CALL TO ORDER/ROLL CALL

DISCUSSION & ACTION

A. Partial Road Closure of Shawnee Mission Park for Road Race – Bill Maasen, Superintendent of Parks & Golf Courses

   Issue: Consider authorizing a partial park closure of Shawnee Mission Park, specifically Ogg Road from the low water crossing on the north to the former entrance to Oakridge Farm on the south.

B. 2019 Agreement for Dog Treat Vendor at JCPRD Dog-off Leash areas - Bill Maasen, Superintendent of Parks & Golf Courses

   Issue: Consider an agreement for 2019 with Kayla Swatzell with Treat Waggin by Barkville Bakery to sell dog treats at JCPRD Dog-off Leash Areas.

C. Mid-America Combined Training Association’s (MACTA) Use of Heritage Park Equestrian Area in 2019 – Bill Maasen, Superintendent of Parks & Golf Courses

   Issue: Consider approval of seven (7) weekend dates being requested by the Mid-America Combined Training Association (MACTA) for use of the Heritage Park Equestrian Area in 2019.

D. Approve Agreement for Arc Flash Hazard Analysis and Compliance Phase 2 Professional Consulting Engineering Services with Herzig Engineering – Cliff Middleton, Planning and Development Manager

   Issue: Consider approval of the Agreement for Arc Flash Hazard Analysis and Compliance Phase 2 Professional Consulting Engineering Services with Herzig Engineering in the amount of $58,000.
E. Consider Bids for 2019 JCPRD On-Call Mechanical & Plumbing Services PRK-2019-02 – Cliff Middleton, Planning & Development Manager

Issue: Bids were opened for the item listed above on January 24, 2019. Staff requests JCPRD Board to consider and award bids per staff recommendation.

F. Consider Bids for 2019 JCPRD On-Call Electrical Services PRK 2019-01 – Cliff Middleton, Planning & Development Manager

Issue: Bids were opened for the item listed above on January 24, 2019. Staff requests JCPRD Board to consider and award bids per staff recommendation.

OTHER BUSINESS

ADJOURNMENT
Presented to: Parks & Golf Courses Committee  Meeting Date: 02-11-2019

Project Name/Identification: Partial Closing of Shawnee Mission Park for Road Race

Contact: Bill Maasen, Superintendent of Parks & Golf Courses  Phone: 826-3437

ISSUE: Consider authorizing a partial park closure of Shawnee Mission Park, specifically Ogg Road from the low water crossing on the north to the former entrance to Oakridge Farm on the south.

BACKGROUND: Team Sparkle has requested permission to close Ogg Road on September 29, 2019 from 5:00 AM until 3:00 PM to host a running event on Ogg Road hill. There is a planned 5K running event and a six-hour endurance run. Partial park closings require Board approval per the JCPRD Operational Policies & Procedures – Policy 24. PARK CLOSINGS OR PARTIAL CLOSINGS FOR SPECIAL EVENTS POLICY (see attached).

ANALYSIS:

FUNDING REVIEW: Are there funding implications involved?  ☒ No  ☐ Yes

ALTERNATIVES:

- Recommend consent approval as recommended by staff ................................................................. ☒
- Recommend consent approval as determined/modified by committee ........................................... ☐
- Recommend discussion and action by the full Board at Board Meeting ........................................... ☐
- Recommend denial of request .......................................................................................................... ☐
- Table for additional consideration .................................................................................................. ☐
- Take no action ................................................................................................................................. ☐
- Other ............................................................................................................................................. ☐

LEGAL REVIEW: Is Legal Counsel Review Required?  ☒ No  ☐ Yes

SUGGESTED RECOMMENDATION/MOTION: It was the consensus of the committee to recommend Board consent approval of a partial park closing in Shawnee Mission Park along Ogg Road on September 29, 2019 from 5:00 AM to 3:00 PM.

SUPPORTING DOCUMENTATION:

1. JCPRD PARK CLOSINGS OR PARTIAL CLOSINGS FOR SPECIAL EVENTS POLICY
1. PARK CLOSINGS OR PARTIAL CLOSINGS FOR SPECIAL EVENTS POLICY

A. Special events involving use of park roads will not be allowed until such event is approved by the Johnson County Park and Recreation District Board.

B. Priority for such events will be given to co-sponsored JCPRD events.

C. The Board will not allow more than two (2) total park closings in any one park per year. Events requiring total park closings must be co-sponsored with JCPRD. In addition, there will be no more than a total of two (2) partial closings per month. Priority will be given to events held on weekdays and events that require only partial park road closings with completion by 10 a.m.

D. The Board will not approve such events on holiday weekends or days on which other JCPRD events or activities have been scheduled.

E. All requests for such events must be submitted sixty (60) days in advance of the event, and a detailed plan for the event, including assurances as noted below, must be available for staff and Board review thirty (30) days prior to the event.

F. Fees for shelters, concessions, or other JCPRD revenue losses will be provided to JCPRD 48 hours prior to the event. (Refer to Fees & Charges section).

G. Thirty (30) days prior to the event, liability insurance and medical assistance assurance for the event shall be received or documented.

H. Each requested event will require the development of and approval of the event by JCPRD, specifying costs, rules and regulations, compliance, and documentation of the assurance for the event.

I. All events requiring closing or a partial closing of a park will require posting the date, time, and nature of the event no less than fourteen (14) days prior to the event date. Signage for this purpose will be ordered and placed appropriately by JCPRD staff. The charge for signage shall be paid by the event organizer prior to the event. (Charges may fluctuate and will be assessed according to current industry pricing at the time of event approval).
Presented to: Parks & Golf Courses Division  Meeting Date: 02/11/2019

Project Name/Identification: 2019 Agreement for Dog Treat Vendor

Submitted by: Bill Maasen, Superintendent of Parks & Golf Courses  Phone: 913-826-3437

ISSUE: Consider an agreement for 2019 with Kayla Swatzell with Treat Waggin by Barkville Bakery to sell dog treats at JCPRD Dog Off-Leash Areas.

BACKGROUND: JCPRD had an agreement with a previous vendor for many years, Good Dog 2 Go, who sold treats at the dog off leash areas. That vendor no longer is in business. This contract requires a 10% of gross revenue share with JCPRD and would expire the end of this year. Barkville Bakery would be selling items from companies to include Barkville Bakery treats & cakes, Beer Paws treats and dog beers, Cheeky Chic Bows dogs and cat bows, Simply Unique Designs animal artwork, PETEY’s Playhouse Paw Butter, Pet Wants Olathe Beef Jerky for Dogs and Farmstead 51 Mercantile Bandanas.

ANALYSIS:

FUNDING REVIEW: Are there funding implications involved? ☒ No  ☐ Yes

ALTERNATIVES:

- Recommend consent approval as recommended by staff ................................................................. ☒
- Recommend consent approval as determined/modified by committee ..............................................
- Recommend discussion and action by the full Board at Board Meeting............................................
- Recommend denial of request...........................................................................................................
- Table for additional consideration..................................................................................................
- Take no action..................................................................................................................................
- Other: .............................................................................................................................................

LEGAL REVIEW: Is Legal Counsel Review Required?  ☐ No  ☒ Yes – If yes, explain: JCPRD Legal Counsel has approved the agreement as to form.

SUGGESTED RECOMMENDATION/MOTION: It was the consensus of the committee to recommend Board consent approval of an agreement for 2019 with Kayla Swatzell with Barkville Bakery to sell dog treats at the JCPRD Dog Off-Leash Areas.

SUPPORTING DOCUMENTATION:

1. 2019 Vendor Agreement with Barkville Bakery
THIS AGREEMENT is made and entered into this _____, by and between Kayla Swatzell, doing business as Treat Waggin by Barkville Bakery, hereinafter referred to as “VENDOR,” and Johnson County Park and Recreation District, hereinafter referred to as “JCPRD.”

WHEREAS, VENDOR desires to set up and operate a portable DOG TREAT TRUCK in the dog off-leash areas of JCPRD parks; and

WHEREAS, JCPRD has approved VENDOR to set up and operate the DOG TREAT TRUCK in JCPRD parks as a means to provide a convenient and affordable dog treat service to dog owners who utilize JCPRD dog off-leash areas, as well as provide additional revenue to JCPRD under the terms and conditions as hereinafter set forth.

NOW, THEREFORE, the parties hereto agree as follows:

1. JCPRD agrees to allow VENDOR to set-up and operate the DOG TREAT TRUCK at the dog off-leash areas in JCPRD parks during normal park hours between the dates of April 1, 2019 and November 30, 2019.

2. The general appearance of and the location for the DOG TREAT TRUCK within JCPRD parks must be approved in advance by JCPRD and VENDOR agrees to set-up and operate the DOG TREAT TRUCK at the approved locations in JCPRD parks and to operate said DOG TREAT TRUCK within the hours and on the days of operations as set forth above in Section 1.

3. VENDOR shall obtain and maintain during the term of this Agreement all necessary city, county and state licenses or permits to operate the DOG TREAT TRUCK in compliance with all applicable laws, ordinances, rules and/or regulations.

4. VENDOR shall be responsible for the timely payment of all applicable taxes, including city, county and state sales tax.

