

## **PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT is made in Johnson County, Kansas, by and between the City of Olathe, Kansas, hereinafter "City," and Freese and Nichols, Inc., hereinafter "Consultant" (collectively, the "Parties").

City intends to construct an improvement project (hereinafter called the "Project") in Olathe, Kansas, described as follows:

### **Indian Creek Trunkmain Rehabilitation** **Project No. 1-C-004-25**

The Project is more fully described in **Exhibit A** (attached hereto and incorporated herein by reference).

By executing this Agreement, Consultant represents to City that Consultant is professionally qualified to perform services on this Project and is licensed to practice engineering by all public entities having jurisdiction over Consultant and the Project.

### **SECTION I - DEFINITIONS**

As used in this Agreement, the following terms will have the following meanings unless otherwise stated or reasonably required by the Agreement, and other forms of any defined words will have a meaning parallel thereto. All terms defined in the most recent version of the Engineers Joint Contract Documents Committee (EJCDC) Standard General Conditions of the Construction Contract (the "General Conditions") adopted by City will have the same meaning when used in this Agreement unless otherwise specifically stated or in the case of a conflict in which case the definition used in this Agreement will prevail in the interpretation of this Agreement.

**"Additional Services"** means services in addition to those listed in **Exhibit B**.

**"City"** means the City of Olathe, Kansas, a municipal corporation duly organized under the laws of the State of Kansas, its employees, appointees, and officers.

**"Consultant"** means the company or individual identified above, herein, and its affiliates, subsidiaries, employees, agents, and assigns.

**"Construction Cost"** means and includes but is not limited to the cost of the entire construction of the Project, including all supervision, materials, supplies, labor, tools, equipment, transportation and/or other facilities furnished, used or consumed in connection with the Project, without deduction on account of penalties, liquidated damages or other amounts withheld from payment to a construction contractor or contractors, but such cost will not include Consultant's fee, or any other payments to Consultant as set forth herein, and will not include cost of land or rights-of-way and easement acquisition.

**"Contract Documents"** means those documents so identified in the Agreement for Construction of this Project including all Consultant Documents.

"Consultant Documents" means all documents required or reasonably implied by the nature of the scope of services to be performed by Consultant hereunder, including, but not limited to, plans, specifications, drawings, tracings, designs, calculations, sketches, models and reports.

"Professional Services" means the professional services, labor, materials, supplies, testing, surveying, title work, inspection, if applicable, and all other acts, duties, and services required of Consultant under this Agreement including any Additional Services.

"Project" is as above described.

"Project Manager" means the person employed and designated by City to act as the City's representative for the Project.

"Right-of-Way" and "Easements" means and includes the public street, highway, or road right-of-way and any other land dedicated to or otherwise subject to public use.

"Subsurface Borings and Testing" means borings, probings and subsurface explorations, laboratory tests and inspections of samples, materials and equipment; appropriate professional interpretations of all the foregoing.

"Traffic Control Plan" means a specific plan that includes but is not limited to signing; application and removal of pavement markings; construction sequencing and scheduling; methods and devices for delineation and channelization; placement and maintenance of devices; traffic regulation; and inspection made in accordance with the City's technical specifications.

## **SECTION II - COMPENSATION**

### **A. FEES & EXPENSES**

1. Total Fee: City agrees to pay Consultant an amount not to exceed three hundred eighty-five six hundred and sixty-eight dollars (\$385,668.00), including reimbursable expenses as described herein. The fee is based on the performance of the scope of services outlined in this Agreement, including **Exhibit B** attached hereto and incorporated by reference, and will be billed by Consultant using hourly rates and equipment charges as set forth in **Exhibit C** attached hereto and incorporated by reference, plus reimbursable expenses as set forth below. All bills will be submitted to City monthly as provided herein. Payment to Consultant will not exceed the following percentages in each phase of the Project without prior written consent of City.

2. Reimbursable Expenses: Consultant will be reimbursed at the actual cost, not to exceed a total expense of ten thousand dollars (\$10,000) for the following expenses related only to the Project: (a) expense of transportation in connection with the Project; (b) expenses in connection with authorized out-of-town travel; (c) long-distance communications; (d) expenses of printing and reproductions; (e) postage and facsimile transmissions; (f) expenses of renderings and models requested by City, and (g) other costs as authorized by City in writing as set forth herein.

## **B. SERVICES BEYOND THE SCOPE OF SERVICES**

1. Change in Scope: For substantial modifications in authorized Project scope, substantial modifications of drawings, or substantial modifications to specifications previously accepted by City, when requested by City and through no fault of Consultant, Consultant will be compensated for time and expense required to incorporate such modifications at Consultant's standard hourly rates per **Exhibit C**; provided, however, that any increase in fee or extension of time for Consultant to complete the services must be approved by City in writing. Consultant will correct or revise any errors or deficiencies in its designs, drawings or specifications without additional compensation when due to Consultant's negligence or other actionable fault.
2. Additional Services: Consultant will provide Additional Services authorized by a supplemental agreement executed in writing by the Parties. Prior to commencing any Additional Services, Consultant must submit a proposal outlining the Additional Services to be provided, estimation of total hours, completion date, and a maximum fee based upon the hourly rate schedule attached hereto as **Exhibit C**. Such Additional Services may include, but are not limited to, making computations and determinations of special assessments, making special trips requested by City other than those required by Section III, preparing changes in plans ordered by City or made necessary by causes beyond the control of Consultant, providing services necessitated in the event the Professional Services are suspended or abandoned, if such suspension or abandonment is not the result of a breach of this Agreement by Consultant, and providing any other special services not otherwise covered by this Agreement which may be requested by City to complete the Project. Payment to Consultant as compensation for Additional Services will be in accordance with the hourly rate schedule attached as **Exhibit C**.
3. Special Services: Consultant may be called on to serve as a consultant or witness in any litigation, arbitration, legal or administrative proceeding arising out of this Project. If Consultant is requested, in writing, by City, to appear as a witness, it will be paid its hourly fee as reflected on the hourly rate schedule attached hereto as **Exhibit C**. Consultant will not be paid extra by City if Consultant's appearance is to defend its Professional Services.

## **C. BILLING & PAYMENT**

1. Billing: Consultant may bill City monthly for completed Professional Services, including reimbursable expenses. The bill submitted by Consultant must itemize the Professional Services and reimbursable expenses for which payment is requested. City agrees to pay Consultant within thirty (30) days of approval by the Governing Body or other agent of

City in accordance with the City's Procurement Policy. The bill must be mailed to the attention of Account Payable, City of Olathe, PO Box 768, Olathe, KS 66051-0768 or emailed to apolathe@olatheks.org. The bill must indicate it is for work or expenses under this Agreement (include Agreement date for identification).

2. City's Right to Withhold Payment: In the event City becomes credibly informed that any representations of Consultant provided in its monthly billing are wholly or partially inaccurate, City may withhold payment of sums then or in the future otherwise due to Consultant until the inaccuracy and the cause thereof is corrected to City's reasonable satisfaction. In the event City questions some element of an invoice, that fact will be made known to Consultant immediately. Consultant will help effect resolution and transmit a revised invoice, if necessary. Amounts not questioned by City will be paid to Consultant in accordance with the contract payment procedures.
3. Progress Reports: A progress report must be submitted with each monthly pay request indicating the percentage of Professional Services completed to date. This report will serve as support for payment to Consultant.

#### **D. SCHEDULE**

All services must be completed on or before 12/31/2026.

### **SECTION III - RESPONSIBILITIES OF CONSULTANT**

Consultant will perform the Professional Services in all phases of the Project to which this Agreement applies as herein provided and which are required for the construction of the Project as described below:

#### **A. PRELIMINARY DESIGN PHASE**

1. Services: The Professional Services to be provided during this phase are set out in **Exhibits B, D, and E**, attached hereto and incorporated by reference.
2. Preliminary Design Documents: Consultant will furnish City copies of the above preliminary design documents per the City of Olathe Technical Specifications and Design Criteria for Public Improvements, unless otherwise noted in **Exhibit B**.
3. Preliminary Cost Estimate: Consultant will furnish City an estimate of probable Construction Cost based on the preliminary design and at subsequent design review submittals as specifically requested by City. Consultant's estimate of probable Construction Cost is to be made based on Consultant's experience and qualifications and represent Consultant's best judgment as an experienced and qualified design professional, familiar with the construction industry.
4. Budget: Consultant will immediately advise City if, in its opinion, the amount budgeted for construction is not sufficient to adequately design and construct the improvement as requested.

5. Permits and Right-of-Way: These Professional Services will include preparation of plans, exhibits and applications required for securing approvals, licenses, or permits from governmental or corporate agencies or authorities, and providing City with documents for right-of-way and/or easement acquisition necessary for the construction of the improvement, unless eminent domain proceedings are required to secure the right-of-way and/or easements. Consultant will comply with the conditions set out in the Land Acquisition Checklist for Consultant Projects as in **Exhibit D**. City will be responsible for acquiring the necessary Right-of-Way or Easements, unless otherwise agreed upon between City and Consultant. A property map of the areas needed to be acquired, and other necessary information related to such acquisition, will be provided by Consultant with copies of the preliminary construction plans to the Project Manager. It is recognized that such information cannot be provided for some tracts until the completion of the final construction plans. Consultant will also provide any necessary ownership and encumbrance (O&E) documents.

**B. FINAL DESIGN PHASE**

1. Services: The Professional Services to be provided during this phase are set out in **Exhibits B and E**, attached hereto and incorporated by reference.
2. Final Design Documents: Consultant will furnish City copies of the final design plans per the City of Olathe Technical Specifications and Design Criteria for Public Improvements unless otherwise noted in **Exhibit B**.
3. Contract Documents: Consultant will prepare for City all Project contract agreement forms, final design plans, general conditions and supplementary conditions, bid forms, invitations to bid and instructions to bidders, and assist in the preparation of other related documents requested by City, unless such documents are provided by City.
4. Final Cost Estimate: Consultant will furnish City an estimate of probable Construction Cost based on final design. This estimate is commonly known as the "Engineer's Estimate" and will be used as the basis for construction contract award. The Engineer's Estimate must be sealed and provided by a professional engineer licensed by the State of Kansas. Since Consultant has no control over the cost of labor, materials, or equipment furnished by others not under contract to Consultant, or over the resources provided by others not under contract to Consultant to meet Project schedules, Consultant's opinion of probable costs and of Project schedules for construction may be made based on experience and qualifications as a professional engineer. Consultant does not guarantee that proposals, bids, or actual Project costs will not vary from Consultant's opinions of probable cost or that actual schedules will not vary from Consultant's projected schedules.
5. Budget: Consultant will immediately advise City if, in its opinion, the amount budgeted for the Project is not sufficient to cover all Project costs, including but not limited to, construction, right-of-way and easement acquisition, inspection, and testing.

