

LANDSCAPE ARCHITECTURAL SERVICES AGREEMENT

THIS AGREEMENT is made in Johnson County, Kansas, by and between the City of Overland Park, Kansas, hereinafter "City," and Gould Evans Associates, L.C., hereinafter "Consulting Landscape Architect." City intends to construct various infrastructure improvements and specific garden elements at the Arboretum Botanical Gardens (hereinafter called the Project) located at 179th and Antioch. The project description is:

DETAIL DESIGN AND PREPARATION OF CONSTRUCTION DOCUMENTS AND PLANS NEEDED TO CONSTRUCT VARIOUS INFRASTRUCTURE IMPROVEMENTS AND SPECIFIC GARDEN ELEMENTS AT THE OVERLAND PARK ARBORETUM AND BOTANICAL GARDENS, 179TH AND ANTIOCH, OVERLAND PARK, KANSAS.

City hereby contracts with Consulting Landscape Architect for the furnishing of professional landscape architectural services in connection with the Project. By executing this Agreement, the Consulting Landscape Architect represents to City that Consulting Landscape Architect is professionally qualified to do this Project and is licensed to practice landscape architecture by all public entities having jurisdiction over Consulting Landscape Architect and the Project.

SECTION I - DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed herein unless otherwise stated or reasonably required by the Agreement, and other forms of any defined words shall have a meaning parallel thereto.

"City" means the City of Overland Park, Kansas.

"Consulting Landscape Architect" means the company or individual identified on pg. 1.

Consulting Landscape Architect shall employ for the services rendered, engineers, architects, landscape architects, and surveyors licensed by the Kansas State Board of Technical Professions.

"Construction Cost" means and includes the cost of the entire construction of the Project, including all supervision, materials, supplies, labor, tools, equipment, transportation and/or other facilities furnished, used or consumed, without deduction on account of penalties, liquidated damages or other amounts withheld from payment to the contractor or contractors, but such cost shall not include the Consulting Landscape Architect's fee, or other payments to the Consulting Landscape Architect and shall not include cost of land or rights-of-way and easement acquisition.

"Contract Documents" means those documents so identified in the Agreement for Construction for this Project, including all Engineering/Architectural Documents. All terms defined in the General Conditions shall have the same meaning when used in this Agreement unless otherwise specifically stated or in the case of a conflict in which case the definition used in this Agreement shall prevail in the interpretation of this Agreement.

"Engineering/Architectural Documents" means all documents required or reasonably implied by the nature of the Project, including, but not limited to, plans, specifications, drawings, tracings, designs, calculations, sketches, models and reports.

"Engineering/Architectural Services" means the professional services, labor, materials, supplies, testing, surveying, title work, inspection, if applicable, and all other acts, duties, and services required of Consulting Landscape Architect under this Agreement together with such other services as City may require pursuant to the terms of this Agreement.

"Project" is as above described.

"Project Manager" means the person employed by City and designated to act as the City's

representative for the Project.

"Right-of-Way" and "Easements" means and includes street, highway, or road right-of-way and any other land dedicated to or otherwise subject to public use.

"Subsurface Borings and Testing" means borings, probings and subsurface explorations, laboratory tests and inspections of samples, materials and equipment; appropriate professional interpretations of all the foregoing.

"Traffic Control Plan" means a specific plan that includes but is not limited to signing; application and removal of pavement markings; construction sequencing and scheduling; methods and devices for delineation and channelization; placement and maintenance of devices; traffic regulation; and inspection.

SECTION II - COMPENSATION

1. [To be utilized for "fixed amount" contracts]

Total Fee: City agrees to pay Consulting Landscape Architect a fixed amount of One Hundred Eleven Thousand Dollars and no cents (\$111,000.00). The fixed fee is based on the performance of the scope of services outlined in this Agreement. Payment to Consulting Landscape Architect shall not exceed the following amounts for each phase of the Project without prior written consent of City:

Phase One	\$ 13,000.00
Phase Two	\$ 7,000.00
Phase Three	\$ 45,000.00
Phase Four	\$ <u>22,000.00</u>
Total for Phases One - Four	\$ 87,000.00

Phase Five (Cost to be negotiated or based on the hourly rates on Exhibit B at the time Phase Five is requested by the City and shall not exceed \$24,000.)

