

A decorative border made of flames, a cup of soda, and a burger. The border is composed of several flame-like shapes at the top and bottom, a cup of soda on the left, and a burger on the right. The text is centered within this border.

City Council Meeting

January 5, 2009

Dinner will be
provided by:

Oklahoma Joe's BBQ

*Wood Smoked Combo:
Brisket and Pulled Pork
BBQ Beans, Potato Salad,
Coleslaw, Bread & Pickles
Dessert*

COUNCIL COMMITTEE
January 5, 2009
6:00 p.m.
Council Chamber

AGENDA

DAVID VOYSEY, COUNCIL PRESIDENT

CONSENT AGENDA

- COU2009-01 Consider Project 190653: El Monte Fountain Improvements Engineering Change Order #1 (Final)**
- COU2007-27 Consider Project 190864: 2008 Street Resurfacing Program Engineering Change Order #8 (Final)**
- COU2009-07 Consider Project 190721: 2009 Storm Drainage Repair Program - Engineering Change Order #2 (Final)**
- *COU2009-10 Consider Purchase Request of Police Vehicles**

AGENDA ITEMS FOR DISCUSSION

- *COU2009-02 Consider MARC Federal Stimulus Package Call for Projects
Tom Trienens**
- COU2009-03 Consider Bid Approval for Project 191023: 2009 Concrete Repair Program
Tom Trienens**
- COU2009-04 Consider Bid Approval for Project P5000: 2009 Crack Seal/ Slurry Seal Program
Tom Trienens**
- COU2009-05 Consider Bid Approval for Project P5001: 2009 Street Repair Program
Tom Trienens**
- COU2009-06 Consider Annual Service Agreement for 2009 Materials Testing
Tom Trienens**
- COU2009-08 Consider Traffic Engineering Study for the Intersection of Roe Avenue and 75th Street
Tom Trienens**

**Discussion about Web Service Concepts and Process Overview
Michael Kelly**
- COU2009-09 Consider Approval of an Ordinance relating to Vagrancy
Wes Jordan**
- *COU2009-11 Consider Transfer to Equipment Reserve Fund
Quinn Bennion**

**Presentation on Neighborhood Revitalization Districts
Katie Logan, Quinn Bennion and Dennis Enslinger**
- COU2007-51 Village Vision**



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: January 5, 2009

Council Meeting Date: January 20, 2009

**COU2009-01: CONSIDER PROJECT 190653: EL MONTE FOUNTAIN IMPROVEMENTS
ENGINEERING CHANGE ORDER #1(FINAL)**

RECOMMENDATION

Staff recommends the City Council approves Engineering Change Order #1(Final) with Larkin Group for an increase of \$2,074.25 to project 190653: El Monte Fountain Improvements.

BACKGROUND

The design is complete. The additional work was to perform survey so that the proposed fountain elevations can be given on the plans

FUNDING SOURCE

Funding is available under the Capital Infrastructure Program Project 190653 - El Monte Fountain Improvements.

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. Engineering Change Order #1(Final) with Larkin Group.

PREPARED BY

Thomas Trienens, Manager of Engineering Services

December 15, 2008

Step

CITY OF PRAIRIE VILLAGE
PUBLIC WORKS DEPARTMENT
CHANGE ORDER NO. 1 (FINAL)

Consultant's Name Larkin Group Inc.

Project Title: El Monte Fountain Improvements

Owner's Project No. 190653

Date Requested: January 5, 2009 Consultant's Project No. KC08-0001.0200

Original Agreement Date: June 2, 2008

The scope of work in the above Service Agreement has been modified as follows:


Additional survey was required in order to give accurate information on the plans for the new fountain elevation.

Original Agreement Amount	<u>\$7,000.00</u>
Net Previous Change Orders	<u>\$0.00</u>
Subtotal	<u>\$7,000.00</u>
Net Increase this Change Order	<u>\$2,074.25</u>
New Agreement Amount	<u>\$9,074.25</u>

The Agreement Completion Date has not been changed.


CONSULTANT

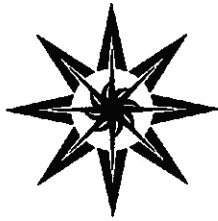
CITY OF PRAIRIE VILLAGE, KANSAS

By 
William J. Cunningham, P.E.

By _____
Ronald L. Shaffer, Mayor

CITY OF PRAIRIE VILLAGE, KANSAS

By 
Thomas Trienens, Manager of Eng. Services



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: January 5, 2009
Council Meeting Date: January 20, 2009

COU2007-27: CONSIDER PROJECT 190864: 2008 STREET RESURFACING PROGRAM ENGINEERING CHANGE ORDER #8 (FINAL)

RECOMMENDATION

Staff recommends the City Council approves 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 Street to Somerset Drive).

BACKGROUND

This project is complete and the total design cost is under budget.

FUNDING SOURCE

The unexpended project funds will be transferred to the Capital Infrastructure Program Streets Unallocated. This includes \$6,415.86 from project 190864, \$2,286.02 from project 190863 and \$10,778.58 from 190868.

RELATED TO VILLAGE VISION

- CC1a. Make streetscape improvements to enhance pedestrian safety and attractiveness of the public realm.*
- CC1b. Evaluate street cleaning and sanitation practices to identify potential gaps in service provision. Offer supplementary services as necessary to keep streets clean.*
- CFS3a. Ensure streets and sidewalks are in good condition by conducting maintenance and repairs as needed.*
- TR3a. Ensure the quality of the transportation network with regular maintenance as well as efficient responses to seasonal issues such as snow removal.*

ATTACHMENTS

1. Engineering Change Order #8 (Final) from HNTB.

PREPARED BY

Thomas Trienens, Manager of Engineering Services

December 16, 2008

**CITY OF PRAIRIE VILLAGE
PUBLIC WORKS DEPARTMENT**

CHANGE ORDER NO. 8 & Final

Consultant's Name HNTB Corporation

Project Title 2008 Paving Program Owner's Project No. 190864

Date Requested December 12, 2008 Consultant's Project No. 45021

Original Agreement Date March 19, 2007

The scope of work in the above Service Agreement has been modified as follows:

This is a final engineering change order that reduces the contract amount to the actual amount used for design of the project.

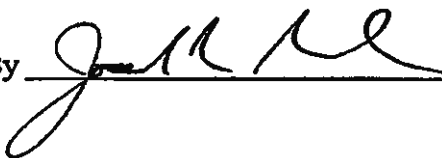
(Attach additional pages as necessary)

Original Agreement Amount	\$ <u>215,200.00</u>
Net Previous Change Orders	\$ <u>157,650.00</u>
Subtotal	\$ <u>372,850.00</u>
Net Decrease this Change Order	\$ <u>19,480.46</u>
New Agreement Amount	\$ <u>353,369.54</u>

The Agreement Completion Date has changed to December 12, 2008.

CONSULTANT

CITY OF PRAIRIE VILLAGE, KANSAS

By 

By _____
Ronald L. Shaffer, Mayor



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: January 5, 2009
Council Meeting Date: January 20, 2009

COU2009-07: CONSIDER PROJECT 190721: 2009 STORM DRAINAGE REPAIR PROGRAM - ENGINEERING CHANGE ORDER #2 (FINAL)

RECOMMENDATION

Staff recommends the City Council approve engineering change order #2 (FINAL) with George Butler Associates for Project 190721: 2009 Storm Drainage Repair Program for \$7,300.00

BACKGROUND

Additional curb inlets were added to this project and the additional design cost is for survey and plan preparation.

FUNDING SOURCE

Funds are available in the Capital Infrastructure Program under Drainage Unallocated.

RELATED TO VILLAGE VISION

- CC1a. Make streetscape improvements to enhance pedestrian safety and attractiveness of the public realm.
- TR3a. Ensure the quality of the transportation network with regular maintenance as well as efficient responses to seasonal issues such as snow removal.

ATTACHMENTS

1. Engineering Change Order #2 (FINAL) with George Butler Associates.

PREPARED BY

Thomas Trienens, Manager of Engineering Services

December 24, 2008

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CITY OF PRAIRIE VILLAGE
PUBLIC WORKS DEPARTMENT

CHANGE ORDER NO. 2 (FINAL)

Consultant's Name George Butler Associates, Inc.

Project Title: 2009 Storm Drainage Repair Program Owner's Project No. 190721

Date Requested December 29th, 2008 Consultant's Project No. 11475.10

Original Agreement Date April 7, 2008

The scope of work in the above Service Agreement has been modified as follows:

Additional curb inlets were added to this project by the City which required additional surveying & plan development.

(Attach additional pages as necessary)

Original Agreement Amount	\$ <u>34,000.00</u>
Net Previous Change Orders	\$ <u>65,000.00</u>
Subtotal	\$ <u>99,000.00</u>
Net Increase or Decrease this Change Order	\$ <u>7,300.00</u>
New Agreement Amount	\$ <u>106,300.00</u>

The Agreement Completion Date has been changed from January 2nd, 2009 to January 16th, 2009.

MANAGER OF ENG. SERVICES

CITY OF PRAIRIE VILLAGE, KANSAS

By Thomas Trienens
Tom Trienens, P.E.

By _____
Ronald L. Shaffer, Mayor

CONSULTANT

By Clarence D. Munsch
Clarence D. Munsch, P.E.



POLICE DEPARTMENT

Council Committee Meeting Date: January 5, 2009

Council Committee Meeting Date: January 5, 2009

*COU2009-10: PURCHASE REQUEST OF POLICE VEHICLES

RECOMMENDATION

Staff recommends the purchase of five (5) 2009 Dodge Chargers from Odessa Dodge for no more than \$23,000 per vehicle. Three (3) of the units will be for Patrol, one (1) for the Traffic Unit, and one will be paid for by the City of Mission Hills.

Staff also recommends the purchase of one (1) 2009 Dodge Charger from Odessa Dodge for no more than \$21,000 for Investigations.

Odessa Dodge was awarded the MARC Metropolitan Coop Bid.

COUNCIL ACTION REQUESTED ON JANUARY 5, 2009.

BACKGROUND

On an annual basis, the Police Department replaces older police units due to age, mileage, and/or maintenance problems. The Department is seeking authorization to purchase these units from Odessa Dodge, who was awarded the 2009 MARC Metropolitan Bid. The approximate build time for these cars is 90-150 days.

This purchase was previously approved by the City Council as part of the 2009 Public Safety Budget.

FUNDING SOURCE

01-03-25-7100 - \$69,000

01-03-26-7100 - \$21,000

01-03-31-7100 - \$23,000

PREPARED BY

Capt. Tim M. Schwartzkopf

Patrol Commander

Date: December 30, 2008



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: January 5, 2009
Council Meeting Date: January 5, 2009

***COU2009-02: CONSIDER SUBMITTAL OF PROJECTS TO MARC FOR CONSIDERATION FOR FEDERAL STIMULUS PACKAGE**

RECOMMENDATION

Staff recommends the attached projects be submitted to MARC for consideration should federal stimulus money become available for local public works projects.

COUNCIL ACTION REQUESTED ON JANUARY 5, 2009

BACKGROUND

The following information was retrieved from the MARC (Mid-America Regional Council) website: The federal government is working to enact an economic stimulus package, 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, maybe 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.

Creating a project list for the region

One thing we can do now is build a credible list of potential local government projects. Many local governments have developed individual lists, which states, metro areas and national organizations are currently compiling. 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. We ask local governments to enter potential stimulus package projects for their jurisdictions into this online database for 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

FUNDING SOURCE

No funding is required.

RELATED 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.*
- TR3a. Ensure the quality of the transportation network with regular maintenance as well as efficient responses to seasonal issues such as snow removal.*

ATTACHMENTS

Proposed list of projects for submittal to MARC.

PREPARED BY

Thomas Trienens, Manager of Engineering Services

December 30, 2008

MARC - Federal Stimulus Package Call for Projects

Priority	Project	Description	Estimated Cost	Expected Date of Land/ROW Acquisition	Are all necessary environmental clearances in place?	Construction could start within:	Potential barriers to timely implementation:
1	83rd Street Rehabilitation: Roe Avenue to Somerset Drive & 83rd Street/Delmar Drainage	Storm drainage (includes a new reinforced concrete box to by pass low water crossing to mitigate traffic hazard and localized flooding), resurfacing, new sidewalk	\$3,200,000	All easements have been obtained. (No ROW required)	No. Must reapply for permit which has recently expired.	3 months	None
2	Roe Avenue: 83rd Street to Somerset Drive	Resurfacing, pavement repairs and new sidewalk	\$700,000	N/A	Yes	Immediately	None
3	75th Street: Mission Road to Stateline Road	Resurfacing, pavement repairs, new sidewalk and relocating overhead utilities underground	\$3,500,000	N/A	No	6 months	None
4	Mission Lane Bridge	Bridge replacement under Mission Lane	\$700,000	N/A	Yes	Immediately	None
5	Municipal Complex energy improvements	Installation of solar panels	\$500,000	N/A	N/A	9 months	None
6	Trail System	Franklin Park/Roe Avenue/Tomahawk	\$350,000	N/A	N/A	6 months	None

Total Project Funds

Year	Project Name	2004 Actual	2005 Actual	2006 Actual	2007 Actual	2008 Estimate	2009 Request	2010 Plan	2011 Plan	2012 Plan	Total 2004-2012
PARK PROJECTS											
190614	Park Furnishing Replacement			8,241							8,241
190616	Harmon Park Skateboard Facility	51,737	226,709	9,042							287,488
190629	Porter Park Irrigation System			11,881							11,881
190634	Prairie Park Addition	1,604	78,121	2,898							82,623
190635	Swimming Pool Repair		5,249								5,249
190636	Weltner Park Half Basketball Court Repair		4,530								4,530
190637	Meadowlake Park Tennis Court Repair		6,045	120,025							126,070
190639	Bennett Park Half Basketball Court			9,348							9,348
190640	Meadowlake Park Field Improvement			2,500	1,920						4,420
190641	Windsor Park Tennis Court Repairs			49,854							49,854
190644	McCrum Park Improvements				49,782						49,782
190646	Swimming Pool Reserve				30,000	50,000	75,000	113,000	170,000	255,000	693,000
190647	Franklin Park Parking Lot Improvements				20,000						20,000
190648	Carroll Plaza Replacement					15,000					15,000
190649	Windsor Park Field Improvement				7,197						7,197
190650	Fall Zone Replacement	52,990		31,053		40,000					124,043
190651	Park ID Signs					51,000					51,000
190652	Park Master Plan					50,000	150,000	158,000	166,000	174,000	698,000
190653	El Monte Fountain Replacement					30,000					30,000
	<i>Section Total</i>	<i>106,331</i>	<i>320,654</i>	<i>244,842</i>	<i>106,899</i>	<i>296,000</i>	<i>225,000</i>	<i>271,000</i>	<i>336,000</i>	<i>429,000</i>	<i>2,277,728</i>
DRAINAGE PROJECTS											
190708	Tomahawk Road - Nall Av to Roe Av		212,000	123,923	2,374,980						2,710,903
190709	Somerset Dr, Delmar St, & Fontana St		76,000	245,700	4,058						325,758
190716	73rd Street CDS Repair	170,175	2,403								172,578
190720	Private Water Discharge Program				16,678	50,000	20,000	21,000	22,000	23,000	152,678
190721	Drainage Repair Program	960,340	708,930	192,265	1,285,065	834,000	600,000	630,000	661,000	695,000	6,566,600
190871	Mission Ln Bridge Drain Component						294,000				294,000
	<i>Section Total</i>	<i>1,130,515</i>	<i>999,393</i>	<i>561,888</i>	<i>3,680,781</i>	<i>884,000</i>	<i>914,000</i>	<i>651,000</i>	<i>683,000</i>	<i>718,000</i>	<i>10,222,317</i>
STREET PROJECTS											
190809	75th Street & State Line Rd Intersection				1,300						1,300
190810	Mission Road Bridge Replacement	4,737									4,737
190836	71st Street - Nall Ave to Roe Ave	376,858									376,858
190841	Mission Road - 71st St to 75th St	49,000	981,056	2,800							1,032,856
190845	Mission Road - 75th St to Somerset Dr	1,163,454	8,781	62,052							1,234,287
190848	Mission Road - 83rd St to Somerset Dr	33,000	264,787	(630)							297,157
190849	Roe Avenue - 91st St to 95th St			340,729							340,729
190850	Reeds Drive - 69th St to 71st St		24,930	200,828							225,758
190853	Corinth School Zone Lights		118,298	14,375							132,673
190855	Tomahawk Road - Bridge Replacement				490,228						490,228
190858	95th Street - Mission Rd to Nall Av			191,077							191,077
190862	75th Street - Nall Av to Mission Rd			93,228	916,764						1,009,992
190865	Roe Avenue - 83rd St to Somerset Dr					76,800	521,000				597,800
190866	75th Street - Belinder Dr to State Line Rd				28,125			95,000	789,100		912,225
190867	Traffic Calming Program					40,000	47,000	52,000	54,000	58,000	251,000
190868	Roe Avenue - 91st St to Somerset Dr				68,900	848,000					916,900
190869	Paving Program	926,747	1,181,623	1,252,451	2,202,695	2,344,000	1,907,000	2,002,000	2,102,000	2,207,000	16,125,516
190871	Mission Ln Bridge Street Component					59,000	564,000				623,000
190874	Roe Avenue - NCL to 67th Street					84,200	161,000				245,200
190876	83rd Street - Roe Av to Somerset Dr					27,000	261,000				288,000

Total Project Funds

Year	Project Name	2004 Actual	2005 Actual	2006 Actual	2007 Actual	2008 Estimate	2009 Request	2010 Plan	2011 Plan	2012 Plan	Total 2004-2012
190877	83rd Street - Nall Av to Roe Ave						52,000	491,000			543,000
190878	Lamar Avenue - 75th St to 79th St						51,000	483,000			534,000
190879	Somerset Drive - 83rd St to Deimar St							40,000	378,000		418,000
190880	Nall Avenue - 75th St to 79th St							63,000	569,000		632,000
190881	Somerset Drive - Roe Av to Nall Av								98,000	929,000	1,027,000
190882	83rd Street - Mission Rd to Somerset Dr									53,000	53,000
190883	Somerset Drive - 83rd St to Mission Rd									50,000	50,000
190884	95th Street - Traffic Signal Replace						50,000				50,000
	<i>Section Total</i>	<i>2,553,796</i>	<i>2,579,475</i>	<i>2,156,910</i>	<i>3,708,012</i>	<i>3,479,000</i>	<i>3,614,000</i>	<i>3,226,000</i>	<i>3,990,100</i>	<i>3,297,000</i>	<i>28,604,293</i>
BUILDING PROJECTS											
190903	Municipal Offices Generator Replacement	69,474	1,295								70,769
190906	PW Bldg A - Generator Replacement		40,850	3,484							44,334
190907	PW Bldg A - HVAC Replacement		20,670								20,670
190908	Municipal Offices - Lighting Replacement		7,261								7,261
190909	Public Safety - Lighting Replacement		12,540								12,540
190910	Community Ctr - Lighting Replacement		1,485								1,485
190911	Municipal Offices - Radio Tower Wall Repair			15,120							15,120
190912	PW Bldg A - Carpet Replacement		5,000								5,000
190913	PW - Lighting Replacement		4,678								4,678
190915	PW Fuel System Upgrade			21,193							21,193
190916	PW Office Addition					10,000					10,000
190917	Purchase of 3541 Somerset Drive						175,000				175,000
190918	Public Safety - Roof Replacement						30,000				30,000
190919	Campus Brick Wall Replacement						26,000	200,000			226,000
	<i>Section Total</i>	<i>69,474</i>	<i>93,779</i>	<i>39,797</i>	<i>-</i>	<i>10,000</i>	<i>231,000</i>	<i>200,000</i>	<i>-</i>	<i>-</i>	<i>644,050</i>
SIDEWALK & CURB PROJECTS											
191001	ADA Compliance Program	12,075		32,545	72,743	25,000	25,000	25,000	25,000	25,000	242,363
191009	2003 Concrete Repair Program	30,954									30,954
191011	2004 Concrete Repair Program	373,060	525,252	400,551	481,265	800,000	600,000	630,000	662,000	695,000	5,167,128
191019	Canterbury Sidewalk			12,546	86,325						98,871
191020	Colonial Pedestrian Bridge Replacement			26,850	350						27,200
191021	City Entrance Monuments			45,000							45,000
	<i>Section Total</i>	<i>416,089</i>	<i>525,252</i>	<i>517,492</i>	<i>640,683</i>	<i>825,000</i>	<i>625,000</i>	<i>655,000</i>	<i>687,000</i>	<i>720,000</i>	<i>5,611,516</i>
	TOTALS	4,276,205	4,518,493	3,520,929	8,138,375	5,434,000	5,809,000	5,003,000	5,696,100	5,164,000	47,360,102
	Percentage Change		6%	-22%	131%	-33%	3%	-11%	14%	-9%	

December 17, 2008

Dear Local Government Official:

As you are aware, the incoming federal administration has proposed an economic stimulus package, focusing on infrastructure investment, which Congress may consider and put in place early next year. It is difficult to anticipate the exact details of such a package, but comments and discussions suggest that:

- ❖ It will be significant, maybe as much as \$500 billion or more over time.
- ❖ A large portion will be transportation investments, but significant funds for other types of infrastructure such as building retrofits and other types of public works projects will likely be included.
- ❖ The number one criteria will be getting projects underway, perhaps with a 180 day time limit for putting projects under contract, at least for the first phase.
- ❖ The immediate goal will be to create jobs, but emphasis on rebuilding the nation's crumbling infrastructure and investing in projects that will have a long-term impact as well as an immediate economic stimulus may also be a part of the plan.

MARC is playing an active role with local governments, regional organizations, and national coalitions to both understand the nature and operations of the stimulus and influence how the stimulus is implemented. In particular we are advocating for a strong role for local governments and metropolitan planning organizations in the planning, receipt and expenditure of the funds (see enclosed MARC policy). We are also taking steps to prepare our own organization to be able to respond in a timely manner to any short-term stimulus program geared towards public works projects.

We believe that one thing we can do now is to build a credible list of potential local government projects. Many local governments have developed individual lists and states, metro areas, and national organizations are already in the process of compiling these lists. MARC has received requests to consolidate these potential investments into a more comprehensive projection of the impact of a major infrastructure investment program on our region. Such a list will aid the region in advocating for metro needs at both the federal and state level and in being prepared to move quickly once the stimulus package is approved.

We are asking you to go to the following MARC Web site and enter potential stimulus package projects: www.marc.org/transportation/stimulusprojects/. The projects entered there should fall into the following categories:

- ❖ Transportation projects including:
 - ◆ Streets and roads
 - ◆ Bridges
 - ◆ Public transit investments
 - ◆ Airports
 - ◆ Trails and bicycle facilities
- ❖ Public works including:
 - ◆ Sewers
 - ◆ Water
 - ◆ Capital projects designed to stimulate economic development or serve low-income areas
- ❖ Public facility renovations, construction, or energy retrofit

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Presiding Commissioner
Cass County, Mo.

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Tom Cooley
Commissioner
Unified Government
of Wyandotte County/
Kansas City, Kan.

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Councilmember
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Treasurer
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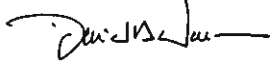
Secretary
Marge Vogt
Councilmember
Olathe, Kan.

Executive Director
David A. Warm

The online form is easy to fill out and only asks for limited information such as a basic description, project type, barriers to implementation, project cost, and readiness to go to contract. We are asking local governments to enter their projects by January 7, 2009, if at all possible so that they can be shared with national organizations. The list will be publically available on the Web site and comments will be solicited from the public. The projects will be shared with our congressional delegation, state delegations, and appropriate federal and state agencies.

Thanks for your assistance with this. We believe this information will put local governments within the region in a better position to capitalize on the stimulus package. If you have any questions about the data base, contact Marc Hansen (816-701-8317, mhansen@marc.org) or for general questions contact Mell Henderson (816-701-8257, mellh@marc.org).

Sincerely yours,

A handwritten signature in black ink, appearing to read "David Warm", with a horizontal line extending to the right.

David Warm
Executive Director



Policy Position

Federal Economic Stimulus and Infrastructure Investment Plan

The MARC Board supports efforts by Congress to authorize and fund a stimulus package that provides resources for local communities to address important and timely transportation, water, sewer and other infrastructure and energy conservation investments. The stimulus package should be designed to meet the scale of the economic challenges facing the country and offer a robust approach to tackle the nation's current economic problems as well as longer-term systemic issues. The funds should be used to support investments that will have lasting benefit to local communities and the nation.

Policy Considerations

Immediate vs. Strategic Impact: The economic crisis facing the nation will require a sustained effort over a period of time, and as such, Congress should consider that investments through a stimulus package might occur in a series of stages, with the first stage focused on immediate infrastructure projects. The second and if necessary subsequent stages of investment should be more strategic in helping position the nation to respond to global economic, social and environmental challenges and opportunities. Funds should be included in the initial program to support necessary planning and engineering work to advance projects for subsequent phases.

Economic Stimulus through Metropolitan Areas to Maximize Impact: The metropolitan areas in the US generate 90 percent of the nation's gross domestic product and 86 percent of the nation's jobs. An economic stimulus package should direct funds to where they will have the most potential for short-term and long-term impact. If the funds are allocated to the states, Congress should ensure that a significant proportion of the resources are made available for metropolitan areas.

Local Government Role: Congress should require a clear role for local governments in decision making and in receipt and use of the funds. Local government projects are those most likely to quickly add jobs to the local economy, and capacity already exists to streamline decision making at the metropolitan and local level.

Congress should make use of existing metropolitan processes such as the Metropolitan Planning Organizations (MPO for transportation) for funding allocation decisions to ensure that short-term investments are consistent with longer term community plans.

Use Existing Programmatic Structures: Congress should allocate funds through existing federal agencies and programs to expedite the release of funds to states, regions and local governments. The federal government has a number of agencies and programs

designed as conduits for allocating federal dollars to projects that will have economic benefits.

These programs require that state and local governments work collaboratively to make decisions on the use of funds. Congress should use these existing programs and processes to ensure that investments are consistent with plans, technical criteria and community and state goals to have lasting impact. Allocations within these programs, especially transportation, may need to be adjusted to ensure appropriate funding for both state and local government projects.

These federal programs include, but may not be limited to:

- ✓ US Department of Transportation: SAFETEA-LU Surface Transportation Program (for a range of multi-modal investments such as bicycle/pedestrian, transit and roadway projects), Public Transit, Rail Modernization, Airport Improvement Program
- ✓ US Economic Development Administration: Public Works and Facilities
- ✓ US Housing and Urban Development: Community Development Block Grant Program (Public Facilities and Infrastructure)
- ✓ US Environmental Protection Agency: Water and Sewer Grants/Loans
- ✓ US Department of Energy: Energy and Environment Block Grant Program (Energy Efficiency Programs)

Streamline Project Delivery Processes: Congress will need to consider adjustments to current program requirements, particularly those involving federal review and approval processes and approval of state and metropolitan Transportation Improvement Programs.

Reduce or Waive Matching Requirements: Local and state governments face budget crises, and matching requirements should be reduced or waived to allow for the effective and timely investment of the federal dollars.

Strategic Investments for the Long-Term Economic Recovery: Congress should consider the investment of funds through one or more stimulus packages to create mechanisms to move the economy and the nation in new directions, particularly by encouraging investments in new energy opportunities; reinvest in metro areas' economies; address social equity; and encourage long-term sustainability.

Approved by MARC Board of Directors
12/16/2008

POTENTIAL FEDERAL STIMULUS PACKAGE PROJECTS SUBMITTED TO MARC

City of Fairway

- Fairway Arboretum - 3 million
- Fairway Public Works Building - 1 million
- Highlands/Bryantwood Storm Sewer Replacement - 13.5 million
- Old Fairway Storm Sewer Replacement - 12 million
- Reinhardt Storm Sewer Replacement - 13.5 million
- Street Resurfacing - 3 million

City of Leawood

- 143rd Street - Nall to Windsor - 13.2 million
- Fire Station 4 - 4.5 million
- Justice Center - 16 million

City of Olathe, KS

- 127th Street, Black Bob to Pflumm - 11 million
- 127th Street, Mur-Len to Black Bob - 8.6 million
- 143rd Street, Lakeshore to Cedar Niles Road - 4.8 million
- 143rd Street, Quivira to Switzer - 5 million
- 159th Street, West City Limits to I-35 - 10.4 million
- Arterial Mill and Overlay - 2.1 million
- Arterial Mill and Overlay Program - 8.9 million
- Black Bob Pool Renovations - 3.5 million
- Cedar Creek Trail - 4 million
- Cedar Creek WWTP Expansion - 38.3 million
- Cedar Lake Dredging - 8 million
- Cedar Lake, Wildlife and Water Quality Restoration - 8 million
- City-Wide In-Situ Lining - 2 million
- City-Wide Sanitary Sewer Rehabilitation - 6 million
- City-Wide Waterline Rehabilitation - 1.65 million
- Collector Well 5 - 5 million
- College Boulevard, Ridgeview to Renner - 3 million
- Community Center - 12 million
- Curb Replacement Program - 1 million
- Elevated Water Storage Tank, 151st & Mur-len - 3.4 million
- Energy Retrofits to Buildings - 1 million
- Geometric Improvements Package - 6.35 million
- Harold Street WWTP Solids Processing Improvements - 4.68 million
- Heritage Trail - \$775,000
- Lake Olathe Dam Repairs - \$150,000
- Lone Elm Park - Phase II - \$400,000
- Lone Elm Road, 119th Street to Harold - 5 million
- Meadowlane Trail - 2 million
- Old 56 Highway Bridge Over Cedar Creek - 3 million
- Police Building Expansion - 16 million

- Raw Water Transmission Main, Collector Well 5 to WTP2 - 17.83 million
- Retaining Wall Replacement, Street Maintenance Facility - \$300,000
- Ridgeview Road, 175th Street to 7100' North - 8.6 million
- Roundabout Improvements - 3.8 million
- Salt Storage Facility - \$900,000
- Santa Fe Streetscape - 4 million
- Sidewalk Program - \$250,000
- South Indian Creek Trail - 1 million
- Street Reconstruction - 2 million
- Street Reconstruction - 2.28 million
- Traffic Signal, 151st Street and Olathe Medical Center - \$350,000
- VOIP - Voice Over Internet Protocol - 4.3 million
- West Cedar Creek Sewer Interceptor Expansion - 15.5 million
- West Olathe Water Transmission Main Improvements - 14.5 million
- Westview Trail - 1.65 million
- Woodland Creek Trail - 2 million

City of Overland Park

- U.S. 69, I-435 to 75th St. - 99 million

City of Westwood

- Highway 169 (Rainbow Blvd.) Improvement Project; KLINK 1R Resurfacing Project - \$990,000
- West 50th Street Improvement - \$190,000

Johnson County Park & Rec District

- Blue River/Camp Branch Creek Streamway Trail Phase 2 - \$900,000
- Camp Branch Creek Streamway Trail Phase 1 - \$600,000
- Kill Creek Streamway Trail Phase 2 - \$450,000
- Kill Creek Streamway Trail Phase 3 - \$600,000
- Okun Fieldhouse Expansion - 7 million
- Shawnee Mission Park Dog Off Leash Area Restroom - \$450,000
- Tomahawk Hills Golf Course Clubhouse Replacement - 2 million
- Tomahawk Hills Golf Course Renovation - 9 million

For complete details, visit

<http://www.marc.org/transportation/stimulusprojects/browseprojects.asp>



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: January 5, 2009

Council Meeting Date: January 20, 2009

COU2009-03: CONSIDER PROJECT 191023: 2009 CONCRETE REPAIR PROGRAM

RECOMMENDATION

Staff recommends the City Council approve the construction contract with McAnany Construction, Inc. for Project 191023: 2009 Concrete Repair Program.

BACKGROUND

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:

McAnany Construction	\$585,000.00
Cobalt Construction	\$644,670.00
Miller Paving	\$649,207.50
Mega Industries	\$799,910.00
Amino Brothers	\$872,935.00
O'Donnell & Sons	\$913,200.00
Freeman	\$916,943.50
Linaweaver Construction	\$956,650.00
Engineer's Estimate	\$723,900.00

City staff has reviewed the bids for accuracy and found no errors.

FUNDING SOURCE

Funding is available in the Capital Infrastructure Program Project 191023.

ATTACHMENTS

1. Contract with McAnany Construction for Project 191023.

PREPARED BY

Thomas Trienens, Manager of Engineering Services

December 22, 2008

PROJECT 191023:

2009 CONCRETE REPAIR PROGRAM

CONSTRUCTION AGREEMENT

BETWEEN

CITY OF PRAIRIE VILLAGE, KS

AND

MCANANY CONSTRUCTION, INC.

**CONSTRUCTION AGREEMENT
BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
MCANANY CONSTRUCTION, INC.
FOR
PROJECT 191023 - 2009 CONCRETE REPAIR PROGRAM**

THIS AGREEMENT, is made and entered into this ____ day of _____, 2009, by and between the City of Prairie Village, Kansas, hereinafter termed the "City", and McAnany Construction, Inc, hereinafter termed in this agreement, "Contractor", for the construction and completion of Project , designated, described and required by the Project Manual and Bid proposal, to wit:

CONTRACT COST: The City shall pay the Contractor for the performance of the Work embraced in this Contract, and the Contractor will accept in full compensation therefore the sum (subject to adjustment as provided by the Contract) of Five hundred and eighty-five thousand and 00/100 DOLLARS (\$585,000.00) for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

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

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

Contractor agrees that time is of the essence and any term pertaining to Contractor timely performing so as to achieve Total Completion when required under the Contract is a material provision of this Contract. Further, the parties acknowledge that City's damages in the event of delay are difficult to ascertain and consequently agree that, in the event and to the extent that actual date of Total Completion is delayed beyond the required date for Total Completion for the Total Project or Project Segments attributable solely or concurrently to (i) an act or omission of Contractor or any of its subcontractors or suppliers, or (ii) in whole or in part, to any other event or condition within the Contractor's reasonable control (and not for reasons solely attributable to City),

the Contractor shall be assessed a liquidated damage, and not as a penalty, in the amount set forth in the Special Conditions for each calendar day beyond the applicable Total Completion date. Such amount shall be deducted from any amounts due Contractor under this agreement.

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

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

1. DEFINITIONS:

1.1 Following words are given these definitions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SPECIFICATIONS shall mean those portions of the Project Manual consisting of written technical descriptions of materials, equipment, construction methods, standards and workmanship as applied to the Work and certain administrative details applicable thereto. They may include, but not necessarily be limited to: design specifications, e.g. measurements, tolerances, materials, inspection requirements and other information relative to the work; performance specifications, e.g., performance characteristics required, if any; purchase

description specifications, e.g. products or equipment required by manufacturer, trade name and/or type; provided, however, equivalent alternatives (including aesthetics, warranty and manufacturer reputation) may be substituted upon written request and written approval thereof by the City.

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

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

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

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

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

- 1.2 Whenever any word or expression defined herein, or pronoun used instead, occurs in these Contract Documents; it shall have and is mutually understood to have the meaning commonly given. Work described in words, which so applied have a well-known technical or trade meaning shall be held to refer to such, recognized standards.
- 1.3 Whenever in these Contract Documents the words "as ordered," "as directed", "as required", "as permitted", "as allowed", or words or phrases of like import are used, it is understood that the order, direction, requirement, permission or allowance of the City Engineer is intended.
- 1.4 Whenever any statement is made in the Contract Documents containing the expression "it is understood and agreed", or an expression of like import, such expression means the mutual understanding and agreement of the parties hereto.
- 1.5 The words "approved", "reasonable", "suitable", "acceptable", "properly", "satisfactorily", or words of like effect in import, unless otherwise particularly specified herein, shall mean approved, reasonable, suitable, acceptable, proper or satisfactory in the judgment of the City Engineer.
- 1.6 When a word, term or phrase is used in the Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and, third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.
- 1.7 All terms used herein shall have the meanings ascribed to them herein unless otherwise specified.

2. ENTIRE AGREEMENT:

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

2.2 The Contract shall be construed in accordance with the laws of the state of Kansas.

3. INTENT AND INTERPRETATION

3.1 The intent of the Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, including construction, labor, materials, tools, equipment and transportation, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result, shall be provided by the Contractor for the Contract Price.

3.2 All limits stated in the Contract Documents are of the essence of the Contract.

3.3 The Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

3.4 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

3.5 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents and shall give written notice to the Engineer of any inconsistency, ambiguity, error or omission, which the Contractor may discover, or should have discovered, with respect to these documents before proceeding with the affected Work. The review, issuance, or the express or implied approval by the City or the Engineer of the Contract Documents shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such review be evidence of the Contractor's compliance with this Contract.

3.6 The City has prepared or caused to have prepared the Project Manual. **HOWEVER, THE CITY MAKES NO REPRESENTATION OR WARRANTY AS TO ACCURACY OR FITNESS FOR PARTICULAR PURPOSE INTENDED OR ANY OTHER WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the City concerning such documents as no such representation or warranties have been made or are hereby made.

3.7 As between numbers and scaled measurements in the Project Manual, the numbers shall

- govern; as between larger scale and smaller scale drawings, (e.g. 10:1 is larger than 100:1) the larger scale shall govern.
- 3.8 The organization of the Project Manual into divisions, sections, paragraphs, articles (or other categories), shall not control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.
- 3.9 The Contract Documents supersedes all previous agreements and understandings between the parties, and renders all previous agreements and understandings void relative to these Contract Documents.
- 3.10 Should anything be omitted from the Project Manual, which is necessary to a clear understanding of the Work, or should it appear various instructions are in conflict, the Contractor shall secure written instructions from the Engineer before proceeding with the construction affected by such omissions or discrepancies.
- 3.11 It is understood and agreed that the work shall be performed and completed according to the true spirit, meaning, and intent of the Contract Documents.
- 3.12 The Contractor's responsibility for construction covered by conflicting requirements, not provided for by addendum prior to the time of opening Bids for the work represented thereby, shall not extend beyond the construction in conformity with the less expensive of the said conflicting requirements. Any increase in cost of work required to be done in excess of the less expensive work of the conflicting requirements will be paid for as extra work as provided for herein.
- 3.13 The apparent silence of the Project Manual as to any detail, or the apparent omission from them of a detailed description concerning any point, shall be regarded as meaning that only the best general practice is to be used. All interpretations of the Project Manual shall be made on the basis above stated.
- 3.14 The conditions set forth herein are general in scope and are intended to contain requirements and conditions generally required in the work, but may contain conditions or requirements which will not be required in the performance of the work under contract and which therefore are not applicable thereto. Where any stipulation or requirement set forth herein applies to any such non-existing condition, and is not applicable to the work under contract, such stipulation or requirement will have no meaning relative to the performance of said work.
- 3.15 Pursuant to K.S.A. No. 16-133, if the Contractor to whom the Contract is awarded is not a resident firm of the State of Kansas, he shall execute and file "Certificate of Appointment of Process of Agent" with the Clerk of the District Court at the Johnson County Courthouse. These forms may be obtained at the Office of the Clerk of the District Court. After execution of the documents, they shall be filed with the Clerk of the District Court. A filing fee of Five Dollars (\$5.00) is required. These certificates are pursuant to the General Statutes of Kansas, and shall be filed prior to the formal execution of the Contract Documents. Failure to comply with these requirements shall disqualify the Contractor for the awarding of this Contract.

