

**CONSULTANT AGREEMENT**

THIS CONSULTANT AGREEMENT (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2014, 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 IMPROVEMENTS (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 to be provided by Consultant 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 related to the Project as more specifically 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 One Hundred Eighty-Four Thousand Two Hundred Eighty-Seven and No/100 Dollars (\$184,287.00), including reimbursable expenses. This fee is based on the successful performance of the Services set forth herein and in Exhibit A attached hereto, and shall be billed using rates and reimbursable expenses as set forth in Exhibit A. All work shall be completed on or before the deadlines set forth in the project schedule set forth 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, and to specifically include the City's right to terminate for its convenience, 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:	\$2,000,000
Products Completed Operations Aggregate:	\$2,000,000
Personal & Advertising Injury:	\$1,000,000
Each Occurrence:	\$1,000,000

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. 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 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 one million dollars (\$1,000,000) 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 regarding the services required herein and shall, as of the effective date hereof, supersede all other agreements between the Parties on that subject. The Parties stipulate that neither Party 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.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the day and year first above written.

CITY OF OVERLAND PARK, KANSAS

BOWMAN BOWMAN NOVICK, INC.

By: \_\_\_\_\_  
 Carl Gerlach  
 Mayor

By: \_\_\_\_\_  
 Print: \_\_\_\_\_  
 Title: \_\_\_\_\_

ATTEST:

ATTEST:

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

\_\_\_\_\_  
 Print: \_\_\_\_\_  
 Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
 Stephen B. Horner  
 Senior Assistant City Attorney

**CORPORATE ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

BE IT REMEMBERED, That on this \_\_\_\_\_ day of \_\_\_\_\_, 2014, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came \_\_\_\_\_ the (title) \_\_\_\_\_ of BOWMAN BOWMAN NOVICK, INC., a corporation duly organized, incorporated and existing under and by virtue of the laws of the State of \_\_\_\_\_, and \_\_\_\_\_, the Secretary of said Corporation, who are personally known to me to be the such officers and who are personally known to me to be the same persons who executed as such officers the within instrument on behalf of said Corporation, and such persons duly acknowledged the execution of the same to be the act and deed of said Corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

My Appointment Expires

\_\_\_\_\_  
Notary Public

**CONSULTANT'S STATEMENT**

Consultant has contracted with the City of Overland Park to perform the consultant services set forth in this Agreement. Consultant does not employ the services of any other person(s) or subcontractor(s). In the event that Consultant hires or otherwise employs any person to serve as either an employee or subcontractor, Consultant hereby agrees to purchase workers' compensation insurance and immediately furnish the City of Overland Park proof of such insurance.

\_\_\_\_\_

Date

\_\_\_\_\_

Consultant's Signature



## EXHIBIT A

### Scope of Services

The following outlines Consultant's required Scope of Services for the work involved and the associated fee.

#### **Task 1. Site Utility Assessment**

Consultant will assess the existing site utilities based on the anticipated needs identified in the master plan previously created by the Consultant for the Roe Park Project and develop a schematic level plan for utility improvements. This schematic will include electrical, sanitary, water, and stormwater, and stormwater treatment facilities (STF's). Consultant will meet with the Parks Services and Public Works Departments to review this schematic document and receive direction on its refinement. The previously agreed upon master plan cost estimate will be updated as required.

#### **Task 2. Design Phase**

Based on the direction given in the Project master plan, (excluding the "Future Construction" items identified in the cost estimate), the Consultant's Design Team will complete the design phase and produce design development drawings for the first phase of the Project implementation. The work required of the Consultant in this phase shall include the following documents:

1. Demolition Plan
2. Site Utility Plan
3. Grading Plan
4. Site Materials and Layout Plan
5. Site Details
6. Planting Plan and Details
7. Floor Plans and Elevations of the Custom Restroom
8. MEP Plans and Details.
9. Updated Construction Cost Estimate
10. Outline of Technical Specifications for Project Manual
11. Selection of Pre-Fabricated Large and Small Shelters with Architectural Enhancements to compliment the restroom building.

Consultant will meet with the City and the City's Steering Committee at the 75% complete milestone of the Design phase to review the documents and receive input on document development. The Project Master Plan cost estimate will be updated as required.

#### **Task 3. Final Development Plan**

The Consultant's design team will revise the design drawings based on feedback received from the City and the City's Steering Committee during the Design Phase, and will consolidate that information into a Final Development Plan addressing the City's planning and development checklist for submission of the Project to the City's Planning Department and that will accompany the application for appropriate City review. Consultant will also attend a review meeting to address any issues raised during this process to insure that the application is complete and adequate for submission for appropriate City review.

#### **Task 4. Construction Documents**

The Consultant's Design Team will provide Construction Documents based on the approved Design Development Documents and updated budget for all Phase One improvements. The Construction

Documents shall set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish the quality levels of materials and systems required for the Project. A final statement of probable costs (cost estimate) will be prepared prior to completion of the construction documentation phase.

