

CITY OF OVERLAND PARK
WEEKEND INTERVENTION PROGRAM AGREEMENT

WHEREAS, the City of Overland Park, Kansas, ("City)", has agreed to contract with Charles Stebbins Counseling Services ("Contractor"), to provide services for the City of Overland Park Weekend Intervention Program ("OPWIP"), as specified in this Agreement; and,

WHEREAS, Contractor has agreed to provide those services.

NOW, THEREFORE, City and Contractor agree as follows:

I. PURPOSE OF THE OPWIP.

Persons who have been convicted of driving under the influence of alcohol and/or drugs contrary to O.P.M.C. 12.04.030 and/or persons who have been convicted of possession of controlled substances contrary to O.P.M.C. 11.56.140 and the conviction(s) constitutes their first conviction, as defined by ordinance, are required to spend a minimum of 48 continuous hours in custody. The City believes that certain persons charged with ordinance violations may benefit from participation in alcohol and drug educational programs. The City desires to utilize alternative sentencing options which comport with statutory requirements, and provide beneficial alcohol and drug safety educational programs through contracting with a qualified provider of community-based alcohol and drug safety action programs and who is so certified by the Administrative Judge of the Tenth Judicial District.

II. CONTRACTOR CERTIFICATION.

The Contractor certifies that he is a certified ADSAP Agency as required by law. The Contractor is required to maintain this certification throughout the term of this Agreement.

III. PROGRAM DESCRIPTION.

Contractor Responsibility:

The Contractor will be responsible for operating the OPWIP alcohol and drug educational and counseling program. Specific responsibilities include:

1. To provide a minimum of 20 hours of alcohol and drug abuse education and counseling for purposes of conducting the OPWIP. The Contractor shall give priority in scheduling to participants referred from the Overland Park Municipal Court over participants in any similar program from any other entity.
2. To furnish during the confinement period, meeting rooms, food, housing, utilities, maintenance and linen service and other housekeeping supplies necessary to meet the needs of the persons participating in the OPWIP (“Participants”). The facility to be used by the Contractor shall be located at Johnson County Community Corrections, 101 Roeland Park Drive, New Century, Kansas, 66031.
3. To provide 24-hour security by Kansas state certified law enforcement officers for purposes of conducting the OPWIP in full compliance with the laws of Kansas. The officers shall be paid and scheduled by the Contractor. The officers shall be responsible for searching all Participants entering the program for alcohol or contraband, and for maintaining security throughout the course of the program.
4. To make available for Participants confined as a result of a first conviction, pursuant to O.P.M.C. 12.04.030 or 11.56.140, or other ordinance violations involving alcohol or drug use, a portion of the Contractor's facility as mutually agreed upon, during certain designated weekends. Lodging in facilities will consist of semi-private bed space for a maximum of thirty (30) Participants.

If more than thirty (30) Participants are scheduled for any particular weekend, the Contractor shall separate the sessions and run parallel sessions so that no more than thirty (30) Participants are in each session.

5. To provide five (5) meals during the weekend period, commencing with Saturday breakfast and ending with Sunday lunch. Meals will be provided as follows:

Saturday - Breakfast

Lunch

Dinner

Sunday - Breakfast

Lunch

6. To make available the use of a portion of the Contractor's facilities from Friday evening until the conclusion of the Sunday seminars and evaluations, to provide space to conduct educational lectures, films, and discussion groups, and to provided a podium, chalkboard, chairs, and all utilities and maintenance necessary for the conduct of said programs.

7. To conduct the program in designated areas of the facility. Participants will not be allowed to leave the designated areas, or receive visitors. No television or smoking shall be allowed during the 48 hour period. No telephone calls shall be allowed.

8. To be solely responsible for collecting program fees. The program fees for the term of this Agreement shall be set by the Contractor, with such fees not to exceed the amount of \$400 per Participant. In order to participate in the OPWIP,

Participants shall be required to prepay program fees to Contractor, no later than seven (7) days prior to commencement of the program they are scheduled to attend. No such fees shall be collected by City. The Contractor's sole compensation for services provided pursuant to this Agreement shall be the program fees collected by the Contractor from the Participants. The City shall not pay any additional fee of any kind to the Contractor, nor shall the City be responsible for the payment of any program fees incurred by any Participants .

9. To provide that for every ten (10) Participants sentenced by the City who participate in the OPWIP and pay their program fees, the City shall receive a credit equivalent to one charge-free program Participant. These credits may then be distributed by the City either by the City selecting an individual to participate in the OPWIP at no charge, or the City electing to disperse these program credits in such a manner that one or more Participants are allowed a reduced rate as long as the total amount "discounted" does not exceed the cost of one full Participant for every ten (10) paying Participants.

10. To notify the Overland Park Municipal Court when Participants have or have not successfully completed the OPWIP. Non-completion reports shall include a detailed narrative of the events that led to the Contractor's conclusion that the Participant did not meet the requirements for completion of the OPWIP.

11. To provide an evaluation of each session, which shall include an evaluation of Participant gains in learning and attitude; and Participant evaluation of each program segment, as well as instructor evaluations and facility and meal ratings.

12. To administer the OPWIP under the close supervision of the Contractor in full compliance with the law and to staff the facility and program with Certified Substance Abuse Counselors, supplemented by medical, legal and law enforcement professionals. At least two staff members shall be on duty during all program hours to allow for small group discussions, provide personal attention to those who may require it and to maintain order. Individual counseling and feedback shall be provided to each Participant by a professional counselor at the conclusion of the session.

13. To provide that all staff, including substance abuse counselors, guest speakers, and security and support personnel will be trained in emergency response procedures, including first aid and fire response.

14. To conduct an outcome study which correlates Participant factors (e.g. demonstrated knowledge of program material, scores on an attitude instrument, satisfaction report, socio-economic data, legal history, DUI evaluation recommendation) with outcomes (e.g. successful completion of Weekend Intervention Program, successful completion of probation, recidivism, life satisfaction instruments) to determine whether program goals are being met and whether referral criteria can be refined.

15. To have the Contractor's counselors conduct, at the conclusion of each program, individual alcohol or drug evaluations with each Participant. Copies of these evaluations shall be supplied to the Overland Park Municipal Court for consideration by the Court Services personnel assigned to the Participant's case. The Contractor shall not make referrals to specific programs, but rather shall only

make general treatment recommendations, if any. Specific referrals will be given by the Overland Park Municipal Court, Court Services Division at the Participant's next meeting with his or her monitor.

16. To provide interpreting services for any Participant who is without sufficient command of the spoken English language to understand the speakers presented during the program at Contractor's expense.

17. The Contractor agrees to provide a cooperative contract option under the same terms and conditions to all units of local government within Johnson County, Kansas. The Contractor agrees to enter into similar agreements, on the terms and conditions herein specified and contained in this agreement with the City, with any such units of local government within Johnson County that request participation in the program through this cooperative contract. Nothing contained herein shall in any way affect the right of such other entities to negotiate any separate or different agreement with the Contractor outside the terms of this cooperative contract, but nothing contained herein shall require the Contractor to reach any agreement with such entities that varies in any material or substantial way from the terms and conditions herein specified.

IV. TERM.

Unless otherwise terminated as provided herein, this Agreement shall be for a term of three years, and the provision of services under this Agreement shall begin on October 1, 2009, and shall expire on October 1, 2012. The City and the Contractor may agree to renew or extend the terms of this Agreement for a period of three additional years or renegotiate a new agreement to take effect upon the expiration of this Agreement, as the City and the Contractor may then

agree. Neither the City nor the Contractor are obligated to agree to an extension or renewal of this Agreement beyond its expiration date.

V. DISPUTE RESOLUTION.

Disputes relative to the contract shall first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute, Contractor shall proceed with the work as per the Contract entered into with the City as if no dispute existed; and provided further that no dispute will be submitted to arbitration without the City's express written consent.

VI. INDEPENDENT CONTRACTOR.

The Contractor is an independent contractor and as such is not an agent or employee of the City. Contractor shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the City. Contractor shall have exclusive control of, and the exclusive right to control the details of the services and work performed hereunder in accordance with the terms of this Agreement, and all persons performing the same, and nothing herein shall be construed as creating a partnership or joint venture between City and Contractor. No person performing any of the work or services described hereunder shall be considered an officer, agent, servant or employee of City, and no such person shall be entitled to any benefits available or granted to employees of City.

VII. INSURANCE.

The Contractor shall maintain throughout the duration of this Agreement insurance in, at minimum, the amounts specified below. All general liability insurance shall be written on an occurrence basis unless otherwise agreed to in writing by the City.

(1) General Liability Insurance

MINIMUM REQUIREMENTS

COMMERCIAL GENERAL LIABILITY POLICY

(Complete Certificate "Form B" or standard Acord Form):

General Aggregate: \$2,000,000.00

Products-Completed

Operations Aggregate: \$2,000,000.00

Personal & Advertising

Injury: \$1,000,000.00

Each Occurrence: \$1,000,000.00

Policy must include the following:

- 1) Broad Form Contractual/Contractually Assumed Liability
 - 2) Independent Contractors
- (2) Workers' Compensation and Employers' Liability

This insurance shall protect the Contractor against all claims under applicable state Workers' Compensation laws. The Contractor shall also be protected against claims for injury, disease or death of employees which, for any reason may not fall within the provisions of a Workers' Compensation law. The policy shall include "all states" insurance, and the liability limits shall not be less than the following:

Workers' Compensation: Statutory

Employers' Liability:

Bodily Injury by Accident \$100,000 each accident

Bodily Injury by Disease \$500,000 policy limit
Bodily Injury by Disease \$100,000 each employee

(3) Professional Liability

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

(4) Industry Ratings

The City will only accept coverage from an insurance carrier who offers proof that it:

- a) Is licensed to do business in the State of Kansas;
- b) Carries a Best's policyholder rating of A or better;

AND

- c) Carries at least a Class X financial rating.

OR

Is a company mutually agreed upon by the City and Contractor.

Certification of insurance coverage in items (1), (2) and (3) above shall be on the City's Standard Certificate of Insurance form, a copy of which is attached and marked "Form B" or a standard Acord Form.

Certification of professional liability insurance shall be provided on a separate form provided by the Contractor's insurance carrier.

Unless otherwise specified or waived, the City shall be shown as an additional insured on all general and automobile liability policies of insurance.

(5) Subcontractor's Insurance

If a part of the Contract is to be sublet, the Contractor shall either:

- (a) Cover all subcontractors in its insurance policies; or
- (b) Require each subcontractor not so covered to secure insurance which will protect against all applicable hazards or risks of loss as and in the minimum amounts designated.

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

Any contractor requesting approval of any self-insurance or re-insurance program shall be required to submit proper documentation to the Risk Manager, who shall approve or disapprove such request.

VIII. INDEMNITY.

A. Definitions.

For purposes of indemnification requirements, the following terms shall have the meanings set forth below:

1. "The Contractor" means and includes Contractor, all of its employees, agents and assignees, and all of its affiliates and subsidiaries, its subcontractors and/or assignees and their respective servants, agents and employees; and
2. "Loss" means any and all loss, damage, liability or expense of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including attorney's fees and the cost of defense), in connection with any action, proceeding, demand or claim, whether real or spurious, for injury, including death, to any person or persons or damages to or loss of, or loss of the use of, property of any person, firm or

corporation, including the parties hereto, which arise out of or are connected with, or are claimed to arise out of or be connected with, the performance of this Agreement whether arising before or after the completion of the work required hereunder.

B. Indemnity.

For purposes of this Agreement, Contractor hereby agrees to indemnify, defend and hold harmless the City, its employees and agents from any and all Loss where Loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Contractor. It is agreed as a specific element of consideration of this Agreement that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the City or any third party and, further notwithstanding any theory of law including, but not limited to, a characterization of the City's or any third party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature; provided, however, that the Contractor's obligation hereunder shall not include amounts attributable to the fault or negligence of the City. Nothing in this section shall be deemed to impose liability on the Contractor to indemnify the City for Loss when the City's negligence or other actionable fault is the sole cause of Loss.

IX. NON-DISCRIMINATION/OTHER LAWS.

The Contractor agrees that:

- a. The Contractor shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin, ancestry or age;
- b. in all solicitations or advertisements for employees, the Contractor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);

- c. if the Contractor fails to report to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Contractor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency;
- d. if the Contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Contractor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency; and
- e. the Contractor shall include the provisions of subsections (1)(a) through (d) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

The Contractor further agrees that the Contractor shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-111 et seq.) and the applicable provision in the Americans With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all federal, state and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

X. NON-ASSIGNMENT.

Neither Contractor nor City shall subcontract, assign, transfer, convey, or otherwise hypothecate this Agreement or their rights, duties or obligations hereunder or any part thereof without the prior written consent of the other.

XI. ACCIDENT NOTIFICATION.

In the event of accidents of any kind which involve the general public and/or private or public property, as related to services provided herein, the Contractor shall immediately notify the City and shall provide a full accounting of all details of the accident. Contractor shall furnish the City with copies of all reports of such accidents at the same time that the reports are forwarded to any other interested parties.

XII. TERMINATION.

Either party may terminate this Agreement by providing written notice of such termination to the other party. If the City elects to terminate, upon receipt of such notice from City, Contractor shall: (1) immediately cease all work; and (2) meet with City and determine what work, if any, shall be required of Contractor in order to bring the Agreement to a reasonable termination in accordance with the request of the City.

XIII. NOTICES.

All notices required or contemplated by this Agreement shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the representative of the parties as follows:

To City: Presiding Judge Karen Arnold-Burger
 City of Overland Park, Kansas
 12400 Foster
 Overland Park, Kansas 66213

To Contractor: Charles A. Stebbins
 8000 W. 127th Street
 Overland Park, KS 66213

or to such other address as the parties may designate in writing.

XIV. CONTRACTOR'S RECORDS.

Contractor shall maintain its books and records related to the performance of this Agreement in accordance with the following minimum requirements:

- (a) Contractor shall maintain any and all ledgers, books of account, invoices, vouchers and canceled checks, as well as all other records or documents evidencing or relating to charges for services, to information provided in the required reports or reasonably relevant to the Contractor's performance of this Agreement or the review of Contractor's operations required by this Agreement,

for a minimum period of three (3) years, or for any longer period required by law, from the date of termination of this Agreement.

(b) Contractor shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

(c) Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time, with reasonable notice, during regular business hours, upon written request by City representative. The records shall be available to City representative at Contractor's address indicated for receipt of notices in this Agreement.

XV. LAW TO GOVERN.

This Agreement is entered into and is to be performed in the state of Kansas. City and Contractor agree that the laws of the state of Kansas shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement.

XVI. AMENDMENT.

This Agreement may be modified or amended only by written agreement duly executed by the parties hereto or their representatives.

XVII. SEVERABILITY.

The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of this Agreement can be determined and effectuated.

XIII. ENTIRETY.

This Agreement and Exhibits attached hereto, if any, contain the entire agreement between the parties as to the matters contained herein. Any oral representations or modifications concerning this Agreement shall be of no force and effect.

IN WITNESS WHEREOF, the parties hereto have set their hands as of this ____ day of _____, 2009.

CITY OF OVERLAND PARK, KANSAS,

By: _____
Carl Gerlach, Mayor

APPROVED AS TO FORM:

ATTEST:

Tammy M. Owens
Senior Assistant City Attorney

Marian Cook
City Clerk

CHARLES STEBBINS COUNSELING
SERVICES

By: _____
Charles A. Stebbins

ACKNOWLEDGMENT

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

BE IT REMEMBERED, that on this ____ day of _____, 2009, before me, the undersigned, a Notary Public in and for said County and State, came Charles Stebbins who is personally known to me to be the same person who executed the foregoing on behalf of Charles Stebbins Counseling Services and he acknowledged that he executed the same as his free act and deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

Notary Public

My Appointment Expires:
