



NOTICE - In an effort to follow social distancing guidelines during the COVID-19 pandemic, there is a limited amount of space and chairs available in the Council Chambers to accommodate the public. Members of the public are encouraged to watch the meeting live online at [OlatheKS.org/OGN](http://OlatheKS.org/OGN) or at their convenience, once the meeting video is archived within hours of its conclusion.

**1. CALL TO ORDER**

**2. ROLL CALL**

**3. EXECUTIVE SESSION**

Consideration of motion to recess into an executive session to discuss the following items:

- A.** For preliminary discussions related to acquisition of property pursuant to the exception provided in K.S.A.75-4319(b)(6) regarding the Downtown Streets Improvement Project, PN 3-R-001-21.  
**Staff Contact:** Ron Shaver and Beth Wright

- B.** For preliminary discussions related to acquisition of property pursuant to the exception provided in K.S.A.75-4319(b)(6) regarding the I-35 & 119th Street Interchange Improvements Project, PN 3-C-026-16.  
**Staff Contact:** Ron Shaver and Beth Wright

**4. RECONVENE FROM EXECUTIVE SESSION**

**5. PLEDGE OF ALLEGIANCE**

**6. SPECIAL BUSINESS**

- A.** Update on Coronavirus by Fire Chief Jeff DeGraffenreid.

**7. CONSENT AGENDA**

The items listed below are considered to be routine by the City Council and may be approved in one motion. These may include items that have been reviewed by the City Council in a prior planning session. There will be no separate discussion unless a Councilmember requests that an item be removed from the consent agenda and considered separately.

- A. Consideration of approval of the City Council meeting minutes of May 5, 2020.  
**Staff Contact:** Brenda Long
- B. Consideration of drinking establishment renewal applications for SPIN! Pizza #2, located at 14230 W. 119th Street and Joe's Kansas City Bar-B-Que of Olathe, located at 11950 S. Strang Line Rd.  
**Staff Contact:** Brenda Long
- C. Consideration of Consent Calendar  
**Staff Contact:** Mary Jaeger and Beth Wright
- D. Consideration of Resolution No. 20-1035 adopting the Downtown Active Transportation Plan.  
**Staff Contact:** Mary Jaeger and Beth Wright
- E. Consideration of Resolution No. 20-1036 establishing a Complete Streets Policy for the City of Olathe.  
**Staff Contact:** Mary Jaeger and Beth Wright
- F. Consideration of Engineer's Estimate, acceptance of bids and award of contract to Donelson Construction Company, LLC for construction of the 2020 MAQS Micro Surface Project, PN 3-P-007-20.  
**Staff Contact:** Mary Jaeger and Beth Wright
- G. Consideration of a Professional Services Agreement with Schlagel & Associates, P.A., for design of Cedar Creek Parkway, South of College, Benefit District Project, PN 3-B-027-19.  
**Staff Contact:** Mary Jaeger and Beth Wright
- H. Consideration of an Agreement with ATMOS Energy Corporation for the Upper Cedar Creek, 169 Hwy to Mahaffie, Stormwater Improvements Project, PN 2-C-013-19.  
**Staff Contact:** Mary Jaeger and Beth Wright
- I. Consideration of an Agreement with JP Morgan to serve as underwriter for the 2020-A Temp Notes to provide capital project funding, including redeeming a portion of the Series 2019-A Notes.  
**Staff Contact:** Dianna Wright
- J. Consideration of amendment to contract for public defender services for the Municipal Court.  
**Staff Contact:** Ron Shaver and Kristi Orbin

- K.** Consideration of award of contract to Kantex Industries for vacuum excavation and utility daylighting services for the Public Works Department.  
**Staff Contact:** Mary Jaeger and Amy Tharnish
- L.** Consideration of renewal of contract with Wiedenmann, Inc. for deep excavation services for the City of Olathe's Public Works Department.  
**Staff Contact:** Mary Jaeger and Amy Tharnish
- M.** Consideration of renewal of contracts to Harcros Chemicals, Inc., Brenntag Mid South, Polydyne, Inc., Poet Ethanol Products, DPC Industries, Inc., Carus Corporation, PVS Technologies, Inc., Mississippi Lime Company, Nalco Company, Evoqua Water Technologies, LLC and Kemira Water Solutions, Inc. for water and wastewater treatment chemicals for the Environmental Services Division of Public Works.  
**Staff Contact:** Mary Jaeger and Amy Tharnish
- N.** Consideration of renewal of contract to JCI Industries, Inc. for mixer and propeller pump repair and service for the Environmental Services Division of the Public Works Department.  
**Staff Contact:** Mary Jaeger and Amy Tharnish
- O.** Consideration of renewal of contract to Mid-American Signal, Inc. for the purchase of traffic signal and Advanced Traffic Management System (ATMS) supplies for the Traffic Division of Public Works.  
**Staff Contact:** Mary Jaeger and Amy Tharnish

## **8. NEW BUSINESS-PUBLIC WORKS**

- A.** Consideration of Ordinance No. 20-16 (ANX20-0001) annexing approximately 9.7± acres, located south of 159th Street and east of Lone Elm Road, into the corporate boundaries of the City of Olathe.  
**Staff Contact:** Aimee Nassif and Daniel Yoza

Action needed: Consider a motion to approve or deny.

## **9. NEW BUSINESS-ADMINISTRATION**

- A.** Consideration of Ordinance No. 20-17 making certain amendments to the contract franchise with ExteNet Systems, Inc. (Ordinance 12-07) and amendments to the Master License agreement with ExteNet Systems, Inc.  
**Staff Contact:** Ron Shaver and Daniel Yoza

Action needed: Consider a motion to approve or deny.

- B.** Consideration of Ordinance No. 20-18 and Resolution No. 20-1037 authorizing the issuance, delivery, form and details of approximately \$14,260,000 principal amount of Water and Sewer System Improvement and Refunding Revenue Bonds, Series 2020.

**Staff Contact:** Dianna Wright, Mary Jaeger and Amy Tharnish

Action needed: Consider a motion to approve or deny.

**10. NEW CITY COUNCIL BUSINESS**

**11. ADJOURNMENT**

The City of Olathe offers public meeting accommodations. Olathe City Hall is wheelchair accessible. Assistive listening devices as well as iPads with closed captioning are available at each meeting. To request an ASL interpreter, or other accommodations, please contact the City Clerk's office at 913-971-8521. Two (2) business days notice is required to ensure availability.





# City of Olathe

## COUNCIL AGENDA ITEM

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**MEETING DATE:** 5/19/2020

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**DEPARTMENT:** Legal

**STAFF CONTACT:** Brenda Long

**SUBJECT:** Consideration of approval of the City Council meeting minutes of May 5, 2020.

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**ITEM DESCRIPTION:**

Consideration of approval of the City Council meeting minutes of May 5, 2020.

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**SUMMARY:**

Attached are the City Council meeting minutes of May 5, 2020 for Council consideration of approval.

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**FINANCIAL IMPACT:**

None

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**ACTION NEEDED:**

Approval of the City Council meeting minutes of May 5, 2020.

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**ATTACHMENT(S):**

A. 05-05-2020 Council Minutes



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**1. CALL TO ORDER**

**Present:** Brownlee, Campbell, Mickelson, McCoy, Bacon, Vogt,  
and Copeland

**2. ROLL CALL**

The City Clerk called roll and all members of the City Council were present. Councilmembers Mickelson, Bacon and Brownlee were present in the Council Chamber. Mayor Copeland and Councilmembers McCoy, Vogt and Campbell attended virtually.

Others in attendance were City Manager Wilkes, Assistant City Manager Sherman and City Attorney Shaver.

**3. PLEDGE OF ALLEGIANCE**

**4. SPECIAL BUSINESS**

- A.** Update on Coronavirus by Fire Chief Jeff DeGraffenreid.  
Fire Chief DeGraffenreid gave a COVID-19 update.

In a recent televised address, Governor Laura Kelly presented her detailed framework for gradually re-opening the Kansas economy and getting Kansas back to work. Governor Kelly's framework, "Ad Astra: A Plan to Reopen Kansas" comes five weeks after a statewide stay-home order became necessary to aggressively mitigate the spread of COVID-19. Phase One took effect yesterday, via Executive Order 20-29, when the statewide stay-home order outlined in Executive Order 20-16 officially lifted.

The framework is structured to return more flexibility to local community response efforts, while still operating under a statewide, regulatory baseline. It allows County governments to impose additional restrictions beyond those outlined at the state level, if they deem it necessary to local COVID-19 response efforts. County governments that choose not to impose additional restrictions are

required to operate within the regulatory baseline established by the state. This approach increases flexibility for local communities while also ensuring a gradual, safe transition statewide.

The Johnson County Board of County Commissioners voted to table the Johnson County COVID-19 Recovery Planning Task Force recommendations, and the county will follow the phases of Kansas Gov. Laura Kelly's Reopening Kansas plan.

It is important to note that while the state plan calls for a May 3 expiration of the stay-at-home order, the Governor's plan allows counties to extend the stay-at-home order. On Thursday, April 30, Johnson County's Local Health Officer Dr. Joseph LeMaster extended that order through 11:59 p.m., May 10.

Up until the planned beginning of Phase One on May 11, only those businesses which are considered as essential businesses by Governor Kelly's stay-at-home order will be open.

As of 9am today, Kansas has 5,458 cases from 82 counties with 137 deaths reported. The testing rate in Johnson County is 12 per 1000 and Statewide - the rate is 13.76 per 1000. Our case rate in Johnson County is 0.85 per 1000. The highest case rate in the State is Seward county with 28.28 per 1000. The overall statewide case rate is 1.87 per 1000. Since my last update, there have been several new cases in SW Kansas in specific industry facilities. Johnson county has 512 cases with 45 deaths. The case rate in Olathe's zip code 66061 is 0.83 per 1,000 population and in zip code 66062 it is 0.58 per 1,000. No new Johnson County hospitalizations from COVID-19 have occurred since the beginning of May.

Throughout all the Reopening Kansas plan phases, everyone should continue to adhere to hygiene and social distancing protocols, including:

- Washing hands frequently, while avoiding contact with one's face;
- Remaining home when sick or running a fever;
- Following isolation and quarantine orders issued by health officers;
- Wearing a cloth face mask when appropriate.
- Working remotely when possible.

These are basic public health guidelines that will slow the spread of this disease, regardless of which phase is in effect, and are essential to minimizing community transmission of COVID-19 in the absence of a vaccine.

The Kansas Essential Functions Framework affirms that functions of local government continuity are deemed essential and allowed. Even so, the City is taking a measured, thoughtful and safety minded approach to transparent, open governance during activities such as this Council meeting. Appropriate safeguards have been instituted including social distancing, facility pre and post cleaning, installation of social separation panels and movement limiting stanchions, new sanitation stations, and refreshed health signage.

I am incredibly proud of how the people of Olathe have met this challenge. It has been a difficult time that is taking a painful toll ... financially, emotionally, physically, spiritually, and professionally on most everyone. Even so - there have been many heartwarming stories of how this community has come together even as we are apart.

- B.** Proclamation recognizing May 3-9, 2020 as Public Service Recognition Week.

Mayor Copeland presented the 2020 Public Service Recognition Week proclamation to Fire Chief, Jeff DeGraffenreid.

## **5. CONSENT AGENDA**

Councilmember McCoy asked to remove item L from the consent agenda for separate consideration and vote.

Motion by Bacon, seconded by Vogt to approve the consent agenda with the exception of item L. The motion carried by the following vote:

**Yes:** Brownlee, Campbell, Mickelson, McCoy, Bacon, Vogt,  
and Copeland

- A.** Consideration of approval of the City Council meeting minutes of April 21, 2020.

Approved

- B.** Consideration of a cereal malt beverage license application for H.B. of Olathe, LLC, d/b/a Buddy's, located at 11240 S. Lone Elm Road, for calendar year 2020.

Approved

- C.** Request for the acceptance of the dedication of land for public easements and public street right-of-way for a final plat for Stonebridge Villas, First Plat (FP20-0004) containing 36 residential lots and three (3) common tracts on 20.66± acres; located at the southeast corner of the intersection of S. Mur-Len Road and W. 169th Place. Planning Commission approved this plat 8-0.  
Approved
- D.** Request for the acceptance of the dedication of land for public easements and right-of-way for a final plat of Valley Ridge, Fourth Plat (FP20-0003) containing fifty (50) lots and two (2) common tracts on 21.46± acres; located southwest of W. 113th Terrace and S. Clare Road. Planning Commission approved the plat 8 to 0.  
Approved
- E.** Consideration of Resolution 20-1030, SU19-0005, for approval of special use permit renewal for continued motor vehicle sales; located at 132 N. Fir Street (KIA Motors). Planning Commission recommends approval 8 to 0 for a 10 year period.  
Approved
- F.** Consideration of Resolution No. 20-1031, SU19-0007, requesting approval for a special use permit for an increase in height of the monopole tower and expansion of the compound area for an AT&T telecommunications facility on 0.43± acres; located at 15201 S Mur-Len Road. Planning Commission recommends approval 8 to 0.  
Approved
- G.** Consideration of Consent Calendar.  
Approved
- H.** Consideration of Resolution No. 20-1032 authorizing the City of Olathe's project requests for inclusion in the 2021-2025 County Assistance Road System (CARS) Program.  
Approved
- I.** Consideration of Engineer's Estimate, acceptance of bids and award of contract to Linaweaver Construction, Inc. for construction of the 2020 Cedar Creek Streets Improvements Project, PN 3-R-003-20.  
Approved
- J.** Consideration of Engineer's Estimate, acceptance of bids and award of contract to VF Anderson Builders, LLC for construction of the Santa Fe Street and Ridgeview Road Geometric Improvements Project, PN 3-C-083-15, and the Santa Fe Street Arterial Mill and Overlay, PN 3-P-001-19.  
Approved
- K.** Consideration of an Agreement with WaterOne for the Upper Cedar

Creek, 169 Hwy to Mahaffie, Stormwater Improvements Project, PN 2-C-013-19.

Approved

- L.** Consideration of an Invoice from Wiedenmann, Inc. for Emergency Stormwater Pipe Replacement at 151st Street and South Mullen Street. Councilmember McCoy asked that item L be considered separately. He asked about how the bid process worked in the event of an emergency.

Public Works Deputy Director, Beth Wright, said the City has price agreements in place for emergency services.

Councilmember McCoy thanked City staff for expediting this repair.

Motion by Bacon, seconded by Vogt, to approve consent agenda item L. The motion carried by the following vote:

**Yes:** Brownlee, Campbell, Mickelson, McCoy, Bacon, Vogt, and Copeland

- M.** Acceptance of bid and consideration of award of contract to Foley Industries to provide equipment rental services to the Stormwater Division of Public Works.

Approved

- N.** Consideration of renewal of contract to Gerken Rent-All for portable restroom rental services for the Parks & Recreation and Public Works Departments.

Approved

## **6. NEW BUSINESS-PUBLIC WORKS**

- A.** Consideration of Ordinance No. 20-11 (VAC20-0001), requesting vacation of an existing waterline easement at Prairie Trails West II; located at 14924 S. Black Bob Road. Planning Commission recommends approval 7-0.

Motion by Bacon, seconded by Vogt, to approve Ordinance No. 20-11. The motion carried by the following vote:

**Yes:** Brownlee, Campbell, Mickelson, McCoy, Bacon, Vogt, and Copeland

- B.** Consideration of Ordinance No. 20-12 (VAC20-0002), requesting vacation of an existing waterline easement at Ernie Miller Park and Nature Center; located at 909 N. K7 Highway. Planning Commission recommends approval 8-0.

Motion by Bacon, seconded by Vogt, to approve Ordinance No. 20-12. The motion carried by the following vote:

**Yes:** Brownlee, Campbell, Mickelson, McCoy, Bacon, Vogt, and Copeland

- C.** Consideration of Resolution No. 20-1033 authorizing a survey and description of land or interest to be condemned for the 119th and Renner Property Acquisition and Demolition Project, PN 7-C-007-20.

Motion by Bacon, seconded by Vogt, to approve Resolution No. 20-1033. The motion carried by the following vote:

**Yes:** Brownlee, Campbell, Mickelson, McCoy, Bacon, Vogt, and Copeland

- D.** Consideration of Ordinance No. 20-13 approving an engineer's survey and authorizing the acquisition of land for the 119th and Renner Property Acquisition and Demolition Project, PN 7-C-007-20.

Motion by Bacon, seconded by Vogt, to approve Ordinance No. 20-13. The motion carried by the following vote:

**Yes:** Brownlee, Campbell, Mickelson, McCoy, Bacon, Vogt, and Copeland

- E.** Consideration of Resolution No. 20-1034 authorizing a survey and description of land or interest to be condemned for the I-35 & 119th Street Interchange Improvements Project, PN 3-C-026-16.

Motion by Bacon, seconded by Vogt, to approve Resolution No. 20-1034. The motion carried by the following vote:

**Yes:** Brownlee, Campbell, Mickelson, McCoy, Bacon, Vogt, and Copeland

- F.** Consideration of Ordinance No. 20-14 approving an engineer's survey and authorizing the acquisition of land for the I-35 & 119th Street Interchange Improvements Project, PN 3-C-026-16.

Motion by Bacon, seconded by Vogt, to approve Ordinance No. 20-14. The motion carried by the following vote:

**Yes:** Brownlee, Campbell, Mickelson, McCoy, Bacon, Vogt, and Copeland

## **7. NEW BUSINESS-ADMINISTRATION**

- A.** Ordinance No. 20-15 grants a contract franchise to Kansas Fiber Network, LLC. The Master License Agreement for Attachments to City Facilities defines the relationship between Kansas Fiber Network, LLC and the City.

Motion by Bacon, seconded by Vogt, to approve Ordinance No. 20-15. The motion carried by the following vote:

**Yes:** Brownlee, Campbell, Mickelson, McCoy, Bacon, Vogt,  
and Copeland

## **8. CONVENE FOR PLANNING SESSION**

### **A. REPORTS**

1. Report on a request by KidsTLC, Inc. for the issuance of tax-exempt industrial revenue bonds in the amount of \$7,000,000. Report accepted.
2. Report on ANX20-0001, a request by Lone Elm Venture, LLC for annexation of approximately 9.7± acres, located south of 159th Street and east of Lone Elm Road (ANX20-0001).  
Jessica Schuller, Senior Planner, gave a short report.

Councilmember Campbell asked about the zoning and that of the surrounding neighborhoods and Ms. Schuller provided the answers.

Councilmembers Brownlee asked if there were any specifics on the planned use and Ms. Schuller said it is zoned light industrial but does not know the specific use at this time.

Councilmember McCoy asked about the specific location of the property in question.

Councilmember Mickelson asked if the zoning was consistent with the zoning to the East and to the North. Ms. Schuller said it is and specific land use will be discussed in the future.

Mayor Copeland asked what would happen if we could not come to an agreement on the land use and if the property owner could request to de-annex. City Attorney, Ron Shaver, said there is no annexation agreement so they would not have the right to ask for de-annexation.

3. Report on Resolution 20-XXXX establishing a Complete Streets Policy for the City of Olathe.  
Report accepted.
4. Report on a proposed ordinance making certain amendments to the contract franchise with ExteNet Systems, Inc. (Ordinance



12-07) and proposed amendments to the Master License Agreement with ExteNet Systems, Inc.

Report accepted.

## **9. NEW CITY COUNCIL BUSINESS**

Councilmember Bacon complimented the facilities staff on the accommodations they had installed on the dais in the effort to protect the council members.

City Manager, Michael Wilkes, said there was still some work to be completed as the plexi-glass that had been received was an incorrect size and would be changed out eventually.

Councilmember Vogt thanked City staff for their work. She also noted that May 6th was National Nurses Day and May 12 would be International Nurses Day. She said this was a great time to recognize her colleagues in the nursing profession. She wished everyone a Happy Mother's Day on Sunday.

Councilmember Campbell thanked staff for accommodating the Council both in the Council Chambers and virtually.

Councilmember McCoy thanked staff for all their hard work and pointed out there are many behind the scenes staff members who are not as visible as others, but still provide a great public service. He also mentioned several non-profit organizations who are serving the community and providing for the needs of the citizens.

Councilmember Brownlee asked Parks and Recreation Director, Michael Meadors, for an update on what summer activities would be allowed. Mr. Meadors said staff was working on a report and would provide that to the Council soon. Ms. Brownlee shared her concern for those who have been out of work during this time. She said she believed there is some confusion regarding who makes decisions regarding closings and openings.

City Attorney, Ron Shaver, said that Kansas law is set up to allow the Governor and health officials to make these decisions in a time of health emergencies.

Councilmember Bacon asked about how the City is responding to community enhancement enforcement.

City Manager Michael Wilkes said staff is working hard to have more hands on discussions with property owners, working with them to resolve the issues.

#### **10. ADJOURNMENT**

The meeting was adjourned at 7:40 p.m.

Brenda D. Long

City Clerk



# City of Olathe

## COUNCIL AGENDA ITEM

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**MEETING DATE:** 5/19/2020

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**DEPARTMENT:** Legal

**STAFF CONTACT:** Brenda Long

**SUBJECT:** Consideration of drinking establishment renewal applications for SPIN! Pizza #2, located at 14230 W. 119<sup>th</sup> Street and Joe's Kansas City Bar-B-Que of Olathe, located at 11950 S. Strang Line Rd.

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**ITEM DESCRIPTION:**

Consideration of drinking establishment renewal applications for SPIN! Pizza #2, located at 14230 W. 119<sup>th</sup> Street and Joe's Kansas City Bar-B-Que of Olathe, located at 11950 S. Strang Line Rd.

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**SUMMARY:**

The applications for the businesses noted below have been submitted for drinking establishment licenses in accordance with Title 7, Liquor Laws, of the Olathe Municipal Code (OMC). The applications are available in the City Clerk's office for review.

SPIN! Pizza #2  
14230 W. 119<sup>th</sup> Street  
Olathe, KS 66062

Joe's Kansas City Bar-B-Que  
11950 S. Strang Line Rd.  
Olathe, KS 66062

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**FINANCIAL IMPACT:**

The license fee as established in Title 7 of the Olathe Municipal Code in the amount of \$500.00 for drinking establishments have been collected for these license applications.

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**ACTION NEEDED:**

Approve these applications for a license as part of the consent agenda.

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**ATTACHMENT(S):**

- A. SPIN! Pizza #2 Staff Recommendations
- B. Joe's Kansas City Bar-B-Que Staff Recommendations

## Brenda Long

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**From:** Brenda Long  
**Sent:** Friday, April 24, 2020 3:52 PM  
**To:** Dennis Pine; Dianna Wright; GIS Shared; James Gorham; Joel Yeldell; Rachelle Breckenridge; Timothy Linot  
**Subject:** DEL - Spin Pizza 04-24-20  
**Attachments:** DEL - Spin Pizza 04-24-20.pdf

Tracking:	Recipient	Response
	Dianna Wright	Approve: 4/27/2020 12:25 PM
	GIS Shared	Approve: 4/29/2020 5:17 PM
	James Gorham	Approve: 4/27/2020 8:17 AM
	Joel Yeldel	Approve: 4/27/2020 9:53 AM
	Rachelle Breckenridge	Approve: 5/02/2020 4:25 PM
	Timothy Linot	Approve: 4/27/2020 9:17 AM

Please use the voting tab to make comments and recommendations for the attached renewal drinking establishment license application by May 1.

[Brenda Long](#), City Clerk

(913) 971-8675 | [OlatheKS.org](http://OlatheKS.org)

City Clerk's Office | City of Olathe, Kansas

**Setting the Standard for Excellence in Public Service**





To: Brenda Long, Assistant City Clerk  
From: Dianna Wright, Director of Resource Management  
Subject: Liquor License Renewal  
Date: April 27, 2020

Resource Management is in receipt of SPIN Concepts, Inc (dba SPIN Pizza #2) liquor license renewal application.

In accordance with Title 7 section 7.06.020 and in reviewing the Statement of Gross Receipts for of SPIN Concepts, Inc (dba SPIN Pizza #2), I hereby determine that the application meets the requirements as set forth by the above reference section.

Should you require any additional information please do not hesitate to let me know.

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# RECEIVED

APR 24 2020

CITY OF OLATHE

CITY OF OLATHE  
CITY CLERK OFFICE



## DRINKING ESTABLISHMENT LICENSE APPLICATION

Date: 4/17/20 Business Phone: 913-764-7746

Name of Establishment: SPIN! Pizza #2

Name of Applicant: Spin Concepts, Inc.

Business Address of Applicant: 14230 W. 119th St, Olathe, KS 66062

Corporate office: 222 W. Gregory Blvd, Ste. 340, Kansas City, MO 64114

E-mail Address of Applicant (optional): crystal.millerbangle@spinpizza.com

Legal description of premises: Building 3, The Shops of Avignon, Lot 2

Owner of premises (if different than applicant): Avignon Retail, LLC

Address of owner of premises: 12721 Metcalf Ave, Ste. 200, Overland Park, KS 66213

### Items required that must accompany this application:

- A. **Site Plan:** Attach a drawing of the premises showing the location in relation to other buildings, structures, parking areas, public or private streets, and sidewalks within 200 feet. The site plan should include the number of parking spaces, seating capacity and number of employees servicing the largest shift.
- B. **Copy of Kansas Liquor License Application**
- C. **Copy of renewed State of Kansas drinking establishment license (May be submitted separately after issuance by the state)**
- D. **License Fee (\$500.00 – 2 year licensing period)**

The biennial fee for Drinking Establishments authorized by K.S.A. Supp. 41-2622 is hereby established and fixed at **FIVE HUNDRED DOLLARS (\$500.00)**. All applications for new or renewal city licenses shall be submitted to the City Clerk for consideration by the Governing Body. No license fee shall be refunded for any reason.

TO THE BEST OF MY KNOWLEDGE, THE ABOVE INFORMATION IS CORRECT AND TRUTHFUL.

Crystal Miller-Bangle  
Name of Applicant (Print Please)

Crystal Miller-Bangle  
Signature

Financial Operations Manager  
Title

State of Missouri

County of Jackson

James A. Hart  
Notary James A. Hart

Sworn and subscribed before me this

This 21<sup>st</sup> day of April, 2020



JAMES A. HART  
My Commission Expires  
July 15, 2021  
Jackson County  
Commission #13525009



**Kansas Alcoholic Beverage Control Division  
Liquor License**

**Drinking Establishment**

**OWNER NAME:** Spin Concepts Inc  
**DBA:** Spin Neapolitan Pizza  
**ADDRESS:** 14230 W 119th Street  
Olathe, KS 66062-6622

**LICENSE NO: 10019159701**

The licensee named above has been granted a liquor license by the Kansas Department of Revenue, Alcoholic Beverage Control Division. This license is neither transferable nor assignable and is subject to suspension or revocation.

**PRIVILEGES:**

Allows the licensee to sell and serve alcoholic liquor for consumption on licensed premises; serve limited free samples of alcoholic liquor; redeem drink coupons in arrangement with a hotel; and other activities as authorized by K.S.A. 41-2642.

**AGREEMENT:**

By accepting this license, the licensee agrees to conduct business in compliance with all applicable federal, state, county and city statutes and regulations.

*Debbi Beavers*

Debbi Beavers  
Director, Alcoholic Beverage Control

*Mark A. Burghart*

Mark A. Burghart  
Secretary of Revenue

**EFFECTIVE: 05/14/2020**

**EXPIRES: 05/13/2022**

**THIS LICENSE MUST BE FRAMED AND POSTED ON THE PREMISES IN A CONSPICUOUS PLACE**

**IMPORTANT INFORMATION**

Contact the ABC Licensing Unit at 785-296-7015 or email [Kdor\\_abc.licensing@ks.gov](mailto:Kdor_abc.licensing@ks.gov) if you have any:

- questions regarding this license
- changes to your business name, location, ownership or officers
- questions about filing gallonage tax; if applicable

Contact your local ABC Enforcement Agent at 785-296-7015 or visit our website at <http://www.ksrevenue.org/abccontact.html>

Contact the Miscellaneous Tax Segment at 785-368-8222 or email [Kdor\\_miscellaneous.tax@ks.gov](mailto:Kdor_miscellaneous.tax@ks.gov) if you:

- need assistance with liquor drink or liquor enforcement taxes
- have questions about liquor drink tax bonds, bond relief or bond release

**CLOSING YOUR BUSINESS**

If you are closing your business, you must surrender your liquor license and complete the information on the back of the license

# Cash Receipt



Receipt #: 50604  
User: MELISSALM  
Dept: CC  
Date: 04/24/2020  
Time: 10:09:38

CITY OF OLATHE - CITY CLERK CASH RECEIPT  
PO BOX 768  
OLATHE KS 66061

Customer: Spin Pizza

THANK YOU FOR YOUR PAYMENT

ON BEHALF OF CITY TREASURER, DIANNA WRIGHT \_\_\_\_\_

Item	Description	Notes	Amount
DRINKING ESTAB	Spin Pizza 1000.43130	check no. 0000034689	\$500.00
<b>**Final**      Total Received</b>			<b>\$500.00</b>



## Brenda Long

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**From:** Brenda Long  
**Sent:** Monday, May 4, 2020 11:29 AM  
**To:** Dennis Pine; Dianna Wright; GIS Shared; James Gorham; Joel Yeldell; Rachelle Breckenridge; Timothy Linot  
**Subject:** DEL - Joe's Kansas City BBQ of Olathe 05-01-20  
**Attachments:** DEL - Joe's Kansas City BBQ of Olathe 05-01-20.pdf

Tracking:	Recipient	Response
	Dianna Wright	Approve: 5/4/2020 11:54 AM
	GIS Shared	Approve: 5/7/2020 4:26 PM
	James Gorham	Approve: 5/12/2020 10:33 AM
	Joel Yeldell	Approve: 5/4/2020 1:55 PM
	Rachelle Breckenridge	Approve: 5/12/2020 2:30 PM
	Timothy Linot	Approve: 5/04/2020 1:55 PM

Please use the voting tab to make comments and recommendations for the attached renewal drinking establishment license application by May 11<sup>th</sup>.

[Brenda Long](#), City Clerk

(913) 971-8675 | [OlatheKS.org](http://OlatheKS.org)

City Clerk's Office | City of Olathe, Kansas

**Setting the Standard for Excellence in Public Service**





To: Brenda Long, Assistant City Clerk  
From: Dianna Wright, Director of Resource Management  
Subject: Liquor License Renewal  
Date: May 4, 2020

Resource Management is in receipt of Joes Kansas City Bar-B-Que of Olathe (dba Joes Kansas City Bar-B-Que) liquor license renewal application.

In accordance with Title 7 section 7.06.020 and in reviewing the Statement of Gross Receipts for of Joes Kansas City Bar-B-Que of Olathe (dba Joes Kansas City Bar-B-Que), I hereby determine that the application meets the requirements as set forth by the above reference section.

Should you require any additional information please do not hesitate to let me know.

---

# RECEIVED

MAY 01 2020

CITY OF OLATHE

CITY OF OLATHE  
CITY CLERK OFFICE

  
OLATHE  
KANSAS

Date: 3/10/2020 Business Phone: 913-722-3366  
Name of Establishment: Joe's Kansas City Bar-B-Que of Olathe  
Name of Applicant: Joe's Kansas City Bar-B-Que of Olathe  
Business Address of Applicant: 11950 S. Strangline Rd. Olathe, KS 66062  
City State Zip  
E-mail Address of Applicant (optional): maggie.Z@joeskcbbq.com  
Legal description of premises: Restaurant

Owner of premises (if different than applicant): Joy Stehney  
Address of owner of premises: 32175 W. 107th St. De Soto, KS 66018  
City State Zip

**Items required that must accompany this application:**

- A. **Site Plan:** Attach a drawing of the premises showing the location in relation to other buildings, structures, parking areas, public or private streets, and sidewalks within 200 feet. The site plan should include the number of parking spaces, seating capacity and number of employees servicing the largest shift.
- B. **Copy of Kansas Liquor License Application**
- C. **Copy of renewed State of Kansas drinking establishment license (May be submitted separately after issuance by the state)**
- D. **License Fee (\$500.00 – 2 year licensing period)**

The biennial fee for Drinking Establishments authorized by K.S.A. Supp. 41-2622 is hereby established and fixed at **FIVE HUNDRED DOLLARS (\$500.00)**. All applications for new or renewal city licenses shall be submitted to the City Clerk for consideration by the Governing Body. No license fee shall be refunded for any reason.

TO THE BEST OF MY KNOWLEDGE, THE ABOVE INFORMATION IS CORRECT AND TRUTHFUL.

Joy Stehney  
Name of Applicant (Print Please)  
[Signature]  
Signature  
Owner  
Title

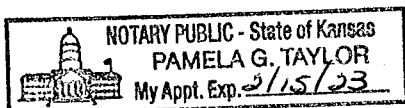
State of Kansas

County of Johnson

[Signature]  
Notary

Sworn and subscribed before me this

This 10<sup>th</sup> day of March, 2020



SEAL

**Kansas Alcoholic Beverage Control Division  
Liquor License**

**Drinking Establishment**

**OWNER NAME:** Joes Kansas City BarBQue of Olathe Inc  
**DBA:** Joe's Kansas City Bar-B-Que  
**ADDRESS:** 11950 S Strang Line Road  
Olathe, KS 66062

**LICENSE NO: 10019338801**

The licensee named above has been granted a liquor license by the Kansas Department of Revenue, Alcoholic Beverage Control Division. This license is neither transferable nor assignable and is subject to suspension or revocation.

**PRIVILEGES:**

Allows the licensee to sell and serve alcoholic liquor for consumption on licensed premises; serve limited free samples of alcoholic liquor; redeem drink coupons in arrangement with a hotel; and other activities as authorized by K.S.A. 41-2642.

**AGREEMENT:**

By accepting this license, the licensee agrees to conduct business in compliance with all applicable federal, state, county and city statutes and regulations.

*Debbi Beavers*

Debbi Beavers  
Director, Alcoholic Beverage Control



*Mark A. Burghart*

Mark A. Burghart  
Secretary of Revenue

**EFFECTIVE: 05/29/2020**

**EXPIRES: 05/28/2022**

**THIS LICENSE MUST BE FRAMED AND POSTED ON THE PREMISES IN A CONSPICUOUS PLACE**

**IMPORTANT INFORMATION**

Contact the ABC Licensing Unit at 785-296-7015 or email [Kdor\\_abc.licensing@ks.gov](mailto:Kdor_abc.licensing@ks.gov) if you have any:

- questions regarding this license
- changes to your business name, location, ownership or officers
- questions about filing gallonage tax; if applicable

Contact your local ABC Enforcement Agent at 785-296-7015 or visit our website at <http://www.ksrevenue.org/abccontact.html>

Contact the Miscellaneous Tax Segment at 785-368-8222 or email [Kdor\\_miscellaneous.tax@ks.gov](mailto:Kdor_miscellaneous.tax@ks.gov) if you:

- need assistance with liquor drink or liquor enforcement taxes
- have questions about liquor drink tax bonds, bond relief or bond release

**CLOSING YOUR BUSINESS**

If you are closing your business, you must surrender your liquor license and complete the information on the back of the license

# Cash Receipt

REPRINT

Receipt #: 50648  
User: MELISSALM  
Dept: CC  
Date: 05/01/2020  
Time: 9:31:23



CITY OF OLATHE - CITY CLERK CASH RECEIPT  
PO BOX 768  
OLATHE KS 66061

Customer: Joe's Kansas City BBQ

THANK YOU FOR YOUR PAYMENT

ON BEHALF OF CITY TREASURER, DIANNA WRIGHT \_\_\_\_\_

Item	Description	Notes	Amount
DRINKING ESTAB	Joe's KC BBQ 1000.43130	Check No. 27202	\$500.00
<b>**Final**      Total Received</b>			\$500.00



# City of Olathe

## COUNCIL AGENDA ITEM

---

**MEETING DATE:** 5/19/2020

---

**DEPARTMENT:** Public Works

**STAFF CONTACT:** Mary Jaeger / Beth Wright

**SUBJECT:** Consideration of Consent Calendar

---

**ITEM DESCRIPTION:**

Consideration of Consent Calendar.

---

**SUMMARY:**

Consent Calendar consists of Project Completion Certificates, Change Orders and Final Pay Estimates for Public Works projects.

---

**FINANCIAL IMPACT:**

N/A

---

**ACTION NEEDED:**

Approve Consent Calendar for May 19, 2020.

---

**ATTACHMENT(S):**

- A. Consent Calendar
- B. Change Orders

**City Council Information Sheet****Date: May 19, 2020****ISSUE: Consent Calendar for: May 19, 2020****DEPARTMENT: Public Works****SUMMARY:****1) PROJECT COMPLETION CERTIFICATES**

- a) Lakeview Avenue Sanitary Sewer Improvements – 1-C-024-18 – Sanitary Sewer
- b) Sure Point Self Storage – 3-D-128-17 – Street Lights
- c) Arbor Woods 5<sup>th</sup> Plat – 3-D-017-18 – Storm Sewers
- d) Arbor Woods 5<sup>th</sup> Plat – 3-D-017-18 – Street
- e) Shops of Sunnybrook Lot 41 – 3-D-013-19 – Street

**2) CHANGE ORDERS**

- a) Lakeview Avenue Sanitary Sewer Improvements – 1-C-024-18

**3) FINAL PAYMENT TO CONTRACTORS**

- a) Lakeview Avenue Sanitary Sewer Improvements – 1-C-024-18

Final Payment	\$ 158,619.64
Paid to Date	\$ 2,307,919.57
Original Contract Amount	\$ 2,496,254.00
Total Change Orders	\$ (29,714.79)
Change Order 1: \$0.00 (7/9/19)	
Change Order 2: \$0.00 (12/23/19)	
Change Order 3: \$0.00 (1/28/20)	
Change Order 4 FINAL: -\$29,714.79 (5/19/20)	

Final Contract Amount	\$ 2,466,539.21
Contractor – Site Rite Construction	

Submitted by: Mary Jaeger, Director / Beth Wright, Deputy Director



CHANGE ORDER NO: 4 - FINAL  
CITY PROJECT NO. 1-C-024-18  
CONTRACT DATE: June 4, 2019  
CONTRACTOR: Site Rite Construction Co.  
ENGINEER: HDR

PROJECT NAME: Lakeview Avenue Sanitary Sewer Improvements  
ENCUMBRANCE NO. 701009

ITEM#	DESCRIPTION	Original QTY	REVISED QTY	UNIT	ORIGINAL UNIT PRICE	REVISED UNIT PRICE	TOTAL
27****	Cured-In-Place Pipe Service Lateral to Sewer Main Connection	7	4	EA	\$2,000.00	N/A	(\$6,000.00)
30****	Trench Excavation and Backfill Non Paved, 0' to 8'	2,105	2,032	LF	\$25.00	N/A	(\$1,825.00)
31****	Trench Excavation and Backfill Under Pavement (Flowable Fill), 0' to 8'	1,396	1,468	LF	\$105.00	N/A	\$7,560.00
32****	Trench Excavation and Backfill, <8' to 12'	2,517	1,078	LF	\$30.00	N/A	(\$43,230.00)
33****	Trench Excavation and Backfill, <12' to 16'	815	1,458	LF	\$35.00	N/A	\$22,505.00
34****	Trench Excavation and Backfill, <16' to 20'	155	966	LF	\$50.00	N/A	\$40,550.00
35****	Rock Excavation	1,300	1,815	CY	\$140.00	N/A	\$72,100.00
37****	4' Dia. Standard Manhole, 0' to 8'	15	14	EA	\$5,000.00	N/A	(\$5,000.00)
40****	5' Dia. Standard Manhole Extra Depth	26.3	26	VF	\$300.00	N/A	(\$90.00)
41****	5' Dia. Standard Drop Manhole Extra Depth	14.2	14	VF	\$500.00	N/A	(\$100.00)
42****	4' Dia. Standard Manhole Extra Depth	84.4	80	VF	\$250.00	N/A	(\$1,100.00)
43****	4' Dia. Standard Drop Manhole Extra Depth	29.2	29	VF	\$450.00	N/A	(\$90.00)
47****	Manhole Abandonment	8	7	EA	\$300.00	N/A	(\$300.00)
48****	Manhole Removal	3	5	EA	\$500.00	N/A	\$1,000.00
49****	Slurry Seal (Abandoned Sanitary Sewer)	92	98	CY	\$130.00	N/A	\$780.00
50****	Remove and Replace Curb Inlet	1	0	EA	\$6,000.00	N/A	(\$6,000.00)
53****	Remove and Replace 30" CMP Storm Sewer with 30" RCP Storm Sewer Pipe	106	76	LF	\$100.00	N/A	(\$3,000.00)
55****	Remove and Replace Asphalt Pavement (School Playground)	197	54	SY	\$50.00	N/A	(\$7,150.00)
56****	10" Concrete Pavement Replacement	550	532	SY	\$82.00	N/A	(\$1,476.00)
57****	8" Concrete Pavement Replacement	1500	1323	SY	\$72.00	N/A	(\$12,744.00)
58****	Remove & Replace Concrete Sidewalk (4")	390	457	SY	\$48.00	N/A	\$3,216.00
60****	Remove & Replace 6" Residential Concrete Drive	260	236	SY	\$70.00	N/A	(\$1,680.00)
61****	Remove & Replace 7" Commercial Concrete Drive	52	37	SY	\$75.00	N/A	(\$1,125.00)
62****	Remove & Replace Concrete Curb & Gutter	1200	1319	LF	\$30.00	N/A	\$3,570.00
63****	Sediment Fence	2700	750	LF	\$1.80	N/A	(\$3,120.00)
64****	Inlet Protection	18	8	EA	\$180.00	N/A	(\$1,800.00)
67****	Sodding	9,000	5,473	SY	\$5.40	N/A	(\$19,045.80)
79****	4' Dia. Standard Manhole, 0' to 8'	1	2	EA	\$5,000.00	N/A	\$5,000.00
81****	4' Dia. Standard Manhole Extra Depth	6.6	10	VF	\$250.00	N/A	\$850.00
82****	4' Dia. Standard Drop Manhole Extra Depth	2.9	3	VF	\$450.00	N/A	\$45.00
87****	8" Concrete Pavement Replacement	26	23	SY	\$72.00	N/A	(\$216.00)
88****	Remove & Replace Concrete Sidewalk (4")	6	38	SY	\$48.00	N/A	\$1,536.00
89****	Remove & Replace 6" Residential Concrete Drive	49	88	SY	\$62.00	N/A	\$2,418.00
90****	Remove & Replace Concrete Curb & Gutter	20	60	LF	\$30.00	N/A	\$1,200.00
91****	Seeding	0.2	0.5	AC	\$3,000.00	N/A	\$900.00
92****	Sodding	1600	0	SY	\$5.40	N/A	(\$8,640.00)
93****	Full Width Milling 2" Depth	2230	2560	SY	\$3.50	N/A	\$1,155.00
94****	2" BM-2FR Asphaltic Concrete Surface	230	272	TN	\$80.00	N/A	\$3,360.00

## DOCUMENTS SUPPORTING THIS CHANGE ORDER ARE TO BE ATTACHED

The Original Contract Sum	\$2,496,254.00
Net change by Previous Change Orders	\$0.00
The Contract Sum Prior to This Change Order Was	\$2,496,254.00
Remaining Owner's Allowance	(\$73,727.99)
Total Change Order Amount	\$44,013.20
The Contract Sum Shall be Unchanged (Increased) (Decreased) by This Change Order	(\$29,714.79)
The New Contract Sum With All Approved Change Orders Will Be	\$2,466,539.21
Original Contract Time	N/A days
The Contract time Will Be (Unchanged) By	N/A days
The Contract Time With All Approved Change Orders is	N/A days
The Day of Substantial Completion as of the Date of This Change Order Therefore is	N/A

RECOMMENDED  
City of Olathe Public Works  
Project Manager - Aaron Wasko

APPROVED  
Site Rite Construction Co.  
Contractor

By: *Aaron Wasko*  
Date: 5-11-20

By: *Daniel E. Anderson*  
Date: 5-04-2020

APPROVED  
CITY OF OLATHE, CITY ENGINEER

Elizabeth Wright

Digitally signed by Elizabeth Wright  
Date: 2020.05.11 17:06:58 -05'00'

DANIEL E. ANDERSON  
VICE PRES./SECRETARY

By: \_\_\_\_\_  
City Clerk

AGREEMENT TO THIS \_\_\_\_\_ day of \_\_\_\_\_ 2020





# City of Olathe

## COUNCIL AGENDA ITEM

---

**MEETING DATE:** 5/19/2020

---

**DEPARTMENT:** Public Works

**STAFF CONTACT:** Mary Jaeger / Beth Wright

**SUBJECT:** A Resolution to adopt the Downtown Active Transportation Plan.

---

**ITEM DESCRIPTION:**

Consideration of Resolution No. 20-1035 adopting the Downtown Active Transportation Plan.

---

**SUMMARY:**

The City currently has completed a Downtown Active Transportation Plan that included recommendations for establishing multimodal connections from regional attractions and trails to Downtown Olathe, a Kansas Avenue Streetscape and a Complete Streets Policy. A presentation of the Downtown Active Transportation Plan was provided at the April 21, 2020 City Council meeting.

The regional connections include Lake Olathe, Mill Creek trails which extend to the Kansas River and the Indian Creek trails which provide access to the Missouri state line. The connections included 23 conceptual projects along with estimated costs for each project. The report also identified opportunities to include the recommendations with other CIP projects, which will reduce the cost of a stand along project.

The Downtown Active Transportation Plan also provided recommendations for the Kansas Avenue streetscape between Santa Fe and Cedar Street. A key component of the streetscape includes a cycle track that will be physically separated from the adjacent vehicular and pedestrian traffic.

The Complete Streets portion of the Plan recommended elements to be adopted in a Complete Streets resolution. A complete streets resolution provides guidelines for safe travel for all modes of transportation and aesthetic treatments. The policy also enhances the City's ability to compete for MARC, State and Federal grant funding.

---

**FINANCIAL IMPACT:**

None.

---

**ACTION NEEDED:**

Approval of Resolution No. 20-1035 adopting the Downtown Active Transportation Plan.

---

**ATTACHMENT(S):**

A. Resolution

**RESOLUTION NO. 20-1035**

**A RESOLUTION APPROVING A DOWNTOWN ACTIVE TRANSPORTATION  
MASTER PLAN FOR THE CITY OF OLATHE, KANSAS.**

**BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF OLATHE,  
KANSAS:**

**SECTION ONE:** The Downtown Active Transportation Master Plan, (attached hereto as Exhibit 1), prepared by the Public Works Department and dated February 2020, is hereby approved and adopted for use by the City of Olathe.

**SECTION TWO:** The Downtown Active Transportation Master Plan shall be used to guide multi-modal transportation opportunities in Downtown Olathe.

**SECTION THREE:** This Resolution shall take effect immediately.

**ADOPTED** by the Governing Body this 19th day of May, 2020.

**SIGNED** by the Mayor this 19th day of May, 2020.

\_\_\_\_\_  
Mayor

**ATTEST:**

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

(SEAL)

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

# **EXHIBIT 1**

## **ACTIVE TRANSPORTATION PLAN**





# The Downtown Olathe Active Transportation Plan

RDG PLANNING & DESIGN/BHC RHODES/VENICE COMMUNICATIONS  
February 2020









# TABLE OF CONTENTS

0	Introduction and Background	5
1	The Network Overview	14
2	Network Components	22
3	Complete Streets Guide	52
4	Implementation	64

# ACKNOWLEDGMENTS

## Mayor & City Council

Mayor Michael Copeland

John Bacon

Larry Campbell

Wes McCoy

Adam Mickelson

Karin Brownlee

Marge Vogt

## Funding Partner

A special thanks to the Mid-America Regional Council for the funding that helped make this project possible.

## Steering Committee

Zach Baker

Emily Carrillo

Hallie Sheptor

Mike Latka

Lisa Donnelly

Emily Baker

Carisa McMullen

Brook Cinalli

Ryan Nelson

Sara Eccles

Casey Wilhm

Nicolle Welsh

## Technical Committee

Zach Baker | Traffic Engineer

Emily Carrillo | Neighborhood Planning Coordinator

Chet Belcher | Transportation Manager

Beth Wright | Deputy Director

Cheryl Lambright | Traffic Engineer

Neil Meredith | Development Review Manager

Nate Baldwin | Assistant City Engineer

Jeff Beal | Street Preservation Program Manager

Sabrina Parker | Water and Sewer Manager

## Consultant Team

### RDG Planning & Design

Planners and Landscape Architects

Des Moines | Omaha | St. Louis

[www.RDGUSA.com](http://www.RDGUSA.com)

### Venice Communications

Public Engagement

[www.vencomm.com](http://www.vencomm.com)

### BHC Rhodes

Engineering

[www.ibhc.com](http://www.ibhc.com)

### McCurdy Engineers

Engineering

[www.mccurdyengineers.com](http://www.mccurdyengineers.com)

# INTRODUCTION

## What is an Active Transportation Plan?

Active transportation, including walking, bicycling, and increasingly other “micro-mobility” devices like electric scooters, is particularly well-suited to growing cities like Olathe. These modes use little or no fuel, do not emit greenhouse gases or other pollutants, are very quiet and space-efficient, and make us healthier. New technologies and innovative products, such as pedal-assisted e-bikes and recumbent tricycles, bring pedal-powered transportation within the capabilities of more people. Other low-impact means of travel, such as scooters and power-assisted wheelchairs, bring greater mobility to those of us with disabilities.

Because of these multiple benefits, Olathe, in common with other regional cities, hopes to increase the number of people using active modes for routine mobility. However, many people cite lack of adequate infrastructure as their principal reason for avoiding walking or bicycling for specific purposes. This Active Transportation Plan seeks to address this concern, building on the work of the Envision Olathe Downtown Master Plan to create a network of on and off-street paths for low impact travel that 1) promotes active transportation within Olathe's central district and 2) strengthens Downtown Olathe by connecting the district to the Kansas City metropolitan area's extensive network of regional shared use paths.

## Why an Active Transportation Plan?

The Envision Olathe downtown plan ties connectivity, housing, development, and public space together to guide downtown's evolution from a daytime government center to a true multi-use destination. This Active Transportation Plan addresses internal functional issues and uses physical opportunities and to create a district that is both connected internally and leads to other features in Olathe and other parts of the metropolitan region. Major regional trails, notably the Mahaffie, Rolling Ridge, Gary Haller, and Indian Creek trails converge in Olathe, but stop short of the downtown core. A downtown active network can be the “knot” that ties these trails together, as well as connecting residents of Olathe to downtown and the major community destinations like Stagecoach Park. This in turn greatly increases the potential of Downtown to attract new residential development. The plan also shows the way to capitalize on and connect other important local initiatives, including the new Johnson County Courthouse, a downtown central open space on the old courthouse site, the previously programmed Kansas Avenue streetscape project, a new library and mixed use project on the north side of Civic Center Park, the Mill Creek stormwater management project, and previous conceptual work on a Mill Creek Path.



# BACKGROUND

The concept for the Downtown Olathe Active Transportation Plan began with the Envision Olathe Downtown Plan adopted in April 2018. High level concepts were developed for a connected network of bicycle and pedestrian infrastructure which are refined within this plan to set the stage for implementation.

---

## Public Engagement

Public engagement was a key part of the plan development. This process began in May, 2019 with a site tour and meeting of technical and steering committees, and included the following components:

### Steering and Technical Committees

A 12 member Steering Committee was tasked with providing direction and feedback during the planning process. Bi-monthly meetings took place from May through October. The committee reviewed the Envision Olathe Downtown Plan to set priorities at the start of the process, reviewing preliminary and refined concepts at subsequent meetings. Committee members also participated in the preliminary concept and final open houses.

A Technical Committee, representing various city divisions met several times to review the details of the emerging plan. Guidance from these meetings led to more refined design concepts and actionable implementation strategies.

### Stakeholder Group Discussions

Two small-group sessions were held to discuss the potential and options for walking, biking, and other active modes in downtown. These groups included city and county staff, engineers, businesses, and downtown neighborhood residents. Themes that emerged through the discussions include:

- Both residents and city staff support the concept of an active mobility plan and are

committed to its implementation.

- Connections across Santa Fe Street are especially important for residents on the north side visiting businesses or the library on the south. (Note: Incorporating a new public library on the north side of Civic Center Park east of City Hall, not on the table during the stakeholder discussions, will increase the importance of safe crossing of the Santa Fe corridor.)
- Central Olathe neighborhoods have long supported a Mill Creek Trail and have developed plan concepts for the path.
- Opportunities exist to use existing city projects and plans to complete many of the proposed transportation improvements.
- Consistent with the downtown master plan, a safe crossing of the BNSF mainline was viewed as both an important priority and a difficult challenge.

## Online Engagement

The engagement program included a project website for residents to learn about the process and share their perceptions and ideas to improve the plan. The website also provided information about upcoming meetings and the overall project schedule. The website was promoted through posters, news outlets, e-blasts and social media.

A visual preference survey was launched to

measure public reactions and preferences for various types of active transportation infrastructure. Nearly 100 respondents completed the survey in Summer 2019. Survey results are reviewed on the following pages.

## Events

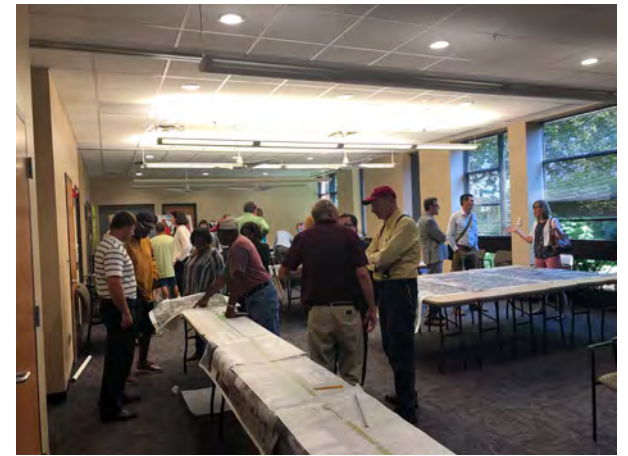
During the July Concept Open House, preliminary concepts were developed and displayed at City Hall for the public to view, ask questions, and provide feedback. Over 40 people attended the event and generally exhibited strong support for the direction of initial ideas.

To help spread the word about the project and gather additional feedback, the project team set up exhibits at two major community events – Olathe Live! on July 26th and Old Settlers Day the first weekend of September.

In coordination with National Community Planning Month, the City held a public open house displaying refined concepts on Tuesday, October 15<sup>th</sup>. Nearly 40 participants attended to view and comment on these proposals. Reactions to these more developed ideas were both helpful and generally very positive.

## Media Coverage

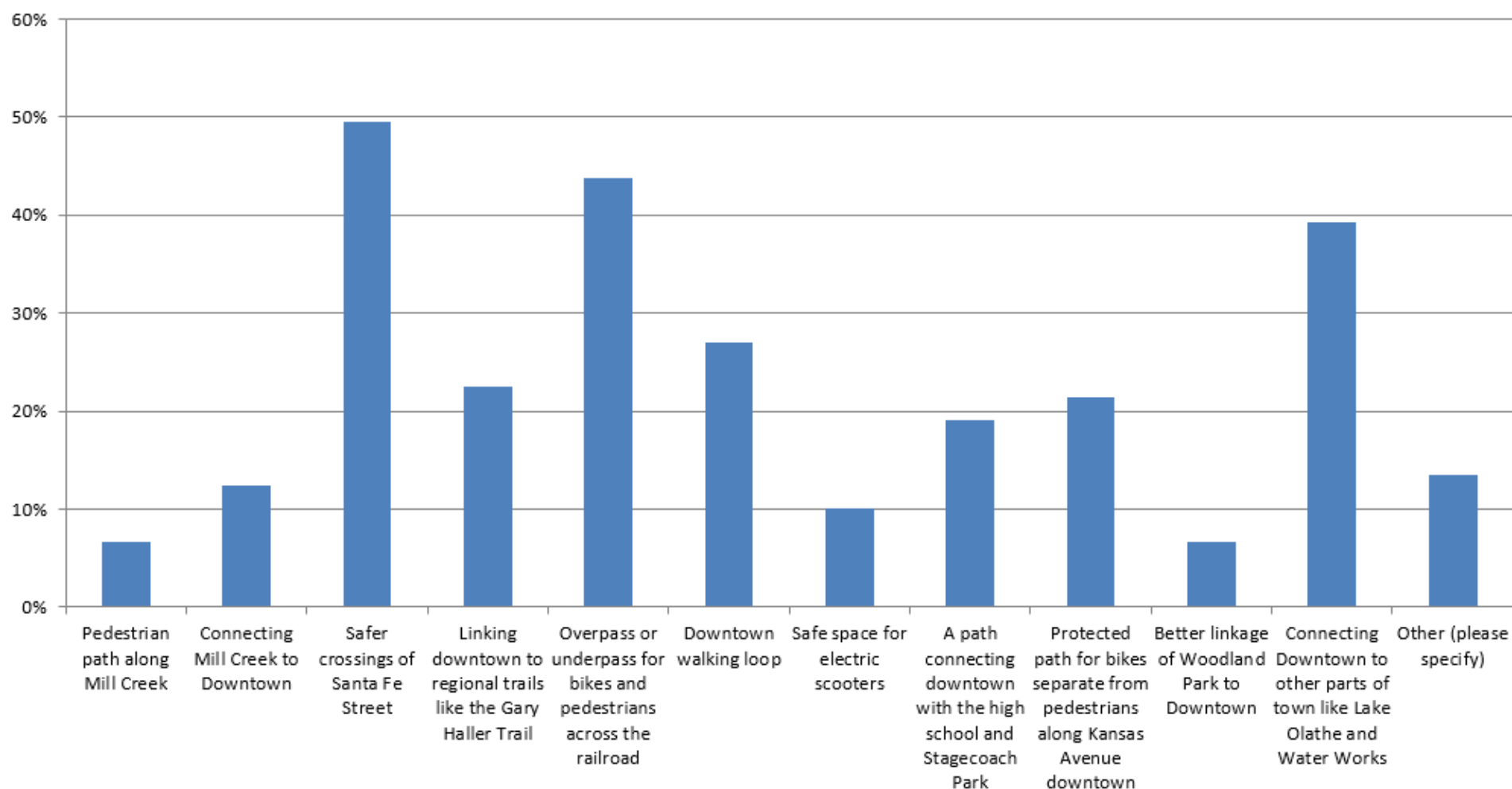
Each public event received extensive media coverage. The first open house was featured in three televised interviews and articles in the Kansas City Star. The final open house included three televised interviews, one radio interview, and it appeared in the Kansas City Star and Olathe Daily News.





# SURVEY RESULTS

## Downtown Priority Projects



## Comfort Level with Various Facilities



35% Moderately Comfortable  
(bicyclists)  
30% Moderately Comfortable  
(pedestrian)

**Woonerf:** Quiet shared street with joint use of street space by pedestrians, bicyclists, and local resident cars. Extensively used in the Netherlands and gaining additional currency in other countries.

### Bike lane and sidepath:

Complete street with standard bike lanes and off-road shared use path for pedestrians and bicyclists uncomfortable with on-road facilities.



37% Moderately Comfortable (bicyclists)  
47% Very Comfortable (pedestrian)

### Bicycle boulevard or neighborhood greenway:

Low-volume residential street with sidewalks and traffic calming devices to hold speeds to 20-25 mph.



32% Moderately Comfortable



42% Moderately Comfortable

### Enhanced standard bike lanes:

Standard on-street lane with green paint at strategic locations and conflict points for greater visibility.



67% Very Comfortable

### Parking protected bike lane:

Bike lane separated from travel lanes by parking and painted buffer with vertical bollard delineators.



76% Very Comfortable

### Protected cycle track:

Two-way on-street path, separated from parking and travel lane by raised planter or median.



54% Very Comfortable (bicyclists)  
48% Very Comfortable (pedestrian)

### Shared use path on separated right-of-way



## Previous Transportation Plans

Several previous documents address the development of future streets, streetscapes, and trails:

- » **Plan Olathe.** PlanOlathe, the city's Comprehensive Plan, was completed in 2010 and is updated annually. It guides the future of the city's transportation network with its vision of establishing and maintaining a balanced multi-modal transportation system that provides effective, efficient, and safe mobility for residents. The plan emphasizes the need for improving mobility, supporting high-quality trails to connect activity centers, and integrating land uses with multi-modal transit opportunities.
- » **Olathe Transportation Master Plan.** In 2017, the city completed a Transportation Master Plan to guide long-range transportation investments. In its section on Active Transportation, the plan identifies the need for a variety of facilities to encourage bicycling for a range of users, including trails, bike lanes, and sidepaths. These were combined into a recommended active transportation network.
- » **Olathe Streetscape Master Plan and Downtown Design Guidelines.** The Streetscape Master Plan and Downtown Design Guidelines, prepared in 2003, establish a design framework for redevelopment in downtown and along Santa Fe Street. The plan describes public realm improvements and design standards/guidelines for private property. It did not include specific standards for Kansas Avenue or Kansas City Road.
- » **Envision Olathe.** Completed in April 2018, Envision Olathe included concepts and a high level network that form the basic foundation for this more detailed active transportation plan. The plan related connectivity, housing,

development, and public space to create a unified vision of the City Center district as a multi-use destination and neighborhood.

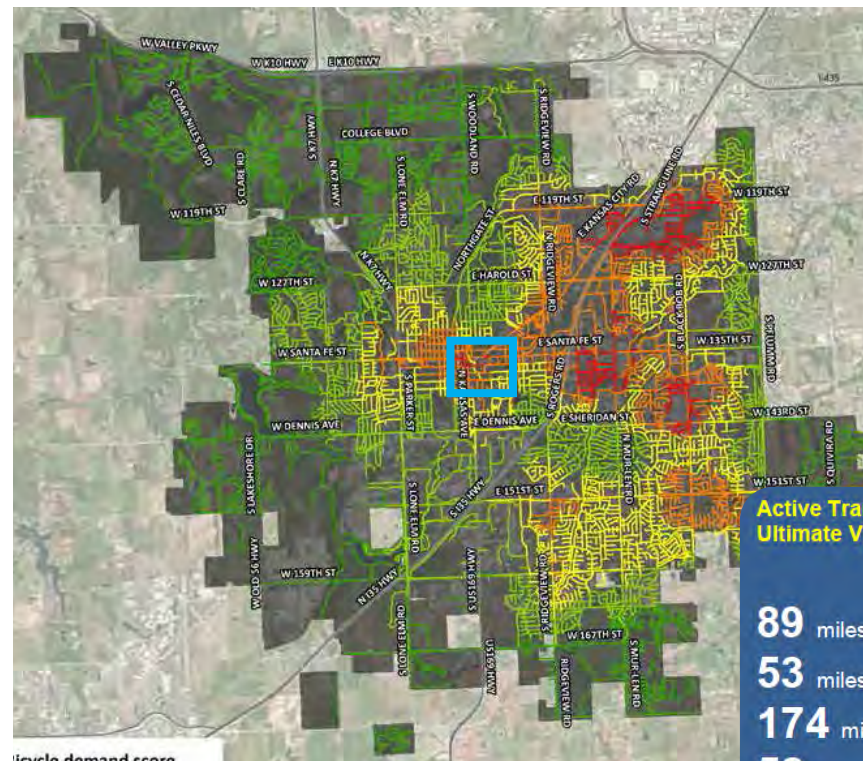
- » **Bike Share Implementation Strategy.** In February 2018 a report was prepared for Olathe to determine the benefits of a bike share system, assess demand, and identify locations for potential bike share facilities and service boundaries.. The public engagement identified downtown as residents' priority location for implementation of bike share. The map below shows the bicycle demand analysis with the study area highlighted in blue. The City Center exhibits high rates of potential bicycle

ridership. However, lack of connected and safe facilities depress levels to those of areas to the east and northeast, with better access to existing trails and bike lanes.

## Street Preservation Program

Much of the planned active transportation route can be built out by planning the upgrades with the Street Preservation Program. The Street Preservation Program is included in the Capital Improvement Program (CIP) for funding each year. Projects range from mill and overlay to full reconstruction. The reconstruction projects that correspond to the planned active transportation route are outlined in blue on the adjacent map.

**BIKE SHARE IMPLEMENTATION STRATEGY (2018):** High Bicycle Demand Map



### Active Transportation Network – Ultimate Vision

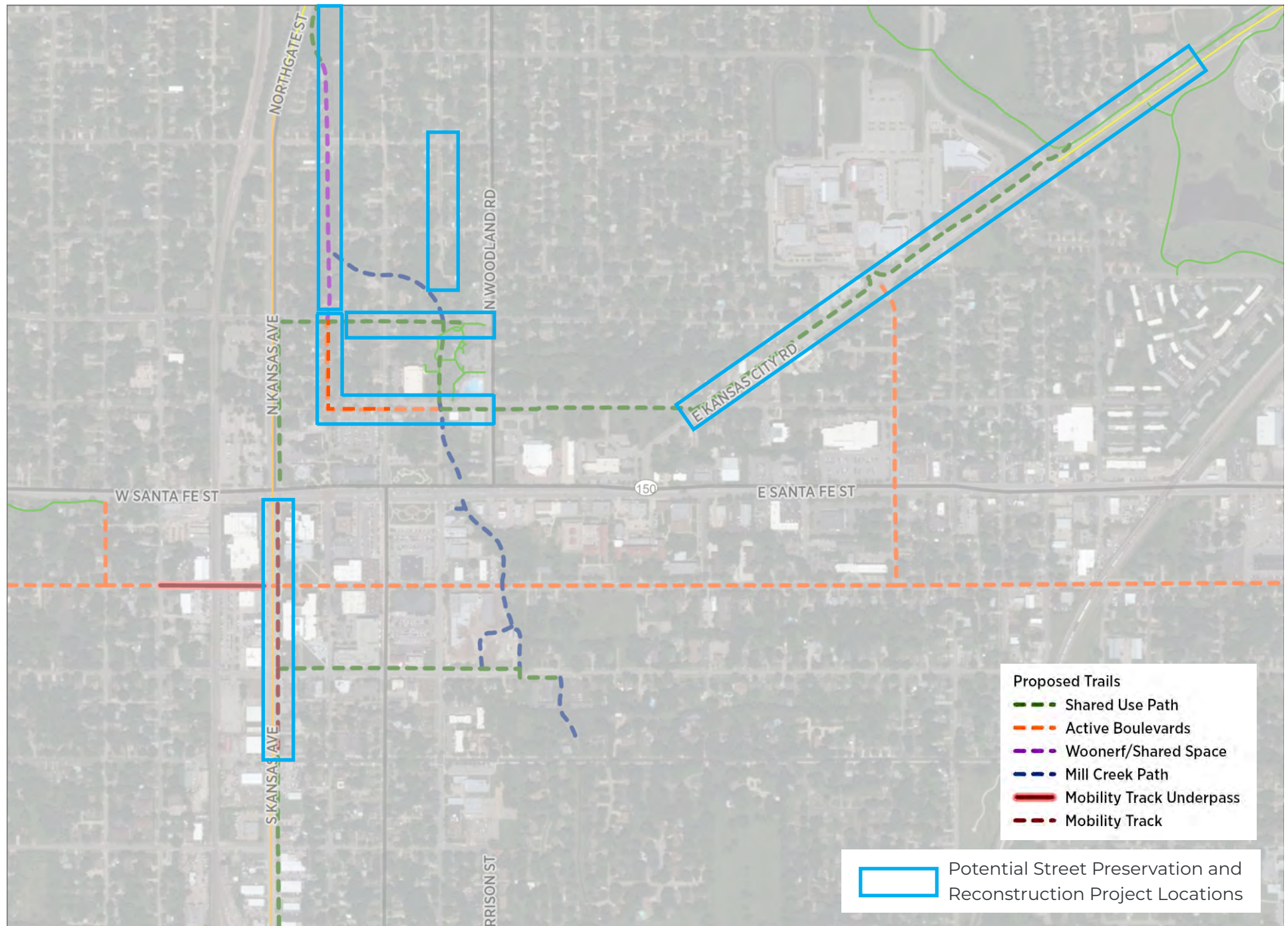
**89** miles of bike lanes (vs. 13 today)  
**53** miles of trails (vs. 29 today)  
**174** miles of sidepaths (vs. 23 today)  
**52** miles of shared roads (vs. 4 today)

**+ pervasive network of sidewalks**





## STREET PRESERVATION AND RECONSTRUCTION POSSIBLE LOCATIONS











1

THE NETWORK



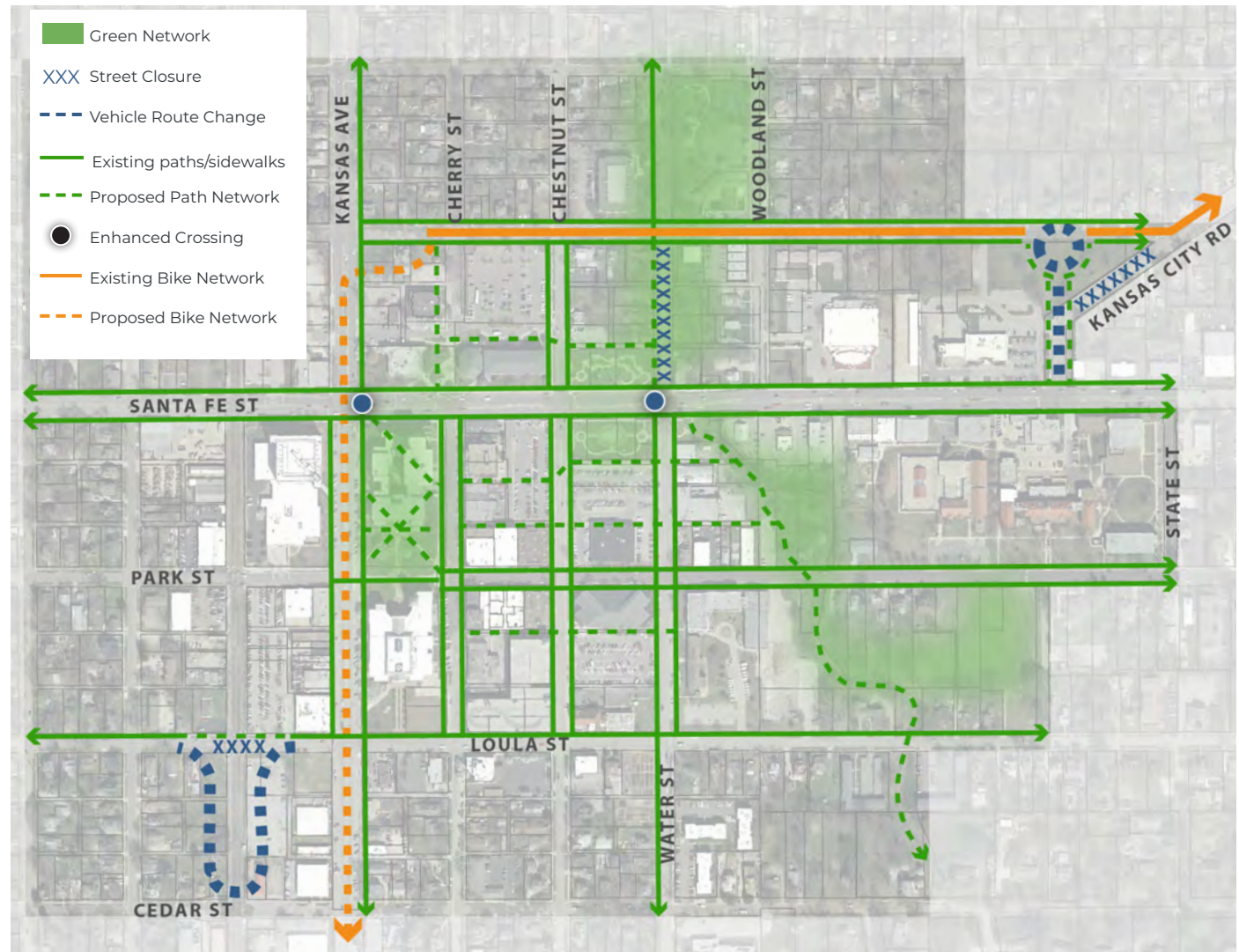
# THE NETWORK

The following chapter outlines the overall active transportation network for Olathe's City Center District. It proposes an internal and external system that connects users of downtown and the regional trail system. This network ties together the five development subdistricts recommended by the Envision Olathe Plan and advances the ideas specified in the mobility framework.

## Study Area

Envision Olathe's active transportation and greenway concept, displayed at right, is the starting point for this document, which maintains the original plan's basic goals and directions. However, some specific elements are changed and new ideas introduced, based on a deeper investigation of opportunities and constraints. Other changes are the result of more recent developments.

While the principal focus of this study is to consider strategies for making connections within the downtown core, it recognizes that regional connections are integral to a fully functioning active transportation network. Therefore, the City Center Network map proposed on the following pages incorporates a wider study area than the original Envision Olathe map.



## Transportation Network

A consideration of an active transportation system for downtown Olathe begins with a discussion of the city's overall transportation network. Key components of the network include:

### MOTOR TRAFFIC CIRCULATION

The downtown traffic circulation system consists of two-way gridded streets, aligned north-south and east-west. Blocks were originally served by sets of east-west mid-block alleys with a north-south alley to connect them. Several blocks preserve these alleys, although they are reconfigured or vacated on others. Remaining alleys provide building service and utilities off the street, improving the public realm. Some alleys are also used by pedestrians, a role that could be enhanced with outdoor amenities.

### MAJOR CORRIDORS AND INTERSECTIONS

Three major road corridors provide circulation from downtown to other parts of Olathe—Santa Fe (135th) Street, Kansas Avenue, and Kansas City Road. Spruce Street, with a grade-separated underpass at the railroad, is another important east-west route, especially when passing trains block the Santa Fe Street grade crossing. Clearance of the underpass is insufficient for many trucks. East-west Loula Street, two blocks south of Santa Fe, is also a collector street with a surface crossing of the railroad.

### SIGNALIZED INTERSECTIONS

In the study area, signalized intersections along Santa Fe Street include Kansas Avenue, Chestnut Street, and Kansas City Road. Kansas Avenue also has signals at Park Street, Loula Street and Spruce Street. Traffic count data and capacity needs have been revisited to determine whether the Park Street and Kansas Avenue intersection needs to remain signalized.

### RAILROAD CROSSINGS

The busy BNSF mainline borders the west side of downtown and averages 88 trains per day. As mentioned above, Santa Fe, Loula, and Park Streets cross the double-tracked line at-grade. Artificial horns, cross bars, and flashing lights are used to protect these crossings. The cumulative delay and crash costs at the Santa Fe Street crossing alone are estimated at over \$10 million between 2012 and 2025. The existing two-lane Spruce Street underpass, two blocks north of Santa Fe, is insufficient to handle traffic trying to avoid these grade crossings when trains pass.

## PEDESTRIANS

While the district has a complete grid of sidewalks, the railroad and traffic flow on major streets present obstacles to smooth, safe, and comfortable pedestrian movement. A defined pedestrian crossing at Santa Fe and Cherry is not signalized but receives heavy pedestrian use, which is likely to increase when the new courthouse on the north side of Santa Fe is occupied. Other desired pedestrian crossings of Santa Fe include Water Street, with demand likely to increase with development of a new library as part of a mixed use project north of Civic Center Park.

## BICYCLE FACILITIES

Bicycle-specific facilities are currently scarce in the city center, although infrastructure connections are available in surrounding areas. These include standard bike lanes on Kansas Avenue between Cedar Street and Dennis Avenue, the regional Gary Haller (Mill Creek) Trail from Mahaffie Stagecoach Park to Shawnee Mission Park and the Kansas River, the regional Indian Creek Trail from Sheridan and Santa Fe near Mur-Len Drive east of I-35, the Rolling Ridge Trail west of Parker between Ernie Miller to Oregon Trail Parks, the Dennis/Sheridan bike lanes from Lake Olathe to the east city line, and the Santa Fe sidepath west of the BNSF corridor. Kansas City Road is signed as a bike route between Santa Fe Street and the Gary Haller Trailhead.



## Existing Traffic Analysis

In late April and early May of 2019, traffic counts were conducted at several intersections in the downtown core to determine the Level of Service (LOS) during the AM (7:15 to 8:15) and PM (4:30 to 5:30) peak hours. Level of Service is defined as the measure of the quality of traffic flow with respect to average delay and is graded from “A” to “F” – with “A” being the best situation and “F” being the worst. Level of Service of D is considered acceptable by most municipalities.

Most intersections in the downtown core operate at a LOS D or better and have sufficient space for queuing vehicles during the AM and PM peak hours. Detailed analysis for each intersection is included within their respective section.

## Future Traffic Distribution

Proposed traffic volumes for the intersections in the downtown core analysis were developed using the April/May 2019 traffic counts (see Section 2 in the Appendix for traffic counts) augmented by the new Johnson County Courthouse and the proposed Milhaus development. The volumes from the north leg of Water Street were redirected to Chestnut Street to account for the closure of Water Street north of Santa Fe proposed by Envision Olathe. Park Street traffic was similarly redirected to Loula Street. Detailed descriptions of traffic impacts for each main intersection are included within their respective sections.

## Citizen Preferences

Downtown walkability is especially important because of its large number of daytime employees. Comments from the public engagement process reinforced the need connections and safe pedestrian paths to accommodate workers who walk around downtown during their breaks. In addition, a quality walking environment will encourage a growing residential population in and around downtown and new private investment.

Public input also suggested significant support for regional connectivity. Participants in events such as the concept open house appreciated ideas for a Kansas Avenue facility that would improve access to the Gary Haller Trail and Lake Olathe. The active transportation network described later is designed to tie the various regional facilities together in the center of the city and provide better links from Downtown Olathe to Mahaffie Stage Coach/Community Center to Downtown, Lake Olathe, the Gary Haller Trail, and a Mill Creek greenway corridor.

## The Network Concept

The maps on pages 17 through 19 provide the basis for the central Olathe system that is detailed in subsequent parts of the plan. The Potential Regional Connections identifies the corridor connections that link Downtown Olathe to features in the surrounding region. These corridors include connecting the City Center to:

- The Gary Haller Trail, connecting to northern Johnson County, Shawnee Mission Park and surrounding recreational resources, and the Kansas River.
- Lake Olathe, one of the city's principal recreational assets.
- Mahaffie Stage Coach Stop, Stagecoach Park, and Olathe Community Center.
- The Indian Creek Trail, connecting to Overland Park, Leawood, and the center of Kansas City.

More local corridors include:

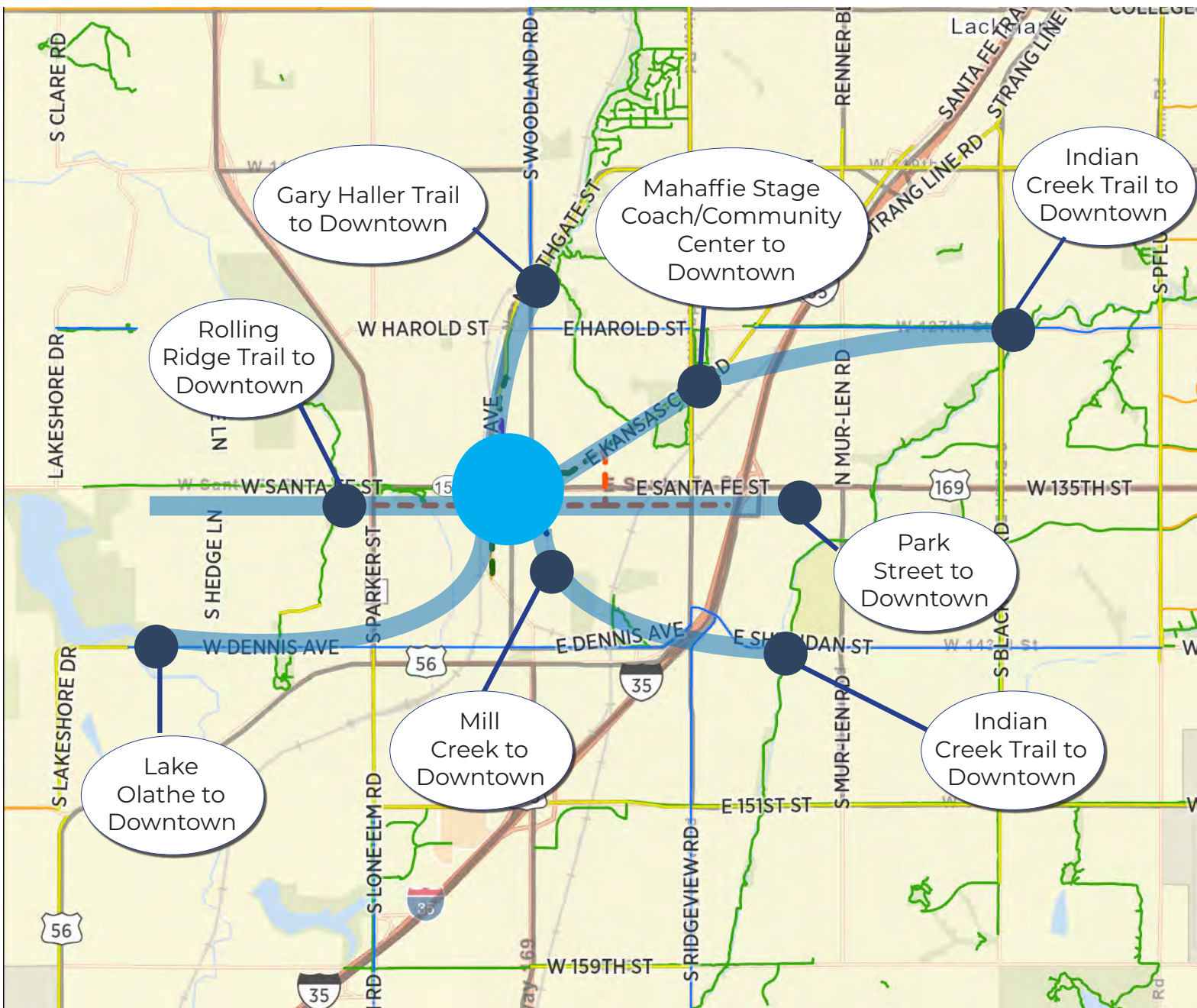
- Mill Creek to Water Works Park, the new library, Mill Creek Park, and ultimately the Gary Haller Trail.
- Park Street, once Olathe's principal east-west civic corridor, connecting to the K-7 corridor and Rolling Ridge Trail.

The Regional Network Map on page 18 relates these general corridors to specific routes and facility types, and the Downtown Network Map focuses on potential projects within the City Center study area. These specific components, discussed in detail in Chapter 2, include:

- Kansas Avenue, the major north-south facility connecting the Dennis Avenue bike lanes and Lake Olathe to the Gary Haller Trail through Downtown Olathe.
- Mill Creek, the central greenway between Cedar Street and the historic Mill building to Mill Creek Park and the north link to the Gary Haller Trail. A key element of this corridor is a safe Santa Fe Street crossing.
- Park Street, the major crosstown civic corridor through a central open space opened by relocation of the Courthouse north of Santa Fe and including a potential grade separated crossing of the BNSF Railway.
- Kansas City Road, connecting the Downtown core to Stagecoach Park and the Gary Haller and Indian Creek systems.
- Interconnections among these major component routes.

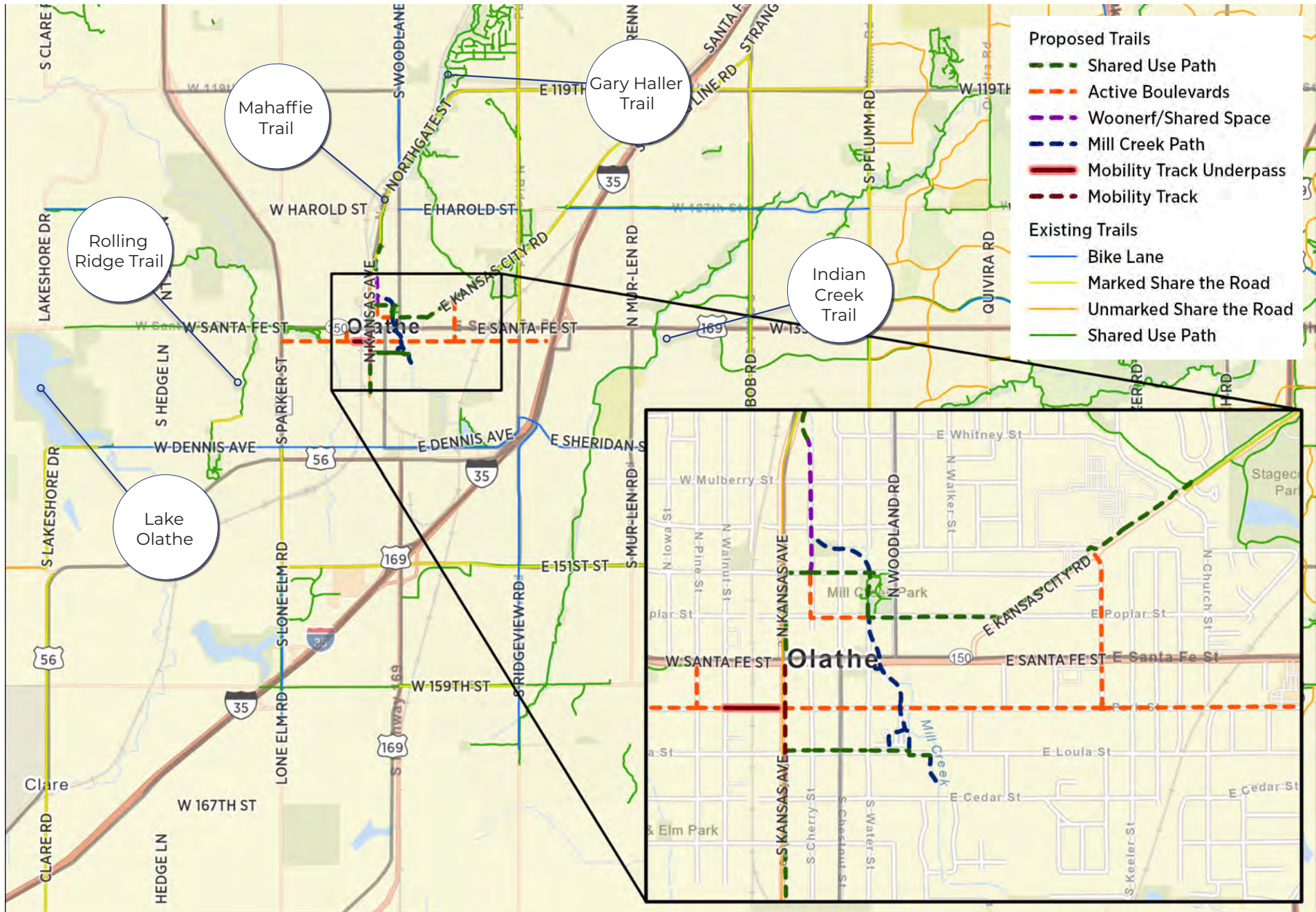


## Potential Regional Connections



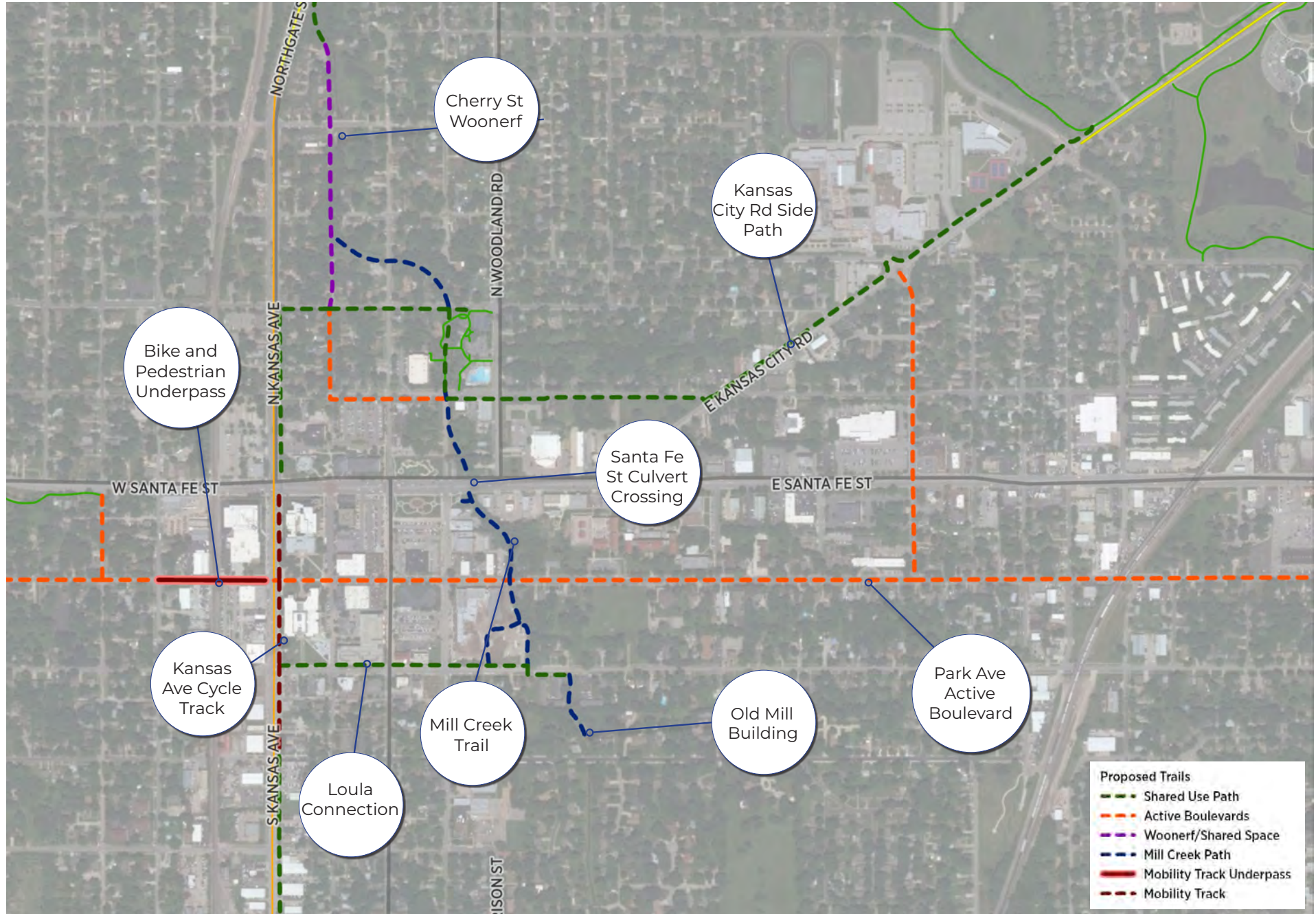


## Regional Network Map





## Proposed Downtown Network Map







PARK ST



A photograph of a city street scene. In the foreground, a sidewalk and a brick wall are visible. A large, leafy tree stands in the middle ground. Behind the tree is a brick building with several windows. To the left, a traffic light pole with a green light is visible. A silver car is parked on the street. The sky is blue with some clouds.

