

## **MASTER AGREEMENT FOR PROFESSIONAL SERVICES**

THIS MASTER AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is made in Johnson County, Kansas, by and between the City of Olathe, Kansas, hereinafter "City," and Lamp Rynearson, Inc., hereinafter "Consultant" (collectively, the "Parties").

City has various water, sanitary sewer, and low-pressure sewer force main rehabilitation and improvements projects in Olathe, Kansas, and requires the following services:

Water and Sanitary Sewer Rehabilitation and Improvements Program On-Call  
Project No. 1-C-003-22, 1-R-100-25, 1-R-000-25, and 5-R-000-25

The required services are more fully described in **Exhibit A** (attached hereto and incorporated herein by reference).

City contracts with Consultant for the performing of Professional Services through the use of Task Orders as described herein, in consideration of these premises and of the mutual covenants herein set forth. By executing this Agreement, Consultant represents to City that Consultant is professionally qualified to perform these Professional Services and is licensed to practice engineering by all public entities having jurisdiction over Consultant and the projects.

### **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 the City's Request for Proposals/Request for Qualifications ("RFP/RFQ").

"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 a Project, including all supervision, materials, supplies, labor, tools, equipment, transportation and/or other facilities furnished, used or consumed in connection with a 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 a 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" means all or part of a project identified by City in a Task Order.

"Project Manager" means the person employed and designated by City to act as the City's representative for this Agreement.

"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.

"Task Order" means the task-specific terms (including, but not limited to, scope of services, schedule, and compensation) for each specific assignment under this Agreement, but does not mean the general terms and conditions set forth in this Agreement.

"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 \$323,908.00, including reimbursable expenses as described herein. The fee is based on the performance of the scope of services outlined in this Agreement, and will be billed by Consultant using hourly rates and equipment charges as set forth in **Exhibit B** attached hereto and incorporated by reference, plus reimbursable expenses as set forth below. All bills will be submitted to City on a monthly basis as provided herein.

2. Reimbursable Expenses: Consultant will be reimbursed at the actual cost 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 the scope of this Agreement or any Task Order, or 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 B**; 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 B**. 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. Payment to Consultant as compensation for Additional Services will be in accordance with the hourly rate schedule attached as **Exhibit B**.
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 a 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 B**. Consultant will not be paid extra by City if Consultant's appearance is to defend its Professional Services.

## **C. BILLING & PAYMENT**

1. Billing: Consultant may bill City monthly for completed Professional Services, including reimbursable expenses. The bill submitted by Consultant must itemize the Professional Services and reimbursable expenses for which payment is requested. City agrees to pay Consultant within thirty (30) days of approval by the Governing Body or other agent of City in accordance with the City's Procurement Policy. The bill must be mailed to the attention

of Account Payable, City of Olathe, PO Box 768, Olathe, KS 66051-0768 or emailed to apolathe@olatheks.org. The bill must indicate it is for work or expenses under this Agreement (include Agreement date for identification).

2. City's Right to Withhold Payment: In the event City becomes credibly informed that any representations of Consultant provided in its monthly billing are wholly or partially inaccurate, City may withhold payment of sums then or in the future otherwise due to Consultant until the inaccuracy and the cause thereof is corrected to City's reasonable satisfaction. In the event City questions some element of an invoice, that fact will be made known to Consultant immediately. Consultant will help effect resolution and transmit a revised invoice, if necessary. Amounts not questioned by City will be paid to Consultant in accordance with the contract payment procedures.
3. Progress Reports: A progress report must be submitted with each monthly pay request indicating the percentage of a Task Order completed to date. This report will serve as support for payment to Consultant.

### **SECTION III - RESPONSIBILITIES OF CONSULTANT**

Consultant will perform the Professional Services in accordance with written Task Orders issued by City and agreed to by Consultant. Task Orders will be substantially similar to the form provided in **Exhibit C**.

#### **A. TASK ORDER PROCEDURES**

1. City or Consultant will prepare a Task Order providing a scope and all appropriate attachments for the other party to review and approve.
2. City, upon its acceptance, will sign and approve the Task Order and return a fully executed copy to Consultant.
3. City may require a Task Order to contain an estimate of cost, an estimate of time, or a funding limitation, and if so required, the Task Order must contain those items.
4. Consultant will notify City as soon as practicable if it appears that an estimate and/or funding limitation will be exceeded. Professional Services provided in excess of estimates or funding limitations must be approved in writing by City.
5. All Task Orders or other forms of written authorization will be subject to the terms and conditions in this Agreement. In the event any provision contained in a Task Order or other form of written authorization conflicts with any terms or conditions in this Agreement, the provisions of this Agreement will control.

#### **B. PRELIMINARY DESIGN TASK ORDERS**

1. Services: Unless provided otherwise in a Task Order, preliminary design services will meet the requirements listed below.

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.
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. If required by a Task Order, 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.

**C. FINAL DESIGN TASK ORDERS**

1. Services: Unless provided otherwise in a Task Order, final design services will meet the requirements listed in this section.
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.
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.

#### **D. BIDDING PHASE TASK ORDERS**

1. Services: Unless provided otherwise in a Task Order, bidding phase services will meet the requirements listed in this Section.
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.

#### **E. CONSTRUCTION PHASE TASK ORDERS**

1. Services: Unless provided otherwise in a Task Order, construction phase services will meet the requirements listed in this Section.
2. 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.
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.

#### **F. GENERAL DUTIES AND RESPONSIBILITIES**

1. Personnel: Consultant will assign only qualified personnel to perform any service concerning a Project. At the time of execution of this Agreement, the Parties anticipate that the following individual will perform as the principal on this Agreement: Jon Shellhorn. As principal, 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 Agreement. 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 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. Utility Coordination: If required by a Task Order, Consultant will comply with the conditions set out in the Utility Coordination Checklist as in **Exhibit E**. The services required of Consultant by this checklist are expected to usually occur during the Preliminary Design,

Final Design, and Construction phases; however, Consultant's responsibilities under this checklist may sometimes occur at other times.

4. 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 a 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.
5. 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.
6. 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.
7. 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.
8. 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 a Task Order; 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 a Task Order and performance of Consultant's obligations under this Agreement.

##### **C. DUTIES**

City will perform the various duties and services in all phases of a Project which are outlined and designated in a Task Order 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 a Task Order.

##### **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 a Task Order. 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 a Project.

##### **G. PROJECT REPRESENTATIVE**

City will designate a Project Manager to represent City in coordinating this Agreement 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 a Task Order 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: Mark Perry  
100 E. Santa Fe  
P.O. Box 768  
Olathe, KS 66051-0768

Lamp Rynearson, Inc.  
Attn: Jon Shellhorn  
9001 State Line Rd.  
Suite 200  
Kansas City, MO 64114

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 a Task Order 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 this Agreement 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, provided that 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 F (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 G – 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 a

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, and hold harmless City and its agents from any and all Loss where Loss is caused or incurred as a result of the intentional misconduct, recklessness, negligence, or other actionable fault of Consultant or its subcontractors. Neither acceptance of completed work nor payment therefor nor termination or expiration of this Agreement releases Consultant of its obligations under this paragraph.
3. Comparative Fault & Contributory Negligence: It is a specific element of consideration of this Agreement that the indemnity in Section V.E.2 will apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of City or any Third Party and, further notwithstanding any theory of law including, but not limited to, a characterization of City's or any Third Party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature; provided, however, that Consultant's obligation hereunder will not include amounts attributable to the fault or negligence of City or any Third Party for whom Consultant is not responsible.
4. Damage Limitations: The indemnification obligation contained in this Agreement will not be limited by any limitation on amount or type of damages, compensation or benefits payable by or for Consultant or its subcontractors, by the minimum insurance required by this Agreement, nor under workers' compensation acts, disability benefit acts, or other employee benefit acts.
5. Negligence by the City: Consultant is not required hereunder to defend City or its agents from assertions that they were negligent, nor to indemnify and hold them harmless from liability based on City's negligence.

#### **F. AFFIRMATIVE ACTION/OTHER LAWS**

1. Kansas Act Against Discrimination: During the performance of this Agreement, Consultant agrees that:
  - a. Consultant will observe the provisions of the Kansas Act Against Discrimination

(K.S.A. 44-1001 et seq.) and will not discriminate against any person in the performance of work under the present contract because of race, religion, color, gender, disability, national origin, ancestry, or age;

- b. in all solicitations or advertisements for employees, Consultant will include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission ("commission");
  - c. if Consultant fails to comply with the way Consultant reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, Consultant will be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by City without penalty;
  - d. if Consultant is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the commission which has become final, Consultant will be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency; and
  - e. Consultant will include the provisions of subsections a. through d. in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.
2. Exceptions to Applicability: The provisions of this Section will not apply to a contract entered into by City with Consultant if (a) Consultant employs fewer than four (4) employees during the term of such contract; or (b) Consultant's contract with City totals Ten Thousand Dollars (\$10,000) or less in aggregate.
3. Kansas Age Discrimination in Employment Act: Consultant further agrees and acknowledges that it will abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this Project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.
4. Kansas Fairness in Public Construction Contract Act: The Parties agree and acknowledge that the services provided under this Agreement are within the scope of the Kansas Fairness in Public Construction Contract Act (K.S.A. 16-1901 et seq.) and that no provision of this Agreement waives, alters, or supersedes any provisions of said Act.

#### **G. KANSAS OPEN RECORDS ACT**

Consultant acknowledges that City is subject to the Kansas Open Records Act (K.S.A. 45-215, *et seq.*). City retains the final authority to determine whether it must disclose any document or other record under the Kansas Open Records Act and the manner in which such document or other record should be disclosed.

## **H. ENTIRE AGREEMENT**

This Agreement, including all documents and exhibits included by reference herein, constitutes the entire Agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both Parties to this Agreement. No form or document provided by Consultant after execution of this Agreement will modify this Agreement, even if signed by both Parties, unless it: 1) identifies the specific section number and section title of this Agreement that is being modified and 2) indicates the specific changes being made to the language contained in this Agreement.

## **I. APPLICABLE LAW, JURISDICTION, AND VENUE**

Interpretation of this Agreement and disputes arising out of or related to this Agreement will be subject to and governed by the laws of the State of Kansas, excluding Kansas' choice-of-law principles. Jurisdiction and venue for any suit arising out of or related to this Agreement will be in the District Court of Johnson County, Kansas.

## **J. NO THIRD-PARTY BENEFICIARIES**

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

## **K. INDEPENDENT CONTRACTOR**

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

## **L. DELIVERABLES**

1. Project Drawings: Project drawings which are developed by Consultant using a Computer Aided Drafting (CAD) System will be made available to City per the City of Olathe Technical Specifications and Design Criteria for Public Improvements. However, due to the potential that the information set forth on the electronic media could be modified by City, or other City consultants, unintentionally or otherwise, Consultant will remove all indices of its ownership, professional corporation name, seal, and/or involvement from each electronic display. If City provides such electronic media to others for any purpose, City will require the electronic media to be returned to City upon completion of such use. City recognizes that use of such electronic media will be at City's sole risk and without any liability risk or legal exposure by Consultant.
2. Project Documentation: All documentation provided City other than Project drawings will be furnished in either Microsoft Word file format or pdf format.
3. Conformed To Construction Drawings ("As Built" Drawings): Following construction, City and/or construction contractor will provide copies of changes and alterations made in the field during construction to Consultant to provide Conformed To Construction Drawings per

the City of Olathe Technical Specifications and Design Criteria for Public Improvements. Consultant may rely on the information provided by City in preparing such documents, subject to the professional standard of care required by this Agreement.

**M. COVENANT AGAINST CONTINGENT FEES**

Consultant represents that it has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this representation, City may terminate this Agreement without liability or may, in its discretion, deduct from the Total Fee or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

**N. NO SOLICITATION TO HIRE CITY EMPLOYEES**

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

**O. COMPLIANCE WITH LAWS**

Consultant will abide by all applicable federal, state and local laws, ordinances and regulations applicable to the performance of Professional Services at the time the Professional Services are performed. Consultant will secure all occupational and professional licenses and permits from public and private sources necessary for the fulfillment of the obligations under this Agreement, and will provide City a copy of its certificate of good standing to conduct business in the State of Kansas with this Agreement (**Exhibit H**).

**P. 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.

**Q. 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.

**R. 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 a Task Order or this Agreement and its exhibits, the following hierarchy of interpretation will apply:

1. This Agreement;
2. Task Order;
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.]***



**S. EXECUTION OF CONTRACT**

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

**CITY OF OLATHE, KANSAS**

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

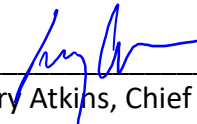
ATTEST:

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

APPROVED AS TO FORM:

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

**LAMP RYNearson, INC.**

By: \_\_\_\_\_  
Terry Atkins, Chief Operating Officer

**TABLE OF CONTENTS  
OF EXHIBITS**

<b>Exhibit A</b>	<b>Description of Services</b>
<b>Exhibit B</b>	<b>Fee &amp; Rate Schedule</b>
<b>Exhibit C</b>	<b>Sample Task Order Form</b>
<b>Exhibit D</b>	<b>Land Acquisition Checklist for Consultant Projects</b>
<b>Exhibit E</b>	<b>Utility Coordination Checklist</b>
<b>Exhibit F</b>	<b>City of Olathe Insurance Requirements</b>
<b>Exhibit G</b>	<b>Certificate of Insurance</b>
<b>Exhibit H</b>	<b>Certificate of Good Standing to Conduct Business in Kansas</b>

**EXHIBIT A**  
**Description of Services**

The City of Olathe requires Program and Project Management services, which could include all of the following: professional engineering services, alternative-delivery bid document preparation, construction management services, and field services for various water and sanitary sewer projects throughout the City. The projects may include survey of existing conditions, engineering studies, water system modeling, waterline design, sanitary sewer design, sanitary sewer flow monitoring, sanitary sewer system modeling, cost estimates, land acquisition documentation (title reports, surveyed exhibits, easement documents, etc.) needed for any right-of-way or easements (if needed), developing construction plans in accordance with KDHE and Olathe specifications, coordination with utilities, and other entities as needed. Additional tasks may include assistance with bidding of projects for construction and construction management. Additional water or sanitary sewer studies, technical assistance and miscellaneous designs may be requested beyond the outlined scope above.

**EXHIBIT B**  
**Fee & Rate Schedule**

**EXHIBIT C**  
**Sample Task Order Form**

**TASK ORDER NO. \_\_\_\_**

This Task Order is made as of this \_\_\_\_ day of \_\_\_\_\_ 20\_\_, under the terms and conditions established in the MASTER AGREEMENT FOR PROFESSIONAL SERVICES, dated \_\_\_\_\_ (the "Agreement"), between City of Olathe, Kansas ("City") and \_\_\_\_\_ ("Consultant") (collectively, the "Parties"). This Task Order is made for the following purpose, consistent with the Agreement and the following project:

[INSERT PROJECT/TASK DESCRIPTION]

**Section A – Scope of Services**

[INSERT TASKS/SUBTASKS]

**Section B – Schedule**

[INSERT SCHEDULE]

**Section C – Compensation**

C.1 In return for the performance of the foregoing obligations, City will pay to Consultant the estimated amount of \$ \_\_\_\_\_, payable according to terms of the Agreement.

C.2 City will pay Consultant according to the fee/rate schedule attached as Appendix C to the Agreement.

C.3 Compensation for the following additional services not included in this Task Order (if any) will be paid by City to Consultant as follows:

None. [OR INSERT SPECIFICS]

**Section D – Owner Responsibilities**

The Owner will provide the following:

None. [OR INSERT SPECIFICS]

**Section E – Other Provisions**

The Parties agree to the following provisions with respect to this specific Task Order:

The parties hereto have caused this Task Order to be executed this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

**CITY OF OLATHE, KANSAS**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**[INSERT CONSULTANT NAME]**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT D**  
**Land Acquisition Checklist for Consultant Projects**

**Complete submittal of these documents is required 7 months prior to acquisition of easements.**

- \_\_\_\_\_ Determine what types of easements are required for each tract:  
i.e. Street Dedication, Temporary Construction Easement, Utility Easement, Permanent Drainage Easement, or Sidewalk Easement. If TCE need termination or end date.

\_\_\_\_\_ **REQUIRED INFORMATION:**

- a) City Project No. and Project Name; State Project No. and Federal Project No. (if applicable)
- 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) The name of any other party who has an interest (contract for deed holder, lienholder, mortgage companies, tenant, etc.)
- f) Situs Address
- g) Mailing Address
- h) Other easement holders (utilities, tenants with 99-year leases)
- i) Temporary Construction Easement must include the date that the easement rights end.
- j) Legal description of the entire tract, including total square footage.
- k) Legal description of the new taking, including total square footage.
- l) Tract map
- m) Ownership & Encumbrance title report, not more than 9 months since certification, showing current ownership, liens, mortgages, existing easements and any other encumbrances upon the property.
- n) Copy of last deed(s) of record. If an undivided interest is conveyed in the deed, we need 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, we will need a copy of both deeds.
- o) 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 is attached):

- a) Map of entire property (May not be possible on large parcels and still showing legible taking) showing location of the easement (s) and indicating any trees to be removed or fences to be moved. Outlines of buildings are to be shown so that we can tell 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 will be placed on separate exhibits with permanent easements on one exhibit and temporary easements on a separate exhibit. **EASEMENT MUST BE CLEARLY VISIBLE ON DRAWING.**
- b) Property owner's names, mailing address, situs address (if different from mailing), Johnson County Parcel ID number, tract number, lienholder, easement holder.
- c) Map of tract must 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 must 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 plan for the project. The Consultant will make corrections, at no cost to the City, to fix errors determined by the City 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) must be marked Exhibit "A" as referenced in the easement documents.**

\_\_\_\_\_ Submit Documents to Public Works staff.



## EXHIBIT E

# Utility Coordination

### Olathe CIP projects

Each project is unique and can be expected to have varying degrees of impact to utilities ranging from minor adjustments to complex and lengthy relocations. A successful utility coordination process has three main facets simplified to:

- What is in conflict
- Where it will be moved
- How long it will take to move it

The checklist below is a tool to help with this process.

The city's project design firm will have primary responsibility for Coordination and Design phases with participation from the city staff. The city staff will have primary responsibility for Construction (utility relocate) phases. City staff may consult with the project design firm if changes or issues arise during the construction phase.

*Please also reference APWA Section 5900 – Best Management Practices: Utility Coordination for CIP*

- ☐ **Design Firm/Surveyor call in locates early in the project design phases**
  - Note – often utilities will be labeled clear or fail to mark lines as part of a design ticket. Non-response tickets may be required. Additional issues shall be reported to the City for assistance.
- ☐ **Project notice to utilities as soon as utilities in the project footprint have been identified (notify all utilities listed on KS One Call tickets)**
  - Describe project improvements
  - Request detailed existing mapping
  - Request documentation of any private easements and claims for reimbursement
  - Provide a general schedule and include a response by date
  - Copy Project Manager and Utility Coordinator
- ☐ **Survey locates (as much detail as possible) once all utilities have been marked as per locate requests**
  - Survey locate marks by provider
  - Survey utility boxes, vaults, and other structures (make note of provider)
  - Make note of overhead infrastructure in addition to each power pole.
    - Transformers, COM attachers, power or COM risers, guy wires, etc.
- ☐ **Incorporate survey into project plans for 30% submittal**

(Any utility line work on plans shall only be from survey of utility marks or pothole points. Small gaps can be filled by mapping info and needs to be noted as such)

  - Label lines and facilities **by provider**
    - Include boxes, vaults, and other structures (by provider)
    - Note overhead infrastructure in addition to each power pole
      - Transformers, COM attachers, power or COM risers, guy wires, etc...
    - See **EXHIBIT E.1** for examples of how information will need to be captured.

- Some providers may only be labeled by CATV and will require further coordination to confirm ownership of lines.
- Review existing mapping to help identify any lines or other infrastructure that may have been missed during locates and survey.
- Utility lines shall NOT be added to project plans based on mapping or as-built info only.
- Utilize utility information obtained to minimize utility impacts when possible during project design.

□ **Project design firm to generate a master utility plan (may not apply to all projects)**

- Utilities labeled by provider and in applicable colors.
- Denote utilities that are to be abandoned or vacated.
- Recommend alternate routes to avoid points of conflict such as proposed storm crossing or conflicts with other utility relocations when possible.
- Continue to update sheets as utility relocate plans are received.

□ **Conflict analysis based on survey, mapping, and other info**

- X-Y locations that may be impacted by Z axis improvements (pothole recommendations)
  - Consider not only project improvements but also constructability.
    - Over dig for walls, storm sewers, etc.
    - Additional depth for rock
    - *Potholing is the responsibility of each individual utility*
      - The City's project team may elect to also pothole private utilities when it is determined beneficial to the project.
- The project design firm shall make a list of potential conflict points for discussion at the utility meetings. (Individual utility companies should also be doing the same)
  - When making a list, keep in mind utility locates are not always accurate so infrastructure near proposed improvements may need to be added to the list for discussion (share this list for comment by the City).

□ **Project design firm to help prioritize location of utilities when overlapping potential relocate paths are identified (ongoing throughout project).**

- Identify opportunities for joint trenches when possible or in tight areas of the project.

□ **Design Firm to notify all parties when project plans change (ongoing throughout project).**

- Reevaluate/conflict analysis in areas of change

□ **Pre-utility meeting – “plan of attack discussion” prior to utility meeting #1 (city and design team)**

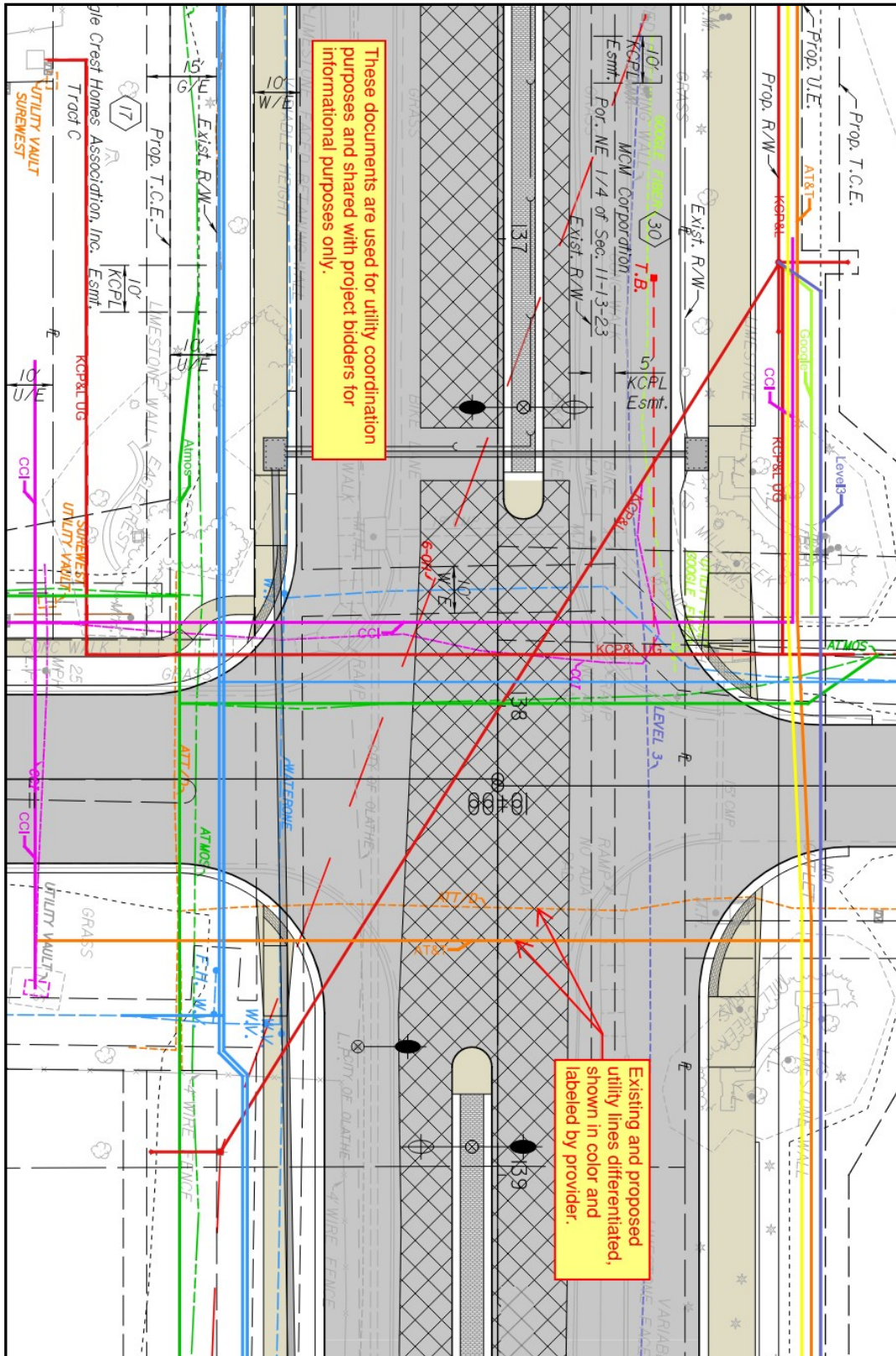
- What is the utility due date?
- What are the utility schedule milestones?
  - Start to develop overall utility schedule.
- Are there project pinch points?
- Identify any utilities claiming private easement/ reimbursement.
- Is there project phasing that should be prioritized by utilities too?
- How are utility meetings to be setup for the project? Joint meetings then individual?
- Other?

- ☐ **Utility Meeting #1 around 30% plan submittal**
  - Schedule
  - Request any existing mapping or private easement information not yet collected.
  - Early project overview and potential opportunity to adjust project improvements around utilities.
  - Distribute meeting minutes.
- ☐ **Individual Meetings ongoing as needed**
  - Schedule
  - Overall review of any likely points of conflict or other concern.
  - Discussion of where/how utilities will relocate.
    - *Example: if a proposed relocate is navigating storm sewers and grade cuts, is there a different path to simplify the relocate and setup the project for success?*
  - Distribute meeting minutes.
- ☐ **Utility Meeting #2 before 60% plans**
  - Schedule
  - Discussing progression of relocate plans
  - Distribute meeting minutes.
- ☐ **Utility providers to generate relocate plans on a timeframe agreed upon during coordination meetings.**
  - The design firm and City shall review relocate plans.
    - Consider including relocate plans in master utility plans
  - The design firm will gather any comments and respond accordingly to the utility.
  - Further review of revisions shall continue until the project team has no additional comments to relocate plans.
  - The design firm will incorporate relocate plans in to project plans and master utility plan sheets.

**HANDOFF POINT WHERE PRIMARY DUTIES SHIFT TO THE CITY UTILITY COORDINATOR (*Design firm may have incidental involvement as needed*). A FEW OF THESE DUTIES ARE NOTED BELOW:**

- ☐ **Utility Company and/or contractor to obtain a ROW permit prior to starting.**
  - The city will review the permit to confirm it matches previously reviewed relocate plans.
- ☐ **Utility Coordinator will check on utility construction, progress, and compliance with relocate plans.**
- ☐ **Utility Coordinator to look for potential oversights or other points of conflict not covered in the relocate plans.**
  - Minor issues may be addressed in the field by the City Utility Coordinator.
  - The City Utility Coordinator will reengage the project team and utility provider with any issues found requiring additional coordination.
- ☐ **Utility Coordinator to provide design firm and PM periodic updates on progress.**

# **EXHIBIT E.1**



## Exhibit F

### CITY OF OLATHE INSURANCE REQUIREMENTS

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

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

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

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

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

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

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

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

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

5. Cyber Insurance: If Consultant will have access to the City's network or City's data, Consultant must maintain throughout the duration of this Agreement and for a

period of three (3) years after the termination of this Agreement. Coverage must include: Cyber Incident/Breach Response and Remediation Expenses, Digital Data Recovery, Privacy and Network Security Liability, and Notification Expense.

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

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

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

**D. Verification of Coverage**

1. Consultant must provide a certificate of insurance on ISO form or equivalent, 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 G**  
**Certificate of Insurance**





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/14/2025

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).

<b>PRODUCER</b> FNIC P.O. Box 45279 Omaha NE 68145-0279	<b>CONTACT</b> NAME: Deanne Beltz-Sund PHONE (A/C, No, Ext): 402-861-7000 E-MAIL ADDRESS: deanne.beltz@fnicgroup.com FAX (A/C, No):
<b>INSURED</b> Lamp Rynearson, Inc. 9001 State Line Rd., Suite 200 Kansas City MO 64114	<b>INSURER(S) AFFORDING COVERAGE</b> INSURER A : The Phoenix Insurance Co INSURER B : Travelers Property Casualty of America INSURER C : XL Specialty Insurance Co INSURER D : Charter Oak Fire Insurance Co. INSURER E : INSURER F :

**COVERAGES**

CERTIFICATE NUMBER: 949701788

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
D	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y		6602L971185	9/30/2024	9/30/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 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 \$
A	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	Y		8102L974010	9/30/2024	9/30/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			CUP3L015816	9/30/2024	9/30/2025	EACH OCCURRENCE \$ 6,000,000 AGGREGATE \$ 6,000,000 \$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> Y <input type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	UB8M969092	9/30/2024	9/30/2025	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
C	Professional Liability/Pollution Claims Made Basis			DPR5034591	9/30/2024	9/30/2025	Each Claim \$5,000,000 Annual Aggregate \$5,000,000

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

City of Olathe is primary, non contributory additional insured for general liability, including ongoing and completed operations, automobile liability, if required by written contract executed prior to loss. Primary & noncontributory status is governed by the terms & conditions of the insurance policies of all parties. The general liability, automobile liability, Professional liability and workers compensation policies have been endorsed to provide 30 days' notice of cancellation. Professional Liability Deductible: \$200,000

**CERTIFICATE HOLDER****CANCELLATION**

City of Olathe  
1385 S. Robinson Drive  
Olathe KA 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

© 1988-2015 ACORD CORPORATION. All rights reserved.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **BLANKET ADDITIONAL INSURED – PRIMARY AND NON-CONTRIBUTORY WITH OTHER INSURANCE**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM**

### **PROVISIONS**

1. The following is added to Paragraph **A.1.c., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:  
This includes any person or organization who you are required under a written contract or agreement between you and that person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to name as an additional insured for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent of that person's or organization's liability for the conduct of another "insured".
2. The following is added to Paragraph **B.5., Other Insurance** of **SECTION IV – BUSINESS AUTO CONDITIONS**:  
Regardless of the provisions of paragraph a. and paragraph **d.** of this part **5. Other Insurance**, this insurance is primary to and non-contributory with applicable other insurance under which an additional insured person or organization is the first named insured when the written contract or agreement between you and that person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, requires this insurance to be primary and non-contributory.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **BLANKET ADDITIONAL INSURED – WRITTEN CONTRACTS (ARCHITECTS, ENGINEERS AND SURVEYORS)**

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

**1. The following is added to SECTION II – WHO IS AN INSURED:**

Any person or organization that you agree in a "written contract requiring insurance" to include as an additional insured on this Coverage Part, but:

- a. Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and
- b. If, and only to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies. The person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.

The insurance provided to such additional insured is limited as follows:

- c. In the event that the Limits of Insurance of this Coverage Part shown in the Declarations exceed the limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured shall be limited to the limits of liability required by that "written contract requiring insurance". This endorsement shall not increase the limits of insurance described in Section III – Limits Of Insurance.
- d. This insurance does not apply to the rendering of or failure to render any "professional services" or construction management errors or omissions.
- e. This insurance does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured, and then the insurance provided to the additional insured ap-

plies only to such "bodily injury" or "property damage" that occurs before the end of the period of time for which the "written contract requiring insurance" requires you to provide such coverage or the end of the policy period, whichever is earlier.

**2. The following is added to Paragraph 4.a. of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

The insurance provided to the additional insured is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover. However, if you specifically agree in the "written contract requiring insurance" that this insurance provided to the additional insured under this Coverage Part must apply on a primary basis or a primary and non-contributory basis, this insurance is primary to "other insurance" available to the additional insured which covers that person or organization as a named insured for such loss, and we will not share with that "other insurance". But this insurance provided to the additional insured still is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under any "other insurance".

**3. The following is added to SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

**Duties Of An Additional Insured**

As a condition of coverage provided to the additional insured:

- a. The additional insured must give us written notice as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, such notice should include:

## COMMERCIAL GENERAL LIABILITY

- i. How, when and where the "occurrence" or offense took place;
  - ii. The names and addresses of any injured persons and witnesses; and
  - iii. The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a claim is made or "suit" is brought against the additional insured, the additional insured must:
  - i. Immediately record the specifics of the claim or "suit" and the date received; and
  - ii. Notify us as soon as practicable.

The additional insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. The additional insured must immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.
- d. The additional insured must tender the defense and indemnity of any claim or "suit" to

any provider of other insurance which would cover the additional insured for a loss we cover. However, this condition does not affect whether this insurance provided to the additional insured is primary to that other insurance available to the additional insured which covers that person or organization as a named insured.

4. The following is added to the **DEFINITIONS** Section:

"Written contract requiring insurance" means that part of any written contract or agreement under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs and the "personal injury" is caused by an offense committed:

- a. After the signing and execution of the contract or agreement by you;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.

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

STATE OF KANSAS  
OFFICE OF SECRETARY OF STATE  
CERTIFICATE OF GOOD STANDING

I, SCOTT SCHWAB, Kansas Secretary of State, certify that the records of this office reveal the following:

Business ID: 4702866

Business Name: LAMP RYNEARSON, INC.

Type: Foreign For-Profit Corporation

Jurisdiction: Nebraska

was filed in this office on March 25, 2013, 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 affix my official certification seal.  
Done at the City of Topeka,  
on this day April 18, 2025.

SCOTT SCHWAB  
KANSAS SECRETARY OF STATE