4. WORK SUPERINTENDENT

- 4.1 The Contractor shall provide and maintain, continually on the site of Work during its progress, an adequate and competent superintendent of all operations for and in connection with the work

being performed under this Contract, either personally or by a duly authorized superintendent or other representative. This representative shall be designated in writing at the preconstruction meeting.

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

5. ENGINEER

- 5.1 It is mutually agreed by and between the parties to this Contract Agreement that the Engineer shall act as the representative of the City and shall observe, as required, the work included herein.
- 5.2 In order to prevent delays and disputes and to discourage litigation, it is further agreed by and between the parties to this Contract that the Engineer shall, in good faith and to the best of its ability, determine the amount and quantities of the several kinds of work which are to be paid for under this Contract; that the Engineer shall determine, where applicable, questions in relation to said Work and the construction thereof; that Engineer shall, where applicable decide questions which may arise relative to the execution of this Contract on the part of said Contractor; that the Engineer's decisions and findings shall be the conditions precedent to the rights of the parties hereto, to any action on the Contract, and to any rights of the Contractor to receive any money under this Contract provided, however, that should the Engineer render any decision or give any direction which, in the opinion of either party hereto, is not in accordance with the meaning and intent of this Contract, either party may file with the Engineer and with the other party, within thirty (30) days a written objection to the decision or direction so rendered and, by such action, may reserve the right to submit the question to determination in the future.
- 5.3 The Engineer, unless otherwise directed or agreed to by the City in writing, will perform those duties and discharge those responsibilities allocated to the Engineer as set forth in this Contract. The Engineer shall be the City's representative from the effective date of this Contract until final payment has been made. The Engineer shall be authorized to act on behalf of the City only to

the extent provided in this Contract.

- 5.4 The City and the Contractor shall communicate with each other in the first instance through the Engineer.
- 5.5 The Engineer shall be the initial interpreter of the requirements of the Project Manual and the judge of the performance by the Contractor. The Engineer shall render written graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.
- 5.6 The Engineer will review the Contractor's Applications for Payment and will certify to the City for payment to the Contractor those amounts then due the Contractor as provided in this Contract. The Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to City, based on Engineer's on-site observations of the Work in progress as an experienced and qualified design professional and on Engineer's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of the Engineer's knowledge, information and belief, the quality of the Work is in accordance with the Project Manual (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Project Manual, to a final determination of quantities and classifications for Unit Price Work if such is called for herein, and to any other qualifications stated in the recommendation); and that Contractor is entitled to payment of the amount recommended. However, by recommending any such payment Engineer will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to Engineer in the Project Manual or that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by the City or the City to withhold payment to Contractor.
- 5.7 The Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make such representations to City. Engineer may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in the Engineer's opinion to protect the City from loss because:
- The Work is defective, or completed Work has been damaged requiring correction or replacement,
 - The Contract Price has been reduced by Written Amendment or Change Order,
 - The City has been required to correct defective Work or complete Work in accordance with the Project Manual.
- 5.8 The City may refuse to make payment of the full amount recommended by the Engineer because claims have been made against City on account of Contractor's performance or furnishing of the Work or liens have been filed in connection with the Work or there are other items entitling City to a set-off against the amount recommended, but City must give Contractor written notice (with a copy to Engineer) stating the reasons for such action.
- 5.9 The Engineer will have the authority to reject Work, which is defective or does not conform to the requirements of this Contract. If the Engineer deems it necessary or advisable, the Engineer shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.

- 5.10 The Engineer will review, or take other appropriate action as necessary, concerning the Contractor's submittals, including Shop Drawings, Product Data and Samples. Such review, or other action, shall be for the sole purpose of determining general conformance with the design concept and information given through the Project Manual.
- 5.11 The Engineer shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 5.12 The Engineer, upon written request from the Contractor shall conduct observations to determine the date of substantial completion and the date of final acceptance. The Engineer will receive and forward to the City for the City's review and records, written warranties and related documents from the Contractor required by this Contract and will issue a final Certificate for Payment to the City upon compliance with the requirements of this Contract.
- 5.13 The Engineer's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.
- 5.14 The Engineer will NOT be responsible for Contractor's means, methods, techniques, sequences, or procedures or construction, or the safety precautions and programs incident thereto and will not be responsible for Contractor's failure to perform the work in accordance with the Project Manual. The Engineer will not be responsible for the acts or omissions of the Contractor or any Subcontractor or any of its or their agents or employees, or any other person at the site or otherwise performing any of the work except as may otherwise be provided.
- 5.15 Any plan or method of work suggested by the Engineer, or other representatives of the City, to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor, and the Engineer and the City will assume no responsibility therefore.
- 5.16 It is agreed by the Contractor that the City shall be and is hereby authorized to appoint or employ, either directly or through the Engineer, such City representatives or observers as the City may deem proper, to observe the materials furnished and the work performed under the Project Manual, and to see that the said materials are furnished, and the said work performed, in accordance with the Project Manual therefore. The Contractor shall furnish all reasonable aid and assistance required by the Engineer, or by the resident representatives for proper observation and examination of the Work and all parts thereof.
- 5.17 The Contractor shall comply with any interpretation of the Project Manual by the Engineer, or any resident representative or observer so appointed, when the same are consistent with the obligations of the Project Manual. However, should the Contractor object to any interpretation given by any subordinate engineer, resident representative or observer, the Contractor may appeal in writing to the City Director of Public Works for a decision.
- 5.18 Resident representatives, observers, and other properly authorized representatives of the City or Engineer shall be free at all times to perform their duties, and intimidation or attempted intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the City so decides, to annul the Contract.

5.19 Such observation shall not relieve the Contractor from any obligation to perform said work strictly in accordance with the Project Manual.

6. WORK SCHEDULE:

- 6.1 The Contractor, within ten (10) calendar days after being instructed to do so in a written notice from the City, shall commence work to be done under this Contract.
- 6.2 The rate of progress shall be such that the Work shall have been completed in accordance with the terms of the Contract Documents on or before the completion date for the construction period named in the contract agreement, subject to any extension or extensions of such time made as hereinafter provided.
- 6.3 The Contractor shall be required to furnish the Engineer with a schedule setting forth in detail (in the critical path method) the sequences proposed to be followed, and giving the dates on which it is expected that portions of the work will be started and completed.
- 6.4 If at any time, in the opinion of the Engineer or City, proper progress is not being maintained; such changes shall be made in the schedule and resubmitted for consideration.
- 6.5 If the Contractor has not completed Work segments and is within a non-performance penalty period, he/she shall not be allowed to undertake a new Work segment until the Work segment in dispute is completed, unless expressly permitted by the City.
- 6.6 The operation of any tool, equipment, vehicle, instrument, or other noise-producing device is prohibited to start before or continue after the hours of 7 AM and 10 PM, Monday through Friday (except Fridays which shall be until Midnight) and 8 AM and midnight on Weekends (except Sunday which shall be 10 PM). Violation of this requirement is Prima Facia Violation of City Municipal Code 11-202.
- 6.7 No work shall be undertaken on Saturdays, Sundays and Holidays (Christmas, New Years, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day and Thanksgiving) without the express written approval of the City Engineer. If it is necessary to perform proper care, maintenance, or protection of work already completed or of equipment used, or in the case of an emergency verbal permission may be obtained through the Engineer.
- 6.8 Night work may be established by the Contractor, as a regular procedure, with the written permission of the City; such permission, however, may be revoked at any time by the City if the Contractor fails to maintain adequate equipment for the proper prosecution and control of all operations performed as part of the Work.
- 6.9 The Contractor shall provide 24 hours notice prior to commencing any work to the City Engineer. The Contractor shall communicate immediately any changes in the work schedule to the City Engineer.

7. DELAYS AND EXTENSIONS OF TIME

- 7.1 In executing the Contract, the Contractor expressly covenants and agrees that, in undertaking the completion of the work within the time herein fixed, he has taken into consideration and made allowances for all of the ordinary delays and hindrances incident to such work, whether growing out of delays in securing materials, workers, weather conditions or otherwise. No

charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the Work, or any portion thereof, included in this Contract.

- 7.2 Should the Contractor, however, be delayed in the prosecution and completion of the work by reason of delayed shipment orders, or by any changes, additions, or omissions therein ordered in writing by the City, or by strikes or the abandonment of the work by the men engaged thereon through no fault of the Contractor, or by any act taken by the U.S. Government such as the commandeering of labor or materials, embargoes, etc., which would affect the fabrication or delivery of materials and/or equipment to the work; or by neglect, delay or default of any other contractor of the City, or delays caused by court proceedings; the Contractor shall have no claims for damages or additional compensation or costs for any such cause or delay; but he shall in such cases be entitled to such extension of the time specified for the completion of the work as the City and the Engineer shall award in writing on account of such delays, provided, however, that claim for such extension of time is made by the Contractor to the City and the Engineer in writing within one (1) week from the time when any such alleged cause for delay shall occur.

8. ADVERSE WEATHER:

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

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

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

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

requirements)

- 8.17 The Contractor shall indicate the approved adverse weather days (whether less or more than the anticipated days) in their monthly Progress Schedule update.

9. PAYMENT PROCEDURE:

- 9.1 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal on the first day of each month of an Application for Payment, all Work for which payments have been received from the City shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.
- 9.2 Each application for payment must be submitted with Contractor's waiver for period of construction covered by application. Each progress payment will be submitted with executed waivers from the subcontractors or sub-contractors and suppliers for the previous period of construction covered by the previous application. The final payment application must be submitted together with or preceded by final or complete waivers from every entity involved with performance of the work covered by the payment request.
- 9.3 The Contractor will submit waivers on forms, and executed in a manner, acceptable to City.
- 9.4 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor because of such Subcontractor's Work the amount to which such Subcontractor is entitled. In the event the City becomes informed that the Contractor has not paid a Subcontractor as herein provided, the City shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the City, shall be deemed payment to the Contractor but shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the City to repeat the procedure in the future.
- 9.5 The Engineer will, upon receipt of a written Application for Payment from the Contractor, review the amount of work performed during the preceding period and the value thereof at the unit prices contracted. From the amounts so ascertained, there shall be deducted ten percent (10%) to be retained until after final completion of the entire work to the satisfaction of the City. The Engineer will submit an estimate each month to the City for payment to the Contractor, except that no amount less than \$500.00 will be submitted unless the total amount of the Contract remaining unpaid is less than \$500.00.
- 9.6 Deductions will be made from progress payments if the Contract includes a provision for a lump sum or a percentage deduction. Lump sum deductions will be that portion of the stated lump sum computed as the ratio that the amount earned bears to the Contract amount. Percentage deductions will be computed at the stated percentage of the amount earned.
- 9.7 No progress payment, nor any use or occupancy of the Work by the City, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.
- 9.8 The City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the City from

loss because of:

- Defective Work not remedied by the Contractor;
- Claims of third parties against the City or the City's property;
- Failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
- Evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
- Evidence that the Work will not be completed in the time required for substantial or final completion;
- Persistent failure to carry out the Work in accordance with the Contract;
- Damage to the City or a third party to whom the City is, or may be, liable;
- Evidence that the work is not progressing according to agreed upon schedule by both parties.

9.9 In the event that the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in this subparagraph, the Contractor shall promptly comply with such demand and refund such monies to the City.

9.10 Neither the observation by the City or any of the City's officials, employees, or agents, nor any order by the City for payment of money, nor any payment for, or acceptance of, the whole or any part of the work by the City or Engineer, nor any extension of time, nor any possession taken by the City or its employees, shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the City, or any right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of any other or subsequent breach.

10. COMPLETION AND FINAL PAYMENT

10.1 Work completion shall be defined as all elements of the Work or work segment, being complete including all subsidiary items and "punch-list" items.

10.2 When all of the Work is finally complete and the Contractor is ready for a final inspection, it shall notify the City and the Engineer thereof in writing. Thereupon, the Engineer will make final inspection of the Work and, if the Work is complete in accordance with this Contract, the Engineer will promptly issue a final Certificate for Payment certifying to the City that the Work is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Engineer is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s), which cost may be deducted by the City from the Contractor's full payment.

10.3 The Contractor shall not be entitled to any payment unless and until it submits to the Engineer its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the City, or the City's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors and Suppliers of the Contractor and of any and all other parties required by the City; and consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the City, the Contractor shall furnish a bond satisfactory to the City to discharge any such lien or indemnify the City from liability.

- 10.4 The City shall make final payment of all sums due the Contractor within thirty days of the later of the Engineer's execution of a final Certificate for Payment.
- 10.5 Acceptance of final payment shall constitute a waiver of all claims against the City by the Contractor except for those claims previously made in writing against the City by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final inspection.

11. CLAIMS BY THE CONTRACTOR

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

- proposed quantity and the contract unit price).
- 11.6 When the alterations cause an increase or decrease in excess of the 25 percent indicated above, either the Contractor or the Engineer may request an adjustment of the unit price to be paid for the item or items.
- 11.7 If a mutually agreeable adjustment cannot be obtained, the City reserves the right to terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the Work.
- 11.8 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall not include standby costs, indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties.
- 11.9 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving Final Acceptance of the Work shall be extended upon the written notice and claim of the Contractor to the City, for such reasonable time as the City may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven calendar days after the occurrence of the event or the first appearance of the condition-giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Work. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this subparagraph, any claim for an extension of time shall be waived.
- 11.10 The Contractor shall delay or suspend the progress of the work or any part thereof, whenever so required by written order of the City, and for such periods of time as required; provided, that in the event of such delay or delays or of such suspension or suspensions of the progress of the work, or any part thereof, the time for completion of work so suspended or of work so delayed by such suspension or suspensions shall be extended for a period equivalent to the time lost by reason of such suspension or suspensions; but such order of the City or Engineer shall not otherwise modify or invalidate in any way, any of the provisions of this Contract. In the event that the work shall be stopped by written order of the City, any expense, which, in the sole opinion and judgment of the City, is caused by the City, shall be paid by the City to the Contractor.
- 11.11 In executing the Contract Documents, the Contractor expressly covenants and agrees that, in undertaking to complete the Work within the time herein fixed, it has taken into consideration and made allowances for all hindrances and delays incident to such work, whether growing out of delays in securing materials or workers or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the work, or any portion thereof, included in this Contract, except as provided herein.
- 11.12 In addition to the Project Manual particular to Mobilization found elsewhere in this document, additional mobilization shall not be compensable for work outside of the designated areas for

work deemed essential by the City. A quantity of work equal to as much as 10% of the total Contract may be required to be performed beyond the boundaries of the designated work areas

12. CHANGES IN THE WORK

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

and forever releases any claim including impact against the City for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

13. INSURANCE AND HOLD HARMLESS.

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

such types and in such amounts as may be necessary to protect himself and the interests of the City and agents of the City against all hazards or risks of loss as hereinafter specified including an endorsement covering explosion, collapse, blasting and damage to underground property if applicable as specified in these Contract Documents. The form and limits of such insurance, together with the underwriter thereof in each case, shall be approved by the City, but regardless of such approval, it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times. Failure of the Contractor to maintain adequate insurance coverage shall not relieve it of any contractual responsibility or obligation. The insurance shall be provided on an occurrence basis and, not claims made basis.

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

Contractor against all claims arising from injuries to members of the public or damage to property of others arising out of any act or omission of the Contractor or its agents, employees, or subcontractors. In addition, this policy shall specifically insure the contractual liability assumed by the Contractor under this Contract entitled "Insurance and Hold Harmless." The property damage liability coverage shall contain no exclusion relative to blasting, explosion, collapse of building, or damage to underground property. Unless otherwise specified, Contractor's insurance shall include the following:

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

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

14. INDEMNITY

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

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

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

contribution, comparative fault or similar statutes to the extent said defenses are inconsistent with or would defeat the purpose of this section.

15. SUCCESSORS AND ASSIGNS

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

acceptance, a list of names of all Subcontractors proposed for portions of the work and shall designate which work each is to perform.

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

16. NON-DISCRIMINATION LAWS

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

17. RELATIONS WITH OTHER CONTRACTORS:

- 17.1 The Contractor shall cooperate with all other contractors who may be performing work on behalf of the City, and workers who may be employed by the City, or any other entity on any work in the vicinity of the Work to be done under this Contract, and the Contractor shall so conduct his/her operations as to interfere to the least possible extent with the work of such contractors or workers. The Contractor shall be responsible for any injury or damage, that may be sustained by other contractors, workers, their work or employees of the City, because of any fault or

negligence on the Contractor's part, and shall, at his/her own expense, repair or pay for such injury or damage. If the work of the Contractor is delayed because of any acts or omissions of any other Contractor or Contractors, the Contractor shall have no claim against the City on that account other than for an extension of time.

17.2 When two or more Contracts are being executed at one time in such manner that work on one Contract may interfere with that on another, the City shall decide which Contractor shall progress at which time.

17.3 Other projects the Contractor may have to coordinate with may include, but are not limited to:

- Project # 190721 - 2009 Storm Drainage Repair Program
- Project # 190865 - Roe Avenue Resurfacing (83rd Street to Somerset Drive)
- Project # 190869 - 2009 Street Resurfacing Program
- Project # 190877 - 83rd Street Resurfacing (Roe Avenue to Somerset Drive)
- Project # P5000 -- 2009 Crack Seal/Slurry Seal
- Project # P5001 - 2009 Street Repair Program
- Project # P5002 - 2009 Line Striping Program
- Project #190871 - Mission Lane Bridge Replacement

17.4 When the territory of one Contract is the necessary or convenient means of access for the transportation or movement of workers, materials, or appliances required for the execution of another Contract, such privileges of access or any other responsible privilege may be granted by the City to the Contractor so desiring, to the extent such may be reasonably necessary.

17.5 Upon execution of the Contract, the Contractor shall furnish the City, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Work. The City shall promptly reply to the Contractor, in writing, stating any objections the City may have to such proposed Subcontractor. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the City has made timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has objection.

18. RIGHT OF CITY TO TERMINATE

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

wrongfully terminated for cause, then such termination shall be deemed a termination for convenience and the Contractor shall be compensated as provided herein.

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

19. MISCELLANEOUS:

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

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

surety(ies); and 3.) his/her insurance carrier(s) and surety(ies) agree to be bound as specified herein, in the Contract Documents and in the insurance policy(ies) and bonds as to liability and surety coverage.

19.15 It is specifically agreed between the parties executing this Agreement that the Contract Documents are not intended to create any third party beneficiary relationship nor authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.

19.16 This agreement is entered into, under and pursuant to, and is to be construed and enforceable in accordance with the laws of the State of Kansas.

WITNESSETH:

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

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

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

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

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

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

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

CITY OF PRAIRIE VILLAGE

MCANANY CONSTRUCTION, INC.

By: _____
(signed)

By Pat McAnany
(signed)

Ronald L. Shaffer _____

Pat McAnany
(typed name)

Mayor _____

PRESIDENT
(typed title)

City of Prairie Village _____

McAnany Construction, Inc.
(typed company name)

7700 Mission Road _____

15320 Midland Drive
(typed address)

Prairie Village, Kansas, 66208 _____

Shawnee Mission, KS 66217
(typed city, state, zip)

631-9440
(typed telephone number)

_____ (date of execution)

_____ (date of execution)

SEAL

ATTEST:

APPROVED BY:

City Clerk, Joyce Hagen-Mundy

City Attorney, Catherine Logan

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

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS that we, the undersigned McAnany Construction, Inc.
P.O. Box 860009, Shawnee, KS 66286-0009, hereinafter referred to
as the "Contractor", and The Hanover Insurance Company, a Corporation organized under the laws
of the State of New Hampshire, and authorized to transact business in the State of Kansas as
Surety, are held firmly bound unto the City of Prairie Village, Kansas, hereinafter referred to as "City", in
the penal sum of Five Hundred Eighty-Five Thousand Dollars & NO/100THS DOLLARS
(\$ 585,000.00), lawful money of the United States of America, for the payment of which sum,
well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and
assigns, jointly and severally, by these presents:

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

WHEREAS, the above bonded Contractor has, on the ____ day of _____, 20__, entered into a
written Contract with the aforesaid City for furnishing all materials, equipment, tools, superintendence,
labor and other facilities and accessories for the construction of certain improvements as designated,
defined and described in the said Contract and the Conditions thereof, and in accordance with the
Specifications and Plans therefore; a copy of said Contract being attached hereto and made a part hereof.

NOW, THEREFORE, if the said Contractor shall and will, in all particulars, well, duly and faithfully
observe, perform and abide by each and every covenant, condition and part of the said Contract, and the
Conditions, Specifications, Plans and other Contract Documents thereto attached or, by reference, made a
part thereof, according to the true intent and meaning in each case, and if said Contractor shall replace all
defective parts, material and workmanship for a period of two years after acceptance by the City, then this
obligation shall be and become null and void; otherwise it shall remain in full force and effect;

PROVIDED FURTHER, if said Contractor fails in any particular to duly and faithfully observe,
perform and abide by each and every covenant, condition, and part of the said Contract and the
Conditions, Specifications, Plans and other Contract Documents, thereto attached, or, by reference made a
part thereof, according to the true intent and meaning in each case, or if said Contractor shall fail to
replace all defective parts, material and workmanship for a period of two years after acceptance by the
City then the surety will pay the costs to complete the project and/or the costs to repair any defective parts
for the period of two years after acceptance, and any other damages incurred by the owner in procuring
completion and/or repair, such amount not exceeding the amount of this obligation, together with interest
as provided by law.

PROVIDED FURTHER, that if the said Contractor fails to duly pay for any labor, materials,
sustenance's, provisions, provender, gasoline, lubricating oils, fuel oils, greases, coal, equipment and
tools consumed or used in said work, groceries and foodstuffs, and all insurance premiums, compensation
;liability and otherwise, or any other supplies or materials used or consumed by such Contractor or his,
their, or its subcontractors in performance of the Work contracted to be done, the Surety will pay the same
in any amount not exceeding the amount of this obligation, together with interest as provided by law;

PROVIDED, FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no
change, extension of time, alteration or addition to the terms of the Contract, or the Work to be performed
thereunder, or the specifications accompanying the same, shall in any way affect this obligation on this

bond and it does hereby waive notice of any change, extension of time, alteration or addition to the terms of the Contract, or to the work, or to the Specifications.

IN TESTIMONY WHEREOF, the said Contractor has hereunto set his hand, and the said Surety has caused these presents to be executed in its name, and its corporate seal to be hereunto affixed by its attorney-in-fact duly authorized thereunto so to do at Kansas City, Missouri on this, the _____ day of _____, 20____.

McAnany Construction, Inc.
CONTRACTOR

BY: *Jack McAnany*
(SEAL)

President
(Official Title)

The Hanover Insurance Company
SURETY COMPANY

BY: *Denise A. Iverson*
(SEAL) Denise A. Iverson

Denise A. Iverson
Attorney-in-Fact

BY: *Matthew J. Miller*
(State Representative) Matthew J. Miller

(Accompany this bond with Attorney-in-Fact's authority form the Surety Company certified to include the date of the bond)

This Power of Attorney may not be used to execute any bond with an inception date after April 1, 2010

THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA

DUPLICATE ORIGINAL

POWERS OF ATTORNEY
CERTIFIED COPY

KNOW ALL MEN BY THESE PRESENTS: That THE HANOVER INSURANCE COMPANY and MASSACHUSETTS BAY INSURANCE COMPANY, both being corporations organized and existing under the laws of the State of New Hampshire, and CITIZENS INSURANCE COMPANY OF AMERICA, a corporation organized and existing under the laws of the State of Michigan, do hereby constitute and appoint
Mary S. Wilcox, Denise A. Iverson, D.C. Pruett, Matthew J. Miller, Sean R. Miller and/or Dale A. Gebauer

of **Kansas City, MO** and each is a true and lawful Attorney(s)-in-fact to sign, execute, seal, acknowledge and deliver for, and on its behalf, and as its act and deed any place within the United States, or, if the following line be filled in, only within the area therein designated

any and all bonds, recognizances, undertakings, contracts of indemnity or other writings obligatory in the nature thereof, as follows:
Any such obligations in the United States, not to exceed Twenty Million and No/100 (\$20,000,000) in any single instance

and said companies hereby ratify and confirm all and whatsoever said Attorney(s)-in-fact may lawfully do in the premises by virtue of these presents. These appointments are made under and by authority of the following Resolution passed by the Board of Directors of said Companies which resolutions are still in effect:

"RESOLVED, That the President or any Vice President, in conjunction with any Assistant Vice President, be and they are hereby authorized and empowered to appoint Attorneys-in-fact of the Company, in its name and as its acts, to execute and acknowledge for and on its behalf as Surety any and all bonds, recognizances, contracts of indemnity, waivers of citation and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company in their own proper persons." (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 - Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America)

IN WITNESS WHEREOF, THE HANOVER INSURANCE COMPANY, MASSACHUSETTS BAY INSURANCE COMPANY and CITIZENS INSURANCE COMPANY OF AMERICA have caused these presents to be sealed with their respective corporate seals, duly attested by a Vice President and an Assistant Vice President, this 11th day of **February, 2008**.



THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA

Mary Jeanne Anderson
Mary Jeanne Anderson, Vice President

Robert K. Grennan
Robert K. Grennan, Assistant Vice President

THE COMMONWEALTH OF MASSACHUSETTS)
COUNTY OF WORCESTER) ss.

On this **11th** day of **February 2008**, before me came the above named Vice President and Assistant Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, to me personally known to be the individuals and officers described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of The Hanover Insurance Company Massachusetts Bay Insurance Company and Citizens Insurance Company of America, respectively, and that the said corporate seals and their signatures as officers were duly affixed and subscribed to said instrument by the authority and direction of said Corporations.



Barbara A. Garlick
Notary Public

My commission expires on November 3, 2011

I, the undersigned Assistant Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, hereby certify that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Powers of Attorney are still in force and effect.

This Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America.

"RESOLVED, That any and all Powers of Attorney and Certified Copies of such Powers of Attorney and certification in respect thereto, granted and executed by the President or any Vice President in conjunction with any Assistant Vice President of the Company, shall be binding on the Company to the same extent as if all signatures therein were manually affixed, even though one or more of any such signatures thereon may be facsimile." (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America)

GIVEN under my hand and the seals of said Companies, at Worcester, Massachusetts, this _____ day of _____, 20__ .

THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA

Stephen L. Braut
Stephen L. Braut, Assistant Vice President

STATUTORY BOND

Bond No. 1887776

KNOW ALL MEN BY THESE PRESENTS: That we McAnany Construction, Inc. as Contractor, and The Hanover Insurance Company with General Offices in the City of Overland Park, Kansas and authorized to transact business in the State of Kansas, as surety, are held and firmly bound unto the CITY OF PRAIRIE VILLAGE, KANSAS, and the STATE OF KANSAS, in the penal sum of Five Hundred Eighty-Five Thousand Dollars & NO/100THS DOLLARS (\$ 585,000.00) lawful money of the United States of America, plus any change orders in excess thereof as approved by the City, for the payment of which sum well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents:

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

WHEREAS, the said Contractor has on the ____ day of _____, 20__, entered into a Contract with the City of Prairie Village, Kansas for furnishing all tools, equipment, materials and supplies, performing all labor and constructing public improvements described in the said Contract, all in accordance with specifications and other contract documents on file in the office of City Clerk, City Hall, 7700 Mission Road, Prairie Village, Kansas.

NOW, THEREFORE, if the said Contractor or the Subcontractors of the Contractor shall pay all indebtedness incurred for supplies, materials or labor furnished, or equipment used or consumed in connection with, or in or about the construction or making of, the improvements described in the above-mentioned Contract Documents, including gasoline, lubricating oils, fuel oils, greases, coal and similar items used or consumed directly in furtherance of such public improvement, this obligation shall be void; otherwise, it shall remain in full force and effect.

The said Surety, for value received, hereby stipulates and agrees that no changes, extension of time, alteration or additions to the terms of the Contract to the work to be performed there under, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Specifications.

The said Surety further agrees that any person to whom there is due any sum for labor or material furnished, as hereinbefore stated, or said person's assigns, may bring action on this bond for the recovery of said indebtedness; PROVIDED that no action shall be brought on said bond after six months from the completion of said public improvements.

IN TESTIMONY WHEREOF, the said Contractor has hereunto set his hand, and the said Surety has caused these presents to be executed in its name, and its corporate seal to be hereunto affixed, by its attorney-in-fact duly authorized hereunto so to do, at _____ on this, the _____ day of _____, 20__.

McAnany Construction, Inc.,
P.O. Box 860009, Shawnee, KS 66286-0009

CONTRACTOR

The Hanover Insurance Company
440 Lincoln Street, Worcester, MA 01653

SURETY COMPANY

BY: _____ (SEAL)

BY: Denise A. Iverson
Attorney-in-Fact Denise A. Iverson

BY: Denise A. Iverson (SEAL)
Denise A. Iverson, Attorney-in-fact

BY: Matthew J. Miller
Kansas Agent Matthew J. Miller

THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA

DUPLICATE ORIGINAL

**POWERS OF ATTORNEY
CERTIFIED COPY**

KNOW ALL MEN BY THESE PRESENTS: That THE HANOVER INSURANCE COMPANY and MASSACHUSETTS BAY INSURANCE COMPANY, both being corporations organized and existing under the laws of the State of New Hampshire, and CITIZENS INSURANCE COMPANY OF AMERICA, a corporation organized and existing under the laws of the State of Michigan, do hereby constitute and appoint

Mary S. Wilcox, Denise A. Iverson, D.C. Pruett, Matthew J. Miller, Sean R. Miller and/or Dale A. Gebauer

of **Kansas City, MO** and each is a true and lawful Attorney(s)-in-fact to sign, execute, seal, acknowledge and deliver for, and on its behalf, and as its act and deed any place within the United States, or, if the following line be filled in, only within the area therein designated

any and all bonds, recognizances, undertakings, contracts of indemnity or other writings obligatory in the nature thereof, as follows:
Any such obligations in the United States, not to exceed Twenty Million and No/100 (\$20,000,000) in any single instance

and said companies hereby ratify and confirm all and whatsoever said Attorney(s)-in-fact may lawfully do in the premises by virtue of these presents. These appointments are made under and by authority of the following Resolution passed by the Board of Directors of said Companies which resolutions are still in effect:

"RESOLVED, That the President or any Vice President, in conjunction with any Assistant Vice President, be and they are hereby authorized and empowered to appoint Attorneys-in-fact of the Company, in its name and as its acts, to execute and acknowledge for and on its behalf as Surety any and all bonds, recognizances, contracts of indemnity, waivers of citation and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company in their own proper persons." (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 - Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America)

IN WITNESS WHEREOF, THE HANOVER INSURANCE COMPANY, MASSACHUSETTS BAY INSURANCE COMPANY and CITIZENS INSURANCE COMPANY OF AMERICA have caused these presents to be sealed with their respective corporate seals, duly attested by a Vice President and an Assistant Vice President, this 11th day of February, 2008.



THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA

Mary Jeanne Anderson
Mary Jeanne Anderson, Vice President

Robert K. Grennan
Robert K. Grennan, Assistant Vice President

THE COMMONWEALTH OF MASSACHUSETTS)
COUNTY OF WORCESTER) ss.

On this 11th day of February 2008, before me came the above named Vice President and Assistant Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, to me personally known to be the individuals and officers described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of The Hanover Insurance Company Massachusetts Bay Insurance Company and Citizens Insurance Company of America, respectively, and that the said corporate seals and their signatures as officers were duly affixed and subscribed to said instrument by the authority and direction of said Corporations.



Barbara A. Garlick
Notary Public

My commission expires on November 3, 2011

I, the undersigned Assistant Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, hereby certify that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Powers of Attorney are still in force and effect.

This Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America.

"RESOLVED, That any and all Powers of Attorney and Certified Copies of such Powers of Attorney and certification in respect thereto, granted and executed by the President or any Vice President in conjunction with any Assistant Vice President of the Company, shall be binding on the Company to the same extent as if all signatures therein were manually affixed, even though one or more of any such signatures thereon may be facsimile." (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America)

GIVEN under my hand and the seals of said Companies, at Worcester, Massachusetts, this _____ day of _____, 20__ .

THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA

Stephen L. Brault
Stephen L. Brault, Assistant Vice President

MAINTENANCE BOND

Bond Number 1887776

Bond _____

KNOW ALL MEN BY THESE PRESENTS:

That we, McAnany Construction, Inc., as Principal and The Hanover Insurance Company, as Surety, are held and firmly bound unto the City of Prairie Village, Kansas, in the full and just sum of Five Hundred Eighty-Five Thousand Dollars & NO/100THS (\$ 585,000.00) for the payment of which, well and truly to be made, we, and each of us, bind ourselves, our heirs, executors and assigns, themselves, and its successors and assigns, jointly and severally, firmly by these presents.

Dated this _____ day of _____, 20__.

The Conditions of this obligation are such that Principal McAnany Construction, Inc. upon completion of the Contract for street improvements, dated _____ which is incorporated herein by reference, and upon acceptance by the City of Prairie Village, Kansas, in accordance with the approved Contract Documents, Plans and Specifications, with no unacceptable deviations thereof, has agreed to guarantee the construction and installation, including all materials and workmanship, for the period of two years beginning on the date the City so accepts said work, said date being the formal acceptance date.

The said Surety, for value received, hereby stipulates and agrees that no changes, extension of time, alteration or addition to the terms of the Contract to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the specifications. Surety further agrees that any person to whom there is due any sum for labor or material furnished, as herein before stated, or said person's assigns, may bring action on this bond for the recovery of said indebtedness; PROVIDED, that no action shall be brought on said bond after twenty-four months from the completion of said public improvements.

NOW, THEREFORE, if said Principal shall guarantee and maintain the work referred to above in accordance with the Contract for a period of two (2) years from date of formal acceptance, then this obligation shall be null and void, otherwise to remain in full force and effect.

PROVIDED FURTHER, that if said Principal fails to duly and faithfully guarantee and maintain said work, the Surety will pay for the same in any amount not exceeding the amount of this obligation, together with interest as provided by law.

Signed, sealed and delivered the day and year first above written
McAnany Construction, Inc.

By: *Matthew J. Miller*
By: *Matthew J. Miller*
Kansas Resident Agent

Matthew J. Miller
Power of Attorney attached.

Countersigned: N/A
The Hanover Insurance Company
By: *Denise A. Iverson*
Attorney-in-Fact

Denise A. Iverson

Certified Copy Void Without Hanover Watermark
This Power of Attorney may not be used to execute any bond with an inception date after April 1, 2010

THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA

DUPLICATE ORIGINAL

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Mary S. Wilcox, Denise A. Iverson, D.C. Pruett, Matthew J. Miller, Sean R. Miller and/or Dale A. Gebauer

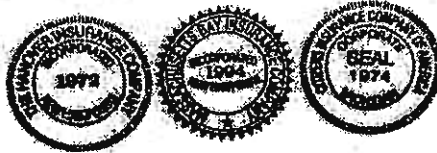
of **Kansas City, MO** and each is a true and lawful Attorney(s)-in-fact to sign, execute, seal, acknowledge and deliver for, and on its behalf, and as its act and deed any place within the United States, or, if the following line be filled in, only within the area therein designated

any and all bonds, recognizances, undertakings, contracts of indemnity or other writings obligatory in the nature thereof, as follows:
Any such obligations in the United States, not to exceed Twenty Million and No/100 (\$20,000,000) in any single instance

and said companies hereby ratify and confirm all and whatsoever said Attorney(s)-in-fact may lawfully do in the premises by virtue of these presents. These appointments are made under and by authority of the following Resolution passed by the Board of Directors of said Companies which resolutions are still in effect:

"RESOLVED, That the President or any Vice President, in conjunction with any Assistant Vice President, be and they are hereby authorized and empowered to appoint Attorneys-in-fact of the Company, in its name and as its acts, to execute and acknowledge for and on its behalf as Surety any and all bonds, recognizances, contracts of indemnity, waivers of citation and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company in their own proper persons." (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 - Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America)

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THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA

Mary Jeanne Anderson
Mary Jeanne Anderson, Vice President

Robert K. Grennan
Robert K. Grennan, Assistant Vice President

THE COMMONWEALTH OF MASSACHUSETTS)
COUNTY OF WORCESTER) ss.

On this **11th** day of **February 2008**, before me came the above named Vice President and Assistant Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, to me personally known to be the individuals and officers described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of The Hanover Insurance Company Massachusetts Bay Insurance Company and Citizens Insurance Company of America, respectively, and that the said corporate seals and their signatures as officers were duly affixed and subscribed to said instrument by the authority and direction of said Corporations.



Barbara A. Garlick
Notary Public

My commission expires on November 3, 2011

I, the undersigned Assistant Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, hereby certify that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Powers of Attorney are still in force and effect.

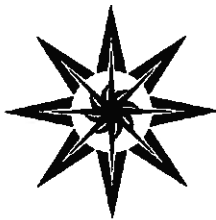
This Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America.

"RESOLVED, That any and all Powers of Attorney and Certified Copies of such Powers of Attorney and certification in respect thereto, granted and executed by the President or any Vice President in conjunction with any Assistant Vice President of the Company, shall be binding on the Company to the same extent as if all signatures therein were manually affixed, even though one or more of any such signatures thereon may be facsimile." (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America)

GIVEN under my hand and the seals of said Companies, at Worcester, Massachusetts, this _____ day of _____, 20__.

THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA

Stephen L. Braull
Stephen L. Braull, Assistant Vice President



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: January 5, 2009

Council Meeting Date: January 20, 2009

COU2009-04: CONSIDER PROJECT P5000: 2009 CRACK SEAL/SLURRY SEAL PROGRAM

RECOMMENDATION

Staff recommends the City Council approve the construction contract with Musselman & Hall Contractors for Project P5000: 2009 Crack Seal/Slurry Program

BACKGROUND

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. See the attached list for locations of work. Two bids were received:

Musselman & Hall Contractors	\$196,300.00
Vance Bros. Inc.	\$236,850.00
Engineer's Estimate	\$222,100.00

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

FUNDING SOURCE

Funding is available in the 2009 Public Works Operating Budget.