2

## SYSTEM COMPONENTS



# KANSAS AVENUE/NORTHGATE

Kansas Avenue and Northgate are important links to the regional transportation system, serving as the middle portion of a larger trail that connects the Gary Haller Trail (and ultimately the Kansas River) to the north and to Lake Olathe to the southwest.

## Why

The north-south connection is a higher priority project because of the imminent completion of the new Johnson County Courthouse and a previously programmed streetscape investment on Kansas Avenue. The Envision Olathe plan proposed a protected cycle track on the east side of the street between Cedar and Santa Fe Streets. This core facility would connect south to Lake Olathe and north to the Gary Haller Trail and Shawnee Mission. The Envision Olathe downtown plan identified the following challenges and opportunities:

- ◀ Perceived Barrier. Traffic speeds and volumes are relatively low through the Downtown core but the street's width presents a barrier to pedestrians.
- ◀ Parking Demand Shift. As the courthouse moves north of Santa Fe Street, parking preferences may also shift to the courthouse's new surface parking lot north of the new building.
- ◀ Streetscape improvements. Kansas Avenue is scheduled for improvements after the courthouse moves in 2021. This presents a great opportunity to enhance the street as an important approach to downtown.

## How

Kansas Avenue's existing curb to curb width averages 80 feet in the center of Downtown, with two direct lanes, short left turn lanes at intersections, and diagonal parking. The street width tends to encourage higher speeds through the central district, and conventional head-in diagonal parking creates hazards for micro-mobility modes such as bicycles and scooters. However, this generous width permits complete redesign within the existing curb width.

The recommended concept reallocates the existing street real estate on Cedar Street by providing:

- ◀ A two-way cycle track protected by a raised barrier with planters along the

east side of Kansas Avenue. The existing east side curb remains in place. The cycle track itself is 10 to 12 feet in width, with a protected buffer of 4 to 6 feet. The entire cycle track installation with buffer is 16 feet.

- ◀ A two-lane street with retained diagonal parking in the remaining 64 feet street channel. A left-turn lane would be maintained at the Santa Fe and Loula intersections. Diagonal parking on one side would be removed at these intersections to avoid traffic conflicts and provide space for the left turn lane.
- ◀ Curb extensions at intersections to reduce pedestrian crossing distance. This treatment would also be extended on the east side of the Park Street T-intersection, especially important with possible removal of the signal. The concept proposes a protected (or Dutch) intersection at the Santa Fe and Kansas Avenue intersection, providing a safe refuge and transition from the cycle track to a shared use path along the Courthouse site from Santa Fe to Spruce.
- ◀ Driveway accesses would be retained between Loula and Cedar. The raised buffer would be interrupted about 5 feet on either side of the driveway, with conflict zone striping across the width of the curb cut. The design of this is detailed in chapter 6.
- ◀ Upgraded sidewalk streetscape to provide a positive and memorable experience to attract visitors and private investment to Downtown's western edge. Features such as pedestrian lighting, trees and benches can be used to create a sense of place with a human scale. Clean streets, ornamental lighting, native plantings, shrubs, and community graphics can also create a more attractive visual and functional environment. Similar applications can also be made to secondary circulation corridors such as Spruce Street and Loula Street.

Overall advantages and features of the conceptual design include:

- ◀ Better safety and comfort for pedestrians, bicyclists, and users of other micro-mobility modes.
- ◀ Updated lighting
- ◀ Improved landscaping to complement a future Courthouse Square
- ◀ Preserve most on-street parking

- ◀ Improved intersection design to provide well-defined pedestrian areas

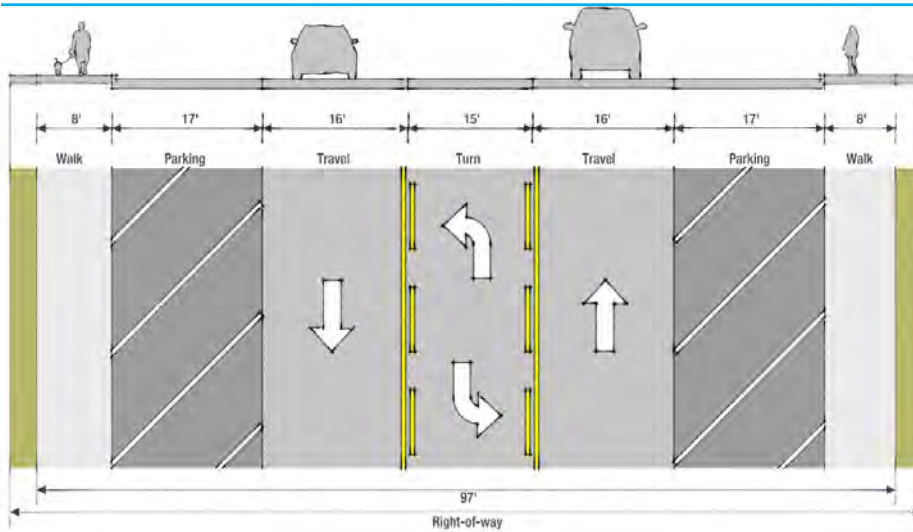
The illustration below presents the overall concept of the core segment, while the following pages describe the individual segments and infrastructure solutions for each segment of this north-south facility.



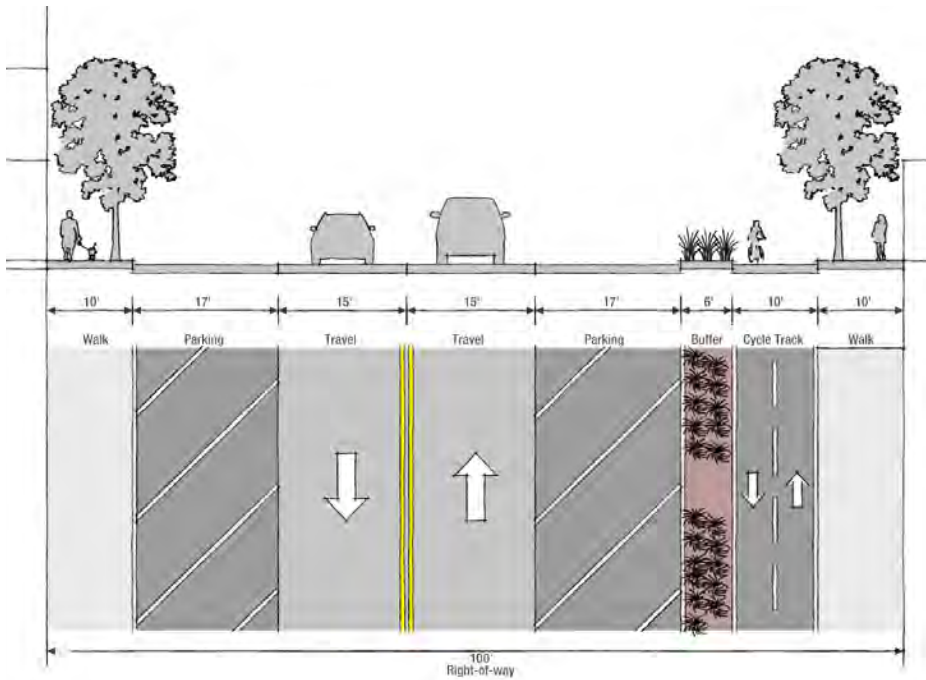


## 2 | SYSTEM COMPONENTS

South Kansas Avenue Street Section - Existing



South Kansas Avenue Street Section - Proposed Complete Street





## Downtown Core: Santa Fe to Cedar Street

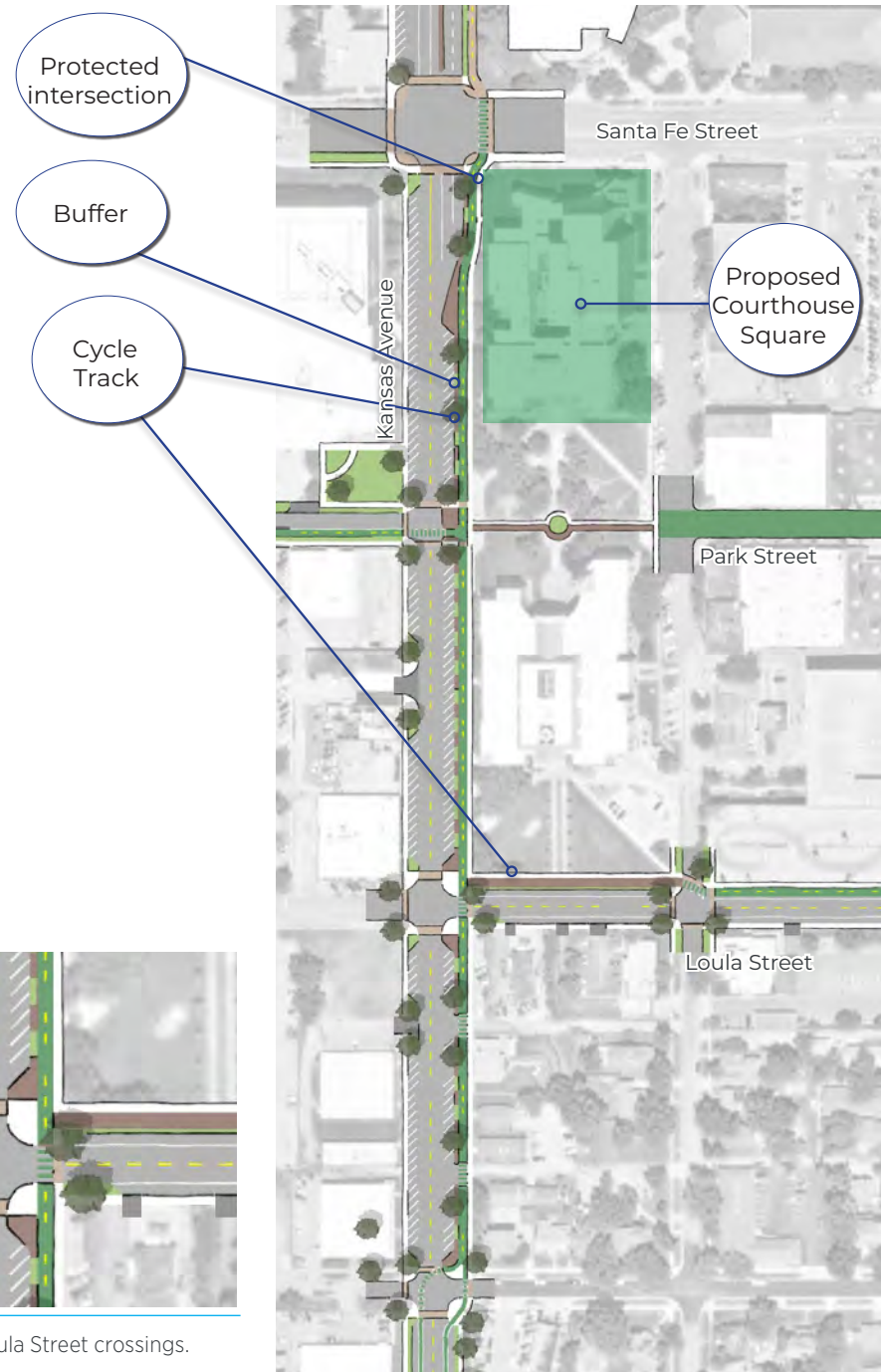
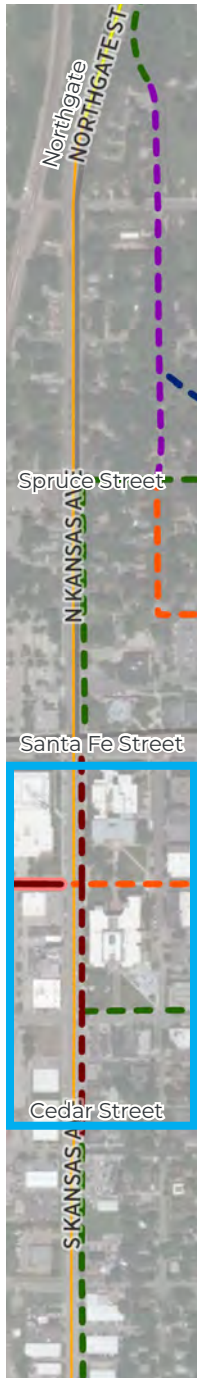
The protected cycle track would extend using the section and features described above from Cedar Street on the south to Santa Fe Street on the north. Significant interior intersections occur at Park and Loula. At Park Street, a longer extension between travel lanes and the cycle track will define the intersection as a pedestrian zone, necessary because of the probable future removal of the unwarranted traffic signal at this location. This also aligns with the pathway and open space connection across the courthouse green to the continuation of Park Street east of Cherry. Loula marks an intersection between a connecting bicycle and pedestrian facility to the Mill Creek Path, described later. Crosswalks and pavement markings would mark a transition of the cycle track to bike lanes south of Cedar.

### Traffic Impacts

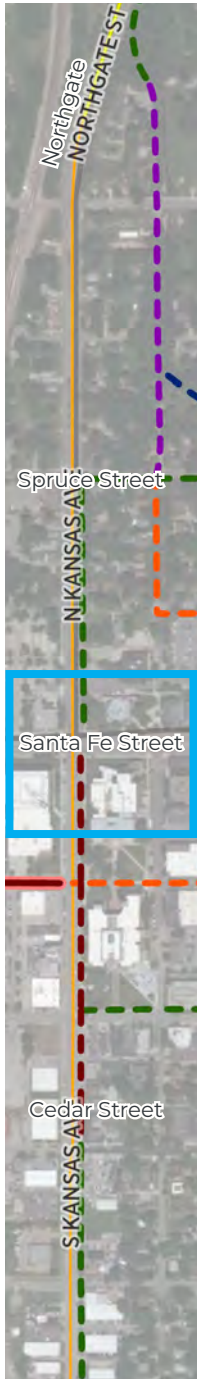
The City is studying the status of the existing signal at Park and Kansas Avenue. The existing analysis assumed an eastbound stop sign on Park and free-flowing north-south movements on Kansas. All movements are expected to operate at a LOS B or better with the eastbound traffic stop controlled. A future Park Street underpass, proposed later in this chapter, could include closure of the existing railroad grade crossing. Should this occur, access to driveways would be provided from Kansas on the east and Walnut on the west to serve the Adult Detention Center and businesses on the west side of the tracks. East-west traffic would use Santa Fe or Loula, and closure of Park Street does not significantly affect LOS on either corridor.



**Intersections from the Kansas Avenue cycle track.** From left: Park Street and Loula Street crossings.





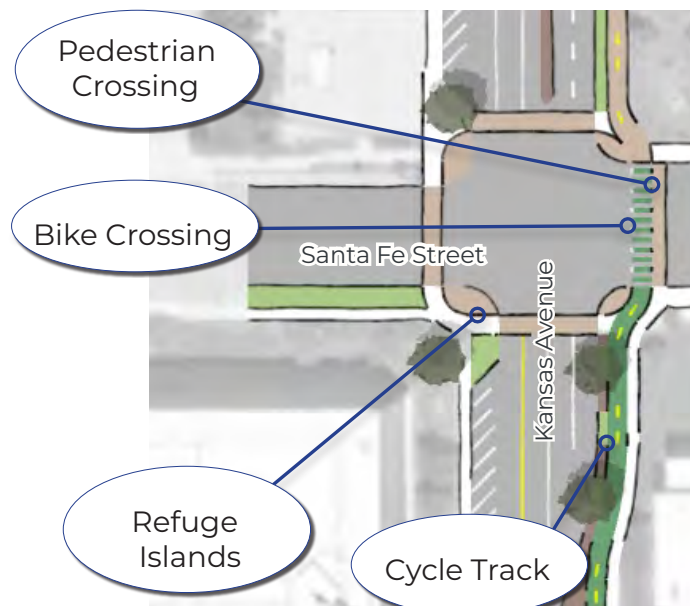


### Santa Fe and Kansas Avenue Intersection

A protected intersection would substantially improve the comfort and safety of pedestrians and bicyclists crossing this intersection. The concept adapts a Dutch design that does not affect traffic operations but provides a safer crossing for bicycles and pedestrians. It does this by extending the physical separation of the protected bike lane into the intersection. This greatly increases the visibility of cyclists at red lights by positioning them in front of cars, reduces the distance of unprotected road that must be crossed, and prevents motorists from turning into the cyclist's blind spot.

#### Traffic Impacts

The signalized intersection at Santa Fe and Kansas Avenue has the highest traffic volumes of all the intersections in the downtown core. Overall it operates at a LOS D. The proximity to the railroad crossing on the west side can cause traffic to be delayed in excess of the LOS E criteria (80 seconds) which is caused by the railroad; signal timing adjustments wouldn't be able to decrease the delay. The LOS at this intersection is not expected to be impacted with the additional traffic from the planned developments.

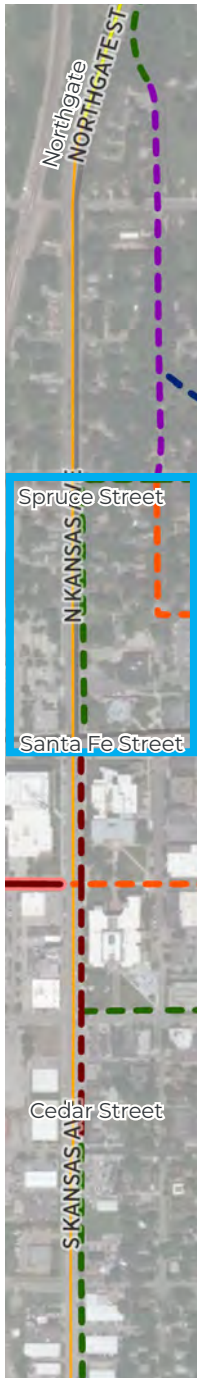


**Protected intersection concept for Kansas and Santa Fe.** Kansas cycle track at left crosses Santa Fe and transitions to a shared use path along the Courthouse site.



**Protected intersection in the Chicago Loop.** For more information on Protected Intersections see page 57.





### NORTHBOUND: Santa Fe to Spruce Street

The northbound extension of the Kansas Avenue facility transitions to a shared use sidepath north of Santa Fe. This facility should provide a 10-foot path with a minimum separation of six feet from back of the Kansas Avenue curb. The northbound route continues on a similar sidepath on the north edge of the Courthouse site to Cherry Street. An active boulevard, marked with route designation signage and shared lane markings (sharrows) would continue south to Poplar Street, which in turn connects to both the Mill Creek and Kansas City Road Paths described below. Future changes to the Kansas Avenue and Spruce Street intersection include widening Spruce to provide left turn lanes.

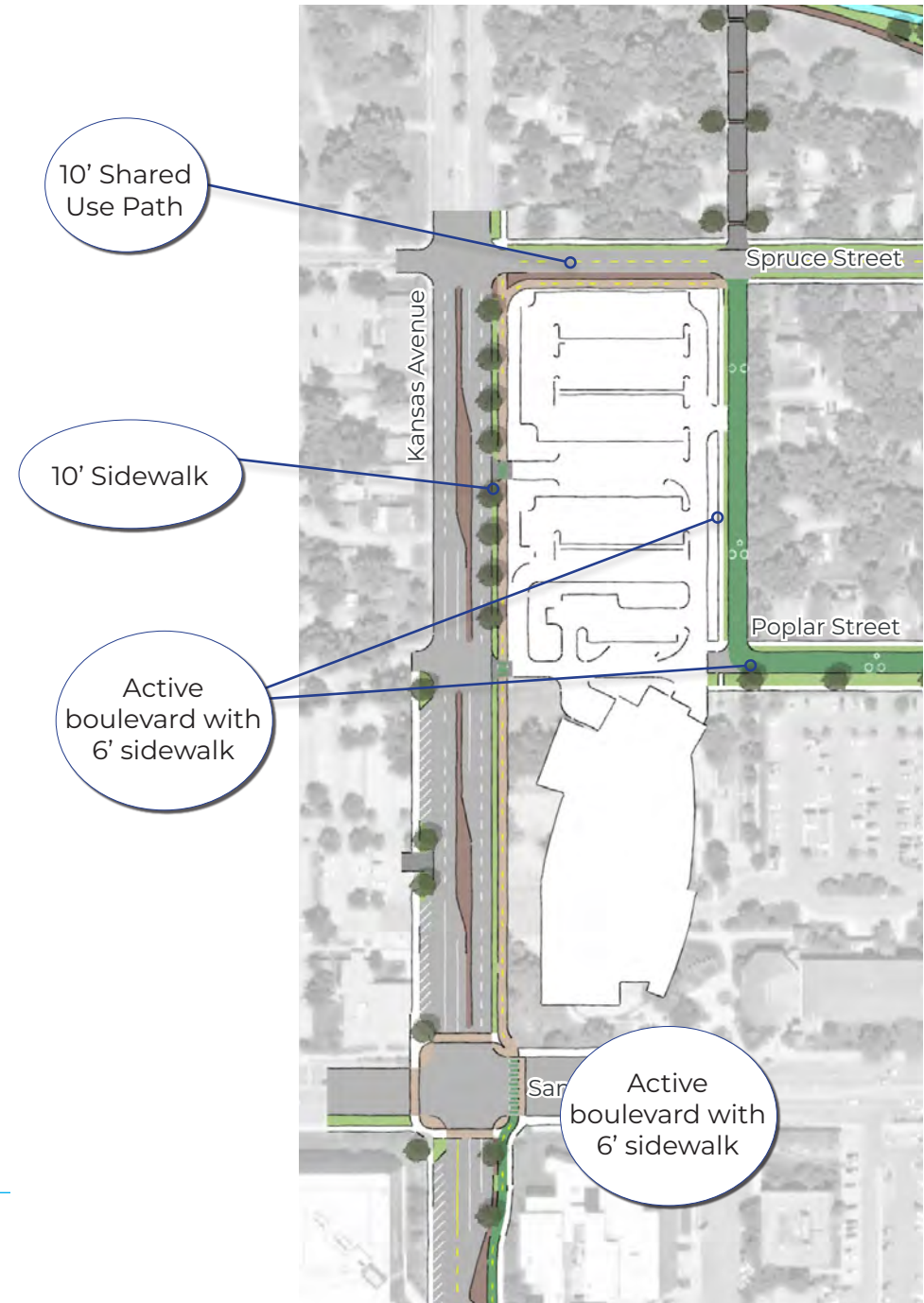
### Traffic Impacts

When the traffic counts were conducted, all movements at the signalized intersection of Spruce and Kansas Avenue operated at a LOS C or better except for the east-west movements. The shared through-turning movements have an average delay of greater than one minute during the AM and PM peak hour. The eastbound movement during the AM peak hour queues back approximately 440 feet.

Analysis was completed with the addition of an eastbound and westbound left-turn lane. With the addition of the turn lanes all movements are expected to operate at a LOS D or better. Overall the signal operates at a LOS C for the AM and PM peak hours.

Introduction of a sidepath on the periphery of the Courthouse site does not affect on-road traffic flow.

**Courthouse shared use sidepath.** The Kansas Avenue facility continues north as a sidepath along the western edge of the Courthouse site.







## NORTHBOUND: Spruce Street to Northgate

Leaving the city center and continuing northbound to reach the Gary Haller Trail, the shared use path along Kansas Avenue turns east on the south side of Spruce Street, continuing for one block to Cherry Street. Cherry Street from Spruce Street to its terminus in a cul-de-sac north of Mulberry is essentially narrow alley, providing local access only. A section between Spruce and Mulberry Streets not needed for driveway access will be closed to traffic as part of the Mill Creek stormwater management project. Two short segments will remain open to serve driveways just north of Spruce and south of Mulberry. This provides the opportunity to redesign Cherry as a “woonerf” – a street concept originated in Holland where bicyclists, pedestrians, and cars at very low speed comfortably and safely share space. Landscaping and low-cost streetscape features are used to reinforce this shared space character.

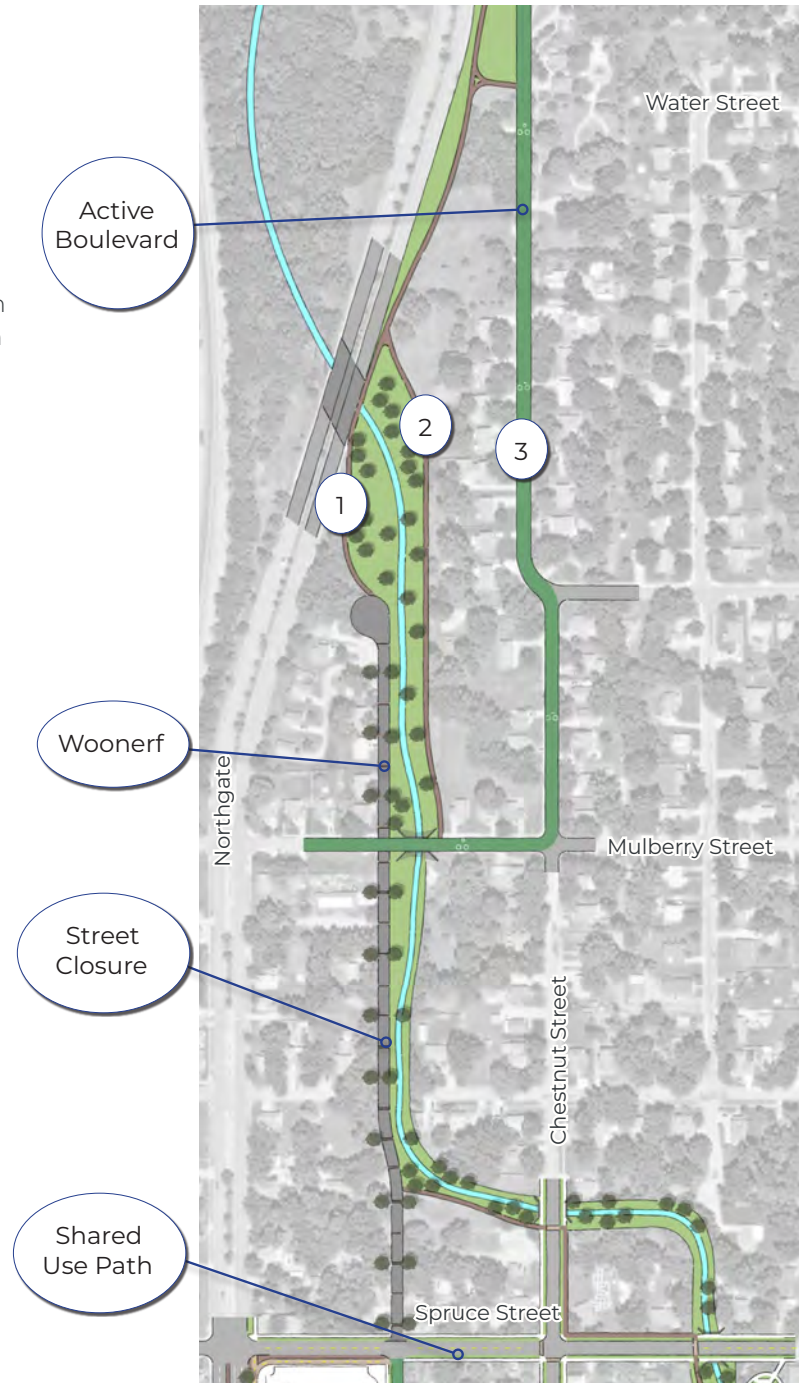
Three options are available to continue the route north of Mulberry to connect with an existing path that begins at the Chestnut Street cul-de-sac south of Olathe Memorial Cemetery.

- » **Option 1.** Continue the Cherry woonerf to the cul-de-sac north of Mulberry, with a short path connection to the existing Northgate sidewalk; widening the Northgate sidewalk to shared use path standards from that point to the Northgate path. The path would narrow to use the existing sidewalk on the Mill Creek bridge.
- » **Option 2.** Cross Mill Creek at Mulberry and build a new shared use path the east side of the creek, connecting to the existing Northgate path north of the Mill Creek bridge.
- » **Option 3.** Adapt Chestnut Street to provide an on-street “active boulevard” on Chestnut to the existing path at the street’s terminus south of the cemetery. This facility would be identified by signage and shared lane markings for wayfinding.

The Northgate path continues to Harold Street, where existing bike lanes connect to the Gary Haller Trail.



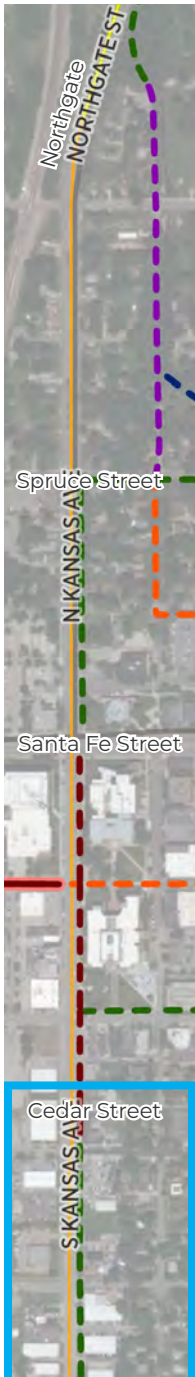
From left: Cherry Street north of Spruce; Dutch woonerf



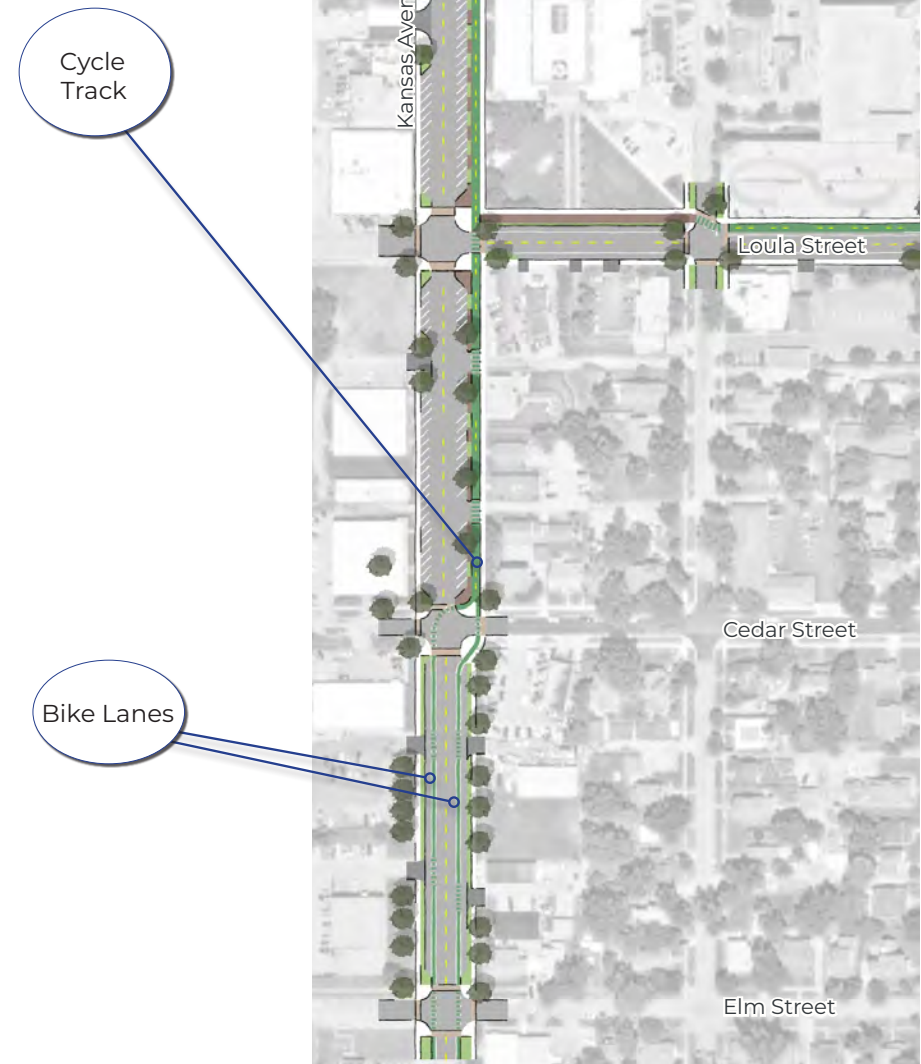
### SOUTHBOUND: Cedar Street to Dennis Avenue

Several options are available to continue the Kansas Avenue facility south of Cedar. The street right-of-way is wide enough to accommodate a shared use sidepath between Cedar and Southgate Street, transitioning to the existing bike lanes south of the Southgate branch line crossing. The cycle track would transition to the sidepath on the east side of Kansas at the Cedar intersection. Alternatively, the cycle track would end at Cedar, with a transition to bike lanes between Cedar and Dennis. The street is sufficiently wide between Cedar and Southgate to provide buffered bike lanes with parking on one side of the street. Painted markings would help indicate to both bicyclists and vehicles that the cycle track users are crossing from the east to the west side of the street in order to enter the southbound bicycle lane.

The bike lanes markings end just north of Dennis Avenue. The intersection should be modified to either continue the bike lanes to the Dennis Avenue bike lanes or transition to an off-street directional path above the curb. Bike lane crossings at the intersection should also be clearly marked to provide a clear path to the east-west Dennis/Sheridan route to Lake Olathe to the west and the Indian Creek Trail to the east.



Buffered bike lane. Armour Boulevard in Kansas City





## Implementation

Estimated costs have been prepared for all options presented within this plan. This helps the City determine the best route option given the current projects and funding available. Detailed breakdowns for each option and network segment can be found in the appendix.

The table at right summarizes estimated costs for each portion of the Kansas Avenue network. Economies are realized if these are included in existing city projects. All three segments lie within the boundaries of planned projects in the Street Preservation and Reconstruction program. Given both the near term opportunity to reduce the project cost and the benefit of the north-south route, the Kansas Avenue connections should be given priority.

### ESTIMATED COSTS

Segment	Details	Cost
Northgate Trail Connection	Using existing bridge	\$614,790
	New pedestrian bridge	\$981,030
	Chestnut bicycle boulevard	\$76,320
Cherry Street Woonerf	Spruce to Chestnut Street	\$723,060
Kansas Avenue Cycle Track/Sidepath	Santa Fe Street to Cedar Street	\$740,700
<b>Total Cost Range</b>		<b>\$1,540,080 to \$2,444,790</b>

\* This estimate assumes substantial use of pavers and resurfacing of the corridor. These costs can be significantly reduced, depending on the final design of the facility.







# MILL CREEK TRAIL

The concept of a Mill Creek Trail began in 2006 when the Central Core Neighborhood Committee produced “An Urban Trail: Mill Creek Trail from Spruce Street to Cedar Street.” This chapter builds upon the ideas of the original trail document, modified for right-of-way constraints and changes its release. The trail generally follows the creek from Cedar Avenue to Northgate, connecting into the existing trail system that leads to the Gary Haller Trail, and includes some segments of the Kansas Avenue route described earlier.

## Background

In 2002-2003, Olathe's Central Core Neighborhood Committee undertook a twelve month study to develop strategies for the downtown area. One of the plan's goals was an urban trail that followed Mill Creek through the center of the city. The original concept linked the Water Works Park area to Northgate near Woodland Cemetery. The path would pass by historic Ott's Mill, originally known as Olathe Mills, currently sitting vacant, but a potential development catalyst and south trail head.



The original trail envisioned ponds and waterfalls along the course. Additional trail amenities included benches, security call boxes, drinking fountains, and pedestrian lighting with built-in electrical outlets. It was seen as a place for daily workers to visit on weekdays and families and residents at night and on weekends. The trail could also host Old Settlers Day activities, art fairs, sculptures, displays, and other events.

## Why

A pedestrian path along Mill Creek would make this potential greenway a significant amenity for Downtown, improve circulation and connectivity, and encourage more residential development, an important priority for the recent Envision Olathe plan. It would link Mill Creek Park, the two Civic Center Parks on either side of Santa Fe Street, Mill Creek Center, and the neighborhoods on the north and south side of Santa Fe Street. The existing right-of-way adjacent to the trail bed would minimize the amount of private property affected by the trail development. However, some segments may require access easements to complete.

The path would also reintroduce nature as a Downtown feature, making the creek more than a functional channel for runoff. Natural waterways are often channelized or enclosed, depriving their urban surrounding of their aesthetic and recreational benefits. Adding a trail along a large portion of the creek will draw residents to the waterway.

A major challenge to a continuous Mill Creek Trail has been the Santa Fe Street crossing. Creating a safe path crossing would be an enormous benefit, especially with the proposed siting of the library on the north side of Civic Center Park. The existing culvert under the street can be adapted as an underpass for trail users, link neighborhoods on both sides of the arterial to each other and to major community facilities.

## How

On its north end, the Mill Creek Trail connects with the Cherry Street woonerf segment of the Kansas Avenue/Northgate route just south of Prairie Street. It continues south through Mill Creek Park, past the planned library and Civic Center Park, across Santa Fe Street and ends at the Old Mill on Cedar Street. Some parts of the path accommodate shared uses, while others are intended primarily for pedestrians. The majority of the path follows the west side of the creek itself. The key Santa Fe crossing uses the existing culvert under the street, although a long-term storm management solution may involve expanding or replacing the culvert, which would also improve this under-crossing. Additional lighting along the trail, especially between Loula Street and the Mill Creek Park, is desirable and would create the trail a more welcoming environment for evening pedestrian use.

The Mill Creek Trail varies in width from six to ten feet. Wider sections, generally north of Santa Fe, are part of the shared use path system of the central city district, while narrower sections are designed as pedestrian priority environments. The following pages detail the individual segments of the path.





### Prairie Street to Poplar Street

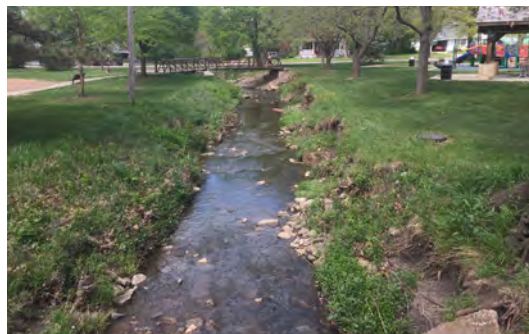
This section provides a standard 10 foot wide shared use path beginning at the Cherry Street woonerf south of Prairie Street. The trail runs on city property between Cherry and Chestnut and property to be acquired with the Mill Creek stormwater improvement project between, turning south to Spruce Street. Two options are available to maintain a continuous path:

- » **Option 1.** Upgrading sidewalks on Chestnut and Spruce Streets to Mill Creek Park, with bike route designation and advisory bike lanes on those two blocks of local street.
- » **Option 2.** Expanding sidewalks along Chestnut and Spruce to shared use path standards, again connecting to Mill Creek Park on the Water Street alignment.

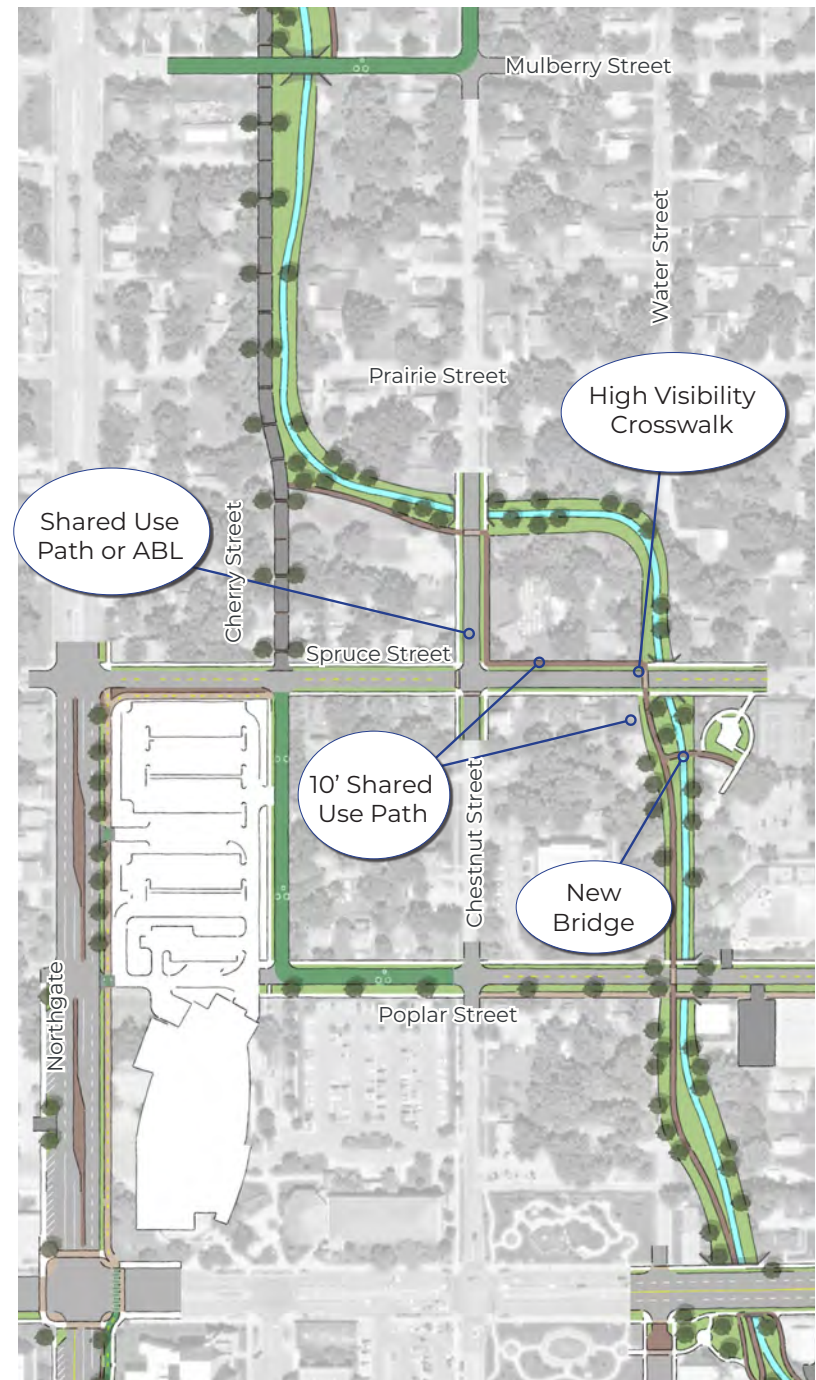
A high visibility crosswalk across Spruce Street leads to Mill Creek Park, and the path continues as a 10-foot shared use path through the park to Poplar Street. Two existing bridges would be removed and replaced with one new central bridge across the creek at the north end of the park. A high visibility crosswalk would be installed at the Poplar Street crossing, and the Mill Creek facility continues as a shared use path south along the existing Water Street right-of-way, which would be converted to trail and greenway use.



**North terminus of Mill Creek Trail.** Trail would be located on this city property between Cherry and Chestnut.



**Mill Creek Park.** The trail would expand an existing walkway on the west side of the creek and replace two older pedestrian bridges with a single bridge to the main park facilities east of the creek.





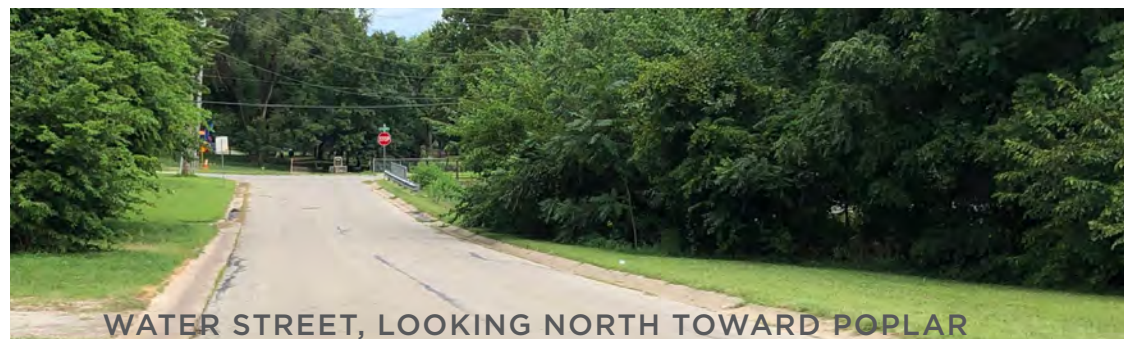


### Poplar Street to Santa Fe Street

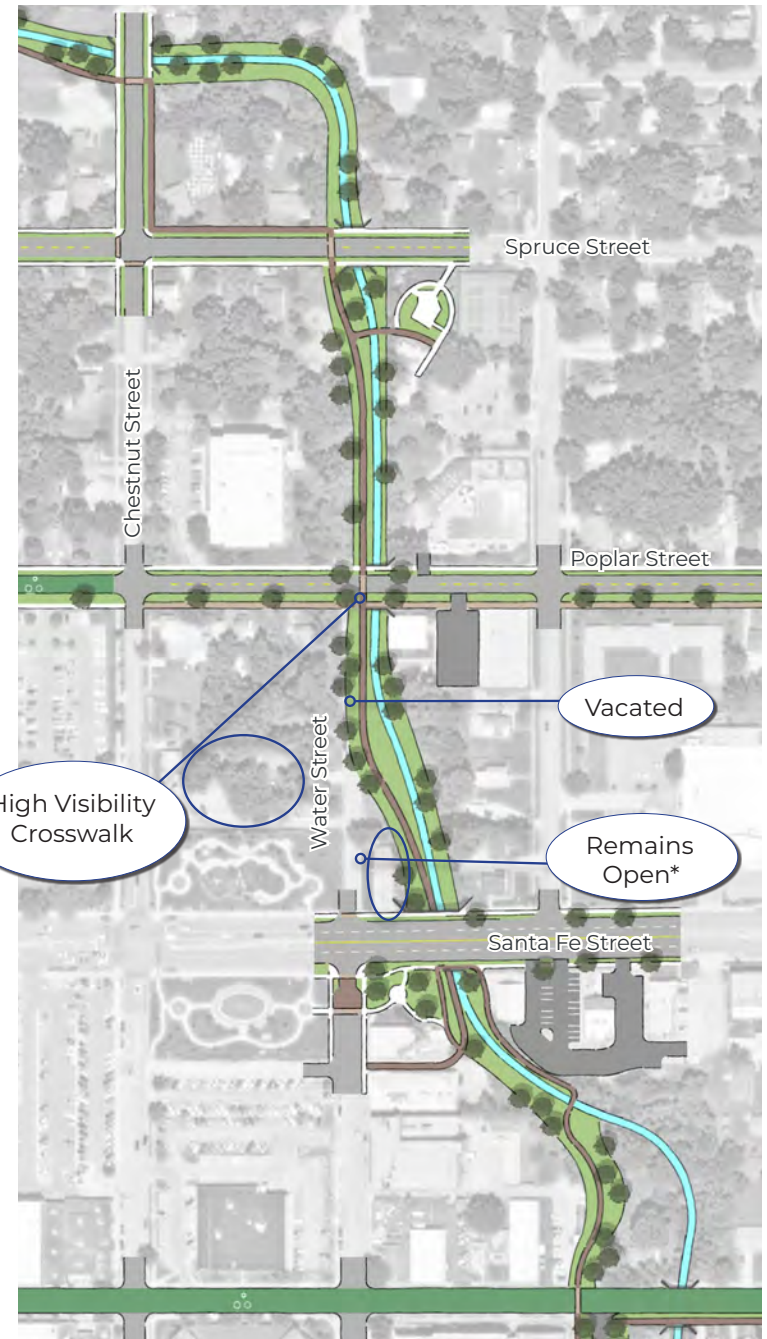
The Envision Olathe Plan recommended conversion of Water Street to a greenway with trail between Santa Fe and Poplar Streets. This plan modifies that concept by maintaining street access on the southern 1/3 of the block to serve adjacent properties. These properties include the proposed library and mixed use development between Water and Chestnut, fronting on Civic Center Park North; and the existing Mannes Bonding Company on the east side of Water. Site design or redevelopment of the east side could make closure and greening of the entire block feasible. The path itself uses the vacated Water Street greenway, curving to the east around private property to access the westernmost of the three culvert apertures under Santa Fe Street.

#### Traffic Impacts

The intersection at Water and Santa Fe Street is stop controlled for the north-south movements. The east-west movements are free flowing. The east-west traffic movements operate at a LOS B or better during the AM and PM peak periods. During the PM peak period the northbound movement drops to a LOS E and the southbound movement is at a LOS F, largely because of the difficulty of crossing the major arterial without a signal cycle. With the proposed changes, the northbound left-turn movement continues to operate at a LOS F without the north leg of the intersection. Fewer than ten vehicles make this movement during the AM and PM peak hour. The existing southbound traffic volumes are likely to use Woodland and Chestnut Streets as alternate routes. For analysis purposes, the traffic was all redirected to Chestnut Street as it is signalized and has sufficient capacity for additional traffic. With the additional traffic all the movements operate at a LOS C or better.



WATER STREET, LOOKING NORTH TOWARD POPLAR



\*Street to remain open unless the circled lots (north and east of the park) are redeveloped in a way that does not require Water Street access.



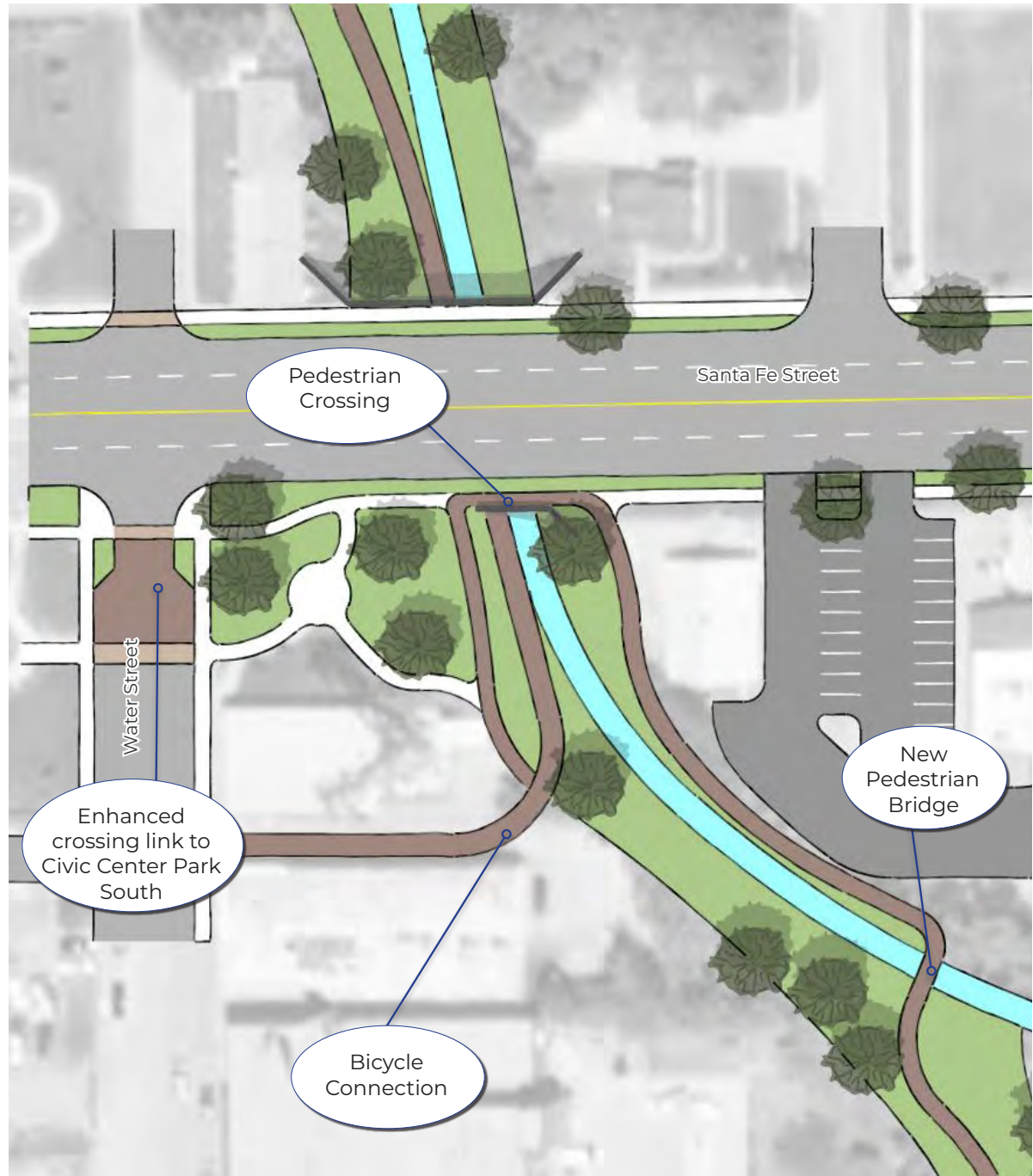


### Santa Fe to Park Street

A true grade separated crossing of Santa Fe Street is a very important part of the Mill Creek concept. The existing triple culvert under Santa Fe can be adapted to protect minimal but adequate clearance for the trail to pass. The recommended route uses the westernmost aperture for the underpass. From the north, the shared use path would ramp down to culvert level, and cross under the street.

**The culvert crossing itself must be equipped with warning signage and devices to prevent entry in high water events.** High quality safety and aesthetic lighting should be provided to ensure a safe and attractive experience for people walking and biking through the tunnel. An alternate surface crossing of Santa Fe at Water Street should be maintained. With either closure or restricted use of Water Street north of Santa Fe, the eastbound to northbound left turn pocket may be eliminated in favor of a pedestrian refuge median. Installation of a warning device such as Rectangular Rapid Flashing Beacons may also be considered here.

The shared use path concept continues south and







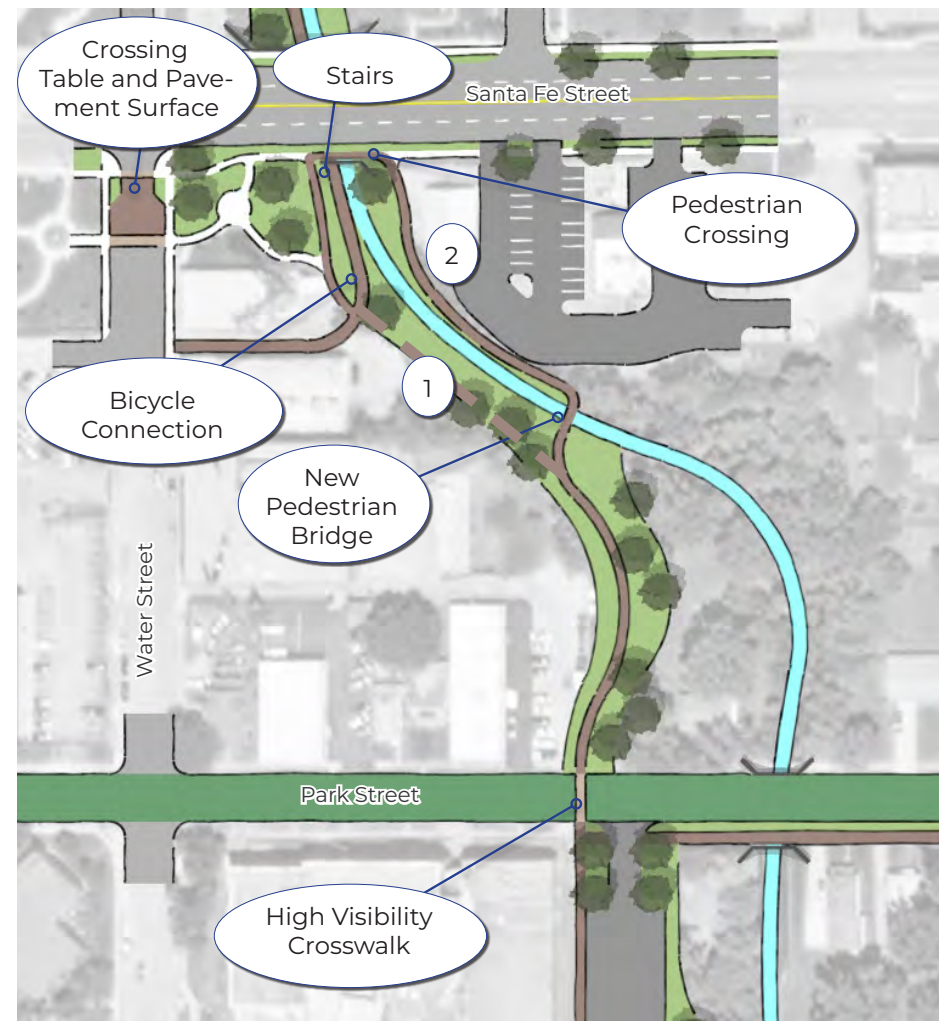
**Crossing treatments.** From left, three images of a trail crossing using a culvert under a major arterial in Sioux Falls, SD; and the impact of dramatic lighting at the High Trestle Trail Bridge over the Des Moines River near Madrid, Iowa.



ascends the bank for about 100 feet. At this point, pedestrian and bicycle routes separate. Bicycles would be directed to an existing alley between two commercial office buildings back up to Water Street, with local access along Water to Downtown and the Loula Street connector described later. Pedestrians would loop back north and use the existing Santa Fe Street sidewalk to cross the creek. This loop should also connect to Civic Center Park South. The Civic Center Park spaces on both sides of Water should be connected by a speed table and pavement surfacing to provide a visual and functional link between the two public spaces and indicate pedestrian priority here.

The main pedestrian trail continues south at the top of the stream bank on land made available through site redesign, providing more efficient shared parking for the two existing businesses east of the creek. The pedestrian path returns to the west side of the creek with installation of a new pedestrian bridge. This configuration avoids disturbing operations at the AT&T site on the west side of the creek.

South of this pedestrian bridge, the pedestrian path continues through open land, eventually curving near or adjacent to a parking lot serving a small office building, at which point the path crosses Park Street to Mill Creek Center.







### Park Street to Loula Street

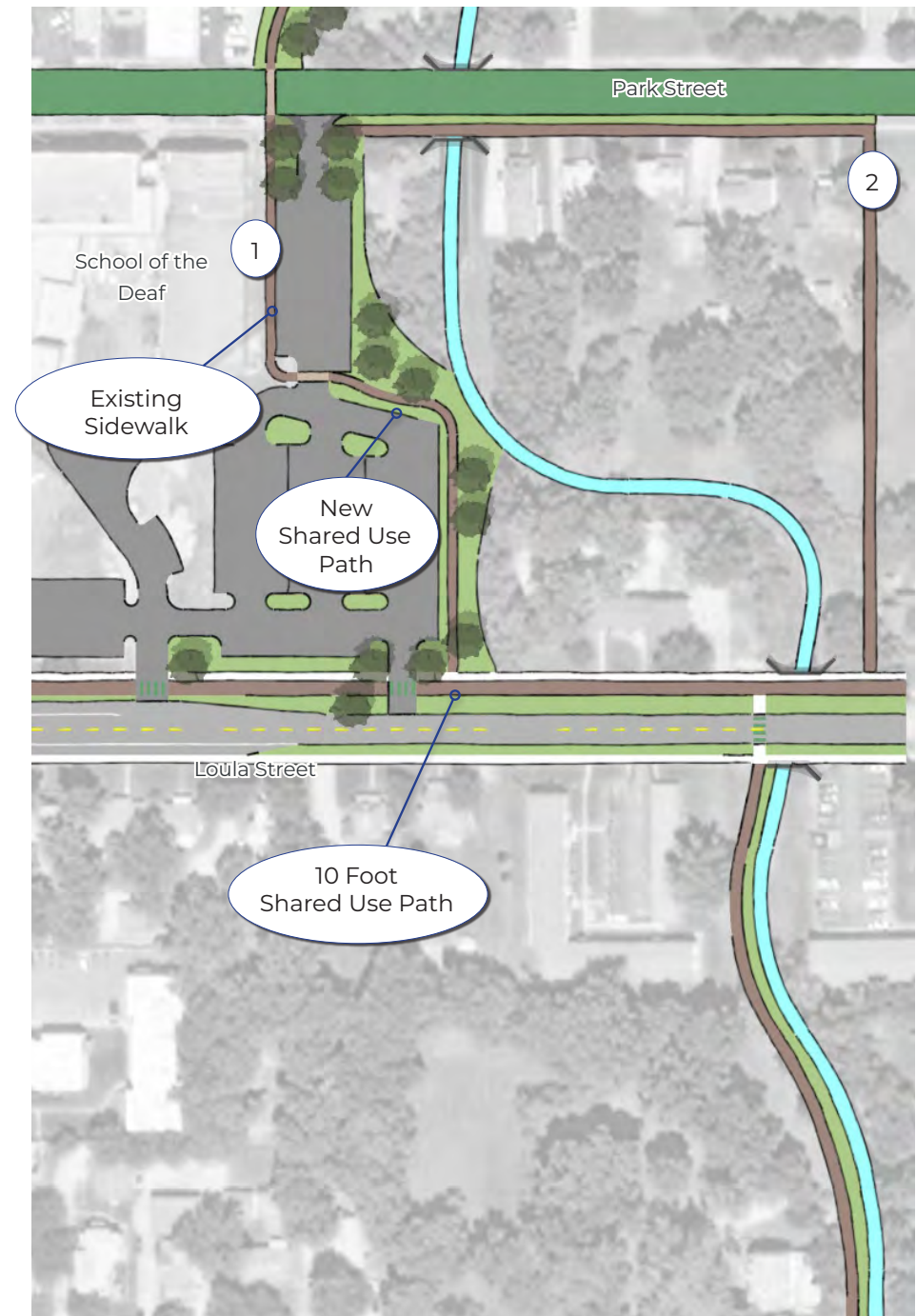
The Park Street to Loula block of the trail has two potential options.

- » **Option 1.** The most attainable option is use of the existing sidewalk of along the east side of the Mill Creek Center building, crossing at the curb extensions at the south of the single-bay parking lot. A new pedestrian path then continues east and south in grass area on the edge of the south lot to Loula Street. It continues to the east along a proposed shared use path on the north side of Loula, described later, and crosses Loula with a high visibility crosswalk west of the creek crossing.
- » **Option 2.** This more difficult alternative would use the Park Street on-street route for bicyclists and sidewalk for pedestrians to the western edge of the Kansas School for the Deaf practice field, continuing south on KSD and the creek edge of private property to Loula.

A third option, following the west side of the creek, was considered but not recommended because of grades and right-of-way acquisition issues.



**Paths through Mill Creek Center.** Walkway along north parking lot; green space strip between edge of south parking lot and Mill Creek







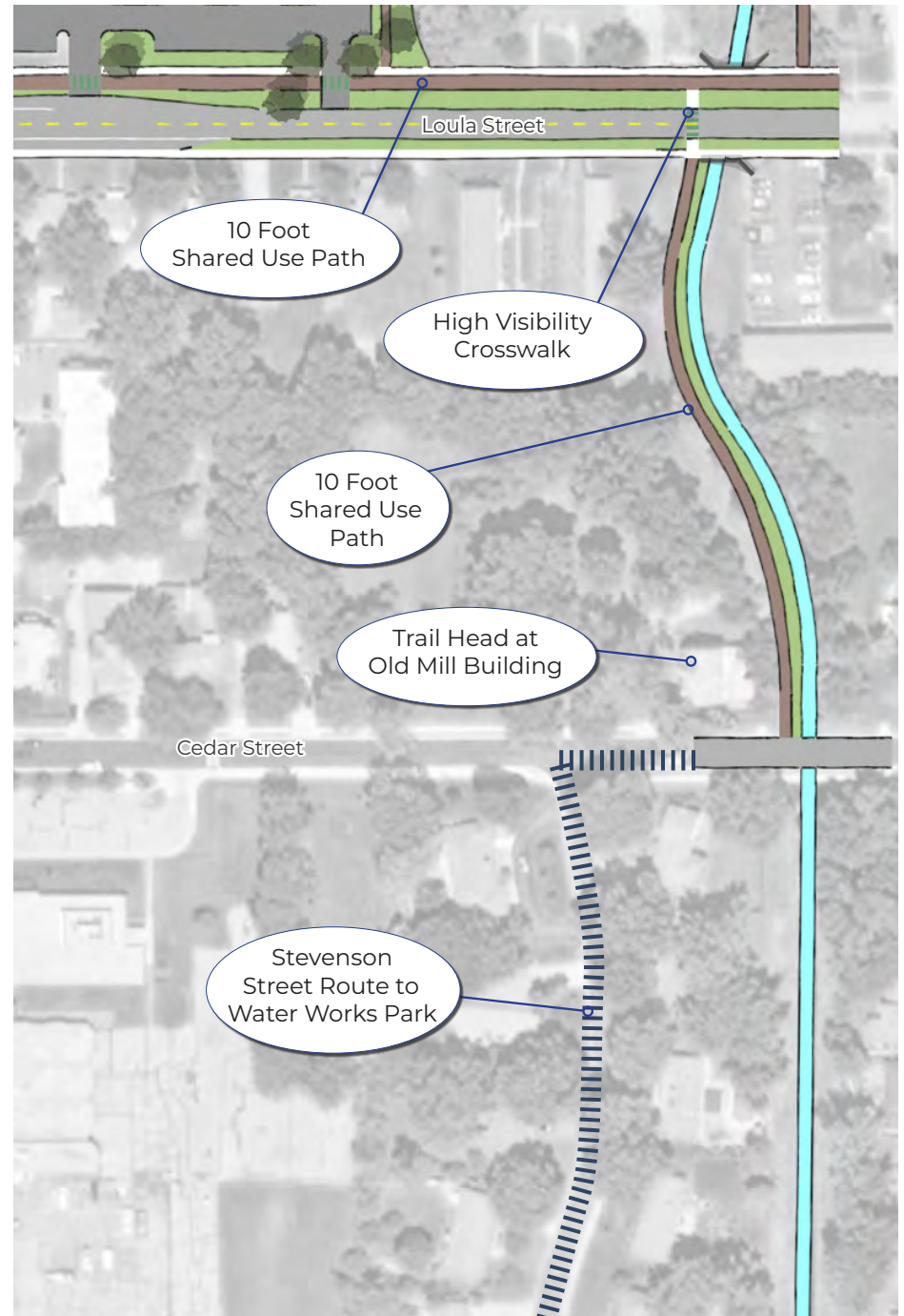
### Loula Street to Cedar Street and Beyond

The final segment of the path to the historic mill structure is very feasible with no grade or building obstructions along the west side of the creek. However, the preferred route is likely to require easements or friendly acquisitions from properties. An easement is probably necessary from the apartments bordering the creek, but has no impact on property use. An easement or acquisition will also be required to reach the historic mill building, but a variety of paths can be used to minimize impact on property or tree cover. The most likely of these stays close to the creek corridor itself. The end point of the path would be adjacent to the Old Mill building which would be an ideal redevelopment and catalyst project for the system.

In addition to the mill and its potential adaptive reuse, Cedar Street, with its historic homes and streetscape is a worthy destination. Additionally, Cedar at its east end leads to Keeler Street, which in turn connects to the Dennis/Sheridan bike lanes. From the potential Olathe Mill trailhead, Stevenson and Sheridan Streets also provide a very low traffic and attractive connection to Water Works Park.



From left: Potential path route along edge of Mill Creek Apartments; historic Olathe Mill, the logical trailhead for the Mill Creek Trail





## Implementation

The cost estimates in the adjacent table reflect the preferred route for the Mill Creek Trail with two options for crossing under Santa Fe Street. The first is a near term solution which retrofits the existing culvert to accommodate a trail. The cost estimate assumes using one of the existing apertures which are 9 feet wide and 8 feet high. According to AASHTO guides on bicycle facilities the recommended height is 10 feet, however 8 feet is acceptable in constrained areas. The 10 foot height is recommended for vehicular maintenance, but this is less necessary for the short tunnel. The second estimate, full replacement, would be a long term solution to provide more head height to meet the preferred AASHTO clearance. This should be done when the culvert is planned for a complete reconstruction for stormwater purposes.

### COST ESTIMATE

Segment	Details	Cost
Shared Use Path	Cherry to Poplar Street	\$712,590
Active Boulevard	Spruce and Chestnut Street (660' each)	\$152,040
Pedestrian Trail	Poplar to Santa Fe Street (with Water Street Closure)	\$264,420
	Santa Fe to Park Street-No Pedestrian Bridge	\$204,216
	Santa Fe to Park Street-With Pedestrian Bridge	\$304,062
	Park to Loula Street	\$128,760
	Loula to Cedar Street	\$204,840
Santa Fe Underpass	Retrofit	\$291,610
	Full Replacement	\$1,029,180
<b>Total Cost Range</b>	<b>\$1,958,476 to \$2,795,892</b>	





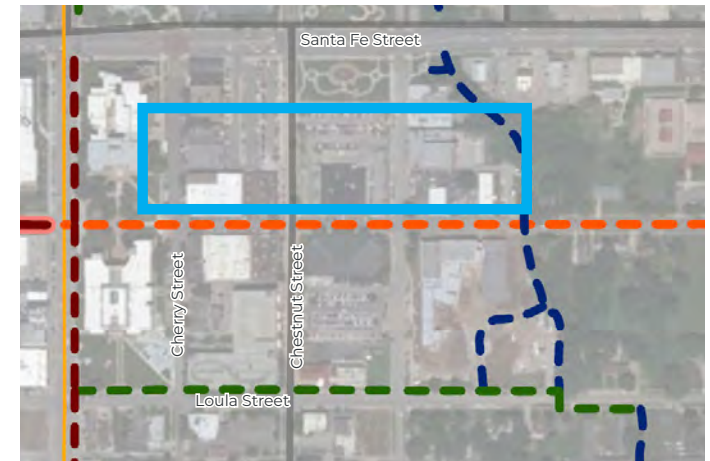
# INTERNAL CONNECTIVITY

While much of the network is created through continuous north-south or east-west spines, a truly connected network requires shorter segments to tie major facilities together. These connections include a Loula Street path to connect the Mill Creek Trail to downtown and alley enhancements between Cherry and Chestnut Streets.

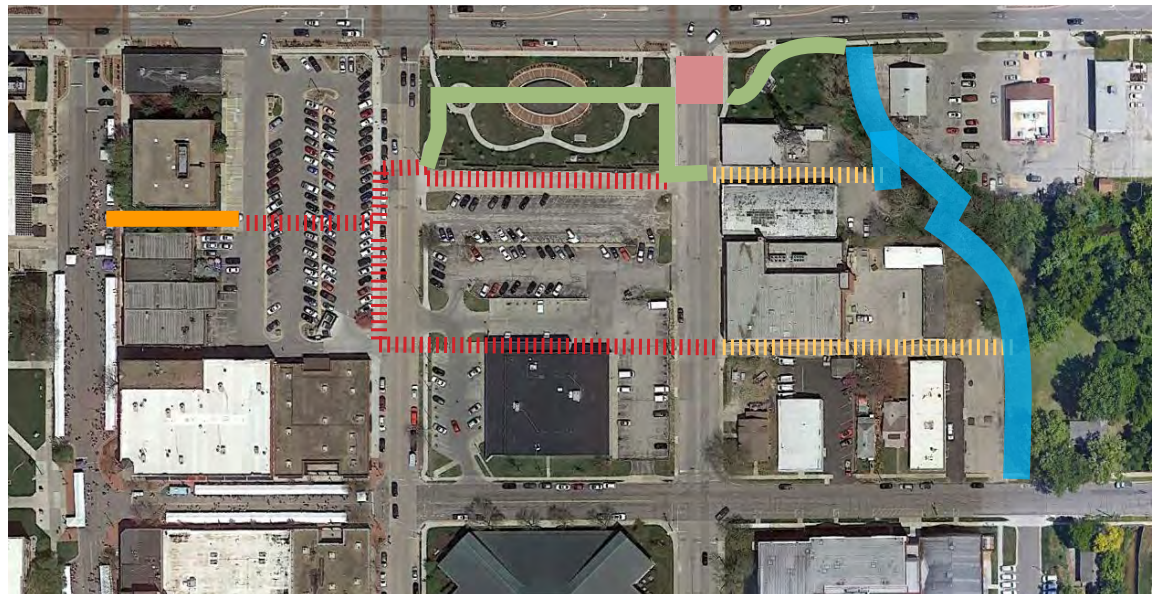
## Enhanced Alley

The alley between Cherry Street and the Chestnut Street public parking lot was part of a previous enhancement project and should be maintained as a future connection. Redevelopment on the east side of this block should maintain a path to Chestnut Street and ultimately to Mill Creek.

- » **Option 1.** Potential future redevelopment of the Post Office site should include a clear path or other public way through to Water Street, continuing east to the Mill Creek Trail on either of the existing driveways leading to the Mill Creek Trail.
- » **Option 2.** If redevelopment does not occur, the pedestrian connection to the trail would go north on Chestnut Street and connect to the rest of the network through Civic Center Park.



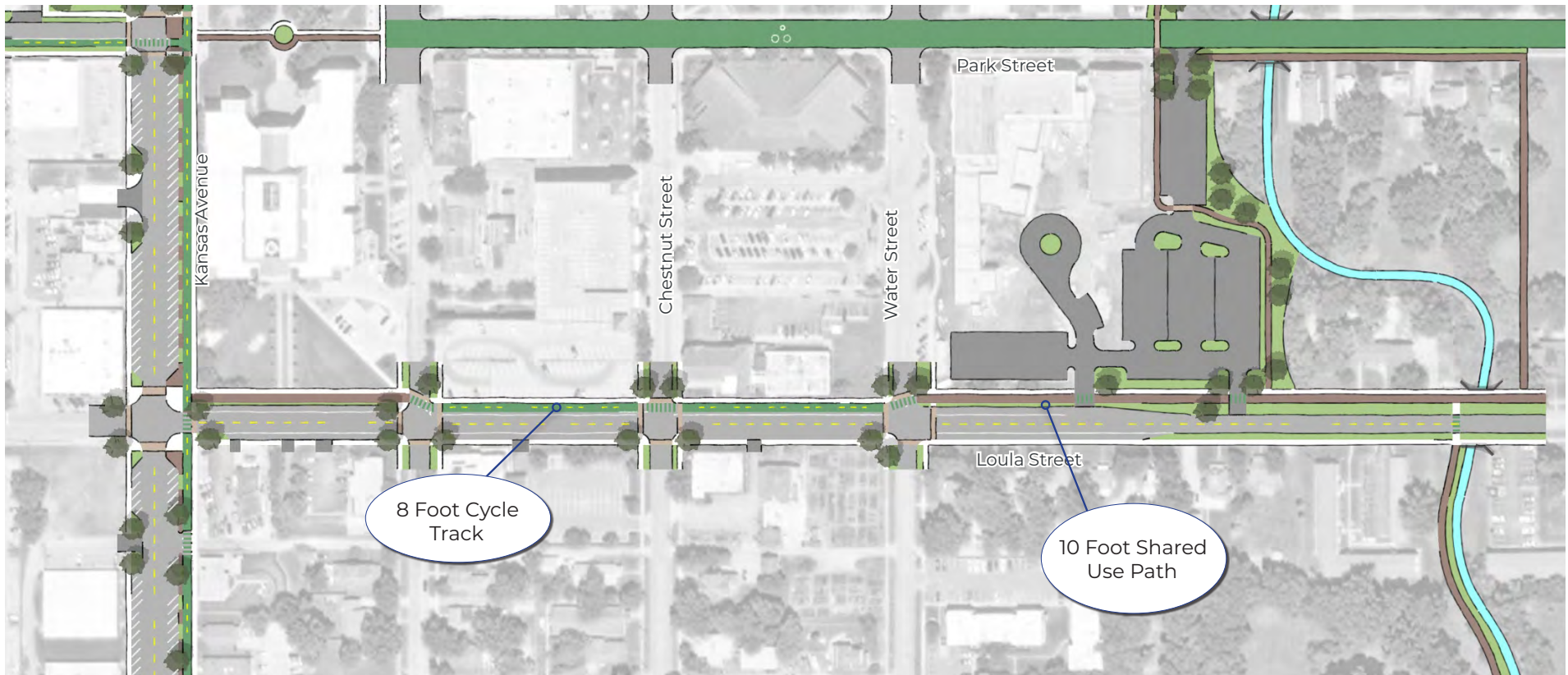
- Previous alley enhancement
- Paths with redevelopment
- Available public connections
- Driveway links
- Mill Creek Trail route
- Raised crosswalk table



## Loula Street

Loula Street presents a good corridor between the Mill Creek Trail, the Downtown center, and the Kansas Avenue cycle track. Two options present themselves for making this link.

- » **Option 1.** A continuous 10 foot shared use sidepath on the north side of the street. This option would require removal of street landscaping and modification of the existing streetscape adjacent to the present county parking structure, and creates potential pedestrian conflicts on the core blocks between Water and Cherry Streets. It would also affect the south side of First Christian Church by widening the existing sidewalk or moving the path closer to the building to avoid an undesirable back of curb condition.
- » **Option 2.** Develop a 10-foot shared use sidepath on the north side of the street between the Mill Creek Trail and Water Street. Transition this off-street path to an on-street, 8-foot wide two-way protected bike lane, keeping the existing sidewalk in place with parking on one side. This is feasible within the street's 45 to 50-foot curb-to-curb width. The cycle track transitions back to a sidepath south of the County Administrative Center to the Kansas Avenue cycle track. The buffer would be painted with possible use of flexible delineators. The estimated cost for this option is \$493,842.





# KANSAS CITY ROAD

This network component is relatively straightforward. Kansas City Road runs diagonally from Santa Fe Street northeast and generally followed the historic Santa Fe Trail into Kansas City. It now marks a relatively intact route to 87th and Quivira. Within Olathe itself, it connects the City Center to important cultural institutions in Olathe, including Olathe North High School, the historic Mahaffie Stagecoach Stop and Farm Historic Site, and the Olathe Community Center. It also provides a direct access to the Gary Haller Trail via the Parkway Drive path.

## Why

Kansas City Road is a three-lane, 38-foot wide urban street currently has sidewalk facilities on both sides of the road and is designated as a bike route. However, it lacks distinct bicycle facilities and is uncomfortable for many users. Upgrading to a shared use sidepath on the north side of Kansas City Road would accommodate most “active” and recreational users to Mahaffie Stagecoach Park and the Olathe Community Center. It is also an important historic link to the Santa Fe Trail itself and connects to the existing path facilities along Nelson Street and Parkway Drive, which in turn lead to the regional Gary Haller Trail and Mill Creek Streamway. The Envision Olathe plan recommended an upgraded Kansas City Road facility that would provide better Downtown connections, serve key community destinations, and improve safety conditions for a variety of users.

## How

The recommended infrastructure solution is a 10 foot wide shared use sidepath on the north side of Kansas City Road, continuing the current westward path to Poplar Street. The trail is currently in place between Ridgeview and Nelson Road, where it turns north and eventually joins the Gary Haller Trail. The entire segment is wide enough to accommodate the path, except for a section between Poplar and Spruce where available right-of-way narrows. When the path reaches the Buchanan Street roundabout, wheeled users would follow the traffic flow and cross at the current crosswalk, continuing southwest on the path on the north side of the road.

The Kansas City Road path would continue westward on the south side of Poplar, and serves a potential new development site between Kansas City Road and Woodland Street, the Salvation Army facilities, Mill Creek Park, the new library, City Hall, and, as a path along the periphery of the new Johnson County Courthouse, the Kansas Avenue/Northgate Trail. Parallel to and one block north of Santa Fe Street, a Poplar Street path also provides access to commercial destinations along that major arterial.

## Implementation

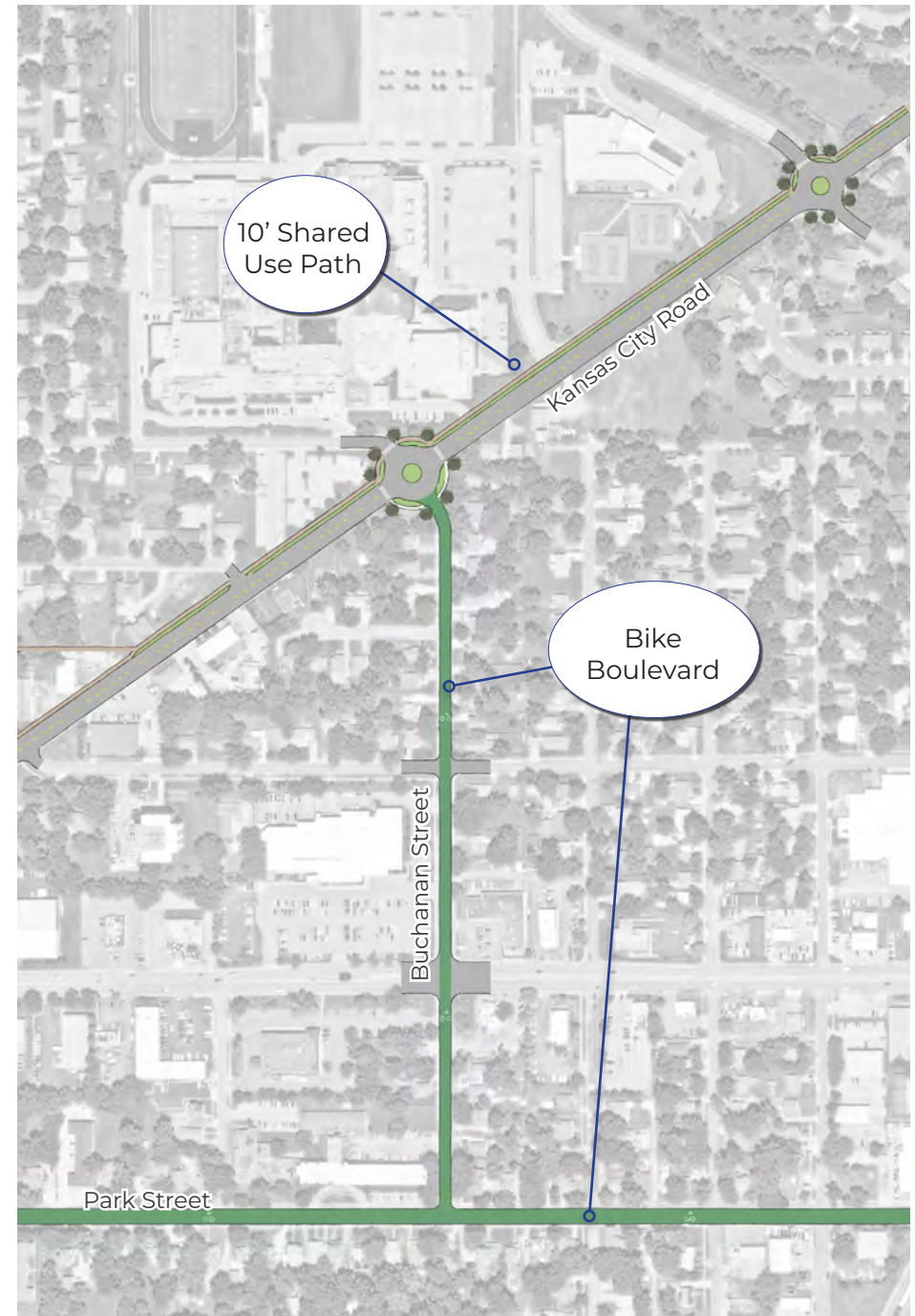
The estimated cost to complete the sidepath construction from Nelson Road to Cherry Street (4,800 feet of facility) is \$703,824. The breakdown of costs is included in the appendix. The work estimated in the estimate consists of demolition of the existing sidewalk, site preparation work, and construction of an 10-foot asphalt path, narrowing to 8 feet where right-of-way is limited, with sod and landscaping. The entire stretch on Kansas City Road and the western half of Poplar Street are included in the Street Preservation and Reconstruction program. Timing the planned active transportation facilities proposed in this document with the planned street projects could significantly reduce the project expenses and lead to a quick implementation. As such, this section of the system should receive a priority similar to the Kansas Avenue segment.





### Nelson Road to Buchanan Street

This segment provides a 10 foot sidepath connecting to the Santa Fe Trail at Nelson Road on the north side of Kansas City Road. The existing sidewalk would be widened to sidepath standards. Where roundabouts occur, the path would align with existing colored concrete crossings. Bicyclists may also enter the circle as vehicles and move with the intended flow of traffic, important for southbound turning movements to Buchanan Street and its signalized intersection with Santa Fe Street. Buchanan Street would be adapted as an active boulevard all the way through to Park Street, where users can then continue east or west.



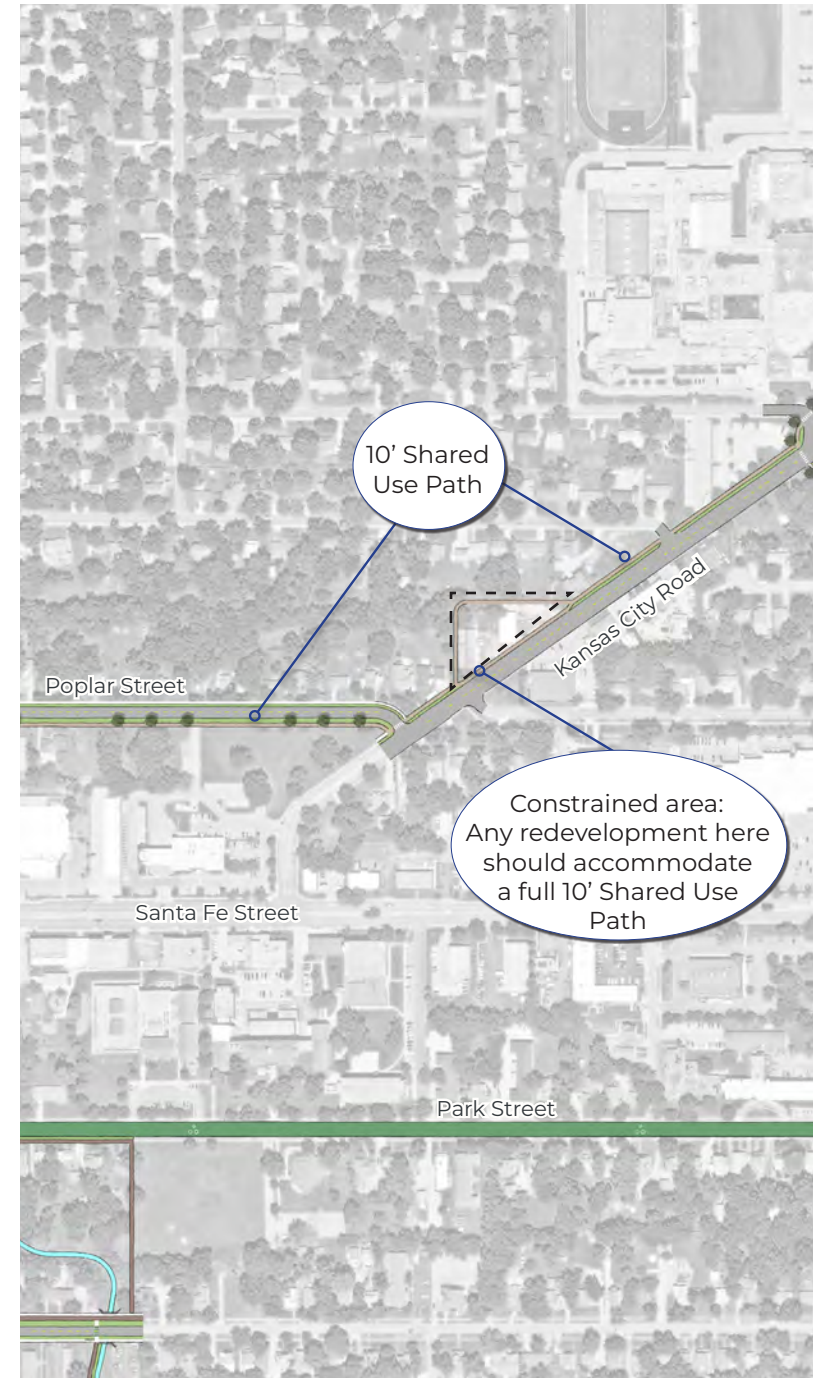


## Buchanan Street to Poplar Street

Southwest from the Buchanan Street roundabout, sidepath continues on the north side to Poplar Street. Right-of-way tightens between Poplar and Spruce Streets which may require narrowing the path for this block. Any future redevelopment on this block should require a sufficient setbacks and driveway configurations to allow a full-width shared use path along the street.

### Traffic Impacts

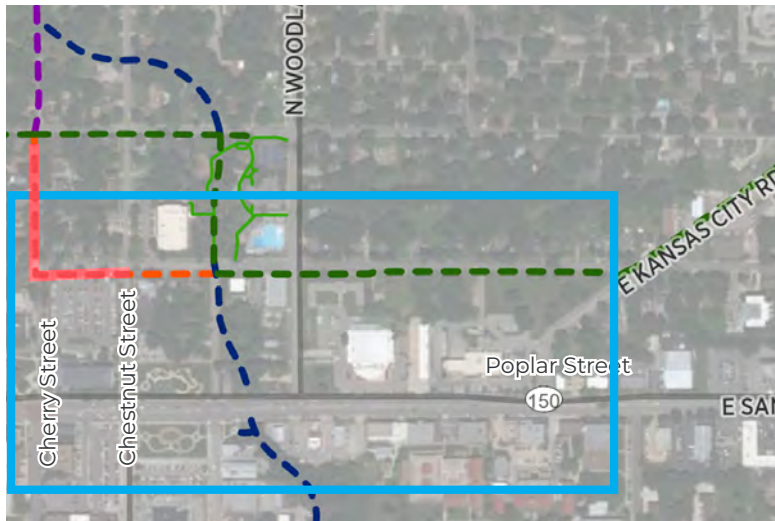
All approaches at the intersection at Kansas City Road and Poplar Street are projected to continue to operate at a LOS D. The intersection has sufficient capacity for queuing vehicles.



