

## **CITY OF OLATHE AGREEMENT**

THIS AGREEMENT is made in Johnson County, Kansas, by and between the City of Olathe, Kansas, hereinafter "City," and Denton Excavating dba Midland Wrecking, hereinafter "Vendor" (each individually a "Party" and collectively, the "Parties"). City needs the city-owned buildings at 1040 W. Spruce Street and 400 N. K-7 Hwy (with associated buildings) demolished, and contracts with Vendor for the work described in Vendor's proposal in **Exhibit A**.

**1. FEES, EXPENSES, AND SCHEDULE.** City agrees to pay Vendor an amount not to exceed \$148,983.00 for the work described in **Exhibit A**. If provided for in **Exhibit A**, Vendor will be reimbursed at the actual cost of the specified expenses. All work must be completed on or before August 31, 2024, and time is of the essence for completion of the work.

**2. ADDITIONAL SERVICES.** Vendor may provide services in addition to those listed **Exhibit A** when authorized in writing by City.

**3. BILLING.** Vendor may bill City monthly for all completed work and reimbursable expenses. Vendor must submit a bill which itemizes the work and reimbursable expenses.

**4. PAYMENT.** City agrees to pay Vendor within thirty (30) days of approval by the Governing Body or other agent of City in accordance with the City's Procurement Policy. If City becomes credibly informed that any representations of Vendor provided in its billing are wholly or partially inaccurate, City may withhold payment of sums then or in the future due to Vendor until the inaccuracy and the cause thereof is corrected to City's reasonable satisfaction.

**5. STANDARD OF CARE.** Vendor will exercise the same degree of care, skill, and diligence in the performance of the work as is ordinarily possessed and exercised by a professional under similar circumstances. If Vendor fails to meet the foregoing standard, Vendor will perform at its own cost, and without reimbursement, any work necessary to correct errors and omissions which are caused by Vendor's negligence.

**6. TERMINATION FOR CONVENIENCE.** City may terminate this Agreement for convenience by providing fifteen (15) days' written notice to Vendor. City will compensate Vendor for all work completed and accepted and reimbursable expenses incurred to the date of its receipt of the termination notice. Compensation will not include anticipatory profit or consequential damages, neither of which will be allowed.

**7. TERMINATION FOR LACK OF FUNDS.** If, for whatever reason, adequate funding is not made available by City to support or justify continuation of the level of work to be provided by Vendor under this Agreement, City may terminate or reduce the amount of work to be provided by Vendor under this Agreement. In such event, City will notify Vendor in writing at least thirty (30) days in advance of such termination or reduction of work for lack of funds.

**8. DISPUTE RESOLUTION.** The Parties agree that disputes regarding the work will first be addressed by negotiations between the Parties. If 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. Notwithstanding any such dispute, Vendor will proceed with undisputed work as if no dispute existed, and City will continue to pay for Vendor's completed undisputed work. No dispute will be submitted to arbitration without both Parties' written approval.

**9. SUBCONTRACTING.** Vendor may not subcontract or assign any of the work to be performed under this Agreement without first obtaining the written approval of City. Unless stated in the written approval to an assignment, no assignment will release or discharge Vendor from any obligation under this Agreement. Any person or entity providing subcontracted work under this Agreement must comply with **Section 11 (Insurance)**.

**10. OWNERSHIP OF DOCUMENTS.** All final documents provided to City as part of the work provided under this Agreement, including but not limited to reports, plans, and related documents, will become City's property except that Vendor's copyrighted documents will remain owned by Vendor. Such documents must be clearly marked and identified as copyrighted by Vendor.

**11. INSURANCE.** Vendor and any subcontractor will maintain for the term of this Agreement insurance as provided in **Exhibit B**.

**12. INDEMNIFICATION AND HOLD HARMLESS.** For purposes of this Agreement, Vendor agrees to indemnify, defend, and hold harmless City, its officers, appointees, employees, and agents from any and all loss, damage, liability or expense, of any nature whatsoever caused or incurred as a result of the negligence or other actionable fault of Vendor, its affiliates, subsidiaries, employees, agents, assignees, and subcontractors and their respective employees and agents. Vendor is not required hereunder to defend City, its officers, appointees, employees, or agents from assertions that they were negligent, nor to indemnify and hold them harmless from liability based on City's negligence. City does not indemnify Vendor.

**13. LIMITATION OF LIABILITY FOR BREACH OF CONTRACT OR NEGLIGENT PERFORMANCE.** Any attempt to limit liability for breach of contract or negligent performance to the amount of the payment to Vendor by City is void. Any attempt to limit Vendor's liability to City for consequential, exemplary, or punitive damages, or any other measure of damages permitted by law, in any action against Vendor for breach of contract is void.

**14. KANSAS ACT AGAINST DISCRIMINATION.** *Unless* Vendor employs fewer than four (4) employees during the term of this Agreement, or *unless* the total of all agreements (including this Agreement) between Vendor and City during a calendar year are cumulatively less than \$5,000, *then* during the performance of this Agreement, Vendor agrees that:

- a. Vendor 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, sex, disability, national origin, or ancestry;
- b. in all solicitations or advertisements for employees, Vendor will include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission ("commission");
- c. if Vendor fails to comply with the way Vendor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, Vendor 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 Vendor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the commission which has become final, Vendor 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. Vendor 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.

**15. 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 by both Parties.

**16. NO THIRD-PARTY BENEFICIARIES.** Nothing contained herein will create a contractual relationship with, or any rights in favor of, any Third Party.

**17. INDEPENDENT CONTRACTOR STATUS.** Vendor is an independent contractor and not an agent or employee of City.

**18. COMPLIANCE WITH LAWS.** Vendor will abide by all applicable federal, state, and local laws, ordinances, and regulations.

**19. 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.

**20. APPLICABLE LAW, JURISDICTION, 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.

**21. SEVERABILITY.** 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.

**22. ORDER OF PRECEDENCE.** If there is any conflict between the terms of this Agreement, excluding exhibits, and anything contained in the exhibits referenced herein or attached hereto, the terms and provisions of this Agreement, excluding exhibits, shall control.

The Parties hereto have caused this Agreement to be executed this \_\_\_\_ day of

\_\_\_\_\_ 20\_\_.

**CITY OF OLATHE, KANSAS**

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

ATTEST:

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

(SEAL)

APPROVED AS TO FORM:

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

(INSERT VENDOR)

Denton Excavating, Inc  
dba midland wrecking

By:

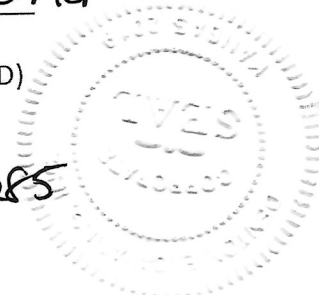
Wyllis Denton owner

(INSERT NAME & TITLE)

(ADDRESS OF VENDOR REQUIRED)

PO Box 14906

Lenexa, KS. 66285





**Exhibit A**  
**Vendor's Proposal**



**DENTON EXCAVATING dba  
MIDLAND WRECKING  
P.O. BOX 14906, LENEXA, KS 66285  
(913) 432-0314 phone (913) 432-6021 fax  
[Tyler@Midlandwreck.com](mailto:Tyler@Midlandwreck.com)**

April 1<sup>st</sup>, 2024

Phone: (913) 971-9064

Attn: Zach Hardy

Email: ZHardy@Olatheks.org

We propose and agree to finish all labor, material, equipment, and insurance necessary to complete subject work, in accordance with the following:

**REMOVE COMMERCIAL STRUCTURES AND CLEAN/CLEAR LOT FOR FUTURE SELL:**

- DEMOLISH AND REMOVE STRUCTURES IN ACCORDANCE WITH ALL STATE AND FEDERAL REGULATIONS
- SECURE ALL NECESSARY DOCUMENTATION WITH CITY AND STATE, INCLUDING PERMITS AND STATE NOTIFICATION
- PROVIDE ALL BONDING DOCUMENTATION AS REQUIRED BY CITY CONTRACT
- PERMANENT UTILITY KILLS/DISCONNECTS (WATER/SEWER/GAS/ELECTRIC)
- ABATE ALL ACMS FROM 1040 W SPRUCE AND THE PRIMARY BUILDING AT 400 K-7 (PER KDHE AND OSHA REQUIREMENTS)
- DISPOSE OF ALL DEBRIS TO STATE RECOGNIZED LANDFILL (PROOF PROVIDED)
- CLEAN LOT OF ALL TRASH/DEBRIS/REFUSE FROM DEMOLITION AND PREVIOUS USES
- REMOVE ANY CONCRETE SLABS AND ALL FOOTINGS FROM BUILDING FOOTPRINTS
- REMOVE ALL DEBRIS/CONCRETE/REFUSE FROM LOWER BIN AREA ON NORTHERN PART OF PARCEL
- REMOVE ALL ASPHALT FROM PARCEL, SAWCUT AS NECESSARY FOR FIRE DEPARTMENT PARKING
- REMOVE CONCRETE CURBS AND ALL PARKING LOT FEATURES FROM EASTERN PARKING LOT.
- EXCAVATE AND REMOVE ANY STORAGE TANKS FROM THE SITE.
- IMPORT AND BACKFILL AS NECESSARY TO FILL VOIDS/SWELLS TO PREVENT PONDING
- FINAL GRADE LOT AND ALL DISTURBED AREAS, WITH CITY OFFICIAL'S APPROVAL OF GRADEWORK
- HYDROSEED ALL DISTURBED AREAS ONCE PROJECT IS COMPLETED
- INSTALL SILT FENCE ON LOW SIDE OF FINAL GRADED LOT TO PREVENT EROSION, DOUBLE SILT IF NECESSARY ON THE SOUTH SIDE OF THE WATERWAY AFTER DISTURBANCE
- DEMOLISH AND REMOVE 1040 W SPRUCE ACCORDING TO THE CITIES REQUIRED DEMOLITION PROCEDURES.
- BACKFILL/GRADE/SEED AND STRAW 1040 W SPRUCE

**EXCLUSIONS:**

- NO LAND SURVEYS INCLUDED
- NO RE-ROUTE OF ANY UTILITIES
- NO TREE REMOVAL, UNLESS NECESSARY TO REMOVE BUILDINGS
- NO MAINTENANCE OF SEED OR STRAW INCLUDED
- SWPP NOT INCLUDED IN SCOPE OF WORK, FINAL GRADE PLANS NOT PROVIDED BY CITY
- NO SITE FENCING INCLUDED (ADDITIONAL CHARGES APPLY IF DEEMED NECESSARY)
- ANY BURIED CONCRETE AND OR TRASH THAT IS NOT EVIDENT FROM INITIAL SITE WALK





404 N K7 HIGHWAY DEMOLITION PRICE: \$129,233

1040 W SPRUCE DEMOLITION PRICE: \$19,750

NOTE: PAYMENT DUE UPON COMPLETION AFTER FINAL INSPECTION.



**Exhibit B**  
**CITY OF OLATHE INSURANCE REQUIREMENTS**

These requirements apply to the vendor or contractor ("Vendor") entering into an Agreement with the City of Olathe ("City").

**A. Insurance.** Secure and maintain for the term of the 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 Auto 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. Insurance must apply separately to each insured against whom claim is made or suit is brought, subject to liability limits.

**Limits:** All Owned Autos; Hired Autos; and Non-Owned Autos: Per occurrence, combined single limit: \$500,000.

Notwithstanding the foregoing, if Vendor does not own any automobiles, then Vendor must maintain Hired and Non-Owned Auto insurance.

3. Worker's Compensation and Employer's Liability: Workers compensation insurance must protect Vendor 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 (if applicable): **Unless excused by the Agreement with the City**, Vendor must maintain for the term 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 applicable): **IF** accessing the City's network or City's data, **THEN** maintain the following coverages throughout for the term of this Agreement and for a period of three (3) years after the termination of this



Agreement: 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.** Above are minimum acceptable coverage limits and do not imply or place a liability limit nor imply that the City has assessed the risk that may be applicable to Vendor. Vendor must assess its own risks and if it deems appropriate and/or prudent maintain higher limits and/or broader coverage. The Vendor'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 Vendor.

**C. Costs.** Insurance costs must be at Vendor's expense and accounted for in Vendor's bid or proposal. Any deductibles or self-insurance in the above-described coverages will be the responsibility and at the sole risk of the Vendor.

**D. Verification of Coverage**

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

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

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



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/2/2024

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 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	CONTACT NAME: Janice Aaron
The Reilly Company LLC	PHONE (A/C No. Ext): (913) 682-1234
608 Delaware St.	FAX (A/C No.): (913) 682-8136
P.O. Box 9	E-MAIL: janice.aaron@reillyinsurance.com
Leavenworth KS 66048-0009	INSURER(S) AFFORDING COVERAGE
	INSURER A: Cincinnati Specialty Underwriters
	INSURER B: Cincinnati Insurance Companies
	INSURER C: Accident Fund
	INSURER D: Westchester Surplus Lines Insurance
	INSURER E:
	INSURER F:
INSURED	NAIC #
Denton Excavating, Inc., DBA: Midland Wrecking	10166
PO Box 14906	
Lenexa KS 66215-4906	

## COVERAGES

CERTIFICATE NUMBER: Master 23 (All Lines)

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	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> WOS Per Contract CSGA4087 <input checked="" type="checkbox"/> Blkt Addl Ins'd w/Comp Ops GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X		CSU0150574	5/10/2023	5/10/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ Excl PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Blkt Addl Insd w/ Compl Ops CSC \$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	X		EBA 0577278	5/10/2023	5/10/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0			CSU0150577	5/10/2023	5/10/2024	EACH OCCURRENCE \$ 3,000,000 AGGREGATE \$ 3,000,000 \$
C	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 N	N/A	100073482	11/25/2023	11/25/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Leased/Rented Equipment			ENP 0577278	5/10/2023	5/10/2024	Limit \$25,000 Ded \$1,000
D	Pollution Liability			673586082003	7/22/2023	7/22/2024	Limit \$2,000,000/\$1,000,000 Ded \$5,000

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

Project: 1040 W Spruce Street & 400 N K7 Hwy. City of Olathe, KS is named as an additional insured on General Liability and Auto Liability as regards work performed by named insured for Certificate Holder per written contact. 30 day notice of cancellation.

## CERTIFICATE HOLDER

## CANCELLATION

City of Olathe, KS  
100 E Santa Fe st  
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

James Bray/JANICE

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