

## **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:

**Stagecoach and Sleepy Hollow Drive Stormwater Improvements**  
**Project No. 2-C-011-20**

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 three thousand six hundred seventy dollars (\$303,670), 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:

Phase 1 – Preliminary Design	(66%)
Phase 2 – Final Design	(27%)
Phase 3 – Bidding	(2%)
Phase 4 – Construction Services	(5%)
TOTAL	100 %

2. Reimbursable Expenses: Consultant will be reimbursed at the actual cost, not to exceed a total expense of twenty-seven thousand seven hundred fifty-five dollars (\$27,755) 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.
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 May 1, 2022.

**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 and D**, 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 **Exhibit B** 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 **Exhibit B**, 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, P.E.. 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. 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: Matthew Kapfer  
100 E. Santa Fe  
P.O. Box 768  
Olathe, KS 66051-0768

Affinis Corp.  
Attn: Kristen Leathers-Gratton, P.E.  
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, if 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 E (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 F – 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.
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. 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.

#### **H. 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.

**I. NO THIRD-PARTY BENEFICIARIES**

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

**J. INDEPENDENT CONTRACTOR**

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

**K. 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.

**L. 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.

#### **M. 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 G**).

#### **N. 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.

#### **O. 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.

#### **P. 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.]*

**Q. EXECUTION OF CONTRACT**

The parties hereto have caused this Agreement to be executed this \_\_\_\_\_ day of  
\_\_\_\_\_  
2021.

**CITY OF OLATHE, KANSAS**

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

ATTEST:

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

(Seal)

APPROVED AS TO FORM:

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

**AFFINIS CORP.**

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



Kristen Leathers-Gratton  
8900 Indian Creek Parkway  
Suite 450, Building 6  
Overland Park, KS 66210

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OF EXHIBITS**

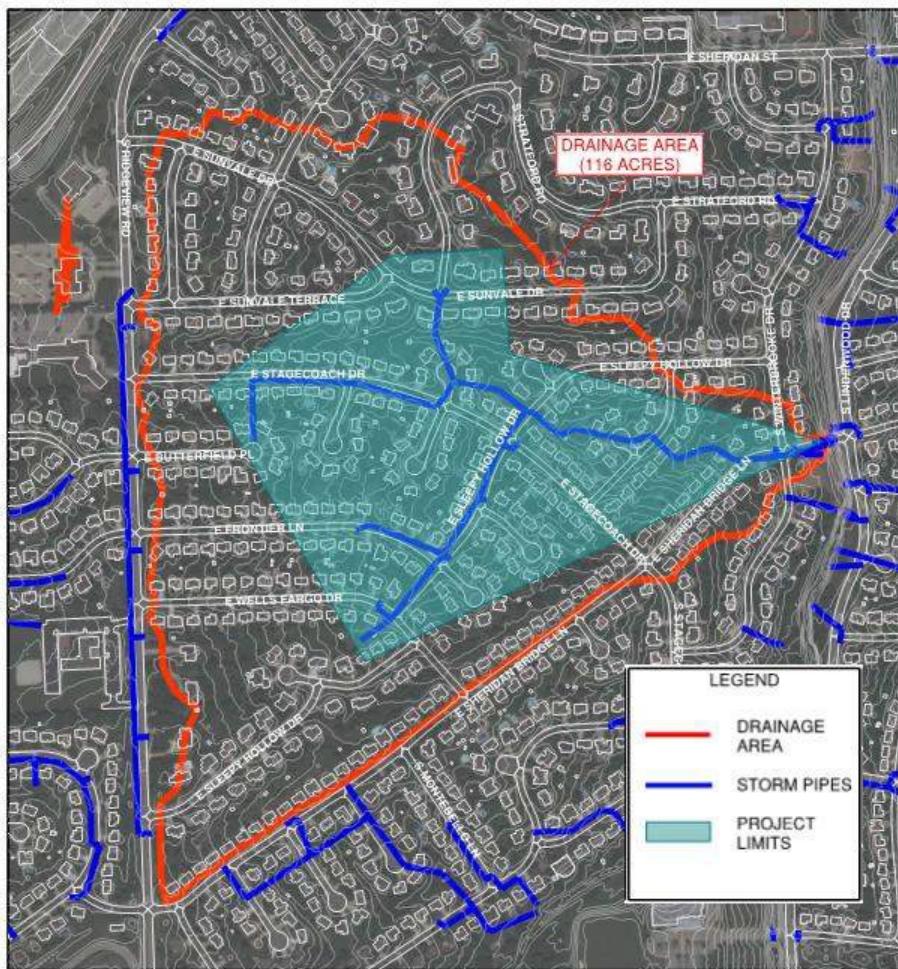
<b>Exhibit A</b>	<b>Description of Project &amp; Map</b>
<b>Exhibit B</b>	<b>Scope of Services</b>
<b>Exhibit C</b>	<b>Fee &amp; Rate Schedule</b>
<b>Exhibit D</b>	<b>Land Acquisition Checklist for Consultant Projects</b>
<b>Exhibit E</b>	<b>City of Olathe Insurance Requirements</b>
<b>Exhibit F</b>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

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

**Stagecoach and Sleepy Hollow Drive Stormwater Improvements**  
**PN 2-C-011-20**

The general project location is bounded by Ridgeview Rd. on the west, Sunvale Dr. on the north, Sleepy Hollow Dr. on the south, and Indian Creek on the east; and it is within the Indian Creek Watershed. A map illustrating the drainage area and existing stormsewer system is shown below.

**EXHIBIT A – PROJECT LOCATION MAP**



This project is anticipated to include replacing, upsizing, and improving a portion of the existing CMP stormsewer system to convey the 100-yr storm event without surcharge to alleviate flooding in areas identified in the *Preliminary Engineering Study (PES) for Indian Creek – Stagecoach Drive and Sleepy Hollow Drive, SMP Project No. IC-09-057, February 14, 2019*.

The project will include survey of existing conditions, utility coordination, cost estimates, acquisition documentation (title reports, surveyed exhibits, easement documents, etc.) needed for any right-of-way or easements (if needed), traffic control as needed, developing construction plans and specifications in accordance with City of Olathe Technical Specifications and Design Criteria, coordination with utilities, assistance with bidding of the project for construction, and construction services.

**Exhibit B: Basic Scope of Services**  
**Stagecoach and Sleepy Hollow Drive Stormwater Improvements (PN 2-C-011-20)**

## **I. Introduction**

The basic scope of services (“scope”) for this project, identified as Exhibit B, for the Stagecoach and Sleepy Hollow Drive Stormwater Improvements (“project”) includes preliminary design, final design, construction documents, project bidding, and construction services.

The project includes the following general improvements:

- Improve existing corrugated metal pipe (CMP) between East Sunvale Drive and East Sheridan Bridge Lane. The improvements could include in-kind replacement with reinforced concrete pipe (RCP), upsized RCP, or rehabilitation of the existing CMP to extend design life.
- A new storm sewer alignment along East Sleepy Hollow Drive, between East Stagecoach Drive and Indian Creek will provide additional storm sewer capacity in the project area.
- Address the street and building flooding in the project area by increasing the storm sewer system and inlet capture capacity to meet Johnson County Stormwater Management Program (SMP) design requirements.

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

## **II. 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's Design Criteria for Public Improvement Projects
- Johnson County stormwater management program (SMP) requirements.
- 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. Right-of-way and easement descriptions shall be signed and sealed by the licensed land surveyor responsible for the preparation of these descriptions.

## **III. 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 Bench Marks: 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 bench marks and section and quarter section corners and property pins within the construction limits shall include a note for the re-establishment of the monuments.

## **IV. 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**

This phase involves the data collection and analysis for the development of preliminary plans. The following tasks are associated with Phase 1: Preliminary Design.

#### **Task 1.1: Project Management and Coordination**

This task involves project coordination through the entirety of the project (Phases 1-4) and includes the following elements:

- A. Project kickoff meeting (2 Affinis staff to attend). Meeting is assumed to be virtual.
- B. Develop detailed design schedule for the entire project and discuss at the project kickoff meeting. Provide schedule updates at project progress communications. Include at least the following benchmarks in the schedule:
  1. Survey complete.
  2. Concept layouts.
  3. Utility coordination meetings.
  4. Public involvement meetings.
  5. Agency permit applications submitted.
  6. Preliminary plans complete.
  7. Easement/Right-of-way documents to city.
  8. Final plans submitted for review.
  9. Project ready for bid.
- C. Prepare design memorandum to be reviewed and approved prior to development of preliminary plans.
- D. Prepare monthly project progress reports and invoices.
- E. Internal project team progress meetings (10 meetings assumed).

## Task 1.2: Field Data Collection

- A. Survey Data Collection – Perform design and cadastral surveys as required to prepare plan and profile sheets in order to provide sufficient control, location, and land information necessary to prepare a complete set of construction plans and to prepare any legal descriptions required for easement acquisition. All surveys and point coordinates for the project must tie into and be in the Kansas State Plane (North Zone). Cadastral surveys shall include locating the position of pertinent PLSS corners (including quarter and sixteenth corners) pertaining to the project and shall conform to the accuracy standards as set forth by the Kansas State Board of Technical Professions. All survey data must be provided to city in digital format allowing insertion into AutoCad environment using standard field book format (PNEZD comma delimited).

It is assumed that private property access will be granted so that field survey data can be collected. The Consultant will be responsible for notifying private property owners about field survey activities. Specific survey work items included in this scope is as follows:

1. Field survey.
  - a. Establish land corners, and horizontal and vertical control
  - b. Field surveys – including shots at pavement tie-in locations, back of curb, edge of pavement, pavement markings, storm sewer and sanitary sewer (including in-structure photos), fences, trees (species and size), landscape plantings, building corners, and other unique features in the project area to create project mapping
  - c. Contact utilities and field locate all utilities in the project areas
  - d. Survey existing visible property corners and include in mapping
  - e. Field locate irrigation systems
  - f. Prepare and submit to governmental agencies a certified land corner record for each section corner recovered and used on this project
  - g. Provide field staking for proposed storm sewer structures (as needed)
  - h. Provide field staking of rights-of-way and/or easements prior to acquisition and construction (as requested by the city) and meet with the city to identify easement and right-of-way locations

- B. Ownership and abutting property information:

1. Secure plats.
2. Obtain ownership information. The Consultant shall obtain ownership information from Johnson County's records. The Consultant will contract with a city approved title company for ownership information investigations and obtain full ownership and encumbrance reports for each property where easements are required by this project (ownership and encumbrance reports for 45 properties are assumed). The costs associated with ownership information investigations shall be included in the total compensation fee for this project.
  - a. Provide spreadsheet related to ownership including:
    - (1) Owner Name.
    - (2) Address.

- (3) Site Address.
- (4) Easements.
- (5) Square Footage.
- b. Title information will be provided in electronic format.
- 3. Record drawings for previous projects in the vicinity of this project will be provided by the city.
- C. Prepare base map at a scale of 1:20 showing contours at 2-foot intervals, property lines, owner information, existing utility information (from locates), and visible features.
- D. Geotechnical Investigation – the Consultant shall contract with a city approved geotechnical subconsultant for subsurface investigations (i.e. soil properties and depth to bedrock) and foundation recommendations for the entire project. The costs associated with the work shall be paid by the Consultant to the geotechnical subconsultant. This cost shall be included in the total compensation fee as outlined in Exhibit C. Specific work tasks to be performed by the geotechnical subconsultant include:
  - 1. Three (3) boring locations that extend down to bedrock or a depth of 15 feet, whichever comes first.
  - 2. Provide for any geological and geotechnical investigations to determine required pipe foundations in accordance with applicable requirements.
  - 3. Provide a written report summarizing information found and make recommendations on what is needed for the project.

### **Task 1.3: Storm Sewer System Design and Coordination**

- A. Review the preliminary stormwater system concepts from the PES for this project to determine if the sizing is adequate to meet SMP design requirements.
- B. Preliminarily design the storm sewer system to meet SMP design requirements with available survey data, minimize utility conflicts, and provide the desired capacity, evaluating the following specific design alternatives:
  - 1. CMP replacement with RCP from East Sunvale Drive to East Sleepy Hollow Drive.
  - 2. CMP rehabilitation (options include slip-lining, cured in place pipe, centrifugally cast concrete pipe, etc.) of the existing CMP downstream of East Sleepy Hollow Drive. This task includes coordination with industry partners to determine the most suitable pipe rehabilitation option for this project. If the CCTV information provided by the City shows that the existing CMP is not structurally sufficient to allow a pipe(s) to be rehabbed, an additional survey and design will be necessary, and a contract supplement will be necessary.
  - 3. New storm sewer alignment along East Sleepy Hollow Drive, from East Stagecoach Drive to Indian Creek.
  - 4. New storm sewer inlets to increase capture at East Sunvale Drive, South Lennox Drive, East Sleepy Hollow Drive, and South Stagecoach Place.
  - 5. Prepare concept layouts sufficient to convey the intent of the design for discussion with SMP.

- C. Prepare a stormwater hydrologic and hydraulic model using PC-SWMM with sufficient detail to calculate hydraulic gradelines in the storm sewer system and confirm that the building and street flooding identified in the PES has been addressed to SMP design standards.
- D. Prepare a preliminary cost estimate for the proposed design shown in the concept layouts to compare with the PES cost estimate for the recommended alternative.
- E. Meet with SMP staff to discuss the project, the scope of the improvements, and the preliminary cost compared to the PES cost estimate. The intent of this meeting would be to determine if and how county funding could be applied to all the proposed improvements, including CMP rehabilitation.

#### **Task 1.4: Preliminary Plans**

This task includes the preparation of preliminary plans that include the following plan elements:

- A. Cover sheet.
- B. Legend and abbreviations
- C. General notes
- D. Easement layout to include property lines and owner information, subdivision names, lots and sites address.
- E. Typical sections.
- F. Survey references.
- G. Plan and profile sheets:
  - 1. Plan scale = 1:20.
  - 2. Profile scale H = 1:20; V = 1:5.
  - 3. Property lines and owner information.
  - 4. Display location of existing utilities and underground facilities in the base map. Reference station location of existing utilities to the base line of the proposed improvements in the plan and profiles.
  - 5. Landmark items to be protected or removed by project (fences, sprinklers, trees, shrubs, landscape beds, etc.
  - 6. Preliminary permanent drainage easement and temporary construction easement limits.
- H. Driveway replacements (horizontal layouts only).
- I. Cross sections for grading/swales at 25-foot intervals.
- J. Sanitary sewer relocation plans – adjust and protect sanitary sewer as necessary to accommodate storm sewer improvements, including the preparation of sanitary sewer

relocation plans and submittal to city for review.

- K. Quality control review of preliminary plans.
- L. Concept Layout Design Meetings: Two (2) Affinis staff will meet up to two (2) times with city staff in connection with the concept layout design. These meetings are assumed to be virtual meetings.
- M. Field Check Meeting for Preliminary Design: Following the city review of the preliminary plans, two (2) Affinis staff will attend one (1) field check review meeting with the appropriate city staff at the project site to review the preliminary plans.
- N. Public Meetings: Prepare for and attend three (3) public/property owner meetings. The first to present preliminary plans and explain the project to property owners in the project area, the second meeting is to discuss the final plans, and the third meeting is to introduce the contractor before construction begins. It is assumed that these meetings will be virtual and coordinated by the city. The city will prepare and send the meeting notifications to property owners. This task includes preparing exhibit(s) with aerial background to show project improvements.

### **Task 1.5: Preliminary Opinion of Probable Construction Cost**

This task includes the development of a preliminary opinion of probable construction cost (OPCC). This cost will be itemized by unit of work and including a 10% construction contingency.

### **Task 1.6: Easement Documents**

- A. Describe easements necessary to complete project.
  - 1. Furnish legal descriptions sealed by an RLS licensed in the state of Kansas. Legal descriptions are also to be provided in a digital format compatible with Microsoft Word.
  - 2. Furnish an ownership and easement spreadsheet to include Owner Name; Owner Address; Site Address and proposed easements to include type and square footage.
  - 3. Prepare the city's easement documents/forms.
  - 4. Maps and sketches as follows:
    - a. Prepare tract maps (45 tract maps assumed).
    - b. Plan and profile pages showing all proposed takings.
    - c. Individual drawings of takings for each ownership, including:
    - d. Title block, including a graphical scale and north arrow.
    - e. Ownership boundaries and information.
    - f. Existing landmarks items protected or removed by the project (trees, buildings, fences, shrubs, landscape beds, etc.).
    - g. Existing rights-of-way and easements.
    - h. Proposed takings identified with text and graphically.

- i. Legend for taking type.
- j. Legal description of all takings.
- (1) Submit 8 1/2 x 11-inch exhibits and legal descriptions of each property required for easement acquisition to the city. Up to forty-five (45) properties are included in the scope.
- (2) Revise legal descriptions, tract maps and/or easement descriptions prior to acquisition and construction as requested by the city. Assume five (5) of the tracts change ownership.
- B. Affinis shall stake in the field the location of easements prior to acquisition and construction as requested by the city. Staking for up to fifteen (15) properties has been included in the fee for the project. Additional staking shall be compensated as additional services as stipulated in Section V of this agreement.
- C. Individual Easement Meeting: Following the field check meeting, Affinis staff will attend up to twelve (12) individual meetings with property owners to discuss project improvements and easements. These will be scheduled by the city and attendance will be at the request of city.