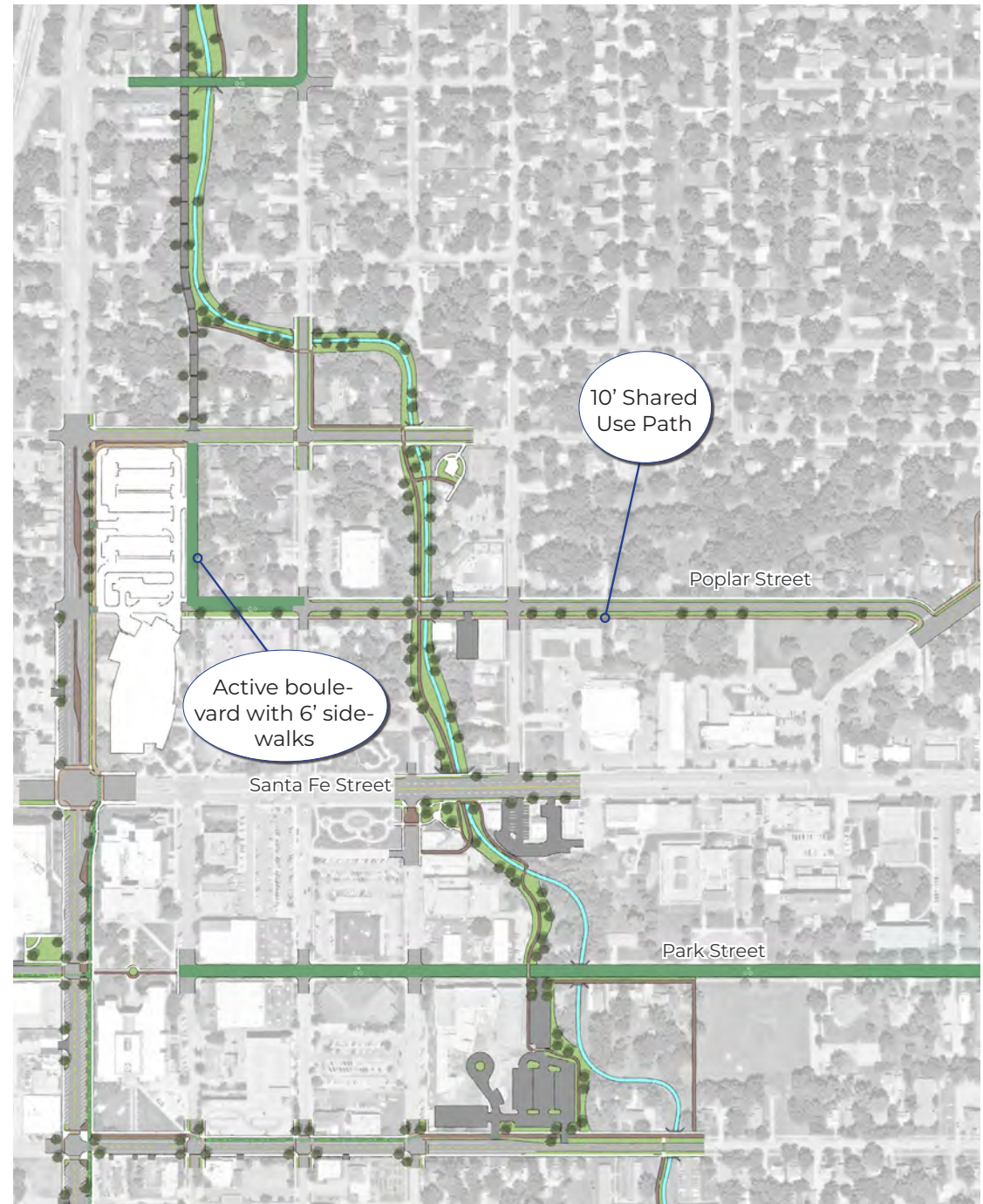


## Poplar Street to Kansas Avenue

The westbound sidepath continues on the south side of Poplar Street to Chestnut Street. From that point, pedestrians bound for the Kansas Avenue/Northgate facility would use six-foot sidewalks along Poplar and Cherry Streets to a path at Spruce and Cherry. Bicyclists would utilize a marked “active boulevard” route for the same segment. The Poplar Street route also connects to the Mill Creek Trail and the Cherry Street woonerf.



**Sidepath route along the south side of Poplar.** This would also serve a potential residential development site on the north side of the Enterprise Bank and Trust property.





# PARK STREET

Park Street was traditionally Olathe's east-west civic street and continues to serve major community institutions. It is an excellent active transportation route, as it parallels the Santa Fe corridor and provides access to many of that corridor's features and businesses. Park Street also crosses under the east side rail elevation, connecting it to Ridgeview Road and an intriguing opportunity for a west side grade separation.

## Why

Few low volume streets exist to connect bicyclists from downtown east, especially south of the Santa Fe corridor. East-west Dennis Avenue provides bike lanes, but is a mile south of the city center district. Marking Park Street as an "active boulevard" with strategic modifications can make this an excellent and pleasant corridor for active travel.

Connections across the extremely busy west side BNSF mainline that leads directly to the giant Edgerton Intermodal Facility were a subject of considerable concern during both the Envision Olathe and Active Transportation planning processes. Traffic backups when trains pass through cause delays for motorists, but also create safety concerns for pedestrians and bicyclists. The Park Street concept includes a pedestrian and bicyclist underpass of this line, maintaining access when trains pass. This provides the additional benefit of potential elimination of a grade crossing and financial participation by the railroad. The concept also maintains local access to businesses and facilities that need it for normal operations. The Envision Olathe Plan proposed a concept that would use long ramps parallel to the BNSF that would provide a grade separated underpass for all modes of travel. A study after completion of that plan estimated the cost of this idea at \$17 million. A pedestrian/bicycle underpass is estimated at about 1/4 that cost and provides another option for the community to consider.

Finally, an active boulevard is a great starting point when developing an

active transportation network. The relatively low cost allows for progress within the first year. Street signs identifying the active boulevard, pavement markings, and low-cost features such as mini-roundabouts and neckdowns are easily added to street improvement projects and demonstrate the City's commitment to implementation.

## How

Active boulevards range in design from being very inexpensive with simple signage and pavement markings to more elaborate with medians and traffic diverters. Funding levels and neighborhood support will influence the ultimate design of Park Street. In the near term, signage and pavement markings would be sufficient, but over time improvements can be made to add elements to enhance the corridor. Different levels of landscaping can help define Park Street as an active boulevard, the value of which are evident in recent Cedar Street enhancements. The overall concept is considered by segments on the following pages.

## Implementation

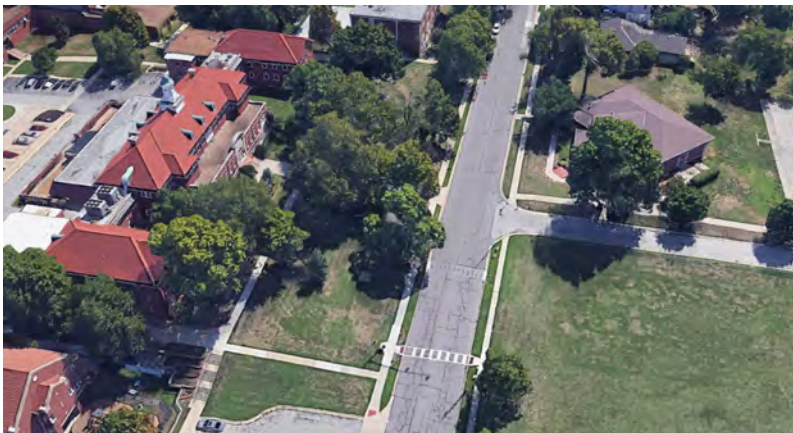
The estimated cost to construct a pedestrian and bicycle underpass below the railroad tracks on Park Street is \$4,224,810, including street reconstruction, excavation, and the path facilities. This is considerably less than the \$17 million estimate ascribed to the Loula Street underpass. Active boulevards can range in cost based on the detail of the route design. Generally, if the route was just signed and pavement markings added, the approximate cost for the active boulevard from Fir Street to Walnut Street would be \$633,600.





### Fir to Cherry Street

This section of path is proposed as an active boulevard, with identifying and wayfinding signage, shared lane pavement markings, or more elaborate traffic calming and speed management features such as mini-roundabouts, curb extensions, and speed tables. While this plan takes the route as far east as Fir Street, active boulevard treatment continued along Fir connects to the Dennis/Sheridan and Ridgeview bike lanes to the east and south. Wayfinding signage could be employed to identify these direct routes to the Indian Creek Trail.



From left: Aerial view of Park Street (Google Earth Image); Mini-roundabouts, an effective way to manage traffic speeds on active (or bicycle) boulevards.

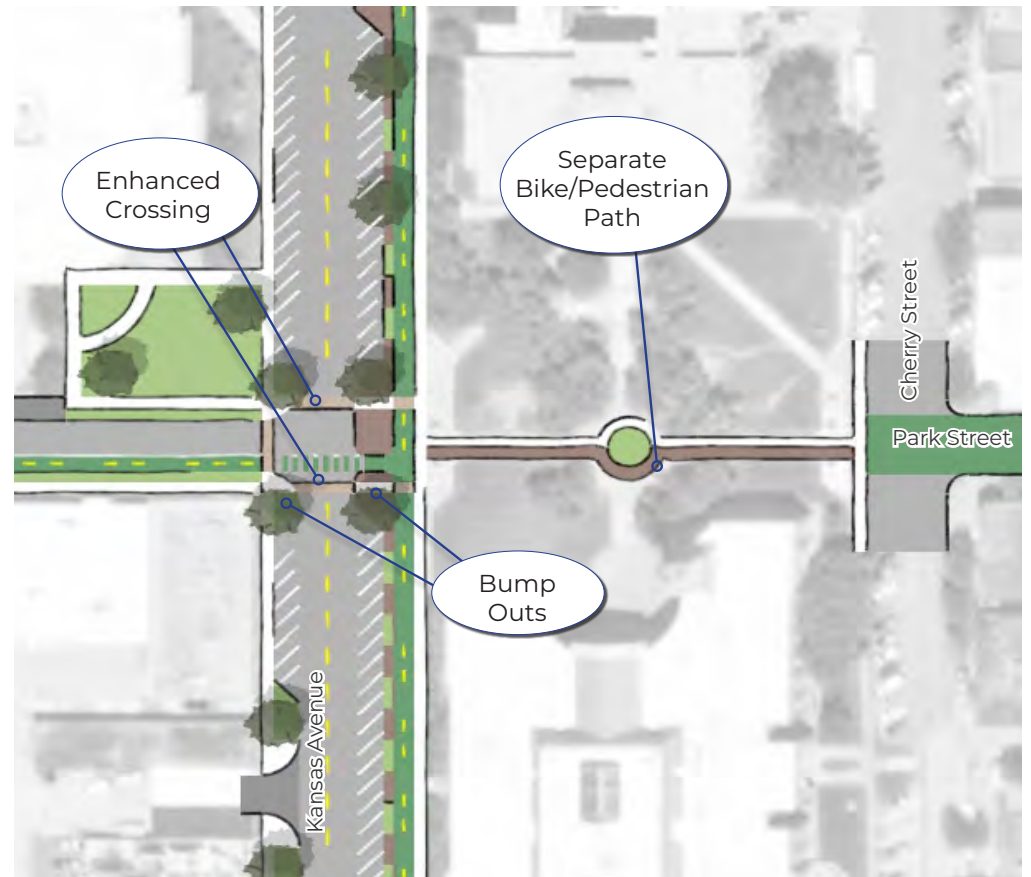




### Cherry Street to Kansas Avenue

Park Street was closed to motor vehicles between Cherry and Kansas as part of development of the Johnson County courthouse grounds. With development of an active boulevard, creation of a large courthouse square with probable demolition of the old courthouse building, and the possibility of a west side grade separation, this important green space will experience more activity, including increased numbers of pedestrians, bicyclists, and micro-mobility users. Travel through the square may require separated parallel paths for pedestrians and wheeled traffic (bikes, strollers, scooters), a technique used in high volume environments like college campuses. Developing this site to its greatest potential will require city and county collaboration.

The traffic signal at the intersection of Park Street and Kansas Avenue is no longer necessary and may be removed in the future. The development of the Kansas Avenue cycle track and streetscape will calm traffic through this intersection. Other improvements to compensate for the removal of signals should include enhanced crosswalks, curb extensions, and green area instead of diagonal parking opposite Park Street west.



**Pedestrian and wheeled vehicle separation.** From left: Broadway along the edge of the CU campus in Boulder; the Brooklyn waterfront.



## Kansas Avenue to Walnut Street and Beyond

The grade crossing issue of the north-south BNSF mainline paralleling Kansas Avenue was an important community concern during the Envision Olathe planning process. The short distance between Kansas Avenue and the railroad is insufficient for the ramps needed for typical over- or underpass solutions. In response, Envision Olathe proposed ramps paralleling the railroad to provide the running distance necessary to provide clearance for an underpass. The so-called “Loula Loop” connected Loula east and west of the mainline together to provide a grade separation that would replace the existing Loula and Park Street grade crossings. The city commissioned a subsequent cost study that estimated cost of the project in the range of \$17 million.

The possible removal of the unwarranted signal at Kansas Avenue and Park is likely to decrease the already light traffic on Park Street traffic. This provides the opportunity for converting Park Street between Kansas and Walnut to a pedestrian/bicycle underpass, with local vehicle access to adjacent properties. In this concept, a two-way protected bike lane would be developed adjacent to the curb on the south side of Park, and with straight ramps to the underpass. The distance between the parallel streets and the tracks is adequate to meet the reduced clearance requirement for pedestrian and bicycle travel. The remaining street width provides access to the County detention center east of the tracks and businesses on the west side. The adjacent public parking lot would be adapted to the loss of Park Street access and the grade crossing closed.

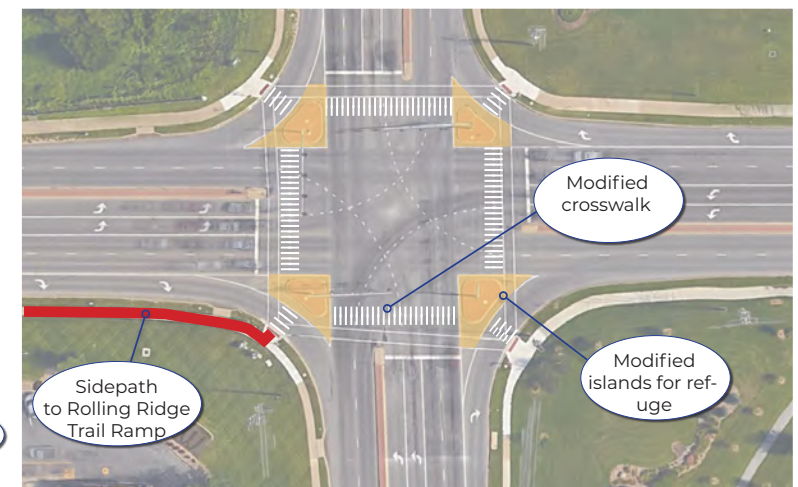
Connections to the Rolling Ridge Trail and Lake Olathe west of the proposed underpass can be made in two ways:



- » **Option 1.** Designate Park Street from Walnut Street to Parker Street an active boulevard to Parker Street, and widening the Parker Street sidewalk to sidepath standards between Park and Loula, and using the signalized Loula intersection crossing and Loula Street to continue west.
- » **Option 2.** Using Park and Pine Streets to connect to the existing shared use path on the south side of Santa Fe Street to Parker. At Parker, the path that can eventually provide a continuous route to Lake Olathe shifts to the north side. This requires path users to negotiate the very wide K-7 intersection in two directions. A safer solution would be widening the existing sidewalk on the south side to sidepath standards to the Rolling Ridge Trail ramp and using the trail tunnel under Santa Fe to make the connection to the north. Right-turn bypass islands should be lengthened to provide pedestrian refuge areas as illustrated below.



From left: Right turn island crossing and refuge and path underpass, both in Boulder, CO; Below: Suggested modifications at K-7 and Santa Fe











3

**COMPLETE  
STREETS GUIDE**



# COMPLETE STREETS GUIDELINES

During the completion of the 2003 Downtown Master Plan a set of design standards and guidelines were adopted for the downtown core. This streetscape plan focused on Santa Fe Street which is reflected in the amenities and improvements that have been made along this corridor. The update to the downtown master plan completed in 2018 recommended updating the streetscape plan to include Kansas Avenue and Kansas City Road. Following are a set of new guidelines and standards to be followed when implementing the Active Transportation Plan, specifically on Kansas Avenue and Kansas City Road.

Santa Fe Street reflects the value of applying well considered design guidelines to a major arterial corridor. The 2003 streetscape plan included a variety of elements that included intersection design, paving materials, lighting, street furniture, street graphics, and other elements. Many of these guidelines are appropriate to the study area's other two major streets, specifically Kansas Avenue and Kansas City Road. Relevant components are addressed in this section. Along Kansas Avenue in the downtown core, street landscape and furniture would generally be found in the buffer area between the cycle track and the new curb adjacent to parking. Where sidepaths are used, these features would ordinarily be focused in the setback between curb and the edge of the path. The width of these areas may vary depending on the final design, but a desirable minimum setback for a sidepath is typically six feet. Streetscape features may include rain gardens and other "green" stormwater management techniques, seating, trash receptacles, signage and street graphics, lighting, bicycle parking, and public art.

In a street design process, each block should be analyzed individually to identify needs and functions strategically to use limited space most effectively. Sometimes, street design features can serve dual functions. For example, planters can also double as informal seating, lighting standards also can accommodate street graphics and banners, and public art can be incorporated into functional elements like bus shelters and bike racks.

In general, the attractive patterns of the Santa Fe streetscape should establish a palette for treatments along Kansas Avenue and Kansas City Road. But the other corridors may include some subtle distinctions to create individual character within a unified family of materials and components. An example of identification without conflict might be the use of uniquely designed tree grate covers for each streetscape or incorporation of green infrastructure that was not included in the original guidelines.



The National Association of City Transportation Officials (NACTO) provides guides for all the facilities included in this report for further reading



## LANDSCAPING

Landscaping in downtown creates a more pleasant environment for users and can serve an important environmental function by capturing rainwater. Forms of landscaping to consider are street trees, planter boxes, and rain gardens. Many of these are already part of the downtown in various locations and should be carried throughout the remainder of the district.

- » **Street trees.** Trees with a minimum canopy of 25 feet should be planted approximately 30 feet on center in pits of at least 6 feet in width. Varieties similar to those existing in downtown should be considered, but varied to ensure preservation if disease takes over a certain tree type. Trees that leave little debris such as flowering varieties or those with large leaves should be avoided.
- » **Planter boxes.** Planter boxes have been successful along streets like Chestnut and could be installed at locations with sufficient space on Kansas Avenue and Kansas City Road. Permanent boxes require less maintenance and can be planted with year round varieties. The best location is between the curb and sidewalk to act as a pedestrian buffer to traffic. On Kansas Avenue, planters can help reinforce the separation between the cycle track and the parking area. Planters can also be areas for stormwater management.
- » **Curb extensions (“Bump outs”).** Curb extensions are good locations for landscaping to beautify the streetscape. Where there is sufficient space, each bump out should include a street tree and shorter shrubs and plants (maximum height of 3 feet) to avoid visibility concerns.
- » **Rain gardens.** An optional concept for the bump outs are rain gardens. A rain garden is designed similar to the existing bump out planters on Kansas Avenue, but include a depressed area at the center to infiltrate stormwater. In addition, the curb is broken to allow water into the garden.



Photo Credit: Iron Age Designs





## BIKE PARKING

Strategically located bike parking is a low cost but significant physical improvement that both encourages cycling, provides greater security, and keeps bikes from damaging trees or street furniture or obstructing pedestrians. The parking program should:

- » **Identify key locations for facilities.** Priority locations include schools, City Hall, the library, parks or shopping destinations. City Hall and the County Administration building have installed bike parking. However, the shopping and dining areas of downtown lack bicycle parking and convenient, non-obtrusive locations should be identified.
- » **Use standardized bike parking equipment that is durable, relatively inexpensive, and unobtrusive.** Many bike racks in common use (notably wave and “schoolhouse” type racks) take up too much space, are inefficient, and can damage bikes if they do not provide for frame locking. Better designs are the inverted U which can be embellished by art, creating an interesting community project that can involve art students or art groups. A city branding theme could be established and carried through into the design of trash bins and benches to unify the district.
- » **Consider locations for a future bike share program.** The Bike Share Implementation Strategy completed in February 2018 identified potential locations in downtown for the bike share hubs. Generally these locations were on private property rather than public right-of-way. Sites in the private domain should be readily accessible from streets and sidewalks.



## SIGNAGE AND WAYFINDING

Wayfinding signs are currently installed throughout the downtown district to guide residents and visitors to major destinations such as the library, post office, and government buildings. These signs are very general, providing only arrows in the general direction. Signage and wayfinding should instead include the following key features:

- » **Estimated distance to each destination.** This gives pedestrians and bicyclists a general estimate for how far they need to travel to each destination. For pedestrians, giving the distance in blocks instead of miles tends to reduce the perceived distance.
- » **Break out destinations.** The current signs state County Government, however with several county buildings in downtown Olathe, the new signage should specify specific buildings and distances.
- » **Consolidate signs.** Signs should be used as efficiently as possible.
- » **Design for flexibility and visibility.** The graphic system should be modular to provide maximum flexibility and efficiency in fabrication. Signs should use reflective material for night visibility.

Installation of a wayfinding system is an inexpensive way to implement a major part of the bike network ahead of major capitol expenditures, especially on streets like bicycle boulevards that do not require extensive infrastructure to be operational. Bicycle signage should comply with the current version of the Manual for Uniform Traffic Control Devices. (MUTCD).



## STREET LIGHTING

Lighting is an important safety element in the design of streets. Street and pedestrian lighting should illuminate the sidewalk and bicycle paths at a level consistent with pedestrian scale.

- ◀ Lighting for Kansas Avenue and Kansas City Road should be consistent with Santa Fe Street, which is a historical lantern luminance.
- ◀ For pedestrian only paths like the Mill Creek Trail the pedestrian scale versions of the historical lantern luminance (seen in Civic Center Park) should be used.
- ◀ LED bulbs should be used because of their superior performance and energy efficiency.
- ◀ Staggered placement of light posts across the street from one another is less formal and may reduce the number of lights required on a street.
- ◀ Fixtures should include attachments for banners to promote events like Old Settlers Day or display seasonal designs.



**Unified family of lighting in Downtown Olathe.** From left: Pedestrian scaled modern lights on Cherry Street, lanterns in Civic Center Park, roadway standards on Santa Fe Street.

## BENCHES AND TRASH BINS

Seating has been installed in parks and open spaces in downtown, with some seating at the Santa Fe and Cherry Street intersection. Benches should be viewed as both aesthetic and functional features – they should be placed where people will actually use them. Trash receptacles should be co-located with seating areas.

- ◀ Along high traffic streets, landscaping can buffer seating areas and street effects and noise.
- ◀ To avoid blocking pedestrian paths in constrained areas, benches can be placed on private property adjacent to the right-of-way with property owner approval.

Seating and trash bins can be used to brand the downtown district, using furnishings like bench backs and trash bins to convey a district logo. This may also be relevant in downtown Olathe.



**Functional elements.** From left: Planters also designed as seating in South Omaha, NE, trash receptacle with district logo at Aksarben Village in Omaha.



#### WOONERF

The woonerf concept applies to Cherry Street north of Spruce Street and potentially a segment of Water Street immediately north of Santa Fe. The woonerf provides shared space in areas with potential pedestrian and bicycle demand but local, very low-speed access is still needed by businesses or residences. When designing a woonerf, the following should be considered:

- Pedestrians and bicyclists are priority users, with motorists limited to pedestrian speed.
- Woonerfs (woonerven in Dutch) are often curbless, forcing motorists to move at very slow speeds. Subtle curvature can also help manage vehicle speed.
- Street furniture and landscaping can enliven the space and bring more people out to activate the street. Trees both provide shade and reinforce the character of the environment.
- Colored pavers could be used to create distinctive designs or delineate vehicle parking areas. However because of cost, they must be used strategically.
- Signage and lighting at gateways can communicate the distinctive territory of the woonerf.



#### ACTIVE BOULEVARD

Active boulevards, also known as bicycle boulevards or neighborhood greenways, are a type of shared roadway with bicycle and pedestrian-friendly features that manage speeds. They are typically local streets that provide good continuity, operate at maximum desirable speeds of 25 mph, have low or moderate traffic volumes, and often parallel or complement major streets. Active boulevard treatments can range from simple installation of pavement markings and signs to speed management devices such as mini-roundabouts, chicanes, curb extensions, and speed tables. Active boulevards should always include pedestrian paths or sidewalks.



#### HIGH VISIBILITY CROSSWALK

Crosswalk enhancements that help improve safety by making pedestrians more visible can reduce crashes by up to 48%. Features include high visibility marking, restricting parking on the crosswalk approach, advance STOP or YIELD markings and signs, curb extensions or bump outs, and in street STOP or YIELD signs. Continental markings are usually preferred over the single line “transverse” crosswalk markings. The Federal Highway Safety Administration maintains guidelines for installation of highly visible crosswalk features.



## CYCLE TRACK

A cycle track provides a dedicated on-street path for bicycles (and micro-mobility devices such as scooters) protected from traffic by such techniques as painted buffers, vertical delineators, parking lanes, raised islands, and planters and other landscaping. Cycle tracks (also referred to as protected bike lanes), first introduced on 9th Avenue in New York City, have grown tremendously in popularity in America because they can be installed relatively easily while offering bicyclists the separation from traffic that they want. Primary features of cycle tracks include:

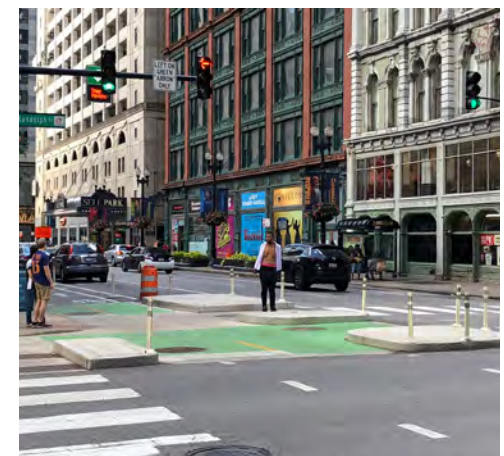
- » Raised or other vertical buffers a minimum of 3 feet wide. The width of Kansas Avenue permits a more generous separation. Some cycle tracks, including the proposed Kansas Avenue project, are further buffered by parking. Paint and flexible delineators are used on lower-cost installations.
- » Cycle tracks can provide for either one-way or two-way travel. A two-way track is desirably 12 foot wide, but can be as narrow as 8 feet when right-of-way is constrained.
- » Painted markings of the cycle track in conflict zones such as driveways or minor street crossings to alert drivers of bicycle traffic. Additional “Yield to Bikes” signage should be used to indicate potential conflict.
- » A buffer area between the cycle track and the pedestrian path with planters, bike racks, lighting, and other amenities.
- » Special signalization with a bicycle cycle when conflicts with turning traffic are likely to occur. These signals will stop turning motor vehicles on a green bicycle cycle. A cycle track may be necessary at Loula and possibly Santa Fe.



## INTERSECTION DESIGN

Intersections are the main point of conflict for pedestrians and bicyclists. Olathe can redesign their intersections to create safer crossings by giving non-vehicular traffic more time to cross, better visibility, reducing speeds of vehicles, and making their crossing a priority. Design features that achieve these goals include:

- » **Bump Outs.** Bump-outs allow pedestrians cross intersections at shorter distances and protect parked vehicles. They can also be places for trees and landscaping. Bump-outs in this design concept shorten the crossing distance by 19 feet.
- » **Pedestrian Islands.** These reduce the crossing distance and improve visibility by clearing the intersection.
- » **Corner Island.** This concrete barrier is placed further into the intersection to give bicyclists more protection from drivers turning right, forcing the turning vehicle further into the intersection before making the turn instead of risking the “right hook” that often causes crashes. This type of protected intersection is proposed at the Kansas and Santa Fe intersection.
- » **Crossing Markings.** Colored markings provide guidance for both pedestrians and bicyclists crossing, but also call attention to their presence for vehicles. Bicycle markings are often green, while pedestrian zones are white.
- » **Right turn islands.** At extremely wide intersections such as Parker and Santa Fe, right-turn islands can provide vulnerable users with a refuge that separates right-turns from other movements. This reduces the distance of exposure, currently almost 150 feet at the Parker intersection.





# SUSTAINABLE DEVELOPMENT TECHNIQUES

Active transportation and sustainable development go hand in hand. Many of the treatments identified within the complete streets guidelines are opportunities to include sustainable elements such as native plants in a bump out or a rain garden alongside a bike lane to act as a buffer. This section presents sustainable development techniques that can and should be incorporated with each project that advances the plan.

Public right-of-ways can and should address significant environmental issues and goals. They can also demonstrate practices that citizens can use in their own lives. The diagram to the right shows how one stretch of Kansas Avenue can incorporate multiple sustainable practices, especially relevant to the future development of a major public space on the old courthouse site. Good practices include stormwater management, energy conservation, and reforestation.

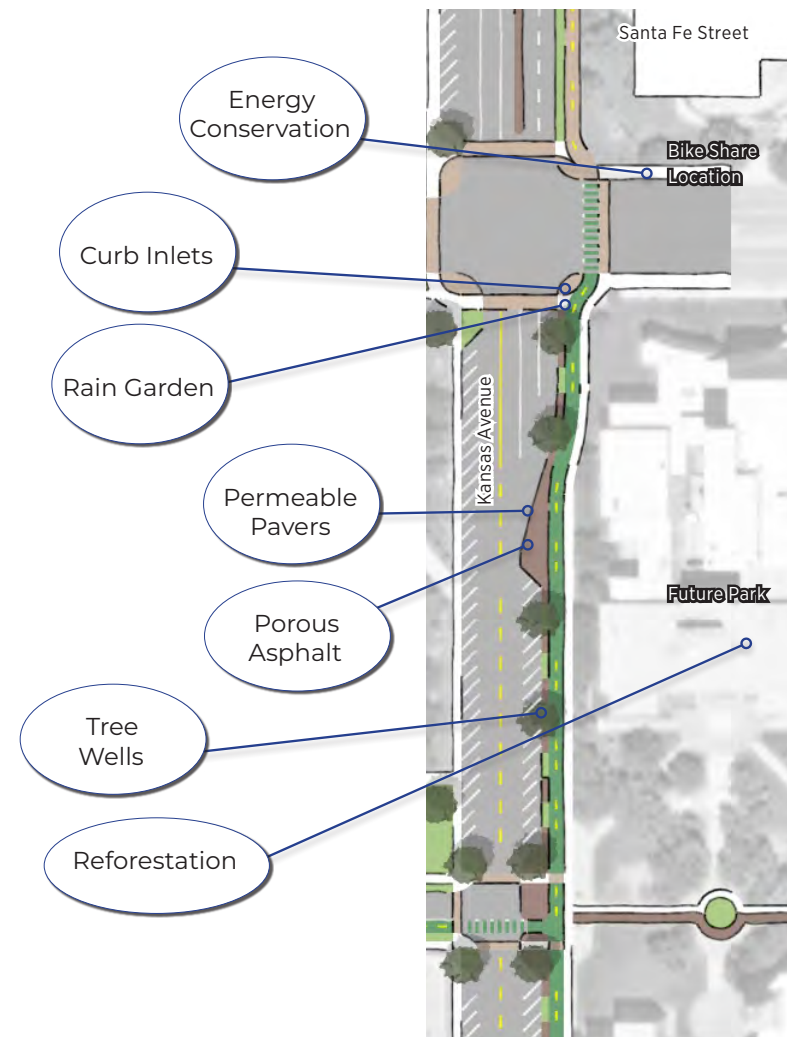
Stormwater management in an urban environment can take several directions, the three common principles of which are slow it down, spread it out, soak it in. With limited permeable area, it is important to incorporate small stormwater installations to focus on detention and infiltration to slow and absorb surface flows.

Energy conservation techniques may also be incorporated into a streetscape. Solar energy can be used to power bike share docking stations and have even been embedded in roadbeds. Light fixtures should have proper daylighting functions and use LED bulbs to reduce energy consumption.

Reforestation is already underway in downtown Olathe with the streetscape improvements but could be advanced further. If the former county building site is reused as public open space, a dense and diverse stock of trees should be planted to help reduce the heat island effect in the downtown, absorb CO2 emissions, and provide shady areas for residents, visitors, and downtown employees.

The following pages show examples of each of these three key components of sustainability to be considered for downtown Olathe.

## Sustainable Street Opportunities

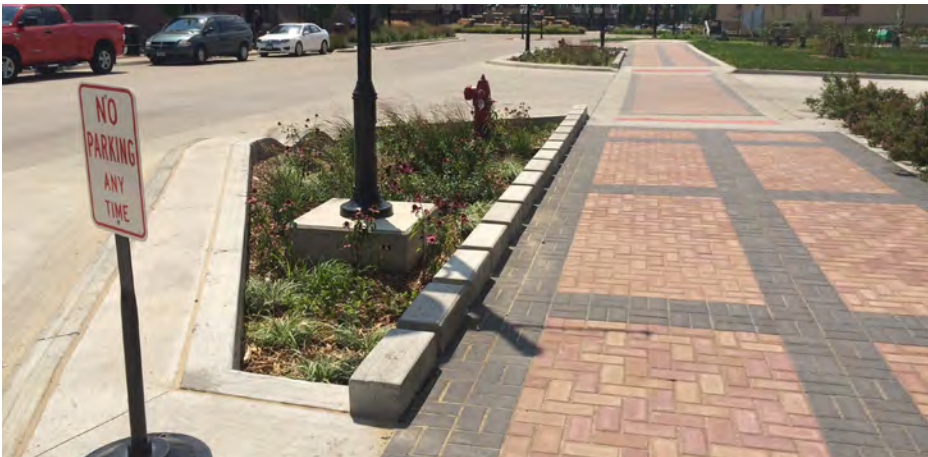


### CURB INLETS

Sawtooth curbs can direct runoff into planted stormwater management features like rain gardens. These curbs are broken every few feet to allow water to run into the planting area, but still provide the protection of a curb. This technique is often used in areas with large impervious surfaces to funnel rainwater into adjacent landscaping areas or bioswales.



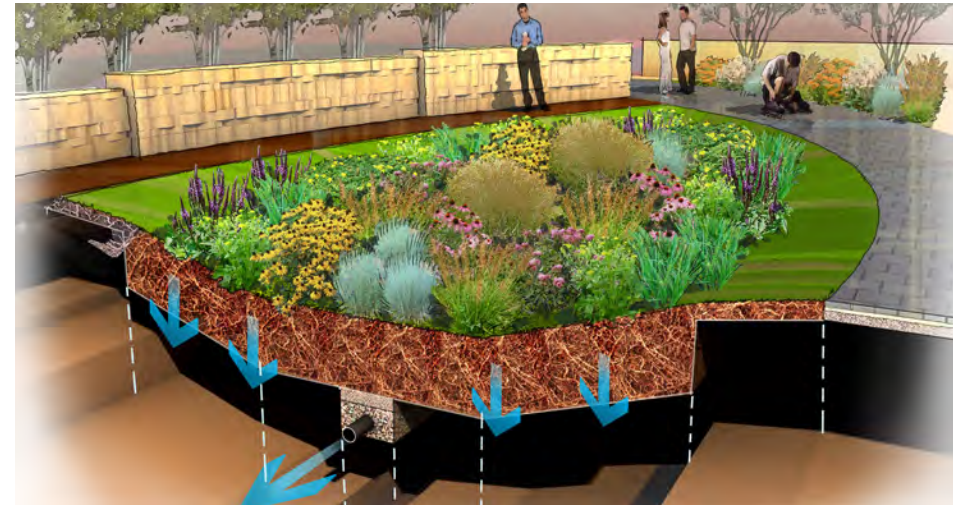
Downtown bioswale in Topeka. This innovative project replaced an unnecessary travel lane.



Coralville, IA Bump Out and curb inlet

### RAIN GARDENS

Rain gardens are an attractive way to capture water while providing landscaping that softens the concrete surfaces in downtown. Rain gardens are dry most of the time, but are designed to capture and hold significant amounts of runoff from adjacent streets and buildings during a rain event. If designed properly, they will absorb rain water into the ground within an hour to two. When designed to capture runoff from streets or sidewalks, careful consideration to the type of plants is necessary as road salt is likely to concentrate in the garden with the spring thaw.



Rain garden diagram



Omaha, NE Rain garden bump out



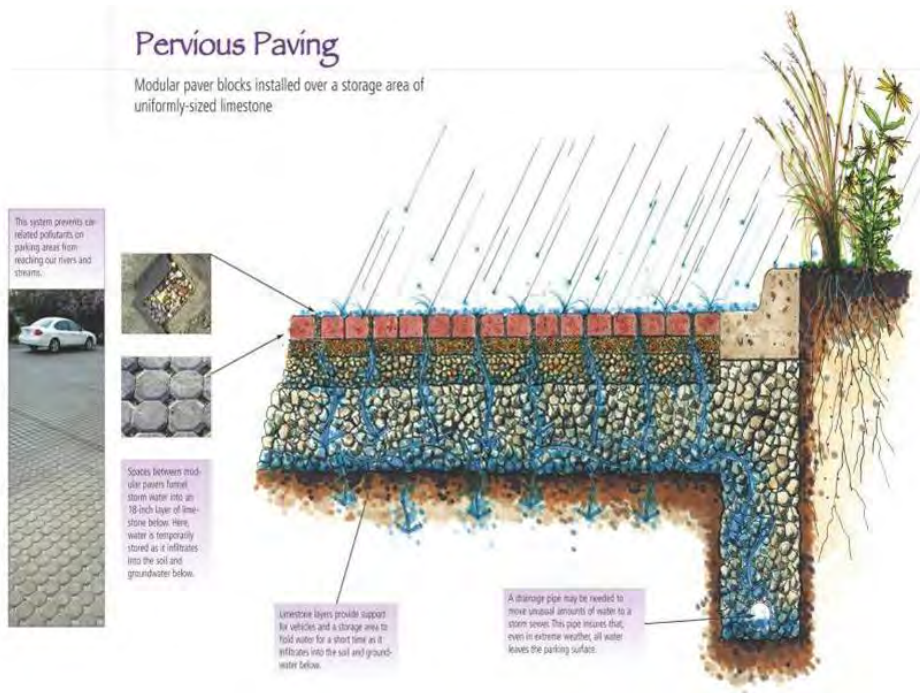
#### PERMEABLE PAVERS AND POROUS ASPHALT

Permeable pavers can capture runoff and provide a distinctive and appealing paving surface. These pavers come in a variety of styles, but all are designed to absorb water into the ground. Paver technology has advanced and pavers are now resistant to winter conditions and as durable as conventional materials when properly maintained.

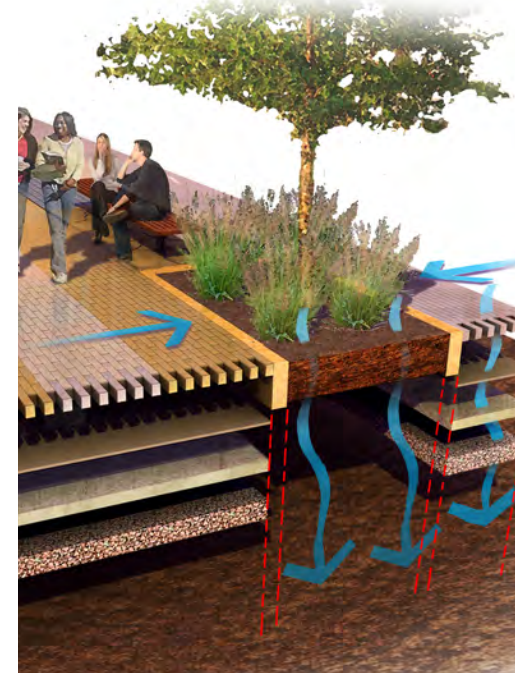
Porous asphalt provides another “green” paving option, conducting water into the ground rather than blocking infiltration.

#### TREE WELLS

Trees sequester carbon and provide much needed shade. They also serve an important function in stormwater management. Tree wells and planter beds in a streetscape capture water from sidewalks and increase ground absorption.



Seattle, WA Tree Wells



The absorption process.

### REFORESTATION.

Many cities are encouraging the growth of their urban forests because of the many benefits they provide. Trees provide shade to reduce heat island effect in urban areas, help sequester carbon dioxide, and capture and absorb stormwater runoff, and provide delight and comfort to downtown's citizens. The types and placement of trees must be carefully considered to avoid maintenance issues created when leaves or fruit begins dropping. Honey locust trees are popular for their resilience and ability to thrive in difficult urban growing conditions. However, the lessons of the emerald ash underscores the need to diversify and avoid monocultures that are vulnerable to disease and infestation. Tree wells should be a minimum of 6 feet square with either mulch or shrubs and groundcover.



### ENERGY CONSERVATION

Active transportation contributes to energy conservation in cities in a variety of ways. The reduction in vehicular travel as more residents commute by bicycle or walk for work or recreation reduces fuel consumption and greenhouse gas pollution. Savings are especially strategic because cars are less fuel efficient and pollute more with shorter trips in cities. Active transportation often leads to more compact development patterns which conserve energy by reducing impervious surface area, preserving open space, and requiring fewer building materials. In Olathe, active access in the city center will encourage new mixed use and higher-density residential development, both of which advance the city's environmental goals. Solar can also be easily integrated into active transportation projects. If a docking station style bike share program were implemented, it could be powered by solar panels as seen below. Solar energy has also been used in street and trail lighting.









A black and white photograph of a group of people at a community meeting. In the foreground, a person's hand is visible pointing at a large map or plan spread out on a table. The map includes various diagrams and text. In the background, several people are standing and talking. One man in a light blue shirt is gesturing with his hand near his face. Another man in a light blue polo shirt is holding a small electronic device. A woman in a striped shirt is looking at a notebook. A woman in a grey shirt and a baseball cap is also visible. A large white number '4' is overlaid on the left side of the image, and a blue banner with the word 'IMPLEMENTATION' in white capital letters is overlaid on the right side.

# 4 IMPLEMENTATION



# FUNDING AND PHASING

The Olathe Street Preservation Program and ongoing Stormwater Improvement projects provide a great opportunity to complete many pieces of the downtown active transportation plan within the next few years. The best way to see quick results is to find options to incorporate portions of the system into already planned projects. This helps reduce cost and speed up the schedule for implementation.

The Downtown Active Transportation Plan establishes a concept for future improvements in Downtown Olathe. To ensure that projects within the concept are implemented over time, the City must set its priorities for individual projects, complete initial steps towards implementing the projects, and evaluate new conditions as they arise. The general strategy, phasing, and schedule presented in the following pages are based on the following considerations:

- » **Think ahead for long-term projects.** Some projects will not occur for many years. However, advance planning starts the process by building partnerships, initiating conversations with adjacent property owners, and conducting initial studies to determine project feasibility.
  - » **Focus efforts wisely.** Keeping in mind community priorities, the City should concentrate activity and benefits to create the greatest returns. By pairing upgrades with already planned projects such as a stormwater upgrades or the street preservation program the City can complete much of this network in the near term.
  - » **Be open to opportunity.** New opportunities may arise as situations change downtown. Awareness of and openness to opportunities can help implement the plan. This is especially true for ongoing projects such as the Mill Creek Trail which will require communication with property owners along the length of the trail and building an understanding of the benefits that such a project could bring.
- « Will the project generate private investment by adjacent property owners?
  - « What is its potential to transform the image of the area and community?
  - « Does the project attract local residents and visitors, increasing business traffic and creating new reasons for people to be downtown?
  - « Does the project generate substantial community support or consensus?
  - « Does the project incorporate and leverage outside funding sources, such as state grants or charitable contributions?

Funding programs and opportunities will inevitably change and influence priorities. The current schedule is based on an aggressive implementation time frame of 6+ years given the programs in place that can assist in route completion over the next few years. However, the City should modify the schedule annually, based on constraints, opportunities, and priority criteria that consider the following questions:

- « Does the project fill a gap in the existing network?
- « Does the project increase safety for bicyclists and pedestrians?

## Implementation Steps

This plan included detailed plans with measurements and cost estimates for each section of the proposed active transportation plan in downtown Olathe. The following implementation table identifies each segments costs and time frame for completion. As mentioned, these time frames may change depending on available funding sources. The next steps to seeing these routes built include:

1. Obtain Funding
2. Boundary & Topographical Survey
3. Preliminary Design
4. Public Involvement
5. Land Acquisition (if necessary)
6. Final Design
7. Utility Relocations
8. Construction

**FIGURE 5.4A:** Implementation Table

SEGMENT	COST RANGE			
		Within 3 Years	3-5 Years	Beyond 5 Years
Kansas Avenue	\$1,540,080 to \$2,444,790	✖		
Kansas City Road	\$703,824	✖		
Mill Creek Trail	\$1,958,476 to \$2,795,892			✖
Park Street with Grade Separation	\$4,224,810			✖
Loula Street	\$493,842		✖	





## Funding Sources

Given the multi-year nature of this active transportation program, identifying and sustaining funding sources is critical. Many projects involving on-street routes could be incorporated into normal maintenance activities. Thus, the marginal cost of activities such as painting and maintaining bicycle boulevards may be significantly lower than the cost factors incorporated here. However, sidepaths and cycle tracks can be expensive and difficult to retrofit after development has already taken place, but are often preferred by residents because of their separation from traffic.

A number of funding sources support the implementation of this active transportation plan, including various local and federal programs. Following is a list of programs that may be appropriate for funding various segments of the network.

### City

- » **Street Preservation and Reconstruction Program.** Much of the proposed network lies within the boundaries of planned street preservation and reconstruction projects. If timed correctly, project costs for building the proposed bicycle and pedestrian infrastructure can be wrapped into the Street Preservation and Reconstruction Program. This not only reduces the estimated costs, but provides an opportunity to see portions of the network built in the next five years.
- » **Capital Improvement Program.** Establishing a dedicated set-aside in the Capital Improvement Program can help the city prepare for implementing this plan for sidewalks, paths, and bicycle infrastructure to improve conditions for bicycling and walking. This set-aside may also be used as a local match for external funding sources, or as contributory towards bicycle elements of larger projects.
- » **City Operating Budget.** The operating budget of Olathe may be a source of funding for the network. Segments of the network can be developed or improved as part of normal operations. This is one way to advance the bicycle and pedestrian network in an incremental and practical manner.

### State

- » **Chronic Disease Risk Reduction.** Funding through the Kansas Department of Health and Environment is available through the Aid to Local (ATL) grant program. Applicable programs in the funding pool include Bike Walk Committees, Active Transportation, and Improving Public Spaces.

## Federal Transportation Act Programs

- » **Surface Transportation Program (STP).** The surface transportation funds are sub-allocated to MARC by the Federal Highway Administration to fund multi-modal and roadway projects on federal-aid highways. Priority is given to projects that increase modal choice, integrate into the community, and manage roadway capacity.
- » **Congestion Mitigation Air Quality (CMAQ).** The congestion mitigation air quality program began in 1991 as part of the Intermodal Surface Transportation Efficiency Act to help pay for transportation projects that improve air quality in “non-attainment” and “maintenance” areas. Funds are distributed by MARC and may or may not be available for Olathe.
- » **Transportation Alternatives Set-Aside.** This program, formerly known as the Transportation Alternatives Program (TAP), is a set-aside of Surface Transportation Block Grant (STBG) funding for transportation alternatives. Eligible projects include smaller-scale transportation projects such as pedestrian and bicycle facilities, recreational trails, safe routes to school projects, and environmental mitigation related to stormwater and habitat connectivity. This program is ideal for carrying out the larger segments of the network such as the Kansas Avenue cycle track.
- » **Highway Safety Improvement Program.** The HSIP program funds projects consistent with the state’s Strategic Highway Safety Plan. Within the context of this plan, it is most useful for helping to fund specific safety infrastructure improvement projects. Safety funds are especially appropriate for intersection enhancement projects.
- » **National Recreational Trails.** This venerable program, administered in Kansas by the Kansas Parks, Wildlife and Tourism Department (KDPWT), was originally established in 1991 and provides funding assistance for recreational projects, such as park trails. This contracts with TAP funds that must be used for projects with a significant transportation component. Trail projects can including walking, bicycling, and other recreational aspects.









A photograph of a brick building with a concrete walkway. A large white letter 'A' is overlaid on the image, positioned in the center-left area. The building is made of red bricks and has a concrete walkway running alongside it. The letter 'A' is large and white, standing out against the brick background.

A

**APPENDIX**



# SECTION 1: DETAILED COST ESTIMATES

## MAP KEY FOR DETAILED COST ESTIMATES





## #9 - TRAIL CONNECTION ALONG NORTHGATE

## Option 1 - Using Existing Bridge

10/1/2019

Item No.	Item	Quantity	Unit	Unit Cost	Total Cost
1	Mobilization	1	LS	\$30,000.00	\$30,000.00
2	Clearing and Grubbing	1	LS	\$15,000.00	\$15,000.00
3	Demolition and Removal	1	LS	\$20,000.00	\$20,000.00
4	Contractor Construction Staking	1	LS	\$8,000.00	\$8,000.00
5	Traffic Control	1	LS	\$10,000.00	\$10,000.00
6	Removal of existing sidewalk	750	LF	\$12.00	\$9,000.00
7	Subgrade Stabilization (Est.)	400	SY	\$15.00	\$6,000.00
8	Unclassified Excavation	450	CY	\$14.00	\$6,300.00
9	Compacted Embankment	500	CY	\$5.00	\$2,500.00
10	Surface HMA-Commercial Grade (Class A) (2")	45	Ton	\$80.00	\$3,600.00
11	Base HMA-Commercial Grade (Class A) (8")	180	Ton	\$80.00	\$14,400.00
12	Concrete Curb & Gutter (Type B)	990	LF	\$30.00	\$29,700.00
13	Woonerf - Permanent Pavers	1000	SF	\$55.00	\$55,000.00
14	Aggregate Base under Paving	425	Ton	\$20.00	\$8,500.00
15	10' Asphalt Side Path	300	Ton	\$80.00	\$24,000.00
16	Guardrail, Steel Plate (MGS)	80	LF	\$50.00	\$4,000.00
17	Guardrail End Terminal (MGS-SRT)	2	Each	\$3,500.00	\$7,000.00
18	Large Block Retaining Wall	400	FF	\$50.00	\$20,000.00
19	Decorative Lighting	12	Each	\$6,000.00	\$72,000.00
20	Concrete Sidewalk (4")	150	SF	\$10.00	\$1,500.00
21	Concrete Driveways (6")	420	SY	\$85.00	\$35,700.00
22	Landscaping	1	LS	\$45,000.00	\$45,000.00
23	Rip Rap	975	SY	\$75.00	\$73,125.00
24	Sod	1000	SY	\$8.00	\$8,000.00
25	Seed	1.7	Acre	\$2,000.00	\$3,400.00
26	Pavement Marking X-Walk	1	Each	\$600.00	\$600.00

sub-total	\$512,325.00
20% Contingency	\$102,465.00
Total	\$614,790.00



## #9 - TRAIL CONNECTION ALONG NORTHGATE

## Option 2 - New Ped Bridge

10/1/2019

Item No.	Item	Quantity	Unit	Unit Cost	Total Cost
1	Mobilization	1	LS	\$40,000.00	\$40,000.00
2	Clearing and Grubbing	1	LS	\$20,000.00	\$20,000.00
3	Demolition and Removal	1	LS	\$20,000.00	\$20,000.00
4	Contractor Construction Staking	1	LS	\$10,000.00	\$10,000.00
5	Traffic Control	1	LS	\$10,000.00	\$10,000.00
6	Removal of existing sidewalk	750	LF	\$12.00	\$9,000.00
7	Subgrade Stabilization (Est.)	400	SY	\$15.00	\$6,000.00
8	Unclassified Excavation	450	CY	\$14.00	\$6,300.00
9	Compacted Embankment	500	CY	\$5.00	\$2,500.00
10	Surface HMA-Commercial Grade (Class A) (2")	45	Ton	\$80.00	\$3,600.00
11	Base HMA-Commercial Grade (Class A) (8")	180	Ton	\$80.00	\$14,400.00
12	Concrete Curb & Gutter (Type B)	990	LF	\$30.00	\$29,700.00
13	Woonerf - Permanent Pavers	1000	SY	\$250.00	\$250,000.00
14	Aggregate Base under Paving	425	Ton	\$20.00	\$8,500.00
15	10' Asphalt Side Path	340	Ton	\$80.00	\$27,200.00
16	Guardrail, Steel Plate (MGS)	80	LF	\$50.00	\$4,000.00
17	Guardrail End Terminal (MGS-SRT)	2	Each	\$3,500.00	\$7,000.00
18	Large Block Retaining Wall	400	FF	\$50.00	\$20,000.00
19	Decorative Lighting	12	Each	\$6,000.00	\$72,000.00
20	Concrete Sidewalk (4")	150	SF	\$10.00	\$1,500.00
21	Concrete Driveways (6")	420	SY	\$85.00	\$35,700.00
22	Landscaping	1	LS	\$45,000.00	\$45,000.00
23	10' Pedestrian Bridge	60	LF	\$1,500.00	\$90,000.00
24	Rip Rap	975	SY	\$75.00	\$73,125.00
25	Sod	1000	SY	\$8.00	\$8,000.00
26	Seed	1.7	Acre	\$2,000.00	\$3,400.00
27	Pavement Marking X-Walk	1	Each	\$600.00	\$600.00

sub-total	\$817,525.00
20% Contingency	\$163,505.00
Total	\$981,030.00

**#9 - TRAIL CONNECTION ALONG NORTHGATE****Option 3 - Chestnut Bicycle Boulevard (1700')****10/1/2019**

Item No.	Item	Quantity	Unit	Unit Cost	Total Cost
1	Mobilization	1	LS	\$10,000.00	\$10,000.00
2	Traffic Control	1	LS	\$3,000.00	\$3,000.00
3	Landscaping	1	LS	\$20,000.00	\$20,000.00
4	Permenant Signage	6	Each	\$1,000.00	\$6,000.00
5	Pavement Marking "Boulevard"	16	Each	\$750.00	\$12,000.00
6	Pavement Marking "Bicycle"	16	Each	\$750.00	\$12,000.00
7	Pavement Marking X-Walk	1	Each	\$600.00	\$600.00

sub-total	\$63,600.00
20% Contingency	\$12,720.00
Total	<u>\$76,320.00</u>



**#8 - CHERRY STREET - WOONERF****Spruce to Mulberry (1100')****12/30/2019**

Item No.	Item	Quantity	Unit	Unit Cost	Total Cost
1	Mobilization	1	LS	\$40,000.00	\$40,000.00
2	Clearing and Grubbing	1	LS	\$25,000.00	\$25,000.00
3	Demolition and Removal	1	LS	\$20,000.00	\$20,000.00
4	Contractor Construction Staking	1	LS	\$15,000.00	\$15,000.00
5	Traffic Control	1	LS	\$10,000.00	\$10,000.00
6	Subgrade Stabilization (Est.)	3200	SY	\$15.00	\$48,000.00
7	Unclassified Excavation	1200	CY	\$14.00	\$16,800.00
8	Compacted Embankment	1200	CY	\$5.00	\$6,000.00
9	Concrete Curb & Gutter (Type A)	2500	LF	\$30.00	\$75,000.00
10	2" Asphalt Mill & Overlay	300	Ton	\$80.00	\$24,000.00
11	Woonerf - Permanent Pavers	800	SY	\$90.00	\$72,000.00
12	Aggregate Base under Paving	350	Ton	\$20.00	\$7,000.00
13	Guardrail, Steel Plate (MGS)	100	LF	\$50.00	\$5,000.00
14	Guardrail End Terminal (MGS-SRT)	2	Each	\$3,500.00	\$7,000.00
15	Decorative Lighting	12	Each	\$6,000.00	\$72,000.00
16	Concrete Sidewalk (4")	100	SF	\$10.00	\$1,000.00
17	Concrete Driveways (6")	350	SY	\$85.00	\$29,750.00
18	Landscaping	1	LS	\$50,000.00	\$50,000.00
19	Sod	1800	SY	\$8.00	\$14,400.00
20	Seed	1.2	Acre	\$2,000.00	\$2,400.00
21	Fencing	1100	LF	\$50.00	\$55,000.00
22	Permanent Signage	6	Each	\$1,000.00	\$6,000.00
23	Pavement Marking X-Walk	2	Each	\$600.00	\$1,200.00

sub-total	\$602,550.00
20% Contingency	\$120,510.00
Total	<u>\$723,060.00</u>

## #1 - KANSAS AVE MOBILITY TRACK &amp; SIDEPATH

Cedar to Santa Fe

10/1/2019

Item No.	Item	Quantity	Unit	Unit Cost	Total Cost
1	Mobilization	1	LS	\$35,000.00	\$35,000.00
2	Demolition and Removal	1	LS	\$50,000.00	\$50,000.00
3	Contractor Construction Staking	1	LS	\$15,000.00	\$15,000.00
4	Traffic Control	1	LS	\$40,000.00	\$40,000.00
5	Subgrade Stabilization (Est.)	400	SY	\$15.00	\$6,000.00
6	Unclassified Excavation	1500	CY	\$14.00	\$21,000.00
7	Concrete Curb & Gutter (Type B)	2000	LF	\$30.00	\$60,000.00
8	Pavers	1000	SF	\$55.00	\$55,000.00
9	Concrete Sidewalk (4")	800	SF	\$10.00	\$8,000.00
10	Landscaping	1	LS	\$85,000.00	\$85,000.00
11	Storm Inlet Adjustments	7	Each	\$2,500.00	\$17,500.00
12	Sod	300	SY	\$8.00	\$2,400.00
13	Cycle Track "Green" Marking	16200	SF	\$12.00	\$194,400.00
14	Pavement Marking Solid White	4000	LF	\$2.00	\$8,000.00
15	Pavement Marking Solid Yellow	3400	LF	\$2.00	\$6,800.00
16	Pavement Marking Dashed White	1700	LF	\$1.50	\$2,550.00
17	Pavement Marking "Arrows"	8	Each	\$500.00	\$4,000.00
18	Pavement Marking X-Walk	11	Each	\$600.00	\$6,600.00

sub-total	\$617,250.00
20% Contingency	\$123,450.00
Total	<u>\$740,700.00</u>



**#10 - ACTIVE BOULEVARD****Spruce and Chestnut (660') Advisory Bike Lane (1 side only)****10/1/2019**

Item No.	Item	Quantity	Unit	Unit Cost	Total Cost
1	Mobilization	1	LS	\$10,000.00	\$10,000.00
2	Clearing and Grubbing	1	LS	\$5,000.00	\$5,000.00
3	Demolition and Removal	1	LS	\$5,000.00	\$5,000.00
4	Contractor Construction Staking	1	LS	\$3,000.00	\$3,000.00
5	Traffic Control	1	LS	\$3,000.00	\$3,000.00
6	Concrete Sidewalk/Sidepath (4")	5500	SF	\$10.00	\$55,000.00
7	Concrete Driveways (6")	350	SY	\$85.00	\$29,750.00
8	Permenant Signage	4	Each	\$1,000.00	\$4,000.00
9	Solid White Pavement Marking	660	LF	\$2.50	\$1,650.00
10	Pavement Marking "Bicycle"	6	Each	\$750.00	\$4,500.00
11	Pavement Marking X-Walk	3	Each	\$600.00	\$1,800.00
12	Sod	500	SY	\$8.00	\$4,000.00

sub-total	\$126,700.00
20% Contingency	\$25,340.00
Total	<u>\$152,040.00</u>

## #12 - SHARED USE PATH

## Poplar to Cherry

10/1/2019

Item No.	Item	Quantity	Unit	Unit Cost	Total Cost
1	Mobilization	1	LS	\$40,000.00	\$40,000.00
2	Clearing and Grubbing	1	LS	\$25,000.00	\$25,000.00
3	Demolition and Removal	1	LS	\$50,000.00	\$50,000.00
4	Contractor Construction Staking	1	LS	\$15,000.00	\$15,000.00
5	Traffic Control	1	LS	\$10,000.00	\$10,000.00
6	Subgrade Stabilization (Est.)	1600	SY	\$15.00	\$24,000.00
7	Unclassified Excavation	150	CY	\$14.00	\$2,100.00
8	Compacted Embankment	300	CY	\$5.00	\$1,500.00
9	Concrete Curb & Gutter (Type B)	100	LF	\$30.00	\$3,000.00
10	Aggregate Base under Paving	400	Ton	\$20.00	\$8,000.00
11	10' Asphalt Side Path	650	Ton	\$80.00	\$52,000.00
12	Guardrail, Steel Plate (MGS)	500	LF	\$50.00	\$25,000.00
13	Guardrail End Terminal (MGS-SRT)	8	Each	\$3,500.00	\$28,000.00
14	Large Block Retaining Wall	1200	FF	\$50.00	\$60,000.00
15	Decorative Lighting	15	Each	\$6,000.00	\$90,000.00
16	Concrete Sidewalk (4")	600	SF	\$10.00	\$6,000.00
17	Landscaping	1	LS	\$20,000.00	\$20,000.00
18	Fencing	600	LF	\$50.00	\$30,000.00
19	10' Pedestrian Bridge	45	LF	\$1,500.00	\$67,500.00
20	Rip Rap	350	SY	\$75.00	\$26,250.00
21	Sod	1000	SY	\$8.00	\$8,000.00
22	Seed	0.9	Acre	\$750.00	\$675.00
23	Pavement Marking X-Walk	3	Each	\$600.00	\$1,800.00

sub-total	\$593,825.00
20% Contingency	\$118,765.00
Total	\$712,590.00



## #13.1 - MILL CREEK GREENWAY PATH

## Cedar to Loula

10/1/2019

Item No.	Item	Quantity	Unit	Unit Cost	Total Cost
1	Mobilization	1	LS	\$15,000.00	\$15,000.00
2	Clearing and Grubbing	1	LS	\$10,000.00	\$10,000.00
3	Demolition and Removal	1	LS	\$10,000.00	\$10,000.00
4	Contractor Construction Staking	1	LS	\$4,000.00	\$4,000.00
5	Traffic Control	1	LS	\$5,000.00	\$5,000.00
6	Subgrade Stabilization (Est.)	650	SY	\$15.00	\$9,750.00
7	Unclassified Excavation	100	CY	\$14.00	\$1,400.00
8	Compacted Embankment	150	CY	\$5.00	\$750.00
10	Aggregate Base under Paving	135	Ton	\$20.00	\$2,700.00
11	10' Asphalt Side Path	150	Ton	\$80.00	\$12,000.00
14	Large Block Retaining Wall	500	FF	\$50.00	\$25,000.00
15	Decorative Lighting	4	Each	\$6,000.00	\$24,000.00
16	Concrete Sidewalk (4")	250	SF	\$10.00	\$2,500.00
19	Landscaping	1	LS	\$20,000.00	\$20,000.00
20	Sod	3500	SY	\$8.00	\$28,000.00
21	Pavement Marking X-Walk	1	Each	\$600.00	\$600.00

sub-total	\$170,700.00
20% Contingency	\$34,140.00
Total	<u>\$204,840.00</u>

## #13.2 - MILL CREEK GREENWAY PATH

Loula to Park

10/1/2019

Item No.	Item	Quantity	Unit	Unit Cost	Total Cost
1	Mobilization	1	LS	\$10,000.00	\$10,000.00
2	Clearing and Grubbing	1	LS	\$5,000.00	\$5,000.00
3	Demolition and Removal	1	LS	\$10,000.00	\$10,000.00
4	Contractor Construction Staking	1	LS	\$3,000.00	\$3,000.00
5	Traffic Control	1	LS	\$5,000.00	\$5,000.00
6	Subgrade Stabilization (Est.)	250	SY	\$15.00	\$3,750.00
7	Unclassified Excavation	100	CY	\$14.00	\$1,400.00
8	Compacted Embankment	150	CY	\$5.00	\$750.00
9	Aggregate Base under Paving	50	Ton	\$20.00	\$1,000.00
10	6' Asphalt Side Path	60	Ton	\$80.00	\$4,800.00
11	Large Block Retaining Wall	300	FF	\$50.00	\$15,000.00
12	Decorative Lighting	4	Each	\$6,000.00	\$24,000.00
13	Concrete Sidewalk (4")	100	SF	\$10.00	\$1,000.00
14	Landscaping	1	LS	\$20,000.00	\$20,000.00
15	Sod	250	SY	\$8.00	\$2,000.00
16	Pavement Marking X-Walk	1	Each	\$600.00	\$600.00

sub-total	\$107,300.00
20% Contingency	\$21,460.00
Total	<u>\$128,760.00</u>



**#13.3 - OPTION 1 - MILL CREEK GREENWAY PATH****Park to Santa Fe (No Ped Bridge)****10/1/2019**

Item No.	Item	Quantity	Unit	Unit Cost	Total Cost
1	Mobilization	1	LS	\$15,000.00	\$15,000.00
2	Clearing and Grubbing	1	LS	\$20,000.00	\$20,000.00
3	Demolition and Removal	1	LS	\$10,000.00	\$10,000.00
4	Contractor Construction Staking	1	LS	\$5,000.00	\$5,000.00
5	Traffic Control	1	LS	\$5,000.00	\$5,000.00
6	Subgrade Stabilization (Est.)	400	SY	\$15.00	\$6,000.00
7	Unclassified Excavation	120	CY	\$14.00	\$1,680.00
8	Compacted Embankment	180	CY	\$5.00	\$900.00
9	Aggregate Base under Paving	90	Ton	\$20.00	\$1,800.00
10	6' Asphalt Side Path	100	Ton	\$80.00	\$8,000.00
11	Large Block Retaining Wall	600	FF	\$50.00	\$30,000.00
12	Decorative Lighting	7	Each	\$6,000.00	\$42,000.00
13	Concrete Sidewalk (4")	100	SF	\$10.00	\$1,000.00
14	Landscaping	1	LS	\$20,000.00	\$20,000.00
15	Sod	400	SY	\$8.00	\$3,200.00
16	Pavement Marking X-Walk	1	Each	\$600.00	\$600.00

sub-total	\$170,180.00
20% Contingency	\$34,036.00
<b>Total</b>	<b>\$204,216.00</b>

**#13.3 - OPTION 2 - MILL CREEK GREENWAY PATH****Park to Santa Fe (Including Ped Bridge)****10/1/2019**

Item No.	Item	Quantity	Unit	Unit Cost	Total Cost
1	Mobilization	1	LS	\$15,000.00	\$15,000.00
2	Clearing and Grubbing	1	LS	\$20,000.00	\$20,000.00
3	Demolition and Removal	1	LS	\$10,000.00	\$10,000.00
4	Contractor Construction Staking	1	LS	\$5,000.00	\$5,000.00
5	Traffic Control	1	LS	\$5,000.00	\$5,000.00
6	Subgrade Stabilization (Est.)	425	SY	\$15.00	\$6,375.00
7	Unclassified Excavation	150	CY	\$14.00	\$2,100.00
8	Compacted Embankment	200	CY	\$5.00	\$1,000.00
9	Aggregate Base under Paving	95	Ton	\$20.00	\$1,900.00
10	6' Asphalt Side Path	110	Ton	\$80.00	\$8,800.00
11	Large Block Retaining Wall	725	FF	\$50.00	\$36,250.00
12	10' Pedestrian Bridge	50	LF	\$1,500.00	\$75,000.00
13	Decorative Lighting	7	Each	\$6,000.00	\$42,000.00
14	Concrete Sidewalk (4")	100	SF	\$10.00	\$1,000.00
15	Landscaping	1	LS	\$20,000.00	\$20,000.00
16	Sod	420	SY	\$8.00	\$3,360.00
17	Pavement Marking X-Walk	1	Each	\$600.00	\$600.00

sub-total	\$253,385.00
20% Contingency	\$50,677.00
Total	<u>\$304,062.00</u>



**#13.4 - MILL CREEK GREENWAY PATH****Santa Fe to Poplar (Removal of Water Street)****10/1/2019**

Item No.	Item	Quantity	Unit	Unit Cost	Total Cost
1	Mobilization	1	LS	\$15,000.00	\$15,000.00
2	Clearing and Grubbing	1	LS	\$20,000.00	\$20,000.00
3	Demolition and Removal	1	LS	\$15,000.00	\$15,000.00
4	Contractor Construction Staking	1	LS	\$7,000.00	\$7,000.00
5	Traffic Control	1	LS	\$15,000.00	\$15,000.00
6	Subgrade Stabilization (Est.)	650	SY	\$15.00	\$9,750.00
7	Unclassified Excavation	400	CY	\$14.00	\$5,600.00
8	Compacted Embankment	200	CY	\$5.00	\$1,000.00
9	Aggregate Base under Paving	140	Ton	\$20.00	\$2,800.00
10	10' Asphalt Path (Water Street)	160	Ton	\$80.00	\$12,800.00
11	Large Block Retaining Wall	900	FF	\$50.00	\$45,000.00
12	Decorative Lighting	7	Each	\$6,000.00	\$42,000.00
13	Concrete Sidewalk (4")	100	SF	\$10.00	\$1,000.00
14	Landscaping	1	LS	\$20,000.00	\$20,000.00
15	Sod	600	SY	\$8.00	\$4,800.00
16	Permenant Signage	3	Each	\$1,000.00	\$3,000.00
17	Pavement Marking X-Walk	1	Each	\$600.00	\$600.00

sub-total	\$220,350.00
20% Contingency	\$44,070.00
Total	<u>\$264,420.00</u>

**#14 - PEDESTRIAN UNDERPASS****Santa Fe RCB Replacement****12/30/2019**

Item No.	Item	Quantity	Unit	Unit Cost	Total Cost
1	Mobilization	1	LS	\$50,000.00	\$50,000.00
2	Clearing and Grubbing	1	LS	\$10,000.00	\$10,000.00
3	Demolition and Removal	1	LS	\$15,000.00	\$15,000.00
4	Contractor Construction Staking	1	LS	\$8,000.00	\$8,000.00
5	Traffic Control	1	LS	\$25,000.00	\$25,000.00
6	Subgrade Stabilization (Est.)	1200	SY	\$15.00	\$18,000.00
7	Unclassified Excavation	1500	CY	\$14.00	\$21,000.00
8	Compacted Embankment	1000	CY	\$5.00	\$5,000.00
9	Surface HMA-Commercial Grade (Class A) (2")	140	Ton	\$80.00	\$11,200.00
10	Base HMA-Commercial Grade (Class A) (8")	550	Ton	\$80.00	\$44,000.00
11	Concrete Curb & Gutter (Type B)	550	LF	\$30.00	\$16,500.00
12	Brick Median	600	SF	\$55.00	\$33,000.00
13	Concrete Sidewalk (4")	3200	SF	\$10.00	\$32,000.00
14	Guardrail, Steel Plate (MGS)	240	LF	\$50.00	\$12,000.00
15	Guardrail End Terminal (MGS-SRT)	4	Each	\$3,500.00	\$14,000.00
16	RCB (Triple 9'x10')	120	LF	\$3,500.00	\$420,000.00
17	Lighting in the RCB	1	LS	\$38,000.00	\$38,000.00
18	Area Inlet (5'x5')	4	Each	\$5,500.00	\$22,000.00
19	Storm Sewer Pipe (30")(RCP)	80	LF	\$100.00	\$8,000.00
20	End Section	1	Each	\$1,000.00	\$1,000.00
21	Rip Rap	650	SY	\$75.00	\$48,750.00
22	Sod	500	SY	\$8.00	\$4,000.00
23	Pavement Marking Symbols	2	Each	\$350.00	\$700.00
24	Pavement Marking	250	LF	\$2.00	\$500.00

sub-total	\$857,650.00
20% Contingency	\$171,530.00
Total	<u>\$1,029,180.00</u>



**Trail Connection at Santa Fe**

Item No.	Item	Quantity	Unit	Unit Cost	Total Cost
1	Mobilization	1	LS	\$18,000.00	\$18,000.00
2	Clearing and Grubbing	1	LS	\$5,000.00	\$5,000.00
3	Demolition and Removal	1	LS	\$10,000.00	\$10,000.00
4	Contractor Construction Staking	1	LS	\$3,000.00	\$3,000.00
5	Traffic Control	1	LS	\$3,500.00	\$3,500.00
6	Subgrade Stabilization (Est.)	300	SY	\$12.50	\$3,750.00
7	Unclassified Excavation	950	CY	\$7.00	\$6,650.00
8	Compacted Embankment	250	CY	\$2.50	\$625.00
9	Concrete Sidewalk & Trail (4")	3500	SF	\$10.00	\$35,000.00
10	Large Block Retaining Wall	2000	FF	\$45.00	\$90,000.00
11	Rip Rap	125	SY	\$75.00	\$9,375.00
12	Sod	650	SY	\$8.00	\$5,200.00
13	Landscaping	1	LS	\$15,000.00	\$15,000.00

sub-total	\$205,100.00
20% Contingency	\$41,020.00
Total	<u>\$246,120.00</u>

\*\*\*ASSUMED 100 FEET NORTH AND SOUTH OF RCB TO CONNECT INTO PROPOSED TRAIL.\*\*\*

**#17 - LOULA ACTIVEWAY SIDEPATH****Kansas Ave. to Mill Creek****10/1/2019**

Item No.	Item	Quantity	Unit	Unit Cost	Total Cost
1	Mobilization	1	LS	\$40,000.00	\$40,000.00
2	Clearing and Grubbing	1	LS	\$10,000.00	\$10,000.00
3	Demolition and Removal	1	LS	\$50,000.00	\$50,000.00
4	Contractor Construction Staking	1	LS	\$10,000.00	\$10,000.00
5	Traffic Control	1	LS	\$25,000.00	\$25,000.00
6	Subgrade Stabilization (Est.)	480	SY	\$15.00	\$7,200.00
7	Unclassified Excavation	500	CY	\$14.00	\$7,000.00
8	Concrete Curb & Gutter (Type B)	450	LF	\$30.00	\$13,500.00
9	Aggregate Base under Paving	100	Ton	\$20.00	\$2,000.00
10	10' Asphalt Side Path	120	Ton	\$80.00	\$9,600.00
11	Concrete Sidewalk (4")	660	SF	\$10.00	\$6,600.00
12	Concrete Driveway	125	SY	\$85.00	\$10,625.00
13	Landscaping	1	LS	\$30,000.00	\$30,000.00
14	Storm Inlet Top Adjustments	6	Each	\$1,500.00	\$9,000.00
15	Sod	475	SY	\$8.00	\$3,800.00
16	Cycle Track "Green" Marking	13330	SF	\$12.00	\$159,960.00
17	Pavement Marking Solid White	3500	LF	\$2.00	\$7,000.00
18	Pavement Marking Dashed White	1500	LF	\$1.50	\$2,250.00
19	Pavement Marking Arrows	4	Each	\$500.00	\$2,000.00
20	Pavement Marking X-Walk	10	Each	\$600.00	\$6,000.00

sub-total	\$411,535.00
20% Contingency	\$82,307.00
Total	<u>\$493,842.00</u>



## #21 - KC ROAD SIDEPATH

Nelson Rd to Cherry (4800')

10/1/2019

Item No.	Item	Quantity	Unit	Unit Cost	Total Cost
1	Mobilization	1	LS	\$50,000.00	\$50,000.00
2	Clearing and Grubbing	1	LS	\$10,000.00	\$10,000.00
3	Demolition and Removal	1	LS	\$50,000.00	\$50,000.00
4	Contractor Construction Staking	1	LS	\$15,000.00	\$15,000.00
5	Traffic Control	1	LS	\$20,000.00	\$20,000.00
6	Subgrade Stabilization (Est.)	4300	SY	\$15.00	\$64,500.00
7	Unclassified Excavation	180	CY	\$14.00	\$2,520.00
8	Compacted Embankment	700	CY	\$5.00	\$3,500.00
9	Concrete Curb & Gutter (Type B)	480	LF	\$80.00	\$38,400.00
10	Aggregate Base under Paving	900	Ton	\$20.00	\$18,000.00
11	8' Asphalt Side Path	1000	Ton	\$80.00	\$80,000.00
12	Guardrail, Steel Plate (MGS)	50	LF	\$50.00	\$2,500.00
13	Guardrail End Terminal (MGS-SRT)	1	Each	\$3,500.00	\$3,500.00
14	Large Block Retaining Wall	500	FF	\$50.00	\$25,000.00
15	Decorative Lighting (Between Cherry & Woodland)	10	Each	\$6,000.00	\$60,000.00
16	Concrete Sidewalk (4")	600	SF	\$10.00	\$6,000.00
17	Concrete Driveways (6")	800	SY	\$85.00	\$68,000.00
18	Storm Sewer Top Adjustments	15	Each	\$1,200.00	\$18,000.00
19	Landscaping	1	LS	\$20,000.00	\$20,000.00
20	Sod	3500	SY	\$8.00	\$28,000.00
21	Pavement Marking X-Walk	6	Each	\$600.00	\$3,600.00

sub-total	\$586,520.00
20% Contingency	\$117,304.00
Total	<u>\$703,824.00</u>

**#2 & #3 - PARK AVE. BIKE TRACK & UNDERPASS****Walnut to Kansas****10/1/2019**

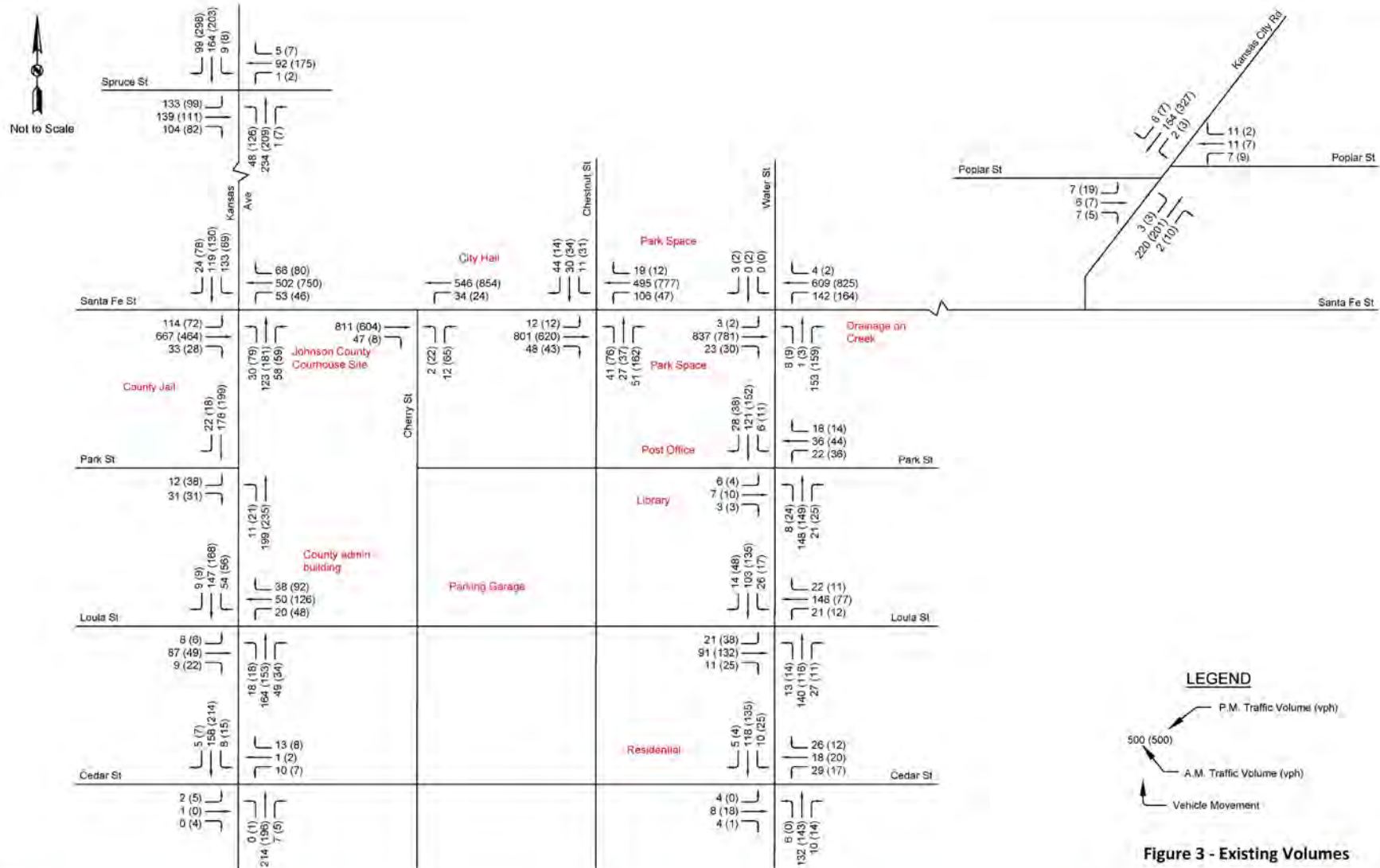
Item No.	Item	Quantity	Unit	Unit Cost	Total Cost
1	Mobilization	1	LS	\$150,000.00	\$150,000.00
2	Demolition and Removal	1	LS	\$80,000.00	\$80,000.00
3	Contractor Construction Staking	1	LS	\$65,000.00	\$65,000.00
4	Traffic Control	1	LS	\$30,000.00	\$30,000.00
5	Subgrade Stabilization (Est.)	2100	SY	\$15.00	\$31,500.00
6	Unclassified Excavation	725	CY	\$14.00	\$10,150.00
7	Concrete Curb & Gutter (Type B)	440	LF	\$30.00	\$13,200.00
8	Aggregate Base under Paving	450	Ton	\$20.00	\$9,000.00
9	10" Asphalt Surface & Base	850	Ton	\$80.00	\$68,000.00
10	Concrete Sidewalk (4")	3250	SF	\$10.00	\$32,500.00
11	Concrete Driveway	660	SY	\$85.00	\$56,100.00
12	Concrete Paving (Trail)	750	SY	\$85.00	\$63,750.00
13	Landscaping	1	LS	\$20,000.00	\$20,000.00
14	Lighting	1	LS	\$25,000.00	\$25,000.00
15	Sod	300	SY	\$8.00	\$2,400.00
16	10'x9' Underpass	100	LF	\$22,000.00	\$2,200,000.00
17	Concrete Retaining Wall	5000	FF	\$50.00	\$250,000.00
18	Covered Trail Entrance	4000	SF	\$100.00	\$400,000.00
19	Pavement Marking Solid White	350	LF	\$2.00	\$700.00
20	Pavement Marking Dashed White	650	LF	\$1.50	\$975.00
21	Permanent Signage	10	Each	\$1,000.00	\$10,000.00
22	Pavement Marking X-Walk	4	Each	\$600.00	\$2,400.00

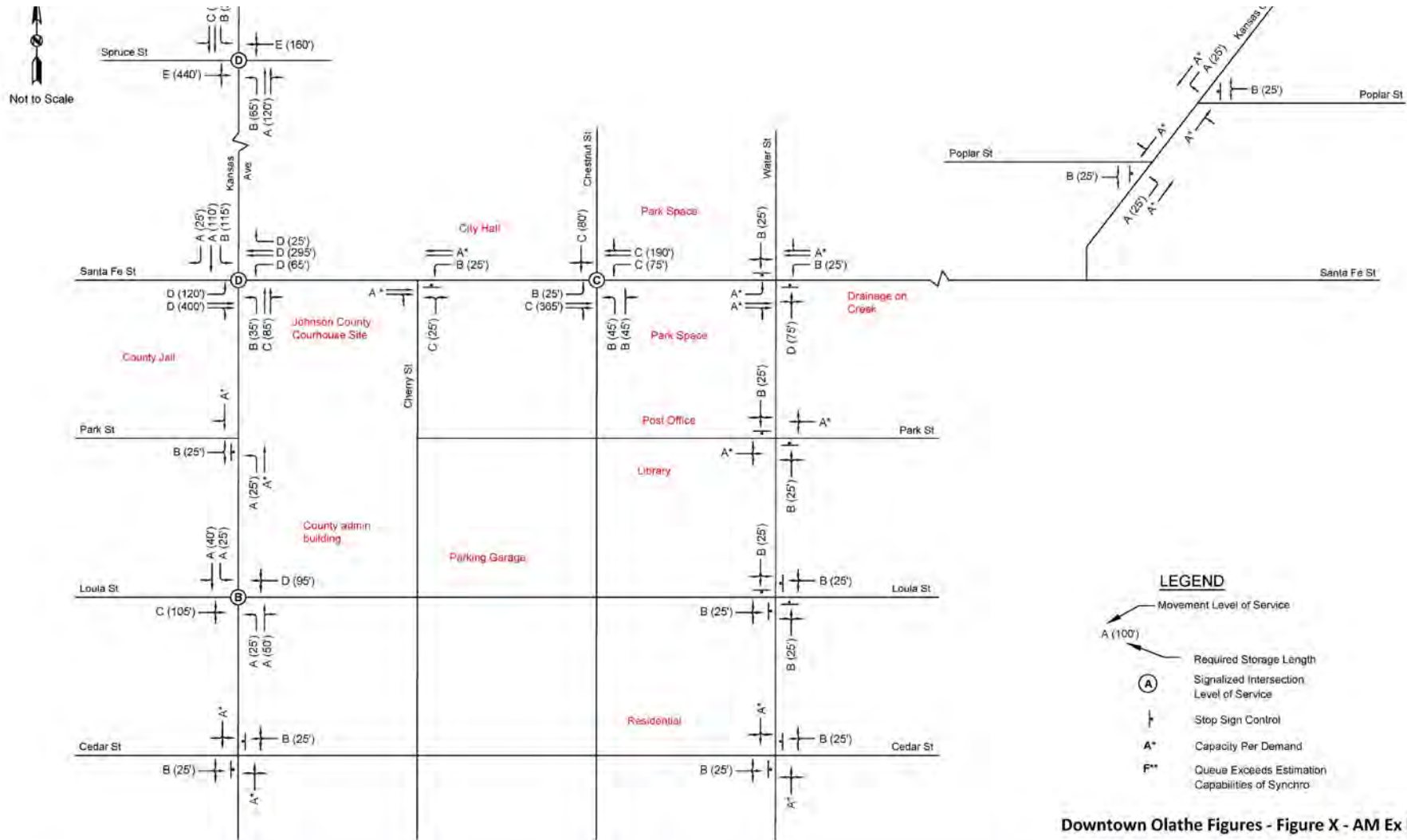
sub-total	\$3,520,675.00
20% Contingency	\$704,135.00
Total	<u>\$4,224,810.00</u>



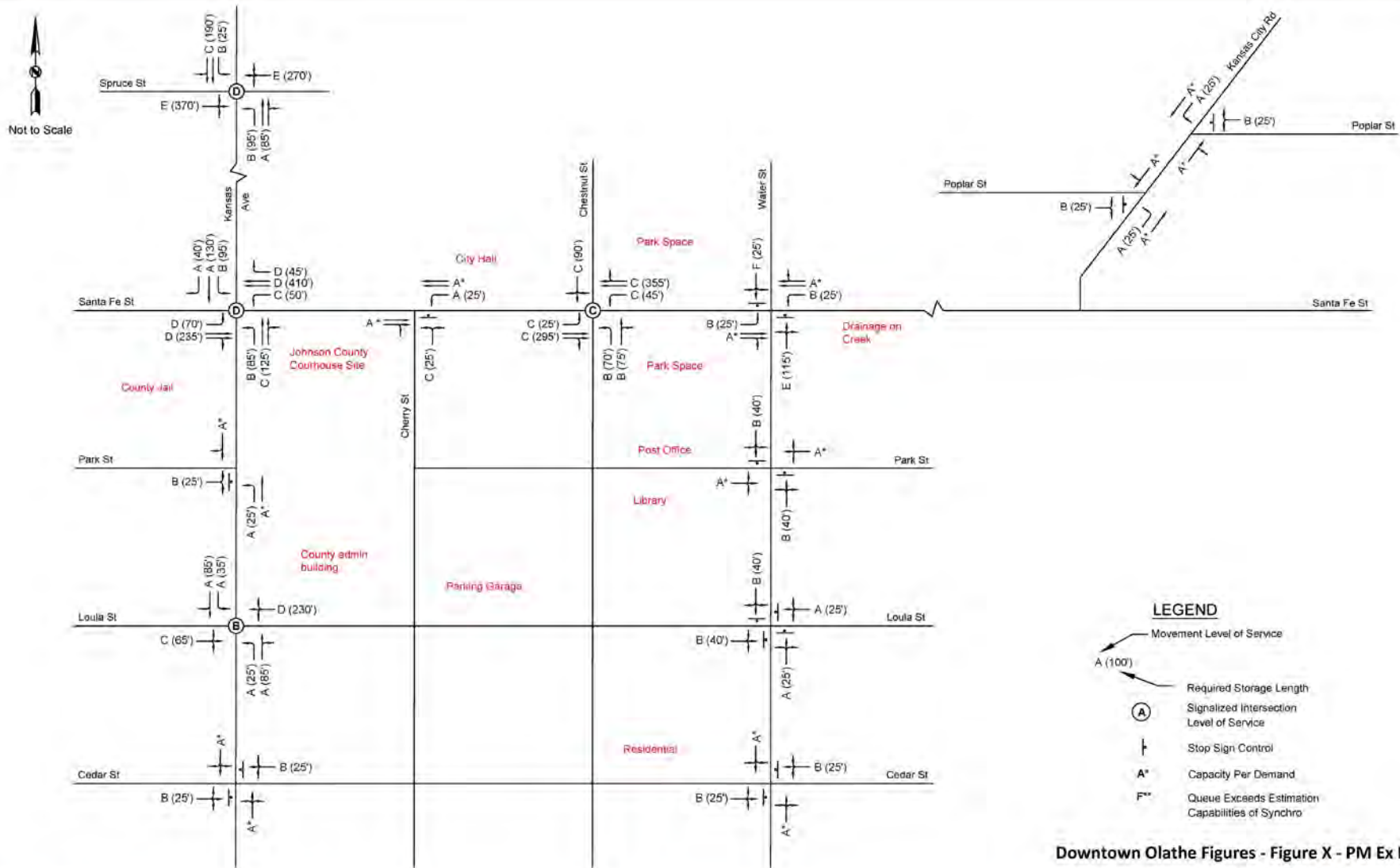
## SECTION 2: TRAFFIC COUNTS

Traffic Impact Study











# City of Olathe

## COUNCIL AGENDA ITEM

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**MEETING DATE:** 5/19/2020

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**DEPARTMENT:** Public Works

**STAFF CONTACT:** Mary Jaeger / Beth Wright

**SUBJECT:** A Resolution to establish a Complete Streets Policy for the City of Olathe.

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**ITEM DESCRIPTION:**

Consideration of Resolution No. 20-1036 establishing a Complete Streets Policy for the City of Olathe.

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**SUMMARY:**

The City currently has completed a Downtown Active Transportation Plan that included recommendations for a Complete Streets policy. A presentation of the Complete Streets policy was provided at the April 21, 2020 City Council meeting.

The City of Olathe has long pursued provisions for pedestrians, bicyclists, persons of all ages and abilities, in addition to vehicular traffic, within its public rights-of-way. Complete Streets promote public health and welfare through increased opportunities for walking, bicycling, and use of public transit by encouraging more physical activity and providing for a comprehensive, integrated and connected transportation network within the City.

This Complete Streets policy provides guidance for providing safe interaction of all modes of transportation, including vehicular, pedestrian, bicycle and public transportation, and outlines aesthetic improvements and appropriate speed limits. Additionally, adoption of this Complete Streets policy enhances the City's ability to compete for MARC, State and Federal grant funding.

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**FINANCIAL IMPACT:**

None.

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**ACTION NEEDED:**

Approval of Resolution No. 20-1036 establishing a Complete Streets Policy for the City of Olathe.

