

## **PROFESSIONAL SERVICES AGREEMENT**

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

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

**Woodside Neighborhood Street Improvements Project**  
**Project No. PN 3-R-002-26**

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 Five hundred ten thousand, six hundred forty and 00/100 Dollars (\$510,640.00), 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.
2. Reimbursable Expenses: Consultant will be reimbursed at the actual cost, not to exceed a total expense of Five thousand four hundred and 00/100 Dollars (\$5,400.00) 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](mailto: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 December 31, 2027.

### **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: Kristen Leathers-Gratton, 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. **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.
3. **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.
4. **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.

5. **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.
6. **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.
7. **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: Hannah Snakenberg, E.I.T.  
100 E. Santa Fe  
P.O. Box 768  
Olathe, KS 66051-0768

Affinis Corp  
Attn: Kristen Leathers-Gratton, PE  
8900 Indian Creek Parkway  
Suite 450, Building 6  
Overland Park, KS 66210

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; except that Consultant's copyrighted instruments will remain in the ownership of Consultant if Consultant, at Consultant's sole discretion, so identifies 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)**. Consultant will provide certificates of insurance and renewals thereof on forms acceptable to City and in the manner specified in **Exhibit F**. 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, subject to the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.*, 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 upon request will provide City a copy of its certificate of good standing to conduct business in the State of Kansas.

**P. FORCE MAJEURE CLAUSE**

Neither party will be considered in default under this Contract because of any delays in performance of obligations hereunder due to causes beyond the control and without fault or negligence on the part of the delayed party, including but not restricted to, an act of God or of a public enemy, civil unrest, volcano, earthquake, fire, flood, tornado, epidemic, quarantine restrictions, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided that the delayed party must notify the other party in writing of the cause of delay and its probable extent within ten (10) days from the beginning of such delay. Such notification will not be the basis for a claim for additional compensation. The delayed party must make all reasonable efforts to remove or eliminate the cause of delay and must, upon cessation of the cause, diligently pursue performance of its obligation under the agreement.

**Q. 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.

**R. 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.

**S. 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.]*

**T. EXECUTION OF CONTRACT**

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

**CITY OF OLATHE, KANSAS**

By: \_\_\_\_\_  
John Bacon, Mayor

ATTEST:

\_\_\_\_\_ (SEAL)  
City Clerk

APPROVED AS TO FORM:

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

Affinis Corp

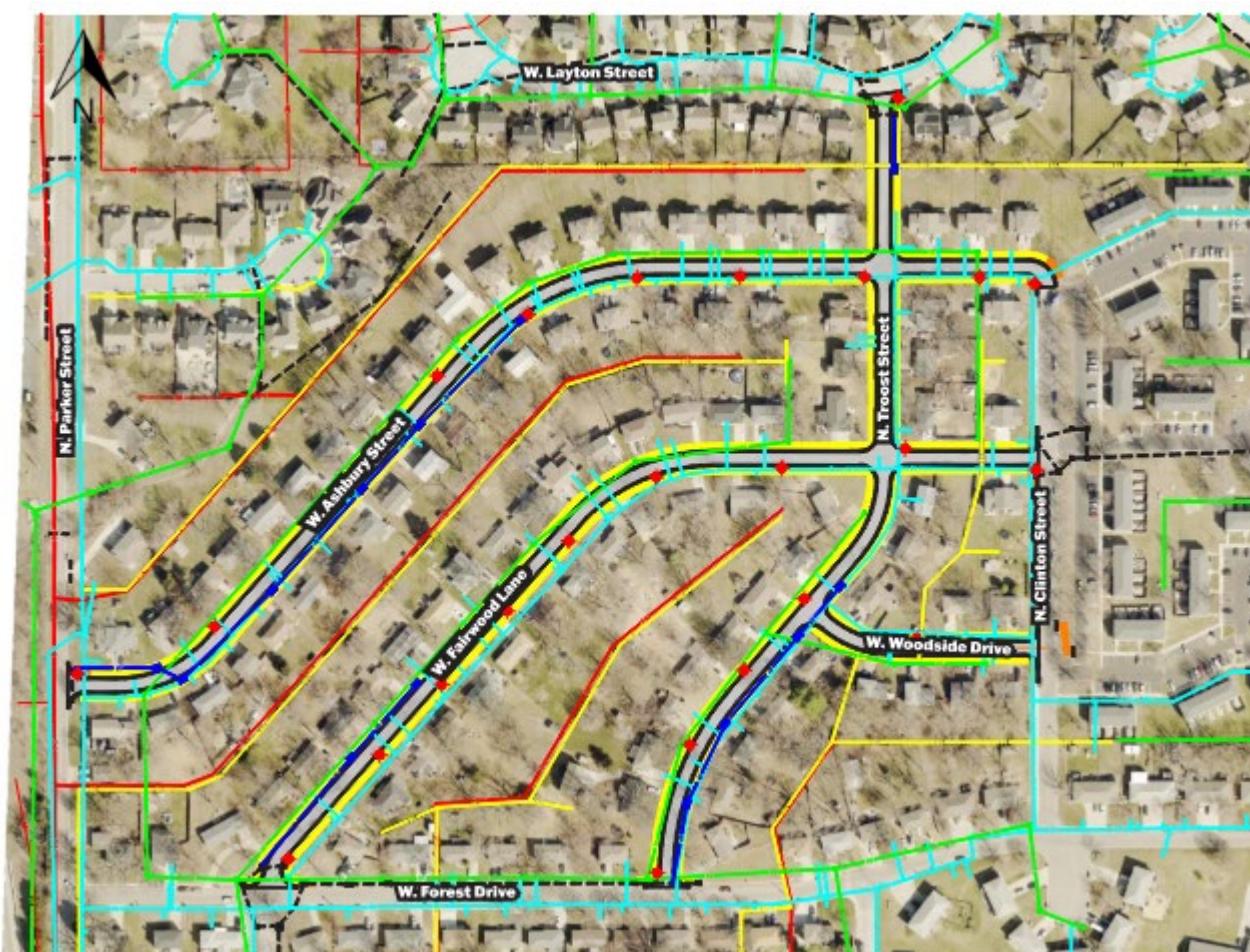
By: Kristen Leathers-Gratton  
Kristen Leathers-Gratton, Principal  
8900 Indian Creek Parkway  
Suite 450, Building 6  
Overland Park, Kansas 66210

## **TABLE OF CONTENTS 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>

**EXHIBIT A**  
**Description of Project & Map**

This project will include the reconstruction of W Ashbury Street, W Fairwood Lane, N Troost Street, and W Woodside Drive within the Woodside Neighborhood. Improvements will include removal of the existing streets, installation of subgrade improvements, asphalt pavement, concrete curb and gutter, driveway approaches, sidewalks and ADA sidewalk ramps, streetlight installation, and stormwater improvements.



**Woodside Neighborhood Street Improvements Project PN 3-R-002-26**

## **Exhibit B** **Scope of Services**

### **Introduction**

The basic scope of services ("scope") for this project, identified as Exhibit B, for the Woodside Neighborhood Street Improvements Project, Project Number 3-R-002-26 ("project") includes preliminary design, final design, construction documents, project bidding, and construction services.

This project will include the reconstruction of W. Ashbury Street (N. Parker Street to N. Clinton Street), W. Fairwood Street (W. Forest Drive to N. Clinton Street), N. Troost Street (W. Forest Drive to W. Layton Street), and W. Woodside Drive (N. Troost Street to N. Clinton Street) within the Woodside Neighborhood. Improvements will include a 28' wide (typical) asphalt pavement section with curb and gutter, streetlights, driveway approaches, storm sewer upgrades, and sidewalk replacement on both sides of the street.

The work tasks will be performed by Affinis Corp ("Consultant") for the City of Olathe, Kansas.

### **General Design Requirements**

The Consultant shall furnish and perform the various professional duties and services required for the construction of the project as outlined in this scope. All plan development stages shall be completed no later than the current project's schedule, exclusive of delays beyond the Consultant's control.

The Consultant shall design the project in conformity with the most current version of the following criteria:

- City of Olathe's Design Criteria for Public Improvement Projects
- The current version of the Manual on Uniform Traffic Control Devices (MUTCD) as adopted by the city.

The design plans shall be signed and sealed by the licensed professional engineer responsible for the preparation of the design plans. Geological investigations or studies shall be signed and sealed by the licensed Geologist responsible for the preparation of the geological investigations or studies. Rights-of-way and easement descriptions shall be signed and sealed by the licensed land surveyor responsible for the preparation of these descriptions.

### **General Survey Requirements**

#### **Vertical Control:**

Elevations for plans must be obtained from a benchmark on the Johnson County Vertical Control Network. Show the datum benchmark and elevation of the datum benchmark on the plans.

#### **Horizontal Control:**

Section Corner and quarter section corner locations must be referenced to the Johnson County Horizontal Control Network. As part of the design survey all section corners and quarter section corners within the project area and others used for project control must be located, reference and state plane coordinates determined with GPS equipment. The coordinates and referenced ties shall be shown on the plans and the standard corner reference report submitted to the Kansas State Historical Society, the County Engineer, and cities project engineer within 30 days of the survey as required by state law. If a Johnson County Horizontal Control marker may be damaged by construction, the County public works department should be notified prior to the bid letting.

