

## CONSULTANT AGREEMENT

THIS AGREEMENT is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the City of Overland Park, Kansas, (hereinafter, the "City") and Finkle Williams, Inc. (hereinafter, the "Consultant").

WITNESSETH:

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

### **CENTRALIZED FLEET FACILITY STUDY (PB-1576)**

(hereinafter, the "Project"); and

WHEREAS, the City has requested that the Consultant submit an engagement letter to outline services Consultant is proposing 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 provide consulting services as set forth in Exhibit A attached hereto and incorporated herein by reference, (hereinafter the "Services").

#### **SECTION 2. SUPPLEMENTAL AGREEMENTS**

This Agreement may be amended to provide for additions, deletions and revisions in the Services or to modify the terms and conditions thereof by a written supplemental agreement. If notice of any change in Services affecting the general scope of the Consultant Agreement or provisions of this Agreement, including but not limited to, Agreement price or Agreement time, is a requirement of any insurance policy held by Consultant as a requirement of this Agreement, the giving of such notice shall be the Consultant's responsibility.

#### **SECTION 3. STATUS**

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

#### **SECTION 4. COMPENSATION**

A. Total Fee: City agrees to pay Consultant an amount not to exceed Seventy-eight Thousand One Hundred Forty-three and 00/100 dollars (\$78,143.00), 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 February 16, 2015. If any additional services beyond the Services outlined in Exhibit A are deemed to be necessary, the compensation for said services shall be outlined in a supplemental agreement as required above and shall be billed at the hourly rates set forth in Exhibit B.

- B. Manner of Payment: Invoices for fees will be submitted every four (4) weeks and are to be paid within thirty (30) days of receipt of undisputed invoice.

**SECTION 5. TERMINATION**

Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City to terminate this Agreement in whole or in part, with or without cause, subject to written notice to Consultant. If the City terminates 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**

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

**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 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 8. INSURANCE**

- A. General: 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 on City provided forms or on forms 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: 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.

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 the 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. Consultant shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

- C. Commercial General Liability

General Aggregate:	\$1,000,000
Products / Completed Operations Aggregate:	\$1,000,000
Personal & Advertising Injury:	\$ 500,000
Each Occurrence:	\$ 500,000

Policy must include the following:

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

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

Limits (Same as Commercial General Liability) -

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

Policy must include the following:

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

- E. 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 Consultant has no employees, the City will provide a waiver form upon request.**

- F. 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.
- G. 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 Consultant.
- H. Subcontractor's Insurance: If a part of this Agreement is to be sublet, 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 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 agents and/or employees 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. During the performance of this Agreement, the Consultant agrees that:
1. Consultant 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, 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 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;
5. the Consultant shall include the provisions of Subsections 1 through 4 in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor.

The provisions of this Section shall not apply to a contract entered into by a Consultant:

- 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.

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

## **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.

**SECTION 13. EXECUTION OF AGREEMENT**

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

FINKLE WILLIAMS, INC.

CITY OF OVERLAND PARK, KANSAS

\_\_\_\_\_  
Greg Finkle  
Principal

\_\_\_\_\_  
Carl Gerlach, Mayor

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Tammy M. Owens  
Deputy City Attorney

EXHIBIT A



7007 COLLEGE BLVD, SUITE 415  
OVERLAND PARK, KANSAS 66211

P 913 + 498 - 1550  
F 913 + 498 - 1042

August 25, 2014  
Revised: September 12, 2014

Mr. Eric Keenan, PE  
Sr. Civil Engineer  
Overland Park Public Works  
Overland Park City Hall  
8500 Santa Fe Drive  
Overland Park, Kansas 66212

Eric,

We are delighted to be selected to assist the city with the development of the program, site location study and preliminary design services for the new Fleet Maintenance Facility. Attached is our proposed scope of services and corresponding fee for your review and input, based on the information known to date. Per your request, we have broken down the tasks and related man-hours according to our understanding of the project parameters discussed so far. We can adjust the scope as necessary to reflect any clarifications or refinements you feel are needed to more accurately define your expectations for the project.

<b>Proposed Fee For Basic Services:</b>	<b>\$73,047</b>
<b>Fixed Reimbursable Expenses</b>	<b>\$1,850</b>
<b>'Not to Exceed' Reimbursable Expenses (Travel)</b>	<b>\$3,246</b>

*Reimbursable expenses are in addition to compensation for Basic and Additional services, and include actual expenses incurred by the Architect, the Architect's employees, or consultants related to the project, including reproductions, plots, standard form AIA documents, postage and deliverable hardcopies. Travel expenses related directly to the project, include mileage, airfare, hotel, meals, car rental and parking*

The following is an outline sequencing each of the proposed scopes:

#### PROGRAMMING | SPACE NEEDS

Develop questionnaires and distribute to the appropriate stakeholders. Hold a conference call to provide instructions on questionnaires. Hold interviews to review and further understand the questionnaire responses. At the time of the interviews conduct site visits of the facility to review current space and programed areas. Hold a 3-4 hour kickoff / goal setting Meeting made up of leadership level stakeholders to:

- Introduce team members and communicate rolls and responsibilities
- Establish an understanding of the current operations and benefits of the new facility
- Review trends in the industry to establish a baseline functionality for the facility
- Establish goals of the facility and prioritize needs.

Document the Program / Space needs along with the goals of the project in a final written report.

#### SITE SELECTION | CONCEPT DESIGN

Site Evaluations – Visit 2 sites and document existing conditions that will aid in determining a sites suitability for the new Central Fleet Maintenance Facility including but not limited to: distance to customers, acceptable access, topography, available utilities, easements, setbacks, surrounding zoning, size and ownership. The information will be presented to the appropriate stakeholders identified in the Kickoff Meeting.

Design Charrette – We will hold a design charrette with the leaders and the users of the new facility to hear firsthand how the users intend to operate the facility and get their insight into building layouts and site functionality based upon the programming and needs assessment data. Teams will be made of users and design team to work through pre-made building and site components to lay out a site. Teams will then present their findings at the end of the session explaining the basis for their layouts.

Site Layouts and Concept Design – The design team will utilize the information created from the design charrette and apply engineering and architecture principles to test and develop working solutions for 2 sites. Site plans will include utilities, grading, paving and general landscaping. Along with site plans basic building footprints and massing will be developed with primary features such as entrances drive thru service



bays in sufficient detail to derive budget cost information and functionality with the site. These design documents will then be utilized to estimate development cost for each of the sites. Each site will be presented to the stakeholders for review and evaluation based upon the goals and objectives determined in the Kickoff Meeting. The preferred site will be determined and refined based upon any feedback from the presentation and documented in the final 11x17 color document.

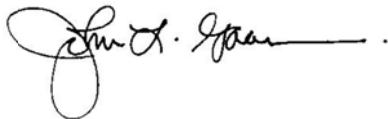
Below is a summary of some of the assumptions/stipulations associated with the attached proposal, subject to your input:

#### ASSUMPTIONS | STIPULATIONS

- Fleet size anticipated to be 90 units including plows, fire, road equipment and city vehicles (until determined otherwise)
- Overland Park will provide existing equipment inventory data
- Facility not anticipated to be a consolidation facility (until determined otherwise)
- No fuel station is anticipated (until determined otherwise)
- (1) wash bay is anticipated (until determined otherwise)
- Real estate advisory services are not included in this proposal
- Project Deliverables will be 3 sets of 11x17 prints and a pdf digital file

Eric, once you've had a chance to review the attached information, let's set up a time to discuss in more detail. In the meantime, please don't hesitate to contact us with any questions or comments. We look forward to getting started upon your authorization.

Sincerely,

A handwritten signature in black ink, appearing to read "John L. Gaar", followed by a horizontal line and a period.

John L. Gaar, AIA

Project Overland Park Centralized Fleet Maintenance Study  
 Project No. 1475



**Summary**

Consultant	FW	MDG	SKW	HEI	CMR	Total
Program / Space Needs	\$7,190	\$11,002	\$1,100	\$6,360	\$0	\$25,652
Site Selection / Concept Design						
Site Analysis	\$2,410	\$996	\$2,320	\$0	\$0	\$5,726
Design Charrette	\$5,810	\$2,424	\$2,080	\$1,300	\$0	\$11,614
Site Layouts Concept Design	\$13,880	\$4,545	\$6,850	\$280	\$4,500	\$30,055
Total Services	\$29,290	\$18,967	\$12,350	\$7,940	\$4,500	\$73,047
Fixed Reimbursable Expenses	\$1,000	\$500	\$200	\$150	\$0	\$1,850
Travel Expenses		\$3,246				\$3,246
Total Fee	\$30,290	\$22,713	\$12,550	\$8,090	\$4,500	\$78,143









**Overland Park Fleet Maintenance Study Schedule**

September 26, 2014

1475



FINKLE + WILLIAMS  
ARCHITECTURE

