

City of Overland Park

Comprehensive Plan Request for Proposals

Introduction

The City of Overland Park, KS seeks consulting services to revitalize the Comprehensive Plan of the City ("Project"). City officials envision the comprehensive plan update for the City to firmly define the goals and objectives, by community consensus, for redevelopment options and implementation strategies on a variety of land use issues. This update would also pull together and provide a comprehensive framework for existing initiatives and planned capital improvement projects. A critical component of the Project will be expanding upon the initiatives established in ForwardOP, the city's strategic plan approved by the Governing Body in 2019.

The revitalized plan will provide vision, goals, objectives, and policies to guide the city's development and redevelopment. The plan will guide the Governing Body, Planning Commission, various advisory boards, city department staff, developers, property owners, and residents on the appropriate growth and redevelopment for Overland Park. The City requests prospective consultants provide a response to this Request for Proposals ("RFP").

Project Description

The City of Overland Park recognizes the need for a purposeful discussion about the future land use of our city. The existing comprehensive plan is a document created more than 30 years ago. The city is interested in a revised plan that includes community engagement, encompasses social and environmental issues, and focuses on implementation. Using the momentum of ForwardOP, the comprehensive plan needs to define the land use aspirations of our community and align with the initiatives of ForwardOP. The city also understands that there is no longer a one-size-fits-all approach to land use and that different approaches or area plans may be necessary for this diverse community. Finally, the city strives to have the comprehensive plan act as the leading policy document guiding development in the community. Other departments should find use in the plan and better utilize the plan when evaluating land use, capital planning, and budgeting decisions.

City staff would like respondents to review the following resources and plans that provide good resources and examples of what the city would like to include in their plan:

- American Planning Association's ["Sustaining Places: Best Practices for Comprehensive Plans"](#)
- Examples of Comprehensive Plans:
 - Oklahoma City, OK - [PlanOKC](#)
 - Bentonville, AR - [Bentonville Community Plan](#)
 - Cary, NC - [The Cary 2040 Community Plan](#)
 - Richmond, VA - [Richmond 300](#)

Community Overview

Overland Park was first established as a place in the early 1900s by William Strang who had a vision for a place that offered opportunities for great neighborhoods and clean living with plenty of space and room to grow. It was envisioned as a “streetcar suburb,” offering amenities not found in cities of the time, including more open spaces, cleaner air, convenient transportation options, and healthier living.

In the mid-century, at a time of rapid suburbanization, local leaders recognized a need once again to reconfirm how Overland Park might grow and prosper. Those leaders determined there was a need to incorporate as a recognizable and formal entity. This resulted in the incorporation of the city in 1960. They selected “Overland Park” as the name, which William Strang first used for his original development. Those early founders of Overland Park recognized the need to establish the basic values and ideals of the city that would be the foundation for how it would grow and develop. That vision included: 1) building great neighborhoods; 2) creating a safe environment; 3) establishing an excellent education system; 4) building an efficient and well-kept transportation system; 5) providing effective and efficient government, and 6) establishing an environment for businesses to thrive.

This vision has been carried out in the development of Overland Park. In its more than 60 year history as an incorporated city, Overland Park has grown to become the second-largest city in both the Kansas City Metro and the state of Kansas. It is a dynamic community filled with great businesses. Its education systems are nationally ranked. The community has access to an excellent health care system. The transportation system provides great access and facilitates commerce. Diverse neighborhoods cater to many needs and are filled with individuals proud of their city. Residents and visitors alike are comfortable that they will have a safe experience. Overland Park is recognized not only locally but nationwide as a city that meets residents’ needs, reflected by a variety of recognized top rankings put out by respected media outlets.

Once again the leaders of Overland Park have recognized that perhaps a moment of community reflection is necessary to consider the next period of growth and development of the City.

Scope

The City of Overland Park seeks to contract with a consulting firm or team that possesses extensive experience in community planning and redevelopment strategies. The consulting firm engaged for the Project is expected to provide a wide range of services including, but not limited to the following:

Alignment with ForwardOP, Vision Metcalf, and Other Plans. ForwardOP defined the strategic vision of the community. The comprehensive plan should take specific initiatives to the next level, defining specific ways to implement the initiatives outlined in ForwardOP that are relevant to Overland Park. The planning process can also be an opportunity to review ForwardOP and report on the status of the plan.

Vision Metcalf first defined how Overland Park should consider redevelopment. The comprehensive plan should further incorporate the suggestions in Vision Metcalf and provide a set of policy recommendations on how the community should consider redevelopment and infill opportunities in other areas of the community.

