

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made in Johnson County, Kansas, by and between the City of Olathe, Kansas, hereinafter "City," and TREKK Design Group, LLC., hereinafter "Consultant" (collectively, the "Parties").

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

Indian Creek Master Plan Flow Monitoring
Project No. 1-C-008-19

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 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 \$118,774.00 (One Hundred Eighteen Thousand Seven Hundred and Seventy-Four Dollars), 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. Payment to Consultant will not exceed the following percentages in each phase of the Project without prior written consent of City.

2. Reimbursable Expenses: Consultant will be reimbursed at the actual cost, not to exceed a total expense of \$118,774.00 (One Hundred Eighteen Thousand Seven Hundred and Seventy-Four Dollars) 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 August 31, 2019.

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**, 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**.

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.

C. 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: Kimberly Robinett. 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. Service By and Payment to Others: Any services authorized in writing by City and performed by any party other than Consultant or its subcontractors (a "Third Party") in connection with the proposed Project will be contracted for and paid for by City. In addition to payments for the Third Party's professional services, this may also include necessary permits, licenses, ownership certifications, materials testing, advertising costs, and other special tests or other services required or requested by City or Consultant which are not defined within the scope of services of Consultant as set forth herein. Fees for such extra services will be subject to negotiation between City and the Third Party. Fees will be approved by City in writing prior to the execution of any extra services. Although Consultant may assist City in procuring such services of Third Parties, Consultant will in no way be liable to either City or such Third Parties in any manner whatsoever for such services or for payment thereof.
3. Subcontracting or Assignment of Services: Consultant may not subcontract or assign any of the Professional Services to be performed under this Agreement without first obtaining the written approval of City. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge Consultant from any obligation under this Agreement. Any person or firm proposed for subcontracting Professional Services under this Agreement will maintain throughout the duration of the Agreement, insurance as provided in Section V.D.2. herein, and will additionally maintain Professional Liability insurance in a minimum amount of \$1,000,000 per claim and in the aggregate and provide City with an insurance certificate showing the insurance limits provided by Consultant's subconsultant. Any services completed by a

City-approved subcontractor of Consultant pursuant to this Agreement may not be increased more than ten percent (10%) over the actual cost of the services.

4. Endorsement: Consultant must sign and seal all final plans, specifications, estimates and engineering data furnished by Consultant. Any review or approval by City of any documents prepared by Consultant, including but not limited to the plans and specifications, will be solely for determining whether such documents are consistent with the City of Olathe Technical Specifications and Design Criteria for Public Improvements and may not be construed as City assuming responsibility for the accuracy, adequacy, fitness, suitability and coordination of Consultant's services and deliverables. No review of such documents will relieve Consultant of its responsibility for the accuracy, adequacy, fitness, suitability and coordination of its services and deliverables.
5. Inspection of Documents: Consultant must maintain all Project records for inspection by City at reasonable times and places upon written request during the contract period and for three (3) years from the date of final payment.
6. Standard of Care: Consultant will exercise the same degree of care, skill, and diligence in the performance of the Professional Services as is ordinarily possessed and exercised by a professional 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: Sabrina Parker
100 E. Santa Fe
P.O. Box 768
Olathe, KS 66051-0768

TREKK Design Group, LLC
Attn: Kimberly Robinett
1411 E 104th St
Kansas City, MO 64131

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

B. DISPUTE RESOLUTION

City and Consultant agree that disputes relative to the Project will first be addressed by negotiations between the Parties. If direct negotiations fail to resolve the dispute, the Party initiating the claim that is the basis for the dispute may take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute, Consultant will proceed with the Professional Services as per this Agreement as if no dispute existed, and City

will continue to make payment for Consultant's completed Professional Services; and provided further that no dispute will be submitted to arbitration without both Parties' express written consent.

C. OWNERSHIP OF CONSULTANT DOCUMENTS

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

D. INSURANCE

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

E. INDEMNITY

1. Loss: For purposes of indemnification requirements, the term "Loss" means any and all loss, damage, liability or expense, of any nature whatsoever, whether incurred as a

judgment, settlement, penalty, fine or otherwise (including reasonable attorney's fees and the cost of defense), in connection with any action, proceeding, demand or claim for injury, including death, to any person or persons or damages to or loss of, or loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with the performance of this Agreement.

2. Indemnification and Hold Harmless: For purposes of this Agreement, Consultant agrees to indemnify, defend and hold harmless City and its agents from any and all Loss where Loss is caused or incurred as a result of the intentional misconduct, recklessness, negligence, or other actionable fault of Consultant or its subcontractors.
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 F**).