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**ATTACHMENT(S):**

A. Resolution



**RESOLUTION NO. 20-1036**

**A RESOLUTION ESTABLISHING A COMPLETE STREETS POLICY FOR THE CITY OF OLATHE, KANSAS.**

**WHEREAS**, for purposes of this Resolution, “Complete Streets” are defined as public rights-of-way that are safe, comfortable and convenient for vehicles, pedestrians, bicyclists, transit users and persons of all ages and abilities; and

**WHEREAS**, the City of Olathe, Kansas (the “City”) has long pursued provisions for pedestrians, bicyclists, persons of all ages and abilities, in addition to vehicular traffic, within its public rights-of-way; and

**WHEREAS**, Complete Streets promote public health and welfare through increased opportunities for walking, bicycling, and use of public transit by encouraging more physical activity and providing for a comprehensive, integrated and connected transportation network within the City; and

**WHEREAS**, the livability of neighborhoods and the economic development of the City and surrounding areas are greatly enhanced by implementing certain Complete Street principles that address a variety of social and community issues such as traffic congestion, quality of life, public health; and

**WHEREAS**, it is desirable that the City establish a policy with respect to Complete Streets, so that those principles can be incorporated into the public street project design, development and construction process.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF OLATHE, KANSAS:**

**SECTION ONE:** The following policies and procedures regarding Complete Streets (this “Policy”) are hereby adopted:

(A) That to the extent reasonable and practical, all public streets that are newly constructed or reconstructed within the City, whether privately or publicly financed, will be constructed as Complete Streets.

(B) That any facilities proposed to meet the intent of this Policy will be designed in context with the land uses and physical characteristics of the surrounding area.

(C) That aesthetic treatments will be considered as a part of all projects in consultation with the Chief Planning and Development Officer and the Parks and Recreation Director, or their designees.

**SECTION TWO:** Complete Street construction shall include to the extent reasonable and practical:

(A) Ensuring provisions for pedestrians, bicyclists, and persons of all ages and abilities, as follows:

(1) Along public streets, including provisions for crossing public streets and private drives or streets, where appropriate;

(2) Across interchanges with freeways and other highways;

(3) Across bridges over highways, waterways and railroad facilities;  
and

(4) To interconnect with activity centers and residential areas with parks, trails and open space.

(B) Working with Johnson County Transit to identify existing and potential locations for transit stops and working to ensure that pedestrians and bicyclists can conveniently and safely access transit vehicles at those locations.

**SECTION THREE:** The following will be excluded from this Policy:

(A) Normal maintenance activities, including mowing, cleaning, sweeping, pothole repair, chip-seal and slurry-seal operations, and other regular maintenance.

(B) Projects involving a public street where bicyclists and pedestrians are expressly prohibited by law. In such cases, the City shall consider alternate provisions, where appropriate and feasible.

(C) Areas where extreme topographic or natural resource constraints prevent the installation of some facilities. In such cases, the City shall consider alternate provisions, where appropriate and feasible.

(D) In cases where the project is a public or private street under the control of another entity.

(E) When the cost of the provision is excessively disproportionate to the need or probable use.

**SECTION FOUR:** This Resolution shall take effect immediately.

**ADOPTED** by the Governing Body this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**SIGNED** by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2020.



\_\_\_\_\_  
Mayor

**ATTEST:**

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

(SEAL)

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney



# City of Olathe

## COUNCIL AGENDA ITEM

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**MEETING DATE:** 5/19/2020

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**DEPARTMENT:** Public Works

**STAFF CONTACT:** Mary Jaeger / Beth Wright

**SUBJECT:** Contract with Donelson Construction Company, LLC for construction of the 2020 MAQS Micro Surface Project, PN 3-P-007-20.

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**ITEM DESCRIPTION:**

Consideration of Engineer's Estimate, acceptance of bids and award of contract to Donelson Construction Company, LLC for construction of the 2020 MAQS Micro Surface Project, PN 3-P-007-20.

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**SUMMARY:**

On May 5, 2020, one bid was received and opened for the above referenced project. Donelson Construction Company, LLC submitted the responsible bid in the amount of \$1,060,214.52. The following is a tabulation of the bids received:

Donelson Construction Company, LLC	\$ 1,060,214.52
Engineer's Estimate	\$ 1,181,881.50

Donelson Construction Company, LLC holds patents for several components of the MAQS surfacing process specified for this project. Donelson does sell these components to other contractors in the area, so the project was competitively bid. The MAQS Micro Surface seals and adds a skid resistant wearing surface to existing asphalt pavement.

This Street Preservation project will provide a micro surface treatment on 87 local and collector streets. Construction is scheduled to begin in June 2020 and will be completed in late Summer 2020.

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**FINANCIAL IMPACT:**

This project is funded from the City of Olathe's 2020 Street Preservation Program authorized on January 7, 2020. Authorized revenue for the 2020 Street Preservation Program includes:

CIP Fund Cash	\$ 2,200,000
CPR Fund Cash	\$ 800,000
G.O. Bonds	\$ 1,000,000
Street Maintenance Sales Tax	\$ 9,000,000
<u>Johnson County Assistance Road System (CARS)</u>	<u>\$ 600,000</u>
Total	\$ 13,600,000

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**ACTION NEEDED:**

Approval of Engineer's Estimate, acceptance of bids and award of contract to Donelson Construction Company, LLC for construction of the 2020 MAQS Micro Surface Project, PN 3-P-007-20.

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**MEETING DATE:** 5/19/2020

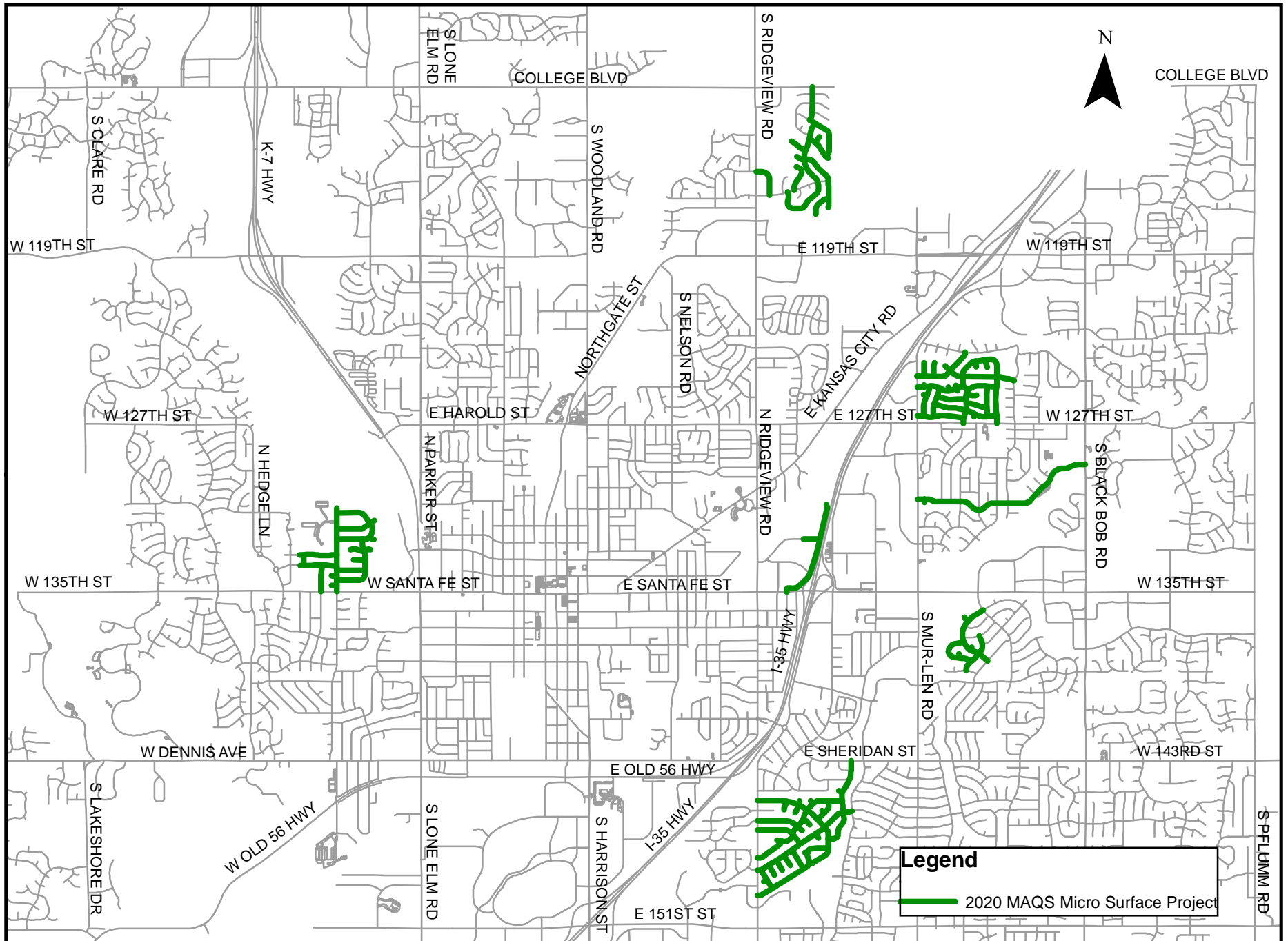
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**ATTACHMENT(S):**

- A. Project Location Map
- B. Project Fact Sheet
- C. Agreement
- D. Engineer's Estimate and Affidavit of Estimate

## 2020 MAQS Micro Surface Project, PN 3-P-007-20







**Project Fact Sheet**  
**2020 MAQS Micro Surface Project**  
**PN 3-P-007-20**  
**May 19, 2020**

**Project Manager:** Beth Wright / Nico Estrada-Stephen

**Description:** The 2020 MAQS Micro Surface Project will include a micro surface treatment on 87 local and collector streets throughout Olathe.

**Justification:** The 2020 Micro Surface Project provides a modified aggregate quickset surface treatment which seals and adds a skid resistant wearing surface to existing asphalt pavement.

<b>Schedule:</b>	<b>Item</b>	<b>Date</b>
Construction:	Bid Award	05/05/2020
	Completion	Late Summer 2020 - estimate
<b>Council Actions:</b>	<b>Date</b>	<b>Amount</b>
Approved in CIP (Street Preservation Program)	2019-2023	\$89,300,000
Project Authorization (2020 Street Preservation Program)	01/07/2020	\$13,600,000
Accept Bid/Award Contract	05/05/2020	\$1,060,214.52
<b>Funding Sources:</b>	<b>Amount</b>	<b>CIP Year</b>
2020 Street Preservation Program	\$1,121,000	2020
<b>Expenditures:</b>	<b>Budget</b>	<b>Amount to Date</b>
Staff	\$ 20,000	\$4,271
Base Repair Asphalt	\$ 20,000	\$ 794
Construction	\$1,061,000	\$ 0
<u>Other Project Costs</u>	<u>\$ 20,000</u>	<u>\$ 138</u>
<b>Total</b>	<b>\$1,121,000</b>	<b>\$5,203</b>

BID FORM  
PN 3-P-007-20  
CITY OF OLATHE, KANSAS

The following table is a list of bid items, estimated quantities, and the unit prices submitted by the bidder for the 2020 MAQS Micro Surface Project, PN 3-P-007-20.

Schedule of Values

ITEM		UNITS	APPROX. QUANTITY	UNIT PRICE		AMOUNT
				DOLLARS	CENTS	DOLLARS
PN 3-P-007-20						
1	Grinding of Existing 4" Pavement Markings	L.F.	16,208	1	00	\$16,208.00
2	Grinding of Existing 6" Pavement Markings	L.F.	305	2	50	\$762.50
3	Grinding of Existing 24" Pavement Markings	L.F.	95	9	00	\$855.00
4	Grinding of Existing Turn Arrow Pavement Markings	Ea.	3	150	00	\$450.00
5	Grinding of Existing School Crosswalk Pavement Markings	Ea.	12	450	00	\$5,400.00
6	Modified Aggregate Quickset Surface - MAQS Type 2	S.Y.	270,884	2	93	\$793,690.12
7	Pressure Pave	S.Y.	22,787	0	84	\$19,141.08
8	Mobilization	L.S.	1	28,500	00	\$28,500.00
9	Traffic Control	L.S.	1	132,000	00	\$132,000.00
10	Install and Remove Street Maintenance Sales Tax Signs	Ea.	6	175	00	\$1,050.00
11	Install 4" Yellow Painted Pavement Markings	L.F.	16,271	0	44	\$7,159.24
12	Install 6" White Painted Pavement Markings	L.F.	242	0	49	\$118.58
13	Install 24" White Painted Pavement Markings	L.F.	95	4	00	\$380.00
14	Install White Turn Arrow Painted Pavement Markings	Ea.	3	100	00	\$300.00
15	Install White School Crosswalk Painted Pavement Markings	Ea.	12	350	00	\$4,200.00
BID TOTAL:						\$1,010,214.52
OWNER'S CONTINGENCY ALLOWANCE:						\$50,000.00
TOTAL:						\$1,060,214.52

**ASPHALT MATERIAL INDEX:**  
The price included for Asphaltic Concrete Surface will be based on the computed monthly Asphalt Material Index for the month of the bid opening. If the current month is not available at the time of bid opening, the index value for the month prior to bid opening shall be used, as listed at the following web site, <http://www.ksdot.org/burconsmain/ppreq/asphaltpriceindex.asp>. The bid unit price for Asphaltic Concrete Surface shall be adjusted in subsequent months based on specification number 15-01009, Asphalt Price Adjustment, in the 2015 Edition of Kansas Department of Transportation Special Provisions for the Standard Specification.

The undersigned successfully completed the bid process online at [www.publicpurchase.com](http://www.publicpurchase.com) and affirms that the schedule of values table above matches the unit prices, line item amounts, and bid total amount submitted electronically.

Contractor

By

Title

Date

Telephone Number

Contact Person



AGREEMENT  
BETWEEN OWNER AND CONTRACTOR  
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

THIS AGREEMENT is dated as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (“Effective Date”), by and between the City of Olathe, Kansas (“Owner”) and \_\_\_\_\_ (“Contractor”). Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**ARTICLE 1 – WORK**

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Modified Aggregate Quickset Surface (MAQS) treatment on eighty-seven (87) local and collector streets and cul-de-sacs, totaling approximately 271,000 square yards of surface treatment and replacement of pavement markings.

**ARTICLE 2 – THE PROJECT**

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: 2020 MAQS Micro Surface Project, Project Number: 3-P-007-20.

**ARTICLE 3 – ENGINEER**

- 3.01 The Project has been designed by the City of Olathe, Kansas, Public Works, Engineering Division.

**ARTICLE 4 – CONTRACT TIMES**

4.01 *Time of the Essence*

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Days*

- A. The Work will be substantially completed within 55 days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 60 days after the date when the Contract Times commence to run.

4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. Substantial Completion: Contractor shall pay Owner \$500 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$500 for each day that expires after such time until the Work is completed and ready for final payment.
3. Liquidated damages for failing to timely attain Substantial Completion and Final Completion are not additive and will not be imposed concurrently.

## ARTICLE 5 – CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents in current funds the amount that follows, subject to adjustment under the Contract:

\$ 1,060,214.52

[Here insert a lump sum, unit prices or both, if necessary attach exhibits and list them in Article 8.]

[CONTRACTOR's Bid may be attached as an exhibit to avoid lengthy retyping of unit price schedules, formulae for escalation of prices, information as to alternatives, etc.]

## ARTICLE 6 – PAYMENT PROCEDURES

### 6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

### 6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the first day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
  1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
    - a. 95% percent of Work completed (with the balance being retainage) and
    - b. 95% percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).



- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 97% of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 200% of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

*NOTE(S) TO USER:*

**6.03    *Final Payment***

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

**ARTICLE 7 – INTEREST**

- 7.01    All amounts not paid when due shall bear interest at the rate prescribed under K.S.A. 16-1901 et seq., and any amendments thereto.

**ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS**

- 8.01    In order to induce Owner to enter into this Contract, Contractor makes the following representations:
  - A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
  - B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
  - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, if any.
  - E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs, if any such reports and drawings are so identified.
  - F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies,

or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.

- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

## **ARTICLE 9 – CONTRACT DOCUMENTS**

### **9.01 Contents**

- A. The Contract Documents consist of the following:
  - 1. This Agreement (pages EJCDC C-520-xiii to EJCDC C-520-xix, inclusive).
  - 2. Performance & Maintenance bond (pages EJCDC C-520-xx to EJCDC C-520-xxv, inclusive).
  - 3. Statutory bond (pages EJCDC C-520-xxvi to EJCDC C-520-xxx, inclusive).
  - 4. Appointment of Process Agent (page EJCDC C-520-xxxi, inclusive).
  - 5. Non-collusive Affidavit of Prime Bidder page EJCDC C-520-1, inclusive).
  - 6. General Conditions (pages EJCDC C-700-1 to EJCDC C-700-65, inclusive).
  - 7. Supplementary Conditions (pages SC-1 to SC-34, inclusive).
  - 8. Specifications as listed in the table of contents of the Project Manual.
  - 9. Drawings (not attached but incorporated by reference) consisting of nine sheets with each sheet bearing the following general title: 2020 MAQS Micro Surface Project.
  - 10. Addenda (numbers \_\_\_ to \_\_\_, inclusive).
  - 11. Exhibits to this Agreement (enumerated as follows):
    - a. Contractor's Bid (pages \_\_\_ to \_\_\_, inclusive).
    - b. Bid Documents (Notice to Bidders, Instructions to Bidders, Questionnaire of Personnel Practices Bid Bond, Bid Form).
    - c. Certificates (Compliance with Personnel Practices, Good Standing to Conduct Business in Kansas, Insurance).
    - d. Federal Funds Project Documents (if applicable) (Standard General Conditions Division 100, General Specifications Division 200, Required Contract Specifications, General Wage Decision).
    - e. Project Requirements.



- f. Temporary Facilities.
  - g. Submittals.
  - h. Technical Specifications.
  - i. General Special Conditions.
  - j. Measurements and Payments.
- 12. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
  - a. Notice to Proceed.
  - b. Work Change Directives.
  - c. Change Orders.
  - d. Field Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

## **ARTICLE 10 – MISCELLANEOUS**

### **10.01 Terms**

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

### **10.02 Assignment of Contract**

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

### **10.03 Successors and Assigns**

- A. Owner and Contractor each represent that they are duly authorized to enter into the Contract, and binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

### **10.04 Severability**

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue

to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
  4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 *Other Provisions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor in the Supplementary Conditions.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]



IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

OWNER:

CONTRACTOR:

City of Olathe, Kansas

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

Title: Mayor

Attest: \_\_\_\_\_

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

Address for giving notices:

P.O. Box 768

Olathe, KS 66051-0768

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

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

*(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)*

Attest: \_\_\_\_\_

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

Address for giving notices:

Contractor's Phone Number

License No.: \_\_\_\_\_

*(where applicable)*

Agent for service of process:

*If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)*

Approved as to form:

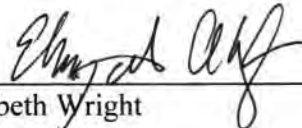
Deputy City Attorney

## AFFIDAVIT OF ESTIMATE OF COST

STATE OF KANSAS     )  
                                  ) ss.  
COUNTY OF JOHNSON)

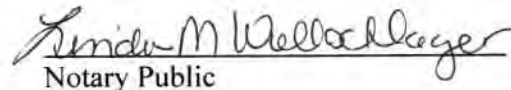
Elizabeth Wright, P.E., of lawful age, being first duly sworn upon her oath,  
states:

1. I am the City Engineer for the City of Olathe, Kansas.
2. The attached detailed estimate of the cost for the 2020 MAQS Micro Surface Project, P.N. 3-P-007-20 is attached and I am providing the estimate of the cost under oath (Exhibit A).

  
Elizabeth Wright

Subscribed in my presence and sworn under oath before me this 6<sup>th</sup>  
day of May, 2020.



  
Notary Public

My Appointment Expires

January 3, 2023

**ENGINEERS ESTIMATE**  
**2020 MAQS Micro Surface Project**  
**Project Number 3-P-007-20**  
**May 5, 2020**

ITEM	DESCRIPTION	UNITS	QUANT.	UNIT/PRICE	TOTAL
1.	Grinding of Existing 4" Pavement Markings	L.F.	16,208	\$1.00	\$16,208.00
2.	Grinding of Existing 6" Pavement Markings	L.F.	305	\$1.00	\$305.00
3.	Grinding of Existing 24" Pavement Markings	L.F.	95	\$6.50	\$617.50
4.	Grinding of Existing Turn Arrow Pavement Markings	EA.	3	\$110.00	\$330.00
5.	Grinding of Existing School Crosswalk Pavement Markings	EA.	12	\$275.00	\$3,300.00
6.	Modified Aggregate Quickset Surface - MAQS Type 2	S.Y.	270,884	\$2.95	\$799,107.80
7.	Pressure Pave	S.Y.	22,787	\$0.80	\$18,229.60
8.	Mobilization	L.S.	1	\$30,000.00	\$30,000.00
9.	Traffic Control	L.S.	1	\$250,000.00	\$250,000.00
10.	Install and Remove Street Maintenance Sales Tax Signs	EA.	6	\$200.00	\$1,200.00
11.	Install 4" Yellow Painted Pavement Markings	L.F.	16,271	\$0.50	\$8,135.50
12.	Install 6" White Painted Pavement Markings	L.F.	242	\$0.55	\$133.10
13.	Install 24" White Painted Pavement Markings	L.F.	95	\$8.00	\$760.00
14.	Install White Turn Arrow Painted Pavement Markings	EA.	3	\$85.00	\$255.00
15.	Install White School Crosswalk Painted Pavement Markings	EA.	12	\$275.00	\$3,300.00
<b>TOTAL BID</b>					<b>\$1,131,881.50</b>
<b>OWNER'S CONTINGENCY ALLOWANCE</b>					<b>\$50,000.00</b>
<b>GRAND TOTAL</b>					<b>\$1,181,881.50</b>

Submitted by:

*Nicolas Noah Estrada-Stephen*  
 Nicolas Noah Estrada-Stephen, P.E.  
 Street Preservation Project Manager

*5/5/2020*  
 Date







# City of Olathe

## COUNCIL AGENDA ITEM

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**MEETING DATE:** 5/19/2020

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**DEPARTMENT:** Public Works

**STAFF CONTACT:** Mary Jaeger / Beth Wright

**SUBJECT:** Contract with Schlager & Associates, P.A., for design of Cedar Creek Parkway South of College Boulevard, PN 3-B-027-19.

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**ITEM DESCRIPTION:**

Consideration of a Professional Services Agreement with Schlager & Associates, P.A., for design of Cedar Creek Parkway, South of College, Benefit District Project, PN 3-B-027-19.

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**SUMMARY:**

This benefit district was approved by the City Council on January 21, 2020, and will design and construct Cedar Creek Parkway from College Boulevard south approximately 3,750 feet. Improvements will include right of way grading and clearing, curb and gutter, pavement, sidewalk, sidepath, storm sewer, watermain, landscaping, and streetlights.

In 2010, Schlager and Associates, P.A., designed approximately 2,850 feet of this project. Construction plans and bid documents were prepared, but the project was delayed, and the work was never bid. This Professional Services Agreement provides engineering services necessary for updating the previous design and extending the project limits approximately 900 feet south. This Agreement is for \$227,110 and will include survey of existing conditions, utility coordination, public involvement, acquisition documentation (title reports, surveyed exhibits, easement documents, etc.) needed for any right-of-way or easements, development of construction plans in accordance with Olathe design standards and specifications, cost estimates, assistance with bidding of project for construction, and assistance as needed throughout construction.

This project is tentatively scheduled for design in 2020, with construction tentatively scheduled to begin in late Fall 2020.

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**FINANCIAL IMPACT:**

Funding for Cedar Creek Parkway, South of College, Benefit District Project includes:

<u>Benefit District Funds, PN 3-B-027-19</u>	<u>\$9,395,108.94</u>
<b>Total</b>	<b>\$9,395,108.94</b>

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**ACTION NEEDED:**

Approval of a Professional Services Agreement with Schlager & Associates, P.A., for design of Cedar Creek Parkway, South of College, Benefit District Project, PN 3-B-027-19.

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**ATTACHMENT(S):**

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**MEETING DATE:** 5/19/2020

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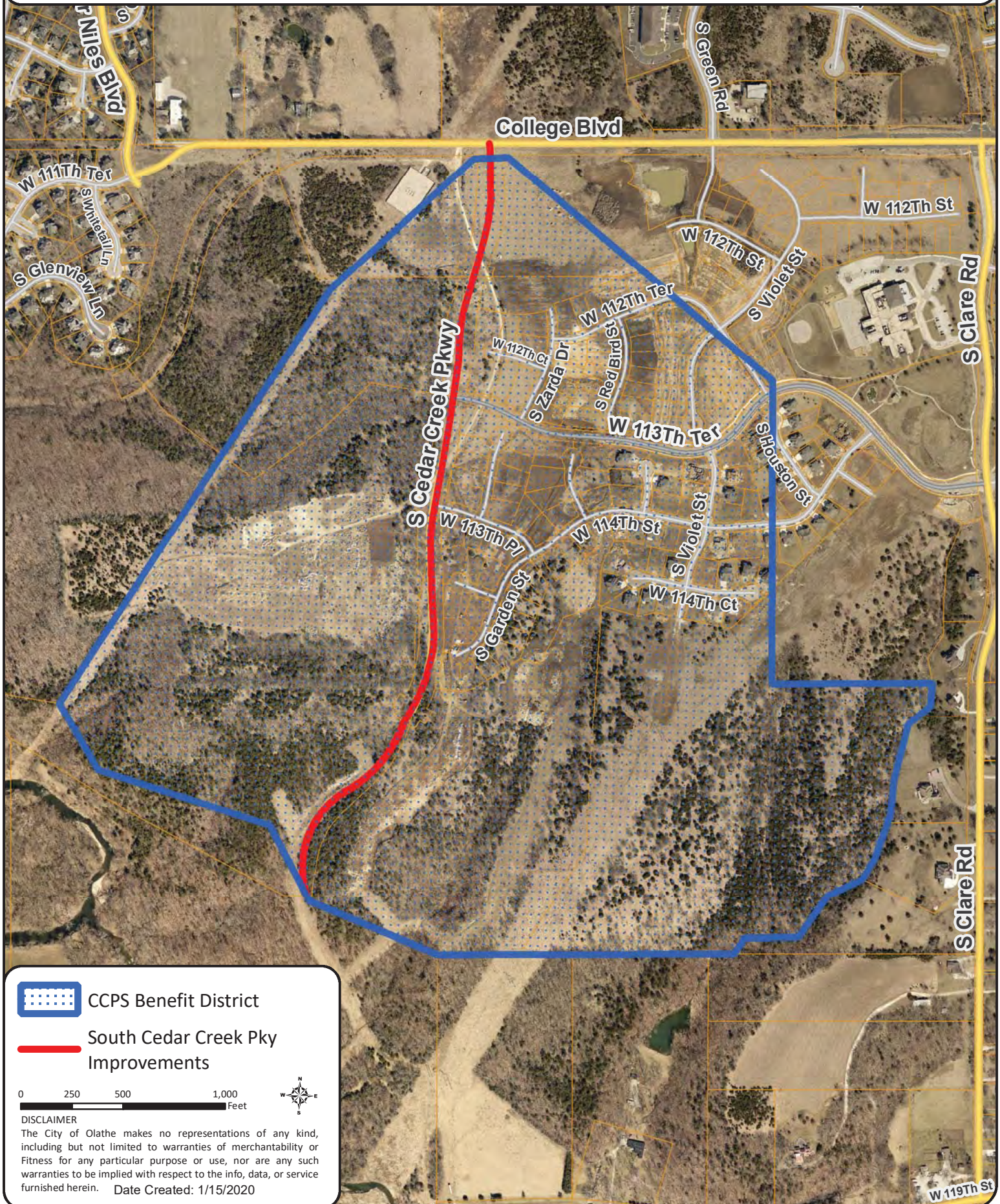
- A. Project Location Map
- B. Project Fact Sheet
- C. Professional Services Agreement



## Cedar Creek Pkwy, South of College Blvd, Benefit District Project

PN 3-B-027-19

## Project Location Map



CCPS Benefit District

South Cedar Creek Pky  
Improvements

0 250 500 1,000  
Feet



## DISCLAIMER

The City of Olathe makes no representations of any kind, including but not limited to warranties of merchantability or Fitness for any particular purpose or use, nor are any such warranties to be implied with respect to the info, data, or service furnished herein. Date Created: 1/15/2020





**Project Fact Sheet**  
**Cedar Creek Parkway, South of College,**  
**Benefit District Project**  
**3-B-027-19**  
**May 19, 2020**

Attachment B

**Project Manager:** Beth Wright / Matthew Kapfer

**Description:** This project will design and construct Cedar Creek Parkway from College Boulevard south approximately 3,750 feet. Improvements will include right of way grading and clearing, curb and gutter, pavement, sidewalk, sidepath, storm sewer, watermain, landscaping, and streetlights.

**Justification:** This project is needed to serve the residential developments south of College Boulevard.

**Comments:** The Benefit District will fund 100% of the cost with zero cost to the city-at-large.

<b>Schedule:</b>	<b>Item</b>	<b>Date</b>
Design:	Consultant Selection	05/19/2020
Utility Relocation:		Fall 2020 – Estimated
Construction:	Bid Award	Fall 2020 – Estimated
	Completion	Fall 2021 – Estimated
<b>Council Actions:</b>	<b>Date</b>	<b>Amount</b>
Benefit District Approval	01/21/2020	\$9,395,108.94
Public Hearing / Special Assessment Ordinance	02/18/2020	\$9,395,108.94
Professional Service Agreement	05/19/2020	\$227,110
Utility Relocation and Reimbursement Agreements		
Accept Bid/Award Contract		
<b>Funding Sources:</b>	<b>Amount</b>	<b>CIP Year</b>
Benefit District (GO Bonds)	\$9,395,108.94	2022
<b>Expenditures:</b>	<b>Budget</b>	<b>Amount to Date</b>
Design	\$ 250,000.00	\$ 0
Staff	\$ 150,000.00	\$ 0
Inspection	\$ 150,000.00	\$ 0
Utilities	\$ 350,000.00	\$ 0
Construction	\$6,950,000.00	\$ 0
Other Project Costs	\$ 95,463.30	\$65
Finance Costs	\$ 549,645.64	\$ 0
<u>Contingency</u>	<u>\$ 900,000.00</u>	<u>\$ 0</u>
<b>Total</b>	<b>\$9,395,108.94</b>	<b>\$65</b>

## **PROFESSIONAL SERVICES AGREEMENT**

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

City intends to construct an improvement project (hereinafter called the "Project") in Olathe, Kansas, described as follows:

### **CEDAR CREEK PARKWAY SOUTH OF COLLEGE BOULEVARD** **Project No. 3-B-027-19**

The Project is more fully described in **Exhibit A** (attached hereto and incorporated herein by reference).

By executing this Agreement, Consultant represents to City that Consultant is professionally qualified to perform services on this Project and is licensed to practice engineering, landscape architecture, and land surveying by all public entities having jurisdiction over Consultant and the Project.

### **SECTION I - DEFINITIONS**

As used in this Agreement, the following terms will have the following meanings unless otherwise stated or reasonably required by the Agreement, and other forms of any defined words will have a meaning parallel thereto. All terms defined in the most recent version of the Engineers Joint Contract Documents Committee (EJCDC) Standard General Conditions of the Construction Contract (the "General Conditions") adopted by City will have the same meaning when used in this Agreement unless otherwise specifically stated or in the case of a conflict in which case the definition used in this Agreement will prevail in the interpretation of this Agreement.

**"Additional Services"** means services in addition to those listed in **Exhibit B**.

**"City"** means the City of Olathe, Kansas, a municipal corporation duly organized under the laws of the State of Kansas, its employees, appointees, and officers.

**"Consultant"** means the company or individual identified above, herein, and its affiliates, subsidiaries, employees, agents, and assigns.

**"Construction Cost"** means and includes but is not limited to the cost of the entire construction of the Project, including all supervision, materials, supplies, labor, tools, equipment, transportation and/or other facilities furnished, used or consumed in connection with the Project, without deduction on account of penalties, liquidated damages or other

amounts withheld from payment to a construction contractor or contractors, but such cost will not include Consultant's fee, or any other payments to Consultant as set forth herein, and will not include cost of land or rights-of-way and easement acquisition.

"Contract Documents" means those documents so identified in the Agreement for Construction of this Project including all Consultant Documents.

"Consultant Documents" means all documents required or reasonably implied by the nature of the scope of services to be performed by Consultant hereunder, including, but not limited to, plans, specifications, drawings, tracings, designs, calculations, sketches, models and reports.

"Professional Services" means the professional services, labor, materials, supplies, testing, surveying, title work, inspection, if applicable, and all other acts, duties, and services required of Consultant under this Agreement including any Additional Services.

"Project" is as above described.

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

"Right-of-Way" and "Easements" means and includes the public street, highway, or road right-of-way and any other land dedicated to or otherwise subject to public use.

"Subsurface Borings and Testing" means borings, probings and subsurface explorations, laboratory tests and inspections of samples, materials and equipment; appropriate professional interpretations of all the foregoing.

"Traffic Control Plan" means a specific plan that includes but is not limited to signing; application and removal of pavement markings; construction sequencing and scheduling; methods and devices for delineation and channelization; placement and maintenance of devices; traffic regulation; and inspection made in accordance with the City's technical specifications.

## **SECTION II - COMPENSATION**

### **A. FEES & EXPENSES**

1. Total Fee: City agrees to pay Consultant an amount not to exceed Two Hundred Twenty Seven Thousand One Hundred Ten (\$227,110), including reimbursable expenses as described herein. The fee is based on the performance of the scope of services outlined in this Agreement, including **Exhibit B** attached hereto and incorporated by reference, and will be billed by Consultant using hourly rates and equipment charges as set forth in



**Exhibit C** attached hereto and incorporated by reference, plus reimbursable expenses as set forth below. All bills will be submitted to City monthly as provided herein.

2. Reimbursable Expenses: Consultant will be reimbursed at the actual cost, not to exceed a total expense of (Eleven Thousand Five Hundred) (\$11,500) for the following expenses related only to the Project: (a) expense of transportation in connection with the Project; (b) expenses in connection with authorized out-of-town travel; (c) long-distance communications; (d) expenses of printing and reproductions; (e) postage and facsimile transmissions; (f) expenses of renderings and models requested by City, and (g) other costs as authorized by City in writing as set forth herein.

**B. SERVICES BEYOND THE SCOPE OF SERVICES**

1. Change in Scope: For substantial modifications in authorized Project scope, substantial modifications of drawings, or substantial modifications to specifications previously accepted by City, when requested by City and through no fault of Consultant, Consultant will be compensated for time and expense required to incorporate such modifications at Consultant's standard hourly rates per **Exhibit C**; provided, however, that any increase in fee or extension of time for Consultant to complete the services must be approved by City in writing. Consultant will correct or revise any errors or deficiencies in its designs, drawings or specifications without additional compensation when due to Consultant's negligence or other actionable fault.
2. Additional Services: Consultant will provide Additional Services authorized by a supplemental agreement executed in writing by the Parties. Prior to commencing any Additional Services, Consultant must submit a proposal outlining the Additional Services to be provided, estimation of total hours, completion date, and a maximum fee based upon the hourly rate schedule attached hereto as **Exhibit C**. Such Additional Services may include, but are not limited to, making computations and determinations of special assessments, making special trips requested by City other than those required by Section III, preparing changes in plans ordered by City or made necessary by causes beyond the control of Consultant, providing services necessitated in the event the Professional Services are suspended or abandoned, if such suspension or abandonment is not the result of a breach of this Agreement by Consultant, and providing any other special services not otherwise covered by this Agreement which may be requested by City to complete the Project. Payment to Consultant as compensation for Additional Services will be in accordance with the hourly rate schedule attached as **Exhibit C**.
3. Special Services: Consultant may be called on to serve as a consultant or witness in any litigation, arbitration, legal or administrative proceeding arising out of this Project. If Consultant is requested, in writing, by City, to appear as a witness, it will be paid its hourly fee as reflected on the hourly rate schedule attached hereto as **Exhibit C**. Consultant will not be paid extra by City if Consultant's appearance is to defend its

Professional Services.

**C. BILLING & PAYMENT**

1. Billing: Consultant may bill City monthly for completed Professional Services, including reimbursable expenses. The bill submitted by Consultant must itemize the Professional Services and reimbursable expenses for which payment is requested. City agrees to pay Consultant within thirty (30) days of approval by the Governing Body or other agent of City in accordance with the City's Procurement Policy.
2. City's Right to Withhold Payment: In the event City becomes credibly informed that any representations of Consultant provided in its monthly billing are wholly or partially inaccurate, City may withhold payment of sums then or in the future otherwise due to Consultant until the inaccuracy and the cause thereof is corrected to City's reasonable satisfaction. In the event City questions some element of an invoice, that fact will be made known to Consultant immediately. Consultant will help effect resolution and transmit a revised invoice, if necessary. Amounts not questioned by City will be paid to Consultant in accordance with the contract payment procedures.
3. Progress Reports: A progress report must be submitted with each monthly pay request indicating the percentage of Professional Services completed to date. This report will serve as support for payment to Consultant.

**D. SCHEDULE**

All services must be completed on or before December 31, 2021.

**SECTION III - RESPONSIBILITIES OF CONSULTANT**

Consultant will perform the Professional Services in all phases of the Project to which this Agreement applies as herein provided and which are required for the construction of the Project as described below:

**A. PRELIMINARY DESIGN PHASE**

1. Services: The Professional Services to be provided during this phase are set out in **Exhibits B and D**, attached hereto and incorporated by reference.
2. Preliminary Design Documents: Consultant will furnish City copies of the above preliminary design documents per the City of Olathe Technical Specifications and Design Criteria for Public Improvements, unless otherwise noted in **Exhibit B**.
3. Preliminary Cost Estimate: Consultant will furnish City an estimate of probable

Construction Cost based on the preliminary design and at subsequent design review submittals as specifically requested by City. Consultant's estimate of probable Construction Cost is to be made based on Consultant's experience and qualifications and represent Consultant's best judgment as an experienced and qualified design professional, familiar with the construction industry.

4. Budget: Consultant will immediately advise City if, in its opinion, the amount budgeted for construction is not sufficient to adequately design and construct the improvement as requested.
5. Permits and Right-of-Way:  
These services will include preparation of plans, exhibits and applications required for securing approvals, licenses, or permits from governmental or corporate agencies or authorities. Consultant will provide City with executed documents for any right-of-way or easements necessary for the construction of the improvement, unless eminent domain proceedings are required to secure any necessary right-of-way or easements. Consultant will comply with the conditions set out in the Land Acquisition Checklist for Consultant Projects as in **Exhibit D**. If City will be responsible for acquiring the necessary Right-of-Way or easements, a survey of the areas needed, title report (with last deed), and other necessary information will be provided with two copies of the preliminary construction plans to City. It is recognized that such information cannot be provided for some tracts until the completion of the final construction plans.

**B. FINAL DESIGN PHASE**

1. Services: The Professional Services to be provided during this phase are set out in **Exhibit B** attached hereto and incorporated by reference.
2. Final Design Documents: Consultant will furnish City copies of the final design plans per the City of Olathe Technical Specifications and Design Criteria for Public Improvements unless otherwise noted in **Exhibit B**.
3. Contract Documents: Consultant will prepare for City all Project contract agreement forms, final design plans, general conditions and supplementary conditions, bid forms, invitations to bid and instructions to bidders, and assist in the preparation of other related documents requested by City, unless such documents are provided by City.
4. Final Cost Estimate: Consultant will furnish City an estimate of probable Construction Cost based on final design. This estimate is commonly known as the "Engineer's Estimate" and will be used as the basis for construction contract award. The Engineer's Estimate must be sealed and provided by a professional engineer licensed by the State of Kansas. Since Consultant has no control over the cost of labor, materials, or equipment furnished by others not under contract to Consultant, or over the resources



provided by others not under contract to Consultant to meet Project schedules, Consultant's opinion of probable costs and of Project schedules for construction may be made based on experience and qualifications as a professional engineer. Consultant does not guarantee that proposals, bids, or actual Project costs will not vary from Consultant's opinions of probable cost or that actual schedules will not vary from Consultant's projected schedules.

5. Budget: Consultant will immediately advise City if, in its opinion, the amount budgeted for the Project is not sufficient to cover all Project costs, including but not limited to, construction, right-of-way and easement acquisition, inspection, and testing.

#### **C. BIDDING PHASE**

1. Services: The Professional Services to be provided during this phase are set out in **Exhibit B**, attached hereto and incorporated by reference.
2. Bids Exceeding Cost Estimate: If all bids exceed Consultant's Final Cost Estimate, Consultant, at the request of City and for no additional cost, will prepare a report for City identifying why all the bids exceed the estimate. City has four (4) options if all bids exceed Consultant's estimate. City may: (1) give written approval of an increase in the Project cost up to a maximum of 7% above the authorized total; (2) authorize rebidding of the Project; (3) terminate the Project and this Agreement; or (4) cooperate in revising the Project scope or specifications, or both, as necessary to reduce the construction cost.

#### **D. CONSTRUCTION PHASE**

1. In-House Administration and Inspection: It is understood that City will provide full-time, in-house administration and inspection of the construction Project and the work of the construction contractor at City's expense, unless otherwise agreed upon in writing by the Parties. Consultant will assist City by providing general administration and inspection of the work of the construction contractor as requested by City by conducting periodic inspections of the construction contractor's work during construction and will assist City in a final inspection of the construction Project after completion of the work by the construction contractor. Consultant will also check shop drawings and assist City in making interpretation of plans and specifications and reviewing pay estimates for making payments to the construction contractor.
2. Services: The Professional Services provided during this phase are set out in **Exhibit B**, both attached hereto and incorporated by reference.
3. Additional Drawings: If during construction, situations arise which require additional drawings or details, Consultant agrees to provide such additional drawings or details at

no cost to City when the additional drawings or details are required to correct Consultant's errors or omissions or clarify Consultant's intent in the original design and preparation of construction drawings. If such situations occur through no fault of Consultant, or are beyond Consultant's control, both Parties agree to negotiate an equitable payment to Consultant for Consultant's Professional Services rendered, which will be accomplished through a Change Order.

4. Staking: Unless otherwise provided, staking must be included in the bid specifications to be performed by the construction contractor.
5. Notice of Defects: If, based on Consultant's involvement during the construction phase, Consultant observes or otherwise becomes aware of any defect in the work, Consultant will give prompt written notice to City of such defects and their approximate location on the Project. However, Consultant will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions, inspections and programs in connection with the work, since these are solely the construction contractor's responsibility under the contract for construction to be entered into with City. Consultant will not be responsible for the construction contractor's schedules or failure to carry out the work in accordance with the Contract Documents. Consultant will not have control over or charge of acts or omissions of any construction contractor, any of a construction contractor's subcontractors, or any of the agents or employees of a construction contractor selected by City to construct the Project.
6. Shop Drawings: Consultant will review and take appropriate action on the chosen construction contractor's shop drawings and samples, and the results of tests and inspections and other data which each construction contractor is required to submit for the purposes of reviewing for compliance with the design concept and conformance with the requirements of the Contract Documents and the City of Olathe Technical Specifications and Design Criteria for Public Improvements.

#### **E. GENERAL DUTIES AND RESPONSIBILITIES**

1. Personnel: Consultant will assign only qualified personnel to perform any service concerning the Project as identified in Consultant's response to the Request for Proposals. At the time of execution of this Agreement, the Parties anticipate that the following individual will perform as the principal on this Project: David A. Rinne. As principal on this Project, this person will be the primary contact with the City's Project Manager and will have authority to bind Consultant. So long as the individual named above remains actively employed or retained by Consultant, such individual will perform the function of principal on this Project. For the Professional Services rendered hereunder, Consultant, and any of its subcontractors, will employ engineers, architects, landscape architects, and surveyors licensed by the Kansas State Board of Technical

Professions.

2. Subsurface Borings & Material Testing: If tests, are required for design, Consultant will prepare specifications for the taking of the additional borings. Such subsurface borings and testing, as defined herein, will be provided by the City's contracted testing consultant or its subcontractors.
3. Service By and Payment to Others: Any services authorized in writing by City and performed by any party other than Consultant or its subcontractors (a "Third Party") in connection with the proposed Project will be contracted for and paid for by City. In addition to payments for the Third Party's professional services, this may also include necessary permits, licenses, ownership certifications, materials testing, advertising costs, and other special tests or other services required or requested by City or Consultant which are not defined within the scope of services of Consultant as set forth herein. Fees for such extra services will be subject to negotiation between City and the Third Party. Fees will be approved by City in writing prior to the execution of any extra services. Although Consultant may assist City in procuring such services of Third Parties, Consultant will in no way be liable to either City or such Third Parties in any manner whatsoever for such services or for payment thereof.
4. Subcontracting or Assignment of Services: Consultant may not subcontract or assign any of the Professional Services to be performed under this Agreement without first obtaining the written approval of City. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge Consultant from any obligation under this Agreement. Any person or firm proposed for subcontracting Professional Services under this Agreement will maintain throughout the duration of the Agreement, insurance as provided in Section V.D.2. herein, and will additionally maintain Professional Liability insurance in a minimum amount of \$1,000,000 per claim and in the aggregate and provide City with an insurance certificate showing the insurance limits provided by Consultant's subconsultant. Any services completed by a City-approved subcontractor of Consultant pursuant to this Agreement may not be increased more than ten percent (10%) over the actual cost of the services.
5. Endorsement: Consultant must sign and seal all final plans, specifications, estimates and engineering data furnished by Consultant. Any review or approval by City of any documents prepared by Consultant, including but not limited to the plans and specifications, will be solely for determining whether such documents are consistent with the City of Olathe Technical Specifications and Design Criteria for Public Improvements and may not be construed as City assuming responsibility for the accuracy, adequacy, fitness, suitability and coordination of Consultant's services and deliverables. No review of such documents will relieve Consultant of its responsibility for the accuracy, adequacy, fitness, suitability and coordination of its services and deliverables.



6. Inspection of Documents: Consultant must maintain all Project records for inspection by City at reasonable times and places upon written request during the contract period and for three (3) years from the date of final payment.
7. Standard of Care: Consultant will exercise the same degree of care, skill, and diligence in the performance of the Professional Services as is ordinarily possessed and exercised by a professional engineer under similar circumstances. If Consultant fails to meet the foregoing standard, Consultant will perform at its own cost, and without reimbursement from City, the Professional Services necessary to correct errors and omissions which are caused by Consultant's negligence.

#### **SECTION IV - CITY OF OLATHE'S RESPONSIBILITIES**

##### **A. COMMUNICATION**

City will provide to Consultant information and criteria regarding City's requirements for the Project; examine and timely respond to Consultant's submissions; and give written notice to Consultant, who will respond promptly, whenever City observes or otherwise becomes aware of any defect in the Professional Services.

##### **B. ACCESS**

City will provide access for Consultant to enter public and private property related to the Project and performance of Consultant's obligations under this Agreement.

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

City will perform the various duties and services in all phases of the Project which are outlined and designated in **Exhibit B** as City's responsibility.

##### **D. PROGRAM AND BUDGET**

City will provide all relevant information reasonably required for Consultant to perform its obligations herein, including but not limited to City's objectives, schedule, constraints, budget with reasonable contingencies, and other necessary design criteria for the Project.

##### **E. ADMINISTRATIVE SERVICES**

City will furnish all City-related legal, accounting, insurance and audit services as may be necessary at any time for completion of the Project. However, in no event will any City-related legal, accounting, insurance and or audit services be provided on behalf of Consultant, nor will Consultant serve any other role than as an independent contractor of City.

**F. BOND FORMS**

City will furnish all bond forms required for the Project.

**G. PROJECT REPRESENTATIVE**

City will designate a Project Manager to represent City in coordinating this Project with Consultant. The City's Project Manager will have the authority to transmit instructions and decisions of City.

**SECTION V - GENERAL PROVISIONS**

**A. TERMINATION**

1. Notice: City reserves the right to terminate this Agreement for either cause (due to Consultant's failure to substantially perform its obligations hereunder) or for its convenience and without cause or default on the part of Consultant, by providing fifteen (15) days' written notice of such termination to Consultant. Upon receipt of such notice from City, Consultant will, at City's option as contained in the notice: (1) immediately cease all Professional Services; or (2) meet with City and, subject to City's approval, determine what Professional Services will be required of Consultant in order to bring the Project to a reasonable termination in accordance with the request of City. Consultant will also provide to City copies of all drawings and documents completed or partially completed at the date of termination for which Consultant has been fully paid. If City defaults on its obligations under this Agreement, (due to City's failure to substantially perform its obligations under this Agreement), Consultant must notify City by written notice of its intent to terminate and City will have fifteen (15) days from the date of the notice to cure or to submit a plan for cure acceptable to Consultant. In no event may Consultant terminate the contract solely for its convenience without cause.

Address for Notice:

City of Olathe  
Attn: Matt Kapfer  
100 E. Santa Fe  
P.O. Box 768  
Olathe, KS 66051-0768

SCHLAGEL & ASSOCIATES, P.A.  
Attn: David A. Rinne, PS, President  
14920 W. 107<sup>th</sup> Street  
Lenexa, KS 66215

2. Compensation for Convenience Termination: If City terminates for its convenience as provided herein, City will compensate Consultant for all Professional Services completed and accepted and reimbursable expenses incurred to the date of its receipt of the termination notice and any additional Professional Services and reimbursable expenses

requested by City to bring the Project to reasonable termination. Compensation will not include anticipatory profit or consequential damages, neither of which will be allowed.

3. Compensation for Cause Termination: If City terminates for cause or default on the part of Consultant, City will compensate Consultant for the reasonable cost of Professional Services and reimbursable expenses completed and accepted to date of its receipt of the termination notice. Compensation will not include anticipatory profit or consequential damages, neither of which will be allowed. City also retains all its rights and remedies against Consultant including but not limited to its rights to sue for damages, interest and attorney fees.
4. Incomplete Documents: Neither Consultant nor its subcontractors will be responsible for errors or omissions in documents which are incomplete because of an early termination under this Section, or Consultant having been deprived of the opportunity to complete such documents and prepare them to be ready for construction.
5. Termination for Lack of Funds: If, for whatever reason, adequate funding is not made available to City to support or justify continuation of the level of Professional Services to be provided by Consultant under this Agreement, City may terminate or reduce the amount of Professional Services to be provided by Consultant under this Agreement. In such event, City will notify Consultant in writing at least thirty (30) days in advance of such termination or reduction of Professional Services for lack of funds.

## **B. DISPUTE RESOLUTION**

City and Consultant agree that disputes relative to the Project will first be addressed by negotiations between the Parties. If direct negotiations fail to resolve the dispute, the Party initiating the claim that is the basis for the dispute may take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute, Consultant will proceed with the Professional Services as per this Agreement as if no dispute existed, and City will continue to make payment for Consultant's completed Professional Services; and provided further that no dispute will be submitted to arbitration without both Parties' express written consent.

## **C. OWNERSHIP OF CONSULTANT DOCUMENTS**

Consultant will provide City a copy of all final Consultant Documents, including but not limited to prints, reproductions, reports, plans, specifications and related documents, which will become the property of City, if Consultant's copyrighted instruments will remain in the ownership of Consultant if Consultant, at Consultant's sole discretion, may so identify them by appropriate markings. If Consultant is paid in full for its Professional Services, then City may subsequently reuse these final documents without any additional compensation or agreement of Consultant. However, such reuse without written verification or adaptation by Consultant



for the specific purpose intended by City will be at City's sole risk and without liability or legal exposure to Consultant. City does not take any responsibility for the reuse of documents by others.

#### **D. INSURANCE**

1. General: Consultant will maintain, throughout the duration of this Agreement, insurance (on an occurrence basis unless otherwise agreed to) of such types and in such amounts as required in **Exhibit E (City of Olathe Insurance Requirements)**. Professional Liability may be written on a "claims made" basis. Consultant will provide certificates of insurance and renewals thereof on forms acceptable to City (**Exhibit F – Certificate of Insurance**). Consultant is required to promptly notify City of a material change or cancellation of any policy listed on the Certificate.
2. Subcontractor's Insurance: If a part of the Professional Services under this Agreement is to be sublet, Consultant will either (a) cover all subcontractors in its insurance policies, or (b) require each subcontractor not so covered to secure insurance which will protect subcontractor against all applicable hazards or risks of loss in the minimum amounts designated herein. If Consultant selects option (b), then Consultant agrees to provide the City's Risk Manager a certificate of insurance acceptable to the Risk Manager at least seven (7) days prior to allowing the subcontractor to perform any services on this Project. Consultant agrees that any subcontractor providing services on said Project without providing a certificate of insurance acceptable to the City's Risk Manager will immediately cease all services on said Project and will assume all financial risk associated with such failure thereto.

#### **E. INDEMNITY**

1. Loss: For purposes of indemnification requirements, the term "Loss" means any and all loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including reasonable attorney's fees and the cost of defense), in connection with any action, proceeding, demand or claim for injury, including death, to any person or persons or damages to or loss of, or loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with the performance of this Agreement.
2. Indemnification and Hold Harmless: For purposes of this Agreement, Consultant agrees to indemnify, defend and hold harmless City and its agents from any and all Loss where Loss is caused or incurred as a result of the intentional misconduct, recklessness, negligence, or other actionable fault of Consultant or its subcontractors.
3. Comparative Fault & Contributory Negligence: It is a specific element of consideration of this Agreement that the indemnity in Section V.E.2 will apply notwithstanding the

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

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

**F. AFFIRMATIVE ACTION/OTHER LAWS**

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

subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

2. Exceptions to Applicability: The provisions of this Section will not apply to a contract entered into by City with Consultant if (a) Consultant employs fewer than four (4) employees during the term of such contract; or (b) Consultant's contract with City totals Ten Thousand Dollars (\$10,000) or less in aggregate.
3. Kansas Age Discrimination in Employment Act: Consultant further agrees and acknowledges that it will abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this Project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.
4. Kansas Fairness in Public Construction Contract Act: The Parties agree and acknowledge that the services provided under this Agreement are within the scope of the Kansas Fairness in Public Construction Contract Act (K.S.A. 16-1901 et seq.) and that no provision of this Agreement waives, alters, or supersedes any provisions of said Act.

#### **G. ENTIRE AGREEMENT**

This Agreement, including all documents and exhibits included by reference herein, constitutes the entire Agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both Parties to this Agreement.

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

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

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

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

#### **J. INDEPENDENT CONTRACTOR**

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



**K. DELIVERABLES**

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

**L. COVENANT AGAINST CONTINGENT FEES**

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

**M. COMPLIANCE WITH LAWS**

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

business in the State of Kansas with this Agreement (**Exhibit G**).

**N. TITLES, SUBHEADS AND CAPITALIZATION**

Titles and subheadings as used herein are provided only as a matter of convenience and will have no legal bearing on the interpretation of any provision of this Agreement. Some terms are capitalized throughout this Agreement but the use of or failure to use capitals has no legal bearing on the interpretation of such terms.

**O. SEVERABILITY CLAUSE**

If any provision of this Agreement is determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) will be null and void; provided, however, that the remaining provisions of this Agreement will be unaffected and will continue to be valid and enforceable.

**P. AMBIGUITY CLAUSE AND HIERARCHY OF INTERPRETATION**

If any ambiguity, inconsistency or conflict arises in the interpretation of this Agreement, the same will be resolved by reference first to the terms and conditions of this Agreement, and any exhibits attached hereto or incorporated by reference as noted below. In the event of any conflict or inconsistency between this Agreement and its exhibits, the following hierarchy of interpretation will apply:

1. This Agreement;
2. Scope of Services (Exhibit B);
3. City's Request for Proposals/Request for Qualifications (incorporated by reference);
4. Consultant's Response to RFP/RFQ (incorporated by reference).

***[The remainder of this page is intentionally left blank***

**R. EXECUTION OF CONTRACT**

The parties hereto have caused this Agreement to be executed this \_\_\_\_ day of \_\_\_\_\_, 2020.

**CITY OF OLATHE, KANSAS**

By: \_\_\_\_\_  
Michael E. Copeland, Mayor

ATTEST:

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

(Seal)

APPROVED AS TO FORM:

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

SCHLAGEL & ASSOCIATES, P.A. ....

By: David A. Rinne

\_\_\_\_\_  
David A. Rinne, PS, President

14920 W. 107<sup>th</sup> Street, Lenexa, KS 66215



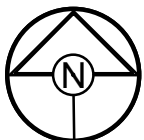
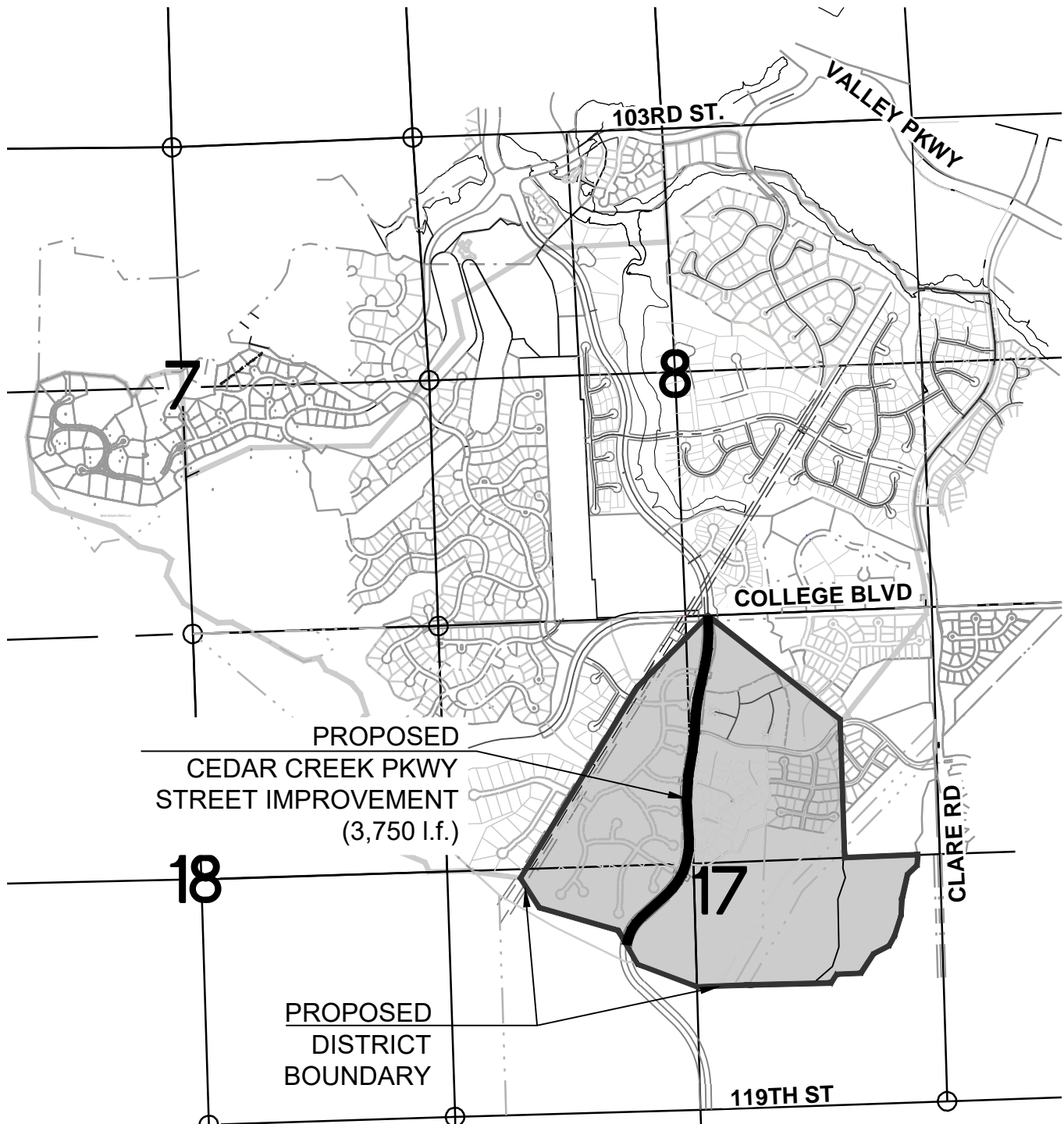
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OF EXHIBITS**

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

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

# EXHIBIT "A"

## CEDAR CREEK PARKWAY SOUTH



DRAWN BY:	JWT
CHECKED BY:	DR
DATE:	11-22-2019
PROJECT NO:	17-046
SCALE:	Not to Scale
SHEET	1 OF 1



**SCHLAGEL & ASSOCIATES, P.A.**

Engineers • Planners • Surveyors • Landscape Architects  
 14920 West 107th Street • Lenexa, Kansas 66215  
[www.schlagelassociates.com](http://www.schlagelassociates.com) • (913) 492-5158 • Fax: (913) 492-8400  
 Kansas State Certificates of Authority  
 #E-296 #LA-29 #LS-54

CC PKWY BENEFIT DISTRICT EXHIBIT



**EXHIBIT B**  
**Scope of Services**

## EXHIBIT B

### DETAILED SCOPE OF SERVICES

#### **Task Series 1.0 – Project Management**

##### **1.1 – Project Definition and Goals (Schedule, Scope, Budget, etc.)**

One (1) meeting will be held at the onset of the project, prior to plan preparation, to discuss the scope, budget and schedule, landscaping and overall geometric goals of the project. This meeting will define the parameters for the horizontal geometric layout. One (1) meeting will be held to ensure the horizontal expectations of the OWNER are satisfied.

##### **1.2 – Progress Meetings and Project Updates**

Five (5) progress meetings will be coordinated with the OWNER by the ENGINEER at five milestones of the project. The milestones include preliminary plan and profile definition prior to plan completion (shall include applicable utility companies), review meeting to discuss the preliminary plans, 2 review meetings to discuss city redline comments and a final meeting to coordinate the bidding and construction phase of the project.

Additionally, the ENGINEER will provide bi-monthly project updates via email to document the progress of the project. The updates will occur on the 1<sup>st</sup> and 15<sup>th</sup> of each month and will provide updates for the work completed, schedule and budget.

##### **1.3 – Project Coordination**

The ENGINEER will field questions from OWNER, utility companies, permitting entities, engineering sub-contractors and other entities associated with the project as directed by the OWNER. The Engineer will also coordinate as necessary with utility companies during design regarding their existing facilities and any relocations that may be required.

##### **1.4 – Coordination with Homes Association**

The ENGINEER will coordinate with and answer questions from HOA.

#### **Task Series 2.0 – Data Collection**

##### **2.1 – Boundary and Alignment Definition**

ENGINEER will locate property corners, section corners and benchmarks as required establishing a horizontal and vertical control network for the project. The ENGINEER will maintain the control network throughout the project and provide the control network data in hardcopy format to the contractor for construction staking as required.

##### **2.2 – Topographic Survey**

The ENGINEER will perform a topographic survey of the extents of the project including, cross sections at every half-station and intersecting roads and driveways. The cross sections will define the locations of utilities, existing culverts, fences, trees, pavement and other topographic feature required to define the existing topography of the project extents.

The ENGINEER will coordinate and meet the utility locating services in the field to define the location of the utilities. If the topographic features are changed during the course of the project, an additional fee will be negotiated to collect the updated features.

**2.3 – Obtain Parcel Ownership Data**

The ENGINEER will obtain the parcel ownership data adjacent to the limits of the project and input this data into the base sheets. The ENGINEER will subcontract a title company to obtain the ownership and encumbrance data. The cost of the title work will be a reimbursable expense and will be the actual cost incurred from the title company plus 10% to cover coordination costs and profit.

**Task Series 4.0 – Preparation of Preliminary Plans and Specifications**

**4.1 – Quality Control and Assurance**

The ENGINEER will provide full time quality assurance through its senior team members. Once the horizontal and draft vertical alignments are established an internal project review meeting will be held to determine if the proposed design is efficient and meets the OWNER's goals for the project. At the completion of the plans a senior team member will review the plans for correct project notes, grammatical and drafting errors.

**4.2 – Street Plan and Profile**

The ENGINEER will prepare street plan and profile plans conforming to the OWNER's specifications. Variations from the OWNER's standards will be discussed and approved prior to plan submittal. Preliminary Study will extend to 119<sup>th</sup> Street.

**4.3 – Storm Sewer and Stormwater Management Plans**

The ENGINEER will prepare storm sewer plan and profile plans that conform to the OWNER's specifications. Variations from the OWNER's standards will be discussed and approved prior to plan submittal.

**4.4 – Street Lights**

The ENGINEER will prepare street light plans conforming to the OWNER's specifications. Variations from the OWNER's standards will be discussed and approved prior to plan submittal.

**4.5 – Water Lines**

The ENGINEER will prepare water line plans and profile plans conforming to the OWNER's specifications. Variations from the OWNER's standards will be discussed and approved prior to plan submittal.

**4.6 – Intersection Details**

The ENGINEER will prepare intersection detail sheets conforming to the OWNER's specifications.

**4.7 – Cross Sections**

The ENGINEER will prepare cross sections conforming to the OWNER's specifications. Variations from the OWNER's standards will be discussed and approved prior to plan submittal.

**4.8 – Erosion Control**



The ENGINEER will prepare erosion control plans conforming to the OWNER's and regulatory agency specifications. Variations from the standards will be discussed and approved prior to plan submittal.

**4.9 – Landscape Plans**

The LANDSCAPE ARCHITECT will prepare landscape plans conforming to the OWNER's and regulatory agency specifications. Particular attention will be given to the unique environment which will exist within the water quality basin.

**4.10 – Signing & Striping**

The ENGINEER will prepare signing and striping plans conforming to the OWNER's specifications. Variations from the OWNER's standards will be discussed and approved prior to plan submittal.

**4.11 – Standard Details, Special Details and Structural Details**

The ENGINEER will prepare standard details, special details and structural details, if necessary, which conform to the OWNER's specifications. Variations from the OWNER's standards will be discussed and approved prior to plan submittal.

**4.12 – Permitting**

The ENGINEER will, on the OWNER's behalf, prepare applications for permits required to complete the project including NPDES (includes preparation of SWPPP), coordination regarding cultural and natural resources, coordination with the Kansas Department of Wildlife and Parks and the Kansas Historical Society. If the permitting agencies require additional plans, exhibits, or effort beyond the standard permit, the ENGINEER will notify OWNER and an additional fee will be negotiated.

**Task Series 5.0 – Preparation of Final Plans**

**5.1 – Quality Control and Assurance**

The ENGINEER will provide full time quality assurance through its senior team members. At the completion of the plans a senior team member will review the plans for correct project notes, grammatical and drafting errors.

**5.2 – Street Plan and Profile**

The ENGINEER will incorporate OWNER's comments and prepare street plan and profile plans conforming to the OWNER's specifications. Variations from the OWNER's standards will be discussed and approved prior to plan submittal.

**5.3 – Storm Sewer and Stormwater Management Plans**

The ENGINEER will incorporate OWNER's comments and prepare storm sewer plan and profile plans and water quality basin plans conforming to the OWNER's specifications. Variations from the OWNER's standards will be discussed and approved prior to plan submittal.

**5.4 – Street Lights**

The ENGINEER will incorporate OWNER's comments and prepare street light plans conforming to the OWNER's specifications. Variations from the OWNER's standards will be discussed and approved prior to plan submittal.

**5.5 – Water Lines**

The ENGINEER will incorporate OWNER's comments and prepare water line plans and profile plans conforming to the OWNER's specifications. Variations

from the OWNER's standards will be discussed and approved prior to plan submittal.

**5.6 – Intersection Details**

The project as proposed will not include any intersections of public streets and therefore this item will not be necessary.

**5.7 – Cross Sections**

The ENGINEER will incorporate OWNER's comments and prepare cross sections conforming to the OWNER's specifications. Variations from the OWNER's standards will be discussed and approved prior to plan submittal.

**5.8 – Erosion Control**

The ENGINEER will incorporate OWNER's comments and prepare erosion control plans conforming to the OWNER's and regulatory agency specifications. Variations from the OWNER's standards will be discussed and approved prior to plan submittal.

**5.9 – Landscape Plans**

The LANDSCAPE ARCHITECT will incorporate OWNER's comments and prepare landscape plans conforming to the OWNER's and regulatory agency requirements. Variations from the OWNER's standards will be discussed and approved prior to plan submittal.

**5.10 – Signing & Striping**

The ENGINEER will incorporate OWNER's comments and prepare signing and striping plans conforming to the OWNER's specifications. Variations from the OWNER's standards will be discussed and approved prior to plan submittal.

**5.11 – Standard Details, Special Details and Structural Details**

The ENGINEER will incorporate OWNER's comments and prepare standard details, special details and structural details as needed, which conform to the OWNER's specifications. Variations from the OWNER's standards will be discussed and approved prior to plan submittal.

**5.12 – Contract Documents**

The ENGINEER will prepare contract document conforming to the OWNER's specifications. Variations from the OWNER's standards will be discussed and approved prior to submittal. The OWNER will be responsible for supplying the general sections for the contract documents and the ENGINEER will prepare the project specific documents.

**5.13 – Update Project Schedule and Budget**

The ENGINEER will prepare an updated project schedule and opinion of probable cost with the submittal.

**Task Series 6.0 – Easements and Land Acquisitions**

**6.1 – Prepare Legal Descriptions and Exhibits**

The ENGINEER will prepare legal descriptions and Exhibits for acquiring easements and right-of-way necessary to construct the project. The OWNER shall provide the easement and right-of-way forms to the ENGINEER. The exhibits will be to a detail suitable for land acquisition and will not be a survey. The exhibits will include the entire parcel, location of the land being acquired, general dimensions and the areas of the land being acquired.

#### 6.2 – Negotiations with Property Owners

The ENGINEER will make initial contact with the property owners to obtain execution of the easement and right of way documents required to construct the project. The approved benefit district petition requires the property owners to donate this land.

#### 6.3 – Update Project Schedule and Budget

The ENGINEER will prepare an updated project schedule and opinion of probable cost with the plan submittal.

### **Task Series 7.0 – Bidding and Award of Contract**

#### 7.1 – Assist with Project Inquiries and Addenda

The ENGINEER will be available to assist OWNER with clarifications and inquiries from the plan holders regarding the contract documents and plans. The ENGINEER will prepare addenda to clarify or modify the contract documents as necessary.

#### 7.2 – Attend Bid and Prepare Bid Tab and Recommend Contractor

The ENGINEER will attend the project letting, and prepare a bid tabulation and letter of recommendation to OWNER. Additionally, the ENGINEER will prepare an opinion of probable cost for the letting.

### **Task Series 8.0 – Construction Services**

#### 8.1 – Construction Services

After the contract has been awarded the ENGINEER will prepare contract documents for the contractor, coordinate a pre-construction conference, and assist the city project engineer during construction. ENGINEER will review contractor's submittals for compliance with city specifications and design criteria. Assistance during construction of the project will include clarification of issues encountered in the field, attendance at progress meetings and periodic visits to the site to keep current with project conditions. If requested the ENGINEER will review periodic pay estimates.

#### 8.2 – Landscape Architect Services

The LANDSCAPE ARCHITECT will review plant sources, inspect planting material before plants are placed, stake locations of various species and observe the property placement of plants during construction. When construction is complete and before the maintenance period has expired, the LANDSCAPE ARCHITECT will inspect the landscape beds and determine if the contract requirements have been met.

### **Task Series 9.0 – Project Completion**

#### 9.1 – Final Inspection with City Inspector

The ENGINEER will attend the final inspection with the City Inspector to assist in developing a final punchlist for the contractor. The ENGINEER will also attend any followup inspections.

#### 9.2 – As-built Plans

The ENGINEER will prepare as-built drawings based on information provided by the City Inspector and will submit to the OWNER.



**EXHIBIT C**  
**Fee & Rate Schedule**

# EXHIBIT C

2020

## SCHEDULE OF HOURLY RATES

Task	Description	Principal Hourly \$165	Project Manager Hourly \$138	Senior Project Engineer Hourly \$138	Design Engineer Hourly \$96	Project Land Surveyor Hourly \$138	Senior Engineering Technician Hourly \$93	Survey Technician Hourly \$93	Survey Crew Hourly \$180	Clerical Hourly \$50	Construction Observation Hourly \$64	Project Landscape Architect Hourly \$138	Total
<b>1.0</b>	<b>Project Management</b>												<b>\$19,700.00</b>
	Project Definition and Goals (Schedule, Scope, Budget, etc.)		3	3						3			\$978.00
	1.2 Progress Meetings and Project updates	2	12	20						3			\$4,896.00
	1.3 Project and Utility Coordination		32	40			24			8			\$12,568.00
	1.4 Coordination with homes association	2	2	4						2			\$1,258.00
<b>2.0</b>	<b>Data Collection</b>												<b>\$17,464.00</b>
	2.1 Boundary and alignment definition		2	8	24	8	32						\$7,764.00
	2.2 Topographic Survey			4		8		32	24				\$8,952.00
	2.3 Obtain Parcel Ownership Data					2		4		2			\$748.00
<b>3.0</b>	<b>Preliminary Design</b>												<b>\$69,288.00</b>
	4.1 Quality Control and Assurance	10	18	24									\$7,446.00
	4.2 Street Plan and Profile	4		24	32		48					16	\$13,716.00
	Storm Sewer and Stormwater Management Plans	4		24	32		28					4	\$10,200.00
	4.4 Street Lights			2	4		16						\$2,148.00
	4.5 Water Lines			6	12		24						\$4,212.00
	4.6 Intersection Details			8	24		24					16	\$7,848.00
	4.7 Cross Sections				12		40						\$4,872.00
	4.8 Erosion Control			8	16		18						\$4,314.00
	4.9 Landscape Plans			2	4							40	\$6,180.00
	4.10 Signing & Striping			4	4		12						\$2,052.00
	Standard Details, Special Details and Structural Details			4	8		8						\$2,064.00
	4.12 Permitting (NPDES/SWPPP)		4	8	16		8			6			\$4,236.00







## SCHEDULE OF RATES 2020

<b>Description</b>	<b>Rates per Hour</b>
Principal .....	\$165.00
Project Manager .....	\$138.00
Senior Project Engineer .....	\$138.00
Senior Project Landscape Architect.....	\$138.00
Project Engineer .....	\$110.00
Project Landscape Architect .....	\$110.00
Design Engineer .....	\$96.00
Design Landscape Architect .....	\$90.00
Staff Engineer .....	\$90.00
Senior Project Designer .....	\$93.00
Project Designer .....	\$87.00
Design Technician .....	\$80.00
Staff Technician .....	\$70.00
Survey Crew .....	\$180.00
Survey Crew – 1 Man w/Robotic or GPS.....	\$145.00
Professional Land Surveyor.....	\$138.00
Survey Technician .....	\$93.00
Construction Observer I .....	\$64.00
Construction Observer II.....	\$78.00
Clerical.....	\$50.00
Reimbursable Expenses .....	Cost Plus 10%
(Printing services, delivery services, postal services, etc. required for completion of the project.)	

14920 West 107<sup>th</sup> Street • Lenexa, Kansas 66215 • (913) 492-5158 • Fax: (913) 492-8400

## EXHIBIT D

### LAND ACQUISITION CHECKLIST FOR CONSULTANT PROJECTS

**Complete submittal of these documents is required 7 months prior to bid opening.**

- \_\_\_ Determine what types of easements are required for each tract:
  - i.e. Street Dedication; Permanent Street Easement; Temporary Construction Easement; Permanent Utility Easement; Permanent Drainage Easement; Permanent Sanitary Sewer Easement; Permanent Waterline Easement; Permanent Sidewalk & Utility Easement; Permanent Wall Easement; Permanent Bike Trail, Utility & Recreational Easement.
  
- \_\_\_ REQUIRED INFORMATION:
  - a) City Project No. and Project Name
  - b) Current Ownership (both husband and wife's name, even if only owned by one spouse)
    - 1) If a trust, the name and date of the trust
    - 2) If a corporation or LLC, state of incorporation or formation
    - 3) If partnership, full name of partnership
  - c) Johnson County Parcel ID number
  - d) Number the tracts in the project (up one side and down the other) (Tract No. \_\_)
  - e) Situs Address
  - f) Mailing Address
  - g) Legal description of the new taking, including total square footage
  - h) Tract map
  - i) Ownership & Encumbrance (O&E) title report, not more than 9 months since certification, showing current ownership, liens, mortgages, existing easements, leases (if recorded) and any other encumbrances upon the property. This requirement also includes tracts where only a temporary construction easement is needed.
  - j) Copy of last deed(s) of record. If an undivided interest is conveyed in the deed, provide copies of all deeds which comprise the whole interest. (If undivided one-half is conveyed to husband's trust and undivided one-half interest is conveyed to wife's trust, provide copies of both deeds.
  - k) Common errors to avoid – verify marital status. *BEFORE SUBMITTING DOCUMENTS TO CITY OF OLATHE VERIFY THE O&E'S TO ENSURE OWNERSHIP HAS NOT CHANGED.*

\_\_\_\_ Tract Map will be considered complete when it contains the following information (example available upon request):

- a) Map of entire property (May not be possible on large parcels and still showing legible taking) showing location of the proposed easement(s) and existing easements. Any trees to be removed, fences to be moved, monument signs, and irrigation systems should be noted on the plans. Outlines of buildings are to be shown on the plans so that it is evident how close the easements are to the existing building. Dimensions/bearings for easements to be clearly shown on map. It is acceptable to place all easements on one exhibit as long as each easement is easily identified. If the exhibit is too cluttered, then the easements should be placed on separate exhibits with permanent easements on one exhibit and temporary easements on a separate exhibit. EASEMENT SHALL BE CLEARLY VISIBLE ON DRAWING. Johnson County Register of Deeds scans the recorded easement in black and white, so be aware of this when drawing the easement on the tract map. Make sure easement area can easily be seen in black and white.
- b) Property owner's names, mailing address, situs address (if different from mailing address), Johnson County Parcel ID number, and tract number.
- c) Map of tract should show dimensions of tract and property lines clearly marked.
- d) Common errors to avoid: North arrow pointing in the wrong direction, verification that the easement legal description closes upon itself.

\_\_\_\_ Legal description and tract maps shall be signed by a Registered Land Surveyor stating that the ownership, easement legal descriptions, description in the deed for the entire tract only when a total property taking is occurring, and surveys for the easement area have been personally reviewed and determined to be accurate in accordance with the plans for the project. The consultant shall make corrections, at no cost to the City, to fix errors determined by the City or the Johnson County Register of Deeds that are the responsibility of the Registered Land Surveyor. These errors may include but are not limited to clerical errors, inconsistencies between the easement legal description and tract map, easement legal description not closing upon itself, or other errors in requirements on this checklist. **Both legal description and tract map(s) shall be marked Exhibit "A" as referenced in the easement documents.**

\_\_\_\_ Appropriate easement document in Word (sometimes referred to as "front end" document). PDF's are available on the City's website (<http://www.olatheks.org/government/public-works/dedications-easements>). Word copies can be obtained by contacting the Olathe Public Works Department Project Manager.



\_\_\_\_ Submit Documents to Public Works staff in electronic format:

- Word copy of legal description
- PDF of signed and sealed legal description
- Tract map signed and sealed
- Word copy of easement ("front end") document
- O&E title report
- Last deed of record

**EXHIBIT E**  
**CITY OF OLATHE INSURANCE REQUIREMENTS**

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

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

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

**C.** Additional Insured. CGL and auto policies must be endorsed to include the City as additional insured for the project. Any and all coverage available to the named insured is applicable to the additional insured. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

**D.** Verification of Coverage.

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

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

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

**EXHIBIT F**  
**Certificate of Insurance**





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/28/2020

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> Hall & Company 19660 10th Ave NE Poulsbo WA 98370		<b>CONTACT NAME:</b> Jim Ledbetter <b>PHONE (A/C, No, Ext):</b> 360-626-2019 <b>FAX (A/C, No):</b> 360-626-2019 <b>E-MAIL ADDRESS:</b> jledbetter@hallandcompany.com	
		<b>INSURER(S) AFFORDING COVERAGE</b>	
		<b>INSURER A:</b> NAVIGATORS INSURANCE COMPANY	
		<b>INSURER B:</b> Hanover Insurance Company	
		<b>INSURER C:</b> Allmerica Financial Benefit Insurance Company	
		<b>INSURER D:</b>	
		<b>INSURER E:</b>	
		<b>INSURER F:</b>	

## COVERAGES

**CERTIFICATE NUMBER:** 1873550918

**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
B	<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	Y	OH2A437782	10/1/2019	10/1/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
C	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	AW2A437746	10/1/2019	10/1/2020	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 checked="" type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE  DED <input type="checkbox"/> RETENTION \$	Y	Y	OH2A437782	10/1/2019	10/1/2020	EACH OCCURRENCE \$ 3,000,000 AGGREGATE \$ 3,000,000 \$
C	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	Y	WK2A437609	10/1/2019	10/1/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Professional Liab:Claims Made			CM19DPL040059IV	10/1/2019	10/1/2020	Per Claim Aggregate \$1,000,000 \$2,000,000

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

The certificate holder is an additional insured per the attached.  
Project Name: Cedar Creek Parkway South of College Boulevard City PN 3-B-027-19 (SPN P2020-053).

## CERTIFICATE HOLDER

## CANCELLATION

CITY OF OLATHE  
1385 S ROBINSON  
OLATHE KS 66061

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

**AUTHORIZED REPRESENTATIVE**

*Matthew L. Copus*

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## **AVENUES BUSINESSOWNERS DELUXE PLATINUM ARCHITECTS AND ENGINEERS PROGRAM BROADENING ENDORSEMENT**

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM  
BUSINESSOWNERS LIABILITY SPECIAL BROADENING ENDORSEMENT

The following is added to **SECTION I – PROPERTY**:

The limits applicable to the coverages included in this endorsement may either be in addition to or included within the applicable Limit of Insurance. For application of the limits, refer to each coverage within this endorsement. Words or phrases in quotation marks have special meanings. The meaning of words or phrases in quotation marks is explained within the applicable coverage section. The coverages in this endorsement amend the coverage provided under the Businessowners Coverage Form through new coverages and replace coverage grants. These coverages are subject to the provisions applicable to this policy, except where amended within this endorsement.

If any of the property covered by this endorsement is also covered under any other provisions of the policy of which this endorsement is made a part of, or if more than one coverage under this endorsement applies, in the event of loss or damage, you may choose only one of these coverages to apply to that loss. The most we will pay in this case is the limit of insurance applying to the coverage you select. Coverages included in this endorsement apply either separately to each described premises or on an occurrence basis. Refer to each coverage within this endorsement for application of coverage.

We provide no coverage for Business Income; Extended Business Income; Extra Expense; or Business Income and Extra Expense from Dependent Properties for any of the Coverages included as part of this endorsement unless specifically stated, and then only to the extent provided for within that Scheduled or Blanket Coverage provision.

### **I. COVERAGES**

<b>Scheduled Coverages</b>	<b>Limit</b>	<b>Page</b>
<b>1.</b> Accounts Receivable On Premises Accounts Receivable Off Premises	\$250,000 \$250,000	3
<b>2.</b> Backup or Overflow of a Sewer, Drain or Sump	Included	3
<b>3.</b> Brands and Labels	Included	3
<b>4.</b> Business Income Billable Hours Option	\$25,000	4
<b>5.</b> Business Income and Extra Expense – Dependent Properties	\$100,000	4
<b>6.</b> Transit Business Income and Extra Expense	\$50,000	5
<b>7.</b> Business Income from Websites	\$50,000 / 7 Days	5
<b>8.</b> Civil Authority	24 hour waiting period	5
<b>9.</b> Computer Equipment Computer Equipment In Transit or Off Premises Computer Equipment – Newly Acquired or Constructed Property	Included \$100,000 \$100,000	6
<b>10.</b> Computer and Funds Transfer Fraud	\$10,000	6
<b>11.</b> Consequential Loss to Stock	Included	6
<b>12.</b> Contract Penalties	\$25,000	6
<b>13.</b> Denial of Access to Premises	30 Days; 72 Hour Waiting Period	6

14. Electronic Vandalism	\$100,000	7
15. Employee Theft Including ERISA Compliance	\$50,000	7
16. Expediting Expenses	\$25,000	7
17. Extended Business Income	90 Days	7
18. Fine Arts (Including Architectural Models)	\$100,000	8
19. Forgery or Alteration	\$50,000	8
20. Hired Auto - Physical Damage	\$50,000	8
21. Identity Theft Expense Reimbursement	\$15,000	9
22. Interruption of Computer Operations On Premises Interruption of Computer Operations Off Premises	\$500,000 \$25,000/\$50,000	10
23. Marring and Scratching	Included	11
24. Money and Securities Inside the Premises Money and Securities Outside the Premises	\$25,000 \$25,000	11
25. Money Orders and Counterfeit Money	\$25,000	11
26. Newly Acquired or Constructed Property – Business Income and Extra Expense	\$500,000	11
27. Ordinance or Law – Demolition Cost Coverage and Increased Cost of Construction	\$25,000	11
28. Ordinance or Law – Increased Period of Restoration	\$50,000	11
29. Ordinance or Law (Tenants Improvement Extension)	\$25,000	12
30. Outdoor Property	\$25,000	12
31. Personal Effects	\$75,000	12
32. Portable Electronic Devices Coverage Worldwide	\$10,000	12
33. Precious Metal Theft Payment Changes	\$25,000	13
34. Preservation of Property - Expense	\$25,000	13
35. Personal Property in Transit	Included	13
36. Sales Representative Samples	\$25,000	13
37. Temporary Relocation of Property	\$50,000	13
38. Tenant Signs	Included	14
39. Utility Services Direct Damage (Including Overhead Transmission Lines) Business Income (Including Overhead Transmission Lines)	\$25,000 \$25,000	14
40. Valuable Papers and Records (Other Than Electronic Data) On Premises Valuable Papers and Records (Other Than Electronic Data) Off Premises	\$100,000 \$100,000	14
41. Worldwide Property Off Premises	\$50,000	14



<b>SECTION II – LIABILITY Changes</b>	<b>Limit</b>	<b>Page</b>
1. Additional Insured by Contract, Agreement or Permit – Amended	Included	15
2. Additional Insured by Contract, Agreement or Permit – Primary and Non-contributory	Included	15
3. Aggregate Limit of Insurance (Per Project)		16
4. Damage to Premises Rented to You – Revised Limit	\$1,000,000	16
5. Limits of Insurance – Medical Expenses	\$10,000 per person	16
6. Newly Acquired or Formed Organizations	180 Days	17
7. Non-Owned Watercraft	75 Feet	17
8. Who Is An Insured – Unnamed Joint Venture	Included	17

## II. DEDUCTIBLES

Deductibles are subject to the provisions applicable to the Businessowners Coverage Form except as provided below. We will not pay for covered loss or damage in any one occurrence unless the amount of loss or damage exceeds the applicable Deductible amount. We will then pay the amount of loss or damage in excess of the Deductible up to the applicable Limit of Insurance.

## III. COVERED PROPERTY

### Scheduled Coverages

#### 1. Accounts Receivable

**SECTION I – PROPERTY, A. Coverage, 6. Coverage Extensions, f. Accounts Receivable**, paragraphs (2) and (3) are replaced by the following:

(2) We will pay under this Coverage Extension for loss or damage in any one occurrence at the described premises. The most we will pay is \$250,000 for accounts receivable at the described premises, unless a higher Limit of Insurance for accounts receivable is shown in the Additional Property Coverage Schedule.

(3) We will pay under this Coverage Extension for loss or damage in any one occurrence not at the described premises. The most we will pay is \$250,000 for accounts receivable not at the described premises.

#### 2. Backup or Overflow of a Sewer, Drain or Sump

The following is added to **SECTION I – PROPERTY, A. Coverage, 5. Additional Coverages**:

**Backup or Overflow of a Sewer, Drain or Sump**

(1) We will pay for direct physical loss or damage to Covered Property at the described premises, solely caused by or resulting from water or waterborne material carried or moved by water that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump or related equipment. The term drain includes a roof drain and its related fixtures.

(2) For the purpose of this Additional Coverage only, **SECTION I – PROPERTY, B. Exclusions, g. Water**, paragraph (3) is deleted.

(3) Payment under this Additional Coverage is included within the applicable Limit of Insurance for Covered Property at a premises described in the Declarations. This Additional Coverage does not increase the Limits of Insurance.

#### (4) Special Sewer Backup Exclusion

We will not pay for:

(a) Loss or damage from water or other materials that back-up or overflow from any sewer or drain, sump, sump pump or related equipment when it is caused by or results from any “flood”, regardless of the proximity of the back-up or overflow to the “flood” condition; or

(b) Failure to keep a sump pump or its related equipment in proper working condition; or

(c) Failure to perform routine maintenance or repair necessary to keep a sewer or drain free from obstructions.

#### 3. Brands and Labels

The following is added to **SECTION I – PROPERTY, A. Coverage, 6. Coverage Extensions**:

**Brands and Labels**

(1) If Covered Property that has a brand or label is damaged by a Covered Cause of Loss and we elect to take all or any part of the damaged property at an agreed or appraised value, you may extend the insurance that applies to your Business Personal Property to:

(a) Pay expenses you incur to:

- (i) Remove the brand or label and then relabel the damaged property to comply with any applicable law; or
- (ii) Label or stamp the damaged property Salvage, if doing so will not physically damage the property.

(b) Cover any reduction in the salvage value of the damaged property as a result of the removal of the brand or label.

(2) Payment under this Extension is included within the Limit of Insurance applicable to your Business Personal Property.

**4. Business Income Billable Hours Option**

The following is added to **SECTION I – PROPERTY, A. Coverage, E. Property Loss Conditions, 5. Loss Payment**:

**Business Income Billable Hours Option**

(1) At your option you may choose to settle a covered Business Income and Extra Expense loss, as described under the Business Income, Extra Expense and Utility Services Additional Coverages, on a billable hours basis. If you choose this settlement method, the billable hours will be verified through review of your historical financial records or based on an average of your billable hourly rate over the past 12 months.

(2) This loss settlement option is only available to you prior to your submission to us of calculations described under **SECTION I – PROPERTY, A. Coverage, 5. Additional Coverages, f. Business Income**.

(3) If you choose this option, **SECTION I – PROPERTY, A. Coverage, 5. Additional Coverages, f. Business Income**, paragraph (c) is replaced by the following:

(c) Business Income means the:

(i) Income that would have been generated from billable hours normally charged by you to your clients for services performed by you or your employees if no physical loss or damage occurred;

(ii) Other income of your business that would have been incurred if no physical loss or damage occurred;

(iii) Continuing normal operating expenses incurred, including “payroll expenses”. However, if your business is not generating any income because you are primarily in research or development or have not yet brought your product to market, your continuing normal operating expenses, including “payroll expenses” will not be offset by the Net Loss; and

(iv) “Rental Value”.

For manufacturing risks, Net Income includes the net sales value of production.

(4) For any occurrence, the two available methods for adjusting and calculating Business Income and Extra Expense loss may not be combined. When the alternative billable hours approach described above is selected, the maximum coverage under this loss settlement option is \$25,000 on an actual loss sustained basis.

