RESOLUTION NO. R-13-02

A RESOLUTION TO AUTHORIZE THE EXECUTION OF A MEMORANDUM OF AGREEMENT BY AND BETWEEN THE CITY OF COFFEYVILLE AND ISHAM TRU-VALUE HARDWARE, INC., REGARDING THE REPLACEMENT OF THE SIDEWALK ALONG THE NORTH SIDE OF THE ISHAM BUILDING.

BE IT RESOLVED by the Board of Commissioners of the City of Coffeyville, Kansas, that the Mayor and City Clerk be and are hereby authorized and directed to execute a Memorandum of Agreement relating to the replacement of the sidewalk located on the north side of the Isham building in downtown Coffeyville.

Adopted this 22nd day of January 2013.

_____
David George, Mayor

ATTEST:

_____
Cindy Price, City Clerk

APPROVED AS TO FORM:

_____
Paul Kritz, City Attorney

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT made and entered into as of this ___ day of January, 2013, by and between the City of Coffeyville, Kansas, P.O. Box 1629, Coffeyville, Kansas (hereinafter referred to as "City"), and Isham Tru-Value Hardware, Inc., 811 Union Street, Coffeyville, Kansas (hereinafter referred to as "Isham").

WHEREAS, Isham owns and operates a retail hardware store located at 811 Union Street, Coffeyville, Kansas;

WHEREAS, the sidewalk adjacent to the north side of the Isham building is dilapidated;

WHEREAS, according to Kansas Statute (K.S.A. 12-1808), it ordinarily falls upon the owner of the abutting property to keep the sidewalk in repair;

WHEREAS, in this particular instance, the sidewalk features historical markers and references to those who defended the citizens of Coffeyville in connection with the Dalton Gang bank robbery of October 5, 1892;

WHEREAS, these unique features of the sidewalk generate interest and use thereof by patrons visiting the Dalton Museum and related attractions and, therefore, the City and Isham have agreed that the City would undertake to replace the sidewalk, in order to ensure the sidewalk properly retains its historic features;

WHEREAS, the parties desire to reduce their respective obligations regarding the sidewalk replacement to a written instrument; and

WHEREAS, the parties have agreed to be bound by the terms of this Memorandum of Agreement.

THEREFORE, in consideration of the conditions, mutual agreements and covenants herein contained, it is understood and agreed by the parties hereto as follows:

1. City agrees to replace the sidewalk along the north side of the Isham building at no cost to Isham.

2. Demolition of the existing sidewalk shall be completed by April 1, 2013, weather permitting.

3. The new sidewalk shall be constructed using suitable materials and shall comply with the City's sidewalk construction standards and requirements.

4. Isham acknowledges that the City does not and cannot warrant or guarantee the City's demolition and/or construction of the sidewalk will not have an impact upon Isham's building. In consideration of the City assuming the responsibility for replacing the

sidewalk, Isham hereby releases the City from any damage caused to the Isham building on account of the sidewalk demolition and/or construction, unless the damage is caused by the City's own negligence.

IN WITNESS WHEREOF, the First Party and Second Party have executed this Memorandum of Agreement as of the day and year first written above.

CITY OF COFFEYVILLE, KANSAS

_____
David George, Mayor

Attest:

_____
Cindy Price, City Clerk

ISHAM TRU-VALUE HARDWARE, INC.

By:_____
Jean Walterscheid, President

Attest:

_____
Secretary