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.] (If this sentence is on a page by itself, remove this entire paragraph.)

R. EXECUTION OF CONTRACT

The parties hereto have caused this Agreement to be executed this ____ day of _____ 201____.

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

TREKK Design Group, LLC.

By:  _____

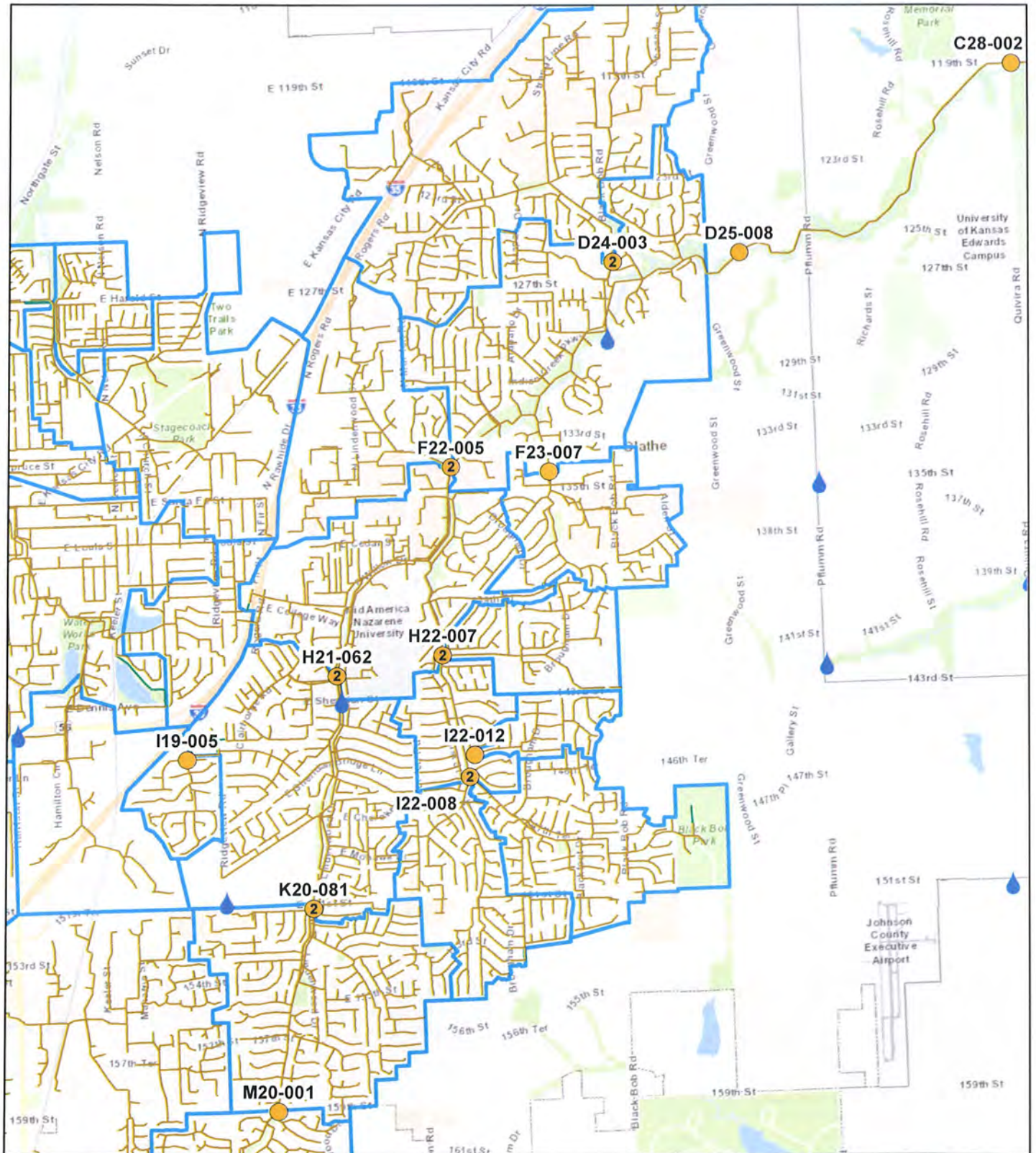
Kimberly Robinett, Managing Partner

1411 E. 104th St.
Kansas City, MO 64131

**TABLE OF CONTENTS
OF EXHIBITS**

Exhibit A	Description of Project & Map
Exhibit B	Scope of Services
Exhibit C	Fee & Rate Schedule
Exhibit D	City of Olathe Insurance Requirements
Exhibit E	Certificate of Insurance
Exhibit F	Certificate of Good Standing to Conduct Business in Kansas

