

CONSULTANT AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 20__, by and between the City of Overland Park, Kansas, hereinafter referred to as "City," and _____, hereinafter referred to as "Consultant."

SECTION I - SCOPE OF SERVICES

Consultant shall provide consulting services to the City in support of a project described as follows: _____, (hereinafter, the "Project").

Consultant will provide services as outlined in **Exhibit A**, which is attached hereto and incorporated by reference as if fully set forth herein, all to the City's full satisfaction (hereinafter, the "Services").

SECTION II – COMPENSATION

The City agrees to pay Consultant an amount not to exceed _____ Dollars (\$_____) including reimbursable expenses for the Services. The fee is based on the performance of the services, and shall be billed using rates and reimbursable expenses as set forth in Exhibit B, attached hereto and incorporated by reference as if fully set forth herein. All work shall be completed on or before _____. If any additional services beyond those outlined in Exhibit A are deemed to be necessary, the compensation for said services shall be outlined in a supplemental agreement as required below and shall be billed at the hourly rates set forth in Exhibit B.

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

SECTION III – OWNERSHIP OF REPORT

The final report and all documents prepared in connection with the services shall be the property of the City upon completion of the services. Consultant will have no responsibility to update its report for events and circumstances occurring after the report is accepted as final and complete by the City.

SECTION IV – SUPPLEMENTAL AGREEMENTS

This Agreement may be amended to provide for additions, deletions and revisions in the Services or to modify the terms and conditions thereof by a written supplemental agreement executed by both City and Consultant. If notice of any change in Services affecting the general scope or provisions of this Agreement, including but not limited to, Agreement price or Agreement time, is a requirement of any insurance policy held by Consultant as a requirement of this Agreement, the giving of such notice shall be the Consultant's responsibility.

SECTION V – TERMINATION

The City may terminate this Agreement at any time at its convenience by giving the Consultant ten (10) days written notice. Any termination shall not relieve the City of its obligations to pay Consultant for any related products or services satisfactorily performed through the effective date of

termination. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.

Either party may immediately terminate this Agreement due to breach of this Agreement by the other party upon notice of such breach to the breaching party.

SECTION VI - PRIOR VERBAL OR WRITTEN STATEMENTS NOT BINDING

It is understood and agreed that the written terms and provisions of this Agreement shall supersede all prior verbal and written statements of any and every official and/or other representative of the City and Consultant and such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any way whatsoever, the written Agreement. In the event that the City issues a purchase order, work order, invoice or similar document relating to services performed, such purchase order or similar document shall be for the City's administrative purposes only and will not supplement, supersede, modify or affect any of the terms and conditions set forth herein.

SECTION VII – DISPUTE RESOLUTION

City and Consultant agree that disputes relative to the services performed should first be addressed by good faith negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute Consultant shall proceed with the services as per this Agreement as if no dispute existed; and provided further that no dispute will be submitted to arbitration without the express written consent of both City and Consultant.

SECTION VIII – CASH BASIS LAW

The City is obligated only to make payments under this Agreement as may be lawfully made from funds budgeted and appropriated for the purposes as set forth in this Agreement during the City's current budget year. In the event the City does not so budget and appropriate the funds, the parties acknowledge and agree that they shall be relieved from all obligations, without penalty, under this Agreement.

SECTION IX - HOLD HARMLESS/INDEMNIFICATION

Definition: For purposes of indemnification requirements, the term "Loss" shall mean any and all Loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including attorney's fees and the cost of defense), in connection with any action, proceeding, demand or claim for injury, including death, to any person or persons or damages to or Loss of, or Loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with, or are claimed to arise out of or be connected with, the performance of this Agreement whether arising before or after the completion of the work required hereunder.

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

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

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

SECTION X - INSURANCE REQUIREMENTS

Consultant shall secure and maintain, throughout the duration of this Agreement, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Consultant shall provide certificates of insurance and renewals thereof on forms approved by the City and shall name the City as an additional insured on the commercial general liability and automobile liability. The Consultant shall be notify the City within thirty (30) days of its receipt of written notice from an applicable insurer that a policy required hereunder will be canceled or altered so as to not be in compliance with the insurance requirements set forth herein. Any claims-made policy forms must be maintained for a minimum of 2-years after the end of this Agreement.

- A. Commercial General Liability.

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

Policy **MUST** include the following conditions:
NAME CITY OF OVERLAND PARK AS “ADDITIONAL INSURED”

- B. Automobile Liability. Policy shall protect Consultant against claims for bodily injury and/or property damage arising from the ownership or use of all owned, hired and/or non-owned vehicles in the amount of no less than Five Hundred Thousand Dollars (\$500,000) Each Accident, Combined Single Limits, Bodily Injury, and Property Damage.

