RESOLUTION NO. 2012-59

A RESOLUTION APPROVING AN AGREEMENT WITH TRI-COUNTY COMMUNITY SENIOR CENTER (PACIFIC SENIOR CENTER) FOR SERVICES TO BE PROVIDED TO THE CITY OF PACIFIC.

WHEREAS, the City of Pacific (the "City") desires to obtain services to assist with meetings and makes services available to the citizens in the community; and

WHEREAS, the Tri-County Community Senior Center (Pacific Senior Center) agrees to make the Senior Center available to the City during 2013 on an as needed basis for meetings and other events as may be determined by the City, and make services available to the senior citizens in the community, and to use such funds to offer these services consistent with all applicable laws and subject to such accounting and other lawful conditions; and

NOW, THERFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF PACIFIC, MISSOURI, as follows:

Section 1. The Mayor is hereby authorized to execute on behalf of the City the Agreement with Pacific Senior Center in substantially the form attached hereto as Exhibit 1 and incorporated in this Resolution by reference. The Mayor is authorized to utilize and attach the City's form professional services agreement, as may be promulgated by the City Attorney, as additional, supplemental terms of the agreement if deemed applicable and appropriate. The Mayor and City Administrator are hereby authorized to take such other actions as may be necessary to effect the Agreement and the purposes of this Resolution.

Section 2. This Resolution shall be in full force and effect from and after its passage and approval as provided by law.

ADOPTED BY THE BOARD OF ALDERMEN AND APPROVED BY THE MAYOR ON THE _____ DAY OF _____ 2012.

_____
Herbert C. Adams, Mayor

ATTEST:

_____
City Clerk

City of Pacific, Missouri
CONSULTANT/SERVICES CONTRACT

DEPARTMENT Administration JOB NO. 2012-12

CONTRACT NO. 2012-12 DATE : 12-4-12

THIS AGREEMENT, made and effective as of April 6, 2004, by and between **The City of Pacific**, a municipal corporation hereinafter referred to as City, and **Tri-County Senior Center** hereinafter referred to as "CONSULTANT," with a business address of 800 W. Union St., Pacific, MO 63069.

WITNESSETH: That the parties hereto for the considerations hereinafter set forth agree as follows:

I. SCOPE OF SERVICES

Provide a meeting place for public and non-profit organizations at no charge and on a non-discriminatory basis. This currently includes the City, General Education Development Classes, Mothers Against Drunk Drivers meetings, Cub Scouts, and Girl Scouts, and such other qualifying organizations that may apply. Provide funeral dinners as needed, provide lunch daily for seniors for all persons requesting lunch (within reasonable estimations of demand) at a cost not to exceed $ 3.75 per meal, work with the Care Center to provide health fair information, provide a place for the open to seniors, students, and other community members on a non-discriminatory basis for use for public purposes, including education, health and nutrition, and exercise..

II. COMPENSATION

A. **Basic Compensation.** The City hereby agrees to pay the Consultant, as full compensation for the complete and satisfactory performance of the contract, and all expenses and costs related thereto:

x☐ a sum not to exceed $10,000.00
or (if above box not checked):

☐ such amount as is set forth on an attached Exhibit A which is incorporated herein.

B. **Additional Compensation.** Any cost not specifically allowed the Consultant pursuant to this paragraph B dealing with additional compensation is included in Basic Compensation. If City directs in writing additional services not included in this Agreement, Consultant shall be paid as follows:

III. TIME AND MANNER OF PAYMENTS

All invoices complete with necessary support documentation shall be submitted in triplicate to the City and payment shall be made by City in a lump sum within thirty (30) days of receipt of an invoice received after satisfactory performance of the Work for the fees, prices, rates or schedule of values set forth above.

IV. CONTRACT SCHEDULE

Time is of the essence. The Work to be performed under the Contract shall be commenced on April, 2004 or when conditions allow and shall be completed in a resonable manner, and shall be performed so as not to delay or hinder City's schedule for the project. Failure to complete the work by the completion date shall result in a reduction in the amount due the Consultant under this contract in the amount of n/a per day as

liquidated damages, herein acknowledged to be reasonable compensation for such delay, in addition to any other remedy that the City may have hereunder.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the effective date of Contract first above written.

CONTRACTOR

By _____

Title _____

CITY OF PACIFIC, MISSOURI

By _____
Herbert C. Adams
Mayor

DATED: December 4,2012

ATTEST:

CITY OF PACIFIC
CONSULTANT/PROFESSIONAL SERVICES AGREEMENT
GENERAL CONDITIONS

Independent Consultant. The Consultant shall be and operate as an independent Consultant in the performance of this Contract. The Consultant shall have complete charge of the personnel engaged in the performance of the Work, and all persons employed by the Consultant shall be employees of said Consultant and not employees of the City in any respect.

Compliance with Laws. The Consultant shall comply with all applicable City ordinances and other laws and regulations, Federal, State, and any political subdivision thereof, including but not limited to, unemployment and workers' compensation, occupational safety, equal employment and affirmative action and wage and price laws insofar as applicable to the performance of the Contract.

Subcontracts. The Consultant shall not subcontract any of the Work to be performed by it hereunder without the express written consent of the City. In addition, this Contract shall not be assigned by the Consultant.

Indemnification. To the fullest extent permitted by law, the Consultant agrees to defend with counsel selected by the City, and indemnify and hold harmless the City, its officers, engineers, representatives, agents and employees from and against any and all liabilities, damages, losses, claims or suits, including costs and attorneys' fees, for or on account of any kind of injury to person, bodily or otherwise, or death, or damage to or destruction of property, or any other circumstances, sustained by the City or others, arising from consultant's breach of the Contract or out of services and operations negligently performed hereunder by the Consultant, including the City's reliance on or use of the services or products provided by the Consultant under the terms of this agreement. The Consultant shall not be liable for any loss or damage attributable solely to the negligence of the City. To the extent required by law to enforce this provision, Consultant agrees that this indemnification requires Consultant to obtain insurance in amounts specified herein and that Consultant has had the opportunity to recover the costs of such insurance in the Compensation set forth in this Agreement.

Insurance. Consultant shall furnish the City the certificates of insurance for workers' compensation, public liability, and property damage, including automobile coverage in the amounts specified by the City in the request for proposals, if any, otherwise in the amounts stated on Exhibit A, but unless otherwise provided shall be no less than the maximum amounts of liability set forth in Chapter 537.610 RSMo. applicable to political subdivisions. The policies of insurance shall be in such form and shall be issued be such company or companies as may be satisfactory to the City. The City and such additional persons and entities as may be deemed to have an exposure to liability as a result of the performance of the Consultant's work, as determined by the City, shall be named as additional insured.

In addition to the foregoing, the Consultant shall maintain Professional Liability "errors and omissions" insurance in the form for the coverages satisfactory to City as indicated in the request for proposals, if any, otherwise as stated on attached Exhibit A. The City and Consultant waive all rights against each other for damages caused by fire or other perils to the extent covered by Builder's Risk or any other property insurance, except such rights as they may have to the proceeds of such insurance; provided that nothing herein shall be deemed a waiver of the City's sovereign immunity relative to any claim against the City.

Nondisclosure. The Consultant agrees that it will not divulge to third parties without the written consent of the City any information obtained from or through the City in connection with the performance of this Contract.

Changes. No change in this Contract shall be made except in writing prior to the change in work or terms being performed. The Consultant shall make any and all changes in the Work without invalidating this Contract when specifically ordered to do so in writing by the City. Consultant, prior to the commencement of such changed or revised work, shall submit promptly to the City, a written cost or credit proposal for such revised Work. If the City and Consultant shall not be able to agree as to the amount, either in consideration of time or money to be allowed or deducted, it shall nevertheless be the duty of Consultant, upon written notice from the City, to immediately proceed with such alteration or change, and Consultant shall be compensated the reasonable value of such Work. **No work or change shall be undertaken or compensated for without prior written authorization from the City.**

Termination. The City shall have the right to terminate the Contract at any time for any reason by giving the Consultant written notice to such effect. The City shall pay to the Consultant in full satisfaction and discharge of all amounts owing to the Consultant under the Contract an amount equal to the cost of all Work performed by the Consultant up to such termination date, less all amounts previously paid to the Consultant on account of the Contract Price. The Consultant shall submit to the City its statement for the aforesaid amount, in such reasonable detail as the City shall request, within thirty (30) days after such date of termination. The City shall not be liable to the Consultant for any damages on account of such termination for loss of anticipated future profits with respect to the remainder of the Work.

Multi-year contracts; Non-appropriation. Notwithstanding any provision herein to the contrary, the City is obligated only to make the payments set forth in the attached contract as may lawfully be made from funds budgeted and appropriated for that purpose during the City's then current fiscal year at the discretion of the City. If no funds are appropriated or otherwise made legally available to make the required payments for this Agreement during the next occurring fiscal year (an "Event of Nonappropriation"), this Agreement will terminate at the end of the then current fiscal year as if terminated expressly . The failure or inability of the City to appropriate funds for this Agreement in any subsequent fiscal year shall not be deemed a breach of this Agreement by any party. If applicable, this Agreement may be annually renewed at each fiscal year by inclusion of specific appropriation for this Agreement, from year to year not to exceed the maximum renewal period or term as set forth in the Agreement.

Accounting. During the period of this Contract, the Consultant shall maintain books of accounts of its expenses and charges in connection with this Contract in accordance with generally accepted accounting principles and practices. The City shall at reasonable times have access to these books and accounts to the extent required to verify all invoices submitted hereunder by the Consultant.

Other Consultants. The City reserves the right to employ other consultants in connection with the Work.

Request for Proposals. If the City issued a request for proposals in connection with the Work, such request for proposals and the proposal of the Consultant in response thereto are incorporated herein by reference and made a part of this Contract. In case of any conflicts between the request for proposals and the executed Consultant/Services Contract or proposal of the Consultant, the requirements of the City's Request for Proposal and this executed Consultant/Professional Services Contract shall control and supercede unless a change thereto is specifically stated in this Contract (including Exhibit A "Scope of Work").

Project Records and Work Product. The Consultant shall provide the City with copies of all documents pertinent to the Work which shall include, without limitation, reports, correspondence, meeting minutes, and originals of all deliverables. The City shall own all right, title and interest, including without limitations, all copyrights and intellectual property rights, to all documents and Work Product of the Consultant creased in performance of or relating to this Contract. Consultant agrees to take all steps reasonably requested by the City to evidence, maintain, and defend the City's ownership rights in the Work Product.

Site Operations. Where appropriate, the City will arrange for right of entry to any property at the request of the Consultant for the purpose of performing studies, tests and evaluations in connection with the Work.

Personnel. The Work shall be performed exclusively by the personnel of the Consultant identified in the Consultant's proposal and no other personnel of the Consultant shall perform any of the Work without the express written approval of the City.

Representations. Consultant agrees that it has not relied on any representations or warranties of the City, oral or written, other than expressly identified in this Contract. The parties agree the Contract represents the entire agreement between the parties.

Other Special Provisions. The special provisions set forth on Exhibit A are incorporated herein by reference, and made a part hereof.