



**Request for Qualifications**

**Park Design Services**

**City of Westwood, Kansas**

**March 29, 2024**



## **Request for Qualifications for Westwood City Park Design Services**

The City of Westwood, Kansas (the “City”) is requesting statements of qualifications and fee proposals (the “Proposals”) for professional services to design a new City Park as described in Section B herein (the “Services”) related to property at 2511 W. 50<sup>th</sup> Street: currently occupied by an elementary school (the “Former School Site”). The City intends to select, hire and pay the successful applicant (the “Firm”) based on a qualification-based selection procedure.

The City and the selected applicant will negotiate and agree upon a fee for the Services. The City also reserves the right to negotiate all other terms of the Proposal with the selected applicant.

### **A. PROJECT DESCRIPTION**

The City of Westwood is the nearest point in Johnson County, Kansas to downtown Kansas City. The City is ½ a square mile in area and is nestled in between Shawnee Mission Pkwy., State Line Rd., and the Wyandotte (Kansas City, Kansas) 47<sup>th</sup> St. County Line Rd. The City is within a short walk to KU Medical Center; the Volker, Westport, and Plaza neighborhoods of Kansas City, Missouri; as well as to Loose Park. Westwood is home to just under 2,000 residents, the KU Cancer Center, Club Woodside and the shops at Woodside Village, and Westwood View Elementary School, in addition to nearly 100 businesses.

Westwood is a community closely tied to the smaller, adjacent, independent cities of Mission Woods and Westwood Hills, which tri-city nexus is 50<sup>th</sup> Terrace & Rainbow Blvd.: the location of the community’s new feature park. The site of the new feature park will replace the former Westwood View Elementary School which was rebuilt on an adjacent lot last year. As the school has been the heart of this tightknit community for decades, so too will the new feature park be for future generations of Westwood families. Westwood has a strong tradition of multiple generations of family members choosing to live nearby one another and for recruiting friends and extended family to move to the cozy and cute community (or within a short walk of it).

Over the last several years, the City has undertaken significant work in planning for the future. Much of this work is reflected in the following studies and plans:

- [2015 Urban Land Institute \(ULI\) Technical Assistance Panel Study](#)
- [2017 Comprehensive Plan](#)
- [2021 Urban Land Institute Technical Assistance Panel Study](#)
- [2022 City Facilities Assessment and Feasibility Analysis](#)
- [2023 Approved Plans for City Park and Mixed-Use Redevelopment Project in Partnership with Karbank](#)

In January 2024, the City created a steering committee (the “Steering Committee”) to guide this park design process. The Steering Committee will be a key group in working with the City Council, City staff, and independent consultants and will represent the greater Westwood community in this process. The Steering Committee is comprised of City officials, residents of all



ages, a resident of a neighboring city, Johnson County Developmental Supports, and Karbank. Among the Committee’s responsibilities will be the following:

- Create and issue this RFQ for a park planning consultant – the Firm – to transform the community's vision for the park into an actual design;
- Interview and recommend a Firm to provide the Services set out herein;
- Provide input on mapping out a broader community engagement effort to ensure anyone and everyone in the community has multiple opportunities to share their vision, hopes, and dreams for the park;
- Guide the Firm’s work for Phases 1 – 4 enumerated in the Scope of Services; and
- Ultimately make a recommendation to the Planning Commission and City Council on the best design and amenities for the park.

In undertaking this work, the Steering Committee and selected Firm should be guided by certain principles, City initiatives, and long-range planning work that has come before this, as well as the stated vision of the Steering Committee and the project goals it has set out. These include the following:

***Vision Statement***

The design of the new Westwood park should provide a common, inclusive and sustainable gathering space for the community and its largest public events, foster a sense of pride and elicit a unique sense of place as it reflects the history and harmonious character of our neighborhood, while providing a relaxing and enjoyable experience as well as enhancing the beauty of its natural surroundings.

***Project Goals***

**Achieve the Vision of the 2017 Comprehensive Plan**

***Community civic spaces & additional open green space areas***

Communities with a high quality of living component connect residents to each other through the built environment. Community civic spaces and outdoor open green space areas function as social settings that encourage people to walk and gather within the community. The Plan outlines the desire and strategies for the development of community connection areas - additional open green space areas and community civic space opportunities.

**Support Westwood’s Commitment to be a Community for All Ages:** The City of Westwood recently achieved “Gold Level” recognition by the Mid-America Regional Council (MARC) as a Community for All Ages. As described by MARC, a community for all ages seeks to meet the needs and interests of the very old, the very young and everyone in between. Our new feature park should be a place that benefits young children, “tweens”, teenagers, single persons, married persons and families, empty-nesters, and seniors living in Westwood.





**Advance Westwood’s Commitment to the Arbor Day Foundation’s Tree City USA Program:**

Westwood has been a recognized Tree City for 35 years. A healthy, mature tree canopy is a high priority for the community and preserving and protecting the mature trees at the project site will be a consideration in final design.

**Provide a Recreational Space Designed for Inclusivity by Using Universal Design Principles:**

Inclusivity is also of primary importance in any new City park. Parks must ensure that children (and adults) with or without disabilities have access to and can use playground equipment and other park amenities. No one deserves to feel left out in Westwood.

**Enhance Park Programming and Events:**



The City has used its park space for a variety of events, including Oktoberfest, the annual Easter Egg Hunt, Movies in the Park, and Music in the Park. These events range in size from 50 – 450 residents. The Steering Committee will consider whether the new park should continue to be used for these events, or what future events may be worthy of consideration, and what facilities or amenities would help improve community participation and event organizing.

**Consider Availability of Nearby or Similar Facilities:**

The design should also consider the extent to which park amenities meet “missing” community desires or the extent to which other nearby facilities (new Westwood View Elementary, City Hall, Woodside, as examples) may already meet certain needs, so as to not create redundancies. Examples could include play fields, sport or tennis courts, shelters, walking trails, dog areas, staging areas, fountains, and the like.

**Adhere to the Terms of the Development Agreement between the City and Karbank:**

Relevant terms of the Development Agreement include the following use limitations:

- The City Park shall be used only as a municipal park and related purposes thereto or therefor, including but not limited to parking and restroom facilities serving the City Park. Under the City’s current arrangement with Karbank, a dedicated number of parking spaces will be provided on the site of the neighboring office development.
- The uses and hours of operation of the City Park shall be reasonably restricted in order not to be unreasonably burdensome on or noxious to the adjacent Karbank site and its customers and tenants. The term “noxious” use shall include (without limitation) (a) amplified music during the hours of 6 AM through 5:00 PM, Monday through Friday (with exception of any state of federally-recognized holiday or the day before or after a holiday if such date is used to celebrate such holiday), to the extent that such amplified music would violate the terms of any applicable noise ordinance or regulation of the City, and (b) overnight camping (except by youth groups or City sanctioned events having permits, issued by the City, specifically for such purpose and not to exceed one (1) day in duration); no other overnight camping shall be permitted.
- Restroom facilities are currently intended to be located as shown to the right, outlined in yellow. This, in part, is due to the location of sanitary sewer facilities and a “bump out” in the property line making space for them. Except for certain dedicated parking, restrooms and parking areas will be so located so that users of the City Park shall not utilize the restrooms and other parking areas located on the adjacent Karbank site.





## **B. SCOPE OF SERVICES**

### **Phase 1: Site Analysis and Assessment; Community Engagement Strategy**

- 1.1. Firm shall create a list of documentation needed from the City to perform Services.
- 1.2. Firm shall receive and review documentation.
- 1.3. Firm shall perform on-site evaluation of the park site, including opportunities for the Steering Committee to engage with the firm in this way.
- 1.4. Firm shall conduct interviews of operational staff to understand issues with existing City Park and future operational needs.
- 1.5. With guidance and input of the Steering Committee, Firm shall prepare a comprehensive public engagement strategy to ensure citizen input is represented in the final park design and that recommendations take into account public desires and expectations.
- 1.6. Firm shall be available for questions and follow up by telephone, virtual meeting, or site meetings with the Steering Committee or City staff.
- 1.7. Firm shall deploy this agreed upon strategy during Phase 2.

### **Phase 2: Conceptual Design Development; Stakeholder Engagement and Community Outreach**

- 2.1. Firm shall design park concepts based upon priorities, objectives, and goals determined by the community engagement activities conducted during this phase.
- 2.2. Firm shall prepare a phasing plan for construction based upon input from the Steering Committee.
- 2.3. Firm shall work with a construction cost estimator to ensure that designs do not exceed the total project budget of \$4.5 million.
- 2.4. Firm should create a conceptual programming plan and conceptual images at this phase.
- 2.5. Provide estimates on maintenance and operations costs as well as a staffing analysis for recommended park program.

### **Phase 3: Design Development and Recommendation**

- 3.1. Firm shall present preliminary/conceptual recommendations to the Steering Committee ahead of the final public presentations in Phase 4, allowing adequate time to incorporate feedback from the Steering Committee into the public presentation and final report. This should include, but is not limited to, conceptual plan, conceptual rendering, etc.
- 3.2. Firm shall present the project process, findings, and professional recommendations to both (and each) (a) the Westwood Governing Body and (b) the Westwood Planning Commission at a public meeting, allowing adequate time to respond to questions regarding the project and findings during that meeting.



**Phase 4: Acquisition of Required Permitting and Approvals**

- 4.1. Firm shall prepare documentation to apply for necessary Planning Commission and City Council approvals.
- 4.2. Firm shall present applications to Planning Commission and incorporate any required changes; approved plans then to be submitted to and approved by City Council.

**Phase 5: Construction Documentation**

- 5.1. Firm shall generate 75% complete construction documents including specifications for City staff review. Drawings shall include but shall not be limited to: Civil, Landscape, Irrigation, Electrical and Structural (as necessary).
- 5.2. Firm shall prepare final rendering and cost estimate.
- 5.3. Firm shall prepare 100% construction documents and specifications for site improvements as digital PDFs for use in bidding; include layout, grading, construction details, irrigation plan, planting plan, planting details and plant list, specifications, costs estimates and written narrative of design elements including maintenance requirements. Incorporate comments from City staff as necessary and generate final construction documents for distribution. Firm will compile and organize all bidding documents.
- 5.4. Firm shall provide other types of professional services of a nature consistent with the intent of the RFQ.

Bidding and Construction Administration Services are not requested at this time but may be requested upon receiving construction bids.

**Desired Schedule**

<b>Milestone</b>	<b>Date</b>
Notice to Proceed	Within two (2) weeks after receipt of signed contract
Complete Site Analysis and Assessment; Community Engagement Strategy Finalized	Within eight (8) weeks after receipt of signed contract
Complete Conceptual Design Development; Stakeholder Engagement and Community Outreach	Within sixteen (16) weeks after receipt of signed contract
Complete Design Development and Recommendation	Within twenty (20) weeks after receipt of signed contract
Deliver and Present Final Design Recommendation	Within twenty-four (24) weeks after receipt of signed contract
Complete Acquisition of Required Permitting and Approvals	Within ten (10) weeks after approval of final design
Complete Construction Documentation	Within ten (10) weeks after permits and approvals received

See below for all pre-contract activities (Section E.2).



### **C. QUALIFICATIONS**

Proposals should include the following detailed information:

1. Description of applicant firm’s history and number of years’ experience providing similar services to those described herein.
2. Identify the applicant’s key staff members, including those of subconsultants, who would be assigned to perform the Services and describe the professional qualifications and experience of each such person with regard to the scope of services listed in this RFQ. A cost estimator should be brought in as early as possible. A stormwater engineer is also expected to be part of the team as the site catches area stormwater. Please list the key staff members you are proposing for this engagement and their experience and job responsibility/title with the current and past assignments you listed in Item No. 4 of this list of qualifications.
3. Percentage of applicant revenue derived from similar work.
4. List of current and past assignments for which similar services were provided including description of projects, whether or not the entity for which the services were provided was public or private, the size of any public entity for which services were provided, project commencement and completion date, any subcontractors engaged by the Firm, and staff member(s) assigned to each project.
5. At least five (5) references of clients, including at least two (2) public entities, for which similar services have been performed with contact names, address, telephone number, and e-mail address. References will be contacted for those firms granted an interview.
6. Demonstration of ability to perform services comparable in design, scope and complexity to this project.
7. Description of your approach to performing Services, including timeline for meeting or accelerating desired completion date. Please elaborate on your public engagement strategy.
8. Description of approach to seeking and incorporating Steering Committee, City operational staff, and public input.
9. An example of a regular status report/update that documents project status, milestones, and outstanding action items.
10. A proposed fee to provide the Services for all phases, the basis for the fee including an itemized breakdown of all items including overhead and profit and proposed reimbursable expenses to be charged to the project. Final determination of fees/expenses will be negotiated between the City and the successful applicant. Please include all hourly rates associated with each Firm member and subconsultant proposed for the project. **THE PROPOSED FEE SHOULD BE PROVIDED IN A SEPARATE DOCUMENT, TO BE OPENED AND SCORED BY CITY ADMINISTRATOR LESLIE HERRING APART FROM COMMITTEE REVIEW.**

### **D. PROPOSAL SUBMISSION & SELECTION**

#### **Proposal Submission**

1. To be eligible for consideration, **one (1) electronic copy** of the response to the RFQ must be received by the City of Westwood no later than **April 30, 2024**. Late submittals will not be considered and will be returned to submitter unopened. The font should not be smaller



than 12 point and **responses should be no longer than a total of 10 pages**. Covers, cover letter (single page max), fee proposal, and table of contents are not included in the 10-page limit. If mailing or delivering a flash drive, the envelope should be addressed to:

City of Westwood  
Attn: Leslie Herring  
4700 Rainbow Blvd.  
Westwood, KS 66205

If emailing your submission, please email to Leslie Herring at [leslie.herring@westwoodks.org](mailto:leslie.herring@westwoodks.org). The subject line should read: "City of Westwood, KS: 2024 RFQ for Park Design Services". If you email the file, it is your responsibility to ensure that the Proposal has been received and not blocked by a spam filter or rejected due to file size. To confirm receipt of the file, contact Leslie Herring at [leslie.herring@westwoodks.org](mailto:leslie.herring@westwoodks.org) or 913-942-2128 prior to 5:00 PM CST on Tuesday, April 30, 2024.

2. The City will host a pre-proposal site visit for all interested Firms to ask preliminary questions and gain clarity around any elements or requirements of this RFQ.

Details follow:

When: Monday, April 8 2024 at 3:30 PM  
Where: 2511 W. 50<sup>th</sup> Street, Westwood, KS 66205

Questions/requests for clarification must be submitted in writing to the City by April 16, 2024. Please submit questions in writing to Leslie Herring at [leslie.herring@westwoodks.org](mailto:leslie.herring@westwoodks.org). All email communication should use the uniform subject line: "City of Westwood, KS: 2024 RFQ for Park Design Services".

3. To avoid inconsistencies and confusion, all communication related to the RFQ process is requested to be directed to Leslie Herring. Contact with other City staff or Steering Committee members regarding Proposals or this RFQ process may be grounds for elimination from the selection process.

4. A Proposal may be withdrawn prior to the submission deadline. After the submission deadline, all Proposals received shall remain valid and be binding upon the applicant if accepted by the City within sixty (60) calendar days after the submission date. The City is not responsible for any costs incurred in connection with preparation of any Proposal submittal.

5. The City reserves the right to accept or reject all Proposals and to waive any technicalities or irregularities therein. Further, the City reserves the right to negotiate all terms of the Proposals. All persons submitting a Proposal agree that rejection shall create no liability on the part of the City because of such rejection.



- 6. The City is exempt from State and local sales taxes by K.S.A 79-3606.
- 7. The City or any of its agencies will not hold harmless or indemnify any respondent for any liability whatsoever.
- 8. Respondent shall, in addition to any other obligation to indemnify the City of Westwood and to the fullest extent provided by law, indemnify and hold harmless the City of Westwood and its elected and appointed officials, employees and agents from and against any and all claims and damages resulting from any error, omission or negligent acts of the respondent its agents, employees or representative in the performance of the respondent’s duties under any agreement resulting from award of this proposal. The indemnification obligations hereunder shall not be limited.
- 9. All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
- 10. No respondent to this request shall in any way, directly or indirectly, discriminate against any person because of age, race, color, handicap, sex, sexual orientation, gender identity, national origin, or religious creed. Successful respondent must comply with the Kansas Act Against Discrimination and, if applicable, execute a Certificate of Non-Discrimination as provided in K.S.A. 44-1030.
- 11. The respondent acknowledges that any proposal, correspondence, documents or other records submitted to the City will be considered an open public record pursuant to the Kansas Open Records Act.
- 12. The invalidity, illegality or unenforceability of any provision of this RFQ or subsequent agreement, shall in no way affect the validity or enforceability of any other portion or provision of the agreement.

**1. Evaluation of Proposals**

1. From responses received, the Steering Committee will review the and rank the firms submitting to the following criteria:

Qualification	Weighted Importance
Demonstration of creativity in community engagement ideas and/or preliminary park elements or design ideas	35%
Project understanding, approach to project phases, and use of desired project schedule	35%
Experience on similar projects and demonstrated ability to accomplish project within desired timeframe at a cost acceptable to the City	25%
Experience and availability of key personnel	5%

2. The Steering Committee will evaluate Proposal submissions and will select three (3) – five (5) applicants for interviews. Selected firms will be notified to schedule an interview.



3. After completion of interviews, a recommendation for selection will be made to the Governing Body. City staff will then endeavor to negotiate a contract with the successful applicant. In the event a mutually agreeable contract cannot be negotiated, City staff will then enter into contract negotiations with the next highest rated applicant until a mutually agreeable contract can be negotiated, or alternatively, the City may reject all remaining submissions.

4. The remaining firms will be notified by letter after contract execution with the successful Firm.

**Timeline for Firm Selection**

<b>Milestone</b>	<b>Date</b>
RFQ Released	March 29, 2024
Pre-Proposal Site Visit	April 8, 2024, 3:30 PM
Deadline for Requests for Clarification and Questions	April 16, 2024
Posting of All Responses to Requests for Clarification and Questions	April 19, 2024
Proposals Due	April 30, 2024
Review of Proposals	Week of May 6, 2024
Interviews	Week of May 20th, 2024
Selection Recommendation to Governing Body	June 13, 2024
Contract Negotiation and Execution	Week of June 17, 2024
Notice to Proceed	By June 30, 2024
Project Kick-off Meeting	Week of July 8, 2024

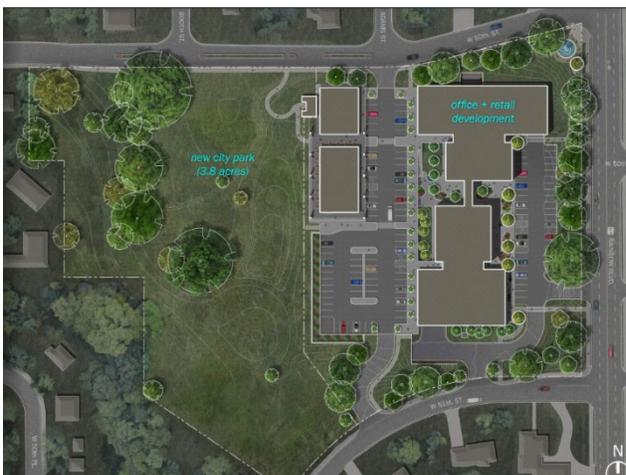


## APPENDIX A – BACKGROUND

Following the 2022 City Facilities Assessment and Feasibility Analysis, the City also conducted resident surveys and held an open house, soliciting and obtaining very good feedback from our residents on options the City might consider that would allow the City to acquire the Former [Westwood View Elementary] School Site, develop a feature park for our community, and also pursue development that can enable the City to continue to provide the services and amenities our residents expect.

In response to this highly-visible work, City officials received a development proposal that would provide a pathway for the City to acquire the Former School Site, develop it as a feature park and green space for our community, and also utilize City-owned frontage on Rainbow Blvd. between 50<sup>th</sup> and 51<sup>st</sup> Streets for a supporting development. This development partnership proposed by Karbank was introduced in March 2023, underwent the public process of rezoning, development plan review, and development agreement negotiation over the course of 2023, and final approvals were granted by the Planning Commission and City Council in the Fall of 2023. [The full timeline and process for this public-private partnership is available via this link to the City's website.](#)

As a result of the Westwood Governing Body's October 12, 2023 approval of Karbank's redevelopment plan for the southwest corner of 50th St. & Rainbow Blvd., the City is responsible for planning and building a 3.8 acre feature park at 50th St. & Booth St. on the western portion Former School Site. This new feature park will replace the 50- year-old Joe D. Dennis Park, which is less than one (1) acre in size, sits on Rainbow Blvd./US Hwy 169, and which playground equipment is now more than 30 years old and not in compliance with current ADA standards.



The City is currently under contract to purchase the Former School Site from USD 512. The City and School District are in a due diligence period with a closing date of August 1, 2024, at which time Rushton Elementary will move into its new building (currently under construction) in Mission, Kansas.