The consulting firm should be prepared to create conceptual land use and design scenarios for major redevelopment sites that incorporate components of the previous planning efforts and help visualize a coherent long-term vision. In addition to ForwardOP and Vision Metcalf, specific plans to review and analyze include the Johnson County Housing Study, Mid-America Regional Council (MARC) Climate Action Plan, Overland Park Parking Study, College and Metcalf Plan among others.

Evaluate existing and emerging issues. The plan should address the impacts of land use on existing and emerging issues such as housing affordability, community inclusion, and sustainability. In addition, this planning process provides an opportunity to analyze the appropriateness of other specific plans and their recommendations to ensure that they meet the goals set forth by our community. Some examples of potential existing and emerging issues include, but are not limited to:

- Infill and redevelopment strategies for established neighborhoods, aging commercial centers, and major redevelopment sites
- Strategies for a coordinated approach to housing (both affordability and mix of housing types)
- Environmental sustainability and the impact of land use decisions
- Planning for future trends in mobility and potential mode shifts
- Recent trends in multi-family construction and their impact on established neighborhoods and future buildout scenarios

Include extensive public engagement efforts to determine the needs, issues, and opportunities within the community. The City expects the consulting firm to design and implement a fun and robust public engagement program that strives to be broad and far-reaching, involving members of the public, community stakeholders, neighborhood groups, city staff, Planning Commissioners, and the Governing Body. An emphasis on ensuring substantial participation that is representative of the community both

geographically and demographically is a priority for this process. The consulting firm shall have experience conducting public engagement among a diverse population and incorporating findings within similar projects.

The public engagement efforts should be authentic, adaptive, and meet the community where they are. A public engagement plan that incorporates both small feedback opportunities across the community, as well as larger approaches (town halls, open houses, or charrettes) is preferred. Public engagement activities shall include but are not limited to marketing materials, mailings, interactive workshops, branding creation, translation services, and print/web materials. Outreach strategies for both online and in-person engagement will be expected.

The public engagement scope will be closely coordinated with the city's Communications Division to clearly define roles and responsibilities and ownership of the various tools.

Analyze the cost to provide service. The plan shall include recommendations for how to address pending infrastructure challenges and needs through a cost of service or revenue-per-acre analysis. The plan should identify strategies on how the city should grow in a more sustainable way (economically and environmentally) in order to avoid severe infrastructure maintenance issues and impacts on service delivery.

Focus on accountable implementation. The plan should include a planning horizon (e.g., 2050) in order to develop projections on how the community wants to grow, goals for how to get there, and performance measures that assess progress. Specifically, this will include approaches that tie these actions to defined timetables, activities, budgets, and responsible parties. A detailed strategy for regular reporting of implementation effectiveness to the public and methodology for revising the plan based on the reported findings will be expected.

A successful interpretation of this requirement will provide an implementation strategy that weaves the plan into the daily activities of the city and ties into the capital improvement and budgeting process. The plan should outline ways that the CIP can complement the comprehensive plan to ensure infrastructure can be provided to meet the goals, with a clear definition of priorities to assist in annual budget development. This should involve coordination with the city's Infrastructure Advisory Group as well as exploring opportunities to combine and coordinate CIPs into other city initiatives and long-term projects.

Project Schedule

The City anticipates the Project to occur in 2022 and 2023. The Project will begin in mid-2022 and be completed by the end of December 2023. Project completion is defined as the “Final Draft of the Comprehensive Plan” for consideration by the Governing Body.

Request For Proposals Release Date – November 2021

Deadline for Written Questions – January 5, 2022

Proposal Deadline – January 28, 2022, 2:00 PM CST

Consultant Presentations and Interviews – March/April 2022

City Council Approval of Consultant – May 2022

Project Commences – June 2022

Project Concludes – December 2023

Deliverables

The consultant will be required to deliver a variety of Plan products at various stages of the project. Examples of final plan deliverables can include, but are not limited to:

- Web-based version of the final plan and recommendations for review and testing;
- Database of final plan recommendations
- One digital file of the Comprehensive Plan draft with all the inserts for review;
- One (1) digital file of the final Comprehensive Plan; and
- One (1) set of Comprehensive Plan maps in digital format that is compatible with the City's GIS and map layers shall be ortho-corrected and geo-referenced to the state plane coordinate system.

The Comprehensive Plan shall be presented in a format and language that is user-friendly and easily comprehended and accessible to the general public. The consultant should make an effort to minimize the use of technical planning language. The extensive use of maps, graphics, and other devices that will enhance the readability and ease of use of the Comprehensive Plan is required. At the completion of the process, the consultant shall provide a complete Comprehensive Plan with all maps, graphs, and tables.

Proposal Content and Format

Proposals must be complete and concise (maximum of 30 pages) and include only the required information. To aid in evaluation, all proposals must follow the same format and have sections tabbed as below.

- **Title page:** Provide the subject of the Project; the firm's name, address, and telephone number; City's contact name, address, telephone number, and email.
- **Cover letter:** Provide a statement regarding the firm's interest in and understanding of the Project. The letter should include a statement that the firm has read and understands the RFP and agrees to all the conditions, requirements, and terms stated in the RFP.
- **Statement of qualifications:** Provide information on the firm's size, location, available resources, and a brief discussion on past experiences related to updating and creating Comprehensive Plans. Submitted materials should demonstrate the firm's, and any sub-consultant qualifications, and those of the particular staff to be assigned to the Project. Firms should demonstrate experience as the lead firm on at least three (3) similar projects, preferably within the past five (5) years.
- **Project team:** Identify the project team (including sub-consultants and associates) and provide a statement of qualifications for each individual, including information such as education, professional registrations, area of expertise, and years of service in their respective fields. The following information should be included:
 - Identify the key individuals, companies, and organizational structure of the team.
 - Identify roles and responsibilities of all proposal team members and their backup as well as their experience in the specifically assigned functions.
 - List the proposer's experience with other successful plans; include roles and responsibilities for these projects' team members, in addition to providing

contact information for references for these other plans.

- **Understanding of Overland Park:** Include a summary of the firm’s understanding of the Project as described in this RFP as it specifically relates to the City of Overland Park and the unique issues facing the City. Identify the City’s background and issues that will affect the firm’s methodology and approach to the Project.
- **Methodology and approach:** Provide a description of the method and approach your firm intends to utilize in order to complete the Project. Discuss and clearly explain the methodology proposed to satisfactorily achieve the required services for the Project. The respondent must document a clear understanding of the RFP’s entire scope of work and Project intent including data requirements, public participation process, all aspects of technical analysis, projections, advanced technology, and software. Firms should provide suggested innovative approaches the City should consider when implementing this Project.
- **Project timeline:** Provide a proposed schedule from the start to the completion of the Project. The schedule should include phasing, key tasks, milestones, and approximate completion dates.
- **Work samples:** List and provide in electronic format only (web link or pdf) at least three (3) examples of Comprehensive Plans completed within the last five (5) years in which the consulting firm was the project’s lead agency.
- **References:** Provide a list of municipal clients for which the firm was the lead agency in providing services similar to the ones described in this RFP. Provide contact information (name, position, address, telephone number, and email) of persons that the City may contact to verify work completed and performance.
- **Verify firm capacity:** Provide a statement of the firm’s ability to begin and complete the Project within the timeframe identified in this RFP and in the manner described in the RFP response.

All proposals, including supporting documentation, are confidential until a recommendation is made to the city’s Community Development (CD) Committee. All costs incurred in the preparation of this proposal are the responsibility of the proposer. All proposals shall be considered firm offers for a period of 180-days following the due date. Once submitted, proposals may not be changed without the written consent of the City.

The submission should be in electronic format. Microsoft Word, Google Docs, or PDF are acceptable formats. The submission can be delivered via flash drive to Overland Park City Hall at 8500 Santa Fe Drive, Overland Park, KS 66212 Attn: Erin Ollig, or e-mailed to Erin.Ollig@opkansas.org by 2:00 P.M., Friday, January 28, 2022, to:

Interpretations, Modifications and Addenda

All questions regarding the RFP should be directed in writing to Strategic Planning Manager, Erin Ollig at Erin.Ollig@opkansas.org. Questions clarifying the process or about the project will be shared so that all interested parties receive the same information.

Proposal Evaluation and Selection Process

Interview selection will be made following a review and ranking of proposals received. The City reserves the right to interview and receive a formal presentation from only those development teams whose proposals best match the evaluation criteria. The City intends to select proposers for interviews within four to five weeks after receipt of proposals. The City's objective is to select the best-qualified development team to undertake the tasks identified.