- Reimbursable Expenses: The Consulting Landscape Architect shall be reimbursed at the actual cost, not to exceed a total expense of Six Hundred Dollars and no cents (\$ 600.00) for the following expenses: (a) expense of transportation in connection with the Project; (b) expenses in connection with authorized out-of-town travel; (c) long-distance communications; (d) expenses of printing and reproductions; (e) postage and facsimile transmissions; and (f) other costs as authorized by City.
3. Additional Services: Consulting Landscape Architect shall provide, with City's concurrence, services in addition to those listed in Section III when such services are requested or authorized in writing by City. Prior to commencing any additional services, Consulting Landscape Architect must submit a proposal outlining the additional services to be provided, estimation of total hours, completion date, and a maximum fee. Such services may include, but are not limited to, making computations and determinations of special assessments, making special trips requested by City other than those required by Section III, preparing changes in plans ordered by City or made necessary by causes beyond the control of Consulting Landscape Architect, providing services necessitated in the event the Landscape Architectural Services shall be suspended or abandoned, if such suspension or abandonment is not the result of a breach of this Agreement by the Consulting Landscape Architect, and providing any other special services not otherwise covered by this Agreement which may be requested by City. Payment to Consulting Landscape Architect, as compensation for these services, shall be in accordance with the fee approved by the City. Reimbursable expenses

incurred in conjunction with additional services shall be paid separately and those reimbursable expenses shall be paid at actual cost. Records of reimbursable expenses and expenses pertaining to additional services shall be made available to City, if so requested.

4. Special Services: Consulting Landscape Architect may be called on to serve as a consultant or witness in any litigation, arbitration, legal or administrative proceeding arising out of this Project. Consulting Landscape Architect shall not be paid extra by City if its appearance is to defend its professional Landscape Architectural Services. Consulting Landscape Architect shall not be paid extra by City to appear at eminent domain or appraiser's hearings necessary to acquire easements and right-of-way for the Project. If Consulting Landscape Architect is requested, in writing, by City, to appear as a general witness, it will be paid its hourly fee as reflected on the hourly rate schedule attached hereto as Exhibit B.
5. Billing: Consulting Landscape Architect shall bill City monthly for all completed services and reimbursable expenses. The bill submitted by Consulting Landscape Architect shall itemize the services and reimbursable expenses for which payment is requested. City agrees to pay Consulting Landscape Architect within thirty (30) days of approval by the Governing Body. City shall be responsible for interest at the rate of 1.5% per month on amounts due and not timely paid, plus consulting landscape architect's legal fees to collect such sums.
6. City's Right to Withhold Payment: In the event City becomes credibly informed that any representations of Consulting Landscape Architect provided in its monthly billing, are wholly or partially inaccurate, City may withhold payment of sums then or in the future otherwise due to Consulting Landscape Architect until the inaccuracy and the cause thereof, is corrected to City's reasonable satisfaction. In the event City questions some element of an

invoice, that fact shall be made known to Consulting Landscape Architect immediately. Consulting Landscape Architect will help effect resolution and transmit a revised invoice, if necessary. Amounts not questioned by City shall be paid to Consulting Landscape Architect in accordance with the contract payment procedures.

7. Progress Reports: A progress report must be submitted with each monthly pay request indicating the percentage of design tasks completed to date. This report will serve as support for payment to Consulting Landscape Architect.
8. Change in Scope: For substantial modifications in authorized Project scope, and/or substantial modifications of drawings and/or specifications previously accepted by City, when requested by City and through no fault of Consulting Landscape Architect, the Consulting Landscape Architect shall be compensated for time and expense required to incorporate such modifications at Consulting Landscape Architect's standard hourly rates per Exhibit B; provided, however, that any increase in Contract Price or Contract Time must be approved through a written Change Order. Consulting Landscape Architect shall correct or revise any errors or deficiencies in its designs, drawings or specifications without additional compensation when due solely to Consulting Landscape Architect's negligence or other actionable fault.
9. Change Orders: This Agreement may be amended to provide for additions, deletions and revisions in the Landscape Architectural Services or to modify the terms and conditions thereof by either written amendment or by Change Order. The Contract Price and Contract Time may only be changed by a written Change Order approved by City, unless it is the result of an emergency situation in which case the Project Manager may give written

approval to be followed by a written and approved Change Order. If notice of any change affecting the general scope of the Landscape Architectural Services or provisions of this Agreement, including but not limited to, Contract Price or Contract Time, is a requirement of any insurance policy held by Consulting Landscape Architect as a requirement of this Agreement, the giving of such notice shall be the Consulting Landscape Architect's responsibility.

