

PROFESSIONAL SERVICES AGREEMENT

THIS Professional Services Agreement is made this 21st day of January, 2015, by and between the City of Lawrence, Kansas, a municipal corporation, and McDonald & Associates, Inc., a Tennessee corporation.

RECITALS

- A.** The City of Lawrence, Kansas ("City"), a municipal corporation, wishes to engage a consultant to audit the construction and the City's infrastructure costs at Rock Chalk Park, a sports village comprising sports facilities for the University of Kansas and public recreation facilities for the City.
- B.** McDonald & Associates, Inc. ("Consultant"), a Tennessee corporation, has experience auditing construction projects and the cost and management of construction projects and can determine compliance with construction contracts.
- C.** The City wishes to engage Consultant as an independent contractor to perform those services described generally in the preceding paragraph and more specifically in that document entitled "Scope of Services." (A copy of that document is affixed hereto as Exhibit A and incorporated herein by reference).
- D.** The Consultant is willing and able to provide those 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.

- (b) **Subcontracting Services.** Consultant reserves the right to employ agents and subcontractors to assist Consultant in performing any of the Contract Services under this Professional Services Agreement. Consultant agrees that it shall be responsible for the work of any agent or subcontractor hired by it to perform any of the Contract Services and shall remain liable to and indemnify the City for the work of any agent or subcontractor performed under this Professional Services Agreement.
- (c) **Time of Performance.** Time is of the essence. Upon execution of this Professional Services Agreement, Consultant shall, unless the time is otherwise extended by the parties in writing, complete performance of the Contract Services on or before February 26, 2015.
- (d) **Expiration.** This Professional Services Agreement shall commence upon the execution of this document and shall expire upon the completion of the Contract Services, including the delivery of the final report, as detailed in Exhibit A, and the City's final payment to Consultant. The provisions regarding indemnity and insurance shall survive the expiration of this Professional Services Agreement.
- (e) **Qualified Personnel.** Consultant shall provide sufficient qualified personnel to perform the Contract Services. Additionally, Consultant agrees to provide qualified personnel to perform any inspections, to review supporting documentation, and to prepare the final report, as required by the Contract Services, as set forth in Exhibit A.
- (f) **Performance.** In performing the Contract Services, Consultant agrees to work with the City Auditor, the City Attorney, City Staff, and third parties to obtain all necessary information and to take all steps necessary for the full and effective performance of the Contract Services, as set forth in Exhibit A.

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, or any agent or subcontractor hired by Consultant under Section 2(b), spends performing the Contract Services. 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 final report delivered to the City by Consultant.

- (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 reasonable out-of-pocket expenses and related administrative expenses incurred by Consultant in connection with the performance of the Contract Services, including but not limited to long-distance telephone calls, postage, messengers, mileage for transportation, other travel expenses, and the costs of computer time.
- (c) **Maximum Compensation; Reimbursement.** Unless otherwise agreed upon by the parties in writing, the maximum total amount payable to Consultant, as Compensation under Section 3(a), shall be Twenty-seven Thousand Dollars and No Cents (\$27,000.00). For the purposes of this Professional Services Agreement, said maximum amount shall not include reimbursement for reasonable out-of-pocket expenses under Section 3(b).
- (d) **Payment Terms.** Consultant shall be paid at the billable rates and fees as set forth in the "Scope of Services," affixed hereto as Exhibit A. Consultant shall coordinate its work so that it takes place within the City's normal business hours, unless the parties agree otherwise in advance.
- (i) Consultant shall invoice the City on a weekly basis. Terms shall be net 30 days. All objections by the City to any invoice must be made in writing to Consultant within fourteen (14) days of the date of the invoice. If no objection to the invoice is received by Consultant within the fourteen-day period, then the invoice shall be deemed accepted by the City.
- (ii) If the City fails to pay Consultant in accordance with the terms set forth above, then Consultant reserves the right to: **(A)** suspend all services until payment is made in full; **(B)** charge interest to the City on the amount past due at the rate of 1.5% or the maximum rate allowed by law, whichever is lesser; and **(C)** invoice the City for all costs of collection, including reasonable attorney's fees.

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 provisions regarding indemnity and insurance 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. Consultant may retain, for its own record keeping purposes a copy of all reports, workpapers, programs, manuals, discs, tapes, listings and other material prepared under this Professional Services Agreement, subject to the confidentiality restrictions of this Agreement.
- (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. 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 the 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. Consultant agrees that it shall comply with all provisions of the Kansas Acts Against Discrimination of 1953 ("KAAD"), and the Kansas Age Discrimination in Employment Act of 1983 ("KADEA"), 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, gender identity, familial status, or age.

SECTION 7. Insurance. Consultant shall secure and maintain, throughout the duration of this Professional Services Agreement, insurance with financially sound and reputable insurance companies in such amounts and covering such risks as is usually carried by companies engaged in the business of professional services, which shall include: **(a)** workers' compensation insurance covering Consultant's employees, as required by law; **(b)** comprehensive non-owned automobile liability insurance for combined bodily injury and property damage of \$1,000,000.00; and **(c)** comprehensive general liability for combined bodily injury and property damage of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate.

