

**CITY COMMISSION MEETING
Winfield, Kansas**

DATE: Thursday, January 30, 2020
TIME: 5:30 p.m.
PLACE: City Commission – Community Council Room – First Floor – City Building

AGENDA

CALL TO ORDERMayor Phillip R. Jarvis
ROLL CALL.....City Clerk, Brenda Peters
MINUTES OF PRECEDING MEETING.....Tuesday, January 21, 2020

BUSINESS FROM THE FLOOR

-Citizens to be heard

NEW BUSINESS

Ordinances & Resolutions

OTHER BUSINESS

-Consider entering into an agreement with the Fracta Inc. to evaluate our water main distribution system.

ADJOURNMENT

-Next City Commission Work Session will be Thursday February 13, 2020 at 4:00 pm.
-Next regular meeting 5:30 p.m. Tuesday, February 18, 2020.

CITY COMMISSION MEETING MINUTES
Winfield, Kansas
January 21, 2020

The Board of City Commissioners met in regular session, Tuesday, January 21, 2020 at 5:30 p.m. in the City Commission-Community Council Meeting Room, City Hall; Mayor Phillip R. Jarvis presiding. Commissioners Gregory N. Thompson and Ronald E. Hutto were also present. Also in attendance were, Taggart Wall, City Manager; Brenda Peters, City Clerk; and William E. Muret, City Attorney. Other staff members present were Gus Collins, Director of Utilities; Gary Mangus, Assistant to the City Manager; and Patrick Steward, Director of Public Improvements.

City Clerk Peters called roll.

Commissioner Hutto moved that the minutes of the January 6, 2020 meeting be approved. Commissioner Thompson seconded the motion. With all Commissioners voting aye, motion carried.

BUSINESS FROM THE FLOOR

NEW BUSINESS

Bill No. 2003 – A Resolution – Authorizing and directing the City Manager of the City of Winfield, Kansas to execute a lease agreement between the City of Winfield and Winfield Isle of Lights, Inc. regarding the lease of the Island Park Storage Facility. Assistant to the City Manager Mangus explains this Resolution is for a renewal of the lease agreement between the City of Winfield and Winfield Isle of Lights, Inc. regarding the Island Park Storage Facility, where the displays are stored. Upon motion by Commissioner Thompson, seconded by Commissioner Hutto all Commissioners voting aye, Bill No. 2003 was adopted and numbered Resolution 0320.

Bill No. 2004 – A Resolution – Authorizing the Mayor and the City Clerk of the City of Winfield, Kansas to execute a right-of-way use permit agreement between the City of Winfield, Kansas, and Ark Valley Credit Union for a retaining wall within the right-of-way. Director of Public Improvements Steward explains this Resolution will authorize the City to execute a right-of-way use permit agreement between the City of Winfield, Kansas, and Ark Valley Credit Union for a retaining wall along the right-of-way line. Upon motion by Commissioner Hutto, seconded by Commissioner Thompson all Commissioners voting aye, Bill No. 2004 was adopted and numbered Resolution No. 0420.

Bill No. 2005 – A Resolution – Authorizing and directing the Mayor and Clerk of the City of Winfield, Kansas, to execute Supplemental Agreement No. 1 to the Pavement Replacement Project Agreement No. 205-19 between the City and the Secretary of the Kansas Department of Transportation, relating to assistance in the financing of the construction of streets on the State Highway System through the City. Director of Public Improvements Steward explains this Resolution authorizes the City to execute a Supplemental Agreement with KDOT for improvements on Highway 160 from College St to Wheat Rd. Upon motion by Commissioner Hutto, seconded by Commissioner Thompson all Commissioners voting aye, Bill No. 2005 was adopted and numbered Resolution 0520.

Bill No. 2006 – A Resolution – Accepting and authorizing the filing of a certain permanent easement necessary to provide right-of-way for installation, construction, maintenance, repair, and removal of the utilities and the necessary appurtenances therefore, in, over, under, and across the real estate described in Section 1. City Manager Wall explains this Resolution accepts an easement between the City and Brooks G. Littrell and Janie F. Littrell, for the Walnut River project. They were advised of their rights to an appraisal and they waived those rights. Upon motion by Commissioner Thompson, seconded by Commissioner Hutto all Commissioners voting aye, Bill No. 2006 was adopted and numbered Resolution No. 0620.

OTHER BUSINESS

- Consider approval of maintenance agreement for 2020 substation technical support program with Vertiv Electrical Reliability Services. Director of Utilities Collins explains this program is a form of preventive maintenance on our five electric substations, in a three-year rotation. Collins explains that staff recommends the commission consider the best bid from Vertiv Electrical Reliability Services due to the successful history we have with them, and because of their familiarity with our electrical system and substation equipment. Vertiv has been conducting the majority of our TSP for the past ten years. Commissioner Jarvis moved to approve the bid with Vertiv Electrical Reliability Services in the amount of \$57,251.00 for the 2020 substation technical support program. Motion was seconded by Commissioner Thompson. With all Commissioners voting aye, motion carried.

-Commissioner Thompson moved that in lieu of the regular meeting on February 3, 2020, the Commission meet in a Special Meeting on Thursday, January 30, 2020 at 5:30, following the work session. Motion was seconded by Commissioner Hutto. With all Commissioners voting aye, motion carried.

-City Manager Wall gave the Commission an update on a rural property purchase in the amount of \$255,000.00.

- Director of Public Improvements Steward explains there is an administrative plat approval that will require no action from the Commission, but will need the signature of the Mayor and City Clerk.

ADJOURNMENT

Upon motion by Commissioner Hutto, seconded by Commissioner Thompson, all Commissioners voting aye, the meeting adjourned at 5:44 p.m.

Signed and sealed this ___ day of January 2020.

Signed and approved this 3rd day of February 2020.

Brenda Peters, City Clerk

Phillip R. Jarvis, Mayor



Request for Commission Action

Date: January 30, 2020

Requestor: Gus Collins, Director of Utilities

Action Requested: Consider entering into an agreement with the Fracta Inc. to evaluate our water main distribution system.

Analysis: With the City Commission approving an inspection of our sanitary sewer system, city staff has been reviewing possible options to inspect the condition of our water main distribution system. After review, (including Director of Information Systems, Jerred Schmidt) staff is recommending Fracta Inc. to do the analysis of our system. The Fracta model compiles significant information/data then predicting the possible future water main breaks throughout our system. It is a full condition assessment of utility water main breaks that can be completed within a 4-6-week period.

We did check references; City of Lawrence utilizes similar methodology with significant success.

There are a few different options; The options range from a one-year agreement to a total three-package. Staff is recommending the approval of a one-year, standard package, providing a comprehensive review of our system. We can then review the data after the completion of one year and consider additional years with this company, if desired.

Fiscal Impact: Total cost for the one year is \$18,000, recommending funding through budgeted monies in the water fund for such costs.

Attachments: Video – to be shown at Work Session.



Fracta Annual ROI

Item	Cost
Prevent <u>One</u> Break- Small Diameter Pipe (Avg Cost Per Break) [1]	\$10,000
Prevent <u>One</u> Break- Large Diameter Pipe (<u>Low End</u> Cost Per Break) [1]	\$8,500
Avoid <u>One</u> Single Unnecessary Water Main Replacement (Avg Replacement Cost) [2]	\$6,300
50% Reduced Spending on Leak Detection, Valve Maintenance, and/or Physical Condition Assessment [3]	\$30,000
Other Savings- Lower Non-Revenue Water Loss (NRWL), Reduced Data Management/Cleanup Costs, IT System Maintenance [4]	\$10,000

[1] What Pipe Breaks & Leaks Reveal About Pipe Health, WRF <http://www.waterrf.org/knowledge/asset-management/FactSheets/AssetMgt-BreaksLeaks-FactSheet.pdf>

[2] Reinvesting in Drinking Water Infrastructure, AWWA <https://www.mcwane.com/upl/downloads/resources/americas-water-infrastructure-challenge/reinvesting-in-drinking-water-infrastructure.pdf>

[3] Estimate based on cost of \$300 per mile at 100 miles, The Economics of Leak Detection, WFM <https://waterfm.com/economics-leak-detection/>

[4] Estimated based on data management/cleanup and IT system maintenance costs of 100 hours at a rate of \$100 per hour annually





SOFTWARE AS A SERVICE SUBSCRIPTION

Customer Name: City of Winfield, Kansas

Customer Address for Notices: 200 E 9th Avenue, Winfield, KS 67156

Customer Primary Contact: Beau Bailey

Telephone: 620-221 5600 **Email:** bbailey@winfieldks.org

Item	Years	Subscription Fee*
Fracta LOF, COF, BRE Full Subscription	1	\$ 18,000

*Taxes and similar fees are not included. Price includes Fracta’s standard service to prepare Customer data for the Fracta system. Data preparation that is outside the standard scope with require a time and materials fee. This quote is valid for 90 days.

** **Start Date:** The first year starts on the date of Customer’s first log-in to the Fracta System, but no later than 30 days from the Effective Date.

Effective Date: The Agreement is effective when both parties sign this Subscription.

This Software as a Subscription is subject to the terms of this document including Attachments A (Master Terms and Conditions of Agreement) and B (Scope of Work). Fracta objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation submitted by Customer.

Signatures:

Fracta, a California Corporation

By: _____

Name: Takashi Kato

Title: President and CEO

Date: _____

Customer

By: _____

Name: _____

Title: _____

Date: _____

Attachment A – Master Terms and Conditions of Agreement



SOFTWARE AS A SERVICE SUBSCRIPTION

These are the Master Terms and Conditions of an Agreement between Fracta, a California corporation (“Fracta”), and the Customer identified on a Fracta Software as a Service Subscription form. Under this Agreement, Fracta will provide Customer with online access to one or more modules of the Fracta System on a subscription, Software as a Service (“SaaS”), basis.

1. DEFINITIONS

- 1.1 “Agreement.” The complete Agreement between Fracta and Customer consists of the Software as a Subscription form, these Master Terms and Conditions including any Attachments, the Software Acceptable Use Agreement posted online, and any amendments to those documents.
- 1.2 “Software as a Service” or “SaaS” refers to Fracta hosting the software and providing Customer with remote, internet-based access to the System on a subscription basis.
- 1.3 “Normalized Customer Data” is the Customer Data after it has been assessed and cleaned by Fracta to operate properly in the System.
- 1.4 “System” is Fracta’s proprietary system of software, algorithms, data analysis and machine technology that helps water utilities improve the efficiency of water main pipe management and replacement.
- 1.5 “Start Date” is the calendar date of Customer’s first log-in to the Fracta System, but no later than 30 days from the Effective Date.
- 1.6 “Updates” are revisions to correct errors or to improve the existing functionality of the System. Updates do not include modules or products that Fracta sells or licenses separately, but Updates do include products that are offered as replacements for the subscribed modules.
- 1.7 “User” is an individual whom the Customer has authorized to use the System on its behalf.
- 1.8 “Customer Data” includes the following information, in machine-readable electronic form: pipe location, age, size, characteristics and installation dates; GIS data; and pipe break data.

2. SUBSCRIPTION SERVICES.

- 2.1 License. Fracta grants to Customer a nonexclusive, nontransferable, non-sublicensable license to use the System, and to authorize Users to use the System, during the term of this Agreement, solely for the benefit of Customer.
- 2.2 Availability. Fracta will use commercially reasonable efforts to make the System available to Customer online 24 hours a day, seven days a week. Fracta may temporarily suspend the System for maintenance, testing, and security purposes. Further, Fracta may be unable to provide access to the System due to actions beyond its reasonable control, such as acts of God, attacks or other interference by third parties, and internet service provider or data center outages. If downtime is planned, Fracta will attempt to inform Users ahead of time, although Fracta is not obligated to do so and will not be liable if it fails to provide advance notice.
- 2.3 System Administrator; User Access. Customer shall designate one or more System Administrators. System Administrators are responsible for managing User access, including adding and subtracting Users.
- 2.4 Names and Passwords. Customer is responsible for maintaining the security of all User names and passwords, for the security of its information systems used to access the System, and for its Users’ compliance with the terms of this Agreement. Customer will immediately notify Fracta if it becomes aware of any loss or theft or unauthorized use of any of Customer’s passwords or



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User names. Fracta has the right at any time to terminate or suspend access to any User or to Customer if Fracta believes in good faith that such termination or suspension is necessary to preserve the security, integrity, or accessibility of the System. Users must not share passwords or user names.

2.5 Use Restrictions. Customer and Users may not do any of the following:

- (i) upload any data that is not Customer Data;
- (ii) access or use the System for the benefit of any third party, or share or re-sell its access to the System;
- (iii) copy or reverse engineer the System;
- (iv) modify, create derivative works based upon, or translate the System;
- (v) upload any content that (i) infringes any intellectual property or other proprietary rights of any party; (ii) Customer does not have a right to upload; (iii) contains any code designed to interrupt, destroy or limit the functionality of the System; or (iv) poses or creates a privacy or security risk to any person or entity; or
- (vi) attempt to compromise the security or integrity of the System.