SECTION III - RESPONSIBILITIES OF CONSULTING LANDSCAPE ARCHITECT

Consulting Landscape Architect shall furnish and perform the various professional duties and services in all phases of the Project to which this Agreement applies as herein provided and which are required for the completion of the Project. The Consulting Landscape Architect's services shall be performed in a manner consistent with that degree of skill and care ordinarily exercised by practicing design professionals performing similar services in the same locality, at the same site and under the same or similar circumstances and conditions. The Consulting Landscape Architect makes no other representations or warranties, whether express or implied, with respect to the services rendered hereunder. These services shall include the following:

A. PHASE ONE

The Consulting Landscape Architect shall:

1. Refine the previously-prepared site grading plan, determine earthwork quantities and modify the grading plan to achieve a balanced site. Consulting Landscape Architect shall utilize site topographic information provided by the City.
2. Prepare construction documents for the final rough site grading plan, prepare earthwork specifications, and assist staff with earthwork contractor for review

and pricing. Assist with obtaining any required permits or plan approval.

3. Assist staff with coordination of the earthwork operations with 4-5 visits to the site.
4. Work for Phase One, tasks 1 and 2, shall be completed by July 1, 2006. Task 3 shall be completed concurrent with actual rough site grading operations.

Cost: \$ 13,000.00

B. PHASE TWO

The Consulting Landscape Architect shall:

1. Prepare a preliminary site utility package which will be responsive to the conceptual site utility plans prepared by Gould Evans Associates.
2. Refine the previously-prepared site utility plans and determine specific demand for each utility type (water, sanitary sewer, storm sewer, electricity).
3. Prepare a schematic design-level site utility plan to illustrate proposed utility main service locations and sizes. Obtain approval of proposed utility improvements by the appropriate utility companies.
4. Prepare preliminary cost estimates for site utility improvements. Cost estimates will be based on the Consulting Landscape Architect's best judgment.
5. Work for Phase Two shall be completed by July 1, 2006.

Cost: \$ 7,000

C. PHASE THREE

The Consulting Landscape Architect shall:

1. Refine the detail design of the Water Rill including selection of stone and concrete finishes including any approval required by the City Planning Department.
2. Refine the design and engineering of the water recirculation/pump system, lighting, shade tree allee' layout at the rill edges, as well as other details. Assist with obtaining all necessary permits and plan approvals.
3. Determine any modifications to the grading plan and determine any additional earthwork quantities. Assist with obtaining all necessary permits and/or plan approvals.
4. Prepare schematic design-level documents for the proposed water rill improvements.
5. Prepare preliminary estimate of construction cost.
6. Review cost data with the City and prepare specifications and plans for site layout and materials, grading and drainage, utilities and lighting, fountain and planting plans, irrigation, and all details and specifications for the Water Rill. Include updated estimate of construction cost.
7. Assist city staff with preparation of bid documents and the bidding process for the portions of the water rill to be constructed with the City's current available construction budget.
8. Provide 8-10 site visits during construction, review contractor pay requests, and provide preliminary and final punch lists after substantial completion of construction.
9. Work for Phase Three (items 1 through 7) shall be completed by July 31, 2006.

Cost: \$ 45,000.00

D. PHASE FOUR (This phase will not begin until notified in writing by the City)

The Consulting Landscape Architect shall:

1. Refine the detail design of the Rose Garden including specific amenities, selection of stone and concrete finishes, planting plan, shade structures, arbors, lighting, irrigation, etc. Prepare a preliminary cost estimate.
2. Prepare plans and specifications for the final site layout, grading and drainage, site utilities, lighting, irrigation, etc., and revise the estimate of probable construction cost.

Cost \$ 22,000

E. PHASE FIVE (This phase will begin until notified in writing by the City)

1. Assist city staff with preparation of bid documents, plans and specifications for that portion of the rose garden to be constructed with the City's existing construction budget at the time this phase is requested. Provide 5-6 site visits during construction, review contractor pay requests, and provide preliminary and final punch lists after substantial completion of construction.
2. Phase Five will not begin until additional funds have been raised by the Friends of the Arboretum or the Arts and Recreation Foundation of Overland Park. The City will notify the Consulting Landscape Architect in writing as to when to begin Phase Five.
3. A completion date for Phase Five will not be determined until the start of Phase Five is approved by the City.