5. VENDOR shall provide at all times adequately trained personnel to operate the DOG TREAT TRUCK.

6. Only that merchandise and/or services associated with the operation of the DOG TREAT TRUCK, shall be authorized to be sold and/or provided by VENDOR to patrons within JCPRD parks. NO beer, wine, spirits or other alcoholic beverages shall be allowed to
be served or sold by VENDOR within JCPRD parks. No other merchandise and/or services by VENDOR shall be allowed.

7. VENDOR shall maintain an itemized record and accounting of all sales and/or services made or provided by VENDOR which are derived from and/or related to the operation of the DOG TREAT TRUCK in JCPRD parks and VENDOR agrees to allow JCPRD to audit its books, receipts and sales records upon reasonable demand by JCPRD.

8. VENDOR shall be responsible for cleaning up the area immediately surrounding the TRUCK at the end of each day’s operation.

9. VENDOR shall be solely responsible for any and all security of or for its merchandise and wares and for its operation within JCPRD parks.

10. VENDOR agrees to pay JCPRD each month an amount equal to ten percent (10%) of all of their Gross Sales derived from or related to the products or services associated with the operation of their DOG TREAT TRUCK in JCPRD parks during the prior month. “Gross Sales” shall mean the gross sales less applicable sales tax and less any documented same day returns or credits. Such payment shall be made in good funds by no later than 4:00 p.m. on the 5th day of each month, commencing with the first payment due May 5, 2019, and with the last payment due on or before December 5, 2019. VENDOR shall submit, along with such payment, a detailed accounting as required under Paragraph 7 of their sales for which payment is being made. The payment shall be delivered to the JCPRD address listed below and directed to the attention of the JCPRD Superintendent of Parks & Golf Courses.

11. VENDOR agrees to fully indemnify and hold harmless JCPRD and JCPRD’S representatives, and its officers and agents, from all losses, damages, costs, expenses, judgments or decrees arising out of or by reason of the failure, omission or neglect of VENDOR to perform any of the covenants herein and/or by reason of the alleged negligence or malfeasance of VENDOR, its agents, representatives or employees.

12. JCPRD shall not be liable or obligated to the VENDOR for any injury or damage to the VENDOR or property of the VENDOR caused by fire, theft, casualty, acts of God, civil disaster and such other occurrences and events beyond the control of JCPRD.

13. JCPRD shall have the right to inspect the DOG TREAT TRUCK operations and facilities used by VENDOR at JCPRD parks at all reasonable times.

14. VENDOR shall obtain at their expense, and continuously maintain in full force covering all of its operations in JCPRD parks under this Agreement, insurance as follows:
(a) A Comprehensive General Liability Insurance Policy including Premises-Operations Liability, Independent Contractors Liability, Products and Completed Operations, and Broad Form Property Damage with these minimum limits:

- Liability limit not less than $1,000,000
- Aggregate Limit not less than $2,000,000
- Fire Damage Liability $100,000
- Medical Payments $5,000

(b) Automobile Liability

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

(c) Workers’ Compensation

- Workers’ compensation per statutory requirements.
  - Employers Liability $500,000 each accident
  - $500,000 disease-policy limit
  - $500,000 disease-each employee

The Workers’ Compensation policy shall include a “Waiver of Subrogation” in favor of JCPRD.

(d) JCPRD will only accept coverage from an insurance carrier who offers proof that it:

1. Is licensed to do business in the State of Kansas and
2. Has a Bests rating of no less than A-, or as acceptable to JCPRD.

(e) Such insurance policy(s) shall be primary and JCPRD shall be named as an Additional Insured. VENDOR shall provide JCPRD with a Certificate of Insurance evidencing the issuance of such policy(s) and showing JCPRD as an Additional Insured prior to the start of services and shall require the insurance company to provide not less than thirty (30) days advance written notice to JCPRD of any cancellation, lapse or termination of the policy. Notwithstanding any other provision contained herein to the contrary, the failure of VENDOR to provide and to continuously maintain all such insurance coverage shall be grounds for the immediate cancellation or termination of this Agreement by JCPRD. VENDOR shall promptly notify JCPRD of any claim, including full details thereof and an estimate of the amount of loss or liability.

15. VENDOR understands and agrees that they and/or their employees, representatives and/or agents are independent contractors, not employees, representatives and/or
agents of JCPGD, and will not represent themselves as employees’, representatives and/or agents of JCPGD.

16. VENDOR shall be in default if they fail to comply with any term or condition of this Agreement. In the event of a default by VENDOR, JCPGD shall have the right to exercise any one or more of the following remedies, concurrently or separately, and without any election of remedies being deemed to have been made: (a) JCPGD may terminate this Agreement and VENDOR shall remain liable for any damages sustained by JCPGD; (b) JCPGD may contract with any third party, upon such terms and conditions as JCPGD shall determine for similar sales in JCPGD parks; (c) JCPGD may pursue any other remedy available at law or in equity. No right or remedy herein conferred upon or reserved to JCPGD is exclusive of any other right or remedy herein, or by law or by equity provided or permitted, but each shall be cumulative of every other right or remedy given herein or now or hereafter existing by law or equity or by statute or otherwise, and my be enforced concurrently therewith or from time to time. No single or partial exercise by JCPGD of any right or remedy hereunder shall preclude any other or further exercise of any other right or remedy.

17. VENDOR shall not discriminate on account of race, sex, religion, color, national origin, ancestry, or age, in the employment of persons, use of facilities or participants associated with VENDOR, and shall comply with all requirements of the American Disabilities Act.

18. All notices required by this Agreement shall be in writing sent by regular U.S. mail, postage prepaid or commercial overnight courier to the Director if sent to the JCPGD and to the person and address listed below. All notices are effective on the date mailed or deposited with courier.

JOHNSON COUNTY PARK & RECREATION DISTRICT:
Attn: William R. Maasen
Superintendent of Parks & Golf Courses
7900 Renner Road
Lenexa, KS 66219
(913) 826-3437
Bill.maasen@jocogov.org
19. VENDOR shall comply with all rules and regulations of JCPRD.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year set forth below.

VENDOR:
Kayla Swatzell DBA Barkville Bakery/Treat Waggin' by Barkville Bakery

Signature: ______________________
Kayla Swatzell

Date: ______________

JOHNSON COUNTY PARK & RECREATION DISTRICT (JCPRD)

By: ______________________
Mike Pirner, Board Chair

Date: ______________

APPROVED AS TO FORM:

__________________________
Fred Logan, JCPRD Legal Counsel
Presented to: Parks & Golf Courses Committee  Meeting Date: 02/11/2019

Project Name/Identification: Mid-America Combined Training Association’s Use of Heritage Park Equestrian Area in 2019

Contact: Bill Maasen, Superintendent of Parks & Golf Courses Phone: 913 826-3437

**ISSUE:** Consider approval of seven (7) weekend dates being requested by the Mid-America Combined Training Association (MACTA) for use of the Heritage Park Equestrian Area in 2019.

**BACKGROUND:** Per a contract approved by the Board in October 2015 between JCPRD and MACTA, MACTA is allowed use of the Heritage Park Equestrian Area for up to eight (8) approved weekends per year. The contract also states that MACTA will pay JCPRD Special Use Permit fees and reimbursement for extra mowing time necessary to prepare the area for each of its event dates.

**ANALYSIS:** The dates being requested are as follows: March 16-17 (rain date of March 23-24), April 27-28 (rain date of May 4-5), June 1-2, July 6-7, August 24-25, September 21-22 and October 4-6. These dates have been cleared through the Heritage Park Maintenance staff, but require Board.

**FUNDING REVIEW:** Are there funding implications involved? ☑ No ☐ Yes – explain: Yes – JCPRD will issue a Special Use Permit for all MACTA events. MACTA will compensate JCPRD $50 per event for the first 50 participants and $2.00 each for each participant thereafter, beginning with participant number 51. MACTA agrees to compensate JCPRD for the preparation of the equestrian area prior to each event at a rate of $26 per hour for staff time during regular hours or $31 per hour for any overtime required. MACTA also agrees to compensate JCPRD for equipment usage and gasoline for such preparation at a cost of $125 per event.

**ALTERNATIVES:**

- Recommend consent approval as recommended by staff ................................................................. ☑
- Recommend consent approval as determined/modified by committee .....................................................
- Recommend discussion and action by the full Board at Board Meeting ..................................................
- Recommend denial of request .................................................................................................................
- Table for additional consideration ..........................................................................................................
- Take no action ...........................................................................................................................................
- Other: ....................................................................................................................................................

**Staff Recommendation**

If other, explain:

**Consequences or additional Information (if any):**

**LEGAL REVIEW:** Is Legal Counsel Review Required? ☑ No ☐ Yes – If yes, explain:

**SUGGESTED RECOMMENDATION/MOTION:** It was the consensus of the Committee to recommend Board consent approval of the seven (7) event weekend dates being requested for 2019 by the Mid-American Combined Training Association (MACTA) for use of the Heritage Park Equestrian Area.

**SUPPORTING DOCUMENTATION:**

1. Email request from MACTA requesting approval of event dates for 2019
Hello Cindy,
I am emailing on behalf of Mid-America Combined Training Association. We would like to request these dates for approval for 2019 for Heritage Horse Park. The rain date weekends will be used if the original date is rained out.

March 16-17
March 23-24 (March Rain Date)
April 27-28
May 4-5 (Rain Date)
June 1-2
July 6-7
August 24-25
Sept 21-22
October 4-6

We are still working on repairing the footing and damages to the ground at Heritage Horse Park that happened during our horse trials in October. The ground has either been too wet or frozen and has not allowed for us to get the proper equipment out there to finish the repairs.

Thank you for your consideration and I look forward to hearing from you soon.

Sincerely,
Kristina Whorton
MACTA Vice President
816-590-3425
Presented to: Parks and Golf Courses  Meeting Date: 02/11/2019

Project Name/Identification: Approve Agreement for Arc Flash Hazard Analysis and Compliance Phase 2 Professional Consulting Engineering Services with Herzig Engineering

Contact: Cliff Middleton, Planning and Development Manager  Phone: 913-826-3425

ISSUE: Consider approval of the Agreement for Arc Flash Hazard Analysis and Compliance Phase 2 Professional Consulting Engineering Services with Herzig Engineering in the amount of $58,000.

BACKGROUND: JCPRD staff participated in the Arc Flash phase I project with JOCO Facilities Department to identify and inventory all electrical services and panels on JCPRD properties. The phase I project started in 2014 with information collection and this data was utilized to solicit phase II of the RFP, which involves the on-site data and utility collection as well as the calculation of arc flash hazard potential and labelling of electrical panels and services county-wide. The safety goal of the project is to ensure that employees or contractors who may be working in or near electrical panels are aware of the hazard potential of a given electrical panel and can wear appropriate Personal Protective Equipment (PPE) to minimize risk of injury. Compliance with NFPA70e will improve life safety conditions for employees and contractors within all Johnson County buildings and grounds. Part of the data collection activity is to provide electrical safety, repair, and update information that will improve overall performance and safety of electrical equipment. JCPRD staff participated in the evaluation and selection of the consultant for these Arc flash services by serving on the selection committee along with staff from Johnson County Airport Commission, Johnson County Library, Johnson County Facilities, Johnson County Purchasing, and Johnson County Sheriff. Although this is a county wide initiative, the funding sources for the project are spread amongst various departments that are each separate legal entities. JCPRD is required to enter into an agreement with the consultant for only the scope of work proposed for JCPRD locations. The cost for basic services for the JCPRD scope of work is $58,500. JCPRD allocated $60,000 for this project in the 2018 CIP anticipating the project award.

ANALYSIS: The ArcFlash phase II project is an important safety improvement that is mandatory for compliance and will potentially reduce the risk of injury for JCPRD employees and contractors. The JCPRD scope of work was bid as part of a larger project by JOCO Facilities to keep the data and labelling in a uniform manner and also to take advantage of the economy of scale for this larger county project.

FUNDING REVIEW: Are there funding implications involved?  □ No □ Yes  If Yes, explain: The project was funded in the 2018 CIP.

ALTERNATIVES:  Staff Recommendation
- Recommend consent approval as recommended by staff .......................................................... ☑
- Recommend consent approval as determined/modified by committee ........................................
- Recommend discussion and action by the full Board at Board Meeting........................................
- Recommend denial of request........................................................................................................
- Table for additional consideration.................................................................................................
- Take no action.................................................................................................................................
- Other: ............................................................................................................................................

If other, explain:

Consequences or additional Information (if any):
LEGAL REVIEW: Is legal counsel review required?  ☑ Yes  If yes, explain: JCPRD Legal Counsel has reviewed the agreement and has provided approval.

SUGGESTED RECOMMENDATION/MOTION:
It was the consensus of the committee to recommend Board consent approval of the Agreement for Arc Flash Hazard Analysis and Compliance Phase 2 Professional Consulting Engineering Services with Herzig Engineering in the amount of $58,000.

SUPPORTING DOCUMENTATION:
2. Arc Flash fully executed contract
AGREEMENT FOR ARC FLASH HAZARD ANALYSIS AND COMPLIANCE
PHASE 2 PROFESSIONAL CONSULTING ENGINEERING SERVICES

THIS AGREEMENT, made in Shawnee, Kansas, and entered into as of the twentieth day of February, 2019 (the “Effective Date”), by and between the JOHNSON COUNTY BOARD OF PARK AND RECREATION COMMISSIONERS, JOHNSON COUNTY PARK AND RECREATION DISTRICT (hereinafter “JCP”) and HERZIG ENGINEERING, with offices located at 11108 N. Oak Trafficway, Suite 104, Kansas City, MO 64155 (hereinafter “HE”), each hereinafter a “Party”, and together hereinafter the “Parties”.

WITNESSETH:

WHEREAS, the Treasury and Financial Management Department of JOHNSON COUNTY, KANSAS solicited formal sealed proposals from firms qualified to provide JOHNSON COUNTY and several of its agencies with certain consulting engineering services to implement an arc flash hazard analysis and compliance program for multiple JOHNSON COUNTY facilities; and

WHEREAS, in response to the JOHNSON COUNTY’s solicitation, HE duly submitted a written proposal to JOHNSON COUNTY for the desired consulting engineering services; and

WHEREAS, on November 15, 2018, the Board of County Commissioners of Johnson County, Kansas authorized a contract with HE to provide the JOHNSON COUNTY with such professional services; and

WHEREAS, JOHNSON COUNTY and HE agreed to accept the terms and conditions of that Agreement.

WHEREAS, on February 20, 2019, the JOHNSON COUNTY BOARD OF PARK AND RECREATION COMMISSIONERS, JOHNSON COUNTY PARK AND RECREATION DISTRICT authorized a contract with HE to provide JCP with such professional services as identified in the scope of services as “Parks and Recreation” (PRK) facilities and identified in the Cost Proposal document with BASE COST and ALTERNATE COST amounts; and

WHEREAS, JCP and HE hereby agree to accept the terms and conditions of this scope of the Agreement.

NOW, THEREFORE, in consideration of the above and foregoing recitals, the mutual promises and covenants hereinafter given, and for other good and valuable consideration, the Parties hereto agree as follows:

ARTICLE I
Purpose
1.1 **Purpose.** JCPRD hereby engages the professional consulting engineering services of HE to conduct and implement an arc flash hazard analysis and compliance program to integrate with its Electrical Safety Program, provide additional safety measures for employees and contractors, and achieve compliance with OSHA NFPA 70E standards (hereinafter the “Services”), and HE hereby agrees to provide JCPRD with such Services in accordance with, and subject to, the terms and conditions of this Agreement. The Parties acknowledge and agree that the National Fire Protection Association (NFPA) Code 70E lists the necessary standards and requirements for the safe operation of electrical switchgear and distribution equipment used in the facility electrical infrastructure. The results of the arc flash hazard analysis will be used to determine arc flash hazard ratings for each component in the electrical system. The results may also be used to plan major, minor, urgent, and long-term corrective action, and short and long term financial planning for regular maintenance and capital improvement projects.

**ARTICLE II**

**Contract Documents**

2.1 The Services to be provided by HE hereunder shall be governed by the terms and conditions of this Agreement, and any attachments and/or exhibits attached hereto, and the respective standard terms and conditions, special conditions, provisions, and representations contained within the documents enumerated below, which are incorporated herein by reference, and which together with the terms and conditions of this Agreement, and any attachments and/or exhibits attached hereto, comprise the Contract Documents:

2.1.1 JOHNSON COUNTY’s Request for Proposal No. 2018-096, and any amendments and/or addenda subsequently issued thereto (collectively hereinafter the “RFP”), with the following exception:

.1 Standard Term and Condition 8.38 Performance and Statutory Bonds is deleted in its entirety; and

2.1.2 HE’s written proposal of September 17, 2018 (hereinafter the “Proposal”), duly submitted to JOHNSON COUNTY in response to the RFP; and

2.1.3 HE’s proposed cost submittal of October 9, 2018 (hereinafter the “Cost Proposal”), duly submitted in accordance with the requirements of the RFP.

2.2 It is hereby acknowledged and agreed that the RFP and HE’s Proposal and Cost Proposal, if not attached hereto, shall be on file with JOHNSON COUNTY’s Office of Treasury and Financial Management, Purchasing Division, Johnson County Administration Building, 111 South Cherry, Suite 2400, Olathe, Kansas 66061-3486, or such other office or location as the County may from time to time designate.
2.3 Whenever the terms "respondent", "successful respondent", "bidder", "successful bidder", "contractor", "successful contractor", “consultant” or terms of similar purport are used in the Contract Documents, such terms shall be deemed to mean and refer to HE.

2.4 Should any ambiguity, inconsistency or conflict arise in the interpretation of the Contract Documents, the same shall be resolved by reference first to the terms and conditions of this Agreement, and any attachments or exhibits attached hereto, and then by reference to the terms and conditions, provisions, and representations contained within the documents in the order enumerated in Section 2.1 hereinabove.

