

## CONSULTANT AGREEMENT

THIS CONSULTANT AGREEMENT (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the CITY OF OVERLAND PARK, KANSAS, (the "City") and \_BOWMAN BOWMAN NOVICK, INC., (the "Consultant").

WITNESSETH:

WHEREAS, the City desires to obtain consulting services in support of a project described as:

ROE PARK MASTER PLAN

(hereinafter, the "Project"); and

WHEREAS, the City and the Consultant desire to enter into this Agreement setting forth the terms and conditions of their understanding as regards the consulting services for the Project.

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 provide consulting services as set forth in Exhibit A, attached hereto and incorporated herein by reference, (the "Services").

### SECTION 2. STATUS OF CONSULTANT

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

### SECTION 3. COMPENSATION

- A. Total Fee: The City agrees to pay the Consultant an amount not to exceed Forty Three Thousand Seven Hundred and No/100 Dollars (\$43,700.00), including reimbursable expenses. The fee is based on the performance of the Services, and shall be billed using rates and reimbursable expenses as set forth in Exhibit A. All work shall be completed on or before project schedule stated in Exhibit A. If any additional services beyond the Services outlined in Exhibit A are deemed to be necessary, the compensation for said services shall be agreed upon in writing by both parties.
- B. Manner of Payment: Unless otherwise stated in Exhibit A, invoices for fees will be submitted every four weeks and are to be paid within thirty (30) days of receipt.

### SECTION 4. TERMINATION

Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City to terminate, in whole or in part, with or without cause, the Services of the Consultant at any time, subject to written notice to the Consultant. If the City terminates the Agreement prior to completion of Services, the City shall compensate the Consultant for all Services satisfactorily completed as of the date of the Consultant's receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.

**SECTION 5. SUBCONTRACTING OF SERVICES**

The Consultant shall not subcontract any of the Services to be performed under this Agreement without first obtaining the written approval of the City regarding the Services to be subcontracted and the person or firm proposed to accomplish the subcontracted portion of the Services.

**SECTION 6. 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. The Consultant will have no responsibility to update its report for events and circumstances' occurring after the report is accepted as final and complete by the City.

**SECTION 7. INSURANCE**

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. The Consultant shall provide certificates of insurance and renewals thereof on forms approved by the City. The City shall be notified by receipt of written notice at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.

Notice of Claim Reduction of Policy Limits: The Consultant, upon receipt of notice of any claim in connection with this Agreement, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability.

The Consultant shall monitor and promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by this Agreement) if the Consultant's limits of protection shall have been impaired or reduced to such extent that the limits fall below the minimum amounts required herein. The Consultant shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

A. General Liability

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

**Name City of Overland Park as "Additional Insured".**

B. 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, hired and/or non-owned vehicles and must include protection for either:

1. Any Auto, OR
2. All Owned Autos (if any); Hired Autos; and Non-Owned Autos.

Limits

Each Accident, Combined Single Limits, Bodily Injury, and Property Damage: \$500,000

**Name City of Overland Park as “Additional Insured”.**

- C. Worker’s 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 limits shall not be less than the following:

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

**If the Consultant has no employees, a waiver form provided by the City must be executed (see attached).**

- D. Professional Liability: The Consultant shall maintain throughout the duration of this Agreement Professional Liability Insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000) and shall provide the City with certification thereof.
- E. Industry Ratings: The City will only accept coverage from an insurance carrier who offers proof that it:
1. Is authorized to do business in the State of Kansas;
  2. Carries a Best’s policyholder rating of A- or better; and
  3. Carries at least a Class VIII financial rating; or
  4. Is a company mutually agreed upon by the City and the Consultant.

Certification of insurance coverage shall be on the City’s standard Certificate of Insurance form or on forms acceptable to the City.

- F. Subcontractor’s Insurance: If a part of this Agreement is to be sublet, the Consultant shall either:
1. Cover all subcontractors under its insurance policies; or
  2. Require each subcontractor not so covered to secure insurance which will protect against applicable hazards or risks of loss as and in the minimum amounts designated herein.

**SECTION 8. INDEMNITY**

- A. Definitions: For purposes of indemnification requirements, the following terms shall have the meaning set forth below:
1. “The Consultant” means and includes the Consultant, 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), in connection with any action, proceeding, demand or claim, whether real or spurious, 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, the 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. 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. Nothing in this section shall be deemed to impose liability on the Consultant to indemnify the City for loss when the City's negligence or other actionable fault is the sole cause of loss. With respect to the City's rights as set forth herein, the Consultant expressly waives all statutory defenses, including, but not limited to, those under workers' compensation, contribution, comparative fault or similar statutes to the extent said defenses are inconsistent with or would defeat the duty of Consultant to indemnify the City.

## **SECTION 9. DISPUTE RESOLUTION**

The City and the Consultant agree that disputes relative to the Project or the Services 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, at the City's direction, the 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 10. NON-DISCRIMINATION**

- A. The Consultant agrees that:
1. During the performance of this Agreement or any subcontract resulting thereof, the Consultant, all subcontractors and vendors shall observe the provisions of the Kansas Acts Against Discrimination (K.S.A. 44-1001, et seq.) and Title VII of the Civil Rights Act of 1964 as amended and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, national origin, age, disability, ancestry, veteran status, or low income;
  2. In all solicitations or advertisements for employees the Consultant, all subcontractors and vendors shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission;
  3. If the Consultant, a subcontractor or vendor fails to comply with the manner in which the Consultant, subcontractor or vendor reports to the Kansas Human Rights Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Consultant, subcontractor or vendor shall be deemed to have breached this Agreement, and it may be canceled, terminated or suspended, in whole or in part, by the City;
  4. If the Consultant, a subcontractor or vendor is found guilty of a violation of the Kansas Acts Against Discrimination under a decision or order of the Kansas Human

Rights Commission which has become final, the Consultant, subcontractor or vendor shall be deemed to have breached this Agreement, and this Agreement may be cancelled, terminated or suspended in whole or in part by the City;

5. The Consultant shall include the provisions of paragraphs A1. through A4. above in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.
  
- 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 of the Americans With Disabilities Act (42 U.S.C. 12101 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 11. 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 Agreement, 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 sections 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.



## CONSULTANT'S STATEMENT

I have contracted with the City of Overland Park to perform consultant services. I do not employ the services of any other person(s) or subcontractor(s). In the event that I hire any person to serve as either my employee or subcontractor, I hereby agree to purchase workers' compensation insurance and immediately furnish the City of Overland Park proof of such insurance.

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Date

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Consultant's Signature

## **EXHIBIT A**

### **Scope of Services**

#### **Task 1. Verification of Existing Documents and Information**

Bowman Bowman Novick, Inc. will review all information provided by the Parks Department for the Roe Park site including; topography, plans and reports, user surveys and any other information available which would be of value to the planning process. This review will serve to verify that the information provided to the consultant is correct regarding general site conditions. Any conditions that vary from information provided will be reviewed with the city for direction.

#### **Task 2. Base Map Development**

BBN will assemble a base map of the project site based on a survey provided by the Parks Department. This will serve as the base for the development of the master plan.

#### **Task 3. Review the Park Workshop**

After completion of the base map, BBN and the client team will “review the park”. This important step in the planning process is designed to provide the opportunity for both the design team and the client team to gain an in-depth knowledge of the project site, which is critical to the success of the master plan. The group will review key portions of the park, assembling their thoughts and perceptions. Specific notes concerning the conditions of the property will be noted. At the completion of the “review the park”, the group will assemble to review the thoughts and perceptions developed. This on the ground, active participation of not only the design team but also the client team provides a wealth of information regarding the existing conditions of the park and the opportunities to enhance the facility.

#### **Task 4. Site Opportunities and Constraints**

After completion of the “review the park” workshop, BBN will assemble the information developed by the group on an exhibit delineating the sites opportunities and challenges for development. This exhibit will be used at the “plan the park workshops” to review the site with those participating.

#### **Task 5. Visioning Workshop**

BBN will hold a workshop with Department staff. This workshop will allow the staff to provide their input as to the needs and desires of the future park facilities in an informal setting. Results of this discussion will be documented and serve as the basis for the development of the initial facility program.

#### **Task 6. “Plan the Park” Workshop #1**

The first “Plan the Park” workshop will be held to review the site opportunities and challenges exhibits with the workshop attendees. All of the individuals involved in the “review the park workshop” will be invited to attend this important step in the development of the master plan. In addition the public will be invited to attend and participate in this workshop. After reviewing the information completed, the design team will lead a discussion and listing of possible improvements to be made to existing park infrastructure and facilities as well as activities/facilities to be added to the park. Such facilities may include but are not limited to the following:

- Bike and walking trails
- Parking requirements
- Spray-ground
- Stream way improvements
- Support structures (picnic shelters, restroom structures, concession building, equipment storage and maintenance, entry features)
- Nature areas and open space

- Sports fields and courts
- Environmental education opportunities
- Improvements to existing facilities

The items put forth during the discussion will be added to the preliminary program for development of the alternative concepts for the park site. If desired, BBN can provide information such as, meeting notes, diagrams, and preliminary plans, to the City Overland Park's Public Information Officer for posting on the cities website. All public responses and comments made in regards to the Master Plan for the future park site can be directed to BBN via an email link from the city website.

#### **Task 7. Development of Alternative Plans**

After receiving input from the public as well as the Parks Department, the consultant will develop two alternative plans for the park site. These plans will be free hand drawings at a scale appropriate to this phase of design. The alternatives will show the proposed elements and their relationship to each other and the site. Each plan will note the proposed facilities, support structures, circulation, ingress and egress to the park and other items needed to clearly define the intent of each alternative.

#### **Task 8. Progress Review**

BBN will review the alternative plans developed with representatives of the City of Overland Park prior to the drawings being completed for presentation. This will allow the city to remain fully informed as to the recommendations to be presented at the next workshop.

#### **Task 9. Plan the Park Workshop #2**

Upon completion of up to two alternative plans a second plan the park workshop will be held for the park. At this meeting the alternative plans will be presented to the City of Overland Park and the public for review and comment. The facilities included in each alternative for the park will be reviewed with the group. After all alternative plans have been presented; those in attendance will be invited to comment on the likes and dislikes of the alternative plans for the park. This review will serve to give direction to the consultant for the development of the final master plan.

#### **Task 10. Development of Final Master Plan & Details**

After receiving input from the City of Overland Park and other interested individuals at the second workshop the final master plan will be completed. The plan will be developed taking into account the comments received through the review process. The plan will be a hard-line drawing at a scale appropriate to the site area. All proposed facilities will be identified and a rendering of the final plan will be provided for the cities use.

#### **Task 11. Estimation of Probable Construction Costs**

Bowman Bowman Novick, Inc will compile a complete estimation of probable construction costs for the park master plan. This estimate will provide project costs for each of the items recommended in the master plan for the park.

#### **Task 12. Project Report**

Upon completion of the final master plan drawing the project report will be completed. This report will provide a brief history and summation of the process used to develop the master plans. This report will be 8 ½" x 11" format with reduced copies of the alternative plans as well as a reduced color Xerox of the final master drawing.

#### **Task 13. Final Presentation**

Upon completion of the final master plan and project report, a final presentation of the master plan will be conducted. This presentation would be given to the Overland Park City Council and other individuals involved in the master plan process in attendance.

**Task 14. Deliverables**

BBN shall deliver 10 bound copies of the park master plan report, full color mounted rendering approximately 36” x 48” of the park master plan, and a digital copy of the park master plan report and park plan.

**Project Schedule**

We anticipate the following schedule for the Master Plan, Final Design, Construction Documents, Bidding and Construction Administration

Master Plan Phase	6 Months (October 2013 – April 2014)
Schematic Design Phase	3 Months (May 2014 – July 2014)
Design Development Phase	3 Months (August 2014 – October 2014)
Construction Document Phase	4 months (November 2014 – February 2015)
Bidding Phase	2 Months (March 2015 – April 2015)
Award of Contract for Construction	1 Month (May 2015)
Notice To Proceed	June 2015
Construction Period	10 Months (June 2015 – April 2016)

Note: Contractor receives NTP in June and begins assembling Shop Drawings and Project Submittals through July 2015. Mobilize on-site August 2015 and begin work in areas available. Pool is demolished late August 2015 and the entire site is then turned over for the contractors use.

**Master Plan Project Fee**

We propose a total fee of \$42,500.00 for the scope of services submitted including a total of \$5,000.00 for the consulting services to be provided by MIG. Reimbursable expenses are in addition to the fee and would be billed to that city at cost; we would anticipate that expenses for the project would be a maximum of \$1,200.00. This fee includes the electronic files and scans of project information for incorporation onto the cities website. BBN will bill the City of Overland Park on a monthly basis for the work completed the prior month; payment is due within 30 days.

**Fee Breakdown by Task**

Task 1	\$ 820.00
Task 2	\$1,070.00
Task 3	\$3,060.00
Task 4	\$1,700.00
Task 5	\$1,770.00
Task 6	\$4,450.00
Task 7	\$4,920.00
Task 8	\$ 600.00
Task 9	\$3,450.00
Task 10	\$7,520.00
Task 11	\$2,460.00
Task 12	\$1,480.00
Task 13	\$2,520.00
Task 14	\$1,700.00