

# **AGREEMENT FOR PROFESSIONAL SERVICES**

THIS Agreement is made and entered into this 5th day of November, 2007 by and between the CITY OF OVERLAND PARK, KANSAS, hereinafter referred to as "City", and GOVERNMENT FINANCE OFFICERS ASSOCIATION (GFOA), hereinafter referred to as "Consultant." It is the intention of the City to use the services of a consultant to perform an **ERP Applications Study**.

## **SECTION I - SCOPE OF WORK**

The services to be provided by Consultant shall include, but not be limited to, the following:

Consultant will conduct a study to provide an assessment and recommendation relative to the continued use or replacement of the existing PeopleSoft HRMS and JD Edwards EnterpriseOne software packages. The Study and Consultant's recommendation may be used to assist the City in preparing a package for consideration as part of a future Capital Improvement Plan. The City is looking for the Study to provide assistance and guidance in determining the best course of action necessary to provide accurate and efficient Human Resources and Financial systems functions, including projected costs for maintaining existing systems, replacing existing systems, or other viable alternative actions, including the potential timing of such actions.

The Study shall provide:

1. An assessment of the City's current use of each ERP application, including analysis of how effectively each application meets the business needs of the City relative to the cost of ownership of the application.
2. The projected life of the current applications with discussion of key factors and issues impacting the life cycle, and timing and necessity of replacement.
3. Estimated cost of keeping the existing ERP applications, to include maintenance and upgrade costs, and the estimated cost of switching to the recommended solution.
4. A recommendation regarding the use of Oracle Fusion.
5. A recommendation for the future direction the City should take in order to provide the necessary and expected functions of the City's Human Resources and Financial applications, including discussion and general recommendations of other software packages and/or outsourcing options that would meet the City's needs.
6. An analysis and recommendation of IT Department staffing needs, including discussion of desired skills and headcount, in order to support existing ERP applications as well as the technology recommended above.

## **SECTION II - COMPENSATION FOR CONSULTANT**

The City agrees to pay Consultant \$41,330.00.

The Consultant agrees to provide additional related consulting services as determined by the City and the Consultant which are outside the scope of this Agreement as requested by the City and agreed to by the Consultant for an hourly rate not to exceed 170.00 for offsite services, and 207.00 for onsite services. The terms and conditions of this Agreement shall remain in force for all such additional services.

## **SECTION III - DISPUTE RESOLUTION**

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City and Consultant agree that disputes relative to the work performed 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 Contractor shall proceed with the work as per this Agreement as if no dispute existed; and provided further that no dispute will be submitted to arbitration without the parties' express written consent.

## **SECTION IV - TERMINATION FOR CONVENIENCE**

Either party may terminate this Agreement at their convenience by giving the other party written notice. Agreement will be terminated on the first day of the month following the month in which a termination notice is received by either party. Any termination shall not relieve the City of its obligations to pay Consultant for services performed through the effective date of termination.

## **SECTION V - 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.

## **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 - INDEPENDENT CONSULTANT**

Consultant is an independent contractor 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.

## **SECTION VIII - HOLD HARMLESS**

Consultant agrees to defend, indemnify and hold harmless the CITY OF OVERLAND PARK and its agents and/or employees from any and all claims, settlements, and judgements for bodily injury, physical property damage and/or death that are caused by the Consultant and within its control and that arise solely out of Consultant'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 shall release Consultant of its obligation under this paragraph. Consultant's liability for any matter arising under this Agreement or from any transaction contemplated herein, including without limitation the provision of the Services, shall not exceed the actual amount paid by an insurer as a result of any claim made with respect to such matter under Consultant's insurance policies as set forth in Section XIV (the

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“**Liability Cap**”). The City acknowledges that the Liability Cap is a material term upon which Consultant has relied in entering into this Agreement and that Consultant would not have entered into this Agreement in the absence of such provision.

### **SECTION IX - NON-DISCRIMINATION AND OTHER LAWS**

A. The Consultant agrees that:

1. the Consultant shall observe the provisions of the Kansas act against discrimination 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, the Consultant shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
3. if the Consultant fails to comply with the manner in which the Consultant reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the 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 the 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, the 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. the 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.

The provisions of this section shall not apply to a contract entered into by a consultant:

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

B. The Consultant further agrees that the 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. 1201 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 X - PROHIBITION AGAINST CONTINGENT FEES**

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

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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.

## **SECTION XI - APPLICABLE LAW, NONWAIVER**

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. 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. If any provision is held to be unenforceable by a court or other tribunal, the enforceability of the other provisions shall not be affected.

## **SECTION XII – AGREEMENT TERM**

The term of this Agreement shall commence on November 5, 2007, and shall continue in force through November 5, 2008 unless otherwise agreed to by the parties.

