



City of Overland Park, Kansas

**Request For Proposals
for the creation of an**

Urban Forest Master Plan

Proposals Due by: 5:00 PM May 31st, 2023

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
1. Introduction	3
2. Deadline for Proposals	3
3. City Prerogatives	4
4. Inquiries, Questions, and Clarifications	4
5. Preliminary Scope of Services	4-10
6. Proposal Submittal Requirements	10-11
7. Selection Process	11-12
8. Schedule	13
9. General Information	13-14
10. Exceptions	14
11. Respondent Information Form	15
12. Byrd Anti-Lobbying Amendment Certification	16
13. Attachment 1 - ARPA Provisions	17-24
14. Form Agreement	25-34

Located just south of Kansas City, the City of Overland Park (“the City”) has a mild climate and beautiful seasonal weather with a rich, rolling terrain. Incorporated in 1960 and founded by William B. Strang, the City’s population exceeded 200,000 shortly after the 2021 Census and continues to grow at twice the rate of its previous expansion.

Since its founding, the City has added 83 parks, 80+ miles of multi-use trails, and over 50,000 street trees. Parks and forests represent a much-loved legacy for the residents of Overland Park, and are consistently ranked as a top attraction. As the City continues to grow, new parks will be added, natural areas will be acquired, boulevard trees will be planted, the trail system will be expanded, and new demands will be placed on existing parks and open space assets.

The urban forest is vital infrastructure, intrinsically linked to the quality of life, health, value & prosperity of Overland Park residents, businesses & visitors. The City is developing an Urban Forest Master Plan with the intention of analyzing existing conditions & industry best practices in order to develop strategies & benchmarks for expanding, revitalizing, and ensuring the longevity of the City's canopy. This project will gather input on the community's long-term goals for the future of the urban forest infrastructure, and will make recommendations on how to accomplish and track progress toward those goals.

1) Introduction

The City is seeking proposals from qualified consultants with demonstrated expertise and experience to prepare a 20-year Urban Forest Master Plan. The Master Plan will:

- Ensure Overland Park's legacy of parks, open spaces, and urban forest continues into the future through community engagement and species planting recommendations;
- Recognize the urban forest as vital infrastructure and explore its link to residents' healthy, safety, and prosperity;
- Provide guidance for investing in the development & maintenance of all forestry assets, especially as Overland Park continues to grow; and
- Explore the urban forest's interdisciplinary connection to climate, environmental justice, development, place-making, and City operations.

2) Deadline for Proposals

Sealed proposals will be received by the City until **5:00 PM on May 31st, 2023**. Any proposal received after the designated deadline will not be accepted. Proposals should be submitted to:

City of Overland Park
City Clerk
8500 Santa Fe Drive, Overland Park, KS 66212

3) City Prerogatives

The City reserves the right to accept or reject any and all Proposals and to waive any technicalities or irregularities therein. No submitted Proposal may be withdrawn for a period of thirty (30) days following the date and time set for the opening thereof.

4) Inquiries, Questions and Clarifications

Inquiries, questions and requests for clarification are to be directed to the following:

Bailey Patterson, City Forester
City of Overland Park, Kansas
11921 Hardy Street, Overland Park, KS 66213
Email: bailey.patterson@opkansas.org

The last time and date for submitting questions is **5:00 PM on May 18th, 2023**, in order to provide adequate time to make Proposal changes, if necessary. Answers to submitted questions will be posted on **May 23rd, 2023** on the City's website. Only non-proprietary and global questions can be addressed.

5) Preliminary Scope of Services

5.1 Project Management

- A. Coordination of Meetings: The selected Consultant will take the lead in coordinating project activities, including coordinating with the City's project team, deliverables, submissions, permits, and similar coordination efforts consistent with the scope of services.
 - a. Meetings with Staff: The Consultant shall develop a plan for regular meetings with City Staff throughout the duration of the project as required to coordinate and execute the scope of services. The Consultant shall prepare and circulate meeting minutes from all coordination meetings. A proposed schedule of meetings should be included in the submitted proposal.
 - b. Public Outreach Meetings: The Consultant shall develop a plan and schedule for conducting and presenting at public outreach meetings (using various in person and virtual engagement formats) in order to solicit input from, promote the project to, and garner support for the project by the public. Volunteer committees such as the Legacy of Greenery Committee and Parks and Recreation Advisory Committee shall also be engaged. Respondents should include samples of public outreach materials in the proposal submission if available.
- B. Project Schedule: The Consultant shall prepare and periodically update a project schedule with tasks and milestones. The Consultant shall break the schedule down by

logical tasks with enough detail to track project progress. The schedule must reflect realistic review periods for tasks, such as reports, plans, and coordination. Plan completion is targeted for mid-2024.

C. Administration

- a. Payment Schedule: The Consultant shall submit a consolidated monthly invoice that includes a progress report reflecting the work completed.
- b. Maintenance of Project Files: The Consultant shall maintain project files in accordance with its work plan.