EXHIBIT A
Description of Project & Map



Legend

-  Rain Gauge Site Locations
-  Flow Monitoring Site
-  Gravity Mains
-  Force Mains
-  Subbasins

TREKK
DESIGN GROUP, LLC



Date: 3/4/2019

EXHIBIT B
Scope of Services

EXHIBIT B
Scope of Services
INDIAN CREEK MASTER PLAN FLOW MONITORING

Professional services to be provided by TREKK shall include sanitary sewer flow monitoring at seventeen (17) locations for 90 days within the Indian Creek Watershed. The data collected as part of this project will be used to support the upcoming Indian Creek Master Planning efforts for the sanitary sewer collection system. Hereinafter, TREKK Design Group, LLC will be defined as the CONSULTANT and City of Olathe, KS, will be defined as the CLIENT.

Section A. - Scope of Services

A.1. TREKK shall perform the following Services:

Task 1 - Project Management & Administration:

Provide project management and administration activities associated with proper scheduling, review, budget control, invoice preparation, and coordination with the City of Olathe.

Task 2 – Collect Flow and Rainfall Data

2.1 – Bench Test Flow Meters:

TREKK will bench test ten (10) City flow meters to ensure level and velocity sensors are accurately recording prior to installation. TREKK meters will be used for the remaining seven (7) locations.

2.2. – Flow Meter Installation:

TREKK shall install seventeen (17) flow meters and mounting rings for the project. City will provide proposed locations for installation. Flow monitoring locations will generally be at the same locations metered as part of the 2012 Indian Creek Master Plan. A site assessment of potential flow monitoring sites will be made to determine, in general, the most suitable flow monitoring locations based on the following conditions:

- **Suitability for Accurate Metering** - The accuracy of the open channel flow metering will depend on numerous variables and it is imperative that they be controlled as much as possible. For this reason, reconnaissance inspections will be performed to identify the best sites for metering and to minimize error-causing factors such as changes in pipe alignment and size, interruption of channel flow by side inlets and turbulence caused by uneven channels.
- **Safety** - It is equally important that the proposed sites conform to TREKK's requirements for safe operating conditions. If the site falls outside of these requirements, alternate sites that are suitable based on safety requirements will be selected upon further consultation with the CITY.

If proposed locations are not suitable for flow monitoring, TREKK will inspect and recommend alternative locations. TREKK shall complete site assessment forms for each final flow monitoring location agreed upon with the City.

TREKK shall calibrate and install seventeen (17) flow monitors. The flow monitor installation and calibration shall be verified by TREKK by conducting site visits one week after installation. Site visits shall include the upload and interrogation of all flow data, meter calibration (as needed), velocity profiling, battery replacement, sensor cleaning, and other diagnostic checks.

2.3 - Routine 2-Week Flow Monitoring Site Visits:

The flow monitors shall be maintained by TREKK by conducting site visits on a bi-weekly basis (every two weeks). Maintenance visits shall include the upload and interrogation of all flow data, meter calibration (as needed), velocity profiling, battery replacement, sensor cleaning, and other diagnostic checks.

Flow monitors shall remain in place for a minimum of a 90-day continuous period. TREKK will remove the meters unless it is recommended and approved by City to keep them in place. Justification for extended metering will be due to insufficient rainfall, or dry days, during the monitoring period. Compensation for additional flow metering service and calibration shall be at the unit price shown in the attached schedule of fees. TREKK shall remove all monitors at the conclusion of the monitoring period.

2.4. – Rainfall Monitoring

TREKK shall gather and utilize rain data from nearby existing STORMWatch electronic rain gauges. Rain data will be processed and incorporated into the 15-minute flow data deliverable spreadsheets. A Thiessen analysis will be completed to appropriately distribute rainfall data across the flow meter basins.

2.5. – Flow Data Processing

During and following completion of the flow monitoring, TREKK will process the gathered data and develop tabular and graphical summaries. The impact of silt and debris will be evaluated and any necessary data adjustments will be made at this time. Hydrographs, level and velocity graphs, and scatterplots will be created for each site.

2.6. – Data Delivery

TREKK shall provide raw and final flow and rainfall data in electronic format (excel spreadsheets). Site assessment forms will also be delivered for each site.