Cost: To be negotiated or based on the hourly rates provided as Exhibit B and shall

not exceed \$24,000.

E. GENERAL DUTIES AND RESPONSIBILITIES

1. Personnel: Consulting Landscape Architect shall assign only qualified personnel to perform any service concerning the Project. At the time of execution of this Agreement, the parties anticipate that the following individual will perform as the principal on this Project: Dennis Strait, AIA, ASLA. As principal on this Project, this person shall be the primary contact with the City's Project Manager and shall have authority to bind Consulting Landscape Architect. So long as the individual named above remains actively employed or retained by Consulting Landscape Architect, he/she shall perform the function of principal on this Project.
2. Subsurface Borings & Material Testing: If tests or borings are required for design, Consulting Landscape Architect shall prepare specifications for the taking of the additional tests or borings. Such subsurface borings and testing, as defined herein, shall be provided by Consulting Landscape Architect or its subcontractors and compensated as an Additional Service as agreed upon by the City.
3. Service By and Payment to Others: Any work authorized in writing by City and performed by anyone other than Consulting Landscape Architect or its subcontractors in connection with the proposed Project shall be contracted for and paid for by City directly to the third party or parties. In addition to payments for professional services, this may also include necessary permits, licenses, ownership certifications, materials testing, advertising costs, and other special tests or other

work required or requested by City or Consulting Landscape Architect which is not defined within the scope of services of Consulting Landscape Architect. Fees for such extra work shall be subject to negotiation between City and the third party. Fees shall be approved prior to the execution of any extra work. Although Consulting Landscape Architect may assist City in procuring such services of third parties, Consulting Landscape Architect shall in no way be liable to either City or such third parties in any manner whatsoever for such services or for payment thereof.

4. Subcontracting of Service: Consulting Landscape Architect shall not subcontract or assign any of the Engineering/Architectural Services to be performed under this Agreement without first obtaining the written approval of City regarding the Engineering/Architectural Services to be subcontracted or assigned and the consulting firm or person proposed to accomplish the subcontracted/assigned portion of the Project. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Any person or firm proposed for subcontracting Engineering/Architectural Services under this Agreement shall maintain throughout the duration of the Agreement, insurance as provided in Section V. D.(6) herein, and shall additionally maintain Professional Liability insurance in a minimum amount of \$1,000,000 and provide the City with certification thereof.
5. Endorsement: Consulting Landscape Architect shall sign and seal all final plans, specifications, estimates and engineering data furnished by him/her. Any review or approval by City of any documents prepared by the Consulting Landscape Architect,

including but not limited to the plans and specifications, shall be solely for the purpose of determining whether such documents are consistent with City's construction program and intent and shall not be construed as approval of same by City. No review of such documents shall relieve Consulting Landscape Architect of its responsibility for its work product.

6. Inspection of Documents: Consulting Landscape Architect shall maintain all project records for inspection by City during the contract period and for three (3) years from the date of final payment.

SECTION IV - CITY OF OVERLAND PARK'S RESPONSIBILITIES

1. Communication: City shall provide to Consulting Landscape Architect information and criteria regarding City's requirements for the Project; examine and timely respond to Consulting Landscape Architect's submissions; and give written notice to Consulting Landscape Architect, who shall respond promptly, whenever City observes or otherwise becomes aware of any defect in the Engineering/Architectural Services.
2. Access: City will provide access for Consulting Landscape Architect to enter public and private property.
3. Duties: City shall furnish and perform the various duties and services in all phases of the Project which are outlined and designated as City's responsibility.
4. Program and Budget: City shall provide full information, including a program which shall set forth City's objectives, schedule, constraints, budget with reasonable contingencies, and other necessary design criteria.
5. Legal, Insurance, Audit: City shall furnish all legal, accounting and insurance counseling

services as may be necessary at any time for the Project. City shall furnish all bond forms required for the Project.

6. Project Representative: City shall designate a Project Manager to represent City in coordinating this Project with Consulting Landscape Architect, with authority to transmit instructions and define policies and decisions of City.