## **Plan Notes - Johnson County Control Benchmarks:**

Any Johnson County benchmarks, Johnson County horizontal control monuments and any section corner and quarter section corners within the area surveyed for the project must be conspicuously indicated on the plans. All benchmarks and section and quarter section corners and property pins within the construction limits shall include a note for the re-establishment of the monuments.

## **Basic Scope of Services**

The scope associated with this project is broken out by phase, task, and sub-task, and is described in detail below. Within each phase, all tasks will be completed by the Consultant or by a subconsultant of the Consultant, unless otherwise noted.

### **Phase 1 Preliminary Design**

#### **1.01. Data Collection.**

- A. Attend pre-design meeting.
- B. Develop design criteria for the project; prepare design memorandum.
- C. Develop detailed design schedule including project milestones. Submit copy to City and provide updates at scheduled progress meetings.
- D. Complete a pre-design walk through with the City to discuss and identify the limits of the project, limits of topography and boundary information needed, and other site information which may impact the design of the project.
- E. Field data collection.
  1. Establish land corners, and horizontal and vertical control.
  2. Field surveys to include all existing topography features within the project limits. Distribute survey notification letters to property owners prior to beginning field survey. Field locate driveway joints, visible irrigation systems, low opening elevation adjacent to stormwater system and at low points. Field survey off-site storm sewer structures, channel and swales upstream and/or downstream of trunk line crossings as needed.
  3. Survey existing visible property corners and include in mapping.
  4. Contact all utilities to request facility mapping, inquire about planned upgrades and identify point of contact information. Contact Kansas One-Call and the City to field locate all facilities. Coordinate and survey pot-hole information for critical vertical utility locations. Subsurface investigation (pot-holing) shall be performed by others. (8 hours for a 2-person crew is included in the basic scope for pot-hole surveys. If additional time is required, the work will be done under a supplemental agreement.)
  5. ~~Stake centerline every 100 feet as may be required by utilities or other entities to plan relocation work. Includes one re-staking and/or re-painting.~~
  6. Provide field staking for proposed storm sewer structures as requested for utility relocations. (8 hours for a 2-person crew is included in the Basic Scope for staking these items. If additional staking work is required for the utilities, it shall be done as a supplemental agreement.)
  7. Prepare and submit to governmental agencies a certified land corner record for each section corner recovered and used on this project.

F. Ownership and abutting property information. (125 104 Tracts)

1. Show Johnson County AIMS and City supplied plat information on plans.
2. Obtain ownership information and last deed of record for all tracts through Johnson County AIMS. Prepare property ownership schedule/spreadsheet which includes owner name, tract number, proposed easements and takings. Ownership/Encumbrance documents are not included in the Basic Scope. If title work is required, the work shall be done under a supplemental agreement.
3. Review record drawings and plans for existing improvements. Update as required.

G. Analyze the storm drainage needs along the project.

1. Evaluate capacity and condition of existing storm sewer system. Determine system improvements to be included with project. Condition assessment shall be performed by City.
2. Analyze 10-year gutter spread, and 10-year storm event capacity of enclosed storm sewer system.
3. Review watershed areas for all streams and basins draining onto the proposed roadway
4. Analyze eliminating the ditch section on the east side of N. Parker Street & W. Ashbury Street.

H. Preliminary Geometrics

1. Develop preferred horizontal alignments for residential streets
2. Create vertical profiles for residential streets that minimize impacts to adjacent properties

I. Prepare an online survey to gather information from residents and property owners including information related to drainage concerns, irrigation, electronic fences, and other related items. Review responses for information to be included on the design and plans. Finally, it will relay project specifics, such as scope and schedule. The City will distribute the survey, collect and summarize the responses, and provide to the Consultant.

J. Develop basemap from survey information. Basemap shall be at a scale of 1"=20 ft. showing contours at 2-foot intervals, existing property lines, owner information, and existing utility information as determined from surveyed utility locates, visible features and/or facility maps.

**1.02. Prepare Preliminary Plans**

- A. Cover sheet.
- B. General notes and legend.
- C. Typical sections.
- D. Preliminary survey reference sheet.
- E. Surface drainage design.
  1. Identify storm sewer system capacity, maintenance and replacement needs.
  2. Drainage area maps.

- 3. Pavement spread, inlet spacing and hydraulic grade line calculations.
- 4. Storm Sewer Profiles
- F. Utility Plan sheets (color coded).
- G. Plan and Profile sheets.
  - 1. Plan scale = 1"=20 ft.
  - 2. Profile scale H:1"= 20 ft., V:1"=5 ft.
- H. Intersection and ADA ramp layouts.
  - 1. Plan scale = 1"=5ft
- I. Preliminary temporary traffic control for construction sequencing plan sheets.
- J. Preliminary street lighting.
  - 1. Pole locations.
  - 2. Preliminary circuit layout.
  - 3. Define design parameters.
- K. Preliminary pavement marking and signing.
- L. Cross sections every 25 feet, including driveway profiles (125 99 Driveways).
- M. Integral sidewalk retaining wall profiles as required for the project.

