of this Agreement or the application of same to the CONSULTANT, the CITY or particular circumstances other than that for which it was held invalid or unenforceable, shall not be affected thereby and each remaining section, subsection, term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

XII. MODIFICATION.

The terms of this Agreement may not be changed, waived, discharged or terminated orally, but only by a written document signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

XIII. WAIVER.

No waiver by the CITY of any default hereunder shall operate as a waiver of any other default or of the same default on any future occasion. No delay on the part of the CITY in exercising any right or remedy hereunder shall operate as a waiver thereof. No single or partial exercise of any right or remedy by the CITY shall preclude future exercise thereof or the exercise of any other right or remedy.

XIV. AUTHORITY.

The persons signing this Agreement represents that they have the authority to sign as, or on behalf of, the party for whom they are signing.

**XV. FINAL AGREEMENT:**

Both the CONSULTANT and the CITY hereby expressly acknowledge and agree that this Agreement is intended to set forth the entire agreement between the parties regarding the services to be rendered by the CONSULTANT to the CITY in connection with the Project, that there are no other considerations or monies contingent upon or resulting from the execution of this Agreement, and that no other monies or considerations have been solicited. No waiver, change, modification or amendment of this Agreement shall be binding upon either party hereto unless in writing and signed by both the CONSULTANT and the CITY. The waiver by either party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that provision or of any other provision or condition in this Agreement.

**ACCEPTED & AGREED:**

**CONSULTANT:  
Garden & Associates, Ltd.**

**CITY OF WASHINGTON:**

  
\_\_\_\_\_  
Jack Pope, Vice-President

\_\_\_\_\_  
Jaron P. Rosien, Mayor

**ATTEST:**

\_\_\_\_\_  
Sally Hart, City Clerk

## **EXHIBIT "A"**

### **SCOPE OF SERVICES**

1. Preliminary Design.
2. Presentation to City for Approval.
3. Final Design of Improvements for Sanitary Sewer Extension.
4. Preparation of IDNR permits for sanitary sewer.
5. Preparation of Final Plans and Specifications
6. Preparation of Easement Plats
7. Preparation of Bidding document, and conduct bid letting
8. Construction phase services including staking, review of shop drawings, and pay applications.

*Jaron P. Rosien, Mayor  
Sally Hart, City Clerk  
Kevin Olson, City Attorney  
Kelsey Brown, Finance Director*



*City of Washington  
215 East Washington Street  
Washington, Iowa 52353  
(319) 653-6584 Phone  
(319) 653-5273 Fax*

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**Memorandum**

September 10, 2021

To: Mayor & Council

From: Sally Y. Hart – City Clerk  
Kelsey Brown – Finance Director

Re: City Administrator Interviews

City Administrator interviews will be held on September 29<sup>th</sup> with the Mayor, City Council members, City staff, and select community partners. A proposed interview day schedule is attached but may be changed depending on how many finalists Council selects to interview.

Council will be provided confidential materials in closed session of candidates for the position. The City Administrator Search Committee has narrowed down the pool of candidates from 21 to 8 semifinalists. Council will select the finalists for interview with a recommendation from the City Administrator Search Committee.

**City of Washington City Administrator DRAFT Interview Schedules  
for Three or Five Finalists: *Subject to Change***

**3 Finalists**

**Wednesday, September 29 (Business Dress)**

8:00 - 8:10 Mayor/Council, Community Members, Staff and Candidates Arrive at City Hall: Coffee, juice and rolls

8:10 - 8:20 Consultant meet with Mayor/Council, Community Members, and Staff and move to interview sites and organize

8:20 - 8:30 Consultant meet with Candidates and to move to interview sites

8:30 - 11:15 Council /Department Head/Citizens Group interviews

11:15 - 12:15 Open House Lunch/Reception: Spouses/Significant other with Staff and Additional Community Members at Washington Public Library for lunch

12:15 - 1:00 Presentation after lunch at the Open House Lunch/Reception: Each candidate will present a 10-15 minutes. Comment cards are available for attendees. Council, Staff, Volunteers and Community attends.

1:00 Tour provided to all Candidates/Significant others

Council to deliberate and make final selection and discusses offer parameters and provides direction to the Consultant.

**Group Interviews** (each interview is scheduled to take no more than 45 minutes and 10-15 minutes between interviews is to allow candidates to get to next site and for breaks)

Time	Mayor/Council	Department Heads	Community Group
8:30	Candidate 1	Candidate 2	Candidate 3
9:30	Candidate 2	Candidate 3	Candidate 1
10:30	Candidate 3	Candidate 1	Candidate 2

**5 Finalists**

**Wednesday, September 29 (Business Dress)**

8:00 - 8:10 Mayor/Council, Community Members, Staff and Candidates Arrive at City Hall: Coffee, juice and rolls

8:10 - 8:20 Consultant meet with Mayor/Council, Community Members, and Staff and move to interview sites and organize

8:20 - 8:30 Consultant meet with Candidates and to move to interview sites

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11:15 - 12:15 Open House Lunch/Reception: Spouses/Significant other with Staff and Additional Community Members at Washington Public Library for lunch

12:15 - 1:00 Presentation after lunch at the Open House Lunch/Reception: Each candidate will present a 10-15 minutes. Comment cards are available for attendees. Council, Staff, Volunteers and Community attends.

1:00 - 2:45 Council /Department Head/Citizens Group interviews

3:00 Council to deliberate and make final selection and discusses offer parameters and provides direction to the Consultant.

Time	Tour	Department Directors	Community Leaders	Council
8:30	Candidate 3	Candidate 2	Candidate 1	Candidate 5
9:30	Candidate 4	Candidate 3	Candidate 2	Candidate 1
10:30	Candidate 2	Candidate 1	Candidate 5	Candidate 4
1:00	Candidate 5	Candidate 4	Candidate 3	Candidate 2
2:00	Candidate 1	Candidate 5	Candidate 4	Candidate 3