

CITY OF PRAIRIE VILLAGE

March 3, 2014

Council Committee Meeting 6:00 p.m.

City Council Meeting 7:30 p.m.



**COUNCIL COMMITTEE OF THE WHOLE
Council Chambers
March 03, 2014
6:00 PM**

AGENDA

DALE WARMAN, COUNCIL PRESIDENT

PRESENTATIONS

Presentation by SMSD Superintendent Jim Hinson

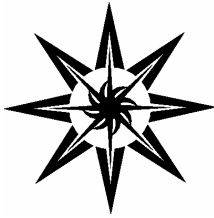
AGENDA ITEMS FOR DISCUSSION

*COU2014-05 Consider approval of a contract with Kansas Heavy Construction, LLC for the 2014 Concrete Repair Program
Keith Bredehoeft

Presentation and discussion of Special Use Permits and Conditional Use Permits
Ron Williamson and Katie Logan

COU2014-03 Consider adoption of a City Council Policy outlining the procedures for filling a vacancy in the office of mayor and selecting the President of the Council
Danielle Dulin

***Council Action Requested the same night**



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: March 3, 2014

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***COU2014-05 - CONSIDER APPROVAL OF A CONTRACT WITH KANSAS HEAVY CONSTRUCTION, LLC FOR THE 2014 CONCRETE REPAIR PROGRAM.**

RECOMMENDATION

Move to authorize the Mayor to sign the Construction Contract with Kansas Heavy Construction, LLC for Project CONC2014, 2014 Concrete Repair Program for \$700,000.00.

BACKGROUND

On February 7, 2014, the City Clerk opened bids for Project CONC2014, 2014 Concrete Repair Program. Seven bids were received:

Kansas Heavy Construction, LLC	\$619,667.50
McAnany Concrete, LLC	\$632,300.00
Wm. White and Sons	\$735,075.00
Miles Excavating, Inc.	\$794,183.00
Gunter Construction Co.	\$850,305.00
O'Donnell & Sons Construction	\$865,120.00
Freeman Concrete Construction	\$1,040,275.00
Engineer's Estimate	\$764,360.00

This program consists of repairs to deteriorated concrete sidewalk, curb and ADA ramps. Location of work includes streets in the City's yearly maintenance Districts. Not all streets in the following area will require work. The area this construction season is area 51. We will also be completing concrete repairs at approximately 15 miscellaneous locations throughout the City.

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

FUNDING SOURCE

Funding is available in the Capital Infrastructure Program Project CONC2014.

ATTACHMENTS

1. Construction Agreement with Kansas Heavy Construction, LLC

PREPARED BY

Keith Bredehoeft, Public Works Director

February 21, 2014

**CONSTRUCTION AGREEMENT
BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
KANSAS HEAVY CONSTRUCTION, LLC
FOR
PROJECT CONC2014 - 2014 CONCRETE REPAIR PROGRAM**

THIS AGREEMENT, is made and entered into this ____ day of _____, 2014, by and between the City of Prairie Village, Kansas, hereinafter termed the "City", and Kansas Heavy Construction, LLC, hereinafter termed in this agreement, "Contractor", for the construction and completion of Project, designated, described and required by the Project Manual and Bid proposal, to wit:

CONTRACT COST: The City shall pay the Contractor for the performance of the Work embraced in this Contract, and the Contractor will accept in full compensation therefore the sum (subject to adjustment as provided by the Contract) of Seven Hundred Thousand and 00/100 DOLLARS (\$700,000.00) for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

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

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

Contractor agrees that time is of the essence and any term pertaining to Contractor timely performing so as to achieve Total Completion when required under the Contract is a material provision of this Contract. Further, the parties acknowledge that City's damages in the event of delay are difficult to ascertain and consequently agree that, in the event and to the extent that actual date of Total Completion is delayed beyond the required date for Total Completion for the Total Project or Project Segments attributable solely or concurrently to (i) an act or omission of Contractor or any of its subcontractors or suppliers, or (ii) in whole or in part, to any other event or

condition within the Contractor's reasonable control (and not for reasons solely attributable to City), the Contractor shall be assessed a liquidated damage, and not as a penalty, in the amount set forth in the Special Conditions for each calendar day beyond the applicable Total Completion date. Such amount shall be deducted from any amounts due Contractor under this agreement.

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

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

1. DEFINITIONS:

1.1 Following words are given these definitions:

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

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

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

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

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

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

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

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

as per the Contract Documents.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. ENTIRE AGREEMENT:

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

3. INTENT AND INTERPRETATION

- 3.1 The intent of the Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, including construction, labor, materials, tools, equipment and transportation, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result, shall be provided by the Contractor for the Contract Price.
- 3.2 All limits stated in the Contract Documents are of the essence of the Contract.
- 3.3 The Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.
- 3.4 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.
- 3.5 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents and shall give written notice to the Engineer of any inconsistency, ambiguity, error or omission, which the Contractor may discover, or should have discovered, with respect to these documents before proceeding with the affected Work. The review, issuance, or the express or implied approval by the City or the Engineer of the Contract Documents shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such review be evidence of the Contractor's compliance with this Contract.
- 3.6 The City has prepared or caused to have prepared the Project Manual. **HOWEVER, THE CITY MAKES NO REPRESENTATION OR WARRANTY AS TO ACCURACY OR FITNESS FOR PARTICULAR PURPOSE INTENDED OR ANY OTHER WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the City concerning such documents as no such representation or warranties have been made or are hereby made.

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

4. WORK SUPERINTENDENT

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

5. ENGINEER

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

The Engineer shall be the City's representative from the effective date of this Contract until final payment has been made. The Engineer shall be authorized to act on behalf of the City only to the extent provided in this Contract.

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

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

intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the City so decides, to annul the Contract.

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

6. WORK SCHEDULE:

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

7. DELAYS AND EXTENSIONS OF TIME

- 7.1 In executing the Contract, the Contractor expressly covenants and agrees that, in undertaking the completion of the work within the time herein fixed, he has taken into consideration and

made allowances for all of the ordinary delays and hindrances incident to such work, whether growing out of delays in securing materials, workers, weather conditions or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the Work, or any portion thereof, included in this Contract.

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

8. ADVERSE WEATHER:

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

reflect these anticipated adverse weather delays in all weather affected activities:

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

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

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

listed above, in their Progress Schedule. (Reference Section 3.1.1 for Progress Schedule requirements)

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

9. PAYMENT PROCEDURE:

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

return of some or all of the amounts previously paid to the Contractor, to protect the City from loss because of:

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

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

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

10. COMPLETION AND FINAL PAYMENT

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

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

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

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

11. CLAIMS BY THE CONTRACTOR

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

- the total cost of which exceeds 12-1/2 percent of the total Contract amount based on the proposed quantity and the contract unit price).
- 11.6 When the alterations cause an increase or decrease in excess of the 25 percent indicated above, either the Contractor or the Engineer may request an adjustment of the unit price to be paid for the item or items.
- 11.7 If a mutually agreeable adjustment cannot be obtained, the City reserves the right to terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the Work.
- 11.8 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall not include standby costs, indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties.
- 11.9 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving Final Acceptance of the Work shall be extended upon the written notice and claim of the Contractor to the City, for such reasonable time as the City may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven calendar days after the occurrence of the event or the first appearance of the condition-giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Work. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this subparagraph, any claim for an extension of time shall be waived.
- 11.10 The Contractor shall delay or suspend the progress of the work or any part thereof, whenever so required by written order of the City, and for such periods of time as required; provided, that in the event of such delay or delays or of such suspension or suspensions of the progress of the work, or any part thereof, the time for completion of work so suspended or of work so delayed by such suspension or suspensions shall be extended for a period equivalent to the time lost by reason of such suspension or suspensions; but such order of the City or Engineer shall not otherwise modify or invalidate in any way, any of the provisions of this Contract. In the event that the work shall be stopped by written order of the City, any expense, which, in the sole opinion and judgment of the City, is caused by the City, shall be paid by the City to the Contractor.
- 11.11 In executing the Contract Documents, the Contractor expressly covenants and agrees that, in undertaking to complete the Work within the time herein fixed, it has taken into consideration and made allowances for all hindrances and delays incident to such work, whether growing out of delays in securing materials or workers or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the work, or any portion thereof, included in this Contract, except as provided herein.
- 11.12 In addition to the Project Manual particular to Mobilization found elsewhere in this document,

additional mobilization shall not be compensable for work outside of the designated areas for work deemed essential by the City. A quantity of work equal to as much as 10% of the total Contract may be required to be performed beyond the boundaries of the designated work areas

12. CHANGES IN THE WORK

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

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

13. INSURANCE AND HOLD HARMLESS.

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

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

13.8 The City and the Engineer shall be a named insured on such policies. Satisfactory certificates of insurance shall be filed with the City prior to starting any construction work on this Contract. The certificates shall state that thirty (30) days written notice will be given to the City before any policy coverage thereby is changed or canceled.

13.9 The Contractor shall secure and maintain through the duration of this Contract insurance on an occurrence basis of such types and in such amounts as may be necessary to protect the Contractor and the City and agents of the City against all hazards or risks of loss as hereinafter specified. The form and limits of such insurance, together with the underwriter thereof in each case, shall be approved by the City, but regardless of such approval, it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times. Failure of the Contractor to maintain adequate coverage shall not relieve it of any contractual responsibility or obligation, including but not limited to, the indemnification obligation.

13.10 Satisfactory certificates of insurance shall be filled with the City prior to the Contractor starting any construction work on this Contract. The Certificates shall state that the thirty (30) days written notice will be given to the City before any policy covered thereby is changed or cancelled. Failure by the Contractor to furnish the required insurance within the time specified in the notice of award of the Contract by the City, at the City option, may be the basis for the City exercising its right to terminate the Contract.

13.11 The liability limits shall be as stated:

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

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

- Commercial General Liability. This insurance shall be written in comprehensive form including

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

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

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

14. INDEMNITY

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

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

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

all statutory defenses, including, but not limited to, those under workers compensation, contribution, comparative fault or similar statutes to the extent said defenses are inconsistent with or would defeat the purpose of this section.

15. SUCCESSORS AND ASSIGNS

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

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

16. NON-DISCRIMINATION LAWS

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

17. RELATIONS WITH OTHER CONTRACTORS:

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

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

- 17.2 When two or more Contracts are being executed at one time in such manner that work on one Contract may interfere with that on another, the City shall decide which Contractor shall progress at which time.
- 17.1 Other projects the Contractor may have to coordinate shall be listed in the Special Conditions.
- 17.2 When the territory of one Contract is the necessary or convenient means of access for the transportation or movement of workers, materials, or appliances required for the execution of another Contract, such privileges of access or any other responsible privilege may be granted by the City to the Contractor so desiring, to the extent such may be reasonably necessary.
- 17.3 Upon execution of the Contract, the Contractor shall furnish the City, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Work. The City shall promptly reply to the Contractor, in writing, stating any objections the City may have to such proposed Subcontractor. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the City has made timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has objection.

18. RIGHT OF CITY TO TERMINATE

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

demobilization.

19. MISCELLANEOUS:

- 19.1 The Contractor warrants to the City that all labor furnished to progress the Work under the Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with the Project Manual. All Work not conforming to these requirements may be considered defective.
- 19.2 The Contractor shall obtain and pay for all permits, fees and licenses necessary or ordinary for the Work. The Contractor shall comply with all lawful requirements, including federal and state laws, City and County laws and ordinances and building codes, applicable to the Work and shall give and maintain copies of all notices required by applicable law pertaining to the Work.
- 19.3 Both the business address of the Contractor given in the Bid or proposal upon which this Contract is founded, and the Contractor's Office near the Work, is hereby designated as the places to which all notices, letters, and other communications to the Contractor may be mailed or delivered. The delivering at either of the above named addresses, or depositing in any mailbox regularly maintained by the Post Office, of any notice, letter or other communication so addressed to the Contractor, and the date of said service shall be the date of such delivery or mailing. Such addresses may be changed at any time by an instrument in writing, executed by the Contractor, presented, and delivered to the Engineer and to the City. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or communication upon the Contractor personally.
- 19.4 It is mutually agreed by and between the parties to this Contract that all royalties and fees for and in connection with patents, or patent infringement, claims for materials, articles, apparatus, devices or equipment (as distinguished from processes) used in or furnished for the work shall be included in the Contract amount and the Contractor shall satisfy all demands that may be made at any time for such, and the Contractor shall at its cost and expense, defend any and all suits or proceedings that may be instituted at any time against the City for infringement or alleged infringement of any such patents involved in the work, and Contractor shall pay any award of damages.
- 19.5 The right of general administration of the City shall not make the Contractor an agent of the City, and the liability of the Contractor for all damages to persons, firms, and corporations, arising from the Contractor's execution of the Work, shall not be lessened because of such general administration, but as to all such persons, firms, and corporations, and the damages, if any, to them or their property. The Contractor herein is an independent Contractor in respect to the work.
- 19.6 For a period of time, from the inception of the Contract to three (3) years from the date of final payment under the Contract, the Contractor and subcontractors shall maintain books, accounts, ledgers, invoices, drafts, pages and other records pertaining to the performance of this Contract. At all reasonable times during this period these records shall be available within the State of Kansas at a field or permanent business office for inspection by authorized representatives of the City or of any other agency, which has contributed funds in connection with the Contract or to which the City is obligated to make such inspections available. In

addition, this requirement shall be included in all subcontracts entered into in connection with this Contract.

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

imposed by law.

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

WITNESSETH:

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

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

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

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

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

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

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

CITY OF PRAIRIE VILLAGE

KANSAS HEAVY CONSTRUCTION, LLC

By: _____
(signed)

By _____
(signed)

Ronald L. Shaffer _____

(typed name)

Mayor _____

(typed title)

City of Prairie Village _____

(typed company name)

7700 Mission Road _____

(typed address)

Prairie Village, Kansas, 66208 _____

(typed city, state, zip)

(typed telephone number)

(date of execution)

(date of execution)

SEAL

ATTEST:

APPROVED BY:

City Clerk, Joyce Hagen-Mundy

City Attorney, Catherine Logan

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

MEMORANDUM

TO: Prairie Village City Council
FROM: Ron Williamson, FAICP, Lochner, Planning Consultant
SUBJECT: PERMITTED USES IN R-1 RESIDENTIAL DISTRICT, SPECIAL USE PERMITS, CONDITIONAL USE PERMITS, AND MXD PLANNED MIXED USE DISTRICT
DATE: March 3, 2014 Project # 000009686

GENERAL COMMENTS:

It has been requested by the Council to address uses permitted in R-1 and Special Use Permits permitted in R-1. It is also suggested that the Council review the list of uses listed as Conditional Use Permits and determine if any of those should be moved to the Special Use Permit chapter. To clarify, briefly, Special Use Permits require a public hearing by the Planning Commission and a recommendation to the Governing Body. The Governing Body makes the final decision. Conditional Use Permits require a public hearing, but the final decision is made by the Planning Commission. When the Zoning Ordinance was revised in 1995, the Council determined that some uses needed to be reviewed by a public body, but they were considered to be minor uses and the decision was delegated to the Planning Commission. Another factor that concerned the Council at that time was that it was taking too long for applicants to get a decision and it was costing applicants too much for minor items.

Staff has reviewed the zoning ordinances for the cities of Leawood, Lenexa, Mission, Olathe, Overland Park, and Shawnee and summarized them as compared to Prairie Village. The ordinances are quite different. Some use the traditional format similar to Prairie Village, while others use the Unified Development Code format. It should also be noted that the terminology for a specific use may vary from one city to another.

USES PERMITTED IN R-1 SINGLE-FAMILY RESIDENTIAL DISTRICTS

A comparison was made between Prairie Village and other cities in Johnson County relative to what uses are permitted by right in single-family residential districts. Table A at the end of this document is the actual listing of the uses as they appear in each city ordinance. Some have restrictions or limitations that are too long to place in the table. The following is a more detailed listing of the uses in the R-1 District in Prairie Village, along with those in Leawood, Lenexa, Mission, Olathe, Overland Park, and Shawnee.

➤ City of Prairie Village

19.06.010 Use Regulations

In District R-1A, no building, structure, land or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved, altered or converted except for one or more of the following uses:

- A. Single family dwellings;
- B. Golf courses, except miniature golf and commercial driving ranges;
- C. Publicly owned parks and recreation areas;
- D. Churches and synagogues;
- E. City Hall, police, fire stations;
- F. Publicly owned libraries, museums, art galleries;
- G. Public schools, college and university educational centers operated by a local district or state agency;
- H. Group Homes;
- I. Residential design manufactured homes;
- J. Accessory uses as provided for and regulated in Chapter 19.34;
- K. Conditional Use Permits as provided for and regulated in Chapter 19.30;
- L. Special Use Permits as provided for and regulated in Chapter 19.28.

➤ City of Leawood

Leawood uses a Table of Uses and the following uses were taken from that listing:

1. Group Homes
2. Single-Family Residential (Detached)
3. Public Uses/Government Uses

➤ City of Lenexa

List of uses permitted in R-1 Residential Single-Family District:

1. Single-Family Dwellings
2. Manufactured Home
3. Church or Place of Worship
4. Daycare limited
5. Group Home limited
6. Public Park
7. Golf Course

➤ City of Mission

List of uses permitted in R-1 Residential Single-Family District:

- A. In District "R-1", no building, structure, land or premises shall be used and no building or structure shall be hereafter erected, constructed, reconstructed, moved or altered except for one (1) or more of the following uses:
 1. Dwellings, one-family, except for residential-designed manufactured homes.
 2. Publicly owned parks and recreational areas.
 3. Churches, synagogues, community centers, public libraries, public museums, public art galleries, public schools, elementary and high and private schools with curriculum equal to that of a public school and institutions of higher learning, all subject to the following conditions:
 - a. There shall be a side yard of at least twenty-five (25) feet for any principal or accessory building.
 - b. Off-street parking shall be set back at least seven (7) feet from any property line and shall be suitably screened by walls, berms or landscaping.
 - c. The location of the use shall be in accordance with at least one (1) of the following situations:
 - (1) On a corner lot immediately adjacent to or across the street from a public park or public recreational area or any other purpose listed in Subsection (A) (3) above.
 - (2) On a parcel or tract of land entirely surrounded by a combination of highways, streets or alleys.
 - (3) A lot or parcel of land immediately adjoining "R-2" to "C-2" District inclusive: or on a corner lot immediately opposite on the other side of the street in any "R-2" to "C-2" District.
 - (4) On a lot approved by the City Council after a public hearing held by the Planning Commission, provided it is found that the use does not materially damage or curtail the appropriate use of neighboring property and the use conforms to the applicable district regulations and is compatible and does not violate the general spirit and intent of the zoning ordinance.
 4. Group home, as defined by K.S.A. 12-736 and amendments thereto, located in single-family dwelling.
 5. The following accessory uses are permitted when located on the same tract, lot or parcel with the above uses:
 - a. Home occupations.
 - b. Non-commercial greenhouses.
 - c. One (1) accessory building of a maximum of one hundred twenty (120) square feet by eight (8) feet maximum height may be allowed in the rear yard only with a minimum of a five (5) foot setback from the side yard or rear yard setback lines. Such accessory building shall be properly anchored to resist wind forces.

- d. Private swimming pools when complying with regulations.
- e. Recreation and service buildings, dining halls, dormitories and the like in connection with Subsection (A)(3) above.
- f. Temporary real estate offices, contractors' construction offices and the like character during construction; removed on completion.
- g. Private attached garages for passenger cars and other vehicles. Also see Accessory Uses (Chapter 420, Article I), Detached Garages (Section 420.010) and Prohibited Uses (Chapter 420, Article II, Section 420.020 et seq.).
- h. All non-residential uses proposed in this district shall be subject to the approval of procedures set forth in Section 440.170(c).
- i. For other accessory uses, see Chapter 420, Article I.

➤ City of Olathe

Uses permitted by right in the R-1 Single-Family Residential District:

1. Single-family residences
2. Residential design manufactured homes.

➤ City of Overland Park

Permitted uses in the R-1 Single-Family Residential District:

18.180.020 Permitted uses

No building, structure, land or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered, except for one or more of the following uses, subject to the development and performance standards set forth in Section 18.180.070:

- A. Dwellings, one-family;
- B. Residential-design manufactured homes;
- C. Churches and publicly-owned and operated community buildings, museums and libraries;
- D. Public parks and playgrounds, including public recreation or service buildings and publicly-owned swimming pools;
- E. Private parks, playgrounds, swimming pools, tennis courts, clubhouses and other recreational facilities within a subdivision for the use of subdivision residents;
- F. Public schools, and private schools with a curriculum equivalent to that of a public school, and institutions of higher learning, including stadiums and dormitories in conjunction therewith, if located on the campus;
- G. Golf courses and clubhouses appurtenant thereto (except miniature golf courses, driving ranges and other similar activities operated as a business);
- H. Agricultural uses;
- I. Residential real estate sales offices;
- J. Accessory uses as provided in Chapter 18,390;
- K. Communication towers designed as an architecturally compatible element to an existing non-residential use such as schools, churches, etc. and communication antennas mounted on existing non-residential structures and non-residential buildings;
- L. Utility structures;
- M. Roof-mounted wind turbine(s) on non-residential structures and non-residential buildings and wind turbines mounted on parking lot light poles located on property developed with a non-residential use.

➤ City of Shawnee

List of permitted uses in the R-1 Residential Single-Family District from the Table of Uses is as follows:

1. Cemeteries – no chapel
2. Cemetery offices
3. Churches, temples and synagogues
4. Civil defensive activities
5. Country clubs *
6. Day care homes (adult/children) *

7. Dwellings – single-family detached
8. Electronic vehicle recharging stations *
9. Fire protection services
10. Golf courses *
11. Group homes (adult/children) *
12. Historic and monument sites
13. Libraries
14. Mausoleums *
15. Parks – private
16. Parks – public
17. Playgrounds, play lots
18. Police protection – municipal
19. Schools – primary
20. Schools – secondary
21. Wind energy conversion systems (WECS) *

*Those uses marked with an asterisk have general special conditions with which they must comply.

SPECIAL USE PERMITS

The approach used in Prairie Village is to provide a list of Special Use Permits that may be allowed in any zoning district, unless otherwise noted, subject to approval of the Planning Commission and Governing Body based upon favorable findings of fact. Table B at the end of this document is a list of the Special Use Permits included in Prairie Village, along with neighboring communities, as they appear in each city ordinance. Below is a more detailed listing of the Special Use Permits as contained in each city's city ordinance.

➤ City of Prairie Village

19.28.070 Specifically Listed Special Use Permits

Any of the following uses may be located in any district by Special Use Permit in accordance with Section 19.28.005; unless otherwise noted:

- A. Country clubs, or private clubs or clubs which serve food and alcoholic, wine and cereal malt, beverages;
- B. Cemeteries;
- C. Columbariums;
- D. Hospitals;
- E. Nursery sales office, building, greenhouse, or area (wholesale or retail);
- F. Nursing and convalescent homes as defined by state statutes; but not including group homes;
- G. Buildings, structures, towers and premises for public utility services or public service corporations whether located in public right-of-way or on easements on private property except that the following shall be specifically excluded from the Special Use Permit requirements: utility poles, utility boxes; and underground utility lines. (Ord. 2029, Sec. II, 2002);
- H. Assembly halls;
- I. Dwellings for senior adults, as defined herein, and including handicapped adults. Dwellings may be in the form of townhouses, apartments or congregate type living quarters. Nursing care or continuous health care services may be provided on the premises as a subordinate accessory use. Not less than seven hundred square feet of land shall be provided for each occupant in an apartment or congregate dwelling unit and not less than five hundred square feet of land shall be provided for each bed in a nursing or continuous care facility. Not less than three off-street parking spaces shall be provided on the premises for every four apartments or congregate living units, one space shall be provided for every five beds in any nursing facility, and not less than one space shall be provided for each employee on the premises on the maximum shift, provided, however, that this section shall not apply to group homes; Standards for height and setback of buildings applicable to such dwellings shall be those permitted in residential zoning districts R-1 through R-4;
- J. Service stations in C-1, C-2 & C-3 Districts only; not including automatic car wash; provided that all gasoline storage tanks shall be located below the surface of the ground. Display and service

racks for new stock normally carried by fillings stations, including oils and tires, may be placed outside the building during business hours;

- K. Automatic and semiautomatic car washes, continuous line car washes, self-service car washes, manual car washes and all other car washing facilities located separately or in relation to the operation of a service station in C-1, C-2 & C-3 Districts only;
- L. Skating rinks, arcades and similar commercial recreation facilities in C-1, C-2 & C-3 Districts only provided such use shall be not less than two hundred feet from any existing clinic, hospital, school, church or district R-1 to R-4 inclusive, unless approved by the Governing Body under such restrictions as seem appropriate after consideration of noise and other detrimental factors incidental to such use;
- M. Mortuaries and funeral homes – C-0, C-1, C-2 & C-3 Districts only;
- N. Day care centers in residential district;
- O. Drinking establishments – bar or night club - C-1, C-2 & C-3 Districts only:
 - a. The initial approval shall be for a period of three years;
 - b. Subsequent renewals may be for periods up to ten years but shall not be in excess of the lease term or options thereof;
- P. Accessory uses to motels includes, but not limited to, restaurants, banquet rooms, liquor, notions and magazine counters, vending machines, beauty and barbershops, flower and gift shops; provided all are within the main building and designed to serve primarily the occupants and patrons of the motel or hotel;
- Q. Accessory uses to hospitals including, but not limited to, residential quarters for staff and employees, nursing or convalescent quarters, storage and utility buildings, food service and vending machines, laundry and other similar services for hospital personnel, visitors and patients;
- R. Utility or storage buildings: Detached storage or utility buildings for nonresidential uses.
- S. DELETED. (Ord. 1909, Sec. II, 1997; Ord. 2190, Sec. III, 2009)
- T. Private schools, colleges and university education centers (Ord. 1919, Sec. I, 1997).

Wireless communications facilities are also approved as a Special Use Permit but are in a separate Chapter of the Zoning Ordinance, Chapter 19.33, Wireless Communications Facilities addresses this use.

➤ City of Leawood

The City of Leawood handles Special Use Permits similar to Prairie Village. The procedure is handled like a zoning change with a public hearing by the Planning Commission and final approval by the Governing Body. The City of Leawood has a Table of Uses and designates permitted and Special Use Permits by Zoning District. The R-1 Zoning District lists the following Special Use Permits:

1. Assisted living, independent, skilled nursing
2. Aviation fields or airports
3. Bed and breakfast
4. Campgrounds, picnic groves and fishing lakes
5. Cemeteries, mausoleums or crematories
6. Churches, synagogues, other places of worship
7. Club, private
8. Off-street parking lots
9. Public uses/Government uses
10. Reservoirs, water towers, filter beds or water treatment plants
11. School, public and private, Elementary, Middle, High
12. School, business/secretarial
13. Television and amateur radio antennae, exceeding district height limitations
14. Towers, radio, television and microwave
15. Waste water treatment plant
16. Wireless communications facilities and antennae

Special Uses 1, 5, 7, 9 and 16 are similar to Prairie Village as well as private school as contained in number 11.

➤ City of Lenexa

The City of Lenexa has a Unified Development Code (UDC) that combines zoning, subdivisions and development standards. The UDC does provide for Special Use Permits in a table format and they are as follows in the R-1 District:

1. Cemeteries
2. Cultural services
3. Daycare general
4. Large WECS – Wind Energy Conversion Systems
5. Public safety services
6. School, elementary and secondary
7. Utility
8. Wireless communications towers
9. Commercial use of residential property

Lenexa has a much shorter list of uses but those listed are similar to those in Prairie Village.

➤ City of Mission

The City of Mission uses Special Use Permits and allows the following to be considered in the R-1 Single-Family Residential District:

1. Cemeteries
2. Dog kennel – veterinary
3. Electric power substations
4. Nursing homes
5. Radio, television and microwave towers and antennae
6. Reservoirs – underground
7. Sewage pumping stations
8. Water tanks
9. Temporary use of land or building for a use not otherwise permitted.
10. The Planning Commission and City Council may designate such other uses as appropriate for a Special Use Permit upon finding that the use is appropriate in a certain location, but is not listed as allowed in any District or is only allowed in a district which contains other uses that would be appropriate in this location.

The procedure and criteria for approving a Special Use Permit is the same as for a zoning change.

➤ City of Olathe

The City of Olathe allows Special Use Permits to be considered for the R-1 Single-Family Residential District and the list is as follows:

1. Adult day-care.
 2. Air transportation facilities (including helicopter pads)
 3. Amusement and recreation services
 4. Animals kept on less than three (3) acres
 5. Assembly halls, convention centers and conference facilities
 6. Automobile parking lots and structures (freestanding)
 7. Bus, taxi, train or light rail depots, stations or dispatch facilities
 8. Cemeteries, funeral services, mortuaries and crematories
 9. Child-care centers
 10. Communication services, not elsewhere classified
 11. Flag poles over sixty (60) feet in height
 12. Government facilities, other than offices
 13. Government offices
 14. Group day-care homes
 15. Hospitals
 16. Hotels, motels, rooming houses, camps and other lodging places
 17. Membership (service) organizations
-

18. Mining and quarrying of nonmetallic minerals, except fuels (includes topsoil removal)
19. Museums and art galleries
20. Nursing and personal care facilities
21. Preschools
22. Residential care facilities
23. Storage lots for recreational vehicles, trailers, boats, etc.
24. Telecommunications facilities: Disguised (stealth) telecommunication facilities as described in Chapter 18.57
25. Telecommunications facilities: New support structures as described in Chapter 18.57
26. Television and AM/FM radio broadcast towers and associated facilities exceeding sixty (60) feet in height, unless located on or within a structure and entirely screened from view
27. U.S. Post Offices

Olathe appears to use Special Use Permits more extensively than most other cities. The approval process is the same as a rezoning.

➤ City of Overland Park

The City of Overland Park also has an extensive listing of Special Use Permits. Those that have an asterisk have special conditions set out in the ordinance. Additional conditions may be attached to the approval. The list is as follows:

1. Airports or aviation fields, heliports and helicopter landing pads *
2. Asphalt plants, concrete plants and foundries
3. Assembly halls, community centers or convention centers
4. Utility structures including outdoor storage areas accessory to a utility maintenance facility
5. Cemeteries, mausoleums or crematories for the disposal of the dead
6. Clubs and drinking establishments *
7. Day care homes, group day care homes, child care centers, preschools, or Mother's Day Out programs (which are not otherwise permitted as an accessory use or as a permitted use) *
8. Drive-in theaters
9. Group boarding homes for minors or group boarding homes for adults
10. Hospitals, nursing or convalescent homes, and continuing care communities
11. Hotels, motor hotels or motels
12. Keeping of farm animals such as horses, ponies, cows and chickens on a lot or tract of less than three acres in size
13. Animal hospitals, large animal veterinarians, or animal kennels *
14. Mines or quarries (including the removing, screening, crushing, washing or storage of ore, sand, clay, stone, gravel or similar materials) *
15. Nurseries, greenhouses and buildings or areas for the wholesale or retail sale of landscaping supplies, plant materials or landscape maintenance services
16. Off-street parking lots/structures of a temporary or permanent nature
17. Oil or gas drilling or production *
18. Penal or correctional institutions
19. Radio, television, microwave
20. Communications facilities, towers and antennas *
21. Reservoirs, towers, filter beds or water treatment plants
22. Residential real estate sales offices *
23. Sales and display areas for manufactured homes, mobile homes or modular housing
24. Solid waste disposal facilities or sanitary sewage plants
25. Sports or recreation facilities of all types, private
26. Taverns and dance facilities
27. Amusement centers and arcades *
28. Temporary use of land for commercial or industrial purposes *
29. Churches, elementary and secondary schools, and publicly-owned and operated community buildings, museums and libraries.
30. Transportation facilities for public agencies (including, but not limited to, school districts, municipal or public transportation agencies, and public utilities) *
31. Wind turbine(s) *

32. Municipal facilities

The procedure for approval of Special Use Permits is the same as rezoning and, like Olathe, the list is extensive.

➤ City of Shawnee

The following is a list of Special Use Permits that may be allowed in an R-1 Single-Family Residential District:

1. Botanical gardens/arboretums *
2. Convents *
3. Electric substations
4. Family day care homes
5. Gas pressure control stations
6. Group day care homes *
7. Marinas
8. Monasteries *
9. Museums *
10. Rectories *
11. Schools – Community College
12. Schools – Technical
13. Schools – Universities
14. Sewage pressure stations
15. Swimming clubs *
16. Tennis clubs *
17. Water pressure stations
18. Water storage

*Those marked with an asterisk are subject General Special Conditions.

There are some similarities in uses that are listed in the Special Use Permit section for each city, but for the most part, the list of uses permitted by Special Use Permit is unique to that city for reasons that are unknown. In reviewing the lists it appears that Prairie Village and Leawood are most similar in the listed uses. Nursing homes are listed in Prairie Village, Leawood, Mission, Olathe and Overland Park. Leawood, Olathe, Overland Park and Prairie Village are the only cities that list senior housing as a Special Use Permit.

In terms of procedure all the cities treat Special Use Permits the same as a rezoning and require the Planning Commission and Governing Body to make findings of fact based on the Golden Factors plus any other factors they deem appropriate.

CONDITIONAL USE PERMITS

Only Prairie Village and Olathe use Conditional Use Permits. Table C at the end of this memo sets out the listing for each city and a more detailed listing of each ordinance is below.

➤ City of Prairie Village

19.30.055 Specifically Listed Conditional Uses

The following uses may be permitted by conditional use permit:

- A. Temporary use of land for commercial or industrial purposes; provided that any building or structure constructed thereon which is not otherwise permitted in the district in which such land is situated, and any stored equipment or material shall be removed upon the date of expiration of the conditional use permit, which permit shall be valid for not more than two years, but may be renewable after public hearing;
- B. Off-street parking lots and parking structures;
- C. Drive-up, drive-through or drive-in services in the C-0, C-1, and C-2 Districts. Such permit shall not be approved unless the following conditions and procedures are met:

- a. The access, circulation and stacking pattern of vehicles using such facility shall be reviewed and approved by the city's traffic engineers prior to Planning Commission approval of plans.
- b. Alcoholic or cereal malt beverages shall not be sold or otherwise dispensed at such facility.
- c. A conditional use permit for drive-up, drive-through or drive-in food services shall be approved only for premises located in Districts C-1 and C-2;
- D. Satellite dish antennas, with a diameter of one meter or greater and those not permitted in Section 19.34.040 (D); and non-commercial transmitting and receiving antennas and towers; (Ord. 1899, Sec. I, 1996; Ord. 1909, Sec. I, 1997; Ord. 2249, Sec. III, 2012)
- E. Property maintenance facilities. Buildings, structures and premises for property maintenance facilities, and uses;
- F. Portable carts, booths and stands or other similar facilities used for retail sales of merchandise;
- G. Utility boxes that have a footprint larger than twelve (12) square feet in area, a pad greater than 2.5 times the area of the utility box footprint or greater than 32 square feet; or have a height of more than fifty-six (56) inches. (Ord. 2029 Sec. IV, 2002; Ord. 2225, Sec. III, 2010)

The procedure for considering these uses is notification of property owners within 200 feet; a neighborhood meeting is required; a public hearing is held; and the Planning Commission makes the final decision.

The list of uses that are included in the conditional use permit were determined by the Planning Commission and City Council when the zoning regulations were updated in 1995. That process can be used again and some or all of the items listed as conditional uses could be moved to the Special Use Permit list. This is totally up to the discretion of the City. In 1995, the Council was concerned that it was taking too long to approve or deny requests for minor items and procedural changes needed to be made to speed up the process. Since the Council does not act on these, there is no protest petition.

➤ City of Olathe

The only other city that uses conditional uses is Olathe and they are set out in each district. The approval of conditionally permitted uses in Olathe is an administrative procedure handled by Staff. The following is included in the R-1 Single-Family Residential District:

Conditionally permitted uses: The following uses shall be permitted, subject to compliance with applicable conditions:

1. Accessory uses, subject to the provisions of Chapter 18.56.
2. The following uses may be permitted, subject to approval of preliminary and final development plans pursuant to Chapter 18.12, Applications and Procedures:
 - a. Colleges, universities, professional schools and junior colleges (public or private).
 - b. Elementary and secondary schools, public and private.
 - c. Golf courses and clubhouses, public and private (except miniature golf, driving ranges, etc.).
 - d. Libraries.
 - e. Parks and recreation facilities, public or private (non-commercial).
 - f. Religious organizations.
 - g. Residential real estate sales offices in model homes.
 - h. Wind generation towers.
3. Nonresidential uses which are proposed for the benefit of or as an amenity to a particular development and not for the use by the general public, i.e., neighborhood pools, clubhouses, etc., subject to approval by the City Planner.

CONCLUSION:

The Kansas Planning Statutes are very general and give the cities the right to structure their zoning ordinances in a manner that best suits the city. Each city has a lot of flexibility in how it regulates, however, the statutes are specific in the procedures of how rezoning occur and how the regulations can be amended. Statutes are silent on the procedures for considering Special Use Permits and Conditional Use Permits; however, case law has determined that Special Use Permits must follow the rezoning procedure. As can be seen, the ordinances of the six cities referenced are different and unique to their needs. It is wise to see what others are doing, but the bottom line is what is best for Prairie Village.

A. R-1 Single-Family Dwelling Districts:

The uses listed in R-1A in Prairie Village are similar to those listed in the other comparable cities. Depending upon how the ordinance is structured some ordinances have a much longer list than others. For example, Prairie Village has a separate chapter on accessory uses while the City of Mission lists them in the District. The City Council may want to add or delete uses from this list.

B. Special Use Permits:

Prairie Village has a long list of uses but is not as long as other communities. The Council may want to review the list and recommend adding uses or removing uses and placing them in specific districts. For example, the City of Mission has a specific district called Senior Adult Residential District. To implement changes the City Council would need to authorize the Planning Commission to hold a public hearing to amend the Zoning Ordinance.

C. Conditional Use Permits:

This procedure is not used extensively in Johnson County. The City Council may retain it as is; place some or all of the uses in the Special Use Permit list; or delegate some of the reviews to Staff. To implement changes the City Council would need to authorize the Planning Commission to hold a public hearing.

MXD PLANNED MIXED USE DISTRICT

Council members have asked about the MXD District and a copy is attached, Attachment A. Staff will discuss the purpose and application of the district and respond to questions of the Council.

Table A

USES PERMITTED BY RIGHT IN R-1 SINGLE FAMILY RESIDENTIAL DISTRICTS ARE INDICATED BY A "•"

	CITY						
	Prairie Village	Leawood	Lenexa	Mission	Olathe	Overland Park	Shawnee
Single-Family Dwellings	•	detached	•	•	•	•	detached
Golf Courses	1		•			1	*
Publicly-Owned Parks/Recreation Areas	•		•	•		4	•
Churches/Synagogues	•		Places of Worship	restricted		•	6
City Hall/Police & Fire Stations	•						•
Publicly-Owned Libraries/Museums/Art Galleries	•			restricted		•	ONLY Libraries
Public Schools/ Colleges/University Educational Centers	2			restricted		5	ONLY Primary & Secondary
Group Homes	•	•	limited	3			* adult & children
Residential Design Manufactured Homes	•		•	NO	•	•	
Accessory Uses	Chapter 19.34	•	•	restricted	•	•	•
Conditional Use Permits	Chapter 19.30						
Special Use Permits	Chapter 19.28						
Daycare			limited				* adult & children
Private Parks/Playgrounds						6	•
Agricultural Uses						•	
Residential Real Estate Sales Offices						•	
Stealth Communication Towers						restricted	
Utility Structures						•	
Cemeteries-no chapel/Mausoleums & Cemetery Offices							•
Civil Defensive Activities							•
Country Clubs							*
Electronic Vehicle Recharging Stations							*
Historic & Monument Sites							•
Wind Energy Conversion Systems (WECS)/Wind Turbines						restricted	*
Public Uses/Government		8					
Private Schools				•		•	

U
S
E

¹ excludes miniature golf and commercial driving ranges

² operated by a local district or state agency

³ located in a single-family dwelling

⁴ includes public recreation and service buildings and publicly-owned swimming pools

⁵ includes stadiums and dormitories located on campus

⁶ includes swimming pools, tennis courts, clubhouses and other recreational facilities within a subdivision for subdivision's use

⁷ includes temples and mausoleums*

⁸ Public Uses - All municipal uses and facilities. This use does not include Public Utility Facilities. All public uses are subject to development plan review prior to approval by the City.

* special conditions apply in Shawnee

Table B

SPECIAL USE PERMITS
USES INDICATED BY A "•" ARE PERMITTED IN SINGLE-FAMILY DISTRICTS

		CITY						
		Prairie Village	Leawood	Lenexa	Mission	Olathe	Overland Park	Shawnee
U S E	Country Clubs/Private Clubs or Clubs Serving Food/Alcohol*	•	Private Club					
	Cemeteries	•	9	•	•	•	9	
	Columbariums	•						
	Hospitals	•				•	•	
	Nursery Sales Offices/Buildings	1					1	
	Nursing/Convalescent Homes	2	•		•	•	•	
	Public Utility Services/Public Service Corporations	3 restricted	•			11		
	Assembly Halls/Community Centers	•				•	•	
	Senior Adult Dwellings**	restricted	•			•	•	
	Service Stations - Commercial Districts	4						
	Automatic/Semiautomatic Car Washes - Commercial Districts	5						
	Skating Rinks/Arcades - Commercial Districts	6 restricted				6	6 ***	
	Mortuaries/Funeral Homes	7				•		
	Daycare Centers/Homes	Residential		general		adult & children	children ***	Residential
	Drinking Establishments - Bar/Night Club - Commercial Districts	8 restricted					***	
	Accessory Uses - Motels	limited						
	Accessory Uses - Hospitals	limited						
	Utility/Storage Buildings	detached / non-res		•			•	
	Schools/Colleges/University Education Centers	Private	Public & Private	Elementary Secondary		ONLY Preschool	Mom's Day Out Preschool Elementary Secondary ***	Community College Technical Universities
	Wireless Communications Facilities	Chapter 19.33	•	•				
	Aviation Fields/Airports		•			12	12 ***	
	Bed and Breakfasts		•					
	Campgrounds/Picnic Groves/Fishing Lakes		•					
	Churches/Synagogues/Places of Worship		•				•	
	Off-Street Parking Lots		•			13	13	
	Reservoirs/Water Towers/Filter Beds/Water Treatment Plants		•		10		•	Water Storage
	Television/Amateur Radio Antennae		•				•	
	Towers/Radio/Television/ Microwave		•		•	•	•	
	Waste Water Treatment Plants		•		•		16	
	Cultural Services			•		Museums/Art Galleries	•	*** Museums
Large Wind Energy Conversion Systems (WECS)/Wind Turbines			•			***		
Public Safety Services			•					
Commercial Uses of Residential Property			•					
Animal Hospitals/Large Animal Veterinarians/Animal Kennels				ONLY Dog Kennels		***		
Electric Power Substations				•			•	
Temporary Use of Land/Building				•		***		

Table B (continued)

SPECIAL USE PERMITS
USES INDICATED BY A "•" ARE PERMITTED IN SINGLE-FAMILY DISTRICTS

	CITY							
	Prairie Village	Leawood	Lenexa	Mission	Olathe	Overland Park	Shawnee	
U S E	Animals on <3 acres				•	•		
	Transportation/Dispatch Facilities				•	17 ***		
	Flag Poles > 60' in height				•			
	Government Facilities				•			
	Government Offices				14			
	Hotels/Motels/Rooming Houses/Camps & Other Lodging Places				•	•		
	Membership/Service Organizations				•			
	Mining/Quarrying Nonmetallic Minerals					15	15 ***	
	Asphalt & Concrete Plants/Foundries					•		
	Drive-In Theaters					•		
	Group Boarding/Homes					•	minors & adults ***	***
	Oil/Gas Drilling/Production						***	
	Penal/Correctional Institutions						•	
	Residential Real Estate Sales Offices						***	
	Sales/Display Areas - Manufactured/Mobile/Modular Housing						•	
	Municipal Facilities						•	
	Botanical Gardens/Arboretums/Marinas							***
	Convents/Monasteries/ Rectories							***
	Gas/Sewage/Water Pressure Stations							•
	Swimming Clubs/Tennis Clubs							***

* including wine and cereal malt beverages

** including handicapped adults, assisted, independent, and skilled nursing facilities

*** special conditions apply in Overland Park & Shawnee

¹ includes greenhouses or areas (wholesale or retail)

² as defined by state statutes; not including group homes

³ includes buildings, structures, towers and premises; excludes utility poles, utility boxes; and underground utility lines

⁴ C-1, C-2 & C-3 Districts only; excludes automatic car washes

⁵ includes continuous line, self-service, manual, and all other car washing facilities

⁶ includes similar commercial recreation facilities in C-1, C-2 & C-3 Districts only

⁷ C-0, C-1, C-2 & C-3 Districts only

⁸ C-1, C-2 & C-3 Districts only

⁹ includes mausoleums and crematories

¹⁰ specifically underground reservoirs and water tanks

¹¹ includes communication and telecommunication (including stealth)

¹² includes helicopter pads

¹³ includes free-standing structures and storage lots for recreational vehicles, trailers, boats, etc.

¹⁴ includes U.S. Post Offices

¹⁵ includes topsoil removal; excludes fuels

¹⁶ includes solid waste and sanitary sewage plants

¹⁷ includes public agencies, public utilities, school districts, etc.

Table C

CONDITIONAL USE PERMITS
USES INDICATED BY A "•" ARE PERMITTED IN SINGLE-FAMILY DISTRICTS

		CITY	
		Prairie Village	Olathe
U S E	Temporary Use of Land for Commercial/Industrial Purposes	restricted	
	Off-Street Parking Lots/Structures	•	
	Drive-Up/Drive-Through/Drive-In Services	restricted	
	Satellite Dish Antennas w/diameter of 1 meter or greater; and Non-Property Maintenance Facilities-Buildings/Structures/Premises & Uses	•	
	Portable Carts/Booths/Stands or Other Similar Facilities for Retail Sale	•	
	Utility Boxes w/footprint larger than 12 sq. ft. in area; pad greater than 2.5 times the area of the footprint or greater than 32 sq. ft.; or have a height of more than 56"	•	
	Accessory Uses		Chapter 18.56
	Colleges/Universities/Professional Schools & Junior Colleges (Public or Private)		•
	Elementary/Secondary Schools (Public & Private)		•
	Golf Courses & Clubhouses (Public & Private); except miniature golf, driving ranges, etc.		•
	Libraries		•
	Parks/Recreation Facilities (Public or Private); Non-Commercial		•
	Religious Organizations		•
	Residential Real Estate Sales Offices in Model Homes		•
	Wind Generation Towers		•
	Nonresidential Uses for the Benefit of a Particular Development and Not for use by the General Public		•

CHAPTER 19.23 – “MXD” PLANNED MIXED USE DISTRICT

Sections:

- 19.23.005 Purpose and Intent.
- 19.23.010 Use Regulations.
- 19.23.015 Building Height.
- 19.23.020 Front Yard.
- 19.23.025 Side Yard.
- 19.23.030 Rear Yard.
- 19.23.035 Preliminary Development Plan Submittal.
- 19.23.040 Public Improvements.
- 19.23.045 Planning Commission Action.
- 19.23.050 City Council Action.
- 19.23.055 Final Development Plan Generally.
- 19.23.060 Final Development Plan Submittal.
- 19.23.065 Recording of Approved Plan
- 19.23.070 Publishing of Ordinance Changing the Zoning

19.23.005 Purpose and Intent

The zoning of property to the MXD, Planned Mixed Use District, is intended to encourage a variety of land uses in closer proximity to one another than would be possible with more conventional zoning districts, to promote sustainable development with projects that achieve a high level of environmental sensitivity and energy efficiency, to encourage design and construction using Leadership in Energy and Environmental Design “LEED” principles and practices; and to encourage building configurations that create a distinctive and memorable sense of place. Developments in this district are allowed and expected to have a mixture of residential, office and retail uses in a single structure or multiple structures along with public spaces, entertainment uses, and other specialty facilities that are compatible in both character and function and incorporate a coordinated consistent theme throughout the development. Developments are also expected to utilize shared parking facilities linked to multiple buildings and uses by an attractive and logical pedestrian network that places more emphasis on the quality of the pedestrian experience than is generally found in typical suburban development. Buildings are intended to be primarily multi-story structures with differing uses organized vertically rather than the horizontal separation of uses that commonly results from conventional zoning districts.

19.23.010 Use Regulations.

Permitted uses shall be established in the conditions of the Ordinance governing the particular Mixed Use Development. Permitted uses may include any uses permitted in any district, uses listed as Special Use Permits, uses listed as Conditional Use Permits, or other uses otherwise not listed that may be compatible with the development. Each planned mixed use district is encouraged to include a mix of residential, office and commercial uses and those uses shall be listed on the development plan. After approval of the “MXD” District, uses may be added, changed or deleted by amendment. The procedure for considering an amendment shall be the same as for the original adoption;

Chapter 19.23 – “MXD” Planned Mixed Use District

19.23.015 Building Height.

- A. No maximum height; the height of buildings shall be as determined by the plan;
- B. At least fifty percent (50%) of the total floor area, except for auditoriums, conference facilities, theaters, and other similar uses, shall be located above the ground floor.

19.23.020 Front Yard.

No minimum requirement. The front yard setback shall be established as shown on the plans.

19.23.025 Side Yard.

No setback required except that where a lot line abuts the lot line of a residentially zoned property, a setback shall be required which is at least equal to the minimum setback required in the district in which the MXD District abuts.

19.23.030 Rear Yard.

No setback required except that where a lot line abuts the lot line of a residentially zoned property, a setback shall be required which is at least equal to the minimum setback required in the district in which the MXD District abuts.

19.23.035 Preliminary Development Plan Submittal.

A tract of land may be zoned “MXD” only upon approval of a Preliminary Development Plan which shall include the following information:

- A. Name of the project, address, boundaries, date, north arrow and scale of the plan;
- B. Name and address of the owner of record, developer, and name, address and phone number of preparers;
- C. All existing lot lines, easements, rights-of-way including area in acres or square feet;
- D. The location and use of all existing and proposed buildings and structures within the development. The number and types of dwellings and square footage or floor area for office and commercial uses. All dimensions of height and floor area, all exterior entrances and all anticipated future additions and alterations. Preliminary sketches depicting the general style, design, size and exterior materials and colors of existing buildings to be retained and new buildings to be constructed. Said sketches shall include building elevations, but detailed drawings are not required.
- E. The location of all existing and proposed public and private ways, driveways, sidewalks, ramps, curbs and fences; specific emphasis shall be placed on connectivity and walkability with and adjacent to the project;
- F. Location of required parking areas including parking stalls, setbacks and loading and service areas and the type of pavement proposed;
- G. A preliminary outdoor lighting plan in accordance with outdoor lighting regulations of the Zoning Ordinance plus a plan for the proposed lighting of public and private streets;
- H. Sign Standards including the location, height, size, materials and design of all proposed monument and structure mounted signage;
- I. Location, type and screening details for all waste disposal containers;
- J. Location, size and screening details for all external HVAC units antennas and other equipment;
- K. A preliminary landscape plan showing all existing open space and trees to be retained, all proposed changes to these features including the location, size and type of proposed plant material, and any proposed screening for adjacent properties which may include solid or semi-solid, fencing, walls or hedges or a combination thereof;
- L. The location and size of all existing and proposed utility systems including:

Chapter 19.23 – “MXD” Planned Mixed Use District

1. sewer lines and manholes;
 2. water lines and fire hydrants;
 3. telephone, cable and electrical systems;
 4. storm drainage system including drain pipes, culverts, catch basins, headwalls, endwalls, manholes, and drainage swales/ditches; and
 5. structure mounted telecommunications equipment (satellite dishes, antennas, etc.).
- M. A stormwater management plan including plans to prevent: (a) the pollution of surface or groundwater; (b) the erosion of soil both during and after construction; (c) excessive run-off, (d) and flooding of other properties, as applicable. Said plans shall include stormwater run-off calculations and shall provide for on-site stormwater management in accordance with Stormwater Management Regulations of the City Code;
- N. Existing and proposed topography shown at not more than two-foot contour intervals and the location of flood plains. All elevations shall refer to U. S. G. S. datum and shall be compatible with Johnson County datum;
- O. Zoning districts adjacent to the site;
- P. Traffic flow patterns within the site including, entrances and exits, emergency access, loading and unloading areas, and curb cuts and street patterns within 200 feet of the site;
- Q. The Planning Commission may require a detailed traffic impact study for large uses, mixed use and multi-tenant developments, or for developments in heavy traffic areas to include:
1. The projected number of motor vehicle trips to enter or leave the site, estimated for daily and peak hour traffic levels;
 2. The projected traffic flow pattern within 1000 feet of the site including vehicular movements at all major intersections likely to be affected by the proposed use of the site; and
 3. The impact of this traffic upon existing, abutting public and private ways in relation to existing road capacities. Existing and proposed daily and peak hour traffic levels, as well as road capacity levels, shall also be given.
 4. The satisfying of traffic warrants for traffic signals and signs in accordance with MUTCD within 1000 feet of the site.
- R. A list of the uses proposed for the “MXD” District.
- S. Off-street parking and loading shall be provided on the premises in accordance with the requirements for each type of use permitted, as set out in the off-street Parking and Loading Regulations of the Zoning Ordinance except as follows:
1. The Planning Commission may reduce the required parking after considering documentation and/or study provided by the applicant, staff’s recommendation and giving decisive weight to all relevant facts, including but not limited to the following factors: availability and accessibility of alternative parking; impact on adjacent properties and uses neighborhoods; existing or potential shared parking arrangements; the characteristics of the use, including hours of operation and peak parking demand times; design and maintenance of off-street parking that will be provided; and whether the proposed use is new or a small addition to an existing use.
 2. Parking spaces on public and private streets may be counted towards the minimum requirements as set forth above; provided the on-street spaces are located on an adjacent or internal street that allows on-street parking. On-street parking spaces being counted towards the credit must be identified on plans at time of submittal to the City.
 3. No open parking areas shall be located closer than fifteen (15) feet to a public street, or no closer than eight (8) feet to a property line other than a street line. Parking areas within the building, or within a parking structure extending more than six (6)

Chapter 19.23 – “MXD” Planned Mixed Use District

feet above the finished grade, shall comply with the setback regulations of the main building. Such parking setback and other open areas shall be brought to finish grade and planted with grass, shrubs and trees, and maintained to at least the average level of maintenance of the other developed property within the immediate neighborhood.

- T. Preservation of Natural Features: Mature trees, vegetative cover, watercourses and other natural site features shall be preserved to the greatest extent possible. Abrupt changes in natural slope shall be avoided. Preservation shall be directed toward:
 - 1. Enhancing the quality of new development;
 - 2. Protecting the natural environment;
 - 3. Providing buffering between new development and surrounding properties;
 - 4. Preserving the character of existing neighborhoods;
 - 5. Handling of stormwater flows in natural channels;
 - 6. Maintaining existing vegetation along stream corridors as water quality filters; and
 - 7. Creation of rain gardens.
- U. Submission of all easement and preliminary covenant documents that will be filed with the County.
- V. A phasing plan if the project is not going to be constructed at one time.

19.23.040 Public Improvements.

The Planning Commission may recommend and the City Council may require the applicant to construct or install infrastructure improvements such as sidewalks, traffic signals, street lighting, pedestrian lighting, street widening and channelization, acceleration and deceleration lanes, waterlines, sewer lines, storm drainage improvements and other similar improvements that are related to the proposed project.

19.23.045 Planning Commission Action.

The Planning Commission shall hold one or more public hearings on the preliminary development and rezoning. Upon conclusion of the public hearing or hearings, the Planning Commission, by a majority of members present and voting, shall make a recommendation to the City Council to approve the proposal as submitted, to approve the proposal subject to conditions, or to deny the proposal.

19.23.050 City Council Action.

Upon approval of the preliminary development plan and the rezoning of the property by the City Council, a final development plan for the project shall be prepared and submitted to the Planning Commission for final approval. Permits for construction shall not be issued until final plans have been reviewed and approved by the Planning Commission. It is the intent of this chapter that the project as constructed shall conform closely to the preliminary plans reviewed and approved at the time of the public hearing.

19.23.055 Final Development of Plan Generally.

Final plan for a project or a portion thereof shall not be approved if one or more of the following conditions, in the judgment of the Commission, exist:

- A. Final plans vary substantially from the concept of the development plan presented and agreed to at the time of rezoning;
- B. The final plans would increase the density (number of units per acre) or intensity (concentration of development) of residential uses more than five percent;
- C. The final plans would increase the floor area of nonresidential buildings by more than ten percent;

Chapter 19.23 – “MXD” Planned Mixed Use District

- D. The final plans would increase by more than ten percent the ground covered by buildings or paved areas;
- E. The final plans would increase the height of a building by one or more stories or four or more feet;
- F. The final plans involve changes in ownership patterns or stages of construction that will lead to a different development concept, less architectural harmony or quality, or impose substantially greater loads on streets and neighborhood facilities;
- G. The final plans vary from specific development or design criteria including traffic impact and stormwater management that may have been adopted by the Planning Commission or City Council at the time the preliminary development plan and rezoning were approved.

Variations between the preliminary and final plans, which do not, in the judgment of the Planning Commission, violate or exceed the above seven criteria, shall be approved by the Planning Commission in its administrative role and no public hearing shall be required. If, however, variations and departures from the approved preliminary plan exceed the above criteria or are sought by the developer or other party at the time of final plan review or building permit application, the applicant shall request an amendment to the plan which shall be handled in the same manner as the approval of the original preliminary plan.

19.23.060 Final Development Plan Submittal.

- A. A detailed site plan showing the physical layout and design of all streets, easements, rights-of-way, lots, sidewalks, parking, blocks, greenspace, structures and uses.
- B. Preliminary building plans, including floor plans, gross floor area of office and commercial uses and exterior elevations.
- C. Final landscaping plans.
- D. Copies of any easements and restrictive covenants and proof of recording of the same.
- E. Proof of the establishment and activation of any entity that is to be responsible for the management and maintenance of any common open space.
- F. Evidence that no lots, parcels, tracts or dwelling units in such development have been conveyed or leased prior to the recording of any restrictive covenants applicable to such planned development.
- G. Such bonds and other documents that may have been required to guarantee the installation of required public improvements.
- H. Drawings showing size, type and location of all monument and wall mounted signs.
- I. Final lighting plan.
- J. Final stormwater control plan.
- K. Bond for public improvements and agreement to pay for City inspection services.

19.23.065 Recording of Approved Plan.

After rezoning to a “MXD” district has been approved and the final plan has been approved by the Planning Commission there shall be filed with the Register of Deeds a statement that a development plan for the area has been approved. The statement shall specify the nature of the plan, the proposed density or intensity of land uses and other pertinent information sufficient to notify any prospective purchasers or users of land of the existence of such plan and any constraints thereon. The landowner shall submit this statement to the City Clerk with the appropriate recording fee and the City shall be responsible for recording the statement.

19.23.70 Publishing of Ordinance Changing the Zoning

The ordinance effectuating the zone change shall not be published until such time as the Zoning and Preliminary Development Plan have been approved by the City Council.



City Council

City Council Date: January 21, 2014
March 3, 2014

Consider adoption of a City Council Policy outlining the procedures for filling a vacancy in the office of mayor and selecting the President of the Council

BACKGROUND

At the January 21, 2014 Committee of the Whole meeting, the drafted policy for the procedure of filling the vacancy in the office of the mayor was discussed. Amendments have been made to the draft policy to incorporate those suggestions.

Discussion regarding the policy for selecting the President of the Council was tabled due to time restrictions. To aid the discussion, Staff has compiled policies—written and unwritten—of surrounding cities. There are two decisions the Committee of the Whole needs to make:

1) How should the President of the Council be elected?

Option A: The Council Member that has the longest consecutive tenure and has not yet been President of the Council *in their current tenure* will be nominated as the President of the Council and confirmed by a simple majority vote.

Option B: The Council Member that has the longest consecutive tenure and has not yet been President of the Council will be nominated as the President of the Council and confirmed by a simple majority vote.

Option C: The Council can abandon the current practice or any practice that is similar and determine another method of electing a Council President.

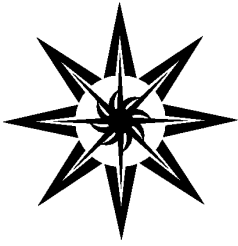
2) Should the procedure be an adopted City Council Policy?

ATTACHMENTS

Draft City Council Policy CPXXX— Procedure for filling a vacancy in the office of mayor
Draft City Council Policy CPXXX—Procedure for electing the President of the Council
Summary of surrounding cities policy for selecting Council President

PREPARED BY

Danielle Dulin
Assistant to the City Administrator
Date: 1/16/2014



City Council Policy:

Effective Date:

Amends:

Approved By:

I. SCOPE

II. PURPOSE

- A.** To establish a voting procedure for filling a vacancy in the office of mayor

III. RESPONSIBILITY

- A.** The City Council shall be responsible for electing a new mayor from the existing members of the City Council.

IV. DEFINITIONS

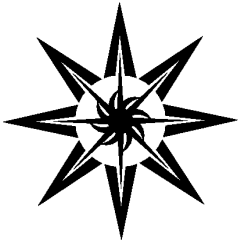
- A. City Council:** City Council means the 12 elected Councilmembers or those persons appointed to fill vacancies on the council.

V. POLICY

Per Charter Ordinance No. 20, in case of a vacancy in the office of mayor, the President of the Council will fill the vacancy by serving as Mayor until the Council elects a new mayor. The Council shall elect, by a majority of those Councilmembers present, a new mayor from those Councilmembers serving at the time of the vacancy within thirty (30) days of the vacancy to serve until the next regularly scheduled city election (where a mayoral election can be added to the ballot).

VI. PROCEDURE

- A.** At the next scheduled City Council meeting within thirty (30) days of the vacancy, the Council President serving as Mayor will ask for nominations for the office of mayor from Councilmembers. Self-nominations will be accepted. Nominations do not require a second.
- B.** If there are multiple nominations, nominees will be given an opportunity to explain to City Council why he/she should be Mayor.
- C.** A written vote will be taken with each Councilmember writing the name of the nominee he/she chooses to elect as Mayor and will be read aloud by the City Clerk.
- D.** The nominee that receives votes from a majority of the Councilmembers present is elected as the Mayor until the next regularly scheduled city election. (i.e., if all 12 Councilmembers are present, one nominee must receive seven (7) votes.) An abstention does not count as a vote toward any nominee.
- E.** If none of the nominees receive a majority of the votes or if there is a tie, the process will be repeated, starting with nominations from Councilmembers, until one nominee has received a majority of votes and a new mayor is elected.
- F.** If no member of the City Council is nominated, then the Council President serves as Acting Mayor until a nomination for the office of mayor is made and a vote taken at a regularly scheduled City Council meeting or the next regularly scheduled city election where a mayoral election can be added to the ballot.



City Council Policy:

Effective Date:

Amends:

Approved By:

I. SCOPE

II. PURPOSE

- A. To establish a procedure for selecting the President of the Council

III. RESPONSIBILITY

- A. The City Council elects one of its own body as President of the Council to preside over meetings of the City Council in the absence of the Mayor. The elected Councilmember will serve as President for a term of one year, starting at the first meeting in May.

IV. DEFINITIONS

- A. **City Council:** City Council means 12 elected Councilmembers or those persons appointed to fill vacancies on the council.

V. POLICY

- A. The Councilmember that has the longest consecutive tenure and has not yet been President of the Council during their current tenure will be nominated as the President of the Council and confirmed by a simple majority vote.
- B. If there are multiple Councilmembers that have the same tenure, the nominee for President of the Council will be chosen by ward in numerical order.
- C. If a Councilmember chooses not to be nominated for President of the Council, the Councilmember with the second longest consecutive tenure and has not yet been President of the Council during their current tenure will be nominated.
- D. If all Councilmembers have served as President of the Council, the Councilmember with the longest consecutive tenure will be nominated as President of the Council.

President of the Council Discussion

City	Ordinance	Current practice--not expressed in writing
Prairie Village	The City Council shall elect one of its own body as President of the Council	Elected annually in May. The councilmember with the longest consecutive tenure and has not been Council President in his/her current term.
Shawnee	The City Council shall elect one of its own body as President of the Council each year at the first meeting in April	No limit on how many times a councilmember can serve as Council President in one term or consecutively.
Fairway	The City Council shall elect one of its own membership as President of the Council	Elected every other April for a two year term. No limit on how many times a councilmember can serve as Council President.
Mission	The City Council shall elect a Council President from its membership in April of odd-numbered years for a two year term.	Councilmembers take turns being Council President. Recently have not had a Councilmember serve more than one consecutive term, but some councilmembers have served more than once.
Mission Hills		Councilmember with the most seniority is elected as Council President for his/her entire four-year term.

Prepared:

2/28/2014

**COUNCIL MEETING AGENDA
CITY OF PRAIRIE VILLAGE
Council Chambers
March 03, 2014
7:30 PM**

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

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

By Staff

- 1. Approve regular council meeting minutes - February 3, 2014
- 2. Approve Claims Ordinance 2915
- 3. Approve the purchase of one 2014 Ford Taurus for \$22,500 for the Police Department Investigations vehicle

- VI. **MAYOR'S REPORT**
- VII. **COMMITTEE REPORTS**

Council Committee of the Whole

COU2014-05 Consider approval of a contract with Kansas Heavy Construction, LLC for the 2014 Concrete Repair Program

- VIII. **STAFF REPORTS**
- IX. **OLD BUSINESS**
- X. **NEW BUSINESS**
- XI. **EXECUTIVE SESSION**
- XII. **ANNOUNCEMENTS**
- XIII. **ADJOURNMENT**

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

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

CONSENT AGENDA

CITY OF PRAIRIE VILLAGE, KS

March 3, 2014

**CITY COUNCIL
CITY OF PRAIRIE VILLAGE
February 3, 2014**

The City Council of Prairie Village, Kansas, met in regular session on Monday, February 3, 2014 at 7:30 p.m. in the Council Chambers at the Municipal Building, 7700 Mission Road, Prairie Village, Kansas.

ROLL CALL

Mayor Ron Shaffer called the meeting to order and roll call was taken with the following Council members present: Ashley Weaver, Dale Warman, Ruth Hopkins, Steve Noll, Andrew Wang, Brooke Morehead, Charles Clark, Courtney McFadden, Ted Odell and David Belz.

Also present were: Wes Jordan, Chief of Police; Keith Bredehoeft, Director of Public Works; David Waters for the City Attorney; Quinn Bennion, City Administrator; Kate Gunja, Assistant City Administrator; Lisa Santa Maria, Finance Director; Danielle Dulin, Assistant to the City Administrator; Nic Sanders, HR Specialist, Glen Cole, Management Intern and Joyce Hagen Mundy, City Clerk.

Mayor Shaffer led those present in the Pledge of Allegiance.

PUBLIC PARTICIPATION

Tom O'Brien, 4410 West 89th Street, presented an update on the Community Garden Program which has grown over the past three years from 25 participants to 32 participants in the second year. This year they have 23 applications for the 11 vacant spots remaining. There is a tremendous interest in the program and a second garden has been added at Cherokee Christian Church with 10 additional spots. Mr. O'Brien

reported that over the past two years over 100 pounds of produce from the community garden has been donated to local food pantries. Ruth Hopkins noted that this program is an outgrowth of the Environment/Recycle Committee.

CONSENT AGENDA

Dale Warman moved the approval of the Consent Agenda for Monday, February 3, 2014:

1. Approve Regular Council Meeting Minutes - January 21, 2014
2. Approve Claims Ordinance 2914
3. Ratify the appointment of Linda Marcusen to the Prairie Village Tree Board filing an unexpired term to end in April, 2016
4. Ratify the reappointment of Patrick Delaney and Alleen VanBebber to the Civil Service Commission for an additional three-year term expiring in January, 2017

A roll call vote was taken with the following members voting “aye”: Weaver, Warman, Hopkins, Noll, Wang, Morehead, Clark, McFadden, Odell and Belz.

MAYOR’S REPORT

Mayor Shaffer reported he represented the City at several events during the past weeks including the Annual Brighton Gardens soup cookoff, Greater Kansas City Chamber Board meeting, Leawood State of City address, Belinder DARE Graduation, Johnson County Leadership Northeast Mayors’ forum and tour and the First Suburbs meeting. .

Presentation about First Lego League by students from Prairie Elementary and Indian Hills Middle Schools

Chief Wes Jordan introduced Bill Meeker, coach of “The Brickheads” a club robotics team. Bill Meeker, 4401 West 69th Terrace introduced students from Prairie Elementary and Indian Hills Middle School who have formed a team to compete in the

First Lego League International Program. The team recently won the “Presentation Award” in the First Lego League regional completion in January.

The students were challenged to come up with an idea for a robot that could help during a natural disaster. The students came with the idea of a drone that would split into four with each mini-drone being able to scan a quadrant of the rubble field left by a tornado.

The Brickheads are hoping to earn a grant to help build out their prototype. The team made a presentation to the Council that was videotaped and will be submitted for the “Global Innovation Award”.

COMMITTEE REPORTS

Planning Commission

Consider Request for a Special Use Permit for the operation of Before/After School and Summer Child Care programs at the following schools:

- PC2013-09 Belinder Elementary School - 7230 Belinder Avenue
- PC2013-10 Prairie Elementary School - 6642 Mission Road
- PC2013-12 Briarwood Elementary School - 5300 West 86th Street
- PC2013-13 Corinth Elementary School - 8301 Mission Road

Kate Gunja stated on January 6, 2014, the Planning Commission held public hearings on the request for Special Use Permits for the operation of Before-After School Program by the YMCA of Greater Kansas City and Johnson County Park & Recreation District at the following elementary schools in Prairie Village: Belinder Elementary, Prairie Elementary School, Briarwood Elementary and Corinth Elementary schools. These schools currently have Before/After School programs in their schools operated by the YMCA and Johnson County Park & Recreation District. The programs operate from 7 a.m. to 8:10 am and 3 pm to 6 p.m. The programs operate out of the existing facilities at the schools Monday through Friday during the school year. Sometimes a summer

program is also provided at the schools operating from 7 a.m. to 6 p.m. using the same facilities. Each of these programs are licensed by the Kansas Department of Health and Environment and operate through agreements with the Shawnee Mission School District.

No one attended any of the neighborhood meetings held by the applicants and no one was present to speak at the published public hearings. The Planning Commission has unanimously recommended that Special Use Permits be granted for an indefinite period of time as long as the conditions of approval are met.

The conditions of approval recommended by the Planning Commission for the Special Use Permits are as follows:

1. That the child care center be approved for use on school days from 7:00 am to 6:00 pm, and from 7:00 am to 6:00 pm, Monday through Friday, during the summer.
2. That the child care center be permitted to operate subject to the licensing requirements by the Kansas Department of Health and Environment.
3. That the special use permit be issued for the child care center for an indefinite period of time unless it creates issues in the neighborhood and then they shall file a new application for reconsideration by the Planning Commission and Governing Body.
4. That the day care center be in compliance with Fire Department regulations and inspections.
5. If this permit is found not to be in compliance with the terms of the approval of the Special Use Permit it will become null and void within 90 days of notification of noncompliance unless noncompliance is corrected.

Kate Gunja stated that since valid protest petitions have not been filed, the Governing Body shall make its findings of fact based on the ordinance Findings of Fact and “Golden Factors” and either:

- A. Adopt the recommendation of the Planning Commission and adopt an ordinance approving the Special Use Permit including the conditions which requires a simple majority of the Governing Body or seven (7) affirmative votes, or
- B. Override the recommendation of the Planning Commission by a 2/3 vote of the Governing Body (9 affirmative votes), and deny the Special Use Permit, or revise the conditions of approval, or
- C. Return the recommendation to the Planning Commission for further consideration by a simple majority vote of the quorum present with a statement specifying the

basis for the Governing Body's failure to approve or disapprove the recommendation.

- D. Continue the item to a designated meeting by a simple majority of the quorum present.

Steve Noll stated he is supportive of an on-going permit and asked what would trigger a review of the permit. Mrs. Gunja responded any violation of the conditions of approval or issues that could not be resolved by staff would require the applicant to come back before the Governing Body.

Laura Wassmer asked what length of time were previous permits issued for. Mrs. Gunja responded the Briarwood permit was for 10 years. The other permits are new applications.

Andrew Wang moved the Governing Body adopt Ordinance 2303 granting a Special Use Permit to allow the operation of a Child Care Program at Belinder Elementary School, 7230 Belinder Avenue, Prairie Village, Kansas. The motion was seconded by Dale Warman.

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

Steve Noll moved the Governing Body adopt Ordinance 2304 granting a Special Use Permit for the operation of a Child Care Program at Prairie Elementary School, 6642 Mission Road, Prairie Village, Kansas. The motion was seconded by Andrew Wang.

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

Courtney McFadden moved the Governing Body adopt Ordinance 2305 granting the renewal of a Special Use Permit for the operation of a Child Care Program at

Briarwood Elementary School, 5300 West 86th Street, Prairie Village, Kansas. The motion was seconded by Ruth Hopkins.

A roll call vote was taken with the following members voting “aye”: Weaver, Warman, Hopkins, Noll, Wang, Morehead, Clark, McFadden, Odell and Belz.

Brooke Morehead moved the Governing Body adopt Ordinance 2306 granting a Special Use Permit to allow for the operation of a Child Care Program at Corinth Elementary School, 8301 Mission Road, Prairie Village, Kansas. The motion was seconded by Laura Wassmer.

A roll call vote was taken with the following members voting “aye”: Weaver, Warman, Hopkins, Noll, Wang, Morehead, Clark, McFadden, Odell and Belz.

Park & Recreation Committee

Laura Wassmer reported that at the last Park & Recreation Committee meeting Doug Pickert presented the preliminary design for McCrum Park Improvements. The next step will be to formally present the plan to the neighborhood. They hope to begin work in March with the work completed by May.

STAFF REPORTS

Public Safety

- Chief Jordan stated that he had been contacted by Tomahawk Elementary School regarding teaching the DARE Program. The Overland Park Police Department has discontinued their participation in the DARE program. He has the staff to teach the class and the increase in costs would be minimal. He has talked with Overland Park Police, the School District and the school Principal. The program would begin next fall. The DARE program is currently taught at four schools - this would be the fifth and would be the maximum that could be done with one DARE Officer.
- At the Villagefest Committee meeting, there was discussion regarding having a Civil War Reenactment at the event which would include the firing of replica civil war weapons. No bullets would be fired, but there would be gun powder. This is prohibited under the city’s current ordinances. To do this the ordinances would need to be revised and they would need a special event permit.

Laura Wassmer stated she did not think this was a good idea based on the recent response to fireworks. She asked how many times the guns would be fired. Quinn Bennion responded a dozen times or more. Ms. Wassmer stated she does not support the idea.

Ted Odell asked if the reenactment could be done without firing the guns. Mr. Bennion stated the black powder is against the code. Dale Warman stated he viewed this similar to the firing of rifles at a burial ceremony. Andrew Wang and David Belz were supportive of the idea. Mr. Belz stated he would like to see an adult component added to Villagefest.

Mayor Shaffer asked if this would have any impact on the potential lawsuit filed against the City. Katie Logan responded it would not - that exceptions can be granted for special events.

Steve Noll reported that one of the committee members likes to have a historical component to the celebration and in researching possibilities suggested the reenactment.

Laura Wassmer asked how it would impact the petting zoo animals. Courtney McFadden why the city would be glorifying gun shooting. Chief Jordan felt perhaps the timing for this event is bad. Ms Wassmer stated she felt it was just not a good idea.

Dale Warman stated that comments would be taken back to the committee.

Public Works

- Keith Bredehoeft reported staff interviewed candidates for the positions of "Project Manager" and "Field Superintendent" last week and hope to have the positions filled within the next few weeks.
- Crews are removing the old pool from Taliaferro Park and cleaning up that area.
- Last weekend crews responded to the ice. There were some problems. The crews will be coming in at 4 a.m. to deal with the projected snow.
-

Laura Wassmer asked about supplies. Mr. Bredehoeft responded salt supplies are fine and with a major snow event more time will be spent plowing than salting.

Ruth Hopkins commended the Public Works department for their fast response at a previous event.

Administration

- Lisa Santa Maria reported the 4th Quarter report will be out in March
- Staff has been working on the on-line budget simulator to gather public input on budget items. She will be sending proposed questions out to the Council for review prior to putting them on-line.
- The City has received the PAFR Award for its 2012 Popular Financial Report.
- Kate Gunja noted that Deffenbaugh crews would be starting at 6 a.m. tomorrow to get out in advance of the snow.
- The BZA and Planning Commission meetings for tomorrow evening have been cancelled. The public hearing items will be carried over to the March meeting. The other items will be heard at the rescheduled meeting on Monday, February 10th.
- Danielle Dulin provided a legislative update on three house bills - SB 304 and two bills that remove the City's ability to regulate knives and guns.
- During the review of a planning commission application it was discovered that the city's code does not address an allowable decibel level for noise. This was in the previous code and the Planning Commission will be considering re-establishing this and sending a recommendation back to the Council.
- Those wanting to attending the upcoming Legislative Breakfasts contact Danielle.
- Joel Rioz will be returning as the Pool Manager for the upcoming season.
- The new Council chairs will be delivered tomorrow.
- Katie Logan spoke briefly on the proposed legislation related to knives/guns and advised the Council to contact their legislators in opposition to these bills.
- Quinn Bennion distributed City Maps and an updated priority list from the recent Council Work Session.
- Mr. Bennion announced that Municipal Court has been cancelled for Tuesday as well as the Municipal Foundation meeting. City Hall will be open staffed with a skeletal crew of staff - staff not reporting will use personal days or unpaid leave.

OLD BUSINESS

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

NEW BUSINESS

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

ANNOUNCEMENTS

Committee meetings scheduled for the next two weeks include:

Board of Zoning Appeals	02/04/2014	6:30 p.m.
Planning Commission	02/04/2014	7:00 p.m.
Tree Board	02/05/2014	6:00 p.m.
Sister City Committee	02/10/2014	7:00 p.m.
Parks & Recreation Committee	02/12/2014	7:00 p.m.
Council Committee of the Whole	02/03/2014	6:00 p.m.
City Council	02/03/2014	7:30 p.m.

=====
City Hall Day will be Wednesday, February 5, 2014 in Topeka, Kansas.

The Prairie Village Arts Council is pleased to present a mixed media exhibit by Jason Filbeck, Jodi Schnakenberg and Adam Finkelson as the February exhibit in the R. G. Endres Gallery. The artist reception will be on Friday, February 14th from 6:30 to 7:30 p.m.

The City office will be closed on Monday, February 17th in observance of Presidents Day. **Trash and yard waste pick-up will not be delayed this week.**

The 2014 annual large item pick up has been scheduled. Items from homes on 75th Street and north of 75th Street will be collected on Saturday, April 5. Items from homes south of 75th Street will be collected on Saturday, April 12.

ADJOURNMENT

With no further business to come before the City Council the meeting was adjourned at 8:30 p.m.

Joyce Hagen Mundy
City Clerk

CITY TREASURER'S WARRANT REGISTER

DATE WARRANTS ISSUED:

Warrant Register Page No. 1

March 1, 2014

Copy of Ordinance
2915

Ordinance Page No. _____

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

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

NAME	WARRANT NUMBER	AMOUNT	TOTAL
EXPENDITURES:			
Accounts Payable			
6704-6709	2/7/2014	7,798.32	
6710-6795	2/14/2014	129,640.67	
6796	2/18/2014	424.92	
6797-6800	2/20/2014	61,586.64	
6801-6812	2/25/2014	12.00	
6813-6924	2/28/2014	1,061,635.00	
Payroll Expenditures			
2/7/2014		242,953.20	
2/21/2014		245,024.04	
Electronic Payments			
Electronic Pmnts	2/5/2014	9,462.44	
Electronic Pmnts	2/7/2014	4,005.45	
Electronic Pmnts	2/11/2014	1,980.20	
Electronic Pmnts	2/12/2014	327.13	
Electronic Pmnts	2/20/2014	2,512.72	
Electronic Pmnts	2/21/2014	222.92	
Electronic Pmnts	2/24/2014	450,000.00	
Electronic Pmnts	2/26/2014	1,159.80	
Electronic Pmnts			
Electronic Pmnts			
TOTAL EXPENDITURES:			2,218,745.45
Voided Checks	Check #	(Amount)	
Annual Council \$1.00 Checks	6801-6812	(12.00)	
Patrick Mahoney	6838	(15.00)	
Jason Kuder	6839	(15.00)	
Drew O'Neill	6840	(15.00)	
Dan Stewart	6843	(15.00)	
Platte City Missouri	6898	(340.00)	
TOTAL VOIDED CHECKS:			(412.00)
GRAND TOTAL CLAIMS ORDINANCE			2,218,333.45

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

Passed this 3rd day of March 2014.

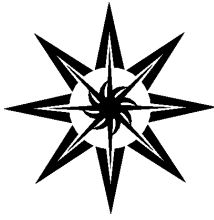
Signed or Approved this 3rd day of March 2014.

(SEAL)

ATTEST: _____

City Treasurer

Mayor



POLICE DEPARTMENT

Council Committee Meeting Date: March 3, 2014

CONSENT AGENDA: PURCHASE REQUEST OF POLICE VEHICLE

RECOMMENDATION

Staff recommends the purchase of one (1) 2014 Ford Taurus for \$22,500.00.

Shawnee Mission Ford was awarded the Mid America Council of Public Purchasing (MACPP) Metropolitan Joint Vehicle Bid.

COUNCIL ACTION REQUESTED ON MARCH 3, 2014.

BACKGROUND

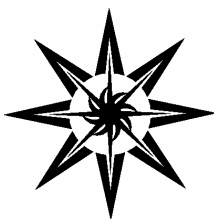
On an annual basis, the Police Department replaces older Investigations vehicles due to age, mileage, and/or maintenance problems. The Department is seeking authorization to purchase this vehicle from Shawnee Mission Ford, who was awarded the 2014 MACPP Metro Bid. (This vehicle replaces a 1998 Ford Crown Victoria.)

This purchase was previously approved by the City Council as part of the 2014 Public Safety Budget.

FUNDING SOURCE 01-03-26-8006-000 - \$22,500.00

PREPARED BY

Capt. Tim M. Schwartzkopf
Investigations Commander
Date: February 21, 2014



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: March 3, 2014

Council Meeting Date: March 3, 2014

***COU2014-05 - CONSIDER APPROVAL OF A CONTRACT WITH KANSAS HEAVY CONSTRUCTION, LLC FOR THE 2014 CONCRETE REPAIR PROGRAM.**

RECOMMENDATION

Move to authorize the Mayor to sign the Construction Contract with Kansas Heavy Construction, LLC for Project CONC2014, 2014 Concrete Repair Program for \$700,000.00.

BACKGROUND

On February 7, 2014, the City Clerk opened bids for Project CONC2014, 2014 Concrete Repair Program. Seven bids were received:

Kansas Heavy Construction, LLC	\$619,667.50
McAnany Concrete, LLC	\$632,300.00
Wm. White and Sons	\$735,075.00
Miles Excavating, Inc.	\$794,183.00
Gunter Construction Co.	\$850,305.00
O'Donnell & Sons Construction	\$865,120.00
Freeman Concrete Construction	\$1,040,275.00
Engineer's Estimate	\$764,360.00

This program consists of repairs to deteriorated concrete sidewalk, curb and ADA ramps. Location of work includes streets in the City's yearly maintenance Districts. Not all streets in the following area will require work. The area this construction season is area 51. We will also be completing concrete repairs at approximately 15 miscellaneous locations throughout the City.

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

FUNDING SOURCE

Funding is available in the Capital Infrastructure Program Project CONC2014.

ATTACHMENTS

1. Construction Agreement with Kansas Heavy Construction, LLC

PREPARED BY

Keith Bredehoeft, Public Works Director

February 21, 2014

**CONSTRUCTION AGREEMENT
BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
KANSAS HEAVY CONSTRUCTION, LLC
FOR
PROJECT CONC2014 - 2014 CONCRETE REPAIR PROGRAM**

THIS AGREEMENT, is made and entered into this ____ day of _____, 2014, by and between the City of Prairie Village, Kansas, hereinafter termed the "City", and Kansas Heavy Construction, LLC, hereinafter termed in this agreement, "Contractor", for the construction and completion of Project, designated, described and required by the Project Manual and Bid proposal, to wit:

CONTRACT COST: The City shall pay the Contractor for the performance of the Work embraced in this Contract, and the Contractor will accept in full compensation therefore the sum (subject to adjustment as provided by the Contract) of Seven Hundred Thousand and 00/100 DOLLARS (\$700,000.00) for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

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

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

Contractor agrees that time is of the essence and any term pertaining to Contractor timely performing so as to achieve Total Completion when required under the Contract is a material provision of this Contract. Further, the parties acknowledge that City's damages in the event of delay are difficult to ascertain and consequently agree that, in the event and to the extent that actual date of Total Completion is delayed beyond the required date for Total Completion for the Total Project or Project Segments attributable solely or concurrently to (i) an act or omission of Contractor or any of its subcontractors or suppliers, or (ii) in whole or in part, to any other event or

condition within the Contractor's reasonable control (and not for reasons solely attributable to City), the Contractor shall be assessed a liquidated damage, and not as a penalty, in the amount set forth in the Special Conditions for each calendar day beyond the applicable Total Completion date. Such amount shall be deducted from any amounts due Contractor under this agreement.

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

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

1. DEFINITIONS:

1.1 Following words are given these definitions:

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

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

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

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

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

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

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

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

as per the Contract Documents.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. ENTIRE AGREEMENT:

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

3. INTENT AND INTERPRETATION

- 3.1 The intent of the Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, including construction, labor, materials, tools, equipment and transportation, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result, shall be provided by the Contractor for the Contract Price.
- 3.2 All limits stated in the Contract Documents are of the essence of the Contract.
- 3.3 The Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.
- 3.4 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.
- 3.5 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents and shall give written notice to the Engineer of any inconsistency, ambiguity, error or omission, which the Contractor may discover, or should have discovered, with respect to these documents before proceeding with the affected Work. The review, issuance, or the express or implied approval by the City or the Engineer of the Contract Documents shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such review be evidence of the Contractor's compliance with this Contract.
- 3.6 The City has prepared or caused to have prepared the Project Manual. **HOWEVER, THE CITY MAKES NO REPRESENTATION OR WARRANTY AS TO ACCURACY OR FITNESS FOR PARTICULAR PURPOSE INTENDED OR ANY OTHER WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the City concerning such documents as no such representation or warranties have been made or are hereby made.

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

4. WORK SUPERINTENDENT

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

5. ENGINEER

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

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

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

intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the City so decides, to annul the Contract.

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

6. WORK SCHEDULE:

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

7. DELAYS AND EXTENSIONS OF TIME

- 7.1 In executing the Contract, the Contractor expressly covenants and agrees that, in undertaking the completion of the work within the time herein fixed, he has taken into consideration and

made allowances for all of the ordinary delays and hindrances incident to such work, whether growing out of delays in securing materials, workers, weather conditions or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the Work, or any portion thereof, included in this Contract.

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

8. ADVERSE WEATHER:

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

reflect these anticipated adverse weather delays in all weather affected activities:

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

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

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

listed above, in their Progress Schedule. (Reference Section 3.1.1 for Progress Schedule requirements)

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

9. PAYMENT PROCEDURE:

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

return of some or all of the amounts previously paid to the Contractor, to protect the City from loss because of:

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

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

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

10. COMPLETION AND FINAL PAYMENT

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

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

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

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

11. CLAIMS BY THE CONTRACTOR

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

- the total cost of which exceeds 12-1/2 percent of the total Contract amount based on the proposed quantity and the contract unit price).
- 11.6 When the alterations cause an increase or decrease in excess of the 25 percent indicated above, either the Contractor or the Engineer may request an adjustment of the unit price to be paid for the item or items.
- 11.7 If a mutually agreeable adjustment cannot be obtained, the City reserves the right to terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the Work.
- 11.8 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall not include standby costs, indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties.
- 11.9 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving Final Acceptance of the Work shall be extended upon the written notice and claim of the Contractor to the City, for such reasonable time as the City may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven calendar days after the occurrence of the event or the first appearance of the condition-giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Work. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this subparagraph, any claim for an extension of time shall be waived.
- 11.10 The Contractor shall delay or suspend the progress of the work or any part thereof, whenever so required by written order of the City, and for such periods of time as required; provided, that in the event of such delay or delays or of such suspension or suspensions of the progress of the work, or any part thereof, the time for completion of work so suspended or of work so delayed by such suspension or suspensions shall be extended for a period equivalent to the time lost by reason of such suspension or suspensions; but such order of the City or Engineer shall not otherwise modify or invalidate in any way, any of the provisions of this Contract. In the event that the work shall be stopped by written order of the City, any expense, which, in the sole opinion and judgment of the City, is caused by the City, shall be paid by the City to the Contractor.
- 11.11 In executing the Contract Documents, the Contractor expressly covenants and agrees that, in undertaking to complete the Work within the time herein fixed, it has taken into consideration and made allowances for all hindrances and delays incident to such work, whether growing out of delays in securing materials or workers or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the work, or any portion thereof, included in this Contract, except as provided herein.
- 11.12 In addition to the Project Manual particular to Mobilization found elsewhere in this document,

additional mobilization shall not be compensable for work outside of the designated areas for work deemed essential by the City. A quantity of work equal to as much as 10% of the total Contract may be required to be performed beyond the boundaries of the designated work areas

12. CHANGES IN THE WORK

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

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

13. INSURANCE AND HOLD HARMLESS.

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

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

13.8 The City and the Engineer shall be a named insured on such policies. Satisfactory certificates of insurance shall be filed with the City prior to starting any construction work on this Contract. The certificates shall state that thirty (30) days written notice will be given to the City before any policy coverage thereby is changed or canceled.

13.9 The Contractor shall secure and maintain through the duration of this Contract insurance on an occurrence basis of such types and in such amounts as may be necessary to protect the Contractor and the City and agents of the City against all hazards or risks of loss as hereinafter specified. The form and limits of such insurance, together with the underwriter thereof in each case, shall be approved by the City, but regardless of such approval, it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times. Failure of the Contractor to maintain adequate coverage shall not relieve it of any contractual responsibility or obligation, including but not limited to, the indemnification obligation.

13.10 Satisfactory certificates of insurance shall be filled with the City prior to the Contractor starting any construction work on this Contract. The Certificates shall state that the thirty (30) days written notice will be given to the City before any policy covered thereby is changed or cancelled. Failure by the Contractor to furnish the required insurance within the time specified in the notice of award of the Contract by the City, at the City option, may be the basis for the City exercising its right to terminate the Contract.

13.11 The liability limits shall be as stated:

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

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

- Commercial General Liability. This insurance shall be written in comprehensive form including

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

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

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

14. INDEMNITY

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

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

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

all statutory defenses, including, but not limited to, those under workers compensation, contribution, comparative fault or similar statutes to the extent said defenses are inconsistent with or would defeat the purpose of this section.

15. SUCCESSORS AND ASSIGNS

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

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

16. NON-DISCRIMINATION LAWS

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

17. RELATIONS WITH OTHER CONTRACTORS:

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

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

- 17.2 When two or more Contracts are being executed at one time in such manner that work on one Contract may interfere with that on another, the City shall decide which Contractor shall progress at which time.
- 17.1 Other projects the Contractor may have to coordinate shall be listed in the Special Conditions.
- 17.2 When the territory of one Contract is the necessary or convenient means of access for the transportation or movement of workers, materials, or appliances required for the execution of another Contract, such privileges of access or any other responsible privilege may be granted by the City to the Contractor so desiring, to the extent such may be reasonably necessary.
- 17.3 Upon execution of the Contract, the Contractor shall furnish the City, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Work. The City shall promptly reply to the Contractor, in writing, stating any objections the City may have to such proposed Subcontractor. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the City has made timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has objection.

18. RIGHT OF CITY TO TERMINATE

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

demobilization.

19. MISCELLANEOUS:

- 19.1 The Contractor warrants to the City that all labor furnished to progress the Work under the Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with the Project Manual. All Work not conforming to these requirements may be considered defective.
- 19.2 The Contractor shall obtain and pay for all permits, fees and licenses necessary or ordinary for the Work. The Contractor shall comply with all lawful requirements, including federal and state laws, City and County laws and ordinances and building codes, applicable to the Work and shall give and maintain copies of all notices required by applicable law pertaining to the Work.
- 19.3 Both the business address of the Contractor given in the Bid or proposal upon which this Contract is founded, and the Contractor's Office near the Work, is hereby designated as the places to which all notices, letters, and other communications to the Contractor may be mailed or delivered. The delivering at either of the above named addresses, or depositing in any mailbox regularly maintained by the Post Office, of any notice, letter or other communication so addressed to the Contractor, and the date of said service shall be the date of such delivery or mailing. Such addresses may be changed at any time by an instrument in writing, executed by the Contractor, presented, and delivered to the Engineer and to the City. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or communication upon the Contractor personally.
- 19.4 It is mutually agreed by and between the parties to this Contract that all royalties and fees for and in connection with patents, or patent infringement, claims for materials, articles, apparatus, devices or equipment (as distinguished from processes) used in or furnished for the work shall be included in the Contract amount and the Contractor shall satisfy all demands that may be made at any time for such, and the Contractor shall at its cost and expense, defend any and all suits or proceedings that may be instituted at any time against the City for infringement or alleged infringement of any such patents involved in the work, and Contractor shall pay any award of damages.
- 19.5 The right of general administration of the City shall not make the Contractor an agent of the City, and the liability of the Contractor for all damages to persons, firms, and corporations, arising from the Contractor's execution of the Work, shall not be lessened because of such general administration, but as to all such persons, firms, and corporations, and the damages, if any, to them or their property. The Contractor herein is an independent Contractor in respect to the work.
- 19.6 For a period of time, from the inception of the Contract to three (3) years from the date of final payment under the Contract, the Contractor and subcontractors shall maintain books, accounts, ledgers, invoices, drafts, pages and other records pertaining to the performance of this Contract. At all reasonable times during this period these records shall be available within the State of Kansas at a field or permanent business office for inspection by authorized representatives of the City or of any other agency, which has contributed funds in connection with the Contract or to which the City is obligated to make such inspections available. In

addition, this requirement shall be included in all subcontracts entered into in connection with this Contract.

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

imposed by law.

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

WITNESSETH:

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

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

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

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

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

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

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

CITY OF PRAIRIE VILLAGE

KANSAS HEAVY CONSTRUCTION, LLC

By: _____
(signed)

By _____
(signed)

Ronald L. Shaffer _____

(typed name)

Mayor _____

(typed title)

City of Prairie Village _____

(typed company name)

7700 Mission Road _____

(typed address)

Prairie Village, Kansas, 66208 _____

(typed city, state, zip)

(typed telephone number)

(date of execution)

(date of execution)

SEAL

ATTEST:

APPROVED BY:

City Clerk, Joyce Hagen-Mundy

City Attorney, Catherine Logan

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

MAYOR'S ANNOUNCEMENTS

March 3, 2014

Committee meetings scheduled for the next two weeks include:

Board of Zoning Appeals	03/04/2013	6:30 p.m.
Planning Commission	03/04/2014	7:00 p.m.
Tree Board	03/05/2014	6:00 p.m.
Sister City Committee	03/10/2014	7:00 p.m.
Parks and Recreation Committee	03/12/2014	7:00 p.m.
Council Committee of the Whole	03/17/2014	6:00 p.m.
City Council	03/17/2014	7:30 p.m.

=====

The Prairie Village Arts Council is pleased to present a photography exhibit by CP11 as the March exhibit in the R. G. Endres Gallery. The artist reception will be on Friday, March 14, from 6:30 - 7:30 p.m.

Recreation sales begin Tuesday, April 1. Pool memberships purchased through April 30 will be discounted by \$10.

The City of Prairie Village, in conjunction with Deffenbaugh Industries, will hold a free compost pick-up on Saturday, April 5, 2014, for Prairie Village residents. Compost will be available starting at 8:00 am in the parking lot next to the water tower (Santa Fe Trail Park, 7805 Delmar).

The 2014 annual large item pick up has been scheduled. Items from homes on 75th Street and north of 75th Street will be collected on Saturday, April 5. Items from homes south of 75th Street will be collected on Saturday, April 12.

INFORMATIONAL ITEMS

March 3, 2014

1. Police Pension Board Minutes - December 30, 2013
2. Planning Commission Minutes - January 7, 2014
3. Parks and Recreation Committee Minutes - January 8, 2014
4. Sister City Committee Minutes - January 13, 2014
5. Prairie Village Arts Council Minutes - January 15, 2014
6. Environmental/Recycle Committee Minutes - January 22, 2014
7. Council Committee of the Whole Minutes - February 3, 2014
8. Board of Zoning Appeals Agenda - March 4, 2014
9. Planning Commission Agenda - March 4, 2014
10. Mark Your Calendars

MINUTES
POLICE PENSION PLAN BOARD OF TRUSTEES
December 30, 2013

The Police Pension Plan Board met on December 30, 2013 at 8:30 AM in the City's Multi-Purpose Room. Members present: Steve Noll, James Whittier, and Ivan Washington; Staff: Quinn Bennion and Nicholas Sanders. Also in attendance: Jenny Mosh, legal counsel from Lathrop & Gage LLP.

Mr. Noll called the meeting to order at 8:30 AM. The first item for discussion was the evaluation of a claim made by Stephen Taylor for a medical disability pension from the Police Pension Plan.

Mr. Noll made a motion, pursuant to KSA 75-4319(b)(1), for the Board to enter into executive session not to exceed thirty (30) minutes for the purpose of discussing Mr. Taylor's medical evaluation in connection with his claim. Present during such session will be all three Police Pension Plan Board members, City Staff Quinn Bennion and Nicholas Sanders and legal counsel. The motion was seconded by Mr. Whittier, and passed unanimously.

Mr. Noll reopened the meeting from executive session at 9:06 AM. There being further discussion necessary of Mr. Taylor's medical evaluation, Mr. Noll made a motion for the Board to enter into executive session not to exceed twenty (20) minutes. The motion was seconded by Mr. Whittier, and passed unanimously.

Mr. Noll reopened the meeting from executive session at 9:26 AM.

Mr. Noll posed the question to the Board regarding the request for medical disability pension for Mr. Taylor under the current guidelines of the Plan. Mr. Whittier moved that the Board (i) deny Mr. Taylor's claim, as it fails to meet the requirements under the Plan, and (ii) request that Mr. Taylor perfect his claim for medical disability benefits by contacting the City's physician, KU MedWest, for evaluation. Mr. Washington seconded. The motion passed unanimously.

There being no further business at hand, the meeting adjourned at 9:30 AM.

Steve Noll
Chairman

PLANNING COMMISSION MINUTES
January 7, 2014

ROLL CALL

The Planning Commission of the City of Prairie Village met in regular session on Tuesday, January 7, 2014, in the Municipal Building Council Chambers at 7700 Mission Road. Chairman Ken Vaughn called the meeting to order at 7:00 p.m. with the following members present: Bob Lindeblad, Gregory Wolf; Randy Kronblad and Nancy Vennard.

The following persons were present in their advisory capacity to the Planning Commission: Ron Williamson, City Planning Consultant; Kate Gunja, Assistant City Administrator; Danielle Dulin, Assistant to the City Administrator; Keith Bredehoeft, Public Works Director, Jim Brown, Building Official and Joyce Hagen Mundy, City Clerk/Planning Commission Secretary. Also present was Andrew Wang Council liaison.

APPROVAL OF MINUTES

Bob Lindeblad moved the approval of the Planning Commission minutes of December 3, 2013. The motion was seconded by Gregory Wolf and passed by a vote of 4 to 0 with Randy Kronblad abstaining.

Chairman Ken Vaughn noted four public hearings on the agenda and reviewed the procedure for the public hearings. Due to the similarity of applications the two applications from the YMCA would be heard together as well as the two applications from Johnson County Park & Recreation District.

PUBLIC HEARINGS

**PC2013-09 Request for Special Use Permit for Day Care Program
7230 Belinder Avenue (Belinder Elementary School)**

Pam Watkins, Vice President - Youth Development Services for the YMCA, stated the YMCA provides before and after school child care at Belinder Elementary School. The program operates from 7 am to 6 pm (7 to 8:10 a.m. and 3 to 6 p.m.) on days when the school is open. The Belinder program has 64 students enrolled between the ages of 5 to 12 supervised by five staff. The program uses the school gym and cafeteria, along with outdoor play areas. Access to the day care is an exterior door to the cafeteria. No changes have been made to the school for the operation of the program. Ms Watkins noted that a summer program is sometimes provided. This program would operate from 7 a.m. to 6 p.m. Monday through Friday using the same facilities.

A neighborhood meeting was held on Monday, January 6th with no one attending.

Bob Lindeblad confirmed the applicant accepted the recommended conditions of approval.

Chairman Ken Vaughn opened the public hearing for public comments. No one was present to address the Commission on this application. The public hearing was closed.

Ron Williamson noted the program has operated for several years with the approval of the school district and provides a valuable service to the community. He recommends that the special use permit be approved for an indefinite period of time in compliance with the conditions of approval.

Chairman Ken Vaughn led the Commission in the following consideration of the factors for Special Use Permits and the Golden Factors:

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

The child care program will be contained within an existing elementary school building and fenced playground which is in compliance with the zoning regulations.

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

The child care program will be an asset to the community because it will provide a much needed service for taking care of the children within the local area. It will be located within an existing building and will not adversely affect the welfare or convenience of the public.

3. **The proposed special use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.**

The child care center will be located within an existing school building and use an existing parking lot therefore it should not create any problems for the adjacent property in the neighborhood.

4. **The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it, are such that this special use will not dominate the immediate neighborhood so as to hinder development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the special use will so dominate the immediate neighborhood, consideration shall be given to: a) the location, size and nature of the height of the building, structures, walls and fences on the site; and b) the nature and extent of landscaping and screening on the site.**

The child care center will accommodate Kindergarten through Sixth Grade and will use the school facility during normal school hours. This use will not have a dominating effect in the neighborhood because it will be located within an existing building. No expansion or modification of the building is proposed.

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

The day care center will use the existing school parking lot and driveways. Pick-up and drop-off will be on the south side of the building and will normally occur prior to and after school hours.

6. **Adequate utility, drainage and other necessary utilities have been or will be provided.**

Since this use will be occupying an existing school facility, utility services are already provided.

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

Adequate entrance and exit drives currently exist at the facility and this proposed special use will utilize the existing infrastructure that is already in place.

8. **Adjoining properties and the general public will be adequately protected from any hazardous or toxic materials, hazardous manufacturing processes, obnoxious odors, or unnecessary intrusive noises.**

This particular use does not have any hazardous materials, processes, odors or intrusive noises that accompany it.

9. **Architectural style and exterior materials are compatible with such styles and materials used in the neighborhood in which the proposed structure is to be built or located.**

The special use will not require any changes in the exterior architecture or style of the existing building. It should be noted that the school was remodeled in 2010.

GOLDEN FACTORS FOR CONSIDERATION:

1. **The character of the neighborhood;**

The neighborhood character is single-family dwellings on the north, south, east and west sides.

2. **The zoning and uses of property nearby;**

North: R-1B Single-Family District - Single-Family Dwellings

East: R-1B Single-Family District - Single-Family Dwellings

South: R-1B Single-Family District - Single-Family Dwellings

West: R-1B Single-Family District - Single-Family Dwellings

3. **The suitability of the property for the uses to which it has been restricted under its existing zoning;**

The property is zoned R-1B Single-Family Residential District which permits single-family dwellings, churches, schools, public buildings, parks, group homes and other uses that may be permitted either as a conditional use or special use such as a day care center. The property has a variety of uses available, but has been developed as a school since 1960, which is a permitted use.

4. **The extent that a change will detrimentally affect neighboring property;**

The day care center has been in existence since the start of the school year and has not created any detrimental neighborhood issues. The south drive will be the main drop-off and pick-up area and should be adequate to accommodate the traffic. There do not appear to be any detrimental effects on the neighborhood.

5. **The length of time of any vacancy of the property;**

Belinder Elementary School was built in 1960 and the site has not been vacant since that time.

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;**

The proposed day care center is within an existing building that will not have any exterior modifications. The applicant will be able to utilize the property for a needed community service and no hardship will be created for adjacent property owners.

7. **City staff recommendations;**

The use has been in operation for several months with no complaints; the use will be within an existing building with no exterior changes; the use will have minimal impact on the neighborhood; and the use will provide a needed day care service for children that is in demand in Prairie Village. It is recommended that it be approved for an indefinite period of time unless issues develop that adversely affect the neighborhood, and if that occurs reevaluation of the day care center would be required.

8. **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. The day care center is an amenity that will improve quality of life in Prairie Village and help make it a desirable location for young families. This application for approval of the day care center is consistent with Village Vision in encouraging reinvestment; providing multiple uses in existing buildings and making better use of underutilized facilities.

Bob Lindeblad moved the Planning Commission find favorably on the ordinance factors and the Golden Factors and forward PC2013-09 request for a Special Use Permit for the operation of a child day care program at 7230 Belinder (Belinder Elementary School) to the Governing Body with a recommendation for approval subject to the following conditions:

1. That the child care center be approved for use on school days from 7:00 am to 6:00 pm, and from 7:00 am to 6:00 pm, Monday through Friday, during the summer.
2. That the child care center be permitted to operate subject to the licensing requirements by the Kansas Department of Health and Environment.
3. That the special use permit be issued for the child care center for an indefinite period of time unless it creates issues in the neighborhood and then they shall file a new application for reconsideration by the Planning Commission and Governing Body.

4. That the day care center be in compliance with Fire Department regulations and inspections.
5. If this permit is found not to be in compliance with the terms of the approval of the Special Use Permit it will become null and void within 90 days of notification of noncompliance unless noncompliance is corrected.

The motion was seconded by Gregory Wolf and passed unanimously.

SITE PLAN APPROVAL

Since the proposed day care center will be within an existing school building and no changes to the building or site will occur, Bob Lindeblad moved the Site Plan Approval be waived. The motion was seconded by Gregory Wolf and passed unanimously.

PC2013-10 Request for Special Use Permit for Day Care Program 6642 Mission Road (Prairie Elementary School)

Pam Watkins, Vice President - Youth Development Services for the YMCA, stated the YMCA provides before and after school child care at Prairie Elementary School. The program operates from 7 am to 6 pm (7 to 8:10 a.m. and 3 to 6 p.m.) on days when the school is open. The Prairie Elementary program has 29 students enrolled between the ages of 5 to 12 supervised by two staff. The program uses the school gym and cafeteria, along with outdoor play areas. Access to the day care is an exterior door to the cafeteria. No changes have been made to the school for the operation of the program. Ms Watkins noted that a summer program is sometimes provided. This program would operate from 7 a.m. to 6 p.m. Monday through Friday using the same facilities.

A neighborhood meeting was held on Monday, January 6th with no one attending.

Chairman Ken Vaughn opened the public hearing for public comments. No one was present to address the Commission on this application. The public hearing was closed.

Ron Williamson noted that a special use permit for the operation of a day care center at this site was previously approved at this location for another provider.

Chairman Ken Vaughn led the Commission in the following consideration of the factors for Special Use Permits and the Golden Factors:

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

The child care program will be contained within an existing elementary school building and fenced playground which is in compliance with the zoning regulations.

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

The child care program will be an asset to the community because it will provide a much needed service for taking care of the children within the local area. It will be located

within an existing building and will not adversely affect the welfare or convenience of the public.

3. The proposed special use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.

The child care center will be located within an existing school building and use an existing parking lot; therefore, it should not create any problems for the adjacent property in the neighborhood.

4. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it, are such that this special use will not dominate the immediate neighborhood so as to hinder development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the special use will so dominate the immediate neighborhood, consideration shall be given to: a) the location, size and nature of the height of the building, structures, walls and fences on the site; and b) the nature and extent of landscaping and screening on the site.

The child care center will accommodate Kindergarten through Sixth Grade and will use the school facility during normal school hours. This use will not have a dominating effect in the neighborhood because it will be located within an existing building. No expansion or modification of the building is proposed.

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

The day care center will use the existing school parking lot and driveways. Pick-up and drop-off will be on the south side of the building and will occur prior to and after school hours.

6. Adequate utility, drainage and other necessary utilities have been or will be provided.

Since this use will be occupying an existing school facility, utility services are already provided.

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

Adequate entrance and exit drives currently exist at the facility and this proposed special use will utilize the existing infrastructure that is already in place.

8. Adjoining properties and the general public will be adequately protected from any hazardous or toxic materials, hazardous manufacturing processes, obnoxious odors, or unnecessary intrusive noises.

This particular use does not have any hazardous materials, processes, odors or intrusive noises that accompany it.

9. **Architectural style and exterior materials are compatible with such styles and materials used in the neighborhood in which the proposed structure is to be built or located.**

The special use will not require any changes in the exterior architecture or style of the existing building.

GOLDEN FACTORS FOR CONSIDERATION:

1. **The character of the neighborhood;**

The areas to the north, south and west are developed for single-family dwellings. A church exists on the east side of Mission Road. With the school, church and single-family dwellings the character of the area is unquestioningly residential.

2. **The zoning and uses of property nearby;**

North: R-1A Single-Family District - Single-Family Dwellings

East: R-1A Single-Family District - Church

South: R-1B Single-Family District - Single-Family Dwellings

West: R-1A Single-Family District - Single-Family Dwellings

3. **The suitability of the property for the uses to which it has been restricted under its existing zoning;**

The property is zoned R-1A Single-Family Residential District which permits single-family dwellings, churches, schools, public buildings, parks, group homes and other uses that may be permitted either as a conditional use or special use. The property has a variety of uses available, but has been developed as a school since 1882.

4. **The extent that a change will detrimentally affect neighboring property;**

The day care center has been in existence for several years and has not created any detrimental neighborhood issues. The south drive will be the main drop-off and pick-up area and should be adequate to accommodate the traffic. There do not appear to be any detrimental effects on the neighborhood.

5. **The length of time of any vacancy of the property;**

Prairie School was originally built on the site in 1882. A new school was built in 1912. In 1990 the school burned down and was rebuilt in 1993. The site has not been vacant since it was developed as a school.

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;**

The proposed day care center is within an existing building that will not have any exterior modifications. The applicant will be able to utilize the property for a needed community service and no hardship will be created for adjacent property owners.

7. **City staff recommendations;**

The use has been in operation for several years with no complaints; the use will be within an existing building with no exterior changes; the use will have minimal impact on the neighborhood; and the use will provide a needed day care service for children that is in demand in Prairie Village. It is recommended that it be approved for an indefinite period of time unless issues develop that adversely affect the neighborhood, and if that occurs reevaluation of the center would be required.

8. 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. The day care center is an amenity that will improve quality of life in Prairie Village and help make it a more desirable location for young families. This application for approval of the day care center is consistent with Village Vision in encouraging reinvestment; providing multiple uses in existing buildings and making better use of underutilized facilities.

Bob Lindeblad moved the Planning Commission find favorably on the ordinance factors and the Golden Factors and forward PC2013-10 request for a Special Use Permit for the operation of a child day care program at 6642 Mission Road (Prairie Elementary School) to the Governing Body with a recommendation for approval subject to the following conditions:

1. That the child care center be approved for use on school days from 7:00 am to 6:00 pm, and from 7:00 am to 6:00 pm, Monday through Friday, during the summer.
2. That the child care center be permitted to operate subject to the licensing requirements by the Kansas Department of Health and Environment.
3. That the special use permit be issued for the child care center for an indefinite period of time unless it creates issues in the neighborhood and then they shall file a new application for reconsideration by the Planning Commission and Governing Body.
4. That the day care center be in compliance with Fire Department regulations and inspections.
5. If this permit is found not to be in compliance with the terms of the approval of the Special Use Permit it will become null and void within 90 days of notification of noncompliance unless noncompliance is corrected.

The motion was seconded by Gregory Wolf and passed unanimously.

SITE PLAN APPROVAL

Since the proposed day care center will be within an existing school building and no changes to the building or site will occur, Bob Lindeblad moved the Site Plan Approval be waived. The motion was seconded by Randy Kronblad and passed unanimously.

PC2013-12 Request for Special Use Permit for Day Care Program 5300 West 86th Street (Briarwood Elementary School)

Rob Knaussman with Johnson County Park & Recreation District stated that the District has provided before and after school child care at Briarwood Elementary School since

1993 for children who attend the school. The daycare hours are 7 to 8 a.m. and 3:10 to 6:00 p.m. for children from kindergarten through grade 6. The average enrollment is 40 to 50 students with a 1 to 12 staff/student ratio. The program operates from an assigned classroom with access to the cafeteria and gymnasium as well as the playground area.

A neighborhood meeting was held on November 14th with no one from the public attending.

Chairman Ken Vaughn opened the public hearing for public comments. No one was present to address the Commission on this application. The public hearing was closed.

Ron Williamson noted that this use has been in place for over 20 years, with no complaints from the public and staff recommends approval for an indefinite period of time. He also noted that the previous permits limited participation to Briarwood Students and recommends that this limitation be removed.

Chairman Ken Vaughn led the Commission in the following consideration of the factors for Special Use Permits and the Golden Factors:

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

The proposed special use for the day care program would be contained within an existing building, which is in compliance with the zoning regulations.

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

The proposed special use permit is an asset to the community as it utilizes an existing school facility to provide a much needed service for taking care of children after school hours.

- 3. The proposed special use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.**

The special use has been in operation for 20 years, located within an existing structure, and does not create any problems for the adjacent property in the neighborhood.

- 4. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it, are such that this special use will not dominate the immediate neighborhood so as to hinder development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the special use will so dominate the immediate neighborhood, consideration shall be given to: a) the location, size and nature of the height of the building, structures, walls and fences on the site; and b) the nature and extent of landscaping and screening on the site.**

The proposed childcare use accommodates a smaller group of students than currently use the school facility during normal school hours. This use is an extension of the school

hours and does not have a dominating effect in the neighborhood, as it is located within an existing building.

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

The proposed day care use will use the existing off-street parking and loading areas that are currently provided by the school.

- 6. Adequate utility, drainage and other necessary utilities have been or will be provided.**

Since this use occupies an existing facility, utility services are already provided.

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

Adequate entrance and exit drives currently exist at the school facility and this proposed special use will use the existing drives that are already in place.

- 8. Adjoining properties and the general public will be adequately protected from any hazardous or toxic materials, hazardous manufacturing processes, obnoxious odors, or unnecessary intrusive noises.**

This particular use does not have any hazardous materials, processes, odors or intrusive noises that accompany it.

- 9. Architectural style and exterior materials are compatible with such styles and materials used in the neighborhood in which the proposed structure is to be built or located.**

The proposed special use does not require any changes in the exterior architecture or style of the existing building.

GOLDEN FACTORS FOR CONSIDERATION:

- 1. The character of the neighborhood;**

The neighborhood is predominantly single-family dwellings to the north, south, east and west. The existing property is Briarwood Elementary School. The character of the immediate neighborhood is residential with single-family dwellings.

- 2. The zoning and uses of property nearby;**

North: R-1A 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

- 3. The suitability of the property for the uses to which it has been restricted under its existing zoning;**

The property is zoned R-1A Single-Family Residential District which permits single-family dwellings, churches, schools, public buildings, parks, group homes and other uses that may be permitted either as a conditional use or special use. The property has a variety of uses available and it can accommodate uses that complement the primary use as a school.

4. The extent that a change will detrimentally affect neighboring property;

The use has been in existence for approximately 20 years and has not created any detrimental neighborhood issues. The renewal request is proposed to operate a day care as it has in the past.

5. The length of time of any vacancy of the property;

The school was built in 1966 and has been used as a school since it opened.

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;

The proposed day care center is within an existing building that will not have any exterior modifications. The applicant will be able to utilize an existing facility and no hardship will be created for adjacent property owners.

7. City staff recommendations;

The use has been in operation for 20 years with no complaints; the use will be within an existing building with no exterior changes; the use will have minimal impact on the neighborhood; and the use will provide a needed service for children that is in demand in Prairie Village. It is recommended that it be approved for an indefinite period of time unless there are complaints from neighbors or the use changes significantly.

8. 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. The day care center is an amenity that will improve quality of life in Prairie Village and help make it a desirable location for young families. This application for approval of the day care center is consistent with Village Vision in providing multiple uses in existing buildings and making better use of underutilized facilities.

Randy Kronblad moved the Planning Commission find favorably on the ordinance factors and the Golden Factors and forward PC2013-12 requesting a Special Use Permit for the operation of a child day care program at 5400 West 86th Street (Briarwood Elementary School) to the Governing Body with a recommendation for approval subject to the following conditions:

1. That the day care program be approved for use from 7:00 am to 6:00 pm on school days and from 7:00 am to 6:00 pm, Monday through Friday, during the summer.
2. That the day care center be permitted to operate subject to the licensing requirements of the Kansas Department of Health and Environment.

3. That the Special Use Permit be issued to Briarwood Elementary School for an indefinite time and renewal will not be required unless the use changes significantly or complaints are received from the neighbors, and then a new application will be need to be filed for consideration by the Planning Commission and Governing Body.
4. That the day care center be in compliance with Fire Department regulations and inspections.
5. If this permit is found not to be in compliance with the terms of the approval of the Special Use Permit, it will become null and void within 90 days of notification of noncompliance unless noncompliance is corrected.

The motion was seconded by Gregory Wolf and passed unanimously.

SITE PLAN APPROVAL

Since the proposed day care center will be within an existing school building and no changes to the building or site will occur, Randy Kronblad moved the Site Plan Approval be waived. The motion was seconded by Gregory Wolf and passed unanimously.

PC2013-13 Request for Special Use Permit for Day Care Program 8301 Mission Road (Corinth Elementary School)

Rob Knaussman with Johnson County Park & Recreation District stated that the District has provided before and after school child care at Corinth Elementary School. The daycare hours are 7 to 8 a.m. and 3:10 to 6:00 p.m. for children from kindergarten through grade 6. Enrollment is on a first come, first serve basis and is about 40 to 50 students with a 1 to 12 staff/student ratio. The program uses existing classrooms, the gymnasium, cafeteria and playground.

A neighborhood meeting was held on November 14th with no one from the public attending.

Chairman Ken Vaughn opened the public hearing for public comments. No one was present to address the Commission on this application. The public hearing was closed.

Chairman Ken Vaughn led the Commission in the following consideration of the factors for Special Use Permits and the Golden Factors:

FACTORS FOR CONSIDERATION SPECIFIC TO SPECIAL USE PERMITS:

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

The child care program will be contained within an existing elementary school building and fenced playground which is in compliance with the zoning regulations.

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

The child care program will be an asset to the community because it will provide a much needed service for taking care of the children within the local area. It will be located

within an existing building and will not adversely affect the welfare or convenience of the public.

3. The proposed special use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.

The child care center will be located within an existing structure and use an existing parking lot therefore it should not create any problems for the adjacent property in the neighborhood.

4. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it, are such that this special use will not dominate the immediate neighborhood so as to hinder development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the special use will so dominate the immediate neighborhood, consideration shall be given to: a) the location, size and nature of the height of the building, structures, walls and fences on the site; and b) the nature and extent of landscaping and screening on the site.

The child care center will accommodate a group of 40 - 50 children, and will use the school facility before and after normal school hours. This use will not have a dominating effect in the neighborhood because it will be located within an existing building. No expansion of the building is proposed.

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

The day care center will use the existing school parking lot and driveways. The drop-off and pick-up times will be before and after normal school hours and the parking and driveways should be adequate to handle the traffic.

6. Adequate utility, drainage and other necessary utilities have been or will be provided.

Since this use will be occupying an existing facility, utility services are already provided.

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

Adequate entrance and exit drives currently exist at the facility and this proposed special use will utilize the existing infrastructure that is already in place.

8. Adjoining properties and the general public will be adequately protected from any hazardous or toxic materials, hazardous manufacturing processes, obnoxious odors, or unnecessary intrusive noises.

This particular use does not have any hazardous materials, processes, odors or intrusive noises that accompany it.

9. Architectural style and exterior materials are compatible with such styles and materials used in the neighborhood in which the proposed structure is to be built or located.

The special use will not require any changes in the exterior architecture or style of the existing building.

GOLDEN FACTORS FOR CONSIDERATION:

1. The character of the neighborhood;

The neighborhood contains a mix of uses. There are single-family dwellings to the south and east; apartments and offices to the north; and apartments, offices and commercial to the west. The day care center fits well in the higher density use of the surrounding area.

2. The zoning and uses of property nearby;

North: C-0 Office Building District - Offices
RP-3 Planned Garden Apartment District - Apartments
East: RP-3 Planned Single-Family- Single-Family Dwellings
R-1A Single-Family District - Single-Family Dwellings
South: R-1A Single-Family District - Single-Family Dwellings
CP-2 Planned General Business - Offices and Retail
West: C-0 Office Building District - Offices
R-3 Garden Apartment District - Apartments

3. The suitability of the property for the uses to which it has been restricted under its existing zoning;

The property is zoned R-1A and is developed for an elementary school that was rebuilt in 1996 and expanded in 2007. The proposed day care center is a practical and reasonable use of the existing school.

4. The extent that a change will detrimentally affect neighboring property;

The use has been in existence for several years and has not created any detrimental effects on neighboring property. The day care center is an excellent use of an existing facility and provides a highly needed service to the community.

5. The length of time of any vacancy of the property;

The property was first developed as an elementary school in 1858 to serve Leawood and Prairie Village residents. The school has been rebuilt several times and the site has never really been vacant.

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;

The proposed day care center is within an existing building that will not have any exterior modifications. The applicant will be able to utilize the property for a needed community service and no hardship will be created for adjacent property owners.

7. City staff recommendations;

The use has been in operation for several years with no complaints; the use will be within an existing building with no exterior changes; the use will have minimal impact on the neighborhood; and the use will provide a needed day care service for children that is in demand in Prairie Village. It is recommended that it be approved for an indefinite period of time unless neighborhood issues cause concerns that would require reevaluation.

8. 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. The day care center is an amenity that will improve quality of life in Prairie Village and help make it a desirable location for young families. This application for approval of the day care center is consistent with Village Vision in encouraging reinvestment; providing multiple uses in existing buildings and making better use of underutilized facilities.

Randy Kronblad moved the Planning Commission find favorably on the ordinance factors and the Golden Factors and forward PC2013-13 requesting a Special Use Permit for the operation of a child day care program at 8301 Mission Road (Corinth Elementary School) to the Governing Body with a recommendation for approval subject to the following conditions:

1. That the child care center be approved from 7:00 to 8:00 am and 3:00 to 6:00 pm during the school year, and 7:00 am to 6:00 pm in the summer.
2. That the child care center be subject to the licensing requirements by the Kansas Department of Health and Environment.
3. That the Special Use Permit be issued for the child care center for an indefinite period unless it creates issues in the neighborhood, and then they shall file a new application for reconsideration by the Planning Commission and Governing Body.
4. That the day care center be in compliance with Fire Department regulations and inspections.
5. If this permit is found not to be in compliance with the terms of the approval of the Special Use Permit it will become null and void within 90 days of notification of noncompliance unless noncompliance is corrected.

The motion was seconded by Gregory Wolf and passed unanimously.

SITE PLAN APPROVAL

Since the proposed day care center will be within an existing school building and no changes to the building or site will occur, Randy Kronblad moved that the Site Plan Approval be waived. The motion was seconded by Gregory Wolf and passed unanimously.

NON PUBLIC HEARINGS

PC2013-128 Site Plan Approval for Wall in Front Yard 6330 Granada

Chairman Ken Vaughn announced that this application has been continued to the February 4th Planning Commission meeting at the applicant's request.

PC2014-101 Request for approval of Monument Sign 3520 West 75th Street

Todd Brendon, Chief Operating Officer for Big Industrial, 3500 West 75th Street, stated they are requesting approval for a monument sign for the Continental Building located at 3520 West 75th Street. The sign standards for this building were approved at the November meeting of the Planning Commission. The proposed sign will be identical to the existing sign for the Windsor Building which is located immediately adjacent to the east of this building.

Randy Kronblad confirmed the masonry in the monument sign will match the masonry of the office building.

Ron Williamson noted the applicant could have a double faced sign that would typically be perpendicular to the street, but is proposing a wall with two 20 sq. ft. sign panels. The design presented appears to be a good solution and complements the sign at the Windsor Building.

The proposed sign would be placed parallel to 75th Street on the west end of the building. The sign would be set back approximately 20 feet from the back of the curb exceeding the required 12 foot setback required by code and is on private property.

The proposed sign would be a translucent acrylic face in an aluminum cabinet and attached to a brick screen wall. The brick of the screen wall would match the new accent trim being added to the facade of the building. The sign boxes will be internally illuminated.

The proposed height of the sign is 4 feet 6 inches, which is in accordance with the maximum 5-foot height requirement permitted by the ordinance. The ordinance requires that monument signs not exceed 20 square feet in area per face and each face of this sign appears to have the actual signage square footage of 20 square feet. Therefore, it does meet the minimum requirement of the ordinance. The two sign panels are separated by a brick panel.

The applicant has submitted a landscape plan. The ordinance requires the landscaping to be three feet on all sides of the sign so there will need to be additional plantings in front to extend the planting bed to three feet. The additional plantings could be annuals to add color to the planting beds.

Gregory Wolf moved the Planning Commission approve PC2014-101 for a monument sign at 3520 West 75th Street submitted to the following conditions:

1. That the applicant increase the width of the landscape planting bed to three feet and submit a revised landscape plan to Staff for review and approval.

The motion was seconded by Bob Lindeblad and passed unanimously.

PC2014-102 Site Plan Approval - Westlake Ace Hardware 4049 Somerset Drive

Bob Massengill, Store Manager, Jenna Bobrukiewicz, Westlake corporate offices, and Kylie Stock with Lega C. Properties, LLC appeared before the Commission to present the application for Site Plan Approval to build a permanent garden center structure in the parking lot where they currently sell annuals, potting soil, rock, etc.

The proposed structure is 12' deep by 64' in width. There is a concrete area in front approximately 13' deep by 72' in width that will have stone columns and a wrought iron fence to provide a safe space for those entering and leaving the outdoor garden center. A shade house structure will be attached to the garden structure and is approximately 20' deep by 64' wide. The total structure is 22' deep by 64' wide for an area of 1,408 sq. ft. The entire garden center area is 69' x 120' or 8,280 sq. ft. In addition to the permanent area of the garden center, the 13 parking spaces along the west side will be used from April 1st to June 30th, as well as a strip 8 foot in width along the north side of the garden center. Ten parking spaces on the north side of the lot will be used from February 15th to October 15th for pallet goods.

Ron Williamson stated that since the pallet goods area will be used for eight months of the year, these 10 spaces should be removed from the available parking calculation for the center. The proposed garden center eliminates 26 parking spaces so the total reduction in permanent parking spaces is 36. The 13 parking spaces on the west side are only used for three months in the spring so they can be counted. The garden center, which is 8,280 sq. ft.; the 10 parking spaces on the north, 1,440 sq. ft.; and the 8' strip on the north side, 552 sq. ft.; for a total of 9,720 sq. ft., that will count as retail space for which parking will need to be provided.

Mr. Williamson noted in January 2011, the Planning Commission approved a Site Plan for an outdoor sales area for lawn, garden, nursery, and landscape products. The purpose of this approval was to improve the appearance of the area and better organize the merchandise. The approval was for 7,350 sq. ft., which is about 2,370 sq. ft. less than this request with the following conditions:

1. That any lighting used to illuminate the outdoor area be installed in such a way as to not create any glare off the site and be in accordance with the outdoor lighting regulations of the zoning ordinance.
2. That a minimum 48-inch wide accessible walkway be maintained either under or in front of the canopy on the north side of the store.

3. That the Site Plan approval be for the permanent outdoor sales area approximately 65' x 112' as shown on the plan submitted and that the shelving of racks be installed generally in accordance with that plan.
4. That signage be permitted only in accordance with the sign standards approved for Corinth Square.
5. That the temporary outdoor sales area immediately east of the permanent area designated for sales from April 1st to June 4th be approved with the provision that all materials and equipment will be removed within 7 days after June 4th and the area will be restored to its normal condition.
6. That the proposed temporary sales area designated from April 23rd to May 13th will be subject to annual approval of a short-term permit by the City Council or its designee.

The applicant conducted a neighborhood meeting on December 30, 2013, in accordance with the Planning Commission Citizen Participation Policy. Three residents appeared and no issues were identified.

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

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

The garden center has been operated at this location for several years. The existing drives will be utilized and are unaffected by the proposed facility. The proposed garden center will remove 36 parking spaces from the off-street parking count. Also, the proposed use is 9,720 sq. ft. and at 3.5 spaces per 1,000 sq. ft. it will require 32 parking spaces. The information submitted by the Center currently has 1,232 parking spaces and is required to have 1,067 by ordinance. Staff is in the process of verifying this information.

Staff feels there needs to be four permanent trees installed as part of this project. They could be internal to the garden center or outside. Two tree wells will be removed.

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

Utilities are currently in place serving the Corinth Square Center and are adequate to serve this area. Water and power will be extended from Westlake Hardware and the lines should be installed under the pavement.

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

There will be no increase in impervious surface so stormwater is not an issue.

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

The proposed site will utilize existing driveways and the general circulation of the Center will not be changed. Adequate pedestrian safety measures will need to be maintained in the crosswalk between the garden center and Westlake Hardware store.

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

The use has been at this location for many years and has not been as well maintained as it could be. The installation of a permanent structure should improve the appearance and provide a more orderly operation.

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

The design of the proposed facility shows the use of timber columns for the structure and stone columns for the fence. These are materials used in the center. The proposed materials description is as follows. There are only four sections that have wall panels and they would be clear polycarbonate material like the gable ends. The roof panels are an “opal” or white translucent polycarbonate panel. The trim and flashing components are aluminum extrusions and galvanized metal. All the uprights and truss assemblies are hot dipped galvanized square tube stock and will be manufactured per a structural, stamped drawing. This engineering drawing was referenced when the concrete area was poured so the thickened slab with rebar reinforcements could be positioned correctly. Timbers have been rough cedar 8 x 12 stock milled down to a smooth finish and stained with a preservative sealer. This would be color matched to the shopping center. The standing seam panels have been a Firestone “Silver Metallic” and will form a continuous band around the structure to hide the horizontal framing and the gutter/downspout assemblies. This color should be specified as bronze or earth-tone to match the shopping center. Interior lighting is provided by three T-5 weatherproof light fixtures that are positioned behind the standing seam material to provide good area lighting and a soft glow to the gable ends. The oval sign will be built to match the look of the three existing storefront signs with the gooseneck lighting.

Staff recommends that the standing seam panels, aluminum extrusions, trim, and structural components be an earth-tone or bronze color to match the shopping center. The lighting needs to be the same as what is used in the center and needs to comply with the outdoor lighting ordinance. The applicant needs to submit final plans of the building, a materials palette, and an outdoor lighting plan for Staff review and approval.

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

One of the principles of the Village Vision was to focus on redevelopment and reinvestment in the community. These issues have become primary goals for the City and this project represents a step in that direction. This is the opportunity to enhance and intensify the use of the center that will generate additional revenues for the City.

Ron Williamson reviewed the conditions of approval noting that #9 and #10 can be combined.

Bob Massengill requested that condition #2 of approval in the staff recommendation be removed. He noted the difficulty they have experienced with maintaining trees in the past and added the garden center itself would provide significant plants and foliage. Mr. Williamson responded the area was very barren and noted two tree wells were being removed for the project. He would like to see tree wells added on the northwest and northeast corners.

Bob Lindeblad noted the trees would intrude on the driving area.

Nancy Vennard stated there would be times when the center is not being used for plant materials. She would like to see planter boxes similar to those next to the large columns in the corners of the main shopping center. She added they could be native grasses.

Kylie Stock felt that would be a good solution and that it could be done. Mrs. Vennard stated she would like to see permanent planters, like those outside of Spin Pizza, so there would be plant material all year.

Bob Lindeblad stated he would prefer big planters that could be moved around and would provide more flexibility. Mrs. Vennard stated she was ok with moveable planters.

Randy Kronblad confirmed the signage would be as presented on the plan. Mr. Williamson replied the proposed signage meets the approved sign standards following the same pattern as found on the Westlake storefront.

