

CITY OF PRAIRIE VILLAGE

September 17, 2012

Council Committee Meeting 6:00 pm

City Council Meeting 7:30 pm



COUNCIL COMMITTEE OF THE WHOLE
Council Chambers
September 17, 2012
6:00 PM

AGENDA

DAVID MORRISON, COUNCIL PRESIDENT

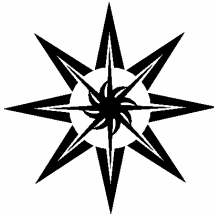
AGENDA ITEMS FOR DISCUSSION

Presentation regarding zoning overlay district in Countryside East Homes Association
Dennis Enslinger

*COU2012-40 Consider Construction Contract for Project SARD0001, 2012 CDBG Project on Sagamore Dr from 75th St to 76th St with Linaweaver Construction, Inc
Bruce McNabb

*COU2012-41 Consider Construction Administration Agreement with TranSystems for Project Number SARD0001, CDBG Project on Sagamore Road from 75th St to 76th St
Bruce McNabb

*Council Action Requested the same night



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: September 17, 2012

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***COU2012-40: CONSIDER CONSTRUCTION CONTRACT FOR PROJECT SARD0001, 2012 CDBG PROJECT ON SAGAMORE DRIVE FROM 75TH STREET TO 76TH STREET WITH LINAWEAVER CONSTRUCTION, INC.**

RECOMMENDATION

Move to approve the construction contract with Linaweaver Construction, Inc. for project SARD0001, 2012 CDBG Project on Sagamore Drive from 75th Street to 76th Street for \$155,598.75.

BACKGROUND

On August 24, 2012, the City Clerk opened bids for Project SARD0001, Sagamore Drive. Six bids were received:

Linaweaver Construction, Inc.	\$155,598.75
Freeman Concrete Construction	\$155,799.00
Mega Industries Corp	\$166,187.00
McAnany Construction, Inc.	\$188,525.00
William White & Son's	\$199,180.50
Amino Brothers	\$214,362.85
Engineer's Estimate	\$209,151.67

The Engineer has reviewed all bids. Linaweaver Construction, Inc. recently constructed the Weltner Park and Cambridge Street improvement and they performed very well and thus we are comfortable hiring them for this project.

FUNDING SOURCE

Funding is available under the Capital Infrastructure Program under Project Number SARD0001. 80% or more of this project will be funded by the CDBG funds.

RELATION TO VILLAGE VISION

TR1a. *Ensure that infrastructure improvements meet the needs of all transportation users.*

ATTACHMENTS

1. Construction Agreement with Linaweaver Construction, Inc.

PREPARED BY

Keith Bredehoeft, Project Manager

September 13, 2012

CONSTRUCTION CONTRACT
FOR
PROJECT: SARD0001
2012 CDBG SAGAMORE ROAD

BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
LINAWEAVER CONSTRUCTION INC.

THIS AGREEMENT, is made and entered into this ____ day of _____, 2012, by and between the City of Prairie Village, Kansas, hereinafter termed the "City", and _____, hereinafter termed in this agreement, "Contractor", for the construction and completion of Project , designated, described and required by the Project Manual and Bid proposal, to wit:

CONTRACT COST: The City shall pay the Contractor for the performance of the Work embraced in this Contract, and the Contractor will accept in full compensation therefore the sum (subject to adjustment as provided by the Contract) of *One Hundred Fifty Five Thousand Five Hundred Ninety Eight + 75/100 Dollars (\$155,598.75)* for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

LIQUIDATED DAMAGES: The contract is comprised of one large project (sometimes referred to as "Total Project Work") and, in some cases, is partitioned into smaller subprojects referred to in this agreement as "Project Segments." A total completion date shall be set forth for both the Total Project Work and, when applicable, the Project Segments. Liquidated damages shall apply to the Total Completion Date for the Total Project Work (as may be extended under the Contract) and, when applicable, the Total Completion Date for each Project Segment (as may be extended under the Contract), in accordance with this Agreement and the Special Conditions. Liquidated Damages are described in greater detail below and the applicable rates for the subject Project are set forth in the **Special Conditions**, attached hereto and incorporated herein by this reference.

Within ten (10) calendar days after receipt of written notice to commence from the City, the Contractor shall commence the Work to be done under this Contract. The Contractor agrees to complete the Total Project Work and Project Segments hereunder within the contract time period set forth in the Contract, or as it may be extended under the terms of this Contract. At the time of execution of this Contract, the Contractor shall furnish the Project Manager with a project schedule setting forth, in detail, the proposed sequence of activities and the dates on which such activities shall be completed. The schedule shall also set forth the dates on which the Project Segments (if applicable to the Contract) shall be totally complete.

Contractor agrees that time is of the essence and any term pertaining to Contractor timely performing so as to achieve Total Completion when required under the Contract is a material provision of this Contract. Further, the parties acknowledge that City's damages in the event of delay are difficult to ascertain and consequently agree that, in the event and to the extent that

actual date of Total Completion is delayed beyond the required date for Total Completion for the Total Project or Project Segments attributable solely or concurrently to (i) an act or omission of Contractor or any of its subcontractors or suppliers, or (ii) in whole or in part, to any other event or condition within the Contractor's reasonable control (and not for reasons solely attributable to City), the Contractor shall be assessed a liquidated damage, and not as a penalty, in the amount set forth in the Special Conditions for each calendar day beyond the applicable Total Completion date. Such amount shall be deducted from any amounts due Contractor under this agreement.

The Contractor agrees that, in the event Project Segments are not Totally Complete, the City may also assess other liquidated damages for each calendar day beyond the date for Total Completion in an amount set forth in the Special Conditions. The Contractor agrees that such assessment is a reasonable estimate of the damages that may be sustained by the City in the event the project is delayed and that such amount is not a penalty.

Further, the Contractor agrees that, in the event Contractor does not carry out such work at such rates of progress as required by the Construction Schedule, the City may, at its option and without Contractor receiving any additional compensation therefore, require Contractor to increase the number of qualified supervisory personnel and/or workers and the amount of equipment employed in the performance of the Work to such extent as City may deem necessary or desirable. In addition, City, at its option, may supplement Contractor's manpower by entering into contracts with other contractors to perform the Work. All costs that are incurred by City, in this regard, including reasonable attorney's fees, shall be deducted from any sums due Contractor or City may make demand on Contractor for reimbursement of such costs.

1. DEFINITIONS:

1.1 Following words are given these definitions:

BID DOCUMENTS shall mean all documents related to submitting a Bid, including, but not limited to, the Advertisement for Bids, Instruction to Bidders, Bid Form, Bid Bond and the proposed Project Manual, including any Addenda issued prior to receipt of Bids.

BID PROPOSAL shall mean the offer or proposal of the Bidder submitted on the prescribed form set forth the prices for the work to be performed.

BIDDER shall mean any individual: partnership, corporation, association or other entity submitting a Bid for the work.

BONDS shall mean the bid, maintenance, performance, and statutory or labor and materials payment bonds, together with such other instruments of security as may be required by the Contract Documents.

CHANGE ORDER is a written order issued after the Agreement is executed by which the City and the Contractor agree to construct additional items of work, to adjust the quantities of work, to modify the Contract time, or, in lump sum contracts, to change the character and scope of work shown on the Project Manual.

CITY shall mean the City of Prairie Village, Kansas, acting through a duly appointed representative.

CONTRACT or **CONTRACT DOCUMENTS** shall mean the Construction Agreement, the accepted Bid Proposal, Contractor's Performance Bond, Contractor's Maintenance Bond, Statutory Bond, Project Manual and any other documents that have bearing the Work prescribed in the Project.

CONTRACT PRICE shall be the amount identified in the Construction Agreement between the City and the Contractor as the total amount due the Contractor for total completion of the Work as per the Contract Documents.

CONTRACT TIME shall be the number of calendar days stated in the Contract Documents for the completion of the work or shall be a specific date as designated in the Construction Agreement.

CONTRACTOR shall mean the entity entering into the Contract for the performance of the work covered by this Contract, together with his/her duly authorized agents or legal representatives.

DEFECTIVE WORK shall mean work, which is unsatisfactorily, faulty or deficient, or not in conformity with the Project Manual.

ENGINEER shall mean the individual, firm or entity designated in the Contract Documents, which has been employed or contracted by the City for the performance of engineering services in connection with the Work.

FIELD ORDER shall mean a written order issued by the Project Manager that orders minor changes in the work, but which does not involve a change in the contract price or contract time.

FIELD SUPERINTENDENT shall mean the Public Works Field Superintendent of the City of Prairie Village or designee.

FINAL ACCEPTANCE shall mean the date when the City accepts in writing that the construction of the Work is complete in accordance with the Contract Documents such that the entire Work can be utilized for the purposes for which it is intended and Contractor is entitled to final payment.

INSPECTOR shall mean the engineering or technical inspector or inspectors duly authorized by the City to monitor the work and compliance tests under the direct supervision of the Project Manager.

NOTICE OF AWARD shall mean the written notice by the City to the apparent successful Bidder stating that upon compliance with the conditions precedent enumerated therein, within the time specified, the City will sign and deliver the Agreement.

NOTICE TO PROCEED shall mean the written notice by the City to the Contractor fixing the date on which the Contract time is to commence and on which the Contractor shall start to perform its obligations under the Contract Documents. Without the prior express written consent of the City, the Contractor shall do no work until the date set forth in the Notice to Proceed.

PAY ESTIMATE NO. ____ or **FINAL PAY ESTIMATE** shall mean the form to be used by the Contractor in requesting progress and final payments, including supporting documentation required by the Contract Documents.

PLANS shall mean and include all drawings which may have been prepared by or for the City or submitted by the Contractor to the City during the progress of the Work, all of which show the character and scope of the work to be performed.

PROJECT MANAGER shall mean the person appointed by the Public Works Director for this project as named in the Special Conditions.

PUBLIC WORKS DIRECTOR shall mean the duly appointed Director of Public Works for the City of Prairie Village or designee.

SHOP DRAWINGS shall mean all drawings, diagrams, illustrations, schedules and other data which are specifically prepared by the Contractor, a Subcontractor, manufacturer, fabricator, supplier or distributor to illustrate some portion of the Work, and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a manufacturer, fabricator, supplier or distribution and submitted by the Contractor to illustrate material or equipment for some portion of the work.

SPECIFICATIONS shall mean those portions of the Project Manual consisting of written technical descriptions of materials, equipment, construction methods, standards and workmanship as applied to the Work and certain administrative details applicable thereto. They may include, but not necessarily be limited to: design specifications, e.g. measurements, tolerances, materials, inspection requirements and other information relative to the work; performance specifications, e.g., performance characteristics required, if any; purchase description specifications, e.g. products or equipment required by manufacturer, trade name and/or type; provided, however, equivalent alternatives (including aesthetics, warranty and manufacturer reputation) may be substituted upon written request and written approval thereof by the City.

SUB-CONTRACTOR shall mean an individual, firm or corporation having a direct contract with the Contractor or with another subcontractor for the performance of a part of the Work.

SUBSTANTIAL COMPLETION shall be defined as being less than 100 percent of the work required that will be completed by a specified date as agreed to in writing by both parties.

TOTAL COMPLETION shall be defined as fulfilling 100 percent of the work required in this contract by the date specified herein.

UNIT PRICE WORK shall mean work quantities to be paid for based on unit prices. Each unit price shall be deemed to include the Contractor's overhead and profit for each separately identified item. It is understood and agreed that estimated quantities of times for unit price work are not guaranteed and are solely for the purpose of comparison of bids and determining an initial Contract price. Determinations of actual quantities and classifications of unit price work shall be made by the City.

WORK shall mean the work to be done to complete the construction required of the Contractor by the Contract Documents, and includes all construction, labor, materials, tools, equipment and transportation necessary to produce such construction in accordance with the Contract Documents.

- 1.2 Whenever any word or expression defined herein, or pronoun used instead, occurs in these Contract Documents; it shall have and is mutually understood to have the meaning commonly given. Work described in words, which so applied have a well-known technical or trade meaning shall be held to refer to such, recognized standards.
- 1.3 Whenever in these Contract Documents the words "as ordered," "as directed", "as required", "as permitted", "as allowed", or words or phrases of like import are used, it is understood that the order, direction, requirement, permission or allowance of the Project Manager is intended.
- 1.4 Whenever any statement is made in the Contract Documents containing the expression "it is understood and agreed", or an expression of like import, such expression means the mutual understanding and agreement of the parties hereto.
- 1.5 The words "approved", "reasonable", "suitable", "acceptable", "properly", "satisfactorily",

or words of like effect in import, unless otherwise particularly specified herein, shall mean approved, reasonable, suitable, acceptable, proper or satisfactory in the judgment of the Project Manager.

- 1.6 When a word, term or phrase is used in the 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.
- 1.7 All terms used herein shall have the meanings ascribed to them herein unless otherwise specified.

2. ENTIRE AGREEMENT:

- 2.1 The Contract Documents, together with the Contractor's Performance, Maintenance and Statutory bonds for the Work, constitute the entire and exclusive agreement between the City and the Contractor with reference to the Work. Specifically, but without limitation, this Contract supersedes all prior written or oral communications, representations and negotiations, if any, between the City and the Contractor. The Contract may not be amended or modified except by a modification as hereinabove defined. These Contract Documents do not, nor shall they be construed to, create any contractual relationship of any kind between the City and any Subcontractor or remote tier Subcontractor.
- 2.2 The Contract shall be construed in accordance with the laws of the state of Kansas.

3. INTENT AND INTERPRETATION

- 3.1 The intent of the Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, including construction, labor, materials, tools, equipment and transportation, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result, shall be provided by the Contractor for the Contract Price.
- 3.2 All limits stated in the Contract Documents are of the essence of the Contract.
- 3.3 The Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.
- 3.4 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.
- 3.5 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents and shall give written notice to the Project Manager of any inconsistency, ambiguity, error or omission, which the Contractor may discover, or should have discovered, with respect to these documents before proceeding with the affected Work. The review, issuance, or the express or implied approval by the City or the Project

Manager of the Contract Documents shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such review be evidence of the Contractor's compliance with this Contract.

- 3.6 The City has prepared or caused to have prepared the Project Manual. **HOWEVER, THE CITY MAKES NO REPRESENTATION OR WARRANTY AS TO ACCURACY OR FITNESS FOR PARTICULAR PURPOSE INTENDED OR ANY OTHER WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the City concerning such documents as no such representation or warranties have been made or are hereby made.
- 3.7 As between numbers and scaled measurements in the Project Manual, the numbers shall govern; as between larger scale and smaller scale drawings, (e.g. 10:1 is larger than 100:1) the larger scale shall govern.
- 3.8 The organization of the Project Manual into divisions, sections, paragraphs, articles (or other categories), shall not control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.
- 3.9 The Contract Documents supersedes all previous agreements and understandings between the parties, and renders all previous agreements and understandings void relative to these Contract Documents.
- 3.10 Should anything be omitted from the Project Manual, which is necessary to a clear understanding of the Work, or should it appear various instructions are in conflict, the Contractor shall secure written instructions from the Project Manager before proceeding with the construction affected by such omissions or discrepancies.
- 3.11 It is understood and agreed that the work shall be performed and completed according to the true spirit, meaning, and intent of the Contract Documents.
- 3.12 The Contractor's responsibility for construction covered by conflicting requirements, not provided for by addendum prior to the time of opening Bids for the work represented thereby, shall not extend beyond the construction in conformity with the less expensive of the said conflicting requirements. Any increase in cost of work required to be done in excess of the less expensive work of the conflicting requirements will be paid for as extra work as provided for herein.
- 3.13 The apparent silence of the Project Manual as to any detail, or the apparent omission from them of a detailed description concerning any point, shall be regarded as meaning that only the best general practice is to be used. All interpretations of the Project Manual shall be made on the basis above stated.
- 3.14 The conditions set forth herein are general in scope and are intended to contain requirements and conditions generally required in the work, but may contain conditions or requirements which will not be required in the performance of the work under contract and which therefore are not applicable thereto. Where any stipulation or requirement set forth

herein applies to any such non-existing condition, and is not applicable to the work under contract, such stipulation or requirement will have no meaning relative to the performance of said work.

- 3.15 Pursuant to K.S.A. No. 16-133, if the Contractor to whom the Contract is awarded is not a resident firm of the State of Kansas, he shall execute and file "Certificate of Appointment of Process of Agent" with the Clerk of the District Court at the Johnson County Courthouse. These forms may be obtained at the Office of the Clerk of the District Court. After execution of the documents, they shall be filed with the Clerk of the District Court. A filing fee of Five Dollars (\$5.00) is required. These certificates are pursuant to the General Statutes of Kansas, and shall be filed prior to the formal execution of the Contract Documents. Failure to comply with these requirements shall disqualify the Contractor for the awarding of this Contract.

4. WORK SUPERINTENDENT

- 4.1 The Contractor shall provide and maintain, continually on the site of Work during its progress, an adequate and competent superintendent of all operations for and in connection with the work being performed under this Contract, either personally or by a duly authorized superintendent or other representative. This representative shall be designated in writing at the preconstruction meeting.
- 4.2 The superintendent, or other representative of the Contractor on the Work, who has charge thereof, shall be fully authorized to act for the Contractor, and to receive whatever orders as may be given for the proper prosecution of the work, or notices in connection therewith. Use of Subcontractors on portions of the work shall not relieve the Contractor of the obligation to have a competent superintendent on the work at all times.
- 4.3 The City shall have the right to approve the person who will be the Superintendent based on skill, knowledge, experience and work performance. The City shall also have the right to request replacement of any superintendent.
- 4.4 The duly authorized representative shall be official liaison between the City and the Contractor regarding the signing of pay estimates, change orders, workday reports and other forms necessary for communication and Work status inquiries. Upon Work commencement, the City shall be notified, in writing, within five (5) working days of any changes in the Contractor's representative. In the absence of the Contractor or representative, suitable communication equipment, which will assure receipt of messages within one (1) hour during the course of the workday, will also be required.
- 4.5 The Contractor will be required to contact the Project Manager daily to advise whether and/or where the Contractor and/or the Subcontractor's crews will be working that day, in order that the Project Manager's representative is able to monitor properly the Work.

5. PROJECT MANAGER

- 5.1 It is mutually agreed by and between the parties to this Contract Agreement that the Project Manager shall act as the representative of the City and shall observe, as required, the work included herein.

- 5.2 In order to prevent delays and disputes and to discourage litigation, it is further agreed by and between the parties to this Contract that the Project Manager shall, in good faith and to the best of its ability, determine the amount and quantities of the several kinds of work which are to be paid for under this Contract; that the Project Manager shall determine, where applicable, questions in relation to said Work and the construction thereof; that Project Manager shall, where applicable decide questions which may arise relative to the execution of this Contract on the part of said Contractor; that the Project Manager's decisions and findings shall be the conditions precedent to the rights of the parties hereto, to any action on the Contract, and to any rights of the Contractor to receive any money under this Contract provided, however, that should the Project Manager render any decision or give any direction which, in the opinion of either party hereto, is not in accordance with the meaning and intent of this Contract, either party may file with the Project Manager and with the other party, within thirty (30) days a written objection to the decision or direction so rendered and, by such action, may reserve the right to submit the question to determination in the future.
- 5.3 The Project Manager, unless otherwise directed or agreed to by the City in writing, will perform those duties and discharge those responsibilities allocated to the Project Manager as set forth in this Contract. The Project Manager shall be the City's representative from the effective date of this Contract until final payment has been made. The Project Manager shall be authorized to act on behalf of the City only to the extent provided in this Contract.
- 5.4 The City and the Contractor shall communicate with each other in the first instance through the Project Manager.
- 5.5 The Project Manager shall be the initial interpreter of the requirements of the Project Manual and the judge of the performance by the Contractor. The Project Manager shall render written graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.
- 5.6 The Project Manager will review the Contractor's Applications for Payment and will certify to the City for payment to the Contractor those amounts then due the Contractor as provided in this Contract. The Project Manager's recommendation of any payment requested in an Application for Payment will constitute a representation by Project Manager to City, based on Project Manager's on-site observations of the Work in progress as an experienced and qualified design professional and on Project Manager's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of the Project Manager's knowledge, information and belief, the quality of the Work is in accordance with the Project Manual (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Project Manual, to a final determination of quantities and classifications for Unit Price Work if such is called for herein, and to any other qualifications stated in the recommendation); and that Contractor is entitled to payment of the amount recommended. However, by recommending any such payment Project Manager will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to Project Manager in the Project Manual or that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by the City or the City to withhold payment to Contractor.

- 5.7 The Project Manager may refuse to recommend the whole or any part of any payment if, in Project Manager's opinion, it would be incorrect to make such representations to City. Project Manager may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in the Project Manager's opinion to protect the City from loss because:
- The Work is defective, or completed Work has been damaged requiring correction or replacement,
 - The Contract Price has been reduced by Written Amendment or Change Order,
 - The City has been required to correct defective Work or complete Work in accordance with the Project Manual.
- 5.8 The City may refuse to make payment of the full amount recommended by the Project Manager because claims have been made against City on account of Contractor's performance or furnishing of the Work or liens have been filed in connection with the Work or there are other items entitling City to a set-off against the amount recommended, but City must give Contractor written notice (with a copy to Project Manager) stating the reasons for such action.
- 5.9 The Project Manager will have the authority to reject Work, which is defective or does not conform to the requirements of this Contract. If the Project Manager deems it necessary or advisable, the Project Manager shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.
- 5.10 The Project Manager will review, or take other appropriate action as necessary, concerning the Contractor's submittals, including Shop Drawings, Product Data and Samples. Such review, or other action, shall be for the sole purpose of determining general conformance with the design concept and information given through the Project Manual.
- 5.11 The Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 5.12 The Project Manager, upon written request from the Contractor shall conduct observations to determine the date of substantial completion and the date of final acceptance. The Project Manager will receive and forward to the City for the City's review and records, written warranties and related documents from the Contractor required by this Contract and will issue a final Certificate for Payment to the City upon compliance with the requirements of this Contract.
- 5.13 The Project Manager's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.
- 5.14 The Project Manager will **NOT** be responsible for Contractor's means, methods, techniques, sequences, or procedures or construction, or the safety precautions and programs incident thereto and will not be responsible for Contractor's failure to perform the

- work in accordance with the Project Manual. The Project Manager will not be responsible for the acts or omissions of the Contractor or any Subcontractor or any of its or their agents or employees, or any other person at the site or otherwise performing any of the work except as may otherwise be provided.
- 5.15 Any plan or method of work suggested by the Project Manager, or other representatives of the City, to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor, and the Project Manager and the City will assume no responsibility therefore.
- 5.16 It is agreed by the Contractor that the City shall be and is hereby authorized to appoint or employ, either directly or through the Project Manager, such City representatives or observers as the City may deem proper, to observe the materials furnished and the work performed under the Project Manual, and to see that the said materials are furnished, and the said work performed, in accordance with the Project Manual therefore. The Contractor shall furnish all reasonable aid and assistance required by the Project Manager, or by the resident representatives for proper observation and examination of the Work and all parts thereof.
- 5.17 The Contractor shall comply with any interpretation of the Project Manual by the Project Manager, or any resident representative or observer so appointed, when the same are consistent with the obligations of the Project Manual. However, should the Contractor object to any interpretation given by any subordinate Project Manager, resident representative or observer, the Contractor may appeal in writing to the City Director of Public Works for a decision.
- 5.18 Resident representatives, observers, and other properly authorized representatives of the City or Project Manager shall be free at all times to perform their duties, and intimidation or attempted intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the City so decides, to annul the Contract.
- 5.19 Such observation shall not relieve the Contractor from any obligation to perform said work strictly in accordance with the Project Manual.
- 6. WORK SCHEDULE:**
- 6.1 The Contractor, within ten (10) calendar days after being instructed to do so in a written notice from the City, shall commence work to be done under this Contract.
- 6.2 The rate of progress shall be such that the Work shall have been completed in accordance with the terms of the Contract Documents on or before the completion date for the construction period named in the contract agreement, subject to any extension or extensions of such time made as hereinafter provided.
- 6.3 The Contractor shall be required to furnish the Project Manager with a schedule setting forth in detail (in the critical path method) the sequences proposed to be followed, and giving the dates on which it is expected that portions of the work will be started and completed.
- 6.4 If at any time, in the opinion of the Project Manager or City, proper progress is not being maintained; such changes shall be made in the schedule and resubmitted for consideration.

- 6.5 If the Contractor has not completed Work segments and is within a non-performance penalty period, he/she shall not be allowed to undertake a new Work segment until the Work segment in dispute is completed, unless expressly permitted by the City.
- 6.6 The operation of any tool, equipment, vehicle, instrument, or other noise-producing device is prohibited to start before or continue after the hours of 7 AM and 10 PM, Monday through Friday (except Fridays which shall be until Midnight) and 8 AM and midnight on Weekends (except Sunday which shall be 10 PM). Violation of this requirement is Prima Facia Violation of City Municipal Code 11-202.
- 6.7 No work shall be undertaken on Saturdays, Sundays and Holidays (Christmas, New Years, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day and Thanksgiving) without the express written approval of the City Project Manager. If it is necessary to perform proper care, maintenance, or protection of work already completed or of equipment used, or in the case of an emergency verbal permission may be obtained through the Project Manager.
- 6.8 Night work may be established by the Contractor, as a regular procedure, with the written permission of the City; such permission, however, may be revoked at any time by the City if the Contractor fails to maintain adequate equipment for the proper prosecution and control of all operations performed as part of the Work.
- 6.9 The Contractor shall provide 24 hours notice prior to commencing any work to the City Project Manager. The Contractor shall communicate immediately any changes in the work schedule to the City Project Manager.

7. DELAYS AND EXTENSIONS OF TIME

- 7.1 In executing the Contract, the Contractor expressly covenants and agrees that, in undertaking the completion of the work within the time herein fixed, he has taken into consideration and made allowances for all of the ordinary delays and hindrances incident to such work, whether growing out of delays in securing materials, workers, weather conditions or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the Work, or any portion thereof, included in this Contract.
- 7.2 Should the Contractor, however, be delayed in the prosecution and completion of the work by reason of delayed shipment orders, or by any changes, additions, or omissions therein ordered in writing by the City, or by strikes or the abandonment of the work by the men engaged thereon through no fault of the Contractor, or by any act taken by the U.S. Government such as the commandeering of labor or materials, embargoes, etc., which would affect the fabrication or delivery of materials and/or equipment to the work; or by neglect, delay or default of any other contractor of the City, or delays caused by court proceedings; the Contractor shall have no claims for damages or additional compensation or costs for any such cause or delay; but he shall in such cases be entitled to such extension of the time specified for the completion of the work as the City and the Project Manager shall award in writing on account of such delays, provided, however, that claim for such extension of time is made by the Contractor to the City and the Project Manager in writing within one (1) week from the time when any such alleged cause for delay shall occur.

8. ADVERSE WEATHER:

- 8.1 Extensions of time for adverse weather shall be granted only under the conditions as hereinafter provided.
- 8.2 For conditions of weather or conditions at the site, so unusual as not to be reasonably anticipated, as determined by the Project Manager, an average or usual number of inclement days when work cannot proceed are to be anticipated during the construction period and are not to be considered as warranting extension of time.
- 8.3 Adverse Weather is defined as atmospheric conditions or the impact thereof at a definite time and place, which are unfavorable to construction activities such that they prevent work on critical activities for 50 percent or more of the Contractor's scheduled workday.
- 8.4 Unusually Severe Weather is defined as weather, which is more severe than the adverse weather anticipated for the season, location, or activity involved.
- 8.5 Time Extensions for Unusually Severe Weather:
- In order for any request for time extension due to unusually severe weather to be valid, the Contractor must document both of the following conditions:
 - The weather experienced at the Work site during the Contract period is more severe than the adverse weather anticipated for the Work location during any given month.
 - The unusually severe weather actually caused a delay to the completion of the Work. The delay must be beyond the control and without fault or negligence by the Contractor.
- 8.6 The following schedule of monthly-anticipated adverse weather delays will constitute the baseline for monthly weather time evaluations. The Contractor's Progress Schedule must reflect these anticipated adverse weather delays in all weather affected activities:

MONTHLY ANTICIPATED ADVERSE WEATHER DELAY
WORK DAYS BASED ON FIVE (5) DAY WORK WEEK

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
10	8	7	6	7	7	5	5	5	4	5	9

- 8.7 Upon receipt of the Notice to Proceed, and continuing throughout the Contract, the Contractor shall record on their daily construction report, the occurrence of adverse weather and resultant impact to normally scheduled work.
- 8.8 The number of actual adverse weather delay days shall include days affected by actual adverse weather (even if adverse weather occurred in the previous month), and shall be calculated chronologically from the first to the last day of each month, and be recorded as full workdays.
- 8.9 If the number of actual adverse weather delay days in a given month exceeds the number

of days anticipated above, the difference shall be multiplied by 7/5 to convert any qualifying workday delays to calendar days. The resulting number of qualifying lost days shall be added to the Contract Time.

- 8.10 The determination that unusually severe weather occurred does not automatically mean an extension of time will be granted. The Contractor must substantiate the unusually severe weather delayed work activities on the critical path of the Progress Schedule.
- 8.11 Full consideration for equivalent fair weather workdays shall be given. If the number of actual adverse weather delays in a given month is less than the number of days anticipated as indicated above, the difference shall be multiplied by 7/5 to convert any workday increases to calendar days. The resulting number of qualifying extra days will be accumulated and subtracted from any future month's days lost due to unusually severe weather.
- 8.12 The net cumulative total of extra days/lost days shall not result in a reduction of Contract Time and the Date of Substantial Completion shall not be changed because of unusually favorable weather.
- 8.13 In converting workdays to calendar days, fractions 0.5 and greater shall be rounded up to the next whole number. Fractions less than 0.5 shall be dropped.
- 8.14 The Contractor shall summarize and report all actual adverse weather delay days for each month to the Project Manager by the tenth (10th) day of the following month. A narrative indicating the impact of adverse weather conditions on the scheduled critical activities shall be included.
- 8.15 Any claim for extension of time due to unusually severe weather shall be submitted to the Project Manager within 7 days of the last day of the commencement of the event giving rise to the delay occurred. Resolution of any claim shall follow the procedures established by the Regulations of the Contract and Special Conditions and as described above.
- 8.16 The Contractor shall include and indicate the monthly-anticipated adverse weather days, listed above, in their Progress Schedule. (Reference Section 3.1.1 for Progress Schedule requirements)
- 8.17 The Contractor shall indicate the approved adverse weather days (whether less or more than the anticipated days) in their monthly Progress Schedule update.

9. PAYMENT PROCEDURE:

- 9.1 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal on the first day of each month of an Application for Payment, all Work for which payments have been received from the City shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.
- 9.2 Each application for payment must be submitted with Contractor's waiver for period of construction covered by application. Each progress payment will be submitted with

executed waivers from the subcontractors or sub-contractors and suppliers for the previous period of construction covered by the previous application. The final payment application must be submitted together with or preceded by final or complete waivers from every entity involved with performance of the work covered by the payment request.

- 9.3 The Contractor will submit waivers on forms, and executed in a manner, acceptable to City.
- 9.4 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor because of such Subcontractor's Work the amount to which such Subcontractor is entitled. In the event the City becomes informed that the Contractor has not paid a Subcontractor as herein provided, the City shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the City, shall be deemed payment to the Contractor but shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the City to repeat the procedure in the future.
- 9.5 The Project Manager will, upon receipt of a written Application for Payment from the Contractor, review the amount of work performed during the preceding period and the value thereof at the unit prices contracted. From the amounts so ascertained, there shall be deducted ten percent (10%) to be retained until after final completion of the entire work to the satisfaction of the City. The Project Manager will submit an estimate each month to the City for payment to the Contractor, except that no amount less than \$500.00 will be submitted unless the total amount of the Contract remaining unpaid is less than \$500.00.
- 9.6 Deductions will be made from progress payments if the Contract includes a provision for a lump sum or a percentage deduction. Lump sum deductions will be that portion of the stated lump sum computed as the ratio that the amount earned bears to the Contract amount. Percentage deductions will be computed at the stated percentage of the amount earned.
- 9.7 No progress payment, nor any use or occupancy of the Work by the City, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.
- 9.8 The City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the City from loss because of:
- Defective Work not remedied by the Contractor;
 - Claims of third parties against the City or the City's property;
 - Failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
 - Evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
 - Evidence that the Work will not be completed in the time required for substantial or final completion;
 - Persistent failure to carry out the Work in accordance with the Contract;
 - Damage to the City or a third party to whom the City is, or may be, liable;

- Evidence that the work is not progressing according to agreed upon schedule by both parties.
- 9.9 In the event that the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in this subparagraph, the Contractor shall promptly comply with such demand and refund such monies to the City.
- 9.10 Neither the observation by the City or any of the City's officials, employees, or agents, nor any order by the City for payment of money, nor any payment for, or acceptance of, the whole or any part of the work by the City or Project Manager, nor any extension of time, nor any possession taken by the City or its employees, shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the City, or any right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of any other or subsequent breach.

10. COMPLETION AND FINAL PAYMENT

- 10.1 Work completion shall be defined as all elements of the Work or work segment, being complete including all subsidiary items and "punch-list" items.
- 10.2 When all of the Work is finally complete and the Contractor is ready for a final inspection, it shall notify the City and the Project Manager thereof in writing. Thereupon, the Project Manager will make final inspection of the Work and, if the Work is complete in accordance with this Contract, the Project Manager will promptly issue a final Certificate for Payment certifying to the City that the Work is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Project Manager is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s), which cost may be deducted by the City from the Contractor's full payment.
- 10.3 The Contractor shall not be entitled to any payment unless and until it submits to the Project Manager its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the City, or the City's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors and Suppliers of the Contractor and of any and all other parties required by the City; and consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the City, the Contractor shall furnish a bond satisfactory to the City to discharge any such lien or indemnify the City from liability.
- 10.4 The City shall make final payment of all sums due the Contractor within thirty days of the later of the Project Manager's execution of a final Certificate for Payment.
- 10.5 Acceptance of final payment shall constitute a waiver of all claims against the City by the Contractor except for those claims previously made in writing against the City by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final inspection.

11. CLAIMS BY THE CONTRACTOR

- 11.1 All Contractor claims shall be initiated by written notice and claim to the Project Manager. Such written notice and claim must be furnished within seven calendar days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.
- 11.2 The Contractor shall diligently proceed with performance of this Contract whether or not there be such a claim pending and the City shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim shall be reflected by a Change Order executed by the City, the Project Manager and the Contractor.
- 11.3 Should concealed and unknown conditions which could not, with reasonable diligence, have been discovered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure differ materially with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided by this Contract, be encountered, the Contract Price shall be equitably adjusted by the Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the City having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the City written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed or unknown condition.
- 11.4 If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the City therefore, the Contractor shall give the City written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.
- 11.5 The City reserves the right to increase or decrease quantities, and alter the details of construction including grade and alignment as the Project Manager may consider necessary or desirable, by approved Change Order. Such modifications shall not invalidate the Contract nor release the surety. Unless such alterations and increases or decreases change the total cost of the Work, based on the originally estimated quantities and the unit prices bid, by more than 25 percent, or change the total cost of any major item, based on the originally estimated quantities and the unit price bid, by more than 25 percent, the Contractor shall perform the work altered, increased or decreased, at a negotiated price or prices. (A major item shall mean any bid item, the total cost of which exceeds 12-1/2 percent of the total Contract amount based on the proposed quantity and the contract unit price).
- 11.6 When the alterations cause an increase or decrease in excess of the 25 percent indicated above, either the Contractor or the Project Manager may request an adjustment of the unit price to be paid for the item or items.
- 11.7 If a mutually agreeable adjustment cannot be obtained, the City reserves the right to terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the Work.

- 11.8 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall not include standby costs, indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties.
- 11.9 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving Final Acceptance of the Work shall be extended upon the written notice and claim of the Contractor to the City, for such reasonable time as the City may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven calendar days after the occurrence of the event or the first appearance of the condition-giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Work. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this subparagraph, any claim for an extension of time shall be waived.
- 11.10 The Contractor shall delay or suspend the progress of the work or any part thereof, whenever so required by written order of the City, and for such periods of time as required; provided, that in the event of such delay or delays or of such suspension or suspensions of the progress of the work, or any part thereof, the time for completion of work so suspended or of work so delayed by such suspension or suspensions shall be extended for a period equivalent to the time lost by reason of such suspension or suspensions; but such order of the City or Project Manager shall not otherwise modify or invalidate in any way, any of the provisions of this Contract. In the event that the work shall be stopped by written order of the City, any expense, which, in the sole opinion and judgment of the City, is caused by the City, shall be paid by the City to the Contractor.
- 11.11 In executing the Contract Documents, the Contractor expressly covenants and agrees that, in undertaking to complete the Work within the time herein fixed, it has taken into consideration and made allowances for all hindrances and delays incident to such work, whether growing out of delays in securing materials or workers or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the work, or any portion thereof, included in this Contract, except as provided herein.
- 11.12 In addition to the Project Manual particular to Mobilization found elsewhere in this document, additional mobilization shall not be compensable for work outside of the designated areas for work deemed essential by the City. A quantity of work equal to as much as 10% of the total Contract may be required to be performed beyond the boundaries of the designated work areas

12. CHANGES IN THE WORK

- 12.1 Changes in the Work within the general scope of this Contract, consisting of additions,

- deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.
- 12.2 The Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 12.3 Any change in the Contract Price resulting from a Change Order shall be by mutual agreement between the City and the Contractor as evidenced by the change in the Contract Price being set forth in the Change Order, and, together with any conditions or requirements related thereto, being initialed by both parties.
- 12.4 If no mutual agreement occurs between the City and the Contractor relative to a change in the Work, the Contractor shall proceed with the work that is the subject of the Change Order, and the change in the Contract Price, if any, shall then be determined by the Project Manager on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content to the City, as the Project Manager requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies or equipment, including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools, whether rented from the Contractor or others, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and job site field office overhead directly attributable to the change. In no event shall any standby time or any expenditure or savings associated with the Contractor's home office or other non-job site overhead expense be included in any change in the Contract Price. Further, in no event shall the Contractor's overhead expense exceed ten (10%) percent of the reasonable expenditures. Pending final determination of reasonable expenditures or savings to the City, payments on account shall be made to the Contractor on the Project Manager's Certificate for Payment.
- 12.5 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that the application of such unit prices to the quantities of Work proposed would cause substantial inequity to the City or to the Contractor, the applicable unit prices shall be equitably adjusted.
- 12.6 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim including impact against the City for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

13. INSURANCE AND HOLD HARMLESS.

- 13.1 The Contractor shall assume full responsibility for the protection of all public and private property, structures, sewers, and utilities, both above and below the ground, along, beneath, above, across or near the site or sites of the work being performed under this Contract, or which are in any manner affected by the prosecution of the Work or the transportation of men/women or materials in connection therewith. Barriers shall be kept placed at all times to protect persons other than those engaged on or about the Work from accident, and the Contractor will be held responsible for all accidents to persons or property resulting from the acts of Contractor or its employees.
- 13.2 To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the City, the Project Manager, and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property (other than the Work itself) including the loss of use resulting there-from, and (2) is caused in whole or in part by any intentional or negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity, which would otherwise exist.
- 13.3 All property damaged shall be repaired or replaced to a condition immediately prior to the time of damage, and to the satisfaction of the City.
- 13.4 All loss or damage arising out of the nature of the work to be done, or from the action of the elements, or from floods or overflows, or from ground water, or from unusual obstructions or difficulties, or any other natural or existing circumstances either known or unforeseen, which may be encountered in the prosecution of the said work shall be sustained and borne by the Contractor at its own cost and expense.
- 13.5 The Contractor shall give reasonable notice to the City or owners of public or private property and utilities when such property is liable to injury or damage through the performance of the Work, and shall make all necessary arrangements with such City or owners relative to the removal and replacement or protection of such property or utilities.
- 13.6 The Contractor shall satisfactorily shore, support, and protect all structures and all pipes, sewers, drains, conduits, and other utility facilities, and shall be responsible for any damage resulting thereto. The Contractor shall not be entitled to any damages or extra compensation because of any postponement, interference, or delay caused by any such structures and facilities being on the line of the Work whether they are shown on the plans or not, specifically including, but not limited to, damages due to delay in utility relocation.
- 13.7 The Contractor shall secure and maintain, throughout the duration of this Contract, insurance from a company authorized to do business in the State of Kansas. Such insurance shall be of such types and in such amounts as may be necessary to protect himself and the interests of the City and agents of the City against all hazards or risks of loss as hereinafter specified including an endorsement covering explosion, collapse, blasting and damage to underground property if applicable as specified in these Contract Documents. The form and limits of such insurance, together with the underwriter thereof in

each case, shall be approved by the City, but regardless of such approval, it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times. Failure of the Contractor to maintain adequate insurance coverage shall not relieve it of any contractual responsibility or obligation. The insurance shall be provided on an occurrence basis and, not claims made basis.

- 13.8 The City and the Project Manager shall be a named insured on such policies. Satisfactory certificates of insurance shall be filed with the City prior to starting any construction work on this Contract. The certificates shall state that thirty (30) days written notice will be given to the City before any policy coverage thereby is changed or canceled.
- 13.9 The Contractor shall secure and maintain through the duration of this Contract insurance on an occurrence basis of such types and in such amounts as may be necessary to protect the Contractor and the City and agents of the City against all hazards or risks of loss as hereinafter specified. The form and limits of such insurance, together with the underwriter thereof in each case, shall be approved by the City, but regardless of such approval, it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times. Failure of the Contractor to maintain adequate coverage shall not relieve it of any contractual responsibility or obligation, including but not limited to, the indemnification obligation.
- 13.10 Satisfactory certificates of insurance shall be filled with the City prior to the Contractor starting any construction work on this Contract. The Certificates shall state that the thirty (30) days written notice will be given to the City before any policy covered thereby is changed or cancelled. Failure by the Contractor to furnish the required insurance within the time specified in the notice of award of the Contract by the City, at the City option, may be the basis for the City exercising its right to terminate the Contract.
- 13.11 The liability limits shall be as stated:
- Worker's Compensation and Employer's Liability: This insurance shall protect the Contractor against all claims under applicable state worker's compensation laws. The Contractor shall also be protected against claims for injury, disease, or death of employees, which, for any reason, may not fall within the provisions of a worker's compensation law. This policy shall include an "all states" endorsement.
 - Automobile Liability.: This insurance shall be written in comprehensive form and shall protect the Contractor against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, and shall cover operation on and off the site of all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired. Unless otherwise specified, Contractor's insurance shall include the following:
 - \$300,000 single limit (on contracts less than \$100,000)
 - \$1,000,000 single limit (on contracts \$100,000 and more)
 - Commercial General Liability. This insurance shall be written in comprehensive form including Products, completed operations and Personal and Advertising injury and shall protect the Contractor against all claims arising from injuries to members of the public or damage to property of others arising out of any act or omission of the Contractor or its

agents, employees, or subcontractors. In addition, this policy shall specifically insure the contractual liability assumed by the Contractor under this Contract entitled "Insurance and Hold Harmless." The property damage liability coverage shall contain no exclusion relative to blasting, explosion, collapse of building, or damage to underground property. Unless otherwise specified, Contractor's insurance shall include the following:

- \$2,000,000 combined single limit (on contracts in excess of \$100,000)
- \$300,000 combined single limit (on contracts in excess of \$10,000 to \$100,000)
- \$100,000 combined single limit (on contracts of \$10,000 and less)

- Additional Insurance: Excess Liability coverage or additional insurance covering special hazards may be required on certain projects. Such additional insurance requirements shall be as specified in Instructions to Bidders or Special Conditions.

14. INDEMNITY

- 14.1 For purposes of indemnification requirements as set forth throughout the Contract, the following terms shall have the meaning set forth below:

"The Contractor" means and includes Contractor, all of his/her affiliates and subsidiaries, his/her Subcontractors and material men and their respective servants, agents and employees; and "Loss" means any and all loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including attorney's fees and the cost of defense), in connection with any action, proceeding, demand or claim, whether real or spurious, for injury, including death, to any person or persons or damages to or loss of, or loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with, or are claimed to arise out of or be connected with, the performance of this Contract whether arising before or after the completion of the work required hereunder.

- 14.2 For purposes of this Contract, and without in any way limiting indemnification obligations that may be set forth elsewhere in the Contract, the Contractor hereby agrees to indemnify, defend and hold harmless the City and County from any and all Loss where Loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Contractor, his/her employees, agents, Subcontractors and suppliers.
- 14.3 It is agreed as a specific element of consideration of this Contract that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the City and County or any third party and, further, notwithstanding any theory of law including, but not limited to, a characterization of the City's or County's or any third party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature.
- 14.4 Nothing in this section shall be deemed to impose liability on the Contractor to indemnify the City or County for Loss when the negligence or other actionable fault the City is the sole cause of Loss.
- 14.5 With respect to the City's or County's rights as set forth herein, the Contractor expressly

waives all statutory defenses, including, but not limited to, those under workers compensation, contribution, comparative fault or similar statutes to the extent said defenses are inconsistent with or would defeat the purpose of this section.

15. SUCCESSORS AND ASSIGNS

- 15.1 The City and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract.
- 15.2 The Contractor shall not assign or sublet the work, or any part thereof, without the previous written consent of the City, nor shall it assign, by power of attorney or otherwise, any of the money payable under this Contract unless by and with the like written consent of the City. In case the Contractor assigns all, or any part of any moneys due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to all prior liens of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.
- 15.3 Should any Subcontractor fail to perform in a satisfactory manner, the work undertaken, its subcontract shall be immediately terminated by the Contractor upon notice from the City. Performing in an unsatisfactory manner is defined as consistently having more than 10% of work unacceptable. The Contractor shall be as fully responsible to the City for the acts and omissions of the subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed. Nothing contained in this Contract shall create any contractual relations between any Subcontractor and the City, nor shall anything contained in the Contract Documents create any obligation on the part of the City to pay or to see to the payment of any sums due any Subcontractor.
- 15.4 The Contractor shall not award subcontracts which total more than forty-five (45%) of the Contract Price and shall perform within its own organization work amounting to not less than fifty-five percent (55%) of the total Contract Price. Approval by the City of any Subcontractor shall not constitute a waiver of any right of the City to reject defective work, material or equipment not in compliance with the requirements of the Contract Documents. The Contractor shall not make any substitution for any Subcontractor accepted by the City unless the City so agrees in writing.
- 15.5 The Contractor shall not subcontract, sell, transfer, assign or otherwise dispose of the Contract or any portion thereof without previous written consent from the City. In case such consent is given, the Contractor, shall be permitted to subcontract a portion thereof, but shall perform with his/her own organization work amounting to not less than fifty five (55%) of the total Contract Price. No subcontracts, or other transfer of Contract, shall release the Contractor of its liability under the Contract and bonds applicable thereto.
- 15.6 The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Contractor by the terms of the Contract Documents insofar as applicable to the work of the Subcontractor and to give the Contractor the same power to terminate any Subcontract as the City has to terminate the Contractor under any provisions of the Contract Documents.

- 15.7 Prior to the City's approval of the Contract bid, the successful bidder shall submit to the City for acceptance, a list of names of all Subcontractors proposed for portions of the work and shall designate which work each is to perform.
- 15.8 The City shall, prior to the City's approval of the Contract bid, notify the successful bidder, in writing, if the City, after due investigation, has reasonable objection to any Subcontractor on such list, and the Contractor shall substitute a Subcontractor acceptable to the City at no additional cost to the City or shall be allowed to withdraw his/her Bid, and the City shall either re-bid the Work or accept the next best lowest and responsible bidder. The failure of the City to make objection to a Subcontractor shall constitute an acceptance of such Subcontractor but shall not constitute a waiver of any right of the City to reject defective work, material or equipment not in conformance with the requirements of the Project Manual.

16. NON-DISCRIMINATION LAWS

- 16.1 The Contractor further agrees that the Contractor shall abide by the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this Work and furnish any certification required by any federal, state or local governmental agency in connection therewith.
- 16.2 In all solicitations or advertisements for employees, the Contractor shall include the phrase, "equal opportunity employer", or similar phrase to be approved by the Kansas Human Rights Commission (Commission);
- 16.3 If the Contractor fails to comply with the manner in which the Contractor reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency;
- 16.4 If the Contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Contractor shall be deemed to have breached the present Contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency; and
- 16.5 The Contractor shall include the provisions of this section in every subcontract or purchase order so that such provisions will be binding upon such Subcontractor or vendor.
- 16.6 The provisions of this section shall not apply to a contract entered into by a Contractor who employs fewer than four employees during the terms of such contract; or whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.

17. RELATIONS WITH OTHER CONTRACTORS:

- 17.1 The Contractor shall cooperate with all other contractors who may be performing work on behalf of the City, and workers who may be employed by the City, or any other entity on any

work in the vicinity of the Work to be done under this Contract, and the Contractor shall so conduct his/her operations as to interfere to the least possible extent with the work of such contractors or workers. The Contractor shall be responsible for any injury or damage, that may be sustained by other contractors, workers, their work or employees of the City, because of any fault or negligence on the Contractor's part, and shall, at his/her own expense, repair or pay for such injury or damage. If the work of the Contractor is delayed because of any acts or omissions of any other Contractor or Contractors, the Contractor shall have no claim against the City on that account other than for an extension of time.

- 17.2 When two or more Contracts are being executed at one time in such manner that work on one Contract may interfere with that on another, the City shall decide which Contractor shall progress at which time.
- 17.3 Other projects the Contractor may have to coordinate shall be listed in the Special Conditions.
- 17.4 When the territory of one Contract is the necessary or convenient means of access for the transportation or movement of workers, materials, or appliances required for the execution of another Contract, such privileges of access or any other responsible privilege may be granted by the City to the Contractor so desiring, to the extent such may be reasonably necessary.
- 17.5 Upon execution of the Contract, the Contractor shall furnish the City, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Work. The City shall promptly reply to the Contractor, in writing, stating any objections the City may have to such proposed Subcontractor. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the City has made timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has objection.

18. RIGHT OF CITY TO TERMINATE

- 18.1 If the Contractor persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, or supply enough properly skilled workers, supervisory personnel or proper equipment or materials, or if it fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or if this Contract is assigned by Contractor without authorization or if Contractor is adjudged as bankrupt, or if a general assignment of assets be made for the benefit of creditors; or if a receiver is appointed, or otherwise is guilty of a substantial violation of a provision of this Contract, then the City may by written notice to the Contractor, without prejudice to any right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor and its surety shall be liable to the City for all excess cost sustained by the City because of such prosecution and completion including any additional legal, Project Manager or bid-letting costs therefore. In such case, the Contractor shall not be entitled to receive further payment. In the event the Contractor is found in a court of law to have been wrongfully terminated for cause, then such termination shall be deemed a termination for convenience and the Contractor shall be compensated as provided herein.

- 18.2 The City, within its sole discretion, may elect to terminate the Contract with the Contractor for convenience upon three (3) days written Notice to Contractor. In the event of such termination, Contractor shall cease immediately all operations and shall be compensated for all work performed as of the date of termination in accordance with the terms of payment in this contract. Contractor shall not be entitled to any anticipatory profits of other costs other than direct costs of demobilization.
19. MISCELLANEOUS:
- 19.1 The Contractor warrants to the City that all labor furnished to progress the Work under the Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with the Project Manual. All Work not conforming to these requirements may be considered defective.
- 19.2 The Contractor shall obtain and pay for all permits, fees and licenses necessary or ordinary for the Work. The Contractor shall comply with all lawful requirements, including federal and state laws, City and County laws and ordinances and building codes, applicable to the Work and shall give and maintain copies of all notices required by applicable law pertaining to the Work.
- 19.3 Both the business address of the Contractor given in the Bid or proposal upon which this Contract is founded, and the Contractor's Office near the Work, is hereby designated as the places to which all notices, letters, and other communications to the Contractor may be mailed or delivered. The delivering at either of the above named addresses, or depositing in any mailbox regularly maintained by the Post Office, of any notice, letter or other communication so addressed to the Contractor, and the date of said service shall be the date of such delivery or mailing. Such addresses may be changed at any time by an instrument in writing, executed by the Contractor, presented, and delivered to the Project Manager and to the City. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or communication upon the Contractor personally.
- 19.4 It is mutually agreed by and between the parties to this Contract that all royalties and fees for and in connection with patents, or patent infringement, claims for materials, articles, apparatus, devices or equipment (as distinguished from processes) used in or furnished for the work shall be included in the Contract amount and the Contractor shall satisfy all demands that may be made at any time for such, and the Contractor shall at its cost and expense, defend any and all suits or proceedings that may be instituted at any time against the City for infringement or alleged infringement of any such patents involved in the work, and Contractor shall pay any award of damages.
- 19.5 The right of general administration of the City shall not make the Contractor an agent of the City, and the liability of the Contractor for all damages to persons, firms, and corporations, arising from the Contractor's execution of the Work, shall not be lessened because of such general administration, but as to all such persons, firms, and corporations, and the damages, if any, to them or their property. The Contractor herein is an independent Contractor in respect to the work.

- 19.6 For a period of time, from the inception of the Contract to three (3) years from the date of final payment under the Contract, the Contractor and subcontractors shall maintain books, accounts, ledgers, invoices, drafts, pages and other records pertaining to the performance of this Contract. At all reasonable times during this period these records shall be available within the State of Kansas at a field or permanent business office for inspection by authorized representatives of the City or of any other agency, which has contributed funds in connection with the Contract or to which the City is obligated to make such inspections available. In addition, this requirement shall be included in all subcontracts entered into in connection with this Contract.
- 19.7 Titles, subheadings used herein, and other Contract Documents are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Contract Documents.
- 19.8 No waiver of any breach of this Contract shall be construed to be a waiver of any other subsequent breach.
- 19.9 Should any provision of this Agreement or other Contract Documents be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement and/or the other Contract Documents shall be unaffected thereby and shall continue to be valid and enforceable.
- 19.10 The Contractor shall keep fully informed of all existing and current regulations of the City, and County, State, and National Laws, which in any way limit or control the actions or operations of those engaged upon the work, or affecting materials supplied, to or by them. The Contractor shall at all times observe and comply with all ordinances, laws, and regulations, and shall protect and indemnify the City and the City's officers and agents against any claims or liability arising from or based on any violation of the same.
- 19.11 Nothing contained in these Project Manual shall create, or be interpreted to create, privity or any other contractual agreement between the City and any person or entity other than the Contractor.
- 19.12 Duties and obligations imposed by the Contract Documents, rights, and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.
- 19.13 No action or failure to act by the City, Project Manager or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval or acquiescence in a breach hereunder, except as may be specifically agreed in writing.
- 19.14 Contractor specifically acknowledges and confirms that: 1.) he/she has visited the site, made all inspections he deems appropriate and has read and fully understands the Contract Documents, including all obligations and responsibilities undertaken by he as specified herein and in other Contract Documents and knowingly accepts the same; 2.) he/she has furnished copies of all Contract Documents to his/her insurance carrier(s) and his/her surety(ies); and 3.) his/her insurance carrier(s) and surety(ies) agree to be

- bound as specified herein, in the Contract Documents and in the insurance policy(ies) and bonds as to liability and surety coverage.
- 19.15 It is specifically agreed between the parties executing this Agreement that the Contract Documents are not intended to create any third party beneficiary relationship nor authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.
- 19.16 This agreement is entered into, under and pursuant to, and is to be construed and enforceable in accordance with the laws of the State of Kansas.

WITNESSETH:

WHEREAS, the City has caused to be prepared, approved and adopted a Project Manual describing construction materials, labor, equipment and transportation necessary for, and in connection with, the construction of a public improvement, and has caused to be published an advertisement inviting sealed Bid, in the manner and for the time required by law; and

WHEREAS, the Contractor, in response to the advertisement, has submitted to the City in the manner and at the time specified, a sealed Bid in accordance with the terms of this Agreement; and

WHEREAS, the City, in the manner prescribed by law, has publicly opened, examined and canvassed the Bids submitted, and as a result of such canvass has determined and declared the Contractor to be the lowest and best responsible bidder for the construct of said public improvements, and has duly awarded to the said Contractor a contract therefore upon the terms and conditions set forth in this Agreement for the sum or sums named in the Bid attached to, and made a part of this Agreement; and

WHEREAS, the Contractor has agreed to furnish at its own cost and expense all labor, tools, equipment, materials and transportation required to construct and complete in good, first class and workmanlike manner, the Work in accordance with the Project Manual; and

WHEREAS, this Agreement, and other Contract Documents on file with the City Clerk of Prairie Village, Kansas, all of which Contract Documents form the Contract, and are as fully a part thereof as if repeated verbatim herein; all work to be to the entire satisfaction of the City or City's agents, and in accordance with the laws of the City, the State of Kansas and the United States of America; and

WHEREAS, in consideration of the compensation to be paid the Contractor, and of the mutual agreements herein contained, the parties hereto have agreed and hereby agree, the City for itself and its successors, and the Contractor for itself, himself, herself or themselves, its, his/her, hers or their successors and assigns, or its, his/her, hers or their executors and administrators, as follows:

IN WITNESS WHEREOF, the City, has caused this Agreement to be executed in its behalf, thereunto duly authorized, and the said Contractor has executed five (5) counterparts of this Contract in the prescribed form and manner, the day and year first above written.

CITY OF PRAIRIE VILLAGE

By: _____
(signed)

By _____
(signed)

Ronald L. Shaffer _____

(typed name)

Mayor _____

(typed title)

City of Prairie Village _____

(typed company name)

7700 Mission Road _____

(typed address)

Prairie Village, Kansas, 66208 _____

(typed city, state, zip)

(typed telephone number)

(date of execution)

(date of execution)

SEAL

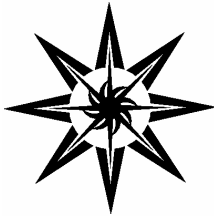
ATTEST:

APPROVED BY:

City Clerk, Joyce Hagen-Mundy

City Attorney, Catherine Logan

(If the Contract is not executed by the President of the Corporation or general partner of the partnership, please provide documentation, which authorizes the signatory to bind the corporation or partnership. If a corporation, the Contractor shall furnish the City a current certificate of good standing, dated within ten (10) days of the date of this Contract.)



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: September 17, 2012

Council Meeting Date: September 17, 2012

***COU2012-41: CONSIDER CONSTRUCTION ADMINISTRATION AGREEMENT WITH TRANSYSTEMS FOR PROJECT NUMBER SARD0001, CDBG PROJECT ON SAGAMORE ROAD FROM 75TH STREET TO 76TH STREET**

RECOMMENDATION

Move to approve the construction administration agreement with TranSystems for Project SARD0001, Sagamore Road CDGB project in the total amount of \$19,975.25.

BACKGROUND

TranSystems is our current construction inspection firm and has been performing well on current projects.

The construction cost for this project will be \$155,598.75. The \$19,975.25 is 12.8% of the construction cost and is comparable to our last CDBG project on 75th Place two years ago. This contract will be a cost not to exceed contract.

FUNDING SOURCE

Funding is available under the Capital Infrastructure Program under Project SARD0001, Sagamore Road.

RELATION TO VILLAGE VISION

TR1a. *Ensure that infrastructure improvements meet the needs of all transportation users.*

ATTACHMENTS

1. Construction Administration Agreement with TranSystems for Project SARD0001, Sagamore Road.

PREPARED BY

Keith Bredehoeft, Project Manager

September 13, 2012

AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES

For

CONSTRUCTION ADMINISTRATION

For

PROJECT SARD0001: 2012 CDBG PROJECT

THIS AGREEMENT, made at the Prairie Village, Kansas, this _____ day of _____, by and between the City of Prairie Village, Kansas, a municipal corporation with offices at 7700 Mission Road, Prairie Village, Kansas, 66208, hereinafter called the “**City**”, and TranSystems, a Missouri corporation with offices at 2400 Pershing Road, Suite 400, Kansas City, MO, 64108, hereinafter called the “**Consultant**”.

WITNESSED, THAT WHEREAS, City has determined a need to retain a professional engineering firm to provide civil engineering services for Construction Administration of Project SARD0001 2012 CDBG Project, hereinafter called the “**Project**”,

AND WHEREAS, the City is authorized and empowered to contract with the Consultant for the necessary consulting services for the Project,

AND WHEREAS, the City has the necessary funds for payment of such services,

NOW THEREFORE, the City hereby hires and employs the Consultant as set forth in this Agreement effective the date first written above.

ARTICLE I - RESPONSIBILITIES OF THE CITY

The CITY designates Keith Bredehoeft, Manager of Engineering Services as CITY representative with respect to this Agreement. Mr. Bredehoeft shall have the authority to transmit instructions, receive information, interpret and define the policies of the CITY, make decisions relevant to the services of the CONSULTANT.

The CITY shall do the following in a timely manner:

1. Make available to the CONSULTANT all existing data and records relevant to the Project, including but not limited to, maps, plans, correspondence, data and previous reports and studies possessed by the CITY.
2. Approve all criteria and information as to the requirements of the CITY for the Project, including objectives and constraints, performance requirements, and budgetary limitations.
3. Review and approve all correspondence transmitted and forms used by the CONSULTANT relative to this Project.
4. Review for approval all submittals such as change orders and payment requests by the CONSULTANT.

ARTICLE II - RESPONSIBILITIES OF THE CONSULTANT

The CONSULTANT designates Mr. Stephen Langley as Construction Manager, who shall direct the related construction inspection and administration services in all phases of the Project to which this Agreement applies. The Construction Manager shall serve as the prime professional on this Project and shall be the prime contact with the Manager of Engineering Services.

The standard of care for all professional consulting services and related construction inspection and administration services either performed for or furnished by the CONSULTANT under this Agreement will be the care and skill ordinarily used by members of the CONSULTANT profession, practicing under similar conditions at the same time and in the same locality.

The Construction Manager shall act as CITY representative to the extent and limitations of the duties, responsibilities and authority as assigned herein and shall not be modified, except as CONSULTANT may otherwise agree in writing. All of CITY instructions to Contractor will be issued through Construction Manager, who shall have authority to act on behalf of CITY in dealings with Contractor to the extent provided in this Agreement, except as otherwise provided in writing.

The Construction Manager shall conduct a pre-construction meeting, which will include the Manager of Engineering Services, Contractor, utility companies and any appropriate government agency parted with the CITY prior to commencement of Work at the Site.

The Construction Manager shall coordinate with the Contractor on the taking of digital, pre-construction pictures.

The Construction Manager shall make visits to the site at intervals appropriate to the various stages of construction, as Construction Manager deems necessary, in order to observe as an experienced and qualified design professional the progress and quality of the Work. Such visits and observations by Construction Manager are not intended to be exhaustive or to extend to every aspect of the Work in progress or to involve detailed inspections of the Work in progress beyond the responsibilities specifically assigned to Construction Manager herein, but rather are to be limited to selective checking, selective sampling, and similar methods of observation of the Work based on Construction Manager's exercise of professional judgment. Based on information obtained during such visits and such observations, Construction Manager will determine if Contractor's work is proceeding in accordance with the Project Manual, and Construction Manager shall keep CITY informed of the progress of the Work.

The purpose of Construction Manager visits to the Site of the Project will be to enable Construction Manager to carry out the duties and responsibilities assigned to and undertaken by CONSULTANT during the Construction Phase. By the exercise of Construction Manager's efforts as an experienced and qualified construction professional, the Construction Manager will provide for CITY a greater degree of confidence that the completed Work will conform in general to the Project Manual and that the integrity of the design concept of the completed project as a functioning whole as indicated in the Project Manual has been implemented and preserved by Contractor. Construction Manager shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over the Work, nor shall Construction Manager have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to the Work, or for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Construction Manager neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Project Manual.

The Construction Manager shall have authority to disapprove or reject Contractor's work while it is in progress if, on the basis of such observations, Construction Manager believes that such work will not

produce a completed project that conforms generally to the Project Manual or that it will prejudice the integrity of the design concept of the completed project as a functioning whole as indicated in the Project Manual.

The Construction Manager shall issue necessary clarifications and interpretations of the Project Manual as appropriate to the orderly completion of the Work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Project Manual. Construction Manager may issue Field Orders authorizing minor variations of work that neither increase the Time for Completion nor have a value of more than \$1,000 from the requirements of the Project Manual.

The Construction Manager shall recommend Change Orders and Field Orders to Manager of Engineering Services, as appropriate, and prepare Change Orders and Field Orders as required.

The Construction Manager shall review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Project Manual and compatibility with the design concept of the completed project as a functioning whole as indicated in the Project Manual. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto. Construction Manager has an obligation to meet any Contractors submittal schedule that has earlier been acceptable to Construction Manager.

The Construction Manager and Manager of Engineering Services shall evaluate and determine the acceptability of substitute or "or equal" materials and equipment proposed by Contractor.

The Construction Manager shall require such special inspections or tests of the Work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Project Manual. The Construction Manager's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Project Manual and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Project Manual. The Construction Manager shall be entitled to rely on the results of such tests.

The Construction Manager shall render formal written recommendations on all claims of CITY and Contractor relating to the acceptability of the Work or the interpretation of the requirements of the Project Manual pertaining to the execution and progress of the Work.

The Construction Manager shall:

1. Review the Contractor's monthly Applications for Payment to determine it represents the work accepted and is mathematically correct. Construction Manager will provide recommendation for payment to the Manager of Engineering Services. Such recommendations of payment will be in writing and will constitute Construction Manager representation to the CITY, based on such observations and review, that, to the best of Construction Manager knowledge, information and belief, the Work has progressed to the point indicated, the quality of such is generally in accordance with the Project Manual (subject to an evaluation of the Work as a functioning whole prior to or upon completion, to the results of any subsequent tests called for in the Project Manual and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Construction Manager responsibility to observe the Work. In the case of unit price work, the Construction Manager recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Project Manual). The responsibilities of Construction Manager are expressly subject to the limitations set forth herein.

2. By recommending any payment, it will also not impose responsibility on Construction Manager to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price. However, the Construction Manager shall obtain from the Contractor documentation in approved form with the payment request to determine that title to any portion of the work in progress, materials, or equipment has passed to CITY free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between CITY and Contractor that might affect the amount that should be paid.

The Construction Manager shall receive and review maintenance and operating instructions, schedules, and guarantees that will be given to the Manager of Engineering Services.

The Construction Manager shall receive and deliver to the Manager of Engineering Services bonds, certificates, or other evidence of insurance not previously submitted and required by the Project Manual, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided herein, and the annotated record documents which are to be assembled by Contractor in accordance with the Project Manual to obtain final payment.

Construction Manager shall transmit to Manager of Engineering Services promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use. In company with Manager of Engineering Services and Contractor, the Construction Manager shall conduct an inspection to determine if the Work is Complete. If after considering any objections, the Construction Manager shall deliver a certificate of Completion to Manager of Engineering Services and Contractor.

Accompanying the recommendation for final payment, Construction Manager shall provide proper notice that the Work is acceptable to the best of the Construction Manager knowledge, information, and belief and based on the extent of the services provided by CONSULTANT under this Agreement.

The Construction Phase will commence with the execution of the Construction Agreement for the Project or any part thereof and will terminate upon written recommendation by Construction Manager for final payment to Contractors.

The Construction Manager shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing any of the Work. Construction Manager shall not be responsible for failure of any Contractor to perform or furnish the Work in accordance with the Project Manual.

Construction Manager shall furnish assistants, and other field staff to assist Construction Manager to provide more extensive observation of Contractor's work by observing progress and quality of the Work. Through such additional observations of Contractor's work in progress and field checks of materials and equipment by the assistants and other field staff, Construction Manager shall provide protection against defects and deficiencies in the Work.

The duties and responsibilities Construction Manager are as follows:

- 1 Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
- 2 Serve liaison with Contractor, working principally through Contractor's superintendent, assist in providing information regarding the intent of the Project Manual.
- 3 Obtaining from CITY additional details or information, when required for proper execution of the Work.

- 4 Report when clarifications and interpretations of the Project Manual are needed and transmit to Contractor clarifications and interpretations.
- 5 Record date of receipt of Samples and approved Shop Drawings.
- 6 Receive and examine Samples, which are furnished at the Site by Contractor.
- 7 Review material test reports and inform Manager of Engineering Services and Contractor of results not meeting specifications. The Construction Manager shall make appropriate recommendations to address results not meeting specifications.
- 8 Advise the Contractor prior to the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal that the submittal has not been received or approved by Construction Manager.
- 9 Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions. Transmit to Contractor in writing decisions as issued by Construction Manager.
- 10 Conduct on-Site observations of Contractor's work in progress to determine if the Work is in general proceeding in accordance with the Project Manual.
- 11 Report any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Project Manual or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Project Manual, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise of that part of work in progress that the Construction Manager believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
- 12 Consult with Contractor in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.
- 13 Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate CITY personnel, and that Contractor maintains adequate records thereof.
- 14 Observe, record, and report appropriate details relative to the test procedures and systems start-ups.
- 15 Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections.
- 16 Maintain orderly files for correspondence, reports of job conferences, reproductions of original Project Manual including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, clarifications and interpretations of the Project Manual, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.
- 17 Prepare a daily report recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Manager of Engineering Services.

- 18 Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.
- 19 Maintain records for use in preparing Project documentation.
- 20 Upon completion of the Work, furnish original set of all Project documentation to Manager of Engineering Services.
- 21 Furnish to Manager of Engineering Services periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- 22 Draft and recommend to Manager of Engineering Services proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- 23 Furnish copies of all inspection, test, and system start-up reports.
- 24 Immediately notify Manager of Engineering Services of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.
- 25 Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Manager of Engineering Services, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
- 26 During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Project Manual, and have these documents delivered to Manager of Engineering Services for review prior to payment for that part of the Work.
- 27 Participate in a Completion inspection, assist in the determination of Completion and the preparation of lists of items to be completed or corrected.
- 28 Participate in a final inspection in the company of Manager of Engineering Services, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.
- 29 Observe whether all items on the final list have been completed or corrected and make recommendations concerning acceptance and issuance of the Notice of Acceptability of the Work.

The Construction Manager shall not:

- 1 Exceed limitations of CONSULTANT authority as set forth in the Agreement or the Project Manual.
- 2 Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.
- 3 Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Project Manual.

- 4 Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of CITY or Contractor.
- 5 Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized.
- 6 Accept Shop Drawing or Sample submittals from anyone other than Contractor.
- 7 Authorize CITY to occupy the Project in whole or in part.

The Construction Manager is expected to conduct himself/herself at all times in such a manner as to reflect credit upon himself/herself and the CITY they represent. It is expected that the Construction Manager will be suitably dressed for the work, and he/she will be clean and neat enough to be a suitable representative of the CITY to the Contractor and the public. The Construction Manager will be pleasant, courteous and business-like in meeting the public. He/She is helpful and considerate to answer questions asked by the public. If the Construction Manager cannot clearly answer the question, the Construction Manager should refer the questioner to the Manager of Engineering Services.

The Construction Manager will not engage in controversial activities relative to the project in public, particularly if it involves public speaking, public debate, public media, etc. All written communications intended for publication that relate to the project must be approved by the Manager of Engineering Services.

Keeping accurate records and reports is a very important function of the Construction Manager. These records are necessary for a number of reasons. Some of the most common reasons for these records and their use as references are as follows:

1. Accounting for quantities for periodic progress payments and extra work under cost plus change order procedures
2. Verify actions and decisions of the Construction Manager
3. Report job status and site conditions of an accident or liability claim
4. Clarify the continuity of project contract time, such as working days, delays, and weather.
5. Responses to inquiries and complaints
6. Evidence in legal action

The basic reporting medium is the Daily Report. It is a continuing report of the job progress and provides an adequate record of each day's progress and activities. The record of activities should be reported in the sequence that they take place. Each report should be brief but at the same time be complete, clear and factual and include all work accomplished by the Contractor, as well as pertinent related information. The report should answer "who did what, when, where, how and how much". Abbreviations are acceptable as long as their meanings are not confusing and have a common acceptance.

A checklist of items contained in the Daily Report is as follows:

Typical entries for general information -

1. All reports shall show the CITY Project number and title and the CARS or SMAC project number
2. All entries shall be printed in black ink or computer generated
3. Detail the Construction Manager hours on the jobsite
4. Record weather conditions such as "sunny, temperature, precipitation type and amount (light, moderate, heavy)"
5. Complete the report the same day
6. Label the report using the consecutive numbers
7. Note any written or verbal instructions given to the Contractor

8. Note any non-compliance issued for the job
9. Record any unsatisfactory or non-compliant work and corrective actions taken
10. Report all job incidents involving the public such injuries, damages to property and equipment, safety conditions
11. Record the type, frequency and person providing testing
12. Detail job progress in terms of quantity, distances, stations, and weight as they are appropriate and applicable to project pay items
13. Record any factors adversely affecting progress of the work, such as utility conflict, material delivery, unforeseen conditions, plan changes, poor Contractor management, weather, etc.
14. Record any important visitors to the project and their nature of business
15. Sign and date the report
16. Send copy of report to Manager of Engineering Services

Typical entries for subgrade work -

1. Name of Contractor doing the work
2. Location and results of compaction tests completed and name of the testing laboratory
3. Limits of rough grade, cuts and fills
4. Thickness and type of material placed and compacted
5. Conformance with final grade specifications

Typical entries for curb, gutter, sidewalk and driveway work -

1. Name of Contractor doing the work
2. Station to station limits of forms placed when concrete is not placed the same day
3. Station to station limits of concrete placed, type of concrete and additives, number of cubic yards placed, source of concrete and copy of delivery ticket
4. Type and size of curb and gutter
5. Width and thickness of sidewalk
6. Width and thickness of driveways
7. Number and location of concrete tests for slump, cylinders taken, and name of testing laboratory

Typical entries for paving work -

1. Name of Contractor doing the work
2. Identification of milling, paving and roller equipment used
3. Source and type of material
4. Station to station and width limits of pavement placed, method of laying, material type,, thickness, and weight of material laid based on delivery tickets
5. Number and location of temperature of material at delivery tests, density tests and name of testing laboratory

Typical entries for storm drains -

1. Station to station limits of excavation, pipe laid (including size and type), bedding material, backfill material and compaction method
2. Number and location of structure by type, backfill material and compaction method
3. Location of utility conflicts and resolution
4. Method of restoration, , compaction method and density test
5. Method of restoration, sidewalks, lawns
6. Televised inspection, dates and results

A primary responsibility of the Construction Manager is to have a working knowledge of the controlling regulations, codes and directives dealing with the public convenience, public safety and construction safety. Though jobsite safety is contractually the Contractor's responsibility, the Construction Manager should immediately report all unsafe conditions or practices to the proper authority. However, if in the opinion of the Construction Manager, the precautions taken by the Contractor are found to be

insufficient or inadequate in providing job or public safety at any time, the Construction Manager shall notify the Manager of Engineering Services.

The Construction Manager is expected to wear suitable clothing and protective gear on the jobsite. Hard hats must be worn at all times there is a danger of falling and flying material. Approved reflective vests must be worn for high visibility in close proximity to traffic and moving equipment. Clothing and protective gear should clearly identify the Construction Manager.

Good housekeeping and sanitary provisions are the responsibility of the Contractor. The Contractor is responsible for public and private property and shall take every reasonable precaution to avoid damage by the construction activities. Throughout all phases of construction, the rubbish and debris on a project shall be held to a minimum and confined to organized disposal and storage areas. Dust nuisance is to be held to a minimum. The Contractor's equipment and construction activities shall not contribute to air pollution by excessively discharging smoke, exhaust and other contaminants in such quantities to be a nuisance and violation of contract. The Construction Manager shall record such unacceptable conditions in the Daily Report.

The responsibility of safe and proper handling of traffic rests with the Contractor. The Construction Manager shall see that the Contractor provides proper handling of traffic as required by the contract and shall notify the Contractor to correct any potentially dangerous situation that exists. The section of the Manual of Uniform Traffic Control Devices (MUTCD) titled *Work Area Traffic Control Handbook* sets forth the principle and standards in order to provide safe and effective work areas and to warn, control, protect and expedite vehicular and pedestrian traffic through the construction project. The MUTCD by reference is part of the Contractor's construction documents. The Construction Manager shall refer to this document when monitoring and coordinating traffic handling with the Contractor. The Construction Manager shall record such unacceptable conditions in the Daily Report.

The Construction Manager are directed to avail themselves of the *Public Works Inspector' Manual*, latest edition published by the BNi Building News and available through the American Public Works Association. The manual is a complete operational and technical guidebook for inspecting all types of public works construction. The manual is the standard by which the CITY expects the Construction Manager to meet and is part of this Agreement.

ARTICLE III - COMPENSATION

The CITY agrees to pay the CONSULTANT, at Hourly Rates, to a Maximum Fee of \$ 19,975.25 for the scope of services as specified herein unless modified by Change Order. CONSULTANT current Hourly Rate Schedule is attached as Exhibits A and B.

The CONSULTANT may submit an invoice on a monthly basis from an estimate of Services or upon the completion of services. The CONSULTANT shall bill reimbursable expenses, which are beyond all fees for professional services, with a multiplier of 1.05. Reimbursable items shall be as follows:

- a. Final plots and printing for construction or as requested by the CITY except as outlined in the scope of services (printing and plotting for the CONSULTANT in-house use is not a reimbursable expense)
- b. Project Mileage
- c. Delivery Charges

All billings must be submitted by the fifteenth day of the month for all services rendered in the previous month. The CONSULTANT will invoice the CITY on forms approved by the CITY. All properly prepared invoices will include a documented breakdown of expenses incurred.

Both parties may submit an Engineering Change Order for major changes in scope, character, delays or complexity of Services. The Engineering Change Order may provide for changes in compensation and schedule, either upward or downward. The Engineering Change Order shall be signed by the CITY and the CONSULTANT prior to the CONSULTANT proceeding with any work covered by this Agreement.

ARTICLE IV - GENERAL PROVISIONS

Times for Rendering Services: The CONSULTANT services and compensation under this Agreement have been agreed to in anticipation of orderly and continuous progress of the Services through completion. Specific periods of time for rendering services are set forth in Article IV, Time Schedule, in this Agreement, by which time defined services are to be completed. If such periods of time are changed through no fault of the CONSULTANT, the rates and amounts of compensation provided for therein shall be subject to equitable adjustment.

Opinions of Probable Cost: In providing opinions of probable cost, the CITY understands that the CONSULTANT has no control over costs or the price of labor, equipment or materials, or over the Contractor's method of pricing, and that the opinions of probable construction costs, if included herein, are to be made based on the CONSULTANT qualifications and experience. The CONSULTANT makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.

Change in Scope: The scope of work described in Article I Scope of Services, shall be subject to modification or supplement upon the signing of an Engineering Change Order by the CITY and the CONSULTANT. At the time of such modification of scope, equitable adjustments, agreeable to both parties, shall be made in the time of performance and the compensation to be paid for the services.

In event the CITY consents to, allows, authorizes or approves of changes to the construction documents prepared by the CONSULTANT, and these changes are not approved in writing by the CONSULTANT, the CITY recognizes that such changes and the results thereof are not the responsibility of the CONSULTANT. Therefore, the CITY agrees to release the CONSULTANT from any liability arising from the construction, use, or result of such changes. In addition, the CITY agrees to indemnify and hold the CONSULTANT harmless from any damage, liability or cost arising from such changes.

Reuse of Documents: All documents including the plans and specifications provided or furnished by the Consultant pursuant to this Agreement ("Plans") shall become the property of City. City agrees that if such Plans are ever used in connection with another project in which the Consultant is not providing civil engineering services or for completion of the Project by others, all references to the Consultant or any subconsultant, including seals, shall be removed from the Plans before use on said project. The City may make and retain copies for the use by the City and others; however, such documents are not intended or suitable for reuse by the City or others as an extension of the Project or on any other Project. Any such reuse without written approval or adaptation by the Consultant for the specific purpose intended will be at the CITY sole risk and without liability to the Consultant. To the extent permitted by law, the City shall indemnify and hold harmless the Consultant from all claims, damages, losses and expenses including attorney's fees arising out of or resulting reuse of the Plans. In a similar manner, the Consultant is prohibited from reuse or disclosing any information contained in any documents, plans or specifications relative to the Project without the expressed written permission of the City.

Insurance: The Consultant shall procure and maintain, at its expense, the following insurance coverage: (a) Workers' Compensation -- Statutory Limits, with Employer's Liability limits of \$100,000

each employee, \$500,000 policy limit; (b) Commercial General Liability for bodily injury and property damage liability claims with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; (c) Commercial Automobile Liability for bodily injury and property damage with limits of not less than \$1,000,000 each accident for all owned, non-owned and hired automobiles; (d) errors and omissions coverage of not less than \$1,000,000. Deductibles for any of the above coverage shall not exceed \$50,000 in General Liability and \$100,000 in Professional Liability unless approved in writing by City. In addition, Consultant agrees to require all consultants and subconsultants to obtain and provide insurance in identical type and amounts of coverage together and to require satisfaction of all other insurance requirements provided in this Agreement.

CONSULTANT'S insurance shall be from an insurance carrier with an A.M. Best rating of A-IX or better, shall be on the GL 1986 ISO Occurrence form or such other form as may be approved by City, and shall name, by endorsement to be attached to the certificate of insurance, City, and its divisions, departments, officials, officers and employees, and other parties as specified by City as additional insureds as their interest may appear, except that the additional insured requirement shall not apply to Errors and Omissions coverage. Such endorsement shall be ISO CG2010 11/85 or equivalent. "Claims Made" and "Modified Occurrence" forms are not acceptable, except for Errors and Omissions coverage. Each certificate of insurance shall state that such insurance will not be canceled or coverage reduced until after thirty (30) days' unqualified written notice of cancellation or reduction has been given to the City, except in the event of nonpayment of premium, in which case there shall be ten (10) days' unqualified written notice. Subrogation against City and CITY Agent shall be waived. CONSULTANT insurance policies shall be endorsed to indicate that CONSULTANT insurance coverage is primary and any insurance maintained by City or CITY Agent is non-contributing.

Before Consultant performs any portion of the Work, it shall provide City with certificates and endorsements evidencing the insurance required by this Article. Consultant agrees to maintain the insurance required by this Article of a minimum of three (3) years following completion of the Project and, during such entire three (3) year period, to continue to name City, CITY agent, and other specified interests as additional insureds thereunder.

If due to the CONSULTANT'S negligent act, error or omission, any required item or component of the project is omitted from the Construction documents produced by the Consultant, the CONSULTANT liability shall be limited to the difference between the cost of adding the item at the time of discovery of the omission and the cost had the item or component been included in the construction documents. The Consultant will be responsible for any retrofit expense, waste, any intervening increase in the cost of the component, and a presumed premium of 10% of the cost of the component furnished through a change order from a contractor to the extent caused by the negligence or breach of contract of the Consultant or its subconsultants.

6.4 Termination: This Agreement may be terminated by either party upon seven days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party; provided, however, the nonperforming party shall have 14 calendar days from the receipt of the termination notice to cure the failure in a manner acceptable to the other party. In any such case, the Consultant shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the payment provisions of this Agreement. Copies of all completed or partially completed designs, plans and specifications prepared under this Agreement shall be delivered to the City when and if this Agreement is terminated, but it is mutually agreed by the parties that the City will use them solely in connection with this Project, except with the written consent of the Consultant (subject to the above provision regarding Reuse of Documents).

6.5 **Termination for Convenience:** The City, within its sole discretion, may elect to terminate the Agreement with the Consultant for convenience upon three (3) days written Notice to Consultant. In the event of such termination, Consultant shall cease immediately all operations and shall be compensated for all work performed as of the date of termination in accordance with the terms of payment in this contract. Consultant shall not be entitled to any anticipatory profits of other costs other than direct costs of demobilization

Controlling Law: This Agreement is to be governed by the laws of the State of Kansas.

Indemnity: To the fullest extent permitted by law, with respect to the performance of its obligations in this Agreement or implied by law, and whether performed by Consultant or any subconsultants hired by Consultant, the Consultant agrees to indemnify City, and its agents, servants, and employees from and against any and all claims, damages, and losses arising out of personal injury, death, or property damage, caused by the negligent acts, errors, or omissions of the Consultant or its subconsultants, to the extent and in proportion to the comparative degree of fault of the Consultant and its subconsultants. Consultant shall also pay for CITY reasonable attorneys' fees, expert fees, and costs incurred in the defense of such a claim to the extent and in proportion to the comparative degree of fault of the Consultant and its subconsultants.

Severability: Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Consultant, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

Notices: Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears on the signature page to this Agreement (as modified in writing from item to time by such party) and given personally, by registered or certified mail, return receipt requested, by facsimile or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

Successors and Assigns: The City and the Consultant each is hereby bound and the partners, successors, executors, administrators, legal representatives and assigns of the City and the Consultant are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, legal representatives and assigns of such other party in respect of all covenants and obligations of this Agreement.

Neither the City nor the Consultant may assign, sublet, or transfer any rights under the Agreement without the written consent of the other, which consent shall not be unreasonably withheld; provided, Consultant may assign its rights to payment without Owner's consent, and 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 the Agreement.

Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by the Consultant to any Contractor, subcontractor, supplier, other person or entity or to any surety for or employee of any of them, or give any rights or benefits under this Agreement to anyone other than the City and the Consultant.

IN WITNESS WHEREOF: the parties hereto have executed this Agreement to be effective as of the date first above written.

CITY:

CITY OF PRAIRIE VILLAGE, KS

CONSULTANT:

TRANSYSTEMS

By: _____

Ronald L. Shaffer

Mayor

By: _____

Thomas Swenson

Principal

Address for giving notices:

CITY of Prairie Village
7700 Mission Road
Prairie Village, Kansas, 66208
913-381-6464

Address for giving notices:

TranSystems
2400 Pershing Road, Suite 400
Kansas City, MO 64108
816-329-8762

ATTEST:

Joyce Hagen Mundy, City Clerk

APPROVED BY:

Catherine Logan, City Attorney

**COUNCIL MEETING AGENDA
CITY OF PRAIRIE VILLAGE
Council Chambers
September 17, 2012
7:30 PM**

- I. **CALL TO ORDER**
- II. **ROLL CALL**
- III. **PLEDGE OF ALLEGIANCE**
- IV. **PUBLIC PARTICIPATION**
- V. **CONSENT AGENDA**

All items listed below are considered to be routine by the Governing Body and will be enacted by one motion (Roll Call Vote). There will be no separate discussion of these items unless a Council member so requests, in which event the item will be removed from the Consent Agenda and considered in its normal sequence on the regular agenda.

By Staff

- 1. Approve Regular Council Meeting Minutes - September 4, 2012
- 2. Approve Claims Ordinance 2899
- 3. Approve the 2013 Mission Hills Contract and the 2013 Mission Hills Budget
- 4. Approve the Interlocal Agreement with Leawood, Kansas for project 81ST0001, 81ST Street and Somerset Drive SMAC Project

- VI. **MAYOR'S REPORT**
- VII. **COMMITTEE REPORTS**

Council Committee of the Whole

- COU2012-39 Consider Approval of Neighborhood Event Ordinance and Permit Process
- COU2012-40 Consider Construction Contract for Project SARD0001, 2012 CDBG Project on Sagamore Dr from 75th St to 76th St with Linaweaver Construction, Inc
- COU2012-41 Consider Construction Administration Agreement with TranSystems for Project Number SARD0001, CDBG Project on Sagamore Road from 75th St to 76th St

- VIII. **STAFF REPORTS**
- IX. **OLD BUSINESS**
- X. **NEW BUSINESS**

XI. ANNOUNCEMENTS

XII. ADJOURNMENT

If any individual requires special accommodations - for example, qualified interpreter, large print, reader, hearing assistance - in order to attend the meeting, please notify the City Clerk at 385-4616, no later than 48 hours prior to the beginning of the meeting.

If you are unable to attend this meeting, comments may be received by e-mail at cityclerk@pvkansas.com

CONSENT AGENDA

CITY OF PRAIRIE VILLAGE, KS

September 17, 2012

**CITY COUNCIL
CITY OF PRAIRIE VILLAGE
September 4, 2012**

The City Council of Prairie Village, Kansas, met in regular session on Tuesday, September 4, 2012, at 7:30 p.m. in the Council Chambers of the Municipal Building.

ROLL CALL

Mayor Ron Shaffer called the meeting to order and roll call was taken with the following Council members present: Ashley Weaver, Dale Warman, Ruth Hopkins, Steve Noll, Laura Wassmer, Brooke Morehead, Charles Clark, David Morrison, Ted Odell and David Belz.

Also present were: Captain Wes Lovett; Bruce McNabb, Director of Public Works; David Waters, representing the City Attorney; Quinn Bennion, City Administrator; Dennis Enslinger, Assistant City Administrator; Lisa Santa Maria, Finance Director; Joyce Hagen Mundy, City Clerk.

Mayor Shaffer led all those present in the Pledge of Allegiance.

PUBLIC PARTICIPATION

Dale Beckerman, 4509 West 82nd Street, spoke against the proposed change to the city's sidewalk policy. He stated the sidewalks are constructed on city right-of-way and it is the responsibility of the Council not the adjacent property owners to determine what happens on City property. He urged the Governing Body not to abdicate its responsibility and to look out for the needs of all the residents of Prairie Village who have strongly stated in the Village Vision that the city have sidewalk connectivity to its parks, schools and shopping centers.

Bryan Kuhn, 4011 West 90th Street, resides next to the shopping center on 90th Street and expressed concern with the proposed sidewalk policy noting that there are only three residential property owners and 12 homes in the Somerset Court West that have stated they are opposed to construction of a sidewalk. He and his neighbors want a sidewalk noting the significant amount of traffic on the street due to the commercial businesses and restaurant. He noted that under the new policy the votes of the homes association would be sufficient to keep them from getting a sidewalk. He agrees with Mr. Beckerman that sidewalks are important for the city.

CONSENT AGENDA

David Morrison moved the approval of the Consent Agenda for August 6, 2012:

1. Approve Regular Council Meeting Minutes - August 20, 2012
2. Approve the agreement with the Johnson County Board of County Commissioners for using the New Century Airport for snowplow training by Public Works employees and a fee of \$100.00
3. Approve a Letter of Understanding with Johnson County Human Services for participation in the 2013 HOME Rehabilitation Program in the amount of \$20,000
4. Approve a Letter of Understanding with Johnson County Human Services for participation in the 2013 Minor Home Rehabilitation Program in the amount of \$6,000
5. Approve the purchase of one (1) 2013 Ford Sedan Police Interceptor at a cost of \$22,984.00
6. Approve the vendor agreement with BRGR Kitchen + Bar to provide food and drinks at the Prairie Village Jazz Festival on September 8, 2012

A roll call vote was taken with the following members voting "aye": Weaver, Warman, Hopkins, Noll, Wassmer, Morehead, Clark, Morrison, Odell and Morrison.

MAYOR'S REPORT

Mayor Shaffer's report was given at the earlier Council Committee meeting.

COMMITTEE REPORT

Council Committee of the Whole COU2012-40 Consider modifications to Sidewalk Policy CP204

On behalf of the Council Committee of the Whole, David Morrison moved the City Council approve revised Council Policy CP204 entitled "Sidewalks". The motion was seconded by Steve Noll.

Andrew Wang asked for clarification on how the votes would be determined. Ted Odell stated the study group felt it was important for residents to have input but also felt that sidewalks are very important assets for the community. They proposed to let the adjacent property owners have a vote as they were the most directly impacted. Any votes not returned will be counted as votes in favor of sidewalks.

Mr. Kuhn asked about a possible council exemption. Laura Wassmer stated she felt there needed to be some way for the Council to have input noting Mr. Beckerman's earlier comments, she felt the Council should have the ability to have the final decision.

Mr. Odell stated that is what was done under the current policy with the Council allowing exemptions to the policy that stated sidewalks would be constructed.

Dale Warman stated the current policy wasn't working as reflected in the number of exemptions the City Council has granted in the past. He likes that the proposed policy gives the adjacent property owners a voice. Mr. Warman stated he would be ok with the Council keeping the current policy if it was committed to uphold it.

David Belz acknowledged that in the past when the chambers filled with residents the Council often backed down from the policy, but noted in recent years very few exemptions have been granted. The "people", through Village Vision, clearly and

strongly stated that they wanted sidewalks throughout the City to connect neighborhoods with one another as well as with shopping areas, parks and schools. These were hundreds of residents over several months of discussion. The Governing Body should be following the direction given in its adopted comprehensive plan.

Charles Clark doubted that this would significantly change the number of residents coming to meetings - noting; what if the vote was only 50% instead of 75%?

Laura Wassmer stated she felt the City was already a very walkable city with sidewalks everywhere. If the sidewalks had been added at the time of construction, it would be fine. However, you cannot always successfully retrofit sidewalks in a 50+ year old community with established historic stone walls/fences, mature trees and stone monument walls and entry signs. This is not a situation where one size fits all and you can force sidewalks onto existing properties. Ms Wassmer also stated it does not make economic sense to place sidewalks in some areas of the city.

David Belz replied the map distributed at the last Council meeting shows several areas where sidewalks have not been constructed and are needed to provide the desired connectivity.

Ashley Weaver stated the residents do not always see the big picture and suggested that the percentage to not construct a sidewalk may need to be higher.

David Morrison responded the policy requires 75% of residents to respond in opposition to sidewalks. He noted Village Vision was about connectivity - not placing a sidewalk on every street in Prairie Village. The proposed policy does not force sidewalks in neighborhoods where they are not wanted by more than 75% of the adjacent property owners. Residents should have the right to have a say on what

happens in their front yard. He agreed with Ms Wassmer's comment regarding the economic sense of constructing unwanted sidewalks.

Ruth Hopkins expressed concern for the future residents of the City. She noted the population of the city is changing with young families moving into many of our communities.

Ted Odell responded the committee wanted to keep the threshold high enough to allow people to keep sidewalks on streets where there truly is an issue or problem. Ashley Weaver suggested making the requirement 90%. Mr. Odell responded if that were the case, there would not be a need to change the current policy noting that any non-returns would be counted as being for a sidewalk.

Dale Warman stated he would support a higher percentage. However, he feels the residents should have a voice and prefers the proposed policy over the current policy as it gives residents an opportunity to express their views in an appropriate manner.

Laura Wassmer asked if it would be possible for Public Works to recommend situations where sidewalks need to be constructed. Mayor Shaffer responded that Public Works has to abide by the policy put in place by the Governing Body. Bruce McNabb stated Public Works will advise the Council of situations where they feel construction of a sidewalk is not feasible.

Brooke Morehead agreed with Mr. Warman that it is important for residents to have a say. She noted there are residents who did not participate in the Village Vision process and a letter mailed to them would give them an opportunity to vote their opinion.

Quinn Bennion stated he would be visiting with Public Works regarding 90th Street. He noted the streets in the homes association are not adjacent to 90th Street

and maybe should not be included in the vote. He stated the policy has been reviewed by legal counsel and is not in violation of any laws or an infringement on resident's rights.

David Waters confirmed legal counsel is not concerned with any legal challenge based on current legal rulings, but a challenge is always possible.

Mayor Shaffer called for a vote on the motion.

The motion passed by a 7 to 3 vote with the following votes cast: "aye" Weaver, Warman, Noll, Wassmer, Morehead, Morrison and Odell; "nay" Hopkins, Clark, Belz.

Jazz Fest Committee

Brooke Morehead reported on the scheduled activities for the 3rd Annual Prairie Village Jazz Festival on Saturday, September 8th from 3 p.m. to 11 p.m. The festival features an excellent line-up including Diverse, Rich Wheeler Quarter, Mike Metheny Quartet, Megan Birdsall, Bobby Watson and headliner Karrin Allyson Quintet. Food will be provided by the presenting sponsor BRGR Kitchen + Bar. Event T-shirts and artist cd's will be for sale at the event. The proceeds of the event will go to Heartland Habitat for Humanity. Ms Morehead acknowledged the donation of trash containers and portable toilets for the event by Deffenbaugh Industries and the significant donation of generators and lighting by MarkOne Electric. She also acknowledged the staff support provided to the committee by City Clerk Joyce Hagen Mundy.

STAFF REPORTS

Staff Reports were given at the Council Committee of the Whole meeting earlier in the evening.

OLD BUSINESS

There was no Old Business to come before the Governing Body.

NEW BUSINESS

Ashley Weaver discussed her concerns with the crosswalks at Tomahawk Drive outside of Euston Hardware. She feels they should be more clearly marked and are currently a serious safety issue. She is working with Chief Jordan and will be bringing the item before the Council for further discussion in the near future. Mrs. Weaver noted that both she and Dale Warman have received calls from residents concerned with the crosswalks.

Laura Wassmer noted this crosswalk has been discussed before and suggested a possible solution would be similar to what was done on Somerset by the Corinth Shops.

Dale Warman confirmed that Tomahawk is a city street.

ANNOUNCEMENTS

Tree Board	09/05/2012	6:00 p.m.
Sister City Committee	09/10/2012	7:00 p.m.
Planning Commission	09/11/2012	7:00 p.m.
Parks & Recreation Committee Meeting	09/12/2012	7:00 p.m.
Council Committee of the Whole	09/17/2012	6:00 p.m.
City Council	09/17/2012	7:30 p.m.

=====
The Prairie Village Arts Council is pleased to announce an art exhibit from our Sister City, Dolyana, Ukraine, in the R. G. Endres Gallery for the month of September. The reception will be held on September 14th from 6:30 to 7:30 p.m.

Deffenbaugh observes the Labor Day holiday so trash and recycling will be delayed one day.

The Prairie Village Jazz Festival is Saturday, September 8th from 3:00 pm to 11:00 pm at Harmon Park.

The Shawnee Mission Education Foundation's Fall Breakfast is Thursday, September 13, 2012 at 7:00 am at the Overland Park Convention Center. RSVP to Jeanne Koontz at 913-381-4662 by Tuesday, September 5th if you would like to attend.

Flu shots will be offered for Council Members on September 28th from 7:30 a.m. - 9:00 a.m. at Public Works or October 5th from 3:00 p.m. - 4:30 p.m. at City Hall in the Multi-Purpose room. The fee for the shot will be \$25. Please notify Nic Sanders at 913-385-4664 if you plan to receive a shot. He will need to know which day you are coming.

Save the Date for the Northeast Johnson County Chamber of Commerce 2012 Annual Gala on November 17, 2012 at the Overland Park Marriott.

ADJOURNMENT

With no further business to come before the City Council, the meeting was adjourned at 8:17 p.m.

Joyce Hagen Mundy
City Clerk

CITY TREASURER'S WARRANT REGISTER

DATE WARRANTS ISSUED:

Warrant Register Page No. 1

September 17, 2012

**Copy of Ordinance
2899**

Ordinance Page No.

An Ordinance Making Appropriate for the Payment of Certain Claims.
Be it ordained by the governing body of the City of Prairie Village, Kansas.

Section 1. That in order to pay the claims hereinafter stated which have been properly audited and approved, there is hereby appropriated out of funds in the City treasury the sum required for each claim.

NAME	WARRANT NUMBER	AMOUNT	TOTAL
EXPENDITURES:			
Accounts Payable			
2986-3079	8/3/2012	575,509.95	
3080-3083	8/13/2012	13,486.20	
3084	8/14/2012	9,973.46	
3085-3160	8/17/2012	509,065.05	
3161-3162	8/21/2012	737.24	
3163-3164	8/27/2012	12,104.18	
3165-3268	8/31/2012	358,834.95	
Payroll Expenditures			
8/10/2012		282,540.27	
8/24/2012		268,320.47	
Electronic Payments			
Electronic Pmnts	8/1/2012	700.45	
Electronic Pmnts	8/2/2012	517.21	
Electronic Pmnts	8/10/2012	17,552.44	
Electronic Pmnts	8/14/2012	636.41	
Electronic Pmnts	8/20/2012	4,138.60	
Electronic Pmnts	8/24/2012	3,634.26	
Electronic Pmnts	8/30/2012	2,795.29	
Electronic Pmnts	8/31/2012	1909612.50	
TOTAL EXPENDITURES:			\$ 3,970,158.93
Voided Checks			
Basic Business Products	#2998	(94.99)	
Lexington Plumbing	#3132	(619.50)	
TOTAL VOIDED CHECKS:			(714.49)
GRAND TOTAL CLAIMS ORDINANCE			3,969,444.44

Section 2. That this ordinance shall take effect and be in force from and after its passage.

Passed this 17th day of Septemebr 2012.

Signed or Approved this 17th day of September 2012.

(SEAL)

ATTEST: _____

City Treasurer

Mayor



CONSENT AGENDA

Council Meeting Date: September 17, 2012

Consider Approval of the 2013 Mission Hills Contract and the 2013 Mission Hills Budget

RECOMMENDATION

The Prairie Village Police Department recommends the City Council formalize its law enforcement relationship with the City of Mission Hills for the 2013 calendar year by approving the attached 2013 Mission Hills Contract and the 2013 Mission Hills Budget.

COUNCIL ACTION REQUESTED ON: September 17, 2012

BACKGROUND

Each year the cities of Prairie Village and Mission Hills formalize their law enforcement relationship with an agreement between the municipalities. The budgetary costs for each law enforcement program are derived from formulas based on percentages of the Prairie Village budget for services that include manpower allocation, calls for service, reported crimes, and vehicular accidents. The current method of calculating shared costs has been in place for nine years.

COST BREAKDOWN/CHANGES

The 2013 Mission Hills Budget is calculated to be \$1,241,793, which is a .13% increase (+\$1,620) compared to 2012. A breakdown of program costs is specified in the attached 2013 Mission Hills Budget spreadsheet. Changes +/- that are considered significant are attributed to the following formula factors:

Administration (Chief/Jen and Building Costs): reduction of \$6,121 or -8.4 %

- \$22,000 to KCP&L
- \$15,700 to Kansas Gas
- \$10,000 in HVAC

Staff Services (Dispatch/Records): reduction of \$4,874 or -3.3%

- \$2,000 in AIMS Mapping (covered by 911 funds)
- \$10,850 in Motorola Maintenance Contract (covered by 911 funds)
- \$12,747 Intergraph Officer
- 10 year average Mission Hills Total Calls For Service, Crimes, and Accidents reduced from 14.78% to 14.55%
- 10 year average Mission Hills Calls For Service reduced from 19.67% to 19.40%
- 10 year average Mission Hills Crimes and Accidents reduced from 9.89% to 9.71%

CONSENT AGENDA

2013 Mission Hills Contract and Budget

Page No. 2

Patrol: **increase of \$23,202 or 2.8%**

- + Increase is attributed to difference in “shared costs.” In 2013 Prairie Village is buying one less vehicle and associated equipment, which makes the “shared portion formula” to Mission Hills higher than 2012 when Prairie Village purchased more equipment.