Section B. - Schedule

TREKK shall perform the Services and deliver the related Documents (if any) according to the following schedule:

Install Flow Meters (3/11/19 thru 3/29/19)
End of 90-day Monitoring Period (week of 6/29/19)
Provide Final Data (8/31/19)

Section C. – Additional Services

The following Services are not included in this project, but shall be provided as Additional Services if authorized or confirmed in writing by the Owner:

Additional Site Visits

Site visits in addition to the regularly scheduled bi-weekly visit will be considered additional services. Reasons for additional site visits may include extension of 90 day base monitoring period, reoccurring debris/silt problems and/or possible malfunctioning flow monitoring equipment and sensors.

Section D. - Owner's Responsibilities Owner shall perform and/or provide the following in a timely manner so as not to delay the Services of TREKK. Unless otherwise provided in this scope of work, Owner shall bear all costs incident to compliance with the following:

Owner shall provide the following:

- 10 Flow Meters and 10 Mounting Rings
- Proposed Monitoring Locations

EXHIBIT C
Fee & Rate Schedule



PROPOSAL FOR OLATHE, KS INDIAN CREEK MASTER PLAN FLOW MONITORING

	Division Lead	Project Manager	Project Engineer II	Office Technician I	Field Manager	Admin	Labor Sub-Total	UNIT COST'S Units Quant Rate	Units Sub-Total	TOTAL
WORK TASK DESCRIPTION										
	Fee Billing Rate	\$215.00	\$156.00	\$102.00	\$93.00	\$85.00				
Task 1 - Project Management and Administration										
1.1	Project Administration	8	24			12	\$ 8,140.00		\$ -	\$ 8,140.00
1.2	Project Meetings (up to 2)		8	4			\$ 6,484.00		0 \$	\$ 6,484.00
							\$ 1,656.00		0 \$	\$ 1,656.00
Task 2 - Collect Flow and Rainfall Data										
2.1	Bench Test Flow Meters						\$ 26,739.00		83,895 \$	\$ 110,634.00
2.2	Flow Meter Installation (17 meters)	8			6		\$ 588.00		0 \$	\$ 588.00
2.3	Flow Monitoring (17 Meters, 90 days)	17					\$ 1,248.00	Each	8,925 \$	\$ 10,173.00
2.4	Rainfall Monitoring	2		16			\$ 2,652.00	Meter-Day Gauge-Day	74,970 \$	\$ 77,622.00
2.5	Flow Data Processing	17		51			\$ 1,800.00	0	0 \$	\$ 1,800.00
2.6	Data Delivery	17		51			\$ 12,597.00		0 \$	\$ 12,597.00
							\$ 7,854.00		0 \$	\$ 7,854.00
									0 \$	\$ -
		8	93	106	67	12				\$ 118,774.00
TOTAL MAN-HOURS / QUANTITY		8	93	106	67	12				\$ 118,774.00
TREKK DESIGN GROUP FEE TOTAL										



A D/WBE, SBA 8(A), WOSB Certified
Civil Engineering Firm

2019 Compensation for Professional Engineering Services¹ TREKK Design Group, LLC (TREKK)

The **OWNERS's** payment to the **ENGINEER** shall be due and payable as follows:

- I. For Professional Engineering Services, when authorized and agreed upon in writing, an amount based upon hourly rates plus expenses, in accordance with Section III below, or a negotiated amount as agreed upon.
- II. For **Other Services**, when authorized and agreed upon in writing, an amount based upon hourly rates plus expenses or unit rates, in accordance with Section III below, or a negotiated amount as agreed upon.

III. Hourly Billing Rates and Expenses:

Project Principal	\$180.00/hr - \$250.00/hr
Project Manager	\$125.00/hr - \$240.00/hr
Quality Manager	\$125.00/hr - \$180.00/hr
Project Coordinator	\$ 80.00/hr - \$150.00/hr
Industry Specialist	\$110.00/hr - \$240.00/hr
Asset Manager	\$100.00/hr - \$230.00/hr
Senior Professional Engineer	\$135.00/hr - \$230.00/hr
Professional Engineer	\$115.00/hr - \$200.00/hr
Project Engineer I	\$100.00/hr - \$150.00/hr
Project Engineer II	\$ 90.00/hr - \$125.00/hr
Staff Engineer	\$ 80.00/hr - \$110.00/hr
Project Designer	\$ 95.00/hr - \$140.00/hr
CADD Technician I	\$ 80.00/hr - \$110.00/hr
CADD Technician II	\$ 65.00/hr - \$ 90.00/hr
Office/GIS Technician I	\$ 75.00/hr - \$110.00/hr
Office/GIS Technician II	\$ 55.00/hr - \$ 85.00/hr
Office/GIS Technician III	\$ 50.00/hr - \$ 70.00/hr
Senior Administrator	\$ 90.00/hr - \$150.00/hr
Administrator	\$ 70.00/hr - \$ 90.00/hr
Field Manager	\$ 80.00/hr - \$125.00/hr
Field Technician I	\$ 70.00/hr - \$100.00/hr
Field Technician II	\$ 57.00/hr - \$ 80.00/hr
Field Technician III	\$ 50.00/hr - \$ 65.00/hr
GIS Analyst I	\$ 95.00/hr - \$150.00/hr
GIS Analyst II	\$ 75.00/hr - \$ 95.00/hr
Construction Inspection Manager	\$110.00/hr - \$165.00/hr
Senior Construction Inspector	\$ 90.00/hr - \$120.00/hr
Construction Inspector	\$ 75.00/hr - \$ 90.00/hr
Survey Manager (PLS)	\$100.00/hr - \$150.00/hr
Professional Land Surveyor (PLS)	\$ 90.00/hr - \$130.00/hr
Survey Party Chief	\$ 75.00/hr - \$125.00/hr
LiDAR Technician	\$ 75.00/hr - \$120.00/hr
Utility Locator	\$ 75.00/hr - \$120.00/hr
Survey Crew	\$153.00/hr - \$204.00/hr
Mobile LiDAR Crew	\$2,000.00/hr
Mileage	\$00.58/mi
Out-of-Pocket Expenses, Supplies, Reproductions, etc.	Cost

Note 1: The above hourly rates and unit prices are good through December 31, 2019.

EXHIBIT D
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 E
Certificate of Insurance



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
03/15/2019

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).

PRODUCER CA#0H64724 IMA, Inc. (NE Kansas Division) 51 Corporate Woods 9393 W. 110th Street, Suite 600 Overland Park, KS 66210	1-913-982-3650	CONTACT NAME: Lynne Cox PHONE: (A/C, No, Ext): E-MAIL: lynne.cox@imacorp.com ADDRESS:	FAX (A/C, No):
INSURED TREKK Design Group LLC 1411 104th Street Kansas City, MO 64131		INSURER(S) AFFORDING COVERAGE	NAIC #
		INSURER A: CHARTER OAK FIRE INS CO	25615
		INSURER B: TRAVELERS PROP CAS CO OF AMER	25674
		INSURER C: TRAVELERS IND CO	25658
		INSURER D: FARMINGTON CAS CO	41483
		INSURER E: BERKLEY INS CO	32603
		INSURER F:	

COVERAGES

CERTIFICATE NUMBER: 55628847

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 SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:		6809K0409331847	04/30/18	04/30/19	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <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		BA9K03691918	04/30/18	04/30/19	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000		CUP9K0443171847	04/30/18	04/30/19	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N/A	UB9K0376521847	04/30/18	04/30/19	<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
E	Professional Liability		AEC902288200	05/10/18	04/30/19	Each Claim 3,000,000 Aggregate 3,000,000

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

RE: Indian Creek Master Plan Flow Monitoring Project No. 1-C-008-19

City of Olathe, KS is included as Additional Insured on the General and Automobile Liability Policies if required by written contract or agreement and with respect to work performed by Insured subject to the policy terms and conditions. The Insurer will provide [30] days written notice of cancellation to the Certificate Holder for cancellation reasons other than non-payment of premium. The Insurer will provide [10] days written notice of cancellation to the Certificate Holder for non-payment of premium.

CERTIFICATE HOLDER

CANCELLATION

City of Olathe Sabrina Parker 100 E Santa Fe, PO Box 768 Olathe, KS 66051-0768 USA	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
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EXHIBIT F
Certificate of Good Standing to Conduct Business in Kansas

**STATE OF KANSAS
OFFICE OF
SECRETARY OF STATE
KRIS W. KOBACH**

I, KRIS W. KOBACH, Secretary of State of the state of Kansas, do hereby certify, that according to the records of this office.

Business Entity ID Number: 3290160

Entity Name: TREKK DESIGN GROUP, LLC

Entity Type: DOM: LTD LIABILITY COMPANY

State of Organization: KS

Resident Agent: TRENT ROBINETT

Registered Office: 2301 W 51st Street, WESTWOOD, KS 66205

was filed in this office on March 01, 2002, 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 March 19, 2018

**KRIS W. KOBACH
SECRETARY OF STATE**

Certificate ID: 1042954 - To verify the validity of this certificate please visit <https://www.kansas.gov/bess/flow/validate> and enter the certificate ID number.