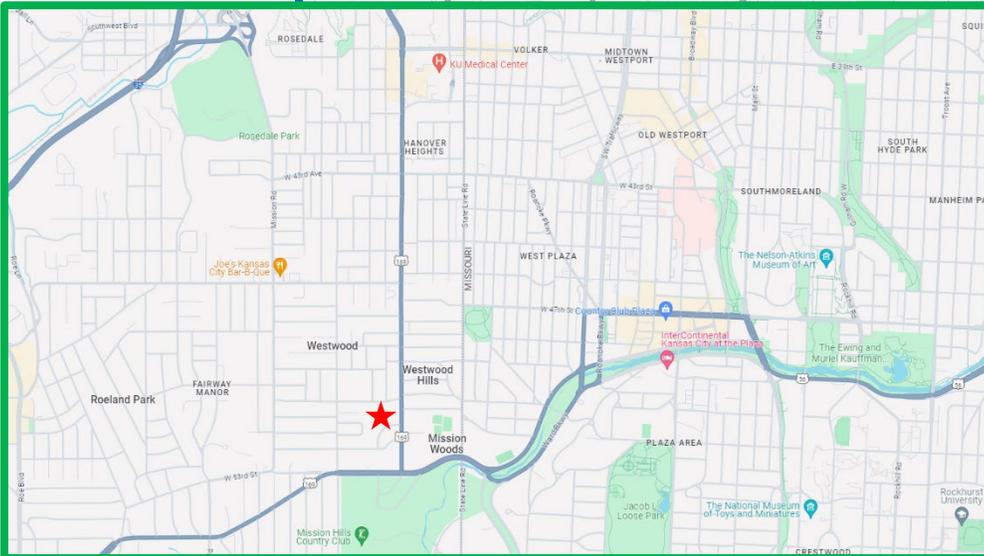
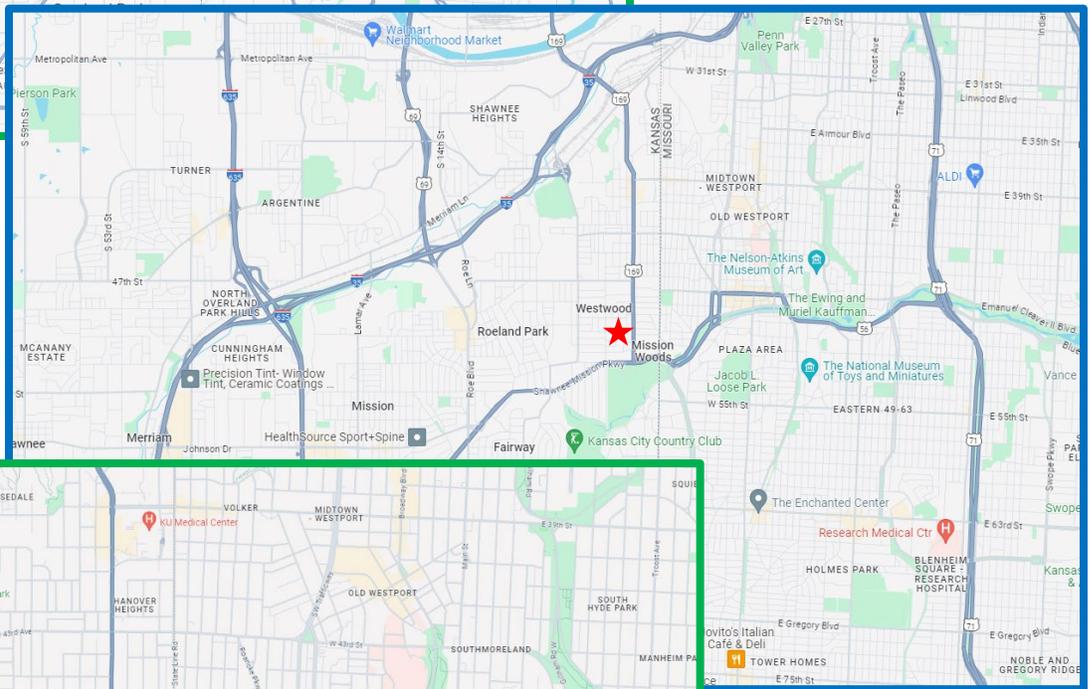
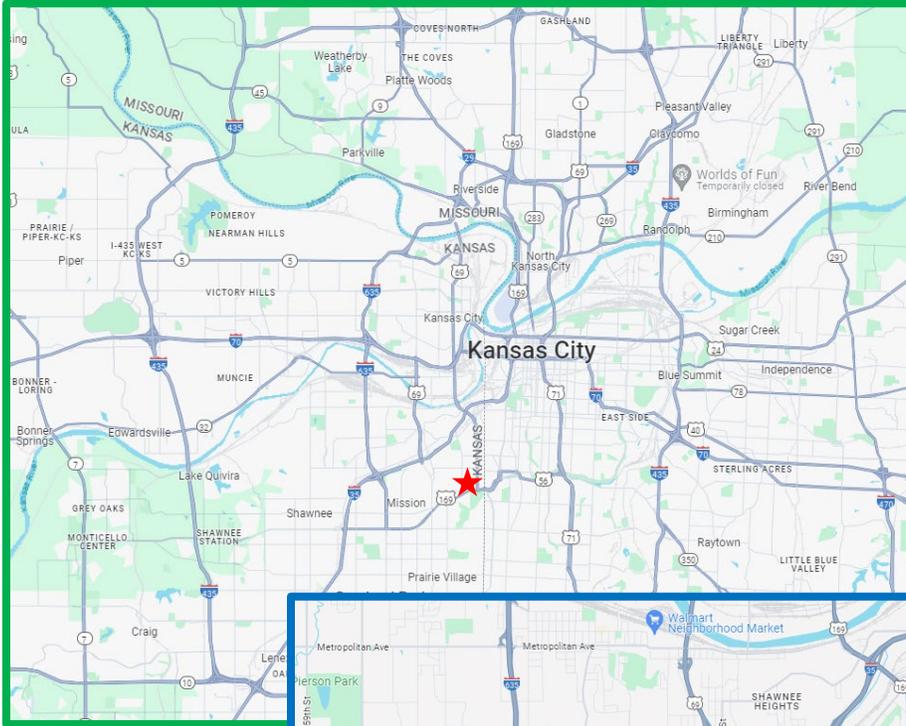


Additionally, Karbank purchased – and is donating to the City – the .5 acre property at 2322 W. 51<sup>st</sup> Street. This property contains a single-family detached house, and the current resident will remain living in her home for so long as she is able and willing, such that this portion of the site may not be immediately available for park purposes, but will be in the future. (This property is indicated by hatched green area in the illustration above.)