ARTICLE III
Nature and Scope of Services

3.1 Nature of Services. HE shall, at all times, faithfully, diligently, earnestly and industriously, and to the best of the ability, experience and skills of the personnel it provides, perform all duties and responsibilities necessary to provide JCPRD with the highest level of quality of professional consulting engineering services in an expeditious and professional manner, consistent with the purpose and requirements of this Agreement, and the JCPRD’s interests and objectives. HE shall exercise that degree of care, expertise, skill and diligence in the performance of the Services as possessed and exercised by other persons providing the same type of professional consulting engineering services under similar circumstances for projects in size, complexity, and scope similar to that of JCPRD’s hereunder.

3.2 Scope of Services. In providing JCPRD with the Services required hereunder, HE shall render to JCPRD those Services and deliverables as specified, outlined and contained in Section 5 – Scope of Services of the RFP (hereinafter referred to as "Basic Services"), consistent with HE’s Project Approach outlined and contained in its Proposal; provided, however, nothing herein shall preclude HE from providing JCPRD, upon written request, with optional or additional professional services relative to the scope, purpose and requirements of this Agreement. The Services shall be provided for those facilities that are clearly delineated as “Parks and Recreation (PRK)” on the spreadsheet issued with the RFP entitled “Site List and Equipment Inventory-Revised 2018-1003”

ARTICLE IV
Period of Performance

4.1 Period of Performance. Unless otherwise established as determined by the Parties hereto at the making of this Agreement, the period of performance for completion of the Services required of HE under this Agreement shall be fully rendered by HE in accordance with a final project timeline schedule (hereinafter the “Project Schedule”) prepared by HE and submitted to JOHNSON COUNTY AND JCPRD, on or in a timely fashion immediately following execution of this Agreement by the Parties. If not otherwise established at the making of this Agreement, the Project
Schedule so submitted by HE shall be subject to JOHNSON COUNTY’s AND JCPRD’s review and approval. Upon approval of a Project Schedule, the same shall form and be made a part of this Agreement. Subject to the provisions of Article X of this Agreement, the Project Schedule may be amended or extended by written addendum of the Parties.

**ARTICLE V**

**Compensation**

5.1 **Compensation.** As compensation for Basic Services rendered by HE hereunder, JCPRD agrees to pay HE in an amount not to exceed **FIFTY-EIGHT THOUSAND FIVE HUNDRED Dollars ($58,500.00)** (hereinafter the "Contract Price"). The Contract Price shall be full compensation for labor, expenses, subsistence, transportation, overhead and profit incurred in performance of the described Basic Services, which include the Base Cost and Total Alternate Costs under this Agreement. Payments shall be made within thirty (30) days of the JCPRD’s receipt of invoices from HE documenting the services and deliverables rendered and deemed acceptable to the COUNTY.

5.2 **Optional or Additional Services.** Should HE be requested to provide optional or additional services for JCPRD relative to the scope, purpose and requirements of this Agreement, HE shall be compensated for such services rendered and expenses reasonably incurred in the amount and rates as may be mutually agreed to by the Parties.

**ARTICLE VI**

**Coordination of Services**

6.1 **Coordination of Services; Project Representative.** HE shall coordinate all Services to be provided by HE under this Agreement with JOHNSON COUNTY’s Facilities Director, or designee thereof (the “County Project Manager”). Whenever this Agreement requires, or it becomes necessary for, HE to advise, provide or communicate information to, or seek the approval of, JOHNSON COUNTY OR JCPRD in matters relating to HE’s Services hereunder, HE shall direct all such communications and requests for approval to the County Project Manager. Further, HE shall, upon request, meet with the County Project Manager upon a periodic basis, as may be recommended or required by the County Project Manager, to coordinate any and all activities, services and responsibilities required of HE under this Agreement.

**ARTICLE VII**

**Insurance**

7.1 **Insurance.** HE shall, while performing the Services required under and for the duration of this Agreement, comply with the insurance requirements of Special Condition No. 9 of the RFP. In addition, HE shall provide certificates of insurance identifying the “Johnson County Board of Park and Recreation Commissioners, Johnson County Park and Recreation District of Johnson County, Kansas and their respective officers, Commissions, Agencies and employees as
Additional Insureds for claims caused in whole or in part by the HE’s negligent acts or omissions during the HE’s operations and during HE’s completed operations. The Additional Insured requirement, as to the Johnson County Board of Park and Recreation Commissioners, shall be subject to the limitation of liability for claims within the scope of the Kansas Tort Claims Act, K.S.A. 75-6101 et seq., and amendments thereto, and does not create a partnership or joint venture between JCP RD and HE under this Contract. HE shall maintain the required insurance for the duration of the project.

**ARTICLE VIII**
Assignment and Subcontracting

8.1 *No Assignment.* HE shall not assign, transfer, convey, sublet or otherwise dispose of neither this Agreement nor any of its rights and obligations hereunder, without the prior written consent of JCP RD, but in no event shall such consent relieve HE from its obligations under the terms of this Agreement.

8.2 *Subcontracting.* It is understood and acknowledged by the Parties that should HE intend to subcontract some services required hereunder to parties other than those that may be named in its Proposal, HE agrees to obtain prior written consent from JCP RD of any such subcontracting relationships, and of the services such subcontractors are to perform. Notwithstanding this procedure, such subcontractors shall at all times remain under the direction and control of HE and not JCP RD, and HE shall remain fully liable to the JCP RD for the proper discharge of all the services required hereunder regardless of by whom they are performed.

**ARTICLE IX**
Agreement Status

9.1 *Agreement Status.* This Agreement is, and shall be deemed, an independent contract for services and HE and all persons providing services on behalf of HE under this Agreement shall be deemed independent contractors and shall not be deemed under any circumstances as employees of JCP RD.

**ARTICLE X**
Amendment

10.1 *Amendment.* This Agreement may be amended by supplemental writing mutually agreed to and executed by duly authorized representatives of the Parties.

**ARTICLE XI**
Notices

11.1 *Notices.* Any notices, bills, invoices, reports, payment of correspondence required or permitted by or from one Party to the other under this Agreement shall be made in writing,
delivered personally, or by United States mail, postage prepaid to the following addresses, or other location as either Party may from time to time designate:

JCPRD: Johnson County Park and Recreation District
      Cliff Middleton, Manager
      Planning & Development Department
      JCP RD Administration Building
      7900 Renner Road
      Shawnee, KS 66219

JOHNSON COUNTY: Johnson County, Kansas
     Brad Reinhardt, Director of Facilities
     Facilities Management
     111 S. Cherry Street, Suite 2100
     Olathe, Kansas 66061

HE: Herzig Engineering
    Bob Herzig, PE
    Principal and Owner
    11108 N. Oak Trafficway, Suite 104
    Kansas City, MO 64155

ARTICLE XII
Termination

12.1 Termination. Notwithstanding any other provision to the contrary, the COUNTY and HE hereby agree that the following shall prevail with respect to termination of this Agreement:

.1 For cause. Should HE be found in violation of any of the terms and conditions of this Agreement, it shall be deemed in breach of this Agreement. JCP RD shall thereupon notify HE, in writing, of such violation, giving HE thirty (30) days to cure such breach. Should HE fail to cure such breach, JCP RD shall then have the right to terminate this Agreement for cause by giving written notice to HE of such termination and specifying the effective date of such termination. In the event of termination for cause, HE shall be entitled to just and equitable compensation for Services satisfactorily performed by HE through the date of termination specified by JCP RD, less costs and damages incurred by JCP RD as a result of HE’s breach.

.2 For lack of funds. Should, for whatever reason, adequate funding not be made available to JCP RD to support or justify continuation of the level of Services to be provided by HE under this Agreement, JCP RD may terminate or reduce the amount of service to be provided by HE under this Agreement. In such event, JCP RD shall notify HE, in writing, at least thirty (30) days in advance of such termination or reduction of services for lack of funds, in
which case, HE shall be reimbursed for all costs and expenses incurred prior to the date of such notice.

.3 For convenience. JCPRD reserves the right to terminate this Agreement, at any time, for the convenience of JCPRD, without penalty or recourse, by giving HE written notice of such termination thirty (30) days prior to the termination. HE shall be entitled to just and equitable compensation for Services satisfactorily performed by HE through the date of termination specified by JCPRD.

.4 For lack of payment. HE reserves the right to terminate this Agreement for lack of payment by JCPRD for Services performed by HE under this Agreement and accepted by JCPRD.

ARTICLE XIII
Waiver of Breach

13.1 Waiver of Breach. The waiver of any Party hereto of a breach of any of the provisions of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.

ARTICLE XIV
Governing Law; Venue

14.1 Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Kansas.

14.2 Venue. In the event that the Parties hereto are unable to resolve any controversy or claim arising out of, or relating to, this Agreement or the making, performance or interpretation of it without resort to the courts, the Parties agree that exclusive jurisdiction and venue over such matter shall be in the District Court of Johnson County, Kansas.

ARTICLE XV
Force Majeure

15.1 Force Majeure. This Agreement is subject to, and HE shall not be responsible or liable for, delay, directly or indirectly, resulting from or contributed to by any foreign or domestic embargoes, seizures, acts of God, insurrections, war or the adoption or enactment of any law, ordinance, regulation, ruling or order directly or indirectly interfering with or rendering more burdensome the videotaping, production, or delivery hereunder. In the event that any performance hereunder is suspended or delayed by reason of any one or more of the occurrences aforesaid, any and all performance so suspended or delayed shall be made after such disabilities have ceased to exist.
ARTICLE XVI
Miscellaneous

16.1 **Good Standing.** HE shall be authorized to do business in the State of Kansas and must maintain good standing pursuant to the laws of this State and any other applicable law.

16.2 **Warranty of Ability to Perform.** HE shall warrant that there is no action, suit, proceeding, inquiry or investigation at law or equity, before or by a court, governmental agency, public Board or body, pending or threatened, to the best of HE’s knowledge, that would in any way prohibit, restrain or enjoin the execution or delivery of HE’s obligations, diminish HE’s obligations, or diminish HE’s financial ability to perform the terms of this Agreement. During the course of this Agreement, if any of the aforementioned events occur, HE must immediately notify JCPRD, in writing, of the same.

16.3 **Dispute Resolution.** The Parties are fully committed to working with each other throughout the period of this Agreement, and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, JCPRD and HE each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions hereunder.

16.4 **Governmental Restrictions.** In the event any governmental restriction is imposed that would necessitate alteration of the performance of the Services provided under this Agreement prior to delivery, HE shall immediately notify JCPRD, in writing, indicating the specific regulation that necessitates the alteration.

16.5 **Documents and Records.** HE shall maintain full and accurate records of all matters covered by this Agreement, and JCPRD shall have access during regular business hours to such records. Access to such records shall extend to appropriate federal, state and other local authorities. All meeting notes, reports, design plans, specifications, special studies, records, Project deliverables and other data prepared under this Agreement shall become the property of JOHNSON COUNTY and JCPRD upon completion or termination of the Services of HE and payment by JCPRD to HE for such Services. All materials produced in performance of work under this Agreement shall be and become the sole property of the JOHNSON COUNTY and JCPRD, and HE shall have no right or property interest in any produced materials and hereby agrees that it shall not reserve any interest by license, copyright or other proprietary claim in or to any such materials.

16.6 **Nondiscrimination.** HE agrees to not discriminate on the basis of race, religion, color, sex, disability, national origin, ancestry, or other circumstance prohibited by federal, state or local law, rule or regulation in its operation, management and employment practices and with respect to availability and accessibility of products and services to the public. HE agrees to comply with all applicable laws of the State of Kansas and of the United States of America, regarding such non-
discrimination and equality of opportunity.

16.7 Funding Clause. This Agreement and any renewal thereof, is subject to the provisions of the Kansas Cash Basis Law, K.S.A. 10-1101 et seq., and amendments thereto (the “Act”). By virtue of this Act, JCPRD is obligated only to pay periodic payments as contemplated herein as may lawfully be made from funds budgeted and appropriated for that purpose during JCPRD’s current budget year (i.e., January 1 to December 31) or from funds made available from any lawfully operated revenue producing source.

16.8 Confidentiality. To the extent permitted by law, each Party agrees that it will not disclose any privileged or confidential information obtained or learned from the other Party as a result of this Agreement, except as may be required in connection with any audit conducted by a third party payor or as required by law, regulation or order of a court with jurisdiction or as set forth below. Without limiting the generality of the foregoing, the Parties agree that they will maintain the confidentiality of any business or financial records, supply and service information, marketing information, personnel information, information contained or encompassed in all computer hardware, algorithms, software and other technology, and/or matters of practices of the other as to other technology, and/or matters or practices of the other to which they have access or knowledge pursuant to this Agreement (“Proprietary Information”) during the term of this Agreement and thereafter, regardless of the reason for the termination of this Agreement. Upon expiration or termination of this Agreement or upon demand, whichever is earlier, each Party will immediately return any and all Proprietary Information belonging to the other Party.

16.9 Change in Laws; Adverse Determination. JCPRD and HE recognize that this Agreement is subject, at all times, to applicable state, local and federal laws, rules and regulations. The Parties further recognize that this Agreement is subject to amendments to such laws, rules and regulations, new legislation, and rulings by courts of competent jurisdiction. Any provisions of law that invalidate, or otherwise are inconsistent with, the terms of this Agreement or that would cause one or both of the Parties to be in violation of any law, rule or regulation, will be deemed to have superseded the terms of the Agreement; provided, however, that the Parties agree to exercise their best reasonable efforts to accommodate the terms and intent of this Agreement by amendment to this Agreement, to the greatest extent possible consistent with the requirements of law. Notwithstanding the foregoing, in the event of any judicial, legislative, regulatory or administrative change or determination, whether federal, state or local, which has or would have a significant adverse impact on either Party hereto in connection with the performance of this Agreement, or in the event that continued performance by either Party of any term, covenant, condition or provision of this Agreement would for any reason be in violation of any statute, regulation, or otherwise be deemed illegal or subject either Party to sanctions or penalties under any federal, state or local law, either Party may elect to terminate this Agreement immediately upon prior written notice to the other Party, notwithstanding the termination provisions of Article XII of this Agreement.

ARTICLE XVII
Severability
17.1 **Severability.** All agreements, covenants and clauses contained herein are severable, and in the event any of them shall be deemed or held to be unconstitutional, invalid or unenforceable, the remainder of this Agreement shall be interpreted as if such unconstitutional, invalid or unenforceable agreements, clauses and covenants were not contained herein.

**ARTICLE XVIII**
Entire Agreement

18.1 **Entire Agreement.** This Agreement represents the entire agreement between the JCPRD and HE with respect to the provision of professional consulting engineering services required hereunder of HE for JCPRD, and supersedes all prior understandings or promises, whether oral or written, between the Parties pertaining to or in connection with this Agreement.

**IN WITNESS WHEREOF,** the Parties hereto have caused this Agreement to be executed in multiple counterparts by their duly authorized representatives and made effective the day and year first above written.

**HERZIG ENGINEERING**

By: ____________________________  

____________________________  

Printed name  

____________________________  

Title

**JCRPD**

By: ____________________________  

____________________________  

Printed name  

____________________________  

Title

**APPROVAL AS TO FORM:**

By: ____________________________

Fred J. Logan, Jr  
Legal Counsel for JCPRD
AGREEMENT FOR ARC FLASH HAZARD ANALYSIS AND COMPLIANCE
PHASE 2 PROFESSIONAL CONSULTING ENGINEERING SERVICES

THIS AGREEMENT, made in Olathe, Johnson County, Kansas, and entered into as of the
6th day of December, 2018 (the “Effective Date”), by and between the JOHNSON
COUNTY, KANSAS (hereinafter the "COUNTY"), and HERZIG ENGINEERING, with offices
located at 11108 N. Oak Trafficway, Suite 104, Kansas City, MO 64155 (hereinafter “HE”), each
hereinafter a “Party”, and together hereinafter the “Parties”.

WITNESSETH:

WHEREAS, the COUNTY solicited formal sealed proposals from firms qualified to provide
the COUNTY with certain consulting engineering services to implement an arc flash hazard analysis
and compliance program for multiple COUNTY facilities; and

WHEREAS, in response to the COUNTY’s solicitation, HE duly submitted a written
proposal to the COUNTY for the desired consulting engineering services; and

WHEREAS, on November 15, 2018, the Board of County Commissioners of Johnson
County, Kansas authorized a contract with HE to provide the COUNTY with such professional
services; and

WHEREAS, the COUNTY and HE hereby agree to accept the terms and conditions of this
Agreement.

NOW, THEREFORE, in consideration of the above and foregoing recitals, the mutual
promises and covenants hereinafter given, and for other good and valuable consideration, the Parties
hereto agree as follows:

ARTICLE I
Purpose

1.1 Purpose. The COUNTY hereby engages the professional consulting engineering
services of HE to conduct and implement an arc flash hazard analysis and compliance program to
integrate with its Electrical Safety Program, provide additional safety measures for employees and
contractors, and achieve compliance with OSHA NFPA 70E standards (hereinafter the “Services”),
and HE hereby agrees to provide the COUNTY with such Services in accordance with, and subject
to, the terms and conditions of this Agreement. The Parties acknowledge and agree that the National
Fire Protection Association (NFPA) Code 70E lists the necessary standards and requirements for the
safe operation of electrical switchgear and distribution equipment used in the facility electrical
infrastructure. The results of the arc flash hazard analysis will be used to determine arc flash hazard
ratings for each component in the electrical system. The results may also be used to plan major,
minor, urgent, and long-term corrective action, and short and long term financial planning for regular maintenance and capital improvement projects.

ARTICLE II
Contract Documents

2.1 The Services to be provided by HE hereunder shall be governed by the terms and conditions of this Agreement, and any attachments and/or exhibits attached hereto, and the respective standard terms and conditions, special conditions, provisions, and representations contained within the documents enumerated below, which are incorporated herein by reference, and which together with the terms and conditions of this Agreement, and any attachments and/or exhibits attached hereto, comprise the Contract Documents:

2.1.1 The COUNTY’s Request for Proposal No. 2018-096, and any amendments and/or addenda subsequently issued thereto (collectively hereinafter the “RFP”); and

2.1.2 HE’s written proposal of September 17, 2018 (hereinafter the “Proposal”), duly submitted to the COUNTY in response to the RFP; and

2.1.3 HE’s proposed cost submittal of October 9, 2018 (hereinafter the “Cost Proposal”), duly submitted in accordance with the requirements of the RFP.

2.2 It is hereby acknowledged and agreed that the RFP and HE’s Proposal and Cost Proposal, if not attached hereto, shall be on file with the COUNTY’s Office of Treasury and Financial Management, Purchasing Division, Johnson County Administration Building, 111 South Cherry, Suite 2400, Olathe, Kansas 66061-3486, or such other office or location as the County may from time to time designate.

2.3 Whenever the terms "respondent", "successful respondent", "bidder", "successful bidder", "contractor", "successful contractor", "consultant" or terms of similar purport are used in the Contract Documents, such terms shall be deemed to mean and refer to HE.

2.4 Should any ambiguity, inconsistency or conflict arise in the interpretation of the Contract Documents, the same shall be resolved by reference first to the terms and conditions of this Agreement, and any attachments or exhibits attached hereto, and then by reference to the terms and conditions, provisions, and representations contained within the documents in the order enumerated in Section 2.1 hereinabove.

ARTICLE III
Nature and Scope of Services
3.1 Nature of Services. HE shall, at all times, faithfully, diligently, earnestly and industriously, and to the best of the ability, experience and skills of the personnel it provides, perform all duties and responsibilities necessary to provide the COUNTY with the highest level of quality of professional consulting engineering services in an expeditious and professional manner, consistent with the purpose and requirements of this Agreement, and the COUNTY’s interests and objectives. HE shall exercise that degree of care, expertise, skill and diligence in the performance of the Services as possessed and exercised by other persons providing the same type of professional consulting engineering services under similar circumstances for projects in size, complexity, and scope similar to that of the COUNTY’s hereunder.

3.2 Scope of Services. In providing the COUNTY with the Services required hereunder, HE shall render to the COUNTY those Services and deliverables as specified, outlined and contained in Section 5 - Scope of Services of the RFP (hereinafter referred to as "Basic Services"), consistent with HE’s Project Approach outlined and contained in its Proposal; provided, however, nothing herein shall preclude HE from providing the COUNTY, upon written request, with optional or additional professional services relative to the scope, purpose and requirements of this Agreement.

ARTICLE IV
Period of Performance

4.1 Period of Performance. Unless otherwise established as determined by the Parties hereto at the making of this Agreement, the period of performance for completion of the Services required of HE under this Agreement shall be fully rendered by HE in accordance with a final project timeline schedule (hereinafter the "Project Schedule") prepared by HE and submitted to the COUNTY, on or in a timely fashion immediately following execution of this Agreement by the Parties. If not otherwise established at the making of this Agreement, the Project Schedule so submitted by HE shall be subject to the COUNTY’s review and approval. Upon approval of a Project Schedule, the same shall form and be made a part of this Agreement. Subject to the provisions of Article X of this Agreement, the Project Schedule may be amended or extended by written addendum of the Parties.

ARTICLE V
Compensation

5.1 Compensation. As compensation for Basic Services rendered by HE hereunder, the COUNTY agrees to pay HE in an amount not to exceed Three Hundred Forty-One Thousand Fifty Dollars ($341,050.00) (hereinafter the "Contract Price"). The Contract Price shall be full compensation for labor, expenses, subsistence, transportation, overhead and profit incurred in performance of the described Basic Services under this Agreement. Payments shall be made within thirty (30) days of the COUNTY’s receipt of invoices from HE documenting the services and deliverables rendered and deemed acceptable to the COUNTY.
5.2 *Optional or Additional Services.* Should HE be requested to provide optional or additional services for the COUNTY relative to the scope, purpose and requirements of this Agreement, HE shall be compensated for such services rendered and expenses reasonably incurred in the amount and rates as may be mutually agreed to by the Parties.

**ARTICLE VI**
Coordination of Services

6.1 *Coordination of Services; Project Representative.* HE shall coordinate all Services to be provided by HE under this Agreement with the COUNTY’s Facilities Director, or designee thereof (the “County Project Manager”). Whenever this Agreement requires, or it becomes necessary for, HE to advise, provide or communicate information to, or seek the approval of, the COUNTY in matters relating to HE’s Services hereunder, HE shall direct all such communications and requests for approval to the County Project Manager. Further, HE shall, upon request, meet with the County Project Manager upon a periodic basis, as may be recommended or required by the County Project Manager, to coordinate any and all activities, services and responsibilities required of HE under this Agreement.

**ARTICLE VII**
Insurance

7.1 *Insurance.* HE shall, while performing the Services required under and for the duration of this Agreement, comply with the insurance requirements of Special Condition No. 9 of the RFP.

**ARTICLE VIII**
Assignment and Subcontracting

8.1 *No Assignment.* HE shall not assign, transfer, convey, sublet or otherwise dispose of neither this Agreement nor any of its rights and obligations hereunder, without the prior written consent of the COUNTY, but in no event shall such consent relieve HE from its obligations under the terms of this Agreement.

8.2 *Subcontracting.* It is understood and acknowledged by the Parties that should HE intend to subcontract some services required hereunder to parties other than those that may be named in its Proposal, HE agrees to obtain prior written consent from the COUNTY of any such subcontracting relationships, and of the services such subcontractors are to perform. Notwithstanding this procedure, such subcontractors shall at all times remain under the direction and control of HE and not the COUNTY, and HE shall remain fully liable to the COUNTY for the proper discharge of all the services required hereunder regardless of by whom they are performed.
ARTICLE IX
Agreement Status

9.1 Agreement Status. This Agreement is, and shall be deemed, an independent contract for services and HE and all persons providing services on behalf of HE under this Agreement shall be deemed independent contractors and shall not be deemed under any circumstances as employees of the COUNTY.

ARTICLE X
Amendment

10.1 Amendment. This Agreement may be amended by supplemental writing mutually agreed to and executed by duly authorized representatives of the Parties.
ARTICLE XI
Notices

11.1 Notices. Any notices, bills, invoices, reports, payment of correspondence required or permitted by or from one Party to the other under this Agreement shall be made in writing, delivered personally, or by United States mail, postage prepaid to the following addresses, or other location as either Party may from time to time designate:

COUNTY:  Johnson County, Kansas
           Brad Reinhardt, Director of Facilities
           Facilities Management
           111 S. Cherry Street, Suite 2100
           Olathe, Kansas 66061

HE:  Herzig Engineering
      Bob Herzig, PE
      Principal and Owner
      11108 N. Oak Trafficway, Suite 104
      Kansas City, MO 64155

ARTICLE XII
Termination

12.1 Termination. Notwithstanding any other provision to the contrary, the COUNTY and HE hereby agree that the following shall prevail with respect to termination of this Agreement:

.1 For cause. Should HE be found in violation of any of the terms and conditions of this Agreement, it shall be deemed in breach of this Agreement. The COUNTY shall thereupon notify HE, in writing, of such violation, giving HE thirty (30) days to cure such breach. Should HE fail to cure such breach, the COUNTY shall then have the right to terminate this Agreement for cause by giving written notice to HE of such termination and specifying the effective date of such termination. In the event of termination for cause, HE shall be entitled to just and equitable compensation for Services satisfactorily performed by HE through the date of termination specified by the COUNTY, less costs and damages incurred by the COUNTY as a result of HE's breach.

.2 For lack of funds. Should, for whatever reason, adequate funding not be made available to the COUNTY to support or justify continuation of the level of Services to be provided by HE under this Agreement, the COUNTY may terminate or reduce the amount of service to be provided by HE under this Agreement. In such event, the COUNTY shall notify HE, in writing, at least thirty (30) days in advance of such termination or reduction of services for lack of funds, in which case, HE shall be reimbursed for all costs and
expenses incurred prior to the date of such notice.

.3 For convenience. The COUNTY reserves the right to terminate this Agreement, at any time, for the convenience of the COUNTY, without penalty or recourse, by giving HE written notice of such termination thirty (30) days prior to the termination. HE shall be entitled to just and equitable compensation for Services satisfactorily performed by HE through the date of termination specified by the COUNTY.

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ARTICLE XIII
Waiver of Breach

13.1 Waiver of Breach. The waiver of any Party hereto of a breach of any of the provisions of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.

ARTICLE XIV
Governing Law; Venue

14.1 Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Kansas.

14.2 Venue. In the event that the Parties hereto are unable to resolve any controversy or claim arising out of, or relating to, this Agreement or the making, performance or interpretation of it without resort to the courts, the Parties agree that exclusive jurisdiction and venue over such matter shall be in the District Court of Johnson County, Kansas.

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Force Majeure

15.1 Force Majeure. This Agreement is subject to, and HE shall not be responsible or liable for, delay, directly or indirectly, resulting from or contributed to by any foreign or domestic embargoes, seizures, acts of God, insurrections, war or the adoption or enactment of any law, ordinance, regulation, ruling or order directly or indirectly interfering with or rendering more burdensome the videotaping, production, or delivery hereunder. In the event that any performance hereunder is suspended or delayed by reason of any one or more of the occurrences aforesaid, any and all performance so suspended or delayed shall be made after such disabilities have ceased to exist.
ARTICLE XVI  
Miscellaneous

16.1 Good Standing. HE shall be authorized to do business in the State of Kansas and must maintain good standing pursuant to the laws of this State and any other applicable law.

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16.3 Dispute Resolution. The Parties are fully committed to working with each other throughout the period of this Agreement, and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, the COUNTY and HE each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions hereunder.

16.4 Governmental Restrictions. In the event any governmental restriction is imposed that would necessitate alteration of the performance of the Services provided under this Agreement prior to delivery, HE shall immediately notify the COUNTY, in writing, indicating the specific regulation that necessitates the alteration.

16.5 Documents and Records. HE shall maintain full and accurate records of all matters covered by this Agreement, and the COUNTY shall have access during regular business hours to such records. Access to such records shall extend to appropriate federal, state and other local authorities. All meeting notes, reports, design plans, specifications, special studies, records, Project deliverables and other data prepared under this Agreement shall become the property of the COUNTY upon completion or termination of the Services of HE and payment by the COUNTY to HE for such Services. All materials produced in performance of work under this Agreement shall be and become the sole property of the COUNTY, and HE shall have no right or property interest in any produced materials and hereby agrees that it shall not reserve any interest by license, copyright or other proprietary claim in or to any such materials.

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16.7 **Funding Clause.** This Agreement and any renewal thereof, is subject to the provisions of the Kansas Cash Basis Law, K.S.A. 10-1101 et seq., and amendments thereto (the “Act”). By virtue of this Act, the COUNTY is obligated only to pay periodic payments as contemplated herein as may lawfully be made from funds budgeted and appropriated for that purpose during the COUNTY’s current budget year (i.e., January 1 to December 31) or from funds made available from any lawfully operated revenue producing source.

16.8 **Confidentiality.** To the extent permitted by law, each Party agrees that it will not disclose any privileged or confidential information obtained or learned from the other Party as a result of this Agreement, except as may be required in connection with any audit conducted by a third party payor or as required by law, regulation or order of a court with jurisdiction or as set forth below. Without limiting the generality of the foregoing, the Parties agree that they will maintain the confidentiality of any business or financial records, supply and service information, marketing information, personnel information, information contained or encompassed in all computer hardware, algorithms, software and other technology, and/or matters of practices of the other as to other technology, and/or matters or practices of the other to which they have access or knowledge pursuant to this Agreement (“Proprietary Information”) during the term of this Agreement and thereafter, regardless of the reason for the termination of this Agreement. Upon expiration or termination of this Agreement or upon demand, whichever is earlier, each Party will immediately return any and all Proprietary Information belonging to the other Party.

16.9 **Change in Laws; Adverse Determination.** The COUNTY and HE recognize that this Agreement is subject, at all times, to applicable state, local and federal laws, rules and regulations. The Parties further recognize that this Agreement is subject to amendments to such laws, rules and regulations, new legislation, and rulings by courts of competent jurisdiction. Any provisions of law that invalidate, or otherwise are inconsistent with, the terms of this Agreement or that would cause one or both of the Parties to be in violation of any law, rule or regulation, will be deemed to have superseded the terms of the Agreement; provided, however, that the Parties agree to exercise their best reasonable efforts to accommodate the terms and intent of this Agreement by amendment to this Agreement, to the greatest extent possible consistent with the requirements of law. Notwithstanding the foregoing, in the event of any judicial, legislative, regulatory or administrative change or determination, whether federal, state or local, which has or would have a significant adverse impact on either Party hereto in connection with the performance of this Agreement, or in the event that continued performance by either Party of any term, covenant, condition or provision of this Agreement would for any reason be in violation of any statute, regulation, or otherwise be deemed illegal or subject either Party to sanctions or penalties under any federal, state or local law, either Party may elect to terminate this Agreement immediately upon prior written notice to the other Party, notwithstanding the termination provisions of Article XII of this Agreement.
ARTICLE XVII
Severability

17.1  Severability. All agreements, covenants and clauses contained herein are severable, and in the event any of them shall be deemed or held to be unconstitutional, invalid or unenforceable, the remainder of this Agreement shall be interpreted as if such unconstitutional, invalid or unenforceable agreements, clauses and covenants were not contained herein.

ARTICLE XVIII
Entire Agreement

18.1  Entire Agreement. This Agreement represents the entire agreement between the COUNTY and HE with respect to the provision of professional consulting engineering services required hereunder of HE for the COUNTY, and supersedes all prior understandings or promises, whether oral or written, between the Parties pertaining to or in connection with this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in multiple counterparts by their duly authorized representatives and made effective the day and year first above written.

HERZIG ENGINEERING
By:  Robert Herzig
Printed name
PRESIDENT
Title

JOHNSON COUNTY, KANSAS
By:  Jim Allen
Printed name
Vice Chairman
Title
JOHNSON COUNTY PARK AND RECREATION DISTRICT
BOARD OF PARK AND RECREATION COMMISSIONERS

BRIEFING SHEET

Presented to:          Parks & Golf Courses          Meeting Date:          02/11/2019

Project Name/Identification:  Consider Bids for 2019 JCRPD On-Call Mechanical & Plumbing Services
                                PRK 2019-02

Contact:          Cliff Middleton          Phone:          913-826-3425

ISSUE: Staff requests JCRPD Board to consider and award bids per staff recommendation for on-call mechanical and plumbing services.

BACKGROUND: Bids were opened for the item listed above on January 24, 2019. The results of the bid are shown on the attached tab sheet. 261 firms were invited to submit bids for the term and supply contract with four firms responding. Staff recommends accepting the contractor as indicated on the bid tabulation. This term and supply contract provides JCRPD access to negotiated rates for mechanical and plumbing services that are not available in the JCRPD inventory.

ANALYSIS: This is a bid that has been used in past to complete various repair and development projects.

FUNDING REVIEW: Are there funding implications involved?  No  Yes  If Yes, explain: The projects are funded in the CIP, General Fund or in maintenance budgets.

ALTERNATIVES:    Staff Recommendation

- Recommend consent approval as recommended by staff ................................................................. ☒
- Recommend consent approval as determined/modified by committee .............................................
- Recommend discussion and action by the full Board at Board Meeting.............................................
- Recommend denial of request ............................................................................................................
- Table for additional consideration ...................................................................................................
- Take no action .................................................................................................................................
- Other: ............................................................................................................................................

If other, explain:

Consequences or additional Information (if any):

LEGAL REVIEW: Is legal counsel review required?  No  Yes  If yes, explain: The bid process used the District’s standard and approved procurement terms and conditions. Legal Counsel will provide review and approval as to form, prior to execution by the Board Chair.

SUGGESTED RECOMMENDATION/MOTION:
It was the consensus of the committee to recommend Board consent approval of the staff recommendation to accept bids and authorize term and supply contracts with the responsive and qualified firms – Crystal Trenching Company, Inc., The Fagan Company, and Plumbing by Fisher, Inc. – on items as identified in the bid tabulation.

SUPPORTING DOCUMENTATION:
1. Attachment A – bid tabulation and staff recommendation
<table>
<thead>
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<th>Responding Supplier</th>
<th>City</th>
<th>State</th>
<th>Response Submitted</th>
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<th>Response Total</th>
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Please note: Lines Responded and Response Total only includes responses to specification. No alternate response data is included.

**Staff Recommendation:**
Accept bids from Plumbing By Fisher, Inc. for Line Items # 1,2,3,7,8,11,12,13,17,18
Accept bids from Crystal Trenching Company, Inc. for Line Items # 1,2,3,7,8,9,10,11,12,13,17,18,19,20
Accept bids from The Fagan Company for Line Items # 4
Reject all bids from DMC Service, Inc. as prices exceed Superintendent's Estimate.
### 1. Licensed Plumber (DP)

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<tr>
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<th>QTY</th>
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### 2. Plumber’s Apprentice / Assistant

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### 3. Plumber’s Laborer

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### 5. HVAC Apprentice / Assistant

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### 6. HVAC Service Technician

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<td>$229.00</td>
<td>$250.00 per day equipment rental + $229.00</td>
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13 Plumber’s Laborer (EMERGENCY WORK)
14 Licensed HVAC (DM) (EMERGENCY WORK)
15 HVAC Apprentice / Assistant (EMERGENCY WORK)
16 HVAC Service Technician (EMERGENCY WORK)
17 Mini Backhoe Excavator (with Operator) (EMERGENCY WORK)
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<th>QTY</th>
<th>UOM</th>
<th>Price</th>
<th>Extended</th>
<th>Supplier Notes</th>
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<td>The Fagan Company</td>
<td>1</td>
<td>HR</td>
<td>$229.00</td>
<td>$229.00</td>
<td>$250.00 per day equipment rental + $229.0</td>
<td></td>
<td></td>
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### Directional Boring Unit (EMERGENCY WORK)

<table>
<thead>
<tr>
<th>Supplier</th>
<th>QTY</th>
<th>UOM</th>
<th>Price</th>
<th>Extended</th>
<th>Supplier Notes</th>
<th>Manufacturer</th>
<th>Manuf Num</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plumbing By Fisher, Inc.</td>
<td>1</td>
<td>HR</td>
<td>$229.00</td>
<td>$229.00</td>
<td>$250.00 per day equipment rental + $229.0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DMC Service, Inc.</td>
<td>1</td>
<td>HR</td>
<td>$229.00</td>
<td>$229.00</td>
<td>No Bid</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Fagan Company</td>
<td>1</td>
<td>HR</td>
<td>$230.00</td>
<td>$230.00</td>
<td>No Bid</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Crystal Trenching Company Inc</td>
<td>1</td>
<td>HR</td>
<td>$360.00</td>
<td>$360.00</td>
<td>No Bid</td>
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<tr>
<td>JCPRD Estimate (JCPRD)</td>
<td>1</td>
<td>HR</td>
<td>$360.00</td>
<td>$360.00</td>
<td>No Bid</td>
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### Equipment Mobilization & Demobilization (EMERGENCY WORK)

<table>
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<tr>
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<th>QTY</th>
<th>UOM</th>
<th>Price</th>
<th>Extended</th>
<th>Supplier Notes</th>
<th>Manufacturer</th>
<th>Manuf Num</th>
</tr>
</thead>
<tbody>
<tr>
<td>DMC Service, Inc.</td>
<td>1</td>
<td>HR</td>
<td>$450.00</td>
<td>$450.00</td>
<td>No Bid</td>
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</tr>
<tr>
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<td>HR</td>
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<td>$450.00</td>
<td>No Bid</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Crystal Trenching Company Inc</td>
<td>1</td>
<td>HR</td>
<td>$658.00</td>
<td>$658.00</td>
<td>$100.00 each way + $658.00 per hour</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Fagan Company</td>
<td>1</td>
<td>HR</td>
<td>$658.00</td>
<td>$658.00</td>
<td>$100.00 each way + $658.00 per hour</td>
<td></td>
<td></td>
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<tr>
<td>JCPRD Estimate (JCPRD)</td>
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<td>HR</td>
<td>$700.00</td>
<td>$700.00</td>
<td>No Bid</td>
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</tbody>
</table>
## ISSUE:
Staff requests JCPRD Board to consider and award bids per staff recommendation for on-call electrical services.

## BACKGROUND:
Bids were opened on January 24, 2019. The results of the bid are shown on the attached tab sheet. 237 firms were invited to submit bids for the term and supply contract. 3 firms responded. Staff recommends accepting the contractor as indicated on the bid tabulation. This term and supply contract provides JCPRD access to negotiated rates for electrical services that are not available in the JCPRD inventory.

## ANALYSIS:
This is a bid that has been used in past to complete various repair and development projects.

## FUNDING REVIEW:
Are there funding implications involved?  
- [ ] No  
- [x] Yes  
*If Yes, explain:* The projects are funded in the CIP, General Fund or in maintenance budgets.

## ALTERNATIVES:

<table>
<thead>
<tr>
<th>Staff Recommendation</th>
</tr>
</thead>
</table>
| Recommend consent approval as recommended by staff  
| Recommend consent approval as determined/modified by committee  
| Recommend discussion and action by the full Board at Board Meeting  
| Recommend denial of request  
| Table for additional consideration  
| Take no action  
| Other:  

*If other, explain:*

Consequences or additional Information (if any):  

- [ ] No  
- [x] Yes  

*If yes, explain:* The bid process used the District’s standard and approved procurement terms and conditions. Legal Counsel will provide review and approval as to form, prior to execution by the Board Chair.

## LEGAL REVIEW:
Is legal counsel review required?  
- [ ] No  
- [x] Yes  

*If yes, explain:* The bid process used the District’s standard and approved procurement terms and conditions. Legal Counsel will provide review and approval as to form, prior to execution by the Board Chair.

## SUGGESTED RECOMMENDATION/MOTION:
It is the consensus of the Committee to recommend Board Consent Approval of the staff recommendation to accept bids and authorize term and supply contracts with the responsive and qualified firms – Heritage Electric, LLC., Pro Circuit, Inc., and Facility Solutions Group – on items as identified in the bid tabulation.

## SUPPORTING DOCUMENTATION:

1. Attachment A – bid tabulation and staff recommendation
**Event Number**  | PRK 2019-01
---|---
**Event Title**  | On-Call Electrical Services
**Event Description**  | IFB
**Issue Date**  | 12/27/2018 05:00:00 PM (CT)
**Close Date**  | 1/24/2019 02:00:00 PM (CT)
**Organization**  | Johnson County, KS
**Workgroup**  | JCPRD
**Event Owner**  | Mark Allen
**Email**  | mark.allen@jocogov.org
**Phone**  | 
**Fax**  | 

<table>
<thead>
<tr>
<th>Responding Supplier</th>
<th>City</th>
<th>State</th>
<th>Response Submitted</th>
<th>Lines Responded</th>
<th>Response Total</th>
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</thead>
<tbody>
<tr>
<td>Heritage Electric, LLC</td>
<td>Olathe KS</td>
<td></td>
<td>1/22/2019 12:21:48 PM (CT)</td>
<td>6</td>
<td>$270.00</td>
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<tr>
<td>Pro Circuit, Inc.</td>
<td>Kansas City MO</td>
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<td>1/23/2019 11:18:21 AM (CT)</td>
<td>6</td>
<td>$384.00</td>
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<tr>
<td>Facility Solutions Group</td>
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<td>1/24/2019 11:21:31 AM (CT)</td>
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<td>$387.50</td>
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<tr>
<td>JCPRD Estimate (JCPRD)</td>
<td>Shawnee Mission</td>
<td>KS</td>
<td>1/22/2019 08:54:04 AM (CT)</td>
<td>6</td>
<td>$497.00</td>
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Please note: Lines Responded and Response Total only includes responses to specification. No alternate response data is included.

**Staff Recommendation:**
Accept bids from Heritage Electric, LLC for Line Items # 1,2,4,5
Accept bids from Pro Circuit, Inc. for Line Items # 1,2,4,5,6
Accept Bids from Facility Solutions Group for Line Items # 1,2,4,5
No bid accepted for Item # 3, as all bids exceeded Superintendent's Estimate.
### 1. Licensed Electrician (per Bid Specifications)

<table>
<thead>
<tr>
<th>Supplier</th>
<th>QTY</th>
<th>UOM</th>
<th>Price</th>
<th>Extended</th>
<th>Supplier Notes</th>
<th>Manufacturer</th>
<th>Manuf Num</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facility Solutions Group</td>
<td>1</td>
<td>HR</td>
<td>$60.00</td>
<td>$60.00</td>
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</tr>
<tr>
<td>Pro Circuit, Inc.</td>
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<td>HR</td>
<td>$65.00</td>
<td>$65.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Heritage Electric, LLC</td>
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<td>HR</td>
<td>$66.00</td>
<td>$66.00</td>
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<td>$101.00</td>
<td>$101.00</td>
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</table>

### 2. Electrician’s Apprentice / Assistant (per Bid Specifications)

<table>
<thead>
<tr>
<th>Supplier</th>
<th>QTY</th>
<th>UOM</th>
<th>Price</th>
<th>Extended</th>
<th>Supplier Notes</th>
<th>Manufacturer</th>
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<tbody>
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<td>$50.00</td>
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<tr>
<td>Pro Circuit, Inc.</td>
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<td>HR</td>
<td>$57.00</td>
<td>$57.00</td>
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<td>$58.00</td>
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### 3. Laborer (per Bid Specifications)

<table>
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<tr>
<th>Supplier</th>
<th>QTY</th>
<th>UOM</th>
<th>Price</th>
<th>Extended</th>
<th>Supplier Notes</th>
<th>Manufacturer</th>
<th>Manuf Num</th>
</tr>
</thead>
<tbody>
<tr>
<td>Heritage Electric, LLC</td>
<td>1</td>
<td>HR</td>
<td>$0.00</td>
<td>$0.00</td>
<td>We do not employ any laborers.</td>
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<td>$45.00</td>
<td>$45.00</td>
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<tr>
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<td>HR</td>
<td>$50.00</td>
<td>$50.00</td>
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### 4. Licensed Electrician (EMERGENCY WORK) (per Bid Specifications)

<table>
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<th>Supplier</th>
<th>QTY</th>
<th>UOM</th>
<th>Price</th>
<th>Extended</th>
<th>Supplier Notes</th>
<th>Manufacturer</th>
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</thead>
<tbody>
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</table>

### 5. Electrician’s Apprentice / Assistant (EMERGENCY WORK) (per Bid Specifications)

<table>
<thead>
<tr>
<th>Supplier</th>
<th>QTY</th>
<th>UOM</th>
<th>Price</th>
<th>Extended</th>
<th>Supplier Notes</th>
<th>Manufacturer</th>
<th>Manuf Num</th>
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</thead>
<tbody>
<tr>
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### 6. Laborer (EMERGENCY WORK) (per Bid Specification)

<table>
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<tr>
<th>Supplier</th>
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<th>UOM</th>
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<th>Extended</th>
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<th>Manuf Num</th>
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<tbody>
<tr>
<td>Heritage Electric, LLC</td>
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<td>HR</td>
<td>$0.00</td>
<td>$0.00</td>
<td>We do not employ any laborers.</td>
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<td></td>
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<tr>
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