**5. Business Income and Extra Expense – Dependent Properties**

The heading for **SECTION I – PROPERTY, A. Coverage, 5. Additional Coverages, m. Business Income from Dependent Properties** is replaced by the following:

**m. Business Income and Extra Expense from Dependent Properties**

The following is added to **Business Income and Extra Expense from Dependent Properties**:

We will pay the necessary Extra Expense you incur due to direct physical loss of or damage to “dependent property” caused by or resulting from a Covered Cause of Loss.

The definition of Extra Expense for this Additional Coverage is replaced by the following:

Extra Expense means necessary expenses you incur during the "period of restoration" for the "dependent property" that you would not have incurred if there had been no direct physical loss or damage to the premises of any "dependent property" caused by or resulting from a Covered Cause of Loss:

- (1) To avoid or minimize the "suspension" of business and to continue "operations"; or
- (2) To minimize the "suspension" of business if you cannot continue "operations".

We will reduce the amount of your Extra Expense loss to the extent you can return "operations" to normal and discontinue such Extra Expense.

- (3) Paragraph (2) of this Additional Coverage is replaced by the following:
  - (2) The most we will pay under this Additional Coverage is \$100,000 per occurrence, regardless of the number of "dependent properties" affected.

## **6. Transit Business Income and Extra Expense**

The following is added to **SECTION I – PROPERTY, A. Coverage, 5. Additional Coverages**:

### **Transit Business Income and Extra Expense**

- (1) We will pay the actual loss of Business Income you sustain and necessary and reasonable Extra Expense you incur caused by direct physical loss of or direct physical damage to Covered Property while "in transit" caused by or resulting from a Covered Cause of Loss.
- (2) **SECTION I – PROPERTY, B. Exclusions, paragraphs 1.b Earth Movement and 1.g Water** do not apply to this Additional Coverage:
- (3) The most we will pay for loss in any one occurrence under this Additional Coverage is \$50,000.
- (4) The amount payable under this Additional Coverage is additional insurance.

## **7. Business Income from Websites**

- a. The following is added to **SECTION I – PROPERTY, A. Coverage, 5. Additional Coverages**:  
**Business Income from Websites**

- (1) You may extend this insurance to apply to a "suspension" of "operations" caused by direct physical loss or damage to property that you depend on for "web site and communications services" from a Covered Cause of Loss.

- (2) We will not pay for any loss of Business Income you incur during the first 12 hours that immediately follows the time when you first discovered the Covered Cause of Loss. This Waiting Period does not apply to Extra Expense.

- (3) The most we will pay for the actual loss of Business Income and necessary and reasonable Extra Expense in any one occurrence under this Additional Coverage is \$50,000 and only for the 7-day period immediately following the Covered Cause of Loss.

- (4) Coverage does not apply to Websites unless there is a duplicate or back-up copy of your Web Page stored at a location that is at least 1,000 feet away from the premises of the vendor that provides "web site and communications services".

- (5) "Web Site and Communication Services" means:

- (a) Internet access, e-mail, web hosting, value added network services and application software services at the premises of others; or
- (b) Network and router infrastructure located more than 1,000 feet from the described premises.

- b. This Additional Coverage is not subject to **SECTION I – PROPERTY, C. Limits of Insurance**.

## **8. Civil Authority**

**SECTION I – PROPERTY, A. Coverage, 5. Additional Coverages, i. Civil Authority**, paragraph (2) is replaced by the following:

- (2) Civil Authority Coverage for Business Income will begin 24 hours after the time of the first action of civil authority that prohibits access to the described premises and will end:
  - (a) Four consecutive weeks after the time of that action; or
  - (b) When your Civil Authority Coverage for Business Income ends;



whichever is later.

## **9. Computer Equipment**

**SECTION I – PROPERTY, A. Coverage, 5. Additional Coverages, r. Computer Equipment,** paragraph (6) is replaced by the following:

- (6) Regardless of the number of insured locations involved, the most we will pay for loss or damage under this Additional Coverage in any one occurrence is the applicable Limit of Insurance for Covered Property at the premises described in the Declarations. .

The most we will pay for loss or damage under this Additional Coverage to property described in paragraphs (1) and (2) above in any one occurrence while “in transit” or at a premises other than the described premises is \$100,000.

The most we will pay for loss or damage under this Additional Coverage to property described in paragraphs (1) and (2) above in any one occurrence for property that you newly acquire is \$100,000.

With respect to newly acquired property under this Additional Coverage, coverage will end when any of the following occurs:

- (a) The policy expires;
- (b) 180 days after you acquire the property listed in (1)(a – d);
- (c) You report values to us.

The most we will pay for Extra Expense is \$5,000 or the amount shown in the Additional Property Coverage Schedule in any one occurrence.

This Additional Coverage is not subject to **SECTION I – PROPERTY, C. Limits of Insurance.**

## **10. Computer and Funds Transfer Fraud**

**SECTION I – PROPERTY, A. Coverage, 5. Additional Coverages, hh. Computer and Funds Transfer Fraud,** paragraph (3) is replaced by the following:

- (3) The most we will pay per occurrence under this Additional Coverage is \$10,000 unless a higher Limit of Insurance is shown in the Schedule of Amended Limits of Insurance.

## **11. Consequential Loss to Stock**

The following is added to **SECTION I – PROPERTY, A. Coverage, 6. Coverage Extensions:**

### **Consequential Loss to Stock**

- (1) You may extend the insurance that applies to your Business Personal Property to apply to the reduction in value of the remaining parts of “stock” in process of manufacture that are physically undamaged but are unmarketable as a complete product because of direct physical loss or damage from a Covered Cause of Loss to other parts of covered “stock” in process of manufacture at an insured location.
- (2) Should it be determined that such “stock” retains only a salvage value, we retain the option of paying the full value of the “stock” as agreed within this policy, and taking the damaged property for salvage purposes.
- (3) Payment under this Coverage Extension is included within the applicable Limit of Insurance.

## **12. Contract Penalties**

The following is added to **SECTION I – PROPERTY, A. Coverage, 5. Additional Coverages:**

### **Contract Penalties**

- (1) We will pay for contract penalties you are required to pay due to your failure to provide your product or service according to contract terms because of direct physical loss or damage by a Covered Cause of Loss to Covered Property.
- (2) The most we will pay for all penalties in any one occurrence is \$25,000.
- (3) The amount payable under this Additional Coverage is additional insurance.

## **13. Denial of Access to Premises**

The following is added to **SECTION I – PROPERTY, A. Coverage, 5. Additional Coverages:**

### **Denial of Access to Premises**

- (1) We will pay for the actual loss of Business Income you sustain and necessary Extra Expense you incur when ingress to or egress from the described premises is prevented, due to direct physical loss of or damage to property that is away from but within 2000 feet of the described premises, caused by or resulting from any Covered Cause of Loss covered under this policy.
- (2) The coverage for Business Income will begin 72 hours after the loss or damage to the premises that causes the denial of access and will apply for a period of up to

30 consecutive days after coverage begins.

- (3) The coverage for Extra Expense will begin immediately after the loss or damage to the premises that causes the denial of access and will end:

(a) 30 consecutive days after coverage begins; or

(b) When your Business Income coverage ends;

whichever is earlier.

- (4) The definitions of Business Income and Extra Expense contained in the Business Income Additional Coverage and the Extra Expense Additional Coverage also apply to this Denial of Access to Premises Additional Coverage.

#### **14. Electronic Vandalism**

**SECTION I – Property, A. Coverage, 5. Additional Coverages, dd. Electronic Vandalism**, paragraph (3) is replaced by the following:

- (3) The most we will pay for loss of or damage to computer “hardware” or “software” in any one occurrence under this Additional Coverage is \$5,000. The most we pay for all covered losses to computer “hardware” or “software” under this Additional Coverage during each separate 12-month period of this policy is \$100,000.

The most we will pay under this Additional Coverage for all loss or damage sustained in any one policy year, regardless of the number of occurrences of loss or damage or the number of premises, locations or computer systems involved, is \$100,000, unless a higher Limit of Insurance is shown in the Declarations. If loss payment on the first occurrence does not exhaust this amount, then the balance is available for subsequent loss or damage sustained in, but not after, that policy year. With respect to an occurrence which begins in one policy year and continues or results in additional loss or damage in a subsequent policy year(s), all loss or damage is deemed to be sustained in the policy year in which the occurrence began.

#### **15. Employee Theft Including ERISA Compliance**

**SECTION I – PROPERTY, A. Coverage, 5. Additional Coverages, p. Employee Theft Including ERISA**, paragraph (6), is replaced by the following:

- (6) The most we will pay for all loss resulting directly from an occurrence is \$50,000. Regardless of the number of years this policy remains in force or the number of premiums paid, no Limit of Insurance cumulates from year to year.

#### **16. Expediting Expenses**

The following is added to **SECTION I – PROPERTY, A. Coverage, 5. Additional Coverages**:

##### **Expediting Expenses**

- (1) When a Covered Cause of Loss occurs to Covered Property, we will pay for the reasonable and necessary additional expenses you incur to:

(a) Make temporary repairs;

(b) Expedite permanent repair or replacement of damaged property; or

(c) Provide training on replacement machines or equipment.

- (2) The most we will pay for loss under this Additional Coverage in any one occurrence is \$25,000.

- (3) The amount payable under this Additional Coverage is additional insurance.

#### **17. Extended Business Income**

**SECTION I – PROPERTY, A. Coverage, 5. Additional Coverages, f. Business Income,**

**(2) Extended Business Income, (a) Extended Business Income – Other Than Rental Value**, paragraph (ii) and **(b) Extended Business Income – Rental Value**, paragraph (ii) are replaced by the following:

**(a) Extended Business Income – Other Than Rental Value**

(ii) Ends on the earlier of:

- 1) The date you could restore your operations, with reasonable speed, to the level which would generate the business income amount that would have existed if no direct physical loss or damage had occurred; or

- 2) 90 consecutive days after the date determined in (2)(a)(i) above.

**(b) Extended Business Income – Rental Value**

(ii) Ends on the earlier of:

- 1) The date you could restore tenant occupancy, with reasonable speed, to the level which would generate the “Rental Value” that would have existed if no direct

physical loss or damage had occurred; or

- 2) 90 consecutive days after the date determined in (2)(b)(i) above.

## 18. Fine Arts

- a. **SECTION I – PROPERTY, A. Coverage, 6. Coverage Extensions, x. Fine Arts,** paragraph (3) is replaced by the following:

(3) The most we will pay for loss under this Additional Coverage is \$100,000 per occurrence regardless of the number of locations or buildings involved.

- b. For the purpose of this Additional Coverage, **SECTION I – PROPERTY, G. Property Definitions, 21. “Fine Arts”** is replaced by the following:

21. “Fine Arts” means architectural models, paintings, etchings, pictures, tapestries, rare art glass, art glass windows, valuable rugs, statuary, sculptures, “antique” furniture, “antique” jewelry, bric-a-brac, porcelains, and similar property of rarity, historical value, or artistic merit.

## 19. Forgery or Alteration

**SECTION I – PROPERTY, A. Coverage, 5. Additional Coverages, k. Forgery or Alteration,** paragraph (5) is replaced by the following:

- (5) The most we will pay for any loss, including legal expenses, under this Additional Coverage is \$50,000.

## 20. Hired Auto – Physical Damage

The following is added to **SECTION I – PROPERTY, A. Coverage, 5. Additional Coverages**:

### Hired Auto – Physical Damage Coverage

- (1) We will pay for loss to an “auto” you or an “employee”, at your direction, lease, hire or rent without a driver for a period of 30 days or less for the purpose of conducting customary operations for your business. This does not include any “auto” you lease, hire or rent from any of your “employees” or members of their households.

We will pay for loss to a covered “auto” or its equipment caused by:

#### (a) Comprehensive coverage

From any cause except:

- (i) The covered “auto’s” collision with another object; or

- (ii) The covered “auto’s” overturn.

#### (b) Collision coverage

- (i) The covered “auto’s” collision with another object; or

- (ii) The covered “auto’s” overturn.

- (2) For the purpose of this Additional Coverage only, **SECTION I – PROPERTY, A. Coverage, 2. Property Not Covered,** paragraph a. is replaced by the following:

- a. Aircraft, automobiles, motortrucks and other vehicles subject to motor vehicle registration and:

- (1) Any “auto” as described in paragraph (1) above, while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity;

- (2) Tapes, records, discs or other similar audio, visual or data electronic devices designed for use with audio, visual or data electronic equipment;

- (3) Any device designed or used to detect speed measuring equipment such as radar or laser detectors and any jamming apparatus intended to elude or disrupt speed measurement equipment; or

- (4) Any electronic equipment, without regard to whether this equipment is permanently installed, that receives or transmits audio, visual or data signals and that is not designed solely for the reproduction of sound.

- (3) For the purpose of this Additional Coverage only, **SECTION I – PROPERTY, B. Exclusions** does not apply with the exception of the following exclusions:

#### (a) 1.d. Nuclear Hazard;

#### (b) 1.f. War and Military Action

For the purpose of this Additional Coverage only, the following exclusions are added to **SECTION I – PROPERTY, B. Exclusions**:

1. We will not pay for loss to a covered “auto” caused by or resulting from someone causing you to voluntarily part with the “auto” by trick or scheme or under false pretenses; or



2. We will not pay for loss caused by or resulting from wear and tear, freezing; mechanical or electrical breakdown; blowouts, punctures or other road damage to tires.

- (4) For the purpose of this Additional Coverage only, the following is added to **SECTION I – PROPERTY, C. Limits of Insurance**:

**Hired Auto Physical Damage Limits of Insurance**

The most we will pay for loss to any one covered “auto” is the lesser of:

- a. The actual cash value of the damaged or stolen property as of the time of loss;
- b. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality; or
- c. \$50,000.

- (5) The following is added to **SECTION I – PROPERTY, D. Deductibles**, paragraph 5.:

Hired Auto – Physical Damage

- (6) For the purpose of this Additional Coverage only, the following is added to **SECTION I – PROPERTY, G. Property Definitions**:

1. “Auto” means a land motor vehicle, trailer or semitrailer that is subject to motor vehicle registration, or designed for travel on public roads, including any attached machinery or equipment.

The amount payable under this Additional Coverage is additional insurance.

This coverage is excess to any other valid insurance whether collectible or not.

**21. Identity Theft Expense Reimbursement**

The following is added to **SECTION I – PROPERTY, A. Coverage, 5. Additional Coverages**:

**Identity Theft Expense**

- (1) We will pay for “expenses” incurred by an “insured person” as a direct result of any one “Identity Theft” first discovered or learned of by such “insured person” during the policy period.

Any act or series of acts committed by one or more persons, or in which such persons are aiding and abetting others against an “insured person”, is considered to be one “identity theft” even if a series of acts

continues into subsequent policy period(s).

- (2) With respect to this Additional Coverage:

(a) “Expenses” means:

- (i) Costs for notarizing affidavits or similar documents attesting to fraud required by financial institutions or similar credit grantors or credit agencies;

- (ii) Costs of certified mail to law enforcement agencies, credit agencies, financial institutions or similar credit agencies;

- (iii) Lost income resulting from:

- 1) Time taken off work to complete fraud affidavits; or
- 2) Meeting or talking to law enforcement agencies, credit agencies or legal counsel.

- (iv) Loan application fees for reapplying for a loan or loans when the original application is rejected solely because the lender received incorrect credit information;

- (v) Reasonable attorney fees to:

- 1) Defend lawsuits brought against an “insured person” by merchants, financial institutions or their collection agencies;
- 2) Remove any criminal or civil judgments wrongly entered against an “insured person”; or
- 3) Challenge the accuracy or completeness of any information in a consumer credit report;

- (vi) Charges for long distance telephone calls due to “Identity theft” to:

- 1) Merchants;
- 2) law enforcement agencies;
- 3) Financial institutions or other similar credit grantors; or
- 4) Credit agencies

- (vii) Reasonable fees for professional financial advice or professional credit advice.

The most we will pay for “expenses” under paragraph (2) (a) is \$5,000, subject to a maximum of \$200 per day.

- (b) For purposes of this Additional Coverage, “identity theft” means:

The act of knowingly transferring or using, without lawful authority, a means of identification of an “insured person” with the intent to commit, or to aid or abet another to commit, any unlawful activity that constitutes a violation of Federal law or a felony under any applicable state or local law; and

- (c) “Insured person” means:

- (i) For sole proprietorships: The individual who is the sole proprietor of the Named Insured shown in the Declarations;
- (ii) For partnerships: Any individual that is a partner of the Named Insured shown in the Declarations;
- (iii) For corporations or any other type of organization: The Chief Executive Officer, and any individual who has an ownership interest of at least 20% of the Named Insured, shown in the Declarations.

- (3) The following additional exclusions apply to this Additional Coverage:

We will not pay for:

- (a) Expenses incurred due to any fraudulent, dishonest or criminal acts by:

- (i) An “insured person”;
- (ii) Any person aiding or abetting an “insured person”; or
- (iii) Any authorized representative of an “insured person”;

whether acting alone or in collusion with others; or

- (b) Loss other than “expenses”. Account balances which arise out of fraudulent or unauthorized charges would be one example of loss other than “expenses”.

- (4) Regardless of the amount of the deductible for Covered Property shown in the Declarations, the most we will deduct from any claim for “expenses” under this Additional Coverage for any one “identity theft” is \$250.

- (5) The most we will pay under this Additional Coverage for all “Expenses” arising out of all “Identity Theft” against an “Insured Person” incurred in any one policy year, regardless of the number of “Identity Thefts” involved, is \$15,000 unless a higher Limit of Insurance is shown in the Declarations.

- (6) In order for coverage to be provided under this Additional coverage, you must send to us, within 60 days after our request, receipts, bills or other records that support your claim for “expenses” under “identity theft” coverage.

## **22. Interruption of Computer Operations**

**SECTION I – PROPERTY, A. Coverage, 5. Additional Coverages, ee. Interruption of Computer Operations,** paragraph (3) is replaced by the following:

- (3) The most we will pay under this Additional Coverage – Interruption of Computer Operations for all loss sustained and expense incurred in any one policy year, regardless of the number of interruptions or the number of premises, locations or computer systems involved is:

- (a) \$500,000 unless a higher Limit of Insurance is shown in the Declarations. If loss payment relating to the first interruption does not exhaust this amount, then the balance is available for loss or expense sustained or incurred as a result of subsequent interruptions in that policy year. A balance remaining at the end of a policy year does not increase the amount of insurance in the next policy year. With respect to any interruption which begins in one policy year and continues or results in additional loss or expense in a subsequent policy year(s), all loss and expense is deemed to be sustained or incurred in the policy year in which the interruption began.

- (b) \$25,000 in any one occurrence for interruptions covered under paragraphs (1) and (2) above for loss arising out of a Covered Cause of Loss occurring away from the described premises. This per occurrence limit applies regardless of the number of premises involved.

- (c) \$50,000 for all losses arising out of interruptions covered under paragraphs (1) and (2) that arise out of a Covered Cause of Loss occurring

away from the described premises during each separate 12 month period of this policy.

## **23. Marring and Scratching**

The following is added to **SECTION I – PROPERTY, A. Coverage, 6. Coverage Extensions**:

### **Marring and Scratching**

- (1) You may extend the insurance that applies to Business Personal Property to apply to damage caused directly by sudden and accidental marring and scratching of:
  - (a) Your “stock”;
  - (b) Your printing plates; or
  - (c) Property of others that is in your care, custody or control.
- (2) This Coverage Extension does not apply to:
  - (a) Property at other than the described premises; or
  - (b) Personal Property in transit.
- (3) Payment under this Coverage Extension is included within Limit of Insurance applicable to your Business Personal Property.

## **24. Money and Securities**

**SECTION I – PROPERTY, A. Coverage, 5. Additional Coverages, s. Money and Securities**, paragraph (5) is replaced by the following:

- (5) The most we will pay for loss in any one occurrence is:
  - (a) \$25,000 or the amount shown in the Additional Property Coverage Schedule Inside the Premises for “money” and “securities” while:
    - (i) In or on the described premises; or
    - (ii) Within a bank or savings institution in the coverage territory; and
  - (b) \$25,000 or the amount shown in the Additional Property Coverage Schedule Outside the Premises for “money” and “securities” while at any other location listed in (1) above and while in the coverage territory.

## **25. Money Orders and Counterfeit Money**

**SECTION I – PROPERTY, A. Coverage, 5. Additional Coverages, j. Money Orders and**

**Counterfeit Money**, paragraph (3) is replaced by the following:

- (3) The most we will pay for any loss under this Additional Coverage is \$25,000.

## **26. Newly Acquired or Constructed Property – Business Income and Extra Expense**

**SECTION I – PROPERTY, A. Coverage, 6. Coverage Extensions, a. Newly Acquired or Constructed Property**, paragraph (3) is replaced by the following:

### **(3) Business Income and Extra Expense**

You may extend the insurance that applies to Business Income and Extra Expense to apply to property at any location you acquire. The most we will pay for loss or damage under this Extension is \$500,000 at each premises.

## **27. Ordinance or Law – Demolition Cost and Increased Cost of Construction**

**SECTION I – PROPERTY, A. Coverage, 5. Additional Coverages, l. Ordinance or Law, (5) Loss Payment**, paragraph (d) is replaced by the following:

- (d) The most we will pay for the total of all covered losses for Demolition Cost and Increased Cost of Construction for each building described in the Declarations is \$25,000 or the amount shown in the Additional Property Schedule. If a damaged building(s) is covered under a Blanket Limit of Insurance and the Blanket Limit of Insurance applies to more than one building or item of property, then the most we will under this Additional Coverage, for each building, is \$25,000, or the amount shown in the Additional Property Coverage Schedule.

## **28. Ordinance or Law – Increased Period of Restoration**

- a. The following is added to **SECTION I – PROPERTY, A. Coverage, 5. Additional Coverages, l. Ordinance or Law**, paragraph (4) **Coverage**:

If a Covered Cause of Loss occurs to property at the premises described in the Declarations, coverage is extended to include the amount of actual and necessary loss you sustain during the increased period of “suspension” of “operations” caused by or resulting from the enforcement of any ordinance or law that:

- (a) Regulates the construction or repair of any property;



(b) Requires the tearing down of parts of any property not damaged by a Covered Cause of Loss; and

(c) Is in force at the time of loss.

However, coverage is not extended under this endorsement to include loss caused by or resulting from the enforcement of any ordinance or law which requires:

(d) The demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungi", wet or dry rot or bacteria; or

(e) Any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungi", wet or dry rot or bacteria.

- b. The following is added to **SECTION I – PROPERTY, A. Coverage 5. Additional Coverages, I. Ordinance or Law, (5) Loss Payment**, paragraph (c):

The most we will pay for loss under Increased Period of Restoration in any one occurrence is \$50,000 for each described building shown in the Declarations or the amount shown in the Additional Property Coverage Schedule. If a damaged building(s) is covered on a blanket Limit of Insurance which applies to more than one building or item of property, then the most we will pay for Increased Period of Restoration for each described building in any one occurrence is \$50,000.

## **29. Ordinance or Law (Tenant's Improvement Extension)**

- a. The following is added to **SECTION I – PROPERTY, A. Coverage, 5. Additional Coverages, I. Ordinance or Law, paragraph (4) Coverage**:

Coverage provided under paragraphs (a), (b) and (c) above applies to tenant's improvements and betterments but only if a Limit of Insurance is shown in the Declarations for Business Personal Property. Business Personal Property must be insured on a replacement cost basis.

This extension is provisional and excess to any other valid insurance for tenant's improvements and betterments whether collectible or not.

- b. The following is added to **SECTION I – PROPERTY, A. Coverage, 5. Additional Coverages, I. Ordinance or Law, (5) Loss Payment**, paragraph (c):

Regardless of the number of locations insured or buildings involved, the most we will pay for any loss to tenant's improvements and betterments under this Additional Coverage in any one occurrence is \$25,000.

## **30. Outdoor Property**

**SECTION I – PROPERTY, A. Coverage, 6. Coverage Extensions, c. Outdoor Property**, paragraph (3) is replaced by the following:

- (3) Regardless of the number of described premises involved, the most we will pay for loss or damage under this Extension, including debris removal expense, is \$25,000, but not more than \$1,000 for any one tree, shrub or plant.

## **31. Personal Effects**

**SECTION I – PROPERTY, A. Coverage, 6. Coverage Extensions, d. Personal Effects**, paragraph (3) is replaced by the following:

- (3) The most we will pay for loss or damage under this Extension is \$75,000 at each described premises.

## **32. Portable Electronic Devices Coverage Worldwide**

The following is added to **SECTION I – PROPERTY, A. Coverage, 5. Additional Coverages**:

### **Portable Electronic Devices Coverage Worldwide**

- (1) We will pay for loss or damage caused by or resulting from a Covered Cause of Loss to portable electronic devices while anywhere in the world, including while "in transit".

- (2) For the purpose of this Additional Coverage, the following is added to **SECTION I – PROPERTY, G. Property Definitions**:

Portable electronic devices includes laptops, tablets, e-readers, smartphones or other lightweight, hand-held or wearable devices capable of storing, retrieving and processing data.

- (3) This coverage is provided when the property is owned by you or owned by others when in your or your "employees" care, custody or control, subject to **SECTION I – PROPERTY, E. Property**

**Loss Conditions, 5. Loss Payment, paragraph d.(3)(b).**

- (4) We will not pay for loss or damage to portable electronic devices when caused by, resulting from, or arising out of "theft" or unexplained loss when the property is checked baggage with a carrier for transit.
- (5) The provisions for a Business Income loss will be governed by the terms of **SECTION I – PROPERTY, A. Coverage, 5. Additional Coverages, f. Business Income** except:
  - (a) There is no requirement that a loss occur within 1,000 feet or at the described premises as stated in paragraph (1)(a); and
  - (b) The following are not included under this Additional Coverage:
    - (i) Continuing normal operating expenses incurred, including "payroll expense";
    - (ii) Extended Business Income.
- (6) The provisions for Extra Expense loss will be governed by the terms of **SECTION I – PROPERTY, A. Coverage, 5. Additional Coverages, g. Extra Expense** except:
  - (a) There is no requirement that a loss occur within 1,000 feet or at the described premises as stated in paragraph g.(1) and g.(2).
- (7) **Limitations**, item b. does not apply to this Additional Coverage.
- (8) **SECTION I – PROPERTY, B. Exclusions, 5. Business Income and Extra Expense Exclusions**, paragraph (4) does not apply to this Additional Coverage.
- (9) Regardless of the number of lost or damaged portable electronic devices, the most we will pay per occurrence including actual loss of Business Income you sustain and necessary Extra Expense you incur, is \$10,000.
- (10) The amount payable under this Additional Coverage is additional insurance.

**33. Precious Metal Theft Payment Changes**

**SECTION I – PROPERTY, A. Coverage, 4. Limitations**, paragraph c. is replaced by the following:

- c. For loss or damage by "theft", the following types of property are covered only up to the limits shown:

- (1) \$10,000 for furs, fur garments and garments trimmed with fur.
- (2) \$10,000 for jewelry, watches, watch movements, jewels, pearls, precious and semi-precious stones. This limit does not apply to jewelry and watches worth \$250 or less per item.
- (3) \$25,000 for bullion, gold, silver, platinum and other precious alloys or metals.

**34. Preservation of Property – Expense**

The following is added to **SECTION I – PROPERTY, A. Coverage, 5. Additional Coverages**:

**Preservation of Property – Expense**

- (1) If it is necessary to move Covered Property from the described premises to preserve it from loss or damage by a Covered Cause of Loss, we will pay your expenses to move or store the Covered Property.
- (2) This coverage applies for 90 days after the property is first moved, but does not extend past the date on which this policy expires.
- (3) The most we will pay under this Additional Coverage is \$25,000.

This Additional Coverage is an additional amount of insurance.

**35. Personal Property in Transit**

**SECTION I – PROPERTY, A. Coverage, 6. Coverage Extensions, i. Personal Property in Transit**, paragraph (5) is replaced by the following:

- (5) Payment under this Coverage Extension is included within the Limit of Insurance applicable to your Business Personal Property

**36. Sales Representative Samples**

**SECTION I – PROPERTY, 5. Additional Coverages, y. Sales Representative Samples**, paragraph (3) is replaced by the following:

- (3) The most we will pay for any loss or damage under this Additional Coverage is \$25,000.

**37. Temporary Relocation of Property**

The following is added to **SECTION I – PROPERTY, A. Coverage, 5. Additional Coverages**:

**Temporary Relocation of Property**

- (1) We will pay for loss of or damage to Covered Property from a Covered Cause of Loss while it is away from the described premises, if it is being stored temporarily at a location you do not own, lease or operate while the described premises is being renovated or remodeled.
- (2) This coverage applies for 90 days after the property is first moved, but does not extend past the date on which this policy expires.
- (3) The most we will pay under this Additional Coverage is \$50,000.
- (4) The amount payable under this Additional Coverage is additional insurance.

### **38. Tenant Signs**

**SECTION I – PROPERTY, A. Coverage, 5. Additional Coverages, t. Tenant Signs,** paragraph (4) is replaced by the following:

- (4) The most we will pay for loss or damage in any one occurrence is the Limit of Insurance for Business Personal Property shown in the Declarations.

### **39. Utility Services (Including Overhead Transmission Lines)**

**a. SECTION I – PROPERTY, A. Coverage, 5. Additional Coverages, bb. Utility Services,** paragraphs (1) and (2) are replaced by the following:

- (1) We will pay for loss of or damage to Covered Property caused by an interruption in service to the described premises. The interruption must result from direct physical loss or damage by a Covered Cause of Loss to property not on the described premises that provides the services shown in paragraph (3) below.

The most we will pay for loss in any one occurrence under this Additional Coverage is \$25,000 at each described premises or the Limit of Insurance shown in the Additional Property Coverage Schedule.

- (2) We will pay for the actual loss of Business Income you sustain and necessary Extra Expense you incur caused by the interruption of service at the described premises. The interruption must result from direct physical loss or damage by a Covered Cause of Loss to property not on the described premises that provides the services shown in paragraph (3) below.

We will only pay for loss you sustain after the first 24 hours following the direct physical loss or damage to the property described above.

The most we will pay for loss in any one occurrence under this Additional Coverage is \$25,000 at each described premises or the Limit of Insurance shown in the Additional Property Coverage Schedule.

**b. SECTION I – PROPERTY, A. Coverage, 5. Additional Coverages, bb. Utility Services,** paragraph (4) is deleted.

### **40. Valuable Papers and Records (Other Than Electronic Data)**

**SECTION I – PROPERTY, A. Coverage, 6. Coverage Extensions, e. Valuable Papers and Records (Other Than Electronic Data),** paragraphs (2) and (3) are replaced by the following:

- (2) The most we will pay under this Coverage Extension for loss or damage to "valuable papers and records" in any one occurrence at the described premises is \$100,000.
- (3) The most we will pay under this Coverage Extension for loss or damage to "valuable papers and records" in any one occurrence not at the described premises is \$100,000.

### **41. Worldwide Property Off Premises**

The following is added to **SECTION I – PROPERTY, A. Coverage, 6. Coverage Extensions:**

#### **Worldwide Property Off-Premises**

- (1) You may extend the insurance that applies to your Business Personal Property and Personal Property of Others to apply to that property while it is temporarily outside the coverage territory if it is:
  - (a) Temporarily at a location you do not own, lease or operate;
  - (b) Temporarily on display or exhibit at any fair, trade show or exhibition;
  - (c) Samples of your "stock" in trade in the custody of your sales representatives; or
  - (d) While "in transit" between the described premises and a location described in (a), (b) or (c) above.
- (2) The most we will pay for loss or damage under this Extension is \$50,000.



- (3) This Extension provides an additional amount of insurance.

## **SECTION II – LIABILITY**

Paragraphs 2. through 8. amend coverage provided under **SECTION II – LIABILITY**.

### **1. Additional Insured by Contract, Agreement or Permit – Amended**

For purposes of the coverage provided by this endorsement, Coverage 1. **Additional Insured by Contract, Agreement or Permit**, subparagraph c. (5) of the **Businessowners Liability Special Broadening Endorsement** is replaced by the following:

This provision does not apply to:

- (5) All professional liability as an architect or engineer arising out of any construction agreement or activities under which any insured or anyone acting on any insured's behalf provides or provided service, advice, expertise or work. Construction includes, but is not limited to, the plan, conception, design, build, construct, assembly, development, safety, erection, formation, reconstruct, rehabilitation, repair, or any improvement made to real property. Construction also includes the hiring, supervision or management of any of these activities. However, this exclusion does not apply to liability arising out of an insured's presence at a jobsite that was not caused by professional activities listed in the above paragraph.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" or the offense which caused the "personal and advertising injury" involved professional liability as an architect or engineer arising out of any construction agreement or activities under which any insured or anyone acting on any insured's behalf provides or provided service, advice, expertise or work.

### **2. Additional Insured by Contract, Agreement or Permit – Primary and Non-contributory**

- a. The following is added to **SECTION III – COMMON POLICY CONDITIONS (APPLICABLE TO SECTION I – PROPERTY AND SECTION II – LIABILITY)**, paragraph H. Other insurance:

**Additional Insured – Primary and Non-Contributory**

If you agree in a written contract, written agreement or permit that the insurance provided to any person or organization included as an Additional Insured under **SECTION II – LIABILITY, C. Who is an Insured**, is primary and non-contributory, the following applies:

If other valid and collectible insurance is available to the Additional Insured for a loss covered under **SECTION II – LIABILITY** of this Coverage Part, our obligations are limited as follows:

#### **(1) Primary Insurance**

This insurance is primary to other insurance that is available to the Additional Insured which covers the

Additional Insured as a Named Insured. We will not seek contribution from any other insurance available to the Additional Insured except:

- (a) For the sole negligence of the Additional Insured;
- (b) When the Additional Insured is an Additional Insured under another primary liability policy; or
- (c) When b. below applies.

If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in c. below.

#### **(2) Excess Insurance**

- (a) This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:
  - (i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
  - (ii) That is Fire insurance for premises rented to the Additional Insured or temporarily occupied by the Additional Insured with permission of the owner;
  - (iii) That is insurance purchased by the Additional Insured to cover the Additional Insured's liability as a tenant for "property damage" to premises rented to the Additional Insured or temporarily occupied by the Additional Insured with permission of the owner; or
  - (iv) If the loss arises out of the maintenance or use of aircraft,

"autos" or watercraft to the extent not subject to Exclusion **g.** of **SECTION II – LIABILITY. B. Exclusions, 1. Applicable to Business Liability Coverage.**

- (v) That is insurance available to you for your participation in any past or present "unnamed joint venture".
- (vi) That is any insurance you may have that provides coverage for your professional services.
- (b) When this insurance is excess, we will have no duty to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.
- (c) When this insurance is excess over other Insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:
  - (i) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
  - (ii) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

### **(3) Method of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first. If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

- b. For the purposes of coverage provided under this endorsement, the following definition is added to **SECTION II – LIABILITY, F. Liability and Medical Expense Definitions:**

- 1. "Unnamed joint venture" means any joint venture in which you are a member or partner where:

- a. Each and every one of your co-ventures in that joint venture is a hair salon.
- b. That joint venture is not.

### **3. Aggregate Limit of Insurance (Per Project)**

- a. For purposes of the coverage provided by this endorsement, the following is added to **SECTION II – LIABILITY, D. Liability and Medical Expenses Limits:**

The General Aggregate Limit under **D. Liability and Medical Expenses Limits of Insurance** applies separately to each of "your projects" or each location listed in the Declarations.

- b. For purposes of the coverage provided by this endorsement, the following definition is added to **SECTION II – LIABILITY, F. Liability And Medical Expenses Definitions:**

- 1. "Your project" means:
  - a. Any premises, site or location at, on, or in which "your work" is not yet completed; and
  - b. Does not include any location listed in the Declarations.

### **4. Damage to Premises Rented To You – Revised Limit**

**SECTION II – LIABILITY, D. Liability And Medical Expenses Limits of Insurance**, paragraph 4. is replaced by the following:

- 4. The most we will pay under Business Liability Coverage f or damages because of "property damage" to any one premises, while rented to you or while temporarily occupied by you with permission of the owner will be the greater of:
  - a. \$1,000,000; or
  - b. The Limit of Insurance f or Damage to Premises Rented To You shown in the Declarations.

### **5. Limits of Insurance – Medical Expenses**

For purposes of the coverage provided by this endorsement, **SECTION II – LIABILITY, D. Liability and Medical Expenses Limits of Insurance**, paragraph 3. is replaced by the following:

- 3. Subject to the Liability and Medical Expenses Limits Limit, the most we will pay for all medical expenses because of "bodily injury" sustained by any one person is \$10,000 or the Medical Expenses limit shown in the Declarations, whichever is greater.

**6. Newly Acquired or Formed Organizations**

**SECTION II – LIABILITY, C. Who is An Insured,** paragraph **3. a.** is replaced by the following:

- a. Coverage under this provision is afforded only until the 180<sup>th</sup> day after you acquire or form the organization or the end of the policy period, whichever is earlier.

**7. Nonowned Watercraft**

**SECTION II – LIABILITY, B. Exclusions, 1. Applicable to Business Liability Coverage, g. Aircraft, Auto or Watercraft, (2) Aircraft (Other Than Unmanned Aircraft),** paragraph **(b)** is replaced by the following:

- (b)** A watercraft you do not own that is:

- (i) Less than 75 feet long; and
  - (ii) Not being used to carry persons or property for a charge.

**8. Who is an Insured – Unnamed Joint Venture**

- a. For purposes of the coverage provided by this endorsement, the final paragraph of **SECTION II – LIABILITY, C. Who Is An Insured** is replaced by the following:

**Unnamed Joint Venture**

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations. However, this does not apply to you, for your participation in any past or present “unnamed joint venture”, or if that person or organization is otherwise

an additional insured under **Additional Insureds – Unnamed Joint Venture** below.

- b. For purposes of the coverage provided by this endorsement, the following is added to **SECTION II – LIABILITY, C. Who is an Insured**:

**Additional Insureds – Unnamed Joint Venture:**

You, as an insured for your participation in any past or present “unnamed joint venture”. However, you are not an insured if the “unnamed joint venture” has:

- (1)** Direct employees; or
  - (2)** Owns, rents, or leases any real or personal property.

No other member or partner, or their spouses, of any past or present “unnamed joint venture” is an insured.

- c. For purposes of the coverage provided by this endorsement, the following definition is added to **SECTION II – LIABILITY, F. Liability And Medical Expenses Definitions**:

- 1. “Unnamed joint venture” means any joint venture in which you are a member or partner where:
    - a. Each and every one of your co-ventures in that joint venture is an architectural, engineering or surveying firm; and
    - b. That joint venture is not named in the Declarations.

ALL OTHER TERMS, CONDITIONS, AND EXCLUSIONS REMAIN UNCHANGED.



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

## DESIGNATED INSURED

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
GARAGE COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM  
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" under the Who Is An Insured Provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement Effective:	Countersigned By:
Named Insured:	(Authorized Representative)

### SCHEDULE

<b>Name of Person(s) or Organization(s):</b> AS REQUIRED BY CONTRACT
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(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to the endorsement.)

Each person or organization shown in the Schedule is an "insured" for Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured Provision contained in **Section II** of the Coverage Form.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## **ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

### **SCHEDULE**

<b>Name Of Person Or Organization</b>	<b>Location And Description Of Completed Operations</b>
AS REQUIRED BY CONTRACT	.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

For the purpose of coverage provided by this endorsement, the following changes are made to **SECTION II - LIABILITY**:

**A. The following is added to SECTION II - LIABILITY, C. Who Is An Insured:**

Any person or organization shown in the Schedule above is also an additional insured, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule above, performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or

agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B. The following is added to SECTION II - LIABILITY, D. Liability And Medical Expenses Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## KANSAS - BUSINESS AUTO COVERAGE BROADENING ENDORSEMENT

This endorsement modifies insurance provided under the following:

### BUSINESS AUTO COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

### SUMMARY OF COVERAGES

1. Cancellation Extension	Included
2. Employee Hired Autos	Included
3. Named Insured - Broad Form	Included
4. Employees as Insureds	Included
5. Supplementary Payments Increased Limits	
-Bail Bonds	\$2,500
-Loss of Earnings	\$500
6. Amended Fellow Employee Exclusion	Included
7. Expense of Returning a Stolen "Auto"	Included
8. Sign Coverage	\$2,000
9. Glass Breakage Deductible Waiver For Repair	Included
10. Transportation Expense	
- Per Day Limit	\$50
- Maximum Limit	\$1,500
11. Hired Auto Physical Damage	\$50,000
12. Audio, Visual and Data Electronic Equipment	\$500
13. Rental Reimbursement and Material Transfer Expense	
-Number of Days	60 days
-Limit	\$3,000
14. Airbag Coverage	Included
15. Auto Loan/Lease Gap Coverage	Included
16. Duties in the Event of Accident, Claim, Suit or Loss	Included
17. Bodily Injury Redefined	Included
18. Blanket Waiver of Subrogation	Included
19. Hired Auto - Worldwide Coverage	Included

### 1. CANCELLATION EXTENSION

Paragraph **A. CANCELLATION** 2. b. of the **COMMON POLICY CONDITIONS** is replaced with the following:

- b. 60 days before the effective date of cancellation if we cancel for any other reason.

### 2. EMPLOYEE HIRED "AUTOS"

**SECTION I - COVERED AUTOS,**  
**A. Description Of Covered Auto**  
**Designation Symbols; Symbol 8** is replaced by the following:

8 = Hired "Autos" Only - Only those "autos" you lease, hire, rent or borrow; including "autos" your employee hires at your direction, for the purpose of conducting your business. This does not include any "auto" you lease, hire, rent, or borrow from any of your



"employees" or partners or members of their households.

### **3. NAMED INSURED - BROAD FORM**

The following is added to the **SECTION II - LIABILITY COVERAGE, A. Coverage; 1. Who Is An Insured**

- d. Any business entity for which you have a financial interest greater than 50% of the voting stock or otherwise have a controlling interest after the effective date of this policy or that is newly acquired or formed by you during the term of this policy.

The coverage provided by this provision is afforded until expiration or termination of this policy, whichever occurs earlier.

The coverage provided by this provision does not apply to any business entity described in d. above that qualifies as an insured under any other automobile liability policy issued to that business entity as a named insured or would have been an insured except for the exhaustion of the policy limits or the insolvency of the insurer.

The coverage provided by this provision does not apply to "bodily injury" nor "property damage" arising from an accident that occurred prior to your acquiring or forming the business entity described in d. above.

### **4. EMPLOYEES AS INSUREDS**

The following is added to the **SECTION II - LIABILITY COVERAGE, A. Coverage; 1. Who Is An Insured**

- e. Any employee of yours is an "insured" while using a covered "auto" you do not own, hire or borrow in your business or your personal affairs.

### **5. SUPPLEMENTARY PAYMENTS**

**SECTION II - LIABILITY COVERAGE, A. Coverage, 2. Coverage Extensions, a. Supplementary Payments, (2) and (4)** are replaced by the following:

- (2) Up to \$2500 for cost of bail bonds

(including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

### **6. AMENDED FELLOW EMPLOYEE EXCLUSION**

The following is added to the **SECTION II - LIABILITY COVERAGE, B. Exclusions. Fellow Employee**

This exclusion does not apply if the "bodily injury" arises from the use of a covered "auto" you own or hire. This coverage is excess over any other collectible insurance, regardless whether such other insurance provides primary, excess or contingent coverages or purports to be excess over this insurance or any other collectible insurance.

### **7. EXPENSE OF RETURNING A STOLEN "AUTO"**

The following is added to **SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE, 1.**

- d. **Expense Of Returning A Stolen "Auto"**

We will pay for the expense of returning a stolen covered "auto" to you.

### **8. SIGN COVERAGE**

The following is added to **SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE, 1.**

- e. **Sign Coverage**

We will pay for loss to signs, murals, paintings or graphics, as part of equipment, which are displayed on a covered "auto".

The most we will pay for "loss" in any one "accident" is the lesser of:

- 1. The actual cash value of the property as of the time of the "loss"; or

2. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality; or
3. \$2,000.

## **9. GLASS BREAKAGE DEDUCTIBLE FOR REPAIR**

The following is added to **SECTION III - PHYSICAL DAMAGE COVERAGE A. COVERAGE** paragraph 3. **Glass Breakage - Hitting a Bird or Animal - Falling Objects or Missiles:**

Any deductible shown in the Declarations as applicable to the covered "auto" will not apply to glass breakage if such glass is repaired, rather than replaced.

## **10. TRANSPORTATION EXPENSE**

**SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE, 4. Coverage Extension, a. Transportation Expenses** is replaced with the following:

- a. We will pay up to \$50 per day to a maximum of \$1500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 24 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

## **11. HIRED AUTO PHYSICAL DAMAGE**

The following is added to **SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE:**

### **5. Hired Auto Physical Damage**

If hired "autos" are covered "autos" for Liability Coverage and if Physical Damage Coverage of Comprehensive, Specified Causes of Loss, or Collision is provided under this Coverage Form for any "auto" you own, then the Physical Damage Coverage(s) provided is extended to

"autos" you hire without a driver or your employee hires, without a driver, at your direction, for the purpose of conducting your business, for a period of 30 days or less, of like kind and use as the "autos" you own, subject to the following:

The most we will pay for any one loss is the lesser of the following:

- a. The actual cash value of the damaged or stolen property as of the time of the "loss"; or
- b. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality; or
- c. \$50,000

minus the deductible equal to the lowest deductible applicable to any owned "auto" for that coverage. Any deductible shown in the Declarations does not apply to "loss" caused by fire or lightning. Subject to the limit and deductible stated above, we will provide coverage equal to the broadest coverage provided to any covered "auto" you own, that is applicable to the loss.

If the loss arises from an accident for which you are legally liable and the lessor incurs an actual financial loss from that accident, we will cover the lessor's actual financial loss of use of the hired "auto" for a period of up to seven consecutive days from the date of the accident, subject to a limit of \$1,000 per accident.

## **12. AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT COVERAGE**

The following is added to **SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE:**

### **6. Audio, Visual and Data Electronic Equipment Coverage**

We will pay for "loss" to any electronic equipment that receives or transmits audio, visual or data signals and that is not designed solely for the reproduction of sound. This coverage applies only if the

equipment is permanently installed in the covered "auto" at the time of the "loss" or the equipment is removable from a housing unit which is permanently installed in the covered "auto" at the time of the "loss", and such equipment is designed to be solely operated by use of the power from the "auto's" electrical system, in or upon the covered "auto", including its antennas and other accessories. However, this does not include tapes, records or discs.

The exclusions that apply to PHYSICAL DAMAGE COVERAGE, except for the exclusion relating to Audio, Visual and Data Electronic Equipment, also apply to coverage provided herein. In addition, the following exclusions apply:

We will not pay, under this coverage, for either any electronic equipment or accessories used with such electronic equipment that is:

1. Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system; or
2. Both:
  - a. An integral part of the same unit housing any sound reproducing equipment designed solely for the reproduction of sound if the sound reproducing equipment is permanently installed in the covered "auto", and
  - b. Permanently installed in the opening of the dash or console normally used by the manufacturer for the installation of a radio.

The most we will pay for all "loss" to audio, visual or data electronic equipment and any accessories used with this equipment as a result of any one "accident" is the lesser of

- a. The actual cash value of the damaged or stolen property as of the time of the "loss"; or
- b. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality; or

c. \$500.

An adjustment for depreciation and physical condition will be made in determining actual cash value at the time of the "loss".

Deductibles applicable to **PHYSICAL DAMAGE COVERAGE**, do not apply to this Audio, Visual and Data Electronic Equipment Coverage.

If there is other coverage provided by this policy for audio, visual and data electronic equipment, the coverage provided herein is excess. However, you may elect to apply the limit or any portion thereof of coverage provided herein to pay any deductible that is applicable under the provisions of the other coverage.

### **13. RENTAL REIMBURSEMENT and MATERIAL TRANSFER EXPENSE**

The following is added to **SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE:**

#### **7. Rental Reimbursement and Material Transfer Expense**

This coverage provides only those Physical Damage Coverages where a premium is shown in the Declarations. It applies only to a covered "auto" described or designated to which the Physical Damage Coverages apply.

We will pay for auto rental expenses and the expenses, incurred by you because of "loss" to a covered "auto", to remove and transfer your materials and equipment from the covered "auto". Payment applies in addition to the otherwise applicable amount of each coverage you have on a covered "auto". No deductibles apply to this coverage.

We will pay only for those auto rental expenses incurred during the policy period beginning 24 hours after the "loss" and ending, regardless of the policy's expiration, with the lesser of the following number of days:

1. The number of days reasonably required to



repair or replace the covered "auto". If "loss" is caused by theft, this number of days is added to the number of days it takes to locate the covered "auto" and transport it to a repair shop.

**2. 60 days.**

Our payment is limited to the lesser of the following amounts:

1. Necessary and actual expenses incurred, including loss of use or
2. \$3000.

This auto rental expense coverage does not apply while there are spare or reserve "autos" available to you for your operations.

If "loss" results from the total theft of a covered "auto" of the private passenger type, we will pay under this coverage only that amount of your rental reimbursement expenses which is not already provided for under the **SECTION III - PHYSICAL DAMAGE COVERAGE, A. 4. Coverage Extension.**

**14. AIRBAG COVERAGE**

The following is added to **SECTION III - PHYSICAL DAMAGE COVERAGE, B. Exclusions, 3. a.**

The portion of this exclusion relating to mechanical or electrical breakdown does not apply to the accidental discharge of an airbag. This coverage is excess of other collectible insurance or warranty, regardless whether such other insurance provides primary, excess or contingent coverages or purports to be excess over this insurance or any other collectible insurance. No deductible applies to this Airbag Coverage.

**15. AUTO LOAN/LEASE GAP COVERAGE**

The **Physical Damage Coverage** Section is amended by the addition of the following:

In the event of a total "loss" to a covered "auto" shown in the Declarations, we will pay any unpaid amount due on the lease or loan for a covered "auto", less:

1. The amount paid under the Physical Damage Coverage Section of the policy; and
2. Any:
  - a. Overdue lease/loan payments at the time of the "loss";
  - b. Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
  - c. Security deposits not returned by the lessor;
  - d. Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and
  - e. Carry-over balances from previous loans and leases.

**16. DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS**

The following is added to **SECTION IV - BUSINESS AUTO CONDITIONS, Paragraph A. Loss Conditions, Subparagraph 2. Duties In The Event Of Accident, Claim, Suit Or Loss:**

- d. Knowledge of any "accident", claim, "suit" or "loss" will be deemed knowledge by you when notice of such "accident", claim, "suit" or "loss" has been received by:
  - (1) You, if you are an individual;
  - (2) Any partner or insurance manager if you are a partnership; or
  - (3) An executive officer or insurance manager if you are a corporation.

**17. BODILY INJURY REDEFINED**

**SECTION V - DEFINITIONS, C. "Bodily injury,"** is replaced by the following:

- C. "Bodily injury" means bodily injury, disability, sickness or disease sustained by a person, including death resulting from any of these. "Bodily injury" includes mental anguish or other mental injury resulting from "bodily injury".

## **18. BLANKET WAIVER OF SUBROGATION**

The following is added to **SECTION IV - BUSINESS AUTO CONDITIONS, A. Loss Conditions, 5. Transfer of Rights of Recovery Against Others to Us:**

However, we waive any right of recovery and proceeds we may have against any person or organization that is added as an additional insured as required by contract, agreement or permit:

1. Because of payments we make for "bodily injury" or "property damage" arising out of an "accident" or "loss"; and
2. While under a written contract, agreement or permit that is made before, and in effect when, the "bodily injury or "property damage" occurs; and
3. You specifically agree in such written contract or agreement to waive those rights of recovery and proceeds for such person or organization.

## **19. HIRED AUTO - WORLDWIDE COVERAGE**

The following is added to **SECTION IV - Business Auto Conditions, B. General Conditions, paragraph 7. Policy Period, Coverage Territory** provision:

- e. Outside the coverage territory described in a., b., c., and d. above for an "accident" or "loss" resulting from the use of a covered "auto" you hire, without a driver, or your employee hires without a driver, at your direction, for the purpose of conducting your business, for a period of 30 days or less, provided the suit is brought within The United States of America or its territories or possessions.

## WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

AS REQUIRED BY CONTRACT

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement  
Insured Schlager & Associates PA

10/01/2019

Effective Policy No.  
WK2A437609

Endorsement No.  
Premium

Insurance Company

Countersigned by \_\_\_\_\_



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

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

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

Business Entity ID Number: 0895854

Entity Name: SCHLAGEL AND ASSOCIATES, P.A.

Entity Type: PROFESSIONAL ASSOCIATION

State of Organization: KS

Resident Agent: SCHLAGEL AND ASSOCIATES, P.A.

Registered Office: 14920 W 107TH ST, LENEXA, KS 66215

was filed in this office on November 26, 1984, and is in good standing, having fully complied with all requirements of this office.

No information is available from this office regarding the financial condition, business activity or practices of this entity.



In testimony whereof I execute this certificate and affix the seal of the Secretary of State of the state of Kansas on this day of April 28, 2020

**SCOTT SCHWAB**  
**SECRETARY OF STATE**

Certificate ID: 1135456 - To verify the validity of this certificate please visit <https://www.kansas.gov/bess/flow/validate> and enter the certificate ID number.



# City of Olathe

## COUNCIL AGENDA ITEM

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**MEETING DATE:** 5/19/2020

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**DEPARTMENT:** Public Works

**STAFF CONTACT:** Mary Jaeger / Beth Wright

**SUBJECT:** An agreement with ATMOS Energy Corporation for utility relocations for the Upper Cedar Creek, 169 Hwy to Mahaffie, Stormwater Improvements Project, PN 2-C-013-19.

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**ITEM DESCRIPTION:**

Consideration of an Agreement with ATMOS Energy Corporation for the Upper Cedar Creek, 169 Hwy to Mahaffie, Stormwater Improvements Project, PN 2-C-013-19.

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**SUMMARY:**

This project is in place to address street and structure flooding that occurs in the vicinity of the intersection of S. Keeler Street and S. Keeler Terrace. The project includes replacement of existing corrugated metal pipe (CMP) culverts with larger concrete culverts, reconstruction of street pavement, channel improvements, storm sewer improvements, and the elimination of the flood risk for two (2) businesses identified within the 100-year floodplain through project improvements.

This is the second of six identified neighborhood flood control projects located outside the FEMA regulated floodplain.

This agreement would allow ATMOS Energy Corporation (ATMOS) to relocate necessary portions of their infrastructure that are in conflict with the City's proposed stormwater improvements along S. Keeler Street and S. Keeler Terrace.

ATMOS's infrastructure is within a private easement, therefore the City must reimburse ATMOS for all costs associated with the relocation effort. ATMOS estimates the cost to be \$99,096.00. The actual costs will be reconciled when ATMOS completes their relocation work.

The relocation of the ATMOS facilities is tentatively scheduled to begin in Summer 2020 with completion by the end of 2020.

Construction of the project is tentatively scheduled to begin in Spring 2021.

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**FINANCIAL IMPACT:**

Funding for the Upper Cedar Creek, 169 Hwy to Mahaffie, Stormwater Improvements Project, as approved in the 2019 Capital Improvement Plan, includes:

Olathe Stormwater Fund	\$1,184,430
<u>Johnson County SMAC Program</u>	<u>\$1,350,570</u>
<b>Total</b>	<b>\$2,535,000</b>

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**MEETING DATE:** 5/19/2020

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**ACTION NEEDED:**

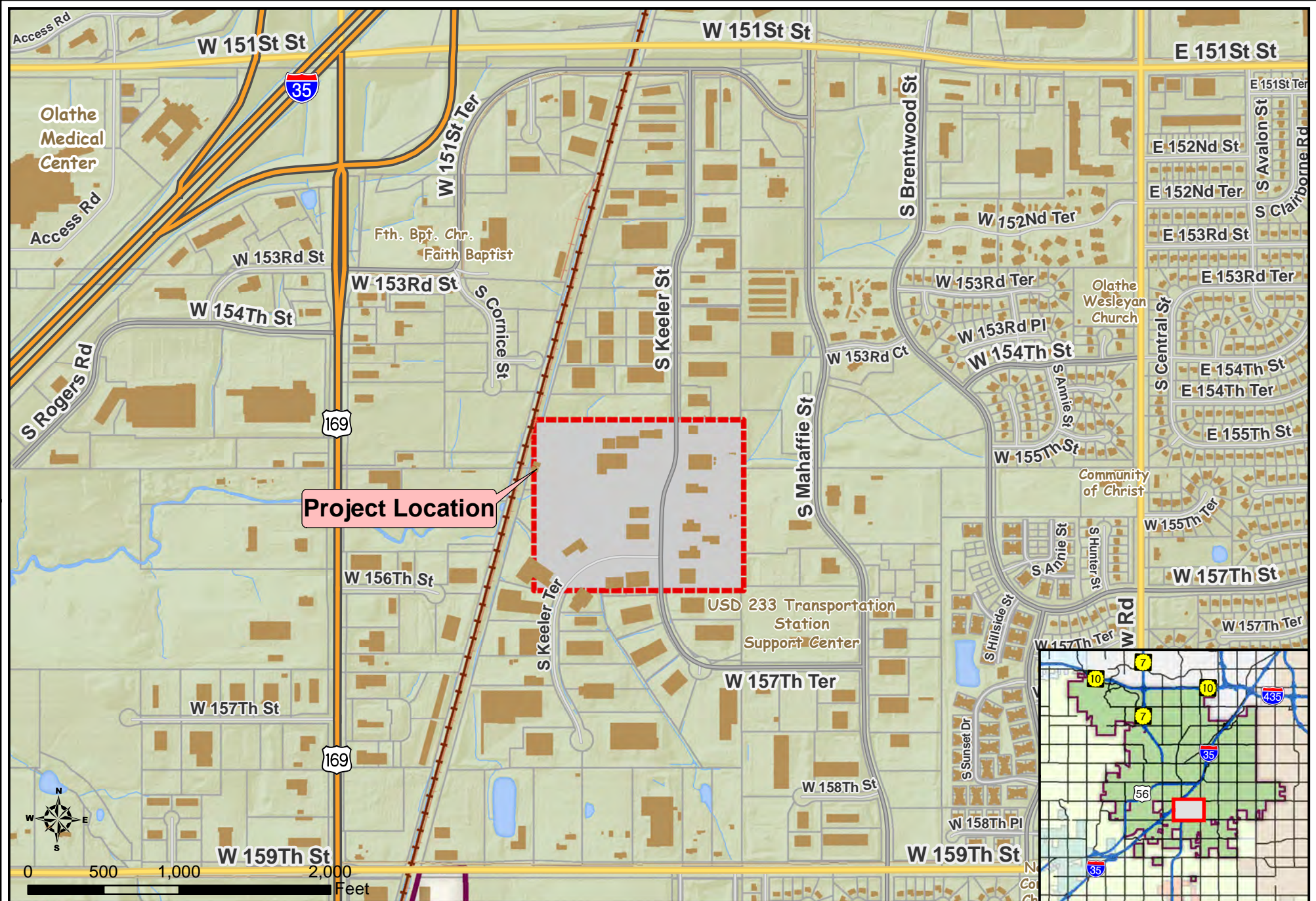
Approval of an Agreement with ATMOS Energy Corporation for the Upper Cedar Creek, 169 Hwy to Mahaffie, Stormwater Improvements Project, PN 2-C-013-19.

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**ATTACHMENT(S):**

- A. Project Location Map
- B. Project Fact Sheet
- C. Agreement





# Upper Cedar Creek, 169 Hwy to Mahaffie, Stormwater Improvements Project

PN 2-C-013-19

## Project Location Map



User: jaredmd  
Date: 04/10/2019





**Project Fact Sheet**  
**Upper Cedar Creek, 169 Hwy to Mahaffie,**  
**Stormwater Improvements Project**  
**2-C-013-19**  
**May 19, 2020**

**Project Manager:** Beth Wright / Scott Ward

**Description:** The project includes replacement of existing corrugated metal pipe (CMP) culverts with larger concrete culverts, reconstruction of street pavement, channel improvements, storm sewer improvements, and the elimination of the flood risk for two (2) businesses identified within the 100-year floodplain through project improvements.

**Justification:** This project will address street and structure flooding that occurs in the vicinity of the intersection of S. Keeler Street and S. Keeler Terrace.

**Comments:** This project has received Johnson County SMAC Program funds which will provide for 75% of design and construction up to a maximum of \$1,350,570.

<b>Schedule:</b>	<b>Item</b>	<b>Date</b>
Design:	RFQ	1/2019
	Consultant Selection	4/2019
Land Acquisition:		Spring 2020 – Estimate
Utility Relocation:		Fall 2020 – Estimate
Construction:	Advertise	2/2021 – Estimate
	Award Contract	3/2021 – Estimate
<b>Council Actions:</b>	<b>Date</b>	<b>Amount</b>
Approved in CIP	2019-2023	\$2,535,000
Professional Services Agreement	4/16/2019	\$244,540
SMAC Agreement (Design)	5/21/2019	\$183,405
WaterOne Agreement	5/5/2020	\$69,769.70
ATMOS Agreement	5/19/2020	\$99,096
Accept Bid/Award Contract		
SMAC Agreement (Construction)		
<b>Funding Sources:</b>	<b>Amount</b>	<b>CIP Year</b>
SMAC Funds	\$1,350,570	2019 and 2020
Stormwater Funds	\$1,184,430	2019 and 2020
<b>Expenditures:</b>	<b>Budget</b>	<b>Amount to Date</b>
Design	\$ 260,000	\$232,618
Land Acquisition	\$ 90,000	\$ 100
Utilities	\$ 200,000	\$ 0
Construction	\$1,350,000	\$ 0
Staff Time	\$ 100,000	\$ 23,837
Inspection	\$ 85,000	\$ 0
<u>Contingency</u>	<u>\$ 450,000</u>	<u>\$ 0</u>
<b>Total</b>	<b>\$2,535,000</b>	<b>\$256,555</b>

## RELOCATION AND REIMBURSEMENT AGREEMENT

**THIS RELOCATION AND REIMBURSEMENT AGREEMENT** (the “Agreement”), is made and entered into this day of March 31, 2020 by and between the **CITY OF OLATHE, KANSAS**, a Kansas Municipality, hereinafter referred to as “City” whose mailing address is 100 E. Santa Fe Street, P.O. Box 768, Olathe, Kansas 66051-0768, and **ATMOS ENERGY CORPORATION**, a Texas Corporation authorized to conduct business in the State of Kansas, successor in interest to United Cities Gas Company, Inc., and Union Gas Corporation, Inc.), hereinafter referred to as “Company”, whose mailing address is P.O. Box 650205, Dallas, TX 75265-0205 (collectively, the “Parties” and each individually, a “Party”).

### WITNESSETH:

**WHEREAS**, Company is the owner of a Natural Gas Pipeline (the “Pipeline”), located in easements obtained by Union Gas Corporation, Inc. (predecessor in interest to the Company) dated January 21, 1987 and August 2, 1966 described and recorded at Books 65 and 167 Pages 12 and 387 respectively in the Register of Deeds Office, Johnson County, Kansas, (the “Easement”) being more particularly identified on **Exhibit A, attached hereto and made a part hereof**; and

**WHEREAS**, City owns a public road right-of-way lying in the SW quarter of Section 12, 14S, 23E by virtue of Improve System of Road Papers recorded in Book XX Page XX in the Register of Deeds Office, Johnson County, Kansas; and

**WHEREAS**, City desires that the Pipeline be relocated in connection with improvements being made by the City to UPPER CEDAR CREEK 169 HWY TO MAHAFFIE STORMWATER IMPROVEMENT PROJECT (the “Improvements”) located in part of the Southwest Quarter of Section 12, 14S, 23E in Johnson County, Kansas; and

**WHEREAS**, under the terms of this Agreement, Company is willing to relocate the Pipeline (install new pipeline and purge, cap and abandon the old pipeline in place) to accommodate the Improvements;

**NOW, THEREFORE**, for and in consideration of the premises and the mutual promises of the Parties herein contained, Company and City hereby agree as follows:

1. Company will relocate, adjust, and/or protect the Pipeline by abandoning approximately 300’ of plastic main and service and relocating with approximately 300’ of 2” HDPE , to clear the proposed roadway improvements as shown on **Exhibits A and B, attached hereto and made a part hereof**, (the “Work”) located within the Easement and the public road right-of-way for the Improvements, as shown on **Exhibit A**. Company further agrees to furnish or subcontract all labor, tools, materials and equipment necessary for the Work, PROVIDED CITY AGREES TO PAY ITS PROPORTIONATE SHARE OF ALL COSTS ATTRIBUTABLE THERETO.



2. The costs for the Work are estimated to be (\$ 99,096.00) (ninety-nine thousand, ninety-six and 00 cents) (hereinafter referred to as the “Estimated Costs”) as shown on **Exhibit B attached hereto and made a part hereof**. The Company will – account for the Actual Costs of the construction, relocation and inspection by using actual and related costs accumulated in accordance with standard work order accounting procedures, and the Company shall keep a detailed and accurate account of all labor, materials, supplies, incidentals, administrative, engineering, inspection, and other necessary cost involved in such work. The City, or any other authorized agent of the City shall have access at all reasonable times to such Company records. It is understood that these Company records are kept at the Company's divisional office located in Denver, CO and all costs incurred by the City related to the inspection of the project records shall be borne by the City.
3. For purposes of this Agreement, “Actual Costs” shall include all fees and expenses incurred by Company both before and after execution of this Agreement for engineering, operations, land, attorneys, appraisers, and other experts, in connection with the negotiation of this and other Agreements with the City pertaining to the Work, the negotiation and acquisition of easements whether through negotiated settlements or condemnation, other legal and appraisal costs, and the handling of encroachment work in connection with the project, but limited to the Scope, Assumptions, and Amount set forth in **Exhibit B**.
4. City agrees to reimburse Company its Actual Costs for the Work (the “Reimbursement”). An itemized invoice shall be sent to the City by Company reflecting the amount equal to 100 % of the estimated costs incurred by Company for the Work. This percentage will reimburse and pay to the Company all of the Company’s cost of construction, relocation and/or inspection of those parts of the Pipeline located within private easement areas in accordance with **Exhibit A**. Within thirty (30) days after the receipt of an invoice from Company, City shall pay the Reimbursement to Company at the following address:

**ATMOS ENERGY CORPORATION**

P.O. Box 841425

Dallas, TX 75284-1425

5. In the event the Actual Costs for the Work estimated by Company exceed the Reimbursement, the Parties agree to adjust the payment due Company from City by execution of a Supplemental Agreement in substantially the form of **EXHIBIT C attached hereto and made a part hereof**. Company reserves the right to adjust hourly rates and equipment charges to the effective current year hourly rates and charges for services provided under future supplemental agreements. If the Company anticipates costs will exceed the reimbursement, it will inform the City in writing and work with the City to mitigate such cost increases.
6. In the event that the Actual Costs for the Work are less than the Reimbursement payable herein, Company shall return to City the balance of the Reimbursement advanced within thirty (30) days of the date that Company issues a Certificate of Full Completion (as defined herein) for the Work and provides such Certificate to City. “Full Completion”



shall mean that the Company shall have completed all of the Work. The Certificate of Full Completion shall be in substantially the form attached hereto as **Exhibit E, attached hereto and made a part hereof**. The City shall, within ten (10) days following delivery of the Certificate of Full Completion, carry out such inspections as it deems necessary to verify to its reasonable satisfaction the accuracy of the certifications contained in the Certificate of Full Completion, and, if satisfied, shall promptly notify Company in writing. Such notice to Company shall constitute City's acceptance of the Work and full satisfaction of the Company's obligations hereunder.

7. In the event the City fails to pay the Reimbursement as required by this Agreement (and as described in Paragraph 4, above), Company shall have the right to stop the Work, without obligation or liability, and the Pipeline shall remain in place as it exists on the date of this Agreement and/or Company, at its election, shall have the right to take whatever actions are deemed necessary by Company in its sole discretion to protect the Pipeline.
8. In the event City, for whatever reason, requires additional work to be done or materials to be used by Company not contemplated by or in Company's estimate of the Work, as shown on **Exhibit C**, City agrees to pay Company all additional Actual Costs incurred by Company to satisfy such additional requirements made by City. Company further reserves the right, upon written demand, to secure additional advances from City in the event City alters its plans in any manner or changes the scope of the Work. Any such advances shall be agreed upon in writing by Company and City under a Supplemental Agreement as set forth in Paragraph 5 above and **Exhibit C**.
9. Subject to natural gas commitments and other delays caused by force majeure, Company will endeavor with all due diligence to complete the Work before June 2020 (if not restricted by regulations concerning the CONVID 19 pandemic).
10. The Company agrees to indemnify and hold harmless the City against and from any and all liability, loss and expense and shall defend all claims resulting from loss of life or damage or injury to persons or property where causation is directly resulting from the work performed by the Company, except said indemnification shall not apply to those claims resulting from the negligent acts of agents or employees of the City. To the extent permitted by law, and subject to the provisions of the Kansas Tort Claims Act, City agrees to indemnify and hold Company, its employees, agents independent contractors and consultants (collectively, the "City Indemnified Parties") harmless from and against any and all suits, claims, damages, injuries, liabilities, judgments, costs and/or expenses, including court costs and reasonable attorneys' fees, resulting from, arising out of, or in any way connected with:
  - a. the negligence or willful misconduct of City its employees, agents, independent contractors and consultants in connection with the performance of the work performed on the Improvements; and
  - b. any delay or expense resulting from any litigation filed against the City.

The City's indemnification of the Company shall not apply to claims resulting from the willful misconduct or negligence acts of Company or its employees, agents, contractors and consultants.

This section includes, but is not limited to, any repair, cleanup, remediation, detoxification, or preparation and implementation of any removal, remediation, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or hazardous wastes including petroleum and its fractions as defined in (i) the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"; 42 U.S.C. Section 9601, et seq.), (ii) the Resource Conservation and Recovery Act ("RCRA"; 42 U.S.C. Section 6901 et seq.) and (iii) Article 34, Chapter 65, K.S.A. and all amendments thereto, at any place where Company is permitted to conduct any of Company's activities under this Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107 (e) of CERCLA to assure, protect, hold harmless and indemnify City from liability. The right to indemnification set forth in this Agreement shall survive the termination of this Agreement.

11. At all times while this Agreement is in effect, Company shall maintain insurance as required by **Exhibit D, attached hereto and made a part hereof**. In compliance with the provisions contained in Exhibit D, Company has provided the City a Self-Insurance Letter referencing the project relating to the improvement; a Revised Certificate of Liability Insurance evidencing excess liability and automobile liability referencing the project relating to the Improvement and a Certificate of Liability Insurance evidencing workers' compensation and referencing the project relating to the Improvement.
12. Company, for itself, its successors and assigns, and any third party with whom Company has contracted for the performance of the Work, agrees that in performance of the Work the Company shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, age, sex, marital status, disability, national origin or ancestry.
13. Nothing in this Agreement shall in any way modify, waive or abandon any right, title or interest Company has in and to the above described easement.
14. The Parties agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications, as may be reasonably necessary or appropriate to carry out the terms, provisions and intent of this Agreement and to reasonably aid and assist each other in carrying out said terms, provisions and intent.
15. This Agreement shall be construed and enforced in accordance with the laws of the State of Kansas, including, but not limited to, the Kansas Cash Basis law. The unenforceability (or modification to conform with such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Agreement. Accordingly, if any provision of this Agreement shall be deemed invalid or unenforceable in whole or

in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision(s) , or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable. In the event it shall become necessary for either Party to commence litigation to enforce any provisions of this Agreement, in addition to any other relief awarded, the prevailing Party shall be entitled to recover its costs of suit, including its reasonable attorney's fees. Any legal actions related to or arising out of this Agreement must be instituted in the District Court of Johnson County, Kansas, or, if federal jurisdiction exists, in the United States District Court for the District of Kansas.

16. The terms of this Agreement shall constitute covenants running with the land and shall be binding on and inure to the benefit of the Parties hereto and their respective successors and assigns. The obligations of the Parties herein shall survive the termination of this Agreement, unless otherwise provided. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the Parties.
17. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement. The transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.
18. This Agreement may be amended only by the mutual consent of the Parties and by the execution of said amendment by the Parties or their successors in interest in writing.
19. Time is of the essence of this Agreement. The Parties hereto will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.
20. Pursuant to Article V of City Ordinance No. 10-64, the City grants the Company the right to construct relocated pipelines and facilities within the new road right-of-way, including any modifications and/or improvements to those relocated pipelines and facilities after they have been constructed. In the event Company is required to subsequently relocate the pipeline and facilities being relocated as a result of this Agreement, the City shall be required to reimburse Company for the cost associated with the subsequent relocation since those pipeline facilities were originally located in a private easement.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, we hereunto set our hands and deals on the day and year below our signatures indicated.

**CITY OF OLATHE, KANSAS**

By: \_\_\_\_\_  
J. Michael Wilkes

Title: City Manager

State of Kansas )  
                              ) SS  
County of Johnson)

**Corporate Acknowledgment**

Before me, the undersigned, a Notary Public duly commissioned in and for the county and state aforesaid, on the \_\_\_\_\_ day of \_\_\_\_\_, 2020, personally appeared \_\_\_\_\_, who being duly sworn, did say the he/she is \_\_\_\_\_ for The City of Olathe, Kansas, a municipal corporation duly organized in accordance with the laws of the state of Kansas, and said instrument was signed on behalf of \_\_\_\_\_ and \_\_\_\_\_ acknowledged said instrument to be the free act and deed of said municipality.

In Testimony whereof, I have hereunto set my hand and affixed my official seal at my office in said county and state the day and year written above.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_



**ATMOS ENERGY CORPORATION**

By: \_\_\_\_\_  
Bart Armstrong

Title: Vice President, Operations

State of Kansas       )  
                                  )  
County of Johnson    )       SS

**Corporate Acknowledgment**

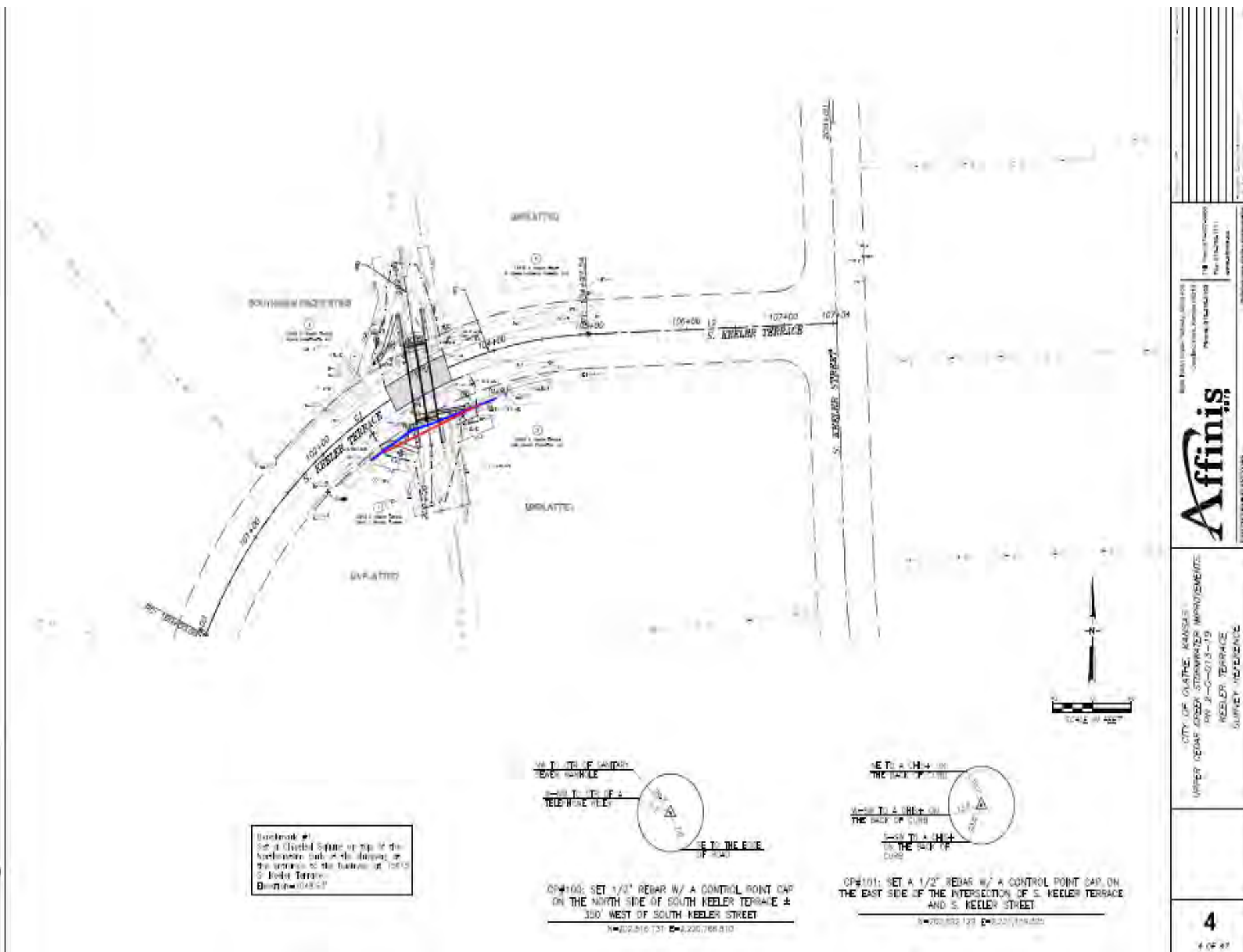
Before me, the undersigned, a Notary Public duly commissioned in and for the county and state aforesaid, on the \_\_\_\_\_ day of \_\_\_\_\_, 2020, personally appeared **Bart Armstrong**, who being duly sworn, did say the he is Vice President, Operations for the Colorado Kansas Division of Atmos Energy Corporation, a Texas Corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and \_\_\_\_\_ acknowledged said instrument to be the free act and deed of said corporation.

In Testimony whereof, I have hereunto set my hand and affixed my official seal at my office in said county and state the day and year written above.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

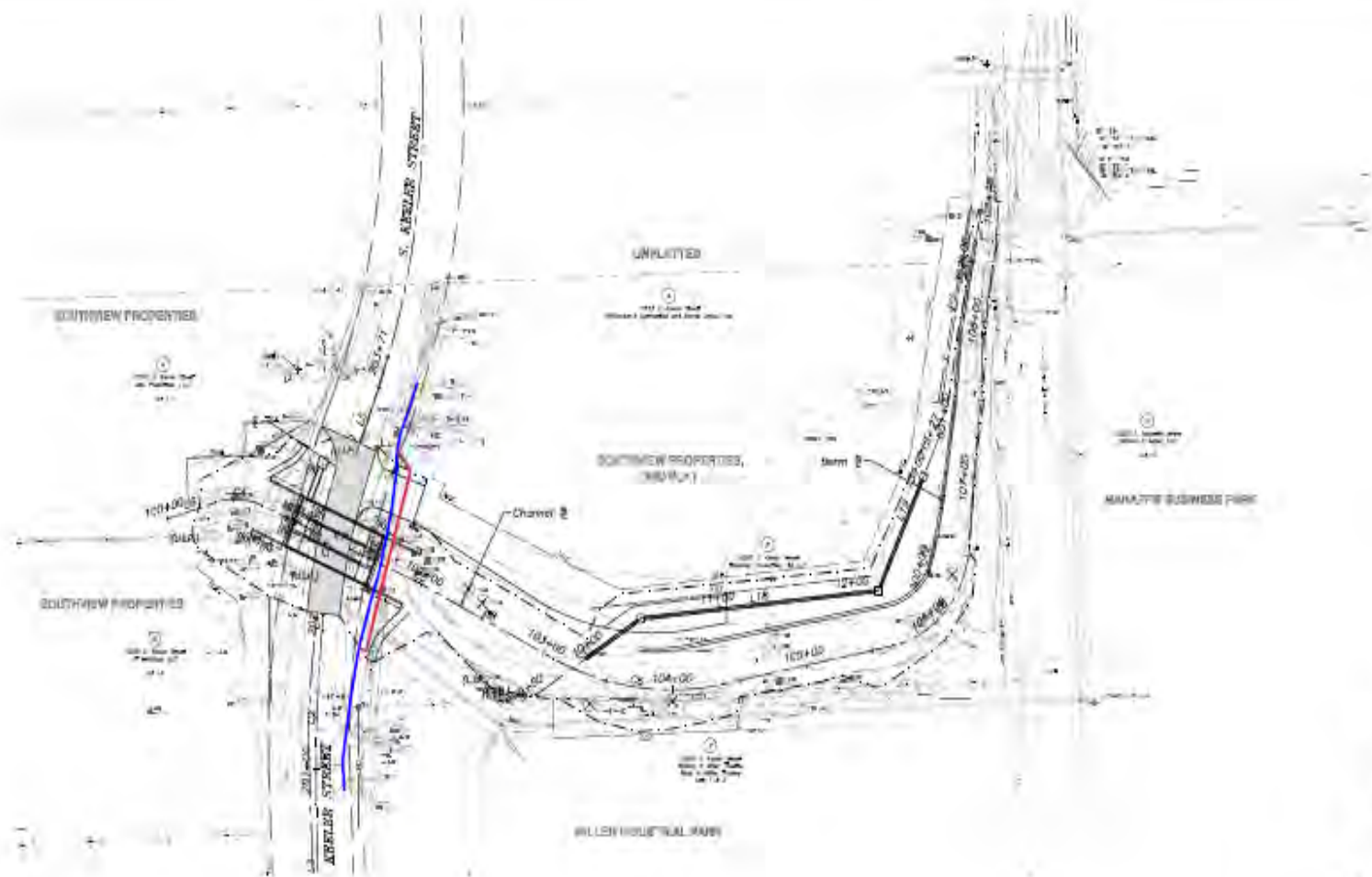
**EXHIBIT A**  
**ATMOS ENERGY CORPORATION EASEMENT**  
**AND AREA TO PERFORM WORK ALONG THE IMPROVEMENTS**

# Exhibit A



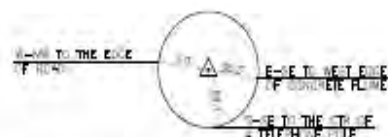
<p>City of Olathe, Kansas          Upper Olathe Green Stormwater Improvements          Job #2020-013-19          Keeler Terrace          Survey Reference</p>	
<p><b>Affinis</b></p> <p>Surveyors &amp; Engineers</p>	
<p>100% Final Plan          Date: 10/1/2020          Project: Upper Olathe Green Stormwater Improvements          Job #2020-013-19          Keeler Terrace          Survey Reference</p>	
<p>4 OF 47</p>	

# Exhibit A



**Benchmark #2**  
Set a Chisled Square on the east  
intersection in the Southwest corner of  
the Eastern parking lot at 10010 S.  
Keeler Street.  
Elevation=1043.18

**Benchmark #3**  
Set a Chisled Square on top of the  
Northeast corner of a concrete wall  
near the Southeast corner of the lot  
at 10010 S. Keeler Street.  
Elevation=1040.99



CP#102 SET A 1/2" REBAR W/ A CONTROL POINT CAP ON  
THE EAST SIDE OF SOUTH KEELER TERRACE 350± NORTH  
OF THE INTERSECTION OF SOUTH KEELER TERRACE  
AND SOUTH KEELER STREET

N=201.019.915 E=221.180.568



CP#103 SET A 1/2" REBAR W/ A CONTROL POINT CAP  
100± SOUTHEAST OF THE NORTHEAST CORNER OF THE  
LOT AT 15525 SOUTH KEELER STREET

N=203.038.046 E=221.017.795



CP#104 SET A 1/2" REBAR W/ A CONTROL POINT CAP  
40± EAST OF THE NORTHEAST CORNER OF THE LOT AT  
5515 SOUTH KEELER STREET

N=203.136.064 E=221.705.756

18' High of Survey  
Pins 1/4" Dia. x 1/4" x 1/4"  
1/4" Dia. x 1/4" x 1/4"  
1/4" Dia. x 1/4" x 1/4"

**Affinis**  
SURVEYING & ENGINEERING

CITY OF FLA. KE. KANSAS  
UPPER CEDAR CREEK STORMWATER IMPROVEMENTS  
PN 2-C-UTS-18  
KEELER STREET  
SURVEY REFERENCE



Exhibit A

# 762378 RIGHT OF WAY CONTRACT

FOR AND IN CONSIDERATION of the sum of ONE DOLLAR to me in hand paid, receipt of which is hereby acknowledged, and the further consideration of Two Dollars (\$2.00) per rod for each line to be paid when such grant shall be used or accepted Andy F. Barthol and Josephine F. Barthol, both single persons,

Address Route #1, Mathe, Kansas do hereby grant to UNION GAS SYSTEM, INC., of Independence, Kansas, successors or assigns, the right of way to lay, maintain, protect, alter, repair, operate, remove and relay pipe lines for the transportation of gas on, over, and through certain lands, situate in Johnson County, State of Kansas described as follows:

All that part of the Northwest 1/4 and all that part of the North 1/2 of the Southwest 1/4 and all that part of the North 1/2 of the South 1/2 of the Southwest 1/4 lying east of the Frisco Railroad in Section 12, Township 14, Range 23, Johnson County, Kansas, subject to covenants, restrictions, reservations and easements of record thereon, if any.

The pipe lines to be laid across the north part of the above described land within one rod of the public road right of way line.

together with right of unimpaired access to said pipe line and the rights of ingress and egress on, over and through said land for any and all purposes necessary and incident to the exercise by said grantee of the rights granted hereunder.

The said grantors shall have the right to fully use and enjoy the said premises except as the same may be necessary for the purposes herein granted to the said grantee. Grantors agree not to build, create or construct, any obstruction, engineering works, or other structure over said pipe line or lines, nor permit same to be done by others. Grantee agrees to pay any damages which may arise to crops and fences by reason of its operations on this land.

As a part of the consideration hereinabove set forth Grantors hereby grant to Grantee the right to construct and operate an additional pipe line or pipe lines alongside said first pipe line through said land on the payment of the roddage consideration above mentioned.

The terms, conditions and provisions hereof shall extend to and be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto and the contract may be assigned by either party. It is agreed that all statements and representations made by the parties or their agents in negotiating this agreement are merged herein.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this 2nd

day of August, A. D., 19 66

Signed, Sealed and Delivered in the presence of

Edwin P. Trout  
Edwin P. Trout

Andy F. Barthol (SEAL)  
Andy F. Barthol  
Josephine F. Barthol (SEAL)  
Josephine F. Barthol (SEAL)

STATE OF Kansas } ss.  
COUNTY OF Johnson

On this 2nd day of August 1966 before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Andy F. Barthol and Josephine F. Barthol to me known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

WITNESS my hand and seal this 2nd day of August 1966.

My commission expires Sept 18 1966

Harold F. Varnes Notary Public.  
STATE OF KANSAS } ss.  
COUNTY OF JOHNSON  
FILED FOR RECORD

1966 AUG 12 AM 8 56 .1

Marguerite M. Broun  
MARGUERITE M. BROUN  
NOTARY PUBLIC

Line  
Township  
County



# SOUTHVIEW PROPERTIES 3RD PLAT

1676772  
STATE OF KANSAS  
COUNTY OF JOHNSON  
FILED FOR RECORD

1987 FEB -5 P 2:44 8  
10.00  
20.00  
AUBIE M. SCOTT  
REGISTER OF DEEDS  
Blk 65 Pg 12 DEP

This is a survey and plat of part of the Southwest 1/4 of Section 12, T14S, R23E, now in the City of Olathe, Johnson County, Kansas, being more particularly described as follows: Beginning at the Northeast corner of the Southwest 1/4 of Section 12, T14S, R23E; thence S 00°06'54" E along the East line of said Southwest 1/4 a distance of 90.67 feet to the TRUE POINT OF BEGINNING; thence continuing S 00°06'54" E along said East line a distance of 177.13 feet; thence N 89°53'09" W parallel with the North line of said Southwest 1/4 a distance of 498.40 feet to a point on the Easterly right-of-way line of Keeler Street as platted; thence Northeasterly along said right-of-way line along a curve to the right having a radius of 470 feet and an initial tangent bearing of N 04°36'40" E for a distance of 171.69 feet; thence N 25°32'28" E continuing along said right-of-way line a distance of 4.45 feet; thence Northeasterly continuing along said right-of-way line along a curve to the left having a radius of 530 feet for a distance of 9.00 feet; thence S 89°53'09" E parallel with the North line of said Southwest 1/4 a distance of 447.91 feet to the TRUE POINT OF BEGINNING, containing 1.949 acres, more or less.

The undersigned proprietor has caused the name to be platted in the manor shown on the accompanying plat, which subdivision and plat shall hereafter be known as "SOUTHVIEW PROPERTIES, 3RD PLAT".

An easement or license is hereby granted to the City of Olathe and all public utility companies to enter upon, construct, and maintain utilities upon, over, and under those areas outlined and designated on the plat as "Utility Easement" or "U/E".

An easement or license is hereby granted to the City of Olathe, Johnson County, Kansas, to enter upon, locate construct and maintain or authorize the location, construction or maintenance and use of conduits, sewer pipes, surface drainage facilities, etc., upon, over, and under these areas outlined and designated on this plat as "Drainage Easement" or "D/E".

The Streets shown on this plat and not heretofore dedicated are hereby so dedicated.

IN TESTIMONY WHEREOF, the undersigned proprietor, ROSE CONSTRUCTION CO., INC., has caused these presents to be signed this 21<sup>st</sup> day of January, 1987.

ROSE CONSTRUCTION CO., INC.

Ned F. Rose President  
Ned F. Rose

STATE OF KANSAS  
COUNTY OF JOHNSON SS BE IT REMEMBERED, that on this 21<sup>st</sup> day of January, 1987, before me a Notary Public in and for said County and State, came NED F. ROSE, President of ROSE CONSTRUCTION CO., INC., who is personally known to me to be the same person who executed the foregoing instrument of writing on behalf of said Corporation and he duly acknowledges the execution of the same to be the act and deed of said Corporation.

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

John B. Ray My commission expires July 7, 1990  
Notary Public

APPROVED by the Planning Commission of Olathe, Kansas, this 24 day of NOVEMBER, 1986.

BY Yvonne L. Bous Chairman

APPROVED by the Governing Body of the City of Olathe, Kansas, this 16 day of DECEMBER, 1986.