The proposals will be evaluated on the basis of several factors, including:

- Past performance on similar projects;
- Understanding of Project scope;
- Approach in completing the objectives of the Project;
- Relevant experience, and availability of key personnel, and relevant experience;
- Knowledge of and experience in creating Comprehensive Plans;
- Ability to bring unique ideas and perspectives to the Project;
- Firm's ability to meet schedules; and
- The appropriateness and extensiveness of the firm's experience with the public engagement process.

Upon selection of the final proposal, the City will negotiate final business and performance terms with the selected development team(s). The commencement of negotiations does not commit the City to accept any or all of the terms of the proposal, and negotiations may be terminated by the City at any time, in which case the City reserves the right to enter into negotiations with other proposers. These negotiations may result in minor or material changes to the proposal, including both the business terms and the project. Successful negotiations will result in an award recommendation. Agreements addressing business terms and performance benchmarks will be entered into between the parties. The agreement shall include requirements for insurance, indemnification and non-discrimination.

The City reserves the right to reject, in whole or in part, any or all proposals. If deemed appropriate to achieve the goals for the Project, the City reserves the right to make no selection and re-issue an RFP. The terms and conditions of any development agreement resulting from this RFP process are subject to approval by the City Council.

Attached to this RFP as Exhibit A is a Sample Agreement agreement between the City and successful respondent. The Final Agreement shall be subject to negotiation between the City and successful respondent.

Resources

The following resources may provide additional context for interested consultants:

- City Website - <https://www.opkansas.org/>
- City of Overland Park Comprehensive Plan and related maps and documents - www.opkansas.org/city-services/planning-development/long-range-planning/comprehensive-plan/
- ForwardOP - <https://forwardop.org/>
- Variety of Interactive and Static Maps - <https://www.opkansas.org/about-overland-park/maps/>
- Johnson County Housing Study and Housing Toolkit - <https://ucsjoco.org/housing-toolkit/>
- MARC Climate Action Plan - www.marc.org/Environment/Climate-Action/Climate-Action-Plan/Climate-Action-Plan-and-Implementation
- City of Overland Park Annual Development Report - www.opkansas.org/city-services/planning-development/long-range-planning/annual-development-report/
- Vision Metcalf - <https://drive.google.com/drive/folders/1MiNzrg--cS-0yqfbhMuLHFgjsBM8ddN0>
- City of Overland Park Special Study Area Plans - www.opkansas.org/city-services/planning-development/long-range-planning/special-area-studies/
- Infrastructure Advisory Group (underway) - www.opkansas.org/city-government/boards-commissions/infrastructure-advisory-group/
- 2022-2026 Capital Improvement Program - www.opkansas.org/city-government/budget-taxes/city-budget/capital-improvements-maintenance-programs/
- [Citywide Survey Results \(2021\)](#)
- U.S. 69 Expansion Project - <https://www.69express.org/>
- Overland Park Small Scale Development Study - <https://opkansas.civicweb.net/document/12303/Incremental%20Development,%20Small%20Scale%20Development%20S.pdf?handle=F3F10E7852C64EA395D2CE81BF00C793>
- 2022 Annual Budget - <https://www.opkansas.org/city-government/budget-taxes/city-budget/>
- Johnson County Transit Plans - www.jocogov.org/deptpage/transit-jo/strategic-plans
- Chamber of Commerce Website - <https://www.opchamber.org/>
- School Districts Map
 - Blue Valley School District - <https://www.bluevalleyk12.org/cms/lib/ks02212623/Centricity/Domain/4503/20>

[20-21%20Trifold%20Map.pdf](#)

- Shawnee Mission School District - <https://www.smsd.org/about/boundary-maps>
- Olathe School District - <https://www.olatheschools.org/Page/3626>
- Spring Hill School District - www.usd230.org/about_us/maps_locations_accessibility

EXHIBIT A
EXAMPLE – FINAL AGREEMENT SHALL BE SUBJECT TO NEGOTIATION AND
AGREEMENT BETWEEN THE PARTIES]

CONSULTANT AGREEMENT

THIS AGREEMENT is made and entered into this day of _____, 21 by and between the City of Overland Park, Kansas, (hereinafter, the "City") and _____, a _____ of the state of _____. (hereinafter, the "Consultant").

WITNESSETH:

WHEREAS, the City desires to obtain consulting services in support of a project described as follows: **City of Overland Park Comprehensive Plan**, (hereinafter, the "Project"); and

WHEREAS, Consultant submitted a response to the City's request for proposal regarding the Project, and desires to provide consulting services for the Project, as set forth in the City's "City of Overland Park Comprehensive Plan RFP" issued by the City on _____; and

WHEREAS, City wishes to engage Consultant to provide consulting services for the Project; 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 [**TO BE NEGOTIATED**], (hereinafter the "Services").

