

**CITY OF CLARKSTON  
CITY COUNCIL AGENDA  
829 5<sup>th</sup> Street  
MONDAY, OCTOBER 8, 2012**

- 1. CALL TO ORDER: 7:00 P.M.**
- 2. PLEDGE OF ALLEGIANCE:**
- 3. AGENDA CHANGES:**
- 4. APPROVAL OF MINUTES:  
September 24, 2012 Regular Meeting**
  
- 5. COMMUNICATIONS:**
  - A. From the Public (Please limit comments to 3 minutes)**
  - B. From the Mayor**
  - C. From Staff or Employees**
  
- 6. COMMITTEE REPORTS:**
  - A. Finance – Audit Report on Current Bills**
  - B. Public Safety – 10/2**
  - C. Public Works – 10/3**
  - D. Administrative/Intergovernmental – 10/8**
  - E. Community Development – 10/2**
  
- 7. UNFINISHED BUSINESS:**
  - A. Authorization for 8<sup>TH</sup> & Poplar Stormwater Project (PW)**
  - B. Agreement with Riedesel Engineering, Stormwater Project (PW)**
  
- 8. NEW BUSINESS:**
  - A. Proclamation for Clarkston High School Deca Week 10/28-11/3**
  
- 9. COUNCIL COMMENTS**
- 10. MEDIA QUESTIONS**
  
- 11. ADJOURN:**

**Time limits for addressing the council have been established by council direction. Presentations are limited to 15 minutes and public comments are limited to 3 minutes per person, per topic.**

**CLARKSTONCITY COUNCIL MINUTES**  
**September 24, 2012**

**CALL TO ORDER: Mayor Warren, 7:00 P.M.**

**COUNCIL:**

<input checked="" type="checkbox"/> Beadles	<input checked="" type="checkbox"/> Nash
<input checked="" type="checkbox"/> Provost	<input checked="" type="checkbox"/> Baumberger
<input checked="" type="checkbox"/> Smith	Blackmon, excused
<input checked="" type="checkbox"/> Manchester	

**STAFF:**

<input checked="" type="checkbox"/> Chief Hastings	<input checked="" type="checkbox"/> Chief Cooper
<input checked="" type="checkbox"/> Clerk Storey	<input checked="" type="checkbox"/> City Attorney Grow

**AGENDA CHANGES:**

Councilmember Nash added a Stormwater Meeting report to the Committee Reports.

**APPROVAL OF MINUTES:** MOTION BY BEADLES/NASH to approve the minutes of the September 5, 2012, Joint Meeting and the September 10, 2012 Regular Meeting. Motion carried.

**COMMUNICATIONS:**

**A. From the Public**

**B. From the Mayor**

Mayor Warren announced that the AWC Regional Meeting will be held on October 18 in Pullman. Any council members interested should let Vickie know so she can register them.

**C. From Staff**

Chief Cooper announced that testing for Volunteer Firefighters was postponed on Saturday due to the smoke in the air.

**COMMITTEE REPORTS:**

**Finance Committee:**

Councilmember Provost reported all bills have been audited and approved. MOTION BY PROVOST/BEADLES to authorize payment of the bills, total expenditures for September 24, 2012 of \$278,230.38. Motion carried.

**Public Safety:** Councilmember Beadles said committee met on September 18. Beadles reported that Lewiston brought over their new fire truck for inspection and told the committee the purchasing process they used. Chief Hastings presented information on a traffic safety grant. WalMart has requested police presence during Black Friday.

**Public Works Committee:** Councilmember Nash reported that committee met on September 19. Nash said the 8<sup>th</sup> and Poplar project would help handle stormwater that floods private property and will be paid from stormwater funds. Committee reviewed an agreement with Riedesel Engineering for design and engineering for a grant funded stormwater project. Committee would like to find funds to trim the trees on 6<sup>th</sup> Street.

**Admin Committee:** Councilmember Manchester reported the committee met on September 24. Clerk Storey presented a resolution to increase the filing fees for liens since the county has raised the recording fee. Storey explained that the City has taken action to take back the final punch list items and roof warranty work from Skyline. We have a proposal from Horizon Roofing to perform the work on the roof to obtain the manufacturer's warranty at a cost of \$14,675 plus tax. A deductive change order will

charged to Skyline for the roof and the punch list items, estimated to be under \$3,000. MOTION BY PROVOST/BEADLES to authorize the agreement with Horizon to complete the roof work to obtain the warranty. Storey said she is working with the law firm on the agreement and will wait for approval before having it signed. Motion carried.

Manchester asked Chief Cooper to report on other items that were discussed. Cooper said a letter drafted to the Asotin County Fire district was reviewed. One change was suggested. It will be revised and sent. Cooper is working on an agreement with Clearwater Fire for use of the flow tester and air compressor so they can use the equipment in exchange for payment of the annual calibration costs. They also reviewed a draft agreement with LCSC for field training for paramedic program. The agreements will come back to council for approval when they have been reviewed by legal counsel. Councilmember Provost thanked Chief Cooper for his work on getting cooperative agreements with other entities in the valley.

**Community Development:** No meeting.

**Stormwater Management:** Councilmember Nash said he attended a meeting on September 17. Discussion included the possibility of reducing the stormwater fee from \$5.00. Nash didn't think it be reduced to the \$3.50 the city is billing. Councilmember Beadles said he feels the City will have to increase the stormwater rate to our residents.

**UNFINISHED BUSINESS:**

**A. Ordinance No. 1506, Budget Amendment – 2<sup>nd</sup> Reading for Action**

Ordinance No. 1506 was read by title. MOTION BY BEADLES/NASH to adopt Ordinance No. 1506. Motion carried.

**NEW BUSINESS:**

**A. Resolution Nol. 2012-09, Lien Filing Fee**

Resolution No. 2012-09 was read by title. MOTION BY BEADLES/MANCHESTER to approve Resolution No. 2012-09. The lien filing and release charges were increased by the County. Councilmember Beadles asked if this fee includes enough to cover the City's administrative costs. Storey said it does. Motion carried.

**B. Agreement with WA. Traffic Safety Commission, Seatbelt & DUI Emphasis**

Chief Hastings this is the same agreement that we have had for about nine years. It funds officer overtime for special patrols for DUI and Seatbelt enforcement. MOTION BY BEADLES/NASH to authorize the agreement. Motion carried.

**C. Authorization for 8<sup>th</sup> & Poplar Stormwater Project**

MOTION BY BEADLES/SMITH to table until the next meeting. Beadles said he has some questions about the project. Motion carried.

**D. Agreement with Riedesel Engineering, Stormwater Project**

MOTION BY BEADLES/SMITH to table action until the next meeting. Beadles said he has some questions he would like to discuss with the public works director. City Attorney Grow also has some questions about the contract. Motion carried.

**COUNCIL COMMENTS:**

Councilmember Beadles commented that mutual aid concerns him. He said the real issue is mutual aid for the citizens, not with the other departments. He said if the involved entities would consider the needs of the citizens they might be more willing to negotiate an agreement for mutual aid.

**MEDIA QUESTIONS:**

**ADJOURNMENT:**

Meeting adjourned at 7:23p.m.

\_\_\_\_\_  
Vickie Storey, City Clerk

\_\_\_\_\_  
Kathleen A. Warren, Mayor

Total Fund Expenditures 9/24/12	CK# 51782, 51916-61	\$158,394.59
Total Payroll, 9/15/12	CK #51783-51806	\$119,835.79

DRAFT

City of Clarkston  
Public Works Director  
829 5<sup>th</sup> St.  
(509) 758-1662  
(509) 769-6019fax

# Memo

*To: Council*

*From: James E. Martin, PWD*

*CC: Mayor Warren*

*Date: Sept. 12, 2012*

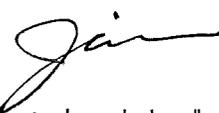
*Re: Drywell Installation*

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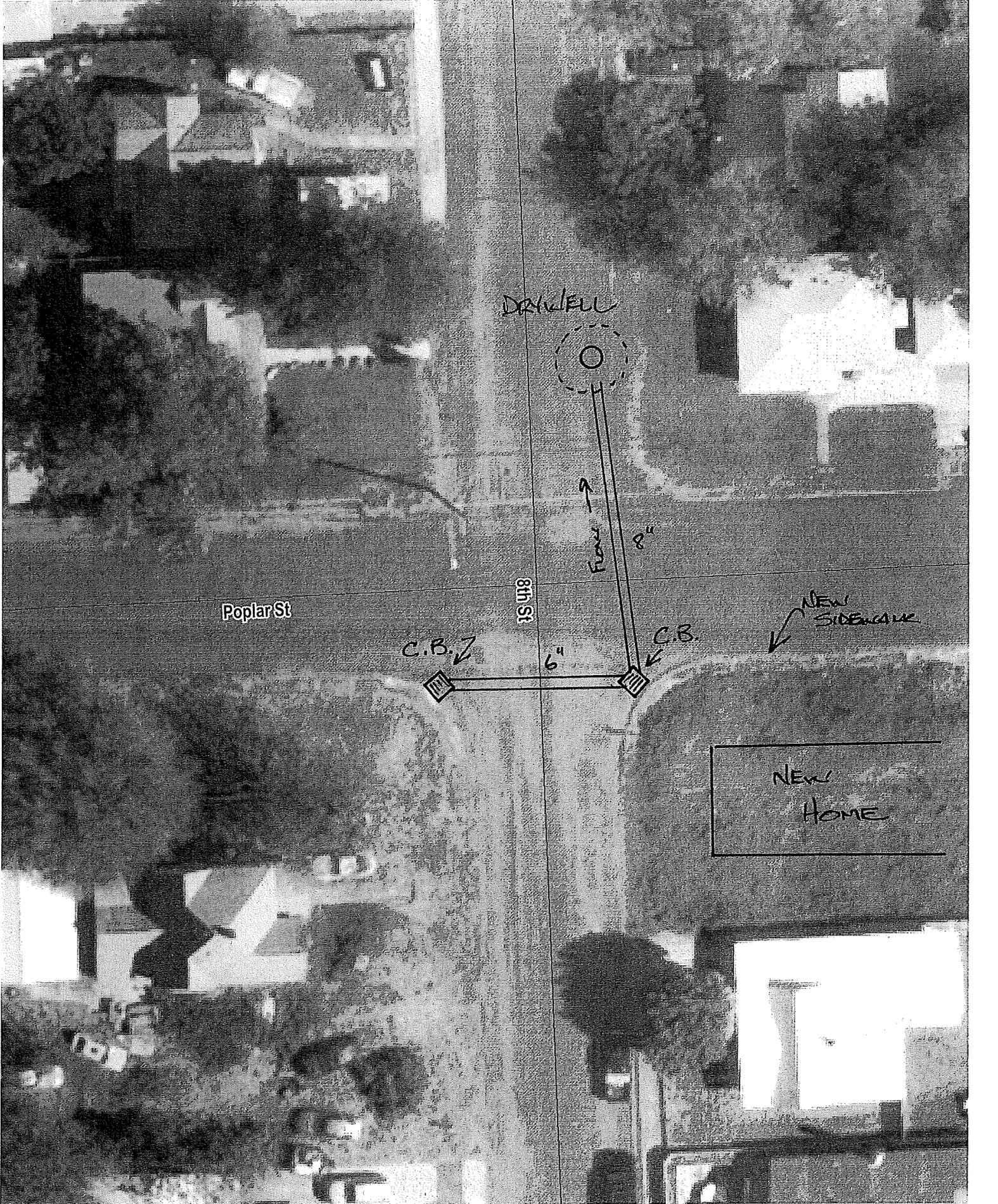
I've been dealing with a problem drainage area at 8<sup>th</sup> and Poplar Streets. A new home required new curb, gutter and sidewalk and the lack on drainage in the area has been flooding the new installation. I had originally thought to add it to our Bubble-up project that will be done next year but the funding and timing is not helpful.

We have Capital Reserves in our Storm Water program that should be tapped for just this type of project. The project will include the installation of a drywell in conjunction with two catch basins that should allow for control and transfer of the storm water when we are inundated during our storms. I am looking for support of pulling less than \$20,000.00 out of the \$101,840.00 we have in reserves. I had proposed the project to the home owner when they were required to install the new sidewalk.

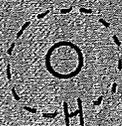
I have McCall's Classic Construction (\$15,372.50) lined out to begin as soon as they get the go ahead. Thanks for your consideration.

