Request for Proposals (RFP)
Citywide Fiber Optic Network Feasibility Study

The City of Spring Hill is accepting proposals from qualified firms to examine options and produce a Feasibility Study Report (“study”) with a market analysis and development plan inclusive of the engineering, construction, operating and business to stimulate creative discussions surrounding the overall concept and feasibility of a Fiber to the Premise (FTTP) high speed network within the City of Spring Hill.

**RFP Submission:** All respondents shall submit three (3) hard copies via mail and an electronic (PDF/zip file via email with confirmed electronic receipt or flash drive via mail/delivery preferred) copy to:

Glenda Gerrity
c/o City Clerk’s Office
P.O Box 424
Spring Hill, KS 66083-0424
cityclerk@springhillks.gov

The outside of any envelope or package must clearly indicate the name of the project, “RFP for Citywide Fiber Optic Network.” Likewise, an email must show “RFP for Citywide Fiber Optic Network” in the Subject line. The name and address of the Respondent must be clearly printed on the outside envelope or package.

**NOTICE OF INTENT TO RESPOND:** Those intending to respond may email their contact information by Monday, April 10, 2017, to the City representative listed in section 5, subsection A. If a respondent does not notify the City of its intent to respond and provide an e-mail address for contact, they may not receive answers to the questions received from other respondents.

**RFP DEADLINE:** Responses must be received no later than 5:00 PM CST on Wednesday, April 26, 2017.

**INQUIRIES:** All inquiries or questions must be directed to Antwone Smoot, Project Manager, Office: (913) 592-3664, or email: antwone.smoot@springhillks.gov.
I. Project Summary
The City of Spring Hill (“the City”) established a Broadband Task Force (BTF) to study options for improved broadband access for the City, and to recommend to the Governing Body a future course of action.

The intent of this Citywide Fiber Optic Network RFP is to hire a qualified firm to examine options and produce a Feasibility Study Report (“study”) with a market analysis and development plan inclusive of the engineering, construction, operating and business requirements as detailed in the Scope of Work; and to stimulate creative discussions surrounding the overall concept and feasibility of a Fiber to the Premise (FTTP) high speed network within the City of Spring Hill.

II. About Spring Hill
Spring Hill is a community of approximately 6,000 residents located on the southern edge of the Kansas City metropolitan area along U.S. Highway 169. The city has nearly tripled in size since 2000, and Spring Hill has been one of the top five fastest-growing cities in the metro area for many years.

The City’s economy is anchored by an industrial park in the city’s core and a variety of local service and retail businesses. Growth in Spring Hill’s manufacturing and distribution centers is expected to increase significantly in the near future as businesses move to the proximity of the nearby BNSF Intermodal Facility.

The Spring Hill School District offers a high-quality, technology-driven education to more than 3,000 students in six schools. The district recently implemented a 1-to-1 laptop program for middle school and high school students to better prepare students for college and careers.

Major ISP providers in the City include CenturyLink and SuddenLink with service offerings varying based on location within the City. Some residences are not offered service from either company due to lack of service availability. Communication with, and inquiries from, local businesses, potential development clients, and residents led the City to engage current providers in conversations regarding their plans for future capital investments into Spring Hill infrastructure and service upgrades. The purpose of the feasibility study is to provide a comprehensive overview of the possibilities to service all residents of Spring Hill.

III. Scope of Work
The study should provide an analysis of options for engineering, constructing, provisioning and operating a high speed citywide FTTP network. It should feature both physical and network transport layer components required to pass and potentially connect every home, business, apartment complex, and institutional building within the City of Spring Hill. The analysis should also consider future use at strategic infill and edge points around the City in order to support network growth through the coming decades. In addition, the proposal should include an optional task to provide analysis and options necessary to support future interconnections to neighborhoods outside City limits and as a base for agricultural uses in the greater unincorporated adjoining county farmland as depicted in the maps found in the Appendix.

The study shall consider at least, but not be limited to, the following classes of business model alternatives and appropriate variations within each model:

- **INFRASTRUCTURE PROVIDER** – the City provides conduit and dark fiber services for lease to community organizations, businesses and broadband providers, which use the fiber to connect to one another and to data centers to reach the internet, cloud services and other content networks;
- **OPEN-ACCESS PROVIDER** – the City owns the fiber optic network and equipment needed to create
a broadband network and may operate said network itself or in contract with others on its behalf. Content is typically resold from other providers;

- PUBLIC-PRIVATE PARTNERSHIPS – the City and one or more private organizations enter into a partnership to plan, fund, build, operate and maintain a broadband network within the municipality’s jurisdiction.

Based on similar work done for comparable jurisdictions, responses should address the following key components at a minimum, and include a summary comparing the different business models. Include any items that your company’s expertise tells you should be part of a FTTP Feasibility Study that isn’t specifically included below. Services provided may include (not limited to):
  
  A. Internet Based Live Television (IPTV)
  B. Traditional Broadcast Live Television (RF Video)
  C. Video on Demand (VOD)
  D. Telephone services (VoIP)
  E. Internet services (ISP, email, web hosting, etc.)
  F. Security and authentication requirements for business
  G. Bandwidth on Demand (BOD)
  H. High speed bandwidth (in excess of symmetrical 100 megabits)
  I. Supervisory Control and Data Acquisition (SCADA)/smart grid.
  J. Customers Serviced (Residential, Business, City Government, University, Wholesale...)
  K. Funding Required (Financing options to include, but not limited to: general obligation bonds, revenue bonds, utility taxes, public/private partnerships and grants)
  L. Competing with Incumbent Providers (expected competitive response).
  M. Operational Requirements/Costs (including ongoing maintenance costs for both Central Office and Customer Premise Equipment)
  N. Customer Premise (End-user) equipment lifetime costs for hardware refreshes
  O. Pre-engineering study(s) at sufficient depth to estimate costs and approximate implementation timeframes for the network
  P. Regulatory/Legal Requirements (Note any potential legal obstacles or risks that may be encountered in the creation of the network and the provisioning of the services)
  Q. Revenue Generation
  R. Financial Risk
  S. Execution Risk
  T. Completion Options (implementation schedule and phasing, if necessary).
  U. Take Rate - one, three and five year projections.
  V. Projected profit and loss statements, balance sheets – expected and worst case models.
  W. Key milestones with periodic status meetings (minimum three) identified through work plan
  X. Provide draft dig once policy
  Y. Coordinate communication with existing providers and interest in Spring Hill project
  Z. Leverage existing City assets, specifically existing sewer lines which extend throughout the City

AA. Provision of all assessments and recommendations with the final study which will include presentation(s) Q&A of the completed FTTP Feasibility Report to the Broadband Task Force and Governing Body.

IV. Materials and/or Services to be provided by City of Spring Hill
  A. Demographic profile (Appendix)
  B. Number of households (Appendix)
C. Information regarding city communications/infrastructure (Appendix)
D. Current aerial images and necessary maps of Spring Hill (Appendix)
E. General site visit

V. Request for Proposal Submittal Requirements
The following will be considered minimal contents of the proposal. Please read this entire RFP and all enclosures before preparing your response. Respondents should seek clarification of any requirements they do not fully understand. Misunderstandings resulting in an improper response will not be considered a valid reason for submitting a non-responsive submittal.

A. Any clarification desired by respondent regarding the meaning or interpretation of this RFP must be requested in writing by email not later than Wednesday, April 12, 2017. Responses to questions will be posted to the City’s website on Monday, April 17, 2017 and sent via email to the requestor. Issues or questions should be submitted via email to: Antwone Smoot, Project Manager, antwone.smoot@springhilks.gov.
B. Respondents should address every item listed in this RFP. Brevity and clarity are encouraged. Responses that do not comply with all requirements of this RFP, including the submittal deadline, will not be considered.
C. The respondent must provide three hard copies, with wet signatures by an authorized representative, containing all relevant documents the respondent wishes to have considered as part of the evaluation of their response. In addition, pdf copies of the proposal and all supporting documents are to be emailed to the contact listed on page 1 prior to the deadline.
D. Responses shall not exceed 60 pages, but will preferably provide a full response in fewer pages. Type font size shall be no smaller than 12 point. No cover letter is necessary. Maximum page number does not include any additional attachments or materials submitted with the response, however overall submittal should not exceed 100 pages. Responses shall include a statement signed by an owner, officer, or agent of the Respondent who is authorized to commit its firm, acknowledging and accepting the terms and conditions of this RFP.
E. Responses shall include the following minimum information about the firm or individual:
   1. Company Information
   2. Name of Firm
   3. Address of Firm
   4. Telephone & Fax Numbers
   5. E-Mail Address
   6. Primary Contact Person
   7. Organization Chart
   8. Legal Structure (corporation, partnership, joint venture, etc.)
   9. Size of Firm / Staff
   10. Years in Business
   11. Brief History of Firm
F. Listing and brief description of all contracts in progress and completed for similar type of work for public agencies as outlined in this RFP, with particular emphasis on financial, marketing and network architecture for fiber based networks.
G. If firm is a partnership or association, a listing of all the partners, general partners, or association members known at the time of submission, who will participate in the contract if awarded must be included.
H. Staff qualifications: Provide the names and contact information for key personnel who will be
assigned to the project. Detail their training and relevant work experience as related to the scope of the feasibility study requested by this RFP.

I. Note: No change in key personnel assigned to the project will be permitted without prior approval of the City.

J. References: Provide a list of at least three references familiar with respondent’s previous work related to the work outlined in this RFP. List should include most current contact information for each reference.