### APPENDIX C – Site Maps







## APPENDIX D – PROFESSIONAL SERVICES AGREEMENT

## PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the City of Westwood, Kansas, a municipal corporation ("City,") and \_\_\_\_\_, a \_\_\_\_\_ having its principle place of business in \_\_\_\_\_ ("Consultant").

**WHEREAS**, the City needs professional assistance to perform the services outlined in the Scope of Services described in Exhibit A; and

**WHEREAS**, the Consultant represents that it has sufficient experience and qualified personnel to perform the professional services herein described on behalf of the City; and

**WHEREAS**, The City has determined, based upon information provided by the Consultant, that Consultant is qualified to provide the professional services described herein.

**WHEREAS**, the City and Consultant desire to enter into this Agreement to set forth the specific terms and conditions of their relationship.

**NOW, THEREFORE**, in consideration of the mutual covenants, promises, and agreements set forth herein, the parties agree as follows:

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

### **SECTION 2. Services.**

- (a) **Scope of Services.** Consultant shall perform those services ("Contract Services") described under Scope of Services in Exhibit A, which is attached to this Agreement and incorporated herein by reference. The City may also request additional services not anticipated at the time of this Agreement. At the City's request, the Consultant shall submit a written scope of the additional work including an estimate of additional costs for the performance of the additional work. No change in scope shall be effective nor additional compensation be paid, except on the basis of the provisions of a written supplemental agreement or an amendment signed by the Parties.
- (b) **Subcontracting Services.** Consultant may not, without first obtaining the City's written consent, subcontract any of the Contract Services. Notwithstanding the City's consent to any subcontracting, Consultant shall remain fully responsible for all obligations under this Agreement.
- (c) **Time of Performance.** The Consultant agrees to complete the Contract Services within the times listed in Exhibit A, Scope of Service. In absence of written directions to the contrary, receipt of the executed Agreement shall be the Consultant's Notice to Proceed. At the City's discretion, an extension of time may be granted to the

Consultant for delays determined by the City as unavoidable. Consultant may request an extension of time stating the reasons for such a request. The term of this Agreement may be extended by mutual agreement of the parties beyond the time periods outlined in Exhibit A for the purpose of the Consultant providing any additional services, as outlined in Exhibit A, as may be requested by City and agreed to by Consultant. The Parties agree that time for performance of the Contract Services is of of the essence and that the Consultant's failure to meet the contractual times for performance shall constitute a material breach of this Agreement.

- (d) **Qualified Personnel.** Consultant shall provide sufficient qualified personnel to perform the Contract Services. If directed by the City, the Consultant shall remove any person the Consultant employs in connection with the work.
- (e) **Performance.** In performing the Contract Services, Consultant agrees to take all steps necessary for the full and effective performance of those tasks.
- (f) **Assistance from City.** To assist Consultant in performing the Contract Services, the City will perform the duties outlined in Exhibit A, if any, in a timely manner so as not to unreasonably delay the Consultant's services.

**SECTION 3. Compensation and Expenses.** As set forth in Exhibit A, the City shall pay the Consultant for the Contract Services it performs as outlined in Section 2 of this Agreement.

**SECTION 4. Termination of Agreement.** The City may terminate this Agreement at any time for convenience or cause upon written notice to Consultant. If the City terminates the Agreement under this Section, the City shall pay the Consultant for Contract Services satisfactorily performed by Consultant before the termination, and for all associated expenses incurred by the Consultant before the termination. Under no circumstances will the Consultant be entitled to anticipatory profits or consequential damages. The provisions regarding indemnity and insurance shall survive the termination of this Agreement.

**SECTION 5. Reports and Documents.** ~~If this section is not needed replace "reports and Documents" with "Reserved"~~

- (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 the Consultant. Consultant may use its own proprietary software for the purposes of generating the data required by the 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 Agreement expires or is terminated for any reason, 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). Consultant shall also immediately upon expiration or termination of this Agreement, return to the City all of the studies, maps, and other data furnished to the Consultant by the City under this Agreement.
- (c) **Confidentiality.** Consultant shall not release to any person except City representatives and others authorized by City any reports or related materials prepared for the City pursuant to the Consultant's performance of the Contract Services. This Agreement, however, does not preclude Consultant from performing any service (whether or not similar in nature to a Contract Service) on behalf of other clients in the city or elsewhere. All reports and documents prepared, assembled, or compiled by Consultant pursuant to the terms of this 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, except as may otherwise herein be provided, subject to the provisions of the Kansas Open Records Act or as may otherwise be required by law.

**SECTION 6. Compliance with Laws.** Consultant shall comply with local, state, and federal rules, regulations, and laws pertaining to this Agreement that are applicable at the time the Consultant conducts the Contract Services, regardless of whether such requirements are specifically referred to in this Agreement. Consultant shall defend, indemnify, and hold harmless the City, its elected officials, officers, employees, and agents against any claim or liability arising from or based on any violation of the same.

