

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made in Johnson County, Kansas, by and between the City of Olathe, Kansas, hereinafter "City," and Orrick & Erskine, L.L.P. hereinafter "Consultant" (collectively, the "Parties").

City is in need of certain professional services in the field of Land Acquisition for a particular project (the "Project") identified in **Exhibit A (Project Description)**, attached hereto and incorporated herein by reference.

Consultant has expertise in Land Acquisition services and activities related to the Project as described in **Exhibit B (Scope of Services)** attached hereto and incorporated by reference.

City contracts with Consultant for the performing of Professional Services in connection with the Project, as described herein, in consideration of these premise and of the mutual covenants herein set forth. By executing this Agreement, Consultant represents to City that Consultant is qualified to perform the work on this Project and is licensed to practice Land Acquisition services 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.

"Contract Documents" means those documents so identified in this Agreement.

"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.

SECTION II - COMPENSATION

A. FEES & EXPENSES

1. Total Fee: City agrees to pay Consultant an amount not to exceed Six Hundred Twenty Five Thousand Dollars and No Cents (\$625,000.00) including reimbursable expenses as described herein. The fee is based on the performance of the scope of services outlined in this Agreement, including **Exhibit B** attached hereto and incorporated by reference, and will be billed by Consultant using fixed and hourly rates and equipment charges as set forth in **Exhibit C** attached hereto and incorporated by reference, plus reimbursable expenses as set forth below. All bills will be submitted to City monthly as provided herein.
2. Reimbursable Expenses: Consultant will be reimbursed at the actual cost, as outlined in Exhibit C, 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 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 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 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 December 31, 2025.

SECTION III - RESPONSIBILITIES OF CONSULTANT

Consultant will perform the Professional Services required for the execution of the Project as described in **Exhibit B**.

A. 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 individuals will perform as the principals on this Project: Joseph Erskine and Tim Orrick. As principals on this Project, these persons will be the primary contact with the City's Project Manager and will have authority to bind Consultant. So long as the individuals named above remain actively employed or retained by Consultant, such individuals will perform the function of principals on this Project.
2. 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.
3. Subcontracting or Assignment of Services: Other than the appraisal services outlined in **Exhibit B**, and corresponding rate schedule contained in **Exhibit C**, which are hereby approved, 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.

4. 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.
5. 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.
6. 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 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. 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.

C. 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.

D. 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.

E. BOND FORMS

City will furnish all bond forms required for the Project.

F. 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: Therese Vink
100 E. Santa Fe
P.O. Box 768
Olathe, KS 66051-0768

Orrick & Erskine, L.L.P.
Attn: Joseph J. Erskine
11900 College Boulevard, Suite 203
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 D (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 E – Certificate of Insurance**). Consultant is required to promptly notify City of a material change or cancellation of any policy listed on the Certificate.
2. Subcontractor's Insurance: If a part of the Professional Services under this Agreement is to be sublet, Consultant will either (a) cover all subcontractors in its insurance policies, or (b) require each subcontractor not so covered to secure insurance which will protect subcontractor against all applicable hazards or risks of loss in the minimum amounts designated herein. If Consultant selects option (b), then Consultant agrees to provide the City's Risk Manager a certificate of insurance acceptable to the Risk Manager at least seven (7) days prior to allowing the subcontractor to perform any services on this Project. Consultant agrees that any subcontractor providing services on said Project without providing a certificate of insurance acceptable to the City's Risk Manager will immediately cease all services on said Project and will assume all financial risk associated with such failure thereto.

E. INDEMNITY

1. Loss: For purposes of indemnification requirements, the term "Loss" means any and all loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including reasonable attorney's fees and the cost of defense), in connection with any action, proceeding, demand or claim for injury, including death, to any person or persons or damages to or loss of, or loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with the performance of this Agreement.
2. Indemnification and Hold Harmless: For purposes of this Agreement, Consultant agrees to indemnify, defend and hold harmless City and its agents from any and all Loss where Loss is caused or incurred as a result of the intentional misconduct, recklessness, negligence, or other actionable fault of Consultant or its subcontractors. Neither acceptance of completed work nor payment therefor nor termination or expiration of this Agreement releases Consultant of its obligations under this paragraph.
3. Comparative Fault & Contributory Negligence: It is a specific element of consideration of this Agreement that the indemnity in Section V.E.2 will apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of City or any Third Party and, further notwithstanding any theory of law including, but not limited to, a

characterization of City's or any Third Party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature; provided, however, that Consultant's obligation hereunder will not include amounts attributable to the fault or negligence of City or any Third Party for whom Consultant is not responsible.

4. Damage Limitations: The indemnification obligation contained in this Agreement will not be limited by any limitation on amount or type of damages, compensation or benefits payable by or for Consultant or its subcontractors, by the minimum insurance required by this Agreement, nor under workers' compensation acts, disability benefit acts, or other employee benefit acts.
5. Negligence by the City: Consultant is not required hereunder to defend City or its agents from assertions that they were negligent, nor to indemnify and hold them harmless from liability based on City's negligence.

F. AFFIRMATIVE ACTION/OTHER LAWS

1. Kansas Act Against Discrimination: During the performance of this Agreement, Consultant agrees that:
 - a. Consultant will observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and will not discriminate against any person in the performance of work under the present contract because of race, religion, color, gender, disability, national origin, ancestry, or age;
 - b. in all solicitations or advertisements for employees, Consultant will include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission ("commission");
 - c. if Consultant fails to comply with the way Consultant reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, Consultant will be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by City without penalty;
 - d. if Consultant is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the commission which has become final, Consultant will be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency; and
 - e. Consultant will include the provisions of subsections a. through d. in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.
2. Exceptions to Applicability: The provisions of this Section will not apply to a contract entered into by City with Consultant if (a) Consultant employs fewer than four (4)

employees during the term of such contract; or (b) Consultant's contract with City totals Ten Thousand Dollars (\$10,000) or less in aggregate.

3. Kansas Age Discrimination in Employment Act: Consultant further agrees and acknowledges that it will abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this Project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.
4. Kansas Fairness in Public Construction Contract Act: The Parties agree and acknowledge that the services provided under this Agreement are within the scope of the Kansas Fairness in Public Construction Contract Act (K.S.A. 16-1901 et seq.) and that no provision of this Agreement waives, alters, or supersedes any provisions of said Act.

G. 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. 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.

L. NO SOLICITATION TO HIRE CITY EMPLOYEES

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

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 F**).

N. 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.

O. 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.

P. 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.

Q. 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.]

R. EXECUTION OF CONTRACT

The parties hereto have caused this Agreement to be executed this ____ day of _____ 2024.

CITY OF OLATHE, KANSAS

By: _____
Mayor

ATTEST:

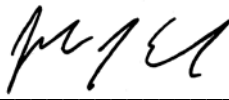
City Clerk

(SEAL)

APPROVED AS TO FORM:

City Attorney or Deputy/Assistant City Attorney

Orrick & Erskine, L.L.P.

By: 

Joseph J. Erskine, Partner
11900 College Boulevard, Suite 203
Overland Park, KS 66210

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EXHIBIT A
Description of Project

Provide Land Acquisition services as requested by the City of Olathe for City project 3-C-025-18, Santa Fe Ridgeview to Mur Len Improvements Project.

EXHIBIT B
Scope of Services

SCOPE OF SERVICES

1. For federal and state funded projects, the Land Acquisition Agent shall comply with the Kansas Department of Transportation (KDOT), the Kansas Department of Health and Environment (KDHE), and the Federal Highway Association (FHWA) laws, rules and regulations on land acquisition.
2. Regarding City projects, upon instructions from the City Public Works Department, Land Acquisition Agent shall provide land acquisition services to acquire the necessary real property, easements, and right-of-way from property owners involved in City projects.
3. For each tract, Land Acquisition Agent is expected to:
 - A. Prepare the estimate of compensation (if applicable), offer letter and other documents to each property owner describing the project and the process for acquisition. Estimates shall include detailed notes for each acquisition.
 - i. In the event appraisals are required, Land Acquisition Agent may sub-contract and supervise the activities of approved appraisal firms for the provision of any such appraisals. The pre-approved appraisal firms and associated fee schedules are set in **Exhibit C**.
 - B. Contact and meet with the property owner at his/her residence, place of business, or any location of their choice; review the plans for the project with them; answer any questions they may have; receive technical engineering questions; and make the offer to them in writing for the right-of-way or easements needed for this project.
 - C. Contact and meet with the property owner a second time to see if they are willing to accept the offer; submit a counteroffer or negotiate a final settlement; provide answers from the City staff on technical questions; provide answers to any additional questions regarding the appraisal/acquisition process.
 - D. If the property owner chooses to make a counteroffer, the Land Acquisition Agent shall negotiate within the range authorized by the Public Works Department. If the counteroffer still exceeds the authorized range of settlement, then the counteroffer shall be submitted to the Public Works Department for review and action. Any additional cost to cure, non-monetary offer items, and change in the plans shall be provided by the contractor and shall be approved by the Project Manager.
 - E. If the property owner has not accepted the offer or made any counteroffer, attempt to complete the transaction by phone at the original offer or any approved counteroffer amount.
 - F. Following consultation with City staff, write a final offer letter to the property owner in an attempt to acquire the needed right-of-way or easements and to explain the eminent domain process.
 - G. If the property owner accepts the final offer, the Land Acquisition Agent shall obtain the landowner's acceptance of the final offer, acknowledging all agreements made by the Land Acquisition Agent and the landowner, in writing on the final documents.
 - H. All signed documents and offer letters shall be submitted to the Public Works Department with invoice for approval and payment within 10 days from receipt of the signed documents by the Land Acquisition Agent for City funded projects and within 21 days for federal and state funded projects. Land Acquisition Agent shall note any property owner requests on the project spreadsheet.
 - I. If unable to satisfactorily complete the negotiation, the file shall be returned to the City's Public Works Department to coordinate with the Legal Department for further action.
 - J. Provide brief negotiator's logs when invoices are submitted highlighting the date of each visit and phone call with the property owner in City funded project and detailed negotiator's logs as required by FHWA regulations in federal and state funded projects.

- K. Land Acquisition Agent may be given the authority to negotiate a higher compensation to the landowner, based upon guidelines set forth by the City Public Works Department.
 - L. Provide updates pursuant to agreed upon schedule with Project Manager.
4. In the event extra work is needed, Land Acquisition Agent shall be paid per hour as follows:
 - A. All meetings with City staff and public prior to the beginning of the project.
 - B. All regularly scheduled land acquisition meetings.
 - C. All subsequent contact with property owner after sending out final offer letter.
 - D. Assisting Public Works and Legal Departments during the eminent domain process and any appeal.
 - E. Preparation of spread sheet if requested by City staff.
 - F. Any changes in document or construction plan.
 - G. Any other work not included in Paragraph No. 3.
 - H. All extra work shall be itemized and documented.
 5. Land Acquisition Agent shall begin the work within fifteen (15) days after receiving the appraisals, documents, easements, construction plan, title work, legal descriptions, and maps from the Public Works Department. The work shall be done for each tract within ninety (90) days after receiving the documents from the Public Works Department. An extension of time may be granted by the Public Works Department for reasonable cause and for any change in the documents by City staff.
 6. The Public Works Department will provide by electronic format, if feasible, the documents to be used, spreadsheet, a map of the tract, title work, name of landowner(s), and legal descriptions of the area to be taken. The procedures for electronic processing of documents will be established later. Land Acquisition Agent shall prepare and print all documents, introduction letter, donation letter and offer letter. The Land Acquisition Agent shall submit any change in the documents to the Public Works Department by electronic processing.
 7. Land Acquisition Agent shall prepare estimates of compensation for the taking of less than \$50,000 for City funded projects and estimates of compensation for the taking of less than \$10,000 for federal and state funded projects without using an appraiser. In federal and state funded projects, the appraiser shall comply with State of Kansas and FHWA guidelines, including meeting with the landowners, and such appraisals shall be submitted to the Review Appraiser for a review appraisal. The appraisal shall be considered to be short form appraisal, based upon comparable sales data approach providing for a brief before and after valuation sheet and an itemized compensation sheet setting out the comparable sales data, damage to land, damage to improvements, including costs to cure providing for total itemized damages. For those tracts with a taking of \$50,000 or more, the documents shall be provided to the City Appraiser by either the Land Acquisition Agent or the Public Works Department.
 8. Land Acquisition Agent shall be certified or qualified as a Land Acquisition Agent, has been used by KDOT as an approved Land Acquisition Agent or has experience in land acquisition for governmental entities.
 9. Land Acquisition Agent shall meet on a regularly scheduled basis with City staff, usually every other week, and submit an updated spreadsheet, if requested, to City staff showing the progress of the land acquisition work.
 10. Upon request from Project Manager, Land Acquisition Agent shall attend meetings held by the engineering firm and City with the landowners during the planning stages of the project.

**EXHIBIT C
Fee & Rate Schedule**

Consultant Per Tract Fee and Payment Schedule:

Partial Takings: \$1,195 per tract
Total Takings: \$1,395 per tract

Residential Relocations: \$1,950 per displaced person
Commercial Relocations: \$2,250 per displaced person or business

Payment Schedule:

- 1) **First 20% after “First Letters/Intent to Acquire/Intent to Relocate Notices” are sent.** Description: When sent to an owner, it gives them the City’s intent to acquire, a brief description of the taking, and introduces them to our team and the appraisers. When sent to a displaced person/business, it will provide the KDOT relocation notices and introduce them to our team so we can meet and discuss their relocation needs.
- 2) **Second 30% after “Offer Letters/Tender of Relocation Benefits” are sent.** Description: When offers are sent to owners or when a tender of relocation benefits are sent to displaced persons/businesses.
- 3) **Third 25% after 45 days of negotiations/relocation counseling.** Description: A third progress payment after Consultant has spent time negotiating and/or working with displaced persons/businesses on their relocation plan.
- 4) **Final 25% upon agreement or impasse.** Description: This is the final progress payment once an acquisition agreement is signed or an impasse is declared with an owner. Regarding relocation, when a displaced person/business has vacated the site.

Hourly Rates:

For other services outside the Scope of Services, including, but not limited to condemnation, Consultants will bill at \$195/hour, and Legal Staff at \$95/hour.

Appraisal Fee Schedules:

Valbridge:

- 1) Just Compensation Estimate less than \$10,000*** (waiver valuation form): \$1,450 per report
- 2) Just Compensation Estimate more than \$10,000*** with no damage to remainder (short-form report, rely on property tax value of improvements in before and after valuations: \$1,950 per report

*** The Uniform Act may be subject a Rule changing these limits to \$15,000 in June 2024.

EXHIBIT C
Fee & Rate Schedule (Continued)

Valbridge (Continued):

- 3) Total Takings (long-form summary report): \$3,700 per report
- 4) Just Compensation Estimate more than \$10,000*** and damages to the remainder (long-form summary report, develop all applicable valuation methods for improvements in before and after valuations: \$4,300 per report

Daniel Kann and Derek Shaner will be Valbridge's lead appraisers for the project.

If Valbridge staff is required for preparing for and appearing/testifying at the Court-Appointed Appraisers' hearing or trial, those hourly rates are: \$375/hour for preparation and \$425/hour for testimony.

Bliss Associates:

Bliss Associates has provided the following proposed fee schedule for review reports:

- Type 1 (Report for #2, above: \$1,250 per report)
- Type 2 (Report for #3 and #4, above: \$1,500 per report)

Robin Marx will be Bliss Associates' lead appraiser for the project.

If Bliss Associates staff is required for preparing for and appearing/testifying at the Court-Appointed Appraisers' hearing or trial, those hourly rates are: \$295/hour for preparation and \$350/hour for testimony.

Payment Schedule:

Valbridge and Bliss Associates shall submit invoices to Consultant, which Consultant will include in its monthly invoices to the City.

EXHIBIT D
CITY OF OLATHE INSURANCE REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. Verification of Coverage

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

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

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

EXHIBIT E
Certificate of Insurance

THE CITY ACKNOWLEDGES RECEIPT OF CERTIFICATE OF INSURANCE.

EXHIBIT F

Certificate of Good Standing to Conduct Business in Kansas

THE CITY ACKNOWLEDGES RECEIPT OF CERTIFICATE OF GOOD STANDING.