Maryellen Swartley ATTEST Wendell  
Mayor City Clerk

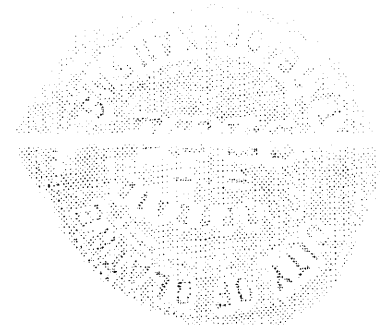
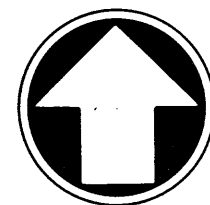
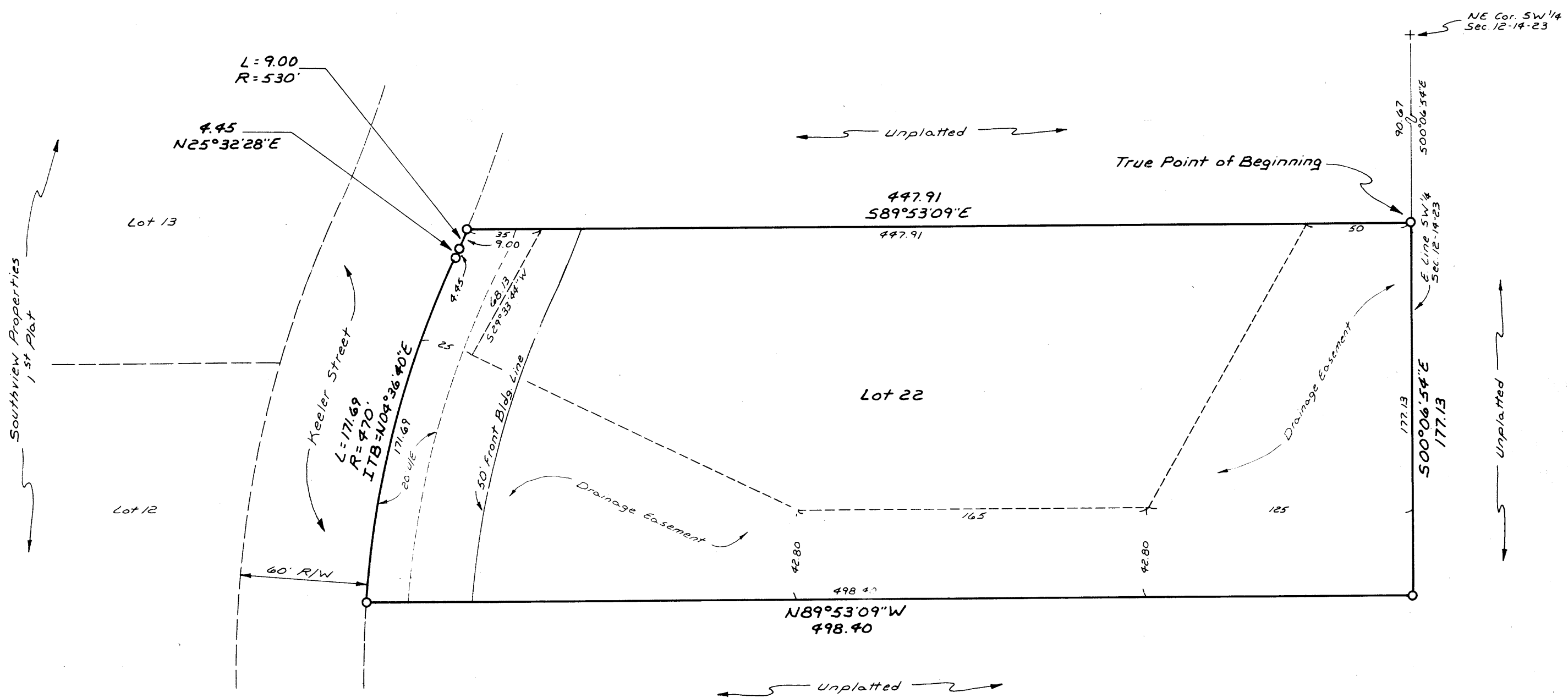
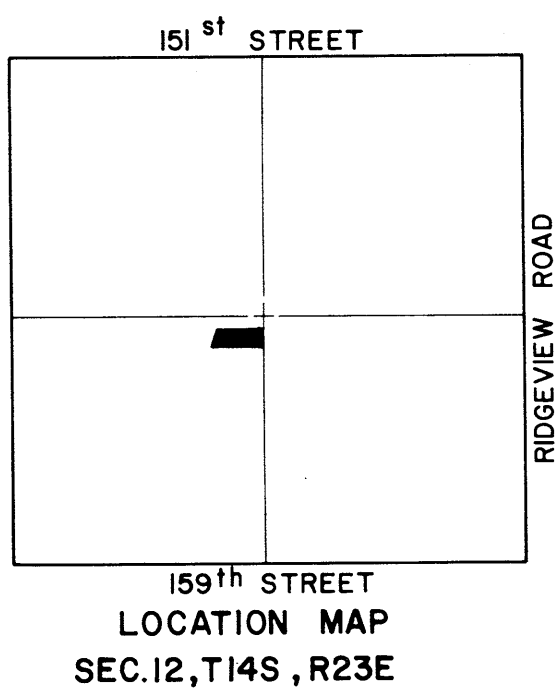


Exhibit A



North  
1"=50'



Max L. Dametz  
MAX L. DAMETZ  
KANSAS P.E. NO. 8987



PAYNE & BROCKWAY  
ENGINEERS  
OLATHE, KANSAS



April 3, 2020

**Exhibit "B"**  
**CITY PROJECT**

**Upper Cedar Creek 169 HWY To Mahaffie  
Stormwater Improvement Project  
( Keeler and Keeler Terr. RCB'S )  
City of Olathe Project No. 2-C-013-19  
SMAC Project No. CC-09-019  
Atmos Project NO. 060.**

Contractor Labor:	\$ 62,000.00
Material:	\$ 3,000.00
Company Labor:	\$ 3,600.00
Indirect company labor, with overheads and benefits:	\$ 30,495.89
Total Cost:	\$ 99,095.89
Reimbursement @ 100%:	\$ 99,095.89

## EXHIBIT C

### SUPPLEMENTAL AGREEMENT NO. \_\_\_\_ TO RELOCATION AND REIMBURSEMENT AGREEMENT CITY OF OLATHE, KS

**THIS SUPPLEMENTAL AGREEMENT (the “Supplemental Agreement”)**, is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the **CITY OF OLATHE, KANSAS**, a Kansas Municipality hereinafter referred to as “**City**” whose mailing address is 100 E. Santa Fe Street, P.O. Box 768, Olathe, Kansas 66051-0768, and **ATMOS ENERGY CORPORATION**, a Texas Corporation authorized to conduct business in the State of Kansas, successor in interest to United Cities Gas Company, Inc., and Union Gas Corporation, Inc.), hereinafter referred to as “**Company**”, whose mailing address is P.O. Box 650205, Dallas, TX 75265-0205 (collectively, the “Parties” and each individually, a “Party”)  
WITNESSETH:

WHEREAS, City and Company have previously entered into that certain Relocation and Reimbursement Agreement, dated (“the Agreement”), pursuant to which, in connection with the Improvements, the City agreed to pay the Actual Costs incurred by Company in performing the Work hereinafter referred to as the “Project”; and

WHEREAS, the Agreement provides that the Reimbursement to be paid to Company by City may be adjusted by a Supplemental Agreement; and

WHEREAS, this Supplemental Agreement No. 1 is to provide reimbursement for up to 100% of the additional estimated costs of the Work as outlined in **Exhibit F** to this Supplemental Agreement No. 1; and

WHEREAS, Company has incurred certain additional costs associated with the Work; and

WHEREAS, the City is authorized and empowered to contract with the Company for the necessary additional costs related to the Work under the Agreement, and necessary funds for the payment of said costs are available.

NOW THEREFORE, for and in consideration set forth in the Agreement, the forgoing recitations and the promises and covenants contained herein, the Parties hereby agree as follows:

- A. That the Compensation under the Agreement be amended by adding the fees as indicated in **Exhibit G** attached hereto and made a part hereof, which shall be in addition to the fees provided in the Agreement. City agrees to pay Company an amount not to exceed (), including reimbursable. This Supplemental Agreement No. 1 raises the total estimated cost of the Project to \$, and the maximum Actual Costs paid by City to Company to \$ for the Work. This is the total of the original fee of \$ for the Agreement, plus \$ for this Supplemental Agreement. Any compensation for additional costs related to the Work



incurred by Company and owed by City shall be agreed upon in a subsequent Supplemental Agreement.

- B. That **Exhibit C** of the Agreement is hereby amended to include the costs and scope of work as outlined in **Exhibit F** attached hereto and made a part thereof.

IN ALL OTHER RESPECTS, the terms and conditions of the Agreement shall remain in full force and effect, except as specifically modified by this Supplemental Agreement 1, including all policies of insurance which shall cover the Work authorized by this Supplemental Agreement 1.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Agreement No. 1 to be executed as of the day and year first above written.

**CITY OF OLATHE, KANSAS**

By: \_\_\_\_\_  
City Manager

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**ATMOS ENERGY CORPORATION**

By: \_\_\_\_\_  
Bart Armstrong  
Vice President, Operations

## **EXHIBIT D**

### **INSURANCE REQUIREMENTS**

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

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

1. Commercial General Liability: [ISO "occurrence" form or its equivalent] \$1,000,000 per occurrence limit and products - completed operations limit including explosion, collapse and underground. Any general aggregate limit should be at least \$2 million. Policy must include Hazardous Materials endorsement CG2278 or equivalent.
2. Business Auto Coverage: (*Owned and non-owned autos*) \$1,000,000 per occurrence limit.
3. Workers Compensation and Employers Liability: Workers compensation limits as required by the statutes of the state of Kansas and employers liability limits of \$500,000/\$500,000/\$500,000. When workers compensation insurance policy is applicable "other states" coverage is required.
4. Umbrella Liability: minimum limit of \$1,000,000 excess of Commercial General Liability and Automobile Liability.
5. Coverage Limits. Coverage limits for General and Auto Liability exposures may be met by a combination of primary and umbrella policy limits.
6. Exposure Limits: The above are minimum acceptable coverage limits and do not infer or place a limit on the liability of the Company nor has the CITY assessed the risk that may be applicable to Company. Company shall assess its own risks and if it deems appropriate and/or prudent maintain higher limits and/or broader coverages. The Company's insurance shall be primary and any insurance or self-insurance maintained by the City shall be excess and not contribute with the coverage maintained by Company.

**C.** Additional Insured. The City shall be listed by ISO endorsement or its equivalent as additional insureds for the project. Any and all coverage available to the named insured is applicable to the additional insured. The Company's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

**D.** Verification of Coverage.

1. A certificate of insurance accompanied by an additional insured ISO form endorsement (CG 20 10; and CG 20 37) or equivalent effecting the coverage required by the City which includes products and completed operations.
2. The insurance coverages are to be provided by Kansas admitted insurance companies with a Best's rating of at least A:-VII. Those not admitted must be approved by City.
3. Any self-insurance or self-insured retentions must be specified on the certificate of insurance. In addition, when self-insured the name, address, and telephone number of the claims office must be indicated on the certificate or separate attached document. Any and all deductibles or self-insurance in the above describes coverages shall be the responsibility and at the sole risk of the Company.
4. The commercial general liability policy shall not contain an endorsement excluding contractual or completed operations liability.
5. When any of the foregoing insurance coverages are required to remain in force after final payment, additional certificates with appropriate endorsements evidencing continuation of such coverage shall be submitted along with the application for final payment.
6. Any coverage provided by a Claims-Made form policy must contain a three year tail option, extended reporting period, or must be maintained for three years post contract.

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

**F.** Subcontractors. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**EXHIBIT E**  
**CERTIFICATE OF FULL COMPLETION**

*Pursuant to **Paragraph 6** of the Agreement, the City shall, within ten (10) days following delivery of this Certificate, carry out such inspections as it deems necessary to verify to its reasonable satisfaction the accuracy of the certifications contained in this Certificate.*

---

**CERTIFICATE OF FULL COMPLETION**

The undersigned, **ATMOS ENERGY CORPORATION** (the “**Company**”), pursuant to that certain Agreement dated as of \_\_\_\_\_, 2014, between the **City of Olathe, Kansas** (the “**City**”) and the Company (the “**Agreement**”), hereby certifies to the City as follows:

1. That as of \_\_\_\_\_, 20\_\_\_\_, the relocation of the Pipeline (as such term is defined in the Agreement) has been substantially completed in accordance with the Agreement.
2. The Project has been completed in a workmanlike manner and in accordance with the Construction Plans (as those terms are defined in the Agreement).
3. Lien waivers for applicable portions of the Project have been obtained, or, to the extent that a good faith dispute exists with respect to the payment of any construction cost with respect to relocation of the Pipeline, Company has provided the City with a bond or other security reasonably acceptable to the City.
4. This Certificate of Full Completion is being issued by the Company to the City in accordance with the Agreement to evidence the Company’s satisfaction of all obligations and covenants with respect to the Project.
6. The City’s acceptance of this Certificate shall evidence the satisfaction of the Company’s agreements and covenants to relocate the Pipeline.

This Certificate is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being.

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**ATMOS ENERGY CORPORATION**

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

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

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

**ACCEPTED:**  
**CITY OF OLATHE, KANSAS**

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

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

(Insert Notary Form(s) and Legal Description)



# City of Olathe

## COUNCIL AGENDA ITEM

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**MEETING DATE:** 5/19/2020

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**DEPARTMENT:** Resource Management

**STAFF CONTACT:** Dianna Wright

**SUBJECT:** Consideration of an Agreement with JP Morgan to serve as underwriter for the 2020-A Temp Notes to provide capital project funding, including redeeming a portion of the Series 2019-A Notes.

---

**ITEM DESCRIPTION:**

Consideration of an Agreement with JP Morgan to serve as underwriter for the 2020-A Temp Notes to provide capital project funding, including redeeming a portion of the Series 2019-A Notes.

---

**SUMMARY:**

The City generally issues both general obligation notes and bonds every year during the spring/early summer months. The notes are sold with an approximate one-year maturity and they are paid-off with a combination of new long-term general obligation bonds and a new issuance of short-term notes during the subsequent year. It is very important that the new notes are issued timely so that the City has funds readily available to pay off /roll over its outstanding notes. The City approaches the market with a competitive public market auction. In a competitive auction, underwriting firms are invited to submit their best bid for the City's offering-a process not unlike a bid on a dump truck or a load of road salt. In normally operating markets, our experience shows that for highly rated issuers (such as the City) with straightforward offerings, a competitive auction typically results in the lowest cost financing.

The table below illustrates the bidding history of the City's notes since 2013.

Note Series	Winning (Best) Bid	Number of Bids
2019-A JP Morgan	(1.43%)	4
2018-A JP Morgan	(1.58%)	3
2017-A JP Morgan	(1.03%)	2
2016-A Hutchinson	(0.79%)	4
2015-A US Bank	(0.51%)	3
2014-A Morgan Stanley	(0.23%)	2
2013-A Morgan Stanley	(0.23%)	3

**COVID-19 and the Municipal Market**

Columbia Capital, the City's financial advisor, has been sending regular market updates to City staff regarding the major market disruption during the COVID-19 crisis. The COVID-19 crisis roiled the municipal bond market much as it did most financial markets in the US and around the world. Since the outset of the crisis in the US, we have seen benchmark 'AAA' tax-exempt bond yields increase



2.0% in just 11 trading days, drop 1.5% over the subsequent six trading days, increase 0.8% in the next three trading days, drop 0.7% over the next ten trading days and, finally, increase about 0.3% over the most recent seven trading days.

By mid-March, the municipal bond market had more or less ceased to function. While we have seen gradual healing in the market in recent weeks, the vast majority of transactions being executed today are high-quality ('AAA' and 'AA' rating categories) with either general obligation (property tax-based) or essential service revenue (water, sewer, electric) sources of repayment. Short-term municipal markets also ceased to function, with interest rates on daily- and weekly-reset variable rate bonds soaring into low double-digits. Subsequent action by the Federal Reserve has returned short-term interest rates to pre-crisis levels, but the short-term municipal market remains fragile.

The City's note offerings generally fit within the categories of deals getting done in today's market, but the current market conditions coupled with recent low participation of bidders on the City's notes via competitive sale gives us pause. As a failed bid for the City's notes would have negative consequences-and due to concerns about the functioning of the short-term market today-Columbia Capital recommends the City pursue a different method of sale for its notes this year.

### **Recommendation - Negotiated Public Markets Underwriting**

If the City were to not receive a bid, Columbia would likely be able to piece together a private loan or a negotiated sale on a highly condensed financing schedule in time to pay off the existing notes, but that approach is more reactive than proactive. Plus, the outcome is certainly not guaranteed. Given the circumstance, Columbia Capital believes the City is better served with a negotiated public offering on its notes.

For this sale method, the City selects an underwriter to work with directly (as opposed to an auction), and with Columbia's assistance, negotiates the cost of the loan with that preselected underwriter based on investor demand and market conditions on the day of the sale. Leading into the sale the underwriter will market directly with investors most interested in the City's notes, going over the structure of the offering and any questions they may have about the City's credit. Often times, they are able to "pre-sale" the offering before the notes are officially offered for sale. This method creates significantly more certainty that the notes will be sold in this challenged market.

In determining which underwriter to select we looked at the City's prior competitive auctions to see which underwriters have supported the City's note offerings. As can be seen in the table above, JP Morgan has won the most (and the last three in a row) bids over the last seven years. This indicates that they (1) understand the City's note structure and historical issuance practices, (2) are familiar with the City's credit, and (3) already have key investor marketing leads. JP Morgan is also a top underwriter of municipal credits with a solid reputation and strong underwriting capability. Given the time sensitivity and importance of this note offering, Columbia Capital recommends the City appoint JP Morgan as underwriter on its 2020-A Notes.

---

### **FINANCIAL IMPACT:**

The only cost of issuance item that differs from a competitive sale is the addition of an underwriter's counsel. Underwriter's counsel represents the underwriter and reviews (and may contribute to) the offering document and other legal documents. Further, they are also primarily responsible for drafting

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**MEETING DATE:** 5/19/2020

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a note purchase agreement between the City and the underwriter. JP Morgan's proposal has a not to exceed fee of \$18,000 for this service and will pay their counsel directly.

---

**ACTION NEEDED:** Approve the agreement.

---

**ATTACHMENT(S):**

Attachment A: JP Morgan Agreement

# CITY OF OLATHE, KANSAS

GENERAL OBLIGATION TEMPORARY NOTES SERIES 2020-A

May 2020

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J.P.Morgan



# 1. Preliminary Fee Proposal

Below, please find J.P. Morgan's proposed takedowns on a maturity-by-maturity basis and preliminary underwriter's discount, including a detailed expense breakdown.

The fees and expenses below assume a par amount of \$40,000,000.

## A. General Obligation Temporary Notes Series 2020-A – Proposed Takedowns

Maturity	Takedown (\$/bond)
8/1/2021	\$2.00

## B. Preliminary Underwriter's Discount and Expense Breakdown – General Obligation Temporary Notes Series 2020-A <sup>1,2</sup>

Series 2020-A Expenses	\$/Bond	\$
Average Takedown	\$2.00	\$80,000.00
Total Underwriter's Expenses	0.521	20,854.12
<b>Total Expenses</b>	<b>\$2.521</b>	<b>\$100,854.12</b>

Expense Breakdown		
Series 2020-A Expenses	\$/Bond	\$
IPREO/Dalcomp	\$0.028	\$1,115.97
CUSIP	0.007	284.00
Dayloan	0.014	554.15
DTC	0.009	350.00
Non - FAST Fee	0.001	50.00
Underwriter's Counsel Total (Not to Exceed)	0.450	18,000.00
Miscellaneous Expenses	0.013	500.00
<b>Total Expenses</b>	<b>\$0.521</b>	<b>\$20,854.12</b>

<sup>1</sup>Based on one maturity (8/1/2021); totals may not add due to rounding

<sup>2</sup>Estimated.Preliminary and subject to change. J.P. Morgan will only bill for actual amounts incurred and refund any overage

Acknowledgement:



J.P. MORGAN SECURITIES LLC

By: Matt Couch, *Executive Director*  
2029 Century Park East, Floor 41  
Los Angeles, CA 90067  
matthew.d.couch@jpmorgan.com

Acknowledgement:

Representative of the City of Olathe, Kansas

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



# City of Olathe

## COUNCIL AGENDA ITEM

---

**MEETING DATE:** 5/19/2020

---

**DEPARTMENT:** Legal

**STAFF CONTACT:** Ron Shaver/Kristi Orbin

**SUBJECT:** Consideration of amendment to the contract for public defender services for the Municipal Court.

---

**ITEM DESCRIPTION:**

Consideration of amendment to contract with Donald J. Smith, Timothy J. Arehart, and Lenin Guerra for public defender services for the Municipal Court.

---

**SUMMARY:**

In 2018, a three-year contract was competitively bid and awarded to Donald J. Smith, Timothy J. Arehart, and Lenin Guerra for public defender services ("the 2018 Contract"). These three (3) attorneys collectively serve as the "Public Defender" in Olathe Municipal Court. The 2018 Contract allows the Municipal Judge or judge pro-tem to appoint, as needed, the Public Defender to represent an indigent defendant in Municipal Court. Under the 2018 Contract, the Public Defender performs legal services including but not limited to evaluating cases, meeting with defendants and witnesses, conducting legal research, preparing motions, and appearing with or on behalf of defendants during plea negotiations, court hearings, and trials. The fee structure of the 2018 Contract provides for flat fee of \$6,933.32 per month to the Public Defender.

Due to the public emergency of the COVID-19 pandemic, court dockets in the Olathe Municipal Court were cancelled during a portion of April and May 2020. Staff approached Mr. Smith, Mr. Arehart, and Mr. Guerra about amending the 2018 Contract to add a different fee structure during times when dockets have been cancelled. Mr. Smith, Mr. Arehart, and Mr. Guerra have agreed to Staff's recommended revision to the fee schedule. Under the proposed contract amendment (**Attachment A**), during any period of docket cancellation, the Public Defender will be paid \$150.00 per hour upon submission and approval of itemized invoices for legal services. During those periods, Staff anticipates very few, if any, legal services being performed by the Public Defender. For any month when dockets are partially cancelled, the flat fee will be prorated for the days when the dockets were not cancelled.

Staff recommends approval of the amendment to the 2018 Contract.

---

**FINANCIAL IMPACT:**

Estimated annual expenditures not to exceed \$83,200 will continue to be charged to the Municipal Court Administration budget for public defender services. Under the proposed contract amendment, when court dockets are cancelled, costs will be lower and result in cost savings through the end of the contract period. The exact amount of cost savings depends on the length of any docket cancellation periods.

---

**ACTION NEEDED:**

---

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**MEETING DATE:** 5/19/2020

---

Approve contract amendment to the 2018 Contract with Donald J. Smith, Timothy J. Arehart, and Lenin Guerra.

---

**ATTACHMENT(S):**

A. Amendment to the 2018 Contract for Public Defender Services

**AMENDMENT TO THE  
2018 CONTRACT FOR PUBLIC DEFENDER SERVICES**

THIS AMENDMENT TO THE 2018 CONTRACT FOR PUBLIC DEFENDER SERVICES, is entered into this 07 day of May, 2020 by and between the City of Olathe, Kansas, herein called the "City" and TIMOTHY J. AREHART, DONALD J. SMITH AND LENIN GUERRA, hereinafter called the "Public Defender."

The Public Defender and the City (collectively "the Parties"), agree to the following:

1. Pursuant to Section 21 of the Contract for Public Defender Services dated May 29, 2018 ("2018 Contract"), the Parties agree to this written amendment to the terms of the 2018 Contract.
2. Section 17(c) of the 2018 Contract, which lists the contact information for notices, is modified to read as follows:

"(c) Any notices of termination to be given by either party to the other must be in writing and personally delivered or emailed to the following:

City of Olathe:	Victoria Smith	<a href="mailto:vsmith@olatheks.org">vsmith@olatheks.org</a>
	Kristi Orbin	<a href="mailto:korbin@olatheks.org">korbin@olatheks.org</a>

Public Defender: Timothy J. Arehart, Donald J. Smith, Lenin Guerra"	<a href="mailto:office@manningandsmith.net">office@manningandsmith.net</a>
--	--

3. Section 18 of the 2018 Contract is modified to read as follows (amended language noted in underline):

"18. Fees: Beginning May 1, 2018, through April 30, 2020, upon submission of invoices, the City will pay the Public Defender, for all legal services provided pursuant to this Contract, the base amount of \$83,199.84 per year payable at the rate of \$6,933.32 per month. Beginning May 1, 2020, through the remainder of the Contract term, the City will pay the Public Defender as follows:

A. During any time period when dockets are cancelled, the City will pay the Public Defender for legal services provided pursuant to this Contract at a rate of \$150 per hour upon submission and approval by the City of itemized invoices. The City will provide notice as soon as is practicable of cancelled dockets. The Parties acknowledge that prior notice of cancelled dockets may



not be practicable in the event of emergencies, such as a pandemic, natural disaster, or other public emergency.

B. During any time period when dockets are not cancelled, the City will pay the Public Defender for legal services provided pursuant to this Contract at a rate of \$6,933.32 per month, which will be prorated based on the number of days in the month in which dockets are not cancelled."

4. All other provisions of the 2018 Contract remain in full force and effect.

IN WITNESS WHEREOF, the Parties have caused the Amendment to be signed by their duly authorized representatives as of the date first above written.

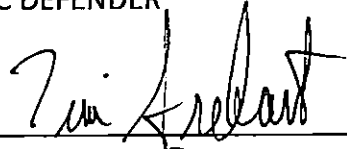
CITY OF OLATHE, KANSAS  
A Municipal Corporation

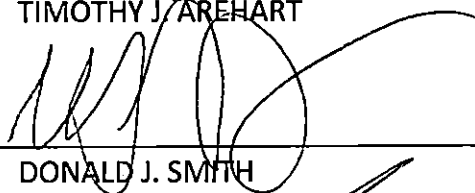
By: \_\_\_\_\_  
Michael E. Copeland (Mayor)  
("City")

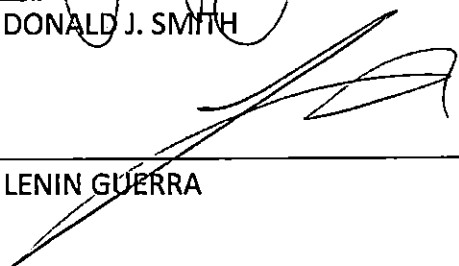
ATTEST:

\_\_\_\_\_  
Brenda D. Long, City Clerk  
(SEAL)

PUBLIC DEFENDER

By:   
TIMOTHY J. AREHART

By:   
DONALD J. SMITH

By:   
LENIN GUERRA



# City of Olathe

## COUNCIL AGENDA ITEM

---

**MEETING DATE:** 5/19/2020

---

**DEPARTMENT:** Resource Management

**STAFF CONTACT:** Mary Jaeger/Amy Tharnish

**SUBJECT:** Consideration of award of contract to Kantex Industries for vacuum excavation and utility daylighting services for the Public Works Department.

---

**ITEM DESCRIPTION:**

Consideration of award of contract to Kantex Industries for vacuum excavation and utility daylighting services for the Public Works Department.

---

**SUMMARY:** On March 17, 2020, two (2) qualifications packets were received from vendors who can provide vacuum excavation and utility daylighting services for the City of Olathe Public Works Department.

These services are for vacuum excavation which is used to safely locate and uncover underground utilities. By locating underground utilities, the City can identify which utilities are in conflict with capital improvements and need to be relocated. Additionally, City crews are able to identify and safely work around underground utilities that may be in conflict with repair and maintenance work.

After reviewing qualifications, staff recommends award of a three (3) year contract, with options for additional one (1) year contract renewals, to Kantex Industries. Kantex has the experience and equipment to perform the work necessary for these services.

Kantex is an Olathe vendor.

---

**FINANCIAL IMPACT:**

Estimated expenses over the three (3) year contract term will be \$75,000 to be funded by various projects.

---

**ACTION NEEDED:**

Consideration of award of contract to Kantex Industries.

---

**ATTACHMENT(S):**

Composite Score Sheet

Proposal Composite Score Sheet

Criteria		Badger Daylighting		
1	Services Proposed (Max 400 pts)	100	120	80
2	Experience (Max 150 pts)	60	180	30
3	Support (Max 200 pts)	80	120	40
4	Response (Max 100 pts)	45	90	45
5	Cost (Max 150 pts)	150	150	150
Total		435	660	345
Average		480		

Criteria		Kantex		
1	Services Proposed (Max 400 pts)	160	100	100
2	Experience (Max 150 pts)	210	240	240
3	Support (Max 200 pts)	100	140	100
4	Response (Max 100 pts)	75	75	60
5	Cost (Max 150 pts)	77.36	77.36	77.36
Total		622.36	632.36	577.36
Average		611		





# City of Olathe

## COUNCIL AGENDA ITEM

---

**MEETING DATE:** 5/19/2020

---

**DEPARTMENT:** Resource Management

**STAFF CONTACT:** Mary Jaeger/Amy Tharnish

**SUBJECT:** Consideration of renewal of contract with Wiedenmann, Inc. for deep excavation services for the City of Olathe's Public Works Department.

---

**ITEM DESCRIPTION:**

Consideration of renewal of contract with Wiedenmann, Inc. for deep excavation services for the City of Olathe's Public Works Department.

---

**SUMMARY:**

In 2017, the City of Olathe invited vendors to submit a Statement of Qualifications to provide on-call deep excavation services for water, sewer and stormwater projects throughout Olathe and various jobs as needed at our Water and Wastewater Treatment Plants. This contract is used to perform work that City crews can't safely do in-house. This includes repair/replacement of water and sewer lines up to 54", and stormwater pipes up to 84". There are areas in Olathe where water and sewer lines are too large or buried at a depth that exceeds the abilities of City of Olathe equipment. In these situations, it is necessary to contract with a firm that can excavate to the depth needed to complete repairs on water and sewer lines and return the area to rough grade.

Four (4) vendors responded to the Request for Qualifications and Wiedenmann, Inc. was chosen based on experience, having the necessary equipment to perform the work, quality of work, response time, references and previous work completed for the City of Olathe.

Staff recommends renewal of this contract with Wiedenmann for a one (1) year term through May 31, 2021 with an additional renewal option.

---

**FINANCIAL IMPACT:**

\$300,000.00 to be paid from projects or the Field Operations and Stormwater operating budgets.

---

**ACTION NEEDED:**

Consideration of renewal of contract Wiedenmann, Inc.

---

**ATTACHMENT(S):**

None

---



# City of Olathe

## COUNCIL AGENDA ITEM

---

**MEETING DATE:** 5/19/2020

---

**DEPARTMENT:** Resource Management

**STAFF CONTACT:** Mary Jaeger/Amy Tharnish

**SUBJECT:** Consideration of renewal of contracts to Harcros Chemicals, Inc., Brenntag Mid South, Polydyne, Inc., Poet Ethanol Products, DPC Industries, Inc., Carus Corporation, PVS Technologies, Inc., Mississippi Lime Company, Nalco Company, Evoqua Water Technologies, LLC and Kemira Water Solutions, Inc. for water and wastewater treatment chemicals for the Environmental Services Division of Public Works.

---

**ITEM DESCRIPTION:**

Consideration of renewal of contracts to Harcros Chemicals, Inc., Brenntag Mid South, Polydyne, Inc., Poet Ethanol Products, DPC Industries, Inc., Carus Corporation, PVS Technologies, Inc., Mississippi Lime Company, Nalco Company, Evoqua Water Technologies, LLC and Kemira Water Solutions, Inc. for water and wastewater treatment chemicals for the Environmental Services Division of Public Works.

---

**SUMMARY:** On March 21, 2019, 12 bids were received for the purchase of water and wastewater treatment chemicals for the Environmental Services Division of Public Works.

Chemicals used for the City's water treatment are specialty products specific to the treatment process and are required to comply with National Sanitation Foundation (NSF), Underwriters Laboratories (UL), American Wastewater Association (AWWA), federal, state, and local regulations.

Staff recommends consideration of renewal of contracts for one (1) year through May 31, 2021 to all above listed vendors, with options for three (3) additional one (1) year renewal periods.

One (1) Olathe vendor was notified of the bid, but they don't offer these types of products.

---

**FINANCIAL IMPACT:**

\$1,200,000. Expenditures will be charged to the chemical accounts of Water Production and Wastewater Treatment.

---

**ACTION NEEDED:** Consideration of renewal of contracts to Harcros Chemicals, Inc., Brenntag Mid South, Polydyne, Inc., Poet Ethanol Products, DPC Industries, Inc., Carus Corporation, PVS Technologies, Inc., Mississippi Lime Company, Nalco Company, Evoqua Water Technologies, LLC and Kemira Water Solutions, Inc.

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**ATTACHMENT(S):**

None

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# City of Olathe

## COUNCIL AGENDA ITEM

---

**MEETING DATE:** 5/19/2020

---

**DEPARTMENT:** Resource Management

**STAFF CONTACT:** Mary Jaeger/Amy Tharnish

**SUBJECT:** Consideration of renewal of contract to JCI Industries, Inc. for mixer and propeller pump repair and service for the Environmental Services Division of the Public Works Department.

---

**ITEM DESCRIPTION:**

Consideration of renewal of contract to JCI Industries, Inc. for mixer and propeller pump repair and service for the Environmental Services Division of the Public Works Department.

---

**SUMMARY:** In May 2016, the City of Kansas City Missouri competitively issued a bid and awarded a cooperative purchase contract to JCI Industries, Inc. for pump repair and service. As part of the bid, JCI Industries, Inc. agreed to provide products and/or services to any municipality, governmental public utility, or any member of Mid-America Regional Council which allows the City of Olathe to accept and award this cooperative purchase contract.

This contract is used for OEM repair and replacement of mixers and propeller pumps that support the BNR Wastewater Treatment process.

This is a time and materials agreement and pricing remains firm and fixed throughout the agreement period. The KCMO contract is currently in the fourth year with options for one-year renewals through May 2022.

---

**FINANCIAL IMPACT:**

\$200,000.00 to be paid from the Environmental Services operating budget.

---

**ACTION NEEDED:**

Consideration of renewal of contract to JCI Industries, Inc.

---

**ATTACHMENT(S):**

None



# City of Olathe

## COUNCIL AGENDA ITEM

---

**MEETING DATE:** 5/19/2020

---

**DEPARTMENT:** Resource Management

**STAFF CONTACT:** Mary Jaeger/Amy Tharnish

**SUBJECT:** Consideration of renewal of contract to Mid-American Signal, Inc. for the purchase of traffic signal and Advanced Traffic Management System (ATMS) supplies for the Traffic Division of Public Works.

---

**ITEM DESCRIPTION:**

Consideration of renewal of contract to Mid-American Signal, Inc. for the purchase of traffic signal and Advanced Traffic Management System (ATMS) supplies for the Traffic Division of Public Works.

---

**SUMMARY:** Mid American Signal, Inc. is the sole distributor for the Kansas City area for RENO A&E, and Wavetronix products.

Traffic signal supplies are used in the maintenance and repair of traffic signals, school crossing beacons, and other related equipment throughout the City.

ATMS supplies are used in the maintenance of traffic surveillance camera equipment which assists in monitoring traffic flow and provides video detection of vehicle presence and speed to traffic signal controllers. In addition, the fiber backbone of the traffic signal network provides connection of City buildings to the main server. The Police Department may use the cameras for monitoring safety.

Staff recommends renewal of the contract to Mid-American Signal, Inc for a one (1)-year term with options to extend for additional contract periods.

---

**FINANCIAL IMPACT:**

Anticipated expenditures for the contract term are \$150,000. Funding will come from the Transportation operating budget.

---

**ACTION NEEDED:**

Consideration of renewal of contract to Mid-American Signal, Inc.

---

**ATTACHMENT(S):**

None





# City of Olathe

## COUNCIL AGENDA ITEM

---

**MEETING DATE:** 5/19/2020

---

**DEPARTMENT:** Public Works (Planning Division), Legal

**STAFF CONTACT:** Aimee Nassif and Daniel Yoza

**SUBJECT:** ANX20-0001, Annexation of approximately 9.7± acres.

**Petitioner:** Lone Elm Venture, LLC.

---

### ITEM DESCRIPTION:

Consideration of Ordinance No. 20-16 (ANX20-0001) annexing approximately 9.7± acres, located south of 159<sup>th</sup> Street and east of Lone Elm Road, into the corporate boundaries of the City of Olathe.

---

### SUMMARY:

In accordance with K.S.A. 12-520(a)(7), Lone Elm Venture, LLC (the "Petitioner") has submitted a petition for annexation of approximately 9.7± acres of land (**Exhibit A**) located at 16129 S. Lone Elm Road (ANX20-0001), which lies contiguous with the corporate boundaries of Olathe (**Exhibit B**). The property is located along the east side of Lone Elm Road, approximately 1/4 mile south of its intersection with 159<sup>th</sup> Street. The applicant has not requested an Annexation Agreement.

The property to be annexed upon adoption of the ordinance (**Exhibit C**) is within the City of Olathe Growth Area and is designated on the Future Land Use Map as an Employment Area. As described in *PlanOlathe*, Employment Areas typically consist of free standing office buildings, office parks, medical facilities, and light industrial uses.

This annexation request was previously on the May 5<sup>th</sup> City Council agenda as a report item. The subject property is currently zoned RUR (County Rural) and following annexation, the applicant will be requesting a change of zoning to the M-2 (General Industrial) District.

---

### FINANCIAL IMPACT:

Future development of the property will result in an increase in the City's real property tax collections.

---

### ACTION NEEDED:

Approve Ordinance No. 20-16 (ANX20-0001) annexing approximately 9.7± acres into the corporate boundaries of the City of Olathe.

---

### ATTACHMENT(S):

- A. Petition for Annexation
- B. Map of Subject Property
- C. Ordinance 20-16

## Partnership

**PETITION FOR ANNEXATION**

TO THE CITY COUNCIL OF THE CITY OF OLATHE, KANSAS:

Lone Elm Venture, LLC

, the

undersigned, respectfully state(s):

1. That we are the record owner(s) of the following described land located in Johnson County, Kansas:  
Lengthy, See attached Exhibit A.
2. That such land adjoins the City of Olathe, Kansas, as is shown on the map attached hereto and incorporated by reference herein.
3. That we respectfully request that such land be annexed and incorporated to the City of Olathe, Kansas, and do hereby consent to such annexation.

JERRY D BAIN

Name

Name

Name

9925 W. 159TH ST.

Address

Address

Address

OVERLAND PARK, KS. (66202)

City, State Zip Code

City, State Zip Code

City, State Zip Code

913-987-8313

Phone Number

Phone Number

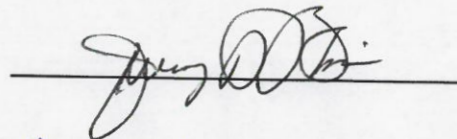
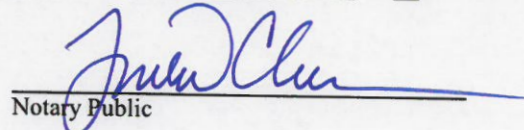
Phone Number

**CERTIFICATION**STATE OF KANSASCOUNTY OF JOHNSON

SS.

Lone Elm Venture, LLC

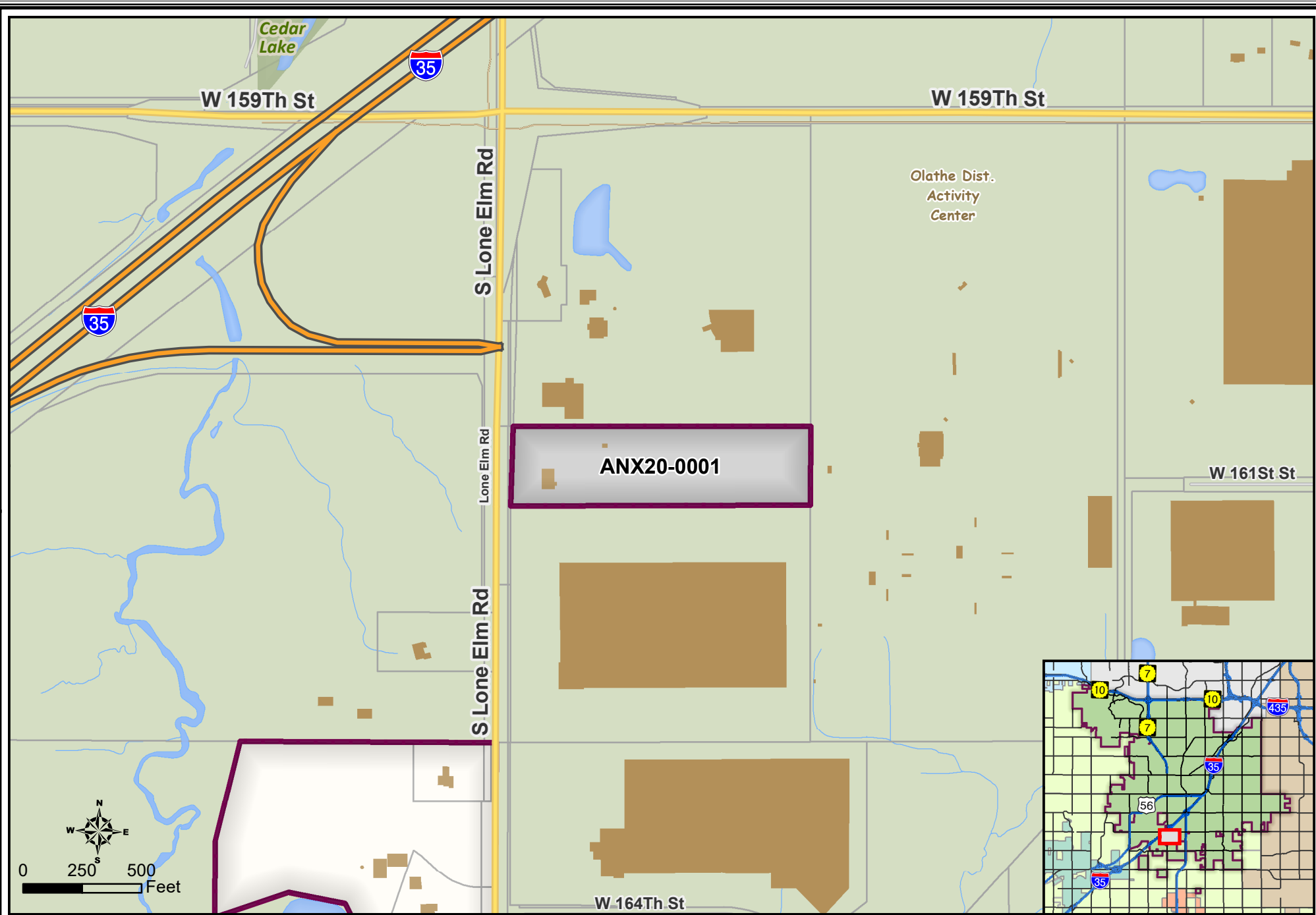
hereby certify that we signed the foregoing Petition for Annexation as our free act and deed and certify that we are the legal owners of the real estate described in the foregoing Petition for Annexation.


Subscribed to and sworn to before me this 10<sup>th</sup> day of APRIL, 2020


Notary Public

My Appointment expires:

**JUDD D. CLAUSSEN**  
Notary Public-State of Kansas  
My Appt. Expires 3/3/24



**LONE ELM VENTURE, LLC**  
**ANX20-0001**



User: JaredMD  
Date: 04/28/2020



**ORDINANCE NO. 20-16**

**AN ORDINANCE ANNEXING CERTAIN LANDS TO THE CITY OF OLATHE, KANSAS, IN CONFORMITY WITH THE PROVISIONS OF K.S.A. 12-520(a)(7), AND AMENDMENTS THERETO.**

**WHEREAS**, the Governing Body of the City of Olathe, Kansas, has received petitions from the owners of the following described real property requesting that such property be annexed to the City of Olathe, Kansas (ANX20-0001):

LOT 2, M.G.A. ESTATES, A SUBDIVISION IN JOHNSON COUNTY, KANSAS, EXCEPT THE WEST 10 FEET IN ROAD, AND EXCEPT

PART OF LOT 2, M.G.A. ESTATES, AND PART OF THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 14 SOUTH, RANGE 23 EAST IN THE CITY OF OLATHE, JOHNSON COUNTY, KANSAS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID NORTHWEST QUARTER; THENCE SOUTH 01° 56' 33" EAST, ALONG THE WEST LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 506.597 METERS (1,662.06 FEET); THENCE NORTH 87° 50' 18" EAST, A DISTANCE OF 18.288 METERS (60.00 FEET) TO THE POINT OF INTERSECTION OF THE SOUTH LINE OF SAID LOT 2 WITH THE EAST RIGHT-OF-WAY LINE OF LONE ELM ROAD, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE NORTH 01° 56' 47" WEST, ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 102.391 METERS (335.93 FEET) TO A POINT ON THE NORTH LINE OF SAID LOT 2; THENCE NORTH 87° 57' 52" EAST, ALONG SAID NORTH LINE, A DISTANCE OF 3.038 METERS (9.97 FEET); THENCE SOUTH 00° 14' 49" EAST, A DISTANCE OF 102.441 METERS (336.09 FEET) TO THE TRUE POINT OF BEGINNING.

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF OLATHE, KANSAS:**

**SECTION ONE:** Pursuant to K.S.A. 12-520(a)(7), the Governing Body of the City of Olathe, Kansas, deems it advisable to annex the following land, to-wit:

LOT 2, M.G.A. ESTATES, A SUBDIVISION IN JOHNSON COUNTY, KANSAS, EXCEPT THE WEST 10 FEET IN ROAD, AND EXCEPT

PART OF LOT 2, M.G.A. ESTATES, AND PART OF THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 14 SOUTH, RANGE 23 EAST IN THE CITY OF OLATHE, JOHNSON COUNTY, KANSAS MORE PARTICULARLY DESCRIBED AS FOLLOWS:



COMMENCING AT THE NORTHWEST CORNER OF SAID NORTHWEST QUARTER; THENCE SOUTH 01° 56' 33" EAST, ALONG THE WEST LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 506.597 METERS (1,662.06 FEET); THENCE NORTH 87° 50' 18" EAST, A DISTANCE OF 18.288 METERS (60.00 FEET) TO THE POINT OF INTERSECTION OF THE SOUTH LINE OF SAID LOT 2 WITH THE EAST RIGHT-OF-WAY LINE OF LONE ELM ROAD, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE NORTH 01° 56' 47" WEST, ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 102.391 METERS (335.93 FEET) TO A POINT ON THE NORTH LINE OF SAID LOT 2; THENCE NORTH 87° 57' 52" EAST, ALONG SAID NORTH LINE, A DISTANCE OF 3.038 METERS (9.97 FEET); THENCE SOUTH 00° 14' 49" EAST, A DISTANCE OF 102.441 METERS (336.09 FEET) TO THE TRUE POINT OF BEGINNING.

including any and all adjacent right-of-way,

and that said land is hereby annexed and made a part of the City of Olathe, Kansas.

**SECTION TWO:** The City Clerk shall file a certified copy of this Ordinance with the County Clerk, the Department of Records and Tax Administration, and the Election Commissioner of Johnson County, Kansas.

**SECTION THREE:** That this Ordinance shall take effect and be in force from and after its passage and publication as provided by law.

**PASSED** by the Governing Body this 19<sup>th</sup> day of May, 2020.

**SIGNED** by the Mayor this 19<sup>th</sup> day of May, 2020.

\_\_\_\_\_  
Mayor

ATTEST:

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

(SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney



# City of Olathe

## COUNCIL AGENDA ITEM

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**MEETING DATE:** 5/19/2020

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**DEPARTMENT:** Legal

**STAFF CONTACT:** Ron Shaver/Daniel Yoza

**SUBJECT:** Ordinance No. 20-17 amends the City's existing contract franchise. An Amendment to the Master License agreement with ExteNet Systems, Inc. has also been prepared. These documents define the relationship between ExteNet Systems, Inc. and the City. Because of recent changes in Federal regulations, certain changes are needed to these documents.

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### ITEM DESCRIPTION:

Consideration of Ordinance No. 20-17 making certain amendments to the contract franchise with ExteNet Systems, Inc. (Ordinance 12-07) and amendments to the Master License agreement with ExteNet Systems, Inc.

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### SUMMARY:

This item was presented as a report at the May 5, 2020 City council meeting. In 2012, the City granted ExteNet Systems, Inc. ("ExteNet") a contract franchise by adoption of Ordinance No. 12-07 (Attachment A). The franchise allows ExteNet to use the City's right-of-way to construct and install its facilities for the purpose of providing telecommunication services in Olathe. In 2014 the City agreed to a Master License Agreement ("MLA") with ExteNet (Attachment B) which defined how Extenet would seek permission and pay for the right to use City facilities. Similar Franchises and MLA's with ExteNet are being used in Lenexa, Overland Park and Leawood. The City of Olathe has also used this structure of agreement with other similar companies, such as Unite Private Networks and Mobilitie. The main purpose of these agreements is to protect the public right-of-way, and to ensure that fair and uniform fees are charged to all similarly situated providers.

On September 27, 2018 the FCC released Declaratory Ruling and Third Report and Order, 18-133. This ruling included language that provided that annual fees of \$270 or less per attachment are presumed reasonable under federal telecommunications law. The existing MLA with ExteNet provides for an annual fee of \$540. Verizon Wireless began attaching facilities to City streetlights after the FCC ruling, and are currently paying annual fees of \$270. Federal law requires Cities to treat Telecommunications providers in non-discriminatory manner, therefore most prudent course of action is to simply agree to and accept the \$270 annual fee going forward.

Since the Ordinance (Attachment C) and MLA (Attachment D) needed to be amended, they were also generally updated to reflect changes in State law, evolving technological terms, and changes in City Ordinances. Finally, Extenet Systems, Inc., has restructured as ExteNet Asset Entity, LLC. The Ordinance and MLA acknowledges this fact and bind the correct entity to the City in the Ordinance and MLA.

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### FINANCIAL IMPACT:

The City will receive compensation for any facilities located in the City's right-of-way in accordance

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**MEETING DATE:** 5/19/2020

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with the MLA and the franchise.

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**ACTION NEEDED:**

Approve Ordinance No. 20-17 amending the contract franchise with ExteNet Systems, Inc. and the Master License Agreement for Attachments to City Facilities.

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**ATTACHMENT(S):**

Attachment A - Ordinance No. 12-07

Attachment B - ExteNet Master License Agreement

Attachment C - Ordinance No. 20-17 ExteNet Franchise Amendment

Attachment D - Amendment to ExteNet MLA

**ORDINANCE NO. 12-07**

**AN ORDINANCE GRANTING TO EXTENET SYSTEMS, INC., A CONTRACT FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A TELECOMMUNICATIONS SYSTEM AS A COMPETITIVE INFRASTRUCTURE PROVIDER IN THE CITY OF OLATHE, KANSAS AND PRESCRIBING THE TERMS OF SAID CONTRACT FRANCHISE.**

WHEREAS, ExteNet Systems, Inc., seeks authority from the City of Olathe, Kansas, to construct, operate and maintain a telecommunications system as a competitive infrastructure provider within the City; and

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF OLATHE, KANSAS:

**SECTION 1. DEFINITIONS.**

For the purposes of this Ordinance the following words and phrases shall have the meaning given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

- a. "City" - means the City of Olathe, Kansas, a municipal corporation duly organized in accordance with the laws of the State of Kansas.
- b. "Competitive infrastructure provider" - means an entity which leases, sells or otherwise conveys Facilities located in the Public Right-of-Way, or the capacity or bandwidth of such Facilities for use in the provision of Telecommunications services, Internet services or other intrastate and interstate traffic, but does not itself provide services directly to end users within the corporate limits of the City.
- c. "Contract franchise" - means this Ordinance granting the right, privilege and franchise to Grantee to provide telecommunications within the City.
- d. "Facilities" - means the Grantee's cables, wires, lines, towers, wave guides, optic fiber, antennae, receivers and any associated converters, or other equipment, comprising the Grantee's System located within the Public Rights of Way, designed and constructed for the purpose of producing, receiving, amplifying or distributing Telecommunications service as a Competitive infrastructure provider to or from locations within the City.
- e. "Grantee" - means ExteNet Systems, Inc., a Delaware Corporation, and a Competitive Infrastructure Provider providing Telecommunications service and capacity via a distributed antennae system within the City. References to Grantee shall also include as appropriate any and all successors and assigns.
- f. "Gross Revenue"- means and includes any and all income and other consideration of whatever nature in any manner gained or derived by Grantee or its affiliates from or in connection with the provision of competitive infrastructure and Telecommunications service through Grantee's Facilities, either directly by Grantee or indirectly through its affiliates, to customers of such



Telecommunications services within the City, including any imputed revenue derived from commercial trades and barter equivalent to the full retail value of goods and services provided by Grantee. Gross Revenue shall not include: (a) sales, ad valorem, or other types of "add-on" taxes, levies, or fees calculated by gross receipts or gross revenues which might have to be paid to or collected for federal, state, or local government (b) non-collectable amounts due Grantee or its affiliates; (c) refunds or rebates; and (d) non-operating revenues such as interest income or gain from the sale of an asset.

- g. "Public right-of-way" - means only the area of real property in which the City has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other non-wire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts. The term does not include infrastructure located within the Public Rights-of-Way owned by the City or other third-parties, such as poles, ducts or conduits.
- h. "Telecommunications service" - means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

## **SECTION 2. GRANT OF CONTRACT FRANCHISE.**

- a. There is hereby granted to Grantee this nonexclusive Contract franchise to construct, maintain, extend and operate its Facilities along, across, upon or under any Public right-of-way for the purpose of supplying competitive infrastructure including Telecommunications services within the corporate boundaries of the City, for the term of this Contract franchise, subject to the terms and conditions of this Contract franchise.
- b. The grant of this Contract franchise by the City shall not convey title, equitable or legal, in the Public right-of-way, and shall give only the right to occupy the Public right-of-way, for the purposes and for the period stated in this Contract franchise. This Contract franchise does not:
  - (1) Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third-party, without the consent of such party;
  - (2) Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of the Public right-of-way, specifically including, but not limited to, parkland property, City Hall property or public works facility property; or
  - (3) Excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party.
- c. As a condition of this grant, Grantee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the Kansas Corporation Commission (KCC). Grantee shall also comply with all applicable laws, statutes and/or City regulations (including, but not limited to those relating to the construction and use of the Public right-of-way or other public or private property). Should Grantee desire to install and

locate its Facilities on any City-owned structures in the Public right-of-way (including, but not limited to, utility poles, storm sirens, street lights, and/or traffic signals), Grantee and City shall enter into a lease agreement setting forth the reasonable terms and conditions for such installation.

- d. Grantee shall not provide any additional services for which a franchise is required by the City without first obtaining a separate franchise from the City or amending this Contract franchise, and Grantee shall not knowingly allow the use of its Facilities by any third party in violation of any federal, state or local law. In particular, this Contract franchise does not provide Grantee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Grantee agrees that this franchise does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.
- e. This authority to occupy the Public right-of-way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law.

### **SECTION 3. USE OF PUBLIC RIGHT-OF-WAY.**

- a. Pursuant to K.S.A. 17-1902, and amendments thereto, and subject to the provisions of this Contract franchise, Grantee shall have the right to construct, maintain and operate its Facilities along, across, upon and under the Public right-of-way. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.
- b. Grantee's use of the Public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City, including, but not limited to, Chapter 12.08 of the Olathe Municipal Code and any amendments thereto.. The City may exercise its home rule powers in its administration and regulation related to the management of the Public right-of-way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances adopted by the City, relating to the construction and use of the Public right-of-way.
- c. Grantee shall participate in the Kansas One Call utility location program.
- d. City may require Grantee to repair all damage to a Public right-of-way caused by the activities of Grantee, or of any agent, affiliate, employee, or subcontractor of Grantee, while occupying, installing, repairing or maintaining Facilities in a Public right-of-way and to return the right-of-way, to its functional equivalence before the damage pursuant to the reasonable requirements and specifications of the City. If Grantee fails to make the repairs required by the City, the City may effect those repairs and charge the provider the cost of those repairs. If the City incurs damages as a result of a violation of this subsection, then the City shall have a cause of action against Grantee for violation of this subsection and may recover its damages, including reasonable attorney fees, if Grantee is found liable by a court of competent jurisdiction.
- e. If requested by the City, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety and welfare of the public, Grantee promptly shall remove its Facilities from the Public right-of-way or shall relocate or adjust its Facilities within the Public right-of-way at no cost to the City, providing such request binds all users of such right-of-way. Such relocation or adjustment shall be completed as soon as reasonably possible within

the time set forth in any written request by the City for such relocation or adjustment, providing that the City shall use its best efforts to provide Grantee with a minimum of one hundred eighty (180) days advance notice to comply with any such relocation or adjustment. Any damages suffered by the City or its contractors as a result of Grantee's failure to timely relocate or adjust its Facilities shall be borne by Grantee. Grantee shall designate one (1) person within its organization by his/her employment position to whom relocation notices shall be sent and with whom rests the responsibility to facilitate all necessary communications within Grantee's various areas.

Where a project referenced in the preceding paragraph is primarily for private benefit (provided, however, that projects that are a part of a City-created tax increment financing or transportation development district are not considered primarily for private benefit), the City shall require, as a condition of its approval of any request for alteration of the Public right-of-way from any private party or parties, that such private party or parties shall reimburse Grantee for the cost of relocation. Grantee understands however that the City has no obligation to collect such reimbursement.

#### SECTION 4. COMPENSATION TO THE CITY.

- a. In consideration of this Contract franchise, Grantee agrees to remit to the City an annual franchise fee of **five percent (5%)** of Gross Revenues. To determine the franchise fee, Grantee shall calculate its Gross Revenues and multiply such amount by 5%.
- b. Grantee shall pay on a monthly basis without requirement for invoice or reminder from the City, and within five (5) days of the last day of the month for which the payment applies franchise fees due and payable to the City. If any franchise fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.
- c. Upon written request by the City, but no more than once per quarter, Grantee shall submit to the City a statement, executed by an authorized officer of Grantee or his or her designee, showing the amount of Gross Revenues for the period covered by the payment, and the manner in which the franchise fee was calculated.
- d. No acceptance by the City of any franchise fee shall be construed as an accord that the amount paid is the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City.
- e. The City shall have the right to examine, audit, inspect, review, and/or obtain copies of (collectively, "Audit") at its sole cost and expense, except as set forth in this subsection e., the papers, books, accounts, documents, maps, plans and other records (collectively, the "Records") of Grantee pertaining to all revenue derived by Grantee from the operation of the Telecommunications service upon no less than fifteen (15) business days written notice to Grantee (no more often than once per calendar year), to verify the correctness of the franchise fees paid by Grantee. Grantee shall fully cooperate in making reasonably available its records and otherwise assisting in these activities as is necessary for City to reasonably verify the correctness of the franchise fees paid by Grantee. The City may extend the time for the provision of such Records upon a reasonable showing by Grantee that such extension is justified. In the event that such audit discloses a discrepancy of more than five percent (5%) between the financial report submitted by the Grantee with a monthly payment and the actual Gross Revenues collected by Grantee that are subject to the franchise fees, the Grantee agrees to pay the City the costs of

such audit; provided that (a) the City will not be entitled to reimbursement of such Audit costs more than once in any five (5) year period, and (2) the total reimbursement to the City in any five (5) year period for the Audit costs shall not exceed one hundred fifty percent (150%) of the amount of the discrepancy. In the event that such Audit results in a determination that additional franchise fees are due the City, Grantee further agrees to pay interest as required for late payment on such additional franchise fees computed from the date on which such additional franchise fees were due and payable.

- f. Unless previously paid, within sixty (60) days of the effective date of this Contract franchise, Grantee shall pay to the City a one-time application fee of One Thousand Dollars (\$1,000.00). The parties agree that such fee reimburses the City for its reasonable, actual and verifiable costs of reviewing and approving this Contract franchise.
- g. The franchise fee required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City under K.S.A. 12-2001 and 17-1902, and amendments thereto. The franchise fee is compensation for use of the Public right-of-way and shall in no way be deemed a tax of any kind.

#### **SECTION 5. INDEMNITY AND HOLD HARMLESS.**

It shall be the responsibility of Grantee to take adequate measures to protect and defend its Facilities in the Public right-of-way from harm or damage. If Grantee fails to accurately or timely locate Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq., it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage caused by its negligence or intentional conduct. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near Grantee's Facilities.

Grantee shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the degree that it is found by a court of competent jurisdiction to be caused by the negligence or wrongful act of Grantee, any agent, officer, director, representative, employee, affiliate or subcontractor of Grantee, or its respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining Facilities in the Public right-of-way.

If Grantee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state law and without waiving any defenses of the parties under state or federal law. This section is solely for the benefit of the City and Grantee and does not create or grant any rights, contractual or otherwise, to any other person or entity.

Grantee or City shall promptly advise the other in writing of any known claim or demand against Grantee or the City related to or arising out of Grantee's activities in the Public right-of-way.

#### **SECTION 6. INSURANCE AND BOND REQUIREMENTS.**

- a. During the term of this Contract franchise, Grantee shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers that are licensed to do business in the State of Kansas. Should Grantee elect to use the services of an affiliated captive insurance company



for this purpose, that company shall possess a certificate of authority from the Kansas Insurance Commissioner. Grantee shall provide not less than the following insurance:

- (1) Workers' compensation as provided for under any worker's compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit equal to the amount required by law.
  - (2) Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage liability. The Grantee may meet the policy limit requirements above in combination with commercial general liability policies and umbrella liability policies. The City shall be included as an additional insured with respect to liability arising from Grantee's operations under this Contract franchise.
- b. As an alternative to the requirements of subsection a., Grantee may demonstrate to the satisfaction of the City that it is self-insured and as such Grantee has the ability to provide coverage in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by Grantee, or alleged to so have been caused or occurred.
- c. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force and will not be cancelled or materially changed with respect to areas and entities covered without first giving the City thirty (30) days prior written notice. Grantee shall make available to the City on request the policy declarations page and a certified copy of the policy in effect, so that limitations and exclusions can be evaluated for appropriateness of overall coverage.
- d. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a performance bond in the amount of Fifty Thousand Dollars (\$50,000), payable to the City to ensure the appropriate and timely performance in the construction and maintenance of Facilities located in the Public right-of-way in accordance with Chapter 12.08 of the Olathe Municipal Code and any amendments thereto, and must be issued by a surety company authorized to transact business in the State of Kansas, and satisfactory to the City Attorney in form and substance. The construction bond shall remain in effect until the City has received Grantee's written certification that all installation of the Facilities within the Public right-of-way has been completed. Thereafter, the City shall, within thirty (30) days of receipt of such certification, return the bond to Grantee, and upon return of the construction bond by the City Grantee shall, within thirty (30) days, deliver to the City a performance bond in the amount of Five Thousand Dollars (\$5,000) to ensure the on-going performance by Grantee of its obligations under this Contract franchise. This bond shall be issued by a surety company authorized to transact business in the State of Kansas, and satisfactory to the City Attorney in form and substance and shall be maintained by Grantee during the initial term and all subsequent renewal terms of this Contract franchise.

**SECTION 7. REVOCATION AND TERMINATION.**

In case of failure on the part of Grantee to comply with any of the provisions of this Contract franchise, or if Grantee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Contract franchise, Grantee shall forfeit all rights, privileges and franchise granted herein, and all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and this Contract franchise shall be deemed revoked or terminated, provided that said revocation or termination, shall not take effect until the City has completed the following procedures: Before the City proceeds to revoke and terminate this Contract franchise, it shall first serve a written notice upon Grantee, setting forth in detail the neglect or failure complained of, and Grantee shall have sixty (60) days thereafter in which to comply with the conditions and requirements of this Contract franchise. If at the end of such sixty (60) day period the City deems that the conditions have not been complied with, the City shall take action to revoke and terminate this Contract franchise by an affirmative vote of the Governing Body present at the meeting and voting, setting out the grounds upon which this Contract franchise is to be revoked and terminated; provided, to afford Grantee due process, Grantee shall first be provided reasonable notice of the date, time and location of the Governing Body's consideration, and shall have the right to address the Governing Body regarding such matter; and further provided, if the nature of the default is such that it cannot be reasonably cured within the above said sixty (60) day period, and the Governing Body believes the Grantee has in good faith timely commenced its cure and is diligently pursuing the completion of the same, Grantee shall be given a reasonable additional period of time to complete its cure.. Nothing herein shall prevent the City from invoking any other remedy that may otherwise exist at law. Upon any determination by the Governing Body to revoke and terminate this Contract franchise, Grantee shall have thirty (30) days to appeal such decision to the District Court of Johnson County, Kansas. This Contract franchise shall be deemed revoked and terminated at the end of this thirty (30) day period, unless Grantee has instituted such an appeal. If Grantee does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment. Provided, however, that the failure of Grantee to comply with any of the provisions of this Contract franchise or the doing or causing to be done by Grantee of anything prohibited by or in violation of the terms of this Contract franchise shall not be a ground for the revocation or termination thereof when such act or omission on the part of Grantee is due to any cause or delay beyond the control of Grantee or to bona fide legal proceedings.

**SECTION 8. RESERVATION OF RIGHTS.**

- a. The City and Grantee hereby acknowledge that the City, in accordance with 47 U.S.C.A. 253, may not prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. To the extent permitted by law, the City specifically reserves its right and authority as a public entity with responsibilities towards its citizens, to participate to the full extent allowed by law in proceedings concerning Grantee's rates and services to ensure the rendering of efficient Telecommunications service and any other services at reasonable rates, and the maintenance of the Public right-of-way and Grantee's property in good repair.
- b. In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, its Home Rule powers under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.
- c. In granting its consent hereunder, Grantee does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas or applicable Federal laws and regulations, as the same may be amended, or under the Constitution of the State of

Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

- d. In entering into this Contract franchise, neither the City's nor Grantee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Contract franchise, neither the City nor Grantee waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Grantee may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, non-franchise ordinances and/or rulings.

#### **SECTION 9. FAILURE TO ENFORCE.**

The failure of either the City or the Grantee to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Contract franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City or the Grantee unless said waiver or relinquishment is in writing and signed by both the City and the Grantee.

#### **SECTION 10. TERM AND TERMINATION DATE.**

- a. This Contract franchise shall be effective for a term beginning on the effective date of this Contract franchise and ending ten (10) years after the effective date. Thereafter, this Contract franchise will automatically renew for up to two (2) additional four (4) year terms, unless either party notifies the other party of its intent to terminate or renegotiate the Contract franchise at least one hundred and eighty (180) days before the expiration of the then current term. The additional terms shall be deemed a continuation of this Contract franchise and not as a new franchise or amendment.
- b. Upon written request of either the City or Grantee, this Contract franchise shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Grantee, including but not limited to the scope of the Contract franchise granted to Grantee or the compensation to be received by the City hereunder.
- c. Amendments under this Section, if any, shall be made by contract franchise ordinance as prescribed by statute. This Contract franchise shall remain in effect, or shall be extended by the parties, according to its terms, pending completion of any review or renegotiation provided by this section. Such extension period shall be deemed a continuation of this Contract franchise and not as a new contract franchise ordinance or amendment.
- d. In the event the parties are actively negotiating in good faith a new contract franchise ordinance or an amendment to this Contract franchise upon the expiration or termination date of this Contract franchise, the parties by written mutual agreement may extend the expiration or termination date of this Contract franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Contract franchise and not as a new contract franchise ordinance or amendment.

**SECTION 11. POINT OF CONTACT AND NOTICES**

Grantee shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Grantee in the event of an emergency. Grantee shall provide the City with said local contact's name, address, telephone number, fax number and e-mail address. Emergency notice by Grantee to the City may be made by telephone to the City Clerk or the City Engineer. All other notices between the parties shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or by facsimile. Any notice served by U.S. Mail or Certified Mail, return receipt requested, shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail unless otherwise provided. Any notice given by facsimile is deemed received by the next business day. "Business day" for purposes of this section shall mean Monday through Friday, City and/or Grantee observed holidays excepted.

**The City:**

City of Olathe, Kansas  
 100 East Santa Fe  
 P.O. Box 768  
 Olathe, Kansas 66051-0768  
 ATTN: City Clerk  
 (913) 971-8525 fax

**Grantee:**

ExteNet Systems, Inc.  
 3030 Warrenville Rd.  
 Suite 340  
 Lisle, IL 60532  
 ATTN: Dan Timm, CFO

with a copy to:  
 ExteNet Systems, Inc.  
 3030 Warrenville Rd.  
 Suite 340  
 Lisle, IL 60532  
 ATTN: George Vinyard, General Counsel

or to replacement addresses that may be later designated in writing.

**SECTION 12. TRANSFER AND ASSIGNMENT.**

This Contract franchise is granted solely to the Grantee and shall not be transferred or assigned without the prior written approval of the City; provided that such transfer or assignment may occur without written consent of the City to any entity controlling, controlled by or under common control with Grantee. The parties acknowledge that said City consent shall only be with regard to the transfer or assignment of this Contract franchise, and that, in accordance with Kansas Statutes, the City does not have the authority to require City approval of transfers of ownership or control of the business or assets of Grantee. In the event of any transfer or assignment of either this Contract franchise or Grantee's business or assets, Grantee shall: timely notify the City of the successor entity; provide a point of contact for the successor entity; and advise the City of the effective date of the transfer or assignment. Additionally, Grantee's obligations under this Contract franchise with regard to indemnity, bonding and insurance shall continue until the transferee or assignee has taken the appropriate measures necessary to assume and replace the same, the intent being that there shall be no lapse in any coverage as a result of the transfer or assignment. In the event an entity acquires substantially all of the assets of Grantee, said successor entity shall be allowed to operate under this Contract franchise for up to one hundred and eighty (180) days from the date of transfer; provided, within thirty (30) days from the date of transfer said successor entity makes application with the City for either a new ordinance or the transfer of this Contract franchise, and provides the City with written evidence satisfying the obligations under this Contract franchise with regard to indemnity, bonding and insurance.



**SECTION 13. CONFIDENTIALITY.**

Information provided to the City under this Contract franchise shall be governed by confidentiality procedures in compliance with K.S.A. 45-215 and 66-1220a, et seq., and amendments thereto. Grantee agrees to indemnify and hold the City harmless from any and all penalties or costs, including reasonable attorney's fees, arising from the actions of Grantee, or of the City, at the written request of Grantee, in seeking to safeguard the confidentiality of information provided by Grantee to the City under this Contract franchise. The foregoing notwithstanding, any information received or known by City pursuant to Section 4. b. regarding revenues of Licensee, Section 4. a. regarding the percentage of revenue and all information received or otherwise known as a result of any Audit under Section 4. c. will be subject to a Non-Disclosure Agreement which shall be executed by the parties within thirty (30) days of the final passage and approval of this Contract franchise.

**SECTION 14. ACCEPTANCE OF TERMS.**

Grantee shall have thirty (30) days after the final passage and approval of this Contract franchise to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Contract franchise, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, this Contract franchise and acceptance shall constitute a contract between the City and Grantee subject to the provisions of the laws of the state of Kansas.

**SECTION 15. PAYMENT OF COSTS.**

In accordance with Kansas law, Grantee shall be responsible for payment of all costs and expense of publishing this Contract franchise, and any amendments thereof.

**SECTION 16. SEVERABILITY.**

If any clause, sentence, or section of this Contract franchise, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or Grantee may elect to declare the entire Contract franchise invalidated if the portion declared invalid is, in the judgment of the City or Grantee, an essential part of the Contract franchise.

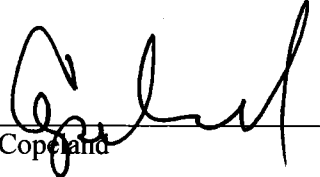
**SECTION 17. FORCE MAJEURE.**

Each and every provision hereof shall be reasonably subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond Grantee's or the City's control.


PASSED by the Governing Body of the City of Olathe, Kansas this 3rd day of April, 2012.

SIGNED by the Mayor this 3rd day of April, 2012.

BY: CITY OF OLATHE, KANSAS

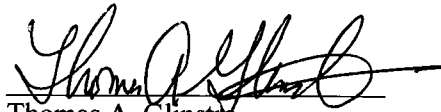
  
\_\_\_\_\_  
Michael E. Copeland  
Mayor

ATTESTED BY:

  
\_\_\_\_\_  
Donald T. Howell  
City Clerk

(Seal)

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Thomas A. Glinstra  
City Attorney

Publish one time and return one Proof of Publication to the City Clerk and one to the City Attorney.

**MASTER LICENSE AGREEMENT  
FOR ATTACHMENTS TO CITY FACILITIES**

This Master License Agreement for Attachments to City Facilities ("Agreement") dated May 6, 2014 (the "Effective Date") is made by and between the CITY OF OLATHE, KANSAS (the "City"), and EXTENET SYSTEMS, INC., a Delaware corporation ("Licensee") (collectively referred to as the "Parties").

**RECITALS**

WHEREAS, the City owns, operates and maintains certain Facilities located in the City; and

WHEREAS, Licensee obtained a contract franchise from the City by the City's adoption and Licensee's acceptance of Ordinance No. 12-07 to install and maintain certain facilities within the City's right-of-way and to pay franchise fees for such privilege; and

WHEREAS, in accordance with the aforementioned contract franchise, Licensee proposes to install and maintain Licensee's Attachments on or within City Facilities to provide Communications Services; and

WHEREAS, the City is willing to grant Licensee a non-exclusive, revocable license under which the City will issue Permits authorizing the placement or installation of Licensee's Attachments on or within specified City Facilities, provided that the City may in its sole discretion, for reasons relating to insufficient capacity, safety, reliability, generally applicable engineering purposes or other governmental needs, uses, obligations and reasons, refuse to issue a Permit for any particular City Facility so long as Licensee is treated in a competitively neutral and non-discriminatory manner as compared with other similarly situated third-parties; and

WHEREAS, the City's lease of Facilities is a commercial transaction involving the rental of City property and the City's intention to act in a non-discriminatory manner notwithstanding, such commitment shall only apply to this Agreement when viewed as a whole and nothing herein shall be construed as a requirement that any other license agreements be identical. Nor shall it be construed as an obligation to proactively ensure competitive neutrality or prevent the City from obtaining in-kind consideration in instances where it is mutually agreeable to the parties.

NOW, THEREFORE, in consideration of the above recitals and the following mutual covenants, agreements, and obligations of the Parties, which constitute good and valuable consideration, the sufficiency of which is acknowledged, and with the intention to be legally bound hereby, the City and Licensee agree as follows:

**1. DEFINITIONS**

For the purposes of this Agreement, the following terms, phrases, words, and their derivations, shall have the meaning given herein, unless more specifically defined within a specific Article or Paragraph of this Agreement. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

**1.1 Affiliate:** when used in relation to Licensee, means another entity that owns or controls, is owned or controlled by, or is under common ownership or control with Licensee.

**1.2 Applicable Standards:** means all applicable engineering and safety standards governing the installation, maintenance and operation of equipment and the performance of all work in or around City Facilities and includes the most current versions of National Electric Safety Code (“NESC”), the National Electrical Code (“NEC”), and the regulations of the Occupational Safety and Health Administration (“OSHA”), each of which is incorporated by reference in this Agreement, and/or other reasonable safety and engineering requirements of the City or other federal, State or local authority with jurisdiction over City Facilities.

**1.3 Attaching Entity:** means any public or private entity, including Licensee, who, pursuant to a valid authorization with the City, places an Attachment on or within City Facilities to provide Communications Service.

**1.4 Attachment(s):** means Licensee’s Communications Equipment that is placed directly on or within approved City Facilities.

**1.5 Capacity:** means the ability of a City Facility to accommodate an additional Attachment based on Applicable Standards, including space and loading considerations.

**1.6 City Facilities or Facilities:** means City-owned Street Lights, poles, rooftops, or Conduits, and associated property, that are capable of accommodating Communications Equipment in accordance with Applicable Standards. Provided, however, no Attachments will be allowed on any traffic control signal or on any other City Facilities without City approval.

**1.7 Communications Equipment:** means wireline or wireless equipment including but not limited to fiber optic, copper and/or coaxial cables, wireless antennas, receivers or transceivers, mounting hardware, power supplies, grounding or bonding wires, and other equipment utilized to provide Communications Service including any and all associated equipment.

**1.8 Communications Service:** means the transmission or receipt of voice, video, data, broadband Internet or other forms of digital or analog signals over Communications Equipment.

**1.9 Conduit System:** means the City’s conduits, innerduct, manholes, handholes, vaults, pull-boxes and trenches.

**1.10 Innerduct:** means flexible conduit installed inside a larger rigid conduit for the placement of wire or cable.

**1.11 Licensee:** means ExteNet Systems, Inc., its authorized agents, successors, designees and assigns.

**1.12 Make-Ready Work:** means all work, as reasonably determined by the City, required to accommodate Licensee’s Attachment and/or to comply with all Applicable Standards. Such work includes, but is not limited to, rearrangement of City Facilities or existing attachments, inspections, engineering work, permitting work, design, planning, construction, materials, cost of removal (less any salvage value), cost of expanding existing Conduit, cost of a (City-approved) substitution of light



poles, tree trimming (other than tree trimming performed for normal maintenance purposes), Facility construction, or Conduit System clearing, but does not include routine maintenance.

**1.13 Permit:** means written or electronic authorization of the City for Licensee to make or maintain Attachments to specific City Facilities pursuant to the requirements of this Agreement and any applicable city code or regulation.

**1.14 Permit Application:** means the application for a Permit pursuant to the applicable requirements of this Agreement and any applicable city code or regulation.

**1.15 Post-Construction Inspection:** means the inspection by the City to determine and verify that the Attachments have been made in accordance with Applicable Standards and the Permit.

**1.16 Pre-Construction Survey:** means all work or operations required by Applicable Standards and/or the City to determine the potential Make-Ready Work necessary to accommodate Licensee's Communications Facilities on or within a City Facility. Such work includes, but is not limited to, field inspection and administrative processing.

**1.17 Reserved Capacity:** means capacity or space on or within a Facility that the City has identified and reserved for City or other governmental requirements, including, but not limited to, Johnson County, other municipalities and any local school districts.

**1.18 Site:** Each place where City Facilities for which Licensee obtains a Permit from the City pursuant to this Agreement for purposes of installing its Attachment.

**1.19 Street Light:** Each City-owned street light fixture and attached photocell, together with the lateral arm on which the street light fixture is mounted.

**1.20 Tag:** means to place distinct markers on wires and cables, coded by color or other means specified by the City and/or applicable federal, State or local regulations that will readily identify the type of Attachment and its owner.

## **2. SCOPE OF AGREEMENT**

**2.1 Grant of License.** Subject to the provisions of this Agreement, the City hereby grants Licensee a revocable, nonexclusive license authorizing Licensee to install and maintain permitted Attachments on or within specified City Facilities. Placement of Licensee's Attachments on or within any specific City Facility shall be at the sole discretion of the City so long as Licensee is treated in a competitively neutral and non-discriminatory manner as compared with other similarly situated third-parties.

**2.2 Conflicting Provisions.** In the event of any conflict between this Agreement and any Permit hereto, the terms and conditions of this Agreement, as amended from time to time, shall control.

**2.3 Permit Issuance Conditions.** The City will issue a Permit(s) to Licensee only when the City determines, in its sole judgment, exercised reasonably, that (i) it has sufficient Capacity to accommodate the requested Attachment(s), (ii) Licensee meets all requirements set forth in this Agreement, and (iii) such Permit(s) comply with all Applicable Standards. City reserves the right to

deny or modify Licensee access to any Facilities, on a competitively-neutral and non-discriminatory basis, where City determines that Licensee's proposed attachment will (a) jeopardize the public health, safety or welfare, or (b) unreasonably limit or harm the capacity, functionality, reliability, governmental interests or aesthetics of City's Facilities, or (c) violate applicable zoning restrictions or other laws and regulations, or (d) exceed the capacity of the Facilities to include taking into consideration the reserved capacity of the Facilities, or (e) interfere with the City's intended use of the Facilities, and (f) interfere with any other reasonable governmental interest.

**2.4 In-Kind Compensation.** The Parties may by mutual agreement adjust the fees and charges specified in Article 3 to account for in-kind contributions from Licensee in the form of service to the City as is reasonably determined by the City to be valued as at least roughly comparable to the Attachment fees and charges.

**2.5 Reserved Capacity.** Access to space on City Facilities will be made available to Licensee with the understanding that City Facilities may be subject to Reserved Capacity for future governmental use. In such case the City may refuse to permit Attachments on such Facilities or may within its discretion permit Attachments, subject to reclaiming its Reserved Capacity in the future. On giving Licensee at least one hundred and eighty (180) calendar days prior notice, the City may reclaim such Reserved Capacity if required for future governmental use. The City may within its reasonable discretion give Licensee the option to remove its Attachment(s) from the affected Facilities or the Licensee may pay for the cost of any Make-Ready Work needed to expand Capacity to accommodate the governmental needs while at the same time maintaining the Licensee's Attachments on the affected Facilities.

**2.6 No Interest in Property.** No use, however lengthy, of any City Facilities, and no payment of any fees or charges required under this Agreement, shall create or vest in Licensee any easement or other ownership or property right of any nature in any portion of such Facilities. Neither this Agreement, nor any Permit granted under this Agreement, shall constitute an assignment of any of the City's rights to City Facilities. Notwithstanding anything in this Agreement to the contrary, Licensee shall, at all times, be and remain a licensee only.

**2.7 Licensee's Right to Attach.** Nothing in this Agreement, other than a Permit issued pursuant to Article 6, shall be construed as granting Licensee any right to attach Licensee's Attachment(s) to or within any specific City Facility or portion of Facilities.

**2.8 City's Rights over Facilities.** The Parties agree that this Agreement does not in any way limit the City's right to locate, operate, maintain or remove its Facilities in the manner that will best enable it to fulfill any governmental requirements.

**2.9 Expansion of Capacity.** The City may take steps as reasonably appropriate, in a competitively neutral manner, to expand Facilities to accommodate Licensee's request for Attachment. Notwithstanding the foregoing, nothing in this Agreement shall be construed to require the City to install, retain, extend or maintain any Facility or portion of City Facilities for use when such Facilities are not needed for the City's or any other governmental service requirements.

**2.10 Other Agreements.** Except as provided herein, nothing in this Agreement shall limit, restrict, or prohibit the City from fulfilling any agreement or arrangement regarding Facilities into which the City has previously entered, or may enter in the future, with others not party to this Agreement, provided that any such future attachments shall not interfere with Licensee's Attachments.

**2.11 No Use After Termination.** Nothing in this Agreement shall be construed to require the City to allow Licensee to use Facilities after the termination of this Agreement.

**2.12 Enclosures.** Nothing in this Agreement shall authorize Licensee to place above-ground pedestals, enclosures or cabinets at the base of any City Facilities upon which Licensee has made authorized Attachments and any such use shall be subject to the Permit and applicable City Code provisions.

### **3. FEES AND CHARGES**

**3.1 Payment of Fees and Charges.** For authorized Attachments covered under this Agreement, Licensee shall pay to the City the fees and charges as set forth in **Exhibit A**, attached hereto and incorporated herein by reference.

**3.2 Payment Period.** Unless otherwise expressly provided, Licensee shall pay any invoice it receives from the City pursuant to this Agreement within thirty (30) calendar days after the City issues the invoice.

**3.3 Payment of Annual Attachment and Conduit Rental Fees.** Licensee shall pay all applicable Annual Attachment and Conduit Rental Fees described in **Exhibit A** without requirement for invoice or reminder from the City on or about January 1 of each year this Agreement remains in effect, but in no event later than January 15 (the "Due Date"). The initial annual rental period shall commence upon the execution of this Agreement and conclude on December 31 of the same year, and each subsequent annual rental period shall commence on the following January 1 and conclude on December 31 of the subsequent year. When delivering the Annual Attachment Fee, Licensee shall set forth the total number of the City's Facilities on/in which Licensee was issued and/or holds a Permit(s) for Attachments during such annual rental period, including any previously authorized and valid Permits. If any fee described in this paragraph, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.

**3.4 Refunds.** No fees and charges shall be refunded on account of any surrender of a Permit granted hereunder.

**3.5 Inventory.** The City shall have the right to require a joint inventory of all Attachments no more frequently than once every three (3) years by the City and Licensee, unless both parties agree to a new inventory schedule. The cost of the inventory shall be shared equally between the City, Licensee and any other participating Attaching Entities, subject to the terms of any agreement with said Attaching Entities.

**3.6 Late Charge.** If the City does not receive payment for any fee, charges or other amount owed within thirty (30) calendar days after it becomes due, Licensee shall pay interest to the City, at the rate of ten percent (10%) per month, on the amount due. Interest under this Agreement shall not exceed the interest allowable under applicable law.

**3.7 Payment for Work.** Licensee will be responsible for payment to the City for all work the City or the City's contractors perform pursuant to this Agreement to accommodate Licensee's Attachments.

**3.8 Advance Payment.** The Permit Application Fee shall be due upon submission of the Permit Application. At the discretion of the City, Licensee may be required to pay in advance all reasonable costs, including but not limited to administrative, construction, inspections and Make-Ready Work Estimate, in connection with the initial installation or rearrangement of Licensee's Attachment pursuant to the procedures set forth in Articles 6 and 7 below. If the City does not exercise this option, the Make-Ready Work Estimate will be paid as set forth in Paragraph 7.2.

**3.9 True Up.** Wherever the City, at its discretion, requires advance payment of estimated expenses prior to undertaking an activity on behalf of Licensee and the actual cost of activity exceeds the advance payment of estimated expenses, Licensee shall pay the City for the difference in cost. To the extent that the actual cost of the activity is less than the estimated cost, the City shall refund to Licensee the difference in cost.

**3.10 Determination of Fees and Charges.** Wherever this Agreement requires Licensee to pay for work done or contracted by the City, the charge for such work shall include all reasonable material, labor, engineering and administrative costs and applicable overhead costs. The City shall bill its services based upon actual costs, and such costs will be determined in accordance with the City's cost accounting systems used for recording capital and expense activities. All such invoices shall include an itemization of dates of work, location of work, labor costs per hour, persons employed and materials used and cost of materials. If Licensee was required to perform work and fails to perform such work necessitating its completion by the City, the City may either charge an additional ten percent (10%) to its costs or, if applicable, assess the Failure to Timely Transfer, Abandon or Removal Facilities Penalty Fee.

**3.11 Work Performed by City.** Wherever this Agreement requires the City to perform any work Licensee acknowledges and agrees that the City, at its sole discretion, may utilize its employees or contractors, or any combination of the two to perform such work, or to permit the Licensee to perform the work.

**3.12 Default for Nonpayment.** Nonpayment of any amount due under this Agreement beyond ninety (90) days shall constitute a material default of this Agreement.

**3.13 Incremental Property Taxes.** If the property or ad valorem taxes payable by the City with respect to City Facilities or lands at a Site(s) are located or the basis on which such taxes are calculated, increase following installation of the Attachment, Licensee shall reimburse the City for the portion of such increase or change attributable to any construction, installation or improvements provided pursuant to this Agreement. Licensee shall be solely responsible for, and shall pay in a timely manner, any property or ad valorem taxes or other taxes or fees levied upon or with respect to the Attachment and other Licensee property located on the Site(s) that are billed directly to Licensee by the taxing authorities.

#### **4. SPECIFICATIONS**

**4.1 Installation/Maintenance of Attachment.** When a Permit is issued pursuant to this Agreement, Licensee's Attachment(s) shall be installed and maintained in accordance with all applicable federal, State and local laws, rules, and regulations, including, but not limited to, the City's applicable permit application and construction requirements for attachments to City Facilities, the City's adopted building and electrical codes, and the City's Unified Development Ordinance (collectively, the "Codes"). All of Licensee's Attachments must comply with all Applicable Standards. Licensee shall



be responsible for the installation and maintenance of its Attachments. Licensee shall, at its own expense, make and maintain its Attachments in safe condition and good repair, in accordance with all Applicable Standards; and Licensee shall replace, remove, reinforce or repair any defective Attachments (unless otherwise agreed to by the City in writing).

#### **4.2 Authorized Attachment(s) and Installation Methods.**

**4.2.1** The City must approve the Attachment(s) that Licensee is authorized to place on City Facilities. Except as authorized by the City in writing, only the Attachments depicted and described in the approved Permit Application may be attached to any City Facility; provided, however, that different internal components may be substituted as part of an upgrade of the Communications Equipment; provided the external appearance remains the same and further provided, different Attachments of similar or smaller size may be substituted upon the filing of a description and design of the new devices at least fifteen (15) days in advance of such change and upon approval by the City. Provided, any said upgrade or substitution must maintain the structural integrity of the City's Facility, and Licensee will provide all necessary supporting documentation.

**4.2.2** In no event may Licensee or any of its subcontractors install or construct new City Facilities or modify or repair existing City Facilities except as may be expressly authorized by this Agreement or by an approved Permit, or as is otherwise authorized in writing by the City.

**4.2.3** Nothing in this Agreement shall be construed as a guaranty of the condition of any City Facility in connection with Licensee's Attachments or impose any obligation upon the City to repair or replace an existing City Facility in order to accommodate a request by Licensee to install an Attachment.

**4.3 Tagging.** Licensee shall Tag all of its Communications Equipment in accordance with any applicable federal, State and local regulations upon installation of such Attachment(s).

**4.4 Interference.** Licensee shall not allow its Attachment(s) to impair the ability of the City or any third party to use City Facilities, nor shall Licensee allow its Attachment(s) to interfere with the operation of any City or other governmental Facilities.

**4.4.1** Licensee shall comply with all Federal Communications Commission ("FCC") and other federal, state and local laws, rules, orders and regulations and all directives of the relevant regulatory agencies that are applicable in connection with the installation and operation of Licensee's Attachments.

**4.4.2** In the event that the installation, operation or maintenance of the Attachment(s), whether or not such operation is in compliance with the terms of Licensee's applicable FCC licenses, creates any interference with the operation of the City's or any other governmental entity's communication or other equipment, Licensee shall immediately, at Licensee's sole cost and expense, take such reasonable steps as may be necessary or recommended by the City or regulatory agencies to eliminate such interference. In the event that the installation, operation or maintenance of the Attachment(s) creates any interference with the operation of the pre-existing equipment of third parties using the Site pursuant to an agreement with the

City or any other pre-existing uses of electronic equipment, Licensee shall immediately, at Licensee's sole cost and expense, take such reasonable steps as may be necessary to eliminate such interference in accordance with FCC or other applicable regulatory requirements. If Licensee is unable or refuses to eliminate such interference, the City may terminate Licensee's use of or right to use the Facility upon which such interfering Attachment is located, and Licensee shall promptly remove the Attachment from the Facility.

**4.4.3** Notwithstanding the foregoing, if equipment installed on a Facility by any third party using the Facility pursuant to an agreement with the City subsequent to the installation of the Licensee's Attachment on the Site causes interference, either electronically or physically, with Licensee's previously installed Attachments then upon thirty (30) days written notice to the City, Licensee shall have the right to terminate the affected Permit.

**4.5 Protective Equipment.** Licensee, and its employees and contractors, shall utilize and install adequate protective equipment to ensure the safety of people and facilities.

**4.6 Violation of Specifications.** If Licensee's Attachment(s), or any part thereof, are installed, used or maintained in violation of this Agreement, and Licensee has not corrected the violation(s) within thirty (30) calendar days from receipt of written notice of the violation(s) from the City, the City at its option, may unilaterally correct such conditions. The City will attempt to notify Licensee in writing prior to performing such work whenever practicable. When the City believes, however, that such violation(s) pose an immediate threat to the safety of any person, interfere with the performance of the City's service obligations or pose an immediate threat to the physical integrity of City Facilities, the City may perform such work and/or take such action as it deems necessary without first giving written notice to Licensee. As soon as practicable thereafter, the City will advise Licensee of the work performed or the action taken. Licensee shall be responsible for all actual and reasonable costs incurred by the City in taking action pursuant to this Paragraph, and shall indemnify the City from liability for all such work. An "Emergency" is conditions that in the discretion of City (i) pose an immediate threat to the safety of utility workers or the public; (ii) materially and adversely interfere with the performance of City's or other attachers' service obligations; or (iii) pose an immediate threat to the integrity of City's or other attachers' equipment or Structures.

**4.7 Restoration of City Service.** The City's service restoration requirements shall take precedence over any and all work operations of Licensee on City Facilities.

**4.8 Effect of Failure to Exercise Access Rights.** If Licensee does not exercise any access right granted pursuant to this Agreement and/or applicable Permit(s) within ninety (90) calendar days of the effective date of such right and any extension thereof, the City may use the space scheduled for Licensee's Attachment(s) for its own needs or other Attaching Entities. For purposes of this Paragraph, Licensee's access rights shall not be deemed effective until any necessary Make-Ready Work has been performed.

## **5. PRIVATE AND REGULATORY COMPLIANCE**

**5.1 Necessary Authorizations.** Licensee shall be responsible for obtaining from the appropriate public and/or private authority or other appropriate persons any required authorization to construct, operate and/or maintain its Communications Equipment on public and/or private property before it occupies any portion of City Facilities. The City retains the right to require evidence that appropriate

authorization has been obtained before any Permit is issued to Licensee. Licensee's obligations under this Article 5 include, but are not limited to, its obligation to obtain all necessary approvals to occupy public/private rights-of-way, including, but not limited to, a franchise, any applicable FCC or KCC authorization, any Right-of-Way Permit, or any applicable zoning or land use approval, and to pay all costs associated therewith. Licensee shall defend, indemnify and reimburse the City for all loss and expense, including reasonable attorney's fees, that the City may incur as a result of claims by owners of private property, or other persons, that Licensee does not have sufficient rights or authority to attach Licensee's Communications Equipment on or within City Facilities or to provide particular Communications Services.

**5.2 Lawful Purpose and Use.** Licensee's Attachments must at all times serve a lawful purpose, and the use of such Facilities must comply with the Codes. This Agreement is not a waiver of any City regulatory power or Licensee's obligation to meet any applicable City Codes or other law and/or regulation.

**5.3 Forfeiture of City's Rights.** No Permit granted under this Agreement shall extend to any Facilities or portions thereof on/in which the attachment of Licensee's Attachment(s) would result in a forfeiture of the City's rights. Any Permit, which on its face would cover Attachments that would result in forfeiture of the City's rights, is invalid. Further, if any of Licensee's existing Attachments, whether installed pursuant to a valid Permit or not, would cause such forfeiture, Licensee shall, at its expense, promptly remove its Attachments upon receipt of written notice from the City. If the Attachments in question are not removed within thirty (30) days of receipt of the City's written notice, the City may at its option perform such removal at Licensee's expense. Notwithstanding the forgoing, Licensee shall have the right to contest any such forfeiture before any of its rights are terminated under the Agreement provided that Licensee shall indemnify the City for any actual damages that may result during Licensee's challenge.

**5.4 Effect of Consent to Construction/Maintenance.** Consent by the City to the construction or maintenance of any Attachments by Licensee shall not be deemed consent, authorization or an acknowledgment that Licensee has the authority to construct or maintain any other such Attachments. It is Licensee's responsibility to obtain all necessary approvals for each Attachment from all appropriate parties or agencies.

## **6. PERMIT APPLICATION PROCEDURES**

**6.1 Permit Required.** Licensee shall not install any Attachments on or within any City Facilities without first applying for and obtaining a Permit pursuant to the applicable provisions of the Codes and other applicable laws, ordinances and regulatory requirements. Attachments to or rights to occupy or utilize City property not covered by this Agreement, such as the lease and use of City-owned fiber optic capacity or any other City property must be separately negotiated.

**6.1.1** Unless otherwise agreeable to the parties, the Licensee shall submit a Permit Application for every proposed above-ground Site of Attachment that shall be accompanied by:

- (i) photos of the subject Facility and surrounding location;
- (ii) equipment specifications;
- (iii) a site sketch that depicts the proposed installation specifications such as attachment height, and attachment methods on the subject City Facility(ies);
- (iv) structural calculations;

- (v) a traffic control plan for all work that includes temporary lane reduction or closures; and
- (vi) additional information which may be required by the City as necessary.

**6.1.2** Permits are valid for one-hundred-twenty (120) days, after which they automatically become void and must be updated and re-approved by the City before any Attachments will be permitted.

**6.1.3** The Contractor shall have one (1) copy of the approved Permit, the approved Attachment plans, and the approved traffic control plan (if required) at the job site at all times.

**6.1.4** For unscheduled emergency maintenance repairs no notification to the City will be required until service is resumed. Coordination with City of Olathe Traffic staff is required if the emergency repair work will cause temporary lane reductions or closures. Contact Traffic staff at 913-971-5170. On the first working day subsequent to such repairs, the Licensee shall notify the City. At that time, the Licensee shall make application for the required Permit following normal procedures.

**6.2 Professional Certification.** Unless otherwise waived in writing by the City, as part of the Permit Application process and at Licensee's sole expense, a qualified and experienced professional engineer, or an employee or contractor of Licensee who has been approved by the City, must participate in the Pre-Construction Survey, conduct the Post-Construction Inspection and certify that Licensee's Attachments can be and were installed on or within the identified Facilities in compliance with the standards in Paragraph 4.1 and in accordance with the Permit. The professional engineer's qualifications must include experience performing such work, or substantially similar work.

**6.3 City Review of Permit Application.** Upon receipt of a properly executed Permit Application, which shall include the Pre-Construction Survey, certified per Paragraph 6.2 above, and detailed plans for the proposed Attachments in a form acceptable to City staff, the City will review the Permit Application and discuss any issues with Licensee, including engineering or Make-Ready Work requirements associated with the Permit Application. The City acceptance of the submitted design documents does not relieve Licensee of full responsibility for any errors and/or omissions in the engineering analysis. Unless otherwise agreed the Permit Application process shall be consistent with the following timeline.

**6.3.1 Review Period.** The City shall review and respond to properly executed and complete Permit Applications within thirty (30) days of receipt; provided, the Parties agree and acknowledge that the grant or denial of Licensee's request may take longer than 30 days if the Parties are communicating and mutually proceeding diligently with the Permit Application in good faith. The City's response will either provide a written explanation as to why the Permit Application is being denied, either in whole or in part, or provide an approval and estimate of the costs of all necessary Make-Ready Work.

**6.3.2** Make-Ready work and access to Conduits shall be provided on a mutually agreeable, reasonable, and timely basis.



**6.3.3** City may toll the time period for completion of Make-Ready Work by written notice in order to respond to severe storms, natural disasters or other emergency situations.

**6.4 Permit as Authorization to Attach.** Upon completion of any necessary Make-Ready Work and receipt of payment for such work, the City will sign and return the Permit Application, which shall serve as authorization for Licensee to make its Attachment(s).

## **7. MAKE-READY WORK/INSTALLATION**

**7.1 Make-Ready Survey.** When the City receives an attachment or placement Permit Application from Licensee, a Pre-Construction Survey may be necessary, at Licensee's cost, to determine the adequacy or the capacity of the City Facilities to accommodate Licensee's Communications Equipment without jeopardizing the safety of the City Facilities or placing the City in violation of generally applicable zoning or other restrictions. Licensee shall be responsible for performing and paying all costs associated with the Pre-Construction Survey. The City may perform a field inspection and structural analysis as part of the Pre-Construction Survey. The City shall provide reasonable advance notice of such a field inspection and a representative of Licensee has the right to be present for the inspection.

### **7.2 Make-Ready Work.**

**7.2.1** Except where the City denies the application, whenever any City Facility to which Licensee seeks attachment or occupancy requires modification or replacement to accommodate both Licensee's Attachment and the existing attachments or equipment of the City and other Attaching Entities, the City, at Licensee's cost, will provide Licensee with a detailed, good faith estimate of Make-Ready Work (the "Make-Ready Estimate") the City believes to be necessary to prepare the City Facilities for Licensee's Attachment. All Make-Ready Work will be performed at the sole cost and expense of Licensee. The City will use its best efforts to provide Licensee with the Make-Ready Estimate within thirty (30) days of Licensee's application. The Make-Ready Estimate shall include itemized estimates of the cost of each component of the Make-Ready Work. (See Paragraph 1.12 for defined components of Make-Ready Work.) Any reference to costs or expenses borne by Licensee within Paragraphs 7.1 and 7.2 shall include all third-party out of pocket expenses incurred by the City and may also include administrative time incurred by the City or expenses that third-party Attaching Entities are obligated to bear under pre-existing agreements.

**7.2.2** After receiving the Make-Ready Estimate, if Licensee still desires to make the Attachment, Licensee may within ninety (90) days of receiving the Make-Ready Estimate elect by written notice to the City any of the following alternatives:

- (i) Offer the City the option to perform such Make-Ready Work as called for in the Make-Ready Estimate (the "Option"), and if the City, in its sole and absolute discretion, agrees to perform such Make-Ready Work pursuant to the Option, Licensee will pay to the City fifty percent (50%) of the fees for Make-Ready Work specified by the Make-Ready Estimate (the "Down Payment"). Licensee shall pay an additional twenty-five percent (25%) of the Make-Ready Estimate when the City has completed one-half of the Make-Ready Work (the "Progress Payment"). Licensee

shall pay the remaining twenty-five percent (25%) of the Make-Ready Estimate upon the City's completion of the Make-Ready Work. Notwithstanding this Subparagraph, the City, at its option, may require advanced payment of the entire Make-Ready Estimate per Paragraph 3.8.

- (ii) Licensee or Licensee's contractors may perform all the Make-Ready Work. The contractors shall be approved by the City to work on or in City Facilities. Approval shall be based upon reasonable and customary criteria employed by the City in the selection of its own contract labor.
- (iii) Licensee may retain its own contractors to perform part of the Make-Ready Work and utilize the City to perform part of the Make-Ready Work, but only where the City has, in its sole and absolute discretion, agreed to such Option described in Subparagraph 7.2.2 (i). The parties shall reasonably agree what portion of the Make-Ready Work each party will perform through this joint-build option. In the event Licensee retains contractors to perform part of the Make-Ready Work and utilizes the City to perform part of the Make-Ready Work, Licensee shall adjust the payments described in Subparagraph 7.2.2 (i) to include only the costs of the itemized components of the Make-Ready Estimate to be performed by the City.

**7.2.3** If the City, in its sole and absolute discretion, exercises its Option to perform any Make-Ready Work as described in Subparagraph 7.2.2 (i), the City shall use its best efforts to make sure that necessary Make-Ready Work, including the work necessary to rearrange the Attachments and equipment of other Attaching Entities, is completed within sixty (60) days from Licensee's remittal of the Down Payment. If Make-Ready Work is not completed by the City within the sixty (60) day period, any fees payable by Licensee for Make-Ready Work shall be waived and any Down Payment or Progress Payment in connection with such Make-Ready Work shall be refunded promptly to Licensee, and Licensee may retain its own contractors perform the Make-Ready Work.

If Licensee submits an application that affects existing Attaching Entities, the City will use commercially reasonable efforts to notify the existing Attaching Entities and coordinate the rearrangements of their Attachments. To the extent third-party equipment is affected by Licensee's application, the City will follow the procedure as described in Paragraphs 7.2.1, 7.2.2 and 7.2.3, but only to the extent such existing Attaching Entities do not elect to perform the rearrangement or are not already obligated to rearrange Attachments and bear the expense of such rearrangement and coordination under a pre-existing separate agreement.

**7.3 Scheduling of Make-Ready Work.** In performing all Make-Ready Work to accommodate Licensee's Attachment, the City will endeavor to include such work in its normal work schedule. In the event Licensee requests that the Make-Ready Work be performed on a priority basis or outside of the City's normal work hours, Licensee agrees to pay any resulting increased costs. Nothing herein shall be construed to require performance of Licensee's work before other scheduled work or City service restoration.

**7.4 Licensee's Installation/Removal/Maintenance Work.**

**7.4.1** All of Licensee's installation, removal and maintenance work shall be performed at Licensee's sole cost and expense, in a good and workmanlike manner, and must not adversely affect the structural integrity of City Facilities or other property or equipment, or other Attaching Entity's facilities or equipment attached thereto. All such work is subject to the insurance requirements of Article 18.

**7.4.2** All of Licensee's installation, removal and maintenance work performed on or within City Facilities or in the vicinity of other City property, either by its employees or contractors, shall be in compliance with all applicable regulations specified in Paragraph 4.1. Licensee shall assure that any person installing, maintaining, or removing its Attachment(s) is fully qualified and familiar with all Applicable Standards, the provisions of Article 17, and the Specifications required by Article 4.

**8. TRANSFERS**

**8.1 Required Transfers of Licensee's Attachments.** If the City reasonably determines that a transfer of Licensee's Attachments is necessary, Licensee agrees to allow such transfer or remove the affected Attachment pursuant to Paragraph 12.2. In such instances, the City shall require Licensee to perform such transfer or removal at its own expense within thirty (30) calendar days after receipt of notice from the City. If Licensee fails to transfer its Equipment within thirty (30) calendar days after receiving such notice from the City, the City shall have the right to transfer Licensee's Equipment using its personnel and/or contractors. The costs of such transfers shall be paid by licensee. The City shall not be liable for damage to Licensee's Equipment except to the extent provided in Paragraph 16.1. The written advance notification requirement of this Paragraph shall not apply to emergency situations, in which case the City shall provide such advance notice as is practical given the urgency of the particular emergency situation. The City shall then provide written notice of any such actions taken within five (5) business days of the occurrence.

The provisions of this Article 8.1 shall be subject to and limited by the terms of the Codes.

**9. MODIFICATIONS AND/OR REPLACEMENTS**

**9.1 Licensee's Action Requiring Modification/Replacement.** In the event that any City Facility to which Licensee desires to make Attachment(s) is unable to support or accommodate the additional Equipment in accordance with all Applicable Standards, the City will notify Licensee. If the City is willing to allow a modification or replacement of the City Facility to accommodate Licensee's Attachment, the City will notify Licensee of the necessary Make-Ready Work, and associated costs, to provide an adequate Facility, including but not limited to replacement of the Facility and rearrangement or transfer of the City's equipment, as well as the equipment of other Attaching Entities. Licensee shall be responsible for separately entering into an agreement with other Attaching Entities concerning the allocation of costs for the relocation or rearrangement of such entities' existing Attachments. If Licensee elects to go forward with the necessary changes, Licensee shall pay to the City the actual cost of any Make-Ready Work, performed by the City, per Paragraphs 3.9 and 7.2; provided, the City, at its discretion, may require advance payment of the entire cost. Licensee shall also be responsible for obtaining, and furnishing to the City before the commencement of any Make-Ready Work, agreements between Licensee and the other Attaching Entities concerning the relocation or rearrangement of their Attachments and the costs involved.

**9.2 Treatment of Multiple Requests for Same Facility.** The rights of any third-parties to whom City confers Facilities access after the Licensee shall be subject to the rights of the Licensee as set forth herein. The City shall not license any Facilities occupied by Licensee, or for which an application for occupancy or attachment from Licensee has been received by City and is pending, for use by any other person or entity where it is determined that such third-party use would unreasonably interfere with Licensee's Communication Equipment pursuant to the Applicable Standards, unless access for such other person or entity is otherwise required by applicable state or federal law. If access is granted to a third-party pursuant to state or federal law, then City shall give Licensee prior written notice of any such grant of third-party access and give Licensee reasonable time to remove and relocate equipment prior to that time any third party is able to access any Facilities previously occupied by or attached to by Licensee.

If City grants Facilities access to any third-party prior to Licensee applying for or being granted such rights, Licensee shall be subject to the rights of said third-party attacher, unless it is determined that Licensee access would not unreasonably interfere with such third-party's equipment pursuant to the Applicable Standards or if such access is required by state or federal law. This Section 9.2 shall not be deemed to otherwise limit the City from using any Facilities in connection with providing its own services or from licensing any Facilities to another person or entity if no application from Licensee is pending or such Facilities is not occupied by Licensee.

**9.3 Allocation of Costs.** The costs for any rearrangement or transfer of Licensee's Attachment or the replacement of a City Facility (including any related costs for tree cutting or trimming or Conduit clearing) shall be allocated to the City and/or Licensee and/or other Attaching Entity on the following basis:

**9.3.1** If the City intends to modify or replace a City Facility solely for its own requirements, it shall be responsible for the costs related to the modification/replacement of the City Facility. Licensee shall be responsible for all costs associated with any necessary modification or relocation of Licensee's Attachment. Prior to making any such modification or replacement of the City Facility the City shall provide Licensee written notification of its intent in order to allow Licensee a reasonable opportunity to elect to modify, relocate or add to its existing Attachment. Should Licensee so elect, it must seek the City's written permission per this Agreement. The notification requirement of this Paragraph shall not apply to routine maintenance or emergency situations. If Licensee elects to add to or modify its Attachment, Licensee shall bear the total incremental costs incurred by the City in making the space on or within the Facilities accessible to Licensee.

**9.3.2** If the modification or replacement of a Facility is necessitated by the requirements of Licensee, Licensee shall be responsible for the costs related to the modification or replacement of the Facilities and for the costs associated with the transfer or rearrangement of any other Attaching Entity's Communications Equipment as well as those of the City. Licensee shall submit to the City evidence, in writing, that it has made arrangements to reimburse all affected Attaching Entities for the cost to transfer or rearrange such Entities' Equipment prior to the commencement of any Make-Ready Work. The City shall not be obligated in any way to enforce or administer Licensee's responsibility for the costs associated with the transfer or rearrangement of another Attaching Entity's Equipment pursuant to this Paragraph.



**9.3.3** If the modification or the replacement of a Facility is the result of an additional Attachment or the modification of an existing Attachment sought by an Attaching Entity other than the City or Licensee, the Attaching Entity requesting the additional or modified Attachment shall bear the entire cost of the modification or Pole replacement, as well as the costs for rearranging or transferring Licensee's Attachment. Licensee shall cooperate with such third-party Attaching Entity to determine the costs of moving Licensee's Equipment.

**9.4 City Not Required to Relocate.** No provision of this Agreement shall be construed to require City to relocate its Attachments or modify/replace its Facilities for the benefit of Licensee, provided, however, any denial by the City for modification of the Facility is based on nondiscriminatory standards of general applicability.

## **10. ABANDONMENT OR REMOVAL OF CITY FACILITIES**

**10.1 Notice of Abandonment or Removal of City Facilities.** If the City desires at any time to abandon, remove or underground any City Facilities to which Licensee's Attachments are attached, it shall give Licensee notice in writing to that effect at least sixty (60) calendar days prior to the date on which it intends to abandon or remove such City Facilities. Notice may be limited to thirty (30) calendar days if the City is required to remove or abandon its City Facilities as the result of the action of a third party and the greater notice period is not practical. Such notice shall indicate whether the City is offering Licensee an option to purchase the Facilities. If, following the expiration of the applicable notice period, Licensee has not yet removed and/or transferred all of its Attachments therefrom and has not entered into an agreement to purchase City Facilities pursuant to Paragraph 10.2, the City shall have the right, subject to any applicable laws and regulations, to have Licensee's Attachment removed and/or transferred from the Facility at Licensee's expense. The City shall give Licensee fifteen (15) days prior written notice of any such removal or transfer of Licensee's Equipment.

**10.2 Option to Purchase Abandoned Poles.** Should the City desire to abandon any Facility, the City, in its sole discretion, may grant Licensee the option of purchasing such Facility at a rate negotiated with the City. Licensee must notify the City in writing within thirty (30) calendar days of the date of the City's notice of abandonment that Licensee desires to purchase the abandoned Facility. Thereafter, Licensee must also secure and deliver proof of all necessary governmental approvals and easements allowing Licensee to independently own and access the Facility within forty-five (45) calendar days. Should Licensee fail to secure the necessary governmental approvals, or should the City and Licensee fail to enter into an agreement for Licensee to purchase the Facility prior to the end of the forty-five (45) calendar days, Licensee must remove its Attachments as required under Paragraph 10.1. The City is under no obligation to sell Licensee the City Facilities that it intends to remove or abandon.

## **11. REMOVAL OF LICENSEE'S ATTACHMENTS**

**11.1 Removal on Expiration/Termination.** At the expiration or other termination of this License Agreement or individual Permit(s), Licensee shall remove its Attachment(s) from the affected Facilities at its own expense. After removal, Licensee shall restore the City Facilities to their condition immediately prior to the date such Attachments were made, excepting normal wear and tear. If Licensee fails to remove such Equipment within sixty (60) calendar days of expiration or termination or some greater period as allowed by the City, the City shall have the right to have such Equipment removed at Licensee's expense.

**11.2 Licensee Removal.** Licensee may, at any time, remove its Attachment(s) from any City Facility, provided it gives the City at least fourteen (14) days prior written notice. Provided, the City may require Licensee to leave in place any conduit, innerduct or similar Communications Equipment within a City Conduit in order to prevent damage to City Facilities. After removal, Licensee shall restore the City Facilities to their condition immediately prior to the date such Attachments were made, excepting normal wear and tear.

**11.3 Emergency Removal.** In the event of any emergency that threatens persons or property, the City may, in its sole discretion, without prior notice, remove any of Licensee's Attachments. Such removal shall be at Licensee's sole cost and expense, unless the removal was the result of gross negligence or willful misconduct by the City. The City will give notice to Licensee subsequent to the City's removal of Licensee's Attachment(s) as soon as practicable under the circumstances.

## **12. TERMINATION OF PERMIT**

**12.1 Automatic Termination of Permit.** Any Permit issued pursuant to this Agreement shall automatically terminate when Licensee ceases to have authority to construct and operate its Attachment on public or private property at the Site of the particular Facility covered by the Permit.

**12.2 Surrender of Permit.** Licensee may at any time surrender any Permit for Attachment and remove its Communications Equipment from the affected Facilities, provided, however, that before commencing any such removal Licensee must obtain the City's written approval of Licensee's plans for removal, including the name of the party performing such work and the date(s) and time(s) during which such work will be completed. All such work is subject to the insurance requirements of Article 18. No refund of any fees or charges will be made upon removal. If Licensee surrenders such Permit pursuant to the provisions of this Article, but fails to remove its Attachments from City Facilities within thirty (30) calendar days thereafter, the City shall have the right to remove Licensee's Attachments at Licensee's expense.

## **13. INSPECTION OF LICENSEE'S ATTACHMENTS**

**13.1 Inspections.** The City may conduct an inventory and inspection of Attachments at any time. Licensee shall correct all Attachments that are not found to be in compliance with Applicable Standards within thirty (30) calendar days of notification. If it is found that Licensee has made an Attachment without a Permit, Licensee shall pay an Unauthorized Access Penalty Fee as specified in Article 3 in addition to applicable Permit and Make-Ready Costs. If it is found that five percent (5%) or more of Licensee's Attachments are either in non-compliance or not permitted, Licensee shall pay its *pro-rata* share of the costs of the inspection.

**13.2 Notice.** The City will give Licensee reasonable advance written notice of such inspections, except in those instances where safety considerations justify the need for such inspection without the delay of waiting until written notice has been received.

**13.3 No Liability.** Inspections performed under this Article 13, or the failure to do so, shall not operate to impose upon the City any liability of any kind whatsoever or relieve Licensee of any responsibility, obligations or liability whether assumed under this Agreement or otherwise existing.

**13.4 Attachment Records.** Notwithstanding the above inspection provisions, Licensee is obligated to furnish the City on an annual basis an up-to-date map depicting the locations of its Attachments in an electronic format specified by the City.

#### **14. UNAUTHORIZED OCCUPANCY OR ACCESS**

**14.1 Penalty Fee.** If any of Licensee's Attachments are found occupying any Facility for which no Permit has been issued, the City, without prejudice to its other rights or remedies under this Agreement, may assess an Unauthorized Access Penalty Fee as specified in Article 3. In the event Licensee fails to pay such Fee within thirty (30) calendar days of receiving notification thereof, the City has the right to remove such Attachment at Licensee's expense and without liability.

**14.2 No Ratification of Unlicensed Use.** No act or failure to act by the City with regard to any unlicensed use shall be deemed as ratification of the unlicensed use and if any Permit should be subsequently issued, such Permit shall not operate retroactively or constitute a waiver by the City of any of its rights or privileges under this Agreement or otherwise; provided, however, that Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement in regards to the unauthorized use from its inception.

#### **15. REPORTING REQUIREMENTS**

Concurrently with Licensee's Annual Attachment Fee payment, Licensee shall report any Attachment Licensee has removed from City Facilities during the relevant reporting period. The report shall identify the Facility from which the Attachment was removed, describe the removed equipment, and indicate the approximate date of removal. This requirement does not apply where Licensee is surrendering a Permit pursuant to Paragraph 12.2.

#### **16. LIABILITY AND INDEMNIFICATION**

**16.1 Liability.** The City reserves to itself the right to maintain and operate its Facilities in such manner as will best enable it to fulfill its governmental service requirements. Licensee agrees to use City's Facilities at Licensee's sole risk. Notwithstanding the foregoing, the City shall exercise reasonable precaution to avoid damaging Licensee's Attachment(s) and shall report to Licensee the occurrence of any such damage caused by its employees, agents or contractors.

**16.2 Indemnification.** Licensee, and any agent, contractor or subcontractor of Licensee, shall defend, indemnify and hold harmless the City and its officials, officers, council members, commissioners, representatives, employees, agents, and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, payments (including payments made by the City under any Workers' Compensation Laws or under any plan for employees' disability and death benefits), and expenses (including reasonable attorney's fees of the City and all other costs and expenses of litigation) ("Covered Claims") arising in any way, including any act, omission, failure, negligence or willful misconduct, in connection with the construction, maintenance, repair, presence, use, relocation, transfer, removal or operation by Licensee, or by Licensee's officers, directors, employees, agents or contractors, of Licensee's Attachments, except to the extent of the City's gross negligence or willful misconduct giving rise to such Covered Claims. Such Covered Claims include, but are not limited to, the following:

**16.2.1** Intellectual property infringement, libel and slander, trespass, unauthorized use of television or radio broadcast programs and other program material, and infringement of patents;

**16.2.2** Cost of work performed by the City that was necessitated by Licensee's failure, or the failure of Licensee's officers, directors, employees, agents or contractors, to install, maintain, use, transfer or remove Licensee's Attachment(s) in accordance with the requirements and specifications of this Agreement, or from any other work this Agreement authorizes the City to perform on Licensee's behalf;

**16.2.3** Damage to property, injury to or death of any person arising out of the performance or nonperformance of any work or obligation undertaken by Licensee, or Licensee's officers, directors, employees, agents or contractors, pursuant to this Agreement; or

**16.2.4** Liabilities incurred as a result of Licensee's violation, or a violation by Licensee's officers, directors, employees, agents or contractors, of any law, rule, or regulation of the United States, State of Kansas, the City, or any other governmental entity or administrative agency.

### **16.3 Procedure for Indemnification.**

**16.3.1** The City shall give prompt notice to Licensee of any claim or threatened claim, specifying the factual basis for such claim and the amount of the claim. If the claim relates to an action, suit or proceeding filed by a third party against the City, the City shall give the notice to Licensee no later than thirty (30) calendar days after the City receives written notice of the action, suit or proceeding.

**16.3.2** The City's failure to give the required notice will not relieve Licensee from its obligation to indemnify the City unless and only to the extent Licensee is materially prejudiced by such failure.

**16.4 Environmental Hazards.** Licensee represents and warrants that its use of City Facilities will not generate any Hazardous Substances, that it will not store or dispose on or about City Facilities or transport to City Facilities any hazardous substances and that Licensee's Attachment(s) will not constitute or contain and will not generate any hazardous substance in violation of federal, state or local law now or hereafter in effect including any amendments. "Hazardous Substance" shall be interpreted broadly to mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, dangerous radio frequency radiation, or other similar terms by any federal, state, or local laws, regulations or rules now or hereafter in effect including any amendments. Licensee further represents and warrants that in the event of breakage, leakage, incineration or other disaster, its Attachment(s) would not release any Hazardous Substances. Licensee and its agents, contractors and subcontractors shall defend, indemnify and hold harmless the City and its respective officials, officers, board members, council members, commissioners, representatives, employees, agents and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, punitive damages, expenses (including reasonable attorney's fees and all other costs and expenses of litigation) arising from or due to the release, threatened release, storage or discovery of any Hazardous Substances on, under or adjacent to City Facilities attributable to Licensee's use of City Facilities.



**16.5 Municipal Liability Limits.** No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by the City of any applicable State limits on municipal liability or governmental immunity. No indemnification provision contained in this Agreement under which Licensee indemnifies the City shall be construed in any way to limit any other indemnification provision contained in this Agreement. Nothing herein shall be construed to waive or limit Licensor's immunities, limitation of liability, or defenses under the Kansas Tort Claims Act, or other law.

**16.6 Liens.** Licensee shall pay all taxes and assessment lawfully levied on Licensee's Attachments and any personal, real property or other taxes, assessments, fees, or charges levied on City Structures and Conduits solely because of their use by Licensee. In no event shall Licensee permit any lien to be filed or to exist upon any of City's Structures or Conduits, or other City property as a result of any claim against Licensee. Licensee shall promptly pay upon receipt of written notice from City all such liens, together with all fees and costs necessary to discharge same, or shall bond around such liens in the manner provided by law.

## **17. DUTIES, RESPONSIBILITIES, AND EXCULPATION**

**17.1 Duty to Inspect.** Licensee acknowledges and agrees that the City does not warrant the condition or safety of City Facilities, or the premises surrounding the Facilities, and Licensee further acknowledges and agrees that it has an obligation to inspect City Facilities and/or premises surrounding the Facilities, prior to commencing any work on City Facilities or entering the premises surrounding such Facilities.

**17.2 Knowledge of Work Conditions.** By executing this Agreement, Licensee warrants that it has acquainted, or will fully acquaint, itself and its employees and/or contractors and agents with the conditions relating to the work that Licensee will undertake under this Agreement and that it fully understands or will acquaint itself with the Facilities, difficulties and restrictions attending the execution of such work.

**17.3 DISCLAIMER. THE CITY MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO THE CITY'S FACILITIES, ALL OF WHICH ARE HEREBY DISCLAIMED, AND THE CITY MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH IN THIS AGREEMENT. THE CITY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

**17.4 Duty of Competent Supervision and Performance.** Licensee shall ensure that its employees, agents, contractors and subcontractors have the necessary qualifications, skill, knowledge, training and experience to protect themselves, their fellow employees, employees of the City and the general public, from harm or injury while performing work permitted pursuant to this Agreement. In addition, Licensee shall furnish its employees, agents, contractors and subcontractors competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner.

## **18. INSURANCE**

**18.1 Policies Required.** At all times during the term of this Agreement, Licensee shall keep in force and effect all insurance policies as described below:

**18.1.1 Workers' Compensation and Employers' Liability Insurance.** Statutory workers' compensation benefits and employers' liability insurance with a limit of liability no less than that required by Kansas law at the time of the application of this provision for each accident. This policy shall be endorsed to include a waiver of subrogation in favor of the City. Licensee shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.

**18.1.2 Commercial General Liability Insurance.** Policy will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations, personal injury, blanket contractual coverage, broad form property damage, independent contractor's coverage with Limits of liability not less than \$2,000,000 general aggregate, \$2,000,000 products/completed operations aggregate, \$2,000,000 personal injury, \$2,000,000 each occurrence.

**18.1.3 Automobile Liability Insurance.** Business automobile policy covering all owned, hired and nonowned private passenger autos and commercial vehicles. Limits of liability not less than \$1,000,000 each occurrence, \$1,000,000 aggregate.

**18.1.4 Umbrella Liability Insurance.** Coverage is to be in excess of the sum employers' liability, commercial general liability, and automobile liability insurance required above. Limits of liability not less than \$4,000,000 each occurrence, \$4,000,000 aggregate.

**18.1.5 Property Insurance.** Each party will be responsible for maintaining property insurance on its own facilities, buildings and other improvements, including all equipment, fixtures, and City structures, fencing or support systems that may be placed on, within or around City Facilities to fully protect against hazards of fire, vandalism and malicious mischief, and such other perils as are covered by policies of insurance commonly referred to and known as "extended coverage" insurance or self-insure such exposures.

**18.2 Qualification; Priority; Contractors' Coverage.** The insurer must be authorized to do business under the laws of the State of Kansas and have an "A" or better rating in Best's Guide. Such insurance will be primary. All contractors and all of their subcontractors who perform work on behalf of Licensee shall carry, in full force and effect, workers' compensation and employers' liability, comprehensive general liability and automobile liability insurance coverages of the type that Licensee is required to obtain under this Article 18 with the same limits.

**18.3 Certificate of Insurance; Other Requirements.** Prior to the execution of this Agreement and prior to each insurance policy expiration date during the term of this Agreement, Licensee will furnish the City with a certificate of insurance ("Certificate") and, upon request, certified copies of the required insurance policies. The Certificate shall reference this Agreement and workers' compensation and property insurance waivers of subrogation required by this Agreement. The City shall be given thirty (30) calendar days advance notice of cancellation or nonrenewal of insurance during the term of this Agreement. The City, its council members, board members, commissioners, agencies, officers, officials, employees and representatives (collectively, "Additional Insureds") shall be named as Additional Insureds under all of the policies, except workers' compensation, which shall be so stated on the Certificate of Insurance. All policies, other than workers' compensation, shall be written on an occurrence and not on a claims-made basis. All policies may be written with deductibles, not to exceed \$100,000, or such greater amount as expressly allowed in writing by the City. Licensee shall defend, indemnify and hold harmless the City and Additional Insureds from and

against payment of any deductible and payment of any premium on any policy required under this Article. Licensee shall obtain Certificates from its agents, contractors and their subcontractors and provide a copy of such Certificates to the City upon request.

**18.4 Limits.** The limits of liability set out in this Article 18 may be increased or decreased by mutual consent of the parties, which consent will not be unreasonably withheld by either party, in the event of any factors or occurrences, including substantial increases in the level of jury verdicts or judgments or the passage of state, federal or other governmental compensation plans, or laws which would materially increase or decrease Licensee's exposure to risk.

**18.5 Prohibited Exclusions.** No policies of insurance required to be obtained by Licensee or its contractors or subcontractors shall contain provisions (1) that exclude coverage of liability assumed by this Agreement with the City except as to infringement of patents or copyrights or for libel and slander in program material, (2) that exclude coverage of liability arising from excavating, collapse, or underground work, (3) that exclude coverage for injuries to the City's employees or agents, or (4) that exclude coverage of liability for injuries or damages caused by Licensee's contractors or the contractors' employees, or agents. This list of prohibited provisions shall not be interpreted as exclusive.

**18.6 Deductible/Self-insurance Retention Amounts.** Licensee shall be fully responsible for any deductible or self-insured retention amounts contained in its insurance program or for any deficiencies in the amounts of insurance maintained.

## **19. AUTHORIZATION NOT EXCLUSIVE**

The City shall have the right to grant, renew and extend rights and privileges to others not party to this Agreement by contract or otherwise, to use City Facilities covered by this Agreement. Such rights shall not interfere with the rights granted to Licensee by the specific Permits issued pursuant to this Agreement.

## **20. ASSIGNMENT**

**20.1 Limitations on Assignment.** Licensee shall not assign its rights or obligations under this Agreement, nor any part of such rights or obligations, without the prior written consent of the City. Notwithstanding, Licensee may, upon written notice to the City, assign this Agreement and/or any or all of its rights and obligations under this Agreement to (i) any affiliate of Licensee; (ii) any successor in interest to Licensee in connection with any merger, acquisition, or similar transaction; or (iii) any purchaser of all or substantially all of the Licensee's assets used to provide Communications Services to residents and businesses located in the City. An "affiliate" means any entity that now or in the future, directly or indirectly controls, is controlled with or by, or is under common control with Licensee; and "control" shall mean, with respect to: (a) a U.S. corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof; (b) a non-U.S. corporation, if the voting power to elect directors thereof is less than fifty percent (50%), the maximum amount allowed by applicable law; and (c) any other entity, fifty percent (50%) or more ownership interest in said entity, or the power to direct the management of such entity.

**20.2 Obligations of Assignee/Transferee and Licensee.** No assignment or transfer under this Article 20 shall be allowed until the assignee or transferee becomes a signatory to this Agreement and assumes all obligations of Licensee arising under this Agreement. Licensee shall furnish the City

with prior written notice of the transfer or assignment, together with the name and address of the transferee or assignee. Notwithstanding any assignment or transfer, Licensee shall remain fully liable under this Agreement and shall not be released from performing any of the terms, covenants or conditions of this Agreement without the express written consent to the release of Licensee by the City.

**20.3 Sub-licensing.** Without the City's prior written consent, Licensee shall not sub-license or lease to any third party, including but not limited to allowing third parties to place Attachments on or within City Facilities. Any such action shall constitute a material breach of this Agreement. Notwithstanding the foregoing, and subject to the reasonable approval of the City, the installation and use of internal space within Licensee's Attachments for third party wireless providers utilizing Licensee's Communications Services is not subject to this Paragraph 20.3. Furthermore, the use of Licensee's Attachments by third parties (including but not limited to leases of dark fiber) that involves no additional Attachment or overlying is not subject to this Paragraph 20.3.

## **21. FAILURE TO ENFORCE**

Failure of the City or Licensee to take action to enforce compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated shall not constitute a waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect until terminated, in accordance with this Agreement.

## **22. ISSUE RESOLUTION PROCESS**

**22.1 Dispute Resolution.** Except as otherwise precluded by law, a resolution of any dispute arising out of, or related to, this Agreement shall first be pursued through good-faith negotiations in order to reach a mutually acceptable resolution. If, after negotiating in good faith for a period of at least thirty (30) days, the parties are unable to resolve the dispute, then all disputes relating to this Agreement, or the breach thereof, the parties shall be entitled to pursue all available remedies at law or equity. Each party will bear its own costs for dispute resolution activity.

**22.2 Confidential Settlement.** Subject to the applicable open records laws, unless the parties otherwise agree in writing, communication between the parties under this Article will be treated as confidential information developed for settlement purposes, exempt from discovery, and inadmissible in litigation.

**22.3 Business As Usual.** Unless an emergency condition exists, during any dispute resolution procedure or lawsuit, the parties will continue providing services to each other and performing their obligations under this Agreement.

## **23. TERMINATION OF AGREEMENT**

**23.1** Notwithstanding the City's rights under Article 12, the City shall have the right, pursuant to the procedure set out in Paragraph 23, to terminate this entire Agreement, or any Permit issued hereunder, whenever Licensee is in default of any material term or condition of this Agreement, including but not limited to the following circumstances:



**23.1.1** Construction, operation or maintenance of Licensee's Attachment(s) in violation of law or in aid of any unlawful act or undertaking; or

**23.1.2** Construction, operation or maintenance of Licensee's Attachment(s) after any authorization required of Licensee has lawfully been denied or revoked by any governmental or private authority or violation of any other agreement with the City; or

**23.1.3** Construction, operation or maintenance of Licensee's Attachment(s) without the insurance coverage required under Article 18.

**23.1.4** The expiration, termination or revocation of Licensee's franchise or any other required regulatory authorization (as required by Article 5); provided, Licensee shall have a reasonable period of time to obtain the reinstatement of any such authorization.

**23.2** The City will notify Licensee in writing within fifteen (15) calendar days, or as soon as reasonably practicable, of any condition(s) applicable to Paragraph 23.1 above. Licensee shall take immediate corrective action to eliminate any such condition(s) within thirty (30) calendar days, or such longer period mutually agreed to by the parties, and shall confirm in writing to the City that the cited condition(s) has (have) ceased or been corrected, or are in the process of being corrected.

**23.3** If the parties are unable to resolve the dispute and Licensee fails to discontinue or correct such condition(s) and/or fails to give the required confirmation, the City may immediately terminate this Agreement or any Permit(s) granted hereunder. In the event of termination of this Agreement or any of Licensee's rights, privileges or authorizations hereunder, the City may seek removal of Licensee's Attachments pursuant to the terms of Article 11, with respect to specific Facilities or from the City's entire system. In such instance, Licensee shall remain liable for and pay all fees and charges accrued pursuant to the terms of this Agreement to the City until Licensee's Attachments are actually removed.

## **24. TERM OF AGREEMENT**

**24.1** This Agreement shall be effective for a term beginning on the Effective Date and ending the earlier of i) ten (10) years after the Effective Date, or ii) the expiration date of Licensee's Contract Franchise (as defined in that certain Ordinance No. 12-07 passed by the Governing Body and signed by the Mayor of the City of Olathe, Kansas on April 3, 2012). Thereafter, this Agreement will automatically renew for up to two (2) additional four (4) year terms, unless either party notifies the other party of its intent to terminate or renegotiate the Contract franchise at least one hundred and eighty (180) days before the expiration of the then current term, or unless Licensee's Contract Franchise is no longer in effect. The additional terms shall be deemed a continuation of this Agreement and not as a new agreement or amendment.

**24.2** Upon written request of either party, this Agreement shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either party, including but not limited to the scope of the Agreement granted to Licensee or the compensation to be received by the City hereunder.

**24.3** In the event the parties are actively negotiating in good faith a new Agreement or an amendment to this Agreement upon the termination date of this Agreement, the parties by written mutual agreement may extend the termination date of this Agreement to allow for further negotiations. Such extension period shall be deemed a continuation of this Agreement and not as a new Agreement.

**24.4** Even after the termination of this Agreement, Licensee's responsibility and indemnity obligations shall continue with respect to any claims or demands related to Licensee's Attachments as provided for in Article 16.

## **25. AMENDING AGREEMENT**

Notwithstanding other provisions of this Agreement, the terms and conditions of this Agreement shall not be amended, changed or altered except in writing and with approval by authorized representatives of both parties.

## **26. NOTICES**

**26.1** Wherever in this Agreement notice is required to be given by either party to the other, such notice shall be in writing and shall be effective when personally delivered to, or when mailed by certified mail, return receipt requested, with postage prepaid and, except where specifically provided for elsewhere, properly addressed as follows:

To the City:

City of Olathe  
P.O. Box 768  
Olathe, Kansas, 66015-0768  
Attn: City Clerk

With a copy to:

City of Olathe  
P.O. Box 768  
Olathe, Kansas, 66015-0768  
Attn: City Attorney

To Licensee:

ExteNet Systems, Inc.  
3030 Warrenville Road, Suite 340  
Lisle, Illinois 60532  
Attn: General Counsel

With a copy to:

ExteNet Systems, Inc.  
3030 Warrenville Road, Suite 340  
Lisle, Illinois 60532  
Attn: CFO

or to such other address as either party, from time to time, may give the other party in writing.

**26.2** The above notwithstanding the parties may agree to utilize electronic communications such as email for notifications related to the Permit Application and approval process and necessary transfer or Facility modifications.

**26.3** Licensee shall maintain a staffed 24-hour emergency telephone number, not available to the general public, where the City can contact Licensee to report damage to Licensee's facilities or other situations requiring immediate communications between the parties. Such contact person shall be qualified and able to respond to the City's concerns and requests. Failure to maintain an emergency contact shall eliminate the City's liability to Licensee for any actions that the City deems reasonably necessary given the specific circumstances.

## **27. ENTIRE AGREEMENT**

This Agreement supersedes all previous agreements, whether written or oral, between the City and Licensee for placement and maintenance of Licensee's Attachments on or within City Facilities within the geographical service area covered by this Agreement; and there are no other provisions, terms or conditions to this Agreement except as expressed herein.

## **28. SEVERABILITY**

If any provision or portion thereof of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement to either party, such provision shall not render unenforceable this entire Agreement but rather it is the intent of the parties that this Agreement be administered as if not containing the invalid provision.

## **29. GOVERNING LAW**

The validity, performance and all matters relating to the effect of this Agreement and any amendment hereto shall be governed by the laws (without reference to choice of law) of the State of Kansas.

## **30. INCORPORATION OF RECITALS**

The recitals stated above are incorporated into and constitute part of this Agreement.

## **31. PERFORMANCE BOND**

On execution of this Agreement, Licensee shall provide to the City a performance bond or letter of credit in an amount of Fifty Thousand Dollars (\$50,000.00). The bond shall be with an entity and in a form acceptable to the City. The purpose of the bond is to ensure Licensee's performance of all of its obligations under this Agreement and for the payment by Licensee of any claims, liens, taxes, liquidated damages, penalties, fees and charges due to the City which arise by reason of the construction, operation, maintenance or removal of Licensee's Attachments on or about City Facilities.

## **32. FORCE MAJEURE**

**32.1** In the event that either the City or Licensee is prevented or delayed from fulfilling any term or provision of this Agreement by reason of fire, flood, earthquake or like acts of nature, wars, revolution, civil commotion, explosion, acts of terrorism, embargo, acts of the government in its sovereign capacity, material changes of laws or regulations, labor difficulties, including without limitation, strikes, slowdowns, picketing or boycotts, unavailability of equipment of vendor, or any other such cause not attributable to the negligence or fault of the party delayed in performing the acts required by the Agreement, then performance of such acts shall be excused for the period of the unavoidable delay, and any such party shall endeavor to remove or overcome such inability as soon as reasonably possible.

**32.2** The City shall not impose any charges on Licensee stemming solely from Licensee's inability to perform required acts during a period of unavoidable delay as described in Paragraph 31.1, provided

that Licensee present the City with a written description of such *force majeure* within a reasonable time after occurrence of the event or cause relied on.

### 33. RELATIONSHIP OF PARTIES

Nothing in this Agreement shall be construed to create an association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to either Party. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement and otherwise.

### 34. NO THIRD-PARTY BENEFICIARIES

Nothing in this Agreement is intended to confer rights on any third-party, as a third-party beneficiary or otherwise.

### 35. SURVIVAL

Any termination of this Agreement shall not release Licensee from any liability or obligations hereunder, whether of indemnity or otherwise, which may have accrued or may be accruing at the time of termination.


**IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.**

**CITY OF OLATHE, KANSAS**


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

Michael E. Copeland, Mayor

ATTEST:

  
Donald T. Howell, City Clerk

APPROVED AS TO FORM:

  
Ronald R. Shaver, Deputy City Attorney



ExteNet Systems, Inc.

DAVID L. THOMAS  
Name

By: [Signature]  
Authorized Signatory

RVP & CFO  
Title

**EXHIBIT A**

The following light pole attachment and conduit rental fees and charges are established based on the descriptions listed below. These fees/charges shall be administered in a competitively neutral and non-discriminatory manner. All fees/charges will be rounded to the nearest dollar.

**Light Pole Attachment Fees:**

## 1. Annual Attachment Fee: \$540 per attachment per year (\$45 per month)

Commencing January 1, 2015, The Annual Attachment Fee shall be adjusted annually by any change in the Index known as the "United States Bureau of Labor Statistics, Consumer Price Index – All Urban Consumers, base period 1982-84=100 (CPI-U) (hereafter the "CPI Index"); provided, however, in no event shall the amount of the Annual Attachment Fee decrease from the previous year. The Annual Attachment Fee does not include the use of the City's electricity. The entity is responsible for obtaining its own meter and electricity supply.

## 2. Non-Recurring Fees/Charges:

a. Permit Application Fee: An amount equal to the fee for a Right-of-way Permit, as set forth by a Resolution of the Governing Body. *(The Permit Application Fee is intended to reimburse the City for costs incurred for review of the permit application and site design approval.)*

b. Make Ready Work Charges: Permittee shall reimburse the City for all actual work done or contracted by the City for any make ready or other work done to accommodate Permittee's antennae and other equipment. The charge for such work shall include all reasonable material, labor engineering and administrative costs and applicable overhead costs.

c. Inspection Fees: Permittee shall reimburse the City for all actual work done or contracted by the City for any necessary inspections. The charge for such work shall include all reasonable material, labor engineering and administrative costs and applicable overhead costs.

## 3. Unauthorized Attachment Penalty Fee: 3x Annual Attachment Fee, per occurrence

4. Failure to Timely Transfer, Abandon or Remove Facilities Penalty: 1/5 Annual Attachment Fee per day, per pole, first 30 days; The Annual Attachment Fee per day, per pole, second 30 days and thereafter.

**Conduit Rental Fees**

1. Annual Conduit Rental Fee: \$1.00 per linear foot per year (\$0.083 per linear foot per month).

Commencing January 1, 2015, The Annual Conduit Rental Fee shall be adjusted annually by any change in the CPI Index; provided, however, in no event shall the amount of the Annual Attachment Fee decrease from the previous year. The Annual Conduit Rental Fee does not include the use of the City's fiber or the City's electricity. The entity is responsible for obtaining its own meter and electricity supply.

2. Non-Recurring Fees/Charges:

- a. Permit Application Fee: An amount equal to the fee for a Right-of-Way Permit, as set forth by a Resolution of the Governing Body. *(The Permit Application Fee is intended to reimburse the City for costs incurred for review of the permit application and site design approval.)*

- b. Make Ready Work Charges: Permittee shall reimburse the City for all actual work done or contracted by the City for any make ready or other work done to accommodate Permittee's fiber and other equipment. The charge for such work shall include all reasonable material, labor engineering and administrative costs and applicable overhead costs.

- c. Inspection Fees: Permittee shall reimburse the City for all actual work done or contracted by the City for any necessary inspections. The charge for such work shall include all reasonable material, labor engineering and administrative costs and applicable overhead costs.

3. Unauthorized Attachment Penalty Fee: 3x Annual Conduit Rental Fee, per occurrence

4. Failure to Timely Transfer, Abandon or Remove Facilities Penalty: 1/5 Annual Conduit Rental Fee per day, per linear foot, first 30 days; The Annual Conduit Rental Fee per day, per linear foot, second 30 days and thereafter

**In Lieu Payments**

In lieu of payment of some or all of the above-established light pole attachment or conduit fees/charges, the City may agree to accept in-kind consideration to be valued as at least roughly comparable to said fees/charges.

**Approvals**

Nothing in this Agreement shall obligate the City to allow the use of any specific light pole or conduit by any entity. Each light pole attachment and/or conduit installation must be approved in writing by the City's Public Works Director (or designee), and must meet all design, installation and maintenance criteria established by the Public Works Director (or designee). Payment of the above-cited fees/charges shall not exempt any entity from any applicable federal, state or local franchise, zoning, building code, permit or other requirements, ordinances or regulations, including, but not limited to, the City's applicable permit application and construction requirements for attachments to City Facilities, the City's adopted building and electrical codes, and the City's Unified Development Ordinance.

**ORDINANCE NO. 20-17**

**AN ORDINANCE AMENDING THE CONTRACT FRANCHISE OF EXTENET SYSTEMS, INC. TO CONSTRUCT, OPERATE AND MAINTAIN A WIRELESS TELECOMMUNICATION SYSTEM AS A COMPETITIVE INFRASTRUCTURE PROVIDER IN THE CITY OF OLATHE, KANSAS; AND APPROVING THE TRANSFER AND ASSIGNMENT OF SAID CONTRACT FRANCHISE TO EXTENET ASSET ENTITY, LLC.**

WHEREAS, on April 3, 2012, ExteNet Systems, Inc. was granted a Contract franchise to construct, operate and maintain a wireless telecommunications system as a competitive infrastructure provider within the City (Ordinance No. 12-07); and

WHEREAS, ExteNet Systems, Inc. is currently undergoing a corporate restructuring and intends to transfer and assign its rights and obligations under the Contract franchise to its affiliate entity, ExteNet Asset Entity, LLC; and

WHEREAS, the City and ExteNet Systems, Inc. have negotiated the terms of this amendment to the Contract franchise with the primary purposes to: (i) allow for the proposed transfer and assignment; and (ii) to change the compensation formula from a gross receipts formula to a flat fee formula that is both simpler and consistent with the compensation formula of similar wireless franchisees.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF OLATHE, KANSAS:

**SECTION 1.** Section 1 of Ordinance No. 12-07 is hereby amended to read as follows:

**“SECTION 1. DEFINITIONS.**

For the purposes of this Ordinance the following words and phrases shall have the meaning given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number. The word “shall” is always mandatory, and not merely directory.

- a. “City” - means the City of Olathe, Kansas, a municipal corporation duly organized in accordance with the laws of the State of Kansas.
- b. “Competitive infrastructure provider” shall have the same meaning as “wireless infrastructure provider”, as defined by K.S.A. 66-2019(b)(20).



- c. "Contract franchise" - means this Ordinance granting the right, privilege and franchise to Grantee to provide telecommunications within the City.
- d. "Facilities" - means the Grantee's cables, wires, lines, towers, wave guides, optic fiber, antennae, receivers and any associated converters, or other equipment, comprising the Grantee's System located within the Public Rights of Way, designed and constructed for the purpose of producing, receiving, amplifying or distributing Telecommunications service as a Competitive infrastructure provider to or from locations within the City.
- e. "Grantee" - means ExteNet Asset Entity, LLC, successor in interest to ExteNet Systems, Inc. (the original Grantee), pursuant to a certain asset backed securitization dated July 19, 2019, a Competitive Infrastructure Provider. References to Grantee shall also include as appropriate any and all future successors and assigns.
- f. "Public right-of-way" - means only the area of real property in which the City has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other non-wire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts. The term does not include infrastructure located within the Public Rights-of-Way owned by the City or other third-parties, such as poles, ducts or conduits.
- g. "Telecommunications service" shall have the same meaning as "wireless services", as defined by K.S.A. 66-2019(b)(19)."

**SECTION 2.** Section 3 of Ordinance No. 12-07 is hereby amended to read as follows:

**"SECTION 3. USE OF PUBLIC RIGHT-OF-WAY.**

- a. Pursuant to K.S.A. 66-2019, and amendments thereto, and subject to the provisions of this Contract franchise, Grantee shall have the right to construct, maintain and operate its

Facilities along, across, upon and under the Public right-of-way. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.

- b. Grantee's use of the Public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City, including, but not limited to, Chapters 12.08 and 12.14 of the Olathe Municipal Code and any amendments thereto. The City may exercise its home rule powers in its administration and regulation related to the management of the Public right-of-way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances adopted by the City, relating to the construction and use of the Public right-of-way.
- c. Grantee shall participate in the Kansas One Call utility location program.
- d. City may require Grantee to repair all damage to a Public right-of-way caused by the activities of Grantee, or of any agent, affiliate, employee, or subcontractor of Grantee, while occupying, installing, repairing or maintaining Facilities in a Public right-of-way and to return the right-of-way, to its functional equivalence before the damage pursuant to the reasonable requirements and specifications of the City. If Grantee fails to make the repairs required by the City, the City may effect those repairs and charge the provider the cost of those repairs. If the City incurs damages as a result of a violation of this subsection, then the City shall have a cause of action against Grantee for violation of this subsection and may recover its damages, including reasonable attorney fees, if Grantee is found liable by a court of competent jurisdiction.
- e. If requested by the City, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety and welfare of the public, Grantee promptly shall remove its Facilities from the Public right-of-way or shall relocate or adjust its Facilities within the Public right-of-way at no cost to the City, providing such request binds all users of such right-of-way. Such relocation or

adjustment shall be completed as soon as reasonably possible within the time set forth in any written request by the City for such relocation or adjustment, providing that the City shall use its best efforts to provide Grantee with a minimum of one hundred eighty (180) days advance notice to comply with any such relocation or adjustment. Any damages suffered by the City or its contractors as a result of Grantee's failure to timely relocate or adjust its Facilities shall be borne by Grantee. Grantee shall designate one (1) person within its organization by his/her employment position to whom relocation notices shall be sent and with whom rests the responsibility to facilitate all necessary communications within Grantee's various areas.

Where a project referenced in the preceding paragraph is primarily for private benefit (provided, however, that projects that are a part of a City-created tax increment financing or transportation development district are not considered primarily for private benefit), the City shall require, as a condition of its approval of any request for alteration of the Public right-of-way from any private party or parties, that such private party or parties shall reimburse Grantee for the cost of relocation. Grantee understands however that the City has no obligation to collect such reimbursement."

**SECTION 3.** Section 4 of Ordinance No. 12-07 is hereby amended to read as follows:

**"SECTION 4. COMPENSATION TO THE CITY.**

- a. It is understood that Grantee's Facilities are primarily wireless communications antennas and their necessary transmission and accessory equipment, and that the Facilities might be attached to a wireless support structure, utility pole, street light or similar structure. In consideration of this Contract franchise, Grantee agrees to remit to the City an annual ROW Access Fee for each of Grantee's wireless antenna Facilities:
  - (1) \$25.00 per year, per structure, for each existing structure in the Right-of-way (e.g. an existing utility pole, or a city streetlight); or
  - (2) \$125.00 per year, per structure, for each new non-city owned structure in the Right-of-way (e.g., a new small cell monopole).
- b.

- c. Grantee shall pay all applicable ROW Access Fees without requirement for invoice or reminder from the City by January 1 each year. Said ROW Access Fee payments are due in advance and not in arrears. As to any new Facilities installed by or for Grantee during any calendar year, such fee may be prorated based on the number of days in the calendar year in which the Facilities were installed and shall commence upon the first day of the month following the effective date of the applicable ROW Permit for the Facilities. In such event, Grantee shall clearly identify the same and the proration amount when Grantee's payment is made.
- d. If any ROW Access Fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.
- e. Upon written request by the City, but no more than once per year, Grantee shall submit to the City a statement, executed by an authorized officer of Grantee or his or her designee, showing the manner in which the ROW Access Fees were calculated for the period covered by the payment.
- f. No acceptance by the City of any ROW Access Fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City.
- g. The City shall have the right to examine, upon written notice to Grantee no more often than once per calendar year, those records necessary to verify the correctness of the ROW Access Fees paid by Grantee.
- h. The ROW Access Fee required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City under K.S.A. 12-2001 and 66-2019, and amendments thereto. The ROW Access Fee is compensation for use of the Public right-of-way and shall in no way be deemed a tax of any kind."

**SECTION 4.** Section 8 of Ordinance No. 12-07 is hereby amended to read as follows:

**SECTION 8. RESERVATION OF RIGHTS.**

- a. Grantee agrees to maintain Grantee's property in good repair.
- b. In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers



under and by virtue of the laws of the State of Kansas as the same may be amended, its Home Rule powers under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

- c. In granting its consent hereunder, Grantee does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas or applicable Federal laws and regulations, as the same may be amended, or under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.
- d. In entering into this Contract franchise, neither the City's nor Grantee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Contract franchise, neither the City nor Grantee waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Grantee may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, non-franchise ordinances and/or rulings."

**SECTION 5.** Section 11 of Ordinance No. 12-07 is hereby amended to read as follows:

**"SECTION 11. POINT OF CONTACT AND NOTICES**

Grantee shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Grantee in the event of an emergency. Grantee shall provide the City with said local contact's name, address, telephone number, fax number and e-mail address. Emergency notice by Grantee to the City may be made by telephone to the City Clerk or the City Engineer. All other notices between the parties shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or by facsimile. Any notice served by U.S. Mail or Certified Mail, return receipt requested, shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail unless otherwise provided. Any notice given by facsimile is deemed received by the next business day. "Business day" for purposes of this section shall mean Monday through Friday, City and/or Grantee observed holidays excepted.

**The City:**

**Grantee:**

City of Olathe, Kansas  
100 East Santa Fe  
P.O. Box 768  
Olathe, Kansas 66051-0768  
ATTN: City Clerk  
(913) 971-8525 fax

ExteNet Asset Entity, LLC  
3030 Warrenville Rd., Ste. 340  
Lisle, IL 60532  
Attention: Chief Financial Officer

With a copy (same address): Attention  
General Counsel and a copy emailed to:  
Notice@extenetsystems.com

or to a replacement addresses that may be later designated in writing.”

**SECTION 6.** Section 12 of Ordinance No. 12-07 is hereby amended to read as follows:

**“SECTION 12. TRANSFER AND ASSIGNMENT.**

This Contract franchise is granted solely to the Grantee and shall not be transferred or assigned without the prior written approval of the City; provided that such transfer or assignment may occur without written consent of the City to a wholly owned parent or subsidiary, or between wholly owned subsidiaries, or to an entity with which Grantee is under common ownership or control, upon written notice to the City. Additionally, Grantee’s obligations under this Contract franchise with regard to indemnity, bonding and insurance shall continue until the transferee or assignee has taken the appropriate measures necessary to assume and replace the same, the intent being that there shall be no lapse in any coverage as a result of the transfer or assignment. In the event of any transfer or assignment of either this Contract franchise or Grantee’s business or assets, Grantee shall: (1) timely notify the City of the successor entity; (2) provide a point of contact for the successor entity; and (3) advise the City of the effective date of the transfer or assignment.

Subject to the above provisions, the City recognizes and approves the transfer effective as of July 19, 2019 and assignment of this Contract franchise from ExteNet Systems, Inc. (the original Grantee) to its affiliate ExteNet Asset Entity, LLC.”

**SECTION 7.** Nothing in this amendment ordinance alters, varies or affects any of the terms, provisions or conditions of Ordinance No. 12-07 other than as stated in Sections 1-6 above, and all other terms, provisions and conditions of Ordinance No. 12-07 shall continue in full force and effect.

## ATTACHMENT C

**SECTION 8.** Existing Sections 1, 3, 4, 8, 11, and 12 of Ordinance No. 12-07 are hereby repealed. Provided, however, the Compensation provisions of said existing Section 4 shall survive solely for the extent necessary for the purpose of the collection and remitting of any franchise fees due and outstanding thereunder.

**SECTION 9.** Effective Date. This amendment ordinance shall take effect and be in force from and after publication in an official City newspaper and the receipt of Grantee's acceptance of this amendment ordinance.

**PASSED** by the Governing Body this \_\_\_\_ day of \_\_\_\_\_, 2020.

**SIGNED** by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Mayor

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

Publish one time and return one Proof of Publication to the City Clerk and one to the City Attorney.

**FIRST AMENDMENT TO MASTER LICENSE AGREEMENT FOR ATTACHMENTS TO CITY FACILITIES**

This First Amendment to Master License Agreement for Attachments to City Facilities (“First Amendment”) is entered into by and between the City of Olathe, Kansas (“City”), and ExteNet Asset Entity, LLC, successor in interest to ExteNet Systems, Inc. (“Licensee”), and is effective as of the date of the last signature written below (the “Effective Date”).

WHEREAS, City and Licensee entered into that certain Master License Agreement for Attachments to City Facilities dated May 6, 2014 (the “Agreement”); and

WHEREAS, City and Licensee desire to amend the Agreement in compliance with existing laws.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. Licensee’s notice information at Section 26.1 of the Agreement is deleted and replaced in its entirety as follows:

To Licensee:

ExteNet Asset Entity, LLC  
3030 Warrenville Road, Suite 340  
Lisle, Illinois 60532  
Attn: General Counsel

With a copy to:

With a copy (same address):

Attention General Counsel; and

a copy emailed to: [Notice@extenetsystems.com](mailto:Notice@extenetsystems.com)

2. Section 1 of Exhibit A of the Agreement entitled “Light Pole attachment Fees” is deleted and replaced in its entirety as follows:

1. Annual Attachment Fee: \$270 per attachment per year

The Annual Attachment Fee does not include the use of the City’s electricity. The entity is responsible for obtaining its own meter and electric supply.

3. Capitalized words and phrases in this First Amendment not otherwise defined shall have the meaning given to those terms in the Agreement.



4. Except to the extent the Agreement is modified by this First Amendment, the remaining terms and provisions of the Agreement shall remain unmodified and continue in full force and effect. From and after the Effective Date of this First Amendment all references to the Agreement shall mean the Agreement as amended by this First Amendment.

5. In the event of a conflict or inconsistency between the terms of the Agreement and the terms of this First Amendment, the terms of this First Amendment shall govern and control.

6. If any provision of this First Amendment shall be determined to be invalid by any court of competent jurisdiction, the remaining portions of this First Amendment shall remain in full force and effect.

7. The persons executing this First Amendment are duly authorized to execute this First Amendment in their individual or representative capacity as indicated.

8. This First Amendment may be executed in one or more counterparts, all of which taken together shall constitute one and the same original document and shall become effective when one or more counterparts have been signed by each of the parties.

*[Remainder of page intentionally left blank.]*

IN WITNESS WHEREOF, the duly authorized representatives of the parties hereto have executed this First Amendment as of the dates written below.

City of Olathe, Kansas

ExteNet Asset Entity, LLC

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

Name: Michael E. Copeland

Title: Mayor

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

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

Name: RICHARD J. COYLE, JR.

Title: EVP

Date: 4/23/2020

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney



# City of Olathe

## COUNCIL AGENDA ITEM

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**MEETING DATE:** 5/19/2020

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**DEPARTMENT:** Resource Management

**STAFF CONTACT:** Dianna Wright/Mary Jaeger/Amy Tharnish

**SUBJECT:** Consideration of Ordinance No. 20-18 and Resolution No. 20-1037 authorizing the issuance, delivery, form and details of approximately \$14,260,000 principal amount of Water and Sewer System Improvement and Refunding Revenue Bonds, Series 2020.

---

**ITEM DESCRIPTION:**

Consideration of Ordinance No. 20-18 and Resolution No. 20-1037 authorizing the issuance, delivery, form and details of approximately \$14,260,000 principal amount of Water and Sewer System Improvement and Refunding Revenue Bonds, Series 2020.

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**SUMMARY:**

As approved by the City Council on April 7, 2020, bids will be received by the City on May 19, 2020, from prospective buyers of the Water and Sewer System Revenue Bond Series 2020. The issuance includes the refunding of Taxable Water and Sewer System Revenue Bonds (Build America Bonds - Direct Pay), Series 2010-A in the amount of \$3,830,000 and Taxable Water and Sewer System Revenue Bonds (Build America Bonds - Direct Pay), Series 2010-B in the amount of \$5,850,000. The refunded portion has 10-year and 15-year terms, respectively, with maturity dates of 2030 and 2035.

Accordingly, the best bid rates will be provided at the City Council meeting.

In addition to the best bid approval required above, the City's bond counsel, Gilmore & Bell, has prepared Ordinance No. 20-18 authorizing the issuance of the bonds. They have also prepared Resolution No. 20-1037, prescribing the form and details of and authorizing the delivery of the Water and Sewer System Revenue Bonds, Series 2020.

Draft copies of the above-mentioned ordinance and resolution are attached. The final versions of these documents will be presented at the City Council meeting once the bids have been received and the best bid has been determined.

The City has applied for a rating from Standard and Poor's Corporation. Revenue bonds are rated separately from general obligation bonds, because the source of repayment for the bonds comes from Water and Sewer operations rather than the full faith and credit of the City. Standard and Poor's affirmed the City's AA rating with a stable outlook.

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**FINANCIAL IMPACT:**

The amount of Water and Sewer System Revenue Bonds, Series 2020 is approximately \$14,260,000. The total outstanding revenue bonds will be \$111,735,000 after the sale of Series 2020. Series 2020 has a 20-year term, with the last of the bonds maturing in 2040.

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**MEETING DATE:** 5/19/2020

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**ACTION NEEDED:**

Approval of Ordinance No. 20-18 and Resolution No. 20-1037 to prescribe the form and details of and authorize issuance and delivery of approximately \$14,260,000 principal amount of Water and Sewer System Revenue Bonds, Series 2020.

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**ATTACHMENT(S):**

Draft Bond Ordinance and Resolution



**Gilmore & Bell, P.C.**  
**Draft: May 19, 2020**  
**Bond Ordinance & Resolution v3**

**WATER AND SEWER SYSTEM IMPROVEMENT  
AND REFUNDING REVENUE BONDS  
SERIES 2020**

- A. Excerpt of Minutes of Meeting approving sale, approving Ordinance/Bond Resolution
- B. Ordinance
- C. Bond Resolution
- D. Summary Bond Ordinance for Publication

**EXCERPT OF MINUTES OF A MEETING  
OF THE GOVERNING BODY OF  
THE CITY OF OLATHE, KANSAS  
HELD ON MAY 19, 2020**

The governing body met in regular session at the usual meeting place in the City, at 7:00 p.m., the following members being present and participating, to-wit:

Present:

Absent:

The Mayor declared that a quorum was present and called the meeting to order.

\* \* \* \* \*

(Other Proceedings)

The City Clerk reported that pursuant to the Notice of Bond Sale duly given, bids for the purchase of Water and Sewer System Improvement and Refunding Revenue Bonds, Series 2020, dated June 4, 2020 (the "Series 2020 Bonds"), of the City of Olathe, Kansas had been received. A tabulation of said bids is set forth as **EXHIBIT A** hereto.

Thereupon, the governing body reviewed and considered the bids and it was found and determined that the bid of [\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_], was the best bid for the Series 2020 Bonds, a copy of which is attached hereto as **EXHIBIT B**.

Thereupon, there was presented an Ordinance entitled:

**AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF \$[PRINCIPAL AMOUNT] PRINCIPAL AMOUNT OF WATER AND SEWER SYSTEM IMPROVEMENT AND REFUNDING REVENUE BONDS, SERIES 2020, OF THE CITY OF OLATHE, KANSAS; MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.**

Thereupon, Councilmember \_\_\_\_\_ moved that said Ordinance be passed. The motion was seconded by Councilmember \_\_\_\_\_. Said Ordinance was duly read and considered, and upon being put, the motion for the passage of said Ordinance was carried by the vote of the governing body, the vote being as follows:

Yea:

Nay:

Thereupon, the Mayor declared said Ordinance duly passed and the Ordinance was then duly numbered Ordinance No. 20-18 and was signed by the Mayor and attested by the City Clerk, and the Ordinance or a summary thereof was directed to be published one time in the official newspaper of the City.

Thereupon, there was presented a Resolution entitled:

**A RESOLUTION PRESCRIBING THE FORM AND DETAILS OF AND AUTHORIZING AND DIRECTING THE SALE AND DELIVERY OF WATER AND SEWER SYSTEM IMPROVEMENT AND REFUNDING REVENUE BONDS, SERIES 2020, OF THE CITY OF OLATHE, KANSAS, PREVIOUSLY AUTHORIZED BY ORDINANCE NO. 20-18 OF THE CITY; MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS CONNECTED THEREWITH.**

Thereupon, Councilmember \_\_\_\_\_ moved that said Resolution be adopted. The motion was seconded by Councilmember \_\_\_\_\_. Said Resolution was duly read and considered, and upon being put, the motion for the adoption of said Resolution was carried by the vote of the governing body, the vote being as follows:

Yea:

Nay:

Thereupon, the Mayor declared said Resolution duly adopted and the Resolution was then duly numbered Resolution No. 20-1037 and was signed by the Mayor and attested by the City Clerk.

\* \* \* \* \*

(Other Proceedings)

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

On motion duly made, seconded and carried, the meeting thereupon adjourned.

**CERTIFICATE**

I hereby certify that the foregoing Excerpt of Minutes is a true and correct excerpt of the proceedings of the governing body of the City of Olathe, Kansas, held on the date stated therein, and that the official minutes of such proceedings are on file in my office.

(SEAL)

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City Clerk



***EXHIBIT A***  
***BID TABULATION***

***EXHIBIT B***  
***BID OF PURCHASER***

**ORDINANCE NO. 20-18**

**AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF \$[PRINCIPAL AMOUNT] PRINCIPAL AMOUNT OF WATER AND SEWER SYSTEM IMPROVEMENT AND REFUNDING REVENUE BONDS, SERIES 2020, OF THE CITY OF OLATHE, KANSAS; MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.**

**WHEREAS**, the City of Olathe, Kansas (the “City”), is a city of the first class duly created, organized and existing under the Constitution and laws of the State of Kansas; and

**WHEREAS**, the City is authorized under the provisions of the Act (as herein defined), to issue and sell revenue bonds for the purpose of paying all or part of the cost of making alterations, repairs, extensions, enlargements and improvements to the System (as herein defined), provided that the principal of and interest on such revenue bonds shall be payable solely from the Net Revenues (as herein defined) derived by the City from the operation of the System; and

**WHEREAS**, the City has pursuant to Resolution No. 19-1013 declared its intention under the Act to repair, alter, extend, reconstruct, enlarge or improve the System as described in Section 1 thereof (the “Project”) at an estimated cost of \$32,000,000 and to issue water and sewer system revenue bonds in an amount not to exceed \$32,000,000; notice of such intention was published one time in the official City newspaper and no sufficient written protest thereto was filed with the City Clerk within 15 days after said publication date as set forth in the Act; and

**WHEREAS**, \$4,787,026.76 of the revenue bonds authorized by Resolution No. 19-1013 have been issued and the City proposes to issue \$[ ] of water and sewer system revenue bonds so authorized to pay the costs of the Project and related bond reserves and financing costs; and

**WHEREAS**, the governing body of the City has caused plans and specifications for the Project and an estimate of the costs thereof to be made and the same are hereby accepted and approved and shall be placed on file in the office of the City Clerk; and

**WHEREAS**, the City previously issued and has Outstanding the Refunded Bonds (as defined herein) and is authorized by K.S.A. 10-116a to issue refunding revenue bonds of the City for the purpose of refunding the Refunded Bonds; and

**WHEREAS**, in order to achieve interest cost savings through early redemption of the Refunded Bonds and to provide an orderly plan of finance for the City, it has become desirable and in the best interest of the City and the System to refund the Refunded Bonds; and

**WHEREAS**, the City has no bonds or other obligations outstanding payable from the Net Revenues of the System, except the following:

<u>Series of Bonds</u>	<u>Dated</u>	<u>Amount Issued</u>	<u>Amount Outstanding</u>
Taxable Water and Sewer System Revenue Bonds, Series 2010-A (Build America Bonds – Direct Pay)	February 23, 2010	\$6,540,000	*\$0-

Taxable Water and Sewer System Revenue Bonds, Series 2010-B (Build America Bonds – Direct Pay)	May 27, 2010	\$8,050,000	*\$-0-
Taxable Water and Sewer System Revenue Bonds, Series 2010-C (Build America Bonds – Direct Pay)	December 28, 2010	\$36,280,000	\$27,465,000
Water and Sewer System Revenue Bonds, Series 2012	December 18, 2012	\$9,585,000	\$6,605,000
Water and Sewer System Revenue Bonds, Series 2015	October 1, 2015	\$18,895,000	\$16,005,000
Water and Sewer System Improvement and Refunding Revenue Bonds, Series 2017	April 4, 2017	\$11,340,000	\$10,280,000
Water and Sewer System Revenue Bonds, Series 2018	April 3, 2018	\$11,580,000	\$11,205,000
Water and Sewer System Improvement and Refunding Revenue Bonds, Series 2019	April 18, 2019	\$16,360,000	\$16,235,000

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\* All Outstanding Series 2010-A Bonds and Series 2010-B Bonds will be defeased and no longer payable from the Net Revenues of the System upon issuance of the Series 2020 Bonds.

**WHEREAS**, the resolutions authorizing the Series 2010-C Bonds, the Series 2012 Bonds, the Series 2015 Bonds, the Series 2017 Bonds, the Series 2018 Bonds, and the Series 2019 Bonds provide that the City may issue additional bonds payable from Net Revenues on a parity with such bonds upon the satisfaction of certain conditions; and

**WHEREAS**, prior to or simultaneously with the issuance of the Series 2020 Bonds, such conditions will be satisfied; and

**WHEREAS**, the City hereby finds and determines that it is necessary to authorize the issuance of the City’s Water and Sewer System Improvement and Refunding Revenue Bonds, Series 2020, in the principal amount of \$[PRINCIPAL AMOUNT] (the “Series 2020 Bonds”) for the purposes set forth herein.

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF OLATHE, KANSAS, AS FOLLOWS:**

**Section 1. Definitions of Words and Terms.** In addition to the words and terms defined elsewhere in this Ordinance and in the Resolution, the following words and terms as used in this Ordinance shall have the following meanings:

“**Act**” means the Constitution and Statutes of the State of Kansas including without limitation K.S.A. 10-101 *et seq.*, specifically including K.S.A. 10-116a, K.S.A. 10-620 *et seq.* and K.S.A. 10-1201 *et seq.*, all as amended and supplemented.

**“Additional Bonds”** means any bonds secured by the Net Revenues of the System hereinafter issued pursuant to Article X of the Resolution.

**“BAB Interest Subsidy Payments”** means payments to be received by the City from the U.S. Department of the Treasury under Code §§ 54AA(g) and 6431 in connection with the payments of interest on the Bonds.

**“Bonds”** means the Series 2020 Bonds.

**“City”** means the City of Olathe, Kansas.

**“City Clerk”** means the duly appointed and acting City Clerk or, in the City Clerk’s absence, the duly appointed Deputy City Clerk or Acting City Clerk of the City.

**“Code”** means the Internal Revenue Code of 1986, as amended, together with any regulations applicable thereto or promulgated thereunder by the United States Department of the Treasury.

**“Current Expenses”** means all necessary expenses of operation, maintenance and repair of the System, including, current maintenance charges, expenses of reasonable upkeep and repairs, properly allocated share of charges for insurance, and all other expenses incident to the operation of the System, but shall exclude depreciation and amortization charges, interest paid on revenue bonds of the System, all general administrative expenses of the City not related to the operation of the System, and the payments into the Bond Reserve Account provided for in the Resolution.

**“Gross Revenues”** means all charges, fees, income and revenues (including interest and investment earnings) derived and collected by the City from the operation and ownership of the System including without limitation the System Development Charge collected pursuant to Section 13.26 of the Municipal Code of the City, as amended, and any rate, fee or charge that succeeds to the System Development Charge, and any amounts deposited in connection with the acquisition, construction, remodeling, renovation and equipping of facilities to be applied during the period of determination to pay debt service on revenue bonds of the System, BAB Interest Subsidy Payments and net proceeds of any business interruption insurance, but excluding any profits or losses on the early extinguishment of debt or on the sale or other disposition, not in the ordinary course of business, of investments or fixed or capital assets.

**“Mayor”** means the duly elected and acting Mayor of the City or, in the Mayor’s absence, the duly appointed and/or elected Vice Mayor, Mayor Pro Tem or Acting Mayor of the City.

**“Net Revenues”** means Gross Revenues less Current Expenses.

**“Ordinance”** means this ordinance as from time to time amended in accordance with the terms hereof.

**“Original Purchaser”** means [\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_].

**“Parity Bonds”** means the Bonds, the Series 2010-C Bonds, the Series 2012 Bonds, the Series 2015 Bonds, the Series 2017 Bonds, the Series 2018 Bonds, the Series 2019 Bonds and any bonds hereinafter issued pursuant to Sections 1002 or 1004 of the Resolution and standing on a parity and equality with the Bonds with respect to the payment of principal and interest out of the Net Revenues of the System.



**“Project”** means the acquisition, construction, reconstruction, alterations, repair, improvements, extensions, or enlargements of the System described in Resolution No. 19-1013 of the City.

**“Refunded Bonds”** means, collectively, (a) the Series 2010-A Bonds maturing in the years 2020 to 2030, inclusive, in the aggregate principal amount of \$3,830,000, and (b) the Series 2010-B Bonds maturing in the years 2020 to 2035, inclusive, in the aggregate principal amount of \$5,850,000.

**“Resolution”** means the resolution to be adopted by the governing body of the City prescribing the terms and details of the Bonds and making covenants with respect thereto.

**“Series 2010-A Bonds”** means the Taxable Water and Sewer System Revenue Bonds, Series 2010-A (Build America Bonds – Direct Pay) authorized by Ordinance No. 10-10 and Resolution No. 10-1007 of the City adopted on January 26, 2010.

**“Series 2010-B Bonds”** means the Taxable Water and Sewer System Revenue Bonds, Series 2010-B (Build America Bonds – Direct Pay) authorized by Ordinance No. 10-35 and Resolution No. 10-1039 of the City adopted on May 4, 2010.

**“Series 2010-C Bonds”** means the Taxable Water and Sewer System Revenue Bonds, Series 2010-C (Build America Bonds – Direct Pay), authorized by Ordinance No. 10-81 and Resolution No. 10-1085 of the City adopted on December 7, 2010.

**“Series 2012 Bonds”** means the Water and Sewer System Revenue Bonds, Series 2012, authorized by Ordinance No. 12-59 and Resolution No. 12-1076 of the City adopted on December 4, 2012.

**“Series 2015 Bonds”** means the Water and Sewer System Revenue Bonds, Series 2015, authorized by Ordinance No. 15-57 and Resolution No. 15-1078 of the City adopted on September 15, 2015.

**“Series 2017 Bonds”** means the Water and Sewer System Improvement and Refunding Revenue Bonds, Series 2017, authorized by Ordinance No. 17-19 and Resolution No. 17-1026 of the City adopted on March 21, 2017.

**“Series 2018 Bonds”** means the Water and Sewer System Revenue Bonds, Series 2018, authorized by Ordinance No. 18-11 and Resolution No. 18-1034 of the City adopted on March 20, 2018.

**“Series 2019 Bonds”** means the Water and Sewer System Improvement and Refunding Revenue Bonds, Series 2019, authorized Ordinance No. 19-11 and Resolution No. 19-1027 of the City adopted on April 2, 2019.

**“Series 2020 Bonds”** means the Water and Sewer System Improvement and Refunding Revenue Bonds, Series 2020, authorized by this Ordinance.

**“Substitute Project”** means a substitute or additional project of the System authorized in the manner set forth in the Parity Bond Resolution.

**“System”** means the entire waterworks plant and system and sewerage plant and system owned and operated by the City for the production, storage, treatment and distribution of water and for the collection, treatment and disposal of sewage together with all alterations, repairs, extensions, enlargements and improvements thereto hereafter made or acquired by the City.

**Section 2. Authorization of the Bonds.** There shall be issued and are hereby authorized and directed to be issued the Water and Sewer System Improvement and Refunding Revenue Bonds, Series 2020, of the City in the principal amount of \$[PRINCIPAL AMOUNT] for the purpose of providing funds to (i) pay a portion of the costs of the Project, (ii) refund the Refunded Bonds, (iii) fund a debt service reserve fund, and (iv) pay Costs of Issuance of the Bonds.

**Section 3. Security for the Bonds.** The Bonds shall be special obligations of the City payable solely from, and secured as to the payment of principal and interest by a pledge of, the Net Revenues. The taxing power of the City is not pledged to the payment of the Bonds, either as to principal or interest. The Bonds shall not be or constitute a general obligation of the City, nor shall they constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter provision, limitation or restriction.

The covenants and agreements of the City contained herein and in the Bonds shall be for the equal benefit, protection and security of the legal owners of any or all of the Bonds, all of which Bonds shall be of equal rank and without preference or priority of one Bond over any other Bond in the application of the funds herein pledged to the payment of the principal of and the interest on the Bonds, or otherwise, except as to rate of interest, date of maturity and right of prior redemption as provided in this Ordinance. The Bonds shall stand on a parity and be equally and ratably secured with respect to the payment of principal and interest from the Net Revenues and in all other respects with any Parity Bonds. The Bonds shall not have any priority with respect to the payment of principal or interest from said Net Revenues or otherwise over any Parity Bonds and any Parity Bonds shall not have any priority with respect to the payment of principal or interest from said Net Revenues or otherwise over the Bonds.

**Section 4. Terms, Details and Conditions of the Bonds.** The Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such forms, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in the Resolution hereinafter adopted by the governing body of the City. The provisions, covenants and agreements set forth in the Resolution are incorporated herein and are deemed a part of this Ordinance as if the Resolution was set out herein in its entirety.

**Section 5. Rate Covenant.** The City will fix, establish, maintain and collect such rates, fees and charges for the use and services furnished by or through the System, including all alterations, repairs, extensions, enlargements and improvements thereto hereafter constructed or acquired by the City, as will produce revenues sufficient to (a) pay the cost of the operation and maintenance of the System; (b) pay the principal of and interest on the Bonds and any Parity Bonds as and when the same become due; (c) enable the City to have in each fiscal year Net Revenues in an amount that will be not less than 110% of the Debt Service Requirements required to be paid by the City in such fiscal year; and (d) provide reasonable and adequate reserves for the payment of the Bonds and the Parity Bonds and the interest thereon and for the protection and benefit of the System of the City as provided in this Ordinance and the Resolution.

**Section 6. Further Authority.** The Mayor, Director of Resource Management, Treasurer, City Clerk and other City officials are hereby further authorized and directed to execute any and all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of the Ordinance, including the making of alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

**Section 7. Governing Law.** The Ordinance and the Bonds shall be governed exclusively by and construed in accordance with the applicable laws of the State of Kansas.

**Section 8. Effective Date.** This Ordinance shall take effect and be in full force from and after its passage by the governing body of the City and publication (or a summary thereof) in the official newspaper of the City.

[Balance of page intentionally left blank]

**PASSED** by the governing body of the City on May 19, 2020 and **APPROVED AND SIGNED** by the Mayor.

(SEAL)

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Mayor

ATTEST:

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City Clerk

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**RESOLUTION NO. 20-1037**

**OF THE**

**CITY OF OLATHE, KANSAS**

**ADOPTED MAY 19, 2020**

**\$[PRINCIPAL AMOUNT]**

**WATER AND SEWER SYSTEM IMPROVEMENT  
AND REFUNDING REVENUE BONDS**

**SERIES 2020**

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Exhibit A - Form of Bond

## RESOLUTION NO. 20-1037

**A RESOLUTION PRESCRIBING THE FORM AND DETAILS OF AND AUTHORIZING AND DIRECTING THE SALE AND DELIVERY OF WATER AND SEWER SYSTEM IMPROVEMENT AND REFUNDING REVENUE BONDS, SERIES 2020, OF THE CITY OF OLATHE, KANSAS, PREVIOUSLY AUTHORIZED BY ORDINANCE NO. 20-18 OF THE CITY; MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS CONNECTED THEREWITH.**

**WHEREAS**, the City has passed the Ordinance authorizing the issuance of the Bonds; and

**WHEREAS**, the Ordinance recognized that the Governing Body of the City would adopt a resolution prescribing certain details and conditions and making certain covenants with respect to the issuance of the Bonds.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF OLATHE, KANSAS, AS FOLLOWS:**

### ARTICLE I

#### DEFINITIONS

Section 101. Definitions of Words and Terms. In addition to the words and terms defined elsewhere in the Ordinance and this Resolution, the following words and terms as used in this Resolution shall have the following meanings:

“Act” means the Constitution and Statutes of the State of Kansas including without limitation K.S.A. 10-101 *et seq.*, specifically including K.S.A. 10-116a, K.S.A. 10-620 *et seq.* and K.S.A. 10-1201 *et seq.*, all as amended and supplemented.

“Additional Bonds” means any bonds or other obligations secured by the Net Revenues, and hereafter issued pursuant to and in accordance with *Article X* hereof.

“Authorized Investments” shall mean the investments hereinafter described, provided, however, no monies or funds shall be invested in a Derivative: (a) investments authorized by K.S.A. 12-1675 and amendments thereto; (b) the municipal investment pool established pursuant to K.S.A. 12-1677a, and amendments thereto; (c) direct obligations of the United States Government or any agency thereof; (d) the City’s temporary notes issued pursuant to K.S.A. 10-123 and amendments thereto; (e) interest-bearing time deposits in commercial banks or trust companies located in the county or counties in which the City is located which are insured by the Federal Deposit Insurance Corporation or collateralized by securities described in (c); (f) obligations of the federal national mortgage association, federal home loan banks or the federal home loan mortgage corporation; (g) repurchase agreements for securities described in (c) or (f); (h) investment agreements or other obligations of a financial institution the obligations of which at the time of investment are rated in either of the three highest rating categories by Moody’s or Standard & Poor’s; (i) investments and shares or units of a money market fund or trust, the portfolio of which is comprised entirely of securities described in (c) or (f); (j) receipts evidencing ownership interests in securities or portions thereof described in (c) or (f); (k) municipal bonds or other obligations issued by any municipality of the State as defined in K.S.A. 10-1101 which are general obligations of the municipality issuing the same; (l) bonds of any municipality of



the State as defined in K.S.A. 10-1101 which have been refunded in advance of their maturity and are fully secured as to payment of principal and interest thereon by deposit in trust, under escrow agreement with a bank, of securities described in (c) or (f); or (m) other investment obligations authorized by the laws of the State, all as may be further restricted or modified by amendments to applicable State law.

“Average Annual Debt Service” means the average of the Debt Service Requirements as computed for the then current and all future fiscal years; provided that the Debt Service Requirements in the final Stated Maturity of any series of Parity Bonds shall be reduced by the value of cash and permitted investments on deposit in the applicable Bond Reserve Account, so long as such Bond Reserve Account is maintained at the applicable Bond Reserve Requirement.

“BAB Interest Subsidy Payments” means payments to be received by the City from the U.S. Department of the Treasury under Code §§ 54AA(g) and 6431 in connection with the payments of interest on the Bonds.

“Bond Counsel” means the firm of Gilmore & Bell, P.C. or any other attorney or firm of attorneys whose expertise in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and acceptable to the City.

“Bond Registrar” means the Treasurer of the State of Kansas, and its successors and assigns.

“Bond Reserve Account” means the Bond Reserve Account for Water and Sewer System Improvement and Refunding Revenue Bonds, Series 2020, created by this Resolution.

“Bond Reserve Requirement” means an amount equal to \$[\_\_\_\_\_].

“Bondowner” means the same as the term Owner.

“Bonds” means the Series 2020 Bonds.

“Business Day” means a day on which financial institutions located in New York, New York or Topeka, Kansas are not required or authorized to remain closed.

“Cede & Co.” means Cede & Co., as nominee name of The Depository Trust Company, New York, New York.

“City” means the City of Olathe, Kansas.

“City Clerk” shall mean the duly appointed and acting City Clerk or, in the City Clerk’s absence, the duly appointed Deputy City Clerk or Acting City Clerk of the City.

“Code” means the Internal Revenue Code of 1986, as amended, together with any regulations applicable thereto or promulgated thereunder by the United States Department of the Treasury.

“Consultant” means the Consulting Engineer, the Independent Accountant, or an independent consultant qualified and having a favorable reputation for skill and experience in financial affairs selected by the City for the purpose of carrying out the duties imposed on the Consultant by the Parity Bond Resolutions.

“Consulting Engineer” means an independent engineer or engineering firm, having a reputation for skill and experience in the construction and operation of public utilities, at the time employed by the City for the purpose of carrying out the duties imposed on the Consulting Engineer by this Resolution.

“Costs of Issuance” means all costs of issuing any series of Bonds, including all publication, printing, signing and mailing expenses in connection therewith, registration fees, financial advisory fees, all legal fees and expenses of Bond Counsel and other legal counsel, expenses incurred in connection with compliance with the Code, all expenses incurred in connection with receiving financial ratings on any series of Bonds, and any premiums or expenses incurred in obtaining any credit enhancement.

“Costs of Issuance Account” means the Costs of Issuance Account for Water and Sewer System Improvement and Refunding Revenue Bonds, Series 2020 created pursuant to **Section 501** hereof.

“Current Expenses” means all necessary expenses of operation, maintenance and repair of the System, including, current maintenance charges, expenses of reasonable upkeep and repairs, properly allocated share of charges for insurance, and all other expenses incident to the operation of the System, but shall exclude depreciation and amortization charges, interest paid on revenue bonds of the System, all general administrative expenses of the City not related to the operation of the System, and the payments into the Bond Reserve Account provided for in the Resolution.

“Dated Date” shall mean the Issue Date.

“Debt Service Coverage Ratio” means, for any fiscal year the ratio determined by dividing (i) a numerator equal to the Net Revenues for such fiscal year by (ii) a denominator equal to the Average Annual Debt Service; provided that with respect to Additional Bonds that are proposed to be Parity Bonds, Debt Service Requirements on junior lien bonds issued pursuant to **Section 1003** hereof, or pursuant to any other Parity Bond Resolutions, shall be disregarded.

“Debt Service Requirements” shall mean the required payments of principal, premium, if any, and interest on the Bonds, any Parity Bonds and any Additional Bonds in accordance with the terms and provisions of this Resolution; provided, however, that for purposes of calculating such amounts, principal and interest shall be excluded from the determination of Debt Service Requirements to the extent that such principal or interest is payable from amounts deposited in trust, escrowed or otherwise set aside for the payment thereof.

“Defaulted Interest” means any interest on the Bonds which is payable but is not punctually paid on any Interest Payment Date.

“Derivative” means any investment instrument whose market price is derived from the fluctuating value of an underlying asset, index, currency, futures contract, including futures, options and collateralized mortgage obligations.

“Disclosure Undertaking” means the City’s Continuing Disclosure Undertaking dated as of the Dated Date, relating to certain obligations contained in Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as may be amended from time to time.

“Event of Default” means each of the following occurrences or events:

(a) Payment of the principal of and interest and the redemption premium, if any, on any of the Bonds shall not be made when the same shall become due and payable, either at Stated Maturity or by proceedings for redemption or otherwise; or

(b) The City shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Bonds, in the Ordinance or in this Resolution on the part of the City to be performed, and such default shall continue for thirty (30) days after written notice specifying such default and requiring the same to be remedied shall have been given to the City by the owner of any of the Bonds then Outstanding; or

(c) The filing by the City of a voluntary petition in bankruptcy, or failure by the City to promptly lift any execution, garnishment or attachment of such consequence as would impair the ability of the City to carry on its operation, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of federal bankruptcy law, or under any similar acts which may hereafter be enacted.

“Federal Tax Certificate” means the Federal Tax Certificate (dated as of the Issue Date), as the same may be amended or supplemented in accordance with its terms.

“Governing Body” means the City Council of the City of Olathe or any successor governing body.

“Gross Revenues” means all charges, fees, income and revenues (including interest and investment earnings) derived and collected by the City from the operation and ownership of the System, including, without limitation the System Development Charge collected pursuant to Section 13.26 of the Municipal Code of the City, as amended, and any rate, fee or charge that succeeds to the System Development Charge, any amounts deposited in connection with the acquisition, construction, remodeling, renovation and equipping of facilities to be applied during the period of determination to pay debt service on revenue bonds of the System, BAB Interest Subsidy Payments and net proceeds of any business interruption insurance, but excluding any profits or losses on the early extinguishment of debt or on the sale or other disposition, not in the ordinary course of business, of investments or fixed or capital assets.

“Independent Accountant” means an independent certified accountant or firm of certified accountants at the time employed by the City for the purpose of carrying out the duties imposed on the Independent Accountant by this Resolution.

“Interest Payment Dates” shall mean January 1 and July 1 of each year, commencing July 1, 2020, and ending on the final maturity date of the Bonds, or such other time as the Bonds are paid or provision is made for the payment thereof.

“Issue Date” means the date when the City delivers the Bonds to the Purchaser in exchange for the Purchase Price.

“Maturity” when used with respect to any Bond means the date on which the principal of such Bond becomes due and payable, whether at the Stated Maturity thereof or call for redemption or otherwise.

“Mayor” means the duly elected and acting Mayor of the City or, in the Mayor’s absence, the duly

appointed and/or elected Vice Mayor, Mayor Pro Tem or Acting Mayor of the City.

“Moody’s” means Moody’s Investors Service, its successors and assigns or if such entity shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency designated by the City, by notice to the Original Purchaser.

“Net Revenues” means Gross Revenues less Current Expenses.

“Operation and Maintenance Account” means the Water and Sewer System Operation and Maintenance Account created by this Resolution.

“Ordinance” means Ordinance No. 20-18 authorizing the issuance of the Series 2020 Bonds, as from time to time amended in accordance with the terms thereof.

“Original Purchaser” means [\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_].

“Outstanding” shall mean, as of a particular date, all bonds previously issued, authenticated and delivered under the provisions of this Resolution, except:

(a) bonds theretofore cancelled by the Paying Agent or delivered to the Paying Agent for cancellation pursuant to this Resolution;

(b) bonds for the payment or redemption of which monies or investments have been deposited in accordance with *Article XII* of this Resolution; and

(c) bonds in exchange for or in lieu of which other bonds have been authenticated and delivered pursuant to this Resolution.

“Owner” or “Registered Owner” when used with respect to any Bond means the person in whose name such Bond is registered on the Bond Register.

“Parity Bonds” means the Bonds, the Series 2010-C Bonds, the Series 2012 Bonds, the Series 2015 Bonds, the Series 2017 Bonds, the Series 2018 Bonds, the Series 2019 Bonds and any Additional Bonds hereinafter issued pursuant to *Sections 1002* or *1004* of this Resolution and standing on a parity and equality with the Bonds with respect to the payment of principal and interest out of the Net Revenues of the System.

“Parity Bond Resolutions” means jointly the Series 2010-C Resolution, the Series 2012 Resolution, the Series 2015 Resolution, the Series 2017 Resolution, the Series 2018 Resolution, the Series 2019 Resolution, the Ordinance, this Resolution, and the ordinances and resolutions under which any additional Parity Bonds shall be issued.

“Participants” means those financial institutions for whom the Securities Depository effects book-entry transfers and pledges of securities deposited with the Securities Depository, as such listing of Participants exists at the time of such reference.

“Paying Agent” means the Treasurer of the State of Kansas, and its successors and assigns.

“Person” means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof.

“Principal and Interest Account” means the Principal and Interest Account for Water and Sewer System Improvement and Refunding Revenue Bonds, Series 2020 created by this Resolution.

“Principal Payment Dates” shall mean July 1 of each year, commencing July 1, 2020, until such time as the aggregate principal amount of the Bonds has been paid or provision is made for the payment thereof, whether at Stated Maturity or Redemption Date.

“Project” means the acquisition, construction, reconstruction, alterations, repair, improvements, extensions, or enlargements of the System described in Resolution No. 19-1013 of the City.

“Project Account” means the Project Account for Water and Sewer System Improvement and Refunding Revenue Bonds, Series 2020, created by this Resolution.

“Purchase Price” shall mean principal amount of the Series 2020 Bonds, plus a [net] premium of \$[\_\_\_\_\_], less an underwriting discount of \$[\_\_\_\_\_].

“Rebate Fund” means the Rebate Fund for Water and Sewer System Improvement and Refunding Revenue Bonds, Series 2020, created by this Resolution.

“Record Date” means the fifteenth day of the month (whether or not a business day) next preceding each Interest Payment Date in each year the Bonds are Outstanding.

“Redemption Date” when used with respect to any Bond to be redeemed means the date fixed for the redemption of such Bond pursuant to the terms of this Resolution.

“Redemption Fund” means the Redemption Fund for Refunded Bonds and any subaccounts therein created by this Resolution.

“Redemption Price” when used with respect to any Bond to be redeemed means the price at which such Bond is to be redeemed pursuant to the terms of this Resolution, including the applicable redemption premium, if any, but excluding installments of interest whose Stated Maturity is on or before the Redemption Date.

“Refunded Bonds” means, collectively, (a) the Series 2010-A Bonds maturing in the years 2020 to 2030, inclusive, in the aggregate principal amount of \$3,830,000, and (b) the Series 2010-B Bonds maturing in the years 2020 to 2035, inclusive, in the aggregate principal amount of \$5,850,000.

“Refunded Bonds Paying Agent” means the respective paying agent for each of the Refunded Bonds as designated in the respective Refunded Bonds Resolution, and any successor or successors at the time acting as paying agent of the Refunded Bonds.

“Refunded Bonds Redemption Date” means July 1, 2020.

“Refunded Bonds Resolution” means each ordinance and the resolution which authorized the Refunded Bonds.

“Replacement Bonds” means Bonds issued to the beneficial owners of the Bonds in accordance with ***Section 212(b)*** hereof.



“Representation Letter” means any Representation Letter from the City and the Paying Agent to the Securities Depository with respect to the Bonds.

“Resolution” means this resolution as from time to time amended in accordance with the terms hereof.

“Revenue Fund” means the Water and Sewer System Revenue Fund referred to in this Resolution.

“S&P” or “Standard & Poor’s” means S&P Global Ratings, a division of S&P Global Inc., New York, New York, its successors and assigns or if such entity shall no longer perform the functions of a securities rating agency, “S&P” shall be deemed to refer to any other nationally recognized securities rating agency designated by the City, by notice to the Original Purchaser.

“Securities Depository” means, initially, The Depository Trust Company, New York, New York, and its successors and assigns.

“Series 2010-A Bond Reserve Account” means the Bond Reserve Account for the Series 2010-A Bonds established by Resolution No. 10-1007 of the City.

“Series 2010-B Bond Reserve Account” means the Bond Reserve Account for the Series 2010-B Bonds established by Resolution No. 10-1039 of the City.

“Series 2010-A Bonds” means the Taxable Water and Sewer System Revenue Bonds, Series 2010-A (Build America Bonds – Direct Pay), authorized by the Series 2010-A Resolution.

“Series 2010-B Bonds” means the Taxable Water and Sewer System Revenue Bonds, Series 2010-B (Build America Bonds – Direct Pay), authorized by the Series 2010-B Resolution.

“Series 2010-C Bonds” means the Taxable Water and Sewer System Revenue Bonds, Series 2010-C (Build America Bonds – Direct Pay) authorized by the Series 2010-C Resolution.

“Series 2012 Bonds” means the Water and Sewer System Revenue Bonds, Series 2012, authorized by the Series 2012 Resolution.

“Series 2015 Bonds” means the Water and Sewer System Revenue Bonds, Series 2015, authorized by the Series 2015 Resolution.

“Series 2017 Bonds” means the Water and Sewer System Improvement and Refunding Revenue Bonds, Series 2017, authorized by the Series 2017 Resolution.

“Series 2018 Bonds” means the Water and Sewer System Revenue Bonds, Series 2018, authorized by the Series 2018 Resolution.

“Series 2019 Bonds” means the Water and Sewer System Improvement and Refunding Revenue Bonds, Series 2019, authorized by the Series 2019 Resolution.

“Series 2020 Bonds” means the Water and Sewer System Improvement and Refunding Revenue Bonds, Series 2020, authorized by the Ordinance.

“Series 2010-A Resolution” means Ordinance No. 10-10 and Resolution No. 10-1007 of the City passed on January 26, 2010, authorizing the issuance of the Series 2010-A Bonds.

“Series 2010-B Resolution” means Ordinance No. 10-35 and Resolution No. 10-1039 of the City passed on May 4, 2010, authorizing the issuance of the Series 2010-B Bonds.

“Series 2010-C Resolution” means Ordinance No. 10-81 and Resolution No. 10-1085 of the City passed on December 7, 2010, authorizing the issuance of the Series 2010-C Bonds.

“Series 2012 Resolution” means Ordinance No. 12-59 and Resolution No. 12-1076 of the City passed on December 4, 2012, authorizing the issuance of the Series 2012 Bonds.

“Series 2015 Resolution” means Ordinance No. 15-57 and Resolution No. 15-1078 of the City passed on September 15, 2015, authorizing the issuance of the Series 2015 Bonds.

“Series 2017 Resolution” means Ordinance No. 17-19 and Resolution No. 17-1026 of the City passed on March 21, 2017, authorizing the issuance of the Series 2017 Bonds.

“Series 2018 Resolution” means Ordinance No. 18-11 and Resolution No. 18-1034 of the City passed on March 20, 2018, authorizing the issuance of the Series 2018 Bonds.

“Series 2019 Resolution” means Ordinance No. 19-11 and Resolution No. 19-1027 of the City passed on April 2, 2019, authorizing the issuance of the Series 2019 Bonds.

“Special Record Date” means a date fixed by the Bond Registrar for the payment of any Defaulted Interest.

“State” means the State of Kansas.

“State Treasurer” means the duly elected Treasurer or, in the Treasurer's absence, the duly appointed Deputy Treasurer or acting Treasurer of the State.

“Stated Maturity” when used with respect to any Bond or any installment of interest thereon means the date specified in such Bond as the fixed date on which the principal of such Bond or such installment of interest is due and payable.

“Substitute Project” means a substitute or additional project of the System authorized in the manner set forth in the Parity Bond Resolution.

“Surplus Account” means the Water and Sewer System Surplus Account referred to in this Resolution.

“System” means the entire waterworks plant and system and sewerage plant and system owned and operated by the City for the production, storage, treatment and distribution of water and for the collection, treatment and disposal of sewage together with all alterations, repairs, extensions, enlargements and improvements thereto hereafter made or acquired by the City.

“Term Bonds” means any Series 2020 Bond designated as a Term Bond in this Resolution.

“Treasurer” means the duly appointed and acting Treasurer of the City or, in the Treasurer’s absence, the duly appointed Deputy Treasurer or acting Treasurer of the City.

## ARTICLE II

### **AUTHORIZATION OF THE BONDS**

Section 201. Authorization of the Bonds. There shall be issued and are hereby authorized and directed to be issued the Water and Sewer System Improvement and Refunding Revenue Bonds, Series 2020, of the City in the principal amount of \$[PRINCIPAL AMOUNT] for the purpose of providing funds to: (a) pay a portion of the costs of the Project; (b) refund the Refunded Bonds; (c) fund a debt service reserve fund; and (d) pay Costs of Issuance of the Bonds.

Section 202. Security for the Bonds. The security for the Bonds shall be as set forth in *Section 3* of the Ordinance.

Section 203. Description of the Bonds. The Bonds shall consist of fully registered bonds in the denomination of \$5,000 or any integral multiple thereof, and shall be numbered in such manner as the Bond Registrar shall determine. The Bonds shall be dated their Issue Date, shall become due on the Principal Payment Dates and shall bear interest at the rates per annum as follows:

#### SERIAL BONDS

<u>Maturity</u> <u>July 1</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Maturity</u> <u>July 1</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>
2020	\$ _____	_____ %	2030	\$ _____	_____ %
2021	_____	_____	2031	_____	_____
2022	_____	_____	2032	_____	_____
2023	_____	_____	2033	_____	_____
2024	_____	_____	2036	_____	_____
2025	_____	_____	2037	_____	_____
2026	_____	_____	2038	_____	_____
2027	_____	_____	2039	_____	_____
2028	_____	_____	2040	_____	_____
2029	_____	_____			

#### \*\*\*[TERM BONDS]

<u>Maturity</u> <u>July 1</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>
20__	\$ _____	_____ %
20__	_____	_____ ]***

Interest on the Bonds at the rates aforesaid (computed on the basis of a 360-day year of twelve 30-day months) from the later of the Dated Date or the most recent Interest Payment Date to which interest has been paid or duly provided for, shall be payable on the Interest Payment Dates, to the owners thereof whose names appear on the books maintained by the Bond Registrar at the close of business on the Record Dates.

Section 204. Designation of Paying Agent and Bond Registrar. The Treasurer of the State of Kansas, Topeka, Kansas, is hereby designated as the City's Paying Agent and Bond Registrar. The Mayor

and City Clerk are hereby authorized and empowered to execute on behalf of the City an agreement with the Paying Agent and Bond Registrar for the Bonds.

The City will at all times maintain a Paying Agent for the performance of the duties hereunder. The City reserves the right to appoint a successor Paying Agent by (1) filing with the Paying Agent then performing such function a certified copy of the proceedings giving notice of the termination of Paying Agent and appointing a successor, and (2) causing notice to be given by first class mail to each Bondowner. No resignation or removal of the Paying Agent shall become effective until a successor has been appointed and has accepted the duties of the Paying Agent.

Section 205. Method and Place of Payment of the Bonds. The principal of, premium, if any, and interest on the Bonds shall be payable in any coin or currency which, on the respective dates of payment thereof, is legal tender for the payment of debts due the United States of America. Payments which become due on Saturdays, Sundays and holidays may be made on the next succeeding Business Day.

The principal of and any premium on the Bonds shall be paid to the Registered Owner of each Bond upon presentation of the Bond at the maturity or Redemption Date to the Paying Agent for cancellation. The interest payable on the Bonds on any Interest Payment Date shall be paid (a) by check or draft mailed by the Paying Agent to the Registered Owner of each Bond at the Registered Owner's address as it appears on the registration books of the City maintained by the Bond Registrar at the close of business on the Record Date for such interest or (b) in the case of an interest payment to any Registered Owner of \$500,000 or more in aggregate principal amount of Bonds, by electronic transfer to such Registered Owner upon written notice given to the Paying Agent by such Registered Owner not less than 15 days prior to the Record Date for such interest, containing the electronic transfer instructions including the bank (which shall be in the continental United States), address, ABA routing number and account number to which such Registered Owner wishes to have such transfer directed.

Notwithstanding any of the foregoing provisions of this Section to the contrary, any Defaulted Interest shall be payable to the Owners as of the close of business on the Special Record Date. The Special Record Date shall be fixed in the following manner: (1) the City shall notify the Bond Registrar in writing of the amount of Defaulted Interest proposed to be paid on the Bonds and the date of the proposed payment, which proposed payment date shall be at least thirty (30) days after receipt by the Bond Registrar of such notice from the City; (2) at the same time the City shall deposit with the Paying Agent an amount of money equal to the aggregate amount to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Paying Agent for such deposit prior to the date of the proposed payment; and (3) thereupon, the Bond Registrar shall fix a Special Record Date for the payment of such Defaulted Interest which shall not be more than fifteen (15) days nor less than ten (10) days prior to the date of the proposed payment. The Paying Agent shall promptly notify the City of such Special Record Date and, in the name and at the expense of the City, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, by first-class mail postage prepaid, to each Owner of a Bond entitled to such notice at the address of such Owner as it appears in the registration books maintained by the Paying Agent and Bond Registrar not less than 10 days prior to such Special Record Date.

The Paying Agent shall keep in its offices a record of payment of principal of, premium, if any, and interest on all Bonds.

Section 206. Method of Execution and Authentication of the Bonds. The Bonds shall be executed for and on behalf of the City by the manual or facsimile signature of the Mayor, attested by the manual or facsimile signature of the City Clerk and the seal of the City shall be affixed thereto or imprinted thereon. The Bonds shall be registered in the office of the City Clerk, which registration shall be evidenced by the manual

or facsimile signature of the City Clerk with the seal of the City affixed thereto or imprinted thereon. The Bonds shall also be registered in the office of the State Treasurer, which registration shall be evidenced by the manual or facsimile signature of the State Treasurer with the seal of the State Treasurer affixed thereto or imprinted thereon. In the event that any of the aforementioned officers shall cease to hold such offices before the Bonds are issued and delivered, the Bonds may be issued and transferred to other owners as though said officers had not ceased to hold office, and such signatures appearing on the Bonds shall be valid and sufficient for all purposes as if they had remained in office until such issuance or transfer.

The Bonds shall not be valid obligations under the provisions of the Resolution until authenticated by the Bond Registrar or a duly authorized representative of the Bond Registrar by execution of the Certificate of Authentication appearing on each Bond. It shall not be necessary that the same representative of the Bond Registrar execute the Certificate of Authentication on all of the Bonds.

Section 207. Registration, Transfer and Exchange of Bonds. As long as the Bonds remain Outstanding, the City shall cause the books for the registration and transfer of the Bonds as provided in the Resolution to be kept by the Bond Registrar.

Upon presentation of the necessary documents as hereinafter described, the Bond Registrar shall transfer or exchange any Bond(s) for new Bond(s) in an authorized denomination of the same maturity and for the same aggregate principal amount as the Bond(s) which was presented for transfer or exchange.

All Bonds presented for transfer or exchange shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in a form and with guarantee of signature satisfactory to the Bond Registrar, duly executed by the Registered Owner thereof or by the Registered Owner's duly authorized agent. In addition, all Bonds presented for transfer or exchange shall be surrendered to the Bond Registrar for cancellation.

Prior to delivery of the new Bond(s) to the transferee, the Bond Registrar shall register the same in the registration books kept by the Bond Registrar for such purpose and shall authenticate each Bond.

The City shall pay out of the proceeds of the Bonds the fees of the Bond Registrar for registration and transfer of the Bonds and the cost of printing a reasonable supply of registered bond blanks. Any additional costs or fees that might be incurred in the secondary market, other than fees of the Bond Registrar, are the responsibility of the owners.

The City and the Bond Registrar shall not be required to issue, register, transfer or exchange any Bonds (i) during a period beginning on the day following the Record Date preceding any Interest Payment Date and ending at the close of business on the Interest Payment Date, (ii) during a period beginning at the opening of business fifteen days preceding a mailing of a notice of redemption for Bonds selected for redemption and ending at the close of business on the date of such mailing, (iii) from and after the establishing of any Special Record Date and the date of payment of any Defaulted Interest, or (iv) selected for redemption in whole or in part.

New Bonds delivered upon any transfer or exchange shall be valid obligations of the City, evidencing the same debt as the Bonds surrendered, shall be secured by the Resolution and shall be entitled to all of the security and benefits hereof to the same extent as the Bonds surrendered.

The City, Bond Registrar and Paying Agent may deem and treat the person in whose name any Bond is registered as the absolute owner thereof, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of, redemption premium, if any, and interest on said



Bond and for all other purposes, and all such payment so made to any such Registered Owner or upon the Registered Owner's order shall be valid and effectual to the extent of the sum or sums so paid, and neither the City, Bond Registrar and Paying Agent shall be affected by any notice to the contrary.

Section 208. Surrender and Cancellation of Bonds. All Bonds that have been paid or redeemed or that otherwise have been surrendered to the Bond Registrar, either at or before maturity, shall be cancelled by the Bond Registrar immediately upon the payment, redemption and surrender thereof to the Bond Registrar and subsequently destroyed in accordance with the customary practices of the Bond Registrar. The Bond Registrar shall execute a certificate in duplicate describing the Bonds so cancelled and destroyed and shall file an executed counterpart of such certificate with the City.

Section 209. Mutilated, Lost, Stolen or Destroyed Bonds. In the event any Bond is mutilated, lost, stolen or destroyed, the City may execute and the Bond Registrar may authenticate a new Bond of like date, maturity, denomination and interest rate, as that mutilated, lost, stolen or destroyed; provided, that in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the City or the Bond Registrar, and, in the case of any lost, stolen or destroyed Bond there shall first be furnished to the Bond Registrar and the City evidence of such loss, theft or destruction satisfactory to them, together with an indemnity satisfactory to the City and the Bond Registrar. In the event any such Bond shall have matured, instead of issuing a duplicate Bond, the City and Bond Registrar may pay the same without surrender thereof. The City and Bond Registrar may charge to the Registered Owner of such Bond their reasonable fees and expenses in connection with replacing any Bond or Bonds mutilated, stolen, lost or destroyed.

Section 210. Temporary Bonds. Until definitive Bonds are prepared, the City may execute, in the same manner as is provided in the Resolution and upon the request of the City, the Bond Registrar shall authenticate and deliver, in lieu of definitive Bonds but subject to the same provisions, limitations and conditions as the definitive Bonds, one or more temporary Bonds substantially of the tenor of the definitive Bonds in lieu of which such temporary Bond or Bonds are issued, in denominations authorized herein, authorized by the City and with such omissions, insertions and variations as may be appropriate to temporary Bonds. The City at its own expense shall prepare and execute and, upon the surrender of such temporary Bonds for exchange and upon the cancellation of such surrendered temporary Bonds, the Bond Registrar shall authenticate and, without charge to the owner thereof, deliver in exchange therefor definitive Bonds of the same aggregate principal amount and maturity as the temporary Bonds surrendered.

If the City shall authorize the issuance of temporary Bonds in more than one denomination, the Registered Owner of any temporary Bond or Bonds may, at such Registered Owner's option, surrender the same to the Bond Registrar in exchange for another temporary Bond or Bonds of like aggregate principal amount and maturity of any other authorized denomination or denominations, and thereupon the City shall execute and the Bond Registrar shall authenticate and, upon payment of any applicable taxes, fees and charges, shall deliver a temporary Bond or Bonds of like aggregate principal amount and maturity in such other authorized denomination or denominations as shall be requested by such owner.

All temporary Bonds surrendered in exchange either for another temporary Bond or Bonds or for a definitive Bond or Bonds shall be forthwith canceled by the Bond Registrar.

Section 211. Execution and Delivery of the Bonds. The Mayor and City Clerk are hereby authorized and directed to prepare and execute the Bonds in the manner hereinbefore specified, and to cause the Bonds to be registered in the offices of the City Clerk and the State Treasurer as provided by law, and, when duly executed and registered, to deliver the Bonds to the Original Purchaser, upon receipt by the City of the Purchase Price.

Section 212. Book-Entry Bonds; Securities Depository.

(a) The Bonds shall initially be registered to Cede & Co., the nominee for the Securities Depository, and no beneficial owner will receive certificates representing their respective interests in the Bonds, except in the event the Bond Registrar issues Replacement Bonds as provided in subsection (b) hereof. It is anticipated that during the term of the Bonds, the Securities Depository will make book-entry transfers among its Participants and receive and transmit payment of principal of, premium, if any, and interest on, the Bonds to the Participants until and unless the Bond Registrar authenticates and delivers Replacement Bonds to the beneficial owners as described in subsection (b).

(b) (1) If the City determines (A) that the Securities Depository is unable to properly discharge its responsibilities, or (B) that the Securities Depository is no longer qualified to act as a securities depository and registered clearing agency under the Securities and Exchange Act of 1934, as amended, or (C) that the continuation of a book-entry system to the exclusion of any Bonds being issued to any Owner other than Cede & Co. is no longer in the best interests of the beneficial owners of the Bonds, or (2) if the Bond Registrar receives written notice from Participants having interests in not less than 50% of the Bonds Outstanding, as shown on the records of the Securities Depository (and certified to such effect by the Securities Depository), that the continuation of a book-entry system to the exclusion of any Bonds being issued to any Owner other than Cede & Co. is no longer in the best interests of the beneficial owners of the Bonds, then the Bond Registrar shall notify the Owners of such determination or such notice and of the availability of certificates to Owners requesting the same, and the Bond Registrar shall register in the name of and authenticate and deliver Replacement Bonds to the beneficial owners or their nominees in principal amounts representing the interest of each, making such adjustments as it may find necessary or appropriate as to accrued interest and previous calls for redemption; provided, that in the case of a determination under (1)(A) or (1)(B) of this subsection (b), the City, with the consent of the Bond Registrar, may select a successor securities depository in accordance with **Section 212(c)** hereof to effect book-entry transfers. In such event, all references to the Securities Depository herein shall relate to the period of time when the Securities Depository has possession of at least one Bond. Upon the issuance of Replacement Bonds, all references herein to obligations imposed upon or to be performed by the Securities Depository shall be deemed to be imposed upon and performed by the Bond Registrar, to the extent applicable with respect to such Replacement Bonds. If the Securities Depository resigns and the City, the Bond Registrar or Owners are unable to locate a qualified successor of the Securities Depository in accordance with **Section 212(c)** hereof, then the Bond Registrar shall authenticate and cause delivery of Replacement Bonds to Owners, as provided herein. The Bond Registrar may rely on information from the Securities Depository and its Participants as to the names of the beneficial owners of the Bonds. The cost of printing, registration, authentication and delivery of Replacement Bonds shall be paid for by the City.

(c) In the event the Securities Depository resigns, is unable to properly discharge its responsibilities, or is no longer qualified to act as a securities depository and registered clearing agency under the Securities Exchange Act of 1934, as amended, the City may appoint a successor Securities Depository provided the Bond Registrar receives written evidence satisfactory to the Bond Registrar with respect to the ability of the successor Securities Depository to discharge its responsibilities. Any such successor Securities Depository shall be a securities depository which is a registered clearing agency under the Securities and Exchange Act of 1934, as amended, or other applicable statute or regulation that operates a securities depository upon reasonable and customary terms. The Bond Registrar upon its receipt of a Bond or Bonds for cancellation shall cause the delivery of Bonds to the successor Securities Depository in appropriate denominations and form as provided herein.

(d) The execution and delivery of any Representation Letter to the Securities Depository by an authorized officer of the City is hereby authorized and approved.

### ARTICLE III

#### **REDEMPTION OF THE BONDS**

##### Section 301. Redemption of Bonds.

(a) *Optional Redemption.* At the option of the City, Bonds maturing on July 1 in the years 2029, and thereafter, will be subject to redemption and payment prior to maturity on July 1, 2028, and thereafter, as a whole or in part (selection of maturities and the amounts for each maturity of the Bonds to be redeemed to be determined by the City) at any time, at the redemption price of 100% (expressed as a percentage of the principal amount), plus accrued interest to the Redemption Date.

\*\*\*[ (b) *Mandatory Redemption.*

(1) *General.* The Term Bonds shall be subject to mandatory redemption and payment prior to Stated Maturity pursuant to the mandatory redemption requirements at a Redemption Price equal to 100% of the principal amount thereof plus accrued interest to the Redemption Date. At its option, to be exercised on or before the 45th day next preceding any mandatory Redemption Date, the City may: (1) deliver to the Paying Agent for cancellation Term Bonds subject to mandatory redemption on said mandatory Redemption Date, in any aggregate principal amount desired; or (2) furnish the Paying Agent funds, together with appropriate instructions, for the purpose of purchasing any Term Bonds subject to mandatory redemption on said mandatory Redemption Date from any Owner thereof whereupon the Paying Agent shall expend such funds for such purpose to such extent as may be practical; or (3) receive a credit with respect to the mandatory redemption obligation of the City under this Section for any Term Bonds subject to mandatory redemption on said mandatory Redemption Date which, prior to such date, have been redeemed (other than through the operation of the mandatory redemption requirements of this subsection) and cancelled by the Paying Agent and not theretofore applied as a credit against any redemption obligation under this subsection. Each Term Bond so delivered or previously purchased or redeemed shall be credited at 100% of the principal amount thereof on the obligation of the City to redeem Term Bonds of the same Stated Maturity on such mandatory Redemption Date, and any excess of such amount shall be credited on future mandatory redemption obligations for Term Bonds of the same Stated Maturity as designated by the City, and the principal amount of Term Bonds to be redeemed by operation of the requirements of this Section shall be accordingly reduced. If the City intends to exercise any option granted by the provisions of clauses (1), (2) or (3) above, the City will, on or before the 45th day next preceding each mandatory Redemption Date, furnish the Paying Agent a written certificate indicating to what extent the provisions of said clauses (1), (2) and (3) are to be complied with, with respect to such mandatory redemption payment.

(2) *20\_\_ Term Bonds.* The City shall from the payments specified in **Section 702(b)** hereof which are to be deposited into the Principal and Interest Account redeem on July 1 in each year, the following principal amounts of 20\_\_ Term Bonds:

<u>Principal</u> <u>Amount</u>	<u>Year</u>
\$ _____	20__
_____	20__ *

\_\_\_\_\_  
\*Final Maturity

(3) 20 *Term Bonds*. The City shall from the payments specified in **Section 702(b)** hereof which are to be deposited into the Principal and Interest Account redeem on July 1 in each year, the following principal amounts of 20 *Term Bonds*:

Principal <u>Amount</u>	<u>Year</u>
\$ _____	20__
_____	20__ *

\_\_\_\_\_  
\*Final Maturity]\*\*\*

**Section 302. Selection of Bonds to be Redeemed.** The Bonds shall be redeemed only in the principal amount of \$5,000 or any integral multiple thereof. When less than all of the Bonds of a Stated Maturity are to be redeemed and paid prior to maturity, such Bonds shall be redeemed in such manner as the Bond Registrar shall determine, Bonds of less than a full maturity to be selected by lot in units of \$5,000.

In the case of a partial redemption of Bonds when Bonds of denominations greater than \$5,000 are then Outstanding, then for all purposes in connection with such redemption each \$5,000 of face value shall be treated as though it were a separate Bond of the denomination of \$5,000. If it is determined that one or more, but not all, of the \$5,000 units of face value represented by any Bond is selected for redemption, then upon notice of intention to redeem such \$5,000 unit or units, the owner or the owner's duly authorized agent shall forthwith present and surrender such Bond to the Bond Registrar: (i) for payment of the Redemption Price (including the redemption premium, if any, and interest to the Redemption Date) of the \$5,000 unit or units of face value called for redemption; and (ii) for exchange, without charge to the owner thereof, for a new Bond(s) of the aggregate principal amount of the unredeemed portion of the principal amount of such Bond. If the owner of any Bond of a denomination greater than \$5,000 shall fail to present such Bond as aforesaid, such Bond shall, nevertheless, become due and payable on the Redemption Date to the extent of the amount called for redemption.

**Section 303. Notice of Redemption.** In the event the City desires to call the Bonds for optional redemption prior to maturity pursuant to **Section 301**, written notice of such intent shall be provided to the Bond Registrar in accordance with K.S.A. 10-129, as amended, not less than 45 days prior to the Redemption Date. Unless waived by any owner of Bonds to be redeemed, if the City elects to call any Bonds for redemption and payment prior to the maturity thereof, the City shall cause the Bond Registrar to give written notice of its intention to call and pay said Bonds on a specified date, the same being described by maturity, said notice to be mailed by United States first class mail addressed to the owners of said Bonds, each of said notices to be mailed not less than 30 days prior to the Redemption Date. The City shall also give such additional notice as may be required by Kansas law or regulations of the Securities and Exchange Commission in effect as of the date of such notice. \*\*\*[The foregoing provisions of this paragraph shall not apply in the case of any mandatory redemption of Term Bonds hereunder, and Term Bonds shall be called by the Paying Agent for redemption pursuant to such mandatory redemption requirements without the necessity of any action by the City and whether or not the Paying Agent holds moneys available and sufficient to effect the required redemption.]\*\*\*

All official notices of redemption shall be dated and shall state (1) the Redemption Date, (2) the Redemption Price, (3) if less than all Outstanding Bonds are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed, (4) that on the Redemption Date the Redemption Price will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date, (5) the place where such Bonds are to be surrendered for payment of the Redemption Price, which place of payment shall

be the principal office of the Paying Agent and (6) the CUSIP numbers of all Bonds being redeemed. The failure of any Owner to receive notice given as heretofore provided or an immaterial defect therein shall not invalidate any redemption.

Prior to any Redemption Date, the City shall deposit with the Paying Agent an amount of money sufficient to pay the Redemption Price of all the Bonds or portions of Bonds which are to be redeemed on that date. Upon surrender of such Bonds for redemption in accordance with said notice, such Bonds shall be paid by the Paying Agent at the Redemption Price. Installments of interest due on or prior to the Redemption Date shall be payable as herein provided for payment of interest. Upon surrender for any partial redemption of any Bond, there shall be prepared for the Registered Owner a new Bond or Bonds of the same maturity in the amount of the unpaid principal. All Bonds which have been redeemed shall be cancelled and destroyed by the Paying Agent and shall not be reissued.

For so long as the Securities Depository is effecting book-entry transfers of the Bonds, the Bond Registrar shall provide the notices specified in this Section to the Securities Depository. It is expected that the Securities Depository shall, in turn, notify its Participants and that the Participants, in turn, will notify or cause to be notified the beneficial owners. Any failure on the part of the Securities Depository or a Participant, or failure on the part of a nominee of a beneficial owner of a Bond (having been mailed notice from the Bond Registrar, the Securities Depository, a Participant or otherwise) to notify the beneficial owner of the Bond so affected, shall not affect the validity of the redemption of such Bond.

Section 304. Effect of Call for Redemption. Whenever any Bond is called for redemption and payment as provided in this Article, all interest on such Bond shall cease from and after the date for which such call is made, provided funds are available for its payment at the price hereinbefore specified.

## **ARTICLE IV**

### **FORM OF THE BONDS**

Section 401. Form of the Bonds. The Bonds shall be printed in accordance with the format required by the Attorney General of the State of Kansas and shall contain information substantially in the form submitted to the Governing Body concurrently with the passage of the Resolution or as may be required by the Attorney General pursuant to the Notice of Systems of Registration for Kansas Municipal Bonds, 2 Kan. Reg. 921 (1983), in accordance with the Kansas Bond Registration Law, K.S.A. 10-620 to 10-632, inclusive.

## **ARTICLE V**

### **ESTABLISHMENT OF FUNDS AND ACCOUNTS**

Section 501. Creation of Funds and Accounts. There are hereby created and ordered to be established and maintained in the treasury of the City the following separate accounts to be known respectively as the:

(a) Principal and Interest Account for Water and Sewer System Improvement and Refunding Revenue Bonds, Series 2020 (the "Principal and Interest Account").

(b) Bond Reserve Account for Water and Sewer System Improvement and Refunding Revenue Bonds, Series 2020 (the "Bond Reserve Account").



(c) Project Account for Water and Sewer System Improvement and Refunding Revenue Bonds, Series 2020 (the “Project Account”).

(d) Rebate Fund for Water and Sewer System Improvement and Refunding Revenue Bonds, Series 2020 (the “Rebate Fund”).

(e) Costs of Issuance Account for Water and Sewer System Improvement and Refunding Revenue Bonds, Series 2020 (the “Cost of Issuance Account”).

(f) Redemption Fund for Refunded Bonds, with a Series 2010-A Subaccount and a Series 2010-B Subaccount therein.

The following funds and accounts created and established in the treasury of the City are hereby ratified and confirmed and shall be administered in accordance with the Parity Bond Resolutions so long as the Series 2020 Bonds and any Parity Bonds are Outstanding in accordance with this Resolution:

(a) Water and Sewer System Revenue Fund (the “Revenue Fund”).

(b) Water and Sewer System Operation and Maintenance Account (the “Operation and Maintenance Account”).

(c) Water and Sewer System Surplus Account (the “Surplus Account”).

Section 502. Ratification of Funds and Accounts for Parity Bonds. The separate funds and accounts previously created and established pursuant to the Parity Bond Resolutions shall be maintained and administered by the City solely for the purposes and in the manner as provided in the Parity Bond Resolutions, so long as any of the Parity Bonds remain Outstanding within the meaning of any Parity Bond Resolution.

## **ARTICLE VI**

### **APPLICATION OF BOND PROCEEDS AND OTHER MONEYS**

Section 601. Disposition of Bond Proceeds and Other Moneys. The proceeds of the Series 2020 Bonds and certain other moneys shall be deposited simultaneously with the delivery of the Series 2020 Bonds as follows:

(a) In the Principal and Interest Account a sum equal to the accrued interest on the Bonds.

(b) In the Bond Reserve Account, the Bond Reserve Requirement.

(c) The sum equal to the amount necessary to pay the estimated costs of issuance into the Costs of Issuance Account.

(d) The sum of \$[ ] from the proceeds of the Series 2020 Bonds, together with \$428,002.26 provided by the City from the Series 2010-A Bond Reserve Account, shall be deposited in the Series 2010-A Subaccount of the Redemption Fund.

(e) The sum of \$[ ] from the proceeds of the Series 2020 Bonds, together with \$497,784.00 provided by the City from the Series 2010-B Bond Reserve Account, shall be deposited in the Series 2010-B Subaccount of the Redemption Fund.

(f) The remaining balance of the proceeds derived from the sale of the Series 2020 Bonds shall be deposited in the Project Account.

Section 602. Application of Monies in the Project Account. Monies in the Project Account shall be used for the sole purpose of (a) paying the costs of the Project, in accordance with the plans and specifications therefor prepared for the Project, heretofore approved by the Governing Body of the City and on file in the office of the City Clerk, including any alterations in or amendments to said plans and specifications deemed advisable by the City; (b) making transfers to the Principal and Interest Account to pay interest on the Bonds during construction of the Projects; and (c) transferring any amounts to the Rebate Fund required by **Section 604** hereof.

Withdrawals from the Project Account shall be made only when authorized by the Governing Body of the City and only on duly authorized and executed warrants therefor accompanied by a certificate executed by the Treasurer or his or her designee that such payment is being made for a purpose within the scope of this Resolution and that the amount of such payment represents only the contract price of the property, equipment, labor, materials or service being paid for or, if such payment is not being made pursuant to an express contract, that such payment is not in excess of the reasonable value thereof.

Upon completion of the Project, any surplus remaining in the Project Account shall be deposited in the Principal and Interest Account.

Section 603. Application of Moneys in the Redemption Fund. Moneys in the respective subaccounts of the Redemption Fund shall be utilized by the respective Refunded Bonds Paying Agent for the payment of the respective series of Refunded Bonds on the Refunded Bonds Redemption Date. The City Clerk is authorized and instructed to provide appropriate notice of redemption in accordance with the Refunded Bonds Resolution authorizing the issuance of such Refunded Bonds. Any moneys remaining in the Redemption Fund not needed to retire the Refunded Bonds shall be transferred to the Principal and Interest Account.

Section 604. Application of Monies in the Costs of Issuance Account. Monies in the Costs of Issuance Account shall be used to pay the Costs of Issuance. Any funds remaining in the Costs of Issuance Account, after payment of all Costs of Issuance, but not later than July 1, 2020, shall be transferred to the Project Account until completion of the Project and thereafter to the Principal and Interest Account.

Section 605. Deposits into and Application of Monies in the Rebate Fund.

(a) There shall be deposited in the Rebate Fund such amounts as are required to be deposited therein pursuant to the Federal Tax Certificate. All money at any time deposited in the Rebate Fund shall be held in trust, to the extent required to pay arbitrage rebate to the federal government of the United States of America, and neither the City nor the owner of any Bonds shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section and by the Federal Tax Certificate (which is incorporated herein by reference).

(b) The City shall periodically determine the amount of arbitrage rebate under Section 148 of the Code in accordance with the Federal Tax Certificate, and the City shall make payments to the United States Government at the times and in the amounts determined under the Federal Tax Certificate. Any monies

remaining in the Rebate Fund after redemption and payment of all of the Bonds and payment and satisfaction of any rebatable arbitrage, or provision made therefor, shall be withdrawn and released to the City.

(c) Notwithstanding any other provision of the Resolution, including in particular *Article XII* hereof, the obligation to remit rebatable arbitrage to the United States and to comply with all other requirements of this Section and the Federal Tax Certificate shall survive the defeasance or payment in full of the Bonds.

Section 606. Nonpresentment of Bonds. If any Bond is not presented for payment when the principal thereof becomes due at Maturity, if funds sufficient to pay such Bond have been made available to the Paying Agent all liability of the City to the Owner thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Paying Agent to hold such funds, without liability for interest thereon, for the benefit of the Owner of such Bond, who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on his part under this Resolution or on, or with respect to, said Bond. If any Bond is not presented for payment within four years following the date when such Bond becomes due at Maturity, the Paying Agent shall repay, without liability for interest thereon, to the City the funds theretofore held by it for payment of such Bond, and such Bond shall, subject to the defense of any applicable statute of limitation, thereafter be an unsecured obligation of the City, and the Owner thereof shall be entitled to look only to the City for payment, and then only to the extent of the amount so repaid to it by the Paying Agent, and the City shall not be liable for any interest thereon and shall not be regarded as a trustee of such money.

Section 607. Redemption of Refunded Bonds. The Refunded Bonds are hereby called for redemption and payment prior to maturity on the Refunded Bonds Redemption Date. The Refunded Bonds shall be redeemed in accordance with the Refunded Bonds Resolution by the payment of the principal thereof, together with the redemption premium and accrued interest thereon to such Refunded Bonds Redemption Date. The City Clerk is hereby directed to cause notice of the call for redemption and payment of the Refunded Bonds to be given in the manner provided in the Refunded Bonds Resolution. The officers of the Issuer and the Refunded Bonds Paying Agent are hereby authorized and directed to take such other action as may be necessary in order to effect the redemption and payment of the Refunded Bonds as herein provided.

## **ARTICLE VII**

### **COLLECTION AND APPLICATION OF REVENUES**

Section 701. Revenue Fund. The City covenants and agrees that from and after the delivery of the Bonds, and continuing as long as any of the Bonds remain outstanding and unpaid, all of the revenues derived and collected by the City from the operation of the System will be paid and deposited into the Revenue Fund, and that said revenues shall be segregated and kept separate and apart from all other monies, revenues, funds and accounts of the City and shall not be mingled with any other monies, revenues, funds and accounts of the City. The Revenue Fund shall be administered and applied solely for the purposes and in the manner provided in this Resolution.

Section 702. Application of Monies in the Revenue Fund. The City covenants and agrees that from and after the delivery of the Bonds and continuing so long as any of the Bonds shall remain Outstanding and unpaid, the City will on the first day of each month administer and allocate all of the monies then held in the Revenue Fund as follows:

(a) Operation and Maintenance Account. An amount equal to the anticipated Current Expenses for the ensuing month shall be deposited into the Operation and Maintenance Account. All Current Expenses of the System shall be paid as bills accrue, and such bills shall be paid by a proper system of vouchers. Such amounts as may be necessary in the opinion of the Governing Body of the City to pay the reasonable and proper Current Expenses of the System for a period of sixty (60) days may be retained and accumulated in the Operation and Maintenance Account before transfers to the other Accounts hereinafter provided for.

(b) Principal and Interest Account. The City shall set aside and transfer monthly from the Revenue Fund to the Principal and Interest Account, beginning on the first said monthly payments, proportionate monthly amounts (less accrued credits to such Account) of the (i) next maturing interest on the Bonds; and (ii) next maturing principal on the Bonds, to the end that at all times one (1) month prior to maturity of interest, principal, or mandatory call requirements, if any, there shall be sufficient monies in the Principal and Interest Account to transmit maturing interest and principal on the Bonds to the Paying Agent for payment when due. All amounts transferred and credited to the Principal and Interest Account shall be used solely and exclusively for the payment of principal of and interest on the Bonds when the same shall become due and payable. In addition thereto, there shall be transferred to the Principal and Interest Account sufficient sums to pay any fees and expenses of the Bond Registrar and Paying Agent.

The amounts required to be paid and credited to the Principal and Interest Account pursuant to this Section shall be made at the same time and on a parity with the amounts at the time required to be paid and credited to the debt service funds established for the payment of principal of and interest on Parity Bonds under the provisions of the Parity Bond Resolutions.

If at any time the monies in the Revenue Fund shall be insufficient to make in full the payments and credits at the time required to be made by the City to the principal and interest accounts established by the City to pay principal of and interest on the Series 2020 Bonds and any Parity Bonds, the available monies in the Revenue Fund shall be divided among such principal and interest accounts in proportion to the respective principal amounts of the Series 2020 Bonds and any Parity Bonds of the City at the time outstanding which are payable from the monies in such principal and interest accounts.

(c) Bond Reserve Account. Simultaneously with the issuance of the Bonds, the City shall provide that the Bond Reserve Account shall contain an amount equal to the Bond Reserve Requirement. Except as hereinafter provided in this Section or as provided in **Section 802** hereof, all amounts paid and credited to the Bond Reserve Account shall be expended and used by the City solely to prevent any default in the payment of interest on or principal of the Series 2020 Bonds if the monies in the Principal and Interest Account are insufficient to pay the interest on or principal of said Bonds as they become due. So long as the Bond Reserve Account aggregates the Bond Reserve Requirement, no further payments into said Account shall be required, but if the City shall ever be required to expend and use a part of the monies in said Account for the purpose herein authorized and such expenditure shall reduce the amount of said Account below the Bond Reserve Requirement or if the value of the investments in the Bond Reserve Account (determined in accordance with **Section 802**) decline so that the amount of said Account is reduced below the Bond Reserve Requirement, the City shall commence equal monthly payments into said Account in amounts sufficient so that said Account shall aggregate the Bond Reserve Requirement in not more than 24 months, said payments into said Account to be made after making all payments and credits required at the time to be made by the City under the provisions of paragraphs (a) and (b) of this Section.

The amounts required to be paid and credited to the Bond Reserve Account pursuant to this Section shall be made at the same time and on a parity with the amounts at the time required to be paid and credited to the bond reserve accounts established for the Parity Bonds under the provisions of the Parity Bond Resolutions.

Monies in the Bond Reserve Account may be used to call the Bonds for redemption and payment prior to their maturity provided all of the Bonds at the time outstanding are called for payment and funds are available to pay the same according to their terms. Monies in the Bond Reserve Account shall be used to pay and retire the last outstanding Bonds unless such Bonds and all interest thereon are otherwise paid.

If at any time the monies in the Revenue Fund shall be insufficient to make in full the payments and credits at the time required to be made by the City to the bond reserve accounts established by the City to protect the payment of the Series 2020 Bonds and Parity Bonds, the available monies in the Revenue Fund shall be divided among such bond reserve accounts in proportion to the respective principal amounts of said Parity Bonds of the City at the time outstanding which are payable from the monies in such bond reserve accounts.

(d) Surplus Account. After all payments and credits required at the time to be made by the City under the provisions of preceding subsections have been made, all monies remaining in the Revenue Fund shall be paid and credited to the Surplus Account. Monies in the Surplus Account may be expended and used for the following purposes as determined by the Governing Body of the City:

- (1) Paying the cost of the operation, maintenance and repair of the System to the extent that may be necessary after the application of the monies held in the Revenue Fund under the provisions of this Section;
- (2) Paying the cost of, or debt service on obligations incurred to finance the cost of, repairs to or extending, enlarging or improving the System;
- (3) Preventing default in, anticipating payments into or increasing the amounts in funds and accounts referred to in preceding subsections, or any one of them, or establishing or increasing the amount of any principal and interest account or bond reserve account created by the City for the payment of any Parity Bonds;
- (4) Calling, redeeming and paying prior to maturity, or, at the option of the City, purchasing in the open market at the best price obtainable the Bonds or any Parity Bonds;
- (5) To make transfers to the Revenue Fund; or
- (6) Subject to the provisions of the Parity Bond Resolutions, any general governmental or municipal purpose of the City.

Section 703. Deficiency of Payments into Funds and Accounts. If at any time the revenues derived by the City from the operation of the System shall be insufficient to make any payment on the date or dates hereinbefore specified, the City will make good the amount of such deficiency by making additional payments or credits out of the first available revenues thereafter received by the City from the operation of the System, such payments and credits being made and applied in the order hereinbefore specified in this Resolution.



If at any time the monies in the Principal and Interest Account and in the Bond Reserve Account are not sufficient to pay the principal of and interest on the Bonds as and when the same become due, then monies in the Surplus Account may and shall be used by the City, to prevent any default in the payment of the principal of and interest on the Bonds.

Section 704. Transfer of Funds to Paying Agent. The Treasurer of the City is hereby authorized and directed to withdraw from the Principal and Interest Account, and, to the extent necessary to prevent a default in the payment of either principal of or interest on the Bonds, from the Bond Reserve Account and the Surplus Account as provided herein, sums sufficient to pay the principal of and interest on the Bonds and the fees of the Bond Registrar and Paying Agent when the same become due, and to forward such sums to the Bond Registrar and Paying Agent prior to dates when such principal, interest and fees of the Bond Registrar and Paying Agent will become due. If, through lapse of time, or otherwise, the owners of Bonds shall no longer be entitled to enforce payment of their obligations, it shall be the duty of the Paying Agent forthwith to return said funds to the City. All monies deposited with the Paying Agent shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Resolution.

Section 705. Payments Due on Saturdays, Sundays and Holidays. In any case where any payment date on the Bonds is not a Business Day, then payment of principal, Redemption Price or interest need not be made on such payment date but may be made on the next succeeding Business Day with the same force and effect as if made on such payment date, and no interest shall accrue for the period after such payment date.

## **ARTICLE VIII**

### **DEPOSIT AND INVESTMENT OF MONIES**

Section 801. Deposits. Cash monies in each of the funds and accounts created by and referred to in this Resolution shall be deposited in a bank or banks or federal or state chartered savings and loan association with offices located as required by Kansas law, which are members of the Federal Deposit Insurance Corporation, and all such deposits shall be adequately secured by the bank or banks or savings and loan associations holding such deposits in accordance with Kansas law.

Section 802. Investments. Monies held in the funds and accounts herein created, ratified or established in conjunction with the issuance of the Bonds, other than the Redemption Fund, may be invested by the City in Authorized Investments, or in other investments allowed by Kansas law in accordance with the Federal Tax Certificate in such amounts and maturing at such times as shall reasonably provide for monies to be available when required in said accounts or funds. Interest or earnings on any Authorized Investment held in any fund or account shall accrue to and become a part of such fund or account, except for amounts required to be deposited into the Rebate Fund in accordance with the Federal Tax Certificate, and except that so long as monies in the Bond Reserve Account are equal to or greater than the Bond Reserve Requirement, earnings on investments held in the Bond Reserve Account shall be credited to the Principal and Interest Account. In determining the amount held in any fund or account under the provisions of the Resolution, Authorized Investments shall be valued at their principal par value or at their then market value, whichever is lower.

So long as any of the Parity Bonds remain outstanding and unpaid, any investments made pursuant to this Section shall be subject to any restrictions in the Parity Bond Resolutions with respect to the funds and accounts created by and referred to in the Parity Bond Resolutions.

## ARTICLE IX

### **PARTICULAR COVENANTS OF THE CITY**

The City covenants and agrees with each of the purchasers and owners of any of the Bonds that so long as any of the Bonds remain Outstanding:

Section 901. Efficient and Economical Operation. The City will continuously own and will operate the System in an efficient and economical manner and will keep and maintain the same in good repair and working order.

Section 902. Rate Covenant. The City will fix, establish, maintain and collect such rates, fees and charges for the use and services furnished by or through the System as provided in **Section 5** of the Ordinance.

Section 903. Reasonable Charges for all Services. None of the facilities or services provided by the System will be furnished to any user (excepting the City itself) without a reasonable charge being made therefor. In the event that the revenues derived by the City from the System shall at any time be insufficient to pay the reasonable expenses of operation and maintenance of the System and also to pay the Debt Service Requirements of the Bonds and any Parity Bonds as and when the same become due, then the City will thereafter pay into the Revenue Fund a fair and reasonable payment in accordance with effective applicable rates, fees and charges for all services or other facilities furnished to the City or any of its departments by the System, and such payments will continue so long as the same may be necessary in order to prevent or reduce the amount of any default in the payment of the interest on or principal of the Bonds.

Section 904. Restrictions on Mortgage or Sale of System. The City will not sell, lease or otherwise dispose of the System or any material part thereof, or any extension or improvement thereof; provided, however, the City may permanently abandon the use of, or sell at fair market value, or lease any of its System facilities, provided that:

(a) It is in full compliance with all covenants and undertakings in connection with all of its bonds then outstanding and payable from the revenues of the System, or any part thereof;

(b) In the event of sale, it will apply the proceeds to either (i) redemption or outstanding bonds in accordance with the provisions governing repayment of bonds in advance of maturity, or (ii) replacement of the facility so disposed of by another facility the revenues of which shall be incorporated into the System as hereinbefore provided;

(c) It certifies, prior to any abandonment of use, that the facility to be abandoned is no longer economically feasible of producing Net Revenues;

(d) It certifies that the estimated Net Revenues of the remaining System facilities for the next succeeding fiscal year plus the estimated Net Revenues of the facilities, if any, to be added to the System satisfy the rate covenants provided in this Resolution; and

(e) With respect to a lease, the City may lease (1) as lessor, any real or personal property which is unused or unimproved, or which has become obsolete, nonproductive or otherwise unusable to the advantage of the City, or which is being acquired as a part of a lease/purchase financing for the acquisition and/or improvement of such property; and/or (2) as lessee, with an option of the City to purchase, any real or personal property for the extension and

improvement of the System. Property being leased as lessor and/or lessee pursuant to this subparagraph (e) shall not be treated as part of the System for purposes of this **Section 904** and may be mortgaged, pledged or otherwise encumbered.

Section 905. Financial Records and Reports. The City will install and maintain proper books, records and accounts (entirely separate from all other records and accounts of the City) in which complete and correct entries will be made of all dealings and transactions of or in relation to the System. Such accounts shall show the amount of revenues received from the System, the application of such revenues, and all financial transactions in connection therewith. Said books shall be kept by the City according to generally accepted accounting principles as applicable to the operation of municipal utilities.

Section 906. Annual Budget. Prior to the commencement of each fiscal year, the City will cause to be prepared and filed with the City Clerk a budget setting forth the estimated receipts and expenditures of the System for the next succeeding fiscal year. Said annual budget shall be prepared in accordance with the requirements of the laws of the State of Kansas, and shall contain normal budgetary items, including:

- (a) An estimate of the receipts from the System during the next ensuing fiscal year.
- (b) A statement of the estimated cost of operating the System during the next ensuing fiscal year.
- (c) A statement of any anticipated unusual expenses for the System during the next fiscal year.
- (d) A statement of any necessary replacements to the System which may be anticipated during the next fiscal year.
- (e) A statement of the amount of principal and interest to be paid on outstanding revenue bonds and general obligation bonds to be paid from revenues of the System during the next fiscal year.
- (f) A statement of the total estimated expenditures to be made from the revenues of the System during the next fiscal year.
- (g) A statement of the estimated Net Revenues during the next fiscal year.

Section 907. Annual Audit. Annually, promptly after the end of the fiscal year, the City will cause an audit to be made of the System for the preceding fiscal year by an Independent Accountant to be employed for that purpose and paid from the revenues of the System. Said annual audit shall include:

- (a) A classified statement of the gross revenues received, the expenditures for operation and maintenance, the net operating revenues and the amount of any capital expenditures made in connection with the System during the previous fiscal year;
- (b) A complete balance sheet as of the end of each fiscal year with the amount on hand at the end of such year in each of the funds and accounts created by and referred to in this Resolution;
- (c) A statement showing the Net Revenues for such fiscal year;

(d) A statement of all System revenue bonds matured or redeemed and interest paid on bonds during said fiscal year;

(e) A statement of the number of customers served by the System at the beginning and the end of such fiscal year;

(f) A statement showing the amount and character of the insurance carried by the City on the property constituting the System and showing the names of the insurers, the expiration dates of the policies and the premiums thereon; and

(g) Such remarks and recommendations regarding the City's practices and procedures of operating the System and its accounting practices as said accountants may deem appropriate.

Within 30 days after the completion of each such audit, a copy thereof shall be filed in the office of the City Clerk. Such audits shall at all times during the usual business hours be open to examination and inspection by any taxpayer, any user of the services of the System, any owner of any of the Bonds, or by anyone acting for or on behalf of such taxpayer, user or owner.

As soon as possible after the completion of such annual audit, the Governing Body of the City shall review such audit, and if any audit shall disclose that proper provision has not been made for all of the requirements of this Resolution and the law under which the Bonds are issued, the City covenants and agrees that it will promptly cure such deficiency and will promptly (within 60 days) proceed to increase the rates, fees and charges to be charged for the use and services furnished by the System as may be necessary to adequately provide for such requirements.

Section 908. Bondowners' Right of Inspection. The owner or owners of not less than 10% of the principal amount of the Bonds shall have the right at all reasonable times to inspect the System and all records, accounts and data relating thereto shall be furnished all such information concerning the System and the operation thereof which such may reasonably be requested.

Section 909. Performance of Duties. The City will faithfully and punctually perform all duties and obligations with respect to the operation of the System now or hereafter imposed upon the City by the Constitution and laws of the State of Kansas and by the provisions of this Resolution.

Section 910. Parity Bond Certification. The City hereby represents and covenants that the Series 2020 Bonds directed to be issued by this Resolution are so issued in full compliance with the restrictions and conditions upon which the City may issue Additional Bonds payable out of the revenues derived from the operation of the System and which stand on a parity with the Parity Bonds heretofore issued and Outstanding, as set forth and contained in the Parity Bond Resolutions, and that the Series 2020 Bonds herein directed to be issued are so issued in all respects on a parity and equality with the Parity Bonds heretofore issued and Outstanding.

## **ARTICLE X**

### **ADDITIONAL BONDS**

Section 1001. Prior Lien Bonds. The City covenants and agrees that so long as any of the Bonds remain outstanding and unpaid, the City will not issue any Bonds or other long term obligations payable out of the revenues of the System or any part thereof which are superior to the Bonds.

Section 1002. Parity Lien Bonds. The City covenants and agrees that so long as any of the Bonds remain outstanding and unpaid, the City will not issue any Additional Bonds or other long-term obligations payable out of the revenues of the System or any part thereof which stand on a parity or equality with the Bonds unless all of the following conditions are met:

(a) The City shall not be in default in the payment of principal of or interest on the Bonds or in making any payment at the time required to be made into the respective funds and accounts created by and referred to in this Resolution.

(b) The City shall certify to either of the following:

(i) The Debt Service Coverage Ratio (as determined by the City) for the fiscal year immediately preceding the issuance of Additional Bonds shall have been equal to not less than 1.10, including the Additional Bonds proposed to be issued. In the event that the City has instituted any increase in rates for the use and services of the System and such increase shall not have been in effect during the full fiscal year immediately preceding the issuance of Additional Bonds, the additional Net Revenues which would have resulted from the operation of the System during said preceding fiscal year had such rate increase been in effect for the entire period, as certified by a Consultant, may be added to the stated Net Revenues.

(ii) The estimated Debt Service Coverage Ratio (as determined by a Consultant), for the fiscal year immediately following the fiscal year in which the project to be financed by the Additional Bonds proposed to be issued is to be in commercial operation, shall be not less than 1.10, including the Additional Bonds proposed to be issued. In the event that the City anticipates additional revenues as a result of an increase in rates and/or expansion or modification of the System by the Additional Bonds or any other obligations, the Consultant may adjust the estimated Net Revenues in determining the Debt Service Coverage Ratio, by adding thereto any estimated increase in Net Revenues resulting from any increase in revenues for the use and services of the System, which, in the opinion of the Consultant, are reasonable based on projected rates and operations of the System for such fiscal year.

(c) When the issuance of additional System revenue bonds of equal stature and priority is permitted by the Statutes of the State of Kansas.

(d) The ordinance and/or resolution authorizing such additional parity bonds shall contain or provide that the bond reserve account for such additional parity bonds shall be funded in an amount equal to the maximum amount permitted by the Code to be deposited from the proceeds of such additional parity bonds in a debt service reserve fund therefor without being subject to yield restriction under the Code and without causing the interest on such additional bonds to be includable in gross income for federal income tax purposes.



Notwithstanding the foregoing restrictions upon the issuance of Additional Bonds, Additional Bonds may be issued under this Section if it is necessary in the opinion of a Consulting Engineer to repair any damage or loss to the System if the same has been damaged or destroyed by disaster to such extent that it cannot be operated or if it is necessary to keep the System in good operating condition.

Additional revenue bonds of the City issued under the conditions set forth in this Section shall stand on a parity with the Bonds and shall enjoy complete equality of lien on and claim against the revenues of the System with the Bonds, and the City may make equal provision for paying said bonds and the interest thereon out of the Revenue Fund and may likewise provide for the creation of reasonable principal and interest accounts and bond reserve accounts for the payment of such Additional Bonds and the interest thereon out of monies in the Revenue Fund.

Section 1003. Junior Lien Bonds. In addition to the authority to issue Parity Bonds as set forth in the preceding section, the City may issue revenue bonds or other long-term obligations payable out of the revenues of the System or any part thereof which shall be junior and subordinate to the Bonds. If at any time the City shall be in default in paying any interest on or principal of the Bonds or in making any of the transfers required to any of the accounts or funds herein specified, then the City shall make no payment of either principal of or interest on such subordinate bonds or other long-term obligations payable out of the revenues of the System or any part thereof until all conditions of default shall be cured.

Section 1004. Refunding Bonds. The City shall have the right to refund any of the Bonds under the provisions of any law then available. Said Bonds or any part thereof may be refunded and the refunding bonds so issued shall enjoy complete equality of pledge and shall be on a parity with any of the Bonds which are not refunded, if any, upon the revenues of the System without complying with the requirements of *Section 1002*.

## **ARTICLE XI**

### **DEFAULT AND REMEDIES**

Section 1101. Contract with Owners. The provisions of this Resolution, including the covenants and agreements herein contained, shall constitute a contract between the City and the owners of the Bonds.

Section 1102. Acceleration and Other Remedies. If an Event of Default shall occur and continue for a period of 60 days after written notice specifying such default has been given to the City by the Registered Owner of any Bond then Outstanding, then, at any time thereafter and while such default continues, the Registered Owners of 25% in principal amount of the Bonds then Outstanding, may, by written notice to the City filed in the office of the City Clerk or delivered in person to said City Clerk, declare the principal of all Bonds then Outstanding to be due and payable immediately, and upon any such declaration given as aforesaid, all of said Bonds shall become and be immediately due and payable, anything in this Resolution or the Ordinance or in the Bonds contained to the contrary notwithstanding. This provision, however, is subject to the condition that if at any time after the principal of said Outstanding Bonds has been so declared to be due and payable, all arrears of interest upon all of said Bonds, except interest accrued but not yet due on such Bonds, and all arrears of principal upon all of said Bonds has been paid in full and all other defaults, if any, by the City under the provisions of this Resolution and the Ordinance and under the provisions of the statutes of the State of Kansas have been cured, then and in every such case the Registered Owners of a majority in principal amount of the Bonds then Outstanding, by written notice to the City given as hereinbefore specified,

may rescind and annul such declaration and its consequences, but no such rescission or annulment shall extend to or affect any subsequent default or impair any rights consequent thereon.

If an Event of Default shall occur and be continuing, the Owner or Owners of not less than 10% in principal amount of the Bonds at the time Outstanding, shall have the right for the equal benefit and protection of all Owners of Bonds similarly situated:

(a) by mandamus or other suit, action or proceedings at law or in equity to enforce the rights of such owner or owners against the City and its officers, agents and employees, and to require and compel duties and obligations required by the provisions of the Resolution or by the Constitution and laws of the State of Kansas;

(b) by suit, action or other proceedings in equity or at law to require the City, its officers, agents and employees to account as if they were the trustees of an express trust; and

(c) by suit, action or other proceedings in equity or at law to enjoin any acts or things which may be unlawful or in violation of the rights of the owners of the Bonds.

In case any proceeding taken by any owner on account of any default shall have been discontinued or abandoned for any reason, then and in every such case the City and the owners shall be restored to their former positions and rights hereunder, respectively, and all rights and remedies of the owners shall continue as though no such proceedings had been taken.

Section 1103. Limitation on Remedies. The covenants and agreements of the City contained herein and in the Bonds shall be for the equal benefit, protection, and security of the owners of any or all of the Bonds, all of which Bonds shall be of equal rank and without preference or priority of one Bond over any other Bond in the application of the funds herein pledged to the payment of the principal of and the interest on the Bonds, or otherwise, except as to rate of interest, date of maturity and right of prior redemption as provided in the Resolution. No one or more Bondowners secured hereby shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security granted and provided for herein, or to enforce any right hereunder, except in the manner herein provided, and all proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all owners of such Outstanding Bonds.

Section 1104. Remedies Cumulative. No remedy herein conferred on the owners is intended to be exclusive of any other remedy or remedies, and each and every remedy conferred shall be cumulative and shall be in addition to every other remedy given hereunder and under the Act or now or hereafter existing at law or in equity or by statute.

No delay or omission of any owner to exercise any right or power accruing upon any default occurring and continuing as aforesaid shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Article to the owners may be exercised from time to time and as often as may be deemed expedient. In case any suit, action or proceedings taken by any Bondowner on account of any default or to enforce any right or exercise any remedy shall have been discontinued or abandoned for any reason, or shall have been determined adversely to such Bondowner, then, and in every such case, the City and the owners of the Bonds shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the Bondowners shall continue as if no such suit, action or other proceedings had been brought or taken.

Section 1105. No Obligation to Levy Taxes. Nothing contained in this Resolution shall be construed as imposing on the City any duty or obligation to levy any taxes either to meet any obligation incurred herein or to pay the principal of or interest on the Bonds.

## **ARTICLE XII**

### **DEFEASANCE**

Section 1201. Defeasance. When all of the Bonds shall have been paid and discharged, then the requirements contained in this Resolution and the pledge of revenues made hereunder and all other rights granted hereby shall terminate. Bonds shall be deemed to have been paid and discharged within the meaning of this Resolution if there shall have been deposited with the Paying Agent or a bank located in the State of Kansas and having full trust powers, at or prior to the maturity or Redemption Date of said Bonds, in trust for and irrevocably appropriated thereto, monies (insured at all times by the Federal Deposit Insurance Corporation or collateralized with the following direct obligations of the United States of America) and/or direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury) which, together with the interest to be earned on any such obligations, will be sufficient for the payment of the principal of said Bonds, the redemption premium thereon, if any, and interest accrued to the date of maturity or redemption, as the case may be, or if default in such payment shall have occurred on such date, then to the date of the tender of such payments; provided, however, that if any such Bonds shall be redeemed prior to the maturity thereof, the City shall have elected to redeem such Bonds and either notice of such redemption shall have been given or the City shall have given irrevocable instructions to the Bond Registrar to redeem such Bond. Any monies and obligations which at any time shall be deposited with said Paying Agent or other bank by or on behalf of the City, for the purpose of paying and discharging any of the Bonds, shall be and are hereby assigned, transferred and set over to the Paying Agent or other bank in trust for the respective owners of the Bonds, and such monies shall be and are hereby irrevocably appropriated to the payment and discharge hereof. All monies deposited with the Paying Agent or other bank shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Resolution.

## **ARTICLE XIII**

### **AMENDMENTS**

Section 1301. Amendments. Except as set forth herein, the provisions of the Bonds authorized by this Resolution and the provisions of this Resolution may be modified or amended at any time by the City with the written consent of the Owners of not less than a majority in aggregate principal amount of the Bonds herein authorized at the time Outstanding; provided, however, that no such modification or amendment shall permit or be construed as permitting: (a) the extension of the maturity of the principal of any of the Bonds issued hereunder, or the extension of the maturity of any interest on the Bonds issued hereunder, or (b) a reduction in the principal amount of the Bonds or the rate of interest thereon, or (c) a reduction in the percentage in principal amount of the Bonds required for the written consent to any modification or alteration of the provisions of this Resolution, or (d) permit preference or priority of any Bonds over any other Bonds without in each instance the prior written consent of 100% of the Owners of Bonds herein authorized at the time Outstanding.

The City may from time to time, without the consent of or notice to any of the owners, provide for amendment to the Bonds or the Resolution, for any one or more of the following purposes:

- (a) To cure any ambiguity or formal defect or omission in this Resolution or to make any other change not prejudicial to the owners;
- (b) To grant to or confer upon the owners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the owners;
- (c) To more precisely identify the Project;
- (d) To conform such Resolution to the Code or future applicable federal law concerning tax-exempt obligations.

Section 1302. Written Evidence of Amendments. Every amendment or modification of a provision of the Bonds or of this Resolution to which the written consent of the owners is given shall be expressed in an ordinance of the City amending or supplementing the provisions of this Resolution and shall be deemed to be a part of this Resolution. It shall not be necessary to note on any of the Outstanding Bonds any reference to such amendment or modification, if any. Prior to the passage of such ordinance, the City shall receive an opinion from Bond Counsel to the effect that the proposed amendment is in compliance with the requirements of the preceding Section and that the adoption of the ordinance authorizing such amendment will not adversely affect the tax-exempt status of the interest on the Bonds. A certified copy of every such amendatory or supplemental ordinance, if any, and a certified copy of this Resolution shall always be kept on file in the office of the City Clerk and shall be made available for inspection by the owners of any Bond or prospective purchaser or owners of any Bond authorized by this Resolution, and upon payment of the reasonable cost of preparing the same, a certified copy of any such amendatory or supplemental ordinance or of this Resolution will be sent by the City Clerk to any such Owner or prospective Owner.

## **ARTICLE XIV**

### **CONTINUING DISCLOSURE REQUIREMENTS AND TAX COVENANTS**

Section 1401. Disclosure Requirements. The City hereby covenants with the Purchaser and the Beneficial Owners to provide and disseminate such information as is required by the SEC Rule and as further set forth in the Disclosure Undertaking, the provisions of which are incorporated herein by reference. Such covenant shall be for the benefit of and enforceable by the Purchaser and the Beneficial Owners.

Section 1402. Failure to Comply with Continuing Disclosure Requirements. In the event the City fails to comply in a timely manner with its covenants contained in the preceding section, the Original Purchaser and/or any such Beneficial Owner may make demand for such compliance by written notice to the City. In the event the City does not remedy such noncompliance within 10 days of receipt of such written notice, the Original Purchaser or any such Beneficial Owner may in its discretion, without notice or demand, proceed to enforce compliance by a suit or suits in equity for the specific performance of such covenant or agreement contained in the preceding section or for the enforcement of any other appropriate legal or equitable remedy as the Original Purchaser and/or any such Beneficial Owner shall deem effectual to protect and enforce any of the duties of the City under such preceding section.

Section 1403. General Tax Covenants. The City covenants and agrees that it will comply with: (a) all applicable provisions of the Code necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on the Series 2020 Bonds; and (b) all provisions and requirements of the Federal Tax Certificate. The Mayor and City Clerk are hereby authorized and directed to execute the

Federal Tax Certificate in a form approved by Bond Counsel, for and on behalf of and as the act and deed of the City. The City will, in addition, adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published rulings and judicial decisions, in order to ensure that the interest on the Series 2020 Bonds will remain excluded from federal gross income, to the extent any such actions can be taken by the City.

Section 1404. Survival of Covenants. The covenants contained in *Sections 1403* and in the Federal Tax Certificate shall remain in full force and effect notwithstanding the defeasance of the Series 2020 Bonds pursuant to *Article XII* hereof or any other provision of this Resolution until such time as is set forth in the Federal Tax Certificate.

## **ARTICLE XV**

### **MISCELLANEOUS PROVISIONS**

Section 1501. Sale of the Bonds. The sale of the Bonds to the Original Purchaser at the Purchase Price is hereby authorized and approved. The Mayor and City Clerk are hereby authorized to execute the bid form evidencing the bid submitted by the Original Purchaser.

Section 1502. Preliminary Official Statement and Official Statement. The City hereby ratifies and confirms its prior approval of the form and content of the Preliminary Official Statement prepared in the initial offering and sale of the Bonds. The Preliminary Official Statement is “deemed final” by the City except for the omission of certain information as provided in Securities and Exchange Commission Rule 15c2-12. The City hereby approves the form and content of any addenda, supplement, or amendment thereto utilized to prepare a final Official Statement. The Official Statement is “deemed final” by the City in accordance with the provisions of Securities and Exchange Commission Rule 15c2-12. The use of such Official Statement in the reoffering of the Bonds by the Original Purchaser is hereby approved and authorized. The proper officials of the City are hereby authorized to execute and deliver a certificate pertaining to such Official Statement as prescribed therein, dated as of the date of payment for and delivery of the Bonds.

Section 1503. Notices, Consents and Other Instruments by Bondowners. Any notice, consent, request, direction, approval, objection or other instrument required by this Resolution to be signed and executed by the Bondowners may be in any number of concurrent writings of similar tenor and may be signed or executed by such Bondowners in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Resolution, and shall be conclusive in favor of the City, the Bond Registrar and Paying Agent with regard to any action taken, suffered or omitted under any such instrument, namely:

(a) The fact and date of the execution by any person of any such instrument may be proved by a certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such instrument acknowledged before such officer the execution thereof, or by affidavit of any witness to such execution.

(b) The fact of ownership of Bonds, the amount or amounts, numbers and other identification of Bonds, and the date of holding the same shall be proved by the registration books of the City maintained by the Bond Registrar.



Section 1504. Parties Interested Herein; Third Party Beneficiaries. Nothing in this Resolution expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than the City, the Paying Agent and the Owners, any right, remedy or claim under or by reason of this Resolution or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Resolution contained by and on behalf of the City shall be for the sole and exclusive benefit of the City, the Paying Agent and the Owners.

Section 1505. Further Authority. The officers of the City, including the Mayor, City Clerk and Director of Resource Management, shall be, and they hereby are, authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Resolution to make alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 1506. Severability. In case any one or more of the provisions of this Resolution or of the Bonds issued hereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Resolution, or of the Bonds appertaining thereto, but this Resolution and said Bonds shall be construed and enforced as if such illegal or invalid provision had not been contained herein. In case any covenant, stipulation, obligation or agreement contained in the Bonds or in this Resolution shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the City to the full extent permitted by law.

Section 1507. Governing Law. This Resolution shall be governed exclusively by and constructed in accordance with the applicable laws of the State of Kansas.

Section 1508. Inconsistent Provisions. In case any one or more of the provisions of this Resolution or of the Bonds issued hereunder shall for any reason be inconsistent with the provisions of any Parity Resolution or any Parity Bonds: (a) the provisions of any Parity Resolution adopted prior to this Resolution shall prevail with respect to Parity Bonds issued prior in time, so long as such Parity Bonds are Outstanding; and (b) the provisions of this Resolution shall prevail with respect to any Parity Resolution adopted subsequent to the Resolution, so long as any Parity Bonds issued under this Resolution are Outstanding.

Section 1509. Electronic Transactions. The transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 1510. Effective Date. This Resolution shall take effect and be in full force from and after its adoption by the Governing Body.

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**ADOPTED** by the Governing Body of the City of Olathe, Kansas, on May 19, 2020.

(Seal)

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Mayor

ATTEST:

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City Clerk

**EXHIBIT A**

**(FORM OF BOND)**

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York Corporation ("DTC"), to the City or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

**REGISTERED  
NUMBER \_\_\_\_\_**

**REGISTERED  
\$ \_\_\_\_\_**

**UNITED STATES OF AMERICA  
STATE OF KANSAS  
COUNTY OF JOHNSON  
CITY OF OLATHE  
WATER AND SEWER SYSTEM IMPROVEMENT AND REFUNDING REVENUE BOND  
SERIES 2020**

**Interest  
Rate: \_\_\_\_%**

**Maturity  
Date: July 1, 20\_\_\_\_**

**Dated  
Date: June 4, 2020**

**CUSIP:**

**REGISTERED OWNER:**

**PRINCIPAL AMOUNT:**

**KNOW ALL PERSONS BY THESE PRESENTS:** That the City of Olathe, in the County of Johnson, State of Kansas (the "City"), for value received, hereby acknowledges itself to be indebted and promises to pay to the registered owner identified above, or registered assigns, but solely from the net revenues derived by the City from the operation of its water and sewer system (the "System") as hereinafter specified, as of the Record Dates as hereinafter provided on the Maturity Date identified above, the Principal Amount identified above, and in like manner to pay interest on such Principal Amount from the date hereof or the most recent Interest Payment Date to which interest has been paid or duly provided for at the rate of interest per annum set forth above (computed on the basis of a 360-day year of twelve 30-day months), semiannually on January 1 and July 1 of each year, commencing July 1, 2020 (the "Interest Payment Dates"), until the Principal Amount is paid, unless this Bond shall have been previously called for redemption and payment as hereinafter set forth.

The principal of, premium, if any, and interest on this Bond shall be payable in lawful money of the United States of America by the Treasurer of the State of Kansas, Topeka, Kansas (the "Paying Agent" and "Bond Registrar"). The principal of and any premium on this Bond shall be payable to the Registered Owner hereof upon presentation of this Bond at the maturity or Redemption Date to the Paying Agent for payment and cancellation. The interest payable on this Bond shall be paid by check or draft mailed by the Paying

Agent to the Registered Owner hereof at the address appearing on the registration books of the City maintained by the Bond Registrar or at such other address provided in writing by the Registered Owner to the Bond Registrar at the close of business on the fifteenth day of the month preceding the Interest Payment Date (the “Record Dates”) or in the case of an interest payment to any registered owner of \$500,000 or more in aggregate principal amount of Bonds, by electronic transfer to such registered owner upon written notice given to the Paying Agent by such registered owner not less than 15 days prior to the Record Date for such interest, containing the electronic transfer instructions including the bank (which shall be in the continental United States), address, ABA routing number and account number to which such registered owner wishes to have such transfer directed. Interest not punctually paid will be paid in the manner established in the hereinafter defined Ordinance.

The principal of, premium, if any, and all interest on this Bond and all other Bonds of the Series of which it is part are hereby made a lien on and are secured by a pledge of the revenues derived from the operation of the System, subject to operation and maintenance expense, and are to be paid solely and only from a separate and special fund, known and identified as the Water and Sewer System Revenue Fund, into which there are to be paid from revenues derived from the rates, fees and charges for the use thereof and for all services rendered by and collected by the City from the operation of the System, as the same now exists or may hereafter be altered, repaired, extended, enlarged or improved in accordance with the Ordinance of the City authorizing the Bonds and the Resolution of the City prescribing the form and details of the Bonds (jointly the “Ordinance”). This Bond does not constitute a general obligation of the City, is not payable in any manner from funds raised by taxation, nor does it constitute an indebtedness of the City within the meaning of any constitutional or statutory provision, limitation or restriction. The Bonds stand on a parity and are equally and ratably secured with respect to the payment of principal and interest from the net income and revenues of the System and in all other respect to a series of a series of Taxable Water and Sewer System Revenue Bonds, Series 2010-C (Build America Bonds – Direct Pay), of the City, dated December 28, 2010; a series of Water and Sewer System Revenue Bonds, Series 2012, of the City, dated December 18, 2012; a series of Water and Sewer System Revenue Bonds, Series 2015, of the City, dated October 1, 2015; a series of Water and Sewer System Improvement and Refunding Revenue Bonds, Series 2017, of the City, dated April 4, 2017; a series of Water and Sewer System Revenue Bonds, Series 2018, of the City, dated April 18, 2018; and a series of Water and Sewer System Improvement and Refunding Revenue Bonds, Series 2019, of the City, dated April 18, 2019.

This Bond is one of an authorized series of Bonds of the City designated “Water and Sewer System Improvement and Refunding Revenue Bonds, Series 2020”, in an aggregate principal amount of \$[PRINCIPAL AMOUNT] (the “Bonds”) issued for the purposes set forth in the Ordinance. The Bonds are issued by the authority of and in full compliance with the provisions, restrictions and limitations of the Constitution and laws of the State of Kansas, including K.S.A. 10-101 *et seq.*, specifically including K.S.A. 10-116a, K.S.A. 10-620 *et seq.*, and K.S.A. 10-1201 *et seq.*, all as amended and supplemented, and all other provisions of the laws of the State of Kansas applicable thereto. Terms used herein and not otherwise defined shall have the meaning set forth in the Ordinance.

The Bonds are subject to redemption and payment prior to maturity, as set forth in the Bond Resolution.

The Bonds are being issued by means of a book-entry system with no physical distribution of bond certificates to be made except as provided in the Resolution. One Bond certificate with respect to each date on which the Bonds are stated to mature, registered in the nominee name of the Securities Depository, is being issued and required to be deposited with the Securities Depository and immobilized in its custody. The book-entry system will evidence positions held in the Bonds by the Securities Depository’s participants, beneficial

ownership of the Bonds in authorized denominations being evidenced in the records of such participants. Transfers of ownership shall be effected on the records of the Securities Depository and its participants pursuant to rules and procedures established by the Securities Depository and its participants. The City, the Bond Registrar and the Paying Agent will recognize the Securities Depository nominee, while the registered owner of this Bond, as the owner of this Bond for all purposes, including (i) payments of principal of, and redemption premium, if any, and interest on, this Bond, (ii) notices and (iii) voting. Transfers of principal, interest and any redemption premium payments to participants of the Securities Depository, and transfers of principal, interest and any redemption premium payments to beneficial owners of the Bonds by participants of the Securities Depository will be the responsibility of such participants and other nominees of such beneficial owners. The City, the Bond Registrar and the Paying Agent will not be responsible or liable for such transfers of payments or for maintaining, supervising or reviewing the records maintained by the Securities Depository, the Securities Depository nominee, its participants or persons acting through such participants. While the Securities Depository nominee is the owner of this Bond, notwithstanding the provision hereinabove contained, payments of principal of and interest on this Bond shall be made in accordance with existing arrangements among the City, the Bond Registrar and the Securities Depository.

**EXCEPT AS OTHERWISE PROVIDED IN THE RESOLUTION, THIS GLOBAL BOND MAY BE TRANSFERRED, IN WHOLE BUT NOT IN PART, ONLY TO ANOTHER NOMINEE OF THE SECURITIES DEPOSITORY OR TO A SUCCESSOR SECURITIES DEPOSITORY OR TO A NOMINEE OF A SUCCESSOR SECURITIES DEPOSITORY.** The Bonds are issued in fully registered form in the denomination of \$5,000 or any integral multiple thereof. This Bond may be exchanged at the office of the Bond Registrar for a like aggregate principal amount of Bonds of the same maturity of other authorized denominations upon the terms provided in the Ordinance.

The City hereby covenants with the owner of this Bond to keep and perform all covenants and agreements contained in the Ordinance, and the City will fix, establish, maintain and collect such rates, fees and charges for the use and services furnished by or through the System of the City as will produce revenues sufficient to pay the cost of operation and maintenance of the System, pay the principal of and interest on the Bonds as and when the same become due, and provide reasonable and adequate reserve funds. Reference is made to the Ordinance for a description of the covenants and agreements made by the City with respect to the collection, segregation and application of the revenues of the System of the City, the nature and extent of the security of the Bonds, the rights, duties and obligations of the City with respect thereto, and the rights of the owners thereof.

Upon certain conditions specified in said Ordinance, the City may issue Additional Bonds for alterations, repair, extensions, enlargements and improvements to the System, which bonds shall be on a parity with Bonds of this Series in stature and priority.

The City and the Bond Registrar may deem and treat the registered owner hereof as the absolute owner hereof for purposes of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes and neither the City nor the Bond Registrar shall be affected by any notice to the contrary.

This Bond is transferable by the registered owner hereof in person or by the registered owner's agent duly authorized in writing, at the office of the Bond Registrar, but only in the manner, subject to the limitations and upon payment of the charges provided in the Ordinance and upon surrender and cancellation of this Bond.

**IT IS HEREBY DECLARED AND CERTIFIED** that all acts, conditions, and things required to be done and to exist precedent to and in the issuance of this Bond have been properly done and performed and



do exist in due and regular form and manner as required by the Constitution and laws of the State of Kansas, and that the total indebtedness of the City, including this series of bonds, does not exceed any constitutional or statutory limitation.

This Bond shall not be valid or become obligatory for any purpose until the Certificate of Authentication and Registration hereon shall have been lawfully executed by the Bond Registrar.

IN WITNESS WHEREOF, the City has caused this Bond to be executed by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of its City Clerk, and its corporate seal to be affixed hereto or imprinted hereon, and this Bond to be dated the Dated Date shown above.

(facsimile seal)

CITY OF OLATHE, KANSAS

ATTEST:

\_\_\_\_\_  
(facsimile)

Mayor

By \_\_\_\_\_  
(facsimile)  
City Clerk

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CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of a series of Water and Sewer System Improvement and Refunding Revenue Bonds, Series 2020, of the City of Olathe, Kansas, described in the within-mentioned Ordinance.

Registration Date

Office of the State Treasurer,  
Topeka, Kansas,  
as Bond Registrar and Paying Agent

By \_\_\_\_\_

Registration Number: \_\_\_\_\_

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BOND ASSIGNMENT

FOR VALUE RECEIVED, the undersigned do(es) hereby sell, assign and transfer to

\_\_\_\_\_  
(Name and Address)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Social Security or Taxpayer Identification No.)

the Bond to which this assignment is affixed in the outstanding principal amount of \$\_\_\_\_\_, standing in the name of the undersigned on the books of the Bond Registrar. The undersigned do(es) hereby irrevocably constitute and appoint \_\_\_\_\_ as agent to transfer said Bond on the books of said Bond Registrar with full power of substitution in the premises. Dated \_\_\_\_\_.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Social Security or  
Taxpayer Identification No.

\_\_\_\_\_  
Signature

(Sign here exactly as name(s) appear on the face of Certificate)

Signature guarantee:

By\_\_\_\_\_

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CERTIFICATE OF CITY CLERK

STATE OF KANSAS            )  
                                      ) SS.  
COUNTY OF JOHNSON        )

I, the undersigned, City Clerk of the City of Olathe, Kansas, hereby certify that the within Bond has been duly registered in my office according to law.

WITNESS my hand and official seal as of \_\_\_\_\_, 2020.

(Facsimile Seal)

\_\_\_\_\_  
(facsimile)  
City Clerk

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CERTIFICATE OF STATE TREASURER

OFFICE OF THE TREASURER, STATE OF KANSAS

I, JAKE LATURNER, Treasurer of the State of Kansas, do hereby certify that a transcript of the proceedings leading up to the issuance of this Bond has been filed in my office, and that this Bond was registered in my office according to law on \_\_\_\_\_.

WITNESS my hand and official seal.

(Seal)

\_\_\_\_\_  
Treasurer of the State of Kansas

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LEGAL OPINION

I, the undersigned, City Clerk of Olathe, Kansas, hereby certify that the following is a true and correct copy of the approving legal opinion of Gilmore & Bell, P.C., Attorneys at Law, Kansas City, Missouri, on the Bond and the series of which it is a part, except that it omits the date of such opinion; that said opinion was manually executed and was dated and issued as of the date of delivery of and payment for the Bonds and is on file in my office.

By (facsimile)  
City Clerk

(PRINTED LEGAL OPINION)

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(Published in *The Gardner News* on May 27, 2020)

**SUMMARY OF ORDINANCE NO. 20-18**

On May 19, 2020, the governing body of the City of Olathe, Kansas passed an ordinance entitled:

**AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF \$[PRINCIPAL AMOUNT] PRINCIPAL AMOUNT OF WATER AND SEWER SYSTEM IMPROVEMENT AND REFUNDING REVENUE BONDS, SERIES 2020, OF THE CITY OF OLATHE, KANSAS; MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.**

The Series 2020 Bonds approved by the Ordinance are being issued in the principal amount of \$[PRINCIPAL AMOUNT], to finance certain improvements to the water and sewer system of the City and refund certain outstanding water and sewer system revenue bonds of the City. The Series 2020 Bonds constitute special obligations of the City payable solely from, and secured as to the payment of principal and interest by a pledge of, the Net Revenues derived by the City from the operation of the water and sewer system. A complete text of the Ordinance may be obtained or viewed free of charge at the office of the City Clerk, 100 East Santa Fe. A reproduction of the Ordinance is available for not less than 7 days following the publication date of this Summary at <https://www.olatheks.org/government/city-clerk/public-notices>.

This Summary is hereby certified to be legally accurate and sufficient pursuant to the laws of the State of Kansas.

DATED: May 19, 2020.

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Ronald R. Shaver, City Attorney