

PROFESSIONAL SERVICES AGREEMENT

THIS Professional Services Agreement is made this ____ day of August, 2016, by and between the City of Lawrence, Kansas, a municipal corporation, and Treanor Architects, P.A., a Kansas professional association.

RECITALS

- A.** The City of Lawrence, Kansas ("City"), a municipal corporation, is in need of certain professional services.
- B.** Treanor Architects, P. A. ("Consultant"), a Kansas professional association, 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 approved grant scope of services 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)** Survey of the primary historic architectural and landscape features of Oak Hill Cemetery including completed cemetery survey forms with photographs uploaded into the Kansas Historic Resources Inventory (KHRI) system. This survey does not include a form for each individual historic marker. The survey includes one overall cemetery survey form and individual forms for each identified significant feature.
- (b)** Completed National Register of Historic Places nomination form.
- (c)** Completed education program similar to a Teaching with Historic Places program which meets the requirements of the City of Lawrence and the State Historic Preservation Office (SHPO).

- (d) A project methodology and completion report which meets the requirements of the State Historic Preservation Office (SHPO) and outlines the process used in the survey, research, and preparation of the survey, National Register of Historic Places nomination form and the education program. This report should include an executive summary outlining project findings for possible publication in *Kansas Preservation* newsletter.

All products shall be provided to the City both in hard copy and in a computer format that is a 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 THIRTY EIGHT THOUSAND DOLLARS AND NO CENTS (\$38,000.00), payable in three installments based on the Consultant reaching the five milestones specified in [Exhibit B](#). A payment of \$11,400 will be made after the completion of Milestone #1-Cemetery Forms Entered into the Kansas Historic Resources Inventory System; Milestone #2-Completion of the National Register of Historic Places Nomination Form; and Milestone #3-Completion of the Education Program; and a final payment of \$3,800 will be made after the completion of Milestone #4-Final documents completed for the State Historic Preservation Office; and #5-Final documents completed for the City of Lawrence 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. 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:

Joy Coleman
Julia Manglitz
Treasor Architects, P. A.
1040 Vermont 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 B, 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 4. 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 5. Insurance.

- (a) **General.** Consultant shall secure and maintain, throughout the duration of this Professional Services Agreement, Insurance (on an occurrence basis unless otherwise agreed in writing) 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. The City shall be notified by receipt of written notice from the insurer at least thirty days prior to material modifications or cancellation of any policy listed on the certificate.

- (b) **Notice of Claim.** Consultant, upon receiving notice of any claim in connection with its performance of Contract Services under this Professional Services Agreement, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability.

- (c) **Reduction of Policy Limits.** 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 this Professional Services Agreement) if the Consultant's limits of protection have been impaired or reduced to such extent that the limits fall below the minimum amounts required hereunder. In that event, Consultant shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

- (d) **Insurance Required.** Consultant agrees to secure and maintain the following insurance:

- (i) **General Liability:**

- General Aggregate: \$500,000.00
 - Personal and Advertising Injury: \$500,000.00
 - Each Occurrence: \$500,000.00

- Additionally, the policy must include the following:

- (A) Broad Form Contractual/Contractually Assumed Liability;
 - (B) Independent Contractors
 - (C) Name the City of Lawrence, Kansas, as an additional insured.

- (ii) **Automobile Liability:**

- The Policy shall protect Consultant against claims for bodily injury and/or property damage arising out of the ownership or use of all owned, hired, or non-owned vehicles and must include protection for either (A) any automobile or (B) all owned automobiles and all hired and non-owned automobiles. (C) The Policy must also name the City of Lawrence, Kansas, as an additional insured.

Limits:

Each Accident, Combined Single Limits

Bodily Injury and Property Damage: \$500,000.00

(iii) Workers' Compensation:

Bodily Injury by Accident: \$100,000.00 each accident

Injury by Disease: \$500,000.00

Bodily Injury by Disease: \$100,000.00 each employee

If Consultant has no employees, it must execute a waiver on a form provided by the City.

(iv) Professional Liability:

The Consultant shall maintain through the duration of the Professional Services Agreement, Professional Liability Insurance in an amount not less than One Million Dollars (\$1,000,000.00) and shall provide the City with certification thereof.

(e) Insurance Ratings. For the purposes of this Professional Services Agreement, the City will only accept coverage from an insurance carrier that offers proof:

- (i) (A)** that it is licensed to do business in the State of Kansas;
- (B)** that it carries a Best's policyholder rating of A- or better; and
- (C)** that it carries at least a Class VIII financial rating. **OR**

(ii) that it is a company mutually agreed upon by the City and Consultant.

(f) Certificate of Insurance Forms. The parties agree that certification of insurance coverage under this Professional Services Agreement shall be on the City's standard Certificate of Insurance Form or on other forms acceptable to the City.

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 Exhibits A and B, represent 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 Contractor. 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 Contractor. 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.

[SIGNATURE PAGES FOLLOW]

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**

THOMAS M. MARKUS
City Manager

ACKNOWLEDGMENT

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

BE IT REMEMBERED, that on this ____ day of August, 2016, before me the undersigned, a notary public in and for the County and State aforesaid, came Thomas M. Markus, 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:

**TREANOR ARCHITECTS, P.A., a
Kansas professional association**

JOY COLEMAN
Principal

ACKNOWLEDGMENT

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

BE IT REMEMBERED, that on this ____ day of August, 2016, before me the undersigned, a notary public in and for the County and State aforesaid, came Joy Coleman, a principal for Treanor Architects, P.A., a Kansas professional association, 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: