

# CITY OF PRAIRIE VILLAGE

**May 20, 2013**

Council Committee Meeting 6:00 pm

City Council Meeting 7:30 pm



**COUNCIL COMMITTEE OF THE WHOLE**  
**Council Chambers**  
**May 20, 2013**  
**6:00 PM**

**AGENDA**

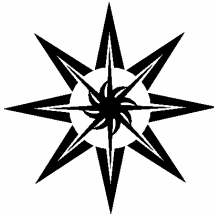
**DALE WARMAN, COUNCIL PRESIDENT**

**AGENDA ITEMS FOR DISCUSSION**

Presentation of City's 2012 Audit  
Berberich Trahan & Co., P.A.

- \*COU2013-20 Consider contract with Serenity Landscape Design, LLC for Weed Abatement Services  
Dennis Enslinger
  
- \*COU2013-19 Consider Construction Contract with O'Donnell and Son's Construction for Project 2013 Paving, 2013 CARS, and 2012/2013 Drainage for \$3,100,000.00  
Keith Bredehoeft
  
- \*COU2013-18 Consider Construction Administration Agreement with TranSystems for 2013 Construction Projects for \$299,299.00  
Keith Bredehoeft
  
- COU2013-12 Consider Significant Budget Items/Priorities
  - \*Park Improvement Priorities
  - \*Property Maintenance, Rental Licensing, Home Ownership

**\*Council Action Requested the same night**



## ADMINISTRATION

Council Committee Meeting Date: May 20, 2013

\*City Council Meeting Date: May 20, 2013

**\*COU2013-20: Accept Bids for Weed Abatement Services and select Serenity Landscape Design, LLC as the low bid and authorize the Mayor to execute contract agreement for Weed Abatement Services with Serenity Landscape Design, LLC.**

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### RECOMMENDATION:

Staff recommends the City Council accept the low bid from Serenity Landscape Design, LLC and authorize the Mayor to execute an Agreement for Weed Abatement Services with Serenity Landscape Design, LLC.

Staff is requesting City Council Approval at the May 20, 2013.

### BACKGROUND:

In 2009 the City began contracting out mowing of properties which have been found to be in violation of the City Weeds and Grass ordinance. The previous contractor has decided not to continue providing services to the City.

The City initiated a bidding process and received (2) bids from contractors for mowing services. Serenity Landscape Design, LLC submitted the lowest aggregate cost bid cost. A summary of the bids received is listed below:

### BID FOR CONTRACT SERVICES

Type of Service	Serenity Landscape Design, LLC.	Denis Lawn Care
Hourly Mowing w/ Operator	\$ 30.00	\$55.00
Tractor mower w/ operator	\$ 38.00	\$65.00
Weed eater w/operator	\$ 30.00	\$55.00
Clean Up (Removal of grass clippings, bottles, cans, etc).	\$ 30.00	\$250.00
Removal of Debris which impedes mowing (limbs, brush, etc)	\$ 2.00 cubic ft	\$175.00
Work Documentation (Before & after pictures)	\$ 00.00	\$00.00

### FUNDING SOURCE:

The 2013 Codes budget contains funds for contract mowing services. If additional funding is necessary, staff will request contingency funds.

**ATTACHMENT:**

Copy of Agreement for Weed Abatement Services

**PREPARED BY:**

Marcia Gradinger

Code Enforcement Officer

Date: May 17, 2013

## ANNUAL AGREEMENT FOR WEED ABATEMENT SERVICES

This Agreement, made this 20<sup>th</sup> day of MAY, 2013, by and between Serenity Landscape, hereinafter referred to as Contractor, and the CITY OF PRAIRIE VILLAGE, KANSAS, hereinafter referred to as City, shall be in full force and effect during calendar year 2013 with the following terms and conditions.

The Contractor proposes and agrees to provide all necessary machinery, tools, and equipment; and to do all the work specified in the documents of the contract in the manner therein prescribed and according to the requirements of the City as therein set forth.

This agreement will be the only executed agreement. Any additions or changes must be added as supplement to this agreement at time of proposal.

### **1.0 General**

- 1.1 That the Contractor shall designate one person, called Supervisor, who shall be present at all times during the execution of the work. This person shall be thoroughly familiar with the specified requirements and the methods needed for the proper performance of the work and who shall direct all work performed.
- 1.2 The Contractor shall designate one person who shall serve as contact for the City for purposes of scheduling inspections, emergencies, and maintaining communication.
- 1.3 The Contractor is admonished that the crews will be properly attired, refrain from abusive language, refrain from improper behavior, and be aware that they are representing the City.
- 1.4 The City will inspect the work on a regular basis and report to the Contractor's contact any problems.
- 1.5 The Contractor will report to the City any problems or hazards that are observed during the course of the work.
- 1.6 The Contractor will use equipment and tools suitable for the work. All equipment and tools will be in near-original working condition.
- 1.7 That Marcia Grading, Code Enforcement Officer, at phone-(913)385-4605, cell 913-522-2573, fax-(913)385-4654, will be the City coordinator for the Contractor for providing any service and responding to any special needs.
- 1.8 The City shall pay the Contractor within thirty (30) days from the date of receipt of an invoice for payment.
- 1.9 The Contractor will take all safety precautions to protect the workers and the general public.
- 1.10 That all work performed by the Contractor will be of acceptable workmanlike quality normally associated with this trade and shall be satisfactory to the City before payment will be made by the City to the Contractor.
- 1.11 All invoices with a copy of the service report are to be sent to the Prairie Village Municipal Offices, C/O Marcia Grading, 7700 Mission Road, Prairie Village, KS 66208.
- 1.12 This Agreement is for the period of January 1, 2013 through December 31, 2013, providing that the term may be renewed for additional twelve month periods by written agreement between the parties. Either party may terminate this agreement by giving sixty (60) days prior written notice to the other party.

## 2.0 Work Hours

- 2.1 That the City authorizes the Contractor to perform work anytime from 8:00 am through 5:00 pm weekdays.
- 2.2 The Contractor shall obtain prior written approval from the City before scheduling any work outside the normal working hours.

## 3.0 Weed Abatement

- 3.1 The Contractor will cut and remove noxious weeds and tall grass with a height in excess of eight (8) inches from private properties upon receipt of a Notice to Abate issued by the City. The Notice to Abate may be delivered via email or facsimile. **The work shall be completed by Contractor within 48 hrs (2 working days) of Contractor's receipt of the Notice to Abate.** The contractor will take digital pictures of the property prior to mowing showing the areas to be mowed, any debris which impedes mowing that will be removed, and any objects to be moved and replaced after mowing. Pictures will be submitted with the Contractors invoice.
- 3.2 Any debris which hinders the Contractor's ability to perform the abatement work, such as the presence of brush piles, limbs, etc. shall be removed from the property by Contractor and disposed of appropriately by the Contractor.
- 3.3 Any items other than debris located on private property which hinders the Contractor's ability to perform the abatement work, such as toys, lawn furniture, etc. shall be temporarily moved on the property by Contractor, enabling the Contractor to perform the work, then returned to their original location upon the completion of abatement activities.
- 3.4 Upon completion of abatement work, the Contractor shall clear any grass clippings or other debris from public sidewalks or streets.
- 3.5 Upon completion of the work, the Contractor shall provide written notice to the City via e-mail or facsimile, of the time and date upon which the work was completed. The Contractor shall also provide an item invoice detailing the specific times and hours worked.

## 4.0 Contractor Availability

- 4.1 The Contractor will be available during normal business hours as identified in Section 2.1 above during the term of this contract for providing the work.

## 5.0 Fees

- 5.1 The following schedule will govern fees charged by Contractor while performing work authorized under this Agreement:
- 5.2 Equipment services will be billed on an hourly basis with a one hour minimum. Services will be billed in 15 minute increments.
- 5.3 Debris removal services will be billed on a per-load basis.

### Service

Hourly Mowing w/ Operator	\$ 30. <sup>00</sup>
Tractor mower w/ operator	\$ 38. <sup>00</sup>
Weed eater w/operator	\$ 30. <sup>00</sup>
Clean Up (Removal of grass clippings, bottles, cans, etc).	\$ 30. <sup>00</sup>
Removal of Debris which impedes mowing (limbs, brush, etc)	\$ 2. <sup>00</sup> per cubic foot
Work Documentation (Before & after pictures)	\$ 00. <sup>00</sup>

## 6.0 Miscellaneous Matters

- 6.1 skilled in the work assigned. Persons hired by the Contractor shall be and remain Contractor's employees.
- 6.2 Contractor shall be responsible for all payroll costs including taxes or contributions, whether state or federal, to all employees engaged in the performance of work under this Contract.
- 6.3 Contractor shall furnish to the City, on request of the City, a certificate or other evidence of compliance with all state or federal laws concerning contributions, taxes and payroll assessments. In addition, Contractor agrees to pay any and all gross receipts, compensating, transaction, sales, use or other taxes or assessments of whatever nature of kind levied or assessed as a consequence of the work performed or on the compensation to be paid under this Contract.
- 6.4 City shall not be responsible or be held liable for any injury or damage to person or property resulting from the use, misuse, or failure of any equipment used by the Contractor or any of the Contractor's employees.
- 6.5 The Contractor agrees to defend, indemnify and hold harmless the City against any and all loss, liability, and claims for injury or damage whatsoever to persons or property resulting from the work to be performed hereunder, whether such injury or damage is to an employee or the property of the Contractor, other contractors, City or other persons.
- 6.6 *Contractor shall procure and maintain comprehensive general liability insurance coverage written by a responsible insurer licensed to do business in Kansas, naming the City, its agents and employees as additional names insured, which coverage, pertaining to the premises or operator's activities shall not be less than \$500,000.00 per occurrence, \$1,000,000.00 in the aggregate including death, property damage and personal injury liability. Contractor will be required to provide all insurances necessary for the work including workers compensation for Contractor's employees and pertinent auto insurance coverage. Verification of the insurance coverage must be submitted to the City prior to the commencement of work.*
- 6.7 This Contract sets forth the entire agreement between Contractor and City with respect to the subject matter thereof and supersedes and cancels any and all prior oral or written agreements or understandings between the parties with respect to the foregoing matters. This Contract may only be changed in writing signed by both parties.

Contractor Contact: Chris Patch

ATTEST:

Address: 19880 Antioch Rd. /s/

Joyce Hagen Mundy, City Clerk Date


Bucyrus, KS 66013

Telephone Number: (913) 238-1841 /s/

Catherine P. Logan, City Attorney Date

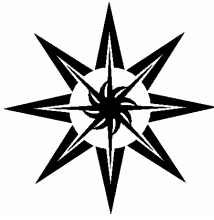
Fax Number: N/A

E-mail address Chris@serenitylandscapingdesign.com

/s/  \_\_\_\_\_  
Contractor Agent Date 5/14/13

/s/ \_\_\_\_\_  
Ronald L. Shaffer, Mayor Date





## PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: May 20, 2013

Council Meeting Date: May 20, 2013

### \*COU2013-19: CONSIDER CONSTRUCTION CONTRACT FOR PROJECT 2013 PAVING, 2013 CARS, AND 2012 /2013 DRAINAGE PROJECTS

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#### RECOMMENDATION

Move to authorize the Mayor to sign the construction contract with O'Donnell and Son's Construction for Project 2013 Paving, 2013 CARS, and 2012/2013 Drainage Projects for \$3,100,000.00.

#### BACKGROUND

This project includes work on many streets throughout the City. It is funded by the 2013 Paving Program, the 2013 CARS Program, and the 2012/2013 Drainage Programs. These streets will be rehabilitated and will include repair or replacement of the concrete and asphalt pavement. Drainage repairs are made on some streets as well with significant drainage work on 63<sup>rd</sup> Street from Delmar to Roe Avenue. Drainage Channel improvement will also be made under the bridge at 71<sup>st</sup> and Tomahawk.

#### Street Projects-

- 63<sup>rd</sup> Street- Delmar Street to Mission Road
- 64<sup>th</sup> Street- 64<sup>th</sup> Terrace to Hodges Drive
- 70<sup>th</sup> Street- Roe Avenue to Tomahawk Drive
- Linden Lane- 71<sup>st</sup> Terrace to 71<sup>st</sup> Street
- 72<sup>nd</sup> Terrace- Village Drive to Mission Road
- 76<sup>th</sup> Street- Briar Street to Roe Avenue
- Delmar Street- 75<sup>th</sup> Street to 79th Street
- 78<sup>th</sup> Street- Tomahawk Road to Nall Avenue
- Linden Lane- 85<sup>th</sup> Street to 83<sup>rd</sup> Terrace
- 84<sup>th</sup> Street- Roe Avenue to Fontana Road
- Somerset Drive- (Reinhardt Lane to Belinder Avenue) CARS

#### Drainage Repairs-

- 63<sup>rd</sup> Street- Roe Avenue to Delmar Street- Replace CMP drainage system.
- Brush Creek(71<sup>st</sup> Street and Tomahawk Drive) Replace Concrete Channel.

On May10, 2013, the City Clerk opened bids for the project. Three acceptable bids were received:

O'Donnell & Sons Construction	\$2,918,820.75
J.M. Fahey Construction	\$3,050,109.44
McAnany Construction	\$3,255,659.95
Engineer's Estimate	\$3,119,683.00

The Engineer has reviewed all bids and has recommended award of the low bid. One additional bid was received but it failed to meet the requirements of the contract.

There is \$3,100,000 budgeted for this project and the contract will be awarded for \$3,100,000.00. Given the bids we should be able to construct more streets than listed above. The scope of work could change on an individual street such as a complete reconstruction versus a mill and overlay causing less funds to be available for additional streets.

## **FUNDING SOURCES**

Funding is available under the 2013 Paving Project (PAVP2013), the 2012 and 2013 Drainage Programs (DRAIN12x and DRAIN13x), and the 2013 CARS Project (SODR0003).

## **RELATION TO VILLAGE VISION**

- CC1a. Make streetscape improvements to enhance pedestrian safety and attractiveness of the public realm.*
- CFS3a. Ensure streets and sidewalks are in good condition by conducting maintenance and repairs as needed.*
- TR1a. Provide sidewalks in new and existing areas to allow for continuous pedestrian movement around Prairie Village.*
- TR1b. Ensure that infrastructure improvements meet the needs of all transportation users.*

## **ATTACHMENTS**

1. Construction Agreement with O'Donnell and Son's Construction.

## **PREPARED BY**

Keith Bredehoeft, Project Manager

May 16, 2013

**CONSTRUCTION CONTRACT**  
**FOR**  
**PROJECT PAVP2013- 2013 PAVING PROGRAM**  
**PROJECT SODR0003- 2013 CARS PROJECT**  
**PROJECT DRAIN12x- 2012 STORM DRAINAGE REPAIR PROJECT**  
**THE CITY OF PRAIRIE VILLAGE, KANSAS**  
**AND**  
**O'DONNELL AND SONS CONSTRUCTION**

**THIS AGREEMENT**, is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the City of Prairie Village, Kansas, hereinafter termed the "City", and O'Donnell and Sons Construction, 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 Three Million One Hundred Thousand and Zero DOLLARS (\$3,100,000.00 ) 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 work 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 the 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  $\frac{7}{5}$  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 filed 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.

- 13.12 For parts of this contract that are partially funded by Johnson County's C.A.R.S. Program the following shall apply:

The Board of County Commissioners of Johnson County, Kansas shall be named as an additional insured on all policies of insurance issued to the Contractor and required by the terms of his/her agreement with the City.

#### 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.

14.6 For parts of this contract that are partially funded by Johnson County's C.A.R.S. Program the following Indemnification Clause shall apply:

The Contractor shall defend, indemnify and save the Board of County Commissioners of Johnson County, Kansas and the City harmless from and against all liability for damages, costs, and expenses arising out of any claim, suit, action or otherwise for injuries and/or damages sustained to persons or property by reason of the acts or omissions of the Contractor, his or her subcontractors, agents or employees in the performance of this contract.

## 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)

Ronald L. Shaffer \_\_\_\_\_

Mayor \_\_\_\_\_

City of Prairie Village \_\_\_\_\_

7700 Mission Road \_\_\_\_\_

Prairie Village, Kansas, 66208 \_\_\_\_\_

\_\_\_\_\_  
(date of execution)

\_\_\_\_\_

By \_\_\_\_\_  
(signed)

\_\_\_\_\_  
(typed name)

\_\_\_\_\_  
(typed title)

\_\_\_\_\_  
(typed company name)

\_\_\_\_\_  
(typed address)

\_\_\_\_\_  
(typed city, state, zip)

\_\_\_\_\_  
(typed telephone number)

\_\_\_\_\_  
(date of execution)

SEAL

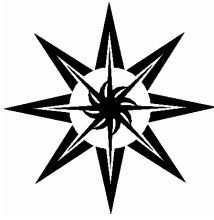
ATTEST:

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: May 20, 2013

Council Meeting Date: May 20, 2013

### **\*COU2013-18: CONSIDER CONSTRUCTION ADMINISTRATION AGREEMENT WITH TRANSYSTEMS FOR THE 2013 CONSTRUCTION PROJECTS.**

#### **RECOMMENDATION**

Move to approve the construction administration agreement with TranSystems for 2013 construction projects for \$299,299.00.

#### **BACKGROUND**

In 2012 TranSystems was selected to be the City's construction administration consultant for 2012, 2013 and 2014.

This contract will include construction administration services for the 2013 Paving Program, the 2013 CARS Project, and the 2012 and 2013 Drainage Programs.

The total construction cost for all the above projects will be about \$3,100,000. The fee was negotiated with TranSystems to be \$299,299.00 or 9.6% of construction costs. This percentage is similar to the percentage for recent construction administration contracts.

#### **FUNDING SOURCE**

Funding is available under the 2013 Paving Project (PAVP2013), the 2012 and 2013 Drainage Programs (DRAIN12x and DRAIN13x), and the 2013 CARS Project (SODR0003).

#### **RELATION TO VILLAGE VISION**

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

#### **ATTACHMENTS**

1. Construction Administration Agreement with TranSystems.

#### **PREPARED BY**

Keith Bredehoeft, Project Manager

May 16, 2013

**AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES**

**For**

**CONSTRUCTION ADMINISTRATION**

**For**

**PROJECT 2012/2013 DRAINAGE PROJECT  
PROJECT PAVP2013: 2013 PAVING PROGRAM  
PROJECT SODR0003: 2013 C.A.R.S. 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 2012/2013 Drainage Project; Project PAVP2013 2013 Paving Program; and Project SODR0003 2013 C.A.R.S. 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. Kyle Fitterer 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 \$ 299,299.00 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 \$500,000

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

**Significant Budget Proposals  
Proposed 2014 Budget**

The Significant Budget Proposals list has been updated to reflect Council action (votes) taken at the March 18, 2013 Council Committee of the Whole meeting. The following Significant Budget Proposals have been identified for discussion during the 2014 Budget process by Council and staff.

Item	Description	Background / Description of Project	Estimated Budget Amount	Council Meeting Discussion
			2014	
A 2	Develop a plan for parks funding and more park/green space (Parks Master Plan)	Discussed by Finance, Council and Parks and Rec Committee. Sales tax initiative not pursued in 2012. Staff and Parks and Rec Committee are recommending adding projects. Staff anticipates parks funding to be between \$200,000 - \$300,000 annually in the CIP budget for several years. More information and a presentation will occur in May from the Parks and Rec Committee.	\$ (250,000)	20-May-13
A 3	Address Emerald Ash Borer infestation	Currently being researched. The Tree Board discussed this item in January and will provide a recommendation in the coming months.. There needs to be a decision to treat and / or remove street trees.  Contract to remove trees depends on the dbh (thickness) of the tree. Prices vary from \$140-\$1215. The average of the cost of arterial avenues and minor streets is \$575. For 737, trees that is \$423,775 total. This is also assuming our 2013 contract agreement rate.  The cost for a single treatment on average is \$87.02 (using city labor). Because the treatment works for two years the true annual cost is \$43.51 per tree or \$33,540.87 a year excluding admin and training costs.  The estimate represents spreading the cost over 5 years.	\$ (50,000)	1-Apr-13
A 4	Rental licensing program enhancement and home ownerships initiatives	Estimated cost includes a staff position for inspection and program administration. There is also a one-time cost for a vehicle and other equipment. Cost could be offset with a fee increase. There are currently 800 rental properties license.	\$ (65,000)	20-May-13
A 7	Comprehensive Compensation Study	Recommended if Council desires to review employee salary and benefits structure. Full study includes pay, insurance and retirement plans.	\$ (30,000)	15-Apr-13

**Significant Budget Proposals  
 Proposed 2014 Budget**

A 8	Pool closing on weekdays after start of school	<p>Closing the pool Mon-Thurs after the start of schools, would save wages of concession and life guards less lost revenue. Council Committee reviewed recently and did not pursue.</p> <table border="1" data-bbox="825 272 1625 690"> <thead> <tr> <th></th> <th>Members</th> <th>Drop-in</th> <th>Total Attendance</th> <th>Gate Revenue</th> </tr> </thead> <tbody> <tr> <td>Week 1 M-Th 2012</td> <td>295</td> <td>121</td> <td>416</td> <td>\$ 624.00</td> </tr> <tr> <td>Week 2 M-Th 2012</td> <td>428</td> <td>99</td> <td>527</td> <td>\$ 494.00</td> </tr> <tr> <td>Week 3 M-Th 2012</td> <td>534</td> <td>142</td> <td>676</td> <td>\$ 696.00</td> </tr> <tr> <td><b>Total 2012</b></td> <td><b>1257</b></td> <td><b>362</b></td> <td><b>1619</b></td> <td><b>\$ 1,814.00</b></td> </tr> <tr> <td>Week 1 M-Th 2011</td> <td>442</td> <td>119</td> <td>561</td> <td>\$ 610.00</td> </tr> <tr> <td>Week 2 M-Th 2011</td> <td>503</td> <td>138</td> <td>641</td> <td>\$ 658.00</td> </tr> <tr> <td>Week 3 M-Th 2011**</td> <td>0</td> <td>0</td> <td>0</td> <td>\$ -</td> </tr> <tr> <td><b>Total 2011</b></td> <td><b>945</b></td> <td><b>257</b></td> <td><b>1202</b></td> <td><b>\$ 1,268.00</b></td> </tr> <tr> <td>Week 1 M-Th 2010</td> <td>435</td> <td>169</td> <td>604</td> <td>\$ 880.00</td> </tr> <tr> <td>Week 2 M-Th 2010</td> <td>189</td> <td>111</td> <td>300</td> <td>\$ 552.00</td> </tr> <tr> <td>Week 3 M-Th 2010*</td> <td>204</td> <td>47</td> <td>251</td> <td>\$ 224.00</td> </tr> <tr> <td><b>Total 2010</b></td> <td><b>828</b></td> <td><b>327</b></td> <td><b>1155</b></td> <td><b>\$ 1,656.00</b></td> </tr> <tr> <td colspan="5">*Closed one day</td> </tr> <tr> <td colspan="5">** Pool Closed 8 days early at the advice of the Johnson County Health Department</td> </tr> </tbody> </table>		Members	Drop-in	Total Attendance	Gate Revenue	Week 1 M-Th 2012	295	121	416	\$ 624.00	Week 2 M-Th 2012	428	99	527	\$ 494.00	Week 3 M-Th 2012	534	142	676	\$ 696.00	<b>Total 2012</b>	<b>1257</b>	<b>362</b>	<b>1619</b>	<b>\$ 1,814.00</b>	Week 1 M-Th 2011	442	119	561	\$ 610.00	Week 2 M-Th 2011	503	138	641	\$ 658.00	Week 3 M-Th 2011**	0	0	0	\$ -	<b>Total 2011</b>	<b>945</b>	<b>257</b>	<b>1202</b>	<b>\$ 1,268.00</b>	Week 1 M-Th 2010	435	169	604	\$ 880.00	Week 2 M-Th 2010	189	111	300	\$ 552.00	Week 3 M-Th 2010*	204	47	251	\$ 224.00	<b>Total 2010</b>	<b>828</b>	<b>327</b>	<b>1155</b>	<b>\$ 1,656.00</b>	*Closed one day					** Pool Closed 8 days early at the advice of the Johnson County Health Department					\$ 8,000	
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A 10	Accelerate Street Maintenance	Accelerate street maintenance with a bond issue or a mill levy increase. With the current assessed valuation estimate for 2012, 1 mill would raise \$282,170.	\$ -	1-Apr-13																																																																											
A 11	Video System - Police Department	<p>Replacement units for in-car video/audio systems.</p> <p>13 units - \$78,000                      13 installations - \$5,200</p> <p>Total = \$83,200</p>	\$ (83,200)	17-Jun-13																																																																											
A 12	Mill levy increase	This is an option even though the preference is not to. With the current assessed valuation estimate for 2012, 1 mill would raise \$282,170.	\$ 282,170	3-Jun-13																																																																											
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**Significant Budget Proposals  
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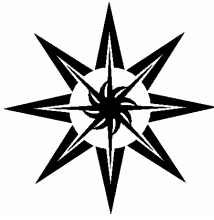
B 2	Evaluate Community Program budgets	Village Fest - \$16k, Environmental Committee - \$8k, Arts Council - \$13.5k and Sister City - \$4k	\$ -	6-May-13
B 24	Employee Merit Pool for 2014	The 2014 Budget will include a merit increase for employees. A smaller or elimination of the increase results in lower increases in FICA, retirement, etc., \$80,000 per 1% of salary. Eliminating the employee merit pool will have negative impact on morale and recruitment.	\$ -	3-Jun-13
B 25	Employee Appreciation Events	<p>The City holds an Annual Employee Appreciation Event to recognize employees for their hard work and dedication. The following are invited: full-time employees, crossing guards, bailiff, mayor and council members. Each person is allowed to bring one guest. The cost also includes the purchase of gift certificates for police officers who are required to work the night of the event and cannot attend.</p> <p>Employee Appreciation Events                  2012 Sporting KC \$10,452, 146 attendance                  2011 Royals \$6,665, 108 attendance                  2010 New Theatre \$8,599, 109 attendance</p> <p>2013 budget = \$15,000                  2012 actual = \$15,399 – the expenditures include the appreciation event, holiday lunch and milestone anniversary recognition.</p> <p>Other options discussed previously: New Dinner Theatre, bowling, Worlds of Fun, Starlight Theater, Country Club Dinner</p>	\$ -	1-Apr-13
B 28	Discuss lump sum merit awards	<p>No "one-time" payment for employees at max of range for performance review.</p> <p>At the end of 2012, only one employee received a lump-sum payment for their employee performance evaluation. The payment was a result of their base salary + performance increase being higher than the top of the range. Budget impact in 2012 of \$140.00. There are five employees currently within 2% of their range maximum.</p>	\$ -	1-Apr-13
B 29	Health Insurance Premiums	Employees pay a greater portion of health insurance premiums	\$ -	15-Apr-13
B 50	Treasurer Position	The Treasurer position is a standing appointment and the Mayor desires to continue that appointment. This position provides additional review of City financial activity. This item has been removed from budget consideration.	\$ <del>5,040</del>	

Significant Budget Proposals  
 Proposed 2014 Budget

**Removed from A List - not a part of 2014 budget process**

A 1	Community Center Feasibility Study	Determine what additional action is needed. If Council wants to proceed, additional project funds will be needed in the CIP budget. At the 03/4/13 meeting, Council voted to not pursue further action at this time.	\$ -
A 5	Review necessity of pet licenses / enumeration	Explore revenue and cost of administering animal licensing program and enumeration. Also discuss the benefits and drawbacks of licensing pets. Savings would be nominal, but would enable staff to focus on other priorities. Will be explored in 2013, but will not affect 2014 budget preparation. This item has been added to the Council's priority initiative list.	\$ -
A 6	Explore the purchase of the city's street light and /or traffic signal system	Currently KCPL owns the street lights and signal systems. The city pays an annual tariff for the use. Several neighboring cities have found it cost effective (long term) to purchase these systems through the issue of bonds. This item will be explored in 2013, but will not affect the 2014 budget preparation. This item is already included on the Council's budget priority list.  <b>2013 Budget:</b> Street lights - \$690k Traffic signals - \$680k	\$ -
A 9	WC Insurance Coverage	Explore joining KERIT instead of traditional Worker's Compensation coverage. Kerit is first dollar coverage with no deductibles. Savings amount reflects transferring to KERIT and cancellation penalty. The Insurance Committee explored the possibility of joining the KERIT insurance pool for workers comp insurance on three occasions and has not recommended a change. This item has been added to the Council's priority initiative list.	\$ 30,000





## PARKS & RECREATION COMMITTEE

Council Meeting Date: May 20, 2013

Committee Report:                    **Prioritized Parks Projects 2014-2017**

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### RECOMMENDATION

The Parks & Recreation Committee (PRC) recommends that Council include funding in the Capital Improvement Plan (CIP) for numerous park improvements. City staff has included the park improvements in the proposed 2014-2017 CIP.

The PRC recommends the following amounts for each year:

- 2014:            **\$250,000** for improvements in McCrum (\$148,800), Prairie (\$5,000), Taliaferro (\$27,000), and Harmon (\$20,000) Parks.
- 2015:            **\$225,000** for improvements in Taliaferro (\$50,000) and Bennett (\$133,000) Parks.
- 2016:            **\$375,000** for improvements in Porter (\$190,000), Taliaferro (\$70,000), and Windsor (\$119,000) Parks.
- 2017:            **\$135,000** for improvements in Harmon Park.
- Future:         **\$200,000** for improvements in Porter and Franklin Parks and northland park development.

### BACKGROUND

At the conclusion of the Parks Master Plan process, park priorities were based on the quality of the improvements assuming only one park would be completed at a time and not based on the availability of funds. There was an effort to pass a 3/8-cent sales tax to fund park projects in June 2012, but Council did not support sending the sales tax initiative to the public. Since that time, the PRC has reconsidered and reprioritized the needs of city parks. The priority list and recommendation to include funding in the CIP for the projects on the priority list was unanimously approved by the PRC at their annual park tour meeting on May 8, 2013.

### DISCUSSION

The purpose of tonight's discussion is informational and to update Council on PRC's latest priorities. PRC members, City Staff, and Doug Pickert of Indigo Design will be in attendance to present and answer questions.

Council will further discuss these priorities on June 17<sup>th</sup> as part of the CIP budget work session. At that meeting the Park Priorities will be discussed in relation to the CIP programming including streets, drainage, building, and pool projects.

## **FINANCIAL IMPACT**

The recommended items total \$985,000 over the next four budget years to be included in the CIP. This is in addition to the Park Reserve, parks operational budget, and tennis court rehabilitation project. The operational budget will increase slightly in 2014, but staff indicates there is adequate funding for park maintenance.

## **RELATED TO VILLAGE VISION**

### **2. I. Enhancing Parks and Open Space**

CFS2.a. Preserve and protect natural areas.

CFS2.b. Enhance parks for active and passive recreation through capital improvements such as landscaping, tree and flower planting, shelters picnic facilities, athletic fields, etc.

## **ATTACHMENTS**

- Detailed list of improvements and cost estimates for each park in each year 2014-2017
- Plans of McCrum, Prairie, Taliaferro, Harmon, Bennett, Porter, and Windsor Parks reflecting proposed priority changes

## **PREPARED BY**

Danielle Dulin

Assistant to the City Administrator

5/14/2013

**Parks Projects 2014 to 2017- Updated 5/16/2013**

<b>2014</b>		\$ 238,560	Added 20% for Design and Inspection	TOTAL= \$250,000
<b>McCrum Park</b>				
New play equipment and swings	\$	148,800		
New tricycle path	\$	70,000		
New small shelter(From Weltner- Paint with stone wraps)	\$	17,800		
Need fence along Roe Avenue from tennis courts to 69 <sup>th</sup> Terrace	\$	25,000		
Fake climbing rock(Move from Paririe Park)	\$	6,000		
KCPL Lines Underground	\$	5,000		
	\$	25,000		
<b>Prairie Park</b>				
Add toddler swings for play area. Remove one picnic table to accommodate swing	\$	5,000		
Climbing boulder moved to McCrum Park				
<b>Taliaferro Park</b>				
New nature play area to enhance play experience	\$	25,000		
	\$	25,000		
<b>Harmon Park</b>				
Nine hole disc golf park	\$	20,000		
	\$	20,000		

<b>2015</b>		\$ 217,200	Added 20% for Design and Inspection	TOTAL = \$225,000
<b>Taliaferro Park</b>				
Sports field improvements and expansion for baseball and soccer	\$	50,000		
	\$	50,000		
<b>Bennett Park</b>				
New 8 foot perimeter walking path	\$	131,000		
Nature play area with sand box relocation	\$	51,000		
New Play Set	\$	10,000		
	\$	70,000		

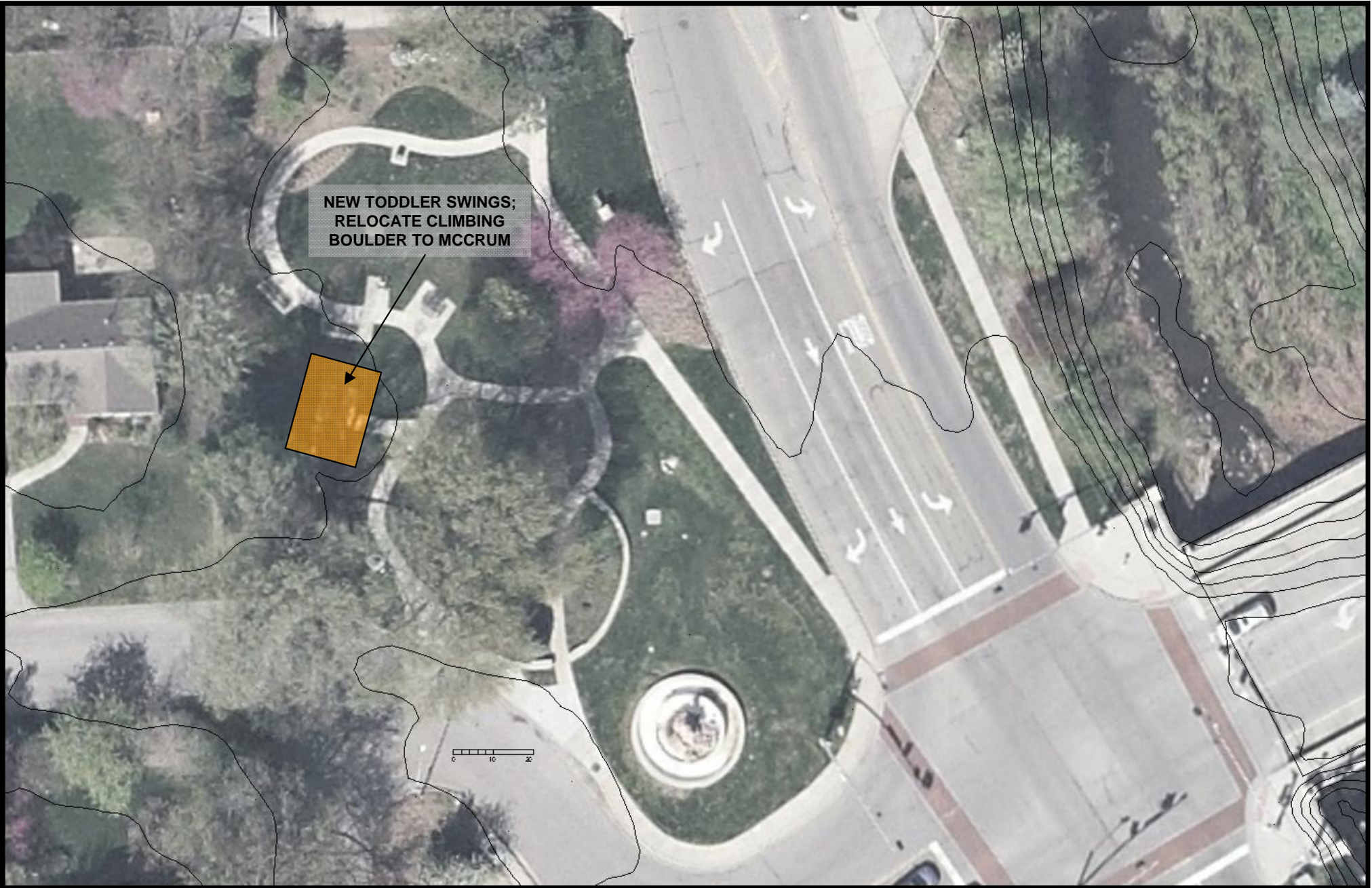
<b>2016</b>		\$ 370,800	Added 20% for Design and Inspection	TOTAL= \$375,000
<b>Porter Park</b>				
New nature play area to enhance play experience	\$	120,000		
Sports field drainage improvements for baseball and soccer	\$	40,000		
Extension of trail from SW edge on Roe to NE along creek ending at Tomahawk Trail	\$	15,000		
New Backstops at ball fields	\$	40,000		
	\$	25,000		
<b>Windsor Park</b>				
Park Benchs and Tables	\$	119,000		
New Play Set	\$	4,000		
Nature Play at Volley Ball Court	\$	70,000		
Field drainage	\$	30,000		
	\$	15,000		
<b>Taliaferro Park</b>				
New Play Set	\$	70,000		
	\$	70,000		

<b>2017</b>		\$ 132,000	Added 20% for Design and Inspection	TOTAL = \$135,000
<b>Harmon Park</b>				
New Nature play Play Set	\$	110,000		
New Play Set	\$	70,000		
	\$	40,000		
<b>Future</b>				
	\$	180,000		TOTAL= \$200,000
Porter Park New Play Set	\$	70,000		
Franklin Park New Play Set	\$	110,000		
Northland Park Development				



PRAIRIE VILLAGE PARKS: 2014-2019 CIP

# McCRUM PARK



PRAIRIE VILLAGE PARKS: 2014-2019 CIP

# PRAIRIE PARK



PRAIRIE VILLAGE PARKS: 2014-2019 CIP

# TALIAFERRO PARK



PRAIRIE VILLAGE PARKS – 2014-2019 CIP

# HARMON AND SANTA FE PARKS



PRAIRIE VILLAGE PARKS: 2014-2019 CIP

# BENNETT PARK





NEW PLAY SETS W/  
NATURE PLAY

NEW  
BACKSTOPS

8' WALKING  
PATH

DRAINAGE  
IMPROVEMENTS

PRAIRIE VILLAGE PARKS: 2014-2019 CIP

# PORTER PARK



PRAIRIE VILLAGE PARKS: 2014-2019 CIP

# WINDSOR PARK



## ADMINISTRATION

Council Committee Meeting Date: May 20, 2013

**Budget Discussion Item: Property Maintenance, Rental Licensing, Home Ownership**

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### **BACKGROUND:**

As part of the 2014 budget discussions, the City Council asked staff to look at the costs associated with adding additional staff in the area of property maintenance. Currently, the draft 2014 budget contains \$65,000 as a place holder for adding one additional FTE to the Community Development Department.

Council Member Odell is requesting the opportunity to discuss this issue in greater detail. The following discussion topics are anticipated:

- General Discussion of Current Code Enforcement Activities
- Inspection Processes for Owner Occupied and Rental Properties
- Merits of Permanent Staff/Outsourcing
- Possible Home Ownership Incentives

The intent of the discussion is to determine if Council wishes to leave the budgeted amount of \$65,000 in the FY 2014 budget and have staff develop an action plan based upon the direction provided by City Council

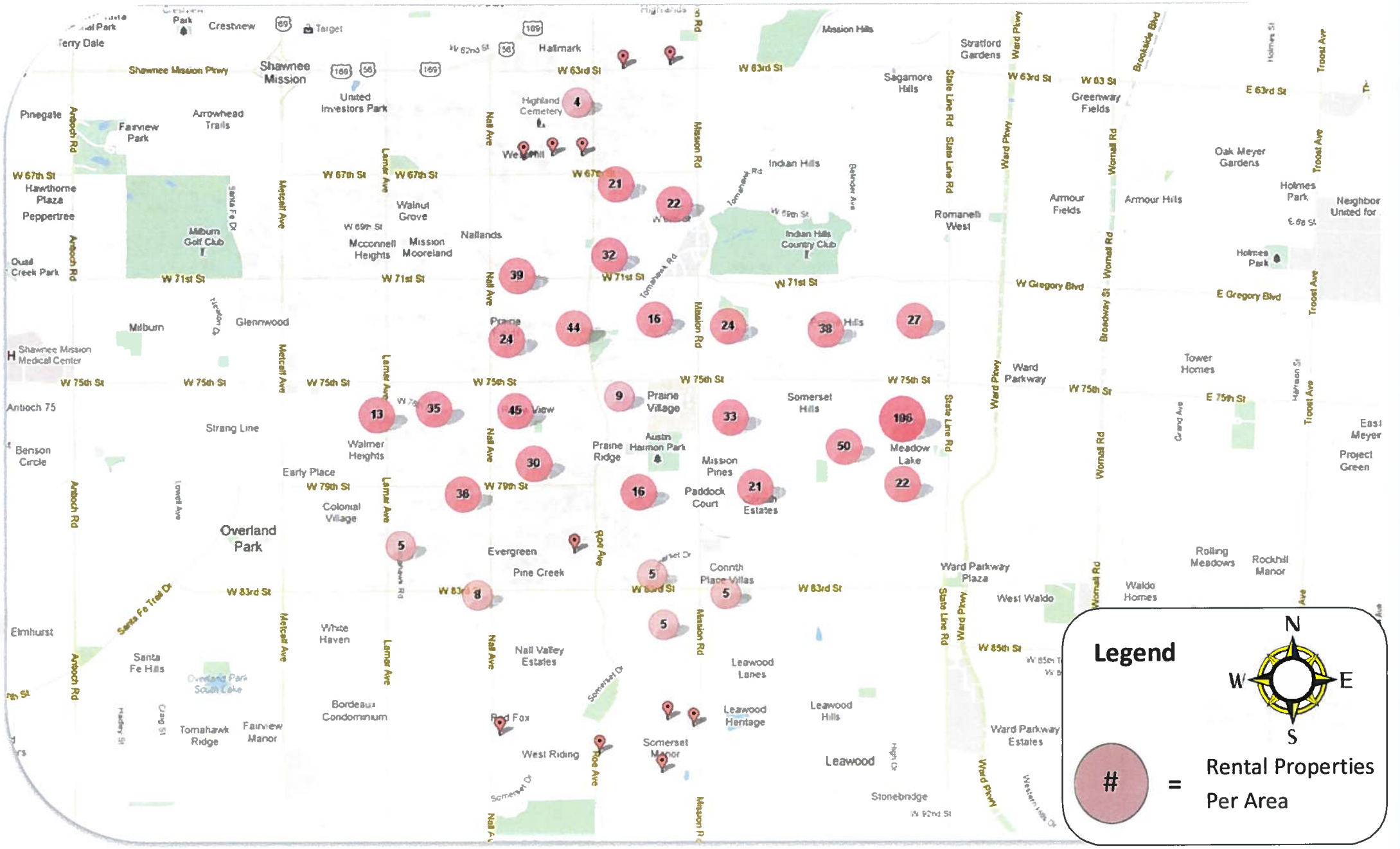
### **ATTACHMENT:**

Map of Existing Rental Properties

### **PREPARED BY:**

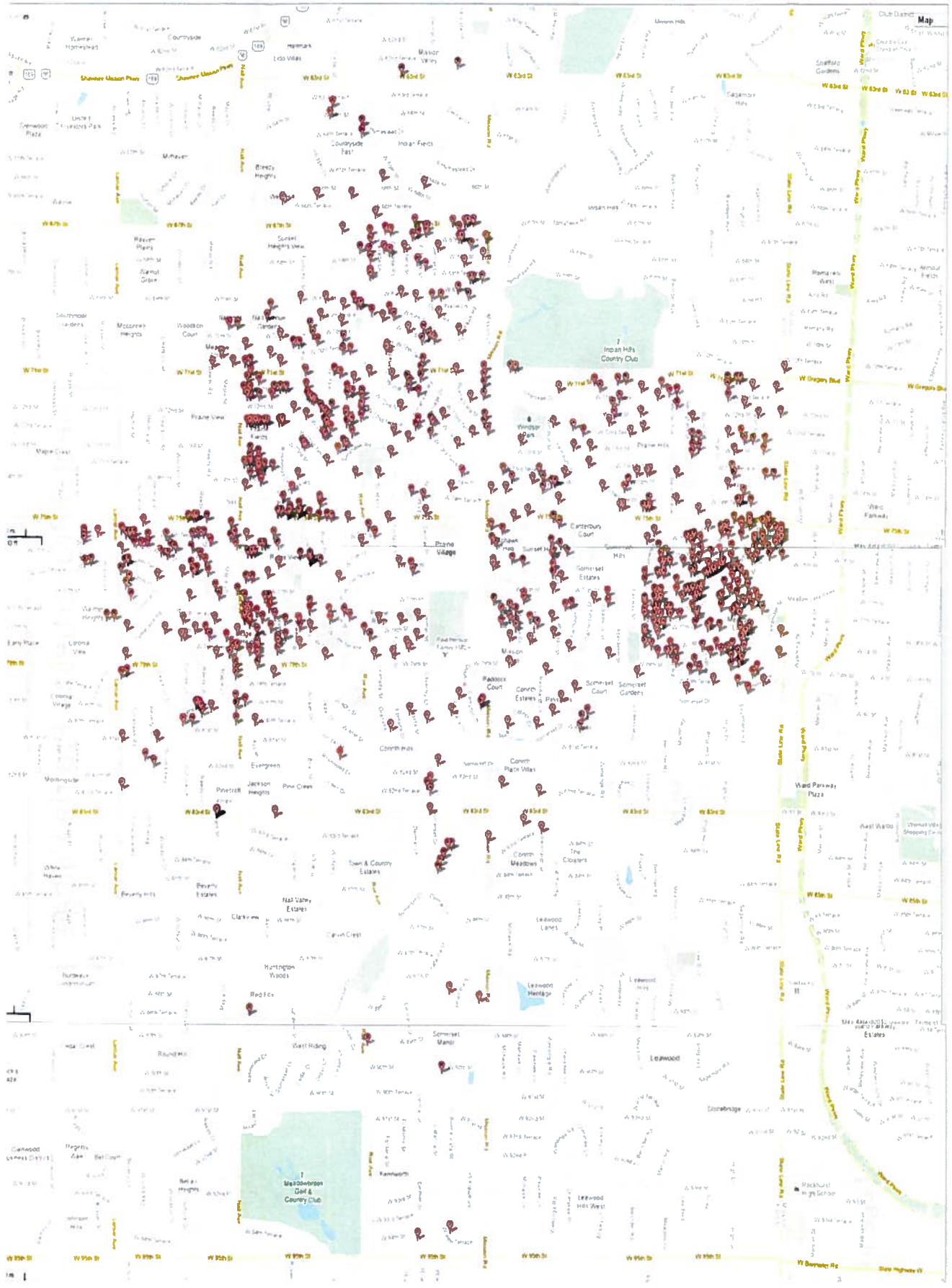
Dennis Enslinger  
Assistant City Administrator  
Date: May 17, 2013

# Rental Properties in Prairie Village



**Legend**

# = Rental Properties Per Area



**COUNCIL MEETING AGENDA  
CITY OF PRAIRIE VILLAGE  
Council Chambers  
May 20, 2013  
7:30 PM**

- I. **CALL TO ORDER**
- II. **ROLL CALL**
- III. **PLEDGE OF ALLEGIANCE**
- IV. **PUBLIC HEARING**

**2014 Community Development Block Grant**

- V. **PUBLIC PARTICIPATION**
- VI. **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 City Council Minutes - May 6, 2013
- 2. Approve agreement with the Red Cross for Aquatic Examiner Services for the 2013 Season
- 3. Approve allocation of \$15,000, not-to-exceed \$8,000 in expenses and the allocation of funding from General Fund Contingency to the Mercer Group, Inc. for the executive search for the Public Works Director
- 4. Approve the following contracts for VillageFest 2013: Del Sawyer, Food Vendor (pays \$175); Captured Memories LLC, Photo Booth (\$500); Susan Lee, Vocal Performance (\$100); Sister Act Face Painting, Face Painting & Wacky Hair (\$2240); Rex Nolen, Food Vendor (pays \$175); Clement McCrae Puppets, Puppet Show (\$875); HyVee, Food Vendor (pays \$175); Hiccup Productions, Jim Cosgrove, Funky Mama, Sound System (\$2300)
- 5. Ratify appointment of Craig Stramel to the Prairie Village Sister City Committee to a three year term expiring in April, 2016.

- VII. **MAYOR'S REPORT**

**Presentation of Planning/Zoning Considerations including "Golden Factors" - Ron Williamson**

- VIII. **COMMITTEE REPORTS**

**Council Committee of the Whole**

- COU2013-20 Consider contract with Serenity Landscape Design, LLC for Weed Abatement Services
- COU2013-19 Consider Construction Contract with O'Donnell and Son's Construction for Project 2013 Paving, 2013 CARS, and 2012/2013 Drainage for \$3,100,000.00
- COU2013-18 Consider Construction Administration Agreement with TranSystems for 2013 Construction Projects for \$299,299.00

**IX. STAFF REPORTS**

**X. OLD BUSINESS**

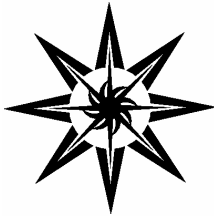
**XI. NEW BUSINESS**

**XII. ANNOUNCEMENTS**

**XIII. 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](mailto:cityclerk@pvkansas.com)**



## PUBLIC WORKS DEPARTMENT

Council Meeting Date: May 20, 2013

### PUBLIC HEARING - 2014 Community Development Block Grant

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#### BACKGROUND

City staff is considering an application to Johnson County for Community Development Block Grant (CDBG) funds for Fiscal Year 2014. The Johnson County program allows cities to apply for funds every other year when applying for funding near the \$200,000 level thus we are applying for 2014. There is no match requirement by the applicant but matching funds do improve the proposed project score. Typical match amounts fall in the range of 20% - 30% depending on total project cost.

The purpose of the public hearing is to obtain citizen input from the public on the possible uses of CDBG funds in resolving local community development and housing needs. CDBG grant funds may be used to carry out eligible activities including, but not limited to, housing rehabilitation, public improvements, economic development and public services. All CDBG projects must address one of three national objectives, benefit low and moderate income persons; aid in the prevention or elimination of slums or blight; or meet other community development needs having particular urgency.

Below are two projects for consideration that staff has identified that fit at least one of the required criteria:

#### **Project #1 - Rainbow Drive- 75<sup>th</sup> Street to Booth Drive- \$200,000**

Rainbow Drive between 75<sup>th</sup> Street and Booth Drive is a 932 foot long residential street. The street has standing water in the gutter for long periods after the wet periods. The pavement and concrete is deteriorating. The construction will replace all curb and gutter on both sides of the street and include 3 inch mill and overlay. Replacing the curb and gutter will necessitate the replacement of the driveway aprons to meet the new gutter profile. This project is recommended by staff to be the proposed CDBG project for 2014.

#### **Project #2 - Booth Drive- 75<sup>th</sup> Street to 78<sup>th</sup> Street - \$195,000**

Booth Drive between 75<sup>th</sup> Street and 78<sup>th</sup> Street is a 2,200 foot long collector street. The pavement is currently in bad condition. This project will mill and overlay the existing deteriorated asphalt. No other work will be included in this project.

#### FINANCIAL SOURCE

Funding of the City share will be from the 2014 C.I.P.

#### PREPARED BY

Keith Bredehoeft, Project Manager

May 16, 2013



**CONSENT AGENDA**

**CITY OF PRAIRIE VILLAGE, KS**

**May 20, 2013**

**CITY COUNCIL  
CITY OF PRAIRIE VILLAGE  
May 6, 2013**

The City Council of Prairie Village, Kansas, met in regular session on Monday, May 6, 2013, at 7:30 p.m. in the Council Chambers of the Municipal Building.

**ROLL CALL**

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

Also present were: Wes Jordan, Chief of Police; Keith Bredehoeft, Interim Public Works Director; Katie Logan, City Attorney; Quinn Bennion, City Administrator; Dennis Enslinger, Assistant City Administrator; Lisa Santa Maria, Finance Director , Danielle Dulin, Assistant to the City Administrator and Joyce Hagen Mundy, City Clerk.

Dale Warman led all those present in the Pledge of Allegiance. Mr. Warman announced that Mayor Shaffer is unable to attend this evening's meeting due to a family emergency.

**PUBLIC PARTICIPATION**

Chuck Dehner, 4201 West 68<sup>th</sup> Terrace, expressed his loss of confidence in the City Council and government. He believes government should serve the needs of the residents and not the elite developers. Mr. Dehner repeated earlier challenges to the statement made by Lane4 in regard to both the CID developments at Corinth Square and Prairie Village Shopping Centers. He opposes the funding they are receiving through the CID agreement and feels they are in breach of this agreement and that the City should bring legal action. Mr. Dehner asked

that his comments be included as part of the official record and are attached at the conclusion of these minutes.

With no one else to address the Council Public Participation was closed at 7:45 p.m.

## **CONSENT AGENDA**

Charles Clark moved the approval of the Consent Agenda for May 6, 2013:

Approve the Regular Council Meeting Minutes - April 15, 2013

Approve Claims Ordinance 2905

Ratify the Mayor's appointment of Dianne Pallanich to the Parks & Recreation Committee with her term expiring in April 2015

Approve the following contracts for VillageFest 2013; Chris Cakes for the pancake breakfast (\$3.25/plate), American Waste Systems for the stage (\$827.00) and A-Z Exotic Animal Entertainment for the petting zoo and pony rides (\$1,950.00)

Authorize the Mayor to execute the following proclamations:

May 1, 2013 - Cold War Victory Day

May 5-11, 2013 - Municipal Clerk's Week

May 12-18, 2013 - National Police Week

Approve the bid award for swimming pool chemicals to Edwards Chemical, Inc.

Approve the request to have KCP&L install a new street light at 8136 Ash Street

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

## **MAYOR'S REPORT**

There was no Mayor's Report as Mayor Shaffer was absent due to a family emergency; however, he noted the Mayor's active involvement in the community as is reflected in his report at each meeting.

## **COMMITTEE REPORT**

**Council Committee of the Whole**

COU2013-17 Consider Contract with Little Joe's Asphalt, Inc. for 2013 Street Repair Program

On behalf of the Council Committee of the Whole, Charles Clark moved the City Council authorize the Mayor to execute the construction contract with Little Joe's Asphalt, Inc. for Project P5001: 2013 Street Repair Program in the amount of \$173,000. The motion was seconded by Ruth Hopkins and passed unanimously.

**Planning Commission**

PC2013-111 Consider Final Plat for Prairie Village Shopping Center

Dennis Enslinger reported that on April 2<sup>nd</sup>, the Planning Commission reviewed and approved the preliminary and final plats for the Prairie Village Shopping Center subject to seven conditions. The new plat does not include the UMB Bank and Service Station properties. With the withdrawal of these properties, the vacation will only be for Mission Lane between Prairie Lane and Mission Road. Prairie Lane and a portion of Mission Lane will remain public streets. The owner of the Prairie Village Center, through a separate agreement with the City to be considered under New Business, will maintain the public right-of-way for Prairie Lane and the small portion of Mission Lane not being vacation under the plat.

Mr. Enslinger stated the plat has been approved and the Council action is only the acceptance of the easements and rights-of-way reflected on the plat and the vacation of Mission Lane.

Laura Wassmer asked for clarification on the construction of the trail/sidewalk. Mr. Enslinger responded the plat has an 8-foot easement per the Planning Commission conditions, but noted this does not require the construction of an 8-foot sidewalk. The construction of the sidewalk is governed by the site plan which has already been approved by the Planning Commission and is a variable width sidewalk that will all fall within the platted 8-foot easement.

Michael Kelly asked for clarification on the Mission Lane vacation. Mr. Enslinger noted at one point in time Mission Lane was part of Mission Road and as such designated as a public street. The City does not feel it should be responsible for street located within a private development. The intent of the CID agreement was to remove the City from any responsibility for maintenance of this currently public street. Since the entire street cannot be vacated on the plat, the property owners have agreed to an agreement with the city whereby they will be responsible for the maintenance of the portion to remain public.

Laura Wassmer confirmed that includes any reconstruction. Mr. Enslinger noted that once the proposed improvements to Mission Lane are finished any further maintenance or improvements cannot be submitted under the CID agreement.

Brooke Morehead asked if Starbucks has a signed lease for the new retail building. Mr. Enslinger responded that as of last week it did not. He noted the conditional use permit for the drive-thru has been approved and is a separate issue unrelated to the plat approval.

Mrs. Morehead asked if the developer will be constructing an 8-foot trail. Mr. Enslinger responded the Planning Commission has approved a proposed variable width sidewalk as part of the approved site plan. Staff has attempted to work with the applicant and designed a possible 8-foot trail throughout. Staff has concerns with the maintenance of a 2-foot landscape area. He noted the construction of an 8-foot trail throughout could be done at no greater cost.

Michael Kelly questioned why the developer is not in violation of the CID agreement when the intent of the agreement was for the construction of an 8-foot trail throughout. Mr. Enslinger responded the provisions of the CID agreement do not specifically state an 8-foot trail is to be constructed, it states a pedestrian trail. Mr. Kelly noted he felt the CID agreement was not negotiated in good faith by the developer and noted the only reason to accept the 8-

foot easement is to provide for possible future construction of an 8-foot trail as the plat stays with the land regardless of ownership.

Ruth Hopkins stated there has been a lot of discussion on sidewalks and trails by the Council with the Council not consistently building 8-foot sidewalks. She feels it would be hypocritical to hold the developer to a higher standard than the city.

Laura Wassmer stated the trail system was part of the Parks Master Plan. She noted the Park & Recreation Committee does not support the construction of 8-foot trails at all locations. She stated she continues to hear residents asking for more green space, not more concrete sidewalk.

David Morrison questioned how there is not a breach of the CID agreement when all of Mission Lane is not being vacated. City Attorney Katie Logan responded the purpose of the vacation was to remove the city from responsibility for maintenance and this will be accomplished by the proposed maintenance agreement.

Ted Odell stated he believes the plat should show an 8-foot easement.

Curtis Petersen, with Polsinelli Shughart, 6201 College Blvd. representing the ownership group, requested the City Council remove condition #2 requiring an 8-foot trail easement to be shown on the east side of Mission Road. He stated their objection is not related to cost acknowledging that adding additional concrete would cost less than maintaining planting landscape and trees as proposed. He noted their sidewalk design reflects what they feel is the best option given the overall development puzzle for this project. He noted that 7 to 8-foot sidewalks make up more than half of the proposed sidewalk. The construction of 8-foot pedestrian limits their landscaping potential for the project. He feels the proposed trail width will sufficiently address pedestrian needs. When the city's tree board reviewed their landscape plan last week, they recommended having more green space. They are requesting a revision

to the plat trail easement from 8-feet to 6-feet or stated that they would file a separate agreement designating the trail easement as they plan to construct the trail and not reflect the easement on the plat.

Laura Wassmer asked what the downside was of having an 8-foot easement. Mr. Petersen responded an 8-foot easement would severely limit what could be placed in the green space and in the patio area could not be constructed over the easement.

Michael Kelly asked if it was not a cost issue, why they were not willing to construct the 8-foot pedestrian trail as intended by the CID agreement. Mr. Petersen noted the importance of the parking for Hen House customers and the tension created in the overall project. Mr. Kelly noted the loss of parking and tension is being created by the expansion of the Hen House.

Ted Odell asked if the Council changed the recommendation if the plat would need to go back to the Planning Commission. Mr. Enslinger responded the Council could make the changes as it is the body that accepts easements. He added staff has offered a lot of alternatives to the developer that would accommodate an 8-foot pedestrian trail. If something other than an 8-foot easement is approved, there could not be an 8-foot trail constructed in the future. This is the city's only opportunity to ensure that option in the future and is the strong recommendation of staff.

David Belz noted if the developer does not have to build an 8-foot trail, why they are requesting the easement be removed. Mr. Petersen stated they believe theirs is the best design for the project.

Laura Wassmer questioned the benefit of an 8-foot easement when the site plan has already approved the construction of the proposed trail which is less than 8 feet. Dennis Enslinger responded the Council directed staff to look at options for an 8-foot trail. These have

been presented to the developer. The designation of an 8-foot easement does not limit the proposed designed sidewalk. Approving the plat as recommended will not change the design. However, he noted the development and ownership of this property will change over the years and if the City ever wants an 8-foot pedestrian trail, now is the time to include an easement on the plat that would allow for future construction.

Brooke Morehead stated she is bothered visually by the proposed variable width trail and would prefer to see a single width. Mr. Enslinger noted staff is doing what it has been asked to do in representing the best interest of the City.

Andrew Wang asked if landscaping would not be provided if an 8-foot easement was required. Mr. Petersen stated they will do what the city wants for landscaping; however, he noted a bigger issue is the impact on the construction of the patio area in the new retail building as you cannot construct a permanent structure over an easement.

Charles Clark moved the City Council authorize the Mayor to execute the Final Plat for the Prairie Village Shopping Center at 71<sup>st</sup> Street and Mission Road accepting easements and rights-of-way subject to the following conditions: 1) that the trail easement for Tomahawk Road be noted as Section 7.04 of the CID Agreement to be shown on the plat as it was on the previous plat, 2) that an eight-foot Trail Easement be shown on the east side of Mission Lane, 3) that the KCP&L line running across Lot 2 be installed underground, 4) that Tract A be dedicated as a utility and cross access easement in the text of the plat, 5) that the text on the UMB lot be removed, 6) that the applicant submit the Final Plat to the Johnson County survey for review and 7) that the Final Plat as approved be revised and three copies submitted to the City for their records. The motion was seconded by David Morrison.

Laura Wassmer asked if a 7-foot easement would remove the problems with the outdoor patio.



Owen Buckley with Lane4 stated they did not feel two feet more or less of sidewalk would be noticeable in the big picture of the project. They want to have the luxury of the addition space for landscaping.

Michael Kelly stated he would be voting no and questioned the ability of the City to enforce its own agreement. Mr. Enslinger responded the proposed plat represents the best interests of the City. If it is not approved, the city will have no ability to secure an 8-foot pedestrian trail now or in the future.

Ted Odell reminded the Council they are looking at the plat only and that they do not know what will be on that property 50 years from now.

David Belz stated he would be voting in support to provide the city the option for a future 8-foot pedestrian trail.

Laura Wassmer does not supporting limiting the current project for future possibilities.

Ruth Hopkins agreed with Ms Wassmer and noted the width of the pedestrian trail was not specifically addressed in the agreement. Mr. Enslinger responded the CID agreement was negotiated based on assumptions noting that most of the pedestrian sidewalks within the center are 8 feet in width or greater. He added the plat has been approved, the issue before the Council is the acceptance of easements and rights-of-way. If this motion is defeated there will be no easements or vacation of rights-of-way included on the approved plat.

The motion was voted on and failed due to a lack of a majority with a 6 to 6 tie with the acting chair voting as a Councilmember which is allowed by City Code.

Laura Wassmer moved to authorize the Mayor to execute the Final Plat for the Prairie Village Shopping Center at 71<sup>st</sup> Street and Mission Road accepting easements and vacation of rights-of-way subject to the following conditions recommended with condition #2 being

amended to reflect a 6-foot trail easement instead of an 8-foot trail easement. The motion was seconded by Ruth Hopkins. The motion was voted on and failed by a 3 to 9 vote.

Dennis Enslinger stated that failure to approve the plat places the City in violation of the CID agreement which required the vacation of Mission Lane.

Curtis Petersen stated the developer needs action this evening and stated they were willing to accept the 8-foot easement with the Council directing staff to investigate options for the construction of the patio. Dennis Enslinger state staff would look at alternatives, but noted the City Council cannot alter an approved site plan. Michael Kelly asked it the application would go back to the Planning Commission. Mr. Enslinger stated on minor issues staff works with the applicant; however, if an agreement cannot be reached that meets the intent of the original approval, the application would be sent back to the Planning Commission.

Charles Clark moved reconsideration of the original motion with the additional direction that staff works with the applicant on options for the construction of the outdoor patio for the new retail building. The motion was seconded by David Belz and voted on with the motion passing by a 7 to 5 vote. \*Note: this vote was later revisited.

## **STAFF REPORTS**

### **Public Safety**

- Chief Jordan announced that the police officers will be participating in Tip-a-cop next Thursday, May 16<sup>th</sup> at Johnny's to raise funds for Special Olympics
- 2013 Citizen's Police Academy will begin September 18<sup>th</sup> and continue for 11 weeks on Wednesday evenings.
- The department will have emergency vehicle training at the Speedway in May and July. Council members were invited to attend and participate.

### **Public Works**

- Crews are filling the pools in preparation for their opening at the end of the month.
- There is currently construction work on 63<sup>rd</sup> Street by WaterOne and Kansas Gas is also replacing a line. The city will begin its project when their work is complete.
- Bids will open this Friday for the 2013 Paving, CARS and Storm Drainage Projects.

## Administration

- Dennis Enslinger reported that work has begun on the Mission Lane Project.
- There will be several large construction projects underway this summer including work at Indian Hills Middle School, Kansas City Eye Clinic, St. Ann's Expansion as well as continuing work at the shopping centers.
- Standees is planning to open Memorial Day weekend.
- KOMA training is being offered by the District Attorney's office on June 6<sup>th</sup>.
- The State Legislature is back in session -the primary focus will be the adoption of a budget.
- The Planning Commission will hold a public hearing on the Mission Valley project tomorrow evening, May 7<sup>th</sup> at 7 o'clock at The Village Church. In anticipation of a lengthy hearing, the hearing will be continued to the June 4<sup>th</sup> meeting of the Commission for action.
- Danielle Dulin announced that the city has still not hired a synchronized swim coach.
- Lisa Santa Maria reviewed the first quarter financial report for 2013 reporting that revenue was at the anticipated level.
- The budget simulator is now on-line. 45 people have used the simulator reflecting that they are satisfied with current status. The demonstration of the simulator scheduled for this evening will be done at a later meeting.
- Katie Logan reminded the Council of the importance of their not taking a position on the upcoming zoning issue and to remain open and objective. Any Council member who has openly pre-judged or declared how they will vote should recues themselves from action when the issue comes before the Council. Ms Logan stated to do otherwise places the decision made by the Council in jeopardy during a legal challenge.
- Ms Logan will review at the next meeting the recently adopted gun House Bill 8052. The provisions of the bill do not become effective until July 1, 2013. She noted the city can exempt from metal checks, but there must be other procedures in place.

Brooke Morehead suggested individuals sign in at the reception station when they enter City Hall and indicate who they are meeting with.

Chief Jordan responded the police department is currently working a security analysis of the building. He noted the biggest challenge is the large number of people in the building for court procedures. Staff will be discussing this item in the near future.

- Quinn Bennion announced congratulations to Deputy City Clerk Jeanne Koontz on her recent graduation from KU with her MPA degree.
- Notify JoCo is up and running. The city has posted several messages through the system. If council members are not signed up, they are missing messages.
- Committee assignments have been made by the Mayor and distributed. These assignments begin immediately.
- The Public Works Director Search is underway. Council members will be contacted by Mr. Mercer for their input.

## OLD BUSINESS

### **Reconsideration of PC2013-111 Final Plat for Prairie Village Shops**

The City Attorney advised that the motion to reconsider made earlier in the meeting was invalid as a motion to reconsider needs to be made by an individual on the prevailing side of the motion. Mr. Clark voted in favor of the motion which failed for failure to secure a majority vote. The motion needs to be made by an individual voting in opposition to the original motion.

Ruth Hopkins confirmed that a different motion could be made on the issue.

Ruth Hopkins moved the City Council authorize the Mayor to execute the Final Plat for the Prairie Village Shopping Center at 71<sup>st</sup> Street and Mission Road accepting easements and rights-of-way subject to the following conditions: 1) that the trail easement for Tomahawk Road be noted as Section 7.04 of the CID Agreement be shown on the plat as it was on the previous Final Plat, 2) that a separate document be filed showing the easement as the trail has been proposed to be constructed by the developer, 3) that the KCP&L line running across Lot 2 be installed underground, 4) that Tract A be dedicated as a utility and cross access easement in the text of the plat, 5) that the text on the UMB lot be removed, 6) that the applicant submit the Final Plat to the Johnson County surveyor for review and 7) that the Final Plat as approved be revised and three copies submitted to the City for their records. The motion was seconded by Laura Wassmer.

Steve Noll confirmed that those would be the permanent easements on the plat.

The motion was voted on and failed by a vote of 3 to 9.

Ruth Hopkins moved the City Council authorize the Mayor to execute the Final Plat for the Prairie Village Shopping Center at 71<sup>st</sup> Street and Mission Road accepting easements and rights-of-way subject to the following conditions: 1) that the trail easement for Tomahawk Road be noted as Section 7.04 of the CID Agreement be shown on the plat as it was on the

previous Final Plat, 2) that an eight foot Trail Easement be shown on the east side of Mission Lane, 3) that the KCP&L line running across Lot 2 be installed underground, 4) that Tract A be dedicated as a utility and cross access easement in the text of the plat, 5) that the text on the UMB lot be removed, 6) that the applicant submit the Final Plat to the Johnson County surveyor for review and 7) that the Final Plat as approved be revised and three copies submitted to the City for their records. The motion was seconded by David Belz and passed by a vote of 7 to 5.

**NEW BUSINESS**

**Consideration of Request by PV Retail Partners, LLC to enter into a Right-of-Way Maintenance Agreement to comply with the intent of the Prairie Village Community Improvement District Development Agreement.**

Ruth Hopkins moved the City Council authorize the Mayor to execute the Right-of-Way Maintenance Agreement provided for by PV Retail Partners, LLC. The motion was seconded by Charles Clark and passed by an 8 to 4 vote.

**ANNOUNCEMENTS**

Planning Commission (6641 Mission Road)	05/07/2013	7:00 p.m.
Parks & Recreation Committee (Porter Park)	05/08/2013	6:00 p.m.
JazzFest Committee (3304 W. 71 <sup>st</sup> Street)	05/09/2013	7:00 p.m.
Sister City Committee	05/13/2013	7:00 p.m.
Prairie Village Arts Council	05/15/2013	7:00 p.m.
Council Committee of the Whole	05/20/2013	6:00 p.m.
City Council	05/20/2013	7:30 p.m.

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The Prairie Village Arts Council is pleased to announce a photography exhibit by Jacia Humiston in the R.G. Endres Gallery for the month of May. The reception will be held on Friday, May 10<sup>th</sup> from 6:30 to 7:30 p.m.

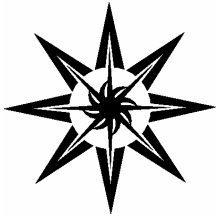
Recreation memberships are on sale in the City Clerk’s Office. The pool opens on Saturday, May 25<sup>th</sup> at 11:00 a.m.

The City offices will be closed on Monday, May 27<sup>th</sup> in observance of the Memorial Day Holiday. Deffenbaugh also observes this holiday so trash pick-up will be delayed one day.

### **ADJOURNMENT**

With no further business to come before the City Council, the meeting was adjourned at 9:50 p.m.

Joyce Hagen Mundy  
City Clerk



## ADMINISTRATION DEPARTMENT

Council Meeting Date: May 20, 2013

**Consent Agenda: 2013 Aquatic Examiner Contract with American Red Cross**

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### **RECOMMENDATION**

Recommend the City Council approve the 2013 American Red Cross Aquatic Examiner Service Agreement.

### **BACKGROUND**

The City contracts with the American Red Cross to participate in the Aquatic Examiner Program. The contract involves three (3) unannounced, video-taped onsite evaluations in which lifeguards are tested on guarding and CPR skills.

### **FINANCIAL IMPACT**

Each onsite evaluation costs \$325 for a total of \$975. Funding has been budgeted in the 2013 Pool budget.

### **ATTACHMENTS**

Aquatic Examiner Services Agreement

### **PREPARED BY**

Danielle Dulin  
Assistant to the City Administrator  
5/14/13

# **AMERICAN RED CROSS AQUATIC EXAMINER SERVICE AGREEMENT**

This Agreement is made and entered into on March 31, 2013, by and between the Kansas City Territory of the American National Red Cross (Red Cross), having its principal address at 211 W Armour Blvd. Kansas City Mo. 64111 and City of Prairie Village, an aquatic facility with its principal address at 7700 Mission Road Prairie Village, KS 66208.

## **I. RED CROSS AGREES TO:**

Provide to the Facility one or more parts of the American Red Cross Aquatic Examiner

Service as identified below (by initials of an authorized Facility representative in the spaces provided). For the purpose of this Agreement, the aquatic examiner service shall mean the Red Cross service as defined fully in Aquatic Examiner Service Client Get Started Guide published in 2013, and as amended from time to time, a copy of which has been provided concurrently with this Agreement and the provisions of which are incorporated herein by reference (Aquatic Examiner Service Client Get Started Guide).

- A. **Annual Lifeguarding Operations Assessment:** \_\_\_\_\_ (Initial here). A Red Cross Aquatic Examiner Service Administrator will tour the Aquatic Facility and review the presence of policies, procedures and protocols, emergency action plans and lifeguarding safety and rescue equipment as described in the Aquatic Examiner Service Client Get Started Guide. The Red Cross will provide a written report identifying the results of the lifeguarding operations assessment and suggestions for improvement.
- B. **On-site Lifeguard Observations and Evaluations:** \_\_\_\_\_ (Initial here). The Red Cross will administer unannounced on-site evaluations to specifically review the activities identified in the On-Site Lifeguard Observation and Evaluation Checklist. A copy of this checklist has been provided concurrently with this Agreement and the provisions of which are incorporated herein by reference.
- C. **Lifeguard and support personnel training:** As described in Aquatic Examiner Service Client Get Started Guide, the Red Cross will assist the Facility with:
  - (1) Annual or preseason orientation and training \_\_\_\_\_ (Initial here if selected);
  - (2) Annual Red Cross training \_\_\_\_\_ (Initial here if selected);
  - (3) In-service training \_\_\_\_\_ (Initial here if selected).
  - (4) Aquatic Emergency Action Plan Drills (Initial here if selected).



## **II. THE FACILITY AGREES TO:**

Comply with all facility Aquatic Examiner Service requirements as set forth in the Aquatic Examiner Service Client Get Started Guide including but not limited to:

- A. Accepting responsibility for all activities associated with developing and implementing its own operational and emergency procedures.
- B. Maintaining on a current basis all applicable government permits or licenses to operate the Facility.
- C. Granting permission for Red Cross access to the Facility as necessary in order to conduct the annual lifeguarding operations assessment, on-site lifeguarding observations and evaluations, and lifeguard and support personnel training as applicable.
- D. Assuring that to the extent the Facility elected annual or preseason orientation and training, annual Red Cross training, in-service training, and/or Aquatic Emergency Action Plan Drills that the relevant Aquatic Examiner Service requirements as outlined in the Aquatic Examiner Service Client Get Started Guide are provided to Facility staff.

## **III. COMPENSATION**

- A. Upon invoicing, the Facility will provide compensation to the Red Cross for Aquatic Examiner services for each Facility location at the following rates net 30 days. Failure to pay will result in termination.
- B. Rates:

## **IV. USE OF RED CROSS NAME AND EMBLEM**

Subject to full compliance with the Aquatic Examiner Service, the Facility shall have the right to use the Red Cross name and emblem (consisting of a red Greek cross) solely to acknowledge that the Facility has participated in the Red Cross Aquatic Examiner Service. Such acknowledgment shall only take the form of:

**Proud participant of the American Red Cross Aquatic Examiner Service.**

With the exception of the foregoing paragraph, the Facility acknowledges and agrees that nothing in this Agreement shall constitute a license or permission for the Facility to use the American Red Cross name or Red Cross emblem in connection with the Facility's business, facilities, employees or any Facility informational, marketing or advertising materials (whether in print, electronic or digital form).

## **V. INDEPENDENT CONTRACTORS**

In performance of all duties and obligations under this Agreement, it is mutually understood and agreed that the Facility and the Red Cross are independent entities, are not related and are not to be considered the agent, servant, partner, employee or joint venture of the other party.

## **VI. ASSIGNMENT**

This Agreement shall not be assigned or the services subcontracted by either party without the prior written consent of the other party.

## **VII. CONFIDENTIALITY**

Red Cross and the Facility acknowledge and agree that if during the term of this Agreement confidential information (as identified by the party providing the information) is disclosed by one party to the other, each party shall hold all such confidential information in the strictest confidence and shall not voluntarily sell, transfer, publish, disclose, display or otherwise make available to any third persons such confidential information or any portion thereof without the express written consent of the other party or unless compelled by subpoena, court order or other lawful means.

## **VIII. TERM**

Subject to sections IX and XII below, this Agreement shall be in effect (1) for seasonal facilities, from the date first written above to March 31, 2013, or (2) for year round facilities, one year from the date first written above. This Agreement shall not be renewed without the written consent of the Red Cross.

## **IX. CANCELLATION**

Either party may cancel this Agreement for any reason by providing 30 days advance written notice to the other party.

## **X. INDEMNITY AND HOLD HARMLESS**

Facility agrees to indemnify, defend, and hold harmless the Red Cross and its directors, officers, agents, volunteers, and employees against any and all claims, demands, damages, lawsuits, penalties, administrative proceedings, judgments, costs or expenses, including attorneys' fees, resulting from, or arising out of the acts or omissions of either party in connection with the Facility, its operations, or the performance or breach of this Agreement. The foregoing notwithstanding, Facility shall have no obligation to indemnify or hold harmless the Red Cross, its directors, officers, agents, volunteers and employees if it has been determined by the final order of a court of competent jurisdiction that a proportion of the liability thereof was caused by the willful misconduct or negligent activity of the

Red Cross, its directors, officers, employees, volunteers or agents, in which case, the Red Cross shall be responsible solely for its proportionate share of the liability. This clause survives termination of this Agreement.

## **XI. LIMITATION OF RED CROSS LIABILITY**

Each party understands and agrees that:

- A. The Aquatic Examiner Service and the Red Cross's obligations there under are based solely upon the Red Cross lifeguard training and evaluation activities in the Aquatic Examiner Service Client G/et Started Guide as selected by the Facility and set forth in Section I of this Agreement. Accordingly, any review or suggestions offered by the Red Cross, its employees or agents with respect to the Facility, any operations or procedures thereof, or the Facility's lifeguarding equipment shall not be construed as approval of, or certification with respect to, the safe design, operation or function of the Facility or its equipment by the Red Cross. Participation by the Facility in the Aquatic Examiner Service does not guarantee that (i) the Facility will be accident free; (ii) the operations of the Facility are sufficient for safe operation, or (iii) the Facility is in compliance with any laws, codes or ordinances. The Red Cross is not responsible for the acts or omissions of the Facility, its agents, contractors or employees. The rights and obligations of the Red Cross under this Agreement to provide initial conference, lifeguard and support personnel training, or on-site lifeguarding evaluations as described in the Aquatic Examiner Service and selected by the Facility in Section I of this Agreement or review of any Facility lifeguarding equipment or physical aspect of the Facility shall not constitute an undertaking on behalf, or for the benefit, of the Facility or others.
- B. No supervisory activities will be performed by Red Cross. The Red Cross assumes no authority or obligation to make changes in Facility's operations or to have the Facility implement suggestions of the Red Cross. Suggestions made by the Red Cross to the Facility relate only to specific conditions and lifeguarding procedures observed by Red Cross while at the Facility's aquatic site (pool, lakefront, etc.) pursuant to the Aquatic Examiner Service. It is the Facility's sole responsibility to decide whether or not to follow suggestions made by the Red Cross, its agents or employees in the context of Aquatic Examiner Service.

## **XII. TERMINATION**

Failure to comply with the terms and conditions of this Agreement or the Aquatic Examiner Service may be interpreted as cause for immediate termination of the Agreement. Termination shall be effective upon written notice delivered to the other party.

### **XIII. LIMITATION OF WARRANTIES**

With respect to the Red Cross, the foregoing is in lieu of all other warranties of merchantability and fitness for a particular purpose or otherwise and for all liability for special, indirect or consequential damages, including lost income or profits, even if the Red Cross has been advised of the possibility of such damages.

In witness whereof, the parties have entered into this agreement as of the date first above written. By signing this agreement, the individuals indicate that he or she has the authority to sign this agreement.

Kansas City Territory  
American National Red Cross

Catherine Edwards  
Authorized Representative

City of Prairie Village Municipal Pool Facility

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Authorized Representative

### **Attachments:**

Aquatic Examiner Service Client Get Started Guide  
On-Site Lifeguard Observations and Evaluations Report template

## Aquatic Examiner Service

The American Red Cross Aquatic Examiner Service is intended to help ensure the safety of your facility by providing unbiased, expert opinion on your facility's emergency plan and the skills and knowledge of your lifeguards. Our goal is to reduce aquatic injuries by assisting lifeguards and aquatic facilities in developing procedures to prevent and minimize the effects of accidents, recognize hazards and respond to emergencies effectively. The services we provide are tailored to meet the specific needs of your facility.

### Pricing

#### I. Initial Conference and Report

Single Site, First Time Client.....	\$350
Additional Sites, First Time Client .....	\$275
Returning Client Initial Conference .....	\$175

#### II. Staff Training

##### Orientation

Orientation to Aquatic Examiner Service .....	No Charge
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##### Recertification

Lifeguard Review .....	\$200/participant
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##### Full Courses

Lifeguarding .....	\$350/participant
<i>Based on minimum of 6 people. Includes CPR/AED for LG and First Aid.</i>	
Waterfront Lifeguarding.....	\$400/participant
<i>Based on minimum of 6 people. Includes CPR/AED for LG and First Aid.</i>	
Waterpark Lifeguarding.....	\$400/participant
<i>Based on minimum of 6 people. Includes CPR/AED for LG and First Aid.</i>	
Shallow Water Lifeguarding .....	\$350/participant
<i>Based on minimum of 6 people. Includes CPR/AED for LG and First Aid.</i>	
Basic Water Rescue.....	\$50/participant
Administering Emergency Oxygen.....	\$50/participant
Bloodborne Pathogens Training .....	\$50/participant
Waterfront Lifeguarding Module.....	\$90/participant
Waterpark Lifeguarding Module .....	\$90/participant

##### In-Service Training

EAP Scenario.....	\$60/hour
In-Service Topics .....	\$60/hour <i>minimum 2 hours</i>

*Please see page 2 for more pricing details.*

**III. On-Site Evaluations**

Upon conclusion of the evaluation, the examiner will review the results with the facility representative. A report outlining the results of the on-site evaluation will also be given to the facility or pool management company.

**Option 1:** The American Red Cross will provide equipment and two examiners to conduct and record the evaluation.

**Single facility** .....\$350/evaluation  
**2 or more pools** .....\$325/evaluation

**Option 2:** The American Red Cross will provide equipment and one examiner to conduct and record the evaluation. The facility will provide an additional guard to be the victim during the evaluation.

**Single facility** .....\$250/evaluation  
**2 or more pools** .....\$225/evaluation

**Option 3:** The American Red Cross will provide equipment and one examiner for conducting the evaluation. The facility will provide an additional guard to be the victim during the evaluation. The evaluation will **NOT** be recorded.

**Single facility** .....\$225/evaluation  
**2 or more pools** .....\$215/evaluation

**Pool Management Company Option:**

**Option 4:** The American Red Cross will conduct unannounced observations at each pool.

**Single facility** .....\$60/evaluation

For questions about the American Red Cross Aquatic Examiner Service, contact:

Kathie Edwards  
[Catherine.Edwards@redcross.org](mailto:Catherine.Edwards@redcross.org)  
816-841-5233 office  
816-377-2086 cell

# Aquatic Examiner Service - Service Options Worksheet

Please return this page with your Aquatic Examiner Service contract. See attached Aquatic Examiner Pricing for component pricing.

**Agency/Organization:** \_\_\_\_\_

**Site:** \_\_\_\_\_

## I. Initial Conference & Report

- Single Site, First Time Client
- Additional Sites, First Time Client
- Returning Client Initial Conference

**Number:** \_\_\_\_\_

## II. Staff Training

### Orientation

- Orientation to Aquatic Examiner Service

### Recertification

- Lifeguard Review

### Full Courses

- Lifeguarding
- Waterfront Lifeguarding
- Waterpark Lifeguarding
- Shallow Water Attendant
- Basic Water Rescue
- Administering Emergency Oxygen
- Bloodborne Pathogens Training
- Waterfront Lifeguarding Module
- Waterpark Lifeguarding Module

### In-Service Training

**Number of Exams:**

**Indoor**

**Outdoor**

**Topic:**

- EAP Scenario - The facility must provide lifeguards to participate in the scenario as lifeguards and patrons.

- In-Service Topics (your request/suggestion):

1. \_\_\_\_\_

2. \_\_\_\_\_

## I. On-Site Evaluations

Upon conclusion of the evaluation, the examiner will review the results with the facility representative. A report outlining the results of the on-site evaluation will also be given to the facility or pool management company.

- Option 1:** The American Red Cross will provide equipment and two examiners to conduct and record the evaluation.

<b>Number of Exams:</b>	<b>Indoor</b>	<b>Outdoor</b>
<hr/>		

- Option 2:** The American Red Cross will provide equipment and one examiner to conduct and record the evaluation. The facility will provide an additional guard to be the victim during the evaluation.

<b>Number of Exams:</b>	<b>Indoor</b>	<b>Outdoor</b>
<hr/>		

- Option 3:** The American Red Cross will provide equipment and one examiner for conducting the evaluation. The facility will provide an additional guard to be the victim during the evaluation. The evaluation will **NOT** be recorded.

<b>Number of Exams:</b>	<b>Indoor</b>	<b>Outdoor</b>
<hr/>		

**Pool Management Company Option:**

- Option 4:** The American Red Cross will conduct unannounced recorded observations at each pool.

<b>Number of Exams:</b>	<b>Indoor</b>	<b>Outdoor</b>
<hr/>		



**Aquatic Examiner Service - Service Options Worksheet**

Please return this page with your Aquatic Examiner Service contract. See attached Aquatic Examiner Pricing for component pricing.

Agency/Organization: City of Prairie Village, KS  
 Site: Municipal Pool Complex 7711 Delmar, 66208

**I. Initial Conference & Report**

- Single Site, First Time Client
- Additional Sites, First Time Client
- Returning Client Initial Conference

Number: \_\_\_\_\_

**II. Staff Training**

**Orientation**

- Orientation to Aquatic Examiner Service - date TBD

**Recertification**

- Lifeguard Review

**Full Courses**

- Lifeguarding
- Waterfront Lifeguarding
- Waterpark Lifeguarding
- Shallow Water Attendant
- Basic Water Rescue
- Administering Emergency Oxygen
- Bloodborne Pathogens Training
- Waterfront Lifeguarding Module
- Waterpark Lifeguarding Module

**In-Service Training**

Number of Exams: \_\_\_\_\_ Indoor \_\_\_\_\_ Outdoor \_\_\_\_\_

**Topic:**

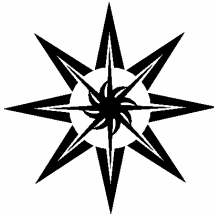
- EAP Scenario - The facility must provide lifeguards to participate in the scenario as lifeguards and patrons.

- In-Service Topics (your request/suggestion):

1. \_\_\_\_\_

2. \_\_\_\_\_





## ADMINISTRATION DEPARTMENT

Council Meeting Date: May 20, 2013

**Consent Agenda:** Consider approval of the allocation of \$15,000, not-to-exceed \$8,000 in expenses and approve the allocation of funding from the General Fund Contingency to the Mercer Group for the executive search services for the Public Works Director

---

### **MOTION**

Move the City Council approve the allocation of \$15,000, not-to-exceed \$8,000 in expenses and approve the allocation of funding from General Fund Contingency to the Mercer Group for the executive search services for the Public Works Director

### **RECOMMENDATION**

Approve allocation of funding from General Fund Contingency for the Mercer Group, Inc. to conduct the executive search for the Public Works Director position.

### **BACKGROUND**

On April 15, the City Council approved an agreement with Mercer Group, Inc. to conduct the executive search for the Public Works Director position. The Council Minutes do not reflect approval of the allocation of funding from the General Fund Contingency. Staff is requesting approval for clarification on the allocation.

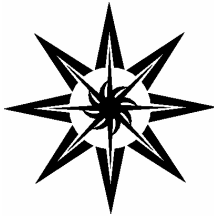
### **FUNDING SOURCE**

General Fund Contingency

### **ATTACHMENTS**

### **PREPARED BY**

Jeanne Koontz  
Deputy City Clerk  
May 15, 2013



## VILLAGEFEST COMMITTEE

Council Meeting Date: May 20, 2013

**CONSENT AGENDA: Consider Approval of VillageFest Contracts**

---

### RECOMMENDATION

Staff recommends the City Council approve the following contracts for VillageFest 2013.

Del Sawyer	Food Vendor	Pays \$175
Captured Memories LLC	Photo Booth	\$500.00
Susan Lee	Vocal Performance	\$100.00
Sister Act Face Painting	Face Painting & Wacky Hair	\$2240.00
Rex Nolen	Food Vendor	Pays \$175
Clement McCrae Puppets	Puppet Show	\$875.00
HyVee, Inc.	Food Vendor	Pays \$175
Hiccups Productions, Inc.	Jim Cosgrove, Funky Mama Sound System	\$2300.00

### FUNDING SOURCE

01-06-41-6014-005 - VillageFest

### ATTACHMENTS

1. Contracts

### PREPARED BY

Jeanne Koontz, Deputy City Clerk  
May 14, 2013

**FOOD SERVICE AGREEMENT**  
**VillageFest 2013**

**THIS FOOD SERVICE AGREEMENT** is made and entered into by and between the City of Prairie Village, Kansas, a municipal corporation, hereinafter referred to as ("City") and Del Sawyer, hereinafter referred to as ("Vendor").

**WHEREAS**, City is sponsoring a 4th of July celebration within the City limits of Prairie Village, Kansas, for enjoyment of the general public, which event is entitled to "VillageFest 2013" (hereinafter "VillageFest") and

**WHEREAS**, the festivities of VillageFest shall include the sale to the general public of food items; and

**WHEREAS**, City is desirous of providing booth space to Vendor during VillageFest and further desires to ensure that services provided to the general public during VillageFest are of the appropriate quality.

**NOW THEREFORE**, in consideration of the mutual benefits to the parties, it is hereby agreed as follows:

**ARTICLE 1**

**Scope, Duties and Hours of Operation**

1.1 Vendor shall have the right to sell food items as supplied by Vendor from a food booth ("Vendor's Booth") located on the site of the VillageFest 2013, the location of which shall be determined by City.

1.2 The dates and hours of operation that Vendor may operate are as follows:  
Date: July 4, 2013. Hours: Set up between 6:30 and 8:30 a.m.; Hours of Operation from 9:00 am until 1:00 pm; Breakdown after 1:00 p.m.

**ARTICLE 2**

**Financial Risk**

2.1 Vendor acknowledges and agrees that City's prime objective in entering into this Agreement is to ensure the availability of quality food items at a reasonable cost to VillageFest patrons. City has made no representation or warranty to Vendor to the effect that Vendor's participation in the VillageFest will be profitable for Vendor. Vendor acknowledges and agrees that its participation in VillageFest is a demanding business opportunity that involves risk and requires considerable manpower and organizational leadership and further acknowledges that there is the potential for substantial loss. Vendor further acknowledges and agrees to accept sole responsibility for protecting itself against any and all forms or types of loss.

**ARTICLE 3**  
**Rental Fee**

3.1 Vendor shall pay to City on or before June 21, 2013, a non-refundable rental fee of \$175.00. Included with submission of the rental fee shall be an executed Food Service Agreement and a Proposal Sheet that shall set forth the food items and cost of said food items that Vendor desires to sell to the general public during VillageFest.

**ARTICLE 4**  
**Signage**

4.1 Vendor shall provide signage for Vendor's Booth that shall legibly state organization or restaurant name, menu and prices. Signage is to be of professional quality and shall be subject to City's approval.

**ARTICLE 5**  
**Equipment Provided by Vendor**

5.1 Vendor shall be responsible for providing all tables, chairs and equipment utilized by Vendor to serve food items to the general public. **Vendor shall also be responsible for providing its own power source, i.e. a power generator.**

**ARTICLE 6**  
**Sanitary Condition of Vendor's Booth**

6.1 Vendor shall maintain Vendor's Booth and all surrounding operating area in a neat, clean and sanitary condition and in good order and repair, free and clear of all litter, debris and rubbish at all times. Vendor shall be responsible for the cleanup of Vendor's Booth on an ongoing basis during the VillageFest, at the conclusion of business and at the conclusion of VillageFest. Vendor's cleanliness responsibilities shall also include, but not be limited to, bagging and depositing Vendor's trash in designated containers. City reserves the right to terminate all of Vendor's rights under this Agreement, including the right to operate Vendor's Booth if Vendor fails to maintain clean and sanitary conditions in and around Vendor's Booth during the term of this Agreement.

**ARTICLE 7**  
**Security and Risk of Loss**

7.1 Vendor is responsible for all items of personal property and/or inventory owned and/or utilized by Vendor throughout the term of this Agreement, including, but not limited to, those items left in and around Vendor's Booth during and after the hours of operation and at the conclusion of the VillageFest. Vendor shall be solely responsible for its own security at all times. Risk of loss of food items, equipment, cash and other items belonging to or in the possession of Vendor is Vendor's. City shall not be responsible for loss of or damage to Vendor's property or inventory whether attributable to theft, vandalism, spoilage, weather or any other cause.

7.2 Vendor is responsible for and agrees to reimburse City for any damage caused by Vendor to City's property or to property being used by the City during VillageFest.

## **ARTICLE 8 Access to Facilities**

8.1 Vendor shall have access to Vendor's Booth on July 4, 2013 for set-up from 7:00 a.m. to 9:00 a.m. and for breakdown after 1:00 p.m. Vendor's vehicle(s) must be removed from the VillageFest grounds within one hour after the end of this time period or the vehicle(s) will be subject to tow. City shall not be responsible in the event of the towing of Vendor's vehicle(s).

## **ARTICLE 9 Items Sold and Prices**

9.1 The items sold by Vendor and the prices charged for these items shall be consistent with the family-oriented spirit of the VillageFest. Vendors must prepare a Proposal Sheet which sets forth all items Vendor desires to sell to the general public during VillageFest and the cost of said items prior to execution of this Agreement. Such proposal sheet shall be attached to this Agreement as Exhibit A. Exhibit A is hereby incorporated into this Agreement. Any amendments to Exhibit A must be approved by City in writing.

9.2 Vendor shall not serve free food to anyone at any time other than to volunteers, representatives, staff and employees of vendor.

9.3 All federal, state, and local laws governing retail sales tax must be followed. Vendor understands the rules and regulation of the event and will comply. Vendor realizes that failure to comply may result in expulsion from the event.

**ARTICLE 10**  
**Business Information**

10.1 Notifications and any other notices under this Agreement shall be made as follows:

If to City:

City Clerk  
7700 Mission Road  
Prairie Village KS 66208  
(913) 381-6464  
(913) 381-7755

If to Vendor:

10.2 Vendor's Tax Identification Number is: \_\_\_\_\_.

**ARTICLE 11**  
**Compliance With Laws**

11.1 Vendor, all of Vendor's volunteers, representatives, staff and employees shall at all times during VillageFest comply with the laws of the State of Kansas and with City's ordinances, rules, regulations, and guidelines and shall at all times comply with all requests of the City or the City's representatives.

11.2 Vendor shall obtain all necessary permits and licenses in order to operate a Vendor Booth at VillageFest and shall provide copies of such permits and licenses to the City prior to June 21, 2013.

**ARTICLE 12**  
**Insurance and Hold Harmless**

12.1 Vendor shall furnish to City a valid certificate of broad form general liability insurance, completed operations and products insurance coverage for personal injuries and property damage with combined single limits of coverage of not less than \$1,000,000.00 with the City named as an additional insured on such policies. Copies of said certificate shall be provided to City on or before June 21, 2013.



12.2 Vendor agrees to assume all liability and responsibility for damages in any form or for costs associated with its activities. Specifically, Vendor agrees to indemnify and hold the City harmless from and against any claims for damages (including attorney's fees necessitated in defending such claims resulting from Vendor's actions, conduct or inaction, whether said claim is premised upon negligence or upon intentional misconduct. Vendor specifically agrees to indemnify and hold the City harmless from and against claims resulting from persons who suffer any sort of injury from the food ingested by such person and/or by virtue of the conditions of the premises located at Vendor's Booth.

### **ARTICLE 13**

#### **Staff**

13.1 Vendor shall provide managers and sufficient staff to keep Vendor's Booth operational during the hours of operation of the VillageFest.

13.2 Vendor's volunteers, employees, representatives and staff shall be prohibited by Vendor from consuming alcoholic beverages when on duty at, in or near Vendor's Booth.

13.3 Vendor and its employees are independent contractors and are not employees, servants or agents of VillageFest or of the City. Vendor has the sole responsibility of providing workers' compensation coverage for its employees and City shall not be responsible for injuries or bodily damage done to Vendor, Vendor's volunteers, employees, representatives and/or staff.

### **ARTICLE 14**

#### **Cancellation**

14.1 City shall retain the right to cancel this Agreement at any time and for any reason without penalty. In the event this Agreement is canceled, Vendor shall not be entitled to a refund of Vendor's Rental Fee as set forth in this Agreement.

### **ARTICLE 15**

#### **Entire Agreement**

15.1 This Agreement evidences the entire agreement between the parties hereto and supersedes any and all prior agreements and understandings between the parties pertaining to VillageFest.

**ARTICLE 16**  
**Effective Date**

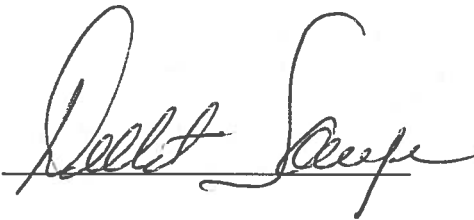
16.1 This Agreement is effective upon City's acceptance as evidenced by execution of this Agreement by a City authorized representative in the space provided below.

CITY OF PRAIRIE VILLAGE:

VENDOR:

By: \_\_\_\_\_

By: \_\_\_\_\_



Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Delbert Sawyer

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Pier

Date: \_\_\_\_\_

Date: \_\_\_\_\_

5/8/13

EXHIBIT A

PROPOSED FOOD ITEMS

<u>FOOD</u>	<u>PRICE</u>
<u>Shaved Ice</u>	<u>\$1.00, 2.00, 3.00</u>
<u>Fudge Poppers</u>	<u>3.00</u>
<u>Baker Dough</u>	<u>3.00</u>
<u>Wackburg Pizza</u>	<u>3.50</u>
<u>Pop Corn</u>	<u>2.00</u>
<u>Fruit Smoothies</u>	<u>3.50 / 4.50</u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>

As a Vendor you are responsible for proper signage. This needs to be visible and also include prices. We will provide advertising, a map of the grounds, & signs throughout the grounds for direction.

**There is also NO ALCOHOL to be sold at the event!!!!**

**ENTERTAINMENT/ VENDOR AGREEMENT  
2013**

**THIS ENTERTAINMENT/VENDOR AGREEMENT**, (hereinafter "Agreement") is made and entered into this 7<sup>th</sup> day of May, 2013, by and between the City of Prairie Village, Kansas (hereinafter "the City") and Captured Memories Photo Booth, LLC, (hereinafter "Vendor").

WHEREAS, the City is sponsoring an event, entitled VillageFest, for the general public which is to be held on July 4, 2013; and

In consideration of the mutual promises and covenants contained herein, Vendor and City agree as follows:

1. Type of Space Provided: the Vendor shall specify the square footage required including facility foot print and clearance space outside the facility foot print:  
5 x 5 indoor space
2. Type of Service Provided: the Vendor agrees to provide the following services:  
Photo Booth
3. Hours of Operation: The Vendor shall provide services to the general public from 9:00 a.m. to 1:00 p.m. on July 4, 2013.
4. Access to Facilities:
  - a. Vendor shall have access to Vendor's location for set-up on July 4, 2013 from 6:30 a.m. to 8:30 a.m. and for breakdown after 1:00 pm. Vendor's vehicle(s) must be removed from the VillageFest grounds within one hour after the end of this time period or the vehicle(s) will be subject to tow.
  - b. Vendor shall furnish City a list of each equipment/facility showing the required electrical power in AC volts and AC amp, required water from a garden hose, required fencing, and required set V up/breakdown assistance specifying skills required, and any other special requirements as part of this Agreement. Any amendments to Exhibit A must be approved by the City in writing.
5. Compensation: In consideration for the entertainment provided, the City shall pay to the Vendor the amount of \$500.00 to be paid on or before July 4, 2013 unless the event is canceled as provided in Section 6 of this agreement.

6. Cancellation of the Event: The City has full authority to cancel the event for any reason. In the event that the City cancels VillageFest, the City shall notify Vendor of the cancellation in a timely manner, and this Agreement shall be terminated.
7. Clean-Up: Vendor shall maintain its Vendor's Booth and/or operating areas in a neat, clean, sanitary condition and in good order and repair, free and clean of all litter, debris and rubbish at all times. Vendor shall be responsible for the clean up of its areas on an ongoing basis during the VillageFest and at the conclusion of business and conclusion of the VillageFest. Vendor's clean up responsibilities shall also include, but not be limited to, bagging and depositing Vendor's trash in the designated containers. City reserves the right to terminate all of Vendor's rights under this Agreement, including the right to operate if Vendor has failed to maintain clean and sanitary conditions in and around Vendor's location.
8. Indemnity:
  - a. Vendor shall indemnify and hold harmless the City and its 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 (i) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting there from and (ii) is caused in whole or in part by any negligent act or omission of the Vendor, or any sub-contractor, 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 as to any party or person described in this Paragraph.
  - b. The Vendor is responsible for all items left on the VillageFest premises, including, but not limited to, those items left in and around Vendor's location before, during and after the hours of operation of the VillageFest. Vendor shall be solely responsible for its own security at all times. Risk of loss of equipment, cash and other items belonging to or in the possession of Vendor is on Vendor. City shall not be responsible for loss of or damage to Vendor's property or inventory whether attributable to theft, vandalism spoilage, weather or any other cause.
  - c. Vendor is responsible for and agrees to reimburse City for any damage caused by Vendor to City's property or to property being used by the City.
  - d. Vendor shall furnish City with a valid certificate of broad form general liability insurance, completed operations and products insurance coverage for

personal injuries and property damage with combines single limits of coverage of not less than \$1,000,000.00 per occurrence, with the City named as additional insured on such policies. **Copies of said certificate shall be provided to City on or before June 21, 2013.**

9. **Notification:** Notification and any other notices under this Agreement shall be made as follows:

City Clerk  
7700 Mission Road  
Prairie Village, KS 66208  
(913) 381-6464

10. **Staff:**

- a. Vendor shall provide managers and sufficient staff to keep Vendor's Booth operational during the hours of operation of the VillageFest.
- b. Vendor's volunteers, employees, representatives and staff shall be prohibited by Vendor from consuming alcoholic beverages, be in possession of controlled substances, acting in a manner prohibited by state law or city ordinance, or conducting themselves in a manner detrimental to the event and the public attending when on duty at or in Vendor Booth.
- c. Vendor and its employees are independent contractors and are not employees, servants or agents of VillageFest or of the City. Vendor has the sole responsibility of providing workers' compensation coverage for its employees.

11. **Cancellation:** The City shall retain the right to cancel this Agreement at any time without penalty.

12. **Entire Agreement:** This Agreement evidences the entire agreement between the parties hereto and supersedes all prior agreements and understandings pertaining to VillageFest.

13. **Effective Date:** This Agreement is effective upon City's acceptance as evidence by the execution of this Agreement by City's authorized representatives in the space provided below.

**CITY OF PRAIRIE VILLAGE**

By: \_\_\_\_\_  
(signed)

Ronald L. Shaffer \_\_\_\_\_

Mayor \_\_\_\_\_

City of Prairie Village \_\_\_\_\_

7700 Mission Road \_\_\_\_\_

Prairie Village, Kansas, 66208 \_\_\_\_\_

913-381-6464 \_\_\_\_\_

\_\_\_\_\_  
(date of execution)

ATTEST:

\_\_\_\_\_  
City Clerk, Joyce Hagen-Mundy

**VENDOR**

By: Kristin L. Harman  
(signed)

Kristin L. Harman  
(typed name)

owner  
(typed title)

Captured Memories Photo Booth  
(typed company name)

5212 N. Jefferson St  
(typed address)

KC, MO 64118  
(typed city, state, zip)

816-510-4881  
(typed telephone number)

July 4, 2013  
(date of execution)

APPROVED BY:

\_\_\_\_\_  
City Attorney, Catherine P. Logan

**ENTERTAINMENT/ VENDOR AGREEMENT  
2013**

**THIS ENTERTAINMENT/VENDOR AGREEMENT**, (hereinafter "Agreement") is made and entered into this 13<sup>th</sup> day of May, 2013, by and between the City of Prairie Village, Kansas (hereinafter "the City") and Susan Lee, (hereinafter "Vendor").

WHEREAS, the City is sponsoring an event, entitled VillageFest, for the general public which is to be held on July 4, 2013; and

In consideration of the mutual promises and covenants contained herein, Vendor and City agree as follows:

1. Type of Space Provided: the Vendor shall specify the square footage required including facility foot print and clearance space outside the facility foot print:
  
2. Type of Service Provided: the Vendor agrees to provide the following services:  
  
Vocal Performance at Patriotic Service
  
3. Hours of Operation: The Vendor shall provide services to the general public from 9:00 am to 9:30 am on July 4, 2013.
  
4. Access to Facilities:
  - a. Vendor shall have access to Vendor's location for set-up on July 4, 2013 from 6:30 a.m. to 10:00 a.m.. Vendor's vehicle(s) must be removed from the VillageFest grounds within one hour after the end of this time period or the vehicle(s) will be subject to tow.
  
  - b. Vendor shall furnish City a list of each equipment/facility showing the required electrical power in AC volts and AC amp, required water from a garden hose, required fencing, and required set V up/breakdown assistance specifying skills required, and any other special requirements as part of this Agreement. Any amendments to Exhibit A must be approved by the City in writing.
  
5. Compensation: In consideration for the entertainment provided, the City shall pay to the Vendor the amount of \$100.00 to be paid on or before July 4, 2013 unless the event is canceled as provided in Section 6 of this agreement.
  
6. Cancellation of the Event: The City has full authority to cancel the event for any reason. In the event that the City cancels VillageFest, the City shall notify



Vendor of the cancellation in a timely manner, and this Agreement shall be terminated.

7. Clean-Up: Vendor shall maintain its Vendor's Booth and/or operating areas in a neat, clean, sanitary condition and in good order and repair, free and clean of all litter, debris and rubbish at all times. Vendor shall be responsible for the clean up of its areas on an ongoing basis during the VillageFest and at the conclusion of business and conclusion of the VillageFest. Vendor's clean up responsibilities shall also include, but not be limited to, bagging and depositing Vendor's trash in the designated containers. City reserves the right to terminate all of Vendor's rights under this Agreement, including the right to operate if Vendor has failed to maintain clean and sanitary conditions in and around Vendor's location.
  
8. Indemnity:
  - a. Vendor shall indemnify and hold harmless the City and its 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 (i) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting there from and (ii) is caused in whole or in part by any negligent act or omission of the Vendor, or any sub-contractor, 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 as to any party or person described in this Paragraph.
  - b. The Vendor is responsible for all items left on the VillageFest premises, including, but not limited to, those items left in and around Vendor's location before, during and after the hours of operation of the VillageFest. Vendor shall be solely responsible for its own security at all times. Risk of loss of equipment, cash and other items belonging to or in the possession of Vendor is on Vendor. City shall not be responsible for loss of or damage to Vendor's property or inventory whether attributable to theft, vandalism spoilage, weather or any other cause.
  - c. Vendor is responsible for and agrees to reimburse City for any damage caused by Vendor to City's property or to property being used by the City.
  - d. Vendor shall furnish City with a valid certificate of broad form general liability insurance, completed operations and products insurance coverage for personal injuries and property damage with combines single limits of coverage of not less than \$1,000,000.00 per occurrence, with the City named

as additional insured on such policies. **Copies of said certificate shall be provided to City on or before June 21, 2013.**

9. **Notification:** Notification and any other notices under this Agreement shall be made as follows:

City Clerk  
7700 Mission Road  
Prairie Village, KS 66208  
(913) 381-6464

10. **Staff:**

- a. Vendor shall provide managers and sufficient staff to keep Vendor's Booth operational during the hours of operation of the VillageFest.
- b. Vendor's volunteers, employees, representatives and staff shall be prohibited by Vendor from consuming alcoholic beverages, be in possession of controlled substances, acting in a manner prohibited by state law or city ordinance, or conducting themselves in a manner detrimental to the event and the public attending when on duty at or in Vendor Booth.
- c. Vendor and its employees are independent contractors and are not employees, servants or agents of VillageFest or of the City. Vendor has the sole responsibility of providing workers' compensation coverage for its employees.

11. **Cancellation:** The City shall retain the right to cancel this Agreement at any time without penalty.

12. **Entire Agreement:** This Agreement evidences the entire agreement between the parties hereto and supersedes all prior agreements and understandings pertaining to VillageFest.

13. **Effective Date:** This Agreement is effective upon City's acceptance as evidence by the execution of this Agreement by City's authorized representatives in the space provided below.

**CITY OF PRAIRIE VILLAGE**

By: \_\_\_\_\_  
(signed)

Ronald L. Shaffer

Mayor

City of Prairie Village

7700 Mission Road

Prairie Village, Kansas, 66208

913-381-6464

(date of execution)

ATTEST:

\_\_\_\_\_  
City Clerk, Joyce Hagen-Mundy

**VENDOR**

By: Susan L Lee  
(signed)

Susan L. Lee

(typed name)

Dr.

(typed title)

St Luke's South

(typed company name)

3729 Somerset Dr

(typed address) (residence)

Prairie Village, KS 66208

(typed city, state, zip)

(913) 317-7990 cell -

(typed telephone number)

(913) 269-2428

5/13/13

(date of execution)

APPROVED BY:

\_\_\_\_\_  
City Attorney, Catherine P. Logan

**ENTERTAINMENT/ VENDOR AGREEMENT  
2013**

**THIS ENTERTAINMENT/VENDOR AGREEMENT**, (hereinafter "Agreement") is made and entered into this 29 day of ~~April~~ April, 2013, by and between the City of Prairie Village, Kansas (hereinafter "the City") and Sister Act Face Painting, (hereinafter "Vendor").

WHEREAS, the City is sponsoring an event, entitled VillageFest, for the general public which is to be held on July 4, 2013; and

In consideration of the mutual promises and covenants contained herein, Vendor and City agree as follows:

1. Type of Space Provided: the Vendor shall specify the square footage required including facility foot print and clearance space outside the facility foot print:  
20x20  
City will provide tent
2. Type of Service Provided: the Vendor agrees to provide the following services:  
5 face painters  
2 wacky hair stylists
3. Hours of Operation: The Vendor shall provide services to the general public from 9:00 a.m. to 1:00 p.m. on July 4, 2013.
4. Access to Facilities:
  - a. Vendor shall have access to Vendor's location for set-up on July 4, 2013 from 6:30 a.m. to 8:30 a.m. and for breakdown after 1:00 pm. Vendor's vehicle(s) must be removed from the VillageFest grounds within one hour after the end of this time period or the vehicle(s) will be subject to tow.
  - b. Vendor shall furnish City a list of each equipment/facility showing the required electrical power in AC volts and AC amp, required water from a garden hose, required fencing, and required set V up/breakdown assistance specifying skills required, and any other special requirements as part of this Agreement. Any amendments to Exhibit A must be approved by the City in writing.
5. Compensation: In consideration for the entertainment provided, the City shall pay to the Vendor the amount of \$2,240.00, to be paid on or before July 4, 2013 unless the event is canceled as provided in Section 6 of this agreement.

6. Cancellation of the Event: The City has full authority to cancel the event for any reason. In the event that the City cancels VillageFest, the City shall notify Vendor of the cancellation in a timely manner, and this Agreement shall be terminated.
7. Clean-Up: Vendor shall maintain its Vendor's Booth and/or operating areas in a neat, clean, sanitary condition and in good order and repair, free and clean of all litter, debris and rubbish at all times. Vendor shall be responsible for the clean up of its areas on an ongoing basis during the VillageFest and at the conclusion of business and conclusion of the VillageFest. Vendor's clean up responsibilities shall also include, but not be limited to, bagging and depositing Vendor's trash in the designated containers. City reserves the right to terminate all of Vendor's rights under this Agreement, including the right to operate if Vendor has failed to maintain clean and sanitary conditions in and around Vendor's location.
8. Indemnity:
  - a. Vendor shall indemnify and hold harmless the City and its 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 (i) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting there from and (ii) is caused in whole or in part by any negligent act or omission of the Vendor, or any sub-contractor, 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 as to any party or person described in this Paragraph.
  - b. The Vendor is responsible for all items left on the VillageFest premises, including, but not limited to, those items left in and around Vendor's location before, during and after the hours of operation of the VillageFest. Vendor shall be solely responsible for its own security at all times. Risk of loss of equipment, cash and other items belonging to or in the possession of Vendor is on Vendor. City shall not be responsible for loss of or damage to Vendor's property or inventory whether attributable to theft, vandalism spoilage, weather or any other cause.
  - c. Vendor is responsible for and agrees to reimburse City for any damage caused by Vendor to City's property or to property being used by the City.
  - d. Vendor shall furnish City with a valid certificate of broad form general liability insurance, completed operations and products insurance coverage for

personal injuries and property damage with combines single limits of coverage of not less than \$1,000,000.00 per occurrence, with the City named as additional insured on such policies. **Copies of said certificate shall be provided to City on or before June 21, 2013.**

9. **Notification:** Notification and any other notices under this Agreement shall be made as follows:

City Clerk  
7700 Mission Road  
Prairie Village, KS 66208  
(913) 381-6464

10. **Staff:**

- a. Vendor shall provide managers and sufficient staff to keep Vendor's Booth operational during the hours of operation of the VillageFest.
- b. Vendor's volunteers, employees, representatives and staff shall be prohibited by Vendor from consuming alcoholic beverages, be in possession of controlled substances, acting in a manner prohibited by state law or city ordinance, or conducting themselves in a manner detrimental to the event and the public attending when on duty at or in Vendor Booth.
- c. Vendor and its employees are independent contractors and are not employees, servants or agents of VillageFest or of the City. Vendor has the sole responsibility of providing workers' compensation coverage for its employees.

11. **Cancellation:** The City shall retain the right to cancel this Agreement at any time without penalty.

12. **Entire Agreement:** This Agreement evidences the entire agreement between the parties hereto and supersedes all prior agreements and understandings pertaining to VillageFest.

13. **Effective Date:** This Agreement is effective upon City's acceptance as evidence by the execution of this Agreement by City's authorized representatives in the space provided below.

**CITY OF PRAIRIE VILLAGE**

By: \_\_\_\_\_  
(signed)

Ronald L. Shaffer \_\_\_\_\_

Mayor \_\_\_\_\_

City of Prairie Village \_\_\_\_\_

7700 Mission Road \_\_\_\_\_

Prairie Village, Kansas, 66208 \_\_\_\_\_

913-381-6464 \_\_\_\_\_

\_\_\_\_\_  
(date of execution)

ATTEST:

\_\_\_\_\_  
City Clerk, Joyce Hagen-Mundy

**VENDOR**

By: MJ Matthews-Tveit  
(signed)

MJ Matthews-Tveit  
(typed name)

DBA Sister Act Face Painting  
(typed title)

Sister Act Face Painting  
(typed company name)

6001 W. 100<sup>th</sup> Terr.  
(typed address)

Overland Park KS 66207  
(typed city, state, zip)

913 593-5104  
(typed telephone number)

\_\_\_\_\_  
(date of execution)

APPROVED BY:

\_\_\_\_\_  
City Attorney, Catherine P. Logan

**FOOD SERVICE AGREEMENT**  
**VillageFest 2013**

**THIS FOOD SERVICE AGREEMENT** is made and entered into by and between the City of Prairie Village, Kansas, a municipal corporation, hereinafter referred to as ("City") and Rex Nolen, hereinafter referred to as ("Vendor").

**WHEREAS**, City is sponsoring a 4th of July celebration within the City limits of Prairie Village, Kansas, for enjoyment of the general public, which event is entitled to "VillageFest 2013" (hereinafter "VillageFest") and

**WHEREAS**, the festivities of VillageFest shall include the sale to the general public of food items; and

**WHEREAS**, City is desirous of providing booth space to Vendor during VillageFest and further desires to ensure that services provided to the general public during VillageFest are of the appropriate quality.

**NOW THEREFORE**, in consideration of the mutual benefits to the parties, it is hereby agreed as follows:

**ARTICLE 1**

**Scope, Duties and Hours of Operation**

1.1 Vendor shall have the right to sell food items as supplied by Vendor from a food booth ("Vendor's Booth") located on the site of the VillageFest 2013, the location of which shall be determined by City.

1.2 The dates and hours of operation that Vendor may operate are as follows:  
Date: July 4, 2013. Hours: Set up between 6:30 and 8:30 a.m.; Hours of Operation from 9:00 am until 1:00 pm; Breakdown after 1:00 p.m.

**ARTICLE 2**

**Financial Risk**

2.1 Vendor acknowledges and agrees that City's prime objective in entering into this Agreement is to ensure the availability of quality food items at a reasonable cost to VillageFest patrons. City has made no representation or warranty to Vendor to the effect that Vendor's participation in the VillageFest will be profitable for Vendor. Vendor acknowledges and agrees that its participation in VillageFest is a demanding business opportunity that involves risk and requires considerable manpower and organizational leadership and further acknowledges that there is the potential for substantial loss. Vendor further acknowledges and agrees to accept sole responsibility for protecting itself against any and all forms or types of loss.



**ARTICLE 3**  
**Rental Fee**

3.1 Vendor shall pay to City on or before June 21, 2013, a non-refundable rental fee of \$175.00. Included with submission of the rental fee shall be an executed Food Service Agreement and a Proposal Sheet that shall set forth the food items and cost of said food items that Vendor desires to sell to the general public during VillageFest.

**ARTICLE 4**  
**Signage**

4.1 Vendor shall provide signage for Vendor's Booth that shall legibly state organization or restaurant name, menu and prices. Signage is to be of professional quality and shall be subject to City's approval.

**ARTICLE 5**  
**Equipment Provided by Vendor**

5.1 Vendor shall be responsible for providing all tables, chairs and equipment utilized by Vendor to serve food items to the general public. **Vendor shall also be responsible for providing its own power source, i.e. a power generator.**

**ARTICLE 6**  
**Sanitary Condition of Vendor's Booth**

6.1 Vendor shall maintain Vendor's Booth and all surrounding operating area in a neat, clean and sanitary condition and in good order and repair, free and clear of all litter, debris and rubbish at all times. Vendor shall be responsible for the cleanup of Vendor's Booth on an ongoing basis during the VillageFest, at the conclusion of business and at the conclusion of VillageFest. Vendor's cleanliness responsibilities shall also include, but not be limited to, bagging and depositing Vendor's trash in designated containers. City reserves the right to terminate all of Vendor's rights under this Agreement, including the right to operate Vendor's Booth if Vendor fails to maintain clean and sanitary conditions in and around Vendor's Booth during the term of this Agreement.

**ARTICLE 7**  
**Security and Risk of Loss**

7.1 Vendor is responsible for all items of personal property and/or inventory owned and/or utilized by Vendor throughout the term of this Agreement, including, but not limited to, those items left in and around Vendor's Booth during and after the hours of operation and at the conclusion of the VillageFest. Vendor shall be solely responsible for its own security at all times. Risk of loss of food items, equipment, cash and other items belonging to or in the possession of Vendor is Vendor's. City shall not be responsible for loss of or damage to Vendor's property or inventory whether attributable to theft, vandalism, spoilage, weather or any other cause.

7.2 Vendor is responsible for and agrees to reimburse City for any damage caused by Vendor to City's property or to property being used by the City during VillageFest.

## **ARTICLE 8 Access to Facilities**

8.1 Vendor shall have access to Vendor's Booth on July 4, 2013 for set-up from 7:00 a.m. to 9:00 a.m. and for breakdown after 1:00 p.m. Vendor's vehicle(s) must be removed from the VillageFest grounds within one hour after the end of this time period or the vehicle(s) will be subject to tow. City shall not be responsible in the event of the towing of Vendor's vehicle(s).

## **ARTICLE 9 Items Sold and Prices**

9.1 The items sold by Vendor and the prices charged for these items shall be consistent with the family-oriented spirit of the VillageFest. Vendors must prepare a Proposal Sheet which sets forth all items Vendor desires to sell to the general public during VillageFest and the cost of said items prior to execution of this Agreement. Such proposal sheet shall be attached to this Agreement as Exhibit A. Exhibit A is hereby incorporated into this Agreement. Any amendments to Exhibit A must be approved by City in writing.

9.2 Vendor shall not serve free food to anyone at any time other than to volunteers, representatives, staff and employees of vendor.

9.3 All federal, state, and local laws governing retail sales tax must be followed. Vendor understands the rules and regulation of the event and will comply. Vendor realizes that failure to comply may result in expulsion from the event.

**ARTICLE 10**  
**Business Information**

10.1 Notifications and any other notices under this Agreement shall be made as follows:

If to City:

City Clerk  
7700 Mission Road  
Prairie Village KS 66208  
(913) 381-6464  
(913) 381-7755

If to Vendor:

10.2 Vendor's Tax Identification Number is: 488-58-5814

**ARTICLE 11**  
**Compliance With Laws**

11.1 Vendor, all of Vendor's volunteers, representatives, staff and employees shall at all times during VillageFest comply with the laws of the State of Kansas and with City's ordinances, rules, regulations, and guidelines and shall at all times comply with all requests of the City or the City's representatives.

11.2 Vendor shall obtain all necessary permits and licenses in order to operate a Vendor Booth at VillageFest and shall provide copies of such permits and licenses to the City prior to June 21, 2013.

**ARTICLE 12**  
**Insurance and Hold Harmless**

12.1 Vendor shall furnish to City a valid certificate of broad form general liability insurance, completed operations and products insurance coverage for personal injuries and property damage with combined single limits of coverage of not less than \$1,000,000.00 with the City named as an additional insured on such policies. Copies of said certificate shall be provided to City on or before June 21, 2013.

12.2 Vendor agrees to assume all liability and responsibility for damages in any form or for costs associated with its activities. Specifically, Vendor agrees to indemnify and hold the City harmless from and against any claims for damages (including attorney's fees necessitated in defending such claims resulting from Vendor's actions, conduct or inaction, whether said claim is premised upon negligence or upon intentional misconduct. Vendor specifically agrees to indemnify and hold the City harmless from and against claims resulting from persons who suffer any sort of injury from the food ingested by such person and/or by virtue of the conditions of the premises located at Vendor's Booth.

### **ARTICLE 13**

#### **Staff**

13.1 Vendor shall provide managers and sufficient staff to keep Vendor's Booth operational during the hours of operation of the VillageFest.

13.2 Vendor's volunteers, employees, representatives and staff shall be prohibited by Vendor from consuming alcoholic beverages when on duty at, in or near Vendor's Booth.

13.3 Vendor and its employees are independent contractors and are not employees, servants or agents of VillageFest or of the City. Vendor has the sole responsibility of providing workers' compensation coverage for its employees and City shall not be responsible for injuries or bodily damage done to Vendor, Vendor's volunteers, employees, representatives and/or staff.

### **ARTICLE 14**

#### **Cancellation**

14.1 City shall retain the right to cancel this Agreement at any time and for any reason without penalty. In the event this Agreement is canceled, Vendor shall not be entitled to a refund of Vendor's Rental Fee as set forth in this Agreement.

### **ARTICLE 15**

#### **Entire Agreement**

15.1 This Agreement evidences the entire agreement between the parties hereto and supersedes any and all prior agreements and understandings between the parties pertaining to VillageFest.

**ARTICLE 16**  
**Effective Date**

16.1 This Agreement is effective upon City's acceptance as evidenced by execution of this Agreement by a City authorized representative in the space provided below.

CITY OF PRAIRIE VILLAGE:

VENDOR:

By: \_\_\_\_\_

By: Rex Nolen

Printed Name: \_\_\_\_\_

Printed Name: REX NOLEN

Title: \_\_\_\_\_

Title: Owner

Date: \_\_\_\_\_

Date: 5/8/13

## EXHIBIT A

### PROPOSED FOOD ITEMS

FOOD

PRICE

Cotton Candy

\$2.00

Funnel Cake

\$5.00

Sno Cone

\$2.00

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As a Vendor you are responsible for proper signage. This needs to be visible and also include prices. We will provide advertising, a map of the grounds, & signs throughout the grounds for direction.

**There is also NO ALCOHOL to be sold at the event!!!!**

**ENTERTAINMENT/ VENDOR AGREEMENT  
2013**

**THIS ENTERTAINMENT/VENDOR AGREEMENT**, (hereinafter "Agreement") is made and entered into this 8<sup>th</sup> day of May, 2013, by and between the City of Prairie Village, Kansas (hereinafter "the City") and Clement McCrae Puppets, (hereinafter "Vendor").

WHEREAS, the City is sponsoring an event, entitled VillageFest, for the general public which is to be held on July 4, 2013; and

In consideration of the mutual promises and covenants contained herein, Vendor and City agree as follows:

1. Type of Space Provided: the Vendor shall specify the square footage required including facility foot print and clearance space outside the facility foot print:

*See Attached map*

2. Type of Service Provided: the Vendor agrees to provide the following services:

4 Marionette Shows for all ages plus platform to perform on

3. Hours of Operation: The Vendor shall provide services to the general public at 9:00 a.m., 10:00 a.m., 11:00 a.m. and 12:00 p.m. on July 4, 2013.

4. Access to Facilities:

a. Vendor shall have access to Vendor's location for set-up on July 4, 2013 from 6:30 a.m. to 8:30 a.m. and for breakdown after 1:00 pm. Vendor's vehicle(s) must be removed from the VillageFest grounds within one hour after the end of this time period or the vehicle(s) will be subject to tow.

b. Vendor shall furnish City a list of each equipment/facility showing the required electrical power in AC volts and AC amp, required water from a garden hose, required fencing, and required set V up/breakdown assistance specifying skills required, and any other special requirements as part of this Agreement. Any amendments to Exhibit A must be approved by the City in writing.

5. Compensation: In consideration for the entertainment provided, the City shall pay to the Vendor the amount of \$875, to be paid on or before July 4, 2013 unless the event is canceled as provided in Section 6 of this agreement.

4 C Clement McCrae Puppet Shows has a professional sound system requires A/C 20 amps 110 Volts grounded Electrical power. Public Works to provide a generator to be place far and away

*See 5/8/13*

6. **Cancellation of the Event:** The City has full authority to cancel the event for any reason. In the event that the City cancels VillageFest, the City shall notify Vendor of the cancellation in a timely manner, and this Agreement shall be terminated.
7. **Clean-Up:** Vendor shall maintain its Vendor's Booth and/or operating areas in a neat, clean, sanitary condition and in good order and repair, free and clean of all litter, debris and rubbish at all times. Vendor shall be responsible for the clean up of its areas on an ongoing basis during the VillageFest and at the conclusion of business and conclusion of the VillageFest. Vendor's clean up responsibilities shall also include, but not be limited to, bagging and depositing Vendor's trash in the designated containers. City reserves the right to terminate all of Vendor's rights under this Agreement, including the right to operate if Vendor has failed to maintain clean and sanitary conditions in and around Vendor's location.
8. **Indemnity:**
  - a. Vendor shall indemnify and hold harmless the City and its 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 (i) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting there from and (ii) is caused in whole or in part by any negligent act or omission of the Vendor, or any sub-contractor, 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 as to any party or person described in this Paragraph.
  - b. The Vendor is responsible for all items left on the VillageFest premises, including, but not limited to, those items left in and around Vendor's location before, during and after the hours of operation of the VillageFest. Vendor shall be solely responsible for its own security at all times. Risk of loss of equipment, cash and other items belonging to or in the possession of Vendor is on Vendor. City shall not be responsible for loss of or damage to Vendor's property or inventory whether attributable to theft, vandalism spoilage, weather or any other cause.
  - c. Vendor is responsible for and agrees to reimburse City for any damage caused by Vendor to City's property or to property being used by the City.
  - d. Vendor shall furnish City with a valid certificate of broad form general liability insurance, completed operations and products insurance coverage for



personal injuries and property damage with combines single limits of coverage of not less than \$1,000,000.00 per occurrence, with the City named as additional insured on such policies. **Copies of said certificate shall be provided to City on or before June 21, 2013.**

9. **Notification:** Notification and any other notices under this Agreement shall be made as follows:

City Clerk  
7700 Mission Road  
Prairie Village, KS 66208  
(913) 381-6464

10. **Staff:**

- a. Vendor shall provide managers and sufficient staff to keep Vendor's Booth operational during the hours of operation of the VillageFest.
- b. Vendor's volunteers, employees, representatives and staff shall be prohibited by Vendor from consuming alcoholic beverages, be in possession of controlled substances, acting in a manner prohibited by state law or city ordinance, or conducting themselves in a manner detrimental to the event and the public attending when on duty at or in Vendor Booth.
- c. Vendor and its employees are independent contractors and are not employees, servants or agents of VillageFest or of the City. Vendor has the sole responsibility of providing workers' compensation coverage for its employees.

11. **Cancellation:** The City shall retain the right to cancel this Agreement at any time without penalty.

12. **Entire Agreement:** This Agreement evidences the entire agreement between the parties hereto and supersedes all prior agreements and understandings pertaining to VillageFest.

13. **Effective Date:** This Agreement is effective upon City's acceptance as evidence by the execution of this Agreement by City's authorized representatives in the space provided below.

**CITY OF PRAIRIE VILLAGE**

**VENDOR**

**By:** \_\_\_\_\_  
(signed)

**Ronald L. Shaffer** \_\_\_\_\_

**Mayor** \_\_\_\_\_

**City of Prairie Village** \_\_\_\_\_

**7700 Mission Road** \_\_\_\_\_

**Prairie Village, Kansas, 66208** \_\_\_\_\_

**913-381-6464** \_\_\_\_\_

**(date of execution)** \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
**City Clerk, Joyce Hagen-Mundy**

**By**  \_\_\_\_\_  
(signed)

**John McCrae** \_\_\_\_\_

**(typed name)**  
**Owner / Puppeteer** \_\_\_\_\_

**(typed title)**

**Clement McCrae Puppet Shows** \_\_\_\_\_

**(typed company name)**

**8806 Ivanhoe Trail** \_\_\_\_\_

**(typed address)**

**Kansas City, MO 64131** \_\_\_\_\_

**(typed city, state, zip)**

**816-444-1492** \_\_\_\_\_

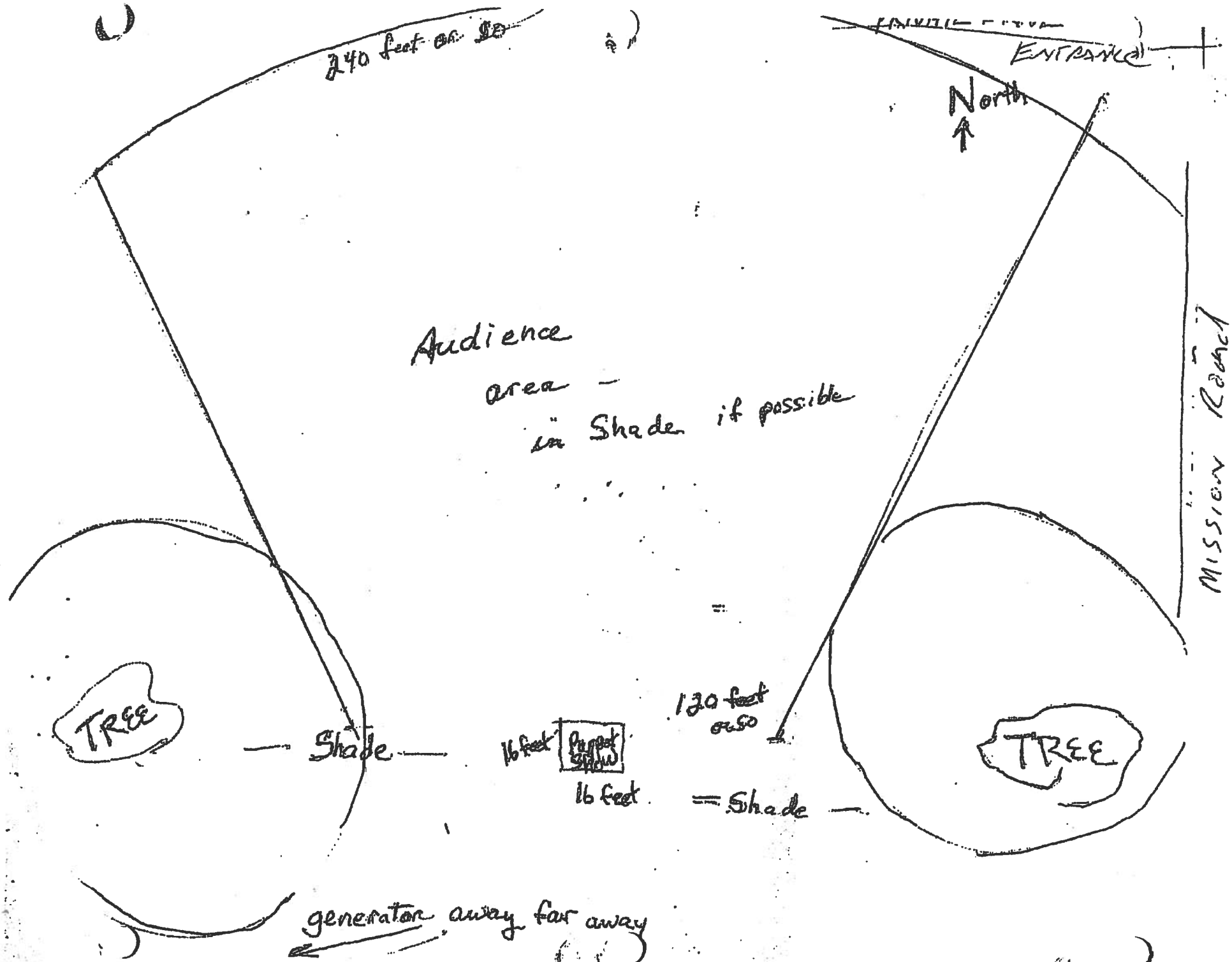
**(typed telephone number)**

**5/8/13** \_\_\_\_\_

**(date of execution)** \_\_\_\_\_

**APPROVED BY:**

\_\_\_\_\_  
**City Attorney, Catherine P. Logan**





## Contract

### Clement McCrae Puppet Shows

#### Parties to the Contract

The Following shall serve as a contract between: **VillageFest of City of Prairie Village** represented by: **Jeanne Koontz**; and **Clement McCrae Puppet Shows (Mary Susan McCrae & John McCrae, puppeteers)**

#### We Shall Provide

**CLEMENT McCRAE PUPPET SHOWS (Mary Susan McCrae) SHALL PROVIDE:**

**Puppets On Strings** : A combination marionette, hand puppets, and other puppets variety show with introduction.

- ⌚ **Show Performance Date:** Thursday, July 04, 2013
- ⌚ **Performance Times:** 9:00 a.m., 10:00 a.m., 11:00 a.m., 12:00 p.m.
- ⌚ **Performance Location:** Shady area southern most part of festival grounds between 2 huge trees.  
7700 Mission  
Prairie Village, KS 66208  
913-385-4662
- ⌚ **Our Arrival time:** One hour prior to show time approx
- ⌚ **Our Departure time:** One-half hour to an hour after show time approx

#### You Shall Provide

**VILLAGEFEST OF CITY OF PRAIRIE VILLAGE (Jeanne Koontz) SHALL PROVIDE:**

- ⌚ **Workplace:** a suitable and clean space for performers
- ⌚ **Stage Area:** an open area 16' x 16' with ceiling clearance of 7 feet.
- ⌚ **Electricity:** (3) 110 volt outlets within 50' of stage area.
- ⌚ **Need a generator supplied by Public Works Department**
- ⌚ **Publicity:** The name CLEMENT McCRAE PUPPET SHOWS shall appear on all publicity about the event.
- ⌚ **Access to the Stage no later than 45 minutes prior to show time.**

**CONTACT PERSON:**

- ⌚ **Jeanne Koontz, 913-385-4662**
- ⌚ **Alternate Contact:** \_\_\_\_\_  
Should be available between one hour before show time and one-half hour after show time



# Contract

## Clement McCrae Puppet Shows

### Fees

The sum of \$ 875.00. Payment made out to CLEMENT McCRAE PUPPET SHOWS shall be given immediately following the first performance.

### Signatories

Mary Susan McCrae or John McCrae  
8806 Ivanhoe Trail  
Kansas City, MO. 64131  
(816) 444-1492

\_\_\_\_\_  
Sponsor signature  
VillageFest of City of Prairie Village

\_\_\_\_\_  
Your address

\_\_\_\_\_  
Your phone

May 8, 2013

Date: \_\_\_\_\_

**FOOD SERVICE AGREEMENT**  
**VillageFest 2013**

**THIS FOOD SERVICE AGREEMENT** is made and entered into by and between the City of Prairie Village, Kansas, a municipal corporation, hereinafter referred to as ("City") and HyVee Inc, hereinafter referred to as ("Vendor").

**WHEREAS**, City is sponsoring a 4th of July celebration within the City limits of Prairie Village, Kansas, for enjoyment of the general public, which event is entitled to "VillageFest 2013" (hereinafter "VillageFest") and

**WHEREAS**, the festivities of VillageFest shall include the sale to the general public of food items; and

**WHEREAS**, City is desirous of providing booth space to Vendor during VillageFest and further desires to ensure that services provided to the general public during VillageFest are of the appropriate quality.

**NOW THEREFORE**, in consideration of the mutual benefits to the parties, it is hereby agreed as follows:

**ARTICLE 1**

**Scope, Duties and Hours of Operation**

1.1 Vendor shall have the right to sell food items as supplied by Vendor from a food booth ("Vendor's Booth") located on the site of the VillageFest 2013, the location of which shall be determined by City.

1.2 The dates and hours of operation that Vendor may operate are as follows:  
Date: July 4, 2013. Hours: Set up between 6:30 and 8:30 a.m.; Hours of Operation from 9:00 am until 1:00 pm; Breakdown after 1:00 p.m.

**ARTICLE 2**

**Financial Risk**

2.1 Vendor acknowledges and agrees that City's prime objective in entering into this Agreement is to ensure the availability of quality food items at a reasonable cost to VillageFest patrons. City has made no representation or warranty to Vendor to the effect that Vendor's participation in the VillageFest will be profitable for Vendor. Vendor acknowledges and agrees that its participation in VillageFest is a demanding business opportunity that involves risk and requires considerable manpower and organizational leadership and further acknowledges that there is the potential for substantial loss. Vendor further acknowledges and agrees to accept sole responsibility for protecting itself against any and all forms or types of loss.

**ARTICLE 3  
Rental Fee**

3.1 Vendor shall pay to City on or before June 21, 2013, a non-refundable rental fee of \$175.00. Included with submission of the rental fee shall be an executed Food Service Agreement and a Proposal Sheet that shall set forth the food items and cost of said food items that Vendor desires to sell to the general public during VillageFest.

**ARTICLE 4  
Signage**

4.1 Vendor shall provide signage for Vendor's Booth that shall legibly state organization or restaurant name, menu and prices. Signage is to be of professional quality and shall be subject to City's approval.

**ARTICLE 5  
Equipment Provided by Vendor**

5.1 Vendor shall be responsible for providing all tables, chairs and equipment utilized by Vendor to serve food items to the general public. **Vendor shall also be responsible for providing its own power source, i.e. a power generator.**

**ARTICLE 6  
Sanitary Condition of Vendor's Booth**

6.1 Vendor shall maintain Vendor's Booth and all surrounding operating area in a neat, clean and sanitary condition and in good order and repair, free and clear of all litter, debris and rubbish at all times. Vendor shall be responsible for the cleanup of Vendor's Booth on an ongoing basis during the VillageFest, at the conclusion of business and at the conclusion of VillageFest. Vendor's cleanliness responsibilities shall also include, but not be limited to, bagging and depositing Vendor's trash in designated containers. City reserves the right to terminate all of Vendor's rights under this Agreement, including the right to operate Vendor's Booth if Vendor fails to maintain clean and sanitary conditions in and around Vendor's Booth during the term of this Agreement.

**ARTICLE 7  
Security and Risk of Loss**

7.1 Vendor is responsible for all items of personal property and/or inventory owned and/or utilized by Vendor throughout the term of this Agreement, including, but not limited to, those items left in and around Vendor's Booth during and after the hours of operation and at the conclusion of the VillageFest. Vendor shall be solely responsible for its own security at all times. Risk of loss of food items, equipment, cash and other items belonging to or in the possession of Vendor is Vendor's. City shall not be responsible for loss of or damage to Vendor's property or inventory whether attributable to theft, vandalism, spoilage, weather or any other cause.

7.2 Vendor is responsible for and agrees to reimburse City for any damage caused by Vendor to City's property or to property being used by the City during VillageFest.

**ARTICLE 8**  
**Access to Facilities**

8.1 Vendor shall have access to Vendor's Booth on July 4, 2013 for set-up from 7:00 a.m. to 9:00 a.m. and for breakdown after 1:00 p.m. Vendor's vehicle(s) must be removed from the VillageFest grounds within one hour after the end of this time period or the vehicle(s) will be subject to tow. City shall not be responsible in the event of the towing of Vendor's vehicle(s).

**ARTICLE 9**  
**Items Sold and Prices**

9.1 The items sold by Vendor and the prices charged for these items shall be consistent with the family-oriented spirit of the VillageFest. Vendors must prepare a Proposal Sheet which sets forth all items Vendor desires to sell to the general public during VillageFest and the cost of said items prior to execution of this Agreement. Such proposal sheet shall be attached to this Agreement as Exhibit A. Exhibit A is hereby incorporated into this Agreement. Any amendments to Exhibit A must be approved by City in writing.

9.2 Vendor shall not serve free food to anyone at any time other than to volunteers, representatives, staff and employees of vendor.

9.3 All federal, state, and local laws governing retail sales tax must be followed. Vendor understands the rules and regulation of the event and will comply. Vendor realizes that failure to comply may result in expulsion from the event.



**ARTICLE 10**  
**Business Information**

10.1 Notifications and any other notices under this Agreement shall be made as follows:

If to City:

City Clerk  
7700 Mission Road  
Prairie Village KS 66208  
(913) 381-6464  
(913) 381-7755

If to Vendor:

10.2 Vendor's Tax Identification Number is: 42-0325630.

**ARTICLE 11**  
**Compliance With Laws**

11.1 Vendor, all of Vendor's volunteers, representatives, staff and employees shall at all times during VillageFest comply with the laws of the State of Kansas and with City's ordinances, rules, regulations, and guidelines and shall at all times comply with all requests of the City or the City's representatives.

11.2 Vendor shall obtain all necessary permits and licenses in order to operate a Vendor Booth at VillageFest and shall provide copies of such permits and licenses to the City prior to June 21, 2013.

**ARTICLE 12**  
**Insurance and Hold Harmless**

12.1 Vendor shall furnish to City a valid certificate of broad form general liability insurance, completed operations and products insurance coverage for personal injuries and property damage with combined single limits of coverage of not less than \$1,000,000.00 with the City named as an additional insured on such policies. Copies of said certificate shall be provided to City on or before June 21, 2013.

12.2 Vendor agrees to assume all liability and responsibility for damages in any form or for costs associated with its activities. Specifically, Vendor agrees to indemnify and hold the City harmless from and against any claims for damages (including attorney's fees necessitated in defending such claims resulting from Vendor's actions, conduct or inaction, whether said claim is premised upon negligence or upon intentional misconduct. Vendor specifically agrees to indemnify and hold the City harmless from and against claims resulting from persons who suffer any sort of injury from the food ingested by such person and/or by virtue of the conditions of the premises located at Vendor's Booth.

### **ARTICLE 13**

#### **Staff**

13.1 Vendor shall provide managers and sufficient staff to keep Vendor's Booth operational during the hours of operation of the VillageFest.

13.2 Vendor's volunteers, employees, representatives and staff shall be prohibited by Vendor from consuming alcoholic beverages when on duty at, in or near Vendor's Booth.

13.3 Vendor and its employees are independent contractors and are not employees, servants or agents of VillageFest or of the City. Vendor has the sole responsibility of providing workers' compensation coverage for its employees and City shall not be responsible for injuries or bodily damage done to Vendor, Vendor's volunteers, employees, representatives and/or staff.

### **ARTICLE 14**

#### **Cancellation**

14.1 City shall retain the right to cancel this Agreement at any time and for any reason without penalty. In the event this Agreement is canceled, Vendor shall not be entitled to a refund of Vendor's Rental Fee as set forth in this Agreement.

### **ARTICLE 15**

#### **Entire Agreement**

15.1 This Agreement evidences the entire agreement between the parties hereto and supersedes any and all prior agreements and understandings between the parties pertaining to VillageFest.

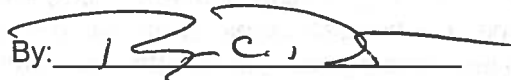
**ARTICLE 16**  
**Effective Date**

16.1 This Agreement is effective upon City's acceptance as evidenced by execution of this Agreement by a City authorized representative in the space provided below.

CITY OF PRAIRIE VILLAGE:

VENDOR:

By: \_\_\_\_\_

By:  \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: Ryan C. Bryant

Title: \_\_\_\_\_

Title: CATERING MANAGER

Date: \_\_\_\_\_

Date: 4/29/13

## EXHIBIT A

### PROPOSED FOOD ITEMS

<u>FOOD</u>	<u>PRICE</u>
<u>Hot Dog</u>	<u>1.50</u>
<u>Fruit</u>	<u>2.50</u>
<u>Burger</u>	<u>2.50</u>
<u>Veg Burger</u>	<u>2.50</u>
<u>Chips</u>	<u>1.00</u>
<u>Jumbo Cookie</u>	<u>1.00</u>
<u>Bottled Water</u>	<u>.75</u>
<u>Cup Pop</u>	<u>.75</u>
<u>GARDOLINI</u>	<u>1.00</u>
<u>CINNAMON ROLL OR DONUT</u>	<u>1.00</u>

As a Vendor you are responsible for proper signage. This needs to be visible and also include prices. We will provide advertising, a map of the grounds, & signs throughout the grounds for direction.

**There is also NO ALCOHOL to be sold at the event!!!!**

**ENTERTAINMENT/ VENDOR AGREEMENT  
2013**

**THIS ENTERTAINMENT/VENDOR AGREEMENT**, (hereinafter "Agreement") is made and entered into this 2 day of April, 2013, by and between the City of Prairie Village, Kansas (hereinafter "the City") and Hiccup Productions, Inc., (hereinafter "Vendor").

WHEREAS, the City is sponsoring an event, entitled VillageFest, for the general public which is to be held on July 4, 2013; and

In consideration of the mutual promises and covenants contained herein, Vendor and City agree as follows:

1. Type of Space Provided: the Vendor shall specify the square footage required including facility foot print and clearance space outside the facility foot print:  
Covered Stage – 24 x 16
2. Type of Service Provided: the Vendor agrees to provide the following services:  
  
Jim "Mr. Stinky Feet" Cosgrove & The Hiccups!  
Funky Mama  
Mark Thies, Sound System
3. Hours of Operation: The Vendor shall provide services to the general public from on July 4, 2013 as follows:  
Funky Mama: 9:00 am – 9:30 am  
Jim Cosgrove: 10:00 am – 11:00 am  
Mark Thies/sound system: 9:00 am – 1:00 pm
4. Access to Facilities:
  - a. Vendor shall have access to Vendor's location for set-up on July 4, 2013 from 6:30 a.m. to 8:30 a.m. and for breakdown after 1:00 pm. Vendor's vehicle(s) must be removed from the VillageFest grounds within one hour after the end of this time period or the vehicle(s) will be subject to tow.
  - b. Vendor shall furnish City a list of each equipment/facility showing the required electrical power in AC volts and AC amp, required water from a garden hose, required fencing, and required set V up/breakdown assistance specifying skills required, and any other special requirements as part of this Agreement. Any amendments to Exhibit A must be approved by the City in writing.

*2*  
\* Please make check payable to Hiccup Productions

5. Compensation: In consideration for the entertainment provided, the City shall pay to the Vendor the amount of \$2,300.00 to be paid on or before July 4, 2013 unless the event is canceled as provided in Section 6 of this agreement.
6. Cancellation of the Event: The City has full authority to cancel the event for any reason. In the event that the City cancels VillageFest, the City shall notify Vendor of the cancellation in a timely manner, and this Agreement shall be terminated.
7. Clean-Up: Vendor shall maintain its Vendor's Booth and/or operating areas in a neat, clean, sanitary condition and in good order and repair, free and clean of all litter, debris and rubbish at all times. Vendor shall be responsible for the clean up of its areas on an ongoing basis during the VillageFest and at the conclusion of business and conclusion of the VillageFest. Vendor's clean up responsibilities shall also include, but not be limited to, bagging and depositing Vendor's trash in the designated containers. City reserves the right to terminate all of Vendor's rights under this Agreement, including the right to operate if Vendor has failed to maintain clean and sanitary conditions in and around Vendor's location.
8. Indemnity:
  - a. Vendor shall indemnify and hold harmless the City and its 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 (i) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting there from and (ii) is caused in whole or in part by any negligent act or omission of the Vendor, or any sub-contractor, 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 as to any party or person described in this Paragraph.
  - b. The Vendor is responsible for all items left on the VillageFest premises, including, but not limited to, those items left in and around Vendor's location before, during and after the hours of operation of the VillageFest. Vendor shall be solely responsible for its own security at all times. Risk of loss of equipment, cash and other items belonging to or in the possession of Vendor is on Vendor. City shall not be responsible for loss of or damage to Vendor's property or inventory whether attributable to theft, vandalism spoilage, weather or any other cause.

- c. Vendor is responsible for and agrees to reimburse City for any damage caused by Vendor to City's property or to property being used by the City.
  - d. Vendor shall furnish City with a valid certificate of broad form general liability insurance, completed operations and products insurance coverage for personal injuries and property damage with combines single limits of coverage of not less than \$1,000,000.00 per occurrence, with the City named as additional insured on such policies. **Copies of said certificate shall be provided to City on or before June 21, 2013.**
9. **Notification:** Notification and any other notices under this Agreement shall be made as follows:
- City Clerk  
7700 Mission Road  
Prairie Village, KS 66208  
(913) 381-6464
10. **Staff:**
- a. Vendor shall provide managers and sufficient staff to keep Vendor's Booth operational during the hours of operation of the VillageFest.
  - b. Vendor's volunteers, employees, representatives and staff shall be prohibited by Vendor from consuming alcoholic beverages, be in possession of controlled substances, acting in a manner prohibited by state law or city ordinance, or conducting themselves in a manner detrimental to the event and the public attending when on duty at or in Vendor Booth.
  - c. Vendor and its employees are independent contractors and are not employees, servants or agents of VillageFest or of the City. Vendor has the sole responsibility of providing workers' compensation coverage for its employees.
11. **Cancellation:** The City shall retain the right to cancel this Agreement at any time without penalty.
12. **Entire Agreement:** This Agreement evidences the entire agreement between the parties hereto and supersedes all prior agreements and understandings pertaining to VillageFest.
13. **Effective Date:** This Agreement is effective upon City's acceptance as evidence by the execution of this Agreement by City's authorized representatives in the space provided below.

**CITY OF PRAIRIE VILLAGE**

By: \_\_\_\_\_  
(signed)

Ronald L. Shaffer

Mayor

City of Prairie Village

7700 Mission Road

Prairie Village, Kansas, 66208

913-381-6464

(date of execution)

ATTEST:

City Clerk, Joyce Hagen-Mundy

**VENDOR**

By Jeni Cosgrove  
(signed)

Jeni Cosgrove

(typed name)

Agent

(typed title)

Hiccup Productions

(typed company name)

PO BOX 8156

(typed address)

Prairie Village, KS 66208

(typed city, state, zip)

913-219-4815

(typed telephone number)

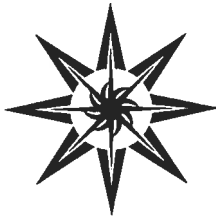
4/2/13

(date of execution)

APPROVED BY:

City Attorney, Catherine P. Logan





**MAYOR**

**Council Meeting Date: May 20, 2013  
CONSENT AGENDA**

**Consider Appointment to Sister City Committee**

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**RECOMMENDATION**

Mayor Shaffer requests Council ratification of the appointment of Craig Stramel to the Prairie Village Sister City Committee to a three year term expiring in April, 2016.

**BACKGROUND**

Craig Stramel is a returned Peace Corps Volunteer who served in Ukraine and will bring great insight and enthusiasm to the committee. His volunteer application is attached. Ratification of her appointment will be included on the Consent Agenda.

**RELATION TO VILLAGE VISION**

*CC3 Diversity*

*CC3a Cultivate an environment that celebrates diversity.*

**PREPARED BY**

Joyce Hagen Mundy  
City Clerk

Date: May 15, 2013



**City of Prairie Village  
APPLICATION TO VOLUNTEER**

Please complete this form and return it to the City Clerk's Office, 7700 Mission Road, Prairie Village, Kansas 66208. If you have any questions, please contact the City Clerk's Office at 913-381-6464 or send an e-mail to [cityclerk@pvkansas.com](mailto:cityclerk@pvkansas.com).

Name Craig Stamel Spouse's Name \_\_\_\_\_  
Address 4001 W. 84th Street Apt. D Zip 66207 Ward \_\_\_\_\_  
Telephone: Home [REDACTED] Work \_\_\_\_\_ Fax \_\_\_\_\_  
E-mail csstamel@yahoo.com Other Number(s): \_\_\_\_\_  
Business Affiliation \_\_\_\_\_

Business Address \_\_\_\_\_  
What Committee(s) interests you? Sister City Committee

Please tell us about yourself, listing any special skills or experiences you have which would qualify you for a volunteer with the City of Prairie Village.

I am a Returned Peace Corps Volunteer who served in Ukraine. I am civic-minded and gained community building skills during my service abroad.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## MEMORANDUM

**TO:** Prairie Village City Council  
**FROM:** Ron Williamson, Lochner, Planning Consultant  
**SUBJECT:** The Golden Factors  
**DATE:** May 20, 2013

Project # 000005977

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In 1978, the Supreme Court of Kansas handed down a decision in the Golden vs. City of Overland Park case that established the basis for considering and reaching a decision on zoning changes. The decision should be made based on the evidence submitted and the factors considered. The eight Golden Factors emerged from this case and have become institutionalized in the consideration of zoning changes in Kansas. A more recent court case determined that Special Use Permits were, in reality, a land use change and should be considered by the same factors.

The factors must be considered by the Planning Commission and Governing Body in order to determine whether granting or denying a zoning change, including a Special Use Permit, was reasonable. It is not necessary that findings on all the factors be favorable to approve or be unfavorable to deny the zoning change or Special Use Permit. Also, not all the factors carry the same weight and the weight may vary from case to case.

1. **The character of the neighborhood:** Factual description of the application area and surrounding property as to land uses, density, intensity, general condition, age of structure, etc.
2. **The zoning and uses of property nearby:** Factual listing of the zoning surrounding the property along with the specific abutting uses.
3. **The suitability of the property for the uses to which it has been restricted under its existing zoning:** How is the property currently zoned and what uses are allowed on the property? Are these uses suitable given surrounding zoning and site criteria? Are the current allowed uses the only ones which might be appropriate for this property?
4. **Extent to which removal of the restrictions will detrimentally affect nearby property:** Can the uses allowed in the requested district be good neighbors to existing development? This is a subjective question. The focus should be on facts, not fears, and should be based on issues that zoning can address (e.g., allowed uses, minimum lot sizes, height, setbacks, traffic, etc.)
5. **Length of time of any vacancy of the property:** Factual information, but its importance can be somewhat subjective. A property might be vacant because the current zoning is unsuitable, but there may be other reasons not related to zoning. Some examples might be a glut of available property of the same zoning district, financing problems, speculation, lack of available services or other development problems.
6. **Relative gain to the public health, safety and welfare by destruction of value of the applicant's property as compared to the hardship on other individual landowners:** The protection of the public health, safety and welfare is the basis for zoning. The relationship between the property owner's right to use and obtain value from their property and the City's responsibility to its citizens should be weighed.
7. **Recommendation of professional staff:** Should be based on the evidence presented, the factors, adopted plans and policies, and other technical reports (e.g., Capital Improvement Programs, facility master plans, etc.) which speak to the topic and staff's best professional judgment.
8. **Conformance with the Comprehensive Plan:** Does the request agree with the adopted plan recommendations? If not, is the plan out-of-date or are there mitigating circumstances which speak to the nonconformity?

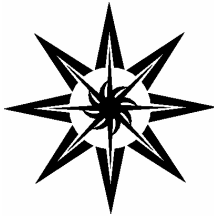
In addition to the Golden Factors, the City of Prairie Village Zoning Regulations also provides factors for consideration (19.28.035) when considering Special Use Permits. Several of these factors are similar to those found in the Golden Factors. The following is an excerpt of 19.28.035.

*The Planning Commission and Governing Body shall make findings of fact to support their decision to approve or disapprove a Special Use Permit. (Ord. 1973, Sec. I, 1999; Ord. 2199, Sec.V, 2009)*

- A. *The proposed special use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations and use limitations;*
- B. *The proposed special use at the specified location will not adversely affect the welfare or convenience of the public;*
- C. *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*
- D. *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 the 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 will so dominate the immediate neighborhood consideration shall be given to:
  1. *The location, size, nature and height of buildings, structures, walls, and fences on the site; and*
  2. *The nature and extent of landscaping and screening on the site.**
- D. *Off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations, and such areas will be screened from adjoining residential uses and located so as to protect such residential uses from any injurious effect.*
- E. *Adequate utility, drainage, and other such necessary facilities have been or will be provided.*
- F. *Adequate access roads or entrance and exit drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.*
- G. *Adjoining properties and the general public shall be adequately protected from any hazardous or toxic materials, hazardous manufacturing processes, obnoxious odors or unnecessarily intrusive noises.*
- H. *Architectural style and exterior materials are compatible with such style and materials used in the neighborhood in which the proposed building is to be built or located.*

*It is not necessary that a finding of fact be made for each factor described herein. However, there should be a conclusion that the request should be approved or denied based upon consideration of as many factors as are applicable. (Ord. 1973, Sec. I, 1999)*

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## ADMINISTRATION

Council Committee Meeting Date: May 20, 2013

\*City Council Meeting Date: May 20, 2013

**\*COU2013-20: Accept Bids for Weed Abatement Services and select Serenity Landscape Design, LLC as the low bid and authorize the Mayor to execute contract agreement for Weed Abatement Services with Serenity Landscape Design, LLC.**

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### RECOMMENDATION:

Staff recommends the City Council accept the low bid from Serenity Landscape Design, LLC and authorize the Mayor to execute an Agreement for Weed Abatement Services with Serenity Landscape Design, LLC.

Staff is requesting City Council Approval at the May 20, 2013.

### BACKGROUND:

In 2009 the City began contracting out mowing of properties which have been found to be in violation of the City Weeds and Grass ordinance. The previous contractor has decided not to continue providing services to the City.

The City initiated a bidding process and received (2) bids from contractors for mowing services. Serenity Landscape Design, LLC submitted the lowest aggregate cost bid cost. A summary of the bids received is listed below:

### BID FOR CONTRACT SERVICES

Type of Service	Serenity Landscape Design, LLC.	Denis Lawn Care
Hourly Mowing w/ Operator	\$ 30.00	\$55.00
Tractor mower w/ operator	\$ 38.00	\$65.00
Weed eater w/operator	\$ 30.00	\$55.00
Clean Up (Removal of grass clippings, bottles, cans, etc).	\$ 30.00	\$250.00
Removal of Debris which impedes mowing (limbs, brush, etc)	\$ 2.00 cubic ft	\$175.00
Work Documentation (Before & after pictures)	\$ 00.00	\$00.00

### FUNDING SOURCE:

The 2013 Codes budget contains funds for contract mowing services. If additional funding is necessary, staff will request contingency funds.

**ATTACHMENT:**

Copy of Agreement for Weed Abatement Services

**PREPARED BY:**

Marcia Gradinger

Code Enforcement Officer

Date: May 17, 2013

## ANNUAL AGREEMENT FOR WEED ABATEMENT SERVICES

This Agreement, made this 20<sup>th</sup> day of MAY, 2013, by and between Serenity Landscape, hereinafter referred to as Contractor, and the CITY OF PRAIRIE VILLAGE, KANSAS, hereinafter referred to as City, shall be in full force and effect during calendar year 2013 with the following terms and conditions.

The Contractor proposes and agrees to provide all necessary machinery, tools, and equipment; and to do all the work specified in the documents of the contract in the manner therein prescribed and according to the requirements of the City as therein set forth.

This agreement will be the only executed agreement. Any additions or changes must be added as supplement to this agreement at time of proposal.

### **1.0 General**

- 1.1 That the Contractor shall designate one person, called Supervisor, who shall be present at all times during the execution of the work. This person shall be thoroughly familiar with the specified requirements and the methods needed for the proper performance of the work and who shall direct all work performed.
- 1.2 The Contractor shall designate one person who shall serve as contact for the City for purposes of scheduling inspections, emergencies, and maintaining communication.
- 1.3 The Contractor is admonished that the crews will be properly attired, refrain from abusive language, refrain from improper behavior, and be aware that they are representing the City.
- 1.4 The City will inspect the work on a regular basis and report to the Contractor's contact any problems.
- 1.5 The Contractor will report to the City any problems or hazards that are observed during the course of the work.
- 1.6 The Contractor will use equipment and tools suitable for the work. All equipment and tools will be in near-original working condition.
- 1.7 That Marcia Grading, Code Enforcement Officer, at phone-(913)385-4605, cell 913-522-2573, fax-(913)385-4654, will be the City coordinator for the Contractor for providing any service and responding to any special needs.
- 1.8 The City shall pay the Contractor within thirty (30) days from the date of receipt of an invoice for payment.
- 1.9 The Contractor will take all safety precautions to protect the workers and the general public.
- 1.10 That all work performed by the Contractor will be of acceptable workmanlike quality normally associated with this trade and shall be satisfactory to the City before payment will be made by the City to the Contractor.
- 1.11 All invoices with a copy of the service report are to be sent to the Prairie Village Municipal Offices, C/O Marcia Grading, 7700 Mission Road, Prairie Village, KS 66208.
- 1.12 This Agreement is for the period of January 1, 2013 through December 31, 2013, providing that the term may be renewed for additional twelve month periods by written agreement between the parties. Either party may terminate this agreement by giving sixty (60) days prior written notice to the other party.

## 2.0 Work Hours

- 2.1 That the City authorizes the Contractor to perform work anytime from 8:00 am through 5:00 pm weekdays.
- 2.2 The Contractor shall obtain prior written approval from the City before scheduling any work outside the normal working hours.

## 3.0 Weed Abatement

- 3.1 The Contractor will cut and remove noxious weeds and tall grass with a height in excess of eight (8) inches from private properties upon receipt of a Notice to Abate issued by the City. The Notice to Abate may be delivered via email or facsimile. **The work shall be completed by Contractor within 48 hrs (2 working days) of Contractor's receipt of the Notice to Abate.** The contractor will take digital pictures of the property prior to mowing showing the areas to be mowed, any debris which impedes mowing that will be removed, and any objects to be moved and replaced after mowing. Pictures will be submitted with the Contractors invoice.
- 3.2 Any debris which hinders the Contractor's ability to perform the abatement work, such as the presence of brush piles, limbs, etc. shall be removed from the property by Contractor and disposed of appropriately by the Contractor.
- 3.3 Any items other than debris located on private property which hinders the Contractor's ability to perform the abatement work, such as toys, lawn furniture, etc. shall be temporarily moved on the property by Contractor, enabling the Contractor to perform the work, then returned to their original location upon the completion of abatement activities.
- 3.4 Upon completion of abatement work, the Contractor shall clear any grass clippings or other debris from public sidewalks or streets.
- 3.5 Upon completion of the work, the Contractor shall provide written notice to the City via e-mail or facsimile, of the time and date upon which the work was completed. The Contractor shall also provide an item invoice detailing the specific times and hours worked.

## 4.0 Contractor Availability

- 4.1 The Contractor will be available during normal business hours as identified in Section 2.1 above during the term of this contract for providing the work.



## 5.0 Fees

- 5.1 The following schedule will govern fees charged by Contractor while performing work authorized under this Agreement:
- 5.2 Equipment services will be billed on an hourly basis with a one hour minimum. Services will be billed in 15 minute increments.
- 5.3 Debris removal services will be billed on a per-load basis.

### Service

Hourly Mowing w/ Operator	\$ 30. <sup>00</sup>
Tractor mower w/ operator	\$ 38. <sup>00</sup>
Weed eater w/operator	\$ 30. <sup>00</sup>
Clean Up (Removal of grass clippings, bottles, cans, etc).	\$ 30. <sup>00</sup>
Removal of Debris which impedes mowing (limbs, brush, etc)	\$ 2. <sup>00</sup> per cubic foot
Work Documentation (Before & after pictures)	\$ 00. <sup>00</sup>

## 6.0 Miscellaneous Matters

- 6.1 skilled in the work assigned. Persons hired by the Contractor shall be and remain Contractor's employees.
- 6.2 Contractor shall be responsible for all payroll costs including taxes or contributions, whether state or federal, to all employees engaged in the performance of work under this Contract.
- 6.3 Contractor shall furnish to the City, on request of the City, a certificate or other evidence of compliance with all state or federal laws concerning contributions, taxes and payroll assessments. In addition, Contractor agrees to pay any and all gross receipts, compensating, transaction, sales, use or other taxes or assessments of whatever nature of kind levied or assessed as a consequence of the work performed or on the compensation to be paid under this Contract.
- 6.4 City shall not be responsible or be held liable for any injury or damage to person or property resulting from the use, misuse, or failure of any equipment used by the Contractor or any of the Contractor's employees.
- 6.5 The Contractor agrees to defend, indemnify and hold harmless the City against any and all loss, liability, and claims for injury or damage whatsoever to persons or property resulting from the work to be performed hereunder, whether such injury or damage is to an employee or the property of the Contractor, other contractors, City or other persons.
- 6.6 *Contractor shall procure and maintain comprehensive general liability insurance coverage written by a responsible insurer licensed to do business in Kansas, naming the City, its agents and employees as additional names insured, which coverage, pertaining to the premises or operator's activities shall not be less than \$500,000.00 per occurrence, \$1,000,000.00 in the aggregate including death, property damage and personal injury liability. Contractor will be required to provide all insurances necessary for the work including workers compensation for Contractor's employees and pertinent auto insurance coverage. Verification of the insurance coverage must be submitted to the City prior to the commencement of work.*
- 6.7 This Contract sets forth the entire agreement between Contractor and City with respect to the subject matter thereof and supersedes and cancels any and all prior oral or written agreements or understandings between the parties with respect to the foregoing matters. This Contract may only be changed in writing signed by both parties.

Contractor Contact: Chris Patch

ATTEST:

Address: 19880 Antioch Rd. /s/

Joyce Hagen Mundy, City Clerk Date


Bucyrus, KS 66013

Telephone Number: (913) 238-1841 /s/

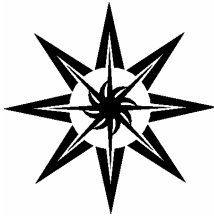
Catherine P. Logan, City Attorney Date

Fax Number: N/A

E-mail address Chris@serenitylandscapingdesign.com

/s/  \_\_\_\_\_  
Contractor Agent Date 5/14/13

/s/ \_\_\_\_\_  
Ronald L. Shaffer, Mayor Date



## PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: May 20, 2013

Council Meeting Date: May 20, 2013

**\*COU2013-19: CONSIDER CONSTRUCTION CONTRACT FOR PROJECT 2013 PAVING, 2013 CARS, AND 2012 /2013 DRAINAGE PROJECTS**

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### RECOMMENDATION

Move to authorize the Mayor to sign the construction contract with O'Donnell and Son's Construction for Project 2013 Paving, 2013 CARS, and 2012/2013 Drainage Projects for \$3,100,000.00.

### BACKGROUND

This project includes work on many streets throughout the City. It is funded by the 2013 Paving Program, the 2013 CARS Program, and the 2012/2013 Drainage Programs. These streets will be rehabilitated and will include repair or replacement of the concrete and asphalt pavement. Drainage repairs are made on some streets as well with significant drainage work on 63<sup>rd</sup> Street from Delmar to Roe Avenue. Drainage Channel improvement will also be made under the bridge at 71<sup>st</sup> and Tomahawk.

#### Street Projects-

- 63<sup>rd</sup> Street- Delmar Street to Mission Road
- 64<sup>th</sup> Street- 64<sup>th</sup> Terrace to Hodges Drive
- 70<sup>th</sup> Street- Roe Avenue to Tomahawk Drive
- Linden Lane- 71<sup>st</sup> Terrace to 71<sup>st</sup> Street
- 72<sup>nd</sup> Terrace- Village Drive to Mission Road
- 76<sup>th</sup> Street- Briar Street to Roe Avenue
- Delmar Street- 75<sup>th</sup> Street to 79th Street
- 78<sup>th</sup> Street- Tomahawk Road to Nall Avenue
- Linden Lane- 85<sup>th</sup> Street to 83<sup>rd</sup> Terrace
- 84<sup>th</sup> Street- Roe Avenue to Fontana Road
- Somerset Drive- (Reinhardt Lane to Belinder Avenue) CARS

#### Drainage Repairs-

- 63<sup>rd</sup> Street- Roe Avenue to Delmar Street- Replace CMP drainage system.
- Brush Creek(71<sup>st</sup> Street and Tomahawk Drive) Replace Concrete Channel.

On May10, 2013, the City Clerk opened bids for the project. Three acceptable bids were received:

O'Donnell & Sons Construction	\$2,918,820.75
J.M. Fahey Construction	\$3,050,109.44
McAnany Construction	\$3,255,659.95
Engineer's Estimate	\$3,119,683.00

The Engineer has reviewed all bids and has recommended award of the low bid. One additional bid was received but it failed to meet the requirements of the contract.

There is \$3,100,000 budgeted for this project and the contract will be awarded for \$3,100,000.00. Given the bids we should be able to construct more streets than listed above. The scope of work could change on an individual street such as a complete reconstruction versus a mill and overlay causing less funds to be available for additional streets.

## **FUNDING SOURCES**

Funding is available under the 2013 Paving Project (PAVP2013), the 2012 and 2013 Drainage Programs (DRAIN12x and DRAIN13x), and the 2013 CARS Project (SODR0003).

## **RELATION TO VILLAGE VISION**

- CC1a. Make streetscape improvements to enhance pedestrian safety and attractiveness of the public realm.*
- CFS3a. Ensure streets and sidewalks are in good condition by conducting maintenance and repairs as needed.*
- TR1a. Provide sidewalks in new and existing areas to allow for continuous pedestrian movement around Prairie Village.*
- TR1b. Ensure that infrastructure improvements meet the needs of all transportation users.*

## **ATTACHMENTS**

1. Construction Agreement with O'Donnell and Son's Construction.

## **PREPARED BY**

Keith Bredehoeft, Project Manager

May 16, 2013

**CONSTRUCTION CONTRACT**  
**FOR**  
**PROJECT PAVP2013- 2013 PAVING PROGRAM**  
**PROJECT SODR0003- 2013 CARS PROJECT**  
**PROJECT DRAIN12x- 2012 STORM DRAINAGE REPAIR PROJECT**  
**THE CITY OF PRAIRIE VILLAGE, KANSAS**  
**AND**  
**O'DONNELL AND SONS CONSTRUCTION**

**THIS AGREEMENT**, is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the City of Prairie Village, Kansas, hereinafter termed the "City", and O'Donnell and Sons Construction, 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 Three Million One Hundred Thousand and Zero DOLLARS (\$3,100,000.00 ) 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 work 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 the 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  $\frac{7}{5}$  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 filed 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.

- 13.12 For parts of this contract that are partially funded by Johnson County's C.A.R.S. Program the following shall apply:

The Board of County Commissioners of Johnson County, Kansas shall be named as an additional insured on all policies of insurance issued to the Contractor and required by the terms of his/her agreement with the City.

#### 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.

14.6 For parts of this contract that are partially funded by Johnson County's C.A.R.S. Program the following Indemnification Clause shall apply:

The Contractor shall defend, indemnify and save the Board of County Commissioners of Johnson County, Kansas and the City harmless from and against all liability for damages, costs, and expenses arising out of any claim, suit, action or otherwise for injuries and/or damages sustained to persons or property by reason of the acts or omissions of the Contractor, his or her subcontractors, agents or employees in the performance of this contract.

## 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)

Ronald L. Shaffer \_\_\_\_\_

Mayor \_\_\_\_\_

City of Prairie Village \_\_\_\_\_

7700 Mission Road \_\_\_\_\_

Prairie Village, Kansas, 66208 \_\_\_\_\_

\_\_\_\_\_  
(date of execution)

\_\_\_\_\_

By \_\_\_\_\_  
(signed)

\_\_\_\_\_  
(typed name)

\_\_\_\_\_  
(typed title)

\_\_\_\_\_  
(typed company name)

\_\_\_\_\_  
(typed address)

\_\_\_\_\_  
(typed city, state, zip)

\_\_\_\_\_  
(typed telephone number)

\_\_\_\_\_  
(date of execution)

SEAL

ATTEST:

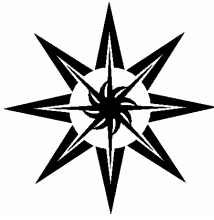
APPROVED BY:

\_\_\_\_\_  
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: May 20, 2013

Council Meeting Date: May 20, 2013

### **\*COU2013-18: CONSIDER CONSTRUCTION ADMINISTRATION AGREEMENT WITH TRANSYSTEMS FOR THE 2013 CONSTRUCTION PROJECTS.**

#### **RECOMMENDATION**

Move to approve the construction administration agreement with TranSystems for 2013 construction projects for \$299,299.00.

#### **BACKGROUND**

In 2012 TranSystems was selected to be the City's construction administration consultant for 2012, 2013 and 2014.

This contract will include construction administration services for the 2013 Paving Program, the 2013 CARS Project, and the 2012 and 2013 Drainage Programs.

The total construction cost for all the above projects will be about \$3,100,000. The fee was negotiated with TranSystems to be \$299,299.00 or 9.6% of construction costs. This percentage is similar to the percentage for recent construction administration contracts.

#### **FUNDING SOURCE**

Funding is available under the 2013 Paving Project (PAVP2013), the 2012 and 2013 Drainage Programs (DRAIN12x and DRAIN13x), and the 2013 CARS Project (SODR0003).

#### **RELATION TO VILLAGE VISION**

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

#### **ATTACHMENTS**

1. Construction Administration Agreement with TranSystems.

#### **PREPARED BY**

Keith Bredehoeft, Project Manager

May 16, 2013

**AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES**

**For**

**CONSTRUCTION ADMINISTRATION**

**For**

**PROJECT 2012/2013 DRAINAGE PROJECT  
PROJECT PAVP2013: 2013 PAVING PROGRAM  
PROJECT SODR0003: 2013 C.A.R.S. 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 2012/2013 Drainage Project; Project PAVP2013 2013 Paving Program; and Project SODR0003 2013 C.A.R.S. 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. Kyle Fitterer 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 parties 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 \$ 299,299.00 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 \$500,000

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**

**May 20, 2013**

**Committee meetings scheduled for the next two weeks include:**

Environmental/Recycle Committee	05/22/2013	7:00 p.m.
VillageFest Committee	05/23/2013	7:00 p.m.
Council Committee of the Whole	06/03/2013	6:00 p.m.
City Council	06/03/2013	7:30 p.m.

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The Prairie Village Arts Council is pleased to announce an abstract photography exhibit by Jacia Humiston in the R.G. Endres Gallery during the month of May.

Recreation memberships are for sale in the City Clerk's Office. The pool opens on Saturday, May 25<sup>th</sup>, at 11:00 a.m.

The City offices will be closed on Monday, May 27<sup>th</sup>, in observation of the Memorial Day Holiday. Deffenbaugh also observes this holiday so pick-up will be delayed.

**INFORMATIONAL ITEMS**  
**May 20, 2013**

1. Planning Commission Minutes - April 2, 2013
2. JazzFest Committee Minutes - April 4, 2013
3. Sister City Committee Minutes - April 8, 2013
4. Park & Recreation Committee Minutes - April 10, 2013
5. Council Committee of the Whole Minutes - May 6, 2013
6. Mark Your Calendars



**PLANNING COMMISSION MINUTES  
APRIL 2, 2013**

**ROLL CALL**

The Planning Commission of the City of Prairie Village met in regular session on Tuesday, April 2, 2013, in the cafeteria of Indian Hills Middle School, 6400 Mission Road. Chairman Ken Vaughn called the meeting to order at 7:00 p.m. with the following members present: Bob Lindeblad, Randy Kronblad, Dirk Schafer, Nancy Wallerstein, Gregory Wolf and Nancy Vennard.

The following persons were present in their advisory capacity to the Planning Commission: Ron Williamson, City Planning Consultant; Dennis Enslinger, Assistant City Administrator; Jim Brown, Building Official, Keith Bredehoeft, Interim Public Works Director, Ted Odell, Council Liaison and Joyce Hagen Mundy, City Clerk/Planning Commission Secretary.

**APPROVAL OF MINUTES**

Nancy Vennard noted on page 10 Rick Jones's firm should be "Nearing Staats Prelogar & Jones". Randy Kronblad moved the minutes of the March 5, 2013 be approved as corrected. The motion was seconded by Nancy Vennard and passed by a vote of 6 to 0 with Ken Vaughn abstaining.

**PUBLIC HEARINGS**

There were no public hearings scheduled before the Commission.

**NON-PUBLIC HEARINGS**

**PC2013-109      Site Plan Approval - KU Eye Center  
7400 State Line Road**

Steve Bowling, with AMAI Architecture, stated KU EYE is proposing to expand its services by adding an eye surgery suite on the second floor to complement its current eye examination practice. This is basically a tenant finish converting general office space to medical offices. KU EYE currently has 15,877 sq. ft. on the first floor and plans to add 7,600 sq. ft. on the second floor. They are located in the west end of the north wing of the building. In implementing this expansion, they are proposing to have an entrance to their space on the west end of the building. To accomplish this they propose to add an elevator to the northwest corner of the building. This requires expansion of the wall area, relocating the transformer and installing a standby generator.

Ron Williamson noted the expansion will result in the loss of two parking spaces. The proposed standby generator is diesel fueled. The Planning Commission has preferred standby generators to be fueled by natural gas delivered by a direct line. Diesel fueled generators have been approved in the past and the applicant has stated that diesel fuel is better for their application. The proposed generator has a 788 gallon fuel tank.

Mr. Williamson also added that the current sign standards only allow for two façade signs and the applicant is seeking to add an additional sign on the west. The Commission will need to approve an amendment to the existing sign standards in a separate action.

Nancy Vennard asked why a diesel generator is being proposed rather than a natural gas. Mr. Bowling responded that to get the same output from a natural gas generator as the proposed diesel generator would require a generator twice the size, which would require a larger expansion. He also noted the new diesel generators have a double lining with a warning system that will sound if the first layer of lining is damaged. The environmental impact, lower risk and reduced noise make the diesel generator a better option for this project.

Mr. Bowling confirmed that he had reviewed the staff report and was in agreement with the conditions of approval recommended by staff.

The applicant held a neighborhood meeting on March 13, 2013 in accordance with the Planning Commission Citizen Participation Policy. Three interested citizens appeared and the primary concerns were the size of the addition, generator noise and safety during construction. The applicant answered their concerns satisfactorily.

Chairman Ken Vaughn led the Commission in the following review of the site plan criteria:

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

The site is 3.03 acres and is fully developed. The site adequately accommodates the building and the development has open space and landscaping.

The on-site circulation works well. Access is provided from State Line Road and Booth Street. No changes are proposed for access or circulation. The primary concern is meeting the requirements for off-street parking. The building has 46,505 sq. ft. of leasable space. Currently KU EYE occupies 15,877 sq. ft. and proposes to add 7,600 sq. ft. for a total of 23,477 sq. ft. The building was built and used for general office which requires one parking space per 300 sq. ft. of floor area. Dividing the 46,505 sq. ft. by 300 required equals 155 spaces. The site has 169 parking spaces and therefore meets the requirement. A problem occurs when general office space is converted to medical offices. Medical offices require one parking space for 200 sq. ft. of floor area. At that rate the current parking requirement for the building is 80 spaces for medical and 103 spaces for general offices for a total of 183 spaces or 14 more than are provided. The parking analysis was not addressed when the medical office space was built out several years ago, but with expansion it is necessary for the parking requirement to be met. Under the proposal there will be 23,028 sq. ft. of general offices requiring 77 spaces and 23,477 sq. ft. of medical requiring 118 spaces for a total of 195 spaces for the building and a deficiency of 28 spaces. Two existing spaces will be lost due to the expansion.

The applicant has stated that 5,650 sq. ft. of the space is for administration staff and should be calculated based on the general office standard. General office would then

be 28,678 sq. ft. requiring 96 spaces and medical would be 17,827 sq. ft. requiring 90 spaces for a total of 186 spaces for the building, and a deficiency of 19 spaces. When this building served as a call center, parking was also an issue and the tenant leased space from other properties in the area to meet the need and reduce the on-street parking in the adjacent residential neighborhood. Staff recommended that they provide 186 spaces at a minimum.

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

The property is currently served with all utilities and the proposed improvements will not create the demand for additional utilities.

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

The amount of impervious area created is insignificant and a storm water management plan was not required. It also should be noted that a large detention pond is located adjacent to the expansion area.

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

Ingress and egress to the site will be the same after the improvements as it is now.

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

The location of the proposed improvements works well with the existing development of the site. The overall plan appears to be well-conceived and is consistent with good planning and site engineering design principles. The plans have not addressed outdoor lighting; and, if outdoor lighting will be added or changed, it will need to conform to the City's outdoor lighting regulation.

**F. An appropriate degree of compatibility will prevail between the architectural quality of the proposed installation and the surrounding neighborhood.**

The proposed elevations indicate that the design of the addition will be compatible with the existing building on the site. The architect has proposed to use similar materials and colors on the new construction as was used on the original building. Material samples will need to be submitted for Staff approval prior to construction.

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

One of the principles of the Village Vision was to focus on redevelopment and reinvestment in the community. These issues have become primary goals for the City and this project represents a step in that direction. This is an opportunity to accommodate a successful local business that will generate additional jobs for the City.

Bob Lindeblad moved the Planning Commission approve PC2013-109, the site plan for the addition to 7400 State Line Road subject to the following conditions:

1. That the applicant submit and outdoor lighting plan in accordance with Section 19.34.050 Outdoor Lighting of the Zoning Ordinance if applicable.

2. That the applicant use materials similar to those used in the existing building and submit material samples to Staff for approval prior to construction.
3. That the applicant provide 186 parking spaces and provide copies of agreements to Staff for off-site space prior to obtaining a building permit.
4. That the maximum noise level for the emergency generator not exceed 67 db. and documentation submitted to Staff.
5. That the emergency generator be tested on weekdays during the hours between 8:00 a.m. and 5:00 p.m.
6. Final design and details subject to Staff approval.

The motion was seconded by Dirk Schafer and passed unanimously.

Bob Lindeblad moved the sign standards for 7400 State Line Road be amended to allow for one façade sign on the west wall of the building. The motion was seconded by Randy Kronblad and passed unanimously.

**PC2013-110      Site Plan Approval  
                         9011 Roe Avenue**

Evan Fitts, with Polsinelli Shughart, 6201 College Blvd., presented the application on behalf of Sprint. Sprint is requesting Site Plan Approval to replace three antennas and replace three equipment boxes with two equipment boxes.

Sprint is consolidating its multiple network technologies into one new network called Network Vision. Network Vision will provide faster data speeds, better signal strength, fewer dropped calls and improved voice quality. Three existing equipment cabinets will remain until adequate testing is done and then they will be removed. There will be five Sprint cabinets in the equipment compound for the testing period, but no expansion or increase in size of the compound will be needed.

The existing three cabinets will be temporarily relocated and will be removed after the new cabinets have been tested and approved. This may take up to one year. Mr. Fitts stated they have received the staff comments and agree with the recommendation and conditions of approval.

Ron Williamson noted this monopole was approved in 1996 and at that time approval was by Conditional Use Permit. The monopole was approved for a height of 100 feet and Sprint antennas are on the top. In 2004, a Special Use Permit was granted to Cingular (now AT&T) to install antennas at the 90 feet elevation along with equipment cabinets in the compound at the base of the antenna. In 2009, a Special Use Permit was granted to Clearwire to install antennas and equipment cabinets. Sprint is a major shareholder in Clearwire and the Clearwire antennas were installed as a modification to the Sprint antennas at the top of the tower. The Clearwire antennas will remain as installed, but the three companion Sprint antennas will be replaced with new panels. The replacement panels will be approximately 12" wide by 72" long.

Sprint submitted an application PC 2011-121 to replace three antennas, add three antennas and replace three equipment boxes with two. This was approved by the Planning Commission; however, Sprint's plans have changed and the request is for less than the previous one.

Mr. Fitts stated he has read the staff report and agrees with the conditions of approval recommended by staff.

Since no neighbors have appeared at previous neighborhood meetings and the changes were not major, the applicant was not required to hold a neighborhood meeting.

Chairman Ken Vaughn led the Commission in the following review of the site plan criteria:

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

The capability of the site to accommodate the equipment compound was addressed in the approval of the Special Use Permit. The proposed improvements will occur on the existing tower and within the existing equipment compound.

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

Adequate utilities are available to serve this location.

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

No additional impervious area that will be created and therefore a stormwater management plan is not required.

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

The site utilizes the existing driveway and parking lot for circulation that currently serves it and no changes are proposed.

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

The details of the overall design of the equipment compound were worked out on the approval of the Conditional Use Permit. The applicant needs to prepare a structural analysis to confirm that the tower is sufficient to carry the load.

**F. An appropriate degree of compatibility will prevail between the architectural quality of the proposed installation and the surrounding neighborhood.**

The tower has been at this location for approximately seventeen years. The tower is located at the Fire Station in a commercial area and has very little impact on surrounding residential areas. All the equipment will be located within the equipment compound. The existing ice bridge will be used. The wiring will be inside the tower.

It should be pointed out that when the original approval for the cell tower occurred in 1996, it was the intent that the equipment be screened. A six foot high fence was required at that time. Obviously, the equipment boxes are much taller and the six foot tall fence is inadequate. The reason the equipment boxes are taller is that they are sitting on a 16" high concrete pad and that is why the fence needs to be taller. In 2009, the Special Use Permit approved for Clearwire required adequate screening of the equipment. A new taller fence wall should replace the existing fence in order to

improve the appearance of the installation and make this installation more consistent with others in the City. It should also be noted that the ice bridge is much higher and more visible than other installations.

**G. The plan represents an overall development pattern that is consistent with the comprehensive plan (Village Vision) and other adopted planning policies.**

Wireless communications are not specifically addressed in Village Vision. Generally it falls into maintaining and improving infrastructure.

Gregory Wolf stated he would recuse himself from voting due to a professional conflict of interest.

Randy Kronblad moved the Planning Commission approve the site plan for the Sprint application at 9011 Roe Avenue subject to the following conditions:

- 1) That the antennas be installed as shown on the proposed site plan.
- 2) That all wiring be contained inside the tower.
- 3) That the three existing cabinets shall be removed immediately after the operation of the new cabinets has been approved, but in no event longer than 12 months from the date of Planning Commission approval of this application. The applicant shall notify the City when the existing cabinets are removed.
- 4) That the applicant prepare a structural analysis of the tower to confirm that it is sufficient to carry the additional load.
- 5) That the applicant replace the existing wood fence with an eight foot tall fence to screen the equipment boxes. Plans for the fence shall be submitted to Staff for review and approval prior to obtaining a permit.

The motion was seconded by Nancy Vennard and passed by a vote of 6 to 0 with Mr. Wolf not voting due to a conflict of interest.

Chuck Dehner, 4201 West 68<sup>th</sup> Terrace, appeared before the Commission to challenge the process of rehearing the application for plat approval at the Prairie Village Shopping Center without a public hearing to allow for resident input.

Chairman Ken Vaughn acknowledged Mr. Dehner's comment but noted the consideration of a plat does not require a public hearing.

**PC2013-111 Preliminary & Final Plat Approval  
Prairie Village Shopping Center**

Curtis Petersen, with Polsinelli Shughart, 6201 College Blvd., stated they are presenting a new plat for the Prairie Village Shopping Center. The initial plat approved by the Planning Commission in October, 2012, included the UMB Bank and the Service Station. The new plat does not include these properties. With the withdrawal of the two property owners, the vacation will only be for Mission Lane between Prairie Lane and Mission Road. Prairie Lane and a portion of Mission Lane will remain public streets. The owner of Prairie Village Center, through a separate agreement with the City, will maintain the public right-of-way for Prairie Lane and the small portion of Mission Lane.

Mr. Petersen reviewed the actions taken by the Planning Commission regarding the Prairie Village Shopping Center including previous approval of a conditional use

permit, site plan approval and the approval of the initial plat submitted. He noted the only difference between the original plat approved and the one before the Commission now is the deletion of Lots 3 and 4.

Mr. Petersen stated the applicant has received the staff report and accepts the recommendation and conditions of approval for the preliminary plat and the recommendation and conditions of approval of the final plat except for condition #2. He reminded the Commission of their earlier approval of a varied width design for the trail from six feet to eight feet in width. They propose that condition #2 be reworded as follows: "that the applicant provides a minimum six foot sidewalk on the east side of Mission Lane making the walkway wider as possible."

Bob Lindeblad stated an eight foot trail easement does not mean an eight foot paved trail.

Ron Williamson stated the Preliminary Plat has been revised to include the information requested on the previous application. The only unresolved issue at this time are the trail easements.

Staff recommends approval of the Preliminary Plat subject to the applicant adding the trail easements along the east side of Mission Lane and on Tomahawk Road and resubmitting three copies of the revised document.

Mr. Williamson stated the Final Plat essentially has all the information on it that is required. The trail easements still need to be resolved.

The trail easements need to be shown on the plat for both Tomahawk Road and Mission Lane and in the dedication text.

As depicted in the master trail plan and as required in the CID agreement, the applicant has indicated they would prefer only language referencing to the possible dedication of the trails along Tomahawk and dedicate the easement on Mission Lane by separate instrument. The proposed trail would vary in width from six feet to eight feet.

The Tomahawk Trail is a City Project funded by the CID and the CID agreement contains clear language regarding the general location and design of the proposed trail. Therefore Staff is comfortable referencing the CID agreement on the face of the plat related to the Tomahawk Trail. This was included on the previous Final Plat, but left off of this submission.

Based on the proposed site plan, the applicant has not adequately addressed how the City would construct a trail on the east side of Mission Lane. Originally, the CID called for buildings to front along Mission Lane to accommodate a trail on Mission Road (i.e. the US Bank building would be replaced). With the proposed site plan, the overall concept of buildings fronting along Mission Lane has been revised to accommodate the Hen House expansion. Based on the site plan, it would be impossible for a trail to be constructed along Mission Road. Staff has proposed an alternative, that an eight foot wide trail be constructed along the east side of Mission Lane at the time it is redeveloped. With the redevelopment of the UMB Bank site, a

10 foot section of sidewalk was constructed along Mission Lane and Mission Road to accommodate a trail as per the Master Parks Trail Plan. There has been considerable discussion about the trail easement on the east side of Mission Lane. Staff has reviewed the Site Plan in the field and an eight foot wide trail could easily be accomplished. Therefore, an eight foot wide trail easement on the east side of Mission Lane needs to be shown on the Plat and in the dedication text. There is no need for a separate instrument.

The City Council has indicated they believe an 8' wide trail is appropriate and should be provided.

The existing KCP&L line crossing Lot 2 needs to be installed underground. Tract A needs to be dedicated as a utility and access easement in the text.

The text on Lot 1 UMB needs to be removed because it is not a part of this Plat.

Nancy Vennard thought the creation of an 8 foot trail would result in the loss of parking spaces. Mr. Williamson responded it would not result in the loss of any parking space but will result in the loss of some green space.

Curtis Petersen responded there were three areas of conflict for the construction of an eight foot trail throughout and reviewed the earlier proposed trail with varied lengths. The first conflict was the location of a gas meter and an elevation change by the existing retail building. The second was along the frontage to Hen House requiring the movement of a retaining wall and the reduction of parking spaces from the 9' width proposed. The final area is by the new retail building causing a reduction in the patio area for Starbucks, which will be one of the tenants in the new building. They believe the proposed varied widths are the best option for the center.

Nancy Vennard asked if the Council has directed the trail to be eight feet if the Commission can change it. Ken Vaughn responded the Commission can give its recommendation to the Council, but it will make the ultimate decision.

Randy Kronblad noted on the preliminary plat the trail easement is shown as ten feet. Mr. Petersen stated that was a typographical error that would be corrected.

Nancy Wallerstein asked if the City Council wants an eight foot trail why the Commission was discussing easements. Mr. Lindeblad responded that easements are all that can be done on the plat and that the actual trail is addressed in the final plan approval.

Dennis Enslinger confirmed that the Commission has approved the final plan in concept. The agreement with the Council calls for an eight foot trail. The Council accepts the easements and rights-of-way on the plat and if it is not shown, it is a violation of the CID Agreement.

Curtis Petersen stated the applicant is requesting that the easement be consistent with what was approved in the site plan.



Bob Lindeblad stated he does not have a problem requiring an eight foot trail easement as it would accommodate the construction of either an eight foot trail throughout or a varied width trail.

Dirk Schafer asked if the width of the trail would be resolved by the City Council and if that is the case he feels the plat should be approved by the Commission as recommended by staff with the inclusion of an eight foot trail easement.

Owen Buckley, with Lane4 spoke on behalf of the property owners, noted that one of the challenges of the project was to balance the needs and desires of all with the creation of the best possible shopping experience. He stated they can construct an eight foot trail, but doing so would result in smaller parking spaces and less green space and landscaping. They believe a six foot width allowing for two feet of landscaping is the best option for all.

Dennis Enslinger stated the staff recommendation is that an eight foot trail can and should be constructed. The conflict between the CID and the Planning Commission approval will need to be resolved by the Governing Body.

Dirk Schafer moved the Planning Commission approve the Preliminary Plat of Prairie Village Shopping Center subject to the applicant adding the trail easements along the east side of Mission Lane and on Tomahawk Road, correcting the noted typographical error and submittal of three copies of the revised document and approve the Final Plat of Prairie Village Shopping Center and forward it to the Governing Body subject to the following conditions:

1. That the trail easement for Tomahawk Road be noted as Section 7.04 of the CID Agreement be shown on the plat as it was on the previous Final Plat.
2. That an eight foot Trail Easement be shown on the east side of Mission Lane.
3. That the KCP&L line running across Lot 2 be installed underground.
4. That Tract A be dedicated as a utility and cross access easement in the text of the plat.
5. That the text on the UMB lot be removed.
6. That the applicant submit the Final Plat to the Johnson County surveyor for a review.
7. That the Final Plat as approved be revised and three copies submitted to the City for their records.

The motion was seconded by Gregory Wolf and passed unanimously.

**PC2012-119 Sign Approval - Standees  
3539 West 69<sup>th</sup> Terrace**

Ron Williamson stated at its regular meeting on November 6, 2012 the Planning Commission approved the Site Plan for Standees in Prairie village Center. One of the conditions of approval was that Sign Standards for the Center were to be submitted and approved by the Planning Commission prior to a permit being issued for Standees' signs. The Center changed management teams and this requirement has not been met although they are working on them. Standees is planning a late May opening and is requesting approval of its signs so they will be in place at the time of opening.

The proposed signage has been reduced from what was shown on the Site Plan that was approved in November. On the north and west elevations the text “The Entertaining Eatery” has been added to the name. In the past the Planning Commission has only approved additional text if it is a part of the official business name. The sign element that is unique for this project is the inclusion of the five Poster Box signs which are typical for a theater. The proposed drawings only show location and not design. The detailed design should be subject to staff approval. The location and design of the blade signs should also be subject to Staff approval.

Gregory Wolf moved the Planning Commission approve the proposed signage for Standees subject to the following conditions:

1. That the words “The Entertaining Eatery” only be permitted if it is part of the legal business name.
2. That the applicant submit detailed plans for the Poster Box signs to Staff for review and approval.
3. That the applicant submit detailed design and location of blade signs to Staff for review and approval.

The motion was seconded by Nancy Vennard and passed unanimously.

## **OTHER BUSINESS**

### **Public Comment**

Brenda Satterlee, 8600 Mission Road, addressed the Commission to provide a resident’s perspective of the three public meetings held on the Mission Chateau project. More than 75 people from the surrounding neighborhood attended these meetings with all opposed to the project for the following reasons: density of the project is too great, height is too tall, lack of green space, concerns with additional flooding on adjacent properties and increase traffic.

She noted that the project has only been reduced in size by 4%, will still be the tallest building in Prairie Village and the building footprint is huge in comparison to the surrounding community. She does not feel they have adequately addressed the concerns of the neighboring residents.

### **Next Meeting**

Dennis Enslinger announce the following applications are anticipated for the May 7<sup>th</sup> Planning Commission: Conditional Use Permit for a radio tower; Site Plan for Residential Building Height Modification; Residential Building Line Modification; Sign Standards for the Prairie Village Shopping Center and possible submittal of the Mission Chateau Project.

Based on the full agenda, staff is recommending that the Commission hear the application for Mission Chateau and hold the public hearing only and that the Commission continue the meeting and public hearing to the June meeting where Commission action would be taken.

## **ADJOURNMENT**

With no further business to come before the Planning Commission, Chairman Ken Vaughn adjourned the meeting at 7:52 p.m.

Ken Vaughn  
Chairman

## **JAZZ FEST COMMITTEE**

**April 4, 2013**

**7:00 p.m.**

Present: Jack Shearer, Gloria Shearer, Donelea Hesse, Dan Andersen, Rod Atteberry, JD Kinney, Chris Huff, Diane Mares, Brian Peters, Brooke Morehead and Joyce Hagen Mundy.

### **Talent**

Jack Shearer noted that Larry Kopitnik would not be able to attend the meeting but reported that he has contacted both Marilyn May and Deborah Brown regarding headlining the 2013 Jazz Festival.

### **Fundraising**

Jack Shearer distributed an update on fundraising reporting that approximately \$22,500 has been raised to date. He noted this is significantly higher than what had been raised at this point in time last year. Brenda Pelofsky continues to make contacts and will be following up on city vendors in the next few weeks.

Brooke Morehead reported that she met with UMB Bank and had a very positive meeting. She is hoping to get \$5000 from each of their three divisions.

JD Kinney reported that he spoke with Selene Madrid, Director of Marketing at Claridge and they are interested in participating. He and Jack will meet with her to discuss options.

Joyce Hagen Mundy reported that Tutera Family Communities have been contacted and are considering returning as a sponsor.

Jack Shearer reported BRGR will be a vendor, let us use their liquor license and give also give a donation. Brenda will be meeting with the owner of the new "Spin Pizza" at Corinth next week. The Tavern is not interested in being a vendor, but will make a donation.

Jack has given Brenda more information regarding Heartland Habitat's "Brush with Kindness" program to promote the City's partnership and how their donation will help the community. She will accept direct donations to Habitat through the foundation. Committee members would like to be able to present a check to Habitat at the festival.

Brian Peters will contact US Bank. He stated the deadline for the foundation has passed. Dan Andersen stated the committee should make application for 2014.

### **Tents**

The committee discussed corporate and VIP tents. Jack will follow up with Taylor Made Real Estate regarding the purchase of a tent again for this year's festival. Possible

number of tents and location were discussed. Dan indicated that he was looking into a new layout for the event.

### **Advertising**

The committee authorized the expenditure of funds for an ad in the *Jazz in the Woods* Program again this year. It was also agreed that JazzFest should have a presence at the PV Art Fair and at Villagefest. Brian Peters and Dan Andersen will talk with Donna Potts regarding participation at the Art Fair.

### **Web Site**

Chris Huff reviewed the changes to the Jazz Fest Website. He stated he is still unable to access the JazzFest Twitter account.

### **Next Meeting**

The next meeting will be Thursday, May 2<sup>nd</sup> at 7:00 p.m. at Dan's House.

### **Adjournment**

The meeting was adjourned at 8:30 p.m.

PRAIRIE VILLAGE  
SISTER CITY COMMITTEE MINUTES  
April 8, 2013

Members in attendance: Ivan Novikov, Cindy Dwigans, Vera Glywa, Bob Glywa, Jim Hohensee, Bob McGowan, Carole Mosher.

February meeting minutes: The minutes were approved.

International student event: The foreign exchange students attending Shawnee Mission East High School were not available tonight. Gift bags will be put together and left at City Hall for the students to pick up.

Earth Fair: Saturday, April 13 from 10:00-3:00, Shawnee Mission East High School. We need to be set up by 9:30. There are 329 bags of sunflower seeds to hand out. Explanation and directions will be stapled to the bags. Jim Hohensee will write up and email a draft to the committee tomorrow. Carole Mosher needs more brochures. Jim will borrow the electronic picture frame from Chris Engel's office.

Photo exchange and art show: Jim Hohensee will discuss with Rod Atteberry and Dan Andersen, Arts Council.

Sister Cities International meeting: San Antonio, July 12-13. A motion to send Peter Jarosewycz as delegate was made by Cindy Dwigans and seconded by Bob Glywa. A motion to allocate up to \$500 for registration costs was made by Cindy Dwigans and seconded by Vera Glywa.

Next presentation about Ukraine: Craig Stramel will give a presentation about his Peace Corps experiences, tentatively scheduled for September or October.

New member: Craig Stramel intends to fill out an application to join the committee. A motion to approve his becoming a member was made by Vera Glywa and seconded by Bob Glywa.

March presentation on Ukraine: Refreshment expenses for the March presentation on Ukraine totaled approximately \$44.00. Jim Hohensee will submit receipts for reimbursement.

Village Fest: The committee wants to have a booth. Bob Glywa will check on the availability of helium. Jim Hohensee will inventory the supply of balloons left over from last year. Jim will also investigate the cost of printing more brochures.

Bricks: Jim Hohensee will ask Jeanne Koontz, Deputy City Clerk, the procedure for ordering bricks. The committee discussed purchasing bricks in memory of Dick Bills and Father Taras Kernytskyy.

Sign post: Vera Glywa offered to translate the saying on the post into Ukrainian to add to the post.

Trolley Run: Sunday, April 28. Jim Hohensee proposed creating "Team Dolyna." Cost is \$35 per person. Notify Jim if you are interested.

Next Meeting: May 13.

Adjournment: A motion to adjourn was made by Bob McGowan and seconded by Jim Hohensee.

## **PARK AND RECREATION COMMITTEE**

**April 10, 2013**

**Council Chambers**

Park and Recreation Committee met at 7:00 pm. In attendance: Laura Wassmer, Chair, Ashley Weaver, Vice-Chair, Eric Blevins, Kevin Letourneau, Maggie Swartz, Dan Searles, Peggy Couch. Staff: Quinn Bennion, Keith Bredehoeft, & Danielle Dulin. Also present: Joe Gittimeier and three seniors from Rockhurst for a class project.

Ms. Wassmer called the meeting to order at 7PM.

### **PUBLIC PARTICIPATION**

Mr. Gittimeier expressed concern about the condition of the tennis courts and inquired about the timeline for rehabilitation. Mr. Bredehoeft indicated that he did not know if the courts could be repaired or if they would need to be rebuilt, but a study conducted in 2013 will determine the necessary actions and cost to restore the tennis courts. He continued that there is funding in the 2014 and 2015 budget to implement the recommendations of the study. Mr. Gittimeier questioned whether money spent on repairing curbs, sidewalks, and catch basins would not be better spent on rehabilitating the tennis courts. Ms. Wassmer explained that that the project is very expensive, but the tennis courts are a priority for the Parks and Rec Committee. Mr. Bredehoeft encouraged Mr. Gittimeier to call the Public Works Department for updates on the progress of this project over the next couple of years.

### **CONSENT AGENDA**

The consent agenda was approved unanimously as submitted.

1. Minutes from March 13, 2013

### **REPORTS**

#### **1. Community Garden Update**

Mr. Bennion presented an updated plan and indicated that all of the plots were kept north of the large elm. He continued that sections were added to the east and west and there are four plots that run east-to-west along the south side; the plan has been reduced from 38 plots to 36. Ms. Couch stated that the community garden is an improvement over what was there previously and some of the produce is donated to charity. Ms. Wassmer agreed that it looks nice but continued that she was glad it was not expanding so there is still park left for people to enjoy.

#### **2. Public Works Report**

Mr. Bredehoeft stated that the Public Works Department is prepping for the grass growing season with fertilizer and weed control and working on getting the parks in better shape. He indicated that the Department would be using environmentally-friendly products at Prairie Park to determine its effectiveness. Ms. Wassmer inquired about the swings at Porter Park. Mr. Bredehoeft stated that he had been in contact with the swing manufacturer and the only solution to the problem is to replace the horizontal cross beam and reduce the load to increase the life of the cross beam. Ms. Wassmer asked if a new swing should be considered along with the improvements in 2018 and 2019. Mr. Bredehoeft stated that there are three options: 1) have only one swing to increase the life of the cross beam; 2) have two swings and plan on replacing the cross beam more often; or 3)

replace the swing at the time of the park improvement. Mr. Searles inquired about the cost of the cross beam and how often it would have to be replaced if there were two swings. Mr. Bredehoeft stated that it was approximately \$500 to replace the cross beam, but he did not know how often the cross beam would have to be replaced. Mr. Blevins stated that there should be two swings. Mr. Searles agreed and stated that the \$500 cost of replacing the cross beam more often would be worth it to have two swings. He also suggested tracking the useful life of the cross beam with two swings during the monthly inspections of the parks. Ms. Wassmer stated that she had received a request from a resident for a new backstop fence for the baseball fields in Porter Park to keep the foul balls from flying into the park. Mr. Bredehoeft thought that this would cost approximately \$10,000 dollars for each field, a total of \$20,000. Ms. Wassmer stated that she was more concerned about the field that is closest to the playground. There was discussion about the need for backstops. Mr. Searles stated that these fields are small and are recommended for use by younger kids.

### **3. Recreation Report**

Mr. Bennion introduced the new Assistant to the City Administrator, Danielle Dulin, to the Committee. He stated that pool passes went on sale April 1.

### **4. Chairperson's Report**

Ms. Wassmer did not have a report.

## **NEW BUSINESS**

### **1. Prairie Village Homes Association Recycling Event at Porter Park**

Mr. Bennion explained that the Prairie Village Homes Association has organized an electronic recycling event at the Prairie Village Shops, and in November, they would like to expand the event to include Goodwill and Habitat Restore; however, the Prairie Village Shops will not allow them the additional space needed so they are requesting the use of the Porter Park parking lot for the event. The Committee determined that the recycling event would inhibit the use of the park by others and recommended that the Prairie Village Homes Association consider another location such as Schliffke Park, 71<sup>st</sup> & Mission Rd, or the Village Presbyterian parking lots instead of Porter Park.

## **OLD BUSINESS**

### **1. Park priorities and maintenance needs**

Ms. Wassmer thanked Mr. Bredehoeft for his report and asked to have something similar compiled for maintenance items that the Committee will need to present to City Council at the next meeting. Mr. Bennion indicated that it would be a separate list because maintenance items will be funded from the Public Works operating budget. Ms. Wassmer stated that she wanted to show City Council the maintenance priorities and new project priorities of the Parks and Rec Committee along with the revised Park Master Plan pictures to reflect the new priorities.

The Committee began to discuss the park projects for 2014-2019. Ms. Wassmer clarified that the reason the 6' perimeter walking path had been removed from the McCrum Park project list in 2014 is because most of the park users live in the area and walk to the park, but money is still needed for the tricycle path. There was discussion about painting the tennis fence black. Mr. Bredehoeft stated that painting the fence black is not an option; it would have to be replaced for \$15,000, and



that has not been budgeted. Ms. Wassmer stated that the fence did not need to be replaced; it was just a suggestion that it would look better if it was painted black. The Committee agreed to remove the fence from the priority list. Mr. Bredehoeft stated that he is negotiating the price of burying the power lines with KCP&L and \$25,000 has been included for the installation of the small shelter that was previously in Weltner Park. He clarified that this price includes a new roof, concrete pad and footings, and stone wrap around the columns for the shelter.

Mr. Searles inquired about the additional curb cuts for Prairie Park. Mr. Bredehoeft indicated that they are on the list to be completed.

Ms. Wassmer briefly read through the 2015 priorities. There was no additional discussion.

Ms. Wassmer asked Mr. Bredehoeft why the Public Works Department did not think the second porta-potty was necessary for Porter Park in 2016. Mr. Bredehoeft stated that the existing porta-potty is hidden and trying to create a location for the additional porta-potty would be difficult; additionally, it would increase the opportunity for vandalism. Mr. Searles indicated that he was happy with just one porta-potty and did not feel the second was necessary. The Committee agreed to remove it from the priority list. Ms. Wassmer asked if the Committee wanted to consider adding the higher backstop for the baseball field that is closest to the playground. Mr. Searles stated that if the trail is expanded around, a higher backstop would be needed for the other field as well; also, he thought it would look better to do both. Mr. Bredehoeft stated that he get a better price estimate for the backstops.

Ms. Wassmer inquired about the \$10,000 budgeted for trees in Windsor Park. Mr. Bredehoeft indicated that the trees were on the list from last fall. There was discussion about shaded areas in the park. Ms. Wassmer suggested a shade structure over the sand box instead of trees. Mr. Bredehoeft stated that he would get more information on shade structures. There was discussion about the sand volleyball court and a possible nature play area as an alternative. Mr. Searles stated that a nature park would probably see more use in that area.

Mr. Bennion stated that during the budget process the Council will review the Capital Improvement Plan for the current year plus three and suggested the Committee consider projects for 2017. The Committee agreed to add new play sets & northland park development to the 2017 priorities in the amount of \$250,000.

Ms. Couch suggested adding lighting to the priority list for Franklin and Harmon Parks to discourage vandalism. Mr. Bennion stated that Public Works had looked into the cost of putting in motion sensor lighting in key areas. The Committee agreed to add lighting along with the disc golf course to the Harmon Park priorities in 2014.

The next meeting will be Wednesday, May 8, 2013 at 6:00 PM. The Committee will meet at Porter Park to eat dinner, and then tour the parks on the priority list. If it rains, the Committee will meet at City Hall to eat dinner at 6 PM.

**Adjourned at 8:10PM**

**COUNCIL COMMITTEE OF THE WHOLE**  
**May 6, 2013**

The Council Committee of the Whole met on Monday, May 6, 2013 at 6:00 p.m. in the Council Chambers. The meeting was called to order by Council President Dale Warman with the following members present: Ashley Weaver, Dale Warman, Steve Noll, Ruth Hopkins, Michael Kelly, Andrew Wang, Laura Wassmer, Brooke Morehead, David Morrison, Charles Clark, Ted Odell and David Belz. Staff Members present: Wes Jordan, Chief of Police; Keith Bredehoeft, Interim Public Works Director; Katie Logan, City Attorney; Quinn Bennion, City Administrator; Dennis Enslinger, Assistant City Administrator; Lisa Santa Maria, Finance Director; Nic Sanders, Human Resources Specialist; Danielle Dunn, Assistant to the City Administrator and Joyce Hagen Mundy, City Clerk.

**COU2013-16 Consider Project DELN0001 - 83<sup>rd</sup> and Delmar Drainage Improvements Alternatives Review Study**

Keith Bredehoeft noted this drainage project has a long history and improvements were planned back in 2007 but due to the project costs for the City increasing more than a million dollars than originally estimated the project was cancelled after having received approval for SMAC funding. The drainage problem is related to the drainage channel between Roe Avenue and Somerset Drive. There are two low water crossings at Delmar Lane and Fontana Street. Just east of Delmar the open channel drains into an underground box culvert. During significant rain falls the water back up at this culvert causes significant roadway flooding as well as flooding of residential properties around the channel at Delmar.

Mr. Bredehoeft showed a video that was taken by a resident of flooding and water flow in the area during a past storm. In June of 2010 a storm caused flooding of a home in this area. This is the most significant drainage/flooding problem in Prairie Village and Public Works recommends moving forward with this project.

A resident meeting was held in December of 2012 to get feedback from residents about the project and there was large support from the neighborhood for a project to be constructed. Mr. Bredehoeft noted the plans on file are several years old and he would recommend a study be conducted to ensure the past recommendation is still valid and the best solution available to the City. He also noted a study is necessary if the City is to file for SMAC funding for the project. He proposes to submit for SMAC funding in 2015. The costs for the project could be funded by the dedicated storm drainage funds from the City's Stormwater Utility Fee.

Laura Wassmer asked if any drainage work has been done in this area since the last study. Mr. Bredehoeft responded none at this location. Charles Clark added a box culvert under Roe was replaced, but noted that has not changed the problem. Ms Wassmer stated that estimated cost for this project earlier was over a million dollars. If the estimated costs are not less than that, she feels the first question to be addressed is funding. Mr. Bredehoeft replied that the stormwater utility fee was created to be able to

get funding to address major drainage problems in the City. This was not available when the project was first considered. By earmarking a portion of these funds, which can only be used for drainage projects, over the next three years he believes funding for the City's portion will be available. Ms. Wassmer there has been two drainage studies on this area while she has been on the Council. She does not feel another study is necessary and staff is putting the cart before the horse. She sees the first decision to be made by the Council is if it is willing to spend the necessary money to do this work.

Charles Clark stated there will be funding available by 2016 for construction of this project through the designated stormwater utility fees collected by the City. Mr. Bredehoeft noted the city receives more than \$700,000 in funding into capital projects per year from this fee.

Michael Kelly asked what would be the result of this work. Mr. Bredehoeft stated it will address the current residential flooding in the area and the significant amount of water that flows through the channel and over the low water crossing during heavy rains. Mr. Kelly stated he agrees with Ms Wassmer that the decision that needs to be made is the expenditure of funds for this work. Another study of the same area is not necessary.

Ms Wassmer asked why the past studies couldn't be used. Mrs. Hopkins stated the earlier studies gave several options for addressing the problems and agreed an additional study was not needed. Mr. Odell stated the situation has to be addressed, but questioned the need for a new study. Steve Noll stated he wants to be sure there is a consensus of the neighborhood on the proposed work. He noted in the past significant time and money was spent developing plans that the neighborhood rejected.

Charles Clark responded that a neighborhood meeting was held in December with unanimous support expressed for moving forward. He noted that SMAC will require a study with the city's application for funding. He added conditions have changed. Part of this area is now in the designated flood plain. The flooding is worse than it was previously. Both the flooding and the low water crossing need to be addressed.

Laura Wassmer confirmed that the earlier plan included a warning arm for the low water crossing, but rejected the cul-de-sac option.

Andrew Wang stated he would support a new study to confirm the action being proposed is still what should be done. Laura Wassmer asked how far ahead the city needed to submit for SMAC funding. Mr. Bredehoeft replied the application would need to be filed in January of 2014 for work in 2016. Ruth Hopkins expressed concern that the city would be able to not use these funds for other projects. Mr. Bredehoeft responded that city did most of its major drainage work a few years ago with bond funding and now is primarily focused on small projects spending approximately \$150,000 per year on drainage repair and rebuilding infrastructure. This is the only large project remaining at this time.

Quinn Bennion stated the stormwater utility fee collects over a million dollars each year. Approximately three hundred thousand dollars are transferred to the general fund for

maintenance. This leaves over \$700,000 each year for drainage projects. Even if \$200,000 of this was spent on other work, over the three year period, \$1.5M would be available for funding this project.

Michael Kelly stated he would like to see a priority listing of drainage work in the city over the next ten years. He feels it is important for the council to be diligent in the expenditure of this money being assessed.

Charles Clark moved to recommend the City Council approve the design agreement with Larkin Lamp Rynearson & Associates for the Alternatives Review Study of the 83<sup>rd</sup> Street and Delmar Drainage Project at a cost of \$41,278.80. The motion was seconded by David Morrison.

Mrs. Hopkins stated that she is not comfortable that the money will be available and cannot support spending an additional \$40,000 for another study that will sit on the shelf because there are not funds to complete it.

Mr. Odell asked what the cost would be for a study that only addressed the requirements for SMAC funding. Mr. Bredehoeft responded \$30,000.

Keith Bredehoeft stated it would be less expensive to do the project as already designed without any additional evaluation.

Steve Noll confirmed the residents were supportive of the previous design. He believes something has to be done to address the problem and the sooner the better. Mr. Clark stated if the Council wants to move ahead with the project without additional study, he is willing to withdraw his motion.

Quinn Bennion asked what would be the impact if action on this waited until after the CIP discussion where the Council could view the entire CIP program and priorities. Mr. Bredehoeft noted that would be acceptable. Laura Wassmer stated she needs to see the dollars. She is supportive of doing something, but wants to make sure the neighbors are all on board. Mr. Clark noted the residents are still upset that the project was pulled last time and they want and expect action to be taken now.

Keith Bredehoeft stated the easier path of action would be to pull a study off the shelf; however, if the city is going to spend over a million dollars on a project, he would like to be sure the action being taken is still the best option to address the existing problems. Quinn Bennion noted the city does have previous studies, but asked if the Council would construct a project with plans that are more than six years old, noting the advances in methodology and flood plain information. technology.

Council President Dale Warman accepted the withdrawn motion and stated this question would be considered again after the presentation of the Capital Improvement Program.

**COU2013-15 Consider APPROVAL OF A CONTRACT WITH Little Joe's Asphalt Inc. for the 2013 Street Repair Program**

On April 19, 2013, the City Clerk opened bids for Project 5001: 2013 Street Repair Program. This program consists of asphalt street repairs at various locations throughout the City. The program addresses area where settlement or deterioration has occurred and make repairs in those areas.

The following four bids were received

Little Joe's Asphalt, Inc.	\$122,049.32
O'Donnell & Sons Construction	\$124,787.50
O'Donnell Way Construction	\$129,953.50
McAnany Construction, Inc.	\$152,500.00
Engineer's Estimate	\$178,125.00

Keith Bredehoeft noted there is \$173,000 budgeted for this project and the contract will be awarded for that amount. Locations of repairs will be increased to utilize the \$173,000 budget. Funding is available in the 2013 Capital Infrastructure Program Project P5001.

Mr. Bredehoeft stated that Little Joe's Asphalt, Inc. has done work in the City over the past two years as a sub-contractor for Linaweaver Construction and the city has been pleased with their work. He also added he had worked with them as a primary contractor when he was employed by the City of Olathe.

Steve Noll made the following motion which was seconded by Michael Kelly and passed unanimously:

**RECOMMEND THE GOVERNING BODY AUTHORIZE THE  
MAYOR TO SIGN THE CONSTRUCTION CONTRACT WITH  
LITTLE JOE'S ASPHALT, INC. FOR PROJECT P5001: 2013  
STREET REPAIR PROGRAM IN THE AMOUNT OF \$173,000.  
COUNCIL ACTION TAKEN  
5/6/2013**

**COU2013-12 Consider Significant Budget Items/Priorities**

**Presentation of General Fund Revenue Assumptions**

Finance Director Lisa Santa Maria distributed and reviewed the General Fund Revenue Assumptions as of May 1, 2013. She noted that the city's top five sources of revenue in 2012 came from five sources and accounted for 84% of the total revenue received.

These sources are as follows:

1) Property Tax	26%
2) Sales Tax	29%
3) Franchise Fees	11%
4) Charges for Services	11%
5) Fines and Fees	7%

Total revenues received in 2012 were 1.7% greater than what was received in 2011 and were at 104.9% of budget. She noted revenues for the first quarter of 2013 were less

than the fourth quarter of 2012, but this is usual. Staff is predicting an increase in revenue of 2%.

Mrs. Santa Maria briefly reviewed the economic outlook from 1999 to 2017 for the US and KS. While Kansas recovery has lagged behind that of the nation, Kansas state employment is forecast to grow at a faster rate than 2012 (1.8%). It is predicted to add 21,000 jobs in 2013 and another 33,000 in 2014 with nearly all sectors of the economy back on a growth tract. It is predicted real personal income will be on the rise by the end of 2014.

**Sales Tax.** Total sales tax received in 2012 was 3.2% above 2011 receipts. Staff is forecasting a conservative growth rate of 2% for 2014.

**Property Tax.** The 2012 budget included a small mil levy rate increase for the hiring of two additional police officers resulting in an estimated 4.77% increase in property tax revenue. Total actual revenues received in 2012 increase 4.5%. Overall, property tax revenues make up 99.6% of budget.

Reappraisal growth is estimated to be 1.08% for all property in the 2014 budget. The mean appraised value for single family homes will increase 0.55% from \$217,873 to \$219,064. Based on this, staff is forecasting property tax to have a moderate 1% increase in 2014. No mill levy increase is being recommended.

**General Fund.** Lisa Santa Maria noted there will be a significant drop in bond interest payments in 2016 with the mill levy going back into the general fund.

**Franchise Fees.** The City charges a franchise fee of 5% of gross receipts on the major utilities within the City. Telephone Franchise fees have been decreasing due to the replacement of land lines with cell phones. Gas and Electric fees are strongly influenced by weather conditions and are difficult to predict. Franchise fees will likely continue to decline as more services are consolidated to “internet services” which do not contribute to franchise fee revenue. Quinn Bennion noted the state legislature in early 2000’s exempted internet provided services from franchise fees.

### **Presentation of Existing City Committee Structure**

Dennis Enslinger presented information on the existing committee structure for the City which includes 19 committees that receive staff support. These fall into two general categories - technical and advisory. He noted there are also ad-hoc committees that are created to address a specific short term need or issue.

Nine of these committees listed below are required by city code, state statues or by-laws and cannot be removed:

ADA Advisory Committee	Animal Control Board
Board of Code Appeals	Board of Zoning Appeals
Civil Service Commission	Municipal Foundation
Park & Recreation Committee	Planning Commission

Police Pension Board	
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However, he noted that the structure and membership of some of these committees could be modified.

Mr. Enslinger stated the following four committees receive direct funding from the City Budget with the 2014 proposed 2014 budget:

- Environment/Recycle Committee \$10,000
- Prairie Village Arts Council \$13,500
- Sister City Committee \$4,000
- Villagefest Committee \$16,000

The Environment/Recycle Committee is requesting an additional \$2,000 to be offset from revenue from the sale of community garden plots. The other funding levels are the same as their 2013 funding. He noted some of the funding given to the Arts Council is in turn given to support both Jazzfest & Villagefest. The actual operating budget for Villagefest is \$25,000 with the committee raising \$9,000 through sponsorships and donations.

Mr. Enslinger noted there are indirect costs associated with all of the committees in the staff time and support they receive from City staff.

Ruth Hopkins stated she was confused by the information given as it does not reflect true costs of the committees, including indirect costs and related expenses; for example, the cost of trees purchased by the Tree Board for Arbor Day. Mr. Enslinger replied it is difficult to get true costs as there are not direct account codes related to each committee and noted that some expenses come out of related department funds. For example, the Board of Zoning Appeals staff time is reflected in Planning Commission hours; trees purchased for Arbor Day come out of a public works budget line item and the staff hours associated with Planning Commission reflect the entire program operational hours, not simply meeting hours.

Michael Kelly asked if the current committee structure was the most efficient or if there was a better approach. Mr. Enslinger replied it is difficult when council members do not want to serve on committees. He noted the past two years; Mayor Shaffer has served as Council liaison to the Sister City Committee because no council member was willing to do so. He also suggested that some of the technical committees may be better served as a staff committee then volunteer committee, such as Animal Control Board. He feels there is room for improvement. Among the information provided was a listing of committees operating in other cities. He noted none of them have 19 standing committees supported by city staff.

Ruth Hopkins asked how other cities operate without committees. Mr. Enslinger noted that in some cases Sister Cities are coordinated by Chambers of Commerce or on their own. Other city events have independent committees supported by chambers of commerce, Rotary or Lions' Clubs, etc.

Michael Kelly noted the Sister City had expressed interest in moving outside the umbrella of the city and forming a separate 501(c). Mr. Enslinger stated they have been given the information to do so years ago, but have not taken any follow-up action.

Brooke Morehead expressed concern with structure of the Planning Commission with the Governing Body not having a voice in planning matters. Mr. Enslinger responded the Planning Commission's make-up is based on the expertise of its members in the areas related to planning, building, zoning law to make objective, informed decisions without the political pressure under which an elected body operates. He noted several years ago many more items were brought to the Governing Body for approval, but at the direction of the Council some items were changed to sole Planning Commission approval.

Charles Clark noted as a past Planning Commission member that for each item the Council would like to be directly involved in there are 10 to 15 items heard by the Commission that they would not want to see. Requiring action by both the Planning Commission and the City Council also significantly lengthened the time involved for approval and slowed development. David Morrison agreed with Mr. Clark and noted the technical expertise of the Commission. However, he suggested that possibly projects of a certain size could be brought to the Council for approval.

Dennis Enslinger responded that following the completion of the budget, staff will bring back to the Council for consideration the Planning Commission Structure and what items have only Planning Commission approval.

Ruth Hopkins stated she felt the presented information was inaccurate and an unfair representation without the inclusion of committee related expenditures, accurate staff time analysis and indirect costs.

Laura Wassmer moved the Council Committee authorize staff to include in the 2014 budget the identified committee budgets and establish a committee to further study committee structure. The motion was seconded by Brooke Morehead and passed. Council members Hopkins, Odell and Morehead agreed to serve on that committee.

Ted Odell noted he views the Planning Commission/Governing Body role as one of checks and balances. Brooke Morehead stated she would like more guidance on the role of council liaison's and staff.

### **Adjournment**

With no further business to come before the Council Committee, Council President Dale Warman adjourned the meeting at 7:20 p.m.

Dale Warman  
Council President



**Council Members  
Mark Your Calendars  
May 20, 2013**

<b>May 2013</b>	Jacia Humiston exhibit in the R.G. Endres Gallery
May 20	City Council Meeting
May 27	City offices closed in observance of Memorial Day
<b>June 2013</b>	
June 3	City Council Meeting
June 14	Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
June 17	City Council Meeting
<b>July 2013</b>	Senior Arts Council exhibit in the R.G. Endres Gallery
July 1	City Council Meeting
July 4	City offices closed in observance of Independence Day
July 4	VillageFest
July 12	Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
July 15	City Council Meeting
<b>August 2013</b>	Olathe Visual Arts exhibit in the R.G. Endres Gallery
August 5	City Council Meeting
August 9	Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
August 19	City Council Meeting
<b>September 2013</b>	
September 2	City offices closed in observance of Labor Day
September 3	City Council Meeting
September 7	Jazz Festival
September 13	Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
September 16	City Council Meeting
September 25	Shawnee Mission Education Foundation Fall Breakfast
<b>October 2013</b>	State of the Arts Exhibit in the R. G. Endres Gallery
October 7	City Council Meeting
October 11	Artist reception in the R. G. Endres Gallery 6:00 - 8:00 p.m.
October 21	City Council Meeting
<b>November 2013</b>	Mid-America Pastel Society exhibit in the R.G. Endres Gallery
November 4	City Council Meeting
November 8	Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
November 12 - 16	National League of Cities Conference in Seattle, WA
November 18	City Council Meeting
November 28	City offices closed in observance of Thanksgiving
November 29	City offices closed in observance of Thanksgiving
<b>December 2013</b>	Greater Kansas City Arts Association exhibit in the R. G. Endres Gallery
December 2	City Council Meeting
December 13	Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
December 16	City Council Meeting
December 25	City offices closed in observance of Christmas