

APPRAISER AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 20____, by and between the City of Overland Park, Kansas, (hereinafter, the "City") and _____, (hereinafter, the "Appraiser").

WITNESSETH:

WHEREAS, the City desires to acquire easements and right-of-way for _____, (hereinafter, the "Project"); and

WHEREAS, the Appraiser is willing to provide the referenced acquisition services for the Project; and

WHEREAS, the City has requested that the Appraiser submit an engagement letter to outline services Appraiser is proposing to provide and the cost related thereto; and

WHEREAS, having received the engagement letter, the City desires to retain Appraiser to provide the acquisition services for the Project; and

WHEREAS, the City and the Appraiser desire to enter into an agreement setting forth the terms and conditions of their understanding as regards the services.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. SCOPE OF SERVICES

The Appraiser agrees to appraise and negotiate for rights-of-way and easements as set forth in Exhibit A attached hereto and incorporated herein by reference, (hereinafter the "Services").

SECTION 2. STATUS

Appraiser is an independent contractor and as such is not an agent or employee of the City.

SECTION 3. COMPENSATION

A. Total Fee. City agrees to pay Appraiser an amount not to exceed _____ Dollars (\$_____). The fee is based on the performance of the Services, and shall be billed using rates as set forth in Exhibit A. All work shall be completed on or before _____, 20____. If any additional services beyond the Services outlined in Exhibit A are deemed to be necessary, the compensation for said services shall be agreed upon in writing by both parties.

B. Manner of Payment. Invoices for fees will be submitted every four (4) weeks and are to be paid within thirty (30) days of receipt of an undisputed invoice.

SECTION 4. TERM

The term of this Agreement is for _____ year(s) commencing on the date set forth above unless this Agreement is terminated as provided herein.

SECTION 5. CASH BASIS/BUDGET (for multi-year agreements)

[If this is not a multi-year agreement, this section can be removed and remaining sections renumbered.]

Notwithstanding anything contained in the Agreement to the contrary, it is understood and agreed by the parties hereto that City is obligated only to pay periodic payments or monthly installments under the Agreement as may lawfully be made from funds budgeted and appropriated for such purpose during the City’s then current budget Year (i.e. January 1 to December 31) or from funds made available from any lawfully operated, revenue producing source. Should City fail to budget, appropriate or otherwise make available funds for payments due under the Agreement in any budget year, the Agreement shall be deemed terminated on the last day of the then current budget year for which appropriations were received without penalty or expense to the City of any kind whatsoever, except as to the portions of the recurring charges herein agreed upon for which funds have appropriated and budgeted or are otherwise made available. City agrees to notify contractor of such termination, which shall not constitute a default under the Agreement, at least sixty (60) days prior to the end of the City’s then current budget year.

SECTION 6. TERMINATION

Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City to terminate this Agreement in whole or in part, with or without cause, subject to written notice to Appraiser. If the City terminates the Agreement prior to completion of Services, City shall compensate Appraiser for all Services satisfactorily completed to date of its receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.

SECTION 7. SUBCONTRACTING OF SERVICES

The Appraiser shall not subcontract or assign any of the Services to be performed under this Agreement

SECTION 8. KDOT AND FEDERAL REQUIREMENTS

The appraisals furnished by Appraiser will meet all KDOT and Federal appraisal regulations, policies and procedures, if required for this Project.

SECTION 9. OWNERSHIP OF REPORT

The final report and all documents prepared in connection with the Services shall be the property of the City upon completion of the Services. Appraiser will have no responsibility to update its report for events and circumstances occurring after the date of its report.

SECTION 10. INSURANCE

The Appraiser shall maintain throughout the duration of this Agreement insurance in, at minimum, the amounts specified below. All general and automobile liability insurance shall be written on an occurrence basis unless otherwise agreed to in writing by the City.

All insurance procured for this Agreement by the Appraiser, including additional insured designations, shall be primary and non-contributory.

- A. Commercial General Liability
 General Aggregate: \$1,000,000

Products / Completed Operations Aggregate:	\$1,000,000
Personal & Advertising Injury:	\$ 500,000
Each Occurrence:	\$ 500,000

Policy must include the following:

Name City of Overland Park as “Additional Insured”.

B. Automobile Liability Insurance

Policy shall protect the Appraiser against claims for bodily injury and/or property damage arising from the ownership or use of all owned, hired and/or non-owned vehicle.

Limits (Same as Commercial General Liability) –

Combined Single Limits, Bodily Injury and Property Damage – Each Accident:

Policy MUST include the following condition:

NAME CITY OF OVERLAND PARK AS “ADDITIONAL INSURED”.

Note: Appraiser expressly agrees to only utilize vehicles properly insured under the requirements of this Agreement while performing the services set forth herein, and to ensure that its subcontractors comply with the same.

C. Workers' Compensation and Employer's Liability

This insurance shall protect the Appraiser against all claims under applicable state workers' compensation laws. The Appraiser shall also be protected against claims for injury, disease or death of employees which, for any reason may not fall within the provisions of a workers' compensation law. The policy limits shall not be less than the following:

Workers' Compensation:	<u>Statutory</u>
Employer's Liability:	
Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee

If Appraiser has no employees, a waiver form provided by the City must be executed.

D. Professional Liability: The Appraiser shall maintain throughout the duration of this Agreement Professional Liability Insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000), and shall provide the City with certification thereof.

E. Industry Ratings

The City will only accept coverage from an insurance carrier who offers proof that it:

- 1) Is authorized to do business in the State of Kansas;
- 2) Carries a Best's policyholder rating of A- or better; and
- 3) Carries at least a Class VIII financial rating, or
- 4) Is a company mutually agreed upon by the City and Appraiser.

Certification of insurance coverage shall be on forms acceptable to the City.

SECTION 11. INDEMNITY

A. Definition

For purposes of indemnification requirements, the term "Loss" shall have the meaning set forth as follows:

"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 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, or are claimed to arise out of or be connected with, the performance of this Agreement whether arising before or after the completion of the work required hereunder.

B. Indemnity

For purposes of this Agreement, Appraiser hereby agrees to indemnify, defend and hold harmless the City, its employees and agents from any and all Loss where Loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Appraiser, its affiliates, subsidiaries, employees, agents and subcontractors/assignees and their respective servants, agents and employees.

It is agreed as a specific element of consideration of this Agreement that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the City or any third party and, further notwithstanding any theory of law including, but not limited to, a characterization of the 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 the Appraiser's obligation hereunder shall not include amounts attributable to the fault or negligence of the City or any third party for whom the Appraiser is not responsible.

In the case of any claims against the City, its employees or agents indemnified under this Agreement, by an employee of the Appraiser, its affiliates, subsidiaries, or assignees, the indemnification obligation contained in this Agreement shall not be limited by any limitation on amount or type of damages, compensation or benefits payable by or for the Appraiser, its affiliates, subsidiaries, or assignees, under workers' compensation acts, disability benefit acts, or other employee benefit acts.

SECTION 12. DISPUTE RESOLUTION

City and Appraiser agree that disputes relative to the project should 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 shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute Appraiser shall proceed with the work as per this Agreement as if no dispute existed; and provided further that no dispute will be submitted to arbitration without the City's express written consent.

SECTION 13. AFFIRMATIVE ACTION/OTHER LAWS.

- A. During the performance of this Agreement, the Appraiser agrees that:
1. Appraiser shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, disability, national origin, ancestry or age;

2. in all solicitations or advertisements for employees, the Appraiser shall include the phrase "equal opportunity employer" or a similar phrase approved by the Kansas Human Rights Commission ("Commission");
 3. if the Appraiser fails to comply with the manner in which the Appraiser reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Appraiser shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City;
 4. if the Appraiser is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Appraiser shall be deemed to have breached the present Agreement, and it may be canceled, terminated or suspended, in whole or in part, by the City;
 5. the Appraiser shall include the provisions of Subsections 1 through 4 in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor.
- B. The Appraiser further agrees that the Appraiser shall 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.

SECTION 14. GENERAL PROVISIONS

- A. This Agreement contains the complete agreement between the parties and shall, as of the effective date hereof, supersede all other agreements between the parties. The parties stipulate that neither of them has made any representation with respect to the subject matter of this Agreement except such representations as are specifically set forth in this document and each of the parties acknowledges that it has relied on its own judgment in entering into this Agreement.
- B. Any modification of this Agreement or additional obligation assumed by either party in connection herewith shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.
- C. If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.
- D. It is the intention of the parties that this Agreement and the performance hereunder, and all suits and special proceedings under this Agreement, be construed in accordance with and under and pursuant to the laws of the State of Kansas and that, in any action, special proceeding or other proceeding that may be brought arising out of, in connection with, or by reason of this Agreement, the laws of the State of Kansas shall be applicable and shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which any action or special proceeding may be instituted.

- E. The titles to sections of this Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.

SECTION 15. ORDER OF PRECEDENCE

If there is any conflict between the terms of this Agreement, excluding exhibits, and anything contained in the exhibits referenced herein or attached hereto, the terms and provisions of this Agreement, excluding exhibits, shall control.

SECTION 16. EXECUTION OF AGREEMENT

The parties hereto have caused this Agreement to be executed on the day and year first above written.

CITY OF OVERLAND PARK, KANSAS

APPRAISER

Anthony J. Hofmann, PMP
Director of Public Works

Appraiser's Signature

Attest:

Elizabeth Kelley, City Clerk

Approved as to Form:

Trevor L. Stiles
Assistant City Attorney II

APPRAISER'S STATEMENT

I have contracted with the City of Overland Park to perform appraiser services. I do not employ the services of any other person(s) or subcontractor(s). In the event that I hire any person to serve as either my employee or subcontractor, I hereby agree to purchase Workers' Compensation Insurance and immediately furnish the City of Overland Park proof of such insurance.

Appraiser's Signature

Date