

**BOARD OF COUNTY COMMISSIONERS
SARPY COUNTY, NEBRASKA**

**RESOLUTION APPROVING AGREEMENT WITH ViREO FOR PHASE 1 OF THE SARPY
COUNTY PARK SYSTEM MASTER PLAN**

WHEREAS, pursuant to Neb. Rev. Stat. §23-104(6) (Reissue 2007), the County has the power to do all acts in relation to the concerns of the County necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. §23-103 (Reissue 2007), the powers of the County as a body are exercised by the County Board; and,

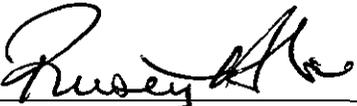
WHEREAS, the County of Sarpy desires to enter into an Agreement with ViREO for services related to phase 1 of the Sarpy County Park System Master Plan, as outlined in the agreement attached hereto as Exhibit A; and,

WHEREAS, said attached agreement is for unique, non-competitive and professional services and is in the best interests of the citizens of Sarpy County.

NOW, THEREFORE, BE IT RESOLVED by the Sarpy County Board of Commissioners that this Board hereby approves and adopts the Agreement with ViREO for phase 1 of the Sarpy County Park System Master Plan, a copy of which is attached.

BE IT FURTHER RESOLVED that the Chairman of this Board, together with the County Clerk, is hereby authorized to sign on behalf of this Board the Agreement with ViREO, a copy of which is attached, and any other related documents, the same being approved by the Board.

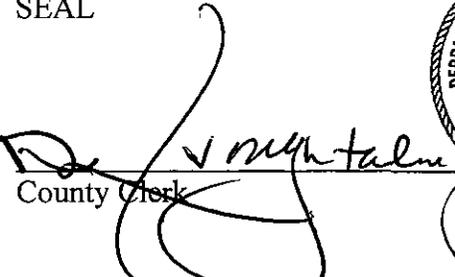
The above Resolution was approved by a vote of the Sarpy County Board of Commissioners at a public meeting duly held in accordance with applicable law on the 6th day of November, 2012.



Sarpy County Board Chairman

Attest:

SEAL



County Clerk





September 19, 2012

Denny Wilson
Sarpy County Engineer
15100 S. 84th Street
Papillion, NE 68046-4627

RE: Sarpy County Park System Master Plan Phase One

Dear Denny,

As promised, enclosed is our Agreement to perform the first exciting phase of the Sarpy County Park System Master Plan. Please review, sign and send one copy back to me when you get a chance. We will then schedule to get this project underway!

Thanks again, Denny, for everything.

Sincerely,

A handwritten signature in black ink that reads "DAVE".

Dave Ciaccio
Owner | Landscape Architect

Kansas City
(formerly PBA)
929 Walnut Suite 700
Kansas City, MO 64106
816-756-5690

Omaha
(formerly CrD)
1111 N. 13th Street Suite 116
Omaha, NE 68102
402-553-5485

AGREEMENT BETWEEN CLIENT AND CONSULTANT
for Planning Projects

CONSULTANT: Vireo (Patti Banks Associates d.b.a. Vireo)
CLIENT: Sarpy County, Nebraska Public Works Department

PROJECT: P-12062
Sarpy County Parks Master Plan Phase I
15100 S 84th Street
Papillion, NE 68046-4627

DATE ISSUED: 09/18/12

Whereas, the Sarpy County Public Works Department, CLIENT, has solicited the services of Vireo, CONSULTANT, to perform professional consulting services in connection with the PROJECT as listed above. This AGREEMENT shall consist of the SCOPE OF SERVICES and GENERAL PROVISIONS, and any exhibits attached thereto for the Project.

DESCRIPTION OF PROJECT:

Phase I will provide a solid baseline of existing and proposed parks, trails and natural resources information upon which to prepare a county-wide master plan.

SCOPE OF SERVICES, FEE SCHEDULE and DELIVERABLE DATES:

See Attachment

This AGREEMENT is subject to the General Conditions attached hereto.

COMPENSATION:

- Lump Sum (includes expenses) \$ 30,000
- Lump Sum plus expenses \$
- Hourly rates plus expenses (per attached hourly rate schedule)
- Hourly rates plus expenses up to a maximum of \$ (per attached hourly rate schedule)
- Cost plus overhead / fixed fee (overhead rate is % of direct labor) / (fixed fee is %)
- Other (please describe)

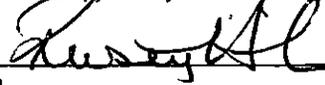
For Hourly Rate Agreements, a Schedule of Hourly Rates is attached and shall be referenced when CONSULTANT invoices CLIENT.
For Hourly Rate Agreements, all expenses shall be billed at cost and will be paid to CONSULTANT.

THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

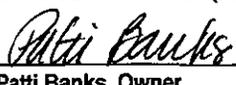
APPROVED & ACCEPTED:

CLIENT: Sarpy County Public Works Department

CONSULTANT: Vireo (Patti Banks Associates d.b.a. Vireo)



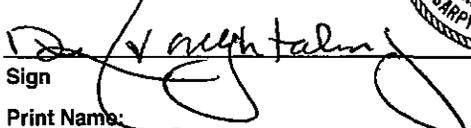
Sign



Patti Banks, Owner . Date 9-18-12

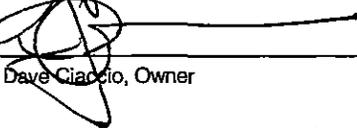
Print Name:

ATTEST:



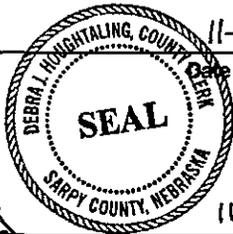
Sign Date 11-6-12

ATTEST:



Dave Giacocio, Owner Date 9-18-12

Print Name:



VIREO GENERAL PROVISIONS

SECTION 1 - ADDITIONAL SERVICES OF VIREO

1.1. Unless otherwise expressly included, Vireo's normal and customary landscape architecture/planning services described here or in the Agreement do not include the following categories of work which shall be referred to as Additional Services.

1.2. If Client and Vireo mutually agree to perform any of the following Additional Services, Client will provide written approval of the agreed upon scope of services, and Vireo shall perform or obtain from others such services and will be paid therefore as provided in the Agreement. Either Client or Vireo may elect not to perform all or any of the following Additional Services without cause or explanation:

1.2.1. Services resulting from significant changes in the general scope, extent or character of the Project or major changes in documentation previously accepted by Client where changes are due to causes beyond Vireo's control.

1.2.2. Providing maps/renderings in addition to those listed in Basic Services.

1.2.3. Providing Public Engagement services in addition to those listed in Basic Services.

1.2.4. Furnishing the services of independent professional associates or consultants for work other than Basic Services.

1.2.5. Services to re-plan some or all of the planning area.

1.2.6. Preparing to serve or serving as a consultant or witness or assisting Client with any litigation, arbitration or other legal or administrative proceeding except where required as part of Basic Services.

1.3. Services in connection with work directive changes to reflect the changes requested by Client if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered.

SECTION 2 - CLIENT'S RESPONSIBILITIES

2.1. Client shall provide all criteria and full information as to Client's requirements for the Project; designate and identify in writing a person to act with authority on Client's behalf in respect of all aspects of the Project; examine and respond promptly to Vireo's submissions; and give prompt written notice to Vireo whenever Client observes or otherwise becomes aware of any defect in Vireo's service.

2.2. Client agrees to pay Vireo the amounts due for services rendered and expenses within thirty (30) days after Vireo has provided its invoice for such services. In the event Client disputes any invoice item, Client shall give Vireo written notice of such disputed item within fifteen (15) days after receipt of such invoice and shall pay to Vireo the undisputed portion of the invoice according to the provisions hereof. If Client fails to pay any invoiced amounts when due, interest will accrue on each unpaid amount at the rate of thirteen percent (13%) per annum from the date due until paid according to the provisions of this Agreement. Interest shall not be charged on any disputed invoice item which is finally resolved in Client's favor. Payment of interest shall not excuse or cure any default or delay in payment of amounts due.

2.2.1. If Client fails to make any payment due Vireo for services and expenses within thirty (30) days after receipt of Vireo's statement therefore, Vireo may, after giving seven days' written notice to Client, suspend services to Client under this Agreement until Vireo has been paid in full all amounts due for services, expenses and charges.

2.3. Client shall also do the following and pay all costs incident thereto:

2.3.1. Guarantee access to and make all provisions for Vireo to enter upon public and private property.

2.3.2. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project.

2.4. Contemporaneously with the execution of the Agreement, Client shall designate in writing an individual to act as its duly authorized Project representative.

SECTION 3 - TERMINATION

3.1. Either party may terminate this Agreement for cause upon giving the other party not less than seven (7) calendar days' written notice of default for any of the following reasons provided, however, that the notified party shall have the same seven (7) calendar day period in which to cure the default:

3.1.1. Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;

3.1.2. Assignment of this Agreement or transfer of the Project by either party to any other entity without the prior written consent of the other party;

3.1.3. Suspension of the Project or Vireo's services by the Client for more than ninety (90) calendar days, consecutive or in the aggregate;

3.1.4. Material changes in the conditions under which this Agreement was entered into, the Scope of Services or the nature of the Project, and the failure of the parties to reach agreement on the compensation and schedule adjustments necessitated by such changes.

3.2. In the event of a "for cause" termination of this Agreement by either party, the Client shall within fifteen (15) calendar days of termination pay Vireo for all services rendered and all reimbursable costs incurred by Vireo up to the date of termination, in accordance with the payment provisions of this Agreement.

3.3. The Client may terminate this Agreement for the Client's convenience and without cause upon giving Vireo not less than seven (7) calendar days' written notice. In the event of any termination that is not the fault of Vireo, the Client shall pay Vireo, in addition to payment for services rendered and reimbursable costs incurred, for all expenses reasonably incurred by Vireo in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs, any fees, costs or expenses incurred by Vireo in preparing or negotiating any proposals submitted to Client for Vireo's Basic or Additional Services under this Agreement and all other expenses directly resulting from the termination and a reasonable profit of not less than 10% of Vireo's actual costs incurred.

SECTION 4 - DISPUTE RESOLUTION

4.1. Mediation

4.1.1. All questions in dispute under this Agreement shall be submitted to mediation. On the written notice of either party to the other of the election to submit any dispute under this Agreement to mediation, each party shall designate their representatives and shall meet within ten (10) days after the service of the notice. The parties themselves shall then attempt to resolve the dispute within ten (10) days of meeting.

4.1.2. Should the parties themselves be unable to agree on a resolution of the dispute, then the parties shall appoint a third party who shall be a competent and impartial party and who shall be acceptable to each party, to mediate the dispute. Any third party mediator shall be qualified to evaluate the performance of both of the parties, and shall be familiar with the design and construction progress. The third party shall meet to hear the dispute within ten (10) days of their selection and shall attempt to resolve the dispute within fifteen (15) days of first meeting.

4.1.3. Each party shall pay the fees and expenses of the third party mediator and such costs shall be borne equally by both parties.

4.2. Arbitration or Litigation

4.2.1. Vireo and Client agree that from time to time, there may be conflicts, disputes and/or disagreements between them, arising out of or relating to the services of Vireo, the Project or this Agreement (hereinafter collectively referred to as "Disputes") which may not be resolved through mediation. Therefore, Vireo and Client agree that all Disputes, arising out of this Agreement or related to the services provided under this Agreement shall be resolved by binding arbitration or litigation at the sole discretion and choice of Vireo. If Vireo chooses arbitration, the arbitration proceeding shall proceed in accordance with the Construction Industry Arbitration Rules of the AAA.

4.2.2. Client hereby agrees that Vireo shall have the right to include Client, by consolidation, joinder or other manner, in any arbitration or litigation involving Vireo and a subconsultant or subcontractor of Vireo or Vireo and any other person or entity, regardless of who originally initiated such proceedings.

4.2.3. If Vireo chooses arbitration or litigation, either may be commenced at any time prior to or after completion of the Project, provided that if arbitration or litigation is commenced prior to the completion of the Project, the obligations of the parties under the terms of this Agreement shall not be altered by reason of the arbitration or litigation being conducted. Any arbitration hearings or litigation shall take place in the County and State of the project location, or in the State of Vireo's home office, Missouri.

4.2.4. The prevailing party in any arbitration or litigation relating to any Dispute shall be entitled to recover from the other party those reasonable attorney fees, costs and expenses incurred by the prevailing party in connection with the Dispute.

SECTION 5 - MISCELLANEOUS

5.1. Reuse of Documents

5.1.1. All documents, including Drawings and Specifications prepared or furnished by Vireo (and Vireo's independent professional associates and consultants) pursuant to this Agreement, are instruments of service in respect of the Project and Vireo shall retain an ownership and property interest therein whether or not the Project is completed. Client may make and retain copies for information and reference in connection with the use and occupancy of the Project by Client and others; however, such documents are not intended or represented to be suitable for reuse by Client or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by Vireo for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to Vireo, or to Vireo's independent professional associates or consultants, and Client shall indemnify and hold harmless Vireo and Vireo's independent professional associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle Vireo to further compensation at rates to be agreed upon by Client and Vireo.

5.2. Electronic Files

5.2.1. By accepting and utilizing any electronic file of any drawing, report or data transmitted by Vireo, the Client agrees for itself, its successors, assigns, insurers and all those claiming under or through it, that by using any of the information contained in the attached electronic file, all users agree to be bound by the following terms. All of the information contained in any electronic file is the work product and instrument of service of Vireo, who shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights, unless the same have previously been transferred in writing to the Client. The information contained in any electronic file is provided for the convenience to the Client and is provided in "as is" condition. The Client is aware that differences may exist between the electronic files transferred and the printed hard-copy original signed and stamped drawings or reports. In the event of a conflict between the signed original documents prepared by Vireo and the electronic files,

which may be transferred, the signed and sealed original documents shall govern. Vireo specifically disclaims all warranties, expressed or implied, including without limitation, and any warranty of merchantability or fitness for a particular purpose with respect to any electronic files. It shall be Client's responsibility to confirm the accuracy of the information contained in the electronic file and that it accurately reflects the information needed by the Client. Client shall not retransmit any electronic files, or any portion thereof, without including this disclaimer as part of any such transmissions. In addition, Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Vireo, its officers, directors, employees and sub consultants against any and all damages, liabilities, claims or costs, including reasonable attorney's and expert witness fees and defense costs, arising from any changes made by anyone other than Vireo or from any reuse of the electronic files without the prior written consent of Vireo.

5.3. Reimbursable Expenses

5.3.1. The expenses incurred by Vireo or Vireo's independent professional associates or consultants directly or indirectly in connection with the Project, and shall be included in periodic billing as applicable as follows:

<u>Classification</u>	<u>Costs</u>
Mileage	IRS Rate
Duplication / Printing	
In-house	Actual Cost
Outside	Actual Cost+10%
Meals	Actual Cost
Postage & Shipping Charges	
for Project Related Materials	Actual Cost
Film and Photo Developing	Actual Cost+10%
Telephone and Fax Transmissions	Actual Cost+10%
Miscellaneous Materials & Supplies	
Applicable only to this Project	Actual Cost+10%
Subconsultants	Actual Cost+10%

5.4. Opinions of Cost

5.4.1. Since Vireo has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, Vireo's opinions of probable Total Project Costs and Construction Cost provided for herein are to be made on the basis of Vireo's experience and qualifications and represent Vireo's best judgment as an experienced and qualified professional landscape architect, familiar with the construction industry; but Vireo cannot and does not guarantee that proposals, bids or actual Total Project or Construction Costs will not vary from opinions of probable cost prepared by Vireo. If prior to the Bidding or Negotiating Phase Client wishes greater assurance as to Total Project or Construction Costs, Client shall employ an independent cost estimator. Vireo's services to modify the Contract Documents to bring the Construction Cost within any limitation established by Client will be considered Additional Services and paid for as such by Client.

5.5. Construction Observation

5.5.1. The visual observation of the Contractor's completed work to permit Vireo, as an experienced and qualified professional, to determine that the inspected work, generally conforms to the Contract Documents. Client understands and agrees that such visual observations are discrete sampling procedures and that such procedures indicate conditions that exist only at the locations and times the observations were performed. In making such visual observations, Vireo makes no guarantees for, and shall have no authority or control over, the Contractor's performance or the Contractor's failure to perform any work in accordance with the Contract Documents. Vireo shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the Contractor or for the Contractor's safety precautions and programs nor for failure by the Contractor to comply with any laws or regulations relating to the performance or furnishing of any work by the Contractor.

5.6. Insurance

5.6.1. Vireo's current general and professional liability insurance and workmen's compensation insurance to protect it from claims for bodily injury, death, property damage, and errors and omissions, as may arise from the performance of services is as follows:

Commercial General Liability	\$1,000,000
Workers' Compensation	\$100,000 / \$500,000
Professional Liability	\$1,000,000
Automobile Liability	\$1,000,000

5.6.2. As required by Client, Vireo and its Subconsultant's shall name the Client as an additional insured of said policy and shall provide a certificate indicating such.

5.7. Controlling Law and Venue

5.7.1. The parties agree that this Agreement and any legal actions concerning its validity, interpretation or performance shall be governed by the laws of the State of Missouri or the State of the project locale. It is further agreed that any legal action between the parties arising out of this Agreement or the performance of services shall be brought in a court of competent jurisdiction in Missouri or the project State locale.

5.8. Subconsultants

5.8.1. Vireo may utilize as necessary in its discretion Subconsultants and other subcontractors. Vireo will be paid for all services rendered by its subconsultants and other subconsultants as set forth in this Agreement.

5.9. Assignment

5.9.1. Client and Vireo each is hereby bound and the partners, successors, executors, administrators and legal representatives of Client and Vireo (and to the extent permitted by paragraph 5.9.2 the assigns of Client and Vireo) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

5.9.2. Neither Client nor Vireo shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Vireo from employing such subconsultants and other subcontractors as Vireo may deem appropriate to assist in the performance of services under this Agreement.

5.9.3. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than Client and Vireo, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Client and Vireo and not for the benefit of any other party. There are no third-party beneficiaries of this Agreement.

5.10. Indemnity

5.10.1. Vireo and the Client mutually agree, to the fullest extent permitted by law, to indemnify and hold each other harmless from any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, relating to personal injury or property damage and arising from their own negligent acts, errors or omissions in the performance of their services under this Agreement, but only to the extent that each party is responsible for such damages, liabilities or costs on a comparative basis of fault.

5.11. Limitation on Damages

5.11.1. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor Vireo, their respective officers, directors, partners, employees, contractors or

subconsultants shall be liable to the other or shall make any claim for any delay damages, any punitive damages or any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this AGREEMENT. This mutual waiver of delay damages and consequential damages shall include, but is not limited to, disruptions, accelerations, inefficiencies, increased construction costs, increased home office overhead, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other delay or consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and Vireo shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this Project.

5.11.2. Notwithstanding any other provision of this Agreement, Client agrees that, to the fullest extent permitted by law, Vireo's total liability to the Client for any and all injuries, claims, losses, expenses, damages, or claims expenses of any kind arising from any services provided by or through Vireo under this Agreement, shall not exceed the cost of attached services. Client acknowledges that such causes include, but are not limited to, Vireo's negligence, errors, omissions, strict liability, breach of contract or breach of warranty.

5.12. Entire Agreement

5.12.1. This Agreement supersedes all prior communications, understandings and agreements, whether oral or written. Amendments to this Agreement must be in writing and signed by the Client and Vireo.

5.13. Liens

5.13.1. Pursuant to Missouri Statute: "NOTICE TO OWNER - FAILURE OF THIS CONTRACTOR TO PAY THOSE PERSONS SUPPLYING MATERIAL OR SERVICES TO COMPLETE THIS CONTRACT CAN RESULT IN THE FILING OF A MECHANIC'S LIEN ON THE PROPERTY WHICH IS THE SUBJECT OF THIS CONTRACT PURSUANT TO CHAPTER 429, RSMO. TO AVOID THIS RESULT YOU MAY ASK THIS CONTRACTOR FOR "LIEN WAIVERS" FROM ALL PERSONS SUPPLYING MATERIAL OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT. FAILURE TO SECURE LIEN WAIVERS MAY RESULT IN YOUR PAYING FOR LABOR AND MATERIAL TWICE "

ATTACHMENT
SARPY COUNTY PARKS MASTER PLAN - PHASE I
SCOPE OF SERVICES - VIREO
September 18, 2012

Task 1 - Project Management and Coordination

- 1.1. **Kickoff Meeting** - Conduct a Kickoff/Scoping meeting with the CLIENT and other County officials as appropriate. Review and refine the project goals, objectives, deliverables, and schedules.
- 1.2. **Routine Project Management** - Conduct routine project management and communications with the CLIENT, and prepare monthly invoices.

Task 2 - Assemble Background Data

- 2.1. **Data Collection** - Obtain background information from the CLIENT. Data will include existing plans, studies, policies, program overview and funding sources, and capital improvement plans and budgets; and information about relevant, upcoming or proposed planning efforts. CLIENT will provide geographic information systems (GIS) data for existing and planned parks and trails, detention basins, county and city political boundaries, infrastructure, topographic contours, and other relevant features. CLIENT will provide natural resources mapping if available. CONSULTANT will obtain additional natural resources information from readily available, public sources.
- 2.2. **GIS Base Map** - CONSULTANT will prepare a GIS base map of existing and planned parks and trails, available natural resources, county and city political boundaries and infrastructure, and other relevant features.

Deliverables:

- Base Map of existing and currently proposed County and municipal parks and trails, and related features
- Updated GIS parks and trails layers, as appropriate

Task 3 - Environmental Sensitivity Index (ESI)

- 3.1. **Develop Vegetative Cover Mapping** - CONSULTANT will develop a county-wide vegetation map using remote sensing (satellite) imagery, such as 4-band National Agricultural Imagery Program (NAIP) data or equivalent.
- 3.2. **Prepare ESI** - CONSULTANT will combine the vegetation data and other natural resources information to rank the environmental value and sensitivity of lands throughout the county. ESI weighting will be consistent with the Omaha ESI developed for the Combined Sewer Overflow program.

Deliverables:

- ESI Summary Map
- One-page overview of the ESI, in lay terms
- Brief technical memorandum documenting the ESI process
- ESI and Vegetative Cover GIS layers