

City Hall will remain closed to the public due to the COVID-19 pandemic.
Members of the Governing Body will participate by video call-in only.
The public will be able to view the meeting at
<https://www.facebook.com/CityofPrairieVillage>

**COUNCIL MEETING AGENDA
CITY OF PRAIRIE VILLAGE
Council Chambers
Monday, June 01, 2020
6:00 PM**

- I. **CALL TO ORDER**
- II. **ROLL CALL**
- III. **PLEDGE OF ALLEGIANCE**
- IV. **APPROVAL OF THE AGENDA**
- V. **PRESENTATIONS**

National Gun Violence Awareness Day proclamation

End of legislative session update - Stuart Little

Teen Council graduation

- VI. **PUBLIC PARTICIPATION**

All comments must be submitted in writing to cityclerk@pvkansas.com prior to 3 p.m. on June 1 to be shared with Councilmembers prior to the meeting.

- VII. **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. Approval of regular City Council meeting minutes - May 18, 2020
- 2. Approval of Expenditure Ordinance #2990
- 3. Approval of school crossing guard agreement with All City Management Services, Inc.
- 4. Approval of short-term special use permit application for farm delivery

VIII. **COMMITTEE REPORTS**

Planning Commission

PC2020-104: Consider Ordinance 2419 to approve an amendment to the special use permit for Kansas City Christian School at 4801 W. 79th Street
Chris Brewster

IX. **MAYOR'S REPORT**

X. **STAFF REPORTS**

XI. **OLD BUSINESS**

XII. **NEW BUSINESS**

COU2020-22 Consider approval of revised 2020 VillageFest budget
Meghan Boom

COU2020-23 Consider approval of contract with Metro Asphalt, Inc., for the 2020 street repair program
Keith Bredehoeft

COU2020-24 Consider approval of contract with Phoenix Concrete LLC for the 2020 concrete repair program
Keith Bredehoeft

COU2020-25 Consider making the neck down traffic calming measure installed in 2018 on 67th Street between Roe Avenue and Nall Avenue a permanent installation
Keith Bredehoeft

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

COU2020-26 Consider revisions to Solicitor Regulations - Chapter 5, Article 2
Adam Geffert

COU2020-27 Consider an amendment to Chapter II (Animal Ordinance) of the Municipal Code to allow for residents to keep chickens
Inga Selders

XIV. **ANNOUNCEMENTS**

XV. **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

National Gun Violence Awareness Day - June 5, 2020

WHEREAS, every day, more than 100 Americans are killed by gun violence and on average there are more than 13,000 gun homicides every year; and

WHEREAS, Americans are 25 times more likely to die by gun homicide than people in other high-income countries; and

WHEREAS, Kansas has 386 gun deaths every year, with a rate of 13.3 deaths per 100,000 people. 69% of all gun deaths in Kansas are suicides; and

WHEREAS, protecting public safety in the communities they serve is among a legislator's highest responsibilities; and

WHEREAS, support for the Second Amendment rights of law-abiding citizens goes hand-in-hand with keeping guns away from people that shouldn't have them; and

WHEREAS, the pandemic facing America has drastically impacted communities and individuals sheltering in place which may result in situations where access to firearms results in increased risk in intimate partner violence gun deaths, suicide by gun and unintentional shootings;

WHEREAS, in January 2013, Hadiya Pendleton, a teenager who marched in the presidential inaugural parade and was tragically shot and killed just weeks later, should be now celebrating her 23rd birthday; and

WHEREAS, to help honor Hadiya – and the more than 100 Americans whose lives are cut short every day and the countless survivors who are injured by shootings every day – a national coalition of organizations has designated June 5, 2020, the first Friday in June, as the 6th National Gun Violence Awareness Day; and

WHEREAS, the idea was inspired by a group of Hadiya's friends, who asked their classmates to commemorate her life by wearing orange; they chose this color because hunters wear orange to announce themselves to other hunters when out in the woods and orange is a color that symbolizes the value of human life; and

WHEREAS, anyone can join this campaign by pledging to Wear Orange on June 5th, the first Friday in June in 2020, to help raise awareness about gun violence; and

WHEREAS, by wearing orange on June 5, 2020 Americans will raise awareness about gun violence and honor the lives of gun violence victims and survivors; and

WHEREAS, we renew our commitment to reduce gun violence and pledge to do all we can to keep firearms out of the wrong hands, and encourage responsible gun ownership to help keep our children safe.

Now, therefore, I, Eric Mikkelson, Mayor of the City of Prairie Village, formally designate **June 5, 2020 to be National Gun Violence Awareness Day** in the City of Prairie Village, Kansas, to honor and remember all victims and survivors of gun violence and to declare that we as a country must do more to reduce gun violence.

Mayor Eric Mikkelson

Adam Geffert, City Clerk

CERTIFICATE OF ACHIEVEMENT

THIS CERTIFICATE IS AWARDED TO

Elizabeth Mikkelson

FOR PARTICIPATION AND CONTRIBUTIONS TO THE
PRAIRIE VILLAGE TEEN COUNCIL

2019-2020

Eric Mikkelson, Mayor

Adam Geffert, City Clerk

CERTIFICATE OF ACHIEVEMENT

THIS CERTIFICATE IS AWARDED TO

Harper Molen

FOR PARTICIPATION AND CONTRIBUTIONS TO THE
PRAIRIE VILLAGE TEEN COUNCIL

2019-2020

Eric Mikkelson, Mayor

Adam Geffert, City Clerk

CERTIFICATE OF ACHIEVEMENT

THIS CERTIFICATE IS AWARDED TO

Sawyer Shutts

FOR PARTICIPATION AND CONTRIBUTIONS TO THE
PRAIRIE VILLAGE TEEN COUNCIL

2019-2020

Eric Mikkelson, Mayor

Adam Geffert, City Clerk

CERTIFICATE OF ACHIEVEMENT

THIS CERTIFICATE IS AWARDED TO

WENHAN SUN

FOR PARTICIPATION AND CONTRIBUTIONS TO THE
PRAIRIE VILLAGE TEEN COUNCIL

2019-2020

Eric Mikkelson, Mayor

Adam Geffert, City Clerk



**CITY COUNCIL
CITY OF PRAIRIE VILLAGE
MAY 18, 2020**

The City Council of Prairie Village, Kansas, met in regular session on Monday, May 18, 2020, at 6:00 p.m. Due to the COVID-19 pandemic, Councilmembers attended a virtual meeting via the Zoom software platform. Mayor Mikkelson presided.

ROLL CALL

Roll was called by the City Clerk with the following Council Members in attendance remotely via Zoom: Chad Herring, Jori Nelson, Inga Selders, Ron Nelson, Tucker Poling, Bonnie Limbird, Sheila Myers, Piper Reimer, Dan Runion, Courtney McFadden, Ian Graves and Terrence Gallagher. Staff present via Zoom: Tim Schwartzkopf, Chief of Police; Keith Bredehoeft, Director of Public Works; Melissa Prenger, Public Works; City Attorney David Waters, attorney with Lathrop & Gage; Wes Jordan, City Administrator; Jamie Robichaud, Deputy City Administrator; Lisa Santa Maria, Finance Director; Meghan Buum, Assistant City Administrator; Adam Geffert, City Clerk.

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

Mrs. Myers made a motion to approve the agenda for May 18, 2020. Mr. Herring seconded the motion. A roll call vote was taken with the following votes cast: "aye": Herring, J. Nelson, Selders, R. Nelson, Poling, Limbird, Myers, Reimer, Runion, McFadden, Graves, Gallagher. The motion passed 12-0.

PRESENTATIONS

Mayor Mikkelson read a proclamation designating the week of May 17 through May 23, 2020, as "National Public Works Week".

CONSENT AGENDA

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

1. Approval of regular City Council meeting minutes - May 4, 2020

Mr. Nelson made a motion to approve the consent agenda as presented. A roll call vote was taken with the following votes cast: "aye": Herring, J. Nelson, Selders, R. Nelson, Poling, Limbird, Myers, Reimer, Runion, McFadden, Graves, Gallagher. The motion passed 12-0.



COMMITTEE REPORTS

- Mrs. McFadden stated that the Parks and Recreation Committee met on Wednesday, May 13. She noted that Public Works had begun its planting and mowing season. Additionally, the doors at the pool facility were recently repainted, plaster repair work on two of the pools was nearly complete and the leak discovered under the lap and adult pools would be evaluated later in the summer. Finally, she said that Challenger Sports had cancelled its summer activities in 2020.
- Ms. Limbird shared that the Arts Council had cancelled all of its events through June, as well as all in-person Chamber in the Chamber concerts for the remainder of the year. However, the performances may still take place and be streamed online.
- Mr. Gallagher said that the Prairie Village Foundation met on May 6, at which new members were elected and officers reelected. Annual objectives and programs, such as the Mayor's Christmas Tree and Shop with a Cop were discussed. Foundation members voted to make donations to several Prairie Village food banks and utility assistance programs.
- Mr. Herring reported that the Tree Board held a meeting on May 6, at which several subcommittees were formed. He stated that the Board was considering educational opportunities about trees in the right-of-way.

Mr. Herring added that the first meeting of the Finance Committee would be held on May 19.

MAYOR'S REPORT

- Mayor Mikkelson gave an update on the local impact of the COVID-19 pandemic, stating that the Johnson County Healthy Director had recently reported positive trends. The situation at Brighton Gardens, a long-term care facility in Prairie Village that had been particularly affected by the virus, appeared to be improving. With help from the Center for Disease Control (CDC) and the Kansas Department of Disability and Aging, the Johnson County Health Department was able to ensure expanded testing and PPE availability at the facility. Outside of Brighton Gardens, the infection rate in Prairie Village was among the lowest in the County.
- The Mayor noted that the City's reopening plan was available on the City website.
- The Mayor stated that former City Administrator Barbara Vernon, who worked for Prairie Village for over 30 years, passed away on May 15.
- The Mayor recognized graduating high school seniors in the City.
- The Mayor will moderate a webinar on "Resilient Cities" for Climate Action KC on May 28.



- The TCBY frozen yogurt shop at the Village Shops recently reopened under the name “Chill”.
- Verbena, the new restaurant in Meadowbrook Park, held a soft opening the prior weekend.

STAFF REPORTS

Public Safety

- Chief Schwartzkopf reported that on May 5, the Police Department responded to a homicide on Somerset Drive. He stated that Department Detectives were conducting an investigation, with help from law enforcement staff from Lenexa, Olathe, Leawood, the Johnson County District Attorney and the Johnson County Crime Lab.

Public Works

- Mr. Bredehoeft shared that three buildings had been demolished at the Public Works site as part of the building project. He added that the Delmar/Fontana drainage project was nearly complete.

OLD BUSINESS

There was no old business to come before the Council.

NEW BUSINESS

COU2020-17 Consider 2021-2025 CARS application

Ms. Prenger stated that in order to receive County Assistance Road System (CARS) funds, the City must annually submit an application containing a list of streets and the estimated costs to repair them. Each year, Public Works presents the five-year proposed CARS program to Council, but only commits funds to the first year of the plan. In 2021, the proposed projects include 79th Street from Roe Avenue to Lamar Avenue, and Mission Road from 85th Street to 95th Street. The Mission Road project will be completed in conjunction with the City of Leawood and Johnson County Wastewater.

Mr. Gallagher made a motion to approve the application as presented. Mr. Graves seconded the motion.

Mr. Herring asked about the status of the stormwater project on 68th Street and Mission Road, and if it would be partially funded by CARS. Ms. Prenger stated that funding for that project would come from the Stormwater Management Advisory Committee (SMAC) program, which would be discussed later in the meeting during the CIP presentation.

A roll call vote was taken with the following votes cast: “aye”: Herring, J. Nelson, Selders, R. Nelson, Poling, Limbird, Myers, Reimer, Runion, McFadden, Graves, Gallagher. The motion passed 12-0.



COU2020-18 Consider construction contract for the 2020 residential street rehabilitation program

Ms. Prenger said that the program would include new curbs, gutters, sidewalks and an asphalt overlay on streets throughout the City. The project is funded through the 2020 Residential Street Rehabilitation Program. Work will be performed by O'Donnell and Sons Construction as part of the third year of the three-year contract approved by Council in 2018. She noted that staff reviewed bids annually to ensure they remain competitive. Along with a bid of \$2,620,000 for repaving, an additional \$90,000 was included to reduce the size of a retaining wall causing sightline issues for drivers at 75th Street and Springfield Street.

Mrs. Myers made a motion to approve the contract as presented. Ms. Nelson seconded the motion. A roll call vote was taken with the following votes cast: "aye": Herring, J. Nelson, Selders, R. Nelson, Poling, Limbird, Myers, Reimer, Runion, McFadden, Graves, Gallagher. The motion passed 12-0.

COU2020-19 Consider construction administration agreement with Trekk Design Group for 2020 construction projects

Ms. Prenger stated that the City complements its own construction inspection staff with consultant inspectors each year due to workload. In 2020, Trekk staff will inspect the Reinhardt drainage project, as well as paving projects and storm drain repairs in other areas of the City. Funding will come from three CIP projects, at a total cost of \$169,673.40.

Mrs. Myers made a motion to approve the proposed construction administration agreement as presented. Mr. Gallagher seconded the motion. A roll call vote was taken with the following votes cast: "aye": Herring, J. Nelson, Selders, R. Nelson, Poling, Limbird, Myers, Reimer, Runion, McFadden, Graves, Gallagher. The motion passed 12-0.

COU2020-20 Consider Amendment #3 with McCownGordon for sanitary sewer construction at the Public Works facility

Ms. Prenger said that the third amendment to the initial agreement approved in October, 2019, would allow for the installation of a sanitary sewer for the new Public Works facility, which must be completed prior to building construction. The plans had already been finalized and approved by Johnson County Wastewater. The project cost totals \$221,341, but includes an option to abandon some existing pipe, which could reduce the total by \$10,860.



Mr. Poling made a motion to approve the amendment as presented. Ms. Reimer seconded the motion.

Ms. Limbird asked what the existing pipe was composed of, and if there would be any environmental concerns from abandoning it. Ms. Prenger stated that the pipe was made of either clay or iron, and would be filled to prevent collapse. She added that doing so would not present any environmental issues. The agreement to abandon was necessary to ensure that the change in ownership of the pipe was reflected in plans and historical records.

A roll call vote was taken with the following votes cast: “aye”: Herring, J. Nelson, Selders, R. Nelson, Poling, Limbird, Myers, Reimer, Runion, McFadden, Graves, Gallagher. The motion passed 12-0.

COU2020-21 Consider Ordinance No. 2418 regulating public offenses within the City of Prairie Village, Kansas, amending Chapter 11 (Public Offenses & Traffic), Article 2 (Local Regulations) of the code of the City of Prairie Village to require the wearing of face coverings or masks during the COVID-19 public health emergency and recovery

Mayor Mikkelson stated that Council had voted at its previous meeting to direct City Attorney David Waters to draft an Ordinance requiring the wearing of face coverings at businesses in which the public is invited. He noted that there had been a significant amount of communication from the public regarding the topic, both in favor of the Ordinance and against it.

Mr. Waters said that the Ordinance had been crafted based on examples from other cities across the country along with limitations under Kansas state law. Considerations were given to the requirements of businesses and the individuals patronizing them, as well as age requirements, penalties and physical and mental health exceptions. He added that the Ordinance as written would expire on June 15 or at the conclusion of the Governor’s reopening plan.

Ms. Nelson read a statement sharing recommendations from health officials that individuals wear masks while in public to reduce the spread of the COVID-19 virus, and made a motion to adopt Ordinance 2418 as written. Ms. Reimer seconded the motion.

Ms. Reimer, Mr. Herring, Ms. Selders and Mr. Nelson all spoke in favor of the Ordinance, while Mrs. Myers, Mrs. McFadden, Mr. Graves, Mr. Gallagher, Ms. Limbird and Mayor Mikkelson spoke in opposition.

Mr. Herring made a motion to amend the motion, changing Section 11-222, subsection C, paragraph #2 of the Ordinance to the following: “This subsection shall not be construed or interpreted as requiring that a Place of Business provide Face Coverings or Masks to customers, clients, and/or visitors.” Mr. Nelson seconded the motion. A roll call



vote on the motion to amend the motion was taken with the following votes cast: “aye”: Herring, J. Nelson, Selders, R. Nelson, Poling, Limbird, Reimer, Graves; “nay”: Myers, Runion, McFadden, Gallagher. The motion passed 8-4.

After further discussion, a roll call vote on the original motion as amended was taken with the following votes cast: “aye”: Herring, J. Nelson, Selders, Poling, Reimer; “nay”: R. Nelson, Limbird, Myers, Runion, McFadden, Graves, Gallagher. The motion failed by a vote of 7-5.

Mr. Nelson made a motion for a resolution based on the language found in the Ordinance, replacing the word “shall” with “should”, and removing exceptions for churches, synagogues and mosques. Ms. Selders seconded the motion.

Mr. Herring made a motion to refer the motion to staff to develop a resolution and bring it back for approval at the next Council meeting. Mr. Gallagher seconded the motion.

After discussion, a roll call vote on the motion to refer was taken with the following votes cast: “aye”: Herring, J. Nelson, Reimer, Runion, Gallagher; “nay”: Selders, R. Nelson, Poling, Limbird, Myers, McFadden, Graves. The motion failed 7-5.

Mr. Nelson modified his original motion, stating the goal of the motion was to get a “sense of Council” on recommending that individuals should wear a face covering when they cannot socially distance, either inside or outside a business or religious institution. The motion was seconded by Ms. Selders. A roll call vote on the modified motion was taken with the following votes cast: “aye”: Herring, J. Nelson, Selders, R. Nelson, Poling, Limbird, Myers, Reimer, Runion, McFadden, Graves, Gallagher. The motion passed 12-0.

Mrs. McFadden made a motion that the City Council move to the Council Committee of the Whole portion of the meeting. The motion was seconded by Ms. Limbird. A roll call vote on the original motion as amended was taken with the following votes cast: “aye”: Herring, J. Nelson, Selders, R. Nelson, Poling, Limbird, Myers, Reimer, Runion, McFadden, Graves, Gallagher. The motion passed 12-0.

COUNCIL COMMITTEE OF THE WHOLE

Public Works budget update

Ms. Prenger provided information on infrastructure projects currently underway in 2020, as well as recommended projects for 2021. Repairs to multiple sections of City roadway, as well as drainage, concrete and asphalt repair projects were discussed. She also provided a report on road conditions in the City, noting that the majority of streets were in “good” or “excellent” condition, with a smaller percentage rated “fair” or “poor”.



Mr. Gallagher stated that multiple streets in Ward 6 were rated fair or poor, and asked if Public Works needed additional funding to address street repair more quickly. Ms. Prenger said that the current \$3 million dedicated to the residential street repair program annually had allowed Public Works to keep the percentage of fair and poor streets on a downward trend for several years, and would be adequate for the future.

Ms. Nelson asked if the significant number of construction vehicles in several areas of the City were causing roads to age more quickly. Ms. Prenger said that solid waste and recycling trucks tended to be the most destructive to roads due to their weight and the area of the road on which they drive.

Mr. Bredehoeft presented a list of CIP projects planned for 2021, separated into four categories: parks, drainage, streets and building/other. Anticipated projects for years 2022 through 2024 were also included.

Ms. Limbird and Mr. Poling asked when the planned restroom construction at Windsor Park would begin. Mr. Bredehoeft stated that funding for the project would be allocated in both the 2022 and 2023 budgets, and that construction would begin in 2023.

Mr. Poling asked if any additional funding was needed for the bike/pedestrian implementation plan. Mr. Bredehoeft stated that existing funding was adequate to complete the project.

Ms. Nelson moved that the City Council end the Council Committee of the Whole portion of the meeting. The motion was seconded by Mr. Herring. A roll call vote on the original motion as amended was taken with the following votes cast: "aye": Herring, J. Nelson, Selders, R. Nelson, Poling, Limbird, Myers, Reimer, Runion, McFadden, Graves, Gallagher. The motion passed 12-0.

ANNOUNCEMENTS

Announcements were included in the Council meeting packet.

ADJOURNMENT

Ms. Nelson made a motion to adjourn the meeting. The motion was seconded by Ms. Limbird. A roll call vote was taken with the following votes cast: "aye": Herring, J. Nelson, Selders, R. Nelson, Poling, Limbird, Myers, Reimer, Runion, McFadden, Graves, Gallagher. The motion passed 12-0.

Mayor Mikkelson declared the meeting adjourned at 9:40 p.m.

Adam Geffert
City Clerk

CITY TREASURER'S WARRANT REGISTER

DATE WARRANTS ISSUED:

Warrant Register Page No. 1

May 18, 2020

Copy of Ordinance
2990

Ordinance Page No. _____

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

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

NAME	DATE	AMOUNT	TOTAL
EXPENDITURES:			
Accounts Payable			
21657-21741	4/10/2020	843,181.69 ✓	
21742-21810	4/21/2020	795,793.01 ✓	
Payroll Expenditures			
4/10/2020		296,623.70 ✓	
4/24/2020		304,204.71 ✓	
Electronic Payments			
Electronic Pmnts	4/6/2020	5,212.18 ✓	
	4/7/2020	184.87 ✓	
	4/8/2020	\$ 31.97 ✓	
	4/9/2020	2,542.36 ✓	
	4/10/2020	8,098.48 ✓	
	4/20/2020	8,595.99 ✓	
	4/21/2020	14,281.28 ✓	
TOTAL EXPENDITURES:			2,278,750.24 ✓
Voided Checks			
	Check #	(Amount)	
All City Management Services Inc	21660	(30,007.60) ✓	
American Micro Co	21662	(6,828.19) ✓	
FastSigns	21679	(1,014.97) ✓	
Stuart J Little	21708	(5,000.00) ✓	
Luis Guerrero	21759	(85.00) ✓	
O'Dell Service Company Inc	21792	(339.50) ✓	
TOTAL VOIDED CHECKS:			(43,275.26)
GRAND TOTAL CLAIMS ORDINANCE			2,235,474.98 ✓

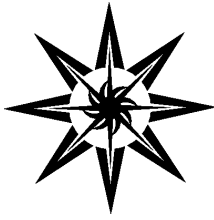
Section 2. That this ordinance shall take effect and be in force from and after its passage.

Passed this 18th day of May 2020.

Signed or Approved this 18th day of May 2020.

(SEAL) ATTEST: Courtney Kramer 05/19/2020
City Treasurer

ATTEST: [Signature] 5.14.20
Finance Director



POLICE DEPARTMENT

Council Meeting Date: June 1, 2020

**CONSENT AGENDA: Approval of School Crossing Guard Agreement
with ALL CITY MANAGEMENT SERVICES INC.**

RECOMMENDATION

Staff recommends approval of the contract with All City Management Inc. for the 2020-2021 school year.

COUNCIL ACTION REQUESTED ON June 1st, 2020.

BACKGROUND

The City has used a private company to contract school crossing guard services since 2014. All City Management Services (ACMS) have provided crossing guard services for the City of Prairie Village since the 2016-2017 school year. The Police Department is satisfied with the services provided and recommend continuing the contract for the 2020-2021 school year.

There is nominal change in the rate from 2019. The new rate is \$22.39 per hour, per crossing guard. This is an increase of \$1.79 per hour (old rate \$20.60). Funds for services rendered by ACMS were approved by the Council in the 2021 Public Safety Budget in line item 01-03-23-6009-000.

The City Attorney has reviewed the document.

PREPARED BY

Maj. Byron Roberson
Patrol Commander
Date: May 20, 2020



AGREEMENT FOR CROSSING GUARD SERVICES

This AGREEMENT FOR CROSSING GUARD SERVICES (the "Agreement") is dated May __, 2020 and is between the CITY OF PRAIRIE VILLAGE (hereinafter called the "City"), and ALL CITY MANAGEMENT SERVICES, INC., a California corporation (hereinafter called the "Contractor").

WITNESSETH

The parties hereto have mutually covenanted and agreed as follows:

1. This Agreement is for one school year period which commences on or sometime thereafter August 1, 2020 and ends on June 30, 2021 and for such a term thereafter as the parties may agree upon.
2. The Contractor will provide personnel equipped and trained in appropriate procedures for crossing pedestrians in marked crosswalks. Such personnel shall be herein referred to as a "Crossing Guard". Contractor will perform fingerprint and criminal background checks on perspective personnel in accordance with Department of Justice fingerprint and criminal investigation requirements. The Contractor shall confirm employment eligibility through E-Verify on all prospective personnel. The Contractor is an independent contractor and the Crossing Guards to be furnished by it shall at all times be its employees and not those of the City.

Non Discrimination – The Contractor 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 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.

3. The City's representative in dealing with the Contractor shall be designated by the Prairie Village Police Department.
4. The City shall determine the locations where Crossing Guards shall be furnished by the Contractor. The Contractor shall provide at each designated location personnel properly trained as herein specified for the performance of duties as a Crossing Guard. The Contractor shall provide supervisory personnel to see that Crossing Guard activities are taking place at the required places and times, and in accordance with the terms of this Agreement.
5. The Contractor shall maintain adequate reserve personnel to be able to furnish alternate Crossing Guards in the event that any person fails to report for work at the assigned time and location and agrees to provide immediate replacement.

6. In the performance of its duties the Contractor and all employees of the Contractor shall conduct themselves in accordance with the conditions of this Agreement and all applicable laws of the state in which the Services are to be performed.
7. Persons provided by the Contractor as Crossing Guards shall be trained in all applicable laws of the state in which the Services are to be performed pertaining to general pedestrian safety in school crossing areas.
8. Crossing Guard Services (the “Services”) shall be provided by the Contractor at the designated locations on all days in which school is in session in the area under City’s jurisdiction. The Contractor also agrees to maintain communication with the designated schools to maintain proper scheduling.
9. The Contractor shall provide all Crossing Guards with apparel by which they are readily visible and easily recognized as Crossing Guards. Such apparel shall be uniform for all persons performing the duties of Crossing Guards and shall be worn at all times while performing said duties. This apparel must be appropriate for weather conditions. The Contractor shall also provide all Crossing Guards with hand-held Stop signs and any other safety equipment which may be necessary.
10. The Contractor shall at all times provide workers' compensation insurance covering its employees and shall provide and maintain liability insurance for Crossing Guard activities. The Contractor will provide to the City a Certificate of Insurance naming the City and its officials, officers and employees as additional insureds; provided, that is to Contractor’s Services as to the 95th and Roe intersection. Contractor shall also provide City a Certificate of Insurance naming the City of Overland Park, Kansas (“Overland Park”), and its officials, officers and employees as additional insureds. Such insurance shall include commercial general liability with a combined single limit of not less than \$2,000,000.00 per occurrence and in aggregate for property damage and bodily injury. Such insurance shall be primary with respect to any insurance maintained by the City and shall not call on the City's insurance contributions (same as Overland Park). Such insurance shall be endorsed for contractual liability and personal injury and shall include the City, its officers, agents and interest of the City. Such insurance shall not be canceled, reduced in coverage or limits or non-renewed except after thirty (30) days written notice has been given to the City of Prairie Village.
11. Contractor agrees to defend, indemnify and hold harmless the City (and Overland Park, as to the 95th and Roe intersection), their respective officers, employees, agents and representatives, from and against any and all actions, claims for damages to persons or property, penalties, obligations or liabilities (each a “Claim” and collectively, the “Claims”) that may be asserted or claimed by any person, firm, entity, corporation, political subdivision or other organization arising out of the sole negligent acts or omissions, or willful misconduct, of Contractor, its agents, employees, subcontractors, representatives or invitees.
 - a) Contractor will defend any action or actions filed in connection with any of said claims, damages, penalties, obligations or liabilities and will pay all costs and expenses including attorney's fees incurred in connection herewith.
 - b) In the event the City (and/or Overland Park, as to the 95th and Roe intersection), their respective officers, agents or employees is made a party to any action or proceeding filed or

prosecuted against Contractor for such damages or other claims arising out of or in connection with the sole negligence of Contractor hereunder, Contractor agrees to pay the City and Overland Park, their respective officers, agents, or employees, any and all costs and expenses incurred by the City, Overland Park, their respective officers agents or employees in such action or proceeding, including, but not limited to, reasonable attorney's fees.

- c) Notwithstanding anything to the contrary contained herein, to the extent permitted by Kansas law and subject to any limitations of defenses provided by City and Overland Park under the Kansas Tort Claims Act, as amended. In the event that a court determines that liability for any Claim was caused or contributed to by the negligent act or omission or the willful misconduct of City or Overland Park liability will be apportioned between Contractor, City and Overland Park based upon the parties' respective degrees of culpability, as determined by the court, and Contractor's duty to indemnify the City and Overland Park will be limited accordingly.
12. Either party shall have the right to terminate this Agreement by giving thirty (30) days written notice to the other party.
13. The Contractor shall not have the right to assign this Agreement to any other person or entity except with the prior written consent of the City of Prairie Village.
14. The City agrees to pay the Contractor for the Services rendered pursuant to this Agreement the sum of Twenty-two Dollars and Thirty-nine Cents (**\$22.39**) per hour, per Crossing Guard during the term. Based on a minimum of eight (8) sites the Contractor shall bill a minimum of 2.0 hours per day, per Crossing Guard, unless Contractor fails to perform service. Based upon a projected (2,880) hours of service the cost shall not exceed Sixty-four Thousand, Four Hundred and Eighty-three Dollars (\$64,483.00) per year.
15. Payment is due within thirty (30) days of receipt of Contractor's properly prepared invoice.
16. Contractor may request a price increase during the term as a result of any legally-mandated increases in wages or benefits imposed in the state or municipality in which the Services are to be performed and to which Contractor's employees would be subject. Contractor shall provide City of Prairie Village with 60 days-notice of its request to increase pricing. The City agrees to review and respond to said notice within 30 days of receipt.
17. The City shall have an option to renew this Agreement. In the event this Agreement is extended beyond the end of the term set forth above, the compensation and terms for the Services shall be established by mutual consent of both parties.
18. This Agreement constitutes the complete and exclusive statement of the agreement among the parties with respect to the subject matter hereof and supersedes all prior written or oral statements among the parties, including any prior statements, warranties, or representations. This Agreement is binding upon and will inure to the benefit of the parties hereto and their respective heirs, administrators, executors, successors, and assigns. Each party hereto agrees that this Agreement will be governed by the law of the state in which the Services are to be performed, without regard to its conflicts of law provisions. Any amendments, modifications, or alterations to this Agreement must be in writing and signed by all parties. There will be no presumption against any party on the ground that such party

was responsible for preparing this Agreement or any part of it. Each provision of this Agreement is severable from the other provisions. If any provision of this Agreement is declared invalid or contrary to existing law, the inoperability of that provision will have no effect on the remaining provisions of the Agreement which will continue in full force and effect.

Sites covered for the 2020-2021 fiscal year are as follows:

1. 94th St./Mission Rd.
2. 72nd Terrace/Mission Rd.
3. 72nd Terrace/Belinder Ave.
4. 86th St./Ash Ln.
5. 83rd St./Mission Rd.
6. 67th St./Mission Rd.
7. 79th St./Lamar Ave
8. 95th/Roe

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year written below.

CITY

CONTRACTOR

City of Prairie Village

All City Management Services, Inc.

By _____
Eric Mikkelson, Mayor

By _____
D. Farwell, Corporate Secretary

Attest: Adam Geffert, City Clerk

Date _____

Date _____



Approval of short-term special use permit for farm delivery trailer

BACKGROUND

Pastimes Farm and Bakery, located in Lincoln, Missouri, has provided an opportunity for its metro area customers to pick up preordered food items from a church parking lot in Overland Park, KS for several months. At the end of May 2020, their special event permit in Overland Park expired for the calendar year, requiring them to search for a new location in the area to set up their refrigerated trailer on Saturday mornings.

The farm would like to request a short-term special use permit to set up in the parking lot of the Global Montessori Academy, located at 7457 Cherokee Drive. The owner of the property has given them permission to use the lot on Saturdays from approximately 9:00 a.m. to 1:00 p.m., from Saturday, June 6th to Saturday, December 19th. The permit, if approved, would expire on that date.

The operators are licensed to supply food from their trailer by the USDA, the Kansas Department of Agriculture and the Missouri Department of Agriculture.

RECOMMENDED MOTION

Staff recommends the City Council move to approve the short-term special use permit as presented.

ATTACHMENTS

Short-term special use permit application
Permission letter from Global Montessori Academy
Kansas retailers' sales tax registration certificate
Photos of trailer

PREPARED BY

Adam Geffert
City Clerk
Date: May 27, 2020



SHORT-TERM SPECIAL USE PERMIT
APPLICATION
City of Prairie Village, Kansas

Application Date: May 25, 2020
\$25 Application fee

Name Jeff & Dianna Clewenger

Email address pastimesfarm@gmail.com (circle one) Mail copy OR Email copy to me

Organization Pastimes Farm Phone 816-419-1033

Address 19509 Hwy 65 City / State / Zip Lincoln Mo 65338

Is the organization (check all that apply):
 Non-profit Civic Incorporated
 Authorized to do business in the State of Kansas -

USE: Sale / activity Trade show Street Fair
 Exposition Promotional venture / entertainment

Please give a complete description of proposed use: farm delivery drop off location for prairie village, overland park, surrounding locations customer pick-up from pastimes farm - USDA: KDA inspected

Location: Global Montessori Academy 7457 Cherokee Drive, AV KS

Attach any descriptive materials such as plans, maps or size dimensions, etc. to better illustrate the proposed use.

Please indicate what types of signs, flags or other devices will be used to attract attention:
none -

Date(s) of Event Saturdays from 9am-1pm - June 6th - Dec 19th

Hours of Operation: 9am - 4pm

Estimated accumulation of automobiles 60 and persons 60

Other characteristics and effects on neighborhood: _____

Submitted by: Mr. Jeff & Dianna Clewenger
(Signature of applicant)



GLOBAL MONTESSORI ACADEMY

7457 Cherokee Drive • Prairie Village, KS 66208 • p. (913) 544-1041 • f. (913)544-1043

May 27, 2020

Prairie Village City Council
7700 Mission Road
Prairie Village, KS 66208

To Whom It May Concern,

This letter is to express Global Montessori Academy's (GMA) support and permission to allow Pastimes Farm and Bakery (Located in Lincoln, MO) to sell their products in the school's parking lot on Saturdays. The school believes this is an excellent use of unutilized space and Pastimes Farm's business is in congruence with GMA's mission as a community school. If you have any questions you may reach me with the contact information below.

Sincerely,

Brian T Gordon
Executive Director
Global Montessori Academy
brian@globalmontessori.com
913-544-1041 ext 101
7457 Cherokee Drive
Prairie Village, KS 66208

KANSAS DEPARTMENT OF REVENUE
Division of Taxation

www.ksrevenue.org

RETAILERS' SALES TAX REGISTRATION CERTIFICATE



Jeffrey W. Clevenger
Clevenger Family Farm & Bakery
19509 Highway 65
Lincoln, MO 65338-2444

Tax Account Number: 004-K09299681F-01

Inception Date: 04/14/2012

Filing Frequency: Quarterly

This Registration Certificate is valid until canceled and is not transferable.



Grass Fed

Beef



Pastured

Pork



Pastured

Chicken



**Butter &
Cheese**



Farm Fresh

Eggs



pastimes farm

pure, fresh and simple



Pastimes Farm & Bakery

PastimesFarm.com



Grass Fed
Beef



Pastured
Pork



Pastured
Chicken



Butter &
Cheese



Farm Fresh
Eggs



pastimes farm

pure, fresh and simple

nesFarm.com

Pre-Order
Pick-Up
Here

Cinnamon
Rolls

Pre-Order
Pick-Up
Here

* Ham	\$6.99
* Ground Beef	\$6.99
* Ribeye	\$18.99
* T-Bone	\$14.99
* Beef Jerky Meat	\$7.99
* Elk	\$9.99
* Elk Roast	\$10.99
* Elk Sican	\$12.99

* Bacon	\$7.99
* Spare Ribs	\$12.99
* Chops	\$6.99
* Pork Steak	\$5.99
* Apple & German Whiskey	\$5.99
* Jalapeno Bacon Brats	\$5.99
* Chorizo	\$4.99
* Sausage & Italian Sausage	\$4.99
* Ground Pork	\$4.99
* Pork Chops & Pork Roast	\$5.99



PC2020-104: Consider Ordinance 2419 to approve an amendment to the special use permit for Kansas City Christian School at 4801 W 79th St

RECOMMENDATION

Make a motion to accept the Planning Commission's recommendation and approve PC2020-104.

BACKGROUND

The applicant is Kansas City Christian School, who is requesting an amendment to their existing special use permit to allow for the operation of a preschool for ages 3 - 5. KCCS's current special use permit only permits the operation of K-12, so in order to operate a pre-school at the facility they needed to amend their special use permit.

The Planning Commission held a public hearing on May 5 remotely via Zoom. Nobody submitted comments beforehand and nobody was present in the meeting to speak in favor or against the application. The Planning Commission voted unanimously to recommend approval of this amended Special Use Permit to the City Council subject to the conditions outlined in the staff report and ordinance. An excerpt of the meeting minutes pertaining to the application are attached for the Council's review.

A special use permit application requires the City Council to act in its quasi-judicial role. When acting in this capacity, rather than a legislative capacity, the governing body must set aside personal opinions and, like a judge, apply the law to facts presented in the public record, taking into consideration the following criteria, commonly referred to as the "Golden" factors:

1. The character of the neighborhood.
2. The zoning and uses of property nearby.
3. The suitability of the property for the uses to which it has been restricted under its existing zoning.
4. The extent that a change will detrimentally affect neighboring property.
5. The length of time of any vacancy of the property.
6. The relative gain to public health, safety, and welfare by destruction of value of the applicant's property as compared to the hardship on other individual landowners.
7. City staff recommendations.
8. Conformance with the Comprehensive Plan.

An analysis of all of these factors is provided in the attached Planning Commission staff report.

According to Section 19.52.040 of the Zoning Regulations, the Governing Body can take the following actions on a special use permit recommendation from the Planning Commission:

1. Adopt the Planning Commission's recommendation by a simple majority (7 votes including the Mayor)
2. Override the Planning Commission's recommendation by a 2/3 majority vote of the entire Governing Body (9 votes including the Mayor)
3. Return the recommendation to the Planning Commission with a statement specifying the basis for the Governing Body's failure to approve or disapprove by a simple majority. The Planning Commission can then submit the original recommendation or submit a new and amended

recommendation. The Governing Body then can adopt or amend the recommendation by a simple majority (7 votes) or take no further action.

Chris Brewster, the City's Planning Consultant, will be present at the meeting to provide a short presentation and answer any associated questions. The applicant will also be present in case there are any questions.

ATTACHMENTS

Ordinance 2419

Planning Commission Staff Report

Special Use Permit Application

Excerpt from May 5, 2020 Planning Commission Minutes

PREPARED BY

Jamie Robichaud

Deputy City Administrator

Date: May 27, 2020

ORDINANCE 2419

AN ORDINANCE APPROVING AN AMENDMENT TO THE SPECIAL USE PERMIT FOR THE OPERATION OF A PRIVATE SCHOOL BY KANSAS CITY CHRISTIAN SCHOOL SOCIETY, INC. ON THE PROPERTY DESCRIBED AS FOLLOWS: 4801 W 79TH STREET, PRAIRIE VILLAGE, KANSAS.

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

Section I. **Planning Commission Recommendation.** That having received a recommendation from the Planning Commission; having found favorably on the findings of fact, proper notice having been given and hearing held as provided by law and under the authority of and subject to the provisions of the Zoning Regulations of the City of Prairie Village, Kansas, that the City Council approve an amendment to the Special Use Permit for the operation of a private school by Kansas City Christian School Society, Inc. at 4801 W 79th Street subject to the following conditions:

1. The applicant shall meet all conditions and requirements of the Planning Commission for the approval of a site plan.
2. The Special Use Permit not have a termination or expiration time established for it.
3. If the applicant violates any conditions of the zoning regulations and requirements as part of the Special Use Permit, the permit may be revoked by the City Council.
4. The applicant cannot further expand or amend the Site Plan without an amendment to the Special Use Permit requiring a public hearing before being approved.
5. Kansas City Christian School shall adopt a policy that all students will park on site and develop a procedure for implementation and enforcement of the policy.
6. The number of designated high school classrooms shall be limited to 12.
7. No more than four buses shall be parked in the rear of the school when not picking up or dropping off, and shall not idle for more than five minutes during pick up and drop off.
8. Kansas City Christian provide to the City at the beginning of each school year an updated student count reflecting the number of students in each grade and the number of classrooms used for each grade level.
9. The permit anticipates a projected enrollment capacity of 525 students, and any enrollment significantly beyond this capacity or reconfiguring of classrooms that creates impacts beyond those anticipated by this baseline may require a revised site plan or may result in revocation of the permit at the discretion of the City.
10. Daycare classrooms are permitted within the previously approved number of classrooms (17) and capacity limits (525), provided hours and operational procedures remain comparable and similar to early elementary students, and that all necessary Kansas Department of Health and Education licenses and approvals are acquired prior to operating a daycare.

Section II. **Findings of the Governing Body.** That at its meeting on June 1, 2020, the Governing Body adopted by specific reference the findings of fact as contained in the Minutes of the Planning Commission meeting dated May 5, 2020 and the

recommendations of the Planning Commission, including conditions, and approved the amendment to the Special Use Permit as docketed PC2020-104.

Section III. Granting of Special Use Permit. Be it therefore ordained that the City of Prairie Village grant an amendment to the Special Use Permit originally approved January 18, 1999, by Ordinance 1964 and amended September 2, 2008 by Ordinance 2175, October 2, 2017 by Ordinance 2367, and January 2, 2018 by Ordinance 2374, which remains in effect to Kansas City Christian School Society, Inc. for the operation of a private school at 4801 West 79th Street, Prairie Village, Kansas subject to the specific conditions listed above.

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

PASSED AND APPROVED THIS 1st DAY OF JUNE, 2020.

CITY OF PRAIRIE VILLAGE, KANSAS

By: _____
Eric Mikkelson, Mayor

ATTEST:

APPROVED AS TO FORM:

Adam Geffert, City Clerk

David E. Waters, City Attorney

STAFF REPORT

TO: Prairie Village Planning Commission
FROM: Chris Brewster, Gould Evans, Planning Consultant
DATE: May 5, 2020, Planning Commission Meeting (anticipated / tentative)

Application: PC 2020-104 – Amendment of SUP

Request: Amendment to Special Use Permit for Private School to change classroom allocation to include daycare services

Property Address: 4801 W. 79th Street

Applicant: Todd Zylstra, Kansas City Christian School

Current Zoning and Land Use: R-1A Single-Family District- Kansas City Christian School

Surrounding Zoning and Land Use: **North:** R-1B Single-Family District - Single-Family Dwellings
East: R-1A Single-Family District - Single-Family Dwellings
South: R-1A Single-Family District - Single-Family Dwellings
West: R-1A Single-Family District - Single-Family Dwellings

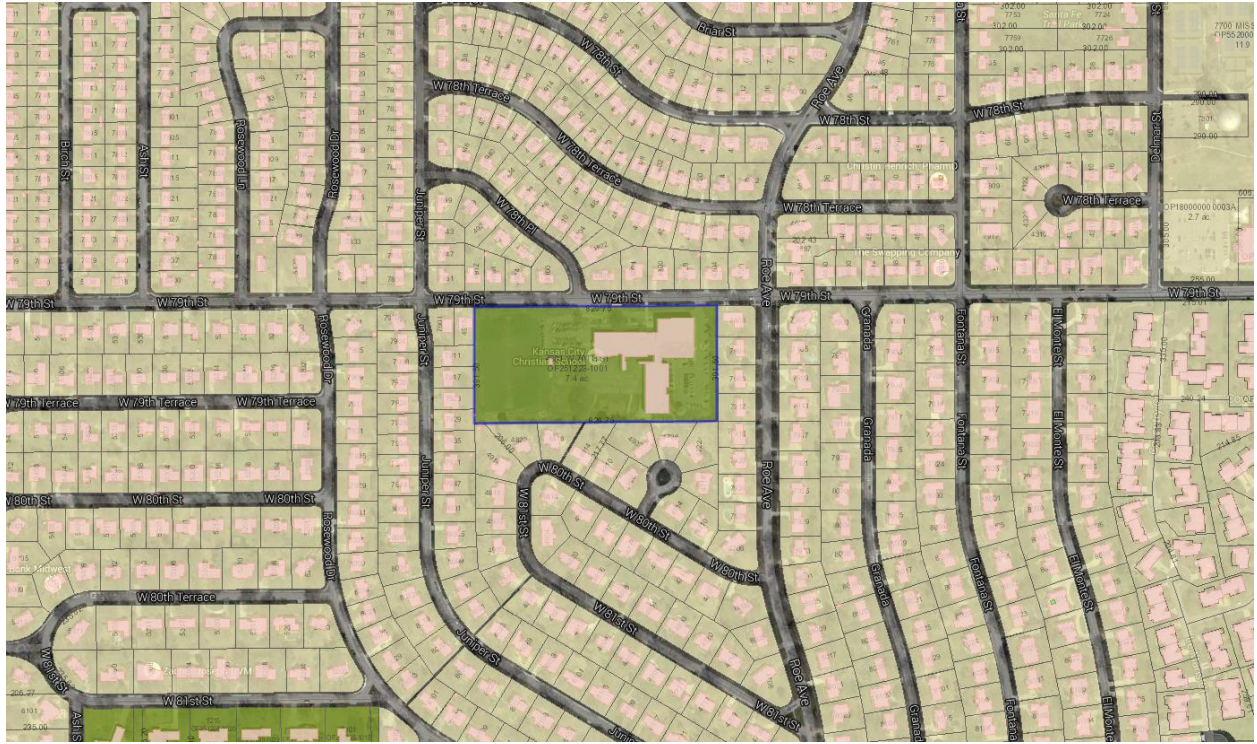
Legal Description: Metes & Bounds Abbreviation (28-12-25 E 826.75' OF W 1159' OF N 421.50' NE 1/4 NW 1/4 EX N 30' 7.43 ACRES PVC 624A BOTA #0708-87-TX)

Property Area: 7.44 Acres (55,557 s.f.)

Related Case Files: PC 2017-102 (original September application; amended December)
PC 2017-103, PC 2016-108, 2015-105, and 2014-110 Temporary Use Permits for ADHD Summer Treatment Program
PC 2008-08 Amendment to SUP
PC 98-07 Original SUP for Private School

Attachments: Application, letter of intent and enrollment

General Location Map



Aerial Map



COMMENTS:

The Special Use Permit for Kansas City Christian School was initially approved by the City Council in January of 1999, for reuse of a school building originally built in 1954. It was most recently amended by City Council in December 2017 based on the recommendation of the Planning Commission. This Special Use Permit approval considered and addressed several issues related to a proposed expansion and construction activity of an existing school operating under an existing Special Use Permit. The approval included several conditions related to the operations and management of the school and related activities, primarily to mitigate impacts on the neighborhood. Part of this approval included a capacity analysis of the school, at maximum anticipated capacity, including a forecasted, grade-based classroom allocation to review traffic and parking impacts. This allocation was for up to 525 students, allocated in K – 12 classrooms, with a requirement for annual reporting and monitoring of enrollment within those parameters. At the time, daycare classrooms were not considered – however, the applicant is proposing to offer daycare as part of a more complete enrollment strategy.

The school has been operating below the allocated capacity since the approval in 2017, and expects to be under that capacity for the foreseeable future, including with approval of the proposed daycare. Essentially, this request is to re-allocate some of the previously approved capacity, and specific classroom allocation, to include day care.

The enrollment numbers associated with this and past applications are as follows:

- 1999 SUP – 543 students (162 of which were high school)
- 2008 SUP amendment – 469 students (274 of which were high school)
- 2017 SUP amendment – up to 525 students (limited to no more than 12 High School classrooms)
- 2020 enrollment – 385 students

The applicant held a neighborhood meeting remotely via Zoom on April 16th in conformance with the City's Citizen Participation Policy. Nobody attended the meeting besides the applicant.

FACTORS FOR CONSIDERATION:

The Planning Commission shall make findings of fact to support its recommendation to approve, conditionally approve, or disapprove this Special Use Permit. It is not necessary that a finding of fact be made for each factor. However, there should be a conclusion that the request should be approved or denied based upon consideration of as many factors as are applicable. The factors to be considered in approving or disapproving a Special Use Permit shall include the following:

A. The character of the neighborhood.

This site is located on the south side of West 79th Street between Roe Avenue and Nall Avenue. The surrounding area is all single-family neighborhoods. In general, schools are compatible and contribute to the character of single-family neighborhoods provided the location, access, and site design is managed in a way that is compatible with residential living in neighborhood environments. The proposed inclusion of daycare facilities within the existing capacity limits does not create significant impacts on the neighborhood, beyond those already considered for the school, or as is considered with other institutional uses offering daycare services in neighborhood settings

B. The zoning and uses of property nearby.

- North: R-1B Single-Family District – Single-family dwellings
- East: R-1A Single-Family District – Single-family dwellings
- West: R-1A Single-Family District – Single-family dwelling
- South: R-1A Single-Family District – Single-family dwelling

The Prairie Village Zoning Ordinance allows private schools and daycare facilities in the R-1A and R-1B zoning district through a special use permit.

C. The extent that a use will detrimentally affect neighboring property

The site has been a school since the building was originally constructed in 1954. It became a private school in 1986 and received an original Special Use Permit in 1999. In 2008 and 2017, the SUP and site plan were renewed and addressed concerns related to transportation, traffic, and proposed construction with the school. The current proposal involves no new construction and is reallocating previously approved capacity to day care services that will have the same or similar operation as early elementary students. Therefore, it should not increase any of the transportation, parking or operational considerations beyond those previously addressed in the past SUP renewals.

D. The relative gain to public health, safety and welfare by destruction of value of the applicant's property as compared to the hardship on other individual landowners.

Previous SUPs and amendments for this site have allowed effective utilization of an older school site within the neighborhood. Provided the parking, transportation and operational intensity is limited similarly to past approvals, it is reasonable to expect the school to contribute positively to the neighborhood, and that reallocation of previously approved capacity will not change that relationship with the neighborhood. Allowing the day care will allow the applicant to offer a more complete enrollment package to the families it serves.

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

Private schools and day cares (whether accessory to institutional uses or as a business) are permitted through a special use process by the Prairie Village zoning ordinance. The existing building and the site meets all other standards applicable to the building and site relating to height, setback, and lot coverage.

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

The site has been used as a school for approximately 66 years and the approval of this amended special use permit will be consistent with that use. Since this is the continuation of a current condition, it is not expected that the use will cause any new issues with respect to the compatibility of uses, provided that they continue to operate within the previously approved capacity, and all other conditions and criteria of past approvals remain in effect.

G. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such as the special use will not cause substantial injury to the value of the property in the immediate neighborhood so as to hinder development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the special use will cause substantial injury to the value of property in the immediate neighborhood, consideration shall be given to:

- 1. The location, size, nature and height of buildings, structures, walls, and fences on the site; and**
- 2. The nature and extent of landscaping and screening on the site.**

This application proposes no construction or expansion of any facilities, and is to reallocate previously approved capacity to offer daycare facilities. This should not have any material impact on issues already addressed under the current Special Use Permit because:

- Daycare drop off and pick up should operate similar to early elementary students.
 - Daycare services will not increase any parking needs beyond previously approved capacity, because there is no expansion of the potential High School classrooms.
 - Any differences in drop-off, pick-up or parking are likely to be easily mitigated under the current Special Use Permit conditions, since it could slightly diversify traffic and parking patterns within previously approved capacity.
-

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

The ordinance requires that elementary, junior high and equivalent schools provide two spaces for each classroom, and high schools provide eight spaces for each classroom, plus one space for each two employees. Daycare facilities require one space for each employee and one space for each 8 children. The addition of daycare services within the existing capacity results in a blended rate comparable to the parking rate that was applied and approved with the 2017 Special Use Permit. (2 per classroom (elementary); 8 per classroom (high school); 1 per 8 children (daycare)). Further, the traffic and drop-off procedures are anticipated to be similar to that of early elementary school students. Therefore, the ordinance would not require additional parking for what is proposed, and no additional parking impacts are anticipated with the change of classroom allocation.

I. Adequate utility, drainage, and other such necessary facilities have been or will be provided.

There is no new construction associated with this application, so there should be no impact on drainage.

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

There is no anticipated traffic change with this application, beyond that previously considered with the 2017 SUP amendment. That application included a traffic memo with projected traffic conditions (including access, parking, and drop-off / pick-up procedures) based on a projected enrollment capacity of 525 students (current is 444). The highest change in volume is expected to be during the morning peak hours. Public Works concurred with the findings of that memo, and did not anticipate any significant traffic impacts beyond those currently experienced in the area or beyond with the overall network can handle.

K. Adjoining properties and the general public shall be adequately protected from any hazardous or toxic materials, hazardous manufacturing processes, obnoxious odors or unnecessarily intrusive noises.

This particular use is not expected to produce any hazardous or toxic materials, hazardous processes, obnoxious odors, or intrusive noises beyond what is ordinarily associated with a school. The use is compatible with surrounding neighborhood properties with regard to these criteria.

L. Architectural design and building materials are compatible with such design and materials used in the neighborhood in which the proposed facility is to be built or located.

There is no new construction associated with this application, so there should be no impact on character of the neighborhood.

M. Conformance with the Comprehensive Plan

One of the primary objectives of Village Vision is to encourage reinvestment in the community to maintain the quality of life in Prairie Village. This application continues the reinvestment in an existing institution within the community, and provided the impacts from additional enrollment are mitigated as provided in previous Special Use Permit approvals, it is consistent with Village Vision in encouraging reinvestment.

N. City Staff recommendations.

Staff believes that the proposed reallocation of previously approved capacity for use as day care classrooms is consistent with and is within previously approved Special Use Permits. Subject to all previous conditions (restated below with the addition of day care classrooms), staff recommends approval.

Recommendations

Staff recommends approval of the Special Use Permit, subject to the following conditions (1-5, 7 and 8 being carried over from the 1999 and 2008 Special Use Permits, 6 being revised and 9 being added with the 2017 Special Use Permit, and 10 being added with this application.).

1. The applicant shall meet all conditions and requirements of the Planning Commission for the approval of a site plan.
 2. The Special Use Permit not have a termination or expiration time established for it.
 3. If the applicant violates any conditions of the zoning regulations and requirements as part of the Special Use Permit, the permit may be revoked by the City Council.
 4. The applicant cannot further expand or amend the Site Plan without an amendment to the Special Use Permit requiring a public hearing before being approved.
 5. Kansas City Christian School adopt a policy that all students will park on site and develop a procedure for implementation and enforcement of the policy.
 6. The number of designated high school classrooms shall be limited to 12.
 7. No more than four busses shall be parked in the rear of the school when not picking-up or dropping-off, and shall not idle more than five minutes during pick-up and drop-off.
 8. Kansas City Christian provide to the City at the beginning of each school year an updated student count reflecting the number of students in each grade and the number of classrooms use for each grade level.
 9. The permit anticipates a projected enrollment capacity of 525 students, and any enrollment significantly beyond this capacity or reconfiguring of classrooms that creates impacts beyond those anticipated by this baseline may require a revised site plan or may result in revocation of the permit at the discretion of the City.
 10. Daycare classrooms are permitted within the previously approved number of classrooms (17) and capacity limits (525), provided hours and operational procedures remain comparable and similar to early elementary students, and that all necessary Kansas Department of Health and Education licenses and approvals are acquired prior to operating a daycare.
-

017001
App# 0022502

SPECIAL USE PERMIT APPLICATION

CITY OF PRAIRIE VILLAGE, KANSAS

For Office Use Only

Case No.: PC2020-104
Filing Fees: \$100.00
Deposit: \$500.00



Date Advertised: _____
Date Notices Sent: March 17, 2020
Public Hearing Date: April 7, 2020

APPLICANT: Todd Zylstra PHONE: 816-550-6395

ADDRESS: 11953 Avila Dr. KC, MO 64145 E-MAIL: tzylstra@mykccs.org

OWNER: Kansas City Christian School PHONE: 913-648-5227

ADDRESS: 4801 W. 79th Street Prairie Village, KS ZIP: 66208

LOCATION OF PROPERTY: 4801 W 79TH

LEGAL DESCRIPTION: 28-12-25 E 826.75' OF W 1159' OF N
421.5 NE 1/4 NW 1/4 EX N 30' 7.43 ACRES PVC 624A
ROTA # 0708-87-TX

ADJACENT LAND USE AND ZONING:

	<u>Land Use</u>	<u>Zoning</u>
North	<u>SINGLE FAM RESIDENCE</u>	<u>R-1B</u>
South	<u>SINGLE FAM RESIDENCE</u>	<u>R-1A</u>
East	<u>SINGLE FAM RESIDENCE</u>	<u>R-1A</u>
West	<u>SINGLE FAM RESIDENCE</u>	<u>R-1A</u>

Present Use of Property: SCHOOL (K-12)

Please complete both pages of the form and return to:
Planning Commission Secretary
City of Prairie Village
7700 Mission Road
Prairie Village, KS 66208



KANSAS CITY CHRISTIAN

4801 W.79th Street

Prairie Village, KS

66208

Kansas City Christian School
Special Use Permit Request
March 4, 2020

Kansas City Christian School is requesting an amendment to the Special Use Permit from September 2017 to include a PreSchool.

Original Issues listed on the SUP from 2008 and 2017:

Enrollment:

2008 SUP: 469 students, amendment in 2017 to 525 students

The addition of a preschool does not exceed our SUP enrollment requirements. Currently our enrollment is 385 students Kindergarten through twelfth grades. Preschool would only add a maximum of 24 additional students for the 2020-2021 school year. The overall capacity for KCC is not increasing beyond what is allowed on the SUP.

2008 SUP: 17 elementary and junior high classrooms

2017 SUP: amended the 2008 High School classrooms from 11 to 12

KCC is not adding additional classrooms but is reallocating our current classroom space to accommodate a preschool. The preschool classroom will be moved into an existing Kindergarten classroom. No adjustments to the building, architectural or construction, will take place. We are not exceeding the 17 allowed classroom spaces for elementary and junior high. We are not exceeding our allowed 12 designated high school classrooms.

Parking/Traffic & Hours of Operation:

During the 2017 SUP amendment process there were noted concerns from the neighbors as to the increase in traffic and parking. Using an existing classroom for preschool does not increase our traffic or parking issues. Students and teachers will still park on campus as noted in the SUP and traffic patterns will be busy during drop off (7:45-8:10 a.m.) and pick up (3:00- 3:40 p.m.). Preschool hours of operation will be the same as Kindergarten-12th grade hours of operation. No evening/weekend preschool hours will take place. The preschool will operate under the same conditions as the K-12 school including days off and summer break.

Preschool hours of operation Monday-Friday: 8:10 a.m.- 3:30 p.m.

Kindergarten – 5th grades hours of operation Monday- Friday: 8:10 a.m. – 3:10 p.m.

6th grade – 12th grade hours of operation Monday- Friday: 8:10 a.m. – 3:00 p.m.

Project Description:

This is a limited code study. It is offered to assist the City in determining appropriate Zoning and KCM's evaluation of the facility.

The existing facility is comprised of two buildings. There is no change of occupancy or physical construction proposed for any portion of either.

KCCB is proposing re-purposing approximately 1,118 s.f. existing kindergarten classroom, storage and private restrooms for use as a Day Care Center.

KCCB is also proposing segregating a portion of the existing playground for exclusive Day Care use.

Model Building/Codebook Codes Used:

- 2012 International Building Code
- 2012 International Mechanical Code
- 2011 National Electrical Code
- 2012 International Plumbing Code
- 2012 International Fire Code
- 2012 International Energy Conservation Code
- Kansas Fire Prevention Code

Responding Fire Service for this Facility:

Consolidated Fire District No. 2

Local Building Inspection Department:

The City of Prairie Village

Construction Type:

- Building A Type I-B (Fully sprinklered)
- Building B Type I-A (not sprinklered)

Occupant Type:

- Building A Group E - Education
- Building B Group A - Assembly

Total Square Footage:

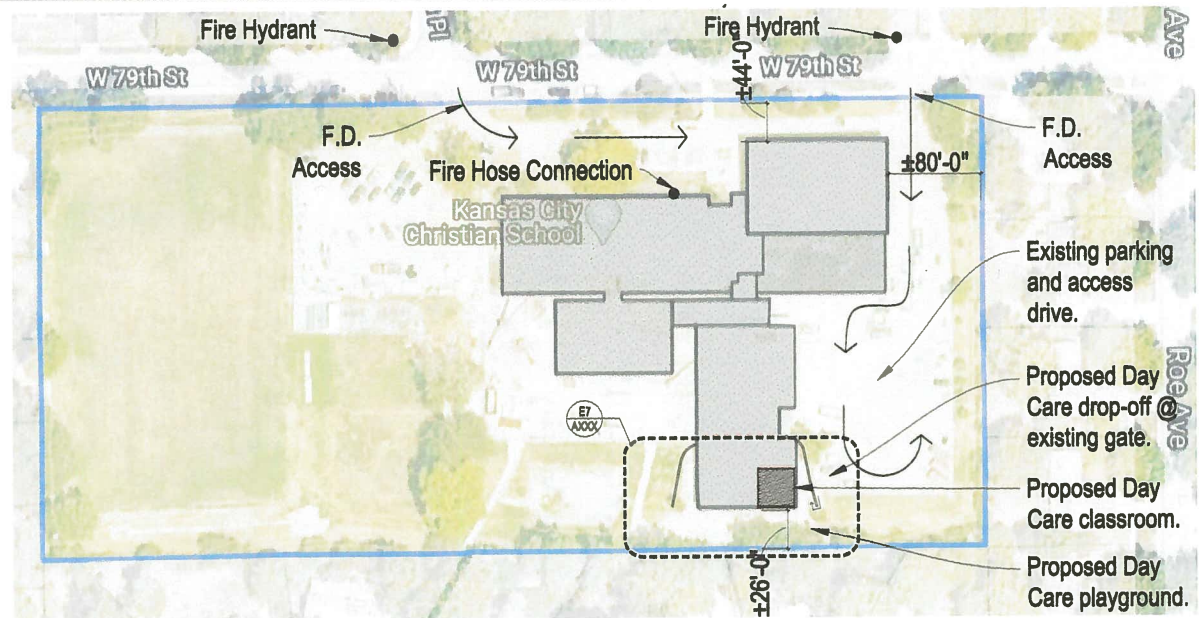
- Building A (Sprinklered)
 - Basement: (actual) 11,243 (allowable) 14,600 (allowable) - base: 14,600
 - Increase for sprinkler: 20,000
 - Increase for frontage: 8,506
 - Total Allowable: 62,096
- Building B (Unsprinklered)
 - First Floor: (actual) 8,120 (allowable) 14,600

Occupied Load by Floor:

- Building A
 - Basement: 237 occupants
 - First Floor: 1,493 occupants
- Building B
 - First Floor: 1,048 occupants
 - M.P./Commons/Cafe: 418 occupants
 - Gym: 962 occupants
 - Platform: 56 occupants

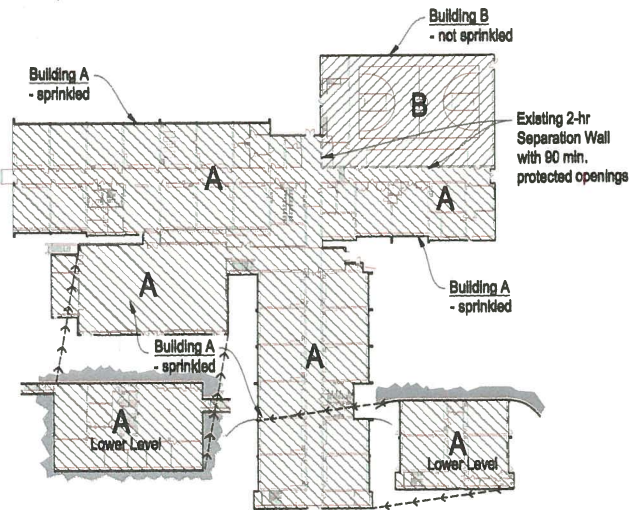
Fire Protection Items:

- NFPA 13 Fire Sprinkler Provided (Building A only)
- Fire Alarm System:
 - Manual pull stations, smoke detectors, audible and visual devices throughout common areas and classrooms.
- Passive Fire Protection Provided:
 - The overall building has been separated by separation walls, so each building can meet allowable area between sprinklered and non-sprinklered.

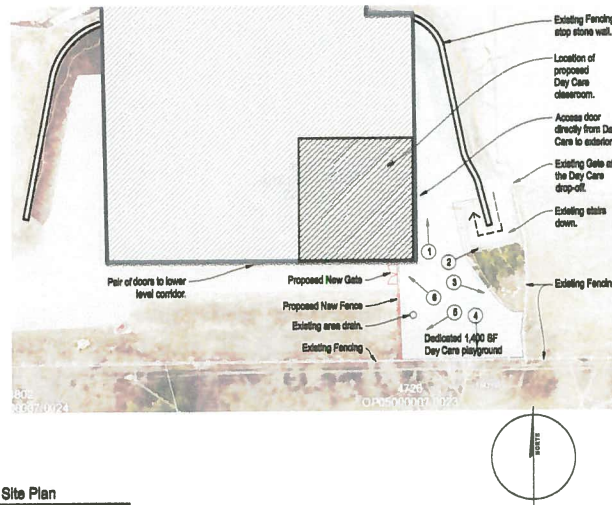


E1 Building Code Assessment
N.T.A.

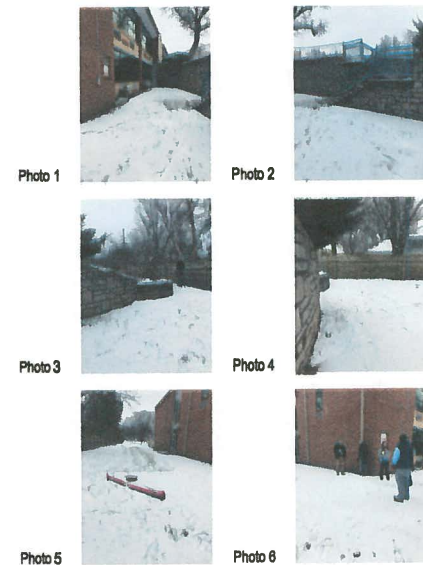
E5 Campus Site Plan
N.T.A.



A1 Building Separation Plan
N.T.A.



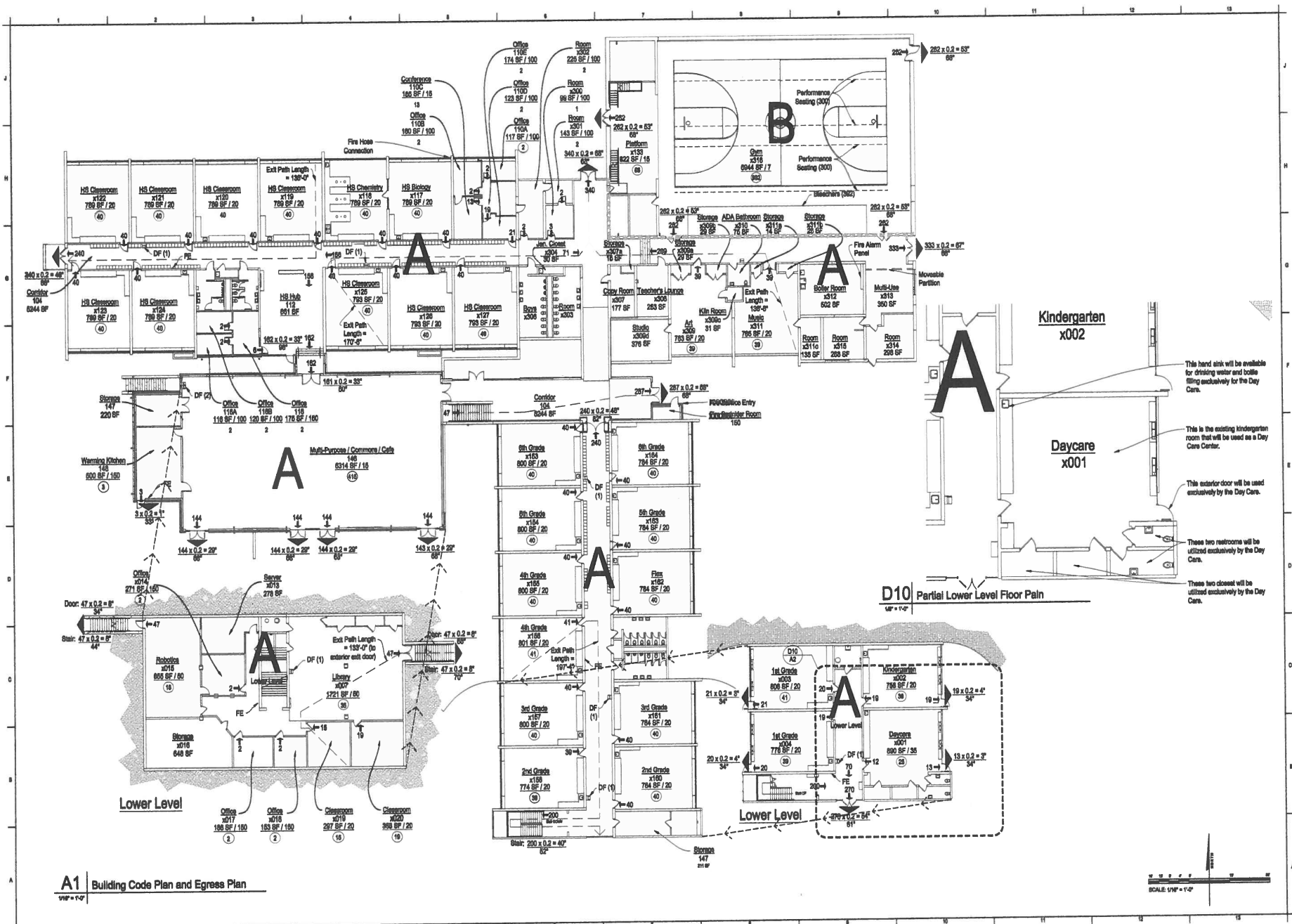
A5 Partial Site Plan
N.T.A.



Architectural
URBAN PRAIRIE ARCHITECTURAL
COLLABORATIVE, P.C.
4828 Merwin St.
Kansas City, MO 64111
P. 816.324.1938
prairie@urbanprairie.com

NO.	DATE	DESCRIPTION

DATE	DESCRIPTION



A1 Building Code Plan and Egress Plan
1/8" = 1'-0"

D10 Partial Lower Level Floor Plan
1/8" = 1'-0"

This hand sink will be available for drinking water and bottle filling exclusively for the Day Care.

This is the existing kindergarten room that will be used as a Day Care Center.

This exterior door will be used exclusively by the Day Care.

These two restrooms will be utilized exclusively by the Day Care.

These two closets will be utilized exclusively by the Day Care.

Application No. PC 2020-104

AFFIDAVIT

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

Todd Zylstra, being duly sworn upon his oath, disposes and states:

That he is the (owner) (attorney for) (agent of) the tract of land for which the application was filed. That in accordance with Section 19.28.025 of the Prairie Village Zoning Regulations, the applicant placed and maintained a sign, furnished by the City, on that tract of land. Said sign was a minimum of two feet above the ground line and within five feet of the street right-of-way line in a central position of the tract of land and had no visual obstruction thereto.



(Owner/Attorney for/Agent of)

Subscribed and sworn to before me this 13th day of April, 2020



SUSAN L. WATTERSON
NOTARY PUBLIC
STATE OF KANSAS
MY APPT. EXP.
2-26-2023



Notary Public or Planning Commission Secretary

Todd Zylstra, being duly sworn upon his oath, deposes and states:

1. I am the (owner of) (attorney for) (agent of) the property described in the attached notice upon which an application has been filed before the Planning Commission of the City of Prairie Village, Kansas.
2. On the 16th day of April, 2020 a public information meeting was held pursuant to the Citizen Participation Policy adopted on June 6, 2000, by the Planning Commission
3. On the 17th day of March, 2020, I did comply with notification requirements to landowners as stated Section 19.28.020, of the Prairie Village Zoning Regulations and notified in letter by certified mail all owners of land located within 200 feet of the described real property. Notice was mailed to the following:

Name

Address

See Attached Document for verification of compliance to Section 19.28.020.

Neighborhood meeting was originally scheduled for March 17th, 2020 but due to
mandatory quarantine for 30 days the neighborhood meeting was rescheduled to
April 16th, 2020 via Zoom. New letters were mailed to PV neighborhood
with information regarding the changes in the meeting.

.I certify that the foregoing is true and correct.

Todd Zylstra

Name

4801 W. 79th Street Prairie Village, KS

Address

Kansas City Christian Virtual Open House
Meeting Notes April 16, 2020

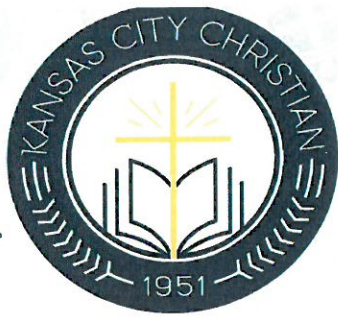
Kansas City Christian notified the citizens of Prairie Village by mail that the Open House required by the city of Prairie Village would be hosted via Zoom from 7:00-7:40 p.m. on April 16th, 2020. The meeting began at 7:00 p.m. with Amy McGruder, host, and Lower School Principal, and Todd Zylstra, Head of School. No additional people joined the meeting. The meeting concluded at 7:40 p.m.



Posted March 5th, 2020 outside Kansas City Christian School



Posted March 23, 2020 with updated information, outside Kansas City Christian School



KANSAS CITY CHRISTIAN

4801 W.79th Street

Prairie Village, KS

66208

Notice to Owners of Affected Properties
Prairie Village, KS
March 13, 2020

An application for the reallocation of our previously approved classroom space as applied to the property at 4801 W. 79th Street has been filed by Todd Zylstra, Head of School, and would authorize Kansas City Christian School to use an existing elementary classroom as designated preschool space. During the 2017 amendment to the Special Use Permit there were a number of concerns from the neighborhood and KCC would like to alleviate any of those concerns prior to the Public Hearing on April 7, 2020 at 7:00 p.m. in the Council Chamber of the City Hall, 7700 Mission Road.

Enrollment:

2008 SUP: 469 students, amendment in 2017 to 525 students

The addition of a preschool does not exceed our SUP enrollment requirements. Currently our enrollment is 385 students Kindergarten through twelfth grades. Preschool would only add a maximum of 24 additional students for the 2020-2021 school year. The overall capacity for KCC is not increasing beyond what is allowed on the SUP. KCC is not adding additional classrooms but is reallocating our current classroom space to accommodate a preschool. The preschool classroom will be moved into an existing Kindergarten classroom. No adjustments to the building, architectural or construction, will take place.

Parking/Traffic & Hours of Operation:

Using an existing classroom for preschool does not increase our traffic or parking issues. Students and teachers will still park on campus as noted in the SUP and traffic patterns will be busy during drop off (7:45-8:10 a.m.) and pick up (3:00- 3:40 p.m.). Preschool hours of operation will be the same as Kindergarten-12th grade hours of operation. No evening/weekend preschool hours will take place. The preschool will operate under the same conditions as the K-12 school including days off and summer break.

A neighborhood meeting will take place in Kansas City Christian's gymnasium on March 24, 2020 from 6:00 p.m. – 7:00 p.m. to answer any question or concerns you have.

The hearing of this application is not limited to those receiving copies of this notice, and if you know of any neighbor or affected property owner who, for any reason, has failed to receive a copy, it would be appreciated if you would inform them of this public hearing. At the time of the scheduled public hearing persons interested may be present, or may submit their comments in writing to the Planning Commission prior to the April 7th scheduled hearing.

Sincerely,



Todd Zylstra, Head of School
Kansas City Christian School



KANSAS CITY CHRISTIAN

4801 W.79th Street

Prairie Village, KS

66208

Notice to Owners of Affected Properties
Prairie Village, KS
April 9, 2020

In March 2020 a letter was sent by Kansas City Christian School notifying you of the following, *“An application for the reallocation of our previously approved classroom space as applied to the property at 4801 W. 79th Street has been filed by Todd Zylstra, Head of School, and would authorize Kansas City Christian School to use an existing elementary classroom as designated preschool space. During the 2017 amendment to the Special Use Permit there were a number of concerns from the neighborhood and KCC would like to alleviate any of those concerns prior to the Public Hearing on April 7, 2020 at 7:00 p.m. in the Council Chamber of the City Hall, 7700 Mission Road.”*

Due to the state-wide stay-at-home order the city of Prairie Village has moved their meeting to May 5th, 2020 at 7:00 p.m. and will be communicating with citizens whether the meeting will be in person or delivered virtually. Please contact the Council Chamber of the City Hall, 7700 Mission Road for more information.

Kansas City Christian School has rescheduled their Open House to Thursday, April 16th, 2020 from 7:00- 7:40 p.m. KCC will hold the meeting via Zoom. To join the meeting please use the following link, meeting ID, and password.

<https://us04web.zoom.us/j/143840342?pwd=NmdQdVBUBhFh2ZVJLMGp2QWNqS0FKQT09>

Meeting ID: 143 840 342

Password: 007141

If you have trouble joining the meeting, please contact Amy McGruder at amcgruder@mykccs.org to submit any questions or concerns you have.

Sincerely,


Todd Zylstra, Head of School
Kansas City Christian School.

**EXCERPT OF PLANNING COMMISSION MINUTES
MAY 5, 2020**

PC2020-104 Amendment to Special Use Permit
4801 W. 79th Street
Zoning: R-1A
Applicant: Kansas City Christian School

Mr. Brewster stated the application was an amendment to the existing special use permit at Kansas City Christian School to allow the addition of daycare services. The prior permit, most recently amended in 2017, only allowed for kindergarten through 12th grade students. He noted that enrollment at the school would not change, nor would any major construction be required since the daycare would be located in an existing room. Drop-off and circulation for the daycare would be a part of the same traffic flow and timeframe as the rest of the school.

Mr. Brewster reminded the Planning Commission that a special use permit requires the Planning Commission to evaluate facts, weigh evidence, and make a recommendation to the City Council based on balancing the “Golden Factors” outlined in the zoning ordinance. Staff recommended approval subject to the nine conditions found in the existing special use permit, along with an additional tenth condition, stating:

10. Daycare classrooms are permitted within the previously approved number of classrooms (17) and capacity limits (525), provided hours and operational procedures remain comparable and similar to early elementary students, and that all necessary Kansas Department of Health and Education licenses and approvals are acquired prior to operating a daycare.

Mr. Birkel asked if there would be a conflict between vehicles entering and leaving from the northeast entrance to the building. Mr. Brewster said that the traffic pattern was consistent with what was approved in the 2017 special use permit amendment.

Applicants Todd Zylstra, Head of Kansas City Christian School, and Amy McGruder, Elementary Principal, attended remotely via Zoom. Mr. Zylstra stated that the school currently had approximately 100 fewer students than the maximum amount allowed under the special use permit, and wished to add a daycare in an effort to increase future kindergarten enrollment. Ms. McGruder added that the daycare would function as a preschool, and only be comprised of 3-5 year olds. She noted that the Kansas Department of Health and Environment determined the maximum number of children allowed in the classroom.

Mr. Wolf opened the public hearing at 7:25 p.m. With no one attending the Zoom meeting to speak, Mr. Wolf closed the public hearing at 7:26 p.m.

Based on the Planning Commission’s consideration of the Golden factors, Mr. Breneman made a motion to approve the amended special use permit, subject to the conditions recommended by staff. Mr. Valentino seconded the motion, which passed unanimously



VILLAGEFEST COMMITTEE
Council Meeting Date: June 1, 2020

COU2020-22: Consider approval of the revised 2020 VillageFest budget

RECOMMENDATION

Recommend approval of the revised 2020 VillageFest budget.

BACKGROUND

On May 4, 2020, the City Council approved an alternate concept for the 2020 VillageFest event due to the impact of the COVID-19 pandemic on the festival. The alternate plan for VillageFest 2020 will include drive through and virtual components.

The City Council had allocated \$20,000 to the event in 2020. Due to the change in scope, the previously approved event budget has been revised, and the committee seeks council approval of the new proposed budget. The budget is based on providing "VillageFest To Go" bags to 2,000 children. A reusable bag will be purchased through the Prairie Village Foundation VillageFest Fund.

Item	Description	Cost
Bag contents	To include patriotic themed items such as crafts, glow necklace, fake tattoos, small toys, etc	\$ 9,000.00
Incidentals	New banners, DJ, online contest prizes	\$ 1,000.00
	Total	\$ 10,000.00

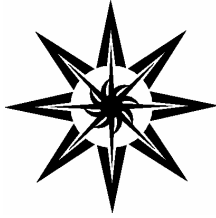
ATTACHMENTS

None

PREPARED BY

Meghan Boom
Assistant City Administrator

May 27, 2020



PUBLIC WORKS DEPARTMENT

Council Meeting Date: June 1, 2020

COU2020-23 CONSIDER APPROVAL OF A CONTRACT WITH METRO ASPHALT, INC., FOR THE 2020 STREET REPAIR PROGRAM

RECOMMENDATION

Move to authorize the Mayor to sign the Construction Contract with Metro Asphalt, Inc. for Project P5001 2020 Street Repair Program for \$150,000.

BACKGROUND

On May 7, 2020, the City Clerk opened bids for Project P5001, 2020 Street Repair Program. Four bids were received:

O'Donnell Construction	\$178,679.10
JM Fahey Construction	\$159,914.00
Advanced Asphalt Paving & Concrete	\$146,400.00
Metro Asphalt	\$140,090.30
Engineers Estimate	\$150,000.00

This program consists of asphalt street repairs at various locations throughout the City. The program allows us to address areas where settlement or deterioration has occurred, and make repairs to those areas.

There is \$150,000 budgeted for this project and the contract will be awarded for that amount. Locations of repairs will be adjusted (increased) to utilize the \$150,000 budget.

City staff has reviewed the bids for accuracy, found no errors and recommends award to the lowest responsible bidder, Metro Asphalt, Inc.

FUNDING SOURCE

Funding is available in the operation budget for project P5001.

ATTACHMENTS

1. Agreement with Metro Asphalt, Inc.

PREPARED BY

Melissa Prenger, Senior Project Manager

May 27, 2020

CONSTRUCTION AGREEMENT



**P5001
2020 STREET REPAIR**

BETWEEN

CITY OF PRAIRIE VILLAGE, KS

AND

METRO ASPHALT, INC.

CONSTRUCTION CONTRACT
FOR
P5001 2020 STREET REPAIR

BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
METRO ASPHALT, INC.

THIS AGREEMENT, is made and entered into this ____ day of _____, 2020, by and between the City of Prairie Village, Kansas, hereinafter termed the “**City**”, and METRO ASPHALT, INC., hereinafter termed in this agreement, “**Contractor**”, for the construction and completion of Project 2020 STREET REPAIR , (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 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 ONE HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$150,000.00) 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 including delays resulting from the COVID-19 pandemic, 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, normal weather conditions, the COVID-19 pandemic, or otherwise provided, however, such hindrances and delays could be anticipated by Contractor at the time of execution. 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 Notwithstanding the foregoing or anything in the Contract to the contrary, Contractor acknowledges and agrees that the work, and the performance thereof, may be subject to current and future governmental orders or directives regarding safety protocols related COVID-19, and Contractor agrees that all Work shall be performed in accordance with the same, including but not limited to directives regarding social distancing, hygiene and other efforts to slow the spread of COVID-19. Failure of Contractor to comply with such order or directive shall be deemed an event of default under this Contract, and City shall not be responsible for any increase in the Contract Sum or the Contract Time related to City's enforcement of such orders or directives, or Contractor's failure to comply with such orders or directives. If Work on the Critical Path is delayed due to COVID-19 reasons outside the control of the contractor, an equitable adjustment in the Contract Sum and/or the Contract Time shall be made to the Contract as the City may reasonably decide.
- 13.13 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 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 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

METRO ASPHALT, INC.

(typed company name)

By: _____
(signed)

By: _____
(signed)

Eric Mikkelson

(typed name)

Mayor

(typed title)

City of Prairie Village

METRO ASPHALT, INC.

(typed company name)

7700 Mission Road

3811 N Cobbler Road

(typed address)

Prairie Village, Kansas 66208

Independence, MO 64058

(typed city, state, zip)

913-385-4647

816-836-7400

(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.)

GENERAL CONSTRUCTION PROVISIONS

1. DEFINITIONS: Capitalized terms not defined herein shall have the meanings set forth in the Construction Contract for the Project dated _____, 2020.
 - 1.1. Following words are given these definitions:

Alternate Bid or alternate is an amount stated in the bid to be added to or deducted from the amount of the base bid, if the corresponding change in the work, as described in the Bid Documents, is accepted.

Base Bid is the sum stated in the bid for which the bidder offers to perform the work described in the Project Manual, without inclusion of any alternate bids.

Concrete shall mean Portland cement concrete.

Day shall mean a calendar day unless otherwise described.

Pavement shall be a rigid or flexible type riding surface placed upon a previously prepared sub-grade or base.

Street shall mean the whole area of any roadway within the right-of-way limits.

Sub-Grade shall be that portion of the construction area which has been prepared, as specified, and upon which a layer of specified material, base, sub-base course, pavement or other improvement is to be placed.

Temporary Construction Easement shall mean the land provided by the City for temporary use by the Contractor during the construction of the work.
 - 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 that so applied have a well-known technical or trade meaning shall be held to refer to such recognized standards.
 - 1.3. Whenever in these Contract Documents the words “as ordered,” “as directed”, “as required”, “as permitted”, “as allowed”, or words or phrases of like import are used, it is understood that the order, direction, requirement, permission or allowance of the City 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 City and/or 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. ABBREVIATIONS

- 2.1. Wherever in this Project Manual the following abbreviations are used, they shall be understood to mean as follows. The serial designation of each reference shall be the latest year of adoption or revision, unless otherwise specified. See the plan sheet for the material abbreviation's legend.

AAN	-	American Association of Nurserymen
AASHTO	-	American Association of State Highway & Transportation Officials
ACI	-	American Concrete Institute
AGC	-	Associated General Contractors of America
AIA	-	American Institute of Architects
ANSI	-	American National Standards Institute
APWA	-	Kansas City Metropolitan Chapter of the American Public Works Association
ASCE	-	American Society of Civil Engineers
ASLA	-	American Society of Landscape Architects
ASME	-	American Society of Mechanical Engineers
ASTM	-	American Society for Testing Materials
ATSSA	-	American Traffic Safety Services Association
CARS	-	Johnson County Assistance Road System
CRSI	-	Concrete Reinforcing Steel Institute
FHWA	-	Federal Highway Administration - Department of Transportation
ISSA	-	International Slurry Seal Association
ITE	-	Institute of Traffic Engineers
KCMMB	-	Kansas City Metropolitan Materials Board
KDOT	-	Kansas Department of Transportation
MCIB	-	Mid-West Concrete Industry Board, Inc.
MUTCD	-	Manual on Uniform Traffic Control Devices for Streets & Highways
NEC	-	National Electrical Code, National Fire Protection Association
NEMA	-	National Electrical Manufacturers Association
SAE	-	Society of Automotive Engineers

3. Standard Detailed Specifications

- 3.1. The first level of reference for standard detailed specifications shall be those promulgated by the City of Prairie Village, KS, Public Works Department.
- 3.2. The second level of reference will be the current edition of the standard detailed specifications of the American Public Works Association (APWA) Kansas City Metro Chapter.
- 3.3. The third level of reference will be the latest edition of the Kansas Department of Transportation "Standard Specifications for Road and Bridge Construction".
- 3.4. For traffic specifications, the latest edition of the Manual On Uniform Traffic Control Devices as published by Federal Highway Administration.
- 3.5. All reference material shall be the latest edition for this project as though fully set forth herein, except as modified or superseded by these construction specifications.

4. Drawings To Be Furnished By Contractor

- 4.1. The Contractor shall furnish all shop, fabrication, assembly, foundation, and other drawings required by the Project Manual, including but not limited to, drawings of equipment and devices, offered by the Contractor for review of the Project Manager, in sufficient detail to show adequately the construction and operation thereof.
- 4.2. Drawings submitted for consideration by the Project Manager shall show the essential details of any change in design of construction proposed by the Contractor in lieu of design or arrangement required by the Contract, or any item of extra work, and all required wiring and piping layouts.
- 4.3. No less than three (3) copies (one for Contractor, one for Project Manager, and one for on site as-builts) of each such drawing shall be submitted to the Project Manager for checking and review.
- 4.4. The Contractor shall maintain at the site modified drawings recording the dimensions and other pertinent details of the work and any changes in the work.
- 4.5. No work shall be performed in connection with the fabrication or manufacture of material or equipment shown by any drawing thereof, nor shall any accessory, appurtenance or device not fabricated or manufactured by the Contractor or its subcontractor, be purchased until the drawing or drawings therefore have been reviewed as stipulated, except at the Contractor's own risk and responsibility.
- 4.6. The Project Manager's review of drawings submitted by the Contractor will be for general conformity to the Project Manual and will not constitute a blanket approval of all dimensions, quantities, and details of the material or equipment shown, nor shall such review relieve the Contractor of responsibility for errors contained in such drawings. Project Manager's review shall not constitute approval of safety precautions, construction means or methods.

5. Responsibility Of Contractor

- 5.1. The Contractor shall furnish all transportation, tools, equipment, machinery, and plant, and all suitable appliances, requisite for the execution of the Project Manual and shall be solely answerable for the same and for the safe, proper, and lawful construction, maintenance, and use thereof including responsibility for hazardous materials.
- 5.2. The Contractor will use equipment and tools suitable for the work. All equipment and tools will be in near-original working condition.
- 5.3. The Contractor shall cover and protect his/her Work from damage and all injury to the same from any source.
- 5.4. The Contractor shall be solely answerable for all damage to the City or the property of the City, to other contractors or other employees of the City, to the neighboring premises, to any person or to any private or personal property, due to improper, illegal, or negligent conduct of Contractor or his/her subcontractors, employees, or agents in and about said work, or in the execution of the work covered by this Contract, or any extra work undertaken as herein provided.

- 5.5. The Contractor shall be responsible to the City for defect in, or the improper use of, any scaffolding, shoring, apparatus, ways, works, machinery, or plant.
- 5.6. The Contractor shall notify all affected utilities of the work and coordinate with the utilities to avoid interruption of utility service and damage to utility lines and property. This notice requirement shall also apply as to the owner/operator of any affected underground facility. Any project delay, damages or increase in construction costs dues to utility relocation delays shall be at the Contractor's risk.
- 5.7. The project site shall be kept clean, neat, and orderly as possible at all times. Stockpiling of debris and unsuitable materials beyond normal working demands shall not be allowed. Immediately after construction operations are complete, all equipment, debris and unsuitable materials shall be completely removed from the site in order to minimize the damage to finished work and inconvenience to the public and adjoining property owners. The work site shall be left "broom clean" at the end of each workday and in case of dispute the City may clean the site and charge the Contractor.
- 5.8. The Contractor shall take precaution to ensure that excessive dust does not become airborne during any construction activities. The Contractor shall comply with all State and Federal regulations that apply to airborne matter in the geographic area of the Work. When directed by the Project Manager, the Contractor shall take immediate and appropriate dust control measures satisfactory to the Project Manager.
- 5.9. The Contractor shall not allow the site of the work or neighboring properties to become littered with trash and waste material, but shall maintain the same in a neat and orderly condition on a daily basis throughout the construction period. The City, or the Project Manager on the City's behalf, shall have the right to determine what is or is not trash or waste material.
- 5.10. On or before the completion of the work the Contractor shall, without charge therefore, carefully clean out all pits, pipes, chambers, or conduits, and shall tear down and remove all temporary structures built by the Contractor, and shall remove all rubbish of every kind from the tracts or grounds which it has occupied and shall leave them in first-class condition. Any trash receptacles on the site shall be covered.
- 5.11. The Contractor shall take whatever steps necessary to provide access for the City and the Project Manager to the Work at all times from commencement of the Work through final completion.
- 5.12. The Contractor alone shall be responsible for the safety, adequacy and efficiency of its plant, equipment, and methods, and for the means, methods, techniques, sequences and procedures of construction.
- 5.13. The review of the Project Manager of any plan or method of work proposed by the Contractor shall not relieve the Contractor of any responsibility therefore, and such review shall not be considered as an assumption by the City, Project Manager, or any officer, agent, or employee thereof, of any risk or liability.
- 5.14. The Contractor is admonished that the crews will be properly attired, refrain from abusive language, refrain from improper behavior, and be aware that they are representing the City.

- 5.15. All operations of the Contractor shall be conducted within the right-of-way of the roadway or established easements and the limits of the earthwork and grading, as shown on the Plans. While working under this contract, no agreement shall be made between Contractor and resident, as it pertains to any additional work on private property not paid for by the City.

6. Safety Rules

- 6.1. The Contractor shall be responsible for enforcing safety rules to assure protection of the employees and property of the City, to assure uninterrupted production and to assure safe working conditions for the Contractor and Subcontractors and their employees and to assure the safety of the general public.
- 6.2. In addition to any other rights the City might exercise, the Contractor and/or Subcontractor failing to follow safety rules shall be subject to eviction from the job site and may be refused reentry.
- 6.3. The Contractor is expected to establish and enforce a comprehensive safety program on this project for the protection of its personnel, its Subcontractor's personnel, City's employees and all other persons exposed to hazards resulting from the Contractor's operations. As a minimum requirement, the Contractor shall review and discuss the details of its program with the City at the first project meeting. The items to be covered shall include, but not necessarily be limited to:
- Personal protective equipment;
 - First aid-personnel and facilities;
 - Arrangements for medical attention;
 - Sanitary facilities;
 - Fire protection;
 - Signs, signals, and barricades;
 - Security regulations;
 - Safety inspections;
 - Designation of persons responsible for the program;
 - Reporting forms and procedures;
 - Material handling and storage;
 - Lines of communication;
 - Determination of potential hazards;
 - Personnel safety meetings and education;
 - Access to work areas;
 - Subcontractors involvement in the program;
 - Inspections and corrective action
- 6.4. The Contractor shall maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of life, the Work, supplies, materials and equipment on the project site not yet incorporated in the Work, City's property and adjacent property.
- 6.5. The Contractor shall comply with all instructions from the City regarding prevention of accidents, fires or for the elimination of any unsafe practice and shall observe all the applicable recommendations of the National Fire Protection Association Standard No. 241 (or other, later revision) "Standards For Safeguarding Building Construction and Demolition

Operations”.

- 6.6. The Contractor shall post danger signs warning against the hazards created by such features of construction as protruding nails, hod hoists, well holes, elevator hatchways, scaffolding, window openings, stairways, falling materials, open trenches, other excavations, obstructions and similar conditions. It shall designate a responsible member of its organization on the project whose duty shall be the prevention of accidents. The name and position of the person so designated shall be reported to the City by the Contractor.
- 6.7. In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, Contractor, without special instruction or authorization from Project Manager or City, is obligated to act, at its discretion, to prevent threatened damage, injury, or loss.
- 6.8. The Contractor shall give prompt written notice of any significant changes in the Work or deviations from the Project Manual caused or necessitated by the emergency. A Change Order shall thereupon be issued covering the changes and deviations involved in such bona fide emergency. If Contractor believes that additional work done in an emergency, which arose from causes beyond its control, entitles it to an increase in the Contract Price or an extension of the Contract Time, the Contractor may make a claim therefore as provided herein.
- 6.9. The Contractor shall develop and maintain an up-to-date emergency action plan, taking into account fires, hazardous materials, explosions, adverse weather, floods, etc., which shall be in compliance with all federal, state and local laws and ordinances. The procedures should outline specific action to be taken to protect life and to secure and protect the building materials, constructed work, buildings, equipment, and the position of cranes. The Contractor shall be fully responsible for the contents of and procedures outlined in said plan, including deficiencies therein, whether or not the City shall have reviewed said plan.
- 6.10. 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 thereof, such costs shall be deducted from any amounts due or to become due the Contractor.
- 6.11. 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.

7. Approval of Equals

- 7.1. “Approved Equals”, where permitted by the Project Manual or otherwise made feasible by market conditions, shall be approved as follows:
 - 7.1.1. The Contractor shall notify the City in writing if it elects to use an approved equal specifically

named in the Project Manual.

- 7.1.2. If the Contractor desires to use an “equal” not specifically named in the Project Manual, it must inform the City and receive written approval for such substitutions. The City has no obligation to approve such request and is not responsible for any delay or cost incurred or caused by Contractor’s making such request.
- 7.2. The Contractor shall be solely responsible for design risks, delays and other claims arising out of any approved alternates.

8. Cutting, Patching and Digging

- 8.1. The Contractor shall do all cutting, fitting or patching of his/her work that may be required to make its parts come together properly and fit it to receive or be received by work of others shown upon or reasonably implied by the Project Manual.
- 8.2. The Contractor shall not endanger any property of the City or any other individual or entity, or the work by cutting, digging or otherwise and shall not cut or alter the work of others except with the written consent of the City.
- 8.3. The Contractor shall assume responsibility for the patching or repairs, by the proper trade, of damages caused by work under this Contract.
- 8.4. The Contractor shall comply with all local ordinances dealing with cutting, patching and digging and shall obtain all necessary permits.

9. Temporary Facilities/Utilities

- 9.1. Except where special permission has been granted by the City to use existing toilet facilities belonging to the City, the Contractor shall provide and maintain sanitary temporary toilet facilities located where directed by the City for accommodation of all persons engaged on the work. Temporary toilets shall be enclosed and weatherproof, kept in sanitary, and in an approved condition at all times. After use for it has ceased, the Contractor shall remove the temporary toilet facilities from the City’s premises, disinfect, and fill any vaults.
- 9.2. The Contractor shall provide and maintain any necessary temporary offices, storerooms, roadways, etc, as may be required for its work. It shall be located and constructed in an approved manner acceptable to the City. Upon completion of work or when requested by the City, the Contractor shall remove it from City’s premises and leave the area in a clean and orderly condition.
- 9.3. The Contractor shall provide and maintain temporary heat as required to protect all work and material against injury from dampness and/or cold to the satisfaction of the City.
- 9.4. Unless otherwise specified in the Project Manual, the Contractor shall provide, at his/her cost and expense, temporary power, wiring, water and lights from City’s provided source as may be required for its operations.
- 9.5. The operations of the Contractor shall be in full conformity with all of the rules and regulations of boards and bodies having jurisdiction with respect to sanitation. The Contractor shall

supply safe and sufficient drinking water to all employees. The Contractor shall obey and enforce all sanitary regulations and orders, and shall take precautions against infectious disease and the spread of the same.

- 9.6. All water used in the course of the Work shall be hauled in or purchased from the local Water Company's distribution system at the Contractor's own cost and expense.

10. Right-Of-Way Limits

- 10.1. The Contractor shall confine construction operations to the construction limits and easements provided for and labeled in the Project Manual. Equipment or materials shall not be stored beyond these limits without the express written approval of the owner of such property.
- 10.2. No person, firm or corporation shall park or store for any period of time any construction vehicles, equipment or materials while constructing or improving any street or while working on any public works project of any kind within the city, on behalf of the city, or any other governmental agency, or any utility, public or private, unless a permit has been previously issued by the Director of Public Works. The person, firm or corporation who parks, or allows the parking or storing of any construction vehicles, equipment, or materials without first obtaining said permit or who parks or stores or allows said parking or storage contrary to the terms and conditions of any permit issued by the City, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished as provided in the Prairie Village Municipal Code. Each day such violation is committed or permitted to continue constitutes a separate offense and shall be punishable as such hereunder.
- 10.3. The Director of Public Works is authorized to issue a permit to authorize and allow the temporary parking, staging and storage of construction vehicles, equipment, and materials on public streets of the City or on public property, church property or property zoned C-0 through C-2 and CPO through CP-2 during periods of construction of public works projects of the city, any other governmental agency, or public or private utility projects within the City of Prairie Village, Kansas.
- 10.4. No permit shall be allowed on property that is residential in nature, provided, however, that property zoned "residential" that is being used as a church, school, or country club may be used with the written permission of the owner.
- 10.5. The only designated haul routes in Prairie Village are: Nall Avenue, Mission Road, 75th Street, and 95th Street. The Contractor must have written approval prior to using any other street or haul route.

11. Completed Work

- 11.1. Before final acceptance of the Work, all mechanical and electrical equipment and devices shall be tested and each part shall be in good condition and working order, or shall be placed in such condition and order at the expense of the Contractor.
- 11.2. All tests of such completed work required under this Contract shall be made in the presence of the Project Manager or its authorized representatives.
- 11.3. All unsatisfactory, faulty or Defective Work and all work not conforming to the requirements to the Project Manual at the time of acceptance thereof, or of such inspections, tests, or

approvals shall be considered defective. Prompt notice of all defects shall be given to the Contractor.

- 11.4. All Defective Work, whether or not in place, may be rejected pending correction thereof. Should the Contractor not correct said Work, the City may do so at Contractor's expense.
- 11.5. The Contractor shall remove from the site of the work, without delay, all rejected and condemned material or structures of any kind brought to or incorporated in the work, or if the Contractor fails to make satisfactory progress in so doing, within forty-eight (48) hours, after the service of a written notice from the Project Manager ordering such removal, the rejected material or structures may be removed by the City at the Contractor's expense.
- 11.6. At the City's discretion, payment for all related items of work may be withheld until all rejected and condemned materials or structures are satisfactorily removed.

12. Maintenance Period

- 12.1. If desired by the City or requested by the Contractor, portions of the Work may be placed in service when completed and the Contractor shall give proper access to the work for this purpose; but such use and operation shall not constitute an acceptance of the Work.
- 12.2. The Contractor shall be liable for defects due to faulty construction until the entire Work under this Contract is finally accepted and for a period of two years or longer thereafter, as stipulated in this Project Manual.
- 12.3. During a period of two years (or longer, if stipulated in the Special Conditions,) from and after the date of the final acceptance by the City of the Work, the Contractor shall make all needed repairs arising out of Defective Workmanship or materials, or both, which, in the judgment of the City, shall become necessary during such period. If within ten (10) days after the mailing of a notice in writing to Contractor, or its agent, the Contractor shall neglect to make or undertake with due diligence to make the aforesaid repairs, City is hereby authorized to make such repairs at the Contractor's expense and charge such against the Maintenance Bond; provided however, that in case of an emergency where, in the judgment of the City, delay would cause serious loss, hazard or damage, repairs may be made without notice being sent to the Contractor, and the Contractor shall pay the cost thereof.
- 12.4. Where maintenance or corrective construction is required, the Contractor shall submit his/her proposed methods and designation of materials to the City, or the City through its Consulting Engineer, for approval in advance of such work.
- 12.5. If, at any time prior to the end of the two year maintenance period, the pavement or walk settles, the Contractor shall, at his/her expense, do all necessary corrective work to eliminate any drainage problem or vertical offset caused by such settlement, provided:
 - 12.5.1. If there is a vertical offset between top of such pavement or walk and top of such structure of more than one-fourth inch.
 - 12.5.2. If around manholes or utility valves, there will be more than one-half (1/2) inch vertical differential between a plane surface passing through the top of the pavement, measured 24 inches horizontally from the edge of top of structure. (This will be measured utilizing a straight edge with one half-inch spacer feet mounted at each end of the straight edge.)

- 12.5.3. If the settlement creates a situation such that the walk is outside of the ADA Accessibility Guidelines, it shall be replaced.
- 12.5.4. If adjacent sections of concrete walk, pavement or curbs settle or heave so that there is more than one-fourth (1/4) inch vertical offset between such adjacent sections.
- 12.5.5. If the flow line of any concrete gutter, or of any concrete curb and gutter pockets water or does not drain properly resulting in three-eighth (3/8) inch of standing water.
- 12.5.6. If, any newly placed pavements surfaced with asphalt concrete pockets water or does not drain properly resulting in three-eighths (3/8) of standing water.
- 12.6. The Contractor shall repair cracks which appear for any reason, but which may or may not indicate failure of sub-grade, base or surface, and which are wide enough in cool weather to be sealed by high standard crack sealing methods. Crack filling shall be done during relatively dry weather and at temperatures when the cracks will be near maximum width. Materials and methods shall be based on width of crack. Materials shall be of such consistency as to minimize whipping out under traffic. Cracks shall be thoroughly blown and cleaned and filler installed without superficial bridging.
- 12.7. The intent of the guarantee period is that the Owner will have a durable and serviceable pavement; that defective materials and workmanship will have been corrected. All materials and construction for such work will be at the Contractor's expense.
- 12.8. All corrective and maintenance work shall be done promptly upon notification by the Owner, in order to prevent unnecessary further deterioration and in order not to inconvenience the traveling public unduly.
- 12.9. All work shall be in accordance with the highest standards of the construction industry and shall be of such nature as to be substantially permanent.

13. Equipment Guaranty

- 13.1. All mechanical and electrical equipment and devices, and every part thereof, which are furnished by the Contractor under the terms of this Contract shall be guaranteed by the Contractor and its surety against Defective Workmanship, faulty design, mechanical and physical defects, leakage, breakage, and other damages or failure, under normal operation of the equipment and devices under specified conditions, for a period of two years from and after the date of acceptance thereof (unless otherwise provided herein) by the City.
- 13.2. Any item of equipment or part thereof, thus proving to be defective within the specified period shall be promptly replaced by and at the expense of the Contractor, when notified by the City. Should the Contractor fail to replace said item within a reasonable time, City may do so at Contractor's expense.
- 13.3. The Contractor shall ensure that a copy of operating and maintenance manuals for all equipment shall be kept on the site during construction of the Work and shall be open to inspection by the City or its agents.

14. Public Complaints

- 14.1. All complaints to the Contractor or any of the Subcontractors or to the Project Manager are to be reported in writing immediately to the City Project Manager. This written report will include the name, address and telephone number of the complainant, a detailed description of the complaint, a detailed description of the actions taken, and by whom to resolve the complaint.
- 14.2. The Contractor shall endeavor, with the cooperation and concurrence of the Project Manager, to communicate with abutting property owners and tenants affected by the work.
- 14.3. The Contractor shall respond to citizen complaints, concerns or inquiries with 48 hours (two work days). The Contractor will submit a copy of the action taken to the Project Manager in a timely manner utilizing forms provided by the City.

15. Notification

- 15.1. As part of this project, the City will be notifying residents by mail of the upcoming work. The Contractor must give the City a minimum notice of three weeks prior to doing **any** work on a street.
- 15.2. The Contractor must give the City three days notice prior to commencing any work that prevents the use of a driveway.
- 15.3. Delays created by failure of the Contractor to notify the City in the above-specified time will be counted against the contract time. The Contractor will not be entitled to an extension of the contract time based on notification delays.
- 15.4. In the event, work does not begin on the designated street within the designated time, the City will re-notify the residents with an explanation of why work did not begin as scheduled and a statement of when work will begin. Work may not begin until 48 hours after mailing the re-notifications.

16. Progress Meetings

- 16.1. Periodic Progress meetings shall be held at a predetermined location on the site. These meetings will be held once every week or sooner as events dictate. These meetings will be organized by the City or Project Manager. Participation in this meeting by representatives of the prime contractor and each of the subcontractors is required. These representatives must be empowered to make decisions affecting the prosecution of the work and shall be the Owner of the construction firm and/or his/her superintendent. The Project Manager will conduct the meetings and the discussion will include, but is not limited to the following:
 - Proposed construction schedule for duration of contract for both Prime and Subcontractors
 - Identification of any known utility/contractor conflicts and proposed resolution of same
 - Coordination of other trades.
 - Specialty items. (Fences, shrubs, monuments, sprinkler systems, etc.)
 - Completion date requirements.
 - Review of traffic control plan as it pertains to area of work.

- Problems and/or complaints and remedial measures taken or proposed.

17. Uncovering and Correcting Work

- 17.1. If any of the Work is covered contrary to the Project Manager's request or to any provisions of this Contract, it shall, if required by the Project Manager or the City, be uncovered for the Project Manager's observation and shall be properly replaced at the Contractor's expense without change in the Contract Time.
- 17.2. If any of the Work is covered in a manner not consistent with the Project Manual, it shall, if required by the Project Manager or City, be uncovered for the Project Manager's observation. If such Work conforms strictly to this Contract, costs of uncovering and proper replacement shall be by Change Order and charged to the City. If such work does not strictly conform to this Contract, the Contractor shall pay the costs of uncovering and proper replacement.
- 17.3. The Contractor, within two weeks of written notification, shall proceed to correct Work rejected by the Project Manager as defective or failing to conform to this Contract. The Contractor shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and observations, and reimbursement to the City for the Project Manager's services and expenses made necessary thereby.
- 17.4. Nothing contained in this Article shall establish any period of limitation with respect to other obligations, which the Contractor has under this Contract.
- 17.5. If, after two weeks following notification by the Project Manager, the Contractor has not started or completed the corrective work, the Contractor will notify the Project Manager and affected resident of intended schedule to complete work.

18. City May Accept Defective or Non-conforming Work

- 18.1. If the City chooses to accept defective or non-conforming Work, the City may do so. In such event, the Contract Price shall be reduced by the greater of (a) the reasonable cost of removing and correcting the defective or non-conforming Work, and (b) the difference between the fair market value of the Work as constructed and the fair market value of the Work had it not been constructed in such a manner as to include defective or non-conforming Work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the City for its acceptance of defective or non-conforming Work, the Contractor, upon written demand from the City, shall pay the City such remaining compensation for accepting defective or non-conforming Work.

END OF SECTION

SPECIAL CONDITIONS

The APWA Section 1100 General Conditions is negated and not to be applied as part of this project manual.

TIME and LIQUIDATED DAMAGES

The Total Completion date for the Project Work under this Contract shall be shall be **AUGUST 15, 2020** with the following substantial completion dates:

ALL WORK DONE ON ARTERIAL ROADWAYS SHALL BE COMPLETED BY JUNE 15, 2020.

Liquidated Damages, as referenced in the contract agreement, shall be assessed in the amount of **\$500.00/per calendar day** for Total Project Work. Contractor agrees that such assessment is a reasonable estimate of the damages that may be sustained by the City in the event the project is delayed and that such amount is not a penalty.

S-330 ILC- SUPERPAVE ASPHALTIC CONCRETE SURFACE AND INTERMEDIATE COURSE

Superpave asphalt pavement shall be an acceptable substitute for base and surface mix. No change in construction methods will be allowed.

S-380 PAVEMENT REPAIR

Any pavement markings eradicated during the pavement repair operation shall be replaced and are considered subsidiary to this bid item.

Base concrete pavement (8" thick) may be substituted as an alternate for 8" base asphalt. The City detail for pavement repair will apply. Payment for this work is included in the unit bid price for "PAVEMENT REPAIR - FULL DEPTH".

S-701 TRAFFIC CONTROL

The Contractor must coordinate his/her work with other City Contractors so there are not two projects occurring on the same route, or adjacent to each other, at the same time. The Engineer, shall make the final determination if there is a conflict (traffic or otherwise) with other projects and whether the Contractor will be permitted to start work at a given location.

WORK HOURS

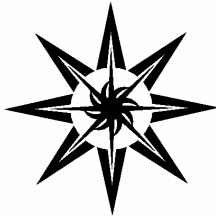
WORK HOURS ARE 8:30 AM TO 4:00 PM

Work at each repair location must be completed by the end of the day. The Contractor shall not leave any milled areas or open pavement repairs overnight. The entire area shall be cleaned and opened to traffic by 4:00 p.m. unless agreed to otherwise by the Engineer.

PROGRAM INTENT

It is the intent of the City to complete repair on as many of the streets as funding will permit.

The 2019 program will construct \$150,000.00 in street repairs under this contract. Project will be awarded on the lowest responsible total bid. The budget will be monitored closely during construction so the final amount is met but not exceeded. Repair areas added to utilize the dollars between the low bid amount and \$150,000 could be located on streets not listed in the contract. Locations listed in the contract are to establish approximate quantities of work on each street. Actual dimensions will be marked in the field by the City prior to construction. The City may add or remove streets to the Street Repair Program. No additional Traffic Control or Mobilization will be awarded for any repair areas added.



PUBLIC WORKS DEPARTMENT

Council Meeting Date: June 1, 2020

COU2020-24

CONSIDER APPROVAL OF A CONTRACT WITH PHOENIX CONCRETE LLC FOR THE 2020 CONCRETE REPAIR PROGRAM

RECOMMENDATION

Move to authorize the Mayor to sign the Construction Contract with Phoenix Concrete LLC for Project CONC2020 2020 Concrete Repair Program for \$725,000.

BACKGROUND

On May 7, 2020, the City Clerk opened bids for Project CONC2020, 2020 Concrete Repair Program. Four bids were received:

Freeman Concrete	\$876,152.00
O'Donnell and Sons	\$721,887.00
Kansas Heavy Construction	\$694,504.00
Phoenix Concrete	\$663,157.36
Engineers Estimate	\$695,000.00

Locations of repairs will be adjusted (increased) to utilize the \$695,000 budget. The remaining \$5,000 will be used for testing. This program consists of repairs to deteriorated concrete sidewalk, curb and ADA ramps.

City staff has reviewed the bids for accuracy, found no errors and recommends award to the lowest responsible bidder, Phoenix Concrete.

Staff will incorporate the following projects into the contract with Phoenix Concrete:

- 1) traffic calming at 67th and Hodges
- 2) concrete repairs at pool bath house

FUNDING SOURCE

CONC2020	\$695,000
TRAFRESV	\$8,000
BG860001	\$22,000
TOTAL	\$725,000

ATTACHMENTS

1. Agreement with Phoenix Concrete LLC

PREPARED BY

Melissa Prenger, Senior Project Manager

May 27, 2020

CONSTRUCTION AGREEMENT



**CONC2020
2020 CONCRETE REPAIR**

BETWEEN

CITY OF PRAIRIE VILLAGE, KS

AND

PHOENIX CONCRETE LLC

CONSTRUCTION CONTRACT
FOR
CONC2020 | 2020 CONCRETE REPAIR

BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
PHOENIX CONCRETE LLC

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 PHOENIX CONCRETE LLC, hereinafter termed in this agreement, “**Contractor**”, for the construction and completion of Project 2020 CONCRETE REPAIR , (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 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 SEVEN-HUNDRED TWENTY-FIVE THOUSAND AND 00/100 DOLLARS (\$725,000.00) 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 including delays resulting from the COVID-19 pandemic, 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, normal weather conditions, the COVID-19 pandemic, or otherwise provided, however, such hindrances and delays could be anticipated by Contractor at the time of execution. 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 Notwithstanding the foregoing or anything in the Contract to the contrary, Contractor acknowledges and agrees that the work, and the performance thereof, may be subject to current and future governmental orders or directives regarding safety protocols related COVID-19, and Contractor agrees that all Work shall be performed in accordance with the same, including but not limited to directives regarding social distancing, hygiene and other efforts to slow the spread of COVID-19. Failure of Contractor to comply with such order or directive shall be deemed an event of default under this Contract, and City shall not be responsible for any increase in the Contract Sum or the Contract Time related to City's enforcement of such orders or directives, or Contractor's failure to comply with such orders or directives. If Work on the Critical Path is delayed due to COVID-19 reasons outside the control of the contractor, an equitable adjustment in the Contract Sum and/or the Contract Time shall be made to the Contract as the City may reasonably decide.
- 13.13 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 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 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

PHOENIX CONCRETE LLC

(typed company name)

By: _____
(signed)

By: _____
(signed)

Eric Mikkelson

(typed name)

Mayor

(typed title)

City of Prairie Village

PHOENIX CONCRETE LLC

(typed company name)

7700 Mission Road

15452 S KEELER ST

(typed address)

Prairie Village, Kansas 66208

OLATHE, KS 66062

(typed city, state, zip)

913-390-1700

(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.)

GENERAL CONSTRUCTION PROVISIONS

1. DEFINITIONS: Capitalized terms not defined herein shall have the meanings set forth in the Construction Contract for the Project dated _____, 2020.
 - 1.1. Following words are given these definitions:

Alternate Bid or alternate is an amount stated in the bid to be added to or deducted from the amount of the base bid, if the corresponding change in the work, as described in the Bid Documents, is accepted.

Base Bid is the sum stated in the bid for which the bidder offers to perform the work described in the Project Manual, without inclusion of any alternate bids.

Concrete shall mean Portland cement concrete.

Day shall mean a calendar day unless otherwise described.

Pavement shall be a rigid or flexible type riding surface placed upon a previously prepared sub-grade or base.

Street shall mean the whole area of any roadway within the right-of-way limits.

Sub-Grade shall be that portion of the construction area which has been prepared, as specified, and upon which a layer of specified material, base, sub-base course, pavement or other improvement is to be placed.

Temporary Construction Easement shall mean the land provided by the City for temporary use by the Contractor during the construction of the work.
 - 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 that so applied have a well-known technical or trade meaning shall be held to refer to such recognized standards.
 - 1.3. Whenever in these Contract Documents the words “as ordered,” “as directed”, “as required”, “as permitted”, “as allowed”, or words or phrases of like import are used, it is understood that the order, direction, requirement, permission or allowance of the City 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 City and/or 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. ABBREVIATIONS

- 2.1. Wherever in this Project Manual the following abbreviations are used, they shall be understood to mean as follows. The serial designation of each reference shall be the latest year of adoption or revision, unless otherwise specified. See the plan sheet for the material abbreviation's legend.

AAN	-	American Association of Nurserymen
AASHTO	-	American Association of State Highway & Transportation Officials
ACI	-	American Concrete Institute
AGC	-	Associated General Contractors of America
AIA	-	American Institute of Architects
ANSI	-	American National Standards Institute
APWA	-	Kansas City Metropolitan Chapter of the American Public Works Association
ASCE	-	American Society of Civil Engineers
ASLA	-	American Society of Landscape Architects
ASME	-	American Society of Mechanical Engineers
ASTM	-	American Society for Testing Materials
ATSSA	-	American Traffic Safety Services Association
CARS	-	Johnson County Assistance Road System
CRSI	-	Concrete Reinforcing Steel Institute
FHWA	-	Federal Highway Administration - Department of Transportation
ISSA	-	International Slurry Seal Association
ITE	-	Institute of Traffic Engineers
KCMMB	-	Kansas City Metropolitan Materials Board
KDOT	-	Kansas Department of Transportation
MCIB	-	Mid-West Concrete Industry Board, Inc.
MUTCD	-	Manual on Uniform Traffic Control Devices for Streets & Highways
NEC	-	National Electrical Code, National Fire Protection Association
NEMA	-	National Electrical Manufacturers Association
SAE	-	Society of Automotive Engineers

3. Standard Detailed Specifications

- 3.1. The first level of reference for standard detailed specifications shall be those promulgated by the City of Prairie Village, KS, Public Works Department.
- 3.2. The second level of reference will be the current edition of the standard detailed specifications of the American Public Works Association (APWA) Kansas City Metro Chapter.
- 3.3. The third level of reference will be the latest edition of the Kansas Department of Transportation "Standard Specifications for Road and Bridge Construction".
- 3.4. For traffic specifications, the latest edition of the Manual On Uniform Traffic Control Devices as published by Federal Highway Administration.
- 3.5. All reference material shall be the latest edition for this project as though fully set forth herein, except as modified or superseded by these construction specifications.

4. Drawings To Be Furnished By Contractor

- 4.1. The Contractor shall furnish all shop, fabrication, assembly, foundation, and other drawings required by the Project Manual, including but not limited to, drawings of equipment and devices, offered by the Contractor for review of the Project Manager, in sufficient detail to show adequately the construction and operation thereof.
- 4.2. Drawings submitted for consideration by the Project Manager shall show the essential details of any change in design of construction proposed by the Contractor in lieu of design or arrangement required by the Contract, or any item of extra work, and all required wiring and piping layouts.
- 4.3. No less than three (3) copies (one for Contractor, one for Project Manager, and one for on site as-builts) of each such drawing shall be submitted to the Project Manager for checking and review.
- 4.4. The Contractor shall maintain at the site modified drawings recording the dimensions and other pertinent details of the work and any changes in the work.
- 4.5. No work shall be performed in connection with the fabrication or manufacture of material or equipment shown by any drawing thereof, nor shall any accessory, appurtenance or device not fabricated or manufactured by the Contractor or its subcontractor, be purchased until the drawing or drawings therefore have been reviewed as stipulated, except at the Contractor's own risk and responsibility.
- 4.6. The Project Manager's review of drawings submitted by the Contractor will be for general conformity to the Project Manual and will not constitute a blanket approval of all dimensions, quantities, and details of the material or equipment shown, nor shall such review relieve the Contractor of responsibility for errors contained in such drawings. Project Manager's review shall not constitute approval of safety precautions, construction means or methods.

5. Responsibility Of Contractor

- 5.1. The Contractor shall furnish all transportation, tools, equipment, machinery, and plant, and all suitable appliances, requisite for the execution of the Project Manual and shall be solely answerable for the same and for the safe, proper, and lawful construction, maintenance, and use thereof including responsibility for hazardous materials.
- 5.2. The Contractor will use equipment and tools suitable for the work. All equipment and tools will be in near-original working condition.
- 5.3. The Contractor shall cover and protect his/her Work from damage and all injury to the same from any source.
- 5.4. The Contractor shall be solely answerable for all damage to the City or the property of the City, to other contractors or other employees of the City, to the neighboring premises, to any person or to any private or personal property, due to improper, illegal, or negligent conduct of Contractor or his/her subcontractors, employees, or agents in and about said work, or in the execution of the work covered by this Contract, or any extra work undertaken as herein provided.

- 5.5. The Contractor shall be responsible to the City for defect in, or the improper use of, any scaffolding, shoring, apparatus, ways, works, machinery, or plant.
- 5.6. The Contractor shall notify all affected utilities of the work and coordinate with the utilities to avoid interruption of utility service and damage to utility lines and property. This notice requirement shall also apply as to the owner/operator of any affected underground facility. Any project delay, damages or increase in construction costs due to utility relocation delays shall be at the Contractor's risk.
- 5.7. The project site shall be kept clean, neat, and orderly as possible at all times. Stockpiling of debris and unsuitable materials beyond normal working demands shall not be allowed. Immediately after construction operations are complete, all equipment, debris and unsuitable materials shall be completely removed from the site in order to minimize the damage to finished work and inconvenience to the public and adjoining property owners. The work site shall be left "broom clean" at the end of each workday and in case of dispute the City may clean the site and charge the Contractor.
- 5.8. The Contractor shall take precaution to ensure that excessive dust does not become airborne during any construction activities. The Contractor shall comply with all State and Federal regulations that apply to airborne matter in the geographic area of the Work. When directed by the Project Manager, the Contractor shall take immediate and appropriate dust control measures satisfactory to the Project Manager.
- 5.9. The Contractor shall not allow the site of the work or neighboring properties to become littered with trash and waste material, but shall maintain the same in a neat and orderly condition on a daily basis throughout the construction period. The City, or the Project Manager on the City's behalf, shall have the right to determine what is or is not trash or waste material.
- 5.10. On or before the completion of the work the Contractor shall, without charge therefore, carefully clean out all pits, pipes, chambers, or conduits, and shall tear down and remove all temporary structures built by the Contractor, and shall remove all rubbish of every kind from the tracts or grounds which it has occupied and shall leave them in first-class condition. Any trash receptacles on the site shall be covered.
- 5.11. The Contractor shall take whatever steps necessary to provide access for the City and the Project Manager to the Work at all times from commencement of the Work through final completion.
- 5.12. The Contractor alone shall be responsible for the safety, adequacy and efficiency of its plant, equipment, and methods, and for the means, methods, techniques, sequences and procedures of construction.
- 5.13. The review of the Project Manager of any plan or method of work proposed by the Contractor shall not relieve the Contractor of any responsibility therefore, and such review shall not be considered as an assumption by the City, Project Manager, or any officer, agent, or employee thereof, of any risk or liability.
- 5.14. The Contractor is admonished that the crews will be properly attired, refrain from abusive language, refrain from improper behavior, and be aware that they are representing the City.

- 5.15. All operations of the Contractor shall be conducted within the right-of-way of the roadway or established easements and the limits of the earthwork and grading, as shown on the Plans. While working under this contract, no agreement shall be made between Contractor and resident, as it pertains to any additional work on private property not paid for by the City.

6. Safety Rules

- 6.1. The Contractor shall be responsible for enforcing safety rules to assure protection of the employees and property of the City, to assure uninterrupted production and to assure safe working conditions for the Contractor and Subcontractors and their employees and to assure the safety of the general public.
- 6.2. In addition to any other rights the City might exercise, the Contractor and/or Subcontractor failing to follow safety rules shall be subject to eviction from the job site and may be refused reentry.
- 6.3. The Contractor is expected to establish and enforce a comprehensive safety program on this project for the protection of its personnel, its Subcontractor's personnel, City's employees and all other persons exposed to hazards resulting from the Contractor's operations. As a minimum requirement, the Contractor shall review and discuss the details of its program with the City at the first project meeting. The items to be covered shall include, but not necessarily be limited to:
- Personal protective equipment;
 - First aid-personnel and facilities;
 - Arrangements for medical attention;
 - Sanitary facilities;
 - Fire protection;
 - Signs, signals, and barricades;
 - Security regulations;
 - Safety inspections;
 - Designation of persons responsible for the program;
 - Reporting forms and procedures;
 - Material handling and storage;
 - Lines of communication;
 - Determination of potential hazards;
 - Personnel safety meetings and education;
 - Access to work areas;
 - Subcontractors involvement in the program;
 - Inspections and corrective action
- 6.4. The Contractor shall maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of life, the Work, supplies, materials and equipment on the project site not yet incorporated in the Work, City's property and adjacent property.
- 6.5. The Contractor shall comply with all instructions from the City regarding prevention of accidents, fires or for the elimination of any unsafe practice and shall observe all the applicable recommendations of the National Fire Protection Association Standard No. 241 (or other, later revision) "Standards For Safeguarding Building Construction and Demolition

Operations”.

- 6.6. The Contractor shall post danger signs warning against the hazards created by such features of construction as protruding nails, hod hoists, well holes, elevator hatchways, scaffolding, window openings, stairways, falling materials, open trenches, other excavations, obstructions and similar conditions. It shall designate a responsible member of its organization on the project whose duty shall be the prevention of accidents. The name and position of the person so designated shall be reported to the City by the Contractor.
- 6.7. In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, Contractor, without special instruction or authorization from Project Manager or City, is obligated to act, at its discretion, to prevent threatened damage, injury, or loss.
- 6.8. The Contractor shall give prompt written notice of any significant changes in the Work or deviations from the Project Manual caused or necessitated by the emergency. A Change Order shall thereupon be issued covering the changes and deviations involved in such bona fide emergency. If Contractor believes that additional work done in an emergency, which arose from causes beyond its control, entitles it to an increase in the Contract Price or an extension of the Contract Time, the Contractor may make a claim therefore as provided herein.
- 6.9. The Contractor shall develop and maintain an up-to-date emergency action plan, taking into account fires, hazardous materials, explosions, adverse weather, floods, etc., which shall be in compliance with all federal, state and local laws and ordinances. The procedures should outline specific action to be taken to protect life and to secure and protect the building materials, constructed work, buildings, equipment, and the position of cranes. The Contractor shall be fully responsible for the contents of and procedures outlined in said plan, including deficiencies therein, whether or not the City shall have reviewed said plan.
- 6.10. 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 thereof, such costs shall be deducted from any amounts due or to become due the Contractor.
- 6.11. 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.

7. Approval of Equals

- 7.1. “Approved Equals”, where permitted by the Project Manual or otherwise made feasible by market conditions, shall be approved as follows:
 - 7.1.1. The Contractor shall notify the City in writing if it elects to use an approved equal specifically

named in the Project Manual.

- 7.1.2. If the Contractor desires to use an “equal” not specifically named in the Project Manual, it must inform the City and receive written approval for such substitutions. The City has no obligation to approve such request and is not responsible for any delay or cost incurred or caused by Contractor’s making such request.
- 7.2. The Contractor shall be solely responsible for design risks, delays and other claims arising out of any approved alternates.

8. Cutting, Patching and Digging

- 8.1. The Contractor shall do all cutting, fitting or patching of his/her work that may be required to make its parts come together properly and fit it to receive or be received by work of others shown upon or reasonably implied by the Project Manual.
- 8.2. The Contractor shall not endanger any property of the City or any other individual or entity, or the work by cutting, digging or otherwise and shall not cut or alter the work of others except with the written consent of the City.
- 8.3. The Contractor shall assume responsibility for the patching or repairs, by the proper trade, of damages caused by work under this Contract.
- 8.4. The Contractor shall comply with all local ordinances dealing with cutting, patching and digging and shall obtain all necessary permits.

9. Temporary Facilities/Utilities

- 9.1. Except where special permission has been granted by the City to use existing toilet facilities belonging to the City, the Contractor shall provide and maintain sanitary temporary toilet facilities located where directed by the City for accommodation of all persons engaged on the work. Temporary toilets shall be enclosed and weatherproof, kept in sanitary, and in an approved condition at all times. After use for it has ceased, the Contractor shall remove the temporary toilet facilities from the City’s premises, disinfect, and fill any vaults.
- 9.2. The Contractor shall provide and maintain any necessary temporary offices, storerooms, roadways, etc, as may be required for its work. It shall be located and constructed in an approved manner acceptable to the City. Upon completion of work or when requested by the City, the Contractor shall remove it from City’s premises and leave the area in a clean and orderly condition.
- 9.3. The Contractor shall provide and maintain temporary heat as required to protect all work and material against injury from dampness and/or cold to the satisfaction of the City.
- 9.4. Unless otherwise specified in the Project Manual, the Contractor shall provide, at his/her cost and expense, temporary power, wiring, water and lights from City’s provided source as may be required for its operations.
- 9.5. The operations of the Contractor shall be in full conformity with all of the rules and regulations of boards and bodies having jurisdiction with respect to sanitation. The Contractor shall

supply safe and sufficient drinking water to all employees. The Contractor shall obey and enforce all sanitary regulations and orders, and shall take precautions against infectious disease and the spread of the same.

- 9.6. All water used in the course of the Work shall be hauled in or purchased from the local Water Company's distribution system at the Contractor's own cost and expense.

10. Right-Of-Way Limits

- 10.1. The Contractor shall confine construction operations to the construction limits and easements provided for and labeled in the Project Manual. Equipment or materials shall not be stored beyond these limits without the express written approval of the owner of such property.
- 10.2. No person, firm or corporation shall park or store for any period of time any construction vehicles, equipment or materials while constructing or improving any street or while working on any public works project of any kind within the city, on behalf of the city, or any other governmental agency, or any utility, public or private, unless a permit has been previously issued by the Director of Public Works. The person, firm or corporation who parks, or allows the parking or storing of any construction vehicles, equipment, or materials without first obtaining said permit or who parks or stores or allows said parking or storage contrary to the terms and conditions of any permit issued by the City, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished as provided in the Prairie Village Municipal Code. Each day such violation is committed or permitted to continue constitutes a separate offense and shall be punishable as such hereunder.
- 10.3. The Director of Public Works is authorized to issue a permit to authorize and allow the temporary parking, staging and storage of construction vehicles, equipment, and materials on public streets of the City or on public property, church property or property zoned C-0 through C-2 and CPO through CP-2 during periods of construction of public works projects of the city, any other governmental agency, or public or private utility projects within the City of Prairie Village, Kansas.
- 10.4. No permit shall be allowed on property that is residential in nature, provided, however, that property zoned "residential" that is being used as a church, school, or country club may be used with the written permission of the owner.
- 10.5. The only designated haul routes in Prairie Village are: Nall Avenue, Mission Road, 75th Street, and 95th Street. The Contractor must have written approval prior to using any other street or haul route.

11. Completed Work

- 11.1. Before final acceptance of the Work, all mechanical and electrical equipment and devices shall be tested and each part shall be in good condition and working order, or shall be placed in such condition and order at the expense of the Contractor.
- 11.2. All tests of such completed work required under this Contract shall be made in the presence of the Project Manager or its authorized representatives.
- 11.3. All unsatisfactory, faulty or Defective Work and all work not conforming to the requirements to the Project Manual at the time of acceptance thereof, or of such inspections, tests, or

approvals shall be considered defective. Prompt notice of all defects shall be given to the Contractor.

- 11.4. All Defective Work, whether or not in place, may be rejected pending correction thereof. Should the Contractor not correct said Work, the City may do so at Contractor's expense.
- 11.5. The Contractor shall remove from the site of the work, without delay, all rejected and condemned material or structures of any kind brought to or incorporated in the work, or if the Contractor fails to make satisfactory progress in so doing, within forty-eight (48) hours, after the service of a written notice from the Project Manager ordering such removal, the rejected material or structures may be removed by the City at the Contractor's expense.
- 11.6. At the City's discretion, payment for all related items of work may be withheld until all rejected and condemned materials or structures are satisfactorily removed.

12. Maintenance Period

- 12.1. If desired by the City or requested by the Contractor, portions of the Work may be placed in service when completed and the Contractor shall give proper access to the work for this purpose; but such use and operation shall not constitute an acceptance of the Work.
- 12.2. The Contractor shall be liable for defects due to faulty construction until the entire Work under this Contract is finally accepted and for a period of two years or longer thereafter, as stipulated in this Project Manual.
- 12.3. During a period of two years (or longer, if stipulated in the Special Conditions,) from and after the date of the final acceptance by the City of the Work, the Contractor shall make all needed repairs arising out of Defective Workmanship or materials, or both, which, in the judgment of the City, shall become necessary during such period. If within ten (10) days after the mailing of a notice in writing to Contractor, or its agent, the Contractor shall neglect to make or undertake with due diligence to make the aforesaid repairs, City is hereby authorized to make such repairs at the Contractor's expense and charge such against the Maintenance Bond; provided however, that in case of an emergency where, in the judgment of the City, delay would cause serious loss, hazard or damage, repairs may be made without notice being sent to the Contractor, and the Contractor shall pay the cost thereof.
- 12.4. Where maintenance or corrective construction is required, the Contractor shall submit his/her proposed methods and designation of materials to the City, or the City through its Consulting Engineer, for approval in advance of such work.
- 12.5. If, at any time prior to the end of the two year maintenance period, the pavement or walk settles, the Contractor shall, at his/her expense, do all necessary corrective work to eliminate any drainage problem or vertical offset caused by such settlement, provided:
 - 12.5.1. If there is a vertical offset between top of such pavement or walk and top of such structure of more than one-fourth inch.
 - 12.5.2. If around manholes or utility valves, there will be more than one-half (1/2) inch vertical differential between a plane surface passing through the top of the pavement, measured 24 inches horizontally from the edge of top of structure. (This will be measured utilizing a straight edge with one half-inch spacer feet mounted at each end of the straight edge.)

- 12.5.3. If the settlement creates a situation such that the walk is outside of the ADA Accessibility Guidelines, it shall be replaced.
- 12.5.4. If adjacent sections of concrete walk, pavement or curbs settle or heave so that there is more than one-fourth (1/4) inch vertical offset between such adjacent sections.
- 12.5.5. If the flow line of any concrete gutter, or of any concrete curb and gutter pockets water or does not drain properly resulting in three-eighth (3/8) inch of standing water.
- 12.5.6. If, any newly placed pavements surfaced with asphalt concrete pockets water or does not drain properly resulting in three-eighths (3/8) of standing water.
- 12.6. The Contractor shall repair cracks which appear for any reason, but which may or may not indicate failure of sub-grade, base or surface, and which are wide enough in cool weather to be sealed by high standard crack sealing methods. Crack filling shall be done during relatively dry weather and at temperatures when the cracks will be near maximum width. Materials and methods shall be based on width of crack. Materials shall be of such consistency as to minimize whipping out under traffic. Cracks shall be thoroughly blown and cleaned and filler installed without superficial bridging.
- 12.7. The intent of the guarantee period is that the Owner will have a durable and serviceable pavement; that defective materials and workmanship will have been corrected. All materials and construction for such work will be at the Contractor's expense.
- 12.8. All corrective and maintenance work shall be done promptly upon notification by the Owner, in order to prevent unnecessary further deterioration and in order not to inconvenience the traveling public unduly.
- 12.9. All work shall be in accordance with the highest standards of the construction industry and shall be of such nature as to be substantially permanent.

13. Equipment Guaranty

- 13.1. All mechanical and electrical equipment and devices, and every part thereof, which are furnished by the Contractor under the terms of this Contract shall be guaranteed by the Contractor and its surety against Defective Workmanship, faulty design, mechanical and physical defects, leakage, breakage, and other damages or failure, under normal operation of the equipment and devices under specified conditions, for a period of two years from and after the date of acceptance thereof (unless otherwise provided herein) by the City.
- 13.2. Any item of equipment or part thereof, thus proving to be defective within the specified period shall be promptly replaced by and at the expense of the Contractor, when notified by the City. Should the Contractor fail to replace said item within a reasonable time, City may do so at Contractor's expense.
- 13.3. The Contractor shall ensure that a copy of operating and maintenance manuals for all equipment shall be kept on the site during construction of the Work and shall be open to inspection by the City or its agents.

14. Public Complaints

- 14.1. All complaints to the Contractor or any of the Subcontractors or to the Project Manager are to be reported in writing immediately to the City Project Manager. This written report will include the name, address and telephone number of the complainant, a detailed description of the complaint, a detailed description of the actions taken, and by whom to resolve the complaint.
- 14.2. The Contractor shall endeavor, with the cooperation and concurrence of the Project Manager, to communicate with abutting property owners and tenants affected by the work.
- 14.3. The Contractor shall respond to citizen complaints, concerns or inquiries with 48 hours (two work days). The Contractor will submit a copy of the action taken to the Project Manager in a timely manner utilizing forms provided by the City.

15. Notification

- 15.1. As part of this project, the City will be notifying residents by mail of the upcoming work. The Contractor must give the City a minimum notice of three weeks prior to doing **any** work on a street.
- 15.2. The Contractor must give the City three days notice prior to commencing any work that prevents the use of a driveway.
- 15.3. Delays created by failure of the Contractor to notify the City in the above-specified time will be counted against the contract time. The Contractor will not be entitled to an extension of the contract time based on notification delays.
- 15.4. In the event, work does not begin on the designated street within the designated time, the City will re-notify the residents with an explanation of why work did not begin as scheduled and a statement of when work will begin. Work may not begin until 48 hours after mailing the re-notifications.

16. Progress Meetings

- 16.1. Periodic Progress meetings shall be held at a predetermined location on the site. These meetings will be held once every week or sooner as events dictate. These meetings will be organized by the City or Project Manager. Participation in this meeting by representatives of the prime contractor and each of the subcontractors is required. These representatives must be empowered to make decisions affecting the prosecution of the work and shall be the Owner of the construction firm and/or his/her superintendent. The Project Manager will conduct the meetings and the discussion will include, but is not limited to the following:
 - Proposed construction schedule for duration of contract for both Prime and Subcontractors
 - Identification of any known utility/contractor conflicts and proposed resolution of same
 - Coordination of other trades.
 - Specialty items. (Fences, shrubs, monuments, sprinkler systems, etc.)
 - Completion date requirements.
 - Review of traffic control plan as it pertains to area of work.

- Problems and/or complaints and remedial measures taken or proposed.

17. Uncovering and Correcting Work

- 17.1. If any of the Work is covered contrary to the Project Manager's request or to any provisions of this Contract, it shall, if required by the Project Manager or the City, be uncovered for the Project Manager's observation and shall be properly replaced at the Contractor's expense without change in the Contract Time.
- 17.2. If any of the Work is covered in a manner not consistent with the Project Manual, it shall, if required by the Project Manager or City, be uncovered for the Project Manager's observation. If such Work conforms strictly to this Contract, costs of uncovering and proper replacement shall be by Change Order and charged to the City. If such work does not strictly conform to this Contract, the Contractor shall pay the costs of uncovering and proper replacement.
- 17.3. The Contractor, within two weeks of written notification, shall proceed to correct Work rejected by the Project Manager as defective or failing to conform to this Contract. The Contractor shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and observations, and reimbursement to the City for the Project Manager's services and expenses made necessary thereby.
- 17.4. Nothing contained in this Article shall establish any period of limitation with respect to other obligations, which the Contractor has under this Contract.
- 17.5. If, after two weeks following notification by the Project Manager, the Contractor has not started or completed the corrective work, the Contractor will notify the Project Manager and affected resident of intended schedule to complete work.

18. City May Accept Defective or Non-conforming Work

- 18.1. If the City chooses to accept defective or non-conforming Work, the City may do so. In such event, the Contract Price shall be reduced by the greater of (a) the reasonable cost of removing and correcting the defective or non-conforming Work, and (b) the difference between the fair market value of the Work as constructed and the fair market value of the Work had it not been constructed in such a manner as to include defective or non-conforming Work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the City for its acceptance of defective or non-conforming Work, the Contractor, upon written demand from the City, shall pay the City such remaining compensation for accepting defective or non-conforming Work.

END OF SECTION

SPECIAL CONDITIONS

1. TIME and LIQUIDATED DAMAGES

The Total Completion date for the Project Work under this Contract shall be September 30, 2020 with the following substantial completion dates:

Curb replacement on the full reconstruction streets - August 7, 2020

Liquidated Damages, as referenced in the contract agreement, shall be assessed in the amount of \$500.00/per calendar day for Total Project Work. Contractor agrees that such assessment is a reasonable estimate of the damages that may be sustained by the City in the event the project is delayed and that such amount is not a penalty.

WORK INACTIVITY PENALTY

The Contractor must commit to the work effort to complete each street location. Completion includes all concrete removals and replacements, asphalt wedging and restoration. If the Contractor does not commit to the continuous work effort, excluding weather, then the Contractor will be charged a WORK INACTIVITY PENALTY after three consecutive days of no work. The initial penalty will be \$300.00 with an additional \$100.00 being charged for each day thereafter.

There shall not be more than three business days between tear out and construction of any item, excluding driveways (See #5 below for driveway requirements).

2. CONCRETE REPAIR PROGRAM

The 2020 Concrete Repair Program is scheduled for construction at the following locations (in priority order)

- A) Curb replacement on full reconstruction streets.
- B) Maintenance Districts
- C) The miscellaneous locations listed throughout the City.

3. S-320 ASPHALT CONCRETE SURFACE AND BASE

ASPHALT WEDGE (SY) consists of 2 inch mill and overlay approximately two foot in width at the curb line to provide a consistent slope to the gutter line. APWA Type 3 mix or OP ILC may be used for asphalt wedge mix.

The measurement of payment for ASPHALT WEDGE will be measured by the square yards actually completed and accepted in accordance with the specifications. The unit price bid shall be full compensation for milling, tack coat, and proper placement of asphalt complete and in place, and for all labor, tools, equipment and incidentals necessary to complete the work.

4. S-901 INLET MODIFICATION

Inlet modification at 4904 W 72nd Street to remove the standard curb inlet and place a curb grate.

5. SP1 CONCRETE SEALER

SEAL-KRETE® Clear-Seal Concrete Protective Sealer (or approved equal) low odor, low VOC in satin finish.

6. S-520 SIDEWALK RAMPS

ADA RAMPS shall not be accepted until all items of work associated with an open ramp are completed, this includes backfill in place and plastic removed from truncated domes. In the case of projects where ADA RAMP replacement is the singular piece of work activity in a project area, acceptance is dependent upon asphalt wedge installation in addition to previously mentioned items.

7. S-524 CONCRETE SIDEWALK

CONCRETE SIDEWALK shall not be accepted until all items of work associated the bid item are complete, this includes backfill in place.

8. S-525 DRIVEWAY

A performance penalty of \$100.00 will be assessed for each calendar day in excess of three calendar days that the driveway is not provided. Rain days will not be counted, however, the Contractor must provide temporary access (as approved by the City) for any time exceeding the three (3) calendar days. Providing temporary access does not alleviate the counting of calendar days.

9. S-541 CONCRETE CURB/GUTTER

CONCRET CURB/GUTTER shall not be accepted until all items of work associated the bid item are complete, this includes backfill in place. In the case of projects where spot repairs are made, acceptance is dependent upon asphalt wedge installation in addition to previously mentioned items

10. SP2 CONCRETE CURB - POOL

Curb to be replaced at the adult pool is in the pool itself. This requires a sub-contractor with pool experience.

Included in this bid item is the repair of the top step of the adult pool to facilitate positive drainage into the pool, and repainting the curb and the step.

11. S-605 SEEDING

Hydromulch with permanent seed mix #1 shall be required for restoration areas too small for sod.

12. S-701 TRAFFIC CONTROL

Traffic control devices shall be in place prior to any demolition or tear out activities. This includes saw cutting activities.

13. ADDITIONAL CLARIFICATIONS: Please note these details that City Inspection Staff routinely call to attention:

13.1. Standard detail 103.04 Curb Detail:

Curb Replacement at Existing Asphalt the curb removal shall be facilitated by a neat sawcut.

13.2. Standard detail 103.01 Curb Detail Section A-A:

The patch adjacent to the curb section shall be poured separately from the curb, after the forms have been removed. The concrete wedge shall be free of debris and the concrete is to be placed to within 2" of the asphalt surface to a smooth surface.

13.3. Curb Machine pouring will not be allowed on any street with a curb segment less than 30 consecutive linear feet.

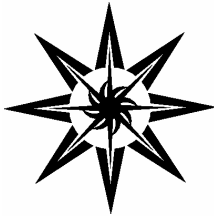
- 13.4. Additional grading may be required in locations where the existing concrete does not meet ADA standards, adjustment due to field conditions or at the City's discretion. Any additional grading required is subsidiary to other items in the contract.
- 13.5. If during construction it becomes necessary to modify the subgrade in order to prepare a level or suitable pouring surface, the contractor will be required to compact the subgrade with a suitable material such as AB3 in order to achieve the desired surface or depth. In no instance will the contractor be allowed to pour on top of a muddy, frozen or otherwise unsuitable subgrade. Subgrade modification is subsidiary to other items in the contract.
- 13.6. Curb removal at signalized intersections can damage traffic signal loops. Prior to the start of any work, the Contractor must contact KCPL so that all traffic signal loops may be marked and protected by their personnel. Failure to do so will result in the contractor bearing the cost to repair any damage to the loops.

14. Contract Section 17.4: Contractor is required to perform 75% of the total contract price.

15. Intent of Work:

The quantities shown on the bid proposal are for bidding purposes only and may not represent the actual quantities of work required under this contract. The bid item quantities are for the purposes of evaluating the submitted bid proposals. Unbalanced bids are not permitted and will be cause for rejection.

The locations, requiring repair, will be marked by the City ahead of the Contractor's schedule of work, as required. Some locations are subject to change and final quantities will be based on the project budget. The Contractor should be aware that this project is for repairing existing damaged or deteriorated concrete curb and gutter, sidewalk, driveways and ADA ramps as needed and that varying sizes of repairs will be encountered on an individual street (five feet to a few hundred feet). The budget for this project is \$695,000 and the contract will be awarded for this amount. The budget will be monitored closely during construction so the final amount is met but not exceeded.



PUBLIC WORKS DEPARTMENT

Council Meeting: June 1, 2020

COU2020-25

CONSIDER MAKING THE NECK DOWN TRAFFIC CALMING MEASURE INSTALLED IN 2018 ON 67TH STREET BETWEEN ROE AVENUE AND NALL AVENUE A PERMANENT INSTALLATION.

RECOMMENDATION

Staff recommends City Council approve making the neck down traffic calming measure installed on 67th Street from Roe Avenue to Nall Avenue a permanent installation.

BACKGROUND

Council approved the installation of traffic calming measures on 67th Street between Roe Avenue and Nall Avenue in the Fall of 2018. A neck down located at Hodges and speed display signs were approved. This was the first neck down that we have installed so it was proposed to be installed initially as a temporary measure and if received well made permanent. The traffic calming after study, attached, was not completed until late fall due to construction in the area. The neighborhood also gathered feedback from residents related to the traffic calming measures. Given the after study results and the comments received from residents that the measures are perceived to be working and are generally supportive of the measures. Given the feedback from residents we are recommending we make the neck down permanent by adding concrete curbs to delineate the neck down.

Going forward if neck downs are selected and approved by council on other projects they would be made permanent when they are initially installed.

ATTACHMENTS

1. Photo of Neck down
2. TranSystems After Study

PREPARED BY

Keith Bredehoeft, Director of Public Works

May 26, 2020



TranSystems
 2400 Pershing Road
 Suite 400
 Kansas City, MO 64108
 Tel 816 329 8600
 Fax 816 329 8601
 www.transystems.com

December 13, 2019

Keith Bredehoeft, PE
 Project Manager
 Public Works Facility
 3535 Somerset Drive
 Prairie Village, KS 66208

**Re: Traffic Calming After Study
 67th Street – Nall Avenue to Roe Avenue**

Dear Keith:

A study was requested on 67th Street from Nall Avenue to Roe Avenue to determine the effects of traffic calming measures implemented since an eligibility study was completed in November 2016.

The street was evaluated using average daily traffic volumes and 85th percentile speeds of vehicles. The data was compared with the same data collected for the eligibility (before) study.

Data Collection

Traffic volumes and speed data for the after condition were collected between Tuesday, December 3, 2019 and Thursday, December 5, 2019. Data was collected for the before condition in November 2016.

The before and after data are summarized on **Figure A-1** in **Appendix A**. The before and after traffic volumes and speed plots over the course of a weekday are graphically displayed in **Appendix B**.

A comprehensive breakdown of daily traffic volumes and vehicle speeds collected are included in **Appendix C** and **Appendix D**.

Comparison of Before and After Data

The primary expectation with traffic calming devices is that vehicular speeds will be reduced. A secondary expectation is that some drivers might choose to use another street to avoid the device(s). The following tables show the changes in traffic volumes and speeds for this street segment.

Before/After Traffic Calming Comparison 67th Street– Nall Avenue to Roe Avenue			
Criteria	Before (2016)	After (2019)	Change
Average Daily Traffic	2,407 vehicles	2,536 vehicles	5.4% increase
Speed – 85th Percentile	35 mph	32 mph	3 mph decrease

The traffic calming devices successfully reduced the 85th percentile vehicular speed by 3 mph. However, the traffic volumes were slightly higher during the 2019 count. The influence of the traffic calming devices on traffic volumes is impossible to determine with any certainty as we don't fully know what other circumstances may have influenced the counts separated by three years.

We trust that the enclosed information proves beneficial to the City of Prairie Village. We appreciate the opportunity to be of service to you and will be available to review this study at your convenience.

Sincerely,

TranSystems

By: _____



Jeffery J. Wilke, PE, PTOE

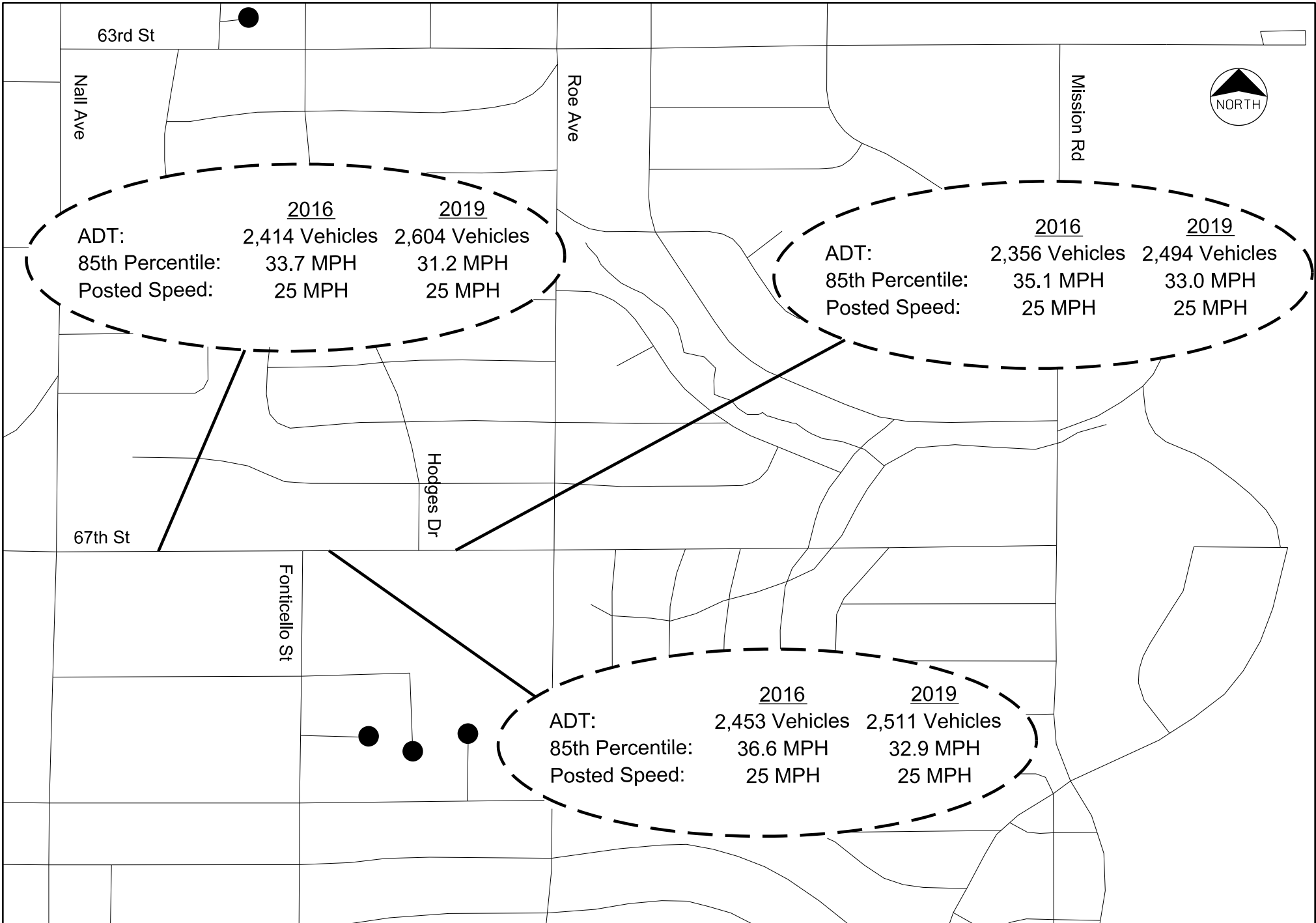


Emma H Martin, EIT

JJW/EHM:em:PI01190242
Attachments

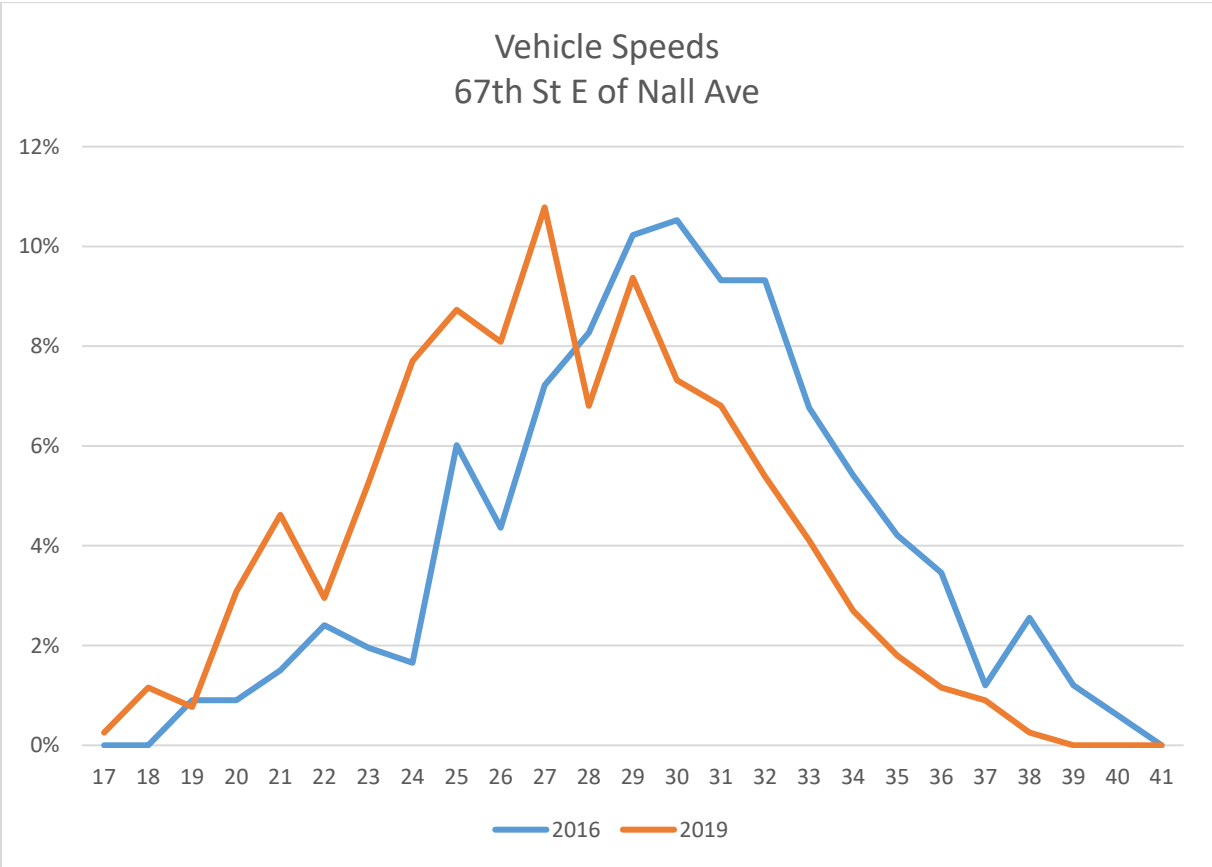
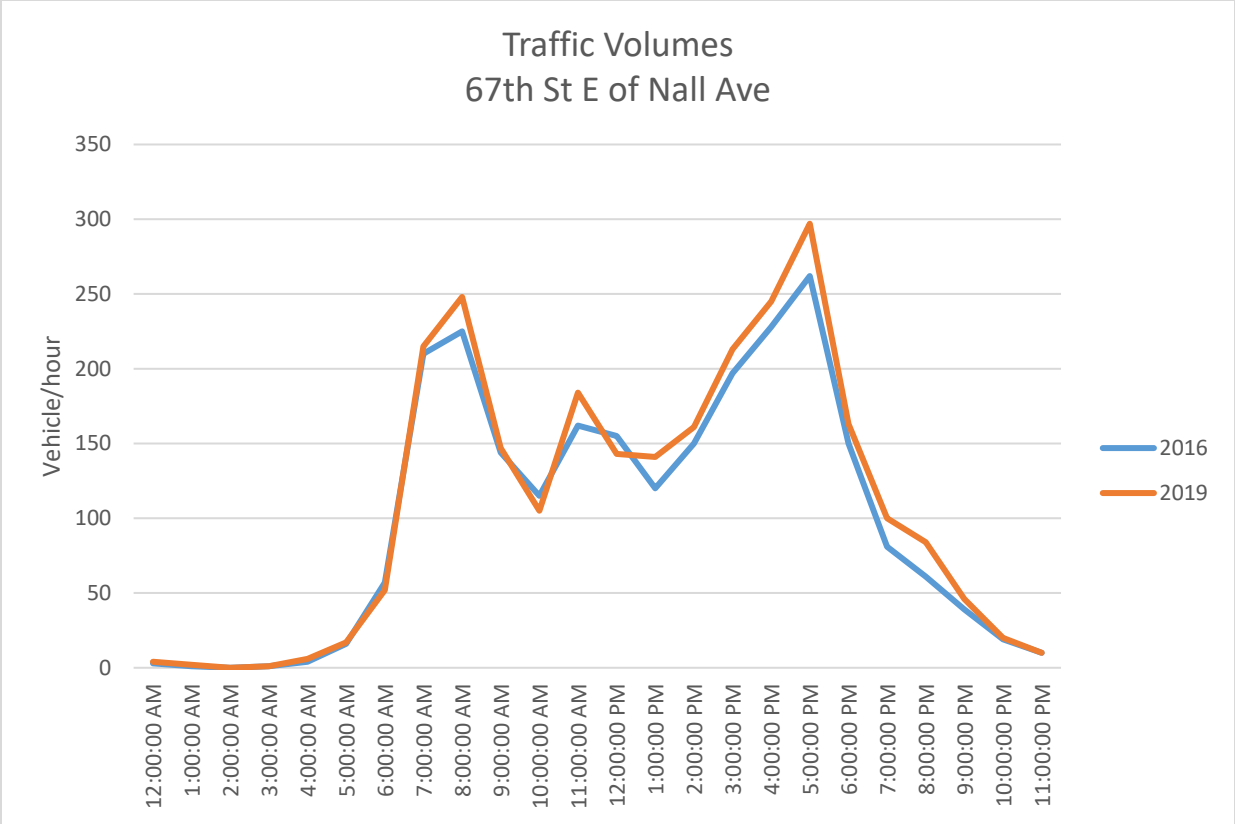
Appendix A

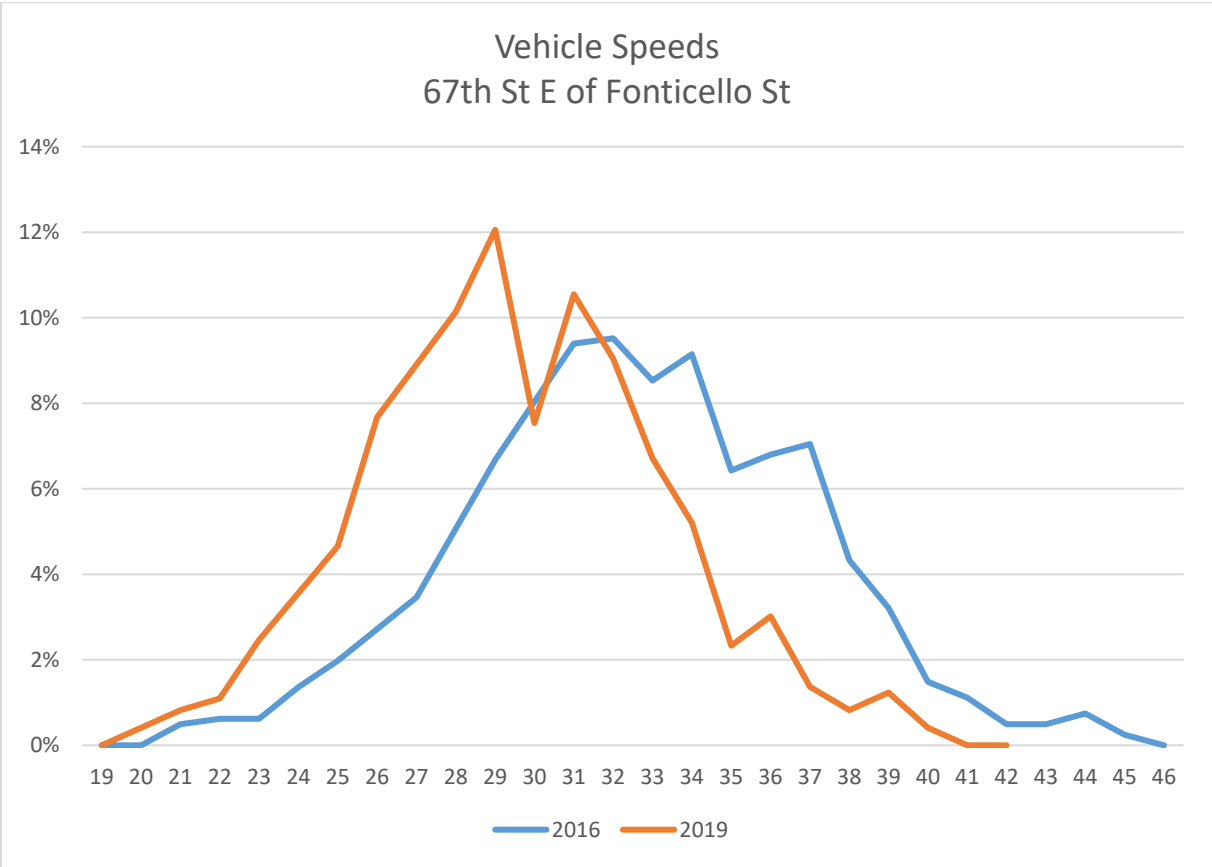
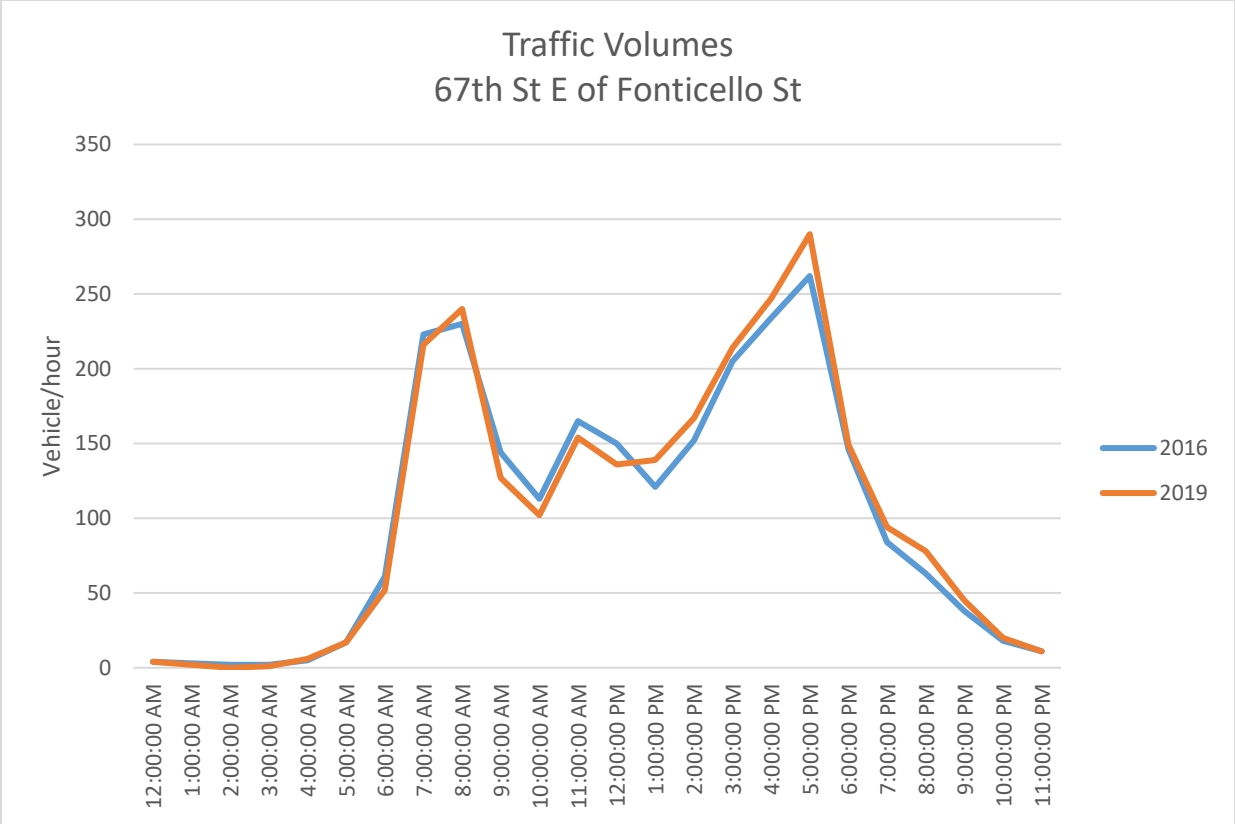
Figure A-1 Origin and Destination Survey Summary and Average Daily Traffic Volumes and Speeds

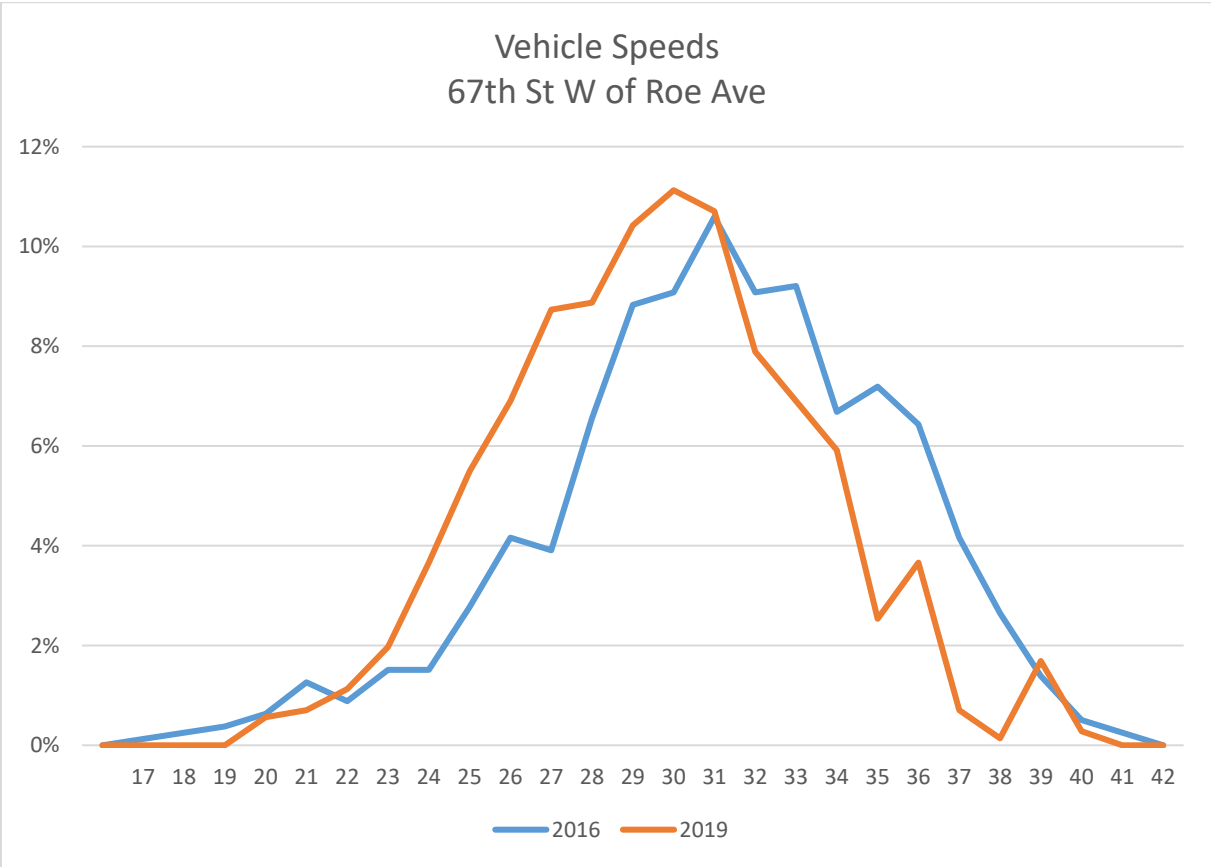
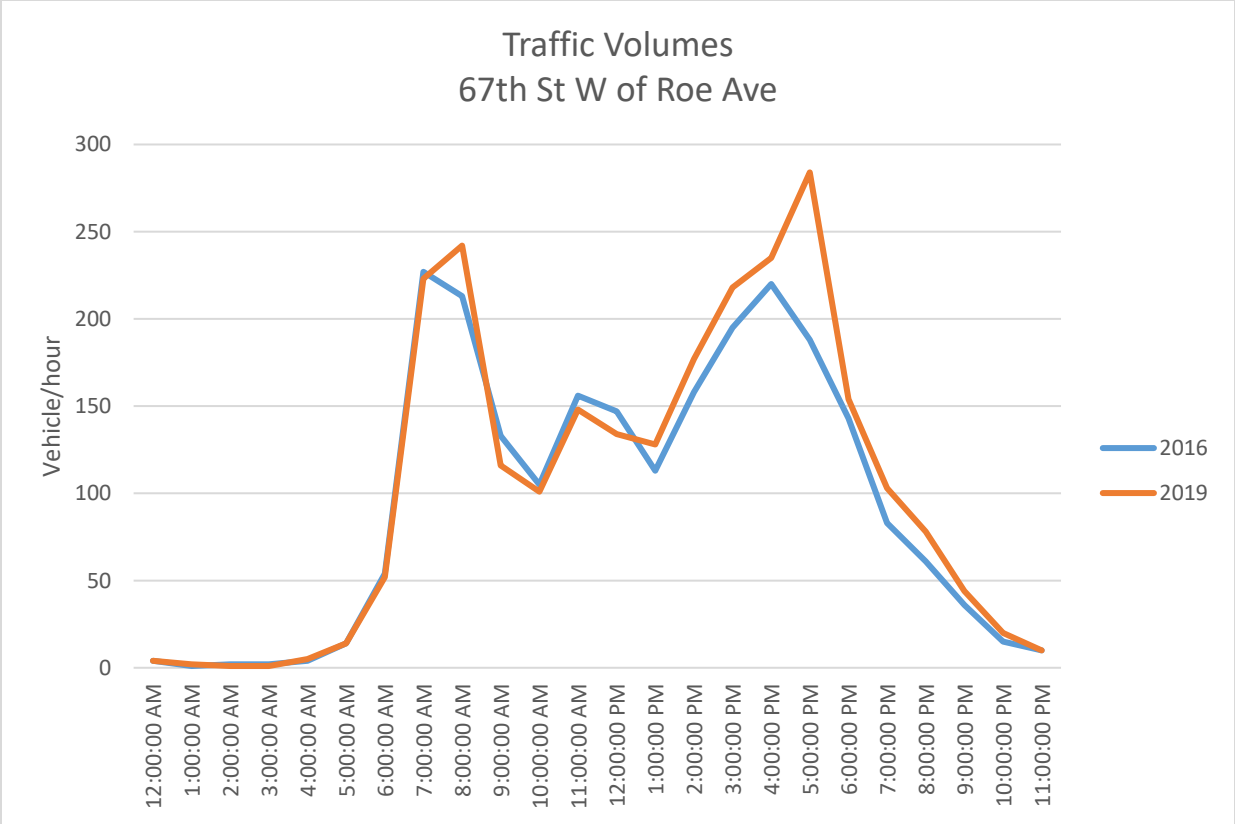


Appendix B – Average Daily Traffic Volumes and Vehicle Speeds Graph

See attached graphs.







Appendix C – Average Daily Traffic Volumes and Vehicle Speeds (2019 Count)

See attached worksheets.

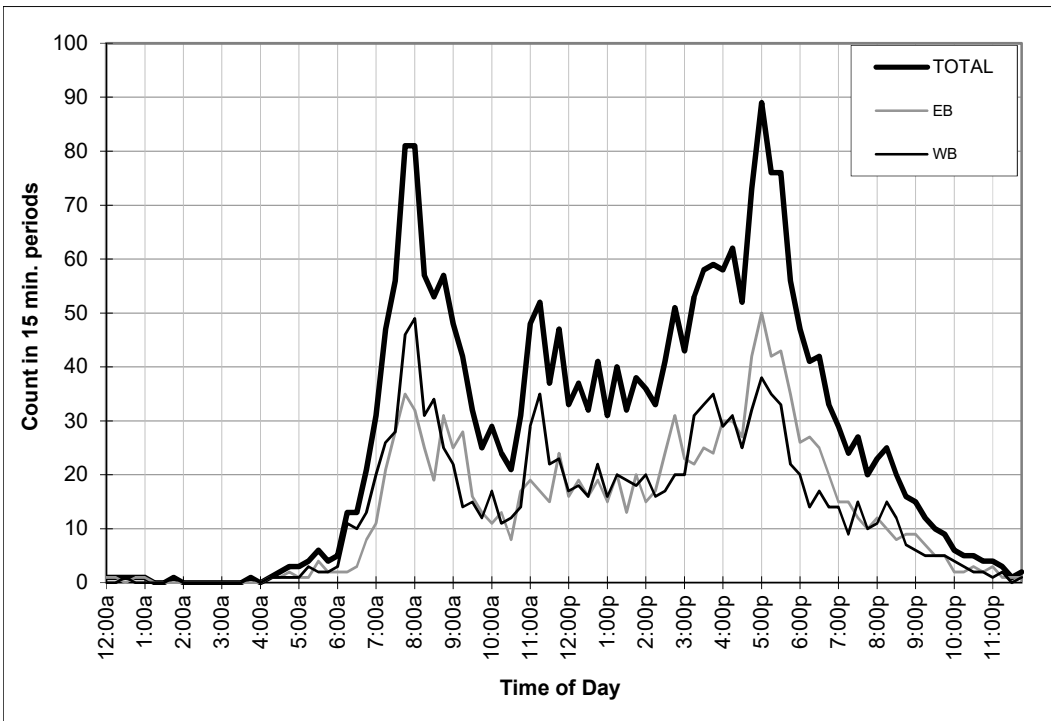
Daily Traffic Count

Praire Village Traffic Calming Study

Praire Village

Location: **67th Street East of Nall**

Period Start	EB	WB	TOTAL	Period Start	EB	WB	TOTAL	Period Start	EB	WB	TOTAL	Period Start	EB	WB	TOTAL
12:00a	1	0	1	6:00a	2	3	5	12:00p	16	17	33	6:00p	26	20	47
12:15a	1	0	1	6:15a	2	11	13	12:15p	19	18	37	6:15p	27	14	41
12:30a	0	1	1	6:30a	3	10	13	12:30p	16	16	32	6:30p	25	17	42
12:45a	1	0	1	6:45a	8	13	21	12:45p	19	22	41	6:45p	20	14	33
1:00a	1	0	1	7:00a	11	20	31	1:00p	15	16	31	7:00p	15	14	29
1:15a	0	0	0	7:15a	21	26	47	1:15p	20	20	40	7:15p	15	9	24
1:30a	0	0	0	7:30a	28	28	56	1:30p	13	19	32	7:30p	12	15	27
1:45a	0	1	1	7:45a	35	46	81	1:45p	20	18	38	7:45p	10	10	20
2:00a	0	0	0	8:00a	32	49	81	2:00p	15	20	36	8:00p	12	11	23
2:15a	0	0	0	8:15a	25	31	57	2:15p	17	16	33	8:15p	10	15	25
2:30a	0	0	0	8:30a	19	34	53	2:30p	24	17	41	8:30p	8	12	20
2:45a	0	0	0	8:45a	31	25	57	2:45p	31	20	51	8:45p	9	7	16
3:00a	0	0	0	9:00a	25	22	48	3:00p	23	20	43	9:00p	9	6	15
3:15a	0	0	0	9:15a	28	14	42	3:15p	22	31	53	9:15p	7	5	12
3:30a	0	0	0	9:30a	16	15	32	3:30p	25	33	58	9:30p	5	5	10
3:45a	0	1	1	9:45a	13	12	25	3:45p	24	35	59	9:45p	5	5	9
4:00a	0	0	0	10:00a	11	17	29	4:00p	30	29	58	10:00p	2	4	6
4:15a	1	1	1	10:15a	13	11	24	4:15p	30	31	62	10:15p	2	3	5
4:30a	1	1	2	10:30a	8	12	21	4:30p	27	25	52	10:30p	3	2	5
4:45a	2	1	3	10:45a	17	14	31	4:45p	42	32	73	10:45p	2	2	4
5:00a	1	1	3	11:00a	19	29	48	5:00p	50	38	89	11:00p	3	1	4
5:15a	1	3	4	11:15a	17	35	52	5:15p	42	35	76	11:15p	1	2	3
5:30a	4	2	6	11:30a	15	22	37	5:30p	43	33	76	11:30p	1	0	1
5:45a	2	2	4	11:45a	24	23	47	5:45p	35	22	56	11:45p	1	1	2



HOURLY TOTALS

Period Start	EB	WB	TOTAL
12:00a	3	1	4
1:00a	1	1	2
2:00a	0	0	0
3:00a	0	1	1
4:00a	4	3	6
5:00a	8	8	17
6:00a	15	37	52
7:00a	95	120	215
8:00a	107	139	248
9:00a	82	63	147
10:00a	49	54	105
11:00a	75	109	184
12:00p	70	73	143
1:00p	68	73	141
2:00p	87	73	161
3:00p	94	119	213
4:00p	129	117	245
5:00p	170	128	297
6:00p	98	65	163
7:00p	52	48	100
8:00p	39	45	84
9:00p	26	21	46
10:00p	9	11	20
11:00p	6	4	10

Approach	3-Day Average	AM Peak 7:30a - 8:30a	Noon Peak 11:00a - 12:00p	PM Peak 4:45p - 5:45p	Totals
Eastbound		120	75	177	1,287
Westbound		154	109	138	1,313
TOTAL		275	184	314	2,604

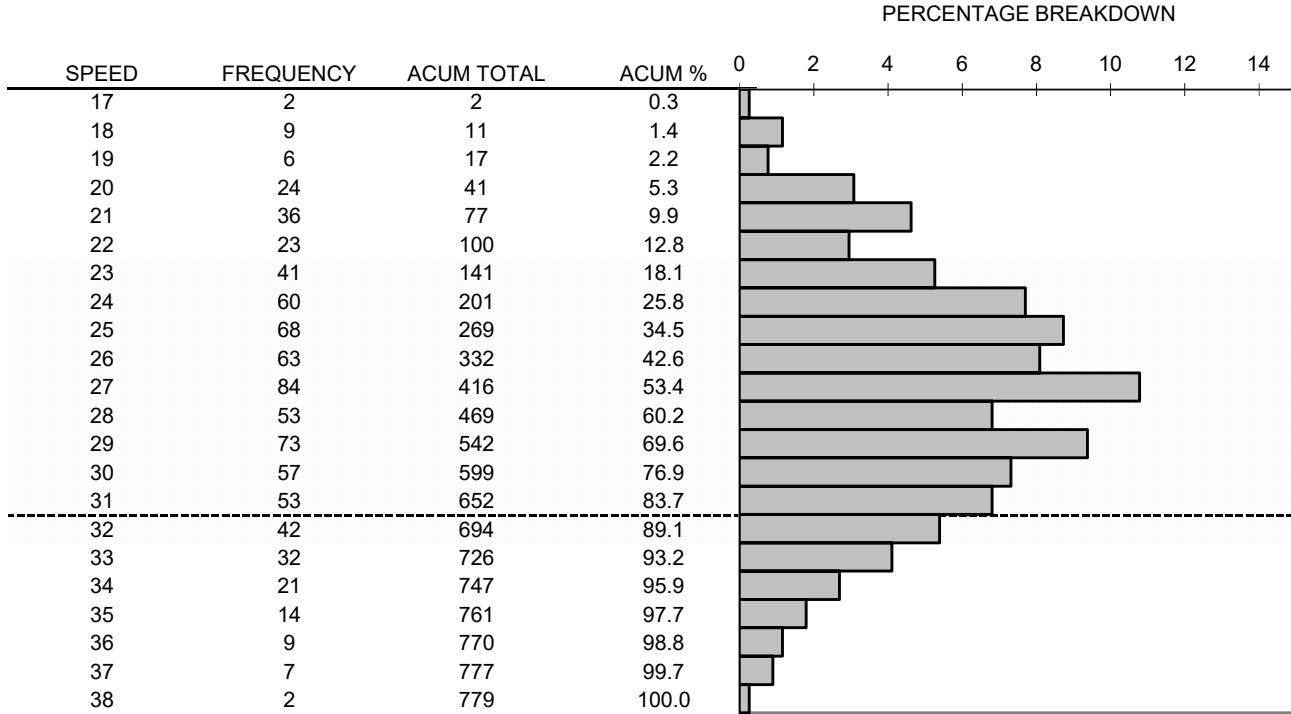


SPOT SPEED STUDY RESULTS RELATIVE FREQUENCY DISTRIBUTION

CITY: Prairie Village
OBSERVER: EHM
DATE: 12/3/2019

COUNTY: Johnson
SPEED LIMIT: 25 mph
DIRECTION: EB + WB

LOCATION: 67th St E of Nall Ave
TIME START: 9:00 AM
TIME END: 2:59 PM



AVERAGE SPEED = 27.3
50th PERCENTILE = 26.7
85th PERCENTILE = 31.2
90th PERCENTILE = 32.2
95th PERCENTILE = 33.7

PACE = 23 - 32
VEHICLES IN PACE = 594
% IN PACE = 76.3
% BELOW PACE = 12.8
% ABOVE PACE = 10.9

SAMPLE VARIANCE = 17.1336926
STANDARD DEVIATION = 4.1392865
RANGE 1*S = 70.86008
RANGE 2*S = 96.27728
RANGE 3*S = 100.

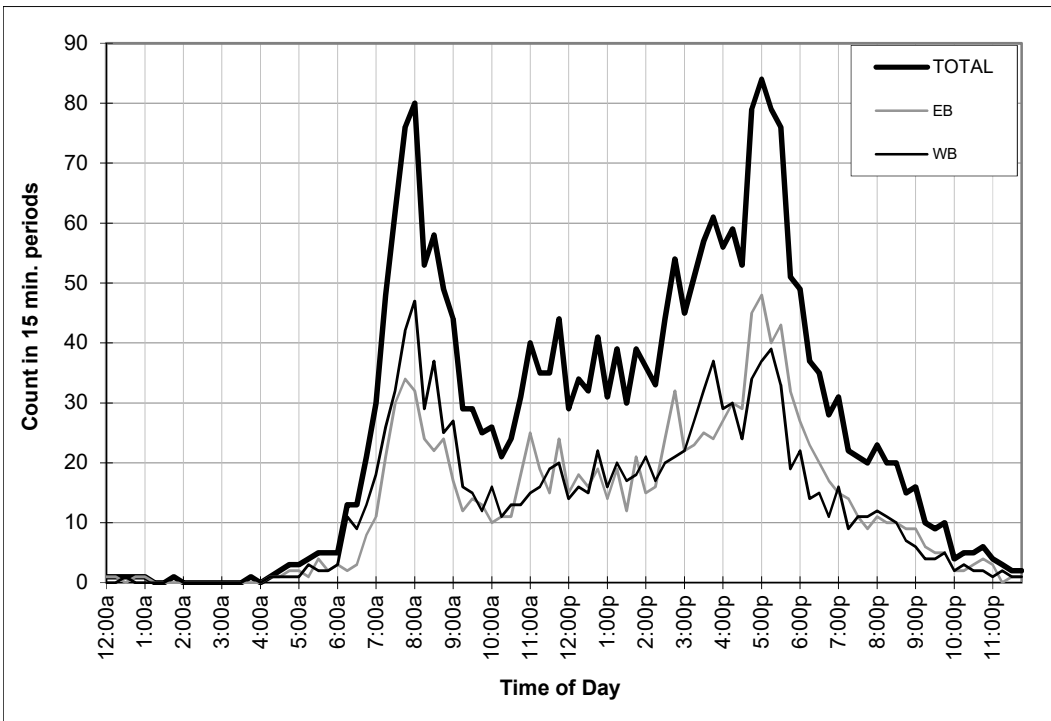
Daily Traffic Count

Praire Village Traffic Calming Study

Praire Village

Location: **67th Street East of Fonticello**

Period Start	EB	WB	TOTAL	Period Start	EB	WB	TOTAL	Period Start	EB	WB	TOTAL	Period Start	EB	WB	TOTAL
12:00a	1	0	1	6:00a	3	3	5	12:00p	15	14	29	6:00p	27	22	49
12:15a	1	0	1	6:15a	2	11	13	12:15p	18	16	34	6:15p	23	14	37
12:30a	0	1	1	6:30a	3	9	13	12:30p	16	15	32	6:30p	20	15	35
12:45a	1	0	1	6:45a	8	13	21	12:45p	19	22	41	6:45p	17	11	28
1:00a	1	0	1	7:00a	11	18	30	1:00p	14	16	31	7:00p	15	16	31
1:15a	0	0	0	7:15a	21	26	48	1:15p	19	20	39	7:15p	14	9	22
1:30a	0	0	0	7:30a	30	32	62	1:30p	12	17	30	7:30p	11	11	21
1:45a	0	1	1	7:45a	34	42	76	1:45p	21	18	39	7:45p	9	11	20
2:00a	0	0	0	8:00a	32	47	80	2:00p	15	21	36	8:00p	11	12	23
2:15a	0	0	0	8:15a	24	29	53	2:15p	16	17	33	8:15p	10	11	20
2:30a	0	0	0	8:30a	22	37	58	2:30p	24	20	44	8:30p	10	10	20
2:45a	0	0	0	8:45a	24	25	49	2:45p	32	21	54	8:45p	9	7	15
3:00a	0	0	0	9:00a	17	27	44	3:00p	22	22	45	9:00p	9	6	16
3:15a	0	0	0	9:15a	12	16	29	3:15p	23	27	51	9:15p	6	4	10
3:30a	0	0	0	9:30a	14	15	29	3:30p	25	32	57	9:30p	5	4	9
3:45a	0	1	1	9:45a	13	12	25	3:45p	24	37	61	9:45p	5	5	10
4:00a	0	0	0	10:00a	10	16	26	4:00p	27	29	56	10:00p	2	2	4
4:15a	1	1	1	10:15a	11	11	21	4:15p	30	30	59	10:15p	2	3	5
4:30a	1	1	2	10:30a	11	13	24	4:30p	29	24	53	10:30p	3	2	5
4:45a	2	1	3	10:45a	18	13	31	4:45p	45	34	79	10:45p	4	2	6
5:00a	2	1	3	11:00a	25	15	40	5:00p	48	37	84	11:00p	3	1	4
5:15a	1	3	4	11:15a	19	16	35	5:15p	40	39	79	11:15p	0	2	3
5:30a	4	2	5	11:30a	15	19	35	5:30p	43	33	76	11:30p	1	1	2
5:45a	2	2	5	11:45a	24	20	44	5:45p	32	19	51	11:45p	1	1	2



HOURLY TOTALS

Period Start	EB	WB	TOTAL
12:00a	3	1	4
1:00a	1	1	2
2:00a	0	0	0
3:00a	0	1	1
4:00a	4	3	6
5:00a	9	8	17
6:00a	16	36	52
7:00a	96	118	216
8:00a	102	138	240
9:00a	56	70	127
10:00a	50	53	102
11:00a	83	70	154
12:00p	68	67	136
1:00p	66	71	139
2:00p	87	79	167
3:00p	94	118	214
4:00p	131	117	247
5:00p	163	128	290
6:00p	87	62	149
7:00p	49	47	94
8:00p	40	40	78
9:00p	25	19	45
10:00p	11	9	20
11:00p	5	5	11

Approach	3-Day Average	AM Peak 7:30a - 8:30a	Noon Peak 11:45a - 12:45p	PM Peak 4:45p - 5:45p	Totals
Eastbound		120	83	176	1,246
Westbound		150	70	143	1,261
TOTAL		271	154	318	2,511

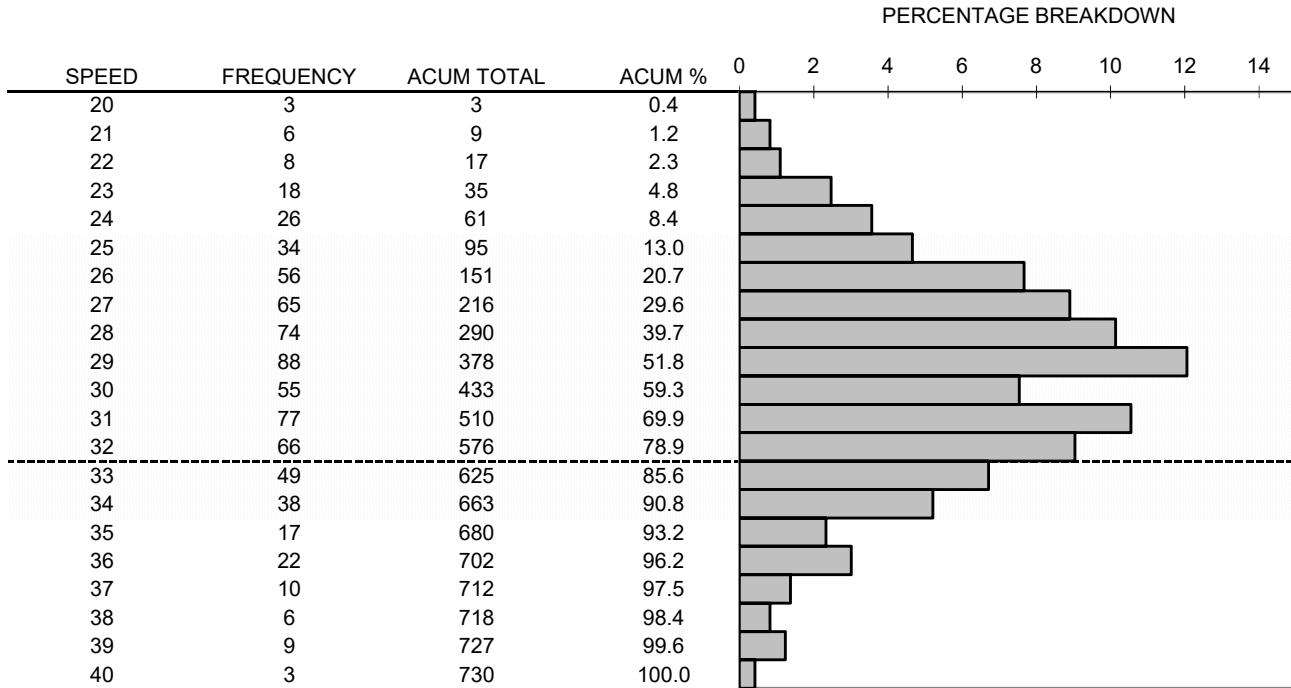


SPOT SPEED STUDY RESULTS RELATIVE FREQUENCY DISTRIBUTION

CITY: Prairie Village
OBSERVER: EHM
DATE: 12/3/2019

COUNTY: Johnson
SPEED LIMIT: 25 mph
DIRECTION: EB + WB

LOCATION: 67th St E of Fonticello
TIME START: 9:00 AM
TIME END: 2:59 PM



AVERAGE SPEED = 29.6
50th PERCENTILE = 28.9
85th PERCENTILE = 32.9
90th PERCENTILE = 33.8
95th PERCENTILE = 35.6

PACE = 25 - 34
VEHICLES IN PACE = 602
% IN PACE = 82.5
% BELOW PACE = 8.4
% ABOVE PACE = 9.2

SAMPLE VARIANCE = 14.014937
STANDARD DEVIATION = 3.7436529
RANGE 1*S = 72.60274
RANGE 2*S = 96.30137
RANGE 3*S = 100.

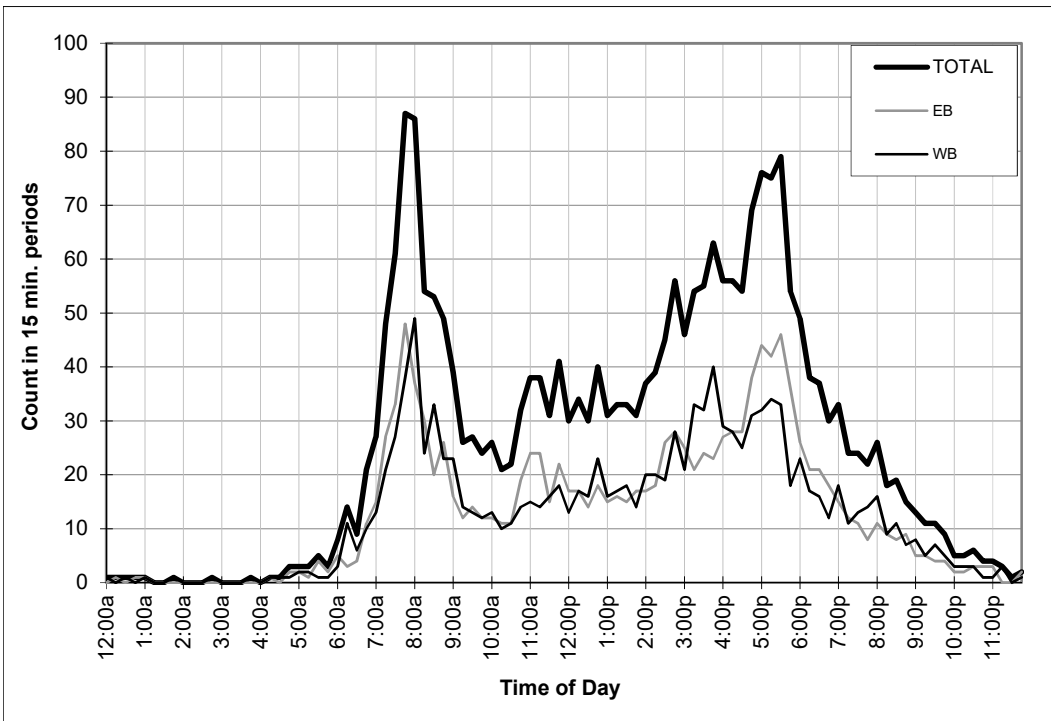
Daily Traffic Count

Praire Village Traffic Calming Study

Praire Village

Location: **67th Street West of Roe**

Period Start	EB	WB	TOTAL	Period Start	EB	WB	TOTAL	Period Start	EB	WB	TOTAL	Period Start	EB	WB	TOTAL
12:00a	0	1	1	6:00a	5	3	8	12:00p	17	13	30	6:00p	26	23	49
12:15a	1	0	1	6:15a	3	11	14	12:15p	17	17	34	6:15p	21	17	38
12:30a	0	1	1	6:30a	4	6	9	12:30p	14	16	30	6:30p	21	16	37
12:45a	1	0	1	6:45a	11	10	21	12:45p	18	23	40	6:45p	18	12	30
1:00a	1	1	1	7:00a	15	13	27	1:00p	15	16	31	7:00p	15	18	33
1:15a	0	0	0	7:15a	27	21	48	1:15p	16	17	33	7:15p	12	11	24
1:30a	0	0	0	7:30a	33	27	61	1:30p	15	18	33	7:30p	11	13	24
1:45a	0	1	1	7:45a	48	38	87	1:45p	17	14	31	7:45p	8	14	22
2:00a	0	0	0	8:00a	37	49	86	2:00p	17	20	37	8:00p	11	16	26
2:15a	0	0	0	8:15a	30	24	54	2:15p	18	20	39	8:15p	9	9	18
2:30a	0	0	0	8:30a	20	33	53	2:30p	26	19	45	8:30p	8	11	19
2:45a	0	1	1	8:45a	26	23	49	2:45p	28	28	56	8:45p	9	7	15
3:00a	0	0	0	9:00a	16	23	39	3:00p	25	21	46	9:00p	5	8	13
3:15a	0	0	0	9:15a	12	14	26	3:15p	21	33	54	9:15p	5	5	11
3:30a	0	0	0	9:30a	14	13	27	3:30p	24	32	55	9:30p	4	7	11
3:45a	0	1	1	9:45a	12	12	24	3:45p	23	40	63	9:45p	4	5	9
4:00a	0	0	0	10:00a	12	13	26	4:00p	27	29	56	10:00p	2	3	5
4:15a	1	1	1	10:15a	11	10	21	4:15p	28	28	56	10:15p	2	3	5
4:30a	0	1	1	10:30a	11	11	22	4:30p	28	25	54	10:30p	3	3	6
4:45a	2	1	3	10:45a	19	14	32	4:45p	38	31	69	10:45p	3	1	4
5:00a	2	2	3	11:00a	24	15	38	5:00p	44	32	76	11:00p	3	1	4
5:15a	1	2	3	11:15a	24	14	38	5:15p	42	34	75	11:15p	0	3	3
5:30a	4	1	5	11:30a	15	16	31	5:30p	46	33	79	11:30p	0	0	1
5:45a	2	1	3	11:45a	22	18	41	5:45p	36	18	54	11:45p	2	1	2



HOURLY TOTALS

Period Start	EB	WB	TOTAL
12:00a	2	2	4
1:00a	1	2	2
2:00a	0	1	1
3:00a	0	1	1
4:00a	3	3	5
5:00a	9	6	14
6:00a	23	30	52
7:00a	123	99	223
8:00a	113	129	242
9:00a	54	62	116
10:00a	53	48	101
11:00a	85	63	148
12:00p	66	69	134
1:00p	63	65	128
2:00p	89	87	177
3:00p	93	126	218
4:00p	121	113	235
5:00p	168	117	284
6:00p	86	68	154
7:00p	46	56	103
8:00p	37	43	78
9:00p	18	25	44
10:00p	10	10	20
11:00p	5	5	10

Approach	3-Day Average	AM Peak 7:30a - 8:30a	Noon Peak 11:45a - 12:45p	PM Peak 4:45p - 5:45p	Totals
Eastbound		148	78	170	1,268
Westbound		138	73	130	1,230
TOTAL		288	152	299	2,494



TranSystems Corporation

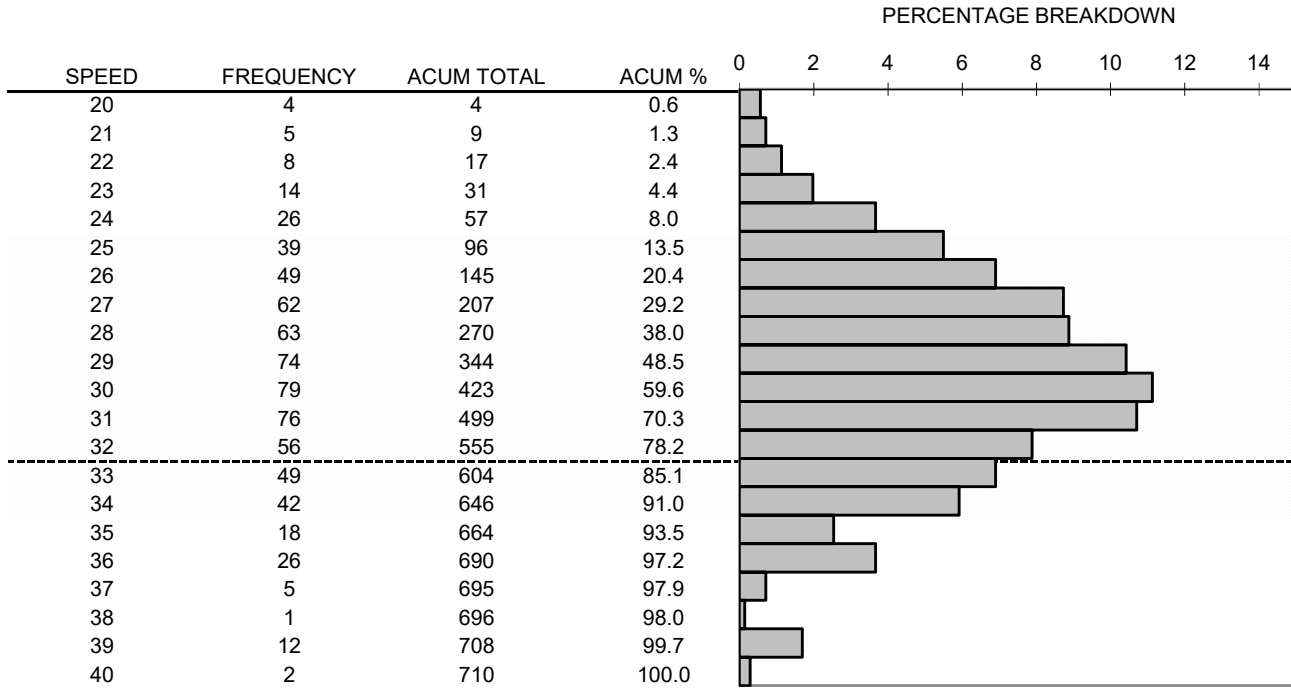
2400 Pershing Road, Suite 400, Kansas City, Missouri 64108 (816) 329-8600

SPOT SPEED STUDY RESULTS RELATIVE FREQUENCY DISTRIBUTION

CITY: Prairie Village
OBSERVER: EHM
DATE: 12/3/2019

COUNTY: Johnson
SPEED LIMIT: 25 mph
DIRECTION: EB + WB

LOCATION: 67th St W of Roe Ave
TIME START: 9:00 AM
TIME END: 2:59 PM



AVERAGE SPEED = 29.6
50th PERCENTILE = 29.1
85th PERCENTILE = 33.
90th PERCENTILE = 33.8
95th PERCENTILE = 35.4

PACE = 25 - 34
VEHICLES IN PACE = 589
% IN PACE = 83.
% BELOW PACE = 8.
% ABOVE PACE = 9.

SAMPLE VARIANCE = 13.7754425
STANDARD DEVIATION = 3.7115283
RANGE 1*S = 71.54929
RANGE 2*S = 96.61972
RANGE 3*S = 100.

Appendix D – Average Daily Traffic Volumes and Vehicle Speeds (2016 Count)

See attached worksheets.

7-Day Traffic Count

Traffic Calming - 67th Street

Prairie Village, KS

Location: **67th Street East of Nall**

EB + WB

Period Start						Wkday				Period Start						Wkday			
	Mon.	Tue.	Wed.	Thu.	Fri.	Avg.	Sat.	Sun.	Mon.		Tue.	Wed.	Thu.	Fri.	Avg.	Sat.	Sun.		
0:00	1	0	4	1	1	1	2	1	12:00	37	36	29	39	36	35	35	48		
0:15	1	1	2	2	0	1	4	2	12:15	44	36	45	35	49	42	34	56		
0:30	1	0	3	0	0	1	2	3	12:30	55	38	36	35	29	39	30	26		
0:45	1	0	1	0	0	0	2	2	12:45	34	42	39	43	39	39	37	24		
1:00	0	0	0	0	0	0	2	4	13:00	26	32	32	35	32	31	32	26		
1:15	1	0	0	0	1	0	2	2	13:15	31	33	29	25	42	32	36	25		
1:30	1	0	0	2	0	1	0	1	13:30	28	21	33	38	32	30	34	26		
1:45	1	0	0	1	0	0	0	4	13:45	19	28	27	25	34	27	32	34		
2:00	1	0	0	1	0	0	2	1	14:00	32	20	28	37	34	30	25	21		
2:15	0	2	0	0	0	0	0	1	14:15	35	23	35	43	45	36	28	35		
2:30	1	0	0	1	0	0	1	3	14:30	42	37	40	44	37	40	34	34		
2:45	0	0	1	0	0	0	1	1	14:45	44	52	44	35	45	44	34	25		
3:00	0	1	0	0	0	0	1	1	15:00	37	44	56	50	38	45	37	22		
3:15	0	0	0	1	1	0	1	0	15:15	44	58	62	65	37	53	33	34		
3:30	0	0	0	0	0	0	0	0	15:30	42	47	48	51	47	47	48	37		
3:45	0	3	0	1	0	1	1	0	15:45	48	51	52	53	55	52	26	42		
4:00	1	0	1	2	2	1	0	3	16:00	50	51	60	62	56	56	31	37		
4:15	1	1	1	0	0	1	0	0	16:15	46	47	40	61	55	50	40	29		
4:30	0	1	4	2	0	1	0	0	16:30	51	69	65	53	57	59	43	29		
4:45	2	0	2	1	1	1	1	0	16:45	49	70	72	78	46	63	43	34		
5:00	1	3	2	2	1	2	0	1	17:00	74	70	94	63	61	72	43	25		
5:15	4	2	4	6	2	4	1	0	17:15	98	75	72	80	59	77	51	26		
5:30	5	8	2	4	3	4	2	2	17:30	70	62	63	51	46	58	31	26		
5:45	8	8	5	7	4	6	2	1	17:45	57	64	58	59	36	55	27	26		
6:00	8	6	8	12	11	9	0	0	18:00	41	55	51	53	38	48	30	18		
6:15	18	10	11	8	10	11	3	3	18:15	37	48	48	31	40	41	32	17		
6:30	19	16	9	16	14	15	3	3	18:30	22	30	30	30	40	30	22	16		
6:45	24	28	22	22	14	22	11	3	18:45	36	26	30	21	41	31	22	16		
7:00	14	26	33	26	29	26	5	6	19:00	23	22	18	25	18	21	17	14		
7:15	43	37	42	45	22	38	11	5	19:15	21	23	16	24	12	19	14	14		
7:30	63	61	61	71	50	61	13	10	19:30	19	28	25	16	20	22	14	13		
7:45	84	89	93	95	66	85	24	11	19:45	9	24	27	19	17	19	13	10		
8:00	87	68	82	69	43	70	14	4	20:00	15	18	23	20	13	18	16	14		
8:15	54	49	54	58	43	52	21	19	20:15	15	22	19	19	21	19	10	9		
8:30	46	51	61	60	49	53	20	19	20:30	11	14	18	14	10	13	12	10		
8:45	53	50	57	45	44	50	30	24	20:45	13	11	10	12	8	11	12	9		
9:00	57	33	54	41	43	46	36	32	21:00	8	7	15	16	9	11	8	4		
9:15	24	43	33	33	40	35	24	43	21:15	8	9	5	15	15	10	13	4		
9:30	30	36	25	46	32	34	38	30	21:30	8	9	11	11	22	12	6	3		
9:45	33	35	28	30	21	29	29	29	21:45	1	6	8	9	8	6	7	1		
10:00	24	28	24	31	46	31	36	22	22:00	7	5	3	8	11	7	9	3		
10:15	25	25	23	31	22	25	27	33	22:15	2	6	4	10	5	5	2	3		
10:30	27	43	33	28	33	33	36	54	22:30	7	2	5	3	4	4	8	4		
10:45	19	32	21	23	33	26	29	44	22:45	1	1	1	3	7	3	9	1		
11:00	33	40	52	38	37	40	36	30	23:00	1	4	4	4	1	3	7	2		
11:15	30	33	47	29	46	37	29	29	23:15	1	2	0	1	7	2	6	0		
11:30	36	48	42	38	47	42	44	41	23:30	1	1	1	3	5	2	3	2		
11:45	49	42	36	42	48	43	33	35	23:45	0	1	1	2	9	3	1	2		

Day	Date	Total	Day	Date	Total
Mon.	11/14/2016	2,331	Sat.	11/12/2016	1,716
Tue.	11/15/2016	2,439	Sun.	11/13/2016	1,498
Wed.	11/9/2016	2,515			
Thu.	11/10/2016	2,500	Weekday Average		2,414
Fri.	11/11/2016	2,287			



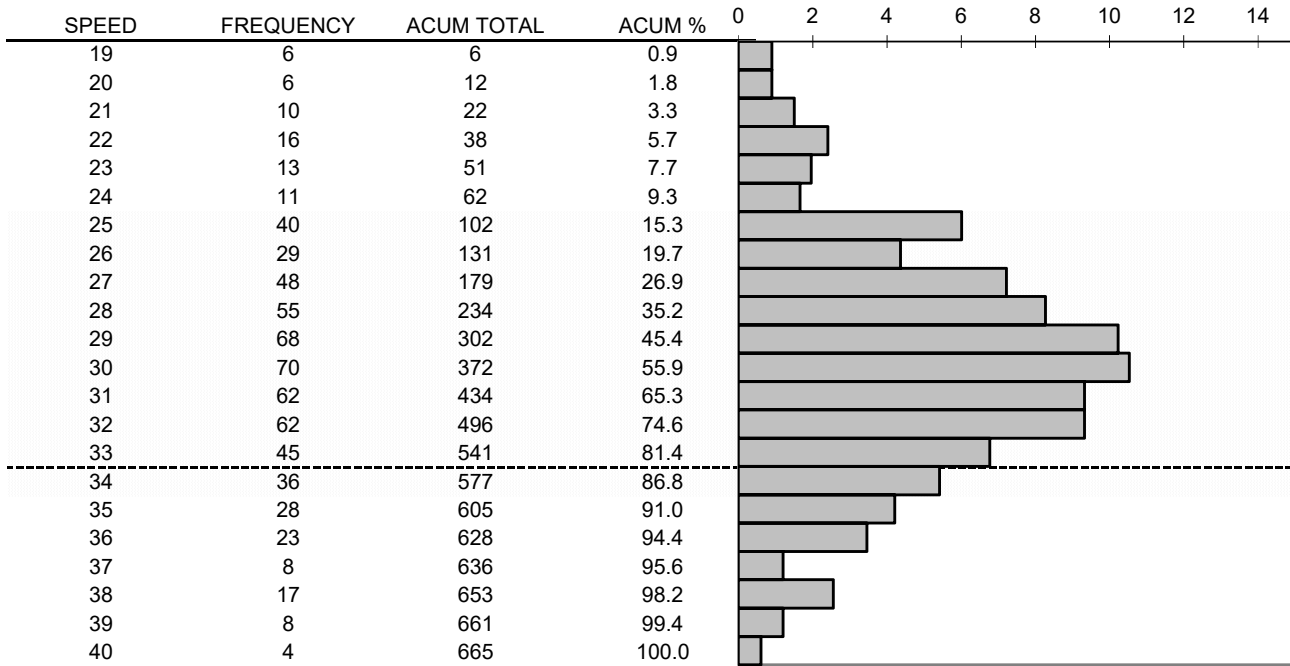
SPOT SPEED STUDY RESULTS RELATIVE FREQUENCY DISTRIBUTION

CITY: Prarie Village
OBSERVER: ARM
DATE: 11/9/2016

COUNTY: Johnson
SPEED LIMIT: 25 mph
DIRECTION: EB + WB

LOCATION: 67th St E of Nall Ave
TIME START: 9:00 AM
TIME END: 2:59 PM

PERCENTAGE BREAKDOWN



AVERAGE SPEED = 29.9
50th PERCENTILE = 29.4
85th PERCENTILE = 33.7
90th PERCENTILE = 34.8
95th PERCENTILE = 36.5

PACE = 25 - 34
VEHICLES IN PACE = 515
% IN PACE = 77.4
% BELOW PACE = 9.3
% ABOVE PACE = 13.2

SAMPLE VARIANCE = 17.6374581
STANDARD DEVIATION = 4.1996974
RANGE 1*S = 71.42857
RANGE 2*S = 96.39098
RANGE 3*S = 100.

7-Day Traffic Count

Traffic Calming - 67th Street

Prairie Village, KS

Location: **67th Street East of Fonticello**

EB + WB

Period Start	Mon.	Tue.	Wed.	Thu.	Fri.	Wkday Avg.	Sat.	Sun.	Period Start	Mon.	Tue.	Wed.	Thu.	Fri.	Wkday Avg.	Sat.	Sun.
0:00	0	0	4	1	1	1	2	2	12:00	35	39	32	41	36	37	30	47
0:15	0	1	2	2	0	1	4	3	12:15	37	40	46	33	40	39	34	56
0:30	1	0	3	0	0	1	2	0	12:30	52	38	32	33	31	37	32	31
0:45	1	1	1	0	0	1	1	5	12:45	30	36	42	39	37	37	37	23
1:00	0	0	0	0	1	0	2	1	13:00	29	33	33	38	34	33	28	28
1:15	2	0	0	0	1	1	2	2	13:15	32	34	27	19	45	31	37	25
1:30	1	0	0	2	0	1	0	1	13:30	30	24	28	41	29	30	31	33
1:45	1	1	0	1	0	1	0	4	13:45	18	28	25	31	32	27	31	28
2:00	2	0	0	1	0	1	2	1	14:00	33	20	27	39	29	30	27	19
2:15	0	3	0	0	0	1	0	1	14:15	37	24	36	39	46	36	27	34
2:30	1	0	0	1	0	0	1	3	14:30	34	40	41	50	37	40	34	36
2:45	0	0	1	0	0	0	1	2	14:45	53	57	48	30	44	46	33	26
3:00	0	1	0	0	0	0	1	0	15:00	44	46	65	53	44	50	31	21
3:15	0	0	0	2	2	1	1	0	15:15	47	64	63	69	39	56	33	38
3:30	0	0	0	0	0	0	0	0	15:30	43	45	45	51	53	47	45	33
3:45	1	3	0	2	0	1	2	0	15:45	48	51	53	55	51	52	24	42
4:00	0	0	1	1	2	1	0	2	16:00	51	49	57	61	55	55	31	31
4:15	1	1	1	0	0	1	0	0	16:15	48	51	40	58	55	50	38	30
4:30	1	1	4	2	1	2	0	0	16:30	61	76	62	57	59	63	45	31
4:45	1	0	2	1	0	1	1	0	16:45	54	67	75	81	51	66	38	36
5:00	1	4	2	5	1	3	0	1	17:00	85	69	92	62	64	74	41	26
5:15	4	2	4	2	3	3	1	0	17:15	84	72	75	77	56	73	47	28
5:30	5	9	2	5	2	5	2	2	17:30	72	66	54	52	46	58	31	26
5:45	9	7	5	7	4	6	2	1	17:45	57	68	65	59	36	57	28	24
6:00	8	7	10	14	11	10	0	1	18:00	38	47	51	49	45	46	31	17
6:15	18	9	11	9	13	12	4	3	18:15	38	49	49	32	44	42	27	20
6:30	18	19	11	16	11	15	4	4	18:30	21	27	30	30	37	29	25	15
6:45	25	28	24	23	19	24	12	2	18:45	33	30	22	22	39	29	22	18
7:00	13	27	27	27	28	24	4	6	19:00	24	20	20	29	18	22	18	14
7:15	53	50	45	57	29	47	11	7	19:15	24	32	18	22	10	21	13	18
7:30	68	62	69	76	47	64	15	11	19:30	21	22	27	15	22	21	15	13
7:45	93	97	94	96	62	88	24	10	19:45	10	21	28	22	17	20	13	9
8:00	91	68	86	70	46	72	14	7	20:00	16	21	27	20	14	20	13	13
8:15	58	50	51	63	47	54	23	19	20:15	14	21	15	16	18	17	12	13
8:30	50	55	71	63	48	57	23	18	20:30	15	15	20	16	11	15	11	10
8:45	54	49	53	41	40	47	30	26	20:45	14	11	8	13	8	11	10	7
9:00	53	32	54	44	45	46	35	36	21:00	8	4	14	15	7	10	8	4
9:15	25	50	29	39	40	37	31	46	21:15	9	11	6	13	15	11	12	6
9:30	36	31	24	38	29	32	36	31	21:30	4	8	14	8	23	11	8	3
9:45	28	34	30	36	18	29	28	25	21:45	1	5	5	11	8	6	8	1
10:00	25	26	22	30	50	31	37	27	22:00	6	6	3	5	10	6	9	3
10:15	28	24	21	26	22	24	29	27	22:15	2	5	3	12	5	5	5	3
10:30	27	40	28	33	32	32	31	61	22:30	8	2	4	5	5	5	6	4
10:45	19	31	25	22	31	26	33	42	22:45	1	1	0	1	7	2	8	1
11:00	35	43	58	43	35	43	40	30	23:00	1	4	4	4	3	3	7	2
11:15	30	35	43	28	45	36	25	27	23:15	1	2	1	2	7	3	5	0
11:30	38	41	38	42	48	41	38	45	23:30	1	2	1	2	5	2	5	3
11:45	57	40	38	42	49	45	42	34	23:45	0	1	1	2	9	3	1	3

Day	Date	Total	Day	Date	Total
Mon.	11/14/2016	2,406	Sat.	11/12/2016	1,701
Tue.	11/15/2016	2,486	Sun.	11/13/2016	1,528
Wed.	11/9/2016	2,528			
Thu.	11/10/2016	2,547	Weekday Average		2,453
Fri.	11/11/2016	2,299			

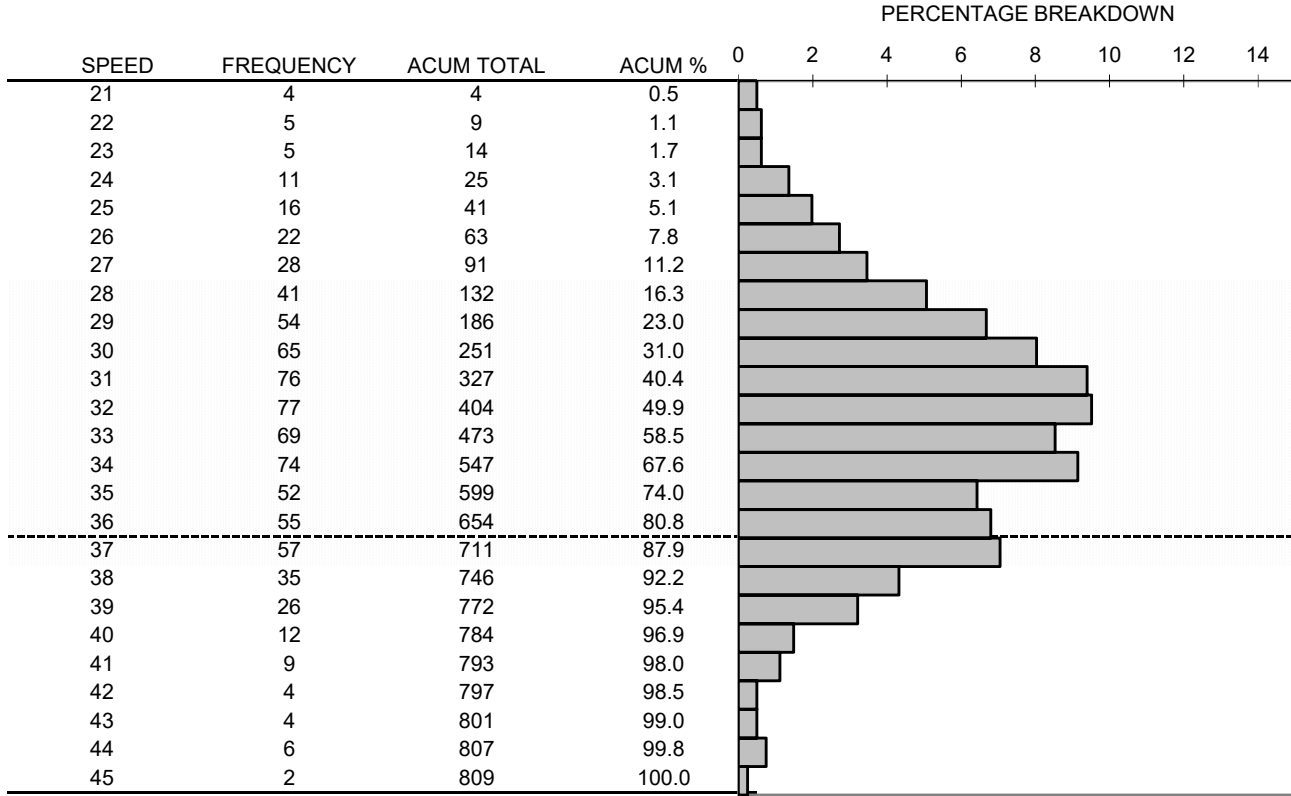


SPOT SPEED STUDY RESULTS RELATIVE FREQUENCY DISTRIBUTION

CITY: Prairie Village
OBSERVER: ARM
DATE: 12/9/2016

COUNTY: Johnson
SPEED LIMIT: 25 mph
DIRECTION: EB + WB

LOCATION: 67th E of Fonticello
TIME START: 9:00 AM
TIME END: 2:59 PM



AVERAGE SPEED = 32.6
50th PERCENTILE = 32.
85th PERCENTILE = 36.6
90th PERCENTILE = 37.5
95th PERCENTILE = 38.9

PACE = 28 - 37
VEHICLES IN PACE = 620
% IN PACE = 76.6
% BELOW PACE = 11.2
% ABOVE PACE = 12.1

SAMPLE VARIANCE = 18.3292569
STANDARD DEVIATION = 4.2812681
RANGE 1*S = 69.59209
RANGE 2*S = 96.29172
RANGE 3*S = 100.

7-Day Traffic Count

Traffic Calming - 67th Street

Prairie Village, KS

Location: **67th Street West of Roe**

EB + WB

Period Start	Wkday						Avg.	Sat.	Sun.	Period Start	Wkday						Avg.	Sat.	Sun.
	Mon.	Tue.	Wed.	Thu.	Fri.	Sat.					Sun.	Mon.	Tue.	Wed.	Thu.	Fri.			
0:00	0	0	3	1	1	1	1	4	2	12:00	34	41	27	38	36	35	31	47	
0:15	0	1	3	2	0	1	1	5	2	12:15	38	36	43	37	42	39	29	46	
0:30	1	0	3	0	0	1	1	2	0	12:30	48	42	30	34	30	37	39	34	
0:45	1	1	1	0	1	1	1	1	3	12:45	33	38	40	35	32	36	35	23	
1:00	0	0	0	0	1	0	0	1	1	13:00	26	30	31	33	27	29	31	32	
1:15	1	0	0	0	1	0	0	2	1	13:15	32	37	28	18	48	33	36	27	
1:30	1	0	0	0	0	0	0	0	1	13:30	28	21	22	36	24	26	28	27	
1:45	1	1	0	1	0	1	0	0	4	13:45	16	25	25	23	34	25	33	27	
2:00	2	0	0	1	0	1	1	2	1	14:00	35	22	26	37	37	31	29	23	
2:15	0	3	0	0	0	1	0	0	0	14:15	37	28	36	44	32	35	32	31	
2:30	1	0	0	1	0	0	0	1	3	14:30	33	35	38	47	35	38	28	32	
2:45	0	0	1	0	0	0	0	1	2	14:45	58	61	67	39	45	54	36	23	
3:00	0	1	0	0	0	0	0	1	0	15:00	41	43	67	58	38	49	28	24	
3:15	0	0	0	2	2	1	1	1	0	15:15	43	64	54	65	41	53	32	34	
3:30	0	0	0	0	0	0	0	0	0	15:30	40	34	46	45	51	43	41	34	
3:45	1	2	0	2	0	1	2	2	0	15:45	48	47	56	51	50	50	28	40	
4:00	0	1	1	1	2	1	1	1	2	16:00	55	42	51	59	54	52	30	22	
4:15	1	1	1	0	1	1	0	0	0	16:15	45	48	43	56	50	48	35	27	
4:30	0	1	3	0	0	1	1	1	0	16:30	50	64	60	59	57	58	46	29	
4:45	1	0	2	2	0	1	1	1	0	16:45	53	63	71	75	48	62	34	33	
5:00	1	2	2	4	1	2	0	0	1	17:00	86	62	95	63	61	73	38	27	
5:15	5	2	4	2	4	3	1	0	0	17:15	75	71	73	80	56	71	38	23	
5:30	2	8	2	6	1	4	1	2	2	17:30	60	64	59	61	43	57	37	24	
5:45	6	5	4	7	4	5	2	1	1	17:45	62	72	59	54	38	57	23	19	
6:00	6	7	10	13	10	9	1	1	1	18:00	34	46	52	45	44	44	27	16	
6:15	15	9	8	8	11	10	5	3	3	18:15	35	48	51	36	49	44	29	20	
6:30	17	19	9	14	9	14	6	5	5	18:30	21	18	25	37	37	28	25	15	
6:45	26	22	20	22	14	21	11	3	3	18:45	29	27	19	21	37	27	18	18	
7:00	16	23	32	23	27	24	3	5	5	19:00	23	24	23	27	12	22	16	14	
7:15	61	55	54	68	28	53	14	9	9	19:15	21	29	22	23	10	21	14	12	
7:30	64	70	67	75	46	64	12	11	11	19:30	17	25	24	15	17	20	16	11	
7:45	90	91	96	92	59	86	22	12	12	19:45	12	21	25	24	17	20	13	10	
8:00	88	64	84	66	45	69	18	8	8	20:00	20	20	29	23	11	21	10	8	
8:15	56	50	43	58	40	49	24	19	19	20:15	16	15	17	15	21	17	12	14	
8:30	40	50	66	57	45	52	20	17	17	20:30	7	17	19	14	13	14	15	9	
8:45	47	41	48	34	43	43	22	25	25	20:45	9	10	8	10	9	9	11	7	
9:00	41	35	51	40	41	42	31	37	37	21:00	8	2	13	13	10	9	6	4	
9:15	23	46	26	39	45	36	34	44	44	21:15	8	11	6	15	17	11	11	6	
9:30	31	27	27	30	25	28	30	25	25	21:30	4	8	12	9	17	10	7	3	
9:45	27	34	32	26	16	27	23	27	27	21:45	1	3	5	9	11	6	6	0	
10:00	25	24	19	33	43	29	33	21	21	22:00	5	6	2	5	9	5	6	2	
10:15	18	22	17	25	20	20	26	29	29	22:15	2	5	2	10	4	5	6	3	
10:30	24	39	31	30	32	31	25	55	55	22:30	5	1	3	5	7	4	6	2	
10:45	23	27	29	22	24	25	37	40	40	22:45	1	0	0	1	5	1	6	2	
11:00	30	38	55	35	37	39	39	32	32	23:00	1	2	4	5	3	3	8	1	
11:15	28	38	37	23	43	34	24	26	26	23:15	1	2	1	2	8	3	7	0	
11:30	40	42	37	42	50	42	37	42	42	23:30	1	1	3	2	5	2	6	3	
11:45	50	35	37	40	42	41	37	35	35	23:45	0	1	1	2	6	2	3	3	

Day	Date	Total	Day	Date	Total
Mon.	11/14/2016	2,268	Sat.	11/12/2016	1,645
Tue.	11/15/2016	2,369	Sun.	11/13/2016	1,448
Wed.	11/9/2016	2,478			
Thu.	11/10/2016	2,462	Weekday Average		2,356
Fri.	11/11/2016	2,202			

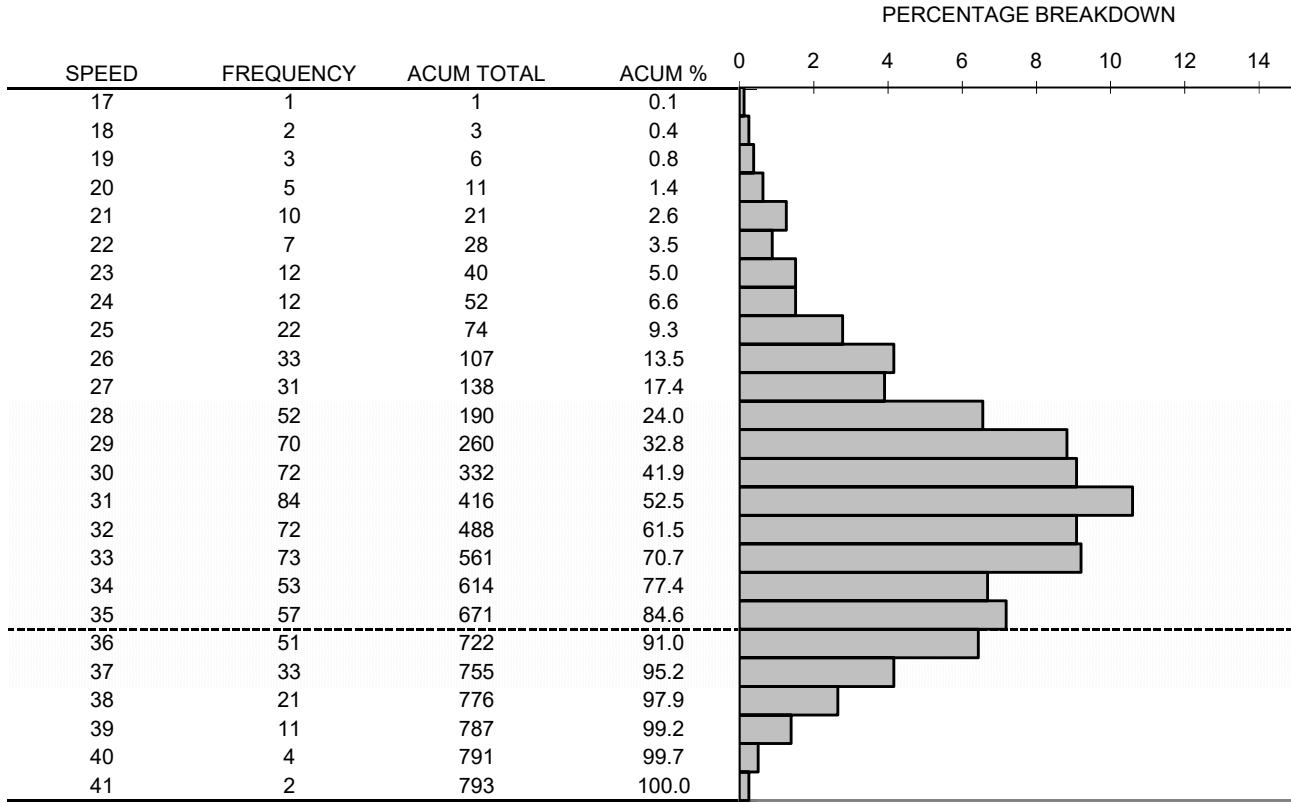


SPOT SPEED STUDY RESULTS RELATIVE FREQUENCY DISTRIBUTION

CITY: Prairie Village
OBSERVER: ARM
DATE: 11/9/2016

COUNTY: Johnson
SPEED LIMIT: 25 mph
DIRECTION: EB + WB

LOCATION: 67th W of Roe
TIME START: 9:00 AM
TIME END: 2:59 PM



AVERAGE SPEED = 31.1
50th PERCENTILE = 30.8
85th PERCENTILE = 35.1
90th PERCENTILE = 35.8
95th PERCENTILE = 37.

PACE = 28 - 37
VEHICLES IN PACE = 617
% IN PACE = 77.8
% BELOW PACE = 17.4
% ABOVE PACE = 4.8

SAMPLE VARIANCE = 17.538729
STANDARD DEVIATION = 4.1879266
RANGE 1*S = 71.12232
RANGE 2*S = 95.71249
RANGE 3*S = 99.62169



AHEAD



ADULT
WALKERS



CITY CLERK DEPARTMENT
Council Committee Date: June 1, 2020

Consider Revisions to Solicitor Regulations - Chapter 5, Article 2

BACKGROUND

At the August 5, 2019 City Council meeting, staff shared complaints received from residents regarding the behavior of certain solicitors working in the City. A discussion was held regarding proposed changes to the City's Municipal Code to address these complaints and revoke permits when necessary. Since that time, the City Attorney has drafted revisions that give administrative staff more flexibility in issuing solicitor permits while at the same time protecting the free speech rights of the public guaranteed by the First Amendment of the United States Constitution.

RECOMMENDED MOTION

Staff recommends the City Council move to approve the draft Ordinance as presented.

ATTACHMENTS

Comparison Draft of Prairie Village Solicitation Ordinance
Modified Draft of Prairie Village Solicitation Ordinance

PREPARED BY

Adam Geffert
City Clerk
Date: May 27, 2020

CHAPTER V. BUSINESS REGULATIONS

- Article 1. General Regulations and Licenses
- Article 2. Solicitors
- Article 3. Amusement Devices, Carnivals and Circuses
- Article 4. Security Licenses and License Agents
- Article 5. Massage Therapy
- Article 6. Adult Entertainment Establishments
- Article 7. Residential Rental Properties
- Article 8. Prohibited Discrimination in Employment, Housing or Public Accommodations

ARTICLE 2. SOLICITORS

- 5-201. LEGISLATIVE FINDINGS. It is hereby found and determined by the governing body that crimes have been committed by persons posing as solicitors and that a variety of frauds and misleading devices are sometimes employed in such solicitations. It is further found that some solicitors present a continuing danger of fraud, robbery, and other crimes to the residents of the city. The city further has an interest in reducing litter and trash associated with commercial handbills, which often end up as litter and contribute to storm water management problems. In addition, it is found that residents of the city are subject to being annoyed by solicitors. In response to these findings, it is hereby determined by the governing body that it is necessary, in the interest of the public safety and welfare, for the governing body to regulate the time, place, and manner of solicitation in the city. ~~Regulations as defined in this article do not apply to individuals seeking part-time income by providing services related to exterior home maintenance, such as lawn service or snow removal, and registration of certain commercial solicitors. This article advances the city's interests while protecting the free speech rights of the public guaranteed by the First Amendment to the United States Constitution.~~
(Ord. 1922, Sec. 1; Ord. _____, Sec. _____)
- 5-202. DEFINITIONS. For the purpose of this chapter the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them, unless a different meaning is clearly indicated by the context.
- ~~(a) Charitable as used in this chapter means any activity represented as carried on from unselfish, civic, or humanitarian motives, or for the benefit of others, and not for private gain, and may include without limitation patriotic, philanthropic, social service, welfare, benevolent, educational, civic, fraternal, cultural, eleemosynary, scientific, historical, athletic, medical or religious activities, either actual or implied.~~
 - (a) ~~(b)~~ City as used in this chapter means the City of Prairie Village, Kansas.
 - ~~(c) Peddle as used in this chapter means to operate from a temporary stand, display or similar facility or to travel from house to house, door to door, street to street or from place to place, carrying, conveying, or transporting goods, wares, or merchandise for the purpose of offering and exposing the same for sale for a profit.~~
 - ~~(d) Peddler as used in this chapter means a person who peddles for himself or any other person.~~

(b) ~~(e)~~ Person as used in this chapter means any individual, firm, partnership, corporation, or company, ~~religious sect or denomination, society, organization or league~~, and includes any trustee, receiver, assignee, agent or other similar representative thereof.

(c) ~~(f)~~ Commercial handbill means any printed or written matter, any sample or device, circular, leaflet, pamphlet, paper booklet, door hanger or any other printed or otherwise reproduced original or copies which:

- (1) Advertises for sale merchandise, products, or commodities;
- (2) Directs attention to any business or mercantile or commercial establishment, or other activity, for the purpose of either directly or indirectly promoting the economic interest thereof by sales; or
- (3) Directs attention to or advertises any meeting, theatrical performance, exhibition, or event of any kind, for which an admission fee is charged or for which a solicitation shall be made for the purpose of private gain or profit.
- (4) Exemption for mail and newspapers. The term "commercial handbill" does not include mail delivered by the United States Postal Service or newspapers duly entered with the Post Office Department of the United States and newspapers filed and recorded with any recording officer, as provided by general law, or any periodical or current magazine regularly published at least annually and sold to the public.

(g) Solicit and Solicitation as used in this chapter mean and include any one or more of the following:

- (1) Selling or offering for sale for a profit-, advertising, marketing, or taking or attempting to take orders for the sale for a profit, of goods or services of any kind, character or description, while traveling from ~~house-to-house~~ house, door-to-door, street-to-street, or from place-to-place in the city ~~or distributing a commercial handbill or advertising a commercial event or service,~~ whether as agent, contractor, employee, representative, or principal.
- (2) Ringling a doorbell, knocking on a door, or otherwise attempting to contact a resident, tenant, or occupant of any residence, dwelling, business, or other location for the purpose of selling, offering, or advertising any goods or services for profit, or to propose a commercial transaction related solely to the economic interests of the solicitor and the person solicited.
- (2) Hanging, leaving, or depositing any commercial handbill, regardless of whether a doorbell is rung, a door is knocked, or any other physical or verbal contact is made.
- (2) ~~Peddling as defined in this section.~~

A solicitation as defined herein shall be deemed completed when made, whether or not the person making the same ~~receives any contribution or~~ makes any sale.

~~Solicit and Solicitation as used in this chapter do not include sales or offers to sell made for charitable purposes by organizations that have qualified for tax-exempt status pursuant to Internal Revenue Code Section 501(c). Examples of such sales or offers to sell are efforts by the Girl Scouts to sell cookies, church groups to sell trash bags, and youth recreational teams from tax-exempt youth sports organizations to sell candy.~~

(h) Solicitor as used in this chapter means a person who solicits for himself, herself, or any other person.

(Ord. 1922, Sec. 1; Ord. _____, Sec. _____)

~~5-203. PROHIBITED ACTS.~~

5-203. PROHIBITED ACTS. It shall be unlawful for any person to:

- (a) ~~It shall be unlawful for any solicitor to ring the bell, or knock on the door, or otherwise attempt to gain admittance for the purpose of soliciting~~ Solicit at a residence, apartment, or other dwelling, or apartment at a business at which a sign bearing the words "No Solicitors," "No Trespassers," or words of similar import indicating that such persons are not wanted on the premises, is painted, affixed or otherwise exposed to public view; provided that this paragraph shall not apply to any solicitor who gains admittance to such residence at the invitation or with the consent of the occupant thereof. For purposes of this section, the "No Solicitors" decal issued by the City Clerk prominently displayed on the door shall constitute sufficient notice to all solicitors. However, other similar signs, as defined above, are also sufficient.
- (b) ~~It shall be unlawful for any solicitor to solicit~~ Solicit prior to 10:00 a.m. or after 8:00 p.m. local time, of any day. In addition, it shall be unlawful for any ~~solicitor~~ person to solicit between 5:30 p.m. and 7:00 p.m. local time, of any day.
- (c) ~~It shall be unlawful for any solicitor to engage~~ Engage in soliciting upon any premises or in any ~~dwelling house~~ residence, apartment, or other residence dwelling, or at a business (including any privately-owned parking lots) after having been asked by the owner or occupant to leave the premises, ~~business,~~ business, or residence.
- (d) ~~It shall be unlawful for any solicitor to make~~ Make more than one solicitation call at the same ~~residential premises~~ residence, apartment, or other dwelling, or at a business, for identical goods, ~~or services, or contributions~~ within any consecutive 14-day period, without receiving a prior invitation therefor from the occupants of the premises. This provision shall be construed to include solicitation upon the same premises by employees, agents, or other persons acting on behalf of the same person more than once during the aforesaid period without a prior invitation as herein provided.
- (e) ~~It shall be unlawful for any solicitor to fail~~ Fail to provide, at the request of the purchaser, a written receipt for purchases exceeding \$5-00 in cash or tangible property which receipt shall be signed by the person making the sale and shall set forth a brief description of the goods or services sold, the total purchase price thereof, amount of cash payment, if any, and the balance due and terms of payment.
- (f) ~~It shall be unlawful for any solicitor to fail~~ Fail at the outset of a solicitation to disclose to the prospective buyer or solicitee the solicitor's name and the name of the company, product or organization he or she represents.
- (g) ~~It shall be unlawful for any solicitor to make~~ Make any assertion, representation or statement which misrepresents the purpose of ~~his or her~~ the solicitor's call, or use any plan, scheme, or ruse which misrepresents such purpose.
- (h) ~~It shall be unlawful for any solicitor to interact~~ Interact in a forceful or otherwise verbally or physically aggressive manner with residents or businesses to whom a solicitation is made in the course of such solicitation.
- (i) ~~It shall be unlawful for any solicitor to conduct his or her business~~ Solicit in such a way as would restrict or interfere with the ingress or egress of the abutting property owner or tenant, increase traffic congestion or delay, or constitute a hazard to traffic, life or property, or an obstruction to adequate access to fire, police or sanitation vehicles.

- (j) Solicit if the solicitor:
 - (1) Is required to register pursuant to the Kansas Offender Registration Act, K.S.A. 22-4901 et seq., and amendments thereto, or pursuant to an offender registration act of any other state;
 - (2) ~~(j) It shall be unlawful for any person to solicit who~~ has been convicted of a felony, misdemeanor, or ordinance violation involving force, violence, moral turpitude, deceit, fraud, or the violation of any law regulating the act of soliciting as defined in this chapter within the past five years in this state or any other state or subdivision thereof or of the United States; possession of a firearm, theft, or violence within the past ten (10) years; or
 - (3) has been convicted of any law regulating the act of soliciting as defined in this chapter within the past five (5) years.
 - (k) ~~It shall be unlawful for any person to solicit~~ Solicit or attempt to solicit ~~at a place of residence~~ at any entrance other than the main entrance of the residence, apartment, or other dwelling, or business.
 - (l) Cut across or walk upon any lawn, front yard, or courtyard except upon sidewalks, walkways, or driveways, if such sidewalks, walkways, or driveways are provided.
 - (m) Throw or deposit any commercial handbill in or upon any vehicle, unless the vehicle is occupied and the occupant is willing to accept it.
 - (n) Fail to carry upon the solicitor's person a government-issued photo identification card (such as a driver's license) if the solicitor is sixteen (16) years of age or older, and/or fail to carry upon the solicitor's person the city license required under section 5-204 below.
- (Ord. 1922, Sec. 1; Ord. _____, Sec. _____)

5-204.

LICENSE REQUIREMENT; APPLICATION PROCEDURE. ~~Solicitors or companies employing solicitors must apply to obtain a permit from the city prior to soliciting in the city. Each application shall, at a minimum, require the following information from all individuals participating:~~

- (a) It shall be unlawful for any person to solicit for any business, including such person's own business, unless such business has received a business license as required by Chapter V, Article 1 of this Code, to the extent such Chapter V, Article 1 would otherwise require that such business obtain a license thereunder.
- (b) Except as otherwise provided in this article, it shall be unlawful for any person to solicit within the city without a solicitation license, which solicitation license shall be required in addition to any business license required by subsection (a) above. Each applicant for a solicitation license shall, at a minimum, provide the following information to the city for licensure:
 - (1) ~~(a)~~ Name, date of birth, physical description of applicant.
 - (2) ~~(b)~~ Government-issued photo identification, such as a driver's license.
 - (3) ~~(c)~~ Applicant's Kansas Sales Tax number.
 - (4) ~~(d)~~ Address of applicant and area where applicant intends to ~~offer goods, wares, merchandise or personal property for sale~~ solicit.
 - (5) ~~(e)~~ A brief description of the name of the business to be conducted and the goods or services to be ~~sold~~ solicited or sold, and a copy of any required city business license.
 - (6) ~~(f)~~ If applicant is employed, name and address of the employer, together with credentials establishing applicant's relationship to such employer.

- ~~(7)~~ ~~(g)~~ Length of time for which the ~~right to do business is desired~~ solicitation license is requested, with a maximum of not to exceed fourteen (14) days, after which time a new license must be obtained.
- ~~(8)~~ ~~(h)~~ If a vehicle is to be used, a description of the same, together with the state vehicle license number carried on such vehicle.
- ~~(9)~~ ~~(i)~~ A Consent to a police record check to determine whether or not the applicant ~~has~~:
 - ~~(A)~~ Is required to register pursuant to the Kansas Offender Registration Act, K.S.A. 22-4901 et seq., and amendments thereto, or pursuant to an offender registration act of any other state;
 - ~~(B)~~ (1)has been convicted of any a felony or crime, misdemeanor, or ordinance violation involving deceit, fraud or theft; or, possession of a firearm, theft, or violence within the past ten (10) years; or
 - ~~(C)~~ has been convicted of any law regulating the act of soliciting as defined in this chapter within the past five (5) years.
- ~~(2)~~ ~~been found to have violated any municipal ordinance regulating solicitors or transient merchants.~~
- ~~(10)~~ ~~(j)~~ Submit a copy of a paid personal property tax receipt from the Johnson County Treasurer or another county treasurer in the State of Kansas for all goods or merchandise brought into Johnson County from outside the State of Kansas to be sold or disposed of in a place of business temporarily occupied for their sale.
- ~~(k)~~ ~~A fee in the amount established by ordinance is required to be paid to the City for processing solicitation permit applications to cover City staff application processing time.~~
- ~~(c)~~ The license fee for soliciting shall be as prescribed by city ordinance or fee schedule adopted by the city. Such fee is required to cover city staff application review and processing time.
- ~~(d)~~ Notwithstanding the foregoing, a city solicitor license shall not be required for persons under the age of eighteen (18) years of age soliciting for themselves, and not part of a business required to be licensed under Chapter V, Article 1 of this Code, for part-time, temporary, or seasonal work related to lawn care services or snow removal.

5-205. REVOCATION OF LICENSE. The City Administrator, or his/her designee, may revoke any license issued under the provision of Section 5-204, for any of the following causes:

- (a) Fraud, misrepresentation or false statement contained in the application for license or made in the course of carrying on the business
- (b) Any violation as described in Section 5-203.

Notice of revocation of a license shall be provided in writing to the applicant by the City Clerk. Any person aggrieved by the denial of an application or the revocation of a license shall have the right of appeal to the Governing Body. Such appeal shall be taken by filing with the City Clerk within fourteen (14) days after notice of revocation or denial of the license has been mailed to the applicant's last known address setting forth the grounds for appeal. The Governing Body shall set a time and place for a hearing on such appeal and notice of such hearing shall be given to the applicant in the same manner as provided herein for notice of hearing on revocation. The decision

and order of the Governing Body on such appeal shall be final and conclusive.

5-206. VIOLATION/PENALTY. In addition to license revocation as provided in section 5-205, any person violating any of the provisions of this article is guilty of a public offense and upon conviction thereof shall be punished as provided in Section 1-116 of this code.

CHAPTER V. BUSINESS REGULATIONS

- Article 1. General Regulations and Licenses
- Article 2. Solicitors
- Article 3. Amusement Devices, Carnivals and Circuses
- Article 4. Security Licenses and License Agents
- Article 5. Massage Therapy
- Article 6. Adult Entertainment Establishments
- Article 7. Residential Rental Properties
- Article 8. Prohibited Discrimination in Employment, Housing or Public Accommodations

ARTICLE 2. SOLICITORS

5-201. LEGISLATIVE FINDINGS. It is hereby found and determined by the governing body that crimes have been committed by persons posing as solicitors and that a variety of frauds and misleading devices are sometimes employed in such solicitations. It is further found that some solicitors present a continuing danger of fraud, robbery, and other crimes to the residents of the city. The city further has an interest in reducing litter and trash associated with commercial handbills, which often end up as litter and contribute to storm water management problems. In addition, it is found that residents of the city are subject to being annoyed by solicitors. In response to these findings, it is hereby determined by the governing body that it is necessary, in the interest of the public safety and welfare, for the governing body to regulate the time, place, and manner of solicitation in the city, and registration of certain commercial solicitors. This article advances the city's interests while protecting the free speech rights of the public guaranteed by the First Amendment to the United States Constitution.

(Ord. 1922, Sec. 1; Ord. _____, Sec. __)

5-202. DEFINITIONS. For the purpose of this chapter the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them, unless a different meaning is clearly indicated by the context.

- (a) City as used in this chapter means the City of Prairie Village, Kansas.
- (b) Person as used in this chapter means any individual, firm, partnership, corporation, or company, and includes any trustee, receiver, assignee, agent or other similar representative thereof.
- (c) Commercial handbill means any printed or written matter, any sample or device, circular, leaflet, pamphlet, paper booklet, door hanger or any other printed or otherwise reproduced original or copies which:
 - (1) Advertises for sale merchandise, products, or commodities;
 - (2) Directs attention to any business or mercantile or commercial establishment, or other activity, for the purpose of either directly or indirectly promoting the economic interest thereof by sales; or
 - (3) Directs attention to or advertises any meeting, theatrical performance, exhibition, or event of any kind, for which an admission fee is charged or for which a solicitation shall be made for the purpose of private gain or profit.
 - (4) Exemption for mail and newspapers. The term "commercial handbill" does not include mail delivered by the United States Postal Service or

newspapers duly entered with the Post Office Department of the United States and newspapers filed and recorded with any recording officer, as provided by general law, or any periodical or current magazine regularly published at least annually and sold to the public.

(g) Solicit and Solicitation as used in this chapter mean and include any one or more of the following:

- (1) Selling or offering for sale for a profit, advertising, marketing, or taking or attempting to take orders for the sale for a profit, of goods or services of any kind, character or description, while traveling from house-to-house, door-to-door, street-to-street, or from place-to-place in the city, whether as agent, contractor, employee, representative, or principal.
- (2) Ringing a doorbell, knocking on a door, or otherwise attempting to contact a resident, tenant, or occupant of any residence, dwelling, business, or other location for the purpose of selling, offering, or advertising any goods or services for profit, or to propose a commercial transaction related solely to the economic interests of the solicitor and the person solicited.
- (2) Hanging, leaving, or depositing any commercial handbill, regardless of whether a doorbell is rung, a door is knocked, or any other physical or verbal contact is made.

A solicitation as defined herein shall be deemed completed when made, whether or not the person making the same makes any sale.

(h) Solicitor as used in this chapter means a person who solicits for himself, herself, or any other person.

(Ord. 1922, Sec. 1; Ord. _____, Sec. __)

5-203.

PROHIBITED ACTS. It shall be unlawful for any person to:

- (a) Solicit at a residence, apartment, or other dwelling, or at a business at which a sign bearing the words "No Solicitors," "No Trespassers," or words of similar import indicating that such persons are not wanted on the premises, is painted, affixed or otherwise exposed to public view; provided that this paragraph shall not apply to any solicitor who gains admittance to such residence at the invitation or with the consent of the occupant thereof. For purposes of this section, the "No Solicitors" decal issued by the City Clerk prominently displayed on the door shall constitute sufficient notice to all solicitors. However, other similar signs, as defined above, are also sufficient.
- (b) Solicit prior to 10:00 a.m. or after 8:00 p.m. local time, of any day. In addition, it shall be unlawful for any person to solicit between 5:30 p.m. and 7:00 p.m. local time, of any day.
- (c) Engage in soliciting upon any premises or in any residence, apartment, or other dwelling, or at a business (including any privately-owned parking lots) after having been asked by the owner or occupant to leave the premises, business, or residence.
- (d) Make more than one solicitation call at the same residence, apartment, or other dwelling, or at a business, for identical goods or services within any consecutive 14-day period, without receiving a prior invitation therefor from the occupants of the premises. This provision shall be construed to include solicitation upon the same premises by employees, agents, or other persons acting on behalf of the same person more than once during the aforesaid period without a prior invitation as herein provided.

- (e) Fail to provide, at the request of the purchaser, a written receipt for purchases exceeding \$5.00 in cash or tangible property which receipt shall be signed by the person making the sale and shall set forth a brief description of the goods or services sold, the total purchase price thereof, amount of cash payment, if any, and the balance due and terms of payment.
 - (f) Fail at the outset of a solicitation to disclose to the prospective buyer or solicitee the solicitor's name and the name of the company, product or organization he or she represents.
 - (g) Make any assertion, representation or statement which misrepresents the purpose of the solicitor's call, or use any plan, scheme, or ruse which misrepresents such purpose.
 - (h) Interact in a forceful or otherwise verbally or physically aggressive manner with residents or businesses to whom a solicitation is made in the course of such solicitation.
 - (i) Solicit in such a way as would restrict or interfere with the ingress or egress of the abutting property owner or tenant, increase traffic congestion or delay, or constitute a hazard to traffic, life or property, or an obstruction to adequate access to fire, police or sanitation vehicles.
 - (j) Solicit if the solicitor:
 - (1) Is required to register pursuant to the Kansas Offender Registration Act, K.S.A. 22-4901 *et seq.*, and amendments thereto, or pursuant to an offender registration act of any other state;
 - (2) has been convicted of a felony, misdemeanor, or ordinance violation involving deceit, fraud, possession of a firearm, theft, or violence within the past ten (10) years; or
 - (3) has been convicted of any law regulating the act of soliciting as defined in this chapter within the past five (5) years.
 - (k) Solicit or attempt to solicit at any entrance other than the main entrance of the residence, apartment, or other dwelling, or business.
 - (l) Cut across or walk upon any lawn, front yard, or courtyard except upon sidewalks, walkways, or driveways, if such sidewalks, walkways, or driveways are provided.
 - (m) Throw or deposit any commercial handbill in or upon any vehicle, unless the vehicle is occupied and the occupant is willing to accept it.
 - (n) Fail to carry upon the solicitor's person a government-issued photo identification card (such as a driver's license) if the solicitor is sixteen (16) years of age or older, and/or fail to carry upon the solicitor's person the city license required under section 5-204 below.
- (Ord. 1922, Sec. 1; Ord. _____, Sec. __)

5-204.

LICENSE REQUIREMENT; APPLICATION PROCEDURE.

- (a) It shall be unlawful for any person to solicit for any business, including such person's own business, unless such business has received a business license as required by Chapter V, Article 1 of this Code, to the extent such Chapter V, Article 1 would otherwise require that such business obtain a license thereunder.
- (b) Except as otherwise provided in this article, it shall be unlawful for any person to solicit within the city without a solicitation license, which solicitation license shall be required in addition to any business license required by subsection (a) above. Each applicant for a solicitation license shall, at a minimum, provide the following information to the city for licensure:

- (1) Name, date of birth, physical description of applicant.
 - (2) Government-issued photo identification, such as a driver's license.
 - (3) Applicant's Kansas Sales Tax number.
 - (4) Address of applicant and area where applicant intends to solicit.
 - (5) A brief description of the name of the business to be conducted and the goods or services to be solicited or sold, and a copy of any required city business license.
 - (6) If applicant is employed, name and address of the employer, together with credentials establishing applicant's relationship to such employer.
 - (7) Length of time for which the solicitation license is requested, not to exceed fourteen (14) days, after which time a new license must be obtained.
 - (8) If a vehicle is to be used, a description of the same, together with the state vehicle license number carried on such vehicle.
 - (9) Consent to a police record check to determine whether or not the applicant:
 - (A) Is required to register pursuant to the Kansas Offender Registration Act, K.S.A. 22-4901 *et seq.*, and amendments thereto, or pursuant to an offender registration act of any other state;
 - (B) has been convicted of a felony, misdemeanor, or ordinance violation involving deceit, fraud, possession of a firearm, theft, or violence within the past ten (10) years; or
 - (C) has been convicted of any law regulating the act of soliciting as defined in this chapter within the past five (5) years.
 - (10) Submit a copy of a paid personal property tax receipt from the Johnson County Treasurer or another county treasurer in the State of Kansas for all goods or merchandise brought into Johnson County from outside the State of Kansas to be sold or disposed of in a place of business temporarily occupied for their sale.
- (c) The license fee for soliciting shall be as prescribed by city ordinance or fee schedule adopted by the city. Such fee is required to cover city staff application review and processing time.
- (d) Notwithstanding the foregoing, a city solicitor license shall not be required for persons under the age of eighteen (18) years of age soliciting for themselves, and not part of a business required to be licensed under Chapter V, Article 1 of this Code, for part-time, temporary, or seasonal work related to lawn care services or snow removal.

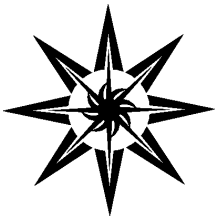
5-205. REVOCATION OF LICENSE. The City Administrator, or his/her designee, may revoke any license issued under the provision of Section 5-204, for any of the following causes:

- (a) Fraud, misrepresentation or false statement contained in the application for license or made in the course of carrying on the business
- (b) Any violation as described in Section 5-203.

Notice of revocation of a license shall be provided in writing to the applicant by the City Clerk. Any person aggrieved by the denial of an application or the revocation of a license shall have the right of appeal to the Governing Body. Such appeal shall be taken by filing with the City Clerk within fourteen (14) days after notice of revocation or denial of the license has been mailed to the applicant's last known address setting forth the grounds for appeal. The Governing Body shall set a time and place for a

hearing on such appeal and notice of such hearing shall be given to the applicant in the same manner as provided herein for notice of hearing on revocation. The decision and order of the Governing Body on such appeal shall be final and conclusive.

5-206. VIOLATION/PENALTY. In addition to license revocation as provided in section 5-205, any person violating any of the provisions of this article is guilty of a public offense and upon conviction thereof shall be punished as provided in Section 1-116 of this code.



COU2020-27: Consider an Amendment to Chapter II (Animal Ordinance) of the Municipal Code to allow for residents to keep chickens.

BACKGROUND

Councilmembers Inga Selders, Jori Nelson, and Piper Reimer have asked for this item to be placed on the agenda for consideration. They have collectively reviewed ordinances of surrounding cities and are recommending this matter to move forward with staff direction to draft an amendment with language similar to the City of Roeland Park's Ordinance (attached) which outlines regulations for resident(s) to have chickens within that jurisdiction. Mrs. Selders also recommended that if this consideration moves forward, that staff considers adjusting the distance that coops are required from adjacent dwellings, churches, schools or places of business from 40 feet to 25 feet. Mrs. Selders indicated the 25 feet requirement would be similar to ordinances that have been adopted in Kansas City, Missouri, and Wyandotte County. The 40-foot requirement would limit or prohibit many residents in keeping chickens due to the number of smaller lot sizes primarily in areas that are zoned R1b.

Staff conducted a preliminary review of the proposed ordinance and also discussed how the ordinance is working with Roeland Park's City Administrator, Keith Moody. The Roeland Park Ordinance does require a special use permit and Mr. Moody said they have 5 residents who are currently permitted to have chickens. He indicated they have not had any complaints or problems.

If the Council votes to move this item forward, Staff would request the latitude to make modifications to the Roeland Park template that we feel would be consistent with existing language in the current ordinance. The following examples of changes were identified by staff in the preliminary review.

- Special Use Permits would not necessarily be needed if regulation language gave authority for Animal or Code Enforcement to have the ability to direct removal if not in compliance with established guidelines.
- The potential dangerous animal protocols would not apply should a chicken become injured by another domesticated pet unless other factors of aggression were present.
- The coop would not necessarily be required to be inspected by a building official if constructed to established specifications.

RECOMMENDED MOTION

Move to direct staff to draft an ordinance as outlined to allow for residents to have the ability to keep chickens.

ATTACHMENTS - Roeland Park Ordinance 2-401 through 2-413.

PREPARED BY

Wes Jordan
City Administrator
Date: May 26, 2020

ARTICLE 4. - CHICKENS

Sec. 2-401. - Registration and Fee.

- (a) Any person who keeps chickens in the City shall obtain a permit from the City prior to acquiring chickens.
- (b) The principal use of the person's property must be a single-family use dwelling or duplex-family dwelling as defined in chapter 16.
- (c) The property must be occupied by the person requesting the permit.
- (d) Every owner of chickens over 16 weeks of age shall annually register with the City Clerk his or her name and address.

(Ord. No. 932, § 1, 5-16-2016)

Sec. 2-402. - Renewal of Registration.

- (a) Renewal applications shall be approved by the City Clerk, unless a complaint from a contiguous neighbor has been filed with the City or its representatives. If complaints are received, renewal applications may only be approved by the City Council.
- (b) The City Council may refuse to renew or revoke a permit if, following a public hearing, it finds any of the following:
 - (1) The premises are being maintained in violation of any applicable law of the State of Kansas, or of the City.
 - (2) The premises are being maintained so as to be a public nuisance.
 - (3) The premises are being maintained so as to be detrimental to the health, safety or peace of mind of persons residing in the immediate vicinity.

It shall be the duty of the City Clerk or designated agent, upon receipt of the registration fee hereinbefore required to keep a record suitable for the registration of chickens, the time of the registration, the name of the owner or keeper, the number of the registration and the amount paid therefore.

The City Clerk shall deliver to the owner or keeper of the chickens a certificate in writing, stating that the person has registered the chickens and the number by which the chickens are registered.

(Ord. No. 932, § 2, 5-16-2016)

Sec. 2-403. - Same; Number and Type of Chickens Allowed.

- (a) No person or household shall own or harbor more than six chickens of 16 weeks of age or older or more than one clutch (eight) chicks per tract of land regardless of how many dwelling units are on the tract.
- (b) Only female chickens are allowed.

Sec. 2-404. - Enclosures.

- (a) Chickens must be kept in a clean, safe and healthy environment.
- (b) Chickens must be kept in a coop, run or chicken tractor at all times.
- (c) All coops shall be inspected and approved by the Building Inspector.

- (1) The coop must be built with a minimum of 12 square feet per chicken, not to exceed 85 square feet total (minimum two square feet of coop per chicken).
 - (2) The coop shall be enclosed on all sides and shall have a roof and doors. Access doors must be able to be shut and locked. Opening windows and vents must be covered with predator- and bird-proof wire of less than one-inch openings.
 - (3) The coop, run and chicken tractor shall consist of sturdy wire or wooden fencing.
 - (4) The coop, run and chicken tractor shall be designed so as to be easily maintained.
 - (5) The coop, run and chicken tractor shall be constructed with durable materials that will hold up to weather and environment.
 - (6) Used materials (reclaimed material) for enclosures must be approved by the Building Inspector as referenced in the adopted International Residential Code. The use of scrap, waste board, sheet metal, or similar materials is prohibited.
- (d) Coops, runs and chicken tractors may only be located in the rear yard of the property, as defined in Chapter 16.
- (e) Coops must be located at least ten feet from the property line and at least 40 feet from any adjacent residential dwelling, church, school or place of business.
- (f) Chicken runs and chicken tractors must be located at least ten feet from the property line.
- Sec. 2-405. - Odor and Noise Impact.

- (a) Odors from chickens, chicken manure or other chicken related substances shall not be perceptible at or beyond the property boundaries.
- (b) Perceptible noise from chickens shall not be loud enough at the property boundaries to disturb persons of reasonable sensibilities.

(Ord. No. 857, § 14; Ord. No. 903, § 24, 1-26-2015)

Sec. 2-406. - Waste Storage and Removal.

Chicken waste is the responsibility of the owner; no more than three cubic feet of chicken manure can accumulate. The coop and surrounding area must be kept free from trash and accumulated droppings. Composting of manure must following City Code Section 15-105 - Composting.

(Ord. No. 857, § 15)

Sec. 2-407. - Feed and Water.

- (a) Chickens shall be provided with access to feed and clean water at all times.
- (b) All feed and other items associated with the keeping of chickens shall be protected from or to prevent rats, mice, or other rodents from gaining access to or coming into contact with the feed.

(Ord. No. 857, § 16)

Sec. 2-408. - Predators and Rodents.

The chicken owner shall take necessary action to reduce the attraction of predators and rodents and the potential infestation of insects and parasites. ;hn0; (Ord. No. 857, § 17)

Sec. 2-409. - Non-Commercial Use.

- (a) Chickens are not to be kept for profit.
- (b) Commercial chicken operations are prohibited.

(Ord. No. 857, § 18)

Sec. 2-410. - Reserved.

Editor's note— Ord. No. 903, § 25, adopted January 26, 2015, repealed the former § 2-410 in its entirety, which pertained to chickens harmed by dogs or cats, and derived from Ord. No. 857, § 19.

Sec. 2-411. - Unlawful Acts.

- (a) No person shall publicly slaughter any chicken.
- (b) It shall be unlawful for any person to keep chickens in violation of any provision of this article.
- (c) It shall be unlawful for any owner, renter or leaseholder of property to allow chickens to be kept on the property in violation of the provisions of this article.

(Ord. No. 857, § 20; Ord. No. 932, § 3, 5-16-2016)

Sec. 2-412. - Enforcement.

- (a) Lack of care, illness issues and abuse complaints will be handled through code enforcement, police and protection ordinances.
- (b) Where chickens are found running at large, the City will seek assistance from a person with expertise in catching chickens.

(Ord. No. 857, § 21; Ord. No. 932, § 4, 5-16-2016)

Sec. 2-413. - Nuisances.

Any violation of this article that constitutes a health hazard or that interferes with the use or enjoyment of neighboring property is a nuisance and may be abated under the general nuisance abatement provisions of Chapter 8, Article 3.

(Ord. No. 857, § 22)

Due to restricted access to City Hall, most meetings will be held virtually. Please continue to check <http://pvkansas.com> for access details.

MAYOR'S ANNOUNCEMENTS
Monday, June 1, 2020

Planning Commission	06/02/2020	7:00 p.m.
Finance Committee	06/04/2020	4:00 p.m.
Arts Council	06/10/2020	5:00 p.m.
City Council	06/15/2020	6:00 p.m.

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INFORMATIONAL ITEMS
June 1, 2020

1. Environmental Committee meeting minutes - 01/22/2020
2. VillageFest Committee meeting minutes - 04/23/2020
3. June Plan of Action

Prairie Village Environmental Committee Meeting

Wednesday, January 22, 2020

Attendees:

Jori Nelson, Ian Graves, Beth Held, Penny Mahon, Stephanie Alger, Magda Born, Nathan Kovac, Fred C. Grunwald, SueAnn Heim, Nancy Robinson, Sarah Bradley, Tucker Poling (Guest), Meghan Buum (Staff)

1. Call to Order
2. Approval of the agenda
3. Approval of minutes from December meeting
4. Introduction of Ian Graves to the committee
5. Public participation
 - a. Stacia Stelk (Executive Director, Deep Roots) introduced Deep Roots (deeprootskc.org) to the committee.
 - i. Our lack of native plant landscapes constitutes a food desert for birds, bees and bugs. Not only that, but native plant landscapes are important to the community for other reasons, such as preventing flooding.
 - ii. Deep Roots will be hosting a sale in Prairie Village at Franklin Park on May 16 from 10am-2pm, preorders will be available on the website. They will also be holding workshops, details are on their website.
 - iii. Stacia provided a book recommendation: “Planting in a Post Wild World” by Thomas Rainer and Claudia West (978-1604695533).
6. New Business – Creating a Native Landscape at 8011 Mission Rd.
 - a. Jori proposed that the committee reach out to the owners of the property (Entertainment Communications, Inc) with interest in converting the property into a native landscape. She suggested possibly asking Pollinator Prairie for ideas for the property.
 - b. Stacia suggested that a native environment would require continued maintenance for three years after the initial planning. She also suggested that the company might be interested in allowing a native garden if the financial benefits are presented as good PR opportunities (such as possible carbon credits).
 - c. Stacia will provide the results of a recent case study to Jori.
 - d. Meghan offered to obtain contact information for the owners of the property.
 - e. Movement to pursue the possibility of a native plant area within this property at 8100 Mission Dr. (Approved unanimously)
7. Old Business – Review and vote on “Plastic Bag Ban Proposal”
 - a. The memo compiled by Jori and Tucker was submitted to the mayor and his staff on December 23, 2019, to inform him of the committee’s intentions.

- b. Tucker explained that instead of providing the council with a draft ordinance they chose to submit a memo in order to promote open discussion, input, and dialog. If, after the council meeting, the council votes to move forward, we will provide a drafted ordinance.
 - c. Jori and Tucker informed the committee that they have been approached by and have personally approached other politicians from north-east Johnson County where they received new ideas for our proposed ordinance.
 - d. The Council Committee of the Whole will review the memo at the next meeting on February 3, 2020 at 6 p.m.
 - e. Motion to approve the draft ordinance should the council choose to move forward (approved unanimously).
8. New Business – From Deconstruction to Demolition: A City Salvage and Reuse Policy
- a. Jori proposed that the committee investigate options relating to ordinances requiring the deconstruction of homes in Prairie Village (in contrast with demolition). She contacted USGBC to understand any standing ordinances pertaining to construction waste.
 - b. SueAnn offered to invite a contact to come to talk at the next committee meeting.
 - c. Nancy will also invite a contact to come to the next committee meeting to discuss.
9. New Business – Earth Day 2020
- a. Nancy offered to reach out to Terry Ball from Mission who wanted to do a joint project with the committee for Earth Day.
 - b. Jori suggested cleaning the section of Brush Creek between 71st St and 72nd Terr.
 - c. Beth suggested that the committee sponsor bump-out rain gardens.
 - d. There was a suggestion that the committee hand out native seeds next to an example native planted garden for Earth Day, and that we announce our intentions in the Village Voice.
 - e. SueAnn will contact Stacia about collaborating with Deep Roots on an Earth Day project.
10. Announcements – None
11. Adjournment

Minutes submitted by: Stephanie Alger

VillageFest Committee

April 23, 2020

Zoom

1. Welcome and Introductions

- a. Amber Fletcher, Alex Fletcher, Meghan Boom, Teresa Stewart, Patty Jordan, Linda Fritz, James Carney, Josh Sigler, Courtney McFadden, Joel Crown, Lissa Haag, Dale Warman, Susan Forrest, Corbin Trimble, Toby Fritz

2. Joel Crown moved to accept the January 23 meeting minutes. Toby Fritz seconded the motion and it was approved unanimously.

3. Updates

- a. Luke Roth – announced as the new police department representative
- b. Scott Oberkrom - no longer with the YMCA, we don't expect a new representative from the Y to be appointed this year.
 - i. Would like to send a card to him thanking him for his work on the committee
- c. Skate park construction will not take place this summer.

4. VillageFest/Covid-19 Update

- a. The city is in a holding pattern as they await guidance from the County and State on gathering restrictions over the next few months.
- b. What would a “socially distant” VillageFest look like?
 - i. Looking at safety for citizens as primary concern
 - ii. How do we sanitize or maintain 6 feet of separation for event attendees? Based on the event components and typical attendance, this seems like an impossible task. Gathering just may not be a possibility.
 - iii. Ideas: #VillageFestAtHome or “Festival in a Bag” concept: Drive through pickup of crafts, patriotic items, coupons from area businesses, etc. Music playing during drive through, with fire trucks and police cars displayed. Facebook Live events: remarks from Mayor, kids decorate bikes and send in pictures, online contest, etc.
 - iv. Formal Motion
 - 1. Teresa Stewart moved to develop alternate plan for VillageFest to include, but not limited to, drive by and virtual components. Joel Crown seconded the motion and it was approved unanimously.

VillageFest Committee

April 23, 2020

Zoom

- c. Drive through logistics
 - i. Need continual movement of cars to prevent traffic problems.
 - ii. Use City Hall drive or pool parking lot
- d. Other discussion
 - i. Committee members will look for crafts, mini face paint kits, candy, frisbee, etc. to include in the “to-go” bag. What is the cost per bag? Previously have ordered 600 crafts. 9,700 households in Prairie Village, potentially hold a Facebook poll to figure out numbers. Are bags for each kid or each car? Keep it simple – when we’re out, we’re out. Price out cost of bags based on several different levels (1000, 2000, or 3000 bags)
 - ii. We don’t want to unintentionally encourage gathering – will need to make sure we have signage that clearly instructs families to stay in their vehicles and avoid on-site items that would draw crowds, like live performances. DJ could play music rather than live performances
 - iii. Spirit Award, recorded with the Mayor in advance and air video on Facebook later or should we skip this year so winners get a more public recognition?
 - iv. Alternate concept to be presented at the May 4 City Council meeting. The Committee will meet following the City Council’s decision - a poll will be sent out to determine the next meeting date/time.

Minutes submitted by: Amber Fletcher



THE CITY OF PRAIRIE VILLAGE

STAR OF KANSAS

DATE: May 27, 2020

TO: Mayor Mikkelson
City Council

FROM: Wes Jordan 

SUBJECT: JUNE PLAN OF ACTION

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

- Consider Ordinance to Allow Chickens - Wes/Chief (06/20)
- Village Voice - Staff (06/20)
- 2021 Budget Process - Staff (06/20)
 - Draft 2 - Finance Committee Budget Review
 - Budget Presentation to Council
 - CIP Presentation to Council
 - Establish Solid Waste Fees
- Recruitment Process Human Resource Manager - Jamie (06/20)
- COVID-19 Messaging Project - Ashley (06/20)
- Legislative Updates to Council - Jamie (06/20)
- Meadowbrook Park Public Art Project - Jamie/Ron (06/20)
- Gould Evans Contract Renewal - Jamie (06/20)
- 7631 Reinhardt Rezoning Request - Jamie/Chris/Adam (06/20)
- VillageFest (Alternate Concept Event) - Meghan (06/20)

In Progress

- COVID-19 Recovery Phased Reopening Planning - Staff (05/20)
- Community Meeting w/Appraiser - Ashley (04/20) [delayed]
- Teen Council Graduation - Meghan (04/20)
- 20/20 Fitness Business Introduction to Council - Wes (04/20) [delayed]
- Energy Efficiency Audit Public Buildings - David McAuliffe (04/20)
- Environmental Committee Vacancy - Meghan (04/20)
- Resident Survey Compost/Glass Pilot Program - Jamie (05/20)
- Annual Finance Audit - Lisa (04/20)
- PW Building Demo Planning - Keith (04/20)
- Large Item Pickup Coordination/Promotion - Jamie/Ashley (03/20)
- Planning Commission Appeal to Council - Jamie (03/20)
- Civic Center Action Plan - Staff (03/20) [on hold]
 - Bond Capacity Discussion w/Council - Jeff White

- Framework of Partnership Agreements with YMCA & Library
 - MOU - Public Engagement & Site Design
- NE Chamber Update - Wes (03/20) [delayed]
- Every Update - Wes (03/20) [delayed]
- Ward 4 Meeting - Meghan (03/20) [postponed]
- Committee Volunteer Waiver Update - Staff (03/20) [delayed]
- Sustainability Grant Program - Jamie (02/20) [pending Council direction]
- Single Use Plastic Bag Discussion - Staff (02/20) [pending Council direction]
- 2019 Annual Report - Staff (02/20)
- 2018 Building Code Adoption - Jamie/Mitch (01/20)
- Website Redesign - Ashley/Adam (10/19)
- PW New Facility Planning - Keith (09/19)
- Memorial Plaques in Parks Criteria Review - Staff (08/19)
- Fee Schedule Review - Adam (08/19)
- 63rd Street Speed Limit Review - PW/PD (08/19)
- JOCO Municipalities Housing Study Task Force - Jamie (07/19)
- Master Personnel Spreadsheet Updates - Staff (06/19)
- Solicitor Ordinance Updates - Adam/Wes (06/19)
- Research Viability of Interior Rental Inspections - Jamie (06/19)
- Statuary Maintenance Plan - Meghan (05/19)
- Longevity Award Update - Amy/Wes (05/19)
- Property Maintenance Code Revisions - Jamie (03/19)
- Contractor's License Requirements/Revisions - Jamie (03/19)
- Census 2020 - Ashley (02/19)
- Personnel Policy Updates - Amy/Jamie (07/18)
- Organization of City Records/Contracts - Adam (05/19)
- Village Vision/Comp Plan Update - Chris/Jamie/Wes (11/17) [delayed]
- Sculpture Unveiling - Keith (11/19) [delayed]

Completed

- 2021 Budget Process - Staff (03-04/20)
 - Personnel Assumptions
 - Merit Pool - Staff
- Website Audit - Staff (12/19)
- PV Foundation Meeting - Meghan (03/20)
- 2021 Budget Process - Staff (05/20)
 - Finance Committee Meeting(s)
 - CIP Discussion and Road Assessment
 - Property Tax Lid Overview
 - Master Personnel Spreadsheet

Tabled Initiatives

- Review & update the City Code/Ordinances

- Review & Update City Policies
- Review of Smoking Ordinance/e-cigs
- E/V Charging Station Installation - Staff