SECTION V - GENERAL PROVISIONS

A. TERMINATION

1. Notice: City reserves the right to terminate this Agreement for either cause or for its convenience and without cause or default on the part of Consulting Landscape Architect, by providing ten (10) days' written notice of such termination to Consulting Landscape Architect. Upon receipt of such notice from City, Consulting Landscape Architect shall, at City's option as contained in the notice: (1) immediately cease all Engineering/Architectural Services; or (2) meet with City and, subject to City's approval, determine what Engineering/Architectural Services shall be required of Consulting Landscape Architect in order to bring the Project to a reasonable termination in accordance with the request of City, provided the Consulting Landscape Architect has been paid in full for services rendered. Consulting Landscape Architect shall also provide to City copies of all drawings and documents completed or partially completed at the date of termination.

If City defaults on its obligation under this Agreement, Consulting Landscape Architect is entitled to terminate this Agreement by providing ten (10) days' written

notice.

2. Termination for Cause: If this Agreement is terminated for cause, after 10 days written notice to Consulting Landscape Architect, City may take over the Engineering/Architectural Services and prosecute same to completion, by contract or otherwise, for the amount and at the expense of the Consulting Landscape Architect, and the Consulting Landscape Architect shall be liable to the City for any and all excess cost sustained by the City by reason of such prosecution and completion. When Consulting Landscape Architect's services have been so terminated, such termination shall not affect any rights or remedies of the City against Consulting Landscape Architect then existing or which may later accrue. Similarly, any retention or payment of monies due Consulting Landscape Architect shall not release Consulting Landscape Architect from liability.
3. Compensation for Convenience Termination: If City shall terminate for its convenience as herein provided, City shall compensate Consulting Landscape Architect for all Engineering/Architectural Services completed to date of its receipt of the termination notice and any additional Engineering/Architectural Services requested by City to bring the Project to reasonable termination. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.
4. Compensation for Cause Termination: If City shall terminate for cause or default on the part of Consulting Landscape Architect, City shall compensate Consulting Landscape Architect for the reasonable cost of Engineering/Architectural Services

completed to date of its receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed. City also retains all its rights and remedies against Consulting Landscape Architect including but not limited to its rights to sue for damages, interest and attorney fees.

5. Incomplete Documents: Neither Consulting Landscape Architect nor its subcontractors shall be responsible for errors or omissions in documents which are incomplete as a result of an early termination under this Section; Consulting Landscape Architect having been deprived of the opportunity to complete such documents and certify them as ready for construction.

B. DISPUTE RESOLUTION

City and Consulting Landscape Architect agree that disputes relative to the project should first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute, Consulting Landscape Architect shall proceed with the Engineering/Architectural Services as per this Agreement as if no dispute existed, and the City shall continue to make payment for Consulting Landscape Architect's completed Services; and provided further that no dispute will be submitted to arbitration without both parties' express written consent.

C. OWNERSHIP OF ENGINEERING/ARCHITECTURAL DOCUMENTS

All landscape architectural documents prepared in connection with this Project shall be the property of the Consulting Landscape Architect, whether the Project for which they are made is

executed or not, however, provided the Consulting Landscape Architect has been paid in full for services rendered, the Consulting Landscape Architect will provide City a copy of all final documents, including but not limited to prints and reproductions. Reports, plans, specifications and related documents are Consulting Landscape Architect's copyrighted instruments, and Consulting Landscape Architect at his/her option may so identify them by appropriate markings. Provided that Consulting Landscape Architect is paid in full for its services, then City may subsequently reuse these final documents without any additional compensation or agreement of Consulting Landscape Architect, however, such reuse without written verification or adaptation by Consulting Landscape Architect for the specific purpose, intended by City shall be at City's sole risk and without liability or legal exposure to Consulting Landscape Architect whatsoever. City does not take any responsibility for the reuse of documents by others.

D. INSURANCE

1. GENERAL

The Consulting Landscape Architect shall maintain, throughout the duration of this Contract, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Professional Liability may be written on a "claims made" basis. Consulting Landscape Architect shall provide certificates of insurance and renewals thereof on forms provided by the City or on forms provided by the City. The City shall be notified by receipt of written notice from the insurer or the Consulting Landscape Architect at least thirty (30) days prior to cancellation of any policy listed on the Certificate.

2. NOTICE OF CLAIM REDUCTION OF POLICY LIMITS

The Consulting Landscape Architect, upon receipt of notice of any claim in connection with the Contract, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability.

The Consulting Landscape Architect shall promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by the Contract Documents) in excess of \$10,000.00, whether or not such impairment came about as a result of this Agreement.