### **Task 1.7: Permitting and Approvals**

Prepare the necessary applications, exhibits, drawings, and specifications for the city's execution and submittal. Permit fees for the permits identified above shall be paid for by the Consultant and the fee amount shall be included in the total compensation fee as outlined in Exhibit C. Permit fee amounts are based on our understanding of the permits required on this project. Permit fee amounts do not include costs associated with mitigation measures as required by a specific permit. Permit submittals assumed are as follows:

- A. Kansas Department of Health and Environment – NPDES Construction Permit Notice of Intent (NOI) and a Stormwater Pollution Prevention Plan (SWPPP) for the project. Two (2) hard copies of the SWPPP will be provided to the city.
- B. SMP preliminary and final submittals.
- C. USACE – Nationwide 404 Permit and floodplain permitting (FEMA and KDA-DWR) and associated mitigation measures are not a part of the scope and if required a supplemental scope and fee would be provided to the city to complete these services.

### **Task 1.8: Utility Coordination**

- A. Following the completion of the preliminary plans, this task includes the submittal of information, coordination with utilities, and tracking utility relocation progress throughout the duration of the project.
  - 1. Submit the preliminary plan information to utilities in the project area and coordination with utilities once the preliminary plan information has been reviewed. This would include correspondence and phone conversations with utilities.
  - 2. Tracking the progress of utility relocations and communicating this progress with the city.

B. Utility Coordination Meetings: Meet with utility companies to coordinate relocations during project design. Three (3) utility coordination meetings with Affinis staff are assumed in this task. This effort includes meeting preparation (including the necessary exhibits) and communication, attendance at meetings, and preparation and distribution of meeting minutes, as appropriate. These meetings are assumed to be virtual meetings.

## **Phase 2: Final Design**

Following the completion of the Phase 1 elements, the city review process, and the field check review (see Task 1.4), Phase 2 involves the preparation of final plans and a project manual. The following tasks are associated with Phase 2: Final Design.

### **Task 2.1: Final Plans**

Prepare final plans, incorporating all field check comments from city staff. At a minimum, the final plans shall include all information from the preliminary plans plus the following detailed design additions:

- A. Update cover sheet, legend, general notes, typical sections, and survey references.
- B. Project quantities.
- C. Plan and profile sheet updates.
- D. Grading plan and swale cross sections.
- E. Final sanitary sewer improvement drawings.
- F. Driveway replacements – full design.
- G. Property restoration schedule.
- H. Erosion control plans.
- I. Intersection (up to 7 intersections) and ADA ramp details (up to 10 ramps).
  - 1. Intersection details will include pavement dimensions, stations and offsets, curb return stations, elevations, curb type (wet/dry), drainage arrows, and grid of final surface elevations for major intersections and gutter control for minor intersections on critically flat slopes.
  - 2. ADA ramp details will include ramp dimensions, stations and offsets, grades, and elevations.
- J. Traffic control plan, and construction phasing including roadway and sidewalk detour routing for each phase of the project.
- K. Pavement marking and permanent signage plans.
- L. Standard details, miscellaneous details, and non-standard details.
- M. Quality control review and submittal of final plans, project manual, and final opinion of

probable construction cost. No hard copies of the final plans or project manual will be provided.

### **Task 2.2: Project Manual**

- A. Review the technical specifications and special provisions provided by the city and modify as needed to address specific elements of this project. Incorporate the front-end documents provided by the city into a single and complete project manual PDF.

### **Task 2.3: Final Opinion of Probable Construction Cost**

- A. Prepare and submit a final opinion of probable construction cost for the project along with the final plans to the city for review.

### **Task 2.4: Project Bid Plans**

- A. After all comments from the city on the final plans are received, the final plans will be updated to address all remaining outstanding review comments. Signed and sealed bid plans will be prepared.
- B. Submit a PDF file of the complete set of signed and sealed bid plans and project manual. No hard copies of the bid plans or project manual will be provided. AutoCAD drawing files of the final plans will be supplied to the city upon request.

## **Phase 3: Bidding Services**

Following the completion of the project bid plans (Phase 2), Phase 3 involves the project bidding process. The following task is associated with Phase 3: Bidding Services.

### **Task 3.1: Bidding Services**

- A. Provide the city with the electronic information of the plans, specifications, and contract documents needed to bid the project.
- B. Respond to questions from contractors regarding the bid plans.
- C. Prepare written addenda to the bidding documents as required and or requested.
- D. Prepare for and attend pre-bid meeting (virtual meeting assumed) and bid opening (in-person meeting assumed).
- E. Assist city in analyzing bids and making recommendations for award of the construction contract.

## **Phase 4: Construction Services**

Following the completion of the project bidding (Phase 3), Phase 4 involves services provided during project construction. The following task is associated with Phase 4: Construction Services.

### **Task 4.1: General Construction Services**

- A. Prepare for and attend a pre-construction conference with city representatives, the successful bidder, and utility companies (in-person meeting assumed).
- B. Answer questions from the contractor regarding the design and interpretation of the plans. Provide consultation concerning conditions encountered during construction that conflict with or were not addressed by the bid plans.
- C. Review shop drawings.
- D. Be available for discussion and consultation during the construction phase, as needed by the city. Construction observation services are not part of this contract.
- E. Participate in final walk-through inspection.
- F. Prepare plan revisions as necessitated by conditions encountered in the field during construction.
- G. Provide city with a complete set of record drawings for the Project. The record drawings shall be provided as a digital copy. The city's construction representative shall provide the Consultant with documentation of plan revisions, field modifications, or information necessary to prepare the record drawings. The final record drawings will include
  1. All change orders.
  2. Minor design changes.
  3. Changes made in the field by city representatives and are marked on the construction plan set.
  4. Submit updated PDF files of the revised sheets.
- H. Post Construction Monumentation: Provide post-construction survey monumentation for property pins that are disrupted by construction activities. Monumentation shall be documented per city approved standard format.

## **V. Schedule**

- A. Assuming notice to proceed with the project by February 3, 2021, the Consultant hereby agrees to submit preliminary plans (Task 1) by June 30, 2021. Easement descriptions and tract maps will be submitted by July 15, 2021. Final plans and bid documents (Task 2) will be submitted by December 1, 2021. A more detailed project schedule will be provided at the project kickoff meeting.

## EXHIBIT C - Fee & Rate Schedule



**Stagecoach and Sleepy Hollow Drive Stormwater Improvements  
PN 2-C-011-20**  
City of Olathe, Kansas

## 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**  
**CITY OF OLATHE INSURANCE REQUIREMENTS**

**A.** Consultant shall procure, and maintain as required, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the project. The cost of such insurance shall be included in the Consultant's bid.

**B.** Consultant shall maintain the following coverages and minimum limits.

1. Commercial General Liability (CGL): [ISO "occurrence" form or its equivalent] \$1,000,000 per occurrence limit including personal and advertising injury and products - completed operations. Any general aggregate limit should be at least \$2,000,000.
2. Business Auto Coverage: (*Owned and non-owned autos*) \$500,000 per occurrence, combined single limit.
3. Workers Compensation and Employers Liability: Workers compensation limits as required by applicable state workers' compensation laws and employer's liability limits or equivalent of \$500,000/\$500,000/\$500,000.
4. Professional Liability: Minimum limits to be \$1,000,000 each claim / annual aggregate.
5. Coverage Limits. Coverage limits for General and Auto Liability exposures may be met by a combination of primary and umbrella policy limits.
6. Exposure Limits: The above are minimum acceptable coverage limits and do not infer or place a limit on the liability of the Consultant nor has the City assessed the risk that may be applicable to Consultant. Consultant shall assess its own risks and if it deems appropriate and/or prudent maintain higher limits and/or broader coverages. The Consultant's insurance shall 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.** Additional Insured. CGL and auto policies must be endorsed to include the City as additional insured for the project. Any and all coverage available to the named insured is applicable to the additional insured. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

**D. Verification of Coverage.**

1. A certificate of insurance, listing the City as a certificate holder, accompanied by an additional insured endorsement or equivalent.
2. The insurance coverages are to be provided by Kansas authorized insurance companies with a Best's rating of at least A- VII. Those not meeting this standard must be approved by City.
3. Any self-insurance or self-insured retentions must be specified on the certificate of insurance. In addition, when self-insured the name, address, and telephone number of the claims office must be indicated on the certificate or separate attached document. Any and all deductibles or self-insurance in the above described coverages shall be the responsibility and at the sole risk of the Consultant.
4. When any of the foregoing insurance coverages are required to remain in force after final payment, additional certificates with appropriate endorsements evidencing continuation of such coverage shall be submitted along with the application for final payment.
5. Any coverage provided by a Claims-Made form policy must contain a three-year tail option, extended reporting period, or must be maintained for three years' post contract.

