

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT is made this ____ day of _____, 2016, by and between the City of Lawrence, Kansas, a municipal corporation, and The Novak Consulting Group, an Ohio limited liability company.

RECITALS

- A.** The City of Lawrence, Kansas ("City"), a municipal corporation, is in need of strategic planning services.
- B.** The Novak Consulting Group ("Consultant"), an Ohio limited liability company, has expertise in strategic planning, organizational assessments, and related activities.
- C.** The City, wishes to engage Consultant as an independent contractor to perform the needed services, which are described in detail in the document entitled "Scope of Services" (a copy of that document is affixed hereto as Exhibit A).
- 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.

TERMS

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 is hereby acknowledged by the parties, the parties agree as follows:

SECTION 1. Engagement. The City hereby engages Consultant as an independent contractor to perform the services hereinafter described and Consultant hereby accepts that engagement.

SECTION 2. Services.

- (a) Scope of Services.** Consultant shall perform those services ("Contract Services") specifically described in Exhibit A, which document is affixed hereto and incorporated herein by reference as if set forth in full. The parties may agree at any time to expand or modify the scope of the Contract Services. Such agreement shall be in writing and shall be attached to this Professional Services Agreement as an Addendum.

The City and Consultant acknowledge the implementation of Envisio software will be addressed directly with Envisio.

- (b) **Subcontracting Services.** Consultant may not, without first obtaining written consent of the City, subcontract any of the Contract Services.
- (c) **Time of Performance.** Upon execution of this Professional Services Agreement, Consultant shall commence performance of the Contract Services in accordance with the time-table established at Exhibit A.
- (d) **Expiration.** The "Initial Term" of this Professional Services Agreement shall commence upon the execution of this document and shall expire at 11:59 p.m. on March 31, 2017. The City shall have the option, and may exercise that option by giving Notice in writing before the expiration of this Professional Services Agreement, to extend the Initial Term for a period of time not to exceed three months for the completion of deliverables and other activities specified in Exhibit A.
- (e) **Qualified Personnel.** Consultant shall provide sufficient qualified personnel to perform the Contract Services. Additionally, Consultant agrees to provide qualified personnel to perform analysis, to prepare reports, and to perform other duties hereunder, as may reasonably be requested by the City.
- (f) **Performance.** In performing the Contract Services, Consultant agrees to take all steps necessary for the full and effective performance of those tasks.

SECTION 3. Compensation and Reimbursement of Expenses.

- (a) **Compensation.** Subject to the limitations established at Section 3(c), City shall pay Consultant for the actual hours that Consultant's professional staff spends performing the Contract Services. City shall also pay Consultant for Subcontracting Services authorized by the City in accordance with Section 2(b). The parties agree that the amounts payable to Consultant for actual work performed shall in no way be dependent upon the nature of the conclusions reached or the reports or advice given by Consultant; nor are they dependent upon the success or lack of success of the City's project(s).
- (b) **Reimbursement for Expenses.** Subject to the limitations established at Section 3(c) and in addition to the City's payment of Compensation as established at Section 3(a), the City agrees to reimburse Consultant for all out-of-pocket expenses and related administrative expenses incurred by Consultant in connection with the performance of the Contract Services established by this Professional Services Agreement, including but not limited to long-distance telephone calls, postage, travel expenses, public

forums in Douglas County, Kansas, supplies used at the public forums, other communications costs, and the costs of computer time. The City also agrees to pay directly all expenses for any printed materials needed for advertisement of the public forums. Such costs may include print advertising, public placards, public advertising, and flyers.

- (c) **Maximum Compensation and Reimbursement.** Unless otherwise agreed upon by the parties in writing, the maximum total amount payable to Consultant **(i)** as compensation for Contract Services and any Subcontracting Services under Section 3(a) and **(ii)** as reimbursement for expenses under Section 3(b), shall not exceed the sum of **FORTY-THREE THOUSAND SIX HUNDRED DOLLARS AND NO CENTS** (\$43,600.00). Unless otherwise agreed by the parties in writing, Consultant shall not be requested to provide Contract Services or to incur related expenses to the extent that the cost of such Contract Services or related expenses would exceed \$43,600.00. Maximum Compensation and Reimbursement for Expenses shall be based on the amounts listed in Exhibit A.
- (d) **Payment Terms.** Consultant shall send invoices to City, not more frequently than once per month, setting forth the Contract Services performed and the amount of Compensation under Section 3(a) and Reimbursement for Expenses under Section 3(b) due under this Professional Services Agreement. To be eligible for reimbursement, all expenses shall be listed individually and shall be accompanied by receipts or other applicable documentation establishing that Consultant has incurred those expenses in the course of performing under this Professional Services Agreement. All invoices are payable upon receipt by the City. The City agrees to make such payment within thirty days of receipt of the invoice. The City also agrees to accept electronic invoices for services and scanned copies of receipts and other documentation. Consultant agrees to provide the City with originals before the City is obligated to pay the invoice.