**1.03.** Perform quality assurance review.

**1.04.** Submit one (1) half-size set and a PDF of preliminary plans and opinion of probable construction cost to the City.

- A. The preliminary opinion of probable project costs should be itemized by unit of work, including a 15-percent contingency. Quantities shall be itemized for each street and summarized for the total project. Compare to City budget.
- B. Prepare and submit request for design exception, if necessary.
- C. Prepare property schedule which includes driveway replacement.

**1.05** Submit PDF preliminary plans (colored utilities) to utility companies for their use in preparing plans for relocations.

**1.06** Meet with City as necessary in connection with preliminary plans. Assume up to two (2) meetings with three (3) people for two (2) hours with meeting minutes prepared and distributed.

**1.07** Preliminary plan review meeting and field check to be performed with representatives of the Consulting Engineer and the City. One (1) meeting with three (3) people for four (4) hours assumed.

- A. Address red-lines/mark-up, revisions and comments.

**1.08** Prepare right-of-way and easements documents.

- A. Describe right-of-way and easements necessary to complete project. (Assumes up to 60 10 properties/tracts will require temporary construction easements.)
  - 1. Furnish legal descriptions sealed by a Registered Land Surveyor (RLS) licensed in the state of Kansas. Legal descriptions will also be provided in a digital format compatible with Microsoft Word.
  - 2. Furnish latest deed information (property owner update) from Johnson County RTA at time of legal document submittal.

3. Maps and sketches as follow:
  - a. Right-of-way plans: Update field check plan and profile sheets to show all proposed takings. Provide up to one full-size and one (1) half-size sets of plans.
  - b. Individual tract maps of takings for each ownership including:
    - (1.) Title block
    - (2.) Ownership boundaries
    - (3.) Existing rights-of-ways and easements
    - (4.) Proposed takings identified with text and graphically
    - (5.) Legend for taking type
    - (6.) Graphical scale and north arrow
    - (7.) Ownership information
    - (8.) Legal description of all takings
4. Electronic copies of sealed legal descriptions, easement documents and exhibits shall be provided. Legal descriptions and documents shall be provided in digital format compatible with Microsoft Word 7.0. Exhibits shall be provided in color PDF format.
5. Revise legal descriptions and ownerships as required. (Assume 10 percent of tracts change ownership).

**1.09 Public Information:**

- A. Prepare for and attend two (2) public information meetings to explain the project to property owners and key stakeholders, and to receive public comments at a time and place arranged for by the City. The meetings will be at right-of-way/easement acquisition and prior to construction starting.
  1. The City will prepare and mail information letters for public meetings.
  2. Prepare exhibits and presentations appropriate for each meeting. Exhibits and presentations will include full-size plan and profile sheets, frequently asked questions (FAQ) information sheet, sign-in sheet and half-size sets of plans for reference.
  3. Have people available to explain the proposed work and to answer questions. Three (3) people for two (2) hour meetings along with setup time.
- B. ~~The Consulting Engineer will be available to meet with City staff and concerned property owners as directed by the City to discuss the project at any time throughout the project. Four (4) individual property owner meetings included in Basic Scope.~~

**1.10 Permitting & Coordination:**

- A. Coordinate project review with State Historic Preservation Office (SHPO).
- B. Prepare the necessary plans and applications for permit submission to and approval of City land disturbance and NPDES land disturbance permits. No other permit activities are included under this Basic Scope of Services. If additional permitting is required, the work shall be done under a supplemental agreement.

