

CONSULTANT AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 2011 by and between the City of Overland Park, Kansas, (hereinafter, the "City") and ETC Institute, (hereinafter, the "Consultant").

WITNESSETH:

WHEREAS, the City desires to hire a consultant to design and administer a community survey to a random sample of households in the City of Overland Park to assess satisfaction with City services and to help identify priorities of the community, and

WHEREAS, the City has requested that the Consultant submit an engagement letter to outline Services it is willing to provide; and

WHEREAS, the City and the Consultant desire to enter into an agreement setting forth the terms and conditions of their understanding as regards the Services.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. SCOPE OF SERVICES

The Consultant agrees to perform the tasks set forth in Attachment A attached hereto and incorporated herein by reference, (hereinafter the Services).

SECTION 2. STATUS

Consultant is an independent contractor and as such is not an agent or employee of the City.

SECTION 3. CONSULTANT STAFFING

Consultant's President as of the date of execution of this Agreement shall oversee all Services performed. Any change in this position without the express prior written permission of the City shall constitute a breach of this Agreement.

SECTION 4. COMPENSATION

A. Total Fee. City agrees to pay Consultant an amount not to exceed Twenty-four Thousand Four Hundred and Eighty-One Dollars (\$24,481.00). The fee is based on the performance of the Services. All Services shall be accomplished on or before _____. If any additional services beyond the Scope of Services

outlined herein are deemed to be necessary, the compensation for said services shall be agreed upon in writing by both parties.

B. Manner of Payment. An invoice for fees will be submitted upon completion of the Services outlined in Exhibit A and shall be paid within 30 days of receipt.

SECTION 5. TERM

Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City to terminate with or without cause, the services of Consultant at any time, subject to written notice to Consultant. If City shall terminate the Agreement prior to completion of Services, City shall compensate Consultant for all Services satisfactorily 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.

SECTION 6. SUBCONTRACTING OF SERVICES

The Consultant shall not subcontract or assign any of the Services to be performed under this Agreement

SECTION 7. 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 has the right to use the data as a component of DirectionFinder benchmarks, but shall not release specific results for the Overland Park Survey without written approval from the City.

SECTION 8. INSURANCE

The Consultant shall maintain throughout the duration of this contract insurance in, at minimum, the amounts specified below. All general and automobile liability insurance shall be written on an occurrence basis unless otherwise agreed to in writing by the City.

A.	<u>General Liability Insurance</u>	
	General Aggregate:	\$500,000.00
	Products-Completed	
	Operations Aggregate:	500,000.00
	Personal & Advertising	
	Injury:	500,000.00
	Each Occurrence:	500,000.00

Policy must include the following:

- i) Broad Form Contractual/Contractually Assumed Liability
- ii) Independent Contractors

B. Automobile Liability Insurance

Policy shall protect the 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 and must include protection for either:

- i) Any Auto
- OR
- ii) 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 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 "all states" insurance, and the liability 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

If Consultant has no employees, a waiver form provided by the City must be executed.

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 (\$ 500,000.00), 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 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 Consultant.

Certification of insurance coverage in subsections A, B, and C above shall be on the City's Standard Certificate of Insurance. Certification of professional liability insurance shall be provided on a separate form provided by the Consultant's insurance carrier. The City shall be shown as an additional insured on all general and automobile liability policies of insurance.

SECTION 9. INDEMNITY

A. 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 work required hereunder.

B. Indemnity

For purposes of this Agreement, Consultant 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 Consultant, 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 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 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 10. DISPUTE RESOLUTION

City and Consultant 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 Consultant 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 City's express written consent.

SECTION 11. AFFIRMATIVE ACTION/OTHER LAWS.

A. Equal Employment Opportunity. During the performance of this contract, the Consultant agrees as follows:

1. The Consultant shall comply with the Kansas Act against discrimination and shall not discriminate against any employee because of race, religion, color, sex or national origin and will abide by the provisions of the Age Discrimination in Employment Act of 1967, as amended. The Consultant will take affirmative action to ensure that applicants are employed and that applicants are treated during employment without regard to their race, religion, color, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment advertisement; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the requirements of these nondiscrimination provisions.

2. The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin and shall include the phrase "equal opportunity employer" or a similar phrase approved by the Kansas Commission on Civil Rights.

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 to have violated the Kansas Act against discrimination under a final decision or order of the Kansas Commission on Civil Rights, the Consultant shall be deemed to have breached the Contract, and it may be canceled, terminated or suspended, in whole or in part, by the City.

5. The Consultant will include all of Subsections 1 through 4 in every subcontract or purchase order, so that such provisions will be binding upon each subcontractor or vendor.

B. Other Laws. The Consultant agrees to abide by all other federal, state or 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 with same.

SECTION 12. GENERAL PROVISIONS

A. This Agreement contains the complete agreement between the parties and shall, as of the effective date hereof, supersede all other agreements between the parties. The parties stipulate that neither of them has made any representation with respect to the subject matter of this Agreement except such representations as are specifically set forth in this document and each of the parties acknowledges that it has relied on its own judgment in entering into this Agreement.

B. Any modification of this Agreement or additional obligation assumed by either party in connection herewith shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

C. If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

D. It is the intention of the parties that this Agreement and the performance hereunder, and all suits and special proceedings under this Agreement, be construed in accordance with and under and pursuant to the laws of the State of Kansas and that, in any action, special proceeding or other proceeding that may be brought arising out of, in connection with, or by reason of this contract, the laws of the State of Kansas shall be applicable and shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which any action or special proceeding may be instituted.

E. The titles to section of this Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.

SECTION 13. EXECUTION OF AGREEMENT

The parties hereto have caused this Agreement to be executed on the day and year first above written.

CITY OF OVERLAND PARK, KANSAS

Bill Ebel, City Manager

APPROVED AS TO FORM:

Mike Santos
City Attorney

CONSULTANT

By:_____
Elaine Tatham, President

CORPORATE ACKNOWLEDGMENT

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

BE IT REMEMBERED, That on this ____ day of _____, 2011, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came _____, President of _____, Inc., a corporation duly organized, incorporated and existing under and by virtue of the laws of _____; who is personally known to me to be such officer and who is personally known to me to be the same person who executed as such officer within this 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:

ATTACHMENT A

Task include, but not limited to:

- Preparing questionnaire for survey of residents, including formatting and printing;
- Coordinating with the City on publicity;
- Sending out questionnaire to randomly selected residents of Overland Park;
- Contacting recipients of survey who have not returned survey and encouraging participation either via telephone or completion of paper copy;
- Tabulating results from both telephone and mail-return survey. Tabulation to include GO coding;
- Compiled results shall be formatted, printed and assembled in a booklet for distribution to City Councilmembers and city senior managers. Number of booklets is 35;
- ETC also to provide results on a CD; and
- ETC officials will make separate presentations to City Council and city senior managers at a future agreed upon date and time.