

# CITY OF PRAIRIE VILLAGE

**July 5, 2011**

**City Council Meeting  
6:00 p.m.**



**COUNCIL COMMITTEE**  
**Tuesday, July 5, 2011**  
**6:00 p.m.**  
**Council Chambers**

**AGENDA**

**DALE BECKERMAN, COUNCIL PRESIDENT**

**AGENDA ITEMS FOR DISCUSSION**

- \*COU2011-32**      **Consider amendments to the Liquor and Drinking Establishment Licensing Regulations**  
**Joyce Hagen Mundy**
  
- COU2011-35**      **Consider Final Change Orders for Project 190659: Franklin Park Improvements, Change**  
**Order #1 (Final)**  
**Keith Bredehoeft**
  
- \*COU2011-31**      **Consider approving an Energy Performance Contract Agreement with Energy Solutions**  
**Professionals, LLC for the sum of \$1,290,924**  
**Dennis Enslinger**
  
- \*COU2011-33**      **Consider approval of a resolution authorizing the offering for sale of general obligation**  
**refunding and improvement bonds, series 2011-A**  
**Gary Anderson, Gilmore & Bell & Jeff White, Columbia Capital**
  
- \*COU2011-34**      **Consider approval of an ordinance amending Ordinance 2153 Uses of the Economic**  
**Development Fund to include park enhancements**

**Discussion and consideration regarding 2012 Operating and Capital Budgets**

**\*Council Action Requested the same night**



## CITY CLERK DEPARTMENT

Council Committee Meeting Date: July 5, 2011  
Council Meeting Date: July 5, 2011

**\*COU2011-32 Consider amendments to Liquor & Drinking Establishment Regulations**

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### **RECOMMENDATION**

Recommend the Governing Body approve ordinances 2236 & 2237 amending the City's Liquor and Drinking Establishment Regulations and approve a two-year license fee of \$600 for a Liquor License and \$500 license fee for a Drinking Establishment License.

**\*Action Requested 7/5/11**

### **BACKGROUND**

Under the 2010 amendments to Kansas Liquor Laws adopted by SB 452, Liquor and Drinking Establishment Licenses are now issued for a two year period. Cities are required to also issue two year licenses. The regulations became effective last year for liquor stores and July 1, 2011 for drinking establishments. To bring the city's code into compliance with the new state regulations references to an "annual" license have been changed to "biannual".

The Governing Body should also approve a change to the fee schedule increasing the current license fees to reflect the two year period. This would change the Liquor License fee from \$300 to \$600 and the Drinking Establishment fee from \$250 to \$500.

The City Attorney has reviewed and approved the proposed changes, which will become effective upon adoption and publication of the ordinance.

### **ATTACHMENTS**

Chapter 3 - Articles 3 & 4  
Proposed Ordinances  
Revised Fee Schedule

### **PREPARED BY**

Joyce Hagen Mundy  
City Clerk

Date: June 27, 2011

### ARTICLE 3. ALCOHOLIC LIQUOR

- 3-301. STATE LICENSE REQUIRED. (a) It shall be unlawful for any person to keep for sale, offer for sale, or expose for sale or sell any alcoholic liquor as defined by the "Kansas liquor control act" without first having obtained a state license to do so.  
(b) The holder of a license for the retail sale in the city of alcoholic liquors by the package issued by the state director of alcoholic beverage control shall present such license to the city clerk when applying to pay the occupation tax levied in section 3-302 and the tax shall be received and a receipt shall be issued for the period covered by the state license.  
(Code 1973, 5.08.060; Code 2003)
- 3-302. TAX; DISTRIBUTORS. ~~An annual~~ **A biannual** occupation license tax is levied on all alcoholic liquor and/or cereal malt beverage distributors, for the first and each additional distributing place of business operated in the city by the same licensee in an amount to be adopted by the governing body and on record in the office of the city clerk. (Code 1973, 5.08.020; Ord. 1758, Sec. 2; Ord. 1815, Sec. 1)
- 3-303. SAME; RETAILERS. ~~An annual~~ **A biannual** occupation license tax is levied on all alcoholic liquor retailers, in an amount to be adopted by the governing body and on record in the office of the city clerk. (Code 1973, 5.08.030; Ord. 1768, Sec. 2; Ord. 1815, Sec. 1)
- 3-304. SAME; MICRO BREWERIES. ~~An annual~~ **A biannual** occupation license tax is levied on all micro breweries, in an amount adopted by the governing body and set out in a schedule on record in the office of the city. (Code 1973, 5.08.050; Ord. 1769, Sec. 2; Ord. 1815, Sec. 1)
- 3-305. SAME; NONBEVERAGE USERS. ~~An annual~~ **A biannual** occupation license tax is levied on all persons engaged in a nonbeverage users' business, in the amount adopted by the governing body and set out in a schedule on record in the office of the city clerk. (Code 1973, 5.08.050; Ord. 1770, Sec. 2; Ord. 1815, Sec. 1)
- 3-306. POSTING OF RECEIPT. Every licensee under this article shall cause the city alcoholic liquor retailer's occupation tax receipt to be placed in plain view, next to or below the state license in a conspicuous place on the licensed premises. (Code 2003)
- 3-307. LICENSE; REQUIRED. No person required to pay ~~an annual~~ **A biannual** occupation license tax under this article shall operate without first having secured a license from the city for each place of business which such person desires to operate within the city limits. (Ord. 1815, Sec. 1)
- 3-308. OPEN SALOONS UNLAWFUL. (a) It is unlawful for any person to own, maintain, operate or conduct, either directly or indirectly, an open saloon.  
(b) As used in this section open saloon means any place, public or private, where alcoholic liquor is sold or offered or kept for sale by the drink or in any quantity of less than 100 milliliters (3.4 fluid ounces) or sold or offered or kept for sale for consumption on the premises where sold, but does not include any premises where the sale of liquors is authorized by this code.  
(Code 1973, 5.08.070; Ord. 1815, Sec. 1)

- 3-309. HOURS OF SALE. No person shall sell at retail any alcoholic liquor:  
(a) On Easter Sunday;  
(b) On all other Sundays, before 12 noon or after 8:00 p.m.;  
(c) Before 9:00 a.m. or after 11:00 p.m. on any other day than Sunday.  
(K.S.A. 41-712; Code 1973, 5.08.090; Code 2003; Ord. 2112, Sec. 1, 2005)
- 3-310. BUSINESS REGULATIONS. It shall be unlawful for a retailer of alcoholic liquor to:  
(a) Permit any person to mix drinks in or on the licensed premises;  
(b) Employ any person under the age of 21 years in connection with the operation of the retail establishment;  
(c) Employ any person in connection with the operation of the retail establishment who has been adjudged guilty of a felony;  
(d) Furnish any entertainment in his or her premises or permit any pinball machine or game of skill or chance to be located in or on the premises; or  
(e) Have in his or her possession for sale at retail any bottles, cask, or other containers containing alcoholic liquor, except in the original package.  
(f) Sell, give away, dispose of, exchange or deliver, or permit the sale, gift or procuring of any alcoholic liquor to or for any person under 21 years of age.  
(Code 2003)
- 3-311. RESTRICTION UPON LOCATION. (a) No club or drinking establishment shall be located within 200 feet of any church or school. For schools, the distance shall be measured from the nearest property line of the school to the nearest portion of the building occupied by the business selling or serving the beverages. For churches, the distance shall be measured from the church building to the portion of the building occupied by the business selling or serving the beverage.  
(b) The 200 foot distance requirement shall not apply to a club or drinking establishment (restaurant) when the applicant petitions for and receives a waiver of the distance limitation from the governing body. The governing body may grant such a waiver only after public notice and a hearing and after it makes a finding that the proximity of the establishment is not adverse to the public welfare or safety of the citizens of this city.  
(Ord. 2013, Sec. 1)
- 3-312. SALE AT RETAIL; FORBIDDEN ON CERTAIN PREMISES. No alcoholic liquor shall be sold at retail upon any premises which have an inside entrance or opening which connects with any other place of business. (Code 1973, 5.08.110)
- 3-313. PENALTY FOR VIOLATION. Any person violating the provisions of this article shall upon conviction thereof be punished by a fine of not more than \$500 or by imprisonment for not more than 90 days, or by both such fine and imprisonment.  
(Code 1973, 5.08.120)

#### ARTICLE 4. DRINKING ESTABLISHMENTS AND CLUBS

- 3-401. LICENSE. The governing body shall issue ~~an annual~~ a **biannual** license to each applicant for licensure which qualifies under this article. Such license shall be issued in the name of the corporation, partnership, trustees, association officers or individual applying. (Code 1973, 5.10.020)
- 3-402. FEES AND APPLICATIONS. At the time the application is made to the governing body for a license pursuant to this article, the applicant shall pay the ~~annual~~ **biannual** license fee adopted by the governing body of the city and on file with the city clerk. (Code 1973, 5.10.030)
- 3-403. LICENSED PREMISES. Any club or drinking establishment license issued pursuant to this article shall be for one particular premises which shall be stated in the application and in the license. No license shall be issued for a club or drinking establishment unless the city zoning code allows such club or drinking establishment at that location. (Code 1973, 5.10.040)
- 3-404. PROHIBITIONS. (a) No person shall sell or offer for sale any Class A club license. No club licensed pursuant to this article or employee or agent of such club shall:
- (1) Offer or serve any free cereal malt beverage or alcoholic liquor in any form to any person;
  - (2) Offer or serve to any person a drink at a price that is less than the acquisition cost of the drink to the licensee or permit holder;
  - (3) Sell, offer to sell or serve to any person an unlimited number of drinks during any set period of time for a fixed price, except at private functions not open to the general public or to the general membership of a club;
  - (4) Sell, offer to sell or serve any drink to any person at any time at a price less than that charged all other purchasers of drinks on that day;
  - (5) Increase the volume of alcoholic liquor contained in a drink or the size of a drink of cereal malt beverage without increasing proportionately the price regularly charged for the drink on that day;
  - (6) Encourage or permit, on the licensed premises, any game or contest which involves drinking alcoholic liquor or cereal malt beverage or the awarding of drinks as prizes; or
  - (7) Advertise or promote in any way, whether on or off the licensed premises, any of the practices prohibited under subsections (a)(1):(6).
- (b) Nothing in subsection (1) shall be construed to prohibit a club, drinking establishment, caterer or holder of a temporary permit from:
- (1) Offering free food or entertainment at any time; or
  - (2) Selling or delivering wine by the bottle or carafe.
- (c) Violation of any provision of this section is a misdemeanor punishable as provided by K.S.A. 41-2633 and amendments thereto.
- (d) Violation of any provisions of this section shall be grounds for suspension or revocation of the licensee's license and for imposition of a civil fine on the licensee or temporary permit holder.
- (e) Every licensed club and drinking establishment shall make available at any time upon request a price list showing the club or drinking establishment's current prices per drink for all drinks.

ORDINANCE 2236

AN ORDINANCE AMENDING CHAPTER 3 OF THE PRAIRIE VILLAGE MUNICIPAL CODE ENTITLED "BEVERAGES" BY AMENDING ARTICLE 3 ENTITLED "ALCOHOLIC LIQUOR" SECTIONS 3-302, 3-303, 3-304, 3-305 AND 3-307

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF PRAIRIE VILLAGE, KANSAS:

**SECTION I**

Chapter 3, Article 3 of the Prairie Village Municipal Code entitled "Alcoholic Liquor" is hereby amended by repealing Sections 3-302, 3-303, 3-304, 3-305 AND 3-307 and enacting in lieu thereof a new Sections 3-302, 3-303, 3-304, 3-305 AND 3-307 to read as follows:

- 3-302. TAX; DISTRIBUTORS. A biannual occupation license tax is levied on all alcoholic liquor and/or cereal malt beverage distributors, for the first and each additional distributing place of business operated in the city by the same licensee in an amount to be adopted by the Governing Body and on record in the office of the City Clerk.
- 3-303. SAME; RETAILERS. A biannual occupation license tax is levied on all alcoholic liquor retailers, in an amount to be adopted by the Governing Body and on record in the office of the City Clerk.
- 3-304. SAME; MICRO BREWERIES. A biannual occupation license tax is levied on all micro breweries, in an amount adopted by the Governing Body and set out in a schedule on record in the office of the City Clerk.
- 3-305. SAME; NONBEVERAGE USERS. A biannual occupation license tax is levied on all persons engaged in a nonbeverage users' business, in the amount adopted by the Governing Body and set out in a schedule on record in the office of the City Clerk.
- 3-307. LICENSE; REQUIRED. No person required to pay a biannual occupation license tax under this article shall operate without first having secured a license from the City for each place of business which such person desires to operate within the city limits.

**SECTION II**

**Effective Date.** This ordinance shall become effective upon approval by the Governing Body of the City of Prairie Village and publication as provided by law.

Approved by the Governing Body of the City of Prairie Village this \_\_\_\_th day of July, 2011.

\_\_\_\_\_  
Mayor Ronald L. Shaffer

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Joyce Hagen Mundy  
City Clerk

\_\_\_\_\_  
Catherine P. Logan  
City Attorney

ORDINANCE 2237

AN ORDINANCE AMENDING CHAPTER 3 OF THE PRAIRIE VILLAGE MUNICIPAL CODE ENTITLED "BEVERAGES" BY AMENDING ARTICLE 4 ENTITLED "DRINKING ESTABLISHMENTS AND CLUBS" SECTIONS 3-401 ENTITLED "LICENSE" AND 3-402 ENTITLED "FEES AND APPLICATIONS".

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF PRAIRIE VILLAGE, KANSAS:

SECTION I

Chapter 3, Article 4 of the Prairie Village Municipal Code entitled "Drinking Establishments and Clubs" is hereby amended by repealing Sections 3-401 and 3-402 and enacting in lieu thereof a new Sections 3-401 and 2-402 to read as follows:

- 3-401. LICENSE. The Governing Body shall issue a biannual license to each applicant for licensure which qualifies under this article. Such license shall be issued in the name of the corporation, partnership, trustees, association officers or individual applying.
- 3-402. FEES AND APPLICATIONS. At the time the application is made to the Governing Body for a license pursuant to this article, the applicant shall pay the biannual license fee adopted by the Governing Body of the city and on file with the City Clerk.

SECTION II

**Effective Date.** This ordinance shall become effective upon approval by the Governing Body of the City of Prairie Village and publication as provided by law.

Approved by the Governing Body of the City of Prairie Village this \_\_\_\_th day of July, 2011.

\_\_\_\_\_  
Mayor Ronald L. Shaffer

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Joyce Hagen Mundy  
City Clerk

\_\_\_\_\_  
Catherine P. Logan  
City Attorney



**SCHEDULE 2**

**Revised 07/05/11**

**ALCOHOL LICENSES**

TAX DISTRIBUTORS	\$ 300	PVMC 3-302 – 07/05/11
TAX BEER DIST.	\$ 300	PVMC 3-302 – 07/05/11
TAX-RETAIL DEALER	\$ 300	PVMC 3-303 – 07/05/11
TAX-MICRO BREWERIES	\$ 300	PVMC 3-304 – 07/05/11
TAX-NON BEVERAGE	\$ 300	PVMC 3-305 – 07/05/11
CATERER'S LICENSE	\$ 100	PVMC 3-501 - 9/21/92
CMB GENERAL RETAIL	\$ 50+\$25 stamp fee	PVMC 3-201 - 9/21/92
CMB LIMITED RETAIL	\$ 50+\$25 stamp fee	PVMC 3-201 - 9/21/92
<b>DRINKING ESTABLISHMENT</b>	<b>\$ 250</b>	<b>PVMC 3-401 – 07/05/11</b>

**LIQUOR ORDINANCE DEFINITIONS**

<u>Category</u>	<u>Explanation</u>
<u>Liquor</u>	
Distributor	Sells to retailer
Beer Distributor	Sells to retailer
Liquor Retailer	Liquor Store
Micro breweries	Brews on site
Non beverage	Produces alcohol not for consumption
 <u>Cereal Malt Beverage</u>	
General Retailer	Store/business selling beer that may be consumed on premises
Limited Retailer	Store/business selling beer unopened original container only
Tavern	Tavern or pub
 <u>Clubs</u>	
Class A Club	Members only, non-profit
Class B Club	Members only, profit
Drinking Establishment	Open to public
Food Service Establishment	Restaurant
Caterer's License	Restaurant who caters, includes alcohol

**SCHEDULE 2**

**Revised 07/05/11**

**ALCOHOL LICENSES**

TAX DISTRIBUTORS	<b>\$ 600</b>	<b>PVMC 3-302 – 07/05/11</b>
TAX BEER DIST.	<b>\$ 600</b>	<b>PVMC 3-302 – 07/05/11</b>
TAX-RETAIL DEALER	<b>\$ 600</b>	<b>PVMC 3-303 – 07/05/11</b>
TAX-MICRO BREWERIES	<b>\$ 600</b>	<b>PVMC 3-304 – 07/05/11</b>
TAX-NON BEVERAGE	<b>\$ 600</b>	<b>PVMC 3-305 – 07/05/11</b>
CATERER'S LICENSE	\$ 100	PVMC 3-501 - 9/21/92
CMB GENERAL RETAIL	\$ 50+\$25 stamp fee	PVMC 3-201 - 9/21/92
CMB LIMITED RETAIL	\$ 50+\$25 stamp fee	PVMC 3-201 - 9/21/92
<b>DRINKING ESTABLISHMENT</b>	<b>\$ 500</b>	<b>PVMC 3-401 – 07/05/11</b>

**LIQUOR ORDINANCE DEFINITIONS**

<u>Category</u>	<u>Explanation</u>
<u>Liquor</u>	
Distributor	Sells to retailer
Beer Distributor	Sells to retailer
Liquor Retailer	Liquor Store
Micro breweries	Brews on site
Non beverage	Produces alcohol not for consumption
<u>Cereal Malt Beverage</u>	
General Retailer	Store/business selling beer that may be consumed on premises
Limited Retailer	Store/business selling beer unopened original container only
Tavern	Tavern or pub
<u>Clubs</u>	
Class A Club	Members only, non-profit
Class B Club	Members only, profit
Drinking Establishment	Open to public
Food Service Establishment	Restaurant
Caterer's License	Restaurant who caters, includes alcohol



## PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: July 5, 2011

Council Meeting Date: July 18, 2011

### COU2011-35: CONSIDER FINAL CHANGE ORDERS FOR PROJECT 190659: FRANKLIN PARK IMPROVEMENTS, CHANGE ORDER #1(FINAL).

#### RECOMMENDATION

Move to approve construction change order #1(Final) with Vanum Construction for Project 190659: Franklin Park Improvements.

#### BACKGROUND

This Final Change Orders reflects the final quantities for all bid items. The final project cost will be \$858,224.00 Changes are summarized below-

Change 1- Changes for channel removal, solid tank lid, additional underdrains, additional asphalt at entrance, two concrete pads for benches, additional sidewalk removal.	\$ 10,655.00
Change 2- Change for modifications to stream basin and troubleshooting system.	\$ 3,388.00
Change 3- Installation of grate inlet at basis of stream.	\$ 4,272.00
Change 4- Repair of pump seal.	\$ 609.00
Change 5- Did not install LED Lights	\$ (-9,300.00)
Change 6- Liquidated damages	\$ (-12,000.00)
	<b>Decrease- \$-2,376.00</b>

#### FUNDING SOURCE

No increase in funds in necessary for this project.

#### RELATED TO VILLAGE VISION

*TR1c. Ensure that infrastructure improvements meet the needs of all transportation users.*

#### ATTACHMENTS

1. Construction Change Order #1 (FINAL) 190659 with Vanum Construction.

#### PREPARED BY

Keith Bredehoeft, Project Manager

July 28, 2011



CITY OF PRAIRIE VILLAGE  
PUBLIC WORKS DEPARTMENT  
CONSTRUCTION CHANGE ORDER NO. 1(FINAL)

City's Project: 2010 Franklin Park Improvements- 190659

Date Requested: July 5, 2011

Contract Date: May 15, 2010

Consultant's Name: N/A

Contractor's Name: Vanum Construction Co. Inc.

**REQUIRED CHANGES TO PRESENT CONTRACT**

Contract Quantity	Previous Amount	Unit	Item Description	Adj. Quant.	Unit Price	Adjusted Amount
0	\$0.00	EA	Change 1	1	\$10,655.00	\$10,655.00
0	\$0.00	EA	Change 2	1	\$3,388.00	\$3,388.00
0	\$0.00	EA	Change 3	1	\$4,272.00	\$4,272.00
0	\$0.00	EA	Change 4	1	\$609.00	\$609.00
1	\$9,300.00	EA	Change 5	0	\$0.00	\$0.00
0	\$0.00	EA	Change 6	1	-\$12,000.00	-\$12,000.00

TOTAL **\$9,300.00**

TOTAL **\$6,924.00**  
Change to Contract Cost Decrease **-\$2,376.00**

**EXPLANATION OF CHANGE - This change order is to cover the following items:**

- Change 1- Changes for channel removal, solid tank lid, additional underdrains, additional asphalt at entrance, two concrete pads for benches, additional sidewalk removal, a contract increase.
- Change 2- Change for modifications to stream basin and troubleshooting system, a contract increase.
- Change 3- Installation of grate inlet at basis of stream, a contract increase.
- Change 4- Repair of pump seal, a contract increase.
- Change 5- Did not install LED lights, a contract decrease.
- Change 6- Liquidated damages, delay, and a contract decrease.

	Contract Value	Contract Days
Original Contract	\$860,600.00	
Current Contract including previous Change Orders	\$860,600.00	
NET This Change Order	(\$2,376.00)	
Final Contract Price	\$858,224.00	

Contractor agrees that the Final Contract Price, which includes a reduction for liquidated damages, is the full and complete amount it will receive for this project.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Keith Bredehoeft, Project Manager  
City of Prairie Village, KS

\_\_\_\_\_  
Date

\_\_\_\_\_  
Ronald L. Shaffer, Mayor  
City of Prairie Village, KS

\_\_\_\_\_  
Date



## ADMINISTRATION

Council Committee Meeting Date: July 5, 2011  
City Council Meeting Date: July 5, 2011

**\*COU2011-31: Consider approving an Energy Performance Contract Agreement with Energy Solutions Professionals, LLC for the sum of \$1,290,924**

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### **MOTIONS:**

Council Committee/City Council authorizes the Mayor to execute an Energy Performance Contract Agreement with Energy Solutions Professionals, LLC for the sum of \$1,290,924, subject to the review by legal counsel.

Staff recommends the Council Committee/City Council authorize the use of \$920,924 from Contingency and general fund reserves to temporarily fund the Energy Measures and Geothermal System Project until permanent funding has been secured from the identified sources.

### **BACKGROUND:**

In May of 2010, the City Council approved an agreement with Energy Solutions Professionals (ESP) to conduct an Investment Grade Energy Audit for the sum of \$3,928. ESP was selected through a Request for Proposals process which secured services for both energy audit services and possible future contract services under an Energy Performance Contract Agreement. (Under City Council Policy CP015 – Selection of Professional Consulting Services)

ESP completed the Investment Grade Energy Audit in February of 2011, at which time they presented their findings to the City Council for consideration. At the February 22, 2011 City Council meeting, the City Council voted to pursue the completion of Option #4 of the recommendations.

- Option 4: Energy Measures + Geothermal System Project for Municipal Complex

Energy measures include lighting retrofits, water efficiency improvements, vending machine controls, building infiltration improvements, and energy management system improvements. The Geothermal System Project for Municipal Complex provides for the replacement of the existing HVAC systems in the Municipal Complex with a Geothermal system.

Over the past months, staff has been working with ESP to formalize the necessary improvements, and establish design build parameters for the installation of the geothermal system at the Municipal complex. In addition, staff has been working with the appropriate state and federal agencies to secure grant approval of the project. Attached is an Energy Performance Contract Agreement which outlines the improvements. legal counsel is still currently reviewing the agreement.

The Energy Performance Contract Agreement is a fixed contract amount for \$1,290,924. This contract was awarded slightly differently than a standard construction contract. Typically, the City would prepare bid documents for construction contracts of this type. However, since this is a design build process, no construction documents have been developed. A specific scope of work has been developed related to the project and then ESP secured three bids related to the scope of services/work and selected a contractor for the various types of work covered by the scope of work. It is important to note the ESP was selected through a formal RFP review process and is acting as the general contractor under this agreement.

One other unique provision of the Energy Performance Contract Agreement, is that ESP is guaranteeing energy savings as a result of the installation of the Energy Measures and Geothermal system. Schedule C: Energy Savings Guarantee sets forth the savings. Based on this schedule, ESP is guaranteeing an annual energy savings of at least \$46,118 per year. Should the energy cost savings not reach the agreed upon amount ESP will reimburse the City the difference after getting a change to remedy the discrepancy.

The project will start around July 26<sup>th</sup> with the drilling of the geothermal wells with completion of the project by the end of 2011.

**RECOMMENDATION:**

Staff recommends the Council Committee/City Council authorizes the Mayor to execute an Energy Performance Contract Agreement with Energy Solutions Professionals, LLC for the sum of \$1,290,924 subject to the review by Legal Counsel.

Staff recommends the Council Committee/City Council authorize the use of \$920,924 from Contingency to temporarily fund the Energy Measures and Geothermal System Project until permanent funding has been secured from identified sources.

**FUNDING SOURCE:**

*Permanent Funding Sources*

As part of the 2009 bond proceeds the City set aside \$370,000 for Energy Efficiency and ADA Improvements. The City has also secured two grant awards from the Kansas Corporation Commission in the amount of \$400,000 (\$150,000 Energy Efficiency and Conservation Block Grant- EECBG and \$250,000 DOE Grant for Renewable Energy Systems). The City has also applied for utility rebates in the sum of \$11,000, which leaves a balance of \$479,924. Under a separate consideration at the July 5, 2011 meeting, the City Council is considering re-issuing bonds which include \$500,000 for the geothermal system. If bonds are not issued, a private placement or other debt mechanism will be pursued in the amount of \$500,000.

*Temporary Funding Sources*

Because the grants and rebates associated with the project will be received after the expenditures have occurred, staff is proposing to use the \$370,000 from the 2009 Bond proceeds and \$920,924 from Contingency until the additional bond proceeds, grants, and rebates have been secured.

**ATTACHMENTS:**

Energy Performance Contract Agreement

**PREPARED BY:**

Dennis J. Enslinger  
Assistant City Administrator  
Date: June 30, 2011

## ENERGY PERFORMANCE CONTRACT AGREEMENT

This Energy Performance Contract Agreement (the "Agreement") is made and entered into as of \_\_\_\_\_ between **Energy Solutions Professionals, LLC** ("ESCO"), and **City of Prairie Village** ("Client"), for the purpose of providing an incentive to Client to install the energy saving equipment, described in **Schedule A (Construction Contract)**, and providing other services described in Exhibit B designed to save energy, water or other operating costs for the Client's property and buildings (the "Premises", as defined in **Schedule A – Attachment B**).

### RECITALS

WHEREAS, Client owns and operates the Premises, and is in need of energy saving and facility improvement services designed to reduce utility consumption and associated costs at said Premises;

WHEREAS, ESCO has completed a comprehensive study (the "IGA" which is attached hereto as **Schedule K**) of the Premises under a separate contract and is willing to design and install certain facility improvement measures (the "Energy Conservation Measures"), and measure their performance;

WHEREAS, Client desires to retain ESCO to provide services for the design and installation of certain equipment of the type or class described in Attachment A (Scope of Work) of **Schedule A (Construction Contract)**, and to provide other services for the purpose of achieving cost reductions within Premises, as more fully set forth herein; and

WHEREAS, ESCO agrees to assist in arranging financing, subject to credit approval of Client, for the portion of the Agreement requiring financing;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, Client and ESCO hereto covenant and agree as follows:

The Term of the Agreement shall be **through final completion of construction (see Attachment I – Final Completion) and the measurement & verification plan identified in (Schedule F - Savings Measurement, Calculation Formulae, and Baseline Adjustments)** unless terminated prior to the completion of the Term based on provisions allowed in this Agreement;

### SECTION 1. DEFINITIONS

- 1.1 "**Agreement**" shall mean this Energy Performance Contract Agreement and shall include all documents attached thereto or referenced therein.
- 1.2 "**Agreement Start Date**" is identified at the top of the Agreement and shall mean the date of the beginning of this Agreement.



- 1.3 "**Agreement Sum**" shall mean the total contract price(s) payable to ESCO as detailed in *Schedule D (Compensation to ESCO)*.
- 1.4 "**Baseline**" shall mean the representative energy use during a twelve (12) calendar month period of the Premises' pre-retrofit energy consumption and the variables that contribute to that consumption as specified in *Schedule E (Baseline Energy Consumption)*.
- 1.5 "**Change Order**" shall mean a document signed by ESCO and Client to amend the Agreement.
- 1.6 "**Client**" shall mean the owner and its duly authorized agents and employees. The address of Client is **7700 Mission Road, Prairie Village, KS 66208**.
- 1.7 "**Day**" or "**days**", unless otherwise expressly defined in the Agreement, shall mean a calendar day or days of twenty-four (24) hours each.
- 1.8 "**Equipment**" shall be as described in *Schedule A* attached to this Agreement.
- 1.9 "**ESCO**" shall mean Energy Solutions Professionals, LLC., and its duly authorized agents, contractors and employees. The address of Energy Solutions Professionals, LLC is 9218 Metcalf Ave, Suite 274, Overland Park, KS 66212.
- 1.10 "**Final Completion**" shall be as defined in *Schedule A (Construction Contract)*.
- 1.11 "**Guarantee Commencement Date**" shall mean the date of the 1<sup>st</sup> day of the first month after Substantial Completion as defined and executed per *Schedule A*.
- 1.12 "**Guarantee Year**" shall mean each of the twelve-month periods following the Guarantee Commencement Date.
- 1.13 "**Lease Agreement**" shall mean the agreement between the Client and the third party financier/leasing company and shall be attached to this Agreement as Schedule G.
- 1.14 "**Operational Savings**" shall mean those non-utility savings resulting from the implementation of energy conservation measures encompassed in the scope of the Project and/or those non-utility savings resulting from the Client not incurring those costs at a later date by having the cost of those improvements included in this Agreement and are agreed to at contract execution.
- 1.15 "**Other Energy Services**" shall mean any energy services not defined elsewhere in the Agreement that Client and ESCO mutually agree that ESCO shall provide as defined in *Schedule B (Other Energy Services)*
- 1.16 "**Project**" shall be as defined in *Schedule A*
- 1.17 "**Services**" shall mean the labor, equipment, supplies, goods, (including raw materials,

components, intermediate assemblies and end products) or materials and related services to be furnished under the Agreement and the carrying out of all obligations imposed by the Agreement.

- 1.18 "**Substantial Completion**" shall be as defined in *Schedule A*.
- 1.19 "**Term**" shall mean the length of the Agreement in years beginning at the Guarantee Commencement Date.
- 1.20 "**Total Savings**" shall mean combination of Utility Savings and Operational Savings.
- 1.21 "**Utility Savings**" shall mean electric energy reduction (for example, expressed in kwh and kw of demand) and fossil fuel energy reduction (for example, expressed in therms, gallons of oil) and gallons of water, etc. resulting from the implementation of conservation measures encompassed in the scope of the Project and as more fully described in the calculation set forth in *Schedule F (Savings Measurement, Calculation Formulae, and Baseline Adjustments)*.

## **SECTION 2. AGREEMENT SCHEDULES**

ESCO has prepared and the Client has approved and accepted the Schedules as set forth below, copies of which are attached hereto and made a part of this Agreement by reference.