D. Work Plan: The Consultant shall prepare a Work Plan, based on the agreed upon scope of work, that includes a list of deliverables, milestone submittal schedule, summary of organization responsibilities and contacts, and task budgets. The Work Plan shall be submitted to the City and approved prior to the first invoice.

5.2 Analysis of Current Status, Challenges, and Opportunities

A. Review City Policies and Documents: The Consultant shall review and assess all relevant material listed in this section.

- a. Municipal Code sections related to trees, landscaping, & natural areas
- b. Emerald Ash Borer Action Plan
- c. Approved Street Tree list
- d. Parks Master Plan
- e. Stormwater Quality Management Plan
- f. Vision Metcalf Plan, & 10 Year Status Update
- g. KC Climate Action Plan
- h. Comprehensive Plan & Forward OP initiatives
- i. CIP & MIP anticipated projects

B. Identify Opportunities for Improving Current Policies and Procedures: Based on an analysis of existing policies and procedures followed by the City, the Consultant shall provide recommendations for aligning the policies listed in 5.2 A. with industry best practices, and in line with the concept of trees as critical infrastructure.

- a. Analysis & recommendations shall include establishing a coordinating procedure between the Forestry Division & other City Departments where operational overlap is common, such as Public Works & Current Planning. See the [Seattle, WA Table 2 plan linked here](#) as an example.

C. Assess Program Structure, Function, and Budget:

- a. Staffing and Resources: Consultant shall review current Forestry staffing and program resources and responsibilities, and shall identify areas for improvement consistent with urban forestry best practices.
- b. Work Conducted: Consultant shall review existing tree removal and replacement programs, backlog of work, emergency response, and levels of interdepartmental coordination; and shall provide recommendations to make work more efficient and cost effective.
 - i. Analysis should establish a clear baseline level of service that is to be

- considered satisfactory by residents, and propose strategies that the City may employ to successfully reach said level of service.
- c. **Budget Allocation:** Consultant shall review current budget allocations and level of service to determine any necessary programmatic funding increases to improve existing service levels. Recommended funding increases should be supported by detailed explanations of the benefits of increased funding in specific areas. See the [San Francisco, CA Goal 4 plan linked here](#) as an example.
 - D. **Assess Current Public Tree Resources:** Consultant shall review the following items and provide recommendations for improvement.
 - a. **Existing Inventory:** The City's existing tree inventory was gathered over 8 years and was completed in 2014. An update is needed but is not included with this project. Consultant shall assess tree species composition and age diversity of existing public trees based on the current inventory, and identify where existing inventory is incomplete. Additionally, the Consultant should provide recommendations for making inventorying trees more efficient such as management and tracking software.
 - b. **Ecosystem Services:** Consultant shall define the return on investment for the current tree canopy based on, but not limited to: stormwater diversion, carbon sequestration, urban cooling, capital value, and property value increases.
 - c. **Future Needs:** Consultant shall assess the fitness of existing species for future climate and growing conditions in the area, and make recommendations for improvement of species composition and diversity if necessary.
 - d. **Management Needs:** Consultant shall assess potential future needs for increases in tree canopy management including but not limited to additional staffing resources and optimized maintenance schedules.
 - e. **Threat Assessment:** Consultant shall identify primary threats to urban forest health Citywide and provide recommendations for threat mitigation.
 - E. **Urban Heat Assessment:** The Consultant shall conduct an urban heat assessment which considers the following criteria:
 - a. **Environmental and Infrastructure Criteria:** pollutant levels, storm drain density, redevelopment potential, impervious surfaces, and existing treatments.
 - b. **Equity Criteria:** park access, socioeconomic and demographic data, canopy coverage, health of canopy, heat island mitigation, and transportation pollution.
 - i. See the [Cambridge, MA plan](#) & [Seattle, WA plan](#) linked here as examples.
 - F. **Map of Priority Planting Areas:** Using information from the urban heat assessment and tree inventory data, Consultant shall develop a map of priority tree planting locations within the City.

5.3 Stakeholder Participation and Outreach

- A. Consultant shall develop and implement an outreach plan that identifies and engages stakeholders both within the organization and in the community in order to solicit input from, promote the project to, and garner support for the project. Stakeholders should

include any & all relevant groups with public, private, and non-profit representatives such as residents, City staff, City plural authority committees, utility companies, hospitals, school districts, industry professionals & companies, Kansas Forest Service, etc... See the [Austin, TX Introduction plan linked here](#) as an example.