Investigations: **reduction of \$4,845 or -6.1%**

- Crime rate lowered from 11.46% to 11.06%
- \$21,500 reduction since unmarked vehicle was not budgeted

Animal Control - The Mission Hills Contract does reflect an hourly rate increase from \$34.70 to \$35.63 per hour due to the 2% merit pool and a .25 cent per gallon increase in fuel.

The Mission Hills City Administrator and City Council have agreed with the contents of the attached 2013 Mission Hills Budget/Contract.

ATTACHMENTS: 2013 Mission Hills Contract and 2013 Mission Hills Budget Comparison.

Prepared By:

Wes Jordan

Chief of Police

Date: September 11, 2012

MISSION HILLS BUDGET COMPARISON

PROGRAM	2011	2012	2013	12-13 COMPARISON	%
Administration	\$72,317	\$72,560	\$66,439	(\$6,121)	-8.4%
Staff Services	\$148,140	\$145,673	\$140,799	(\$4,874)	-3.3%
Community Services	\$0	\$0	\$0	\$0	0.0%
Crime Prevention	\$10,677	\$9,566	\$9,394	(\$172)	-1.8%
Patrol	\$856,949	\$827,673	\$850,875	\$23,202	2.8%
Investigations	\$80,152	\$72,999	\$68,154	(\$4,845)	-6.6%
Special Investigation	\$0	\$0	\$0	\$0	0.0%
D.A.R.E.	\$7,394	\$7,556	\$7,603	\$47	0.6%
Professional Standards	\$23,671	\$22,939	\$22,249	(\$690)	-3.0%
Traffic	\$0	\$0	\$0	\$0	0.0%
Court	\$79,051	\$81,207	\$76,280	(\$4,927)	-6.1%
School Crossing	\$0	\$0	\$0	\$0	0.0%
Accounting	\$0	\$0	\$0	\$0	0.0%
TOTAL	\$1,278,351	\$1,240,173	\$1,241,793	\$1,620	
% OF INCREASE					0.13%

MISSION HILLS AGREEMENT - 2013

THIS AGREEMENT, made this ____ day of _____, 2012, between the City of Prairie Village, Kansas, a municipal corporation, hereinafter referred to as "Prairie Village," and the City of Mission Hills, Kansas, a municipal corporation, hereinafter referred to as "Mission Hills."

WHEREAS, Prairie Village and Mission Hills are adjoining cities and share many of the same problems and concerns for police protection; and

WHEREAS, in the opinion of the governing bodies of Prairie Village and Mission Hills, the consolidated operation of law enforcement and policing of the two cities will be to the mutual benefit and the general welfare of the persons and properties of both municipalities; and

WHEREAS, K.S.A. 12-2908, and amendments thereto, authorize the parties hereto to enter into a contract with respect to performance of government services; and

WHEREAS, the governing bodies of said cities have determined to enter into an agreement as authorized and provided by K.S.A. 12-2908 and amendments thereto,

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein made and contained, it is mutually agreed as follows:

A. Services Provided. Prairie Village shall furnish to Mission Hills during the term of this agreement, the following items:

1. Police Cars. It is agreed and understood that Mission Hills has previously paid for four police cars that are currently being used primarily in the City of Mission Hills and said cars are identified as:

Unit 048 - 2010 Dodge Charger
VIN 2B3AA4CT9AH215647
registered to the City of Prairie Village;

Unit 148 - 2011 Ford Crown Victoria
VIN 2FABP7BV8BX137672
registered to the City of Prairie Village;

Unit 149 - 2011 Ford Crown Victoria
VIN 2FABP7BV6BX137671
registered to the City of Prairie Village, and

Unit 948 - 2009 Dodge Charger
VIN 2B3KA43T09H598507
registered to the City of Prairie Village.

During the terms of this agreement, Mission Hills shall be responsible for the replacement costs of any new vehicles needed. The Chief of Police shall notify the Mission Hills City Administrator when fleet bids are being offered. Replacement vehicles for Mission Hills will be offered as part of the fleet purchase, above the costs of this contract, if desired and approved by Mission Hills. New vehicles will be titled to the City of Prairie Village. Collision and liability insurance on the vehicles purchased by Mission Hills shall be maintained and paid for by Prairie Village.

Mission Hills shall pay all expenses relating to the maintenance of said vehicles, including, but not limited to, gasoline, oil, lubrication, tires, repairs and equipment changeover. Maintenance of said vehicles shall be under the direction and supervision of the Chief of Police. Routine maintenance will be provided by a vendor agreed upon by the Mission Hills City Administrator and the Chief of Police. Gasoline shall be provided through the Prairie Village gasoline pump. A monthly itemized bill shall be prepared and forwarded to Mission Hills for payment, which shall be above the costs of the contract agreement listed in Paragraph B. Major repair items such as engine or transmission overhaul shall be approved by the Mission Hills City Administrator prior to work being performed and will be billed directly to Mission Hills. If a Mission Hills police unit is inoperable for a period of time - as determined by a Police Department Shift Supervisor or Command Staff member, due to the vehicle being unable to be operated safely, or where further use may cause damage to the vehicle - Prairie Village shall provide a replacement vehicle and may bill Mission Hills at the rate equal to the 2013 IRS standard mileage rate per mile for a car used for business purposes for its use, above the costs of this contract.

It is agreed and understood that if both parties agree to terminate the conditions of this contract, those vehicles purchased by the City of Mission Hills, but titled to the City of Prairie Village, shall be transferred back to the ownership of Mission Hills for the sum of \$1.00.

2. **Police Personnel.** Prairie Village shall provide to Mission Hills the services of police officers, detectives, and other personnel as adopted by budget formulas to provide efficient and effective law enforcement services. The Chief of Police will approve staffing/scheduling in consultation with the Mission Hills City Administrator. With respect to the additional officers, Prairie Village shall not be required to provide a replacement officer or effect a reduction in the amount due Prairie Village by Mission Hills under this Agreement when such an officer is unavailable due to an excused absence. An “excused absence” is an absence provided for under Prairie Village’s personnel policies and for which the officer receives monetary compensation or compensatory time directly from Prairie Village for the absence, but does not include any such absence for which the officer is receiving monetary compensation for the absence from Workers’ Compensation or other insurance. If any additional officer is unavailable for any reason other than an excused absence, Prairie Village shall either assign a replacement officer for the position or effect an appropriate reduction in the amount due Prairie Village by Mission Hills under this Agreement. Prairie Village shall use its best efforts to ensure that excused absences of police officers assigned to Mission Hills shall not be disproportionately higher than excused absences of police officers assigned to Prairie Village.

Prairie Village shall provide the services of such supervisory and support personnel as shall be necessary for the operation of said police cars and to provide normal police services.

Prairie Village shall pay the salaries, payroll taxes, Workers’ Compensation and related benefits and shall bear all expenses and liabilities with respect to said police personnel, which may accrue from or be attributable to the employer-employee relationship.

All Prairie Village Police officers, and all cars used by such police officers, including the cars designated as the Mission Hills police cars, shall be subject to the jurisdiction of the Prairie Village Chief of Police, whether operating in Mission Hills or Prairie Village. The Prairie Village Chief of Police shall have exclusive supervision of

the operation of the police cars designated as the Mission Hills cars and the personnel operating same, and shall handle all complaints or calls for services through the Police Department's Offices at 7710 Mission Road, Prairie Village, Kansas. The Chief of Police will consult and cooperate with Mission Hills in scheduling and supervising the operation of Mission Hills cars and personnel operating same.

Mission Hills will designate an individual who shall serve as its representative to consult with the Chief of Police. All Prairie Village Police officers shall be deputized to act as police officers in Mission Hills and all Prairie Village personnel, in carrying out the police functions for Mission Hills as contemplated by this Agreement, shall be deemed to be acting for, and as the police arm of, Mission Hills.

It is further mutually agreed by the governing bodies of the respective cities hereto that each will respectively do all acts necessary and proper as provided in K.S.A. 19-2645 and K.S.A. 19-2646, and acts amendatory and supplemental thereto, for carrying out the applicable provisions of this Agreement.

3. **Court Personnel.** Prairie Village shall also provide a Clerk of the Court for the Mission Hills Municipal Court for two court sessions per month. Said Clerk shall be assigned by the Court Administrator of the Prairie Village Municipal Court. Said Clerk of the Court shall perform all duties as required by law and shall be deemed to be acting for and on behalf of the City of Mission Hills while performing said duties. Prairie Village shall not be liable in any manner for the actions of said clerk of the Court in the performance or nonperformance of said duties. Prairie Village shall be reimbursed for the costs of providing said Court personnel, which amount is included in the total contract amount as provided in Paragraph B of this Agreement.

4. **Humane Officer.** For purposes of animal control, Prairie Village shall provide to Mission Hills the services of a humane officer, when such services are needed. Said humane officer shall be under the supervision of the Chief of Police. It is agreed that when on duty, the humane officer shall respond to calls for service within Mission Hills that are the normal function of this service. In addition, the Mayor or City Administrator of Mission Hills can request scheduled hours in Mission Hills on a regular

basis, which shall be provided if personnel are available. The cost of this service is not included in the contract amount as provided in Paragraph B, and shall be documented and billed at the rate of **\$35.64** per hour.

It is further agreed that Prairie Village has entered into a contract agreement with Animal Medical Center for the professional care, impounding and boarding of animals taken into custody by the Police Department. This service is not included in the contract amount as provided in Paragraph B, and shall be billed to Mission Hills by Prairie Village as required by the service provided by Animal Medical Center.

5. General Law Enforcement Services. Prairie Village shall provide to Mission Hills law enforcement services necessary to efficiently maintain public safety in the City of Mission Hills. These services include, but are not limited to, administration of the Police Department; 9-1-1 and non-emergency PSAP for communications to the Police Department and police vehicles; Records for maintaining law enforcement files; Crime Prevention Program for education to reduce community vulnerability to crime and establish "community-oriented policing," Investigations function that provides for the investigation of Part I and Part II crimes perpetrated by adults and youths; D.A.R.E. to provide a prevention aspect to adolescent drug use; the Property Room and evidence system, and the Department's comprehensive training.

B. Reimbursement Costs. Mission Hills shall reimburse Prairie Village for the cost of services and equipment provided to the City of Mission Hills as heretofore provided, the total amount of One Million, Two Hundred and Fourty One Thousand, Seven Hundred and Ninety Three and 00/100 Dollars (\$1,241,793.00), said amount to be paid by Mission Hills at the rate of One Hundred and Three Thousand, Four Hundred and Eighty Two and 75/100 Dollars (\$103,482.75), per month during the term of this Agreement, said payment to be made not later than the 15th day of each month.

Said amount is based on the standard employee work schedule of the City of Prairie Village and includes the cost of supervision and insurance, radio dispatching, officer supplies, uniform replacement, salary of personnel, overhead and other costs

which will be incurred by Prairie Village in fulfilling the obligations of this Agreement. The estimated costs of services and equipment to be provided under this Agreement have been compiled in a proposed budget for the year 2013, previously furnished to Mission Hills by Prairie Village. This budget was used in determining the costs to be reimbursed by Mission Hills; however, the parties recognize that the actual costs for the items furnished may differ from those estimated.

In the event of a difference which results from a change in the wage structure of Prairie Village personnel from that contemplated in the proposed budget, or pursuant to Paragraph A., 2., any additional officer is unavailable for any reason other than an excused absence and Prairie Village elects not to assign a replacement officer, an appropriate increase or decrease will be made in the amount due Prairie Village by Mission Hills hereunder. However, the parties agree that no other difference, if any, in the actual costs of the services and equipment provided from that contemplated in the proposed budget will be cause for increasing or decreasing the amount due Prairie Village from Mission Hills hereunder.

C. Reports. The Chief of Police of Prairie Village shall at least once a month submit to Mission Hills a complete written report of the police activity and protection provided within said city.

D. Liability Insurance and Uninsured Claims. The parties recognize that actions (or omissions) in connection with services to be provided by Prairie Village under this Agreement may result in, or give rise to, claims against Mission Hills or Prairie Village, or both, for alleged damages or injuries. For the purpose of limiting financial exposure with respect to such claims, Prairie Village has obtained liability insurance relating to the operation of the Police Department and relating to the operation of vehicles used in providing the services contemplated by this Agreement. Part of the cost of these policies is allocated to Mission Hills and included in the total contract amount as provided in Paragraph B of this Agreement. Mission Hills shall at all times be named as an insured party on both such insurance policies.

In addition, both Prairie Village and Mission Hills carry general liability insurance and both parties agree that they will use their best efforts to cause the insurance companies providing such insurance coverage to waive any subrogation rights, which such companies may have against Prairie Village or Mission Hills, as the case may be, with respect to expenses incurred and amounts paid under such policies on behalf of the party carrying such insurance.

The parties also recognize that claims may be made against Mission Hills or Prairie Village or both for alleged injuries or damages which are not covered by any of such insurance policies. With respect to such uninsured claims: The parties agree that Mission Hills should bear all or most of the costs related to such claims (including defense costs and payments for settlement or judgment) in those situations in which the action or omission which gives rise to the claim relates primarily to a risk that would not have been incurred by Prairie Village, if Prairie Village were not providing services to Mission Hills under this Agreement; and Prairie Village should bear all or most of the costs related to such claims (including defense costs and payments for settlement or judgment) in those situations in which the action or omission which gives rise to the claim relates primarily to the operation or policies of the Prairie Village Police Department and services provided to Mission Hills under this Agreement are only incidental to the situation.

Accordingly, the parties agree that the circumstances surrounding any claim, which is not covered by insurance and which relates to or arises from actions (or omissions) in connection with services provided or to be provided by Prairie Village under this Agreement, will be examined at the time such claim is made for the purpose of determining the appropriate percentage of the costs related to such claim, which are to be paid by Mission Hills and the appropriate percentage of such costs, which are to be paid by Prairie Village.

E. Effective Date. This Agreement shall be in effect from January 1, 2013, through December 31, 2013, and shall not be assigned. It is agreed that during the term

of this Agreement neither party may terminate or modify the Agreement without the consent of the other, except as otherwise provided by this Agreement.

IN WITNESS WHEREOF, the Mayor of Prairie Village, Kansas, has signed this Agreement on behalf of the City of Prairie Village, as such mayor, and the City of Prairie Village has caused these presents to be attested by its Clerk and the seal of said city to be hereto attached; and the Mayor of Mission Hills, Kansas, has signed this Agreement on behalf of the City of Mission Hills, as such mayor, and the City of Mission Hills has caused these presents to be attested by its Clerk, and the seal of said city to be hereto attached, the day and year first above written.

THE CITY OF PRAIRIE VILLAGE, KANSAS

By: _____
Ronald L. Shaffer - Mayor

ATTEST:

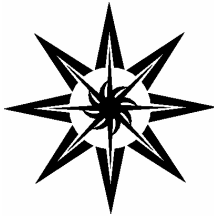
Joyce Hagen Mundy - City Clerk

THE CITY OF MISSION HILLS, KANSAS

By: _____
Rick Boeshaar - Mayor

ATTEST:

Jill Clifton - City Clerk



PUBLIC WORKS DEPARTMENT

Council Meeting Date: September 17, 2012

CONSENT AGENDA: CONSIDER INTERLOCAL AGREEMENT WITH LEAWOOD, KANSAS FOR PROJECT 81ST0001- 81ST STREET AND SOMERSET DRIVE SMAC PROJECT.

RECOMMENDATION

Move to approve the interlocal agreement with Leawood, Kansas for project 81ST0001, 81ST Street and Somerset Drive SMAC Project.

BACKGROUND

This project is being administered by the City of Leawood and the portion of the project in Prairie Village is a small part of a large drainage improvement project to the south of 81ST Street in the City of Leawood. To complete their project to the south of 81ST Street it was determined a pipe between two homes and the two storm structures on 81st Street need to be improved. The City of Leawood approached us to see if we would be agreeable to this solution and we agreed. The improvements in Prairie Village are 75% funded by the County's Stormwater Management Advisory Council (SMAC) program. The City of Prairie Village portion of the improvements is expected to be approximately \$13,000.00.

This construction of this project has been ongoing this summer and is nearing completion.

FUNDING SOURCE

Funding is included in the current CIP under Project 81ST0001 for the City's portion of the project.

RELATION TO VILLAGE VISION

TR1a. *Ensure that infrastructure improvements meet the needs of all transportation users.*

ATTACHMENTS

1. Interlocal Agreement with Leawood, Kansas

PREPARED BY

Keith Bredehoeft, Project Manager

September 13, 2013

AGREEMENT BETWEEN THE CITY OF LEAWOOD, KANSAS AND PRAIRIE VILLAGE, KANSAS, FOR THE PUBLIC IMPROVEMENT FOR STORMWATER MANAGEMENT ADVISORY COUNCIL (SMAC) DB-04-026 PROJECT

THIS AGREEMENT, made and entered into this _____ day of _____, 2012 by and between the CITY OF LEAWOOD, KANSAS, and the CITY OF PRAIRIE VILLAGE, KANSAS, each party having been organized and now existing under the laws of the State of Kansas,

WITNESSETH:

WHEREAS, the parties hereto have determined it is in their best interest to make the public improvement near the 3300 block of W 81st Street replacing the existing storm sewer line beginning on the north side of 81st St southerly to the City of Leawood limits, SMAC DB-04-026, such improvement is hereinafter described; and

WHEREAS, K.S.A. 12-2908 authorizes the parties hereto to cooperate in making the public improvement; and

WHEREAS, the governing bodies of each of the parties hereto have determined to enter into this Agreement for the aforesaid public improvement, as authorized and provided by K.S.A. 12-2908 and K.S.A. 68-169; and

WHEREAS, the governing body of the CITY OF LEAWOOD, KANSAS, did approve and authorize its mayor to execute this Agreement by official vote of the body on the _____ day of _____, 2012.

WHEREAS, the governing body of the CITY OF PRAIRIE VILLAGE, did approve and authorize its Mayor to execute this Agreement by official vote of the body on the _____ day of _____, 2012; and

NOW, THEREFORE, in consideration of the above recitals, the mutual covenants and agreements herein contained, and for other good and valuable considerations, the parties hereto agree as follows:

1. PURPOSE OF AGREEMENT. The parties hereto enter into this Agreement for the purpose of constructing the SMAC public improvement near 3300 block of W 81st St as heretofore described by performing the following work:

- a) The City of Leawood is providing all survey, design and inspection services.
- b) Replace the existing storm sewer line beginning on the north side of W 81st St southerly to the City of Leawood limits;
- c) Provide an overland swale to convey the 1% storm between 3301 W 81st St and 3309 W 81st St;
- d) Restore the curbs and street of W 81st St and restore the landscape areas disturbed by construction; and,
- e) Construct other incidental items associated and integral with the above referenced construction.

2. ESTIMATED COST OF PROJECT.

A. The estimated cost of the construction for the public improvements covered by this agreement is FIVE HUNDRED TWENTY ONE THOUSAND TWO HUNDRED DOLLARS (\$521,200.00). Prairie Village's estimated cost for construction of the public improvement within Prairie Village City Limits covered by this agreement is FIFTY TWO THOUSAND DOLLARS (\$52,000.00).

- B. The cost of making the public improvement shall include:
- (1) Labor and material used in the making the public improvements; and
 - (2) Such other expenses which are necessary in making the public improvement, exclusive of the cost of acquiring real property and any improvement thereon for the location of the public improvement. These costs include but are not limited to construction, restoration and material testing.

C. The cost for the local share of the cost of making the public improvements shall be distributed as follows:

- (1) The CITY OF LEAWOOD, KANSAS shall pay 25% of the cost for said public improvements within Leawood City Limits (estimated to be \$117,300.00)
 - (2) The CITY OF PRAIRIE VILLAGE, KANSAS shall pay 25.0% of the cost of said public improvement within Prairie Village City Limits (estimated to be \$13,000.00).
 - (3) The JOHNSON COUNTY STORMWATER MANAGEMENT ADVISORY COUNCIL shall pay 75.0% of the cost of said public improvement (estimated to be \$390,900.00).
3. FINANCING. THE CITIES OF LEAWOOD, KANSAS and PRAIRIE VILLAGE, KANSAS, shall pay their portion of the cost with monies budgeted and appropriated funds.
4. LEAWOOD ADMINISTRATION OF PROJECT. It is acknowledged and understood between the parties that since there are two separate cities included within the proposed improvement, one of the cities should be designated as being “in charge” of the project to provide for its orderly design and construction. However, both cities shall have the right of

review and comment on project decisions at any time throughout duration of this Agreement, and any subsequent agreements hereto. The public improvement shall be designed, constructed and the job administered by the CITY OF LEAWOOD, KANSAS, acting by and through the Director of Public Works for Leawood, Kansas, who shall be the principal public official designated to administer the public improvement; provided, that the Director of Public Works shall, among his several duties and responsibilities, assume and perform the following:

- A. Make all contracts for the public improvement, including the responsibility to solicit construction bids by publication in the official newspaper of Leawood, Kansas. In the solicitation of bids, the appropriate combination of best bids shall be determined by the aforesaid governing body administering the project, except that the governing body of the CITY OF PRAIRIE VILLAGE, KANSAS reserves the right to reject the successful bidder in the event that the bid price exceeds the engineer's estimate. If all bids exceed the estimated cost of the public improvement, then either CITY shall have the right to reject the bid. In such case, the project shall rebid at a later date.
- B. Submit to the CITY OF PRAIRIE VILLAGE on or before the 10th day of each month, or as received, estimates of accrued costs of design and constructing the public improvement for the month immediately preceding the month the statement of costs is received; provided that the CITY OF PRAIRIE VILLAGE shall within thirty (30) days after receipt of a statement of costs as aforesaid, remit their portion of the accrued costs to the CITY OF LEAWOOD as herein agreed.
- C. Upon completion of the public improvement, the Director of Public Works shall submit to the CITY OF PRAIRIE VILLAGE a final accounting of all costs incurred in making the public improvement for the purpose of apportioning the same among

the parties as provided herein.

- D. The CITY OF PRAIRIE VILLAGE shall be named as additional insured on all applicable certificates of insurance issued by the contractor for this project.
 - E. The CITY OF LEAWOOD shall require performance bonds for the improvement from all contractors and require that all contractors discharge and satisfy any mechanics or materialman's liens that may be filed.
 - F. The CITY OF LEAWOOD shall require that any contractor provide a two-year performance and maintenance bond for the Improvement. As Administrator, the CITY OF LEAWOOD will, upon request of the CITY OF PRAIRIE VILLAGE, make any claim upon the maintenance bond or performance bond and require that the contractor fully perform all obligations under the performance and maintenance bonds.
 - G. The CITY OF LEAWOOD shall include in contracts for design and construction a requirement that the contractor defend, indemnify and save the CITY OF LEAWOOD and the CITY OF PRAIRIE VILLAGE harmless from and against all liability for damages, costs, and expenses arising out of any claim, suit or action for injuries or damages sustained to persons or property by reason of the act or omissions of the contractor and the performance of his or her contract.
5. DURATION AND TERMINATION OF AGREEMENT. The parties hereto agree that this Agreement shall exist until the completion of the aforesaid public improvement, which shall be deemed completed upon certification to each of the parties hereto by the Director of Public Works advising that the public improvement has been accepted by him as constructed; provided that upon the occurrence of such certification by the Director of Public Works, this

Agreement shall be deemed terminated and of no further force or effect.

6. PLACING AGREEMENT IN FORCE. The attorney for the administering body described in paragraph 4 hereof shall cause this Agreement to be executed in triplicate. Each party hereto shall receive a duly executed copy of this Agreement for their official records.
7. AMENDMENTS. This Agreement cannot be modified or changed by any verbal statement, promise or agreement, and no modification, change nor amendment shall be binding on the parties unless it shall have been agreed to in writing and signed by both parties.
8. JURISDICTION. This Agreement shall be construed according to the laws of the State of Kansas and may be enforced in any court of competent jurisdiction.

IN WITNESS WHEREOF, the above and foregoing Agreement has been executed in triplicate by each of the parties hereto on the day and year first above written.

CITY OF LEAWOOD, KANSAS

By _____
PEGGY J. DUNN, MAYOR

ATTEST:

DEBRA HARPER, CITY CLERK

APPROVED AS TO FORM:

PATRICIA A. BENNETT, CITY ATTORNEY

CITY OF PRAIRIE VILLAGE, KANSAS

By _____
RON SHAFFER, MAYOR

ATTEST:

APPROVED AS TO FORM:



POLICE DEPARTMENT

Council Committee Meeting Date: August 20, 2012
Council Meeting Date: September 17, 2012

COU2012-39: Consider Approving Ordinance 11-1401 - 11-1412 [Special Event Permit].

RECOMMENDATION

The Neighborhood Events Study Group recommends the City Council approve the Special Events Permit Ordinance as defined.

COUNCIL ACTION REQUESTED ON:

September 17, 2012

SUGGESTED MOTIONS

Move to approve Ordinance 11-1401 - 11-1412.

BACKGROUND

The purpose of this Ordinance is to regulate special events in residential zoned districts, which generate crowds or participants or visitors that interfere with the safe and orderly movement of pedestrian or vehicular traffic to mitigate delays in public safety response. And, the permitting process takes into account the impact on neighboring properties and to protect the safety, health, peace, good, and tranquility of the community.

Attachments: Ordinance 11-1401 - 11-1412 [Chapter 14] as authored by the City Attorney.

PREPARED BY

Wes Jordan
Chief of Police
Date: August 17, 2012

Ordinance No. _____

AN ORDINANCE AMENDING CHAPTER 11 OF THE PRAIRIE VILLAGE MUNICIPAL CODE, 2003, ENTITLED "PUBLIC OFFENSES AND TRAFFIC" BY ADDING ARTICLE 14 ENTITLED "SPECIAL EVENT PERMIT"

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF PRAIRIE VILLAGE, KANSAS:

Section I.

Chapter 11 of the Prairie Village Municipal Code, 2003, entitled "Public Offenses and Traffic" is hereby amended by adopting a new Article 14 entitled "Special Event Permit" with the following sections:

11-1401. PURPOSE AND INTENT.

The purpose and intent of this article is to regulate, in areas of the City zoned as residential districts, special events which generate, during all or a portion of such event, crowds of participants or visitors sufficient in size to obstruct, delay or interfere with the safe and orderly movement of pedestrian or vehicular traffic, and which may also hinder fire and police protection and ambulance service to the areas near a special event. Furthermore, it is the intent of this article to protect nearby property owners and residents from special events which may be unsafe given site conditions, traffic patterns, land use characteristics and the nature of the proposed event. Finally, it is the intent of this article to protect the safety, health, peace, good order and tranquility of the community.

11-1402. UNLAWFUL TO OPERATE WITHOUT A PERMIT.

It shall be unlawful for any person to use property for any special event as defined in this article without obtaining a permit as required by this article. The purpose of such permit is to provide a procedure whereby the Police Department can best protect the safe movement of vehicular and pedestrian traffic and the availability of emergency services to the areas in the vicinity of the special event.

11-1403. SPECIAL EVENT DEFINED.

For purpose of this article, the term "**special event**" means a temporary outdoor use of private property in a district zoned residential, which

A. Is likely to or does in fact generate crowds of participants or visitors sufficient in size to obstruct, delay or interfere with the safe and orderly movement of pedestrian or vehicular traffic; and

B. Is likely to or does in fact create a condition in which the Police Department is required to protect the public health and welfare by modifying the normal flow of traffic and parking or by diverting police officers to the vicinity of the event in order to regulate and enforce traffic, pedestrian safety and parking and to insure that fire and police protection and ambulance service to the areas near such special event are not unduly interfered with or prevented.

11-1404. EVENTS NOT REQUIRING A PERMIT.

Events which do not, in the aggregate, occur on more than 5 total days in any calendar month shall not require a special event permit under this article.

11-1405. ADMINISTRATIVE PERMIT REQUIRED.

A. All special events, other than those excluded under section 11-1404, require a permit issued administratively by the Police Department.

B. No more than two special event permits per calendar year shall be issued at any location.

11-1406. PERMIT APPLICATION PROCEDURES.

A. No special event permit shall be issued until an application has been submitted to the Police Department. The application shall be made on forms provided by the Police Department, and shall be accompanied by the following items, as applicable:

1. a letter from the applicant identifying the address of the property at which the special event shall be held, describing the event, the hours of operation, the duration of the event, an estimate of the per diem attendance, and any structures or signs used in conjunction with the event;
2. a sketch plan showing the location of the activities, structures and signs in relation to existing buildings, parking areas, streets and property lines; and
3. any additional information deemed necessary by the City.

B. The applicant shall be either the owner or occupant of the property at which the special event shall be held. If the special event will occur at multiple property addresses, the owner or occupant of each property address shall sign the application, or an owner or occupant may delegate in writing to a single representative the authority to apply for a special permit.

C. A complete application shall be made at least two (2) weeks prior to the commencement date of a special event.

Recognizing that an event may not initially fall within the definition of "special event" set forth in Section 11-1403, or that an owner or occupant may reasonably believe that a planned event will not fall within the definition of "special event" set forth in Section 11-1403, this article will also be complied with if, within five (5) business days after an event does in fact meet the definition of "special event" set forth in Section 11-1403, an application is made.

Based upon the criteria set forth in subsection D below, the Police Department shall determine whether to approve, approve with conditions, or deny the permit within one (1) week after the application is received.

The Police Department shall have the authority to order any special event which has commenced without a special event permit to cease pending the processing of a valid application in order to protect the public safety and welfare.

D. The Police Department may deny a special event permit if it determines that there are no conditions which can be imposed which will protect the public safety and welfare.

The Police Department may grant a special event permit with conditions deemed necessary protect the public safety and welfare, including, but not limited to:

(i) the placement by the Public Works department of signs, including limited turning signs, one way traffic signs, protected pedestrian crossing signs, and restricted parking signs, in order to regulate traffic flow, parking, and pedestrian safety,

(ii) the presence of police officers during some or all of the special event operating times in order to regulate and enforce traffic, pedestrian safety and parking and to insure that fire and police protection and ambulance service to the areas near such special event are not unduly interfered with or prevented.

(iii) limits on the hours of operation in order to prevent a diversion of police from normal services.

If the Police Department determines that signage or police presence is required, or if the City provides other services or equipment at the request of the applicant, the applicant shall be required to reimburse the City for the costs of such signage, equipment or services in accordance with section 11-1407 hereof.

11-1407. PAYMENTS.

If costs are to be reimbursed to the City pursuant to section 11-1406(D), the applicant shall pay the estimated costs upon issuance of the special event permit. If the costs are less than the estimated cost advance, the City shall refund the difference to the applicant within thirty (30) days of the termination of the special event. If the costs are more than the estimated cost advance, the City shall so notify the applicant who is obligated to pay such excess costs within thirty (30) days of demand therefor.

11-1408. DENIAL OF A SPECIAL EVENT PERMIT APPLICATION; APPEALS FROM CONDITIONS OR DENIALS.

If the Police Department disapproves any application, it shall give the reasons therefore in writing, file same with the City Clerk and mail or deliver a copy to the applicant. The applicant may appeal such disapproval by filing a written notice thereof with the City Clerk within 15 days after the Police Department files the statement of reasons for the disapproval. A hearing on such appeal shall be held by the Governing Body of the City no more than fourteen (14) days after the applicant files such notice of appeal. The Governing Body, after a hearing, may reverse or affirm the decision of the Police Department by a majority vote. Applicant may bring an action in the District Court of Johnson County to determine the reasonableness of any such decision. Such appeals must be filed in the District Court within thirty (30) calendar days after the date that the decision of the Governing Body Planning Commission was made.

11-1409. REVOCATION OF SPECIAL EVENT PERMIT.

A. Any special event permit issued pursuant to this article is subject to revocation if the Police Department determines that:

1. The permit holder has fraudulently obtained the permit by knowingly giving false information in the application; or
2. The special event cannot be conducted without violating the standards or conditions for special event permit issuance or the provisions of this article; or
3. The special event is being conducted in violation of any condition of the special event permit or this provision of this article; or
4. The special event poses a threat to health or safety; or
5. The special event organizer or any person associated with the event has failed to obtain any other permit required pursuant to this article or that the special event is otherwise being conducted in violation of other applicable provisions of the Prairie Village City Code, Zoning Regulations and Subdivision Regulations.

B. If the Police Department revokes a special event permit, it shall state the reasons therefor and notify the permit holder in writing by mail or by leaving a copy of such notice at the location of the special event, whereupon the permit holder or holders shall immediately cease the special event. The applicant may appeal such revocation by filing a written notice thereof with the City Clerk within 15 days after the Police Department files the statement of reasons for the disapproval. A hearing on such appeal shall be held by the Governing Body of the City no more than fourteen (14) days after the applicant files such notice of appeal. The Governing Body, after a hearing, may reverse or affirm the decision of the Police Department by a majority vote. Applicant may bring an action in the District Court of Johnson County to determine the reasonableness of any such decision. Such appeals must be filed in the District Court within thirty (30) calendar days after the date that the decision of the Governing Body Planning Commission was made.

11-1410. GENERAL SPECIAL EVENT STANDARDS.

All special events shall comply with the following standards:

- A. The total duration of each allowable special event shall not exceed 60 days.
- B. The special event shall not endanger or be materially detrimental to the public health, safety or welfare or injurious to property or improvements in the immediate vicinity of the special event.
- C. The special event shall not cause undue traffic congestion or accident potential.

11-1411. COMPLIANCE WITH OTHER PROVISIONS OF THE CODE.

Special events shall also be subject to all other applicable provisions of the Prairie Village City Code, Zoning Regulations and Subdivision Regulations, including, but not limited to, provisions governing (a) short term special use permits, (b) temporary

structures, (c) signs, (d) amplified sound permits, (e) parade permits, and (f) race permits.

11-1412. PENALTY AND ENFORCEMENT.

Any person violating any provision of this article shall be guilty of a class A misdemeanor upon conviction thereof. Each day such violation is committed or allowed to continue shall constitute a separate violation. The City may also enforce this article by filing an action for declaratory or injunctive relief in District Court of Johnson County.

Section II.

Take Effect. That this ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper as provided by law.

PASSED AND APPROVED THIS ____ DAY OF _____, 2012.

Ronald L. Shaffer, Mayor

ATTEST:

APPROVED AS TO FORM:

Joyce Hagen Mundy
City Clerk

Catherine P. Logan
City Attorney

**COUNCIL COMMITTEE
AUGUST 20, 2012
6:00 P.M.
Council Chambers**

AGENDA

DAVID MORRISON, COUNCIL PRESIDENT

AGENDA ITEMS FOR DISCUSSION

COU2012-40 Consider modifications to Sidewalk Policy CP204
Keith Bredehoeft

Presentation of 75th Street Concept Design (State Line to Mission)
Keith Bredehoeft & consultant Cory Clark

*COU2012-35 Consider Engineering Change Order #1 for Project 75ST0001 - 75th
Street from State Line Road to Mission Road
Keith Bredehoeft

*COU2012-38 Consider KDOT Form 1302 - Request for Construction Project for Project
75ST0001: 75th Street - State Line Road to Mission Road
Keith Bredehoeft

COU2012-39 Consider approval of Neighborhood Event Ordinance and Permit
Process
Neighborhood Events Study Group

COUNCIL COMMITTEE OF THE WHOLE
August 20, 2012

The Council Committee of the Whole met on Monday, August 20, 2012 at 6:00 p.m. in the Council Chambers. The meeting was called to order by Council President David Morrison with the following members present: Ashley Weaver, Dale Warman, Ruth Hopkins, Steve Noll, Michael Kelly, Andrew Wang (arrived late), Laura Wassmer, Brooke Moorhead, Charles Clark, Ted Odell and David Belz. Staff Members present: Wes Jordan, Chief of Police; Captain Wes Lovett; Bruce McNabb, Director of Public Works, Keith Bredehoeft; Project Manager; Katie Logan, City Attorney; Quinn Bennion, City Administrator; Dennis Enslinger, Assistant City Administrator; Lisa Santa Maria, Finance Director, Chris Engel, Assistant to the City Administrator and Joyce Hagen Mundy, City Clerk.

COU2012-40 Consider modifications to Sidewalk Policy CP204

Council Policy 204 requires sidewalks to be constructed on one side of all local streets. It is common for residents to ask City Council to reconsider this policy when their street is planned for the addition of a sidewalk. City Council has granted exceptions when residents have shown significant support to not build the sidewalk. At the August 6th Committee meeting, staff was directed to draft modifications to the sidewalk policy based on Council input. Council members Morrison and Odell met with staff on Friday, August 10th to discuss possible criteria and policy modifications to match current Council direction. The study group recommends a vote petition process for abutting property owners.

Keith Bredehoeft distributed a city map identifying arterial and collector streets indicating where sidewalks are currently located and a map identifying residential streets indicating the location of sidewalks. The proposed amendment to the Sidewalk Policy only addresses sidewalks on residential streets at this time. Future discussion is needed regarding where sidewalks on both sides of arterial and collector streets are warranted.

The proposed vote petition provides the residents an option to contest the sidewalk installation while upholding the policy of constructing sidewalks on local streets. The proposed modification to the policy will allow for exceptions at a high threshold if 75% of the abutting property owners protest. Sidewalk requirements for arterial and collector streets will remain the same as exists in the current policy.

The proposed new language is as follows:

CP-204 Recommended Modification-

Item III.I

For residential / local streets, property owners who abut the street with a proposed sidewalk project may contest its construction. Public Works will send a written notice of intent to construct a sidewalk to the property owners abutting the

street. The notice will be sent certified mail (no return receipt) to the first property owner of record as listed on the Johnson County land records. The notice will include a vote petition which the property owner can indicate approval or disapproval of the construction of the sidewalk. The vote petition must be received by Public Works within 30 calendar days of the mailing of the notice. No response is counted towards approval of the construction of a sidewalk. There is only one vote petition per residential property.

If 75 percent or greater of the vote petitions indicate disapproval, then the sidewalk will not be constructed as part of the street project. If more than 25 percent of the vote petitions indicate approval or are not returned, then the sidewalk will be constructed as part of the street project.

Laura Wassmer stated she preferred the proposed survey over a petition as she felt this would allow for a more honest response by residents. However, she noted that there are areas in the city that should have sidewalks for safety reasons and she would like to see language added that would allow the City to consider these on an individual basis to allow sidewalk construction that the city deems necessary for public safety in these locations regardless of the survey results.

Ted Odell noted the committee's desire was to keep this as "black and white" as possible with a systematic approach. The 30 day time-frame was to give ample time for property owners to respond. He added any no responses would be considered as in support of sidewalks. The committee felt the high traffic and higher speeds on these streets created a safety issue that merited having sidewalks.

Michael Kelly supported keeping the existing sidewalk policy noting the value of having sidewalks constructed on both sides of collector and arterial streets and enforcing the construction of sidewalks on one side of residential streets.

Dale Warman complimented the committee and noted the City has two obligations - first to the safety of people walking and to listen to the desires of the residents. He feels the proposed revision meets both obligations, but felt the 75% criteria may be too low.

David Belz stated he likes the policy as it exists as it gives the Council the ability to look at individual streets. He expressed concern with having only the residents who live on the proposed street to have a voice. Village Vision states the City shall be a walkable community providing connectivity. As a governing body, the council needs to act on behalf of the community as a whole and to look to the future. He supports the enforcement of the existing policy.

Ruth Hopkins also supports the existing policy agreeing with Mr. Belz that the Council needs to act for the benefit of the community. She noted there is a huge silent majority who are not present. During the past weeks she has received comments from several residents who were horrified to think that the City would consider not constructing any sidewalks. She noted several comments on the "PVPost" in support of sidewalks. As the City of Kansas City said "Do what is good for the children".

Ted Odell noted the problem exists in that the Council is not enforcing its policy. The proposed amendment provides for a systematic approach to allow all residents to have a voice.

David Belz agreed the with Mr. Odell and noted that if the governing body makes its decision on behalf of the entire city and enforces its policy Prairie Village will become a walkable community, rather than to allow segments of streets to go without sidewalks.

Dale Warman agrees with the existing policy, but history indicates that the governing body has not been enforcing it. The proposed amendment provides a way for people to voice their opinion.

Laura Wassmer stated she doesn't believe every street in the city needs a sidewalk and the current policy does not recognize that. She noted both the cost of constructing and maintaining unnecessary sidewalks. She further noted the difficulties in retrofitting sidewalks onto existing properties with established mature trees and landscaping.

Michael Kelly noted the city has created a "catch 22". Laws prohibit skateboards, rollerblades and scooters from being on the street, yet the city is not constructing sidewalks. How do the police enforce these regulations when there is no were other than the street for skateboarders?

David Morrison noted the committee wanted to provide a way for residents to exercise some degree of local control. By polling all the residents in the area through an unbiased survey sent to the city residents will have the opportunity to have a voice.

Steve Noll stated that in a new development there would be universal sidewalk construction. He was surprised by the gaps of sidewalks reflected on the map for arterial and collector streets. He supported providing residents a means to have input and suggested that additional medium could be used in addition to mail.

Laura Wassmer asked if the committee discussed expanding the surveyed area. Ted Odell stated they had and would be ok with expanding the area of notification. They felt those abutting the proposed sidewalk would have the greater impact so they were chosen for notification.

Steve Noll made the following motion which was seconded by Brook Morehead:

**MOVED THE GOVERNING BODY APPROVE THE PROPOSED
AMENDMENT TO CITY COUNCIL POLICY 204 ENTITLED
"SIDEWALKS" INCORPORATING A PROVISION TO ALLOW
FOR A VOTE PETITION TO NOT INSTALL SIDEWALKS ON
RESIDENTIAL STREETS.**

COUNCIL ACTION REQUIRED

The motion was voted on and passed by a vote of 7 to 5 with the following votes cast: “aye” Weaver, Warman, Noll, Wassmer, Morehead, Morrison, Odell; “nay” Hopkins, Kelly, Wang, Clark, and Belz.

David Morrison asked if the Council wanted to accept those petitions that have already been submitted with more than the required 75% signatures.

Quinn Bennion noted petitions have been received by the following neighborhoods: 68th Street; 70th Terrace & Fonticello and Reeds & Outlook who were exempted at the last meeting. He noted the signatures or ownership status on these petitions have not been verified by staff.

David Belz stated he did not want to penalize those residents who were unaware of the policy and felt the proposed policy should be followed. Laura Wassmer agreed and felt that all residents should receive a survey. If the new policy is going into effect, begin following it now.

Ruth Hopkins confirmed there was sufficient time to follow the process and still complete the potential construction of sidewalks. Bruce McNabb stated letters would be mailed out following the formal approval of the policy on September 3rd. Keith Bredehoeft noted construction of sidewalks could be delayed to allow for the process to be completed.

Presentation of 75th Street Concept Design - State Line Road to Mission Road

Keith Bredehoeft stated the 75th Street subcommittee consisting of Michael Kelly, Andrew Wang, David Belz, Ted Odell and the Mayor has been working with George Butler Associates regarding possible 75th Street enhancements.

Cory Clark, with GBA, stated the following alternatives were considered:

- Baseline Improvements - replacing & improving existing infrastructure.
- South Sidewalk - adding a sidewalk to the south side of 75th where one does not currently exist. Current sidewalk does not meet existing sidewalk standards.
- Retaining Wall Aesthetics - improving the appearance of any existing walls and any new walls added.
- Mission Road Realignment - correcting the alignment across 75th Street at Mission Road
- Belinder Realignment - correcting the alignment at 75th & Belinder.
- Street Lighting Upgrade - this would apply to existing street lights.
- Pedestrian Lighting - this is proposed to be added along the north side of 75th Street.
- State Line Gateway - creates a new entrance to the City at State Line Road featuring stone columns, terraced low stone wall and additional landscaping
- Belinder Aesthetics - enhancement of the corners of 75th & Belinder with landscaping, stone walls and small plaza area with seating.
- Windsor Crosswalk - relocation

- Shop Frontage Aesthetics - in front of Laura Little's Shop and the adjacent office building.
- Bus Stops - the possible addition of bus stops along 75th Street with funding from MARC.
- Landscaping Nodes - along 75th Street as right-of-way allows

Mr. Clark reviewed a power point presenting visual photos and sketches on each of these potential elements.

David Morrison noted that these are concept drawings and there are no construction plans at this time.

Laura Wassmer left. Keith Bredehoeft noted that a letter was sent to residents along 75th Street advising them that the design concepts for 75th Street would be discussed at this meeting and that there would be a meeting with the residents at a later date to review the concept designs if approved by the Council and to receive resident comments.

Mr. Clark reviewed the potential difficulties with some of the proposed sidewalk installations and other aspects proposed and answered questions from the Council. Mr. Bredehoeft stated that the concepts on the proposed access management options for the area in front of the retail and offices on the north side of 75th Street. The City will work with them throughout the process.

Council President David Morrison opened the meeting to comments and questions from residents.

John J. Hayde, 5219 West 69th Terrace, liked the ideas presented; however, he felt they were 50 to 60 years too late as he went on to express concerns with placing sidewalks over old water lines and the current quality of concrete. He noted a number of recent water line breaks in his area.

Anthony Heinz, 3619 West 75th Street, spoke in support of the proposed sidewalks and asked if the sidewalks on the south side could be widened to match those going in on the north side. Mr. Clark responded there is limited right-of-way available on the south side.

Steven Miller, 3214 West 75th Street, expressed frustration with the growth of weeds between the sidewalks and the existing curb. He questioned the proposed use of bricks, noting they did not work in the street and he does not feel they will work as proposed. Mr. Miller feels more engineering study needs to be done to get a better design.

Ruth Hopkins asked where the Carroll Plaza at 75th and Mission Road fit into the proposed plans. Keith Bredehoeft responded that due to costs, the committee is recommending that the Mission Road Realignment and Pedestrian Lighting alternatives be excluded from the project. Committee members explained the focus at this time was the section of 75th Street from Mission Road east.

Dale Warman stated he liked the proposed State Line Gateway and commended the committee and GBA for their work. He confirmed that this plan will be presented to the residents for comments and feedback at a later date.

***COU2012-35 Consider Engineering Change Order #1 for Project 75ST0001 - 75th Street from State Line Road to Mission Road**

The 75th Street project will improve the existing infrastructure and will also look to improve pedestrian accommodations and to make 75th Street a more aesthetically pleasing corridor. This project is scheduled to receive \$1.6 Million in Federal Funds through the Mid-America Regional Council(MARC) under the Bike/Pedestrian and Livable Communities category. The Federal Funds are to be used in 2014.

Keith Bredehoeft noted that George Butler Associates, Inc.(GBA) was selected to perform the conceptual design study for this project. The requested Engineering Change Order is for preliminary design, final design, bidding services, and limited construction services. The Kansas Department of Transportation (KDOT) administers Federal funds and therefore this project will be designed to KDOT standards. KDOT will also manage the construction letting of the project. The 75th Street City Council Sub-Committee has recommended the project design features move forward to preliminary design.

The following design features to be included preliminary design:

- New continuous sidewalks on north and south sides of 75th Street.
- Narrow 75th Street lanes from 12 feet to 11 feet to allow for better pedestrian accommodations on the north side of the street.
- Aesthetic facing on retaining walls.
- Alignment of 75th Street at Belinder Avenue including the possibility of concrete curb medians.
- Belinder Avenue and 75th Street landscape/aesthetic improvements.
- 75th Street and Stateline Road landscape/City entrance feature.
- Pedestrian activated beacons for crossing 75th Street near Windsor Street.
- Improved bus accommodations.
- New concrete curb, new asphalt pavement, and drainage improvements.

Once preliminary design is completed an additional Public Meeting will be held in early 2013 to get additional input to help finalize the design of the project. Property owners with more significant impacts and home associations will be a part of the preliminary design process.

Funding is available under Project 75ST0001: 75th State Line Road to Mission Road in the amount of \$238,240.00.

Charles Clark made the following motion, which was seconded by Michael Kelly and passed unanimously:

**MOVE THE GOVERNING BODY APPROVE CHANGE ORDER #1
WITH GEORGE BUTLER ASSOCIATES (GBA) FOR PROJECT
109866I 75TH STREET REHABILITATION FROM STATE LINE
ROAD TO MISSION ROAD IN THE AMOUNT OF \$238,240.00
BRINGING THE NEW CONTRACT AMOUNT TO \$363,000.00.
COUNCIL ACTION TAKEN
08/20/2012**

Move to approve Change Order #1 with GBA for project 190866: 75th Street Rehabilitation from State Line Road to Mission Road in the amount of \$238,240.00.

***COU2012-38 Consider KDOT Form 1302 - Request for Construction Project for Project
75ST0001: 75th Street - State Line Road to Mission Road**

Keith Bredehoeft noted that this project was selected by the Mid-America Regional Council (MARC) to receive Federal Funds. The Kansas Department of Transportation (KDOT) administers the Federal Funds for local communities in Kansas. As part of their process KDOT Form 1302 must be executed by the City. The agreement states that the City has or will have the required matching funds for the project. This project will utilize 2014 Federal Funds.

Project Funding is available under the Capital Infrastructure Program under Project 75ST0001: 75th State Line Road to Mission Road. Depending on final scope of project additional City funds may be added to the project.

Charles Clark made the following motion, which was seconded by David Belz and passed unanimously:

**MOVE THE GOVERNING BODY AUTHORIZE THE MAYOR TO
SIGN KDOT FORM 1302 - REQUEST FOR CONSTRUCTION
PROJECT FOR PROJECT 75ST0001: 75TH STREET - STATE
LINE ROAD TO MISSION ROAD
COUNCIL ACTION TAKEN
08/20/2012**

Council President David Morrison recessed the committee meeting until after the conclusion of the City Council meeting.

The Council Committee of the Whole was reconvened at 8:15 p.m.

COU2012-39 Consider approval of Neighborhood Event Ordinance and Permit Process

Andrew Wang stated he and Michael Kelly have been working with staff over the past several months to come up with a means to preserve the health and safety of neighborhoods during a neighborhood event. With the assistance of the city attorney an ordinance has been drafted. The ordinance directly addresses public safety as it relates to the ability of police, fire and emergency vehicles to access a neighborhood. The ordinance was modeled after special event permits now required by the city for such events as parades and races. The proposal asks the event planner to estimate crowd size and provide information on parking and the potential impact on the neighborhood.

David Belz asked for comments from Chief Wes Jordan noting some of the language in the ordinance is vague and questioned who would be responsible for making interpretations. Chief Jordan stated that since the ordinance is designed to cover a wide variety of potential types of events the language needed to be broad. He stressed the need for the police department to have information in advance of events to ensure public safety. He noted there has been a marked increase in the number of 5K's and fun runs which require additional officers and time to coordinate for the safety of the participants as well as the general public. Mr. Belz asked how an individual would estimate the number of participants or vehicles for an event that covered several days. Chief Jordan responded the application would describe the event and provide estimates that would allow the police to make appropriate plans, especially if additional personnel were needed such as the KU event last weekend. Without advance notice, officers would need to be pulled from the street to provide any needed coverage.

The purpose of this Ordinance is to regulate special events in residential zoned districts, which generate crowds or participants or visitors that interfere with the safe and orderly movement of pedestrian or vehicular traffic and to mitigate delays in public safety response. The permitting process takes into account the impact on neighboring properties and to protect the safety, health, peace, good, and tranquility of the community.

City Attorney Katie Logan noted the ordinance pulled information from similar ordinances regulating special events in commercial areas which had much more regulation. The important consideration is not the number of people in attendance but the impact on traffic and safety.

Charles Clark stated the ordinance is a good idea but expressed concern with the enforcement of the ordinance by the governing body. There will be challenges to the ordinance and he wants to be sure the governing body is willing to stand up to those challenges.

Michael Kelly noted Mr. Clark's concern but stated the city cannot let the sometimes unwillingness of the governing body to uphold its decisions prevent the city from moving forward in attempting to utilize a structure and process to address an identified concern for public safety.

Ted Odell agreed that it was important for the police department to be provided with this information in order to take appropriate action for the safety of residents.

Andrew Wang noted the governing body has wavered on policy, but he does not recall it doing so on any ordinances. Mr. Wang reviewed some of the provisions of the ordinance which allows for two permits to be issued during a year for a period not to exceed 60 days. This could be a maximum period of four months out of a year which would be an extremely long time. He cannot conceive an event longer than two weeks and would be more comfortable with a 14 to 30 day timeframe. Katie Logan explained the rationale for the 60 day time period. Ruth Hopkins confirmed the 60 days could be contiguous but would require the filing of an additional application.

David Belz asked why Council action is not scheduled for the next City Council meeting. Quinn Bennion responded it is scheduled for September 17th due to the absence of both the City Attorney and the Chief of Police at the September 4th meeting. Mr. Belz noted this is a recommendation of the committee and asked for the staff recommendation.

Quinn Bennion responded that staff have different opinions on the effectiveness of the proposed ordinance. The proposed ordinance clearly addresses a need to ensure public safety access to residential neighborhoods. The administration by the police department following criteria used for similar special event permits required is good. Staff shares Mr. Clark's concern with the ability of the governing body to enforce the ordinance when challenged. He noted there may be costs connected to the granting of the permit for the additional services required by the police department to ensure public safety. The ordinance could leave to legal challenges as well as significant press comment and coverage. He wants to Governing Body to be fully aware of the potential implications of adopting this ordinance.

David Belz questioned the probability of a permits being issued under the criteria established by the ordinance for an existing event in the city.

Andrew Wang noted a precedent has been set in the city with the special permits required for other events that need the approval of the police department to ensure public safety. He noted that he does not have a special event in his ward or neighborhood; but would like to see this ordinance in place if a special event such as a haunted house would open in his ward for the benefit of the neighborhood.

Michael Kelly noted the proposed ordinance provides a balance allowing for special events while also looking out for the neighborhoods or residents that may be impacted by that event, especially as it relates to issues of health and safety.

Katie Logan envisions this ordinance as a means by which the police department can identify events and make sure steps are taken to address the safety needs of the residents in the neighborhood. She noted the cost related to any special services required by the police department would be the responsibility of the event planner and not the city and would further limit the drain on police resources.

Ruth Hopkins liked that the responsibility for the event is placed on the event holder. She feels this is a proactive step while not denying anyone the ability to hold a special event.

Andrew Wang made the following motion, which was seconded by Michael Kelly:

**MOVED THE GOVERNING BODY ADOPT AN ORDINANCE
AMENDING CHAPTER XI ENTITLED "PUBLIC OFFENSES &
TRAFFIC" BY ADDING A NEW ARTICLE 14 ENTITLED
"SPECIAL EVENT PERMIT"**

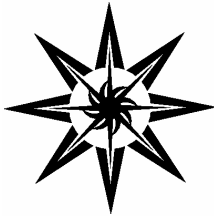
**COUNCIL ACTION REQUIRED
09/17/2012**

The motion passed by a 9 to 2 vote with the David Morrison and David Belz voting in opposition.

Adjournment

With no further business to come before the Council Committee of the Whole, Council President David Morrison adjourned the meeting at 8:45 p.m.

David Morrison
Council President



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: September 17, 2012

Council Meeting Date: September 17, 2012

***COU2012-40: CONSIDER CONSTRUCTION CONTRACT FOR PROJECT SARD0001, 2012 CDBG PROJECT ON SAGAMORE DRIVE FROM 75TH STREET TO 76TH STREET WITH LINAWEAVER CONSTRUCTION, INC.**

RECOMMENDATION

Move to approve the construction contract with Linaweaver Construction, Inc. for project SARD0001, 2012 CDBG Project on Sagamore Drive from 75th Street to 76th Street for \$155,598.75.

BACKGROUND

On August 24, 2012, the City Clerk opened bids for Project SARD0001, Sagamore Drive. Six bids were received:

Linaweaver Construction, Inc.	\$155,598.75
Freeman Concrete Construction	\$155,799.00
Mega Industries Corp	\$166,187.00
McAnany Construction, Inc.	\$188,525.00
William White & Son's	\$199,180.50
Amino Brothers	\$214,362.85
Engineer's Estimate	\$209,151.67

The Engineer has reviewed all bids. Linaweaver Construction, Inc. recently constructed the Weltner Park and Cambridge Street improvement and they performed very well and thus we are comfortable hiring them for this project.

FUNDING SOURCE

Funding is available under the Capital Infrastructure Program under Project Number SARD0001. 80% or more of this project will be funded by the CDBG funds.

RELATION TO VILLAGE VISION

TR1a. *Ensure that infrastructure improvements meet the needs of all transportation users.*

ATTACHMENTS

1. Construction Agreement with Linaweaver Construction, Inc.

PREPARED BY

Keith Bredehoeft, Project Manager

September 13, 2012

CONSTRUCTION CONTRACT
FOR
PROJECT: SARD0001
2012 CDBG SAGAMORE ROAD

BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
LINAWEAVER CONSTRUCTION INC.

THIS AGREEMENT, is made and entered into this ____ day of _____, 2012, by and between the City of Prairie Village, Kansas, hereinafter termed the "City", and _____, hereinafter termed in this agreement, "Contractor", for the construction and completion of Project , designated, described and required by the Project Manual and Bid proposal, to wit:

CONTRACT COST: The City shall pay the Contractor for the performance of the Work embraced in this Contract, and the Contractor will accept in full compensation therefore the sum (subject to adjustment as provided by the Contract) of *One Hundred Fifty Five Thousand Five Hundred Ninety Eight + 75/100 Dollars (\$155,598.75)* for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

LIQUIDATED DAMAGES: The contract is comprised of one large project (sometimes referred to as "Total Project Work") and, in some cases, is partitioned into smaller subprojects referred to in this agreement as "Project Segments." A total completion date shall be set forth for both the Total Project Work and, when applicable, the Project Segments. Liquidated damages shall apply to the Total Completion Date for the Total Project Work (as may be extended under the Contract) and, when applicable, the Total Completion Date for each Project Segment (as may be extended under the Contract), in accordance with this Agreement and the Special Conditions. Liquidated Damages are described in greater detail below and the applicable rates for the subject Project are set forth in the **Special Conditions**, attached hereto and incorporated herein by this reference.

Within ten (10) calendar days after receipt of written notice to commence from the City, the Contractor shall commence the Work to be done under this Contract. The Contractor agrees to complete the Total Project Work and Project Segments hereunder within the contract time period set forth in the Contract, or as it may be extended under the terms of this Contract. At the time of execution of this Contract, the Contractor shall furnish the Project Manager with a project schedule setting forth, in detail, the proposed sequence of activities and the dates on which such activities shall be completed. The schedule shall also set forth the dates on which the Project Segments (if applicable to the Contract) shall be totally complete.

Contractor agrees that time is of the essence and any term pertaining to Contractor timely performing so as to achieve Total Completion when required under the Contract is a material provision of this Contract. Further, the parties acknowledge that City's damages in the event of delay are difficult to ascertain and consequently agree that, in the event and to the extent that

actual date of Total Completion is delayed beyond the required date for Total Completion for the Total Project or Project Segments attributable solely or concurrently to (i) an act or omission of Contractor or any of its subcontractors or suppliers, or (ii) in whole or in part, to any other event or condition within the Contractor's reasonable control (and not for reasons solely attributable to City), the Contractor shall be assessed a liquidated damage, and not as a penalty, in the amount set forth in the Special Conditions for each calendar day beyond the applicable Total Completion date. Such amount shall be deducted from any amounts due Contractor under this agreement.

The Contractor agrees that, in the event Project Segments are not Totally Complete, the City may also assess other liquidated damages for each calendar day beyond the date for Total Completion in an amount set forth in the Special Conditions. The Contractor agrees that such assessment is a reasonable estimate of the damages that may be sustained by the City in the event the project is delayed and that such amount is not a penalty.

Further, the Contractor agrees that, in the event Contractor does not carry out such work at such rates of progress as required by the Construction Schedule, the City may, at its option and without Contractor receiving any additional compensation therefore, require Contractor to increase the number of qualified supervisory personnel and/or workers and the amount of equipment employed in the performance of the Work to such extent as City may deem necessary or desirable. In addition, City, at its option, may supplement Contractor's manpower by entering into contracts with other contractors to perform the Work. All costs that are incurred by City, in this regard, including reasonable attorney's fees, shall be deducted from any sums due Contractor or City may make demand on Contractor for reimbursement of such costs.

1. **DEFINITIONS:**

1.1 Following words are given these definitions:

BID DOCUMENTS shall mean all documents related to submitting a Bid, including, but not limited to, the Advertisement for Bids, Instruction to Bidders, Bid Form, Bid Bond and the proposed Project Manual, including any Addenda issued prior to receipt of Bids.

BID PROPOSAL shall mean the offer or proposal of the Bidder submitted on the prescribed form set forth the prices for the work to be performed.

BIDDER shall mean any individual: partnership, corporation, association or other entity submitting a Bid for the work.

BONDS shall mean the bid, maintenance, performance, and statutory or labor and materials payment bonds, together with such other instruments of security as may be required by the Contract Documents.

CHANGE ORDER is a written order issued after the Agreement is executed by which the City and the Contractor agree to construct additional items of work, to adjust the quantities of work, to modify the Contract time, or, in lump sum contracts, to change the character and scope of work shown on the Project Manual.

CITY shall mean the City of Prairie Village, Kansas, acting through a duly appointed representative.

CONTRACT or **CONTRACT DOCUMENTS** shall mean the Construction Agreement, the accepted Bid Proposal, Contractor's Performance Bond, Contractor's Maintenance Bond, Statutory Bond, Project Manual and any other documents that have bearing the Work prescribed in the Project.

CONTRACT PRICE shall be the amount identified in the Construction Agreement between the City and the Contractor as the total amount due the Contractor for total completion of the Work as per the Contract Documents.

CONTRACT TIME shall be the number of calendar days stated in the Contract Documents for the completion of the work or shall be a specific date as designated in the Construction Agreement.

CONTRACTOR shall mean the entity entering into the Contract for the performance of the work covered by this Contract, together with his/her duly authorized agents or legal representatives.

DEFECTIVE WORK shall mean work, which is unsatisfactorily, faulty or deficient, or not in conformity with the Project Manual.

ENGINEER shall mean the individual, firm or entity designated in the Contract Documents, which has been employed or contracted by the City for the performance of engineering services in connection with the Work.

FIELD ORDER shall mean a written order issued by the Project Manager that orders minor changes in the work, but which does not involve a change in the contract price or contract time.

FIELD SUPERINTENDENT shall mean the Public Works Field Superintendent of the City of Prairie Village or designee.

FINAL ACCEPTANCE shall mean the date when the City accepts in writing that the construction of the Work is complete in accordance with the Contract Documents such that the entire Work can be utilized for the purposes for which it is intended and Contractor is entitled to final payment.

INSPECTOR shall mean the engineering or technical inspector or inspectors duly authorized by the City to monitor the work and compliance tests under the direct supervision of the Project Manager.

NOTICE OF AWARD shall mean the written notice by the City to the apparent successful Bidder stating that upon compliance with the conditions precedent enumerated therein, within the time specified, the City will sign and deliver the Agreement.

NOTICE TO PROCEED shall mean the written notice by the City to the Contractor fixing the date on which the Contract time is to commence and on which the Contractor shall start to perform its obligations under the Contract Documents. Without the prior express written consent of the City, the Contractor shall do no work until the date set forth in the Notice to Proceed.

PAY ESTIMATE NO. ____ or **FINAL PAY ESTIMATE** shall mean the form to be used by the Contractor in requesting progress and final payments, including supporting documentation required by the Contract Documents.

PLANS shall mean and include all drawings which may have been prepared by or for the City or submitted by the Contractor to the City during the progress of the Work, all of which show the character and scope of the work to be performed.

PROJECT MANAGER shall mean the person appointed by the Public Works Director for this project as named in the Special Conditions.

PUBLIC WORKS DIRECTOR shall mean the duly appointed Director of Public Works for the City of Prairie Village or designee.

SHOP DRAWINGS shall mean all drawings, diagrams, illustrations, schedules and other data which are specifically prepared by the Contractor, a Subcontractor, manufacturer, fabricator, supplier or distributor to illustrate some portion of the Work, and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a manufacturer, fabricator, supplier or distribution and submitted by the Contractor to illustrate material or equipment for some portion of the work.

SPECIFICATIONS shall mean those portions of the Project Manual consisting of written technical descriptions of materials, equipment, construction methods, standards and workmanship as applied to the Work and certain administrative details applicable thereto. They may include, but not necessarily be limited to: design specifications, e.g. measurements, tolerances, materials, inspection requirements and other information relative to the work; performance specifications, e.g., performance characteristics required, if any; purchase description specifications, e.g. products or equipment required by manufacturer, trade name and/or type; provided, however, equivalent alternatives (including aesthetics, warranty and manufacturer reputation) may be substituted upon written request and written approval thereof by the City.

SUB-CONTRACTOR shall mean an individual, firm or corporation having a direct contract with the Contractor or with another subcontractor for the performance of a part of the Work.

SUBSTANTIAL COMPLETION shall be defined as being less than 100 percent of the work required that will be completed by a specified date as agreed to in writing by both parties.

TOTAL COMPLETION shall be defined as fulfilling 100 percent of the work required in this contract by the date specified herein.

UNIT PRICE WORK shall mean work quantities to be paid for based on unit prices. Each unit price shall be deemed to include the Contractor's overhead and profit for each separately identified item. It is understood and agreed that estimated quantities of times for unit price work are not guaranteed and are solely for the purpose of comparison of bids and determining an initial Contract price. Determinations of actual quantities and classifications of unit price work shall be made by the City.

WORK shall mean the work to be done to complete the construction required of the Contractor by the Contract Documents, and includes all construction, labor, materials, tools, equipment and transportation necessary to produce such construction in accordance with the Contract Documents.

- 1.2 Whenever any word or expression defined herein, or pronoun used instead, occurs in these Contract Documents; it shall have and is mutually understood to have the meaning commonly given. Work described in words, which so applied have a well-known technical or trade meaning shall be held to refer to such, recognized standards.
- 1.3 Whenever in these Contract Documents the words "as ordered," "as directed", "as required", "as permitted", "as allowed", or words or phrases of like import are used, it is understood that the order, direction, requirement, permission or allowance of the Project Manager is intended.
- 1.4 Whenever any statement is made in the Contract Documents containing the expression "it is understood and agreed", or an expression of like import, such expression means the mutual understanding and agreement of the parties hereto.
- 1.5 The words "approved", "reasonable", "suitable", "acceptable", "properly", "satisfactorily",

or words of like effect in import, unless otherwise particularly specified herein, shall mean approved, reasonable, suitable, acceptable, proper or satisfactory in the judgment of the Project Manager.

- 1.6 When a word, term or phrase is used in the 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.
- 1.7 All terms used herein shall have the meanings ascribed to them herein unless otherwise specified.

2. ENTIRE AGREEMENT:

- 2.1 The Contract Documents, together with the Contractor's Performance, Maintenance and Statutory bonds for the Work, constitute the entire and exclusive agreement between the City and the Contractor with reference to the Work. Specifically, but without limitation, this Contract supersedes all prior written or oral communications, representations and negotiations, if any, between the City and the Contractor. The Contract may not be amended or modified except by a modification as hereinabove defined. These Contract Documents do not, nor shall they be construed to, create any contractual relationship of any kind between the City and any Subcontractor or remote tier Subcontractor.
- 2.2 The Contract shall be construed in accordance with the laws of the state of Kansas.

3. INTENT AND INTERPRETATION

- 3.1 The intent of the Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, including construction, labor, materials, tools, equipment and transportation, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result, shall be provided by the Contractor for the Contract Price.
- 3.2 All limits stated in the Contract Documents are of the essence of the Contract.
- 3.3 The Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.
- 3.4 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.
- 3.5 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents and shall give written notice to the Project Manager of any inconsistency, ambiguity, error or omission, which the Contractor may discover, or should have discovered, with respect to these documents before proceeding with the affected Work. The review, issuance, or the express or implied approval by the City or the Project

Manager of the Contract Documents shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such review be evidence of the Contractor's compliance with this Contract.

- 3.6 The City has prepared or caused to have prepared the Project Manual. **HOWEVER, THE CITY MAKES NO REPRESENTATION OR WARRANTY AS TO ACCURACY OR FITNESS FOR PARTICULAR PURPOSE INTENDED OR ANY OTHER WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the City concerning such documents as no such representation or warranties have been made or are hereby made.
- 3.7 As between numbers and scaled measurements in the Project Manual, the numbers shall govern; as between larger scale and smaller scale drawings, (e.g. 10:1 is larger than 100:1) the larger scale shall govern.
- 3.8 The organization of the Project Manual into divisions, sections, paragraphs, articles (or other categories), shall not control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.
- 3.9 The Contract Documents supersedes all previous agreements and understandings between the parties, and renders all previous agreements and understandings void relative to these Contract Documents.
- 3.10 Should anything be omitted from the Project Manual, which is necessary to a clear understanding of the Work, or should it appear various instructions are in conflict, the Contractor shall secure written instructions from the Project Manager before proceeding with the construction affected by such omissions or discrepancies.
- 3.11 It is understood and agreed that the work shall be performed and completed according to the true spirit, meaning, and intent of the Contract Documents.
- 3.12 The Contractor's responsibility for construction covered by conflicting requirements, not provided for by addendum prior to the time of opening Bids for the work represented thereby, shall not extend beyond the construction in conformity with the less expensive of the said conflicting requirements. Any increase in cost of work required to be done in excess of the less expensive work of the conflicting requirements will be paid for as extra work as provided for herein.
- 3.13 The apparent silence of the Project Manual as to any detail, or the apparent omission from them of a detailed description concerning any point, shall be regarded as meaning that only the best general practice is to be used. All interpretations of the Project Manual shall be made on the basis above stated.
- 3.14 The conditions set forth herein are general in scope and are intended to contain requirements and conditions generally required in the work, but may contain conditions or requirements which will not be required in the performance of the work under contract and which therefore are not applicable thereto. Where any stipulation or requirement set forth

herein applies to any such non-existing condition, and is not applicable to the work under contract, such stipulation or requirement will have no meaning relative to the performance of said work.

- 3.15 Pursuant to K.S.A. No. 16-133, if the Contractor to whom the Contract is awarded is not a resident firm of the State of Kansas, he shall execute and file "Certificate of Appointment of Process of Agent" with the Clerk of the District Court at the Johnson County Courthouse. These forms may be obtained at the Office of the Clerk of the District Court. After execution of the documents, they shall be filed with the Clerk of the District Court. A filing fee of Five Dollars (\$5.00) is required. These certificates are pursuant to the General Statutes of Kansas, and shall be filed prior to the formal execution of the Contract Documents. Failure to comply with these requirements shall disqualify the Contractor for the awarding of this Contract.

4. WORK SUPERINTENDENT

- 4.1 The Contractor shall provide and maintain, continually on the site of Work during its progress, an adequate and competent superintendent of all operations for and in connection with the work being performed under this Contract, either personally or by a duly authorized superintendent or other representative. This representative shall be designated in writing at the preconstruction meeting.
- 4.2 The superintendent, or other representative of the Contractor on the Work, who has charge thereof, shall be fully authorized to act for the Contractor, and to receive whatever orders as may be given for the proper prosecution of the work, or notices in connection therewith. Use of Subcontractors on portions of the work shall not relieve the Contractor of the obligation to have a competent superintendent on the work at all times.
- 4.3 The City shall have the right to approve the person who will be the Superintendent based on skill, knowledge, experience and work performance. The City shall also have the right to request replacement of any superintendent.
- 4.4 The duly authorized representative shall be official liaison between the City and the Contractor regarding the signing of pay estimates, change orders, workday reports and other forms necessary for communication and Work status inquiries. Upon Work commencement, the City shall be notified, in writing, within five (5) working days of any changes in the Contractor's representative. In the absence of the Contractor or representative, suitable communication equipment, which will assure receipt of messages within one (1) hour during the course of the workday, will also be required.
- 4.5 The Contractor will be required to contact the Project Manager daily to advise whether and/or where the Contractor and/or the Subcontractor's crews will be working that day, in order that the Project Manager's representative is able to monitor properly the Work.

5. PROJECT MANAGER

- 5.1 It is mutually agreed by and between the parties to this Contract Agreement that the Project Manager shall act as the representative of the City and shall observe, as required, the work included herein.

- 5.2 In order to prevent delays and disputes and to discourage litigation, it is further agreed by and between the parties to this Contract that the Project Manager shall, in good faith and to the best of its ability, determine the amount and quantities of the several kinds of work which are to be paid for under this Contract; that the Project Manager shall determine, where applicable, questions in relation to said Work and the construction thereof; that Project Manager shall, where applicable decide questions which may arise relative to the execution of this Contract on the part of said Contractor; that the Project Manager's decisions and findings shall be the conditions precedent to the rights of the parties hereto, to any action on the Contract, and to any rights of the Contractor to receive any money under this Contract provided, however, that should the Project Manager render any decision or give any direction which, in the opinion of either party hereto, is not in accordance with the meaning and intent of this Contract, either party may file with the Project Manager and with the other party, within thirty (30) days a written objection to the decision or direction so rendered and, by such action, may reserve the right to submit the question to determination in the future.
- 5.3 The Project Manager, unless otherwise directed or agreed to by the City in writing, will perform those duties and discharge those responsibilities allocated to the Project Manager as set forth in this Contract. The Project Manager shall be the City's representative from the effective date of this Contract until final payment has been made. The Project Manager shall be authorized to act on behalf of the City only to the extent provided in this Contract.
- 5.4 The City and the Contractor shall communicate with each other in the first instance through the Project Manager.
- 5.5 The Project Manager shall be the initial interpreter of the requirements of the Project Manual and the judge of the performance by the Contractor. The Project Manager shall render written graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.
- 5.6 The Project Manager will review the Contractor's Applications for Payment and will certify to the City for payment to the Contractor those amounts then due the Contractor as provided in this Contract. The Project Manager's recommendation of any payment requested in an Application for Payment will constitute a representation by Project Manager to City, based on Project Manager's on-site observations of the Work in progress as an experienced and qualified design professional and on Project Manager's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of the Project Manager's knowledge, information and belief, the quality of the Work is in accordance with the Project Manual (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Project Manual, to a final determination of quantities and classifications for Unit Price Work if such is called for herein, and to any other qualifications stated in the recommendation); and that Contractor is entitled to payment of the amount recommended. However, by recommending any such payment Project Manager will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to Project Manager in the Project Manual or that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by the City or the City to withhold payment to Contractor.

- 5.7 The Project Manager may refuse to recommend the whole or any part of any payment if, in Project Manager's opinion, it would be incorrect to make such representations to City. Project Manager may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in the Project Manager's opinion to protect the City from loss because:
- The Work is defective, or completed Work has been damaged requiring correction or replacement,
 - The Contract Price has been reduced by Written Amendment or Change Order,
 - The City has been required to correct defective Work or complete Work in accordance with the Project Manual.
- 5.8 The City may refuse to make payment of the full amount recommended by the Project Manager because claims have been made against City on account of Contractor's performance or furnishing of the Work or liens have been filed in connection with the Work or there are other items entitling City to a set-off against the amount recommended, but City must give Contractor written notice (with a copy to Project Manager) stating the reasons for such action.
- 5.9 The Project Manager will have the authority to reject Work, which is defective or does not conform to the requirements of this Contract. If the Project Manager deems it necessary or advisable, the Project Manager shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.
- 5.10 The Project Manager will review, or take other appropriate action as necessary, concerning the Contractor's submittals, including Shop Drawings, Product Data and Samples. Such review, or other action, shall be for the sole purpose of determining general conformance with the design concept and information given through the Project Manual.
- 5.11 The Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 5.12 The Project Manager, upon written request from the Contractor shall conduct observations to determine the date of substantial completion and the date of final acceptance. The Project Manager will receive and forward to the City for the City's review and records, written warranties and related documents from the Contractor required by this Contract and will issue a final Certificate for Payment to the City upon compliance with the requirements of this Contract.
- 5.13 The Project Manager's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.
- 5.14 The Project Manager will **NOT** be responsible for Contractor's means, methods, techniques, sequences, or procedures or construction, or the safety precautions and programs incident thereto and will not be responsible for Contractor's failure to perform the

- work in accordance with the Project Manual. The Project Manager will not be responsible for the acts or omissions of the Contractor or any Subcontractor or any of its or their agents or employees, or any other person at the site or otherwise performing any of the work except as may otherwise be provided.
- 5.15 Any plan or method of work suggested by the Project Manager, or other representatives of the City, to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor, and the Project Manager and the City will assume no responsibility therefore.
- 5.16 It is agreed by the Contractor that the City shall be and is hereby authorized to appoint or employ, either directly or through the Project Manager, such City representatives or observers as the City may deem proper, to observe the materials furnished and the work performed under the Project Manual, and to see that the said materials are furnished, and the said work performed, in accordance with the Project Manual therefore. The Contractor shall furnish all reasonable aid and assistance required by the Project Manager, or by the resident representatives for proper observation and examination of the Work and all parts thereof.
- 5.17 The Contractor shall comply with any interpretation of the Project Manual by the Project Manager, or any resident representative or observer so appointed, when the same are consistent with the obligations of the Project Manual. However, should the Contractor object to any interpretation given by any subordinate Project Manager, resident representative or observer, the Contractor may appeal in writing to the City Director of Public Works for a decision.
- 5.18 Resident representatives, observers, and other properly authorized representatives of the City or Project Manager shall be free at all times to perform their duties, and intimidation or attempted intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the City so decides, to annul the Contract.
- 5.19 Such observation shall not relieve the Contractor from any obligation to perform said work strictly in accordance with the Project Manual.
- 6. WORK SCHEDULE:**
- 6.1 The Contractor, within ten (10) calendar days after being instructed to do so in a written notice from the City, shall commence work to be done under this Contract.
- 6.2 The rate of progress shall be such that the Work shall have been completed in accordance with the terms of the Contract Documents on or before the completion date for the construction period named in the contract agreement, subject to any extension or extensions of such time made as hereinafter provided.
- 6.3 The Contractor shall be required to furnish the Project Manager with a schedule setting forth in detail (in the critical path method) the sequences proposed to be followed, and giving the dates on which it is expected that portions of the work will be started and completed.
- 6.4 If at any time, in the opinion of the Project Manager or City, proper progress is not being maintained; such changes shall be made in the schedule and resubmitted for consideration.

- 6.5 If the Contractor has not completed Work segments and is within a non-performance penalty period, he/she shall not be allowed to undertake a new Work segment until the Work segment in dispute is completed, unless expressly permitted by the City.
- 6.6 The operation of any tool, equipment, vehicle, instrument, or other noise-producing device is prohibited to start before or continue after the hours of 7 AM and 10 PM, Monday through Friday (except Fridays which shall be until Midnight) and 8 AM and midnight on Weekends (except Sunday which shall be 10 PM). Violation of this requirement is Prima Facia Violation of City Municipal Code 11-202.
- 6.7 No work shall be undertaken on Saturdays, Sundays and Holidays (Christmas, New Years, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day and Thanksgiving) without the express written approval of the City Project Manager. If it is necessary to perform proper care, maintenance, or protection of work already completed or of equipment used, or in the case of an emergency verbal permission may be obtained through the Project Manager.
- 6.8 Night work may be established by the Contractor, as a regular procedure, with the written permission of the City; such permission, however, may be revoked at any time by the City if the Contractor fails to maintain adequate equipment for the proper prosecution and control of all operations performed as part of the Work.
- 6.9 The Contractor shall provide 24 hours notice prior to commencing any work to the City Project Manager. The Contractor shall communicate immediately any changes in the work schedule to the City Project Manager.

7. DELAYS AND EXTENSIONS OF TIME

- 7.1 In executing the Contract, the Contractor expressly covenants and agrees that, in undertaking the completion of the work within the time herein fixed, he has taken into consideration and made allowances for all of the ordinary delays and hindrances incident to such work, whether growing out of delays in securing materials, workers, weather conditions or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the Work, or any portion thereof, included in this Contract.
- 7.2 Should the Contractor, however, be delayed in the prosecution and completion of the work by reason of delayed shipment orders, or by any changes, additions, or omissions therein ordered in writing by the City, or by strikes or the abandonment of the work by the men engaged thereon through no fault of the Contractor, or by any act taken by the U.S. Government such as the commandeering of labor or materials, embargoes, etc., which would affect the fabrication or delivery of materials and/or equipment to the work; or by neglect, delay or default of any other contractor of the City, or delays caused by court proceedings; the Contractor shall have no claims for damages or additional compensation or costs for any such cause or delay; but he shall in such cases be entitled to such extension of the time specified for the completion of the work as the City and the Project Manager shall award in writing on account of such delays, provided, however, that claim for such extension of time is made by the Contractor to the City and the Project Manager in writing within one (1) week from the time when any such alleged cause for delay shall occur.

8. ADVERSE WEATHER:

- 8.1 Extensions of time for adverse weather shall be granted only under the conditions as hereinafter provided.
- 8.2 For conditions of weather or conditions at the site, so unusual as not to be reasonably anticipated, as determined by the Project Manager, an average or usual number of inclement days when work cannot proceed are to be anticipated during the construction period and are not to be considered as warranting extension of time.
- 8.3 Adverse Weather is defined as atmospheric conditions or the impact thereof at a definite time and place, which are unfavorable to construction activities such that they prevent work on critical activities for 50 percent or more of the Contractor's scheduled workday.
- 8.4 Unusually Severe Weather is defined as weather, which is more severe than the adverse weather anticipated for the season, location, or activity involved.
- 8.5 Time Extensions for Unusually Severe Weather:
- In order for any request for time extension due to unusually severe weather to be valid, the Contractor must document both of the following conditions:
 - The weather experienced at the Work site during the Contract period is more severe than the adverse weather anticipated for the Work location during any given month.
 - The unusually severe weather actually caused a delay to the completion of the Work. The delay must be beyond the control and without fault or negligence by the Contractor.
- 8.6 The following schedule of monthly-anticipated adverse weather delays will constitute the baseline for monthly weather time evaluations. The Contractor's Progress Schedule must reflect these anticipated adverse weather delays in all weather affected activities:

MONTHLY ANTICIPATED ADVERSE WEATHER DELAY
WORK DAYS BASED ON FIVE (5) DAY WORK WEEK

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
10	8	7	6	7	7	5	5	5	4	5	9

- 8.7 Upon receipt of the Notice to Proceed, and continuing throughout the Contract, the Contractor shall record on their daily construction report, the occurrence of adverse weather and resultant impact to normally scheduled work.
- 8.8 The number of actual adverse weather delay days shall include days affected by actual adverse weather (even if adverse weather occurred in the previous month), and shall be calculated chronologically from the first to the last day of each month, and be recorded as full workdays.
- 8.9 If the number of actual adverse weather delay days in a given month exceeds the number

of days anticipated above, the difference shall be multiplied by 7/5 to convert any qualifying workday delays to calendar days. The resulting number of qualifying lost days shall be added to the Contract Time.

- 8.10 The determination that unusually severe weather occurred does not automatically mean an extension of time will be granted. The Contractor must substantiate the unusually severe weather delayed work activities on the critical path of the Progress Schedule.
- 8.11 Full consideration for equivalent fair weather workdays shall be given. If the number of actual adverse weather delays in a given month is less than the number of days anticipated as indicated above, the difference shall be multiplied by 7/5 to convert any workday increases to calendar days. The resulting number of qualifying extra days will be accumulated and subtracted from any future month's days lost due to unusually severe weather.
- 8.12 The net cumulative total of extra days/lost days shall not result in a reduction of Contract Time and the Date of Substantial Completion shall not be changed because of unusually favorable weather.
- 8.13 In converting workdays to calendar days, fractions 0.5 and greater shall be rounded up to the next whole number. Fractions less than 0.5 shall be dropped.
- 8.14 The Contractor shall summarize and report all actual adverse weather delay days for each month to the Project Manager by the tenth (10th) day of the following month. A narrative indicating the impact of adverse weather conditions on the scheduled critical activities shall be included.
- 8.15 Any claim for extension of time due to unusually severe weather shall be submitted to the Project Manager within 7 days of the last day of the commencement of the event giving rise to the delay occurred. Resolution of any claim shall follow the procedures established by the Regulations of the Contract and Special Conditions and as described above.
- 8.16 The Contractor shall include and indicate the monthly-anticipated adverse weather days, listed above, in their Progress Schedule. (Reference Section 3.1.1 for Progress Schedule requirements)
- 8.17 The Contractor shall indicate the approved adverse weather days (whether less or more than the anticipated days) in their monthly Progress Schedule update.

9. PAYMENT PROCEDURE:

- 9.1 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal on the first day of each month of an Application for Payment, all Work for which payments have been received from the City shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.
- 9.2 Each application for payment must be submitted with Contractor's waiver for period of construction covered by application. Each progress payment will be submitted with

executed waivers from the subcontractors or sub-contractors and suppliers for the previous period of construction covered by the previous application. The final payment application must be submitted together with or preceded by final or complete waivers from every entity involved with performance of the work covered by the payment request.

- 9.3 The Contractor will submit waivers on forms, and executed in a manner, acceptable to City.
- 9.4 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor because of such Subcontractor's Work the amount to which such Subcontractor is entitled. In the event the City becomes informed that the Contractor has not paid a Subcontractor as herein provided, the City shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the City, shall be deemed payment to the Contractor but shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the City to repeat the procedure in the future.
- 9.5 The Project Manager will, upon receipt of a written Application for Payment from the Contractor, review the amount of work performed during the preceding period and the value thereof at the unit prices contracted. From the amounts so ascertained, there shall be deducted ten percent (10%) to be retained until after final completion of the entire work to the satisfaction of the City. The Project Manager will submit an estimate each month to the City for payment to the Contractor, except that no amount less than \$500.00 will be submitted unless the total amount of the Contract remaining unpaid is less than \$500.00.
- 9.6 Deductions will be made from progress payments if the Contract includes a provision for a lump sum or a percentage deduction. Lump sum deductions will be that portion of the stated lump sum computed as the ratio that the amount earned bears to the Contract amount. Percentage deductions will be computed at the stated percentage of the amount earned.
- 9.7 No progress payment, nor any use or occupancy of the Work by the City, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.
- 9.8 The City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the City from loss because of:
- Defective Work not remedied by the Contractor;
 - Claims of third parties against the City or the City's property;
 - Failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
 - Evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
 - Evidence that the Work will not be completed in the time required for substantial or final completion;
 - Persistent failure to carry out the Work in accordance with the Contract;
 - Damage to the City or a third party to whom the City is, or may be, liable;

- Evidence that the work is not progressing according to agreed upon schedule by both parties.
- 9.9 In the event that the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in this subparagraph, the Contractor shall promptly comply with such demand and refund such monies to the City.
- 9.10 Neither the observation by the City or any of the City's officials, employees, or agents, nor any order by the City for payment of money, nor any payment for, or acceptance of, the whole or any part of the work by the City or Project Manager, nor any extension of time, nor any possession taken by the City or its employees, shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the City, or any right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of any other or subsequent breach.

10. COMPLETION AND FINAL PAYMENT

- 10.1 Work completion shall be defined as all elements of the Work or work segment, being complete including all subsidiary items and "punch-list" items.
- 10.2 When all of the Work is finally complete and the Contractor is ready for a final inspection, it shall notify the City and the Project Manager thereof in writing. Thereupon, the Project Manager will make final inspection of the Work and, if the Work is complete in accordance with this Contract, the Project Manager will promptly issue a final Certificate for Payment certifying to the City that the Work is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Project Manager is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s), which cost may be deducted by the City from the Contractor's full payment.
- 10.3 The Contractor shall not be entitled to any payment unless and until it submits to the Project Manager its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the City, or the City's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors and Suppliers of the Contractor and of any and all other parties required by the City; and consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the City, the Contractor shall furnish a bond satisfactory to the City to discharge any such lien or indemnify the City from liability.
- 10.4 The City shall make final payment of all sums due the Contractor within thirty days of the later of the Project Manager's execution of a final Certificate for Payment.
- 10.5 Acceptance of final payment shall constitute a waiver of all claims against the City by the Contractor except for those claims previously made in writing against the City by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final inspection.

11. CLAIMS BY THE CONTRACTOR

- 11.1 All Contractor claims shall be initiated by written notice and claim to the Project Manager. Such written notice and claim must be furnished within seven calendar days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.
- 11.2 The Contractor shall diligently proceed with performance of this Contract whether or not there be such a claim pending and the City shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim shall be reflected by a Change Order executed by the City, the Project Manager and the Contractor.
- 11.3 Should concealed and unknown conditions which could not, with reasonable diligence, have been discovered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure differ materially with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided by this Contract, be encountered, the Contract Price shall be equitably adjusted by the Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the City having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the City written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed or unknown condition.
- 11.4 If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the City therefore, the Contractor shall give the City written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.
- 11.5 The City reserves the right to increase or decrease quantities, and alter the details of construction including grade and alignment as the Project Manager may consider necessary or desirable, by approved Change Order. Such modifications shall not invalidate the Contract nor release the surety. Unless such alterations and increases or decreases change the total cost of the Work, based on the originally estimated quantities and the unit prices bid, by more than 25 percent, or change the total cost of any major item, based on the originally estimated quantities and the unit price bid, by more than 25 percent, the Contractor shall perform the work altered, increased or decreased, at a negotiated price or prices. (A major item shall mean any bid item, the total cost of which exceeds 12-1/2 percent of the total Contract amount based on the proposed quantity and the contract unit price).
- 11.6 When the alterations cause an increase or decrease in excess of the 25 percent indicated above, either the Contractor or the Project Manager may request an adjustment of the unit price to be paid for the item or items.
- 11.7 If a mutually agreeable adjustment cannot be obtained, the City reserves the right to terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the Work.

- 11.8 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall not include standby costs, indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties.
- 11.9 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving Final Acceptance of the Work shall be extended upon the written notice and claim of the Contractor to the City, for such reasonable time as the City may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven calendar days after the occurrence of the event or the first appearance of the condition-giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Work. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this subparagraph, any claim for an extension of time shall be waived.
- 11.10 The Contractor shall delay or suspend the progress of the work or any part thereof, whenever so required by written order of the City, and for such periods of time as required; provided, that in the event of such delay or delays or of such suspension or suspensions of the progress of the work, or any part thereof, the time for completion of work so suspended or of work so delayed by such suspension or suspensions shall be extended for a period equivalent to the time lost by reason of such suspension or suspensions; but such order of the City or Project Manager shall not otherwise modify or invalidate in any way, any of the provisions of this Contract. In the event that the work shall be stopped by written order of the City, any expense, which, in the sole opinion and judgment of the City, is caused by the City, shall be paid by the City to the Contractor.
- 11.11 In executing the Contract Documents, the Contractor expressly covenants and agrees that, in undertaking to complete the Work within the time herein fixed, it has taken into consideration and made allowances for all hindrances and delays incident to such work, whether growing out of delays in securing materials or workers or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the work, or any portion thereof, included in this Contract, except as provided herein.
- 11.12 In addition to the Project Manual particular to Mobilization found elsewhere in this document, additional mobilization shall not be compensable for work outside of the designated areas for work deemed essential by the City. A quantity of work equal to as much as 10% of the total Contract may be required to be performed beyond the boundaries of the designated work areas

12. CHANGES IN THE WORK

- 12.1 Changes in the Work within the general scope of this Contract, consisting of additions,

- deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.
- 12.2 The Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 12.3 Any change in the Contract Price resulting from a Change Order shall be by mutual agreement between the City and the Contractor as evidenced by the change in the Contract Price being set forth in the Change Order, and, together with any conditions or requirements related thereto, being initialed by both parties.
- 12.4 If no mutual agreement occurs between the City and the Contractor relative to a change in the Work, the Contractor shall proceed with the work that is the subject of the Change Order, and the change in the Contract Price, if any, shall then be determined by the Project Manager on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content to the City, as the Project Manager requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies or equipment, including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools, whether rented from the Contractor or others, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and job site field office overhead directly attributable to the change. In no event shall any standby time or any expenditure or savings associated with the Contractor's home office or other non-job site overhead expense be included in any change in the Contract Price. Further, in no event shall the Contractor's overhead expense exceed ten (10%) percent of the reasonable expenditures. Pending final determination of reasonable expenditures or savings to the City, payments on account shall be made to the Contractor on the Project Manager's Certificate for Payment.
- 12.5 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that the application of such unit prices to the quantities of Work proposed would cause substantial inequity to the City or to the Contractor, the applicable unit prices shall be equitably adjusted.
- 12.6 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim including impact against the City for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

13. INSURANCE AND HOLD HARMLESS.

- 13.1 The Contractor shall assume full responsibility for the protection of all public and private property, structures, sewers, and utilities, both above and below the ground, along, beneath, above, across or near the site or sites of the work being performed under this Contract, or which are in any manner affected by the prosecution of the Work or the transportation of men/women or materials in connection therewith. Barriers shall be kept placed at all times to protect persons other than those engaged on or about the Work from accident, and the Contractor will be held responsible for all accidents to persons or property resulting from the acts of Contractor or its employees.
- 13.2 To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the City, the Project Manager, and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property (other than the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any intentional or negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity, which would otherwise exist.
- 13.3 All property damaged shall be repaired or replaced to a condition immediately prior to the time of damage, and to the satisfaction of the City.
- 13.4 All loss or damage arising out of the nature of the work to be done, or from the action of the elements, or from floods or overflows, or from ground water, or from unusual obstructions or difficulties, or any other natural or existing circumstances either known or unforeseen, which may be encountered in the prosecution of the said work shall be sustained and borne by the Contractor at its own cost and expense.
- 13.5 The Contractor shall give reasonable notice to the City or owners of public or private property and utilities when such property is liable to injury or damage through the performance of the Work, and shall make all necessary arrangements with such City or owners relative to the removal and replacement or protection of such property or utilities.
- 13.6 The Contractor shall satisfactorily shore, support, and protect all structures and all pipes, sewers, drains, conduits, and other utility facilities, and shall be responsible for any damage resulting thereto. The Contractor shall not be entitled to any damages or extra compensation because of any postponement, interference, or delay caused by any such structures and facilities being on the line of the Work whether they are shown on the plans or not, specifically including, but not limited to, damages due to delay in utility relocation.
- 13.7 The Contractor shall secure and maintain, throughout the duration of this Contract, insurance from a company authorized to do business in the State of Kansas. Such insurance shall be of such types and in such amounts as may be necessary to protect himself and the interests of the City and agents of the City against all hazards or risks of loss as hereinafter specified including an endorsement covering explosion, collapse, blasting and damage to underground property if applicable as specified in these Contract Documents. The form and limits of such insurance, together with the underwriter thereof in

each case, shall be approved by the City, but regardless of such approval, it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times. Failure of the Contractor to maintain adequate insurance coverage shall not relieve it of any contractual responsibility or obligation. The insurance shall be provided on an occurrence basis and, not claims made basis.

- 13.8 The City and the Project Manager shall be a named insured on such policies. Satisfactory certificates of insurance shall be filed with the City prior to starting any construction work on this Contract. The certificates shall state that thirty (30) days written notice will be given to the City before any policy coverage thereby is changed or canceled.
- 13.9 The Contractor shall secure and maintain through the duration of this Contract insurance on an occurrence basis of such types and in such amounts as may be necessary to protect the Contractor and the City and agents of the City against all hazards or risks of loss as hereinafter specified. The form and limits of such insurance, together with the underwriter thereof in each case, shall be approved by the City, but regardless of such approval, it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times. Failure of the Contractor to maintain adequate coverage shall not relieve it of any contractual responsibility or obligation, including but not limited to, the indemnification obligation.
- 13.10 Satisfactory certificates of insurance shall be filled with the City prior to the Contractor starting any construction work on this Contract. The Certificates shall state that the thirty (30) days written notice will be given to the City before any policy covered thereby is changed or cancelled. Failure by the Contractor to furnish the required insurance within the time specified in the notice of award of the Contract by the City, at the City option, may be the basis for the City exercising its right to terminate the Contract.
- 13.11 The liability limits shall be as stated:
- Worker's Compensation and Employer's Liability: This insurance shall protect the Contractor against all claims under applicable state worker's compensation laws. The Contractor shall also be protected against claims for injury, disease, or death of employees, which, for any reason, may not fall within the provisions of a worker's compensation law. This policy shall include an "all states" endorsement.
 - Automobile Liability.: This insurance shall be written in comprehensive form and shall protect the Contractor against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, and shall cover operation on and off the site of all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired. Unless otherwise specified, Contractor's insurance shall include the following:
 - \$300,000 single limit (on contracts less than \$100,000)
 - \$1,000,000 single limit (on contracts \$100,000 and more)
 - Commercial General Liability. This insurance shall be written in comprehensive form including Products, completed operations and Personal and Advertising injury and shall protect the Contractor against all claims arising from injuries to members of the public or damage to property of others arising out of any act or omission of the Contractor or its

agents, employees, or subcontractors. In addition, this policy shall specifically insure the contractual liability assumed by the Contractor under this Contract entitled "Insurance and Hold Harmless." The property damage liability coverage shall contain no exclusion relative to blasting, explosion, collapse of building, or damage to underground property. Unless otherwise specified, Contractor's insurance shall include the following:

- \$2,000,000 combined single limit (on contracts in excess of \$100,000)
- \$300,000 combined single limit (on contracts in excess of \$10,000 to \$100,000)
- \$100,000 combined single limit (on contracts of \$10,000 and less)

- Additional Insurance: Excess Liability coverage or additional insurance covering special hazards may be required on certain projects. Such additional insurance requirements shall be as specified in Instructions to Bidders or Special Conditions.

14. INDEMNITY

- 14.1 For purposes of indemnification requirements as set forth throughout the Contract, the following terms shall have the meaning set forth below:

"The Contractor" means and includes Contractor, all of his/her affiliates and subsidiaries, his/her Subcontractors and material men and their respective servants, agents and employees; and "Loss" means any and all loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including attorney's fees and the cost of defense), in connection with any action, proceeding, demand or claim, whether real or spurious, for injury, including death, to any person or persons or damages to or loss of, or loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with, or are claimed to arise out of or be connected with, the performance of this Contract whether arising before or after the completion of the work required hereunder.

- 14.2 For purposes of this Contract, and without in any way limiting indemnification obligations that may be set forth elsewhere in the Contract, the Contractor hereby agrees to indemnify, defend and hold harmless the City and County from any and all Loss where Loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Contractor, his/her employees, agents, Subcontractors and suppliers.
- 14.3 It is agreed as a specific element of consideration of this Contract that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the City and County or any third party and, further, notwithstanding any theory of law including, but not limited to, a characterization of the City's or County's or any third party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature.
- 14.4 Nothing in this section shall be deemed to impose liability on the Contractor to indemnify the City or County for Loss when the negligence or other actionable fault the City is the sole cause of Loss.
- 14.5 With respect to the City's or County's rights as set forth herein, the Contractor expressly

waives all statutory defenses, including, but not limited to, those under workers compensation, contribution, comparative fault or similar statutes to the extent said defenses are inconsistent with or would defeat the purpose of this section.

15. SUCCESSORS AND ASSIGNS

- 15.1 The City and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract.
- 15.2 The Contractor shall not assign or sublet the work, or any part thereof, without the previous written consent of the City, nor shall it assign, by power of attorney or otherwise, any of the money payable under this Contract unless by and with the like written consent of the City. In case the Contractor assigns all, or any part of any moneys due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to all prior liens of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.
- 15.3 Should any Subcontractor fail to perform in a satisfactory manner, the work undertaken, its subcontract shall be immediately terminated by the Contractor upon notice from the City. Performing in an unsatisfactory manner is defined as consistently having more than 10% of work unacceptable. The Contractor shall be as fully responsible to the City for the acts and omissions of the subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed. Nothing contained in this Contract shall create any contractual relations between any Subcontractor and the City, nor shall anything contained in the Contract Documents create any obligation on the part of the City to pay or to see to the payment of any sums due any Subcontractor.
- 15.4 The Contractor shall not award subcontracts which total more than forty-five (45%) of the Contract Price and shall perform within its own organization work amounting to not less than fifty-five percent (55%) of the total Contract Price. Approval by the City of any Subcontractor shall not constitute a waiver of any right of the City to reject defective work, material or equipment not in compliance with the requirements of the Contract Documents. The Contractor shall not make any substitution for any Subcontractor accepted by the City unless the City so agrees in writing.
- 15.5 The Contractor shall not subcontract, sell, transfer, assign or otherwise dispose of the Contract or any portion thereof without previous written consent from the City. In case such consent is given, the Contractor, shall be permitted to subcontract a portion thereof, but shall perform with his/her own organization work amounting to not less than fifty five (55%) of the total Contract Price. No subcontracts, or other transfer of Contract, shall release the Contractor of its liability under the Contract and bonds applicable thereto.
- 15.6 The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Contractor by the terms of the Contract Documents insofar as applicable to the work of the Subcontractor and to give the Contractor the same power to terminate any Subcontract as the City has to terminate the Contractor under any provisions of the Contract Documents.

- 15.7 Prior to the City's approval of the Contract bid, the successful bidder shall submit to the City for acceptance, a list of names of all Subcontractors proposed for portions of the work and shall designate which work each is to perform.
- 15.8 The City shall, prior to the City's approval of the Contract bid, notify the successful bidder, in writing, if the City, after due investigation, has reasonable objection to any Subcontractor on such list, and the Contractor shall substitute a Subcontractor acceptable to the City at no additional cost to the City or shall be allowed to withdraw his/her Bid, and the City shall either re-bid the Work or accept the next best lowest and responsible bidder. The failure of the City to make objection to a Subcontractor shall constitute an acceptance of such Subcontractor but shall not constitute a waiver of any right of the City to reject defective work, material or equipment not in conformance with the requirements of the Project Manual.

16. NON-DISCRIMINATION LAWS

- 16.1 The Contractor further agrees that the Contractor shall abide by the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this Work and furnish any certification required by any federal, state or local governmental agency in connection therewith.
- 16.2 In all solicitations or advertisements for employees, the Contractor shall include the phrase, "equal opportunity employer", or similar phrase to be approved by the Kansas Human Rights Commission (Commission);
- 16.3 If the Contractor fails to comply with the manner in which the Contractor reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency;
- 16.4 If the Contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Contractor shall be deemed to have breached the present Contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency; and
- 16.5 The Contractor shall include the provisions of this section in every subcontract or purchase order so that such provisions will be binding upon such Subcontractor or vendor.
- 16.6 The provisions of this section shall not apply to a contract entered into by a Contractor who employs fewer than four employees during the terms of such contract; or whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.

17. RELATIONS WITH OTHER CONTRACTORS:

- 17.1 The Contractor shall cooperate with all other contractors who may be performing work on behalf of the City, and workers who may be employed by the City, or any other entity on any

work in the vicinity of the Work to be done under this Contract, and the Contractor shall so conduct his/her operations as to interfere to the least possible extent with the work of such contractors or workers. The Contractor shall be responsible for any injury or damage, that may be sustained by other contractors, workers, their work or employees of the City, because of any fault or negligence on the Contractor's part, and shall, at his/her own expense, repair or pay for such injury or damage. If the work of the Contractor is delayed because of any acts or omissions of any other Contractor or Contractors, the Contractor shall have no claim against the City on that account other than for an extension of time.

- 17.2 When two or more Contracts are being executed at one time in such manner that work on one Contract may interfere with that on another, the City shall decide which Contractor shall progress at which time.
- 17.3 Other projects the Contractor may have to coordinate shall be listed in the Special Conditions.
- 17.4 When the territory of one Contract is the necessary or convenient means of access for the transportation or movement of workers, materials, or appliances required for the execution of another Contract, such privileges of access or any other responsible privilege may be granted by the City to the Contractor so desiring, to the extent such may be reasonably necessary.
- 17.5 Upon execution of the Contract, the Contractor shall furnish the City, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Work. The City shall promptly reply to the Contractor, in writing, stating any objections the City may have to such proposed Subcontractor. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the City has made timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has objection.

18. RIGHT OF CITY TO TERMINATE

- 18.1 If the Contractor persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, or supply enough properly skilled workers, supervisory personnel or proper equipment or materials, or if it fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or if this Contract is assigned by Contractor without authorization or if Contractor is adjudged as bankrupt, or if a general assignment of assets be made for the benefit of creditors; or if a receiver is appointed, or otherwise is guilty of a substantial violation of a provision of this Contract, then the City may by written notice to the Contractor, without prejudice to any right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor and its surety shall be liable to the City for all excess cost sustained by the City because of such prosecution and completion including any additional legal, Project Manager or bid-letting costs therefore. In such case, the Contractor shall not be entitled to receive further payment. In the event the Contractor is found in a court of law to have been wrongfully terminated for cause, then such termination shall be deemed a termination for convenience and the Contractor shall be compensated as provided herein.

- 18.2 The City, within its sole discretion, may elect to terminate the Contract with the Contractor for convenience upon three (3) days written Notice to Contractor. In the event of such termination, Contractor shall cease immediately all operations and shall be compensated for all work performed as of the date of termination in accordance with the terms of payment in this contract. Contractor shall not be entitled to any anticipatory profits of other costs other than direct costs of demobilization.
19. MISCELLANEOUS:
- 19.1 The Contractor warrants to the City that all labor furnished to progress the Work under the Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with the Project Manual. All Work not conforming to these requirements may be considered defective.
- 19.2 The Contractor shall obtain and pay for all permits, fees and licenses necessary or ordinary for the Work. The Contractor shall comply with all lawful requirements, including federal and state laws, City and County laws and ordinances and building codes, applicable to the Work and shall give and maintain copies of all notices required by applicable law pertaining to the Work.
- 19.3 Both the business address of the Contractor given in the Bid or proposal upon which this Contract is founded, and the Contractor's Office near the Work, is hereby designated as the places to which all notices, letters, and other communications to the Contractor may be mailed or delivered. The delivering at either of the above named addresses, or depositing in any mailbox regularly maintained by the Post Office, of any notice, letter or other communication so addressed to the Contractor, and the date of said service shall be the date of such delivery or mailing. Such addresses may be changed at any time by an instrument in writing, executed by the Contractor, presented, and delivered to the Project Manager and to the City. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or communication upon the Contractor personally.
- 19.4 It is mutually agreed by and between the parties to this Contract that all royalties and fees for and in connection with patents, or patent infringement, claims for materials, articles, apparatus, devices or equipment (as distinguished from processes) used in or furnished for the work shall be included in the Contract amount and the Contractor shall satisfy all demands that may be made at any time for such, and the Contractor shall at its cost and expense, defend any and all suits or proceedings that may be instituted at any time against the City for infringement or alleged infringement of any such patents involved in the work, and Contractor shall pay any award of damages.
- 19.5 The right of general administration of the City shall not make the Contractor an agent of the City, and the liability of the Contractor for all damages to persons, firms, and corporations, arising from the Contractor's execution of the Work, shall not be lessened because of such general administration, but as to all such persons, firms, and corporations, and the damages, if any, to them or their property. The Contractor herein is an independent Contractor in respect to the work.

- 19.6 For a period of time, from the inception of the Contract to three (3) years from the date of final payment under the Contract, the Contractor and subcontractors shall maintain books, accounts, ledgers, invoices, drafts, pages and other records pertaining to the performance of this Contract. At all reasonable times during this period these records shall be available within the State of Kansas at a field or permanent business office for inspection by authorized representatives of the City or of any other agency, which has contributed funds in connection with the Contract or to which the City is obligated to make such inspections available. In addition, this requirement shall be included in all subcontracts entered into in connection with this Contract.
- 19.7 Titles, subheadings used herein, and other Contract Documents are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Contract Documents.
- 19.8 No waiver of any breach of this Contract shall be construed to be a waiver of any other subsequent breach.
- 19.9 Should any provision of this Agreement or other Contract Documents be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement and/or the other Contract Documents shall be unaffected thereby and shall continue to be valid and enforceable.
- 19.10 The Contractor shall keep fully informed of all existing and current regulations of the City, and County, State, and National Laws, which in any way limit or control the actions or operations of those engaged upon the work, or affecting materials supplied, to or by them. The Contractor shall at all times observe and comply with all ordinances, laws, and regulations, and shall protect and indemnify the City and the City's officers and agents against any claims or liability arising from or based on any violation of the same.
- 19.11 Nothing contained in these Project Manual shall create, or be interpreted to create, privity or any other contractual agreement between the City and any person or entity other than the Contractor.
- 19.12 Duties and obligations imposed by the Contract Documents, rights, and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.
- 19.13 No action or failure to act by the City, Project Manager or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval or acquiescence in a breach hereunder, except as may be specifically agreed in writing.
- 19.14 Contractor specifically acknowledges and confirms that: 1.) he/she has visited the site, made all inspections he deems appropriate and has read and fully understands the Contract Documents, including all obligations and responsibilities undertaken by he as specified herein and in other Contract Documents and knowingly accepts the same; 2.) he/she has furnished copies of all Contract Documents to his/her insurance carrier(s) and his/her surety(ies); and 3.) his/her insurance carrier(s) and surety(ies) agree to be

- bound as specified herein, in the Contract Documents and in the insurance policy(ies) and bonds as to liability and surety coverage.
- 19.15 It is specifically agreed between the parties executing this Agreement that the Contract Documents are not intended to create any third party beneficiary relationship nor authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.
- 19.16 This agreement is entered into, under and pursuant to, and is to be construed and enforceable in accordance with the laws of the State of Kansas.

WITNESSETH:

WHEREAS, the City has caused to be prepared, approved and adopted a Project Manual describing construction materials, labor, equipment and transportation necessary for, and in connection with, the construction of a public improvement, and has caused to be published an advertisement inviting sealed Bid, in the manner and for the time required by law; and

WHEREAS, the Contractor, in response to the advertisement, has submitted to the City in the manner and at the time specified, a sealed Bid in accordance with the terms of this Agreement; and

WHEREAS, the City, in the manner prescribed by law, has publicly opened, examined and canvassed the Bids submitted, and as a result of such canvass has determined and declared the Contractor to be the lowest and best responsible bidder for the construct of said public improvements, and has duly awarded to the said Contractor a contract therefore upon the terms and conditions set forth in this Agreement for the sum or sums named in the Bid attached to, and made a part of this Agreement; and

WHEREAS, the Contractor has agreed to furnish at its own cost and expense all labor, tools, equipment, materials and transportation required to construct and complete in good, first class and workmanlike manner, the Work in accordance with the Project Manual; and

WHEREAS, this Agreement, and other Contract Documents on file with the City Clerk of Prairie Village, Kansas, all of which Contract Documents form the Contract, and are as fully a part thereof as if repeated verbatim herein; all work to be to the entire satisfaction of the City or City's agents, and in accordance with the laws of the City, the State of Kansas and the United States of America; and

WHEREAS, in consideration of the compensation to be paid the Contractor, and of the mutual agreements herein contained, the parties hereto have agreed and hereby agree, the City for itself and its successors, and the Contractor for itself, himself, herself or themselves, its, his/her, hers or their successors and assigns, or its, his/her, hers or their executors and administrators, as follows:

IN WITNESS WHEREOF, the City, has caused this Agreement to be executed in its behalf, thereunto duly authorized, and the said Contractor has executed five (5) counterparts of this Contract in the prescribed form and manner, the day and year first above written.

CITY OF PRAIRIE VILLAGE

By: _____
(signed)

By _____
(signed)

Ronald L. Shaffer _____

(typed name)

Mayor _____

(typed title)

City of Prairie Village _____

(typed company name)

7700 Mission Road _____

(typed address)

Prairie Village, Kansas, 66208 _____

(typed city, state, zip)

(typed telephone number)

(date of execution)

(date of execution)

SEAL

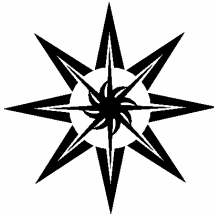
ATTEST:

APPROVED BY:

City Clerk, Joyce Hagen-Mundy

City Attorney, Catherine Logan

(If the Contract is not executed by the President of the Corporation or general partner of the partnership, please provide documentation, which authorizes the signatory to bind the corporation or partnership. If a corporation, the Contractor shall furnish the City a current certificate of good standing, dated within ten (10) days of the date of this Contract.)



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: September 17, 2012

Council Meeting Date: September 17, 2012

***COU2012-41: CONSIDER CONSTRUCTION ADMINISTRATION AGREEMENT WITH TRANSYSTEMS FOR PROJECT NUMBER SARD0001, CDBG PROJECT ON SAGAMORE ROAD FROM 75TH STREET TO 76TH STREET**

RECOMMENDATION

Move to approve the construction administration agreement with TranSystems for Project SARD0001, Sagamore Road CDGB project in the total amount of \$19,975.25.

BACKGROUND

TranSystems is our current construction inspection firm and has been performing well on current projects.

The construction cost for this project will be \$155,598.75. The \$19,975.25 is 12.8% of the construction cost and is comparable to our last CDBG project on 75th Place two years ago. This contract will be a cost not to exceed contract.

FUNDING SOURCE

Funding is available under the Capital Infrastructure Program under Project SARD0001, Sagamore Road.

RELATION TO VILLAGE VISION

TR1a. *Ensure that infrastructure improvements meet the needs of all transportation users.*

ATTACHMENTS

1. Construction Administration Agreement with TranSystems for Project SARD0001, Sagamore Road.

PREPARED BY

Keith Bredehoeft, Project Manager

September 13, 2012

AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES

For

CONSTRUCTION ADMINISTRATION

For

PROJECT SARD0001: 2012 CDBG PROJECT

THIS AGREEMENT, made at the Prairie Village, Kansas, this _____ day of _____, by and between the City of Prairie Village, Kansas, a municipal corporation with offices at 7700 Mission Road, Prairie Village, Kansas, 66208, hereinafter called the “**City**”, and TranSystems, a Missouri corporation with offices at 2400 Pershing Road, Suite 400, Kansas City, MO, 64108, hereinafter called the “**Consultant**”.

WITNESSED, THAT WHEREAS, City has determined a need to retain a professional engineering firm to provide civil engineering services for Construction Administration of Project SARD0001 2012 CDBG Project, hereinafter called the “**Project**”,

AND WHEREAS, the City is authorized and empowered to contract with the Consultant for the necessary consulting services for the Project,

AND WHEREAS, the City has the necessary funds for payment of such services,

NOW THEREFORE, the City hereby hires and employs the Consultant as set forth in this Agreement effective the date first written above.

ARTICLE I - RESPONSIBILITIES OF THE CITY

The CITY designates Keith Bredehoeft, Manager of Engineering Services as CITY representative with respect to this Agreement. Mr. Bredehoeft shall have the authority to transmit instructions, receive information, interpret and define the policies of the CITY, make decisions relevant to the services of the CONSULTANT.

The CITY shall do the following in a timely manner:

1. Make available to the CONSULTANT all existing data and records relevant to the Project, including but not limited to, maps, plans, correspondence, data and previous reports and studies possessed by the CITY.
2. Approve all criteria and information as to the requirements of the CITY for the Project, including objectives and constraints, performance requirements, and budgetary limitations.
3. Review and approve all correspondence transmitted and forms used by the CONSULTANT relative to this Project.
4. Review for approval all submittals such as change orders and payment requests by the CONSULTANT.

ARTICLE II - RESPONSIBILITIES OF THE CONSULTANT

The CONSULTANT designates Mr. Stephen Langley as Construction Manager, who shall direct the related construction inspection and administration services in all phases of the Project to which this Agreement applies. The Construction Manager shall serve as the prime professional on this Project and shall be the prime contact with the Manager of Engineering Services.

The standard of care for all professional consulting services and related construction inspection and administration services either performed for or furnished by the CONSULTANT under this Agreement will be the care and skill ordinarily used by members of the CONSULTANT profession, practicing under similar conditions at the same time and in the same locality.

The Construction Manager shall act as CITY representative to the extent and limitations of the duties, responsibilities and authority as assigned herein and shall not be modified, except as CONSULTANT may otherwise agree in writing. All of CITY instructions to Contractor will be issued through Construction Manager, who shall have authority to act on behalf of CITY in dealings with Contractor to the extent provided in this Agreement, except as otherwise provided in writing.

The Construction Manager shall conduct a pre-construction meeting, which will include the Manager of Engineering Services, Contractor, utility companies and any appropriate government agency partied with the CITY prior to commencement of Work at the Site.

The Construction Manager shall coordinate with the Contractor on the taking of digital, pre-construction pictures.

The Construction Manager shall make visits to the site at intervals appropriate to the various stages of construction, as Construction Manager deems necessary, in order to observe as an experienced and qualified design professional the progress and quality of the Work. Such visits and observations by Construction Manager are not intended to be exhaustive or to extend to every aspect of the Work in progress or to involve detailed inspections of the Work in progress beyond the responsibilities specifically assigned to Construction Manager herein, but rather are to be limited to selective checking, selective sampling, and similar methods of observation of the Work based on Construction Manager's exercise of professional judgment. Based on information obtained during such visits and such observations, Construction Manager will determine if Contractor's work is proceeding in accordance with the Project Manual, and Construction Manager shall keep CITY informed of the progress of the Work.

The purpose of Construction Manager visits to the Site of the Project will be to enable Construction Manager to carry out the duties and responsibilities assigned to and undertaken by CONSULTANT during the Construction Phase. By the exercise of Construction Manager's efforts as an experienced and qualified construction professional, the Construction Manager will provide for CITY a greater degree of confidence that the completed Work will conform in general to the Project Manual and that the integrity of the design concept of the completed project as a functioning whole as indicated in the Project Manual has been implemented and preserved by Contractor. Construction Manager shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over the Work, nor shall Construction Manager have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to the Work, or for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Construction Manager neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Project Manual.

The Construction Manager shall have authority to disapprove or reject Contractor's work while it is in progress if, on the basis of such observations, Construction Manager believes that such work will not

produce a completed project that conforms generally to the Project Manual or that it will prejudice the integrity of the design concept of the completed project as a functioning whole as indicated in the Project Manual.

The Construction Manager shall issue necessary clarifications and interpretations of the Project Manual as appropriate to the orderly completion of the Work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Project Manual. Construction Manager may issue Field Orders authorizing minor variations of work that neither increase the Time for Completion nor have a value of more than \$1,000 from the requirements of the Project Manual.

The Construction Manager shall recommend Change Orders and Field Orders to Manager of Engineering Services, as appropriate, and prepare Change Orders and Field Orders as required.

The Construction Manager shall review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Project Manual and compatibility with the design concept of the completed project as a functioning whole as indicated in the Project Manual. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto. Construction Manager has an obligation to meet any Contractors submittal schedule that has earlier been acceptable to Construction Manager.

The Construction Manager and Manager of Engineering Services shall evaluate and determine the acceptability of substitute or "or equal" materials and equipment proposed by Contractor.

The Construction Manager shall require such special inspections or tests of the Work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Project Manual. The Construction Manager's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Project Manual and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Project Manual. The Construction Manager shall be entitled to rely on the results of such tests.

The Construction Manager shall render formal written recommendations on all claims of CITY and Contractor relating to the acceptability of the Work or the interpretation of the requirements of the Project Manual pertaining to the execution and progress of the Work.

The Construction Manager shall:

1. Review the Contractor's monthly Applications for Payment to determine it represents the work accepted and is mathematically correct. Construction Manager will provide recommendation for payment to the Manager of Engineering Services. Such recommendations of payment will be in writing and will constitute Construction Manager representation to the CITY, based on such observations and review, that, to the best of Construction Manager knowledge, information and belief, the Work has progressed to the point indicated, the quality of such is generally in accordance with the Project Manual (subject to an evaluation of the Work as a functioning whole prior to or upon completion, to the results of any subsequent tests called for in the Project Manual and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Construction Manager responsibility to observe the Work. In the case of unit price work, the Construction Manager recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Project Manual). The responsibilities of Construction Manager are expressly subject to the limitations set forth herein.

2. By recommending any payment, it will also not impose responsibility on Construction Manager to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price. However, the Construction Manager shall obtain from the Contractor documentation in approved form with the payment request to determine that title to any portion of the work in progress, materials, or equipment has passed to CITY free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between CITY and Contractor that might affect the amount that should be paid.

The Construction Manager shall receive and review maintenance and operating instructions, schedules, and guarantees that will be given to the Manager of Engineering Services.

The Construction Manager shall receive and deliver to the Manager of Engineering Services bonds, certificates, or other evidence of insurance not previously submitted and required by the Project Manual, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided herein, and the annotated record documents which are to be assembled by Contractor in accordance with the Project Manual to obtain final payment.

Construction Manager shall transmit to Manager of Engineering Services promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use. In company with Manager of Engineering Services and Contractor, the Construction Manager shall conduct an inspection to determine if the Work is Complete. If after considering any objections, the Construction Manager shall deliver a certificate of Completion to Manager of Engineering Services and Contractor.

Accompanying the recommendation for final payment, Construction Manager shall provide proper notice that the Work is acceptable to the best of the Construction Manager knowledge, information, and belief and based on the extent of the services provided by CONSULTANT under this Agreement.

The Construction Phase will commence with the execution of the Construction Agreement for the Project or any part thereof and will terminate upon written recommendation by Construction Manager for final payment to Contractors.

The Construction Manager shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing any of the Work. Construction Manager shall not be responsible for failure of any Contractor to perform or furnish the Work in accordance with the Project Manual.

Construction Manager shall furnish assistants, and other field staff to assist Construction Manager to provide more extensive observation of Contractor's work by observing progress and quality of the Work. Through such additional observations of Contractor's work in progress and field checks of materials and equipment by the assistants and other field staff, Construction Manager shall provide protection against defects and deficiencies in the Work.

The duties and responsibilities Construction Manager are as follows:

- 1 Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
- 2 Serve liaison with Contractor, working principally through Contractor's superintendent, assist in providing information regarding the intent of the Project Manual.
- 3 Obtaining from CITY additional details or information, when required for proper execution of the Work.

- 4 Report when clarifications and interpretations of the Project Manual are needed and transmit to Contractor clarifications and interpretations.
- 5 Record date of receipt of Samples and approved Shop Drawings.
- 6 Receive and examine Samples, which are furnished at the Site by Contractor.
- 7 Review material test reports and inform Manager of Engineering Services and Contractor of results not meeting specifications. The Construction Manager shall make appropriate recommendations to address results not meeting specifications.
- 8 Advise the Contractor prior to the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal that the submittal has not been received or approved by Construction Manager.
- 9 Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions. Transmit to Contractor in writing decisions as issued by Construction Manager.
- 10 Conduct on-Site observations of Contractor's work in progress to determine if the Work is in general proceeding in accordance with the Project Manual.
- 11 Report any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Project Manual or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Project Manual, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise of that part of work in progress that the Construction Manager believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
- 12 Consult with Contractor in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.
- 13 Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate CITY personnel, and that Contractor maintains adequate records thereof.
- 14 Observe, record, and report appropriate details relative to the test procedures and systems start-ups.
- 15 Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections.
- 16 Maintain orderly files for correspondence, reports of job conferences, reproductions of original Project Manual including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, clarifications and interpretations of the Project Manual, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.
- 17 Prepare a daily report recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Manager of Engineering Services.

- 18 Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.
- 19 Maintain records for use in preparing Project documentation.
- 20 Upon completion of the Work, furnish original set of all Project documentation to Manager of Engineering Services.
- 21 Furnish to Manager of Engineering Services periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- 22 Draft and recommend to Manager of Engineering Services proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- 23 Furnish copies of all inspection, test, and system start-up reports.
- 24 Immediately notify Manager of Engineering Services of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.
- 25 Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Manager of Engineering Services, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
- 26 During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Project Manual, and have these documents delivered to Manager of Engineering Services for review prior to payment for that part of the Work.
- 27 Participate in a Completion inspection, assist in the determination of Completion and the preparation of lists of items to be completed or corrected.
- 28 Participate in a final inspection in the company of Manager of Engineering Services, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.
- 29 Observe whether all items on the final list have been completed or corrected and make recommendations concerning acceptance and issuance of the Notice of Acceptability of the Work.

The Construction Manager shall not:

- 1 Exceed limitations of CONSULTANT authority as set forth in the Agreement or the Project Manual.
- 2 Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.
- 3 Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Project Manual.

- 4 Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of CITY or Contractor.
- 5 Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized.
- 6 Accept Shop Drawing or Sample submittals from anyone other than Contractor.
- 7 Authorize CITY to occupy the Project in whole or in part.

The Construction Manager is expected to conduct himself/herself at all times in such a manner as to reflect credit upon himself/herself and the CITY they represent. It is expected that the Construction Manager will be suitably dressed for the work, and he/she will be clean and neat enough to be a suitable representative of the CITY to the Contractor and the public. The Construction Manager will be pleasant, courteous and business-like in meeting the public. He/She is helpful and considerate to answer questions asked by the public. If the Construction Manager cannot clearly answer the question, the Construction Manager should refer the questioner to the Manager of Engineering Services.

The Construction Manager will not engage in controversial activities relative to the project in public, particularly if it involves public speaking, public debate, public media, etc. All written communications intended for publication that relate to the project must be approved by the Manager of Engineering Services.

Keeping accurate records and reports is a very important function of the Construction Manager. These records are necessary for a number of reasons. Some of the most common reasons for these records and their use as references are as follows:

1. Accounting for quantities for periodic progress payments and extra work under cost plus change order procedures
2. Verify actions and decisions of the Construction Manager
3. Report job status and site conditions of an accident or liability claim
4. Clarify the continuity of project contract time, such as working days, delays, and weather.
5. Responses to inquiries and complaints
6. Evidence in legal action

The basic reporting medium is the Daily Report. It is a continuing report of the job progress and provides an adequate record of each day's progress and activities. The record of activities should be reported in the sequence that they take place. Each report should be brief but at the same time be complete, clear and factual and include all work accomplished by the Contractor, as well as pertinent related information. The report should answer "who did what, when, where, how and how much". Abbreviations are acceptable as long as their meanings are not confusing and have a common acceptance.

A checklist of items contained in the Daily Report is as follows:

Typical entries for general information -

1. All reports shall show the CITY Project number and title and the CARS or SMAC project number
2. All entries shall be printed in black ink or computer generated
3. Detail the Construction Manager hours on the jobsite
4. Record weather conditions such as "sunny, temperature, precipitation type and amount (light, moderate, heavy)"
5. Complete the report the same day
6. Label the report using the consecutive numbers
7. Note any written or verbal instructions given to the Contractor

8. Note any non-compliance issued for the job
9. Record any unsatisfactory or non-compliant work and corrective actions taken
10. Report all job incidents involving the public such injuries, damages to property and equipment, safety conditions
11. Record the type, frequency and person providing testing
12. Detail job progress in terms of quantity, distances, stations, and weight as they are appropriate and applicable to project pay items
13. Record any factors adversely affecting progress of the work, such as utility conflict, material delivery, unforeseen conditions, plan changes, poor Contractor management, weather, etc.
14. Record any important visitors to the project and their nature of business
15. Sign and date the report
16. Send copy of report to Manager of Engineering Services

Typical entries for subgrade work -

1. Name of Contractor doing the work
2. Location and results of compaction tests completed and name of the testing laboratory
3. Limits of rough grade, cuts and fills
4. Thickness and type of material placed and compacted
5. Conformance with final grade specifications

Typical entries for curb, gutter, sidewalk and driveway work -

1. Name of Contractor doing the work
2. Station to station limits of forms placed when concrete is not placed the same day
3. Station to station limits of concrete placed, type of concrete and additives, number of cubic yards placed, source of concrete and copy of delivery ticket
4. Type and size of curb and gutter
5. Width and thickness of sidewalk
6. Width and thickness of driveways
7. Number and location of concrete tests for slump, cylinders taken, and name of testing laboratory

Typical entries for paving work -

1. Name of Contractor doing the work
2. Identification of milling, paving and roller equipment used
3. Source and type of material
4. Station to station and width limits of pavement placed, method of laying, material type,, thickness, and weight of material laid based on delivery tickets
5. Number and location of temperature of material at delivery tests, density tests and name of testing laboratory

Typical entries for storm drains -

1. Station to station limits of excavation, pipe laid (including size and type), bedding material, backfill material and compaction method
2. Number and location of structure by type, backfill material and compaction method
3. Location of utility conflicts and resolution
4. Method of restoration, , compaction method and density test
5. Method of restoration, sidewalks, lawns
6. Televised inspection, dates and results

A primary responsibility of the Construction Manager is to have a working knowledge of the controlling regulations, codes and directives dealing with the public convenience, public safety and construction safety. Though jobsite safety is contractually the Contractor's responsibility, the Construction Manager should immediately report all unsafe conditions or practices to the proper authority. However, if in the opinion of the Construction Manager, the precautions taken by the Contractor are found to be

insufficient or inadequate in providing job or public safety at any time, the Construction Manager shall notify the Manager of Engineering Services.

The Construction Manager is expected to wear suitable clothing and protective gear on the jobsite. Hard hats must be worn at all times there is a danger of falling and flying material. Approved reflective vests must be worn for high visibility in close proximity to traffic and moving equipment. Clothing and protective gear should clearly identify the Construction Manager.

Good housekeeping and sanitary provisions are the responsibility of the Contractor. The Contractor is responsible for public and private property and shall take every reasonable precaution to avoid damage by the construction activities. Throughout all phases of construction, the rubbish and debris on a project shall be held to a minimum and confined to organized disposal and storage areas. Dust nuisance is to be held to a minimum. The Contractor's equipment and construction activities shall not contribute to air pollution by excessively discharging smoke, exhaust and other contaminants in such quantities to be a nuisance and violation of contract. The Construction Manager shall record such unacceptable conditions in the Daily Report.

The responsibility of safe and proper handling of traffic rests with the Contractor. The Construction Manager shall see that the Contractor provides proper handling of traffic as required by the contract and shall notify the Contractor to correct any potentially dangerous situation that exists. The section of the Manual of Uniform Traffic Control Devices (MUTCD) titled *Work Area Traffic Control Handbook* sets forth the principle and standards in order to provide safe and effective work areas and to warn, control, protect and expedite vehicular and pedestrian traffic through the construction project. The MUTCD by reference is part of the Contractor's construction documents. The Construction Manager shall refer to this document when monitoring and coordinating traffic handling with the Contractor. The Construction Manager shall record such unacceptable conditions in the Daily Report.

The Construction Manager are directed to avail themselves of the *Public Works Inspector' Manual*, latest edition published by the BNi Building News and available through the American Public Works Association. The manual is a complete operational and technical guidebook for inspecting all types of public works construction. The manual is the standard by which the CITY expects the Construction Manager to meet and is part of this Agreement.

ARTICLE III - COMPENSATION

The CITY agrees to pay the CONSULTANT, at Hourly Rates, to a Maximum Fee of \$ 19,975.25 for the scope of services as specified herein unless modified by Change Order. CONSULTANT current Hourly Rate Schedule is attached as Exhibits A and B.

The CONSULTANT may submit an invoice on a monthly basis from an estimate of Services or upon the completion of services. The CONSULTANT shall bill reimbursable expenses, which are beyond all fees for professional services, with a multiplier of 1.05. Reimbursable items shall be as follows:

- a. Final plots and printing for construction or as requested by the CITY except as outlined in the scope of services (printing and plotting for the CONSULTANT in-house use is not a reimbursable expense)
- b. Project Mileage
- c. Delivery Charges

All billings must be submitted by the fifteenth day of the month for all services rendered in the previous month. The CONSULTANT will invoice the CITY on forms approved by the CITY. All properly prepared invoices will include a documented breakdown of expenses incurred.

Both parties may submit an Engineering Change Order for major changes in scope, character, delays or complexity of Services. The Engineering Change Order may provide for changes in compensation and schedule, either upward or downward. The Engineering Change Order shall be signed by the CITY and the CONSULTANT prior to the CONSULTANT proceeding with any work covered by this Agreement.

ARTICLE IV - GENERAL PROVISIONS

Times for Rendering Services: The CONSULTANT services and compensation under this Agreement have been agreed to in anticipation of orderly and continuous progress of the Services through completion. Specific periods of time for rendering services are set forth in Article IV, Time Schedule, in this Agreement, by which time defined services are to be completed. If such periods of time are changed through no fault of the CONSULTANT, the rates and amounts of compensation provided for therein shall be subject to equitable adjustment.

Opinions of Probable Cost: In providing opinions of probable cost, the CITY understands that the CONSULTANT has no control over costs or the price of labor, equipment or materials, or over the Contractor's method of pricing, and that the opinions of probable construction costs, if included herein, are to be made based on the CONSULTANT qualifications and experience. The CONSULTANT makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.

Change in Scope: The scope of work described in Article I Scope of Services, shall be subject to modification or supplement upon the signing of an Engineering Change Order by the CITY and the CONSULTANT. At the time of such modification of scope, equitable adjustments, agreeable to both parties, shall be made in the time of performance and the compensation to be paid for the services.

In event the CITY consents to, allows, authorizes or approves of changes to the construction documents prepared by the CONSULTANT, and these changes are not approved in writing by the CONSULTANT, the CITY recognizes that such changes and the results thereof are not the responsibility of the CONSULTANT. Therefore, the CITY agrees to release the CONSULTANT from any liability arising from the construction, use, or result of such changes. In addition, the CITY agrees to indemnify and hold the CONSULTANT harmless from any damage, liability or cost arising from such changes.

Reuse of Documents: All documents including the plans and specifications provided or furnished by the Consultant pursuant to this Agreement ("Plans") shall become the property of City. City agrees that if such Plans are ever used in connection with another project in which the Consultant is not providing civil engineering services or for completion of the Project by others, all references to the Consultant or any subconsultant, including seals, shall be removed from the Plans before use on said project. The City may make and retain copies for the use by the City and others; however, such documents are not intended or suitable for reuse by the City or others as an extension of the Project or on any other Project. Any such reuse without written approval or adaptation by the Consultant for the specific purpose intended will be at the CITY sole risk and without liability to the Consultant. To the extent permitted by law, the City shall indemnify and hold harmless the Consultant from all claims, damages, losses and expenses including attorney's fees arising out of or resulting reuse of the Plans. In a similar manner, the Consultant is prohibited from reuse or disclosing any information contained in any documents, plans or specifications relative to the Project without the expressed written permission of the City.

Insurance: The Consultant shall procure and maintain, at its expense, the following insurance coverage: (a) Workers' Compensation -- Statutory Limits, with Employer's Liability limits of \$100,000

each employee, \$500,000 policy limit; (b) Commercial General Liability for bodily injury and property damage liability claims with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; (c) Commercial Automobile Liability for bodily injury and property damage with limits of not less than \$1,000,000 each accident for all owned, non-owned and hired automobiles; (d) errors and omissions coverage of not less than \$1,000,000. Deductibles for any of the above coverage shall not exceed \$50,000 in General Liability and \$100,000 in Professional Liability unless approved in writing by City. In addition, Consultant agrees to require all consultants and subconsultants to obtain and provide insurance in identical type and amounts of coverage together and to require satisfaction of all other insurance requirements provided in this Agreement.

CONSULTANT'S insurance shall be from an insurance carrier with an A.M. Best rating of A-IX or better, shall be on the GL 1986 ISO Occurrence form or such other form as may be approved by City, and shall name, by endorsement to be attached to the certificate of insurance, City, and its divisions, departments, officials, officers and employees, and other parties as specified by City as additional insureds as their interest may appear, except that the additional insured requirement shall not apply to Errors and Omissions coverage. Such endorsement shall be ISO CG2010 11/85 or equivalent. "Claims Made" and "Modified Occurrence" forms are not acceptable, except for Errors and Omissions coverage. Each certificate of insurance shall state that such insurance will not be canceled or coverage reduced until after thirty (30) days' unqualified written notice of cancellation or reduction has been given to the City, except in the event of nonpayment of premium, in which case there shall be ten (10) days' unqualified written notice. Subrogation against City and CITY Agent shall be waived. CONSULTANT insurance policies shall be endorsed to indicate that CONSULTANT insurance coverage is primary and any insurance maintained by City or CITY Agent is non-contributing.

Before Consultant performs any portion of the Work, it shall provide City with certificates and endorsements evidencing the insurance required by this Article. Consultant agrees to maintain the insurance required by this Article of a minimum of three (3) years following completion of the Project and, during such entire three (3) year period, to continue to name City, CITY agent, and other specified interests as additional insureds thereunder.

If due to the CONSULTANT'S negligent act, error or omission, any required item or component of the project is omitted from the Construction documents produced by the Consultant, the CONSULTANT liability shall be limited to the difference between the cost of adding the item at the time of discovery of the omission and the cost had the item or component been included in the construction documents. The Consultant will be responsible for any retrofit expense, waste, any intervening increase in the cost of the component, and a presumed premium of 10% of the cost of the component furnished through a change order from a contractor to the extent caused by the negligence or breach of contract of the Consultant or its subconsultants.

6.4 Termination: This Agreement may be terminated by either party upon seven days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party; provided, however, the nonperforming party shall have 14 calendar days from the receipt of the termination notice to cure the failure in a manner acceptable to the other party. In any such case, the Consultant shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the payment provisions of this Agreement. Copies of all completed or partially completed designs, plans and specifications prepared under this Agreement shall be delivered to the City when and if this Agreement is terminated, but it is mutually agreed by the parties that the City will use them solely in connection with this Project, except with the written consent of the Consultant (subject to the above provision regarding Reuse of Documents).

6.5 **Termination for Convenience:** The City, within its sole discretion, may elect to terminate the Agreement with the Consultant for convenience upon three (3) days written Notice to Consultant. In the event of such termination, Consultant shall cease immediately all operations and shall be compensated for all work performed as of the date of termination in accordance with the terms of payment in this contract. Consultant shall not be entitled to any anticipatory profits of other costs other than direct costs of demobilization

Controlling Law: This Agreement is to be governed by the laws of the State of Kansas.

Indemnity: To the fullest extent permitted by law, with respect to the performance of its obligations in this Agreement or implied by law, and whether performed by Consultant or any subconsultants hired by Consultant, the Consultant agrees to indemnify City, and its agents, servants, and employees from and against any and all claims, damages, and losses arising out of personal injury, death, or property damage, caused by the negligent acts, errors, or omissions of the Consultant or its subconsultants, to the extent and in proportion to the comparative degree of fault of the Consultant and its subconsultants. Consultant shall also pay for CITY reasonable attorneys' fees, expert fees, and costs incurred in the defense of such a claim to the extent and in proportion to the comparative degree of fault of the Consultant and its subconsultants.

Severability: Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Consultant, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

Notices: Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears on the signature page to this Agreement (as modified in writing from item to time by such party) and given personally, by registered or certified mail, return receipt requested, by facsimile or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

Successors and Assigns: The City and the Consultant each is hereby bound and the partners, successors, executors, administrators, legal representatives and assigns of the City and the Consultant are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, legal representatives and assigns of such other party in respect of all covenants and obligations of this Agreement.

Neither the City nor the Consultant may assign, sublet, or transfer any rights under the Agreement without the written consent of the other, which consent shall not be unreasonably withheld; provided, Consultant may assign its rights to payment without Owner's consent, and 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 the Agreement.

Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by the Consultant to any Contractor, subcontractor, supplier, other person or entity or to any surety for or employee of any of them, or give any rights or benefits under this Agreement to anyone other than the City and the Consultant.

IN WITNESS WHEREOF: the parties hereto have executed this Agreement to be effective as of the date first above written.

CITY:

CITY OF PRAIRIE VILLAGE, KS

CONSULTANT:

TRANSYSTEMS

By: _____

Ronald L. Shaffer

Mayor

By: _____

Thomas Swenson

Principal

Address for giving notices:

CITY of Prairie Village
7700 Mission Road
Prairie Village, Kansas, 66208
913-381-6464

Address for giving notices:

TranSystems
2400 Pershing Road, Suite 400
Kansas City, MO 64108
816-329-8762

ATTEST:

Joyce Hagen Mundy, City Clerk

APPROVED BY:

Catherine Logan, City Attorney

MAYOR'S ANNOUNCEMENTS

September 17, 2012

Committee meetings scheduled for the next two weeks include:

Arts Council	09/19/2012	7:00 p.m.
Environmental/Recycle Committee	09/26/2012	7:00 p.m.
Council Committee of the Whole	10/01/2012	6:00 p.m.
City Council	10/01/2012	7:30 p.m.

The Prairie Village Arts Council is pleased to announce a photography exhibit from our Sister City, Dolyna, Ukraine in the R. G. Endres Gallery for the month of September.

Flu shots will be offered for Council Members on September 28th from 7:30 a.m. - 9:00 a.m. at Public Works or October 5th from 3:00 p.m. - 4:30 p.m. at City Hall in the Multi-Purpose room. The fee for the shot will be \$25. Please notify Nic Sanders at 913-385-4664 if you plan to receive a shot. He will need to know which day you are coming.

Prairie Village Peanut Butter Week is October 1st - 5th. Please bring some peanut butter to the October 1st Council Meeting!

The October exhibit in the R. G. Endres Gallery will be the annual State of the Arts. The reception will be held on October 12th from 6:00 - 8:00 p.m. with the awards being announced at 7:30 p.m.

Save the Date for the Northeast Johnson County Chamber of Commerce 2012 Annual Gala on November 17, 2012 at the Overland Park Marriott.

INFORMATIONAL ITEMS
September 17, 2012

1. Planning Commission Minutes - August 7, 2012
2. JazzFest Committee Minutes - August 9, 2012
3. JazzFest Committee Minutes - August 30, 2012
4. Park and Recreation Committee Minutes - May 9, 2012
5. Sister City Committee Minutes - August 13, 2012
6. Council Committee of the Whole Minutes - September 4, 2012
7. Mark Your Calendars

**PLANNING COMMISSION MINUTES
AUGUST 7, 2012**

ROLL CALL

The Planning Commission of the City of Prairie Village met in regular session on Tuesday, August 7, 2012, in the Council Chambers, 7700 Mission Road. Chairman Ken Vaughn called the meeting to order at 7:00 p.m. with the following members present: Randy Kronblad, Bob Lindeblad, Gregory Wolf and Nancy Vennard.

The following persons were present in their advisory capacity to the Planning Commission: Dennis Enslinger, Assistant City Administrator; Ted Odell, Council Liaison and Joyce Hagen Mundy, City Clerk/Planning Commission Secretary.

APPROVAL OF MINUTES

Nancy Vennard noted a spelling error on "clematis" on page 2 of the minutes. Randy Kronblad moved for the approval of the minutes of July 10, 2012 with the correction noted. The motion was seconded by Nancy Vennard and passed by a vote of 4 to 0 with Bob Lindeblad abstaining.

PUBLIC HEARINGS

**PC2012-07 Request for Special Use Permit for Daycare Program
9100 Mission Road**

Angela Bertocchini, Premier Learning Early Childhood Education, requested approval of a Special Use Permit for a child care center children ranging in age from 0 - 5 years. The child care center is located in Resurrection Lutheran Church at 9100 Mission Road. It is anticipated to use five existing classrooms in the church with each classroom designated for a specific age group as follows:

- Classroom A - Infants (0 - 12 months/walking, Ratio 2:6)
- Classroom B - Toddlers (Walking - Two years, Ratio 1:5)
- Classroom C - Two's (Two - Three years, Ratio 1:7)
- Classroom D - Three's (Three - Four years, Ratio 1:12)
- Classroom E - Four's (Four years - Pre-K, Ratio 1:12)
- Total number of children - 42

Ms. Bertocchini stated this is an estimated breakdown of children. She stated the site has been inspected and she has received a temporary license from the State of Kansas. Based on the size of the facility the state has granted a license for 52 children. The hours of operation will be 7:00 a.m. to 6:00 p.m., Monday - Friday, all year long with the exception of eight Holidays when they will be closed. It is anticipated that eight people will be employed at the child care center.

An outdoor play area is located at the south end of the building. A 42" black chain link fence has been installed. The playground will be divided into two sections; one for

children under 2.5 years and the other for those over 2.5 years. Playground equipment also has been installed.

Since the proposed child care center is entirely contained within the existing church building, no exterior changes are proposed for the building, and the outside improvement is a fence.

A neighborhood meeting on July 21, 2012 in accordance with the Planning Commission Citizen Participation Policy and one person attended the meeting. The attendee was interested in the operation of the facility and their only concern was keeping the dumpster within the fenced area.

No one was present to speak on the application. Chairman Ken Vaughn closed the public hearing at 7:06 p.m.

Dennis Enslinger noted that although Ms. Bertocchini has given a breakdown by age for the children staff recommends the permit be issued for a maximum number of children as the class breakdown could change over time. He stated staff is comfortable with increasing the number of children allowed to 52 as licensed by the state as there are no other providers at this location.

The Planning Commission made the following findings in review of this application for a Special Use Permit:

1. **The proposed special use complies with all applicable provisions of these regulations including intensity of use regulations, yard regulations and use limitations.**

The child care program will be contained within an existing building and fenced playground which is in compliance with the zoning regulations.

2. **The proposed special use at the specified location will not adversely affect the welfare or convenience of the public.**

The child care program will be an asset to the community because it will provide a much needed service for taking care of the children within the local area. It will be located within an existing building and will not adversely affect the welfare or convenience of the public.

3. **The proposed special use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.**

The child care center will be located within an existing structure and use an existing parking lot therefore it should not create any problems for the adjacent property in the neighborhood. The playground area is fenced and the fence is approximately 150 feet north of 92nd Terrace providing significant green space. The request should be approved for a five year period so it can be reevaluated at that time.

4. **The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it, are such that this special use will not dominate the immediate neighborhood so as to hinder development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the special use permit will so dominate the immediate neighborhood, consideration shall be given to: a) the location size and nature of the height of the building, structures, walls and fences on the site; and b) the nature and extent of landscaping and screening on the site.**

The child care center will accommodate a group of up to 42 children, and will use the church facility during normal working hours. This use will not have a dominating effect in the neighborhood because it is for a small number of children and it will be located within an existing building. No expansion of the building is proposed.

5. **Off street parking and loading areas will be provided with standards set forth in these regulations and areas shall be screened from adjoining residential uses and located so as to protect such residential uses from any injurious effect.**

Access to the child care center will be from the parking lot on the west side of the building. The parking lot is large and can certainly accommodate the employee parking and the pick-up and drop-off traffic that will occur. There will be no changes in the parking lot from what currently exists.

6. **Adequate utility, drainage and other necessary utilities have been or will be provided.**

Since this use will be occupying an existing facility, utility services are already provided.

7. **Adequate access roads or entrance and exit drives will be provided and shall be so designed to prevent hazards and to minimize traffic congestion in public streets and alleys.**

Adequate entrance and exit drives currently exist at the facility and this proposed special use will utilize the existing infrastructure that is already in place. The access will be from Alhambra Street.

8. **Adjoining properties will be adequately protected from any hazardous or toxic materials, hazardous manufacturing processes, obnoxious odors, or unnecessary intrusive noises.**

This particular use does not have any hazardous materials, processes, odors or intrusive noises that accompany it.

9. **Architectural style and exterior materials are compatible with such style and materials used in the neighborhood in which the proposed structure is to be built or located.**

The special use has not required any changes in the exterior architecture or style of the existing building. The fence material is black chain link and appears to be compatible with the neighborhood. No independent signs are permitted on the property for this use unless approved by the Planning Commission.

Bob Lindeblad moved the Planning Commission find favorably on the factors for approval and recommends the Governing Body grant a special use permit for the operation of a child care program at 9100 Mission Road subject to the following conditions:

1. That the child care center be approved for a maximum of 52 children.
2. That the child care center be permitted to operate year-round from 7:00 a.m. to 6:00 p.m. subject to the licensing requirements by the Kansas Department of Health and Environment.
3. That the special use permit be issued for the child care center for a period of five years from the date of City Council approval and that if the applicant desires to continue the use after that time period expires, they shall file a new application for reconsideration by the Planning Commission and City Council.
4. No independent signs shall be permitted unless approved by the Planning Commission.
5. That the child care center occupies the outdoor space as shown on the plans submitted and if it is increased in area, the proposed expansion will be submitted to the Planning Commission for Site Plan Approval.
6. That the trash dumpster is contained within the fenced area so that it is screened from view.
7. If this permit is found not to be in compliance with the terms of the approval of the Special Use Permit it will become null and void within 90 days of notification of noncompliance unless noncompliance is corrected.

The motion was seconded by Gregory Wolf and passed unanimously.

Randy Kronblad noted there is currently a sign on the playground fence. Mr. Enslinger confirmed the sign was temporary and would be allowed for 90 days.

NON-PUBLIC HEARINGS

PC2012-112 Request for Site Plan Approval for fence setback 4310 West 71st Street

Claire Brettell, 4310 West 71st Street, requested a waiver from Section 19.44.025 C.1 which requires a ten (10) foot setback adjacent to 71st Street and 70th Terrace for the installation of a split rail fence. This property is located on a corner lot with two platted front yards (71st Street and 70th Terrace). The Chief Building Inspector has made the determination that the property has two front yards because of the platted designation.

The original fence location was actually located in the right-of-way of both 70th Terrace and 71st Street. The applicant is requesting the waiver from the setback requirements to make a more balanced and visual appearance in relationship to the residence. The request is to place the fence two (2) feet-four (4) inches from the property line along 70th Terrace and three (3) feet- seven (7) inches from the property line along 71st Street.

Dennis Enslinger stated that staff has been working with the applicant and calculated what it felt was a reasonable accommodation to allow for a fence.

The Planning Commission made the following review of the request:

A. The site is capable of accommodating the building(s), parking areas and drives with appropriate open space and landscape;

The applicant is not proposing to significantly alter the existing building, parking or drive configuration. The open space will remain relatively the same since the proposed fence design is the same as the previous fence. The height of the proposed fence will meet existing code provisions of 2.5 feet.

B. Utilities are available with adequate capacity to serve the proposed development;

The site has existing utilities.

C. The plan provides for adequate management of stormwater runoff;

The proposed modifications to the site will not have any impact on stormwater runoff.

D. The plan provides for safe and easy ingress, egress and internal traffic circulation;

The Planning Commission has given the placement of fences a great deal of consideration related to safe ingress and egress circulation. In developing setback standards for fences, the Planning Commission has considered impacts on adjacent properties. In this case, the two properties to the west could be adversely impacted. To alleviate such, an impact the zoning ordinance requires that new front yard fences be setback a minimum of ten (10) feet. This would allow clear visibility for anyone backing out of the adjacent driveway.

It was noted the applicant is proposing a decorative split rail fence which exceeds the 50% void ratio and should not have any adverse impact on the adjacent properties.

E. The plan is consistent with good land planning and site engineering design principles;

The plan is consistent with good land planning and site engineering design principles.

F. An appropriate degree of compatibility will prevail between the architectural quality of the proposed building(s) and the surrounding neighborhood;

The proposed fence is compatible with the residential structure and the surrounding neighborhood.

G. The plan represents an overall development pattern that is consistent with the Comprehensive Plan and other adopted planning policies.

The plan is consistent with overall development patterns represented in the neighborhood and with the policies adopted in the Comprehensive Plan.

Nancy Vennard asked if the previous fence was 30" in height. Ms Brettell responded she was not sure. Mrs. Vennard noted this may be shorter than the previous fence. Ms Brettell stated the fence height was measured by the Building Inspector on site and it is approximately two inches shorter.

Randy Kronblad moved the Planning Commission approve PC2012-112 for a waiver to Section 19.44.025 C, for the property located at 4310 West 71st Street subject to the following conditions:

1. The fence be a minimum of two (2) feet -four (4) inches from the property line along 70th Terrace and three (3) feet- seven (7) inches from the property line along 71st Street;
2. The fence design shall be a split rail fence design with a maximum height of 2.5 feet and
3. Letter from the Homes Association approving the request is submitted.

The motion was seconded by Gregory Wolf and passed unanimously.

OTHER BUSINESS

Discussion of Setback for Accessory Structures

Dennis Enslinger reviewed a draft of proposed language to clarify the setback requirements for accessory structures prepared by Ron Williamson as a follow-up to last month's application.

The new language states "Unless otherwise set out in these regulations, any accessory structure shall setback a minimum of three (3) feet from the rear and side lot lines, except that an accessory structure exceeding ten (10) feet in height shall be located a distance of one third its height from the rear and side lot lines. In residential districts, unless otherwise set out in these regulations, accessory structures shall not be located in the front yard."

Dennis Enslinger noted additional clarification needs to be added to address detached garages. This will be done and the new language brought back to the Commission for formal action at a later date.

Gregory Wolf asked if the introduction "unless otherwise set out in these regulations" was not sufficient to address detached garages. Mr. Enslinger responded it would, but staff would like it to be more clearly addressed.

Mr. Wolf asked if staff had made any progress in resolving the sign issue at 2200 West 75th Street. Mr. Enslinger responded staff is still working on that issue.

Next Meeting

The deadline for filing for the September meeting is August 10th. No applications have been received; however, it is anticipated that Lane4 will file an application for site plan approval, a conditional use permit for a drive-thru and an application for platting at the Prairie Village Shops. Due to the Labor Day Holiday, the September meeting will be on the second Tuesday, September 11th.

ADJOURNMENT

With no further business to come before the Planning Commission, Chairman Ken Vaughn adjourned the meeting at 7:25 p.m.

Ken Vaughn
Chairman

JAZZ FEST COMMITTEE
August 9, 2012
7:00 p.m.

Present: Jack Shearer, Gloria Shearer, Peggy Wright, Mary Ann Watkins, Walt Vernon, Brian Peters, Larry Kopitnik, Kate Fields and Joyce Hagen Mundy.

The minutes of the July 24, 2012 meeting were distributed and approved.

FINANCIAL STATUS

Jack Shearer presented the financial report as of August 9, 2012 with a balance of \$19,635.54 and expenses of \$11,286.84 leaving a balance of \$11,286.84. There is still \$1000 pledged outstanding, giving a balance of \$12,286.84. From this we have committed \$9,550 for talent leaving a working balance of \$2,736.84. Known expenses are \$875 for the MC and \$4000 for the stage. Estimated expenses include the backline (\$1500) T-shirts (\$1000) Portable Toilets (\$800-possibly donated); Hotel Rooms (\$1000-possibly donated). BRGR will be covering the remaining banner costs, yard signs and printing. This gives a shortfall if no other donations are received. Jack indicated that he is confident that the shortfall will be covered by sale of drinks at the event with an estimated attendance of 5,000 to 6000. He will talk with BRGR regarding a possible loan if needed for expenses due the day of the event. The possibility of securing event insurance was discussed and Jack stated that he would get additional information on the cost; however, most committee members questioned the value of such insurance with the many conditions generally placed on receiving any benefit.

Jack advised that he has made arrangements to have an ATM on site for the festival. The committee discussed if checks would be taken or only cash or credit cards. With the ATM and other options available, it was felt that there would not be many checks written, but it was felt they should be accepted noting some of the older Prairie Village residents may be more comfortable with checks. Joyce will make sure directions are given to volunteers at the merchandise tent regarding the information needed on checks received.

WINE TASTING

Joyce Hagen Mundy reported 35 tickets were sold for the wine tasting raising \$1050. The silent auction raised \$1347 with more than 42 items donated. All but a few items sold. The canoe, which did not sell at the auction, has been purchased by a city employee for \$150. Walt Vernon and MaryAnn Watkins were thanked for their assistance in gathering items for the auction. Joyce noted that all of the donations have been acknowledged.

FUTURE EVENTS

Mary Ann Watkins stated that she would be attending the KU event at Corinth Square and distributing flyers on the festival. She would also be attending the Leawood Jazz Performances on Friday evenings in August and would hand out line-up cards. Joyce said she would ask Tara to order more cards for distribution.

PUBLICITY

Mary Ann announced that she has confirmed with Joel Nichols and he will be announcing the festival on his show September 1st to September 8th. Joyce distributed a copy of the Village Voice insert that will be mailed to all home owners and businesses in Prairie Village. She thanked Tara for her excellent work in putting the pages together. Larry discussed interviews that would be done by the artists.

VOLUNTEERS

The committee discussed the volunteer needs based on previous years and determined where volunteers would be needed and how many. Joyce stated she has a listing of volunteers from previous years and will send out an e-mail to all of those individuals. She asked that committee members follow up with those that do not respond. She also distributed volunteer assignment descriptions. Kate Fields will coordinate volunteers from Habitat for Humanity.

HABITAT FOR HUMANITY

Concern was expressed that the event would not be able to raise significant funds for Heartland Habitat for Humanity. It was decided that donations would be collected at the gates and also during the event. The MC will make announcements and the possibility of sharing some of the success stories from Habitat was discussed.

NEXT MEETING

It was noted as the event date nears, it will probably be necessary for the committee to meet more often and also to have representatives from the City's Public Works and Police Department attend those meeting.

The next meeting will be Wednesday, August 22nd at 7:00 p.m.

ADJOURNMENT

The meeting was adjourned at 8:25 p.m.

JAZZ FEST COMMITTEE
August 30, 2012
NOTES

Present: Jack Shearer, Gloria Shearer, Peggy Wright, MaryAnn Watkins, Brian Peters, Larry Kopitnik, Dan Andersen, Rod Atteberry, Donelea Hespe and Joyce Hagen Mundy.

Minutes from the August 9th meeting were approved as presented.

Financial Report was given indicating a balance of \$2150.02 as of August 30, 2012.

Volunteers -

- **Joyce Hagen Mundy presented an update of the status of festival volunteers and distributed a list of current volunteers scheduled. Volunteer orientation will be held on Thursday and Friday evenings at 6 p.m. at City Hall.**

Talent -

- **Artist rooms have been booked. Larry announced that Doug and Kathy Peterson would be providing the necessary transportation for those artists coming in from out of town.**
- **Dan Andersen will confirm back-line needs**

Merchandise Sales

- **Artist CDs will be sold with the price set by the artist. They are to be turned in at the sound check. The committee will also offer MC David Basse to sell CDs. Taxes will be the responsibility of the artists.**
- **BRGR 5K shirts will be sold at \$_____**
- **2011 Event & Volunteer Shirts will be sold at \$8**
- **2012 Event Shirts will be sold at \$15 or two for \$25**
- **Merchandise sales will accept cash, checks or credit cards**

“Music of the 2012 PV Jazz Performers” raffle

- **Artists have agreed to donate autographed CDs for a raffle.**
- **Raffle tickets will be sold at the Information booth and Merchandise tent**
- **It was also suggested to go through the crowd selling tickets**
- **Tickets will be sold for \$1 each or 6 for \$5**
- **Do not need to be present to win - Name drawn on stage before Karrin’s performance by Mayor Shaffer**

Yard Signs

- **Remaining yard signs were distributed. Individuals were asked to note where the signs are placed and to pick them up following the event**

Parking Areas

- Designated parking areas were confirmed
- ADA Parking and Artist parking will be in the interior lower level parking lot at City Hall. This will be barricaded at the entrance. ADA drop-offs will be allowed at the main entry.
- Volunteers may park at the parking lot across from the tennis courts.
- Parking has been arranged at the two adjacent churches and SME. Police will be patrolling the parking areas.

Trash & Portable Toilets

- Deffenbaugh has donated both the portable toilets and 40 cardboard trash bins - 20 for recycle/20 trash
- Boy Scout Troop 1007 will be picking up trash throughout the event.
- Trash will be taken to PW and an additional dumpster has been added by the pavilion.

Stage & Equipment Update

- Stage and backline arrangements are being finalized
- Tents - a 20' x 30' tent is being rented for the backstage area.
- Primarily 10' x 20' tents will be used & a 20' x 20' with 1 10' x 10'
- Most of the major set up will be done on Friday, so volunteers for setting up will begin at 9 am instead of 8 am PD will provide overnight security.

Publicity Update

- Joyce distributed copies of the Village Voice with a 4 page center section on JazzFest
- Recent print ads from InkKC were shown
- MaryAnn confirmed TV announcements by Joel Nichols beginning September 1st
- Larry noted there will be lead-ins made at the Folly Theater for the event.
- The success of on-line face book posts during the event the first year was noted and suggested that this be done again.
- PV Post will also carry both coverage and advertisements

VIP Tent & Sponsor Tent

- Jack advised that he has received interest in a potential VIP tent. The pros and cons of the tent were discussed as well as also having a Sponsor Tent for the primary sponsors with on stage recognition given to them as well. If the company goes ahead with the VIP tent the committee agreed to also having a sponsor tent.

The next meeting will be Wednesday, September 5th at 7 p.m.
The meeting was adjourned at 8:30 p.m.

PARK AND RECREATION COMMITTEE

May 9, 2012

Harmon Park Pavilion

The Park and Recreation Committee met at 6.30pm. In attendance: Laura Wassmer, Chair, Ashley Weaver, Vice-Chair, Diane Mares, Peggy Couch, Tim O'Toole, Max Rieper, Eric Blevins and Kevin Letourneau. Staff: Mike Helms and Chris Engel. Also present: Kathy Thompsen and John Joyce.

CONSENT AGENDA

The minutes from April 11, 2012 were approved.

REPORTS

Public Works Report

Mike reported on May 2nd a tree fell in McCrum Park and destroyed a section of fence. They will be repairing soon. The Franklin Park play stream is open and operating daily from 10:00am – 5:00pm. Dead pine trees within Franklin are in the process of being removed. A swing at Weltner Park was cut down recently to remove a large child that was stuck. The cost to replace it was \$241. There are currently four pools within the pool complex that have been filled with water.

Recreation Report

Chris reported the pool opens two weeks from Saturday and all staff has been hired other than a Synchro Coach. If a Synchro Coach is not onboard by Friday, May 18th the season will be cancelled. There are three orientations next week for both employees and aquatics parents. Computers and phones are hooked up at the pool and in the process of being tested. Food and beverages will be ordered next week. Overall registrations are normal for this time of year. \$10 off for early pool memberships in April and increased web advertising has worked well.

Events Update

The Weltner Park rededication is May 12th from 10:00 – noon. Diane is still looking for volunteers to help out. There will be kids games, chalk, Frisbees, and Jim Cosgrove will play at 11:00. Laura shared the Mayor needs to be at the Mission parade Saturday morning so the timeline for the event will need to be moved up an hour to accommodate. Diane and Laura will share the duties of emcee for the event.

Chairpersons Report

Laura asked the committee to keep in mind the two vacancies in Wards Five and Six and contact her if there are any suggestions. Laura also reported the City Council recently voted to concur with the Planning Commission's recommendation to leave the Trail Master Plan as-is with a trail on Roe and not Nall. However, they also indicated they didn't really support an 8' wide trail on Roe either. They recommended the Parks & Recreation Committee reevaluate the entire trail plan and come up with something politically feasible. Laura asked the Committee to be thinking of trails over the summer so when the committee reconvenes in September it can be discussed. Laura also reported the Park Sales Tax item will be coming to City Council soon and if approved the Parks Committee will need to meet over the summer to discuss what their role in that campaign should be.

The Committee did a tour of the Community Garden and was largely impressed.

Adjournment

The next meeting will be Wednesday, September 12th unless otherwise required.

SISTER CITY COMMITTEE
13 August 2012
MINUTES

CALL TO ORDER

Chair Jim Hohensee called the meeting to order. Present: Bob Glywa, Vera Glywa and Ivan Novikov. Also Present: Sally Hohensee. Staff: Chris Engel

MINUTES

Minutes from July 9, 2012 were held over for lack of quorum.

PRESENTATION

Jim shared photos from a recent trip abroad.

SISTER CITIES INTERNATIONAL CONFERENCE

Jim shared his experiences from the Sister Cities International conference. He told the committee they should be proud of what they're accomplishing. Jim felt the conference was geared primarily to the larger cities but believes they will be working to include smaller cities in the years to come. Jim brought up the relationship that Corvallis, OR has with a Ukrainian city as an example of other cities that are doing interesting and inventive things to foster their relationships within Ukraine. Jim took a grant writing session and became aware of funding that is available for a variety of activities. One such activity was called Planet Earth and relates to hosting environmental projects in both sister cities. A social media session was also attended and Jim learned how to move you site up in the search engines for better exposure.

PHOTO EXCHANGE

Bob reported that the pictures had been printed and matting and framing was proceeding. He and Vera will be out of town for a few weeks so they are trying to get as much completed before they leave. Bob shared the art will not be sold because the City was requiring a 1099 Form before payment can be made. Since this can't be completed by a foreign national it would require someone with a social security number and that would have some tax implications. The art will be hung on Tuesday, September 4 and the reception will be on Friday, September 14th.

UKRAINIAN INDEPENDENCE DAY

The Committee is hosting the Ukrainian Independence Day gathering at the Community Center on Friday, August 24 at 6:30. Vera reported she has invited the Ukrainian Club and Jim will look into inviting members of the 'Friend of' group that have helped the committee in the past. The committee will pay to cater the meat for the event and attendees will bring a dish to share.

The next meeting will be Monday, September 10, 2012.

Jim Hohensee
Chair

COUNCIL COMMITTEE OF THE WHOLE
September 4, 2012

The Council Committee of the Whole met on Tuesday, September 4, 2012 at 6:30 p.m. in the Council Chambers. The meeting was called to order by Council President David Morrison with the following members present: Ashley Weaver, Dale Warman, Ruth Hopkins (arrived late), Steve Noll, Laura Wassmer, Brooke Morehead, Charles Clark, Ted Odell and David Belz. Staff Members present: Captain Wes Lovett; Bruce McNabb, Director of Public Works, David Waters representing the city attorney; Quinn Bennion, City Administrator; Dennis Enslinger, Assistant City Administrator; Lisa Santa Maria, Finance Director and Joyce Hagen Mundy, City Clerk.

Update on Northeast Johnson County Chamber Activities

Deb Settle, Executive Director of Northeast Johnson County Chamber, thanked the City for its support of the Chamber. Over the past three years she has been with the chamber, she has seen great progress. She expressed appreciation for the service of Councilman Dale Warman who serves as an Ambassador for the chamber. During the past year the chamber celebrated ribbon cuttings at UltraMax Sports, American Family Insurance and Tide Cleaners in Prairie Village. Prairie Village businesses make up 14% of the over 300 chamber members. Thirty-two new businesses joined the chamber in the past year and Ms Settle stated the chamber is very proud of its 90% retention rate for memberships.

The Mission of the Chamber is “Helping Small Businesses Grow”. The chamber has just finished a new Northeast Johnson County Map that can be distributed to new residents in the community. Registrations for the 2013 Leadership Northeast Program which begins in January will kick off on October 25th with an alumni and recruitment day for LNE. The highly recognized program provides an opportunity for individuals to gain insight and information on local, county and state government as well as area business and offers an excellent opportunity to network. The 2013 class will offer a new component addressing serving the area’s aging population.

Ms Settle explained the shared Kansas City Area Development Council membership that allows cities to join KCADC under the umbrella of the Chamber. All cities have been invited to attend the September 20th meeting of the KCADC. She encouraged council members to be added to their mailing list to receive the monthly calendar of chamber events.

The annual chamber gala will be held November 17th at the Marriott in Overland Park. Council members were encouraged to attend this optional black tie event that features a silent auction, dinner and dance.

Brooke Morehead asked how membership fees were established. Ms Settle stated they were based on number of employees.

David Morrison, a recent graduate of the Leadership Northeast program encouraged any council and staff members to participate in this program.

Dale Warman noted he has been on the board for the chamber since 1992 and has seen great improvements over the past few years under the leadership of Deb Settles. He encouraged Council members to attend the annual gala in November.

Update from Consolidated Fire District 2

Chief Phil Hodgdon with the Consolidated Fire District #2 reported on activities of the fire district. The District served 760 calls in Prairie Village to date in 2013 with 1 fire loss of approximately \$6,000. For the year ending 2011, the District responded to 1100 calls with \$1.3M in fire loss. Their 2013 budget has been approved with a mill levy of 10.18; however, they have cut \$500,000 from their operating budget. A new pumper truck has been ordered for the station at 90th & Roe at the cost of \$565,000 with a pre-pay discount of 4%.

Chief Hodgdon stated the 60+ year old fire station at 90th & Roe will be relocated next year as it is too small for operations and the increasing cost of maintenance for the existing building. A study on the relocation was conducted in conjunction with neighboring emergency service providers with a defined set of criteria considered. A new site has been selected and they are in the process of finalizing the purchase agreements. The location will be announced in a few weeks.

David Morrison confirmed the new site would be in Prairie Village.

Laura Wassmer asked what would be done with the property at 90th & Roe. Chief Hodgdon responded the property will be listed by Zimmer Associates for sale. They have already sold the easement for the cellular tower on the site.

STAFF REPORTS

Public Safety

- Captain Lovett had no report.

Public Works

- Bruce McNabb reported Somerset would be closed later this week and would remain closed for up to 60 days.
- Public Works is working with the bonding company for the repair of the trail in Franklin Park.

Administration

- The Endres Art Gallery will host an opening for the Dolyna Photography Art Exhibit on display this month.
- The Prairie Village Shopping Center improvements will be presented at the September 11th Planning Commission meeting in concept - formal action and presentation and the public hearing will be at the October 2nd meeting.

- Building Official Jim Brown was recognized for his extra effort and hours spent during evenings and weekends to oversee the extended hours construction at Indian Hills Middle School as well and several other commercial projects.
- Municipal Court Supervisor was recognized for her work in the recent installation of new court software that will enable the issuance of e-ticketing in the near future.
- Quinn Bennion reported on the Fiber Space tour with other Prairie Village officials and staff.
- He remains in contact with SureWest regarding the city's continued interest in their offering services to Prairie Village residents. Several PV residents have also made contact with SureWest expressing their interest. SureWest will announce their 2013 build out location and schedule in November.

MAYOR'S REPORT

Mayor Shaffer's reported he represented the City at the following events during the past weeks: Goggle Fiber space tour, ribbon cutting for American Family Insurance, Relay for Life event at Franklin Park. He reported on the city's involvement with MARC's continued sustainability initiative with the review of building codes. Mayor Shaffer was pleased to participate in the annual Lancer Day parade and celebration which was not dampened by the rain.

Adjournment

With no further business to come before the Council Committee of the Whole, Council President David Morrison adjourned the meeting at 7:05 p.m.

David Morrison
Council President

**Council Members
Mark Your Calendars
September 17, 2012**

September 2012	Ukrainian - Sister City exhibit in the R. G. Endres Gallery
October 2012	State of the Arts Exhibit in the R. G. Endres Gallery
October 1	City Council Meeting
October 6-8	2012 League of Kansas Municipalities Conference
October 12	Artist reception in the R. G. Endres Gallery 6:30 - 8:30 p.m.
October 15	City Council Meeting
November 2012	Greater Kansas City Art Association
November 5	City Council Meeting
November 9	Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
November 17	Northeast Johnson County Chamber of Commerce Annual Gala
November 19	City Council Meeting
November 22	City offices closed in observance of Thanksgiving
November 23	City offices closed in observance of Thanksgiving
November 28-Dec 1	National League of Cities Conference
November 29	Mayor's Holiday Tree Lighting
December 2012	Eileen McCoy oils exhibit in the R. G. Endres Gallery
December 3	City Council Meeting
December 14	Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
December 14	Volunteer Appreciation Holiday Party
December 17	City Council Meeting
December 25	City offices closed in observance of Christmas