

**EUDORA CITY COMMISSION  
MEETING AGENDA  
January 14, 2019  
Eudora City Office  
4 East 7<sup>th</sup> Street Eudora, Kansas  
7:00 P.M.**

**Mayor: Tim Reazin**

**City Commission: Ruth Hughs, Jolene Born, Troy Squire & Tim Bruce**

- I. CALL TO ORDER      Roll Call      Pledge of Allegiance**
- II. CHANGES OR ADDITIONS TO AGENDA – Approve agenda**
- III. ELECT MAYOR**
- IV. ELECT VICE MAYOR**
- V. CONSENT ITEMS:**
  - A. Consider minutes of December 10, 2018 Eudora City Commission meeting**
  - B. Consider warrants against the City of Eudora**
  - C. Consider December Police Department report**
  - D. Consider December Fire Department report**
  - E. Consider Resolution 2019-01 GAAP waiver**

**PUBLIC COMMENTS:** Please state name and address prior to addressing the Governing Body. Public comments are limited to 5 minutes per speaker.

- VI. BUSINESS ITEMS:**
  - A. Consider service agreement for on-call planning services with Ochsner, Hare & Hare a division of Olsson Planning Services**
  - B. Consider mayoral appointments to Planning Commission and Board of Zoning Appeals**
- VII. Mayor & City Commission comments**
- VIII. City Manager & staff comments**
- IX. WORK SESSION:**
  - A. None**
- X. EXECUTIVE SESSION:**
  - A. Non-elected personnel**
- XI. Adjournment**

*As a courtesy, please silence all cell phones while the City Commission meeting is in session.*

Eudora City Commission Meeting  
City Hall – 4 E. 7<sup>th</sup> Street  
Eudora, Kansas  
December 10, 2018  
7:00 p.m.

Call to Order:

Mayor Tim Reazin  
Commissioner Troy Squire  
Commissioner Tim Bruce  
Commissioner Ruth Hughs  
Commissioner Jolene Born

Quorum noted.

Pledge of Allegiance was recited.

Changes or additions to agenda

Mayor Reazin requested the Executive Session be removed from the agenda.

**Commissioner Squire moved the City Commission approve the agenda with the Executive Session removed,** motion seconded by Commissioner Bruce, all ayes, motion carried, 5-0.

Consent agenda items

- A. Consider minutes of November 26, 2018 Eudora City Commission meeting
- B. Consider warrants against the City of Eudora
- C. Consider November Police Department report
- D. Consider November Fire Department report
- E. Consider agreement with Mize Houser & Co. for 2019 audit services
- F. Consider agreement with Douglas County Sheriff's Department for 2019 inmate housing

**Mayor Reazin moved the City Commission approve consent items,** motion seconded by Commissioner Born, all ayes, motion carried, 5-0.

Public comments

Public comments were invited. Nolan Jones introduced himself and his wife, Stephanie. They are new to town and wanted to get involved. Stephanie Jones is active with the Historical Society and serves on the board.

Mayor Reazin recognized Jim Hoover who recently passed away. Mr. Hoover served on the council or as mayor from 1976 to 1997.

Business Items

- A. Consider recommendation from the Planning Commission regarding the establishment of Eudora Urban Growth Area

City Manager Barack Matite explained although establishing a UGA was started in the 1970's, Eudora does not have a UGA that the county recognizes. This item appeared before the Planning Commission at their November 7, 2018 meeting. After reviewing the two options in establishing a UGA, they recommend the City Commission approve option 2, an Interlocal Agreement. This process is the one recommended by Douglas County.

**Commissioner Bruce moved the City Commission accept the recommendation from the Planning Commission to proceeding with option two – the Interlocal Agreement, in establishing the Eudora Urban**

**Growth Area; and direct the City Manager to submit a request to the Board of County Commissioners to recognize the designated urban growth area for the purposes of applying the Douglas County Subdivision Regulations which are specific to an urban growth area,** motion seconded by Commissioner Hughs, all ayes, motion carried, 5-0.

B. Online credit card payment convenience fees

Matite commented the purpose of the conversation is to draw the Commission's attention to the rising cost of convenience fee charges. Staff is not recommending any changes at this time but will keep an eye on the charges. Staff will investigate ways to reduce the cost in the future. Commissioner Hughs asked staff to explore how other cities absorb the fees. Should fees get between 3 and 5 percent, staff will make recommendations to lower the costs.

C. Consider Resolution 2018-07 updating the Master Fee Schedule

City Clerk Pam Schmeck commented the Master Fee Schedule was on the agenda as a work session at the last City Commission meeting. The fee schedule presented tonight has the only change requested completed and is ready for approval.

**Mayor Reazin moved the City Commission approve Resolution 2018-07 updating the fees reflected in the master fee schedule as presented,** motion seconded by Commissioner Bruce, all ayes, motion carried, 5-0.

D. Consider 2019 Cereal Malt Beverage License renewals for Gene's Heartland Foods, Casey's General Store #1199, Kwik Shop and Jasmin Restaurant

Schmeck commented all the applicants have completed the necessary paperwork, paid the appropriate fees and are ready for approval.

**Mayor Reazin moved the City Commission approve the Cereal Malt Beverage License applications for Kwik Shop, Casey's General Store #1199, Gene's Heartland Foods and Jasmin Restaurant pending completion of requirements and approved background checks,** motion seconded by Commissioner Born, all ayes, motion carried, 5-0.

E. Consider appointment of Josh Harger to the Planning Commission

Mayor Reazin suggested Josh Harger to replace Amber Wells on the Planning Commission.

**Commissioner Born moved the City Commission approve the Mayor's appointment of Josh Harger to the Planning Commission effective January 1, 2019,** motion seconded by Commissioner Bruce, all ayes, motion carried, 5-0.

Mayor and City Commission Comments

**Mayor Reazin** commented he will be serving city staff an appreciation lunch in the upcoming weeks. He is working with staff to plan an appreciation dinner for Planning Commission, Board of Zoning Appeals, Convention Visitor's Bureau, Chamber of Commerce Board members and the Park and Recreation Foundation. He mentioned Jim Hoover's funeral on Friday and Douglas County Administrator Craig Weinaug is retiring and his reception is at 2:00 pm on Friday. He offered the use of his land to burn the existing brush pile at no cost. If there is a need for more rock on the drive, he will supply it. No strings attached. He thanked the Commission for their commitment. He thanked city employees adding it's been a great year.

**Commissioner Bruce** – No comment.

**Commissioner Hughs** commented that she had a great day asking people to volunteer. She had a great response from those she called. She thanked the mayor and staff for the Mayor's Christmas Tree Lighting event. She enjoyed it.

**Commissioner Born** – No comment.

**Commissioner Squire** – No comment.

City Manager and Staff Comments

**City Manager Barack Matite** commented he will be out of the office until January 4<sup>th</sup>.

**Assistant Manager Leslie Herring** commented there is a Parks & Rec Foundation strategic planning meeting scheduled next Monday evening from 6:00 pm to 9:00 pm in the Commission Chambers. Staff has an annual employee crockpot luncheon scheduled.

**Director of Public Works Branden Boyd** updated the Commissioner on the status of the west entrance sign. Hopefully, the steel will be ready to hang next week. Progress is being made. Streets signs have been received but six bases have not shipped yet. The generator that was sold on Purplewave in 2018 was picked up by a man who lives in Texas but was originally from South Africa. The village he came from does not have electricity. The generator is intended to supply electricity to the village.

**Police Chief Wes Lovett** – No comment.

**Fire Chief Ken Keiter** commented at the next Douglas County Commission meeting the Douglas County Fire Chiefs Association will present Craig Weinaug with an appreciation plaque.

**Parks & Recreation Director Gary Scott** did not attend meeting. Assistant Parks & Recreation Director Jimmy Kegin did not attend meeting.

**City Clerk Pam Schmeck** commented the annual audit will start with a preliminary audit on January 21, 2019 and the audit scheduled for February 27, 2019. Before the crockpot luncheon, an all employee meeting is scheduled for employees to complete end of year/new year paperwork.

**Commissioner Bruce moved to adjourn**, motion seconded by Commissioner Squire, all ayes, motion carried, 5-0.

Meeting adjourned at 7:35 pm.

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Tim Reazin, Mayor

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Pam Schmeck, City Clerk



# City of Eudora Police Department

Report Date Range: 12/01/2018 to 12/31/2018

## Dispatched Calls- Priority Level= 139

INCIDENT TYPE	# INCIDENTS	% of TOTAL
Medicals	37	26.62%
Adult/Child Welfare Checks	13	9.35%
Suspicious Activity	13	9.35%
Accidents	12	8.63%
Disturbances	10	7.19%
Alarms	8	5.76%
Other	46	33.09%
<b>TOTAL</b>	<b>139</b>	<b>100.00%</b>

## Dispatched Calls- Non-Priority= 174

INCIDENT TYPE	# INCIDENTS	% of TOTAL
Request Speak to Officer	52	29.89%
Investigate Vehicle	22	12.64%
Animal Calls	20	11.49%
Motorist Assist	18	10.34%
Parking Violations	16	9.20%
Special Assignment	12	6.90%
Other	34	19.54%
<b>TOTAL</b>	<b>174</b>	<b>100.00%</b>

## Self-Initiated Calls/Stops= 193

TYPE	#
Traffic Stops	186
Traffic Citations	19
Criminal Citations	14
Arrests	15
Warrants Served	3
Attempted Warrants	3
DUI's	5
<b>TOTAL</b>	<b>193</b>

also counts as a traffic stop

also counts as a traffic stop

includes warrants served

**\*Total officer interactions for the month of December= 506**

### Investigations:

Detective Flick currently has 10 active cases: 3 burglaries, 1 theft, 3 sex crimes, 2 abuse cases and 1 rape. 22 cases are pending with the DA's office & court system. Detective Flick has closed 2 cases.

### News & Events:

Thanks to community support, EPD was able to provide a generous Christmas to 2 families. Officers wrapped the gifts and delivered them a few days before Christmas.

### Other:

Interviews were held for the Police Officer position that is available.

# City of Eudora Fire Department

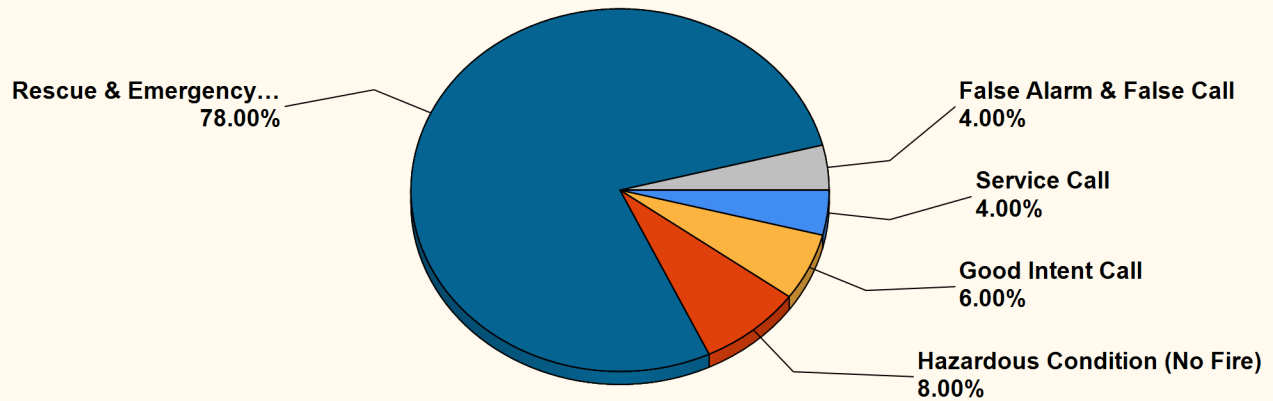
Eudora, KS

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## Breakdown by Major Incident Types for Date Range

Zone(s): All Zones | Start Date: 12/01/2018 | End Date: 12/31/2018



MAJOR INCIDENT TYPE	# INCIDENTS	% of TOTAL
Rescue & Emergency Medical Service	39	78.00%
Hazardous Condition (No Fire)	4	8.00%
Service Call	2	4.00%
Good Intent Call	3	6.00%
False Alarm & False Call	2	4.00%
<b>TOTAL</b>	<b>50</b>	<b>100.00%</b>

Only REVIEWED incidents included. Summary results for a major incident type are not displayed if the count is zero.

### Detailed Breakdown by Incident Type

INCIDENT TYPE	# INCIDENTS	% of TOTAL
321 - EMS call, excluding vehicle accident with injury	39	78.00%
412 - Gas leak (natural gas or LPG)	3	6.00%
445 - Arcing, shorted electrical equipment	1	2.00%
550 - Public service assistance, other	1	2.00%
554 - Assist invalid	1	2.00%
611 - Dispatched & cancelled en route	2	4.00%
651 - Smoke scare, odor of smoke	1	2.00%
733 - Smoke detector activation due to malfunction	1	2.00%
736 - CO detector activation due to malfunction	1	2.00%
<b>TOTAL INCIDENTS:</b>	<b>50</b>	<b>100.00%</b>

Only REVIEWED incidents included. Summary results for a major incident type are not displayed if the count is zero.



# City of Eudora Fire Department

Eudora, KS

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## Incident Statistics

Start Date: 12/01/2018 | End Date: 12/31/2018

INCIDENT COUNT			
INCIDENT TYPE		# INCIDENTS	
EMS		39	
FIRE		11	
<b>TOTAL</b>		<b>50</b>	
TOTAL TRANSPORTS (N2 and N3)			
APPARATUS	# of APPARATUS TRANSPORTS	# of PATIENT TRANSPORTS	TOTAL # of PATIENT CONTACTS
1200	0	0	3
E1232	0	0	3
S1251	0	0	1
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>7</b>
PRE-INCIDENT VALUE		LOSSES	
<b>\$0.00</b>		<b>\$0.00</b>	
CO CHECKS			
736 - CO detector activation due to malfunction		1	
<b>TOTAL</b>		<b>1</b>	
MUTUAL AID			
Aid Type		Total	
OVERLAPPING CALLS			
# OVERLAPPING		% OVERLAPPING	
6		12	
LIGHTS AND SIREN - AVERAGE RESPONSE TIME (Dispatch to Arrival)			
Station	EMS	FIRE	
City of Eudora Fire Department	0:04:47	0:04:22	
<b>AVERAGE FOR ALL CALLS</b>		<b>0:04:43</b>	
LIGHTS AND SIREN - AVERAGE TURNOUT TIME (Dispatch to Enroute)			
Station	EMS	FIRE	
City of Eudora Fire Department	0:01:25	0:01:42	
<b>AVERAGE FOR ALL CALLS</b>		<b>0:01:28</b>	
AGENCY		AVERAGE TIME ON SCENE (MM:SS)	
City of Eudora Fire Department		18:44	

Only Reviewed Incidents included. CO Checks only includes Incident Types: 424, 736 and 734. # Apparatus Transports = # of incidents where apparatus transported. # Patient Transports = # of PCR with disposition "Treated, Transported by EMS". # Patient Contacts = # of PCR contacted by apparatus. This report now returns both NEMSIS 2 & 3 data as appropriate.



## Agenda Statement

**Date:** January 14, 2019  
**To:** Mayor, Vice-Mayor and City Commissioners  
**From:** Renee Davis, Budget Analyst/Treasurer  
**Re:** GAAP Waiver for FY 2019

### **Background**

State Statute K.S.A. 75-1120a(a) requires municipalities to use generally accepted accounting principles (GAAP) to prepare financial statements. Per K.S.A. 75-1120a(c)(1), the Governing Body may waive GAAP requirements by resolution and prepare financial statements and reports in compliance with the cash-basis and budget laws of the State of Kansas.

### **Staff Recommendation**

Staff recommends the Governing Body of Eudora allow staff to prepare financial statements and reports based on the cash receipts and disbursements as adjusted to show compliance with the cash-basis and budget laws of the State of Kansas by adopting Resolution 2019-01.

**Budget Impact** – None.

**City Manager Approval** -

### **Recommended Commission Action**

*Suggested Motion:* I move the City Commission approve Resolution 2019-01 waiving GAAP requirements.

## **RESOLUTION 2019-01**

**WHEREAS** the City of Eudora, Kansas has determined that the financial statements and financial reports for the year ended 2019 to be prepared in conformity with the requirements of K.S.A. 75-1120a(a) are not relevant to the requirements of the cash basis and budget laws of this state and are of no significant value to the Governing Body or the members of the general public of the City of Eudora, and;

**WHEREAS** there are no revenue bond ordinances or other ordinances or resolutions of the municipality which require financial statements and financial reports to be prepared in conformity with K.S.A. 75-1120a(a) for the year ended 2019.