SECTION 8. Mutual Indemnification. The City and Consultant agree to indemnify, defend, and hold harmless to the other for any injuries to persons or property caused by the negligent, intentional, or willful acts of its officers, agents, or employees in connection with the performance of the Contract Services under this Professional Services Agreement.

SECTION 9. Limitation of Liability. The City and Consultant agree and understand that neither party shall be liable to the other for any punitive, incidental, or consequential or indirect damages as the result of performance of the Contract Services under this Professional Services Agreement. The City and Consultant agree that neither party's liability to the other for any damages arising out of work performed on the Contract Services under this Professional Services Agreement shall not exceed those charges paid by the City to Consultant under the terms of this Agreement.

SECTION 10. Quality Assurance. Consultant warrants that its performance under this Professional Services Agreement will be performed in a workmanlike and professional manner by persons who have the skill and experience commensurate with the requirements of this Agreement. Other than that, Consultant makes no representation or warranties with respect to its performance of the Contract Services under this Professional Services Agreement.

SECTION 11. Entire Agreement.

- (a)** This Professional Services Agreement, including 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 12. 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 13. 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:**

McDonald & Associates, Inc.
143 Oakwell Lane
Jonesborough, Tennessee 37659-7412
Attn: Robert McDonald, President

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

City of Lawrence, Kansas
6 East 6th Street
P. O. Box 708
Lawrence, Kansas 66044
Attn: Michael Eglinski, City Auditor

Copy to: Toni R. Wheeler, City Attorney

SECTION 14. 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 15. 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 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*.

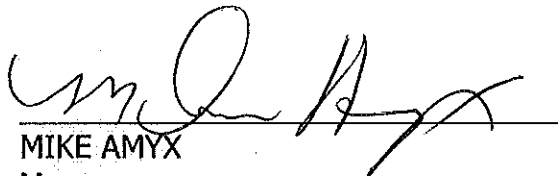
SECTION 21. Governing Law. This Professional Services Agreement, the rights and obligations of the parties, and any claim or dispute arising hereunder shall be construed in accordance with the laws of the State of Kansas.

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


MIKE AMYX
Mayor

ACKNOWLEDGMENT

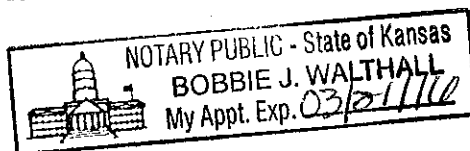
THE STATE OF KANSAS)
)
THE COUNTY OF DOUGLAS) SS:


BE IT REMEMBERED, that on this 21 day of January, 2015, before me the undersigned, a notary public in and for the County and State aforesaid, came Mike Amyx, as Mayor 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:




ROBERT McDONALD
President

THE STATE OF TENNESSEE)
)
THE COUNTY OF WASHINGTON) SS:

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

12-27-15



Exhibit A

SCOPE OF SERVICES

OBJECTIVE

Through this Professional Services Agreement, the City has engaged Consultant, as an independent contractor with experience auditing construction projects and related costs, to audit, with respect to Rock Chalk Park, the construction site and the City's infrastructure expenditures in order to determine:

1. Whether the construction work was delivered in compliance with the Development Agreement; and
2. Whether the City's expenditures for infrastructure (hard and soft costs) were in compliance with the Development Agreement.

CONSULTANT – SERVICES, RESPONSIBILITIES, AND TIMETABLE

Services

In order to meet that objective, Consultant shall provide to the City the following Contract Services:

1. Staffing, scheduling, and management of all audit resources assigned;
2. Development and implementation of the Work Plan, including reviewing the construction site, the City's infrastructure costs, the Development Agreement, and any other relevant document provided by the City and third parties; and
3. Preparation and issuance of a written, final report

Responsibilities

Consultant shall be responsible for all phases of the Contract Services, including assigning and supervising the work performed.

Timetable

Consultant will, unless the time is otherwise extended by the parties in writing, provide to the City a written, final report on or before February 26, 2015

Exhibit A

CITY - MANAGEMENT REPRESENTATIVE, RESPONSIBILITIES AND ENGAGEMENT ASSUMPTIONS

Management Representative

The City has designated the City Auditor as its management representative, who will make, in consultation with the Mayor and Vice-Mayor, all management decisions for the City with respect to the Contract Services provided by Consultant. To the extent that Consultant's deliverables include surveys, analyses, reports, evaluations, recommendations, or other management consulting services, the City agrees that it will be responsible for all decisions regarding implementation of, or any future action with respect to matters addressed in the deliverables.

Responsibilities

With respect to the Contract Services, the City shall be responsible for:

1. All content provided by the City to Consultant, in connection with its performance of the Contract Services under this Professional Services Agreement; and
2. The accuracy, completeness, and timeliness of all information provided by the City to Consultant.

The City shall also be responsible for providing Consultant with directions and instructions relating to any laws or regulations applicable to the protection of data, upon which directions and instructions Consultant will rely exclusively when accessing and processing Data in performing the Contract Services.

Regarding the Contract Services, however, the City Attorney will be made available to Consultant only to provide factual data and shall not serve as legal counsel to Consultant during the performance of the Contract Services. To the extent that it becomes necessary for Consultant to seek legal counsel or the advice of counsel during its performance of the Contract Services, Consultant shall be responsible for procuring those services.

Engagement Assumptions

The City and Consultant agree that performance of the Contract Services is based upon the following Engagement Assumptions:

Exhibit A

1. Through this Professional Services Agreement, the City has contracted with Consultant for delivery of a written, final report on or before February 26, 2015. In connection therewith, the City agrees as follows:
 - a. Consultant will perform the Contract Services in compliance with the Institute of Internal Auditors Standards (Red Book) and by using Consultant's Operations Manual, which constitute Consultant's normal standards.
 - b. The City understands and agrees that Consultant's completion of the Contract Services and timely delivery of the final report will depend upon the City and third parties being responsive to Consultant's requests for information and access to individuals. The City agrees to provide Consultant access to information in its possession and access to City Staff, without delay. The City also agrees to endeavor to facilitate Consultant's access to third parties' information, and if access to that information is not obtained, the City agrees to accept Consultant's final report based upon the information that has been made available to Consultant.
 - c. The City will be able to provide to Consultant access to cost estimating software or tools (for example RS Means or Compass International) that it deems acceptable for use in determining the infrastructure cost estimate.
2. The City will also provide to Consultant a suitable office working environment to perform the Contract Services. The working environment will provide adequate privacy and security to Consultant for its tools and documents.

Consultant's completion of the Contract Services and delivery of a timely final report are dependent on (i) the City's timely and effective completion of the City's Responsibilities, (ii) the accuracy and completeness of documents provided, as recognized by the Engagement Assumptions, and (iii) timely decisions and approvals by the City. Consultant shall not be responsible for any delays, additional costs incurred, or non-compliance caused by or associated with the City's failure to fulfill its Responsibilities or lack of providing accurate, complete, or appropriate documents, as recognized by the Engagement Assumptions.

Exhibit A

CONSULTANT'S DELIVERABLES

In completing its Contract Services, Consultants shall provide, in a timely fashion, the following deliverables:

1. A written, final report including the following:
 - a. Consultant's conclusions regarding whether the construction at Rock Chalk Park was delivered in compliance with the Development Agreement;
 - b. Consultant's conclusions regarding whether the City's expenditures for infrastructure (hard and soft costs) were in compliance with the Development Agreement; and
 - c. Consultant's recommendations for improvement, if it elects to provide such recommendations.

ENGAGEMENT APPROACH AND STAFFING

Engagement Approach

Consultant will perform the Contract Services on an agreed procedures basis. Although changes to these procedures may become necessary, the following are anticipated at this time:

Phase	Description	Hour estimate
1	Contract Analysis & Request For Information	
	Development Agreement - RFI	12
	A103 & A201 - RFI	12
	Review RFI Response	2
	Determine payment compliance criteria	4
	Modify this Work Plan as necessary	4
	Reach agreement on the Work Plan and any potential modifications	3
	Phase Subtotal	37
2	Review Infrastructure Costs	
	Interview key City Personnel, review inspection reports, obtain and review as-built drawings and select a sample of items to physically inspect.	7
	With assistance of the City personnel perform a	13

Exhibit A

	site inspection of selected portions of the infrastructure, noting exceptions or portions that do not agree with expectations. Record and evaluate the results. This test may significantly cause a change to the approach and the Work Plan. If so this must be brought to the City's attention and a resolution obtained.	
	Determine the cost standard or methodology the City wishes to use	5
	Obtain sample of infrastructure costs for further testing	4
	Test the sample items and document the results	17
	Analyze testing results and summarize	7
	Phase Subtotal	53
3	Review Payments	
	Obtain the infrastructure project accounting. Analyze and document large expenditure, any that appear unusual or non-standard so these items may be tested	6
	On a sample basis evaluate detail support, document testing results	24
	Evaluate and follow up on any exceptions noted	10
	Summarize exceptions	6
	Phase Subtotal	46
4	Report	
	Drafting and Review	12
	Presentation	12
	Phase Subtotal	24
	Total	160

Staffing

Consultant shall assign the following individuals to perform the Contract Services under this Professional Services Agreement. Consultant reserves the right, from time to time, to add or re-assign personnel. However, before it takes any such action, Consultant will advise the City of its proposed action and offer the City the opportunity to approve such action.

Name	Title
Robert A. McDonald	Sr. Consultant
Warren C. Hudson	Sr. Consultant

Exhibit A

PROFESSIONAL FEES & EXPENSES

The fees for this Professional Services Agreement will be on an hourly basis, estimated at 160 hours at \$160.00 per hour, not to exceed \$27,000.00, exclusive of out-of-pocket expenses. The basis for this level-of-effort is shown in the Approach. Travel and any other out of pocket costs will be charged at cost with receipts provided. Mileage will be charged at the then-current IRS rate.

Should it prove impossible to fully perform the Contract Services under this Professional Services Agreement, Contractor agrees to work with the City to limit fees to the actual work performed.