Jim 

h:\com2012\8th&poplardrywelltocouncil.doc



DRYWELL



Flow →

P<sub>2</sub>

Poplar St

8th St

C.B. 7

6"

C.B.

NEW SIDEWALK

NEW HOME



# City of Clarkston

City Hall: (509) 758-5541 • Police: (509) 758-1684 • Fire: (509) 758-8681 • Fax: (509) 758-1670

829 5th Street • Clarkston, WA 99403

## 8<sup>th</sup> and POPLAR STREETS DRAINAGE PROJECT

This agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2012, between the City of Clarkston and Classic Construction, hereinafter call "Contractor".

**Contract Title:** 8<sup>th</sup> and Poplar Streets Drainage Project  
**Contractor Name:** Randy McCall  
**Business Name:** McCall's Classic Construction  
**Business Address:** 945 Beachview Blvd., Clarkston Wa. 99403  
**Business Phone:** 798-8946  
**Contractor's Reg:** MCCALCC024KI

**WITNESSETH:** That in consideration of the terms and conditions contained herein and attached and made a part of this agreement, the parties hereto covenant and agree as follows:

1. The Contractor shall perform all work and furnish all tools, materials and equipment for the following named project – 8<sup>th</sup> and Poplar Streets Drainage Project for the bid price of \$14,300.00 plus sales tax of \$1,072.50, for a total of \$15,372.50.

The Contractor shall provide and bear the expense of all equipment, work and labor, of any sort whatsoever that may be required for the transfer of materials and for constructing and completing the work provided for in these Contract Documents except those items mentioned therein to be furnished by the City of Clarkston.

2. The Contractor for himself and for his heirs, executors, administrators, successors, and assigns, does hereby agree to full performance of all covenants required for the Contractor in the contract.

3. It is further provided that no liability shall attach to the City by reason of entering into this contract, except as provided herein.

4. Description of Work to be performed:

Installation of one 600 gallon drywell, 2 catch basins, with 6" and 8" PVC pipe connecting the three components.

- Traffic control will be the responsibility of the Contractor
- Permits will be obtained by Contractor



5. Requirements to be met by Contactor:
- Affidavit showing intent to pay prevailing wage
  - Valid City of Clarkston business license
  - Valid Washington State contractor's license
  - In lieu of performance bond, 50% of the contract will be retained for thirty days after the date of final acceptance or until receipt of all necessary releases from Dept. of Revenue and L & I and settlement of any liens.
  - All sales tax will be paid by Contractor and the amount shown separately on all invoices

6. Indemnification/Hold Harmless: The Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purpose of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this agreement.

## 7. MINIMUM SCOPE OF INSURANCE

A. Contractor shall obtain insurance of the types described below:

a. Automobile Liability Insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

b. Commercial General Liability Insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground

property damage. The City shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed

Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.

c. Workers' Compensation Coverage as required by the Industrial Insurance laws of the State of Washington.

d. Builders Risk insurance covering interests of the City, the Contractor, Subcontractors, and Sub-subcontractors in the work. Builders Risk insurance shall be on a all-risk policy form and shall insure against the perils of the fire and extended coverage and physical loss or damage including flood and earthquake, theft, vandalism, malicious mischief, collapse, temporary building and debris removal. This Builders Risk insurance covering the work will have a deductible of \$5,000 for each occurrence, which will be the responsibility of the Contractor. Higher deductibles for flood and earthquake perils may be accepted by the City upon written request by the Contractor and written acceptance by the City. Any increased deductibles accepted by the City will remain the responsibility of the Contractor. The Builders Risk insurance shall be maintained until final acceptance of the work by the City.

e. Professional Liability insurance appropriate to the Consultant's profession.

**B.** Contractor shall maintain the following minimum amounts of insurance:

a. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$500,000 per accident;

b. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products- completed operations aggregate limit.

c. Builders Risk insurance shall be written in the amount of the completed value of the project with no coinsurance provisions.

d. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

**C. Other Insurance Provisions:**

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Commercial General Liability and Builders Risk insurance:

a. The Contractor's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

b. The Contractor's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

c. Contractor's Insurance For Other Losses. The Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor's employee owned tools, machinery, equipment, or motor vehicles owned or rented by the Contractor, or the Contractor's agents, suppliers or contractors as well as to any temporary structures, scaffolding and protective fences.

**8. WAIVER OF SUBROGATION**

The Contractor and the City waive all rights against each other any of their Subcontractors, Sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other perils to the extend covered by Builders Risk Insurance or other property insurance obtained pursuant to the Insurance Requirements Section of this Contract or other property insurance applicable to the work. The policies shall provide such waivers by endorsement or otherwise.

**9. ACCEPTABILITY OF INSURERS**

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

**10. VERIFICATION OF COVERAGE**

Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the Automobile Liability and Commercial General Liability insurance of the Contractor before commencement of the work. Before any exposure to loss may occur, the Contractor shall file with the City a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms and endorsements related to this project.

**11. TERMINATION OF THE CONTRACT.**

a. If the Contractor persistently or repeatedly fails or neglects to carry out the Work in accordance with the Contract or Design Documents or otherwise materially breaches the Contract, Owner shall provide Contractor with seven calendar days' written notice of the breach and provide the Contractor with an opportunity to cure the Contract. Should Contractor fail to take steps to cure the Contract, Owner shall have the right to terminate the Contract. Contractor shall be compensated for the Work performed by Contractor up to the date of termination plus incurred overhead and earned profit. Owner shall also be entitled to recover the cost of expenses consequentially related to the termination.

b. Contractor may terminate this Contract if Owner fails or neglects to carry out its obligations in accordance with the Contract or Design Documents or otherwise materially breaches the Contract, Contractor shall provide Owner with seven calendar days' notice of the breach and provide Owner with an opportunity to cure the Contract. Should Owner fail to cure the Contract, Contractor shall have the right to terminate the Contract. Contractor shall be entitled to payment for work completed plus spent overhead and earned profit. Contractor shall also be entitled to recover the cost of expenses consequentially related to the termination.

In Witness hereof Owner and Contractor have caused this Agreement to be executed and accepted by their duly authorized officials:

CONTRACTOR

CITY OF CLARKSTON

\_\_\_\_\_  
Randy McCall, Owner

\_\_\_\_\_  
Kathleen A. Warren, Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**CITY OF CLARKSTON  
AGREEMENT FOR PLANNING and ENGINEERING SERVICES**

**CLARKSTON BUBBLE UP RETROFIT PROJECT**

THIS AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between the City of Clarkston, hereinafter called the OWNER and Riedesel Engineering, Inc., 77 Southway, Suite C, Lewiston, ID 83501, hereinafter referred to as the ENGINEER.

NOW, THEREFORE, in consideration of the premises and the mutual promises of the parties hereinafter contained, the parties hereto mutually agree as follows:

The work of this Agreement is for the following project:

PROJECT NAME: Clarkston Bubble Up Retrofit Project.

hereinafter referred to as the PROJECT, and the ENGINEER agrees to perform or furnish the various professional services stipulated in this Agreement for the planning and engineering services for said PROJECT.

**SUB-CONSULTANTS**

The OWNER approves the Consultant's utilization of Strata, Inc., a sub-consultant for geotechnical engineering.

The ENGINEER shall have sole responsibility for the management, direction, and control of each Sub-consultant and shall be responsible and liable to the OWNER for the satisfactory performance and quality of work performed by Sub-consultant under the terms and conditions of this Agreement. The ENGINEER shall include all the applicable terms and conditions of this Agreement in each Sub-consultant Agreement between the Consultant and Sub-consultant.

**WITNESSETH:**

For and in consideration of the mutual covenants and promises between the parties hereto, it is agreed:

ARTICLE 1  
ENGINEERING SERVICES

1.01 BASIC SERVICES

The ENGINEER agrees to perform or furnish professional engineering services in connection with the PROJECT, including normal planning and engineering services

related thereto, as outlined in the Exhibit A and as set forth below and contained within this document.

#### Exhibit A– Scope of Services

##### 1.02 ADDITIONAL SERVICES

When authorized in writing by the owner, the ENGINEER agrees to furnish or obtain from others, additional professional services in connection with the PROJECT, as set forth below and as otherwise contained within this Agreement.

(1) Services as required due to changes in the scope of the PROJECT or its design, including but not limited to, changes in size, complexity or schedule.

(2) Revising studies, reports, design documents or drawings which have previously been approved by the OWNER, or when such revisions are due to causes beyond the control of the ENGINEER.

(3) Provide services as an expert witness for the OWNER in connection with litigation or other proceedings involving the PROJECT.

(4) Provide services with condemnation action for the OWNER in connection with land acquisition for the PROJECT.

(5) Provide relocation services or relocation plans for the OWNER in connection with land acquisition for the PROJECT.

#### ARTICLE 2 OWNER'S RESPONSIBILITIES

##### 2.01 OWNER'S RESPONSIBILITIES

The OWNER shall:

(1) Provide copies of all pertinent data including statistics, plans, and studies, on file for the City as outlined in the Scope of Services Exhibit A.

(2) This Agreement shall be administered by Jim Martin, Public Works Director, 829 5<sup>th</sup> Street, Clarkston, WA 99403; or an authorized representative. The Agreement Administrator will administer this Agreement for performance and payment and will decide all questions, which may arise as to quality and acceptability of the work, rate of progress, definition of work to be performed, and acceptable fulfillment of this Agreement. The ENGINEER shall address all correspondence, make all requests, and deliver all documents to the Agreement Administrator.

(3) Hold promptly all required special meetings, serve all required public and private notices, receive and act upon all protests and fulfill all requirements necessary in the development of the PROJECT and pay all costs incidental thereto.

(4) Furnish permits and approvals from all governmental authorities having jurisdiction over this PROJECT and from others as may be necessary for completion of the PROJECT.

(5) Provide legal, title insurance, deeds, accounting, and insurance counseling services necessary for the PROJECT, legal review of the Contract Documents, and such auditing services as the OWNER may require to account for the expenditure of funds.

(6) Guarantee full and free access for the ENGINEER to enter upon all property required for the performance of the ENGINEER's services under this Agreement.

(7) Give prompt written notice to the ENGINEER whenever the OWNER observes or otherwise becomes aware of any defect in the PROJECT or other event which may substantially affect the ENGINEER's performance of services under this Agreement.

(8) It is the OWNER's responsibility to provide information that would normally come from the OWNER, however, the ENGINEER shall request from the OWNER the necessary information.

(9) Furnish above services at the OWNER's expense and in such manner that the ENGINEER may rely upon them in the performance of his services under this Agreement.

(10) Compensate the ENGINEER for services rendered under this Agreement.

ARTICLE 3  
COMPENSATION FOR ENGINEERING SERVICES

3.01 BASIC SERVICES COMPENSATION

The ENGINEER shall provide services in connection with the terms and conditions of this Agreement and the OWNER shall compensate the ENGINEER therefore as follows:

### Design Plans and Specifications

The OWNER shall compensate the ENGINEER for Task 2, Design Plans and Specifications, as described in Exhibit A – Scope of Services, on the basis of a lump sum amount of Twenty-Four Thousand, Six Hundred Five Dollars and Zero Cents (\$24,605.00).

The OWNER shall compensate the ENGINEER for Task 3, Construction Management, as described in Exhibit A – Scope of Services, on a time a materials basis with a not to exceed amount of Twenty Thousand Thirty One Dollars and Zero Cents (\$20,031.00). This amount will not be exceeded without prior written approval.

Partial Payment shall be made monthly for the services performed as the work under this Agreement progresses, based on the percentage of completion to the total cost of the fully completed work.

### 3.02 ADDITIONAL SERVICES

In addition to any and all compensation stipulated hereinabove, the OWNER shall compensate the ENGINEER for Additional Services, Section 1.02, under a separate written agreement. These Additional Services are to be performed or furnished by the ENGINEER only upon written authorization by the OWNER.

### 3.03 COMPENSATION ADJUSTMENT

It is agreed by the parties hereto that the lump sum amount, as shown in Section 3.01(1), has been calculated on the stipulation that the owner will authorize the ENGINEER to proceed with all of these above said services within one (1) calendar year from the date of this Agreement. It is also agreed that the costs of those services, in whole or in part, that have not been authorized by the OWNER for performance by the ENGINEER within said calendar year shall be adjusted to allow for changes in cost of services, and said adjustment shall be in relation to the ratio of the Department of labor national Average Cost of Living Index. The ratio to be used shall be that of the Cost of Living Index over the previous twelve (12) months. Should notice to proceed with any of the above Sections exceed two and one-half (2 ½) years, those contract amounts shall be renegotiated by mutual consent of the OWNER and ENGINEER.

### 3.04 ADDITIONAL CONDITIONS OF COMPENSATION

The OWNER and ENGINEER further agree that:

(1) Progress payments shall be made in proportion to services rendered as indicated within this Agreement and shall be due and owing within thirty (30) days of the ENGINEER's submittal of his monthly statement. The ENGINEER will submit a status report to accompany his monthly statement.

(2) If the OWNER fails to make monthly payments due the ENGINEER, the ENGINEER may, after giving seven (7) days written notice to the OWNER, suspend services under this Agreement.

(3) If the PROJECT is delayed or if the ENGINEER's services for the PROJECT are delayed or suspended for more than three (3) months for reasons beyond the ENGINEER's control or beyond the OWNER's control, the ENGINEER or the OWNER, after giving seven (7) days written notice, may terminate this Agreement and the OWNER shall compensate the ENGINEER in accordance with the termination provision contained hereafter in this Agreement.

#### ARTICLE 4 GENERAL PROVISIONS

##### 4.01 REUSE OF DOCUMENTS

All documents including reports, drawings and electronic files prepared or furnished by ENGINEER (and ENGINEER's independent professional associates and consultants) pursuant to this Agreement are the property of the OWNER. ENGINEER may make and retain copies for information and reference. Such documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER or ENGINEER's independent professional associates or consultants, and OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's independent professional associates and consultants from all claims, damages, losses and expenses including attorney's fees arising out of or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

##### 4.02 DELEGATION OF DUTIES

Neither the OWNER nor the ENGINEER shall delegate, assign, sublet or transfer his duties under this Agreement without the written consent of the other.

##### 4.03 TERMINATION

The OWNER reserves the right to terminate this Agreement at any time, upon written notice should any of the following events occur:

- (1) Upon the completion of any phase of this Agreement.
- (2) If the Project is abandoned or indefinitely postponed.

(3) If the ENGINEER's services are, in the judgment of the OWNER, unsatisfactory.

(4) If the ENGINEER fails to prosecute the work with due diligence or fails to complete the work within the time limits specified herein or as subsequently extended.

Except upon voluntary abandonment of the PROJECT by the ENGINEER, in the event the OWNER terminates this Agreement, the OWNER shall be obligated to pay the ENGINEER an amount equal in value to that of the services satisfactorily performed until the time of the termination.

#### 4.04 EXTENT OF AGREEMENT

This Agreement represents the entire and integrated agreement between the OWNER and the ENGINEER and supersedes all prior negotiations, representation or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the OWNER and the ENGINEER.

#### 4.05 GENERAL

(1) Should litigation or arbitration occur between the two parties relating to the provisions of this Agreement, all court costs and reasonable attorney fees incurred by the prevailing party shall be paid by the non-prevailing party.

(2) Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond control of the other or the other's employees or agents.

(3) In the event any provisions of this agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provisions, terms, conditions or covenants shall not be construed by the other party as a waiver of subsequent breach of the same by the other party.

(4) The ENGINEER shall render his services under this Agreement in accordance with generally accepted professional practices.

(5) Any opinions of the estimates Construction Cost prepared by the ENGINEER represents his judgment as a design professional and is supplied for the general guidance of the OWNER. Since the ENGINEER has no control over the cost of labor and material, or over competitive bidding or market conditions, the ENGINEER does not guarantee that such opinions will conform to actual bids received or actual costs to the OWNER.

(6) Any notices or other communications required or permitted by this Contract or by law to be served on, given to, or delivered to either party hereto, by the

other party shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the party to whom it is addressed or in lieu of such personal service, when deposited in the United States mail, certified mail, return receipt requested, addressed to the OWNER at City of Clarkston, 829 5<sup>th</sup> Street, Clarkston, WA 99403, or to the ENGINEER 77 Southway, Suite C, Lewiston , Idaho 83501. Either party, the OWNER or the ENGINEER, may change his address for the purpose of this paragraph by giving written notice of such change to the other party in the manner provided in this paragraph.

## ARTICLE 5 SPECIAL PROVISIONS

### 5.01 INSURANCE AND INDEMNITY

(1) ENGINEER's Insurance. The ENGINEER shall acquire and maintain statutory workman's compensation insurance coverage, employer's liability, and comprehensive general liability insurance coverage with a combined single limit for property damage and liability of One Million Dollars (\$1,000,000.00). The ENGINEER shall acquire and maintain Professional Liability Insurance in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00).

(2) INDEMNIFICATION: The ENGINEER shall hold the OWNER harmless from all liability, penalties, costs, losses, damages, expense, causes of action, claims, attorney fees or judgments arising from or in any way connected to the ENGINEER's negligent performance or failure to perform under this Contract. In the event a claim is made against the OWNER for any matters which are covered by this hold harmless agreement, the ENGINEER shall defend against any such claim, and the ENGINEER shall reimburse the OWNER for any cost or expense, including attorney fees which the OWNER may incur in defending against the claim. This hold harmless agreement shall apply to any act of omission, willful misconduct, or negligence, whether passive or active, on the part of the ENGINEER.

### 5.02 RESERVATIONS AND COMPLIANCE

(1) The OWNER or any of their duly authorized representatives shall have access to any books, documents, papers, and all other records which directly pertain to this PROJECT for the purpose of making audit, examination, excerpts, and transcriptions.

(2) The ENGINEER agrees to comply with Federal Executive Order No. 11246, entitled, "Equal Employment Opportunity", as supplemented in Department of Labor Regulations (41 CFR, Part 60) if this Agreement exceeds \$10,000; Section 103 and 107 of the Contract Work house and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor Regulations (29 CFR, Part 5) if this Agreement exceeds \$2,500; and all applicable standards, orders, and regulations issued pursuant to the Clean Air Act of 1970 if this Agreement exceeds \$100,000.

### 5.03 SUCCESSORS AND ASSIGNMENTS

(1) The OWNER and ENGINEER each bind themselves, their partners, successors, executors, administrators, and assigns to the other parties to this Agreement and to the successors, executors, administrators and assigns of such other party in respect to all covenants of this Agreement.

(2) This Agreement shall not be assigned without the written consent of the OWNER.

### 5.04 CERTIFICATION OF ENGINEER

The OWNER and ENGINEER hereby certify that the ENGINEER has not been required, directly or indirectly, as an expressed or implied condition in connection with obtaining or carrying out this contract, to:

- (1) Employ or retain, or agree to employ or retain, any firm or persons; or
- (2) Pay, or agree to pay, to any firm, person or organization, any fee, contribution, donation or consideration of any kind.

### 5.05 LIMIT OF LIABILITY

The OWNER agrees to limit the ENGINEER's liability to the OWNER, and to all construction Contractors or subcontractors on the PROJECT, due to the ENGINEER's negligent acts, errors, or omissions, such that the total aggregate liability of the ENGINEER to all those named shall not exceed Two hundred fifty thousand dollars (\$250,000.00).

IN WITNESS WHEREOF, the OWNER and the ENGINEER hereto have made and executed this Agreement as of the day and year first above written.

OWNER:

ATTEST:

City of Clarkston

\_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

ENGINEER:

Riedesel Engineering, Inc.

ATTEST:

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

\_\_\_\_\_

Name: John R. Watson

\_\_\_\_\_

Title: Riedesel Regional Area Manager

October 2, 2012

Community Development Committee

Present: John Smith, George Nash, Jim Martin, Belinda Campbell, Michelle Peters, Terry Beadles

Committee recommends that the Mayor sign the proclamation for Clarkston High School DECA Week 10/28 – 11/3. Agenda item for council action.

Michelle Peters presented the concept of a visitor center and museum at 14<sup>th</sup> and Bridge Street. Partial funding would be through the balance in the account of convention center sale. A presentation to the council will be at a later date after more plans and details are researched.

October 2, 2012

Public Safety Committee

Present: Chief Cooper, Chief Hastings, Dick Jones, Terry Beadles

Chief Hastings discussed the request of Wal-Mart needing Police security during their Black Friday sale. It appears that this concept is within the jurisdiction of the Police Department. However, there may not be an officer available.

Chief Cooper discussed the purchase and budgeting of a new fire engine in the year of 2013. We should first proceed with the application of a grant covering this purchase. The Chief will be out of the office October 10<sup>th</sup> thru 21<sup>st</sup>.