## Phase 2 - Final Design

**2.01** Prepare detailed plans and specifications.

- A. Cover sheet.
- B. General notes and legend.
- C. Typical sections.
- D. Survey reference sheet.
- E. Surface drainage design.
  - 1. Finalize system layout and pipe profile
  - 2. Update plan notes and drainage calculations
- F. Utility Plan sheets (Color Coded)
  - 1. Note abandonments, adjustments, and relocations to take place ahead, during, and following construction
- G. Plan and Profile sheets.
  - 1. Plan scale = 1"= 20 ft., north arrow and sheet name indicated.
  - 2. Profile scale H: 1"= 20 ft. V: 1" = 5 ft.
- H. Property schedule, including driveway replacement and restoration items.
- I. Intersection details with pavement dimensions, stations and offsets indicated. Also includes curb return stations, elevations, curb type (wet/dry), drainage arrows and proposed contours.
- J. Street lighting.
  - 1. Pole locations shall be based on standard spacing.
  - 2. Design parameters.
  - 3. Circuit information including control center locations.
- K. Pavement marking and signing.
- L. Cross sections every 25 feet, including driveway profiles (125 99 Driveways).
- M. Final temporary traffic control plan and construction phasing for each phase of the project.
- N. Erosion and sediment control (ESC) plans, details and estimated quantities meeting KDOT and NPDES requirements. Notes on plans shall include the intent of the erosion and sediment controls. Include pay items for each item to be used in the ESC plan. The ESC plan shall include sequencing of the controls as may be needed to coordinate with construction phasing.
- O. Design and detailing ISR walls. Non-ISR walls are NOT included in the Basic Scope of Services.
- P. Standard and special construction detail sheets.
- Q. Summary of bid quantities.

**2.02** The City will prepare project manual. The Consultant shall provide the schedule of values (bid form), measurement and payment section, and special conditions.

**2.03** Perform quality assurance review.

**2.04** Schedule and attend four (4) utility coordination meetings during design phases. Prepare agenda, minutes, and schedule of utility conflicts for each meeting.

- Provide plans and electronic base maps to all utilities for their use in developing relocation plans.

**2.05** Prepare a detailed opinion of probable cost.

- Include an appropriate contingency.
- Compare to previous opinions and City budget.
- Estimate time required to complete construction.

**2.06** Submit one (1) half-size set and a PDF of final plans and opinion of probable construction cost to the City for review.

**2.07** Address final plan review comments and prepare bid documents.

**2.08** Submit bid documents to City in reproducible format.

- At the completion of the project design, furnish to the City the CAD drawings of the project in AutoCAD format for the City's future use. The record contract documents for the project will be the original sealed drawings. In addition, furnish plans in .pdf and .tif formats.TIFF images in compressed CCITT, group 4 at 200 dpi format. Specifications to be provided in native, .pdf, and .tif formats.
- Provide PDF bid documents to City for electronic bidding by City.

**2.09** Prepare Stormwater Pollution Prevention Plan (SWPPP) including erosion and sediment control plans. SWPPP shall follow the city of Olathe template and conform to KDHE requirements. Provide two (2) copies prior to bidding.

**2.10** Meet with City as necessary during preparation of final plans. Assume one (1) meeting.

### **Phase 3 Bidding**

- Answer Contractor questions during the bid period.
- Prepare addenda to the bidding documents as required and/or necessary.
- Submit engineer's estimate electronically prior to bid opening.
- Attend a pre-construction conference with representatives of the City, the successful bidder and utilities.
- Provide two (2) full-size and eight (8) half-size sets of plans, and eight (8) contract/project manuals. The City shall provide the executed contract/project manual to the Consultant for printing.

### **Phase 4 Construction Services**

- Be available for discussion and consultation during the construction phase. Full-time construction observation and administration services will be the responsibility of the City.
- Review shop drawings and be available for consultation with the City during construction. (Assume limited shop drawing review. City will review majority of submittals.)

A. Precast inlets, manholes and other drainage structures.

**4.03** ~~Attend up to four (4) construction progress meetings as directed by the City.~~

**4.04** Prepare plan revisions as necessitated by conditions encountered in the field during construction, with the exception of traffic control plans.

**4.05** Prepare final record drawings from City provided redlines that reflect:

- A. All change orders.
- B. Minor design changes.
- C. Changes made in the field by City representatives and marked on the construction plan set.
- D. Provide record drawings in AutoCAD and PDF formats, as well as .tif format and GIS shape files.

**Completion Time:**

The Consulting Engineer hereby agrees to complete field check and right-of-way plans suitable for a public information meeting including easement and right-of-way descriptions and tract maps (Task 1) by **June 12, 2026**, and to complete all work necessary for final plans by **August 14, 2026**. Advertising for bids will occur by **October 1, 2026**.

**SERVICES TO BE PROVIDED BY THE CITY:**

1. Electronic copy of the plans of designed and constructed improvements adjacent to the project.
2. GIS information from AIMS, including utility facilities and services.
3. Sanitary sewer videos for service locations.
4. Notifications/letters for public meetings.
5. Easement acquisition.
6. Assistance in obtaining approval from regulatory agencies.
7. Payment of permit fees required by regulatory agencies.
8. Legal advertisement for public bids.

