

CONTRACT FOR AUDITING SERVICES

BETWEEN

THE CITY OF OVERLAND PARK, KANSAS

AND

McGLADREY & PULLEN LLP

AGREEMENT

This Agreement is made in Johnson County, Kansas, by and between the CITY OF OVERLAND PARK, KANSAS, hereinafter referred to as "City," and McGladrey & Pullen LLP, hereinafter referred to as "Auditor." It is the intention of the City to procure an audit of its financial statements for the calendar year ending December 31, 2007, and certain other audit services.

SECTION I. AUDITOR DUTIES

The Auditor shall perform the various professional duties and prepare an audit of the City's financial statements for the calendar year ending December 31, 2007, to specifically include the component audits and the duties and services of the Auditor as more fully described in Section II, Nature of Services Required and other provisions of the Request for Qualifications for Professional Auditing Services, dated August 22, 2007, hereinafter referred to as "RFQ." A copy of the RFQ is attached hereto as Exhibit A and fully incorporated herein. A copy of the Auditor's response to the City's RFQ is attached hereto as Exhibit B, and is fully incorporated herein. The parties agree that should any of the provisions of this Agreement conflict with provisions contained in the RFQ or the Auditor's response to the City's RFQ, the provisions of this Agreement shall control.

A. Scope of Work to be Performed.

The Auditor shall conduct an audit of City's basic financial statements, the City's Municipal Employees Pension Plan, the Overland Park Convention Center and the Overland Park Development Corporation. All of the Auditor's work on these projects shall comply with the requirements of Paragraph II.B. Scope of Work to be Performed of the RFQ. The Auditor acknowledges that the Scope of Work to be performed pursuant to

this Agreement shall not include the Overland Park Convention and Visitor's Bureau; provided however, the auditor may be engaged to audit this entity by direct agreement with the entity.

B. Auditing Standards to be Followed.

Auditor shall perform all audit work in accordance with the standards set forth in Paragraph II.C. Auditing Standards to be Followed of the RFQ.

C. Reports to be Issued.

Upon completion of the audit of the City's 2007 fiscal year's financial statements and other required work, the Auditor shall issue reports as required by Paragraph II. D. Reports to be Issued of the RFQ. In addition, the Auditor shall comply with the reporting requirements concerning Irregularities and Illegal Acts set forth in said Paragraph II.D of the RFQ.

D. Special Considerations.

Auditor shall comply with the requirements of Paragraph II.E. Special Considerations of the RFQ.

SECTION II. TIME TABLE

The Auditor shall complete all audit work required by this Agreement within the Section IV, TIME REQUIREMENTS of the RFQ and any other time requirements of the aforementioned RFQ. Auditor acknowledges that the completion of all audit work within the stated time requirements established by the RFQ is critical and time is of the essence.

SECTION III. COMPENSATION

The City agrees to pay and the Auditor agrees to accept as compensation for all services and duties performed in accordance with the requirements of this Agreement the compensation

set forth in the all-inclusive maximum price for audits submitted by the Auditor, a copy of which is attached hereto as Exhibit C. The parties agree that under no circumstance will the City compensate the Auditor more than the sum of ninety-seven thousand sixty-five dollars (\$97,065) for the services required by this Agreement. City shall pay Auditor in accordance with the Manner of Payment provisions of the RFQ. Auditor acknowledges that this Agreement does not engage the Auditor for work related to the Overland Park Convention and Visitor's Bureau nor is the compensation set forth herein intended to reflect payment for such services.

SECTION IV. TERM

Unless earlier terminated as provided herein or modified by mutual agreement of the parties, the term of this Agreement shall be from the date of execution of this Agreement through July 30, 2008. Auditor shall complete all work required by this Agreement no later than the July 30, 2008, termination date. The City may renew this Agreement for up to four additional one year terms, provided the parties acknowledge that the City is under no obligation to do so.

SECTION IV. ASSIGNMENT

This Agreement shall not be assigned or transferred by the Auditor without the written consent of the City and this Agreement binds the parties, their successors, trustees, assignees and legal representatives.

SECTION V. 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 the Auditor 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.

SECTION VI. INDEPENDENT CONTRACTOR

The parties acknowledge that the Auditor is not an employee of the City and further, that the Auditor is an independent contractor and is responsible for any and all personal federal, state and local taxes.

SECTION VII. PROHIBITION AGAINST CONTINGENT FEES

The Auditor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Auditor, to solicit or secure a person, company, corporation, individual or firm other than Auditor, any fees, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

For breach or violation of the foregoing provision, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the consideration or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

SECTION VIII. TERMINATION RIGHTS

A. Termination for Cause. Without in any manner limiting the right of the City to terminate this Agreement or declare the Auditor in default thereof for any reason set forth herein or in the RFQ documents, if the work to be done under this Agreement shall be abandoned by Auditor; or if this Agreement shall be assigned by Auditor otherwise than as herein provided; or if the Auditor should be judged as bankrupt; or if a general assignment of its assets should be made for the benefit of its creditors; or if a receiver should be appointed for the Auditor or any of its property; or if at any time the City determines that the performance of the work under this Agreement is being unnecessarily delayed, that the Auditor is violating any of the conditions or covenants of this Agreement, that Auditor is executing the same in bad faith or otherwise not in accordance with the terms of said Agreement; then, in addition to other rights the City may

choose to exercise, the City may, at its option, serve written notice upon the Auditor of the City's intention to terminate this Agreement, and, unless within ten (10) days after the serving of such notice upon the Auditor a satisfactory arrangement be made for the continuance thereof, this Agreement shall cease and terminate unless the City otherwise agrees to continue the Agreement. In the event of such termination, the City shall immediately serve notice thereof upon the Auditor, and the City may take over the work and prosecute same to completion by contract with another audit firm or otherwise and in such event the City may take possession of and utilize in completing the work any and all documents and other materials as may be necessary therefore. When Auditor's services have been so terminated, such termination shall not affect any rights or remedies of the City against Auditor then existing or which may later accrue. Similarly, any retention or payment of monies due Auditor shall not release Auditor from liability.

B. Termination for Convenience. City reserves the right, in its sole discretion and for its convenience and without cause or default on the part of the Auditor, to terminate this Agreement by providing sixty (60) days prior written notice of such termination to Auditor. Upon receipt of such notice from City, Auditor shall: (1) immediately cease all work or (2) meet with City and, subject to City's approval, determine what work shall be required of Auditor in order to bring the Project to a reasonable termination in accordance with the request of the City. If City shall terminate for its convenience as herein provided, City shall compensate Auditor for all work completed to date of termination. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed. Any termination of the Agreement for alleged default by Auditor that is ultimately determined to be unjustified shall automatically be deemed a termination for convenience of the City.

SECTION IX. INDEMNITY

A. Definitions

For purposes of indemnification requirements, the following terms shall have the meanings set forth below:

1. The "Auditor" means and includes Auditor, all of its employees, agents and assignees, and all of its affiliates and subsidiaries, its subcontractors and/or assignees and their respective servants, agents and employees; and
2. "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).

B. Indemnity

For purposes of this Agreement, Auditor 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 Auditor. 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 Auditor's obligation hereunder shall not include amounts attributable to the fault or negligence of the City. Nothing in this section shall be deemed to impose liability on the Auditor to indemnify the City for loss when the City's negligence or other actionable fault is the sole cause of loss.

SECTION X. INSURANCE

During the performance of this Agreement, the Auditor agrees to maintain for the duration of the Agreement insurance coverage of the types and minimum liability as set forth below. Prior to execution of this Agreement, the Auditor shall furnish to the City a Certificate of Insurance verifying such coverage and identifying the City as a loss payee on the valuable papers coverage. The certificate holder on the Certificate of Insurance shall be as follows:

City of Overland Park, Kansas
c/o City Clerk
8500 Santa Fe Drive
Overland Park, KS 66212

Prior to any material change or cancellation, the City will be given thirty (30) days advanced written notice by registered mail to the stated address of the certificate holder.

General and automobile liability insurance requirements:

A. General Liability Insurance

COMMERCIAL GENERAL LIABILITY POLICY

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

Policy must include the following:

1. Broad Form Contractual/Contractually Assumed Liability
2. Independent Contractors

B. Automobile Liability Insurance

Policy shall protect the Auditor against claims for bodily injury and/ or property damage arising from the ownership or use of all owned, hired and/ or non-owned vehicles and must include protection for either:

a) Any Auto

OR

b) All Owned Autos;
Hired Autos; and
Non-Owned Autos.

Limits of liability protection required are the SAME as the limits for the General Liability section.

C. Workers’ Compensation and Employers’ Liability

This insurance shall protect the Auditor against all claims under applicable state Workers’ Compensation laws. The Auditor 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 “all states” insurance, and the liability limits shall not be less than the following:

Workers’ Compensation:	Statutory
	<u>Employers’ 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 Insurance

Policy shall protect the Auditor against claims for wrongful acts associated with their professional services. Limits are to be no less than \$1,000,000 per wrongful act / \$1,000,000 annual aggregate.

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 policyholder rating of A or better;

AND

3. Carries at least a Class X financial rating.

OR

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

Certification of insurance coverage in items (1), (2) and (3) above shall be provided by the Auditor's insurance carrier.

Certification of professional liability insurance shall be provided on a separate form provided by the Auditor's insurance carrier.

This insurance shall be required only on City-funded projects where the state or federal government does not establish separate guidelines.

SECTION XI. COMPLIANCE WITH NON-DISCRIMINATION REQUIREMENTS

The Auditor agrees that:

1. The Auditor 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, national origin, ancestry or age;

2. In all solicitations or advertisements for employees the Auditor shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission ("Commission");
3. If the Auditor fails to comply with the manner in which the Auditor reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Auditor shall be deemed to have breached the present Agreement, and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency;
4. If the Auditor 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 Auditor shall be deemed to have breached the present Agreement, and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency; and
5. The Auditor shall include the provisions of paragraphs 1 through 4 above in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

The Auditor further agrees that the Auditor 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 shall furnish any certification required by any federal, state or local laws, ordinances and regulations applicable to this project and shall

furnish any certification required by any federal, state or local governmental agency in connection therewith.

SECTION XII. 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 XIII. 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.

SECTION XIV. 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.

SECTION XV. 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.

SECTION XVI. 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 the contract. Some terms are capitalized throughout the contract but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

SECTION XVII. EXECUTION OF AGREEMENT

The parties hereto have caused this contract to be executed in triplicate this _____ day of _____, 2007.

CITY OF OVERLAND PARK, KANSAS

ATTEST:

Carl Gerlach, Mayor

Marian Cook, City Clerk

APPROVED AS TO FORM:

Michael R. Santos
Deputy City Attorney

AUDITOR

By:
Title:

STATE OF _____

COUNTY OF _____

BE IT REMEMBERED that on this _____ day of November, 2007, before me appeared _____ to me personally known, and, being by me first duly sworn, said that he/she is the _____ of McGladrey & Pullen LLP, and acknowledged that he/she signed the foregoing instrument on behalf of and as the act and deed of said partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal at my office the day and year last above written.

Notary

My commission/appointment expires: _____