

WATER MAIN RELOCATION AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 2024, by and between the City of Olathe, a municipal corporation of the State of Kansas, hereinafter called the "City," and Water District No. 1 of Johnson County, a quasi-municipal corporation of the State of Kansas, hereinafter called "WaterOne" (collectively called the "parties," and each individually, a "party").

WITNESSETH that:

WHEREAS, the City has determined that it is appropriate to reconstruct Ridgeview Road from approximately 800 feet north of W 167th Street to approximately 700 feet south of W 167th Street, and W 167th Street from approximately 500 feet east of Ridgeview Road to approximately 160 feet west of Ridgeview Road, Olathe Project 3-C-018-22 (hereinafter called the "Public Improvement"); and

WHEREAS, the construction area is located in the area of the SW ¼ of Section 18 and the NW ¼ of Section 19, Township 14S, Range 24E and the SE ¼ of Section 13 and the NE ¼ of Section 24, Township 14S, Range 23E in Olathe, Johnson County, Kansas; and

WHEREAS, as part of the Public Improvement, it is necessary to reconstruct and otherwise relocate water facilities which are presently either located in public right-of-way or city public utility easement, or located outside public right-of-way or city public utility easement, or located in WaterOne private easement (hereinafter called the "Water Facilities," WaterOne Project Number RA-22001); and

WHEREAS, WaterOne has agreed to the relocation of the Water Facilities subject to the cost of the relocation of substituted facilities for those now located in or adjacent to WaterOne private easements being paid by the City; and

WHEREAS, as part of the relocation, WaterOne has determined a need through hydraulic modeling to replace the existing water main with a larger water main in order to meet the service needs of the area served by the main; and

WHEREAS, there is a dispute between WaterOne and the City regarding who should bear the difference in cost for the increase in water main size; and

WHEREAS, the parties have agreed to move forward with the Project and resolve the dispute through available legal remedies; and

WHEREAS, K.S.A. 68-169, and amendments thereto, authorizes the parties hereto to enter into a joint agreement for the improvement proposed herein; and

WHEREAS, the City and WaterOne have determined to enter into this Agreement for the aforesaid Public Improvement; and

WHEREAS, WaterOne has executed this Agreement by its General Manager who is authorized to approve and execute such relocation agreements by Resolution of the WaterOne Board dated June 13, 1995; and

WHEREAS, the Governing Body of the City did approve and authorize the Public Improvement by adoption of Resolution No. 21-1064 dated September 21, 2021, and;

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

1. The parties hereto enter into this Agreement for the purpose of relocating Water Facilities now situated in or adjacent to WaterOne's private easement by replacing such Water Facilities to areas within the expanded public right-of-way, within permanent public utility easements, within remaining WaterOne easements or remaining portions of such easements not condemned by nor disclaimed to the City to avoid conflict with the City construction and improvements within its Public Improvement project. The aforementioned Water Facilities are shown on the project plans which are incorporated herein by reference.

2. WaterOne hereby agrees to relocate the water facilities to an elevation and alignment compatible with the street improvements to be constructed by the City, and in a specific location to be agreed upon by both the City and WaterOne.

Subject to Section 3, the City agrees to pay all costs of relocating the existing water facilities now located within or adjacent to WaterOne's private easement. WaterOne's estimated cost for relocation of these facilities is \$155,933.66 (100% of cost estimate).

WaterOne will invoice the City at times determined by WaterOne, but no more than monthly, for progress payments for work completed.

3. The parties recognize that the estimated cost in Section 2 includes costs to increase the water main size from that currently in place. The current estimate of the costs attributable to the size increase is \$25,000.06. WaterOne asserts that pursuant to WaterOne Rule X ("Rule X"), the City is responsible for such costs. The City asserts that, under relevant Kansas law, it should not be responsible for such costs.

In order to avoid unnecessary delay in completing this project, the parties agree that relocation, invoicing, and payment will proceed as set forth elsewhere in this Agreement, but that the City reserves any and all rights under law to seek legal remedy or determination regarding responsibility for the costs attributable to the increase in water main size. The parties agree that this Agreement will not be raised or argued as evidence

of the City's acquiescence or agreement that Rule X may be validly applied to require the City to pay for costs attributable to the increase in water main size or that the City is legally responsible for any relocation costs under Rule X beyond those that would be required by the "substitute facilities" doctrine. The City expressly reserves its right to assert in any subsequent legal action any and all arguments that it should not be responsible for the costs attributable to the increase in water main size.

4. WaterOne shall account to the City for all of its costs in designing, constructing and connecting the relocated and replacement facilities which are to be relocated and paid for by the City. WaterOne shall make no further claim for damages or indemnification except as provided in Sections 2 and 5 herein.

5. Upon execution of this Agreement, WaterOne will commence work as soon as reasonably possible. WaterOne agrees that subject to delays due to weather and conditioned upon the City's ability to comply with its own construction schedule with respect to construction affecting the relocation by WaterOne, WaterOne shall complete the relocation of the Water Facilities within the Public Improvement project time limits.

6. WaterOne shall design, construct, and install the relocated water facilities within a course and area that will not conflict with the improvements to be constructed by the City. The specific location for the relocated facilities shall be agreed upon by both the City and WaterOne. The City shall protect the newly relocated and installed water facilities from interruption or damage during the course of the Public Improvement.

7. The City may, in the future, elect to require WaterOne to again relocate its Water Facilities which are the subject of this Agreement to other areas within the expanded street right-of-way or public utility easements to avoid conflict with any future road improvements by the City and to specific locations to be agreed upon by both the City and WaterOne. In such event if the facilities originated within or adjacent to private WaterOne easements the entire cost of any such future relocation shall be borne by the City. In such event, WaterOne shall account to the City for all of its costs in relocating, constructing and connecting those portions of the relocated facilities, which costs shall be fully indemnified to WaterOne by the City.

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

If to WaterOne:

Water District No. 1 of Johnson County
Eric Maassen, P.E.
Project Manager
10747 Renner Boulevard
Lenexa, Kansas 66219

If to the City:

City of Olathe
Austin Lamparter, P.E.
City Project Manager
Public Works Department
1415 S Robinson Drive
Olathe, Kansas 66061

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

9. This Agreement constitutes the entire agreement of the parties and may be amended or terminated only by written mutual agreement of the parties.

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

CITY OF OLATHE

By: _____
John Bacon
Mayor

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
Ron Shaver
City Attorney

WATER DISTRICT NO. 1 OF JOHNSON COUNTY

By: _____
Shaun P. Pietig
General Manager

APPROVED AS TO FORM:

By: _____
Eric R. Arner
General Counsel

ACKNOWLEDGMENT

STATE OF KANSAS)
)ss.
COUNTY OF JOHNSON)

BE IT REMEMBERED that on this ____ day of _____, 2024, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came John Bacon, Mayor of Olathe, Kansas, who is personally known to me to be the same person who executed the foregoing instrument on behalf of said City, and said person duly acknowledged the execution of the same to be the act and deeds of the CITY OF OLATHE, KANSAS.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public

My Commission Expires:

ACKNOWLEDGMENT

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

BE IT REMEMBERED, that on this _____ day of _____, 2024, before me, the undersigned, a Notary Public in and for the County and State aforesaid came Shaun P. Pietig, General Manager of Water District No. 1 of Johnson County, a quasi-municipal corporation of the State of Kansas, who is personally known to me to be such officer and the same person who executed the foregoing instrument on behalf of said Water District, and said person duly acknowledged the execution of the same as the act and deed of WATER DISTRICT NO. 1 OF JOHNSON COUNTY.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public

My Commission Expires: