

**Standard Form of Agreement Between Owner and Contractor for a Small Project**  
*Basis of Payment is a STIPULATED SUM*

This CONSTRUCTION CONTRACT (the "Contract") is made and entered into by and between the CITY OF HUTCHINSON, a Kansas municipal corporation (the "Owner")

and \_\_\_\_\_ [Contractor] \_\_\_\_\_, with its principal place of business at \_\_\_\_\_ [Address] \_\_\_\_\_ (the "Contractor").

This Contract is for the construction of a project identified as:

\_\_\_\_\_ **Park Pedestrian Bridges Project Bid #12-151** \_\_\_\_\_, in the City of Hutchinson, Reno County, Kansas (the "Project").

The Owner and Contractor agree as follows:

**ARTICLE 1: THE CONTRACT AND THE CONTRACT DOCUMENTS**

The Contractor shall complete the Work described in the Contract Documents for the project.

1.1 The Contract Documents consist of:

- 1.1.1 The Bidding Requirements and Bidding Documents;
- 1.1.2 City of Hutchinson Building Codes, incorporated by reference;
- 1.1.3 City of Hutchinson Fire Codes, incorporated by reference;
- 1.1.4 This Agreement signed by the Owner and Contractor;
- 1.1.5 The preliminary Design Scope Specification;
- 1.1.6 The General and Supplementary Conditions are deemed to be a part of this Contract by reference, and shall be included as general provisions for use with Design Documents prepared by Contractor, Change Orders and Field Orders issued hereafter, along with any other written amendments executed by Owner and Contractor, as well as the following documents (if any) all of which are hereby incorporated herein by reference and made a part of this Contract;
- 1.1.7 All Design Documents hereafter prepared by Contractor and approved by Owner in accordance with this Contract and any special provisions added thereto with the consent of Owner;
- 1.1.8 the Drawings and Specifications prepared by the Architect, and enumerated as follows:

**Drawings:**

Number	Title	Date
Plans as drawn by		
<b>Transystems</b>	<b>Abutment Plans (Sheets 1-6)</b>	<b>Jun 2012</b>

**Specifications:**

Section	Title	Pages
<b>As identified in Bid 12-151</b>	<b>Supp - General - Technical Specifications</b>	<b>All</b>

1.2 Enumerated Documents Form Entire Contract: Documents not specifically enumerated in paragraph 1.1 of this Agreement are not Contract Documents.

1.3 Contract Interpreted As A Whole: This Contract is intended to be an integral whole and shall be interpreted as internally consistent. Work required by any page, part, or portion of the Contract shall

be deemed to be required Contract Work as if called for in the whole Contract and no claim for extra work shall be based upon the fact that the description of the Work in question is incomplete.

## ARTICLE 2: DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION DATE

- 2.1 The date of commencement shall be fixed in a notice to proceed. The Contractor shall substantially complete the Work not later than **Eighty (80)** consecutive working days, from the date of commencement subject to adjustment by Change Order.

## ARTICLE 3: CONTRACT SUM

- 3.1 Subject to additions and deductions by Change Order, the Contract Sum is:

**XXX,XXX.00**

- 3.2 For purposes of payment, the Contract Sum includes the following values related to portions of the Work:

**N/A**

- 3.3 The Contract Sum shall include all items and services necessary for the proper execution and completion of the Work.

## ARTICLE 4: PAYMENT

- 4.1 Based on Contractor's Applications for Payment certified by the Owner, the Owner shall pay the Contractor as follows:

4.1.1 ***(Here insert payment procedures and provisions for retainage, if any.)*** **N/A**

4.1.2 Progress payment procedures, including applications for payments and timeframes for review, are set forth in General Conditions of the Contract for Construction of a Small Project, as modified by the parties. Owner shall make payment of the amount it certifies to be due within fifteen (15) calendar days of the date on which it certifies that such payment is due.

- 4.2 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate of one and one-half percent (1.5%) per month, or in the absence thereof, at the legal rate prevailing at the place of the Project.

## ARTICLE 5: INSURANCE

- 5.1 For this project and in compliance with the General Conditions as set forth in this agreement the Contractor shall provide the following insurances:

### Type of Insurance

### Limit of Liability

1.) Worker's Compensation Insurance: State and Applicable Federal	1.) Statutory
2.) Contractor's Comprehensive or Commercial form General Liability Insurance including coverage for Premises-Operations, Independent Contractor's, Products-Completed Operations, Contractual Liability, Bodily Injury and Broad Form Property Damage	2.) \$1,000,000 per Occurrence
3.) Automobile Liability insurance for bodily injury and property damage	3.) \$1,000,000 Each Accident
4.) Professional Liability (Errors and Omissions)	N/A for this project

- 5.3 The Contractor shall obtain an endorsement to its general liability insurance policy to cover the Contractor's obligations under the General Conditions for this Project.
- 5.4 For this project and in compliance with the General Conditions as set forth in this agreement the Contractor shall provide the following bonds:

Type of Bond	Amount
1.) Bid Security (Bid Bond)	1.) Five percent (5%) of amount bid
2.) Performance Bond	2.) not less than total contract price
3.) Maintenance Bond	3.) not less than total contract price
4.) Statutory Bond	4.) Amount equal to the contract amount

- 5.5 Certificates of insurance and all bonds shall be provided by the Contractor showing its coverages prior to commencement of the Work.

**ARTICLE 6: OTHER TERMS AND CONDITIONS**

**6.1 APPROPRIATIONS AND AUTHORIZATIONS**

6.1.1 This Contract is contingent upon sufficient appropriations and authorizations being made for performance of this Contract by the City Council of Hutchinson Kansas and/or, if state funds are involved, the Legislature of the State of Kansas. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Contract shall terminate upon written notice by Owner to Contractor. Such termination shall be without penalty to Owner, and Owner shall have no duty to reimburse Contractor for expenditures made in the performance of this Contract. Owner is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by Owner. Owner's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Contract shall be final and not subject to challenge by Contractor in any way or forum, including a lawsuit.

6.2 **PROVISION OF ALL THINGS REQUIRED:** Anything that may be required, implied or inferred by the Contract Documents which make up this Contract, or any one or more of them, shall be provided by Contractor for the Contract Price.

6.3 **PRIVITY ONLY WITH CONTRACTOR:** Nothing contained in this Contract shall create, nor be interpreted to create, privity or any other relationship whatsoever between Owner and any person except Contractor.

6.4 **AGREED INTERPRETATION OF CONTRACT TERMS:** When a word, term, or phrase is used in this Contract, it shall be interpreted or construed first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage. Headings are used herein solely for convenience.

6.5 **TERM "INCLUDE" INTENDED TO BE ENCOMPASSING:** "Include", "includes", or "including", as used in the Contract, shall be deemed in all cases to be followed by the phrase, "without limitation."

6.6 **USE OF SINGULAR AND PLURAL:** Words or terms used as nouns in the Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

- 6.7 **DEFINITION OF MATERIAL BREACHES NOT EXHAUSTIVE:** The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of the Contract shall not imply that any other, nonspecified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of the Contract.
- 6.8 **ORDER OF PRECEDENCE:** In the event of any conflict, discrepancy, or inconsistency among any of the Contract Documents which make up this Contract, the following shall control:
- 6.8.1 As between figures given on plans and scaled measurements, the figures shall govern.
- 6.8.2 As between large scale plans and small scale plans, the large scale plans shall govern.
- 6.8.3 As between plans and specifications, the requirements of the specifications shall govern.
- 6.8.4 As between this document and the plans or specifications, this document shall govern.
- 6.9 **ADMINISTRATION:** This Contract shall be administered on behalf of Owner by the Director of Parks and Facilities, or his designee (hereinafter called the “Director”), and on behalf of the Contractor by its duly authorized representatives.
- 6.10 **RECORDS AND INSPECTIONS**
- 6.10.1 To the extent their books and records relate to (i) their performance of this Contract or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Contract or that was required to be submitted to Owner as part of the procurement process, Contractor agrees to (i) maintain such books and records during the term of this Contract and for a period of six (6) years from the date of final payment under this Contract;
- 6.10.1.1 allow Owner or its designee to audit such books and records at reasonable times and upon reasonable notice; and
- 6.10.1.2 to keep such books and records in accordance with generally accepted accounting principles (“GAAP”).
- 6.10.2 To the extent their books and records relate to (i) their performance of this Contract or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Contract or that was required to be submitted to County as part of the procurement process, Contractor also agrees to require any subcontractor it may hire to perform its obligations under this Contract to (i) maintain such books and records during the term of this Contract and for a period of six (6) years from the date of final payment under the subcontract; (ii) to allow Owner or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with GAAP.
- 6.11 **CONFLICT OF INTEREST:** Contractor represents that it has no and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of its obligations under this Contract.
- 6.12 **EQUAL OPPORTUNITY COMPLIANCE**
- 6.12.1 Contractor agrees to abide by all Federal, State, and local laws, ordinances, and rules and regulations pertaining to equal opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, Contractor specifically agrees not to discriminate against any person with regard to employment with Contractor or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.
- 6.12.2 Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.
- 6.13 **NOTICE OF PENALTIES:** The Kansas Crimes Affecting Business, K.S.A.21-4401 et seq., imposes civil and criminal penalties for its violation. In addition, criminal statutes impose felony penalties for bribery and racketeering.
- 6.14 **TORT CLAIMS ACT:** No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by City or its “public employees” at common law or under the Kansas Tort Claims Act, K.S.A. 75-6101, et seq.

EXECUTED as of the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by Owner, signing by and through its City Contractor, approved by the City Council on \_\_\_\_\_, and by Contractor, acting through its duly authorized officials.

**APPROVED AS TO FORM:**

**CITY OF HUTCHINSON:**

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Manager

**ATTEST:**

**CONTRATOR:**

BY \_\_\_\_\_  
City Clerk

BY \_\_\_\_\_  
President

SAMPLE

**CONTRACTOR'S AFFIDAVIT**

Owner's Project No.     **Bid #12-151**     Engineer's Project No. \_\_\_\_\_

Project     **Carey Park Pedestrian Bridges Project**    

To:     The City of Hutchinson      
Owner

The Contractor, represented by the undersigned, hereby declares that all indebtedness, whether incurred by me as principal contractor, or by a subcontractor or otherwise, for supplies, materials or labor furnished, used, or consumed in connection with or in or about the construction of the above mentioned Project, including gasoline, lubricating oils, fuel oils, greases, coal and other items used or consumed in furtherance of the said improvement have been paid in full, and I further declare that the Owner has been paid in full for all loss, cost damage or expense which it has been held responsible for by reason of any negligence, defective condition, default, failure or miscarriage in the performance of said contract, either by me as principal contractor or by a subcontractor, or otherwise.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

Contractor \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

State of Kansas                    )  
  )SS.  
County of \_\_\_\_\_)

On the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, before me personally appeared \_\_\_\_\_, known to me to represent the Contractor on the above Project, and being duly sworn, stated that the above statement is true and correct.

\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_, 20 \_\_\_\_\_.

**PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS, That we, \_\_\_\_\_,  
as Principal and \_\_\_\_\_,  
a corporation authorized under the laws of the State of \_\_\_\_\_,  
with principal office in \_\_\_\_\_,  
and authorized to transact business in the State of Kansas as Surety, are held and firmly bound into the City of  
Hutchinson hereinafter called the Owner, in the sum of \_\_\_\_\_  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_) lawful money of the United States, for  
the payment of which sum, well and truly to be made, said Principal and Surety bind themselves, their heirs,  
administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT WHEREAS, said Principal has entered into a written  
Contract with the Owner dated \_\_\_\_\_, 20 \_\_\_\_\_ for the furnishing of  
all materials and doing of all the work of whatever kind necessary to construct:

**Carey Park Pedestrian Bridges Project  
Bid #12-151**

all in accordance with the detailed plans and specifications for such work on file in the office of the City Engineer of  
Hutchinson, Kansas and in accordance with said Contract, a copy of which is, or may be attached hereto and which is  
by reference made a part hereof.

NOW, THEREFORE, if the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms,  
conditions, an agreements of said Contract during the original term of said Contract and any extensions thereof that  
may be granted by the Owner, with or without notice to the Surety, and during the life of any guaranty required under  
the Contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and  
agreements of any kind and all duly authorized modifications of said Contract that may hereafter be made, then, this  
obligation to be void, otherwise to remain in full force and effect.

THE UNDERSIGNED SURETY, for value received, hereby stipulates and agrees that no extension of time, change  
in, addition to, or other modification of the terms of the Contract or work to be performed thereunder, or of the  
specifications or other Contract Document accompanying same, shall in anywise affect its obligation on this bond and  
said surety does hereby waive notice of any such extension of time, change, addition or modification.

IN TESTIMONY WHEREOF, said Principal has duly executed these presents and said Surety has caused these  
presents to be executed in its name and its Corporate Seal to be hereunto affixed, by its duly authorized agent or  
agents, all as of the day and year first above written. This document is executed in four (4) copies.

CORPORATE SEAL \_\_\_\_\_  
Principal \_\_\_\_\_  
Signature \_\_\_\_\_  
Name in Print \_\_\_\_\_

CORPORATE SEAL \_\_\_\_\_  
Surety \_\_\_\_\_  
By \_\_\_\_\_  
Attorney-in-fact \_\_\_\_\_

(A certified copy of the agent’s power of attorney must be attached hereto)

**STATUTORY BOND**

KNOW ALL MEN BY THESE PRESENTS, That we, \_\_\_\_\_,  
as Principal and \_\_\_\_\_,  
a corporation authorized under the laws of the State of \_\_\_\_\_,  
with principal office in \_\_\_\_\_,

and authorized to transact business in the State of Kansas as Surety, are held and firmly bound into the City of  
Hutchinson hereinafter called the Owner, in the sum of \_\_\_\_\_  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_) lawful money of the United States, for  
the payment of which sum, well and truly to be made, said Principal and Surety bind themselves, their heirs,  
administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT WHEREAS, said Principal has entered into a written  
Contract with the Owner dated \_\_\_\_\_, 20 \_\_\_\_\_ for the furnishing of all  
supplies, materials and labor and doing all the work of whatever kind necessary to construct:

**Carey Park Pedestrian Bridges Project**  
**Bid #12-151**

in accordance with the detailed plans and specifications for such work on file in the Office of the City Engineer of  
Hutchinson, Kansas and in accordance with said Contract, a copy of which is or may be attached hereto and which is  
made a part hereof by reference.

NOW THEREFORE, if the Principal shall promptly make payment to all persons furnishing supplies, materials and  
labor in the prosecution of the work provided for in said Contract, and any and all duly authorized modifications of  
said Contract that may hereafter be made, then this obligation will be void; otherwise, to remain in full force and  
effect.

THE SAID SURETY, for value received, hereby stipulates and agrees that no change, extension of time, alteration  
or addition to the term of the Contract or to the work to be performed thereunder, or the specifications  
accompanying the same, shall in anywise affect it obligation on this bond, and it does hereby waive notice of any  
such change, extension of time, alteration or addition to the terms of the Contract or to the specifications.

IN TESTIMONY WHEREOF, said Principal has duly executed these presents, and said Surety has caused these  
presents to be executed in its name, and its Corporation Seal is to be hereunto affixed, by its duly authorized agent or  
agents, all as of the day and year above written.

CORPORATE SEAL

Principal

CORPORATE SEAL

Surety

Attorney-in-fact

*(A certified copy of the agent's power of attorney must be attached hereto)*  
*(To be filed with the Clerk of the District Court)*



**MAINTENANCE BOND**

KNOW ALL MEN BY THESE PRESENTS, That we, \_\_\_\_\_,  
as Principal and \_\_\_\_\_,  
a corporation authorized under the laws of the State of \_\_\_\_\_,  
with principal office in \_\_\_\_\_,  
and authorized to transact business in the State of Kansas, as Surety, hereinafter referred to as "Surety", are held and  
firmly bound unto \_\_\_\_\_ the City of Hutchinson \_\_\_\_\_, hereinafter called the "Owner", in the penal sum of  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_),  
lawful money of the United States for the payment of which sum well and truly to be made said Principal and Surety  
bind themselves, their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these  
presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT WHEREAS, said Principal has entered into written  
Contract with the Owner, dated \_\_\_\_\_ 20\_\_\_\_\_, for the furnishing of all the  
materials and doing all the work of whatever kind necessary to construct the **Carey Park Pedestrian Bridges  
Project Bid #12-151** all in accordance with the detailed Plans and Specifications for such work on file in the office  
of the City Engineer of Hutchinson, Kansas and in accordance with said Contract, a copy of which is, or may be  
attached hereto and which is made a part hereof by reference.

NOW THEREFORE, if the Principal shall keep and maintain the **Carey Park Pedestrian Bridges Project Bid  
#12-151** without additional charge of cost to the Owner for a period of two (2) years from the date of final payment  
under said Contract; and make such repairs as the Owner may deem necessary; and, before the expiration of the two  
(2) year period, make such repairs as may be ordered by the Owner to produce the **Carey Park Pedestrian Bridges  
Project Bid #12-151** which shall meet the conditions as listed in the General Specifications of the Contract  
Documents for said Contract; then this obligation will be void; otherwise to remain in full force and effect.  
IN TESTIMONY WHEREOF, said Principal has duly executed these presents, and said Surety has caused these  
presents to be executed in its name and its Corporate Seal is to be hereunto affixed, by its duly authorized agent or  
agents, all as of the day and year first above written. This document is executed in four (4) copies.

Principal \_\_\_\_\_

Signature \_\_\_\_\_

Name in Print \_\_\_\_\_

Office or Position of Signer \_\_\_\_\_

Surety \_\_\_\_\_

Attorney-in-Fact \_\_\_\_\_

Name in Print \_\_\_\_\_

(A certified copy of the agent's power of attorney must be attached hereto).