- a. Engagement may also include creating a steering committee composed of members from these relevant stakeholder groups.
- B. Consultant shall develop and provide content for project web pages to be uploaded by City staff and hosted on the existing City website, which will be a resource for project documents. See [Austin, TX interactives](#) and [Boulder, CO storymap](#) as examples.
- C. Consultant shall collect input from stakeholders through both in person and virtual engagement opportunities. This can include any combination of public town halls, virtual interactive maps for public comment, pop up events at the Farmer's Market and other spaces, community presentations, or student ambassadors.
 - a. Public engagement should consider employing strategies that use local examples to determine what long-term end result the community is interested in achieving.
- D. Consultant shall develop media messaging materials and a media outreach strategy to inform the public about the planning process as well as opportunities for residents to be involved in supporting the health of the urban forest, including planting and properly managing trees on private property.

5.4 Urban Forest Master Plan Development

The Consultant team will prepare the Urban Forest Master Plan document with input from City Staff to encompass the determinations based on issues identified in the scope of work. The Consultant team will develop the organization, narrative text and graphic layout, and an accompanying web-based document.

- A. Identify Principles and Key Goals: Consultant shall work with the community, staff, volunteer groups, and Governing Body to develop principles and goals for the Urban Forest Master Plan. Major challenges for implementing the plan should also be identified. The Consultant team should plan to address equity in the outreach process, and in the prioritization of tree planting efforts across neighborhoods.
- B. Key Performance Indicators: Consultant shall recommend key performance indicators for tracking progress on Plan goals, such as tree planting numbers, net tree gain and canopy coverage, increased native biodiversity, number of volunteer hours, and others in alignment with the Overland Park Governing Body's Strategic Goals & with the Key Goals identified in 5.4 A. See the [Boulder, CO plan How Do We Get There linked here](#) as an example.
 - a. Performance Indicators should be structured in meaningful benchmarks to show significant progress every five years, and incremental progress annually.
- C. Tree Species and Management Recommendations:
 - a. The plan should identify recommended tree species appropriate for planting especially given anticipated changes in climate over the next 100 years. The plan

- should also recommend goals for percentage of species composition. See the [Des Moines, IA Recommended Species plan linked here](#) as an example.
- b. Provide the City and stakeholders with guidance and recommendations in regards to Urban Forestry best practices in the following areas at minimum:
 - i. Tree Care and Health
 - ii. Tree Monitoring
 - iii. Tree Protection, Removal and Mitigation for Public and Private Trees
 - iv. Integrating Urban Forestry into Land Use Planning
 - v. Natural Area Management & Forest Health Improvement
 - vi. Tree Shade and Heat Island Mitigation
 - vii. Public and Private Utility Conflict Mitigation
 - c. Identify creative strategies to minimize tree/utility conflicts, and reduce the need to remove trees due to these conflicts since trees are equally vital infrastructure.
 - d. Outline recommendations for best management practices for declining trees and removal of public trees.
 - e. Outline recommendations for preserving existing trees on private properties, including both gray & green development of commercial and new residential sites. Outline recommendations for, requirements for, & mitigation of, removal. Analysis & recommendations will not include existing residential properties.
 - f. Outline recommendations for creating and implementing maintenance programs for public trees, including but not limited to pruning cycles and watering plans.
 - g. Recommend supplemental tools, policies, and practices toward increasing tree planting programs and minimizing need for tree removal.
 - h. Recommend strategies for natural area management, such as invasive species removal and reforestation, especially with private landowners.
- D. Staffing Structure, Function, Budget, and Revenue for the Urban Forest:
- a. Based on input from outreach efforts, identify what aspects of the City's urban forest program pose the greatest challenges and opportunities. Provide suggestions for potential future investments that are most and least preferred.
 - b. Recommend optimal staffing (mix of in-house, contract, other) to improve service and efficiency that meets residents' acceptable level of satisfaction.
 - c. Determine a recommended budget for urban forest management to meet desired level of service and plan goals.
 - d. Identify potential sources of revenue or support to increase funding and resources available to the urban forest program. Include any Federal, State, or private funding opportunities that the City may qualify for.
 - e. Evaluate current tree maintenance contracts and make recommendations to align existing strategies with the overall goals of Urban Forest Master Plan and recommended programmatic needs.
 - f. Provide a comprehensive list of all applicable resources with the required competencies including staffing, tools and software.
 - g. Recommend urban forest management strategies that are consistent with the

City's goals, and describe their feasibility under both current and potentially expanded staffing levels.

- E. Challenges for Maintaining a Healthy Urban Forest: The Plan should identify challenges such as climate change, rising groundwater, drought, heat, aging trees, pests, competing uses, urban development, removal of invasive species and subsequent reforestation, and any additional challenges. The Plan should also suggest innovative ways for the City to prepare for and mitigate the impacts of the challenges identified.
- F. Ongoing Community Input on Forest Management: Tree planting and care cannot be a City endeavor alone - it will require participation and investment from the community. The City wants to build community leadership around stewardship of the urban forest. See the [Rancho Cordova, CA Chapter 5 plan linked here](#) as an example.

Recommendations may address:

- a. Actions regarding partnerships, outreach, programming, and community events. This can include best outreach/communication practices, demonstration projects, volunteer tree planting programs & community planting days in public areas, and Arbor Day festivals.
 - b. Ways to educate residents about the urban forest, how it supports the City's sustainability goals, and how residents can be involved in supporting the urban forest including information on residents' responsibilities with public trees.
 - c. Strategies to encourage and assist residents, businesses, and private property owners to plant and properly maintain trees on their own property to contribute to the development of the urban forest, including managing natural areas.
 - d. With limited staff capacity at the City, a tree planting and maintenance program will need to be supplemented and supported by a community network. Identify possible collaboration structures for staff, community volunteers, the City's Teen Council, higher-education students, community partners, and organizations to work together on tree planting & maintenance programs.
 - e. Possible partnerships with local businesses and nurseries to further support the community's engagement with the Plan.
 - f. Applicable community engagement resources, including staffing, tools and software.
- G. Changes to City Policies and Related Plans: Identify and recommend changes to current City policies, planning, and documents based on the assessment of current policies and plans.
 - H. Inventory: Provide recommendations on expanding the City's tree inventory to include all City trees. Recommendations should also be provided on best practices for making inventorying trees more efficient such as management and tracking software
 - I. Plan Evaluation and Updates: Provide recommendations for the ongoing evaluation of the effectiveness of the Plan and guidance for the timing and process of updating the Plan at regular intervals.

5.5 Final Plan Production

- A. Complete Draft of the Urban Forest Master Plan: Consultant shall submit to the City a complete draft of the Urban Forest Master Plan, which will be a comprehensive, organized document that addresses the elements listed above, and any other elements identified as priorities during community engagement for this project. The City will be provided with electronic copies of the Draft Urban Forest Master Plan in Word and PDF formats for review and feedback, which will be provided to the Consultant.
- B. Final Urban Forest Master Plan: Once the Draft Plan has been refined based on the City's feedback, a final version will be prepared and presented to the Overland Park City Council for adoption. Any changes directed by the City will be incorporated into the final plan. In addition to being substantively strong, the City expects that the final Urban Forest Master Plan will be an attractive and graphically rich document. It should be visually appealing and written in a clear, accessible manner. The City will also be provided with electronic copies of the final version (both Word and PDF formats), including tables in Excel format and maps in GIS file format (as applicable). See the [Cedar Rapids, IA plan linked here](#) as an example.

6) Proposal Submittal Requirements

Proposals should be submitted no later than 5:00 PM on May 31st, 2023 in the form of three (3) paper copies and one (1) digital PDF copy. The following information should be included:

1. **Cover Sheet**: The cover sheet shall list the name of the Consultant with names, email addresses, and phone numbers of persons who may be contacted to answer questions. Also, the cover sheet shall state who prepared the submittal and how they can be reached, including phone number and email address.
2. **Project Understanding**: Provide a brief narrative explaining the team's understanding of the project goals and scope, highlighting the perceived unique opportunities, challenges, and priorities of this project and how the team will address them.
3. **Project Team and Qualifications**: The Consultant qualification information shall include:
 - a. **Firm Information**: Provide information on firm size, years in business, locations, and primary services. Include the same information for any subconsultants on this project.
 - b. **Project Team**: Provide a project organizational chart showing the proposed team structure for this contract. Identify the project manager, key personnel, and their roles and responsibilities on the project. Consultants should include short bios addressing the knowledge and experience of the project team members relating to these roles and responsibilities. The roles of any subconsultants should also be clearly identified.
 - c. **Representative Projects**: Describe specific experience of both individuals and firms with projects of a similar type that demonstrate the knowledge and experience of the personnel proposed in the areas identified in the scope of work. Description of the client/community, project, location, common issues, and links to electronic work products should be included in this section. Additionally, please list any projects or work

previously performed by your firm for the City.

- d. **References:** Identify at least three references for similar projects completed by the personnel proposed for this project. Include the client, contact person, mailing address, email address, and telephone number for each reference.
- e. **Resume:** Provide professional resumes for all personnel proposed to work on this project in an appendix.
4. **Project Approach:** Describe the team’s approach to the project’s scope of work. Include information on methods, meetings, deliverables, and other project related information for the tasks. Include any project approaches or ideas not included in the scope of work that would be applied to this project to enhance the quality of the team’s services. The Consultant is encouraged to offer additional insights and may propose modifications to the scope of work identified above.
5. **Project Management:** Describe the team’s project management approach including how the project would be conducted, coordination across disciplines and managing the work of subconsultants, if applicable. Describe the methods and timeline of communication the team will use with Overland Park staff and other parties. Describe the team’s expectations and requirements of Overland Park and its partners in order to effectively perform the services outlined in the RFP.
6. **Schedule:** Provide a project schedule identifying milestones and completion dates.

