

City Council Meeting

January 20, 2009

Tuesday

7:30 p.m.



**Dinner will be provided by:
Dragon Inn**

Chicken with seasonal vegetables

Shrimp with snow peas

Sweet and Sour Pork

Beef and Broccoli

Ice Cream Cake from Mely's

COUNCIL COMMITTEE
January 20, 2009 (Tuesday)
6:00 p.m.
Council Chamber

AGENDA

DAVID VOYSEY, COUNCIL PRESIDENT

CONSENT AGENDA

***COU2009-19 Consider Agreement for Contract Services with Amazing Cities**

**COU2009-13 Consider Projects 190649 and 190655 Windsor and Porter Park Ball Field Improvements
Tom Trienens**

AGENDA ITEMS FOR DISCUSSION

**COU2008-21 Consider Construction Administration Agreement for Project 190865: 2009 CARS, Roe Avenue: Somerset Drive to 83rd Street
Tom Trienens**

**COU2008-97 Consider Construction Administration Agreement for Project 190869: 2009 Paving Program
Tom Trienens**

**COU2009-17 Consider Construction Administration Agreement for Project 190877: 2009 CARS, 83rd Street Resurfacing: Roe Avenue to Somerset Drive
Tom Trienens**

**COU2009-15 Consider Construction Administration Agreement for Project 190721: 2009 Storm Drainage Repair Program
Tom Trienens**

**COU2009-20 Consider Construction Administration Agreement for Project 190871: Mission Lane Bridge Replacement
Tom Trienens**

**COU2009-12 Consider 2010-2014 CARS Application
Tom Trienens**

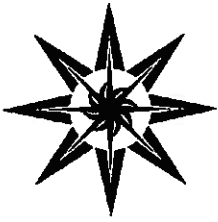
**COU2009-14 Consider Design Agreement for Project 190870: 2010 Street Resurfacing Program
Tom Trienens**

**COU2009-16 Consider Design Agreement for Project 190876: 2010 CARS, 83rd Street Resurfacing from Nall Avenue to Roe Avenue
Tom Trienens**

**COU2009-18 Consider Agreement for Swimming Pool Conformance Evaluation
Suzanne Lownes**

COU2007-51 Village Vision

***Council Action Requested the same night**



ADMINISTRATION

Council Committee Meeting Date: January 20, 2009
Council Meeting Date: January 20, 2009

***COU2009-19: Consider Contract Services with Amazing Cities**

RECOMMENDATION

Staff recommends the approval of the Amazing Cities contract as written.

Council Approval Requested January 20, 2009

BACKGROUND

In June 2007 the City contracted with Jim Hunt and Amazing Cities to facilitate a one day Council work session. Jim Hunt has been asked to return this year and facilitate the January 31, 2009 joint Council - Department Head work session.

ATTACHMENTS

Amazing Cities Contract

PREPARED BY

Chris Engel
Assistant to the City Administrator
Date: 1/15/09

James C. Hunt
522 Musgrave Street
Clarksburg, WV 26301

Consulting Agreement

James C. Hunt (hereafter called Consultant) agrees to provide the following services to the City of Prairie Village, Kansas (hereafter called Client):

- A. Interviews: Consultant will conduct pre-retreat phone interviews of the Mayor and Council members and other retreat participants to get their views of issues facing the client.
- B. Consultant will travel to Prairie Village, Kansas to conduct a full-day retreat to be conducted on January 31, 2009.
- D. Client agrees to:
 - 1. Arrange for a suitable site for retreat on January 31, 2009.
 - 2. Client will provide a continental breakfast and box lunch for participants and refreshments for morning and afternoon breaks.
 - 3. Two easels with flip charts and multi-colored markers
- E. Contractor will write a follow-up report for the Mayor and Council of Prairie Village, Kansas detailing agreed upon objectives and recommendations.
- F. Client agrees to pay Contractor a fee of \$5,000.00 (Five Thousand dollars) for services described above. The fee will include travel to Prairie Village, Kansas; lodging and meals while in Prairie Village, Kansas, long distance phone calls and any copying and mailing services.

The payments will be made in three installments: \$1500 at the signing of this contract; \$3,000 upon completion of the Retreat in Prairie Village, Kansas; and \$500 upon completion of the project. The project will be considered complete when the written report described above is submitted.

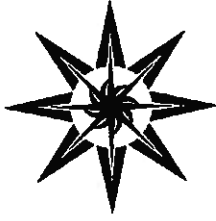
Signed:

For the City of Prairie Village, Kansas:

_____ Date _____

For James C. Hunt, Consultant

_____ Date _____



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: January 20, 2009
Council Meeting Date: February 2, 2009

COU2009-13: CONSIDER PROJECTS 190649 and 190655 WINDSOR AND PORTER PARK BALL FIELD IMPROVEMENTS

RECOMMENDATION

Staff recommends the City Council reject the bids for Projects 190649 and 190655, Windsor and Porter Park ball field improvements.

BACKGROUND

On December 12, 2008 the City Clerk opened bids for Projects 190649 and 190655. Two bids were received:

Amino Brothers	\$114,565.83
Mega Industries	\$130,115.80
Engineer's Estimate	\$53,397.40

City staff has checked the bids for accuracy and found no errors that would affect the bid.

FUNDING SOURCE

No funding is required

ATTACHMENTS

None

PREPARED BY

Thomas Trienens, Manager of Engineering Services

January 2, 2009



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: January 20, 2009

Council Meeting Date: February 2, 2009

COU2008-21: CONSIDER CONSTRUCTION ADMINISTRATION AGREEMENT FOR PROJECT 190865: 2009 CARS, ROE AVENUE: SOMERSET DRIVE TO 83RD STREET

RECOMMENDATION

Move to approve the construction administration agreement with TranSystems for Project 190865: 2009 CARS, Roe Avenue from Somerset Drive to 83rd Street in the total amount of \$31,000.

BACKGROUND

Six consultants submitted proposals for construction administration services for 2009 projects. The six were narrowed down to three and On December 17, 2008, the Consultant Selection Committee conducted oral interviews of SKW, DRG and TranSystems. The committee selected TranSystems.

FUNDING SOURCE

Funding is available under the Capital Infrastructure Program in the amount of \$31,000 under Project 190865: 2009 CARS, Roe Avenue from Somerset Drive to 83rd Street. Fifty percent (\$15,500) of this amount will be reimbursed by the County.

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 Administration Agreement with TranSystems for Project 190865: 2009 CARS, Roe Avenue from Somerset Drive to 83rd

PREPARED BY

Thomas Trienens, Manager of Engineering Services

January 13, 2009

AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES
for
CONSTRUCTION ADMINISTRATION
for

PROJECT 190865: 2009 C.A.R.S., ROE AVENUE RESURFACING
(SOMERSET DRIVE TO 83RD STREET)

THIS AGREEMENT, made at the Prairie Village, Kansas, this _____ day of _____, 2009, 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 Kansas 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 190865: 2009 C.A.R.S., Roe Avenue Resurfacing (Somerset Drive to 83rd Street) 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 Thomas Trienens, Manager of Engineering Services as CITY representative with respect to this Agreement. Mr. Trienens 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. Barry Denslow 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 \$31,000.00 (Thirty one thousand dollars) for the scope of services as specified herein unless modified by Change Order. CONSULTANT current Hourly Rate Schedule is attached as Exhibit A.

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

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

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

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

ARTICLE IV - GENERAL PROVISIONS

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

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

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

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

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

Insurance: The Consultant shall procure and maintain, at its expense, the following insurance coverage: (a) Workers' Compensation -- Statutory Limits, with Employer's Liability limits of \$100,000 each employee, \$500,000 policy limit; (b) Commercial General Liability for bodily injury and property damage liability claims with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; (c) Commercial Automobile Liability for bodily injury and property damage with limits of not less than \$1,000,000 each accident for all owned, non-owned and hired automobiles; (d) errors and omissions coverage of not less than \$1,000,000. Deductibles for any of the above coverage shall not

exceed \$25,000 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 G. Swenson

Thomas G. 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



Exhibit A
Prairie Village 2009 Construction Administration - CARS Somerset Drive (190865)
Fee Estimate

	CLASS	HOURS	RATE	EXTENSION
PRE-CONSTRUCTION	E4	0.933	\$ 182.00	\$ 169.87
	I4	0.933	\$ 108.00	\$ 100.80
	I3	4.667	\$ 90.00	\$ 420.00
	TOTALS	6.533		\$ 690.67
CONSTRUCTION	E4	18.67	\$ 182.00	\$ 3,397.33
	I4	9.333	\$ 108.00	\$ 1,008.00
	I3	205.3	\$ 90.00	\$ 18,480.00
	E2	30.8	\$ 110.00	\$ 3,388.00
	I2	38.5	\$ 69.00	\$ 2,656.50
TOTALS	302.6		\$ 28,929.83	
POST-CONSTRUCTION	E4	0.467	\$ 182.00	\$ 84.93
	I4	0.933	\$ 108.00	\$ 100.80
	I3	9.333	\$ 90.00	\$ 840.00
	TOTALS	10.73		\$ 1,025.73
SUMMARY	E4	20.07	\$ 182.00	\$ 3,652.13
	I4	11.2	\$ 108.00	\$ 1,209.60
	I3	219.3	\$ 90.00	\$ 19,740.00
	E2	30.8	\$ 110.00	\$ 3,388.00
	I2	500	\$ 69.00	\$ 34,500.00
		781.4		\$ 62,489.73
TOTAL DIRECT LABOR				\$ 30,646.23
DIRECT EXPENSES				
10,000 MILES @ \$0.55/MILE = \$ 5,500				\$ 641.67
ESTIMATED COST PLUS NET FEE				\$ 31,287.90
				\$ 31,000.00



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: January 20, 2009
Council Meeting Date: February 2, 2009

COU2008-97: CONSIDER CONSTRUCTION ADMINISTRATION AGREEMENT FOR PROJECT 190869: 2009 PAVING PROGRAM

RECOMMENDATION

Move to approve the construction administration agreement with TranSystems for Project 190869: 2009 Street Resurfacing Program in the total amount of \$143,000.

BACKGROUND

Six consultants submitted proposals for construction administration services for 2009 projects. The six were narrowed down to three and On December 17, 2008, the Consultant Selection Committee conducted oral interviews of SKW, DRG and TranSystems. The committee selected TranSystems.

FUNDING SOURCE

Funding is available under the Capital Infrastructure Program in the amount of \$143,000 under Project 190869: 2009 Street Resurfacing Program.

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 Administration Agreement with TranSystems for Project 190869:2009 Resurfacing Program

PREPARED BY

Thomas Trienens, Manager of Engineering Services

January 13, 2009

AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES
for
CONSTRUCTION ADMINISTRATION
for
PROJECT 190869: 2009 STREET RESURFACING PROGRAM

THIS AGREEMENT, made at the Prairie Village, Kansas, this _____ day of _____, 2009, 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 Kansas 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 190869: 2009 Street Resurfacing Program 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 Thomas Trienens, Manager of Engineering Services as CITY representative with respect to this Agreement. Mr. Trienens 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. Barry Denslow 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 \$143,000.00 (One hundred forty three thousand dollars) for the scope of services as specified herein unless modified by Change Order. CONSULTANT current Hourly Rate Schedule is attached as Exhibit A.

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

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

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

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

ARTICLE IV - GENERAL PROVISIONS

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

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

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

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

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

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

each employee, \$500,000 policy limit; (b) Commercial General Liability for bodily injury and property damage liability claims with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; (c) Commercial Automobile Liability for bodily injury and property damage with limits of not less than \$1,000,000 each accident for all owned, non-owned and hired automobiles; (d) errors and omissions coverage of not less than \$1,000,000. Deductibles for any of the above coverage shall not exceed \$25,000 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

By: _____

Ronald L. Shaffer

Mayor

CONSULTANT:

TRANSYSTEMS

By: Thomas G. Swenson

Thomas G. 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



Exhibit A
Prairie Village 2009 Construction Administration - Streets (190869)
Fee Estimate

	CLASS.	HOURS	RATE		EXTENSION
PRE-CONSTRUCTION	E4	4.267	\$	182.00	\$ 776.53
	I4	4.267	\$	108.00	\$ 460.80
	I3	21.33	\$	90.00	\$ 1,920.00
	TOTALS	29.87			\$ 3,157.33
	CONSTRUCTION	E4	85.33	\$	182.00
	I4	42.67	\$	108.00	\$ 4,608.00
	I3	938.7	\$	90.00	\$ 84,480.00
	E2	140.8	\$	110.00	\$ 15,488.00
	I2	176	\$	69.00	\$ 12,144.00
TOTALS	1383				\$ 132,250.67
POST-CONSTRUCTION	E4	2.133	\$	182.00	\$ 388.27
	I4	4.267	\$	108.00	\$ 460.80
	I3	42.67	\$	90.00	\$ 3,840.00
	TOTALS	49.07			\$ 4,689.07
SUMMARY	E4	91.73	\$	182.00	\$ 16,695.47
	I4	51.2	\$	108.00	\$ 5,529.60
	I3	1003	\$	90.00	\$ 90,240.00
	E2	189.9	\$	110.00	\$ 20,885.33
	I2	205.9	\$	69.00	\$ 14,204.80
	TOTALS	1541			\$ 147,555.20
TOTAL DIRECT LABOR					\$ 140,097.07
DIRECT EXPENSES					
10,000 MILES @ \$0.55/MILE = \$ 5,500					2933.333333
ESTIMATED COST PLUS NET FEE					\$ 143,030.40
					\$ 143,000.00



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: January 20, 2009

Council Meeting Date: February 2, 2009

COU2009-17: CONSIDER CONSTRUCTION ADMINISTRATION AGREEMENT FOR PROJECT 190877: 2009 CARS, 83RD STREET RESURFACING: ROE AVENUE TO SOMERSET DRIVE

RECOMMENDATION

Move to approve the construction administration agreement with TranSystems for Project 190877: 2009 CARS, 83rd Street from Roe Avenue to Somerset Drive in the total amount of \$31,000.

BACKGROUND

Six consultants submitted proposals for construction administration services for 2009 projects. The six were narrowed down to three and On December 17, 2008, the Consultant Selection Committee conducted oral interviews of SKW, DRG and TranSystems. The committee selected TranSystems.

FUNDING SOURCE

Funding is available under the Capital Infrastructure Program in the amount of \$31,000 under Project 190877: 2009 CARS, 83rd Street from Roe Avenue to Somerset Drive. Fifty percent (\$15,500) will be reimbursed to the City by the County.

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 Administration Agreement with TranSystems for Project 190877: 2009 CARS, 83rd Street from Roe Avenue to Somerset Drive

PREPARED BY

Thomas Trienens, Manager of Engineering Services

January 13, 2009

AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES
for
CONSTRUCTION ADMINISTRATION
for

PROJECT 190877: 2009 C.A.R.S., 83rd STREET RESURFACING
(ROE AVENUE TO SOMERSET DRIVE)

THIS AGREEMENT, made at the Prairie Village, Kansas, this _____ day of _____, 2009, 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 Kansas 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 190877: 2009 C.A.R.S., 83rd Street Resurfacing (Roe Avenue to Somerset Drive) 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 Thomas Trienens, Manager of Engineering Services as CITY representative with respect to this Agreement. Mr. Trienens 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. Barry Denslow 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

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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 \$31,000.00 (Thirty one thousand dollars) for the scope of services as specified herein unless modified by Change Order. CONSULTANT current Hourly Rate Schedule is attached as Exhibit A.

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

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

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

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

ARTICLE IV - GENERAL PROVISIONS

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

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

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

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

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

Insurance: The Consultant shall procure and maintain, at its expense, the following insurance coverage: (a) Workers' Compensation -- Statutory Limits, with Employer's Liability limits of \$100,000 each employee, \$500,000 policy limit; (b) Commercial General Liability for bodily injury and property damage liability claims with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; (c) Commercial Automobile Liability for bodily injury and property damage with limits of not less than \$1,000,000 each accident for all owned, non-owned and hired automobiles; (d) errors and omissions coverage of not less than \$1,000,000. Deductibles for any of the above coverage shall not exceed \$25,000 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

By: _____

Ronald L. Shaffer

Mayor

CONSULTANT:

TRANSYSTEMS

By: Thomas G. Swenson

Thomas G. 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



Exhibit A
Prairie Village 2009 Construction Administration - CARS 83rd Street (190877)
Fee Estimate

	CLASS	HOURS	RATE		EXTENSION
PRE-CONSTRUCTION	E4	0.933	\$	182.00	\$ 169.87
	I4	0.933	\$	108.00	\$ 100.80
	I3	4.667	\$	90.00	\$ 420.00
	TOTALS	6.533			\$ 690.67
CONSTRUCTION	E4	18.67	\$	182.00	\$ 3,397.33
	I4	9.333	\$	108.00	\$ 1,008.00
	I3	205.3	\$	90.00	\$ 18,480.00
	E2	30.8	\$	110.00	\$ 3,388.00
	I2	38.5	\$	69.00	\$ 2,656.50
	TOTALS	302.6			\$ 28,929.83
POST-CONSTRUCTION	E4	0.467	\$	182.00	\$ 84.93
	I4	0.933	\$	108.00	\$ 100.80
	I3	9.333	\$	90.00	\$ 840.00
	TOTALS	10.73			\$ 1,025.73
SUMMARY	E4	20.07	\$	182.00	\$ 3,652.13
	I4	11.2	\$	108.00	\$ 1,209.60
	I3	219.3	\$	90.00	\$ 19,740.00
	E2	30.8	\$	110.00	\$ 3,388.00
	I2	500	\$	69.00	\$ 34,500.00
		781.4			\$ 62,489.73
TOTAL DIRECT LABOR					\$ 30,646.23
DIRECT EXPENSES					
10,000 MILES @ \$0.55/MILE = \$ 5,500					641.666667
ESTIMATED COST PLUS NET FEE					\$ 31,287.90
					\$ 31,000.00



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: January 20, 2009

Council Meeting Date: February 2, 2009

COU2009-15: CONSIDER CONSTRUCTION ADMINISTRATION AGREEMENT FOR PROJECT 190721: 2009 STORM DRAINAGE REPAIR PROGRAM

RECOMMENDATION

Move to approve the construction administration agreement with TranSystems for Project 190721: 2009 Storm Drainage Repair Program in the total amount of \$63,000.

BACKGROUND

Six consultants submitted proposals for construction administration services for 2009 projects. The six were narrowed down to three and On December 17, 2008, the Consultant Selection Committee conducted oral interviews of SKW, DRG and TranSystems. The committee selected TranSystems.

FUNDING SOURCE

Funding is available under the Capital Infrastructure Program in the amount of \$63,000 under Project 190721: 2009 Storm Drainage Repair Program.

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 Administration Agreement with TranSystems for Project 190721:2009 Storm Drainage Repair Program.

PREPARED BY

Thomas Trienens, Manager of Engineering Services

January 13, 2009

AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES
for
CONSTRUCTION ADMINISTRATION
for

PROJECT 190721: 2009 STORM DRAINAGE REPAIR PROGRAM

THIS AGREEMENT, made at the Prairie Village, Kansas, this _____ day of _____, 2009, 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 Kansas 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 190721: 2009 Storm Drainage Repair Program 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 Thomas Trienens, Manager of Engineering Services as CITY representative with respect to this Agreement. Mr. Trienens 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. Barry Denslow 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 \$63,000.00 (Sixty three thousand dollars) for the scope of services as specified herein unless modified by Change Order. CONSULTANT current Hourly Rate Schedule is attached as Exhibit A.

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

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

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

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

ARTICLE IV - GENERAL PROVISIONS

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

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

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

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

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

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

each employee, \$500,000 policy limit; (b) Commercial General Liability for bodily injury and property damage liability claims with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; (c) Commercial Automobile Liability for bodily injury and property damage with limits of not less than \$1,000,000 each accident for all owned, non-owned and hired automobiles; (d) errors and omissions coverage of not less than \$1,000,000. Deductibles for any of the above coverage shall not exceed \$25,000 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 or 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

By: _____

Ronald L. Shaffer

Mayor

CONSULTANT:

TRANSYSTEMS

By: Thomas G. Swenson

Thomas G. Swenson

Principal

Address for giving notices:

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

ATTEST:

Joyce Hagen Mundy, City Clerk

Address for giving notices:

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

APPROVED BY:

Catherine Logan, City Attorney



Exhibit A
Prairie Village 2009 Construction Administration - Drainage (190721)
Fee Estimate

	CLASS	HOURS	RATE	EXTENSION
PRE-CONSTRUCTION	E4	1.867	\$ 182.00	\$ 339.73
	I4	1.867	\$ 108.00	\$ 201.60
	I3	9.333	\$ 90.00	\$ 840.00
	TOTALS	13.07		\$ 1,381.33
CONSTRUCTION	E4	37.33	\$ 182.00	\$ 6,794.67
	I4	18.67	\$ 108.00	\$ 2,016.00
	I3	410.7	\$ 90.00	\$ 36,960.00
	E2	61.6	\$ 110.00	\$ 6,776.00
	I2	77	\$ 69.00	\$ 5,313.00
	TOTALS	605.3		\$ 57,859.67
POST-CONSTRUCTION	E4	0.933	\$ 182.00	\$ 169.87
	I4	1.867	\$ 108.00	\$ 201.60
	I3	18.67	\$ 90.00	\$ 1,680.00
	TOTALS	21.47		\$ 2,051.47
SUMMARY	E4	40.13	\$ 182.00	\$ 7,304.27
	I4	22.4	\$ 108.00	\$ 2,419.20
	I3	438.7	\$ 90.00	\$ 39,480.00
	E2	61.6	\$ 110.00	\$ 6,776.00
	I2	500	\$ 69.00	\$ 34,500.00
	TOTALS	1063		\$ 90,479.47
TOTAL DIRECT LABOR				\$ 61,292.47
DIRECT EXPENSES				
10.000 MILES @ \$0.55/MILE = \$ 5,500				\$ 1,283.33
ESTIMATED COST PLUS NET FEE				\$ 62,575.80
				\$ 63,000.00



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: January 20, 2009

Council Meeting Date: February 2, 2009

COU2009-20: CONSIDER CONSTRUCTION ADMINISTRATION AGREEMENT FOR PROJECT 190871: MISSION LANE BRIDGE REPLACEMENT

RECOMMENDATION

Move to approve the construction administration agreement with George Butler Associates for Project 190871: Mission Lane Bridge Replacement in the total amount of \$121,500.

BACKGROUND

George Butler Associates designed this project. In the last couple of years Public Works has utilized a different engineering consultant to perform construction administration than the one that designed the project. However in this case, due to the complexity of this project and the great familiarity with the many details of the bridge replacement, it is recommended that GBA be retained to perform the construction administration. It should also be noted that they performed the construction administration on the Tomahawk Bridge replacement and their work was of good quality.

The fee for Construction Administration is larger than other projects due to the complexity and engineering that is required (i.e. shop drawing reviews of girders, review of demolition plan, masonry wall plan review).

FUNDING SOURCE

Funding is available under the Capital Infrastructure Program in the amount of \$121,500 under Project 190871: Mission Lane Bridge Replacement.

RELATION TO VILLAGE VISION

CFS3a. Ensure streets and sidewalks are in good condition by conducting maintenance and repairs as needed.

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

ATTACHMENTS

1. Construction Administration Agreement with GBA for Project 190871: Mission Lane Bridge Replacement.

PREPARED BY

Thomas Trienens, Manager of Engineering Services

January 15, 2009

AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES

For

CONSTRUCTION ADMINISTRATION

For

PROJECT 190871: MISSION LANE BRIDGE REPLACEMENT

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 George Butler Associates, Inc., a Kansas corporation with offices at 9801 Renner Boulevard, Lenexa, Kansas 66219-9745, 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 190871: Mission Lane Bridge Replacement 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 Thomas Trienens, Manager of Engineering Services as CITY representative with respect to this Agreement. Mr. Trienens 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. James Jarrett 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 additional 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 endeavor to 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 that is observed by the Consultant.

- 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 \$ 121,500 for the scope of services as specified herein unless modified by Change Order. CONSULTANT current Hourly Rate Schedule is attached as Exhibit A.

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

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

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

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

ARTICLE IV - GENERAL PROVISIONS

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

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

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

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

Reuse of Documents: All documents including the plans and specifications provided or furnished by the Consultant pursuant to this Agreement ("Plans") shall become the property of City. City agrees that if such Plans are ever used in connection with another project in which the Consultant is not providing civil engineering services or for completion of the Project by others, all references to the Consultant or any subconsultant, including seals, shall be removed from the Plans before use on said project. The City may make and retain copies for the use by the City and others; however, such documents are not intended or suitable for reuse by the City or others as an extension of the Project or on any other Project. Any such reuse without written approval or adaptation by the Consultant for the specific

purpose intended will be at the CITY sole risk and without liability to the Consultant. To the extent permitted by law, the City shall indemnify and hold harmless the Consultant from all claims, damages, losses and expenses including attorney's fees arising out of or resulting reuse of the Plans. In a similar manner, the Consultant is prohibited from reuse or disclosing any information contained in any documents, plans or specifications relative to the Project without the expressed written permission of the City.

Insurance: The Consultant shall procure and maintain, at its expense, the following insurance coverage: (a) Workers' Compensation -- Statutory Limits, with Employer's Liability limits of \$100,000 each employee, \$500,000 policy limit; (b) Commercial General Liability for bodily injury and property damage liability claims with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; (c) Commercial Automobile Liability for bodily injury and property damage with limits of not less than \$1,000,000 each accident for all owned, non-owned and hired automobiles; (d) errors and omissions coverage of not less than \$1,000,000. Deductibles for any of the above coverage shall not exceed \$25,000, except for errors and omissions, for which the deductible shall not exceed \$300,000, 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

By: _____

Ronald L. Shaffer

Mayor

CONSULTANT:

GEORGE BUTLER ASSOCIATES, INC.

By: 

Clarence D. Munsch, P.E.

Vice President

Address for giving notices:

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

Address for giving notices:

George Butler Associates, Inc.
9801 Renner Boulevard
Lenexa, KS 66219-9745
913-492-0400

ATTEST:

Joyce Hagen Mundy, City Clerk

APPROVED BY:

Catherine Logan, City Attorney

Supporting Data Sheet
for
ESTIMATE OF ENGINEERING FEE

A. Construction Administration

<u>Work Type</u>	<u>Employee</u>	<u>Est.</u> <u>Hrs.</u>	<u>Rate</u>	<u>Extension</u>
1. Preconstruction & Project				
Setup & Utility Relocation	(a) Principal	2 @	\$230 =	\$ 460
Observation	(b) Const. Manager	10 @	\$165 =	\$ 1,650
	(c) Lead Inspector	24 @	\$ 90 =	\$ 2,160
Periodic - 5 visits	(c) Lead Inspector	10 @	\$ 90 =	\$ 900
	(e) Clerical	2 @	\$ 75 =	<u>\$ 150</u>
	Subtotal			\$ 5,320
2. Field Inspection and Daily Contract Documents				
Answering Questions and meetings	(b) Const. Manager	88 @	\$165 =	\$ 14,520
Assumes 110 (8) hr. days	(c) Lead Inspector	880 @	\$ 90	\$ 79,200
Includes concrete pour days	(d) Staff Inspector	40 @	\$100 =	\$ 4,000
(and multiple operations)	(e) Clerical	10 @	\$ 75 =	<u>\$ 750</u>
	Subtotal			\$ 98,470
3. Shop drawing review (girders)				
Shop drawing review (inlets)	(f) Engineer 1	24 @	\$110 =	\$ 2,640
Expansion joints	(f) Engineer 1	2 @	\$110 =	\$ 220
Temporary shoring	(f) Engineer 1	4 @	\$110 =	\$ 440
Demolition Plan review	(f) Engineer 1	8 @	\$110 =	\$ 880
Masonry Wall Plan review	(f) Engineer 1	24 @	\$110 =	\$ 2,640
	(f) Engineer 1	16 @	\$110 =	<u>\$ 1,760</u>
	Subtotal			\$ 8,580
4. Final Paperwork & Punchlist				
As-builts – (Legible Redlines Of Plan Changes)	(b) Const. Manager	8 @	\$165 =	\$ 1,320
	(c) Lead Inspector	48 @	\$ 90 =	\$ 4,320
	(d) Clerical	4 @	\$ 75 =	<u>\$ 300</u>
	Subtotal			\$ 5,940
	Total			\$ 118,310

B. Direct Expenses (Travel, Telephone)

Mileage: Pickup (5000 @ \$0.55/mile) =	\$ 2,750
Telephone	\$ <u>440</u>
Total Direct Expenses =	\$ <u>3,190</u>
TOTAL COST PLUS NET FEE ESTIMATE	<u>\$ 121,500</u>

All testing for project shall be the responsibility of the City.

\$ 23,100 Construction Administration time
\$ 98,400 Construction observation time
\$121,500 Total



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: January 20, 2009

Council Meeting Date: February 2, 2009

COU2009-12: CONSIDER 2010-2014 CARS APPLICATION

RECOMMENDATION

Staff recommends the City Council approve the application for the 2010-2014 County Assistance Roads System program.

BACKGROUND

In order to receive CARS funds, the City must annually submit an application containing a list of streets and the estimated costs. The following streets are recommended for the five-year CARS program, 2010-2014. The Public Works Department compiled the list based on the pavement condition. The work will include where necessary full depth pavement repair, curb and gutter replacement, sidewalk repair, new sidewalk and milling/overlaying the pavement.

Program Year	Street Segment	Limits	Total Estimated Construction Cost	Prairie Village Cost
2010	83rd Street	Nall Avenue to Roe Avenue	\$630,000	\$315,000
2010	Nall Avenue	75 th Street to 79 th Street	\$672,000	\$336,000
		Total	\$1,302,000	\$651,000
2011	Somerset Drive	83 rd Street to Mission Road	\$480,000	\$240,000
2011 *	Lamar Avenue	75 th Street to 79 th Street	\$486,000	\$203,000
		Total	\$966,000	\$443,000
2012	Somerset Drive	Roe Avenue to Nall Avenue	\$935,000	\$467,500
		Total	\$935,000	\$467,500
2013 **	Somerset Drive	Belinder Ave to Mission Rd	\$915,000	\$282,500
		Total	\$915,000	\$282,500
2014 ***	Somerset Drive	Stateline Rd. to Belinder Ave.	\$533,000	\$106,500
2014	Roe Avenue	79 th Street to 83 rd Street	\$505,000	\$252,500
		Total	\$1,038,000	\$359,000

- * Joint project with the City of Overland Park (OP share approximately \$40,000)
- ** Joint project with the City of Leawood (Leawood share approximately \$175,000)
- *** Joint project with the City of Leawood (Leawood share approximately \$160,000)

It should be noted that the City submits an application annually and can revise future year requests. The costs include construction and construction administration. Design costs are not included, as the CARS program does not fund design.

FUNDING SOURCE

No funds are required at this time.

RELATION TO VILLAGE VISION

CC1. Attractive Environment

CC1a. Make streetscape improvements to enhance pedestrian safety and attractiveness of the public realm.

CFS3. Streets and Sidewalks

CFS3a. Ensure streets and sidewalks are in good condition by conducting maintenance and repairs as needed.

TR1. Bike and Pedestrian Friendly

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.

PUBLIC NOTICE

None required.

ATTACHMENTS

1. Application to CARS

PREPARED BY

Thomas Trienens, Manager of Engineering Services

January 7, 2009

2010-2014
CARS
PROGRAM

Prairie Village, Kansas
Johnson County

JANUARY, 2009

CARS Form A
2010--2014 Project Application for the
County Assistance Road System (CARS) Program

Submit one form for each project. Make copies of this form as needed.

Complete & Return by March 1, 2009

Submitting City: Prairie Village, Kansas Number 1 Priority (Y/N) Y

Project Location: 83rd Street, Nall Avenue to Roe Avenue

Joint Project With: _____ Administrating City: _____

Contact Name & Title: Thomas Trienens, Engineering Manager County Commission District(s) #: 1

Estimated Project Schedule: Start Date (mo/yr): 6/2010 Completion Date (mo/yr): 9/2010

Current Average Daily Traffic (ADT): 8599 Accident History (Prior 3 Years): 22

Project Type: Capacity Major Maintenance Bridge Replacement Bridge Rehabilitation
 Route Enhancement System Management

Current Level of Service (LOS) [System Management Projects Only]: _____

Sufficiency Rating (Bridge Projects): _____ Pavement Condition: Good Fair Poor

Detailed Description of Existing Facility:

83rd Street is an existing east/west, two lane collector and is considered a Major Route under CARS criteria. There is some sidewalk on both the north and south sides with gaps. There are traffic signals and dedicated left turn lanes at the intersections of Nall Avenue and Roe Avenue. The existing pavement is asphalt concrete.

Detailed Description of Project Scope:

The existing roadway surface will be milled two inches and resurfaced with two inches of asphalt. Full depth asphalt pavement repairs will be made as needed. Full depth concrete pavement will be constructed on the westbound approach to Nall Avenue. Existing deteriorated concrete curb and gutter and sidewalk will be replaced as necessary. New sidewalk will be constructed to fill in gaps on both the north and south sides. Pavement markings will be replaced throughout.

Project Cost Information *

1. Design Cost:	_____	\$70,000
2. Right-of-way acquisition cost:	_____	
3. Utility relocation Cost:	_____	
4. Construction cost:	_____	\$583,000
5. Construction engineering cost:	_____	\$47,000
Total project cost:	_____	\$700,000

Calculation of CARS Eligible costs:

A. Sum item # 4 & 5 above	(+)	_____	\$630,000
B. Federal Aid Participation	(-)	_____	
C. State Aid Participation	(-)	_____	
D. Other Non-local Participation	(-)	_____	
Subtotal (CARS eligible costs)		_____	\$630,000
CARS Funding request		_____	\$315,000

(Request cannot exceed 50% of the CARS eligible costs)

Funding participation by other cities:

City Name: _____ Funding: _____
 City Name: _____ Funding: _____

*Program policies require that a licensed professional engineer prepare and seal construction cost estimates for upcoming fiscal year projects (i.e., 2010 Program Projects). A copy of the sealed estimates must be furnished for all 2010 CARS Program requests.

Construction Cost Estimate

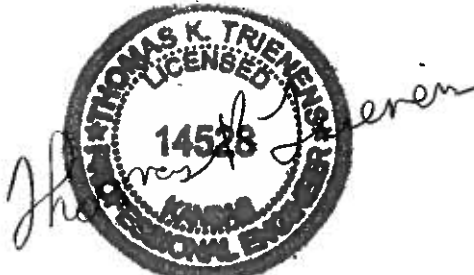
Prairie Village, Kansas

01/01/09 Project No. 1

**83rd Street
Nall Avenue to Roe Avenue**

Design Year
2009

Description	Unit	Estimated Quantity	Unit Price	Total
2" Mill	S.Y.	7000	\$2.00	\$14,000.00
2" Overlay	TON	800	\$66.00	\$52,800.00
Asphalt Wedging	TON	100	\$70.00	\$7,000.00
Full Depth Patch	S.Y.	700	\$60.00	\$42,000.00
12" Subgrade Modification	S.Y.	70	\$21.00	\$1,470.00
Replaced Concrete Curb	L.F.	1000	\$31.00	\$31,000.00
4" Concrete Sidewalk (Replace)	S.Y.	250	\$50.00	\$12,500.00
4" Concrete Sidewalk (New)	S.Y.	850	\$45.00	\$38,250.00
6" Concrete Driveway	S.Y.	430	\$70.00	\$30,100.00
Integral Sidewalk/Retaining Wall	L.F.	570	\$200.00	\$114,000.00
8" Concrete Pavement	S.Y.	350	\$85.00	\$29,750.00
Sidewalk Ramps	Each	17	\$1,700.00	\$28,900.00
Inlet Replacement	Each	2	\$5,000.00	\$10,000.00
Inlet Repair	Each	0	\$500.00	\$0.00
Pipes	L.F.	0	\$100.00	\$0.00
Manhole Adjustment	Each	1	\$500.00	\$500.00
Pavement Marking - 4" White	L.F.	130	\$1.00	\$130.00
12" White	L.F.	160	\$9.00	\$1,440.00
24" White	L.F.	25	\$15.00	\$375.00
4" Yellow	L.F.	5400	\$1.00	\$5,400.00
12" Yellow	L.F.	30	\$9.00	\$270.00
Symbols	Each	2	\$250.00	\$500.00
Sod	S.Y.	1000	\$7.00	\$7,000.00
Large Tree Removal	Each	6	\$900.00	\$5,400.00
Existing Wall Demolition	L.S.	1	\$5,000.00	\$5,000.00
Testing	Allowance	1	\$10,000.00	\$10,000.00
Traffic Control	L.S.	1	\$10,000.00	\$10,000.00
Construction Staking	L.S.	1	\$5,000.00	\$5,000.00
			Mobilization 5%	\$23,000.00
			Contingencies 20%	\$97,000.00
			Construction Cost (Rounded)	\$583,000.00



Construction Engineering		\$47,000
Estimated Eligible Total (Total Cost)		\$630,000

Right of Way Cost		\$0
Design Cost		\$70,000
Estimated Non-Eligible Total		\$70,000
Estimated Grand Total		\$700,000

	Construction Cost	Design Cost	Total Cost	Percentage
County Cost	\$315,000	0	\$315,000	45%
Prairie Village Cost	\$315,000	\$70,000	\$385,000	55%

CARS Form A
2010-2014 Project Application for the
County Assistance Road System (CARS) Program

Submit one form for each project. Make copies of this form as needed.

Complete & Return by March 1, 2009

Submitting City: Prairie Village, Kansas Number 1 Priority (Y/N) N

Project Location: Nall Avenue, 75th Street to 79th Street

Joint Project With: _____ Administrating City: _____

Contact Name & Title: Thomas Trienens, Engineering Manager County Commission District(s) #: 1

Estimated Project Schedule: Start Date (mo/yr): 6/2010 Completion Date (mo/yr): 9/2010

Current Average Daily Traffic (ADT): 12,469 Accident History (Prior 3 Years): 37

Project Type: Capacity Major Maintenance Bridge Replacement Bridge Rehabilitation
Route Enhancement System Management

Current Level of Service (LOS) [System Management Projects Only]: _____

Sufficiency Rating (Bridge Projects): _____ Pavement Condition: Good Fair Poor

Detailed Description of Existing Facility: Nall Avenue is a north/south, two-lane collector street with traffic signals and dedicated left turn lanes at the intersections with 79th Street and 75th Street. It is considered a Major Route based on CARS guidelines. The east and west sides have continuous sidewalk. The existing pavement is asphalt concrete.

Detailed Description of Project Scope: The existing roadway surface will be milled two inches and resurfaced with two inches of asphalt. Full depth asphalt pavement repairs will be made in selected locations as required. Existing deteriorated sidewalk and curb and gutter will be replaced as necessary. Concrete pavement will be constructed on the southbound, northbound and eastbound approaches to 79th Street. Pavement markings will be replaced throughout.

Project Cost Information *

1. Design Cost:	_____	\$75,000
2. Right-of-way acquisition cost:	_____	
3. Utility relocation Cost:	_____	
4. Construction cost:	_____	\$622,000
5. Construction engineering cost:	_____	\$50,000
Total project cost:	_____	\$747,000

Calculation of CARS Eligible costs:

A. Sum item # 4 & 5 above	(+)	_____	\$672,000
B. Federal Aid Participation	(-)	_____	
C. State Aid Participation	(-)	_____	
D. Other Non-local Participation	(-)	_____	
Subtotal (CARS eligible costs)		_____	\$672,000
CARS Funding request		_____	\$336,000

(Request cannot exceed 50% of the CARS eligible costs)

Funding participation by other cities:

City Name: _____ Funding: _____
 City Name: _____ Funding: _____

*Program policies require that a licensed professional engineer prepare and seal construction cost estimates for upcoming fiscal year projects (i.e., 2010 Program Projects). A copy of the sealed estimates must be furnished for all 2010 CARS Program requests.

Construction Cost Estimate

Prairie Village, Kansas

01/01/09 Project No. 2

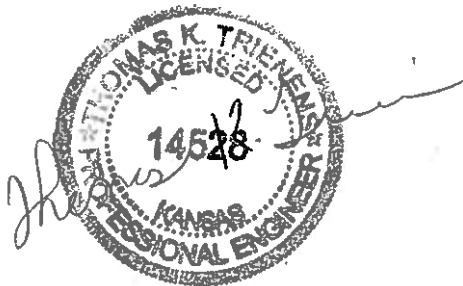
Nail Avenue

Design Year

75th Street to 79th Street

2009

Description	Unit	Estimated Quantity	Unit Price	Total
2" Mill	S.Y.	10500	\$2.00	\$21,000.00
2" Overlay	TON	1200	\$66.00	\$79,200.00
Asphalt Wedging	TON	100	\$70.00	\$7,000.00
Full Depth Patch	S.Y.	1000	\$60.00	\$60,000.00
12" Subgrade Modification	S.Y.	100	\$21.00	\$2,100.00
Replaced Concrete Curb	L.F.	0	\$31.00	\$0.00
New Concrete Curb	L.F.	5300	\$20.00	\$106,000.00
4" Concrete Sidewalk (Replace)	S.Y.	810	\$50.00	\$40,500.00
4" Concrete Sidewalk (New)	S.Y.	0	\$45.00	\$0.00
6" Concrete Driveway	S.Y.	500	\$70.00	\$35,000.00
8" Concrete Driveway	S.Y.	0	\$90.00	\$0.00
8" Concrete Pavement	S.Y.	700	\$85.00	\$59,500.00
Sidewalk Ramps	Each	30	\$1,700.00	\$51,000.00
Inlet Replacement	Each	1	\$5,000.00	\$5,000.00
Inlet Repair	Each	0	\$500.00	\$0.00
Pipes	L.F.	0	\$100.00	\$0.00
Manhole Adjustment	Each	0	\$500.00	\$0.00
Pavement Marking - 4" White	L.F.	1100	\$1.00	\$1,100.00
12" White	L.F.	300	\$9.00	\$2,700.00
24" White	L.F.	70	\$15.00	\$1,050.00
4" Yellow	L.F.	6000	\$1.00	\$6,000.00
12" Yellow	L.F.	100	\$9.00	\$900.00
Symbols	Each	6	\$250.00	\$1,500.00
Sod	S.Y.	1500	\$7.00	\$10,500.00
Testing	Allowance	1	\$10,000.00	\$10,000.00
Traffic Control	L.S.	1	\$10,000.00	\$10,000.00
Construction Staking	L.S.	1	\$5,000.00	\$5,000.00
			Mobilization 5%	\$26,000.00
			Contingencies 15%	\$81,000.00
			Construction Cost (Rounded)	\$622,000.00



Construction Engineering		\$50,000
Estimated Eligible Total (Total Cost)		\$672,000

Right of Way Cost		\$0
Design Cost		\$75,000
Estimated Non-Eligible Total		\$75,000
Estimated Grand Total		\$747,000

	Construction Cost	Design Cost	Total Cost	Percentage
County Cost	\$336,000		\$336,000	45%
Prairie Village Cost	\$336,000	\$75,000	\$411,000	55%

CARS Form A
2010–2014 Project Application for the
County Assistance Road System (CARS) Program

Submit one form for each project. Make copies of this form as needed.

Complete & Return by March 1, 2009

Submitting City: Prairie Village, Kansas Number 1 Priority (Y/N) Y

Project Location: Somerset Drive, 83rd Street to Mission Road

Joint Project With: _____ Administrating City: _____

Contact Name & Title: Thomas Trienens, Engineering Manager County Commission District(s) #: 1

Estimated Project Schedule: Start Date (mo/yr): 6/2011 Completion Date (mo/yr): 9/2011

Current Average Daily Traffic (ADT): 9,111 Accident History (Prior 3 Years): 28

Project Type: Capacity Major Maintenance Bridge Replacement Bridge Rehabilitation

Route Enhancement

System Management

Current Level of Service (LOS) [System Management Projects Only]: _____

Sufficiency Rating (Bridge Projects): _____ Pavement Condition: Good Fair Poor

Detailed Description of Existing Facility:

Somerset Drive is an east/west, four-lane collector and is considered a Major Route by CARS criteria. There are signalized intersections with dedicated left turn lanes at 83rd Street and Mission Road. There is continuous sidewalk on the north and the south side. The existing pavement is asphalt.

Detailed Description of Project Scope:

The existing roadway surface will be milled two inches and resurfaced with two inches of asphalt. Full depth asphalt pavement repairs will be constructed as necessary to address areas of sub base failure. Existing deteriorated concrete sidewalk and curb and gutter will be replaced as necessary. Concrete pavement will be constructed on the westbound approach to 83rd Street. Pavement markings will be replaced throughout.

Project Cost Information *

1. Design Cost:	<u>\$53,000</u>
2. Right-of-way acquisition cost:	<u>\$0</u>
3. Utility relocation Cost:	<u>\$0</u>
4. Construction cost:	<u>\$444,000</u>
5. Construction engineering cost:	<u>\$36,000</u>
Total project cost:	<u>\$533,000</u>

Calculation of CARS Eligible costs:

A. Sum item # 4 & 5 above	(+)	<u>\$480,000</u>
B. Federal Aid Participation	(-)	<u>\$0</u>
C. State Aid Participation	(-)	<u>\$0</u>
D. Other Non-local Participation	(-)	<u>\$0</u>
Subtotal (CARS eligible costs)		<u>\$480,000</u>
CARS Funding request		<u>\$240,000</u>

(Request cannot exceed 50% of the CARS eligible costs)

Funding participation by other cities:

City Name: _____ Funding: _____
 City Name: _____ Funding: _____

*Program policies require that a licensed professional engineer prepare and seal construction cost estimates for upcoming fiscal year projects (i.e., 2010 Program Projects). A copy of the sealed estimates must be furnished for all 2010 CARS Program requests.

CARS Form A
2010–2014 Project Application for the
County Assistance Road System (CARS) Program

Submit one form for each project. Make copies of this form as needed.

Complete & Return by March 1, 2009

Submitting City: Prairie Village, Kansas Number 1 Priority (Y/N) N

Project Location: Lamar Avenue, 75th Street to 79th Street

Joint Project With: Overland Park Administrating City: Prairie Village

Contact Name & Title: Thomas Trienens, Engineering Manager County Commission District(s) #: 1

Estimated Project Schedule: Start Date (mo/yr): 6/2011 Completion Date (mo/yr): 9/2011

Current Average Daily Traffic (ADT): 6015 Accident History (Prior 3 Years): 16

Project Type: Capacity Major Maintenance Bridge Replacement Bridge Rehabilitation
Route Enhancement System Management

Current Level of Service (LOS) [System Management Projects Only]: _____

Sufficiency Rating (Bridge Projects): _____ Pavement Condition: Good Fair Poor

Detailed Description of Existing Facility: Lamar Avenue is a north/south, two-lane collector street with traffic signals and dedicated left turn lanes at the intersections with 79th Street and 75th Street. It is considered a Major Route based on CARS guidelines. The east and west sides have continuous sidewalk. The existing pavement is asphalt concrete.

Detailed Description of Project Scope: The existing roadway surface will be milled two inches and resurfaced with two inches of asphalt. Full depth asphalt pavement patches will be constructed in selected locations as required. Existing deteriorated sidewalk and curb and gutter will be replaced as necessary. Pavement markings will be replaced throughout.

Project Cost Information *

1. Design Cost:	_____	\$54,000
2. Right-of-way acquisition cost:	_____	
3. Utility relocation Cost:	_____	
4. Construction cost:	_____	\$450,000
5. Construction engineering cost:	_____	\$36,000
Total project cost:	_____	\$540,000

Calculation of CARS Eligible costs:

A. Sum item # 4 & 5 above	(+)	_____	\$486,000
B. Federal Aid Participation	(-)	_____	
C. State Aid Participation	(-)	_____	
D. Other Non-local Participation	(-)	_____	
Subtotal (CARS eligible costs)		_____	\$486,000
CARS Funding request		_____	\$243,000

(Request cannot exceed 50% of the CARS eligible costs)

Funding participation by other cities:

City Name: <u>Overland Park</u>	Funding: <u>\$40,000</u>
City Name: _____	Funding: _____

*Program policies require that a licensed professional engineer prepare and seal construction cost estimates for upcoming fiscal year projects (i.e., 2010 Program Projects). A copy of the sealed estimates must be furnished for all 2010 CARS Program requests.

CARS Form A
2010--2014 Project Application for the
County Assistance Road System (CARS) Program

Submit one form for each project. Make copies of this form as needed.

Complete & Return by March 1, 2009

Submitting City: Prairie Village, Kansas Number 1 Priority (Y/N) Y

Project Location: Somerset Drive, Roe Avenue to Nall Avenue

Joint Project With: _____ Administrating City: _____

Contact Name & Title: Thomas Trienens, Engineering Manager County Commission District(s) #: 1

Estimated Project Schedule: Start Date (mo/yr): 6/2012 Completion Date (mo/yr): 9/2012

Current Average Daily Traffic (ADT): 7,651 Accident History (Prior 3 Years): 14

Project Type: Capacity Major Maintenance Bridge Replacement Bridge Rehabilitation
Route Enhancement System Management

Current Level of Service (LOS) [System Management Projects Only]: _____

Sufficiency Rating (Bridge Projects): _____ Pavement Condition: Good Fair Poor

Detailed Description of Existing Facility:

Somerset Drive is an east/west, two-lane collector and is considered a Major Route by CARS criteria. There are signalized intersections with dedicated left turn lanes at Roe Avenue and Nall Avenue. There is continuous sidewalk on the north side and nearly continuous sidewalk on the south side except for about 700 feet east of Nall Avenue. The existing pavement is asphalt.

Detailed Description of Project Scope:

The existing roadway surface will be milled two inches and resurfaced with two inches of asphalt. Full depth asphalt pavement repairs will be constructed as necessary. Existing deteriorated concrete sidewalk and curb and gutter will be replaced as necessary. New sidewalk will be constructed on the south side where there currently is none. Concrete pavement will be constructed on the westbound approach to Nall Avenue and the eastbound approach to Roe Avenue. Pavement markings will be replaced throughout.

Project Cost Information *

1. Design Cost:	<u>\$104,000</u>
2. Right-of-way acquisition cost:	<u>\$0</u>
3. Utility relocation Cost:	<u>\$0</u>
4. Construction cost:	<u>\$866,000</u>
5. Construction engineering cost:	<u>\$69,000</u>
Total project cost:	<u>\$1,039,000</u>

Calculation of CARS Eligible costs:

A. Sum item # 4 & 5 above	(+)	<u>\$935,000</u>
B. Federal Aid Participation	(-)	<u>\$0</u>
C. State Aid Participation	(-)	<u>\$0</u>
D. Other Non-local Participation	(-)	<u>\$0</u>
Subtotal (CARS eligible costs)		<u>\$935,000</u>
CARS Funding request		<u>\$467,500</u>

(Request cannot exceed 50% of the CARS eligible costs)

Funding participation by other cities:

City Name: _____ Funding: _____
 City Name: _____ Funding: _____

*Program policies require that a licensed professional engineer prepare and seal construction cost estimates for upcoming fiscal year projects (i.e., 2010 Program Projects). A copy of the sealed estimates must be furnished for all 2010 CARS Program requests.

CARS Form A
2010--2014 Project Application for the
County Assistance Road System (CARS) Program

Submit one form for each project. Make copies of this form as needed.

Complete & Return by March 1, 2009

Submitting City: Prairie Village, Kansas Number 1 Priority (Y/N) Y

Project Location: Somerset Drive, Belinder Avenue to Mission Road

Joint Project With: City of Leawood Administrating City: Prairie Village

Contact Name & Title: Thomas Trienens, Engineering Manager County Commission District(s) #: 1

Estimated Project Schedule: Start Date (mo/yr): 6/2013 Completion Date (mo/yr): 9/2013

Current Average Daily Traffic (ADT): 9,217 Accident History (Prior 3 Years): 6

Project Type: Capacity Major Maintenance Bridge Replacement Bridge Rehabilitation

Route Enhancement

System Management

Current Level of Service (LOS) [System Management Projects Only]: _____

Sufficiency Rating (Bridge Projects): _____ Pavement Condition: Good Fair Poor

Detailed Description of Existing Facility:

Somerset Drive is an east/west, two-lane collector and is considered a Major Route by CARS criteria. There are signalized intersections with a dedicated left turn lane at Mission Road. There is continuous sidewalk on the north and the south side. The existing pavement is asphalt.

Detailed Description of Project Scope:

The existing roadway surface will be milled two inches and resurfaced with two inches of asphalt. Full depth asphalt pavement repairs will be constructed as necessary to address areas of sub base failure. Existing deteriorated concrete sidewalk and curb and gutter will be replaced as necessary. Concrete pavement will be constructed on the westbound approach to Belinder Avenue. Pavement markings will be replaced throughout.

Project Cost Information *

1. Design Cost:	<u>\$102,000</u>
2. Right-of-way acquisition cost:	<u>\$0</u>
3. Utility relocation Cost:	<u>\$0</u>
4. Construction cost:	<u>\$847,000</u>
5. Construction engineering cost:	<u>\$68,000</u>
Total project cost:	<u>\$1,017,000</u>

Calculation of CARS Eligible costs:

A. Sum item # 4 & 5 above	(+)	<u>\$915,000</u>
B. Federal Aid Participation	(-)	<u>\$0</u>
C. State Aid Participation	(-)	<u>\$0</u>
D. Other Non-local Participation	(-)	<u>\$0</u>
Subtotal (CARS eligible costs)		<u>\$915,000</u>
CARS Funding request		<u>\$457,500</u>

(Request cannot exceed 50% of the CARS eligible costs)

Funding participation by other cities:

City Name: Leawood Funding: \$175,000 (31%)
 City Name: _____ Funding: _____

*Program policies require that a licensed professional engineer prepare and seal construction cost estimates for upcoming fiscal year projects (i.e., 2010 Program Projects). A copy of the sealed estimates must be furnished for all 2010 CARS Program requests.

CARS Form A
2010-2014 Project Application for the
County Assistance Road System (CARS) Program

Submit one form for each project. Make copies of this form as needed.

Complete & Return by March 1, 2009

Submitting City: Prairie Village, Kansas Number 1 Priority (Y/N) Y

Project Location: Somerset Drive, Belinder Avenue to Stateline Road

Joint Project With: City of Leawood Administrating City: Prairie Village

Contact Name & Title: Thomas Trienens, Engineering Manager County Commission District(s) #: 1

Estimated Project Schedule: Start Date (mo/yr): 6/2014 Completion Date (mo/yr): 9/2014

Current Average Daily Traffic (ADT): 12,448 Accident History (Prior 3 Years): 12

Project Type: Capacity Major Maintenance Bridge Replacement Bridge Rehabilitation
Route Enhancement System Management

Current Level of Service (LOS) [System Management Projects Only]: _____

Sufficiency Rating (Bridge Projects): _____ Pavement Condition: Good Fair X Poor

Detailed Description of Existing Facility:

Somerset Drive is an east/west, two-lane collector and is considered a Major Route by CARS criteria. There are signalized intersections with a dedicated left turn lane at Stateline Road. There is continuous sidewalk on the north side and sidewalk from Belinder Avenue to Lee Boulevard on the south side. The existing pavement is asphalt.

Detailed Description of Project Scope:

The existing roadway surface will be milled two inches and resurfaced with two inches of asphalt. Full depth asphalt pavement repairs will be constructed as necessary to address areas of sub base failure. Existing deteriorated concrete sidewalk and curb and gutter will be replaced as necessary. Concrete pavement will be constructed on the eastbound approach to Stateline Road. New sidewalk will be constructed on the south side from Lee Boulevard to Stateline Road. Pavement markings will be replaced throughout.

Project Cost Information *

1. Design Cost:	<u>\$69,000</u>
2. Right-of-way acquisition cost:	<u>\$0</u>
3. Utility relocation Cost:	<u>\$0</u>
4. Construction cost:	<u>\$493,000</u>
5. Construction engineering cost:	<u>\$40,000</u>
Total project cost:	<u>\$602,000</u>

Calculation of CARS Eligible costs:

A. Sum item # 4 & 5 above	(+)	<u>\$533,000</u>
B. Federal Aid Participation	(-)	<u>\$0</u>
C. State Aid Participation	(-)	<u>\$0</u>
D. Other Non-local Participation	(-)	<u>\$0</u>
Subtotal (CARS eligible costs)		<u>\$533,000</u>
CARS Funding request		<u>\$266,500</u>

(Request cannot exceed 50% of the CARS eligible costs)

Funding participation by other cities:

City Name: Leawood Funding: \$160,000 (48%)
 City Name: _____ Funding: _____

*Program policies require that a licensed professional engineer prepare and seal construction cost estimates for upcoming fiscal year projects (i.e., 2010 Program Projects). A copy of the sealed estimates must be furnished for all 2010 CARS Program requests.

CARS Form A
2010–2014 Project Application for the
County Assistance Road System (CARS) Program

Submit one form for each project. Make copies of this form as needed.

Complete & Return by March 1, 2009

Submitting City: Prairie Village, Kansas Number 1 Priority (Y/N) N

Project Location: Roe Avenue, 79th Street to 83rd Street

Joint Project With: _____ Administrating City: _____

Contact Name & Title: Thomas Trienens, Engineering Manager County Commission District(s) #: 1

Estimated Project Schedule: Start Date (mo/yr): 6/2014 Completion Date (mo/yr): 9/2014

Current Average Daily Traffic (ADT): 8,733 Accident History (Prior 3 Years): 38

Project Type: **Capacity** Major Maintenance **Bridge Replacement** **Bridge Rehabilitation**
Route Enhancement **System Management**

Current Level of Service (LOS) [System Management Projects Only]: _____

Sufficiency Rating (Bridge Projects): _____ Pavement Condition: Good Fair Poor

Detailed Description of Existing Facility: Roe Avenue is a north/south, two-lane collector street with a traffic signal dedicated left turn lane at the intersection with 83rd Street. The intersection of 79th Street and Roe Avenue is a four way stop without any dedicated left turn lanes. It is considered a Major Route based on CARS guidelines. The east and west sides have continuous sidewalk. The existing pavement is asphalt concrete.

Detailed Description of Project Scope: The existing roadway surface will be milled two inches and resurfaced with two inches of asphalt. Full depth asphalt pavement patches will be constructed in selected locations as required. Existing deteriorated sidewalk and curb and gutter will be replaced as necessary. Pavement markings will be replaced throughout.

Project Cost Information *

1. Design Cost:	<u>\$66,000</u>
2. Right-of-way acquisition cost:	_____
3. Utility relocation Cost:	_____
4. Construction cost:	<u>\$468,000</u>
5. Construction engineering cost:	<u>\$37,000</u>
Total project cost:	<u>\$571,000</u>

Calculation of CARS Eligible costs:

A. Sum item # 4 & 5 above	(+)	<u>\$505,000</u>
B. Federal Aid Participation	(-)	_____
C. State Aid Participation	(-)	_____
D. Other Non-local Participation	(-)	_____
Subtotal (CARS eligible costs)		<u>\$505,000</u>
CARS Funding request		<u>\$252,500</u>

(Request cannot exceed 50% of the CARS eligible costs)

Funding participation by other cities:

City Name: _____ Funding: _____
 City Name: _____ Funding: _____

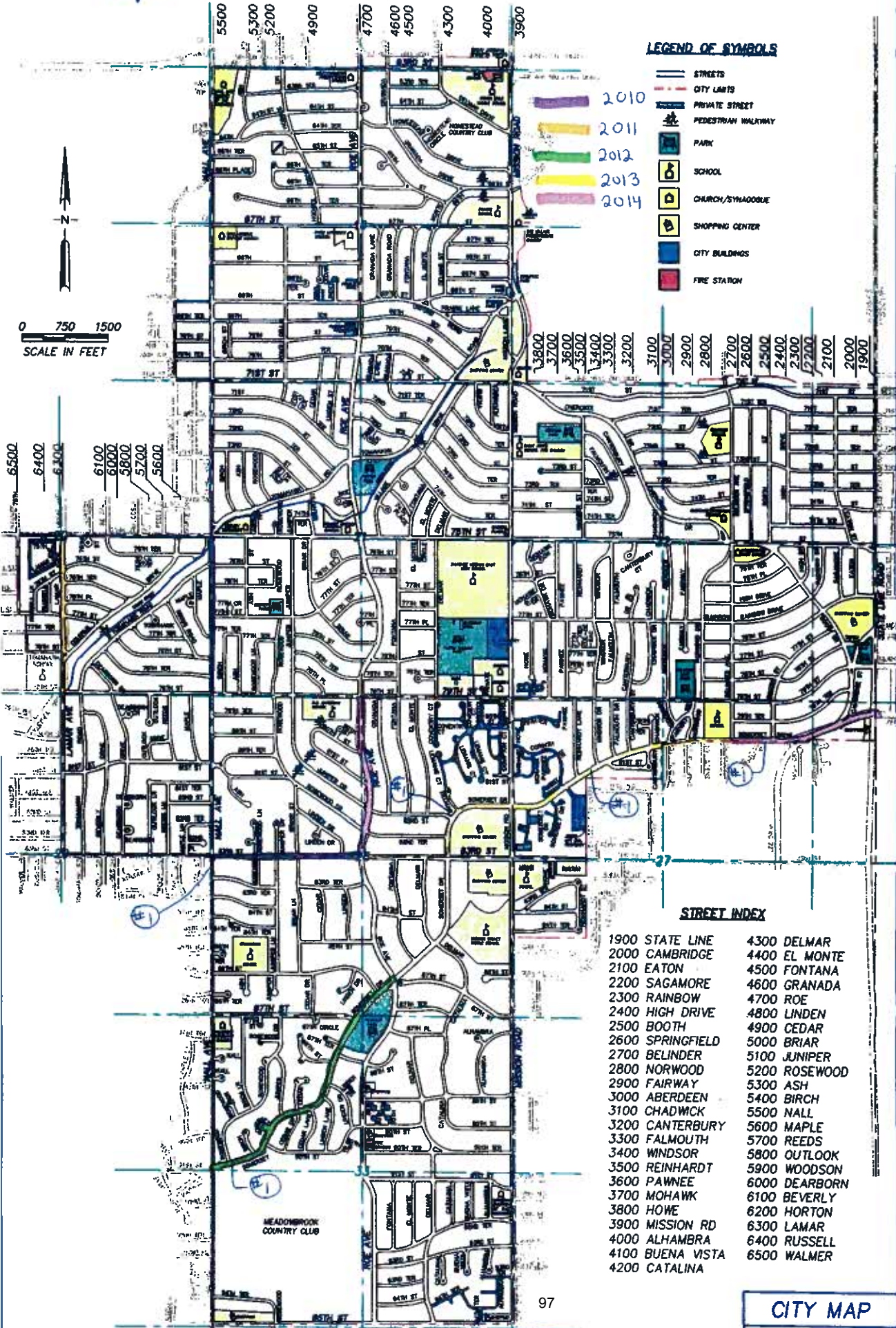
*Program policies require that a licensed professional engineer prepare and seal construction cost estimates for upcoming fiscal year projects (i.e., 2010 Program Projects). A copy of the sealed estimates must be furnished for all 2010 CARS Program requests.



LEGEND OF SYMBOLS

- STREETS
- CITY LIMITS
- PRIVATE STREET
- PEDESTRIAN WALKWAY
- PARK
- SCHOOL
- CHURCH/SYNAGOGUE
- SHOPPING CENTER
- CITY BUILDINGS
- FIRE STATION

- 2010
- 2011
- 2012
- 2013
- 2014



STREET INDEX

- | | |
|------------------|---------------|
| 1900 STATE LINE | 4300 DELMAR |
| 2000 CAMBRIDGE | 4400 EL MONTE |
| 2100 EATON | 4500 FONTANA |
| 2200 SAGAMORE | 4600 GRANADA |
| 2300 RAINBOW | 4700 ROE |
| 2400 HIGH DRIVE | 4800 LINDEN |
| 2500 BOOTH | 4900 CEDAR |
| 2600 SPRINGFIELD | 5000 BRIAR |
| 2700 BELINDER | 5100 JUNIPER |
| 2800 NORWOOD | 5200 ROSEWOOD |
| 2900 FAIRWAY | 5300 ASH |
| 3000 ABERDEEN | 5400 BIRCH |
| 3100 CHADWICK | 5500 NALL |
| 3200 CANTERBURY | 5600 MAPLE |
| 3300 FALMOUTH | 5700 REEDS |
| 3400 WINDSOR | 5800 OUTLOOK |
| 3500 REINHARDT | 5900 WOODSON |
| 3600 PAWNEE | 6000 DEARBORN |
| 3700 MOHAWK | 6100 BEVERLY |
| 3800 HOWE | 6200 HORTON |
| 3900 MISSION RD | 6300 LAMAR |
| 4000 ALHAMBRA | 6400 RUSSELL |
| 4100 BUENA VISTA | 6500 WALMER |
| 4200 CATALINA | |



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: January 20, 2009

Council Meeting Date: February 2, 2009

COU2009-14: CONSIDER DESIGN AGREEMENT FOR PROJECT 190870: 2010 STREET RESURFACING PROGRAM

RECOMMENDATION

Move to approve the design agreement with Affinis Corporation for project 190870: 2010 Street Resurfacing Program in the amount of \$204,000.00.

BACKGROUND

Eight consultants submitted proposals for the design of the 2010 storm drainage repair program. The eight were narrowed down to two and on December 1, 2008, the Consultant Selection Committee conducted oral interviews of GBA and Affinis. (NOTE: After the committee selected the two consultants for interviews, staff decided it would be a benefit to also include 2010 Street and CARS resurfacing programs as part of the interviews since it was decided that HNTB would not be asked to perform street design for a second year). The committee selected Affinis. The streets to be reviewed in the concept phase for project 190870 are:

- Canterbury Drive Cul-de-sac (77th Street to End)
- El Monte Street (74th Terrace to 75th Street)
- 79th Terrace (Rosewood Drive to Nall Avenue)
- Juniper Lane (83rd Street to 86th Street)
- Cedar Street (70th Terrace to 71st Street)
- 79th Street (Nall Avenue to Roe Avenue)
- Aberdeen Street (77th Street to 79th Street)
- Outlook Drive (Reeds Street to 81st Street)

This list is subject to change after the consultant has completed the concept phase. The final list will be determined based on scope of work and available budget.

FUNDING SOURCE

Funding is available under the Capital Infrastructure Program in the amount of \$190,000.00 under project 190870: 2010 Street Resurfacing Program with a transfer of \$14,000.00 from Streets Unallocated.

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. Design agreement with Affinis.

PREPARED BY

Thomas Trienens, Manager of Engineering Services

January 9, 2009

AGREEMENT FOR PROFESSIONAL ENGINEER

For

DESIGN SERVICES

Of

PROJECT 190870: 2010 PAVING PROGRAM

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 Affinis Corp, a corporation with offices at 7401 West 129th Street, Suite 110 Overland Park, KS, 66213 hereinafter called the "**Consultant**".

WITNESSED, THAT WHEREAS, City has determined a need to retain a professional engineering firm to provide civil engineering services for the Design of Project 190870: 2010 Paving Program, 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.

1. CITY RESPONSIBILITIES

- 1.1. The City has designated the Manager of Engineering Services, Mr. Thomas Trienens, to act as the representative for the City with respect to the services to be performed or furnished by the Consultant under this Agreement. This person shall have the authority to transmit instructions, receive information, interpret and define the City policies with respect to the Consultant's services for this Project.
- 1.2. The City shall make available to the Consultant all existing data and records relevant to the Project such as, maps, plans, correspondence files and other information possessed by the City that is relevant to the Project. Consultant shall not be responsible for verifying or ensuring the accuracy of any information or content supplied by City or any other Project participant unless specifically defined by the scope of work, nor ensuring that such information or content does not violate or infringe any law or other third party rights. However, Consultant shall promptly advise the City, in writing, of any inaccuracies in the information provided or any other violation or infringement of any law or third party rights that Consultant observes. City shall indemnify Consultant for any infringement claims resulting from Consultant's use of such content, materials or documents.
- 1.3. The City shall review for approval all criteria, design elements and documents as to the City requirements for the Project, including objectives, constraints, performance requirements and budget limitations.
- 1.4. The City shall provide copies of all existing standard details and documentation for use by the Consultant for the project.
- 1.5. The City shall diligently review all submittals presented by the Consultant.

- 1.5. The City shall diligently review all submittals presented by the Consultant.
- 1.6. The City has funded \$1,680,000 for this project with this proposed list of streets:
 - 1.6.1. Canterbury Drive Cul-de-sac (77th Street to End) Mill & Overlay
 - 1.6.2. El Monte Street (74th Terrace to 75th Street) Reconstruction
 - 1.6.3. 79th Terrace (Rosewood Drive to Nall Avenue) Mill & Overlay
 - 1.6.4. Juniper Lane (83rd Street to 86th Street) Mill & Overlay
 - 1.6.5. Cedar Street (70th Terrace to 71st Street) Reconstruction
 - 1.6.6. 79th Street (Nall Avenue to Roe Avenue) Mill & Overlay
 - 1.6.7. Aberdeen Street (77th Street to 79th Street) Mill & Overlay
 - 1.6.8. Outlook Drive (Reeds Street to 81st Street) Mill & Overlay

2. CONSULTANT RESPONSIBILITIES

- 2.1. The Consultant shall either perform for or furnish to the City professional civil engineering services and related services in all phases of the Project to which this Agreement applies as hereinafter provided.
- 2.2. The Consultant shall serve as the prime professional Consultant for the City on this Project
- 2.3. The standard of care for all professional consulting services and related 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's profession, practicing under similar conditions at the same time and in the same locality.
- 2.4. Designate a person to act as the Consultant's representative with respect to the services to be performed or furnished by the Consultant under this Agreement. Such person shall have authority to transmit instructions, receive information, and make decisions with respect to the Consultant's services for the Project.

3. SCOPE OF SERVICES

- 3.1. Upon receipt of notice to proceed from the City, the Consultant shall provide all consulting services related to this project including, but not limited, to these phases and tasks. The scope is generally defined below and in more details in Exhibit A.
- 3.2. **Concept Phase**
 - 3.2.1. Schedule and attend one startup meeting with City to confirm project goals, schedule, budget and expectations. At this meeting the City will review philosophical changes in the program.
 - 3.2.2. Review the list of work locations with applicable priorities as provided by the City
 - 3.2.3. Review any criteria changes in the program
 - 3.2.4. Review with City staff, the list of issues based on service requests, work orders, permits issued, Public Works staff experiences, available plans, previous studies, and pertinent information regarding the Project
 - 3.2.5. Conduct early field reconnaissance to evaluate and identify construction needs, limits, alignment, underground utilities, drainage problems, sidewalk issues, driveway issues, other special elements
 - 3.2.6. Meet with City to discuss project limits and issues
 - 3.2.7. Determine coring locations and coordinate with Geotechnical firm for corings
 - 3.2.8. Evaluate coring and pavement repair application
 - 3.2.9. Identify all utilities that may be affected by the project and make contact with the utility to determine the facilities involved
 - 3.2.10. Prepare a project schedule

- 3.2.11. Submit an opinion of probable project cost listing typical construction pay items, construction administration costs and any other project related costs. Add a project contingency equal to 20 percent of the total of construction costs
- 3.2.12. Suggest additions or deductions to adjust the total project cost to equal approximately 1.20 times the project budget
- 3.2.13. Meet with City to review costs and scope of project
- 3.2.14. Submit a report summarizing the project scope containing a list of streets, description of intended construction, probable construction cost per street, and location of new sidewalks.
- 3.2.15. Provide one hard copy and electronic copy of any report, or drawing in Microsoft Word or Excel.
- 3.2.16. Provide files of the plan or drawing in PDF Format.

3.3. Preliminary Design Phase

- 3.3.1. Prepare preliminary construction documents showing the nature and extent of improvements, the conditions under which the Contractor shall work and the general conditions of contractual relations.
- 3.3.2. Conduct field reconnaissance to evaluate and identify:
 - 3.3.2.1. Issues determined in the concept phase
 - 3.3.2.2. Identify existing drainage components in project area (location, size, material, capacity, storm design adequacy and condition)
 - 3.3.2.3. Need for drainage improvements
 - 3.3.2.4. Condition of drainage system by observing water flow during, immediately after and after three days with no rain
 - 3.3.2.5. Need for full depth pavement repairs
 - 3.3.2.6. Need for sidewalk replacement
 - 3.3.2.7. Location for new sidewalk
 - 3.3.2.8. Need for curb and gutter replacement
 - 3.3.2.9. Need for and limits of driveway replacement
 - 3.3.2.10. Need for which type of ADA ramps
 - 3.3.2.11. Utility locations and conflicts
 - 3.3.2.12. Tree conflicts
- 3.3.3. Determine existing pavement elevations every 50 feet parallel to center line at the center line, gutter, at gutter elevation at center of ADA ramp and property line, and 12 feet perpendicular to center line for evaluating cross slope and profile.
- 3.3.4. Determine drainage improvements after consultation with City
- 3.3.5. Record location of existing traffic markings and review for compliance with MUTCD and City standards
- 3.3.6. Identify location and scope of relocation through test pit locations of potential utility conflicts
- 3.3.7. Identify location of bench marks and section markers
- 3.3.8. Prepare preliminary construction plans (80%)
- 3.3.9. Prepare a project title sheet
- 3.3.10. Prepare general site plan showing and identifying surface features such as street right-of-way, edge of pavement, sidewalks, driveways, boring locations, trees, house outline, address, owner name based on latest AIMS coverage data, irrigation systems, known electronic dog fences and any other pertinent surface feature

- 3.3.11. Prepare plan and profiles for street reconstruction showing all utility, including drainage, sanitary sewer, water, gas, electric, telephone, traffic signals, and street lights, as well as all conflicts and test pits
- 3.3.12. Prepare typical sections
- 3.3.13. Prepare a cross section plan of typical sections for significant changes in final elevations or critical construction locations
- 3.3.14. Prepare a detail plan showing City details drawings and other special details pertinent to the project
- 3.3.15. Prepare an easement plan of existing and intended construction and required easements (both permanent and temporary) as well as any right of entry
- 3.3.16. Prepare a traffic control plan showing temporary and permanent traffic control measures per MUTCD for various phases of construction
- 3.3.17. Prepare an erosion and sediment control plan showing all areas to be controlled during construction.
- 3.3.18. Present one set (one full size and one half size) of preliminary (80% completion) construction plans for City review that include:
 - 3.3.18.1. Cover sheet
 - 3.3.18.2. Typical sections
 - 3.3.18.3. Standard and special details
 - 3.3.18.4. Plan and profile for streets to be reconstructed
 - 3.3.18.5. Plan for streets to be milled and overlaid
 - 3.3.18.6. Plan and profile for drainage improvements
 - 3.3.18.7. Plan and profile for new sidewalk construction
 - 3.3.18.8. Plan for traffic markings and traffic control during construction
 - 3.3.18.9. Erosion control plan
 - 3.3.18.10. Plan showing property, easements and right-of-way locations and ownership
- 3.3.19. Prepare all easement documents and submit to City in a form acceptable to Johnson County
- 3.3.20. Present one set (half size) of preliminary plans to appropriate governmental agencies and utility companies requesting comments and verification of potential conflicts
- 3.3.21. Conduct a field check with City
- 3.3.22. Participate in a public meeting to present project specifics
- 3.3.23. Present draft of detail specifications and special conditions for City review
- 3.3.24. Present a detailed opinion of probable construction cost of City defined construction pay items with quantities and current unit costs. Add to the total construction cost, a contingency of 15 percent plus estimate of Construction Administration Fee
- 3.3.25. Suggest additions or deductions to adjust the total project cost to equal approximately 1.15 times the project budget.
- 3.3.26. Publish minutes of all monthly project review meetings and disperse the minutes to City representative and all other attendees within five working days.

- 3.3.27. Provide one hard copy and electronic copy of any report, or drawing in Microsoft Word or Excel.
- 3.3.28. Provide files of the plan or drawing in PDF Format.

3.4. Final Design Phase

- 3.4.1. Prepare final design documents base of review and comments from City and other review agencies of the preliminary plans
- 3.4.2. Present final project manual for City review
- 3.4.3. Prepare and submit to City two copies of legal description for permanent and temporary easements, and any right-of-entry documents in approved Johnson County Register of Deeds format.
- 3.4.4. Present one half size set of final design plans and specifications for City review
- 3.4.5. Submit one half-size set of final plans and specifications to other appropriate governmental agencies and utility companies with identification of significant changes to preliminary design plans.
- 3.4.6. Request utility comments and construction schedule.
- 3.4.7. Prepare a final opinion of probable construction cost.
- 3.4.8. Prepare all bid documents using the City's standard documents.
- 3.4.9. Publish minutes of all project review meetings and disperse to City representative and all other attendees within five working days.
- 3.4.10. Provide one hard copy and electronic copy of any report, or drawing in Microsoft Word or Excel.
- 3.4.11. Provide files of the plan or drawing in PDF Format.

3.5. Bidding Phase

- 3.5.1. Provide the City a notice of bid for publication.
- 3.5.2. Mail notice to bid to potential contractors and plan houses
- 3.5.3. Provide to printing house plans, bid documents, and specifications for potential bidders to purchase
- 3.5.4. Provide all utilities with bid set of plans and request attendance at pre-bid meeting.
- 3.5.5. Conduct a pre-bid meeting
- 3.5.6. Publish minutes of all pre-bid meeting and disperse to City representative and all other attendees within five working days.
- 3.5.7. If necessary after pre-bid meeting, prepare and distribute addenda prior to bid opening.
- 3.5.8. Provide to the City a Consultant's opinion of probable construction cost and bid tab sheet.
- 3.5.9. Attend bid opening
- 3.5.10. Check accuracy of bids, evaluate the bidders and make a recommendation of award to the City.
- 3.5.11. Assemble five sets construction documents including bonds for execution by the contractor and the City.
- 3.5.12. Submit contractor signed contract documents to the City for execution and award.

- 3.5.13. Provide one hard copy and electronic copy of any report, or drawing in Microsoft Word or Excel.
- 3.5.14. Provide files of the plan or drawing in PDF Format.

4. TIME SCHEDULE

- 4.1. The Consultant's services and compensation under this Agreement have been agreed to in anticipation of orderly and continuous progress of the Project through completion of the Concept Phase, Preliminary Design Phase, Final Design Phase and Bidding Phase.
- 4.2. If the City fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, the Consultant shall be entitled to equitable adjustment of rates and amounts of compensations to reflect reasonable costs incurred by the Consultant as a result of the delay or changes in the various elements that comprise such rates of compensation.
- 4.3. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and delay in or inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either City or Consultant under this Agreement. Consultant shall be granted a reasonable extension of time for any delay in its performance caused by any such circumstances.
- 4.4. Should such circumstances occur, the consultant shall, within a reasonable time of being prevented from performing, give written notice to the City describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.
- 4.5. Recognizing that time is of the essence, the Consultant proposes to complete the scope of services as specified in the Scope of Services:

Concept Phase	Due by April 1, 2009
Preliminary Design Phase	Due by September 1, 2009
Final Design Phase	Due by November 15, 2009
Bid Advertisement Date	December 8, 2009
Letting Date	January 8, 2009

5. COMPENSATION

- 5.1. The City agrees to pay the Consultant as maximum compensation as defined in Exhibit B for the scope of services the following fees:

Concept Phase	Total Maximum Fee	\$ <u>24,000.00</u>
Preliminary Design Phase	Total Maximum Fee	\$ <u>112,000.00</u>
Final Design Phase	Total Maximum Fee	\$ <u>57,000.00</u>
Bidding Phase	Total Maximum Fee	\$ <u>11,000.00</u>
Total Fees		\$ <u>204,000.00</u>

- 5.2. The compensation will be billed by Phase detailing the position, hours and appropriate hourly rates (which include overhead and profit) for Consultant's personnel classifications and Direct Non-Salary Costs.
- 5.3. The term "Direct Non-Salary Costs" shall include the Consultant payments in connection with the Project to other consultants, transportation, and reproduction costs. Payments will be billed to the City at actual cost. Transportation, including use of survey vehicle or automobile will be charged at the IRS rate in effect during the billing period. Reproduction work and materials will be charged at actual cost for copies submitted to the City.
- 5.4. All billings must be submitted monthly for all services rendered in the previous month. The Consultant will invoice the City on forms approved by the City. All properly prepared invoices shall be accompanied by a documented breakdown of expenses incurred. This documentation shall include personnel by job classification, hourly rate, number of hours, description of subconsultant services and detail list of Direct Non-Salary Costs.
- 5.5. The maximum fee shall not be changed unless adjusted by an Engineering Change Order mutually agreed upon by the City and the Consultant prior to incurrence of any expense. The Engineering Change Order will be for major changes in scope, time or complexity of Project.

6. **GENERAL PROVISIONS**

- 6.1. **Opinion of Probable Cost and Schedule:** Since the Consultant has no control over the cost of labor, materials or equipment furnished by Contractors, or over competitive bidding or market conditions, the opinion of probable Project cost, construction cost or project schedules are based on the experience and best judgment of the Consultant, but the Consultant cannot and does not guarantee the costs or that actual schedules will not vary from the Consultant's projected schedules.
- 6.2. **Quantity Errors:** Negligent quantity miscalculations or omissions because of the Consultant's error shall be brought immediately to the City's attention. The Consultant shall not charge the City for the time and effort of checking and correcting the errors to the City's satisfaction.
- 6.3. **Reuse of Documents:** All documents including the plans and specifications provided or furnished by the Consultant pursuant to this Agreement are instruments of service in respect of the Project. The Consultant shall retain an ownership and property interest upon payment therefore whether or not the Project is completed. 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's sole risk and without liability to the Consultant. 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 documents. 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.
- 6.4 **Insurance:**
 - 6.4.1 The Consultant shall procure and maintain, at its expense, the following insurance coverage: (a) Workers' Compensation -- Statutory Limits, with Employer's Liability limits of \$100,000 each employee, \$500,000 policy limit; (b) Commercial General Liability for bodily injury and property damage liability claims with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; (c) Commercial Automobile Liability for bodily injury and property damage with limits of not less than \$1,000,000 each accident

for all owned, non-owned and hired automobiles; (d) errors and omissions coverage of not less than \$1,000,000. Deductibles for any of the above coverage shall not exceed \$25,000 unless approved in writing by City. In addition, Consultant agrees to require all consultants and sub-consultants 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.

- 6.4.2 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's Agent shall be waived. Consultant's insurance policies shall be endorsed to indicate that Consultant's insurance coverage is primary and any insurance maintained by City or City's Agent is non-contributing.
- 6.4.3 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's agent, and other specified interests as additional insureds thereunder.
- 6.4.4 Coverage shall contain a waiver of subrogation in favor of the City, and its subdivisions, departments, officials, officers and employees.
- 6.4.5 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's 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.

6.5 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).

6.6 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

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

6.8 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 sub-consultants 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 sub-consultants, to the extent and in proportion to the comparative degree of fault of the Consultant and its sub-consultants. Consultant shall also pay for City's 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 sub-consultants.

6.9 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.

6.10 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.

6.11 Successors and Assigns:

6.11.1 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.

6.11.2 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.

6.11.3 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, Kansas

By: _____

Ronald L. Shaffer, Mayor

Address for giving notices:

City of Prairie Village
7700 Mission Road
Prairie Village, Kansas 66208

Telephone: 913-385-4600

ATTEST:

Joyce Hagen Mundy, City Clerk

Consultant:

Affinis Corp

By: _____

John B. Thomas, P.E., Principal

Address for giving notices:

Affinis Corp
7401 West 129th Street, Suite 110
Overland Park, KS 66213

Telephone: 913-239-1100

APPROVED AS TO FORM BY:

Catherine Logan, City Attorney

Exhibit A

**2010 Paving Program
Project 190870
Prairie Village, Kansas
January 8, 2009**

Project Description:

The following scope of services and fee estimate are based on the services described below to produce construction documents for a select number of street resurfacing or reconstruction projects as outlined by the City of Prairie Village. The list of streets is as follows and is described in further detail below:

1. Canterbury Drive Cul-de-sac (77th Street to End) Mill & Overlay
 - a. This project area is anticipated to require a mill and overlay and is approximately 1,092 feet long. It is also anticipated that there will be some curb and sidewalk replacement. Full depth replacement of asphalt pavement along the project at isolated locations is also anticipated and will be determined by pavement cores and field reconnaissance. Some drives and storm drainage components are expected to be replaced or modified based on field evaluations.
 - b. Data collection: AIMS mapping and aerial photography from Johnson County, pavement condition index from the City, existing plats as needed from Johnson County and Affinis records.
 - c. Field surveys: Centerline and edges of pavement elevations at 50-foot intervals to determine cross slopes. Detailed survey at the following locations: Pavement core locations and identified ADA ramps.
2. El Monte Street (74th Terrace to 75th Street) Reconstruction
 - a. This project area is anticipated to require full reconstruction and is approximately 675 feet long. The full reconstruction will include asphalt pavement, subgrade, sidewalk, drive aprons and curb. Some storm drainage components are expected to be replaced or modified based on field evaluations.
 - b. Data collection: AIMS mapping and aerial photography from Johnson County, pavement condition index from the City, existing plats as needed from Johnson County and Affinis records.
 - c. Field surveys: Full topographic survey within the right of way and along all driveways to the garage including joint locations. Detailed survey at the following locations: Pavement core locations.
3. 79th Terrace (Rosewood Drive to Nall Avenue) Mill & Overlay
 - a. This project area is anticipated to require a mill and overlay and is approximately 1,142 feet long. It is also anticipated that there will be some curb and sidewalk replacement. Full depth replacement of asphalt pavement along the project at isolated locations is also anticipated and will be determined by pavement cores and field reconnaissance. Some drives and storm drainage components are expected to be replaced or modified based on field evaluations.
 - b. Data collection: AIMS mapping and aerial photography from Johnson County, pavement condition index from the City, existing plats as needed from Johnson County and Affinis records.

- c. Field surveys: Centerline and edges of pavement elevations at 50-foot intervals to determine cross slopes. Detailed survey at the following locations: Pavement core locations and identified ADA ramps.
- 4. Juniper Lane (83rd Street to 86th Street) Mill & Overlay
 - a. This project area is anticipated to require a mill and overlay and is approximately 1,927 feet long. It is also anticipated that there will be some curb and sidewalk replacement. Full depth replacement of asphalt pavement along the project at isolated locations is also anticipated and will be determined by pavement cores and field reconnaissance. Some drives and storm drainage components are expected to be replaced or modified based on field evaluations.
 - b. Data collection: AIMS mapping and aerial photography from Johnson County, pavement condition index from the City, existing plats as needed from Johnson County and Affinis records.
 - c. Field surveys: Centerline and edges of pavement elevations at 50-foot intervals to determine cross slopes. Detailed survey at the following locations: Pavement core locations and identified ADA ramps.
- 5. Cedar Street (70th Terrace to 71st Street) Reconstruction
 - a. This project area is anticipated to require full reconstruction and is approximately 428 feet long. The full reconstruction will include asphalt pavement, subgrade, sidewalk, drive aprons and curb. Some storm drainage components are expected to be replaced or modified based on field evaluations.
 - b. Data collection: AIMS mapping and aerial photography from Johnson County, pavement condition index from the City, existing plats as needed from Johnson County and Affinis records.
 - c. Field surveys: Full topographic survey within the right of way and along all driveways to the garage including joint locations. Detailed survey at the following locations: Pavement core locations.
- 6. 79th Street (Nall Avenue to Roe Avenue) Mill & Overlay
 - a. This project area is anticipated to require a mill and overlay and is approximately 2,681 feet long. It is also anticipated that there will be some curb and sidewalk replacement. Full depth replacement of asphalt pavement along the project at isolated locations is also anticipated and will be determined by pavement cores and field reconnaissance. Some drives and storm drainage components are expected to be replaced or modified based on field evaluations.
 - b. Data collection: AIMS mapping and aerial photography from Johnson County, pavement condition index from the City, existing plats as needed from Johnson County and Affinis records.
 - c. Field surveys: Centerline and edges of pavement elevations at 50-foot intervals to determine cross slopes. Detailed survey at the following locations: Pavement core locations and identified ADA ramps.
- 7. Aberdeen Street (77th Street to 79th Street) Mill & Overlay
 - a. This project area is anticipated to require a mill and overlay and is approximately 1,348 feet long. It is also anticipated that there will be some curb replacement. Full depth replacement of asphalt pavement along the project at isolated locations is also anticipated and will be determined by pavement cores and field reconnaissance. Some drives and storm drainage components are expected to be replaced or modified based on field evaluations. New sidewalk will be installed on one side of the street which will be determined/designated by the City.
 - b. Data collection: AIMS mapping and aerial photography from Johnson County, pavement condition index from the City, existing plats as needed from Johnson County and Affinis records.

- c. Field surveys: Centerline and edges of pavement elevations at 50-foot intervals to determine cross slopes. Detailed survey at the following locations: Pavement core locations and proposed sidewalk location (one side of the street between the curb and right of way).
8. Outlook Drive (Reeds Street to 81st Street) Mill & Overlay
- a. This project area is anticipated to require a mill and overlay and is approximately 745 feet long. It is also anticipated that there will be some curb replacement. Full depth replacement of asphalt pavement along the project at isolated locations is also anticipated and will be determined by pavement cores and field reconnaissance. Some drives and storm drainage components are expected to be replaced or modified based on field evaluations. New sidewalk will be installed on one side of the street which will be determined/designated by the City.
 - b. Data collection: AIMS mapping and aerial photography from Johnson County, pavement condition index from the City, existing plats as needed from Johnson County and Affinis records.
 - c. Field surveys: Centerline and edges of pavement elevations at 50-foot intervals to determine cross slopes. Detailed survey at the following locations: Pavement core locations and proposed sidewalk location (one side of the street between the curb and right of way).

Project Schedule:

The project schedule will generally be:

Notice to Proceed for Design:	February 3, 2009
Concept Phase Completed:	April 1, 2009
Preliminary Plans to City:	September 1, 2009
Final Plans to City:	November 15, 2009
Advertise for Bid:	December 8, 2009
Bid Opening:	January, 8, 2010

Assumptions:

1. The City will contract directly with a geotechnical firm to perform all soil borings and pavement cores. The City will provide Affinis with the information gathered and reported by the geotechnical firm. Affinis will coordinate directly with the geotechnical firm for locations and reports.
2. Existing plats and Johnson County AIMS mapping will be used to develop/determine property lines as needed. No title work (last deeds of record or ownerships/encumbrances) will be obtained by Affinis as part of this scope of services.
3. The City will obtain rights of entry or easements as needed for the construction of the project. Affinis will prepare all right of entry and easement description documents for the City.
4. The City will distribute any and all correspondence to adjacent residents or property owners regarding the project.
5. Affinis will include storm and sanitary sewer manhole adjustments in the plans. All other utility relocation plans will be prepared by others. Affinis' role in utility coordination is limited to identifying utility locations by way of mapping provided by utilities and field locations, submitting plans to utilities and requesting relocation designs and schedules.

6. Design required for sprinkler systems, electric/invisible dog fences, septic systems or other amenities that could be impacted with the construction of this project are not included in this scope of services.
7. The project listed along with the 2010 CARS Program, Project Number 190876, will be advertised and bid as one set of plans and specifications.
8. Traffic projections or analysis are not included in this scope of services.
9. ADA sidewalk ramps will be designed for each pedestrian/sidewalk crossing at public streets. Detailed elevations of points on ramps are not included. The City standard details will be used to construct all ramps.
10. Utility potholing will be performed by utility companies or contracted directly by the City. Field survey of utility potholes and locations will be performed by Affinis. A total of 20 locations for all project areas are included with this scope of services.

**EXHIBIT B
PROJECT ESTIMATING SHEET**

PV Project Number: 190870

2010 Paving Program

Prairie Village, Kansas

Date: 1/8/2009

Made By: KEL/RAW

	PRINCIPAL	SR. PROJECT MANAGER	SENIOR ENGINEER	ENGINEER	SR CAD TECH	CAD TECH	ADMIN. SUPPORT	LAND SURVEYOR	SURVEY TECH.	SURVEY CREW	LABOR COSTS	OTHER DIRECT COSTS ITEM	TOTAL COST	TOTAL FEE
CONCEPT PHASE	\$190.00	\$160.00	\$135.00	\$120.00	\$77.50	\$75.00	\$70.00	\$120.00	\$75.00	\$150.00				
Tasks														
CONCEPT PHASE														
Predesign Meeting		2		2	2						\$715			\$715
Design criteria and priorities		2		2	2						\$715			\$715
Review service requests, plans, studies, etc.				4	4						\$790			\$790
Field check of existing issues/conditions		16		24	24			4	4	16	\$10,480			\$10,480
Pavement cores (coordination & evaluation)				4	8						\$1,100	Geotech by City		\$1,100
Utility coordination				4	4			4	4	16	\$3,970			\$3,970
Microsoft project schedule				2			2				\$380			\$380
Opinion of probable cost (+20%)		2		4	8	8					\$2,020			\$2,020
Review project budget		2		2							\$560			\$560
Concept phase summary report		4	4	4	8		4				\$2,560			\$2,560
Deliverables (hard copy & PDF)					2						\$155			\$155
												Mileage	\$150.00	\$150
												Repro./Delivery	\$100.00	\$100
CONCEPT DESIGN PHASE - SUBTOTAL HOURS	0	28	4	52	62	8	6	8	8	32				
CONCEPT DESIGN PHASE - SUBTOTAL FEE	\$0	\$4,480	\$540	\$6,240	\$4,805	\$600	\$420	\$960	\$600	\$4,800	\$23,445		\$250.00	\$23,695
PRELIMINARY DESIGN PHASE														
FIELD WORK														
Field Reconnaissance		40	8	40	40			8			\$16,340			\$16,340
Field survey (topo)				4	4			24	40	80	\$18,670			\$18,670
Storm drainage		8		16	16						\$4,440			\$4,440
Existing pavement markings				4		4					\$780			\$780
Tree conflicts		2		4	4						\$1,110			\$1,110
Utility potholing & locates (coordination)				4	4			4		8	\$2,470	SUE by others		\$2,470
Horiz. & Vert. Control (Benchmarks & Sec. Corners)								8	8	24	\$5,160	Records & filing	\$200.00	\$5,360
PRELIMINARY PLANS														
Cover Sheet						2					\$150			\$150
Site plans				2		2					\$390			\$390
Plan/profile sheets	2	8	2	40	40	40					\$12,830			\$12,830
Cross-sections/typical sections		4		40	40	40					\$11,540			\$11,540
Drainage		8		24	16	16					\$6,600			\$6,600
Details				2	4	8					\$1,150			\$1,150
Easements (mapping and documents)					4	8		16	16		\$4,030			\$4,030
Traffic control & pavement marking plan				4	4	8					\$1,390			\$1,390
Erosion Control Plans				2		8					\$840			\$840
Field Check (All)		16		16	16		4				\$6,000			\$6,000
Public Meeting (1 for all streets)		4		4		4	4				\$1,700			\$1,700
Draft specifications	2	4		8		8					\$2,260			\$2,260
OPCC (+15%)		2		4	8	8					\$2,020			\$2,020
Review project budget		2									\$320			\$320
QC/QA		8	8								\$2,360			\$2,360
Project Meetings (Monthly) & documentation		16		16	16		8				\$6,280			\$6,280
Deliverables (hard copy & PDF)				4	4		4				\$1,070			\$1,070
												GPS/Equipment	\$1,000.00	\$1,000
												Mileage	\$400.00	\$400
												Repro./Delivery	\$300.00	\$300
PRELIMINARY DESIGN PHASE - SUBTOTAL HOURS	4	122	18	238	220	148	24	60	64	112				
PRELIMINARY DESIGN PHASE - SUBTOTAL FEE	\$760	\$19,520	\$2,430	\$28,560	\$17,050	\$11,100	\$1,680	\$7,200	\$4,800	\$16,800	\$109,900		\$1,900.00	\$111,800

EXHIBIT B														
PROJECT ESTIMATING SHEET														
PV Project Number: 190870														
2010 Paving Program														
Prairie Village, Kansas														
												Date: 1/8/2009		
												Made By: KEL/RAW		
	PRINCIPAL	SR. PROJECT MANAGER	SENIOR ENGINEER	ENGINEER	SR CAD TECH	CAD TECH	ADMIN. SUPPORT	LAND SURVEYOR	SURVEY TECH	SURVEY CREW	LABOR COSTS	OTHER DIRECT COSTS ITEM	TOTAL COST	TOTAL FEE
Tasks	\$190.00	\$160.00	\$135.00	\$120.00	\$77.50	\$75.00	\$70.00	\$120.00	\$75.00	\$150.00				
FINAL DESIGN PHASE														
FINAL PLANS														
Final design documents				48	48	48					\$13,080			\$13,080
Project manual		8		16			8				\$3,760			\$3,760
Legal descriptions & rights of entry		4		24	24						\$5,380			\$5,380
Plan submittal to utilities				4	4						\$790			\$790
Utility Coordination		4		16	16			4		8	\$5,480			\$5,480
OPCC		4		16	24	16					\$5,620			\$5,620
Quality Control & Reviews	2	4	8								\$2,100			\$2,100
Bid documents (all)	2	24	4	40	40		24				\$14,340			\$14,340
Project Meetings (Monthly) & documentation		8	8	8	8						\$3,940			\$3,940
Deliverables (hard copy & PDF)		2		16							\$2,240			\$2,240
												Mileage	\$200.00	\$200
												Repro./Delivery	\$300.00	\$300
FINAL DESIGN PHASE - SUBTOTAL HOURS	4	58	20	188	164	64	32	4	0	8				
FINAL DESIGN PHASE - SUBTOTAL FEE	\$760	\$9,280	\$2,700	\$22,560	\$12,710	\$4,800	\$2,240	\$480	\$0	\$1,200	\$56,730		\$500.00	\$57,230
BIDDING PHASE														
Notice to bidders							1				\$70			\$70
Distribute notice to bidders							2				\$140			\$140
Provide bidding documents to printer					2						\$155			\$155
Plans to utilities							1				\$70			\$70
Pre-bid Meeting & documentation		4		4			2				\$1,260			\$1,260
Addenda & consultation	2	4	8	16	16		4				\$5,540			\$5,540
Engineer's estimate		2		2							\$560			\$560
Bid opening		2		2							\$560			\$560
Bid tabulation		2		4							\$800			\$800
Construction contracts & documents		2		2			4				\$840			\$840
Deliverables (hard copy & PDF)				2			4	4			\$820			\$820
												Mileage	\$50.00	\$50
												Repro./Delivery	\$500.00	\$500
BIDDING PHASE - SUBTOTAL HOURS	2	16	8	32	18	4	18	0	0	0				
BIDDING PHASE - SUBTOTAL FEE	\$380	\$2,560	\$1,080	\$3,840	\$1,395	\$300	\$1,260	\$0	\$0	\$0	\$10,815		\$550.00	\$11,365
Grand Total														\$204,090



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: January 20, 2009

Council Meeting Date: February 2, 2009

COU2009-16: CONSIDER DESIGN AGREEMENT FOR PROJECT 190876: 2010 C.A.R.S., 83RD STREET RESURFACING FROM NALL AVENUE TO ROE AVENUE

RECOMMENDATION

Move to approve the design agreement with Affinis Corporation for project 190876: 2010 CARS, 83rd Street Resurfacing, Nall Avenue to Roe Avenue in the amount of \$59,000.00.

BACKGROUND

Eight consultants submitted proposals for the design of the 2010 storm drainage repair program. The eight were narrowed down to two and on December 1, 2008, the Consultant Selection Committee conducted oral interviews of GBA and Affinis. (NOTE: After the committee selected the two consultants for interviews, staff decided it would be a benefit to also include 2010 Street and CARS resurfacing programs as part of the interviews since it was decided that HNTB would not be asked to perform design for a second year). The committee selected Affinis.

FUNDING SOURCE

Funding is available under the Capital Infrastructure Program in the amount of \$52,000 under project 190876: CARS, 83rd Street, Nall Avenue to Roe Avenue with a transfer of \$7000.00 from Streets Unallocated.

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. Design agreement with Affinis.

PREPARED BY

Thomas Trienens, Manager of Engineering Services

January 9, 2009

Seje

AGREEMENT FOR PROFESSIONAL ENGINEER

For

DESIGN SERVICES

Of

**PROJECT 190876: 2010 C.A.R.S. PROGRAM
83rd STREET (NALL AVENUE TO ROE AVENUE)**

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 Affinis Corp, a corporation with offices at 7401 West 129th Street, Suite 110 Overland Park, KS, 66213 hereinafter called the "**Consultant**".

WITNESSED, THAT WHEREAS, City has determined a need to retain a professional engineering firm to provide civil engineering services for the Design of Project 190876: 2010 C.A.R.S. Program, 83rd Street Resurfacing (Nall Avenue to Roe Avenue) 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.

1. CITY RESPONSIBILITIES

- 1.1. The City has designated the Manager of Engineering Services, Mr. Thomas Trienens, to act as the representative for the City with respect to the services to be performed or furnished by the Consultant under this Agreement. This person shall have the authority to transmit instructions, receive information, interpret and define the City policies with respect to the Consultant's services for this Project.
- 1.2. The City shall make available to the Consultant all existing data and records relevant to the Project such as, maps, plans, correspondence files and other information possessed by the City that is relevant to the Project. Consultant shall not be responsible for verifying or ensuring the accuracy of any information or content supplied by City or any other Project participant unless specifically defined by the scope of work, nor ensuring that such information or content does not violate or infringe any law or other third party rights. However, Consultant shall promptly advise the City, in writing, of any inaccuracies in the information provided or any other violation or infringement of any law or third party rights that Consultant observes. City shall indemnify Consultant for any infringement claims resulting from Consultant's use of such content, materials or documents.
- 1.3. The City shall review for approval all criteria, design elements and documents as to the City requirements for the Project, including objectives, constraints, performance requirements and budget limitations.
- 1.4. The City shall provide copies of all existing standard details and documentation for use by the Consultant for the project.

- 1.4. The City shall provide copies of all existing standard details and documentation for use by the Consultant for the project.
- 1.5. The City shall diligently review all submittals presented by the Consultant.
- 1.6. The City has funded \$458,000 for construction of this project:

2. CONSULTANT RESPONSIBILITIES

- 2.1. The Consultant shall either perform for or furnish to the City professional civil engineering services and related services in all phases of the Project to which this Agreement applies as hereinafter provided.
- 2.2. The Consultant shall serve as the prime professional Consultant for the City on this Project
- 2.3. The standard of care for all professional consulting services and related 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's profession, practicing under similar conditions at the same time and in the same locality.
- 2.4. Designate a person to act as the Consultant's representative with respect to the services to be performed or furnished by the Consultant under this Agreement. Such person shall have authority to transmit instructions, receive information, and make decisions with respect to the Consultant's services for the Project.

3. SCOPE OF SERVICES

- 3.1. Upon receipt of notice to proceed from the City, the Consultant shall provide all consulting services related to this project including, but not limited, to these phases and tasks. The scope is generally defined below and in more details in Exhibit A.

3.2. Concept Phase

- 3.2.1. Schedule and attend one startup meeting with City to confirm project goals, schedule, budget and expectations. At this meeting the City will review philosophical changes in the program.
- 3.2.2. Review the list of work locations with applicable priorities as provided by the City
- 3.2.3. Review any criteria changes in the program
- 3.2.4. Review with City staff, the list of issues based on service requests, work orders, permits issued, Public Works staff experiences, available plans, previous studies, and pertinent information regarding the Project
- 3.2.5. Conduct early field reconnaissance to evaluate and identify construction needs, limits, alignment, underground utilities, drainage problems, sidewalk issues, driveway issues, other special elements
- 3.2.6. Meet with City to discuss project limits and issues
- 3.2.7. Determine coring locations and coordinate with Geotechnical firm for corings
- 3.2.8. Evaluate coring and pavement repair application
- 3.2.9. Identify all utilities that may be affected by the project and make contact with the utility to determine the facilities involved
- 3.2.10. Prepare a project schedule
- 3.2.11. Submit an opinion of probable project cost listing typical construction pay items, construction administration costs and any other project related costs. Add a project contingency equal to 20 percent of the total of construction costs
- 3.2.12. Suggest additions or deductions to adjust the total project cost to equal approximately 1.20 times the project budget
- 3.2.13. Meet with City to review costs and scope of project

- 3.2.14. Submit a report summarizing the project scope containing a list of streets, description of intended construction, probable construction cost per street, and location of new sidewalks.
- 3.2.15. Provide one hard copy and electronic copy of any report, or drawing in Microsoft Word or Excel.
- 3.2.16. Provide files of the plan or drawing in PDF Format.

3.3. Preliminary Design Phase

- 3.3.1. Prepare preliminary construction documents showing the nature and extent of improvements, the conditions under which the Contractor shall work and the general conditions of contractual relations.
- 3.3.2. Conduct field reconnaissance to evaluate and identify:
 - 3.3.2.1. Issues determined in the concept phase
 - 3.3.2.2. Identify existing drainage components in project area (location, size, material, capacity, storm design adequacy and condition)
 - 3.3.2.3. Need for drainage improvements
 - 3.3.2.4. Condition of drainage system by observing water flow during, immediately after and after three days with no rain
 - 3.3.2.5. Need for full depth pavement repairs
 - 3.3.2.6. Need for sidewalk replacement
 - 3.3.2.7. Location for new sidewalk
 - 3.3.2.8. Need for curb and gutter replacement
 - 3.3.2.9. Need for and limits of driveway replacement
 - 3.3.2.10. Need for which type of ADA ramps
 - 3.3.2.11. Utility locations and conflicts
 - 3.3.2.12. Tree conflicts
- 3.3.3. Determine existing pavement elevations every 50 feet parallel to center line at the center line, gutter, at gutter elevation at center of ADA ramp and property line, and 12 feet perpendicular to center line for evaluating cross slope and profile.
- 3.3.4. Determine drainage improvements after consultation with City
- 3.3.5. Record location of existing traffic markings and review for compliance with MUTCD and City standards
- 3.3.6. Identify location and scope of relocation through test pit locations of potential utility conflicts
- 3.3.7. Identify location of bench marks and section markers
- 3.3.8. Prepare preliminary construction plans (80%)
- 3.3.9. Prepare a project title sheet
- 3.3.10. Prepare general site plan showing and identifying surface features such as street right-of-way, edge of pavement, sidewalks, driveways, boring locations, trees, house outline, address, owner name based on latest AIMS coverage data, irrigation systems, known electronic dog fences and any other pertinent surface feature
- 3.3.11. Prepare plan and profiles for street reconstruction showing all utility, including drainage, sanitary sewer, water, gas, electric, telephone, traffic signals, and street lights, as well as all conflicts and test pits
- 3.3.12. Prepare typical sections
- 3.3.13. Prepare a cross section plan of typical sections for significant changes in final elevations or critical construction locations

- 3.3.14. Prepare a detail plan showing City details drawings and other special details pertinent to the project
- 3.3.15. Prepare an easement plan of existing and intended construction and required easements (both permanent and temporary) as well as any right of entry
- 3.3.16. Prepare a traffic control plan showing temporary and permanent traffic control measures per MUTCD for various phases of construction
- 3.3.17. Prepare an erosion and sediment control plan showing all areas to be controlled during construction.
- 3.3.18. Present one set (one full size and one half size) of preliminary (80% completion) construction plans for City review that include:
 - 3.3.18.1. Cover sheet
 - 3.3.18.2. Typical sections
 - 3.3.18.3. Standard and special details
 - 3.3.18.4. Plan and profile for streets to be reconstructed
 - 3.3.18.5. Plan for streets to be milled and overlaid
 - 3.3.18.6. Plan and profile for drainage improvements
 - 3.3.18.7. Plan and profile for new sidewalk construction
 - 3.3.18.8. Plan for traffic markings and traffic control during construction
 - 3.3.18.9. Erosion control plan
 - 3.3.18.10. Plan showing property, easements and right-of-way locations and ownership
- 3.3.19. Prepare all easement documents and submit to City in a form acceptable to Johnson County
- 3.3.20. Present one set (half size) of preliminary plans to appropriate governmental agencies and utility companies requesting comments and verification of potential conflicts
- 3.3.21. Conduct a field check with City
- 3.3.22. Participate in a public meeting to present project specifics
- 3.3.23. Present draft of detail specifications and special conditions for City review
- 3.3.24. Present a detailed opinion of probable construction cost of City defined construction pay items with quantities and current unit costs. Add to the total construction cost, a contingency of 15 percent plus estimate of Construction Administration Fee
- 3.3.25. Suggest additions or deductions to adjust the total project cost to equal approximately 1.15 times the project budget.
- 3.3.26. Publish minutes of all monthly project review meetings and disperse the minutes to City representative and all other attendees within five working days.
- 3.3.27. Provide one hard copy and electronic copy of any report, or drawing in Microsoft Word or Excel.
- 3.3.28. Provide files of the plan or drawing in PDF Format.

3.4. Final Design Phase

- 3.4.1. Prepare final design documents base of review and comments from City and other review agencies of the preliminary plans

- 3.4.2. Present final project manual for City review
 - 3.4.3. Prepare and submit to City two copies of legal description for permanent and temporary easements, and any right-of-entry documents in approved Johnson County Register of Deeds format.
 - 3.4.4. Present one half size set of final design plans and specifications for City review
 - 3.4.5. Submit one half-size set of final plans and specifications to other appropriate governmental agencies and utility companies with identification of significant changes to preliminary design plans.
 - 3.4.6. Request utility comments and construction schedule.
 - 3.4.7. Prepare a final opinion of probable construction cost.
 - 3.4.8. Prepare all bid documents using the City's standard documents.
 - 3.4.9. Publish minutes of all project review meetings and disperse to City representative and all other attendees within five working days.
 - 3.4.10. Provide one hard copy and electronic copy of any report, or drawing in Microsoft Word or Excel.
 - 3.4.11. Provide files of the plan or drawing in PDF Format.
- 3.5. Bidding Phase**
- 3.5.1. Provide the City a notice of bid for publication.
 - 3.5.2. Mail notice to bid to potential contractors and plan houses
 - 3.5.3. Provide to printing house plans, bid documents, and specifications for potential bidders to purchase
 - 3.5.4. Provide all utilities with bid set of plans and request attendance at pre-bid meeting.
 - 3.5.5. Conduct a pre-bid meeting
 - 3.5.6. Publish minutes of all pre-bid meeting and disperse to City representative and all other attendees within five working days.
 - 3.5.7. If necessary after pre-bid meeting, prepare and distribute addenda prior to bid opening.
 - 3.5.8. Provide to the City a Consultant's opinion of probable construction cost and bid tab sheet.
 - 3.5.9. Attend bid opening
 - 3.5.10. Check accuracy of bids, evaluate the bidders and make a recommendation of award to the City.
 - 3.5.11. Assemble five sets construction documents including bonds for execution by the contractor and the City.
 - 3.5.12. Submit contractor signed contract documents to the City for execution and award.
 - 3.5.13. Provide one hard copy and electronic copy of any report, or drawing in Microsoft Word or Excel.
 - 3.5.14. Provide files of the plan or drawing in PDF Format.
- 4. TIME SCHEDULE**
- 4.1. The Consultant's services and compensation under this Agreement have been agreed to in anticipation of orderly and continuous progress of the Project through completion of the Concept Phase, Preliminary Design Phase, Final Design Phase and Bidding Phase.

- 4.2. If the City fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, the Consultant shall be entitled to equitable adjustment of rates and amounts of compensations to reflect reasonable costs incurred by the Consultant as a result of the delay or changes in the various elements that comprise such rates of compensation.
- 4.3. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and delay in or inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either City or Consultant under this Agreement. Consultant shall be granted a reasonable extension of time for any delay in its performance caused by any such circumstances.
- 4.4. Should such circumstances occur, the consultant shall, within a reasonable time of being prevented from performing, give written notice to the City describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.
- 4.5. Recognizing that time is of the essence, the Consultant proposes to complete the scope of services as specified in the Scope of Services:

Concept Phase	Due by April 1, 2009
Preliminary Design Phase	Due by September 1, 2009
Final Design Phase	Due by November 15, 2009
Bid Advertisement Date	December 8, 2009
Letting Date	January 8, 2009

5. COMPENSATION

- 5.1. The City agrees to pay the Consultant as maximum compensation as defined in Exhibit B for the scope of services the following fees:

Concept Phase	Total Maximum Fee	\$ <u>11,000.00</u>
Preliminary Design Phase	Total Maximum Fee	\$ <u>32,000.00</u>
Final Design Phase	Total Maximum Fee	\$ <u>11,000.00</u>
Bidding Phase	Total Maximum Fee	\$ <u>5,000.00</u>
Total Fees		\$ <u>59,000.00</u>

- 5.2. The compensation will be billed by Phase detailing the position, hours and appropriate hourly rates (which include overhead and profit) for Consultant's personnel classifications and Direct Non-Salary Costs.
- 5.3. The term "Direct Non-Salary Costs" shall include the Consultant payments in connection with the Project to other consultants, transportation, and reproduction costs. Payments will be billed to the City at actual cost. Transportation, including use of survey vehicle or automobile will be charged at the IRS rate in effect during the billing period. Reproduction work and materials will be charged at actual cost for copies submitted to the City.

- 5.4. All billings must be submitted monthly for all services rendered in the previous month. The Consultant will invoice the City on forms approved by the City. All properly prepared invoices shall be accompanied by a documented breakdown of expenses incurred. This documentation shall include personnel by job classification, hourly rate, number of hours, description of subconsultant services and detail list of Direct Non-Salary Costs.
- 5.5. The maximum fee shall not be changed unless adjusted by an Engineering Change Order mutually agreed upon by the City and the Consultant prior to incurrence of any expense. The Engineering Change Order will be for major changes in scope, time or complexity of Project.

6. GENERAL PROVISIONS

- 6.1. **Opinion of Probable Cost and Schedule:** Since the Consultant has no control over the cost of labor, materials or equipment furnished by Contractors, or over competitive bidding or market conditions, the opinion of probable Project cost, construction cost or project schedules are based on the experience and best judgment of the Consultant, but the Consultant cannot and does not guarantee the costs or that actual schedules will not vary from the Consultant's projected schedules.
- 6.2. **Quantity Errors:** Negligent quantity miscalculations or omissions because of the Consultant's error shall be brought immediately to the City's attention. The Consultant shall not charge the City for the time and effort of checking and correcting the errors to the City's satisfaction.
- 6.3. **Reuse of Documents:** All documents including the plans and specifications provided or furnished by the Consultant pursuant to this Agreement are instruments of service in respect of the Project. The Consultant shall retain an ownership and property interest upon payment therefore whether or not the Project is completed. 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's sole risk and without liability to the Consultant. 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 documents. 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.
- 6.4 **Insurance:**
 - 6.4.1 The Consultant shall procure and maintain, at its expense, the following insurance coverage: (a) Workers' Compensation -- Statutory Limits, with Employer's Liability limits of \$100,000 each employee, \$500,000 policy limit; (b) Commercial General Liability for bodily injury and property damage liability claims with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; (c) Commercial Automobile Liability for bodily injury and property damage with limits of not less than \$1,000,000 each accident for all owned, non-owned and hired automobiles; (d) errors and omissions coverage of not less than \$1,000,000. Deductibles for any of the above coverage shall not exceed \$25,000 unless approved in writing by City. In addition, Consultant agrees to require all consultants and sub-consultants 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.
 - 6.4.2 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's Agent shall be waived. Consultant's insurance policies shall be endorsed to indicate that Consultant's insurance coverage is primary and any insurance maintained by City or City's Agent is non-contributing.

- 6.4.3 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's agent, and other specified interests as additional insureds thereunder.
- 6.4.4 Coverage shall contain a waiver of subrogation in favor of the City, and its subdivisions, departments, officials, officers and employees.
- 6.4.5 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's 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.
- 6.5 **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).
- 6.6 **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
- 6.7 **Controlling Law:** This Agreement is to be governed by the laws of the State of Kansas.

- 6.8 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 sub-consultants 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 sub-consultants, to the extent and in proportion to the comparative degree of fault of the Consultant and its sub-consultants. Consultant shall also pay for City's 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 sub-consultants.
- 6.9 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.
- 6.10 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.
- 6.11 Successors and Assigns:**
- 6.11.1** 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.
- 6.11.2** 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.
- 6.11.3** 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, Kansas

By: _____

Ronald L. Shaffer, Mayor

Address for giving notices:

City of Prairie Village
7700 Mission Road
Prairie Village, Kansas 66208

Telephone: 913-385-4600

ATTEST:

Joyce Hagen Mundy, City Clerk

Consultant:

Affinis Corp

By: _____

John B. Thomas, P.E., Principal

Address for giving notices:

Affinis Corp
7401 West 129th Street, Suite 110
Overland Park, KS 66213

Telephone: 913-239-1100

APPROVED AS TO FORM BY:

Catherine Logan, City Attorney

Exhibit A

**2010 CARS Program
83rd Street (Nall Avenue to Roe Avenue)
Project 190876
Prairie Village, Kansas
January 8, 2009**

Project Description:

The following scope of services and fee estimate are based on the services described below to produce construction documents for 83rd Street from Nall Avenue to Roe Avenue, as outlined by the City of Prairie Village. The description of work is outlined in further detail below:

1. This project area is anticipated to require a mill and overlay and is approximately 2,668 feet long. It is also anticipated that there will be some curb replacement. Full depth replacement of asphalt pavement along the project at isolated locations is also anticipated and will be determined by pavement cores and field reconnaissance. Some drives and storm drainage components are expected to be replaced or modified based on field evaluations. New sidewalk will be installed on one side of the street which will be determined/designated by the City. It is anticipated that retaining walls will be necessary. Concrete pavement will be installed at the Nall Avenue intersection.
2. Data collection: AIMS mapping and aerial photography from Johnson County, pavement condition index from the City, existing plats as needed from Johnson County and Affinis records.
3. Field surveys: Centerline and edges of pavement elevations at 50-foot intervals to determine cross slopes. Detailed survey at the following locations: Pavement core locations, pavement markings, proposed sidewalk and retaining wall locations (one side of the street between the curb and right of way) and identified ADA ramps.

Project Schedule:

The project schedule will generally be:

Notice to Proceed for Design:	February 3, 2009
Concept Phase Completed:	April 1, 2009
Preliminary Plans to City:	September 1, 2009
Final Plans to City:	November 15, 2009
Advertise for Bid:	December 8, 2009
Bid Opening:	January, 8, 2010

Assumptions:

1. The City will contract directly with a geotechnical firm to perform all soil borings and pavement cores. The City will provide Affinis with the information gathered and reported by the geotechnical firm. Affinis will coordinate directly with the geotechnical firm for locations and reports.

2. Existing plats and Johnson County AIMS mapping will be used to develop/determine property lines as needed. No title work (last deeds of record or ownerships/encumbrances) will be obtained by Affinis as part of this scope of services.
3. The City will obtain rights of entry or easements as needed for the construction of the project. Affinis will prepare all right of entry and easement description documents for the City.
4. The City will distribute any and all correspondence to adjacent residents or property owners regarding the project.
5. Affinis will include storm and sanitary sewer manhole adjustments in the plans. All other utility relocation plans will be prepared by others. Affinis' role in utility coordination is limited to identifying utility locations by way of mapping provided by utilities and field locations, submitting plans to utilities and requesting relocation designs and schedules.
6. Design required for sprinkler systems, electric/invisible dog fences, septic systems or other amenities that could be impacted with the construction of this project are not included in this scope of services.
7. The project listed along with the 2010 CARS Program, Project Number 190876, will be advertised and bid as one set of plans and specifications.
8. Traffic projections or analysis are not included in this scope of services.
9. ADA sidewalk ramps will be designed for each pedestrian/sidewalk crossing at public streets. Detailed elevations of points on ramps are not included. The City standard details will be used to construct all ramps.
10. Utility potholing will be performed by utility companies or contracted directly by the City. Field survey of utility potholes and locations will be performed by Affinis. A total of 20 locations for all project areas are included with this scope of services.
11. Retaining wall design will be for walls less than 30 inches tall. Retaining wall profiles will be included in the plans.

**EXHIBIT B
PROJECT ESTIMATING SHEET**

PV Project Number: 190876

2010 CARS Program

Prairie Village, Kansas

Date: 1/8/2009

Made By: KEL/RAW

	PRINCIPAL	SR. PROJECT MANAGER	SENIOR ENGINEER	ENGINEER	SR CAD TECH	CAD TECH	ADMIN. SUPPORT	LAND SURVEYOR	SURVEY TECH.	SURVEY CREW	LABOR COSTS	OTHER DIRECT COSTS ITEM	TOTAL FEE	
Tasks	\$190.00	\$180.00	\$135.00	\$120.00	\$77.50	\$75.00	\$70.00	\$120.00	\$75.00	\$150.00				
CONCEPT PHASE														
Pre-design Meeting (see Paving)											\$0		\$0	
Design criteria and priorities (see Paving)											\$0		\$0	
Review service requests, plans, studies, etc.				4	4						\$790		\$790	
Field check of existing issues/conditions		8		8	8						\$2,860		\$2,860	
Pavement cores (coordination & evaluation)				4	8						\$1,100	Geotech by City	\$1,100	
Utility coordination				4				2	2	8	\$2,070		\$2,070	
Microsoft project schedule				2			2				\$380		\$380	
Opinion of probable cost (+20%)		2		2		4					\$860		\$860	
Review project budget		2		2							\$560		\$560	
Concept phase summary report	2	4	4	4	4		2				\$2,490		\$2,490	
Deliverables (hard copy & PDF)					2						\$155		\$155	
												Mileage	\$50.00	\$50
												Repro./Delivery	\$50.00	\$50
CONCEPT DESIGN PHASE - SUBTOTAL HOURS	2	16	4	30	26	4	4	2	2	8				
CONCEPT DESIGN PHASE - SUBTOTAL FEE	\$380	\$2,560	\$540	\$3,600	\$2,015	\$300	\$280	\$240	\$150	\$1,200	\$11,265		\$100.00	\$11,365
PRELIMINARY DESIGN PHASE														
FIELD WORK														
Field Reconnaissance	2	8	4	8	8						\$3,780		\$3,780	
Field survey (topo)								8	8	16	\$3,960		\$3,960	
Storm drainage		2		2	2						\$715		\$715	
Existing pavement markings				4		8					\$1,080		\$1,080	
Tree conflicts				2	2						\$395		\$395	
Utility potholing (coordination)				4	4						\$790	SUE by others	\$790	
Horiz. & Vert. Control (Benchmarks & Sec. Corners)								8		8	\$2,160	Records & filing	\$100.00	\$2,260
PRELIMINARY PLANS														
Cover Sheet (see Paving)											\$0		\$0	
Site plans					2						\$155		\$155	
Plan/profile sheets	2	4		8	24	16					\$5,040		\$5,040	
Cross-sections/typical sections		4		8	8	8					\$2,820		\$2,820	
Drainage		4		8	16						\$2,840		\$2,840	
Details (see Paving)											\$0		\$0	
Easements (mapping and documents)						4		8	8		\$1,860		\$1,860	
Traffic control & pavement marking plan				4	4	8					\$1,390		\$1,390	
Erosion Control Plans				2		4					\$540		\$540	
Field Check (All)		4		4	4		2				\$1,570		\$1,570	
Public Meeting (1) (see Paving)											\$0		\$0	
Draft specifications (see Paving)											\$0		\$0	
OPCC (+15%)		2		4	4						\$1,110		\$1,110	
Review project budget		2									\$320		\$320	
QC/QA		4	4								\$1,180		\$1,180	
Project Meetings (Monthly) & documentation (see Paving)											\$0		\$0	
Deliverables (hard copy & PDF) (see Paving)											\$0		\$0	
												GPS/Equipment	\$100.00	\$100
												Mileage	\$100.00	\$100
PRELIMINARY DESIGN PHASE - SUBTOTAL HOURS	4	34	8	58	78	48	2	24	16	24				
PRELIMINARY DESIGN PHASE - SUBTOTAL FEE	\$760	\$5,440	\$1,080	\$6,960	\$6,045	\$3,800	\$140	\$2,880	\$1,200	\$3,600	\$31,705		\$300.00	\$32,005

**EXHIBIT B
PROJECT ESTIMATING SHEET**

PV Project Number: 190876

2010 CARS Program

Prairie Village, Kansas

Date: 1/8/2009

Made By: KEL/RAW

	PRINCIPAL	SR. PROJECT MANAGER	SENIOR ENGINEER	ENGINEER	SR CAD TECH	CAD TECH	ADMIN. SUPPORT	LAND SURVEYOR	SURVEY TECH.	SURVEY CREW	LABOR COSTS	OTHER DIRECT COSTS ITEM	TOTAL FEE	
Tasks	\$190.00	\$160.00	\$135.00	\$120.00	\$77.50	\$75.00	\$70.00	\$120.00	\$75.00	\$150.00				
FINAL DESIGN PHASE														
FINAL PLANS														
Final design documents				8	16	16					\$3,400		\$3,400	
Project manual		4		4			4				\$1,400		\$1,400	
Legal descriptions & rights of entry							2	4	4		\$920		\$920	
Plan submittal to utilities (see Paving)											\$0		\$0	
Utility Coordination		4		8	8						\$2,220		\$2,220	
OPCC		2		4	8	4					\$1,720		\$1,720	
Quality Control & Reviews	2	2	4								\$1,240		\$1,240	
Bid documents (see Paving)											\$0		\$0	
Project Meetings (Monthly) & documentation (see Paving)											\$0		\$0	
Deliverables (hard copy & PDF) (see Paving)											\$0		\$0	
											Mileage	\$50.00	\$50	
FINAL DESIGN PHASE - SUBTOTAL HOURS	2	12	4	24	32	20	6	4	4	0				
FINAL DESIGN PHASE - SUBTOTAL FEE	\$380	\$1,920	\$540	\$2,880	\$2,480	\$1,500	\$420	\$480	\$300	\$0	\$10,900		\$50.00	\$10,950
BIDDING PHASE														
Notice to bidders (see Paving)											\$0		\$0	
Distribute notice to bidders (see Paving)											\$0		\$0	
Provide bidding documents to printer (see Paving)											\$0		\$0	
Plans to utilities (see Paving)											\$0		\$0	
Pre-bid Meeting & documentation (see Paving)											\$0		\$0	
Addenda & consultation		4	2	4	4		2				\$1,840		\$1,840	
Engineer's estimate		2		2							\$560		\$560	
Bid opening (see Paving)											\$0		\$0	
Bid tabulation				2							\$240		\$240	
Constuction contracts & documents		2		2			8				\$1,120		\$1,120	
Deliverables (hard copy & PDF)				2			4	4			\$820		\$820	
BIDDING PHASE - SUBTOTAL HOURS	0	8	2	12	4	4	14	0	0	0				
BIDDING PHASE - SUBTOTAL FEE	\$0	\$1,280	\$270	\$1,440	\$310	\$300	\$980	\$0	\$0	\$0	\$4,580		\$0.00	\$4,580
Grand Total														\$58,900



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: January 20, 2009

Council Meeting Date: February 2, 2009

COU2009-18: CONSIDER AGREEMENT FOR SWIMMING POOL CONFORMANCE EVALUATION

RECOMMENDATION

Move to approve agreement with Water Technology, Inc. to assist in the review of the aquatic facility for an evaluation of compliance with Title XIV (Virginia Graeme Baker Pool and Spa Safety Act) and APSP-7 (The American National Standard for Suction Entrapment Avoidance in Swimming Pools) for \$5,250.00.

BACKGROUND

There are new governmental regulations that are required of public swimming pools. Water Technology, Inc. was the design engineer for the last pool renovation and has knowledge of most of our system. They will assist in reviewing our facility to determine each pool outlets level of conformance to Title XIV and APSP-7

FUNDING SOURCE

Funding is available in the Pool Reserve.

RELATION TO VILLAGE VISION

None

ATTACHMENTS

1. Agreement with Water Technology, Inc.

PREPARED BY

Suzanne Lownes, Office Manager

January 12, 2009



100 Park Avenue, P.O. Box 614, Beaver Dam, Wisconsin 53916
Phone: 920-887-7375 Fax: 920-887-7999

**Proposal for Services
Limited Evaluation for
Compliance with Title XIV**

November 3, 2008

Bob Pryzby
City of Prairie Village
3535 Somerset Drive
Prairie Village, KS 66208
Phone: 913-385-4640
E-Mail: bpryzby@pvkansas.com

Dear Bob:

Water Technology, Inc. (hereinafter WTI) proposes to assist your review of your aquatic facility for an evaluation of compliance with Title XIV, commonly known as the Virginia Graeme Baker Pool and Spa Safety Act. The purpose of the evaluation is limited to identifying pool outlets that are governed by the Act and evaluating whether they are compliant. We will also evaluate the drain system as it applies to ANSI/APSP-7, The American National Standard for Suction Entrapment Avoidance in Swimming Pools, Wading Pools, Spas, Hot Tubs and Catch Basins. It is beyond the scope of this study to identify or recommend compliance paths for non-conformant conditions.

This limited pool evaluation is based upon evaluating the following:

- Seven (7) Bodies of Water

WTI will perform the following tasks as part of this evaluation:

1. Provide you with information required so that your staff can locate and identify submerged outlets, including:
 - Floor grates
 - Wall grates
 - Skimmer equalizer outlets

2. Provide a reference identifier for each outlet, locating the outlet for reference and evaluation, and tracking its source data.
3. Your staff will measure and document the critical dimensional data for the outlet, including width, length, depth and opening sizes.
4. Your staff will measure and document the critical dimensional data for outlet sumps, including depth, piping size and clearances.
5. Your staff will document pumps attached to outlet systems on WTI provided data sheet.
6. Based upon information gathered, WTI will analyze each outlet for conformance to the Act, including:
 - Design flow at each outlet
 - Maximum flow possible at each outlet
 - Sump dimensions provided
7. Provide a written report of the analysis, identifying each outlet with a pass/fail designation for compliance with Title XIV and APSP-7.

There are two methodologies necessary for this analysis:

1. Review of record drawings and data.
2. Field documentation and measurement. This involves field measuring each outlet.

The specialized nature of this analysis necessitates a high level of Client cooperation. In an effort to provide you, the Client, with the most cost effective proposal, WTI will rely on field verifications and Client provided information. The following information is the responsibility of the Client:

Step 1 – Record Drawing Analysis

1. Provide complete record drawings to WTI of each pool. Record drawings must include piping plans, outlet details and pump data.
2. A completed pump data sheet on each pump returned to WTI. Data sheet provided by WTI to Client. Client responsible for completeness of data sheet.

Step 2 – On-Site Analysis of Outlets

Field recording of outlet information by your staff, including:

1. A completed pump data sheet on each pump returned to WTI with maximum flow information. Data sheet will be provided by WTI to Client. Client responsible for completeness and accuracy of data sheet.

2. Pool vessels drained, including to bottom of any sumps for measurement, or information can be obtained through use of a scuba diver.

Both options will require maintenance personnel capable of running the pool systems and removing existing grates, covers, etc., to allow for inspection and measurement.

Based upon the information gathered and/or provided, WTI will provide a written evaluation on each outlets conformance with Title XIV and APSP-7.

Based upon the requirements of Title XIV, it is likely that few, if any, outlets will be found conformant. The purpose and intent of this study is to determine the degree of nonconformance, so that an informed plan of action can be developed. Based upon the results of the evaluation and discussions with you, WTI will develop a proposal for recommendations to bring your pool into compliance with Title XIV.

As is generally the case with new legislation, WTI expects this law to be clarified over time. We anticipate that over the next few months, manufacturers and fabricators will bring more products to market that comply with requirements.

WTI is pleased to offer the above services for a stipulated sum of five thousand two hundred fifty and no/100 dollars (\$5,250.00), plus standard reimbursable expenses. WTI does not include any on site visits for this data gathering task.

This proposal incorporates and is based upon WTI's Terms and Conditions (copy attached).

WTI appreciates the opportunity to provide professional services to you for this project. Please sign, date and return a copy of this to us as your acceptance of these services. Should you have any questions, please do not hesitate to contact us.

Sincerely,

Water Technology, Inc.



Matthew W. Freeby, AIA
Leisure Services, Project Manager

Accepted By:

City of Prairie Village

Name: _____

Date: _____

**Water Technology, Inc.
Terms and Conditions**

Revised 02-2008

The services and compensation of Water Technology, Inc. (hereinafter WTI) are based on the following conditions unless otherwise noted in the accompanying proposal:

1. Basis of Agreement

- 1.1 Proposal is to be attached, and is incorporated by reference, to an AIA B141, Standard Form of Agreement Between Owner and Architect, or an AIA C141/C142, Architect/Consultant Agreement.
- 1.2 The general conditions of the contract will be the AIA A201, General Conditions of the Contract for Construction.

2. Scope of Services

- 2.1 Services offered are limited to those services described in the proposal. No other services are offered or implied unless specifically addressed in the proposal.

3. Expiration

- 3.1 The attached proposal is considered valid for a period of ninety (90) days from the date of the proposal or its last revision date, if any. Proposals older than ninety (90) days are expired, unless reissued by WTI with a reissue date.

4. Payment

- 4.1 All proposals are based upon payment in US dollars. Invoices will be issued monthly and are payable within forty-five (45) days of date of invoice. An interest rate of one percent (1.0%) per month will be payable on any amount not paid within this time period. Attorney's fees and any other costs incurred in collecting delinquent accounts shall be paid by Client.
- 4.2 WTI will invoice professional fees monthly, on a percent complete basis, throughout the project term.

5. Hourly Charges/Additional Services

- 5.1 WTI personnel will be charged at the following rates:

Principal/Project Leader	\$150.00
Project Manager	\$105.00
Project Designer	\$ 95.00
CADD Technician	\$ 65.00
Administrative	\$ 55.00

- 5.2 These rates are valid for a period of twelve (12) months from date of an accepted proposal. These rates are not valid for work involving claims settlement, expert witness or litigation work.
- 5.3 Additional services, if requested by Client, will be performed on a stipulated sum or hourly basis, as agreed to in writing by both parties prior to initiating the additional services.

6. Reimbursable Expenses

6.1 Expenses and services not directly provided by WTI will be invoiced at one and 10/100 (1.10) times cost. Reimbursable expenses include travel expenses, printing of drawings and/or specifications and expedited delivery service. International travel is business class air. Domestic airfare will be coach. These costs are not included in WTI's fee unless specifically noted as included in our proposal.

.1 Air fares are based on fourteen (14) days advanced purchase. Costs associated with customer requested modifications to travel arrangements after purchase by WTI will be an addition to the contract sum.

7. Additional Project Related Costs

7.1 The following costs are not included in our proposal and should be anticipated in the owner's budgeting.

- .1 Geotechnical services and reports
- .2 Topographic and boundary surveys (site surveys)
- .3 Testing
- .4 Project related insurance, legal and safety consultant services
- .5 Permits and fees
- .6 Marketing and operations development

8. Project Requirements

8.1 The following information, records and electronic media will be provided to WTI at no cost:

- .1 AutoCAD files of building, site and other work being prepared by others.
- .2 Copies of geotechnical investigations, surveys and programming information.
- .3 Complete set of plans and specifications of the building and site bid documents.

9. Standard of Care

9.1 Services provided by WTI under this Agreement will be performed in a manner consistent with that degree of skill and care ordinarily exercised by members of the same profession currently practicing under similar circumstances and in accordance with the governing codes and regulations adopted at the time of the execution of this Agreement. No other warranty or representation, either expressed or implied, is included or intended in our proposals, contracts, plans and specifications or reports.

10. Risk Allocation

10.1 Client agrees that to the fullest extent permitted by law, WTI's total liability to Client for any and all injuries, claims, losses, expenses, damages or claims expenses arising out of this Agreement from any cause or causes, shall not exceed the total amount of fees for services for this project or twenty-five thousand and no/100 dollars (\$25,000.00), whichever is greater.

11. Governance

11.1 This Agreement shall be governed by the laws of the State of Wisconsin.

12. Insurance

- 12.1 Notwithstanding any other provisions in this Agreement, nothing shall be construed so as to void, vitiate, adversely affect or in any other way impair any insurance coverage held by either party to this Agreement.
- 12.2 During the term of this agreement, WTI agrees to provide evidence of insurance coverage as shown in the example Insurance Certificate attached hereto. In addition, WTI will attempt to maintain continuous professional liability coverage for the period of design and construction of this project, and for a period of three (3) years following substantial completion, if such coverage is reasonable available at commercially affordable premiums. For the purposes of this agreement, "reasonably available" and "commercially affordable" shall mean that more than half the design professionals practicing in this state in this discipline are able to obtain such coverage.
- 12.3 Owner will require that any party hired for the construction of the project, including but not limited to the general contractor, construction manager, and subcontractors will include, in addition to the Owner, Water Technology, Inc. and it's consultants as additional insured for all policies related to the project.
- 12.4 Standard insurance carried by WTI is as follows:

General Liability (Occurrence)	\$1.0 Million
General Aggregate (Project)	\$2.0 Million
Automobile	\$1.0 Million
Excess (Occurrence)	\$4.0 Million
Workers Compensation	Statutory
E & O	\$1.0 Million

Costs for additional coverage limits, if requested, will be paid for by Client.

13. Photography

- 13.1 The project architect agrees that any published photos, descriptions or award submittals of the project that include reference to the aquatic work shall include WTI as the aquatic consultant.

14. Client Services

- 14.1 As part of WTI's quality assurance program, WTI will contact the Owner regarding services provided by WTI.

15. Miscellaneous Provisions

15.1 Dispute Resolution

- .1 In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, Client and WTI agree that all disputes between them arising out of or relating to this agreement shall be submitted to nonbinding mediation unless the parties mutually agree otherwise.
- .2 Client and WTI further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing all mediation as the primary method for dispute resolution, between the parties to those agreements.

- .3 No mediation arising out of or relating to this agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this agreement, except by written consent containing a specific reference to this agreement signed by Client, WTI and any other person or entity sought to be joined. Consent to mediation involving an additional person or entity duly consented to by the parties to this agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

15.2 Hazardous Materials

- .1 Client represents to WTI that to the best of Client's knowledge no hazardous or toxic substances within the meaning of any applicable statute or regulation are presently stored, or otherwise located, on the project site or adjacent thereto. Further, within the definition of such statutes or regulations, no part of the project site or adjacent real estate, including the ground water located thereon, is presently contaminated.

15.3 Existing Conditions

- .1 Inasmuch as the remodeling and/or rehabilitation of an existing site/structure requires that certain assumptions be made regarding existing conditions, and because some of these assumptions may not be verifiable without expending additional sums of money or destroying otherwise adequate or serviceable portions of the building, Client agrees, to fullest extent permitted by law, to indemnify and hold the design professional harmless from any claim, liability or cost (including reasonable attorney's fees and costs of defense) for injury or economic loss arising or allegedly arising out of the professional services provided under this agreement, excepting only those damages, liabilities or costs attributable to the sole negligence or willful misconduct of the design professional.

15.4 Working Hours

- .1 Water Technology, Inc.'s business hours are 8:00 a.m. to 5:00 p.m. central time, week days, excluding US holidays. Business meetings, teleconferences and/or video conferences scheduled outside of these business hours may, at Water Technology, Inc.'s sole discretion, be subject to additional costs.

15.5 Termination

- .1 Either party may terminate the agreement for convenience after seven (7) days written notice of intent to terminate. Client shall be responsible for all costs and charges incurred up to the date of termination, including reasonable costs for WTI to close the work and organize files. WTI agrees not to charge for lost or anticipated profits on the work not completed and will provide copies of work files to Client upon receipt of final payment.

**COUNCIL MEETING AGENDA
CITY OF PRAIRIE VILLAGE
January 20, 2009 (Tuesday)
7:30 p.m.**

- I. CALL TO ORDER**
- II. PLEDGE OF ALLEGIANCE**
- III. ROLL CALL**
- IV. PUBLIC PARTICIPATION**
- V. PROCLAMATION OF JOYCE DIDONATO DAY**
- 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 Council Meeting Minutes – January 5, 2009
2. Approve Claims Ordinance 2855
3. Approve the rental agreement with Pitney Bowes for rental of postage machine for Public Works.
4. Approve contractual agreements with Intergraph Inc. and the City of Overland Park to implement and support the Police Department's Computer Aided Dispatch (CAD), Mobile, and Record Management Systems (RMS).
5. Adopt Ordinance 2186 authorizing and providing for the acquisition of real property by purchase located at 3541 Somerset Drive, Prairie Village, Kansas.
6. Approve the 2009 Recreation Fee Schedule as written.
7. Approve the Recreation Contracts with Johnson County Parks and Recreation District, British Soccer, Omega Soccer and Challenger Sports as written.

By Committee:

8. Approve Engineering Change Order #1 (final) with Larkin Group for an increase of \$2,074.25 for Project 190653: El Monte Fountain Improvements bringing the final contract amount to \$9,074.25. (Council Committee of the Whole Minutes – January 5, 2009)
9. Approve Engineering Change Order #8 (final) with HNTB Corporation for a decrease of \$19,480.46 to Project 190864: 2008 Street Resurfacing Program, Project 190863: Shawnee Mission East Parking Improvements and Project 190868: 2008 CARS – Roe Avenue 91st to Somerset Drive bringing the final contract amount to \$353,369.54 (Council Committee of the Whole Minutes – January 5, 2009)
10. Approve Engineering Change Order #2 (final) with George Butler Associates for Project 190721: 2009 Storm Drainage Repair Program for an increase of \$7,300.00 bringing the final contract amount to \$106,300.00. (Council Committee of the Whole Minutes – January 5, 2009)
11. Approve the construction contract with McAnany Construction, Inc. in the amount of \$585,000 for Project 191023: 2009 Concrete Repair Program. (Council Committee of the Whole Minutes – January 5, 2009)
12. Approve the construction contract with Musselman & Hall Contractors in the amount of \$196,300 for Project P5000: 2009 Crack Seal/Slurry Seal Program. (Council Committee of the Whole Minutes – January 5, 2009)

13. Approve the construction contract with O'Donnell & Sons Construction in the amount of \$119,810 for Project P5001: 2009 Street Repair Program. (Council Committee of the Whole Minutes – January 5, 2009)
14. Approve the construction contract with Professional Service Industries (PSI) for 2009 Materials testing services. (Council Committee of the Whole Minutes – January 5, 2009)

VII. APPOINTMENT AND OATH OF OFFICE – CITY PROSECUTOR

VIII. STAFF REPORTS

IX. COMMITTEE REPORTS

COU2009-19 Consider Agreement for Contract Services with Amazing Cities

Council Committee of the Whole - COU2009-08 Consider Traffic Engineering Study of the intersection of Roe Avenue & 75th Street – David Voysey

Park and Recreation Committee – Diana Ewy Sharp

X. OLD BUSINESS

XI. NEW BUSINESS

XII. EXECUTIVE SESSION

XIII. ANNOUNCEMENTS

XIV. 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 381-6464, Extension 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

**PROCLAMATION OF
JOYCE DiDONATO DAY
IN THE CITY OF PRAIRIE VILLAGE**

WHEREAS, Joyce DiDonato is a daughter of our city who has grown to world-wide fame, bringing reflected glory to our community, and

WHEREAS, Joyce DiDonato has performed to acclaim on the world's major opera stages and has given recitals and concerts at major halls and with principal orchestras around the world, and

WHEREAS, Joyce DiDonato has received the Metropolitan Opera Beverly Sills Award, been named the Royal Philharmonic Society's Singer of the Year, and received the Richard Tucker Award, given to a single American singer annually, and

WHEREAS, Joyce DiDonato still remains, in spirit, young Joyce Flaherty from Alhambra Street, attending Saint Ann School, singing in the choir and school musicals, and

WHEREAS, Joyce DiDonato is almost as proud of her home town as Prairie Village is of her,

THEREFORE, BE IT RESOLVED that this day, January 20, 2009 be proclaimed Joyce DiDonato Day in the City of Prairie Village, Kansas.

Adopted this 20th day of January, 2009

Ronald L. Shaffer,
Mayor, City of Prairie Village

CONSENT AGENDA

CITY OF PRAIRIE VILLAGE, KS

**January 20, 2009
Tuesday**

**CITY COUNCIL
CITY OF PRAIRIE VILLAGE
JANUARY 5, 2009**

The City Council of Prairie Village, Kansas, met in regular session on Monday, January 5, 2009, at 7:30 p.m. in the Council Chambers of the Municipal Building.

ROLL CALL

Mayor Ron Shaffer called the meeting to order and roll call was taken with the following Council members present: Al Herrera, Bill Griffith, Ruth Hopkins, David Voysey, Michael Kelly, Andrew Wang, Laura Wassmer, Dale Beckerman, David Morrison, Charles Clark, Diana Ewy Sharp and David Belz.

Also present were: Quinn Bennion, City Administrator; Katie Logan, City Attorney; Wes Jordan, Chief of Police; Tom Trienens, Manager of Engineering Services; Dennis Enslinger, Assistant City Administrator; Karen Kindle, Finance Director; Chris Engel, Assistant to City Administration; Suzanne Lownes and Joyce Hagen Mundy, City Clerk.

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

PUBLIC PARTICIPATION

Jim Mitchell, 7140 Booth, asked if there were any plans for the City to provide glass recycling services. Ruth Hopkins advised the City does not, however, added the City of Overland Park is going to continue operating the center at 119th and Roeland Park is looking into opening a recycling center. Mrs. Hopkins felt there would be more opportunities in the future; however she noted

there is currently no market for recycled glass - it is very cost ineffective to recycle because of its weight and related transportation costs. She suggested it may be more effective to encourage the manufacturers and users of glass to recycle their product. Mr. Mitchell asked about state funded programs. Mrs. Hopkins advised him to contact his legislative representatives. She stated the website www.recycle.spot will give him information on recycling locations.

CONSENT AGENDA

David Voysey stated he would recuse himself on item number 5 on the consent agenda because of a professional conflict of interest and moved the approval of the Consent Agenda for Monday, January 5, 2009:

1. Approve Regular Council Meeting Minutes - December 15, 2008
2. Approve the contract for Portable Toilet Services to Best Portable Toilets Inc. for 2009 and renewal in 2010 and 2011.
3. Approve the contract for Holiday Tree Lighting Services to Arbor Masters Tree & Landscape for 2009 and renewal in 2010 and 2011.
4. Approve the contract for HVAC Services to O'Dell Service Co. Inc for 2009 and renewal in 2010 and 2011.
5. Approve the contract for Ice Maker Services to Ice-Masters, Inc. for 2009 and renewal in 2010 and 2011.
6. Approve the contract for Locksmith Services to Johnson County Key Services for 2009 and renewal in 2010 and 2011.
7. Approve the contract for Pest Control Services to Lawrence Pest Control for 2009 and renewal in 2010 and 2011.
8. Approve a Letter of Understanding with Deffenbaugh Industries setting the unit price for solid waste, recyclable, and yard waste collection services for participants in the City's Solid Waste Management Program at \$13.47/per household/month for the calendar year 2009.

9. Approve Construction Change Order #7 (final) with O'Donnell & Sons Construction for an increase of \$5,477.43 on Project 190864: 2008 Street Resurfacing Program.
10. Approve Engineering Change Order #2 (final) with BHC Rhodes for an increase of \$3,610.80 on Project 190864: 2008 Street Resurfacing Program.
11. Approve an agreement with Columbia Capital Management, LLC, for financial advisory services pending approval by the City Attorney.

A roll call vote was taken with the following members voting "aye":

Herrera, Griffith, Hopkins, Voysey, Kelly, Wang, Wassmer, Beckerman, Clark, Morrison, Ewy Sharp and Belz.

STAFF REPORTS

Public Safety

- Repairs are being made this week to the police radio tower. Nine areas of concern were identified in the recent study related to damages from lightning. The repairs are being done by a local company and being paid out of the 2008 Public Safety budget.
- The Code Red Message sent out recently regarding the increase in residential burglaries and car thefts was well received by residents. The system contacted 15,671 residences in under 30 minutes. There will be a follow-up article in the Village Voice on the Code Red System. Chief Jordan stated this is the fastest notification system in the metro.

Mayor Shaffer confirmed the system was able to leave messages on answering machines. Bill Griffith asked when the system would be used. Chief Jordan replied for notification of emergency situations. Michael Kelly asked if it could have been used to broadcast information during the recent electrical outage. Chief Jordan said it could although that was not an emergency public safety situation. Dale Beckerman stated the Code Red System is designed to get information out quickly to address a specific issue such as a lost child, not a static condition.

Public Works

- Bids will be received this week on the Mission Lane Bridge Project and 2009 Reconstruction/CARS Project
- It was reported, although Public Works Director Bob Pryzby had a setback during the holidays, he is now home and doing well. His return date has been pushed back as he continues to recover.

Administration

- The 2009 budget is now on-line and copies will be printed in the coming weeks.
- Johnson County Appraiser's Office released their initial estimated property values for 2010. Prairie Village properties retained their value better than most cities. The appraiser's office projects a range for the City of -0.4% to -2.3%. The Appraiser will meet with the Mayor and staff in February when all areas have been reviewed. Quinn Bennion noted they ran two different scenarios and in both, Prairie Village will decrease. It appears that -0.4 decrease would be the best case scenario for 2010. Last year the City had a 1.9% increase in values.
- City Hall Day at Topeka will be held at the end of January. Any Council members wanting to attend should contact Chris Engel.
- The Legislative Breakfast will be held at Homestead on January 31st from 8:30 to 10:30 followed by a Council Work session led by Jim Hunt. The work session is anticipated to last until four o'clock.
- The proposed development by Walgreen's for the southeast corner of Mission and 95th Street is on the Planning Commission agenda for January 6th.
- The proposed CVS development at the corner of Somerset and Mission Road has requested a continuance to the February Commission meeting.
- HNTB and the City have severed the contract for the 75th Street Corridor.
- The artwork on display in the Endres Gallery for January and February is city-owned Artwork.
- The closing on the purchase of the public works building has been delayed to the end of January as a new survey was required for the closing. This has been completed and the City Attorney does not anticipate any problems with the closing.
- The winds and power outage experienced by the northeast part of the City resulted in significant tree and limb debris. Public Works crews worked over the weekend to clear city streets. The City allowed individuals to bring tree limbs and debris to the public works facility. This service will not be provided in the future as it was used by very few residents.
- Addressing the request of Council to be able to know City staff, a photograph of the entire public safety department was distributed to City Council. Administrative Staff pictures will be added to the City's intranet site in the future.

Mayor Shaffer reported he spoke with Thomas Robinson, the City's contact person at KCP&L this week and he has offered to attend a Council or Committee meeting to answer questions and address concerns about storm related items or general information. .

COMMITTEE REPORTS

Communications Committee

Consider Village Voice

Michael Kelly noted that prior to 1997 the City's Newsletter was a bi-monthly publication. From 1997 to 2004, it was published monthly. It returned to a bi-monthly publication in 2004-2005 and then went back to monthly in 2006. The Communications Committee recently discussed the publication of the newsletter noting increased mailing and printing costs and on-going difficulty to develop quality content on a monthly basis. \$50,000 is spent annually on the publication with half of that cost for printing and the other half for mailing. The Communications Committee recommends the publication be produced 5 times a year with the 6th publication being the annual Park & Recreation Brochure. The five publications would be eight-page full-color newsletters.

Bill Griffith suggested the City send a well designed mailer requesting e-mail addresses and moving toward to e-mail delivery of the publication and dropping the mailing altogether.

Michael Kelly responded they discussed offering people the option to go on the web and remove their name from the mailing list, but had concerns with when residents move. They discussed having a once a year period to allow for changes. Mr. Griffith stated a mailer could go out once each year to capture accurate e-mail addresses.

Quinn Bennion stated several residents enjoy the paper copies. He stated even if 20% of the residents chose e-mail delivery that would make a significant

difference. Dale Beckerman asked if the going to full-color publication offered savings. Dennis Enslinger responded the proposed reduction from 12 publications to 6 publications with full-color is a comparable cost. The desire was to create a more professional image and better designed publication - it was not proposed for cost savings. He noted that most other cities' publications are full-color. Once you have one or two pages in color, the additional pages are not expensive.

Diana Ewy Sharp stated she is supportive of the change; however, she would like to see the publication to provide a sense of community and have more city interest stories. She supports having the option to have e-mail or regular mail delivery and added the school district gives residents that option.

Dale Beckerman felt the City needed to provide an opt-out option for e-mail delivery. He acknowledged many residents would keep paper delivery, but felt there would also be several residents who would opt out. He did not know the best way to handle address changes. Dennis Enslinger responded with several options for addressing that issue.

Bill Griffith suggested the City contact the SUN for permission to republish some of their neighbor news and special interest stories.

Michael Kelly moved the City Council authorize the publication of 5 full-color newsletter publications and the Park & Recreation Brochure annually with focus on redesign and community content. The motion was seconded by Laura Wassmer and passed unanimously.

COU2009-11 Consider Transfer of funds to Equipment Reserve Fund

Michael Kelly stated the City Council approved \$10,000 in funding for website maintenance in the 2008 budget. The Communications Committee has been working on selecting a website vendor to redesign the website and the \$10,000 was not used in 2008. The Committee would like to use this money towards the website redesign in 2009.

Laura Wassmer moved the City Council approve transferring \$10,000 from the General Fund to the Equipment Reserve Fund for web site redesign services effective in FY2009. The motion was seconded by David Morrison and passed unanimously.

Council Committee of the Whole

COU2009-10 Purchase request for Police Vehicles

On behalf of the Council Committee of the Whole, David Voysey moved the City Council approve the purchase of five 2009 Dodge Chargers from Odessa Dodge for no more than \$23,000 per vehicle and one 2009 Dodge Charger from Odessa Dodge for no more than \$21,000 for the investigations unit with funding from the 2009 public safety budget. The motion was seconded by Ruth Hopkins and passed unanimously.

COU2009-02 Consider submittal of Projects to MARC for consideration for Federal Stimulus Package

On behalf of the Council Committee of the Whole, David Voysey moved the City Council authorize submittal of the following six projects to the Mid America Regional Council (MARC) for consideration for federal stimulus money:

- 1) 83rd Street Rehabilitation - Roe to Somerset & 83rd Street/Delmar Drainage;
- 2)

Roe Avenue - 83rd Street to Somerset Drive" 3) 75th Street - Mission Road to State Line Road; 4) Mission Lane Bridge' 5) Municipal Complex energy improvements and 6) Trail System. The motion was seconded by Ruth Hopkins and passed unanimously.

OLD BUSINESS

There was no Old Business to come before the City Council.

NEW BUSINESS

COU2009-09 Consider approval of an Ordinance relating to Vagrancy

Chief Jordan reported recent events where the Police Department responded to incidents, in which individuals were using automobiles as a place to live, causing the Department to review existing laws which allowed for enforcement action. There are currently no legal remedies available to the City to prohibit persons from using a vehicle as living quarters. A similar topic was reviewed concerning the use of unimproved areas of the City to sleep or live. The current ordinance prohibits camping in City Parks only. The language was amended to further define camping and expand the areas of the City where camping is prohibited as a means to address vagrancy issues.

Chief Jordan stressed this is not intended to be used as an enforcement with prosecution, but rather as an enforcement that would allow them to move the individuals to acceptable shelters with prosecution being a last resort.

Ruth Hopkins confirmed there are places where these individuals could be taken by the police officers.

Laura Wassmer questioned the references to private property in the ordinance. Chief Jordan responded the ordinance has been reviewed and approved by the City Attorney.

Dale Beckerman questioned the language in Article 11-221 and how the city would determine/define "living quarters" i.e., overnight, two days, etc. Chief Jordan responded the department would direct their officers to use a common sense approach. He would prefer to leave the language as written and change it only if it becomes a problem. He does not see this ordinance being used frequently.

David Voysey moved the City Council approve Ordinance 2185 amending Chapter 12 of the Prairie Village Municipal Code. 2003, entitled "Public Property" by repealing Article 12-108 entitled "Camping Prohibited" and amending Chapter 11 entitled "Public Offenses & Traffic" by adding a new Article 11-220 entitled "Unlawful Camping". The motion was seconded by Michael Kelly.

Ruth Hopkins confirmed that taking action on this motion would formally adopt the ordinance and is not a recommendation for action in two weeks. Quinn Bennion confirmed this was originally a committee item not scheduled for Council action tonight and could be continued to the next Council meeting in case anyone wanted to speak. Council members discussed whether to continue action and decided to vote on the motion as stated.

A roll call vote was taken with the following members voting "aye": Herrera, Griffith, Hopkins, Voysey, Kelly, Wang, Wassmer, Beckerman, Clark, Morrison, Ewy Sharp and Belz. Mayor Shaffer declared the ordinance adopted.

Discussion on Neighborhood Revitalization District Process

Quinn Bennion stated one of the economic tools identified in Village Vision was the designation of a Neighborhood Revitalization District (NRD). OPUS has mentioned the possible use of this tool for the development of Meadowbrook. Staff has visited with the cities of Shawnee, Lenexa and Olathe who have used NRD's to gather information from their experiences.

Katie Logan stated the Neighborhood Revitalization Act is governed by KSA 12-17, 114 et seq. and generally authorizes municipalities to encourage revitalization of qualified areas by making property tax rebates to owners who build new structures or improve existing structures in areas designated as neighborhood revitalization areas or districts. The tax rebate is a rebate of up to 100% of incremental property taxes resulting from improvements made to property in the District for up to 10 years. The terms of the rebate are set forth in a "revitalization plan" which is adopted by the municipality. Other jurisdictions may, but are not required to participate in the rebate. If they participate, they do so by interlocal agreement among the participating taxing jurisdictions.

Katie Logan reviewed the process and steps for designation and implementation of a Neighborhood Revitalization District Process. Laura Wassmer asked why an NRD would be used over a TIF. Ms. Logan responded the criteria that have to be met are different. Quinn Bennion added a TIF is typically more difficult to qualify for than an NRD. Charles Clark confirmed other entities must agree and recommended talking with them early in the process before taking action.

David Belz asked if a NRD designation would lower property values in the area. Katie Logan responded she is not aware of this happening.

Dennis Enslinger took the Council through an example of how a NRD Tax Rebate would work, and its resultant impact. He noted that once the Revitalization Plan is approved by the City Council, it does not come back to the Council. Dale Beckerman asked if there were any NRD's on residential property only. Mr. Enslinger responded many projects combine both a portion of residential and commercial property in the district. He noted this process works well on vacant property because there is a greater increment of value increase.

David Belz asked if it wasn't difficult to make the necessary determination of detriment to public health and safety. Quinn Bennion responded this is the determination of the Governing Body. Mr. Enslinger added most cities look at declining property values, declining population, things that can be evaluated. Mr. Bennion noted only the City Council reviews the determination. The attorney general only reviews the interlocal agreements.

Council Worksession on January 31st

Diana Ewy Sharp encouraged Council members to think about what their priorities are for the City noting several items will be coming before them such as a community center, website improvements, 75th Street improvements, etc. The Council will need to adopt priorities.

ANNOUNCEMENTS

Committee meetings scheduled for the next two weeks include:

Planning Commission	01/06/2009	7:00 p.m.
Sister City Committee	01/12/2009	7:00 p.m.

Park & Recreation Committee	01/14/2009	7:00 p.m.
Council Committee of the Whole	01/20/2009	6:00 p.m.
City Council	01/20/2009	7:30 p.m.

Mayor Shaffer encouraged Council members to attend the informal Convener reception for the 2009 Johnson County State Legislative delegation on Thursday, January 8th from 5 pm. To 7 pm.

The Prairie Village Arts Council is pleased to announce a mixed media exhibit of the City of Prairie Village owned art for the month of January. There will not be a January Reception.

Please RSVP to Penny by January 12th if you plan to attend the reception for Joyce DiDonato at Homestead Country Club on January 20th at 11:30 a.m.

The City offices will be closed on Monday, January 19th in observance of Martin Luther King Jr. Day. Deffenbaugh also observes this holiday and trash pick-up will be delayed one day that week.

The NEJC Chamber Legislative Breakfast is January 24 at 7:30 am at the Ritz Charles. Please RSVP to Jeanne by January 21 if you would like to attend.

The City will once again have Holiday Tree Recycling available for Prairie Village residents. You may take your holiday tree to the designated areas of Porter, Franklin, and Meadowlake Parks, and in the Harmon Park parking lot near the water tower between December 22, 2008 and January 18, 2009.

Donations to the Holiday Tree Fund are being accepted. The funds will be used to assist Prairie Village families and Senior Citizens needing help to pay their heating and electric bills during the cold winter months, as well as with home maintenance throughout the year. Your tax deductible contributions are appreciated.

Prairie Village Gift Cards are on sale at the Municipal Building. This is a great way to encourage others to "Shop Prairie Village."

The 50th Anniversary books, Prairie Village Our Story, are being sold to the public.

ADJOURNMENT

With no further business to come before the Council, the meeting was adjourned at 9:15 p.m.

Joyce Hagen Mundy
City Clerk

CITY TREASURER'S WARRANT REGISTER

DATE WARRANTS ISSUED:

Warrant Register Page No. 1

January 13, 2009

Copy of Ordinance
2855

Ordinance Page No.

An Ordinance Making Appropriate for the Payment of Certain Claims.

Be it ordained by the governing body of the City of Prairie Village, Kansas.

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

NAME	WARRANT NUMBER	AMOUNT	TOTAL
EXPENDITURES:			
Accounts Payable			
91046-91056	12/12/2008	800.00	
91057-91063	12/3/2008	3,210.71	
91064-91065	12/9/2008	2,708.50	
91066-91066	12/12/2008	961.91	
91067-91133	12/19/2008	56,147.91	
91134-91134	12/23/2008	1,698.32	
91232-91235	12/31/2008	1,309.03	
Payroll Expenditures			
12/5/2008		230,144.43	
12/19/2008		233,342.11	
Electronic Payments			
Intrust Bank -credit card fees (General Oper)		323.23	
State of Kansas - sales tax remittance		13.70	
Marshall & Ilsley - Police Pension remittance		7,318.48	
Intrust Bank - fee			
KCP&L		6,661.70	
CBIZ - Section 125 admin fees		337.92	
Intrust Bank - purchasing card transactions		19,734.67	
United Health Care		74,238.40	
Kansas Gas		1,993.53	
TOTAL EXPENDITURES:			\$ 640,944.55
Voided Checks			
Riggs Recreation Equipment	#90948	(3,857.00)	
TOTAL VOIDED CHECKS:			(3,857.00)
GRAND TOTAL CLAIMS ORDINANCE			637,087.55

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

Passed this 19th day of January 2009.

Signed or Approved this 19th day of January 2009.

(SEAL)

ATTEST: _____

City Treasurer

Mayor



PUBLIC WORKS DEPARTMENT

Council Meeting Date: January 20, 2009

CONSENT AGENDA: CONSIDER POSTAGE MACHINE RENTAL AGREEMENT

RECOMMENDATION

Move to approve the rental agreement with Pitney Bowes for rental of postage machine for Public Works.

BACKGROUND

Our current postage meter will not be available any longer and a replacement machine has been specified to meet our current usage needs. The monthly rental cost is more than the previous machine but the overall usage cost is less since our new agreement does not require download fees and maintenance of the new machine is less expensive.

FUNDING SOURCE

Funding is available in the Public Works operations budget.

RELATION TO VILLAGE VISION

None

ATTACHMENTS

1. Agreement with Pitney Bowes.

PREPARED BY

Suzanne Lownes, Office Manager

January 12, 2009



Engineering the flow of communication™

State & Local Term Rental account # 60

Grid for account number

Your Business Information

Form with fields: CAN #, ORDER #, CITY OF PRAIRIE VILLAGE, Full legal name of renter, DBA name of renter, Tax ID # (FEINTIN), Billing address, Billing contact name, Billing contact phone #, Billing CAN #, Installation address, Installation contact name, Installation CAN #, Credit Card #, Name on card, Exp date, Type of card, Tax exempt #, State tax (if applicable), Fiscal period (from - to)

Your Business Needs

Table with columns: Qty, Business Solution Description. Rows include Mail Creation - 1, DM100 Desktop Mailing System w/ Moistener, 10 Accts & 2 I, IntelliLink Interface / PSD for DM100, Confirmation Services Welcome Kit for DM100, IntelliLink Subscription with Value Based Services

Check items to be included in customer's payment

- Equipment Maintenance Provides service coverage including certain parts and labor
Software Maintenance Provides revision updates and technical assistance
Soft-Guard® Subscription Provides postal and carrier updates
IntelliLink™ Subscription / Meter Rental / Confirmation Services / Purchase Power Subscription
EasyPermitPostage® Subscription Allows you to pay for permit mail.

Your Payment Plan

Table with columns: Number of months, Monthly amount*. Row: First (48) (\$52)

*Monthly Billing Only.

- () Required advance check of \$ received
() Tax exempt certificate attached
Initial rental term

Your Acknowledgement

By your signature as "Renter" below, you request that we rent to you the equipment described above or on any schedule attached hereto (the "Equipment") for essential governmental purposes...

1. NON-APPROPRIATION. You warrant that you have funds available to pay the Total Payments until the end of your current fiscal period, and shall use your best efforts to obtain funds to pay the Total Payments in each subsequent fiscal period...

Form with fields: Signature, Date, Print name, Title, Email address, Account rep, District office, PBGFS acceptance

**STATE & LOCAL TERM RENTAL AGREEMENT
TERMS AND CONDITIONS**

1. **NON-APPROPRIATION.** You warrant that you have funds available to pay the Total Payments, as defined in Page One, until the end of your current fiscal period, and shall use your best efforts to obtain funds to pay the Total Payments in each subsequent fiscal period through the end of the referenced term (the "Term"). If your appropriation request to your legislative body, or funding authority ("Governing Body") for funds to pay the Total Payments is denied, you may terminate this Agreement on the last day of the fiscal period for which funds have been appropriated, upon (i) submission of documentation reasonably satisfactory to us evidencing the Governing Body's denial of an appropriation sufficient to continue this Agreement for the next succeeding fiscal period, and (ii) satisfaction of all charges and obligations under this Agreement incurred through the end of the fiscal period for which funds have been appropriated, including the return of the Equipment at your expense

2. **TERM; NON-ASSIGNABILITY.** This Agreement shall commence on the date of delivery and shall continue until the earlier of (i) termination at our option upon the occurrence of an event of default, or (ii) the occurrence of an event of a non-appropriation under Section 1, or (iii) the expiration of the Term and your payment of all Total Payments and other sums due and your fulfillment of all other obligations under this Agreement. **YOU MAY NOT ASSIGN, TRANSFER, OR SUBLET ANY INTEREST IN THIS AGREEMENT, OR THE EQUIPMENT WITHOUT OUR PRIOR WRITTEN CONSENT.**

3. **TOTAL PAYMENT.** You will pay each and every Total Payment, subject to your right of non-appropriation as provided in Section 1. All Total Payments and other sums due shall be payable to us at our executive office, until we direct you otherwise in writing. We may increase the Total Payment as a result of any imposition of, or increase in, taxes as provided in Sections 7 or 8. Your obligations, including your obligation to pay the Total Payments due in any fiscal year during the term of this Agreement, shall constitute a current expense for such fiscal year and shall not constitute indebtedness within the meaning of the constitution and laws of the state in which you are located. Nothing herein shall constitute a pledge by you of any taxes or other moneys (other than moneys lawfully appropriated from time to time by or for your benefit for this Agreement) to the payment of any Total Payment due under this Agreement. A one time documentation fee to cover the origination, documentation and processing of this Agreement is included in your equipment cost and made a part of your Total Payments. **REGARDLESS OF ANY LOSS OR DAMAGE TO THE EQUIPMENT OR ANY OTHER REASON, YOU ARE REQUIRED TO PAY US ALL TOTAL PAYMENTS AND OTHER SUMS DUE UNDER THIS AGREEMENT. ALL TOTAL PAYMENTS SHALL BE PAID BY YOU WITHOUT DEDUCTION AND IRRESPECTIVE OF ANY SET-OFF, COUNTERCLAIM, RECOUPMENT, DEFENSE OR OTHER RIGHT WHICH YOU MAY HAVE AGAINST US, OR ANY OTHER PARTY.**

4. **REPAIRS; USE.** You shall, at your expense, keep the Equipment in good repair, condition, and working order, and shall not alter the Equipment without our prior written consent. You shall use the Equipment only in the manner specified in the manuals and instructions covering the Equipment and will not permit the Equipment to be used in a trade or business of any other person or entity.

5. **RISK OF LOSS.** You are responsible for Equipment loss, damage or destruction from any cause, whether or not insured. You shall provide, maintain, and pay for: (a) insurance against Equipment loss, theft, damage, or destruction, for the full replacement value of the Equipment, with loss payable to us, and (b) public liability and property damage insurance naming us as an additional insured. Such insurance and types and amounts of coverage (and written evidence thereof delivered to us at our request) shall be satisfactory to us. No Equipment loss, theft, damage or destruction shall relieve you of your obligation to pay the Total Payments or any other obligation under this Agreement. We shall bear the risk of loss during shipment of the Equipment.

6. **REPRESENTATIONS.** You hereby represent and warrant that (a) you are a state or political subdivision thereof within the meaning of Section

103(c) of the Internal Revenue Code of 1986, as amended (the "Code"); and (b) you have the power and authority under applicable law to enter into this Agreement and you have been duly authorized to execute and deliver this Agreement and carry out your obligations hereunder. You acknowledge that a portion of each Total Payment you shall pay includes interest and that this Agreement is entered into based on the assumption that the interest portion of each Total Payment is not includible in gross income of the owner thereof for Federal income tax purposes under Section 103(a) of the Code. You shall, at all times, do and perform all acts and things necessary and within your control in order to assure that such interest component shall be so excluded. If any interest is determined not to be excludible from gross income, your Total Payment shall be adjusted in an amount sufficient to maintain our original after tax yield utilizing our consolidated marginal tax rate, which adjusted Total Payments you agree to pay as provided in this Agreement, subject to Section 1. The rate at which the interest portion of Total Payments is calculated is not intended to exceed the maximum rate or amount of interest permitted by applicable law. If such interest portion exceeds such maximum, then at our option, if permitted by law, the interest portion will be reduced to the legally permitted maximum amount of interest, and any excess will be used to reduce the principal amount of your obligation or be refunded to you. You shall not do (or cause to be done) any act which will cause, or by omission of any act allow, this Agreement to be an "arbitrage bond" within the meaning of Section 148(a) of the Code or a "private activity bond" within the meaning of Section 141(a) of the Code. At the time of your execution of this Agreement, you shall provide us with a properly prepared and executed copy of the appropriate US Treasury Form 8038-G or 8038-GC and you appoint us as your agent for the purpose of maintaining a registration system as required by Section 149(a) of the Code. Notwithstanding any other provision of this Agreement, this Section shall survive the termination of this Agreement.

7. **TAXES; NO LIENS; TITLE.** As we direct, you shall pay all charges and taxes (including any customary fees of ours associated with the administration, billing and tracking of such charges and taxes) incurred by us which may be imposed or levied upon this Agreement, documentation, the billing or receiving of the Total Payments and the sale, purchase, personal property ownership, leasing, value, possession, or use of the Equipment, excluding taxes on or measured by our net income (unless such taxes result from your breach of any representation set forth in Section 8). You shall keep the Equipment free and clear of all liens and encumbrances, subject to the following sentence. You grant us a security interest constituting a first lien on the Equipment (including any replacements, substitutions, additions, attachments and proceeds) and authorize us to file a financing statement with respect to such security interest. Title to the Equipment shall pass to you upon installation. However, you and we agree that title shall automatically revert to us in the event of default, or termination due to your non-appropriation under Section 1.

8. **ASSIGNMENT.** We may assign this Agreement, or pledge or mortgage the Equipment, in whole or in part without notice to you, and in such event, you agree, upon notice and request by us, to pay directly to any assignee all amounts payable hereunder without deduction, offset, defense or counterclaim and that such assignee shall thereafter have all of our rights and benefits (but none of our obligations) hereunder. We shall remain responsible for all of our obligations hereunder. Further, upon receipt of a request, you shall acknowledge any assignment. You acknowledge that any assignment, or granting of a security interest by us, will neither materially change your duties under this Agreement, nor increase your burdens or risks under this Agreement.

9. **LATE PAYMENT/RETURNED ITEM CHARGES.** If any payment required herein is not paid in full on or before its due date, you shall pay to us the then applicable fee being charged by us in connection with the administration of delinquent accounts. You shall also pay interest on any such late payment from the due date thereof until the date paid at 18% or the maximum rate allowed by law. For each dishonored or returned payment item, check or draft you shall pay to us the then applicable fee being charged by us in connection with our handling of returned items.

10. **DEFAULT.** If you fail to pay when due any amount required under this Agreement, make any misrepresentation, breach any warranty or fail to perform any other obligation hereunder, we may, without demand or notice,

exercise any one or all of the following remedies: (a) terminate this Agreement, (b) take possession of the Equipment, (c) declare the entire amount due and to become due under this Agreement for the then current fiscal period for which funds have been appropriated to be immediately due and payable, and (d) pursue any other remedy permitted by law or in equity. You will be responsible for all related damages and legal and other costs and expenses incurred by us in enforcing the provisions herein. To the extent permitted by applicable law, you waive the provisions of UCC Sections 2A-508 through 2A-522.

11. NOTICES. All notices under this Agreement shall be mailed, first class postage prepaid, to the recipient at its address set forth on this Agreement, or at such other address as each party may provide in writing from time to time. Such notices shall be effective on the date they are mailed.

12. SURRENDER OF EQUIPMENT. If you default, or terminate this Agreement by non-appropriation under Section 1, you, at your expense, shall return all Equipment by delivering it to us in the same condition as when delivered to you, reasonable wear and tear excepted, to such place or on board such carrier, packed for shipping, as we may specify. Until the Equipment is returned as required above, all terms of this Agreement remain in effect including, without limitation, your obligations to make payments relating to your continued use of the Equipment and to insure the Equipment.

13. INDEMNIFICATION. To the extent allowed by applicable law, you agree to indemnify, defend and hold us and persons acting on our behalf harmless from and against any and all costs, expenses, damages, fines, settlements, claims or liability, including reasonable attorneys' fees (collectively, "Claims") arising out of or relating to your performance under this Agreement or use of the Equipment, excluding those adjudged to have arisen solely from our gross negligence or willful misconduct. We shall give you prompt written notice of such Claims under this Section made upon us. Further, notwithstanding your obligation to defend, we retain the right, at your expense, to defend, and after consultation with you to settle or compromise the claims and actions.

14. PURCHASE ORDER USE. You may use a Purchase Order to offer to obtain use of Equipment and receive other services, provided however, if a purchase order is issued, none of its terms and conditions shall supplement, amend, modify or supercede the terms and conditions of this Agreement, nor shall any of its terms be incorporated herein and it shall have no effect except with respect to Equipment description, Equipment quantity, Term, requested services, Total Payments and Equipment location (the "Equipment/Service Detail"). Any provisions other than the Equipment/Service contained in a purchase order are hereby expressly objected to.

15. MISCELLANEOUS. This Agreement including the Equipment Service Level Agreement and Equipment Guide, if applicable, constitutes the entire agreement between the parties. This Agreement may not be amended, altered or changed except by a written agreement signed by the parties. If any provision should be found illegal, invalid or void, that provision is severable and should be considered deleted from this Agreement. The remaining provisions shall not be impaired and this Agreement shall be interpreted to the extent possible to give effect to the parties' intent. This Agreement shall inure to and be binding on the successors, heirs, transferees and the permitted assigns of the parties.

The following terms and conditions apply to all equipment service level agreements:

1.0 Basic Equipment Maintenance. To obtain service or emergency repair, you must contact PBI for service during its normal working hours (8am - 5pm in the time zone where the equipment is located, Monday through Friday, excluding holidays) ("Normal Working Hours") or you may place a request for service via its website www.pb.com. In addition, you have access to remote telephone support through the toll free response center (8 am to 8 pm EST, Monday through Friday, excluding holidays) at 1-800-522-0020. Depending on your Equipment type and at its option, PBI reserves the right to service your Equipment by (a) Service by Replacement with new, reconditioned or remanufactured equipment, depending upon the age of the Equipment and the nature of the performance problem, or (b) On-site service, remote diagnostics or off-site service, including new (or equivalent to new)

parts and assemblies replacement needed due to normal wear. Parts or assemblies for discontinued equipment (and/or equipment not marketed as new will be provided only if available. If service is provided for your Equipment by replacement and your problem cannot be resolved over the telephone, PBI will, at no cost to you, promptly ship new, reconditioned or remanufactured equipment to replace your Equipment. Within five (5) days of receipt of the replacement equipment, you must pack your defective Equipment in the shipping carton that contained the replacement equipment, place the shipping paid return address label on the carton and return it to PBI. You are responsible for the value of, and any damages to, the Equipment until PBI receives it. If service is provided for your Equipment by on-site service, remote diagnostics or off-site service, and if deemed necessary by PBI, a service engineer in most cases will be dispatched to arrive at your location for on-site service. There will be no hourly charges unless service is performed outside PBI's Normal Working Hours set forth above. Lubricants and other materials needed to service your Equipment are provided without additional charge. Notwithstanding the foregoing, consumable supplies for all levels of service and printheads for meters, Intellilink® equipment and printers for standard service are not covered by this SLA. Professional services other than those set forth herein are not covered by this SLA. Rate program software for electronic scales and weighing systems is excluded from coverage under this SLA.

2.0 Exclusions. This SLA excludes services and repairs that are made necessary due to negligence or accident, damage in transit, virus contamination and loss of data, use of Equipment in a manner not authorized by this SLA or other applicable purchase, lease or licensing agreement, external forces, use of Equipment in an environment with unsuitable humidity and/or line voltage, loss of electrical power, power fluctuation, operator error, casualty (such as fire, flood, or other natural causes), sabotage, repair or attempted repair by anyone other than PBI, the use of supplies or other hardware or software in connection with the Equipment not meeting PBI specifications, failure to use applicable software updates and/or use of Equipment with any system for which PBI has advised it will no longer provide support or has advised is no longer compatible.

3.0 Term. THE INITIAL TERM OF THIS AGREEMENT SHALL BE A TWELVE (12) MONTH PERIOD OR SUCH LONGER TERM AS MAY BE PROVIDED IN ANY LEASE AGREEMENT RELATING TO THE EQUIPMENT FOR WHICH MAINTENANCE COVERAGE IS PURCHASED PURSUANT TO THIS SLA AND SHALL BE AUTOMATICALLY RENEWED FOR SUCCESSIVE TWELVE (12) MONTH PERIODS (OR UNTIL EXPIRATION OR TERMINATION OF THE LEASE AGREEMENT), UNLESS PITNEY BOWES RECEIVES FROM YOU WRITTEN NOTICE OF TERMINATION AT LEAST SIXTY (60) DAYS BEFORE THE END OF THE INITIAL TERM OR THE THEN CURRENT RENEWAL TERM. SUCH NOTICE SHALL BE PROVIDED TO THE FOLLOWING ADDRESS: Pitney Bowes Inc., 2225 American Drive, Neenah, WI 54956. All amounts invoiced under this SLA are due and payable to Pitney Bowes upon your receipt of each invoice.

4.0 Modification; Termination. Pitney Bowes may, from time to time, change the services provided under this SLA, modify the terms of this SLA, or terminate such services or this SLA, at Pitney Bowes' discretion, with notice to you. If the equipment covered by this Agreement is moved from its original location, Pitney Bowes may elect, in its sole discretion and upon written notice to you, to revise this agreement to delete the on-site response times set forth in Section 11.0. In the event of such a revision, you will receive a pro-rata refund for the remaining term of your agreement reflecting the cost of that additional on-site guaranteed response time service as compared to the cost of maintenance coverage without such response time obligation. Pitney Bowes will advise you, in such notice, if it believes, in its sole judgment, that any such change in services or modification of terms is material. If you receive notice that any such change in services or modification of terms is material, you may terminate this SLA by delivering to Pitney Bowes written notice of your desire to terminate within thirty (30) days after your receipt of such notice from Pitney Bowes. Any such termination by you shall be effective ten (10) business days after Pitney Bowes' receipt of your notice of termination. Your notice must include your Customer account number and, if applicable, your lease number and be sent to Pitney Bowes, by certified mail, return receipt requested, at the following address: Pitney Bowes Inc., 2225

American Drive, Neenah, WI 54956. If you breach any applicable term of this or any other agreement with Pitney Bowes or any of our affiliates, Pitney Bowes may immediately terminate this SLA. Pitney Bowes may also recover all expenses incurred in enforcing its rights under this SLA, including reasonable attorneys' fees and interest to the maximum extent permitted by law. If Pitney Bowes no longer offer maintenance service for the Equipment or this SLA is terminated by Pitney Bowes or if you have terminated this SLA as provided in this Section 4.0, Pitney Bowes' sole obligation shall be a pro-rata refund of fees paid for the terminated services except if the termination is due to your breach of this SLA.

5.0 Fees. Adjustments to SLA rates will be made only at renewal time. If your Equipment is regularly operated more than one eight-hour shift per day, five days per week, a surcharge will be added to your annual rate. Pitney Bowes reserves the right not to renew this SLA at any time and for any reason including, but not limited to, age of the Equipment or excessive cycle count, or your refusal to pay any amounts due under this SLA. If any payment under this SLA is not made in full on or before its due date, you shall pay Pitney Bowes' then applicable administrative fee assessed on delinquent accounts, including interest from its due date until paid in full, at the lesser of 1.5% per month or the maximum rate allowed by law. Your signature is PBI's assurance that you have the authority to enter into this SLA. Pitney Bowes' acceptance is signified when its authorized invoice is issued or by its acceptance of your payment.

6.0 Liabilities; Warranty. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, PITNEY BOWES MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SERVICES FURNISHED HEREUNDER. OTHER THAN THE LIQUIDATED DAMAGES THAT MAY BE APPLICABLE TO SERVICE LEVEL AGREEMENTS WITH GUARANTEED RESPONSE TIMES UNDER SECTION 11, IN NO EVENT WILL PITNEY BOWES BE LIABLE FOR ANY DAMAGES, INCLUDING ANY LOST PROFITS OR INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR OTHER DAMAGES, EVEN IF PBI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, PITNEY BOWES' LIABILITY ARISING OUT OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, IN TORT OR WARRANTY, OR OTHERWISE SHALL NOT EXCEED THE AMOUNTS PAID BY YOU FOR EQUIPMENT MAINTENANCE PROVIDED DURING THE 12-MONTH TERM DURING WHICH SUCH LIABILITY AROSE WITH RESPECT TO SUCH SERVICE.

7.0 General

For your convenience, if you replace the Equipment covered by this SLA, your coverage will remain in effect on the replacement Pitney Bowes equipment (if the equipment qualifies) at Pitney Bowes' then current annual rate for the replacement equipment. If you acquire an attachment to your covered Equipment or add a unit to a covered integrated system, Pitney Bowes will provide coverage for any qualifying attachment or unit and adjust your rate accordingly. If you do not elect to continue coverage on the replacement equipment, you may cancel this SLA within thirty (30) days after the date of your initial invoice, and any further maintenance or repair services provided for your Equipment will be subject to Pitney Bowes' then current chargeable rates for maintenance and emergency repair services. You may have additional remedies available under Pitney Bowes' Customer Satisfaction Guarantee Program as established by Pitney Bowes from time to time. In no event (including under the Customer Satisfaction Guarantee Program) will Pitney Bowes be liable for any damages including any lost profits, or other incidental or consequential damages for nonperformance of any obligations under this SLA. This SLA comprises the entire agreement between us with regard to the subject covered, and supersedes all prior statements, understandings and agreements, oral or written, or other documents if they purport to obligate us in any way beyond the terms of this SLA. Purchase orders or any other document that add to, vary from, or conflict with these terms are rejected. The terms of any software license agreement or software maintenance agreement between Pitney Bowes and you relating to the Equipment covered under this SLA shall have priority over the terms of this SLA. Pitney Bowes shall not be held responsible or incur any liability for any delay or failure in performance of any part of this SLA to the extent that such

delay or failure results from causes beyond its control, including but not limited to fire, flood, explosion, war, terrorism, labor dispute, embargo, government requirement, civil or military authority, natural disasters, or other similar types of situations.

The Following terms apply to equipment service level agreements with training and equipment service level agreements with guaranteed response time (as elected on the cover page of the lease). They do not apply to basic equipment service level agreements.

8.0 Training Services. You may receive training during the term of this Agreement at a time mutually agreed upon by both parties. Such training will include an overview to the operator(s) on how to use the Pitney Bowes equipment covered by this Agreement. The number of training sessions that are included as part of the annual fees for your service level agreement are as follows:

- a. mail finishing products (which includes meters and scales) receive up to twenty four (24) training sessions in each twelve month period;
- b. certain mail finishing accounting solutions receive up to four (4) training sessions in each twelve month period; and
- c. mail creation products (which includes tabletop folders, tabletop inserters and address printers and the Documatch® mailing system) receive up to four (4) training sessions in each twelve month period.

9.0 Additional covered items. Printheads for meters, Intellilink® equipment and printers are provided without additional charge.

The following terms apply to equipment service level agreements with guaranteed response time (as elected on the cover page of the lease). They do not apply to basic equipment service level agreements and/or equipment service level agreements with training.

10.0 Preventive Maintenance. Services. Pitney Bowes shall perform preventive maintenance on the Equipment which shall include maintenance of all non-expendable parts, cleaning, lubrication, and adjustments, when applicable. Preventative Maintenance services shall be performed at regular intervals scheduled in advanced at a time convenient for both parties and based on the manufacturers' recommended preventive maintenance schedules.

11.0 Response time. If Pitney Bowes determines that on-site service is necessary, Pitney Bowes shall use reasonable commercial efforts to have a service technician on-site within four (4) business hours of our receipt of your call to PBI's toll free number in Section 1.0. Pitney Bowes' business hours are Monday through Friday, 8 am to 5 pm in the time zone where the Equipment is located, excluding holidays. You acknowledge, however, that this response time relates solely to the arrival of a technician at your location, and that response time does not indicate the time to resolve a problem. This is not a guarantee of problem resolution during such four (4) hour time period, nor does it guarantee that all parts necessary to make a repair will be on-site within these time frames. In your discretion, you may elect to schedule service at a time outside of the four (4) hour response time set forth herein. Products designated as service by replacement, software maintenance, preventive maintenance, operator training or other services not essential to restore equipment to a functional condition will be scheduled in advance and are not part of the response times set forth herein.

12.0 Liquidated Damages for Failure to Meet Response Time. Pitney Bowes agrees that if it does not respond to your site within four (4) hours of receipt of the request for service, Pitney Bowes will reimburse you a credit equal to three (3) months of the cost of the premium associated with the cost of the additional on-site guaranteed response time service as compared to the cost of maintenance coverage without such response time obligation ("Premium") upon your completion of refund form. You may request the refund form from your service technician or by calling the toll free number set forth in Section 1.0. Pitney Bowes will then review your request for a refund and shall determine whether a credit shall be issued based upon the information provided by you and a review of its own records. The credits set

forth herein are limited to credits for two (2) failures to meet the response time obligations in Section 11.0 in any twelve (12) month period.

DEFINITIONS. "PBI", "we" or "us" means Pitney Bowes Inc. "PBGFS" means Pitney Bowes Global Financial Services LLC. "Bank" means The Pitney Bowes Bank, Inc. "Party" shall mean each of PBI, PBGFS, Bank or you. "You" and "Your" means the customer.

WARRANTY. 1. Warranty. Pitney Bowes Equipment (hereinafter "Equipment"), Rate Software and PROM's are warranted by PBI to be free from defects in material and workmanship and to perform according to their specifications for 90 days from the date of installation. If a defect in material or workmanship or a failure to perform within specifications occurs within the first 90 days after installation, PBI will repair it or, at its option, replace it at no charge. A "defect" does not include the failure of rates embodied in a Rate Update to conform to published rates as a result of carrier rate changes. The performance of services by PBI shall be done in a professional and workmanlike manner. There is no warranty for services and repairs that are made necessary due to negligence or accident, misuse, usage which exceeds manufacturer's recommended usage, damage in transit, virus contamination or loss of data, misuse or abuse, external forces, loss of power, power fluctuation, operator error, casualty (such as fire, flood, or other natural causes), sabotage, repair or attempted repair by anyone other than PBI or the use of supplies not meeting PBI specifications. The warranty does not cover consumable parts or supplies such as belts, ink, ink rollers, sealer and moistener brushes, bulbs, felts and sponges or for parts worn out due to extraordinary use of the Equipment. 2. Disclaimer and limitation on liability. EXCEPT AS STATED ABOVE, PBI MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PBI WILL NOT BE LIABLE FOR ANY DAMAGES YOU MAY INCUR BY REASON OF YOUR USE OF THE EQUIPMENT OR THE FAILURE OF THE EQUIPMENT TO OPERATE, INCLUDING INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES, EVEN IF PBI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

ACKNOWLEDGMENT OF DEPOSIT REQUIREMENT. By signing this IntelliLink™ Subscription/Meter Rental Agreement, you represent that you have read the Acknowledgment of Deposit Requirement and are familiar with its terms. You agree that upon execution of this Agreement with PBI, you will also be bound by all terms and conditions of the Acknowledgment of Deposit Requirement, as it may be amended from time to time.

USPS ACKNOWLEDGMENT OF DEPOSIT. By electing to lease or use computerized meter resetting system ("CMRS") meter equipment, you may transfer funds to the Bank for deposit into a Postage By Phone® Reserve Account which you maintain at the Bank ("your Reserve Account") or may transfer funds to the United States Postal Service ("USPS") through a lockbox bank ("Lockbox Bank") for the purpose of prepayment of postage on CMRS-equipped meters ("Deposit"). 2. After the effective date of the lease or meter rental agreement between you and PBI, you may, from time to time, make deposits in your Reserve Account or may make Deposits in the Lockbox Bank account identified as: "United States Postal Service CMRS-PB." The USPS may, at its discretion, designate itself or a successor as recipient of Deposits made by you to the Lockbox Bank account described above. 3. Any deposit made by you in your Reserve Account shall be subject to the Postage By Phone® Reserve Account – Agreement and Disclosure Statement governing your Reserve Account. Any Deposit made by you in such Lockbox Bank account shall be credited by the USPS only for the payment of postage for CMRS equipment. Such Deposits will be held within the Postal Service Fund at the U.S. Treasury and may be commingled with Deposits of other customers. You shall not receive or be entitled to any interest or other income earned on such Deposits. 4. The USPS will provide a refund to you for remaining postage balances in CMRS equipment. The Lockbox Bank will provide a refund to you for deposits otherwise held by the USPS. These refunds are provided in accordance with the rules and regulations governing deposit of funds for CMRS, published in the Domestic Mail Manual or its successor. 5. The Lockbox Bank, which shall collect funds on behalf of the USPS, shall provide PBI, on each business day, information as to the amount of each Deposit made to the USPS by you, so PBI can update its records. 6. PBI may deposit funds on your behalf. The USPS will make no advances. Any relationship concerning advances is between you and PBI, PBGFS and/or the Bank. 7. You acknowledge that the terms of this arrangement may be changed, modified, or revoked by the USPS, with appropriate notice. 8. USPS regulations governing the deposit of funds for CMRS are published in the Domestic Mail Manual or its successor. You shall be subject to all applicable rules, regulations, and orders of the USPS, including future changes to such rules, regulations and orders, and such additional terms and conditions as may be determined in accordance with applicable law. The USPS rules, regulations, and orders shall prevail in the event of any conflict with any other terms and conditions applicable to any Deposit. 9. By engaging in any transaction through the Lockbox Bank, which will have the effect of setting postage through CMRS meter equipment, your activities concerning CMRS are subject to this USPS Acknowledgment of Deposit.

INTELLILINK® SUBSCRIPTION/METER RENTAL. Pursuant to United States Postal Service ("USPS") regulations, PBI must own the IntelliLink® Control Center or Meter (which includes the postal security device, the user interface or keyboard and display and the print engine), and you may rent and use it solely for the purpose of processing your mail, provided that you have a valid USPS meter license and you comply with (i) these provisions and (ii) all applicable USPS regulations. Your rights of use and rental shall be coterminous with your Lease ("Initial Term") and may not be cancelled during the Initial Term. You will be billed the subscription or rental fees set forth in your Lease. After the Initial Term, the use and rental provided for herein may be cancelled by either party upon 30 days prior written notice. After termination, you must return the IntelliLink® Control Center or Meter to PBI in the same condition as you received it, reasonable wear and tear excepted. Your subscription and/or rental fees will not be increased during the Initial Term. After the Initial Term, PBI may increase the subscription and/or rental fees upon 30 days' prior written notice, provided no notice will be given if such increase is being offset by a corresponding reduction in your lease payment. When you receive notice of an increase, you may terminate this use and rental as of the date the increase becomes effective. Your IntelliLink® Control Center and/or Meter may require periodic rate information updates that you can obtain under our Soft-Guard® program or you will receive individual rate updates as a separate charge. PBI reserves the right to recover or disable the IntelliLink® Control Center or Meter and/or terminate this use and rental at any time and for any reason. Tampering with or misusing the IntelliLink® Control Center or Meter is a violation of federal law. You must use only attachments or printing devices authorized by PBI and only supplies meeting PBI's specifications. Consumable supplies and postage are your responsibility. From time to time, we may access or download information remotely from your mailing system equipment powered by IntelliLink® technology to provide us with information about your postage usage amounts and patterns. Such information enables us to provide you with the best customer support and information about other products and services that may be of use to you, and some of the access and/or information may be necessary in order to conduct an inspection as required by USPS regulations. Any individually identifiable information that we obtain about you in this manner will not be shared by us with any third parties. From time to time, we may elect in our sole discretion to share aggregate data about our customers' postage uses with third parties. Please contact us if you have any questions about these data collection and/or sharing practices. You will notify PBI prior to moving the IntelliLink® Control Center or Meter to a different location. In order to obtain postage, you must contact PBI's POSTAGE BY PHONE® data center. Postage refill fees, if any, will not increase during the Initial Term but thereafter refill fees may be increased upon 30 days prior written notice. If you participate in any PBI, PBGFS and/or Bank postage advance programs, payment will be advanced on your behalf to USPS, subject to repayment by you under the terms and conditions of the applicable postage advance program and billed separately from your Quarterly Lease Payment. Refunds of unused postage, if any, will be made by USPS in accordance with then current USPS regulations. Your download of postage after receipt of these terms shall be deemed your acceptance.

SOFT-GUARD® SUBSCRIPTION/RATE UPDATES. If the Lease includes a Soft-Guard® subscription, PBI will provide up to 6 Rate Updates during each 12 month period following the date of installation of the applicable Equipment. PBI will provide each Rate Update only if required due to a postal or carrier change in rate, service, Zip Code or zone change. Your Soft-Guard® subscription does not cover any change in rates due to custom rate changes, new classes of carrier service or a change in Zip Code or zone due to Equipment relocation. If your order does not include a Soft-Guard® subscription or if you have received the maximum number of Rate Updates under your Soft-Guard® subscription, you will automatically receive Rate Updates or additional Rate Updates, as applicable, at the then-current list price. If you do not elect to

purchase a Soft-Guard subscription upon the execution of the Lease, you may purchase one at a later date through PBI's Customer Care Center. There will be no charge for Rate Updates supplied within 90 days after the applicable Equipment is first installed.

PURCHASE POWER CREDIT LINE. 1. Purchase Power Credit Line Works. (a) You may participate in the Purchase Power program, by providing the requisite information contemplated by section 8 below and thereafter ordering meter resets, office supplies, or other services, including carrier billing (a service to effectuate shipping transactions) through the Purchase Power program, whichever is applicable (the "Program"). If you subscribe to the EasyPermitPostage® service, you may utilize the Purchase Power credit line to pay for permit postage and associated USPS fees. When you or an employee or agent of yours with express, implied, or apparent authority to do so (an "Authorized User"), places such an order under the Program "on line" by telephone or otherwise, or if you utilize your Purchase Power credit line to pay for permit postage and associated USPS fees, your Purchase Power Account (the "Account") will be charged for the amount of postage, products, and services requested and the related fees, if applicable. (b) The Purchase Power credit line is a product of the Bank and is not available to individuals for personal, family, or household purposes. You will receive a billing statement for each billing cycle in which you have any activity on the Account. You must pay the Account balance under the terms provided herein. Payments are due by the due date shown on your billing statement. You may pay the entire balance due or a portion of the balance, provided that you pay at least the minimum payment shown on the statement. In the event of a partial payment, you will be responsible for the unpaid balance of the Account under the terms herein. 2. Deferred Payment Terms. By using the Purchase Power program, you agree that whenever there is an unpaid balance outstanding on the Account which is not paid in full by the due date shown on your billing statement, the Bank will charge you, and you will pay, interest on the unpaid balance of the Account from time to time, for each day from the date the transaction is posted to the Account until the date the unpaid balance is paid in full, at a variable rate equal to the Annual Percentage Rate applicable to the Account from time to time. The Annual Percentage Rate applicable to the Account will be calculated as follows: the Bank will take the greater of (i) 22% and (ii) the sum of (a) the highest "Prime Rate" published in the "Money Rates" section of the *The Wall Street Journal* on the last business day of the month and (b) the margin set forth below (the sum of the margin and the Prime Rate is herein called the "Floating Rate"). The Annual Percentage Rate will be adjusted on a monthly basis based on any fluctuation in the Floating Rate. Any change in the Annual Percentage Rate based on the calculation described in this section will become effective on the first day of your next billing cycle. The margin which will be added to the Prime Rate to determine the Floating Rate will be 14.75% (using the Prime Rate in effect as of January 31, 2008, the daily periodic rate would be .056693 % and the corresponding annual percentage rate would be 20.75%). The Account balance that is subject to a finance charge each day will include (i) outstanding balances, minus any payments and credits received by the Bank on the Account that day, and (ii) unpaid interest, fees, and other charges on the Account. The Bank will charge a minimum finance charge of \$1.00 in any billing cycle if the finance charge as calculated above is less than \$1.00. Each payment that you make will be applied to reduce the outstanding balance of the Account and replenish your available credit line. The Bank may refuse to extend further credit if the amount of a requested charge plus your existing balance exceeds your credit line. 3. Account Charges. Unless prohibited by applicable law, you agree to pay such fees and charges of which the Bank has given you notice, as the same may be in effect from time to time, including, without limitation, the fees and charges relating to: (a) transaction fees, if applicable; (b) your failure to pay in a timely manner; (c) your exceeding your credit line; and (d) fees attributable to the return of any checks that you give to the Bank as payment of the Account. Without limiting the generality of the foregoing, if you have subscribed to the EasyPermitPostage® service, you agree to pay a transaction fee in respect of permit postage and associated fees financed through the Account during any billing cycle to the extent that the amount so financed exceeds \$1,000, if your subscription is Level 1, \$5,000, if your subscription is Level 2, and \$10,000, if your subscription is Level 3, which fee shall be .65% of the amount of such excess for such billing cycle. 4. Account Cancellation and Suspension. The Bank may at any time close or suspend the Account, and may refuse to allow further charges to the Account. No cancellation or suspension will affect your obligation to pay any amounts you owe. 5. Enforcement. If you fail to observe the provisions hereof, the Bank may declare the entire Account balance due and payable. If the Bank is required to take collection action or any other legal action related to the Account, you will be responsible for all court and collection costs and reasonable attorneys' fees. 6. Amendments; Termination. The Bank can amend any of the provisions and terms related to the Program at any time by written notice to you. Each time you use the Program, you are signifying your acceptance of the terms and provisions as then in effect. Any amendment will become effective on the date stated in the notice and will apply to any outstanding balance on the Account. The Bank may terminate the Program at any time. The Bank will notify you in the event of any termination. Any outstanding obligation will survive termination of the Program. 7. Miscellaneous. The Bank may accept late payments, partial payments or checks and money orders marked "payment in full" without compromising any rights. The Program and advances thereunder shall be governed by and construed in accordance with the laws of the State of Utah and applicable federal law. 8. USA PATRIOT ACT. To help the government fight the funding of terrorism and money laundering activities, Federal law requires financial institutions to obtain, verify and record information that identifies each person who opens an account. Accordingly, the Bank asks that you provide identifying information, including your address and taxpayer identification number. The Bank may also ask for additional identifying information, where appropriate, including asking that your representative who is opening the Account provide his/her name, address, date of birth, driver's license and/or such other documents and information that will allow the Bank to identify him/her.

VALUE BASED SERVICES. 1. Fees. If your lease includes Value Based Services, these services will be made available to you through your IntelliLink® Subscription, and the fees ("Fees") for these services will be included in your Quarterly Lease Payment. Your Fees will not be increased during the Initial Term. After the end of the Initial Term, we may increase the Fees, but we will give you thirty (30) days' prior written notice. When you receive this notice of an increase, you may terminate these services as of the date the increase becomes effective. If at any time you request a change to your Value Based Services, the Fees will be adjusted. 2. Limited Warranty. We warrant that, for a period of ninety (90) days from the date of delivery, the Value Based Services will perform substantially in accordance with their specifications under normal use. This warranty is void if the failure to perform is due to negligence or accident, virus contamination or loss of data, misuse or abuse, external forces, loss of power, power fluctuation, operator error, casualty (such as fire, flood, or other natural causes), sabotage, repair or attempted repair by anyone other than PBI or the use of supplies not meeting PBI specifications. We are only responsible for maintenance of the performance of the Equipment. Equipment performance will be governed by the warranty terms found in the Equipment Guide. EXCEPT AS HEREIN SPECIFICALLY PROVIDED, THE VALUE BASED SERVICES ARE PROVIDED WITHOUT ANY FURTHER WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Some states do not allow the disclaimer of implied warranties. Therefore, the above disclaimer may not apply to you. 3. LIMITED LIABILITY. WE WILL NOT BE LIABLE FOR ANY DAMAGES YOU MAY INCUR BY REASON OF YOUR USE OF THE SERVICES, INCLUDING INCIDENTAL CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. 4. Termination. We shall have the right to terminate the services if you breach your obligations hereunder and fail to cure such breach within thirty (30) days after you have been notified in writing of such breach. 5. USPS Provided Services. If one or more of the Value Based Services you selected is provided by the USPS, then the description of those services and the applicable terms for usage can be found in the USPS Domestic Mail Manual as it may be amended from time to time by the USPS. Any fees charged by the USPS for any special service you purchase will be payable by you in the same way that you pay for postage. The USPS is solely responsible for acceptance and processing of customer requests for Value Based Services. We are not responsible for the results of any malfunctions of any part of the communication link (i.e., telephone lines connecting the IntelliLink® Control Center with the USPS data system). If USPS discontinues a service you have selected, we will discontinue such service automatically.

ENTIRE AGREEMENT. This Equipment Guide constitutes the entire agreement between the parties as to the subjects addressed in this Equipment Guide, and representations or statements; oral and written, not included herein are not binding on the parties.

Information Return for Small Tax-Exempt Governmental Bond Issues, Leases, and Installment Sales

▶ Under Internal Revenue Code section 149(e)

Caution: If the issue price of the issue is \$100,000 or more, use Form 8038-G.

Part I Reporting Authority Check box if Amended Return

1 Issuer's name CITY OF PRAIRIE VILLAGE	2 Issuer's employer identification number
3 Number and street (or P.O. box if mail is not delivered to street address) 3535 SUMMERSET DR	Room/suite
4 City, town, or post office, state, and ZIP code PRAIRIE VILLAGE KS 66208-5180	5 Report number 5
6 Name and title of officer or legal representative whom the IRS may call for more information	7 Telephone number of officer or legal representative ()

Part II Description of Obligations Check if reporting: a single issue or on a consolidated basis

8a Issue price of obligation(s) (see instructions)	8a
b Issue date (single issue) or calendar year (consolidated) (see instructions) ▶	
9 Amount of the reported obligation(s) on line 8a:	
a Used to refund prior issue(s)	9a
b Representing a loan from the proceeds of another tax-exempt obligation (e.g., bond bank)	9b
10 If the issuer has designated any issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check this box.....	<input type="checkbox"/>
11 If any obligation is in the form of a lease or installment sale, check this box	<input checked="" type="checkbox"/>
12 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check this box	<input checked="" type="checkbox"/>

Sign Here Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

Issuer's authorized representative	Date	Type or print name and title
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

Form 8038-GC is used by the issuers of tax-exempt governmental obligations to provide the IRS with the information required by section 149(e) and to monitor the requirements of sections 141 through 150.

Who Must File

Issuers of tax-exempt governmental obligations with issue prices of less than \$100,000 must file Form 8038-GC.

Issuers of a tax-exempt governmental obligation with an issue price of \$100,000 or more must file Form 8038-G, Information Return for Tax-Exempt Governmental Obligations.

Filing a separate return. Issuers have the option to file a separate Form 8038-GC for any tax-exempt governmental obligation with an issue price of less than \$100,000.

An issuer of a tax-exempt bond used to finance construction expenditures must file a separate Form 8038-GC for each issue to give notice to the IRS that an election was made to pay a penalty in lieu of arbitrage rebate (see the line 12 instructions).

Filing a consolidated return. For all tax-exempt governmental obligations with issue prices of less than \$100,000 that are not reported on a separate Form 8038-GC, an issuer must file a consolidated information return including all such issues issued within the calendar year.

Thus, an issuer may file a separate Form 8038-GC for each of a number of small issues and report the remainder of small issues issued during the calendar year on one consolidated Form 8038-GC. However, a separate Form 8038-GC must be filed to give the IRS notice of the election to pay a penalty in lieu of arbitrage rebate.

When To File

To file a separate return, file Form 8038-GC on or before the 15th day of the second calendar month after the close of the calendar quarter in which the issue is issued.

To file a consolidated return, file Form 8038-GC on or before February 15th of the calendar year following the year in which the issue is issued.

Late filing. An issuer may be granted an extension of time to file Form 8038-GC under Section 3 of Rev. Proc. 88-10, 1988-1 C.B. 635, if it is determined that the failure to file on time is not due to willful neglect. Type or print at the top of the form, "This Statement Is Submitted in Accordance with Rev. Proc. 88-10." Attach to the Form 8038-GC a letter briefly stating why the form was not submitted to the IRS on time. Also indicate whether the obligation in question is under examination by the IRS. Do not submit copies of any bond documents, leases, or installment sale documents. See **Where To File** below.

Where To File

File Form 8038-GC, and any attachments, with the Internal Revenue Service Center, Ogden, UT 84201.

Other Forms That May Be Required

For rebating arbitrage (or paying a penalty in lieu of arbitrage rebate) to the Federal government, use Form 8038-T, Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate. For private activity bonds, use Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues.

Rounding to Whole Dollars

You may show the money items on this return as whole-dollar amounts. To do so, drop any amount less than 50 cents and increase any amount from 50 to 99 cents to the next higher dollar.

Definitions

Obligations. This refers to a single tax-exempt governmental obligation if Form 8038-GC is used for separate reporting or to multiple tax-exempt governmental obligations if the form is used for consolidated reporting.

Tax-exempt obligation. This is a bond, installment purchase agreement, or financial lease, on which the interest is excluded from income under section 103.

Tax-exempt governmental obligation. A tax-exempt obligation that is not a private activity bond (see below) is a tax-exempt governmental obligation. This includes a bond issued by a qualified volunteer fire department under section 150(e).

Private activity bond. This includes an obligation issued as part of an issue in which:

- More than 10% of the proceeds are to be used for any private activity business use, and

• More than 10% of the payment of principal or interest of the issue is either (a) secured by an interest in property to be used for a private business use (or payments for such property) or (b) to be derived from payments for property (or borrowed money) used for a private business use.

It also includes a bond, the proceeds of which (a) are to be used to make or finance loans (other than loans described in section 141(c)(2)) to persons other than governmental units and (b) exceeds the lesser of 5% of the proceeds or \$5 million.

Issue. Generally, obligations are treated as part of the same issue only if they are issued by the same issuer, on the same date, and as part of a single transaction, or a series of related transactions. However, obligations issued during the same calendar year (a) under a loan agreement under which amounts are to be advanced periodically (a "draw-down loan") or (b) with a term not exceeding 270 days, may be treated as part of the same issue if the obligations are equally and ratably secured under a single indenture or loan agreement and are issued under a common financing arrangement (e.g., under the same official statement periodically updated to reflect changing factual circumstances). Also, for obligations issued under a draw-down loan that meets the requirements of the preceding sentence, obligations issued during different calendar years may be treated as part of the same issue if all of the amounts to be advanced under the draw-down loan are reasonably expected to be advanced within 3 years of the date of issue of the first obligation. Likewise, obligations (other than private activity bonds) issued under a single agreement that is in the form of a lease or installment sale may be treated as part of the same issue if all of the property covered by that agreement is reasonably expected to be delivered within 3 years of the date of issue of the first obligation.

Arbitrage rebate. Generally, interest on a state or local bond is not tax exempt unless the issuer of the bond rebates to the United States arbitrage profits earned from investing proceeds of the bond in higher yielding nonpurpose investments. See section 148(f).

Construction issue. This is an issue of tax-exempt bonds that meets both of the following conditions:

1. At least 75% of the available construction proceeds of the issue are to be used for construction expenditures with respect to property to be owned by a governmental unit or a 501(c)(3) organization, and
2. All of the bonds that are part of the issue are qualified 501(c)(3) bonds, bonds that are not private activity bonds, or private activity bonds issued to finance property to be owned by a governmental unit or a 501(c)(3) organization.

In lieu of rebating any arbitrage $\frac{1}{2}$ ¢ may be owed to the United States, the issuer of a construction issue may make an irrevocable election to pay a penalty. The penalty is equal to 1 % of the amount of construction proceeds that do not meet certain spending requirements. See section 148(f)(4)(C) and the Instructions for Form 8038-T.

Specific Instructions

In general, a Form 8038-GC must be completed on the basis of available information and reasonable expectations as of the date the issue is issued. However, forms that are filed on a consolidated basis may be completed on the basis of information readily available to the issuer at the close of the calendar year to which the form relates, supplemented by estimates made in good faith.

Part I—Reporting Authority

Amended return. If this is an amended Form 8038-GC, check the amended return box. Complete Part I and only those lines of Form 8038-GC that are being amended. Do not amend estimated amounts previously reported once the actual amounts are determined. (See the Part II instructions below.)

Line 1. The issuer's name is the name of the entity issuing the obligations, not the name of the entity receiving the benefit of the financing. In the case of a lease or installment sale, the issuer is the lessee or purchaser.

Line 2. An issuer that does not have an employer identification number (EIN) should apply for one on Form SS-4, Application for Employer Identification Number. This form may be obtained at Social Security Administration offices or by calling 1-800-TAX-FORM. If the EIN has not been received by the due date for Form 8038-GC, write "Applied for" in the space for the EIN.

Line 5. After the preprinted 5, enter two self-designated numbers. Number reports consecutively during any calendar year (e.g., 534, 535, etc.).

Part II—Description of Obligations

Line 8a. The issue price of obligations is generally determined under Regulations section 1.148-1(b). Thus, when issued for cash, the issue price is the price at which a substantial amount of the obligations are sold to the public. To determine the issue price of an obligation issued for property, see sections 1273 and 1274 and the related regulations.

Line 8b. For a single issue, enter the date of issue, generally the date on which the issuer physically exchanges the bonds that are part of the issue for the underwriter's (or other purchaser's) funds; for a lease or installment sale, enter the date interest starts to accrue. For issues reported on a consolidated basis, enter the calendar year during which the obligations were issued

Lines 9a and 9b. For line 9a, enter the amount of the proceeds that will be used to pay principal, interest, or call premium on any other issue of bonds, including proceeds that will be used to fund an escrow account for this purpose. Both line 9a and 9b may apply to a particular obligation. For example, report on line 9a and 9b obligations used to refund prior issues which represent loans from the proceeds of another tax-exempt obligation.

Line 11. Check this box if property other than cash is exchanged for the obligation, e.g., acquiring a police car, a fire truck, or telephone equipment through a series of monthly payments. (This type of obligation is sometimes referred to as a "municipal lease.") Also check this box if real property is directly acquired in exchange for an obligation to make periodic payments of interest and principal. Do not check this box if the proceeds of the obligation are received in the form of cash, even if the term "lease" is used in the title of the issue.

Line 12. Check this box if the issue is a construction issue and an irrevocable election to pay a penalty in lieu of arbitrage rebate has been made on or before the date the bonds were issued. The penalty is payable with a Form 8038-T for each 6-month period after the date the bonds are issued. Do not make any payment of penalty in lieu of rebate with Form 8038-GC. See Rev. Proc. 92-22, 1992-1 C.B. 736, for rules regarding the "election document."

Paperwork Reduction Act Notice

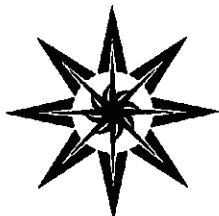
We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form varies depending on individual circumstances. The estimated average time is:

- Learning about the law or the form1 hr., 58 min.
- Preparing the form3 hr., 3 min.
- Copying, assembling, and sending the form to the IRS16 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. Do not send the form to this address. Instead, see Where To File on page 1.



POLICE DEPARTMENT

Council Meeting Date: January 20, 2009

CONSENT AGENDA:

Consider contracts with the City of Overland Park and Intergraph Inc. to support the Police Department's Computer Aided Dispatch (CAD), Mobile, and Record Management Systems (RMS).

RECOMMENDATION

Staff recommends that the City Council approve contractual agreements with Intergraph Inc. and the City of Overland Park to implement and support the Police Department's Computer Aided Dispatch (CAD), Mobile, and Record Management Systems (RMS).

SUGGESTED MOTION

I move for approval of contractual agreements as recommended with Intergraph Inc. and the City of Overland Park to implement and support the Police Department's Computer Aided Dispatch (CAD), Mobile, and Record Management Systems (RMS).

BACKGROUND

As the Police Department moves forward with upgrading technology, contractual agreements will be necessary to implement and support the system. In addition, both Intergraph Inc. and the City of Overland Park require that user agreements be signed by the City of Prairie Village to approve the terms of the hub use and software maintenance. Legal staff has reviewed, modified, and approved contractual language.

ATTACHMENTS

1. Contractual agreement with Intergraph, Inc., and
2. Contractual agreement with the City of Overland Park.

PREPARED BY

Kyle Shipps
Special Operations Officer
Date: January 13, 2009

City of Prairie Village KS – 1/13/09



Security, Government & Infrastructure (SG&I) U.S. Maintenance Terms and Conditions for Software and Hardware

The SG&I U.S. Maintenance Terms and Conditions for Software and Hardware consists of this cover page, the attached General Terms and Conditions, the Scope of Work (as indicated by the applicable Exhibits marked below), and any Addenda thereto. This document and the Quote to which it is attached comprise the complete agreement. This Agreement replaces all prior oral or written communications between the Parties regarding the terms and conditions of SG&I Maintenance Services.

By signing the maintenance Quote, the Parties agree to the terms of this Agreement. Once signed, 1) the Parties agree any reproduction of the Agreement made by reliable means (for example, photocopy or facsimile) is considered an original and 2) all Covered Products are subject to it.

Scope of Work

If checked below, additional Terms and Conditions specific to the following Scope of Work items are made a part of this Agreement:

- | | | | |
|-----------------------------------|---|-------------------------------------|---|
| Exhibits:
(mark as applicable) | A | <input checked="" type="checkbox"/> | Commercial Off-The-Shelf ("COTS") Software, except for DMC Software |
| | B | <input type="checkbox"/> | Z/I Imaging Hardware, except for DMC Hardware |
| | C | <input type="checkbox"/> | Digital Mapping Camera ("DMC") Systems Hardware and Software |
| | D | <input type="checkbox"/> | Third Party Products |

GENERAL TERMS AND CONDITIONS

The following general terms and conditions apply to all maintenance Services provided by Intergraph, except as otherwise modified in an applicable Exhibit or by subsequent Addendum signed by Intergraph and the Customer, or unless Customer and Intergraph enter into a separate agreement that provides for maintenance services. In case of conflict between any of the parts of the Terms and Conditions, the order of precedence shall be as follows: 1) any Addenda executed by the Customer and Intergraph, with the latest Addendum taking precedence over any earlier Addenda in which a conflict may appear; 2) any applicable Exhibits, as pertains to the subject thereof; and 3) the general terms and conditions.

1.0 DEFINITIONS

1.1 **"Agreement"** means the agreement between Customer and Intergraph that is created by Customer accepting the Quote which references and is subject to the Terms and Conditions. The Customer-accepted Quote and the Terms and Conditions make up the Agreement between Customer and Intergraph.

1.2 **"Coverage Period"** means the Agreement period of performance as designated in the Quote(s).

1.3 **"Covered Products"** means the hardware and/or software products listed on the Quote for which Services are to be provided by Intergraph. Covered Products shall also include additional copies of a software product that are already covered by the Agreement and that are purchased or otherwise obtained by Customer during the Coverage Period. Covered Products may include products of Security, Government & Infrastructure, as well as Third Party Products, as defined below.

1.4 **"Customer"** means the entity or person purchasing maintenance services.

1.5 **"Designated Hardware"** means hardware designated by Intergraph as eligible for cancellation with ninety (90) days notice.

1.6 **"DMC"** means Digital Mapping Camera.

1.7 **"Intergraph"** means the Security, Government & Infrastructure (SG&I) division of Intergraph Corporation.

1.8 **"Quote"** means a quotation for Services submitted to Customer by Intergraph. A Quote may be the quotation issued by the Customer Services Center, but may also be the maintenance quotation submitted to Customer along with a product quotation at time of purchase.

1.9 **"Scope of Work"** means the specific maintenance services contracted by Customer and to be performed by Intergraph, as described in applicable Exhibits attached hereto.

1.10 **"Services"** means the maintenance services for Covered Products that are further described in the Scope of Work.

1.11 **"Terms and Conditions"** means these terms and conditions, including any Addenda and applicable Exhibits, that together with the Quote accepted by Customer comprise the Agreement between Customer and Intergraph for the Services.

1.12 **"Third Party Products"** means the hardware or software products of any division of Intergraph Corporation other than Security, Government & Infrastructure and/or of an entity other than Intergraph Corporation.

1.13 **"Upgrade(s)"** means the subsequent releases of applicable software products covered under the Agreement.

2.0 AUTHORIZATION AND PERFORMANCE

2.1 Initiating Services

By accepting the Quote issued by Intergraph and paying all charges listed in the Quote, Customer thereby authorizes Intergraph to provide the Services for Covered Products during the Coverage Period specified on the Quote, and

thereby agrees to these Terms and Conditions. Such Services will be provided in accordance with the Scope of Work. The Agreement shall be considered as beginning on the first day of the month that the Agreement becomes effective, and thus the Covered Period shall be for whole months only.

2.2 Renewing Services

Approximately ninety (90) days prior to the Agreement expiration date, Intergraph will submit to the Customer a renewal Quote that includes pricing for the Services during the subsequent Coverage Period. By accepting the renewal Quote and agreeing to pay or paying all charges listed in the renewal Quote, Customer thereby authorizes Intergraph to provide the Services for Covered Products during the designated Coverage Period, and thereby agrees to the then current Terms and Conditions referenced in the renewal Quote. Intergraph reserves the right to increase maintenance prices at any time at its sole discretion, which shall, if applicable, be reflected in the renewal Quote and shall take effect for the renewal Coverage Period.

3.0 TERMINATION OF SERVICES

Coverage may only be terminated by either party at the end of a Coverage Period. The party desiring to terminate Services must provide to the other party written notification at least thirty (30) days prior to the end of the then current Coverage Period of its intent to terminate Services. However, should Customer not remit payment for any renewal Quote prior to the end of the then current Coverage Period, Services shall terminate at the end of that Coverage Period and Services shall be deemed by Intergraph to have lapsed.

This Agreement may only be terminated prior to its expiration in the following ways:

- (a) A new Agreement between Customer and Intergraph is signed into effect for similar service.
- (b) If either party petitions for reorganization under the Bankruptcy Act or is adjudicated as bankrupt, or a receiver is appointed for either party's business, or the Customer fails to pay Intergraph any amount when due hereunder.

4.0 CHANGES, DELETIONS, AND ADDITIONS

4.1 Changes of Coverage

If Customer desires to change coverage for the renewal Coverage Period, Customer should notify Intergraph and obtain a revised renewal Quote that reflects Customer's wishes, provided such changes are not in violation of the Terms and Conditions.

4.2 Deletions from Agreement

4.2.1 Designated Hardware

Either party may remove Designated Hardware from the Agreement by providing ninety (90) days advance written notice to the other party, with the deletion to take effect at the end of the month in which falls the ninetieth day from the date notice was received by the other party, or at the end of the Coverage Period, whichever comes first. In the event either party withdraws maintenance for an item of Designated Hardware, the charges pertaining to such item of Designated Hardware shall be prorated for the remaining term of this Agreement, and if applicable, to the extent charges were prepaid, refunded to Customer in whole months only.

4.2.2 Covered Products

Either party may provide written notice to the other party at least thirty (30) days prior to the end of any Coverage Period of its intent to remove any individual Covered Products from the Agreement for the renewal period. Neither party may remove Covered Products other than Designated Hardware except upon Agreement renewal.

Customer may not remove from Coverage individual software licenses of a software product for which Customer has multiple copies under maintenance at one site or for software licenses that are being used interdependently at a single site.

4.3 Additions to Agreement

In the event Customer purchases additional Intergraph hardware or software during the term of this Agreement and does not also purchase maintenance for those items at the time of purchase, and if Customer purchased the additional items from Intergraph, Intergraph will notify the Customer by submitting in writing an add-on Quote that reflects the additional items, effective date(s) of service, and charges for those items pursuant to these Terms and Conditions.

In the event Customer should obtain additional Intergraph software license(s) from an authorized reseller or by any other manner, Customer agrees to notify Intergraph about the newly acquired software licenses(s). In response, Intergraph will provide the Customer with an add-on Quote reflecting the effective date of service and charges for the additional software license(s).

Customer shall purchase maintenance coverage on all additions of software licenses to a site obtained via software license transfer. Any such software license transfers shall be in accordance with the current Intergraph Software Transfer Policy and the End-User License Agreement and Limited Product Warranty for Intergraph Corporation Software Product(s) or other applicable Software License Agreement delivered with the software product.

5.0 REQUIRED COVERAGE

5.1 Multiple or Interdependent Licenses

Maintenance may not be declined for individual licenses of a software product for which Customer has multiple copies under maintenance at one site or for software licenses that are being used interdependently at a single site.

5.2 Prerequisite Licenses

All prerequisite Intergraph software licenses that are necessary to operate the software for which Customer desires Services under the Agreement must also be included as Covered Products and listed on the Quote.

6.0 CHARGES

Maintenance services are not eligible for discounts.

6.1 Payment

Charges for Services are due and payable **annually in advance**. For Customers desiring to pay quarterly in advance instead of annually in advance, the Customer must request a revised Quote which shall include a convenience fee uplift of fifteen percent (15%) of the total annual charges, which convenience fee Customer agrees to pay. The convenience fee shall be prorated and charged to the four quarterly invoices.

All charges are due net thirty (30) days from the date of invoice, unless Customer accepts the Quote less than thirty (30) days before the first day of the Coverage Period in which case the charges for the invoice or initial invoice, as applicable, are due prior to the beginning of the Coverage Period. In the event Customer accepts a Quote after the Coverage Period has already begun, the charges for the invoice or initial invoice, as applicable, shall be due and payable in full upon receipt of the invoice. Charges for products added during a Coverage Period to an Agreement shall be prorated to the remaining months of the Coverage Period, in whole month increments only, and such charges shall be due and payable in full upon receipt of invoice.

6.2 Past Due Accounts

INTERGRAPH RESERVES THE RIGHT TO REFUSE SERVICE TO ANY CUSTOMER WHOSE ACCOUNT IS PAST DUE. At the discretion of Intergraph, Customers who have not paid any charges when due may not be rendered Services or receive Upgrades until the charges are paid in full. Additionally, Intergraph shall charge and Customer agrees to pay interest at the rate of two percent (2%) per month or the maximum amount allowed by law, whichever is less, for all

amounts not received when due. The start of the Coverage Period shall not be postponed due to delayed payment of any charges.

6.3 Reinstatement of Software Maintenance Coverage

Software reinstatement fees will apply if there is a lapse in software maintenance Services. Intergraph will provide a Quote for reinstatement of maintenance upon request.

6.4 Reinstatement of Hardware Maintenance Coverage

Intergraph may charge a recertification fee for reinstating coverage for hardware where coverage has lapsed. Recertification of hardware will require inspection and possible refurbishment of the hardware at Customer's expense prior to being eligible for addition to an Intergraph maintenance contract.

7.0 CUSTOMER RESPONSIBILITIES

During the Coverage Period of the Agreement, Customer shall commit to the following:

- (a) Customer is responsible for backing up all systems software, applications, and user data files prior to commencement of any repair services.
- (b) Customer warrants that for all software licenses supported under the Agreement, all like software licenses in the possession of the Customer and located at the site referenced on the Quote are listed on the Quote. If all like software licenses are not listed on the Quote, Customer agrees to notify Intergraph so that Intergraph may issue a revised Quote to the Customer. Customer also warrants that all prerequisite Intergraph software licenses necessary to operate the software supported under the Agreement are listed on the Quote.
- (c) Customer warrants that Services provided herein shall be utilized only for the quantity of licenses listed on the Quote.

8.0 SERVICES WARRANTIES AND LIMITATION OF LIABILITY

Product warranties are as provided in the Security, Government & Infrastructure Terms and Conditions of Sale, the End-User License Agreement and Limited Product Warranty for Intergraph Corporation Software Product(s) and/or other Software License Agreement provided with the Covered Products, and/or in other contractual documents, as applicable. The following warranties apply to the Services described in these Terms and Conditions.

8.1 Warranties

INTERGRAPH WARRANTS FOR A PERIOD OF THIRTY (30) DAYS FROM THE DATE OF SERVICE THAT, UNDER NORMAL USE, MATERIALS AND SPARES PROVIDED PURSUANT TO THIS AGREEMENT FOR SECURITY, GOVERNMENT & INFRASTRUCTURE HARDWARE SHALL BE FREE FROM DEFECT IN MATERIAL AND WORKMANSHIP. ANY SPARES OR MATERIALS PROVIDED PURSUANT TO THIS AGREEMENT FOR SERVICE OF THIRD PARTY HARDWARE ITEMS SHALL ONLY BE WARRANTED TO THE EXTENT THE SPARES OR MATERIALS ARE WARRANTED BY THE THIRD PARTY HARDWARE MANUFACTURER.

INTERGRAPH DOES NOT WARRANT THAT THE SOFTWARE UPDATES OR MAINTENANCE SERVICES PROVIDED HEREUNDER WILL MEET CUSTOMER'S REQUIREMENTS, AND UNDER NO CIRCUMSTANCES DOES INTERGRAPH WARRANT THAT SOFTWARE WILL OPERATE UNINTERRUPTED OR ERROR FREE. ANY ADDITIONAL WARRANTY OF THIRD PARTY SOFTWARE ITEMS SHALL ONLY BE TO THE EXTENT THE ITEMS ARE WARRANTED BY THE THIRD PARTY SOFTWARE MANUFACTURER.

8.2 Disclaimers

THE FOREGOING WARRANTIES ARE VOID IF FAILURE OF A WARRANTED ITEM RESULTS DIRECTLY, OR INDIRECTLY, FROM AN UNAUTHORIZED MODIFICATION OF A WARRANTED ITEM; AN UNAUTHORIZED ATTEMPT TO REPAIR A WARRANTED ITEM; OR MISUSE OF A WARRANTED ITEM, INCLUDING WITHOUT LIMITATION, USE OF WARRANTED ITEM UNDER ABNORMAL OPERATING CONDITIONS OR WITHOUT ROUTINELY MAINTAINING A WARRANTED ITEM.

THE FOREGOING WARRANTIES FOR MAINTENANCE SERVICES PROVIDED PURSUANT TO THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES OF MAINTENANCE SERVICES, WHETHER EXPRESSED OR IMPLIED. INTERGRAPH DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, WITH REGARD TO MAINTENANCE SERVICES SUPPLIED HEREUNDER, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE.

8.3 Limitation of Liability

INTERGRAPH SHALL NOT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES, ARISING OUT OF, OR IN CONNECTION WITH THE FOREGOING WARRANTIES, OR THE PERFORMANCE OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUE OR PROFIT, OR LOSS OR CORRUPTION OF DATA. IN NO EVENT SHALL INTERGRAPH BE RESPONSIBLE FOR DAMAGES IN EXCESS OF THE AMOUNT PAID BY CUSTOMER DURING THE PAST TWELVE MONTHS FOR THE SITE(S) REFERENCED IN THE MOST RECENT QUOTE ISSUED BY INTERGRAPH UNDER THIS AGREEMENT AS OF THE DATE OF ANY SUCH WARRANTY CLAIM.

9.0 NON-SOLICITATION OF EMPLOYEES

For purposes of this Section 9.0, the term "employee" shall also include employees of Intergraph's Services subcontractors who directly support Customer. Customer agrees that it will not, without the prior written consent of Intergraph, solicit or hire any Intergraph employee, or induce such employee to leave Intergraph's employment, directly or indirectly, during the term of this Agreement and for a period of twelve (12) months after the Agreement expires or is terminated. Customer agrees that a breach of this provision would cause actual and substantial damages to Intergraph such that it would be very difficult to calculate actual damages. Accordingly, any such breach will entitle Intergraph to recover liquidated damages from Customer in the amount equal to one year of the affected employee's annual salary plus benefits for each such breach, as well as expenses, costs, and reasonable attorney's fees incurred by Intergraph in seeking enforcement of this Agreement. Customer agrees that the foregoing amount is intended to be, and in fact is, a reasonable estimate of the actual damages that would be incurred by Intergraph if Customer were to breach this provision, and that this amount is not intended to be, and in fact is not, a penalty. In addition, Intergraph shall be entitled to equitable or injunctive relief to prevent further breaches.

10.0 MISCELLANEOUS

10.1 Taxes

All maintenance charges are exclusive of United States and/or any other country's federal, state, municipal, or other governmental, withholding, excise, sales, use, value added or other taxes, tariffs, custom duties and importing fees ("Taxes"). Customer shall be liable for, and shall indemnify and hold Intergraph harmless from and against, any and all Taxes. Taxes shall expressly exclude any United States (i) federal, (ii) state, (iii) municipal, (iv) or other governmental income taxes, franchise taxes, business license fees and other like taxes measured by Intergraph's income, capital and/or assets. The total invoice amount for maintenance charges is subject to increase by the amount of any Taxes which Intergraph is required to withhold, collect, or pay so that Intergraph receives the full amount of the maintenance charges. Any certificate to exempt the Agreement from tax liability or other documentary evidence of statutory exemption shall be obtained by Customer at Customer's expense.

10.2 Notices

Any notice or other communication ("Notice") required or permitted under this Agreement shall be in writing and either delivered personally or sent by electronic mail, facsimile, overnight delivery, express mail, or certified or registered mail, postage prepaid, return receipt requested. A Notice delivered personally shall be deemed given only if acknowledged in writing by the person to whom it is given. A Notice sent by electronic mail or facsimile shall be deemed given when transmitted, provided that the sender obtains written confirmation from the recipient that the transmission was received. A Notice sent by overnight delivery or express mail shall be deemed given twenty-four (24) hours after having been sent.

A Notice that is sent by certified mail or registered mail shall be deemed given forty-eight (48) hours after it is mailed. If any time period in this Agreement commences upon the delivery of Notice to any one or more parties, the time period shall commence only when all of the required Notices have been deemed given.

10.3 Headings

The various headings in these Terms and Conditions are inserted for convenience only and shall not affect the meaning or interpretation of these Terms and Conditions or any section or provision hereof.

10.4 Assignment

Neither party shall have the right to assign any of its rights nor delegate any of its obligations under the Agreement without the prior written consent of the other party, provided that such consent shall not be unreasonably withheld, except that Intergraph may assign its rights and obligations under the Agreement, without the approval of Customer, to an entity which acquires all or substantially all of the assets of Intergraph or of the Intergraph division furnishing services under the Agreement, or to any subsidiary, affiliate or successor in a merger or acquisition of Intergraph, or in the case of individual products or product lines, Intergraph may assign its rights and obligations under the Agreement for the product or product line, without the approval of Customer to an entity which acquires all or substantially all of the product or product line asset.

10.5 Interpretation

The Agreement shall for all purposes be construed and enforced under and in accordance with the Laws of the State of Alabama and shall have been deemed to have been executed in Huntsville, Alabama. The parties agree that any legal action or proceeding relating to the Agreement shall be instituted in the District Court for Johnson County, Kansas or the United States District Court for the District of Kansas. The parties agree to submit to the jurisdiction of and agree that venue is proper in these courts in any such legal action or proceedings.

10.6 Severability

Whenever possible, each provision of the Agreement and each related document shall be interpreted in such a manner as to be effective and valid under applicable law. However, if any provision of the Agreement or any related document shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of the Agreement or such related document.

10.7 No Waiver

Any failure by either party to enforce performance of the Terms and Conditions of the Agreement shall not constitute a waiver of, or affect said party's right to avail itself of such remedies as it may have for any subsequent breach of the terms of the Agreement.

10.8 Force Majeure

Except for payment obligation hereunder, neither party shall be liable for any failure to perform or observe any of its obligations under this Agreement for as long as and to the extent that such performance is prevented or hindered by any circumstances beyond its reasonable control. By way of example and not limitation, such causes may include acts of God or public enemies; labor disputes; acts of local, state, or national governments or public agencies; utility or communications failure; fire; flood; epidemics; riots; or strikes. The time for performance of any right or obligation delayed by such events will be postponed for a period equal to the delay. If, however, a party is subject to a force majeure that endures for more than sixty (60) days, the other party has a right to terminate the Agreement.

10.9 Subcontracting

Intergraph may provide services as set forth in this Agreement through a subcontract arrangement with a third party maintenance provider, with the prior written consent of customer.

10.10 Entire Agreement

The Agreement constitutes the entire agreement between the parties hereto with regard to the subject matter hereof. The Agreement supersedes any and all prior discussions and/or representations, whether written or oral, and no reference to prior dealings may be used to in any way modify the expressed understandings of the Agreement. The Agreement may not be amended or modified unless done so in writing signed by authorized representatives of both parties.

A.1. SOFTWARE SERVICE

Intergraph offers three levels of support for Covered Products software, although not all levels are available for all software products. When available, the highest level of support offered is Premium Service which provides 24x7 coverage and Upgrades of Covered Products software. The service offered for the majority of the Covered Products is Standard Service which offers Upgrades and support during standard business hours. Advantage Service, when available, provides support during standard business hours but no Upgrades. Customer may choose any level of service offered; however all Covered Products in the support Agreement must have the same level of service when available.

A.1.1 Premium Service

For critical Customer applications, Premium Service provides support to the Customer twenty-four hours per day, seven days per week (24x7), including Intergraph-observed holidays.

Premium Service will include and be limited to the following for Security, Government & Infrastructure software products listed on the Quote as having Premium level support under the Agreement:

- (a) Out-of-the-box functionality support via the Help Desk (telephone or eService via Intergraph's web site) Phone support for all priority levels of software errors is available on normal business days from 7AM – 7PM Central Time, excluding Intergraph-observed holidays. When the software error is considered to be Critical (meaning production is down), then phone support is available after-hours and on Intergraph-observed holidays.
- (b) Access to all published software Upgrades, updates, fixes and enhancements
- (c) Twenty-four-hour-per-day/seven-day-per-week access to problem Knowledge Base, an on-line self-help tool
- (d) Complete problem diagnostic support (This often extends to data related problems that have nothing to do with Intergraph software issues. It should be noted that when Intergraph solves a data related problem, it will provide the instructions for solving the problem to the customer but not the actual solution. For example, if a customer has difficulty in performing a bundle adjustment due to a data problem, Intergraph will instruct the customer on the proper steps to solve the problem, but will not, in general, provide the results of the adjustment.)

Services are limited to the specific Security, Government & Infrastructure products listed on the Quote and functioning on the appropriate Intergraph-supported operating system.

Intergraph will notify Customer when Upgrades are made available for any Covered Products for which Premium Service has been purchased. Upgrades are shipped upon Customer request.

Premium Service is only available for the current version and the one version prior to the current version of a particular Security, Government & Infrastructure software product.

Premium Service may not be available for all software products.

A.1.2 Standard Service

Standard Software support will be provided to the Customer during the hours of 7:00 a.m. to 7:00 p.m. Central Time, Monday through Friday, excluding Intergraph-observed holidays.

Standard Service will include and be limited to the following for Security, Government & Infrastructure software products listed on the Quote as having Standard level support under the Agreement:

- (a) Out-of-the-box functionality support via the Help Desk (telephone or eService via Intergraph's web site) Phone support for all priority levels of software errors is available on normal business days from 7AM – 7PM Central Time, excluding Intergraph-observed holidays.
- (b) Access to all published software Upgrades, updates, fixes and enhancements
- (c) Twenty-four-hour-per-day/seven-day-per-week access to problem Knowledge Base, an on-line self-help tool
- (d) Complete problem diagnostic support (This often extends to data related problems that have nothing to do with Intergraph software issues. It should be noted that when Intergraph solves a data related problem, it will provide the instructions for solving the problem to the customer but not the actual solution. For example, if a customer has difficulty in performing a bundle adjustment due to a data problem, Intergraph will instruct the customer on the proper steps to solve the problem, but will not, in general, provide the results of the adjustment.)

Services are limited to the specific Security, Government & Infrastructure products listed on the Quote and functioning on the appropriate Intergraph-supported operating system.

Intergraph will notify Customer when Upgrades are made available for any Covered Products for which Standard Service has been purchased. Upgrades are shipped upon Customer request.

Standard Service is only available for the current version and the one version prior to the current version of a particular Security, Government & Infrastructure software product.

Standard Service may not be available for all software products.

A.1.3 Advantage Service

Advantage Service support will be provided to the Customer during the hours of 7:00 a.m. to 7:00 p.m. Central Time, Monday through Friday, excluding Intergraph-observed holidays.

Advantage Service will include and be limited to the following for Security, Government & Infrastructure software products listed on the Quote as having Advantage level support under the Agreement:

- (a) Out-of-the-box functionality support via the Help Desk (telephone or eService via Intergraph's web site) Phone support for all priority levels of software errors is available on normal business days from 7AM – 7PM Central Time, excluding Intergraph-observed holidays.
- (b) Twenty-four-hour-per-day/seven-day-per-week access to problem Knowledge Base, an on-line self-help tool

Services are limited to the specific Security, Government & Infrastructure products listed on the Quote and functioning on the appropriate Intergraph-supported operating system.

With Advantage Service the Customer is not eligible to receive Upgrades or new releases to any software for which Advantage Service is contracted.

Advantage Service may not be available for all software products.

A.2 EXCLUDED SOFTWARE SERVICES

Services are limited to specific software products listed on the Quote and functioning on the appropriate Intergraph supported operating system. Support for the following is outside the scope of this Exhibit and may be available under a different category of Service or through a separate agreement:

- (a) Software malfunctions from causes other than through the ordinary and intended use of the software
- (b) Installation of any software, Upgrades, fixes or releases
- (c) Network configuration
- (d) System-level tuning and optimization
- (e) Programming or software development
- (f) Installation of Custom Interface Software
- (g) Product training

Services provided by Intergraph under this Exhibit shall not include support calls that are necessary due to failure of software not supplied by Intergraph and not covered in the Agreement.

**USER AGREEMENT
BETWEEN
THE CITY OF OVERLAND PARK
AND
THE CITY OF PRAIRIE VILLAGE**

This agreement made and entered into this ____ day of _____, 2008 by and between the City of Overland Park, Kansas, hereinafter referred to as "LEAD AGENCY," and the City of Prairie Village, Kansas, hereinafter referred to as "USER AGENCY."

WHEREAS, the LEAD AGENCY is the administrator of the Computer Aided Dispatch (CAD), Records Management (RMS), and Mobile Data (MDC) systems, hereinafter referred to collectively as "SYSTEM;" and

WHEREAS, the USER AGENCY desires to utilize said SYSTEM; and

WHEREAS, the parties hereto wish to enter into an agreement pursuant to which LEAD AGENCY will allow USER AGENCY access to the SYSTEM for the consideration and upon the terms and conditions herein provided.

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

WHEREAS, the governing bodies of each of the parties have determined to enter into this agreement as authorized by K.S.A. 12-2908; and

NOW, THEREFORE, in consideration of the compensation to be paid to LEAD AGENCY and of the mutual agreements herein contained, the parties hereto have agreed, and hereby agree, the LEAD AGENCY for itself and its successors, and the USER AGENCY for itself, and its successors and assigns or its executors and administrators as follows:

ARTICLE 1. OBLIGATIONS OF LEAD AGENCY

The LEAD AGENCY shall be responsible for providing the servers, server software (I/CAD, I/LEADS, I/MDT), databases, system administration, and necessary interfaces for the SYSTEM. The LEAD AGENCY will be responsible for maintaining the interface to the Kansas City, Missouri ALERT system and to the Johnson County Sheriff's Radio Network Controller (RNC) as long as these connections are necessary. The LEAD AGENCY will also be responsible for maintaining the Intergraph Public Safety supplied interfaces to mugshot systems, fingerprint identification systems, and interfaces between Intergraph Public Safety products. The LEAD AGENCY will further be responsible to execute a maintenance contract for the servers, server software, and the hardware necessary for the operation of the SYSTEM. The LEAD AGENCY shall be responsible to monitor new technology to maintain a technologically current

SYSTEM. Based upon the data gathered, it shall be the sole responsibility of the LEAD AGENCY to determine the hardware and software that will maximize benefits to both the SYSTEM and the USER AGENCY. The LEAD AGENCY shall establish and maintain a protocol for the diagnosis and correction of system errors. The LEAD AGENCY shall establish and coordinate user groups to facilitate communication, direction, and problem solving. The LEAD AGENCY shall have the responsibility to carefully consider and evaluate all requests, suggestions and recommendations that user groups present in writing to the LEAD AGENCY. The LEAD AGENCY must respond to all requests, suggestions and recommendations presented to it by a user group within a reasonable amount of time.

ARTICLE 2. OBLIGATIONS OF USER AGENCY

A. Workstation and Software

The USER AGENCY shall be responsible for providing the required workstations and workstation software. The workstations will be located in Prairie Village, Kansas. The workstation software shall be compatible with the software operating on server of LEAD AGENCY. USER AGENCY shall execute maintenance agreements for the software installation on the equipment used by USER AGENCY to access the SYSTEM.

B. Connection to Network

The USER AGENCY is responsible for establishing a connection to the network of LEAD AGENCY. This includes all acquisition, installation, and maintenance of network connections. USER AGENCY shall provide the physical cabling and software necessary to attach to the network of LEAD AGENCY. This connection will be done at the direction and under the supervision of the Information Technology Department of LEAD AGENCY. No action will be taken relative to this connection without the written consent of LEAD AGENCY.

C. User Agreement for ALERT and KCJIS Access

The USER AGENCY is required to maintain a current user agreement with the Board of Police Commissioners of Kansas City, Missouri for access to the criminal justice information provided on SYSTEM including but not limited to, Alert, the National Crime Information Center (NCIC), Missouri Uniform Law Enforcement System (MULES), Missouri Department of Revenue (DOR), Kansas Department of Revenue (KDOR), the Automated Statewide Telecommunications Records Access (ASTRA), and the National Law Enforcement Telecommunications System (NLETS). The USER AGENCY agrees to abide by all terms and conditions of the user agreement with the Board of Police Commissioners of Kansas City, Missouri. Violation of that agreement shall be considered a violation of this agreement and pursuant to Article 5, is grounds for immediate termination of this agreement. The USER AGENCY further agrees to abide by the policies and procedures set forth in the Memorandum of Agreement regarding the installation and use of KIBRS Gateway software received from the

Kansas Criminal Justice Information System (KCJIS). A violation of those policies and procedures shall be considered a violation of this agreement and pursuant to Article 5, is grounds for immediate termination of this agreement.

D. Dissemination of Information

The USER AGENCY agrees to abide by all federal and state laws and regulations, relating to the collection, storage, retrieval, and dissemination of criminal justice information. Under no circumstances will the USER AGENCY disseminate information entered into the SYSTEM by LEAD AGENCY or any other user agency. The LEAD AGENCY will not disseminate information entered into the SYSTEM by the USER AGENCY.

E. Completeness, Accuracy, Submission, and Security

The USER AGENCY agrees to be responsible for the accuracy, timeliness, and completeness of information entered into or through the SYSTEM by the USER AGENCY. The USER AGENCY agrees to make a good faith effort to maintain the integrity of the I/LEADS Master Name Index, Master Location Index, and Master Property Index. The USER AGENCY is responsible for the submission of criminal offense and criminal arrest data to the State of Kansas or any other entity as is required by law. The USER AGENCY is responsible for managing security of information contained in the databases, as well as the user access and security for its employees.

F. Training

USER AGENCY agrees to train any personnel accessing the SYSTEM according to the training standard provided by Intergraph Public Safety. The USER AGENCY represents and agrees that they assume the responsibility to ensure that all persons operating the software shall be properly qualified, supervised, and trained, and have demonstrated effectively that the operator is proficient to properly access the SYSTEM.

ARTICLE 3. BACKUP SERVER

The LEAD AGENCY and the USER AGENCY may agree to work together to implement and maintain a backup server at the USER AGENCY site. The USER AGENCY will supply this server and have primary responsibility for its maintenance.

ARTICLE 4. TERM

This Agreement shall commence upon the date it is executed, and shall continue in effect for a period of two (2) years. The term of this agreement shall be automatically extended at the end of the initial two (2) year term for a twelve month period, and in a like manner in succeeding years, unless either party notifies the other, in writing, at least sixty (60) days prior to the end of the agreement current at the time, that the party intends to terminate the agreement and it will not be extended.

Notwithstanding the foregoing or any other language contained in this agreement, the USER AGENCY is obligated to pay only such periodic payments or monthly installments thereof as may lawfully be made from funds budgeted and approved for the purpose. USER AGENCY agrees to notify LEAD AGENCY at the earliest possible time of the non-availability of funds from which to make any periodic payment or monthly installment.

In the event the USER AGENCY fails to make any payments due to LEAD AGENCY under this agreement, LEAD AGENCY may at its option immediately thereafter terminate this agreement upon fifteen (15) days written notice from LEAD AGENCY of an overdue payment.

ARTICLE 5. TERMINATION

The LEAD AGENCY or the USER AGENCY may terminate this agreement for any reason upon at least one hundred twenty (120) days notice. If the USER AGENCY fails to comply with terms and conditions of this agreement, the LEAD AGENCY reserves the right to immediately terminate the agreement.

ARTICLE 6. CONSIDERATION

The consideration for this Agreement is calculated on an annual basis. User Agency shall pay the amount of the total maintenance fees for maintenance of the SYSTEM divided by the total number of user agency CAD seats held by all user agencies participating in the SYSTEM and multiplying that number by the number of user agency seats held by USER AGENCY. The consideration is due in monthly installments with the adjusted amount effective August 1 of each year unless another date is mutually agreed upon by the parties.

ARTICLE 7. INDEMNIFICATION

To the extent permitted by law and subject to the immunity and maximum liability provisions of the Kansas Tort Claims Act, the USER AGENCY agrees to indemnify and hold harmless the LEAD AGENCY, and its agents, servants, and employees from and against any and all claims, demands, actions, suits, judgments, and proceedings by others, against all liability, including but not limited to, any liability for damages by reason of or arising out of any false arrests, imprisonment, or any loss, cost expense, or damage arising from, arising out of or in connection with this agreement to the extent that such liability results from the negligent acts or omissions of the USER AGENCY, its employees or agents.

ARTICLE 8. WARRANTY

The SYSTEM is provided without any warranty or condition, expressed or implied. LEAD AGENCY specifically disclaims any implied warranties of title,

merchantability, fitness for a particular purpose, and non-infringement. The USER AGENCY acknowledges that the SYSTEM may not operate totally without interruption and warrants that it shall maintain a manual system adequate to back up the SYSTEM should it become unavailable for use, either planned or unplanned. LEAD AGENCY makes no representations, warranties, or guarantees regarding "up-time" for the SYSTEM. The LEAD AGENCY and THE USER AGENCY both agree to pursue remedies through Intergraph Public Safety to all software problems arising from software provided by Intergraph Public Safety. Remedies for problems arising that are caused by circumstances outside of Intergraph Public Safety's control (network connection issues, user errors, hardware failures, etc.) shall be pursued jointly by the LEAD AGENCY and the USER AGENCY until a resolution is achieved.

ARTICLE 9. NON-DISCRIMINATION

USER AGENCY and LEAD AGENCY, for purposes this section referred to singularly as "AGENCY" and collectively as "AGENCIES", agree that:

1. AGENCIES shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of the work under the present contract because of race, color, religion, age, disability, sex, ancestry, national origin, veteran status or low income.
2. In all solicitations or advertisements for employees, AGENCIES shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission, hereinafter, "Commission."
3. If the AGENCIES fail to comply with the reporting requirements of K.S.A. 44-1031 and amendments thereto, the offending AGENCY shall be deemed to have breached the present agreement it may be canceled, terminated or suspended, in whole or in part, by the contracting agency.
4. If AGENCIES are found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the offending AGENCY shall be deemed to have breached the present agreement and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency.
5. AGENCIES shall include the provisions of Article 9, subsections (1) through (4) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

The provisions of this section shall not apply to a contract entered into by a contractor:

- (a) who employs fewer than four employees during the term of such contract; or
- (b) whose contracts with the AGENCY cumulatively total \$5,000.00 or less during the fiscal year of the AGENCY.

The AGENCIES further agree that they shall abide by the Kansas Age Discrimination In Employment ACT (K.S.A. 44-1111 *et seq.*) and the applicable provision in the Americans With Disabilities Act (42 U.S.C. 1201 *et seq.*) as well as all federal, state and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

IN WITNESS WHEREOF, the parties hereto caused this agreement to be executed by the proper officers and officials.

APPROVED AS TO FORM:

CITY ATTORNEY

CITY OF PRAIRIE VILLAGE, KANSAS

By _____
MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

JOHN J. KNOLL
SENIOR ASSISTANT CITY ATTORNEY

CITY OF OVERLAND PARK, KANSAS

By _____
CARL GERLACH
MAYOR

ATTEST:

MARIAN COOK
CITY CLERK



CITY CLERK DEPARTMENT

Council Committee Meeting Date:
Council Meeting Date: January 20, 2009
Consent Agenda

Consider Ordinance authorizing the purchase of property

RECOMMENDATION

Move the City Council adopt Ordinance 2186 authorizing and providing for the acquisition of real property by purchase located at 3541 Somerset Drive, Prairie Village, Kansas

BACKGROUND

On December 1, 2008, the City Council authorized the purchase of the property located at 3541 Somerset Drive from Highwoods Realty Limited Partnership. The title company has requested this authorization be made as an ordinance. The attached ordinance has been prepared by the City Attorney. The closing for the property is set for Friday, January 16, 2009.

ATTACHMENTS:

Ordinance 2186

PREPARED BY

Joyce Hagen Mundy
City Clerk

Date: January 15, 2009

ORDINANCE NO. 2186

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ACQUISITION OF REAL PROPERTY BY PURCHASE LOCATED AT 3541 SOMERSET DRIVE, PRAIRIE VILLAGE, KANSAS.

WHEREAS, the Governing Body of the City of Prairie City, Kansas, has heretofore approved a contract for the purchase of property described on the attached Exhibit A from Highwoods Realty Limited Partnership.

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

SECTION 1. The purchase of the property legally described on the attached Exhibit A from Highwoods Realty Limited Partnership for the sum of \$200,000 is hereby authorized and approved..

SECTION 2. This Ordinance shall take effect and be in force from and after its passage, approval, and publication as provided by law.

PASSED AND APPROVED January 20, 2009.

Mayor Ronald L. Shaffer

ATTEST:

APPROVED AS TO FORM:

Joyce Hagen Mundy, City Clerk

Catherine Logan, City Attorney

EXHIBIT "A"

Legal Description of the Property

ALL THAT PART OF THE NW 1/4 OF SECTION 27, TOWNSHIP 12, RANGE 25, NOW IN THE CITY OF PRAIRIE VILLAGE, JOHNSON COUNTY, KANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE NW 1/4 OF SAID SECTION 27; THENCE N 0 DEGREES 11' 53" W, ALONG THE WEST LINE OF THE NW 1/4 OF SAID SECTION 27, A DISTANCE OF 39.82 FEET; THENCE N 89 DEGREES 48' 07" E, ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE, A DISTANCE OF 42 FEET, TO A POINT ON THE EAST LINE OF MISSION ROAD, AS NOW ESTABLISHED; THENCE N 0 DEGREES 11' 53" W, ALONG THE EAST LINE OF SAID MISSION ROAD, A DISTANCE OF 619.95 FEET; THENCE S 89 DEGREES 51' 50" E, A DISTANCE OF 175 FEET; THENCE N 0 DEGREES 11' 53" W, A DISTANCE OF 148 FEET, TO A POINT ON THE SOUTH LINE OF SOMERSET DRIVE, AS NOW ESTABLISHED; THENCE S 89 DEGREES 51' 50" E, ALONG THE SOUTH LINE OF SAID SOMERSET DRIVE, A DISTANCE OF 114.57 FEET, TO A POINT OF CURVATURE; THENCE EASTERLY AND NORTHEASTERLY, ALONG THE SOUTH LINE OF SAID SOMERSET DRIVE AND ALONG THE NORTH LINE AND ITS EXTENSION OF LOT 45, BLOCK 1, CORINTH PLACE VILLAS, A SUBDIVISION OF LAND IN THE CITY OF PRAIRIE VILLAGE, JOHNSON COUNTY, KANSAS, SAID LINE BEING ON A CURVE TO THE LEFT HAVING A RADIUS OF 542 FEET AND A CENTRAL ANGLE OF 38 DEGREES 00' 45", A DISTANCE OF 359.59 FEET; THENCE N 37 DEGREES 52' 35" W, ALONG THE SOUTH LINE OF SAID SOMERSET DRIVE AND ALONG THE NORTH LINE OF SAID LOT 45, A DISTANCE OF 2 FEET; THENCE N 52 DEGREES 07' 25" E, ALONG THE SOUTH LINE OF SAID SOMERSET DRIVE AND ALONG THE NORTH LINE OF SAID LOT 45, A DISTANCE OF 100.36 FEET, TO A POINT OF CURVATURE; THENCE NORTHEASTERLY, ALONG THE SOUTH LINE OF SAID SOMERSET DRIVE AND ALONG THE NORTH LINE OF SAID LOT 45, SAID LINE BEING ON A CURVE TO THE RIGHT HAVING A RADIUS OF 4,960 FEET AND A CENTRAL ANGLE OF 3 DEGREES 14' 18", A DISTANCE OF 280.32 FEET; THENCE S 34 DEGREES 08' 50" E, ALONG THE NORTHEASTERLY LINE OF SAID LOT 45, A DISTANCE OF 182.76 FEET; THENCE S 55 DEGREES 51' 10" W, ALONG THE EAST LINE OF SAID LOT 45, A DISTANCE OF 90.39 FEET; THENCE S 0 DEGREES 13' 22" E, ALONG THE EAST LINE OF SAID LOT 45, A DISTANCE OF 132.91 FEET, TO A POINT OF CURVATURE, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING OF SUBJECT TRACT; THENCE SOUTHERLY AND SOUTHWESTERLY, ALONG THE EAST LINE OF SAID LOT 45, SAID LINE BEING ON A CURVE TO THE RIGHT HAVING A RADIUS OF 45 FEET AND A CENTRAL ANGLE OF 70 DEGREES, A DISTANCE OF 54.98 FEET, TO A POINT OF TANGENCY; THENCE S 69 DEGREES 46' 38" W, ALONG THE EAST LINE OF SAID LOT 45, A DISTANCE OF 42.98 FEET; THENCE S 0 DEGREES 13' 22" E, ALONG THE EAST LINE OF SAID LOT 45, A DISTANCE OF 295.13 FEET; THENCE N 79 DEGREES 43' 38" E, A DISTANCE OF 71.09 FEET; THENCE N 0 DEGREES 13' 22" W, A DISTANCE OF 339.71 FEET, TO THE TRUE POINT OF BEGINNING OF SUBJECT TRACT.



PARK AND RECREATION COMMITTEE

Park and Recreation Committee Meeting Date: January 14, 2009
Council Meeting Date: January 20, 2009

Consent Agenda: Consider 2009 Recreation Fee Schedule.

RECOMMENDATION

Park and Recreation Committee recommends the approval of the 2009 Recreation Fee Schedule as written.

BACKGROUND

Per Council direction recreation fees are raised each year to keep pace with salary increases. 2009 Fees reflect the following increases: Resident passes +2.87%; Non-Resident passes + 3.00%; Aquatic Team fees +3.28%; and Tennis +3.8%. The walk up gate fee, daycare fee and daily twilight fee were held the same as 2008. Excerpt of unapproved minutes:

Jim Bernard moved for recommendation to City Council for approval of the 2009 Recreation Fee Schedule as written. Kathy Peterson seconded and it passed unanimously.

FINANCIAL IMPACT

All things held the same as 2008, membership revenues should increase ~\$4900, aquatics teams revenues ~\$830 and Tennis revenues ~\$635.

ATTACHMENTS

Recommended 2009 Recreation Fee Schedule

PREPARED BY

Chris Engel
Assistant to the City Administrator
Date: 1/15/09

January 14, 2009

Staff recommendation

Consider approval of the following fee changes for 2009:

RESIDENT	2008	2009 Recommend	Increase
Household of 4	\$138	\$143	3.62%
- additional members over total of 4	\$5	\$5	0.00%
Two Person Family	\$133	\$136	2.26%
Individual	\$67	\$70	4.48%
Senior	\$50	\$52	4.00%
10 Swim	\$50	\$50	0.00%

NON-RESIDENT			
Household of 4	\$276	\$280	1.45%
- additional members over total of 4	\$5	\$5	0.00%
Individual	\$144	\$150	4.17%
Senior	\$94	\$97	3.19%
Child	\$94	\$97	3.19%
10 Swim	\$55	\$55	0.00%

AQUATICS			
Resident	\$91	\$94	3.30%
additional child	\$86	\$89	3.49%
Non-Resident	\$131	\$135	3.05%
additional child	\$91	\$94	3.30%
Lessons (.5 hr)	\$30	\$30	0.00%

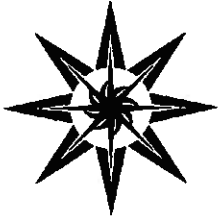
TENNIS			
JTL	\$87	\$89	2.30%
additional child	\$82	\$84	2.44%
Pee-Wee	\$38	\$39	2.63%
Mighty Mites	\$50	\$51	2.00%
Future Stars	\$50	\$51	2.00%
Adult Lessons	\$57	\$59	3.51%
Private (.5 hr)	\$20	\$21	5.00%
Semi-Private (.5 hr)	\$13	\$14	7.69%
Three & a Pro (hour)	\$15	\$16	6.67%

DAILY ADMISSION	\$6	\$6	0.00%
TWILIGHT	\$4	\$4	0.00%
DAYCARE	\$4.50	\$4.50	0.00%
POOL RENTAL	387	\$387	0.00%

**2004 - 2008 Recreation Fee Survey
and 2009 Recommendation**

RESIDENT	2004	2005	2006	2007	2008	5 yr Average Increase	Increase Formula				2009	
							5 yr Trend	Category Average	5% Increase	2.6% Market*	Recommend	Increase
Household of 4	\$126	\$125	\$128	\$134	\$138	1.9%	\$141	\$143	\$145	\$142	\$143	3.62%
Two Person Family	n/a	\$120	\$123	\$129	\$133	2.7%	\$137	\$138	\$140	\$137	\$136	2.26%
Individual	\$57	\$60	\$62	\$65	\$67	3.5%	\$69	\$69	\$70	\$69	\$70	4.48%
Senior	\$41	\$45	\$46	\$48	\$50	4.4%	\$52	\$52	\$53	\$52	\$52	4.00%
10 Swim	\$42	\$40	\$40	\$48	\$50	3.8%	\$52	\$52	\$53	\$52	\$50	0.00%
Cat ave.						3.6%						2.87%
NON-RESIDENT												
Household of 4	\$236	\$250	\$256	\$269	\$276	2.6%	\$283	\$285	\$290	\$284	\$280	1.45%
Individual	\$116	\$130	\$133	\$140	\$144	4.8%	\$151	\$149	\$151	\$148	\$150	4.17%
Senior	\$84	\$85	\$87	\$91	\$94	2.4%	\$96	\$97	\$99	\$97	\$97	3.19%
Child	\$84	\$85	\$87	\$91	\$94	2.4%	\$96	\$97	\$99	\$97	\$97	3.19%
10 Swim	\$47	n/a	n/a	n/a	\$55	-	-	\$57	\$58	\$57	\$55	0.00%
Cat ave.						3.2%						3.00%
AQUATICS												
Resident	\$79	\$81	\$83	\$88	\$91	3.0%	\$94	\$94	\$96	\$94	\$94	3.30%
additional child	\$74	\$76	\$78	\$83	\$86	3.2%	\$89	\$89	\$90	\$89	\$89	3.49%
Non-Resident	\$116	\$119	\$121	\$127	\$131	2.6%	\$134	\$135	\$138	\$135	\$135	3.05%
additional child	\$79	\$81	\$83	\$88	\$91	3.0%	\$94	\$94	\$96	\$94	\$94	3.30%
Lessons (.5 hr)	n/a	n/a	n/a	\$30	\$30	-	-	\$31	\$32	\$31	\$30	0.00%
Cat ave.						3.0%						3.28%
TENNIS												
JTL	\$77	\$79	\$80	\$84	\$87	2.6%	\$89	\$89	\$91	\$90	\$89	2.30%
additional child	\$72	\$74	\$75	\$79	\$82	2.8%	\$84	\$84	\$86	\$85	\$84	2.44%
Pee-Wee	\$34	\$35	\$35	\$37	\$38	2.4%	\$39	\$39	\$40	\$39	\$39	2.63%
Mighty Mites	\$44	\$45	\$46	\$48	\$50	2.7%	\$51	\$51	\$53	\$52	\$51	2.00%
Future Stars	\$44	\$45	\$46	\$48	\$50	2.7%	\$51	\$51	\$53	\$52	\$51	2.00%
Adult Lessons	\$50	\$51	\$52	\$55	\$57	2.8%	\$59	\$59	\$60	\$59	\$59	3.51%
Private (.5 hr)	\$18	\$18	\$18	\$19	\$20	2.2%	\$20	\$21	\$21	\$21	\$21	5.00%
Semi-Private (.5 hr)	\$11	\$11	\$11	\$12	\$13	3.6%	\$13	\$13	\$14	\$14	\$14	7.69%
Three & a Pro (hour)	\$13	\$13	\$13	\$14	\$15	3.1%	\$15	\$15	\$16	\$16	\$16	6.67%
Cat ave.						2.8%						3.80%
POOL RENTAL	\$369	\$350	\$359	\$377	\$387	2.6%	\$397	\$387	\$406	\$387	\$387	2.60%

* 2.6% Market results all rounded up (i.e. \$85.01 = \$86)



PARK AND RECREATION COMMITTEE

Park and Recreation Committee Meeting Date: January 14, 2009
Council Meeting Date: January 20, 2009

Consent Agenda: Consider Recreation Contracts with Johnson County Parks and Recreation District, British Soccer, Omega Soccer and Challenger Sports.

RECOMMENDATION

Park & Recreation Committee recommends the approval of the Recreation Contracts with Johnson County Parks and Recreation District, British Soccer, Omega Soccer and Challenger Sports as written.

BACKGROUND

The City annually contracts with these outside agencies to offer recreation programming in the various parks. The attached contracts are similar to the ones we have signed for the past few years. These contracts were approved by the Park and Recreation Committee on January 14, 2009. Excerpt of unapproved minutes:

Clarence Munsch moved for recommendation to City Council for approval of the Johnson County Day Camp, Pool Usage Agreement, Learn to Swim, British Soccer, Omega Soccer and Challenger Sports contracts as written. Jim Bernard seconded and it passed unanimously.

FINANCIAL IMPACT

There are no direct costs to the City in administering these contracts outside of normal park maintenance costs and minimal administrative staff time. The service providers directly charge and collect fees of which a nominal portion is passed on to the City to cover the above costs.

ATTACHMENTS

Pool Usage Agreement, Learn to Swim Agreement, Day Camp Agreement, Omega, Challenger and British Soccer agreements.

PREPARED BY

Chris Engel
Assistant to the City Administrator
Date: 1/15/09

2009 CITY OF PRAIRIE VILLAGE DAY CAMP AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 2009 by and between the City of Prairie Village, Kansas, hereinafter referred to as "City", and the Johnson County Park and Recreation District, hereinafter referred to as the "District", each party having been organized and now existing under the laws of the State of Kansas.

WHEREAS, K.S.A. 19-2862 authorizes the District to enter into contracts; and the City is authorized to enter into contracts by virtue of Article 12, Section 5, of the Kansas Constitution and K.S.A. 12-101; and

WHEREAS, the District has established and conducts a program to provide for the recreational, cultural, educational and social needs of children; and

WHEREAS, the City owns and operates Harmon Park, hereinafter referred to as the "Park", and the Prairie Village Municipal Swimming Pool, hereinafter referred to as the "Pool"; and

WHEREAS, the District desires to obtain permission of the City to operate a summer day camp program at the Park and to lease from the City the right to use parts of the Pool and the Park in program activities and the City is willing to lease the Park and parts of the Pool to the District; and

WHEREAS, the Governing Body of the City did approve and authorize its Mayor to execute this Agreement by official vote on the ____ day of _____, 2009; and

WHEREAS, the Governing Body of the District did authorize its chairperson to execute this agreement by official vote of said body on the ____ day of _____, 2009.

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

1. The District shall have access to and the use of the Park, including its shelter, restroom and playground facilities, and the Pool for the terms, times and use as mutually agreed upon herein.
2. Duration of Agreement and Termination. This Agreement shall be in effect from **May 27, 2009** through the period ending **August 8, 2009** provided that this Agreement may be terminated by either party, giving at least 30 days' prior written notice to the other party of its intention to terminate this Agreement; further provided that if the City or District shall fail or refuse to comply with any of the obligations or provisions herein agreed, the non-defaulting party shall have the right to notify the defaulting party in writing of such default; and if the defaulting party so notified shall remain in default for 10 days thereafter, the non-defaulting party may elect to cancel this Agreement immediately thereafter.

3. No Legal Entity Created. There will be no separate legal entity created under this Agreement.
4. Purpose of the Agreement. The purpose of this Agreement is to allow the District to operate a summer day camp at the Park and for the City to lease to the District the right to use the Park and parts of the Pool as hereinafter set forth in operating the District's day camp activities.
5. Financing. Except as may be otherwise provided herein, the District shall provide all funding and personnel necessary to manage the day camp program.
6. Acquisition Holding and Disposal of Property. The Park and Pool shall remain the property of the City. The District may not install any fixtures or make any physical changes to the premises and facilities of the Park or Pool except as otherwise provided in this Agreement. Any equipment used in the Park or Pool will either be owned by the City or the District. No equipment is to be jointly owned. In the event that this Agreement is terminated all property shall be returned to the owner agency. The maintenance, repair, replacement and general upkeep of equipment shall be the responsibility of the owner except as otherwise provided by this Agreement.
7. Administration of Program. The day camp program shall be administered, staffed and operated solely by the District.
8. Responsibilities

The District:

- a. Shall operate a fully licensed day camp program for children, ages 5 – 10. It is the responsibility of the District to ensure the program meets all licensing requirements established by the Kansas Department of Health and Environment.
- b. Shall pay the City a shelter rental fee for each day or part of a day of Park usage at a rate of \$20 per day.
- c. Shall pay the City a Pool usage fee for each day of Pool usage. The fee for day camp attendance will be \$4.50 per person per visit and must be paid in advance on dates listed in the Agreement in accordance with Prairie Village Council Policy #620. Pool usage will be as approved by the pool manager.
- d. Shall provide the City an annual report that includes the number of camp participants and a zip code summary of where they reside no later than September 30, 2009.

- e. Will make arrangement to transport participants to another location, not the Municipal Building, when there is inclement weather. City property may be used if necessary during tornado warnings or lightning storms.
- f. Shall provide an adequate number of supervisors at all times to operate the program with at least one adult on the site to manage the staff and program.
- g. Will provide supervised activities to interest the campers.
- h. Will provide trash containers and on each day of camp will collect trash created by participants in and around the facility and deposit in the City's trash dumpster.
- i. Will provide a telephone to eliminate use of City telephones.
- j. Will repair and/or replace property or equipment damage that is directly attributed to participants and/or District staff while the program is in session. This will be required to meet the standards of the City.
- k. Will provide locked storage box to be located in the Park shelter for the storage of camp supplies.
- l. Will provide refrigerator to be located in the Prairie Village Community Center for storage of participant lunches.

The City:

- a. Shall provide the District exclusive use of the park shelter from 7:00 a.m. to 5:30 p.m., each Monday through Friday, from May 29, through August 7, 2009 except as otherwise provided herein.
 - b. Shall provide the District with exclusive use of the Park Shelter on Tuesday, May 27, 2009, from 10:00 a.m. to 8:00 p.m. for parent orientation.
 - c. Shall provide the District with entrance to the Pool per a schedule to be approved by the Pool manager on behalf of the City at the beginning of the swim season.
 - d. Shall allow the District to park a school bus in the south Harmon Park parking lot when not in use for participant transportation from June 1 through August 7, 2009.
9. Indemnification. The DISTRICT agrees to defend, indemnify, and hold harmless the CITY and its agents and/or employees from any and all claims, settlements, and judgments for personal injury, bodily injury, property damage, and/or death arising out of the District's or any of its agents', servants', and/or employees'

negligent acts and/or failures to act in the performance of this Agreement, provided, however, that in no event shall the DISTRICT be subjected to any liability greater than found in the Kansas Tort Claims Act, K.S.A. 75-6101, et seq., and amendments thereto.

- 10. Disclaimer of Liability. The City shall not be liable or obligated to the District for damage incurred by the District upon the premises by fire, theft, casualty, acts of God, civil disaster and such other occurrences and events beyond the control of the City.
- 11. Insurance. The District shall secure and maintain, or have maintained throughout the duration of this Agreement, insurance of such types and in such amounts as may be necessary to protect the District and the City against all hazards or risks generated by the District or any of its agents. The District shall offer to the City evidence of such insurance coverage, and any and all renewals thereof, in the form of a Certificate of Insurance. This Certificate of Insurance shall list the City of Prairie Village as an additional insured. The Certificate of Insurance shall list the following insurance coverage:

Commercial General Liability:	
General Aggregate	\$2,000,000
Products and Complete Operations	\$2,000,000
Personal and Advertisement Injury	\$ 500,000
Fire Damage	\$ 300,000
Each Occurrence	\$ 500,000

Workers Compensation and Employers Liability as determined by Kansas Statutes

12. Miscellaneous Provisions

- a. The District shall pay to the City shelter rental on or before September 30, 2009.
- b. The District shall pay to the City Pool fees on Friday of each week.
- c. Residents of the City shall have permission to use the shelter during camp hours when the District program is off-site for field trips. The District shall provide the City with a notice of off-site scheduling on first day of each week.
- d. All surface cleaning in the Park shelter and restroom shall be the responsibility of the District. Trash removal of general Park trash from containers and general maintenance shall remain the responsibility of the City.

- 13. Verbal Statements Not Binding. It is understood and agreed that the written terms and provisions of this Agreement shall supersede all prior verbal

statements of any and every official and/or other representatives of the City and District, and such statements shall not be effective or be construed as entering into, forming a part of, or altering in any way whatsoever the written Agreement.

14. Inspection of Premises by City. The City shall have the right to inspect the premises and facilities occupied by the District within the Park and the Pool at all reasonable times.
15. Provisions Separable. It is the intent of the parties hereto in the preparation and execution of the Agreement to avoid a conflict with the applicable laws or regulations of the State of Kansas; and if any provision herein is found to be in conflict with the regulation, it is the intent of the parties hereto that such provision shall have no force and effect, and the remainder of the Agreement shall be valid as though such conflicting provision had not been written or made a part hereof.
16. Nonassignability of Agreement. This Agreement shall not be assigned, transferred, or sold, nor the premises and facilities, in whole or part, except with the express written consent of the City.
17. Non-Discrimination Clause. The District shall comply with all applicable state and federal laws in carrying out this Agreement. In connection with the performance of this Agreement, the District agrees to comply with the applicable provisions of all state and federal non-discrimination laws. The District further agrees to not discriminate against any person because of race, religion, color, sex, disability, age, national origin or ancestry in the admission or access to, or participation or employment in, its programs, services and activities.

If the City determines that the District has violated any applicable provision of any state or federal law, or discriminated against any person because of race, religion, color, sex, disability, age, national origin or ancestry in the admission or access to, or participation or employment in, its programs, services and activities, such violation and/or discrimination shall constitute a breach of this Agreement and the City may cancel, terminate or suspend this agreement in whole or in part, pursuant to the terms contained in paragraph 2.

The parties do not intend this provision to subject any party to liability under any state or federal law unless it applies.

IN WITNESS WHEREOF, two copies of the above and foregoing Agreement have been executed by each of the parties on the day and year first written above.

CITY OF PRAIRIE VILLAGE, KANSAS

Date

Ronald L. Shaffer, Mayor

ATTEST:

Joyce Hagen Mundy, City Clerk

APPROVED AS TO FORM:

Catherine Logan, City Attorney

JOHNSON COUNTY PARK AND
RECREATION DISTRICT BOARD OF PARK
AND RECREATION COMMISSIONERS

Date

Gary K. Montague, Chair

ATTEST:

Anthony L. Adams, Secretary

APPROVED AS TO FORM:

Bill Tuley, District Legal Counsel

TO: City of Prairie Village

FROM: Johnson County Park and Recreation District

RE: 2009 Request for Large Pavilion at Harmon Park for Day Camp

DAY	DATE	TIME	USE
Wednesday,	May 27	6:00 p.m. - 8:00 p.m.	Set-up / Parent Orientation
Friday,	May 29	10 a.m. - 5:00 p.m.	Set-up
Monday-Friday,	June 1 - June 5	7:00 a.m. - 5:30 p.m.	Day Camp
Monday,-Friday,	June 8 - June 12	7:00 a.m. - 5:30 p.m.	Day Camp
Monday-Friday,	June 15 - June 19	7:00 a.m. - 5:30 p.m.	Day Camp
Monday-Friday,	June 22 - June 26	7:00 a.m. - 5:30 p.m.	Day Camp
Monday, Thursday	June 29 - July 2	7:00 a.m. - 5:30 p.m.	Day Camp
Monday-Friday,	July 6 - July 10	7:00 a.m. - 5:30 p.m.	Day Camp
Monday-Friday,	July 13 - July 17	7:00 a.m. - 5:30 p.m.	Day Camp
Monday-Friday,	July 20 - July 24	7:00 a.m. - 5:30 p.m.	Day Camp
Monday-Friday,	July 27 - July 31	7:00 a.m. - 5:30 p.m.	Day Camp
Monday-Friday,	August 3 - August 7	7:00 a.m. - 5:30 p.m.	Day Camp

The following is list of dates and times the Summer Escapades Camp, located at the large Pavilion and run by Johnson County Park and Recreation District, would like to swim at Prairie Village Pool for the 2009 pool season:

Tuesday, June 2	1:00 p.m. until 3:00 p.m.
Wednesday, June 3	2:00 p.m. until 4:00 p.m.
Thursday, June 4	1:00 p.m. until 3:00 p.m.
Tuesday, June 9	1:00 p.m. until 3:00 p.m.
Wednesday, June 10	2:00 p.m. until 4:00 p.m.
Thursday, June 11	1:00 p.m. until 3:00 p.m.
Tuesday, June 16	1:00 p.m. until 3:00 p.m.
Wednesday, June 17	2:00 p.m. until 4:00 p.m.
Thursday, June 18	1:00 p.m. until 3:00 p.m.
Tuesday, June 23	1:00 p.m. until 3:00 p.m.
Wednesday, June 24	2:00 p.m. until 4:00 p.m.
Thursday, June 25	1:00 p.m. until 3:00 p.m.
Tuesday, June 30	1:00 p.m. until 3:00 p.m.
Wednesday, July 1	1:00 p.m. until 3:00 p.m.
Thursday, July 2	1:00 p.m. until 3:00 p.m.
Tuesday, July 7	1:00 p.m. until 3:00 p.m.
Wednesday, July 8	2:00 p.m. until 4:00 p.m.
Thursday, July 9	1:00 p.m. until 3:00 p.m.
Tuesday, July 14	1:00 p.m. until 3:00 p.m.
Wednesday, July 15	2:00 p.m. until 4:00 p.m.
Thursday, July 16	1:00 p.m. until 3:00 p.m.
Tuesday, July 21	1:00 p.m. until 3:00 p.m.
Wednesday, July 22	2:00 p.m. until 4:00 p.m.
Thursday, July 23	1:00 p.m. until 3:00 p.m.
Tuesday, July 28	1:00 p.m. until 3:00 p.m.
Wednesday, July 29	2:00 p.m. until 4:00 p.m.
Thursday, July 30	1:00 p.m. until 3:00 p.m.
Tuesday, August 4	1:00 p.m. until 3:00 p.m.
Wednesday, August 5	2:00 p.m. until 4:00 p.m.
Thursday, August 6	1:00 p.m. until 3:00 p.m.

2009 CITY OF PRAIRIE VILLAGE POOL USAGE AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of February, 2009 by and between the City of Prairie Village, Kansas, hereinafter referred to as "City", and the Johnson County Park and Recreation District, hereinafter referred to as the "District", each party having been organized and now existing under the laws of the State of Kansas.

WHEREAS, K.S.A. 19-2862 authorizes the District to enter into contracts; and the City is authorized to enter into contracts by virtue of Article 12, Section 5, of the Kansas Constitution and K.S.A. 12-101; and

WHEREAS, the District has established and conducts a program to provide for the recreational, cultural, educational and social needs of senior citizens; and

WHEREAS, the City owns and operates Harmon Park, hereinafter referred to as the "Park", and the Prairie Village Municipal Swimming Pool, hereinafter referred to as the "Pool"; and

WHEREAS, a coordinated approach to the provision of recreational services to the population is most effective and efficient; and

WHEREAS, co-sponsorship of aquatics programs held at the Pool would ensure a coordinated approach to the provision of the needed services; and

WHEREAS, the Governing Body of the City did approve and authorize its Mayor to execute this agreement by official vote of said body on the ____ day of _____, 2009; and

WHEREAS, the Governing Body of the District did authorize its chairperson to execute this agreement by official vote of said body on the ____ day of _____, 2009.

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

1. The District shall have access to and the use of the Pool for the term, times and use as hereinafter specifically defined.
2. Duration of Agreement and Termination. This agreement shall be in effect from **May 26, 2009** through the period ending **September 3, 2009** provided that this agreement may be terminated by either party, giving at least 30 days' prior written notice to the other party of its intention to terminate this agreement; further provided that if the City or District shall fail or refuse to comply with any of the

obligations or provisions herein agreed, the affected party shall have the right to notify the other party in writing of such default; and if the party so notified shall remain in default for 30 days thereafter, the affected party may elect to cancel this agreement immediately thereafter.

3. No Legal Entity Created. There will be no separate legal entity created under this agreement.
4. Purpose of the Agreement. The purpose of this agreement is to facilitate cooperation in the establishment and operation of an aquatics program and to define responsibilities for the operation, finances, publicity, facility maintenance and other matters pertaining to the program.
5. Financing. Except as may be otherwise provided herein, the District shall provide all funding and personnel necessary to manage the aquatics program.
6. Acquisition Holding and Disposal of Property. The Pool shall remain the property of the City. The District may not install any fixtures or make any physical changes to the premises and facilities of the Pool. No equipment is to be jointly owned. In the event that this agreement is terminated all property shall be returned to the owner agency. The maintenance, repair, replacement and general upkeep of equipment shall be the responsibility of the owner except as otherwise provided by this agreement. The City will permit the District the use of the pool lanes during the Master Swim practice. The District will be responsible for the setup and take down each evening and for any maintenance or repair.
7. Administration of Agreement. The District's aquatics program at the Prairie Village Municipal Swimming Pool shall be known as a co-sponsored program between the District and the City.
8. Responsibilities

The District:

- a. Shall operate an aquatics program for adults 16 and over and senior citizens age 50 or older. Only persons qualified to conduct aquatics programs will be permitted to instruct the classes. It is the responsibility of the District to ensure that the instructors are qualified.
- b. Shall provide an annual report to include the number of programs, the number of people served, the residency of persons served and inventory of equipment, the class fee structure and other information as may be requested by the City.

- c. Shall provide a printed list, for review and approval by the City, of proposed facility improvements or program enhancements to benefit aquatic program participants utilizing the Prairie Village Swimming Pool.

The City:

- a. Shall provide access to the Pool during the following days and times:
 - 1. Water Exercise (50+) – Monday and Wednesday
5:30–6:30 p.m. June 1 to August 26, 2009
 - 2. Master’s Swim Workouts – Monday through Thursday
6:30–8:00 p.m. May 26 to September 3, 2009

9. Indemnification. The District agrees to defend, indemnify, and hold harmless the City and its agents and/or employees from any and all claims, settlements, and judgments for personal injury, bodily injury, property damage, and/or death arising out of the District’s or any of its agents’, servants’, and/or employees’ negligent acts and/or failures to act in the performance of this Agreement provided, however, that in no event shall the District be subjected to any liability greater than found in the Kansas Tort Claims Act, K.S.A. 75-6101, et seq., and amendments thereto.

10. Disclaimer of Liability. The City shall not be liable or obligated to the District for damage insured to the District upon the premises by fire, theft, casualty, acts of God, civil disaster and such other occurrences and events beyond the control of the City.

11. Insurance. The District shall secure and maintain, or have maintained throughout the duration of this contract, insurance of such types and in such amounts as may be necessary to protect the District and the City against all hazards or risks generated by the District or any of its agents. The District shall offer to the City other evidence of such insurance coverage, and any and all renewals thereof, in the form of a Certificate of Insurance. This Certificate of Insurance shall list the City of Prairie Village as an additional insured. The Certificate shall list the following insurance coverage:

Commercial General Liability	
General Aggregate	\$2,000,000
Products	\$2,000,000
Personal and Advertisement Injury	\$ 500,000
Personal & Advertisement (each occurrence)	\$ 500,000
Fire Damage	\$ 300,000

Workers Compensation and Employers Liability as determined by Kansas Statutes

12. Miscellaneous Provisions

- a. For 50+ and Adult Water Exercise programs, the District agrees to pay to the City a “pool use fee” in the amount of \$9.00 per hour. Each program will be limited to the use of two (2) lap lanes during each class period.
 - b. For the Master’s program, the District agrees to pay to the City a “pool use fee” in the amount of \$19.00 per participant per month and allow access to a maximum of four (4) lap lanes from 6:30 p.m. to 8:00 p.m. If the pool manager requires participants to leave the pool due to overcrowding, a partial refund of the use fee may be made.
 - c. By the terms of this agreement, the aquatics program shall be known as a Co-sponsored program; all written and verbal publicity should reflect the Co-sponsorship. Every effort shall be made by both agencies to inform the participants and public of the Co-sponsorship arrangement.
13. Verbal Statements Not Binding. It is understood and agreed that the written terms and provisions of this agreement shall supersede all prior verbal statements of any and every official and/or other representatives of the City and District, and such statements shall not be effective or be construed as entering into, forming a part of, or altering in any way whatsoever the written agreement.
 14. Inspection of Premises by City. The City shall have the right to inspect the premises and facilities occupied by the District within the Park at all reasonable times.
 15. Provisions Separable. It is the intent of the parties hereto in the preparation and execution of the agreement to avoid a conflict with the applicable laws or regulations of the State of Kansas; and if any provision herein is found to be in conflict with the regulation, it is the intent of the parties hereto that such provision shall have no force and effect, and the remainder of the agreement shall be valid as though such conflicting provision had not be written or made a part hereof.
 16. Nonassignability of Agreement. This agreement shall not be assigned, transferred, or sold, nor the premises and facilities corporation, in whole or part, except with the express written consent of the City.
 17. Non-Discrimination Clause. The District shall comply will all applicable state and federal laws in carrying out this agreement. In connection with the performance of this agreement, the District agrees to comply with the applicable provisions of all state and federal non-discrimination laws. The District further agrees to not discriminate against any person because of race, religion, color, sex, disability, age, national origin or ancestry in the admission or access to, or participation or employment in, its programs, services and activities.

If the City determines that the District has violated any applicable provision of any state or federal law, or discriminated against any person because of race, religion, color, sex, disability, age, national origin or ancestry in the admission or access to, or participation or employment in, its programs, services and activities, such violation and/or discrimination shall constitute a breach of contract and the City may cancel, terminate or suspend this agreement in whole or in part.

The parties do not intend this provision to subject any party to liability under state or federal laws unless it applies.

IN WITNESS WHEREOF, two copies of the above and foregoing agreement have been executed by each of the parties on the day and year first written above.

CITY OF PRAIRIE VILLAGE, KANSAS

Date

Ronald L. Shaffer, Mayor

ATTEST:

APPROVED AS TO FORM:

Joyce Hagen Mundy, City Clerk

Catherine Logan, City Attorney

JOHNSON COUNTY PARK AND
RECREATION DISTRICT BOARD OF
PARK AND RECREATION
COMMISSIONERS

Date

Gary K. Montague, Chair

ATTEST:

Anthony L. Adams, Secretary

APPROVED AS TO FORM:

Bill Tuley, District Legal Counsel

Johnson County Park and Recreation District Learn to Swim Program 2009 Participation Agreement

As a Community Service, the Johnson County Park and Recreation District (the "District") agrees to provide the Learn to Swim program for the City of Prairie Village (the "City.") The program will be held at the Prairie Village Pool Complex at 7711 Delmar in Prairie Village, Kansas.

1. The District will provide:
 - The Learn to Swim Program.
 - Private/Semi-Private Lessons
 - The scheduling for the lessons in the program.
 - Sufficient certified staff.
 - A staff member to monitor and control the entrance.
 - Promotion of the program.
 - Registration of the participants.
 - Equipment needed for the program.
 - Emergency action plans and first aid kit.

The City will provide a temporary barrier at the entrance to assist staff in the control of patrons at the entrance.

2. The District will have use of the facility beginning June 8, 2009 and ending August 14, 2008. Morning lessons will be held in the Yard Pool and Diving Well until 11 a.m. At 11 a.m. the Splash Down Pool and the Meter Pool will be used for lessons. Evening Lessons will use the Meter Pool (there will be no diving or deep water skills during the evening.) Exceptions can be made at the discretion of the City Management. The Adult Pool is off-limits during lessons.
 - Lessons are offered Monday through Thursday, with Fridays to be held for make up and training days as needed.
 - Morning lessons are held between 8:30 a.m. and 1:00 p.m. Session dates:
 1. June 8 – June 18
 2. June 22 – July 2
 3. July 6 – July 16
 4. July 20 – July 30
 5. August 3-August 14
 - Evening lessons held between 5:00 p.m. and 6:45 p.m. Session dates:
 1. June 8 – June 18
 2. June 22 – July 2
 3. July 6 – July 16
 4. July 20 – July 30
3. The sessions will be:
 - Eight (8) sessions, each thirty (30) minutes long, for all Parent & Child, Pre-school and Learn to Swim Levels 1-6

4. The courses offered by the District consist of:
 - Parent & Child Levels 1 & 2
 - Pre-School Levels 1, 2 & 3
 - Level 1: Water Exploration (ages 4 & Up)
 - Level 2: Primary Skills (ages 5 & older)
 - Level 3: Stroke Readiness (ages 5 and older)
 - Level 4: Stroke Development (ages 5 and older)
 - Level 5: Stroke Refinement (ages 5 and older)
 - Level 6: Skill Proficiency (ages 5 and older)
 - Level 6: Fitness Swimmer (ages 6 and older)
 - Level 6: Fundamentals of Diving (ages 6 and older)
 - Level 6: Personal Water Safety (ages 5 and older)
 - Adult Lessons
 - Private Lessons (to be held during group lesson times only)
 - **Names of Courses may change with the update in March 2009**
5. Course Fees will be:
 - \$48 Learn to Swim per Session (Johnson County Resident)
 - \$53 Learn to Swim per Session (Non-Johnson County Resident)
 - \$40 for Two 30-minute Private Lessons (Johnson County Resident)
 - \$44 for Two 30-minute Private Lessons (Non-Johnson County Resident)
 - \$50 for Two 30-minute Semi-private Lessons (Johnson County Resident)
 - \$55 for Two 30-minute Semi-private Lessons (Non-Johnson County Resident)
6. The District Learn to Swim program will conduct sessions out of the water for days of inclement weather, facility problems, or insufficient staffing.
7. The District will establish a routine to take a water test before the use of the pool to check for the chemical balance. This will aid in maintaining safety standards for the participants.
8. Non-Discrimination Clause

The District shall comply with all applicable state and federal laws in carrying out this agreement.

In connection with the performance of this agreement, the District agrees to comply with the applicable provisions of all state and federal discrimination laws.

The District further agrees not to discriminate against any person because of race, religion, color, sex, disability, age, national origin or ancestry in the admission or access to, or participation or employment in, its programs, services and activities.

If the City determines that the District has violated any applicable provision of any state or federal law, or has discriminated against any person because of race, religion, color, sex, disability, age, national origin or ancestry in the admission or access to, or participation or employment in its programs, services and activities, such violation

and/or discrimination shall constitute a breach of contract and the City may cancel, terminate or suspend this agreement in whole or in part. The parties do not intend this provision to subject any party to liability under state or federal laws unless it applies.

9. The District shall furnish to the City a valid Certificate of Insurance providing the following coverage:

General Aggregate	\$2,000,000
Products and Completed Operations	\$2,000,000
Personal/Advertisement Injury	\$ 500,000
Fire Damage	\$ 300,000
Each Occurrence	\$ 500,000

Workers Compensation and Employers Liability as determined by Kansas Statutes.

Copies of said policies shall be provided to the City on or before May 31, 2009.

The District agrees to defend, indemnify, and hold harmless the City and its agents and/or employees from any and all claims, settlements, and judgments for personal injury, bodily injury, property damage and/or death arising out of the District's or any of its agents', servants' and/or employees' negligent acts and/or failures to act in the performance of this Agreement provided, however, that in no event shall the District be subjected to any liability greater than found in the Kansas Tort Claims Act, K.S.A. 75-6101, et seq., and amendments thereto.

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

This Agreement evidences the entire agreement between parties hereto and supersedes any and all prior agreements and understandings between the parties pertaining to the provision of swimming lessons at the Prairie Village Pool Complex.

Changes can be made to any part of this agreement with the consent of both parties. If the agreement is suitable to the parties involved, please sign below.

JOHNSON COUNTY PARK AND
RECREATION DISTRICT BOARD OF PARK
AND RECREATION COMMISSIONERS

Date

Gary K. Montague, Chair

APPROVED AS TO FORM

Bill Tuley, District Legal Counsel

CITY OF PRAIRIE VILLAGE, KANSAS

Date

Mayor Ronald L. Shaffer

ATTEST:

Joyce H. Mundy, City Clerk

APPROVED AS TO FORM:

Catherine Logan, City Attorney

2009 BRITISH SOCCER CAMP AGREEMENT/CONFIRMATION

The agreement made in 2009 between British Soccer a division of CHALLENGER SPORTS CORP, a corporation organized and existing under the laws of the State of Kansas, located at 8263 Flint, Lenexa, KS 66214 and herein referred to as "British Soccer" and:

_____ herein referred to as "The Club"
 Organization Name City & State

WHEREAS:

1.0 Conditions: "British Soccer" agrees that it will conduct and maintain an instructional soccer camp in accordance with the following:

- Coaches will hold the minimum of a Football Association Coaching License/Challenger/British Soccer Coaching certification.
- There will be at least one qualified coach for each coaching group (12-16) of campers.
- Each camp shall include five daily sessions Monday through Friday or other as specified.

1.1 Term of Contract :

Challenger Camp fees: 1.5 hours \$69 3 hours \$99 City of Prairie Village to add their \$ amount to these prices.

(For any camper registering after the ball and shirt order has been taken 10 days before camp, there will be a \$10 late fee charged).

1.2 Provisions: "British Soccer" shall provide the following to the Club:

- A certificate of general liability coverage to all camps.
- Promotional literature, posters and operational and marketing support.
- A hand stitched soccer ball and T-shirt to each camper who registers for camp – unless otherwise stated.
- A replica British Soccer jersey to all campers who register on line 45 days before camp.
- All host families will receive a rebate of up to \$80 towards the cost of their camp fees.

2.0 Conditions accepted by the "The Club":

- To provide an outdoor soccer field or training area suitable for instructional purposes. Approximate requirements - one field per 30 campers.

2.1 Non Solicitation: "The Club" agrees that it will not solicit the services of any member of the "British Soccer" Coaching staff for employment independent of "British Soccer."

The terms and/or conditions of this contract may be amended by Challenger Sports with 30 day written notice.

Camp Week	Week of Choice	Camp Week	Week of Choice	Camp Week	Week of Choice
May 25-May 29	n/a	June 29 – July 3	n/a	Aug 3 – Aug 7	n/a
June 1 – June 5	Week 1	July 6 – July 10	Week 2	Aug 10- Aug 14	n/a
June 8 – June 12	n/a	July 13 – July 17	n/a	Aug 17 – Aug 21	n/a
June 15 – June 19	n/a	July 20 – July 24	n/a	Aug 24 – Aug 28	n/a
June 22 – June 26	n/a	July 27 – July 31	n/a	Aug 31 – Sept 4	n/a

PLEASE PRINT: Name of Authorized officer for sponsoring organization: _____

Address: _____ City: _____ St: _____ Zip: _____

Daytime tel: () _____ Eve. () _____ email: _____

 Signature of authorized officer of sponsoring organization Date: _____

 Signature of British Soccer Officer Date: _____

2009 AGREEMENT BETWEEN THE CITY OF PRAIRIE VILLAGE AND OMEGA SOCCER CAMP ORGANIZATION

The undersigned, Omega Soccer Camp Organization (hereinafter termed "Omega") and the City of Prairie Village (hereinafter termed "City"), enter into the following rental agreement with regard to the dates and terms specified below. This rental agreement is for the purpose of conducting a soccer camp for the children of Prairie Village and its surrounding area.

Omega and the City do hereby agree to the following terms:

Facility Reserved:

Omega and the City agree that the camp will be held at Franklin Park, which is located in the City of Prairie Village, Kansas. Soccer fields A and B will be reserved for use by Omega.

Camp Date:

The camps will take place from: June 15-19, June 22-25 and July 6 - 10.

Facility Use/Condition:

The City will allow Omega use of said facility from 8:00 - 4:00 p.m. daily. This applies to all applicable areas of said facility.

In the event of any property damage caused directly through the negligence of or the act or actions of Omega or participants in said camp program, the City will notify Omega within five (5) business days of the damage and any related claims against Omega, and Omega shall be liable for the costs of repair or replacement thereof.

Rental Payment:

Omega agrees to pay a rental fee of *twelve U.S. dollars (\$12.00)* per student enrolled in each camp. Payment shall be delivered to the City no later than July 31, 2009. This shall be the only payment required in consideration of the use of said site for said camp. Omega will provide enrollment rosters as proof of camp attendance.

Insurance:

Omega will provide proof of insurance prior to the first day of camp. The City will be listed as "Additional Insured" and a copy of the insurance certificate will be sent to the City.

The City shall be free from all liabilities and claims for damages and/or suits for or by reason of any injury or injuries to any person or persons or property of any kind whatsoever, whether the person or property of Omega, its agents, employees, or camp attendants, from any cause or causes whatsoever while in or upon the facility or any part thereof during the term of the camp or occasioned by any occupancy or use of the facility or any activity carried on by Omega in connection therewith. Omega agrees to indemnify and save harmless the City from any claim or loss by

reason of Omega, or any camp attendant under the supervision of Omega, or person connected thereto, use or misuse of the facility and from any claim or loss by reason of any accident or damages, during the camp, to any person or property happening on or in said facility.

The Agreement

When signed by an authorized representative of both parties, this document accurately reflects the entire and only agreement between these parties. This agreement may be modified only in writing signed by an authorized representative of each party. This agreement also contains within the option to renew annually upon the written consent of both parties.

Acknowledged and agreed:

Omega Soccer Camp Organization Representative

Date

City of Prairie Village Representative
Ronald L. Shaffer, Mayor

Date

AGREEMENT BETWEEN THE CITY OF PRAIRIE VILLAGE AND CHALLENGER SPORTS

The undersigned, Challenger Sports, a corporation organized and existing under the laws of the State of Kansas, located at 8263 Flint, Lenexa, KS 66214 (hereinafter termed "Challenger") and the City of Prairie Village, a municipal corporation (hereinafter termed "City"), enter into the following rental agreement with regard to the dates and terms specified below. This rental agreement is for the purpose of conducting flag football camps for the children of Prairie Village and its surrounding area.

Challenger and the City do hereby agree to the following terms:

Services Provided:

Challenger shall make available, conduct and maintain (1) instructional flag football camp in accordance with the terms of this Agreement. There will be at least one qualified coach for each coaching group (12-15 campers). The morning camp shall consist of five (5) sessions of at least three (3) hours each. Challenger shall not be required to conduct the camps if it is determined by mutual agreement of the parties that there is not sufficient interest among participants to justify the camp.

Cost of Camp:

The cost for each participant for the morning camp sessions during the week of June 22-26 shall be \$90. Challenger shall be in charge of collecting these fees from participants.

Facility Reserved:

Challenger and the City agree that the camp will be held at Meadowlake Park, which is located in the City of Prairie Village, Kansas.

Camp Date:

The camps will take place from June 22, 2009 through June 26, 2009. In the event of a cancelled day of camp due to weather, the City will allow the use of said facility at no additional cost to Challenger for make-up days mutually agreed upon.

Facility Use/ Condition:

The City will allow Challenger exclusive use of said facility from 9:00 a.m.-12:00 p.m. This applies to all applicable areas of said facility, including, but not limited to, all playing field areas, restrooms and covered shelter areas. However, Challenger understands that the facility is a public park and the residents of Prairie Village may reasonably use the portions of the facility not in use by Challenger.

The City also agrees to prepare the facility (i.e. Proper lawn care, sanitize restrooms and shelters, removal of trash, etc.) prior to the first day of camp. Challenger and the City will agree upon the satisfactory condition of the facility within seven (7) days prior to the start of the first day of camp. Any additional facility maintenance agreed upon by both parties will be provided by the City throughout the camp week at no additional charge.

In the event of any property damage caused directly through the negligence of or the act or actions of Challenger or participants in said camp program, the City will notify Challenger within five (5) business days of the damage and any related claims against Challenger; and Challenger shall be liable for the costs of repair or replacement thereof.

Rental Payment:

Challenger agrees to pay a rental fee of Ten Dollars (\$10.00) per student enrolled in said morning camps. This fee is intended to reimburse the City for its costs in making the facility available for the

camps. Challenger will pay the City of Prairie Village by check no later than September 1, 2009. This shall be the only payment required in consideration of the use of said site for said camp. Challenger, as proof of camp attendance, will provide enrollment rosters.

Insurance:

Challenger will provide proof of insurance prior to the first day of camp. The City will be recognized as a Certificate Holder and a copy of the insurance certificate will be sent to the City.

Liability:

The City shall be free from all liabilities and claims for damages and/or suits for or by reason of any injury or injuries to any person or persons or property of any kind whatsoever, whether the person or property of Challenger, its agents, employees, or camp attendants, from any cause or causes whatsoever while in or upon the facility or any part thereof during the term of the camp or occasioned by any occupancy or use of the facility or any activity carried on by Challenger in connection therewith. Challenger agrees to indemnify and hold harmless the City from any claim or loss by reason of Challenger's, or any camp attendant under the supervision of Challenger, or person connected thereto, use or misuse of the facility and from any claim or loss by reason of any accident or damages, during the camp, to any person or property happening on or in said facility.

The Agreement:

When signed by an authorized representative of both parties, this document accurately reflects the entire and only agreement between these parties. This agreement may be modified only in writing signed by an authorized representative of each party. This constitutes as an agreement between Challenger and the City with respect to the 2009 Challenger Camp season, from May 1, 2009 to September 1, 2009, and supersedes all prior representations and agreements. This agreement also contains within the option to renew annually upon the written consent of both parties.

Challenger Representative

Date

City of Prairie Village Representative
Ronald L. Shaffer, Mayor

Date

Attest:

Joyce H. Mundy, City Clerk

Approved as to Form:

Catherine Logan, City Attorney

COUNCIL COMMITTEE OF THE WHOLE
January 5, 2009

The Council Committee of the Whole met on Monday, January 5, 2009 at 6:00 p.m. The meeting was called to order by Council President David Voysey with the following members present: Mayor Shaffer, Al Herrera, Bill Griffith, Ruth Hopkins, Michael Kelly, Andrew Wang, Laura Wassmer, Dale Beckerman, Charles Clark, David Morrison, Diana Ewy Sharp and David Belz. Staff members present: Quinn Bennion, City Administrator; Wes Jordan, Chief of Police; Tom Trienens, Manager of Engineering Services; Katie Logan, City Attorney; Dennis Enslinger, Assistant City Administrator; Karen Kindle, Finance Director; Chris Engel, Assistant to the City Administrator; Suzanne Lownes and Joyce Hagen Mundy, City Clerk.

David Belz moved the approval of the Consent Agenda for Monday, January 5, 2009:

- **Approve Engineering Change Order #1 (final) with Larkin Group for an increase of \$2,074.25 for Project 190653: El Monte Fountain Improvements bringing the final contact amount to \$9,074.25.**
- **Approve Engineering Change Order #8 (final) with HNTB Corporation for a decrease of \$19,480.46 to Project 190864: 2008 Street Resurfacing Program, Project 190863: Shawnee Mission East Parking Improvements and Project 190868: 2008 CARS - Roe Avenue 91st to Somerset Drive bringing the final contract amount to \$353,369.54.**
- **Approve Engineering Change Order #2 (final) with George Butler Associates for Project 190721: 2009 Storm Drainage Repair Program for an increase of \$7,300.00 bringing the final contract amount to \$106,300.00.**

COUNCIL ACTION REQUIRED
CONSENT AGENDA

- **Approve the purchase of five 2009 Dodge Chargers from Odessa Dodge at a cost of no more than \$23,000 per vehicle and one 2009 Dodge Charger at a cost of no more than \$21,000 with funding from the 2009 Public Safety Budget.**

COUNCIL ACTION TAKEN
01/05/2009

The motion was voted on and passed unanimously.

COU2009-02 Consider submittal of Projects to MARC for Consideration for Federal Stimulus Package

Tom Trienens reported the City has been requested by Mid-American Regional Council (MARC) to submit potential stimulus package projects for the proposed economic stimulus package by the new administration. This package is focused on infrastructure investment, which Congress may consider and put in place in early 2009. The exact details of the package are unknown, but comments and discussions suggest that:

- It could be substantial, as much as \$500 billion or more over time
- A large portion will be transportation investments, but there may be significant funds for other types of infrastructure such as building retrofits and public works projects.

- The top funding criterion will be the ability to get projects in motion quickly, perhaps with a 180-day time limit to be under contract — at least for the first phase.
- The immediate goal is to create jobs, but there also may be an emphasis on rebuilding the nation’s crumbling infrastructure and investing in projects that will have a long-term impact.

MARC has received requests to consolidate potential investments into a comprehensive projection of the impact of a major infrastructure investment program in the Kansas City region. This list could help the region advocate for metro needs at the state and federal levels, and prepare us to move quickly once a stimulus package is approved. The projects will fall into the following categories:

- Transportation projects including:
 - Streets and roads
 - Bridges
 - Public transit
 - Airports
 - Trails
- Public works including:
 - Sewers
 - Water
 - Capital projects to stimulate economic development or serve low-income areas
- Public facility renovations, construction or energy retrofit

Staff are recommending the following projects be submitted by the City:

- 1) 83rd Street Rehabilitation: Roe Avenue to Somerset Drive & 83rd Street/Delmar Drainage
- 2) Roe Avenue: 83rd Street to Somerset Drive
- 3) 75th Street: Mission Road to Stateline Road
- 4) Mission Lane Bridge
- 5) Municipal Complex energy improvements
- 6) Trail System

Diana Ewy Sharp questioned if there should be a regional focus or individual city. She suggested the Booth/Cambridge/79th Street intersection as a possible project.

Quinn Bennion responded MARC is coordinating the submittal; however, at this time he is not aware of any joint city projects. He hopes when the final selection is submitted by MARC there would be some joint projects. He noted very little direction has been given on the program, its criteria, project evaluation, etc. There are currently more questions than answers. Staff looked at what other cities had submitted and it varied widely. Olathe submitted 30-40 projects covering a wide variety of areas. The staff’s approach was to look at short-term and long-term projects as well as mixture of types.

Ruth Hopkins said she understood the projects had to be ones ready to go forward.

Charles Clark asked if the City would be contacting their congressional representatives. Dennis Enslinger responded MARC will be meeting with congressional representatives.

Bill Griffith stated he sees the overriding concern in the City as being stormwater improvements and maintenance. He asked if a broad submittal could be made for stormwater improvements. He noted this could even be done as a region getting more attention. Tom Trienens responded he felt that overall the City's stormwater infrastructure was in good shape. As he understands the program, the submittals need to be project specific.

Quinn Bennion added the projects selected get underway quickly as they have already been designed. He noted some cities have made general submittals.

Bill Griffith stated the wastewater system in Prairie Village and most of the county needs improvement and could be a possible joint submittal.

Michael Kelly noted the cities of Fairway and Olathe have general non-specific projects and suggested adding general projects at the end of the city's proposed listing.

Mayor Shaffer stated it was his understanding that items submitted needed to be ready to begin.

Charles Clark made the following motion, which was seconded by Ruth Hopkins.

**MOVED THE PROJECTS IDENTIFIED BY STAFF BE SUBMITTED
TO MARC FOR CONSIDERATION SHOULD FEDERAL STIMULUS
MONEY BECOME AVAILABLE FOR LOCAL PUBLIC WORKS
PROJECTS**

**COUNCIL ACTION TAKEN
01/05/2009**

Diana questioned why the 75th Street project ended at Mission and felt that it should cover the entire 75th Street connecting to Overland Park.

Dale Beckerman stated he feels this will be a phased package and that the list will come back for future review. The immediate submittal should be projects that are ready to go rather than general undesigned projects.

David Belz said it was his understanding that the projects submitted should be "shovel ready" although as he looks at other cities' lists they are not following that criteria and perhaps the 75th Street Corridor should be added to the list. He hopes that when MARC decides on the list for submittal they will come back to the city for more input.

Michael Kelly questioned why the city should go through MARC and supported the City submitting its list independently and lobbying for it. Mayor Shaffer responded most cities will be doing both. Bill Griffith noted the program will have to go through the government hierarchy and it will take some time. He supports working through MARC and independently.

The motion was voted on and passed unanimously.

COU2009-03 Consider Project 191023: 2009 Concrete Repair

Tom Trienens stated on December 12, 2008, the City Clerk opened bids for Project 191023: 2009 Concrete Repair Program. This program consists of repairs to deteriorated concrete sidewalk and curb. Location of work includes District # 32 (Belinder Avenue to Stateline Road and 71st Street to 75th Street) and District #22 (Roe Avenue to Mission Road and 67th Street to 71st Street). Eight bids were received ranging from \$585,000 to \$956,650 with the engineer's estimate for the project being \$723,900.

Staff has reviewed the bids for accuracy and found no errors. The lowest and best bid was from McAnany Construction. The City had other projects successfully completed by McAnany Construction in recent years and staff recommends they be awarded the contract. Funding is available in the 2009 Capital Infrastructure Program for Project 191023: 2009 Concrete Repair. :

Diana Ewy Sharp made the following motion, which was seconded by Michael Kelly and passed unanimously:

**MOVE THE CITY COUNCIL APPROVE THE CONSTRUCTION CONTRACT WITH
MCANANY CONSTRUCTION, INC. IN THE AMOUNT OF \$585,000 FOR PROJECT
191023: 2009 CONCRETE REPAIR PROGRAM
COUNCIL ACTION REQUIRED
CONSENT AGENDA**

COU 2009-04 Consider Project P5000: 2009 Crack Seal/Slurry Seal Program

Tom Trienens stated on December 12, 2008 the City Clerk opened bids for Project P5000: 2009 Crack Seal/Slurry Program. The Crack Filling and Slurry Seal programs are bid together in an attempt to get better prices as potential contractors typically perform both types of work. The Crack Sealing will be done in the spring and the Slurry Sealing in the summer. Two bids were received at \$196,300 and \$238,850 with the engineer's estimate for the project being \$222,100.00.

City staff has checked the bids for accuracy and found no errors. Musselman & Hall Contractors submitted the lowest and best bid. They have previously performed this work for the City and staff recommends they be awarded the contract. Funding is available in the 2009 Public Works Operating Budget.

Ruth Hopkins made the following motion, which was seconded by Dale Beckerman and passed unanimously:

**MOVE THE CITY COUNCIL APPROVE THE CONSTRUCTION CONTRACT
WITH MUSSELMAN & HALL CONTRACTORS IN THE AMOUNT OF \$196,300
FOR PROJECT P5000: 2009 CRACK.SEAL/SLURRY SEAL PROGRAM
COUNCIL ACTION REQUIRED
CONSENT AGENDA**

COU2009-05 Consider Project P5001: 2009 Street Repair Program

Tom Trienens stated on December 12, 2008 the City Clerk opened bids for Project P5001: 2009 Street Repair Program. This program consists of repairs to deteriorated asphalt pavement in miscellaneous locations throughout the City. Two bids were received at \$119,810.00 and \$135,452.50 with the engineer's estimate for the project being \$187,000.00.

City staff has checked the bids for accuracy and found no errors. O'Donnell & Sons Construction submitted the lowest and best bid. They have previously performed work for the City and staff recommends they be awarded the contract. Funding is available in the 2009 Public Works Operating Budget.

Ruth Hopkins made the following motion, which was seconded by Dale Beckerman and passed unanimously:

**MOVE THE CITY COUNCIL APPROVE THE CONSTRUCTION CONTRACT
WITH O'DONNELL & SONS CONSTRUCTION IN THE AMOUNT OF \$119,810
FOR PROJECT P5001 2009 STREET REPAIR PROGRAM
COUNCIL ACTION REQUIRED
CONSENT AGENDA**

COU2009-06: Consider Annual Service Agreement for 2009 Materials Testing

Tom Trienens stated on December 12, 2008 the City Clerk opened bids for the annual service agreement for materials testing. Since this would be an on-call contract, the low bid was determined by estimating the number and types of tests that will be required and multiplying those types with unit prices submitted by each laboratory. Five bids were received ranging from \$24,690.00 to \$32,587.50 with the engineer's estimate being \$30,275.00

City staff has checked the bids for accuracy and found no errors. They also conducted reference checks on the low bidder, Professional Service Industries (PSI) Staff recommends they be awarded the contract. Funding is available in the in the individual projects for these services.

Dale Beckerman made the following motion, which was seconded by Ruth Hopkins and passed unanimously:

**MOVE THE CITY COUNCIL APPROVE THE CONSTRUCTION CONTRACT
WITH PROFESSIONAL SERVICE INDUSTRIES (PSI) FOR 2009 MATERIALS
TESTING SERVICES.**

**COUNCIL ACTION REQUIRED
CONSENT AGENDA**

COU2009-08 Consider Traffic Engineering Study of the intersection of Roe Avenue & 75th Street

Tom Trienens stated at the last City Council meeting, Chief Jordan described a car accident that recently occurred at 4609 W. 75th Street causing major damage to several vehicles parked in the resident's driveway. There have been other accidents at this location which resulted in vehicles encroaching on private property. Both of the recent severe accidents have been the result of driver impairment or mechanical problems. Public Works has requested a fee proposal from the City's traffic engineer to provide an additional study of the intersection of 75th Street and Roe Avenue. The study would investigate five years of traffic and accident data, look at sight distances and other features. The proposal for this additional work is \$7,300.00.

Mr. Trienens noted there is no current funding for this study.

Chief Jordan stated that every five years the City conducts a traffic safety study and in each of the two previous years this intersection has had the highest accident rate and it continues to be so. Ruth Hopkins asked if the study had made recommendations to address this issue. Chief Jordan responded that accessory recommendations were made related to visibility obstructions, widening the street and adding left turn arrows. Mrs. Hopkins asked if this could be included in the 2010 study. Chief Jordan stated he is not comfortable with the cost of the additional study, but acknowledged the concerns of the residents.

Laura Wassmer stated no road design change would address an accident caused by drunk driving.

Laura Nakonechny, 4609 West 75th Street, who resides at the site of the accidents, expressed her concerns not only for her property, but for pedestrians on the sidewalk as traffic and traffic speed increases. She is requesting a barrier be placed to protect their property.

Chief Jordan stated an engineer needs to make the determination if a barrier should be placed as requesting noting a barrier could cause more serious accidents and complications.

Laura Wassmer stated before spending any money she would like to know more about the accidents and their causes.

Chief Jordan responded most accidents are caused by inattention. There have been several east and west bound accidents. Some occur during rush hours, others due to weather. There is not a specific or glaring single cause. There have been very few red light accidents since the posting of the warning sign.

Dale Beckerman stated looking at accidents is part of the study but what he is hearing from Chief is that design does not appear to be a factor. Chief Jordan stated staff is not comfortable addressing the request for a barrier without a study and recommendation by a traffic engineer.

Diana Ewy Sharp stated she is comfortable with having the study done, but advised the property owner that doing so does not mean they will get the requested barrier.

Andrew Wang agreed with Ms Wassmer regarding DUI accidents, but noted that does not mean there is not something that could be done to positively address the number of accident occurring at this location. He agreed with Chief Jordan this is not a decision that should be made without a review and analysis of the issue by a traffic engineer.

Diana Ewy Sharp made the following motion, which was seconded by Charles Clark:

**MOVE THE CITY COUNCIL AUTHORIZE A TRAFFIC ENGINEERING STUDY
OF THE INTERSECTION OF ROE AVENUE AND 75TH STREET BY THE
CITY'S TRAFFIC ENGINEER AT A COST OF \$7,300
COUNCIL ACTION REQUIRED**

David Morrison agreed with Mr. Wang, but suggested trees be planted on the property for protection. Mrs. Nakonechny responded trees could not be planted due to the required sight distance requirements.

Al Herrera asked if there were any plans for the 75th Street Corridor that would impact this intersection. Quinn Bennion responded the 75th Street Corridor project is on hold and he does not see any action in the near future.

David Voysey stated he does not feel any design change can offset the force of gravity at this location. Ms Wassmer agreed and noted this is one of the busiest intersection in the City. She does not feel this issue can be resolved by a study; but could be addressed in 75th Street Corridor improvements.

David Belz stated the City will not know if anything can be done until the study is conducted. Charles Clark agreed.

Dale Beckerman asked if there was any way vegetation could be used to help the situation. He also feels speed should be considered in the study. Chief Jordan stated staff could ask the traffic engineer to look into the speed aspect.

Quinn Bennion noted there are two possible funding sources for the study. The first is from 2009 Contingency and the second is from the public works engineering services budget. However, taking it from the public works engineering budget would reduce that budget in half and impact future studies such as traffic calming. Mr. Bennion stated he has not been able to discuss this issue with the City's insurance carrier and wants the carrier's recommendation prior to a final decision..

Katie Logan stated in regards to City liability, the City has immunity for design flaws if the street was constructed in accordance with standards at the time of its design.

David Voysey stated the homeowner is looking for protection for their home and he does not see that as requiring redesign of the roadway. Chief Jordan responded Mr. Nakonechny is concerned with the number of accidents, the study would take a broader approach to looking at the problem. Mr. Voysey confirmed action would be taken in two weeks and additional information from the insurance company and funding options would be available then.

Laura Wassmer stated she would like to see other options. Chief Jordan responded the purpose of the study is to determine options, not staff.

Bill Griffith asked for an aerial of the property showing the sight distance triangle. He feels there is action that could be taken by the property owner.

Mrs. Nakonechny expressed her disappointment stating she felt the Council was more concerned with protecting the drunk driver than their residence. This is a very busy intersection and something needs to be done.

Council President David Voysey called for a vote on the motion. The following votes were cast: "aye" Herrera, Kelly, Wang, Beckerman, Clark, Morrison, Ewy Sharp and Belz; 'nay" Griffith, Hopkins, Voysey and Wassmer.

Discussion of Web Service Concepts and Process Overview

Michael Kelly introduced Steve DiFranco and Jeff Eden from DEG who were in attendance to answer any questions. He stated his presentation is designed to provide an update on what has been done by the Communications Committee, to introduce web technology concepts and to get direction from the City Council in regards to proceeding with a tactical or strategic web technology approach.

Requests for Proposals were sent out by staff in May, 2008, to 30 vendors with 13 responses received. The Communications committee selected 5 firms to interview. The following three firms were selected by the Communications Committee: Digital Evolution Group (DEG), Burn and Vision Internet. Mr. Kelly stated that during the process much has been learned regarding web technology. The most important factor being there is an interconnection between our current - and future - web based software packages.

There are two types of Web Investments. A Tactical approach is generally a short-term investment that changes the "look and feel" of the web site with a cost range of \$15,000 to \$50,000. A Strategic approach is a long-term investment. This approach incorporates all of an institution's web technology with the objective of eliminating service delivery costs with a cost range of \$150,000 to \$350,000 in a phased investment.

There are two types of web based service delivery. Simple Convenience Service Delivery allows the citizen to complete an online form from their computer. It is more convenient to the consumer. The cost to deliver the service remains the same or is marginally increased. Outcome Based Service Delivery places the customer convenience as secondary to the internal efficiencies gained. It is more convenient to the consumer and the cost to deliver the service is dramatically reduced. Mr. Kelly reviewed an example of each using the scenario of pet licensing.

Bill Griffith stated the strategic approach should be taken but stressed it needs to be phased in over several years with \$5,000 to \$25,000 expenditures annually. He cautioned that in many cases if not done correctly on-line processes can become more laborious than traditional methods.

Laura Wassmer stated the Council needs to balance the return on the investment and needs. She is not sure that is going to happen in the long term and noted with more things to manage the strategic approach is necessary. Michael Kelly responded this is an opportunity to build an entire new web infrastructure.

Al Herrera noted Prairie Village has a small population and would need to have a majority of our residents use the system to make it profitable. He does not see that happening at this time and does not support the expenditure of \$150,000.

Dale Beckerman asked if there were any statistics on how many people use these functions. Jeff with DEG responded it is more how the different systems integrate and fit together with one another.

David Voysey stated he typically finds when ranges are given the final amount is closer to the top of the range than the bottom and asked how this would be funded. Michael Kelly responded from the economic development fund with potential funding from the jail tax fund. He noted the costs would be determined by which areas were chosen to be developed and noted this would be a phased project with priorities developed.

David Belz acknowledged the current population may not be active computer users but noted the city is working to rebuild its population and the younger population does everything on-line. He feels there is no question, the City needs to move forward and is supportive of the strategic approach.

Quinn Bennion stated he does not question the capability of DEG to provide the services needed by the City, but stated he is uncomfortable with the cost of their services. The Council needs to determine its level of commitment to this project. He believes a hybrid approach would be better for the City.

Michael Kelly stated a hybrid approach is available and acknowledged that that is where the City will probably end up with. Bill Griffith stated the key is to follow a phased approach. He noted the city can only budget for one year. He would like to see a year by year proposal with specific work to be completed and costs. He feels the question is not whether or not this will be done, but when.

Andrew Wang stressed the importance of due diligence. He reminded the Council the Communications Committee is very small, having four vacancies, and although all agreed the current web site does not serve the residents or city's needs, there was not agreement on how much investment is necessary to reach the point where the City will "get the biggest bang for its buck". The proposed strategic approach excludes some other options that can provide the same services. He noted the pet license example given does not acknowledge the need for digital submittal of a rabies vaccination which is not provided by his vet and thus he would not be able to use the on-line registration.

Michael Kelly responded it is a matter of setting priorities and identifying areas for development.

Laura Wassmer stated she would like more information. She wants to know simply what would be necessary for residents to be able to make a payment on line. Diana Ewy Sharp stated she also would like to see the cost for simply allowing for on-line payments to be made.

Dale Beckerman noted there will only be so many interfaces with residents. He needs specific cost information to determine if the investment would merit the return.

Quinn Bennion noted one of the complications with on-line payments is the push and pull from one database to another and the necessary interfacing.

Laura Wassmer stated she wants to see the cost benefit to the residents and to the City.

Bill Griffith stated he is looking for a better and more cost effective approach to what the City is currently doing.

Adjournment

Council David Voysey adjourned the committee meeting at 7:30 p.m.

David Voysey
Council President

VERMILLION LAW OFFICE, L.L.C.

DEBRA A. VERMILLION

214 S. Chestnut

Olathe, KS 66061

913-782-5544-Telephone

913-782-4445 - Facsimile

dvermillion@lawyersllc-ks.com

Pat Tinnel, Legal Assistant

Katie Ridenour, Adm. Assistant

December 1, 2008

Katie Logan, City Attorney
City of Prairie Village
7700 Mission Road
Prairie Village, Kansas 66208

Re: Request for Appointment as City Prosecutor

Dear Ms. Logan,

Please accept this letter as my request to be considered for appointment to provide part time prosecution services for the City of Prairie Village. Attached hereto is my resume along with a list of references who may be contacted regarding my reputation and qualifications.

As noted in my resume, I spent approximately 11 years as a prosecutor in the Johnson County District Attorney's office before leaving that office and entering into a litigation practice with the Wallace, Saunders, and later, Martin, Pringle law firms. While in the District Attorney's office I prosecuted a wide variety of cases very successfully. Of importance to me, during my tenure with the DA's office, was the opportunity and pleasure I had of working with and advising many law enforcement officers on a variety of legal issues, including issues related to search and seizure.

In September, 2006 I left my litigation practice and went to work for one of my civil clients, Shawnee Mission Medical Center. I handled a variety of matters for the hospital, which included working with police chiefs and the Kansas Hospital Association on legislation which clarified the roles of hospital personnel and police in cases involving suspected drunk drivers and involuntary blood draws. I enjoyed my tenure at the hospital but I soon learned that I enjoyed the "courtroom" too much and so decided to open my own office in January, 2008. My office practice consists of a mix of civil and criminal litigation. As a criminal defense attorney I primarily involve myself in federal criminal matters, juvenile and CINC matters and other types of state offenses. My defense practice as it relates to DUI cases is less than 5% of my case load. On the civil side, I have a mixture of family law cases, medical malpractice defense cases and a generic sprinkling of other types of civil litigation. As you know, over the last few months I have had the privilege of acting as the interim city prosecutor for the City of Prairie Village. I have learned the ins and outs of the City's Municipal Court and have immensely enjoyed working with the fine staff of the Court Administrator's office, the Judges, and the many police officers and code enforcers whom I encounter in representing the City as its prosecutor both in Court, and in an advisory role.

Pg 2

12/01/08

Request for Appointment

I believe my experience in litigation, in prosecuting, in defending, and in working with police will provide the City with a well rounded, well experienced prosecutor who is available when needed to cover all requirements of a "city prosecutor".

As requested, there are no pending litigation matters or judgments against me or my office in any matter relating to professional activities of the office. There are no pending complaints with the disciplinary office of the Kansas Bar Association.

Thank you for your time and consideration in review of my request. I look forward to meeting with you and other members of the Selection Panel.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Debra A. Vermillion". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Debra A. Vermillion

Debra A. Vermillion

5914 West 78th Terrace
Prairie Village, Kansas 66208
(913) 649-8232
(913) 638-3174 (mobile)

Experience **01/02/08 to Present** **Vermillion Law Office, LLC** **Olathe, Ks.**

Sole Member

Civil/Criminal Litigation

General civil litigation and criminal defense practice involving a wide range of cases, including medical malpractice, family law, other tort related cases, federal and state criminal defense, juvenile and CINC matters.

09/07 to 12/31/08 **Shawnee Mission Medical Center** **Merriam, Ks,**

Administrative Director

Legal Services/Risk Management/Corporate Compliance

Draft, review and modify contracts, policies and procedures; responsible for advising the Medical Center and its employees on various legal issues including HIPAA, EMTALA, Sarbanes-Oxley. Represent the Medical Center or its employees in legal or administrative hearings. Evaluation of cases or events for potential legal liability.

03/05 to 09/07 **Martin, Pringle, Oliver, Wallace and Overland Park, Ks.**
Bauer, L.L.P.

Partner

Civil/Criminal Litigation

General litigation practice which included medical malpractice defense and defense of health care providers at administrative hearings; and representation of defendants in other types of civil cases. A small portion of my practice was related to the defense of persons charged with crimes.

06/97 to 03/05 **Wallace, Saunders, Austin, Brown Overland Park, Ks.**
and Enochs, Chtd.

Partner

Civil Litigation

General litigation practice which included medical malpractice defense and defense of health care providers at administrative hearings; and representation of defendants in other types of civil cases.

06/86 to 06/97

Johnson County District Attorney's Office Olathe, Ks.

Senior Trial Attorney

I handled a wide variety of criminal cases while with the DA's office. Beginning in the juvenile and traffic divisions and ultimately handling the prosecution of many high profile and complex criminal cases. In addition, I was on-call for law enforcement to answer any questions related to the enforcement of the laws of the State of Kansas, search and seizure, Miranda etc. I taught at the police academy at Johnson County Community College and presented at seminars for area law enforcement departments.

Education

**Washburn University School of Law
J.D. 1986
University of Missouri at Kansas City
B.A. 1982**

Admissions

**Kansas State Bar
Missouri State Bar
United States District Court for District of Kansas
Western District of Missouri
United States Court of Appeals for the Tenth Circuit
United States Supreme Court**

PROFESSIONAL SERVICES AGREEMENT
CITY PROSECUTOR CONTRACT

This CITY PROSECUTOR CONTRACT (“Contract”) made and entered into this 1st day of January, 2009, by and between Debra A. Vermillion (the “Contractor”) and the City of Prairie Village, a Kansas municipal corporation (the “City”).

The Contractor and the City, for the mutual promises and consideration hereinafter set forth, agree as follows:

1. Scope of Work.

a. The Contractor shall provide the services as described in Exhibit A (the “Work”), all as attached and incorporated herein.

b. The Contractor shall be solely responsible for all means, methods, techniques and sequences for coordinating all portions of the Work. The Contractor shall be responsible to the City for the acts and omissions of her agents and employees, and other persons performing any of the Work.

c. The Contractor is free to establish and control her times of performance of the Work and the City shall not dictate time of performance except as stated required by hearings and trials set by the court, and as noted in Exhibit A.

d. The Contractor is not required to perform work exclusively for the City during the term of this Contract.

2. Independent Contractor. This Contract does not create an employer/employee relationship between the parties. It is the parties’ intention that the Contractor will be an independent contractor and not the City’s employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Kansas revenue and taxation laws, Kansas workers’ compensation law, and Kansas unemployment insurance law. The Contractor will retain sole and absolute discretion and judgment in the manner and means of carrying out the Contractor’s activities and responsibilities hereunder. The Contractor agrees that it is a separate and independent enterprise from the City, that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the Work. This Contract shall not be construed as creating any joint employment relationship between the Contractor and the City, and the City will not be liable for any obligation incurred by the Contractor, including, but not limited to, unpaid minimum wages and/or overtime premiums.

3. License. The Contractor shall at all times hold an unrestricted license to practice law in the State of Kansas. The Contractor shall give all notices and comply

with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work.

4. Indemnification. The Contractor shall appear, defend, indemnify and hold harmless the City, members of the City's governing body, its officers, agents, representatives, successors and assigns from and against all claims of any character or nature, demands, suits, actions and costs arising out of the Work performed under the terms of this Contract, or on account of any act or omission by the Contractor or its agents, employees or representatives, or from any claims or amounts arising or recovered under workers' compensation laws or any other law, bylaw or ordinance, order, decree or any failure on the part of the Contractor to fulfill the Contractor's obligations under this Contract. Without limiting the generality of the preceding sentence, it is the intent of the parties to this Contract that the City shall, in all instances, be indemnified against all liability losses and damages of any nature whatsoever for or on account of any injuries to or death of persons or damages to or destruction of property belonging to any person arising out of or in any way connected with the performance of this Contract. The provisions of this paragraph shall survive termination of this Contract.

5. Governing Law. This Contract shall be governed by the laws of the State of Kansas.

6. Insurance. The Contractor shall purchase and maintain professional liability insurance in minimum amounts of one million dollars (\$1,000,000.00) per specific claim and one million dollars (\$1,000,000.00) per aggregate claim per occurrence. If required by the City, Certificates of Insurance acceptable to the City shall be filed with the City prior to commencement of the Work. The Certificates shall contain a provision stating that coverage is supported and that the policies will not expire, be canceled or changed until all Work has been completed and accepted by the City.

7. Contract Fee. The Contractor shall be compensated for the Work as set forth in Exhibit A. The Contractor shall provide a monthly statement for service. The City shall promptly pay amounts due to the Contractor.

8. Contract Term. The term of this Contract will commence on January 1, 2009, and continue for a period of two years.

9. Termination. Either party may terminate this Contract by providing sixty (60) days' prior written notice.

10. Rights and Remedies. The duties and obligations imposed by this Contract and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City or the Contractor shall constitute a waiver of any right or duty afforded the parties under the Contract, nor shall any action or failure

to act constitute an approval of or acquiescence to any briefs hereunder, except as may be specifically agreed to in writing.

11. Litigation. Should litigation be necessary to enforce any term or provision under this Contract, or to collect any damages claimed or portion of the amount payable under this Contract, then all litigation and collection expenses, witness fees, court costs and attorney's fees shall be paid to the prevailing party. Nothing herein shall preclude non-binding arbitration if the parties so elect in the event of a dispute hereunder.

12. Entire Agreement. This Contract constitutes the entire agreement between the parties relative to the subject matter.

13. Amendment. No amendment or modification of this Contract shall be valid or effective, unless in writing and signed by the parties to this Contract.

IN WITNESS WHEREOF the parties hereto have caused this Contract to be executed, the day and year first herein written.

CITY OF PRAIRIE VILLAGE, KANSAS

By: _____
Ronald L. Shaffer, Mayor

Attest:

Joyce Hagen Mundy, City Clerk

Approved as to form:

Catherine P. Logan, City Attorney

CONTRACTOR

Debra A. Vermillion

EXHIBIT A

SCOPE OF WORK & CONTRACT RATE

1. The Contractor shall serve as the City Prosecutor for the City of Prairie Village, Kansas. The Contractor's primary responsibilities shall include, but are not limited to, prosecution of misdemeanors, traffic violations that occur within the City and violations of Prairie Village City Ordinances.
2. The Contractor shall render to the best of its abilities, in accordance with applicable professional standards, the services, legal representation and advice described herein during the continuance of this Contract.
3. The Contractor agrees to faithfully represent the interests of the City in carrying out her duties as City Prosecutor and in accordance with established prosecution standards and policies.
4. The Contractor's services shall include attendance at hearings to represent the City of Prairie Village as City Prosecutor in the Municipal Court and preparation for such hearings. Hearings are normally held on the first three Tuesdays of every month on an arraignment and minor traffic plea docket calendar from 7:30 a.m. until the calendar is finished. In addition, an attorney plea docket is set every Thursday at 4:00 p.m., followed by a pro se plea docket. Arraignments, sentencings and motions are set for 6:00 p.m. upon the Judge's arrival. The Contractor is responsible for prosecution of trials that are before the trial judge alone. Bench trials are set for the second, third and fourth Thursdays of each month, commencing at 6:30 p.m. or after completion of the plea docket.
5. The Contractor will be compensated Sixteen hundred - eighty dollars (\$1,680.00) per month for prosecution services described in paragraph 4 above.
6. The Contractor shall also be required to continue its representation of the City when a case is appealed to the Johnson County District Court. The Contractor may also be requested from time to time to provide legal advice to the police department not involving the prosecution of individual cases. The Contractor shall be compensated at an hourly rate of \$130.00 for such appeal work and legal advice to the police department.
7. The Contractor shall be responsible for arranging for substitute counsel when unable, for any reason, to appear in Court. Substitute counsel shall not be used routinely. Generally, substitute counsel shall be used only when the Contractor cannot serve as City Prosecutor because of illness or prior legal commitment in another Court. The Contractor shall provide the City and the City Attorney with a list of the name(s), address(es), telephone number(s),

Kansas Bar number(s), and professional resumes of substitute counsel who will be responsible for providing City Prosecutor services. All substitute counsel on such list must be approved by the City in advance. All services performed by substitute counsel shall be the sole responsibility of the Contractor, including matters of compensation due and payable to substitute counsel for work performed.

PRAIRIE VILLAGE - MISSION HILLS

FINAL CRIME REPORT - 2008

CRIME	2004	2005	2006	2007	2008	AVERAGE	2008 +/- AVG
Homicide	0	0	0	0	0	0.00	0.00
Rape	3	5	2	2	3	2.40	0.60
Robbery	3	10	4	2	5	3.80	1.20
Assault	99	102	71	70	84	68.40	15.60
Burglary	65	57	41	45	88	41.60	46.40
Residence	43	36	24	32	81	27.00	54.00
Business/ Miscellaneous	22	21	17	13	7	14.60	-7.60
Theft	195	249	239	179	243	172.40	70.60
Auto Theft	14	22	19	34	26	17.80	8.20
Arson	7	5	2	9	8	4.60	3.40
Forgery	10	15	21	19	9	13.00	-4.00
Fraud	8	11	23	4	6	9.20	-3.20
Criminal Damage	76	103	123	95	88	79.40	8.60
Sexual Offenses	14	10	6	7	7	7.40	-0.40
TOTAL	494	589	551	466	567	420.00	147.00

ACCIDENTS	2004	2005	2006	2007	2008	AVERAGE	2008 +/- AVG
Fatal	0	0	0	0	0	0.00	0.00
Street - Injury	29	32	33	28	26	29.60	-3.60
Street - Property + \$1,000*	480	375	390	379	364	397.60	-33.60
Street - Property - \$1,000*	50	52	45	49	48	48.80	-0.80
Private - Injury	0	1	0	0	0	0.20	-0.20
Private - Property	91	76	78	94	91	86.00	5.00
Walk-In - Property	70	72	47	65	56	62.00	-6.00
TOTAL	720	608	593	615	585	624.20	-39.20

TOTAL CALLS	12,855	12,305	11,932	11,323	10,487	11,780.40	-1293.40
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* 2005 statute change to \$1,000

PRAIRIE VILLAGE
FINAL CRIME REPORT - 2008

CRIME	2004	2005	2006	2007	2008	AVERAGE	2008 +/- AVG
Homicide	0	0	0	0	0	0.00	0.00
Rape	3	5	2	2	3	3.00	0.00
Robbery	3	8	4	2	5	4.40	0.60
Assault	93	97	65	69	74	79.60	-5.60
Burglary	58	56	30	37	73	50.80	22.20
Residence	36	35	16	24	66	35.40	30.60
Business/ Miscellaneous	22	21	14	13	7	15.40	-8.40
Theft	181	224	212	154	194	193.00	1.00
Auto Theft	13	21	15	30	22	20.20	1.80
Arson	6	5	2	8	8	5.80	2.20
Forgery	10	15	21	19	9	14.80	-5.80
Fraud	5	11	22	4	6	9.60	-3.60
Criminal Damage	69	101	108	85	74	87.40	-13.40
Sexual Offenses	14	9	6	7	7	8.60	-1.60
TOTAL	455	552	487	417	475	477.20	-2.20

ACCIDENTS	2004	2005	2006	2007	2008	AVERAGE	2008 +/- AVG
Fatal	0	0	0	0	0	0.00	0.00
Street - Injury	28	30	32	25	24	27.80	-3.80
Street - Property + \$1,000*	435	345	345	352	323	360.00	-37.00
Street - Property - \$1,000*	46	47	39	42	47	44.20	2.80
Private - Injury	0	0	0	0	0	0.00	0.00
Private - Property	88	69	72	94	86	81.80	4.20
Walk-In Property	67	69	45	58	50	57.80	-7.80
TOTAL	664	560	533	571	530	571.60	-41.60

TOTAL CALLS	9,695	9,409	9,762	9,511	8,580	9,391.40	-811.40
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*2005 statute change to \$1,000

MISSION HILLS

FINAL CRIME REPORT - 2008

CRIME	2004	2005	2006	2007	2008	AVERAGE	2008 +/- AVG
Homicide	0	0	0	0	0	0.00	0.00
Rape	0	0	0	0	0	0.00	0.00
Robbery	0	2	0	0	0	0.40	-0.40
Assault	6	5	6	1	10	5.60	4.40
Burglary	7	1	11	8	15	8.40	6.60
Residence	7	1	8	8	15	7.80	7.20
Business	0	0	3	0	0	0.60	-0.60
Theft	14	25	27	25	49	28.00	21.00
Auto Theft	1	1	4	4	4	2.80	1.20
Arson	1	0	0	1	0	0.40	-0.40
Forgery	0	0	0	0	0	0.00	0.00
Fraud	3	0	1	0	0	0.80	-0.80
Criminal Damage	7	2	15	10	14	9.60	4.40
Sexual Offenses	0	1	0	0	0	0.20	-0.20
TOTAL	39	37	64	49	92	56.20	35.80

ACCIDENTS	2004	2005	2006	2007	2008	AVERAGE	2008 +/- AVG
Fatal	0	0	0	0	0	0.00	0.00
Street - Injury	1	2	1	3	2	1.80	0.20
Street - Property + \$1,000*	45	30	45	27	41	37.60	3.40
Street - Property - \$1,000*	4	5	6	7	1	4.60	-3.60
Private - Injury	0	1	0	0	0	0.20	-0.20
Private - Property	3	7	6	0	5	4.20	0.80
Walk-In - Property	3	3	2	7	6	4.20	1.80
TOTAL	56	48	60	44	55	52.60	2.40

TOTAL CALLS	3,160	2,896	2,170	1,812	1,907	2,389.00	-482.00
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*2005 statute change to \$1,000



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: January 5, 2009

Council Meeting Date: January 20, 2009

CONSIDER TRAFFIC ENGINEERING STUDY OF THE INTERSECTION OF ROE AVENUE AND 75TH STREET

STAFF RECOMMENDATION

It is recommended that the City examine the intersection as part of the standard five year study conducted by professional traffic engineer.

BACKGROUND

At the Council Committee on January 5, 2009, various items were discussed and questions raised with regards to performing a traffic engineering study at the intersection of 75th Street and Roe Avenue. The following is a summary of the items with responses:

1. Is a speed study included in the fee proposal of \$7300 submitted by TranSystems to perform a traffic engineering study? No. Adding a speed study to the traffic engineering agreement would cost an additional \$900 for a total of \$8200. Speed studies were conducted in 2006 throughout the City as part of the last overall City Safety Study (see attached diagram). The 85th percentile speed was relatively consistent along 75th Street throughout the City limits. A new speed study could be conducted closer to the intersection if desired. The data would be collected on the approaches to the intersection back far enough from the traffic signal so traffic would be going full speed even when the signal is red.
2. Could staff provide an aerial photograph of the intersection with the sight distance triangle shown for 4609 W. 75th Street (southeast corner)? Attached is an aerial drawing with the sight distance triangle shown according to City Ordinance 13-2A03. The short leg of the triangle is 20 feet from the back of curb of 75th Street and the longer leg of the triangle is 390 feet (based on a 35 mph speed limit on 75th Street) east of the Roe Avenue curb line. The scale of this drawing is approximately one inch equals forty feet (1"=40'). City Ordinance 13-2A03 is also attached for your information.
3. The resident indicated she thought she was not permitted to construct anything in her yard. Staff contacted the resident to inform her that they could consider constructing various features in their yard, including decorative fences and landscaping rocks, but that City requirements must be met with respect to the sight line obstruction ordinance and zoning regulations including Chapter 19.44 ("Height and Area Exceptions"), section 19.44.025 which covers fencing.
4. During the discussions at the Jan. 5th committee meeting, Council directed staff to discuss this item with the City's insurance carrier. The insurance consultant and carrier were contacted and expressed concern about an additional study beyond the City's standard practices. Staff will provide information regarding the visit during the Council meeting.

FUNDING SOURCE

Two potential funding sources are:

1. 2009 Traffic Engineering. This source would decrease the available funding for other traffic engineering related tasks such as traffic calming projects.
2. 2009 contingency

ATTACHMENTS

1. City Ordinance 13-2A02 entitled "Street Intersection Sight Line Obstruction".
2. Aerial photograph with sight distance triangle.
3. Speed Study performed in 2006.
4. Zoning Regulation 19.44.025 entitled "Fences".

PREPARED BY

Thomas Trienens, Manager of Engineering Services

January 13, 2009

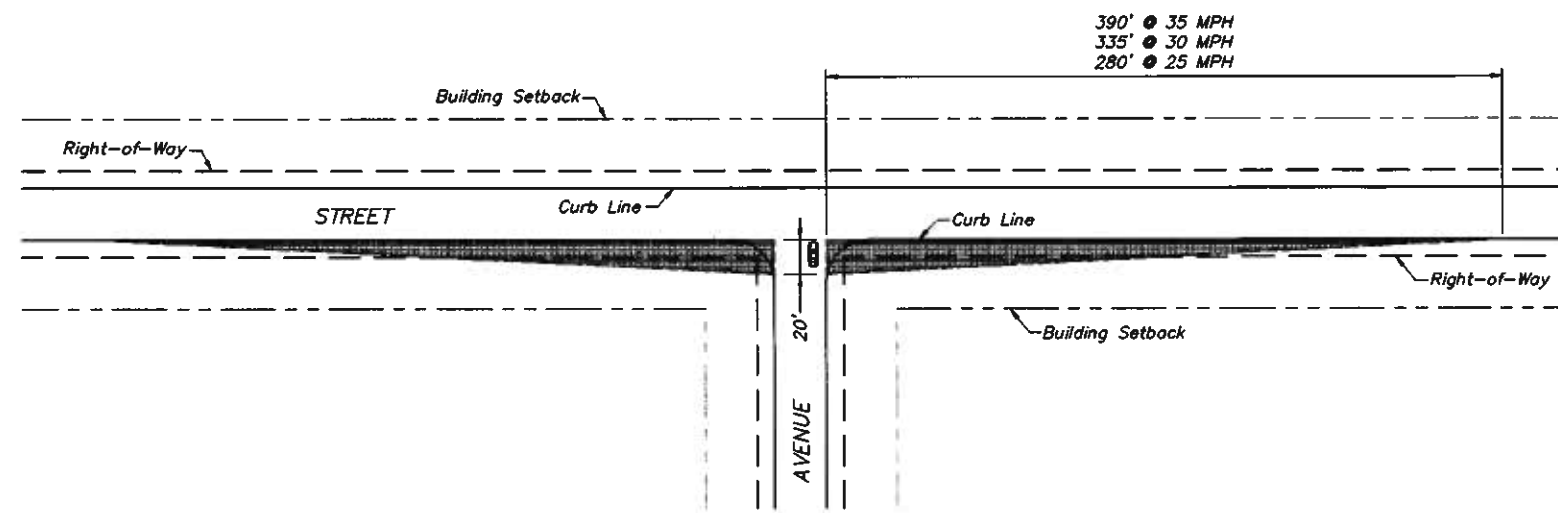
**ARTICLE 2A. STREET INTERSECTION
SIGHT LINE OBSTRUCTION**

13-2A01. **PURPOSE.** The City believes that it is in the best interest of the residents for the city to prevent obstructions of height greater than 3.5 feet from being placed in a street sight line at an intersection not controlled by all-way stop signs or traffic signals. (Ord. 2059, Sec. 1)

13-2A02. **AUTHORITY.** The City Public Works Director, or authorized designee, shall be responsible for the investigation of reported violations. If the violation is not removed in due process, the City Code Enforcement Officer will issue a municipal court summons for the violation. (Ord. 2059, Sec. 1)

13-2A03. **STREET INTERSECTION SIGHT LINE OBSTRUCTION.** All land at an intersection shall provide departure sight line distance triangles to reduce hazards of oncoming vehicular traffic. Such triangles shall be measured at the back of the curb or at the edge of roadway where no curb exists and the street, by state statute, is entitled to be right-of-way. The short leg of the triangle shall be not less than 20 feet along the street where a vehicle will enter another street. The long leg shall either be 390 feet for a street with a 35 mph speed limit, 335 feet for a street with a 30 mph speed limit, or 280 feet for a street with a 25 mph speed limit. No obstruction extending higher than 3.5 feet or having the potential to extend higher than 3.5 feet above the adjacent roadway surface shall be permitted.

Architectural structures (i.e., statues, decorative columns, walls), existing trees having diameter at breast height of greater than 36 inches, private utility boxes, and City traffic signs will be exempted from this provision. At such time as any area in the triangle is to be modified by construction activities, the location in the triangle of any utility poles, architectural structures, existing trees having diameter at breast height of greater than 36 inches, and City traffic signs will be reviewed and approved by the public safety department for traffic hazard conditions and by public works compliance with City standards. (Ord. 2059, Sec. 1)



STREET INTERSECTION SIGHT LINE OBSTRUCTION
 Scale: 1"=100'

DATE	Z:\STANDARD\PV\PV-SIGHTLINE.DWG	REVISIONS
CITY OF PRAIRIE VILLAGE PUBLIC WORKS DEPARTMENT		
★	STREET INTERSECTION SIGHT LINE OBSTRUCTION	
STANDARD DETAIL NUMBER: 117.01		

complies with the requirements of this title, yet is less than the established setback for the block as provided above, such setback line shall apply.

- B. Where an official line has been established for future widening or opening of a street upon which a lot abuts, then the depth or width of a yard shall be measured from such official line to the nearest wall of the building.
- C. In all use districts, portions of buildings may project into required yards as follows:
 - 1. Bay, bow, oriel, dormer or other projecting windows and stairway landings; other than full two or more story windows and landings may project into required yards not to exceed three (3) feet;
 - 2. Miscellaneous architectural features, including eaves, cornices, sills, belt courses, spoutings, chimneys, brackets, pilasters, grill work, trellises and similar projections for purely ornamental purposes may project into required yards not to exceed four (4) feet;
 - 3. Any vestibule, not more than one (1) story in height, may project into required yards not more than three (3) feet;
 - 4. Unenclosed porches, ported cocheres, marquees and canopies may project into required front or rear yards not to exceed twelve (12) feet, and on corner lots may project into required side yards on the side streets not to exceed ten (10) feet;
 - 5. Provided that the projections permitted in Subdivisions 2, 3 and 4 above shall not project into required side yards a distance greater than one-half the required minimum width of side yard;
 - 6. There shall be no limitation on the projection of open (uncovered) porches, decks, terraces or patios into required yards;
- D. An open fire escape may project into a required side yard not more than half the width of such yard, but not more than four feet from the building. Fire escapes, solid-floored balconies and enclosed outside stairways may project not more than four feet into a rear yard.
- E. In any district a detached garage or carport shall not exceed twenty-four feet or two stories in height, or in any case shall not be higher than the main building and the area shall not be more than twenty percent of the required rear yard.
- F. A through lot having one end abutting a limited access highway with no access permitted to that lot from said highway, shall be deemed to front upon the street which gives access to that lot.
- G. Accessibility to the rear portion of all lots in a district C-O to C-2 inclusive, for four-wheeled vehicles from and to a public street, alley or way shall be provided unless waived by the Planning Commission.

19.44.025 Fences.

- A. Purpose and Intent
 - 1. To buffer or screen uses that may have negative impact on adjacent uses.
 - 2. To provide privacy in outdoor spaces.
 - 3. To provide safety from hazards such as swimming pools, hot tubs, spas and other similar facilities.
 - 4. To enhance the quality of appearance of developed land use. (Ord. 2117, Sec. 2, 2006)
- B. Design
 - 1. Appearance – Those fences which have surface material, whether it be wood, chain link, metal bars or other permitted material, attached on one side of posts and/or rails, thus producing a finished side and an unfinished side, shall be installed with the finished sides exposed toward the street and adjacent properties. When doubt exists as to which way the surface of the proposed fence shall face, the Building Official shall make the final determination.
 - 2. Prohibited Fences – The installation of barbed wire, electric and razor ribbon fences or any similar type fence shall be prohibited.

3. Height – No fence shall exceed six (6) feet in height except tennis court enclosures which may not exceed twelve (12) feet in height and except fences which are located within the building envelope of a lot shall not exceed eight (8) feet in height. The height of the fence shall be deemed to be the average distance from the finished grade to the highest point on the fence panel, excluding posts which may project above the fence panel not more than eight (8) inches. Where the terrain is not level, the average dimension may, at the discretion of the Building Official, be applied to each eight (8) foot section of the fence. Fences built in combination with retaining walls and/or berms shall not exceed the required height restrictions. In addition, fences and walls built on slopes shall comply with the required height measurement along the line of the fence location.
 4. Decorative Fences – Decorative fences shall be designed so that they are at least 50% open and do not exceed two and a half (2 ½) feet in height. Split rail and wrought iron fences are examples of this type of fence. (Ord. 2117, Sec. 2, 2006)
- C. Location
1. Decorative fences may be located in the front yard but shall be located no closer than ten (10) feet from a street right-of-way line.
 2. Fences, other than decorative fences, shall not be located in the front yard and may be attached to or extended from the front corner of the dwelling.
 3. Fences located on the side street of a corner lot shall not be less than five (5) feet from the right-of-way line except that if an adjacent lot faces the side street, the fence shall be setback from the right-of-way line a distance of fifteen (15) feet or not less than one-half the depth of the front yard of an adjacent building, whichever is the greater setback.
 4. If the rear of a through lot is fenced, a gate shall be installed to provide access to the right-of-way.
 5. Diagrams depicting the location of fences on various types of lots are attached. (Ord. 2117, Sec. 2, 2006)
- D. Retaining Walls
1. Retaining walls shall be designed and constructed to support lateral loads. Applications for retaining walls exceeding four (4) feet in height, whether terraced or not, shall be accompanied by design calculations and plans sealed by a professional engineer licensed in the State of Kansas. Said plans shall be reviewed prior to the issuance of a building permit. Retaining walls shall setback a minimum of two (2) feet from side and rear property lines, and retaining walls exceeding six (6) feet in height shall be required to be setback from side and rear property lines an additional one (1) foot for each two (2) feet, or part thereof, in excess of six (6) feet in height, e.g. a ten (10) foot high retaining wall would be required to set back a minimum of four (4) feet from the property line. Allowances will be made for tie backs to existing grade. Diagrams depicting the location of retaining walls on various types of situations are attached. Any exceptions or deviations from this formula shall require site plan approval by the Planning Commission. (Ord. 2117, Sec. 2, 2006)
- E. Drainage and Utility Easements
1. Fences and walls shall not restrict natural surface drainage nor be constructed to divert or channel water flow with increased velocity. Fences shall not be constructed in drainage easements if they affect the flow of storm water.
 2. Fences installed in a utility easement may need to be removed in order to access the utilities. Fences constructed in easements are at the risk of the owner and shall not be the responsibility of the utility or city to replace them. (Ord. 2117, Sec. 2, 2006)
- F. Permits Required
1. All fences, and retaining walls as defined herein, unless otherwise excepted, shall require a building permit. No fence may be erected, constructed or replaced until said permit has been procured from the Building Official. The Building Official may allow minor

deviations and adjustments relative to the dimensions set out in this section where topographic or other natural features, utility locations, meters, trees or other conditions so warrant and where the spirit and intent of this section will be preserved.

2. Enclosures erected around compost piles in compliance with the conditions set forth in Chapter 15. Article 3 of the City Code are excluded from these regulations and shall not require a permit. (Ord. 2117, Sec. 2, 2006)

G. Site Plan Approval

1. As a part of the site plan approval process as set out in Section 19.32 Site Plan Approval, the Planning Commission may make adjustments to the height and location of fences, walls and retaining walls provided that it results in a project that is more compatible, provides better screening, provides better storm drainage management, or provides a more appropriate utilization of the site.
2. An application may be made to the Planning Commission for site plan approval of a fence that is unique and does not have the locational or design characteristics set out in these regulations. (Ord. 2117, Sec. 2, 2006)

19.44.030 Building Elevations.

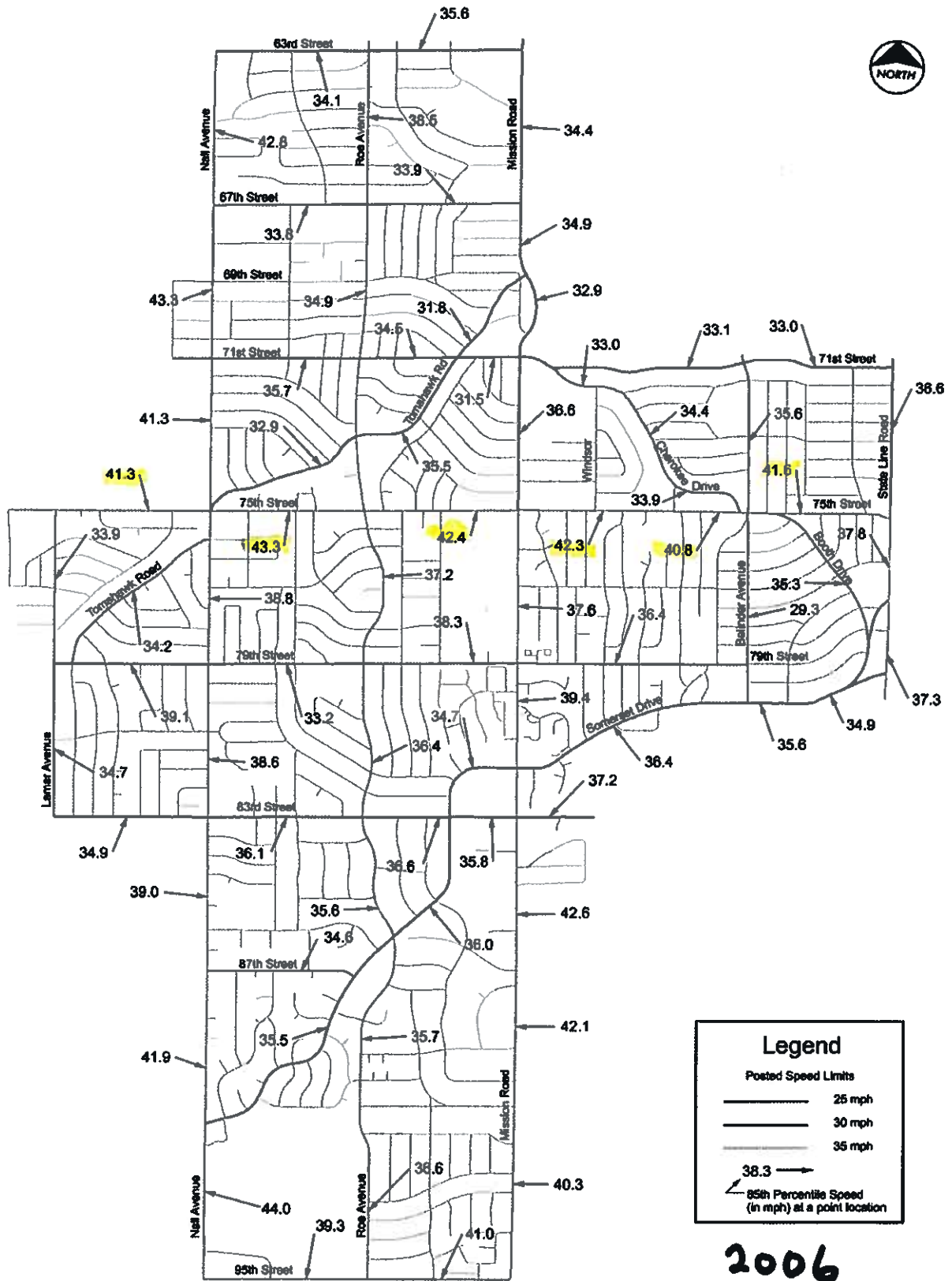
- A. New residential structures or additions set at the same first floor elevation or lower than the original structure shall be exempt from review by the Planning Commission.
- B. New residential structures or additions may raise the first floor elevations six inches for every additional five feet over the minimum side yard setback that the building sets back from both side property lines. The maximum elevation can be raised is three feet without requiring review and approval of the Planning Commission.
- C. New residential structures or additions not meeting paragraphs a or b above shall be submitted to the Planning Commission for review and approval. (Ord. 2019, Sec. III, 2001)

19.44.035 Lot Coverage

The Board of Zoning Appeals as an Exception may grant permission to exceed the 30% Lot Coverage requirement as set out in Sections 19.06.041, 19.08.036, 19.10.046, 19.12.036 and 19.14.041. The applicant shall submit a site plan and building elevations adequate to convey the character of the architecture.

The Board shall give consideration to the following criteria in approving or disapproving an increase of the Lot Coverage over 30%:

- A. The site is capable of accommodating the building(s), parking areas and drives with appropriate open space;
- B. The property can be developed as proposed without any significant adverse impact on surrounding properties or the public health and safety;
- C. The plan provides for adequate management of stormwater runoff;
- D. The plan is consistent with good land planning and site engineering design principles; and
- E. An appropriate degree of compatibility will prevail between the architectural quality of the existing building and the proposed building expansion. (Ordinance 2060, Sec. II, 2003)



Legend

Posted Speed Limits

- 25 mph
- 30 mph
- 35 mph

38.3 →

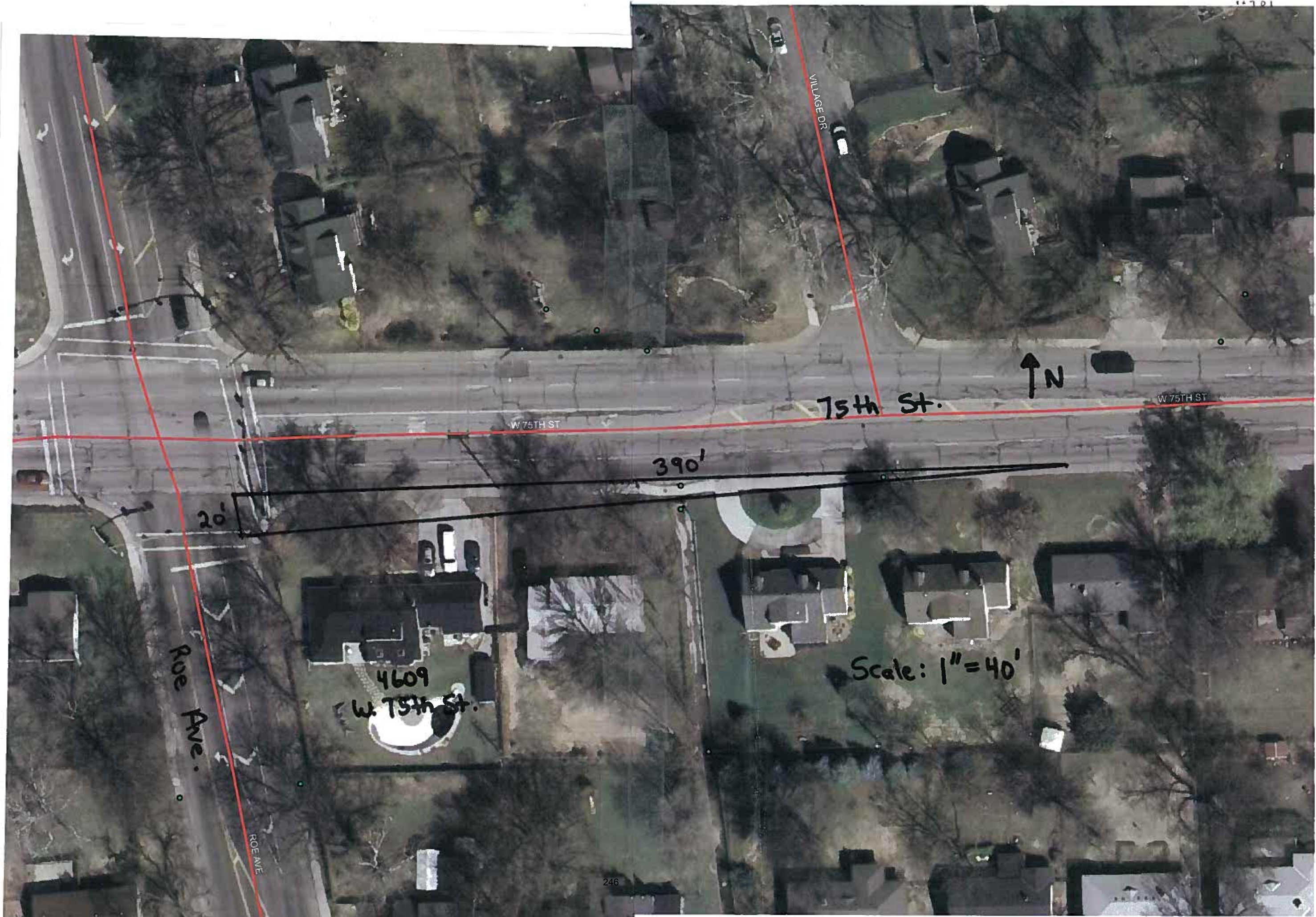
85th Percentile Speed
(in mph) at a point location

2006



**Vehicle Speed Data
Prairie Village, Kansas**

Figure 2



VILLAGE DR

W 75TH ST

W 75TH ST

75th St.



390'

26'

ROE AVE.

4609
W. 75th St.

Scale: 1" = 40'

MAYOR'S ANNOUNCEMENTS

Tuesday, January 20, 2009

Committee meetings scheduled for the next two weeks include:

Prairie Village Arts Council	01/21/2009	7:00 pm.
VillageFest Committee	01/22/2009	7:00 pm.
Environmental/Recycle	01/28/2009	7:00 p.m.
Council Committee	02/02/2009	6:00 p.m.
Council	02/02/2009	7:30 p.m.

The Prairie Village Arts Council is pleased to announce a mixed media exhibit of City of Prairie Village owned art for the month of January.

The NEJC Chamber Legislative Breakfast is January 24 at 7:30 am at the Ritz Charles. Please RSVP to Jeanne by January 21 if you would like to attend.

The annual large item pick-up has been scheduled for April 25th.

Prairie Village Gift Cards are on sale at the Municipal Building. This is a great way to encourage others to "Shop Prairie Village."

The 50th Anniversary books, Prairie Village Our Story, and Prairie Village Gift Cards continue to be sold to the public.

INFORMATIONAL ITEMS
January 20, 2009 (Tuesday)

1. Board of Zoning Appeals Agenda - February 3, 2009
2. Planning Commission Agenda - February 3, 2009
3. Finance Committee Minutes - December 2, 2008
4. Planning Commission Minutes - December 9, 2008
5. Planning Commission Actions - January 6, 2009
6. Tree Board Minutes - January 7, 2009
7. Mark Your Calendars
8. Committee Agenda

**BOARD OF ZONING APPEALS
CITY OF PRAIRIE VILLAGE, KANSAS
AGENDA
TUESDAY, February 3, 2009
6:30 P.M.
Multi-Purpose Room**

- I. ROLL CALL

- II. APPROVAL OF MINUTES - December 9, 2008

- III. ACTION ITEM
 - BZA2009-01 Request for a Variance from P.V.M.C. 19.08.025(a) to allow for construction of a building addition giving a zero side yard setback on the west side property line of 7338 Roe Circle
Zoning: R-1b - Single Family Residential District
Applicant: Debra Hudacek

- IV. NEW BUSINESS

- V. OLD BUSINESS

- VI. ADJOURNMENT

If you can not be present, comments can be made by e-mail to
Cityclerk@Pvkansas.com

**PLANNING COMMISSION AGENDA
CITY OF PRAIRIE VILLAGE
MUNICIPAL BUILDING - 7700 MISSION ROAD
TUESDAY, FEBRUARY 3, 2009
Council Chambers
7:00 P. M.**

I. ROLL CALL

II. APPROVAL OF PC MINUTES - January 6, 2008

III. PUBLIC HEARINGS

**PC2008-10 Request for Conditional Use Permit for Drive-thru
8200 Mission Road
Zoning: C-2
Applicant : Landplan Engineering for CVS**

**PC2009-02 Request for Conditional Use Permit for a Communications
Utility Box by AT&T in the right-of-way at
6730 Fonticello
Zoning: R-1a
Applicant: Zach Zupan, representing AT&T**

**PC2009-03 Proposed Ordinance Revisions to Wireless Communications
Regulations - 19.33
Applicant: City of Prairie Village**

**PC2009-04 Proposed Ordinance Revisions to Definitions of Building
Height, Grade and Story - PVMC 19.02
Applicant: City of Prairie Village**

**PC2009-05 Proposed Ordinance Revisions to PVMC 19.34.040 -
Emergency Generators in residential districts
Applicant: City of Prairie Village**

IV. NON-PUBLIC HEARINGS

**PC2008-115 Site Plan Approval - Retail Building
Southwest Corner Somerset & Mission
Zoning: C-2
Applicant: Landplan Engineering for CVS**

V. OTHER BUSINESS

VI. ADJOURNMENT

Plans available at City Hall if applicable

If you can not be present, comments can be made by e-mail to
Cityclerk@Pvkansas.com

***Any Commission members having a conflict of interest, shall acknowledge that conflict prior to the hearing of an application, shall not participate in the hearing or discussion, shall not vote on the issue and shall vacate their position at the table until the conclusion of the hearing.**

FINANCE COMMITTEE
December 2, 2008

The Finance Committee met on December 2, 2008. Present: Chairman David Voysey, Charles Clark and Wayne Vennard. Staff Present: Quinn Bennion and Karen Kindle.

Financial Advisor RFP Interviews

- The Committee interviewed three (3) firms as part of the Financial Advisor RFP process. The three firms were: George K. Baum, PiperJaffray and Columbia Capital Management.
- The Committee discussed the qualifications of the three firms and their interviews and selected Columbia Capital Management to recommend to the Council.

Banking Services RFP

- Mrs. Kindle requested that the Banking Services RFP be postponed until after the financial system is implemented. With Year End, Budget and the implementation of the financial system all happening at the same time, there is not sufficient time available to do the RFP.
- The Committee agreed with staff's request.

Financial Software RFP Update

- Mrs. Kindle gave an overview of the RFP process to date.
- Nine (9) responses were received. Seven (7) of the nine (9) firms were invited for demos on site in mid December.
- The next step after the demos would be to narrow the choice to one or two and visit with current customers.
- Staff hopes to make a recommendation and work on the contract in January and February.
- System implementation would likely take place in March - July.

Governmental Accounting Standards Board Statement No. 50 (GASB 50)

- Mrs. Kindle noted that GASB 50 will be effective for the City's December 31, 2008 financial statements.
- GASB 50 changes the note disclosures required for pensions plans.
- The additional information required to be disclosed for the KPERS plan can easily be obtained from KPERS.
- At this time, no additional disclosures are needed for the Supplemental Retirement Plan.
- The biggest change in disclosure requirements relates to the Police Pension Plan. The city's actuary will provide the information needed for the additional disclosures as part of the current contract.
 - Because the City uses the Aggregate actuarial cost method in the annual actuarial valuation of the Police Pension Plan, GASB 50 requires the City to present a schedule of funding progress based on the Entry Age actuarial cost method.
 - Mrs. Kindle explained to the Committee that the financial statements will show funding progress of the plan based on a different method than is used to make funding decisions about the plan. Mrs. Kindle noted that she did not know what to expect the schedule to show regarding the funding of the plan. She also noted that the City used the Entry Age method until 2003.

FINANCE COMMITTEE
December 2, 2008

Meadowbrook Update

- Mr. Bennion provided a brief update to the Committee regarding communications with OPUS representatives regarding the Meadowbrook project.
- Mr. Bennion noted that staff had met with OPUS representatives and has done some research with other cities and has also asked the City Attorney to do some research.

**PLANNING COMMISSION MINUTES
MEETING OF DECEMBER 9, 2008**

ROLL CALL

The Planning Commission of the City of Prairie Village met in regular session on Tuesday, December 9, 2008 in the Multipurpose Room, 7700 Mission Road. Chairman Ken Vaughn called the meeting to order at 7:00 p.m. with the following members present: Randy Kronblad, Bob Lindeblad, Dale Warman, Marlene Nagel, Nancy Vennard and Dirk Schafer.

The following persons were present in their advisory capacity to the Planning Commission: Ron Williamson, Planning Consultant; Dennis Enslinger, Assistant City Administrator; Jim Brown, City Building Official and Joyce Hagen Mundy, City Clerk/Planning Commission Secretary.

APPROVAL OF MINUTES

Dale Warman moved approval of the minutes of November 4, 2008 as written. The motion was seconded by Marlene Nagel and passed unanimously.

PUBLIC HEARINGS

**PC2008-10 Request for Conditional Use Permit for Drive-thru
8200 Mission Road**

Ken Vaughn stated the applicant has requested this application be continued. Bob Lindeblad moved the Commission continue consideration of PC2008-10 to the January meeting of the Planning Commission. The motion was seconded by Nancy Vennard and passed by a vote of 6 to 0 with Dirk Schafer abstaining.

NON-PUBLIC HEARINGS

**PC2008-115 Site Plan Approval for Retail Building on the SW corner of
Somerset and Mission Road**

Ken Vaughn stated the applicant has requested this application be continued to the January meeting of the Planning Commission. Dale Warman moved the Commission continue consideration of PC2008-115 to the January 6, 2009 meeting of the Planning Commission. The motion was seconded by Randy Kronblad and passed by a vote of 6 to 0 with Dirk Schafer abstaining.

Nancy Vennard asked how the plans in the packet differed from the first submittal. Dennis Enslinger responded landscaping changes and a pedestrian path were the only changes made.

**PC2008-114 Sign Standards & Monument Sign Approval
1900 West 75th Street**

Kip Slattery, with Luminous Neon, representing Capitol Federal Savings presented the revised sign standards and monument sign for 1900 West 75th Street. Mr. Slattery noted the changes requested by the Commission and staff has been incorporated in the sign standards. The monument sign has been designed of concrete that matches the building façade and lists three tenants. The sign size meets all requirements.

Ken Vaughn noted there are two different fonts used for the sign and asked if all names could use the same font.

Mr. Slattery introduced Ken Scott, Vice President of Capitol Federal Savings. Mr. Scott stated the font and logo used for Capitol Federal are its logo and designated font with the others being similar styles. Mr. Vaughn asked if they could all be the same. Mr. Scott stated they all could be done in the Cap Fed font

Bob Lindeblad stated he would like to see the base of the sign in a darker color. He noted the base appears to have the same depth as the sign. Mr. Slattery responded the depth of the sign is six to eight inches with the base being smaller. Mr. Lindeblad stated he felt there needed to be some dimension to the sign or a different color base.

Nancy Vennard asked if it was necessary for the base to match the white concrete color of the building and if it was all precast. Mr. Slattery stated the letters are raised. Mrs. Vennard stated it is not a very distinctive sign and the proposed landscaping appears to be seasonal and low. She suggested using some low evergreen bushes in the landscaping. Bob Lindeblad noted the base of the sign is only 12 inches. Low evergreens would cover the base and provide color and dimension. Dennis Enslinger noted there are existing boxwood at the other sign. Mr. Lindeblad suggested foot high Junipers.

Randy Kronblad asked if the sign would be illuminated. Mr. Scott stated they would like to have an exterior light shining on the sign. Mr. Williamson noted the regulations would require the light be flush with the ground and could be added as a condition of approval.

Randy Kronblad moved the Planning Commission approve the sign standards as revised and the proposed monument sign for 1900 West 75th Street with the same font used for all names on the sign, and the lighting be flush with the ground, and a revised landscape plan as suggested submitted to staff for approval. The motion was seconded by Marlene Nagel and passed by a vote of 7 to 0.

**PC2008-118 Site Plan Approval - 1st Floor Elevation
4820 West 68th Street**

Bryon Vanlerberg, 19308 West 63rd Terrace, addressed the Commission as contractor for Mike Robinson owner of the property at 4820 West 68th Street. This property resides

between a home on the west that was demolished and totally rebuilt and one on the east that has been fully remodeled. The house is 2 ½' lower than the house on the left and 1 ½' lower than the house on the right. He is proposing to raise the first floor elevation by 2'2". This would still be 6" lower than the house on the left and 8" higher than the house on the right. The change is being made primarily because of drainage issues. The house sets low and stormwater causes damage to the home.

The lot slopes to the rear and in designing the new home the applicant would like to have a walkout basement. The existing dwelling was built in 1959 and the site has many mature trees. The lot is long (282 feet) and narrow (90 feet) and drops approximately 17 feet from south to north.

The existing dwelling sets at a finished floor elevation of 96.1 feet while the home to the west sets at approximately 97.7 feet (*top of wall*) and the house to the east sets approximately 96.6 feet (*top of wall*). The new dwelling would be set at about the same elevation as the house to the west 97.3 feet (*top of wall*). The finished first floor elevation would be approximately one foot higher at an elevation of 98.3 feet.

Ken Vaughn asked for the relation of the first floor elevation to the street. Mr. Vanlerberg stated the first floor elevation would be approximately 2' below the street elevation.

Mr. Vanlerberg stated at the neighborhood meeting the general response was very positive. A compromise has been made to save existing trees in the front yard.

Mr. Vaughn expressed concern with the grade on the west elevation. Mr. Schafer asked how the property would be graded. Mr. Vanlerberg stated the grading would be done to maintain the current flow of water and will not affect adjacent properties. The water would remain on this lot. Mr. Schafer confirmed the house sets below the curb.

Mr. Vaughn expressed concern with the steepness of the slope on the west side of the property. Mr. Vanlerberg stated the height of the foundation is not changing on the west side from the existing height in order to maintain water on the site. He noted it could be modified.

Nancy Vennard noted the proposed home appears to be four feet closer to the west property line. Mr. Vanlerberg responded the house meets the city's setback requirement from property line and from adjacent structures.

Ron Williamson advised that a grading plan will have to be approved by the Public Works Department. Ken Vaughn asked what the maximum finished grade was. Jim Brown, Building Official, responded that is not specifically addressed in the code; however, noted Public Works may have specific criteria. Dennis Enslinger added a three to one would be the most that could be done without having an engineering study.

The Commission made the following review of the criteria for approval:

- 1. That there are special circumstances or conditions affecting the property.**
This house sets lower than the two adjacent homes. The lot drops off significantly to the rear providing an opportunity to build a walkout level. The elevation increase would allow this home to be at approximately the same elevation as the adjacent homes.
- 2. That the elevation change is necessary for reasonable and acceptable development of the property in question.**
The applicant has analyzed the site and in order to properly drain the site and build a lower level walkout with the desired ceiling height, the first floor elevation needs to be set at the height proposed. The proposed elevation change of 2.2 feet is not a significant increase since it will be at about the same elevation as the house to the west. There are a limited number of lots in Prairie Village that have this opportunity to redevelop for walkout levels. This is a unique location that warrants consideration of a different approach that takes advantage of the site but does not alter the character of the neighborhood. The proposed elevation change provides for a reasonable and acceptable redevelopment of this property. It is important that housing choices are available to accommodate the desires of the people wanting to live in Prairie Village and this provides that opportunity without adversely affecting the neighbors.
- 3. That the granting of the building elevation change will not be detrimental to the public welfare or injurious to or adversely affect adjacent property or other property in the vicinity in which the particular property is situated.**
The proposed building elevation will be higher than the neighbor to the east, but approximately the same as the neighbor to the west. This is a neighborhood that is experiencing redevelopment and several major expansions and teardown/rebuilds have already occurred in the immediate area. The redevelopment of this lot should not adversely affect the neighbors or the public.

Bob Lindeblad moved the Planning Commission approve the requested 2.2 foot change in first floor elevation for the property at 4820 West 68th Street as requested in PC2008-118 with the understanding that the Public Works Department will review the grades and drainage plan for the sides of the proposed house. The motion was seconded by Marlene Nagel and passed unanimously.

OTHER BUSINESS

Discussion on Cell Tower Regulations

Ron Williamson stated that on December 1, 2008, the City Council Committee of the Whole discussed the proposed revisions to the City's cell tower regulations. The consensus of the Council was that the ordinance approach was preferred over the policy. The only other area discussed by the City Council was setbacks. The primary concern was that if the setbacks are too restrictive, there will be no locations that can be approved for cell towers and some type of waiver is needed. Mr. Williamson noted that two of the existing towers in Prairie Village do not meet the setbacks as proposed in the ordinance and would become nonconforming structures.

The proposed revisions to Section 19.33.025 were approved by the Planning Commission.

Mr. Williamson noted there are 19 sites that could accommodate a non-stealth cell tower using the 200 feet setback. Eight of those sites are schools and at this time the school district has not agreed to allow cell towers, but this could change in the future. Six of the sites are private and the remainder are city owned properties. None of the church sites meet the 200 feet setback from the property line. If the setback remains as proposed, the only way to change it would be by a variance through the Board of Zoning Appeals. Finding the conditions of "uniqueness" and "hardship" could be difficult.

As an alternative, it was suggest the Council that a waiver provision be added where the Council could reduce the setback if it deemed it appropriate. Two alternatives were presented to address a waiver.

Alternative #1

The applicant may request a waiver of the setback requirement. The Planning Commission shall consider the request and make a recommendation to the City Council who will make the final determination.

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Alternative #2

The applicant may request a waiver of the setback requirement. The Planning Commission shall consider the request and make a recommendation to the City Council who will make the final determination. In approving a setback waiver, the Commission and Council shall consider the following:

- a. That there are special circumstances or conditions affecting the property.
- b. That the setback waiver is necessary for reasonable development of the cell tower installation;
- c. That the granting of the setback waiver will not be detrimental to the public welfare or cause substantial injury to the value of the adjacent property or other property in the vicinity in which the particular property is situated.

Dennis Enslinger added that some Council members wanted to delete the setback requirement from the regulations entirely.

Nancy Vennard asked if the regulations would be considered a violation of the FCC with the significant limitation of available sites. Mr. Enslinger stated the City is not limiting the sites, only the construction of stand alone stealth towers - applications incorporated within building structures would be allowed.

Randy Kronblad confirmed the setback was from neighboring property line.

Bob Lindeblad stated the City of Overland Park allows the Planning Commission and City Council to waive requirements for extenuating circumstances. Dennis Enslinger stated the City Council felt the waiver should be at the Council level. Bob Lindeblad stated he feels the Commission and Council should work together with the Commission recommending the waiver and the Council taking official action.

Dennis Enslinger stated staff could look at the Overland Park provision and come back with more information for the Commission in January.

Ken Vaughn and Dirk Schafer stated they felt stipulated criteria are necessary and support alternative #2.

Ron Williamson reviewed the letter submitted from Curtis Holland at Polsinelli. Bob Lindeblad confirmed the current base is 1½ times the height with a maximum height of 200 feet.

Nancy Vennard asked what the intent of the setback regulations. She noted falling ice is not an issue unless there are strong winds and aesthetics are not changed by setback.

Bob Lindeblad stated he felt the height of the tower is reasonable. Mr. Enslinger added it is the industry standard, with 80' towers there would be a number of other sites available. Randy Kronblad stated he did not feel the difference between 80' and 100' was significant.

The letter from Polsinelli suggested a search area of ½ mile instead of the proposed two miles. Mr. Williamson stated the intent of the ordinance is to be able to see a pattern within the City. The cities of Leawood and Mission Hills have a three mile area, Fairway has a two mile area and Overland Park is ½ mile. Ken Vaughn stated he felt 1 mile with a two mile circumference was appropriate.

Bob Lindeblad asked if this was in reference to stealth towers only or did it include antenna on top of buildings. The wording "wireless communication sites" is not clear. Nancy Vennard asked if it would also include "booster boxes". Mr. Enslinger stated he felt it included antennas as well as towers.

Bob Lindeblad stated he is not interested in tower location, but in coverage areas. Mr. Enslinger wanted see the locations and did not feel this was a major cost or difficulty for the providers. He noted neighboring cities require greater distances. The Commission was ok with a one-mile circumference.

Dale Warman stated the terms should be clarified in the definitions.

Mr. Enslinger noted the final two items in the letter are being reviewed by the City's legal counsel. Staff will report the findings on those items.

Discussion of possible changes to "Building Height Regulations"

Jim Brown, City Building Official, reported that the current trend within the City of Prairie Village in regards to new single family dwellings is the construction of larger and taller homes. Most of our housing stock is of older 1950's/1960's Ranch or Cape Cod design. It is now common for these older homes to be demolished and replaced with more modern larger and taller homes with varying roof pitches and elevations. In keeping with this trend, it has become necessary to further clarify and adopt a consistent and specific method of measuring building height.

Jim Brown stated the present method of determining building height is not specific and leads to subjective or "gray areas".. The present method is to find the lowest elevation (grade) at a point 5 feet from the perimeter of the house and then from this lowest elevation (grade) the measurement for the building height begins. The current definition of "building height" is as follows:

19.02.100- Building, height of.

"Height of Building" means the vertical distance in feet measured from grade to the highest point of the roof for flat roofs, to the deck surface of mansard roofs and to the mean height between eaves and ridge for gable, hip and gambrel roofs. Heating, ventilating, air conditioning and elevator equipment located on flat roofs may extend not more than eight(8) feet above this maximum building height and for gable, hip and gambrel roofs no more than two(2) feet above peak of the roofs provided, however, that all such equipment is adequately screened from view and compatibility incorporated into the building design."

In determining building height based upon the current definition, the subjective or "gray area" is a result of the term "mean height" used in the definition. At present we determine this as the average height between all roof peaks. Mr. Brown noted this method does not coincide with the method of determining building height as specified in the International Building Code (IBC) adopted by the City.

The IBC is much more definitive and specific as to how to determine building height. IBC definitions are as follows:

Height, Building.

"The vertical distance from grade plane to the average height of the highest roof surface".

● This definition establishes the two points of measurement that determine the height of a building in feet. The lower point of measurement is the grade plane. The upper point of measurement is the roof surface of the building with consideration given to sloped roofs

such as a hip or gable roof. In the case of sloped roofs the average height would be used as the upper point of measurement, rather than the eave line or ridge line. The average height of the roof is the mid-height between the roof eave and the roof ridge, regardless of the shape of the roof.

This definition also indicates that the building height is measured to the highest roof surface. In the case of a building with multiple roof levels, the highest of the various roof levels must be used to determine building height. If the highest of the various roof levels is a sloped roof, then the average height of that sloped roof must be used. The average height of multiple roof levels is not to be used to determine building height.

Grade Plane.

“A reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, where the lot line is more than 6 feet from the building, between the building and a point 6 feet from the building.”

Mr. Brown noted this term is critical in determining the height of a building and the number of stories above grade. Since the finished ground surface adjacent to the building may vary due to site conditions the average taken at various points around the building constitutes grade plane. In most cases the ground adjacent to the building slopes away because of site or landscaping considerations. In these situations the lowest finished ground level at any point between the building’s exterior wall and a point 6 feet from the building comes under consideration. These points are used to determine the grade plane.

Mr. Brown added the IBC offers a more definitive method of determining “story” and “story above grade plane” as shown in the following definitions:

Story.

“That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. It is measured as the vertical distance from top to top of two successive tiers of beams or finished floor surfaces and for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters”.

Story above grade plane.

“Any story having its finish floor surface entirely above grade plane, except that a basement shall be considered as a story above grade plane where the finished surface of the floor above the basement is:

- 1. More than 6 feet above grade plane; or*
- 2. More than 12 feet above the finished ground level at any point.*

These two specific criteria establish a point at which a basement extends far enough above ground that it contributes to the total height of the building and number of stories. Staff is recommending the following changes to the zoning regulations:

1. Replace 19.02.100 **Building, Height of** - *"Height of Building" means the vertical distance in feet, measured from grade to the highest point of the roof for flat roofs, to the deck surface of mansard roofs and to the mean height between eaves and ridge for gable, hip and gambrel roofs.*

Replace with **Building Height**- *"The vertical distance from grade plane to the average height of the highest roof surface."*

2. Replace 19.02.254 **Grade**- *"Grade" means the lowest point of elevation of the finished surface of the ground, paving or sidewalk within the area between the building and the property line or, when the property line is more than 5 feet from the building, between the building and a line 5 feet from the building."*

Replace with **Grade Plane**- *"A reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, where the lot line is more than 6 feet from the building, between the building and a point 6 feet from the building."*

3. Replace 19.02.435 **Story**- *"Story" means that portion of a building included between the surface of a floor and the surface of the next floor above, or if there is no floor above, the space between the floor and the ceiling next above.*

In a residential building the upper story is a half story when sloping ceilings are produced by finishing the underside of roof rafters on pitched roofs having the eave line 4 feet or less above the floor of that story. Mansard structures on any residential or commercial building shall not be considered roofs for the purpose of this definition.

A lower story in a residential or business building is a half story when the floor thereof is below the average finished grade elevation along the entire front of the building a distance of not less than 3 feet and not more than 5 feet.

A lower story is a full story when the floor thereof is not below said average elevation a distance of 3 feet.

A lower story is a basement and not counted as a story for height purposes when the floor thereof is below said average elevation a distance of more than 5 feet.

Replace with **Story**- *"That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. It is measured as the vertical distance from top to top of two successive tiers of beams or finished floor surfaces and for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters."*

4. Add new definition **Story Above Grade Plane**- *"Any story having its finish floor surface entirely above grade plane, except that a basement shall be considered a story where the finished surface of the floor above the basement is:*

- 1. More than 6 feet above grade plane; or*
- 2. More than 12 feet above the finished ground level at any point.*

5. Incorporate the details attached (as counter handouts) to further explain how to determine building height.

Ken Vaughn stated he would rather use all grades and increase the building height by five feet., but that probably would not be accepted by the community.

Bob Lindeblad stated he liked the average of grade plan and noted it is very common.

Dirk Schafer reviewed the previous application using the proposed criteria noting the difference would be 4.75'.

Ron Williamson stated that currently the zoning regulations are inconsistent with the building code and this creates problems for applicants to calculate the building height and meet both the zoning ordinances and the building code. The definitions should be the same.

Dirk Schafer confirmed the proposed measurement of roof height uses the highest point and not an average height.

Ron Williamson stated the proposed change in the zoning regulations would reference the ICBO code. Bob Lindeblad said the language needs to be user friendly and easily found. Jim Brown responded staff would have available handouts that explained the process in non-technical language for residents.

Nancy Vennard asked if the proposed regulations would apply to both commercial and residential properties. Mr. Lindeblad stated he preferred separate regulations for residential and commercial. Dennis Enslinger stated staff would investigate that further. Ron Williamson noted the most restrictive would apply.

Ken Vaughn noted the proposed regulations are essentially increasing the building height by three to four feet.

Dennis Enslinger stated that staff would do further study and return to the Commission in January with specific language and how the change would be incorporated into the zoning regulations.

Nancy Vennard moved the Planning Commission authorize a public hearing on the proposed revisions to building height at the February 3, 2009 meeting. The motion was seconded by Randy Kronblad and passed unanimously.

January 6th meeting

The Planning Commission secretary noted the agenda for the January meeting includes the continued application by CVS, an application for conditional use permit and site plan

approval at 95th & Mission by Walgreen's and a first floor elevation request at 3908 West 66th Street.

ADJOURNMENT

With no further business to come before the Planning Commission, the meeting was adjourned at 8:20 p.m.

Ken Vaughn
Chairman

**Planning Commission Actions
January 6, 2009**

PC2008-10 Request for Conditional Use Permit for a Drive-thru at the southwest corner of Mission Road and Somerset

This application was continued to the February 3, 2009 Planning Commission meeting.

PC2008-115 Request for Site Plan Approval for Retail Building - SW corner of Mission & Somerset

This application was continued to the February 3, 2009 Planning Commission meeting.

PC2009-01 Request for Conditional Use Permit for a Drive-thru pharmacy window for Walgreens at the SW corner of 95th & Mission Road

The Planning Commission approved the Conditional Use Permit subject to two conditions.

PC2009-101 Request for Site Plan Approval for Walgreen's at SW corner of 95th & Mission Road

The Planning Commission approved the Site Plan for the construction of a Walgreen's Drug store at the SW corner of 95th & Mission Road subject to ten following conditions to be reviewed and approved by staff.

Discussion on Proposed Ordinance Revisions

Cell Tower Regulations

The Planning Commission authorized a public hearing on February 3, 2009 on proposed wireless communications facilities and antenna

Building Height

The Planning Commission reviewed the final language for proposed revisions regarding the measurement of building height. A public hearing will be held on Tuesday, February 3, 2009.

Emergency Generators

The Planning Commission reviewed proposed revisions regarding the location of emergency generators in the side yard on residential properties and authorized a public hearing on Tuesday, February 3, 2009.

**TREE BOARD
City of Prairie Village, Kansas**

MINUTES

**Wednesday - January 7, 2009, 6:00PM Meeting
Public Works - Conference Room
3535 Somerset Drive**

Board Members: Cliff Wormcke, Jack Lewis, Greg VanBooven, Deborah Nixon, Luci Mitchell, Art Kennedy, Tony Rostberg

Other Attendees: Suzanne Lownes

- 1) **Review and Approve minutes from December 3, 2008 meeting** - Motion by Jack Lewis and seconded by Cliff Wormcke to accept the minutes.

- 2) **Sub-Committee Report**
 - 2.1) **Fall Seminar**
 - a) **Discussion of possible topics.** Luci Mitchell suggested that landscaping would be an interesting topic. Jack Lewis said that could be a very broad topic and attendees would all have different questions and interests. It was suggested that Winterizing Your Landscape could be a more defined topic for the Fall Seminar. Deborah Nixon said that she would try finding some options for speakers on the topic and also that she knew of a resource that might be good about pruning schedules
 - 2.2) **Arboretum Committee**
 - a) **Update.** Art Kennedy said that there was no report at this time.
 - 2.3) **Arbor Day**
 - a) **Arbor Day Poster Contest.** Art Kennedy and Luci Mitchell said that they had positive feedback from the schools that contacted. Deborah Nixon stated that the teacher she talked to suggested that they submit the information earlier so that the teachers would have a chance to incorporate it into their teaching plans. Deborah Nixon stated that she had sent an email to the Arbor Day Poster Contest contact about when the materials could be obtained for next year.
 - b) **Arbor Day Event.** It was determined that Arbor Day will be April 24th this year and that the Tree Board Annual Arbor Day Event should be held on Saturday, April 25th. It was suggested to check with Bob on a preferred location for the event. Jack Lewis said that he would work on getting two ornamental trees, a replacement for last year's tree and one for this year's event. There was discussion on the nomination procedure that was set up. Suzanne Lownes said that she would find and send out the procedure. It was mentioned to post the nominations on the Prairie Village website as well as the Village Voice. Suzanne Lownes stated that at some point the Village Voice will probably be distributed every other month and she will check on the status of February's issue. It was decided that nominations should be received by February 28th.

- 3) **Discussion of revising Tree Planting List for Right-of-way plantings.** Greg will review and update the list for a new right-of-way planting list and submit it for approval at the next meeting.

- 4) **Tree Removal at Corinth Shopping Center** - Luci Mitchell submitted the notes from the review by Tree Board members on January 3rd. Suzanne Lownes said she would rewrite the list and attach the map with locations and submit to Dennis Enslinger for Highwoods Properties.

- 5) **Old Business** - No old business
- 6) **New Business** - Suzanne Lownes updated the committee that the 2008 Tree City USA Application had been completed and submitted for consideration.

Deborah Nixon said that she was informed that a donation had been made to the Arboretum Foundation and she was curious how many others had been received. Suzanne Lownes said that she would check with staff on the status of the Arboretum Fund.

- 7) **The next meeting agenda** - Next meeting will be February 4th at 6:00PM at Public Works.

**Council Members
Mark Your Calendars
January 20, 2009**

January 2009
January 24 Prairie Village Arts Collection mixed media exhibit in the R. G. Endres Gallery
NEJC Chamber Legislative Breakfast at the Ritz Charles - 7:30 a.m.

February 2009
February 2 Prairie Village Arts Collection mixed media exhibit in the R. G. Endres Gallery
City Council Meeting
February 16 City offices closed in observance of President's Day
February 17 (Tues.) City Council Meeting

March 2009
March 2 Deana Winter mixed media exhibit in the R. G. Endres Gallery
City Council Meeting
March 13 Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
March 16 City Council Meeting

April 2009
April 6 Christi Roberts-Bony oils exhibit in the R. G. Endres Gallery
City Council Meeting
April 10 Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
April 20 City Council Meeting

May 2009
May 4 Kay Trieb photography exhibit in the R. G. Endres Gallery
City Council Meeting
May 8 Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
May 18 City Council Meeting
May 25 City offices closed in observance of Memorial Day

June 2009
June 1 L. Daniel Compton photography exhibit in the R. G. Endres Gallery
City Council Meeting
June 12 Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
June 15 City Council Meeting

July 2009
July 3 Mark Raynes photography exhibit in the R. G. Endres Gallery
City offices closed in observance of Independence Day
July 4 VillageFest
July 6 City Council Meeting
July 10 Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
July 20 City Council Meeting

August 2009
August 3 Senior Arts Council mixed media exhibit in the R. G. Endres Gallery
City Council Meeting
August 14 Artist reception in the R. G. Endres Gallery 6:30 - 7:30
August 17 City Council Meeting

September 2009
September 7 City offices closed in observance of Labor Day
September 8 (Tues.) City Council Meeting
September 21 City Council Meeting

October 2009	State of the Arts exhibit in the R. G. Endres Gallery
October 5	City Council Meeting
October 9	Artist reception in the R. G. Endres Gallery 6:00 - 8:00
October 19	City Council Meeting
November 2009	Mid America Pastel Society exhibit in the R. G. Endres Gallery
November 2	City Council Meeting
November 13	Artist reception in the R. G. Endres Gallery 6:00 - 8:00
November 16	City Council Meeting
November 26	City offices closed in observance of Thanksgiving
November 27	City offices closed in observance of Thanksgiving
December 2009	Mimi Pettigrew oils exhibit in the R. G. Endres Gallery
December 4	Mayor's 2009 Holiday Party
December 7	City Council Meeting
December 11	Artist reception in the R. G. Endres Gallery 6:00 - 7:30
December 21	City Council Meeting
December 25	City offices closed in observance of Christmas

COMMITTEE AGENDA

January 20, 2009

ANIMAL CONTROL COMMITTEE

AC96-04 Consider ban the dogs from parks ordinance (assigned 7/15/96)

COMMUNICATIONS COMMITTEE

COM2008-01 Consider upgrade to City's Website (assigned 10/8/2007)

COUNCIL COMMITTEE

COU2006-27 Consider Project 190855: Tomahawk Road Bridge Replacement (assigned 8/28/2006)
COU2006-33 Consider Lease of Public Works from Highwoods Properties, Inc. (assigned 8/29/2006)
COU2006-38 Consider Park & Recreation Committee Master Plan (assigned 09/27/2006)
COU2007-02 Consider Reducing size of Council & term limits for elected officials (assigned 1/8/2007)
COU2007-27 Consider Project 190864 - 2008 Paving Program (assigned 3/9/2007)
COU2007-35 Consider reactivation of Project 190709: 83rd Street/Delmar Drainage Improvements
COU2007-40 Consider Code Enforcement - Interior Inspections (assigned 5/2/2007)
COU2007-74 Consider reactivation of Prairie Village Development Corporation (assigned 12/3/2007)
COU2008-21 Consider Project 190865:2009 CARS - Roe Avenue Resurfacing from Somerset Drive to 83rd Street (assigned 2/26/2008)
COU2008-22 Consider Project 190890: 2009 Street Resurfacing Program (assigned 2/26/2008)
COU2008-25 Consider Project 190871: Mission Lane Bridge Replacement (assigned 2/27/2008)
COU2008-67 Consider sidewalk policy relative to sidewalks (8200 Rosewood) (assigned 8/13/2008)
COU2008-75 Consider approval of a modification to Personnel Policy 910 regarding "comp time" (assigned 10/1/2008)
COU2008-91 Consider 2009 Salary Ranges (assigned 11/24/2008)
COU2008-97 Consider Sidewalk on Homestead Circle, Project 190869: - 2009 Street Resurfacing Program (assigned 12/8/2008)
COU2008-98 Consider Policy amendment regarding pool passes for employees (assigned 12/10/2008)
COU2008-100 Consider approval of ordinance affirming City Boundaries (assigned 12/10/2008)
COU2009-03 Consider Project 191023: 2009 Concrete Repair Program (assigned 12/23/2008)
COU2009-04 Consider Project P5000: 2009 Crack Seal/Slurry Seal Program (assigned 12/23/2008)
COU2009-05 Consider Project P5001: 2009 Street Repair Program (assigned 12/23/2008)
COU2009-12 Consider 2010-2014 CARS Application (assigned 1/9/2009)
COU2009-13 Consider Project 190649 and 190655 Windsor and Porter Park Ball Field Improvements (assigned 1/9/2009)
COU2009-14 Consider Design Agreement for Project 190870: 2010 Street Resurfacing Program (assigned 1/13/2009)
COU2009-15 Consider Construction Administration Agreement for Project 190721: 2009 Storm Drainage Repair Program (assigned 1/13/2009)
COU2009-16 Consider Design Agreement for Project 190876: 2010 CARS, 83rd Street Resurfacing from Nall Avenue to Roe Avenue (assigned 1/13/2009)
COU2009-17 Consider Construction Administration Agreement for Project 190877: 2009 CARS, 83rd Street Resurfacing: Roe Avenue to Somerset Drive (assigned 1/13/2009)
COU2009-18 Consider Agreement for Swimming Pool Conformance Evaluation (assigned 1/13/2009)
COU2009-19 Consider Agreement for Contract Services with Amazing Cities (assigned 1/15/2009)
COU2009-20 Consider Construction Administration Agreement for Project 190871: Mission Lane Bridge Replacement (assigned 1/15/2009)

PARKS AND RECREATION COMMITTEE

PK97-26 Consider Gazebo for Franklin Park (assigned 12/1/97)

PLANNING COMMISSION

PC2007-01 Study City zoning regulations to address those items identified by the Village Vision Strategic Investment Plan in 2007 (assigned 8/20/2007)
PC2008-01 Consider Cell Tower Policy (assigned 3/19/2008)
PC2008-02 Consider development of ordinances to support best practices for renewable energy and for green design related to residential and commercial building design (assigned 7/7/08)

PRAIRIE VILLAGE ARTS COUNCIL

PVAC2000-01 Consider a brochure to promote permanent local art and history (assigned Strategic Plan for the 1st Quarter of 2001)