In the event the City shall determine that the Consulting Landscape Architect's aggregate limits of protection shall have been impaired or reduced to such extent that the City shall determine such limits inadequate for the balance of the project, the Consulting Landscape Architect shall, upon notice from the City, promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

3. COMMERCIAL GENERAL LIABILITY

Limits -

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

Policy MUST include the following conditions:

- a) Explosion, Collapse & Underground

- b) Independent Contractors
- c) Pollution Liability (Applicable only to contracts involving pollutants such as asbestos & lead abatement, sludge or other waste abatement, etc.)

Name City of Overland Park as "Additional Insured"

4. AUTOMOBILE LIABILITY

Policy shall protect the Consulting Landscape Architect against claims for bodily injury and/or property damage arising out of the ownership or use of any owned, hired and/or non-owned vehicle and must include the protection for either:

Any Auto

Or

All Owned Autos;
Hired Autos; and
Non-Owned Autos

Limits -

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

Same as General Liability

Policy MUST include the following condition:

Name City of Overland Park as "Additional Insured"

5. WORKERS' COMPENSATION

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

Workers' Compensation: Statutory

Employers Liability -

Bodily Injury by Accident:	\$ 100,000 Each Accident
Bodily Injury by Disease:	\$ 500,000 Policy Limit
Bodily Injury by Disease:	\$ 100,000 Each Employee

6. PROFESSIONAL LIABILITY

The Consulting Landscape Architect shall maintain throughout the duration of this Contract, Professional Liability Insurance in an amount not less than One Million Dollars (\$1,000,000.00), per claim and annual aggregate.

7. INDUSTRY RATINGS

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

- a) Is approved to do business in the State of Kansas;
- b) Carries a Best's policyholder rating of B+ or better; and
- c) Carries at least a Class X financial rating.

OR

Is a company mutually agreed upon by the City and Consulting Landscape Architect. Professional Liability is with Lexington.

8. SUBCONTRACTORS' INSURANCE

If a part of the Agreement is to be sublet, the Consulting Landscape Architect shall either:

- a) Cover all subcontractors in its insurance policies, or
- b) Require each subcontractor not so covered to secure insurance which will protect subcontractor against all applicable hazards or risks of loss as and in the minimum amounts designated.

Whichever option is chosen, Consulting Landscape Architect 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.

E. INDEMNITY

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

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

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

It is agreed as a specific element of consideration of this Agreement that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the City or any third party and, further

notwithstanding any theory of law including, but not limited to, a characterization of the City's or any third party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature; provided, however, that the Consulting Landscape Architect's obligation hereunder shall not include amounts attributable to the fault or negligence of the City or any third party for whom the Consulting Landscape Architect 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 Consulting Landscape Architect, its affiliates, subsidiaries, or subcontractor/assignees, the indemnification obligation contained in this Agreement shall not be limited by any limitation on amount or type of damages, compensation or benefits payable by or for the Consulting Landscape Architect, its affiliates, subsidiaries, or subcontractor/assignees, under workers' compensation acts, disability benefit acts, or other employee benefit acts.

F. AFFIRMATIVE ACTION/OTHER LAWS

1. During the performance of this Agreement, the Consulting Landscape Architect agrees that:
 - a. Consulting Landscape Architect 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 contract because of race, religion, color, sex, disability, national origin, ancestry or age;

- b. in all solicitations or advertisements for employees, the Consulting Landscape Architect shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the commission;
- c. if the Consulting Landscape Architect fails to comply with the manner in which the Consulting Landscape Architect reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Consulting Landscape Architect shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency;
- d. if the Consulting Landscape Architect is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the commission which has become final, the Consulting Landscape Architect shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency; and
- e. the Consulting Landscape Architect shall include the provisions of subsections (a) through (d) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

The provisions of this section shall not apply to a contract entered into by a Consulting Landscape Architect:

- who employs fewer than four employees during the term of such contract; or
- whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.

2. The Consulting Landscape Architect further agrees that the Consulting Landscape Architect shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

G. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Agreement.

H. 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.

I. ASSIGNMENT OF AGREEMENT

This Agreement shall not be assigned or transferred by Consulting Landscape Architect without the written consent of the City.

J. NO THIRD PARTY BENEFICIARIES

Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

K. INDEPENDENT CONTRACTOR

The Consulting Landscape Architect is an independent contractor and as such is not an agent or employee of the City.