2.6 Customer shall immediately notify Fracta if Customer becomes aware of any unauthorized use of all or any of the Software as a Service.

3. DATA ENTRY

3.1 Customer will electronically transfer the Customer Data to the System using an agreed-upon data transfer method and will provide information regarding the available data and database systems and database structures related to the Customer Data.

- 3.1.1. Customer will provide one pipe data zip file containing one of more the following file extensions: cpg, .dbf, .prj, .shp, .shx. A list of pipe material of construction, year installed and diameter should be included in the data file and the name of the corresponding column of the data clearly denoted.
- 3.1.2. Customer will provide one pipeline break history data file in either shapefile, CSV, or Excel format. If data is in Excel or CSV format, a column corresponding to address or latitude and longitude must be included (as well as the name of that column). The date of the Break, and the name of the column corresponding to this information.
- 3.1.3. Customer Data provided by Customer must be in an electronic format; geospatial data must be in an ArcGIS shapefile or similar format. Other data may be in a tabular Excel or similar format.
- 3.1.4. Fracta will assess and clean the Customer Data as necessary to create Normalized Customer Data.
- 3.1.5. Fracta will load the Normalized Customer Data into the System.

3.2 After the initial load of the Normalized Customer Data into the System, Fracta will provide Customer up to two (2) additional loads of Normalized Customer Data into the System per subscription year. The additional loads do not include an assessment and cleaning. Fracta assumes that Customer will provide updated Customer Data in the Normalized format. If the Normalized Customer Data cannot be loaded because of the format provided by the Customer,



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Fracta will provide an estimate of fees to the Customer for assessing and cleaning the data. Fracta will not load the data until Customer has agreed in writing to pay the assessment and cleaning fees.

- 3.3 Fracta will provide online access to the Normalized Customer Data, which Customer can view online and download.
- 3.4 Data Responsibility. Responsibility for ensuring that the data entered into the System is accurate and reflects Customer requirements lies solely with Customer.
- 3.5 No Sensitive Data; Customer Responsibilities. The System is not intended for use with protected health information under HIPAA, credit card numbers, financial account numbers, or personally identifiable information. Customer assumes all risk arising from use of any such sensitive information with the System, including the risk of any inadvertent disclosure or unauthorized access thereto. Customer is responsible for ensuring that Customer's use of the System is in compliance with all applicable laws and governmental regulations and Customer assumes all risk arising from any such use that is not compliant with applicable laws and regulations.

4. SUPPORT

- 4.1 System Updates and Changes. Fracta will provide access to Updates at no additional charge, when they are commercially available. Fracta reserves the right to add new features and functions to the System, and the right to discontinue features. Upon Customer's reasonable request and on mutually agreeable terms, Fracta may enable Customer to continue to use discontinued features or functions.
- 4.2 Errors. An Error is a defect in the programming of the System software that causes it to fail to operate properly. Customer acknowledges that the software in general is not error-free and agrees that the existence of errors in the Software shall not constitute a breach of this Agreement.
- 4.3 Error Correction. Fracta will use commercially reasonable efforts to correct all material Errors reported by Customer, or to provide a reasonable workaround using its reasonable efforts during Fracta's normal business hours. Customer will provide access, information, and assistance as Fracta may reasonably require in the process of resolving any Error. This paragraph is Customer's sole and exclusive remedy for Errors.
- 4.4 Support Requests. During regular business hours (9 am – 5 pm Pacific Time) Customer may email or call Fracta to raise a support issue, using the contact information provided by Fracta. Customer is encouraged to designate Users with authority to make support requests. Fracta reserves the right to limit the number of such Users if support requests are excessive.

5. TERM

- 5.1 Term. The Initial Term of this Agreement shall begin on the Effective Date and shall expire the number of years following the Start Date shown on the Software as a Subscription form. The Agreement will automatically renew for successive Renewal Terms of one (1) year, unless either party gives notice of non-renewal at least sixty (60) days prior to the expiration of the then-current term.
- 5.2 Termination. Either party may terminate this Agreement for a material breach by the other party that is not cured within thirty (30) days after notice of breach. Either Party may immediately terminate this Agreement if the other Party: (a) becomes insolvent and becomes

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unwilling or unable to meet its obligations under this Agreement; (b) files a petition in bankruptcy; or (c) is subject to the filing of an involuntary petition for bankruptcy that is not rescinded within a period of sixty (60) days.

- 5.3 Obligations Upon Termination. Upon termination of this Agreement: (i) Fracta may immediately terminate Customer's access to the System; (ii) Upon written request from Customer received within 30 days of termination, Fracta will provide access to the System for a period of 48 hours for the limited purpose of exporting Customer Data;
- 5.4 Survival. All provisions of this Agreement which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, and limitations of liability.

6. CONFIDENTIAL INFORMATION

- 6.1 "Receiving" and "Disclosing" Parties. Careful protection and non-disclosure of Confidential Information (as defined below) by the Party receiving Confidential Information ("Receiving Party") from the Party disclosing Confidential Information ("Disclosing Party") is of importance to both Parties. The terms "Receiving Party" and "Disclosing Party" includes each Party's officers, directors, employees and representatives. As to Customer, the terms "Receiving Party" and "Disclosing Party" also includes all entities controlling, controlled by and under common control with, Customer (each, an "Affiliate") and such Affiliate's representatives.
- 6.2 "Confidential Information." For purposes of this Agreement, "Confidential Information" means all non-public information that a Disclosing Party designates as being confidential, or which, under the circumstance of disclosure, ought to be treated as confidential. Confidential Information includes, without limitation, Fracta's algorithms, Fracta's software system, Customer's pipeline deployment data, and each Party's research, development, trade secrets, product development plans, inventions, and technical data. Confidential Information does not include information which can be shown by the Receiving Party to be: (i) already known or in its possession without an obligation of confidentiality to the Disclosing Party prior to the execution of this Agreement; (ii) rightfully furnished to the Receiving Party by a third party; (iii) publicly available without breach of this Agreement; or (iv) independently developed by the Receiving Party without reliance on the Confidential Information as evidenced by written records of the Receiving Party.
- 6.3 Protection of Confidential Information. During the term of this Agreement, Receiving Party agrees to hold the Disclosing Party's Confidential Information in confidence and to take reasonable precautions to protect such Confidential Information including, without limitation, all precautions that Receiving Party uses for to its own confidential information, but in no event less than reasonable care.
- 6.4 Required Disclosures. If a Receiving Party is legally compelled by a court or governmental body to make any disclosure of Confidential Information, the Receiving Party shall (i) promptly notify the Disclosing Party, unless such notice is prohibited by law; and (ii) consult with and assist the Disclosing Party, at the Disclosing Party's expense, in obtaining an injunction or other appropriate remedy to prevent such disclosure.
- 6.5 Unauthorized Disclosure. If a Receiving Party discovers that the Disclosing Party's Confidential Information has been used or disclosed in violation of this Agreement, the Receiving Party will immediately: (i) notify Disclosing Party; (ii) take reasonable action to minimize the impact of the



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use or disclosure; and (iii) take necessary steps to prevent a further disclosure of any Confidential Information.

- 6.6 Return of Confidential Information. A Receiving Party will return or destroy all Confidential Information and all copies received from the Disclosing Party within 15 days of the Disclosing Party's request. If the Confidential Information is destroyed by Receiving Party, that Receiving Party must certify such destruction in writing. Notwithstanding the foregoing, the Receiving Party may retain one copy of any of Disclosing Party's Confidential Information to comply with Receiving Party's legal or regulatory requirements.

7. FEES and PAYMENT

- 7.1 Fracta will invoice Customer annually in advance on the Effective Date for SaaS subscriptions ordered by Customer as shown in the Software as a Subscription form. If Customer orders additional subscriptions during the Term of this Agreement, the first-year subscription fee and first-year term for the additional subscriptions will be prorated to cover the remaining portion of the current year. Invoices are payable net thirty (30) days.
- 7.2 On each anniversary of the Effective Date during the Initial Term, and upon the commencement of any Renewal Term, Fracta may increase the subscription fees for the coming year by five percent (5%) or by the CPI Adjustment, whichever is lower. The CPI Adjustment means the percentage increase (if any) in the year over year average CPI-U (All Urban Consumers, U.S. City Average) for the prior two years, as reported by the US Bureau of Labor Statistics.
- 7.3 For any Data Normalization services that are outside the standard scope, or Customer will be billed on a time-and-materials basis at the rate of \$1,200 per day.
- 7.4 All fees quoted to Customer for the provision of the Services by Fracta are exclusive of any sales tax or similar tax or fee.

8. NOTICES.

All written notices required by this Agreement must be delivered to the addresses shown on Software as a Subscription form by overnight courier or certified mail, and will be effective upon receipt. Either party may change its address for notices by giving written notice of the change to the other party.

9. OWNERSHIP

- 9.1 The System. Fracta owns all right, title and interest and all intellectual property rights in the System. Fracta will also own any suggestions, enhancement requests, feedback or recommendations relating to the System that are provided by Customer or User.
- 9.2 Customer Data. Customer warrants that it either owns all right, title and interest in the Customer Data, or has a license or other legal right to use the Customer Data in the System, including the right to license the use of the Customer Data to Fracta as provided in this Agreement.
- 9.3 Fracta Use of Customer Data. Customer grants to Fracta a nonexclusive, nontransferable (except in connection with a permitted assignment as set forth below), non-sublicensable license to store, use, copy, transmit, modify and display the Customer Data solely (1) to process the data on Customer's behalf, (2) to improve the System, and (3) to improve Fracta's analytical model or algorithms. Customer understands that due to the nature of the machine learning process, exposure to the Customer Data will inherently improve the System and Fracta's analytical model and algorithms.



FRACTA

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10. DISCLAIMERS

All forms of non-destructive testing involve an inherent and unavoidable level of uncertainty. The results provided by Fracta are therefore not guaranteed. The methods used for leak detection and pipe condition assessment are highly dependent on input parameters. As a result, Fracta is not responsible for any actions taken by Customer based on the System or on Fracta's recommendations.

EXCEPT FOR THE LIMITED ERROR CORRECTION WARRANTY PROVIDED IN THIS AGREEMENT, FRACTA MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, RELATING TO THE SYSTEM, OR TO FRACTA'S SERVICES. FRACTA SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT. FRACTA DOES NOT WARRANT OR REPRESENT THAT THE SYSTEM WILL BE FREE FROM ERRORS OR THAT ITS USE WILL BE UNINTERRUPTED, OR MAKE ANY OTHER REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF THE USE, OF THE SYSTEM IN TERMS OF ACCURACY, RELIABILITY, OR OTHERWISE. THESE DISCLAIMERS SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN.

11. Exclusion of Certain Damages

FRACTA WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR RELIANCE DAMAGES, INCLUDING ANY DAMAGES DUE TO LOST OR CORRUPTED DATA, ARISING FROM OR RELATING TO THIS AGREEMENT OR THE SYSTEM, EVEN IF FRACTA KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF, OR COULD REASONABLY HAVE PREVENTED, SUCH DAMAGES.

WITH THE EXCEPTION OF CUSTOMER'S OBLIGATION TO PAY FEES, EACH PARTY'S TOTAL CUMULATIVE LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT OR THE SYSTEM, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES PAID OR PAYABLE TO FRACTA BY CUSTOMER DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT THAT GAVE RISE TO THE LIABILITY. THIS LIMITATION OF DAMAGES SHALL BE GIVEN FULL EFFECT EVEN IF THE WARRANTIES PROVIDED IN THIS AGREEMENT ARE DEEMED BY AN ARBITRATOR OR COURT TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. THE PARTIES ACKNOWLEDGE THAT THE TERMS OF THIS SECTION REFLECT THE ALLOCATION OF RISK IN THIS AGREEMENT AND THAT THE PARTIES WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS OF LIABILITY. This Section does not limit either party's liability for bodily injury, gross negligence or willful misconduct.

12. DISPUTE RESOLUTION

- 12.1 Negotiation. The Parties will make good faith efforts to resolve disputes through informal discussions between the appropriate representatives of the parties. Formal negotiation may be initiated by either party by sending written Notice of the description of the dispute to the other party. Within twenty (20) business days of the Notice, principals of both parties, who have the authority to settle the dispute, will meet to discuss resolution of the dispute.
- 12.2 Arbitration. If a dispute arising out of this Agreement cannot be resolved through formal negotiation, the dispute must be arbitrated according to the Commercial Arbitration Rules of the American Arbitration Association. The dispute shall be determined in accordance with the Agreement and the substantive laws of the State of California. It shall take place in San Mateo County, California, and the result shall be binding on both parties. The cost of the arbitration shall be borne equally by both parties. The parties hereby submit to the

jurisdiction of the appropriate court for the purpose of confirming any agreed settlement arrived at during arbitration.

13. INDEMNIFICATION

- 13.1 Indemnification of Customer. Fracta agrees to defend Customer and its directors, officers and employees from and against any and all claims, demands, suits or proceedings made or brought against Customer by third parties, and agrees to pay or reimburse Customer for any and all damages, costs and expenses payable by Customer to such third party to the extent that they are awarded in a final judgment or agreed to in settlement, as a result of a claim against Customer, based upon or arising out of: (i) any dishonest, fraudulent, criminal, or negligent acts committed by Fracta, or any agent or employee of Fracta, acting pursuant to, or in connection with, the Agreement; or (ii) a claim that the use of the Software as a Service or the System as permitted hereunder infringes the intellectual property rights of a third party. As a condition of Fracta's indemnification obligation, Customer must (i) promptly give written notice of the claim to Fracta, (ii) give Fracta sole control of the defense and settlement of the claim (provided that Fracta may not settle or defend any claim unless it unconditionally releases Customer of all liability), (iii) provide to Fracta all reasonable and available information and assistance. and (iv) not have compromise or settled such claim.
- 13.2 Indemnification of Fracta. Customer agrees to defend Fracta and its directors, officers and employees from and against any and all claims, demands, suits or proceedings made or brought against Fracta by third parties, and agrees to pay or reimburse Fracta for any and all damages, costs and expenses payable by Fracta to such third party to the extent that they are awarded in a final judgment or agreed to in settlement, as a result of a claim against Fracta, based upon or arising out of: (i) any dishonest, fraudulent, criminal, or negligent acts committed by Customer, or any agent or employee of Customer, acting pursuant to, or in connection with, the Agreement; or (ii) a claim the Customer Data infringes the intellectual property rights, privacy rights or publicity rights of a third party. As a condition of Customer's indemnification obligation, Fracta must (i) promptly give written notice of the claim to Fracta, (ii) give Customer sole control of the defense and settlement of the claim (provided that Customer may not settle or defend any claim unless it unconditionally releases Fracta of all liability), (iii) provide to Customer all reasonable and available information and assistance, and (iv) not have compromise or settled such claim.

14. GENERAL

- 14.1 Non-Solicitation. Neither party shall, directly or indirectly, induce or entice any employee of the other to leave such employment, or induce or entice any of the other party's sub-contractors to provide any services other than by an agreement with, and through, such other party. Employees responding to a generally published notice or advertisement shall not fall under this provision.
- 14.2 Assignment. Customer may not assign its rights and/or obligations under this Agreement to any other party without our prior written consent. Fracta may assign its rights and/or obligations under this Agreement to any other party at its discretion.
- 14.3 California Law and Venue. The laws of the State of California (without giving effect to its conflict of laws principles) govern all matters arising out of or relating to this Agreement. Any claims or actions regarding or arising out of this Agreement must be brought exclusively in a court of competent jurisdiction sitting in San Mateo County, California, and each party



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- to this Agreement submits to the jurisdiction of such courts for the purposes of all claims and actions arising out of or relating to this Agreement.
- 14.4 Force Majeure. Neither Party shall be liable for any failure or delay of performance due any unforeseeable event, such as, but not limited to, fire, strike, inevitable accidents, war, terrorism or any other cause outside the reasonable control of the defaulting Party, and occurring without its fault or negligence.
- 14.5 Entire Agreement. This Agreement constitutes the final, complete and exclusive agreement between the parties as to the subject matter hereof, and supersede any prior or contemporaneous agreement, proposal, warranties and representations.
- 14.6 Conflicting Terms; Amendments. This Agreement prevails over any conflicting or additional terms of any quote, purchase order, invoice or other communication. No modification, amendment or waiver of any provision of this Agreement shall be effective unless in writing and signed by both Parties.



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Attachment B – Scope of Work

1. SCOPE

Fracta provides expertise in the ranking and rating of potable water mains by their Likelihood of Failure (“LOF”), Consequence of Failure (“COF”), and Business Risk Exposure (“BRE”) and uses a proprietary artificial intelligence-based condition assessment system to analyze large volumes of data using various criteria.