K. Sub-consultants: Respondents should identify all consultants whom they propose for this contract of services and include their contact information and qualifications. Qualifications should include all information listed in section V, subsection E above. Specify what roles the sub-consultants will perform.

L. Cost Proposal: Provide a cost proposal detailing the full cost of the development and production of the technical study. Include cost proposal as an Excel spreadsheet attached as an appendix to the RFP response (Note: cost proposal does not count in RFP page limit). Break cost proposal down by the following:
   1. Labor Costs: Indicate labor classification (position) and corresponding estimated hours, related hourly rate, and total labor costs for each position. Indicate the total estimated hours and direct labor calculated. Include costs for both prime and sub-consultants.
   2. Overhead Costs
   3. Travel Expenses
   4. Other Reimbursable Expenses: Any expenses associated with the development and production of study, including any fees for the collection and analysis of pertinent data.
   5. Preferred pricing will identify fixed cost bids with a menu of necessary and optional services.

M. Goals, objectives and project tasks to demonstrate the respondent's view of the project and exhibition of respondent's knowledge and expertise regarding FTTP networks.

N. Demonstrated ability to analyze and interpret the regulatory and legal landscape and provide guidance on the regulatory hurdles of different delivery options.

O. Detailed work plan identifying the tasks to be accomplished and the budget hours to be expended for each task and subtask. This will be used as a work plan and managing tool for basis of invoicing.

P. Availability for interview(s) on request.

VI. Feasibility Study Deliverables and Reports
The selected firm(s) or individual will be expected to provide the following deliverables and reports:
   A. Weekly updates with City, either written or verbal, on the status of the project.
   B. Project calendar with key tasks, dates and responsible parties – updated on a regular basis.
   C. Periodic updates with the City’s Broadband Task Force (BTF).
   D. Verification/finalization of study scope and the three business model scenarios to be considered.
   E. Draft feasibility study submitted to City staff and the BTF for review and comment.
   F. Presentation of the draft feasibility study to the BTF.
   G. Final version of study will be submitted after review of the draft feasibility study by City staff and the BTF. Final draft should include all annexes, pro-forma analyses, Excel spreadsheets and additional documentation that were utilized in the development of the study.
   H. Presentation of final study, findings and results to the BTF and the Governing Body.

VII. Evaluation Criteria
The City and the BTF will evaluate all proposals received by the deadline. Responses will be screened and
selected by City and BTF representatives, including but not limited to staff, BTF members and advisory consultants, to determine which firms/individuals complied with submittal requirements and meet the minimum criteria. The representatives will then review the eligible responses and rank the firms/individuals. The firm/individual will be notified electronically via email if it has been selected. Factors upon which proposals will be evaluated and ranked include, but are not limited to:

A. Expresses understanding of the project
B. Qualifications of the represented company and its personnel
C. Project work plan and timeline
D. Overall cost
E. Oral presentation (if required).

**VIII. Selection**

A. This RFP includes the explanation of the City’s needs, which must be met.
B. This RFP and all materials submitted in response to this RFP will become the property of the City.
C. The submission of a response to this RFP does not commit the City to award a contract for the services requested or to pay costs incurred in the preparation of responses to this RFP.
D. The City reserves the right to interpret or change any provision of this RFP at any time prior to the RFP submission date. Such interpretations or changes shall be in the form of addenda to this RFP and sent directly to respondents via email. The City, in its sole discretion, may determine that a time extension is required for submission of responses to this RFP, in which case such addenda shall indicate a new RFP submission deadline. The City reserves the right to waive inconsequential deviations from stated requirements.
E. Selection will be made according to project timetable in section IX.
F. Firms selected will be notified by phone and email once the review is completed.
G. Upon initial selection of the consultant, the City will enter into negotiations with the selected consultant to develop a Professional Services Agreement and finalize the work plan including budget hours, performance milestones and deliverables.
H. Should the City and the selected consultant fail to satisfactorily reach an agreement on the work plan including budget, they may enter into negotiations with the respondent judged second in the evaluation process, or the City may re-advertise for proposals. The City reserves the right to reject any and all proposals regardless of merit.
I. Respondents not selected will be notified by email upon execution of a contract with the selected consultant.
J. City reserves the right to contact individual respondents for clarifying information any time during the RFP process. Each respondent must provide the City with electronic contact information in response to this RFP.
K. Alteration of Terms and Clarifications. It is mutually understood and agreed that no alteration or variations of the terms of this RFP shall be valid unless made or confirmed in writing and signed by the City and selected firm/individual, and that no oral understandings or agreements not incorporated herein, and no alterations or variations of the terms hereof unless made or confirmed in writing between said parties hereto, shall be binding.
L. All responses shall remain valid for a period of not less than 120 days from the proposal deadline date.
M. The City reserves the right to retain all responses submitted and use any ideas included in a response regardless of whether that response is selected.
N. No person shall, on the grounds of race, color, creed, national origin, religious affiliation or non-affiliation, sex, sexual orientation, marital status, age (over 40), disability, medical condition
(including but not limited to AIDS, HIV positive diagnosis or cancer), political affiliation or union membership be excluded from participation in, be denied the benefits of, or be subjected to discrimination under this agreement.