Bob confirmed that they would not be adding any additional outdoor lighting. Mr. Massengill replied all of the lighting would be beneath the canopy. He agreed to meet with staff to ensure the lighting is the same as found elsewhere in the center.

Ken Vaughn noted there are ten spaces designated for pallets almost year-round.

Ron Williamson noted the proposed structure would add approximately 9,720 additional square feet of retail space.

Randy Kronblad confirmed the revisions to the site plan would be presented to staff for approval and would not be coming back before the Planning Commission.

Bob Lindeblad moved the Planning Commission approve the Site Plan for the Westlake Ace Hardware Garden Center subject to the following conditions:

- 1) That all lighting used to illuminate the outdoor area be installed in such a way as to not create any glare off the site, be the same design and color of lights used in the center, meet the outdoor lighting regulations, and a lighting plan be submitted to Staff for review and approval.
- 2) That the applicant install a minimum of two portable planters and submit the locations and plant material to Staff for review and approval.

- 3) That the proposed "Temporary Expansion Area" which includes the 8 foot strip on the north side, designated for use from April 1st to June 30th be approved provided that all materials are removed from that area within seven (7) days after June 30th.
- 4) That the 10 spaces on the north that are designated as the pallet goods area only be used from February 16th to October 15th and all materials and goods will be removed by October 15th.
- 5) That the applicant submit a Final Plan labeling all materials and colors on the permanent structure for review and approval by Staff.
- 6) That the 9,720 sq. ft. allocated to the garden center be counted as retail space and off-street parking be provided for that area.
- 7) That all utilities serving the proposed use be installed underground.
- 8) That a safe pedestrian crosswalk be maintained between the Westlake Ace Hardware store and the proposed garden center.
- 9) That the applicant submit three copies of the revised plan that includes all the information on materials, lighting, landscaping, etc. to the City.
- 10) That prior to the applicant obtaining a building permit for the proposed Garden Center, Corinth Square Shopping Center shall submit revised drawings and tabulations to the City for the required off-street parking calculation.

The motion was seconded by Gregory Wolf and passed unanimously.

**PC2014-104 Request for Building Line Modification from 45' to 30'
6641 Mission Road - Village Presbyterian Church**

Matt Schlicht with Engineering Solutions stated this property has a 45-foot platted front yard setback along Mission Road. The proposed addition will be on the west side of the existing church building and will set back approximately 35 feet from the Mission Road right-of-way. Therefore, the applicant is requesting a setback modification from the platted 45-foot setback to 30 feet. They are requesting a modification to 30 feet in order to give them additional area in case there are changes in the final plans. The closest point of the existing building sets back approximately 60 feet from Mission Road.

They met with the adjacent homeowners on November 25, 2013 and reviewed the plans with the four persons that attended. No one expressed any opposition to the proposed setback modification. The questions primarily dealt with the noise of the cooling tower, parking, storm drainage, and landscaping.

Ron Williamson stated the proposed location for the expansion is the best location on the site because it will not affect parking and he does not see any negative impact. Although the proposed building extends to 35 feet, he recommends a modification be grant to 30 feet in compliance with city code.

Nancy Vennard confirmed not the entire area of the expansion would extend to the revised building line.

Randy Kronblad confirmed the trees presently shown along Mission Road would be lost. Mr. Schlicht stated they would be replacing 14-15 trees along Mission Road. Chairman Ken Vaughn led the Commission in the following review of the required factors:

1. That there are special circumstances or conditions affecting the property;

This is the most logical area for expansion of the church. It works well with the internal use of the church and it does not reduce any of the existing parking areas. It should also be pointed out that the church is the only use of the east side of Mission Road from 66th Street south to Tomahawk Drive.

2. The building line modification is necessary for reasonable and acceptable development of the property in question;

The proposed location is the most logical direction for expansion in order to keep the church compact and to have a minimum impact on the parking areas.

3. That the granting of the building line modification will not be detrimental to the public welfare or injurious to or adversely affect adjacent property or other property in the vicinity in which the particular property is situated;

The proposed addition will not be detrimental to the public or adversely affect adjacent property because it will still set back at least 30 feet from Mission Road, which is the same as the zoning setback requirement of 30 feet. Also, as previously pointed out there are no houses or buildings in that block on the east side of Mission Road.

Bob Lindeblad stated the proposed building line modifications meets all of the required factors and is in compliance with city code.

Gregory Wolf moved the Planning Commission find favorably on the three factors and approve the front yard building setback modification from 45' to 30' for only that portion of the building as shown on the plans dated December 27, 2013. The motion was seconded by Randy Kronblad and passed unanimously.

**PC2014-113 Request for Site Plan Approval
Village Presbyterian Church
6641 Mission Road**

Matt Schlicht with Engineering Solutions briefly reviewed the proposed site plan for the proposed expansion of Village Church. The expansion will be located on the northwest corner of the existing building. The proposed addition will be two-story with 7,790 sq. ft. on the first floor and 6,700 sq. ft. on the second floor. The addition will include a two-story fellowship foyer, café, offices, chancel storage, elevators and restrooms. The existing steeple will be removed and replaced with a new steeple on the southwest corner of the addition. The proposed steeple is 99 ft. in height as it was approved by the Board of Zoning Appeals. The applicant has requested a variance to allow the 99 ft. height. A new north entrance is also proposed with a portico for dropping off and picking up visitors. The north entrance will provide better access to the church from the north

parking lot. The addition will be similar in character to the existing building. There are no significant grade changes proposed. The plan retains the interior courtyard area.

Mr. Schlicht noted the church would close access to the Church from Mission Road on Sundays with all traffic entering off 68th Street with one-way traffic.

The applicant held a neighborhood meeting on November 25, 2013 in accordance with the Planning Commission Citizen Participation Policy. Four neighbors attended and the questions primarily dealt with the noise of the cooling tower, parking, storm drainage, and landscaping.

Bob Lindeblad noted the neighborhood comments regarding the noise from the cooling units and asked how they would be addressed.

Brian Rathsam, architect for the project, further reviewed the site plan drawings. He noted the focus of the project is to address accessibility issues both in entering the church and within the church. The materials match the existing building. The brick corners that set off the building are the same style and profile as the current structure.

He stated that during the engineering process a review was made of the capacity of the existing HVAC unit and it was found that the existing unit can meet the needs of the expanded structure. They will not have to get a larger unit, nor should the existing unit be required to run any more than it currently runs.

The existing unit is approximately 15 years old and the church is looking at getting an upgraded HVAC system as an alternate for the project bid.

Nancy Vennard confirmed, if replaced, the location would be the same.

Bob Lindeblad asked what the maximum decibels of noise at the property line is allowed by city code. Ron Williamson responded there is no decibel restriction on noise in the City Code. Danielle Dulin added "noise" is addressed in Chapter 8 of the City Code and that language does not reference specific decibel levels.

Mr. Lindeblad asked if the city had any documentation on the actual decibels for the unit on the church. Mr. Williamson replied no reading has been taken at the property line. He noted direct sound control is difficult because of the location being so close to Brush Creek and on the property line. Mr. Williamson asked if a new tower would be smaller and allow some noise control. Mr. Rathsam responded he did not have information at this time on other cooling towers. The Church is aware of the issue and trying to address it as best they can.

Mr. Williamson said based on the decibel levels, Mr. Nearing gives in his information, the noise level is high, but not high enough to cause hearing damage. It is, however, a serious annoyance and adversely affects their quality of life.

Gregory Wolf asked what the estimated cost of a new unit would be. Mr. Rathsam responded just under \$200,000.

Nancy Vennard noted that if it is not replaced in conjunction with this project, it will probably be replaced in a few years - possibly 3 to 5 years.

Bob Lindeblad stated he was more concerned with the lack of specific decibel level requirements at a residential property line. Mr. Williamson stated that such regulations would have to be outside the zoning regulations or any existing applications would be grandfathered. Mr. Williamson asked the estimated cost of the proposed project. Mr. Rathsam responded seven to eight million dollars.

Bob Lindeblad moved to continue this application to the next meeting. The motion was seconded by Gregory Wolf.

Mr. Rathsam questioned if the HVAC unit was not part of the project or requiring additional usage, why the application was being held up.

Ron Williamson stated this has been a problem for years and could go on for another five years. Bob Lindeblad stated he felt the Commission needs to be proactive in resolving this issue.

Gregory Wolf asked what options were available to reduce the sound. Mr. Rathsam and Mr. Williamson reviewed options. Mr. Wolf asked if there was any way to get a current noise level reading at the property line and what should that level be.

Danielle Dulin stated most other cities restrict noise at residential property lines to 65 to 75 decibels. Ken Vaughn stated the lack of specific regulations is an issue the Commission needs to look into.

Ron Williamson advised Mr. Rathsam that the variance and building line has been approved with the only site plan issue being noise. He believes the applicant can proceed based on that action. Mr. Rathsam stated it is not their practice to proceed without full approval.

The motion was voted on and passed unanimously.

OLD BUSINESS

Consider proposed amendment to add reapplication waiting period

Ron Williamson stated at its regular meeting on October 21, 2013, the City Council discussed amending the zoning regulations to include a reapplication waiting period for Special Use Permits and Rezoning Applications. The discussion ranged from leaving the ordinance as it currently is to having a one-year reapplication waiting period. On a 6 to 5 vote, the Council requested the Planning Commission evaluate the issue and consider authorizing a public hearing.

Staff has researched the other communities in Johnson County and the following is a summary of their requirements:

<u>City</u>	<u>Zoning Reapplication Waiting Period</u>	<u>Special Use Permit Reapplication Waiting Period</u>
Leawood	6 months	6 months
Olathe	1 year	1 year
Shawnee	none	none
Overland Park	6 months	none
Lenexa	1 year	none
Mission	6 months	none

The concern with having no waiting period is that controversial applications require significant Staff, Planning Commission, and City Council time, as well as, numerous meetings for interested or affected citizens. Prairie Village has a small staff and repetitive applications take staff away from other responsibilities. It appears that the most common waiting period is six (6) months and that might be a good starting point. Another question is whether the reapplication waiting period applies to the same Special Use Permit or Rezoning, or if a different request is made should the waiting period not apply.

Mr. Williamson presented proposed language for rezoning applications as an addition of a new Section 19.52.055 Reapplication Waiting Period would be added to Chapter **19.52 PROCEDURAL PROVISIONS.**

19.52.055 Reapplication Waiting Period

In the case of denial of an application by the Governing Body, the applicant must wait a period of 6 months before reapplying for approval of a new development plan or zoning change on the same property, unless the application is for a more restrictive use than the original or that reapplication is approved by the Governing Body upon a showing of changed circumstances.

Fewer cities have a reapplication waiting period for Special Use Permits. Since case law has determined that Special Use Permits are a change in land use and are subject to the “Golden Criteria” it would appear logical to treat them the same as rezoning applications.

A new Section 19.28.075 Reapplication Waiting Period would be added to Chapter 19.28 SPECIAL USE PERMITS. Suggested wording is as follows:

19.28.075 Reapplication Waiting Period

In the case of denial of an application by the Governing Body, the applicant must wait a period of 6 months before reapplying for approval of a Special Use Permit on the same property, unless the new application is for a Special Use Permit that

is a different use than the original or that reapplication is approved by the Governing Body upon a showing of changed circumstances.

Bob Lindeblad stated the biggest issue he sees is the neighborhoods feeling like their being harassed.

Ken Vaughn noted that now is a good time, between significant applications, to consider this issue.

Randy Kronblad noted that perhaps if it was known that there was a waiting period for reapplication, that the applicant's would submit their best proposal with the initial application.

Ron Williamson noted the ordinance needs to carefully identify what would be considered a change.

Bob Lindeblad stated he felt a reapplication would be for the same legal description and for the same use. If the legal description changed or the proposed use changed, the waiting period would not apply.

Randy Kronblad moved the Planning Commission authorize a public hearing on language requiring a waiting period for the reapplication of rezoning and special use permit applications. The motion was seconded by Nancy Vennard and passed unanimously.

NEXT MEETING

The February 4, 2014 meeting will be held in the Council Chambers of the Municipal Building. There will also be a BZA meeting for a lot depth variance to allow for a lot split. Returning to the Commission will be the plats for Mission Chateau; the plat & final development plan for Chadwick Court, the continued site plan for Village Presbyterian and the continued site plan for the wall.

ADJOURNMENT

With no further business to come before the Commission, Chairman Ken Vaughn adjourned the meeting at 8:30 p.m.

Ken Vaughn
Chairman

PARK AND RECREATION COMMITTEE

January 8, 2014

City Hall

Park and Recreation Committee met at 7:00 PM. In attendance: Laura Wassmer, Chair, Ashley Weaver, Vice Chair, Maggie Schwartz, Diane Pallanich, Kevin Letourneau, Eric Mikkelson, Tim O'Toole, Peggy Couch, Eric Blevins. Staff: Danielle Dulin, Keith Bredehoeft, Joyce Hagan-Mundy. Guests: Holly Milledge, Mark Berlino, Jon Christensen, Tina Lloyd, Jori Nelson, George Holter, Judith Holter, Doug Pickert

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

Public Participation

Ms. Holly Milledge, 6426 Sagamore Road, Mission Hills, stated that she is a sponsor for the lacrosse teams in the area. She stated that it is not a school sanctioned sport in the state of Kansas so Shawnee Mission East does not have to supply a field for them to practice on. She asked the Parks and Recreation Committee to consider allowing her teams to reserve the Franklin Park ball fields Monday through Friday 4:30-6:30PM from March 3 to May 10. She indicated that she would be happy to pay to have the fields reseeded or to lay sod in May.

Ms. Wassmer asked Ms. Hagan-Mundy what fields were currently booked. Mr. Hagan-Mundy explained the reservation process and stated that the particular time slots and fields Ms. Milledge is requesting are the most popular. Ms. Wassmer explained that the process has to be fair for all teams and the demand is greater than the supply. She suggested that Ms. Milledge look at other options such as Bennett or Taliaferro Parks.

Consent Agenda

1. Minutes from November 13, 2013
2. Approve SuperPass Interlocal Agreement for 2014
3. Approve Swim Meet Letter of Understanding for 2014
4. Approve contracts with Challenger Sports for Flag Football and British Soccer camps for 2014

It was moved and seconded to approve the minutes from the November 13, 2013 Parks and Recreation Committee meeting. Motion passed unanimously.

Ms. Dulin explained that nothing had changed from 2013 regarding the SuperPass, Swim Meet Letter of Understanding agreements. It was moved and seconded to approve the agreements. Motion passed unanimously. It was moved and seconded to approve the contract with Challenger Sports. Motion passed unanimously.

Reports

1. Public Works Report

Mr. Bredehoeft explained that the Public Works Department has been busy with snow operations; mulch from Christmas trees is available in Porter and Franklin Parks; and the park bench has been replaced in Brenzier Park. He continued that Harmon Park is in the process of getting year-round bathrooms. Mr. Bredehoeft explained that the trail at Franklin Park has been plowed, and the crews are getting around to Porter Park. Ms. Wassmer asked if calls were received regarding the Porter Park

trail. Mr. Bredehoeft indicated it had not been an issue. Mr. Mikkelson stated that the trail at Windsor Park had been plowed.

2. Recreation Report

Ms. Dulin indicated that she is starting to work on getting things in order for the pool season, and that lifeguard and operation attendant positions had been posted on the City's website.

3. Chairperson's Report

No report.

New Business

1. 2014 Park Improvements Plans and Process Discussion

Mr. Doug Pickert gave a presentation of the improvements planned for McCrum and Taliaferro Parks in 2014.

McCrum Park Improvements Discussion

Mr. Mikkelson stated that the playground equipment in McCrum appeared to be geared towards younger children. Mr. Pickert explained that a park of this size is visited more by younger children. He continued that the playground equipment had features primarily for the two- to five-year olds, but did not ignore the needs of nine- to eleven-year olds. Ms. Wassmer noted there were toddler swings, but no belt swings. She suggested there needed to be at least two belt swings.

Mr. Mark Berlino, 4708 W 70th Street, suggested that the tire swing be replaced with at least four belt swings and that a crosswalk is painted at the top of the hill on Roe because it is such a busy street. He also suggested making the parking signs more clear so parents know where to park. Mr. Bredehoeft stated that he would look into the crosswalk and the parking situation. Mr. Berlino indicated that he would really love to see an ADA swing in the park.

Ms. Jori Nelson, 4802 W 69th Terrace, stated that there really needs to be a crosswalk on Roe for people to cross the street.

Mr. George Holter, 4705 W 70th Street, stated these park improvements were not appropriate for this a park of this size and location; the traffic situation is too dangerous. He indicated the old oak trees were full of termites. Ms. Wassmer responded that the work was not really adding anything new, just upgrading the existing equipment.

Mr. Jon Christensen, 4711 W 69th Terrace, stated that there were drainage issues at the park, and he wanted to make sure the situation was not worsened. He was happy the electrical lines were being buried and pleased with the fence being installed along Roe, and inquired about the material of the fence. Mr. Pickert indicated that the fence would be a decorative fence similar to the fence at Weltner Park. Mr. Christensen asked about the lighting at the shelter. Mr. Pickert stated that there would be a light fixture in the shelter so that the neighbors could tell if someone was in there; other than that the existing lighting was to remain. Mr. Christensen stated that the police do a good job of enforcing the 11:00 PM curfew.

Mr. Mikkelson asked about the life of the net climber. Mr. Pickert indicated that the nets are made out of fiber covered steel cables and would last for 15 years.

There was more discussion regarding the number of belt and toddler swings in the park.

Ms. Tina Lloyd, 4711 W 69th Terrace, stated that she liked the concept of the park; the swings get used a lot, and she would hate to see the swings pulled out of the park. She indicated that she was pleased with the north side of the park being preserved as open space, but she would like to see more of a buffer along the west side of the park.

Mr. O'Toole stated that he agreed there needed to be enough belt swings because 7- and 8-year olds will find a way to get into toddler swings.

Mr. Mikkelson stated that the tire swing was a favorite of his children, but if he had to choose, he would choose more belt swings. Mr. Mikkelson indicated that the seat spinner was the lowest on his priority.

Mr. Pickert stated that it was important to maintain the size of the playground because functional open space is a fundamental need. He suggested replacing the tire swing with a new six-swing set, two toddler swings, 3 belt swings, and one ADA swing.

The Committee agreed with Mr. Pickert's suggestion.

Taliaferro Park Improvements Discussion

Ms. Weaver asked about the material under the play equipment. Mr. Bredehoeft stated that was not included in the park improvements, but he was taking care of that this spring.

Ms. Wassmer asked about installing a backboard on the tennis courts. Mr. Bredehoeft stated that he did not think it was appropriate in Taliaferro Park due to the proximity of the neighboring houses; backboards generate a lot of noise. Mr. Mikkelson asked how in demand the city tennis courts were. Ms. Wassmer responded that they get a lot of use. Mr. Mikkelson stated that with changes to Homestead Country Club, the city courts may get even more use and more backboards may need to be considered in other locations.

Informational Items

Next meeting—February 12, 2014 @ 7:00 PM.

Meeting adjourned at 8:30 PM.

**PRAIRIE VILLAGE
SISTER CITY COMMITTEE MINUTES**
January 13, 2014

Members in attendance: Craig Stramel, Jim Hohensee, Bob McGowan, Carole Mosher, Ivan Novikov, Bob Glywa. Also attending: Danielle Dulin, Assistant to City Administrator.

November 2013 meeting minutes: Bob Glywa made a motion to approve the minutes from the November meeting and Bob McGowan seconded. The minutes were approved.

Photo show expenses, September 2012: The Prairie Village Sister City Committee held a photo show of photographs from the Dolyna, Ukraine photo club. Jim Hohensee made a motion to approve Bob Glywa's expenses for frames, mats, and printing photographs in the amount of \$1091.79. Bob McGowan seconded the motion and it was passed.

Donation of photograph to Prairie Village City Hall: Danielle Dulin said that the City would like to display pictures of food-related items in the City Hall kitchen. After discussion, the committee decided to donate a photo from the September 2012 Dolyna photo club show. The chosen photo depicts people selling baskets of mushrooms. The photographer is Yaroslav Savchyn and the photo is entitled "Mushroom Time." Bob Glywa made a motion to donate this photograph to Prairie Village for display in the City Hall kitchen. Craig Stramel seconded the motion and it was passed.



Dolyna silent auction expenses, 2012: Dolyna held a silent auction to raise money for repairs at the music school, and the Prairie Village Sister City Committee mailed donated items to Dolyna. Bob McGowan made a motion to approve Vera Glywa's mailing expenses in the amount of \$40.57. Jim Hohensee seconded the motion and it was passed.

Gift of photographs to Peace Corps volunteer: Robin and Jim Eleazer served in the Peace Corps in Dolyna for three years. Robin was instrumental in the formation of the Dolyna photo club and took some of the photos which were in the September 2012 show. Jim Hohensee made a motion to give Robin Eleazer six of her printed and framed photographs from the show, in commemoration of her support of the sister city relationship between Dolyna and Prairie Village during her Peace Corps service. Bob McGowan seconded the motion and it passed.

Foreign exchange students' reception: The reception for five foreign exchange students at Shawnee Mission East H.S and their four host families will take place at City Hall on January 27. Carole Mosher will bring gift bags and refreshments. Jim Hohensee will notify committee members who are not present at tonight's meeting. Danielle Dulin will invite the City Council members.

Visit to Dolyna, Ukraine, August 2014: Dolyna Mayor Volodymyr Harazd invited Prairie Village Mayor Ron Shaffer to Dolyna Days, August 7-10. Mayor Shaffer is looking at the timing of the visit to Dolyna to see if it works with his schedule. The committee is looking for other people to go along and is making contact with Prairie Village people who might want to go.

Presentations about Peace Corps experiences: Craig Stramel will check through the Kansas City Area Peace Corps Association with former Peace Corps volunteers for their availability and possible dates.

Earth Fair: The Earth Fair is coming up in the spring, but the date has not yet been announced. The committee plans to hand out sunflower seeds again, along with flyers about our sister city relationship and information about the sunflower garden.

Bricks: The city will be coming up with guidelines for content for all bricks. The committee is holding off on this until we receive the guidelines from the city.

Disposition of photos from the 2012 show: The committee discussed this issue extensively. Currently the framed, matted photographs are in the Glywa's basement. The committee discussed the possibility of selling or giving away some of them. The photo show expenses were originally paid out of the sister city committee budget. If the photos are sold, the committee would have to determine the disposition of any possible proceeds. It might be possible to reuse the frames and mats for a future show. Photos could be sold minus the mats and frames. The results of this discussion were: 1) Bob Glywa will take the photos out of the mats and frames. 2) Danielle Dulin will store the frames on city premises. 3) Bob Glywa will keep the mats for future use. 4) The photos will be offered for sale at various events.

Social media: The social media subcommittee has not yet met, and will schedule another meeting. Nick (Nicholas) Sanders, Human Resources Manager, is currently the city of Prairie Village web site administrator while Jeanne Koontz is on maternity leave.

Next committee meeting, February 2014: The next sister city committee meeting will be held on Monday, February 10, 2014.

Adjournment: A motion to adjourn was made by Craig Stramel, seconded by Bob Glywa, and passed. The meeting was adjourned at 8:00 p.m.

<u>MEMBERS</u>		
1	Cindy	Dwigans
2	Bob	Glywa
3	Vera	Glywa
4	Jim	Hohensee
5	Peter	Jarosewycz
6	Bob	McGowan
7	Carole	Mosher
8	Aaron	Noll
9	Craig	Stramel
student	Ivan	Novikov
liaison	Ron	Shaffer

Non-member:

Danielle Dulin, Assistant to City Administrator

Prairie Village Arts Council
Wednesday, January 15, 2014
7:00 p.m.
City Hall Council Chambers

Minutes

The Prairie Village Arts Council met at 7:00 p.m. in the City Council Chambers at City Hall. Members present: Shelly Trewolla, Chair, Truss Tyson, Daniel Andersen, Pam Marshall, Kim Horgan, Wayne Wilkes and Shervin Razavian. Staff: Kate Gunja

Introduction of Members

Shelly welcomed Kate Gunja as the new staff person for the Arts Council.

Minutes

The minutes from the November 20, 2013 meeting were approved as submitted.

Financial Reports

Kate Gunja gave a brief update on the 2013 Arts Council budget. The committee planned to discuss the line-item budget for 2014, however, requested budget information from the Municipal Foundation related to the Arts Council before setting the 2014 budget. Kate will provide this information at the February Meeting. There was discussion regarding JazzFest funding and it was decided that this item should also be placed on the February Meeting agenda for consideration.

City Council Report

Council Member Odell was not present.

Exhibit/Receptions

January Exhibit/Reception – Diana Werts, January 11th, 2013 from 6:30 – 7:30 p.m.
There was a good turnout for the January reception.

February Exhibit/Reception – Filbeck, Finkelston & Schnakenberg, February 14th from 6:30 to 7:30 p.m.
Pam, Kim, Shervin, Shelly and possibly Wayne said they would be present for the February reception.

Old Business

Discuss Marketing

This item was moved to the February meeting agenda for discussion as Lindsay Ridder was working on information for the Committee but was not able to attend the meeting.

Discuss Children's Show

This item was continued from the November 20 agenda as Julie Flanagan had said that she would work on this idea. Julie was not able to attend the meeting so the item will be continued to the February meeting agenda.

Shelly stated that she had received KC Studio Magazine and noticed that the Leawood Arts Council is hosting a juried children's show. She inquired if there was any interest. There was discussion among the committee that they may be interested in hosting a children's show but the committee was not sure that it needed to be juried.

Shelly also mentioned that she had been talking to the Merriam Arts Council about what area Arts Councils can do to support each other's efforts.

Ribbon Cutting for Corinth Square

Shelly stated that the Committee had considered the dates of April 17 or 24. After some discussion the Committee decided to hold the event on Thursday, April 24 at 5:30 p.m. pending that this date was open for the Northeast Johnson County Chamber and was acceptable to the property managers. Kate said that she would contact the Chamber, property manager and would also contact the Mayor to place on his calendar. There was discussion about involving the businesses and serving alcohol at the event. Kate said that she would look into this, discuss with the property manager and would report back to the Committee at the February meeting.

New Business

2014 Budget Discussion

This item was continued to the February 19 Meeting Agenda.

Set Artist Application Submission and Review Dates for 2015 Showings

The Committee agreed that they would like to schedule shows 6 months at a time for 2015. The Committee requested an article in the upcoming Village Voice indicating that the Committee was accepting applications for consideration for the first 6 months of 2015 and that to be considered, applications must be submitted by May 30th. Applications will be reviewed at the June meeting. The Committee requested that this information be posted on the website and also included in the April/May edition of the newsletter.

Shelly asked the Arts Council to begin thinking about people who would be good jurors for the State of the Arts this fall.

Discuss 2014 Shooting Stars Gala

Shelly explained that Shooting Stars is a high school juried art show for students in Johnson County and provided an overview of the event. The Arts Council has previously sponsored the event and there was discussion about the donation amount.

Daniel Andersen moved to approve a donation of \$500 to Shooting Stars for 2014. Shervin Razavian seconded the motion which passed unanimously.

Shelly added that auditions would be held on January 25 at the MidAmerica Nazarene College. She said to let her know if anyone was interested in assisting with them.

Shelly brought up the idea of expanding art offerings to other performing arts, for instance musicians. The Committee discussed this possibility and considered how it might work during the monthly Art Receptions. The Committee asked that information be placed in the next newsletter indicating that the Council was interested in accepting applications for musical performing artists to perform during the monthly Art Receptions. Kate said that she would work with Shelly in drafting this information for the newsletter.

To continue the discussion regarding expanding art offerings, Shelly asked the Council to think about inclusion of other art forms, the skills and talents of individual members, and ways to tap into existing events.

Daniel mentioned that tomorrow, January 16 there would be a presentation to the Johnson County Board of Commissioners of the Public Art Master Plan presented by the JOCO Public Art Commission. Daniel inquired if anyone would be able to attend to show support of the plan. No one indicated that they could attend.

The meeting was adjourned at 8:20 p.m. The next meeting will be February 19 at 7:00 pm.

PRAIRIE VILLAGE ENVIRONMENT AND RECYCLE COMMITTEE

Minutes, January 22, 2014

Pete Jarchow, for the Steering Committee, opened the meeting at 7:00 p.m. Attending were Pete, Ben Claypool, Thomas O'Brien, Margaret Goldstein, Polly Swafford, Karin McAdams, Penny Mahon, Toby Grotz, Ashley Weaver, Ruth Hopkins, and Kate Gunja, Assistant City Administrator. Visitors included Linda Gourley, Earth Fair Coordinator; Kathy Riordan, former member; and Megan England, Roeland Park City Council, with Roeland Park and Overland Park supporters Halli Vrooman, Verna Crane, Marilyn Lyons (OP Environmental Advisory Council), Thomas Madigan and Sandra Sanchez.

The minutes from December 4 were approved as written.

Guest presentation: Megan England from Roeland Park, speaking on their experiences proposing a ban on one-use plastic bags in Roeland Park.

- Roeland Park's Sustainability Committee surveyed citizens in 2008 and found an interest in the environment. Speaking with Tommy Wells, a Washington DC councilman, they learned of DC's successful use of a plastic bag use fee. This action reduced plastic bag use by 80% and raised funds for environmental cleanup. Many other areas have passed similar measures.
- Businesses in Roeland Park were favorable to a bag limitation, especially Walmart, which has been attempting to make a variety of environmentally sound improvements. Money taken in through a bag fee would go partly to businesses and partly to the city.
- The committee presented a thorough document to the Roeland Park City Council, which was supportive.
- However, three years ago the city of Mission faced litigation due to its "driveway tax," which charged a fee to homeowners and businesses to help finance roadwork. This fee was categorized as an excise tax. The committee withdrew its plastic bag fee plan, being advised that this measure could be looked on in the same way.
- Now they are looking at ways to change behavior without legislating it. "Bag monsters" at major retail outlets could teach about the perils of plastic bags, for instance.
- At this point some possibilities are: Roeland Park, Overland Park and Prairie Village could join forces to create change; our committee could consult with our city attorney and the attorney for the state about the legality of a bag fee; we can study Roeland Park's extensive documentation and consider further options.

Reports and business:

- **Earth Fair – Linda Gourley:**
 - Publicity is well underway, including articles to *Greenability* and *Village Voice*, handouts for vendors, entries in many calendars, and updating the website.
 - An exciting new exhibit will be from MindDrive, a student engineering group.

- We hope to include a cluster of exhibits on sustainable vacations and outings, from the state parks organizations, Sierra Club, Amtrak and others. Those with suggestions for this should contact Karin.
- **Community Forum:** Kathy Riordan
 - Kathy gave a complete report in October, but it was not minuted, as there was not a quorum. Kate Gunja has a copy of the report. The committee did not use all the funds that were budgeted for the forum.
 - Kathy would like to recognize Deb English for all the hard work that she put into the 2012 and 2013 forums.
 - In the future, Kathy would like to continue to serve on the forum committee, mostly to work with the caterer.
 - She proposes adding an additional co-sponsor, True Blue Women.
 - They are interested, and Jennifer Byers, of the environmental subcommittee, will be a contact person. The forum could then be directed by a committee to be made up of two or more representatives from our committee, KNRC and True Blue Women.
 - With this structure, there would be more partners to help draw attendance.
 - There would then be no need to have a chairperson to head the event, or else a chair could be chosen by the planning committee.
 - A motion to join with True Blue Women and KNRC to plan future forums was seconded and passed.

Community Gardens:

- Only ten plots opened up after this growing season, and many more people would like to use them. A lottery is planned to decide who gets them, and it will be followed by a general meeting on February 8 at 9:00 a.m.
- The garden committee is interested in finding new ways to expand. It is of interest that Cherokee Christian Church, home of the auxiliary garden, will be moving, but the future tenant, a Montessori school, may be interested in maintaining the garden.
- **A note from Ruth Hopkins:**
 - The city council will be looking at each city committee to assess its viability.

The meeting adjourned at 8:55 pm.

The next meeting will be held on February 26 at 7:00 p.m.

Respectfully submitted,

Karin McAdams

COUNCIL COMMITTEE OF THE WHOLE
February 3, 2014

The Council Committee of the Whole met on Monday, February 3, 2014 at 6:00 p.m. in the Council Chambers of City Hall at 7700 Mission Road, Prairie Village. The meeting was called to order by Council President Dale Warman with the following members present: Mayor Shaffer, Ashley Weaver, Laura Wassmer, Brooke Morehead, Charles Clark, Courtney McFadden, Ted Odell and David Belz; Ruth Hopkins, Steve Noll, Andrew Wang arriving late. Staff Members present: Wes Jordan, Chief of Police; Keith Bredehoeft, Public Works Director; David Waters for the City Attorney; Quinn Bennion, City Administrator; Kate Gunja, Assistant City Administrator; Lisa Santa Maria, Finance Director; Danielle Dulin, Assistant to the City Administrator; Nic Sanders, HR Specialist, Glen Cole, Management Intern and Joyce Hagen Mundy, City Clerk.

KC Communities For All Ages

Kate Gunja introduced Cathy Boyer-Shesol with MARC who is the facilitator of the KC Communities For All Ages Grant Program. Prairie Village is involved in Phase I of the Grant and is one of four cities involved in the Phase II pilot program.

Cathy Boyer-Shesol presented background on the grant. The outcome from the Phase I was the creation of the “Making Your Community Work for All Ages” Toolkit for Cities. She presented data on the changing population noting a significant increase in the aging population. Older residents desire to remain in their homes as long as possible or if not in their homes in their community. Housing options are becoming more important as well as the ability to adapt their current homes. Walkability within the community is important to seniors. Mobility and available transportation services will play a vital role in their ability to remain in their homes. Phase II is developing a checklist of criteria for a city to achieve certification as a “Community for all Ages”. Each participating city will create a task force address these issues.

Annual Exterior Grant Program Update

Glen Cole, Management Intern for the University of Kansas presented the 2013 Report for the Exterior Grant Program. This program is a matching funds grant of \$50,000 from the Economic Development Fund. In 2013, approximately \$46,000 was awarded for 26 projects. Mr. Cole reviewed the project uses and the map of the areas where grants were awarded. He presented before/after photos of homes at 7345 Ash, 2604 West 76th Street and 5810 West 75th Terrace.

Over the past six years, there has been almost \$1.6M in investment made to properties in the city through the grant program. Applications for the 2014 program will be accepted beginning March 1st.

Laura Wassmer asked if the program could be used by individuals or companies “flipping” a home. She views that similar to providing a TIFF for residential development and would not want to see them receive funds over a homeowner wanting to improve their property. Quinn Bennion stated the program is open to all. The purpose of the

program is to improve neighborhoods. He noted it would be difficult to determine the intent of the individual seeking the grant. Ms Wassmer responded it was listed under a company name. She wants homeowners to be the primary beneficiaries of the program.

Charles Clark stated the program is not about individual homes, but about lifting up the entire neighborhood. It was created to improve neighborhoods with code problems. Steve Noll asked if it was known how many of the homes receiving grants had been cited for code violations. The intent of the program was to help substandard properties. Mr. Bennion replied that information is not readily available. He noted each situation is different. The purpose of the program is to incent action by others and to encourage home owners to do more than originally intended with the receipt of additional funding.

Ruth Hopkins stated she lives in an area covered by the grant program and feels that the program is working. It is keeping homes from becoming rundown to where they have code violations. There are people on the waitlist for the program. Ted Odell also lives in an area within the grant area and has seen a difference since the program began.

David Belz agreed the program is working. Ms Wassmer stated that individuals “flipping homes” would spend whatever money is necessary without grant funds and feels the funds should go first to homeowners. She is not concerned with rental properties participating in the program.

Ted Odell expressed concern with legality of limiting participating. Katie Logan stated she could investigate this. Ms. Wassmer stated it is not a big issue at this time, but when there becomes a longer waiting list she feels there should be a priority rating.

Quinn Bennion stated the building inspector has worked with these people and could probably determine how each of the grant funds were used; i.e. number of rentals, owner-occupied, for sale properties.

Courtney McFadden suggested the grant brochure be stapled to the code violation notices.

Laura Wassmer suggested that perhaps the first month only applications from home owners were received. She would like to track who receives the grant funds.

COU2014-03 Consider adoption of City Council Policy outlining the procedures for filling a vacancy in the office of mayor and selecting the President of the Council.

Danielle Dulin stated that following discussion regarding Charter Ordinance No. 20 at the December 2nd City Council meeting staff was asked to prepare a draft Council Policy to outline the voting procedures for filling a vacancy in the office of the Mayor and also a policy to reflect current practices on the selection of Council President. She noted the changes reflected in bold are not staff recommendations, but changes to the draft policy to clarify the current practice. The voting procedures for the selection of a mayor is a draft to serve as a starting point for discussion by the Council.

Selection of Mayor

Ted Odell expressed concerns with the roll call vote and suggested a written ballot. He was also concerned with the procedure proposed in case of a tie vote.

Laura Wassmer agreed that it should be a written vote. Katie Logan advised the Council that it could be a written ballot, but not a secret ballot. The votes need to be public.

Steve Noll commented that the proposed tie breaking procedure would eventually work - it may take time, but in the end everything becomes a compromise. It is straightforward and visible to everyone including the public.

Katie Logan stated the charter ordinance delegates to the City Council the ability to select a Mayor. The selection of a Mayor is not addressed in the state statutes, there is no conflict with the proposed procedure.

Quinn Bennion noted there could be a scenario where the selected Mayor served past the city's next election.

Danielle Dulin asked how the Council would want to handle if the selected individual did not want to give up their council seat to become Mayor. Katie Logan states the selected Mayor may appoint someone to fill the vacancy until the next election for that council position.

Laura Wassmer stated it would be helpful to have some of the scenarios written out. Danielle Dulin stated staff could prepare those.

Selection of Council President

Ruth Hopkins stated she does not support the past policy. She does not believe everyone deserves to be President.

Charles Clark noted the policy was in never in writing. It was an understanding of a process that was followed.

Ted Odell feels that everyone should be given the opportunity to be Council President. He has a problem with the language "current tenure". Looking at past history only two individuals served as Council President for more than one year.

Laura Wassmer supports the current process without the "current tenure" language. Being Council President is a great learning process.

David Belz agreed that it is an excellent learning process and stated that almost everyone who has served as stepped up to the challenge. The Council President is a facilitator; it is not a difficult job. It does provide the individual access to the Mayor and staff.

Ruth Hopkins noted the glaring exception and stated she does not feel it is a right.

Andrew Wang stated in addition to being a facilitator, there are a lot of different personalities and individuals with personal agendas that the President needs to bring together. That is not an easy job. The Council President also has the ability to set the committee agenda, determining what issues are discussed. He is not against the policy as written.

Laura Wassmer noted that how it is currently written it should be a majority vote, she suggested that possibly it should be a super majority vote. She does not feel that one person could push an agenda.

Dale Warman stated the focus is too much on next year. If you are setting a written policy, you need to look to the future years.

Laura Wassmer stated why would someone who left and comes back get to serve a second time as Council President. It is not fair to those with consecutive service.

ADJOURNMENT

The Council Committee of the Whole meeting was adjourned at 7:27 p.m.

Dale Warman
Council President

**BOARD OF ZONING APPEALS
CITY OF PRAIRIE VILLAGE, KANSAS
AGENDA
March 4, 2014
6:30 P.M.**

I. ROLL CALL

II. APPROVAL OF MINUTES - January 7, 2014

III. ACTION ITEM

- BZA2014-02 Request for a Variance from P.V.M.C. 19.06.041 "Lot Size"
To decrease the width of the lot from 125' to 108.9'
5015 West 67th Street
Zoning: R-1a Single Family Residential District
Applicant: James Porter**
- BZA2014-03 Request for a Variance from P.V.M.C. 19.06.035 "Rear Yard"
To reduce the rear yard setback from 25' to 19'
5336 West 67th Street
Zoning: R-1a Single Family Residential District
Applicant: Weston Bennett on behalf of Don & Katie Calderon**

IV. OTHER BUSINESS

V. OLD BUSINESS

VI. ADJOURNMENT

If you cannot be present, comments can be made by e-mail to
Cityclerk@Pvkansas.com

**PLANNING COMMISSION AGENDA
CITY OF PRAIRIE VILLAGE
TUESDAY, MARCH 4, 2014
7700 MISSION ROAD
7:00 P.M.**

I. ROLL CALL

II. APPROVAL OF PC MINUTES - FEBRUARY 10, 2013

III. PUBLIC HEARINGS

**PC2014-01 Proposed Revisions to Chapter 19.54 & 19.28
Adding a Reapplication Waiting Period
Applicant: Ron Williamson, City of Prairie Village**

**PC2014-02 Request for a Special Use Permit for Private School
7457 Cherokee Drive
Zoning: R-1a
Applicant: Jodie Nolen, Global Montessori Academy**

IV. NON-PUBLIC HEARINGS

**PC2014-105 Lot Split
5015 West 67th Street
Zoning: R-1a
Applicant: James Porter**

**PC2013-120 Preliminary Plat Approval
Chadwick Court
Zoning: RP-1b
Applicant: Robert Royer**

This item was continued by the Planning Commission at its meeting on 2-10-14. The applicant is working out details on the storm water management and the item will be placed back on the Agenda when the information is prepared and submitted to the City. This is not a Public Hearing matter and no action is needed.

**PC2014-107 Site Plan Approval with wireless antenna
7700 Mission Road
Zoning: R-1a
Applicant: Chris Ross with Black & Veatch for AT&T**

**PC2014-108 Site Plan Approval with wireless antenna
7700 Mission Road
Zoning: R-1a
Applicant: Justin Anderson with SSC for Verizon**

**PC2012-109 Sign Standards Approval
2220 West 75th Street
Zoning: C-0
Applicant: Stephanie Warden DDS & ALH Home Renovations**

PC2012-113 Revised Site Plan for PV Shopping Center
NW Corner 71st & Mission Road
Zoning: C-2
Applicant: Kylie Stock, LegaC Properties

V. OTHER BUSINESS
Discussion of possible changes to RV regulations

VI. ADJOURNMENT

Plans available at City Hall if applicable
If you cannot be present, comments can be made by e-mail to
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***Any Commission members having a conflict of interest, shall acknowledge that conflict prior to the hearing of an application, shall not participate in the hearing or discussion, shall not vote on the issue and shall vacate their position at the table until the conclusion of the hearing.**

**Council Members
Mark Your Calendars
March 3, 2014**

March 2014	CPH photography exhibit in the R. G. Endres Gallery
March 3	City Council Meeting
March 14	Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
March 17	City Council Meeting
April 2014	Lucinda Baker exhibit in the R. G. Endres Gallery
April 7	City Council Meeting
April 11	Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
April 21	City Council Meeting
May 2014	Wayne Wilkes oil and acrylic exhibit in the R. G. Endres Gallery
May 5	City Council Meeting
May 9	Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
May 19	City Council Meeting
May 26	City offices closed in observance of Memorial Day
June 2014	Helen Benson mixed media exhibit in the R. G. Endres Gallery
June 2	City Council Meeting
June 13	Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
June 16	City Council Meeting
July 2014	Senior Arts Council mixed media exhibit in the R. G. Endres Gallery
July 4	City offices closed in observance of Independence Day
July 4	VillageFest
July 7	City Council Meeting
July 11	Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
July 21	City Council Meeting
August 2014	
August 4	City Council Meeting
August 8	Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
August 18	City Council Meeting
September 2014	Shannon and Judy Manning mixed media exhibit in the R. G. Endres Gallery
September 1	City offices closed in observance of Labor Day
September 2	City Council Meeting
September 6	JazzFest
September 12	Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
September 15	City Council Meeting
October 2014	State of the Arts exhibit in the R. G. Endres Gallery
October 6	City Council Meeting
October 10	Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
October 20	City Council Meeting

November 2014 Jhulan Mukharji and Ada Koch mixed media exhibit in the R. G. Endres Gallery
November 3 City Council Meeting
November 14 Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
November 17 City Council Meeting
November 27 City offices closed in observance of Thanksgiving
November 28 City offices closed in observance of Thanksgiving

December 2014 Kathleen Manning photography exhibit in the R. G. Endres Gallery
December 1 City Council Meeting
December 112 Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
December 15 City Council Meeting
December 25 City offices closed in observance of Christmas