## C. BIDDING PHASE

1. Services: The Professional Services to be provided during this phase are set out in **Exhibit B**, attached hereto and incorporated by reference.
2. Bids Exceeding Cost Estimate: If all bids exceed Consultant's Final Cost Estimate, Consultant, at the request of City and for no additional cost, will prepare a report for City identifying why all the bids exceed the estimate. City has four (4) options if all bids exceed Consultant's estimate. City may: (1) give written approval of an increase in the Project cost up to a maximum of 7% above the authorized total; (2) authorize rebidding of the Project; (3) terminate the Project and this Agreement; or (4) cooperate in revising the Project scope or specifications, or both, as necessary to reduce the construction cost.

## D. CONSTRUCTION PHASE

1. In-House Administration and Inspection: It is understood that City will provide full-time, in-house administration and inspection of the construction Project and the work of the construction contractor at City's expense, unless otherwise agreed upon in writing by the Parties. Consultant will assist City by providing general administration and inspection of the work of the construction contractor as requested by City by conducting periodic inspections of the construction contractor's work during construction and will assist City in a final inspection of the construction Project after completion of the work by the construction contractor. Consultant will also check shop drawings and assist City in making interpretation of plans and specifications and reviewing pay estimates for making payments to the construction contractor.
2. Services: The Professional Services provided during this phase are set out in **Exhibits B and E**, both attached hereto and incorporated by reference.
3. Additional Drawings: If during construction, situations arise which require additional drawings or details, Consultant agrees to provide such additional drawings or details at no cost to City when the additional drawings or details are required to correct Consultant's errors or omissions or clarify Consultant's intent in the original design and preparation of construction drawings. If such situations occur through no fault of Consultant, or are beyond Consultant's control, both Parties agree to negotiate an equitable payment to Consultant for Consultant's Professional Services rendered, which will be accomplished through a Change Order.
4. Staking: Unless otherwise provided, staking must be included in the bid specifications to be performed by the construction contractor.
5. Notice of Defects: If, based on Consultant's involvement during the construction phase, Consultant observes or otherwise becomes aware of any defect in the work, Consultant will give prompt written notice to City of such defects and their approximate location on the Project. However, Consultant will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions, inspections and programs in connection with the work, since these are

solely the construction contractor's responsibility under the contract for construction to be entered into with City. Consultant will not be responsible for the construction contractor's schedules or failure to carry out the work in accordance with the Contract Documents. Consultant will not have control over or charge of acts or omissions of any construction contractor, any of a construction contractor's subcontractors, or any of the agents or employees of a construction contractor selected by City to construct the Project.

6. Shop Drawings: Consultant will review and take appropriate action on the chosen construction contractor's shop drawings and samples, and the results of tests and inspections and other data which each construction contractor is required to submit for the purposes of reviewing for compliance with the design concept and conformance with the requirements of the Contract Documents and the City of Olathe Technical Specifications and Design Criteria for Public Improvements.

#### **E. GENERAL DUTIES AND RESPONSIBILITIES**

1. Personnel: Consultant will assign only qualified personnel to perform any service concerning the Project as identified in Consultant's response to the Request for Proposals. At the time of execution of this Agreement, the Parties anticipate that the following individual will perform as the principal on this Project: Clay Herndon, PE. As principal on this Project, this person will be the primary contact with the City's Project Manager and will have authority to bind Consultant. So long as the individual named above remains actively employed or retained by Consultant, such individual will perform the function of principal on this Project. For the Professional Services rendered hereunder, Consultant, and any of its subcontractors, will employ engineers, architects, landscape architects, and surveyors licensed by the Kansas State Board of Technical Professions.
2. Subsurface Borings & Material Testing: If tests, additional to those provided for in **Exhibit B**, are required for design, Consultant will prepare specifications for the taking of the additional borings. Such subsurface borings and testing, as defined herein, will be provided by the City's contracted testing consultant or its subcontractors.
3. Utility Coordination: Consultant will comply with the conditions set out in the Utility Coordination Checklist as in **Exhibit E**. The services required of Consultant by this checklist are expected to usually occur during the Preliminary Design, Final Design, and Construction phases; however, Consultant's responsibilities under this checklist may sometimes occur at other times.
4. Service By and Payment to Others: Any services authorized in writing by City and performed by any party other than Consultant or its subcontractors (a "Third Party") in connection with the proposed Project will be contracted for and paid for by City. In addition to payments for the Third Party's professional services, this may also include necessary permits, licenses, ownership certifications, materials testing, advertising costs, and other special tests or other services required or requested by City or Consultant which are not defined within the scope of services of Consultant as set forth herein. Fees for such extra services will be subject to negotiation between City and the Third Party. Fees will be approved by City in writing prior to the execution of any extra services. Although

Consultant may assist City in procuring such services of Third Parties, Consultant will in no way be liable to either City or such Third Parties in any manner whatsoever for such services or for payment thereof.

5. Subcontracting or Assignment of Services: Consultant may not subcontract or assign any of the Professional Services to be performed under this Agreement without first obtaining the written approval of City. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge Consultant from any obligation under this Agreement. Any person or firm proposed for subcontracting Professional Services under this Agreement will maintain throughout the duration of the Agreement, insurance as provided in Section V.D.2. herein, and will additionally maintain Professional Liability insurance in a minimum amount of \$1,000,000 per claim and in the aggregate and provide City with an insurance certificate showing the insurance limits provided by Consultant's subconsultant. Any services completed by a City-approved subcontractor of Consultant pursuant to this Agreement may not be increased more than ten percent (10%) over the actual cost of the services.
6. Endorsement: Consultant must sign and seal all final plans, specifications, estimates and engineering data furnished by Consultant. Any review or approval by City of any documents prepared by Consultant, including but not limited to the plans and specifications, will be solely for determining whether such documents are consistent with the City of Olathe Technical Specifications and Design Criteria for Public Improvements and may not be construed as City assuming responsibility for the accuracy, adequacy, fitness, suitability and coordination of Consultant's services and deliverables. No review of such documents will relieve Consultant of its responsibility for the accuracy, adequacy, fitness, suitability and coordination of its services and deliverables.
7. Inspection of Documents: Consultant must maintain all Project records for inspection by City at reasonable times and places upon written request during the contract period and for three (3) years from the date of final payment.
8. Standard of Care: Consultant will exercise the same degree of care, skill, and diligence in the performance of the Professional Services as is ordinarily possessed and exercised by a professional engineer under similar circumstances. If Consultant fails to meet the foregoing standard, Consultant will perform at its own cost, and without reimbursement from City, the Professional Services necessary to correct errors and omissions which are caused by Consultant's negligence.

#### **SECTION IV - CITY OF OLATHE'S RESPONSIBILITIES**

##### **A. COMMUNICATION**

City will provide to Consultant information and criteria regarding City's requirements for the Project; examine and timely respond to Consultant's submissions; and give written notice to Consultant, who will respond promptly, whenever City observes or otherwise becomes aware of any defect in the Professional Services.



**B. ACCESS**

City will provide access for Consultant to enter public and private property related to the Project and performance of Consultant's obligations under this Agreement.

**C. DUTIES**

City will perform the various duties and services in all phases of the Project which are outlined and designated in **Exhibit B** as City's responsibility.

**D. PROGRAM AND BUDGET**

City will provide all relevant information reasonably required for Consultant to perform its obligations herein, including but not limited to City's objectives, schedule, constraints, budget with reasonable contingencies, and other necessary design criteria for the Project.

**E. ADMINISTRATIVE SERVICES**

City will furnish all City-related legal, accounting, insurance and audit services as may be necessary at any time for completion of the Project. However, in no event will any City-related legal, accounting, insurance and or audit services be provided on behalf of Consultant, nor will Consultant serve any other role than as an independent contractor of City.

**F. BOND FORMS**

City will furnish all bond forms required for the Project.

**G. PROJECT REPRESENTATIVE**

City will designate a Project Manager to represent City in coordinating this Project with Consultant. The City's Project Manager will have the authority to transmit instructions and decisions of City.

**SECTION V - GENERAL PROVISIONS**

**A. TERMINATION**

1. **Notice:** City reserves the right to terminate this Agreement for either cause (due to Consultant's failure to substantially perform its obligations hereunder) or for its convenience and without cause or default on the part of Consultant, by providing fifteen (15) days' written notice of such termination to Consultant. Upon receipt of such notice from City, Consultant will, at City's option as contained in the notice: (1) immediately cease all Professional Services; or (2) meet with City and, subject to City's approval, determine what Professional Services will be required of Consultant in order to bring the Project to a reasonable termination in accordance with the request of City. Consultant

will also provide to City copies of all drawings and documents completed or partially completed at the date of termination for which Consultant has been fully paid. If City defaults on its obligations under this Agreement, (due to City's failure to substantially perform its obligations under this Agreement), Consultant must notify City by written notice of its intent to terminate and City will have fifteen (15) days from the date of the notice to cure or to submit a plan for cure acceptable to Consultant. In no event may Consultant terminate the contract solely for its convenience without cause.

Address for Notice:

City of Olathe  
Attn: Mark Perry  
100 E. Santa Fe  
P.O. Box 768  
Olathe, KS 66051-0768

Freese & Nichols, Inc.  
Attn: Clay Herndon, PE Vice President  
3600 NW 138<sup>th</sup> St., Suite 202  
Oklahoma City, OK 73134

2. Compensation for Convenience Termination: If City terminates for its convenience as provided herein, City will compensate Consultant for all Professional Services completed and accepted and reimbursable expenses incurred to the date of its receipt of the termination notice and any additional Professional Services and reimbursable expenses requested by City to bring the Project to reasonable termination. Compensation will not include anticipatory profit or consequential damages, neither of which will be allowed.
3. Compensation for Cause Termination: If City terminates for cause or default on the part of Consultant, City will compensate Consultant for the reasonable cost of Professional Services and reimbursable expenses completed and accepted to date of its receipt of the termination notice. Compensation will not include anticipatory profit or consequential damages, neither of which will be allowed. City also retains all its rights and remedies against Consultant including but not limited to its rights to sue for damages, interest and attorney fees.
4. Incomplete Documents: Neither Consultant nor its subcontractors will be responsible for errors or omissions in documents which are incomplete because of an early termination under this Section, or Consultant having been deprived of the opportunity to complete such documents and prepare them to be ready for construction.
5. Termination for Lack of Funds: If, for whatever reason, adequate funding is not made available to City to support or justify continuation of the level of Professional Services to be provided by Consultant under this Agreement, City may terminate or reduce the amount of Professional Services to be provided by Consultant under this Agreement. In such event, City will notify Consultant in writing at least thirty (30) days in advance of such termination or reduction of Professional Services for lack of funds.

## **B. DISPUTE RESOLUTION**

City and Consultant agree that disputes relative to the Project will first be addressed by negotiations between the Parties. If direct negotiations fail to resolve the dispute, the Party initiating the claim that is the basis for the dispute may take such steps as it deems necessary to

protect its interests; provided, however, that notwithstanding any such dispute, Consultant will proceed with the Professional Services as per this Agreement as if no dispute existed, and City will continue to make payment for Consultant's completed Professional Services; and provided further that no dispute will be submitted to arbitration without both Parties' express written consent.

#### **C. OWNERSHIP OF CONSULTANT DOCUMENTS**

Consultant will provide City a copy of all final Consultant Documents, including but not limited to prints, reproductions, reports, plans, specifications and related documents, which will become the property of City, provided that Consultant's copyrighted instruments will remain in the ownership of Consultant if Consultant, at Consultant's sole discretion, may so identify them by appropriate markings. If Consultant is paid in full for its Professional Services, then City may subsequently reuse these final documents without any additional compensation or agreement of Consultant. However, such reuse without written verification or adaptation by Consultant for the specific purpose intended by City will be at City's sole risk and without liability or legal exposure to Consultant. City does not take any responsibility for the reuse of documents by others.

#### **D. INSURANCE**

1. General: Consultant will maintain, throughout the duration of this Agreement, insurance (on an occurrence basis unless otherwise agreed to) of such types and in such amounts as required in **Exhibit F (City of Olathe Insurance Requirements)**. Professional Liability may be written on a "claims made" basis. Consultant will provide certificates of insurance and renewals thereof on forms acceptable to City (**Exhibit G – Certificate of Insurance**). Consultant is required to promptly notify City of a material change or cancellation of any policy listed on the Certificate.
2. Subcontractor's Insurance: If a part of the Professional Services under this Agreement is to be sublet, Consultant will either (a) cover all subcontractors in its insurance policies, or (b) require each subcontractor not so covered to secure insurance which will protect subcontractor against all applicable hazards or risks of loss in the minimum amounts designated herein. If Consultant selects option (b), then Consultant agrees to provide the City's Risk Manager a certificate of insurance acceptable to the Risk Manager at least seven (7) days prior to allowing the subcontractor to perform any services on this Project. Consultant agrees that any subcontractor providing services on said Project without providing a certificate of insurance acceptable to the City's Risk Manager will immediately cease all services on said Project and will assume all financial risk associated with such failure thereto.

#### **E. INDEMNITY**

1. Loss: For purposes of indemnification requirements, the term "Loss" means any and all loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including reasonable attorney's fees and the cost of defense), in connection with any action, proceeding, demand or claim for injury, including death, to any person or persons or damages to or loss of, or loss of the

use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with the performance of this Agreement.

2. Indemnification and Hold Harmless: For purposes of this Agreement, Consultant agrees to indemnify, defend and hold harmless City and its agents from any and all Loss where Loss is caused or incurred as a result of the intentional misconduct, recklessness, negligence, or other actionable fault of Consultant or its subcontractors. Neither acceptance of completed work nor payment therefor nor termination or expiration of this Agreement releases Consultant of its obligations under this paragraph.
3. Comparative Fault & Contributory Negligence: It is a specific element of consideration of this Agreement that the indemnity in Section V.E.2 will apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of City or any Third Party and, further notwithstanding any theory of law including, but not limited to, a characterization of City's or any Third Party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature; provided, however, that Consultant's obligation hereunder will not include amounts attributable to the fault or negligence of City or any Third Party for whom Consultant is not responsible.
4. Damage Limitations: The indemnification obligation contained in this Agreement will not be limited by any limitation on amount or type of damages, compensation or benefits payable by or for Consultant or its subcontractors, by the minimum insurance required by this Agreement, nor under workers' compensation acts, disability benefit acts, or other employee benefit acts.
5. Negligence by the City: Consultant is not required hereunder to defend City or its agents from assertions that they were negligent, nor to indemnify and hold them harmless from liability based on City's negligence.

#### **F. AFFIRMATIVE ACTION/OTHER LAWS**

1. Kansas Act Against Discrimination: During the performance of this Agreement, Consultant agrees that:
  - a. Consultant will observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and will not discriminate against any person in the performance of work under the present contract because of race, religion, color, gender, disability, national origin, ancestry, or age;
  - b. in all solicitations or advertisements for employees, Consultant will include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission ("commission");
  - c. if Consultant fails to comply with the way Consultant reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, Consultant will be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by City without penalty;

- d. if Consultant is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the commission which has become final, Consultant will be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency; and
  - e. Consultant will include the provisions of subsections a. through d. in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.
2. Exceptions to Applicability: The provisions of this Section will not apply to a contract entered into by City with Consultant if (a) Consultant employs fewer than four (4) employees during the term of such contract; or (b) Consultant's contract with City totals Ten Thousand Dollars (\$10,000) or less in aggregate.
  3. Kansas Age Discrimination in Employment Act: Consultant further agrees and acknowledges that it will abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this Project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.
  4. Kansas Fairness in Public Construction Contract Act: The Parties agree and acknowledge that the services provided under this Agreement are within the scope of the Kansas Fairness in Public Construction Contract Act (K.S.A. 16-1901 et seq.) and that no provision of this Agreement waives, alters, or supersedes any provisions of said Act.

#### **G. KANSAS OPEN RECORDS ACT**

Consultant acknowledges that City is subject to the Kansas Open Records Act (K.S.A. 45-215, *et seq.*). City retains the final authority to determine whether it must disclose any document or other record under the Kansas Open Records Act and the manner in which such document or other record should be disclosed.

#### **H. ENTIRE AGREEMENT**

This Agreement, including all documents and exhibits included by reference herein, constitutes the entire Agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both Parties to this Agreement. No form or document provided by Consultant after execution of this Agreement will modify this Agreement, even if signed by both Parties, unless it: 1) identifies the specific section number and section title of this Agreement that is being modified and 2) indicates the specific changes being made to the language contained in this Agreement.

#### **I. APPLICABLE LAW, JURISDICTION, AND VENUE**

Interpretation of this Agreement and disputes arising out of or related to this Agreement

will be subject to and governed by the laws of the State of Kansas, excluding Kansas' choice-of-law principles. Jurisdiction and venue for any suit arising out of or related to this Agreement will be in the District Court of Johnson County, Kansas.

**J. NO THIRD-PARTY BENEFICIARIES**

Nothing contained herein will create a contractual relationship with, or any rights in favor of, any Third Party.

**K. INDEPENDENT CONTRACTOR**

Consultant is an independent contractor and not an agent or employee of City.

**L. DELIVERABLES**

1. Project Drawings: Project drawings which are developed by Consultant using a Computer Aided Drafting (CAD) System will be made available to City per the City of Olathe Technical Specifications and Design Criteria for Public Improvements. However, due to the potential that the information set forth on the electronic media could be modified by City, or other City consultants, unintentionally or otherwise, Consultant will remove all indices of its ownership, professional corporation name, seal, and/or involvement from each electronic display. If City provides such electronic media to others for any purpose, City will require the electronic media to be returned to City upon completion of such use. City recognizes that use of such electronic media will be at City's sole risk and without any liability risk or legal exposure by Consultant.
2. Project Documentation: All documentation provided City other than Project drawings will be furnished in either Microsoft Word file format or pdf format.
3. Conformed To Construction Drawings ("As Built" Drawings): Following construction, City and/or construction contractor will provide copies of changes and alterations made in the field during construction to Consultant to provide Conformed To Construction Drawings per the City of Olathe Technical Specifications and Design Criteria for Public Improvements. Consultant may rely on the information provided by City in preparing such documents, subject to the professional standard of care required by this Agreement.

**M. COVENANT AGAINST CONTINGENT FEES**

Consultant represents that it has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this representation, City may terminate this Agreement without liability or may, in its discretion, deduct from the Total Fee or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

**N. NO SOLICITATION TO HIRE CITY EMPLOYEES**

1. No Solicitation to Hire: Except as otherwise provided in this section, during the term of this Agreement and for one year after the Agreement's expiration or termination, Consultant must not solicit to hire and then hire, or solicit to contract with and then contract with, any of the City's current employees involved with the oversight or implementation of this Agreement, including but not limited to the Project Manager.
2. No Restriction on City Employees: The foregoing restrictions shall not prevent City employees from affirmatively seeking employment elsewhere.
3. Liquidated Damages: The Parties agree that in the event of a breach of this provision that damages would be uncertain and difficult to accurately estimate. Therefore, if Consultant breaches this provision, Consultant agrees to pay City liquidated damages to the City equal to the annual salary of the applicable employee hired by or contracting with Consultant.

**O. COMPLIANCE WITH LAWS**

Consultant will abide by all applicable federal, state and local laws, ordinances and regulations applicable to the performance of Professional Services at the time the Professional Services are performed. Consultant will secure all occupational and professional licenses and permits from public and private sources necessary for the fulfillment of the obligations under this Agreement, and will provide City a copy of its certificate of good standing to conduct business in the State of Kansas with this Agreement (**Exhibit H**).

**P. TITLES, SUBHEADS AND CAPITALIZATION**

Titles and subheadings as used herein are provided only as a matter of convenience and will have no legal bearing on the interpretation of any provision of this Agreement. Some terms are capitalized throughout this Agreement but the use of or failure to use capitals has no legal bearing on the interpretation of such terms.

**Q. SEVERABILITY CLAUSE**

If any provision of this Agreement is determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) will be null and void; provided, however, that the remaining provisions of this Agreement will be unaffected and will continue to be valid and enforceable.

**R. AMBIGUITY CLAUSE AND HIERARCHY OF INTERPRETATION**

If any ambiguity, inconsistency or conflict arises in the interpretation of this Agreement, the same will be resolved by reference first to the terms and conditions of this Agreement, and any exhibits attached hereto or incorporated by reference as noted below. In the event of any conflict or inconsistency between this Agreement and its exhibits, the following hierarchy of interpretation will apply:

1. This Agreement;
2. Scope of Services (Exhibit B);
3. City's Request for Proposals/Request for Qualifications (incorporated by reference);
4. Consultant's Response to RFP/RFQ (incorporated by reference).

***[The remainder of this page is intentionally left blank.]***



**S. EXECUTION OF CONTRACT**

The parties hereto have caused this Agreement to be executed this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

**CITY OF OLATHE, KANSAS**

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

(SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney or Deputy/Assistant City Attorney

Freese & Nichols, Inc.

By: \_\_\_\_\_  
Clay Herndon, PE Principal/Vice President  
3600 NW 138<sup>th</sup> St., Suite 202  
Oklahoma City, OK 73134

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OF EXHIBITS**

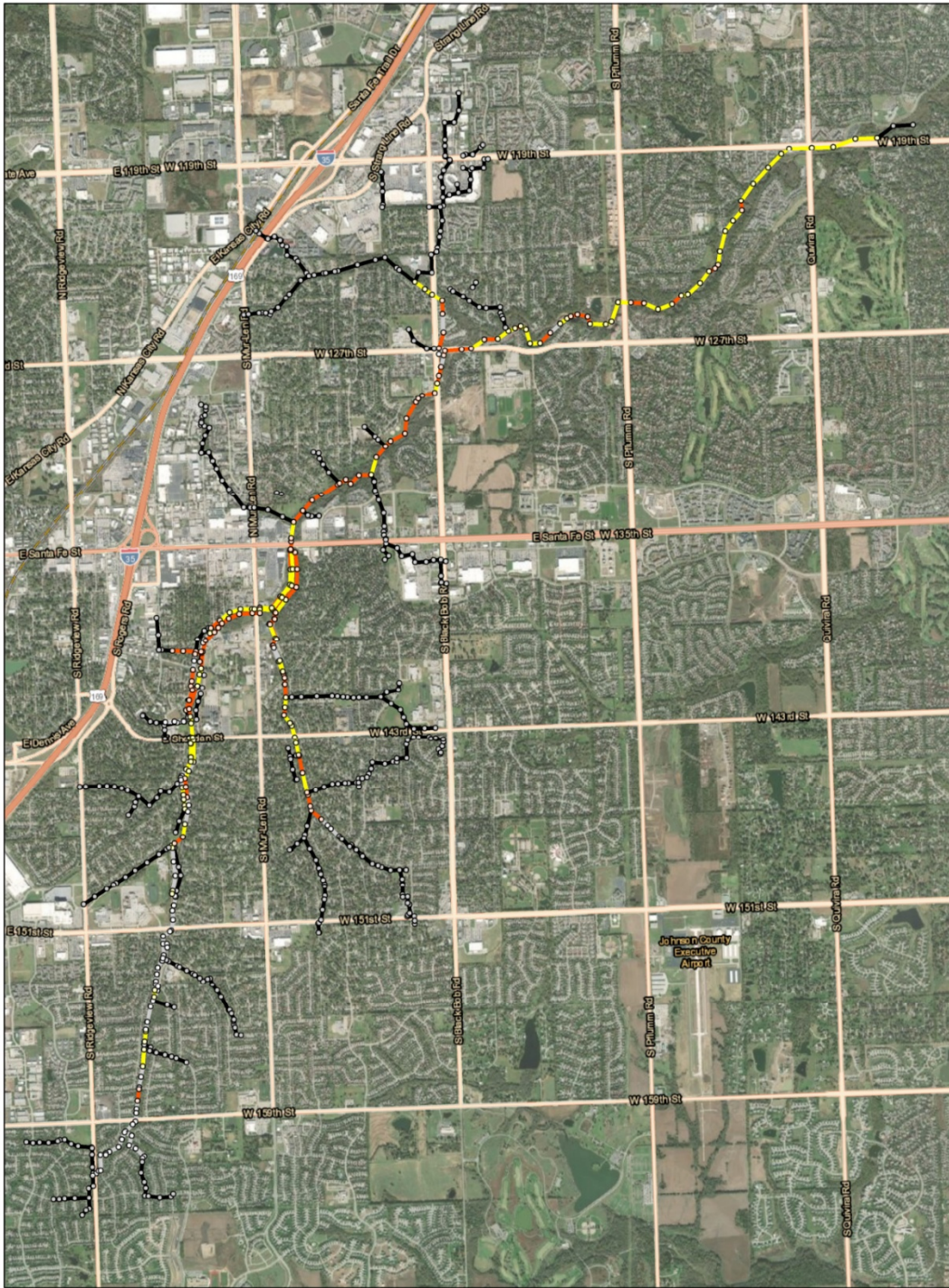
<b>Exhibit A</b>	<b>Description of Project &amp; Map</b>
<b>Exhibit B</b>	<b>Scope of Services</b>
<b>Exhibit C</b>	<b>Fee &amp; Rate Schedule</b>
<b>Exhibit D</b>	<b>Land Acquisition Checklist for Consultant Projects</b>
<b>Exhibit E</b>	<b>Utility Coordination Checklist</b>
<b>Exhibit F</b>	<b>City of Olathe Insurance Requirements</b>
<b>Exhibit G</b>	<b>Certificate of Insurance</b>
<b>Exhibit H</b>	<b>Certificate of Good Standing to Conduct Business in Kansas</b>

**EXHIBIT A**  
**DESCRIPTION OF PROJECT & MAP**

The Adopted Capital Improvement Plan (CIP) for 2025 to 2029 for the City of Olathe, KS includes the Indian Creek Trunk Main Rehabilitation Project (PN 1-C-004-25). According to the CIP, this Project is anticipated to include rehabilitation of up to approximately 27,000 linear feet of sanitary sewer trunk-mains ranging in size from 18-inches to 54-inches by pipe grouting, joint grouting, cured in place pipe (CIPP), manhole end seals, and/or other rehabilitation methods.

In 2019 and 2020, TREKK Design Group, LLC (TREKK) previously inspected over 73,500 linear feet of the sanitary sewer trunk-mains within the Indian Creek Sanitary Sewer Basin by CCTV for the City. Multi-sensory inspection was not performed as a part of this inspection. The results of the inspection are summarized in the following reports prepared by TREKK: Indian Creek Interceptor Flow and Rainfall Monitoring Technical Memorandum Dated July 21, 2020 and Indian Creek Interceptor Rehabilitation Recommendations Report Dated February 2021, which will be used as the foundation for rehabilitation design.

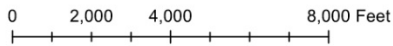
Of those mains that were inspected by TREKK, 63% or 53,960 linear feet of the trunk-mains had either visible infiltration and inflow (I&I) or structural damage. These trunk-mains have an observed estimated I&I of 169,020 gallons per day or 62 MG per year assuming these segments were leaking throughout the year at the same rate as observed. These segments were classified into three priority groups based on rehabilitation needs. This project will include rehabilitation of Priority 1 segments shown in the below figure.



**Priority Rating**

- Manholes
- Priority 1
- Priority 2
- Televised, No Recommendation
- Reference

**Priority Rehabilitation Recommendations**



Date: 12/8/2020



This map is for visual purposes only.  
TREKK cannot be held liable for  
the use or misuse of this information.

**Figure 1 – Priority Rehabilitation Recommendation Figure from the Indian Creek Interceptor Rehabilitation Recommendations Report Dated February 2021 Prepared by TREKK Design Group, LLC**

**EXHIBIT B**  
**SCOPE OF SERVICES**

PROJECT UNDERSTANDING

- A. The Indian Creek Trunk Main Rehabilitation Project (Project) includes rehabilitation of the existing Indian Creek Trunk Main, which consists of a 54"/48" trunk sewer that flows to the northeast and parallels Indian Creek in the northeast portion of the City of Olathe, KS (City) and extends into the western portion of the City of Overland Park, KS. The rehabilitation of the Indian Creek Trunk Main is to start at the downstream end of the trunk main that is owned and operated by the City, just east of the existing flow metering structure that is located just south of the intersection of Indian Creek Parkway and Nieman Road. Immediately downstream, the trunk sewer connects to an existing 54" sewer that is owned and operated by Johnson County Wastewater (JCW) and the flow continues downstream until it reaches the Douglas L. Smith Middle Basin Wastewater Treatment Facility, also owned and operated by JCW.
- B. The upstream extent of the existing Indian Creek Trunk Main that is to be rehabilitated is currently anticipated to be in the vicinity of the intersection of Indian Creek Parkway and Black Bob Road, but the upstream extent will ultimately be based on the budget that is currently allocated in the City's Adopted Capital Improvement Plan (CIP) for 2025 to 2029 (\$14,872,400) for the Project, which includes costs for construction, inflation, contingency, design, inspection, land acquisition, and City staff. For any rehabilitation of the existing Indian Creek Trunk Main, including portions upstream of the intersection of Indian Creek Parkway and Black Bob Road, that cannot be performed within the budget in the City's current CIP for the Project, such improvements will be included in a future project.
- C. For the extent of the rehabilitation of the existing Indian Creek Trunk Main described above, the rehabilitation will include the Priority 1 Segments shown in Figure 1 included in EXHIBIT A. Priority 2 Segments in this reach may be included as budget allows, especially if such segments are adjacent to Priority 1 Segments and can be cost-effectively addressed in conjunction with adjacent Priority 1 Segments.
- D. The primary basis for the design of the rehabilitation of the Indian Creek Trunk Main is described in the Indian Creek Interceptor Rehabilitation Recommendations Report Dated February 2021 prepared by TREKK Design Group, LLC (TREKK Report) as well as per discussions between Freese and Nichols, Inc. (Consultant) and City staff during scoping meetings. The TREKK Report discussed possible rehabilitation methods for the Indian Creek Trunk Main, including Cured in Place Pipe (CIPP) lining, spiral wound lining, sliplining, and/or spray lining, and ultimately recommended CIPP lining. In addition, the TREKK Report recommended the performance of pipe joint grouting for the pipe segments where either active inflow and infiltration or staining was observed, installation of end seals at manholes, and installation of lateral liners for the few laterals connected to the trunk sewer, all to reduce the inflow and infiltration as well as reduce the hydrostatic pressure behind the proposed CIPP lining.

ASSUMPTIONS

- A. The Indian Creek Sanitary Sewer Basin Hydraulic Study Draft Report Revision 1 dated December 20, 2024 prepared by Burns & McDonnell Engineering Company, Inc. indicates that there are capacity restrictions within the Indian Creek Trunk Main. The draft study indicates trunk mains that are modelled experience surcharging during as low as a 2-Year, 24-Hour Design Storm; despite this, the City has had no indication of surcharging directly attributable to the Indian Creek Trunk Sewer over the past decade. In the interest of budget, the City has indicated that upsizing the entire

interceptor to reduce all bottlenecks is financially infeasible for the foreseeable future. It is assumed that rehabilitation of the trunk main will increase the effective capacity of the interceptor due to the expected removal of I&I during peak storm events, and hence will benefit the level of service of the trunk main.

- B. For the portions of the existing Indian Creek Trunk Main that do not currently meet the City’s Design Criteria for Sanitary Sewers and Appurtenances or the Kansas Department of Health and Environment (KDHE)’s Minimum Standards of Design for Water Pollution Control Facilities (Minimum Standards), it will be assumed that no relocation, replacement, or upsizing of the existing Indian Creek Trunk Sewer will be required as a part of this Project so that the trunk sewer conforms to the current requirements in City’s Design Criteria or KDHE’s Minimum Standards.
- C. The City recently replaced the existing flume and flow metering equipment at the far downstream of the Indian Creek Trunk Main. It is assumed no improvements, modifications, or rehabilitation are needed of the flume or flow metering equipment as a part of this Project.
- D. It is assumed the existing Indian Creek Trunk Sewer is primarily located in existing rights-of-way or easements and that some additional rights-of-way or easements may be needed to be acquired for the rehabilitation of the existing trunk sewer associated with this Project. Consultant will notify City if existing rights-of-way or easements are later determined to be insufficient. If any land acquisition is required, it will be performed by the City’s internal land agents with support from the Consultant and a survey subconsultant acceptable to the City. For any impacts to existing trees, determination will be made by the City’s arborist.
- E. The Project will be delivered by the design-bid-build delivery method. Alternative procurement through the Johnson County’s Cooperative Procurement with Other Jurisdictions, through the Mid America Regional Council (MARC) Cooperative Purchasing Programs, or other programs that the City participates in may also be utilized.
- F. The Project budget in the CIP for 2025 to 2029 is as follows:

<u>Expenditures</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>Total</u>
Construction	\$1,451,600	\$4,075,000	\$3,018,200	\$8,544,800
Inflation	\$458,200	\$1,874,400	\$1,414,000	\$3,746,600
Contingency	\$218,000	\$612,000	\$453,000	\$1,283,000
Design	\$553,000	\$0	\$0	\$553,000
Inspection	\$51,000	\$143,000	\$106,000	\$300,000
Land Acquisition	\$250,000	\$0	\$0	\$250,000
<u>Staff</u>	<u>\$65,000</u>	<u>\$65,000</u>	<u>\$65,000</u>	<u>\$195,000</u>
<b>Total</b>	<b>\$3,046,800</b>	<b>\$6,769,400</b>	<b>\$5,056,200</b>	<b>\$14,872,400</b>

- G. KDHE does not require a permit for the maintenance and repair of a public sanitary sewer line. Therefore, it will be assumed no coordination with KDHE or submittals to KDHE will be required for this Project.
- H. Plans for the Project will be developed based on available record drawings and GIS and inspection data provided by the City. The Plans will be primarily created in GIS. The existing plan and profile drawings of the existing Indian Creek Trunk Sewer will not be re-created in CAD but such drawings will be included in the Plans for information only. No field surveys or subsurface utility engineering will be performed by the Consultant to generate the Plans. In lieu of field surveys, City to provide all

required GIS, inspection, and survey data (based on the North American Datum 1983, Kansas State Plane North 1501 feet coordinate system) required to develop the Plans for the Project in accordance with the City's Design Criteria, including:

1. Title Sheet
  - a. Project benchmark(s) from the Johnson County Horizontal and Vertical Control Network.
  - b. Zoning information, if required to be shown.
2. General Layout Sheet
  - a. Names of subdivisions, if required to be shown.
  - b. Block designation, if required to be shown.
  - c. Lot designation, if required to be shown.
  - d. Street names.
  - e. Quarter section corners from the Johnson County Horizontal and Vertical Control Network.
  - f. Project boundary, survey control and reference ties, if required to be shown.
  - g. Location of all existing sanitary sewer and waterlines properly designated within or adjacent to the project area, including sanitary sewer lines owned by JCW and waterlines owned by Water District No. 1 of Johnson County (WaterOne).
  - h. City project name and number of any adjacent utilities, if required to be shown.
  - i. Connection points to existing facilities (tied to a known point on existing facility) and the type of connection to be utilized, if applicable.
3. Plan and Profile Sheets
  - a. Existing and proposed streets with names and widths.
  - b. Existing and proposed property lines, lot numbers, block numbers and subdivision names.
  - c. All existing and proposed utilities including power, gas, oil, water, telephone, sewer, street lights, traffic signals, and other items as necessary.
  - d. All existing and proposed improvements within seventy-five (75) feet each side of the center line. This shall include streets, curbs and gutters, driveways, culverts, fire hydrants, utility poles, trees, shrubs, fences, walls, houses, and other such items, and shall be identified as to type, size, material, etc.
  - e. All existing easement and right-of-way information recorded with the Johnson County Treasury, Taxation, and Vehicles Department.
  - f. Channel centerline of waterways within fifty (50) feet of the sanitary sewer lines.
  - g. All manholes (including manholes within JCW's sanitary sewer system) with manhole designation, station, and invert elevations. Drop, shallow and special manholes shall be designated as such. Invert elevations shown shall be the invert of the pipe in and out of the manhole. The proposed top elevation of the manhole shall be shown. Distance between manholes shall be shown as well as the gradient, pipe size, and pipe material.
  - h. Station, slope, and length of each service line.
  - i. Topographic information in order to provide the profile of existing grade and the proposed grade. The flow line of any drainage channel, either improved or unimproved, within fifty (50) feet of the sewer line shall also be included and properly identified.
  - j. All utility crossings with approximate elevations.
  - k. Locations of all cleanouts, if applicable.

### BACKGROUND INFORMATION

The reports and data made available by the City related to the Project and/or the Indian Creek Sanitary Sewer Basin for the development of this Scope of Services include:

- A. GIS Data
  1. GIS Data of “Indian Creek Manholes” and “Indian Creek Trunk Mains” Provided by the City on January 6, 2025.
- B. Master Plan
  1. Indian Creek Sanitary Sewer Rehabilitation Master Plan Report Dated November 2012 Prepared by CH2MHill (Now Jacobs Engineering Group).
- C. Modeling Data
  1. EPA SWMM Model of the Indian Creek Trunk Sewer Provided by the City on January 28, 2025.
- D. Record Drawings
  1. Linking Interceptor Sewer Project Record Drawings Dated 1988 Prepared by Van Doren, Hazard, Stallings and Green Engineering Services.
  2. Main Sewer District No. 10 Interceptor Sewer Conformed to Construction Record Drawings Dated 1973 Prepared by Black & Veatch Corporation.
- E. Reports and Memoranda Prepared by Burns & McDonnell Engineering Company, Inc.
  1. 118598 – Indian Creek Manhole Evaluation Memorandum Dated June 19, 2020.
  2. Flow Monitoring and Indian Creek Sanitary Sewer Basin Hydraulic Study Draft Report Revision 1 Dated December 20, 2024 (Hydraulic Study).
  3. Leopold-Lagco Flume Analysis Report Revision B Dated November 9, 2020.
- F. Reports and Memoranda Prepared by TREKK Design Group, LLC
  1. Indian Creek Flow Monitoring Technical Memorandum and Inflow and Infiltration Reduction Recommendations Dated November 8, 2019.
  2. Indian Creek Interceptor Flow and Rainfall Monitoring Technical Memorandum Dated July 21, 2020.
  3. Indian Creek Interceptor Rehabilitation Recommendations Report Dated February 2021.

**ARTICLE I**

**BASIC SERVICES:** Freese and Nichols, Inc. (Consultant) shall render the following professional services in connection with the development of the Project:

- A. **PROJECT MANAGEMENT, INITIATION, SCHEDULING, AND QUALITY MANAGEMENT:** Consultant shall coordinate internally and with the City for successful initiation, planning, execution, monitoring/controlling, and closeout. Consultant shall manage integration, scope, schedule, budget, cost, quality, staffing resources, communications, risk, and procurements, as necessary. This includes:
  1. Consult with the City to verify specific design requirements for the Project.
  2. Collect and review available existing information, including record drawings, reports, and GIS and modeling data.
  3. Perform field investigations as necessary to confirm final design parameters and construction requirements. Field surveying and subsurface utility engineering (SUE) are to be considered an additional service.
  4. Direction and coordination of Consultant’s project team and staff for completion of required tasks and deliverables listed herein.



5. Direction and coordination of any sub-consultants of Consultant, including monitoring, scheduling, reporting, invoicing, quality reviews, for completion of required tasks and deliverables of any sub-consultants as necessary.
6. Coordination with project stakeholders, including:
  - a. City's Parks & Recreation Department for traffic control and/or closure for the portion of the Indian Creek Trail located west of Pflumm Road to the southern/western end of the Project.
  - b. City of Overland Park, KS Parks & Recreation Department for traffic control and/or closure for the portion of the Indian Creek Trail located east of Pflumm Road to the northern/eastern end of the Project.
  - c. JCW for possible sanitary sewer bypass opportunities during construction. Coordination is limited to up to three (3) in person or virtual meetings. If the construction contractor elects to perform a bypass of the Indian Creek Trunk Sewer into JCW's sanitary sewer system, construction contractor is to provide all required coordination with JCW. Any additional meetings required by Consultant with JCW is considered an additional service.
7. Provide monthly progress reports to the City. Progress reports will be submitted monthly with pay requests.
8. Develop a baseline project design schedule and provide updated progress schedules as necessary as changes occur and submit to the City.
9. Perform internal quality management including quality control and quality assurance prior to submitting work products and design deliverables to the City. Maintain these documents pertaining to internal quality management as part of the project records.
10. DELIVERABLES:
  - a. Monthly progress reports and pay requests.
  - b. Baseline project design schedule and updated progress schedule(s) as necessary.

B. PRELIMINARY DESIGN PHASE: Consultant shall provide professional services in this phase as follows:

1. Develop Indian Creek Trunk Sewer Rehabilitation Project Technical Memorandum (TM), which will include the following:
  - a. Review of the relevant findings of the current condition of the trunk sewer based on available record drawings, GIS, inspection, and modeling data and reports, including CCTV inspection data, provided by the City as well as GIS data available through Johnson County's Automated Information Mapping System (AIMS).
  - b. Evaluation of the rehabilitation methods appropriate for the trunk sewer and consider possible capacity restrictions with each method by performing a limited hydraulic capacity analysis based on the results of the recent Hydraulic Study performed by others and provide recommendations for suitable rehabilitation method(s) for the trunk sewer, including considerations for bypass pumping.
  - c. Evaluation of the rehabilitation methods appropriate to reduce the inflow and infiltration as well as reduce the hydrostatic pressure behind the proposed lining as required for the suitable rehabilitation method(s) for the trunk sewer, including considerations for bypass pumping. This may include pipe joint grouting for the pipe segments where either active inflow and infiltration or staining was observed, installation of end seals at manholes, and installation of lateral liners for the few laterals connected to the trunk sewer.
  - d. Perform outreach to contractors who have experience with the recommended suitable rehabilitation method(s) for the trunk sewer.
  - e. Develop a Preliminary Opinion of Probable Construction Cost (OPCC) for the recommended rehabilitation method(s) for the trunk sewer. The OPCC will be a Class 4 estimate based on the AACE International Recommended Practice No. 56R-08.