O. Respondents shall ensure equal employment opportunity based on objective standards of recruitment, selection, promotion, classification, compensation, performance evaluations, and management relations, for all employees under any contract that may result from this submittal.

P. Respondents' personnel policies shall be made available to the City upon request.

IX. Project Timetable

- **RFP released** .............................................................. Wednesday, March 29, 2017
- **RFP respondent notice of intent due** ........................ Monday, April 10, 2017
- **RFP respondent questions due** .............................. Wednesday, April 12, 2017
- **Proposals due** ............................................................... Wednesday, April 26, 2017 (5:00 PM CST)
- **Interviews as needed** .................................................... TBD
- **Award of bid and contract** ........................................... Thursday, May 11, 2017

Aggressive timeline for project completion anticipated upon award of bid and contract.

The City of Spring Hill will make reasonable attempts through email to notify respondents of changes to the schedule and all changes will be posted to the City’s website.

NOTE: If a respondent does not notify the Client or the City of its intent to respond and provide an e-mail address for contact, they may not receive answers to the questions received from other respondents. This does not disqualify them from responding by the RFP due date; however, they may not have the benefit of the provided answers.

All proposals must be received by 5:00 PM CST, Wednesday, April 26, 2017.

City of Spring Hill Disclaimer

The City of Spring Hill makes no intention or implied expression beyond what is specifically listed and enumerated in this RFP.
1. Demographic Information
Spring Hill is a community of approximately 6,000 residents located on the southern edge of the Kansas City metropolitan area along U.S. Highway 169. The city has nearly tripled in size since 2000, and Spring Hill has been one of the top five fastest-growing cities in the metro area for many years.

Demographic information is available for the City of Spring Hill on the City’s website at http://springhillks.gov/214/Demographics.

2. Household Information
Spring Hill supplies utility services to approximately 2,100 households within the Spring Hill city limits. Households have consistently increased by 50-70 units per year over the past several years and it is expected that the trend will continue for the foreseeable future. This does not include the number of apartment units both existing and planned.

3. Information regarding city communications/infrastructure
City functions require high internet speeds. Currently, most city facilities are connected by leased fiber infrastructure through a local provider.

4. Information regarding city communications/infrastructure
MAP B – FUTURE LAND USE MAP

http://www.springhillks.gov/DocumentCenter/View/79
ATTACHMENT B

CITY OF SPRING HILL

SAMPLE AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made and entered into this ____ day of____________, 2017, by and between the CITY OF SPRING HILL, a municipal corporation existing under the laws of the State of Kansas, hereinafter referred to as “City,” and________________________, a ___________________________, hereinafter referred to as “Consultant.”

RECITALS

HEREAS, Consultant desires to perform and assume responsibility for the provision of certain services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing services related to producing a feasibility report complete with market analysis and development plan including engineering, construction, operating and business requirements to public clients and is familiar with the plans of the City with respect to the Project, as defined below.

WHEREAS, the City desires to engage Consultant to render such services in connection with the Spring Hill Citywide Fiber Optic Network project (“Project”) as set forth in this Agreement.

NOW, THEREFORE, City and Consultant agree as follows:

1. SCOPE OF SERVICES AND TERM.

1.1 Scope of Services. Consultant promises and agrees to furnish to City all labor, services, and incidental and customary work necessary to fully and adequately perform the services as outlined and necessary for the Project (“Services”). The Services are more particularly described in Exhibit A. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state, and federal laws, rules, and regulations. In the event of a conflict between a provision in this Agreement and a provision in Exhibit A or in any other exhibit to this Agreement, the provision in this Agreement shall control.
1.2 **Facilities, Equipment, and Other Materials.** Except as specifically provided in Exhibit B, Consultant shall, at its sole cost and expense, furnish all facilities, tools, equipment, and other materials necessary for performing the Services pursuant to this Agreement. The City shall furnish to Consultant only those facilities, tools, equipment, and other materials specifically listed in Exhibit B, according to the terms and conditions set forth in that exhibit.

1.3 **Schedule of Services.** Consultant shall perform the Services expeditiously and in accordance with the Schedule of Services set forth in Exhibit C and any updates to the Schedule of Services approved by the City. Time is of the essence in the performance of this Agreement. Consultant’s failure to perform any Service required under this Agreement within the time limits set forth in Exhibit C shall constitute a material breach of this Agreement.

1.4 **Term.** The term of this Agreement shall begin on the date the Governing Body approves this Agreement and shall expire upon completion of the Services or when terminated as provided in Article 5.

2. **PROJECT COORDINATION.**

2.1 **City’s Representative.** The City Administrator will act as the City representative for the performance of this Agreement. The City Administrator will designate a Project Manager who shall supervise the progress and day-to-day performance of this Agreement.

2.2 **Consultant’s Representative.** Consultant hereby designates [INSERT NAME OR TITLE] to act as its representative for the performance of this Agreement (“Consultant’s Representative”). Consultant’s Representative shall have full authority to represent and act on behalf of Consultant for all purposes under this Agreement. The Consultant’s Representative shall supervise and direct the Services under this Agreement, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services to be performed under this Agreement. Should the Consultant’s Representative need to be substituted for any reason, the proposed new Consultant’s Representative shall be subject to the prior written acceptance and approval of the Project Manager. The Consultant shall not assign any representative to whom the City has a reasonable objection.

2.3 **Coordination of Services.** Consultant agrees to work closely with City staff in the
performance of the Services and shall be available to City staff at all reasonable times.

3. RESPONSIBILITIES OF CONSULTANT.

3.1 Independent Contractor. The City retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Nor shall any additional personnel performing the Services under this Agreement on behalf of Consultant be employees of the City; such personnel shall at all times be under Consultant’s exclusive direction and control. Consultant shall be entitled to no other benefits or compensation except as provided in this Agreement.

3.2 Control and Payment of Subordinates. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods, and details of performing the Services subject to the requirements of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant’s exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers’ compensation insurance.

3.3 Conformance to Applicable Requirements. All services performed by Consultant shall be subject to the Project Manager’s review and approval. Consultant shall furnish City with every reasonable opportunity to determine that Consultant’s services are being performed in accordance with this Agreement. The City’s review of Consultant’s services shall not relieve Consultant of any of its obligations to fulfill this Agreement as prescribed.

3.4 Substitution of Key Personnel. Consultant has represented to the City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon the City’s approval. In the event that the City and Consultant cannot agree as to the substitution of key personnel, the City shall be entitled to terminate this Agreement for cause. The key personnel for performance of this Agreement are as follows: [INSERT NAMES OF KEY PERSONNEL].

3.5 Licenses and Permits. Consultant represents that it, its employees and subconsultants
have all licenses, permits, qualifications and approvals of whatever nature that are legally required
to perform the Services, and that such licenses and approvals shall be maintained throughout the
term of this Agreement, at Consultant’s sole cost and expense.

3.6 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant’s failure to comply with the standard of care provided for herein. Any employee of Consultant or its subconsultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.7 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with the Services. If Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold the City, its officials, directors, officers, employees, and agents free and harmless, pursuant to the indemnification provisions of this Agreement and in accordance with the language of Section 6.3, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.8 Non-Discrimination. No discrimination shall be made in the employment of persons under this Agreement because of that person’s race, color, national origin, ancestry, religion, age, marital status, disability, gender, sexual orientation, or place of birth. With respect to all service provided by Consultant under this Agreement, Consultant agrees to comply with the requirements of K.S.A 44-1030 of the Kansas Acts Against Discrimination. Consultant also agrees to comply with all ADA, Civic Rights Act, and Age Discrimination and Employment Act (ADEA)
requirements and obligations. Consultant shall require all its subcontractors and independent contractors to agree, in writing, to comply with all requirements of K.S.A 44-1030 of the Kansas Acts Against Discrimination and with the ADA, Civil Rights Act and ADEA requirements and obligations before providing any services to Consultant in regard to this Agreement. Consultant agrees to indemnify and hold City harmless from all claims and damages, including but not limited to attorney fees and expenses, arising from any failure by Consultant to comply with all such requirements of this Section 3.8 with respect to all services under this Agreement.

3.9 **Insurance.** Consultant shall not commence the performance of Services under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required herein. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required herein. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Agreement for cause. Consultant shall, at its expense, procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of this Agreement by Consultant, its agents, representatives, employees or subconsultants. Consultant shall also require all of its subconsultants to procure and maintain the same insurance for the duration of this Agreement. City of Spring Hill minimum insurance requirements are found in Exhibit E.

4. **FEES AND PAYMENT.**

4.1 **Compensation.** Consultant shall receive compensation, including authorized reimbursements, for Services rendered under this Agreement at the rates set forth in Exhibit D. The total compensation shall not exceed [INSERT WRITTEN DOLLAR AMOUNT] ($[INSERT NUMERICAL DOLLAR AMOUNT]) without written approval of the City Administrator. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

4.2 **Payment of Compensation.** Consultant shall submit to the City a monthly itemized statement which indicates tasks completed during the month, hours of services rendered by Consultant during the month, and supplies provided during the month. The City shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.
4.3 City’s Right to Withhold Payment. The City reserves the right to withhold payment from Consultant on account of Services not performed satisfactorily, delays in Consultant’s performance of Services past the milestones established in the Schedule of Services (Exhibit C), or other defaults hereunder. Consultant shall not stop or delay performance of Services under this Agreement on account of payment disputes with the City, provided that the City continues to make payment of undisputed amounts.

4.4 Payment Disputes. If the City disagrees with any portion of a billing, the City shall promptly notify Consultant of the disagreement, and the City and Consultant shall attempt to resolve the disagreement. The City’s payment of any amounts shall not constitute a waiver of any disagreement and the City shall promptly pay all amounts not in dispute.

4.5 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses except as specifically set forth in Exhibit D.

4.6 Extra Work. At any time during the term of this Agreement, the City may request that Consultant perform Extra Work. As used herein, “Extra Work” means any work which is determined by the City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the City Administrator, in accordance with the City’s purchasing policy.

5. SUSPENSION AND TERMINATION.

5.1 Suspension. The City may suspend this Agreement and Consultant’s performance of the Services, wholly or in part, for such period as it deems necessary due to unfavorable conditions or to the failure on the part of Consultant to perform any provision of this Agreement. Consultant will be paid for satisfactory services performed through the date of temporary suspension. In the event that Consultant’s services hereunder are delayed for a period in excess of six (6) months due to causes beyond Consultant’s reasonable control, Consultant’s compensation shall be subject to renegotiation.

5.2 Termination for Cause.

5.2.1 If Consultant at any time refuses or neglects to prosecute its services in a timely fashion or in accordance with the Schedule of Services, or is adjudicated a bankrupt, or commits any act of insolvency, or makes an assignment for the benefit of
creditors without the City’s consent, or fails to make prompt payment to persons furnishing labor, equipment, materials or services, or fails in any respect to properly and diligently prosecute its services, or otherwise fails to perform fully any and all of the agreements herein contained, Consultant shall be in default.

5.2.2 If Consultant fails to cure the default within seven (7) days after written notice thereof, the City may, at its sole option, take possession of any documents and data (as more specifically described in Section 6.1) or other materials (in paper and electronic form) prepared or used by Consultant in connection with the Project and (1) provide any such work, labor, materials or services as may be necessary to overcome the default and deduct the cost thereof from any money then due or thereafter to become due to Consultant under this Agreement; or (2) terminate Consultant’s right to proceed with this Agreement.

5.2.3 In the event the City elects to terminate, the City shall have the right to immediate possession of all documents and data and work in progress prepared by Consultant, whether located at the Project, at Consultant’s place of business, or at the offices of a subconsultant, and may employ any other person or persons to finish the Services and provide the materials therefor. In case of such default termination, Consultant shall not be entitled to receive any further payment under this Agreement until the Project is completely finished. At that time, if the expenses incurred by the City in obtaining the Services necessary to complete the Project exceed such unpaid balance, then Consultant shall promptly pay to the City the amount by which such expense exceeds the unpaid balance of the not-to-exceed amount reflected in Section 4.1. The expense referred to in the previous sentence shall include expenses incurred by the City in causing the Services called for under this Agreement to be provided by others, for attorneys’ fees, and for any costs or damages sustained by the City by reason of Consultant’s default or defective work.

5.3 Termination for Convenience.

5.3.1 In addition to the foregoing right to terminate for default, the City reserves the absolute right to terminate this Agreement without cause, upon 72-hours’ written notice to Consultant. In the event of termination without cause, Consultant shall be entitled to payment in an amount not to exceed the not-to-exceed amount set forth in
Section 4.1 which shall be calculated as follows: (1) payment for Services then satisfactorily completed and accepted by the City, plus (2) payment for Additional Work satisfactorily completed and accepted by the City, plus (3) reimbursable expenses actually incurred by Consultant, as approved by the City. The amount of any payment made to Consultant prior to the date of termination of this Agreement shall be deducted from the amounts described in (1), (2), and (3) above. Consultant shall not be entitled to any claim or lien against the City or the Project for any additional compensation or damages in the event of such termination and payment. In addition, the City’s right to withhold funds under Section 4.3 shall be applicable in the event of a termination for convenience.

5.3.2 If this Agreement is terminated by the City for default and it is later determined that the default termination was wrongful, such termination automatically shall be converted to and treated as a termination for convenience under this Section and Consultant shall be entitled to receive only the amounts payable hereunder in the event of a termination for convenience.

6. OTHER PROVISIONS.

6.1 Documents and Data.

6.1.1 Ownership of Documents. The City shall be the owner of the following items produced pursuant to this Agreement, whether or not completed: all data collected, all documents prepared, of any type whatsoever, and any material necessary for the practical use of the data and/or documents from the time of collection and/or production whether performance under this Agreement has been completed or if this Agreement has been terminated prior to completion. Consultant shall not release any materials under this Section except after prior written approval of the City.

6.1.2 Copyright. No materials produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country except as determined at the sole discretion of the City. The City shall have the unrestricted authority to publish, disclose, distribute, and otherwise use in whole or in part, any reports, data, documents or other materials prepared under this Agreement.
6.1.3 **Release of Documents to City.** Consultant shall deliver to the City all materials prepared by Consultant in connection with this Agreement, including all drafts, memoranda, analyses, and other documents, in paper and electronic form, within five (5) days of receiving a written request from the City.

6.1.4 **Confidentiality.** All documents, reports, information, data, and exhibits prepared or assembled by Consultant in connection with its performance under this Agreement are confidential until released by the City to the public, and Consultant shall not make any of these documents or information available to any individual or organization not employed by Consultant or the City without the written consent of the City before any such release.

6.2 **Assignment; Successors.** Consultant shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of the City. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

6.3 **Indemnification.**

6.3.1 **Indemnity.** To the fullest extent permitted by law, Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant’s Services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorney fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant’s Services are subject to Civil Code Section 2782.8, the above defense and indemnity obligations shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.
6.3.2 **Hold Harmless.** Contractor agrees to defend, indemnify and hold harmless the City and its agents and/or employees, Mayor, and Governing Body members from any and all claims, settlements, and judgments including but not limited to those for bodily injury, physical property damage and/or death that are caused by the Contractor and within its control and that arise out of Contractor’s or any of its agents, servants and/or employees’ negligent acts, and/or failure to act in the performance of this Agreement. Neither acceptance of the completed work nor payment therefore or termination or expiration of this Agreement shall release Contractor of its obligation under this paragraph.

In the event of an proceeding (suit, claim, or action) against City arising from allegations that the hardware, software, or services, or part thereof, furnished by Contractor (hereinafter “Product”) infringes on a U.S. patent, copyright, trade secret, intellectual property, or other proprietary right of any third-party, Contractor will, if such a proceeding does not result from modifications to the Product made by City use of any Product in combination with other products not furnished by Contractor, defend City’s right, title, or interest in the Product, at Contractor’s expense, provided City promptly notifies Contractor in writing of the allegation. Contractor shall make such defense by counsel of its own choosing, and City shall cooperate with said counsel.

In the event any Product furnished hereunder is, in Contractor’s opinion, likely to or does become the subject of claim or infringement of any duly issued patent or copyright or any trade secrets or other intellectual property rights or other proprietary right of a third-party, Contractor may at its option and expense, procure for City the right to continue using the Product, or modify the Product to make it non-infringing but functionally the same, or replace the Product with a non-infringing equivalent.

6.4 **Consultant Not Agent.** Except as the City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of the City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind the City to any obligation whatsoever.

6.5 **Governing Law; Venue.** This agreement is made in Kansas and is to be interpreted and enforced under Kansas law. Any litigation between the parties arising out of or related to this Agreement shall be brought only in the District Court of Johnson County, Kansas, and in no other court or location.
6.6 **Delivery of Notices.** All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

**Consultant:**

__________________________

__________________________

Attn: ______________________

**City:**

City of Spring Hill
Attn: Glenda Gerrity
P.O. Box 424
102 S. Main
Spring Hill, KS 66083

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

6.7 **Incorporation by Reference.** All exhibits referred to in this Agreement are attached hereto and are by this reference incorporated herein.

6.8 **City’s Right to Employ Other Consultants.** The City reserves the right to employ other consultants in connection with this Project.

6.9 **Construction; References; Captions.** The language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to the City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various sections and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

6.10 **Amendment; Modification.** No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both parties.
6.11  **Waiver.** No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppel or otherwise.

6.12  **No Third Party Beneficiaries.** There are no intended third party beneficiaries of any right or obligation assumed by the parties.

6.13  **Invalidity; Severability.** If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

6.14  **Interest of Consultant.** Consultant covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services under this Agreement. Consultant certifies that no one who has or will have any financial interest under this Agreement is an officer or employee of the City.

6.15  **Interest of Subconsultants.** Consultant further covenants that, in the performance of this Agreement, no subconsultant or person having any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services under this Agreement shall be employed. Consultant has provided City with a list of all subconsultants and the key personnel for such subconsultants that are retained or to be retained by Consultant in connection with the performance of the Services, to assist the City in affirming compliance with this Section.