Policy **MUST** include the following conditions:
NAME CITY OF OVERLAND PARK AS “ADDITIONAL INSURED”

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

- C. Worker’s Compensation and Employer’s Liability. This insurance shall protect Consultant against all claims under applicable state workers’ compensation laws. Consultant shall also be protected against claims for injury, disease or death of employees which, for any reason may not fall within the provisions of a workers’ compensation law. The policy limits shall not be less than the following:

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

- D. Professional Liability. The Consultant shall maintain throughout the duration of this Agreement Professional Liability Insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000) and shall provide the City with certification thereof.
- E. Industry Ratings. The City will only accept coverage from an insurance carrier who offers proof that it:
1. Is authorized to do business in the State of Kansas;
 2. Carries a Best's policyholder rating of A- or better; and
 3. Carries at least a Class VIII financial rating;
- OR
4. Is a company mutually agreed upon by the City and Consultant.
- F. Subcontractor's Insurance. If a part of the Agreement is to be sublet, the Consultant shall either:
1. Cover all subcontractors in its insurance policies if allowed to by Consultant's insurance carrier; or
 2. Require each subcontractor not so covered to secure insurance which will protect subcontractor against all applicable hazards or risks of loss as and in types and in the minimum amounts required to be carried by Consultant designated herein.

Whichever option is chosen, Consultant shall indemnify and hold harmless the City as to any and all damages, claims or losses, including attorney's fees, arising out of the acts or omissions of its subcontractors.

SECTION XI – NON-DISCRIMINATION AND OTHER LAWS

- A. During the performance of this Agreement, Consultant agrees that:
1. Consultant shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, disability, national origin, ancestry or age;
 2. In all solicitations or advertisements for employees, Consultant shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (the "Commission");
 3. If Consultant fails to comply with the manner in which Consultant reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, Consultant shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City;
 4. If Consultant is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, Consultant shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City; and

5. Consultant shall include the provisions of subsections (A)(1) through (4) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.
 6. The provisions of this section shall not apply if:
 - a. Consultant employs fewer than four employees during the term of such contract; or
 - b. If Consultant's contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.
- B. Consultant further agrees that Consultant shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision in the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all federal, state and local laws, ordinances and regulations applicable to this Project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

SECTION XII – GENERAL PROVISIONS

The following are general provisions applicable to this Agreement:

- A. Applicable Law. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Kansas. Any lawsuit arising between the parties concerning this Agreement shall be brought before the state courts of Johnson County, Kansas.
- B. Assignment. Parties hereto agree that neither shall assign, sublet or transfer their interest in this Agreement without the written consent of the other and further agree that this Agreement binds the parties, their successors, trustees, assignees and legal representatives.
- C. Contingent Fees Prohibited. Consultant warrants that it has not employed or retained any person, firm, or corporation, other than a bona fide employee working solely for Consultant, to solicit or secure the awarding of this Agreement based upon an arrangement that the person, firm or corporation would receive any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award of this Agreement. For the breach or violation of the foregoing provision, the City shall have the right to terminate the Agreement without liability and, at its discretion to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.
- D. Independent Consultant. Consultant is an independent Consultant, and as such, neither Consultant nor its personnel are agents or employees of the City. Consultant is responsible for payment of any and all federal, state and local taxes.
- E. Subcontractors. Consultant shall not subcontract any of the services to be performed under this Agreement without first obtaining the written approval of City regarding the services to be subcontracted and the person or firm proposed to accomplish the subcontracted portion of the services. City shall have the right of approval thereof. The services performed by any subcontractor hired by Consultant will not result in any additional cost to City. Consultant agrees to the insurance requirements concerning the use of subcontractors as specified herein.
- F. Severability/Non-waiver. Should any provision of this Agreement be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement shall be unaffected thereby

and shall continue to be valid and enforceable. The waiver of or failure to enforce any term or condition of this Agreement shall not be construed as a waiver of any other term or condition.

SECTION XIII - EXECUTION OF AGREEMENT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized officials on the day and year first above written.

CITY OF OVERLAND PARK, KANSAS

CONSULTANT

Dept. Director/City Manager/Mayor

By:
Title:

ATTEST:

Elizabeth Kelley
City Clerk

APPROVED AS TO FORM:

Trevor L. Stiles
Assistant City Attorney II

CORPORATE ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

BE IT REMEMBERED, That on this _____ day of _____, 20__ before me, the undersigned, a Notary Public in and for the County and State aforesaid, came [Name]_____, [Title]_____ of [Company]_____, a corporation duly organized, incorporated and existing under and by virtue of the laws of [State]_____ who is personally known to me to be the same person who executed as such officer the foregoing instrument on behalf of the Corporation, and such person duly acknowledged the execution of the same to be the act and deed of the Corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

Notary Public

My Commission Expires:

(SEAL)