

City of Overland Park

Unified Development Ordinance Request for Proposals

Introduction

The City of Overland Park, KS (the City) seeks consulting services to review and update the City's Unified Development Ordinance (the UDO) to allow implementation of the City's recently updated comprehensive plan (FrameworkOP). The purpose of the update (the Project) is to align the UDO and the City's development standards with the goals outlined in FrameworkOP and to facilitate development of the character types identified for the community through a mix of contextual uses. The resulting updated UDO should facilitate efficient development with predictable and flexible standards that support a high quality of life, improved options for mobility, environmental sustainability, a range of housing options, and economic growth.

The City's existing UDO and the related Site Design Standards (SDS), Architectural Design Standards (ADS), Mixed Use Design Standards (MUDS) and Downtown Form District (DFD) are all available on-line for review at: <https://online.encodeplus.com/regs/overlandpark-ks/index.aspx>.

Community Overview and Background

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

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

This vision has been carried out in the development of Overland Park. In its more than 60-year history as an incorporated city, Overland Park has grown to become the second-largest city in both the Kansas City Metro area and the state of Kansas. It is a dynamic community filled with great businesses. Its education systems are nationally ranked. The community has access to an excellent healthcare system. The transportation system provides great access and facilitates

commerce. Diverse neighborhoods cater to many needs and are filled with individuals proud of their city. Residents and visitors alike are comfortable that they will have a safe experience. Overland Park is recognized not only locally but nationwide as a city that meets residents' needs, reflected by a variety of recognized top rankings put out by respected media outlets. Once again, the leaders of Overland Park have recognized that perhaps a moment of community reflection is necessary to consider the next period of growth and development of the City.

Project Description

The City is expected to adopt FrameworkOP in May 2024. FrameworkOP is a complete review and update to the City's Comprehensive Plan which was created approximately 40 years ago. A prominent recommendation in FrameworkOP was to update the City's Unified Development Ordinance (UDO) to align with the policies and actions contained in the updated plan.

The last full update of the City's UDO was in 1990. Since that time, numerous revisions and updates have occurred. In 2012, City staff initiated an audit and focus group discussions to identify inconsistencies and areas of concern within the existing code. (Copies of the City's audit will be made available to the selected consultant.) The staff engaged with a consultant who provided an organizational code outline and technical and legal advice relating to an update of the City's sign code, which was completed in 2020.

The staff also engaged with EnCode, which resulted in the City's full municipal code, including the UDO and related design guidelines, being moved to the EnCode online platform in 2015. The City is also responsible for enforcing two different Johnson County zoning regulations from annexations in 1985, 2002, and 2008, multiple design standards, and a form-based code.

It is anticipated the Project will involve the development of a hybrid of existing or modified regulations and new regulations, including new zoning districts, performance standards, and design standards. Some code sections have been recently updated and major revisions to those sections are not expected. These sections include: 18.440 - Signs; 18.430 - Parking and Loading; 18.365 - Stream Corridor; 18.360 - Floodplain Management; and 18.395 - Communication Facilities for Wireless Services. Additionally, the following updates are currently in process: Parking Lot Lighting; Permit-Ready Small-Scale Single-family Plans and supporting UDO changes; and an overlay for the College Boulevard and Metcalf Avenue area.

Because of the complex nature of the zoning and the development review process, the Project's code update must incorporate community engagement and a cooperative partnership with City staff to ensure the Project is representative of the Overland Park community, the goals of FrameworkOP, and the City's established development review process.

The specific goals of the Project are: (1) analyze the existing UDO provisions to assess alignment with the Character Area recommendations from FrameworkOP; (2) create a matrix of recommended changes for consideration; (3) coordinate development of the code update with City staff, relevant steering or advisory committees, and interested parties; (4) develop a user-friendly code with hyperlinks and provisions with supporting graphics that are easy to understand, administer, and interpret; (5) provide better consistency of terminology throughout the UDO; (6) provide for efficient code administration with the delivery of predictable, high quality outcomes; and (7) allow for responsiveness to market conditions and community needs and expectations.

Scope

The City desires that the Project be completed and implemented in phases as outlined below. The final timing and detailed content of the phases are subject to final negotiation with the selected consultant. The contract with the selected consultant is expected to include an initial agreement for the work identified in Phase 1 with subsequent contract amendments or task orders for Phases 2 and 3 based on the original fee structure.

Phase 1:

1. Audit of the existing UDO, including and the related design standards adopted by reference: Section 18.100.041 - Architectural Design Standards; Section 18.100.043 - Site Design Standards; Section 18.100.048 - Mixed Use Design Standards to develop a roadmap for updating of the code to include:
 - a. Targeted focus group discussions to understand current use and challenges of the existing code and related design standards;
 - b. Recommended code outline and organization;
 - c. Description of new or consolidated zoning districts and development standards (including review of properties with carry-over Johnson County zoning designations);
 - d. Suggested modifications to existing zoning districts and the development and design standards;
 - e. Identification of opportunities to use innovative zoning approaches (i.e. form-based, overlay, performance, floating districts), including benefits and drawbacks of identified techniques and specific character areas or geographic locations where their application could be considered;
 - f. Market analysis of the feasibility of recommended mixed-use districts;
 - g. Opportunities to utilize hyperlinks, graphics or tables to streamline and better communicate code provisions and performance standards;
 - h. Consolidation and cross-referencing to eliminate repeat language and minimize the need to reference multiple chapters or documents to understand development requirements, to include options for incorporating the ADS, SDS and MUDS into the UDO;

- i. Identification of options to further streamline the application and development review processes while maintaining predictable outcomes and satisfying the legal requirements of Kansas Statute;
 - j. Review of staff's comments, (e.g., 2012 UDO audit);
 - k. Recommended prioritization of anticipated changes to support the implementation of FrameworkOP; and
 - l. Other recommendations that further the specific goals of the RFP.
2. Development of consistent code terminology or vocabulary and a style guide to establish code organization, formatting, and common language for use with this and future code updates.
3. Development of guidelines or a policy to assist with evaluating and facilitating incremental change from existing suburban commercial and office development to the ultimate character type. *(For inspiration, see City of Des Moines: [Chapter 135, Article 5](#))*
4. Draft amendments for adoption of the following UDO provisions:
 - a. Section 18.100.049, which incorporates by reference the Downtown Form-Based Code;
 - i. Incorporate into the UDO instead of being a stand-alone document in order to bring better alignment of this code with the City's development processes and standards;
 - ii. Incorporate relevant recommendations from FrameworkOP;
 - iii. Simplify the design requirements, and streamline project review.
 - b. Section 18.110 - Rules of Interpretations and Definitions;
 - c. Section 18.380 - Special Events and related sections of the Municipal Code;
 - d. Section 18.410 - Nonconforming Situations and Vested Rights.

Phase 2:

1. Completion of this phase of the Project is expected to be achieved in coordination with the City. Some updates may be led by the consultant team with review by the City, while the City may lead other updates with the consultant team acting as an advisor.
 - a. Review the remaining recommendations from Phase 1;
 - b. Determine priority updates; and
 - c. Schedule and assign responsibility for updating the identified code sections.
2. Evaluation of potential zoning map amendments:
 - a. Necessary to implement the update to the UDO; and
 - b. Impacts of rezoning designated properties, including properties with carryover Johnson County zoning designations, to include the creation of non-conformities and status of approved development plans.

3. Creation of user-friendly guidebook(s) of the development process for use by staff, applicants, officials and the public.
4. Training and support for staff to effectively implement the new code.

Phase 3:

The City may request to enter into an on-call contract with the consultant for ongoing advisory or development assistance of additional ordinance updates and FrameworkOP implementation.

Project Schedule

The City anticipates updates from the Project to occur in 2025 and 2026. The Project will begin once contract negotiations are finalized. The code audit in Phase 1 is expected to be completed within 6 months of project kick-off, with the remaining components completed by the end of 2025. Phase 2 is expected to be completed by the end of 2026. Phase 3 timing will be determined at the appropriate juncture. Portions of each phase may be completed on a different schedule as approved by the City in coordination with the consultant. Project completion for each phase will be defined as part of the negotiations for each phase.

Request For Proposals Release Date — April 15, 2024

Deadline for Written Questions — May 24, 2024

Proposal Deadline — June 14, 2024, 2:00 PM CST

Consultant Presentations and Interviews — Mid-July - Early August 2024

City Council Approval of Consultant — October 2024

Project Commences — December 2024

Project Concludes — December 2026

*Dates above may be subject to change.

Proposal Content and Format

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

- A. Title page: Provide the subject of the Project; the firm's name, address, and telephone number; City's contact name, address, telephone number, and email.
- B. Cover letter: Provide a statement regarding the firm's interest in and understanding of the Project. The letter should include a statement that the firm has read and

understands the RFP and agrees to all the conditions, requirements, and terms stated in the RFP.

- C. Statement of qualifications: Provide information on the firm's size, location, available resources, and a brief discussion on past experiences related to updating zoning regulation, Unified Development Ordinances, and design guidelines (including the record of accomplishing similar work in the required time, and, if applicable, the quality of any work previously performed for the City of Overland Park). Submitted materials should demonstrate the firm's qualifications (including the qualifications of any sub-consultants or associates) and those of the particular staff to be assigned to the Project. Firms should demonstrate experience as the lead firm on at least three (3) similar projects, preferably within the past five (5) years.
- D. Project team: Identify the project team (including sub-consultants and associates) and provide a statement of qualifications for each individual, including information such as education, professional registrations, area of expertise, and years of service in their respective fields.
- E. Identify the key individuals, companies, and organizational structure of the team.
 - a. Identify roles and responsibilities of all proposal team members and their backup as well as their experience in the specifically assigned functions.
 - b. List the proposer's experience with other successful plans; include roles and responsibilities for these projects' team members, in addition to providing contact information for references for these other plans.
- F. Understanding of the City of Overland Park: Include a summary of the firm's understanding of the Project as described in this RFP as it specifically relates to the City and the unique issues facing the City. Identify the City's background and issues that will affect the firm's methodology and approach to the Project.
- G. Methodology and approach: Provide a description of the method and approach your firm intends to utilize in order to complete the Project. Discuss and clearly explain the methodology proposed to satisfactorily achieve the required services for the Project. The consulting firm must document a clear understanding of the RFP's entire scope of work and Project intent, including data requirements, public participation process, all aspects of technical analysis, projections, advanced technology, and software. Firms should provide suggested innovative approaches the City should consider when implementing this Project.
- H. Project timeline for Phase 1: Provide a proposed schedule from the start to the completion of the Project. The schedule should include phasing, key tasks, milestones,

and approximate completion dates. Timelines for additional Phases will be agreed upon prior to initiation of those phases.

- I. Work samples: List and provide in electronic format only (web link or pdf) at least three (3) examples of Unified Development Ordinance or Zoning Code updates completed within the last five (5) years in which the consulting firm was the project's lead agency.
- J. References: Provide a list of municipal clients for which the firm was the lead agency in providing services similar to the ones described in this RFP. Provide contact information (name, position, address, telephone number, and email) of persons that the City may contact to verify work completed and performance.
- K. Verify firm capacity: Provide a statement of the firm's ability to begin and complete the Project within the timeframe identified in this RFP and in the manner described in the RFP response.

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

The submission should be in electronic format. Acceptable formats are PDF (preferred) or Google Docs. The submission can be delivered via flash drive to the City Clerk, Overland Park City Hall, at 8500 Santa Fe Drive, Overland Park, KS 66212 Attn: Leslie Karr or e-mailed to cityclerk@opkansas.org by 2:00 P.M. CST, Friday, June 14, 2024.

Interpretations, Modifications and Addenda

All questions regarding the RFP should be directed in writing to Leslie Karr, Planning Director at Leslie.Karr@opkansas.org. Questions clarifying the process or about the Project will be shared so that all interested parties receive the same information.

Proposal Evaluation and Selection Process

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

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

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

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

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

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

Contract Negotiation

The selected firm will be requested to negotiate a fee for the Project. If, after reasonable effort, a contract cannot be negotiated, the negotiations with the selected firm shall be terminated and negotiations may be started with the next firm recommended.

Resources

The following resources may provide additional context for interested consultants:

City Website: <https://www.opkansas.org/>

Framework OP: City of Overland Park Comprehensive Plan and related maps and documents: <https://frameworkop.org/>

Videos of the Public Hearings adopting FrameworkOP:
<https://opkansas.civicweb.net/Portal/MeetingTypeList.aspx>

Planning Commission - April 8, 2024; City Council - Scheduled - May 6, 2024

Unified Development Ordinance, Design Standards and Document Library, including County regulations for annexed areas: <https://online.encodeplus.com/regs/overlandpark-ks/index.aspx>

Developer Resources:
<https://www.opkansas.org/city-services/planning-development/submitting-a-development-application/>

Variety of Interactive and Static Maps, including zoning and development:
<https://www.opkansas.org/about-overland-park/maps/>

City of Overland Park Annual Development Report:
<https://www.opkansas.org/city-services/planning-development/long-range-planning/annual-development-report/>

City of Overland Park Special Study Area Plans:
<https://www.opkansas.org/city-services/planning-development/long-range-planning/special-area-studies/>

Overland Park Small Scale Development Study:
<https://www.opkansas.org/city-services/planning-development/long-range-planning/special-area-studies/small-scale-development/>

PlaybookOP - Parks and Recreation Long Range Plan - underway:
<https://www.opkansas.org/recreation-fun/parks-trails/parks-master-plan/>

Urban Forest Plan - underway:
<https://www.opkansas.org/city-services/trees-environment/forestry/urban-forest-plan/>

Sign Code update:

<https://www.opkansas.org/city-services/permits-licenses-inspections-directory/signs-sign-placement/>

Infrastructure Advisory Group:

<https://www.opkansas.org/city-government/boards-commissions/infrastructure-advisory-group/>

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

CONSULTANT AGREEMENT

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

WITNESSETH:

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

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

WHEREAS, City wishes to engage Consultant to provide consulting services for the Project; and

WHEREAS, the City and the Consultant desire to enter into an agreement setting forth the terms and conditions of their understanding as regards the services.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. SCOPE OF SERVICES

The Consultant agrees to provide consulting services as set forth in **Exhibit A** attached hereto and incorporated herein by reference [**TO BE NEGOTIATED**], (hereinafter the "Services").

SECTION 2. SUPPLEMENTAL AGREEMENTS

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

SECTION 3. STATUS

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

SECTION 4. COMPENSATION

- A. Total Fee: City agrees to pay Consultant an amount not to exceed dollars (\$ _____), including reimbursable expenses. The fee is based on the performance of the Services, and shall be billed using rates and reimbursable expenses as set forth in **Exhibit B [TO BE NEGOTIATED]**. All work shall be completed on or before _____. If any additional services beyond the Services outlined in Exhibit A are deemed to be necessary, the compensation for said services shall be outlined in a supplemental agreement as required above and shall be billed at the hourly rates set forth in Exhibit B.
- B. Manner of Payment: Invoices for fees will be submitted every four (4) weeks and are to be paid within thirty (30) days of receipt of undisputed invoice.

SECTION 5. TERMINATION

Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City to terminate this Agreement in whole or in part, with or without cause, subject to written notice to Consultant. If the City terminates the Agreement prior to completion of Services, City shall compensate Consultant for all Services satisfactorily completed to date of its receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.

SECTION 6. SUBCONTRACTING OF SERVICES

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

SECTION 7. OWNERSHIP OF COMPREHENSIVE PLAN

The final Comprehensive Plan and all documents prepared in connection with the Services shall be the property of the City upon completion of the Services. Consultant will have no responsibility to update its report for events and circumstances occurring after the report is accepted as final and complete by the City.

SECTION 8. INSURANCE

- A. General: Consultant shall secure and maintain, throughout the duration of this Agreement, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Consultant shall provide certificates of insurance and renewals on City provided forms or on forms approved by the City. The City shall be notified by receipt of written notice from the insurer at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.
- B. Notice of Claim Reduction of Policy Limits: Consultant, upon receipt of notice of any claim in connection with the Agreement, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability.

Consultant shall monitor and promptly notify the City of any reduction in limits of protection afforded under any policy listed in the certificate (or otherwise required by the

Agreement) if the Consultant's limits of protection shall have been impaired or reduced to such extent that the limits fall below the minimum amounts required herein. Consultant shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

C. Commercial General Liability

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

Policy must include the following:

Name City of Overland Park as "Additional Insured".

D. Automobile Liability: Policy shall protect the Consultant against claims for bodily injury and/or property damage arising from the ownership or use of all owned, hired and/or non-owned vehicles and must include protection for either:

Limits (Same as Commercial General Liability) -
Combined Single Limits, Bodily Injury, and Property Damage - Each Accident

Policy must include the following:

Name City of Overland Park as "Additional Insured".

E. Worker's Compensation and Employer's Liability: This insurance shall protect the Consultant against all claims under applicable state workers' compensation laws. The Consultant shall also be protected against claims for injury, disease or death of employees which, for any reason may not fall within the provisions of a workers' compensation law. The policy limits shall not be less than the following:

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

If Consultant has no employees, a waiver form provided by the City must be executed.

F. Professional Liability: The Consultant shall maintain throughout the duration of this Agreement Professional Liability Insurance in an amount not less than One Million Dollars (\$1,000,000) and shall provide the City with certification thereof.

G. Industry Ratings: The City will only accept coverage from an insurance carrier who offers proof that it:

1. Is authorized to do business in the State of Kansas;
2. Carries a Best's policyholder rating of A- or better; and

3. Carries at least a Class VIII financial rating; or
 4. Is a company mutually agreed upon by the City and Consultant.
- H. Subcontractor's Insurance: If a part of this Agreement is to be sublet, Consultant shall either:
1. Cover all subcontractors under its insurance policies; or
 2. Require each subcontractor not so covered to secure insurance which will protect against applicable hazards or risks of loss as and in the minimum amounts designated herein.

SECTION 9. INDEMNITY

- A. Definition: For purposes of indemnification requirements, the term "Loss" shall have the meaning set forth as follows:

"Loss" means any and all Loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including attorney's fees and the cost of defense), in connection with any action, proceeding, demand or claim for injury, including death, to any person or persons or damages to or Loss of, or Loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with, or are claimed to arise out of or be connected with, the performance of this Agreement whether arising before or after the completion of the work required hereunder.

- B. Indemnity: For purposes of this Agreement, Consultant hereby agrees to indemnify, defend and hold harmless the City, its agents and/or employees from any and all Loss, whatsoever in nature, where Loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Consultant, its affiliates, subsidiaries, employees, agents and subcontractors/assignees and their respective servants, agents and employees.

It is agreed as a specific element of consideration of this Agreement that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the City or any third party and, further notwithstanding any theory of law including, but not limited to, a characterization of the City's or any third party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature; provided, however, that the Consultant's obligation hereunder shall not include amounts attributable to the fault or negligence of the City or any third party for whom the Consultant is not responsible.

In the case of any claims against the City, its employees or agents indemnified under this Agreement, by an employee of the Consultant, its affiliates, subsidiaries, or assignees, the indemnification obligation contained in this Agreement shall not be limited by any limitation on amount or type of damages, compensation or benefits payable by or for the Consultant, its affiliates, subsidiaries, or assignees, under workers' compensation acts, disability benefit acts, or other employee benefit acts.

SECTION 10. DISPUTE RESOLUTION

City and Consultant agree that disputes relative to the Project should first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute Consultant shall proceed with the work as per this Agreement as if no dispute existed; and provided further that no dispute will be submitted to arbitration without the City's express written consent.

SECTION 11. ANTI-DISCRIMINATION AND OTHER LAWS

A. Consultant agrees that:

- 1) Consultant shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and shall not discriminate against any person in the performance of work under the Agreement because of race, religion, color, sex, national origin, ancestry, age, sexual orientation, or gender identity;
- 2) In all solicitations or advertisements for employees, Consultant shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission ("Commission");
- 3) If Consultant fails to comply with the manner in which either reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, Contractor shall be deemed to have breached this Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City;
- 4) If Consultant is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, Consultant shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City, without penalty; and
- 5) Consultant shall include the provisions of paragraphs (1) through (4) above in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.
- 6) The provisions of this section shall not apply if:
 - a. Contractor employs fewer than four employees during the term of such contract; or
 - b. If Contractor contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.

7) To the extent allowed by K.S.A. Sec. 44-1031, this sub-section 11. A. shall not apply to any contractor who has already complied with the provisions of such this subsection by reason of holding a contract with the federal government or a contract involving federal funds.

B. Consultant further agrees that they shall abide by the Kansas Age Discrimination

In Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 *et seq.*) as well as all other federal, state and local laws, ordinances and regulations applicable to this Agreement and to furnish any certification required by any federal, state or local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

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

SECTION 12. GENERAL PROVISIONS

- A. This Agreement contains the complete agreement between the parties and shall, as of the effective date hereof, supersede all other agreements between the parties. The parties stipulate that neither of them has made any representation with respect to the subject matter of this Agreement except such representations as are specifically set forth in this document and each of the parties acknowledges that it has relied on its own judgment in entering into this Agreement.
- B. Any modification of this Agreement or additional obligation assumed by either party in connection herewith shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.
- C. If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.
- D. It is the intention of the parties that this Agreement and the performance hereunder, and all suits and special proceedings under this Agreement, be construed in accordance with and under and pursuant to the laws of the State of Kansas and that, in any action, special proceeding or other proceeding that may be brought arising out of, in connection with, or by reason of this Agreement, the laws of the State of Kansas shall be applicable and shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which any action or special proceeding may be instituted. The parties agree that any lawsuit between them arising from this Agreement shall be brought in the state courts of Johnson County, Kansas.
- E. As may be applicable, the City is obligated only to make payments under this Agreement as may be lawfully made from funds budgeted and appropriated for the purposes as set forth in this Agreement during the City's current budget year. In the event the City does not so budget and appropriate the funds, the parties acknowledge and agree that they shall be relieved from all obligations, without penalty, under this Agreement.

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

- M. The titles to sections of this Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.

SECTION 13. EXECUTION OF AGREEMENT

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

[CONSULTANT]

Printed name of authorized signatory
Title of authorized signatory

CITY OF OVERLAND PARK, KANSAS

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney