

**COUNCIL MEETING AGENDA
CITY OF PRAIRIE VILLAGE
Council Chambers
Monday, April 01, 2019
6:00 PM**

#

- I. **CALL TO ORDER**
- II. **ROLL CALL**
- III. **PLEDGE OF ALLEGIANCE**
- IV. **APPROVAL OF THE AGENDA**
- V. **INTRODUCTION OF STUDENTS & SCOUTS**
- VI. **PRESENTATIONS**

SevenDays proclamation

Tax Increment Financing (TIF) Update - Meadowbrook
Jeff White / Justin Duff

Corinth South update
First Washington

2018 Traffic unit summary
Chief Schwartzkopf / Sgt. McCullough

- VII. **PUBLIC PARTICIPATION**

(5 minute time limit for items not otherwise listed on the agenda)

- VIII. **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 the regular City Council meeting minutes - March 18, 2019
- 2. Consider appointment to the Parks and Recreation Committee

- IX. **COMMITTEE REPORTS**
- X. **MAYOR'S REPORT**
- XI. **STAFF REPORTS**

XII. **OLD BUSINESS**

XIII. **NEW BUSINESS**

COU2019-20 Consider approval of 2019-2020 insurance renewals
Lisa Santa Maria / Truss Insurance

COU2019-21 Consider approval of Ordinance 2399 amending Section 1-804 of the
Code of the City of Prairie Village, Kansas
David Waters

COU2019-22 Consider approval of contract with Vance Brothers, Inc., for the 2019
Crack Seal/Micro Surfacing Program
Melissa Prenger

COU2019-23 Consider approval of construction contract for the 2019 Residential
Street Rehabilitation Program
Melissa Prenger

XIV. **COUNCIL COMMITTEE OF THE WHOLE** (Council President presiding)

Discuss options for implementation of bike plan
Keith Bredehoeft

Discuss Snow Angel program
Jori Nelson

XV. **ANNOUNCEMENTS**

XVI. **ADJOURNMENT**

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

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

CITY OF PRAIRIE VILLAGE

Proclamation

SevenDays 2019
April 9 through April 15, 2019

Whereas, The Faith Always Wins Foundation is a local organization working to make a difference against hateful acts through kindness and interfaith dialogue;

Whereas, The foundation's event entitled "SevenDays Make a Ripple, Change the World" is an annual weeklong series of events demonstrating how hatred, bigotry, and ignorance can be overcome by kindness, respect, and understanding;

Whereas, SevenDays continues the healing journey following the murders of Dr. William Corporon, his grandson Reat Underwood, and Teresa LaManno outside Jewish facilities in April 2014;

Whereas, SevenDays engages all people to discover commonalities and overcome evil with acts of kindness. Their vision is to make a ripple to change the world by connecting communities;

Whereas, Prairie Village is committed to be a community where kindness is key and understanding is paramount, and stands in strong partnership to support this worthy outreach effort;

Now, therefore, I, Eric Mikkelson, Mayor of the City of Prairie Village, do hereby designate the week of

April 9 through 15, 2019 as "SevenDays 2019"

in The City of Prairie Village, and I call upon all citizens and civic organizations to support the pillars of The Faith Always Wins Foundation - Kindness, Faith, and Healing and participate in SevenDays events.

Mayor Eric Mikkelson

City Clerk

Date



Tax Increment Financing (TIF) Update - Meadowbrook

PROJECT BACKGROUND

In 2015 Van Trust Real Estate, LLC along with Johnson County Government, the City of Prairie Village, and Johnson County Park & Recreation District announced their intent to work together on a redevelopment project including a significant opportunity for a regional park in Northeast Johnson County.

The plan preserved approximately two-thirds of the green space which would be owned, operated, and maintained as a county park by Johnson County Park and Recreation District. Substantially all of the park acquisition, park improvements, and other public improvements would be funded by the taxes generated by the private development. The remaining 42 acres of the approximate 136 acre site would be developed by Van Trust, a Kansas City-based national developer of residential communities and commercial projects, and would provide multiple housing options.

In 2016 bonds were issued and ground was broke on the project.

PROJECT UPDATE

Attached please find the Memorandum from Columbia Capital. The City asked Jeff White to provide an assessment on the performance of Meadowbrook Development and their latest projections.

Jeff White from Columbia Capital will present his finding and be available for questions.

ATTACHMENTS: Columbia Capital Memorandum dated 3.28.2019

Prepared By:

Lisa Santa Maria

Finance Director

Date: March 28, 2019



Jeff White
Principal
913.312.8077
jwhite@columbiacapital.com

MEMORANDUM

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Wes Jordan
Lisa Santa Maria
City of Prairie Village

The purpose of this memorandum is to provide an update on the current and projected status of repayment of the City-backed Meadowbrook tax increment financing (TIF) project bonds. From time to time, we meet with representatives of VanTrust to re-test our modeling assumptions, particularly with respect to the timing of development.

PROJECT

The performance of the TIF is driven in roughly equal measure from four housing types at the project: single family; townhomes; apartments; and senior living (plus the inn). For each of these components, the key drivers of TIF revenue are **timing of completion** (the sooner the better) and **valuation for tax purposes** (the higher the better). We expect Johnson County's tax valuation of the single family and townhome components to be primarily driven by the combination of land purchase price and costs to construct. We expect the valuation of the apartments and senior living to be valued using cost information, but also the value of comparable properties (sales approach) and the financial performance of the components (income approach). The larger components of the project benefit from partial appraisals of value by the County each January based upon the development stage of the project.

ANALYSIS

To our knowledge, VanTrust is in good standing with respect to all of its obligations under its development agreement with the City. Based upon our detailed conversations with VanTrust, the overall project is developing more slowly than initially modeled with respect to the senior housing component (which has a different operator (Dial) than originally anticipated) and some of the single family lots, but that construction/sales values and expected as-completed values are higher than initially modeled. Based upon these updated projections, **we continue to expect that TIF revenues will materialize less quickly than expected but will ultimately be higher than initially modeled.**

IMPLICATIONS

The City issued full faith and credit TIF bonds in the amount of \$11.3 million to support the project, the proceeds of which were used to acquire the parkland and to construct public infrastructure, including the east-west street bisecting the former golf course. "Full faith and credit" means that the City is obligated to make principal and interest payments from any

source available (including through raising property taxes) to make payments on the bonds in full and on time if TIF revenues are not sufficient to make those payments.

We structured the bonds to pay interest-only through 2019 with amortization commencing in 2020. In addition, we structured the bonds to fund *capitalized interest*, that is, to make bond proceeds available to pay interest on the bonds through a portion of the expected construction period. Capitalized interest will cover the City's debt service obligations on the bonds through most of 2019 (the net payment obligation this year from TIF revenues, rather than capitalized interest is about \$50,000).

Once amortization commences in 2020, principal amounts due ramp up over three years, providing the City with additional cushion as the TIF project's components reach completion and start to be fully assessed for tax purposes.

UPDATED PROJECTIONS

Based upon VanTrust's latest timing and valuation expectations and using actual TIF revenues captured from the 2016-2018 tax years, we updated our modeling as shown on the attachment to this memorandum.

The key columns on this pro forma are the three at the far right. The first, "Debt Service Coverage," shows the amount of TIF revenues projected to be available each year for each dollar of debt service due. A figure of 1.29x, for instance, indicates a projection that \$1.29 in TIF revenues will be available for each \$1.00 of debt service due. Ideally, this figure will always be 1.00x or higher.

The model projects, however, at least two years where coverage is below 1.00x. For these cases, it is important to look to the far right column, "Cum[ulative] Excess Revenues." For any year in which debt service coverage exceeds 1.00x, the City will bank "excess" TIF revenues that may be used in subsequent years to cover debt service shortfalls in those years. Even though the model shows projected coverage in 2020 and 2022 to be slightly less than 1.00x, the model projects the City to have more than sufficient balances from prior years' surpluses to cover any temporary shortfalls in those years. At issuance, we structured the bonds to produce projected coverage of approximately 1.10x in each year starting in 2020.

Commencing in 2022, accumulated excess revenues not needed to cover debt service in such year will automatically be used to reduce the balance of bonds outstanding. As such, the large cumulative surplus balances shown in the modeling attached during and after 2022 are illustrative only.

CONCLUSION

Through our review of the project, we find that, although the project's timing lags the modeling we used at the time of issuance of the bonds, expected financial results from the TIF exceed those projected at the time of issuance of the bonds. We continue to believe that TIF revenues will be sufficient to pay debt service due on the bonds and that the City should not have to use its general resources to cover debt service costs in any year. Additionally, VanTrust continues to make significant progress toward construction completion of each of

the four major areas of the project, further adding to our comfort that the project is likely to be successful in covering debt service on the TIF bonds over time.

As always, we note that these projections are subject to change. The amount of TIF revenues ultimately produced by the project relies on the strength of the economy, the ability of VanTrust to complete the project in a timely manner, the consistency of Johnson County in appraising properties for tax purposes in a consistent manner over time, the stability over time of the total property tax levy for Prairie Village businesses and residences, and the continued demand for the mix of housing provided by the development.

Please let me know if you have questions or require additional analysis. We plan to update this analysis again early in 2020.



CITY OF PRAIRIE VILLAGE
 Meadowbrook Redevelopment District
 Bond Debt Service and Coverage

Dated Date: 5/17/16
 Delivery Date: 5/17/16

TIF Plan Adoption: 3/31/16
 Maximum Bond Maturity Date: 3/31/36
 Date of Source File: 5/2/16

GENERAL OBLIGATION BONDS

Revenue Share: 50%

	Incremental Revs	Taxables			Tax-Exempts				Net Debt Service	Debt Service Coverage	Excess Revenues	Cum. Excess Revenues
		Scale	Principal	Interest	Cap I	Scale	Principal	Interest				
2016	0						84,392	(84,392)				
2017	35,866						292,125	(292,125)	0	n/a	35,866	35,866
2018	68,188						292,125	(292,125)	0	n/a	68,188	104,054
2019	72,497						292,125	(243,438)	48,688	1.48x	23,809	127,863
2020	388,736				0.95	100,000	289,625		389,625	0.99x	(889)	126,974
2021	786,392				1.05	275,000	280,250		555,250	1.41x	231,142	358,116
2022	828,019				1.20	590,000	261,575		851,575	0.97x	(23,556)	334,560
2023	929,163				1.32	615,000	243,625		858,625	1.08x	70,538	405,098
2024	1,019,390				1.45	635,000	231,125		866,125	1.17x	153,265	558,363
2025	1,106,257				1.65	655,000	218,225		873,225	1.26x	233,032	791,395
2026	1,193,992				1.80	680,000	204,875		884,875	1.34x	309,117	1,100,512
2027	1,244,267				2.05	700,000	191,075		891,075	1.39x	353,192	1,453,704
2028	1,255,288				2.22	725,000	176,372		901,372	1.39x	353,916	1,807,620
2029	1,266,417				2.41	750,000	160,231		910,231	1.39x	356,186	2,163,805
2030	1,277,656				2.59	775,000	142,106		917,106	1.39x	360,549	2,524,354
2031	1,289,005				2.65	805,000	122,356		927,356	1.38x	361,648	2,886,003
2032	1,300,465				2.74	835,000	101,334		936,334	1.38x	364,131	3,250,134
2033	1,312,039				2.89	870,000	78,413		948,413	1.38x	363,626	3,613,760
2034	1,323,726				2.89	900,000	54,075		954,075	1.38x	369,651	3,983,410
2035	1,335,528				3.03	935,000	27,675		962,675	1.38x	372,853	4,356,263
2036	627,284				3.03	455,000	6,825		461,825	1.35x	165,459	4,521,722
Totals	18,660,172		0	0	0	11,300,000	3,750,529	(912,079)	14,138,450			

2018 TRAFFIC UNIT SUMMARY



TRAFFIC UNIT

The traffic unit consists of four officers and one sergeant

- Officer Tanner Swope – Motorcycle Officer
- Officer Mark Brown – Motorcycle Officer
- Officer Drew O’Neill – Car/Bike Patrol Officer
- Officer Steve Steck – Car/Bike Patrol Officer
- Sergeant Eric McCullough

PURPOSE

The goal of the traffic unit is to increase traffic safety for everyone that uses the roadways in Prairie Village.

The traffic unit promotes traffic safety, directly, through education and enforcement.

The traffic unit also contributes to traffic safety by working with Public Works on traffic engineering.

CRASH INVESTIGATION

The traffic unit led investigations in 101 of the 445 crashes in Prairie Village in 2018, handling 22.6% of the total crashes reported to the Department.

All hit and run reports are reviewed by the traffic unit. Those with viable leads are investigated by traffic unit officers.



CRASH INVESTIGATION

Traffic unit Officers receive advanced training in crash investigation and crash reconstruction.

In 2018, the traffic unit handled six major crash investigations.

- One fatality crash
- Three serious injury crashes
- Two injury DUI crashes

Four of the six cases investigated were submitted to the Johnson County District Attorney's Office.

- Two of the cases have already resulted in convictions. Two cases are still pending.

The traffic unit has advanced equipment to help in crash reconstruction.

- Total Station
- Crash Data Retrieval Device (Grant)
- Crash Mapping Software (Grant)

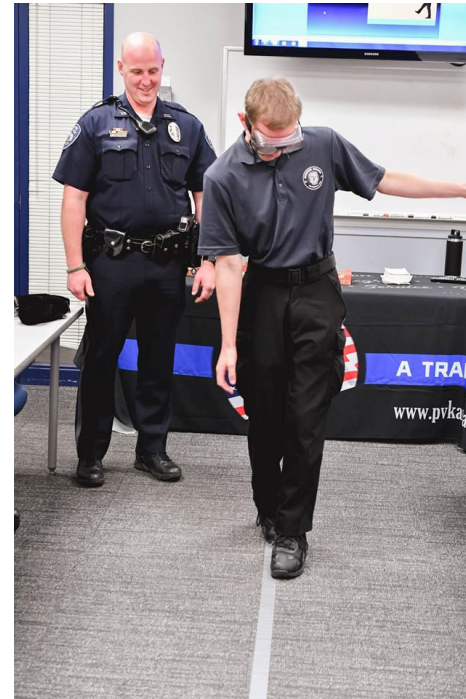
TRAFFIC SAFETY EDUCATION

Seatbelt Education and Enforcement

- Social media posts, sign boards, visits to schools.
- Traffic Officers issued eight child restraint violations, 106 adult seatbelt violations, and four juvenile seatbelt citations in 2018.

Explorer's Program

- Traffic unit officers taught the Explorer's program about the dangers of impaired driving.



TRAFFIC SAFETY EDUCATION

The Police Department offers free car seat installation to residents of Prairie Village and Mission Hills.

Traffic unit officers are certified to install child seats and instruct parents on how to correctly use them.

We installed 57 car seats for citizens in 2018.

Traffic unit officers visit the local elementary schools to conduct booster seat checks each year. In 2018, approximately 1,146 students were checked by the traffic unit.



TRAFFIC COMPLAINTS



The traffic unit handles traffic complaints from citizens.

The traffic unit received 30 requests for extra enforcement in traffic complaint areas in 2018.

- 134.47 hours of enforcement were devoted to these complaint areas

The traffic survey device was deployed at 22 locations throughout Prairie Village and 9 locations in Mission Hills in 2018.

The speed trailer was requested by citizens 22 times in 2018 and was deployed for 265 days.

QUESTIONS?





**CITY COUNCIL
CITY OF PRAIRIE VILLAGE
March 18, 2019**

The City Council of Prairie Village, Kansas, met in regular session on Monday, March 18, 2019, at 6:00 p.m. in the Council Chambers at the Municipal Building, 7700 Mission Road, Prairie Village, Kansas. Mayor Mikkelson presided.

ROLL CALL

Roll was called by the City Clerk with the following Council Members in attendance: Chad Herring, Jori Nelson, Serena Schermoly, Ron Nelson, Tucker Poling, Andrew Wang, Sheila Myers, Brooke Morehead, Dan Runion, Courtney McFadden, Ted Odell and Terrence Gallagher. Staff present: Tim Schwartzkopf, Chief of Police; Keith Bredehoeft, Director of Public Works; City Attorney David Waters, attorney with Lathrop & Gage; Wes Jordan, City Administrator; Jamie Robichaud, Deputy City Administrator; Alley Porter, Assistant City Administrator; Lisa Santa Maria, Finance Director; Adam Geffert, City Clerk.

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

Tucker Poling made a motion to approve the agenda for March 18, 2019 as presented, and Ron Nelson seconded. The motion passed unanimously.

INTRODUCTION OF STUDENTS & SCOUTS

Students in attendance from Prairie Elementary School introduced themselves.

PRESENTATIONS

A recycling presentation was given by Prairie Elementary students. The students shared videos that demonstrated proper recycling procedures. The videos will be posted on the City's website and social media accounts.

PUBLIC PARTICIPATION

Nathan Kovac, 4112 W. 75th Street, shared his concerns about climate change and carbon dioxide levels, and how they will affect the City and surrounding areas in the future. He noted that sustainable energy options, such as solar panels, can be very expensive, and suggested the City consider buying electricity generated by wind farms.

Missy McGillicuddy, 4902 W. 69th Terrace, noted the continued increases in home assessment values, and that the additional costs were a strain on residents with fixed incomes.



CONSENT AGENDA

Mayor Mikkelson asked if there were any items to remove from the consent agenda for discussion.

Terrence Gallagher moved for the approval of the Consent Agenda of March 18, 2019 as presented. The motion passed unanimously.

1. Approve the regular City Council meeting minutes - March 4, 2019
2. Approve expenditure ordinance #2976
3. Approve Unite Private Networks franchise agreement
4. Approve professional services agreement with Clark Enersen Partners for the Public Works Building Assessment Project in the amount of \$18,000

A roll call vote was taken with the following votes cast: "aye": Herring, J. Nelson, Schermoly, R. Nelson, Poling, Wang, Myers, Morehead, Runion, McFadden, Odell and Gallagher.

COMMITTEE REPORTS

Brooke Morehead noted that the Arts Council would be giving a presentation later in the meeting.

MAYOR'S REPORT

- The Mayor gave a recap of the Prairie Village Foundation meeting, which was held on Tuesday, March 5th.
- The Mayor and City Administrator Wes Jordan met with First Washington, the owner of the Corinth and Prairie Village shopping centers, on Thursday, March 7th. Topics included the preference for local shops, maintenance improvements and the installation of electric vehicle charging stations. The Mayor noted that the recently-vacated building on the south side of the Corinth shops would be demolished and replaced with a new shopping area. The Mayor added that First Washington will try to pay tribute to the structure by incorporating a feature from salvaged wood, and would attend a future Council meeting to updated the Governing Body on building plans.
- A meeting was held with KCP&L on Monday, March 18th, to continue discussion about power outages in the City. Conversations included tree-trimming protocols, communication initiatives, and opportunities to reduce the duration and severity of outages.
- Community Center Update: The Mayor and staff met with representatives from the YMCA in a continuing dialogue to discuss partnership opportunities.
- The Mayor noted that in 2009, an approved ordinance modifying the voting process of the Council Committee of the Whole had been inadvertently left out of the Municipal Code. This ordinance included the provision that the Mayor can



provide a tie-breaking vote in the Committee of the Whole. Since the most recently approved version of the Code does not include this language, an update will be presented to Council at a future meeting to properly amend the code.

- The City was asked to take part in a “spread kindness” event known as SevenDays, which will take place April 9th through the 15th. The event was created in response to the fatal shootings at the Jewish Community Center in 2014. Staff is researching how other cities intend to participate.
- The Mayor met with other Johnson County and Wyandotte County Mayors. A countywide study of affordability in Johnson County has been proposed, but funding for the study has not yet been identified.

STAFF REPORTS

Public Works

- Keith Bredehoeft stated that work at Porter Park and Wassmer Park will begin later in the week. Additionally, Mr. Bredehoeft stated potholes caused primarily by winter weather are being addressed. Public Works largely relies on citizens to report information about potholes. Mr. Nelson asked when construction on Roe would begin between 67th Street and 75th Street. Mr. Bredehoeft stated that work will start in the next couple of weeks. Chad Herring added that there are several potholes on Roe that need attention. Courtney McFadden stated that she had received many positive reports from residents in regard to the new playground equipment at Franklin Park.

Administration

- Wes Jordan shared an update on storm debris collection. The project is nearly complete, and has cost the City approximately \$150,000 thus far. Public Works is now picking up debris that may have been too small for Arbor Masters and too large for Republic. 60% of the budget reserved for storm debris pickup has been used.

OLD BUSINESS

There was no old business to come before the Council.

NEW BUSINESS

COU2019-16 Consider approval of agreement with Conference Technologies, Inc. to upgrade City Council Chamber audio

Alley Porter noted that the audio equipment in the Council Chamber had originally been updated in 2012, and again in 2017 to address ongoing issues. Livestreaming was added in December, 2017. Mrs. Porter shared viewer statistics from both Facebook and Boxcast.



Mrs. Porter provided a proposal from Conference Technologies, Inc., noting that individual microphones would be removed from the dais, and 16 replacement microphones would be installed in the ceiling. Mute buttons would also be placed at each seat.

Terrence Gallagher made a motion to approve COU2019-16 as presented. The motion was seconded by Jori Nelson.

Dan Runion moved to amend the motion so that the proposal included a warranty guaranteeing that the system would work as intended. The amendment was seconded by Mr. Nelson.

The amended motion made by Mr. Runion passed by a vote of 11-1, with Mr. Odell in opposition.

The original motion passed 11-1 with Mr. Odell in opposition.

COU2019-19 Consider approval of KCP&L Renewables Direct Agreement

Drew Robinson of KCP&L and Westar (now merged and known as Evergy) gave a presentation on the Renewables Direct program. Mayor Mikkelson stated that a decision on the program was time-sensitive, and asked the Council to consider action at this meeting.

Mr. Robinson shared information about clean energy. As a result of the merger, Evergy has 1.6 million customers in Kansas and Missouri. Currently, 30% of the company's fuel generation comes from renewable sources; when nuclear power is included, 50% of the energy generated is emission-free. Wind farms will be the clean energy source for the program, but signed commitments must be received from a certain number of municipalities to meet the threshold to move forward. Construction would potentially start in the Summer of 2019, and be completed in 2021. Agreement terms are 5, 10, 15 and 20 years.

Mr. Robinson added that a Renewal Participation Charge (RPC) would replace the existing monthly Energy Cost Adjustment (ECA) charge. Participation in the program guarantees a maximum \$.02 per kilowatt hour charge. KCP&L will also pay customers for energy produced that is not used, and conversely, charge customers when energy has to be obtained from other sources. Street lights are not eligible for the program due to billing complexity. The expected savings for the City would be nearly \$2,000 annually. If the City elects to terminate the agreement prior to completion, it would pay the RPC costs due for the remainder of the term. The 20-year term will commence when the wind farm begins generating power.

Mr. Nelson made a motion to approve COU2019-19 as presented. The motion was seconded by Ms. Nelson, and passed 11-0 with Mr. Odell abstaining.



Dan Runion provided a report of the testimony he gave in Topeka in support of a bill that would give cities more flexibility with respect to the property tax-lid. It was unclear whether the bill would make it out of Committee.

COU2019-17 Consider approval of the 2020-2024 County Assistance Road System (CARS) program

Mr. Bredehoeft stated that each year, the County's CARS program shares funding with cities for projects on eligible routes. The City generally submits multiple projects, and nearly always receives funding for those identified as first priority. Other lower-priority projects are often funded as well. Projects submitted this year include:

- Roe Avenue, from 83rd Street to 91st Street
- Nall Avenue, from 83rd Street to 95th Street (a shared project with Overland Park)

Mr. Bredehoeft noted that there is approximately \$500,000 in City funding set aside each year for these projects. In 2022, approximately \$1,000,000 will be reserved for larger projects.

Sheila Myers made a motion to approve COU2019-17 as presented in the packet. The motion was seconded by Tucker Poling, and passed unanimously.

COU2019-18 Consider approval of cereal malt beverage (CMB) ordinance update

David Waters stated that legislation was passed in 2017 that would authorize Kansas retailers carrying a Cereal Malt Beverage (CMB) license to begin selling beer that contains up to 6% alcohol by volume (ABV). Wine and spirits are still not allowed to be sold under this license.

The League of Kansas Municipalities developed the term "Enhanced Cereal Malt Beverage", which includes cereal malt beverages with 3.2% ABV as well as beer up to 6% ABV. City Code has been updated to reflect these changes, which are required by Kansas statute. Other updates were also made to outdated language within the section.

Tucker Poling made a motion to approve COU2019-18 as presented. The motion was seconded by Andrew Wang.

Chad Herring asked whether the Council would still have the authority to deny location exemptions to retailers within 200 feet of a school or religious facility. Mr. Waters stated that the Council will continue to be responsible for approving or denying exemptions.



A roll call vote was taken with the following votes cast: “aye”: Herring, J. Nelson, Schermoly, R. Nelson, Poling, Wang, Myers, Morehead, Runion, McFadden, Odell and Gallagher.

Brooke Morehead motioned that the City Council move into the Council Committee of the Whole portion of the meeting. The motion passed unanimously.

COUNCIL COMMITTEE OF THE WHOLE
2020 Committee budget and funding requests

Representatives from City committees presented their budgetary requests for fiscal year 2020.

- **Village Fest**

Courtney McFadden stated that the Village Fest budget request remained the same as 2018, at \$20,000. The event is in its 24th year, and typically has an attendance of 5,000 to 10,000.

Tucker Poling made a motion to approve the budget request made by the Village Fest Committee. The motion was seconded by Chad Herring, and passed unanimously.

- **Jazz Fest**

J.D. Kinney, Chair of the Jazz Fest Committee, said that the event is in its 10th year. The Committee requests continued funding of \$10,000, as it has since 2015. In 2018, heavy rain reduced attendance to half of the roughly 4,000 that typically attend, so approximately \$13,000 of \$25,000 in reserve funds had to be used to cover costs. Mr. Kinney added that the 2019 event has been scaled back to decrease expenses. The stage will be reduced in size and free food for volunteers will be eliminated, as will some less-successful advertising campaigns.

Mrs. Morehead made a motion to approve the budget request made by the Jazz Fest Committee. The motion was seconded by Mr. Nelson and passed 11-1, with Mr. Gallagher in opposition.

- **Environmental Committee**

Jori Nelson stated that the Environmental Committee’s primary objective is to educate and increase awareness among residents about the importance of preserving and protecting the environment and its natural resources. In 2020, the Committee intends to participate in an Earth Fair, which will require hiring a consultant to help work out the details of participating. The Committee would also like to host a recycling and drop-off event, as well as participate at Jazz Fest in some capacity. The budget request is \$8,000, which, with the exception of a small reduction in 2019, is the same amount that was approved in previous years.



Mr. Poling made a motion to approve the budget request made by the Environmental Committee. The motion was seconded by Serena Schermoly and passed 11-1, with Mr. Wang in opposition.

- **Arts Council**

Dan Anderson, Sheila Evans and other members of the Arts Council were present to discuss budget needs. Mrs. Evans stated that Johnson County has one of the highest levels of philanthropy for the arts in the nation. The 2019 budget for the Council is \$14,500; in 2020, the group is requesting \$11,500, a 21% decrease. The decrease is expected to be offset by revenue from ticket sales. There will be no increase in the City's contribution to the 2019 budget; instead, additional dollars will be used from a surplus from the previous year.

Mrs. Evans stated that the Arts Council intends to broaden its focus from just visual arts. The requested reallocation in 2019 also includes performing arts, particularly chamber music. If approved, a new event series known as "Chamber at the Chambers" will take place on the third Friday of every other month. Three events will be hosted in 2019, and six in each future year. Tickets will be \$20 for adults, and free for children (or possibly those under the age of 21).

Councilmembers shared concern that reducing the budget would leave almost no surplus at the end of 2020, and that additional events would require more staff time after-hours. Mrs. Schermoly stated that she believed the Council needed the full \$14,500 to successfully operate in 2020.

Mrs. Schermoly made a motion to approve a budget of \$14,500 for the Arts Council for 2020. The motion was seconded by Tucker Poling.

Mrs. Morehead moved to amend the motion to approve the original request of \$11,500. The amendment was seconded by Mrs. Myers. The motion failed 5-7, with Mr. Herring, Ms. Nelson, Mrs. Schermoly, Mr. Nelson, Mr. Poling, Mrs. McFadden and Mr. Gallagher in opposition.

The original motion passed by a vote of 9-3, with Mr. Wang, Mrs. Morehead and Mr. Odell in opposition.

Mr. Odell made a motion to approve the revised 2019 budget of \$41,270, which included the addition of the Chamber Music Series. The motion was seconded by Mr. Wang, and passed unanimously.

- **Preliminary revenue estimate**

Lisa Santa Maria shared the preliminary revenue forecast, stating that she expects additional revenue of \$1.2 million in 2020 if the mill levy remains the same. Property taxes would make up approximately 50% of that amount. Mrs. Santa Maria stated that franchise fees make up approximately 10% of the budget,



and that she does not anticipate and significant changes in 2020, with the exception of KCP&L. Now that the utility has merged with Westar, it has advised that the City should expect a 2.5 - 3% yearly decrease. KCP&L franchise fee collection was significantly impacted in January due to reduced gross receipts that month.

Mrs. Santa Maria added that the top 10 businesses in the City make up approximately half of the City's sales tax revenue. Motor vehicle and gas tax revenue has not yet been determined. General fund revenue projections for 2020 are expected to be nearly 6% greater than the 2019 budget estimate, and 6.5% over 2018 actuals. Mrs. Santa Maria also stated that the City has no control over property assessment increases. The City's portion of property taxes are 16% of the total amount collected.

Finally, staff budget review in preparation for 2020 will take place the week of April 8th. At the May 6th Council meeting, budget expenditure estimates will be presented for the first time.

- **2020 Budget decision packages**

Wes Jordan presented the 2020 budget decision packages that were recommended by Councilmembers. Mr. Jordan added that it was an opportunity for Council to change or add items to the list and provide direction as to whether the packages should continue to be studied by staff.

Mr. Herring made a motion to accept the decision package list with the inclusion of increased funding for ward meetings. Jori Nelson seconded the motion.

Mrs. Schermoly made a motion to add enhancements to the meeting streaming system. Mr. Poling seconded the motion. The motion passed 7-4 with Mr. Wang, Mrs. Myers, Mrs. Morehead, and Mr. Gallagher in opposition. Mr. Odell was absent.

Mrs. Schermoly made a motion to add municipal code hosting to the list. Mr. Nelson seconded the motion. Mr. Jordan asked that it be combined with the website update package.

Mr. Poling made a motion to remove a potential change to the mill rate levy from the list. Mrs. Schermoly seconded the motion. The motion failed 2-9, with Mr. Herring, Ms. Nelson, Mrs. Schermoly, Mr. Nelson, Mrs. Myers, Mrs. Morehead, Mr. Runion, Mrs. McFadden, and Mr. Gallagher in opposition, and Mr. Odell absent.

The motion to accept the decision package list including the addition of livestreaming and code hosting passed 10-1 with Mr. Poling in opposition and Mr. Odell absent.



New Business

There was no new business to come before the Council Committee of the Whole.

Sheila Myers moved the City Council end the Council Committee of the Whole portion of the meeting. The motion was seconded by Serena Schermoly, and passed unanimously.

ANNOUNCEMENTS

Announcements were included in the Council packet.

ADJOURNMENT

With no further business to come before the City Council, Mayor Mikkelson declared the meeting adjourned at 10:35 p.m.

Adam Geffert
City Clerk



MAYOR

**Council Meeting Date: April 1, 2019
CONSENT AGENDA**

Consider Appointment to the Parks and Recreation Committee

RECOMMENDATION

Mayor Mikkelson requests Council ratification of the appointment of Matthew Moeder to the Prairie Village Parks and Recreation Committee.

BACKGROUND

Mr. Moeder is being recommended for appointment as the Tennis Representative of the Parks and Recreation Committee per Council Policy CP001.

ATTACHMENTS

Volunteer Application

PREPARED BY

Adam Geffert
City Clerk

Date: March 27, 2019

Parks and Recreation Committee Volunteer Application

Name: Matthew Moeder

Ward: 4

Biography:

I moved to Prairie Village with my wife, Valerie, and two sons, Levi and Grant, in April 2017. We are thrilled to call Prairie Village home as it is a perfect place to live and raise a family. It is with that belief that I would like to become a more active member of this community and work to ensure a successful future for Prairie Village.

I am currently an Assistant United States Attorney, where I lead federal investigations and prosecute federal crimes involving violent acts, narcotics, firearms, healthcare fraud, mail and wire fraud, and money laundering. Before joining the United States Attorney's Office in 2016, I was state prosecutor. As a state prosecutor, I advocated for justice for victims of violent crime. In addition to my work inside the courtroom, I formed relationships with community groups and partners to decrease crime.

During my legal career, I have tried over 30 jury trials, conducted investigations, reviewed legislation, evaluated the legality and constitutionality of laws, and conducting legal and ethical training. The experiences and skills that I have gained in my legal career will assist me serving on a volunteer committee.

Before I attended law school, I worked for former Congressman Dennis Moore. As a congressional aide, I routinely worked with local governments, school districts, and community leaders to collaborate and advocate for the needs of the congressional district.

My judgment, skills, personal and professional experiences will assist me in carrying out the objectives of the committee for which I am chosen to serve.



INSURANCE COMMITTEE

Council Meeting Date: April 1, 2019

COU2019-20: Consider 2019-2020 Insurance Renewals

RECOMMENDATION

Insurance Committee Recommends the City Council approve the renewal of all of the City's insurance needs with Travelers and Chubb (Cyber Liability) for the coverage year May 2019 to May 2020.

Traveler's coverage for year May 2019 to May 2020 will include:

- Property
- Inland Marine
- GL/Auto/Public Official/employment practices
- Employee Benefits liability
- Law Enforcement liability
- Crime
- Workers Compensation
- Umbrella
- Fiduciary Liability
- Treasurer Bond - Fielding Norton

SUGGESTED MOTION

Recommend the City Council approve the insurance renewal policy and rates with Travelers and Chubb at a renewal rate not to exceed \$356,074 for the upcoming coverage year.

BACKGROUND

The Insurance Committee met on December 12th to discuss the City's insurance needs. The renewal options were discussed at the March 5th meeting and included a review of Worker's Compensation claims. The Committee also decided to look at increasing the Social Engineering limit and as a result are including the additional coverage which is located under the Crime coverage. The City and Truss's Safety & Loss control department along with Traveler's Insurance Company's safety department continue to meet and plan out training for City employees. Worker's Compensation is covered on a first dollar basis.

This means the insurance policy will provide full coverage for the entire value of a loss without a deductible. Prior to May 2014 the City had a \$10,000 deductible per incident. The City was averaging approximately \$15,000 a year in Worker's Compensation deductibles.

Overall, the renewal represents a decrease of \$23,261 or -6.1%. The proposed policy is very similar to the current plan.

The Property and Casualty coverage rate increased \$3,072 or 6.3% and Worker's Compensation decreased \$23,918 or -16.6%.

FUNDING SOURCE

The premiums are budgeted in the general fund in 2019 and the renewal amount will be budgeted as part of the 2020 budget process. With coverage starting in May, both budget years will be affected by the renewal amount. The deductible amounts will be taken from insurance reserve fund.

ATTACHMENTS

- Premium Comparison

PREPARED BY:

Lisa Santa Maria, Finance Director

Date: March 28, 2019

City Of Prairie Village Kansas

Premium Comparison

Coverage	Carrier AM Best Rating	Expiring Premium	Renewal Premium
Property	Travelers A++ XV	\$48,841	\$51,913
Inland Marine	Travelers A++ XV	\$5,561	5,635
General Liability	Travelers A++ XV	\$25,381	\$18,587
Employee Benefits Liability	Travelers A++ XV	\$381	\$381
Law Enforcement Liability	Travelers A++ XV	\$41,828	\$42,237
Public Entity Management Liability	Travelers A++ XV	\$4,779	\$4,959
Employment Practices Liability	Travelers A++ XV	\$11,008	\$12,460
Automobile Liability	Travelers A++ XV	\$41,340	\$42,060
Automobile Physical Damage	Travelers A++ XV	\$15,162	\$16,258
Cyber Liability	Chubb A++ XV	\$5,940	\$5,897
Umbrella	Travelers A++ XV	\$26,768	\$27,102
Crime	Travelers A++ XV	\$3,551	\$4,142
Special Crime (Kidnap & Ransom)	Travelers A++ XV	Included	Included
Fiduciary Liability	Travelers A++ XV	\$4,412	\$3,978
Workers' Compensation	Travelers A++ XV	\$144,251	\$120,333
Treasurer Bond- Fielding, Jr.	Travelers A++ XV	\$132	\$132
GRAND TOTAL		\$379,335	\$356,074



ADMINISTRATION

City Council Meeting Date: April 1, 2019

COU2019-21

Consider approval of Ordinance 2399 amending Section 1-804 of the Code of the City of Prairie Village, Kansas

RECOMMENDATION

Recommend the Governing Body adopt Ordinance 2399 amending Section 1-804, entitled "Council Committee of the Whole; Membership, Duties and Meetings."

BACKGROUND

Section 1-804, subsection (a) of Article A, Chapter 1 of the Code of the City Prairie Village, was amended in 2009, but the amendment was inadvertently left out of the master copy of the Code. Since that time, other parts of this Section have been updated with the incorrect version of subsection (a). This ordinance updates Section 1-804 to include all amendments approved by Council.

ATTACHMENTS

Proposed Code Revision
Ordinance 2399

PREPARED BY

Adam Geffert
City Clerk
Date: March 25, 2019

1-804. COUNCIL COMMITTEE OF THE WHOLE; MEMBERSHIP, DUTIES AND MEETINGS.

(a) The council committee of the whole shall consist of the 42 twelve (12) members of the city council and the mayor. The council president shall serve as chairman of the council committee of the whole. Except as otherwise provided by city council policies, only city council members, including the council president may vote, except that the mayor may vote to cast a tiebreaking vote on questions when the council members present are equally divided.

(b) The council committee of the whole shall ordinarily meet twice each month as part of the regularly scheduled meeting of the Governing Body, which may go into the council committee of the whole as and if appropriate. The council committee of the whole may also meet at such times as shall from time to time be designated by the Governing Body and/or the chairperson of the committee. Attendance by seven (7) of the councilmembers elected shall constitute a quorum to do business, but a number fewer than seven may adjourn from day to day.

(c) The council committee of the whole may make recommendations to the Governing Body on matters pertaining to: issues where a public hearing is necessary to solicit citizens' input on an issue, long-range planning, the city's budget, capital expenditure plan, policy issues of a major impact and items that need to be expedited.

(d) The council committee of the whole may also make recommendations to the Governing Body on matters pertaining to: construction projects if the project has been included in the capital expenditure plan, public safety, petitions for new services, council policies, personnel policies, changes to city services or new service, proposed legislation, city codes, ordinance changes, regulation of franchise agreements, zoning and land use planning, interlocal agreements, services agreements, grants, assistance programs, wage/salary ordinance, employee benefit programs, financial planning, investment of city funds and audits of city records.

(Summary Published in the _____ on _____, 2019)

ORDINANCE NO. 2399

AN ORDINANCE AMENDING SECTION 1-804 ENTITLED "COUNCIL COMMITTEE OF THE WHOLE; MEMBERSHIP, DUTIES AND MEETINGS" OF CHAPTER I ENTITLED "ADMINISTRATION" OF THE CODE OF THE CITY OF PRAIRIE VILLAGE, KANSAS.

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

SECTION I. Section 1-804 of Article 8, Chapter I of the Code of the City of Prairie Village, Kansas is hereby amended to read as follows:

1-804. COUNCIL COMMITTEE OF THE WHOLE; MEMBERSHIP, DUTIES AND MEETINGS.

(a) The council committee of the whole shall consist of the twelve (12) members of the city council and the mayor. The council president shall serve as chairman of the council committee of the whole. Except as otherwise provided by city council policies, only city council members, including the council president may vote, except that the mayor may vote to cast a tiebreaking vote on questions when the council members present are equally divided.

(b) The council committee of the whole shall ordinarily meet twice each month as part of the regularly scheduled meeting of the Governing Body, which may go into the council committee of the whole as and if appropriate. The council committee of the whole may also meet at such times as shall from time to time be designated by the Governing Body and/or the chairperson of the committee. Attendance by seven (7) of the councilmembers elected shall constitute a quorum to do business, but a number fewer than seven may adjourn from day to day.

(c) The council committee of the whole may make recommendations to the Governing Body on matters pertaining to: issues where a public hearing is necessary to solicit citizens' input on an issue, long-range planning, the city's budget, capital expenditure plan, policy issues of a major impact and items that need to be expedited.

(d) The council committee of the whole may also make recommendations to the Governing Body on matters pertaining to: construction projects if the project has been included in the capital expenditure plan, public safety, petitions for new services, council policies, personnel policies, changes to city services or new service, proposed legislation, city codes, ordinance changes, regulation of franchise agreements, zoning and land use planning, interlocal agreements, services agreements, grants, assistance programs, wage/salary ordinance, employee benefit programs, financial planning, investment of city funds and audits of city records.

SECTION II. Section 1-804 of the Code of the City of Prairie Village, Kansas, in existence as of and prior to the adoption of this ordinance, is hereby repealed.

SECTION III. This ordinance shall take effect and be in force from and after its publication in the official city newspaper.

PASSED by the City Council of the City of Prairie Village, Kansas on April 1, 2019.

APPROVED:

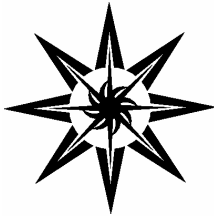
Eric Mikkelson, Mayor

ATTEST:

Adam Geffert, City Clerk

APPROVED AS TO LEGAL FORM:

David E. Waters, City Attorney



PUBLIC WORKS DEPARTMENT

City Council Meeting Date: April 1, 2019

COU2019-22

CONSIDER APPROVAL OF A CONTRACT WITH VANCE BROTHERS, INC. FOR THE 2019 CRACK SEAL/MICRO SURFACING PROGRAM

RECOMMENDATION

Move to authorize the Mayor to sign the Construction Contract with Vance Brothers, Inc. for Project P5000/P5038, 2019 Crack Seal/Micro Surfacing Program for \$312,000.

BACKGROUND

On March 8, 2019 the City Clerk opened bids for Project P5000/P5038, 2016 Crack Seal/Micro Surfacing Program. Two bids were received:

Pavement Management	\$359,900
Vance Brothers, Inc.	\$342,180
Engineer's Estimate	\$342,400

This contract consists of two separate maintenance programs at various locations throughout the City. A Micro Surfacing program which is a maintenance tool to assist in preserving the existing asphalt pavement, thus extending the pavements life cycle and a Crack Seal program which seals existing cracks in the asphalt pavement. Sealing cracks and joints helps to prevent water from entering the base of the pavement.

There is \$312,000.00 budgeted for these projects and the contract will be awarded for that amount. Locations of work will be adjusted (decreased) to utilize the \$312,000 budget.

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

FUNDING SOURCE

Funding is available in the 2019 Project P5000/P5038.

ATTACHMENTS

Construction Agreement with Vance Brothers, Inc.

PREPARED BY

Melissa Prenger, Senior Project Manager
Date: March 26, 2019

CONSTRUCTION AGREEMENT



**P5000/P5038
2019 CRACK SEAL / MICRO SURFACE
PROGRAM**

BETWEEN

CITY OF PRAIRIE VILLAGE, KS

AND

VANCE BROTHERS, INC.

CONSTRUCTION CONTRACT
FOR
P5000/P5038 2019 CRACK SEAL/MICRO SURFACE PROGRAM

BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
VANCE BROTHERS, INC.

THIS AGREEMENT, is made and entered into this ____ day of _____, 20____, by and between the City of Prairie Village, Kansas, hereinafter termed the “**City**”, and Vance Brothers, Inc., hereinafter termed in this agreement, “**Contractor**”, for the construction and completion of Project 2019 CRACK SEAL/MICRO SURFACE PROGRAM, (the “**Project**”) designated, described and required by the Project Manual and Bid Proposal, to wit:

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;

WHEREAS, the Contractor, in response to the advertisement, has submitted to the City in the manner and at the time specified, a sealed Bid Proposal in accordance with the Bid Documents;

WHEREAS, the City, in the manner prescribed by law, has publicly opened, examined and canvassed the Bid Proposals submitted, and as a result of such canvass has determined and declared the Contractor to be the lowest and best responsible bidder for the construction 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 set forth herein;

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 Contract Documents; 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;

NOW, THEREFORE, 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:

1. **DEFINITIONS:** Capitalized terms not defined herein shall have the meanings set forth in the General Conditions.

1.1 Following words are given these definitions:

ADVERSE WEATHER shall have the meaning set forth in Section 9.3 hereof.

APPLICATION FOR PAYMENT shall mean a written request for compensation for Work performed on forms approved by the City.

BID shall mean a complete and properly signed proposal to do the Work or designated portion thereof, for the price stipulated therein, submitted in accordance with the Bid Documents.

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

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

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

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

CERTIFICATE FOR PAYMENT shall mean written certification from the Project Manager stating that to the best of the project manager's knowledge, information and belief, and on the basis of the Project Manager's on-site visits and inspections, the Work described in an Application for Payment has been completed in accordance with the terms and conditions of the Contract Documents and that the amount requested in the Application for Payment is due and payable.

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 consist of (but not necessarily be limited to) the Plans, the Specifications, all addenda issued prior to and all modifications issued after execution of this Agreement, (modifications consisting of written amendments to the Agreement signed by both parties, Change Orders, written orders for minor changes in the Work issued by the Project Manager) this Construction Contract between the City and Contractor (sometimes referred to herein as the "**Agreement**"), the accepted Bid Proposal, Contractor's Performance Bond, Contractor's Maintenance Bond, Statutory Bond, the Project Manual, the General Conditions, the Special Conditions and any other documents that have bearing the Work prescribed in the Project. It is understood that the Work shall be carried out and the Project shall be constructed fully in accordance with the Contract Documents.

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.

FIELD ORDER shall mean a written order issued by the Project Manager that orders minor changes in the Work, but which does not involve a change in the Contract Price or Contract Time.

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.

GENERAL CONDITIONS shall mean the provisions in the document titled "General Conditions - General Construction Provisions" attached hereto and incorporation herein by reference.

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

NOTICE 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 Shop Drawings which may have been prepared by or for the City as included in the Project Manual or submitted by the Contractor to the City during the progress of the Work, all of which show the character and scope of the work to be performed.

PROJECT shall mean the Project identified in the first paragraph hereof.

PROJECT MANAGER shall mean the person appointed by the Public Works Director for this Contract.

PROJECT MANUAL shall contain the General Conditions, Special Conditions, Specifications, Shop Drawings and Plans for accomplishing the work.

PROJECT SEGMENTS shall have the meaning set forth in Section 7.1 hereof.

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

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

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

SPECIAL CONDITIONS shall mean the provisions in the document titled "Special Conditions" attached hereto and incorporation herein by reference.

SUBCONTRACTOR 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 mean all elements of a Project Segment or the Total Project Work is complete including all subsidiary items and "punch-list" items.

TOTAL PROJECT WORK shall have the meaning set forth in Section 7.1 hereof.

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.

UNUSUALLY SEVERE WEATHER shall have the meaning set forth in Section 9.4 hereof.

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

WORK SCHEDULE shall have the meaning set forth in Section 7.2 hereof.

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

2. ENTIRE AGREEMENT:

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.

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 time limits stated in the Contract Documents are of the essence of the Contract.
- 3.3 The Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

- 3.4 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.
- 3.5 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents and shall give written notice to the Project Manager of any inconsistency, ambiguity, error or omission, which the Contractor may discover, or should have discovered, with respect to these documents before proceeding with the affected Work. The review, issuance, or the express or implied approval by the City or the Project Manager of the Contract Documents shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such review be evidence of the Contractor's compliance with this Contract.
- 3.6 The City has prepared or caused to have prepared the Project Manual. **HOWEVER, THE CITY MAKES NO REPRESENTATION OR WARRANTY AS TO ACCURACY OR FITNESS FOR PARTICULAR PURPOSE INTENDED OR ANY OTHER WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the City concerning such documents as no such representation or warranties have been made or are hereby made.
- 3.7 As between numbers and scaled measurements in the Project Manual, the numbers shall govern; as between larger scale and smaller scale drawings, (e.g. 10:1 is larger than 100:1) the larger scale shall govern.
- 3.8 The organization of the Project Manual into divisions, sections, paragraphs, articles (or other categories), shall not control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.
- 3.9 The Contract Documents supersedes all previous agreements and understandings between the parties, and renders all previous agreements and understandings void relative to these Contract Documents.
- 3.10 Should anything be omitted from the Project Manual, which is necessary to a clear understanding of the Work, or should it appear various instructions are in conflict, the Contractor shall secure written instructions from the Project Manager before proceeding with the construction affected by such omissions or discrepancies.
- 3.11 It is understood and agreed that the Work shall be performed and completed according to the true spirit, meaning, and intent of the Contract Documents.
- 3.12 The Contractor's responsibility for construction covered by conflicting requirements, not provided for by addendum prior to the time of opening Bids for the Work represented thereby, shall not extend beyond the construction in conformity with the less expensive of the said conflicting requirements. Any increase in cost of Work required to be done in excess of the less expensive work of the conflicting requirements will be paid for as extra work as provided for herein.

- 3.13 The apparent silence of the Project Manual as to any detail, or the apparent omission from them of a detailed description concerning any point, shall be regarded as meaning that only the best general practice is to be used. All interpretations of the Project Manual shall be made on the basis above stated.
- 3.14 The conditions set forth herein are general in scope and are intended to contain requirements and conditions generally required in the Work, but may contain conditions or requirements which will not be required in the performance of the Work under contract and which therefore are not applicable thereto. Where any stipulation or requirement set forth herein applies to any such non-existing condition, and is not applicable to the Work under contract, such stipulation or requirement will have no meaning relative to the performance of said Work.
- 3.15 KSA 16-113 requires that non-resident contractors appoint an agent for the service of process in Kansas. The executed appointment must then be filed with the Secretary of State, Topeka, Kansas. Failure to comply with this requirement shall disqualify the Contractor for the awarding of this Contract.

4. CONTRACT COST

The City shall pay the Contractor for the performance of the Work embraced in this Contract, and the Contractor will accept in full compensation therefore the sum (subject to adjustment as provided by the Contract) of THREE HUNDRED TWELVE THOUSAND AND 00/100 DOLLARS (\$312,000.00) 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.

5. WORK SUPERINTENDENT

- 5.1 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.
- 5.2 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.
- 5.3 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.
- 5.4 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.

5.5 The Contractor will be required to contact the Project Manager daily to advise whether and/or where the Contractor and/or the Subcontractor's crews will be working that day, in order that the Project Manager's representative is able to monitor properly the Work.

6. PROJECT MANAGER

6.1 It is mutually agreed by and between the parties to this Agreement that the Project Manager shall act as the representative of the City and shall observe and inspect, as required, the Work included herein.

6.2 In order to prevent delays and disputes and to discourage litigation, it is further agreed by and between the parties to this Agreement that the Project Manager shall, in good faith and to the best of its ability, determine the amount and quantities of the several kinds of work which are to be paid for under this Contract; that the Project Manager shall determine, where applicable, questions in relation to said Work and the construction thereof; that Project Manager shall, where applicable decide questions which may arise relative to the execution of this Contract on the part of said Contractor; that the Project Manager's decisions and findings shall be the conditions precedent to the rights of the parties hereto, to any action on the Contract, and to any rights of the Contractor to receive any money under this Contract provided, however, that should the Project Manager render any decision or give any direction which, in the opinion of either party hereto, is not in accordance with the meaning and intent of this Contract, either party may file with the Project Manager and with the other party, within thirty (30) days a written objection to the decision or direction so rendered and, by such action, may reserve the right to submit the question to determination in the future.

6.3 The Project Manager, unless otherwise directed or agreed to by the City in writing, will perform those duties and discharge those responsibilities allocated to the Project Manager as set forth in this Contract. The Project Manager shall be the City's representative from the effective date of this Contract until final payment has been made. The Project Manager shall be authorized to act on behalf of the City only to the extent provided in this Contract. The City and Project Manager may, from time to time, designate Inspectors to perform such functions.

6.4 The City and the Contractor shall communicate with each other in the first instance through the Project Manager.

6.5 The Project Manager shall be the initial interpreter of the requirements of the Project Manual and the judge of the performance by the Contractor. The Project Manager shall render written graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.

6.6 The Project Manager will review the Contractor's Applications for Payment and will certify to the City for payment to the Contractor those amounts then due the Contractor as provided in this Contract. The Project Manager's recommendation of any payment requested in an Application for Payment will constitute a representation by Project Manager to City, based on Project Manager's on-site observations of the Work in progress as an experienced and qualified design professional and on Project Manager's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of the Project Manager's knowledge, information and belief, the quality of the Work is in accordance with the Project Manual (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Project Manual, to a final determination of quantities and

classifications for Unit Price Work if such is called for herein, and to any other qualifications stated in the recommendation); and that Contractor is entitled to payment of the amount recommended. However, by recommending any such payment Project Manager will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to Project Manager in the Project Manual or that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by the City or the City to withhold payment to Contractor.

- 6.7 The Project Manager may refuse to recommend the whole or any part of any payment if, in Project Manager's opinion, it would be incorrect to make such representations to City. Project Manager may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in the Project Manager's opinion to protect the City from loss because:
- The Work is defective, or completed Work has been damaged requiring correction or replacement,
 - The Contract Price has been reduced by Written Amendment or Change Order,
 - The City has been required to correct Defective Work or complete Work in accordance with the Project Manual.
- 6.8 The City may refuse to make payment of the full amount recommended by the Project Manager because claims have been made against City on account of Contractor's performance or furnishing of the Work or liens have been filed in connection with the Work or there are other items entitling City to a set-off against the amount recommended, but City must give Contractor written notice (with a copy to Project Manager) stating the reasons for such action.
- 6.9 The Project Manager will have the authority to reject Work which is defective or does not conform to the requirements of this Contract. If the Project Manager deems it necessary or advisable, the Project Manager shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.
- 6.10 The Project Manager will review, or take other appropriate action as necessary, concerning the Contractor's submittals, including Shop Drawings, Product Data and Samples. Such review, or other action, shall be for the sole purpose of determining general conformance with the design concept and information given through the Project Manual.
- 6.11 The Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 6.12 The Project Manager, upon written request from the Contractor shall conduct observations to determine the dates of Substantial Completion, Total Completion and the date of Final Acceptance. The Project Manager will receive and forward to the City for the City's review and records, written warranties and related documents from the Contractor required by this

- Contract and will issue a final Certificate for Payment to the City upon compliance with the requirements of this Contract.
- 6.13 The Project Manager's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.
- 6.14 The Project Manager will **NOT** be responsible for Contractor's means, methods, techniques, sequences, or procedures or construction, or the safety precautions and programs incident thereto and will not be responsible for Contractor's failure to perform the Work in accordance with the Project Manual. The Project Manager will not be responsible for the acts or omissions of the Contractor or any Subcontractor or any of its or their agents or employees, or any other person at the site or otherwise performing any of the Work except as may otherwise be provided.
- 6.15 Any plan or method of work suggested by the Project Manager, or other representatives of the City, to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor, and the Project Manager and the City will assume no responsibility therefore.
- 6.16 It is agreed by the Contractor that the City shall be and is hereby authorized to appoint or employ, either directly or through the Project Manager, such City representatives or observers as the City may deem proper, to observe the materials furnished and the work performed under the Project Manual, and to see that the said materials are furnished, and the said work performed, in accordance with the Project Manual therefore. The Contractor shall furnish all reasonable aid and assistance required by the Project Manager, or by the resident representatives for proper observation and examination of the Work and all parts thereof.
- 6.17 The Contractor shall comply with any interpretation of the Project Manual by the Project Manager, or any resident representative or observer so appointed, when the same are consistent with the obligations of the Project Manual. However, should the Contractor object to any interpretation given by any subordinate Project Manager, resident representative or observer, the Contractor may appeal in writing to the City Director of Public Works for a decision.
- 6.18 Resident representatives, observers, and other properly authorized representatives of the City or Project Manager shall be free at all times to perform their duties, and intimidation or attempted intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the City so decides, to annul the Contract.
- 6.19 Such observation shall not relieve the Contractor from any obligation to perform said Work strictly in accordance with the Project Manual.
- 7. WORK SCHEDULE:**
- 7.1 The Work 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 Contract Time shall be stated in the Contract Documents for both the Total Project Work and, when applicable, the Project Segments.

- 7.2 At the time of execution of this Contract, the Contractor shall furnish the Project Manager with a schedule ("**Work 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 Project Segments will be started and completed within the Contract Time. The Work Schedule is subject to approval by the City.
- 7.3 Monthly Work Schedule reports shall accompany the Contractor's pay request for Work completed. Where the Contractor is shown to be behind schedule, it shall provide an accompanying written summary, cause, and explanation of planned remedial action. Payments or portions of payments may be withheld by the City upon failure to maintain scheduled progress of the Work as shown on the approved Work Schedule.
- 7.4 At a minimum the Contractor shall update and submit the Work Schedule for review weekly, unless otherwise agreed upon by the City.
- 7.5 The Contractor, within ten (10) calendar days after being instructed to do so in a written notice from the City, shall commence the Work to be done under this Contract.
- 7.6 If at any time, in the opinion of the Project Manager or City, proper progress is not being maintained; changes shall be proposed in the Work Schedule and resubmitted for consideration and approval.
- 7.7 If the Contractor has not completed Project Segments and is within a non-performance penalty period, it shall not be allowed to undertake a new Project Segment until the Project Segment in dispute is completed, unless expressly permitted by the City.
- 7.8 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.
- 7.9 No work shall be undertaken on Saturdays, Sundays and Holidays (Christmas, New Years, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day and Thanksgiving) without the express written approval of the City Project Manager. If it is necessary to perform proper care, maintenance, or protection of work already completed or of equipment used, or in the case of an emergency verbal permission may be obtained through the Project Manager.
- 7.10 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.
- 7.11 The Contractor shall provide 24 hours notice prior to commencing any work to the City Project Manager. The Contractor shall communicate immediately any changes in the Work Schedule to the Project Manager for approval by the City.

8. DELAYS AND EXTENSIONS OF TIME

- 8.1 In executing the Contract, the Contractor expressly covenants and agrees that, in undertaking the completion of the Work within the Contract Time, it 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.

- 8.2 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 persons 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 it shall in such cases be entitled to such extension of the time specified for the completion of the Work as the City and the Project Manager shall award in writing on account of such delays, provided, however, that claim for such extension of time is made by the Contractor to the City and the Project Manager in writing within one (1) week from the time when any such alleged cause for delay shall occur.

9. ADVERSE WEATHER:

- 9.1 Extensions of time for Adverse Weather shall be granted only under the conditions as hereinafter provided.
- 9.2 For conditions of weather or conditions at the site, so unusual as not to be reasonably anticipated, as determined by the Project Manager, an average or usual number of inclement days when work cannot proceed are to be anticipated during the construction period and are not to be considered as warranting extension of time.
- 9.3 “**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.
- 9.4 “**Unusually Severe Weather**” is defined as weather, which is more severe than the adverse weather anticipated for the season, location, or activity involved.
- 9.5 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 all 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.

- 9.6 The following schedule of monthly-anticipated Adverse Weather delays will constitute the baseline for monthly weather time evaluations. The Contractor's Work 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

- 9.7 Upon receipt of the Notice to Proceed, and continuing throughout the Contract, the Contractor shall record on its daily construction report, the occurrence of Adverse Weather and resultant impact to the Work Schedule.
- 9.8 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.
- 9.9 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.
- 9.10 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 Work Schedule.
- 9.11 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.
- 9.12 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.
- 9.13 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.
- 9.14 The Contractor shall summarize and report all actual Adverse Weather delay days for each month to the Project Manager by the tenth (10th) day of the following month. A narrative indicating the impact of Adverse Weather conditions on the Work Schedule shall be included.
- 9.15 Any claim for extension of time due to Unusually Severe Weather shall be submitted to the Project Manager within 7 days of the last day of the commencement of the event giving rise to the delay occurred. Resolution of any claim shall follow the procedures described above.

- 9.16 The Contractor shall include and indicate the monthly-anticipated Adverse Weather days, listed above, in the Work Schedule. (Reference Section 7.1 for Work Schedule requirements)
- 9.17 The Contractor shall indicate the approved Adverse Weather days (whether less or more than the anticipated days) in its Work Schedule updates.

10. LIQUIDATED DAMAGES

- 10.1 Contractor agrees that time is of the essence and any term pertaining to Contractor timely performing so as to achieve Total Completion within the Contract Time 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 Contract Time for the Total Project Work 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 Contract Time. Such amount shall be deducted from any amounts due Contractor under this Agreement.
- 10.2 Further, the Contractor agrees that, in the event Contractor does not carry out such Work at such rates of progress as required by the Work Schedule approved by the City, 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.

11. PAYMENT PROCEDURE

- 11.1 Based upon Applications for Payment submitted to the Project Manager by the Contractor and Certificates for Payment issued by the Project Manager, the City shall make progress payments on account of the contract sum to the Contractor as provided below and elsewhere in the Contract Documents.
- 11.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month or on a mutually agreed date by City and Contractor.
- 11.3 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.
- 11.4 Each application for payment must be submitted with Contractor's waiver for period of construction covered by application. Each Application for 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.

- 11.5 The Contractor will submit waivers on forms, and executed in a manner, acceptable to City.
- 11.6 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.
- 11.7 The Project Manager will, upon receipt of a written Application for Payment from the Contractor, review the amount of Work performed during the preceding period and the value thereof at the unit prices contracted. From the amounts so ascertained, there shall be deducted ten percent (10%) to be retained until after final completion of the entire Work to the satisfaction of the City. The Project Manager will submit an estimate each month to the City for payment to the Contractor, except that no amount less than \$500.00 will be submitted unless the total amount of the Contract remaining unpaid is less than \$500.00.
- 11.8 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 Price. Percentage deductions will be computed at the stated percentage of the amount earned.
- 11.9 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.
- 11.10 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.

11.11 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.

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

12. COMPLETION AND FINAL PAYMENT

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

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

12.3 The City shall make final payment of all sums due the Contractor within thirty days of the Project Manager's execution of a final Certificate for Payment.

12.4 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.

13. CLAIMS BY THE CONTRACTOR

- 13.1 All Contractor claims shall be initiated by written notice and claim to the Project Manager. Such written notice and claim must be furnished within seven calendar days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.
- 13.2 The Contractor shall diligently proceed with performance of this Contract whether or not there be such a claim pending and the City shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim shall be reflected by a Change Order executed by the City, the Project Manager and the Contractor.
- 13.3 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.
- 13.4 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.
- 13.5 The City reserves the right to increase or decrease quantities, and alter the details of construction including grade and alignment as the Project Manager may consider necessary or desirable, by approved Change Order. Such modifications shall not invalidate the Contract nor release the surety. Unless such alterations and increases or decreases change the total cost of the Work, based on the originally estimated quantities and the unit prices bid, by more than 25 percent, or change the total cost of any major item, based on the originally estimated quantities and the unit price bid, by more than 25 percent, the Contractor shall perform the work altered, increased or decreased, at a negotiated price or prices. (A major item shall mean any bid item, the total cost of which exceeds 12-1/2 percent of the total Contract Price based on the proposed quantity and the contract unit price).
- 13.6 When the alterations cause an increase or decrease in excess of the 25 percent indicated above, either the Contractor or the Project Manager may request an adjustment of the unit price to be paid for the item or items.
- 13.7 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.

- 13.8 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.
- 13.9 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.
- 13.10 The Contractor shall delay or suspend the progress of the work or any part thereof, whenever so required by written order of the City, and for such periods of time as required; provided, that in the event of such delay or delays or of such suspension or suspensions of the progress of the work, or any part thereof, the time for completion of work so suspended or of work so delayed by such suspension or suspensions shall be extended for a period equivalent to the time lost by reason of such suspension or suspensions; but such order of the City or Project Manager shall not otherwise modify or invalidate in any way, any of the provisions of this Contract. In the event that the work shall be stopped by written order of the City, any expense, which, in the sole opinion and judgment of the City, is caused by the City, shall be paid by the City to the Contractor.
- 13.11 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.
- 13.12 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

14. CHANGES IN THE WORK

- 14.1 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.

- 14.2 The Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 14.3 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.
- 14.4 If no mutual agreement occurs between the City and the Contractor relative to a change in the Work, the Contractor shall proceed with the Work that is the subject of the Change Order, and the change in the Contract Price, if any, shall then be determined by the Project Manager on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content to the City, as the Project Manager requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies or equipment, including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools, whether rented from the Contractor or others, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and job site field office overhead directly attributable to the change. In no event shall any standby time or any expenditure or savings associated with the Contractor's home office or other non-job site overhead expense be included in any change in the Contract Price. Further, in no event shall the Contractor's overhead expense exceed ten (10%) percent of the reasonable expenditures. Pending final determination of reasonable expenditures or savings to the City, payments on account shall be made to the Contractor on the Project Manager's Certificate for Payment.
- 14.5 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.
- 14.6 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.

15. INSURANCE AND BONDS.

- 15.1 The Contractor shall secure and maintain, throughout the duration of the agreement, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Contractor shall provide certificates of insurance and

renewals thereof on forms acceptable to the City. The City shall be notified by receipt of written notice from the insurer or the Contractor at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.

15.2 The Contractor, upon receipt of notice of any claim in connection with this Agreement, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability. The Contractor shall monitor and promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by the Contract Documents) if the Contractor’s limits of protection shall have been impaired or reduced to such extent that the limits fall below the minimum amounts required herein. The Contractor shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

15.3 Minimum Requirements Commercial General Liability Policy Limits -

General Aggregate:	\$2,000,000
Products / Completed Operations Aggregate:	\$2,000,000
Personal & Advertising Injury:	\$1,000,000
Each Occurrence:	\$1,000,000

Policy MUST include the following conditions:

- A. Pollution Liability (Applicable only to contracts involving pollutants such as asbestos & lead abatement, sludge or other waste abatement, etc.)
- B. NAME CITY OF PRAIRIE VILLAGE and OVERLAND PARK AS “ADDITIONAL INSURED”

15.4 Automobile Liability Policy shall protect the Contractor against claims for bodily injury and/or property damage arising from the ownership or use of any owned, hired and/or non-owned vehicle.

Limits (Same as Commercial General Liability) -
 Combined Single Limits, Bodily Injury and Property Damage - Each Accident:

Policy MUST include the following condition:
 NAME CITY OF PRAIRIE VILLAGE and OVERLAND PARK AS “ADDITIONAL INSURED”

15.5 Umbrella Liability. The Umbrella / Excess Liability must be at least as broad as the underlying general liability and automobile liability policies.

Limits -

Each Occurrence	\$1,000,000
General Aggregate	\$1,000,000

15.6 Workers' Compensation. This insurance shall protect the Contractor against all claims under applicable state workers' 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 workers' compensation law. The policy limits shall not be less than the following:

Workers' Compensation:	Statutory
Employer's Liability:	

Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee

15.7 The City will only accept coverage from an insurance carrier who offers proof that it:

- Is authorized to do business in the State of Kansas;
- Carries a Best's policy holder rating of A- or better; and
- Carries at least a Class VIII financial rating, **or**
- Is a company mutually agreed upon by the City and Contractor.

15.8 Subcontractor's Insurance. If a part of the Agreement is to be sublet, the Contractor shall either:

- A. Cover all subcontractor's in its insurance policies, or
- B. Require each subcontractor not so covered to secure insurance which will protect subcontractor against all applicable hazards or risks of loss as and in the minimum amounts designated.

Whichever option is chosen, Contractor shall indemnify and hold harmless the City as to any and all damages, claims or losses, including attorney's fees, arising out of the acts or omissions of its Subcontractors.

15.9 Prior to commencing any work, Contractor shall provide City with certificates evidencing that (1) all Contractor's insurance obligations required by the contract documents are in full force and in effect and will remain in effect until Contractor has completed all of the work and has received final payment from City and (2) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to City. Contractor's property insurance shall not lapse or be canceled if City occupies a portion of the work. Contractor shall provide City with the necessary endorsements from the insurance company prior to occupying a portion of the work.

15.10 Waiver of Subrogation. All insurance coverage required herein shall contain a waiver of subrogation in favor of the City. Contractor's insurance policies shall be endorsed to indicate that Contractor's insurance coverage is primary and any other insurance maintained by City is non-contributing as respects the work of Contractor.

15.11 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 Special Conditions.

15.12 Bonds and Other Performance Security. Contractor shall provide a Performance Bond, Maintenance Bond and a Statutory Bond in the amount of one hundred percent (100%) of the Contract Price to cover the entire scope of Work and any other specific performance security that may be indicated in this Contract. With each bond there shall be filed with the City one copy of "Power of Attorney" certified to include the date of the bonds.

16. INDEMNITY

- 16.1 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.

- 16.2 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 Cities, Prairie Village and Overland Park 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.
- 16.3 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 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.
- 16.4 Nothing in this section shall be deemed to impose liability on the Contractor to indemnify the City for Loss when the negligence or other actionable fault the City is the sole cause of Loss.
- 16.5 With respect to the City’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

17. SUCCESSORS AND ASSIGNS

- 17.1 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.
- 17.2 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.

- 17.3 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.
- 17.4 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.
- 17.5 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.
- 17.6 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.
- 17.7 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.
- 17.8 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.

18. NON-DISCRIMINATION LAWS

- 18.1 The Contractor agrees that:
- A. The Contractor 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 contract because of race, religion, color, sex, disability, national origin, ancestry or age;

- B. In all solicitations or advertisements for employees, the Contractor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
 - C. The Contractor further agrees not to discriminate against any person because of race, religion, color, sex, sexual orientation, gender identity, disability, age, national origin or ancestry. If the City determines that the Contractor has violated any applicable provision of any local, state or federal law, or has discriminated against any person because of race, religion, color, sex, sexual orientation, gender identity, disability, age, national origin, or ancestry, such violation and/or discrimination shall constitute a breach of contract and the City may cancel, terminate or suspend this agreement in whole or in part. The parties do not intend this provision to subject any party to liability under local, state or federal laws unless it applies.
 - D. 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;
 - E. 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
 - F. The Contractor shall include the provisions of Subsections A through D in every subcontract or purchase order so that such provisions will be binding upon such Subcontractor or vendor.
 - G. The provisions of this Section shall not apply to a contract entered into by a Contractor: (1) Who employs fewer than four employees during the term of such contract; or (2) Whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.
- 18.2 The Contractor further agrees that it 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. 12101 et seq.) as well as all other federal, state and local laws.

19. FEDERAL LOBBYING ACTIVITIES

[THIS PROVISION ONLY APPLIES IF THE CITY IS RECEIVING FEDERAL FUNDS]

- 19.1 31 USCS Section 1352 requires all subgrantees, Contractors, Subcontractors, and consultants/Architects who receive federal funds via the City to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the award of any federal contract, grant, loan, or cooperative agreements.

19.2 In addition, contract applicants, recipients, and subrecipients must file a form disclosing any expenditure they make for lobbying out of non-federal funds during the contract period.

19.3 Necessary forms are available from the City and must be returned to the City with other Contract Documents. It is the responsibility of the general contractor to obtain executed forms from any Subcontractors who fall within the provisions of the Code and to provide the City with the same.

20. RELATIONS WITH OTHER CONTRACTORS:

20.1 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.

20.2 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.

20.3 Other projects the Contractor may have to coordinate shall be listed in the Special Conditions.

20.4 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.

20.5 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

21. RIGHT OF CITY TO TERMINATE

21.1 If the Contractor persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, or supply enough properly skilled workers, supervisory personnel or proper equipment or materials, or if it fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or if this Contract is assigned by Contractor without authorization or if Contractor is adjudged as bankrupt, or if a general assignment of assets be made for the

benefit of creditors; or if a receiver is appointed, or otherwise is guilty of a substantial violation of a provision of this Contract, then the City may by written notice to the Contractor, without prejudice to any right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor and its surety shall be liable to the City for all excess cost sustained by the City because of such prosecution and completion including any additional legal, Project Manager or bid-letting costs therefore. In such case, the Contractor shall not be entitled to receive further payment. In the event the Contractor is found in a court of law to have been wrongfully terminated for cause, then such termination shall be deemed a termination for convenience and the Contractor shall be compensated as provided herein. Any termination of the Agreement for alleged default by Contractor that is ultimately determined to be unjustified shall automatically be deemed a termination for convenience of the City.

- 21.2 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, consequential damages or other costs other than direct costs of demobilization.

22. MISCELLANEOUS:

- 22.1 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.
- 22.2 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.
- 22.3 Provision for Emergencies. Whenever, in the opinion of the City, the Contractor has not taken sufficient precaution for the safety of the public or the protection of the Work to be constructed under this Contract, or of adjacent structures or property which may be injured by process of construction, and whenever, in the opinion of the City, an emergency shall arise and immediate action shall be considered necessary in order to protect property interests and to avoid personal injury and/or death, then the City, with or without notice to the Contractor, shall provide suitable protection to the said interests by causing such Work to be done and materials to be furnished at places as the City may consider necessary and adequate. The cost and expense of such Work and material so furnished shall be borne by the Contractor and, if the same shall not be paid on presentation of the bills therefore, such costs shall be deducted from any amounts due or to become due the Contractor. The performance of such emergency Work shall in no way relieve the Contractor of responsibility for damages which may occur during or after such precaution has been duly taken.

- 22.4 Both the business address of the Contractor given in the Bid or proposal upon which this Contract is founded, and the Contractor's Office near the Work, is hereby designated as the places to which all notices, letters, and other communications to the Contractor may be mailed or delivered. The delivering at either of the above named addresses, or depositing in any mailbox regularly maintained by the Post Office, of any notice, letter or other communication so addressed to the Contractor, and the date of said service shall be the date of such delivery or mailing. Such addresses may be changed at any time by an instrument in writing, executed by the Contractor, presented, and delivered to the Project Manager and to the City. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or communication upon the Contractor personally.
- 22.5 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 Price 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.
- 22.6 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.
- 22.7 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.
- 22.8 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.
- 22.9 No waiver of any breach of this Contract shall be construed to be a waiver of any other subsequent breach.
- 22.10 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.
- 22.11 Without in any manner limiting Contractor's responsibilities as provided elsewhere in the Contract Documents, the Contractor shall assume full responsibility for the protection of all

- public and private property, structures, sewers, and utilities, for both above ground and underground facilities, along, beneath, above, across or near the site or sites of the Work being performed under this Agreement, 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 in place 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.
- 22.12 The Contractor shall keep fully informed of all existing and current regulations of the City, county, state, and federal 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.
- 22.13 Nothing contained in the Contract Documents 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.
- 22.14 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.
- 22.15 No action or failure to act by the City, Project Manager or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval or acquiescence in a breach hereunder, except as may be specifically agreed in writing.
- 22.16 Contractor specifically acknowledges and confirms that: (i) it has visited the site, made all inspections it deems appropriate and has read and fully understands the Contract Documents, including all obligations and responsibilities undertaken by it as specified herein and in other Contract Documents and knowingly accepts the same; (ii) it has furnished copies of all Contract Documents to its insurance carrier(s) and its surety(ies); and (iii) its 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.
- 22.17 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.
- 22.18 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. Venue of any litigation arising in connection with this Agreement shall be the State courts of Johnson County, Kansas.

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

Vance Brothers, Inc.

(typed company name)

By: _____
(signed)

By: _____
(signed)

Eric Mikkelson

(typed name)

Mayor

(typed title)

City of Prairie Village

Vance Brothers, Inc.

(typed company name)

7700 Mission Road

5201 Brighton, PO Box 3000107

(typed address)

Prairie Village, Kansas 66208

Kansas City, MO 64130-0107

(typed city, state, zip)

816-823-4325

(typed telephone number)

(date of execution)

(date of execution)

SEAL

ATTEST:

APPROVED BY:

City Clerk, Adam Geffert

City Attorney, David Waters

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



PUBLIC WORKS DEPARTMENT

Council Meeting Date: April 1, 2019

COU2019-23

CONSIDER CONSTRUCTION CONTRACT FOR THE 2019 RESIDENTIAL STREET REHABILITATION PROGRAM

RECOMMENDATION

Move to authorize the Mayor to sign the construction contract with O'Donnell and Sons Construction for the 2019 Residential Street Rehabilitation Program for \$2,750,000.

BACKGROUND

This project includes work on many streets throughout the City and includes new curb/gutter, sidewalk, and an asphalt mill and overlay. It is funded by the 2019 Paving Program.

On May 7, 2018, the Governing Body authorized staff to bring a contract before Council with a selected Contractor for award for the 2018-2020 Paving Program. The Contractor, O'Donnell and Sons was selected based on an evaluation of services and competitive pricing from 2015-2018.

This is our second year of the three year process. The City Staff is pleased with the response from the Contractor on any issue during construction to date and on their proactive on-street public meetings with residents prior to construction. We also utilize the "one-stop" email for residents which allows them to email pvstreets@odonnell-sons.com to put them in contact with representatives from the Contractor and the City which resolves their issues or answers questions in a timely fashion.

The Engineer and City Staff have reviewed the bid proposal submitted for the 2019 Program and has confirmed the reasonableness of the offered unit pricing based upon established bids from neighboring communities for projects of similar nature.

FUNDING SOURCES

2019 Residential Street Rehabilitation Program (PAVP2019)	\$2,750,000
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ATTACHMENTS

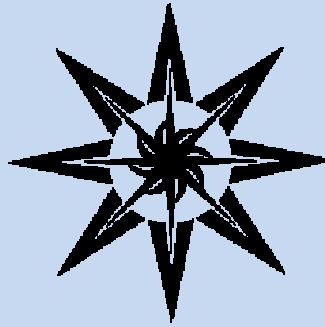
1. Construction Agreement with O'Donnell and Sons Construction
2. Map of 2019 Paving Program

PREPARED BY

Melissa Prenger, Senior Project Manager

March 27, 2019

CONSTRUCTION AGREEMENT



**PAVP2019
2019 RESIDENTIAL STREET PROGRAM**

BETWEEN

CITY OF PRAIRIE VILLAGE, KS

AND

O'DONNELL AND SONS CONSTRUCTION

CONSTRUCTION CONTRACT
FOR
PAVP2019 | 2019 RESIDENTIAL STREET PROGRAM

BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
O'DONNELL AND SONS CONSTRUCTION

THIS AGREEMENT, is made and entered into this ____ day of _____, 20____, by and between the City of Prairie Village, Kansas, hereinafter termed the "**City**", and O'Donnell and Sons Construction, hereinafter termed in this agreement, "**Contractor**", for the construction and completion of Project 2019 RESIDENTIAL STREET PROGRAM, (the "**Project**") designated, described and required by the Project Manual and Bid Proposal, to wit:

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;

WHEREAS, the Contractor, in response to the advertisement, has submitted to the City in the manner and at the time specified, a sealed Bid Proposal in accordance with the Bid Documents;

WHEREAS, the City, in the manner prescribed by law, has publicly opened, examined and canvassed the Bid Proposals submitted, and as a result of such canvass has determined and declared the Contractor to be the lowest and best responsible bidder for the construction 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 set forth herein;

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 Contract Documents; 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;

NOW, THEREFORE, 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:

1. **DEFINITIONS:** Capitalized terms not defined herein shall have the meanings set forth in the General Conditions.

1.1 Following words are given these definitions:

ADVERSE WEATHER shall have the meaning set forth in Section 9.3 hereof.

APPLICATION FOR PAYMENT shall mean a written request for compensation for Work performed on forms approved by the City.

BID shall mean a complete and properly signed proposal to do the Work or designated portion thereof, for the price stipulated therein, submitted in accordance with the Bid Documents.

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

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

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

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

CERTIFICATE FOR PAYMENT shall mean written certification from the Project Manager stating that to the best of the project manager's knowledge, information and belief, and on the basis of the Project Manager's on-site visits and inspections, the Work described in an Application for Payment has been completed in accordance with the terms and conditions of the Contract Documents and that the amount requested in the Application for Payment is due and payable.

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 consist of (but not necessarily be limited to) the Plans, the Specifications, all addenda issued prior to and all modifications issued after execution of this Agreement, (modifications consisting of written amendments to the Agreement signed by both parties, Change Orders, written orders for minor changes in the Work issued by the Project Manager) this Construction Contract between the City and Contractor (sometimes referred to herein as the "**Agreement**"), the accepted Bid Proposal, Contractor's Performance Bond, Contractor's Maintenance Bond, Statutory Bond, the Project Manual, the General Conditions, the Special Conditions and any other documents that have bearing the Work prescribed in the Project. It is understood that the Work shall be carried out and the Project shall be constructed fully in accordance with the Contract Documents.

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.

FIELD ORDER shall mean a written order issued by the Project Manager that orders minor changes in the Work, but which does not involve a change in the Contract Price or Contract Time.

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.

GENERAL CONDITIONS shall mean the provisions in the document titled "General Conditions - General Construction Provisions" attached hereto and incorporation herein by reference.

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

NOTICE 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 Shop Drawings which may have been prepared by or for the City as included in the Project Manual or submitted by the Contractor to the City during the progress of the Work, all of which show the character and scope of the work to be performed.

PROJECT shall mean the Project identified in the first paragraph hereof.

PROJECT MANAGER shall mean the person appointed by the Public Works Director for this Contract.

PROJECT MANUAL shall contain the General Conditions, Special Conditions, Specifications, Shop Drawings and Plans for accomplishing the work.

PROJECT SEGMENTS shall have the meaning set forth in Section 7.1 hereof.

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

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

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

SPECIAL CONDITIONS shall mean the provisions in the document titled "Special Conditions" attached hereto and incorporation herein by reference.

SUBCONTRACTOR 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 mean all elements of a Project Segment or the Total Project Work is complete including all subsidiary items and "punch-list" items.

TOTAL PROJECT WORK shall have the meaning set forth in Section 7.1 hereof.

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.

UNUSUALLY SEVERE WEATHER SHALL have the meaning set forth in Section 9.4 hereof.

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

WORK SCHEDULE shall have the meaning set forth in Section 7.2 hereof.

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

2. ENTIRE AGREEMENT:

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.

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 time limits stated in the Contract Documents are of the essence of the Contract.
- 3.3 The Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

- 3.4 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.
- 3.5 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents and shall give written notice to the Project Manager of any inconsistency, ambiguity, error or omission, which the Contractor may discover, or should have discovered, with respect to these documents before proceeding with the affected Work. The review, issuance, or the express or implied approval by the City or the Project Manager of the Contract Documents shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such review be evidence of the Contractor's compliance with this Contract.
- 3.6 The City has prepared or caused to have prepared the Project Manual. **HOWEVER, THE CITY MAKES NO REPRESENTATION OR WARRANTY AS TO ACCURACY OR FITNESS FOR PARTICULAR PURPOSE INTENDED OR ANY OTHER WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the City concerning such documents as no such representation or warranties have been made or are hereby made.
- 3.7 As between numbers and scaled measurements in the Project Manual, the numbers shall govern; as between larger scale and smaller scale drawings, (e.g. 10:1 is larger than 100:1) the larger scale shall govern.
- 3.8 The organization of the Project Manual into divisions, sections, paragraphs, articles (or other categories), shall not control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.
- 3.9 The Contract Documents supersedes all previous agreements and understandings between the parties, and renders all previous agreements and understandings void relative to these Contract Documents.
- 3.10 Should anything be omitted from the Project Manual, which is necessary to a clear understanding of the Work, or should it appear various instructions are in conflict, the Contractor shall secure written instructions from the Project Manager before proceeding with the construction affected by such omissions or discrepancies.
- 3.11 It is understood and agreed that the Work shall be performed and completed according to the true spirit, meaning, and intent of the Contract Documents.
- 3.12 The Contractor's responsibility for construction covered by conflicting requirements, not provided for by addendum prior to the time of opening Bids for the Work represented thereby, shall not extend beyond the construction in conformity with the less expensive of the said conflicting requirements. Any increase in cost of Work required to be done in excess of the less expensive work of the conflicting requirements will be paid for as extra work as provided for herein.

- 3.13 The apparent silence of the Project Manual as to any detail, or the apparent omission from them of a detailed description concerning any point, shall be regarded as meaning that only the best general practice is to be used. All interpretations of the Project Manual shall be made on the basis above stated.
- 3.14 The conditions set forth herein are general in scope and are intended to contain requirements and conditions generally required in the Work, but may contain conditions or requirements which will not be required in the performance of the Work under contract and which therefore are not applicable thereto. Where any stipulation or requirement set forth herein applies to any such non-existing condition, and is not applicable to the Work under contract, such stipulation or requirement will have no meaning relative to the performance of said Work.
- 3.15 KSA 16-113 requires that non-resident contractors appoint an agent for the service of process in Kansas. The executed appointment must then be filed with the Secretary of State, Topeka, Kansas. Failure to comply with this requirement shall disqualify the Contractor for the awarding of this Contract.

4. 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 TWO MILLION SEVEN HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$2,750,000.00) 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.

5. WORK SUPERINTENDENT

- 5.1 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.
- 5.2 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.
- 5.3 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.
- 5.4 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.

5.5 The Contractor will be required to contact the Project Manager daily to advise whether and/or where the Contractor and/or the Subcontractor's crews will be working that day, in order that the Project Manager's representative is able to monitor properly the Work.

6. PROJECT MANAGER

6.1 It is mutually agreed by and between the parties to this Agreement that the Project Manager shall act as the representative of the City and shall observe and inspect, as required, the Work included herein.

6.2 In order to prevent delays and disputes and to discourage litigation, it is further agreed by and between the parties to this Agreement that the Project Manager shall, in good faith and to the best of its ability, determine the amount and quantities of the several kinds of work which are to be paid for under this Contract; that the Project Manager shall determine, where applicable, questions in relation to said Work and the construction thereof; that Project Manager shall, where applicable decide questions which may arise relative to the execution of this Contract on the part of said Contractor; that the Project Manager's decisions and findings shall be the conditions precedent to the rights of the parties hereto, to any action on the Contract, and to any rights of the Contractor to receive any money under this Contract provided, however, that should the Project Manager render any decision or give any direction which, in the opinion of either party hereto, is not in accordance with the meaning and intent of this Contract, either party may file with the Project Manager and with the other party, within thirty (30) days a written objection to the decision or direction so rendered and, by such action, may reserve the right to submit the question to determination in the future.

6.3 The Project Manager, unless otherwise directed or agreed to by the City in writing, will perform those duties and discharge those responsibilities allocated to the Project Manager as set forth in this Contract. The Project Manager shall be the City's representative from the effective date of this Contract until final payment has been made. The Project Manager shall be authorized to act on behalf of the City only to the extent provided in this Contract. The City and Project Manager may, from time to time, designate Inspectors to perform such functions.

6.4 The City and the Contractor shall communicate with each other in the first instance through the Project Manager.

6.5 The Project Manager shall be the initial interpreter of the requirements of the Project Manual and the judge of the performance by the Contractor. The Project Manager shall render written graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.

6.6 The Project Manager will review the Contractor's Applications for Payment and will certify to the City for payment to the Contractor those amounts then due the Contractor as provided in this Contract. The Project Manager's recommendation of any payment requested in an Application for Payment will constitute a representation by Project Manager to City, based on Project Manager's on-site observations of the Work in progress as an experienced and qualified design professional and on Project Manager's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of the Project Manager's knowledge, information and belief, the quality of the Work is in accordance with the Project Manual (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of

any subsequent tests called for in the Project Manual, to a final determination of quantities and classifications for Unit Price Work if such is called for herein, and to any other qualifications stated in the recommendation); and that Contractor is entitled to payment of the amount recommended. However, by recommending any such payment Project Manager will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to Project Manager in the Project Manual or that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by the City or the City to withhold payment to Contractor.

- 6.7 The Project Manager may refuse to recommend the whole or any part of any payment if, in Project Manager's opinion, it would be incorrect to make such representations to City. Project Manager may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in the Project Manager's opinion to protect the City from loss because:
- The Work is defective, or completed Work has been damaged requiring correction or replacement,
 - The Contract Price has been reduced by Written Amendment or Change Order,
 - The City has been required to correct Defective Work or complete Work in accordance with the Project Manual.
- 6.8 The City may refuse to make payment of the full amount recommended by the Project Manager because claims have been made against City on account of Contractor's performance or furnishing of the Work or liens have been filed in connection with the Work or there are other items entitling City to a set-off against the amount recommended, but City must give Contractor written notice (with a copy to Project Manager) stating the reasons for such action.
- 6.9 The Project Manager will have the authority to reject Work which is defective or does not conform to the requirements of this Contract. If the Project Manager deems it necessary or advisable, the Project Manager shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.
- 6.10 The Project Manager will review, or take other appropriate action as necessary, concerning the Contractor's submittals, including Shop Drawings, Product Data and Samples. Such review, or other action, shall be for the sole purpose of determining general conformance with the design concept and information given through the Project Manual.
- 6.11 The Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 6.12 The Project Manager, upon written request from the Contractor shall conduct observations to determine the dates of Substantial Completion, Total Completion and the date of Final Acceptance. The Project Manager will receive and forward to the City for the City's review and records, written warranties and related documents from the Contractor required by this

- Contract and will issue a final Certificate for Payment to the City upon compliance with the requirements of this Contract.
- 6.13 The Project Manager's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.
- 6.14 The Project Manager will **NOT** be responsible for Contractor's means, methods, techniques, sequences, or procedures or construction, or the safety precautions and programs incident thereto and will not be responsible for Contractor's failure to perform the Work in accordance with the Project Manual. The Project Manager will not be responsible for the acts or omissions of the Contractor or any Subcontractor or any of its or their agents or employees, or any other person at the site or otherwise performing any of the Work except as may otherwise be provided.
- 6.15 Any plan or method of work suggested by the Project Manager, or other representatives of the City, to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor, and the Project Manager and the City will assume no responsibility therefore.
- 6.16 It is agreed by the Contractor that the City shall be and is hereby authorized to appoint or employ, either directly or through the Project Manager, such City representatives or observers as the City may deem proper, to observe the materials furnished and the work performed under the Project Manual, and to see that the said materials are furnished, and the said work performed, in accordance with the Project Manual therefore. The Contractor shall furnish all reasonable aid and assistance required by the Project Manager, or by the resident representatives for proper observation and examination of the Work and all parts thereof.
- 6.17 The Contractor shall comply with any interpretation of the Project Manual by the Project Manager, or any resident representative or observer so appointed, when the same are consistent with the obligations of the Project Manual. However, should the Contractor object to any interpretation given by any subordinate Project Manager, resident representative or observer, the Contractor may appeal in writing to the City Director of Public Works for a decision.
- 6.18 Resident representatives, observers, and other properly authorized representatives of the City or Project Manager shall be free at all times to perform their duties, and intimidation or attempted intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the City so decides, to annul the Contract.
- 6.19 Such observation shall not relieve the Contractor from any obligation to perform said Work strictly in accordance with the Project Manual.
- 7. WORK SCHEDULE:**
- 7.1 The Work 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 Contract Time shall be stated in the Contract Documents for both the Total Project Work and, when applicable, the Project Segments.
- 7.2 At the time of execution of this Contract, the Contractor shall furnish the Project Manager with a schedule ("**Work 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

Project Segments will be started and completed within the Contract Time. The Work Schedule is subject to approval by the City.

- 7.3 Monthly Work Schedule reports shall accompany the Contractor's pay request for Work completed. Where the Contractor is shown to be behind schedule, it shall provide an accompanying written summary, cause, and explanation of planned remedial action. Payments or portions of payments may be withheld by the City upon failure to maintain scheduled progress of the Work as shown on the approved Work Schedule.
- 7.4 At a minimum the Contractor shall update and submit the Work Schedule for review weekly, unless otherwise agreed upon by the City.
- 7.5 The Contractor, within ten (10) calendar days after being instructed to do so in a written notice from the City, shall commence the Work to be done under this Contract.
- 7.6 If at any time, in the opinion of the Project Manager or City, proper progress is not being maintained; changes shall be proposed in the Work Schedule and resubmitted for consideration and approval.
- 7.7 If the Contractor has not completed Project Segments and is within a non-performance penalty period, it shall not be allowed to undertake a new Project Segment until the Project Segment in dispute is completed, unless expressly permitted by the City.
- 7.8 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.
- 7.9 No work shall be undertaken on Saturdays, Sundays and Holidays (Christmas, New Years, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day and Thanksgiving) without the express written approval of the City Project Manager. If it is necessary to perform proper care, maintenance, or protection of work already completed or of equipment used, or in the case of an emergency verbal permission may be obtained through the Project Manager.
- 7.10 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.
- 7.11 The Contractor shall provide 24 hours notice prior to commencing any work to the City Project Manager. The Contractor shall communicate immediately any changes in the Work Schedule to the Project Manager for approval by the City.

8. DELAYS AND EXTENSIONS OF TIME

- 8.1 In executing the Contract, the Contractor expressly covenants and agrees that, in undertaking the completion of the Work within the Contract Time, it 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.

8.2 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 persons 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 it shall in such cases be entitled to such extension of the time specified for the completion of the Work as the City and the Project Manager shall award in writing on account of such delays, provided, however, that claim for such extension of time is made by the Contractor to the City and the Project Manager in writing within one (1) week from the time when any such alleged cause for delay shall occur.

9. ADVERSE WEATHER:

9.1 Extensions of time for Adverse Weather shall be granted only under the conditions as hereinafter provided.

9.2 For conditions of weather or conditions at the site, so unusual as not to be reasonably anticipated, as determined by the Project Manager, an average or usual number of inclement days when work cannot proceed are to be anticipated during the construction period and are not to be considered as warranting extension of time.

9.3 “**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.

9.4 “**Unusually Severe Weather**” is defined as weather, which is more severe than the adverse weather anticipated for the season, location, or activity involved.

9.5 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 all 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.

9.6 The following schedule of monthly-anticipated Adverse Weather delays will constitute the baseline for monthly weather time evaluations. The Contractor’s Work 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

- 9.7 Upon receipt of the Notice to Proceed, and continuing throughout the Contract, the Contractor shall record on its daily construction report, the occurrence of Adverse Weather and resultant impact to the Work Schedule.
- 9.8 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.
- 9.9 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.
- 9.10 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 Work Schedule.
- 9.11 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.
- 9.12 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.
- 9.13 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.
- 9.14 The Contractor shall summarize and report all actual Adverse Weather delay days for each month to the Project Manager by the tenth (10th) day of the following month. A narrative indicating the impact of Adverse Weather conditions on the Work Schedule shall be included.
- 9.15 Any claim for extension of time due to Unusually Severe Weather shall be submitted to the Project Manager within 7 days of the last day of the commencement of the event giving rise to the delay occurred. Resolution of any claim shall follow the procedures described above.
- 9.16 The Contractor shall include and indicate the monthly-anticipated Adverse Weather days, listed above, in the Work Schedule. (Reference Section 7.1 for Work Schedule requirements)
- 9.17 The Contractor shall indicate the approved Adverse Weather days (whether less or more than the anticipated days) in its Work Schedule updates.

10. LIQUIDATED DAMAGES

- 10.1 Contractor agrees that time is of the essence and any term pertaining to Contractor timely performing so as to achieve Total Completion within the Contract Time 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 Contract Time for the Total Project Work 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 Contract Time. Such amount shall be deducted from any amounts due Contractor under this Agreement.

- 10.2 Further, the Contractor agrees that, in the event Contractor does not carry out such Work at such rates of progress as required by the Work Schedule approved by the City, 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.

11. PAYMENT PROCEDURE

- 11.1 Based upon Applications for Payment submitted to the Project Manager by the Contractor and Certificates for Payment issued by the Project Manager, the City shall make progress payments on account of the contract sum to the Contractor as provided below and elsewhere in the Contract Documents.
- 11.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month or on a mutually agreed date by City and Contractor.
- 11.3 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.
- 11.4 Each application for payment must be submitted with Contractor's waiver for period of construction covered by application. Each Application for 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.
- 11.5 The Contractor will submit waivers on forms, and executed in a manner, acceptable to City.
- 11.6 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.
- 11.7 The Project Manager will, upon receipt of a written Application for Payment from the Contractor, review the amount of Work performed during the preceding period and the value thereof at the unit prices contracted. From the amounts so ascertained, there shall be deducted ten percent (10%) to be retained until after final completion of the entire Work to the satisfaction of the City. The Project Manager will submit an estimate each month to the City for payment to the Contractor, except that no amount less than \$500.00 will be submitted unless the total amount of the Contract remaining unpaid is less than \$500.00.
- 11.8 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 Price. Percentage deductions will be computed at the stated percentage of the amount earned.
- 11.9 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.
- 11.10 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.
- 11.11 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.
- 11.12 Neither the observation by the City or any of the City's officials, employees, or agents, nor any order by the City for payment of money, nor any payment for, or acceptance of, the whole or any part of the Work by the City or Project Manager, nor any extension of time, nor

any possession taken by the City or its employees, shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the City, or any right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of any other or subsequent breach.

12. COMPLETION AND FINAL PAYMENT

- 12.1 Upon Total Completion, when the Contractor is ready for a final inspection of the Total Project Work, it shall notify the City and the Project Manager thereof in writing. Thereupon, the Project Manager will make final inspection of the Work and, if the Work is complete in accordance with this Contract, the Project Manager will promptly issue a final Certificate for Payment certifying to the City that the Work is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Project Manager is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s), which cost may be deducted by the City from the Contractor's full payment.
- 12.2 The Contractor shall not be entitled to any payment unless and until it submits to the Project Manager its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the City, or the City's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors and Suppliers of the Contractor and of any and all other parties required by the City; and consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the City, the Contractor shall furnish a bond satisfactory to the City to discharge any such lien or indemnify the City from liability.
- 12.3 The City shall make final payment of all sums due the Contractor within thirty days of the Project Manager's execution of a final Certificate for Payment.
- 12.4 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.

13. CLAIMS BY THE CONTRACTOR

- 13.1 All Contractor claims shall be initiated by written notice and claim to the Project Manager. Such written notice and claim must be furnished within seven calendar days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.
- 13.2 The Contractor shall diligently proceed with performance of this Contract whether or not there be such a claim pending and the City shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim shall be reflected by a Change Order executed by the City, the Project Manager and the Contractor.
- 13.3 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.
- 13.4 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.
- 13.5 The City reserves the right to increase or decrease quantities, and alter the details of construction including grade and alignment as the Project Manager may consider necessary or desirable, by approved Change Order. Such modifications shall not invalidate the Contract nor release the surety. Unless such alterations and increases or decreases change the total cost of the Work, based on the originally estimated quantities and the unit prices bid, by more than 25 percent, or change the total cost of any major item, based on the originally estimated quantities and the unit price bid, by more than 25 percent, the Contractor shall perform the work altered, increased or decreased, at a negotiated price or prices. (A major item shall mean any bid item, the total cost of which exceeds 12-1/2 percent of the total Contract Price based on the proposed quantity and the contract unit price).
- 13.6 When the alterations cause an increase or decrease in excess of the 25 percent indicated above, either the Contractor or the Project Manager may request an adjustment of the unit price to be paid for the item or items.
- 13.7 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.
- 13.8 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.
- 13.9 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.

- 13.10 The Contractor shall delay or suspend the progress of the work or any part thereof, whenever so required by written order of the City, and for such periods of time as required; provided, that in the event of such delay or delays or of such suspension or suspensions of the progress of the work, or any part thereof, the time for completion of work so suspended or of work so delayed by such suspension or suspensions shall be extended for a period equivalent to the time lost by reason of such suspension or suspensions; but such order of the City or Project Manager shall not otherwise modify or invalidate in any way, any of the provisions of this Contract. In the event that the work shall be stopped by written order of the City, any expense, which, in the sole opinion and judgment of the City, is caused by the City, shall be paid by the City to the Contractor.
- 13.11 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.
- 13.12 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

14. CHANGES IN THE WORK

- 14.1 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.
- 14.2 The Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 14.3 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.
- 14.4 If no mutual agreement occurs between the City and the Contractor relative to a change in the Work, the Contractor shall proceed with the Work that is the subject of the Change Order, and the change in the Contract Price, if any, shall then be determined by the Project Manager on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content to the City, as the Project Manager requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order.

Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies or equipment, including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools, whether rented from the Contractor or others, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and job site field office overhead directly attributable to the change. In no event shall any standby time or any expenditure or savings associated with the Contractor's home office or other non-job site overhead expense be included in any change in the Contract Price. Further, in no event shall the Contractor's overhead expense exceed ten (10%) percent of the reasonable expenditures. Pending final determination of reasonable expenditures or savings to the City, payments on account shall be made to the Contractor on the Project Manager's Certificate for Payment.

- 14.5 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.
- 14.6 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.

15. INSURANCE AND BONDS.

- 15.1 The Contractor shall secure and maintain, throughout the duration of the agreement, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Contractor shall provide certificates of insurance and renewals thereof on forms acceptable to the City. The City shall be notified by receipt of written notice from the insurer or the Contractor at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.
- 15.2 The Contractor, upon receipt of notice of any claim in connection with this Agreement, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability. The Contractor shall monitor and promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by the Contract Documents) if the Contractor's limits of protection shall have been impaired or reduced to such extent that the limits fall below the minimum amounts required herein. The Contractor shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

15.3 Minimum Requirements Commercial General Liability Policy Limits -

General Aggregate:	\$2,000,000
Products / Completed Operations Aggregate:	\$2,000,000
Personal & Advertising Injury:	\$1,000,000
Each Occurrence:	\$1,000,000

Policy MUST include the following conditions:

- A. Pollution Liability (Applicable only to contracts involving pollutants such as asbestos & lead abatement, sludge or other waste abatement, etc.)
- B. NAME CITY OF PRAIRIE VILLAGE AS “ADDITIONAL INSURED”
- 15.4 Automobile Liability Policy shall protect the Contractor against claims for bodily injury and/or property damage arising from the ownership or use of any owned, hired and/or non-owned vehicle.
- Limits (Same as Commercial General Liability) -
 Combined Single Limits, Bodily Injury and Property Damage - Each Accident:
 Policy MUST include the following condition:
 NAME CITY OF PRAIRIE VILLAGE AS “ADDITIONAL INSURED”
- 15.5 Umbrella Liability. The Umbrella / Excess Liability must be at least as broad as the underlying general liability and automobile liability policies.
- Limits -
- | | |
|-------------------|-------------|
| Each Occurrence | \$1,000,000 |
| General Aggregate | \$1,000,000 |
- 15.6 Workers' Compensation. This insurance shall protect the Contractor against all claims under applicable state workers' 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 workers' compensation law. The policy limits shall not be less than the following:
- | | |
|---------------------------|-------------------------|
| Workers' Compensation: | Statutory |
| Employer's Liability: | |
| Bodily Injury by Accident | \$100,000 each accident |
| Bodily Injury by Disease | \$500,000 policy limit |
| Bodily Injury by Disease | \$100,000 each employee |
- 15.7 The City will only accept coverage from an insurance carrier who offers proof that it:
- Is authorized to do business in the State of Kansas;
 Carries a Best's policy holder rating of A- or better; and
 Carries at least a Class VIII financial rating, **or**
 Is a company mutually agreed upon by the City and Contractor.
- 15.8 Subcontractor's Insurance. If a part of the Agreement is to be sublet, the Contractor shall either:
- A. Cover all subcontractor's in its insurance policies, or
- B. Require each subcontractor not so covered to secure insurance which will protect subcontractor against all applicable hazards or risks of loss as and in the minimum amounts designated.

Whichever option is chosen, Contractor shall indemnify and hold harmless the City as to any and all damages, claims or losses, including attorney's fees, arising out of the acts or omissions of its Subcontractors.

- 15.9 Prior to commencing any work, Contractor shall provide City with certificates evidencing that (1) all Contractor's insurance obligations required by the contract documents are in full force and in effect and will remain in effect until Contractor has completed all of the work and has received final payment from City and (2) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to City. Contractor's property insurance shall not lapse or be canceled if City occupies a portion of the work. Contractor shall provide City with the necessary endorsements from the insurance company prior to occupying a portion of the work.
- 15.10 Waiver of Subrogation. All insurance coverage required herein shall contain a waiver of subrogation in favor of the City. Contractor's insurance policies shall be endorsed to indicate that Contractor's insurance coverage is primary and any other insurance maintained by City is non-contributing as respects the work of Contractor.
- 15.11 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 Special Conditions.
- 15.12 Bonds and Other Performance Security. Contractor shall provide a Performance Bond, Maintenance Bond and a Statutory Bond in the amount of one hundred percent (100%) of the Contract Price to cover the entire scope of Work and any other specific performance security that may be indicated in this Contract. With each bond there shall be filed with the City one copy of "Power of Attorney" certified to include the date of the bonds.

16. INDEMNITY

- 16.1 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.

- 16.2 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 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.
- 16.3 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 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.

- 16.4 Nothing in this section shall be deemed to impose liability on the Contractor to indemnify the City for Loss when the negligence or other actionable fault the City is the sole cause of Loss.
- 16.5 With respect to the City'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.

17. SUCCESSORS AND ASSIGNS

- 17.1 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.
- 17.2 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.
- 17.3 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.
- 17.4 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.
- 17.5 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.

- 17.6 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.
- 17.7 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.
- 17.8 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.

18. NON-DISCRIMINATION LAWS

- 18.1 The Contractor agrees that:
- A. The Contractor 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 contract because of race, religion, color, sex, disability, national origin, ancestry or age;
 - B. In all solicitations or advertisements for employees, the Contractor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
 - C. The Contractor further agrees that it shall abide by the Prairie Village Non Discrimination Code (Section 5-801 et seq) and shall not discriminate against any person in the performance of Work under the present contract because of sexual orientation or gender identity. If the City determines that the Contractor has violated any applicable provision of any local, state or federal law, or has discriminated against any person because of race, religion, color, sex, sexual orientation, gender identity, disability, age, national origin, or ancestry, such violation and/or discrimination shall constitute a breach of contract and the City may cancel, terminate or suspend this agreement in whole or in part. The parties do not intend this provision to subject any party to liability under local, state or federal laws unless it applies.
 - D. 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;
 - E. 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

- F. The Contractor shall include the provisions of Subsections A through D in every subcontract or purchase order so that such provisions will be binding upon such Subcontractor or vendor.
 - G. The provisions of this Section shall not apply to a contract entered into by a Contractor: (1) Who employs fewer than four employees during the term of such contract; or (2) Whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.
- 18.2 The Contractor further agrees that it 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. 12101 et seq.) as well as all other federal, state and local laws.

19. FEDERAL LOBBYING ACTIVITIES

[THIS PROVISION ONLY APPLIES IF THE CITY IS RECEIVING FEDERAL FUNDS]

- 19.1 31 USCS Section 1352 requires all subgrantees, Contractors, Subcontractors, and consultants/Architects who receive federal funds via the City to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the award of any federal contract, grant, loan, or cooperative agreements.
- 19.2 In addition, contract applicants, recipients, and subrecipients must file a form disclosing any expenditure they make for lobbying out of non-federal funds during the contract period.
- 19.3 Necessary forms are available from the City and must be returned to the City with other Contract Documents. It is the responsibility of the general contractor to obtain executed forms from any Subcontractors who fall within the provisions of the Code and to provide the City with the same.

20. RELATIONS WITH OTHER CONTRACTORS:

- 20.1 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.
- 20.2 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.

20.3 Other projects the Contractor may have to coordinate shall be listed in the Special Conditions.

- 20.4 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.
- 20.5 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.

21. RIGHT OF CITY TO TERMINATE

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

22. MISCELLANEOUS:

- 22.1 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.

- 22.2 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.
- 22.3 Provision for Emergencies. Whenever, in the opinion of the City, the Contractor has not taken sufficient precaution for the safety of the public or the protection of the Work to be constructed under this Contract, or of adjacent structures or property which may be injured by process of construction, and whenever, in the opinion of the City, an emergency shall arise and immediate action shall be considered necessary in order to protect property interests and to avoid personal injury and/or death, then the City, with or without notice to the Contractor, shall provide suitable protection to the said interests by causing such Work to be done and materials to be furnished at places as the City may consider necessary and adequate. The cost and expense of such Work and material so furnished shall be borne by the Contractor and, if the same shall not be paid on presentation of the bills therefore, such costs shall be deducted from any amounts due or to become due the Contractor. The performance of such emergency Work shall in no way relieve the Contractor of responsibility for damages which may occur during or after such precaution has been duly taken.
- 22.4 Both the business address of the Contractor given in the Bid or proposal upon which this Contract is founded, and the Contractor's Office near the Work, is hereby designated as the places to which all notices, letters, and other communications to the Contractor may be mailed or delivered. The delivering at either of the above named addresses, or depositing in any mailbox regularly maintained by the Post Office, of any notice, letter or other communication so addressed to the Contractor, and the date of said service shall be the date of such delivery or mailing. Such addresses may be changed at any time by an instrument in writing, executed by the Contractor, presented, and delivered to the Project Manager and to the City. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or communication upon the Contractor personally.
- 22.5 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 Price 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.
- 22.6 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.
- 22.7 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.
- 22.8 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.
- 22.9 No waiver of any breach of this Contract shall be construed to be a waiver of any other subsequent breach.
- 22.10 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.
- 22.11 Without in any manner limiting Contractor's responsibilities as provided elsewhere in the Contract Documents, the Contractor shall assume full responsibility for the protection of all public and private property, structures, sewers, and utilities, for both above ground and underground facilities, along, beneath, above, across or near the site or sites of the Work being performed under this Agreement, 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 in place 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.
- 22.12 The Contractor shall keep fully informed of all existing and current regulations of the City, county, state, and federal 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.
- 22.13 Nothing contained in the Contract Documents 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.
- 22.14 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.
- 22.15 No action or failure to act by the City, Project Manager or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval or acquiescence in a breach hereunder, except as may be specifically agreed in writing.
- 22.16 Contractor specifically acknowledges and confirms that: (i) it has visited the site, made all inspections it deems appropriate and has read and fully understands the Contract

Documents, including all obligations and responsibilities undertaken by it as specified herein and in other Contract Documents and knowingly accepts the same; (ii) it has furnished copies of all Contract Documents to its insurance carrier(s) and its surety(ies); and (iii) its 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.

- 22.17 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.
- 22.18 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. Venue of any litigation arising in connection with this Agreement shall be the State courts of Johnson County, Kansas.

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 AND SONS CONSTRUCTION
(typed company name)

By: _____
(signed)

By: _____
(signed)

Eric Mikkelson

Patrick O'Donnell
(typed name)

Mayor

Vice-President
(typed title)

City of Prairie Village

O'Donnell and Sons Construction
(typed company name)

7700 Mission Road

15301 Broadmoor Street
(typed address)

Prairie Village, Kansas 66208

Overland Park, Kansas 66223
(typed city, state, zip)

913-681-2155
(typed telephone number)

(date of execution)

(date of execution)

SEAL

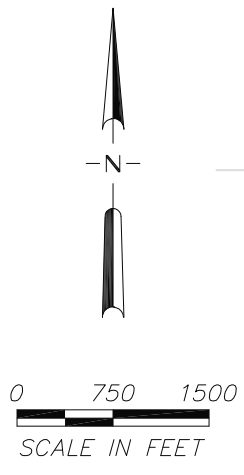
ATTEST:

APPROVED BY:

City Clerk, Adam Geffert

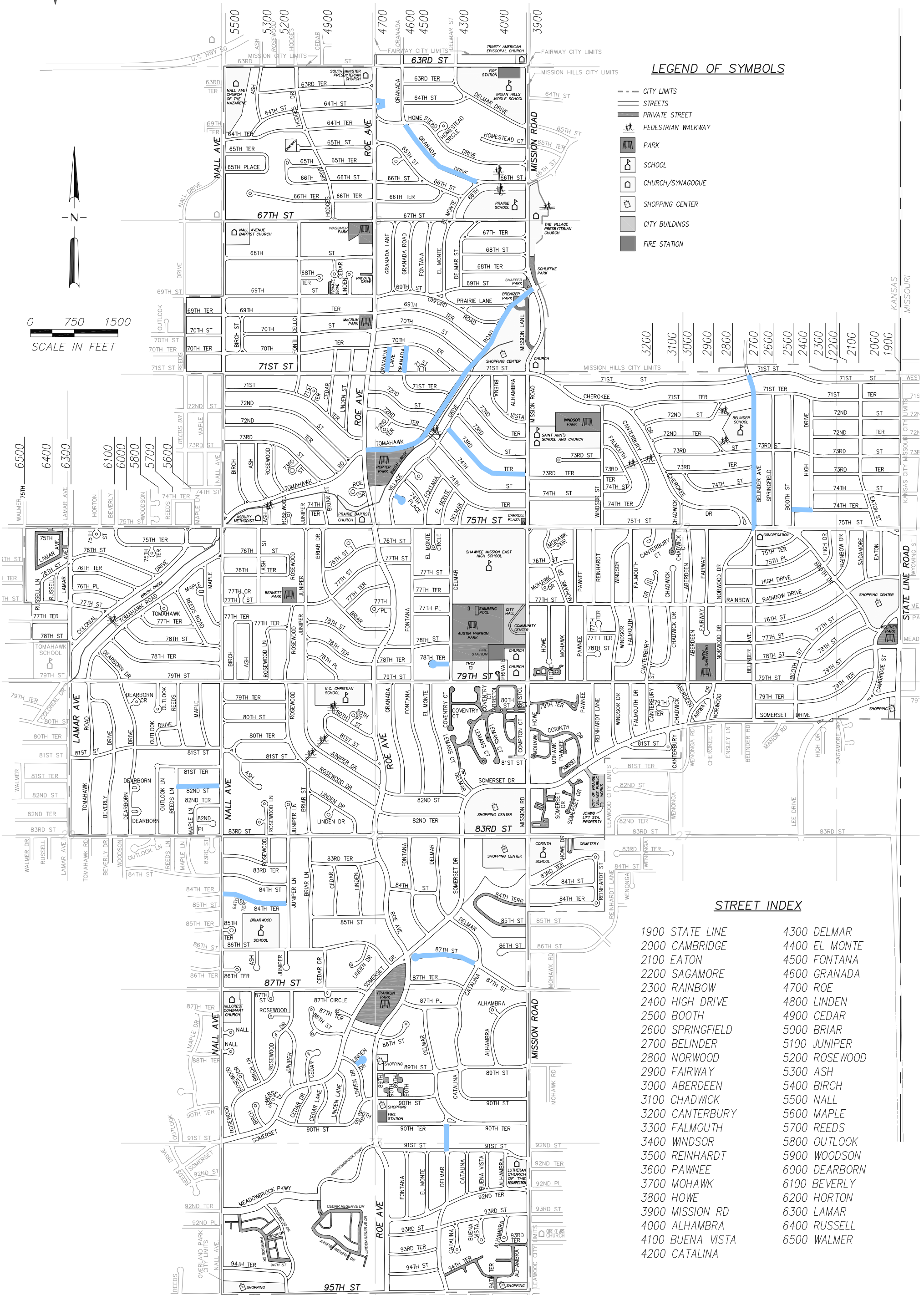
City Attorney, David Waters

(If the Contract is not executed by the President of the Corporation, general partner of the Partnership, or manager of a limited liability company, please provide documentation, which authorizes the signatory to bind the corporation, partnership or limited liability company. 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.)



LEGEND OF SYMBOLS

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

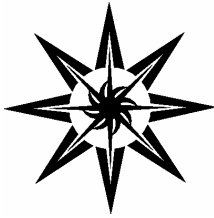


STREET INDEX

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

Prepared By:





PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: April 1, 2019

DISCUSS OPTIONS FOR IMPLEMENTATION OF THE BIKE PLAN

BACKGROUND

The Bike Pedestrian Plan approved in 2018 included significant accommodations for bikes in Prairie Village. The plan predominately calls for the installation of shared bike routes throughout the city. The plan consists of a system of shared bike routes that utilizes predominately residential streets and then there are also shared bike routes on higher level roadways that connect to the surrounding communities. The plan also calls for designated bike lanes on Nall Avenue (67th to 95th) as well as Mission Road (Tomahawk Road to 63rd Street). The discussion related to the wide sidewalk/trail from the Village Shops to 67th and Nall will be part of a future discussion with council.

The attached study developed by Affinis Corp studied several different pavement marking products and in the end the MMA (Methyl Methacrylate) pavement marking type was selected to be used to implement the bike plan. The MMA will work well on our different pavement types and will do so in a cost effective way. It is similar to paint but it is a higher quality product that will last longer. The higher dollar thermoplastic pavement markings will only be used when we have a street rehabilitation project in the future. The study also has implementation maps for the pavement markings as well as a Bike Route Sign map. The estimated total cost for implementation of the pavement markings and signs is \$200,000. It is expected that it will take two to three years to implement most of the plan. There is \$60,000 in the 2019 budget to begin installation this year which will complete about a third of the plan. Two options are show below on how to fund the rest of the implementation.

Option 1- Fund \$140,000 in 2020. This would allow for most if not all to be completed in 2020.

Option2- Fund \$70,000 in 2020 and \$70,000 in 2021. This would spread out the funding and the plan would be completed by 2021.

ATTACHMENTS

Affinis Study

PREPARED BY

Keith Bredehoeft, Public Works Director

March 27, 2019

Sharrow Implementation Plan

PREPARED FOR:

City of Prairie Village, Kansas

PREPARED BY:

Affinis Corp
Lee Baer, PE
Mike McKenna, PE, PTOE, ENV SP

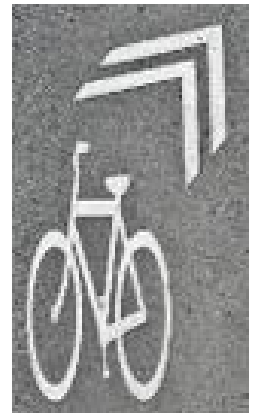
Executive Summary

The City of Prairie Village completed a citywide bike/ped plan in 2018. This plan outlines the existing conditions, public engagement undertaken for the plan preparation, where bicycle and pedestrian facilities should be located, and an action plan. This document further explains the placement, compares durability of materials, and estimates how to divide the city of Prairie Village

PLACEMENT OF SHARROWS

Sharrow pavement markings are a great way to retrofit an existing roadway with a bicycle facility. Sharrows should not be placed on roadways that have a speed limit above 35 mph. The horizontal placement of sharrows shall be in accordance with Section 9C.07 of the Manual on Uniform Traffic Control Devices (MUTCD). The MUTCD also states, "If used, the Shared Lane Marking should be placed immediately after an intersection and spaced at intervals not greater than 75 m (250 ft) thereafter." The tendency in the surrounding municipalities is to space the sharrows at 250 feet apart, while alternating sides of the roadway and direction.

The National Association of City Transportation Officials (NACTO) provides guidance on modified sharrow marking, shown to the right. These sharrows help guide bicyclists through intersections.



MATERIAL TYPE AND APPLICATIONS

Thermoplastic: Extruded Thermoplastic pavement marking is a durable marking typically applied on an asphalt surface. Extruded Thermoplastic is designed to last longer than paint and is a proven way to reduce maintenance costs.

Preformed Thermoplastic (Recommended for New Asphalt): Preformed Thermoplastic is one of the most durable pavement markings in the industry. These highly durable and reflective markings are typically used for legends, symbols, and transversal lines. It is applied using industrial heat torches and an adhesive depending on the surface it is applied to.

Cold Plastic Tape Cold Plastic Tape is a durable pavement marking used for legends, symbols, and transversal lines. Cold Plastic Tape is vulnerable to peeling during winter months due to snow plow truck blades.

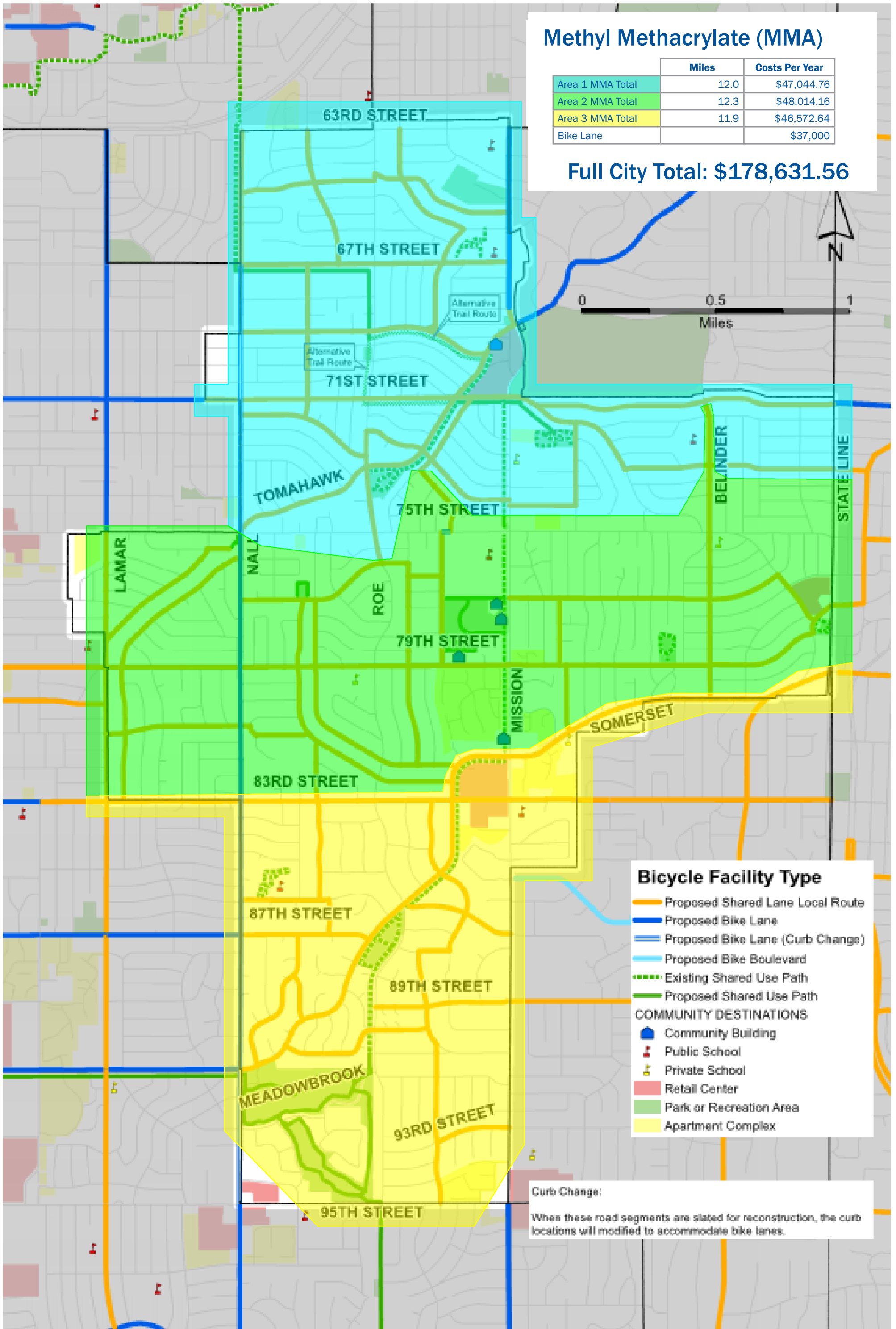
MMA (Methyl Methacrylate) (Recommended for Old Asphalt/Concrete and New Concrete): MMA based pavement markings are the most durable pavement marking materials available today. MMA can be surface applied onto asphalt (new or old) or concrete roadways. MMA can also be inlaid for longer service life. It is engineered for durable long lines as well as transverse markings, and it is durable in extreme weather conditions.

Waterborne Paint: Paint is the least expensive pavement marking on the market and is used on low volume roadways. Paint is also the least durable marking and in many cases, must be repainted annually.

Methyl Methacrylate (MMA)

	Miles	Costs Per Year
Area 1 MMA Total	12.0	\$47,044.76
Area 2 MMA Total	12.3	\$48,014.16
Area 3 MMA Total	11.9	\$46,572.64
Bike Lane		\$37,000

Full City Total: \$178,631.56



Bicycle Facility Type

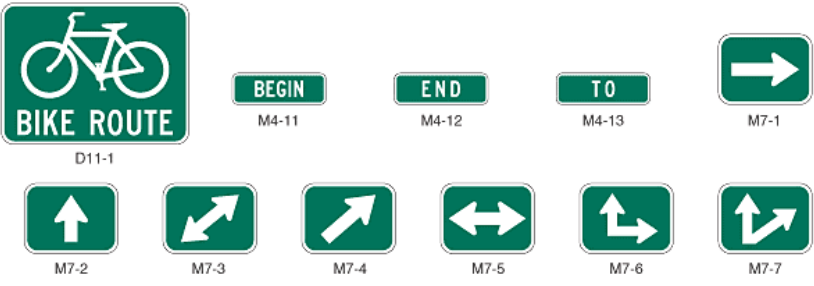
- Proposed Shared Lane Local Route
- Proposed Bike Lane
- Proposed Bike Lane (Curb Changes)
- Proposed Bike Boulevard
- Existing Shared Use Path
- Proposed Shared Use Path

COMMUNITY DESTINATIONS

- Community Building
- Public School
- Private School
- Retail Center
- Park or Recreation Area
- Apartment Complex

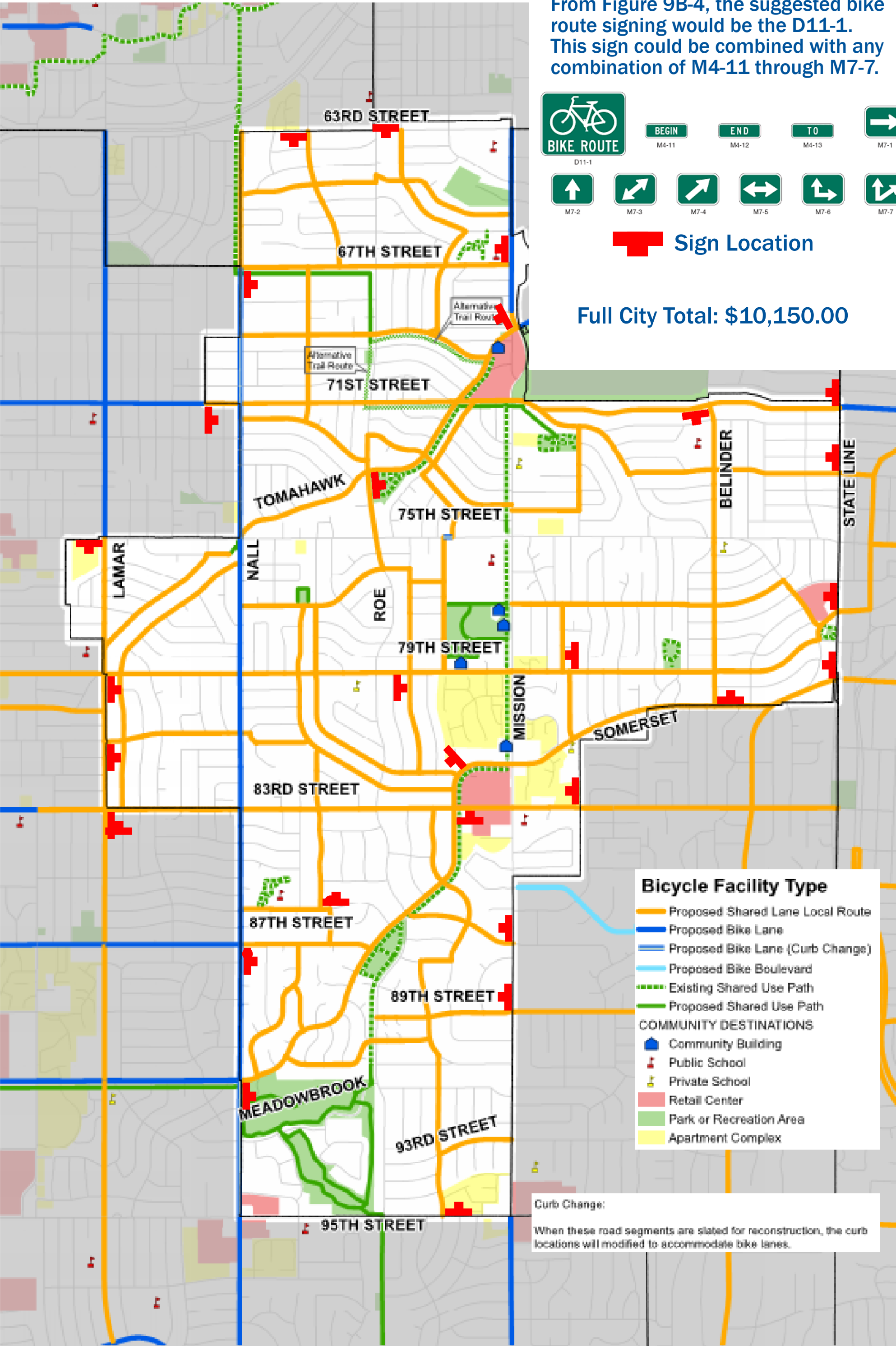
Curb Change:
 When these road segments are slated for reconstruction, the curb locations will be modified to accommodate bike lanes.

From Figure 9B-4, the suggested bike route signing would be the D11-1. This sign could be combined with any combination of M4-11 through M7-7.



 Sign Location

Full City Total: \$10,150.00





ADMINISTRATION DEPARTMENT

Council Meeting Date: April 1, 2019

Discuss Snow Angel Program

DISCUSSION

Councilmember Nelson proposes the City adopt a “Snow Angel” program for residents.

BACKGROUND

The City of Olathe coordinates a Snow Angel program to connect volunteers with elderly and disabled residents to remove snow after accumulations of 2 or more inches. Volunteers complete applications and background checks prior to participating in the program. Volunteers agree to remove snow for their assigned resident(s) within 24-48 hours.

ATTACHMENTS

Snow Brigade Blank Template Application
Snow Brigade Match Letter
Snow Brigade Volunteer Search
Snow Patrol Power Point

PREPARED BY

Adam Geffert
City Clerk

Date: March 28, 2019

Name,

Thank you so much for your interest in volunteering with the City of Olathe's Snow Brigade. We received your application on the (date the application came in). The next step is filling out a background check. The City requires all prospective volunteers 18 years and older to complete a background check prior to being approved.

The background check is a simple process and only takes a couple minutes, just follow the instructions. Once you have completed this background check process, please reply back to this email so I know it has been done.

Now, please click on the link below and create a username and password. You will then be required to acknowledge the disclosure form.

Olathe – Parks & Rec [\(insert background link here\)](#)

If you have technical issues, please contact our background screening company, Validity Screening Solutions at 1-866-915-0792.

Thank you again and we look forward to working with you.



SNOW BRIGADE

Volunteer/Resident Match

The Snow Brigade was implemented to assist our elderly and disabled citizens with snow removal in accumulation of 2 or more inches.

The City's Goal is to match residents with a volunteer in their area who would be able to clear the snow for them, so they could safely get out of their homes

Each resident's snow removal need may vary; some residents may only need their sidewalk shoveled and access to their mailbox, others may need their driveway cleared. Specifics should be relayed to each volunteer by the resident.

Volunteer services are intended to be for snow accumulation amounts of two (2) inches or more. Therefore, Volunteers will not be expected to remove snow during light snowfalls. We request that turn-around time be within 24-48 hours (after snowfall has stopped).

Please contact 913-971-XXXX or @olatheks.org if you have any questions.

Thank you

Volunteer name:

Michael and Amy Meadors



Dear Olathe Resident,

We are sending you this letter to inform you someone in your neighborhood requires snow removal assistance. The Snow Brigade was implemented to assist our elderly and disabled citizens with snow removal in accumulation of 2 or more inches.

The City's Goal is to match residents with a volunteer in their area who would be able to clear the snow for them, so they could safely get out of their homes

Each resident's snow removal need may vary; some residents may only need their sidewalk shoveled and access to their mailbox, others may need their driveway cleared. Specifics should be relayed to each volunteer by the resident.

Volunteer services are intended to be for snow accumulation amounts of two (2) inches or more. Therefore, Volunteers will not be expected to remove snow during light snowfalls. We request that turn-around time be within 24-48 hours (after snowfall has stopped).

Due to low volunteer numbers, we are reaching out to you as a neighbor to see if you would be open to joining the snow brigade. If you are willing to join the team, go to <https://www.olatheks.org/i-want-to/volunteer/individual-volunteer-application> and fill out the online application selecting parks and recreation, then snow brigade. Please contact 913-971-8788 or SGBannister@olatheks.org if you have any questions.

Thank you for considering volunteering!
Sydney



SNOW ANGELS

Proposal for a Prairie Village Volunteer Program



OLATHE, KANSAS

THE SNOW BRIGADE OPERATES AS A VOLUNTEER SERVICE FOR QUALIFYING ELDERLY OR DISABLED OLATHE RESIDENTS WHO REQUEST SNOW REMOVAL ASSISTANCE.

HOW THEIR PROGRAM WORKS

- ▶ August – September the program is promoted through the City Facebook page, newsletter, and email blast.
- ▶ Applications for volunteers and recipients are processed from Nov. 1 through Nov. 30.
- ▶ Applications received after Nov. 30 of each year will be placed on a waiting list.
- ▶ Program closes on November 30th and then volunteers assigned accordingly.
- ▶ Volunteers are activated within 24 to 48 hours when two inches, or more, of snow accumulates.
- ▶ What happens if volunteer is a no show? They are called and emailed by staff. Then reassigned to another volunteer to handle. Volunteers are very reliable and they seldom have any issues.
- ▶ There are no guarantees that every applicant will be assigned a volunteer.

VOLUNTEERS:

Apply to be a volunteer by filling out Individual Volunteer Application (available online).

- ▶ A background check will be performed.
- ▶ Applicant will receive a letter of acceptance and will then attend an orientation.
- ▶ Must complete an application every year.
- ▶ Must attempt to remove snow within 24-48 hours after snowfall.
- ▶ Comprise of individuals, families, and church groups

RECIPIENTS:

- ▶ Documentation is required for every adult living in the household to verify age (65 years of age or older) or disability (verified with a SS Disability letter, letter from a medical professional, etc.).
- ▶ Matches are based on availability of volunteers. Every effort is made to recruit volunteers to serve all qualified locations, but matches are not guaranteed.
- ▶ Must complete an application every year.
- ▶ Receive the name and type of vehicle of the volunteer.
- ▶ They will be taken care of within 24-48 hours.

STATISTICS

▶ Olathe:

- ▶ Population 137,432
- ▶ Currently signed up for program: 82 people
- ▶ 33 people are on the waiting list
- ▶ Some volunteers are assigned to one person some take more.
- ▶ 65 current volunteers
- ▶ Administrative clerk is in charge of the program
- ▶ Program started over 20 years ago

▶ Prairie Village:

- ▶ Population 21,778
- ▶ 28% of our residents over 64 years of age
- ▶ +8% increase of long term residents with 22% living here over 30 years

MAYOR'S ANNOUNCEMENTS
Monday, April 1, 2019

Committee meetings scheduled:

Planning Commission	04/02/2019	7:00 p.m.
Tree Board	04/03/2019	6:00 p.m.
Arts Council	04/10/2019	5:30 p.m.
City Council	04/15/2019	6:00 p.m.

=====

The Prairie Village Arts Council is pleased to feature The Art of Photography during the month of April. The artist reception will be held from 6 p.m. to 7 p.m. on Friday, April 12.

INFORMATIONAL ITEMS
April 1, 2019

1. JazzFest Meeting Minutes - 2/12/19
2. Village Fest Meeting Minutes - 2/28/19
3. April Plan of Action
4. Mark Your Calendar

JazzFest Committee
Meeting Minutes – February 12, 2019

In attendance

JD Kinney, Serena Schermoly, Joyce Hagen Mundy, Dave Hassett, Amanda Hassett, John Wilinski, Mike Polich, Brian Peters, Maura Coleman, Meghan Buom

Budget

JD Kinney welcomed Serena Schermoly as the new JazzFest Committee liaison to the City Council. He recapped the January meeting -- The festival has less start up cash after the rainy weather affected gate and beverage sales at the 2018 event. The proposed budget reflects a move to more local talent, a smaller stage, no food for the volunteers, and a slight pullback on marketing. On the day JazzFest occurs, all bills will be covered through the bank balance, fundraising, and the City of Prairie Village's contribution. Day of sales will seed the 2020 festival.

After discussions with Jim Barnes, the committee will also seek cost estimates from multiple vendors for tent and table rental as a potential way to save money on infrastructure. JD also asked for committee members to volunteer to head up that portion of the festival as a way to spread the workload. Mike Polich will work with Jim in that area.

Talent

JD and Alex Toepfer have been discussing 2019 acts. They agree that they don't want to skimp on talent but do want to focus on local talent to save on travel expenses.

Food

Amanda Hassett has made arrangements for food in the VIP area from McGonigle's. Dave Hassett is in the process of reaching out to food trucks for the festival.

Sponsorships

JD asked Joyce Hagen Mundy to outline her communications schedule and letters sent to potential sponsors. A letter has been drafted to send to sponsors.

Marketing

The Facebook page will be removed due to ongoing inactivity, with content to be posted through the City Hall Facebook page. There will be multiple posts on the page to transition the audience to the new location for information.

Volunteers

Maura Coleman volunteered to take over as the volunteer coordinator in 2019.

City Council Update

Serena Schermoly announced that JD will present the budget to City Council on March 18. She provided information on the potential performance pad that may be incorporated into the skate park renovation. Serena set up an account for JazzFest with Gill Studios for signage.

Other

Next meeting: March 19, 2019 at 5:30 p.m.

VillageFest Committee

February 28, 2019

Multi-Purpose Room

1. Welcome & Introductions

In attendance: Teresa Stewart, Corbin Trimble, Courtney McFadden, Ted Fritz, Amber Fletcher, Scott Oberkrom, Steve Meyer, Josh Sigler, Patty Jordan, Toby Fritz, James Carney, Joel Crown, Dale Warman, Meghan Boom

2. Approval of Minutes

Motion to approve: Steve Meyer / Second: Toby Fritz / Approved unanimously

3. 2019 event discussion

Administrative update: The large tent top needs to be replaced – the VillageFest committee agreed to split the expense with the Arts Council and the City. Meghan and James will get started on the light pole banners for VillageFest. Meghan will seek quotes for new signage along Mission Road to replace the overhead banner.

Pancake Breakfast: Dale confirmed that the Masons are willing to volunteer again this year. Meghan will arrange coffee service from Starbucks when we get closer to the event date.

Patriotic Ceremony: Dale will make arrangements with the Boy Scouts to perform the patriotic service. Corbin has arranged for Kristy Lambert to sing the anthem.

Spirit Award: Toby suggested reaching out to the HOAs in the area for potential nominations. Meghan will provide him a list.

Children's Craft area: Patty is going to reach out to Euston's Hardware about participating in the event again. The committee discussed trying to find a higher quality wood craft to use.

Balloons & Décor: No update. Patty will provide Lissa the contact for the balloon lady.

Children's Parade: No update

Slip & Slide: No update

Live Entertainment: Corbin has confirmed all entertainers. Funky Mama will not be able to participate this year, so Janie Next Door will fill her slot on the stage.

Craft Fair Vendors: Amber will take over the craft fair in 2019.

Balloon Twister: Confirmed for 2019, location will be near the face painters again.

Food Vendors: Meghan asked Josh to take over the coordination of new food vendors.

Pie Baking Contest: No update

YMCA Kids Activity: No update

Historic Display: Mr. Bones is confirmed. Ted will focus on a Native American theme in City Hall. He is hoping to secure a group of Native dancers. He is also trying to secure the presence of military vehicles for display.

Information Booth: No update

Day of Volunteers: No update

Marketing: The Facebook page will be closed down and future communications will come from the City's account.

Car Show: Steve reported that he is checking with various clubs to secure 30-40 cars to display. He would like to add a voting component to the show. Meghan will add a line to the budget to provide a prize for the winners.

Police Department/Fire Department Displays: No update

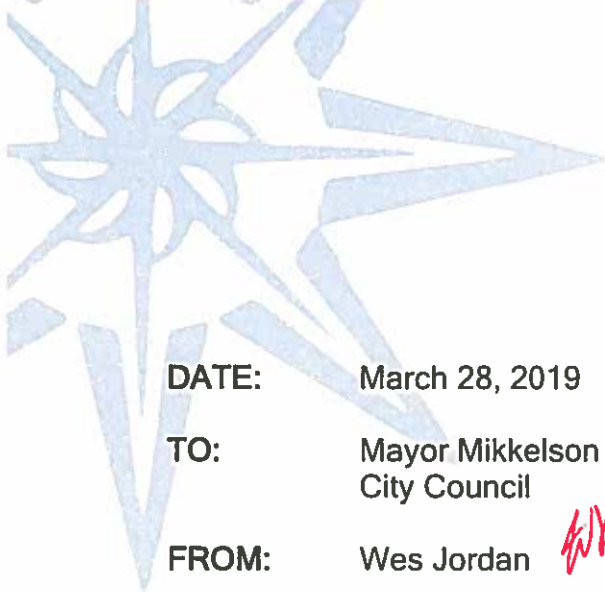
Water Sales: The WaterOne Water Wagon will be on the event grounds. The committee hopes to secure a charitable partner to sell bottles at the pancake breakfast.

Yard Games: Josh suggested adding a second set of trash can pong. James will confirm the number of trash cans we currently have.

Talent Show: no update

Little Kids Area: The committee agreed to add an area for smaller kids aged 3 and under. The details will be worked out, but potentially would have a small bounce house, bubbles, tumbling mats, hay bale barricade, etc.

Other: Steve will look into a calliope – the NKC Masons may have one.



THE CITY OF PRAIRIE VILLAGE

STAR OF KANSAS

DATE: March 28, 2019
TO: Mayor Mikkelson
City Council
FROM: Wes Jordan *WJK*
SUBJECT: APRIL PLAN OF ACTION

The following projects will be initiated during the month of April:

- Corinth South Presentation - First Washington - (04/01)
- Meadowbrook Presentation - Jeff White/Justin Duff - (04/01)
- SevenDay Proclamation - Alley (04/01)
- Vehicle Leasing Program - Keith/James (04/01)
- Chapter 1 Ordinance Amendment - David/Adam (04/01)
- PV Foundation Bylaws Amendment - Meghan/Wes (04/01)
- WIFI Bandwidth in Council Chambers - Jake (04/01)
- CTI Contract Amendment - Alley (04/01)
- Police Pension Board - Amy/Wes (04/01)
- Voya 457/401A Updates - Amy/Wes (04/01)
- MARC/LKM Salary Input Updates - Amy (04/01)
- Insurance Renewal Presentation - Lisa/Wes (04/01)
- Bike/Ped Plan Funding - Keith (04/01)
- 2020 Budget Process - Staff (04/01)
 - Department Budget Reviews by Line Item - Lisa/Wes (04/01)
 - Finance Committee Budget Review - Lisa/Wes (04/01)
 - Equipment Reserve Fund - Staff (04/01)
- Annual Finance Audit - Lisa (04/01)
- Village Voice Articles - Staff (04/01)
- Notification to Non-Selected Committee Applicants - Staff (04/01)
- Mowing Contract Abated Properties - Jamie (04/01)
- JCPRD Activity Center Tour - Alley (04/01)
- NEJC Mayors Lunch - Alley (04/01)
- Arts Council Vacancies - Jamie (04/01)

In Progress

- Website Re-design - Ashley/Alley - (03/19)
- Municipal Code Software Research - Adam/Alley (03/19)

- Pool Opening Preparations & Lifeguard Recruitment - Alley (03/19)
- Committee Volunteer Waiver Update - Staff (03/19)
- Swim Fee Review w/JCPRD - Alley (03/19)
- Property Maintenance Code Revisions - Jamie (03/19)
- Codes Support Specialist Recruitment - Jamie (03/19)
- Right-of-Way Vacation at 71st & Eaton - Jamie (03/19)
- Contractor's License Requirements/Revisions - Jamie (03/19)
- Community Center - Staff (03/19)
- 2018 Annual Report - Staff (03/19)
- Council Photos - Ashley (03/19)
- VillageFest Contracts - Meghan (03/19)
- Census 2020 - Alley (02/19)
- Council Chamber Audio Quality - Alley (02/19)
- 1st Quarter Council Priority List - Wes (12/18) *continued by Council
- New Statue Location/Foundation/Easement - Alley/Keith (07/18)
- Personnel Policy Updates - Amy (07/18)
- Service Line Warranty Program Renewal - Jamie (03/18)
- Comprehensive Traffic Study - Keith/Melissa (03/18)
- Village Voice Format Update - Ashley (02/18)
- Organization of City Records/Contracts - Adam (01/18)
- Village Vision/Comp Plan Update - Chris/Jamie/Wes (11/17)
- Council Policy Website Update - Meghan/Joyce (11/17)
- Drone Ordinance - David Waters (10/17)
- Zoning Ordinance Update on SUP's/CUP's - Chris (10/16)

Completed

- Meadowbrook TIF Update - Jeff White (03/19)
- 2020 Budget Process - Staff (03/19)
 - Council Budget Goals & Objectives
 - CIP Presentation
 - Committee Funding Requests
 - Decision Packages
 - Insurance Cost Assumptions
 - Personnel Assumptions
 - Reappraisal Projections
- Work Comp Code Classifications - Amy (03/19)
- KCP&L Future Improvements Meeting - Wes (02/19)
- Skate Park RFP Review & Selection - Keith/Melissa (02/19)
- Storm Debris Collection - Staff (02/19)
- State-Enacted CMB License Changes - Alley (01/19)
- Committee Appointments - Staff/Mayor (01/19)
- Campus Lighting - Keith/Wes (09/18)
- Solar Panel Council Presentation - Jamie (03/19)
- PV Foundation Meeting - Meghan/Wes (03/19)

- PW Building Assessment Report/Presentation - Keith/Melissa (03/19)
- 2019 Exterior Grant Applications - Penny/Jamie (03/19)
- E-Scooter Research - Alley (03/19)

**Council Members
Mark Your Calendars
April 1, 2019**

May, 2019

May 6

May 10

May 20

Featured Artists: Beth Grillo, Gary Johnson, James Kilmer

City Council Meeting

Artist Reception in the R.G. Endres Gallery

City Council Meeting

June, 2019

June 3

June 14

June 17

Featured Artists: Ted Denton, Hank Hall, P. Ebel, Maegan Kirschner

City Council Meeting

Artist Reception in the R.G. Endres Gallery

City Council Meeting

July, 2019

July 1

July 12

July 15

The Seniors Art 2019

City Council Meeting

Artist Reception in the R.G. Endres Gallery

City Council Meeting