SECTION 4. Termination of Professional Services Agreement. The parties may terminate this Agreement at any time, for convenience or for cause, upon ten (10) days written Notice to the other party. In the event that the City terminates the Agreement for convenience, then it shall pay Consultant for Contract Services satisfactorily performed by the Consultant and for all associated expenses incurred therewith prior to the termination. Under no circumstance, in the event of termination of this Professional Services Agreement, will the Consultant be entitled to recover anticipated profits or consequential damages. The provision regarding indemnity shall survive the termination of this Professional Services Agreement.

SECTION 5. Reports and Documents.

- (a) **Property and Possession.** All reports, studies, analyses, memoranda, and related data and material, as may be developed during the performance of the Contract Services, shall be submitted to and shall be the exclusive property of the City, which shall have the right to use the same for any purpose without further compensation to Consultant. Consultant may use its own proprietary software for the purposes of generating the data required by this Professional Services Agreement. The parties agree that the City shall retain all rights to the data generated, but that the Consultant shall retain all rights to the proprietary software.
- (b) **Status of Documents upon Expiration or Termination.** If this Professional Service Agreement expires or is terminated for any reason, including cause, all finished or unfinished documents prepared as part of the Contract Services shall immediately be transmitted to the City by Consultant, with the exception of the Consultant's proprietary software, as noted in Section 5(a).
- (c) **Confidentiality.** Consultant shall not release to any person except the City and its authorized agents any reports or related materials prepared for the City by the Consultant as the Contract Services and maintained confidentially by the City. This Professional Services Agreement, however, does not preclude Consultant from providing any service (whether or not similar in nature to the Contract Services hereunder) in behalf of other clients in the City of Lawrence, Kansas, or elsewhere.

All reports and documents prepared, assembled, or compiled by Consultant pursuant to the terms of this Professional Services Agreement are to be considered confidential and Consultant agrees that it will not, without prior written consent of the City, submit or make the same available to any individual, agency, public body, or organization other than the City and its authorized agents, except as may otherwise herein be provided.

SECTION 6. Compliance with Equal Opportunity Laws, Regulations, and Rules

- (a) Consultant agrees that it shall comply with all provisions of the Kansas Acts Against Discrimination of 1953 ("KAAD"), codified as amended at K.S.A. 44-1001 *et seq.*, and the Kansas Age Discrimination in Employment Act of 1983 ("KADEA"), codified as amended at K.S.A. 44-1111 *et seq.* and shall not discriminate against any person, in the course of performing under this Professional Services Agreement, because of that person's race,

religion, sex, disability, national origin, ancestry, sexual orientation, familial status, or age.

- (b) 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 ("KHRC").
- (c) If Consultant fails to comply with the manner in which Consultant reports to the KHRC in accordance with the provisions of K.S.A. 44-1031 and any amendment thereto, Consultant shall be deemed to have breached the present Professional Services Agreement and the City shall, in accordance with Section 5, have the right to cancel, terminate, or suspend the terms of this Professional Services Agreement, either in whole or in part.
- (d) If Consultant is found guilty or liable for any violation of the KAAD or the KADEA by way of a final decision or order of the KHRC, then Consultant shall be deemed to have breached the present Professional Services Agreement and the City shall, in accordance with Section 5, have the right to cancel, terminate, or suspend the terms of this Professional Services Agreement, either in whole or in part.
- (e) In any subcontract, to which the City consents in accordance with Section 2(b) of this Professional Services Agreement, Consultant agrees to include the language of Sections 6(a) through 6(d) and agrees to make such language applicable to any subcontractor hereunder.
- (f) Consultant also agrees to comply with the American with Disabilities Act of 1990 ("ADA"), codified as amended at 42 U.S.C. § 12101 *et seq.*, as well as all other federal, state, and local laws, ordinances, rules, and regulations applicable to this project and to furnish any and all certification that may be required by federal, state, or local governmental agencies in connection therewith.

SECTION 7. Insurance.

- (a) The Consultant shall maintain through the duration of this Professional Services Agreement, Professional Liability Insurance in an amount not less than Two Million Dollars (\$2,000,000.00) and shall provide the City with certification thereof.
- (b) The Consultant shall maintain workers' compensation insurance on its employees in the following amounts:

- (i) Bodily Injury by Accident: \$100,000 each accident
- (ii) Injury by Disease: \$500,000
- (iii) Bodily Injury by Disease: \$100,000 each employee

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

SECTION 8. Indemnification. 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 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, Consultant means Consultant or any person acting in behalf of Consultant or for whom Consultant is responsible).

SECTION 9. Quality Assurance. Consultant agrees that it shall perform its work and services under this Professional Services Agreement in accordance with recognized professional standards prevalent in the field of strategic planning. Further, Consultant agrees that it shall perform its work and service under this Professional Services Agreement with professional expertise, skills, and knowledge of state of the art procedures and techniques in all relevant subject matters. Consultant agrees that, accordingly, it shall be capable of performing the necessary consulting and other services required by the City and possesses the ready comprehension of the required subject matter and the expertise to provide consultation on strategic planning for the City

SECTION 10. Entire Agreement.

- (a) This Professional Services Agreement and Exhibit A represent the entire and integrated agreement between the City and 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.

- (b) 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 11. Assignment. This Professional Services Agreement is non-assignable by the Consultant and any subcontractor of Consultant approved by the City in accordance with Section 2(b).

SECTION 12. Notices. All notices, demands, or other communications, which may be or are required to be given by any party to any other party under this Professional Services Agreement, shall be in writing and shall be hand-delivered, mailed by first class mail, registered or certified mail, return receipt requested, postage prepaid, or sent by overnight express mail, postage prepaid, return receipt requested, to the following addresses:

(a) **If to Consultant:**

The Novak Consulting Group
1776 Mentor Avenue
Cincinnati, OH 45212
Attn: Julia Novak

(b) **If to the City:**

City of Lawrence, Kansas
6 East 6th Street
P. O. Box 708
Lawrence, Kansas 66044
Attn: Tom Markus, City Manager

Copy to: Diane Stoddard, Assistant City Manager

SECTION 13. Authorizations. Each person executing this Professional Services Agreement in behalf of the City and Consultant hereby 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 14. Independent Contractor. In no event, while performing under this Professional Services Agreement, shall Consultant be deemed to be acting as an employee of the City; rather, Consultant shall be deemed to be an independent contractor. Nothing expressed herein or implied herein shall be construed as creating between Consultant and the City the relationships of employer and employee, principal and agent, a partnership, or a joint venture.

SECTION 15. 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 16. Conflict of Interest. Consultant is currently unaware of any conflict of interest with any party affected by this Professional Services Agreement and agrees that, if any conflict or potential conflict of interest should arise in the future, it will give notice to the City immediately.

SECTION 17. Legal Action. The parties agree that the appropriate venues for any legal actions arising out of this Professional Services Agreement are the District Court of Douglas County, Kansas, or, if federal jurisdiction exists, the United States District Court for the District of Kansas.

SECTION 18. Force Majeure. Neither party shall be deemed to be at default under this Professional Services Agreement to the extent that any delay in performance results from any cause beyond its reasonable control and without its intentional act or negligence.

SECTION 19. 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 20. 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 21. 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 22. 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:
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 _____, 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:

CONSULTANT:
The NOVAK CONSULTING GROUP,
an Ohio limited liability company

JULIA NOVAK
President

ACKNOWLEDGMENT

THE STATE OF OHIO)
) ss:
THE COUNTY OF HAMILTON)

BE IT REMEMBERED, that on this ____ day of _____, 2016, before me the undersigned, a notary public in and for the County and State aforesaid, came Julia Novak as President of The Novak Consulting Group, 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:

Strategic Planning Approach and Work Plan

The following outlines our work plan for the development of a strategic plan for the City of Lawrence

Activity 1 – Prepare for Strategic Planning Facilitation

A successful strategic planning process will benefit from a collaborative relationship between the consulting team and the City from the very beginning of the process. This task is intended to begin building that relationship.

At the start of this engagement, we will request and review all background information, including any previous vision or mission statements, results of other planning processes, and other relevant data for the environmental scan. Next, The Novak Consulting Group will meet with the City's project team to gain a clear picture of what the City hopes to accomplish from the strategic planning process, and interview members of the City Commission. We want to ensure that we have a shared understanding for how to develop the plan. We will review the project plan and finalize the schedule.

Activity 2 – Develop Environmental Scan

In order to answer the first question (Where are we today?), an environmental scan must be completed. The Novak Consulting Group will work collaboratively with the City to develop this scan which will provide helpful background information about the current state of the City and potential future impacts.

To prepare the scan, The Novak Consulting Group will gather existing data about the community such as financial trends, demographic data, statistics about housing, business, and jobs, and other relevant information. We will also conduct a group meeting with the Executive Management Team to help inform the scan. All information received will be incorporated into the environmental scan, which will be reviewed with the City prior to finalization.

Activity 3 – Plan and Facilitation Strategic Planning Framework Development

Next, The Novak Consulting Group will facilitate a retreat with members of the City Commission and key staff to develop the strategic plan framework. During the session, the results of environmental scan will be presented, and the participants will articulate a desired future (vision) for Lawrence. The group will also spend time developing key performance areas – those things that must go well in the community in order for the vision to be realized.