**SECTION 7. Compliance with Equal Opportunity Laws, Regulations, and Rules.**

- (a) **Discrimination Prohibited.** Consultant agrees to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*) and shall not discriminate against any person in the performance of work under this Agreement because of race, religion, color, sex, disability, national origin or ancestry, or age.
- (b) **Solicitations.** In all solicitations or advertisements for employees, Consultant shall include the phrase "equal opportunity employer" or a similar phrase approved by the Kansas Human Rights Commission (Commission).
- (c) **Non-Compliance.** Consultant shall be deemed to have breached this Agreement and it may be cancelled, terminated, or suspended in whole or in part by the City, if the Consultant:

1. fails to comply with the reporting requirements of K.S.A. 44-1031 or K.S.A. 44-1116, and amendments thereto; or
  2. is found guilty of the Kansas Act Against Discrimination or the Kansas Age Discrimination in Employment Act under a decision or order of the Commission that has become final.
- (d) **Flow Through Requirements.** Consultant shall include the provisions of Section 7(a)-(c) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.
- (e) **Exempt Contractors.** The provisions of this Section 7(a)-(d) are recommended but not enforceable against Consultant if:
1. Consultant employs fewer than four employees at all times during the term of this Agreement; or
  2. All of Consultant's contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City pursuant to K.S.A. 44-1030(c).
- (f) **ADA Compliance.** Consultant 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.
- (g) **Code Compliance.** Consultant agrees to comply with Chapter 35, Article III of the Westwood Code, which prohibits discrimination in employment, housing, and public accommodations on the basis of an individual's sexual orientation or gender identity.

## **SECTION 8. Insurance.**

- (a) **General.** Consultant shall secure and maintain, throughout the duration of this Agreement, insurance (on an occurrence basis unless otherwise agreed in writing) of such types and in at least such amounts as required herein. The City shall be named as an additional insured for all coverages required herein except workers' compensation coverage and professional liability coverage. All insurance procured for this Agreement by the Consultant, including additional insured designations, shall be primary and noncontributory. Consultant shall provide certificates of insurance on forms acceptable to the City at the time of this Agreement's execution. The Certificate shall specify the date when such insurance expires. A renewal certificate shall be furnished to the City before the expiration date of any coverage. The City shall be notified by receipt of written notice from the insurer at least 30 days before material modification or cancellation of any policy listed on the Certificate.

- (b) **Notice of Claim.** Consultant, upon receiving notice of any claim in connection with this 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 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) **Industry Ratings.** Consultant agrees that its insurance carrier must:
  - 1. a. Be licensed to do business in the State of Kansas;
  - b. Carry a Best’s policyholder rating of “A-” or better and;
  - c. Carry at least a Class VIII financial rating; OR
  - 2. Be acceptable to the City.
- (e) **Insurance Required.** Consultant agrees to secure and maintain the following insurance:
  - 1. **Commercial General Liability.** Consultant shall maintain General Liability coverage including Premises-Operations Liability, Independent Contractors Liability, Products and Completed Operations, and Broad Form Property Damage within these minimum limits:

Bodily Injury & Property Damage	\$1,000,000 combined single limit per occurrence: \$2,000,000 annual aggregate
Fire Damage Liability	\$50,000
Medical Payments	\$5,000

The property damage liability coverage shall contain no exclusion relative to blasting, explosion, collapse of buildings, or damages to underground property.

- 2. **Comprehensive Automobile Liability.** Consultant shall maintain Automobile Liability coverage including coverage for Owned, Hired and Non-owned Auto Liability providing for all injuries to members of the public and damage to property of others arising from the use of motor vehicles on and off the Work site with these minimum limits:

Bodily Injury & Property Damage	\$1,000,000 combined single limit per occurrence
---------------------------------	--

**3. Workers' Compensation and Employer's Liability.** Consultant shall maintain Workers' Compensation coverage for all claims made under applicable state workers' compensation laws. Consultant shall also maintain Employer's Liability coverage for claims made for injury, disease, or death of an employee that, for any reason, may not fall within the provisions of a workers' compensation law. The following minimum limits shall apply:

Workers' Compensation	Statutory Limits
Employers' Liability	\$500,000 each accident
	\$500,000 disease – policy limit
	\$500,000 disease – each employee

**4. Professional Liability Insurance.** Consultant shall maintain Professional Liability Insurance in an amount of no less than \$1,000,000.

(f) **Subcontractor's Insurance.** If a part of this Agreement is to be sublet, the Consultant shall either:

1. Cover all subcontractors under its insurance policies; or
2. Require each subcontractor not so covered to secure insurance that will protect subcontractor against all applicable hazards or risks of loss as and in the minimum amounts designated.

Whichever option is chosen, Consultant shall indemnify and hold harmless the City as to any and all damages, claims, or losses, including attorneys' fees, arising out of or resulting from the acts or omissions of its subcontractors.

**Section 9. Indemnification.** Without in any way limiting indemnification obligations that may be set forth elsewhere in this Agreement, Consultant shall defend, indemnify, and hold harmless the City, its elected officials, officers, employees, and agents, from all claims, damages, losses, liabilities, costs, and expenses, including attorneys' fees, arising out of or resulting from the performance of Consultant's services, provided that any such claim, damage, loss, liability, cost, or expense is caused in whole or in part by a negligent and/or intentional act, error, or omission of the Consultant, its subcontractors, anyone directly or indirectly employed or retained by any of them, or anyone for whose acts any of them may be liable, whether or not arising before or after completion of Consultant's services. Consultant shall give the City immediate written notice of any claim, suit, or demand that may be subject to this provision.

**Section 10. No Third Party Beneficiaries.** City and Consultant specifically agree that this Agreement is not intended to create any third party beneficiary relationship nor to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage

pursuant to the terms or provisions of this Agreement; the duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.

**Section 11. Disputes.** The City and Consultant agree that disputes relative to the Contract Services of this Agreement 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 of the dispute shall be free to take such steps as it deems necessary to protect its interest; provided, however, that notwithstanding any such dispute, the Consultant shall proceed with its services under this Agreement as though no dispute exists.