**E.** Cancellation. Each insurance policy required shall not be suspended, voided, or canceled, except after Consultant has provided thirty (30) days' advance written notice to the City.

**F.** Sub-Consultants. All coverages for sub-Consultants must meet all of the requirements stated herein.



## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
01/19/2021

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. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

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. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Holmes Murphy & Associates, LLC	1-866-574-6282	CONTACT NAME: Monica Wilks	
1828 Walnut Street Suite 700 Kansas City, MO 64108		PHONE (A/C, No, Ext):	
		FAX (A/C, No):	
		E-MAIL ADDRESS: mwilks@holmesmurphy.com	
		INSURER(S) AFFORDING COVERAGE	NAIC #
		INSURER A: TRAVELERS IND CO	25658
		INSURER B: TRAVELERS IND CO OF AMER	25666
		INSURER C: TRAVELERS PROP CAS CO OF AMER	25674
		INSURER D: TRAVELERS CAS & SURETY CO	19038
		INSURER E: XL SPECIALTY INS CO	37885
		INSURER F:	

## COVERAGES

CERTIFICATE NUMBER: 61216653

## 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. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS		
A	COMMERCIAL GENERAL LIABILITY  CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR			6805G548660	01/22/21	01/22/22	EACH OCCURRENCE	\$ 1,000,000	
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000	
							MED EXP (Any one person)	\$ 10,000	
							PERSONAL & ADV INJURY	\$ 1,000,000	
							GENERAL AGGREGATE	\$ 2,000,000	
							PRODUCTS - COMP/OP AGG	\$ 2,000,000	
OTHER:	\$								
B	AUTOMOBILE LIABILITY  ANY AUTO  OWNED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			BA3R814633	01/22/21	01/22/22	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000	
							BODILY INJURY (Per person)	\$	
							BODILY INJURY (Per accident)	\$	
							PROPERTY DAMAGE (Per accident)	\$	
							OTHER:	\$	
C	UMBRELLA LIAB  EXCESS LIAB  DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			CUP5G552071	01/22/21	01/22/22	EACH OCCURRENCE	\$ 2,000,000	
							AGGREGATE	\$ 2,000,000	
							OTHER:	\$	
							OTHER:	\$	
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY  ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N <input checked="" type="checkbox"/> N	N / A	UB0N43901A	01/22/21	01/22/22	<input checked="" type="checkbox"/> PER STATUTE	OTHR-	
							E.L. EACH ACCIDENT	\$ 1,000,000	
							E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000	
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000	
							OTHER:	\$	
E	Professional Liability			DPR9953160	01/22/20	01/22/22	Each Claim	2,000,000	
							Annl Aggr	2,000,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Re: Project No. 2-C-011-20, Stagecoach and Sleepy Hollow Drive Stormwater Improvements  
the City of Olathe is added as additional insured on all policies except the professional liability and workers compensation as required by written contract. A 30 Day Notice of Cancellation Applies.

## CERTIFICATE HOLDER

## CANCELLATION

City of Olathe, Kansas  100 E. Santa Fe Street  Olathe, KS 66061	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE  
USA	

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**STATE OF KANSAS  
OFFICE OF  
SECRETARY OF STATE  
SCOTT SCHWAB**

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

I, SCOTT SCHWAB, Secretary of State of the state of Kansas, do hereby certify, that according to the records of this office.

Business Entity ID Number: 2966885

Entity Name: AFFINIS CORP.

Entity Type: FOREIGN FOR PROFIT

State of Organization: MO

was filed in this office on January 04, 2001, 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 execute this certificate and affix the seal of the Secretary of State of the state of Kansas on this day of January 05, 2021



**SCOTT SCHWAB  
SECRETARY OF STATE**

Certificate ID: 1160866 - To verify the validity of this certificate please visit <https://www.kansas.gov/bess/flow/validate> and enter the certificate ID number.