All responses are due **May 31st, 2023 by 5:00 PM.**

7) Selection Process

The selection process will be managed by the staff contact. After the submission deadline has passed, proposals will be reviewed by the designated selection committee; if necessary, a short list of Consultants for consideration will be generated. Consultants on the short list may be asked to give a presentation and participate in an interview. The City will then solicit feedback from the interview and selection panel and evaluate each Consultant using a scoring system. The scoring criteria and weighting are as follows:

1. **Competence (25 Points):** Substantive representations regarding the team’s experience and competence to accomplish the required work as set forth in this RFP.
2. **Approach (25 Points):** The team’s approach to the project and basic scope of services.
3. **Experience (25 Points):** The related project experience of the firm and/or individuals who will be assigned to the project, including completion of similar projects in other jurisdictions.
4. **Local Knowledge (15 Points):** An understanding of Overland Park and the Kansas City Metropolitan Area.
5. **Completeness (10 Points):** The preparation of a proposal consistent with this RFP that satisfies the proposal submittal requirements outlined in Section 6.

The project oversight committee and staff contact will be responsible for proposal evaluation. Selection of a

Consultant will occur no later than **July 1st, 2023**. The City reserves the right to proceed with this project differently than described in this RFP.

If a fee or contract cannot be successfully negotiated with the first selected Consultant, then negotiations with that Consultant will be terminated and the City will ask the Consultant with the next highest score to enter into negotiations. This process will continue until a fee and contract is successfully negotiated or said process is suspended by Overland Park.

The City reserves the right to follow any of the below listed courses of action if an acceptable contract cannot be negotiated:

- To reject any and all proposals;
- To consider alternatives;
- To waive irregularities;
- To re-solicit proposals;
- To accept any proposals deemed most advantageous to Overland Park;
- To obtain information concerning any and all Consultants from any source;
- To request additional information and/or clarification from any and all proposers to this RFP;
- To approve any substitute personnel or terminate services at Overland Parks' sole discretion if the selected Consultant undergoes a change of key personnel; and
- To seek new submissions when such a procedure is reasonable & in the best interests of Overland Park.

Overland Park operates its programs and services without regard to race, sex, religion, age, national origin, or disability, in accordance with Title VI of the Civil Rights Act of 1964 and the Americans with Disabilities Act of 1990, as amended. The successful Consultant shall provide written assurance that no person shall be denied employment of fair treatment, or in any way discriminated against, on the basis of race, sex, religion, age, national origin, or disability. In addition, since federal funds will be used to finance this project, the successful Consultant shall comply with all civil rights and federal contracting requirements applicable to transportation related projects. For more information, refer to the attached Federally Required Contract Terms.

The City is not liable for any cost incurred by any person or firm responding to this RFP or for any other cost incurred prior to the negotiation of the contract and the issuance of a Notice to Proceed.

The submission of a proposal shall be prima facie evidence that the Consultant has full knowledge of the scope, nature, quantity, and quality of work to be performed.

After the selection process, City staff shall negotiate a fee and contract with the successful firm. Overland Park reserves the right to delete elements or expand the scope of the contract based on the negotiated fees at the time of contract letting.

Consultants submitting proposals are advised to include any information that is relevant to this project given the aforementioned criteria.

8) Schedule

Each proposal received will be reviewed in accordance with the criteria stated above in section “(7) Selection Process,” one or more Respondents (finalists) will be selected for further consideration. Those selected as finalists may be interviewed and allowed to present detailed information regarding the submitted proposal(s). Upon completion of interviews the Consultant will be selected.

Upon selection of the successful Consultant, City staff will negotiate a fee with the consultant and City Legal staff will then develop an Agreement with the Consultant and will present the Agreement to the Overland Park City Council for approval. An award is made on execution of the written Agreement by all parties. Only the City is authorized to issue news releases relating to this RFP, its evaluation, award and/or performance of the Agreement. In the event the City and the Consultant cannot agree on a fee and/or terms of an Agreement, then Agreement negotiations with the next most appropriate finalist will be made.

The following schedule is tentative and the City reserves the right to change the proposed schedule at any time.

05-01-2023	RFP Posted on City Website
05-18-2023	Last Day for Inquiries/Questions about RFP
05-23-2023	All Responses to Inquiries Posted on City Website
05-31-2023	RFP Submissions Due
06-05-2023	Week of Consultant Interviews
June 2023	Authorization requested/provided.
July 2023	Contract with the Selected Consultant is Executed

9) General Information

Minimum Effective Period of Proposal

All proposals are required to remain in effect for at least 120 days from the date submitted to Overland Park for review. This requirement should be taken into account during budget preparations.

Public Information

All information, documentation, and other materials submitted in response to this solicitation are considered non-confidential and/or non-proprietary and are subject to public disclosure in accordance with the Kansas Open Records Act.

Lobbying Restriction

Consultant acknowledges and accepts that from the Date of Issuance of the RFP until a final decision has been

made by the City, it will not take any action, make any effort, or support or engage others on its behalf to take actions or efforts with attempt to influence the decision making process for this RFP in favor of the Consultant. This includes direct contact with the City Council, City Manager, City staff, and others who may be engaged in the selection process, except point of contact Bailey Patterson. Additionally, the Consultant acknowledges and accepts that it will not attempt to use public communication such as the news media, social media, etc. as a means of attempting to influence the RFP evaluation or decision making process. Any Consultant violating any of the aforementioned conditions is subject to immediate disqualification from consideration.

Acceptance of Evaluation Methodology

By submitting a proposal, Consultant accepts the evaluation process and acknowledges that the determination of the “most qualified” firm(s) will require subjective judgements by Overland Park.

Amendments to this RFP

Should it become necessary to amend this RFP for any reason, Overland Park reserves the right to re-issue this RFP as amended and to provide reasonable notification to parties of interest.

Public Records

All proposals submitted in response to this RFP become property of the City of Overland Park and as such, they will be public records in accordance with the Kansas Open Records Act.

Debarment

By submitting a proposal, Consultant certifies that it is not currently debarred from submitting proposals for contracts issued by any political subdivision or agency in the State of Kansas or the Federal Government.

American Rescue Plan Act required contractual provisions

This project is receiving American Rescue Plan Act (ARPA) funds. By submitting a response to this RFP, respondent is agreeing to comply with the applicable ARPA contractual requirements set forth in Attachment No. 1 to this RFP.

Form Agreement

A form agreement of the City is attached to this RFP as **Exhibit A**. The successful respondent will be asked to enter into an agreement with the City with the terms and in the form provided.

10) Exceptions

Please list **ALL** exceptions your company makes to the requirements specified in this RFP in this Section. Exceptions noted in the body of your proposal **MUST** be repeated in this Section. Include any features that will not operate as specified, in addition to other exceptions you may have. Please repeat **ALL** legal exceptions here as well. ***Note: Exceptions stated herein will not automatically become part of any resulting agreement, unless specifically agreed to by City and specifically set forth in the resulting Agreement. City reserves the right to reject any and all proposed exceptions.**

11) Respondent Information Form

(This form to be included with proposal)

Respondent Name:	
Contact Name:	
Title:	
Street Address:	
City, State, Zip:	
Phone:	
Email:	

I have reviewed all of the general information and specifications in the RFP, have contacted the City regarding any needed clarifications, and submit this proposal with a full understanding of the specifications.

If selected by the City as the Consultant, I agree to abide by the terms and conditions specified in this RFP.

Company Officer Name:	
Title:	
Signature:	
Date:	
Phone:	

BYRD ANTI-LOBBYING AMENDMENT CERTIFICATION

Regarding the contract for the Overland Park Urban Forest Master Plan (the "Contract"), The undersigned, [INSERT CONTRACTOR NAME] ("Contractor") certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Contract the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

Please check the appropriate box:

No non-federal funds have been used or are planned to be used for lobbying in connection with this application/award/contract.

or

Attached is Standard Form LLL, "Disclosure of Lobbying Activities," which describes the use (past or planned) of non-federal funds for lobbying in connection with this application/award/contract.

Executed this _____ day of _____, 20_____

By: _____

(Type or Print Name) (Title of Executing Official)

(Signature of Executing Official) (Name of Organization/Applicant)

ATTACHMENT 1

FEDERAL PROVISIONS APPLICABLE

TO THE AMERICAN RESCUE PLAN ACT FUNDS

In accordance with laws, regulations, and provisions related to the use of American Rescue Plan Act Funds (“ARPA Funds”), Contractor shall comply with the following:

A. Compliance with Record Retention, Audit, and Other Requirements

1. Contractor hereby certifies that its use of ARPA Funds does not duplicate other covered assistance that has been received or is reasonably expected to be received, and agrees to repay any assistance later received for the same purpose as the ARPA Funds.
2. Contractor hereby agrees that, upon request by the City, Contractor will document compliance with any terms and conditions set forth by the Department of Treasury related to use of ARPA Funds.
3. Contractor hereby agrees that, upon request by the City, Contractor shall report detailed costs and provide supporting documentation to confirm eligibility for ARPA Funds.
4. Contractor hereby agrees to cooperate with any local, state, or federal review, audit, or investigation to include, but not limited to: 1) the production of documents and making individuals available for interviews during the life of the Agreement, 2) allowing access by local, state, or federal agencies to audit the Contractor’s books and records related to ARPA Funding during the life of the Agreement.
5. Contractor hereby agrees to maintain records and financial documents related to this Agreement for five years after all ARPA Funds have been expended.

B. Assurances of Compliance with Title VI of the Civil Rights Act of 1964

1. Contractor ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subsection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
2. Contractor acknowledges that Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency,” seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Contractor understands that denying a person access to its programs, services, and activities because of LEP is a

form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Contractor shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Contractor understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Contractor's programs, services, and activities.

3. Contractor agrees to consider the need for language services for LEP persons when Contractor develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.
4. Contractor acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Contractor and Contractor's successors, transferees, and assignees for the period in which such assistance is provided.
5. Contractor acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every contract or agreement subject to Title VI and its regulations between the Recipient and the Recipient's sub-grantees, contractors, subcontractors, successors, transferees, and assignees:

The sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.

C. Requirements of 2 C.F.R. Part 200.

Contractor shall comply with all applicable provisions of 2 C.F.R. Part 200, including but not limited to:

1. **For Construction Contracts:** Equal Employment Opportunity. Contractor agrees as follows:
 1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor

will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
4. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for

further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

8. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel,

terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

2. **For Construction Contracts in excess of \$2,000:**
 - Copeland “Anti-Kickback” Act, Contractor and subcontractors shall comply with the Copeland “Anti-Kickback” Act ([40 U.S.C. 3145](#)), as supplemented by Department of Labor regulations (29 CFR part 3). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
3. **For Contracts in excess of \$100,000 that involve employment of mechanics or laborers: Contract Work Hours and Safety Standards Act** (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
4. **Rights to Inventions Made Under a Contract or Agreement**. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
5. **For Contracts in excess of \$150,000: Clean Air Act** (42 U.S.C. 7401-7671q.) and the **Federal Water Pollution Control Act** (33 U.S.C. 1251-1387), Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act ([42 U.S.C. 7401-7671g](#)) and the Federal

Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

6. **Debarment and Suspension** (Executive Orders 12549 and 12689): Contractor hereby certifies they are not debarred, suspended or otherwise excluded from holding contracts involving federal funds, and is not listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR part 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

7. **Byrd Anti-Lobbying Amendment** (31 U.S.C. 1352). **Certification** - Contractor hereby certifies that:
 - (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

 - (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions; and

 - (3) **It will require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subcontractors shall certify and disclose accordingly.**

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the

required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

8. **Prohibition on certain telecommunications and video surveillance services or equipment:** Contractor is prohibited from obligating or expending loan or grant funds to: (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). (ii) Telecommunications or video surveillance services provided by such entities or using such equipment. (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

D. Other Applicable Federal Statutes, Laws, and Regulations Prohibiting Discrimination

1. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
2. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
3. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury’s implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance;
4. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

E. Other Applicable Federal Statutes, Laws, Regulations and Provisions

1. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18,

1997), Contractor is encouraged to adopt and enforce on-the job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

2. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Contractor is encouraged to adopt and enforce policies that ban text messaging while driving, and Contractor is encouraged to establish workplace safety policies to decrease accidents caused by distracted drivers.
3. Publications. Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Recipient] by the U.S. Department of the Treasury."

EXHIBIT A

FORM AGREEMENT

CONSULTANT AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 2023, by and between the City of Overland Park, Kansas, hereinafter referred to as “City,” and _____, hereinafter referred to as “Consultant” or “Contractor”.

SECTION I - SCOPE OF SERVICES

Consultant shall provide consulting services to the City in support of a project described as follows: **MAPLE HILLS PARK IMPROVEMENT 2021**, (hereinafter, the “Project”).

Consultant will provide services as outlined in the scope of work set forth in **Exhibit A**, which is attached hereto and incorporated by reference as if fully set forth herein, all to the City’s full satisfaction (hereinafter, the “Services”).

SECTION II – COMPENSATION

The City agrees to pay Consultant an amount not to exceed _____ (\$) including reimbursable expenses for the Services. 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**, attached hereto and incorporated by reference as if fully set forth herein. All work shall be completed on or before _____. If any additional services beyond those outlined in **Exhibit A** are deemed to be necessary, the compensation for said services shall be outlined in a supplemental agreement as required below and shall be billed at the hourly rates set forth in **Exhibit B**.

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 III – OWNERSHIP OF REPORT & DOCUMENTS

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.

All documents and information prepared by Consultant in contemplation of, or in the course of, or as a result

of this Agreement or work on the project (hereinafter “City Documents and Information”), shall be promptly furnished to the City upon completion of the services set forth herein or upon termination of this Agreement.

All City Documents and Information shall be the exclusive property of the City and shall be deemed to be “Works for Hire.” Consultant hereby assigns all right, title and interest in and to the City Documents and Information, including but not limited to, all copyright and patent rights in and to the City documents and information. Neither party grants to the other any express or implied licenses under any patents, copyrights, trademarks, or other intellectual property rights, except to the extent necessary to complete its obligations to the other under this Agreement. Consultant shall require any of its sub-contractors preparing City Documents and Information under this Agreement to assign all rights, title and interest in such City Documents and Information to the City.

SECTION IV – 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 executed by both City and Consultant. If notice of any change in Services affecting the general scope 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 V – TERMINATION

The City may terminate this Agreement at any time at its convenience by giving the Consultant ten (10) days written notice. Any termination shall not relieve the City of its obligations to pay Consultant for any related products or services satisfactorily performed through the effective date of termination. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.

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 VI - 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 Consultant 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 VII – DISPUTE RESOLUTION

City and Consultant agree that disputes relative to the services performed should first be addressed by good faith 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 services as per this Agreement as if no dispute existed; and provided further that no dispute will be submitted to arbitration without the express written consent of both City and Consultant.

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, 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 subconsultants/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 of Consultant 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 X - INSURANCE REQUIREMENTS

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 thereof on forms approved by the City and shall name the City as an additional insured on the commercial general liability and automobile liability. The Consultant shall be notify the City within thirty (30) days of its receipt of written notice from an applicable insurer that a policy required hereunder will be canceled or altered so as to not be in compliance with the insurance requirements set forth herein. Any claims-made policy forms must be maintained for a minimum of 2-years after the end of this Agreement.

All insurance procured for this Agreement by the Consultant, including additional insured designations, shall be primary and non-contributory.

A. 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 conditions:

NAME CITY OF OVERLAND PARK AS "ADDITIONAL INSURED"

B. Automobile Liability. Policy shall protect 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 in the amount of no less than Five Hundred Thousand Dollars (\$500,000) Each Accident, Combined Single Limits, Bodily Injury, and Property Damage.

Policy MUST include the following conditions:

NAME CITY OF OVERLAND PARK AS “ADDITIONAL INSURED”

Note: Consultant expressly agrees to only utilize vehicles properly insured under the requirements of this Agreement while performing the services set forth herein, and to ensure that its subcontractors comply with the same.

- C. Worker’s Compensation. This insurance shall protect Consultant against all claims under applicable state workers’ compensation laws. 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:

<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. 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 Consultant.

- F. Subcontractor’s Insurance. If a part of the Agreement is to be sublet, the Consultant shall either:
1. Cover all subcontractors in its insurance policies if allowed to by Consultant’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 types and in the minimum amounts required to be carried by Consultant designated herein.

Whichever option is chosen, Consultant shall indemnify and hold harmless the City as to any and all damages, claims or losses, including attorney’s fees, arising out of the acts or omissions of its subcontractors.

SECTION XI – NON-DISCRIMINATION AND OTHER LAWS

- A. During the performance of this Agreement, 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, Consultant shall include the phrase, “equal opportunity employer,” or a similar phrase to be approved by the Kansas Human Rights Commission (the “Commission”);
 3. If Consultant fails to comply with the manner in which Consultant reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, 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 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; and
 5. Consultant 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.
 6. The provisions of this section shall not apply if:
 - a. Consultant employs fewer than four employees during the term of such contract; or
 - b. If Consultant’s contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.
- B. Consultant further agrees that Consultant 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.
- C. Contractor shall observe the provisions of Chapter 8 of the Overland Park Municipal Code, and

shall not discriminate against any person in the performance of work under the present Agreement because of race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, genetic information, marital status, familial status, or military status.

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 lawsuit arising between the parties concerning this Agreement shall be brought before 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. Consultant warrants that it has not employed or retained any person, firm, or corporation, other than a bona fide employee working solely for Consultant, 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 Consultant. Consultant is an independent Consultant, and as such, neither Consultant nor its personnel are agents or employees of the City. Consultant is responsible for payment of any and all federal, state and local taxes.
- E. Subcontractors. 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. City shall have the right of approval thereof. The services performed by any subcontractor hired by Consultant will not result in any additional cost to City. Consultant agrees to the insurance requirements concerning the use of subcontractors as specified herein.
- 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.

- H. Order of Precedence. If there is any conflict between the terms of this Agreement, excluding exhibits, and anything contained in the exhibits referenced herein or attached hereto, the terms and provisions of this Agreement, excluding exhibits, shall control.

(The remainder of this page intentionally left blank)

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 and year first above written.

CITY OF OVERLAND PARK, KANSAS

[CONSULTANT]

Printed Name: _____



CITY OF OVERLAND PARK, KANSAS
Request For Proposals
for the creation of an
Urban Forest Master Plan

Title: _____

ATTEST:

Elizabeth Kelley
City Clerk

APPROVED AS TO FORM:

Trevor L. Stiles
Sr. Assistant City Attorney

ACKNOWLEDGMENT

STATE OF _____)

) ss.

COUNTY OF _____)

BE IT REMEMBERED, That on this _____ day of _____, 20__ before me, the undersigned, a Notary Public in and for the County and State aforesaid, came [Name]_____

[Title]_____ of [Company]_____ (the “Company”), a corporation/company/partnership duly formed/organized/incorporated and existing under and by virtue of the laws of [State]_____ who is personally known to me to be the same person who executed as such officer the foregoing instrument on behalf of the said Company, and such person duly acknowledged the execution of the same to be the act and deed of the Company.

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

Notary Public

My Commission Expires:

(SEAL)