

INTERGOVERNMENTAL AGREEMENT BETWEEN WATERONE AND THE CITY OF OLATHE, KANSAS FOR THE RELOCATION OF WATER DISTRIBUTION MAINS

THIS AGREEMENT, is made this ____ day of _____, 2019, by and between the City of Olathe, a municipal corporation of the State of Kansas, hereinafter called the "City," and Water District No.1 of Johnson County, hereinafter called "WaterOne."

WITNESSETH that:

WHEREAS, the City is improving Woodland Road from K-10 Highway to College Blvd. (the "Public Improvement"); and

WHEREAS, the construction area is located within the East ½ of Section 11, and the West ½ of Section 12, both in Township 13 South, Range 22 East; and

WHEREAS, as part of the Public Improvement, it is necessary for existing water facilities, which are presently located either within previous Relocation Agreement RA-02402 or RA-15007 between the City and WaterOne, in existing private easements owned by WaterOne or adjacent to private WaterOne easements but outside public right of way, to be reconstructed or relocated (the "Relocations"); and

WHEREAS, WaterOne has agreed to the Relocations subject to the cost of said Relocations being allocated between the City and WaterOne as set forth herein; and

WHEREAS, the City is willing to undertake the Relocations as a part of the Public Improvement subject to the terms and conditions of this Agreement; and

WHEREAS, the City and WaterOne have determined to enter into this Agreement for the aforesaid Public Improvement; as authorized and provided by K.S.A. 12-2908 and K.S.A. 68-169; and

WHEREAS, the governing body of the City did approve and authorize its Mayor to execute an Agreement by official vote of the body on the day of _____, 2019; and

WHEREAS, the governing body of WaterOne did approve and authorize its Board Chairman to execute an Agreement by official vote of the body on the ____ day of _____, 2019.

NOW, THEREFORE, in consideration of the above recitals, the mutual covenants and agreements herein contained, and for other good and valuable considerations, the parties hereto agree as follows:

1. **PURPOSE OF AGREEMENT**. The parties hereto enter into this Agreement for the purpose of performing the Relocations as a part of the Public Improvement.

2. **COST OF RELOCATIONS.**

- A. The cost of the Relocations shall include, but are not limited to, labor and materials in the Relocation work; design and construction engineering by WaterOne staff; project administration by City of Olathe and WaterOne; submittal review; construction inspection; material testing; as-built documentation; utility relocations; pavement removal and restoration; landscaping; irrigation; financing; monuments; traffic control; and other items incidental to the Relocations.
- B. Estimated cost for construction and other expenses of the Relocations is \$872,000.00.
- C. The cost of performing the Relocations incurred by either the City or WaterOne shall be distributed between the parties as follows:
 - (1) WaterOne agrees to pay all costs associated with relocating that part of the existing water facilities now lying within original public right-of-way or original public utility easements. WaterOne's cost for relocation of these facilities is 6% of total Relocation costs [estimated amount of \$52,320]. Final costs shall be determined based on actual construction costs using the Contractor's unit prices and/or additional work by WaterOne crews.
 - (2) The City agrees to pay all costs of relocating the existing water facilities now lying in areas outside original public right-of-way, or outside original public utility easements, or those now lying within private easements or adjacent to private easements or those now lying within the Relocation Agreement limits. The City's cost for relocation of these facilities is 94% of the total Relocation costs [estimated amount of \$819,680]. Final costs shall be determined based on actual construction costs using the Contractor's unit prices and/or additional work by WaterOne crews.

3. **FINANCING.** This section is reserved.

4. **ADMINISTRATION OF RELOCATIONS.**

- A. Construction of the Relocations shall be administered by the City, acting by and through the Director of Public Works for Olathe, Kansas, who shall be the principal public official designated to administer the design and construction of said improvements; provided, that the Director of Public Works shall, among the several duties and responsibilities, assume and perform the following:
 - (1) The City shall make all contracts and change orders for the design and construction of the improvements, including the responsibility to solicit construction bids by publication on www.publicpurchase.com. The contract will be awarded to the lowest responsible bidder as determined by the City, with concurrence by WaterOne. The City reserves the right to reject any and all bids; to waive any and all irregularities and informalities; to negotiate contract terms with the successful bidder; and the right to disregard all nonconforming, non-

responsive or conditional bids as allowed by its ordinances. In evaluating bids, the City may consider the qualification of bidders, whether or not the bids comply with the prescribed requirements, and alternates and unit prices if requested in the bid forms. The City reserves the right to reject the bid of any bidder who does not pass the evaluation to the City's satisfaction. Change orders related to Relocations shall be approved by WaterOne and the City.

- (2) The City shall incorporate plans and specifications, prepared by WaterOne, and approved by the City, into the Public Improvement plans.
- (3) WaterOne shall be responsible for final approval of all submittals for materials used for the Relocations, in accordance with the specifications provided by WaterOne.
- (4) The City shall coordinate utility relocations for the Public Improvement.
- (5) The City shall incorporate minimum qualification of contractors and/or subcontractors to perform Relocations into the construction contract documents. These minimum qualifications shall be provided by WaterOne.
- (6) The City will forward the complete bid tabulation, the apparent low bidding contractors, including subcontractors, along with references for each, to WaterOne for approval. WaterOne's approval, or rejection, shall be submitted to the City within five (5) business days of WaterOne receiving notification of proposed contractors. The City reserves the right to award the contract and remove the Relocations from the contract if WaterOne does not approve the contractors, including subcontractors, who will perform the Relocations.
- (7) The City shall not make final payment to the contractor until such time that WaterOne has accepted all Relocations as being in compliance with the contract documents. Written certification that all Relocations are compliant with the contract specifications shall be forwarded by WaterOne to the City within ten (10) days of final inspection of the Public Improvement.
- (8) The City shall submit to WaterOne, on a monthly basis, a statement of costs of constructing the Relocations; provided that WaterOne shall, within thirty (30) days after receipt of the statement of costs, remit its portion of the accrued costs to the City as herein agreed.
- (9) WaterOne shall be named as an Additional Insured with respect to this Public Improvement by the City of Olathe, and any contractors or subcontractors and a certificate of insurance or endorsement shall be provided to WaterOne as evidence of such, prior to any work being performed.
- (10) The City shall acquire all right-of-way required for the Relocations.

5. **FUTURE RELOCATIONS.** The City may, in the future, elect to require WaterOne to again relocate its facilities to other areas within the expanded street right-of-way to avoid conflict with any future road improvements by the City and to specific locations to be agreed upon by both the City and WaterOne. In such event, the entire cost of any such future relocation shall be borne by the City. In such event, WaterOne shall account to the City for all of its relocation costs.

6. **OWNERSHIP OF THE RELOCATED FACILITIES.** WaterOne shall have and retain full and complete ownership and title of the Relocations, now and into the future, pursuant to this Agreement.

7. **ACCOUNTING AND PAYMENT OF FINAL COSTS.**

A. At the completion of the Public Improvement, the City will certify to WaterOne that the City has accepted the same, as constructed. Within thirty (30) days of the certification of final completion of the Public Improvement, the City shall submit to WaterOne a final accounting of all Relocation costs. WaterOne shall reimburse the City in accordance with item 2.C.(1) for the difference between the actual costs and the cost paid through previous payment requests, not later than thirty (30) days following receipt of notification by WaterOne.

B. Upon receipt of final completion of Public Improvement, WaterOne shall submit to the City a final accounting of all costs for the WaterOne Improvements.

8. **TERMINATION OF AGREEMENT.** This Agreement may only be terminated by mutual written consent of the parties.

9. **PLACING AGREEMENT IN FORCE.** The City shall cause this Agreement to be executed in quadruplicate. Each party hereto shall receive two duly executed copies of this Agreement for their official records.

10. **NOTIFICATION.** For the purposes of this Agreement, any required notices shall be deemed sufficiently given the third day following deposit in the U.S. mail, certified, return receipt requested, postage prepaid, and addressed as follows:

A. If to WaterOne:
Water District No.1 of Johnson County
Daniel Smith, P.E.
Director of Distribution
10747 Renner Boulevard
Lenexa, Kansas 66219

B. If to the City:
City of Olathe
Beth Wright, P.E.
City Engineer
1385 S. Robinson Street
Olathe, Kansas 66061

Notice shall also be deemed sufficiently given upon actual delivery by reliable courier service or other method.

IN WITNESS WHEREOF, the above and foregoing Agreement has been executed by the authority of their respective governing bodies the day and year first above written.

City of Olathe, Kansas

Water District No 1 of Johnson County

Michael Copeland, Mayor

Robert P. Reese, Board Chair

Attest:

Attest:

Emily K. Vincent, City Clerk

Candace Golubski,
Assistant to the Water District Board

Approved As To Form:

Approved As To Form:

Ron Shaver, City Attorney

Eric Arner, General Counsel