The construction documents set will include an erosion control plan, a Stormwater Pollution Prevention Plan, and the necessary documents required to work within the floodplain. The Consultant's design team will prepare the necessary technical specifications for incorporation into and compliance with the Project Manual that is to be used for bidding purposes. The City will prepare the Front End documents for the Project Manual. Consultant will meet with the City at 50% and 95% Complete milestones to review the Construction documents and receive input on the development of these documents.

**Task 5. Bidding**

Consultant will assist the City in the public bidding of the project by providing the City with the construction document drawings and technical specifications in electronic format. The Consultant's Design Team will attend the Pre-Bid Conference for prospective bidders, and will prepare responses to questions from prospective bidders throughout the bid period in the form of Addenda to the bid documents. The Consultant's Design Team will assist the City in bid review and recommendations for award of the contract for general construction.

**Task 6. Construction Administration**

Members of the Consultant's Design Team will attend the Pre-Construction Meeting and be available to answer questions of the construction team. The Parties acknowledge that the construction period will not exceed ten (10) months, and that the Contractor will facilitate bi-weekly Owner/Architect/Contractor Progress Meetings at the site. Consultant's Design Team members will be present for the construction Progress Meetings and will review the work performed on-site at those times. This Scope of Service includes attendance at 20 Progress Meetings.

Consultant's Design Team members will respond to Requests for Information documents submitted by the Contractor, where such information is not available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor prepared Coordination Drawings, or prior Project correspondence or documentation. Consultant will prepare other necessary documents to facilitate the construction work including: Architect's Supplemental Instructions, Proposal Requests, and Change Orders. Consultant will also review all test reports and Contractor pay applications. Consultant's Design Team members will review all relevant contractor-furnished shop drawings and submittals required in the contract documents.

In addition to the progress meetings set forth above, Consultant's Design Team members will perform an additional site visit to observe the construction at Substantial Completion and prepare a Punch List of unsatisfactory or incomplete items for use by the Contractor in completing the Project. Consultant will prepare a Certificate of Substantial Completion that accompanies the Punch List. Consultant's Design Team members will follow-up with one final site visit to verify that the unsatisfactory or incomplete items noted on the Punch List have been rectified.

**Assumptions and Exclusions**

1. It is the City's intent that the interactive Project water feature will be a packaged system and that the manufacturer will be responsible for its engineering. Working with the City and Steering Committee, the Design Team will help to facilitate the selection of the desired

appearance and water effect, and produce the necessary performance specifications for this work to be bid competitively.

2. In a similar manner, Consultant will facilitate the direction of the “Active Play Area” by soliciting designs from local product representatives based on the available budget and input provided by the City. Consultant will assist the City in selecting the desired design and include the play system in the bid documents as an owner-provided element to be installed by the Contractor.
3. The Parties acknowledge that without an agreed upon additional fee, the Project scope of work expressly excludes irrigation design, water feature engineering, and floodwater control or bridge design.
4. The Parties acknowledge that since the proposed restroom is more than 200 feet from the existing sanitary main, SK Design anticipates the requirement for a main line extension into the Park. Johnson County Wastewater (JCW) requires full-time inspection of public sewer main construction by a licensed engineer, along with surveyed as-built drawings. SK Design Group will provide these services on an hourly basis for the time incurred if requested by the City.
5. The Parties acknowledge that this proposal does not include floodplain analysis, flood plain certificates, CLOMAR studies or applications, coordination with FEMA, or hydraulic analysis of the floodplain. After reviewing the topographic survey provided, it appears there may be a need for additional topographic and utility information of critical areas, including the existing swimming pool to be removed, elevations of the site at critical tie in points, and along the alignment of the anticipated public sewer main extension.
6. The Parties acknowledge that this proposal assumes that the City will provide geotechnical services for the project including pavement recommendations for the proposed tennis courts, parking lot, and pedestrian surfaces. Any required construction testing will be provided by the City.

### **Project Schedule**

The Parties acknowledge the following schedule and deadlines for the Design Development, Construction Documents, Bidding and Construction Administration Services to be provided by the Consultant:

Design Development Phase	3 Months (September 2014 – November 2014)
Construction Document Phase	4 months (December 2014 – March 2015)
Bidding Phase	2 Months (April 2015 – May 2015)
Award of Contract for Construction	1 Month (June 2015)
Notice To Proceed	July 2015
Construction Period	10 Months (August 2015 – May 2016)

The Parties acknowledge that the City’s targeted date of August 12, 2015, for commencement of pool demolition has been taken into account in establishing the schedule deadlines.

### **Remainder of Page Intentionally Blank**

**Fees to be paid to Consultant for successful completion of professional A/E services are presented by task as follows:**

<b>Task 1 Site Utility Assessment</b>	<b>\$ 10,116.00</b>
<b>Task 2 Design Development Documents</b>	<b>\$ 34,693.00</b>
<b>Task 3 Final Development Plan</b>	<b>\$ 20,519.00</b>
<b>Task 4 Construction Documents</b>	<b>\$ 72,980.00</b>
<b>Task 5 Bidding</b>	<b>\$ 6,632.00</b>
<b>Task 6 Construction Administration</b>	<b>\$ 36,347.00</b>
<b>Anticipated Reimbursable Expenses</b>	<b>\$ 3,000.00</b>
<b>Total Fee</b>	<b>\$ 184,287.00</b>