**NOW, THEREFORE BE IT RESOLVED**, by the Governing Body of the City of Eudora, Kansas in regular meeting duly assembled this 14<sup>th</sup> day of January, 2019 that the Governing Body requests the Director of Accounts and Reports to waive the requirements of K.S.A. 75-1120a(a) as they apply to the City of Eudora, Kansas for the year ended 2019.

**BE IT FURTHER RESOLVED** that the Governing Body shall cause the financial statements and financial reports of the City of Eudora, Kansas to be prepared on the basis of cash receipts and disbursements as adjusted to show compliance with the cash basis and budget laws of this State.

**PASSED** by the Governing Body this 14<sup>th</sup> day of January, 2019; signed by Mayor of the City of Eudora, Kansas.

(SEAL)

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Pam Schmeck, City Clerk



## Agenda Statement

**Date:** January 14, 2019  
**To:** Mayor and Commissioners  
**From:** Leslie Herring, Assistant City Manager  
**Re:** Agreement for Professional Services: Ochsner, Hare & Hare (On-Call Planning)

### Background

Due to a 2018 organizational and employment change at Shafer, Kline, & Warren – the City’s primary provider of on-call planning services – City staff explored other service providers to conduct plan review and general planning services.

### Staff Comments and Recommendation

After research, reference checks, and interviews, City staff recommends engaging Ochsner, Hare & Hare, a subsidiary of Olsson Associates through an on-call service agreement. This firm has staff capacity and varied expertise to aid City staff in handling various planning, zoning, and codes matters and has a positive reputation in other communities it serves.

**Budget Impact** – Charges will be assessed only when City staff engages the firm. Staff will pass on the cost of service to individual applicants and developers whenever possible.

**City Manager Approval** – Received.

### Recommended Commission Action

*Suggested Motion:* I move the City Commission authorize the City Manager to execute the Letter of Agreement for Professional Planning Services with Ochsner, Hare & Hare, a design studio of Olsson Associates.

**Ochsner Hare and Hare, the Olsson Studio**

Labor Billing Rates

2018 Planner Rate Sheet

**Staff Description**

Ken Boone – Studio Leader - \$195.00/hr

Taylor Plummer - Associate Planner - \$100.00/hr

Tresa Carter – Assistant Planner - \$80.00/hr

Jon Moore – Associate Planner - \$100/hr

## LABOR BILLING RATE SCHEDULE

### 2018 Labor Rates

Description	Range
Principal	109.00 - 381.00
Project Manager	103.00 - 189.00
Project Professional	94.00 - 166.00
Assistant Professional	47.00 - 143.00
Designer	84.00 - 164.00
CAD Operator	32.00 - 109.00
Survey	46.00 - 147.00
Construction Services	40.00 - 189.00
Administrative/Clerical	29.00 - 107.00

**Note:**

1. Special Services not included in above categories will be provided on a Special Labor Rate Schedule
2. Rates subject to change based upon updates to Billing Rates for upcoming year.

## REIMBURSABLE EXPENSE SCHEDULE

The expenses incurred by Olsson or Olsson's independent professional associates or consultants directly or indirectly in connection with the Project shall be included in periodic billing as follows:

<u>Classification</u>	<u>Cost</u>
Automobiles (Personal Vehicle)	\$0.545/mile*
Suburban's and Pick-Ups	\$0.75/mile*
Automobiles (OA Vehicle)	\$85.00/day
Other Travel or Lodging Cost	Actual Cost
Meals	Actual Cost
Printing and Duplication including Mylars and Linens	
In-House	Actual Cost
Outside	Actual Cost+10%
Postage & Shipping Charges for Project Related Materials including Express Mail and Special Delivery	Actual Cost
Film and Photo Developing	Actual Cost+10%
Telephone and Fax Transmissions	Actual Cost+10%
Miscellaneous Materials & Supplies Applicable to this Project	Actual Cost+10%
Copies of Deeds, Easements or other Project Related Documents	Actual Cost+10%
Fees for Applications or Permits	Actual Cost+10%
Sub-Consultants	Actual Cost+10%

\*Rates consistent with the IRS Mileage Rate Reimbursement Guidelines (Subject to Change).

**LETTER AGREEMENT  
FOR PROFESSIONAL SERVICES**

November 29, 2018

City of Eudora, Kansas  
Attn: Leslie Herring, Asst City Manager  
4 E 7th Street  
Eudora, Kansas 66025

Re: **LETTER AGREEMENT FOR PROFESSIONAL SERVICES**  
On-Call Planning Services (the "Project")  
Eudora, Kansas

Dear Ms. Herring:

It is our understanding that City of Eudora, Kansas ("Client") requests Olsson, Inc. ("Olsson") dba Ochsner Hare & Hare the Olsson Studio (the Olsson Studio) to perform the services described herein pursuant to the terms of this Letter Agreement for Professional Services, Olsson's General Provisions and any exhibits attached hereto (all documents constitute and are referred to herein as the "Agreement") for the Project.

Olsson has acquainted itself with the information provided by Client relative to the Project and based upon such information offers to provide the services described below for the Project. Client warrants that it is either the legal owner of the property to be improved by this Project 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 Letter Agreement, and the General Provisions regarding the services to be performed by Olsson, the terms of the Letter Agreement shall take precedence.

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

Hourly planning services for City, Community, and Neighborhood planning; development case review and assistance; code and guidelines assistance; planning or design services; or other planning services, as requested by Client.

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:                    Upon receipt of a notice to proceed  
Anticipated Completion Date:        To be determined

Olsson will endeavor to start its services on the Anticipated Start Date and to complete its services on the Anticipated Completion Date. Unless otherwise agreed to in writing, 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, the actual time of personnel performing such services, and all actual reimbursable expenses in accordance with the Labor Billing Rate Schedule(s) and the Reimbursable Expense Schedule attached to this Agreement. Olsson shall submit invoices on a monthly basis and payment is due within 30 calendar days of invoice date.

### **TERMS AND CONDITIONS OF SERVICE**

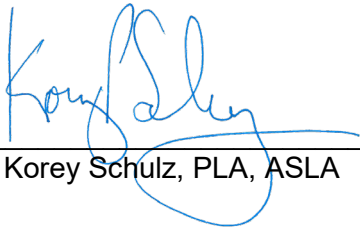
We have discussed with you the risks, rewards and benefits of the Project, the Scope of Services, and our fees for such services and the Agreement represents the entire understanding between Client and Olsson with respect to the Project. The Agreement may only be modified in writing signed by both parties.

Client's designated Project Representative shall be \_\_\_\_\_.

If this Agreement satisfactorily sets forth your understanding of our agreement, please sign in the space provided below. Retain one original for your files and return an executed original to Olsson. 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.  
DBA OCHSNER HARE & HARE THE OLSSON STUDIO**

By  \_\_\_\_\_  
Ken Boone, Team Leader

By  \_\_\_\_\_  
Korey Schulz, PLA, ASLA

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 EUDORA, KANSAS**

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

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

Title \_\_\_\_\_

Dated \_\_\_\_\_

Attachments

- General Provisions
- Standard Labor Billing Rate Schedule
- Reimbursable Expense Schedule

## GENERAL PROVISIONS

These General Provisions are attached to and made a part of the respective Letter Agreement, dated November 29, 2018 between City of Eudora, Kansas ("Client") and Olsson, Inc. ("Olsson") for professional services in connection with the project or projects arising under such Letter Agreement (the "Project(s)").

As used herein, the term "this Agreement" refers to these General Provisions, the applicable Letter 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, after a diligent attempt to obtain specific instructions from Client in a timely manner, shall perform or obtain from others such services without receiving 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. 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 all undisputed invoices that are directly related to the creation of such Work Product.

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. Nothing in this Section 3.8.1 waives or limits Olsson's liability to Client for Olsson's failure to comply with all applicable laws.

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 Deleted

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

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 Deleted

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 under this Section 5.3, the Client shall pay Olsson, for services rendered and reimbursable costs incurred.

5.4 Termination of this Agreement will not affect any rights or obligations under Section 7.1 of this Agreement.

## **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 Deleted

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 any other person or entity, regardless of who originally initiated such proceedings, only if the litigation or arbitration is directly related to Client's actions under this Agreement.

6.2.3 Deleted

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 – Deleted**

## **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 paid all undisputed invoices, 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 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 Client or from any reuse of the electronic files outside of the rights granted in Section 7.1 and 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 and related direct damages 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 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 reasonably prompt 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, to the extent of its fault, 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, and to the extent of its fault 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 Kansas. 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 Kansas.

## **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.

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.

**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.

General Provisions updated 11/29/2018.

**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 or, any punitive damages arising out of or connected in any way to the Project(s) or to this Agreement.

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 insurance coverage provided 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. The consultant "shall" carry at least those types of insurance, and that the City shall be named an additional insured thereunder.

Workers' Compensation	Statutory – per state law
Employer's Liability	\$500,000/Each Accident
General Liability	\$1,000,000/Occurrence \$2,000,000/Aggregate
Automobile Liability	\$ 1,000,000 Combined Single Limit for BI/PD
Professional Liability	\$1,000,000 Each Claim & Aggregate

**7.16 Entire Agreement**

## LABOR BILLING RATE SCHEDULE

### 2018 Labor Rates

Description	Range
Principal	109.00 - 381.00
Project Manager	103.00 - 189.00
Project Professional	94.00 - 166.00
Assistant Professional	47.00 - 143.00
Designer	84.00 - 164.00
CAD Operator	32.00 - 109.00
Survey	46.00 - 147.00
Construction Services	40.00 - 189.00
Administrative/Clerical	29.00 - 107.00

**Note:**

1. Special Services not included in above categories will be provided on a Special Labor Rate Schedule
2. Rates subject to change based upon updates to Billing Rates for upcoming year.

## REIMBURSABLE EXPENSE SCHEDULE

The expenses incurred by Olsson or Olsson's independent professional associates or consultants directly or indirectly in connection with the Project shall be included in periodic billing as follows:

<u>Classification</u>	<u>Cost</u>
Automobiles (Personal Vehicle)	\$0.545/mile*
Suburban's and Pick-Ups	\$0.75/mile*
Automobiles (OA Vehicle)	\$85.00/day
Other Travel or Lodging Cost	Actual Cost
Meals	Actual Cost
Printing and Duplication including Mylars and Linens	
In-House	Actual Cost
Outside	Actual Cost+10%
Postage & Shipping Charges for Project Related Materials including Express Mail and Special Delivery	Actual Cost
Film and Photo Developing	Actual Cost+10%
Telephone and Fax Transmissions	Actual Cost+10%
Miscellaneous Materials & Supplies Applicable to this Project	Actual Cost+10%
Copies of Deeds, Easements or other Project Related Documents	Actual Cost+10%
Fees for Applications or Permits	Actual Cost+10%
Sub-Consultants	Actual Cost+10%

\*Rates consistent with the IRS Mileage Rate Reimbursement Guidelines (Subject to Change).



## Agenda Statement

**Date:** January 14, 2019  
**To:** Vice-Mayor and City Commissioners  
**From:** Pam Schmeck, City Clerk  
**Re:** Mayoral appointments to the Planning Commission and Board of Zoning Appeals

### Background

Of the seven members of the Planning Commission, three of the three-year terms expired last month. The terms for the remaining four members expire in 2020. The members with the expiring terms are Glenn Bartlett, Johnny Stewart and Tim Pringle. Mayor Reazin has been in contact with these members and both Johnny Stewart and Tim Pringle indicated they are interested in being reappointed. Glenn Bartlett indicated that he would prefer not to be reappointed for another term.

Of the five members of the Board of Zoning Appeals, two of the three-year terms expired last month. The terms for the remaining three members expire in 2020. Charlie Watts holds one of the expiring terms and Mayor has contacted him and Mr. Watts is open to reappointment. Josh Harger held the remaining position until January 1, 2019 when he was appointed to the Planning Commission. Mayor Reazin will appoint Aaron Thakker to the open position.

The Mayor will present these appointments on Monday night.

**Budget Impact** – N/A

**City Manager Approval** – N/A

### Recommended Commission Action

*Suggested Motion:* I move the City Commission approve the Mayor's appointments of Tim Pringle and Johnny Stewart to the Eudora Planning Commission and Charlie Watts and Aaron Thakker to the Board of Zoning Appeals.