## **SECTION XIII – SUBCONTRACTORS**

Consultant shall not subcontract any of the work or services required by this Agreement without the prior written approval of the City. Should Consultant request and the City agree to work being subcontracted, the Consultant shall be as fully responsible to the City for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by said sub-contractors, as Consultant is for the acts and omissions of the persons it directly employs.

## **SECTION XIV - INSURANCE REQUIREMENTS**

- (a) General -  
The 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 provided or approved by the City. The City shall be notified by receipt of written notice from the insurer at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.
  
- (b) Notice of Claim Reduction of Policy Limits -  
The Consultant, upon receipt of notice of any claim in connection with the Agreement, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability.

The Consultant 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 Agreement) 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 Consultant'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 work, the Consultant shall, upon notice from the City, promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

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- (c) General Liability -  
The Commercial General Liability insurance coverage that is to be provided by Consultant shall comply with the Hold Harmless section of this Agreement. Such insurance shall specifically insure the contractual liability assumed by the Consultant under the hold harmless and indemnification provisions of this Agreement. )

### MINIMUM INSURANCE REQUIREMENTS

#### COMMERCIAL GENERAL LIABILITY POLICY

(Complete Certificate "Form B")

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

Policy must include the following conditions:

- a) Broad Form Contractual/Contractually Assumed Liability
- b) Independent Contractors
- c) Broad Form Property Damage

- (d) Automobile Liability -  
Policy shall protect the Consultant against claims for bodily injury and/or property damage arising from the ownership or use of all owned, if any, and hired and/or non-owned vehicles and must include protection for either:

(A) Any Auto

OR

(B) All Owned Autos, if any:  
Hired Autos; and  
Non-Owned Autos..

Limits of liability protection required are the SAME as the limits for the Commercial General Liability section. Policy shall insure the contractual liability assumed by the Consultant.

- (e) Workers' Compensation and Employer's Liability -  
This insurance shall protect the Consultant against all claims under applicable state Workers' Compensation laws. The 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 shall include liability limits not less than the following:

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Workers' Compensation:                      Statutory

Employer's 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

(f) Industry Ratings –

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

- (1) Is licensed to do business in the State of Kansas;
- (2) Carries a Best's policy holder rating of B+ or better; and
- (3) Carries at least a Class X financial rating.

OR

Is a company mutually agreed upon by the City and Consultant.

(g) Subcontractors 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 the minimum amounts designated.
- (3) 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, for bodily injury, physical property damage and/or death that arises out of a subcontractor's or any of its agents, servants, and/or employees' negligent acts, and or failure to act in the performance of this Agreement arising out of the acts or omissions of its subcontractors in compliance with the provisions of the Hold Harmless section of this agreement.

(h) Professional Liability Insurance-

This insurance shall protect the Consultant against claims for damage arising from the work performed by Consultant as specified in Section I. The limits of protection shall be \$1 million.

## **SECTION XV - PUBLICATIONS**

As an educational, nonprofit, professional membership association, Consultant reserves the right to publish non-confidential documents describing the results of, or created during, the Services performed under this Agreement. Consultant will not publish any item with the name of the City without obtaining the prior written consent of the City.

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SECTION XVI - PROPRIETARY ITEMS**

All work product produced as a result of the Services provided hereunder shall be the property of the City; however, Consultant's methodologies (e.g., surveys, reference databases) that it has developed before and during this engagement are the property of Consultant (collectively, and together with any Consultant proprietary assessment tools, the "**GFOA Intellectual Property**"). In particular, in the course of performance hereunder, Consultant may use (and may authorize the City's personnel to use) certain GFOA Intellectual Property to assist in engagement completion. The City shall not have or obtain any right or title to or interest in such GFOA Intellectual Property (or in any modifications or enhancements thereto). Consultant makes no express or implied warranties of any kind regarding the GFOA Intellectual Property.

**SECTION XVII – ADJUSTMENT TO CONTRACT TERMS**

Changes to the terms of this Agreement may be made only in writing and must be approved by the City and the Consultant. Should a decision be made to amend the terms of this Agreement, the City and the Consultant must mutually agree in writing to the amended terms.

**SECTION XVIII – 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 XIX - 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.

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**SECTION XVIII - EXECUTION OF CONTRACT**

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

\_\_\_\_\_  
Carl R. Gerlach  
Mayor

\_\_\_\_\_  
Jeff Esser  
Executive Director and CEO

ATTEST:

\_\_\_\_\_  
Marian Cook, City Clerk

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

\_\_\_\_\_  
Jane Neff-Brain  
Asst. City Attorney