While the City Commission should “own” the Vision and Critical Success Factors, it is equally important that City employees feel a deep connection to the Organizations mission and values. As such we will advise the project team on questions and methods for engaging City employees in articulating Mission and Values that will be shared with the Commission and considered as part of the overall Strategic Planning Framework.

Activity 4 – Engage Community Members

A strategic plan is best when touched by as many key stakeholders as possible. Therefore, following the retreat, The Novak Consulting Group will solicit input on the strategic plan

framework from the community. This will be accomplished through a series of community meetings (up to three), as well as through social media and online engagement.

At the conclusion of the input phase, a summary will be prepared for the City.

Activity 5 – Develop Strategic Priorities

After the input process, The Novak Consulting Group will facilitate a second retreat with the City Commission and key staff. At this session, the feedback received on the strategic plan framework will be reviewed, and the strategic plan will be finalized.

Activity 6 – Support Implementation

Achievement of the vision, key focus areas, and strategic priorities will rest on successful implementation. Therefore, The Novak Consulting Group will work with the City to develop an implementation action plan. This action plan will include key performance measures, including STAR metrics, for use by the organization as well as the Commission and community to ensure progress toward achieving the strategic plan's vision. The final plan, priorities, and metrics will be uploaded on the Envisio Platform for use in tracking and reporting progress.

At the conclusion of the above activities, The Novak Consulting Group will prepare a comprehensive deliverable that includes the results of the process. We will review the draft deliverables with the City and make any necessary changes or modifications prior to finalization. We will also work with the City to develop strategies for continual engagement of the community as the strategic plan is implemented, and provide deliverables for public presentation.

Cost

The total, not-to-exceed price to complete the scope of work outlined in this proposal is \$43,600 including all professional fees and expenses.

Use of the Envisio Platform will cost approximately additional \$12,000, plus annual subscription fees. Actual costs will be passed on to the City once final subscription access needs are determined.

It is our practice to invoice clients monthly based on work completed.

SCHEDULE

	Schedule																									
	Lawrence, Kansas																									
	Strategic Plan	start	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
		10/24	10/31	11/7	11/14	11/21	11/28	12/5	12/12	12/19	12/26	1/2	1/9	1/16	1/23	1/30	2/6	2/13	2/20	2/27	3/6	3/13	3/20	3/27	4/3	4/10
Activity 1 - Begin Engagement																										
1.1	Conduct project kick off meeting																									
1.2	Finalize scope and schedule																									
1.3	Submit data request																									
1.4	Review background materials																									
1.5	Prepare final infographic with plan outline																									
Activity 2 - Prepare Environmental Scan		10/24	10/31	11/7	11/14	11/21	11/28	12/5	12/12	12/19	12/26	1/2	1/9	1/16	1/23	1/30	2/6	2/13	2/20	2/27	3/6	3/13	3/20	3/27	4/3	4/10
2.1	Conduct group meeting with Executive Management Team																									
2.2	Work with City Staff to develop environmental scan																									
2.3	Review draft environmental scan with City																									
2.4	Prepare environmental scan presentation																									
Activity 3 - Plan and Facilitate Strategic Planning Framework Development		10/24	10/31	11/7	11/14	11/21	11/28	12/5	12/12	12/19	12/26	1/2	1/9	1/16	1/23	1/30	2/6	2/13	2/20	2/27	3/6	3/13	3/20	3/27	4/3	4/10
3.1	Develop and finalize agenda																									
3.2	Facilitate strategic planning retreat																									
3.3	Prepare draft framework																									
Activity 4 - Engage Community Members		####	10/31	11/7	11/14	11/21	11/28	12/5	12/12	12/19	12/26	1/2	1/9	1/16	1/23	1/30	2/6	2/13	2/20	2/27	3/6	3/13	3/20	3/27	4/3	4/10
4.1	Facilitate community meetings (3)																									
4.2	Work with City to solicit online engagement																									
4.3	Prepare summary report of community input																									
Activity 5 - Develop Strategic Priorities		####	10/31	11/7	11/14	11/21	11/28	12/5	12/12	12/19	12/26	1/2	1/9	1/16	1/23	1/30	2/6	2/13	2/20	2/27	3/6	3/13	3/20	3/27	4/3	4/10
5.1	Prepare agenda																									
5.2	Facilitate strategy and initiative development																									
5.3	Prepare final strategic plan																									
Activity 6 - Support Implementation		####	10/31	11/7	11/14	11/21	11/28	12/5	12/12	12/19	12/26	1/2	1/9	1/16	1/23	1/30	2/6	2/13	2/20	2/27	3/6	3/13	3/20	3/27	4/3	4/10
6.1	Prepare implementation plans																									
6.2	Work with City to identify appropriate community indicators that incorporate STAR metrics																									
6.3	Put initial plan, initiatives and metrics on Envisio Platform																									