6.16  **Prohibited Interests.** Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. If required, Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the City’s Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, the City shall have the right to rescind this Agreement without liability. For the
term of this Agreement, no member, officer or employee of the City, during the term of his or her service with the City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

6.17  Cooperation; Further Acts. The parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

6.18  Attorneys’ Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys’ fees and all other costs of such action.

6.19  Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform this Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

6.20  Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

6.21  Entirety of Agreement. This Agreement contains the entire agreement of the City and Consultant with respect to the subject matter hereof, and no other agreement, statement or promise made by any party, or to any employee, officer or agent of any party, which is not contained in this Agreement, shall be binding or valid.

6.22  Application of Kansas Tort Claims Act. The City is a governmental entity within the meaning of K.S.A 75-6106 (Kansas Tort Claims Act). The liability for each of the acts or omissions of its officers, employees, agents, Governing Body members and Mayor shall be determined pursuant to the provisions of that Act. City shall not be deemed to have waived any defense available to it under the provisions of the Act, whether with respect to the Consultant or to third parties.

IN WITNESS WHEREOF, the City and Consultant have entered into this Agreement as of the date first stated above.
CITY OF SPRING HILL

By: _______________________

Its: _______________________ 

CONSULTANT

By: _______________________

Its: _______________________ 

Approved as to form:

_________________________________
EXHIBIT A

SCOPE OF SERVICES

[Describe services to be performed by Consultant]
EXHIBIT B

FACILITIES, EQUIPMENT, AND OTHER MATERIALS PROVIDED BY CITY

[Determined during contract negotiations]
EXHIBIT C

SCHEDULE OF SERVICES

[Determined during contract negotiations]
EXHIBIT D

PAYMENT

[Determined during contract negotiations]
EXHIBIT E

CONTRACTOR’S INSURANCE

Contractor shall acquire and maintain insurance as shown below for the duration of the contract, and the cost of such insurance shall be included in the rates charged by the Contractor.

1) COMMERCIAL GENERAL LIABILITY: A combined single limit of liability of $1,000,000 Per Occurrence / $2,000,000 Aggregate including products and completed operations, written on ISO occurrence form CG 0001 or its equivalent. Endorsements limiting contractual liability are not acceptable. Policy shall contain a “per job/per project” aggregate endorsement. If applicable, Pollution Liability must also be included or separate policy provided reflecting same limits.

2) BUSINESS AUTOMOBILE LIABILITY: A combined single limit of liability of $1,000,000 Per Occurrence / Accident to apply to all owned, hired, and/or non-owned autos used in the completion of the contract.

3) WORKERS COMPENSATION & EMPLOYERS LIABILITY: Workers Compensation coverage should be statutory for the State of Kansas and apply to all workers involved in the work, including the owner, sole proprietor, partners, members of an LLC, and officers of a corporation, regardless of whether or not such persons come under the statutory requirements to carry this coverage. Employers Liability limits must be at least $100,000/$500,000/$100,000.

4) PROFESSIONAL LIABILITY/ERRORS & OMISSIONS: $1,000,000 per claim/$2,000,000 aggregate. This coverage shall apply to actual or alleged negligent wrongful acts, errors and omissions resulting in claim(s) for damages related to the work. Defense coverage should be in addition to the limit requested and not erode the limit requested.

5) OTHER INSURANCE REQUIREMENTS:
   a. Contractor agrees to name the City as an additional insured on a primary basis, for ongoing and completed operations in its Commercial General Liability policy with respect to the work performed under the contract. The certificate of insurance must reflect this requirement.
   b. Prior to commencing the work, Contractor’s insurance agent shall furnish the City with an acceptable Accord 25 (2010/05) Certificate of Insurance form containing the above required provisions and containing a provision that obligates the insurance company(ies) issuing such policies to notify the City in writing at least 30 days prior to any cancellation (10 days for non-payment of premium), non-renewal, or material alteration which would have an adverse effect on the coverage pertaining to this contract. This cancellation provision shall be indicated on the certificate of insurance. Certificate holder should be:
      City of Spring Hill, Kansas
      Attn: Natalie Lazenby, HR-Risk Manager
      401 N. Madison, P.O. Box 424
      Spring Hill, KS 66083
      natalie.lazenby@springhillks.gov
   c. All insurance policies shall be written by insurance company(ies) acceptable to City and with a current A.M. Best’s Guide Rating of A- and Class VIII or better, and authorized to do business in the state of Kansas.
   d. The fact that insurance is obtained by the Contractor shall not be deemed to release or diminish the liability of Contractor. Damages recoverable by City shall not be limited by the amount of required insurance coverage.
   e. Contractor shall notify a City Department Manager as soon as possible after:
      1. Receiving notice of, or knowledge of, any demand, claim, lawsuit, or action arising out of the work performed, or
      2. Any bodily injury or property damage occurrence that could potentially lead to any claim or lawsuit.