



ABILENE CITY COMMISSION - REGULAR MEETING AGENDA  
ABILENE PUBLIC LIBRARY, 209 NW FOURTH STREET  
November 9, 2020 - 4:00 pm

**DUE TO COVID-19 AND SOCIAL DISTANCING WE ARE ENCOURAGING VIEWING ALL MEETINGS VIRTUALLY ON THE LIVE STREAMED CITY OF ABILENE'S YOUTUBE PAGE AT [https://www.youtube.com/channel/UCNURrU0ueP6\\_dRpHYu1wJEg](https://www.youtube.com/channel/UCNURrU0ueP6_dRpHYu1wJEg)**

1. Call to Order
2. Roll Call: \_\_\_\_\_ Ostermann \_\_\_\_\_ Rein \_\_\_\_\_ Marshall \_\_\_\_\_ Shafer \_\_\_\_\_ Witt
3. Pledge of Allegiance

Consent Agenda (*Consent Agenda items will be acted upon by one motion unless a majority of the City Commission votes to remove an item for discussion and separate action.*)

4. Agenda approval for the November 9, 2020 City Commission meeting.
5. Meeting minutes: October 26, 2020 regular meeting.
6. Approve an agreement with Olsson & Associates for the Airport Environmental Assessment.

Public Comments and Communications

7. Persons who wish to address the City Commission may do so when called upon by the Mayor.

Old and New Business

8. Consider approval of master agreement work order for Rogers Street with Olsson & Associates in the amount \$38,460.00
9. Consider approval of the purchase of police body cameras in the amount of \$26,057.74 from Axon Enterprises.
10. Executive session: I move the city commission recess into executive session for \_\_\_ minutes to based upon the need to discuss personnel matters of non-elected personnel pursuant to K.S.A. 75-4319(b)(1). The open meeting will resume in this room at \_\_\_\_\_PM.

Reports

11. City Manager reports.

Adjournment

12. Consider a motion to adjourn the November 9, 2020 City Commission meeting.

Future Meeting Reminders:

- Study session meeting, November 16 at 4 pm
- City Commission meeting, November 23 at 4pm



**Abilene City Commission Meeting Minutes**  
**Abilene Public Library – 209 NW Fourth Street**  
**October 26, 2020 @ 4:00 p.m.**  
**Abilene, Kansas**

**1. Call to Order**

**2. Roll Call** – City Commission Present: Vice-Mayor Rein. Commissioners Marshall, Shafer, and Witt.  
Absent: Mayor Ostermann.

Staff Present: City Manager Foltz, City Clerk Soukup, City Attorney Martin, Finance Director Rothchild, Convention and Visitors Bureau Director Roller-Weeks, Public Works Director Schrader, and Administrative Assistant Zook.

**3. Pledge of Allegiance**

**Consent Agenda**

- 4. Agenda Approval for the October 26, 2020 City Commission Meeting**
- 5. Meeting minutes: October 12, 2020 Regular Meeting**
- 6. Approval of Cereal Malt Beverage License for Tossed N Sauced located at 306 NW 3<sup>rd</sup> St.**

Motion by Commissioner Marshall, seconded by Commissioner Witt to approve the Consent Agenda as presented. Roll call vote: Marshall YES, Shafer YES, Witt YES, Rein YES. Motion carried unanimously 4-0.

**Public Comments and Communications**

**7. Persons who wish to address the City Commission may do so when called upon by the Mayor.**

There were no public comments or communications.

**8. Arbor Day Proclamation**

Vice-Mayor Rein read the Arbor Day Proclamation proclaiming October 30, 2020 as Arbor Day in the City of Abilene, Kansas.

## **Old and New Business**

### **9. Public Hearing to consider a property tax abatement application from D.B. Nibs, LLC (Don's Tire).**

Vice-Mayor Rein opened the public hearing at 4:03 p.m.

Chuck Scott, Dickinson County Economic Development Council, is present and will answer any questions.

Vice-Mayor Rein closed the public hearing at 4:04 p.m.

### **10. Consider Resolution No. 102620-1, A RESOLUTION OF THE CITY OF ABILENE, KANSAS, MAKING CERTAIN FINDINGS OF FACT AS REQUIRED BY K.S.A. 79-251, AS AMENDED, WITH RESPECT TO A PROPERTY TAX EXEMPTION TO BE GRANTED TO D.B. NIBS, L.L.C. FOR CERTAIN IMPROVEMENTS TO REAL PROPERTY LOCATED AT 714 S. BUCKEYE AVE., ABILENE, KANSAS, AND PROVIDING CERTAIN TERMS AND CONDITIONS.**

Motion by Commissioner Shafer, seconded by Commissioner Marshall to approve resolution No. 102620-1, **A RESOLUTION OF THE CITY OF ABILENE, KANSAS, MAKING CERTAIN FINDINGS OF FACT AS REQUIRED BY K.S.A. 79-251, AS AMENDED, WITH RESPECT TO A PROPERTY TAX EXEMPTION TO BE GRANTED TO D.B. NIBS, L.L.C. FOR CERTAIN IMPROVEMENTS TO REAL PROPERTY LOCATED AT 714 S. BUCKEYE AVE., ABILENE, KANSAS, AND PROVIDING CERTAIN TERMS AND CONDITIONS.** Roll call vote: Shafer YES, Witt YES, Rein YES, Marshall YES. Motion carried unanimously 4-0.

### **11. Consider Ordinance No. 20-3391, AN ORDINANCE EXEMPTING CERTAIN PROPERTY OWNED BY D.B. NIBS, L.L.C., LOCATED AT 714 S. BUCKEYE AVE., ABILENE, KANSAS FROM AD VALOREM TAXATION.**

Motion by Commissioner Shafer, seconded by Commissioner Witt to adopt Ordinance No. 20-3391, **AN ORDINANCE EXEMPTING CERTAIN PROPERTY OWNED BY D.B. NIBS, L.L.C., LOCATED AT 714 S. BUCKEYE AVE., ABILENE, KANSAS FROM AD VALOREM TAXATION.** Roll call vote: Witt YES, Rein YES, Marshall YES, Shafer YES. Motion carried unanimously 4-0.

### **12. Consider Ordinance No. 20-3392 AN ORDINANCE AMENDING THE ZONING REGULATIONS FOR THE CITY OF ABILENE, KANSAS TO ADD A NEW SECTION 20-14 CONCERNING THE DESIGNATION AND REGULATION OF CRITICAL DRAINAGE AREAS WITHIN THE CITY OF ABILENE, KANSAS.**

City Manager Foltz presented information regarding amending the zoning regulations regarding critical drainage areas in the city.

Motion by Commissioner Marshall, seconded by Commissioner Witt to adopt Ordinance No. 20-3392, **AN ORDINANCE AMENDING THE ZONING REGULATIONS FOR THE CITY OF ABILENE, KANSAS TO ADD A NEW SECTION 20-14 CONCERNING THE DESIGNATION AND REGULATION OF CRITICAL DRAINAGE AREAS WITHIN THE CITY OF ABILENE, KANSAS.**

Roll call vote: Rein YES, Marshall YES, Shafer YES, Witt YES. Motion carried unanimously 4-0.

**13. Consider Ordinance No. 20-3393, AN ORDINANCE AMENDING SECTION 27-401 OF THE ZONING REGULATIONS FOR THE CITY OF ABILENE, KANSAS CONCERNING REQUIRED MESSAGE HOLD TIMES FOR ELECTRONIC MESSAGE CENTER SIGNS WITHIN THE CITY OF ABILENE, KANSAS.**

City Manager Foltz presented information regarding the amendment of Section 27-401 of the zoning regulations regarding the message hold time for electronic message centers. The minimum hold time will be changed from 15 seconds to 3 seconds. This was reviewed by the Planning Commission.

Motion by Commissioner Witt, seconded by Commissioner Marshall to adopt Ordinance No. 20-3393, **AN ORDINANCE AMENDING SECTION 27-401 OF THE ZONING REGULATIONS FOR THE CITY OF ABILENE, KANSAS CONCERNING REQUIRED MESSAGE HOLD TIMES FOR ELECTRONIC MESSAGE CENTER SIGNS WITHIN THE CITY OF ABILENE, KANSAS.**

Roll call vote: Marshall YES, Shafer YES, Witt YES, Rein YES. Motion carried unanimously 4-0.

**14. Consider bids for the NE Drainage Project.**

City Manager Foltz presented information regarding the bids for the NE Drainage Project. Seven bids were received, and the lowest bid was Prairie Landworks, Inc. in the amount of \$185,793.93. This project will be paid for out of the storm water fund.

Motion by Commissioner Marshall, seconded by Commissioner Witt to approve the bid from Prairie Landworks, Inc. in the amount of \$185,793.93 for the NE Drainage Project. Roll call vote: Shafer YES, Witt YES, Rein YES, Marshall YES. Motion carried unanimously 4-0.

## **Reports**

### **15. City Manager reports**

Fire Chief Bob Sims will be retiring on January 1, 2021. We will have an open house in early December for Bob. We will begin the process of finding our next fire chief.

8<sup>th</sup> Street officially opened last Friday, October 23<sup>rd</sup>.

The Planning Commission meets next week on Wednesday, November 4<sup>th</sup>.

## **Adjournment**

### **16. Consideration of a motion to adjourn the October 26, 2020 City Commission meeting.**

Motion by Commissioner Marshall, seconded by Commissioner Witt to adjourn at 4:14 p.m. Roll call vote: Witt YES, Rein YES, Marshall YES, Shafer YES. Motion carried unanimously 4-0.

(Seal)

---

Brandon Rein, Vice-Mayor

ATTEST:

---

Penny L. Soukup, CMC  
City Clerk

Originating Department

Abilene Municipal Airport

Prepared By:

Marcus Rothchild

Approved For Agenda By:  
(Office Use Only)

JF

AGENDA ITEM HEADING:

Consider selection of consultant for Airport Environmental Assessment.

BACKGROUND:

In July of 2020, our Airport Master Plan was completed and presented to the City Commission. With that plan in place the City can now start completing projects from the Airport Capital Improvement Program utilizing the FAA entitlement funds. The first project on the ACIP is listed as "Obstruction Removal/Mitigation". This is a two-part project that requires an environmental assessment prior to obstruction removal/mitigation. The City has received the Project Initiation letter from the FAA and the next step in the process is consultant selection. After submitting a request for qualifications for the Environmental Assessment, the City received two proposals. The two consultants that responded are Olsson and Associates and Alfred Benesch and Company. The City has worked with both firms in the past and after reviewing the proposals found both companies fully qualified to complete the project successfully. A review committee comprised of the City Manager Foltz, Finance Director Rothchild, Airport Board Chair Jim Price and Abilene Municipal Airport FBO Jim Curtis reviewed both proposals and ultimately recommended Olsson and Associates to the Airport Board. At the airport board meeting on October 14, 2020 the Airport Board voted 4-0 to also recommend that Olsson and Associates be selected as our consultant for the Environmental Assessment.

FISCAL NOTE:

This selection is based on qualifications and not meant to be selected by price. The scope of work will have to be approved by the FAA followed by a negotiated contract and grant application prior to receiving a confirmation of federal funding. Matching from City is 10%.

COMMISSION ACTION:

Consider approval for selection of a consultant to conduct Airport Related Environmental Assessment/Plan/Study.



## **MASTER AGREEMENT FOR PROFESSIONAL SERVICES**

October 9, 2020

City of Abilene  
419 N. Broadway  
P.O. Box 510  
Abilene, Kansas 67410

Re: **MASTER AGREEMENT FOR PROFESSIONAL SERVICES  
ABILENE MUNICIPAL AIRPORT (K78)**

It is our understanding that the City of Abilene ("Client") requests Olsson, Inc. ("Olsson") to perform the services described herein pursuant to the terms of this Master Agreement for Professional Services, Olsson's General Provisions, Federal Contract Provisions, and any exhibits attached hereto (all documents constitute and are referred to herein as the "Agreement").

The purpose of the Agreement is to provide the Client and Olsson with an operating agreement covering on-going services provided to Client. Upon request for services from the Client, Olsson will send to the Client a proposed **Work Order** for approval by Client. The Work Order will include the project location, anticipated start and completion dates, project description, compensation, and the Scope of Services. Olsson will commence work on individual projects upon receipt of a signed Work Order.

Olsson has acquainted itself with the information provided by Client relative to the Master Agreement and based upon such information offers to provide the services described in each Work Order. Client warrants that it is either the legal owner of the property to be improved by each Work Order or that Client is acting as the duly authorized agent of the legal owner of such property. Client acknowledges that it has reviewed the General Provisions (and any exhibits attached hereto), which are expressly made a part of and incorporated into the Agreement by this reference. In the event of any conflict or inconsistency between this Master Agreement and the General Provisions regarding the services to be performed by Olsson, the terms of the General Provisions shall take precedence.

Olsson shall provide Client the Scope of Services for Projects as specified in each project Work Order. Olsson shall invoice Client for all services as outlined in each project Work Order. Olsson's services may vary for each project. Olsson shall not commence work on any Work Order without Client's prior approval in writing.

Olsson agrees to provide all of its services in a timely, competent, and professional manner, in accordance with applicable standards of care, for projects of similar geographic location, quality and scope.

## SCHEDULE FOR SERVICES

Details of the schedule for each project will be outlined in the Work Order.

## COMPENSATION

Compensation for each project will be outlined in the Work Order. Olsson shall submit invoices on a monthly basis and payment is due within 30 calendar days of the invoice date.

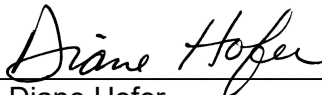
## TERMS AND CONDITIONS OF SERVICE

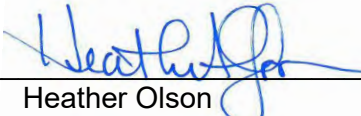
We have discussed with you the risks, rewards and benefits of the Agreement and the Agreement will represent the entire understanding between Client and Olsson with respect to any project subject to a Work Order. The Agreement may only be modified in writing signed by both parties.

Unless otherwise set forth in writing, Client's designated representative shall be Diane Hofer, PE.

If this Agreement satisfactorily sets forth your understanding of our agreement, please sign in the space provided below (indicating Client's designated representative if different from the party signing). Retain a copy for your files and return an executed original to Olsson, 601 P Street, Suite 200, Lincoln, Nebraska 68508. This proposal will be open for acceptance for a period of 30 days from the date set forth above, unless changed by us in writing.

## OLSSON, INC.

By   
Diane Hofer

By   
Heather Olson

By signing below, you acknowledge that you have full authority to bind Client to the terms of the Agreement. If you accept the terms set forth herein, please sign:

## CITY OF ABILENE

By \_\_\_\_\_  
Signature

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

Dated: \_\_\_\_\_

### Attachments

General Provisions

Federal Contract Provisions for A/E Agreements

## GENERAL PROVISIONS

These General Provisions are attached to and made a part of the respective Letter Agreement or Master Agreement, dated November 9, 2020 between City of Abilene, KS ("Client") and Olsson, Inc. ("Olsson") for professional services in connection with the project or projects arising under such Letter Agreement or Master Agreement (the "Project(s)").

As used herein, the term "this Agreement" refers to these General Provisions, the applicable Letter Agreement or Master Agreement, and any other exhibits or attachments thereto as if they were part of one and the same document.

### **SECTION 1—OLSSON'S SCOPE OF SERVICES**

Olsson's scope of services for the Project(s) is set forth in the applicable Letter Agreement or Master Agreement ("Scope of Services").

### **SECTION 2—ADDITIONAL SERVICES**

2.1 Unless otherwise expressly included, Scope of Services does not include the categories of additional services set forth in Sections 2.2 and 2.3.

2.2 If Client and Olsson mutually agree for Olsson to perform any optional additional services as set forth in this Section 2.2 ("Optional Additional Services"), Client will provide written approval of the agreed-upon Optional Additional Services, and Olsson shall perform or obtain from others such services and will be entitled to an increase in compensation at rates provided in this Agreement. Olsson may elect not to perform all or any of the Optional Additional Services without cause or explanation:

2.2.1 Preparation of applications and supporting documents for governmental financial support of the Project(s); preparation or review of environmental studies and related services; and assistance in obtaining environmental approvals.

2.2.2 Services to make measured drawings of or to investigate existing conditions of facilities.

2.2.3 Services resulting from changes in the general scope, extent or character of the Project(s) or major changes in documentation previously accepted by Client where changes are due to causes beyond Olsson's control.

2.2.4 Services resulting from the discovery of conditions or circumstances which were not contemplated by Olsson at the commencement of this Agreement. Olsson shall notify Client of the newly discovered conditions or circumstances and Client and Olsson shall renegotiate, in good faith, the compensation for this Agreement, if amended terms cannot be agreed upon, Olsson may terminate this Agreement and Olsson shall be paid for its services through the date of termination.

2.2.5 Providing renderings or models.

2.2.6 Preparing documents for alternate bids requested by Client.

2.2.7 Analysis of operations, maintenance or overhead expenses; value engineering; the preparation of rate schedules; earnings or expense statements; cash flow or economic evaluations or; feasibility studies, appraisals or valuations.

2.2.8 Furnishing the services of independent professional associates or consultants for work beyond the Scope of Services.

2.2.9 Services necessary due to the Client's award of more than one prime contract for the Project(s); services necessary due to the construction contract containing cost plus or incentive-savings provisions; services necessary in order to arrange for performance by persons other than the prime contractor; or those services necessary to administer Client's contract(s).

2.2.10 Services in connection with staking out the work of contractor(s).

2.2.11 Services during out-of-town travel or visits to the site beyond those specifically identified in this Agreement.

2.2.12 Preparation of operating and maintenance manuals.

2.2.13 Services to redesign some or all of the Project(s).

2.2.14 Preparing to serve or serving as a consultant or witness or assisting Client with any litigation, arbitration or other legal or administrative proceeding.

2.2.15 Services relating to Construction Observation, Certification, Inspection, Construction Cost Estimating, project observation, construction management, construction scheduling, construction phasing or review of Contractor's performance means or methods.

2.3 Whenever, in its sole discretion, Olsson determines additional services as set forth in this Section 2.3 are necessary to avoid a delay in the completion of the Project(s) ("Necessary Additional Services"), Olsson shall perform or obtain from others such services without waiting for specific instructions from Client, and Olsson will be entitled to an increase in compensation for such services at the standard hourly billing rate charged for those employees performing the services, plus reimbursable expenses, if any:

2.3.1 Services in connection with work directive changes and/or change orders directed by the Client to any contractors.

2.3.2 Services in making revisions to drawings and specifications occasioned by the acceptance of substitutions proposed by contractor(s); services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by contractor(s); or evaluating an unreasonable or extensive number of claims submitted by contractor(s) or others in connection with the Project(s).

2.3.3 Services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.

2.3.4 Additional or extended services during construction made necessary by (1) work damaged during construction, (2) a defective, inefficient or neglected work by any contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, or (4) default by any contractor.

### **SECTION 3—CLIENT'S RESPONSIBILITIES**

3.1. Client shall provide all criteria and full information as to Client's requirements for the Project(s); designate and identify in writing a person to act with authority on Client's behalf in respect of all aspects of the Project(s); examine and respond promptly to Olsson's submissions; and give prompt written notice to Olsson whenever Client observes or otherwise becomes aware of any defect in the Olsson's services.

3.2 Client agrees to pay Olsson the amounts due for services rendered and expenses within thirty (30) days after Olsson has provided its invoice for such services. In the event Client disputes any invoice item, Client shall give Olsson written notice of such disputed item within fifteen (15) days after receipt of such invoice and shall pay to Olsson the undisputed portion of the invoice according to the provisions hereof. If Client fails to pay any invoiced amounts when due, interest will accrue on each unpaid amount at the rate of thirteen percent (13%) per annum from the date due until paid according to the provisions of this Agreement. Interest shall not be charged on any disputed invoice item which is finally resolved in Client's favor. Payment of interest shall not excuse or cure any default or delay in payment of amounts due.

3.2.1 If Client fails to make any payment due Olsson for services and expenses within thirty (30) days after receipt of Olsson's statement therefore, Olsson may, after giving seven (7) days written notice to Client, suspend services to Client under this Agreement until Olsson has been paid in full all amounts due for services, expenses and charges and Client will not obtain any license to any Work Product or be entitled to retain or use any Work Product pursuant to Section 7.1 unless and until Olsson has been paid in full and Client has fully satisfied all of its obligations under this Agreement.

3.3 Payments to Olsson shall not be withheld, postponed or made contingent on the construction, completion or success of the Project(s) or upon receipt by the Client of offsetting reimbursements or credit from other parties who may have caused the need for additional services. No withholdings, deductions or offsets shall be made from Olsson's compensation for any reason unless and until Olsson has been found to be legally liable for such amounts.

3.4 Client shall also do the following and pay all costs incident thereto:

3.4.1 Furnish to Olsson any existing and/or required borings, probings or subsurface explorations; hydrographic surveys; laboratory tests or inspections of samples, materials or equipment; appropriate professional interpretations of any of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic or utility surveys; property descriptions; and/or zoning or deed restrictions; all of which Olsson may rely upon in performing services hereunder.

3.4.2 Guarantee access to and make all provisions for Olsson to enter upon public and private property reasonably necessary to perform its services on the Project(s).

3.4.3 Provide such legal, accounting, independent cost estimating or insurance counseling services as may be required for the Project(s); any auditing service required in respect of contractor(s)' applications for payment; and/or any inspection services to determine if contractor(s) are performing the work legally.

3.4.4 Provide engineering surveys to establish reference points for construction unless specifically included in Olsson's Scope of Services.

3.4.5 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project(s).

3.4.6 If more than one prime contractor is to be awarded the contract for construction, designate a party to have responsibility and authority for coordinating and interfacing the activities of the various prime contractors.

3.4.7 All fees and other amounts payable by Client under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Client is responsible and liable for all sales, service, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, county or local governmental authority on any amounts payable by Client under this Agreement, other than any taxes imposed on Olsson's income. In the event any governmental authority assesses Olsson for taxes, duties, or charges of any kind in connection with Scope of Services provided by Olsson to Client, Olsson shall be entitled to submit an invoice to Client, its successors or assigns, for the amount of said assessment and related interest and penalties. Client shall pay such invoice in accordance with Olsson's standard payment terms.

3.5 Client shall pay all costs incident to obtaining bids or proposals from contractor(s).

3.6 Client shall pay all permit application review costs for government authorities having jurisdiction over the Project(s).

3.7 Contemporaneously with the execution of this Agreement, Client shall designate in writing an individual to act as its duly authorized Project(s) representative.

3.8 Client shall bear sole responsibility for:

3.8.1 Jobsite safety. Neither the professional activities of Olsson, nor the presence of Olsson or its employees or sub-consultants at the Project shall impose any duty on Olsson relating to any health or safety laws, regulations, rules, programs or procedures.

3.8.2 Notifying third parties including any governmental agency or prospective purchaser, of the existence of any hazardous or dangerous materials located in or around the Project(s) site.

3.8.3 Providing and updating Olsson with accurate information regarding existing conditions, including the existence of hazardous or dangerous materials, proposed Project(s) site uses, any change in Project(s) plans, and all subsurface installations, such as pipes, tanks, cables and utilities within the Project(s) site.

3.8.4 Providing and assuming all responsibility for: interpretation of contract documents; Construction Observations; Certifications; Inspections; Construction Cost Estimating; project observations; construction management; construction scheduling; construction phasing; and review of Contractor's performance, means and methods. Client waives any claims against Olsson and releases Olsson from liability relating to or arising out of such services and agrees, to the fullest extent permitted by law, to indemnify and hold Olsson

harmless from any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, relating to such actions and services.

3.9 Client releases Olsson from liability for any incorrect advice, judgment or decision based on inaccurate information furnished by Client or others.

3.10 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including hazardous materials, encountered on the site, Olsson may immediately stop work in the affected area and report the condition to Client. Client shall be solely responsible for retaining independent consultant(s) to determine the nature of the material and to abate or remove the material. Olsson shall not be required to perform any services or work relating to or in the area of such material until the material has been removed or rendered harmless and only after approval, if necessary of the government agency with jurisdiction.

#### **SECTION 4—MEANING OF TERMS**

4.1 The "Cost of Construction" of the entire Project(s) (herein referred to as "Cost of Construction") means the total cost to Client of those portions of the entire Project(s) designed and specified by Olsson, but it will not include Olsson's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to, properties unless this Agreement so specifies, nor will it include Client's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project(s) or the cost of other services to be provided by others to Client pursuant to Section 3.

4.2 The "Salary Costs": Used as a basis for payment mean salaries and wages (base and incentive) paid to all Olsson's personnel engaged directly on the Project(s), including, but not limited to, engineers, architects, surveyors, designers, draftsmen, specification writers, estimators, other technical and business personnel; plus the cost of customary and statutory benefits, including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday pay and other group benefits.

4.3 "Certify" or "a Certification": If included in the Scope of Services, such services shall be limited to a statement of Olsson's opinion, to the best of Olsson's professional knowledge, information and belief, based upon its periodic observations and reasonable review of reports and tests created by Olsson or provided to Olsson. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that any certifications based upon discrete sampling observations and that such observations indicate conditions that exist only at the locations and times the observations were performed. Performance of such observation services and certification does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor(s) or for the contractor's safety precautions and programs nor for failure by the contractor(s) to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor(s). Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the

construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor(s) or any subcontractor(s). Olsson shall sign pre-printed form certifications only if (a) Olsson approves the form of such certification prior to the commencement of its services, (b) such certification is expressly included in the Scope of Services, (c) the certification is limited to a statement of professional opinion and does not constitute a warranty or guarantee, express or implied. It is understood that any certification by Olsson shall not relieve the Client or the Client's contractors of any responsibility or obligation they may have by industry custom or under any contract.

4.4 "Opinion of Probable Cost": An opinion of probable construction cost made by Olsson. In providing opinions of probable construction cost, it is recognized that neither the Client nor Olsson has control over the costs of labor, equipment or materials, or over the contractor's methods of determining prices or bidding. The opinion of probable construction costs is based on Olsson's reasonable professional judgment and experience and does not constitute a warranty, express or implied, that the contractor's bids or the negotiated price of the work on the Project(s) will not vary from the Client's budget or from any opinion of probable cost prepared by Olsson.

4.5 "Day": A calendar day of 24 hours. The term "days" shall mean consecutive calendar days of 24 hours each, or fraction thereof.

4.6 "Construction Observation": If included in the Scope of Services, such services during construction shall be limited to periodic visual observation and testing of the work to determine that the observed work generally conforms to the contract documents. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that such visual observations are discrete sampling procedures and that such procedures indicate conditions that exist only at the locations and times the observations were performed. Performance of Construction Observation services does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor or for the contractor's safety precautions and programs nor for failure by the contractor to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor. Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor or any subcontractor. Client, or its designees shall notify Olsson at least twenty-four (24) hours in advance of any field tests and observations required by the construction documents.

4.7 "Inspect" or "Inspection": If included in the Scope of Services, such services shall be limited to the periodic visual observation of the contractor's completed work to permit Olsson, as an experienced and qualified professional, to determine that the observed work, generally conforms to the contract documents. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that such visual observations are discrete sampling procedures and that such procedures indicate conditions that exist only at the locations and times the observations were performed. Performance of such observation services does not constitute a warranty or guarantee of any type, since even with

diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor(s) or for the contractor's safety precautions and programs nor for failure by the contractor(s) to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor(s). Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor(s) or any subcontractor(s). Client, or its designees, shall notify Olsson at least twenty-four (24) hours in advance of any inspections required by the construction documents.

4.8 "Record Documents": Drawings prepared by Olsson upon the completion of construction based upon the drawings and other data furnished to Olsson by the Contractor and others showing significant changes in the work on the Project(s) made during construction. Because Record Documents are prepared based on unverified information provided by others, Olsson makes no warranty of the accuracy or completeness of the Record Documents.

## **SECTION 5—TERMINATION**

5.1 Either party may terminate this Agreement, for cause upon giving the other party not less than seven (7) calendar days written notice of default for any of the following reasons; provided, however, that the notified party shall have the same seven (7) calendar day period in which to cure the default:

5.1.1 Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;

5.1.2 Assignment of this Agreement or transfer of the Project(s) by either party to any other entity without the prior written consent of the other party;

5.1.3 Suspension of the Project(s) or Olsson's services by the Client for more than ninety (90) calendar days, consecutive or in the aggregate.

5.2 In the event of a "for cause" termination of this Agreement by either party, the Client shall, within fifteen (15) calendar days after receiving Olsson's final invoice, pay Olsson for all services rendered and all reimbursable costs incurred by Olsson up to the date of termination, in accordance with the payment provisions of this Agreement.

5.2.1 In the event of a "for cause" termination of this Agreement by Client and (a) a final determination of default is entered against Olsson under Section 6.2 and (b) Client has fully satisfied all of its obligations under this Agreement, Olsson shall grant Client a limited license to use the Work Product pursuant to Section 7.1.

5.3 The Client may terminate this Agreement for the Client's convenience and without cause upon giving Olsson not less than seven (7) calendar days written notice. In the event of any termination that is not the fault of Olsson, the Client shall pay Olsson, in addition to payment for services rendered and reimbursable costs incurred, for all expenses reasonably incurred by Olsson in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs, any

fees, costs or expenses incurred by Olsson in preparing or negotiating any proposals submitted to Client for Olsson's Scope of Services or Optional Additional Services under this Agreement and all other expenses directly resulting from the termination and a reasonable profit of ten percent (10%) of Olsson's actual costs (including overhead) incurred.

## **SECTION 6—DISPUTE RESOLUTION**

### **6.1. Mediation**

6.1.1 All questions in dispute under this Agreement shall be submitted to mediation. On the written notice of either party to the other of the election to submit any dispute under this Agreement to mediation, each party shall designate their representatives and shall meet within ten (10) days after the service of the notice. The parties themselves shall then attempt to resolve the dispute within ten (10) days of meeting.

6.1.2 Should the parties themselves be unable to agree on a resolution of the dispute, and then the parties shall appoint a third party who shall be a competent and impartial party and who shall be acceptable to each party, to mediate the dispute. Any third party mediator shall be qualified to evaluate the performance of both of the parties, and shall be familiar with the design and construction progress. The third party shall meet to hear the dispute within ten (10) days of their selection and shall attempt to resolve the dispute within fifteen (15) days of first meeting.

6.1.3 Each party shall pay the fees and expenses of the third party mediator and such costs shall be borne equally by both parties.

### **6.2 Arbitration or Litigation**

6.2.1 Olsson and Client agree that from time to time, there may be conflicts, disputes and/or disagreements between them, arising out of or relating to the services of Olsson, the Project(s), or this Agreement (hereinafter collectively referred to as "Disputes") which may not be resolved through mediation. Therefore, Olsson and Client agree that all Disputes shall be resolved by binding arbitration or litigation at the sole discretion and choice of Olsson. If Olsson chooses arbitration, the arbitration proceeding shall proceed in accordance with the Construction Industry Arbitration Rules of the AAA.

6.2.2 Client hereby agrees that Olsson shall have the right to include Client, by consolidation, joinder or other manner, in any arbitration or litigation involving Olsson and a subconsultant or subcontractor of Olsson or Olsson and any other person or entity, regardless of who originally initiated such proceedings.

6.2.3 If Olsson chooses arbitration or litigation, either may be commenced at any time prior to or after completion of the Project(s), provided that if arbitration or litigation is commenced prior to the completion of the Project(s), the obligations of the parties under the terms of this Agreement shall not be altered by reason of the arbitration or litigation being conducted. Any arbitration hearings or litigation shall take place in Lincoln, Nebraska, the location of Olsson's home office.

6.2.4 The prevailing party in any arbitration or litigation relating to any Dispute shall be entitled to recover from the other party those reasonable attorney fees, costs and expenses incurred by the prevailing party in connection with the Dispute.

### 6.3 Certification of Merit

Client agrees that it will not assert any claim, including but not limited to, professional negligence, negligence, breach of contract, misconduct, error, omission, fraud, or misrepresentation ("Claim") against Olsson, or any Olsson subconsultant, unless Client has first provided Olsson with a sworn certificate of merit affidavit setting forth the factual and legal basis for such Claim (the "Certificate"). The Certificate shall be executed by an independent engineer ("Certifying Engineer") currently licensed and practicing in the jurisdiction of the Project site. The Certificate must contain: (a) the name and license number of the Certifying Engineer; (b) the qualifications of the Certifying Engineer, including a list of all publications authored in the previous 10 years and a list of all cases in which the Certifying Engineer testified within the previous 4 years; (c) a statement by the Certifying Engineer setting forth the factual basis for the Claim; (d) a statement by the Certifying Engineer of each and every act, error, or omission that the Certifying Engineer contends supports the Claim or any alleged violation of any applicable standard of care; (e) a statement by the Certifying Engineer of all opinions the Certifying Engineer holds regarding the Claim or any alleged violation of any applicable standard of care; (f) a list of every document related to the Project reviewed by the Certifying Engineer; and (g) a list of every individual who provided Certifying Engineer with any information regarding the Project. The Certificate shall be provided to Olsson not less than thirty (30) days prior to any arbitration or litigation commenced by Client or not less than ten (10) days prior to the initial response submitted by Client in any arbitration or litigation commenced by someone other than Client. The Certificate is a condition precedent to the right of Client to assert any Claim in any litigation or arbitration and Client's failure to timely provide a Certificate to Olsson will be grounds for automatic dismissal of the Claim with prejudice.

## **SECTION 7—MISCELLANEOUS**

### 7.1 Reuse of Documents

All documents, including drawings, specifications, reports, boring logs, maps, field data, data, test results, information, recommendations, or opinions prepared or furnished by Olsson (and Olsson's independent professional associates and consultants) pursuant to this Agreement ("Work Product"), are all Olsson's instruments of service, do not constitute goods or products, and are copyrighted works of Olsson. Olsson shall retain an ownership and property interest in such Work Product whether or not the Project(s) is completed. If Client has fully satisfied all of its obligations under this Agreement, Olsson shall grant Client a limited license to use the Work Product and Client may make and retain copies of Work Product for use in connection with the Project(s); however, such Work Product is for the exclusive use and benefit of Client or its agents in connection with the Project(s), are not intended to inform, guide or otherwise influence any other entities or persons with respect to any particular business transactions, and should not be relied upon by any entities or persons other than Client or its agents for any purpose other than the Project(s). Such Work Product is not intended or represented to be suitable for reuse by Client or others on extensions of the Project(s) or on any other Project(s). Client will not distribute or convey such Work Product to any other persons or entities without Olsson's prior written consent which shall include a release of Olsson from liability and indemnification by the third party. Any reuse of Work Product without written verification or adaptation by Olsson for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to Olsson, or to Olsson's independent

professional associates or consultants, and Client shall indemnify and hold harmless Olsson and Olsson's independent professional associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation of Work Product will entitle Olsson to further compensation at rates to be agreed upon by Client and Olsson.

### 7.2 Electronic Files

By accepting and utilizing any electronic file of any Work Product or other data transmitted by Olsson, the Client agrees for itself, its successors, assigns, insurers and all those claiming under or through it, that by using any of the information contained in the attached electronic file, all users agree to be bound by the following terms. All of the information contained in any electronic file is the work product and instrument of service of Olsson, who shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights, unless the same have previously been transferred in writing to the Client. The information contained in any electronic file is provided for the convenience to the Client and is provided in "as is" condition. The Client is aware that differences may exist between the electronic files transferred and the printed hard-copy original signed and stamped drawings or reports. In the event of a conflict between the signed original documents prepared by Olsson and the electronic files, which may be transferred, the signed and sealed original documents shall govern. Olsson specifically disclaims all warranties, expressed or implied, including without limitation, and any warranty of merchantability or fitness for a particular purpose with respect to any electronic files. It shall be Client's responsibility to confirm the accuracy of the information contained in the electronic file and that it accurately reflects the information needed by the Client. Client shall not retransmit any electronic files, or any portion thereof, without including this disclaimer as part of any such transmissions. In addition, Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Olsson, its officers, directors, employees and sub consultants against any and all damages, liabilities, claims or costs, including reasonable attorney's and expert witness fees and defense costs, arising from any changes made by anyone other than Olsson or from any reuse of the electronic files without the prior written consent of Olsson.

### 7.3 Opinion of Probable Cost

Since Olsson has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s)' methods of determining prices, or over competitive bidding or market conditions, Olsson's Opinion of Probable Cost provided for herein is made on the basis of Olsson's experience and qualifications and represent Olsson's best judgment as an experienced and qualified professional engineer, familiar with the construction industry. Client acknowledges and agrees that Olsson cannot and does not guarantee proposals or bids and that actual total Project(s) or construction costs may reasonably vary from Olsson's Opinion of Probable Cost. If prior to the bidding or negotiating phase Client wishes greater assurance as to total Project(s) or construction costs, Client shall employ an independent cost estimator as provided in paragraph 3.4.3. If Olsson's Opinion of Probable Cost was performed in accordance with its standard of care and was reasonable under the total circumstances, any services performed by Olsson to modify the contract documents to bring the construction cost within any limitation established by Client will be considered Optional Additional Services and paid for as such by Client. If, however, Olsson's Opinion of Probable Cost was not performed

in accordance with its standard of care and was unreasonable under the total circumstances and the lowest negotiated bid for construction of the Project(s) unreasonably exceeds Olsson's Opinion of Probable Cost, Olsson shall modify its work as necessary to adjust the Project(s)' size, and/or quality to reasonably comply with the Client's budget at no additional cost to Client. Under such circumstances, Olsson's modification of its work at no cost shall be the limit of Olsson's responsibility with regard to any unreasonable Opinion of Probable Cost.

#### **7.4 Prevailing Wages**

It is Client's responsibility to determine whether the Project(s) is covered under any prevailing wage regulations. Unless Client specifically informs Olsson in writing that the Project(s) is a prevailing wage project and is identified as such in the Scope of Services, Client agrees to reimburse Olsson and to defend, indemnify and hold harmless Olsson from and against any liability, including costs, fines and attorneys' fees, resulting from a subsequent determination that the Project(s) was covered under any prevailing wage regulations.

#### **7.5 Samples**

All material testing samples shall remain the property of the Client. If appropriate, Olsson shall preserve samples obtained no longer than forty-five (45) days after the issuance of any document that includes the data obtained from those samples. After that date, Olsson may dispose of the samples or return them to Client at Client's cost.

#### **7.6 Standard of Care**

Olsson will strive to perform its services in a manner consistent with that level of care and skill ordinarily exercised by members of Olsson's profession providing similar services in the same locality under similar circumstances at the time Olsson's services are performed. This Agreement creates no other representation, warranty or guarantee, express or implied.

#### **7.7 Force Majeure**

Any delay in the performance of any of the duties or obligations of either party hereto (except the payment of money) shall not be considered a breach of this Agreement and the time required for performance shall be extended for a period equal to the period of such delay, provided that such delay has been caused by or is the result of any acts of God, acts of the public enemy, insurrections, riots, embargoes, labor disputes, including strikes, lockouts, job actions, boycotts, fires, explosions, floods, shortages of material or energy, or other unforeseeable causes beyond the control and without the fault or negligence of the party so affected. The affected party shall give prompt notice to the other party of such cause, and shall take promptly whatever reasonable steps are necessary to relieve the effect of such cause.

#### **7.8 Equal Employment Opportunity**

Olsson and any sub-consultant or subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in

employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

#### **7.9 Confidentiality**

In performing this Agreement, the parties may disclose to each other written, oral, electronic, graphic, machine-readable, tangible or intangible, non-public, confidential or proprietary data or information in any form or medium, including but not limited to: (1) information of a business, planning, marketing, conceptual, design, or technical nature; (2) models, tools, hardware, software or source code; and (3) any documents, videos, photographs, audio files, data, studies, reports, flowcharts, works in progress, memoranda, notes, files or analyses that contain, summarize or are based upon any non-public, proprietary or confidential information (hereafter referred to as the "Information"). The Information is not required to be marked as confidential.

7.9.1 Therefore, Olsson and Client agree that the party receiving Information from the other party to this Agreement (the "Receiving Party") shall keep Information confidential and not use the Information in any manner other than in the performance of this Agreement without prior written approval of the party disclosing Information (the "Disclosing Party") unless Client is a public entity and the release of Information is required by law or legal process.

7.9.2 Prior to the start of construction on the Project, the existence of discussions between the parties, the purpose of this Agreement, and this Agreement shall be considered Information subject to the confidentiality provisions of this Agreement.

7.9.3 Notwithstanding anything to the contrary herein, the Receiving Party shall have no obligation to preserve the confidentiality of any Information which:

7.9.3.1 was previously known to the Receiving Party free of any obligation to keep it confidential; or

7.9.3.2 is or becomes publicly available by other than unauthorized disclosures; or

7.9.3.3 is independently developed by the Receiving Party without a breach of this Agreement; or

7.9.3.4 is disclosed to third parties by the Disclosing Party without restrictions; or

7.9.3.5 is received from a third party not subject to any confidentiality obligations.

7.9.4 In the event that the Receiving Party is required by law or legal process to disclose any of Information of the Disclosing Party, the Receiving Party required to disclose such Information shall provide the Disclosing Party with prompt oral and written notice, unless notice is prohibited by law (in which case such notice shall be provided as early as may be legally permissible), of any such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy.

7.9.5 Notwithstanding anything to the contrary herein (or to the contrary of any existing or future nondisclosure, confidentiality or similar agreement between the parties), Olsson is authorized, to use, display, reproduce, publish, transmit, and distribute Information (including, but not limited to, videos and

photographs of the Project) on and in any and all formats and media (including, but not limited to, Olsson's internet website) throughout the world and in all languages in connection with or in any manner relating to the marketing, advertising, selling, qualifying, proposing, commercializing, and promotion of Olsson and/or its services and business and in connection with any other lawful purpose of Olsson. In the event of any conflict or inconsistency between the provisions of this section and any other prior or future nondisclosure, confidentiality or similar agreement between the parties, the terms of this section shall take precedence.

7.9.6 Nothing contained in this Agreement shall be construed as altering any rights that the Disclosing Party has in the Information exchanged with or disclosed to the Receiving Party, and upon request, the Receiving Party will return all Information received in tangible form to the Disclosing Party, or at the Receiving Party's option, destroy all such Information. If the Receiving Party exercises its option to destroy the Information, the Receiving Party shall certify such destruction to the Disclosing Party.

7.9.7 The parties acknowledge that disclosure or use of Information in violation of this Agreement could cause irreparable harm for which monetary damages may be difficult to ascertain or constitute an inadequate remedy. Each party therefore agrees that the Disclosing Party shall be entitled in addition to its other rights to seek injunctive relief for any violation of this Agreement.

7.9.8 The obligations of confidentiality set forth herein shall survive termination of this Agreement but shall only remain in effect for a period of one (1) year from the date the Information is first disclosed.

#### **7.10 Damage or Injury to Subterranean Structures or Utilities, Hazardous Materials, Pollution and Contamination**

7.10.1 To the extent that work pursuant to this Agreement requires any sampling, boring, excavation, ditching or other disruption of the soil or subsurface at the Site, Olsson shall confer with Client prior to such activity and Client will be responsible for identifying, locating and marking, as necessary, any private subterranean structures or utilities and Olsson shall be responsible for arranging investigation of public subterranean structures or utilities through an appropriate utility one-call provider. Thereafter, Olsson shall take all reasonable precautions to avoid damage or injury to subterranean structures or utilities which were identified by Client or the one-call provider. Olsson shall not be responsible for any damage, liability or costs, for any property damage, injury or economic loss arising or allegedly arising from damages to subterranean structures or utilities caused by subsurface penetrations in locations approved by Client and/or the one call provider or not correctly shown on any plans, drawings or utility clearance provided to Olsson, except for damages caused by the negligence of Olsson in the use of such information.

7.10.2 It is understood and agreed that any assistance Olsson may provide Client in the disposal of waste materials shall not result in Olsson being deemed as a generator, arranger, transporter or disposer of hazardous materials or hazardous waste as defined under any law or regulation. Title to all samples and waste materials remains with Client, and at no time shall Olsson take title to the above material. Client may authorize Olsson to execute Hazardous Waste Manifest, Bill of Lading or other forms as agent of Client. If Client requests Olsson to execute such documents as its agent, the Hazardous

Waste Manifest, Bill of Lading or other similar documents shall be completed in the name of the Client. Client agrees to indemnify and hold Olsson harmless from any and all claims that Olsson is a generator, arranger, transporter, or disposer of hazardous waste as a result of any actions of Olsson, including, but not limited to, Olsson signing a Hazardous Waste Manifest, Bill of Lading or other form on behalf of Client.

7.10.3 At any time, Olsson can request in writing that Client remove samples, cuttings and hazardous substances generated by the Project(s) from the project site or other location. Client shall promptly comply with such request, and pay and be responsible for the removal and lawful disposal of samples, cuttings and hazardous substances, unless other arrangements are mutually agreed upon in writing.

7.10.4 Client shall release Olsson of any liability for, and shall defend and indemnify Olsson against any and all claims, liability and expense resulting from operations under this Agreement on account of injury to, destruction of, or loss or impairment of any property right in or to oil, gas, or other mineral substance or water, if at the time of the act or omission causing such injury, destruction, loss or impairment, said substance had not been reduced to physical possession above the surface of the earth, and for any loss or damage to any formation, strata, reservoir beneath the surface of the earth.

7.10.5 Notwithstanding anything to the contrary contained herein, it is understood and agreed by and between Olsson and Client that the responsibility for pollution and contamination shall be as follows:

7.10.5.1 Unless otherwise provided herein, Client shall assume all responsibility for, including control and removal of, and protect, defend and save harmless Olsson from and against all claims, demands and causes of action of every kind and character arising from pollution or contamination (including naturally occurring radioactive material) which originates above the surface of the land or water from spills of fuels, lubricants, motor oils, pipe dope, paints, solvents, ballast, bilge and garbage, except unavoidable pollution from reserve pits, wholly in Olsson's possession and control and directly associated with Olsson's equipment.

7.10.5.2 In the event a third party commits an act or omission which results in pollution or contamination for which either Olsson or Client, for whom such party is performing work, is held to be legally liable, the responsibility therefore shall be considered as between Olsson and Client, to be the same as if the party for whom the work was performed had performed the same and all of the obligations regarding defense, indemnity, holding harmless and limitation of responsibility and liability, as set forth herein, shall be specifically applied.

#### **7.11 Controlling Law and Venue**

The parties agree that this Agreement and any legal actions concerning its validity, interpretation or performance shall be governed by the laws of the State of Nebraska. It is further agreed that any legal action between the parties arising out of this Agreement or the performance of services shall be brought in a court of competent jurisdiction in Nebraska.

## **7.12 Subconsultants**

Olsson may utilize as necessary in its discretion subconsultants and other subcontractors. Olsson will be paid for all services rendered by its subconsultants and other subconsultants as set forth in this Agreement.

## **7.13 Assignment**

7.13.1 Client and Olsson each are hereby bound and the partners, successors, executors, administrators and legal representatives of Client and Olsson (and to the extent permitted by paragraph 7.13.2 the assigns of Client and Olsson) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

7.13.2 Neither Client nor Olsson shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. 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 this Agreement. Nothing contained in this paragraph shall prevent Olsson from employing such subconsultants and other subcontractors as Olsson may deem appropriate to assist in the performance of services under this Agreement.

7.13.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than Client and Olsson, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Client and Olsson and not for the benefit of any other party. There are no third-party beneficiaries of this Agreement.

## **7.14 Indemnity**

Olsson and Client mutually agree, to the fullest extent permitted by law, to indemnify and hold each other harmless from any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, relating to third party personal injury or third party property damage and arising from their own negligent acts, errors or omissions in the performance of their services under this Agreement, but only to the extent that each party is responsible for such damages, liabilities or costs on a comparative basis of fault.

## **7.15 Limitation on Damages**

7.15.1 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither party's individual employees, principals, officers or directors shall be subject to personal liability or damages arising out of or connected in any way to the Project(s) or to this Agreement.

7.15.2 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither Client nor Olsson, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any delay damages, any punitive damages or any incidental, indirect or consequential damages arising out of or connected in any way to the Project(s)

or to this Agreement. This mutual waiver of delay damages and consequential damages shall include, but is not limited to, disruptions, accelerations, inefficiencies, increased construction costs, increased home office overhead, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other delay or consequential damages that either party may have incurred from any cause of action including, but not limited to, negligence, statutory violations, misrepresentation, fraud, deceptive trade practices, breach of fiduciary duties, strict liability, breach of contract and/or breach of strict or implied warranty. Both the Client and Olsson shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in the Project(s).

7.15.3 Notwithstanding any other provision of this Agreement, Client agrees that, to the fullest extent permitted by law, Olsson's total liability to the Client for any and all injuries, claims, losses, expenses, damages, or claims expenses of any kind arising from any services provided by or through Olsson under this Agreement, shall not exceed the amount of Olsson's fee earned under this Agreement. Client acknowledges that such causes include, but are not limited to, negligence, statutory violations, misrepresentation, fraud, deceptive trade practices, breach of fiduciary duties, strict liability, breach of contract and/or breach of strict or implied warranty. This limitation of liability shall apply to all phases of Olsson's services performed in connection with the Project(s), whether subsequent to or prior to the execution of this Agreement.

## **7.16 Entire Agreement**

This Agreement supersedes all prior communications, understandings and agreements, whether oral or written. Amendments to this Agreement must be in writing and signed by the Client and Olsson.

# FEDERAL CONTRACT PROVISIONS FOR A/E AGREEMENTS

ALL REFERENCES MADE HEREIN TO “CONTRACTOR”, “PRIME CONTRACTOR”, “BIDDER”, “OFFEROR”, AND “APPLICANT” SHALL PERTAIN TO THE ARCHITECT/ENGINEER (A/E).

ALL REFERENCES MADE HEREIN TO “SUBCONTRACTOR”, “SUB-TIER CONTRACTOR” OR “LOWER TIER CONTRACTOR” SHALL PERTAIN TO ANY SUBCONSULTANT UNDER CONTRACT WITH THE A/E.

ALL REFERENCES MADE HEREIN TO “SPONSOR” AND “OWNER” SHALL PERTAIN TO THE STATE, CITY, AIRPORT AUTHORITY OR OTHER PUBLIC ENTITY EXECUTING CONTRACTS WITH THE A/E.

## ACCESS TO RECORDS AND REPORTS

Reference: 2 CFR § 200.333, 2 CFR § 200.336, and FAA Order 5100.38

The contractor must maintain an acceptable cost accounting system. The contractor agrees to provide the Sponsor, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

## CIVIL RIGHTS – GENERAL

Reference: 49 USC § 47123

The contractor agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the contractor and sub-tier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

## CIVIL RIGHTS – TITLE VI ASSURANCE

Reference: 49 USC § 47123 and FAA Order 1400.11

### A) Title VI Solicitation Notice

The **(Name of Sponsor)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

## **B) Title VI Clauses for Compliance with Nondiscrimination Requirements**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

- 1) **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- 2) **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- 3) **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
- 4) **Information and Reports:** The contractor will provide all information and reports required by the Nondiscrimination Acts and Authorities, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- 5) **Sanctions for Noncompliance:** In the event of a contractor’s noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
- 6) **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Nondiscrimination Acts and Authorities, and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

### **C) Title VI List of Pertinent Nondiscrimination Authorities**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non- discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

## **DISADVANTAGED BUSINESS ENTERPRISE**

Reference: 49 CFR part 26

**Contract Assurance (§ 26.13)** - The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

**Prompt Payment (§26.29)** - The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) calendar days from the receipt of each payment the prime contractor receives from the Sponsor. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Sponsor. This clause applies to both DBE and non-DBE subcontractors.

## **ENERGY CONSERVATION REQUIREMENTS**

Reference: 2 CFR § 200, Appendix II (H)

Contractor and each subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201 et seq).

## **FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)**

Reference: 29 USC § 201, et seq.

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The Consultant has full responsibility to monitor compliance to the referenced statute or regulation. The Consultant must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Wage and Hour Division.

## **OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

Reference: 20 CFR part 1910

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

## RIGHT TO INVENTIONS

Reference: 2 CFR § 200 Appendix II (F) and 37 CFR §401

Contracts or agreements that include the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the Owner in any resulting invention as established by 37 CFR part 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements. This contract incorporates by reference the patent and inventions rights as specified within in the 37 CFR §401.14. Contractor must include this requirement in all sub-tier contracts involving experimental, developmental or research work.

## SEISMIC SAFETY

Reference: 49 CFR part 41

In the performance of design services, the Consultant agrees to furnish a building design and associated construction specification that conform to a building code standard which provides a level of seismic safety substantially equivalent to standards as established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their building code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety. At the conclusion of the design services, the Consultant agrees to furnish the Owner a “certification of compliance” that attests conformance of the building design and the construction specifications with the seismic standards of NEHRP or an equivalent building code.

## TAX DELINQUENCY AND FELONY CONVICTION

Reference: Sections 415 and 416 of Title IV, Division L of the Consolidated Appropriations Act, 2014 (Pub. L. 113-76) and DOT Order 4200.6

**Certification** - The applicant represents that it is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

**Certification** - The applicant represents that it is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months. A felony conviction means a conviction within the preceding twenty four (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. § 3559.

## TRADE RESTRICTION CERTIFICATION

Reference: 49 USC § 50104 and 49 CFR part 30

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror:

- a) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (U.S.T.R.);
- b) has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the U.S.T.R.; and
- c) has not entered into any subcontract for any product to be used on the Federal on the project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

The Offeror/Contractor must provide immediate written notice to the Owner if the Offeror/Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to an Offeror or subcontractor:

- a) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. or
- b) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such U.S.T.R. list or
- c) who incorporates in the public works project any product of a foreign country on such U.S.T.R. list;

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by U.S.T.R, unless the Offeror has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

## **VETERAN'S PREFERENCE**

Reference: 49 USC § 47112(c)

In the employment of labor (excluding executive, administrative, and supervisory positions), the contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 U.S.C. 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

### **PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$3,500**

## **DISTRACTED DRIVING**

Reference: Executive Order 13513 and DOT Order 3902.10

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), the FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

In support of this initiative, the Owner encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$3,500 and involve driving a motor vehicle in performance of work activities associated with the project.

### **PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$10,000**

## **TERMINATION OF CONTRACT**

Reference: 2 CFR § 200 Appendix II (B)

### **Termination for Convenience**

The Owner may, by written notice to the Consultant, terminate this Agreement for its convenience and without cause or default on the part of Consultant. Upon receipt of the notice of termination, except as explicitly directed by the Owner, the Contractor must immediately discontinue all services affected.

Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

### **Termination by Default**

Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the work per the terms and conditions of the Agreement. The party initiating

the termination action must allow the breaching party an opportunity to dispute or cure the breach.

The terminating party must provide the breaching party [7] days advance written notice of its intent to terminate the Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this agreement.

- a) Termination by Owner: The Owner may terminate this Agreement in whole or in part, for the failure of the Consultant to:
  - 1) Perform the services within the time specified in this contract or by Owner approved extension;
  - 2) Make adequate progress so as to endanger satisfactory performance of the Project;
  - 3) Fulfill the obligations of the Agreement that are essential to the completion of the Project.

Upon receipt of the notice of termination, the Consultant must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

If, after finalization of the termination action, the Owner determines the Consultant was not in default of the Agreement, the rights and obligations of the parties shall be the same as if the Owner issued the termination for the convenience of the Owner.

- b) Termination by Consultant: The Consultant may terminate this Agreement in whole or in part, if the Owner:
  - 1) Defaults on its obligations under this Agreement;
  - 2) Fails to make payment to the Consultant in accordance with the terms of this Agreement;
  - 3) Suspends the Project for more than [180] days due to reasons beyond the control of the Consultant.

Upon receipt of a notice of termination from the Consultant, Owner agrees to cooperate with Consultant for the purpose of terminating the agreement or portion thereof, by mutual consent. If Owner and Consultant cannot reach mutual agreement on the termination settlement, the Consultant may, without prejudice to any rights and remedies it may have, proceed with terminating all or parts of this Agreement based upon the Owner's breach of the contract.

In the event of termination due to Owner breach, the Engineer is entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by the Consultant through the effective date of termination action. Owner agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

## **PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$25,000**

### **DEBARMENT AND SUSPENSION**

Reference: 2 CFR part 180 (Subpart C), 2 CFR part 1200, and DOT Order 4200.5

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that at the time the bidder or offeror submits its proposal that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

The successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a "covered transaction", must verify each lower tier participant of a "covered transaction" under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. The successful bidder will accomplish this by:

- 1) Checking the System for Award Management at website: <https://www.sam.gov>.
- 2) Collecting a certification statement similar to the Certificate Regarding Debarment and Suspension (Bidder or Offeror), above.
- 3) Inserting a clause or condition in the covered transaction with the lower tier contract

If the FAA later determines that a lower tier participant failed to tell a higher tier that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedy, including suspension and debarment.

## **PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$100,000**

### **CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS**

Reference: 2 CFR § 200 Appendix II (E)

#### **1) Overtime Requirements.**

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

#### **2) Violation; Liability for Unpaid Wages; Liquidated Damages.**

In the event of any violation of the clause set forth in paragraph (1) above, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 above.

#### **3) Withholding for Unpaid Wages and Liquidated Damages.**

The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any

other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 above.

4) Subcontractors.

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section.

### **LOBBYING AND INFLUENCING FEDERAL EMPLOYEES**

Reference: 31 U.S.C. § 1352 – Byrd Anti-Lobbying Amendment; 2 CFR part 200, Appendix II (J); and 49 CFR part 20, Appendix A

The bidder or offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- 1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

P

## **ROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$150,000**

### **BREACH OF CONTRACT TERMS**

Reference: 2 CFR § 200 Appendix II (A)

Any violation or breach of terms of this contract on the part of the contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

### **CLEAN AIR AND WATER POLLUTION CONTROL**

Reference: 2 CFR § 200 Appendix II (G)

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 740-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

Contractor must include this requirement in all subcontracts that exceeds \$150,000.

**City of Abilene**  
Item for City Commission Agenda

Meeting Date: 11/9/20

Originating Department

Public Works

Prepared By:

Lon Schrader & Mark Bachamp

Approved for Agenda By:  
(Office Use Only)

JF

**AGENDA ITEM HEADING:**

Consideration and discussion of Rogers Street construction. Master agreement work order for 30% of design plans from Olsson Associates.

**BACKGROUND:**

In our street maintenance plans, we are proposing a reconstruction project from NW 4<sup>th</sup> to NW 8<sup>th</sup> St. on N. Rogers St.

Thus far all cost projections have been made internally, based on minimal professional input. For your consideration is this proposal (attached) from Olsson Associates to complete 30% of the engineering services to better determine probable cost and timeframe for construction. No design work has been done but Olsson staff has been surveying the site to establish a public right-of-way.

**FISCAL NOTE:**

Cost of this phase is \$38,460 to be paid from the street maintenance fund.

**COMMISSION ACTION:**

Approve Master Agreement Work Order with Olsson Associates for Rogers Street

## MASTER AGREEMENT WORK ORDER

This exhibit is hereby attached to and made a part of the Master Agreement for Professional Services dated July 13, 2015 between City of Abilene, Kansas ("Client") and Olsson Associates ("Olsson") providing for professional services. Olsson's Scope of Services for the Agreement is as indicated below.

### PROJECT DESCRIPTION AND LOCATION

Project will be located at: Abilene, KS

Project Description: Rogers Street from 4<sup>th</sup> Street to 8<sup>th</sup> Street to 30% Design Plans

### SCOPE OF SERVICES

Olsson shall provide the following services (Scope of Services) to Client for the Project:

#### Phase 100 – Project Management & Meetings

##### Project Management

Project management is responsible for coordination of the various people that are involved in the project, tracking of work completion, and project management.

##### Meetings

Olsson will attend meetings related to the Project including:

Attend up to three (3) project meetings with the City and stakeholders related to the general management of the design of the project.

#### Phase 150 – Surveying Services

Task 151: Boundary and Topographic Survey - Topographic features will be surveyed to create a surface represented by 1-foot contours. Improvements within the limits will be located, including roads, structures, pipes, fences, gravel surfaces, concrete surfaces, asphalt surfaces, trees, and utilities.

- A Utility-One-Call will be made for the site. Utilities that are marked will be located. Above ground visible utilities will be located. Olsson will not be responsible for underground utilities not marked by the utility locate, also underground structures or tanks that are not visible on the surface of the site. An attempt will be made to obtain utility maps from the utilities listed on the Utility-One-Call. If maps are provided those utilities will be placed on the survey. Manholes will be inverted to get the pipe size and flow lines elevations.
- Horizontal coordinate system will be in reference to the Kansas State Plane Coordinate System North American Datum of 1983 (NAD83) modified to ground. Vertical datum will be in reference to the North American Datum of 1988 (NAVD88).

## Phase 200 – 30% Construction Documents

Task 201: Extension of Public Infrastructure - Olsson will attend City staff and/or other permitting agencies meetings as required. Olsson will prepare construction documents to 30% in accordance with City's design criteria and will include:

- **Roadway Design** - shall include all items listed below for the permanent paved street per the attached Exhibit:
  - Cover sheet
  - Demo and removals sheet
  - Typical sections Geometric design
  - Entrance Details
  - Sidewalk ADA ramp design, Sidewalk on one side location to be determined with design
  - Surface drainage design
  - Street plan and profile sheets
  - Intersection details
  - Cross Sections (25' intervals)
- **Storm Sewer** – shall include underground storm sewer connected to 4<sup>th</sup> street. Analysis should include how to drain to the west of the ball diamonds and also to 3<sup>rd</sup> street system. A short study on alignment options will be conducted and discuss impacts to the downstream system.
- **Opinion of Probable Cost** – Determine at the 30% design plans the cost for the street, curb and gutter, sidewalk and storm sewer.

### **PROJECT ASSUMPTIONS**

The following are additional services that Olsson can provide:

Items not included:

- Construction Staking
- Final construction documents
- Waterline
- Sanitary Sewer

Should Client request work in addition to the Scope of Services, Olsson shall invoice Client for such additional services (Optional Additional Services) at the standard hourly billing labor rate charged for those employees actually performing the work, plus reimbursable expenses if any. Olsson shall not commence work on Optional Additional Services without Client's prior written approval.

Olsson agrees to provide all of its services in a timely, competent and professional manner, in accordance with applicable standards of care, for projects of similar geographic location, quality and scope.

## SCHEDULE FOR OLSSON'S SERVICES

Unless otherwise agreed, Olsson expects to perform its services under the Agreement as follows:

Anticipated Start Date: December 2020

Anticipated Completion Date for 30% plans: February 2021

Olsson will endeavor to start its services on the Anticipated Start Date and to complete its services on the Anticipated Completion Date. However, the Anticipated Start Date, the Anticipated Completion Date, and any milestone dates are approximate only, and Olsson reserves the right to adjust its schedule and any or all of those dates at its sole discretion, for any reason, including, but not limited to, delays caused by Client or delays caused by third parties.

## COMPENSATION

Client shall pay to Olsson for the performance of the Scope of Services a lump sum of Thirty-Eight Thousand Four Hundred Sixty Dollars (\$38,460.00). Olsson's reimbursable expenses for this Project are included in the lump sum. Olsson shall submit invoices on a monthly basis and payment is due within 30 calendar days of invoice date.

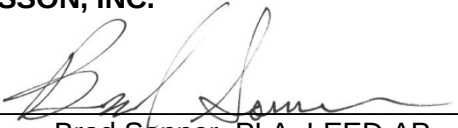
## TERMS AND CONDITIONS OF SERVICE

We have discussed with you the risks, rewards and benefits of the Project, the Scope of Services, and our fees for such services and the Agreement represents the entire understanding between Client and Olsson with respect to the Project. The Agreement may only be modified in writing signed by both parties.

Client's designated Project Representative shall be Jane Foltz.

If this Work Order satisfactorily sets forth your understanding of our agreement, please sign in the space provided below. Retain a copy for your files and return an executed original to Olsson, 302 S. 4<sup>th</sup> Street, Suite 110, Manhattan, Kansas 66502. This proposal will be open for acceptance for a period of maximum 30 days from the date set forth above, unless changed by us in writing.

## OLSSON, INC.

By   
Brad Sonner, PLA, LEED AP  
Vice President

By   
Jamie Fain, P.E.  
Vice President

By signing below, you acknowledge that you have full authority to bind Client to the terms of the Agreement. If you accept this Work Order, please sign:

## CITY OF ABILENE, KANSAS

By \_\_\_\_\_  
Signature

Print Name \_\_\_\_\_

Title \_\_\_\_\_

Dated: \_\_\_\_\_

# EXHIBIT B - Rogers Street from 4th to 8th street

October 14, 2020

| Phase/<br>Task | Description of Work             | Engineering    |                 |                 |                |                | Survey         |                     |               |             |             |
|----------------|---------------------------------|----------------|-----------------|-----------------|----------------|----------------|----------------|---------------------|---------------|-------------|-------------|
|                |                                 | Senior<br>Engr | Tech.<br>Leader | Project<br>Engr | Assoc.<br>Engr | Senior<br>Tech | Senior<br>Tech | Project<br>Surveyor | 2-Man<br>Crew |             |             |
|                |                                 | \$190.00       | \$182.00        | \$135.00        | \$113.00       | \$105.00       | \$105.00       | \$115.00            | \$150.00      |             |             |
| Phase 100      | Project Management & Meetings   |                |                 |                 |                |                |                |                     |               |             | \$4,550.00  |
|                | Project Management              | 4              |                 | 4               |                |                |                |                     |               | \$1,300.00  |             |
|                | Project Meetings                | 10             |                 | 10              |                |                |                |                     |               | \$3,250.00  |             |
| Phase 150      | Surveying                       |                |                 |                 |                |                |                |                     |               |             | \$13,970.00 |
|                | Boundary and Topographic Survey |                |                 |                 |                | 6              | 44             | 8                   | 52            | \$13,970.00 |             |
| Phase 200      | 30% Construction Documents      |                |                 |                 |                |                |                |                     |               |             | \$19,943.00 |
|                | Roadway Design                  |                | 10              | 40              | 30             | 20             |                |                     |               | \$12,710.00 |             |
|                | Storm Water Study               |                |                 | 8               | 6              |                |                |                     |               | \$1,758.00  |             |
|                | Storm Sewer                     |                |                 | 15              | 20             |                |                |                     |               | \$4,285.00  |             |
|                | Opinion of Probable Cost        | 2              |                 | 6               |                |                |                |                     |               | \$1,190.00  |             |
|                |                                 |                |                 |                 |                |                |                |                     |               |             |             |
|                |                                 |                |                 |                 |                |                |                |                     |               |             |             |
| GRAND TOTAL    |                                 | \$3,040        | \$1,820         | \$11,205        | \$6,328        | \$2,730        | \$4,620        | \$920               | \$7,800       |             |             |
|                |                                 | Engineering    |                 |                 |                |                | Survey         |                     |               |             | \$38,463.00 |
|                |                                 | \$25,123.00    |                 |                 |                |                | \$13,340.00    |                     |               | \$          | 38,463.00   |



CITY OF ABILENE  
Item for City Commission Agenda

Meeting Date:

11/09/20

Originating Department

Prepared By:

Approved For Agenda By:  
(Office Use Only)

Police

Chief Hatter

JF

AGENDA ITEM HEADING:

Consider purchase of body cameras for police officers

BACKGROUND:

The City of Abilene has budgeted \$26,000 in the 2020 Capital Improvement Fund for the purchase and/or upgrade of body worn cameras for the Abilene Police Department.

Two companies, AXON Enterprises and Watch Guard, were identified as vendors able to provide products to fit the needs of the police department. AXON Enterprises holds the current contract which expires in March 2021.

AXON Enterprises provided a quote for a three-year contract which includes sixteen (16) Axon Flex 2 cameras (an upgrade from the current equipment) and controllers, two (2) Axon Flex 2 docking stations, 1,200 GB of annual data storage and licensing for \$26,057.74. This price includes a credit from the existing contract.

Watch Guard offers equipment that would integrate with the current in-car video system, allowing both the body camera and in-car video system to be triggered by the same event. Watch Guard provided a quote which includes sixteen (16) V300 cameras, docking and transfer stations and licensing for \$31,319.00. The quoted cost includes a \$5,000 fee for system configuration and training. The system integration between body cameras and in-car video would require an additional fee of \$1,500 bring the total cost to \$32,819.00.

After conducting research into both systems and reviewing the provided quotes, the Abilene Police Department requests the dedicated funds be utilized to purchase the required equipment from AXON Enterprises.

FISCAL NOTE:

\$26,000 was budgeted for this purchase from the Capital Improvement Fund in the 2020 budget.

COMMISSION ACTION:

Consider approval for purchase of police body cameras in the amount of \$26,057.74 from Axon Enterprises.



# ABILENE POLICE DEPARTMENT

419 N. Broadway  
PO Box 519

Abilene, KS 67410-0519

Phone: (785) 263-1213

Fax: (785) 263-1523

Email: [police@apdks.org](mailto:police@apdks.org)

Date: October 20<sup>th</sup>, 2020

To: Chief Hatter

Fr: Asst. Chief Wilkins

Re: Purchase of Body Cameras

---

The City of Abilene currently has \$26,000.00 budgeted in the 2020 Capital Improvement Fund for the purchase and/or upgrade of body worn cameras for the Abilene Police Department. The Abilene Police Department began utilizing body worn cameras in April 2015, and have found them to be exceptional tools for both evidentiary purposes, as well as assessing the quality of officer-citizen interactions.

While researching the purchase of body worn cameras, I narrowed the search down to two companies: Axon Enterprises and Watch Guard. Both of these companies are leaders in video solutions for law enforcement, and provide products which would fit the needs of our department.

Axon Enterprises has provided the Abilene Police Department with body worn cameras and cloud-based storage since the inception of our program in 2015. Our current contract with Axon Enterprises expires in March 2021. Axon has provided us with a renewal quote for a three year contract that includes the following: sixteen (16) Axon Flex 2 cameras and controllers, two (2) Axon Flex 2 docking stations, 1,200 GB of annual data storage and necessary licensing for \$26,057.74. This price reflects a small credit we would receive from our existing contract.

Watch Guard offers a body worn camera that would integrate with our current in-car video systems. This integration would allow both the body worn camera and in-car video system to be triggered by the same event. Watch Guard has provided us with a quote that includes the following: sixteen (16) V300 cameras, docking and transfer stations and necessary licensing for \$31,319.00. This includes a \$5,000.00 fee associated with system configuration and training. In addition, the Watch Guard system would require the installation of docking stations in seven (7) of our patrol units where the two camera systems would be integrated. This would be an additional \$1,500.00 estimated cost, bringing the total Watch Guard quote to \$32,819.00.

With the Abilene Police Department currently utilizing a stand-alone server for our Watch Guard in-car video system, cloud-based storage would not be necessary. The data from the body worn cameras could be transferred and stored on the current server. However, in speaking with the Watch Guard representative, the company has migrated to a different platform than what our department currently operates our Watch Guard system with. This would require the software upgrade which the representative indicated could create potential server issues.

Based on the research I conducted and the quotes I received from both companies, I recommend the Abilene Police Department continue our relationship with Axon Enterprises. Axon Enterprises' body worn cameras have proven to be a reliable product, and are more affordable than the Watch Guard system. While I believe there are benefits of having an integrated video system, I have concerns about the potential logistics involved in switching to Watch Guard.

Attached to the memorandum are copies of the quotes received from Axon Enterprises and Watch Guard. Should you have any additional questions, please do not hesitate to contact me.



Jason Wilkins  
Asst. Chief of Police



**Axon Enterprise, Inc.**  
17800 N 85th St.  
Scottsdale, Arizona 85255  
United States  
Phone: (800) 978-2737

**Q-273406-44124.946LM**

Issued: 10/20/2020

Quote Expiration: 12/31/2020

Account Number: 158081

Payment Terms: Net 30  
Delivery Method: Fedex - Ground

**SALES REPRESENTATIVE**

Lindsey McElroy  
Phone: 480-502-6200  
Email: lmcclroy@axon.com  
Fax:

**PRIMARY CONTACT**

Jason Wilkins  
Phone: (785) 263-1213  
Email: jwilkins@apdks.org

**SHIP TO**

Jason Wilkins  
Abilene Police Dept. - KS  
419 N. BROADWAY  
Abilene, KS 67410  
US

**BILL TO**

Abilene Police Dept. - KS  
419 N. BROADWAY  
Abilene, KS 67410  
US

**Year 1**

| Item                             | Description                                  | Term (Months) | Quantity | List Unit Price | Net Unit Price | Total (USD) |
|----------------------------------|----------------------------------------------|---------------|----------|-----------------|----------------|-------------|
| <b>Axon Plans &amp; Packages</b> |                                              |               |          |                 |                |             |
| 73683                            | 10 GB EVIDENCE.COM A-LA-CART STORAGE         | 36            | 120      | 0.00            | 0.00           | 0.00        |
| 73683                            | 10 GB EVIDENCE.COM A-LA-CART STORAGE         | 36            | 14       | 0.00            | 0.00           | 0.00        |
| 73840                            | EVIDENCE.COM BASIC ACCESS LICENSE            | 36            | 14       | 0.00            | 0.00           | 0.00        |
| 73683                            | 10 GB EVIDENCE.COM A-LA-CART STORAGE         | 36            | 6        | 0.00            | 0.00           | 0.00        |
| 73746                            | PROFESSIONAL EVIDENCE.COM LICENSE            | 36            | 2        | 0.00            | 0.00           | 0.00        |
| <b>Hardware</b>                  |                                              |               |          |                 |                |             |
| 11528                            | FLEX 2 CAMERA, (ONLINE)                      |               | 16       | 470.00          | 470.00         | 7,520.00    |
| 11537                            | DOCK, FLEX 2, 6-BAY + CORE                   |               | 2        | 1,563.00        | 1,563.00       | 3,126.00    |
| 11532                            | FLEX 2 CONTROLLER                            |               | 16       | 262.00          | 262.00         | 4,192.00    |
| 11509                            | BELT CLIP, RAPIDLOCK                         |               | 16       | 0.00            | 0.00           | 0.00        |
| 11534                            | USB-C to USB-A CABLE FOR AB3 OR FLEX 2       |               | 16       | 0.00            | 0.00           | 0.00        |
| 11545                            | COLLAR MOUNT, FLEX 2                         |               | 16       | 0.00            | 0.00           | 0.00        |
| <b>Other</b>                     |                                              |               |          |                 |                |             |
| 73831                            | 10 GB EVIDENCE.COM A-LA-CART STORAGE PAYMENT | 12            | 120      | 4.80            | 4.80           | 576.00      |
| 73841                            | EVIDENCE.COM BASIC LICENSE PAYMENT           | 12            | 14       | 180.00          | 117.41         | 1,643.74    |

## Year 1 (Continued)

| Item              | Description                               | Term (Months) | Quantity | List Unit Price | Net Unit Price     | Total (USD) |
|-------------------|-------------------------------------------|---------------|----------|-----------------|--------------------|-------------|
| Other (Continued) |                                           |               |          |                 |                    |             |
| 73837             | EVIDENCE.COM PROFESSIONAL LICENSE PAYMENT | 12            | 2        | 468.00          | 468.00             | 936.00      |
|                   |                                           |               |          |                 | Subtotal           | 17,993.74   |
|                   |                                           |               |          |                 | Estimated Shipping | 0.00        |
|                   |                                           |               |          |                 | Estimated Tax      | 0.00        |
|                   |                                           |               |          |                 | Total              | 17,993.74   |

## Year 2

| Item  | Description                                  | Term (Months) | Quantity | List Unit Price | Net Unit Price | Total (USD) |
|-------|----------------------------------------------|---------------|----------|-----------------|----------------|-------------|
| Other |                                              |               |          |                 |                |             |
| 73831 | 10 GB EVIDENCE.COM A-LA-CART STORAGE PAYMENT | 12            | 120      | 4.80            | 4.80           | 576.00      |
| 73841 | EVIDENCE.COM BASIC LICENSE PAYMENT           | 12            | 14       | 180.00          | 180.00         | 2,520.00    |
| 73837 | EVIDENCE.COM PROFESSIONAL LICENSE PAYMENT    | 12            | 2        | 468.00          | 468.00         | 936.00      |
|       |                                              |               |          |                 | Subtotal       | 4,032.00    |
|       |                                              |               |          |                 | Estimated Tax  | 0.00        |
|       |                                              |               |          |                 | Total          | 4,032.00    |

## Year 3

| Item  | Description                                  | Term (Months) | Quantity | List Unit Price | Net Unit Price | Total (USD) |
|-------|----------------------------------------------|---------------|----------|-----------------|----------------|-------------|
| Other |                                              |               |          |                 |                |             |
| 73831 | 10 GB EVIDENCE.COM A-LA-CART STORAGE PAYMENT | 12            | 120      | 4.80            | 4.80           | 576.00      |
| 73841 | EVIDENCE.COM BASIC LICENSE PAYMENT           | 12            | 14       | 180.00          | 180.00         | 2,520.00    |
| 73837 | EVIDENCE.COM PROFESSIONAL LICENSE PAYMENT    | 12            | 2        | 468.00          | 468.00         | 936.00      |
|       |                                              |               |          |                 | Subtotal       | 4,032.00    |
|       |                                              |               |          |                 | Estimated Tax  | 0.00        |
|       |                                              |               |          |                 | Total          | 4,032.00    |

**Grand Total** 26,057.74



## Discounts (USD)

Quote Expiration: 12/31/2020

|              |                  |
|--------------|------------------|
| List Amount  | 26,934.00        |
| Discounts    | 876.26           |
| <b>Total</b> | <b>26,057.74</b> |

*\*Total excludes applicable taxes*

## Summary of Payments

| Payment            | Amount (USD)     |
|--------------------|------------------|
| Year 1             | 17,993.74        |
| Year 2             | 4,032.00         |
| Year 3             | 4,032.00         |
| <b>Grand Total</b> | <b>26,057.74</b> |

## Notes

Agency has existing contract ##00015594 (originated via Q-107544) and is terminating that contract upon the new license start date (1/15/2021) of this quote.

The parties agree that Axon is granting a refund of \$876.25 (applied to Year #1 licenses) to refund paid, but undelivered services. This discount is based on a ship date range of 12/15/2020-12/31/2020, resulting in a 1/15/2021 license date. Any change in this date and resulting license start date will result in modification of this discount value which may result in additional fees due to or from Axon.

Tax is subject to change at order processing with valid exemption.

## Axon's Sales Terms and Conditions

This Quote is limited to and conditional upon your acceptance of the provisions set forth herein and Axon's Master Services and Purchasing Agreement (posted at [www.axon.com/legal/sales-terms-and-conditions](http://www.axon.com/legal/sales-terms-and-conditions)), as well as the attached Statement of Work (SOW) for Axon Fleet and/or Axon Interview Room purchase, if applicable. Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.

Signature: \_\_\_\_\_

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

Name (Print): \_\_\_\_\_

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

PO# (Or write  
N/A): \_\_\_\_\_

Please sign and email to Lindsey McElroy at [lmcelroy@axon.com](mailto:lmcelroy@axon.com) or fax to

Thank you for being a valued Axon customer. For your convenience on your next order, please check out our online store [buy.axon.com](http://buy.axon.com)

The trademarks referenced above are the property of their respective owners.

### \*\*\*Axon Internal Use Only\*\*\*

|           |          |                  |
|-----------|----------|------------------|
|           |          | SFDC Contract #: |
|           |          | Order Type:      |
|           |          | RMA #:           |
|           |          | Address Used:    |
|           |          | SO #:            |
| Review 1  | Review 2 |                  |
| Comments: |          |                  |



## 4RE/VISTA Price Quote

CUSTOMER: Abilene Police Department

ISSUED: 10/21/2020 1:12 PM

EXPIRATION: 12/31/2020 7:00 PM

,  
,,  
'''

**TOTAL PROJECT ESTIMATED AT:  
\$31,319.00**

ATTENTION: Asst Chief Jason Wilkins

SALES CONTACT: Davin Perkins

PHONE: 785-263-1213

DIRECT: (469) 342-8948

E-MAIL:

E-MAIL:  
davin.perkins@motorolasolutions.com

### V300 Proposal

#### VISTA HD Cameras and Options

| Part Number     | Detail                                                                         | Qty   | Direct     | Discount | Total Price |
|-----------------|--------------------------------------------------------------------------------|-------|------------|----------|-------------|
| VIS-300-BWC-001 | V300, Body Worn Camera, 1080P, WiFi/Bluetooth with Removable Battery           | 16.00 | \$995.00   | \$0.00   | \$15,920.00 |
| VIS-300-VTS-KIT | Transfer Station II Kit, Incl. Power & AC Cables, Label and Docs               | 2.00  | \$1,495.00 | \$0.00   | \$2,990.00  |
| VIS-300-CHG-001 | V300, USB Dock, D300, Desktop Charge/Upload Kit Incl. Power and USB Cables     | 1.00  | \$95.00    | \$0.00   | \$95.00     |
| VIS-300-VEH-002 | V300, WiFi Dock, D330, In-Vehicle Charge/Upload Kit, Incl. Cables and Brackets | 7.00  | \$295.00   | \$0.00   | \$2,065.00  |
| VIS-300-BAT-RMV | V300, Battery, Removable and Rechargeable, 3.8V, 4180mAh                       | 1.00  | \$99.00    | \$0.00   | \$99.00     |

#### VISTA HD Warranties

| Part Number     | Detail                                         | Qty   | Direct | Discount | Total Price |
|-----------------|------------------------------------------------|-------|--------|----------|-------------|
| WAR-300-CAM-1ST | Warranty, V300 1st Year (Months 1-12) Included | 16.00 | \$0.00 | \$0.00   | \$0.00      |

#### Evidence Library 4 Web Software and Licensing

| Part Number     | Detail                                                           | Qty   | Direct     | Discount   | Total Price |
|-----------------|------------------------------------------------------------------|-------|------------|------------|-------------|
| KEY-EL50SRV-001 | Evidence Library, Web Server Site License Key                    | 1.00  | \$1,000.00 | \$1,000.00 | \$0.00      |
| SFW-4RE-DEV-FEE | Evidence Library, 4RE Annual Device License & Support Fee        | 7.00  | \$195.00   | \$195.00   | \$0.00      |
| SFW-BWC-DEV-FEE | Evidence Library, VISTA/V300 Annual Device License & Support Fee | 16.00 | \$195.00   | \$0.00     | \$3,120.00  |

#### Shipping and Handling

| Part Number | Detail                                   | Qty  | Direct   | Discount | Total Price        |
|-------------|------------------------------------------|------|----------|----------|--------------------|
| Freight     | Shipping/Handling and Processing Charges | 1.00 | \$280.00 | \$0.00   | \$280.00           |
|             |                                          |      |          |          | <b>\$26,319.00</b> |

### Technical Services Calculator

#### WatchGuard Video Technical Services

415 E. Exchange Parkway • Allen, TX • 75002  
Toll Free (800) 605-6734 • Main (972) 423-9777 • Fax (972) 423-9778  
[www.WatchGuardVideo.com](http://www.WatchGuardVideo.com)



## 4RE/VISTA Price Quote

| Part Number                                       | Detail                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Qty  | Direct     | Discount | Total Price |
|---------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|------------|----------|-------------|
| SVC-4RE-ONS-400                                   | Tier 1 Onsite Installation. Includes Project Coordination, One Pre-Deployment IT Call, Provisioning of ELC and Azure AD, Install OS and SQL (if Purchased from WatchGuard), Limited EL Client Installations, Limited Configuring of 4RE Units, Limited MDC App Installations, Interview Room Configuration, Limited Configuration of Body Worn Cameras, Full Testing of WatchGuard Systems, Installation of Evidence Library, Training of Officer and Admin Staff, Limited Vehicle Install Inspections, Vendor Management, Suppo | 1.00 | \$5,000.00 | \$0.00   | \$5,000.00  |
|                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |      |            |          | \$5,000.00  |
| Total Estimated Tax, may vary from State to State |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |      |            |          | \$0.00      |
| Configuration Discounts                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |      |            |          | \$2,365.00  |
| Additional Quote Discount                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |      |            |          | \$0.00      |
| Total Amount                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |      |            |          | \$31,319.00 |

NOTE: This is only an estimate for 4RE & VISTA related hardware, software and WG Technical Services. Actual costs related to a turn-key operation requires more detailed discussion and analysis, which will define actual back-office costs and any costs associated with configuration, support and installation. Please contact your sales representative for more details.

To accept this quotation, sign, date and return with Purchase Order: \_\_\_\_\_ DATE: \_\_\_\_\_

## CITY OF ABILENE

11/03/20 3:25 PM

Page 1

**\*Check Summary Register©**

Batch: 110920PAY

| Name                              |                             | Check Date | Check Amt    |                                       |
|-----------------------------------|-----------------------------|------------|--------------|---------------------------------------|
| <b>002000 Astra Bank checking</b> |                             |            |              |                                       |
| 30652                             | ABILENE ANIMAL HOSPITAL, PA | 11/9/2020  | \$1,233.50   | OCTOBER ANIMAL FEES                   |
| 30653                             | ABILENE AREA CHAMBER COM    | 11/9/2020  | \$900.00     | ABILENE BUCKS - SERVICE AWARDS 2020   |
| 30654                             | ABILENE MUNICIPAL COURT     | 11/9/2020  | \$400.00     | RYAN HORAN 20-0053 BOND APPLY TO CA   |
| 30655                             | ABILENE PUBLIC LIBRARY      | 11/9/2020  | \$4,850.00   | OCT 2020 DISBURSEMENT                 |
| 30656                             | ABILENE REFLECTOR-CHRONIC   | 11/9/2020  | \$209.00     | OCT 2020 LEGALS & ADS                 |
| 30657                             | ABILENE TERMITE & PEST CO   | 11/9/2020  | \$385.00     | QUARTLEY PEST CONTROL                 |
| 30658                             | AIR AND FIRE SYSTEMS INC    | 11/9/2020  | \$39.05      | FIRE EXTINGUISHER MAINT               |
| 30659                             | ALCOHOLIC BEVERAGE CONTR    | 11/9/2020  | \$25.00      | CMB TAX STAMPS OCT 2020               |
| 30660                             | AMERICAN ELECTRIC CO        | 11/9/2020  | \$192.00     | 4FT LED                               |
| 30661                             | AMERICAN PLANNING ASSOC.    | 11/9/2020  | \$109.00     | 2021 DUES                             |
| 30662                             | BIG RED FENCING & LANDSCAPI | 11/9/2020  | \$100.00     | NEW TIMER ON SPRINKLERS @ FIELDS 1 &  |
| 30663                             | BIZ SWAG                    | 11/9/2020  | \$930.00     | NEW SIGNS                             |
| 30664                             | BLACKWELL & STRUBLE         | 11/9/2020  | \$250.00     | SPURLOCK 20-0043                      |
| 30665                             | BOYD EXCAVATING INC         | 11/9/2020  | \$500.00     | RENTED SHEEPSFOOT ROLLER              |
| 30666                             | CATLETT AUTOMOTIVE INC      | 11/9/2020  | \$292.14     | GASKET SEALER                         |
| 30667                             | CHENEY DOOR COMPANY         | 11/9/2020  | \$831.55     | YARD OVERHEAD DOORS SERVICED          |
| 30668                             | CINTAS                      | 11/9/2020  | \$63.59      | 1ST AID CABINETS @ YARD & R. CENTER   |
| 30669                             | CONSOLIDATED PRINTING       | 11/9/2020  | \$25.00      | CHAMBER & CVB COPY MACHINE            |
| 30670                             | COOPER CLEANING SERVICE     | 11/9/2020  | \$2,100.00   | OCT 2020 CLEANING                     |
| 30671                             | CRAFCO, INC                 | 11/9/2020  | \$4,702.02   | CRACK SEALING MATERIALS               |
| 30672                             | CRUZ, ASHLEY                | 11/9/2020  | \$50.00      | REFUND DIFFERENCE IN TACKLE FOOTBA    |
| 30673                             | CULLIGAN OF SALINA          | 11/9/2020  | \$30.00      | RO SYSTEM RENTAL 10/25-11/23/20       |
| 30674                             | DK CTY ADMINISTRATION       | 11/9/2020  | \$400.79     | FUEL                                  |
| 30675                             | DK CTY REGISTER OF DEEDS    | 11/9/2020  | \$6.00       | COPY OF DEED                          |
| 30676                             | DK CTY SHERIFF              | 11/9/2020  | \$1,190.00   | PRISONER CARE OCT 2020                |
| 30677                             | DON'S TIRE & SUPPLY         | 11/9/2020  | \$992.70     | NEW TIRES #15                         |
| 30678                             | EAGLE BROADBAND, INC        | 11/9/2020  | \$419.95     | 13TH ST WATER TOWER INTERNET FOR M    |
| 30679                             | EAGLE TECHNOLOGY Solutio    | 11/9/2020  | \$1,595.25   | IT WORK - ADMIN, INSPECTION, PLANNING |
| 30680                             | EVERGY                      | 11/9/2020  | \$46,068.16  | ELECTRIC SERVICE                      |
| 30681                             | FOUR SEASONS INC            | 11/9/2020  | \$780.00     | MOVE DUCTLESS UNIT IN CHIEF'S OFFICE  |
| 30682                             | HOLM AUTOMOTIVE CENTER      | 11/9/2020  | \$1,000.00   | UNIT 12 COLLISION REPAIR (DEDUCTIBLE) |
| 30683                             | HOMMAN ELECTRONICS          | 11/9/2020  | \$94.00      | 2 MOTOROLA PAGER CHARGERS             |
| 30684                             | IMAGE QUEST                 | 11/9/2020  | \$361.32     | CONTRACT RATE 2 HP PRINTERS           |
| 30685                             | J & K CONTRACTING           | 11/9/2020  | \$151,455.38 | PAYMENT #7 8TH ST PROJECT             |
| 30686                             | KA-COMM, INC.               | 11/9/2020  | \$19,751.84  | MOBILE DATA COMPUTERS - MOUNTING      |
| 30687                             | KANSAS GAS SERVICE          | 11/9/2020  | \$590.96     | GAS SERVICE                           |
| 30688                             | KANSAS ONE-CALL SYSTEM, IN  | 11/9/2020  | \$85.20      | LOCATES                               |
| 30689                             | KANSAS STATE TATSUMAKI YO   | 11/9/2020  | \$200.00     | YOSAKOI DANCE PERFORMANCE 2/29/20     |
| 30690                             | KDHE BUREAU OF WATER        | 11/9/2020  | \$25.00      | OPERATOR CERTIFICATION EXAM FEE - ZI  |
| 30691                             | KS TREASURER                | 11/9/2020  | \$909.55     | OCT 2020                              |
| 30692                             | LACAL EQUIPMENT, INC        | 11/9/2020  | \$1,182.81   | SWEEPER BROOMS                        |
| 30693                             | LINDER ELECTRIC             | 11/9/2020  | \$367.50     | WPT                                   |
| 30694                             | LUMBER HOUSE TRUE VALUE     | 11/9/2020  | \$623.88     | STAIN FOR BOOKCASE                    |
| 30695                             | MICHELLE WRIGHT             | 11/9/2020  | \$9,030.41   | CID ROSEROCK LESS 2% ADMIN FEE OCT    |
| 30696                             | MIDWEST CONCRETE MATERIA    | 11/9/2020  | \$641.38     | CONCRETE REPAIRS EAGLE DR             |
| 30697                             | NARAYAN, INC                | 11/9/2020  | \$3,583.21   | CID HOLIDAY I LESS 2% ADMIN FEE OCT 2 |
| 30698                             | NAVRATS                     | 11/9/2020  | \$172.65     | 2021 DOG TAGS                         |
| 30699                             | NEW BOSTON CREATIVE GROU    | 11/9/2020  | \$690.00     | RSS FEED FROM WEBSITE TO DIGITAL KIO  |
| 30700                             | NEX-TECH RURAL TELEPHONE    | 11/9/2020  | \$407.03     | PHONE SERVICE                         |
| 30701                             | OLSSON                      | 11/9/2020  | \$40,812.59  | PROFESSIONAL ENGINEERING SERVICES     |
| 30702                             | OPTIVE SECURITY INC         | 11/9/2020  | \$774.04     | KCJIS SECURITY TOKENS                 |
| 30703                             | PACE ANALYTICAL SERVICES    | 11/9/2020  | \$531.20     | EFFLUENT SAMPLES                      |
| 30704                             | PRECISION ELECTRICAL CONTRA | 11/9/2020  | \$44,631.63  | APPLICATION #4 OF WATER TREATMENT P   |
| 30705                             | ROASTER JOES, INC           | 11/9/2020  | \$147.85     | COFFEE                                |

## CITY OF ABILENE

11/03/20 3:25 PM

Page 2

**\*Check Summary Register©**

Batch: 110920PAY

|                     | Name                      | Check Date | Check Amt           |                                      |
|---------------------|---------------------------|------------|---------------------|--------------------------------------|
| 30706               | ROBSON OIL CO, INC        | 11/9/2020  | \$3,463.77          | 30/1 GUN GREASE                      |
| 30707               | RYAN & MULLIN, PA         | 11/9/2020  | \$2,916.67          | CITY PROSECUTOR NOV 2020             |
| 30708               | SALINA SUPPLY CO          | 11/9/2020  | \$81.10             | LOCKS FOR WATER METERS               |
| 30709               | SAMS CLUB/GECF            | 11/9/2020  | \$247.42            | CONCESSION SUPPLIES                  |
| 30710               | SARGENT DRILLING          | 11/9/2020  | \$509.60            | ELECTRICT CONNECTORS                 |
| 30711               | SOLID ROCK AUDIO VIDEO    | 11/9/2020  | \$180.00            | TECH SUPPORT NOV 2020 MEETINGS       |
| 30712               | STANION WHOLESALE ELECTRI | 11/9/2020  | \$78.28             | TRAFFIC SIGNAL                       |
| 30713               | TRIPLETT, INC             | 11/9/2020  | \$6,147.12          | CID PROPERTY 6 LESS 2% ADMIN FEE OCT |
| 30714               | TRUE WEST PUBLISHING, INC | 11/9/2020  | \$525.00            | AD DECEMBER 2020 TRAVEL GUIDE        |
| 30715               | UNIFIRST CORPORATION      | 11/9/2020  | \$1,729.25          | UNIFORM SERVICE                      |
| 30716               | US BANK EQUIPMENT FINANCE | 11/9/2020  | \$197.73            | COPIER USAGE                         |
| 30717               | WEST'S PLAZA COUNTRY MART | 11/9/2020  | \$2,280.00          | GIFT CARDS EMPLOYEES 38              |
| 30718               | ZEYS MARKET               | 11/9/2020  | \$2,280.00          | GIFT CARDS EMPLOYEES 38              |
| <b>Total Checks</b> |                           |            | <b>\$368,375.07</b> |                                      |

FILTER: ((([Act Year]='2020' and [period] in (11))) and (Source in ('110920PAY')))

# CITY OF ABILENE

11/04/20 2:23 PM

Page 1

## \*Check Summary Register©

Batch: MANUAL110420

| Name         |                        | Check Date | Check Amt  |                       |
|--------------|------------------------|------------|------------|-----------------------|
| 002000       | Astra Bank checking    |            |            |                       |
| 30719        | ABILENE PUBLIC LIBRARY | 11/9/2020  | \$4,850.08 | OCT 2020 DISBURSEMENT |
| Total Checks |                        |            | \$4,850.08 |                       |

FILTER: ((([Act Year]='2020' and [period] in (11))) and (Source in ('MANUAL110420')))

**City of Abilene**  
**Payroll Expenditures Report**  
**10/30/2020 PR #22**

| PAYROLL CODE  |                                          | TOTALS    |                       |
|---------------|------------------------------------------|-----------|-----------------------|
|               | NET SALARIES                             | \$        | 79,335.07             |
| 051 & 501     | OASDI - CITY/EMPLOYEE                    | \$        | 13,877.20             |
| 049 & 502     | MEDICARE - CITY/EMPLOYEE                 | \$        | 3,245.56              |
| 001           | FEDERAL WITHHOLDING - EMPLOYEE           | \$        | 9,513.13              |
| 503           | KPERS - CITY                             | \$        | 5,950.87              |
| 056, 057, 059 | KPERS EMPLOYEE                           | \$        | 3,715.43 \$ 9,666.30  |
| 505           | KPERS RETIREE/EMPLOYER                   | \$        | -                     |
| 153           | KPERS GROUP LIFE - EMPLOYEE              | \$        | -                     |
| 504           | KPF - CITY                               | \$        | 9,644.66              |
| 61            | KPF EMPLOYEE                             | \$        | 3,144.52 \$ 12,789.18 |
| 155           | KPF GROUP LIFE- EMPLOYEE                 | \$        | -                     |
| 105 & 540     | WADDELL & REED 457 - CITY/EMPLOYEE       | \$        | 1,530.00              |
| 204           | WADDELL & REED 529 - EMPLOYEE            | \$        | 50.00                 |
| 110           | WADDELL & REED SAVINGS - EMPLOYEE        | \$        | 465.00                |
| 130 & 530     | ICMA 457 CITY/EMPLOYEE                   | \$        | -                     |
| 005           | STATE TAX - EMPLOYEE                     | \$        | 4,850.63              |
| 120           | AFLAC After Tax D&L - EMPLOYEE           | \$        | -                     |
| 170           | AFLAC Before Tax INSURANCE - EMPLOYEE    | \$        | -                     |
| 102           | VISION CARE DIRECT - EMPLOYEE            | \$        | -                     |
| 104           | VSP VISION PLANS - EMPLOYEE              | \$        | -                     |
| 140           | HEALTH INSURANCE - EMPLOYEE              | \$        | -                     |
| 510           | HEALTH INSURANCE - CITY                  | \$        | - \$ -                |
| 103           | HEALTH SAVINGS ACCOUNT - EMPLOYEE        | \$        | -                     |
| 506           | HEALTH SAVINGS ACCOUNT - CITY            | \$        | -                     |
| 111 & 520     | IMPACT SPORTS & FITNESS- CITY/EMPLOYEE   | \$        | -                     |
| 114 & 560     | ABILENE PHYSICAL THERAPY - CITY/EMPLOYEE | \$        | -                     |
| 200           | KS PAYMENT CENTER SUPPORT - EMPLOYEE     | \$        | 168.46                |
| 206           | CALIFORNIA CHILD SUPPORT - EMPLOYEE      | \$        | 369.23                |
| 150           | FLEXIBLE SPENDING ACCOUNT - EMPLOYEE     | \$        | -                     |
| 121           | POLICE & FIREMENS INS. - EMPLOYEE        | \$        | -                     |
| 211           | GARNISHMENT - EMPLOYEE                   | \$        | 210.04                |
|               | <b>TOTAL PAYROLL EXPENDITURES</b>        | <b>\$</b> | <b>136,069.80</b>     |