**Section 12. Representations.** The Consultant certifies that:

- (a) The price submitted and the costs comprising same are independently arrived at without collusion.
- (b) The Consultant has not knowingly influenced and promises that it will not knowingly influence a City employee or former City employee to breach any ethical standard.
- (c) The Consultant has not violated, is not violating, and promises that it will not violate the City's policy of prohibition against gratuities and kickbacks.
- (d) The Consultant represents that it has not retained and will not retain a person to solicit or secure a City contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.
- (e) The Consultant is currently unaware of any conflict of interest with any party affected by this Agreement. Consultant agrees that if any conflict of interest should arise in the future, it will give notice to the City immediately.
- (f) Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement.
- (g) Consultant warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind the Consultant.

**Section 13. Quality Assurance.** Consultant warrants that all work and services performed under this Agreement, shall conform to or exceed the recognized professional standards prevalent in their field. Further, the Consultant warrants that all work and service performed under this Agreement shall be performed with the professional expertise, skills, and knowledge of state of the art procedures and techniques in all relevant subject matters. The Consultant accordingly shall be capable of performing the necessary consulting and other services required herein and possess the ready comprehension of the required subject matter and the expertise to provide these services.

**Section 14. Assignment.** Neither this Agreement nor any rights or obligations hereunder shall be assigned or otherwise transferred by Consultant without the prior written consent of the City. This

Agreement is binding upon and fully enforceable against the successors and assigns of Consultant, whether consented to or not.

**Section 15. Notices.** Any formal notice required or permitted under this Agreement shall be deemed sufficiently given if the notice is in writing and personally delivered or sent by First Class mail, postage prepaid, to the party to whom said notice is to be given. Notices delivered in person shall be deemed to be served effective as of the date the notice is delivered. Notices sent by First Class Mail shall be deemed to be served 72 hours after the date the notice is postmarked to the addressee, postage prepaid.

Until changed by written notice given by one party to the other, notice to the Consultant shall be made at the address set forth following the Consultant's signature block. Notice to the City shall be made as follows:

City of Westwood, Kansas  
4700 Rainbow Blvd.  
Westwood, KS 66202  
Attn: \_\_\_\_\_

**Section 16. Independent Contractor.** In no event, while performing under this Agreement, shall Consultant be deemed to be acting as an employee of the City; rather, Consultant shall be deemed to be an independent contractor. Consultant shall be responsible for and pay all taxes and withholdings required by law upon the compensation paid under this Agreement, and shall defend, indemnify, and hold harmless the City from liability in connection therewith. 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 17. Compliance with Kansas Cash Basis Law.** This Agreement must comply with the applicable provisions of the Kansas Cash-Basis Law, K.S.A. 10-1101 *et seq.*, as amended. The City is obligated only to pay periodic payments or monthly installments under this Agreement as may lawfully be made from funds budgeted and appropriated for the purposes set forth in this Agreement during the City's current budget year. Notwithstanding any other provision of this Agreement, in the event that the City does not budget and appropriate funds for any renewal term, for any reason in its sole discretion, the parties agree that they shall be relieved of all obligations under this Agreement without penalty. To the extent that the City does budget and appropriate funds for the purposes set forth in this Agreement, the obligations of the parties shall remain as provided herein.

**Section 18. Legal Action.** The parties agree that the sole and exclusive venue for any legal actions arising out of this Agreement shall be the District Court of Johnson County, Kansas.

**Section 19. Governing Law.** This 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 20. Phraseology.** In this Agreement, the singular includes the plural, the plural includes the singular and any gender includes the other gender.

**Section 21. Descriptive Headings and Capitalization.** The descriptive headings of the provisions of this Agreement are formulated and used only for convenience and shall not be deemed to affect the meaning and construction of any such provision. Some terms are capitalized throughout the Agreement, but use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

**Section 22. Invalidity.** If any provision in this Agreement shall be adjudicated invalid under applicable laws, such invalid provision shall automatically be considered reformed and amended so as to conform to all applicable legal requirements, or, if such invalidity cannot be cured by reformation or amendment, the same shall be considered stricken and deleted, but in neither such event or events shall the validity or enforceability of the remaining valid portions hereof be affected thereby.

**Section 23. Waiver.** The failure of either party to insist upon the strict performance of any of the terms or conditions of this Agreement or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue and remain in full force and effect. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by the waiving party.

**Section 24. Merger.** This Agreement and the documents incorporated by reference constitute the entire agreement between the parties with respect to the professional services set forth herein. There are no verbal understandings, agreements, representations or warranties between the parties that are not expressly set forth herein. This Agreement supersedes all prior agreements and understandings between the parties, both written and oral.

**Section 25. Verbal Statements Not Binding.** It is understood and agreed that the written terms and provisions of this Agreement supersede all verbal statements of any and every official or other representative of the City, and such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any way whatsoever, this written Agreement.

**Section 26. Amendments.** This Agreement may not be amended unless such amendment is in writing and signed by both parties.

**Section 27. Survivorship.** Notwithstanding the termination of this Agreement, Consultant's obligations with respect to Insurance (Section 8) and Indemnification (Section 9), and any other terms and conditions that by their nature should survive termination, shall survive the termination of this Agreement.

**Section 28. Incorporation of Exhibits and Conflicts.** Exhibit XX (City's Request for Proposal) and Exhibit XX (the Proposal) are incorporated herein by reference and are a part of this Agreement to the same extent as if fully set forth herein. If there is a conflict or inconsistency in the terms or provisions of this Agreement and the terms and provisions of any incorporated exhibit, the terms and provisions of this Agreement shall prevail.

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement the day and year first above written.

**CITY OF WESTWOOD, KANSAS**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**CONTRACTOR**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

**EXHIBIT A: Proposal**