2. Submit a DRAFT Indian Creek Trunk Sewer Rehabilitation Project TM for review by the City.
    - a. Prepare and participate in an in-person or virtual review meeting for the draft TM with the City.
    - b. Incorporate comments from the City and update the TM as necessary.
  3. Submit a FINAL Indian Creek Trunk Sewer Rehabilitation Project TM.
  4. DELIVERABLES:
    - a. Draft TM and Preliminary OPCC – One (1) electronic copy in PDF format.
    - b. Final TM and Preliminary OPCC – One (1) electronic copy in PDF format.
- C. FINAL DESIGN PHASE: Consultant shall provide professional services in this phase as follows:
1. Prepare 60% Design Plans and Specifications based on the following:
    - a. Plans and Specifications will be developed in general accordance with the requirements listed in the City’s Design Criteria for Public Improvement Projects, Revised 2024 (City’s Design Criteria) and the City’s Technical Specifications for Public Improvement Projects, Revised January 2024 (City’s Technical Specifications).
    - b. Plans are to be 22” x 34”. The horizontal scale will be 1” = 100’ for the general layout sheets, unless otherwise approved by the City.
    - c. Plans will be developed based on the North American Datum 1983, Kansas State Plane North 1501 feet coordinate system.
    - d. Plans for the Project will be developed in GIS based on available record drawings and GIS, inspection, and survey data provided by the City as stated in the assumptions above. No field surveys or SUE will be performed by the Consultant to develop the Plans.
    - e. Plans will include a title sheet, general notes sheet, general layout sheet, and standard and special detail sheets in general conformance with the City’s Design Criteria. No plan and profile sheets will be developed, but the existing plan and profile drawings will be included in the plans for information only. Standard detail sheets will include City’s Standard Details for Public Street, Stormwater and Utility Improvement Projects, Revised January 2024, as applicable. No grading plan, erosion control and sedimentation control plan sheets, intersection details, or drainage map and calculations will be developed or included in the Plans.
    - f. Specifications will be developed based on the City’s standard front-end documents and the City’s Technical Specifications. Additional front-end documents and technical specifications will be developed based on the Consultant’s standard specifications as required.
    - g. Develop an OPCC for the 60% Design Plans and Specifications. The OPCC will be a Class 2 estimate based on the AACE International Recommended Practice No. 56R-08.
    - h. Perform internal quality control review of the 60% Design Plans, Specifications, and OPCC.
    - i. Submit the 60% Design Plans, Specifications, and OPCC for review by the City.
    - j. Prepare and participate in an in-person or virtual design review meeting to review the 60% Design Plans, Specifications, and OPCC with the City.
  2. Prepare 100% Design Plans and Specifications based on the following:
    - a. Incorporate comments and feedback from the City on the 60% Design Plans and Specifications. Develop the Draft 100% Design Plans and Specifications.
    - b. Develop an OPCC for the Draft 100% Design Plans and Specifications. The OPCC will be a Class 1 estimate based on the AACE International Recommended Practice No. 56R-08.
    - c. Perform internal quality control review of the Draft 100% Design Plans, Specifications, and OPCC.
    - d. Submit the Draft 100% Design Plans, Specifications, and OPCC for review by the City.
    - e. Incorporate comments and feedback from the City on the Draft 100% Design Plans and Specifications. Develop the Final 100% Design Plans and Specifications.
    - f. Submit the Final 100% Design Plans, Specifications, and OPCC for review by the City.

- g. Upon approval of the City, City to submit one set of the Plans to each of the private and public utility companies as necessary per the City's Design Criteria.
3. **DELIVERABLES:**
- a. 60% Deliverable:
    - i. Design Plans – One (1) electronic copy in PDF format.
    - ii. Design Specifications – One (1) electronic copy in PDF format.
    - iii. OPCC – One (1) electronic copy in PDF format.
  - b. Draft 100% Deliverable:
    - i. Draft Final Design Plans – One (1) electronic copy in PDF format.
    - ii. Draft Final Design Specifications – One (1) electronic copy in PDF format.
    - iii. Draft Final OPCC – One (1) electronic copy in PDF format.
  - c. Final 100% Deliverable:
    - i. Final Design Plans – Three (3) full size paper copies and One (1) electronic copy in CAD and PDF format
    - ii. Final Design Specifications – One (1) electronic copy in PDF format.
    - iii. Final OPCC – One (1) electronic copy in PDF format.
- D. **BIDDING PHASE:** Upon completion of the FINAL DESIGN PHASE Consultant shall provide professional services in this phase as follows:
- 1. Bid document production and distribution method will be via the City Procurement Office's preferred vendor: Bonfire. City will upload the final bid documents to the City's website and preferred vendor's website for bidding purposes.
  - 2. Assist the City in conducting a pre-bid conference for the Project and coordinate responses with the City. Response to the pre-bid conference will be in the form of addenda issued after the conference. Attend the tour of the project site after the pre-bid conference.
  - 3. Assist City by responding to questions and interpreting bid documents. Assist City by preparing and issuing addenda to the bid documents to plan holders, as necessary.
  - 4. City to furnish copies of the Contract Documents to the construction contractor pursuant to the General Conditions of the Contract Documents.
- E. **CONSTRUCTION PHASE:** Upon completion of the BIDDING PHASE Consultant shall provide professional services in this phase as follows:
- 1. No Construction Phase Services are included. Construction Phase Services will be negotiated at a later date between the City and the Consultant and added via a supplemental agreement.

**ARTICLE II**

**SPECIAL SERVICES:** Consultant shall render the following professional services, which are not included in the Basic Services described above, in connection with the development of the Project:

- 1. Surveying in support of City's land agents for land acquisition activities, including the performance of site surveys and development of legal descriptions and figures as required. A \$50,000 allowance will be included for surveying support to be performed by a subconsultant acceptable to the City. FNI will prepare specifications and a work plan for the surveying to be performed by the subconsultant also as a part of this allowance. Any additional surveying services exceeding the allowance will be considered as an additional service.

2. Geotechnical investigation and reporting services in support of the design of the type(s) of rehabilitation to be performed of the trunk sewer. A \$50,000 allowance will be included for geotechnical investigation and reporting support to be performed by a subconsultant acceptable to the City. FNI will prepare specifications and a work plan for the geotechnical investigation to be performed by the subconsultant also as a part of this allowance. Any additional geotechnical investigation and reporting services exceeding the allowance will be considered as an additional service.

### ARTICLE III

**ADDITIONAL SERVICES:** Any services performed by Consultant that are not included in the Basic Services or Special Services described above are to be considered Additional Services. Additional Services to be performed by Consultant, if authorized by the City, are described as follows:

1. Field surveying and/or subsurface utility engineering required for the preparation of designs and plans.
2. Provide surveying that is not included in the allowance for surveying included in Special Services.
3. Field layouts or the furnishing of construction line and grade surveys.
4. GIS mapping services or assistance with these services.
5. Making property, boundary and right-of-way surveys, preparation of easement and deed descriptions, including title search and examination of deed records.
6. Providing services to investigate existing conditions or facilities, or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by City. This includes performance of additional CCTV inspections, multi-sensor inspections, manhole interior inspections, inspections to determine the remaining wall thickness and/or reinforcement profile of existing concrete pipe, or other testing and inspections for the condition assessment of an existing sanitary sewer.
7. Performing detailed hydraulic modeling or performing a hydraulic capacity analysis of an existing sanitary sewer.
8. Providing renderings, model, and mock-ups requested by the City.
9. Revisions to drawings, specifications, or other documents when such revisions are 1) not consistent with approvals or instructions previously given by the City or 2) due to other causes not solely within the control of the Consultant.
10. Providing consultation concerning the replacement of any Work damaged by fire or other cause during construction and providing services as may be required in connection with the replacement of such Work.
11. Investigations involving consideration of operation, maintenance and overhead expenses, and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals, evaluations, assessment schedules, and material audits or inventories required for certification of force account construction performed by City.
12. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
13. Providing shop, mill, field or laboratory inspection of materials and equipment. Observe factory tests of equipment at any site remote to the project or observing tests required as a result of equipment failing the initial test.
14. Conducting pilot plant studies or tests.
15. Preparing operation and maintenance manuals or conducting operator training.
16. Preparing data and reports for assistance to City in preparation for hearings before regulatory agencies, courts, arbitration panels or any mediator, giving testimony, personally or by

- deposition, and preparations therefore before any regulatory agency, court, arbitration panel or mediator.
17. Furnishing the services of a Resident Project Representative to act as the City's on-site representative during the Construction Phase of the Project.
  18. Furnishing Special Inspections required under Chapter 17 of the International Building Code.
  19. Assisting the City in preparing for, or appearing at litigation, mediation, arbitration, dispute review boards, or other legal and/or administrative proceedings in the defense or prosecution of claims disputes with the construction contractor.
  20. Performing investigations, studies and analyses of substitutions of equipment and/or materials or deviations from the drawings and specifications.
  21. Assisting the City in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this Agreement. Such services, if any, shall be furnished by the Consultant on a fee basis negotiated by the respective parties outside of and in addition to this Agreement.
  22. Providing environmental support services including the design and implementation of ecological baseline studies, environmental monitoring or testing, impact assessment and analyses, permitting assistance, and other assistance required to address environmental issues.
  23. Performing investigations, studies, and analysis of work proposed by construction contractors to correct defective work.
  24. Design, contract modifications, studies or analysis required to comply with local, State, Federal or other regulatory agencies that become effective after the date of this Agreement.
  25. Services required to resolve bid protests or to rebid the projects for any reason.
  26. Visits to the site in excess of the number of trips noted herein for periodic site visits, coordination meetings, or contract completion activities.
  27. Any services required as a result of default of the construction contractor(s) or the failure, for any reason, of the construction contractor(s) to complete the work within the contract times.
  28. Providing services after the completion of the construction phase not specifically listed in Article I or Article II herein.
  29. Providing basic or additional services on an accelerated time schedule or other than as described herein.
  30. Providing services made necessary because of unforeseen, concealed, or differing site conditions or due to the presence of hazardous substances in any form.
  31. Providing services to review or evaluate construction contractor claim(s), provided said claim(s) are supported by causes not within the control of the Consultant.
  32. Providing value engineering studies or reviews of cost savings proposed by construction contractors after bids have been submitted.
  33. Provide follow-up professional services during construction contractor's warranty period.
  34. Provide geotechnical investigations, studies and reports that are not included in the allowance for geotechnical investigation and reporting included in Special Services.
  35. Coordinate the work of testing laboratories and inspection bureaus required for the testing or inspection of materials, witnessed tests, factory testing, etc. for quality control of the Project other than those listed in Basic Services or Special Services. The cost of such quality control shall be paid by the City.
  36. Providing bidding services in the event that the project is rebid by the City, including for bids exceeding the cost estimate.
  37. Providing revised designs, plans, or specifications as required by the City to reduce the construction cost due to the result of bids exceeding the cost estimate.

**EXHIBIT C**  
**Fee & Rate Schedule**

**EXHIBIT C - FEE & RATE SCHEDULE**

<b><u>Position</u></b>	<b><u>Hourly Rate</u></b>
Professional 1	139
Professional 2	170
Professional 3	193
Professional 4	219
Professional 5	257
Professional 6	297
Construction Manager 1	120
Construction Manager 2	150
Construction Manager 3	163
Construction Manager 4	203
Construction Manager 5	245
Construction Manager 6	282
Construction Representative 1	108
Construction Representative 2	120
Construction Representative 3	150
Construction Representative 4	163
CAD Technician/Designer 1	118
CAD Technician/Designer 2	155
CAD Technician/Designer 3	189
Corporate Project Support 1	114
Corporate Project Support 2	137
Corporate Project Support 3	182
Intern / Coop	77

**Rates for In-House Services and Equipment**

<b><u>Mileage</u></b>	<b><u>Bulk Printing and Reproduction</u></b>		<b><u>Equipment</u></b>		
Standard IRS Rates		<u>B&amp;W</u>	<u>Color</u>	Valve Crew Vehicle (hour)	\$75
	Small Format (per copy)	\$0.10	\$0.25	Pressure Data Logger (each)	\$500
<b><u>Technology Charge</u></b>	Large Format (per sq. ft.)			Water Quality Meter (per day)	\$100
\$8.50 per hour	Bond	\$0.25	\$0.75	Microscope (each)	\$150
	Glossy / Mylar	\$0.75	\$1.25	Ultrasonic Thickness Guage (per day)	\$275
	Vinyl / Adhesive	\$1.50	\$2.00	Coating Inspection Kit (per day)	\$275
	Mounting (per sq. ft.)	\$2.00		Flushing / Cfactor (each)	\$500
	Binding (per binding)	\$0.25		Backpack Electrofisher (each)	\$1,000
				<u>Survey Grade</u>	<u>Standard</u>
				Drone (per day)	\$200     \$100
				GPS (per day)	\$150     \$50

**OTHER DIRECT EXPENSES:**

Other direct expenses are reimbursed at actual cost times a multiplier of 1.00. They include outside printing and reproduction expense, communication expense, travel, transportation and subsistence away from the FNI office. For other miscellaneous expenses directly related to the work, including costs of laboratory analysis, test, and other work required to be done by independent persons other than staff members, these services will be billed at a cost times a multiplier of 1.10. For Resident Representative services performed by non-FNI employees and CAD services performed In-house by non-FNI employees where FNI provides workspace and equipment to perform such services, these services will be billed at cost times a multiplier of 2.0. This markup approximates the cost to FNI if an FNI employee was performing the same or similar services.

**These ranges and/or rates will be adjusted annually in February. Last updated 2025.**

## EXHIBIT D

### LAND ACQUISITION CHECKLIST FOR CONSULTANT PROJECTS

**Complete submittal of these documents is required 7 months prior to bid opening.**

- \_\_\_ Determine what types of easements are required for each tract:
  - i.e. Street Dedication; Permanent Street Easement; Temporary Construction Easement; Permanent Utility Easement; Permanent Drainage Easement; Permanent Sanitary Sewer Easement; Permanent Waterline Easement; Permanent Sidewalk & Utility Easement; Permanent Wall Easement; Permanent Bike Trail, Utility & Recreational Easement.
  
- \_\_\_ REQUIRED INFORMATION:
  - a) City Project No. and Project Name
  - b) Current Ownership (both husband and wife's name, even if only owned by one spouse)
    - 1) If a trust, the name and date of the trust
    - 2) If a corporation or LLC, state of incorporation or formation
    - 3) If partnership, full name of partnership
  - c) Johnson County Parcel ID number
  - d) Number the tracts in the project (up one side and down the other) (Tract No. \_\_)
  - e) Situs Address
  - f) Mailing Address
  - g) Legal description of the new taking, including total square footage
  - h) Tract map
  - i) Ownership & Encumbrance (O&E) title report, not more than 9 months since certification, showing current ownership, liens, mortgages, existing easements, leases (if recorded) and any other encumbrances upon the property. This requirement also includes tracts where only a temporary construction easement is needed.
  - j) Copy of last deed(s) of record. If an undivided interest is conveyed in the deed, provide copies of all deeds which comprise the whole interest. (If undivided one-half is conveyed to husband's trust and undivided one-half interest is conveyed to wife's trust, provide copies of both deeds.
  - k) Common errors to avoid – verify marital status. *BEFORE SUBMITTING DOCUMENTS TO CITY OF OLATHE VERIFY THE O&E'S TO ENSURE OWNERSHIP HAS NOT CHANGED.*



\_\_\_\_ Tract Map will be considered complete when it contains the following information (example available upon request):

- a) Map of entire property (May not be possible on large parcels and still showing legible taking) showing location of the proposed easement(s) and existing easements. Any trees to be removed, fences to be moved, monument signs, and irrigation systems should be noted on the plans. Outlines of buildings are to be shown on the plans so that it is evident how close the easements are to the existing building. Dimensions/bearings for easements to be clearly shown on map. It is acceptable to place all easements on one exhibit as long as each easement is easily identified. If the exhibit is too cluttered, then the easements should be placed on separate exhibits with permanent easements on one exhibit and temporary easements on a separate exhibit. EASEMENT SHALL BE CLEARLY VISIBLE ON DRAWING. Johnson County Register of Deeds scans the recorded easement in black and white, so be aware of this when drawing the easement on the tract map. Make sure easement area can easily be seen in black and white.
- b) Property owner's names, mailing address, situs address (if different from mailing address), Johnson County Parcel ID number, and tract number.
- c) Map of tract should show dimensions of tract and property lines clearly marked.
- d) Common errors to avoid: North arrow pointing in the wrong direction, verification that the easement legal description closes upon itself.

\_\_\_\_ Legal description and tract maps shall be signed by a Registered Land Surveyor stating that the ownership, easement legal descriptions, description in the deed for the entire tract only when a total property taking is occurring, and surveys for the easement area have been personally reviewed and determined to be accurate in accordance with the plans for the project. The consultant shall make corrections, at no cost to the City, to fix errors determined by the City or the Johnson County Register of Deeds that are the responsibility of the Registered Land Surveyor. These errors may include but are not limited to clerical errors, inconsistencies between the easement legal description and tract map, easement legal description not closing upon itself, or other errors in requirements on this checklist. **Both legal description and tract map(s) shall be marked Exhibit "A" as referenced in the easement documents.**

\_\_\_\_ Appropriate easement document in Word (sometimes referred to as "front end" document). PDF's are available on the City's website (<http://www.olatheks.org/government/public-works/dedications-easements>).

Word copies can be obtained by contacting the Olathe Public Works Department Project Manager.

\_\_\_\_ Submit Documents to Public Works staff in electronic format:

- Word copy of legal description
- PDF of signed and sealed legal description

- Tract map signed and sealed
- Word copy of easement ("front end") document
- O&E title report
- Last deed of record

EXHIBIT E

## Utility Coordination Olathe CIP projects

Each project is unique and can be expected to have varying degrees of impact to utilities ranging from minor adjustments to complex and lengthy relocations. A successful utility coordination process has three main facets simplified to:

- What is in conflict
- Where it will be moved
- How long it will take to move it

The checklist below is a tool to help with this process.

The city's project design firm will have primary responsibility for Coordination and Design phases with participation from the city staff. The city staff will have primary responsibility for Construction (utility relocate) phases. City staff may consult with the project design firm if changes or issues arise during the construction phase.

*Please also reference APWA Section 5900 – Best Management Practices: Utility Coordination for CIP*

- Design Firm/Surveyor call in locates early in the project design phases**
  - Note – often utilities will be labeled clear or fail to mark lines as part of a design ticket. Non-response tickets may be required. Additional issues shall be reported to the City for assistance.
  
- Project notice to utilities as soon as utilities in the project footprint have been identified (notify all utilities listed on KS One Call tickets)**
  - Describe project improvements
  - Request detailed existing mapping
  - Request documentation of any private easements and claims for reimbursement
  - Provide a general schedule and include a response by date
  - Copy Project Manager and Utility Coordinator
  
- Survey locates (as much detail as possible) once all utilities have been marked as per locate requests**
  - Survey locate marks by provider
  - Survey utility boxes, vaults, and other structures (make note of provider)
  - Make note of overhead infrastructure in addition to each power pole.
    - Transformers, COM attachers, power or COM risers, guy wires, etc.
  
- Incorporate survey into project plans for 30% submittal**

*(Any utility line work on plans shall only be from survey of utility marks or pothole points. Small gaps can be filled by mapping info and needs to be noted as such)*

  - Label lines and facilities **by provider**
    - Include boxes, vaults, and other structures (by provider)
    - Note overhead infrastructure in addition to each power pole
      - Transformers, COM attachers, power or COM risers, guy wires, etc...
    - See **EXHIBIT E.1** for examples of how information will need to be captured.

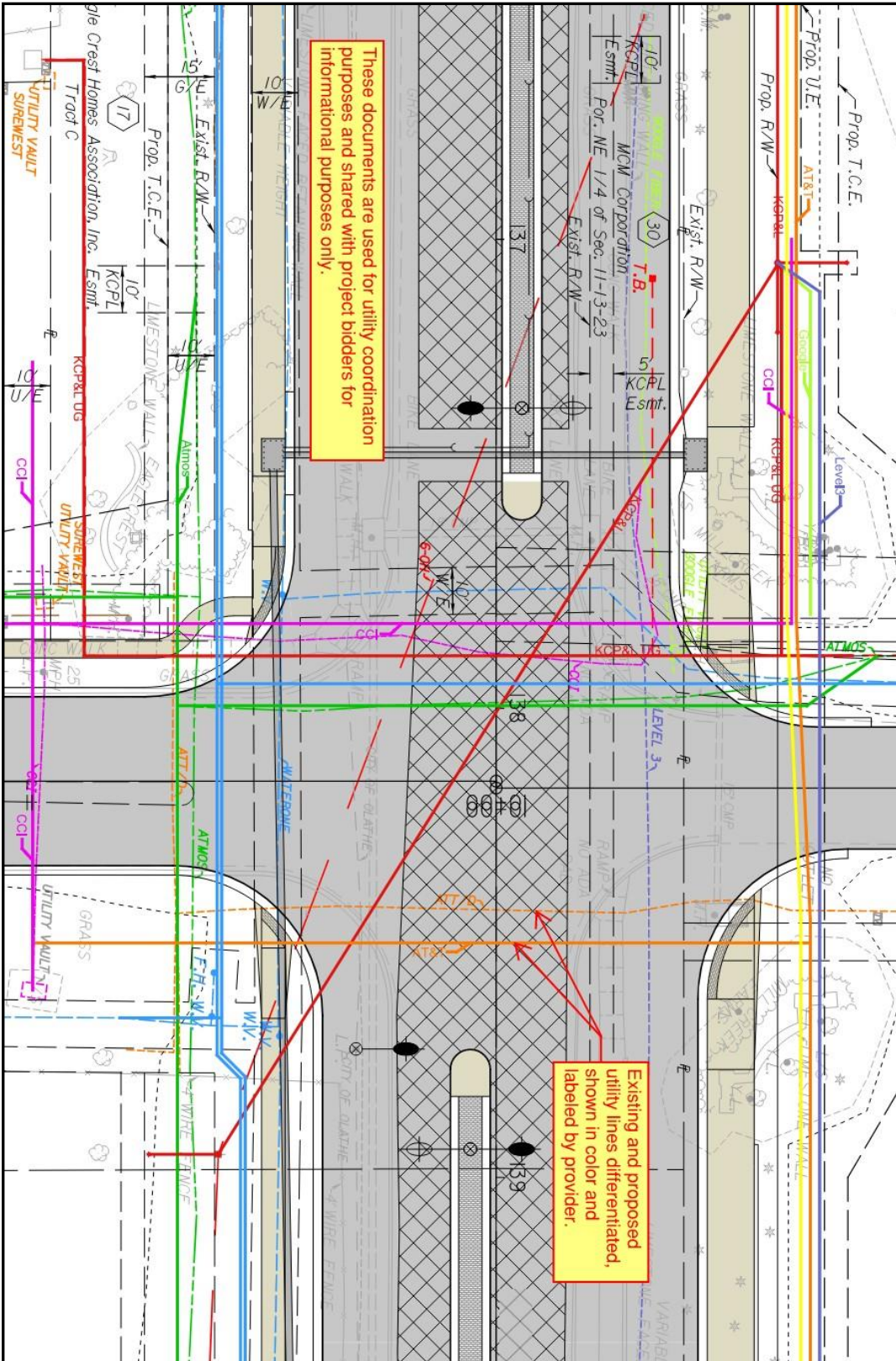
- Some providers may only be labeled by CATV and will require further coordination to confirm ownership of lines.
  - Review existing mapping to help identify any lines or other infrastructure that may have been missed during locates and survey.
  - Utility lines shall NOT be added to project plans based on mapping or as-built info only.
  - Utilize utility information obtained to minimize utility impacts when possible during project design.
- **Project design firm to generate a master utility plan (may not apply to all projects)**
- Utilities labeled by provider and in applicable colors.
  - Denote utilities that are to be abandoned or vacated.
  - Recommend alternate routes to avoid points of conflict such as proposed storm crossing or conflicts with other utility relocates when possible.
  - Continue to update sheets as utility relocate plans are received.
- **Conflict analysis based on survey, mapping, and other info**
- X-Y locations that may be impacted by Z axis improvements (pothole recommendations)
    - Consider not only project improvements but also constructability.
      - Over dig for walls, storm sewers, etc.
      - Additional depth for rock
      - *Potholing is the responsibility of each individual utility*
        - The City's project team may elect to also pothole private utilities when it is determined beneficial to the project.
  - The project design firm shall make a list of potential conflict points for discussion at the utility meetings. (Individual utility companies should also be doing the same)
    - When making a list, keep in mind utility locates are not always accurate so infrastructure near proposed improvements may need to be added to the list for discussion (share this list for comment by the City).
- **Project design firm to help prioritize location of utilities when overlapping potential relocate paths are identified (ongoing throughout project).**
- Identify opportunities for joint trenches when possible or in tight areas of the project.
- **Design Firm to notify all parties when project plans change (ongoing throughout project).**
- Reevaluate/conflict analysis in areas of change
- **Pre-utility meeting – “plan of attack discussion” prior to utility meeting #1 (city and design team)**
- What is the utility due date?
  - What are the utility schedule milestones?
    - Start to develop overall utility schedule.
  - Are there project pinch points?
  - Identify any utilities claiming private easement/ reimbursement.
  - Is there project phasing that should be prioritized by utilities too?
  - How are utility meetings to be setup for the project? Joint meetings then individual?
  - Other?

- **Utility Meeting #1 around 30% plan submittal**
  - Schedule
  - Request any existing mapping or private easement information not yet collected.
  - Early project overview and potential opportunity to adjust project improvements around utilities.
  - Distribute meeting minutes.
  
- **Individual Meetings ongoing as needed**
  - Schedule
  - Overall review of any likely points of conflict or other concern.
  - Discussion of where/how utilities will relocate.
    - *Example: if a proposed relocate is navigating storm sewers and grade cuts, is there a different path to simplify the relocate and setup the project for success?*
  - Distribute meeting minutes.
  
- **Utility Meeting #2 before 60% plans**
  - Schedule
  - Discussing progression of relocate plans
  - Distribute meeting minutes.
  
- **Utility providers to generate relocate plans on a timeframe agreed upon during coordination meetings.**
  - The design firm and City shall review relocate plans.
    - Consider including relocate plans in master utility plans
  - The design firm will gather any comments and respond accordingly to the utility.
  - Further review of revisions shall continue until the project team has no additional comments to relocate plans.
  - The design firm will incorporate relocate plans in to project plans and master utility plan sheets.

**HANDOFF POINT WHERE PRIMARY DUTIES SHIFT TO THE CITY UTILITY COORDINATOR (*Design firm may have incidental involvement as needed*). A FEW OF THESE DUTIES ARE NOTED BELOW:**

- **Utility Company and/or contractor to obtain a ROW permit prior to starting.**
  - The city will review the permit to confirm it matches previously reviewed relocate plans.
  
- **Utility Coordinator will check on utility construction, progress, and compliance with relocate plans.**
  
- **Utility Coordinator to look for potential oversights or other points of conflict not covered in the relocate plans.**
  - Minor issues may be addressed in the field by the City Utility Coordinator.
  - The City Utility Coordinator will reengage the project team and utility provider with any issues found requiring additional coordination.
  
- **Utility Coordinator to provide design firm and PM periodic updates on progress.**

**EXHIBIT E.1**



These documents are used for utility coordination purposes and shared with project bidders for informational purposes only.

Existing and proposed utility lines differentiated, shown in color and labeled by provider.

## EXHIBIT F

### CITY OF OLATHE INSURANCE REQUIREMENTS

**A. Insurance.** Consultant agrees to secure and maintain throughout the duration of this Agreement insurance of such types and in at least such amounts as set forth below from a Kansas authorized insurance company which carries a Best's Policyholder rating of "A-" or better and carries at least a Class "VII" financial rating or better, unless otherwise agreed to by City:

1. Commercial General Liability: City must be listed by ISO endorsement or its equivalent as an additional insured on a primary and noncontributory basis on any commercial general liability policy of insurance. The insurance must apply separately to each insured against whom claim is made or suit is brought, subject to the limits of liability.

**Limits:** Per Occurrence, including Personal & Advertising Injury and Products/Completed Operations: \$1,000,000; General Aggregate: \$2,000,000.

2. Business Automobile Insurance: City must be listed by ISO endorsement or its equivalent as an additional insured on a primary and noncontributory basis on any automobile policy of insurance. The insurance must apply separately to each insured against whom claim is made or suit is brought, subject to the limits of liability.

**Limits:** Any Auto; OR All Owned Autos; Hired Autos; and Non-Owned Autos: Per occurrence, combined single limit: \$500,000  
Notwithstanding the foregoing, if Consultant does not own any automobiles, then Consultant must maintain Hired and Non-Owned Auto insurance.

3. Worker's Compensation and Employer's Liability: Workers compensation insurance must protect Consultant against all claims under applicable state Worker's Compensation laws at the statutory limits, and employer's liability with the following limits.

**Limits:** \$500,000 Each Accident/\$500,000 Policy Limit/\$500,000 Each Employee

4. Professional Liability: Consultant must maintain throughout the duration of this Agreement and for a period of three (3) years after the termination of this Agreement, Professional Liability Insurance.

**Limits:** Each Claim: \$1,000,000; General Aggregate: \$1,000,000

5. Cyber Insurance: If Consultant will have access to the City's network or City's data, Consultant must maintain throughout the duration of this Agreement and for a period of three (3) years after the termination of this Agreement. Coverage must

include: Cyber Incident/Breach Response and Remediation Expenses, Digital Data Recovery, Privacy and Network Security Liability, and Notification Expense.

**Limits:** Per claim, each insuring agreement: \$1,000,000; Aggregate: \$1,000,000

**B. Exposure Limits.** The above are minimum acceptable coverage limits and do not infer or place a limit on the liability of Consultant nor has City assessed the risk that may be applicable to Consultant. Consultant must assess its own risks and if it deems appropriate and/or prudent maintain higher limits and/or broader coverage. The Consultant's insurance must be primary, and any insurance or self-insurance maintained by the City will not contribute to, or substitute for, the coverage maintained by Consultant.

**C. Costs.** The cost of insurance will be included in the Consultant's bid or proposal and must be at Consultant's expense. Any and all deductibles or self-insurance in the above described coverages will be the responsibility and at the sole risk of the Consultant.

**D. Verification of Coverage**

1. Consultant must provide a certificate of insurance on ISO form or equivalent, listing the City as the certificate holder, and additional insured endorsements for the requested coverages.
2. Any self-insurance must be approved in advance by the City and specified on the certificate of insurance. Additionally, when self-insured, the name, address, and telephone number of the claim's office must be noted on the certificate or attached in a separate document.
3. When any of the insurance coverages are required to remain in force after final payment, additional certificates with appropriate endorsements evidencing continuation of such coverage must be submitted along with the application for final payment.
4. For cyber insurance, the certificate of insurance confirming the required protection must confirm the required coverages in the "Additional Comments" section or provide a copy of the declarations page confirming the details of the cyber insurance policy.

**E. Cancellation.** No required coverage may be suspended, voided, or canceled, except after Consultant has provided thirty (30) days' advance written notice to the City.

**F. Subconsultant's Insurance:** If a part of this Agreement is to be sublet, Consultant must either cover all subconsultants under its insurance policies; OR require each subconsultant not so covered to meet the standards stated herein.



**EXHIBIT G**  
**Certificate of Insurance**



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 1/27/2025

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement.

Table with PRODUCER (Ames & Gough), INSURED (Freese and Nichols, Inc.), and INSURER(S) AFFORDING COVERAGE (National Fire Insurance Company of Hartford, Valley Forge Insurance Company, Continental Insurance Company, Travelers Casualty and Surety Company).

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES.

Main table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSD, SUBR WVD, POLICY NUMBER, POLICY EFF, POLICY EXP, LIMITS. Includes rows A (Commercial General Liability), B (Automobile Liability), C (Umbrella Liab), C (Workers Compensation), and D (Professional Liab).

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) PROFESSIONAL LIABILITY AGGREGATE LIMIT: \$10,000,000

City of Olathe, KS is included as Additional Insured with respect to General Liability, Auto Liability, and Umbrella Liability when required by written contract. General Liability, Auto Liability and Umbrella Liability are primary and non-contributory over any existing insurance...

Table with CERTIFICATE HOLDER (City of Olathe, KS) and CANCELLATION (Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions).

**EXHIBIT H**  
**Certificate of Good Standing to Conduct Business in Kansas**

STATE OF KANSAS  
OFFICE OF SECRETARY OF STATE  
CERTIFICATE OF GOOD STANDING

I, SCOTT SCHWAB, Kansas Secretary of State, certify that the records of this office reveal the following:

Business ID: 7434053

Business Name: FREESE AND NICHOLS, INC.

Type: Foreign For-Profit Corporation

Jurisdiction: Texas

was filed in this office on July 11, 1991, and is in good standing, having fully complied with all requirements of this office.

No information is available from this office regarding the financial condition, business activity or practices of this entity.



In testimony whereof:  
I affix my official certification seal.  
Done at the City of Topeka,  
on this day January 22, 2025.

A handwritten signature in cursive script that reads "Scott Schwab". The signature is written in black ink and is positioned above the printed name of the Secretary of State.

SCOTT SCHWAB  
KANSAS SECRETARY OF STATE