ATTACHMENTS

1. Contract Agreement with Musselman & Hall Contractors

PREPARED BY

Thomas Trienens, Manager of Engineering Services

December 22, 2008

Crack Seal						
STREET ID	STREET	FROM	TO	STREET LENGTH (FT)	STREET WIDTH (FT)	AREA (SY)
MIRD05	Mission Road	71st Street	75th Street	2670	52.5	15575
MIRD08	Mission Road	Somerset Drive	83rd Street	860	60	5733
91ST01	91st Street	Mission Road	Delmar Road	1491	23.5	3893
91ST02	91st Street	Delmar Road	Roe Avenue	1146	23.5	2992
DELD02	Delmar Drive	63rd Street	Mission Road	1730	23	4421
DELR05	Delmar Road	91st Street	92nd Terrace	936	23	2392
71ST01	71st Street	Stateline Road	Belinder Avenue	2607	26	7531
71ST02	71st Street	Belinder Avenue	Cherokee Drive	3329	30	11097
71ST07	71st Street	Roe Avenue	Nall Avenue	2561	30	8537
BIST01	Birch Street	69th Terrace	70th Terrace	663	22	1621
WAST01	Walmer Street	75th Street	77th Street	1320	22	3227
78ST03	78th Street	Booth Street	Belinder Avenue	783	22	1914
OULA01	Outlook Lane	81st Terrace	83rd Street	1160	23	2964
REEL01	Reeds Lane	81st Terrace	83rd Street	1152	23	2944
73TE05	73rd Terrace	Mission Road	Windsor Street	1334	29	4298
79ST04	79th Street	Mission Road	Belinder Road	3980	22.5	9950
					TOTAL	89,090

Slurry Seal						
STREET ID	STREET	FROM	TO	STREET LENGTH (FT)	STREET WIDTH (FT)	AREA (SY)
GRLA01	Granada Lane	67th Street	69th Street	1246	23.3	3226
79TE02	79th Terrace	Booth Street	Belinder Ave.	677	21.8	1640
FALD02	Falmouth Drive	75th Street	77th Street	1315	22	3214
NODR02	Norwood Drive	77th Street	79th Street	1333	28	4147
78ST06	78th Street	Delmar Road	Fontana Road	660	23	1687
BRST02	Briar Drive	75th Street	77th Street	1249	23	3192
76ST12	76th Street	Lamar Avenue	Russell Lane	630	23	1610
RULA01	Russell Lane	76th Street	77th Street	345	23	882
81TE01	81st Terrace	Nall Avenue	Outlook Lane	1171	22.5	2928
CELA01	Cedar Lane	Somerset Drive	90th Street	832	23.5	2172
REES01	Reeds Street	Tomahawk Road	78th Street	1074	23	2745
88ST03	88th Street CDS	Somerset Drive	End	1148	23.5	2998
88ST04	88th Street CDS	88th Street	End	278	23	710
ELST05	El Monte Street	91st Street	92nd Terrace	1068	23	2729
SPST01	Springfield Street	71st Terrace	73rd Street	960	23	2453
CHALN01	Chadwick Lane CDS	Somerset Drive	End	600	22.5	1500
79TE03	79th Terrace CDS	Chadwick Lane	End	320	22	782
84SST01	84th Street	Reinhardt Street	Mission Road	1140	22	2787
REIST02	Reinhardt Street	83rd Terrace	84th Terrace	728	22	1780
73TE01	73rd Terrace	Stateline Road	Eaton Road	677	22	1655
74ST02	74th Street	Eaton Street	High Drive	830	22.5	2075
78TE02	78th Terrace	Fontana Road	Roe Avenue	660	23	1687
78TE03	78th Terrace	Roe Avenue	Juniper Drive	1286	23	3286
77ST11	77th Street	Lamar Avenue	Walmer Street	785	22.5	1963
82TE02	82nd Terrace	Nall Avenue	Maple Lane	475	24	1267
ASST06	Ash Street CDS	81st Street	End	833	24	2221
RODR08	Rosewood Drive	83rd Street	83rd Terrace	465	23	1188
65TE01	65th Terrace	Roe Avenue	Hodges Drive	908	22	2220

66ST03	66th Street	El Monte Street	65th Street	663	23	1694
68ST01	68th Street	Mission Road	Delmar Road	1135	25	3153
86ST01	86th Street CDS	Mission Road	End	694	23.5	1812
RUST01	Russell Road	76th Street	77th Street	518	23	1324
					TOTAL	68725

PROJECT P5000:

2009 CRACK SEAL/SLURRY SEAL PROGRAM

CONSTRUCTION AGREEMENT

BETWEEN

CITY OF PRAIRIE VILLAGE, KS

AND

MUSSELMAN & HALL CONTRACTORS

**CONSTRUCTION AGREEMENT
BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
MUSSELMAN AND HALL CONTRACTORS
FOR
PROJECT P5000 - 2009 CRACK SEAL/SLURRY SEAL PROGRAM**

THIS AGREEMENT, is made and entered into this ____ day of _____, 2009, by and between the City of Prairie Village, Kansas, hereinafter termed the "City", and Musselman and Hall Contractors, hereinafter termed in this agreement, "Contractor", for the construction and completion of Project , designated, described and required by the Project Manual and Bid proposal, to wit:

CONTRACT COST: The City shall pay the Contractor for the performance of the Work embraced in this Contract, and the Contractor will accept in full compensation therefore the sum (subject to adjustment as provided by the Contract) of One hundred and ninety-six thousand and three hundred and 00/100 DOLLARS (\$196,300.00) for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

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

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

Contractor agrees that time is of the essence and any term pertaining to Contractor timely performing so as to achieve Total Completion when required under the Contract is a material provision of this Contract. Further, the parties acknowledge that City's damages in the event of delay are difficult to ascertain and consequently agree that, in the event and to the extent that actual date of Total Completion is delayed beyond the required date for Total Completion for the Total Project or Project Segments attributable solely or concurrently to (i) an act or omission of Contractor or any of its subcontractors or suppliers, or (ii) in whole or in part, to any other event or condition within the Contractor's reasonable control (and not for reasons solely attributable to City),

the Contractor shall be assessed a liquidated damage, and not as a penalty, in the amount set forth in the Special Conditions for each calendar day beyond the applicable Total Completion date. Such amount shall be deducted from any amounts due Contractor under this agreement.

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

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

1. DEFINITIONS:

1.1 Following words are given these definitions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SPECIFICATIONS shall mean those portions of the Project Manual consisting of written technical descriptions of materials, equipment, construction methods, standards and workmanship as applied to the Work and certain administrative details applicable thereto. They may include, but not necessarily be limited to: design specifications, e.g. measurements, tolerances, materials, inspection requirements and other information relative to the work; performance specifications, e.g., performance characteristics required, if any; purchase

description specifications, e.g. products or equipment required by manufacturer, trade name and/or type; provided, however, equivalent alternatives (including aesthetics, warranty and manufacturer reputation) may be substituted upon written request and written approval thereof by the City.

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

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

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

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

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

- 1.2 Whenever any word or expression defined herein, or pronoun used instead, occurs in these Contract Documents; it shall have and is mutually understood to have the meaning commonly given. Work described in words, which so applied have a well-known technical or trade meaning shall be held to refer to such, recognized standards.
- 1.3 Whenever in these Contract Documents the words "as ordered," "as directed", "as required", "as permitted", "as allowed", or words or phrases of like import are used, it is understood that the order, direction, requirement, permission or allowance of the City Engineer is intended.
- 1.4 Whenever any statement is made in the Contract Documents containing the expression "it is understood and agreed", or an expression of like import, such expression means the mutual understanding and agreement of the parties hereto.
- 1.5 The words "approved", "reasonable", "suitable", "acceptable", "properly", "satisfactorily", or words of like effect in import, unless otherwise particularly specified herein, shall mean approved, reasonable, suitable, acceptable, proper or satisfactory in the judgment of the City Engineer.
- 1.6 When a word, term or phrase is used in the Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and, third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.
- 1.7 All terms used herein shall have the meanings ascribed to them herein unless otherwise specified.

2. ENTIRE AGREEMENT:

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

2.2 The Contract shall be construed in accordance with the laws of the state of Kansas.

3. INTENT AND INTERPRETATION

3.1 The intent of the Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, including construction, labor, materials, tools, equipment and transportation, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result, shall be provided by the Contractor for the Contract Price.

3.2 All limits stated in the Contract Documents are of the essence of the Contract.

3.3 The Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

3.4 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

3.5 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents and shall give written notice to the Engineer of any inconsistency, ambiguity, error or omission, which the Contractor may discover, or should have discovered, with respect to these documents before proceeding with the affected Work. The review, issuance, or the express or implied approval by the City or the Engineer of the Contract Documents shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such review be evidence of the Contractor's compliance with this Contract.

3.6 The City has prepared or caused to have prepared the Project Manual. **HOWEVER, THE CITY MAKES NO REPRESENTATION OR WARRANTY AS TO ACCURACY OR FITNESS FOR PARTICULAR PURPOSE INTENDED OR ANY OTHER WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the City concerning such documents as no such representation or warranties have been made or are hereby made.

3.7 As between numbers and scaled measurements in the Project Manual, the numbers shall

govern; as between larger scale and smaller scale drawings, (e.g. 10:1 is larger than 100:1) the larger scale shall govern.

- 3.8 The organization of the Project Manual into divisions, sections, paragraphs, articles (or other categories), shall not control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.
- 3.9 The Contract Documents supersedes all previous agreements and understandings between the parties, and renders all previous agreements and understandings void relative to these Contract Documents.
- 3.10 Should anything be omitted from the Project Manual, which is necessary to a clear understanding of the Work, or should it appear various instructions are in conflict, the Contractor shall secure written instructions from the Engineer before proceeding with the construction affected by such omissions or discrepancies.
- 3.11 It is understood and agreed that the work shall be performed and completed according to the true spirit, meaning, and intent of the Contract Documents.
- 3.12 The Contractor's responsibility for construction covered by conflicting requirements, not provided for by addendum prior to the time of opening Bids for the work represented thereby, shall not extend beyond the construction in conformity with the less expensive of the said conflicting requirements. Any increase in cost of work required to be done in excess of the less expensive work of the conflicting requirements will be paid for as extra work as provided for herein.
- 3.13 The apparent silence of the Project Manual as to any detail, or the apparent omission from them of a detailed description concerning any point, shall be regarded as meaning that only the best general practice is to be used. All interpretations of the Project Manual shall be made on the basis above stated.
- 3.14 The conditions set forth herein are general in scope and are intended to contain requirements and conditions generally required in the work, but may contain conditions or requirements which will not be required in the performance of the work under contract and which therefore are not applicable thereto. Where any stipulation or requirement set forth herein applies to any such non-existing condition, and is not applicable to the work under contract, such stipulation or requirement will have no meaning relative to the performance of said work.
- 3.15 Pursuant to K.S.A. No. 16-133, if the Contractor to whom the Contract is awarded is not a resident firm of the State of Kansas, he shall execute and file "Certificate of Appointment of Process of Agent" with the Clerk of the District Court at the Johnson County Courthouse. These forms may be obtained at the Office of the Clerk of the District Court. After execution of the documents, they shall be filed with the Clerk of the District Court. A filing fee of Five Dollars (\$5.00) is required. These certificates are pursuant to the General Statutes of Kansas, and shall be filed prior to the formal execution of the Contract Documents. Failure to comply with these requirements shall disqualify the Contractor for the awarding of this Contract.

4. WORK SUPERINTENDENT

- 4.1 The Contractor shall provide and maintain, continually on the site of Work during its progress, an adequate and competent superintendent of all operations for and in connection with the work

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

5. ENGINEER

- 5.1 It is mutually agreed by and between the parties to this Contract Agreement that the Engineer shall act as the representative of the City and shall observe, as required, the work included herein.
- 5.2 In order to prevent delays and disputes and to discourage litigation, it is further agreed by and between the parties to this Contract that the Engineer shall, in good faith and to the best of its ability, determine the amount and quantities of the several kinds of work which are to be paid for under this Contract; that the Engineer shall determine, where applicable, questions in relation to said Work and the construction thereof; that Engineer shall, where applicable decide questions which may arise relative to the execution of this Contract on the part of said Contractor; that the Engineer's decisions and findings shall be the conditions precedent to the rights of the parties hereto, to any action on the Contract, and to any rights of the Contractor to receive any money under this Contract provided, however, that should the Engineer render any decision or give any direction which, in the opinion of either party hereto, is not in accordance with the meaning and intent of this Contract, either party may file with the Engineer and with the other party, within thirty (30) days a written objection to the decision or direction so rendered and, by such action, may reserve the right to submit the question to determination in the future.
- 5.3 The Engineer, unless otherwise directed or agreed to by the City in writing, will perform those duties and discharge those responsibilities allocated to the Engineer as set forth in this Contract. The Engineer shall be the City's representative from the effective date of this Contract until final payment has been made. The Engineer shall be authorized to act on behalf of the City only to

- the extent provided in this Contract.
- 5.4 The City and the Contractor shall communicate with each other in the first instance through the Engineer.
- 5.5 The Engineer shall be the initial interpreter of the requirements of the Project Manual and the judge of the performance by the Contractor. The Engineer shall render written graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.
- 5.6 The Engineer will review the Contractor's Applications for Payment and will certify to the City for payment to the Contractor those amounts then due the Contractor as provided in this Contract. The Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to City, based on Engineer's on-site observations of the Work in progress as an experienced and qualified design professional and on Engineer's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of the Engineer's knowledge, information and belief, the quality of the Work is in accordance with the Project Manual (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Project Manual, to a final determination of quantities and classifications for Unit Price Work if such is called for herein, and to any other qualifications stated in the recommendation); and that Contractor is entitled to payment of the amount recommended. However, by recommending any such payment Engineer will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to Engineer in the Project Manual or that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by the City or the City to withhold payment to Contractor.
- 5.7 The Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make such representations to City. Engineer may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in the Engineer's opinion to protect the City from loss because:
- The Work is defective, or completed Work has been damaged requiring correction or replacement,
 - The Contract Price has been reduced by Written Amendment or Change Order,
 - The City has been required to correct defective Work or complete Work in accordance with the Project Manual.
- 5.8 The City may refuse to make payment of the full amount recommended by the Engineer because claims have been made against City on account of Contractor's performance or furnishing of the Work or liens have been filed in connection with the Work or there are other items entitling City to a set-off against the amount recommended, but City must give Contractor written notice (with a copy to Engineer) stating the reasons for such action.
- 5.9 The Engineer will have the authority to reject Work, which is defective or does not conform to the requirements of this Contract. If the Engineer deems it necessary or advisable, the Engineer shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.

- 5.10 The Engineer will review, or take other appropriate action as necessary, concerning the Contractor's submittals, including Shop Drawings, Product Data and Samples. Such review, or other action, shall be for the sole purpose of determining general conformance with the design concept and information given through the Project Manual.
- 5.11 The Engineer shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 5.12 The Engineer, upon written request from the Contractor shall conduct observations to determine the date of substantial completion and the date of final acceptance. The Engineer will receive and forward to the City for the City's review and records, written warranties and related documents from the Contractor required by this Contract and will issue a final Certificate for Payment to the City upon compliance with the requirements of this Contract.
- 5.13 The Engineer's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.
- 5.14 The Engineer will NOT be responsible for Contractor's means, methods, techniques, sequences, or procedures or construction, or the safety precautions and programs incident thereto and will not be responsible for Contractor's failure to perform the work in accordance with the Project Manual. The Engineer will not be responsible for the acts or omissions of the Contractor or any Subcontractor or any of its or their agents or employees, or any other person at the site or otherwise performing any of the work except as may otherwise be provided.
- 5.15 Any plan or method of work suggested by the Engineer, or other representatives of the City, to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor, and the Engineer and the City will assume no responsibility therefore.
- 5.16 It is agreed by the Contractor that the City shall be and is hereby authorized to appoint or employ, either directly or through the Engineer, such City representatives or observers as the City may deem proper, to observe the materials furnished and the work performed under the Project Manual, and to see that the said materials are furnished, and the said work performed, in accordance with the Project Manual therefore. The Contractor shall furnish all reasonable aid and assistance required by the Engineer, or by the resident representatives for proper observation and examination of the Work and all parts thereof.
- 5.17 The Contractor shall comply with any interpretation of the Project Manual by the Engineer, or any resident representative or observer so appointed, when the same are consistent with the obligations of the Project Manual. However, should the Contractor object to any interpretation given by any subordinate engineer, resident representative or observer, the Contractor may appeal in writing to the City Director of Public Works for a decision.
- 5.18 Resident representatives, observers, and other properly authorized representatives of the City or Engineer shall be free at all times to perform their duties, and intimidation or attempted intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the City so decides, to annul the Contract.

5.19 Such observation shall not relieve the Contractor from any obligation to perform said work strictly in accordance with the Project Manual.

6. WORK SCHEDULE:

- 6.1 The Contractor, within ten (10) calendar days after being instructed to do so in a written notice from the City, shall commence work to be done under this Contract.
- 6.2 The rate of progress shall be such that the Work shall have been completed in accordance with the terms of the Contract Documents on or before the completion date for the construction period named in the contract agreement, subject to any extension or extensions of such time made as hereinafter provided.
- 6.3 The Contractor shall be required to furnish the Engineer with a schedule setting forth in detail (in the critical path method) the sequences proposed to be followed, and giving the dates on which it is expected that portions of the work will be started and completed.
- 6.4 If at any time, in the opinion of the Engineer or City, proper progress is not being maintained; such changes shall be made in the schedule and resubmitted for consideration.
- 6.5 If the Contractor has not completed Work segments and is within a non-performance penalty period, he/she shall not be allowed to undertake a new Work segment until the Work segment in dispute is completed, unless expressly permitted by the City.
- 6.6 The operation of any tool, equipment, vehicle, instrument, or other noise-producing device is prohibited to start before or continue after the hours of 7 AM and 10 PM, Monday through Friday (except Fridays which shall be until Midnight) and 8 AM and midnight on Weekends (except Sunday which shall be 10 PM). Violation of this requirement is Prima Facia Violation of City Municipal Code 11-202.
- 6.7 No work shall be undertaken on Saturdays, Sundays and Holidays (Christmas, New Years, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day and Thanksgiving) without the express written approval of the City Engineer. If it is necessary to perform proper care, maintenance, or protection of work already completed or of equipment used, or in the case of an emergency verbal permission may be obtained through the Engineer.
- 6.8 Night work may be established by the Contractor, as a regular procedure, with the written permission of the City; such permission, however, may be revoked at any time by the City if the Contractor fails to maintain adequate equipment for the proper prosecution and control of all operations performed as part of the Work.
- 6.9 The Contractor shall provide 24 hours notice prior to commencing any work to the City Engineer. The Contractor shall communicate immediately any changes in the work schedule to the City Engineer.

7. DELAYS AND EXTENSIONS OF TIME

- 7.1 In executing the Contract, the Contractor expressly covenants and agrees that, in undertaking the completion of the work within the time herein fixed, he has taken into consideration and made allowances for all of the ordinary delays and hindrances incident to such work, whether growing out of delays in securing materials, workers, weather conditions or otherwise. No

charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the Work, or any portion thereof, included in this Contract.

- 7.2 Should the Contractor, however, be delayed in the prosecution and completion of the work by reason of delayed shipment orders, or by any changes, additions, or omissions therein ordered in writing by the City, or by strikes or the abandonment of the work by the men engaged thereon through no fault of the Contractor, or by any act taken by the U.S. Government such as the commandeering of labor or materials, embargoes, etc., which would affect the fabrication or delivery of materials and/or equipment to the work; or by neglect, delay or default of any other contractor of the City, or delays caused by court proceedings; the Contractor shall have no claims for damages or additional compensation or costs for any such cause or delay; but he shall in such cases be entitled to such extension of the time specified for the completion of the work as the City and the Engineer shall award in writing on account of such delays, provided, however, that claim for such extension of time is made by the Contractor to the City and the Engineer in writing within one (1) week from the time when any such alleged cause for delay shall occur.

8. ADVERSE WEATHER:

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

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

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

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

requirements)

- 8.17 The Contractor shall indicate the approved adverse weather days (whether less or more than the anticipated days) in their monthly Progress Schedule update.

9. PAYMENT PROCEDURE:

- 9.1 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal on the first day of each month of an Application for Payment, all Work for which payments have been received from the City shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.
- 9.2 Each application for payment must be submitted with Contractor's waiver for period of construction covered by application. Each progress payment will be submitted with executed waivers from the subcontractors or sub-contractors and suppliers for the previous period of construction covered by the previous application. The final payment application must be submitted together with or preceded by final or complete waivers from every entity involved with performance of the work covered by the payment request.
- 9.3 The Contractor will submit waivers on forms, and executed in a manner, acceptable to City.
- 9.4 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor because of such Subcontractor's Work the amount to which such Subcontractor is entitled. In the event the City becomes informed that the Contractor has not paid a Subcontractor as herein provided, the City shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the City, shall be deemed payment to the Contractor but shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the City to repeat the procedure in the future.
- 9.5 The Engineer will, upon receipt of a written Application for Payment from the Contractor, review the amount of work performed during the preceding period and the value thereof at the unit prices contracted. From the amounts so ascertained, there shall be deducted ten percent (10%) to be retained until after final completion of the entire work to the satisfaction of the City. The Engineer will submit an estimate each month to the City for payment to the Contractor, except that no amount less than \$500.00 will be submitted unless the total amount of the Contract remaining unpaid is less than \$500.00.
- 9.6 Deductions will be made from progress payments if the Contract includes a provision for a lump sum or a percentage deduction. Lump sum deductions will be that portion of the stated lump sum computed as the ratio that the amount earned bears to the Contract amount. Percentage deductions will be computed at the stated percentage of the amount earned.
- 9.7 No progress payment, nor any use or occupancy of the Work by the City, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.
- 9.8 The City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the City from

loss because of:

- Defective Work not remedied by the Contractor;
- Claims of third parties against the City or the City's property;
- Failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
- Evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
- Evidence that the Work will not be completed in the time required for substantial or final completion;
- Persistent failure to carry out the Work in accordance with the Contract;
- Damage to the City or a third party to whom the City is, or may be, liable;
- Evidence that the work is not progressing according to agreed upon schedule by both parties.

9.9 In the event that the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in this subparagraph, the Contractor shall promptly comply with such demand and refund such monies to the City.

9.10 Neither the observation by the City or any of the City's officials, employees, or agents, nor any order by the City for payment of money, nor any payment for, or acceptance of, the whole or any part of the work by the City or Engineer, nor any extension of time, nor any possession taken by the City or its employees, shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the City, or any right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of any other or subsequent breach.

10. COMPLETION AND FINAL PAYMENT

10.1 Work completion shall be defined as all elements of the Work or work segment, being complete including all subsidiary items and "punch-list" items.

10.2 When all of the Work is finally complete and the Contractor is ready for a final inspection, it shall notify the City and the Engineer thereof in writing. Thereupon, the Engineer will make final inspection of the Work and, if the Work is complete in accordance with this Contract, the Engineer will promptly issue a final Certificate for Payment certifying to the City that the Work is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Engineer is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s), which cost may be deducted by the City from the Contractor's full payment.

10.3 The Contractor shall not be entitled to any payment unless and until it submits to the Engineer its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the City, or the City's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors and Suppliers of the Contractor and of any and all other parties required by the City; and consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the City, the Contractor shall furnish a bond satisfactory to the City to discharge any such lien or indemnify the City from liability.

- 10.4 The City shall make final payment of all sums due the Contractor within thirty days of the later of the Engineer's execution of a final Certificate for Payment.
- 10.5 Acceptance of final payment shall constitute a waiver of all claims against the City by the Contractor except for those claims previously made in writing against the City by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final inspection.

11. CLAIMS BY THE CONTRACTOR

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

proposed quantity and the contract unit price).

- 11.6 When the alterations cause an increase or decrease in excess of the 25 percent indicated above, either the Contractor or the Engineer may request an adjustment of the unit price to be paid for the item or items.
- 11.7 If a mutually agreeable adjustment cannot be obtained, the City reserves the right to terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the Work.
- 11.8 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall not include standby costs, indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties.
- 11.9 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving Final Acceptance of the Work shall be extended upon the written notice and claim of the Contractor to the City, for such reasonable time as the City may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven calendar days after the occurrence of the event or the first appearance of the condition-giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Work. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this subparagraph, any claim for an extension of time shall be waived.
- 11.10 The Contractor shall delay or suspend the progress of the work or any part thereof, whenever so required by written order of the City, and for such periods of time as required; provided, that in the event of such delay or delays or of such suspension or suspensions of the progress of the work, or any part thereof, the time for completion of work so suspended or of work so delayed by such suspension or suspensions shall be extended for a period equivalent to the time lost by reason of such suspension or suspensions; but such order of the City or Engineer shall not otherwise modify or invalidate in any way, any of the provisions of this Contract. In the event that the work shall be stopped by written order of the City, any expense, which, in the sole opinion and judgment of the City, is caused by the City, shall be paid by the City to the Contractor.
- 11.11 In executing the Contract Documents, the Contractor expressly covenants and agrees that, in undertaking to complete the Work within the time herein fixed, it has taken into consideration and made allowances for all hindrances and delays incident to such work, whether growing out of delays in securing materials or workers or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the work, or any portion thereof, included in this Contract, except as provided herein.
- 11.12 In addition to the Project Manual particular to Mobilization found elsewhere in this document, additional mobilization shall not be compensable for work outside of the designated areas for

work deemed essential by the City. A quantity of work equal to as much as 10% of the total Contract may be required to be performed beyond the boundaries of the designated work areas

12. CHANGES IN THE WORK

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

and forever releases any claim including impact against the City for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

13. INSURANCE AND HOLD HARMLESS.

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

such types and in such amounts as may be necessary to protect himself and the interests of the City and agents of the City against all hazards or risks of loss as hereinafter specified including an endorsement covering explosion, collapse, blasting and damage to underground property if applicable as specified in these Contract Documents. The form and limits of such insurance, together with the underwriter thereof in each case, shall be approved by the City, but regardless of such approval, it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times. Failure of the Contractor to maintain adequate insurance coverage shall not relieve it of any contractual responsibility or obligation. The insurance shall be provided on an occurrence basis and, not claims made basis.

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

Contractor against all claims arising from injuries to members of the public or damage to property of others arising out of any act or omission of the Contractor or its agents, employees, or subcontractors. In addition, this policy shall specifically insure the contractual liability assumed by the Contractor under this Contract entitled "Insurance and Hold Harmless." The property damage liability coverage shall contain no exclusion relative to blasting, explosion, collapse of building, or damage to underground property. Unless otherwise specified, Contractor's insurance shall include the following:

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

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

14. INDEMNITY

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

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

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

contribution, comparative fault or similar statutes to the extent said defenses are inconsistent with or would defeat the purpose of this section.

15. SUCCESSORS AND ASSIGNS

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

acceptance, a list of names of all Subcontractors proposed for portions of the work and shall designate which work each is to perform.

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

16. NON-DISCRIMINATION LAWS

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

17. RELATIONS WITH OTHER CONTRACTORS:

- 17.1 The Contractor shall cooperate with all other contractors who may be performing work on behalf of the City, and workers who may be employed by the City, or any other entity on any work in the vicinity of the Work to be done under this Contract, and the Contractor shall so conduct his/her operations as to interfere to the least possible extent with the work of such contractors or workers. The Contractor shall be responsible for any injury or damage, that may be sustained by other contractors, workers, their work or employees of the City, because of any fault or

negligence on the Contractor's part, and shall, at his/her own expense, repair or pay for such injury or damage. If the work of the Contractor is delayed because of any acts or omissions of any other Contractor or Contractors, the Contractor shall have no claim against the City on that account other than for an extension of time.

17.2 When two or more Contracts are being executed at one time in such manner that work on one Contract may interfere with that on another, the City shall decide which Contractor shall progress at which time.

17.3 Other projects the Contractor may have to coordinate with may include, but are not limited to:

- Project # 190721 - 2009 Storm Drainage Repair Program
- Project # 190865 - Roe Avenue Resurfacing (83rd Street to Somerset Drive)
- Project # 190869 - 2009 Street Resurfacing Program
- Project # 190877 - 83rd Street Resurfacing (Roe Avenue to Somerset Drive)
- Project # 191023 - 2009 Concrete Repair Program
- Project # P5001 - 2009 Street Repair Program
- Project # P5002 - 2009 Line Striping Program
- Project #190871 - Mission Lane Bridge Replacement

17.4 When the territory of one Contract is the necessary or convenient means of access for the transportation or movement of workers, materials, or appliances required for the execution of another Contract, such privileges of access or any other responsible privilege may be granted by the City to the Contractor so desiring, to the extent such may be reasonably necessary.

17.5 Upon execution of the Contract, the Contractor shall furnish the City, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Work. The City shall promptly reply to the Contractor, in writing, stating any objections the City may have to such proposed Subcontractor. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the City has made timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has objection.

18. RIGHT OF CITY TO TERMINATE

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

wrongfully terminated for cause, then such termination shall be deemed a termination for convenience and the Contractor shall be compensated as provided herein.

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

19. MISCELLANEOUS:

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

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

surety(ies); and 3.) his/her insurance carrier(s) and surety(ies) agree to be bound as specified herein, in the Contract Documents and in the insurance policy(ies) and bonds as to liability and surety coverage.

19.15 It is specifically agreed between the parties executing this Agreement that the Contract Documents are not intended to create any third party beneficiary relationship nor authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.

19.16 This agreement is entered into, under and pursuant to, and is to be construed and enforceable in accordance with the laws of the State of Kansas.

WITNESSETH:

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

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

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

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

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

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

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

CITY OF PRAIRIE VILLAGE

MUSSELMAN AND HALL CONTRACTORS

By: _____
(signed)

By George H. Snyder Jr
(signed)

Ronald L. Shaffer _____

George H. Snyder Jr
(typed name)

Mayor _____

Exec. Vice President
(typed title)

City of Prairie Village _____

Musselman + Hall Contractors LLC
(typed company name)

7700 Mission Road _____

PO Box 300858 - 4922 E Blue Banks
(typed address)

Prairie Village, Kansas, 66208 _____

Kansas City MO 64130
(typed city, state, zip)

816-861-1234
(typed telephone number)

(date of execution)

12/22/08
(date of execution)

SEAL

ATTEST:

APPROVED BY:

City Clerk, Joyce Hagen-Mundy

City Attorney, Catherine Logan

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

MAINTENANCE BOND

Bond Number 105187272

Bond _____

KNOW ALL MEN BY THESE PRESENTS:

That we, Musselman & Hall Contractors, LLC, as Principal and Travelers Casualty and Surety * as Surety, are held and firmly bound unto the City of Prairie Village, Kansas, in the full and just sum of One Hundred Ninety Six **(\$ 196,300.00) for the payment of which, well and truly to be made, we, and each of us, bind ourselves, our heirs, executors and assigns, themselves, and its successors and assigns, jointly and severally, firmly by these presents.

*Company of America

Dated this _____ day of _____, 20__.

**Thousand Three Hundred Dollars

The Conditions of this obligation are such that Principal Musselman & Hall Contractors, LLC upon completion of the Contract for street improvements, dated _____ which is incorporated herein by reference, and upon acceptance by the City of Prairie Village, Kansas, in accordance with the approved Contract Documents, Plans and Specifications, with no unacceptable deviations thereof, has agreed to guarantee the construction and installation, including all materials and workmanship, for the period of two years beginning on the date the City so accepts said work, said date being the formal acceptance date.

The said Surety, for value received, hereby stipulates and agrees that no changes, extension of time, alteration or addition to the terms of the Contract to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the specifications. Surety further agrees that any person to whom there is due any sum for labor or material furnished, as herein before stated, or said person's assigns, may bring action on this bond for the recovery of said indebtedness; PROVIDED, that no action shall be brought on said bond after twenty-four months from the completion of said public improvements.

NOW, THEREFORE, if said Principal shall guarantee and maintain the work referred to above in accordance with the Contract for a period of two (2) years from date of formal acceptance, then this obligation shall be null and void, otherwise to remain in full force and effect.

PROVIDED FURTHER, that if said Principal fails to duly and faithfully guarantee and maintain said work, the Surety will pay for the same in any amount not exceeding the amount of this obligation, together with interest as provided by law.

Signed, sealed and delivered the day and year first above written

By: Musselman & Hall Contractors, LLC

Countersigned: Travelers Casualty and Surety

By: [Signature]
Kansas Resident Agent
Exec. Vice President

By: [Signature] Company of America
Attorney-in-Fact Brenda L. Linze
KS Non Resident Agent

Power of Attorney attached.

POWER OF ATTORNEY

Farmington Casualty Company
 Fidelity and Guaranty Insurance Company
 Fidelity and Guaranty Insurance Underwriters, Inc.
 Seaboard Surety Company
 St. Paul Fire and Marine Insurance Company

St. Paul Guardian Insurance Company
 St. Paul Mercury Insurance Company
 Travelers Casualty and Surety Company
 Travelers Casualty and Surety Company of America
 United States Fidelity and Guaranty Company

Surety Bond No. 105187272

Principal: Musselman & Hall Contractors, LLC

OR

Project Description: Project P5000 - 2009 Crack Seal/Slurry Seal Program Obligee: City of Prairie Village KS

KNOW ALL MEN BY THESE PRESENTS: That Seaboard Surety Company is a corporation duly organized under the laws of the State of New York, that St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc. is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Brenda L. Linze** of the City of **Kansas City**, State of **MO**, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this **11th** day of **August, 2006**.

**Farmington Casualty Company
 Fidelity and Guaranty Insurance Company
 Fidelity and Guaranty Insurance Underwriters, Inc.
 Seaboard Surety Company
 St. Paul Fire and Marine Insurance Company**

**St. Paul Guardian Insurance Company
 St. Paul Mercury Insurance Company
 Travelers Casualty and Surety Company
 Travelers Casualty and Surety Company of America
 United States Fidelity and Guaranty Company**



State of Connecticut

City of Hartford ss.

 By: George W. Thompson
 George W. Thompson, Senior Vice President

On this the **11th** day of **August, 2006**, before me personally appeared **George W. Thompson**, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.

 My Commission expires the **30th** day of **June, 2011**.


Marie C. Tetreault
 Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kori Johanson, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this _____ day of _____, _____.


Kori M. Johanson, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at stpaultravelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

STATUTORY BOND

Bond #105187272

LLC

KNOW ALL MEN BY THESE PRESENTS: That we Musselman & Hall Contractors, LLC, as Contractor, and Travelers Casualty and Surety* with General Offices in the City of Hartford CT, and authorized to transact business in the State of Kansas, as surety, are held and firmly bound unto the CITY OF PRAIRIE VILLAGE, KANSAS, and the STATE OF KANSAS, in the penal sum of One Hundred Ninety Six Thousand Three Hundred Dollars DOLLARS (\$196,300.00) lawful money of the United States of America, plus any change orders in excess thereof as approved by the City, for the payment of which sum well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents:

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

WHEREAS, the said Contractor has on the ____ day of _____, 20__, entered into a Contract with the City of Prairie Village, Kansas for furnishing all tools, equipment, materials and supplies, performing all labor and constructing public improvements described in the said Contract, all in accordance with specifications and other contract documents on file in the office of City Clerk, City Hall, 7700 Mission Road, Prairie Village, Kansas.

NOW, THEREFORE, if the said Contractor or the Subcontractors of the Contractor shall pay all indebtedness incurred for supplies, materials or labor furnished, or equipment used or consumed in connection with, or in or about the construction or making of, the improvements described in the above-mentioned Contract Documents, including gasoline, lubricating oils, fuel oils, greases, coal and similar items used or consumed directly in furtherance of such public improvement, this obligation shall be void; otherwise, it shall remain in full force and effect.

The said Surety, for value received, hereby stipulates and agrees that no changes, extension of time, alteration or additions to the terms of the Contract to the work to be performed there under, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Specifications.

The said Surety further agrees that any person to whom there is due any sum for labor or material furnished, as hereinbefore stated, or said person's assigns, may bring action on this bond for the recovery of said indebtedness; PROVIDED that no action shall be brought on said bond after six months from the completion of said public improvements.

IN TESTIMONY WHEREOF, the said Contractor has hereunto set his hand, and the said Surety has caused these presents to be executed in its name, and its corporate seal to be hereunto affixed, by its attorney-in-fact duly authorized hereunto so to do, at Kansas on this, the _____ day of _____, 20__.

City MO

Musselman & Hall Contractors, LLC
CONTRACTOR

Travelers Casualty and Surety Company of America
SURETY COMPANY

BY: Geo H Snyder (SEAL)

BY: Brenda L Linze (SEAL)

BY: GEORGE H. SNYDER, JR.
~~Attorney-in-Fact~~
Exec. Vice President

BY: Brenda L. Linze Attorney in Fact and
~~Kansas Agent~~ KS Non Resident Agent

Travelers Casualty and Surety
Company of America
One Tower Square
Hartford CT 06183
860 277 2408 fax 860 277 5722

POWER OF ATTORNEY

Farmington Casualty Company
 Fidelity and Guaranty Insurance Company
 Fidelity and Guaranty Insurance Underwriters, Inc.
 Seaboard Surety Company
 St. Paul Fire and Marine Insurance Company

St. Paul Guardian Insurance Company
 St. Paul Mercury Insurance Company
 Travelers Casualty and Surety Company
 Travelers Casualty and Surety Company of America
 United States Fidelity and Guaranty Company

Surety Bond No. 105187272

Principal: Musselman & Hall Contractors, LLC

OR

Project Description: Project P5000 - 2009 Crack Seal/Slurry Seal Program

Obligee: City of Prairie Village KS

KNOW ALL MEN BY THESE PRESENTS: That Seaboard Surety Company is a corporation duly organized under the laws of the State of New York, that St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc. is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Brenda L. Linze** of the City of **Kansas City**, State of **MO**, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this **11th** day of **August, 2006**.

**Farmington Casualty Company
 Fidelity and Guaranty Insurance Company
 Fidelity and Guaranty Insurance Underwriters, Inc.
 Seaboard Surety Company
 St. Paul Fire and Marine Insurance Company**

**St. Paul Guardian Insurance Company
 St. Paul Mercury Insurance Company
 Travelers Casualty and Surety Company
 Travelers Casualty and Surety Company of America
 United States Fidelity and Guaranty Company**



State of Connecticut

City of Hartford ss.

By: George W. Thompson
 George W. Thompson, Senior Vice President

On this the **11th** day of **August, 2006**, before me personally appeared **George W. Thompson**, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June, 2011**.



Marie C Tetreault
 Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kori Johanson, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this day of .


Kori M. Johanson, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at stpaultravelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

PERFORMANCE BOND

Bond #105187272

KNOW ALL MEN BY THESE PRESENTS that we, the undersigned Musselman & Hall
Contractors, LLC 4922 E. Blue Banks, Kansas City MO 64130, hereinafter referred to
as the "Contractor", and Travelers Casualty and *, a Corporation organized under the laws
of the State of CT, and authorized to transact business in the State of Kansas as
Surety, are held firmly bound unto the City of Prairie Village, Kansas, hereinafter referred to as "City", in
the penal sum of One Hundred Ninety Six Thousand** DOLLARS (\$196,300.00), lawful
money of the United States of America, for the payment of which sum, well and truly to be made, we
bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, by
these presents: *Surety Company of America **Three Hundred Dollars and no/100--

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

WHEREAS, the above bonded Contractor has, on the ____ day of _____, 20__, entered into a
written Contract with the aforesaid City for furnishing all materials, equipment, tools, superintendence,
labor and other facilities and accessories for the construction of certain improvements as designated,
defined and described in the said Contract and the Conditions thereof, and in accordance with the
Specifications and Plans therefore; a copy of said Contract being attached hereto and made a part hereof.

NOW, THEREFORE, if the said Contractor shall and will, in all particulars, well, duly and faithfully
observe, perform and abide by each and every covenant, condition and part of the said Contract, and the
Conditions, Specifications, Plans and other Contract Documents thereto attached or, by reference, made a
part thereof, according to the true intent and meaning in each case, and if said Contractor shall replace all
defective parts, material and workmanship for a period of two years after acceptance by the City, then this
obligation shall be and become null and void; otherwise it shall remain in full force and effect;

PROVIDED FURTHER, if said Contractor fails in any particular to duly and faithfully observe,
perform and abide by each and every covenant, condition, and part of the said Contract and the
Conditions, Specifications, Plans and other Contract Documents, thereto attached, or, by reference made a
part thereof, according to the true intent and meaning in each case, or if said Contractor shall fail to
replace all defective parts, material and workmanship for a period of two years after acceptance by the
City then the surety will pay the costs to complete the project and/or the costs to repair any defective parts
for the period of two years after acceptance, and any other damages incurred by the owner in procuring
completion and/or repair, such amount not exceeding the amount of this obligation, together with interest
as provided by law.

PROVIDED FURTHER, that if the said Contractor fails to duly pay for any labor, materials,
sustenance's, provisions, provender, gasoline, lubricating oils, fuel oils, greases, coal, equipment and
tools consumed or used in said work, groceries and foodstuffs, and all insurance premiums, compensation
;liability and otherwise, or any other supplies or materials used or consumed by such Contractor or his,
their, or its subcontractors in performance of the Work contracted to be done, the Surety will pay the same
in any amount not exceeding the amount of this obligation, together with interest as provided by law;

PROVIDED, FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no
change, extension of time, alteration or addition to the terms of the Contract, or the Work to be performed
thereunder, or the specifications accompanying the same, shall in any way affect this obligation on this

bond and it does hereby waive notice of any change, extension of time, alteration or addition to the terms of the Contract, or to the work, or to the Specifications.

IN TESTIMONY WHEREOF, the said Contractor has hereunto set his hand, and the said Surety has caused these presents to be executed in its name, and its corporate seal to be hereunto affixed by its attorney-in-fact duly authorized thereunto so to do at Kansas City MO on this, the _____ day of _____, 20__.

CONTRACTOR Musselman & Hall
Contractors, LLC

BY: [Signature]
(SEAL)

Exec. Vice President.
(Official Title)

SURETY COMPANY Travelers Casualty and Surety
Company of America

BY: [Signature]
(SEAL)

Brenda L. Linze Attorney in Fact
Attorney-in-Fact

BY: and KS Non Resident Agent of Surety
(State Representative)

(Accompany this bond with Attorney-in-Fact's authority form the Surety Company certified to include the date of the bond)

Travelers Casualty and Surety
Company of America
One Tower Square
Hartford CT 06183
860 277 2408 fax 860 277 5722

POWER OF ATTORNEY

Farmington Casualty Company
 Fidelity and Guaranty Insurance Company
 Fidelity and Guaranty Insurance Underwriters, Inc.
 Seaboard Surety Company
 St. Paul Fire and Marine Insurance Company

St. Paul Guardian Insurance Company
 St. Paul Mercury Insurance Company
 Travelers Casualty and Surety Company
 Travelers Casualty and Surety Company of America
 United States Fidelity and Guaranty Company

Surety Bond No. 105187272

Principal: Musselman & Hall Contractors, LLC

OR

Project Description: Project P5000 - 2009 Crack Seal/Slurry Seal Program Obligee: City of Prairie Village KS

KNOW ALL MEN BY THESE PRESENTS: That Seaboard Surety Company is a corporation duly organized under the laws of the State of New York, that St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc. is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Brenda L. Linze** of the City of **Kansas City**, State of **MO**, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this **11th** day of **August**, 2006.

Farmington Casualty Company
 Fidelity and Guaranty Insurance Company
 Fidelity and Guaranty Insurance Underwriters, Inc.
 Seaboard Surety Company
 St. Paul Fire and Marine Insurance Company

St. Paul Guardian Insurance Company
 St. Paul Mercury Insurance Company
 Travelers Casualty and Surety Company
 Travelers Casualty and Surety Company of America
 United States Fidelity and Guaranty Company



State of Connecticut

City of Hartford ss.

 By: George W. Thompson
 George W. Thompson, Senior Vice President

On this the **11th** day of **August, 2006**, before me personally appeared **George W. Thompson**, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.

 My Commission expires the **30th** day of **June**, 2011.


Marie C. Tetreault
 Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kori Johanson, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this day of .


Kori M. Johanson, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at stpaultravelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: January 5, 2009

Council Meeting Date: January 20, 2009

COU2009-05: CONSIDER PROJECT P5001: 2009 STREET REPAIR PROGRAM

RECOMMENDATION

Staff recommends the City Council approve the construction contract with O'Donnell & Sons Construction for Project P5001: 2009 Street Repair Program.

BACKGROUND

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. This program helps preserve the integrity of the existing pavement. Two bids were received:

O'Donnell & Sons Const.	\$119,810.00
Musselman & Hall Contractors	\$135,452.50
Engineer's Estimate	\$187,000.00

City staff has reviewed the bids for accuracy and found no errors.

FUNDING SOURCE

Funding is available in the 2009 Public Works Operating Budget.

ATTACHMENTS

1. Contract with O'Donnell & Sons Construction.

PREPARED BY

Thomas Trienens, Manager of Engineering Services

December 22, 2008

PROJECT P5001:

2009 STREET REPAIR PROGRAM

CONSTRUCTION AGREEMENT

BETWEEN

CITY OF PRAIRIE VILLAGE, KS

AND

O'DONNELL & SONS CONSTRUCTION CO., INC.

**CONSTRUCTION AGREEMENT
BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
O'DONNELL & SONS CONSTRUCTION CO., INC.
FOR
PROJECT P5001 - 2009 STREET REPAIR PROGRAM**

THIS AGREEMENT, is made and entered into this ____ day of _____, 2009, by and between the City of Prairie Village, Kansas, hereinafter termed the "City", and O'Donnell & Sons Construction Co., Inc., hereinafter termed in this agreement, "Contractor", for the construction and completion of Project , designated, described and required by the Project Manual and Bid proposal, to wit:

CONTRACT COST: The City shall pay the Contractor for the performance of the Work embraced in this Contract, and the Contractor will accept in full compensation therefore the sum (subject to adjustment as provided by the Contract) of One hundred and nineteen thousand and eight hundred and ten and 00/100 DOLLARS (\$119,810.00) for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

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

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

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

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

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

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

1. DEFINITIONS:

1.1 Following words are given these definitions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SPECIFICATIONS shall mean those portions of the Project Manual consisting of written technical descriptions of materials, equipment, construction methods, standards and

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

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

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

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

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

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

- 1.2 Whenever any word or expression defined herein, or pronoun used instead, occurs in these Contract Documents; it shall have and is mutually understood to have the meaning commonly given. Work described in words, which so applied have a well-known technical or trade meaning shall be held to refer to such, recognized standards.
- 1.3 Whenever in these Contract Documents the words "as ordered," "as directed", "as required", "as permitted", "as allowed", or words or phrases of like import are used, it is understood that the order, direction, requirement, permission or allowance of the City Engineer is intended.
- 1.4 Whenever any statement is made in the Contract Documents containing the expression "it is understood and agreed", or an expression of like import, such expression means the mutual understanding and agreement of the parties hereto.
- 1.5 The words "approved", "reasonable", "suitable", "acceptable", "properly", "satisfactorily", or words of like effect in import, unless otherwise particularly specified herein, shall mean approved, reasonable, suitable, acceptable, proper or satisfactory in the judgment of the City Engineer.
- 1.6 When a word, term or phrase is used in the Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and, third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

1.7 All terms used herein shall have the meanings ascribed to them herein unless otherwise specified.

2. ENTIRE AGREEMENT:

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

2.2 The Contract shall be construed in accordance with the laws of the state of Kansas.

3. INTENT AND INTERPRETATION

3.1 The intent of the Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, including construction, labor, materials, tools, equipment and transportation, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result, shall be provided by the Contractor for the Contract Price.

3.2 All limits stated in the Contract Documents are of the essence of the Contract.

3.3 The Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

3.4 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

3.5 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents and shall give written notice to the Engineer of any inconsistency, ambiguity, error or omission, which the Contractor may discover, or should have discovered, with respect to these documents before proceeding with the affected Work. The review, issuance, or the express or implied approval by the City or the Engineer of the Contract Documents shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such review be evidence of the Contractor's compliance with this Contract.

3.6 The City has prepared or caused to have prepared the Project Manual. **HOWEVER, THE CITY MAKES NO REPRESENTATION OR WARRANTY AS TO ACCURACY OR FITNESS FOR PARTICULAR PURPOSE INTENDED OR ANY OTHER WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed

- and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the City concerning such documents as no such representation or warranties have been made or are hereby made.
- 3.7 As between numbers and scaled measurements in the Project Manual, the numbers shall govern; as between larger scale and smaller scale drawings, (e.g. 10:1 is larger than 100:1) the larger scale shall govern.
 - 3.8 The organization of the Project Manual into divisions, sections, paragraphs, articles (or other categories), shall not control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.
 - 3.9 The Contract Documents supersedes all previous agreements and understandings between the parties, and renders all previous agreements and understandings void relative to these Contract Documents.
 - 3.10 Should anything be omitted from the Project Manual, which is necessary to a clear understanding of the Work, or should it appear various instructions are in conflict, the Contractor shall secure written instructions from the Engineer before proceeding with the construction affected by such omissions or discrepancies.
 - 3.11 It is understood and agreed that the work shall be performed and completed according to the true spirit, meaning, and intent of the Contract Documents.
 - 3.12 The Contractor's responsibility for construction covered by conflicting requirements, not provided for by addendum prior to the time of opening Bids for the work represented thereby, shall not extend beyond the construction in conformity with the less expensive of the said conflicting requirements. Any increase in cost of work required to be done in excess of the less expensive work of the conflicting requirements will be paid for as extra work as provided for herein.
 - 3.13 The apparent silence of the Project Manual as to any detail, or the apparent omission from them of a detailed description concerning any point, shall be regarded as meaning that only the best general practice is to be used. All interpretations of the Project Manual shall be made on the basis above stated.
 - 3.14 The conditions set forth herein are general in scope and are intended to contain requirements and conditions generally required in the work, but may contain conditions or requirements which will not be required in the performance of the work under contract and which therefore are not applicable thereto. Where any stipulation or requirement set forth herein applies to any such non-existing condition, and is not applicable to the work under contract, such stipulation or requirement will have no meaning relative to the performance of said work.
 - 3.15 Pursuant to K.S.A. No. 16-133, if the Contractor to whom the Contract is awarded is not a resident firm of the State of Kansas, he shall execute and file "Certificate of Appointment of Process of Agent" with the Clerk of the District Court at the Johnson County Courthouse. These forms may be obtained at the Office of the Clerk of the District Court. After execution of the documents, they shall be filed with the Clerk of the District Court. A filing fee of Five Dollars (\$5.00) is required. These certificates are pursuant to the General Statutes of Kansas, and

shall be filed prior to the formal execution of the Contract Documents. Failure to comply with these requirements shall disqualify the Contractor for the awarding of this Contract.

4. WORK SUPERINTENDENT

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

5. ENGINEER

- 5.1 It is mutually agreed by and between the parties to this Contract Agreement that the Engineer shall act as the representative of the City and shall observe, as required, the work included herein.
- 5.2 In order to prevent delays and disputes and to discourage litigation, it is further agreed by and between the parties to this Contract that the Engineer shall, in good faith and to the best of its ability, determine the amount and quantities of the several kinds of work which are to be paid for under this Contract; that the Engineer shall determine, where applicable, questions in relation to said Work and the construction thereof; that Engineer shall, where applicable decide questions which may arise relative to the execution of this Contract on the part of said Contractor; that the Engineer's decisions and findings shall be the conditions precedent to the rights of the parties hereto, to any action on the Contract, and to any rights of the Contractor to receive any money under this Contract provided, however, that should the Engineer render any decision or give any direction which, in the opinion of either party hereto, is not in accordance with the meaning and

intent of this Contract, either party may file with the Engineer and with the other party, within thirty (30) days a written objection to the decision or direction so rendered and, by such action, may reserve the right to submit the question to determination in the future.

- 5.3 The Engineer, unless otherwise directed or agreed to by the City in writing, will perform those duties and discharge those responsibilities allocated to the Engineer as set forth in this Contract. The Engineer shall be the City's representative from the effective date of this Contract until final payment has been made. The Engineer shall be authorized to act on behalf of the City only to the extent provided in this Contract.
- 5.4 The City and the Contractor shall communicate with each other in the first instance through the Engineer.
- 5.5 The Engineer shall be the initial interpreter of the requirements of the Project Manual and the judge of the performance by the Contractor. The Engineer shall render written graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.
- 5.6 The Engineer will review the Contractor's Applications for Payment and will certify to the City for payment to the Contractor those amounts then due the Contractor as provided in this Contract. The Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to City, based on Engineer's on-site observations of the Work in progress as an experienced and qualified design professional and on Engineer's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of the Engineer's knowledge, information and belief, the quality of the Work is in accordance with the Project Manual (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Project Manual, to a final determination of quantities and classifications for Unit Price Work if such is called for herein, and to any other qualifications stated in the recommendation); and that Contractor is entitled to payment of the amount recommended. However, by recommending any such payment Engineer will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to Engineer in the Project Manual or that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by the City or the City to withhold payment to Contractor.
- 5.7 The Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make such representations to City. Engineer may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in the Engineer's opinion to protect the City from loss because:
- The Work is defective, or completed Work has been damaged requiring correction or replacement,
 - The Contract Price has been reduced by Written Amendment or Change Order,
 - The City has been required to correct defective Work or complete Work in accordance with the Project Manual.
- 5.8 The City may refuse to make payment of the full amount recommended by the Engineer

because claims have been made against City on account of Contractor's performance or furnishing of the Work or liens have been filed in connection with the Work or there are other items entitling City to a set-off against the amount recommended, but City must give Contractor written notice (with a copy to Engineer) stating the reasons for such action.

- 5.9 The Engineer will have the authority to reject Work, which is defective or does not conform to the requirements of this Contract. If the Engineer deems it necessary or advisable, the Engineer shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.
- 5.10 The Engineer will review, or take other appropriate action as necessary, concerning the Contractor's submittals, including Shop Drawings, Product Data and Samples. Such review, or other action, shall be for the sole purpose of determining general conformance with the design concept and information given through the Project Manual.
- 5.11 The Engineer shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 5.12 The Engineer, upon written request from the Contractor shall conduct observations to determine the date of substantial completion and the date of final acceptance. The Engineer will receive and forward to the City for the City's review and records, written warranties and related documents from the Contractor required by this Contract and will issue a final Certificate for Payment to the City upon compliance with the requirements of this Contract.
- 5.13 The Engineer's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.
- 5.14 The Engineer will **NOT** be responsible for Contractor's means, methods, techniques, sequences, or procedures or construction, or the safety precautions and programs incident thereto and will not be responsible for Contractor's failure to perform the work in accordance with the Project Manual. The Engineer will not be responsible for the acts or omissions of the Contractor or any Subcontractor or any of its or their agents or employees, or any other person at the site or otherwise performing any of the work except as may otherwise be provided.
- 5.15 Any plan or method of work suggested by the Engineer, or other representatives of the City, to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor, and the Engineer and the City will assume no responsibility therefore.
- 5.16 It is agreed by the Contractor that the City shall be and is hereby authorized to appoint or employ, either directly or through the Engineer, such City representatives or observers as the City may deem proper, to observe the materials furnished and the work performed under the Project Manual, and to see that the said materials are furnished, and the said work performed, in accordance with the Project Manual therefore. The Contractor shall furnish all reasonable aid and assistance required by the Engineer, or by the resident representatives for proper observation and examination of the Work and all parts thereof.

- 5.17 The Contractor shall comply with any interpretation of the Project Manual by the Engineer, or any resident representative or observer so appointed, when the same are consistent with the obligations of the Project Manual. However, should the Contractor object to any interpretation given by any subordinate engineer, resident representative or observer, the Contractor may appeal in writing to the City Director of Public Works for a decision.
- 5.18 Resident representatives, observers, and other properly authorized representatives of the City or Engineer shall be free at all times to perform their duties, and intimidation or attempted intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the City so decides, to annul the Contract.
- 5.19 Such observation shall not relieve the Contractor from any obligation to perform said work strictly in accordance with the Project Manual.

6. WORK SCHEDULE:

- 6.1 The Contractor, within ten (10) calendar days after being instructed to do so in a written notice from the City, shall commence work to be done under this Contract.
- 6.2 The rate of progress shall be such that the Work shall have been completed in accordance with the terms of the Contract Documents on or before the completion date for the construction period named in the contract agreement, subject to any extension or extensions of such time made as hereinafter provided.
- 6.3 The Contractor shall be required to furnish the Engineer with a schedule setting forth in detail (in the critical path method) the sequences proposed to be followed, and giving the dates on which it is expected that portions of the work will be started and completed.
- 6.4 If at any time, in the opinion of the Engineer or City, proper progress is not being maintained; such changes shall be made in the schedule and resubmitted for consideration.
- 6.5 If the Contractor has not completed Work segments and is within a non-performance penalty period, he/she shall not be allowed to undertake a new Work segment until the Work segment in dispute is completed, unless expressly permitted by the City.
- 6.6 The operation of any tool, equipment, vehicle, instrument, or other noise-producing device is prohibited to start before or continue after the hours of 7 AM and 10 PM, Monday through Friday (except Fridays which shall be until Midnight) and 8 AM and midnight on Weekends (except Sunday which shall be 10 PM). Violation of this requirement is Prima Facie Violation of City Municipal Code 11-202.
- 6.7 No work shall be undertaken on Saturdays, Sundays and Holidays (Christmas, New Years, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day and Thanksgiving) without the express written approval of the City Engineer. If it is necessary to perform proper care, maintenance, or protection of work already completed or of equipment used, or in the case of an emergency verbal permission may be obtained through the Engineer.
- 6.8 Night work may be established by the Contractor, as a regular procedure, with the written permission of the City; such permission, however, may be revoked at any time by the City if the Contractor fails to maintain adequate equipment for the proper prosecution and control of all operations performed as part of the Work.

- 6.9 The Contractor shall provide 24 hours notice prior to commencing any work to the City Engineer. The Contractor shall communicate immediately any changes in the work schedule to the City Engineer.

7. DELAYS AND EXTENSIONS OF TIME

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

8. ADVERSE WEATHER:

- 8.1 Extensions of time for adverse weather shall be granted only under the conditions as hereinafter provided.
- 8.2 For conditions of weather or conditions at the site, so unusual as not to be reasonably anticipated, as determined by the Engineer, an average or usual number of inclement days when work cannot proceed are to be anticipated during the construction period and are not to be considered as warranting extension of time.
- 8.3 Adverse Weather is defined as atmospheric conditions or the impact thereof at a definite time and place, which are unfavorable to construction activities such that they prevent work on critical activities for 50 percent or more of the Contractor's scheduled workday.
- 8.4 Unusually Severe Weather is defined as weather, which is more severe than the adverse weather anticipated for the season, location, or activity involved.
- 8.5 Time Extensions for Unusually Severe Weather:
- In order for any request for time extension due to unusually severe weather to be valid, the Contractor must document both of the following conditions:

- The weather experienced at the Work site during the Contract period is more severe than the adverse weather anticipated for the Work location during any given month.
- The unusually severe weather actually caused a delay to the completion of the Work. The delay must be beyond the control and without fault or negligence by the Contractor.

8.6 The following schedule of monthly-anticipated adverse weather delays will constitute the baseline for monthly weather time evaluations. The Contractor's Progress Schedule must reflect these anticipated adverse weather delays in all weather affected activities:

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

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

- 8.7 Upon receipt of the Notice to Proceed, and continuing throughout the Contract, the Contractor shall record on their daily construction report, the occurrence of adverse weather and resultant impact to normally scheduled work.
- 8.8 The number of actual adverse weather delay days shall include days affected by actual adverse weather (even if adverse weather occurred in the previous month), and shall be calculated chronologically from the first to the last day of each month, and be recorded as full workdays.
- 8.9 If the number of actual adverse weather delay days in a given month exceeds the number of days anticipated above, the difference shall be multiplied by 7/5 to convert any qualifying workday delays to calendar days. The resulting number of qualifying lost days shall be added to the Contract Time.
- 8.10 The determination that unusually severe weather occurred does not automatically mean an extension of time will be granted. The Contractor must substantiate the unusually severe weather delayed work activities on the critical path of the Progress Schedule.
- 8.11 Full consideration for equivalent fair weather workdays shall be given. If the number of actual adverse weather delays in a given month is less than the number of days anticipated as indicated above, the difference shall be multiplied by 7/5 to convert any workday increases to calendar days. The resulting number of qualifying extra days will be accumulated and subtracted from any future month's days lost due to unusually severe weather.
- 8.12 The net cumulative total of extra days/lost days shall not result in a reduction of Contract Time and the Date of Substantial Completion shall not be changed because of unusually favorable weather.
- 8.13 In converting workdays to calendar days, fractions 0.5 and greater shall be rounded up to the

next whole number. Fractions less than 0.5 shall be dropped.

- 8.14 The Contractor shall summarize and report all actual adverse weather delay days for each month to the Engineer by the tenth (10th) day of the following month. A narrative indicating the impact of adverse weather conditions on the scheduled critical activities shall be included.
- 8.15 Any claim for extension of time due to unusually severe weather shall be submitted to the Engineer within 7 days of the last day of the commencement of the event giving rise to the delay occurred. Resolution of any claim shall follow the procedures established by the Regulations of the Contract and Special Conditions and as described above.
- 8.16 The Contractor shall include and indicate the monthly-anticipated adverse weather days, listed above, in their Progress Schedule. (Reference Section 3.1.1 for Progress Schedule requirements)
- 8.17 The Contractor shall indicate the approved adverse weather days (whether less or more than the anticipated days) in their monthly Progress Schedule update.

9. PAYMENT PROCEDURE:

- 9.1 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal on the first day of each month of an Application for Payment, all Work for which payments have been received from the City shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.
- 9.2 Each application for payment must be submitted with Contractor's waiver for period of construction covered by application. Each progress payment will be submitted with executed waivers from the subcontractors or sub-contractors and suppliers for the previous period of construction covered by the previous application. The final payment application must be submitted together with or preceded by final or complete waivers from every entity involved with performance of the work covered by the payment request.
- 9.3 The Contractor will submit waivers on forms, and executed in a manner, acceptable to City.
- 9.4 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor because of such Subcontractor's Work the amount to which such Subcontractor is entitled. In the event the City becomes informed that the Contractor has not paid a Subcontractor as herein provided, the City shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the City, shall be deemed payment to the Contractor but shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the City to repeat the procedure in the future.
- 9.5 The Engineer will, upon receipt of a written Application for Payment from the Contractor, review the amount of work performed during the preceding period and the value thereof at the unit prices contracted. From the amounts so ascertained, there shall be deducted ten percent (10%) to be retained until after final completion of the entire work to the satisfaction of the City. The

Engineer will submit an estimate each month to the City for payment to the Contractor, except that no amount less than \$500.00 will be submitted unless the total amount of the Contract remaining unpaid is less than \$500.00.

- 9.6 Deductions will be made from progress payments if the Contract includes a provision for a lump sum or a percentage deduction. Lump sum deductions will be that portion of the stated lump sum computed as the ratio that the amount earned bears to the Contract amount. Percentage deductions will be computed at the stated percentage of the amount earned.
- 9.7 No progress payment, nor any use or occupancy of the Work by the City, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.
- 9.8 The City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the City from loss because of:
- Defective Work not remedied by the Contractor;
 - Claims of third parties against the City or the City's property;
 - Failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
 - Evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
 - Evidence that the Work will not be completed in the time required for substantial or final completion;
 - Persistent failure to carry out the Work in accordance with the Contract;
 - Damage to the City or a third party to whom the City is, or may be, liable;
 - Evidence that the work is not progressing according to agreed upon schedule by both parties.
- 9.9 In the event that the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in this subparagraph, the Contractor shall promptly comply with such demand and refund such monies to the City.
- 9.10 Neither the observation by the City or any of the City's officials, employees, or agents, nor any order by the City for payment of money, nor any payment for, or acceptance of, the whole or any part of the work by the City or Engineer, nor any extension of time, nor any possession taken by the City or its employees, shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the City, or any right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of any other or subsequent breach.

10. COMPLETION AND FINAL PAYMENT

- 10.1 Work completion shall be defined as all elements of the Work or work segment, being complete including all subsidiary items and "punch-list" items.
- 10.2 When all of the Work is finally complete and the Contractor is ready for a final inspection, it shall notify the City and the Engineer thereof in writing. Thereupon, the Engineer will make final inspection of the Work and, if the Work is complete in accordance with this Contract, the Engineer will promptly issue a final Certificate for Payment certifying to the City that the Work is

complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Engineer is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s), which cost may be deducted by the City from the Contractor's full payment.

- 10.3 The Contractor shall not be entitled to any payment unless and until it submits to the Engineer its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the City, or the City's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors and Suppliers of the Contractor and of any and all other parties required by the City; and consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the City, the Contractor shall furnish a bond satisfactory to the City to discharge any such lien or indemnify the City from liability.
- 10.4 The City shall make final payment of all sums due the Contractor within thirty days of the later of the Engineer's execution of a final Certificate for Payment.
- 10.5 Acceptance of final payment shall constitute a waiver of all claims against the City by the Contractor except for those claims previously made in writing against the City by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final inspection.

11. CLAIMS BY THE CONTRACTOR

- 11.1 All Contractor claims shall be initiated by written notice and claim to the Engineer. Such written notice and claim must be furnished within seven calendar days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.
- 11.2 The Contractor shall diligently proceed with performance of this Contract whether or not there be such a claim pending and the City shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim shall be reflected by a Change Order executed by the City, the Engineer and the Contractor.
- 11.3 Should concealed and unknown conditions which could not, with reasonable diligence, have been discovered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure differ materially with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided by this Contract, be encountered, the Contract Price shall be equitably adjusted by the Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the City having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the City written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed or unknown condition.
- 11.4 If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition

precedent to any liability of the City therefore, the Contractor shall give the City written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.

- 11.5 The City reserves the right to increase or decrease quantities, and alter the details of construction including grade and alignment as the Engineer may consider necessary or desirable, by approved Change Order. Such modifications shall not invalidate the Contract nor release the surety. Unless such alterations and increases or decreases change the total cost of the Work, based on the originally estimated quantities and the unit prices bid, by more than 25 percent, or change the total cost of any major item, based on the originally estimated quantities and the unit price bid, by more than 25 percent, the Contractor shall perform the work altered, increased or decreased, at a negotiated price or prices. (A major item shall mean any bid item, the total cost of which exceeds 12-1/2 percent of the total Contract amount based on the proposed quantity and the contract unit price).
- 11.6 When the alterations cause an increase or decrease in excess of the 25 percent indicated above, either the Contractor or the Engineer may request an adjustment of the unit price to be paid for the item or items.
- 11.7 If a mutually agreeable adjustment cannot be obtained, the City reserves the right to terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the Work.
- 11.8 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall not include standby costs, indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties.
- 11.9 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving Final Acceptance of the Work shall be extended upon the written notice and claim of the Contractor to the City, for such reasonable time as the City may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven calendar days after the occurrence of the event or the first appearance of the condition-giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Work. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this subparagraph, any claim for an extension of time shall be waived.
- 11.10 The Contractor shall delay or suspend the progress of the work or any part thereof, whenever so required by written order of the City, and for such periods of time as required; provided, that in the event of such delay or delays or of such suspension or suspensions of the progress of the

work, or any part thereof, the time for completion of work so suspended or of work so delayed by such suspension or suspensions shall be extended for a period equivalent to the time lost by reason of such suspension or suspensions; but such order of the City or Engineer shall not otherwise modify or invalidate in any way, any of the provisions of this Contract. In the event that the work shall be stopped by written order of the City, any expense, which, in the sole opinion and judgment of the City, is caused by the City, shall be paid by the City to the Contractor.

11.11 In executing the Contract Documents, the Contractor expressly covenants and agrees that, in undertaking to complete the Work within the time herein fixed, it has taken into consideration and made allowances for all hindrances and delays incident to such work, whether growing out of delays in securing materials or workers or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the work, or any portion thereof, included in this Contract, except as provided herein.

11.12 In addition to the Project Manual particular to Mobilization found elsewhere in this document, additional mobilization shall not be compensable for work outside of the designated areas for work deemed essential by the City. A quantity of work equal to as much as 10% of the total Contract may be required to be performed beyond the boundaries of the designated work areas

12. CHANGES IN THE WORK

12.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.

12.2 The Engineer shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.

12.3 Any change in the Contract Price resulting from a Change Order shall be by mutual agreement between the City and the Contractor as evidenced by the change in the Contract Price being set forth in the Change Order, and, together with any conditions or requirements related thereto, being initialed by both parties.

12.4 If no mutual agreement occurs between the City and the Contractor relative to a change in the Work, the Contractor shall proceed with the work that is the subject of the Change Order, and the change in the Contract Price, if any, shall then be determined by the Engineer on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content to the City, as the Engineer requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies or equipment, including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance, reasonable

rental costs of machinery and equipment exclusive of hand tools, whether rented from the Contractor or others, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and job site field office overhead directly attributable to the change. In no event shall any standby time or any expenditure or savings associated with the Contractor's home office or other non-job site overhead expense be included in any change in the Contract Price. Further, in no event shall the Contractor's overhead expense exceed ten (10%) percent of the reasonable expenditures. Pending final determination of reasonable expenditures or savings to the City, payments on account shall be made to the Contractor on the Engineer's Certificate for Payment.

- 12.5 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that the application of such unit prices to the quantities of Work proposed would cause substantial inequity to the City or to the Contractor, the applicable unit prices shall be equitably adjusted.
- 12.6 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim including impact against the City for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

13. INSURANCE AND HOLD HARMLESS.

- 13.1 The Contractor shall assume full responsibility for the protection of all public and private property, structures, sewers, and utilities, both above and below the ground, along, beneath, above, across or near the site or sites of the work being performed under this Contract, or which are in any manner affected by the prosecution of the Work or the transportation of men/women or materials in connection therewith. Barriers shall be kept placed at all times to protect persons other than those engaged on or about the Work from accident, and the Contractor will be held responsible for all accidents to persons or property resulting from the acts of Contractor or its employees.
- 13.2 To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the City, the Engineer, and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property (other than the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any intentional or negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity, which would otherwise exist.
- 13.3 All property damaged shall be repaired or replaced to a condition immediately prior to the time of damage, and to the satisfaction of the City.
- 13.4 All loss or damage arising out of the nature of the work to be done, or from the action of the

- elements, or from floods or overflows, or from ground water, or from unusual obstructions or difficulties, or any other natural or existing circumstances either known or unforeseen, which may be encountered in the prosecution of the said work shall be sustained and borne by the Contractor at its own cost and expense.
- 13.5 The Contractor shall give reasonable notice to the City or owners of public or private property and utilities when such property is liable to injury or damage through the performance of the Work, and shall make all necessary arrangements with such City or owners relative to the removal and replacement or protection of such property or utilities.
- 13.6 The Contractor shall satisfactorily shore, support, and protect all structures and all pipes, sewers, drains, conduits, and other utility facilities, and shall be responsible for any damage resulting thereto. The Contractor shall not be entitled to any damages or extra compensation because of any postponement, interference, or delay caused by any such structures and facilities being on the line of the Work whether they are shown on the plans or not, specifically including, but not limited to, damages due to delay in utility relocation.
- 13.7 The Contractor shall secure and maintain, throughout the duration of this Contract, insurance from a company authorized to do business in the State of Kansas. Such insurance shall be of such types and in such amounts as may be necessary to protect himself and the interests of the City and agents of the City against all hazards or risks of loss as hereinafter specified including an endorsement covering explosion, collapse, blasting and damage to underground property if applicable as specified in these Contract Documents. The form and limits of such insurance, together with the underwriter thereof in each case, shall be approved by the City, but regardless of such approval, it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times. Failure of the Contractor to maintain adequate insurance coverage shall not relieve it of any contractual responsibility or obligation. The insurance shall be provided on an occurrence basis and, not claims made basis.
- 13.8 The City and the Engineer shall be a named insured on such policies. Satisfactory certificates of insurance shall be filed with the City prior to starting any construction work on this Contract. The certificates shall state that thirty (30) days written notice will be given to the City before any policy coverage thereby is changed or canceled.
- 13.9 The Contractor shall secure and maintain through the duration of this Contract insurance on an occurrence basis of such types and in such amounts as may be necessary to protect the Contractor and the City and agents of the City against all hazards or risks of loss as hereinafter specified. The form and limits of such insurance, together with the underwriter thereof in each case, shall be approved by the City, but regardless of such approval, it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times. Failure of the Contractor to maintain adequate coverage shall not relieve it of any contractual responsibility or obligation, including but not limited to, the indemnification obligation.
- 13.10 Satisfactory certificates of insurance shall be filed with the City prior to the Contractor starting any construction work on this Contract. The Certificates shall state that the thirty (30) days written notice will be given to the City before any policy covered thereby is changed or cancelled. Failure by the Contractor to furnish the required insurance within the time specified in the notice of award of the Contract by the City, at the City option, may be the basis for the City exercising its right to terminate the Contract.

13.11 The liability limits shall be as stated:

- **Worker's Compensation and Employer's Liability:** This insurance shall protect the Contractor against all claims under applicable state worker's compensation laws. The Contractor shall also be protected against claims for injury, disease, or death of employees, which, for any reason, may not fall within the provisions of a worker's compensation law. This policy shall include an "all states" endorsement.
- **Automobile Liability.:** This insurance shall be written in comprehensive form and shall protect the Contractor against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, and shall cover operation on and off the site of all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired. Unless otherwise specified, Contractor's insurance shall include the following:

\$300,000 single limit (on contracts less than \$100,000)
\$1,000,000 single limit (on contracts \$100,000 and more)

- **Commercial General Liability.** This insurance shall be written in comprehensive form including Products, completed operations and Personal and Advertising injury and shall protect the Contractor against all claims arising from injuries to members of the public or damage to property of others arising out of any act or omission of the Contractor or its agents, employees, or subcontractors. In addition, this policy shall specifically insure the contractual liability assumed by the Contractor under this Contract entitled "Insurance and Hold Harmless." The property damage liability coverage shall contain no exclusion relative to blasting, explosion, collapse of building, or damage to underground property. Unless otherwise specified, Contractor's insurance shall include the following:

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

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

14. INDEMNITY

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

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

are claimed to arise out of or be connected with, the performance of this Contract whether arising before or after the completion of the work required hereunder.

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

15. SUCCESSORS AND ASSIGNS

- 15.1 The City and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract.
- 15.2 The Contractor shall not assign or sublet the work, or any part thereof, without the previous written consent of the City, nor shall it assign, by power of attorney or otherwise, any of the money payable under this Contract unless by and with the like written consent of the City. In case the Contractor assigns all, or any part of any moneys due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to all prior liens of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.
- 15.3 Should any Subcontractor fail to perform in a satisfactory manner, the work undertaken, its subcontract shall be immediately terminated by the Contractor upon notice from the City. Performing in an unsatisfactory manner is defined as consistently having more than 10% of work unacceptable. The Contractor shall be as fully responsible to the City for the acts and omissions of the subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed. Nothing contained in this Contract shall create any contractual relations between any Subcontractor and the City, nor shall anything contained in the Contract Documents create any obligation on the part of the City to pay or to see to the payment of any sums due any Subcontractor.

- 15.4 The Contractor shall not award subcontracts which total more than forty-five (45%) of the Contract Price and shall perform within its own organization work amounting to not less than fifty-five percent (55%) of the total Contract Price. Approval by the City of any Subcontractor shall not constitute a waiver of any right of the City to reject defective work, material or equipment not in compliance with the requirements of the Contract Documents. The Contractor shall not make any substitution for any Subcontractor accepted by the City unless the City so agrees in writing.
- 15.5 The Contractor shall not subcontract, sell, transfer, assign or otherwise dispose of the Contract or any portion thereof without previous written consent from the City. In case such consent is given, the Contractor, shall be permitted to subcontract a portion thereof, but shall perform with his/her own organization work amounting to not less than fifty five (55%) of the total Contract Price. No subcontracts, or other transfer of Contract, shall release the Contractor of its liability under the Contract and bonds applicable thereto.
- 15.6 The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Contractor by the terms of the Contract Documents insofar as applicable to the work of the Subcontractor and to give the Contractor the same power to terminate any Subcontract as the City has to terminate the Contractor under any provisions of the Contract Documents.
- 15.7 Prior to the City's approval of the Contract bid, the successful bidder shall submit to the City for acceptance, a list of names of all Subcontractors proposed for portions of the work and shall designate which work each is to perform.
- 15.8 The City shall, prior to the City's approval of the Contract bid, notify the successful bidder, in writing, if the City, after due investigation, has reasonable objection to any Subcontractor on such list, and the Contractor shall substitute a Subcontractor acceptable to the City at no additional cost to the City or shall be allowed to withdraw his/her Bid, and the City shall either re-bid the Work or accept the next best lowest and responsible bidder. The failure of the City to make objection to a Subcontractor shall constitute an acceptance of such Subcontractor but shall not constitute a waiver of any right of the City to reject defective work, material or equipment not in conformance with the requirements of the Project Manual.

16. NON-DISCRIMINATION LAWS

- 16.1 The Contractor further agrees that the Contractor shall abide by the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this Work and furnish any certification required by any federal, state or local governmental agency in connection therewith.
- 16.2 In all solicitations or advertisements for employees, the Contractor shall include the phrase, "equal opportunity employer", or similar phrase to be approved by the Kansas Human Rights Commission (Commission);
- 16.3 If the Contractor fails to comply with the manner in which the Contractor reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Contractor shall be deemed to have breached the present contract and it may be cancelled,

terminated or suspended, in whole or in part, by the contracting agency;

- 16.4 If the Contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Contractor shall be deemed to have breached the present Contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency; and
- 16.5 The Contractor shall include the provisions of this section in every subcontract or purchase order so that such provisions will be binding upon such Subcontractor or vendor.
- 16.6 The provisions of this section shall not apply to a contract entered into by a Contractor who employs fewer than four employees during the terms of such contract; or whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.

17. RELATIONS WITH OTHER CONTRACTORS:

- 17.1 The Contractor shall cooperate with all other contractors who may be performing work on behalf of the City, and workers who may be employed by the City, or any other entity on any work in the vicinity of the Work to be done under this Contract, and the Contractor shall so conduct his/her operations as to interfere to the least possible extent with the work of such contractors or workers. The Contractor shall be responsible for any injury or damage, that may be sustained by other contractors, workers, their work or employees of the City, because of any fault or negligence on the Contractor's part, and shall, at his/her own expense, repair or pay for such injury or damage. If the work of the Contractor is delayed because of any acts or omissions of any other Contractor or Contractors, the Contractor shall have no claim against the City on that account other than for an extension of time.
- 17.2 When two or more Contracts are being executed at one time in such manner that work on one Contract may interfere with that on another, the City shall decide which Contractor shall progress at which time.
- 17.3 Other projects the Contractor may have to coordinate with may include, but are not limited to:
- Project # 190721 - 2009 Storm Drainage Repair Program
 - Project # 190865 - Roe Avenue Resurfacing (83rd Street to Somerset Drive)
 - Project # 190869 - 2009 Street Resurfacing Program
 - Project # 190877 - 83rd Street Resurfacing (Roe Avenue to Somerset Drive)
 - Project # 191023 - 2009 Concrete Repair Program
 - Project # P5000 - 2009 Crack Seal/Slurry Seal Program
 - Project # P5002 - 2009 Line Striping Program
 - Project #190871 - Mission Lane Bridge Replacement
- 17.4 When the territory of one Contract is the necessary or convenient means of access for the transportation or movement of workers, materials, or appliances required for the execution of another Contract, such privileges of access or any other responsible privilege may be granted by the City to the Contractor so desiring, to the extent such may be reasonably necessary.
- 17.5 Upon execution of the Contract, the Contractor shall furnish the City, in writing, the names of

persons or entities proposed by the Contractor to act as a Subcontractor on the Work. The City shall promptly reply to the Contractor, in writing, stating any objections the City may have to such proposed Subcontractor. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the City has made timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has objection.

18. RIGHT OF CITY TO TERMINATE

- 18.1 If the Contractor persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, or supply enough properly skilled workers, supervisory personnel or proper equipment or materials, or if it fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or if this Contract is assigned by Contractor without authorization or if Contractor is adjudged as bankrupt, or if a general assignment of assets be made for the benefit of creditors; or if a receiver is appointed, or otherwise is guilty of a substantial violation of a provision of this Contract, then the City may by written notice to the Contractor, without prejudice to any right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor and its surety shall be liable to the City for all excess cost sustained by the City because of such prosecution and completion including any additional legal, engineering or bid-letting costs therefore. In such case, the Contractor shall not be entitled to receive further payment. In the event the Contractor is found in a court of law to have been wrongfully terminated for cause, then such termination shall be deemed a termination for convenience and the Contractor shall be compensated as provided herein.
- 18.2 The City, within its sole discretion, may elect to terminate the Contract with the Contractor for convenience upon three (3) days written Notice to Contractor. In the event of such termination, Contractor shall cease immediately all operations and shall be compensated for all work performed as of the date of termination in accordance with the terms of payment in this contract. Contractor shall not be entitled to any anticipatory profits of other costs other than direct costs of demobilization.

19. MISCELLANEOUS:

- 19.1 The Contractor warrants to the City that all labor furnished to progress the Work under the Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with the Project Manual. All Work not conforming to these requirements may be considered defective.
- 19.2 The Contractor shall obtain and pay for all permits, fees and licenses necessary or ordinary for the Work. The Contractor shall comply with all lawful requirements, including federal and state laws, City and County laws and ordinances and building codes, applicable to the Work and shall give and maintain copies of all notices required by applicable law pertaining to the Work.
- 19.3 Both the business address of the Contractor given in the Bid or proposal upon which this

Contract is founded, and the Contractor's Office near the Work, is hereby designated as the places to which all notices, letters, and other communications to the Contractor may be mailed or delivered. The delivering at either of the above named addresses, or depositing in any mailbox regularly maintained by the Post Office, of any notice, letter or other communication so addressed to the Contractor, and the date of said service shall be the date of such delivery or mailing. Such addresses may be changed at any time by an instrument in writing, executed by the Contractor, presented, and delivered to the Engineer and to the City. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or communication upon the Contractor personally.

- 19.4 It is mutually agreed by and between the parties to this Contract that all royalties and fees for and in connection with patents, or patent infringement, claims for materials, articles, apparatus, devices or equipment (as distinguished from processes) used in or furnished for the work shall be included in the Contract amount and the Contractor shall satisfy all demands that may be made at any time for such, and the Contractor shall at its cost and expense, defend any and all suits or proceedings that may be instituted at any time against the City for infringement or alleged infringement of any such patents involved in the work, and Contractor shall pay any award of damages.
- 19.5 The right of general administration of the City shall not make the Contractor an agent of the City, and the liability of the Contractor for all damages to persons, firms, and corporations, arising from the Contractor's execution of the Work, shall not be lessened because of such general administration, but as to all such persons, firms, and corporations, and the damages, if any, to them or their property. The Contractor herein is an independent Contractor in respect to the work.
- 19.6 For a period of time, from the inception of the Contract to three (3) years from the date of final payment under the Contract, the Contractor and subcontractors shall maintain books, accounts, ledgers, invoices, drafts, pages and other records pertaining to the performance of this Contract. At all reasonable times during this period these records shall be available within the State of Kansas at a field or permanent business office for inspection by authorized representatives of the City or of any other agency, which has contributed funds in connection with the Contract or to which the City is obligated to make such inspections available. In addition, this requirement shall be included in all subcontracts entered into in connection with this Contract.
- 19.7 Titles, subheadings used herein, and other Contract Documents are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Contract Documents.
- 19.8 No waiver of any breach of this Contract shall be construed to be a waiver of any other subsequent breach.
- 19.9 Should any provision of this Agreement or other Contract Documents be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement and/or the other Contract Documents shall be unaffected thereby and shall continue to be valid and enforceable.

- 19.10 The Contractor shall keep fully informed of all existing and current regulations of the City, and County, State, and National Laws, which in any way limit or control the actions or operations of those engaged upon the work, or affecting materials supplied, to or by them. The Contractor shall at all times observe and comply with all ordinances, laws, and regulations, and shall protect and indemnify the City and the City's officers and agents against any claims or liability arising from or based on any violation of the same.
- 19.11 Nothing contained in these Project Manual shall create, or be interpreted to create, privity or any other contractual agreement between the City and any person or entity other than the Contractor.
- 19.12 Duties and obligations imposed by the Contract Documents, rights, and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.
- 19.13 No action or failure to act by the City, Engineer or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval or acquiescence in a breach hereunder, except as may be specifically agreed in writing.
- 19.14 Contractor specifically acknowledges and confirms that: 1.) he/she has visited the site, made all inspections he deems appropriate and has read and fully understands the Contract Documents, including all obligations and responsibilities undertaken by he as specified herein and in other Contract Documents and knowingly accepts the same; 2.) he/she has furnished copies of all Contract Documents to his/her insurance carrier(s) and his/her surety(ies); and 3.) his/her insurance carrier(s) and surety(ies) agree to be bound as specified herein, in the Contract Documents and in the insurance policy(ies) and bonds as to liability and surety coverage.
- 19.15 It is specifically agreed between the parties executing this Agreement that the Contract Documents are not intended to create any third party beneficiary relationship nor authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.
- 19.16 This agreement is entered into, under and pursuant to, and is to be construed and enforceable in accordance with the laws of the State of Kansas.

WITNESSETH:

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

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

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

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

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

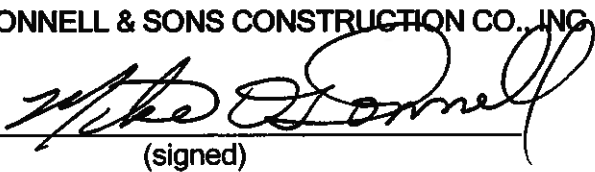
WHEREAS, in consideration of the compensation to be paid the Contractor, and of the mutual agreements herein contained, the parties hereto have agreed and hereby agree, the City for itself and its successors, and the Contractor for itself, himself, herself or themselves, its, his/her, hers or their successors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

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

CITY OF PRAIRIE VILLAGE

O'DONNELL & SONS CONSTRUCTION CO., INC

By: _____
(signed)

By  _____
(signed)

Ronald L. Shaffer _____

Michael T. O'Donnell _____
(typed name)

Mayor _____

Secretary _____
(typed title)

City of Prairie Village _____

O'Donnell & Sons Construction Co., Inc. _____
(typed company name)

7700 Mission Road _____

15301 Broadmoor _____
(typed address)

Prairie Village, Kansas, 66208 _____

Overland Park, KS 66223 _____
(typed city, state, zip)

913.681.2155 _____
(typed telephone number)

(date of execution)

(date of execution)

SEAL

ATTEST:

APPROVED BY:

City Clerk, Joyce Hagen-Mundy

City Attorney, Catherine Logan

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

MAINTENANCE BOND

Bond Number 105196392

Bond _____

KNOW ALL MEN BY THESE PRESENTS:

That we, O'Donnell and Sons Construction Co., Inc., as Principal and Travelers Casualty and Surety Company of America, as Surety, are held and firmly bound unto the City of Prairie Village, Kansas, in the full and just sum of One Hundred Nineteen Thousand Eight Hundred Ten & 00/100 (\$ 119,810.00) for the payment of which, well and truly to be made, we, and each of us, bind ourselves, our heirs, executors and assigns, themselves, and its successors and assigns, jointly and severally, firmly by these presents.

Dated this _____ day of _____, 20__.

The Conditions of this obligation are such that Principal O'Donnell and Sons Construction Co., Inc. upon completion of the Contract for street improvements, dated _____ which is incorporated herein by reference, and upon acceptance by the City of Prairie Village, Kansas, in accordance with the approved Contract Documents, Plans and Specifications, with no unacceptable deviations thereof, has agreed to guarantee the construction and installation, including all materials and workmanship, for the period of two years beginning on the date the City so accepts said work, said date being the formal acceptance date.

The said Surety, for value received, hereby stipulates and agrees that no changes, extension of time, alteration or addition to the terms of the Contract to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the specifications. Surety further agrees that any person to whom there is due any sum for labor or material furnished, as herein before stated, or said person's assigns, may bring action on this bond for the recovery of said indebtedness; PROVIDED, that no action shall be brought on said bond after twenty-four months from the completion of said public improvements.

NOW, THEREFORE, if said Principal shall guarantee and maintain the work referred to above in accordance with the Contract for a period of two (2) years from date of formal acceptance, then this obligation shall be null and void, otherwise to remain in full force and effect.

PROVIDED FURTHER, that if said Principal fails to duly and faithfully guarantee and maintain said work, the Surety will pay for the same in any amount not exceeding the amount of this obligation, together with interest as provided by law.

Signed, sealed and delivered the day and year first above written

O'Donnell and Sons Construction Co., Inc. Travelers Casualty and Surety Company
By: _____ Countersigned: _____ of America

By: Barbara Talty
Kansas Resident Agent Barbara Talty

By: Barbara Talty
Attorney-in-Fact Barbara Talty

Power of Attorney attached.

SCHIFMAN, REMLEY & ASSOC., INC.
5201 JOHNSON DR. #500
MISSION, KS 66205
913-831-1777



POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
Seaboard Surety Company
St. Paul Fire and Marine Insurance Company

St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 217626

Certificate No. 002579287

KNOW ALL MEN BY THESE PRESENTS: That Seaboard Surety Company is a corporation duly organized under the laws of the State of New York, that St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc. is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Barbara Talty, Deborah McClendon, Gary A. Remley, William M. Schiffman, Kevin D. Kalish, Joyce A. Tenoid, Rosanna R. Dabler, Larry O'Donnell, and Steve Lange

of the City of Mission, State of Kansas, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 21st day of August, 2008.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
Seaboard Surety Company
St. Paul Fire and Marine Insurance Company

St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: [Signature]
George W. Thompson, Senior Vice President

On this the 21st day of August, 2008, before me personally appeared George W. Thompson, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal. My Commission expires the 30th day of June, 2011.



[Signature]
Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kori M. Johanson, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this _____ day of _____, 20 ____.

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER


Kori M. Johanson, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.travelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

STATUTORY BOND

KNOW ALL MEN BY THESE PRESENTS: That we O'Donnell and Sons Construction
Travelers Casualty and Surety Company of America Co., Inc. as Contractor, and
Company of America with General Offices in the City of Hartford, CT
and authorized to transact business in the State of Kansas, as surety, are held and firmly bound unto the **CITY OF PRAIRIE VILLAGE, KANSAS, and the STATE OF KANSAS**, in the penal sum of
One Hundred Nineteen Thousand Eight Hundred Ten and 00/100 DOLLARS (\$119,810.00) lawful money of the United States of America, plus any change orders in excess thereof as approved by the City, for the payment of which sum well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents:

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

WHEREAS, the said Contractor has on the ____ day of _____, 20__, entered into a Contract with the City of Prairie Village, Kansas for furnishing all tools, equipment, materials and supplies, performing all labor and constructing public improvements described in the said Contract, all in accordance with specifications and other contract documents on file in the office of City Clerk, City Hall, 7700 Mission Road, Prairie Village, Kansas.

NOW, THEREFORE, if the said Contractor or the Subcontractors of the Contractor shall pay all indebtedness incurred for supplies, materials or labor furnished, or equipment used or consumed in connection with, or in or about the construction or making of, the improvements described in the above-mentioned Contract Documents, including gasoline, lubricating oils, fuel oils, greases, coal and similar items used or consumed directly in furtherance of such public improvement, this obligation shall be void; otherwise, it shall remain in full force and effect.

The said Surety, for value received, hereby stipulates and agrees that no changes, extension of time, alteration or additions to the terms of the Contract to the work to be performed there under, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Specifications.

The said Surety further agrees that any person to whom there is due any sum for labor or material furnished, as hereinbefore stated, or said person's assigns, may bring action on this bond for the recovery of said indebtedness; PROVIDED that no action shall be brought on said bond after six months from the completion of said public improvements.

IN TESTIMONY WHEREOF, the said Contractor has hereunto set his hand, and the said Surety has caused these presents to be executed in its name, and its corporate seal to be hereunto affixed, by its attorney-in-fact duly authorized hereunto so to do, at Mission Kansas on this, the ____ day of _____, 20__.

O'Donnell and Sons Construction
Co., Inc.
CONTRACTOR

Travelers Casualty and Surety Company of America
SURETY COMPANY

BY: _____ (SEAL)

BY: Barbara Talty (SEAL)
Barbara Talty, Attorney-in-Fact

BY: Barbara Talty
Attorney-in-Fact

BY: Barbara Talty
Kansas Agent Barbara Talty

SCHIFMAN, REMLEY & ASSOC., INC.
5201 JOHNSON DR. #500
MISSION, KS 66205
913-831-1777



POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
Seaboard Surety Company
St. Paul Fire and Marine Insurance Company

St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 217626

Certificate No. 002579286

KNOW ALL MEN BY THESE PRESENTS: That Seaboard Surety Company is a corporation duly organized under the laws of the State of New York, that St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc. is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Barbara Talty, Deborah McClendon, Gary A. Remley, William M. Schifman, Kevin D. Kalish, Joyce A. Tenold, Rosanna R. Dabler, Larry O'Donnell, and Steve Lange

of the City of Mission, State of Kansas, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 21st day of August, 2008.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
Seaboard Surety Company
St. Paul Fire and Marine Insurance Company

St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: [Signature]
George W. Thompson, Senior Vice President

On this the 21st day of August, 2008, before me personally appeared George W. Thompson, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal. My Commission expires the 30th day of June, 2011.



[Signature]
Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kori M. Johanson, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this _____ day of _____, 20 ____.

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER


Kori M. Johanson, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.travelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS that we, the undersigned O'Donnell and Sons Construction Co., Inc., hereinafter referred to as the "Contractor", and Travelers Casualty and Surety Company of America, a Corporation organized under the laws of the State of CT, and authorized to transact business in the State of Kansas as Surety, are held firmly bound unto the City of Prairie Village, Kansas, hereinafter referred to as "City", in the penal sum of One Hundred Nineteen Thousand Eight Hundred Ten and 00/100 DOLLARS (\$ 119,810.00), lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, by these presents:

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

WHEREAS, the above bonded Contractor has, on the _____ day of _____, 20____, entered into a written Contract with the aforesaid City for furnishing all materials, equipment, tools, superintendence, labor and other facilities and accessories for the construction of certain improvements as designated, defined and described in the said Contract and the Conditions thereof, and in accordance with the Specifications and Plans therefore; a copy of said Contract being attached hereto and made a part hereof.

NOW, THEREFORE, if the said Contractor shall and will, in all particulars, well, duly and faithfully observe, perform and abide by each and every covenant, condition and part of the said Contract, and the Conditions, Specifications, Plans and other Contract Documents thereto attached or, by reference, made a part thereof, according to the true intent and meaning in each case, and if said Contractor shall replace all defective parts, material and workmanship for a period of two years after acceptance by the City, then this obligation shall be and become null and void; otherwise it shall remain in full force and effect;

PROVIDED FURTHER, if said Contractor fails in any particular to duly and faithfully observe, perform and abide by each and every covenant, condition, and part of the said Contract and the Conditions, Specifications, Plans and other Contract Documents, thereto attached, or, by reference made a part thereof, according to the true intent and meaning in each case, or if said Contractor shall fail to replace all defective parts, material and workmanship for a period of two years after acceptance by the City then the surety will pay the costs to complete the project and/or the costs to repair any defective parts for the period of two years after acceptance, and any other damages incurred by the owner in procuring completion and/or repair, such amount not exceeding the amount of this obligation, together with interest as provided by law.

PROVIDED FURTHER, that if the said Contractor fails to duly pay for any labor, materials, sustenance's, provisions, provender, gasoline, lubricating oils, fuel oils, greases, coal, equipment and tools consumed or used in said work, groceries and foodstuffs, and all insurance premiums, compensation ;liability and otherwise, or any other supplies or materials used or consumed by such Contractor or his, their, or its subcontractors in performance of the Work contracted to be done, the Surety will pay the same in any amount not exceeding the amount of this obligation, together with interest as provided by law;

PROVIDED, FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract, or the Work to be performed thereunder, or the specifications accompanying the same, shall in any way affect this obligation on this

bond and it does hereby waive notice of any change, extension of time, alteration or addition to the terms of the Contract, or to the work, or to the Specifications.

IN TESTIMONY WHEREOF, the said Contractor has hereunto set his hand, and the said Surety has caused these presents to be executed in its name, and its corporate seal to be hereunto affixed by its attorney-in-fact duly authorized thereunto so to do at Mission, KS on this, the _____ day of _____, 20____.

CONTRACTOR

O'Donnell and Sons Construction Co, Inc

BY: _____
(SEAL)

(Official Title)

SURETY COMPANY

Travelers Casualty and Surety Company of America

BY _____
(SEAL)

Barbara Talty

Attorney-in-Fact Barbara Talty

BY: *Barbara Talty*

(State Representative) Barbara Talty

SCHIFMAN, REMLEY & ASSOC., INC.
5201 JOHNSON DR. #500
MISSION, KS 66205
913-831-1777

(Accompany this bond with Attorney-in-Fact's authority form the Surety Company certified to include the date of the bond)



POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
Seaboard Surety Company
St. Paul Fire and Marine Insurance Company

St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 217626

Certificate No. 002579291

KNOW ALL MEN BY THESE PRESENTS: That Seaboard Surety Company is a corporation duly organized under the laws of the State of New York, that St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc. is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Barbara Talty, Deborah McClendon, Gary A. Remley, William M. Schifman, Kevin D. Kalish, Joyce A. Tenold, Rosanna R. Dabler, Larry O'Donnell, and Steve Lange

of the City of Mission, State of Kansas, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 21st day of August, 2008.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
Seaboard Surety Company
St. Paul Fire and Marine Insurance Company

St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: [Signature]
George W. Thompson, Senior Vice President

On this the 21st day of August, 2008, before me personally appeared George W. Thompson, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2011.



[Signature]
Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kori M. Johanson, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this _____ day of _____, 20 ____.

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER


Kori M. Johanson, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.travelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID RS
ODONN-1

DATE (MM/DD/YYYY)
12/17/08

PRODUCER Schifman, Remley & Assoc., Inc 5201 Johnson Drive, Suite 500 Mission KS 66205 Phone: 913-831-1777 Fax: 913-831-4730	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	INSURERS AFFORDING COVERAGE	NAIC #
INSURED O'Donnell & Sons Construction P. O. Box 23023 Overland Park KS 66283	INSURER A: Travelers Indemnity Company	25658
	INSURER B: Charter Oak Fire Insurance Co	
	INSURER C: Travelers Indemnity Comp of CT	
	INSURER D:	
	INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
B		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	CO894J4155COF	11/01/08	11/01/09	EACH OCCURRENCE \$ 1000000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300000 MED EXP (Any one person) \$ 5000 PERSONAL & ADV INJURY \$ 1000000 GENERAL AGGREGATE \$ 2000000 PRODUCTS - COMP/OP AGG \$ 2000000	
B		AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	810894J4155COF	11/01/08	11/01/09	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$	
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC AUTO ONLY: \$ AGG \$	
A		EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$10000	CUP894J4155	11/01/08	11/01/09	EACH OCCURRENCE \$ 1000000 AGGREGATE \$ 1000000 \$ \$	
C		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	UB894J4155	11/01/08	11/01/09	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 500000 E.L. DISEASE - EA EMPLOYEE \$ 500000 E.L. DISEASE - POLICY LIMIT \$ 500000	
		OTHER					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 City of Prairie Village, KS are named as an additional insured, except Workers Compensation as required by contract with respects to project: P5001 Street Repair Program. *10 Days for Non Payment

CERTIFICATE HOLDER CITYPRA CITY OF PRAIRIE VILLAGE 3535 SOMERSET DRIVE PRAIRIE VILLAGE KS 66208	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30* DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE <i>Edoche S Newborn</i>
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IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: January 5, 2009

Council Meeting Date: January 20, 2009

COU2009-06: CONSIDER ANNUAL SERVICE AGREEMENT FOR 2009 MATERIALS TESTING

RECOMMENDATION

Staff recommends the City Council approve the 2009 Materials Testing Service Agreement with Professional Service Industries (PSI).

BACKGROUND

Five companies submitted bids for this program. Since this would be an on-call contract, the low bidder was determined by estimating the number and type of tests that will be required and multiplying those times the unit prices submitted by each laboratory.

PSI	\$24,690.00
Terracon	\$26,840.00
Kleinfelder	\$30,550.00
Kaw Valley	\$31,450.00
Geotechnology, Inc	\$32,587.50
Engineer's Estimate	\$30,275.00

FUNDING SOURCE

The money for this program is budgeted in each individual project.

ATTACHMENTS

1. Agreement with PSI.

PREPARED BY

Thomas Trienens, Manager of Engineering Services

December 22, 2008

2009 MATERIALS TESTING PROGRAM

AGREEMENT

BETWEEN

CITY OF PRAIRIE VILLAGE, KS

AND

PROFESSIONAL SERVICE INDUSTRIES, INC.
(PSI)

AGREEMENT FOR MATERIAL TESTING SERVICES

Agreement, made this 18th day of December '08, by and between PROFESSIONAL SERVICE INDUSTRIES, INC. (PSI) hereinafter referred to as Contractor, and the CITY OF PRAIRIE VILLAGE, KANSAS, hereinafter referred to as City, shall be in full force and effect during calendar year 2009 with the following terms and conditions.

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

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

1.0 Service Specifications

- 1.1 The Contractor will provide the services of drilling core samples and testing of construction materials throughout the City. The testing of materials includes, but may not be limited to, asphalt, concrete, aggregate, sub-base and subgrade.
- 1.2 The Contractor shall assign one person who shall serve as the contact for the City for purposes of scheduling tests and maintaining communication.
- 1.3 The Contractor is admonished that the technicians will be properly attired, refrain from abusive language, refrain from improper behavior and be aware that they are representing the City.
- 1.4 The City will inspect the work and report to the Contractor's supervisor any problems.
- 1.5 The Contractor will use proper equipment and tools for the work. All equipment and tools will be in near-original working condition.

2.0 General

- 2.1 This signed agreement will be the authorization for the Contractor to provide the described services as requested by the City from time to time.
- 2.2 Thomas Trienens, Manager of Engineering Services, at phone: (913) 385-4642, fax: (913) 642-0117, email: ttrienens@pvkansas.com will be the City coordinator for the Contractor in providing any service and responding to any special needs.
- 2.3 The City will contact the Contractor 24 hours in advance of any necessary testing. All work shall be performed between 7:00 am and 6:00 pm, Monday through Friday unless otherwise stated by the City.

- 2.4 All work performed by the Contractor will be of acceptable workmanlike quality normally associated with this trade and shall occur to the satisfaction of the City before payment will be made by the City to the Contractor.
- 2.5 All invoices shall be grouped by the City project number with a clear description of the specific testing provided at each specific location. Invoices are to be sent to Thomas Trienens, Public Works Department, 3535 Somerset Drive, Prairie Village, KS 66208.
- 2.6 The Contractor shall maintain throughout the life of this Contract, General Liability Insurance covering any and all actions of the Contractor in the performance of this Contract. Minimum limits shall be Bodily Injury \$500,000/\$500,000; Property Damage \$100,000. The Contractor shall maintain throughout the life of this Contract, Automobile Liability Insurance which shall be written in comprehensive form and shall be protect the Contractor against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, and shall cover operation on and off the site of all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired. Unless otherwise specified, Contractor's insurance shall include Auto Liability of \$350,000 single limit. Contractor shall also be responsible to provide workmen's compensation insurance and benefits for its employees.
- 2.7 The Contractor is providing services to the City as an independent contractor. *Benefits*
Not { To the extent of Contractor's negligence } → The Contractor shall be responsible for death or injury to any persons and for any property damage while in the performance of service of the terms of this agreement and it shall hold the City harmless and shall indemnify the City for any loss it may have resulting from the Contractor providing the services described in this agreement. The City shall not be responsible for any withholding of taxes or social security for any employee of the Contractor, nor shall it provide to any employee of the Contractor any fringe benefits of any kind.
- 2.8 This agreement is for the period of **January 1, 2009** through **December 31, 2009**. Either party may terminate this agreement by giving thirty (30) days prior written notice to the other party.

3.0 Technical

- 3.1 The Contractor shall perform all testing, requested by the City, in conformance with all current standards of AASHTO, APWA, ASTM and KDOT.
- 3.2 The City representative who will request inspection services from the Contractor is defined as the Construction Inspector, and will be either the City coordinator or a consultant to the City at the project site.
- 3.3 The Contractor shall furnish a clear, accurate, typed report with all the results of each test within 48 hours of collecting the samples. This report shall include a clear description of the location of each test, the City project number and the name of the City representative on site. Both the test results and the standard specifications should be shown, along with an indication if the material met the

appropriate specifications. (i.e. APWA, KCMMB, KDOT) The material mix type shall also be indicated in the report.

- 3.4 The Contractor representative shall attend preconstruction meetings, which will include the City Prime Contractor as well as the City Design Consultant. The Contractor will not charge a fee to the City for attending these meetings.
- 3.5 The Contractor may be directed by the City Inspector to perform testing under the following City Contracts:
- A) # 190869, 2009 Street Resurfacing Program
 - B) #190870, 2010 Street Resurfacing Program
 - C) # 191023, 2009 Concrete Repair Program
 - D) # 190721, 2009 Storm Drainage Program
 - E) # P5001, 2008 Street Repair Program
 - F) # P5000, 2008 Crack/Slurry Program
 - G) # 190865, CARS – Roe Avenue, 83rd Street to Somerset Drive
 - H) # 190877, CARS – 83rd Street, Roe Avenue to Somerset Drive
 - I) #190649, Windsor Ball Field Improvements
 - J) #190655, Porter Park Ball Field Improvements
 - K) #190653, El Monte Fountain Improvements
 - L) Random Testing of Public Works Field Operations
 - L) Other as necessary

Supplemental Terms and Conditions:

Consequential Damages - Neither party shall be liable to the other for loss of profits or revenue; loss of use or opportunity; loss of good will; cost of substitute facilities, goods, or services; cost of capital; or for any special, consequential, indirect, punitive, or exemplary damages.

Testing and Observations - City understands that testing and observation are discrete sampling procedures, and that such procedures indicate conditions only at the depths, locations, and times the procedures were performed. Contractor will provide test results and opinions based on tests and field observations only for the work tested. City understands that testing and observation are not continuous or exhaustive, and are conducted to reduce - not eliminate - project risk. City agrees to the level or amount of testing performed and the associated risk. City is responsible (even if delegated to contractor) for notifying and scheduling Contractor so Contractor can perform these Services. Contractor shall not be responsible for the quality and completeness of other contractor's work or their adherence to the project documents, and Contractor's performance of testing and observation services shall not relieve contractor in any way from its responsibility for defects discovered in its work, or create a warranty or guarantee. Contractor will not supervise or direct the work performed by other contractors or their subcontractors and is not responsible for their means and methods.

Assignment. Contractor shall not assign or subcontract the services provided for herein.

Contractor Contact: Ryan Hankins
Address: 1211 W. Cambridge Cir Dr
Kansas City, KS 64103

Telephone Number: 913-310-1600

Fax Number: 913-310-1601

Email: ryan.hankins@psiusa.com



CONTRACTOR AGENT 12/18/08
DATE

ATTEST:

/s/ _____
Joyce Hagen Mundy, City Clerk Date

/s/ _____
Catherine Logan, City Attorney Date

/s/ _____
Ronald L. Shaffer, Mayor Date



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: January 5, 2009
Council Meeting Date: January 20, 2009

COU2009-08: CONSIDER TRAFFIC ENGINEERING STUDY OF THE INTERSECTION OF ROE AVENUE AND 75TH STREET

RECOMMENDATION

None.

BACKGROUND

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. Apparently there have been other accidents at this location which resulted in vehicles encroaching on private property. Public Works has requested a fee proposal from the City's traffic engineer to study the intersection of 75th Street and Roe Avenue and determine if there are any roadway features which may be contributing to the crashes at this intersection. The proposal is in the amount of \$7,300.00.

FUNDING SOURCE

There is no current funding for this study,

RELATED TO VILLAGE VISION

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

ATTACHMENTS

Traffic Engineering Agreement with TranSystems.

PREPARED BY

Thomas Trienens, Manager of Engineering Services

December 29, 2008

TASK AGREEMENT

TS09 – Traffic – Roe Avenue/75th Street Intersection Study

The Professional Services Agreement for Prairie Village Traffic Engineering Consultant, signed in November, 2005, entered into between TranSystems Corporation as Prime Consultant and The City of Prairie Village, Kansas as Client, for good and valuable consideration including the promises and agreements set forth hereafter is hereby amended, modified, and revised as follows:

Task 1 – Roe Avenue/75th Street Intersection Study

Concept: The resident at 4609 75th Street has commented that there have been two serious vehicular crashes at his home in the recent past years. The purpose of this study is to document the crashes at the intersection, and review and document the existing traffic control devices in the area. If inadequate or substandard traffic control devices are found, the study will also include recommendations for improving the devices.

Data Collection: The following data will be collected for this location by the **CONSULTANT**:

1. Obtain from the Client the crash history at the intersection. Crash records for the past 5 years will be collected and analyzed.
2. Obtain from the Client the traffic signal timings.
3. Existing traffic control devices in the vicinity of the intersection will be inventoried.
4. Measure existing sight distances at each approach to the intersection and measure the intersection sight distance for each right-turn lane.

Analysis:

1. Based on the crash records, determine if a crash pattern exists at the intersection.
2. Determine if the approach or intersection sight distances are below AASHTO recommended minimums.
3. Determine if any vertical, horizontal or traffic control device changes should be made to reduce the crash history.

Report:

1. A report documenting the methods of the study, data collected, findings of analysis including approach and intersection sight distances, and recommended improvements will be developed by the **CONSULTANT**.

Fee for this task agreement: = \$7,300.00

All other terms and conditions of said original agreement identified in the original agreement that are not expressly amended, modified, and or revised by this Task Agreement, shall remain unchanged and in full force and effect.

The undersigned being the authorized representatives of the contracting parties identified herein, have executed this Task Agreement to make it binding upon the parties hereto effective this ____ day of _____, 2008.

CITY OF PRAIRIE VILLAGE, KANSAS

TRANSYSTEMS CORPORATION

TRANSYSTEMS CORPORATION

By: S. Robert Pryzby

By: Paul Plotas

By: Thomas G. Swenson



POLICE DEPARTMENT

Council Committee Meeting Date: January 5, 2009
Council Meeting Date: January 20, 2009

COU2009-09: Consider Ordinance 2185

RECOMMENDATION

Staff recommends 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" and adding a new Article 11-221 entitled "Vehicles as Living Quarters"

BACKGROUND

Recent events where the Police Department responded to incidents, in which individuals were using automobiles as a place to live, caused 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.

ATTACHMENTS

1. Ordinance 2185

PREPARED BY

Wes Jordan
Chief of Police
Date: 12/30/08

Ordinance No. 2185

AN ORDINANCE AMENDING CHAPTER 12 OF THE PRAIRIE VILLAGE MUNICIPAL CODE, 2003, ENTITLED "PUBLIC PROPERTY" BY REPEALING THE EXISTING ARTICLE 12-108 ENTITLED "CAMPING PROHIBITED" AND AMENDING CHAPTER 11 ENTITLED "PUBLIC OFFENSES & TRAFFIC" BY ADDING A NEW ARTICLE 11-220 ENTITLED "UNLAWFUL CAMPING", AND A NEW ARTICLE 11-221 ENTITLED "VEHICLES AS LIVING QUARTERS"

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

Section I.

The existing Article 12-108 of Chapter 12 of the Prairie Village Municipal Code, 2003, entitled "Camping Prohibited" is hereby repealed.

Section II.

Chapter 11 of the Prairie Village Municipal Code, 2003, entitled "Public Offenses & Traffic" is hereby amended by adopting a new Article 11-220 entitled "Unlawful Camping" to read as follows:

11-220 **UNLAWFUL CAMPING.** All camping is hereby prohibited in city streets, city parks, any public parking lot or public area, improved or unimproved, alleys, or under any bridge way.

The term "camping" shall mean the use of land to maintain a temporary place to live, and shall include, but is not limited to, such activities as sleeping, laying down bedding in preparation to sleep, storing personal belongings, making any fire, whether for cooking or warmth, or erecting a tent or other temporary structure for shelter. Whether such a situation warrants the term "camping" shall be determined by a totality of the circumstances.

The purpose of enacting such statute shall be to protect the health, safety and welfare of the citizens of the City of Prairie Village by maintaining a safe and sanitary environment that does not pose a threat to public safety.

Section III.

Chapter 11 of the Prairie Village Municipal Code, 2003, entitled "Public Offenses & Traffic" is hereby amended by adopting a new Article 11-221 entitled "Vehicles as Living Quarters" to read as follows:

11-221 **VEHICLES AS LIVING QUARTERS.** No vehicle, motor home, camping trailer, pickup camper, recreational vehicle, or similar item shall be used as living quarters within the boundaries of the City of Prairie Village except as provided in 19.38.025 of the City Zoning Regulations.

Section III

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

PASSED AND APPROVED THIS _____ DAY OF _____, 2009.

Ronald L. Shaffer, Mayor

ATTEST:

APPROVED AS TO FORM:

Joyce Hagen Mundy
City Clerk

Catherine P. Logan
City Attorney



ADMINISTRATION DEPARTMENT

Council Committee Meeting Date: January 5, 2009

Council Meeting Date: January 5, 2009

***COU2009-11: Consider Transfer to Equipment Reserve Fund**

RECOMMENDATION

Staff recommends the City Council approve transferring \$10,000 from the General Fund to the Equipment Reserve Fund for Website Redesign Services effective in FY2008.

COUNCIL ACTION REQUESTED ON January 5, 2009

BACKGROUND

The 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. The \$10,000 was not used in 2008. Staff would like to use this money towards the website redesign in 2009. Staff is requesting that \$10,000 be transferred to the Equipment Reserve Fund where other technology project budgets and expenditures are accounted for.

FUNDING SOURCE

01-05-33-5160

PREPARED BY

Jeanne Koontz
Deputy City Clerk
January 2, 2009

**COUNCIL MEETING AGENDA
CITY OF PRAIRIE VILLAGE
January 5, 2009
7:30 p.m.**

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

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

By Staff:

- 1. Approve Regular Council Meeting Minutes – 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.

By Committee:

- 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. (Council Committee of the Whole Minutes – December 15, 2008)
- 10. Approve Engineering Change Order #2 (final) with BHC Rhodes for an increase of \$3,610.80 on Project 190864: 2008 Street Resurfacing Program. (Council Committee of the Whole Minutes – December 15, 2008)
- 11. Approve an agreement with Columbia Capital Management, LLC, for financial advisory services pending approval by the City Attorney. (Council Committee of the Whole Minutes – December 15, 2008)

- VI. STAFF REPORTS**
- VII. COMMITTEE REPORTS**
Communications Committee - Michael Kelly

Council Committee of the Whole - COU2009-10 Consider Purchase Request of Police Vehicles – David Voysey

Council Committee of the Whole – COU2009-02 Consider submittal of Projects to MARC for consideration for Federal Stimulus Package – David Voysey

Council Committee of the Whole – COU2009-11 Consider Transfer to Equipment Reserve Fund

VIII. OLD BUSINESS

IX. NEW BUSINESS

X. ANNOUNCEMENTS

XI. 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

CONSENT AGENDA

CITY OF PRAIRIE VILLAGE, KS

January 5, 2009

**CITY COUNCIL
CITY OF PRAIRIE VILLAGE
December 15, 2008**

The City Council of Prairie Village, Kansas, met in regular session on Monday, December 15, 2008, 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, Ruth Hopkins, David Voysey, Michael Kelly, Andrew Wang, Dale Beckerman, Charles Clark, David Morrison, Diana Ewy Sharp and David Belz.

Also present were: Quinn Bennion, City Administrator; Katie Logan, City Attorney; Wes Jordan, Chief of Police; Susan Lownes representing the Director of Public Works; Dennis Enslinger, Assistant City Administrator; Karen Kindle, Finance Director; Chris Engel, Assistant to the City Administrator and Joyce Hagen Mundy, City Clerk.

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

INTRODUCTION OF NEW VILLAGEFEST CHAIRMAN

Diana Ewy Sharp introduced John Capito to the Council. John has served on the Villagefest Committee for the past three years and has agreed to take on the role of Chairman. Mr. Capito stated he is pleased to be involved with the Villagefest celebration and is confident next year's celebration will continue the excellent tradition that has been established.

PUBLIC PARTICIPATION

No one was present to address the City Council.

Ten Scouts from Troop 16 at St. Andrews attended the meeting to earn their "Citizenship in the Community" merit badge.

CONSENT AGENDA

David Voysey moved the approval of the Consent Agenda for Monday, December 15, 2008:

1. Approve Regular Council Meeting Minutes - December 1, 2008
2. Approve Claims Ordinance #2854
3. Approve the issuance of 2009 Cereal Malt Beverage Licenses to the following businesses: Hen House at 4050 West 83rd Street; Hen House at 6950 Mission Road; Hy-Vee, Inc. at 7620 State Line Road; PCF SALECO LLC, DBA Circle K #6100 at 9440 Mission Road
4. Approve Resolution 2008-07 establishing 2009 compensation ranges for the City of Prairie Village subject to the review and approval of the City Attorney
5. Approve the recommendations of the Drug and Alcoholism Council of Johnson County contained in the United Community Services Fund Recommendations Report and the contribution of \$15,000 to UCS from the 2009 Parks, Recreation & Community Services budget
6. Approve a Letter of Understanding with Johnson County Department of Human Services and Aging for administration of the Utility Assistance Program for Prairie Village residents
7. Approve Engineering Change Order #1 with George Butler Associates, Inc. for Project 190871: Mission Lane Bridge Replacement in the amount of \$5,000.00 and an additional transfer of \$1,000.00 to cover title search fees.
8. Approve the purchase of two 2009 Ford F250 3/4-ton pickup trucks from Shawnee Mission Ford for a total cost of \$32,584.00
9. Approve the purchase of a 2009 model 61-inch lawn mower from Bledsoe's Rental for \$11,090.00
10. Approve the transfer of \$120,010 from the General Fund to the Equipment Reserve Fund for the purchase of financial software.
11. Approve the amendment to the Police Pension Plan in order to comply with Internal Revenue Code Section 401(a)(9), adding required distributions at age 70 ½
12. Adopt Ordinance 2184 amending Chapter 4 of the Prairie Village Municipal Code, 2003, entitled "Buildings and Construction" by repealing Article 4-105 entitled "Amendments to Section 105-3" and adopting a new Article 4-105 entitled "Amendments to Section 105-3" and approve an Interlocal Agreement with the Board of County Commissioners of Johnson County, Kansas for the administration and implementation of the Johnson County Contractor Licensing Program.

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

STAFF REPORTS

Public Safety - Chief Wes Jordan

- There has been an increase in auto thefts, both from vehicles left running and parked. There were two thefts last week.
- There has also been an increase in residential burglaries There have been eleven in the past six weeks with four last week off Belinder.
- The Department will be sending out a message through the "Code Red" system to all Prairie Village and Mission Hills residents alerting them to the increase in crimes.

David Voysey asked when the burglaries were taking place. Chief Jordan responded late afternoon. Michael Kelly asked if solicitors in the City were required the have identification. The City Clerk responded they are require to where a photo id that is issued to them by the City.

Public Works - Suzanne Lownes

- Bob Pryzby is at home and recovering well.
- The crews will be operating on 12-hour snow shifts all week.

Administration - Chris Engle

- Reservations for the Council Worksession should be made with Chris by December 17th. The final 2009 Legislative Priorities was distributed to Council.
- Reservations for the State of the Cities luncheon should be made with Chris by December 17th.

Finance - Karen Kindle

- Staff met last week to conduct interviews and see software demonstrations from the finalist selected from the budget and financial software proposals. Demonstrations were also given on related licensing software and will continue with two additional demonstrations this week.

Codes Administration - Dennis Enslinger

- Dennis reported he has not had any contact with Deffenbaugh regarding their 2009 agreement and request to change routes.
- The City received five RFP's for Prosecutor. The Mayor and staff will conduct interviews over the next two weeks.

City Attorney - Katie Logan

- Ms Logan prepared a letter for staff addressing OPUS inquiries relating to the Neighborhood Revitalization Act

City Administrator - Quinn Bennion

- The Employee Holiday luncheon was held last Friday with employees recognized for promotions and service anniversaries. He thanked the Council for their support of this event.
- OPUS has not had any direct contact with staff; however, staff has heard they intend to come before the Council in January with their financial request. Staff will prepare background information on possible financing options for review with the Council at the January 5th meeting.

COMMITTEE REPORTS

Council Committee of the Whole

COU2008-88 Consider Contingency Allocation for 2008 Property Tax Bill

Karen Kindle reported at the last Council Committee of the Whole meeting she presented a request for approval to allocate contingency funds for the payment of the City's 2008 property tax bill for the stormwater assessment fee which had not been included in the 2008 budget. At that meeting the shortfall was \$20,817.14; however, since that time she has received additional tax bills increasing the needed funding to \$29,577.69.

On behalf of the Council Committee of the Whole, Dale Beckerman moved the City Council approve allocating contingency funds in the amount of \$29,577.69 for payment of the City's 2008 property tax bill. The motion was seconded by David Voysey and passed unanimously.

Park and Recreation Committee

Diana Ewy Sharp reported the Master Plan is moving forward. The Consultant is working on the rough draft of their report with pictures. The Sub-Committee will be meeting in January to review the document.

OLD BUSINESS

There was no Old Business to come before the Council.

NEW BUSINESS

David Morrison asked if, based on the current economic situation, if it would be wise to set up a task force to consider any necessary adjustments to the budget. Mayor Shaffer stated the City's Finance Committee serves that purpose.

David Voysey stated the Finance Committee has discussed economic conditions and are watching revenue. There is no concern at this time with revenue, but

expenditures will be closely monitored. Charles Clark added the housing indicators for Prairie Village are holding steady and this is a primary source of revenue for the City. The City's sales tax revenue comes primarily from the three grocery stores in the City and that revenue is holding steady as well. David Voysey stated there may be changes in appraisals based on home sales statistics for next year. Quinn Bennion added the County Appraiser meets with Mayors and City Administrators in January to give their preliminary appraisal figures. He also stated staff is taking measures to reduce expenditures.

Mayor Shaffer noted for those present that the City Council would be going into executive session and therefore proceeded directly to the announcements.

Committee meetings scheduled for the next two weeks include:

Prairie Village Arts Council	12/17/2008	7:00 p.m.
Environmental/Recycle Council Committee	12/19/2008	7:00 p.m.
Council	01/05/2009	6:00 p.m.
Council	01/05/2009	7:30 p.m.

The Prairie Village Arts Council is pleased to announce a mixed media exhibit by Tom Wilson, Melanie Nolker and Wendy Taylor for the month of December.

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

The City offices will be closed on Thursday, December 25th in observance of the Christmas holiday and on Thursday, January 1st in observance of the New Year's holiday. Deffenbaugh also observes both these holidays and trash service will be delayed one day.

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, and Prairie Village Gift Cards continue to be sold to the public.

Executive Session

David Voysey moved pursuant to KSA 74-4319 (b) (2) that the Governing Body, recess into Executive Session for a period not to exceed ten minutes for the purpose of consulting with the City Attorney on a matters which are privileged in the attorney-client relationship.

Present will be the Mayor, City Council, City Administrator, Assistant City Administrator, City Clerk and Assistant City Attorney. The council meeting will reconvene at 8:10 p.m. The motion was seconded by Michael Kelly and passed unanimously.

Mayor Shaffer reconvened the meeting at 8:10 p.m.

Executive Session

David Voysey moved pursuant to KSA 74-4319 (b) (2) that the Governing Body, recess into Executive Session for a period not to exceed 30 minutes for the purpose of consulting with the City Attorney on a matters which are privileged in the attorney-client relationship.

Present will be the Mayor, City Council, City Administrator, Assistant City Administrator, City Clerk and Assistant City Attorney & representative from Holman, Hansen & Colville. The council meeting will reconvene at 8:42 p.m. The motion was seconded by Dale Beckerman and passed unanimously.

Mayor Shaffer reconvened the meeting at 8:42 p.m.

Executive Session

David Voysey moved pursuant to KSA 74-4319 (b) (2) that the Governing Body, recess into Executive Session for a period not to exceed 10 minutes for the purpose of

consulting with the City Attorney on a matters which are privileged in the attorney-client relationship.

Present will be the Mayor, City Council, City Administrator, Assistant City Administrator, City Clerk and Assistant City Attorney & representative from Holman, Hansen & Colville. The council meeting will reconvene at 8:55 p.m. The motion was seconded by Dale Beckerman and passed unanimously.

Mayor Shaffer reconvened the meeting at 8:55 p.m.

ADJOURNMENT

With no further business to come before the Council, the meeting was adjourned at 9:00 p.m.

Joyce Hagen Mundy
City Clerk



PUBLIC WORKS DEPARTMENT

Council Meeting Date: 1/5/2008

CONSENT AGENDA: Consider Bid Award for Portable Toilet Services

RECOMMENDATION

Staff recommends the City Council approve the contract for Portable Toilet Services to Best Portable Toilets Inc. for 2009 and renewal in 2010 and 2011.

COUNCIL ACTION REQUESTED ON January 5, 2008

BACKGROUND

On Friday, December 5, 2008, the City Clerk received a bid for a three year contract to provide Portable Toilet Services. The contract is to provide portable toilet services for the City parks. Two bids were received.

<u>Bidder</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>Total</u>
Best Portable Toilets	\$11,520	\$11,840	\$12,160	\$35,520
Deffenbaugh Industries	\$12,660	\$14,400	\$15,104	\$42,164

FUNDING SOURCE

Funding is available in the 2009 Public Works Operating Budget.

RELATION TO VILLAGE VISION

CCS2a. Enhance parks for active and passive recreation through capital improvements such as landscaping, tree and flower planting, shelters, picnic facilities, athletic fields, etc.

ATTACHMENTS

1. Bid for Portable Toilet Services with Best Portable Toilets

PREPARED BY

Suzanne Lownes, Office Manager, Public Works

December 26, 2008

AGREEMENT FOR PORTABLE TOILET SERVICES

This Agreement, made this 4th day of Dec 2008, by and between BEST Portable Toilets Inc. hereinafter referred to as Contractor, and the CITY OF PRAIRIE VILLAGE, KANSAS, hereinafter referred to as City, shall be in full force and effect during calendar years 2009 through 2011 with the following terms and conditions.

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

This document will be the only executed agreement. Any additions or changes must be added as a written supplement to this agreement at time of proposal. City Council must approve each year the terms of this agreement based on the budgetary allowance.

1.0 Service Specifications

- 1.2 The Contractor will provide one wheel chair accessible portable toilet service year-round at: Meadowlake Park (2900 West 79th Street), Porter Park (Roe Avenue and Tomahawk Road), Windsor Park (West 72nd Street and Windsor Drive), Franklin Park (8700 Roe Avenue) and Weltner Park (Cambridge and State Line Road). The Contractor will also provide one wheel chair accessible portable toilet service from November 1 to March 1 at Harmon Park (7727 Delmar).
- 1.3 The Contractor will provide delivery, setup, cleaning two (2) times per week, repair and removal
- 1.4 The portable toilet unit will be bolted to the pad and/or enclosure.
- 1.5 That within 24 hours of notice, the Contractor will replace any portable toilet that is not in good condition and/or useable.
- 1.6 The Contractor will service a unit within 24 hours of request by the City.
- 1.7 The Contractor will supply a direct contact name, phone number and email and will notify the City if this contact information changes during the Contract period.
- 1.8 The Contractor is admonished that their employees will be properly attired, refrain from abusive language, refrain from improper behavior, and be aware that they are representing the City.

2.0 General

- 2.1 This signed agreement will be the authorization for the Contractor to provide the described services as requested by the City.
- 2.2 Mike Helms, Field Superintendent, at phone-(913)385-4644, fax-(913)642-0117 Email-mhelms@pvkansas.com, will be the City coordinator for the Contractor for providing any service and responding to any special needs.
- 2.3 The Contractor will contact Public Works to schedule work. All work should be preformed between 7:00am through 3:30pm weekdays unless otherwise stated by the City.
- 2.4 All work performed by the Contractor will be of acceptable workmanlike quality and installation normally associated with this trade and shall occur to the satisfaction of the City before payment will be made by the City to the Contractor.

- 2.5 All invoices should be grouped by location, with a copy of the service report attached, and are to be sent to Public Works Department, 3535 Somerset Drive, Prairie Village, KS 66208.
- 2.6 The Contractor shall maintain throughout the life of this contract, General Liability Insurance covering any and all actions of the contractor in the performance of this contract. Minimum limits shall be Bodily Injury \$500,000/500,000; Property Damage \$100,000. The Contractor shall maintain throughout the life of this contract, Automobile Liability Insurance which shall be written in comprehensive form and shall protect the Contractor against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, and shall cover operation on and off the site of all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired. Unless otherwise specified, Contractor's insurance shall include Auto Liability of \$300,000 single limit. Contractor shall also be responsible to provide workmen's compensation insurance and benefits for its employees.
- 2.7 The Contractor is providing services to the City as an independent contractor. The contractor shall be responsible for the death or injury of any employee of the contractors, while in the performance of service of the terms of this agreement and it shall hold the City harmless and shall indemnify the City for any loss it may have resulting from the contractor providing the services described in this agreement. The City shall not be responsible for any withholding of taxes or social security for any employee of contractor, nor shall it provide to any employee of contractor any fringe benefits of any kind.
- 2.8 This Agreement is for the period of January 1, 2009 through December 31, 2011. Either party may terminate this agreement by giving sixty (60) days prior written notice to the other party.
- 2.9 The Contractor will commence work within ten (10) calendar days from and after receiving instructions from the City.
- 3.0 Fees
- 3.1 Fees will be calculated by averaging out the monthly fee for the three year period.
- 3.2 The Monthly fee for each unit including damage waiver fee with two (2) times per week service on Mondays and Fridays.

LOCATIONS	2009 MONTHLY FEE	2010 MONTHLY FEE	2011 MONTHLY FEE
<i>all w/ 2x week serv</i>			
Meadowlake Park - 2900 West 79 th Street	180.00	185.00	190.00
Porter Park - Roe Avenue and Tomahawk Road	180.00	185.00	190.00
Windsor Park - West 72 nd Street and Windsor Drive	180.00	185.00	190.00
Franklin Park - 8700 Roe Avenue	180.00	185.00	190.00
Weltner Park - Cambridge and State Line Road	180.00	185.00	190.00
Harmon Park - 7727 Delmar (November 1 st to March 1 st)	180.00	185.00	190.00

4.0 References

4.1 The Contractor will provide three (3) references of comparable work from the last twelve (12) months.

4.2

Company: Jackson Co Parks + Rec Contact: JD

Phone #: 816-503-4800 Email: _____

Brief Description on Work: Supply about 100 Toilets a year

Company: Kansas City Parks + Rec Contact: Melinda Minx

Phone #: 816-513-7653 Email: _____

Brief Description on Work: Do events for Parks + Rec

Company: Blue Springs Chamber of Commerce Contact: Rita

Phone #: 816-229-8558 Email: _____

Brief Description of Work: Large event in fall + other events

Contractor Contact: Terry L. Keesler Pres. ATTEST:

Company Name: BEST Portable Toilets Inc /s/ _____

Address: PO Box 512 Joyce Hagen Mundy, City Clerk Date

Belton, MO 64012

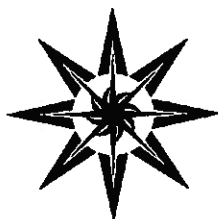
Telephone Number: 816-348-7700 /s/ _____
Catherine P. Logan, City Attorney Date

Fax Number: SAME

Email: bestportabletoiletsinc@yahoo.com

/s/ Terry L. Keesler Pres. 12-4-08
Contractor Agent Date

/s/ _____
Ronald L. Shaffer, Mayor Date



PUBLIC WORKS DEPARTMENT

Council Meeting Date: 1/5/2008

CONSENT AGENDA: Consider Bid Award for Holiday Tree Lighting

RECOMMENDATION

Staff recommends the City Council approve the contract for Holiday Tree Lighting Services to Arbor Masters Tree & Landscape for 2009 and renewal in 2010 and 2011.

COUNCIL ACTION REQUESTED ON January 5, 2008

BACKGROUND

On Friday, December 5, 2008, the City Clerk received a bid for a three year contract to provide Holiday Tree Lighting Services. The contract is to provide holiday tree lighting services for the Municipal Campus, 75th & Cherokee, Porter Park and Franklin Park. There have been five additional trees added to this contract. Arbor Masters is the current contractor. The Bid is attached and was the only bid received.

FUNDING SOURCE

Funding is available in the 2009 Public Works Operating Budget.

RELATION TO VILLAGE VISION

CCS2a. Enhance parks for active and passive recreation through capital improvements such as landscaping, tree and flower planting, shelters, picnic facilities, athletic fields, etc.

ATTACHMENTS

1. Bid for Holiday Tree Lighting Services with Arbor Masters Tree & Landscape.

PREPARED BY

Suzanne Lownes, Office Manager, Public Works

December 26, 2008

AGREEMENT FOR HOLIDAY TREE LIGHTING

This Agreement, made this 5th day of DECEMBER, _____, by and between ARBOR MASTER TREE & LANDSCAPE, hereinafter referred to as Contractor, and the CITY OF PRAIRIE VILLAGE, KANSAS, hereinafter referred to as City, shall be in full force and effect during calendar years 2009 through 2011 with the following terms and conditions.

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

This document will be the only executed agreement. Any additions or changes must be added as a written supplement to this agreement at time of proposal. City Council must approve each year the terms of this agreement based on the budgetary allowance.

1.0 Service Specifications

1.1 The Contractor will provide holiday tree lighting services for these locations:

Municipal Campus, 7700 Mission Road

1 Each Spruce, Mayors Tree (C-9) colored lamps

3 Each Flowering Crabapples (C-7) white lamps

4 Each Bradford Pears (C-7) white lamps

1 Each Flowering Crabapple (mini) white lamps

5 Each Crabapples along sidewalk towards Community Center(mini) white lamps

75th & Cherokee

1 Each Spruce (C-7) colored lamps

Porter Park, Tomahawk & Roe

1 Each Pine (C-9) colored lamps

Franklin Park, Somerset Drive & Roe

3 Each Spruce (C-7) colored lamps

1.2 All wiring and electrical connections are to meet City electrical codes.

1.3 Pricing will include all labor including but not limited to; installation, removal, year around storage and once a month lighting check.

1.4 Lights will be installed by November 1st and remain up until January 31st.

1.5 The City, in accordance with City Council Policy No. CP061 will retain the right to obtain competitive pricing on any singular item costing more than \$10,000.

1.6 The Contractor will supply a direct contact name, phone number and email and will notify the City if this contact information changes during the Contract period.

1.7 The Contractor is admonished that their employees will be properly attired, refrain from abusive language, refrain from improper behavior, and be aware that they are representing the City.

2.0 General

2.1 The signed agreement will be the authorization for the vendor to provide the described services.

2.2 Mike Helms, Field Superintendent, at phone-(913)385-4644, fax-(913)642-0117 Email-mhelms@pvkansas.com, will be the City coordinator for the Contractor for providing any service and responding to any special needs.

2.3 The Contractor will contact Public Works to schedule work. All work should be preformed between 7:00am through 3:30pm weekdays unless otherwise stated by the City.

- 2.4 All work performed by the Contractor will be of acceptable workmanlike quality and installation normally associated with this trade and shall occur to the satisfaction of the City before payment will be made by the City to the Contractor.
- 2.5 All invoices should be grouped by location with a copy of the service report and are to be sent to Public Works Department, 3535 Somerset Drive, Prairie Village, KS 66208.
- 2.6 The Contractor shall maintain throughout the life of this contract, General Liability Insurance covering any and all actions of the contractor in the performance of this contract. Minimum limits shall be Bodily Injury \$500,000/500,000; Property Damage \$100,000. The Contractor shall maintain throughout the life of this contract, Automobile Liability Insurance which shall be written in comprehensive form and shall protect the Contractor against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, and shall cover operation on and off the site of all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired. Unless otherwise specified, Contractor's insurance shall include Auto Liability of \$300,000 single limit. Contractor shall also be responsible to provide workmen's compensation insurance and benefits for its employees.
- 2.7 The Contractor is providing services to the City as an independent contractor. The contractor shall be responsible for the death or injury of any employee of the contractors, while in the performance of service of the terms of this agreement and it shall hold the City harmless and shall indemnify the City for any loss it may have resulting from the contractor providing the services described in this agreement. The City shall not be responsible for any withholding of taxes or social security for any employee of contractor, nor shall it provide to any employee of contractor any fringe benefits of any kind.
- 2.8 This Agreement is for the period of February 2, 2009 through February 1, 2011. Either party may terminate this agreement by giving sixty (60) days prior written notice to the other party.
- 2.9 The Contractor will commence work within ten (10) calendar days from and after receiving the fully executed agreement from the City and will complete all work covered in this contract.
- 3.0 Fees
- 3.1 Fees will be calculated by averaging out the yearly fee for the three year period.
- 3.2 That the yearly fees for the completion of these services are:

Locations	2009 Yearly Fee	2010 Yearly Fee	2011 Yearly Fee
Municipal Campus - 7700 Mission Road			
1 Each-Spruce, Mayors Tree (C-9) colored lamps			
3 Each-Flowering Crabapples (C-7) white lamps			
4 Each-Bradford Pears (C-7) white lamps			
1 Each-Flowering Crabapple (mini) white lamps			
5 Each - Crabapple along sidewalk to Community Center (mini) white lamps	5,200	5,200	5,200
75th & Cherokee			
1 Each-Spruce (C-7) colored lamps	3,050	3,050	3,050
Porter Park, Tomahawk & Roe			
1 Each-Pine (C-9) colored lamps	425 ⁰⁰	425 ⁰⁰	425 ⁰⁰
Franklin Park, Somerset Drive & Roe			
3 Each-Spruce (C-7) colored lamps	1875 ⁰⁰	1875 ⁰⁰	1875 ⁰⁰

4.0 References

4.1 The Contractor will provide three (3) references of comparable work from the last twelve (12) months.

4.2

Company: CITY OF PRAIRIE VILLAGE Contact: Bob Pryzsy

Phone #: ⁹¹² 385-4640 Email: _____

Brief Description on Work: CITY LIGHTING CONTRACT
FOR 6 YEARS

Company: _____ Contact: _____

Phone #: _____ Email: _____

Brief Description on Work: _____

Company: _____ Contact: _____

Phone #: _____ Email: _____

Brief Description of Work: _____

Contractor Contact: MARK CANTRELL ATTEST: _____

Company Name: ARBOR MASTERS TREE & LANDSCAPE _____

Address: 8250 COLE PARKWAY _____
SHAWNEE MISSION KS. 66227

Telephone Number: 913-441-8888 _____
Is/ _____
Catherine P. Logan, City Attorney Date

Fax Number: 913-441-8920 _____

Email: mcantrell@arbormasters.com _____

Is/ Mark Cantrell 12/5/08 _____
Contractor Agent Date 170 Ronald L. Shaffer, Mayor Date



PUBLIC WORKS DEPARTMENT

Council Meeting Date: 1/5/2008

CONSENT AGENDA: Consider Bid Award for HVAC Services

RECOMMENDATION

Staff recommends the City Council approve the contract for HVAC Services to O'Dell Service Co. Inc for 2009 and renewal in 2010 and 2011.

COUNCIL ACTION REQUESTED ON January 5, 2008

BACKGROUND

On Friday, December 5, 2008, the City Clerk received a bid for a three year contract to provide HVAC Services. The contract is to provide HVAC service for cooling systems, heating systems, and repair services for the City buildings. Two bids were received.

<u>Bidder</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>Total</u>
O'Dell Services Co.	\$15,840.00	\$16,128.00	\$16,416.00	\$48,384.00
Chief Heating & Cooling	\$29,780.40	\$31,120.00	\$32,520.80	\$93,421.20

FUNDING SOURCE

Funding is available in the 2009 Public Works Operating Budget.

RELATION TO VILLAGE VISION

None

ATTACHMENTS

1. Bid for HVAC Services with O'Dell Service Co.

PREPARED BY

Suzanne Lownes, Office Manager, Public Works

December 26, 2008

AGREEMENT FOR HVAC SERVICE

This Agreement, made this _____ day of _____, _____, by and between O'Dell Service, hereinafter referred to as Contractor, and the CITY OF PRAIRIE VILLAGE, KANSAS, hereinafter referred to as City, shall be in full force and effect during calendar years 2009 through 2011 with the following terms and conditions.

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

This document will be the only executed agreement. Any additions or changes must be added as a written supplement to this agreement at time of proposal. City Council must approve each year the terms of this agreement based on the budgetary allowance.

1.0 Service Specifications

1.1 The Contractor will provide City HVAC service for cooling system, heating system, special preventative maintenance and repair service for the following locations:

Police Department - 7710 Mission Road
Municipal Building - 7700 Mission Road
Community Center - 7720 Mission Road
Public Works - 3535 Somerset Drive
Swimming Pool Facility - 7711 Delmar

1.2 Cooling Systems Service will be provided quarterly in March, June and September. Check and start up all air conditioning systems in March. Notify the City of any deficiencies or parts which need to be replaced. The following preventive maintenance will be performed on all cooling units during the months of March, June and September:

- a. Change all air filters
- b. Lubricate blower & motor bearings
- c. Check belt condition and tension
- d. Check condenser coils and clean
- e. Check evaporator cooling coil and clean
- f. Check operating pressures
- g. Check Freon charge and leak test units with low charge
- h. Check thermostat and control
- i. Check condenser efficiency and clean contacts
- j. Set dampers and check fan speed for summer operation
- k. Check safety controls for correct operation and setting
- l. Check superheat setting and adjust
- m. Check for proper oil level and add oil, if required
- n. Check voltage and amp draw
- o. Check for correct rotation
- p. Check expansion valve and refrigerant flow through drier
- q. Check contactors and starters
- r. Check 'start and run' capacitors
- s. Check compressor efficiency
- t. Clean condensate drain
- u. Check thermostat and controls
- v. Change air filter
- w. Check Damper actuation and thermostats on VAV boxes

- 1.3 Heating Systems Service will be provided quarterly in September, December and March. Check and start up all heating systems in September. Notify the City of any deficiencies or parts which need to be replaced. The following preventive maintenance will be performed on all heating units during the months of September, December and March:
- a. Change all air filters
 - b. Lubricate blower and motor bearings
 - c. Check belt condition and tension
 - d. Check operation of controls and clean contact points
 - e. Check to insure that all furnace and heater flues are drawing properly
 - f. Check condition of pilot and clean
 - g. Check condition of burner for proper flame and adjust
 - h. Check gas line pressure
 - i. Check manifold pressure
 - j. Check combustion
 - k. Check fan and limit control
 - l. Check pilot safety
 - m. Check heat anticipator
 - n. Check gas pressure regulator
 - o. Check burner operation
 - p. Check heat relay
 - q. Check safety controls
 - r. Check thermocouple output
 - s. Check temperature rise through heat exchanger
 - t. Set dampers and check fan speed for winter operation
 - u. Check for CO2 to supply ducts and around flues
 - v. Change air filter
 - w. Check damper actuation, thermostats and valves on hot water VAV boxes
- 1.4 Provide emergency service within four (4) hours of request at specified hourly or over-time rate plus materials.
- 1.5 Furnish the City with a repair order detailing all work performed by location including labor hours and parts replaced along with Invoice for work performed by location to be delivered to Public Works at 3535 Somerset, Prairie Village, KS 66208 when work is completed.
- 1.6 The City, in accordance with City Council Policy No. CP061 will retain the right to obtain competitive pricing on any singular item costing more than \$10,000.
- 1.7 The Contractor is admonished that their employees will be properly attired, refrain from abusive language, refrain from improper behavior, and be aware that they are representing the City.
- 1.8 The Contractor will supply a direct contact name, phone number and email and will notify the City if this contact information changes during the Contract period.
- 2.0 **General**
- 2.1 The signed agreement will be the authorization for the vendor to provide the described services.
- 2.2 Mike Helms, Field Superintendent, at phone-(913)385-4644, fax-(913)642-0117 Email-mhelms@pvkansas.com, will be the City coordinator for the Contractor for providing any service and responding to any special needs.

- 2.3 A permit shall be applied for through the City of Prairie Village Building Inspector's Office for all repairs, at no cost to the Contractor.
- 2.4 The Contractor will contact Public Works to schedule work. All work should be performed between 7:00am through 3:30pm weekdays unless otherwise stated by the City..
- 2.5 All work performed by the Contractor will be of acceptable workmanlike quality and installation normally associated with this trade and shall occur to the satisfaction of the City before payment will be made by the City to the Contractor.
- 2.6 All invoices should be grouped by building and are to be sent to Public Works Department, 3535 Somerset Drive, Prairie Village, KS 66208.
- 2.7 The Contractor shall maintain throughout the life of this contract, General Liability Insurance covering any and all actions of the contractor in the performance of this contract. Minimum limits shall be Bodily Injury \$500,000/500,000; Property Damage \$100,000. The Contractor shall maintain throughout the life of this contract, Automobile Liability Insurance which shall be written in comprehensive form and shall protect the Contractor against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, and shall cover operation on and off the site of all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired. Unless otherwise specified, Contractor's insurance shall included Auto Liability of \$300,000 single limit. Contractor shall also be responsible to provide workmen's compensation insurance and benefits for its employees.
- 2.8 The Contractor is providing services to the City as an independent contractor. The contractor shall be responsible for the death or injury of any employee of the contractors, while in the performance of service of the terms of this agreement and it shall hold the City harmless and shall indemnify the City for any loss it may have resulting from the contractor providing the services described in this agreement. The City shall not be responsible for any withholding of taxes or social security for any employee of contractor, nor shall it provide to any employee of contractor any fringe benefits of any kind.
- 2.9 This Agreement is for the period of January 1, 2009 through December 31, 2011. Either party may terminate this agreement by giving sixty (60) days prior written notice to the other party.
- 2.10 The Contractor will commence work within ten (10) calendar days from and after receiving the fully executed agreement from the City and will complete all work covered in this contract.
- 3.0 Fees
- 3.1 Fees will be calculated by averaging out the Quarterly Fees for the three year period.
- 3.2 The fees for the completion of this service are:

LOCATION	2009 Quarterly Fee	2010 Quarterly Fee	2011 Quarterly Fee
Public Safety - 7710 Mission Road			
Spring Maintenance Service	\$540 .	552 .	564 .
Fall Maintenance Service	\$360 .	\$368 .	\$376 .
Municipal Building - 7700 Mission Road			
Spring Maintenance Service	\$720 .	\$720 .	\$720 .
Fall Maintenance Service	\$720 .	\$736 .	\$752 .

Community Center - 7720 Mission Road			
Spring Maintenance Service	\$135.	\$138.	\$141.
Fall Maintenance Service	\$135.	\$138.	\$141.
Public Works - 3535 Somerset Drive			
Spring Maintenance Service	\$360.	\$368.	\$376.
Fall Maintenance Service	\$720.	\$736.	\$752.
Swimming Pool Facility - 7711 Delmar			
Spring Maintenance Service	\$135.	\$138.	\$141.
Fall Maintenance Service	\$135.	\$138.	\$141.

3.3 Additional Fees

DESCRIPTION	2009 PRICING	2010 PRICING	2011 PRICING
Labor Cost per Hour:	\$90.	\$92.	\$94.
Labor Cost per Overtime Hour:	\$135.	\$138.	\$141.
Materials - Actual Cost Plus Mark Up %:	35%	35%	35%
Freon - Cost Per Pound for Refrigerant (r22)	\$13.	market	market

4.0 Units covered by this agreement

4.1 Municipal Building (City Hall), 7700 Mission Road

MFG	MODEL #	SERIAL #	LOCATION
TRANE	TUE100A948K0	M223L3M2G	BASEMENT
TRANE	TUE100A948K0	M222N4M1G	BASEMENT
LENNOX	G23Q2/3-75-6	5899A 28161	BASEMENT
LENNOX	G23Q3/4-100-6	5898M 38048	BASEMENT
TRANE	TTR048C100A2	J18205766	OUTSIDE, GROUND
LENNOX	H529-036-1P	5899B 35778	OUTSIDE, GROUND
TRANE	TTA090A300CB	L301YPHAH	OUTSIDE, GROUND
LENNOX	G23Q2/3-75-4	5898C 63896	UPSTAIRS
LENNOX	G23Q5/6-125-4	5898C 61145	UPSTAIRS
LENNOX	G23Q5/6-125-4	5898C 61146	UPSTAIRS
LENNOX	G23Q5/6-125-4	5897J 28427	UPSTAIRS
LENNOX	G23Q5/6-125-4	5897J 28460	UPSTAIRS
LENNOX	G23Q5/6-125-6	5599B 25045	UPSTAIRS
LENNOX	G23Q5/6-125-6	5899B 25059	UPSTAIRS
YORK	P2MPD20N11201F	EMDM465821	UPSTAIRS
YORK	P2MPD20N11201F	EMDM465816	UPSTAIRS
LENNOX	H529-036-9Y	5898C 35611	ROOFTOP
LENNOX	LSA090C-1Y	5698D06040	ROOFTOP
TRANE	TT5018C100A0	L085T7AAF	ROOFTOP
LENNOX	LSA090C-1Y	5698K 05013	ROOFTOP
LENNOX	GC516-030-75-1P	5699C 06663	ROOFTOP
CARRIER	J094178	38AD012400	ROOFTOP
LENNOX	HS17-1353-5Y	5193J26272	ROOFTOP
TRANE	YCC024F1LOBE	N111NX22H	ROOFTOP
TRANE	YCH048C3LOB	L25101188D	ROOFTOP

4.2 Community Center, 7720 Mission Road

MFG.	MODEL #	SERIAL #	LOCATION
CARRIER	58WAV111-20	1197A04954	FURNACE ROOM
CARRIER	58WAV111-20	1197A04944	FURNACE ROOM
CARRIER	38CKC060300	3197E18546	OUTSIDE
CARRIER	38CKC060300	3197E18551	OUTSIDE

4.3 Swimming Pool Facility, 7711 Delmar

MFG.	MODEL #	SERIAL #	LOCATION
YORK	N4AHD14A06A	EGFS192429	INSIDE
YORK	H1DB036S06B	EHF303588	GROUND
YORK	F1SA030R06A	ELCS347675	INSIDE
YORK	H2DH030506A	EFD239221	ROOF

4.4 Public Works Facilities, 3535 Somerset

MFG.	MODEL #	SERIAL #	LOCATION
TRANE	GPA125A	0G-06327	SHOP
JANITROL	WH100	89GH3810R	SHOP
JANITROL	WH100	89GH3983R	PARTS
LENNOX	LF3E-165-2	8-92020ES	HIGH LIFT
SHENANDOAH	AM-862526	2026	SHOP
TRANE	TUE060A936KO	L305K4RIG	SHOP, CEILING
TRANE	TUE120A960KO	L323T8G1G	SHOP, CEILING
TRANE	TTR025C100A2	L322LCHAF	GROUND
TRANE	TTB060C100AD	L273RBGHF	GROUND
YORK	P4UGD20N12001A	ENXM249132	FURNACE ROOM
YORK	HICF060S06B	MBYM131772	GROUND
REZNOR	F50	AQ131KSN44235	SIGN GARAGE
CARRIER	38CKC030340	1105E08979	GROUND

NORTH - G BUILDING

BRYANT	565BJ018	5286A26256	GROUND
BRYANT	519DXX024000MAAA	R786441	SHOP - MECH RM
REZNOR	XL60-3	ALL31G8N77873	SHOP - WALL
REZNOR	F250	AQA31K6NO3925	SHOP - WALL
SCHWACK	36C01	NONE	BAY 1 - CEILING
SCHWACK	36C01	NONE	BAY 2 - CEILING

SOUTH - G BUILDING

BRYANT	565B	5286A25594	GROUND
BRYANT	519XX024000MAAA	R794438	SHOP - MECH RM
SCHWACK	36C01	NONE	BAY 1 - CEILING
SCHWACK	36C01	NONE	BAY 2 - CEILING
REZNOR	XL60-3	ALL31G8N77872	SHOP

4.5 Police Building, 7710 Mission Road

MFG.	MODEL #	SERIAL #	LOCATION
AJAX	WG850	46894	BASEMENT
TRANE	SXHFC50EOE10C6A	J94M73448	ROOF
	D300ADEMRT		
TRANE	TCD04BC30ABC	K021016520	ROOF

5.0 References

5.1 The Contractor will provide three (3) references of comparable work from the last twelve (12) months.

5.2

Company: Johnson County Parks & Rec Contact: Grant Evans

Phone #: 913-631-0734 Email: _____

Brief Description on Work: Preventive Maintenance and Service Repair work.
Multiple Sites, 14 year relationship.

Company: Clay County Administration Contact: Donna Koontz

Phone #: 816-407-3333 Email: dkoontz@claycogov.com

Brief Description on Work: Preventive Maintenance and Service Repair Work.
Five (5) Buildings

Company: Bank Midwest Contact: Jim Fowler

Phone #: 816-412-6010 Email: jfowler@dfckc.com

Brief Description of Work: Preventive Maintenance and Service Repair Work.
Multiple Locations. 16 year relationship

Contractor Contact: Gregory Piontek

Company Name: O'Dell Service Co. Inc.

Address: 2605 NE Industrial Dr.

N. Kansas City, MO 64116

Telephone Number: 816-842-3414

Fax Number: 816-842-9506

Email: gregp@odellservice.com

/s/ *Gregory Piontek* 12/5/08
Contractor Agent Date

ATTEST:

/s/ _____
Joyce Hagen Mundy, City Clerk Date

/s/ _____
Catherine P. Logan, City Attorney Date

/s/ _____
Ronald L. Shaffer, Mayor Date



PUBLIC WORKS DEPARTMENT

Council Meeting Date: 1/5/2008

CONSENT AGENDA: Consider Bid Award for Ice Maker Services

RECOMMENDATION

Staff recommends the City Council approve the contract for Ice Maker Services to Ice-Masters, Inc. for 2009 and renewal in 2010 and 2011.

COUNCIL ACTION REQUESTED ON January 5, 2008

BACKGROUND

On Friday, December 5, 2008, the City Clerk received a bid for a three year contract to provide Ice Maker Services. The contract is to provide ice maker services for Public Works and the Swimming Pool Concession. Ice-Masters, Inc. is the current contractor. The Bid is attached and was the only bid received.

FUNDING SOURCE

Funding is available in the 2009 Public Works Operating Budget.

RELATION TO VILLAGE VISION

None

ATTACHMENTS

1. Bid for Ice Maker Services with Ice-Masters, Inc.

PREPARED BY

Suzanne Lownes, Office Manager, Public Works

December 26, 2008

AGREEMENT FOR ICE MAKER SERVICE

This Agreement, made this 2nd day of December, 2008 by and between Ice-Masters, Inc, hereinafter referred to as Contractor, and the CITY OF PRAIRIE VILLAGE, KANSAS, hereinafter referred to as City, shall be in full force and effect during calendar years 2009 through 2011 with the following terms and conditions.

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

This document will be the only executed agreement. Any additions or changes must be added as a written supplement to this agreement at time of proposal. City Council must approve each year the terms of this agreement based on the budgetary allowance.

1.0 Service Specifications

1.1 The Contractor will provide a rental program for:

- a) One (1) water cooled crescent cube ice maker producing 18 pounds per hour, 300 pound ice storage bin, water filter located at Public Works B-building, 3535 Somerset Drive, January through December.
- b) One (1) water cooled crescent cube ice maker producing 800 pounds per day with 500 pound ice storage bin, water filter located at Swimming Pool Concession, 7711 Delmar, May through September.

1.2 The Contractor will provide a maintenance service on a 24 hour, seven days per week basis that includes all delivery, installation, full maintenance including periodic cleanings, water filtration system with replacement cartridges and ice delivery in event of equipment failure.

1.3 The Contractor will supply a direct contact name, phone number and email and will notify the City if this contact information changes during the Contract period.

1.4 The Contractor is admonished that their employees will be properly attired, refrain from abusive language, refrain from improper behavior, and be aware that they are representing the City.

2.0 General

2.1 The signed agreement will be the authorization for the vendor to provide the described services.

2.2 Mike Helms, Field Superintendent, at phone-(913)385-4644, fax-(913)642-0117 Email-mhelms@pvkansas.com, will be the City coordinator for the Contractor for providing any service and responding to any special needs.

2.3 The Contractor will contact Public Works to schedule work. All work should be performed between 7:00am through 3:30pm weekdays unless otherwise stated by the City.

2.4 All work performed by the Contractor will be of acceptable workmanlike quality and installation normally associated with this trade and shall occur to the satisfaction of the City before payment will be made by the City to the Contractor.

2.5 All invoices should be grouped by building and are to be sent to Public Works Department, 3535 Somerset Drive, Prairie Village, KS 66208.

- 2.6 The Contractor shall maintain throughout the life of this contract, General Liability Insurance covering any and all actions of the contractor in the performance of this contract. Minimum limits shall be Bodily Injury \$500,000/500,000; Property Damage \$100,000. The Contractor shall maintain throughout the life of this contract, Automobile Liability Insurance which shall be written in comprehensive form and shall protect the Contractor against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, and shall cover operation on and off the site of all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired. Unless otherwise specified, Contractor's insurance shall include Auto Liability of \$300,000 single limit. Contractor shall also be responsible to provide workmen's compensation insurance and benefits for its employees.
- 2.7 The Contractor is providing services to the City as an independent contractor. The contractor shall be responsible for the death or injury of any employee of the contractors, while in the performance of service of the terms of this agreement and it shall hold the City harmless and shall indemnify the City for any loss it may have resulting from the contractor providing the services described in this agreement. The City shall not be responsible for any withholding of taxes or social security for any employee of contractor, nor shall it provide to any employee of contractor any fringe benefits of any kind.
- 2.8 This Agreement is for the period of January 1, 2009 through December 31, 2011. Either party may terminate this agreement by giving sixty (60) days prior written notice to the other party.
- 2.9 The Contractor will commence work within ten (10) calendar days from and after receiving the fully executed agreement from the City and will complete all work covered in this contract.
- 3.0 Fees
- 3.1 That the Monthly fee for these services are:

Service	2009 Monthly Rate	2010 Monthly Rate	2011 Monthly Rate
Public Works B-Building - 3535 Somerset Drive	90 ⁰⁰	90 ⁰⁰	90 ⁰⁰
Swimming Pool Concession - 7711 Delmar Drive (Seasonal Rate)	1000. ⁰⁰	1000. ⁰⁰	1000. ⁰⁰

4.0 References

4.1 The Contractor will provide three (3) references of comparable work from the last twelve (12) months.

4.2

Company: City of KCMO

Contact: Purchasing Dept.

Phone #: _____

Email: _____

Brief Description on Work: Hold contract for all City of KCMO ice machine rentals

Company: City of Olathe

Contact: Connie Kuobe

Phone #: 913-971-6263

Email: _____

Brief Description on Work: Rentals for all parks & Rec locations

Company: City of Leawood

Contact: _____

Phone #: _____

Email: _____

Brief Description of Work: Rentals for Parks & Rec. Dept.

Contractor Contact: _____

ATTEST:

Company Name: _____

/s/ Joyce Hagen Mundy, City Clerk Date

Address: _____

/s/ Catherine P. Logan, City Attorney Date

Telephone Number: _____

Fax Number: _____

Email: _____

/s/ _____
Contractor Agent Date

/s/ Ronald L. Shaffer, Mayor Date



PUBLIC WORKS DEPARTMENT

Council Meeting Date: 1/5/2008

CONSENT AGENDA: Consider Bid Award for Locksmith Services

RECOMMENDATION

Staff recommends the City Council approve the contract for Locksmith Services to Johnson County Key Services for 2009 and renewal in 2010 and 2011.

COUNCIL ACTION REQUESTED ON January 5, 2008

BACKGROUND

On Friday, December 5, 2008, the City Clerk received a bid for a three year contract to provide Locksmith Services. The contract is to provide locksmith services for the City buildings. Johnson County Key Services is the current contractor. The Bid is attached and was the only bid received.

FUNDING SOURCE

Funding is available in the 2009 Public Works Operating Budget.

RELATION TO VILLAGE VISION

None

ATTACHMENTS

1. Bid for Locksmith Services with Johnson County Key Services.

PREPARED BY

Suzanne Lownes, Office Manager, Public Works

December 26, 2008

AGREEMENT LOCKSMITH SERVICES

This Agreement, made this _____ day of _____, _____, by and between _____, hereinafter referred to as Contractor, and the CITY OF PRAIRIE VILLAGE, KANSAS, hereinafter referred to as City, shall be in full force and effect during calendar years 2009 through 2011 with the following terms and conditions.

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

This document will be the only executed agreement. Any additions or changes must be added as a written supplement to this agreement at time of proposal. City Council must approve each year the terms of this agreement based on the budgetary allowance.

1.0 Service Specifications

- 1.1 The Contractor will provide locksmith services for City facilities.
- 1.2 The City, in accordance with City Council Policy No. CP061 will retain the right to obtain competitive pricing on any singular item costing more than \$10,000.
- 1.3 The Contractor is admonished that their employees will be properly attired, refrain from abusive language, refrain from improper behavior, and be aware that they are representing the City.
- 1.4 The Contractor will supply a direct contact name, phone number and email and will notify the City if this contact information changes during the Contract period.

2.0 General

- 2.1 This signed agreement will be the authorization for the Contractor to provide the described services as requested by the City.
- 2.2 Mike Helms, Field Superintendent, at phone-(913)385-4644, fax-(913)642-0117 Email-mhelms@pvkansas.com, will be the City coordinator for the Contractor for providing any service and responding to any special needs.
- 2.3 The Contractor will contact Public Works to schedule work. All work should be performed between 7:00am through 3:30pm weekdays unless otherwise stated by the City.
- 2.4 All work performed by the Contractor will be of acceptable workmanlike quality and installation normally associated with this trade and shall occur to the satisfaction of the City before payment will be made by the City to the Contractor.
- 2.5 All invoices should be grouped by location, with a copy of the service report attached, and are to be sent to Public Works Department, 3535 Somerset Drive, Prairie Village, KS 66208.

- 2.6 The Contractor shall maintain throughout the life of this contract, General Liability Insurance covering any and all actions of the contractor in the performance of this contract. Minimum limits shall be Bodily Injury \$500,000/500,000; Property Damage \$100,000. The Contractor shall maintain throughout the life of this contract, Automobile Liability Insurance which shall be written in comprehensive form and shall protect the Contractor against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, and shall cover operation on and off the site of all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired. Unless otherwise specified, Contractor's insurance shall include Auto Liability of \$300,000 single limit. Contractor shall also be responsible to provide workmen's compensation insurance and benefits for its employees.
- 2.7 The Contractor is providing services to the City as an independent contractor. The contractor shall be responsible for the death or injury of any employee of the contractors, while in the performance of service of the terms of this agreement and it shall hold the City harmless and shall indemnify the City for any loss it may have resulting from the contractor providing the services described in this agreement. The City shall not be responsible for any withholding of taxes or social security for any employee of contractor, nor shall it provide to any employee of contractor any fringe benefits of any kind.
- 2.8 This Agreement is for the period of January 1, 2009 through December 31, 2011. Either party may terminate this agreement by giving sixty (60) days prior written notice to the other party.
- 2.9 The Contractor will commence work within ten (10) calendar days from and after receiving instructions from the City.
- 3.0 **Fees**
- 3.1 Fees will be calculated by averaging out the hourly rate for the three year period.
- 3.2 That the fees for the completion of this service are:

Employees	2009		2010		2011	
	Hourly Rate	Overtime Rate	Hourly Rate	Overtime Rate	Hourly Rate	Overtime Rate
Supervisor	60.00	90.00	60.00	90.00	60.00	90.00
Locksmith	60.00	90.00	60.00	90.00	60.00	90.00
Apprentice	30.00	45.00	30.00	45.00	30.00	45.00
Helper	20.00	30.00	20.00	30.00	20.00	30.00
Materials	Percentage Markup		Percentage Markup		Percentage Markup	
Purchase Invoice Cost Plus	20%		20%		20%	

4.0 References

4.1 The Contractor will provide three (3) references of comparable work from the last twelve (12) months.

4.2

Company: JOHNSON COUNTY PARKS Contact: JEAN HARDER

Phone #: 913 894-3386 Email: _____

Brief Description on Work: New installs, Repairs, ReKeying

Company: CITY OF OVERLAND PK Contact: RUSS DENT

Phone #: 913 895-6276 Email: _____

Brief Description on Work: New installs, Repairs, ReKeying

Company: HELBURG DIAMONDS Contact: SARA STREIFF

Phone #: 816-480-0204 Email: _____

Brief Description of Work: New installs, Repairs, ReKeying

Contractor Contact: ELLIS RANKIN

Company Name: JOHNSON COUNTY KEYSER

Address: 7216 W 75
O.P. KS 66204

Telephone Number: 913-894-5079

Fax Number: 913 722 5864

Email: _____

/s/ Ellis Rankin 11/26/08
Contractor Agent Date

ATTEST:

/s/ _____
Joyce Hagen Mundy, City Clerk Date

/s/ _____
Catherine P. Logan, City Attorney Date

/s/ _____
Ronald L. Shaffer, Mayor Date



PUBLIC WORKS DEPARTMENT

Council Meeting Date: 1/5/2008

CONSENT AGENDA: Consider Bid Award for Pest Control Services

RECOMMENDATION

Staff recommends the City Council approve the contract for Pest Control Services to Lawrence Pest Control for 2009 and renewal in 2010 and 2011.

COUNCIL ACTION REQUESTED ON January 5, 2008

BACKGROUND

On Friday, December 5, 2008, the City Clerk received a bid for a three year contract to provide Pest Control Services. The contract is to provide pest control services for the City buildings. Lawrence Pest Control is the current contractor. The Bid is attached and was the only bid received.

FUNDING SOURCE

Funding is available in the 2009 Public Works Operating Budget.

RELATION TO VILLAGE VISION

None

ATTACHMENTS

1. Bid for Pest Control Services with Lawrence Pest Control

PREPARED BY

Suzanne Lownes, Office Manager, Public Works

December 26, 2008

AGREEMENT FOR PEST CONTROL SERVICES

This Agreement, made this _____ day of _____, _____, by and between _____, hereinafter referred to as Contractor, and the CITY OF PRAIRIE VILLAGE, KANSAS, hereinafter referred to as City, shall be in full force and effect during calendar years 2009 through 2011 with the following terms and conditions.

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

This document will be the only executed agreement. Any additions or changes must be added as a written supplement to this agreement at time of proposal. City Council must approve each year the terms of this agreement based on the budgetary allowance.

1.0 Service Specifications

1.1 The Contractor will provide total building monthly pest control at these locations on a specified day every month:

Municipal Building, 7700 Mission Road
 Public Safety Center, 7710 Mission Road
 Community Center, 7720 Mission Road
 Public Works Facility - A building, 3535 Somerset Drive
 Public Works Facility - B building, 3535 Somerset Drive
 Public Works Facility - G building, 3535 Somerset Drive

1.2 The Contractor will provide total building monthly pest control only during May, June, July, August, September at these locations on a specified day every month:

Swimming Pool Bathhouse, 7711 Delmar
 Swimming Pool South Filter House, 7711 Delmar
 Swimming Pool Concession Area, 7711 Delmar (bi-weekly service)
 Pavilion Restrooms, 7721 Delmar

1.3 The Contractor will provide outside monthly pest control only during May, June, July, August, September at these locations on a specified day every month:

Municipal Building, 7700 Mission Road
 Public Safety Center, 7710 Mission Road
 Community Center, 7720 Mission Road
 Public Works Facility - A building, 3535 Somerset Drive
 Public Works Facility - B building, 3535 Somerset Drive

1.4 The Contractor will provide an annual termite inspection at these locations on the specified date:

Municipal Building, 7700 Mission Road
 Public Safety Center, 7710 Mission Road
 Community Center, 7720 Mission Road
 Public Works Facility - A building, 3535 Somerset Drive
 Public Works Facility - B building, 3535 Somerset Drive
 Public Works Facility - G building, 3535 Somerset Drive
 Swimming Pool Bathhouse, 7711 Delmar
 Swimming Pool South Filter House, 7711 Delmar
 Swimming Pool Concession Area, 7711 Delmar (bi-weekly service)
 Pavilion Restrooms, 7721 Delmar

- 1.5 The Contractor will use an odorless chemical to provide for the control of spiders, roaches, waterbus, silverfish, ants, crickets, and mice. The Contractor will also provide sticky-traps at all potential entry points which shall be replaced monthly.
- 1.6 The Contractor will identify the chemicals and amounts used in a service report for each location.
- 1.7 If it is necessary for the Contractor to repeat a treatment between scheduled services, the Contractor will do so at no cost.
- 1.8 The Contractor will provide a Material Safety Data Sheet for all chemicals used on an annual basis or if products are changed.
- 1.9 The Contractor is admonished that their employees will be properly attired, refrain from abusive language, refrain from improper behavior, and be aware that they are representing the City.
- 1.10 The Contractor will supply a direct contact name, phone number and email and will notify the City if this contact information changes during the Contract period.
- 2.0 **General**
- 2.1 This signed agreement will be the authorization for the Contractor to provide the described services as requested by the City.
- 2.2 Mike Helms, Field Superintendent, at phone-(913)385-4644, fax-(913)642-0117 Email-mhelms@pvkansas.com, will be the City coordinator for the Contractor for providing any service and responding to any special needs.
- 2.3 The Contractor will contact Public Works to schedule work. All work should be preformed between 7:00am through 3:30pm weekdays unless otherwise stated by the City.
- 2.4 All work performed by the Contractor will be of acceptable workmanlike quality and installation normally associated with this trade and shall occur to the satisfaction of the City before payment will be made by the City to the Contractor.
- 2.5 All invoices should be grouped by location, with a copy of the service report attached, and are to be sent to Public Works Department, 3535 Somerset Drive, Prairie Village, KS 66208.
- 2.6 The Contractor shall maintain throughout the life of this contract, General Liability Insurance covering any and all actions of the contractor in the performance of this contract. Minimum limits shall be Bodily Injury \$500,000/500,000; Property Damage \$100,000. The Contractor shall maintain throughout the life of this contract, Automobile Liability Insurance which shall be written in comprehensive form and shall protect the Contractor against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, and shall cover operation on and off the site of all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired. Unless otherwise specified, Contractor's insurance shall included Auto Liability of \$300,000 single limit. Contractor shall also be responsible to provide workmen's compensation insurance and benefits for its employees.

- 2.7 The Contractor is providing services to the City as an independent contractor. The contractor shall be responsible for the death or injury of any employee of the contractors, while in the performance of service of the terms of this agreement and it shall hold the City harmless and shall indemnify the City for any loss it may have resulting from the contractor providing the services described in this agreement. The City shall not be responsible for any withholding of taxes or social security for any employee of contractor, nor shall it provide to any employee of contractor any fringe benefits of any kind.
- 2.8 This Agreement is for the period of January 1, 2009 through December 31, 2011. Either party may terminate this agreement by giving sixty (60) days prior written notice to the other party.
- 2.9 The Contractor will commence work within ten (10) calendar days from and after receiving instructions from the City.
- 3.0 Fees
- 3.1 Fees will be calculated by averaging out the monthly rate for the three year period.
- 3.2 That the monthly fees for the completion of these services are:

LOCATION	2009 MONTHLY FEE	2010 MONTHLY FEE	2011 MONTHLY FEE
Municipal Building	\$ 25.00	\$ 30.00	\$ 35.00
Municipal Building Outside	(Included)	(Included)	(Included)
Public Safety Center	\$ 25.00	\$ 30.00	\$ 35.00
Public Safety Center Outside	(Included)	(Included)	(Included)
Community Center	\$ 25.00	\$ 30.00	\$ 35.00
Community Center Outside	(Included)	(Included)	(Included)
Public Works Facility - A Building	\$ 25.00	\$ 30.00	\$ 35.00
Public Works Facility - A Bldg Outside	(Included)	(Included)	(Included)
Public Works Facility - B Building	\$ 25.00	\$ 30.00	\$ 35.00
Public Works Facility - B Bldg Outside	(Included)	(Included)	(Included)
Public Works Facility - G Building	\$ 25.00	\$ 30.00	\$ 35.00
Public Works Facility - G Bldg Outside	(Included)	(Included)	(Included)
Swimming Pool Bathhouse	\$ 12.50	\$ 15.00	\$ 17.50
Swimming Pool Concession Area (Bi-Weekly)	\$ 25.00	\$ 30.00	\$ 35.00
Swimming Pool South Filter House	\$ 12.50	\$ 15.00	\$ 17.50
Pavilion Restrooms	\$ 12.50	\$ 15.00	\$ 17.50
Monthly Day of Service: (ie. 1 st Tuesday of every month)			
	2009 ANNUAL FEE	2010 ANNUAL FEE	2011 ANNUAL FEE
Annual Termite Inspection	\$ 200.00	\$ 250.00	\$ 300.00
Scheduled Date of Termite Inspection:			

4.0 References

4.1 The Contractor will provide three (3) references of comparable work from the last twelve (12) months.

4.2

Company: City of Kansas City, MO Contact: Delois Moore
Phone #: 816-513-1163 Email: _____

Brief Description on Work: Pest control same at (1) Kansas City International Air Port (2) Downtown Air Port (3) water service Dept. Bldg (4) Public Service Bldgs

Company: City of Olathe, Kansas Contact: John Kurians
Phone #: 913-921-8517 Email: _____

Brief Description on Work: Pest control same to all city facilities including: (1) Fire stations (2) city hall (3) Public Service Buildings (4) Police Bldg (5) Animal Control

Company: City of Drene Village Contact: Mike Helm
Phone #: 913-385-4644 Email: _____

Brief Description of Work: Pest control to (1) city hall, (2) Police Bldg (3) Community Service Bldg (4) Public Service works Bldgs

Contractor Contact: SAM KUMAR ATTEST: _____

Company Name: LAWRENCE PEST CONTROL /s/ _____

Address: 4725 LAMAR AVE Joyce Hagen Mundy, City Clerk Date

MISSION, KS. 66202

Telephone Number: 913-677-3003 /s/ _____
Catherine P. Logan, City Attorney Date

Fax Number: 913-677-3086

Email: lawrencepest@yahoo.com

/s/ _____ 11/25/08
Contractor Agent Date

/s/ _____
Ronald L. Shaffer, Mayor Date



ADMINISTRATION

City Council Meeting Date: January 5, 2009

Consent Agenda: Consider FY 2009 Solid Waste Management Letter of Understanding Establishing 2009 Unit Price For Collection Services

RECOMMENDATION

Staff recommends the Council approves 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.

SUGGESTED MOTION

The City Council moves to approve a unit contract price of \$13.47 per household/per month for the collection of solid waste, recyclable material, and yard waste and authorize the Mayor to execute the associated Letter of Understanding with Deffenbaugh Industries establishing the unit price per the Third Addendum to the 2002 Contract.

BACKGROUND

Since 1976, the City has provided collection of solid waste for residences in the city. Although some homes associations opt-out of the city program and obtain their own service, the vast majority of Prairie Village residents receive solid waste, recyclable collection, and yard waste collection services through this city sponsored program. These services are funded through special assessments placed on the property tax bills of participating households.

The current agreement with Deffenbaugh Industries was negotiated in 2005 and, upon City Council approval, may continue through 2009. The current contract cost of these services is \$12.95/household/month. The contract allows for annual increase based on the Refuse Rate Index, which is similar to the Consumer Price Index (CPI) but weighted toward costs specific to solid waste collection, namely diesel fuel. However, the maximum increase under the current contract is limited to 4%.

For FY 2009, Deffenbaugh has requested a 4% cost increase which would bring the monthly cost to \$13.47 per household. Deffenbaugh has provided documentation that the proposed cost increase is based on the Refuse Rate Index but limited to the maximum increase of 4% under the current contract.

ATTACHMENTS:

- Letter of Understanding has been prepared and has been approved by the City Attorney
- Correspondence from Deffenbaugh Industries requesting rate increase

FUNDING SOURCE

This item has been budgeted for FY 2009 through the Solid Waste Fund which is collected through special assessments of participating households.

PREPARED BY

Dennis J. Enslinger
Assistant City Administrator
Date: December 30, 2008



ONE EARTH. ONE CHANCE.

December 15, 2008

VIA FACSIMILE – 913.381.7755
AND U.S. MAIL

Mr. Dennis J. Enslinger, AICP
Assistant City Administrator
City of Prairie Village
7700 Mission Road
Prairie Village, KS 66208

Re: Contract Rate for 2009

Dear Mr. Enslinger:

As per your e-mail of this date, Deffenbaugh Industries, Inc. is providing you with this notification that we are seeking an increase in the current contracted residential rate of \$12.95 to \$13.47 per household per month for the calendar year of 2009. This represents an increase of 4% over the 2008 rate.

Also, the date for bulky item collection has been set for April 25, 2009 as you requested.

Deffenbaugh looks forward to being your residential solid waste service provider for the next year and hopefully beyond. Please let me know if I can provide any additional information on this matter. I can be reached at 913.745.1830 or mclagett@deffenbaughinc.com.

Sincerely,
Deffenbaugh Industries, Inc.

A handwritten signature in black ink, appearing to read "Michael H. Clagett".

Michael H. Clagett

MHC/

cc: Tom Coffman

P.O. Box 3220
Shawnee, Kansas 66203

(913) 631-3300
(800) 631-3301
www.deffenbaughinc.com
Printed on Recycled Paper

2601 Midwest Drive
Kansas City, Kansas 66111



ONE EARTH. ONE CHANCE.

December 22, 2008

Dennis J. Enslinger, AICP
Assistant City Administrator
Municipal Building
7700 Mission Road
Prairie Village, KS 66208

Re: Refuse Rate Index Information

Dear Mr. Enslinger:

I have enclosed the most recent Refuse Rate Index (RRI) information that I provided to the City of Kansas City, Missouri on April 1, 2008. The RRI data is provided to the City of Kansas City, Missouri on an annual basis. This information is compiled by the firm of Ernst & Young, LLP, in Kansas City, Missouri. The residential contract between Deffenbaugh Industries, Inc. and the City of Kansas City bases annual rate adjustments on the RRI calculation. As you can see, the adjustment for their fiscal year of 08/09 was an increase of 7.357%.

Deffenbaugh is currently invoicing the City of Prairie Village for 8,244 households. This appears to be in line with the original bid document estimate of 8,250 households.

I hope this gives you the information you need as you move forward. Please let me know if I can provide additional information on these matters.

Sincerely,
Deffenbaugh Industries, Inc.

Michael H. Clagett

MHC/

Enclosure (1)

P.O. Box 3220
Shawnee, Kansas 66203

(913) 631-3300
(800) 631-3301
www.deffenbaughinc.com
195
Printed on Recycled Paper

2601 Midwest Drive
Kansas City, Kansas 66111

KCMO Contract -- Refuse
 Exhibit B
 Refuse Rate Index - "RPI"

<u>Cost Component</u>	<u>Cost Component for the period 12/06 - 12/07 (sec. 5.5.2)</u>	<u>Weight</u>	<u>% Change In Component 12/06 - 12/07 (sec 5.5.1)</u>	<u>Weighted Percentage Change</u>
Labor	40,328,021	58.159%	3.1915%	1.856%
Fuel	9,470,469	13.658%	33.9409%	4.636%
Vehicle Replacement	4,595,904	6.628%	3.0610%	0.203%
Maintenance	7,380,964	10.644%	3.0901%	0.329%
All Other	<u>7,565,984</u>	<u>10.911%</u>	<u>3.0610%</u>	<u>0.334%</u>
Total	<u>69,341,343</u>	<u>100.000%</u>		<u>7.357%</u>

LETTER OF UNDERSTANDING

This Letter of Understanding is made by and between the City of Prairie Village, Kansas, a Kansas municipal corporation (hereinafter the "City"), and Deffenbaugh Industries, Inc. (hereinafter the "Contractor"). The purpose of this Letter of Understanding is to set the 2009 annual unit price (covering January 1, 2009 through December 31, 2009) under the Third Addendum to Contract for Solid Waste, Recyclables, Compostables and Bulky Item Collection for the City of Prairie Village, Kansas (hereafter "Third Addendum"), which the parties hereto entered into on 20th day of June, 2005. Other than designating the 2009 annual unit price, this Letter of Understanding is not in any manner intended to modify, amend or change the parties' agreement set forth in the Third Addendum, and all provision therein shall remain unchanged.

The parties hereto acknowledge that the Third Addendum sets forth the agreement between the parties for the collection and removal of solid waste, recyclables, compostables, and bulky items from approximately 8,250 households within the City by the Contractor at a set annual unit price; provided, said agreement is subject to the annual approval of said expenditures by the Prairie Village City Council, in accordance with the Kansas Cash Basis Law.

In accordance with the terms of the Third Addendum, specifically paragraph 2, the Contractor hereby notifies the City of and agrees that the unit price applicable for the calendar year 2009 weekly collection shall be thirteen and 47/100 dollars (\$13.47) per unit per month.

In accordance with this Letter of Understanding, the parties hereto agree and acknowledge that the above-stated 2009 unit price is in accordance with the maximum limits set by the Third Addendum (4%), and shall be the effective unit price for 2009 upon the separate appropriations for the same by the Prairie Village City Council in accordance with the Kansas Cash Basis Law.

IN WITNESS WHEREOF the parties have hereunder set their hands this _____ of _____, 2009

The City of Prairie Village, Kansas

Deffenbaugh Industries, Inc.

By: _____
Ronald L. Shaffer
Mayor

By: _____
Name: _____
Title: _____

Date: _____

Date: _____

ATTEST TO:

Joyce Hagen Mundy
City Clerk

APPROVED AS TO FORM:

Catherine Logan
City Attorney

COUNCIL COMMITTEE OF THE WHOLE
December 15, 2008

The Council Committee of the Whole met on Monday, December 15, 2008 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, Ruth Hopkins, Michael Kelly, Andrew Wang (arrive late), Dale Beckerman, Charles Clark, David Morrison, Diana Ewy Sharp and David Belz. Staff members present: Quinn Bennion, City Administrator; Wes Jordan, Chief of Police; Suzanne Lownes for the Director of Public Works; Tom Trienens, Manager of Engineering Services; Dennis Enslinger, Assistant City Administrator; Chris Engel, Assistant to the City Administrator; Karen Kindle, Finance Director and Joyce Hagen Mundy, City Clerk.

David Belz moved the approval of the Consent Agenda for Monday, December 15, 2008:

- 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
- Approve Engineering Change Order #2 (final) with BHC Rhodes for an increase of \$3,610.80 on Project 190864: 2008 Street Resurfacing Program

COUNCIL ACTION REQUIRED
CONSENT AGENDA

COU2008-97 Consider sidewalk on Homestead Circle, Project 190869: 2009 Street Resurfacing Program

Tom Trienens reported that earlier this year the Council voted not to construct a sidewalk on Rosewood Lane cul-de-sac and directed the Public Works Director to draft a new sidewalk policy addressing cul-de-sacs. Mr. Trienens stated the policy revisions requested have not been completed. Homestead Circle is part of the 2009 Street Resurfacing Program and currently has no sidewalk. Construction of a five foot sidewalk is currently planned for the west side adjacent to the curb.

A resident has contacted the City requesting that the new sidewalk be deleted from this project for this area. Homestead Circle is approximately 240 feet long with four houses. Rosewood lane cul-de-sac is approximately 170 feet long with three houses.

Ruth Hopkins asked if any of the other residents on the cul-de-sac have contacted the City. Mr. Trienens responded no. Diana Ewy Sharp expressed her standing support for the construction of sidewalks throughout the City.

Charles Clark asked if a decision needed to be made this evening or if it would wait until the policy revisions were in place. Mr. Trienens stated the Project has gone out to bid with bids being received January 9th; however, construction will not begin until March. The sidewalk has been designed and is in the plans, but could be eliminated prior to beginning construction. Immediate action is not required. Ruth Hopkins asked the status of the revisions. Suzanne Lownes responded it was on Mr. Pryzby's to-do-list when he returns.

Quinn Bennion confirmed deleting the sidewalk once bid is simply a matter of deleting the quantities designated for construction. David Voysey stated he felt it should be left in at this time. He feels the policy should be in place before any action is taken. Mr. Bennion stated he would follow-up with Mr. Pryzby regarding the status of the revisions and report back at the January meeting.

Dale Beckerman stated when it comes back he would like to see how close the proposed sidewalk is to the homes. He noted from the aerial photograph it does not appear to be very close. Mr. Trienens noted the sidewalk is 5 feet in width and is placed at the curb.

Charles Clark stated he sees the revised policy addressing the following questions/criteria 1) the length of the street/cul-de-sac; 2) the number of houses on the street/cul-de-sac and 3) location of the sidewalk in comparison to the houses. He did not feel a blanket waiver for sidewalks could be issued for cul-de-sacs noting some are located at the end of fairly lengthy dead-end streets.

Mayor Shaffer added that he felt another consideration would be if the sidewalk would connect to an existing sidewalk.

It was the consensus of the Committee that no action be taken at this time with the issued considered after the adoption of the revised sidewalk policy.

PRESENTATION on 2008 Exterior Grant Program

Dennis Enslinger presented an overview of the 2008 Exterior Grant Program. The initial program was created as an incentive to improve properties in areas designated by the Village Vision. The three areas are as follows:

- Area 1 included all streets west of the centerline of Roe Avenue between 71st Street (south side only) to 75th Street (north side only)
- Area 2 included all streets east of the centerline of Belinder
- Area 3 included all streets west of the centerline of Nall between 75th Street to 79th Street (north side)

There were 18 grants approved with 4 grants in Area 1, 11 grants in Area 2 and 2 grants in Area 3 with one grant withdrawing from the program. Sixteen projects have been completed to date for a total investment of \$218,251 (\$32,772 - City funding; \$185,479 resident investment).

The projects covered a variety of improvements - 6 driveway improvements; 3 roof repairs; 6 repaired siding and painted; 5 complete or partial window replacements; 3 garage door replacements and one foundation repair.

Mr. Enslinger shared before and after pictures of some of the projects and reported the results of a survey completed by grant recipients.

- 1) How did you hear about the Exterior Grant Program? Primary responses were from the City's web site, from the Code Enforcement Officer, Village Voice or a neighbor.

- 2) Would you have done the work you indicated on the application without the grant. Most stated they would.
- 3) Rate the ease of the process of obtaining the grant. All but one felt the process was easy with the average rating on a one to five scale being three.
- 4) Was staff helpful in answering questions and/or providing information. Staff was rated as very helpful. Mr. Enslinger noted staff tried to streamline the process.

Recommendations

Staff recommends the following minor boundary changes be made:

- Change the boundaries of Area 3 to include all streets West of Juniper from 75th Street to 70th Street.
- Change the boundaries of Area 2 to include all streets East of Norwood from 75th Street to Somerset
- Include all addresses on boundary streets instead of using the street centerline as the cut-off

Mr. Enslinger asked for input on the following issues:

- Is a resident/property owner who received the maximum grant amount the previous year eligible to apply for a grant this year?

Michael Kelly felt past recipients should not be eligible. Dale Beckerman suggested they can apply but be placed at the bottom of the listing, not totally removed.

David Morrison stated he would like to see the program opened up to the entire City and grants issued based on highest need. Michael Kelly noted the program began as an incentive program to encourage improvements in areas of the City identified by the Village Vision. Dennis Enslinger suggested that after a specified date, if funding was still available, applications from other areas of the City could be considered.

- If not, are residents who did not receive the full grant amount of \$2,500 one year eligible for the remaining grant amount the following year(s).

Council supported this proposal which would allow an individual to receive the maximum amount, but no one receive more than the maximum allowing residents to stage/stagger their improvements. Michael Kelly confirmed the applicant would have to reapply for the grant. Mr. Enslinger noted two current grant recipients have raised this question.

- Some projects can be costly, but have little impact on the overall visual appearance of a property; i.e. the addition of premium windows adds value, but do not make a significant enhancement to the exterior of the property.

Ruth Hopkins supported use of grant funds for windows noting that while they may not make a significant exterior enhancement they are increasing the property's resale value and appraisal value. Dale Beckerman noted such improvements are also preventative actions for more serious future problems. He does not want to have the City micromanage how the residents want to improve their property.

Andrew Wang supported keeping the grant simple to administer as well as to apply for. Mr. Enslinger stated the process worked well in 2008.

Dale Beckerman asked if the eastern boundary proposed at Juniper for Area 3 be expanded to Roe Avenue. Mr. Enslinger stated that was possible, but would like to see a waiting list for areas outside the defined areas. He would like to have only minimal increases to the area for next year although funding has been increased. He added it appears that the City will come very close to allocating the full grant amount for 2008.

Michael Kelly asked if there were other sources for communication. Mr. Enslinger responded the article in the SUN resulted in several requests and inquiries. The homes associations have also been helpful; although many of the homes associations in the areas designated are inactive. He noted there has been completion issues with one of the project

Dennis Enslinger confirmed the Council was supportive of the proposed new boundaries with the expansion to Roe Avenue in Area 3. Michael Kelly asked if the program would become more effective if the areas were decreased. Mr. Enslinger stated he would like to see more activity in areas 1 & 3, but feels the areas as identified are appropriate for the second year.

To date, the City has awarded \$32,772 of the \$37,500 budgeted. All grant approvals were completed in no more than two working days. Mr. Enslinger stated the 2009 budget for the Exterior Grant Program is \$50,000. He noted there are currently 10 individuals are the waiting list for 2009.

COU2008-99 Consider Agreement with Columbia Capital Management for Financial Advisory Services

David Voysey provided historical background on the past and present selection of a Finance Advisor. In October, the Finance Committee directed staff to issue a Request for Proposal for Financial Advisory Services. The RFP focused on two categories of services: (1) general financial advisory services, including evaluating developer proposals; (2) coordinate debt issues/arbitrage/rebate management/continuing disclosure. Karen Kindle noted the City needs services more in the area of special projects than the issuance of bonds.

The RFP was mailed to twelve firms and advertised in the Legal Record and six firms responded. The Finance Committee reviewed the proposals and selected George K. Baum & Company; Columbia Capital Management, and PiperJaffray to interview. The Finance Committee unanimously selected Columbia Capital Management, LLC,.

Funding for financial advisory services is budgeted in the City Governance program or expenditures are reimbursed with bond issue proceeds.

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

**MOVE THE CITY COUNCIL APPROVE AN AGREEMENT WITH
COLUMBIA CAPITAL MANAGEMENT, LLC, FOR FINANCIAL
ADVISORY SERVICES PENDING APPROVAL BY THE CITY ATTORNEY
COUNCIL ACTION REQUIRED
CONSENT AGENDA**

PRESENTATION - Police Citizen Survey

Chief Jordan stated in the past the Police Department has sent a fairly generic survey form to approximately 500 people who had previous contact with the Police Department. Staff decided they wanted a broader and more effective survey and in September included in the Prairie Village Voice a survey distributed to approximately 10,000 residents and businesses. The survey was also placed on the City's website. The Department received 271 completed surveys by the end of October, which equates to an overall return rate of just 2.71 percent. Although the return rate was much lower than anticipated, the Department did receive helpful information. The surveys are certainly a valuable mechanism for people to confidentially express their views, opinions, and suggestions. The Survey Form also provided a means to communicate directly with the Department. We received many questions, as well as specific complaints about isolated problems.

Chief Jordan received a summary report on the survey, but noted the complete analysis is available.

Analysis and Findings

- 99% of the respondents felt the City was safe.
- 43% of the respondents stated police officers were generally not seen in their neighborhoods. Chief Jordan noted this was higher than he would like to see, but acknowledged the City has been operating at reduced staff levels and these figures probably do not include the night patrols.
- 93% of the respondents rated staff at average or above average on competence
- 95% of the respondents rated staff at average or above average on courtesy
- 94% of the respondents rated staff at average or above average on overall attitude.
- 95% of the respondents rated staff at average or above average on appearance
- 88% of the respondents rated satisfaction with services at average or higher.
- 86% of the respondents rated satisfaction with officers at average or higher.
- 27% of the respondents rated satisfaction with investigation follow-up at average or higher. Chief Jordan noted 70% of the respondents had no opinion - probably reflecting no contact with investigative staff

David Morrison asked how many of the 271 respondents had direct contact with the Department. Based on the responses, Chief felt 191 had direct contact.

- 81% of the respondents rated satisfaction with Dispatch services at average or higher.
- 29% of the respondents rated satisfaction with Police Records service at average or higher. Again, 70% responded no opinion.

Chief Jordan noted there were several written comments included on the surveys and stated that management followed up with on any negative comments. The survey also asked residents to rate what police functions are most important to them. General patrol rated the highest followed by response time to calls. The Department plans to do a survey every other year with the Mission Hills being surveyed the off years.

Dale Beckerman suggested possibly making the surveys available at the post office and grocery stores in addition to the sources used.

Update on Citizen Inquiry on Leptospirosis

Captain Tim Schwartzkopf conducted additional investigation into Leptospirosis as requested by Mrs. Johnson at the December 1st Council Meeting. This is a bacterial disease found in all animals, except cats. There were 100 to 200 cases reported throughout the United States in the past year. The CDC and Johnson County Health Department do not record incidents. His call to the Kansas Department of Wildlife was the first call received on this issue in five years.

Captain Schwartzkopf called and spoke with Mrs. Johnson advising her the City would not be changing their operational procedures. They will continue to release animals. Animal Medical Center sees an average of three cases per year in animals. David Belz asked if the animals could be released outside city limits. Capt. Schwartzkopf stated that could be done and asked how far outside of the city limits. He stated they generally release animals on the Public Works property. Dale Beckerman felt it does not make sense to take animals outside the City.

Chief Jordan noted that most cities do not pick up wild animals. Dale Beckerman stated the bottom line was this is not a legitimate law enforcement problem.

STAFF REPORTS

Public Safety - Chief Jordan

Chief Jordan reported the house on the southeast corner of 75th Street and Roe was hit by a DUI driver last weekend. All four of his cars were damaged with three being totaled. Slides were shown of the site and damages. The resident is fearful and looking to the City to take some action to prevent reoccurrences. Chief Jordan noted this property has been damaged previously from vehicle accidents. He noted there is the potential for similar type of accidents anywhere along 75th Street and he has talked with Public Works regarding having the City's Traffic Engineer take an in depth look at the problem and provide recommendations.

ADJOURNMENT

With no further business to come before the Council Committee of the Whole, Council President David Voysey adjourned the meeting at 7:20 p.m.

David Voysey
Council President

CITY OF PRAIRIE VILLAGE

PUBLIC WORKS DEPARTMENT

CONSTRUCTION CHANGE ORDER NO. 7 (FINAL)

Consultant's Name: BHC Rhodes

Project Title: 2008 Paving Program

Date Requested: December 15, 2008

Owner's Project No.: 190864

Contract Date: March 3, 2008

Contractor's Name: O'Donnell & Sons

REQUIRED CHANGES IN PRESENT CONTRACT

Contract Quantity	Previous Amount	Unit	Item Description	Adj. Quant.	Unit Price	Adjusted Amount
1	\$21,000.00	LS	MOBILIZATION	\$21,000.00	\$21,000.00	\$21,000.00
1	\$86,750.00	LS	DEMOLITION	\$141,660.00	\$86,750.00	\$141,660.00
1	\$11,100.00	LS	CLEARING AND GRUBBING	\$11,100.00	\$11,100.00	\$11,100.00
0	\$0.00	EA	LARGE TREE REMOVAL	0	\$850.00	\$0.00
1	\$24,220.00	LS	TRAFFIC CONTROL	\$24,720.00	\$24,220.00	\$24,720.00
4081	\$140,794.50	LF	LINEAR GRADING	7195	\$34.50	\$248,227.50
2019	\$115,083.00	SY	PORTLAND CONCRETE PAVEMENT (MISSION ROAD)	5518.67	\$57.00	\$314,564.19
0	\$0.00	SY	PORTLAND CONCRETE PAVEMENT (ROE AVENUE)	0	\$66.00	\$0.00
2434	\$10,344.50	LF	EXISTING CONCRETE PAVEMENT JOINT SEALING	0	\$4.25	\$0.00
19140	\$24,882.00	SY	COLD MILLING (1 1/2")	11010	\$1.30	\$14,313.00
0	\$0.00	SY	COLD MILLING (2")	0	\$1.75	\$0.00
1745	\$99,988.50	TON	1 1/2" ASPHALT SURFACE (TYPE 3)	1163.33	\$57.30	\$66,658.81
1352	\$77,469.60	TON	2" ASPHALT SURFACE (TYPE 3)	2493.65	\$57.30	\$142,886.15
0	\$0.00	TON	2" ASPHALT SURFACE (TYPE 6)	0	\$59.05	\$0.00
2702	\$134,829.80	TON	4" ASPHALT BASE (TYPE 1)	5671.84	\$49.90	\$283,024.82
2526	\$37,890.00	TON	4" GRANULAR SUBBASE	2865	\$15.00	\$42,975.00
2054	\$88,398.20	SY	FULL DEPTH PAVEMENT REPAIR - RESIDENTIAL	1173	\$33.30	\$39,060.90
27	\$1,134.00	SY	FULL DEPTH PAVEMENT REPAIR - COLLECTOR/ARTERIAL	42.83	\$42.00	\$1,798.86
656	\$13,120.00	TON	12" SUBGRADE MODIFICATION	721	\$20.00	\$14,420.00
9135	\$205,537.50	LF	CONCRETE CURB AND GUTTER - REPLACED TYPE A	8760	\$22.50	\$197,100.00
2579	\$35,074.40	LF	CONCRETE CURB AND GUTTER - NEW TYPE A	5768	\$13.60	\$78,444.80
194	\$5,141.00	LF	CONCRETE CURB AND GUTTER - REPLACED TYPE B	1256	\$26.50	\$33,284.00
217	\$3,016.30	LF	CONCRETE CURB AND GUTTER - NEW TYPE B	232	\$13.90	\$3,224.80
488	\$12,248.80	LF	CONCRETE CURB - REPLACED TYPE E	236	\$25.10	\$5,923.60
77	\$1,239.70	LF	CONCRETE CURB - NEW TYPE E	80	\$16.10	\$1,288.00
15	\$9,000.00	LF	CONCRETE CURB - GABION WALL	15	\$600.00	\$9,000.00
2030	\$118,958.00	SY	REPLACED 6" CONCRETE DRIVEWAY	2234.64	\$58.60	\$130,949.90
0	\$0.00	SY	REPLACED 8" CONCRETE DRIVEWAY	0	\$70.50	\$0.00
83	\$4,897.00	SY	REPLACED 6" ASPHALT DRIVEWAY	83	\$59.00	\$4,897.00
1052	\$46,814.00	SY	REPLACED 4" SIDEWALK	1124.22	\$44.50	\$50,027.79
1674	\$57,920.40	SY	NEW 4" SIDEWALK	2251	\$34.60	\$77,884.60
15	\$5,250.00	LF	INTEGRAL SIDEWALK RETAINING WALL (8")	0	\$350.00	\$0.00
14.5	\$5,437.50	LF	INTEGRAL SIDEWALK RETAINING WALL (10")	0	\$375.00	\$0.00
215	\$13,760.00	SY	REPLACED ADA RAMP	240	\$64.00	\$15,360.00
116	\$6,844.00	SY	NEW ADA RAMP	116	\$59.00	\$6,844.00
638	\$14,323.10	SF	TRUNCATED DOME PANEL	674	\$22.45	\$15,131.30
85	\$1,530.00	LF	REMOVAL AND RESETTING FENCE (CHAINLINK)	85	\$18.00	\$1,530.00
10	\$500.00	LF	REMOVAL AND RESETTING FENCE (WOOD)	10	\$50.00	\$500.00
1027	\$5,391.75	SY	SOD - FESCUE	3064.11	\$5.25	\$16,086.58
110	\$522.50	SY	SOD - BLUEGRASS	0	\$4.75	\$0.00
261	\$1,631.25	SY	SOD - ZOYSIA	0	\$6.25	\$0.00
537	\$2,685.00	LF	LAWN SPRINKLER - PIPE REPLACE (EST)	537	\$5.00	\$2,685.00
23	\$1,150.00	EA	LAWN SPRINKLER - HEAD REPLACE (EST)	23	\$50.00	\$1,150.00
0	\$0.00	LF	EROSION CONTROL - SILT FENCE	0	\$5.00	\$0.00
4	\$600.00	EA	EROSION CONTROL - GRAVEL FILTER BAGS	4	\$150.00	\$600.00
4	\$11,600.00	EA	4'X4' STANDARD TYPE CURB INLET	4	\$2,900.00	\$11,600.00
1	\$3,000.00	EA	4'X5' STANDARD TYPE CURB INLET	1	\$3,000.00	\$3,000.00
2	\$6,200.00	EA	5'X4' STANDARD TYPE CURB INLET	2	\$3,100.00	\$6,200.00
1	\$3,200.00	EA	5'X5' STANDARD TYPE CURB INLET	1	\$3,200.00	\$3,200.00
1	\$3,300.00	EA	5'X6' STANDARD TYPE CURB INLET	1	\$3,300.00	\$3,300.00
3	\$11,100.00	EA	6'X4' STANDARD TYPE CURB INLET	3	\$3,700.00	\$11,100.00
1	\$4,025.00	EA	6'X5' STANDARD TYPE CURB INLET	1	\$4,025.00	\$4,025.00
1	\$4,125.00	EA	6.5'X4' STANDARD TYPE CURB INLET	1	\$4,125.00	\$4,125.00
0	\$0.00	EA	7'X4' STANDARD TYPE CURB INLET	0	\$4,750.00	\$0.00
2	\$5,800.00	EA	CURB INLET ADJUSTMENT	2	\$2,900.00	\$5,800.00
2	\$1,250.00	EA	12" CONCRETE COLLAR	2	\$625.00	\$1,250.00
1	\$650.00	EA	15" CONCRETE COLLAR	1	\$650.00	\$650.00

2	\$1,550.00	EA	18" CONCRETE COLLAR	2	\$775.00	\$1,550.00
1	\$1,050.00	EA	21" CONCRETE COLLAR	1	\$1,050.00	\$1,050.00
16	\$1,248.00	LF	12" R.C.P.	16	\$78.00	\$1,248.00
3	\$630.00	LF	15" R.C.P.	3	\$210.00	\$630.00
149	\$12,367.00	LF	18" R.C.P.	149	\$83.00	\$12,367.00
4	\$828.00	LF	21" R.C.P.	4	\$207.00	\$828.00
917	\$87,115.00	LF	24" R.C.P.	917	\$95.00	\$87,115.00
800	\$12,000.00	LF	UNDERDRAIN PIPE (EST)	0	\$15.00	\$0.00
120	\$2,400.00	LF	DRAIN TILE CONNECTION (EST)	20	\$20.00	\$400.00
1	\$2,000.00	EA	PIPE CONNECTION TO GABION WALL	1	\$2,000.00	\$2,000.00
0	\$0.00	SY	CONCRETE CAST IN PLACE CHANNEL	0	\$225.00	\$0.00
7	\$5,250.00	SY	GABION BASKET	7	\$750.00	\$5,250.00
1	\$9,000.00	LS	CONTRACTOR CONSTRUCTION STAKING	1	\$9,000.00	\$9,750.00
65	\$8,450.00	SY	STAMPED CONCRETE CROSSWALK	65	\$130.00	\$8,450.00
914	\$914.00	LF	4" YELLOW EPOXY PAVEMENT MARKING	0	\$1.00	\$0.00
487	\$487.00	LF	4" WHITE EPOXY PAVEMENT MARKING	1907	\$1.00	\$1,907.00
85	\$255.00	LF	12" WHITE EPOXY PAVEMENT MARKING	202	\$3.00	\$606.00
57	\$285.00	LF	18" WHITE EPOXY PAVEMENT MARKING	0	\$5.00	\$0.00
8	\$40.00	LF	18" YELLOW EPOXY PAVEMENT MARKING	0	\$5.00	\$0.00
189	\$1,323.00	LF	24" WHITE EPOXY PAVEMENT MARKING	456	\$7.00	\$3,192.00
7	\$350.00	EA	LEFT TURN EPOXY PAVEMENT MARKING SYMBOL	25	\$50.00	\$1,250.00
240	\$144.00	LF	4" YELLOW THERMOPLASTIC PAVEMENT MARKING	2203	\$0.60	\$1,321.80
0	\$0.00	LF	4" WHITE THERMOPLASTIC PAVEMENT MARKING	0	\$1.00	\$0.00
98	\$294.00	LF	12" WHITE THERMOPLASTIC PAVEMENT MARKING	98	\$3.00	\$294.00
0	\$0.00	LF	12" YELLOW THERMOPLASTIC PAVEMENT MARKING	0	\$3.00	\$0.00
12	\$60.00	LF	24" WHITE THERMOPLASTIC PAVEMENT MARKING	12	\$5.00	\$60.00
1	\$2,750.00	EA	REMOVE AND RESET SUBDIVISION MONUMENT	1	\$2,750.00	\$2,750.00
0	\$0.00	EA	COUNTY PROJECT SIGN	0	\$1,000.00	\$0.00
0	\$0.00	EA	Adjust Storm Sewer Manholes	4	\$1,200.00	\$4,800.00
0	\$0.00	EA	4' x 5' Curb Inlet	1	\$3,000.00	\$3,000.00
0	\$0.00	EA	Junction Box	1	\$3,100.00	\$3,100.00
0	\$0.00	LS	High Early Concrete	1	\$50.00	\$50.00
0	\$0.00	LS	Water One - NE Corner Mission/Somerset	1	\$3,380.65	\$3,380.65
0	\$0.00	LS	Water One - SE Corner Mission/Somerset	1	\$9,177.48	\$9,177.48
0	\$0.00	LS	Lava Rock	1	\$21.36	\$21.36
0	\$0.00	LS	Remove Exist. Pavt Marking (Mission Road)	1	\$605.00	\$605.00
	\$0.00	SY	Fly Ash	4.95	\$6,869.00	\$34,001.55

Contract Total \$1,631,516.30

Total Work to Date \$2,272,725.43
Total Contract Increase \$641,209.13
Previous Change Orders \$635,731.70
Final Change Order \$5,477.43

Explanation of Changes

Project 190864; 2008 Paving Program. This change order is to cover the following items:

Final As-Built Quantities.

This change order increases the contract amount by \$5,477.43.

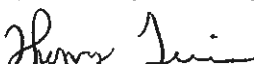
Calendar days were not added as result of this change order.

Original Contract Price	<u>\$1,631,516.30</u>
Current Contract Price, as adjusted by previous Change Orders	<u>\$2,267,248.00</u>
NET increase or decrease this Change Order	<u>\$5,477.43</u>
New Contract Price	<u>\$2,272,725.43</u>

Change to Contract Time:

The current contract deadline of December 1, 2008 will remain the same.

The City does not anticipate a related Engineering Change Order.



Thomas Triemans, Manager of Engineering Services
City of Prairie Village, KS

11/26/08

Date

Ronald L. Shaffer, Mayor
City of Prairie Village, KS

Date



Joseph O'Donnell
O'Donnell & Sons Construction

11-26-08

Date

**CITY OF PRAIRIE VILLAGE
PUBLIC WORKS DEPARTMENT**

CHANGE ORDER NO. 2 (FINAL)

Consultant's Name BHC Rhodes

Project Title: 2008 Street Resurfacing Program

Owner's Project No. 190864

Date Requested: December 1, 2008 Consultant's Project No. 9221

Original Agreement Date: March 3, 2008

The scope of work in the above Service Agreement has been modified as follows:

Construction Administration is complete. This is the final total necessary to complete the work..

Original Agreement Amount	\$115,500.00
Net Previous Change Orders	\$12,172.17
Subtotal	\$127,672.17
Net Increase this Change Order	\$3610.80
New Agreement Amount	\$131,282.97

The Agreement Completion Date has not been changed.

CONSULTANT

CITY OF PRAIRIE VILLAGE, KANSAS

By Bill Brungardt
Bill Brungardt, Vice President

By _____
Ronald L. Shaffer, Mayor

CITY OF PRAIRIE VILLAGE, KANSAS

By Thomas Trienens
Thomas Trienens, Manager of Eng. Services

AGREEMENT FOR FINANCIAL ADVISOR SERVICES

THIS AGREEMENT is made as of the ____ day of _____, 2008, by and between the City of Prairie Village, Kansas, ("Client") and Columbia Capital Management, LLC ("Advisor"), a Missouri limited liability company.

WHEREAS, the Client wishes to retain the services of the Advisor on the terms and conditions set forth herein, and the Advisor wishes to provide such services;

NOW, THEREFORE, the parties hereto agree as follows:

1. Services. Advisor shall perform the services ("Services") described in Exhibit A attached hereto. Task 2 "Coordinate Debt Issues" shall include the following Services: For each Debt Obligation issued by the Client during the term of this Agreement, the Advisor shall advise the Client as to the following matters related to the Debt Obligation, depending on the characteristics of the Debt Obligation and the needs of the Client; (a) the basis and procedure for authorization of the Debt Obligation; (b) the structure of the Debt Obligation; (c) the need for and type of collateral or other devices for securing repayment of the Debt Obligation or of any loan made by the Client with the proceeds of the Debt Obligation; (d) an estimate, based on data provided by the Client, as to the sufficiency of revenue to repay the Debt Obligation or any loan made by the Client with the proceeds of the Debt Obligation; (e) the ratability of the Debt Obligation; (f) the marketability of the Debt Obligation; and (g) the rate of interest at which the Debt Obligation should be issued. In addition, depending on the characteristics of the Debt Obligation and the needs of the Client, the Advisor may assist the Client in drafting the Official Statement related to the Debt Obligation, apply for a credit rating, print or arrange for printing of the Official Statement, the instruments evidencing the Debt Obligation, and any related documents. For the purposes of this Agreement the term "Debt Obligation" shall mean all indebtedness issued by the Client which is evidenced by a bond or similar instrument.
2. Compensation. For each Debt Obligation the Client shall compensate the Advisor at the rates set forth in Appendix B attached hereto.
3. Term and Termination. This Agreement shall commence as of the date hereof, and, subject to the annual availability of appropriation required by the State cash basis law, shall renew each year for 4 years or until terminated by Advisor by written notice given to City at least 60 days before the effective date of such termination or by City as provided in Appendix C.
4. Confidentiality: Disclosure of Information.

Client Information. All information, files, records, memoranda and other data of the Client which the Client provides to the Advisor or which the Advisor becomes aware of in the performance of its duties hereunder ("Client Information") shall be deemed by the parties to be the property of the Client. The Advisor may disclose the Client Information to third parties in connection with the performance by it of its duties hereunder.

Advisor Information. The Client acknowledges that in connection with the performance by the Advisor of its duties hereunder, the Client may become aware of internal files, records, memoranda and other data, including without limitation computer programs of the Advisor ("Advisor Information"). The Client acknowledges that all Advisor Information, except reports prepared by the Advisor for the Client, is confidential and proprietary to the Advisor, and agrees that the Client will not, directly or indirectly, disclose the same or any part thereof to any person or entity except upon the express written consent of the Advisor unless required by the Kansas Open Records Act, K.S.A. 45-215 et seq..

5. Miscellaneous

The following appendices, attached and incorporated herein, including this agreement and modifications issued hereafter, constitute the entire contract document ("Contract Document") between the Client and the Advisor.

- Appendix A. Scope of Services
- Appendix B. Schedule of Compensation for Services

Appendix C. General Terms and Conditions

No Underwriting Participation. The Advisor shall not during the term of this Agreement directly or indirectly engage in the underwriting of any Debt Obligation.

Delegation of Duties. The Advisor shall not delegate its duties hereunder to any third party without the express written consent of the Client.

No Third Party Beneficiary. No third party shall have any rights or remedies under this Agreement.

Entire Contract; Amendment. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior written or oral negotiations, understandings or agreements with respect hereto. This Agreement may be amended in whole or in part by mutual consent of the parties, and this Agreement shall not preclude the Client and the Advisor from entering into separate agreements for other projects.

Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas.

Severability. To the extent any provision of this Agreement shall be determined invalid or unenforceable, the invalid or unenforceable portion shall be deleted from this Agreement, and the validity and enforceability of the remainder shall be unaffected.

Notice. All notices required hereunder shall be in writing and shall be deemed to have been given when delivered, transmitted by first class, registered or certified mail, postage prepaid and addressed as follows:

If to the Client:

City of Prairie Village, Kansas
7700 Mission Road
Prairie Village, KS 66208
Attention: Finance Director

If to the Advisor, to:

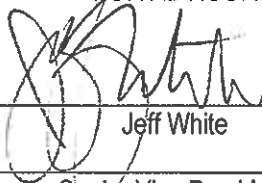
Columbia Capital Management, LLC
6330 Lamar Avenue, Suite 200
Overland Park, Kansas 66202
Attention: Managing Director

The foregoing Agreement is hereby entered into on behalf of the respective parties by signature of the following persons each of whom is duly authorized to bind the parties indicated.

FOR CLIENT

Title

FOR ADVISOR



Jeff White

Senior Vice President

APPENDIX A OF AGREEMENT BETWEEN
The City of Prairie Village, Kansas

AND

Columbia Capital Management, LLC

Effective as of _____

SCOPE OF SERVICES

Services will include, but are not limited to, the following tasks:

- Task 1: Other Financial Advisory Services
- Task 2: Coordinate Debt Issues
- Task 3: Arbitrage/Rebate Management/Continuing Disclosure

Task 1: Other Financial Advisory Services

The City has adopted the Village Vision Strategic Investment Plan. As the City Council works through the recommendations contained in that document the City may require the services of the financial advisor in evaluating funding options and evaluating developer requests for incentives/preparing fiscal impact studies. In addition, from time to time, the City may request assistance in other areas related to public finance, such as analyzing the City's operating and capital budgets and identifying funding alternatives, etc.

Task 2: Coordinate Debt Issue

The financial advisor will be responsible for the oversight of the issuance of all City debt. This includes all aspects of debt issuance from advising on the structure through the bond closing activities.

Task 3: Arbitrage/Rebate Management/Continuing Disclosure

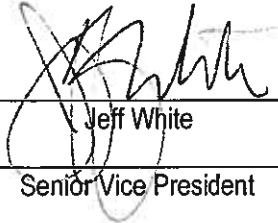
The financial advisor will prepare arbitrage rebate calculations for the City's debt issues and assist the City in complying with continuing disclosure requirements.

This Appendix A. is acknowledged to be a part of the Agreement, effective as of _____, between the Client and the Advisor.

FOR CLIENT

FOR ADVISOR

Title


Jeff White
Senior Vice President

**APPENDIX B OF AGREEMENT BETWEEN
The City of Prairie Village, Kansas**

AND

Columbia Capital Management, LLC

Effective as of _____

SCHEDULE OF ADVISOR'S COMPENSATION FOR SERVICES RELATING TO CLIENT'S DEBT OBLIGATIONS:

	Fee per Transaction	OR	Rate per \$1,000 issued
Temporary Note Sales			\$15,000 plus \$0.90 per \$1,000 issued
General Obligation Bond Sale < \$5 million			\$15,000 plus \$0.90 per \$1,000 issued
Refunding Bond Sales < \$5 million			\$15,000 plus \$0.90 per \$1,000 issued

Columbia's fee on a \$5 million transaction would be \$19,450.

Consistent with its practice of building long-standing relationships with its clients, Columbia generally does not charge for advice and assistance in between transactions for work generally related to the City's debt and debt management. We want and encourage our clients to maintain regular contact with us. On occasion the City may want to engage Columbia for a project outside the normal scope of our engagement; in that case we are willing to work at hourly rates or on a fixed-fee basis to be negotiated at the time.

Staff Person Assigned	Hourly Rate
Managing Director/Executive VP	\$225
Senior VP/VP	\$200
Asst. VP/Analyst	\$150
Clerical/Support	\$80

Columbia would seek reimbursement for actual out-of-pocket expenses including travel costs for travel outside of Johnson County (transportation, hotels and meals), printing/duplicating, conference calling services, overnight delivery services, etc., and any transaction costs not directly related to financial advisory services that we are expected to pay, such as printing the official statement or rating agency fees. Columbia agrees to provide an estimate of such fees prior to each transaction upon request of the City. On a typical general obligation bond transaction, we would anticipate our expenses to be \$300 to \$500.

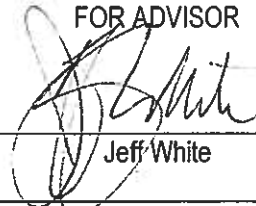
In addition, as mentioned earlier, to the extent it is necessary to engage outside legal counsel to assist with arbitrage/rebate compliance services, these fees would be considered outside of our regular financial advisory fees and vary depending upon the complexity of the task.

This Appendix B. is acknowledged to be a part of the Agreement, effective as of _____, between the Client and the Advisor.

FOR CLIENT

Title

FOR ADVISOR



Jeff White

Senior Vice President

APPENDIX C OF AGREEMENT BETWEEN
The City of Prairie Village, Kansas

AND

Columbia Capital Management, LLC

Effective as of _____

GENERAL TERMS AND CONDITIONS

The following contract terms must be included in all contracts for financial advisory services.

1. RIGHT OF CITY TO TERMINATE AGREEMENT

A. Termination for Cause. Without in any manner limiting the right of the City to terminate this Agreement or declare the Advisor in default thereof for any reason set forth herein, if the work to be done under this contract shall be abandoned by the Advisor; or if this Agreement shall be assigned by the Advisor otherwise than as herein provided; or if the Advisor should be judged as bankrupt; or if a general assignment of its assets should be made for the benefit of its creditors; or if a receiver should be appointed for the Advisor or any of its property; or if at any time the City determines that the performance of the work under this contract is being unnecessarily delayed, that the Advisor is violating any of the conditions or covenants of this Agreement, that it is executing the same in bad faith or otherwise not in accordance with the terms of said Agreement; then, in addition to other rights the City may choose to exercise, the City may, at its option, serve written notice upon the Advisor of the City's intention to terminate this Agreement, and, unless within ten (10) days after the serving of such notice upon the Advisor a satisfactory arrangement be made for the continuance thereof, this Agreement shall cease and terminate unless the City otherwise agrees to continue the Agreement. In the event of such termination, the City shall immediately serve notice thereof upon the Advisor, and the City may take over the work and prosecute same to completion by contract with another Advisor or otherwise and in such event the City may take possession of and utilize in completing the work any and all documents and other materials as may be necessary therefor. When the Advisor's services have been so terminated, such termination shall not affect any rights or remedies of the City against the Advisor then existing or which may later accrue. Similarly, any retention or payment of monies due the Advisor shall not release Advisor from liability.

B. Termination for Convenience. The City reserves the right, in its sole discretion and for its convenience and without cause or default on the part of the Advisor, to terminate this Agreement by providing sixty (60) days prior written notice of such termination to the Advisor. Upon receipt of such notice from the City, the Advisor shall: (1) immediately cease all work or (2) meet with the City and, subject to the City's approval, determine what work shall be required of the Advisor in order to bring the services then being performed by Advisor to a reasonable termination in accordance with the request of the City. If the City shall terminate for its convenience as herein provided, the City shall compensate the Advisor for all work completed to date of termination. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed. Any termination of the Agreement for alleged default by the Advisor that is ultimately determined to be unjustified shall automatically be deemed a termination for convenience of the City.

2. DISPUTES.

All controversies between the City and the Advisor which arise under, or are by virtue of, this Agreement and which are not resolved by mutual agreement, shall be decided by the Mayor in writing, within 30 days after a written request by the Advisor for a final decision concerning the controversy; provided, however, that if the Mayor does not issue a written decision within 30 days after written request for a final decision, or within such longer period as may be

agreed upon by the parties, then the Advisor may proceed as if an adverse decision had been received.

The Mayor shall immediately furnish a copy of the decision to the Advisor by certified mail, return receipt requested, or by any other method that provides evidence of receipt. Any such decision shall be final and conclusive, unless fraudulent, or the Advisor brings an action seeking judicial review of the decision in the District Court of Johnson County, Kansas.

The Advisor shall comply with any decision of the Mayor and proceed diligently with performance of this Agreement pending final resolution by the District Court of Johnson County, Kansas of any controversy arising under, or by virtue of, this Agreement, except where there has been a material breach of the Agreement by the City; provided, however, that in any event the Advisor shall proceed diligently with the performance of the Agreement where the Mayor has made a written determination that continuation of work under the contract is essential to the public health and safety

Notwithstanding any language to the contrary, no interpretation shall be allowed to find the City has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of any contingency. Further, the City shall not agree to pay attorney fees and late payment charges.

3. INDEMNITY

A. *Definitions*

For purposes of indemnification requirements, the following terms shall have the meanings set forth below:

i. The "Advisor" means and includes the Advisor, all of its employees, agents and assignees, and all of its affiliates and subsidiaries, its subcontractors and/or assignees and their respective servants, agents and employees; and

ii. "Loss" means any and all loss, damage, liability or expense of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including attorney's fees and the cost of defense).

B. *Indemnity*

For purposes of this Agreement, the Advisor hereby agrees to indemnify, defend and hold harmless the City, and its employees and agents from any and all "Loss" where "Loss" is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Advisor. It is agreed as a specific element of consideration of this Agreement that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the City or any third party and, further notwithstanding any theory of law including, but not limited to, a characterization of the City's or any third party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature; provided, however, that the Advisor's obligation hereunder shall not include amounts attributable to the fault or negligence of the City. Nothing in this section shall be deemed to impose liability on the Advisor to indemnify the City for loss when a loss was caused in whole or in part by the City's gross negligence or when City's negligence or other actionable fault is the sole cause of loss.

C. Disclaimer of Liability

The City shall not hold harmless or indemnify the Advisor for any liability whatsoever.

D. Payment of Taxes

The City shall not be responsible for, nor indemnify the Advisor for any federal, state, or local taxes, which may be imposed or levied upon the subject matter of this Agreement. The Advisor shall pay the City any applicable occupation tax, or other similar city tax to do business within the limits of the City's jurisdictional boundaries, prior to execution of the Agreement.

4. INSURANCE

During the performance of this contract, the Advisor agrees to maintain for the duration of the contract insurance coverage of the types and minimum liability as set forth below. Before entering into a contract, the successful Advisor shall furnish to the City a Certificate of Insurance verifying such coverage. All general and automobile liability insurance shall be written on an occurrence basis unless otherwise agreed to in writing by the City.

Insurance Type	Coverage Limits
Professional Liability	\$1,000,000 each claim/aggregate
Commercial General Liability	
Each Occurrence	\$1,000,000
Personal & Advertising Injury	\$1,000,000
Products Completed/Completed	\$2,000,000
Operations Aggregate	
General Aggregate	\$2,000,000
Automobile Liability Insurance	Each accident, combined single limits, bodily injury and property damage: \$1,000,000
Protect against claims for bodily injury and/or property damage arising out of the ownership or use of any owned, hired and/or non-owned vehicle and must include protection for either: any auto or all autos/hire autos/non-owned autos	
Worker's Compensation	Worker's Compensation: Statutory
This insurance shall protect the Advisor against all claims under applicable state Workers' Compensation laws. The Advisor shall also be protected against claims for injury, disease or death of employees for which, for any reason, may not fall within the provisions of a Workers' Compensation law. The policy limits shall include "all States" insurance, and the liability limits shall not be less than the following:	Employer's Liability: <ul style="list-style-type: none"> • Bodily Injury by Accident: \$100,000 each accident • Bodily Injury by Disease: \$500,000 policy limit • Bodily Injury by Disease: \$100,000 each employee

Industry Ratings

The City will only accept coverage from an insurance carrier which offers proof that the carrier:

- Is licensed to do business in the State of Kansas
 - Carries a Best's Policyholder rating of A- or better; and
 - Carries at least a Class VII financial rating;
- OR**
- Is a company mutually agreed upon by the City and the Advisor.

Certification of insurance coverage in the sections above shall be on a separate form provided by the Advisor's insurance carrier.

5. COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS, RULES AND LAWS

A. Kansas Cash Basis Law

This Agreement is subject to the Kansas Cash Basis Law, K.S.A. 10-1101. Any automatic renewal of the terms of the Agreement shall create no legal obligation on the part of the City. The City is obligated only to pay periodic payments or monthly installments under the Agreement as may lawfully be made from (a) funds budgeted and appropriated for that purpose during the City's current budget year or (b) funds made available from any lawfully operated revenue producing source.

B. Equal Opportunity Laws

The Advisor agrees that:

- The Advisor shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, national origin, ancestry or age;
- In all solicitations or advertisements for employees the Advisor shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission ("Commission");
- If the Advisor fails to comply with the manner in which the Advisor reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Advisor 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;
- If the Advisor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Advisor 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; and
- The Advisor shall include the provisions of paragraphs (1) through (4) above in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.
- The Advisor further agrees that the Advisor shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this project and shall furnish any certification required by any federal, state or local laws, ordinances and regulations applicable to this project and shall furnish any certification required by any federal, state or local governmental agency in connection therewith.

6. REPRESENTATIONS

The Advisor makes the following representations:

- The price submitted is independently arrived at without collusion.

- It has not knowingly influenced and promises that it will not knowingly influence a City employee or former City employee to breach any of the ethical standards set forth within the City's applicable procurement regulations and the City's Code of Ethics.
- It has not violated, and is not violating, and promises that it will not violate any prohibition against gratuities and kickbacks set forth within the City's procurement regulations, as applicable.
- It has not retained and will not retain a person to solicit or secure a City contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

7. **MISCELLANEOUS**

A. Ownership of Materials

All property rights, including publication rights, in all interim, draft, and final reports and other documentation, including machine-readable media, produced by the Advisor in connection with the work pursuant to this Agreement, shall be in the City.

B. Availability of Records and Audit

The Advisor agrees to maintain books, records, documents, and other evidence pertaining to the costs and expenses of the services provided under the Agreement (hereinafter collectively called "records") to the extent and in such detail as will properly reflect all net costs, direct and indirect, of labor, materials, equipment, supplies, and services, and other costs and expenses of whatever nature for which reimbursement is claimed under the provisions of this Agreement. The Advisor agrees to make available at the offices of the City at all times during the period set forth in the Request for Proposals any of the records for inspection, audit, or reproduction by any authorized representative of the City. Except for documentary evidence delivered to the offices of the City, the Advisor shall preserve and make available to persons designated by the City his records for a period of three years from the date of final payment under the Agreement or until all audit questions have been resolved, whichever period of time is longer.

C. Assignment

Neither the Advisor nor the City shall sell, transfer, assign, or otherwise dispose of any rights or obligations created by the Contract Documents or any portion thereof without the written consent of the other party.

This Appendix C. is acknowledged to be a part of the Agreement, effective as of _____, between the Client and the Advisor.

FOR CLIENT

FOR ADVISOR

Title

Jeff White

Senior Vice President

MAYOR'S ANNOUNCEMENTS

Monday, January 5, 2009

Committee meetings scheduled for the next two weeks include:

Board of Zoning Appeals	01/06/2009	6:30 p.m.
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 (Tuesday)	01/20/2009	6:00 p.m.
City Council (Tuesday)	01/20/2009	7:30 p.m.

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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. There will not be a January reception.

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.

INFORMATIONAL ITEMS
January 5, 2009

1. Planning Commission Agenda - January 6, 2009
2. Mark Your Calendars
3. Committee Agenda

**PLANNING COMMISSION AGENDA
CITY OF PRAIRIE VILLAGE
MUNICIPAL BUILDING - 7700 MISSION ROAD
TUESDAY, JANUARY 6, 2009
Council Chambers
7:00 P. M.**

I. ROLL CALL

II. APPROVAL OF PC MINUTES - December 9, 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
(Continuance Requested by Applicant)**

**PC2009-01 Request for Conditional Use Permit for Drive-thru
95th & Mission Road
Zoning C-2
Applicant: Walgreen's**

IV. NON-PUBLIC HEARINGS

**PC2008-115 Site Plan Approval - Retail Building
Southwest Corner Somerset & Mission
Zoning: C-2
Applicant: Landplan Engineering for CVS
(Continuance Requested by Applicant)**

**PC2008-102 Site Plan Approval
95th & Mission Road
Zoning: C-2
Applicant: Walgreen's**

V. OTHER BUSINESS

**Proposed Ordinance Revisions - Cell Towers
Proposed Ordinance Revisions - Repeater Antennas
Proposed Ordinance Revisions - Bldg. Height**

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.**

**Council Members
Mark Your Calendars
January 5, 2009**

January 2009 Prairie Village Arts Collection mixed media exhibit in the R. G. Endres Gallery
January 19 City offices closed in observance of Martin Luther King Jr. Day
January 20 Reception for Joyce DiDonato at Homestead Country Club
January 20 (Tues.) City Council Meeting
January 24 NEJC Chamber Legislative Breakfast at the Ritz Charles - 7:30 a.m.

February 2009 Prairie Village Arts Collection mixed media exhibit in the R. G. Endres Gallery
February 2 City Council Meeting
February 16 City offices closed in observance of President's Day
February 17 (Tues.) City Council Meeting

March 2009 Deana Winter mixed media exhibit in the R. G. Endres Gallery
March 2 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 Christi Roberts-Bony oils exhibit in the R. G. Endres Gallery
April 6 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 Kay Trieb photography exhibit in the R. G. Endres Gallery
May 4 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 L. Daniel Compton photography exhibit in the R. G. Endres Gallery
June 1 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 Mark Raynes photography exhibit in the R. G. Endres Gallery
July 3 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 Senior Arts Council mixed media exhibit in the R. G. Endres Gallery
August 3 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 6:70 - 7:30
December 21	City Council Meeting
December 25	City offices closed in observance of Christmas

COMMITTEE AGENDA

January 5, 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)
COU2009-01 Consider Project 190653: El Monte Fountain Improvements Engineering Change Order #1(Final) (assigned 12/23/2008)
COU2009-02 Consider MARC - Federal Stimulus Package Call for Projects (assigned 12/26/2008)
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)
COU2009-06 Consider Annual Service Agreement for 2009 Materials Testing (assigned 12/23/2008)
COU2009-07 Consider Project 190721: 2009 Storm Drainage Repair Program - Engineering Change Order #2 (Final) (assigned 12/29/2008)
COU2009-08 Consider Traffic Engineering Study of the Intersection of Roe Avenue and 75th Street (assigned 12/29/2008)
COU2009-09 Consider Approval of an Ordinance relating to Vagrancy (assigned 12/30/2008)
COU2009-10 Consider Purchase Request for Police Vehicles (assigned 1/2/2009)
COU2009-11 Consider Transfer to Equipment Reserve Fund (assigned 1/2/2009)

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)