SECTION 2. SUPPLEMENTAL AGREEMENTS

This Agreement may be amended, in writing executed by both parties, 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 dollars (\$ _____), 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 B [TO BE NEGOTIATED]**. All work shall be completed on or before _____. 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 COMPREHENSIVE PLAN

The final Comprehensive Plan 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, a waiver form provided by the City must be executed.

F. 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.

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, whatsoever in nature, 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. ANTI-DISCRIMINATION AND OTHER LAWS

A. 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 Agreement because of race, religion, color, sex, national origin, ancestry, age, sexual orientation, or gender identity;
- 2) In all solicitations or advertisements for employees, Consultant shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission ("Commission");
- 3) If Consultant fails to comply with the manner in which either reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, Contractor 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 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, 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, without penalty; and
- 5) Consultant 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.
- 6) The provisions of this section shall not apply if:
 - a. Contractor employs fewer than four employees during the term of such contract; or
 - b. If Contractor contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.
- 7) To the extent allowed by K.S.A. Sec. 44-1031, this sub-section 11. A. shall not apply to any contractor who has already complied with the provisions of such this subsection by reason of holding a contract with the federal government or a contract involving federal funds.

B. Consultant further agrees that they 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 Agreement and to furnish any certification required by any 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 therewith.

- C. Consultant shall observe Chapter 8.10 of the Overland Park City Code of Ordinances, entitled "Civil Rights". Consultant shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, genetic information, marital status, familial status, or military status. Discrimination by contractor in violation of this sub-section 11.C. shall be grounds for termination of this Agreement by City for cause.

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. The parties agree that any lawsuit between them arising from this Agreement shall be brought in the state courts of Johnson County, Kansas.
- E. As may be applicable, 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.

- F. **Kansas Open Records Act/Records Retention/Agreement Open Document.** Consultant acknowledges that the City is subject to K.S.A 45-215, *et seq*, the Kansas Open Records Act (KORA), and that any duty of confidentiality or non-disclosure by the City shall be subject to the City's obligations under KORA or any other provision of law or operation thereof. City shall have no duty or obligation to give notice to Consultant prior to complying with a valid open records request, subpoena or other operation of law related to the products and services contained in this Agreement. City shall have no duty to require its employees or consultants enter into non-disclosure agreements related to the products and services contained in this Agreement. Any duty imposed on City regarding destruction or return of records pursuant to this Agreement or the products or services herein shall be subject to any applicable records retention laws. Further, Consultant acknowledges that this Agreement, including Exhibits, shall be considered an open record under the KORA and may be presented in open session public meeting to the City's Governing Body and published on the City's website.
- G. **Prohibition Against Contingent Fees:** Consultant warrants that they have not employed or retained any person, firm, or corporation, other than a bona fide employee working solely for their respective companies, to solicit or secure the awarding of this Agreement based upon an arrangement that the person, firm, or corporation would receive any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award of this Agreement. For the breach or violation of the foregoing provision, the City shall have the right to terminate the Agreement without liability, at its discretion to deduct from the Agreement price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.
- H. **Exclusivity:** Notwithstanding anything in this Agreement to the contrary, this Agreement is not exclusive.
- I. **Governing Law:** This Agreement shall be subject to, governed by, and construed according to the laws of the State of Kansas. Any litigation arising from this Agreement or the obligations set forth herein shall have proper venue in the state courts of Johnson County, Kansas.
- J. **Arbitration, Damages, Warranties:** No interpretation of the Agreement shall be allowed to find that the City has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the City shall not be liable to pay attorney fees and late payment charges beyond those available by law and no provisions will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
- K. **Representative's Authority to Contract:** By signing this Agreement, the representative of Consultant hereby represent that such persons are duly authorized to execute this Agreement on behalf of their respective company(ies) and that said company(ies) agrees to be bound by the provisions thereof.
- L. **Responsibility for Taxes:** The City is tax-exempt and shall not be responsible for, nor indemnify for, any federal state or local taxes which may be imposed or levied upon the subject matter of this Agreement.

M. 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.

[CONSULTANT]

Printed name of authorized signatory
Title of authorized signatory

CITY OF OVERLAND PARK, KANSAS

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney