

**AGREEMENT BETWEEN
CITY OF OVERLAND PARK, KANSAS
AND VENDOR
FOR THE PURCHASE OF
Oxycontin/Heroin Video Production**

THIS AGREEMENT is made and entered into this ____ day of _____, 2010, by and between the City of Overland Park, Kansas, hereinafter the "City," and Treehouse Entertainment and Daniel Taylor Productions, hereinafter the "Vendor";

WITNESSETH:

WHEREAS, the City has caused to be prepared, in accordance with the law, Notice and Invitation for Qualifications and Proposals, this Agreement, Specifications and other Proposal Documents, as defined herein, for the work and/or product herein described, and has caused to be published, in the manner and for the time required by law, an advertisement inviting sealed Proposals for furnishing materials, labor, tools, equipment and transportation necessary for, and in connection with, the delivery of goods and services in accordance with the terms of this Agreement and the Proposal and Contract Documents; and

WHEREAS, the Vendor, in response to the advertisement, has submitted to the City, in the manner and at the time specified, a sealed Proposal in accordance with the requirements of the above referenced Qualifications and Proposal Documents; and

WHEREAS, the City, in the manner prescribed by law, has publicly opened, examined and canvassed the Proposals submitted, and as a result of this canvass has, in accordance with the law, determined and declared the Vendor to be the most qualified and best responsible Vendor for the delivery of the specified goods and services, and has duly awarded to the Vendor a contract therefore upon the terms and conditions set forth in this Agreement and the Contract Documents as defined herein and for the sum or sums named in the Proposal attached to and made a part of this Agreement.

NOW, THEREFORE, in consideration of the compensation to be paid the Vendor, and of the mutual agreements herein contained, the parties hereto have agreed, and hereby agree, the City for itself and its successors, and the Vendor for itself, himself/herself or themselves, its, his/her or their successors and assigns, or its, his/her or their executors and administrators, as follows:

ARTICLE 1. DEFINITIONS

Whenever any word or expression defined herein, or pronoun used in its stead, occurs in these Contract Documents, it shall have and is mutually understood to have the meaning herein given.

A. "Agreement" shall mean this Agreement and the Qualifications and Proposal and

Contract Documents and any attachments to those documents to include Exhibits. The terms "Agreement," "Proposal Documents," and "Contract Documents" are used interchangeably in these documents and reference to one shall be reference to all of the documents.

- B. **"Proposal"** shall mean the offer or proposal of the Vendor submitted on the prescribed form setting forth the prices for the work or services to be performed and the goods or products to be delivered, as well as the requested vendor qualifications, including any materials, references or works that support these qualifications (the City reserves the right to reject any and all proposals).
- C. **"Bidder"** shall mean any individual, partnership, corporation, association or other entity submitting a bid for the work.
- D. **"Proposal Documents"** shall mean all documents related to a Vendor's submitting a Proposal, including, but not limited to, the advertisement for Qualifications and Proposal, if applicable, Notice and Invitation Qualifications and Proposal, Instructions to Vendors, Agreement and any other forms and Documents included in the Proposal Document Package, including any addenda issued prior to receipt of Proposals. The Proposal Documents shall be incorporated by reference into this Agreement and the Contract Documents and shall be considered as fully a part of this Agreement and the Contract Documents as if repeated verbatim herein. The Proposal Documents are attached hereto as Exhibit A. The terms "Agreement," "Proposals Bidding Documents," and "Contract Documents" are used interchangeably in these documents and reference to one shall be reference to all of the documents.
- E. **"City"** shall mean the City of Overland Park, Kansas.
- F. **"Contract"** shall mean the work/project awarded to the Vendor that submitted the Proposal chosen to provide the goods and services described in the Proposal Documents.
- G. **"Contract Documents"** shall mean the Proposal Documents and this Agreement. The terms "Agreement," "Proposal Documents," and "Contract Documents" are used interchangeably in these documents and reference to one shall be reference to all of the documents.
- H. **"Vendor"** shall mean the person; company or corporation awarded the Contract for the performance of the work or services and/or delivery of goods and products that is the subject of the Proposal Documents, together with its duly authorized agents or legal representatives.
- I. **"Defective Work"** shall mean work which is unsatisfactory, faulty or deficient, or not in conformity with the Proposal and Contract Documents. It shall also include work

damaged prior to approval of final payment unless responsibility for such damage shall have been expressly assumed by the City after substantial completion.

- J. **"Effective Date of the Agreement"** shall mean the date indicated in the Agreement on which it becomes effective, but, if no such date is indicated, it shall mean the date on which the Agreement is signed and delivered by the City to the Vendor. For this purpose, delivery shall be accomplished by either hand-delivery to the Vendor or placing a copy in the mail, first class, and postage pre-paid.
- K. **"Final Acceptance"** shall mean the date when the City accepts in writing that the services or work required by the Vendor is complete in accordance with the Proposal and Contract Documents such that the entire project can be utilized for the purposes for which it is intended and/or that the Vendor has delivered the goods/products as required by the Proposal and Contract Documents and the Vendor is entitled to final payment.
- L. **"Notice of Award of Contract"** shall mean the written notice by the City to the apparent successful Vendor stating that upon compliance with the conditions precedent enumerated therein, within the time specified, the City has awarded this Vendor the Contract to perform the work necessary to complete the project and/or delivery of the goods and will sign and deliver the Agreement and issue a Notice to Proceed to perform the work.
- M. **"Notice to Proceed"** shall mean the written notice by the City to the Vendor fixing the date on which the Vendor's performance is to commence and on which the Vendor shall start to perform its obligations as specified in the Proposal and Contract Documents. Without the prior express written consent of the City, Vendor shall do no work until the date set forth in the Notice to Proceed.
- N. **"Specifications"** shall mean those portions of the Proposal and Contract Documents consisting of written technical descriptions of products, goods, materials, equipment, construction methods and maintenance standards and workmanship as applied to the work and services to be performed and/or the goods and products to be delivered and certain administrative details applicable thereto. Specifications may include, but not necessarily be limited to:
- a. design specifications, e.g. measurements, tolerances, materials, inspection requirements and other information relative to the work;
 - b. performance specifications, e.g., performance characteristics required, if any; purchase description specifications, e.g. products or equipment required by manufacturer, trade name and/or type;
 - c. such other information deemed appropriate by the City for inclusion in the Specifications for the proper completion of the project and delivery of the products, goods and services.

- O. **"Sub-Vendor"** shall mean an individual, firm or corporation having a direct contract with the Vendor or with another Sub-Vendor for the performance of a part of the work on the project.
- P. **"Work" or "Project"** (used interchangeably) shall mean the work to be done necessary to complete the performance required of the Vendor by the Proposal and Contract Documents, and includes all labor, materials, tools, equipment and transportation necessary to comply with the Contract Documents.
- Q. **"Maintenance Agreement"** means a separate agreement for maintenance between the parties and specifically does not include the initial one year warranty on the product provided to City by Vendor.
- R. **"Warranty Period"** means the period beginning upon receipt and acceptance of goods and extends to the lifetime limited warranty provided by the vendor.
- S. **"Understood and agreed."** Whenever any statement is made in the Contract Documents containing the expression "it is understood and agreed," or an expression of like import, such expression means the mutual understanding and agreement of the parties hereto.
- T. **"Approved."** The words "approved," "reasonable," "suitable," "acceptable," "properly," "satisfactory," or words of like effect in import, unless otherwise particularly specified herein, shall mean approved, reasonable, suitable, acceptable, proper or satisfactory in the judgment of the City.

ARTICLE 2. VENDOR'S PERFORMANCE

The Vendor will furnish at its own cost and expense all labor, tools, equipment, materials and transportation required to complete the work as designated, described and required by the Contract Documents, to wit the delivery of an Oxycontin/Heroin Video Production to the Overland Park Police Department all in accordance with the Contract Documents; all work to be done in a good, substantial and workmanlike manner to the entire satisfaction of the City, and in accordance with the laws of the City, the State of Kansas and the United States of America.

ARTICLE 3. PRICE AND PAYMENT TERMS

The Vendor agrees to sell and deliver to the City an Oxycontin/Heroin Video Production, as described in the Contract Documents, and in consideration the City agrees to pay to the Vendor for the performance required by this Agreement and as specified in the Contract Documents, and the Vendor will accept in full compensation therefore, the sum of \$98,900.00

(Ninety-eight Thousand, Nine Hundred Dollars), for all work covered by and included in the Contract and Proposal Documents, payment thereof to be made in cash or its equivalent and in the manner provided herein.

Provided this Agreement is properly executed between the parties and in effect, seventy-five (75%) of the amount described in this Article 3, shall be due and payable to Vendor in United States currency within thirty (30) days of presentment of Vendor's invoice and receipt by City of the Oxycontin/Heroin Video Production. Final payment of any remaining monies due, shall be payable upon Final Acceptance by the City.

ARTICLE 4. MISCELLANEOUS OBLIGATIONS OF CITY.

Designated Person: The City will designate a person to coordinate all activities with the Vendor. The designated person (or a designated alternate) shall be available at all times to make decisions on behalf of the City, which shall include, but not be limited to, the approval and acceptance of the story line of the production, wording of script, choice of featured persons and/or actors and length or production. The designated person shall work and cooperate with the Vendor, but the designated person will not be under the direction or control of the Vendor and shall at no time be considered an employee or agent of the Vendor.

ARTICLE 5. MISCELLANEOUS OBLIGATIONS OF VENDOR

- A. **Vendor's Prime Responsibilities:** The Vendor shall be responsible for the delivery and warranty of an Oxycontin/Heroin Video Production. The Vendor will be the sole point of contact with regard to contractual matters.
- B. **Designated Person:** The Vendor will designate a person to coordinate all activities with the City. This person (or a designated alternate) shall be available during all normal business hours.

ARTICLE 6. PROPOSAL DOCUMENTS, CONTRACT DOCUMENTS AND AGREEMENT COMPLIMENTARY

The Proposal Documents, Contract Documents and Agreement are complementary, and what is called for by any one shall be as binding as if called for by all. The intention of the Proposal Documents, Contract Documents and Agreement is to include all construction, labor, materials, tools, equipment and transportation necessary for the workmanlike completion of the project in accordance with the Bidding Documents, Contract Documents and Agreement. The Contract Documents supersede all previous agreements and understandings between the parties, which previous agreements and understandings are of no further force and effect. This Agreement and the Contract Documents may not be amended or modified except by a modification as herein provided.

ARTICLE 7. PERMITS AND NOTICES

All permits and licenses necessary to complete the work required by this Agreement and the Contract Documents shall be secured and paid for by Vendor, unless otherwise specified.

The Vendor shall give all notices required by and all work shall be done in accordance with all applicable federal and state laws, City and County laws and ordinances, building codes and rules and regulations bearing on the conduct of the work.

ARTICLE 8. VENDOR'S EMPLOYEES

The Vendor shall at all times enforce strict discipline and good order among its employees and shall not employ on the work any unfit person or anyone not skilled in the work assigned to him.

The Vendor shall be responsible for compliance with all state and federal laws, if applicable, pertaining to wages, hours and benefits for workers employed to carry out the work.

ARTICLE 9. DELAYS AND EXTENSION OF TIME

If the Vendor shall be delayed at any time in the progress of the work by an act or omission of the City or by any separate Vendor employed by the City and over which the Vendor has no control and which is not a result of the Vendor's acts or the acts of any of its employees, Sub-Vendor or suppliers, negligent or otherwise, then the time of completion shall be extended for such reasonable time as the City shall decide, and no adjustment shall be made in the consideration to be paid.

No such extension shall be made for delay unless the Vendor provides written notice to City of such delay, the reasons therefore and the expected length of delay within seven (7) days of the commencement of such delay.

In executing this Agreement, the Vendor expressly covenants and agrees that, in undertaking to complete the work within the time therein fixed, it has taken into consideration and made allowances for all hindrances and delays incident to such work, whether growing out of delays in securing materials, workers, weather conditions or otherwise.

The Vendor shall delay or suspend the progress of the work or any part thereof, whenever it shall be so required by written order of the City for such periods of time as the City shall require; provided, that in the event of such delay or delays or of such suspension or suspensions of the progress of the work, or any part thereof, the time for completion of work so suspended or of work so delayed by such suspension or suspensions shall be extended for a period equivalent to the time lost by reason of such suspension or suspensions; but such order of the City shall not otherwise modify or invalidate in any way, any of the provisions of this Agreement.

ARTICLE 10. PATENT AND COPYRIGHT LIABILITY CLAUSE

The Vendor agrees to defend any claim, action or suit that may be brought against City, its governing body, officers, agents or employees for infringement of any Letters Patent of the United States or any Copyright infringement arising out of the performance of this Agreement or out of the use or disposal by or for the account of City of products, materials, goods or work performed hereunder, and also to indemnify and hold harmless City, its governing body, officers, agents, and employees against all judgments, decrees, damages, costs and expenses recovered against it or them or sustained by it or them on account of any such actual or alleged infringement. It is understood that all royalties and fees for and in connection with patents or copyrights, or materials, articles, apparatus, devices or equipment used in or furnished for the work shall be included in the Agreement price. Final payment to the Vendor by the City shall not be made while any suit or claim involving infringement or alleged infringement of any patent or copyright remains unsettled.

ARTICLE 11. INDEPENDENT CONTRACTOR

The right of general observation and inspection of the City shall not make the Vendor an agent of the City, and the liability of the Vendor for all damages to persons, firms and corporations arising from the Vendor's execution of the work shall not be lessened because of such general observation and inspection, but as to all such persons, firms and corporations, and the damages, if any, to them or their property, the Vendor herein is an independent contractor in respect to the work.

ARTICLE 12. INDEMNITY

- A. **Definitions:** For purposes of indemnification requirements as set forth throughout the Contract, the following terms shall have the meanings set forth below:
- a. **"Vendor"** means and includes the Vendor, all of its affiliates and subsidiaries, its Sub-Vendors and materialmen and their respective servants, agents and employees; and
 - b. **"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 performance required hereunder.

- B. The Indemnity:** For purposes of this Agreement, and without in any way limiting indemnification obligations that may be set forth elsewhere in the Agreement, the Vendor hereby agrees to indemnify, defend and hold harmless the City 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 Vendor, its employees, agents, Sub-Vendors and suppliers.

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.

- C. General Limitation:** Nothing in this section shall be deemed to impose liability on the Vendor to indemnify the City for loss when the City's negligence or other actionable fault is the sole cause of loss.
- D. Waiver of Statutory Defenses:** With respect to the City's rights as set forth herein, the Vendor expressly waives all statutory defenses, including, but not limited to, those under workers compensation, contribution, comparative fault or similar statutes to the extent said defenses are inconsistent with or would defeat the purposes of this section.

ARTICLE 13. DISPUTE RESOLUTION

The City and the Vendor agree that disputes relative to the product 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 the Vendor shall proceed with the work as per the Contract Documents as if no dispute existed; and provided further that no dispute will be submitted to arbitration without the City's express written consent.

ARTICLE 14. RIGHT OF CITY TO TERMINATE CONTRACT

If at anytime during the warranty period, the product does not perform to agreed upon specifications, the City will notify the Vendor in writing. Upon receipt of written notification, the Vendor will have sixty (60) days to correct the warranty defect. If unable to do so, the City has the right to terminate the Agreement, return the product and receive a full reimbursement of funds. When the Vendor's services have been so terminated, such termination shall not affect any rights or remedies of the City against the Vendor then existing or which later may incur. Similarly, any retention or payment of monies due the Vendor shall not release the Vendor from

liability.

The City reserves the right, in its sole discretion and for its convenience and without cause or default on the part of the Vendor, to terminate this Agreement by providing written notice of such termination to the Vendor.

Any termination of the Agreement for alleged default by the Vendor that is ultimately determined to be unjustified shall automatically be deemed a termination for convenience of the City.

ARTICLE 15. CITY'S RIGHT TO DO WORK

Without otherwise limiting the City's rights under the Contract Documents, if the Vendor should neglect to prosecute the work properly or fail to perform any provision of the Contract Documents, the City, after sixty (60) days written notice to the Vendor may, without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Vendor.

ARTICLE 16. LAWS AND ORDINANCES

The Vendor shall be fully familiar with all City, County, State and Federal laws, ordinances or regulations which would in any way control the actions or operations of those engaged in the performance of this Contract or which would affect the materials supplied to or by them. It shall at all times observe and comply with all ordinances, laws and regulations and shall protect and indemnify and defend the City and the City's officers and agents against any claims or liability arising from or based on any violation of same.

ARTICLE 17. VENDOR'S RISK

The Vendor shall assume full responsibility for the work performed pursuant to the Contract Documents and shall bear any loss and repair any damage at his/her own cost occasioned by neglect, accident, vandalism or natural cause, whether foreseen or unforeseen, during the progress of the work and until the work and performance is completed and accepted by the City.

ARTICLE 18. AFFIRMATIVE ACTION/OTHER LAWS.

The Vendor agrees that:

- a. The Vendor shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) 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 Vendor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the commission;
- c. If the Vendor fails to comply with the manner in which the Vendor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Vendor shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency;
- d. If the Vendor 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 Vendor shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency; and the Vendor shall include the provisions of subsections (1.) through (4.) in every subcontract or purchase order so that such provisions will be binding upon such Sub-Vendor or vendor.
- e. The provisions of this section shall not apply to an Agreement entered into by a Vendor:
 - 1. who employs fewer than four employees during the term of such contract; or
 - 2. whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.

The Vendor further agrees that the Vendor shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all other 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.

ARTICLE 19. FEDERAL LOBBYING ACTIVITIES.

31 USC § 1352 requires all subgrantees, Vendors, Sub-Vendors and consultants who receive federal funds via the City to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the award of any federal contract, grant, loan or cooperative agreements.

In addition, contract applicants, recipients and sub-recipients must file a form disclosing any expenditure they make for lobbying out of non-federal funds during the contract period.

Necessary forms are available from the City Engineer and must be returned to the City with other contract documents. It is the responsibility of the general Vendor to obtain executed forms from any Sub-Vendors who fall within the provisions of the Code and to provide the City with the same.

ARTICLE 20. RECORDS

The Vendor shall maintain copies of records pertaining to this project for a period of five (5) years from the date of final payment. Such records shall be made available to the City for audit and review purposes upon written request therefore from City or its authorized agent(s) during the construction period and the five (5) year period following final payment.

ARTICLE 21. TITLES, SUBHEADS AND CAPITALIZATION

Titles and subheadings as used herein and other Contract Documents are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Contract Documents. Some terms are capitalized throughout the Contract Documents, but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

ARTICLE 22. NO WAIVER OF RIGHTS

No waiver of any breach of this Agreement or Contract Documents shall be construed to be a waiver of any other or subsequent breach.

ARTICLE 23. SEVERABILITY

The parties agree that should any provision of this Agreement or the Contract Documents be determined to be void, invalid, unenforceable or illegal for whatever reason such provision(s) shall be null and void but that the remaining provisions of this Agreement or the Contract Documents shall be unaffected thereby and shall continue to be valid and enforceable.

ARTICLE 24. APPLICABLE LAW

This Agreement and Contract Documents are entered into, under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Kansas.

ARTICLE 25. PROPRIETARY RIGHTS

CITY shall have sole ownership of all rights in the completed project and shall be responsible for securing a copyright to protect CITY's interests against infringement. Unless otherwise expressly agreed in writing, CITY shall retain ownership of production materials, including but not limited to set designs, unused footage, costumes, and props. Vendor acknowledges that subsequent to project completion and payment by City, Vendor shall not utilize any production materials for its own use or offer production materials to a third party without first receiving express written permission from City for such use or purpose. Within one month following delivery of the completed Project, CITY shall notify VENDOR regarding any production materials CITY does not wish to retain, and CITY shall then make those materials

available to VENDOR for storage or disposition. VENDOR shall store a dub master of Project in its program library for a period not to exceed three years from the date of completion of the Project. During that time, if VENDOR wishes to use any used or unused footage from the project in VENDOR'S sampler videos, VENDOR shall submit the proposed sample to CITY and shall only use such used or unused footage with the express written permission of the CITY.

ARTICLE 26. INSURANCE

The Successful Vendor will be required to meet the following insurance requirements and provide proof of such coverage on form(s) provided by the City and must provide proof of insurance on a City form no later than the date of execution of the Agreement between the parties:

- A. **General:** The Vendor shall secure and maintain, throughout the duration of this Contract, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. The City shall be notified by receipt of written notice from the insurer at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate. Certification of insurance coverage shall be on a Standard Acord Certificate of Liability Insurance form.

- B. **Notice of Claim Reduction of Policy Limits:** The Vendor, upon receipt of notice of any claim in connection with the contract, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability.

The Vendor shall monitor and promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by the contract) if the Vendor's limits of protection shall have been impaired or reduced to such extent that the limits fall below the minimum amounts required herein. The Vendor shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

MINIMUM REQUIREMENTS

COMMERCIAL GENERAL LIABILITY POLICY

General Aggregate:	\$ 1,000,000
Products-Completed	
Operations Aggregate:	1,000,000
Personal & Advertising	
Injury:	1,000,000
Each Occurrence:	1,000,000

Policy must include the following conditions:
Broad Form Contractual/Contractually Assumed Liability
Independent Contractors
Broad Form Property Damage
City named as Additional Insured

AND

Workers' Compensation and Employer's Liability -

This insurance shall protect the Vendor against all claims under applicable state Workers' Compensation laws. The vendor 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

Employer's 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

Industry Ratings -

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

- Is licensed to do business in the State of Kansas
- Carries a Best's policy rating of A- or better
- Carries at least a Class VII financial rating

OR

- Is a company mutually agreed upon by the City and the Vendor.

Subcontractors' Insurance -

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

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

Whichever option is chosen, the 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.

Vendors are referred to the Contract Documents for additional insurance information.

ARTICLE 27. NOTICE TO PARTIES

All notices and demands of any kind which either party may serve upon the other party under this AGREEMENT shall be served by personal service, or by leaving the notice or demand at the address set forth below, or by forwarding a copy thereof by first class mail, postage prepaid, or by telex or telecopier, addressed as follows:

To City: Overland Park Police Department
12400 Foster
Overland Park, Kansas 66213
ATTN: Captain Thomas L. Fredrickson

To Vendor: Treehouse Entertainment and Daniel Taylor Productions
500 West 5th Street
Kansas City, Missouri 64105

or to such other address as may be specified from time to time by the relevant party. Service shall be deemed complete when the notice or demand is received by the party to whom it is addressed.

ARTICLE 28. EXHIBITS

The following exhibits form a part of and are incorporated into this AGREEMENT by this reference:

EXHIBIT A: Request for Qualifications and Proposal

IN WITNESS WHEREOF the parties have executed this AGREEMENT as of the date first written above.

City: City of Overland Park
8500 Santa Fe
Overland Park, KS 66212

By: _____

Carl Gerlach, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

John Knoll
Senior Assistant City Attorney

SELLER:

By: _____ ATTEST _____

CORPORATE 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 the County and State aforesaid, came Treehouse Entertainment and Daniel Taylor Productions, a corporation duly organized, incorporated and

existing under and by virtue of the laws of the United States and the State of Kansas, President of said corporation, who are personally known to me to be such officers and who are personally known to me to be the same persons who executed as such officers within instrument on behalf of said Corporation, and such persons duly acknowledged the execution of the same to be the act and deed of said Corporation.

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

Notary Public

My Commission Expires:

REQUEST FOR Qualifications (RFQ)

August 19, 2009

Prospective Vendor:

The City of Overland Park, Kansas will receive sealed qualifications until 2:00 PM Friday, October 2, 2009 for a 20-25 minute video spotlighting the Oxycontin/heroin abuse problem in our community.

If you are interested in submitting qualifications, please return the original and five (5) copies to:

Office of the City Clerk
City of Overland Park
8500 Santa Fe Drive
Overland Park, Kansas 66212

Qualifications shall be submitted in a sealed envelope clearly marked "Qualifications for Oxycontin/Heroin Video Program" by the date and the time indicated above. Please contact the Office of the City Clerk at the above address to receive a copy of the request for qualifications.

Questions concerning this RFQ, should be directed to Deputy Chief Mark Kessler at 913-327-6834.

Sincerely,

Lt. Col. Mark Kessler
Deputy Chief of Police

REQUEST FOR QUALIFICATIONS

Oxycontin/Heroin Video Program
City of Overland Park, Kansas
July 15, 2009

I. **Introduction:** The City of Overland Park, Kansas is seeking proposals from qualified firms to provide services for video creation and production as detailed in the *Scope of Services* contained herein to be implemented on or about October 26, 2009 with delivery of final product(s) no later than April 12, 2010.

II. **Background:**

Oxycontin/heroin abuse is a growing problem both nationally, and in Johnson County. An article which appeared in the July 6, 2009, issue of U.S. News and World Report stated:

“By 2008, the NDIC’s National Drug Threat Assessment, which is based on interviews with local law enforcement and public health officials across the country, struck a very different tone, warning that heroin abuse ‘is increasing among young adults in a number of suburban and rural areas.’ Low-level dealers had found the suburbs could be quite lucrative because they could more easily monopolize the local heroin market.”

The result of this growing problem has been an increase in overdoses and even death among young people, many of whom are still in high school. Collecting statistics regarding Oxycontin/heroin abuse is difficult at best for many reasons, e.g., police are not notified of all drug overdoses, hospital record keepers group drug overdoses with poisonings, etc. The following information was developed by reviewing police reports filed by Johnson County agencies that utilize the I-Leads records management system:

- a. In 2007 there were 14 Oxycontin/heroin overdose reports filed and 7 deaths. In 2008 there were 17 Oxycontin/heroin overdoses reported, with 3 deaths. So far, in 2009 there have been 19 Oxycontin/heroin overdoses reported with 5 deaths.
- b. Of these 50 overdose incidents, 27 occurred in the City of Overland Park.
- c. Of these 50 overdose incidents, 15 involved Blue Valley high school students.
- d. In 2007, there were 29 I-Leads reports filed with the word “Heroin” present in the narrative. In 2008, there were 59 I-Leads reports filed with the word “Heroin” present in the narrative. Thus far in 2009, there have been 50 I-Leads reports filed with the word “Heroin” present in the narrative.

- e. In 2007, there were 103 I-Leads reports filed with the word “Oxy” present in the narrative. In 2008, there were 117 I-Leads reports filed with the word “Oxy” present in the narrative. Thus far in 2009, there have been 84 I-Leads reports filed with the word “Oxy” present in the narrative.
- f. In the first quarter of 2009, 81 of the 532 clients of Johnson County Mental Health reported using heroin.

In an effort to address these issues, the Overland Park Police Department, in consultation with the Johnson County Sheriff’s Office, the Johnson County District Attorney’s Office and the Johnson County Police Chiefs, would like to develop an interactive educational program targeting parents and teens, to combat the rising problem of Oxycontin/heroin abuse in our community.

The program would consist of a presentation, approximately 80 minutes in duration, as well as follow-up educational opportunities utilizing online resources as well as the School Resource Officer program.

The presentation would be interactive and take a multi-media approach, beginning with a short Power-Point presentation, and ending with a panel discussion comprised of an audience and a panel of professionals, e.g., a narcotics detective, an emergency room physician, a judge, a mental health practitioner, etc. The centerpiece of the training would be a compelling 20-25 minute video spotlighting the devastating effects of the current Oxycontin/heroin epidemic.

We envision a modern and compelling, broadcast quality video that creatively addresses the problem of Oxycontin/heroin abuse in our community. Interspersed in this story would be real interviews with local convicted Oxycontin/heroin users, parents of users who have overdosed and died, and other non-fictional arrest incidents, photos, evidence, etc., that would contribute to the local impact of the film. The video could be used as a “stand-alone” training tool or in conjunction with the live presentation alluded to earlier.

III. **Scope of services:** Interested Vendors shall submit qualifications, which meet the minimum specifications listed within this RFQ. The qualifications shall describe in detail each service offered, clearly state all of the fees, or costs, or charges associated with the service, how the service shall be provided, and who shall provide the services. The qualifications should include costs for all items relative to the creation and production of the video. In addition, the proposal should include the vendor’s qualifications for producing a compelling video with the aforementioned subject matter. Qualifications will include, but not be limited to the following:

- 1. Past experience in film making.
- 2. Education as it relates to film making.
- 3. Samples of previously produced, broadcast quality videos may be submitted.

4. Reasons for taking on this project.
5. References

If you are interested in bidding this project, the base bid must include detailed price information on the following:

- A. PRE-PRODUCTION EXPENSES FOR SCRIPTING**
Pre-production planning consultation, research, and script development and writing services.
- B. PRODUCTION EXPENSES**
All necessary equipment, e.g, cameras, lighting, etc.
Writing, producing, and directing project
Site coordination
Obtain necessary talent releases from all participants
Obtain necessary releases for any news or program footage used
Professional announcer/voice over talent
Miscellaneous production expenses (including location costs, travel, etc.)
- C. POST-PRODUCTION EXPENSES**
Editing
Video graphics (artist, rendering, and equipment fees),
Royalty secured music with all licenses in place for use,
Edit masters
Digital delivery formats for online and offline use
Maintenance of archival footage
- D.** Vendor must assure that all video footage will remain confidential and all footage to be included in the finished product will be approved and quality controlled by a designated individual from the City. The City of Overland Park will retain all copyrights of the footage and final product.
- E.** Vendor agrees to make its services available outside of normal business hours; to cover any filming that must occur outside normal hours.

- IV. Selection procedure and evaluation criteria:** The qualifications submitted will be the primary document upon which each Vendor will be evaluated by an evaluation team. It must include the qualifications and relevant experience of those assigned to the project. All proposals will first be screened in determining whether the consultant has performed the type of services requested herein.

The evaluation team will be responsible for selecting a vendor and recommending them to the Finance Administration and Economic Development (FAED) committee of the City Council on or about October 21, 2009. The City reserves

the right to accept or reject any and all proposals and all or part of a proposal and may waive informalities, technical defects, and minor irregularities in the proposals received.

The significant factors for consideration are as follows:

- A. Plan for performing desired services:
 - 1. Scope of Tasks
 - 2. Approach
 - 3. Schedule

 - B. Qualifications:
 - 1. Past experience in film making.
 - 2. Education as it relates to film making.
 - 3. Samples of previously produced videos may be submitted.
 - 4. Reasons for taking on this project.
 - 5. References

 - C. Proposed cost of services.

 - D. Responsiveness to requested proposal format.
- V. **Proposal Format:** Proposals must be organized according to the fixed format outlined below. A fixed format facilitates comparison and evaluation of competitive proposals. The required sections of the proposal and a description of the contents of each section are set forth below.

The following sections prescribe the format of proposals and describe the approach for the development and presentation of proposal data. These sections are designed to ensure the submission of information essential to the understanding and comprehensive evaluation of proposals. They permit the inclusion of any additional information a respondent may deem pertinent to add value to the proposal. A comprehensive table of contents should be at the front of the proposal for ease of reference. (Additional identification of additional attachments is recommended.)

- A. Section 1. Cover letter -- letter of transmittal.

- B. Section 2. Executive Summary -- The Vendor presenting the proposal should provide a statement of the prominent features of the proposal.

- C. Section 3. Description of Work Program and Scope of Services -- The Vendor shall describe details and flow of production from start to finish of project with specific timeline estimations.

- D. Section 4. Qualifications and Experience of Firm -- The Vendor presenting the proposal response should describe all qualifications of their firm and experience in performing projects of similar nature and scope. The proposal should include the vendor's reason for wanting to work on this type of project. The key personnel to be involved in the project also should be identified and a description of their qualifications and experience included. A list of similar projects completed by the Vendor, with a client reference company, point of contact, and phone number should be included in this section.
- E. Section 5. Cost Breakdown -- Vendor must include all costs associated with their proposal. Costs must be assigned to elements outlined under Section III. Scope of Services.
- F. Section 6. Additional Information -- Vendor may add any information that supports its response to the proposal in this section, such as samples of previous work.
- VI. **Preparation of Proposal:** Proposals shall be typed and shall be completely executed by the respondents in ink with their full signature. The respondent shall indicate whether they are an individual, partnership, joint venture, corporation, or a foreign corporation, and enter the correct name of the respondent. The business address of the Vendor shall be typed or printed on the proposal. An authorized agent shall sign the proposal. If submitted by a corporation, the proposal must be signed by the President, Secretary, or by other authorized agents and proof of authorization shall accompany the proposal.
- VII. **Delivery of Proposal:** Each Vendor will be supplied one (1) copy of the request for proposal document. The original and five (5) copies of the proposal shall be deposited with the Office of the City Clerk, 8500 Santa Fe Drive, Overland Park, Kansas, 66212, on or before 2:00 p.m., Tuesday, September 1, 2009. There will be no public opening of the proposals. It is the sole responsibility of the respondent to see that their proposal documents are delivered in time.
- Any proposal received after the scheduled closing time for the receiving of proposal will be returned to the vendor unopened and will not be considered.
- VIII. **Contract Requirements:** The successful Vendor will be required to enter into a contract with the City which will include the following:
- A. This paragraph. Termination: The City may terminate the contract resulting from this Request For Qualifications at any time the vendor fails to carry out its provisions. The City shall give the vendor notice of such termination with stated reasons for the termination. If, after such notice, vendor fails to remedy the conditions contained in the notice, the City

shall issue the vendor an order to stop work immediately and to vacate the premises

- B. This statement. Vendor's Cooperation: The vendor shall at all times observe and comply with all City of Overland Park rules and regulations in any way affecting the contract.
- C. This statement. Hold Harmless: Vendor agrees to defend, indemnify and hold harmless the CITY OF OVERLAND PARK and its agents and/or employees from any and all claims, settlements, and judgements for personal injury, bodily injury, property damage and/or death arising solely out of Vendor's or any of its agents, servants and/or employees' negligent acts, and or failure to act in the performance of this CONTRACT. Neither acceptance of the completed work nor payment therefore shall release Vendor of its obligation under this paragraph.

D. **Non-Discrimination Clause**

The successful vendor must agree to include the following language in the contract between the City and the successful vendor.

- 1. The Vendor agrees that:
 - a. the Vendor 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 Vendor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
 - c. if the Vendor fails to comply with the manner in which the Vendor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Vendor 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 Vendor 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 Vendor 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 Vendor 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 sub-vendor or vendor.

2. The Vendor further agrees that the Vendor shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 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

E. **Insurance Requirements**

The successful vendor will be required to maintain for the duration of the contract the following insurance. In addition the successful vendor will be required to complete the City's Certificate of Insurance form to verify that the insurance requirements have been met.

1. **General** -

The Vendor shall secure and maintain, throughout the duration of this contract, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Vendor shall provide certificates of insurance and renewals thereof on standard ACORD forms. Certificates of insurance for professional liability may be issued on forms provided by the insurer. The City shall be notified by receipt of written notice from the insurer at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.

MINIMUM INSURANCE REQUIREMENTS

I. COMMERCIAL GENERAL LIABILITY POLICY

Each Occurrence:	\$ 500,000
General Aggregate:	\$ 500,000

II. AUTOMOBILE LIABILITY

Policy shall protect the Vendor against claims for bodily injury and/or property damage arising from the ownership or use of all

owned, hired and/or non-owned vehicles and must include protection for either:

(A) Any Auto

OR

(B) All Owned Autos;
Hired Autos; and
Non-Owned Autos.

Limits-

Each Accident, Combined Single Limits,
Bodily Injury and Property Damage: \$ 500,000

II. WORKERS' COMPENSATION

This insurance shall protect the Vendor against all claims under applicable state workers' compensation laws. The Vendor shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of workers' compensation law. The liability limits shall not be less than the following:

Workers' Compensation: Statutory

Employer's 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

(f) **FILM AND PROGRAM PRODUCER'S ERRORS & OMISSIONS** (or similar)

Limits-

Each Occurrence: \$ 500,000
General Aggregate: \$ 500,000

(g) Industry Ratings -

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

- (1) Is licensed to do business in the State of Kansas;
- (2) Carries a Best's policy holder rating of B+ or better; and
- (3) Carries at least a Class X financial rating.

OR

is a company mutually agreed upon by the City and Vendor.

IX. Right to Reject Proposal

The City of Overland Park reserves the right to reject any or all proposals and to disregard typographical, mathematical, or obvious errors. The City of Overland Park will not pay costs incurred by Vendors in the preparation of their proposal.

X. Disputes and Complaints

All complaints or grievances of Vendors should be first submitted in writing to **Mark Kessler, Deputy Chief of Police**, who will take prompt remedial action. The Deputy Chief of Police shall investigate the validity of the complaint and present the findings in writing to the respondent. If the respondent is dissatisfied with the remedies as determined by the Deputy Chief, he/she may then make an appeal to the **John Douglass, Chief of Police**. This policy does not preclude consideration of legal questions in connection with any decisions made by the City of Overland Park.