Winfield is a city and county seat of Cowley County, Kansas, United States. It is situated along the Walnut River in South Central Kansas. Serving a population of roughly 12,000, Winfield’s 119 miles of water distribution pipe are constructed mainly of cast iron and ductile. With roughly 25 breaks per year, Winfield would like to use Fracta to maximize their pipe replacements and mitigate risk within their network.

2. SERVICES

Fracta will perform the following services under this Agreement:

- Project Management: Fracta will assign a project manager to oversee the delivery of the Services. The project manager will perform project management functions for the project. Fracta will communicate the status of the project with Customer on a biweekly basis until the Customer has received access to Fracta system.
- Kick-Off Meeting: Fracta will coordinate and set up a kick-off meeting with Customer to introduce the team members, review the project tasks, discuss roles and responsibilities, review the scope and schedule for the project, and any other relevant project information.
- Data Request: Fracta will meet with Customer to identify available data and formats. Fracta or Customer will upload the requested data to the data exchange portal.
- Data Review: Fracta will review the data that Customer provides.
- Data Clean-Up, Normalization, and Import into Software: Fracta will analyze the pipe asset and historical break data to identify data gaps and outliers. Fracta will coordinate a discussion with the Customer if it identifies any data anomalies that must be addressed by the Customer. Fracta will perform data clean-up and normalization to include formatting data for proper use in the Fracta model. Clean-up of data that is significantly outside the requirements is out of scope: this may include, for example, filling data gaps for pipe asset information with parcel data, geo-coding break history to align to pipe assets and other more manual data manipulation. If applicable, Fracta will provide an estimate of the cost for the out-of-scope work prior to proceeding.
- Review of Results: Fracta will coordinate and set up a meeting with the Customer to review the results of Fracta system.
- Access to Online Tool: Fracta will provide the Customer with on-going access to Fracta system for the Term of the Agreement. On-going access will be provided in the form of user accounts.
- Additional Services. For any services that are outside the scope of this Agreement, Customer will be billed on a time-and-materials basis. Fracta will charge \$1,200 per day, in minimum billing increments of two hours, plus reasonable and necessary out-of-pocket expenses, provided that Customer must pre-approve such services.



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3. DELIVERABLES

Fracta will provide the following Deliverables:

- Cleaned, digital data files of pipe assets and main break data in GIS shape and .csv file formats
- One (1) hour remote meeting at Customer to present results in the Fracta Likelihood of Failure system
- Software Access to the Fracta system that provides:
 - Statistics and performance indicators
 - Graphs include, e.g., Total # of breaks per year, Break rate per year, Total # of breaks and break rate per material, per install year and per install decade
 - Mapped analytical visualization about historical break data
 - LOF, COF, BRE
 - Mapped visualizations
 - Downloadable data files
 - Cleaned data files (GIS shape, .csv file formats)
 - LOF, COF, BRE (GIS shape, .csv file formats)

4. CUSTOMER RESPONSIBILITIES

Customer will provide the following resources to enable Fracta to complete the work per the Section Schedule:

- Pipe asset file in a GIS format to at least include:
 - Unique pipe segment ID
 - Pipe Material Type (AC, DI, CI, PVC, etc.)
 - Pipe Length
 - Pipe Diameter
- Hydraulic Pressure (Nodes)
 - GEO Information (WKT)
 - Pressure Minimum
 - Pressure Maximum
 - Pressure Average
- Break history file in GIS format or other geocodable format to at least include:
 - Unique pipe segment ID
 - Break date
- Designated point of contact who can facilitate bi-weekly status meetings and provide answers to data questions that might arise during the project

5. SCHEDULE

Total project length is estimated at 8-12 weeks from receipt of the Customer data. Fracta will provide a final schedule after Customer data has been received and reviewed. The project will be guided by bi-weekly status meetings.

6. PROJECT MANAGERS

FRACTA:
Name: Eric Wang
Phone: (888)-413-6321

CUSTOMER:
Name: Beau Bailey
Phone: 620-221 5600



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Email: ewang@fracta.ai

Email: bbailey@winfieldks.org

7. ASSUMPTIONS

- Data provided by Customer will be in an electronic format; geospatial data will be in an ArcGIS shapefile or similar format. Other data will be in a tabular Excel or similar format.
- Timeline is dependent on the availability of Customer resources to answer questions about the submitted data and for the review and comments on the results and final report.