Schedule A	Construction Contract
Schedule B	Other Energy Services
Schedule C	Energy Savings Guarantee
Schedule D	Compensation to ESCO
Schedule E	Baseline Energy Consumption
Schedule F	Savings Measurement, Calculation Formulae, and Baseline Adjustments
Schedule G	Lease Agreement
Schedule H	Standards of Comfort / Operating Parameters
Schedule I	Maintenance Responsibilities
Schedule J	Warranty
Schedule K	Investment Grade Audit

## **SECTION 3. PRINCIPAL TERMS**

- 3.1 ESCO agrees to provide the services described herein and guarantee the energy savings described herein in exchange for Client's agreement to pay ESCO the compensation described in *Schedule D (Compensation to ESCO)* hereto (including payment for the IGA) in the amounts and manner described in *Schedule D*, Client executing the Construction Contract attached as *Schedule A*, and Client entering into the Lease Agreement described in Section 4 of this Agreement.

## **SECTION 4. FINANCIAL SERVICES**

- 4.1 Client shall enter into a lease with a third party financing or leasing company (hereinafter “Leasing Company”). The lease shall be attached to this Agreement as ***Schedule G (Lease Agreement)***. Client agrees to execute the lease documents simultaneously with the execution of this Agreement.

## **SECTION 5. ESCO GUARANTEE**

- 5.1 **Energy Savings Guarantee**. ESCO has formulated and, subject to the adjustments provided for in Section 10 has guaranteed the annual level of energy, operational, and/or avoided future cost savings to be achieved as a result of the installation and operation of the Equipment and provision of Services provided for in this Agreement as specified in ***Schedule I (Maintenance Responsibilities)*** and in accordance with the Savings Calculation Formula as set forth in ***Schedule F (Savings Measurement, Calculation Formulae, and Baseline Adjustments)***. The Energy Savings Guarantee is set forth in annual increments for the term of the Agreement as specified in ***Schedule C (Energy Savings Guarantee)***.
- 5.2 **Annual Review**. If at the beginning of any Guarantee Year during the term of this Agreement the ESCO fails to achieve the annual Energy Savings Guarantee specified in ***Schedule C (Energy Savings Guarantee)*** per the methods described in ***Schedule F (Savings Measurement, Calculation Formulae, and Baseline Adjustments)***, the ESCO maintains the right to remedy shortfall by any of the following methods:
- (a) further test, repair, correct, modify, or replace Equipment and re-review to verify the subsequent achievement of the annual Energy Savings Guarantee at ESCO’s expense; provided the Client has fulfilled all terms of this Agreement including, but not limited, to those items in ***Schedule H (Standards of Comfort / Operating Parameters)*** and ***Schedule I (Maintenance Responsibilities)***.
  - (b) will pay the Client the difference between the annual amount guaranteed and the amount of actual energy and operations savings achieved at the Premises in accordance with the provisions of ***Schedule C (Energy Savings Guarantee)*** per the methods described in ***Schedule F (Savings Measurement, Calculation Formulae, and Baseline Adjustments)***. The ESCO shall remit such payments to the Client.

## **SECTION 6. ESCO COMPENSATION AND FEES.**

- 6.1 The Client agrees to pay compensation to ESCO for the Scope of Work and any Other Energy Services provided through this agreement as identified in ***Schedule D (Compensation to ESCO)***.
- 6.2 **Billing Information Procedure**. Payments due to ESCO under this Section 6 shall be calculated in accordance with the completion of Services in this Agreement and compensated as defined in ***Schedule D (Compensation to ESCO)*** in the following manner:

- (a) Payment for the IGA is due upon receipt of the invoice. If not paid within 30 days, a \$150 late fee will be assessed.
  - (b) Payment for Other Energy Services (if any) as defined in *Schedule B (Other Energy Services)* shall be due upon completion.
  - (c) ESCO shall prepare and send to Client throughout the construction period an Application for Payment for Services completed on a monthly basis as described in *Schedule A (Construction Contract)*, Article 4 – Payments to Contractor.
  - (d) Upon collection and verification of the information defined in *Schedule F (Savings Measurement, Calculation Formulae, and Baseline Adjustments)*, ESCO shall calculate the savings in accordance with the agreed-upon calculation formulae in *Schedule F*.
- 6.3 Payment. Client shall pay ESCO within thirty days of receipt of ESCO's invoice. If not paid within 30 days, a \$150 late fee will be assessed.
- 6.4 Late Payment. Amounts not paid to Client will accrue interest at 12% per annum for the number of days from the due date until the payment due is made in full.

## **SECTION 7. EQUIPMENT**

- 7.1 Startup and Equipment Commissioning. ESCO shall assist in conducting a thorough and systematic performance test of each element and total system of the installed Equipment in accordance with *Schedule H (Standards of Comfort / Operating Parameters)* and prior to acceptance of the project by Client. The ESCO shall provide notice to the Client of the scheduled test(s) and the Client and/or its designees shall have the right to be present at any or all such tests conducted by ESCO and/or manufacturers of the Equipment. ESCO shall be responsible for correcting and/or adjusting all deficiencies in systems and Equipment operations that may be observed during system commissioning procedures.
- 7.2 Location and access. Client shall provide access to the Premises for ESCO and its contractors or subcontractors during regular business hours, or such other hours as may be requested by ESCO and reasonably acceptable to Client, to, adjust, inspect, maintain and repair the Equipment and to otherwise complete the Work and other duties and responsibilities under this Agreement. ESCO shall have free access to the Premises to correct any emergency condition.
- 7.3 Service by ESCO. Client shall only incur cost (as defined in *Schedule D – Compensation to ESCO*) for Services rendered. When the need for maintenance or repairs arises principally due to any reason other than ESCO's failure to perform its duties and obligations under the Agreement, including but not limited to any act, error, omission, negligence or willful misconduct of Client or any employee or other

agent of Client, ESCO may charge Client for the reasonable and customary time and materials cost of maintenance or repair.

- 7.4 Service by Client. Client shall operate, service and maintain the Equipment; per **Schedule I (Maintenance Responsibilities)**, in a manner to maintain efficiency and sustain energy savings over time. Client shall notify ESCO as soon as possible if it knows of (a) any material malfunction in the operation of the Equipment, (b) upon determination of the existence of any emergency or dangerous condition affecting the Equipment or c) any interruption or alteration of the energy supply to the Premises. ESCO will not be responsible, under the Energy Savings Guarantee, for any loss of Total Savings due to failure of Client to fulfill all terms of this Agreement including, but not limited, to those items in **Schedule H (Standards of Comfort / Operating Parameters)** and **Schedule I (Maintenance Responsibilities)**, a material malfunction in the operation of the Equipment or an alteration of energy supply.
- 7.5 Upgrading or Altering of Equipment by ESCO. ESCO shall at all times; during construction and measurement & verification period, have the right, subject to Customer's prior written approval, which approval shall not be unreasonably withheld, to change the Equipment, revise any procedures for the operation of the equipment or implement other energy saving actions in the Premises, provided that:
- such modifications or additions to, or replacement of the Equipment, and any operational changes, or new procedures are necessary to enable the ESCO to achieve the Energy and Cost Savings at the Premises and;
  - the ESCO complies with the standards of comfort and services set forth in **Schedule H (Standards of Comfort / Operating Parameters)** herein;
  - any cost incurred relative to such modifications, additions or replacement of the Equipment, or operational changes or new procedures shall be the responsibility of the ESCO.

All replacements, deletions, substantial alterations, or additions of equipment or revisions to the prescribed procedures shall be described in an additional schedule to be attached hereto and identified as Schedule A-2 or A-3, and so forth. Replacements, substantial alterations, or additions of Equipment shall belong to and become the property of Client, and shall be part of the Equipment for purposes of this Agreement. The Agreement Sum will only be adjusted; through a Change Order, required by either unforeseen conditions or Client requested changes to the Scope of Work.

- 7.6 Upgrading or Altering of Equipment by Client. Client agrees to maintain the Premises, the Equipment and all existing mechanical systems, equipment and other energy consuming systems located on the Premises in good repair, in the same condition or better condition, reasonable wear and tear excepted, as existed prior to construction of the Project and to protect and preserve the building envelope and the operating condition and standard of performance of all mechanical systems, equipment and other energy consuming systems located on the Premises. Client may not remove, alter or change in any material way the Equipment; or any part thereof,

without first consulting ESCO, except in an emergency. If Client fails to satisfy its obligations in ***Schedule I (Maintenance Responsibilities)***, ESCO's guarantee pursuant to Article 5 shall be reduced by the excess of (a) the actual energy consumed by Client based on such failure or (b) the energy that would have been consumed had Client fulfilled its maintenance obligation.

- 7.7 **Damage or Destruction of Equipment.** If any significant item of Equipment is irreparably damaged by the negligence or willful misconduct of an employee of the Client, destroyed, or stolen, and if Client fails to repair or replace said item within a reasonable period of time, not to exceed 120 days, ESCO a) will not be responsible for lost energy savings, b) may adjust the Energy Savings Guarantee to reflect any reduction in savings associated with the missing or damaged Equipment, or c) terminate this Agreement by delivery of a written notice to Client, whereupon both parties shall have no further liability to each other. Any such termination shall not be considered an Event of Default on the part of either party.

## **SECTION 8. EQUIPMENT WARRANTIES**

- 8.1 **Equipment Warranties.** ESCO covenants and agrees that all Equipment installed as part of this Agreement is new, in good and proper working condition and protected by appropriate written warranties covering all parts and Equipment performance. ESCO further agrees to deliver to the Client for inspection and approval, all such written warranties and which shall be attached and set forth per ***Schedule J (Warranty)*** to pursue rights and remedies against manufacturer and supplier of the equipment under the warranties in the event of equipment malfunction or improper or defective function, and defects in parts, workmanship and performance, to notify the Client whenever defects in equipment parts or performance occur which give rise to such rights and remedies and those rights and remedies are exercised by ESCO. The cost of any risk of damage or damage to the equipment and its performance, including damage to property and equipment of the Client or the Premises, due to ESCO's failure to exercise its warranty rights shall be borne solely by ESCO.
- (a) All warranties shall be transferable and extend to the Client. The warranties shall specify that only new, and not reconditioned parts, may be used and installed when repair is necessitated by malfunction.
  - (b) All warranties provided hereunder shall be in force for a minimum of one year (except for those extended warranties described in ***Schedule J – Warranty***), from the Substantial Completion Date(s) as described in ***Attachment H (Certificate of Substantial Completion)*** and mutually agreed to by Client and ESCO during the Construction Period.
  - (c) Notwithstanding the above, nothing in this Section shall be construed to alleviate/relieve the ESCO from complying with its obligations to perform under all terms and conditions of this Agreement and as set forth in all attached Schedules.

## **SECTION 9. PERFORMANCE BY ESCO**

- 9.1 Performance by ESCO. ESCO shall perform all Services under the Agreement in such a manner so as not to harm the structural integrity of the buildings or their operating systems and so as to conform to the standards set forth in ***Schedule H (Standards of Comfort and Operating Parameters)***. ESCO shall repair and restore to its original condition any area of damage caused by ESCO's performance under this Agreement. The Client reserves the right to review the work performed by ESCO and to direct ESCO to take certain corrective action if, in the opinion of the Client, the structural integrity of the Premises or its operating system is or will be harmed. All costs associated with such corrective action to damage caused by ESCO's performance of the work shall be borne by ESCO. ESCO shall remain responsible for the professional and technical accuracy of all services performed, whether by the ESCO or its contractors, subcontractors, or others on its behalf, throughout the term of this Agreement.
- 9.2 Standards of Comfort. Maintenance and operation of the Equipment shall be sufficient to maintain the Standards of Comfort defined in ***Schedule H (Standards of Comfort / Operating Parameters)*** shall be as described in ***Schedule I (Maintenance Responsibilities)***.

## **SECTION 10. MATERIAL CHANGE**

- 10.1 Material Change Defined. A Material Change shall include any change in or to the Premises, whether structural, operational or otherwise in nature which reasonably could be expected, in the judgment of the ESCO and mutually agreed upon by Client, to increase or decrease annual energy consumption in accordance with the provisions and procedures set forth in ***Schedule E (Baseline Energy Consumption)*** and ***Schedule F (Savings Measurement, Calculation Formulae & Baseline Adjustment)***. Actions by the Client which may result in a Material Change include but are not limited to the following:
- (a) manner of use of the Premises by the Client;
  - (b) hours of operation for the Premises or for any equipment or energy using systems operating at the Premises;
  - (c) permanent changes in the comfort and service parameters set forth in ***Schedule H (Standards of Comfort / Operating Parameters)***;
  - (d) occupancy of the Premises;
  - (e) structure of the Premises;
  - (f) types and quantities of equipment used at the Premises;
  - (g) modification, renovation or construction at the Premises;
  - (h) the Client's failure to provide maintenance of and repairs to the Equipment in accordance with ***Schedule I (Maintenance Responsibilities)***; or

- (i) any other conditions other than climate affecting energy use at the Premises.
- 10.2 Reported Material Changes; Notice by Client: The Client shall use its best efforts to deliver to ESCO a written notice describing all actual or proposed Material Changes in the Premises or in the operations of the Premises; which could reasonably be expected to affect energy consumption within the Premises, at least thirty (30) days before any actual or proposed Material Change is implemented or as soon as is practicable after an emergency or other unplanned event. Notice to ESCO of Material Changes which results because of a bona fide emergency or other situation which precludes advance notification shall be deemed sufficient if given by the Client within thirty (30) days after having actual knowledge that the event constituting the Material Change occurred or was discovered by the Client to have occurred.
- 10.3 Unreported Material Change. Any material changes may effect energy consumption in Client facilities, and may impact the ESCO guarantee savings amount identified in *Schedule C (Energy Savings Guarantee)* and calculated and measured per formulae in *Schedule F (Savings Measurement, Calculation Formulae & Baseline Adjustment)*. The ESCO shall not be responsible for any loss of energy savings that may result from a Material Change caused by the Client. The Client may request for the ESCO to help identify the affect a material change will have on facility operations and energy savings. ESCO shall report its findings to the Client in a timely manner and ESCO and Client shall determine what, if any, adjustments to the baseline will be made in accordance with the provisions set forth in *Schedule F*. The ESCO shall be entitled to additional compensation from the Client for work performed that is above and beyond those Services defined in this Agreement.

## **SECTION 11. PROPERTY/CASUALTY/INSURANCE; INDEMNIFICATION**

- 11.1 At all times during the term of this Agreement, ESCO shall maintain in full force and effect, at its expense: (1) Workmen's Compensation Insurance sufficient to cover all of the employees of (ESCO) working to fulfill this Agreement, and (2) Casualty and Liability Insurance on the Equipment and Liability Insurance for its employees and the possession, operation, and service of the Equipment. The limits of such insurance shall be not less than \$500,000 for injury to or death of one person in a single occurrence and \$1 million for injury to or death of more than one person in a single occurrence and \$500,000 for a single occurrence of property damage. Such policies shall name the Client as an additional insured. Prior to commencement of work under this Agreement, ESCO will be required to provide Client with current certificates of insurance specified above. These certificates shall contain a provision that coverage afforded under the policies will not be canceled or changed until at least thirty (30) days' prior written notice has been given to Client.
- 11.2 ESCO shall be responsible for (i) any damage to the Equipment or other property on the Premises and (ii) any personal injury where such damage or injury occurs as a result of ESCO's performance under this Agreement.



## **SECTION 12. HAZARDOUS MATERIALS; ENVIRONMENTAL REQUIREMENTS**

- 12.1 Client recognizes that in connection with the Services at the Premises, ESCO may encounter, but is not responsible for, (a) asbestos and materials containing asbestos, and (b) pollutants, petroleum, urea formaldehyde, hazardous wastes, hazardous materials, contaminants or mold, (collectively, clauses (a) and (b) constitute "Hazardous Materials"), and (c) the storage, handling, use, transportation, treatment, or the disposal, discharge, leakage, detection, removal or containment thereof. The materials and activities listed in the foregoing sentence are referred to as "Excluded Materials and Activities." Client acknowledges that Client is the sole generator of any Excluded Materials and Activities and is solely responsible for every aspect of the Excluded Materials and Activities. Client agrees that if performance of Work involves any Excluded Materials and Activities, ESCO may perform or arrange for the performance of such Work but Client shall bear the sole risk and responsibility therefore. Furthermore, in handling any of Client's property, including, without limitation, ESCO does not take title to any such property, nor does ESCO assume any responsibility for the storage, handling, use, transportation, treatment, disposal, discharge, leakage, detection, removal or containment of such property. Client shall be solely responsible for disposing of its Hazardous Materials in a timely manner and in accordance with all federal, state and local laws, statutes and regulations applicable thereto. At ESCO's option, certain costs associated with Services related to Excluded Materials and Activities necessary for the implementation of the Equipment may be included in the Agreement Sum, notwithstanding the fact that such costs are the responsibility of Client and shall be incurred by Client. In furtherance of the foregoing Client agrees to release, indemnify, defend and hold harmless ESCO, its directors, consultants, contractors, and officers, agents, assignees and employees of and from all costs, claims, damages and liability arising out of or relating to Excluded Materials and Activities, acts or omissions of ESCO or third parties relating thereto, or injury caused thereby, excepting only such costs, claims, damages or liability as are the direct result of any negligence or willful misconduct of ESCO. Upon disposition of Hazardous Materials by Client, Client shall provide to ESCO copies of all manifests or other evidence or confirmation of removal of such Hazardous Materials showing Client as the sole generator of such Hazardous Materials upon ESCO's request for the same.
- 12.2 Client recognizes that in connection with the Services at the Premises, ESCO may encounter Client's lighting ballasts that may contain PCBs or DEHP and Client's fluorescent tubes that may contain mercury all of which constitute "Contained Hazardous Lighting Materials". ESCO does not take title to any such property, however may provide services to properly dispose of Contained Hazardous Lighting Materials (hereafter "Contained Hazardous Lighting Materials Services") as further defined in *Schedule A (Construction Contract)*. In furtherance of the foregoing Client agrees to release, indemnify, defend and hold harmless ESCO, its directors, consultants, contractors, and officers, agents, assignees and employees of and from all costs, claims, damages and liability arising out of or relating to Contained Hazardous Lighting Materials Services, acts or omissions of ESCO or third parties relating thereto, or injury caused thereby, excepting only such costs, claims, damages or

liability as are the direct result of any negligence or willful misconduct of ESCO. In the event that ESCO provides Contained Hazardous Lighting Materials Services per *Schedule A (Construction Contract)*, upon disposition of Contained Hazardous Lighting Materials by ESCO, ESCO shall provide to Client copies of all manifests or other evidence or confirmation of removal of such Contained Hazardous Lighting Materials showing Client as the sole generator of such Contained Hazardous Lighting Materials upon Client's request for the same.

### **SECTION 13. CONDITIONS BEYOND CONTROL OF THE PARTIES**

If a party ("performing party") shall be unable to reasonably perform any of its obligations under this Agreement due to acts of God, insurrections or riots, or similar events, this Agreement shall at the other party's option (i) remain in effect but said performing party's obligations shall be suspended until the said events shall have ended; or, (ii) be terminated upon ten (10) days notice to the performing party, in which event neither party shall have any further liability to the other with the exception of payments as defined in Schedule D for Services completed up to the time of termination.

### **SECTION 14. EVENTS OF DEFAULT**

14.1 Events of Default by Client. Each of the following events or conditions shall constitute an "Event of Default" by Client:

- (a) any failure by Client to pay ESCO any sum due for a Services of more than ten days after written notification by ESCO that Client is delinquent in making payment and provided that ESCO is not in default in its performance under the terms of this Agreement; or
- (b) any other material failure by Client to perform or comply with the terms and conditions of this Agreement, including breach of any covenant contained herein, provided that such failure continues for thirty days after notice to Client demanding that such failures to perform be cured or if such cure cannot be effected in thirty days, Client shall be deemed to have cured default upon the commencement of a cure within thirty days and diligent subsequent completion thereof;
- (c) any representation or warranty furnished by Client in this Agreement which was false or misleading in any material respect when made.

14.2 Events of Default by ESCO. Each of the following events or conditions shall constitute an "Event of Default" by ESCO:

- (a) the standards of comfort and service set forth in *Schedule H (Standards of Comfort / Operating Parameters)* are not provided due to failure of ESCO to properly design, maintain, repair or adjust the Equipment per the terms of this

Agreement except that such failure, if corrected or cured within thirty days after written notice by Client to ESCO demanding that such failure be cured, shall be deemed cured for purposes of this Agreement.

- (b) any representation or warranty furnished by ESCO in this Agreement is false or misleading in any material respect when made;
- (c) provided that the operation of the facility is not adversely affected and provided that the standards of comfort in *Schedule H (Standards of Comfort / Operating Parameters)* are maintained per the terms of this Agreement, any failure by ESCO to perform or comply with the terms and conditions of this Agreement, including breach of any covenant contained herein except that such failure, if corrected or cured within thirty days after written notice by the Client to ESCO demanding that such failure to perform be cured, shall be deemed cured for purposes of this Agreement;
- (d) the filing of a bankruptcy petition whether by ESCO or its creditors against ESCO which proceeding shall not have been dismissed within thirty days of its filing, or an involuntary assignment for the benefit of all creditors or the liquidation of ESCO;
- (e) Any material change in ownership or control of the ESCO without the prior approval of the Client, which shall not be unreasonably withheld;
- (f) failure by the ESCO to pay any amount due the Client or perform any obligation under the terms of this Agreement or the Energy Savings Guarantee as set forth in *Schedule C (Energy Savings Guarantee)*.

## **SECTION 15. REMEDIES UPON DEFAULT**

15.1 Remedies upon Default by Client. In the event the dispute Resolution provisions of Section 18 fail to resolve disputes between the Parties pertaining to the terms, conditions and obligations of either Party pursuant to this Contract, and in the further event Client fails to pay ESCO its compensation under this Agreement when due or any other Event of Default by Client occurs, ESCO may, without an election of remedies:

- (a) Exercise all remedies available at law or at equity or other appropriate proceedings, including bringing an action or actions from time to time for recovery of amounts due and unpaid by Client, and/or for specific performance and/or damages which shall include all costs and expenses reasonably incurred in exercise of its remedy, all amounts due and not previously paid (if any) to ESCO (or its contractors) for the Services completed in accordance with the Agreement, the reasonable costs incurred in the maintenance, protection (and disposition, if any) of property acquired by Client under the Agreement, for anticipated profits and overheads, and reasonable attorneys' fees;

- (b) Without limiting the foregoing, and without regard to the existence or non-existence of any Event of Default by Client, in the event Client fails to perform any other duty, covenant or condition under this Agreement after thirty (30) days' written notice, ESCO may perform such duty at its option and invoice Client for the cost incurred.

15.2 Remedies Upon Default by ESCO. In the event the dispute Resolution provisions of Section 18 fail to resolve disputes between the Parties pertaining to the terms, conditions and obligations of either Party pursuant to this Contract, and in the further event of Default by ESCO, Client may, without an election of remedies:

- (a) Exercise all remedies available at law or equity or other appropriate proceedings, including bringing an action or actions from time to time for recovery of amounts due and unpaid by ESCO, and/or for specific performance and/or for damages which shall include all costs and expenses reasonably incurred in exercise of its remedy, including reasonable attorneys' fees.

## **SECTION 16. ASSIGNMENT**

16.1 Assignment by ESCO. ESCO acknowledges that the Client is induced to enter into this Agreement by, among other things, the professional qualifications of the ESCO. The ESCO agrees that neither this Agreement nor any right or obligations hereunder may be assigned in whole or in part to another firm, without the prior written approval of the Client. Notwithstanding the forgoing, ESCO may, with prior written approval of the Client, which consent shall not be unreasonably withheld, delegate its duties and performance under this Agreement, and/or utilize contractors, provided that any assignee(s), delegate(s), or contractor(s) shall fully comply with the terms of this Agreement. ESCO shall remain jointly and severally liable with its assignees(s), or transferee(s) to the Client for all of its obligations under this Agreement.

16.2 Assignment by Client. Client may transfer or assign this Agreement and its rights and obligations herein to a successor or purchaser of the Premises or an interest therein.

## **SECTION 17. INDEMNIFICATION, LIMIT OF LIABILITY, CONSEQUENTIAL DAMAGES**

17.1 Indemnification. ESCO and Client agree to indemnify, defend and hold each other harmless from any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees resulting from bodily injury or damage to property of others, arising out of, connected with or resulting from the negligence or misconduct of their respective employees or other agents in connection with their activities within the scope of this Agreement. However, neither party shall indemnify the other against claims, damages, expenses or liabilities arising out of, connected with or resulting from the negligence or misconduct of the other party. If the parties are both at fault, then the obligation to indemnify shall be proportional to fault. The

duty to indemnify will continue in full force and effect notwithstanding the expiration or early termination of this Agreement with respect to any claims based on facts or conditions which occurred prior to termination for a period of two (2) years after such expiration or early termination. It is agreed that in providing the Equipment or Services included in this Agreement, ESCO is not an insurer, and does not guarantee that no damage or injury to persons or property will occur.

17.2 Limited Liability. ESCO's total liability to Client for damages or injury to persons or property that may be caused by or arise through performing any obligation under the Agreement shall be limited only to losses proximately caused by ESCO's negligence and only to the extent of the Agreement Sum. Notwithstanding any provision in this Agreement to the contrary, neither party, nor its officers, employees, agents, or affiliates shall be liable to the other party, its officers, employees, agents, partners, affiliates or contractors, for claims for incidental, indirect, consequential, exemplary, punitive or other special damages, including but not limited to damages for loss of anticipated profits (except as derived from payment or other compensation due for performance hereunder), loss of use or revenue, losses by reason of cost of capital connected with or resulting from any performance or lack of performance hereunder regardless whether a claim is based on contract, tort (including negligence) or theory of strict liability; provided, however, that the foregoing limitation is not intended to apply to, and shall not be construed to limit or exclude, Client's obligations under this Agreement. Neither party shall have any remedy at law or in equity which is inconsistent with any provision of this Agreement, and neither party shall have a right to terminate this Agreement except as specifically and explicitly set forth in this Agreement.

## **SECTION 18. DISPUTES; MEDIATION; ARBITRATION**

18.1 Disputes. Any controversy, claim or dispute of whatever nature arising between the parties in connection with this Agreement, including those arising out of or relating to any agreement between the parties or the breach, termination, enforceability, scope or validity thereof, whether such claim existed prior to or arises on or after the date of this Agreement (a "Dispute"), shall be resolved by good faith negotiations between ESCO and Client, by mediation or, failing mediation, by binding arbitration in accordance with this Section 18.

18.2 Mediation. Neither party shall commence an arbitration proceeding pursuant to the provisions set forth below unless such party shall first give a written notice (a "Dispute Notice") to the other party setting forth the nature of the Dispute. The parties shall attempt in good faith to resolve the Dispute by mediation under the American Arbitration Association ("AAA") mediation procedures in effect at the time of this Agreement. If the parties cannot agree on the selection of a mediator within 20 days after receipt of the Dispute Notice, the mediator will be selected in accordance with the AAA procedures. The expenses of the mediation shall be borne equally by the parties to the mediation, provided that each party shall pay for and bear the cost of its own experts, evidence and counsel.

18.3 Arbitration. If any Dispute is not settled by mediation, upon the request of any party involved (and without regard to whether or not any provision of this Agreement expressly provides for arbitration), such Dispute shall be submitted by either party to and settled by arbitration in the state of the location of the Premises in conformance with rules of the American Arbitration Association then in effect (or at any other place or under any other forum or arbitration mutually acceptable to the parties). Any award rendered shall be final and conclusive upon the parties, and a judgment thereon may be entered in the highest court of a forum, state or federal, having jurisdiction. The expenses of the arbitration shall be borne equally by the parties to the arbitration, provided that each party shall pay for and bear the cost of its own experts, evidence and counsel.

18.4 Remedies. Notwithstanding the provisions in this Section 18.4, the parties recognize that certain business relationships could give rise to the need for one or more of the parties to seek emergency, provisional or summary relief and for temporary injunctive relief. Immediately following the issuance of any such relief, the parties agree to the stay of any judicial proceedings pending mediation or arbitration of all underlying claims between the parties.

## **SECTION 19. REPRESENTATIONS AND WARRANTIES**

19.1 Each party warrants and represents to the other that:

- (a) it has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Agreement and perform its obligations hereunder;
- (b) its execution, delivery, and performance of this Agreement have been duly authorized by, or are in accordance with, its organizational instruments, and this Agreement has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;
- (c) its execution, delivery, and performance of this Agreement will not breach or violate, or constitute a default under any Agreement, lease or instrument to which it is a party or by which it or its properties may be bound or affected; or
- (d) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder

## **SECTION 20. ADDITIONAL REPRESENTATIONS OF THE PARTIES**

20.1 Client hereby warrants, represents and promises that it has provided or shall provide timely to ESCO, all records relating to energy usage and energy-related maintenance of Premises requested by ESCO and the information set forth therein

is, and all information in other records to be subsequently provided pursuant to this Agreement will be true and accurate in all material respects.

20.2 ESCO hereby warrants, represents and promises that:

- a. it shall have provided proof and documentation of required insurance pursuant to Section 11 of this Agreement;
- b. it shall make available, upon reasonable request, all documents relating to its performance under this Agreement, including all contracts and subcontracts entered into;
- c. it shall use qualified subcontractors and delegates, licensed and bonded in this state to perform the work so subcontracted or delegated pursuant to the terms hereof;
- d. that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Services and perform its obligations under this Agreement.

#### **SECTION 21. APPLICABLE LAW**

This Agreement and the construction and enforceability thereof shall be interpreted under the laws of the State where the Premises is located.

#### **SECTION 22. COMPLIANCE WITH LAW AND STANDARD PRACTICES**

ESCO shall perform its obligations hereunder in compliance with any and all applicable federal, state, and local laws, rules, and regulations, in accordance with sound engineering and safety practices, and in compliance with any and all reasonable rules of Client relative to the Premises. ESCO shall be responsible for obtaining all governmental permits, consents, and authorizations as may be required to perform its obligations hereunder.

#### **SECTION 23. INDEPENDENT CAPACITY OF THE CONTRACTOR**

The parties hereto agree that ESCO, and any agents and employees of ESCO, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees, or agents of the Client.

#### **SECTION 24 NO WAIVER**

The failure of ESCO or Client to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of either party's right to thereafter enforce the same in accordance with this Agreement in the event of a continuing or subsequent default on the part of ESCO or Client.

**SECTION 25 SEVERABILITY**

In the event that any clause or provision of this Agreement or any part thereof shall be declared invalid, void, or unenforceable by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portions of this Agreement unless the result would be manifestly inequitable or unconscionable

**SECTION 26 COMPLETE AGREEMENT**

This Agreement, when executed, together with all Schedules attached hereto or to be attached hereto, as provided for by this Agreement shall constitute the entire Agreement between both parties and this Agreement may not be amended, modified, or terminated except by a written Agreement signed by the parties hereto.

**SECTION 27 FURTHER DOCUMENTS**

The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement

**SECTION 28 NOTICE**

Any notice required or permitted hereunder shall be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail or telefax (Fax), return receipt requested, postage prepaid, or delivered to a nationally recognized express mail service, charges prepaid, receipt obtained, to the address shown below or to such other persons or addresses as are specified by similar notice.

TO ESCO:                   **Energy Solutions Professionals, LLC**  
*Attn: Jeff Flathman*  
**9218 Metcalf Avenue, Suite 274**  
**Overland Park, KS 66212**  
**(913) 439-1865**

TO CLIENT:                   **City of Prairie Village**  
*Attention: Quinn Bennion, City Administrator*  
**7700 Mission Road**  
**Prairie Village, KS 66208**



## SECTION 29 CLIENT COMPLIANCE WITH CHECKLIST

- 29.1 The parties acknowledge and agree that ESCO has entered into this Agreement upon the prospect of earning compensation based on ***Schedule D (Compensation to ESCO)***, with the commitment to design and install energy-saving and facility-improvement measures that will result in guaranteed energy and operational savings as identified in ***Schedule C (Energy Savings Guarantee)***, each of these schedules is attached hereto and made a part hereof.
- 29.2 The parties further acknowledge and agree that the said guaranteed energy savings would not likely be obtained unless certain procedures and methods of operation designed for energy conservation shall be implemented and followed by Client on a regular and continuous basis.
- 29.3 Client agrees that in order to achieve sustained energy savings over time, it shall be necessary to follow, implement and adhere to the energy conservation procedures and methods of operation set forth on ***Schedule H (Standards of Comfort / Operating Parameters)***, and to carry out maintenance procedures as presented in ***Schedule I (Maintenance Responsibilities)***, each schedule to be attached hereto and made a part hereof, after Client's approval.
- 29.4 Client agrees that ESCO shall have the right to periodically, with prior notice, inspect Premises. The primary purpose of these inspections is to assist Client with assuring optimal performance and energy savings are achieved and sustained over time. Further, the ESCO will determine if Client is complying, and shall have complied with its obligations as set forth above in Section 29.3. Client shall make the Premises available to ESCO for and during each (potential) inspection, and shall have the right to witness each inspection and any measurements taken or records made.

**SECTION 30 SPECIAL PROVISIONS**

The signatures of the parties follow the attached Special Provisions (if applicable), which Special Provisions are included as part of this Agreement.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto subscribe their names to this Agreement by their duly authorized officers on the date first above written.

**Energy Solutions Professionals:**

\_\_\_\_\_ By \_\_\_\_\_  
Date  
20-5856796 Print Name: Jeff Flathman  
FEIN  
Title: President

**CLIENT:**

\_\_\_\_\_ By: \_\_\_\_\_  
Date  
Print Name: Quinn Bennion  
Title: City Administrator

## SCHEDULE A CONSTRUCTION CONTRACT

This Construction Contract (the "Contract") is made and entered into as of \_\_\_\_\_ between *Energy Solutions Professionals* ("Contractor"), and *City of Prairie Village* ("Client"), for the purpose of installing certain energy, water conservation or other equipment, described in *Attachment A (Equipment & Scope of Work)*, for the Client's property and buildings (the "Premises", *Attachment B (Premises)*).

### RECITALS

WHEREAS, Client owns and operates the Premises, and is in need of energy saving equipment designed to save costs at said Premises;

WHEREAS, Contractor has completed an investment grade audit (the "IGA") of the premises under a separate contract and is willing to design and install certain facility improvement measures (the "Work");

WHEREAS, Client desires to retain Contractor to purchase, install certain equipment of the type or class described in *Attachment A*, attached hereto; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, Client and Contractor hereto covenant and agree as follows:

### **ARTICLE 1. CONTRACT DEFINITIONS**

- 1.1 "**Change Order**" shall mean a document signed by Contractor and Client to amend the Contract.
- 1.2 "**Client**" shall mean the owner and its duly authorized agents and employees. The address of Client is **7700 Mission Road, Prairie Village, KS 66208**.
- 1.3 "**Contract**" shall mean the written agreement between Contractor and the Client as to the work that Contractor has agreed to furnish. This Contract shall be the Construction Contract and shall include all documents attached thereto or referenced therein.
- 1.4 "**Contract Start Date**" is identified at the top of the Contract and shall mean the date of the beginning of final design and construction of the scope of work.
- 1.5 "**Contract Sum**" shall mean the total contract price(s) payable to Contractor as detailed in *Attachment C (Compensation to Contractor)*.
- 1.6 "**Day**" or "**days**", unless otherwise expressly defined in the Contract, shall mean a

calendar day or days of twenty-four (24) hours each.

- 1.7 "**Equipment**" shall mean the items described in *Attachment A* attached to this Contract
- 1.8 "**Contractor**" shall mean Energy Solutions Professionals, LLC., and its duly authorized agents, contractors and employees. The address of Energy Solutions Professionals, LLC is 9218 Metcalf Ave, Suite 274, Overland Park, KS 66212.
- 1.9 "**Final Completion**" shall mean the completion of the Project including all punch list items finished, documents per *Attachment J (Project Closeout Documents)* have been delivered to Client as mutually agreed by Client and Contractor, and evidenced by the execution of *Attachment I (Certificate of Final Completion)*.
- 1.10 "**Project**" shall mean the facility, specification of scope of work identified in the Contract being constructed or worked on
- 1.11 "**Premises**" shall mean the contiguous land upon which the Project is being constructed or where the premises reside. *Attachment B*
- 1.12 "**Scope of Work**" shall mean the labor, equipment, supplies, goods, (including raw materials, components, intermediate assemblies and end products) or materials and related services to be furnished under the Contract and the carrying out of all obligations imposed by the Contract as described in detail in *Attachment A*.
- 1.13 "**Substantial Completion**" shall mean the date determined by the Contractor and mutually agreed to by Client when the work or designated portion thereof is complete in accordance with the Contract and the final punch list has been delivered, so the Client may beneficially utilize the equipment and occupy the work or designated portion thereof for its intended use. Execution of *Attachment H (Certificate of Substantial Completion)* shall signify Substantial Completion

## **ARTICLE 2. CONTRACT ATTACHMENTS**

The Contractor has prepared and the Client has approved and accepted the Attachments as set forth below, copies of which are attached hereto and made a part of this Contract by reference.

Attachment A	Equipment & Scope of Work
Attachment B	Premises
Attachment C	Compensation to Contractor
Attachment D	Construction and Installation Schedule
Attachment E	Project Bonding Requirements
Attachment F	Standards of Comfort / Operating Parameters
Attachment G	Contractor's Training Responsibilities

Attachment H	Certificate of Substantial Completion
Attachment I	Certificate of Final Completion
Attachment J	Project Closeout Documents
Attachment K	Subcontractor Grant Flowdown Requirements

**ARTICLE 3. CONTRACTOR'S DUTIES**

- 3.1 Performance of the Construction Work. Contractor shall install the Equipment and perform the Work in the manner set forth herein. Contractor shall proceed in accordance with the construction schedule set out in Attachment D.
- 3.2 Training by Contractor. Contractor shall conduct the training program described in Attachment G, which shall be completed prior to acceptance of the Work by client.
- 3.3 Differing Site Conditions. Contractor shall promptly notify Client in writing upon discovery of any: (a) subsurface or latent physical conditions at the Premises differing materially from those indicated in the Contract, or (b) theretofore unknown physical conditions at the Premises, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Scope of Work of the character provided for in the Contract. Client shall investigate the conditions, and if it finds that such conditions do so materially differ and cause an increase or decrease in the Client's cost of, or the time required for, performance of any part of the Work under the Contract, and which could not have reasonably been anticipated by Contractor, whether or not changed as a result of such conditions, an equitable adjustment shall be made in the Contract Sum, time of completion and/or other terms and conditions of the Contract, and the Contract shall be modified in writing accordingly by a written Change Order.

**ARTICLE 4. PAYMENTS TO CONTRACTOR**

- 4.1 Billing Information Procedure. Payments due to Contractor under *Attachment C* (including any Change Orders) shall be calculated each month in the following manner:
  - a. Progress Payment Application. By no later than the 5<sup>th</sup> day of each month, Contractor shall submit an application for payment (the “Payment Application”) to the Client; each application will represent the amount of equipment provided and scope of work complete through the end of the previous month less the amounts requested in previous Payment Applications. The Payment Application shall subtract the correct amount of Retainage.
  - b. Final Payment Application. Upon execution of Final Completion, Contractor shall submit a final application for payment (the “Final Payment Application”) to the Client; Final Payment Application will represent the

amount of equipment provided and scope of work complete not included in previous Payment Applications as well as the amount of Retainage that has not been billed in Payment Applications.

- 4.2 Payment. Client shall pay Contractor within thirty days of receipt of Contractor's invoice. If not paid within 30 days, a \$150 late fee will be assessed.
- 4.3 Retainage. Client shall retain 5% of each progress payment application.
- 4.4 Late Payment. Amounts not paid to Client will accrue interest at 12% per annum for the number of days from the due date until the payment due is made in full.

## **ARTICLE 5. PERMITS AND APPROVALS; COORDINATION**

- 5.1 Permits and Approvals. Client shall use its best efforts to assist Contractor in obtaining all necessary permits and approvals for installation of the Equipment. In no event shall Client, however, be responsible for payment of any permits. The equipment installed by Contractor shall conform to all federal, state and local code requirements. Contractor shall furnish copies of each permit or license which is required to perform the work to the Client before the Contractor commences the portion of the work requiring such permit or license.
- 5.2 Coordination. The Client and Contractor shall coordinate the activities of Contractor's equipment installers with those of the Client, its employees, and agents. Contractor shall not commit or permit any act which will interfere with the performance of business activities conducted by the Client or its employees without prior written approval of the Client.

## **ARTICLE 6. EQUIPMENT**

- 6.1 Ownership of Existing Equipment Ownership of the equipment and materials presently existing at the Premises at the time of execution of this Contract shall remain the property of the Client even if it is replaced or its operation made unnecessary by work performed by Contractor pursuant to this Contract. If applicable, Contractor shall advise the Client in writing of all equipment and materials to be replaced at the Premises and the Client shall within thirty days designate in writing to Contractor which equipment and materials that should not be disposed of off-site by Contractor. It is understood and agreed to by both Parties that the Client shall be responsible for and designate the location and storage for any equipment and materials that should not be disposed of off-site. Contractor shall be responsible for the disposal of all equipment and materials designated by the Client as disposable off-site in accordance with all applicable laws and regulations regarding such disposal.

- 6.2 New Equipment. All new equipment or materials supplied to the Client shall become the property of the Client.
- 6.3 Startup and Equipment Commissioning: The Contractor shall conduct a thorough and systematic performance test of each element and total system of the installed Equipment in accordance with ***Attachment F (Standards of Comfort / Operating Parameters)*** and prior to acceptance of the project by Client. The Contractor shall provide notice to the Client of the scheduled test(s) and the Client and/or its designees shall have the right to be present at any or all such tests conducted by Contractor and/or manufacturers of the Equipment. The Contractor shall be responsible for correcting and/or adjusting all deficiencies in systems and Equipment operations that may be observed during system commissioning procedures.
- 6.4 Location and access. Client shall provide mutually satisfactory rent-free space for the installation and operation of the Equipment and shall protect such Equipment in the same careful manner that Client protects its own property. Client shall provide access to the Premises for Contractor and its contractors or subcontractors during regular business hours, or such other hours as may be requested by Contractor and reasonably acceptable to Client, to install, adjust, inspect, maintain and repair the Equipment and to otherwise complete the Work and other duties and responsibilities under this Contract. Contractor shall have free access to the Premises to correct any emergency condition.
- 6.5 Damage or Destruction of Equipment. If any significant item of Equipment is irreparably damaged by the negligence or willful misconduct of an employee of the Client, destroyed, or stolen, and if Client fails to repair or replace said item within a reasonable period of time, not to exceed 120 days, Contractor may terminate this Contract by delivery of a written notice to Client, whereupon both parties shall have no further liability to each other. Any such termination shall not be considered an Event of Default on the part of either party

## **ARTICLE 7. PERFORMANCE BY CONTRACTOR**

- 7.1 Performance by Contractor. Contractor shall perform all tasks/phases under the Contract, including construction, and install the Equipment in such a manner so as not to harm the structural integrity of the buildings or their operating systems and so as to conform to the standards set forth in ***Attachment F*** and the construction schedule specified in ***Attachment D***. Contractor shall repair and restore to its original condition any area of damage caused by Contractor's performance under this Contract. The Client reserves the right to review the work performed by Contractor and to direct Contractor to take certain corrective action if, in the opinion of the Client, the structural integrity of the Premises or its operating system is or will be harmed. All costs associated with such corrective action to damage

caused by Contractor's performance of the work shall be borne by Contractor. Contractor shall remain responsible for the professional and technical accuracy of all services performed under this Contract, whether by the Contractor or its subcontractors or others on its behalf.

## **ARTICLE 8. CONTRACTOR'S PROPERTY/CASUALTY/INSURANCE**

- 8.1 At all times during the term of this Contract, Contractor shall maintain in full force and effect, at its expense: (1) Workmen's Compensation Insurance sufficient to cover all of the employees of (Contractor) working to fulfill this Contract, and (2) Casualty and Liability Insurance on the Equipment and Liability Insurance for its employees and the possession, operation, and service of the Equipment. The limits of such insurance shall be not less than \$500,000 for injury to or death of one person in a single occurrence and \$1 million for injury to or death of more than one person in a single occurrence and \$500,000 for a single occurrence of property damage. Such policies shall name the Client as an additional insured.
- 8.2 Prior to commencement of work under this Contract, Contractor will be required to provide Client with current certificates of insurance specified above. These certificates shall contain a provision that coverage afforded under the policies will not be canceled or changed until at least thirty (30) days' prior written notice has been given to Client.
- 8.3 Contractor shall be responsible for (i) any damage to the Equipment or other property on the Premises and (ii) any personal injury where such damage or injury occurs as a result of Contractor's performance under this Contract.

## **ARTICLE 9. HAZARDOUS MATERIALS; ENVIRONMENTAL REQUIREMENTS**

- 9.1 Client recognizes that in connection with the Scope of Work at the Premises, Contractor may encounter, but is not responsible for, (a) asbestos and materials containing asbestos, (b) pollutants, petroleum, urea formaldehyde, hazardous wastes, hazardous materials or contaminants, (c) lamps and ballasts containing PCB's & DEHP, (collectively, clauses (a), (b) and (c) constitute "Hazardous Materials"), and (d) the storage, handling, use, transportation, treatment, or the disposal, discharge, leakage, detection, removal or containment thereof. The materials and activities listed in the foregoing sentence are referred to as "Excluded Materials and Activities." Client acknowledges that Client is the sole generator of any Excluded Materials and Activities and is solely responsible for every aspect of the Excluded Materials and Activities. Client agrees that if performance of Work involves any Excluded Materials and Activities, Contractor may perform or arrange



for the performance of such Work but Client shall bear the sole risk and responsibility therefore. Furthermore, in handling any of Client's property, including, without limitation, Client's lighting ballasts that may contain PCBs or DEHP and Client's fluorescent tubes, Contractor does not take title to any such property, nor does Contractor assume any responsibility for the storage, handling, use, transportation, treatment, disposal, discharge, leakage, detection, removal or containment of such property. Client shall be solely responsible for disposing of its Hazardous Materials in a timely manner and in accordance with all federal, state and local laws, statutes and regulations applicable thereto. At Contractor's option, certain costs associated with Scope of Work related to Excluded Materials and Activities necessary for the implementation of the Equipment may be included in the Contract Sum, notwithstanding the fact that such costs are the responsibility of Client and shall be incurred by Client. In furtherance of the foregoing Client agrees to release, indemnify, defend and hold harmless Contractor, its directors, consultants, contractors, and officers, agents, assignees and employees of and from all costs, claims, damages and liability arising out of or relating to Excluded Materials and Activities, acts or omissions of Contractor or third parties relating thereto, or injury caused thereby, excepting only such costs, claims, damages or liability as are the direct result of any gross negligence or willful misconduct of Contractor. Upon disposition of Hazardous Materials by Client, Client shall provide to Contractor copies of all manifests or other evidence or confirmation of removal of such Hazardous Materials showing Client as the sole generator of such Hazardous Materials upon Contractor's request for the same.

## **ARTICLE 10. CONDITIONS BEYOND CONTROL OF THE PARTIES**

10.1 If a party ("performing party") shall be unable to reasonably perform any of its obligations under this Contract due to acts of God, insurrections or riots, or similar events, this Contract shall at the other party's option (i) remain in effect but said performing party's obligations shall be suspended until the said events shall have ended; or, (ii) be terminated upon ten (10) days notice to the performing party, in which event neither party shall have any further liability to the other.

## **ARTICLE 11. EVENTS OF DEFAULT**

11.1 Events of Default by Client. Each of the following events or conditions shall constitute an "Event of Default" by Client:

- a. any failure by Client to pay Contractor any sum due work completed of more than ten days after written notification by Contractor that Client is delinquent in making payment and provided that Contractor is not in default in its performance under the terms of this Contract; or

- b. any other material failure by Client to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein, provided that such failure continues for thirty days after notice to Client demanding that such failures to perform be cured or if such cure cannot be effected in thirty days, Client shall be deemed to have cured default upon the commencement of a cure within thirty days and diligent subsequent completion thereof;
- c. any representation or warranty furnished by Client in this Contract which was false or misleading in any material respect when made.

11.2 Events of Default by Contractor. Each of the following events or conditions shall constitute an "Event of Default" by Contractor:

- a. any representation furnished by Contractor in this Contract is false or misleading in any material respect when made;
- b. failure to furnish and install the Equipment and make it ready for use within the time specified by this Contract as set forth in ***Attachment A and Attachment G***;
- c. any failure by Contractor to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein except that such failure, if corrected or cured within thirty days after written notice by the Client to Contractor demanding that such failure to perform be cured, shall be deemed cured for purposes of this Contract;
- d. any lien or encumbrance upon the equipment by any subcontractor, laborer or materialman of Contractor;
- e. the filing of a bankruptcy petition whether by Contractor or its creditors against Contractor which proceeding shall not have been dismissed within thirty days of its filing, or an involuntary assignment for the benefit of all creditors or the liquidation of Contractor;
- f. Any material change in ownership or control of the Contractor without the prior approval of the Client, which shall not be unreasonably withheld;

## **ARTICLE 12. REMEDIES UPON DEFAULT**

12.1 Remedies upon Default by Client. In the event Client fails to pay Contractor its compensation under this Contract when due or any other Event of Default by Client occurs, Contractor may, without an election of remedies:

- a. Exercise all remedies available at law or at equity or other appropriate proceedings, including bringing an action or actions from time to time for recovery of amounts due and unpaid by Client, and/or for specific performance and/or damages which shall include all costs and expenses reasonably incurred in exercise of its remedy, all amounts due and not previously paid (if any) to Contractor (or its subcontractors) for the Scope of Work completed in accordance with the Contract, the reasonable costs incurred in the maintenance, protection (and disposition, if any) of property acquired by Client under the Contract, for anticipated profits and overheads, and reasonable attorneys' fees;
- b. Without recourse to legal process, terminate this Contract by delivery of written notice declaring termination; and
- c. Without limiting the foregoing, and without regard to the existence or non-existence of any Event of Default by Client, in the event Client fails to perform any other duty, covenant or condition under this Contract after thirty (30) days' written notice, Contractor may perform such duty at its option and invoice Client for the cost incurred.

12.2 Remedies Upon Default by Contractor. In the Event of Default by Contractor, Client may, without an election of remedies:

- a. Exercise all remedies available at law or equity or other appropriate proceedings, including bringing an action or actions from time to time for uncompleted Work by Contractor, which shall include all costs and expenses reasonably incurred in exercise of its remedy, including reasonable attorneys' fees; and
- b. Without recourse to legal process, terminate this Contract by delivery of a written notice declaring termination.

### **ARTICLE 13. ASSIGNMENT**

13.1 Assignment by Contractor. Contractor acknowledges that the Client is induced to enter into this Contract by, among other things, the professional qualifications of Contractor. Contractor agrees that neither this Contract nor any right or obligations hereunder may be assigned in whole or in part to another firm, without the prior written approval of the Client.

Notwithstanding the foregoing, Contractor may, with prior written approval of the Client, which consent shall not be unreasonably withheld, delegate its duties and performance under this Contract, and/or utilize contractors, provided that any assignee(s), delegate(s), or contractor(s) shall fully comply with the terms of this Contract. Notwithstanding the provisions of this paragraph, the Contractor shall remain jointly and severally liable with its assignees(s), or transferee(s) to the Client for all of its obligations under this Contract.

13.2 Assignment by Client. Client may transfer or assign this Contract and its rights and obligations herein to a successor or purchaser of the Premises or an interest therein.

**ARTICLE 14. INDEMNIFICATION, LIMIT OF LIABILITY,  
CONSEQUENTIAL DAMAGES**

14.1 Indemnification. Contractor and Client agree to indemnify, defend and hold each other harmless from any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees resulting from bodily injury or damage to property of others, arising out of, connected with or resulting from the negligence or misconduct of their respective employees or other agents in connection with their activities within the scope of this Contract. However, neither party shall indemnify the other against claims, damages, expenses or liabilities arising out of, connected with or resulting from the negligence or misconduct of the other party. If the parties are both at fault, then the obligation to indemnify shall be proportional to fault. The duty to indemnify will continue in full force and effect notwithstanding the expiration or early termination of this Contract with respect to any claims based on facts or conditions which occurred prior to termination for a period of two (2) years after such expiration or early termination. It is agreed that in providing the Equipment or Services included in this Contract, Contractor is not an insurer, and does not guarantee that no damage or injury to persons or property will occur.

14.2 Damage Limitations.

- a. Contractor's total liability to Client for damages or injury to persons or property that may be caused by or arise through furnishing and installing equipment under the Contract shall be limited only to losses proximately caused by Contractor's negligence and only to the extent of the Contract Sum.
- b. Notwithstanding any provision in this Contract to the contrary, neither party, nor its officers, employees, agents, or affiliates shall be liable to the other party, its officers, employees, agents, partners, affiliates or contractors, for claims for incidental, indirect, consequential, exemplary, punitive or other special damages, including but not limited to damages for loss of anticipated profits (except as derived from payment or other compensation due for performance hereunder), loss of use or revenue, losses by reason of cost of capital connected with or resulting from any performance or lack of performance hereunder regardless whether a claim is based on contract, tort (including negligence) or theory of strict liability; provided, however, that the foregoing limitation is not intended to apply to, and shall not be construed to limit or exclude, Client's obligations under this Contract. Neither party shall have any remedy at law or in equity which is inconsistent with any provision of this Contract, and neither party shall have a right to terminate this Contract except as specifically and explicitly set forth in this Contract.

## **ARTICLE 15. DISPUTES; MEDIATION; ARBITRATION**

- 15.1 Disputes. Any controversy, claim or dispute of whatever nature arising between the parties in connection with this Contract, including those arising out of or relating to any agreement between the parties or the breach, termination, enforceability, scope or validity thereof, whether such claim existed prior to or arises on or after the date of this Contract (a "Dispute"), shall be resolved by good faith negotiations between Contractor and Client, by mediation or, failing mediation, by binding arbitration in accordance with this Article 15.
- 15.2 Mediation. Neither party shall commence litigation proceeding pursuant to the provisions set forth below unless such party shall first give a written notice (a "Dispute Notice") to the other party setting forth the nature of the Dispute. The parties shall attempt in good faith to resolve the Dispute by mediation under the American Arbitration Association ("AAA") mediation procedures in effect at the time of this Contract. If the parties cannot agree on the selection of a mediator within 20 days after receipt of the Dispute Notice, the mediator will be selected in accordance with the AAA procedures. The expenses of the mediation shall be borne equally by the parties to the mediation, provided that each party shall pay for and bear the cost of its own experts, evidence and counsel.
- 15.3 Arbitration. If any Dispute is not settled by mediation, upon the request of any party involved (and without regard to whether or not any provision of this Contract expressly provides for arbitration), such Dispute may be submitted by either party to and settled by arbitration in state of location of Premises in conformance with rules of the American Arbitration Association then in effect (or at any other place or under any other forum or arbitration mutually acceptable to the parties). Any award rendered shall be final and conclusive upon the parties, and a judgment thereon may be entered in the highest court of a forum, state or federal, having jurisdiction. The expenses of the arbitration shall be borne equally by the parties to the arbitration, provided that each party shall pay for and bear the cost of its own experts, evidence and counsel.
- 15.4 Remedies. Notwithstanding the provisions in this Article 15.4, the parties recognize that certain business relationships could give rise to the need for one or more of the parties to seek emergency, provisional or summary relief and for temporary injunctive relief. Immediately following the issuance of any such relief, the parties agree to the stay of any judicial proceedings pending mediation or arbitration of all underlying claims between the parties.

## **ARTICLE 16. REPRESENTATIONS AND WARRANTIES**

- 16.1 Each party warrants and represents to the other that:
- a. it has all requisite power, authority, licenses, permits, and franchises, corporate

or otherwise, to execute and deliver this Contract and perform its obligations hereunder;

- b. its execution, delivery, and performance of this Contract have been duly authorized by, or are in accordance with, its organizational instruments, and this Contract has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;
- c. its execution, delivery, and performance of this Contract will not breach or violate, or constitute a default under any Contract, lease or instrument to which it is a party or by which it or its properties may be bound or affected; or
- d. it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder

#### **ARTICLE 17. ADDITIONAL REPRESENTATIONS OF THE PARTIES**

17.1 Client Warranties. Client hereby warrants, represents and promises that it has provided or shall provide timely to Contractor, all information in records to be subsequently provided pursuant to this Contract will be true and accurate in all material respects.

17.2 Contractor Warranties. Contractor hereby warrants, represents and promises that:

- a. It shall have provided proof and documentation of required insurance pursuant to Article 11 of this Contract;
- b. it shall make available, upon reasonable request, all documents relating to its performance under this Contract, including all contracts and subcontracts entered into;
- c. it shall use qualified subcontractors and delegates, licensed and bonded in this state to perform the work so subcontracted or delegated pursuant to the terms hereof;
- d. that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Scope of Work and perform its obligations under this Contract.

#### **ARTICLE 18. APPLICABLE LAW**

This Contract and the construction and enforceability thereof shall be interpreted under the laws of the State of the location of the Premises.

**ARTICLE 19. COMPLIANCE WITH LAW AND STANDARD PRACTICES**

Contractor shall perform its obligations hereunder in compliance with any and all applicable federal, state, and local laws, rules, and regulations, in accordance with sound engineering and safety practices, and in compliance with any and all reasonable rules of Client relative to the Premises. Contractor shall be responsible for obtaining all governmental permits, consents, and authorizations as may be required to perform its obligations hereunder

**ARTICLE 20. INDEPENDENT CAPACITY OF THE CONTRACTOR**

The parties hereto agree that Contractor, and any agents and employees of Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers, employees, or agents of the Client.

**ARTICLE 21 NO WAIVER**

The failure of Contractor or Client to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of either party's right to thereafter enforce the same in accordance with this Contract in the event of a continuing or subsequent default on the part of Contractor or Client.

**ARTICLE 22 SEVERABILITY**

In the event that any clause or provision of this Contract or any part thereof shall be declared invalid, void, or unenforceable by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portions of this Contract unless the result would be manifestly inequitable or unconscionable

**ARTICLE 23 COMPLETE CONTRACT**

This Contract, when executed, together with all Attachments attached hereto or to be attached hereto, as provided for by this Contract shall constitute the entire Contract between both parties and this Contract may not be amended, modified, or terminated except by a written Contract signed by the parties hereto.

**ARTICLE 24 FURTHER DOCUMENTS**

The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Contract

**ARTICLE 25 NOTICE**

Any notice required or permitted hereunder shall be deemed sufficient if given in writing and delivered personally or sent by electronic mail, registered or certified mail or telefax (Fax), return receipt requested, postage prepaid, or delivered to a nationally recognized express mail service, charges prepaid, receipt obtained, to the address shown below or to such other persons or addresses as are specified by similar notice.

TO CONTRACTOR: ***Energy Solutions Professionals***  
Attention: Jeff Flathman, President  
9218 Metcalf, Suite 274  
Overland Park, KS 66212  
***(913) 381-2800***

TO CLIENT: ***City of Prairie Village***  
Attention: Quinn Bennion, City Administrator  
7700 Mission Road  
Prairie Village, KS 66208  
***(913)-385-4601***



**ARTICLE 26 SPECIAL PROVISIONS**

The signatures of the parties follow the attached Special Provisions (if applicable), which Special Provisions are included as part of this Contract.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto subscribe their names to this Contract by their duly authorized officers on the date first above written.

**CONTRACTOR:**

\_\_\_\_\_ By: \_\_\_\_\_  
Date  
20-5856796 Print Name: Jeff Flathman  
FEIN  
Title: President

**CLIENT:**

\_\_\_\_\_ By: \_\_\_\_\_  
Date  
Print Name: Quinn Bennion  
Title: City Administrator

## ATTACHMENT A

### SCOPE OF WORK

#### **GENERAL NOTES TO ALL SCOPE**

1. Sales taxes are excluded on all work performed, as the project is tax exempt. Client will provide ESCO sales tax exemption certificate.
2. For the purposes of low voltage control wiring, plenum rate cable may be used in concealed areas provided it is tied up to avoid sagging. In exposed areas, conduit or wiremold must be used as consistent with raceway currently existing in the room/building.

#### **ENERGY/FACILITY IMPROVEMENTS PROJECT**

**Note: This Energy Conservation Project is being partially funded through an ARRA grant and therefore will follow rules and guidelines for ARRA funded projects.**

#### **ECM 1 – Lighting Retrofits**

1. Provide and install new lamps, ballasts, fixtures in the quantities and locations described in the following lighting construction table.
2. Remove all existing lamps and ballasts (per lighting construction table) and properly recycle. Provide official certificate of recycling on all recycled lighting components.
3. Remove and properly dispose of all other materials not being recycled as described above.
4. Provide dumpsters as necessary.
5. Provide storage containers for all materials on site during installation.
6. Replacement of wiring and circuits is NOT included unless specifically noted in the lighting construction table.
7. Replacement of lenses / diffusers is NOT included unless specifically noted in the following lighting construction table.

Lighting Improvement description	City Hall	Police Station	Community Center	City Hall / Police Station - exterior lighting	Public Works A	Public Works D	Public Works G	TOTAL
Conv. Kit - EB & 28w lamps (2L)	-	5	-	-	-	-	-	5
Conv. Kit - EB & 28w lamps (4L)	28	8	-	-	10	2	15	63
Conv. Kit - EB & 28w lamps (4L) - high ballast factor ballast	-	-	-	-	2	9	-	11
Delamp - 4L to 2L - low wattage EB & 28w lamps (2L)	11	16	7	-	-	-	-	34
Delamp from 3L to 2L - low wattage EB & 28w lamps (2L)	-	-	-	-	1	-	-	1
Lamp replacement with 28 watt lamp (1L)	5	34	-	-	3	-	-	42
Low wattage EB & 17w lamps (2L)	-	2	-	-	-	-	-	2
Low wattage EB & 25w lamps (2L)	8	2	-	-	-	-	-	10
Low wattage EB & 28w lamps (1L)	-	-	-	-	-	-	2	2
Low wattage EB & 28w lamps (2L)	62	48	-	-	2	2	23	137
Low wattage EB & 28w lamps (3L)	-	-	-	-	30	6	-	36
Low wattage EB & 28w lamps (4L)	58	41	14	-	13	16	-	142
Retrofit kit - white reflector, low wattage EB & 28w lamps (2L)	30	57	-	-	4	7	-	98
Screw-in TWIST CFL 13w (1L)	14	-	2	-	-	-	-	16
Replace lamp - Sylvania CF23EL/BR40/BL/1 screw in flood	-	-	9	-	-	-	-	9
Replace lamp - Sylvania LED6MR16/DIM/830/FL40	36	-	-	-	-	-	-	36
Replace lamp - Sylvania LED8G25/DIM/F/830	28	-	8	-	-	-	-	36
Replace lamp - Sylvania LED8PAR20/DIM/830/FL40	18	-	-	-	-	-	-	18
Retrofit kit - 1st Source Lighting - UISB series 100w induction	-	-	-	2	-	-	1	3
Retrofit kit - Lithonia MRP series 100w induction	-	-	-	16	-	-	-	16
Retrofit kit - Sylvania area light LED 55	-	-	-	8	-	-	-	8
NEW - 6 lamp T8 - Williams AL series - 28w lamps w/HBF ballast	-	-	-	-	17	-	-	17
NEW 40w induction wall pack - USLightingTech	-	-	-	5	-	2	4	11
NEW 42T flood light - RAB Future Flood	-	-	-	6	8	-	2	16
NEW canopy fixture - 42T compact fluorescent - Williams SMSQ12 series	-	-	-	-	10	-	-	10
NEW LED Exit (RED)	4	7	-	-	-	4	-	15
NEW LED Exit (RED) - w/bug eye	-	-	-	-	1	-	-	1
NEW low bay fixture - 42T compact fluorescent - Williams SMPG series	-	-	-	-	3	-	-	3
<b>TOTALS</b>	<b>302</b>	<b>220</b>	<b>40</b>	<b>37</b>	<b>104</b>	<b>48</b>	<b>47</b>	<b>798</b>
DO NOTHING - NO RETROFIT	59	139	1	3	1	-	-	203
<b>TOTAL NUMBER OF FIXTURES AUDITED</b>	<b>361</b>	<b>359</b>	<b>41</b>	<b>40</b>	<b>105</b>	<b>48</b>	<b>47</b>	<b>1,001</b>

## **ECM 2 – Water Efficiency Upgrades**

1. Provide and install plumbing fixtures, components, etc in the quantities and locations as shown in the following water efficiency construction table.
2. Remove and properly dispose of all demolished materials not being recycled as described above. Provide dumpsters as necessary.
3. Provide storage containers for all materials on site during installation.
4. Replacement of shutoff, diverting, isolation, and/or stop valves is NOT included unless specifically noted in the water efficiency construction table.
5. Repairs to pre-existing damage such as missing, loose, cracked, or broken tiles are NOT included.
6. Faucet modifications are limited to that of flow aerators and do NOT include repair of leaking faucets, valve stems, etc. unless specifically noted in the water efficiency construction table.
7. Repair of cracked or leaking basins / bowls is NOT included unless specifically noted otherwise in the water efficiency construction table.
8. Repair and/or replacement of broken faucet / shower handles is NOT included unless specifically noted in the water efficiency construction table.
9. Installation of ADA equipment is limited to equipment that is existing ADA fixtures as defined in the following water efficiency construction table.

PROJECT SCOPE BY BUILDING AND MEASURE				
Building Name	Existing Fixture Description	Measure Description	Data	Total
City Hall	Urinal Wall Round Sloan	Don't Do - Low Consumption	Existing Qty	2
			Qty Upgraded	0
	Closet Wall Elongated Sloan	New wall mounted elongated bowl retrofit existing valve to 1.6 gpf	Existing Qty	8
			Qty Upgraded	8
	Shower Plastic Standard	Don't Do - Low Consumption	Existing Qty	2
			Qty Upgraded	0
	Urinal Wall Elongated Sloan	Don't Do - Low Consumption	Existing Qty	2
		Qty Upgraded	0	
	Lavatory Sink 4" Centerset Standard - wristblades, gooseneck	Retrofit existing faucet with 1.5 gpm vandal proof laminar flow moderator	Existing Qty	4
			Qty Upgraded	4
	Kitchen Sink 8" Centerset Standard - Single Handle Mixing	Retrofit existing faucet with 1.5 gpm vandal proof laminar flow moderator	Existing Qty	2
			Qty Upgraded	2
	Lavatory Sink 8" Centerset Standard	Retrofit existing faucet with 1.5 gpm vandal proof laminar flow moderator	Existing Qty	4
			Qty Upgraded	4
City Hall Sum of Existing Qty				24
City Hall Sum of Qty Upgraded				18
Community Center	Closet Floor Elongated Tank ADA	Don't Do - Low Consumption	Existing Qty	1
			Qty Upgraded	0
		New 1.6 gpf gravity flush ADA tank toilet with elongated bowl 12" rough in	Existing Qty	2
			Qty Upgraded	2
	Lavatory Sink 4" Centerset Standard	Retrofit existing faucet with 0.5 gpm vandal proof spray moderator	Existing Qty	3
			Don't Do - High Flow Needed	Existing Qty
		Qty Upgraded	0	
Kitchen Sink Pot Sinks	Don't Do - High Flow Needed	Existing Qty	2	
		Qty Upgraded	0	
Pre-Rinse	Don't Do - Existing Condition	Existing Qty	1	
		Qty Upgraded	0	
Community Center Sum of Existing Qty				10
Community Center Sum of Qty Upgraded				5
Public Safety	Closet Floor Elongated Sloan ADA	New floor mounted elongated bowl and retrofit existing valve to 1.6 gpf - ADA	Existing Qty	7
			Qty Upgraded	7
	Urinal Wall Round Sloan	Don't Do - Low Consumption	Existing Qty	1
			Qty Upgraded	0
	Closet Floor Elongated Sloan	New floor mounted elongated bowl and retrofit existing valve to 1.6 gpf	Existing Qty	3
			Qty Upgraded	3
	Shower Plastic Standard	Don't Do - Low Consumption	Existing Qty	2
			Qty Upgraded	0
	Urinal Wall Elongated Sloan	Don't Do - Low Consumption	Existing Qty	3
			Qty Upgraded	0
	Lavatory Sink 4" Centerset Standard - Single Handle Mixing	Retrofit existing faucet with 1.5 gpm vandal proof laminar flow moderator	Existing Qty	5
			Qty Upgraded	5
		Retrofit existing faucet with 0.5 gpm vandal proof spray moderator	Existing Qty	4
			Qty Upgraded	4
	Kitchen Sink 8" Centerset Standard - thumb blades	Retrofit existing faucet with 1.5 gpm vandal proof laminar flow moderator	Existing Qty	2
		Qty Upgraded	2	
Shower Plastic Handheld	Don't Do - Low Consumption	Existing Qty	1	
		Qty Upgraded	0	
Closet Penal Combie Stainless Steel	Don't Do - Existing Condition	Existing Qty	1	
		Qty Upgraded	0	
Lavatory Sink Penal Combie Stainless Steel	Don't Do - Existing Condition	Existing Qty	1	
		Qty Upgraded	0	
Closet Detox Grate Stainless Steel	Don't Do - Existing Condition	Existing Qty	1	
		Qty Upgraded	0	
Closet Penal Fixture Stainless Steel	Don't Do - Existing Condition	Existing Qty	2	
		Qty Upgraded	0	
Lavatory Sink Penal Fixture Stainless Steel	Don't Do - Existing Condition	Existing Qty	2	
		Qty Upgraded	0	
Public Safety Sum of Existing Qty				35
Public Safety Sum of Qty Upgraded				21
Public Works Buildings A&B	Closet Floor Elongated Tank	New 1.6 gpf gravity flush tank toilet with elongated bowl 12" rough in	Existing Qty	1
			Qty Upgraded	1
	Closet Floor Elongated Sloan ADA	New floor mounted elongated bowl and retrofit existing valve to 1.6 gpf - ADA	Existing Qty	1
			Qty Upgraded	1
	Urinal Wall Round Sloan	Don't Do - Low Consumption	Existing Qty	4
			Qty Upgraded	0
	Closet Wall Elongated Sloan	New wall mounted elongated bowl retrofit existing valve to 1.6 gpf	Existing Qty	2
			Qty Upgraded	2
	Shower Plastic Standard	Don't Do - Low Consumption	Existing Qty	1
		Qty Upgraded	0	
Lavatory Sink 4" Centerset Standard - wristblades, gooseneck	Retrofit existing faucet with 1.5 gpm vandal proof laminar flow moderator	Existing Qty	1	
		Qty Upgraded	1	
Kitchen Sink 8" Centerset Standard - Single Handle Mixing	Retrofit existing faucet with 1.5 gpm vandal proof laminar flow moderator	Existing Qty	1	
		Qty Upgraded	1	
Lavatory Sink 8" Centerset Standard	Retrofit existing faucet with 0.5 gpm vandal proof spray moderator	Existing Qty	2	
		Qty Upgraded	2	
Lavatory Sink 4" Centerset Standard - Single Handle Mixing	Retrofit existing faucet with 0.5 gpm vandal proof spray moderator	Existing Qty	3	
		Qty Upgraded	3	
Public Works Buildings A and B Sum of Existing Qty				16
Public Works Buildings A and B Sum of Qty Upgraded				11
<b>Total Sum of Existing Qty</b>				<b>88</b>
<b>Total Sum of Qty Upgraded</b>				<b>58</b>

**ECM 3 – Building Infiltration Improvements**

1. Provide and install building infiltration reduction materials in the quantities and locations as shown in the following construction table.
2. Replacement of existing doors and windows is NOT included within the scope.

	Community Center	City Offices/Public Safety	Public Works A	Public Works B
Exterior Doors to be Weather-Stripped and Sealed	2	15	5	3
Interior Doors to be Weather-Stripped and Sealed	1	3		
Roof/Wall to be Sealed	118'	887'	190'	170'
Windows to be Caulked	1	34		
Roof Vents to be Sealed		6		
Roof Level Change to be Sealed		725'		35'
Interior Roof Wall to be Sealed from Repair Bays			60'	

**ECM 4 – Energy Management System**

1. Provide and install expanded control strategies as defined in the EMS Points List on the following page.
2. Incorporation of new graphics for each building in this scope of work.
3. The new EMS systems shall provide the ability at each of the facilities to be controlled via the internet by one system manufacturer. This includes the following:
  - a. All hardware, software packages, interface devices, and technical support necessary to provide information.
  - b. Consistent graphics throughout all of the facilities. Client’s facilities will be controlled by one manufacturer’s system with a consistent graphics platform.
4. Low voltage control wiring, plenum rate cable will be used in concealed areas provided it is tied up to avoid sagging. In exposed areas, conduit or wiremold will be used as consistent with raceway currently existing in the room/building.
5. One new laptop workstation will be provided which will be used to access the system.

POINTS LIST	ANALOG IN		DISCRETE IN D/O				A/O	ALARMS		SOFTWARE													
	PIPE TEMP	SPACE TEMP	HUMIDITY	STATUS	STATUS	SMOKE/FIRE	OCCUPIED / UNOCCUPIED	ON-OFF	ENABLE/DISABLE	VFD CONTROL	DAMPER POSITION	HIGH ANALOG	LOW ANALOG	STATUS	SCHEDULING	PUSHBUTTON OVERRIDE	OPTIMAL START/STOP	TEMP CONTROL	ECONOMIZER	NIGHT SETBACK	AUTO RESTART	GRAPHICS	
<b>DISTRICT WIDE POINTS</b>																							
OUTDOOR AIR TEMP		2																				X	
OUTDOOR HUMIDITY			2																			X	
GLOBAL SCHEDULING (i.e. holidays, snow days)															X							X	
<b>City Hall</b>																							
Vertical HP #1 - bsmt. mech. room		1			1				1			X	X		X	X	X	X			X	X	
Vertical HP #2 - bsmt. mech. room		1			1				1			X	X		X	X	X	X			X	X	
Vertical HP #3 - bsmt. mech. room		1			1				1			X	X		X	X	X	X			X	X	
Horizontal HP #4 - bsmt. IT room		1			1				1			X	X		X	X	X	X			X	X	
Horizontal HP #5 - fitness room		1			1				1			X	X		X	X	X	X			X	X	
Vertical HP #6 - council chambers (1st floor mech room)		1			1				1			X	X		X	X	X	X			X	X	
Vertical HP #7 - restrooms (1st floor mech room)		1			1				1			X	X		X	X	X	X			X	X	
Horizontal HPs #8-#11 - court & codes offices		4			4				4			X	X		X	X	X	X			X	X	
Horizontal HPs #12-#15 - city administrative offices		4			4				4			X	X		X	X	X	X			X	X	
<b>Police Station</b>																							
Horizontal HP #1 & #2 - bsmt holding area		2			2				2			X	X		X	X	X	X			X	X	
Horizontal HP #3 - bsmt shift super/report writing		1			1				1			X	X		X	X	X	X			X	X	
Horizontal HP #4 - bsmt roll call		1			1				1			X	X		X	X	X	X			X	X	
Horizontal HP #5 - bsmt evid stor/uniform stor/comm equip.		1			1				1			X	X		X	X	X	X			X	X	
Horizontal HP #6 - bsmt women's locker room		1			1				1			X	X		X	X	X	X			X	X	
Horizontal HP #7 - bsmt armory		1			1				1			X	X		X	X	X	X			X	X	
Horizontal HP #8 - bsmt men's locker room		1			1				1			X	X		X	X	X	X			X	X	
Horizontal HP #9 - bsmt break room, SIU, Special Ops, mech		1			1				1			X	X		X	X	X	X			X	X	
Horizontal HP #10 - 1st flr lobby/ restrooms/ interview		1			1				1			X	X		X	X	X	X			X	X	
Rooftop HP #11 - 1st flr dispatch		1			1				1			X	X		X	X	X	X			X	X	
Horizontal HP #12 - 1st flr records		1			1				1			X	X		X	X	X	X			X	X	
Horizontal HP #13 - 1st flr conference room		1			1				1			X	X		X	X	X	X			X	X	
Horizontal HP #14 - 1st flr copy room/ comp syst mgr/ kitchen/ storage / restrooms		1			1				1			X	X		X	X	X	X			X	X	
Horizontal HP #15 - 1st flr police chief/ office manager		1			1				1			X	X		X	X	X	X			X	X	
Horizontal HP #16 - 1st flr offices 110/111/112		1			1				1			X	X		X	X	X	X			X	X	
Horizontal HP #17 - 1st flr offices 113/114/115		1			1				1			X	X		X	X	X	X			X	X	
Horizontal HP #18 - 1st flr offices 125/126/127/128		1			1				1			X	X		X	X	X	X			X	X	
Horizontal HP #19 - 1st flr DARE/ interview rooms		1			1				1			X	X		X	X	X	X			X	X	
Fluid cooler		3			1				1						X							X	X
Circulation pump P-1					1				1						X							X	X
Circulation pump P-2					1				1						X							X	X
<b>Community Center</b>																							
Vertical HP #1 - 1st flr mech. room		1			1				1			X	X		X	X	X	X			X	X	
<b>Public Works A</b>																							
Split AC / Furnace - #1		1			1				1			X	X		X	X	X	X			X	X	
<b>Public Works B</b>																							
Split AC / Furnace #1		1			1				1			X	X		X	X	X	X			X	X	
<b>Public Works G</b>																							
NO CONTROLS WORK IN THIS BUILDING																							

**ECM 5 – Vending Machine Controls**

1. Provide and install Vendingmizer controls for the cold drink vending machines as identified in the table below.
2. Replacement of vending machines or vending machine components is NOT included.

Building	Quantity of Pop Machines to be Retrofitted
Public Safety	1
City Offices	2
Public Works B	1

**RENEWABLE ENERGY PROJECT**

**Note: This Renewable Energy Project is being partially funded through an ARRA grant and therefore will follow rules and guidelines for ARRA funded projects.**

**ECM 6 – Geothermal Heat Pumps**

Provide and install the following scope items to achieve a complete and functioning system. One common well field will be drilled in the green space located East of the Police and City Hall buildings. The three buildings: Police Station, City Hall, and the Community Building will utilize the well field and their new water source heat pump systems to provide heating, ventilation, and air conditioning to their buildings.

1. Install ground loop to serve the Police Station, City Hall and Community Building. Loop field design will be a maximum of 95 degree incoming water in the summer and 35 degree incoming in the winter. Loop design will include the installation of a fluid cooler located on the roof replacing an existing 40 ton rooftops current location, or on the ground near the Community Center or the back of the City Hall or Police Station. The average entering water temperature in the summer will be in the 70's, with the average water temperature for winter to be in the low 50's.
2. Install a mechanical room in the basement of the Police Station to serve both the City Hall and Police Station, or locate the well field pumps in the Community Center mechanical room.
3. The price assumes good drilling conditions to approximately 400 feet. A test hole will be drilled to verify drilling conditions.
4. Loop field area will be returned to rough grade, and will be re-seeded. Watering and further maintenance of the seed to be provided by others.
5. Trenching and drilling spoils to be placed on drill site to be removed by others.
6. Removal of unforeseen hazardous material not included.
7. Drawings and specifications sealed by a Registered Kansas Engineer will be provided.



**Police Station**

8. Install 19 separate heat pumps, including ductwork, electrical supply wiring, demolition of existing equipment, coring, insulation and other misc. items required to install a functional ground source heat pump system.
9. Existing piping will be reused where it is feasible. New poly pipe will be installed where required. Insulation of piping is included. New flow valves, strainers, and shut-off valves will be installed on the entire hydronic system.

**City Hall**

10. Install 15 separate heat pumps including ductwork, electrical supply wiring, demolition of existing equipment, coring, insulation and other misc. items required to install a functional ground source heat pump system.
11. New poly pipe will be installed. Insulation of piping is included. New flow valves, strainers, and shut-off valves will be installed on the entire hydronic system.

**Community Building**

12. Install (2) 5 ton ground source heat pumps and reconnect to existing ductwork
13. Provide new poly pipe and flow center with pump to serve the heat pumps from the common loop field.

## ATTACHMENT B

### PREMISES

#### Description of Premises

The following buildings are included as part of this contract. The buildings affected are listed below.

Building	Address
City Hall	7700 Mission Road
Community Center	7720 Mission Road
Police Department	7710 Mission Road
Public Works A	3535 Somerset Drive
Public Works B	3535 Somerset Drive
Public Works G	3535 Somerset Drive

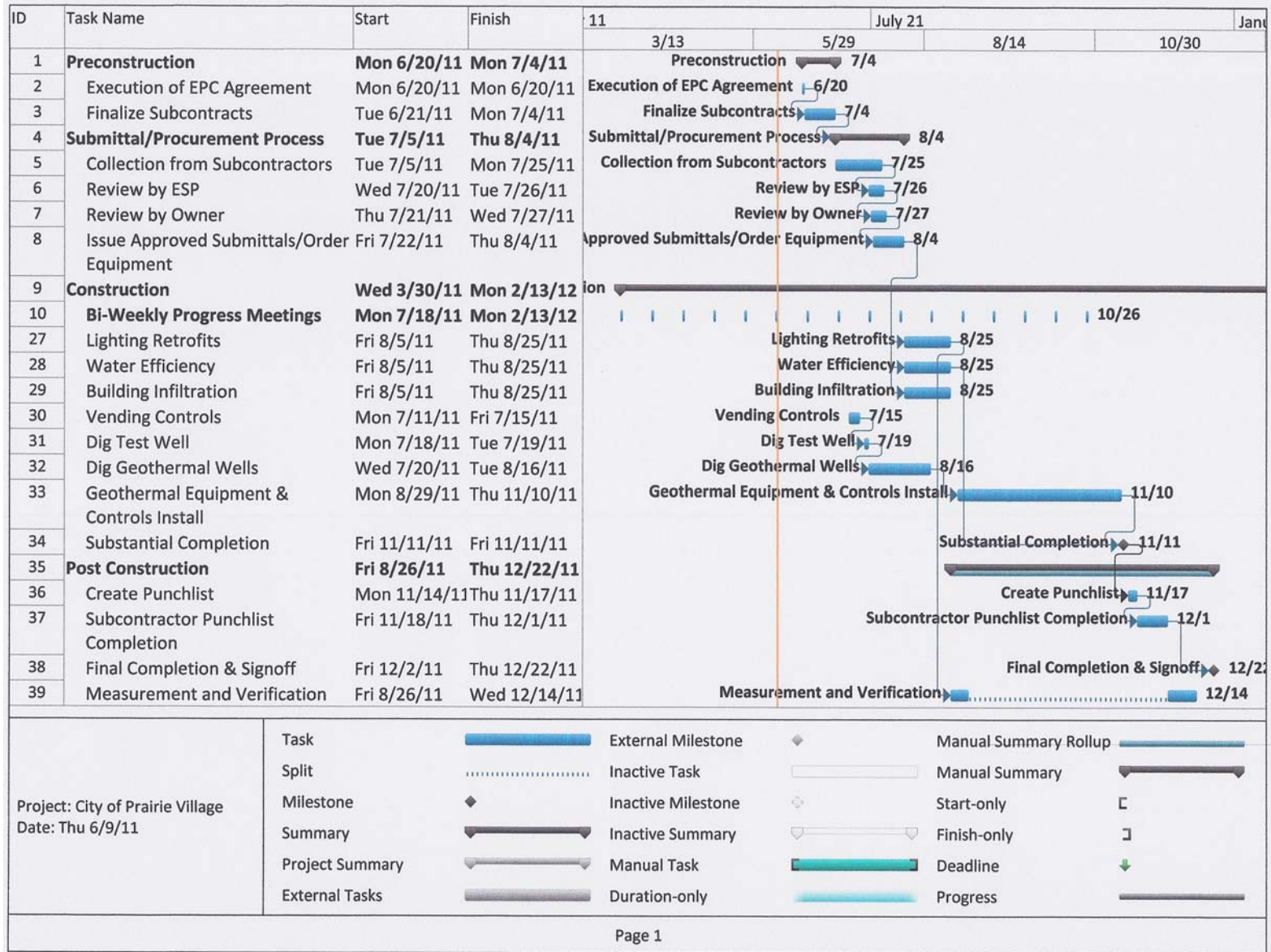
## ATTACHMENT C

### COMPENSATION to CONTRACTOR

This schedule identifies the projected savings and total installed cost for each individual Energy Conservation Measure (ECM) included in Attachment A – Scope of Work – of the Construction Contract. The ECM Summary table below identifies what the total cost will be for each scope item included.

City of Prairie Village - ECM Summary Table				
ECM Description	Projected Energy Savings	O&M Savings	Total Annual Savings	Total Installed Cost
Lighting Retrofits	\$8,200	\$600	\$8,800	\$76,600
Water Efficiency Upgrades	\$1,400	\$200	\$1,600	\$13,200
Building Infiltration Improvements	\$6,500	\$0	\$6,500	\$48,300
Energy Management System	\$7,500	\$1,000	\$8,500	\$125,000
Vending Machine Controls	\$300	\$0	\$300	\$1,160
Geothermal Systems	\$21,300	\$6,500	\$27,800	\$1,100,000
<b>Project Totals</b>	<b>\$45,200</b>	<b>\$8,300</b>	<b>\$53,500</b>	<b>\$1,364,260</b>
Investment Grade Audit Fee				<b>\$1,964</b>
ESP Project Magnitude Discount				<b>-\$75,300</b>
Total Compensation to Contractor				<b>\$1,290,924</b>
Approved ARRA Grant Funds				<b>-\$400,000</b>
Projected Utility Rebates				<b>-\$11,000</b>
Projected Net Cost of Project				<b>\$879,924</b>

## ATTACHMENT D SCHEDULE



## **ATTACHMENT E**

### **PROJECT BONDING REQUIREMENTS**

Contractor will provide Performance Bonding and statutory/public works Payment Bonding, each in the sum of 100% of the Contract Sum. The Performance Bond shall apply to the performance of the Work of this Contract and the Payment Bond shall apply to and cover those providing labor, materials, equipment, supplies and services in connection with the performance of the Work covered by this Contract. The guarantees extended pursuant to these bonds are limited to this Contract only and exclude any work, warranties, performance guarantees, etc. not identified in this Contract.

## Attachment F

### STANDARDS OF COMFORT / OPERATING PARAMETERS

Listed below are the standards of comfort / operating parameters at which is generally accepted for comfort in addition to providing energy efficient operation. These setpoints are the basis upon which the applicable savings calculations and the subsequent guaranteed energy savings are based.

<b>Temperature setpoints</b>	<b>Heating</b>	<b>Cooling</b>
Occupied	70°F	74°F
Unoccupied	60°F	85°F

## **ATTACHMENT G**

### **TRAINING**

Following is a list of training sessions that will be provided by ESP for the Client. Training on other systems and equipment installed can be provided if requested by the Client.

#### **Geothermal Heat Pump System Installation**

1. Up to four (4) hours of training in one session.

#### **EMS Expansion**

1. Up to twelve (12) hours of training in sessions no longer than four hours each.

**ATTACHMENT H**

**CERTIFICATE OF SUBSTANTIAL COMPLETION**

LOCATION	SCOPE OF WORK	SUBSTANTIAL COMPLETION DATE	SIGN-OFF (INITIALS)	
			CLIENT	CONTRACTOR

The Scope of Work to which this Certificate applies has been inspected by authorized representatives of the Client and Contractor and found as itemized and dated above to be substantially complete.

A "Punch-List" of items to be completed or corrected is attached hereto. This list may not be all-inclusive, and the failure to include an item in it does not alter the responsibility of the Contractor to complete all of the Scope of Work in accordance with this Contract. The items in the tentative list shall be completed or corrected by the Contractor within \_\_\_\_\_ days of the above date of Substantial Completion.

**CONTRACTOR:**

\_\_\_\_\_ By \_\_\_\_\_  
Date Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CLIENT:**

\_\_\_\_\_ By: \_\_\_\_\_  
Date Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**ATTACHMENT I**

**CERTIFICATE OF FINAL COMPLETION**

The undersigned hereby certifies:

1. All work including work required under change order(s) has been performed in accordance with the terms of this Contract.
2. All changes to the work (except minor modifications and field adjustments) have been authorized in writing by the Client.
3. By accepting full payment, the Contractor releases the Client from any and all claims arising under the Contract.
4. The Punch List items as agreed upon at Substantial Completion have all been remedied.
5. The Project Closeout Documents as defined in Attachment J have been provided to the Client.

**CONTRACTOR:**

\_\_\_\_\_ By \_\_\_\_\_  
Date Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CLIENT:**

\_\_\_\_\_ By: \_\_\_\_\_  
Date Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## ATTACHMENT J

### PROJECT CLOSEOUT DOCUMENTS

- Contractor shall provide to the Client two (2) copies of the items identified in the table below:

PROJECT CLOSEOUT DOCUMENTATION				
	Approved Submittals	O&M Manuals	Warranty Information	Schematic Design & As-Built Drawings
Energy Conservation Measure				
Lighting Retrofits	x	x	x	
Water Efficiency Improvements	x	x	x	
Vending Machine Controls	x	x	x	
Building Infiltration Improvements	x	x	x	
Energy Management System	x	x	x	
Geothermal Heat Pump System	x	x	x	x

- Contractor shall provide a summarized ECM matrix that details all the start and end dates for the warranties as well as the associated contractors and manufacturers that apply.

**ATTACHMENT K**

**Subcontractor Grant Flowdown Requirements**

## DOE ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT PROGRAM SUBRECIPIENT OR SUBCONTRACTOR FLOWDOWN REQUIREMENTS

Subawardees who receive federal funds under an assistance agreement shall comply with the flowdown requirements for subawardees specified in the “Special Provisions Relating to Work Funded under American Recovery and Reinvestment Act of 2009” which apply to this award. Additionally, as required by 10 CFR 600.2(b), 10 CFR 600.236, and 10 CFR 600.237, any new, continuation, or renewal award and any subsequent subaward shall comply with any applicable Federal statute, Federal rule, Office of Management and Budget (OMB) Circular and Government-wide guidance in effect as of the date of such award. These requirements include, but are not limited to the following:

- a. DOE Assistance Regulations, 10 CFR Part 600 at <http://ecfr.gpoaccess.gov>.
- b. In addition to 10 CFR 600, Appendix A, Generally Applicable Requirements, the National Policy Assurances to Be Incorporated as Award Terms in effect on date of award at [http://management.energy.gov/business\\_doe/1374.htm](http://management.energy.gov/business_doe/1374.htm) apply.
- c. 2 CFR 215, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (OMB Circular A-110).”
- d. OMB Circular A-102, “Grants and Cooperative Agreements with State and Local Governments” Common Rules.
- e. OMB Circular A-21, “Cost Principles for Educational Institutions,” OMB Circular A-87, “Cost Principles for State, Local, and Indian Tribal Governments,” OMB Circular A-122, “Cost Principles for Non-Profit Organizations,” or FAR at 48 CFR Part 31, “Contract Cost Principles and Procedures,” for Profit Organizations, as applicable.
- f. OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations.”
- g. Subawardee Application/proposal as approved by DOE.

The following pages set forth subgrant flowdown provisions suggested for use in issuing subawards.

**Recipients are also advised that all contracts must include the provisions in 10 CFR 600.236, “Procurement,” Section (i) “Contract Provisions,” numbers 1-13.**

- (1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)
- (2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)
- (3) Compliance with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees)
- (4) Compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair)
- (5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation)
- (6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)
- (7) Notice of awarding agency requirements and regulations pertaining to reporting.

- (8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
- (9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.
- (10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
- (11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.
- (12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000).
- (13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

**DOE SUBGRANT FLOWDOWN PROVISIONS FOR EECBG FINANCIAL ASSISTANCE  
AWARDS: SPECIAL TERMS AND CONDITIONS**

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## **1. RESOLUTION OF CONFLICTING CONDITIONS**

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this award must be referred to the DOE Award Administrator for guidance.

## **2. CEILING ON ADMINISTRATIVE COSTS**

### STATES

- a. State Recipients may not use more than 10 percent of amounts provided under the program for administrative expenses (EISA Sec 545 (c)(4)). These costs should be captured and summarized for each activity under the Projected Costs Within Budget: Administration.
- b. Recipients are expected to manage their administrative costs. DOE will not amend an award solely to provide additional funds for changes in administrative costs. The Recipient shall not be reimbursed on this project for any final administrative costs that are in excess of the designated 10 percent administrative cost ceiling. In addition, the Recipient shall neither count costs in excess of the administrative cost ceiling as cost share, nor allocate such costs to other federally sponsored project, unless approved by the Contracting Officer.

### LOCAL GOVERNMENT (Cities & Counties) and INDIAN TRIBES

- a. Local government and Indian Tribe Recipients may not use more than 10 percent of amounts provided under this program, or \$75,000, whichever is greater (EISA Sec 545 (b)(3)(A)), for administrative expenses, excluding the costs of meeting the reporting requirements under Title V, Subtitle E of EISA. These costs should be captured and summarized for each activity under the Projected Costs Within Budget: Administration.
- b. Recipients are expected to manage their administrative costs. DOE will not amend an award solely to provide additional funds for changes in administrative costs. The Recipient shall not be reimbursed on this project for any final administrative costs that are in excess of the designated 10 percent administrative cost ceiling. In addition, the Recipient shall neither count costs in excess of the administrative cost ceiling as cost share, nor allocate such costs to other federally sponsored project, unless approved by the Contracting Officer.

## **3. LIMITATIONS ON USE OF FUNDS**

- a. By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, for gambling establishments, aquariums, zoos, golf courses or swimming pools.
- b. Local government and Indian tribe Recipients may not use more than 20 percent of the amounts provided or \$250,000, whichever is greater (EISA Sec 545 (b)(3)(B)), for the establishment of revolving loan funds.
- c. Local government and Indian tribe Recipients may not use more than 20 percent of the amounts provided or \$250,000, whichever is greater (EISA Sec 545 (b)(3)(C)), for subgrants to nongovernmental organizations for the purpose of assisting in the implementation of the energy efficiency and conservation strategy of the eligible unit of local government or Indian tribe.

#### **4. REIMBURSABLE INDIRECT COSTS AND FRINGE BENEFIT COSTS**

- a. The Recipient is expected to manage their final negotiated project budgets, including their indirect costs and fringe benefit costs. DOE will not amend an award solely to provide additional funds for changes in the indirect and/or fringe benefit costs or for changes in rates used for calculating these costs. DOE recognizes that the inability to obtain full reimbursement for indirect or fringe benefit costs means the Recipient must absorb the underrecovery. Such underrecovery may be allocated as part of the Recipient's cost share.
- b. If actual allowable [indirect and/or fringe benefit] costs are less than those budgeted and funded under the award, the Recipient may use the difference to pay additional allowable direct costs during the project period. If at the completion of the award the Government's share of total allowable costs (i.e., direct and indirect), is less than the total costs reimbursed, the Recipient must refund the difference.

#### **5. USE OF PROGRAM INCOME**

If you earn program income during the project period as a result of this award, you may add the program income to the funds committed to the award and used to further eligible project objectives.

#### **6. STATEMENT OF FEDERAL STEWARDSHIP**

DOE will exercise normal Federal stewardship in overseeing the project activities performed under this award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the award objectives have been accomplished.

#### **7. SITE VISITS**

DOE's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. You must provide, and must require your subawardees to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

#### **8. REPORTING REQUIREMENTS**

- a. Requirements. The reporting requirements for this award are identified on the Federal Assistance Reporting Checklist, DOE F 4600.2, attached to this award. Failure to comply with these reporting requirements is considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by Federal agencies.
- b. Additional Recovery Act Reporting Requirements are found in the Provision below labeled: "REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT."

#### **9. PUBLICATIONS**



- a. You are encouraged to publish or otherwise make publicly available the results of the work conducted under the award.
- b. An acknowledgment of DOE support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

*Acknowledgment:* “This material is based upon work supported by the Department of Energy [National Nuclear Security Administration] [add name(s) of other agencies, if applicable] under Award Number(s) [enter the award number(s)].”

*Disclaimer:* “This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof.”

## **10. FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS**

You must obtain any required permits, ensure the safety and structural integrity of any repair, replacement, construction and/or alteration, and comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this award.

## **11. LOBBYING RESTRICTIONS**

By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

## **12. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REQUIREMENTS**

You are restricted from taking any action using Federal funds, which would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE providing either a NEPA clearance or a final NEPA decision regarding this project.

If you move forward with activities that are not authorized for Federal funding by the DOE Contracting Officer in advance of the final NEPA decision, you are doing so at risk of not receiving Federal funding and such costs may not be recognized as allowable cost share.

If this award includes construction activities, you must submit an environmental evaluation report/evaluation notification form addressing NEPA issues prior to DOE initiating the NEPA process.

## **13. HISTORIC PRESERVATION**

Prior to the expenditure of Project funds to alter any historic structure or site, the Recipient or subrecipient shall ensure that it is compliant with Section 106 of the National Historic Preservation Act (NHPA),

consistent with DOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. If applicable, the Recipient or subrecipient must contact the State Historic Preservation Officer (SHPO), and the Tribal Historic Preservation Officer (THPO) to coordinate the Section 106 review outlined in 36 CFR Part 800. SHPO contact information is available at the following link:

<http://www.ncshpo.org/find/index.htm>. THPO contact information is available at the following link: <http://www.nathpo.org/map.html>. Section 110(k) of the NHPA applies to DOE funded activities.

If applicable, the Recipient or subrecipient certifies that it will retain sufficient documentation, to demonstrate that the Recipient or subrecipient has received required approval(s) from the SHPO or THPO for the Project. Recipients or subrecipients shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106. The Recipient or subrecipient shall deem compliance with Section 106 of the NHPA complete only after it has received this documentation. The Recipient or subrecipient shall make this documentation available to DOE on DOE's request (for example, during a post-award audit).

#### **14. WASTE STREAM**

The Recipient assures that it will create or obtain a waste management plan addressing waste generated by a proposed Project prior to the Project generating waste. This waste management plan will describe the Recipient's or subrecipient's plan to dispose of any sanitary or hazardous waste (e.g., construction and demolition debris, old light bulbs, lead ballasts, piping, roofing material, discarded equipment, debris, and asbestos) generated as a result of the proposed Project. The Recipient shall ensure that the Project is in compliance with all Federal, state and local regulations for waste disposal. The Recipient shall make the waste management plan and related documentation available to DOE on DOE's request (for example, during a post-award audit).

#### **15. DECONTAMINATION AND/OR DECOMMISSIONING (D&D) COSTS**

Notwithstanding any other provisions of this Agreement, the Government shall not be responsible for or have any obligation to the Recipient for (i) Decontamination and/or Decommissioning (D&D) of any of the Recipient's facilities, or (ii) any costs which may be incurred by the Recipient in connection with the D&D of any of its facilities due to the performance of the work under this Agreement, whether said work was performed prior to or subsequent to the effective date of the Agreement.

#### **16. SUBGRANTS AND LOANS**

- a. The Recipient hereby warrants that it will ensure that all activities by sub-grantee(s) and loan recipients to accomplish the approved Project Description or Statement of Project Objectives are eligible activities under 42 U.S.C. 171534(1)-(13). State recipients hereby warrant that they will ensure that all activities by sub-grantee(s) and loan recipients pursuant to 42 U.S.C. 17155(c)(1)(A) to accomplish the approved Project Description or Statement of Project objects are eligible activities under 42 U.S.C. 171534(3)-(13).
- b. Upon the Recipient's selection of the sub-grantee(s) and loan recipients, the Recipient shall notify (i.e. approval not required) the DOE Contracting Officer with the following information for each, regardless of dollar amount:
  - Name of Sub-Grantee
  - DUNS Number
  - Award Amount
  - Statement of work including applicable activities

State recipients shall notify the DOE Contracting Officer with the above information within 180 days of the award date in Block 27 of the Assistance Agreement Cover Page.

- c. In addition to the information in paragraph b. above, for each sub-grant and loan that has an estimated cost greater than \$2,000,000, the recipient must submit for approval by the Contracting Officer, a SF424A Budget Information – Nonconstruction Programs, and PMC 123.1 Cost Reasonableness Determination for Financial Assistance (available at <http://www.eere-pmc.energy.gov/forms.aspx>).

## 17. JUSTIFICATION OF BUDGET COSTS

- a. In the original application, the recipient did not provide sufficient information to justify the approval or release of funds for the proposed **activities**. In order to receive reimbursement for the costs associated with the **activities** listed in the approved Statement of Project Objectives (SOPO), a justification for all proposed costs must be submitted to the DOE Contracting Officer.
- b. The Recipient must provide justification for the following costs:

### Personnel Costs:

The Recipient must submit cost justification for the following personnel costs: for approval by the Contracting Officer.

### Fringe Benefit Costs:

The Recipient must submit a fringe benefit rate proposal/agreement for approval by the Contracting Officer.

### Travel Costs:

The Recipient must submit cost justification for the following travel costs: for approval by the Contracting Officer.

### Equipment Costs:

The Recipient must submit vendor quotes for equipment with an individual item cost of \$50,000 or more, for approval by the Contracting Officer.

### Supplies Costs:

The Recipient must submit cost justification for the following supplies costs: for approval by the Contracting Officer.

### Contractual Costs:

1. The recipient shall provide the following information for each individual or company that will receive EECBG funding, regardless of dollar amount:

- Name
- DUNS Number
- Award Amount
- Statement of work including applicable activities
- NEPA documentation, as applicable

2. In addition to the information in paragraph 1. above, for each individual or company that has an estimated cost greater than \$2,000,000, the Recipient must submit a separate SF424A Budget Information – Nonconstruction Programs, and Budget Justification. The DOE Contracting Officer may require additional information concerning these individuals or companies prior to providing written approval.

Other Direct Costs:

The Recipient must submit cost justification for the following other direct costs: for approval by the Contracting Officer.

Indirect Costs:

The Recipient must submit an indirect rate proposal/agreement for approval by the Contracting Officer.

- c. Upon written notification and/or approval by the Contracting Officer, the Recipient may then receive payment for the activities listed in the approved SOPO for allowable costs incurred in accordance with the payment provisions contained in the Special Terms and Conditions of this agreement. These written notifications and/or approvals will be incorporated into the award by formal modification at a future date.

## **18. ADVANCE UNDERSTANDING CONCERNING PUBLICLY FINANCED ENERGY IMPROVEMENT PROGRAMS**

The parties recognize that the Recipient may use funds under this award for Property-Assessed Clean Energy (PACE) loans, Sustainable Energy Municipal Financing, Clean Energy Assessment Districts, Energy Loan Tax Assessment Programs (ELTAPS), or any other form or derivation of Special Taxing District whereby taxing entities collect payments through increased tax assessments for energy efficiency and renewable energy building improvements made by their constituents. The Department of Energy intends to publish "Best Practices" or other guidelines pertaining to the use of funds made available to the Recipient under this award pertaining to the programs identified herein. By accepting this award, the Recipient agrees to incorporate, to the maximum extent practicable, those Best Practices and other guidelines into any such program(s) within a reasonable time after notification by DOE that the Best Practices or guidelines have been made available. The Recipient also agrees, by its acceptance of this award, to require its sub-recipients to incorporate to the maximum extent practicable the best practices and other guideline into any such program used by the sub-recipient.

## **19. SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (May 2009)**

### Preamble

The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act) was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases. Recipients shall use grant funds in a manner that maximizes job creation and economic benefit.

The Recipient shall comply with all terms and conditions in the Recovery Act relating generally to governance, accountability, transparency, data collection and resources as specified in Act itself and as discussed below.

Recipients should begin planning activities for their first tier subrecipients, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR).

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to

complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related guidance. For projects funded by sources other than the Recovery Act, Contractors must keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning specific procedural requirements for the new reporting requirements. The Recipient will be provided these details as they become available. The Recipient must comply with all requirements of the Act. If the recipient believes there is any inconsistency between ARRA requirements and current award terms and conditions, the issues will be referred to the Contracting Officer for reconciliation.

## Definitions

For purposes of this clause, Covered Funds means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the grant, cooperative agreement or TIA and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.

Non-Federal employer means any employer with respect to covered funds -- the contractor, subcontractor, grantee, or recipient, as the case may be, if the contractor, subcontractor, grantee, or recipient is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving covered funds; or with respect to covered funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

Recipient means any entity that receives Recovery Act funds directly from the Federal government (including Recovery Act funds received through grant, loan, or contract) other than an individual and includes a State that receives Recovery Act Funds.

## Special Provisions

### A. Flow Down Requirement

Recipients must include these special terms and conditions in any subaward.

### B. Segregation of Costs

Recipients must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects.

### C. Prohibition on Use of Funds

None of the funds provided under this agreement derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

#### D. Access to Records

With respect to each financial assistance agreement awarded utilizing at least some of the funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the Comptroller General is authorized --

(1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to, and involve transactions that relate to, the subcontract, subcontract, grant, or subgrant; and

(2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.

#### E. Publication

An application may contain technical data and other data, including trade secrets and/or privileged or confidential information, which the applicant does not want disclosed to the public or used by the Government for any purpose other than the application. To protect such data, the applicant should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the application with the following Notice as well as referring to the Notice on each page to which the Notice applies:

##### Notice of Restriction on Disclosure and Use of Data

The data contained in pages ---- of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data here to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the applicant.

Information about this agreement will be published on the Internet and linked to the website [www.recovery.gov](http://www.recovery.gov), maintained by the Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

#### F. Protecting State and Local Government and Contractor Whistleblowers.

The requirements of Section 1553 of the Act are summarized below. They include, but are not limited to:

**Prohibition on Reprisals:** An employee of any non-Federal employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

- gross management of an agency contract or grant relating to covered funds;
- a gross waste of covered funds;
- a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- an abuse of authority related to the implementation or use of covered funds; or

- as violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Agency Action: Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

- Order the employer to take affirmative action to abate the reprisal.
- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

Nonenforceability of Certain Provisions Waiving Rights and remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, [www.Recovery.gov](http://www.Recovery.gov), for specific requirements of this section and prescribed language for the notices.).

#### G. Reserved

#### H. False Claims Act

Recipient and sub-recipients shall promptly refer to the DOE or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

#### I. Information in Support of Recovery Act Reporting

Recipient may be required to submit backup documentation for expenditures of funds under the Recovery Act including such items as timecards and invoices. Recipient shall provide copies of backup documentation at the request of the Contracting Officer or designee.

#### J. Availability of Funds

Funds obligated to this award are available for reimbursement of costs until 36 months after the award date.

#### K. Additional Funding Distribution and Assurance of Appropriate Use of Funds

Certification by Governor – For funds provided to any State or agency thereof by the American

Reinvestment and Recovery Act of 2009, Pub. L. 111-5, the Governor of the State shall certify that: 1) the state will request and use funds provided by the Act; and 2) the funds will be used to create jobs and promote economic growth.

Acceptance by State Legislature -- If funds provided to any State in any division of the Act are not accepted for use by the Governor, then acceptance by the State legislature, by means of the adoption of a concurrent resolution, shall be sufficient to provide funding to such State.

Distribution -- After adoption of a State legislature's concurrent resolution, funding to the State will be for distribution to local governments, councils of government, public entities, and public-private entities within the State either by formula or at the State's discretion.

#### L. Certifications

With respect to funds made available to State or local governments for infrastructure investments under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, the Governor, mayor, or other chief executive, as appropriate, certified by acceptance of this award that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Recipient shall provide an additional certification that includes a description of the investment, the estimated total cost, and the amount of covered funds to be used for posting on the Internet. A State or local agency may not receive infrastructure investment funding from funds made available by the Act unless this certification is made and posted.

### **20. REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT**

(a) This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act) and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

(b) The reports are due no later than ten calendar days after each calendar quarter in which the Recipient receives the assistance award funded in whole or in part by the Recovery Act.

(c) Recipients and their first-tier subrecipients must maintain current registrations in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.

(d) The recipient shall report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at <http://www.FederalReporting.gov> and ensure that any information that is pre-filled is corrected or updated as needed.

### **21. NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS**

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

\*Special Note: Definitization of the Provisions entitled, "REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009" and "REQUIRED USE OF AMERICAN IRON, STEEL, AND



MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS) – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009” will be done upon definition and review of final activities.

## **22. REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

If the Recipient determines at any time that any construction, alteration, or repair activity on a public building or public works will be performed during the course of the project, the Recipient shall notify the Contracting Officer prior to commencing such work and the following provisions shall apply.

(a) *Definitions.* As used in this award term and condition—

(1) *Manufactured good* means a good brought to the construction site for incorporation into the building or work that has been—

(i) Processed into a specific form and shape; or

(ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(2) *Public building and public work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

(3) *Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Domestic preference.* (1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111–5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) of this section and condition.

(2) This requirement does not apply to the material listed by the Federal Government as follows:

To Be Determined

(3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this section and condition if the Federal Government determines that—

(i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of Section 1605 of the Recovery Act* . (1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

(d) *Data*. To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

### Foreign and Domestic Items Cost Comparison

Description	Unit of measure	Quantity	Cost (dollars)*
<i>Item 1:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
<i>Item 2:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____

List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.

Include other applicable supporting information.

\*Include all delivery costs to the construction site.

### 23. REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS) – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

(a) *Definitions*. As used in this award term and condition—

*Designated country* — (1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom);

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or

(3) A United States-European Communities Exchange of Letters (May 15, 1995) country: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.

*Designated country iron, steel, and/or manufactured goods* — (1) Is wholly the growth, product, or manufacture of a designated country; or

(2) In the case of a manufactured good that consist in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different manufactured good distinct from the materials from which it was transformed.

*Domestic iron, steel, and/or manufactured good* — (1) Is wholly the growth, product, or manufacture of the United States; or

(2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.

*Foreign iron, steel, and/or manufactured good* means iron, steel and/or manufactured good that is not domestic or designated country iron, steel, and/or manufactured good.

*Manufactured good* means a good brought to the construction site for incorporation into the building or work that has been—

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

*Public building and public work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

*Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Iron, steel, and manufactured goods.* (1) The award term and condition described in this section implements—

(i) Section 1605(a) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States; and

(ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services. This obligation shall only apply to projects with an estimated value of \$7,443,000 or more.

(2) The recipient shall use only domestic or designated country iron, steel, and manufactured goods in performing the work funded in whole or part with this award, except as provided in paragraphs (b)(3) and (b)(4) of this section.

(3) The requirement in paragraph (b)(2) of this section does not apply to the iron, steel, and manufactured goods listed by the Federal Government as follows:

To Be Determined

(4) The award official may add other iron, steel, and manufactured goods to the list in paragraph (b)(3) of this section if the Federal Government determines that—

(i) The cost of domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, and/or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.* (1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(4) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(4) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, or manufactured goods shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other appropriate actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods other than designated country iron, steel, and/or manufactured goods is noncompliant with the applicable Act.

(d) *Data*. To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the applicant shall include the following information and any applicable supporting data based on the survey of suppliers:

**Foreign and Domestic Items Cost Comparison**

Description	Unit of measure	Quantity	Cost(dollars)*
<i>Item 1:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
<i>Item 2:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____

List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.

Include other applicable supporting information.

\*Include all delivery costs to the construction site.

**24. WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT**

(a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR

5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

(b) For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

## **25. RECOVERY ACT TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND RECIPIENT RESPONSIBILITIES FOR INFORMING SUBRECIPIENTS**

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 “Uniform Administrative Requirements for Grants and Agreements” and OMB Circular A-102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A-102 is available at <http://www.whitehouse.gov/omb/circulars/a102/a102.html>.

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations,” recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. OMB Circular A-133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix “ARRA-” in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

(c) Recipients agree to separately identify to each subrecipient, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to subrecipients shall distinguish the subawards of incremental Recovery Act funds from regular subawards under the existing program.

(d) Recipients agree to require their subrecipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor subrecipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

## **26. DAVIS-BACON ACT AND CONTRACT WORKHOURS AND SAFETY STANDARD ACT**

**Definitions:** For purposes of this provision, “Davis Bacon Act and Contract Work Hours and Safety Standards Act,” the following definitions are applicable:

(1) “Award” means any grant, cooperative agreement or technology investment agreement made with Recovery Act funds by the Department of Energy (DOE) to a Recipient. Such Award must require compliance with the labor standards clauses and wage rate requirements of the Davis-Bacon

Act (DBA) for work performed by all laborers and mechanics employed by Recipients (other than a unit of State or local government whose own employees perform the construction) Subrecipients, Contractors, and subcontractors.

(2) “Contractor” means an entity that enters into a Contract. For purposes of these clauses, Contractor shall include (as applicable) prime contractors, Recipients, Subrecipients, and Recipients’ or Subrecipients’ contractors, subcontractors, and lower-tier subcontractors. “Contractor” does not mean a unit of State or local government where construction is performed by its own employees.”

(3) “Contract” means a contract executed by a Recipient, Subrecipient, prime contractor, or any tier subcontractor for construction, alteration, or repair. It may also mean (as applicable) (i) financial assistance instruments such as grants, cooperative agreements, technology investment agreements, and loans; and, (ii) Sub awards, contracts and subcontracts issued under financial assistance agreements. “Contract” does not mean a financial assistance instrument with a unit of State or local government where construction is performed by its own employees.

(4) “Contracting Officer” means the DOE official authorized to execute an Award on behalf of DOE and who is responsible for the business management and non-program aspects of the financial assistance process.

(5) “Recipient” means any entity other than an individual that receives an Award of Federal funds in the form of a grant, cooperative agreement, or technology investment agreement directly from the Federal Government and is financially accountable for the use of any DOE funds or property, and is legally responsible for carrying out the terms and conditions of the program and Award.

(6) “Subaward” means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a Recipient to an eligible Subrecipient or by a Subrecipient to a lower-tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include the Recipient’s procurement of goods and services to carry out the program nor does it include any form of assistance which is excluded from the definition of “Award” above.

(7) “Subrecipient” means a non-Federal entity that expends Federal funds received from a Recipient to carry out a Federal program, but does not include an individual that is a beneficiary of such a program.

**(a) Davis Bacon Act**

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and, without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.



Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, *provided* that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination;
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *provided* that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the Department of Energy, Recipient, or Subrecipient, may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship

programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit the payrolls to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit them to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 3729 of title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Department of Energy or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees—

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal

certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

(6) Contracts and Subcontracts. The Recipient, Subrecipient, the Recipient's, and Subrecipient's contractors and subcontractor shall insert in any Contracts the clauses contained herein in(a)(1) through (10) and such other clauses as the Department of Energy may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of the paragraphs in this clause.

(7) Contract termination: debarment. A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Recipient, Subrecipient, the Contractor (or any of its subcontractors), and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**(b) Contract Work Hours and Safety Standards Act.** As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Contracts and Subcontracts. The Recipient, Subrecipient, and Recipient's and Subrecipient's contractor or subcontractor shall insert in any Contracts, the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(5) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions

made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Energy and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

**(c) Recipient Responsibilities for Davis Bacon Act**

(1) On behalf of the Department of Energy (DOE), Recipient shall perform the following functions:

- (i) Obtain, maintain, and monitor all Davis Bacon Act (DBA) certified payroll records submitted by the Subrecipients and Contractors at any tier under this Award;
- (ii) Review all DBA certified payroll records for compliance with DBA requirements, including applicable DOL wage determinations;
- (iii) Notify DOE of any non-compliance with DBA requirements by Subrecipients or Contractors at any tier, including any non-compliances identified as the result of reviews performed pursuant to paragraph (ii) above;
- (iv) Address any Subrecipient and any Contractor DBA non-compliance issues; if DBA non-compliance issues cannot be resolved in a timely manner, forward complaints, summary of investigations and all relevant information to DOE;
- (v) Provide DOE with detailed information regarding the resolution of any DBA non-compliance issues;
- (vi) Perform services in support of DOE investigations of complaints filed regarding noncompliance by Subrecipients and Contractors with DBA requirements;
- (vii) Perform audit services as necessary to ensure compliance by Subrecipients and Contractors with DBA requirements and as requested by the Contracting Officer; and
- (viii) Provide copies of all records upon request by DOE or DOL in a timely manner.

**(d) Rates of Wages**

The prevailing wage rates determined by the Secretary of Labor can be found at <http://www.wdol.gov/>.

## **SCHEDULE B**

### **OTHER ENERGY SERVICES**

The Client has not engaged the ESCO to provide any energy services under the Energy Performance Contract that are above and beyond those services and scope of work identified in the Energy Performance Contract and Construction Contract.



## SCHEDULE C

### ENERGY SAVINGS GUARANTEE

This schedule identifies the mechanics of how the energy savings have been calculated, defines the Measurement & Verification principles on which the Guarantee is based (refer to Schedule F for a description of the specific M&V Plan that the Client and ESCO have agreed to for this project), a table quantifying the projected and guaranteed savings levels and a description of the plan for reconciling any savings discrepancies.

#### A. Energy Savings Guarantee – Defined

The ESCO utilized a combination of utility analysis and field measurement data as input for standard engineering calculation methods that identify the energy usage and dollar savings achieved by implementing certain energy conservation and/or facility improvement measures. The data and calculation formulae are presented in detail within the Investment Grade Audit Report attached as Schedule K. The term of the Energy Savings Guarantee is 10-Years, with annual guaranteed savings as identified in the table located in this schedule under “Guaranteed Savings” column.

#### B. Measurement & Verification Concepts

The savings will be verified using methods as defined by the International Performance Monitoring and Verification Protocol (IPMVP) that was developed by the United States Department of Energy. The following table identifies Option A of the IPMVP. This is the guideline that will be followed in the Measurement & Verification Plan (See Schedule F). The M&V plan was developed in order to provide the empirical evidence necessary to ensure the savings are achieved (or not), while minimizing the cost of implementing the M&V Plan so that maximize infrastructure improvements would be achieved through this Energy Performance Contract.

M&V Option	Operation Conditions	Savings Calculations	Value to Client
Option A	Stipulated using analysis of historical data or spot/short-term metering data	Measurements and engineering calculations	Uses factory or measured data from equipment. Valuable for equipment that operates at constant load, such as lighting. Acts as re-commissioning tool.

#### C. Magnitude of Energy Savings

The magnitude of savings projected and guaranteed represents a significant annual cost reduction for the Client. The savings is derived from the Scope of Work as defined in Attachment A of the Construction Contract. These measures encompass technologies that the ESCO has vast experience implementing, and a high degree of confidence that the measures will meet or exceed projected savings levels.

The dollar savings values have been derived by applying average utility rate costs to the calculated units of energy savings. The actual rates are based on complicated tier-level pricing, demand charges, transport and delivery costs and other parameters that are difficult to model effectively. The ECMs being implemented will generate demand and usage savings at various tier levels (due to the time in which they will be saving the energy). Hence, the ESCO has used a blended, average rate for calculating the dollar savings achieved by the energy saving measures.

The average rates from the Investment Grade Audit that have been applied for calculating the dollar magnitude of savings are as follows:

<b>City of Prairie Village Utility Rates</b>						
	Elec Rate	\$/kWh	\$/kW	Natural Gas \$/Mcf	Water \$/kgal	Wastewater \$/kgal
<b>City Hall</b>	2MGSE	\$0.0377	\$4.66	\$9.75	\$3.58	\$1.99
<b>Police Dept</b>	2MGSE	\$0.0377	\$4.66	\$9.75	\$3.16	\$1.99
<b>Community Center</b>	2SGSE	\$0.0402	\$2.40	\$9.75	\$3.85	\$1.99
<b>Public Works A</b>	2MGSE	\$0.0377	\$4.66	\$9.75	\$3.16	\$1.99
<b>Public Works B</b>	2SGSE	\$0.0402	\$2.40	\$9.75	\$3.16	\$1.99
<b>Public Works G</b>	2SGSE	\$0.0402	\$2.40	\$9.75	\$3.16	\$1.99

The table below identifies the projected and guaranteed energy savings in units of energy and associated dollar savings. The table also identifies annual Operation & Maintenance and Rate Change Savings.

	Projected Savings					Safety Factor	Guaranteed Savings		
	Natural Gas (MCF)	Electricity (kWh)	Electricity (kW)	Rate Change Cost Savings	O&M Cost Savings		Natural Gas (MCF)	Electricity (kWh)	Electricity (kW)
Lighting Retrofits		66,890	270		\$600	0.9	0	60,201	243
Water Efficiency Upgrades	6				\$200	0.9	5	0	0
Building Infiltration Improvements	628	9,986			\$0	0.9	565	8,987	0
Energy Management System	64	184,437			\$1,000	0.9	58	165,993	0
Geothermal Systems	1,682	-8,067		\$8,299	\$0	0.9	1,514	-8,963	0
Vending Machine Controls		3,153			\$6,500	0.9	0	2,838	0
<b>Total Savings</b>	<b>2,380</b>	<b>256,399</b>	<b>270</b>	<b>\$8,299</b>	<b>\$8,300</b>		<b>2,142</b>	<b>229,056</b>	<b>243</b>

**NOTES:**

1. The actual guaranteed savings amount is not to exceed the amount reflected above, but may be less depending on the debt service amount resulting from the actual amortization schedule to be finalized between Client and Finance Company (See Schedule G).

2. Rate Change Cost Savings and O&M Cost Savings are agreed to by Client and Contractor. Rate Change Savings are dependent upon future Utility rate changes being authorized.

## **D. Plan for Reconciling Savings Discrepancies**

The ESCO will utilize the field measurements taken to fulfill the M&V Plan to calculate an annual utility usage savings. The above rates are then applied to these savings values to determine the associated dollar savings amount, which will then be compared to the overall guaranteed energy savings level – on an individual ECM and aggregate savings basis.

1. If the calculation that is based upon measured criteria demonstrates that the guaranteed energy savings level has been met or exceeded for each individual measure, then no further calculations are necessary. In this case, ESCO will tabulate the measurements and computed savings into a Measurement & Verification Report, and will forward to Client for their records.
2. In the event that the measurement-based computations indicate that guaranteed savings have not been achieved for an individual Energy Conservation Measure, the ESCO will calculate an aggregate savings for all measures, and determine whether the aggregate savings meets or exceeds the overall Guarantee level savings. If the savings meets or exceeds the overall Guaranteed Savings level the ESCO will tabulate all measurements and calculations into a M&V Report and will forward to client for their records.

NOTE: ESCO will make an effort to rectify the individual Energy Conservation Measure; through field adjustments and/or equipment modifications, so that each ECM meets or exceeds the individual measure Guaranteed Savings level. However, it is understood that if Aggregate Savings magnitude exceeds the Aggregate Guaranteed Savings the ESCO has met the obligations of this M&V Plan.

3. In the event that measurement-based calculated aggregate savings does not meet or exceed aggregate Guarantee Savings levels the ESCO will proceed with one or a combination of all the following remedies:
  - a. Implement field adjustments and/or equipment modifications or replacements (at the ESCOs cost) that facilitate bringing the field measurement calculations to a level that ensures aggregate Guaranteed Savings levels are achieved.
  - b. If the actions taken in above (Item a) fail to result in aggregate savings that exceed the total guaranteed savings level, the ESCO will a) provide services or b) provide funds in the amount of the savings shortfall on an annual basis at the anniversary of the guarantee start date for as long as the savings shortfall persists. These services and/or funds (at Client discretion) will be provided within 90-days of the anniversary of the guarantee start date. Alternatively, the ESCO may present-value the savings short-fall and make one payment to finalize all contract obligations.

## SCHEDULE D

### COMPENSATION to CONTRACTOR

This schedule identifies the projected savings and total installed cost for each individual Energy Conservation Measure (ECM) included in Attachment A – Scope of Work – of the Construction Contract. The ECM Summary table below identifies what the total cost will be for each scope item included.

City of Prairie Village - ECM Summary Table				
ECM Description	Projected Energy Savings	O&M Savings	Total Annual Savings	Total Installed Cost
Lighting Retrofits	\$8,200	\$600	\$8,800	\$76,600
Water Efficiency Upgrades	\$1,400	\$200	\$1,600	\$13,200
Building Infiltration Improvements	\$6,500	\$0	\$6,500	\$48,300
Energy Management System	\$7,500	\$1,000	\$8,500	\$125,000
Vending Machine Controls	\$300	\$0	\$300	\$1,160
Geothermal Systems	\$21,300	\$6,500	\$27,800	\$1,100,000
<b>Project Totals</b>	<b>\$45,200</b>	<b>\$8,300</b>	<b>\$53,500</b>	<b>\$1,364,260</b>
Investment Grade Audit Fee				<b>\$1,964</b>
ESP Project Magnitude Discount				<b>-\$75,300</b>
Total Compensation to Contractor				<b>\$1,290,924</b>
Approved ARRA Grant Funds				<b>-\$400,000</b>
Projected Utility Rebates				<b>-\$11,000</b>
Projected Net Cost of Project				<b>\$879,924</b>

## SCHEDULE E

### BASELINE ENERGY CONSUMPTION

The ESCO has completed a detailed Utility Analysis of the Client’s facility, and established a baseline for each individual facility. The following table represents historical energy consumption of the buildings which was analyzed during the Investment Grade Audit. Refer to Utility Analysis of Schedule K – Investment Grade Audit Report for comprehensive analysis regarding the utility consumption, graphical depiction of historical consumption and detailed information on each individual site. Due to the length of time which occurs between when the IGA is completed and when the energy project is constructed, the baseline energy usage and cost may be re-evaluated to include more recent data to more accurately account for current energy consumption, building usage patterns, and costs of energy.

#### Base Line Energy Usage and Cost

City of Prairie Village - Baseline Energy Consumption Totals																						
Building Square Feet:	49,112			(WATER) kgals/sq. ft. =	0.01			ELECTRIC BTUs / sq. ft. =	59,563			(SEWER) kgals/sq. ft. =	0.01			NATURAL GAS BTUs / sq. ft. =	52,374					
Watts / sq. ft. =	4.18			Other-1/sq. ft. =	-			OTHER BTUs / sq. ft. =	-			Other-2/sq. ft. =	-			TOTAL BTUs / sq. ft. =	111,937					
kWh / sq. ft. =	17.45			Other-2/sq. ft. =	-							Other-3/sq. ft. =	-									
MCF/sq. ft. =	0.05																					
ELECTRICITY														WATER			SEWER					
0	kW	kWh	Equivalent FLH	kW \$	kWh \$	Total electric \$	\$/kW	\$/kWh	0	kgals	kgals \$	\$/kgals	kgals	kgals \$	\$/kgals							
Jan	99.4	63,435	638	\$ -	\$ 4,865	\$ 4,865	\$ -	\$ 0.0767	Jan	32	\$ 160	\$ 4.95	32	\$ 51	\$ 1.60							
Feb	99.4	61,387	618	\$ -	\$ 4,585	\$ 4,585	\$ -	\$ 0.0747	Feb	25	\$ 146	\$ 5.79	26	\$ 50	\$ 1.95							
Mar	123.6	56,609	458	\$ -	\$ 4,713	\$ 4,713	\$ -	\$ 0.0833	Mar	31	\$ 154	\$ 4.92	31	\$ 61	\$ 1.95							
Apr	140.9	66,568	472	\$ -	\$ 5,292	\$ 5,292	\$ -	\$ 0.0795	Apr	47	\$ 197	\$ 4.18	50	\$ 79	\$ 1.57							
May	163.3	71,010	435	\$ -	\$ 5,494	\$ 5,494	\$ -	\$ 0.0774	May	52	\$ 180	\$ 3.48	55	\$ 59	\$ 1.07							
Jun	205.3	82,331	401	\$ -	\$ 7,132	\$ 7,132	\$ -	\$ 0.0866	Jun	71	\$ 248	\$ 3.50	70	\$ 92	\$ 1.32							
Jul	195.5	88,537	453	\$ -	\$ 7,498	\$ 7,498	\$ -	\$ 0.0847	Jul	98	\$ 333	\$ 3.39	88	\$ 121	\$ 1.37							
Aug	189.3	84,017	444	\$ -	\$ 7,693	\$ 7,693	\$ -	\$ 0.0916	Aug	93	\$ 306	\$ 3.30	93	\$ 146	\$ 1.57							
Sep	165.9	80,760	487	\$ -	\$ 6,770	\$ 6,770	\$ -	\$ 0.0838	Sep	118	\$ 436	\$ 3.71	116	\$ 198	\$ 1.71							
Oct	136.9	68,400	500	\$ -	\$ 5,264	\$ 5,264	\$ -	\$ 0.0770	Oct	84	\$ 309	\$ 3.68	77	\$ 125	\$ 1.63							
Nov	124.9	63,801	509	\$ -	\$ 4,904	\$ 4,904	\$ -	\$ 0.0771	Nov	33	\$ 165	\$ 5.00	32	\$ 59	\$ 1.83							
Dec	123.3	70,432	571	\$ -	\$ 5,354	\$ 5,354	\$ -	\$ 0.0760	Dec	30	\$ 158	\$ 5.34	29	\$ 58	\$ 1.96							
<b>Totals</b>	<b>1,767.7</b>	<b>857,087</b>	<b>5,986</b>	<b>\$ -</b>	<b>\$ 69,563</b>	<b>\$ 69,563</b>	<b>\$ -</b>	<b>\$ 0.0812</b>	<b>Totals</b>	<b>714</b>	<b>\$ 2,793</b>	<b>\$ 3.91</b>	<b>701</b>	<b>\$ 1,099</b>	<b>\$ 1.57</b>							
NATURAL GAS														OTHER-1			OTHER-2			OTHER-3		
0	MCF	MCF \$	\$/MCF	0	Other-1	Other-1 \$	\$/Other-1	0	Other-2	Other-2 \$	\$/Other-2	0	Other-3	Other-3 \$	\$/Other-3							
Jan	579	\$ 5,976	\$ 10.32	Jan	-	\$ -	-	Jan	-	\$ -	-	Jan	-	\$ -	-							
Feb	548	\$ 5,189	\$ 9.47	Feb	-	\$ -	-	Feb	-	\$ -	-	Feb	-	\$ -	-							
Mar	336	\$ 3,242	\$ 9.64	Mar	-	\$ -	-	Mar	-	\$ -	-	Mar	-	\$ -	-							
Apr	160	\$ 1,689	\$ 10.53	Apr	-	\$ -	-	Apr	-	\$ -	-	Apr	-	\$ -	-							
May	167	\$ 1,620	\$ 9.71	May	-	\$ -	-	May	-	\$ -	-	May	-	\$ -	-							
Jun	82	\$ 830	\$ 10.13	Jun	-	\$ -	-	Jun	-	\$ -	-	Jun	-	\$ -	-							
Jul	46	\$ 529	\$ 11.49	Jul	-	\$ -	-	Jul	-	\$ -	-	Jul	-	\$ -	-							
Aug	33	\$ 429	\$ 12.93	Aug	-	\$ -	-	Aug	-	\$ -	-	Aug	-	\$ -	-							
Sep	43	\$ 507	\$ 11.83	Sep	-	\$ -	-	Sep	-	\$ -	-	Sep	-	\$ -	-							
Oct	109	\$ 1,005	\$ 9.18	Oct	-	\$ -	-	Oct	-	\$ -	-	Oct	-	\$ -	-							
Nov	161	\$ 1,337	\$ 8.31	Nov	-	\$ -	-	Nov	-	\$ -	-	Nov	-	\$ -	-							
Dec	307	\$ 2,726	\$ 8.87	Dec	-	\$ -	-	Dec	-	\$ -	-	Dec	-	\$ -	-							
<b>Totals</b>	<b>2,572</b>	<b>\$ 25,078</b>	<b>\$ 9.75</b>	<b>Totals</b>	<b>-</b>	<b>\$ -</b>	<b>-</b>	<b>Totals</b>	<b>-</b>	<b>\$ -</b>	<b>-</b>	<b>Totals</b>	<b>-</b>	<b>\$ -</b>	<b>-</b>							
ELECTRICITY \$/sq. ft. =														\$ 1.42		0		Total Annual \$				
WATER & SEWER \$/sq. ft. =														\$ 0.08		Jan	\$ 11,052	Feb	\$ 9,969			
NATURAL GAS \$/sq. ft. =														\$ 0.51		Mar	\$ 8,170	Apr	\$ 7,257			
OTHER UTILITIES \$ / sq. ft. =														\$ -		May	\$ 7,353	Jun	\$ 8,302			
TOTAL \$ / sq. ft. =														\$ 2.01		Jul	\$ 8,481	Aug	\$ 8,573			
																Sep	\$ 7,912	Oct	\$ 6,703			
																Nov	\$ 6,466	Dec	\$ 8,296			
																<b>Totals</b>	<b>\$ 98,533</b>					

## **SCHEDULE F**

### **SAVINGS MEASUREMENT AND CALCULATION FORMULAE; METHODOLOGY TO ADJUST BASELINE**

The ESCO guarantees the parameters set forth within this Measurement & Verification Plan will be achieved. The Customer remains responsible for actual operation of the facilities; including properly maintaining the equipment per Schedule I, establishing hours of operation based on a combination of fulfilling facility mission requirements and meeting the energy efficiency objectives, and realizing that cost adjustments may be necessary over time based on building usage patterns, weather, and unit cost fluctuations.

#### **A. Guarantee**

##### **1. Utility Rates:**

The utility rates used in converting the energy savings from units of measure to dollars are as set forth in Schedule C – Energy Savings Guarantee. The utility rates identified will be used for establishing the dollar savings for all Energy Conservation Measures. Due to the length of time that occurs between the Investment Grade Audit and construction of the project, a current analysis of rate structures may be performed in order to accurately account for the baseline costs of energy.

2. **Energy Savings:** The projected annual units of energy savings for each measure, as well as an associated conversion to dollar savings, are shown in Schedule C. The table identifies both the Projected and Guaranteed unit and dollar savings. The savings summary table also identifies the Operations & Maintenance and Avoided Future Cost Savings.

#### **B. Savings Measurement**

##### **1. Option A energy measures**

Quantities and locations of measurements will be determined utilizing the Federal Energy Management Program M&V Guidelines: Measurement and Verification for Federal Energy Projects, Version 2.2. Both Customer and ESCO will agree on an acceptable confidence and precision criteria.

Installed equipment efficiencies will be measured one time at the end of construction. Actual, measured equipment efficiencies will be utilized in the calculation of projected energy savings over the entire year. Table F.1 presents a list of equipment that will be measured.

### C. Measurement & Verification Reporting

The ESCO shall prepare and deliver Measurement & Verification Reports annually for the duration of the contract, starting 60 days after construction completion, or as soon as the utility data is available to verify savings; whichever is later. Measurement & Verification Reports for future years will be provided on the anniversary of the delivery date of the Year 1 report.

The M&V Report will clearly identify the guaranteed and ACHIEVED savings levels, based on the M&V Plan identified here-in. Refer to Schedule C – Energy Savings Guarantee for reconciling the savings and what steps shall be taken (if necessary) to remedy any savings short-fall that may occur.

ESCO shall include a summary of all baseline adjustments, including calculations and assumptions used to derive each adjustment.

**Table F.1:** *Measurement & Verification Methodology by Energy Conservation Measure*

ECM Description	M&V Methodology	Measured Parameters	Length of Measurement	Quantity of Devices Measured
<b>Lighting Improvements</b>				
Lamp & Ballast Retrofits				
Fixture Replacements	Measured	Fixture Watts	one time	
LED & Fluorescent Lamps				
<b>Water Efficiency Improvements</b>				
Toilets		gallons/flush		
Urinals	Measured	gallons/flush	one time	
Faucet Aerators		gpm		
<b>Building Infiltration Improvements</b>				
Caulking/Sealing	Calculated			
<b>Geothermal System</b>				
Heat Pumps	Measured	kW/ton	one time	
<b>Energy Management System</b>				
HVAC Systems	Measured	Parameters	one time	
<b>Vending Machine Controls</b>				
Vendingmizers	Calculated			



## 1. Measurement & Verification Calculation Formulae

The ESCO will utilize the methods and formulae identified on the following pages to measure, calculate and verify savings for each ECM identified above as “Measured”.

The formulae and measurement parameters for each Measured ECM are as follows:

### a. Lighting

- Lighting savings will be verified by directly measuring the actual wattage consumption for a representative cross-sectional percentage of the retrofits. These measured values will then be compared to the values that were used for calculating the savings. When the average measured wattage value (for each representative fixture type measured) is less than the value used for savings calculations, the guaranteed savings values are being achieved.
- There are numerous different retrofit applications for the Customer project (reference the lighting scope in the Construction Contract). The ESCO will identify the retrofit type that represents the vast majority of the energy savings, and will focus measurement endeavors on those fixture types. Savings for the measures that represent a very small percentage of the total lighting savings will be agreed to by the Customer and ESCO.
- Based on the lighting inventory, ESCO can verify the vast bulk of the savings by measuring certain types of fixtures. We will take M&V measurements of a small percentage of each of the primary savings-generating fixture types, and the Lighting Savings Verification Table provides a synopsis of the fixture types chosen, target wattage and quantity to be measured.

Some criteria for the measurements:

- Where applicable – when multiple fixtures of the same type are on one switch, the power may be measured at the switch and then divided by the number of fixtures on the switch circuit to determine the wattage per fixture.
- If there are voltage swings of a magnitude to necessitate adjustments, the readings will be scaled (using standard engineering calculations) back to a nominal value.
- The measured values will then be averaged and compared to the target wattage (i.e. the value used for the savings calculations). If the average measured wattage is less than the target wattage, the savings are achieved. If the average wattage is higher than the target value, then the steps identified in Schedule C – Guarantee – “Plan for Reconciling Savings Discrepancies” (Item D) will be followed.

### b. Water Efficiency Improvements

- Water savings will be verified by directly measuring the actual water consumption for a representative cross-sectional percentage of the retrofits. These measured values will then be compared to the values that were used for calculating the savings. When the average measured water consumption value (for each representative fixture type measured) is less than the value used for

savings calculations, the guaranteed savings values are being achieved.

- There are numerous different retrofit applications for the Customer project (reference the water scope in the Construction Contract). The ESCO will identify the retrofit type that represents the vast majority of the water savings, and will focus measurement endeavors on those fixture types. Savings for the measures that represent a very small percentage of the total water savings will be agreed to by the Customer and ESCO.

c. Geothermal Systems

- This complete system replacement will provide a much more efficient method of heating and cooling for the facilities. The ESCO will measure the power-draw of the heat pumps at different loading conditions. Once all of the measurements are taken, the actual efficiencies can be compared to that of the targeted efficiencies to verify the equipment performance.

d. Energy Management System Expansion

- The ESCO has calculated the magnitude of savings that is achievable through setback of temperature when a space is unoccupied. The most practical way of verifying the savings are achieved is to ensure that the schedule, set-point and other operating parameters are actually programmed and functioning per design intent.
- The system functionality, temperature set-points, and operating schedules have been reviewed and agreed to by the Customer and ESCO. It is understood by both parties that the operating schedules and set-points are a dynamic feature within facilities. Special events and/or needs may arise that cause the operating parameters to be changed from time to time. The ESCO will help the Customer develop time-effective methods for checking these parameters on a regular basis so that Customer can return to “optimal” operating conditions in terms of generating energy savings. The temperature set-points and schedules identified in the following tables have been agreed to as the “target” conditions, and these represent the values at which the savings calculations have been based (with some conservatism adjustments to account for operational variations).
- The ESCO will perform a complete diagnostic review of the energy management system operations to verify that programming matches the design intent upon which savings calculations are based. This diagnostic will include checking all schedules and set-points, sequence of operations and programming for advanced programming functions and confirming that mechanical systems actually respond as desired and/or expected in order to achieve energy savings.

## **H. Measurement & Verification Templates**

ESCO will work with the Customer to develop templates of tables to utilize for verification of equipment performance. The Customer’s staff will have the option to be present during all measurements and will have the opportunity to inspect all equipment and measurement devices utilized by ESCO in obtaining the field data that will be utilized to quantify the actual achieved energy saving levels for each measured ECM.

## **SCHEDULE G**

### **LEASE AGREEMENT**

The Client has elected to arrange their financing for the project. The financing plus grant awards, plus other funding sources are sufficient to cover 100% of the Total Compensation to Contractor (detailed in Schedule A, Attachment A).

## SCHEDULE H

### STANDARDS OF COMFORT / OPERATING PARAMETERS

Listed below are the standards of comfort / operating parameters at which is generally accepted for comfort in addition to providing energy efficient operation. These setpoints are the basis upon which the applicable savings calculations and the subsequent guaranteed energy savings are based.

<b>Temperature setpoints</b>	<b>Heating</b>	<b>Cooling</b>
Occupied	70°F	74°F
Unoccupied	60°F	85°F

## SCHEDULE I

### MAINTENANCE RESPONSIBILITIES

#### **ESCO Maintenance Responsibilities**

ESCO Maintenance responsibilities shall consist of providing equipment start-up and thorough training; as defined in Attachment G of the Construction Contract. The purpose of the start-up and training is to ensure that the Client's staff has the information necessary to properly operate and maintain the equipment over time. The Client has elected not to have the ESCO provide any on-going maintenance services as part of this Energy Performance Contract Agreement, so the ESCO does not have any responsibilities with respect to maintaining the equipment over time.

#### **Client Maintenance Responsibilities**

A detailed facility and equipment maintenance checklist will be provided with the Operations and Maintenance Manuals that are to be delivered as part of Attachment J – Closeout Documents – of the Construction Contract. These manuals will be delivered during on-site Client staff's training. The Client is retaining full responsibility to effectively maintain and service the equipment installed through the Energy Performance Contract.

## **SCHEDULE J**

### **WARRANTIES**

ESCO shall provide the following warranties for the duration(s) described below:

- One year full parts and labor warranty for all items installed as part of Schedule A. Warranty start and end dates shall be documented and provided to the Customer by ESCO.
- Extended warranties shall be those provided by the equipment manufacturers and will be detailed in the warranty information. Extended warranty information will be provided upon completion of construction along with Operation & Maintenance manuals.
- Warranties begin at substantial completion on an ECM by ECM basis. Substantial completion is defined as the date when the Customer begins receiving beneficial use of the equipment.
- Spare lamp material provided by Contractor at the completion of the Construction Contract shall be utilized to fulfill warranty requirements. In the event of failed lamps during warranty, Client shall collect multiple failed lamps prior to sending directly to the distributor for warranty replacements.
- Spare ballast material provided by Contractor at the completion of the Construction Contract shall be utilized to fulfill warranty requirements. In the event of failed ballasts during warranty, Client shall collect multiple failed ballasts prior to sending directly to the distributor for warranty replacements. The manufacturer shall send reimbursement monies in the amount of \$10 per ballast for the labor warranty directly to Client.



## COUNCIL COMMITTEE

Council Committee Meeting Date: July 5<sup>th</sup>, 2011  
Council Meeting Date: July 5<sup>th</sup>, 2011

### Agenda Item:

Consider approval of resolution authorizing the offering for sale of General Obligation refunding and improvement bonds, series 2011-A.

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### SUGGESTED MOTIONS

Move to approve a resolution authorizing the offering for sale of General Obligation refunding and improvement bonds, series 2011-A.

### BACKGROUND

At the June 20<sup>th</sup> Council Committee meeting, the committee approved proceeding with the preparations and necessary actions to refinance the 2009 bond issue for the purpose of accelerating additional capital investment for streets over the next three years. The resolution does not commit the City to the bond issue, but it does initiate the process in preparation for the bond sale.

Gary Anderson of Gilmore & Bell, City's bond counsel, and Jeff White of Columbia Capital, City's financial advisor, will be at the July 5<sup>th</sup> meeting to provide additional information and answer questions related to the potential refinancing or bond issue.

There several items to consider as part of a potential refinancing (or new debt issue):

- 1) Refinance existing debt or advance refund approximately \$6,650,000. The refinancing enables approximately \$3.6M for cash project funding over the next three years by lowering bond debt service payments during those years. Advance refunding (refunding bonds prior to their call date) is a onetime ability. This refinancing results in higher total payments over the life of the bonds versus status quo scheduled debt service.
- 2) If refinancing occurs, staff recommends including \$500,000 in bonding for energy projects for partial payment of the geothermal system (also on the July 5th agenda). The inclusion of the energy projects in the refunding bond offering eliminates the potential incremental costs of a separate issuance or private placement for the energy projects.
- 3) If the goal is to accelerate approximately \$4M in capital projects, Council may consider the option of issuing new debt, rather than refunding existing

bonds, which may provide a more efficient method of securing project funding. Additional information regarding this option will be presented by the city's advisors at the meeting.

In 2009, the City issued about \$9M in bonds. Debt issuance costs were approximately \$75,000 for consultants, filing fees and bond counsel. Underwriting fees totaled about \$40,000 which is a function of the size of the transaction for a total of about \$115,000 for bond issuance costs. The refunding scenario (or new issuance) is expected to result in total issuance costs between \$100,000 to \$125,000.

By approving the attached resolution, Council authorizes City staff, consultants and bond counsel to begin work on the transaction. A bond issue requires significant effort to prepare necessary documents, approvals, bond rating and submitting the bond to market.

The resolution does not commit the City to the bond issue, however approval indicates a strong desire to refinance or issue new debt. Attached is a draft transaction calendar prepared by Columbia Capital. It is an aggressive schedule that ends with a bond closing on September 14<sup>th</sup>. This schedule presumes that all milestones are met with limited delays.

The refinance would allow cash for immediate projects for the next three years, but reduces the expected cash available for such projects over the subsequent seven years as shown on the attachment. Street maintenance is an ongoing commitment that needs adequate funding each year. City Administrator is not supportive of refinancing the 2009 debt and supports the status quo scheduled debt payments. If additional street maintenance projects are desired, a better alternative is to raise the mill levy as a permanent funding source.

**ATTACHMENTS:**

- Resolution authorizing the offering for sale of General Obligation refunding and improvement bonds
- Draft transaction calendar
- Pro forma comparing existing debt structure with refinancing

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Prepared By:  
Quinn Bennion  
City Administrator  
Date: July 1<sup>st</sup>, 2011



**RESOLUTION NO. 2011-\_\_\_\_\_**

**RESOLUTION AUTHORIZING THE OFFERING FOR SALE OF GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS, SERIES 2011-A, OF THE CITY OF PRAIRIE VILLAGE, KANSAS.**

**WHEREAS**, the City of Prairie Village, Kansas (the "Issuer"), has heretofore issued and has outstanding general obligation bonds; and

**WHEREAS**, due to the current interest rate environment, the Issuer has the opportunity to issue its general obligation refunding bonds in order to achieve substantially level debt service payments on the debt represented by such general obligation bonds described as follows (the "Refunded Bonds"):

<i>Description</i>	<i>Series</i>	<i>Dated Date</i>	<i>Years</i>	<i>Amount</i>
General Obligation Refunding and Improvement Bonds	2009-A	November 19, 2009	2012 to 2019	\$6,650,000

**WHEREAS**, the Issuer, has heretofore authorized certain internal improvements described as follows (collectively, the "Improvements"):

<u>Project Description</u>	<u>Authority</u>	<u>Estimated Principal Amount of Bonds</u>
City Hall/Police Building	K.S.A. 12-1736 <i>et seq.</i>	\$500,000
Various Street Projects	K.S.A. 12-685 <i>et seq.</i>	\$ _____,000
<i>Total:</i>		\$00,000

**WHEREAS**, the Issuer proposes to issue its general obligation bonds to pay a portion of the costs of the Improvements and to refund all or certain maturities of the Refunded Bonds; and

**WHEREAS**, the Issuer, has selected the firm of Columbia Capital Management, LLC, Overland Park, Kansas ("Financial Advisor"), as financial advisor for one or more series of general obligation bonds of the Issuer to be issued in order in order to provide funds to permanently finance the Improvements; and

**WHEREAS**, the Issuer desires to authorize the Financial Advisor to proceed with the offering for sale of said general obligation bonds and related activities; and

**WHEREAS**, one of the duties and responsibilities of the Issuer is to prepare and distribute a preliminary official statement relating to said general obligation bonds; and

**WHEREAS**, the Issuer desires to authorize the Financial Advisor, in conjunction with the Clerk, to proceed with the preparation and distribution of a preliminary official statement and notice of bond sale and to authorize the distribution thereof and all other preliminary action necessary to sell said general obligation bonds.

**BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF PRAIRIE VILLAGE, KANSAS, AS FOLLOWS:**

**Section 1.** The Issuer is hereby authorized to offer for sale the Issuer's General Obligation Refunding and Improvement Bonds, Series 2011-A (the "Bonds") described in the Notice of Bond Sale, which is hereby approved in substantially the form presented to the governing body this date.

**Section 2.** The Mayor and Clerk in conjunction with the Financial Advisor and Gilmore & Bell, P.C., Kansas City, Missouri ("Bond Counsel") are hereby authorized to cause to be prepared a Preliminary Official Statement, and such officials and other representatives of the Issuer are hereby authorized to use such document in connection with the sale of the Bonds.

**Section 3.** The Clerk, in conjunction with the Financial Advisor and Bond Counsel, is hereby authorized and directed to give notice of said bond sale by publishing a summary of the Notice of Bond Sale not less than 6 days before the date of the bond sale in a newspaper of general circulation in Johnson County, Kansas, and the *Kansas Register* and by distributing copies of the Notice of Bond Sale and Preliminary Official Statement to prospective purchasers of the Bonds. Proposals for the purchase of the Bonds shall be submitted upon the terms and conditions set forth in said Notice of Bond Sale, and shall be delivered to the governing body at its meeting to be held on such date, at which meeting the governing body shall review such bids and shall award the sale of the Bonds or reject all proposals.

**Section 4.** For the purpose of enabling the purchaser of the Bonds (the "Purchaser") to comply with the requirements of Rule 15c2-12 of the Securities Exchange Commission (the "Rule"), the Mayor and Clerk or other appropriate officers of the Issuer are hereby authorized: (a) to approve the form of said Preliminary Official Statement, and to execute the "Certificate Deeming Preliminary Official Statement Final" in substantially the form attached hereto as *Exhibit A*, as approval of the Preliminary Official Statement, such official's signature thereon being conclusive evidence of such official's and the Issuer's approval thereof; (b) covenant to provide continuous secondary market disclosure by annually transmitting certain financial information and operating data and other information necessary to comply with the Rule to the Municipal Securities Rulemaking Board; and (c) take such other actions or execute such other documents as such officers in their reasonable judgment deem necessary to enable the Purchaser to comply with the requirement of the Rule.

**Section 5.** The Issuer agrees to provide to the Purchaser within seven business days of the date of the sale of Bonds or within sufficient time to accompany any confirmation that requests payment from any customer of the Purchaser, whichever is earlier, sufficient copies of the final Official Statement to enable the Purchaser to comply with the requirements of Rule 15c2-12(3) and (4) of the Securities and Exchange Commission and with the requirements of Rule G-32 of the Municipal Securities Rulemaking Board.

**Section 6.** The Mayor, Clerk and the other officers and representatives of the Issuer, the Financial Advisor and Bond Counsel are hereby authorized and directed to take such other action as may be necessary to carry out the sale of the Bonds.

**Section 7.** The officers and representatives of the Issuer are hereby authorized and directed to take such action as may be necessary, after consultation with the Financial Advisor and Bond Counsel, to subscribe for United States Treasury Securities to be purchased or to purchase any other Defeasance Obligations (as defined in Resolution No. 2009-20) and deposited in the escrow for the Refunded Bonds and to provide for notice of redemption of the Refunded Bonds and any material event notices.

**Section 8.** The Issuer hereby authorizes the Clerk and Bond Counsel to file with the Municipal Securities Rulemaking Board via the Electronic Municipal Market Access system for municipal securities disclosures ([www.emma.msrb.org](http://www.emma.msrb.org)) the material event notice in substantially the form attached hereto as *Exhibit B* providing notice that the Issuer is planning to advance refund the Refunded Bonds.

**Section 9.** This Resolution shall be in full force and effect from and after its adoption.

**ADOPTED** by the governing body on July 5, 2011.

(SEAL)

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Mayor

ATTEST:

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Clerk

City of Prairie Village  
 General Obligation Refunding and Improvement Bonds  
 Series 2011

July 2011							August 2011						
					1	2		1	2	3	4	5	6
3	4	5	6	7	8	9	7	8	9	10	11	12	13
10	11	12	13	14	15	16	14	15	16	17	18	19	20
17	18	19	20	21	22	23	21	22	23	24	25	26	27
24	25	26	27	28	29	30	28	29	30	31			
31													

September 2011						
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

DATE	ACTIVITY	RESPONSIBLE PARTY
<b>July</b>		
4	4 <sup>th</sup> of July Holiday	
5	Council Approves Sale Resolution Permitting Transaction Planning to Move Ahead	City
5	Council Authorizes New Money Projects to Move Ahead	City
8	Route First Draft of Documents/POS	BC, FA
8	Packets Sent to Rating Agency	FA
13	Comments Due on First Draft of Documents	All
14	Second Draft Documents/POS Routed	BC, FA
18	Approval of New Money Project Resolutions	City
19	Sizing of Bonds Confirmed for Notices	City, FA
19	Summary Notice of Bond Sales to Newspapers	FA
20	Comments Due on 2 <sup>nd</sup> Draft of Documents	All

# TRANSACTION CALENDAR

As of June 30, 2011

Page 2 of 2

City of Prairie Village  
General Obligation  
Refunding and Improvement Bonds  
Series 2011

22	Final Draft Documents Routed	BC, FA
26	Final Comments Due on All Documents	All
28	Bond Ordinance Delivered to City Clerk	BC
<b>August</b>		
1	First Reading of Bond Ordinance	City
5	Obtain Bond Rating	Moody's
8	Summary Notice of Bond Sale Published	FA
8	Notify Bloomberg of Sale	FA
8	Set up Auction Information with Grant St. Group	FA
8	POS Printed and Mailed	BC, Printer
<b>15</b>	<b>Pricing (10:00 CDT for bonds via columbiacapitalauction.com)</b>	<b>FA, BC, City</b>
15	Bids Due on Escrow Securities (If SLGS not available)	FA, Escrow
15	Final Reading of Bond Ordinance and Adoption of Bond Resolution	City
17	Draft Final OS Distributed	BC
17	Bond Ordinance Published	City
18	Comments Due on Final OS	All
19	Final OS Printed and Mailed	BC, Printer
24	Transcripts delivered to Attorney General	BC
<b>September</b>		
5	<b>Labor Day</b>	
7	Transcript Approved; Bonds shipped to DTC	BC
14	<b>Closing on Bonds</b>	<b>All</b>
14	<b>Closing on Escrow</b>	<b>Escrow</b>

### LEGEND

City	City of Prairie Village (Issuer)
BC	Bond Counsel (Gilmore & Bell, PC)
FA	Financial Advisor (Columbia Capital Management, LLC)
UW	Underwriter [TBD]
Printer	FPR
Verification	Verification Agent (Robert Thomas CPA)
Escrow	Escrow Agent [TBD]

# City of Prairie Village

## Pro Forma Refunding of General Obligation Bonds/Energy Projects

June 30, 2011

	Existing Debt Structure			Debt After Pro Forma Refunding			Debt After Pro Forma Refunding and Energy Project Financing			
	Bond Debt Service	Cash-Financed Capital	Total Capital Investment	Bond Debt Service	Cash-Financed Capital	Total Capital Investment	Refunding Bond Debt Service	Energy Bond Debt Service	Cash-Financed Capital	Total Capital Investment
2012	\$ 1,970,475	\$ 1,100	\$ 1,971,575	\$ 776,041	\$ 1,195,535	\$ 1,971,575	\$ 775,907	\$ 57,519	\$ 1,195,535	\$ 2,029,094
2013	1,968,875	2,700	1,971,575	779,165	1,192,411	1,971,575	779,031	57,379	1,192,411	2,028,954
2014	1,971,575	-	1,971,575	775,992	1,195,583	1,971,575	775,858	57,144	1,195,583	2,028,719
2015	228,475	1,743,100	1,971,575	775,997	1,195,578	1,971,575	775,863	56,774	1,195,578	2,028,349
2016	223,975	1,747,600	1,971,575	778,993	1,192,582	1,971,575	778,859	56,259	1,192,582	2,027,834
2017	228,975	1,742,600	1,971,575	780,368	1,191,207	1,971,575	780,234	55,634	1,191,207	2,027,209
2018	228,200	1,743,375	1,971,575	779,098	1,192,477	1,971,575	778,964	54,829	1,192,477	2,026,404
2019	231,750	1,739,825	1,971,575	780,253	1,191,322	1,971,575	780,119	53,854	1,191,322	2,025,429
2020	-	1,971,575	1,971,575	778,868	1,192,707	1,971,575	778,734	52,724	1,192,707	2,024,299
2021	-	1,971,575	1,971,575	780,368	1,191,207	1,971,575	775,234	56,474	1,191,207	2,028,049
<b>Totals</b>	<b>\$ 7,052,300</b>	<b>\$ 12,663,450</b>	<b>\$ 19,715,750</b>	<b>\$ 7,785,142</b>	<b>\$ 11,930,608</b>	<b>\$ 19,715,750</b>	<b>\$ 7,778,802</b>	<b>\$ 558,590</b>	<b>\$ 11,930,608</b>	<b>\$ 20,274,340</b>

Columbia Capital Management, LLC • Subject to Change



## COUNCIL COMMITTEE

Council Committee Meeting Date: July 5<sup>th</sup>, 2011  
Council Meeting Date: July 5<sup>th</sup>, 2011

### Agenda Item:

Consider approval of amending Ordinance No. 2153 establishing policies and procedures for spending economic development funds to specifically allow funding of park enhancements.

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### SUGGESTED MOTIONS

Move to amend Ordinance No. 2153 establishing policies and procedures for spending economic development funds to specifically allow funding of park enhancements.

### BACKGROUND

At the June 20<sup>th</sup> committee meeting, Council committee as a whole was presented with and approved the use of economic development funds for park enhancement projects.

The Council discussed the purposes of the economic development fund as provided in Ordinance No. 2153. Councilmembers interpreted the ordinance differently as to whether the existing ordinance provided for the use of economic development funds to design and construct park enhancements. A majority of Councilmembers determined park enhancements to be an appropriate use and approved the allocation as part of the 2012 budget.

The City Attorney was asked by Council to research the existing ordinance and provide a determination if the Council followed the ordinance. The existing ordinance provides that the fund may be used "to engage in any projects, programs or improvements within the City of Prairie Village deemed by the Governing body as appropriate and related to economic development within the city."

The amended ordinance is provided to bring clarity and eliminate the question as to whether park enhancements are an allowable use and to confirm the action Council took at the last meeting.

The amended ordinance adds a new provision to Section IV of Ordinance No. 2153. Paragraph 9 includes: to provide funds for enhancement of parks.

**ATTACHMENTS:**

- Proposed ordinance amending Ordinance No. 2153
  - Current version of Ordinance No. 2153
- 

Prepared By:

Quinn Bennion

City Administrator

Date: July 1<sup>st</sup>, 2011



**AN ORDINANCE AMENDING ORDINANCE NO. 2153 OF THE CITY OF PRAIRIE VILLAGE, KANSAS ESTABLISHING AN ECONOMIC DEVELOPMENT FUND IN THE CITY OF PRAIRIE VILLAGE AND ESTABLISHING POLICIES AND PROCEDURES FOR RESPENDING THE FUND.**

**WHEREAS**, paragraph 8 of Section IV of Ordinance No. 2153 provides that the Economic Development fund may be used "to engage in any projects, programs or improvements within the City of Prairie Village deemed by the Governing body as appropriate and related to economic development within the city"; and

**WHEREAS**, the Governing Body has determined that the enhancement of parks is related to economic development within the City and is an appropriate use of Economic Development Fund; and

**WHEREAS**, the Governing Body desires to amend ordinance No. 2153 to confirm such determination.

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS;**

**SECTION 1.** Section IV of Ordinance No. 2153 is hereby amended by adding a new paragraph 9, to read as follows:

9. To provide funds for enhancement of parks.

**SECTION 2.** This Ordinance shall take effect from and after its passage by the Governing Body of the City and publication in the official city newspaper.

THIS ORDINANCE IS PASSED AND APPROVED BY THE GOVERNING BODY OF THE CITY OF PRAIRIE VILLAGE, this July 5, 2011.

\_\_\_\_\_  
Ronald L. Shaffer, Mayor

ATTEST:

By \_\_\_\_\_  
Joyce Hagen Mundy, City Clerk

## ORDINANCE NO. 2153

AN ORDINANCE ESTABLISHING AN ECONOMIC DEVELOPMENT FUND IN THE CITY OF PRAIRIE VILLAGE AND ESTABLISHING POLICIES AND PROCEDURES FOR SPENDING THE FUND.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF PRAIRIE VILLAGE, KANSAS:

### SECTION I. Fund Established

In accordance with K.S.A. 12-101 and the authority of the City to exercise its rights to establish separate funds based on its Home Rule powers, there is hereby established an Economic Development Fund which shall be used by the City to finance activities that foster and promote economic development within the City. The Governing Body shall provide for the transfer of moneys from the General Fund to the Economic Development Fund.

### SECTION II. Policy Objective

It is the policy objective of the Governing Body that the economic development fund be used to disburse and expend funds for economic development projects; to foster and promote economic development in the City of Prairie Village Kansas; and to provide the means by which land or other property may be acquired, held, used, conveyed, or otherwise disposed of in order to meet present and future needs in the City of Prairie Village for purposes of economic development in the City.

### SECTION III. Definition.

The following definition of Economic Development shall be used to evaluate proposed expenditures from this Fund, consistent with the Policy Objective stated above:

A project will be considered an "Economic Development Project" if it is to directly increase city revenues, and/or city population, and/or property values of either commercial or residential property. These projects may include, but not be limited to the purchase of real property, encouragement of the creation and/or retention of businesses, the encouragement of redevelopment of property both commercial and residential, and the encouragement of property maintenance.

### SECTION IV. Authorized Uses of Funds

Funds from the Economic Development Fund may only be used for the following:

1. To provide funds for economic development activities
2. To provide for the improvement and maintenance of areas designated for redevelopment or reinvestment initiatives.
3. To purchase or otherwise acquire real property or any interest therein
4. To acquire, receive, hold title to, administer, sell, lease or otherwise dispose of real and personal property or any interest therein and to use said property or the proceeds thereof for the purposes encouraging and promoting economic development in the City.
5. To foster and promote public awareness of economic development needs and activities in the City
6. To enlist the services of planners, consultants, legal counsel, and other professional services incidental to accomplishing the policy objectives identified in this Ordinance.
7. To carry on such other activities as may be incidental to or will assist in the accomplishment of the above-stated purposes.
8. To engage in any projects, programs or improvements within the City of Prairie Village deemed by the Governing Body as appropriate and related to economic Development within the City.

#### **SECTION V. Revenues Credited to the Fund**

Monies received from the following sources shall be credited to the Economic Development Reserve Fund on at least a quarterly basis:

1. Sales and Compensating Use Tax revenues generated from a sales tax ballot measure approved by the voters of Johnson County, Kansas in 2003 and subsequently renewed in 2005.
2. Any other funds approved by the Governing Body to be credited to the Economic Development Reserve Fund.

#### **SECTION VI. Expenditures From the Fund**

The Governing Body shall have the authority to use and expend monies in the Economic Development Fund as follows:

1. All expenditures from the fund shall be consistent with the policy objectives and authorized uses identified in this ordinance.
2. Approval of the Prairie Village Governing Body will be required for all expenditures from the fund.
3. No single expenditure from the Fund shall be in an amount less than \$5,000 unless the Governing Body finds that special circumstances exist.
4. Expenditures from this fund may not be used to pay costs associated with the employment of full or part-time City employees. However, this shall not prevent monies in the Economic Development Fund to be used to obtain the services of professionals and contract employees as described in this Ordinance.

**SECTION VII. Take Effect.** That this ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper as provided by law.

PASSED AND APPROVED THIS 1st DAY OF OCTOBER, 2007



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Ronald L. Shaffer, Mayor

ATTEST:



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Joyce Hagen Mundy  
City Clerk

APPROVED AS TO FORM:



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Charles E. Wetzler  
City Attorney



## COUNCIL COMMITTEE

Council Committee Meeting Date: July 5<sup>th</sup>, 2011

Agenda Item:  
Consider approval of 2012 budget considerations

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### SUGGESTED MOTIONS

1. Move to approve a base balanced 2012 budget as prepared and presented by city staff at the June 13<sup>th</sup> meeting and maintains current mill levy rate of 18.877.
2. Move to approve the funding for an additional two police officers to the annual budget with the corresponding mill levy increase of 0.60 mills (for a total mill levy rate of 19.477).
3. Move to approve additional funding to the Capital Projects Fund for street work with a corresponding mill levy increase:

1.0 mill increase	\$280,000 increase
2.0 mill increase	\$560,000 increase
3.0 mill increase	\$840,000 increase

At the July 5<sup>th</sup> meetings, Council will consider two other agenda items that impact the 2012 budget: refinancing existing debt and transfer of \$400,000 from the Economic Development Fund to Capital Project Fund for park enhancements.

### BACKGROUND

The 2012 budget process continues. At the July 5<sup>th</sup> meeting, staff seeks Council direction regarding the 2012 budget in preparation for the July 18<sup>th</sup> meeting where the Council approves to publish the budget. The final budget approval is expected at the August 1<sup>st</sup> City Council meeting.

#### Base balanced budget

The 2012 base balanced budget includes funding of all current city services, programs and personnel levels. It also includes \$800,000 supplement to the CIP for street work. The base budget keeps the current mill levy rate at 18.877.

The City is in a fortunate situation to offer this option particularly in these economic times. Due to the City's strong financial condition, conservative budgeting and fiscal prudence, the base budget presented does not require a mill levy increase while maintaining all services.

The base budget was included in the blue binders handed out to Council for the June 13<sup>th</sup> meeting. As a reminder, the base budget includes an increase in the storm water utility fee to 4 cents per square foot of impervious surface (previously 3.9 cents) and the addition of 0.5 FTE for a part-time intern.

The following changes have occurred to the budget document in the binders based on Council input and additional information:

- Solid waste assessment - will remain the same rate as 2011 due to lower than expected renewal rate, recycling revenue sharing and utilization of reserves
- CIP - water discharge program - will remain at \$20,000 to cover program expenses with the remaining funds used for the following drainage related programs:
  - o \$ 15,000 for Stormwater (Drainage) System Master Plan
  - o \$ 45,000 additional for the Drainage Repair Program (for a total of \$ 235,000)

#### Decision Package #1: +2 police officers

Move to approve the addition of two police officers to the annual budget with the corresponding mill levy increase of 0.60 mills (for a total mill levy rate of 19.477).

Staff recommends that ongoing costs be funded with a new ongoing revenue source. Funding an ongoing cost with reserves is not sustainable and will result in difficult budget decisions in the immediate future.

Attached is a spreadsheet with probable costs to hire, equip and maintain the Directed Patrol Unit for the next 8 years. The average annual cost is \$167,000 per year with a corresponding mill levy rate increase of 0.60 mills. Indirect costs resulting from the addition of two officers are not included in the spreadsheet such as PD administration, payroll process, work comp insurance, finance, HR, IT, etc. If approved, the officers would be hired in early 2012 and available on patrol in Fall 2012.

Chief Jordan recommends this motion be approved. Attached is a summary of losses by burglary crime victims during the past several years according to department records.

#### Decision Package #2: additional street work

Move to approve additional funding for street work for the Capital Improvement Project fund with a corresponding mill levy increase:

1.0 mill increase	\$280,000 increase
2.0 mill increase	\$560,000 increase
3.0 mill increase	\$840,000 increase

Public Works Director recommends the approval of at least 1 mill for increased funding for street work.

**ATTACHMENTS:**

- Projected costs for Directed Patrol Unit (2 officers)
- Chart summarizing losses by burglary victims

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Prepared By:

Quinn Bennion

City Administrator

Date: July 1<sup>st</sup>, 2011

Directed Patrol Unit cost projections

	2012	2013	2014	2015	2016	2017	2018	2019
Salary / Benefits	\$129,000.00	\$134,000.00	\$140,000.00	\$146,000.00	\$152,000.00	\$158,000.00	\$165,000.00	\$172,000.00
Vehicle	\$25,000.00				\$28,000.00			
Vehicle equipment	\$19,000.00				\$7,000.00			
In car video	\$6,000.00				\$6,000.00			
Fuel / Maintenance	\$5,000.00	\$5,250.00	\$5,500.00	\$5,750.00	\$5,250.00	\$5,500.00	\$5,750.00	\$6,000.00
Computer/Aircard	\$4,500.00	\$500.00	\$500.00	\$500.00	\$5,000.00	\$500.00	\$500.00	\$500.00
Uniform / Cleaning	\$2,370.00	\$2,370.00	\$2,370.00	\$2,370.00	\$2,370.00	\$2,370.00	\$2,370.00	\$2,370.00
Forfeiture funds	-\$25,000.00							
<b>Total</b>	<b>\$165,870.00</b>	<b>\$142,120.00</b>	<b>\$148,370.00</b>	<b>\$154,620.00</b>	<b>\$205,620.00</b>	<b>\$166,370.00</b>	<b>\$173,620.00</b>	<b>\$180,870.00</b>

Average \$167,182.50

2012-2019 \$1,337,460.00

2 officers w/ family coverage



**FINANCIAL IMPACT TO CRIME VICTIMS  
BURGLARIES 2008 – 2011**

<b>Year</b>	<b>Loss of Property</b>	<b>Criminal Damage</b>	<b>TOTAL</b>
2008	\$158,986	\$25,190	\$184,176
2009	\$122,351	\$10,880	\$133,231
2010	\$90,079	\$25,490	\$115,569
2011 (to date)	\$47,652	\$4,959	\$52,611
		<b>TOTAL</b>	<b>\$485,587</b>

**COUNCIL MEETING AGENDA  
CITY OF PRAIRIE VILLAGE  
Tuesday, July 5, 2011  
7:30 p.m.**

- I. CALL TO ORDER
- II. PLEDGE OF ALLEGIANCE
- III. ROLL CALL
- IV. PUBLIC PARTICIPATION
- V. CONSENT AGENDA

All items listed below are considered to be routine by the Governing Body and will be enacted by one motion (Roll Call Vote). There will be no separate discussion of these items unless a Council member so requests, in which event the item will be removed from the Consent Agenda and considered in its normal sequence on the regular agenda.

**By Staff:**

- 1. Approve Regular Council Meeting Minutes - June 20, 2011

- VI. MAYOR'S REPORT
- VII. COMMITTEE REPORT

**Council Committee of the Whole**

COU2011-32 Consider amendments to Liquor & Drinking Establishment Regulations

COU2011-31 Consider approving an Energy Performance Contract Agreement with Energy Solutions Professionals, LLC for the sum of \$1,290,924 - Dale Beckerman

COU2011-33 Consider approval of a resolution authorizing the offering for sale of general obligation refunding and improvement bonds, series 2011-A - Dale Beckerman

COU2011-34 Consider approval of an ordinance amending Ordinance 2153 Uses of the Economic Development Fund to include park enhancements - Dale Beckerman

Consider approval of transfer of \$400,000 from Economic Development Fund to Capital Projects Fund for park enhancements as part of the 2012 budget.

- VIII. STAFF REPORTS
- IX. OLD BUSINESS
- X. NEW BUSINESS
- XI. ANNOUNCEMENTS
- XII. ADJOURNMENT

**If any individual requires special accommodations – for example, qualified interpreter, large print, reader, hearing assistance – in order to attend the meeting, please notify the City Clerk at 381-6464, Extension 4616, no later than 48 hours prior to the beginning of the meeting.**

**If you are unable to attend this meeting, comments may be received by e-mail at  
cityclerk@pvkansas.com**

**CONSENT AGENDA**

**CITY OF PRAIRIE VILLAGE, KS**

**July 5, 2011**

**CITY COUNCIL  
CITY OF PRAIRIE VILLAGE  
June 20, 2011**

The City Council of Prairie Village, Kansas, met in regular session on Monday, June 20, 2011, at 7:30 p.m. in the Council Chambers of the Municipal Building.

**ROLL CALL**

Mayor Ron Shaffer called the meeting to order and roll call was taken with the following Council members present: Al Herrera, Steve Noll, Michael Kelly, Andrew Wang, Laura Wassmer, Dale Beckerman, Charles Clark, David Morrison, Diana Ewy Sharp and David Belz.

Also present were: Wes Jordan, Chief of Police; Captain Tim Schwartzkopf; Bruce McNabb, Director of Public Works; Katie Logan, City Attorney; Quinn Bennion, City Administrator; Dennis Enslinger, Assistant City Administrator; Lisa Santa Maria, Finance Director; Chris Engel, Assistant to the City Administrator; Joyce Hagen Mundy, City Clerk.

Mayor Shaffer led all those present in the Pledge of Allegiance.

**PUBLIC PARTICIPATION**

John Joyce, 4201 Delmar Drive, addressed the Council regarding the proposed 2012 budget. He stated spending and programs at all levels need to shrink and presented the following areas of the budget that he felt should be reviewed by the City Council: 1) Reduction of Economic Development Fund; 2) Equipment Reserve Fund; 3) Council Chamber voice upgrade; 4) Data communication for Public Works; 5) Council Laptops - delay replacement; 6) Mayor/Council - Contract Services - reduce by 50%; 7)

Mayor/Council - commodities; 8) Administration - look at Village Voice, Training and Employee Events spending; 9) Parks & Community Programs; 10) Swimming budget of \$100,00 with an existing fund balance of \$56,000; 11) CIP Construction Administration; and 12) CIP partial reduction in sidewalks. Mr. Joyce voiced concern with the lack of citizen participation in the budget process and the lack of budget information available on the City's website.

No one else was present to address the Council and public participation was closed at 7:40 p.m.

**CONSENT AGENDA**

Dale Beckerman moved the approval of the Consent Agenda for Monday, June 20, 2011:

1. Approve Regular Council Meeting Minutes - June 6, 2011
2. Approve Claims Ordinance 2884
3. Approve the following contracts for VillageFest 2011
 

Hiccup Productions LLC	Jim Cosgrove	\$2,300
	Funky Mama	
	Sound System	
Trent Carter	Food Vendor	They pay us \$175
Captured Memories	Photo Booth	\$400
Beaks N Wings	Exotic Birds	\$0
Popcorn Man	Del Sawyer	They pay us \$175
Skydive KC	Skydivers	\$2,115
Wacky Banana	Inflatables	\$1,750
4. Approve a production services agreement with S.E.C.T Theatre Supplies, Inc. to provide set-up and take-down of stage, sound, lighting and roof necessary for the Prairie Village Jazz Festival.

A roll call vote was taken with the following members voting "aye": Herrera, Warman, Noll, Kelly, Wang, Wassmer, Beckerman, Clark, Morrison, Ewy Sharp and Belz.

## MAYOR'S REPORT

Mayor Shaffer represented the City at the following events during the past two weeks: Johnson County Charter Commission meeting, Mission Square ribbon cutting, Prairie Village Art Show, MARC annual meeting and NARC conference in San Diego. Mayor Shaffer reviewed conversations with representatives of the postal service regarding the Post Office and shared a letter he received from the US Postal Service regarding the Prairie Village Post Office regarding the closing and moving of postal services. He was assured that there will be a retail postal presence in Prairie Village.

David Belz responded that to his knowledge nothing definite has been decided and noting discussions on moving operations to the main post office have been going on for three years. Mayor Shaffer added the current lease for the Prairie Village facility does not expire until November, 2013.

## COMMITTEE REPORTS

### **Council Committee of the Whole**

**COU2011-29 Consider resolution providing for a substitute improvement to be financed with the proceeds of the General Obligation Refunding Series 2009-A.**

On behalf of the Council Committee of the Whole, Dale Beckerman moved the Governing Body approve Resolution 2011-11 providing for a substitute improvement to be financed with the proceeds of the City of Prairie Village, Kansas, General Obligation Refunding and Improvement Bonds, Series 2009-A. The motion was seconded by Al Herrera.

A roll call vote was taken with the following votes cast: "aye" Herrera, Noll, Kelly, Wang, Wassmer, Beckerman, Clark, Morrison and Belz ; "nay" Ewy Sharp.

**COU2011-30 Consider resolution authorizing certain main trafficway improvements and providing for the manner of paying for the same.**

On behalf of the Council Committee of the Whole, Dale Beckerman moved the Governing Body approve Resolution 2011-12 authorizing certain main traffic way improvements and providing for the manner of paying for the same with the amount shown in Sections 3 & 4 corrected to read \$6,350,000. The motion was seconded by Charles Clark.

David Morrison noted he does not support the construction of sidewalks in conjunction with these projects. Bruce McNabb replied he did not know if any of the additional projects included new sidewalks, but it is a possibility.

A roll call vote was taken with the following votes cast: “aye” Herrera, Noll, Kelly, Wang, Wassmer, Beckerman, Clark and Belz ; “nay” Morrison, Ewy Sharp, .

**Villagefest**

Diana Ewy Sharp encouraged all to attend the Villagefest celebration on July 4<sup>th</sup> from 7 a.m. to 1:30 p.m. She noted the committee is still seeking more volunteers for the event.

**Staff Reports**

**Public Safety**

- Wes Jordan noted that in addition to budget preparation his staff is working on amending existing policies and procedures to be in compliance with state statute changes that will go into effect July 1.

**Public Works**

- Bruce McNabb reported Franklin Park stream improvements have been made and the stream worked over the weekend.
- 2011 CIP Project maps were distributed
- The Somerset Project is in its 2<sup>nd</sup> stage with work from 83<sup>rd</sup> to Mission Road and approaching completion.
- There were reports of electrical outages and tree damage from the storm this past weekend.

**Administration**

- Dennis Enslinger announced the City received final approval for the geothermal project with contracts coming before the Council on July 5<sup>th</sup>.
- The Planning Commission will also be meeting on July 5<sup>th</sup> with CVS plans and several other items on their agenda.
- The school district is finalizing agreements for the purchase of Mission Valley by the end of June.
- A performance by the Air Force Band will be sponsored by the Arts Council on September 26<sup>th</sup>.
- Finance Director Lisa Santa Maria announced that the City has completed the transfer of banking services from Intrust Bank to UMB.

**OLD BUSINESS**

There was no Old Business to come before the Council.

**NEW BUSINESS**

There was no New Business to come before the Council.

**ANNOUNCEMENTS**

**Committee meetings scheduled for the next two weeks include:**

Environmental Committee	06/22/2011	7:00 p.m.
VillageFest Committee	06/23/2011	7:00 p.m.
Planning Commission	07/05/2011	7:00 p.m.
Council Committee of the Whole (Tuesday)	07/05/2011	6:00 p.m.
City Council (Tuesday)	07/05/2011	7:30 p.m.

The Prairie Village Arts Council is pleased to announce a oils exhibit by Nancy Todd Roberts and Suzy Perkins in the R. G. Endres Gallery for the month of June.

Don't forget to attend the 15<sup>th</sup> Annual VillageFest celebration on July 4<sup>th</sup>! It is also the City of Prairie Village 60<sup>th</sup> anniversary celebration.

The City offices will be closed on Monday, July 4<sup>th</sup> in observance of Independence Day. Deffenbaugh also observes this holiday so trash and recycling pick-up will be delayed one day.

The 50<sup>th</sup> Anniversary books, Prairie Village Our Story, are being sold to the public.



## ADJOURNMENT

With no further business to come before the City Council, the meeting was adjourned at 8:00 p.m.

Joyce Hagen Mundy  
City Clerk

**MAYOR'S ANNOUNCEMENTS**  
**July 5, 2011**

**Committee meetings scheduled for the next two weeks include:**

Planning Commission	07/05/2011	7:00 p.m.
Sister City Committee	07/11/2011	7:00 p.m.
Communications Committee	07/12/2011	5:30 p.m.
JazzFest Committee	07/14/2011	7:00 p.m.
Council Committee of the Whole	07/18/2011	6:00 p.m.
City Council	07/18/2011	7:30 p.m.

=====

The Prairie Village Arts Council is pleased to announce a mixed medium exhibit by the Senior Arts Council the R. G. Endres Gallery for the month of July. The artist reception will be held on July 8<sup>th</sup> from 6:30 to 8:30 p.m.

Moonlight swim July 8<sup>th</sup> from 8:30 - 10:00 p.m.

The annual water show will be held on July 24<sup>th</sup> at 8:30 p.m.

The 50<sup>th</sup> Anniversary books, Prairie Village Our Story, are being sold to the public.

**INFORMATIONAL ITEMS**  
**July 5, 2011**

1. Planning Commission Agenda - July 5, 2011
2. Council Committee of the Whole Budget Worksession - June 13, 2011
3. Tree Board Minutes - May 4, 2011
4. VillageFest Minutes - May 26, 2011
5. Mark Your Calendars

PLANNING COMMISSION AGENDA  
CITY OF PRAIRIE VILLAGE  
MUNICIPAL BUILDING - 7700 MISSION ROAD  
TUESDAY, JULY 5, 2011  
**Multi-Purpose Room**  
7:00 P.M.

I. ROLL CALL

II. APPROVAL OF PC MINUTES - JUNE 7, 2011

III. PUBLIC HEARINGS

PC2011-05 Request for Conditional Use Permit for Utility Box  
8301 Delmar Lane  
Zoning: R-1a  
Applicant: AT&T

PC2011-04 Request for Conditional Use Permit for Drive-Thru  
8200 Mission Road  
Zoning: C-2  
Applicant: Cedarwood Development

IV. NON-PUBLIC HEARINGS

PC2011-108 Request for Site Plan Approval - CVS  
8200 Mission Road  
Zoning: C-2  
Applicant: Cedarwood Development

PC2011-110 Request for Building Line Modification  
5301 West 67<sup>th</sup> Street  
Zoning: R-1a  
Applicant: John Wind

PC2011-111 Request for Site Plan Approval  
6400 Mission Road  
Zoning: R-1a  
Applicant: Adam Stern with Gould Evans

PC2011-112 Request for Building Line Modification  
8300 Delmar  
Zoning: R-1a  
Applicant: John Schutt

PC2010-111 Approval of Sign Standards - HyVee Center  
7600 State Line Road  
Zoning: C-2  
Applicant: Ross Jensen with Acme Signs

V. OTHER BUSINESS

VI. ADJOURNMENT

Plans available at City Hall if applicable

If you cannot be present, comments can be made by e-mail to  
[Cityclerk@Pvkansas.com](mailto:Cityclerk@Pvkansas.com)

**COUNCIL COMMITTEE OF THE WHOLE  
BUDGET WORKSESSION  
June 13, 2011**

The Council Committee of the Whole met on Monday, June 13, 2011 at 6:00 p.m. The meeting was called to order by Council President Dale Beckerman with the following members present: Al Herrera, Steve Noll, Michael Kelly, Andrew Wang, Laura Wassmer, Charles Clark, David Morrison, Diana Ewy Sharp and David Belz. Staff Members present: Wes Jordan, Chief of Police; Captains Wes Lovett and Tim Schwartzkopf, Tim Kobe, Communications Supervisor; Bruce McNabb, Director of Public Works; Quinn Bennion, City Administrator; Dennis Enslinger, Assistant City Administrator; Chris Engel, Assistant to the City Administrator; Lisa Santa Maria, Finance Director and Joyce Hagen Mundy, City Clerk.

Council President Dale Beckerman noted this was a meeting of the Council Committee of the Whole to discuss the 2012 Budget. There is no formal public participation on the agenda; however, noting individuals in the audience, Mr. Beckerman stated he would accept brief comments prior to the beginning of the meeting.

Charles Schollenberger, 3718 West 79<sup>th</sup> Terrace, expressed strong opposition to a 7 mill levy increase noting the increase in state sales tax last year, the increase in local sales tax through the CID approved by the City and growing number of older residents on fixed incomes. He does feel that additional patrol officers are needed but that they could be funded from existing city revenues. Possible sources would be to temporarily stop funding the Economic Development Fund or to take money from the city's reserve funds.

John Joyce, 4201 Delmar Drive, agreed with the need for additional patrol officers and increased public works funding for city infrastructure. However, he reiterated his comments from the last City Council meeting encouraging the Council to distinguish between city needs and wants. He does not support a mill levy increase.

Jori Nelson, 4802 West 69<sup>th</sup> Terrace, stated she felt the City was billing taxpayers through increasing the mill levy without taking any effort to decrease discretionary city spending. She felt two obvious unnecessary expenditures during these difficult economic times would be the removal of the \$17,000 budgeted for employee appreciation event and \$13,000 for the Mayors holiday party.

**Introduction**

Quinn Bennion reviewed the agenda for this evening's meeting with each Department presenting their 2012 budget request. In preparation of the budget staff following the following objectives:

- To maintain high quality services and programs
- To maintain quality streets, parks and infrastructure
- To continue the City's strong financial condition
- To maintain AAA bond rating
- To reduce reliance on fund balance and reserve funds.

He stated the budget represents the priorities and goals of the City Council. After the individual presentations, staff is seeking feedback and direction on any changes that the Council may want. There will not be any formal vote on the budget until the July 5<sup>th</sup> meeting.

The 2012 budget as presented by staff is balanced with the current mill levy rate of 18.871 and maintains the same level of services without any reduction in personnel plus a part-time administrative intern. Mr. Bennion noted the 2012 budget as presented does not include additional public safety officers, additional CIP funding or any new programs or services.

## **PUBLIC SAFETY BUDGET**

### **Administration - 2 FTE**

Chief Wes Jordan reviewed by line item what was included in the administration budget for public safety as well as proposed changes including reductions in line items, the addition of new line items and increases in line items. The proposed budget for 2012 Public Safety Administration is \$48,775.00.

### **Investigations - 7 FTE**

Captain Wes Lovett reviewed by line item what was included in the Investigations budget for public safety as well as proposed changes including increases of \$500 for CIRT Gear and \$2000 for office furniture and a \$500 reduction in printing. The proposed budget for 2012 Public Safety Investigations is \$69,955.00.

### **Special Investigations - 2 FTE**

Captain Wes Lovett reviewed by line item what was included in the Special Investigations budget for public safety as well as proposed changes including a \$500 reduction in contract services. The proposed budget for 2012 Public Safety Special Investigations is \$12,750.00.

### **D.A.R.E. - 1 FTE**

Captain Wes Lovett noted there are no changes in this budget. The proposed budget for 2012 Public Safety D.A.R.E. is \$5,870.00.

Laura Wassmer asked what the operating supplies budget was for DARE. Chief Jordan responded \$2600 with \$1600 for T-shirts and \$1000 for graduations.

### **Crime Prevention - 1 FTE**

Captain Wes Lovett reviewed by line item what was included in the Crime Prevention budget for public safety as well as proposed changes including an increase of \$200 for vehicle maintenance and decreases of \$500 in printing and \$250 in commodities. The proposed budget for 2012 Public Safety Crime Prevention is \$55,050.00.

### **Professional Standards - 1 FTE**

Captain Wes Lovett reviewed by line item what was included in the Professional Standards noting this department primarily tracks all training. Each officer is required to

complete 40 hours of training annually. The majority of this budget goes toward firearm range costs. The proposed budget for 2012 Public Safety Professional Standards is \$57,650.00.

### **Staff Services - 10 FTE**

Communications Supervisor Tim Kobe reviewed by line item what was included in the Staff Services budget for public safety as well as proposed changes including a several reductions and increases in line items. The proposed budget for 2012 Public Safety Staff Services is \$151,935 and increase of approximately \$2,000.

David Belz asked what the Technical Operations Officer did. Tim Kobe responded he serves as his backup as well as Dispatch. He is involved with all technical operations, particularly the "Intergraph" system and provides technical support to officers in the field.

### **Community Services 2 FTE & 9 School Crossing Guards**

Captain Tim Schwartzkopf reviewed by line item what was included in the Community Services budget for public safety as well as proposed changes. He noted the primary expenditure for this program is Animal Medical Center costs which increased \$1800. The proposed budget for 2012 Public Safety Community Services is \$40,020.

### **Patrol 27 FTE (8.2 FTE for Mission Hills)**

Captain Tim Schwartzkopf reviewed by line item what was included in the Patrol budget for public safety as well as proposed changes. The budget as presented totals \$435,360.00 for an increase of \$3,400.00. If two additional patrol officers are added with the necessary related equipment, the budget for Patrol would increase to \$496,910 for an increase of \$64,950.00.

### **Off-Duty Contractual**

Chief Wes Jordan stated staff is currently working approximately 1250 hours annually at an average cost of \$44.69. This amount is billed to the individual or organization using the services. The proposed budget for 2012 Public Safety Contractual Services is \$60,500.00. There is no increase for this program.

### **Traffic 5 FTE**

Captain Tim Schwartzkopf reviewed by line item what was included in the Traffic budget for public safety as well as proposed changes. The proposed budget for 2012 Public Traffic is \$33,350.00.

Laura Wassmer asked what types of items are included under "commodities", noting there appears to be increases in this area throughout the city budget. Chief Jordan responded that line item includes usable items not accounted for under contractual services.

### **Alternatives**

Chief Wes Jordan presented the following alternatives as directed by the City Council:

- Continue with current staffing and services.
- Discontinue D.A.R.E and reallocate manpower

- Replace Technical Operations with another option and reallocate manpower
- Adopt 2012 budget with mill levy increase for the addition of two officers
- Pending COPS Grant

### D.A.R.E.

Chief Jordan noted that this program was funded with the alcohol funds with the stipulation that the funds be used for drug education. He has talked with the City Attorney regarding the ability to use that funding elsewhere. He stated that the City of Overland Park has decided to discontinue its DARE program next year and the Cities of Shawnee and Olathe have discontinued its program.

Quinn Bennion responded that the city has made some inquiries to other cities and based on Shawnee's actions the funds could be reallocated. It may be possible to reallocate the funds to the School Resource Officer program. Staff is still investigating the options. He noted that if the funds could not be reallocated, there would not be funding available to retain the officer.

Chief Jordan stated that if he had to choose between D.A.R.E and protecting residents, he would select the additional officers. However, he noted that dropping the program would impact the relationship that is developed between the students and the officers that carries over to the School Resource Officer. David Belz asked if there has not been debate on the effectiveness of the program. Chief responded there has and noted they have not conducted a recent survey on the program. Steve Noll asked what the school district's feeling was toward the program. Chief Jordan noted the program has expanded to cover bullying and sexual abuse in addition to drug education. He is not sure what the school district will do if the program is dropped. Chief Jordan answered several questions regarding the operation of the program.

Michael Kelly confirmed the DARE officer could be placed in the field without any additional training. Chief Jordan added they often cover patrol vacations during the summer or when school is not in session.

Laura Wassmer expressed concern with the growing commodities budgets over the past years. Chief Jordan responded that inflation alone will cause the budgets to grow. Ms Wassmer stated an increase of over \$46,000 in three years is more than inflation.

### Technical Operations Officer

Chief Jordan noted this position is responsible for all technical operations including Intergraph System, electronic ticketing, computerized records system, in-car laptops, etc. The current individual in this position is also working on the mental health issue. This position could be handled by a non-certified officer allowing for more officers in the field. However, the savings in salary would not be significant.

### COPS Grant

The City will not know until September 30<sup>th</sup> if it is awarded a COPS Grant. The grant criteria focus is on saving programs being terminated or for new programs and the City is competing with cities throughout the country. Chief does not feel it is likely that Prairie



Village will receive the grant which would cover salary for three years with the city required to retain the officer for an additional year.

Chief Jordan stated these are the alternatives for consideration by the Council. They are not his recommendations. He requested direction from the Council on the additional officers so he can complete his Mission Hills budget. Laura Wassmer confirmed that discussion will take place after all of the department budgets are presented.

Council President Dale Beckerman declared a ten minute break. The meeting was reconvened at 7:40 p.m.

## **PUBLIC WORKS BUDGET**

Bruce McNabb stated there are very few significant changes in the Public Works budget. Program titles have been changed to be more descriptive. Mr. McNabb provided a general overview of the department and noted that focus of the department will be to take on more responsibility with the same staff, to take over some previously contracted work and to work with other agencies for greater efficiency. The proposed operating budget for 2012 is \$5,594,808 for a 3.2% increase or \$174,314. Mr. McNabb noted the equipment/capital budget for 2012 is \$155,500 a decrease of \$146,000.

Laura Wassmer noted an increase in contractual services from \$2.3 million in 2003 to \$2.8 million in 2012. Bruce McNabb stated the largest portion of the increase is from increased electricity costs for traffic signals and street lights as well as general use. Electrical services increased by \$129,000 in the past year.

Quinn Bennion noted comparisons from actual amounts to budgeted amounts are not truly reflective of actual increases. Budgeted amounts are estimated expenditures which in most cases will be larger than actual expenditures. Historically, the city has spent 93% of its estimated budget.

### **Management, Engineering & Administration - 7 FTE**

In addition to management staff, this area includes the Field Superintendent, Construction Inspectors and administrative staff. They are responsible for managing projects, issuing right-of-way and drainage permits and all customer service requests. During 2012 their focus will be on analyzing costs vs. revenues on permit fees, measuring the completion of service requests within 30 days, holding more public information meetings including one at both the design and construction stage of projects. The proposed budget for this area is \$631,328.

### **Drainage Operations & Maintenance - 5 FTE**

This area includes a crew leader and 4 maintenance workers who are responsible for maintenance of 9 miles of drainage channels, street sweeping and ensuring the city's compliance with Federal Stormwater regulations. Mr. McNabb noted that this area is funded by the Stormwater Utility Fee with approximately one-third of the fee going to this program area. The major change to this area is the addition of a Confined Space Entry

System required by Federal Regulations and the related equipment, training and procedure, estimated cost \$10,000. The City will also need to replace a dump truck in 2012 at a cost of \$110,000. The proposed budget for this area is \$302,727.

Laura Wassmer asked if there was a replacement schedule for vehicles. Chris Engel responded there is an equipment reserve fund and referred to pages 13 & 14 of the budget document. He noted the police department will replace 4 vehicles in 2012. Bruce McNabb noted that when replacement of a vehicle is delayed increased maintenance money needs to be allocated.

Michael Kelly asked if the leasing of equipment had been considered. Mr. McNabb responded he had leased equipment at other cities, but noted the market has changed and more research needs to be done to determine if there is a cost savings. Quinn Bennion added that generally over the life of a truck leasing will cost more than purchasing the vehicle. Dale Beckerman stated leasing charges a premium for the best years of a vehicle's life.

#### **Vehicle Maintenance - 3 FTE**

This program area provides full service for 43 Public Works and Codes Vehicles and special equipment. It provides very limited service for 40 police vehicles. The Fuel Service operations for all city vehicles as well as Mission Hills and Johnson County Fire District #2 vehicles costs are included in this program. The proposed budget for this area is \$222,433.

#### **Street Operation & Maintenance - 5 FTE**

This is the largest program area budget. 70% of this budget is in contractual services with street and traffic lights over \$1 million of the \$1,875,822 budget. Bruce McNabb stated the city underestimated the costs for these in past budgets and this budget includes back payments as well as a revised estimate of costs for 2012.

#### **Building & Grounds - 8.5 FTE**

This is the largest program area in terms of staff time with half of the staff time spent in the maintenance of city parks. The proposed 2012 budget for this program area is \$831,769. He noted they are trying to reduce the number of islands maintained by having homes associations care for them. Laura Wassmer asked if they had looked at replacing the grass with natural grasses that require less maintenance. Bruce McNabb responded that they have already done that in some areas and are looking at doing more. Michael Kelly asked where he was in the process of contacting homes associations and what his experience had been. Mr. McNabb responded they have contacted those that had previously cared for islands. Generally, the response has been good. Laura Wassmer asked for the cost to mow the islands.

#### **Other Buildings & Grounds**

The city staff is responsible for the operation and maintenance of seven buildings, plus the pool complex, the tennis court complex, park pavilions and the public safety building. Bruce McNabb stated the 2012 budget does not reflect any energy efficiency changes from the energy efficiency project which is expected to yield lower gas and electricity

costs as well as plumbing costs. The proposed 2012 budget for the adjunct areas is \$409,597.

Laura Wassmer noted commodities increased from \$475,569 in 2009 to \$679,000. Mr. McNabb stated the increases in this line item are primarily due to increased costs for vehicle parts and fuel.

## **ADMINISTRATION**

### **Mayor & Council**

Chris Engel reviewed the items covered in this budget and noted the proposed 2012 budget of \$137,459 reflects a decrease of 3.6%

Laura Wassmer questioned the increase of \$47,000 since 2009. Chris Engel responded the 2009 figure is an actual expenditure the 2012 figure is an estimated budget figure and based on historical data that amount will not be as high as budgeted. Quinn Bennion stated staff can lower this budget as directed by the Council.

### **Management & Planning 2.4 FTE**

This program area includes newsletter costs, planning services, training, dues and employee events. There is a 1.9% increase in this proposed budget of \$457,693 which is for the addition of Excelligent and Innovations Alliance subscription.

Laura Wassmer asked if the city really spent \$17,000 on the employee event at the K. Quinn Bennion responded that \$17,000 is the total budget for all employee events, not the cost of one event. He will provide the actual cost of the event to the Council.

Laura Wassmer noted this line item has increased by approximately \$83,000 since 2009. She would like to see the "cush" removed and the budget prepared closer to actual. Quinn Bennion responded the city could take a different approach than in the past and could reduce the budget amounts to minimums, but noted staff would need to come back and request contingency funding for any unanticipated increase that takes the line item over budget. He noted the example of legal services which were \$157,535 in 2009 and \$70,637 the following year. Budget amounts are based on historical averages and reasonable anticipated expenses. Under planning services the amount varies widely depending on the number of development applications received and zoning ordinances being reviewed. Costs are projected to increase in 2010 because of anticipated redevelopment.

Laura Wassmer noted she is consistently seeing more being budgeted than what is needed or the creeping up of expenses. Michael Kelly pointed out that the City is spending more than it takes in. There is no "cush" in the budget. Quinn Bennion replied in 2010 the City spent 93% of its budgeted amount - that could be changed to 99%; however, doing so would make it very difficult for staff to budget and result in the carryover of no funds into the following year. These are two different budgeting philosophies.

### Information Technology

Chris Engel noted this line item increased 11.1% with an increase of \$20,500 attributable to annual software agreements for new systems and increased technology consultant fees.

Laura Wassmer noted IT costs keep increasing because of increasing maintenance costs and asked if the city was truly saving money through technology usage. Quinn Bennion replied the city staff is absolutely more efficient due to the technology they have been given. He noted a report requested late last Friday was available Monday. A huge amount of time and money is being saved through Intergraph allowing officers to do reports and access information while in the field. Three staff were cut in the 2010 budget without a reduction in services. Chief Jordan responded that although fees in this area may be going up, there are costs in other areas that are going down because of the efficiencies being utilized through technology.

### City Clerk - 4 FTE

Joyce Hagen Mundy reviewed briefly the functions of the City Clerk office. The 2012 budget reflects a 10.3% increase. She noted that although the percentage increase is large the dollar increase is relatively low. \$6,000 has been added to the budget for anticipated election costs and \$800 for additional copy costs. She noted that if primary elections are necessary in the 2012, the entire cost of those elections would be assessed to the City. Johnson County Election Office makes that assessment based on the number of registered voters. If the elections are not needed, as was the case for the Mayor's election this year, the budget funds will be returned to the general fund.

### Municipal Court - 6.1 FTE

Dennis Enslinger reviewed briefly the functions of the Municipal Court and noted that approximately 25% of the court costs are reimbursed by the City of Mission Hills for services provided. The increase in Personal Services does not reflect additional staff, but increased benefit costs for KPERS, health insurance and the merit pool. Mr. Enslinger noted the new municipal court software is expected to increase efficiencies; however, noted that may not be able to be reflected in reduced personnel because of the personnel needed to operate the multiple court sessions held for both cities. The proposed 2012 budget for Municipal Court is \$294,242.

### Community Development 5.2 FTE

Dennis Enslinger reviewed the functions of the Community Development Department and stated there were no significant changes in this program area. The proposed 2012 budget includes the requested part-time intern position. Mr. Enslinger noted the internal review of residential applications before the Planning Commission does not save the City money, but does save residents money.

### Solid Waste Management - 0.3 FTE

The cost of this program is funded through the Solid Waste Management Program by assessments for the services provided. Mr. Enslinger noted these funds cannot be moved elsewhere.

## **PARKS & COMMUNITY PROGRAMS - 0.78 FTE**

This program area includes funding for the Arts Council, Environmental Committee, Sister City Committee and Villagefest as well as the swimming and tennis programs. Chris Engel stated there have been no changes to the amounts budgeted for committees. However, a one-time budget increase of \$16,000 (7%) has been added to this budget for new furniture for the MPR as approved during earlier budget discussions. Diana Ewy Sharp noted an error on the slide presented that Villagefest should be receiving \$21,000 not \$20,000.

## **GENERAL BUDGET ITEMS**

The following general budget items were noted:

- Fuel costs were budgeted at \$3.50 per gallon
- Health Insurance costs were budgeted at a 12% increase
- KPERS was budgeted with a 0.6% rate increase on the employer portion
- Police Pension Contribution budgeted to remain at \$450,000
- Employee Merit Pool of 2% with a one-time payment
- 9% rate increase budgeted for street lights and traffic signals
- Projected energy efficiencies not included in the proposed 2012 budget

Quinn Bennion noted the 2% one-time merit payment will help to retain and reward exceptional employees and allow the city to be competitive in attracting new employees. He confirmed not all employees will get a 2% merit payment - it will be based on performance. The one-time payment will not impact the employee's base salary and thus will not negatively impact related city costs such as KPERS, social security, retirement and will provide a lower salary base for the 2013 budget.

Financial Director Lisa Santa Maria stated the proposed 2012 budget is balanced; however, noted the City will spend more than it takes in with the difference being covered by savings from 2010. She noted this is a concerning trend and cannot continue.

Lisa reviewed information distributed prior to the meeting giving the year to date financials. The report indicates an error by the State of Kansas with what appears to be the placement of funds in the wrong account. Ms Santa Maria stated she spoke with an individual at the state who indicated it appeared that funds were deposited into the wrong account. The state is reviewing their transactions. Ms Santa Maria stressed the revenue figures presented on this report reflect funds received, it does not reflect an accurate accounting for those funds. The funds under review are reflected on the report.

Michael Kelly asked Ms Santa Maria what concerns she had with the proposed budget. Lisa Santa Maria responded she is new to the City's budget process and noted there are different budget philosophies. Her primary concern is that the city is spending more than it is receiving in revenue. The city cannot continue to have gaps and expect to be able to resolve them with savings from prior years or by reducing fund balances. The bottom line is revenue and expenditures must balance.

## **OTHER ITEMS**

### **Villagefest/Jazzfest Stage**

Quinn Bennion noted this item was discussed in an earlier budget session and continued. The Villagefest/Jazzfest committees have requested \$20,000 for the purchase of a stage to be used annually in conjunction with their events. Marianne Noll, Chairman of Villagefest, noted the existing stage constructed by the City several years ago is no longer safe to use. Villagefest will be renting a stage to be used for this year's celebration.

She noted several possible uses of a stage at different city events or functions and noted the stage they found to meet their needs was quoted at \$20,000. Several other cities have purchased their own stages and do not rent or loan them to others. The City of Mission expressed an interest in partnering on the purchase of a stage at some point in time. It was noted that Villagefest will be \$1000 to rent a stage this year and Jazzfest will be \$3500 for a stage and related equipment.

Michael Kelly noted Jazzfest paid in full for their stage out of raised funds and feels it should stay that way. David Morrison agreed and noted several other possible options for renting a stage.

Diana Ewy Sharp stated that Villagefest began in 1997 and serves over 5000 people each year. She feels this expenditure is well justified.

David Morrison stated he knew of several other options for securing a stage for an event.

### **MPR Furniture**

Chris Engel confirmed the Council still supported the inclusion of \$16,000 for the purchase of furniture for the Multi-Purpose Room.

### **Management Intern**

Chris Engel confirmed the Council still supported the inclusion of \$15,000 for a part-time administrative intern that would work primarily in the Community Development Department and on special assignments.

Council President Dale Beckerman called for a five-minute recess. The meeting was reconvened at 9:50 p.m.

Dale Beckerman stated the first item to be addressed is the inclusion of additional police officers and if so how will they be funded.

## **ADDITIONAL POLICE OFFICERS**

It is estimated to cost \$200,000 to fund the officers and related equipment and commodities. Funding by a mill levy increase would require a mill increase of 0.75 mills raising \$210,000 at a cost of \$17.77 annually for the average Prairie Village homeowner.

Charles Clerk noted this is a continuing obligation and if funds are to be taken from some other account it must be from an on-going account. If something is to be removed from the budget, it has to be removed permanently. David Belz agreed that this needs to be funded with continuing revenues.

Laura Wassmer asked if two officers were needed. Chief Jordan stated that if the department loses an officer between now and then that one officer will be allocated to that position and nothing would be gained. He feels two officers are necessary. Ms Wassmer stated she felt funds could be easily found for two officers by the reallocation of money. For example, contractual services in Mayor and Council could be reduced by \$25,000 and Conferences could be reduced by \$10,000.

Quinn Bennion stressed that funds to be reallocated must be funds that are known will actually be spent.

David Morrison agreed with Laura Wassmer and during the break distributed a list of several items totaling almost \$94,000 that he felt could be removed from the proposed budget.

Dale Beckerman noted the largest portion of the operating budget is personnel costs.

Charles Clark noted the removal of the Home Exterior Repair Program suggested by Mr. Morrison would not help as this is a designated funding source and these funds would not be able to be used for police officer related costs.

Diana Ewy Sharp stated she agreed with Ms Wassmer that there was "cush" in the budget. She felt that \$50,000 for the police vehicle and equipment could be taken from the equipment reserve fund. Quinn Bennion noted that some of the funds listed in the equipment reserve are designated for projects that have not yet been completed. Dennis Enslinger noted the fund contained \$100,000 designated for the new communications system. Diana Ewy Sharp stated she would like to see what has not been allocated in that fund.

Andrew Wang stated he thought the department was at full staff and the additional officer was needed to help cover rotations under the new program. He noted the car and the equipment as well as the cost for the officer are on-going costs and neither can be funded by the one-time funds in the equipment reserve fund. He would support one additional officer funded by a mill levy increase.

Laura Wassmer stated she cannot support a mill levy increase. There is easily enough "cush" in the existing budget to support one additional officer. She would like to see the budget adjusted to more realistic budget amounts and that by doing so the additional funding would be available.

Charles Clark noted that these officers will be an on-going expense. If budgeted money is not spent, it will be returned to the general fund and available to meet the needs of our residents.

Diana Ewy Sharp stated she was not supportive of a tax increase and feels there is funding available for additional officers. She noted the city raised sales taxes through the CID in 2011, raised the mill levy in 2010, and raised the stormwater utility fee in 2009. The City needs to realize what it is doing to our residents. She noted she is taking a cut in Parks and stated she does not feel Chief would ask for additional officer unless he needed them.

David Morrison agreed and added there are places in the proposed budget that could be cut to fund the additional officers. The City needs to address its infrastructure and safety needs.

David Belz stated the Council needs to give actual direction to the staff and not simply say there are items that can be cut. The staff has given us a balanced budget. If the Council wants to add two officers, it needs to identify an on-going revenue source to fund them.

Laura Wassmer stated she felt \$100,000 should be taken from the Economic Development Fund and \$100,000 from the proposed budget. This is not a good time to raise taxes.

Beckerman stated the proposed use is inconsistent with the criteria for Economic Development Funds and noted this is an on-going expense and needs an on-going - not one-time revenue source. As Quinn Bennion noted, Mr. Beckerman restated that the Council needs to identify actual expenditures in the budget and remove or draw down and we to be responsible to find money that will actually be spent to be removed. Diana Ewy Sharp stated she felt some of the existing items funded by the Economic Development Fund do not meet the criteria of the fund. Mr. Beckerman replied the Economic Development Fund is a one-time revenue source which cannot fund an on-going expenditure.

Andrew Wang questioned whether two officers were needed. Chief Jordan stated one is better than none, but he feels two are needed to address the crime needs with this growing theft trend.

David Belz stated he would like more information on the removal of the DARE and Technology Officer. Laura Wassmer stated she does not feel the funds should come from Chief Jordan's budget and that there are excess funds in other budgets.

Quinn Bennion asked Council to identify those funds. Ms Wassmer stated Economic Development Funds. Dale Beckerman restated Economic Development Funds could not be used for this expenditure. Al Herrera felt the trail funds could be used to fund the officers. Mr. Beckerman noted these are also one-time funds and asked how the officers would be funded in 2013. He feels if it is such a need, the residents would pay



for it. David Morrison stated it is a matter of setting priorities. Mr. Beckerman noted there would need to be seven councilmembers agree on what those priorities were and what items could be cut from the budget.

Council President Dale Beckerman asked for an unofficial poll on if there was support of additional police officers funded by a mill levy increase. There was majority support for the additional officers.

Additional other funding options continued to be discussed. Staff asked for direction on what cuts the Council would be comfortable. It was emphasized that these have to be actual expenditures and have to result in on-going or permanent additional revenue.

Council President Dale Beckerman asked for an unofficial poll on if there was support of additional police officers funded with Economic Development Funds. There was not majority support for the additional officers funded with this source.

#### **CAPITAL IMPROVEMENT PROGRAM**

Quinn Bennion noted that for the past three years the budget was balanced through reductions in the City's Capital Improvement Program. It is being recommended that the City approve a one mill levy increase designated for streets. This would raise \$280,000 at an annual cost of \$23.69 for the average homeowner.

Charles Clark noted that with each dollar not spent now on city infrastructure will cost the City \$4 at a later time. The city has to maintain its infrastructure and noted that the sins of omission are often as bad as the sins of commission. Mr. Clark stated that \$14 million worth of street repair work has been identified. If the City continues to underfund this program it will cost more in the future.

Diana Ewy Sharp stated that when the City approved the 2009 Bonds she knew that repayment in five years would be difficult. She stated the bond allowed for the acceleration of five years worth of projects and is comfortable where the program currently sits.

Andrew Wang stressed that the City will get more work for its money if the work is done now rather than later. Charles Clark stated that in reality the City needs to spend annually what it spent on the accelerated plan. Dale Beckerman stated he views this as stewardship of a different source and that either way the action of this Council will bind future councils either with debt or with extremely poor roads.

Michael Kelly stated deferred maintenance is a way to spend today what we cannot spend and stressed the City must stop living beyond its means and spending more than it receives in revenue.

Mr. Kelly stated he would like to go back to reviewing possible cuts. The issue of streets will cause long term harm to the City and he supports an increase of 6 mills to address this need along with looking at possible reductions in the budget.

Al Herrera suggested cutting the Large Item Pick-up. Dennis Enslinger stated that the funds saved by such action would not help the General Fund. The only savings would be if those funds were used to reduce the assessment to the residents.

Dale Beckerman stated he did not feel the proposed one mill was sufficient for the amount of work needed. He feels 4 mills would present a solution that would last for several years. He noted that money spent now will reduce the expenditure of additional funds down the road.

Dave Belz stated he would prefer an increase on 1 mill next year with the commitment to continue that increase in future years to fully address the problem.

Council President Dale Beckerman asked for an unofficial poll on if there was support for the funding of additional street work through a mill levy increase. Support was equally divided.

#### **REFINANCE DEBT OPTION**

Council President Dale Beckerman asked for an unofficial poll on if there was support for the refinancing debt to enable project funds in the next three years. Support was equally divided.

Dennis Enslinger stated there is not \$280,000 that can be cut from the proposed budget. Staff can give Council options for them to decide. Council directed staff to compile a list of possible cuts from the 2012 budgets for their review.

Quinn Bennion reminded the Council that the budget would be discussed again at the June 20<sup>th</sup> meeting and July 5<sup>th</sup>. The authorization to publish the budget needs to be given at the July 18<sup>th</sup> meeting for the budget hearing to be held on August 1<sup>st</sup>. Staff will have the requested additional information for the June 20<sup>th</sup> meeting.

Council President Dale Beckerman adjourned the meeting at 11:15 p.m.

Dale Beckerman  
Council President

**TREE BOARD**  
**City of Prairie Village, Kansas**

**MINUTES**

**Wednesday, May 4, 2011**  
**Public Works Conference Room**  
**3535 Somerset Drive**

Board Members: Cliff Wormcke, Jack Lewis, Greg VanBooven, Deborah Nixon, Luci Mitchell, Andy Gabbert

Other Attendees: Bruce McNabb, Bill Layne, Sean Mulcahy

The meeting was called to order at 6:00 p.m. with a quorum present.

**1) Review and Approve Minutes of April 6, 2011-** Motion by Deb Nixon, second by Cliff Wormcke; **Approved unanimously.**

Bruce McNabb noted that the Mayor had recently appointed City Councilman Michael Kelly to the Tree Board as the City Council Liaison to take the place of David Scott Morrison. The Mayor also reappointed Deb Nixon and Greg VanBooven to additional three year terms. All appointments were confirmed by City Council.

**2) Tree Removal Request at 9116 Buena Vista Dr. --** Greg VanBooven and Bruce McNabb briefed the Committee on the inspection of this tree after the previous Board meeting. Greg confirmed that the tree did have a severe girdling roots problem. Therefore, based on direction from the Tree Board, Bruce informed Mr. Gladstone that the tree could be removed. City staff will work with him to get the tree removed and a replacement tree planted.

**5) New Business:** (As these were potential action items they were moved up on the agenda in case some Board members had to depart prior to the end of the meeting.)

**A) Tree Removal Request at 9112 Buena Vista Dr. ---** Mr. Layne described problems with his sweet gum tree at this address. He said the tree was larger and worse than the tree at 9116 Buena Vista. His tree is tilted toward the street with roots coming up in the yard. He did not want the tree replaced.

**B) Tree Removal Request at 9108 Buena Vista Dr. --** Mr. Mulcahy said the sidewalk had to be replaced next to his sweet gum tree at this address. The tree also has root problems. He is willing to pay to have it taken down.

Art Kennedy provided a recent history of the Tree Board and its consideration of requests to remove sweet gum trees. He explained that the Board typically approves these requests only when there are major problems with the health of the tree. The Committee discussed the problem of girdling roots, which are caused by planting and maintenance practices.

The Board asked Greg to inspect the two additional trees on Buena Vista and relay his findings to the Board and the residents.

### **3) Subcommittee Reports:**

**3.1 Arbor Day Event—Wrap Up-** Deb Nixon described the event on April 30 at Porter Park honoring Jim Hanson. Mayor Shaffer and Councilwoman Diana Ewy Sharp attended and offered praise for Jim's accomplishments for the City. Bruce McNabb said that staff will attempt to get the certificate to Mr. Hanson's daughter.

**3.2 Earth Fair Event – Wrap Up-** Luci Mitchell reviewed the participation in this April 16 event. She and Cliff Wormcke staffed the table. She said attendance was down a little bit from previous years but it was still good. Luci returned the Tree Board banner and extra handouts. The Committee discussed the history of its participation in this event.

The Committee discussed various ideas for changing its participation in this event next year. Luci suggested that the Tree Board may want to hold its own raffle for the tree next year in order to increase attendance at its table. The Board decided to put together a display of leaves of the most common trees in this area: pin oaks, maples, elms, ginkgos and sycamores. Jack Lewis pointed out that the leaves would have to be collected later this year and he volunteered to help with this activity. Deb Nixon suggested adding more information to the Tree Board page on the City's website.

**3.3 Fall Seminar -** The Board discussed possible dates for this event and decided on Wed., Oct. 5 at 7:00 p.m. in City Council Chambers as its first choice. Bruce McNabb said he would ask Suzanne Lownes to see if this time was available and make a reservation if it was. (Subsequent to the meeting Suzanne confirmed this reservation.)

The Board discussed topics that have been presented at previous seminars including pruning, trimming and selection of trees; the general benefits of an urban forest and the selection of champion trees.

The Board decided the topic for this year would be the selection of champion trees by the Board. The Board will not solicit nominations. The publicity for the event will include an explanation of the criteria used in the selection process.

Greg VanBooven will contact Chuck Breasher, who maintains a large number of champion trees.

The seminar will be planned to last 50 minutes to an hour.

### **4) Old Business:**

Deb Nixon noted that classes from Johnson County Community College are using the signed Arboretum trees for their class work.

### **6) Next Meeting:**

The Board decided that it would not meet again until August 3 unless something urgent came up.

There being no further business to come before the Tree Board, the meeting was adjourned at 6:45 p.m.

Minutes prepared by Bruce McNabb

## VILLAGEFEST COMMITTEE

### May 26, 2011 Minutes

The VillageFest Committee met May 26, 2011. Present and presiding, Marianne Noll. Members present: Diana Ewy Sharp, Doug Sharp, Toby Fritz, Art Dick, Kathy Peters, Joel Crown, Ed Roberts, Julie Weiss, Dale Warman, Patty Jordan, Tony Lopez, Sgt. Byron Roberson, Chief Wes Jordan, Quinn Bennion, Mike Helms and Jeanne Koontz.

#### Minutes

Diana Ewy Sharp noted Neon Blue performs 50's and 60's music. Joel Crown moved approval of the minutes as amended of the March 24, 2011 meeting. Ed Roberts seconded the motion which passed unanimously.

#### Budget Report

Marianne Noll reported that Clear Hearing Aid will not be a sponsor this year due to insistence that they pick the band. The budget is in good shape despite this loss. Marianne Noll suggested having a photo booth which was very popular in the late 50's and early 60's. The cost will range from \$600 to \$1,500. The photo booth space is large enough for a group of people. The committee expressed interest if there is room in the budget.

#### Staff Reports

##### A. Administration

No report.

##### B. Public Works

Mike Helms reported that it would cost \$1,600 to rent a dance floor. The committee decided not to proceed with this idea.

##### C. Police Department

Byron Roberson reported that Med-Act may charge the City for services this year.

##### D. Fire Department

Tony Lopez said he would like to establish a set time to rescue the Mayor. The committee decided on 11:30 am. Mr. Lopez also suggested using an interop radio channel for communication.

#### Sub-Committee Chairperson Assignments

##### A. Decorations

The vendor will need access to electricity. There will be a 10' tall '60', 4 arches and a '15' by the stage.

##### B. Stage

The location of the stage will be moved slightly to make room for other attractions.

##### C. Entertainment

Insurance may be an issue again this year.

##### D. Sponsorship

Marianne reiterated that Clear Hearing Aid will not be a sponsor.

- E. Marketing, advertising and material design  
Marianne Noll said the yard signs will be distributed before the next meeting. The facebook page still needs to be updated.
- F. Creativity Center  
Patty Jordan said the supplies order is ready.
- G. Patriotic Service  
No report.
- H. Food  
Jeanne Koontz will contact Latte Land.
- I. Hospitality  
No report.
- J. Volunteers  
Quinn Bennion passed around a volunteer sign-up sheet. He asked if anyone had connections to the Lion's Club because he has had trouble contacting them.
- K. Children's Parade  
Julie Weiss said she will use the giveaways as prizes.
- L. Information Booth  
Bob Engel is unable to be at VillageFest this year so Steve Noll will run the Information Booth.
- M. Student Contest  
The posters will be judged at the June meeting.
- N. Community Spirit Award  
Diana Ewy Sharp asked for the letter to be mailed to city committee volunteers. The committee also suggested including information in the NEJC Chamber e-blast, mailing to Homes Associations and having forms at the PV Art Fair. The judging panel is Pat Daniels, Donna Potts and Ann Bontrager.
- O. Bike Rodeo  
No report.
- P. Children's Fingerprinting  
It will be in the Council Chambers.
- Q. Committee Shirts  
The committee will pay for \$10 of the shirt making the final price \$15.
- R. Committee Booths  
The following committees will be in attendance: Environmental, JazzFest, Arts Council and Sister City. The environmental committee will handle recycling.

**WOW Idea**

The KC Skydivers will jump with the U.S. Flag and white smoke.

**Other**

The national guard will bring a humvee and a race car replica.

Marianne Noll said she needs more trivia questions. The DJ will run the trivia contest and the hula hoop contest.

The meeting adjourned at 8:05 pm.

Marianne Noll  
Chair

**Council Members  
Mark Your Calendars  
July 5, 2011**

<b>July 2011</b>	Senior Arts Council exhibit in the R. G. Endres Gallery
July 8	Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
July 8	Moonlight Swim at the pool
July 18	City Council Meeting
July 24	Annual Water Show at the pool - 8:30 p.m.
<b>August 2011</b>	Cortney Christensen photography & watercolors exhibit in the R. G. Endres Gallery
August 1	City Council Meeting
August 5	Moonlight Swim at the pool
August 12	Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
August 15	City Council Meeting
August 15	Reduced hours begin at the pool
<b>September 2011</b>	Michael Doyle photography exhibit in the R. G. Endres Gallery
September 5	City offices closed in observance of Labor Day
September 5	Pool closes for the season - 6:00 p.m.
September 6(Tues.)	City Council Meeting
September 9	Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
September 10	JazzFest
September 19	City Council Meeting
<b>October 2011</b>	State of the Arts Exhibit in the R. G. Endres Gallery
October 3	City Council Meeting
October 14	Artist reception in the R. G. Endres Gallery 6:00 - 8:00 p.m.
October 17	City Council Meeting
<b>November 2011</b>	Greater KC Art Association mixed medium exhibit in the R. G. Endres Gallery
November 7	City Council Meeting
November 11	Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
November 21	City Council Meeting
November 24	City offices closed in observance of Thanksgiving
November 25	City offices closed in observance of Thanksgiving
<b>December 2011</b>	Richard Joslin watercolor exhibit in the R. G. Endres Gallery
December 5	City Council Meeting
December 9	Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
December 19	City Council Meeting
December 26	City offices closed in observance of Christmas