**SERVICES NOT INCLUDED IN THE BASIC SCOPE:**

- Assisting in the preparation of applications and supporting documents (in addition to those identified in Section IV) for private or governmental grants, loans or advances in connection with the project; preparation or review of environmental assessments and impact statements; review and evaluation of the effect on the design requirements of the project of any such statements; review and evaluation of the effect on the design requirements of the project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the project.
- Additional meetings, including meetings with city staff and concerned property owners to discuss the project at any time throughout the project, beyond those defined in this scope of work, would be billed hourly.
- Individual sidewalk ramp design and details per ADA requirements.
- Contracting with a geotechnical firm for pavement and/or subsurface investigation.
- Purchase of ownership and encumbrance documents for properties requiring permanent easement or right-of-way acquisition.
- Preparation of easement documents and tract maps for more properties and/or takings than included in the Basic Scope of Services.

- Post-construction survey monumentation for property pins that are disrupted by construction activities.
- Services to check the accuracy of drawings or other information furnished by the city.
- Services resulting from significant change in the scope, extent, or character of the project or its design.
- Preparing documents for alternate bids requested by city for contractor(s)' work which is not executed or documents for out-of-sequence work.
- Services required preparing to award more prime construction contracts than were anticipated at the time of authorization by the city.
- Providing construction staking for the contractor(s) as well as other field and office surveys, such as boundary surveys.
- Providing full-time construction observation and administration services.
- Preparing to serve or serving as a consultant or witness for city in any litigation, arbitration or other legal or administrative proceedings involving the project.
- Services in making revisions to drawings and specifications occasioned by the acceptance of substitutions proposed by contractor(s); and services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by contractor.

# Exhibit C

## Fee & Rate Schedule

PX-3R-0026 - 2017 Main Street Eastbound Project										Date
City of Olathe, Kansas										Office: KS
At the Proj. No. 2-0580-XX										Proj. No. W-0111
Task	Task Description	Principal	Project Manager	Project Engineer III	Engineering I	Intern	Intern	Intern	Intern	Admin
1.01	<b>DATA COLLECTION</b>	\$315,00	\$25,00	\$175,00	\$150,00	\$15,00	\$15,00	\$15,00	\$15,00	Labor Costs \$120,00
A	At-hire Data Collection Meeting									
B	Develop Design Criteria/Project Design Memo									
C	Develop Detailed Design Schedule									
D	Complete the Design & Through									
E	Field Data Collection (SWOT ID)									
F	Established Criteria (Int'l & Vert. Control)									
G	Established Criteria (Int'l & Vert. Control)									
H	Develop Construction & Layout									
I	Establish Construction & Layout									
J	Survey Baseline Surveys									
K	Storm Survey									
L	Summit Land Surveyor Reports									
M	Ownership & Abutting Property Info & Taxed (Title Tracts)									
N	1. AdCo ANS & Plat Information									
O	2. Ownership Info & Specifications									
P	3. Survey Record Drawings and Plans									
Q	4. Survey Data Analysis									
R	5. Survey Data Analysis									
S	6. Survey Data Analysis									
T	7. Survey Data Analysis									
U	8. Survey Data Analysis									
V	9. Survey Data Analysis									
W	10. Survey Data Analysis									
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LL	101. Survey Data Analysis									
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XX	112. Public Information Meetings									
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## 2027 Olathe Street Reconstruction Program

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**PN 3-R-002-26 - Woodside Neighborhood Street Improvements Project**

PN 3-R-002-26 - Woodside Neighborhood Street Improvements Project										Date
										Client:
										Attn: Per Proj. No. 2-3580-XX
	Principal	Project	Project	Engineer III	Engineer I	Intern	Intern	Surveyor I	Surveyor II	Labour
	Manager	Manager	Manager	Manager II	Manager II	Engineer II	Engineer II	Surveyor II	Surveyor II	Costs
1.00	\$315,600	\$25,900	\$23,500	\$175,60	\$150,60	\$15,60	\$15,60	\$15,60	\$15,60	\$120,00
<b>1.01</b>	<b>Commission During Bid Period</b>	<b>4</b>	<b>8</b>	<b>8</b>	<b>8</b>	<b>8</b>	<b>8</b>	<b>8</b>	<b>8</b>	<b>\$ 4,760.00</b>
3.02	Prepare Addenda	2	2	8	8	8	8	4	4	\$ 3,470.00
3.03	Submit Engineer's Estimate	2	2	4	4	4	4	4	4	\$ 1,210.00
3.04	Pre-Construction Conference	2	2	2	2	4	4	4	4	\$ 1,400.00
3.05	Construction Documents			4	4	4	4	4	4	\$ 1,240.00
	Submitted Task 1 - Hours	4	14	0	0	0	0	0	0	\$ 2,000.00
	Submitted Task 3 - Cost	\$1,260,00	\$1,570,00	\$0,00	\$0,00	\$4,550,00	\$0,00	\$0,00	\$0,00	\$ 2,000,00
	<b>3.06</b>	<b>CONSTRUCTION SERVICES</b>	<b>4</b>	<b>12</b>	<b>16</b>	<b>8</b>	<b>8</b>	<b>8</b>	<b>8</b>	<b>\$ 14,220.00</b>
4.01	Discussion & Consultation During Construction	4	12	16	8	8	8	8	8	\$ 2,000.00
4.02	Review Shop Drawing (Roadway/Storm)	2	2	4	4	16	8	8	8	\$ 4,650.00
4.03	<b>Business associated with construction</b>									\$ -
4.04	Print/PDF Revision for Field Changes (Vehicles/Traffic Control)		4	4	4	2	2	2	2	\$ 2,700.00
4.05	Final Report Drafting			2	2	4	2	2	2	\$ 2,700.00
	Submitted Task 4 - Hours	4	14	0	0	16	4	0	0	\$ 200.00
	Submitted Task 4 - Cost	\$1,260,00	\$1,570,00	\$0,00	\$0,00	\$4,550,00	\$2,000,00	\$0,00	\$0,00	\$ 200,00
	<b>GRAND TOTAL HOURS</b>	<b>28</b>	<b>161</b>	<b>40</b>	<b>74</b>	<b>16</b>	<b>590</b>	<b>248</b>	<b>212</b>	<b>\$ 18,640.00</b>
	<b>GRAND TOTAL FEE</b>	<b>\$8,230,00</b>	<b>\$35,955,00</b>	<b>\$9,400,00</b>	<b>\$17,020,00</b>	<b>\$126,875,00</b>	<b>\$2,400,00</b>	<b>\$79,650,00</b>	<b>\$28,620,00</b>	<b>\$50,240,00</b>
	<b>GRAND TOTAL - FEE</b>									<b>\$ 510,640.00</b>
	<b>City Projects Summary</b>									
	<b>PN 3-R-001-27</b>									<b>\$ 510,640.00</b>
	<b>GRAND TOTAL - FEE</b>									<b>\$ 510,640.00</b>

**EXHIBIT D**  
**Land Acquisition**  
**Olathe CIP Projects**

Project consultant will submit land acquisition documents and tracking spreadsheet to City project manager for review and approval as determined by project schedule. City staff and land acquisition agent will be responsible for acquisition of each taking, and consultant will provide support, as necessary, to assist in all acquisitions. All submittals shall be in electronic format.

**REQUIREMENTS FOR ALL TAKINGS**

- Each tract with acquisitions will be assigned a tract number, which will be consistent across all project documents and submittals.
- Ownership and encumbrance (O&E) title report for each tract, not more than 9 months since certification, showing current ownership, liens, mortgages, existing easements, leases (if recorded), and any other encumbrances affecting the property.
- Copy of last deed 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

**SUBMITTAL SCHEDULE**

Dedication documents, tract maps, and legal descriptions shall be submitted to City project manager, at minimum, 9 months prior to anticipated bid opening. Documents may be required to be submitted earlier for complex projects or projects with a large project area, as determined by project manager. Submittals per tract will include:

- Word copy of legal description
- PDF of signed and sealed legal description
- Tract map signed and sealed
- Word copy of easement ("front end") document(s)
- O&E title report
- Last deed of record
- Summary of Takings spreadsheet (1 per project)

**EASEMENT DOCUMENTS & TRACT MAPS**

Each tract with takings require easement dedication documents, legal description of each easement taking, and a tract map (Exhibit D.1) showing each taking on the subject property. Legal descriptions and tract maps to be signed and sealed by Registered Land Surveyor in the State of Kansas. Legal descriptions shall be submitted in pdf and Word format.

Consultant will prepare easement dedication (front end) documents for each tract and taking. Draft dedication documents are available in Word format on the City of Olathe website.

Tract maps will include, at minimum:

- Project name and city project number
- Tract number
- Ownership information
- Property address
- North arrow, scale, legend
- Property lines

- Building outlines, including outbuildings
- Property features, including, but not limited to, trees, fences, driveways, landscaping, monument signs, existing streets and any other feature useful in acquisition discussions with property owner
- Existing ROW
- Proposed project improvements clearly shown in relation to existing features
- Removals and cost to cure items clearly identified
- Location and dimensions of proposed easements, including square footage of each easement
  - Proposed easements shall be hatched and color coded, consistent with across all project takings
  - Hatching must be legible when recorded and printed in black and white
  - Show all proposed easements on a single tract map. Multiple pages are permissible if not clearly legible on a single tract map

#### **SUMMARY OF TAKINGS SPREADSHEET**

Consultant shall submit a spreadsheet (Exhibit D.2) detailing land acquisition taking information for use in tracking land acquisition progression, budget tracking, and for informational use with other city staff.

Spreadsheet should include, at minimum:

- Project name and city project number
- Tract number
- Ownership information
- Johnson County Parcel ID
- Mailing and situs address
- Easement type and square footage of taking
- Cost to cure items

## 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 relocates. 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**

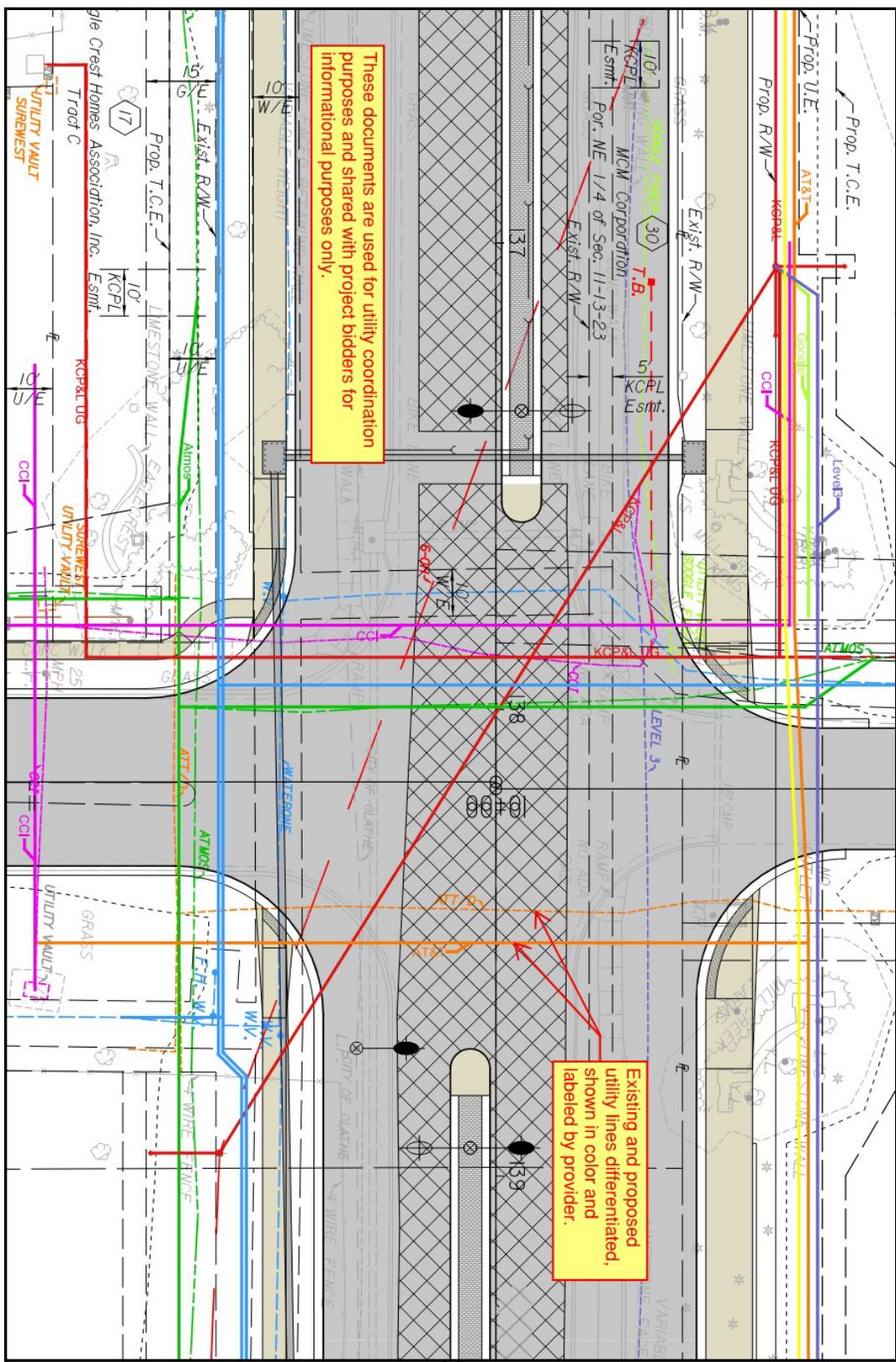
- X-Y locations that may be impacted by Z axis improvements (pothole recommendations)
  - Consider not only project improvements but also constructability.
    - Over dig for walls, storm sewers, etc.
    - Additional depth for rock
    - *Potholing is the responsibility of each individual utility*
      - 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).

- 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.

**HANOFF 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**



**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 including all requirements listed herein. City uses the myCOI platform for submission and review of certificates of insurance and related documentation. Consultant must provide any information needed to register on the platform and submit certificates of insurance and related documentation through the platform.
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.