

Agreement for _____

THIS AGREEMENT is made and entered into this _____ day of 202__, by and between the City of Overland Park, Kansas, hereinafter referred to as “City,” and _____, hereinafter referred to as “Contractor.”

SECTION I - SCOPE OF SERVICES

Contractor shall provide to the City _____ and related services as outlined in this Agreement and the defined Scope of Services attached hereto and incorporated by reference herein as **Exhibit A** all to the City’s full satisfaction.

SECTION II - COMPENSATION

The City agrees to pay Contractor for all products and services contemplated by the Agreement for the amount of _____. Compensation will be paid to Contractor within thirty (30) days of the City’s receipt of the undisputed invoice. All amounts payable under this Agreement are exclusive of taxes as the City is a tax-exempt political subdivision.

SECTION III – AGREEMENT TERM

The term of this Agreement shall commence on the date above first written and shall continue in force until the ___ day of _____, 202__ (the “Initial Term”). Thereupon, the Agreement will renew automatically for an additional term of _____ (____) year(s) (“the Renewal Term”) unless either party gives written notice of intent to not renew thirty (30) days prior to the date the term expires.

Notwithstanding the foregoing, 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, at any time, subject to written notice to Contractor. Upon termination, the City shall compensate Contractor for all work satisfactorily completed to date of its receipt of the termination notice. Contractor shall not include anticipatory profit or consequential damages, neither of which will be allowed.

SECTION IV – TERMINATION

The City may terminate this Agreement at any time at its convenience by giving the Contractor written notice. Agreement will be terminated on the first day of the month following the month in which a termination notice is received by the Contractor.

Either party may immediately terminate this Agreement due to breach of this Agreement by the other party upon notice of such breach to the breaching party.

SECTION V – PRIOR VERBAL OR WRITTEN STATEMENTS NOT BINDING

It is understood and agreed that the written terms and provisions of this Agreement shall supersede all prior verbal and written statements of any and every official and/or other representative of the City and Contractor and such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any way whatsoever, the written Agreement. In the event that the City issues a purchase order, work order, invoice or similar document relating to services performed, such purchase order or similar document shall be for the City's administrative purposes only and will not supplement, supersede, modify or affect any of the terms and conditions set forth herein.

SECTION VI - ADJUSTMENT TO CONTRACT TERMS

Changes to the terms of this Agreement may be made only in writing and must be approved by the City and Contractor. Should a decision be made to amend the terms of this Agreement, the City and Contractor must mutually agree in writing to the amended terms.

SECTION VII – DISPUTE RESOLUTION

The City and Contractor agree that the implementation of this Agreement will be enhanced by the timely resolution of any dispute between them. Therefore, each party agrees to cause any dispute or disagreement between them, whether with respect to the interpretation of this Agreement or with respect to the performance of either party under this Agreement, to be considered, negotiated in good faith and resolved as soon as possible in accordance with the following dispute resolution process. The dispute resolution process will require that the following steps be completed within a reasonable time.

Each party will appoint a representative who will be made available for conference calls and meetings with the other party's representative for this dispute resolution process. Each party shall refrain from exercising its rights of termination for a reasonable time and shall continue to perform its obligations under this Agreement in order to allow the parties to settle the dispute or disagreement, provided that, if the dispute concerns a material breach, the party(s) alleged to be in breach has promptly commenced cure and pursues the cure in good faith. If the dispute resolution process fails 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 Contractor 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.

Neither party shall be compensated for any time or expense related to the dispute resolution process.

SECTION VIII – CASH BASIS LAW

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.

SECTION IX - HOLD HARMLESS/INDEMNIFICATION

Definition: For purposes of indemnification requirements, the term "Loss" shall mean 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.

For purposes of this Agreement, Contractor 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 Contractor, 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 Contractor's obligation hereunder shall not include amounts attributable to the fault or negligence of the City.

In the case of any claims against the City, its employees or agents indemnified under this Agreement, by an employee of the Contractor, 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 Contractor, its affiliates, subsidiaries, or assignees, under workers' compensation acts, disability benefit acts, or other employee benefit acts.

SECTION X - INSURANCE REQUIREMENTS

Contractor 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. All insurance procured for this Agreement by the Contractor shall be primary and

noncontributory. Contractor shall provide certificates of insurance and renewals thereof on forms approved by the City and shall name the City as an additional insured on the general liability and automobile liability. 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. Any claims-made policy forms must be maintained for a minimum of 2-years after the end of this Agreement.

A. General Liability.

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

B. Automobile Liability. Policy shall protect Contractor against claims for bodily injury and/or property damage arising from the ownership or use of all owned, hired and/or non-owned vehicles in the amount of no less than Five Hundred Thousand Dollars (\$500,000) Each Accident, Combined Single Limits, Bodily Injury, and Property Damage. Contractor agrees to only use vehicles properly insured under this Agreement in the performance of the services.

C. Worker's Compensation and Employer's Liability. This insurance shall protect Contractor against all claims under applicable state workers' compensation laws. Contractor 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:

<u>Workers' Compensation:</u>	Statutory
<u>Employer's Liability:</u>	
Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee

D. Professional Liability. Contractor shall maintain throughout the duration of this Agreement plus a minimum of three additional years, Professional Liability Insurance in an amount not less than Two Million Dollars (\$2,000,000) 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 licensed to do business in the State of Kansas;
 2. Carries a Best's policyholder rating of A- or better; and
 3. Carries at least a Class VIII financial rating;
- OR
4. Is a company mutually agreed upon by the City and Contractor

F. Subcontractors Insurance.

If a part of the Agreement is to be sublet, the Contractor shall either:

1. Cover all subcontractors in its insurance policies if allowed to by Contractor's insurance carrier, or
2. Require each subcontractor not so covered to secure insurance which will protect subcontractor against all applicable hazards or risks of loss as and in the minimum amounts designated.
3. Whichever option is chosen, Contractor shall indemnify and hold harmless the City as to any and all damages, claims or losses, including attorney's fees, for bodily injury, physical property damage and/or death that arises out of a subcontractor's or any of its agents, servants, and/or employees' negligent acts, and or failure to act in the performance of this Agreement arising out of the acts or omissions of its subcontractors.

SECTION XI – NON-DISCRIMINATION AND OTHER LAWS

A. Contractor agrees that:

1. Contractor shall observe the provisions of the Kansas act against discrimination and Overland Park Municipal Code Chapter 8.10, 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, age, sexual orientation, gender identity, or gender expression;
2. In all solicitations or advertisements for employees, Contractor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (the "Commission");
3. If Contractor fails to comply with the manner in which Contractor 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 the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City;
4. If Contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, or to have violated Overland Park Municipal Code Chapter 8.10, Contractor 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; and

5. Contractor shall include the provisions of subsections (A)(1) through (4) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor. 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.

- B. Contractor further agrees that Contractor shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision in the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all 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 XII – GENERAL PROVISIONS

The following are general provisions applicable to this Agreement:

- A. Applicable Law. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, 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.

- B. Assignment. Parties hereto agree that neither shall assign, sublet or transfer their interest in this Agreement without the written consent of the other and further agree that this Agreement binds the parties, their successors, trustees, assignees and legal representatives.

- C. Contingent Fees Prohibited. Contractor warrants that it has not employed or retained any person, firm, or corporation, other than a bona fide employee working solely for Contractor, 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 and, at its discretion to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

- D. Independent Contractor. Contractor is an independent contractor, and as such, neither Contractor nor its personnel are agents or employees of the City. Contractor is responsible for payment of any and all federal, state and local taxes.

- E. Subcontractors. Contractor shall not subcontract any of the work or services required by this Agreement without the prior written approval of the City. Should Contractor request and the City agree to work being subcontracted, Contractor shall be as fully responsible to the City for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by said subcontractors, as Contractor is for the acts and omissions of the persons it directly employs.
- F. Severability/Non-waiver. Should any provision of this Agreement be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement shall be unaffected thereby and shall continue to be valid and enforceable. The waiver of or failure to enforce any term or condition of this Agreement shall not be construed as a waiver of any other term or condition.

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SECTION XIII - EXECUTION OF AGREEMENT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized officials on the ____ day of _____, 20__.

CITY OF OVERLAND PARK, KANSAS

[CONTRACTOR]

Curt Skoog, Mayor

Date

Date

ATTEST:

Elizabeth Kelley
City Clerk

APPROVED AS TO FORM:

EXHIBIT A - SERVICES