

CONSULTING AGREEMENT

THIS AGREEMENT is made in Johnson County, Kansas, by and between the City of Olathe, Kansas, hereinafter "City," and Shockey Consulting Services, LLC, hereinafter "Consultant" (collectively, the "Parties", and each, individually, a "Party"). City is in need of certain services for strategic community visioning and contracts with Consultant for the scope of services described in **Exhibit A**, attached hereto and incorporated by reference herein.

1. FEES, EXPENSES, AND SCHEDULE. City agrees to pay Consultant an amount not to exceed One Hundred and Ten Thousand Dollars (\$110,000.00) based on the amounts set forth in **Exhibit A** for the work described in **Exhibit A**. This Agreement will remain in effect until such time as the City determines the services of the Contractor are no longer needed, the Consultant is no longer able to fulfill the terms of this Agreement, or this Agreement is terminated as provided herein. All work must be completed on or before March 1, 2019.

2. ADDITIONAL SERVICES. Consultant may provide, with City's concurrence, services in addition to those listed **Exhibit A**, when such services are requested or authorized in writing by City.

3. BILLING. Consultant may bill City monthly for all completed services. The bill submitted by Consultant must itemize the services 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.

4. TERMINATION FOR LACK OF FUNDS. If, for whatever reason, adequate funding is not made available by City to support or justify continuation of the level of services to be provided by Consultant under this Agreement, City may terminate or reduce the amount of 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 services for lack of funds.

5. 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 services as per this Agreement as if no dispute existed, and City will continue to make payment for Consultant's completed services; and provided further that no dispute will be submitted to arbitration without both Parties' express written consent.

6. SUBCONTRACTING. Consultant may not subcontract or assign any of the 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 services under this Agreement will maintain throughout the duration of the Agreement, insurance as provided in Section 7. herein, and will additionally maintain Professional Liability insurance in a minimum amount of \$1,000,000 and provide City with certification thereof.

7. INSURANCE. Consultant will maintain, throughout the duration of this Agreement, insurance as provided in **Exhibit B**.

8. CONFIDENTIALTY. In the course of performing work for the City under this Agreement, Consultant may learn certain information pertaining to City business which has not been made public under applicable law, including, but not limited to, personal information regarding City employees, internal business processes, financial information, draft documents, security procedures, and proposed policies ("Confidential Information"). Consultant agrees to keep all Confidential Information in the strictest of confidence and will exercise due care to prevent disclosure to City employees or non-employees who are not intended to receive the Confidential Information. Consultant will not disclose or divulge any Confidential Information either directly or indirectly to others unless authorized by the City or compelled to do so by law. Consultant will not use any Confidential Information for any other purpose than for the services being provided to the City. ANY BREACH OF THIS PROVISION BY CONTRACTOR WILL CONSTITUTE AN EVENT OF DEFAULT AND WILL RESULT IN AUTOMATIC TERMINATION OF THIS AGREEMENT WITHOUT NOTICE.

9. INDEMNIFICATION AND HOLD HARMLESS. For purposes of this Agreement, Consultant agrees to indemnify, defend and hold harmless City, its officers, appointees, employees, and agents from any and all loss, damage, liability or expense, of any nature whatsoever caused or incurred as a result of the negligence or other actionable fault of Consultant, its affiliates, subsidiaries, employees, agents, assignees, and subcontractors and their respective employees and agents. Consultant is not required hereunder to defend City, its officers, appointees, employees, or agents from assertions that they were negligent, nor to indemnify and hold them harmless from liability based on City's negligence.

10. TERMINATION

- a. **Notice:** Except as otherwise provided herein, 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 services hereunder; or (2) meet with City and, subject to City's approval, determine what 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 work completed or partially completed at the date of termination. 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 the City by written notice of its intent to terminate and the City shall 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 this Agreement solely for its convenience without cause.
- b. **Compensation for Convenience Termination:** If City terminates for its convenience as provided herein, City will compensate Consultant for all services

completed to the date of its receipt of the termination notice and any additional services requested by City to bring the work in progress to reasonable termination. Compensation will not include anticipatory profit or consequential damages, neither of which will be allowed.

- c. **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 services completed 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.

11. 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.

12. NO THIRD PARTY BENEFICIARIES. Nothing contained herein will create a contractual relationship with, or any rights in favor of, any Third Party.

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

14. COMPLIANCE WITH LAWS. Consultant will abide by all applicable federal, state and local laws, ordinances and regulations applicable at the time the services are rendered.

15. APPLICABLE LAW, JURISDICTION, 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. Jurisdiction and venue for any suit arising out of or related to this Agreement will be in the District Court of Johnson County, Kansas.

16. SEVERABILITY. 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.

17. AMBIGUITY. 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 then to **Exhibit A**.

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The Parties hereto have caused this Agreement to be executed this 6th day of June, 2018.

CITY OF OLATHE, KANSAS

By:


Michael E. Copeland
Mayor


ATTEST:


Emily K. Vincent
City Clerk

(SEAL)



APPROVED AS TO FORM:


~~Ronald R. Shaver~~
Deputy City Attorney

Shockey Consulting Services, LLC

By:



Sheila Shockey, President

Exhibit A
Scope of Services

SHOCKEY CONSULTING --Future-Ready Olathe 2040 COST ESTIMATE					
5/22/2018					
PHASE ONE - LAUNCH	# OF MEETINGS	FEES	EXPENSES	TOTAL	NOTES:
Project Management Team Meetings	2	\$750	\$50	\$800	In person
Staff Work team Workshop	1	\$2,100	\$50	\$2,150	In person
Advisory Committee Meetings	1	\$4,400	\$200	\$4,600	Shockey prepares materials and facilitates. Shockey provides copies of deliverables for meeting.
Project Management Plan	0	\$250	\$0	\$250	Delivered electronically
Stakeholder Engagement Plan	0	\$500	\$0	\$500	Delivered electronically
Branding Meeting	1	\$1,400	\$0	\$1,400	City creates branding. Shockey participates in a meeting to develop brand and coordinates with Communications staff.
PROJECT LAUNCH SUBTOTAL	5	\$9,400	\$300	\$9,700	
PHASE TWO - DISCOVERY	# OF MEETINGS	FEES	EXPENSES	TOTAL	NOTES:
Project Management Team Meetings	2	\$750	\$50	\$800	Shockey provides copies of deliverables for meetings.
Advisory Committee Meetings	1	\$4,400	\$50	\$4,450	Copies of Deliverables & Refreshments provided by City for meeting. Shockey facilitates.
Current Snapshot Map & Document		\$2,400	\$0	\$2,400	Delivered electronically
Insight Series - Trends - 5 Focus Areas		\$4,440	\$0	\$4,440	Delivered electronically June 8.
Case Studies		\$4,200	\$0	\$4,200	Delivered electronically
Governing Body Presentation	1	\$0	\$0	\$0	No charge for presentation of materials developed.
Opportunities Map		\$3,600	\$0	\$3,600	Delivered electronically
DISCOVERY SUBTOTAL	4	\$19,790	\$100	\$19,890	

PHASE THREE - VISIONING	# OF MEETINGS	FEES	EXPENSES	TOTAL	NOTES:
Project Management Team Meetings	2	\$750	\$50	\$800	Shockey provides Deliverables for meetings
Staff Work Team Engagement Training	3	\$2,100	\$50	\$2,150	Shockey conducts the training. The City secures the venue, provides copies and refreshments.
Advisory Committee Meetings	1	\$4,400	\$200	\$4,600	Copies of Deliverables & Refreshments provided by City for meeting. Shockey facilitates.
Online Engagement		\$7,560	\$0	\$7,560	Shockey delivers questions electronically for posting/distribution by City. Shockey tallies results and prepare a summary of input.
Prepare materials for participatory engagement - City manages, implements - Shockey summarizes input in report.		\$7,560	\$0	\$7,560	Delivered electronically - City arranges events, prints and distributes materials. Shockey summarizes input from outreach activities.
State of the Future Event	1	\$9,000	\$100	\$9,100	Shockey provides electronic version of recruitment materials for city distribution. Copies of Deliverables & Refreshments provided by City for event. Shockey prepares for, facilitates and staffs the event.
Governing Body Presentation	1	\$1,200	\$0	\$1,200	Shockey prepares presentation for Advisory Committee Co-Chairs and submits an electronic copy for their use. City provides copies of materials to Governing Body. Shockey attends at no charge to answer any questions.
VISIONING SUBTOTAL	8	\$32,570	\$400	\$32,970	

PHASE FOUR - CRAFT PLAN	# OF MEETINGS	FEES	EXPENSES	TOTAL	NOTES:
Project Management Team	2	\$750	\$50	\$800	Shockey provides Deliverables for meetings
Advisory Committee Meetings	2	\$8,800	\$400	\$9,200	Copies of Deliverables & Refreshments provided by City for meeting. Shockey facilitates.
Governing Body Workshop	1	\$1,200	\$0	\$1,200	Copies of Deliverables & Refreshments provided by City for meeting. Shockey holds a 3 hour workshop to develop the Final Vision Plan.
Plan Reveal	1	\$6,000	\$200	\$6,200	The City secures the venue and arranges set up, provides refreshments and meeting copies. Shockey helps staff with event.
Video Plan of Future-Ready Olathe 2040		\$6,000	\$0	\$6,000	4 minute video - Delivered electronically.
Vision Plan & Map		\$9,600	\$0	\$9,600	Delivered electronically Draft Nov 8; Final Nov 19.
CRAFTING SUBTOTAL	6	\$32,350	\$650	\$33,000	
Project Mgmt & Contingency		\$14,440	\$0	\$14,440	
GRAND TOTAL	23	\$108,550	\$1,450	\$110,000	
Meeting Cost Breakdown	PER MEETING COST	QUANTITY	TOTAL		NOTES:
State of the Future Event	\$9,100	1	\$9,100		
Fees Per Project Team Meeting	\$800	12	\$9,600		
Cost per Staff Work Team Kick Off	\$2,150	1	\$2,150		
Cost per Staff Engagement Training Workshop	\$2,150	3	\$6,450		
Branding Meeting	\$1,400	1	\$1,400		
Plan Reveal	\$7,000	1	\$7,000		
Fees Per Advisory Committee	\$4,600	5	\$23,000		

Participatory Engagement Menu Pricing	QUANTITY	FEES	EXPENSES	TOTAL	NOTES:
Pop Up -- Futures StoryCorps -- Shockey staffs and videos at event	Per Event	\$3,600	\$25	\$3,625	Shockey staffs event (Not just provides materials)
Drop In - Shockey goes to civic leader meetings, makes presentations and gathers input	Per Meeting	\$1,200	\$50	\$1,250	Shockey staffs event (Not just provides materials)
Drop By - Shockey manages collecting input from stationary engagement sites.	Per Site	\$2,400	\$250	\$2,650	Shockey staffs event (Not just provides materials)
Drive Around - Shockey mans mobile meeting event	1/2 Day	\$1,800	\$100	\$1,900	Shockey staffs event (Not just provides materials). City rents the truck and pays for refreshments.

Exhibit B
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] \$500,000 per occurrence limit and products - completed operations limit. Any general aggregate limit should be at least \$1 million.
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 the statutes of the state of Kansas and employers liability limits of \$500,000/\$500,000/\$500,000.
4. Professional Liability: Minimum limits to be \$500,000 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 name 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 accompanied by an additional insured ISO form endorsement (CG 20 10; and CG 20 37) or equivalent effecting the coverage required by the City.
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 shall be subject to all of the requirements stated herein.

