

PROFESSIONAL SERVICES AGREEMENT

THIS Professional Services Agreement is made this ____ day of April, 2013, by and between the City of Lawrence, Kansas, a municipal corporation, and Dale Nimz.

RECITALS

- A. The City of Lawrence, Kansas ("City"), a municipal corporation, is in need of certain professional services.
- B. Dale Nimz ("Consultant") possesses the expertise and ability to provide those professional services.
- C. The City, accordingly, wishes to engage the Consultant to perform the needed services, which are described in detail in the document entitled "Amendment to *Historic Resources of Lawrence, Douglas County, Kansas*, national Register Multiple Property Documentation Form for properties constructed from 1945-1975" (a copy of that document is affixed hereto as Exhibit A and is incorporated herein by reference).
- D. The Consultant is willing and able to provide the services for which the City wishes to engage it and agrees to perform those services in accordance with the terms and conditions of this Professional Services Agreement, as set forth below.

AGREEMENT

NOW, THEREFORE, in light of the mutual promises and obligations contained herein, and in exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

SECTION 1. Scope of Services. The Consultant agrees that there are four (4) products required of this project:

- a. A minimum of two (2) public meetings. The first meeting will introduce the project to the public and ask for assistance in identifying research that may have been previously completed. The second public meeting will be held to inform the public of the process and to articulate the results found in the research project.
- b. MPDF amendment document, in digital and paper format, on the appropriate National Register of Historic Places form with photographs and bibliography.
- c. A project methodology report which meets the requirements of the State Historic Preservation Office and outlines the process used in the research, public participation, and drafting of the context.
- d. A project completion report that identifies all of the final project activities and expenditures.

All products shall be provided to the City both in hard copy and in a computer format that is compatible with Microsoft Word 2007 or other mutually agreed upon format.

All photos, research materials and additional photographic and archival materials collected as part of the research and writing process are to be submitted to the City of Lawrence, Lawrence/Douglas County Metropolitan Planning Office, at the conclusion of the project, and will become the property of the City

SECTION 2. Compensation. The City agrees to pay to the Consultant for performance in full and complete compliance with this Professional Services Agreement, the total sum of SEVEN THOUSAND TWO HUNDRED DOLLARS AND NO CENTS (\$7,200.00), payable in two installments based on the Consultant reaching the two milestones specified in Exhibit A. A payment of 50% (\$3,600.00) will be made after the completion of Milestone #1-Draft MPDF document (July 1, 2013). And, a final payment of 50% (\$3,600.00) will be made after the completion of Milestone #2-Final documents completed (August 30, 2013), which would mark the completion of the project. Such payments will be made only if the Consultant has complied with all provisions of this Professional Services Agreement. The Consultant will receive no other compensation or benefits from the City; this contract is all-inclusive. Assuming that the Consultant has complied with all provisions of this Professional Services Agreement and has reached the applicable milestone, the City shall make payment to the Consultant within sixty (60) days of its receipt of an invoice.

SECTION 3. Termination for Cause. If, through an inexcusable cause, the Consultant shall fail to fulfill in a timely and proper manner all obligations under this Professional Services Agreement or if the Consultant shall violate any of the covenants, agreements, or stipulations herein, the City may terminate the Professional Services Agreement by giving written notice to the Consultant of such termination and by specifying the effective date of such termination. Written notice shall be mailed to:

Dale Nimz
321 E. 17th Street
Lawrence, KS 66044

In such event, all finished or unfinished documents prepared by the Consultant under this contract shall, at the option of the City, become the property of the City and the Consultant shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder in accordance with the schedule set forth Exhibit A, together with reimbursement for any out-of-pocket expenses accrued to the date of the termination. However, the total amount paid in reimbursement hereunder shall not exceed the sum of \$2,000.00.

SECTION 5. Kansas State Historical Society Requirements. The Kansas State Historical Society (KSHS), the Department of the Interior, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Consultant, which are directly pertinent to this Professional Services Agreement, for the purpose of making an audit, examination, excerpts, and transcription. The Consultant and any subConsultants under this Professional Services Agreement shall maintain

all required records for **THREE** years after grant recipients make final payments and all other pending matters are closed.

Compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations, *see* 41 C.F.R. § 60, is required for the Consultant and any subConsultants under this Professional Services Agreement.

The Consultant shall not use its position for the actual or apparent purpose of private gain (other than payment for services rendered) for itself or another entity, particularly one with whom it has family, business, or financial ties.

The Consultant shall not convey inside information that has not become part of the body of public information and that would not be available upon request, directly to any person for the purpose of private gain for itself or another person, particularly one with whom it has family, business, or financial ties.