L. WORK PRODUCT FORMAT

1. Project Drawings: Project drawings which are developed by Consulting Landscape Architect through the use of a Computer Aided Drafting (CAD) System shall be made available to City by PDF files. However, due to the potential that the information set forth on the electronic media (PDF files) can be modified by City, or City consultants, unintentionally or otherwise, Consulting Landscape Architect shall remove all indices of its ownership, professional corporation name, seal, and/or involvement from each electronic display. Accordingly, the electronic documents provided to the City are for informational purposes only and are not intended as an end-product. The Consulting Landscape Architect makes no warranties, either expressed or implied, regarding the fitness or suitability of the electronic documents. Accordingly, the City agrees to waive any and all claims against the Consulting Landscape Architect and the Consulting Landscape Architect's Architects relating in any way to the unauthorized use, reuse or alteration of the electronic documents. For documentation purposes, two sets of an original electronic media (PDF files) will be prepared. One set will be given to City and one set will be retained by Consulting Landscape Architect. If City provides such electronic media (PDF files) to others for any purpose, City shall require the electronic media to be returned to City upon completion of such use. City recognizes that use of such electronic media will be at City's sole risk and without any liability risk or legal exposure by Consulting

Landscape Architect.

2. Project Documentation: All documentation provided the City other than project drawings shall be furnished in PDF file format, in Microsoft Word file format.

M. FEDERAL LOBBYING ACTIVITIES

(Only applies to projects receiving federal funds via the City)

31 USCA Section 1352 requires all subgrantees, contractors, subcontractors and consultants who receive federal funds via City to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the award of any federal contract, grant, loan or cooperative agreements. In addition, contract applicants, recipients and subrecipients must file a form disclosing any expenditures they make for lobbying out of non-federal funds during the contract period.

Necessary forms are available from the City's Project Manager and should be returned to City with other final contract documents. It is the responsibility of Consulting Landscape Architect to obtain executed forms from any of its subcontractors who fall within the provision of the Code and to provide City with the same.

N. COVENANT AGAINST CONTINGENT FEES

Consulting Landscape Architect warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for Consulting Landscape Architect, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement.

For breach or violation of this warranty, City may terminate this Agreement without liability or may, in its discretion, deduct from the Contract Price or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

O. COMPLIANCE WITH LAWS

Consulting Landscape Architect shall abide by all applicable federal, state and local laws, ordinances and regulations applicable to the Engineering/Architectural Services or the Project at the time Services are rendered. Consulting Landscape Architect shall secure all occupational and professional licenses and permits from public and private sources necessary for the fulfillment of his/her obligations under this Agreement.

P. TITLES, SUBHEADS AND CAPITALIZATION

Title and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of this Agreement. Some terms are capitalized throughout this Agreement but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

Q. SEVERABILITY CLAUSE

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 remainder of this page is intentionally left blank.]

R. EXECUTION OF CONTRACT

The parties hereto have caused this Agreement to be executed in triplicate this _____ day of _____ 19 ____.

CITY OF OVERLAND PARK, KANSAS

ATTEST: By: _____
Carl Gerlach, Mayor

Marian Cook, City Clerk

APPROVED AS TO FORM:

Bart Budetti
Senior Assistant City Attorney

Gould Evans Associates,L.C.

By: _____
Dennis Strait

Principal

EXHIBIT B

GouldEvans

2005-2006 Billable Rates

Principal	\$ 175.00
Senior Project Manager	\$ 130.00
Project Manager	\$ 110.00
Senior Project Architect	\$ 110.00
Project Architect	\$ 100.00
Job Captain	\$ 90.00
Designer 3	\$ 80.00
Designer 2	\$ 70.00
Designer 1	\$ 60.00
Architectural Support	\$ 60.00
Senior Interior Manager	\$ 120.00
Senior Interior Designer	\$ 100.00
Interior Designer 2	\$ 70.00
Interior Designer 1	\$ 60.00
Senior Landscape Manager	\$ 130.00
Senior Urban Design Manager	\$ 130.00
Senior Urban Designer	\$ 100.00
Senior Landscape Architect	\$ 100.00
Urban Designer 3	\$ 80.00
Landscape Architect 3	\$ 80.00
Urban Designer 2	\$ 70.00
Landscape Architect 2	\$ 70.00
Urban Designer I	\$ 60.00
Landscape Architect I	\$ 60.00
Senior Graphic Manager	\$ 100.00
Senior Graphic Designer	\$ 80.00
Graphic Designer 2	\$ 70.00
Graphic Designer 1	\$ 60.00