The Consultant shall not, either for or without compensation, engage in teaching, lecturing, or writing that is dependent on information obtained as a result of its participation with the recipient, except when that information has been made available to the general public or will be made available upon request, or when the SHPO gives written authorization for the use of non-public information on the basis that the use is in the public interest.

SECTION 6. Indemnification. The Consultant agrees to defend, indemnify, and otherwise hold harmless the City, its commissioners, officers, employees, and agents from any and all claims, actions, damages, costs, liabilities, settlements, judgments, expenses, or lawsuits, including attorneys' fees, but only to the extent that such are caused by the Consultant's breach of this Professional Services Agreement or by Consultant's negligence in performing any action necessary for the performance under this Professional Services Agreement. (For the purposes of this Section, the Consultant means Consultant or any person acting in behalf of Consultant or for whom Consultant is responsible).

SECTION 7. Entire Agreement. This Professional Services Agreement, and Exhibit A, represents the entire and integrated agreement between the City and the Consultant and supersedes all prior negotiations, representations, or agreements between the parties, whether written or oral. This Professional Services Agreement may be amended only by a written instrument signed by both the City and the Consultant. Written and signed amendments shall automatically become a part of this Professional Services Agreement and shall supersede any inconsistent provision herein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

No oral orders, objections, claims, or notices by any party to the other shall affect or modify any of the terms or obligations set forth in this Professional Services Agreement; and none of its provisions shall be deemed waived or modified by reason of any act whatsoever, other than by a definitely agreed waiver, modification, or amendment made in writing and signed by both parties. No evidence of notice, waiver modification, or amendment, other than evidence of such in writing, shall be introduced as evidence at any proceeding, either legal or administrative.

SECTION 8. Assignment. This Professional Services Agreement is non-assignable by the Consultant.

SECTION 9. Authorizations. Each person executing this Professional Services Agreement in behalf of the Consultant and the City represents and warrants that he or she has the authority to bind his or her respective party hereto and that all acts requisite to confer authorization to enter into this Professional Services Agreement have been taken and completed.

SECTION 10. Independent Consultant. In no event, while performing under this Professional Services Agreement, shall the Consultant be deemed to be acting as an employee of the City; rather, the Consultant shall be deemed to be an independent Consultant. Nothing expressed herein or implied herein shall be construed as creating between the Consultant and the City the relationships of employer and employee, principal and agent, a partnership, or a joint venture.

SECTION 11. Kansas Cash-Basis Law. This Professional Services Agreement must comply with the applicable provisions of the Kansas Cash-Basis Law of 1933, codified as amended at K.S.A. 10-1101 *et seq.* The City is obligated only to make payments under this Professional Services Agreement as may be lawfully made from funds budgeted and appropriated for the purposes set forth in this Professional Services Agreement during the City's current budget year. In the event that the City does not so budget and appropriate funds, the parties acknowledge and agree that they shall be relieved of all obligations under this Professional Services Agreement without penalty. To the extent that the City does so budget and appropriate funds for the purposes set forth in this Agreement, the obligations of the parties shall remain as provided herein.

SECTION 12. Captions. The Captions of this Professional Services Agreement are for convenience only and are not meant by the parties to define, limit, or enlarge the scope of this Professional Services Agreement or its terms.

SECTION 13. Recitals. The recitals set forth at the beginning of this Professional Services Agreement are adopted and incorporated herein by reference as if set forth in full and shall be effective as if repeated *verbatim*.

SECTION 14. Governing Law. This Professional Services Agreement, the rights and obligations of the parties, and any claim or dispute arising hereunder shall be construed in accordance with the laws of the State of Kansas.

SECTION 15. Severability. In the event that any provision of this Professional Services Agreement shall be held invalid and unenforceable, the remaining portions of this contract shall remain valid and binding upon the parties.

IN WITNESS WHEREOF, the undersigned have caused this Professional Services Agreement to be executed as of the date noted above.

**CITY OF LAWRENCE, KANSAS, a
municipal corporation**

DAVID L. CORLISS
City Manager

ACKNOWLEDGMENT

THE STATE OF KANSAS)
) ss:
THE COUNTY OF DOUGLAS)

BE IT REMEMBERED, that on this ____ day of April, 2013, before me the undersigned, a notary public in and for the County and State aforesaid, came David L. Corliss, as City Manager of the City of Lawrence, Kansas, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last written above.

Notary Public

My Appointment Expires:

DALE NIMZ

THE STATE OF _____)
)
THE COUNTY OF _____) SS:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last written above.

My Appointment Expires: