

CITY OF PRAIRIE VILLAGE

May 19, 2014

Council Committee Meeting 6:00 p.m.

City Council Meeting 7:30 p.m.



COUNCIL COMMITTEE OF THE WHOLE
Council Chambers
May 19, 2014
6:00 PM

AGENDA

ASHLEY WEAVER, COUNCIL PRESIDENT

AGENDA ITEMS FOR DISCUSSION

- COU2014-15 Consider agreement for information technology services with the Johnson County Department of Technology and Innovation
Nic Sanders

- *COU2014-16 Consider approval of a contract with Metro Asphalt, Inc. for the 2014 Street Repair Program
Keith Bredehoeft

- *COU2014-17 Consider purchase of laptops for Police Department Vehicles
Tim Kobe

- 2015 Budget Overview and Significant Budget Considerations
Lisa Santa Maria and Quinn Bennion

***Council Action Requested the same night**



COUNCIL COMMITTEE

Council Committee Meeting Date: May 19, 2014

City Council Meeting Date: June 2, 2014

COU2014-15: Consider agreement for information technology services with the Johnson County Department of Technology and Innovation.

SUGGESTED MOTION

Move that the Committee approve the agreement with the Johnson County Department of Technology and Innovation for information technology services.

BACKGROUND

A representative from the Johnson County Department of Technology and Innovation department will be in attendance at Monday night's meeting to provide County prospective and answer questions.

During the May 5, 2014 Council Committee of the Whole meeting, staff discussed the idea of moving information technology services to the Johnson County Department of Technology and Innovation (JoCo IT). The current information technology consultant, Alexander Open Systems (AOS), has been with the City for more than ten (10) years and provides twelve (12) hours of on-site services per week.

Moving to JoCo IT shifts towards a 'shared services' model and allows for increased shared services with the County and other agencies increasing efficiency and service and saving operating cost. Staff estimates that there will be a small cost savings beginning in year two:

	AOS status quo	JoCo IT option
2015 Estimated	75,000	71,420
2014 Estimated	72,000	74,362* + 36,000 (AOS)
2013 Actual	80,550	-
2012 Actual	68,940	-
2011 Actual	69,335	-

** Includes one-time implementation cost of \$40,026. Remainder of the year is prorated.*

JoCo IT would provide 24x7 support, better buying power for software and hardware, as well as potential future benefits of backup and disaster recovery, phone and internet services, and SPAM and internet content filtering.

Other northeast agencies utilizing JoCo IT:

- Consolidated Fire District 2
- Roeland Park
- Mission
- Mission Hills
- Fairway

FUNDING SOURCE

Information technology services are funded with the General Fund. The 2014 budget included \$85,000 for this expense; the proposed budget for 2015 will include \$75,000. The one-time implementation fees of \$40,026 will be expensed from the Information Technology/Equipment Reserve Fund.

ATTACHMENTS

- Interlocal Agreement with Johnson County for Information Technology Services.

Prepared By:

Nicholas Sanders, PHR, IPMA-CP
Human Resources Manager

Date: May 14, 2014

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INFORMATION TECHNOLOGY SERVICES AGREEMENT

THIS INFORMATION TECHNOLOGY SERVICES AGREEMENT, made and entered into this ___ day of _____, 2014, by and between the City of Prairie Village, Kansas (“City”) and Johnson County, Kansas, by and through the Department of Technology and Innovation, a department within Johnson County, Kansas government (“County”).

WITNESSETH:

WHEREAS, the City is a municipality located within Johnson County, Kansas, organized and existing under the laws of the State of Kansas; and

WHEREAS, the County is a municipal government organized and existing under the laws of the State of Kansas; and

WHEREAS, the City desires to engage the services of the County for the purpose of providing information technology services; and

WHEREAS, the City and the County are authorized by K.S.A. 12-2908 to enter into an agreement with each other for the performance of a governmental service, activity, or undertaking; and

WHEREAS, the City and the County hereby agree to accept the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the above and foregoing recitals, the mutual promises and covenants hereinafter given, and for other good and valuable considerations, the parties hereto agree as follows:

1. In order to promote efficiency and coordination among local governments, this Agreement sets forth the terms and conditions upon which the County will provide certain information technology services to the City.
2. The County agrees to perform and the City agrees to pay the County for each and all services described in the “Services & Costs” table at the rates set forth in the table, below. These rates are valid for the first year of this Agreement.

SERVICES & COSTS:

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Service	Description	One Time Cost	Ongoing Cost
Systems	Server Backup and Restore	\$1656.24	\$4,880.39
	Active Directory Support, OS support, server patching and updates, print management, other miscellaneous domain administrator functions.	\$8557.24	\$12,200.97
	Microsoft Exchange Support	\$2208.32	\$4,692.68
Consulting	Provide project management services to coordinate and direct activities associated with the initial transition to the Johnson County support model. (10 hrs @ \$69.01 per hr). Provide project management services on an as needed basis to support future major IT initiatives. \$69.01 per hr Provide support for major changes in the technology environment - \$69.01 per hr	\$690.10	
Business Application Support	Application Support: Deploy current client/server applications to new server(s). Support current applications	\$1380.20	\$2,325.00
Data Administration	Provide periodic monitoring of the database management systems, optimizing or repairing where possible, and tackling problems as they occur. Manage backups of the databases.	\$2760.40	\$2,684.21
Network	Monitoring: 24/7/365 monitoring of all network systems including servers, switches and core appliances that are SNMP-enabled and accessible via Internet from Johnson County Support Center. Support and Administration: Review of event logs and manufacturer-recommended firmware updates and available upgrades for CISCO switches, routers and firewalls. Identification evaluation and application of available and relevant firmware (OS) upgrades.	\$13111.90	\$12,200.97
Security	Vulnerability Monitoring: external scanning of client's network for potential security weaknesses, based on public-facing devices on the Client Network and if applicable, identification and recommendations of ways to better protect the client's network. Firewall and VPN Management: Monitoring and maintenance of client's one CISCO ASA firewall. We assume that the ASA firewall is also used for VPN. Maintain and support the current VPN system. Make recommendations to upgrade or replace current systems and bring them to Johnson County standards. Anti-Virus and Threat Management: Maintain and support the client's anti-virus. Monitoring automated updates to ensure AV signatures are current and active across all devices. Assistance as needed should an infection occur. Network Security Monitoring and Intrusion-Prevention Services: Monitor the Client's network for any security issues and make recommendations	\$4140.60	\$10,167.47
Support Center – Help Desk	The Support Center team provides Tier 1 and Tier 2 desktop support 24 x 7. Support is provided by a team of highly skilled, certified, technicians who have an average of 8 years' experience each.	\$5520.80	\$19,521.55
Total Cost		\$40,025.80	\$68,673.24

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3. The County shall bill the City on a quarterly basis prior to performance of the services to be provided pursuant to this Agreement and the City shall pay the County within thirty (30) days of receipt of the County's bill. As such, upon execution of this Agreement by the parties, the County shall bill the City in the amount of \$57,194.11 for the cost of first quarter services, which includes the one-time costs and twenty-five percent (25%) of the ongoing costs.

4. This Agreement shall become effective upon its execution by both parties. The term of this Agreement is one year and it may be renewed upon written agreement of the parties. The County reserves the right to review and adjust the pricing of its services at the time of each renewal. Either party may terminate this Agreement by giving ninety (90) days written notice to the other party. In the event of termination by the City, the County shall be compensated for services performed through the effective date of termination. In the event of termination by either party, the City shall be responsible for and agrees to pay any costs, fees, or penalties charged by or incurred under any third party agreements for services, software, or equipment related to the City's technology services.

5. The City shall allow the County to have on-site access to the City's physical infrastructure as reasonably needed by the County to perform services under this Agreement. The City shall provide to the County administrative level access to software, hardware, and technology components required by the County to perform services under this Agreement, including all administrative level passwords, keys, and access codes.

6. In addition to the services set forth in the table above, the City may request additional services or projects to be performed by the County. In that event, the parties shall meet and negotiate in good faith to discuss and draft a Statement of Work ("SOW"), which shall set forth the specific services to be provided by the County and any additional terms and conditions. The parties agree that during the initial term of this Agreement, the County's rate for such additional services or projects shall be \$69.01 per hour. Once completed, all such SOWs shall be executed and attached as an exhibit to this Agreement and incorporated herein. Throughout the course of this Agreement, the parties may negotiate and execute multiple SOWs, and any reference to a SOW in this Agreement shall include each such SOW and any amendments thereto.

7. The parties shall be responsible for jointly administering this Agreement. Each party will assume administrative responsibility for its own participation in this cooperative undertaking.

8. Each party shall indemnify and hold harmless the other party from any and against all claims, losses, damages or costs arising from or in any way related to the negligent or intentional act, error, or omission of the other, its officers, employees or agents, in performing under this Agreement. Under no circumstances shall either party be liable for any indirect, incidental, special, punitive, or consequential damages or losses resulting from or related to the services provided by the County pursuant to this Agreement. Under no circumstances shall the County be liable for any claims, losses, damages or costs arising from or in any way related to the City's use of its current computer hardware, software, and related equipment, including, but not limited to, lost, damaged, or inaccessible data, records, or information, or from the City's failure to comply with the County's recommended best practices with regards to security, equipment replacement, software replacement, and server management.

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9. The County expressly disclaims any express or implied warranties, representations, or endorsements regarding any data, information, services or products provided in connection with, included in, or regarding this Agreement. No advice or information given by County officers, employees, agents, or contractors shall create a warranty.

10. All County employees providing services on behalf of the County under this Agreement shall remain employees of the County for all purposes and shall not be deemed employees of the City under any circumstances. Similarly, all City employees coordinating with or providing any assistance to the County in the performance of services under this Agreement shall remain employees of the City for all purposes and shall not be deemed employees of the County under any circumstances.

11. Any notices required or permitted by this Agreement shall be in writing and shall be sent by certified U.S. mail, postage prepaid, to the following addresses:

TO THE COUNTY: Johnson County Information Technology Services
Attn. ITS Director
111 S. Cherry, Suite 3100
Olathe, KS 66061

TO THE CITY: City of Prairie Village
Attn.

Prairie Village, KS

12. (a) The waiver of any breach of any provision of this Agreement shall not constitute a waiver of any subsequent breach of the same or other provisions herein; (b) This Agreement contains the entire understanding between the parties and supersedes all prior agreements or understandings between the parties with respect to the subject matter hereof; (c) Any modification or waiver of any provision in this Agreement shall not be effective unless made in writing; (d) This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas and venue shall be in the state courts of Johnson County, Kansas; and (e) Neither party shall assign, transfer, convey, subcontract, resell or otherwise dispose of this Agreement or any of the rights and obligations hereunder without the prior written consent of the other party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in two (2) counterparts by their duly authorized representatives and made effective the day and year first above written.

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CITY OF PRAIRIE VILLAGE, KANSAS

JOHNSON COUNTY, KANSAS

By _____

Ed Eilert, Chairman of the Board

Printed name & title

ATTEST:

Clerk of the Board

APPROVED AS TO FORM:

Cynthia Dunham
Deputy Director of Legal



**City of Prairie Village
Technology Analysis**

IT Service Options

May 2013

* Costs updated February 2014

**City of Prairie Village
Department of Technology and Innovation**



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OVERVIEW

The Johnson County Department of Technology and Innovation (DTI) occasionally assists County related entities and Johnson County cities by providing technology services. The department has done this for several years and has provided everything from single services like Internet access and business applications to fully managed technology environments for various organizations.

What services can be provided is determined by the relationship of the entity to the County and what is allowed by Johnson County software licensing agreements with their technology vendors. While services cannot be provided at no cost, many times DTI can provide them at a much lower cost than organizations can by themselves or through business partners and vendors.

Background

DTI and City of Prairie Village staff recently discussed exploring what technology services DTI could provide to the City. Prairie Village is aware of the services being provided to other Johnson County cities and is interested in what Johnson County DTI could offer them in the way of IT support services. The City is exploring support options for their technology environment. DTI is not able to commit to technology support for the City of Prairie Village at this time. This report was produced for informational purposes and for possible future use

This activity is in line with direction from County management to look for opportunities for collaboration and service sharing with other County entities. This is just one of several prospects for partnerships with other public organizations within Johnson County.

Objectives

The key underlying business objectives for this effort are listed below:

- Understand the current City of Prairie Village technology environment.
- Determine what services DTI can provide
- Produce a report, detailing what services can be provided and the cost of providing them.

Approach

Johnson County technology subject matter experts conducted interviews with the City of Prairie Village to learn about their technology environment and the challenges facing the City in the area of technology.

Assumptions and Constraints

The following list identifies the key assumptions and constraints associated with this analysis:

- The City of Prairie Village is under the same budget pressures as other public entities.
- DTI is not able to commit to technology support for the City of Prairie Village at this time. This report was produced for informational purposes and for possible future use.
- The costs quoted in this report are based on the numbers of employees reported by the city. A change in these numbers would affect the total cost. Any adjustments required would be made if and when a formal agreement is reached.

SERVICE PROPOSAL

In general, Johnson County DTI can provide services comparable to those provided by the City's current provider. The following list details the services.

Services

Service	Description
<p>Help Desk</p>	<p>The Support Center team provides Tier 1 and Tier 2 desktop support 24 x 7. Support is provided by a team of highly skilled, certified, technicians who have an average of 8 years' experience each.</p> <p>The following activities are performed by the Support Center team:</p> <ul style="list-style-type: none"> • Communicate outages through high-volume client contact. • Assist with adds, moves, changes. • Publish applicable standards. • Monitor to insure desktop devices are current with patches and updates. • Perform password resets. • Perform desktop software deployment. • Troubleshoot network connectivity • Assist with failed component replacement. • Acts as liaison with computing vendors. • Acts as liaison with print device service requests. • Configure new devices and devices. • Provide best practice recommendations. • Provide data removal of devices being retired. • Provide answers to How To questions on supported software and hardware. • Perform ad hoc testing of new releases of desktop software. • Provides functionality education on supported desktop applications. <p>DTI Support Center (Help Desk) hours are 7:30 a.m. to 5:30 p.m. (excluding Johnson County recognized holidays.) The DTI Support Center Help Desk can be reached by calling Telephone number: 715-1700 or by sending an email. After hours support is provided via an On-Call staff member who can be reached outside normal business hours at 913-208-9589.</p>

Service	Description
<p>Network and Security</p>	<p>The Network and Security team provides the following services:</p> <p>Network</p> <p>Monitoring: 24/7/365 monitoring of all network systems including servers, switches and core appliances that are SNMP-enabled and accessible via Internet from Johnson County Support Center.</p> <p>Support and Administration: Review of event logs and manufacturer-recommended firmware updates and available upgrades for HP switches, routers and firewalls. Identification evaluation and application of available and relevant firmware (OS) upgrades.</p> <p>Security</p> <p>Vulnerability Monitoring: external scanning of client’s network for potential security weaknesses, based on public-facing devices on the Client Network and if applicable, identification and recommendations of ways to better protect the client’s network.</p> <p>Firewall and VPN Management: Monitoring and maintenance of the firewall. Maintain and support the current VPN system.</p> <p>Anti-Virus and Threat Management: Maintain and support the client’s anti-virus. Monitoring automated updates to ensure AV signatures are current and active across all devices. Assist with remediation activities should an infection occur.</p> <p>Network Security Monitoring and Intrusion-Prevention Services: Monitor the Client’s network for any security issues and make recommendations.</p>
<p>Servers</p>	<p>The Systems Group provides Tier 1 and Tier 2 server support 24 x 7. Support is provided by a team of highly skilled and certified LAN Administrators. Support services are provided via telephone, remote connect or on-site visit.</p> <p>The Systems Group will manage and support the server backups and restores. Specific details will be established and reviewed annually that will define the server and folder(s) (data) that will be backed up.</p> <p>The Systems Group will manage and support Active Directory accounts, login scripts, server operating systems, server patching and updates, folder and file permissions, print queues and other miscellaneous domain administrator functions.</p> <p>The Systems Group will manage and support Microsoft Exchange Email accounts.</p>
<p>Data Administration</p>	<p>The Data Administration team will provide periodic monitoring of the database management systems, optimizing or repairing where possible, and tackling problems as they occur.</p> <p>This team will also manage backups of the databases.</p>
<p>Business Application Support</p>	<p>The Application Support and Development team will provide Tier 2 application support. This includes the following:</p> <ul style="list-style-type: none"> • Deployment of current applications to new servers • Troubleshooting application problems • Vendor liaison if necessary • Minor report and application enhancements • Upgrade assistance

Service	Description
<p>Consulting and/or Additional Services</p>	<p>The Project Management Team provides project management services to coordinate and direct activities associated with the initial transition to the Johnson County support model.</p> <p>The Project Manager role serves as the focal point for defining the needs of the project; facilitates communication among the project stakeholders; coordinates and manages all phases of the project; ensures project objectives and client expectations are met.</p> <p>Business Analysis services can be provided to assist in the selection of new or replacement applications.</p> <p>Consulting or additional support beyond the current environment can be provided when circumstances require. Advanced notice of large implementations of additional equipment, new applications, or major changes to the technology environment is beneficial. These services may incur additional support costs depending on the amount of work involved.</p>

Johnson County may recommend that the City adopt some best practices for technology management. These are industry standard practices that are employed in thousands of organizations and have proven to reduce risks and lower technology management costs over the long term. These practices will be discovered as Johnson County becomes more familiar with the City’s environment and will be proposed as needed. Examples may include the following;

- Adopt a policy to force individual password changes every 90 days.
- Limit the number of people that have access to administrative level functions in the environment. At a minimum, this should be done for servers, but can also be beneficial at the desktop level.

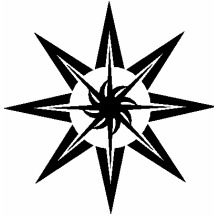
In addition, Johnson County DTI may recommend that the City of Prairie Village change some of the software components in their environment or upgrade certain systems. Again, these will be discovered as Johnson County becomes familiar with the City’s technology environment. An example here might be the antivirus product or the backup software used.

The level of services proposed alleviates the need for Prairie Village staff to be involved with IT related service requests, freeing them up to concentrate on the City services they are responsible for. These services can be provided at a cost of \$66,737.76 per year. Costs are detailed in the next section. There are also one-time costs of \$38,860.00 that will cover the initial migration of services.

SERVICE COSTS

This table provides specifics as to the labor costs involved with providing each service.

Service	Description	One Time Cost	Ongoing Cost
Systems	Server Backup and Restore	\$1656.24	\$4,880.39
	Active Directory Support, OS support, server patching and updates, print management, other miscellaneous domain administrator functions.	\$8557.24	\$12,200.97
	Microsoft Exchange Support	\$2208.32	\$4,692.68
Consulting	Provide project management services to coordinate and direct activities associated with the initial transition to the Johnson County support model. (10 hrs @ \$67 per hr). Provide project management services on an as needed basis to support future major IT initiatives. \$67 per hr Provide support for major changes in the technology environment - \$67 per hr	\$690.10	
Business Application Support	Application Support: Deploy current client/server applications to new server(s). Support current applications	\$1380.20	\$2,325.00
Data Administration	Provide periodic monitoring of the database management systems, optimizing or repairing where possible, and tackling problems as they occur. Manage backups of the databases.	\$2760.40	\$2,684.21
Network	Monitoring: 24/7/365 monitoring of all network systems including servers, switches and core appliances that are SNMP-enabled and accessible via Internet from Johnson County Support Center. Support and Administration: Review of event logs and manufacturer-recommended firmware updates and available upgrades for CISCO switches, routers and firewalls. Identification evaluation and application of available and relevant firmware (OS) upgrades.	\$13111.90	\$12,200.97
Security	Vulnerability Monitoring: external scanning of client's network for potential security weaknesses, based on public-facing devices on the Client Network and if applicable, identification and recommendations of ways to better protect the client's network. Firewall and VPN Management: Monitoring and maintenance of client's one CISCO ASA firewall. We assume that the ASA firewall is also used for VPN. Maintain and support the current VPN system. Make recommendations to upgrade or replace current systems and bring them to Johnson County standards. Anti-Virus and Threat Management: Maintain and support the client's anti-virus. Monitoring automated updates to ensure AV signatures are current and active across all devices. Assistance as needed should an infection occur. Network Security Monitoring and Intrusion-Prevention Services: Monitor the Client's network for any security issues and make recommendations	\$4140.60	\$10,167.47
Support Center – Help Desk	The Support Center team provides Tier 1 and Tier 2 desktop support 24 x 7. Support is provided by a team of highly skilled, certified, technicians who have an average of 8 years' experience each.	\$5520.80	\$19,521.55
Total Cost		\$40,025.80	\$68,673.24



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: May 19, 2014

Council Meeting Date: May 19, 2014

***COU2014-16: CONSIDER APPROVAL OF A CONTRACT WITH METRO ASPHALT, INC. FOR THE 2014 STREET REPAIR PROGRAM.**

RECOMMENDATION

Move to authorize the Mayor to sign the Construction Contract with Metro Asphalt Inc. for Project P5001, 2014 Street Repair Program for \$150,000.00.

BACKGROUND

On April 18, 2014, the City Clerk opened bids for Project P5001, 2014 Street Repair Program. Four bids were received:

Metro Asphalt, Inc.	\$130,074.25
McConnell & Associates Corp.	\$150,500.00
Little Joe's Asphalt, Inc.	\$171,417.45
McAnany Construction Inc.	\$312,200.00
Engineers Estimate	\$149,385.00

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

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

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

FUNDING SOURCE

Funding is available in the 2014 Capital Infrastructure Program Project P5001.

ATTACHMENTS

1. Construction Agreement with Metro Asphalt, Inc.

PREPARED BY

Keith Bredehoeft, Public Works Director

May 15, 2014

**CONSTRUCTION AGREEMENT
BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
METRO ASPHALT, INC.
FOR
PROJECT P5001 - 2014 STREET 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 Contractor hereinafter termed in this agreement, Metro Asphalt, Inc. for the construction and completion of Project, designated, described and required by the Project Manual and Bid proposal, to wit:

CONTRACT COST: The City shall pay the Contractor for the performance of the Work embraced in this Contract, and the Contractor will accept in full compensation therefore the sum (subject to adjustment as provided by the Contract) of One Hundred Fifty thousand and 00/100 Dollars (\$150,000.00) for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

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

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

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

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

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

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

1. DEFINITIONS:

1.1 Following words are given these definitions:

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

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

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

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

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

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

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

CONTRACT PRICE shall be the amount identified in the Construction Agreement between the

City and the Contractor as the total amount due the Contractor for total completion of the Work as per the Contract Documents.

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

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

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

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

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

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

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

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

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

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

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

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

SPECIFICATIONS shall mean those portions of the Project Manual consisting of written technical descriptions of materials, equipment, construction methods, standards and workmanship as applied to the Work and certain administrative details applicable thereto. They

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

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

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

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

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

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

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

specified.

2. ENTIRE AGREEMENT:

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

3. INTENT AND INTERPRETATION

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

consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the City concerning such documents as no such representation or warranties have been made or are hereby made.

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

these requirements shall disqualify the Contractor for the awarding of this Contract.

4. WORK SUPERINTENDENT

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

5. ENGINEER

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

- thirty (30) days a written objection to the decision or direction so rendered and, by such action, may reserve the right to submit the question to determination in the future.
- 5.3 The Engineer, unless otherwise directed or agreed to by the City in writing, will perform those duties and discharge those responsibilities allocated to the Engineer as set forth in this Contract. The Engineer shall be the City's representative from the effective date of this Contract until final payment has been made. The Engineer shall be authorized to act on behalf of the City only to the extent provided in this Contract.
- 5.4 The City and the Contractor shall communicate with each other in the first instance through the Engineer.
- 5.5 The Engineer shall be the initial interpreter of the requirements of the Project Manual and the judge of the performance by the Contractor. The Engineer shall render written graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.
- 5.6 The Engineer will review the Contractor's Applications for Payment and will certify to the City for payment to the Contractor those amounts then due the Contractor as provided in this Contract. The Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to City, based on Engineer's on-site observations of the Work in progress as an experienced and qualified design professional and on Engineer's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of the Engineer's knowledge, information and belief, the quality of the Work is in accordance with the Project Manual (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Project Manual, to a final determination of quantities and classifications for Unit Price Work if such is called for herein, and to any other qualifications stated in the recommendation); and that Contractor is entitled to payment of the amount recommended. However, by recommending any such payment Engineer will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to Engineer in the Project Manual or that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by the City or the City to withhold payment to Contractor.
- 5.7 The Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make such representations to City. Engineer may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in the Engineer's opinion to protect the City from loss because:
- The Work is defective, or completed Work has been damaged requiring correction or replacement,
 - The Contract Price has been reduced by Written Amendment or Change Order,
 - The City has been required to correct defective Work or complete Work in accordance with the Project Manual.
- 5.8 The City may refuse to make payment of the full amount recommended by the Engineer because claims have been made against City on account of Contractor's performance or

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

any resident representative or observer so appointed, when the same are consistent with the obligations of the Project Manual. However, should the Contractor object to any interpretation given by any subordinate engineer, resident representative or observer, the Contractor may appeal in writing to the City Director of Public Works for a decision.

- 5.18 Resident representatives, observers, and other properly authorized representatives of the City or Engineer shall be free at all times to perform their duties, and intimidation or attempted intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the City so decides, to annul the Contract.
- 5.19 Such observation shall not relieve the Contractor from any obligation to perform said work strictly in accordance with the Project Manual.

6. WORK SCHEDULE:

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

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

7. DELAYS AND EXTENSIONS OF TIME

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

8. ADVERSE WEATHER:

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

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

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

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

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

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

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

9. PAYMENT PROCEDURE:

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

that no amount less than \$500.00 will be submitted unless the total amount of the Contract remaining unpaid is less than \$500.00.

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

10. COMPLETION AND FINAL PAYMENT

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

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

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

11. CLAIMS BY THE CONTRACTOR

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

- such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.
- 11.5 The City reserves the right to increase or decrease quantities, and alter the details of construction including grade and alignment as the Engineer may consider necessary or desirable, by approved Change Order. Such modifications shall not invalidate the Contract nor release the surety. Unless such alterations and increases or decreases change the total cost of the Work, based on the originally estimated quantities and the unit prices bid, by more than 25 percent, or change the total cost of any major item, based on the originally estimated quantities and the unit price bid, by more than 25 percent, the Contractor shall perform the work altered, increased or decreased, at a negotiated price or prices. (A major item shall mean any bid item, the total cost of which exceeds 12-1/2 percent of the total Contract amount based on the proposed quantity and the contract unit price).
- 11.6 When the alterations cause an increase or decrease in excess of the 25 percent indicated above, either the Contractor or the Engineer may request an adjustment of the unit price to be paid for the item or items.
- 11.7 If a mutually agreeable adjustment cannot be obtained, the City reserves the right to terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the Work.
- 11.8 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall not include standby costs, indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties.
- 11.9 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving Final Acceptance of the Work shall be extended upon the written notice and claim of the Contractor to the City, for such reasonable time as the City may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven calendar days after the occurrence of the event or the first appearance of the condition-giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Work. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this subparagraph, any claim for an extension of time shall be waived.
- 11.10 The Contractor shall delay or suspend the progress of the work or any part thereof, whenever so required by written order of the City, and for such periods of time as required; provided, that in the event of such delay or delays or of such suspension or suspensions of the progress of the work, or any part thereof, the time for completion of work so suspended or of work so delayed by

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

- 11.11 In executing the Contract Documents, the Contractor expressly covenants and agrees that, in undertaking to complete the Work within the time herein fixed, it has taken into consideration and made allowances for all hindrances and delays incident to such work, whether growing out of delays in securing materials or workers or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the work, or any portion thereof, included in this Contract, except as provided herein.
- 11.12 In addition to the Project Manual particular to Mobilization found elsewhere in this document, additional mobilization shall not be compensable for work outside of the designated areas for work deemed essential by the City. A quantity of work equal to as much as 10% of the total Contract may be required to be performed beyond the boundaries of the designated work areas

12. CHANGES IN THE WORK

- 12.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.
- 12.2 The Engineer shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 12.3 Any change in the Contract Price resulting from a Change Order shall be by mutual agreement between the City and the Contractor as evidenced by the change in the Contract Price being set forth in the Change Order, and, together with any conditions or requirements related thereto, being initialed by both parties.
- 12.4 If no mutual agreement occurs between the City and the Contractor relative to a change in the Work, the Contractor shall proceed with the work that is the subject of the Change Order, and the change in the Contract Price, if any, shall then be determined by the Engineer on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content to the City, as the Engineer requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies or equipment, including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools, whether rented from the

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

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

13. INSURANCE AND HOLD HARMLESS.

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

difficulties, or any other natural or existing circumstances either known or unforeseen, which may be encountered in the prosecution of the said work shall be sustained and borne by the Contractor at its own cost and expense.

- 13.5 The Contractor shall give reasonable notice to the City or owners of public or private property and utilities when such property is liable to injury or damage through the performance of the Work, and shall make all necessary arrangements with such City or owners relative to the removal and replacement or protection of such property or utilities.
- 13.6 The Contractor shall satisfactorily shore, support, and protect all structures and all pipes, sewers, drains, conduits, and other utility facilities, and shall be responsible for any damage resulting thereto. The Contractor shall not be entitled to any damages or extra compensation because of any postponement, interference, or delay caused by any such structures and facilities being on the line of the Work whether they are shown on the plans or not, specifically including, but not limited to, damages due to delay in utility relocation.
- 13.7 The Contractor shall secure and maintain, throughout the duration of this Contract, insurance from a company authorized to do business in the State of Kansas. Such insurance shall be of such types and in such amounts as may be necessary to protect himself and the interests of the City and agents of the City against all hazards or risks of loss as hereinafter specified including an endorsement covering explosion, collapse, blasting and damage to underground property if applicable as specified in these Contract Documents. The form and limits of such insurance, together with the underwriter thereof in each case, shall be approved by the City, but regardless of such approval, it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times. Failure of the Contractor to maintain adequate insurance coverage shall not relieve it of any contractual responsibility or obligation. The insurance shall be provided on an occurrence basis and, not claims made basis.
- 13.8 The City and the Engineer shall be a named insured on such policies. Satisfactory certificates of insurance shall be filed with the City prior to starting any construction work on this Contract. The certificates shall state that thirty (30) days written notice will be given to the City before any policy coverage thereby is changed or canceled.
- 13.9 The Contractor shall secure and maintain through the duration of this Contract insurance on an occurrence basis of such types and in such amounts as may be necessary to protect the Contractor and the City and agents of the City against all hazards or risks of loss as hereinafter specified. The form and limits of such insurance, together with the underwriter thereof in each case, shall be approved by the City, but regardless of such approval, it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times. Failure of the Contractor to maintain adequate coverage shall not relieve it of any contractual responsibility or obligation, including but not limited to, the indemnification obligation.
- 13.10 Satisfactory certificates of insurance shall be 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.
- 17.3 Other projects the Contractor may have to coordinate with may include, but are not limited to:
- Project # 191024 - 2010 Concrete Repair Program
Project # P5000 - 2010 Crack Seal/Slurry Seal Program
- 17.4 When the territory of one Contract is the necessary or convenient means of access for the transportation or movement of workers, materials, or appliances required for the execution of another Contract, such privileges of access or any other responsible privilege may be granted by the City to the Contractor so desiring, to the extent such may be reasonably necessary.
- 17.5 Upon execution of the Contract, the Contractor shall furnish the City, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Work. The City shall promptly reply to the Contractor, in writing, stating any objections the City may have to such proposed Subcontractor. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the City has made timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has objection.

18. RIGHT OF CITY TO TERMINATE

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

19. MISCELLANEOUS:

- 19.1 The Contractor warrants to the City that all labor furnished to progress the Work under the Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with the Project Manual. All Work not conforming to these requirements may be considered defective.
- 19.2 The Contractor shall obtain and pay for all permits, fees and licenses necessary or ordinary for the Work. The Contractor shall comply with all lawful requirements, including federal and state laws, City and County laws and ordinances and building codes, applicable to the Work and shall give and maintain copies of all notices required by applicable law pertaining to the Work.
- 19.3 Both the business address of the Contractor given in the Bid or proposal upon which this Contract is founded, and the Contractor's Office near the Work, is hereby designated as the places to which all notices, letters, and other communications to the Contractor may be mailed or delivered. The delivering at either of the above named addresses, or depositing in any mailbox regularly maintained by the Post Office, of any notice, letter or other communication so addressed to the Contractor, and the date of said service shall be the date of such delivery or mailing. Such addresses may be changed at any time by an instrument in writing, executed by the Contractor, presented, and delivered to the Engineer and to the City. Nothing herein

contained shall be deemed to preclude or render inoperative the service of any notice, letter, or communication upon the Contractor personally.

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

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

WITNESSETH:

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

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

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

***WHEREAS**, the Contractor has agreed to furnish at its own cost and expense all labor, tools,*

equipment , materials and transportation required to construct and complete in good, first class and workmanlike manner, the Work in accordance with the Project Manual; and.

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

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

IN WITNESS WHEREOF, the City, has caused this Agreement to be executed in its behalf, thereunto duly authorized, and the said Contractor has executed three (3) counterparts of this Contract in the prescribed form and manner, the day and year first above written.

CITY OF PRAIRIE VILLAGE

METRO ASPHALT, INC.

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)

(date of execution)

(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.)



POLICE DEPARTMENT

Council Meeting Date: May 19, 2014

COU2014-17: Consider Purchase of Laptops for Police Department Vehicles

RECOMMENDATION

Staff recommends the City Council approve the quote from Turn-Key Mobile for the purchase of laptops for the Police Department vehicles.

SUGGESTED MOTION

I move that the Police Department purchase 20 Panasonic laptop computers from Turn-Key Mobile and installation hardware/labor as described for a total cost to not exceed \$65,176.

NOTE: The net purchase will be approximately \$52,176 after reimbursement of approximately \$13,000 from the City of Mission Hills.

BACKGROUND

The Department had budgeted laptop replacement in 2015; however, in late 2013 and early 2014, we were notified by REJIS (Regional Justice Information Services), which maintains the secured criminal database used by the Police Department, that Microsoft was ceasing support for the XP platform as of April 8, 2014. The current laptops were put into service in 2009 have the XP Platform and, based on the fact Microsoft is not providing security support and updates, the system is vulnerable to viruses and the potential compromise of sensitive information.

The Department has worked with the IT Committee to allocate the needed funds as part of the Equipment Reserve Fund to replace the laptops and docking stations in each marked patrol unit. The laptops are part the Intergraph Network, a multiagency initiative, which exclusively uses Panasonic brand laptops. The Department sought quotes (attached) from Turn-Key Mobile and CDW-G, the two most predominate Panasonic vendors, in order to get the best price possible. Aside from the low bid are costs for installation and an upgrade by our IT consultant for solid-state hard drives.

COU2014-17: Consider Purchase of Laptops for Police Department Vehicles
Page No. 2

Costs Estimates:

20 laptops (this includes two backup computers to mitigate downtime)	\$40,320
3-year warranty	3,900
memory upgrade	2,100
18 docking stations	10,368
DC adaptors	2,879
hard drives	2,300
installation costs (\$83 per vehicle)	1,411
3% contingency	1,898
TOTAL	\$65,176

Mission Hills Reimbursement: \$13,000 (approximately)

Funding Source: Equipment Reserve Fund 22-53-53-8001-000

ATTACHMENTS

- Turn-Key Quote
- CDW-G Quote
- Ka-Comm Installation

PREPARED BY

Tim Kobe
Staff Services Division Supervisor
Date: May 14, 2014



Turn-Key Mobile, Inc.

501 Lakeview Heights, Suite 101
Jefferson City, MO 65109

573-893-9888 Office 314-754-9794 Fax

Proposal

Date	Proposal #
5/1/2014	16454

Name / Address
Prairie Village Police Department 7710 Mission Rd. Prairie Village, KS 66208

Sales Rep	Prepared By	PO #	Accepted By
Kim	Lindsay		

Item	Description	Qty	Rate	Total
CF-53SULZYLM	Panasonic CF-53, Win7 (Win8 COA), Intel Core i5-3340M 2.70GHz, vPro, 14.0" HD Touch, 500GB(7200rpm), 4GB, Intel WiFi a/b/g/n, Bluetooth, Emissive Backlit Keyboard, Multi-drive, Toughbook Preferred	20	2,016.00	40,320.00
CF-SVCLTNF3Y	Panasonic Toughbook Protection Plus, 3 Year "No Fault" Warranty	20	195.00	3,900.00
MIG64KL110	Kingston 8GB Memory Upgrade for CF-53	20	105.00	2,100.00
7160-0393-00	GAMBER JOHNSON Panasonic Toughbook CF-53 No pass docking station	18	576.00	10,368.00
PA-1580T-3223	Lind Electronics Mountable DC adapter with 1 hr shut down timer, bare wire input - for Toughbook CF-31, CF-53	18	159.95	2,879.10
Options - CF-53	Optional: Fingerprint Scanner +\$200 Smartcard Reader +\$100 *Interface plates may be needed to match hole pattern to your existing computer mounts			

Proposals are good for 30 days. Please ask your rep for updated pricing and availability.	Total	\$59,567.10
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Signature _____



SALES QUOTATION

QUOTE NO.	ACCOUNT NO.	DATE
FFWR403	4211174	4/16/2014

BILL TO:
CITY OF PRAIRIE VILLAGE
7700 MISSION RD

SHIP TO:
CITY OF PRAIRIE VILLAGE
Attention To: NICHOLAS SANDERS
7700 MISSION RD

Accounts Payable
PRAIRIE VILLAGE , KS 66208-4281

PRAIRIE VILLAGE , KS 66208-4281
Contact: NIC SANDERS 913.385.4664

Customer Phone #913.385.4603

Customer P.O. # PANASONIC TB 53 FINAL

ACCOUNT MANAGER		SHIPPING METHOD	TERMS	EXEMPTION CERTIFICATE
JOHN BURNS 866.668.9498		UPS Ground	Request Terms	GOVT-EXEMPT
QTY	ITEM NO.	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
20	470719	PAN TOUGHBOOK WARRANTY PRO PLUS 3YR Mfg#: CF-SVCLTNF3Y Contract: MARKET	199.99	3,999.80
20	3158687	Electronic distribution - NO MEDIA BTO PAN CF 53 I5-3340M 500GB 8GB W7P Mfg#: CF-53SUMZYLM Contract: MARKET	2,134.99	42,699.80
20	2630666	GAMBER DOCK STATION INT POW NO-RF Mfg#: 7160-0393-04 Contract: MARKET	709.99	14,199.80
20	2809733	GAMBER SCREEN SUPPORT F/PAN 53 DOCK Mfg#: 7160-0428 Contract: MARKET	44.99	899.80
SUBTOTAL				61,799.20
FREIGHT				0.00
TAX				0.00
				US Currency

TOTAL 61,799.20

CDW Government
230 North Milwaukee Ave.
Vernon Hills, IL 60061

Fax: 312.752.3878

Please remit payment to:
CDW Government
75 Remittance Drive
Suite 1515
Chicago, IL 60675-1515

Significant Budget Considerations
Proposed 2015 Budget

[Return to Agenda](#)

The Significant Budget Considerations list has been updated to reflect Council discussion.
The following Significant Budget Considerations have been identified for discussion during the 2015 Budget process by Council and staff.

Item	Description	Background / Description of Project	Estimated Budget Amount	Council Meeting Discussion
			2015	
A 1	Tree Trimming Services	<p>Increase the level of service to complete the tree trimming on a 5-year rotation versus our current 10-year rotation.</p> <p>2009 Budget = \$100,000 2010 Budget = \$ 50,000 2011 Budget = \$ 75,000 2012 Budget = \$ 75,000 2013 Budget = \$125,000 2014 Budget = \$125,000</p> <p><i>Increase to current budget for this service is estimated to be \$125,000</i></p>	\$ 125,000	5.5.2014
A 2	City Publication - Village Voice	<p>Option 1 - The Village is the City's bi-monthly newsletter. The newsletter is produced in-house. Increase publishing to monthly and continue to produce in-house.</p> <p>Current funding: \$40,000</p> <p><i>Increase to current budget is estimated to be \$36,000.</i></p> <p>Option 2 - Move to outside vendor to produce in a magazine format monthly with local advertising to off-set costs. Publication would still be produced in-house and the City would continue to pay mailing costs. Increased costs would be in staff time and mailing.</p>	\$ 36,000	5.19.2014
A 3	Citywide Events	<p>The City supports events such as the Earth Fair, Electronic Recycling Village Fest and the Jazz Fest. Increase support of community events with better or more events. Current funding is approximately \$56,000 and does not include City staff time.</p> <p><i>Increase to current budget is estimated to be \$25,000.</i></p> <p>Examples of current funding: Village Fest - \$16k, Environmental Committee - \$8k, Arts Council - \$13.5k and Sister City - \$4k</p>	\$ 25,000	5.19.2014

**Significant Budget Considerations
Proposed 2015 Budget**

A 4	Traffic enforcement on Residential Streets	<p>Increase traffic enforcement in high accident areas, citizen complaints, school zones, and area where speeding vehicles are problematic.</p> <p>Possible options: 1. Increase number of Traffic Officers by two officers - \$162,000 Note: This is not being recommended by the Police Department 2. Increase use of speed deterrent devices such as a digital speed limit sign (\$8k each) - \$24,000</p> <p><i>Increase to current budget is estimated to be \$24,000.</i></p>	\$ 24,000	5.5.2014																																																																																																																							
A 5	Purchase of Green Space	<p>Purchase green space (land) and maintain new property. The City would finance additional land purchases by borrowing the funds and then paying them back over a 10 year period.</p> <p><i>Increase to current budget is estimated to be \$300,000 per year</i></p>	\$ 300,000	5.5.2014																																																																																																																							
A 6	Comprehensive Compensation Study	<p>Recommended if Council desires to review employee salary and benefits structure. Full study includes pay, insurance and retirement plans.</p>	\$ 30,000	5.19.2014																																																																																																																							
A 7	Pool closing on weekdays after start of school	<p>Closing the pool Mon-Thurs after the start of schools, would save wages of concession and life guards less lost revenue.</p> <p><u>Decrease</u> to current expenditure budget is estimated to be \$8,000 per year</p> <div style="text-align: center;"> <p>Pool Attendance during Reduced Hours 2010-2013</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th>Members</th> <th>Drop-in</th> <th>Total Attendance</th> <th>Gate Revenue</th> <th>Avg. High Temp</th> <th>Sig. Precipitation</th> </tr> </thead> <tbody> <tr> <td>Week 1 M-Th 2013</td> <td>312</td> <td>176</td> <td>488</td> <td>\$ 1,101.00</td> <td>79</td> <td>No</td> </tr> <tr> <td>Week 2 M-Th 2013</td> <td>574</td> <td>151</td> <td>725</td> <td>\$ 876.00</td> <td>87</td> <td>No</td> </tr> <tr> <td>Week 3 M-Th 2013</td> <td>764</td> <td>209</td> <td>973</td> <td>\$ 1,205.00</td> <td>92</td> <td>No</td> </tr> <tr> <td>Total 2013</td> <td>1650</td> <td>536</td> <td>2186</td> <td>\$ 3,182.00</td> <td></td> <td></td> </tr> <tr> <td>Week 1 M-Th 2012</td> <td>295</td> <td>121</td> <td>416</td> <td>\$ 624.00</td> <td>81</td> <td>No</td> </tr> <tr> <td>Week 2 M-Th 2012</td> <td>428</td> <td>99</td> <td>527</td> <td>\$ 494.00</td> <td>93</td> <td>No</td> </tr> <tr> <td>Week 3 M-Th 2012</td> <td>534</td> <td>142</td> <td>676</td> <td>\$ 696.00</td> <td>96</td> <td>No</td> </tr> <tr> <td>Total 2012</td> <td>1257</td> <td>362</td> <td>1619</td> <td>\$ 1,814.00</td> <td></td> <td></td> </tr> <tr> <td>Week 1 M-Th 2011</td> <td>442</td> <td>119</td> <td>561</td> <td>\$ 610.00</td> <td>85</td> <td>1.16 in. on 8/16</td> </tr> <tr> <td>Week 2 M-Th 2011</td> <td>503</td> <td>138</td> <td>641</td> <td>\$ 658.00</td> <td>91</td> <td>No</td> </tr> <tr> <td>Week 3 M-Th 2011**</td> <td>0</td> <td>0</td> <td>0</td> <td>\$ -</td> <td></td> <td></td> </tr> <tr> <td>Total 2011</td> <td>945</td> <td>257</td> <td>1202</td> <td>\$ 1,268.00</td> <td></td> <td></td> </tr> <tr> <td>Week 1 M-Th 2010</td> <td>435</td> <td>169</td> <td>604</td> <td>\$ 880.00</td> <td>85</td> <td>No</td> </tr> <tr> <td>Week 2 M-Th 2010</td> <td>189</td> <td>111</td> <td>300</td> <td>\$ 552.00</td> <td>85</td> <td>No</td> </tr> <tr> <td>Week 3 M-Th 2010*</td> <td>204</td> <td>47</td> <td>251</td> <td>\$ 224.00</td> <td>82</td> <td>0.41 in. on 9/1</td> </tr> <tr> <td>Total 2010</td> <td>828</td> <td>327</td> <td>1155</td> <td>\$ 1,656.00</td> <td></td> <td></td> </tr> </tbody> </table> <p>*Closed one day ** Pool Closed 8 days early due at the advice of the Johnson County Health Department</p> </div> <td data-bbox="1665 753 1839 1455" style="background-color: yellow;">\$ (8,000)</td> <td data-bbox="1839 753 2043 1455">5.19.2014</td>		Members	Drop-in	Total Attendance	Gate Revenue	Avg. High Temp	Sig. Precipitation	Week 1 M-Th 2013	312	176	488	\$ 1,101.00	79	No	Week 2 M-Th 2013	574	151	725	\$ 876.00	87	No	Week 3 M-Th 2013	764	209	973	\$ 1,205.00	92	No	Total 2013	1650	536	2186	\$ 3,182.00			Week 1 M-Th 2012	295	121	416	\$ 624.00	81	No	Week 2 M-Th 2012	428	99	527	\$ 494.00	93	No	Week 3 M-Th 2012	534	142	676	\$ 696.00	96	No	Total 2012	1257	362	1619	\$ 1,814.00			Week 1 M-Th 2011	442	119	561	\$ 610.00	85	1.16 in. on 8/16	Week 2 M-Th 2011	503	138	641	\$ 658.00	91	No	Week 3 M-Th 2011**	0	0	0	\$ -			Total 2011	945	257	1202	\$ 1,268.00			Week 1 M-Th 2010	435	169	604	\$ 880.00	85	No	Week 2 M-Th 2010	189	111	300	\$ 552.00	85	No	Week 3 M-Th 2010*	204	47	251	\$ 224.00	82	0.41 in. on 9/1	Total 2010	828	327	1155	\$ 1,656.00			\$ (8,000)	5.19.2014
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**Significant Budget Considerations
Proposed 2015 Budget**

A 8	Accelerate Street Maintenance	<p>Accelerate street maintenance with a bond issue or a mill levy increase. With the current assessed valuation estimate for 2014, 1 mill would raise \$285,139.</p> <p><i>Increase to current budget is estimated to be \$500,000.</i></p> <table border="1" data-bbox="676 342 1642 529"> <thead> <tr> <th></th> <th>2013</th> <th>2012</th> <th>2011</th> <th>2010</th> <th>2009</th> <th>2008</th> <th>2007</th> <th>2006</th> </tr> </thead> <tbody> <tr> <td>Public Works</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Number of Potholes Patched</td> <td>2,392</td> <td>1,244</td> <td>3,951</td> <td>7,986</td> <td>2,124</td> <td>4,660</td> <td>2,874</td> <td>1,002</td> </tr> <tr> <td>Streets Slurry Sealed (Square Yards)</td> <td>84,094</td> <td>72,332</td> <td>69,650</td> <td>63,513</td> <td>68,725</td> <td>64,668</td> <td>86,743</td> <td>95,925</td> </tr> <tr> <td>Streets Milled and Overlaid (Linear Feet)</td> <td>8,500</td> <td>14,450</td> <td>26,500</td> <td>17,451</td> <td>12,350</td> <td>13,482</td> <td>15,759</td> <td>11,895</td> </tr> <tr> <td>Sidewalk Replaced (Square Yards)</td> <td>9,301</td> <td>7,806</td> <td>12,583</td> <td>10,966</td> <td>5,713</td> <td>7,556</td> <td>6,023</td> <td>3,951</td> </tr> <tr> <td>Curb and Gutter Replaced (Linear Feet)</td> <td>27,722</td> <td>32,121</td> <td>49,797</td> <td>52,925</td> <td>36,016</td> <td>33,982</td> <td>37,251</td> <td>27,097</td> </tr> </tbody> </table> <p>Note: The highlighted activity for 2010 - 2013 was affected by a bond issue in 2009 and 2011.</p>		2013	2012	2011	2010	2009	2008	2007	2006	Public Works									Number of Potholes Patched	2,392	1,244	3,951	7,986	2,124	4,660	2,874	1,002	Streets Slurry Sealed (Square Yards)	84,094	72,332	69,650	63,513	68,725	64,668	86,743	95,925	Streets Milled and Overlaid (Linear Feet)	8,500	14,450	26,500	17,451	12,350	13,482	15,759	11,895	Sidewalk Replaced (Square Yards)	9,301	7,806	12,583	10,966	5,713	7,556	6,023	3,951	Curb and Gutter Replaced (Linear Feet)	27,722	32,121	49,797	52,925	36,016	33,982	37,251	27,097	\$ 500,000	5.5.2014
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A 9	Mill levy increase	This is an option even though the preference is not to. With the current assessed valuation estimate for 2014, 1 mill would raise \$285,139.		ongoing																																																															
A 10	Parks Master Plan - Bike Friendly Routes and Lanes	<p>Increase annual funding for multiyear implementation plan to install bike friendly routes and lanes. This would be included in the Capital Infrastructure five year budget.</p> <p><i>Increase to current budget is estimated to be \$75,000 per year</i></p>	\$ 75,000	5.5.2014																																																															
A 11	Snow Removal on Sidewalks (new service option)	<p>City crews clear public sidewalks at parks and City buildings. This proposal would add snow removal on sidewalks on priority streets and around schools. The City would have to contract this work out.</p> <p><i>Increase to current budget is estimated to be \$85,000 per year.</i></p>	\$ 85,000	5.5.2014																																																															
A 12	Citywide Leaf Pickup (new service option)	<p>Add leaf removal services which would be available during one month in the Fall. The City would have to contract this work out.</p> <p>Based on the number of homes that have trash service (8,362) and a cost of \$40.00 per pickup.</p> <p><i>Increase to current budget is estimated to be \$334,480 per year.</i></p>	\$ 334,480	5.5.2014																																																															
A 13	Island Maintenance and Statuary	<p>The City currently maintains 187 islands at an estimated annual cost of \$20,000. Maintenance at these locations includes mowing and maintaining mulch. There are about 40 islands that are maintained by homes associations and are generally maintenance to a high level .</p> <p>Current funding for statuary = \$4,000</p> <p><i>Increase budget to cover statuary maintenance is estimated to be \$20,000</i></p>	\$ 20,000	5.5.2014																																																															

**Significant Budget Considerations
 Proposed 2015 Budget**

A 14	Explore the purchase of the city's street light and /or traffic signal system	<p>Currently KCPL owns the street lights and signal systems. The city pays an annual tariff for their use. Several neighboring cities have found it cost effective (long term) to purchase these systems through the issue of bonds. Add funding to 2015 budget to research and implement initiative. It is estimated that there would be a three year payoff related to purchasing the street lights from KCPL.</p> <p>2014 Budget: Street lights - \$690k Traffic signals - \$680k</p> <p><i>Increase to current budget is estimated to be \$50,000 for replacing lights with energy efficient bulbs.</i></p>	\$ 50,000	5.5.2014
A 15	Elderly and Disabled Transportation Services (new service option)	<p>Develop and implement a City Ride program for Prairie Village residents 62 years of age and older or persons with disabilities.</p> <p><i>Increase to budget is estimated to be \$40,000.</i></p>	\$ 40,000	5.19.2014
A 16	Homeowner BMP Cost-Share Program (new service option)	<p>The City is eligible to receive from Johnson County Stormwater Management Program up to \$10,000 to fund a cost-sharing program fro residents and businesses to install Stormwater Best Management Practices (BMP) on their person property. Types of BMP's eligible include rain gardens, native plantings buffers/swales, cisterns, permeable pavement (driveways/patios) and rain barrels.</p> <p><i>Increase to budget is estimated to be \$20,000.</i></p>	\$ 20,000	5.19.2014

**COUNCIL MEETING AGENDA
CITY OF PRAIRIE VILLAGE
Council Chambers
May 19, 2014
7:30 PM**

- I. **CALL TO ORDER**
- II. **ROLL CALL**
- III. **PLEDGE OF ALLEGIANCE**
- IV. **PRESENTATIONS**

Presentation from Berberich Trahan on the 2013 Annual Audit

- V. **PUBLIC PARTICIPATION**
- VI. **CONSENT AGENDA**

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

By Staff

- 1. Approve Regular Council Meeting Minutes - May 5, 2014
- 2. Ratify the Mayor's appointment of Carolyn Wassmer as a student representative to the Prairie Village Arts Council
- 3. Approve VillageFest Contracts for Food Service
- 4. Approve an advertising agreement with the Prairie Village Post for promotional and advertising services at a cost of \$1,300.
- 5. Approve purchase of (3) 2014 Ford Police Interceptor Utility Vehicles

By Committee

- 6. Approve the submittal of the 2015-2019 County Assistance Roads System (CARS) Program (Council Committee of the Whole - May 5, 2015)

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

Council Committee of the Whole

- COU2014-16 Consider approval of a contract with Metro Asphalt, Inc. for the 2014 Street Repair Program
- COU2014-17 Consider purchase of laptops for Police Department Vehicles

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

If any individual requires special accommodations - for example, qualified interpreter, large print, reader, hearing assistance - in order to attend the meeting, please notify the City Clerk at 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

May 19, 2014

**CITY COUNCIL
CITY OF PRAIRIE VILLAGE
May 5, 2014**

The City Council of Prairie Village, Kansas, met in regular session on Monday, May 5, 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, Jori Nelson, Ruth Hopkins, Steve Noll, Eric Mikkelson, Andrew Wang, Laura Wassmer, Brooke Morehead, Dan Runion, Courtney McFadden, Ted Odell and Terrence Gallagher.

Also present were: Wes Jordan, Chief of Police; Keith Bredehoeft, Director of Public Works; Katie Logan, 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, Human Resources Manager and Joyce Hagen Mundy, City Clerk.

Mayor Shaffer led those present in the Pledge of Allegiance.

PUBLIC PARTICIPATION

New Business owner Brian Murray appeared before the Council. He opened Fountain City Properties approximately 8 months ago, focusing on home renovations. His first project is a home in Prairie Village near HyVee and Weltner Park.

Mayor Shaffer recognized a boy scout from Troop 98 present to earn his "Citizen in the Community" badge.

CONSENT AGENDA

Brooke Morehead requested that item #1 & #5 be removed from the Consent Agenda. Ashley Weaver moved the approval of the Consent Agenda for Monday, May 5, 2014 with the removal of #1 & #5:

1. Removed - Approve Regular Council Meeting Minutes - April 21, 2014
2. Approve Claims Ordinance 2917
3. Approve Villagefest contracts with Omni Entertainment for the Headlining Band and Clement McCrae Puppets for puppet shows in the amount of \$2,615.00
4. Approve Villagefest contracts with Sister Act Face Painting and the Photo Bus in the amount of \$3,440.00
5. Removed - Approve the purchase of two 2014 Harley Davidson Road King motorcycles for \$7,322.42 per unit from Worth Harley Davidson
6. Authorize the Mayor to execute a proclamation recognizing May 11 - 17 as "National Police Week"
7. Authorize the Mayor to execute a proclamation recognizing May 4 - 10 as "Municipal Clerk's Week"
8. Approve the purchase of a replacement drainage camera system at a cost of \$94,050 from Key Equipment and Supply Company and the disposal of assets #1262 and #474 with a trade-in value of \$15,000 bringing the purchase cost to \$79,050

A roll call vote was taken with the following members voting "aye": Weaver, Nelson, Hopkins, Noll, Mikkelson, Wang, Wassmer, Morehead, Runion, McFadden, Odell and Gallagher.

Brooke Morehead noted a misspelling of her name on the first page of the minutes. The minutes of the Regular Council Meeting of April 21, 2014 were approved as corrected.

Mrs. Morehead asked for further information on item #5. Chief Jordan noted that four bids were received with Worth Harley Davidson submitting the lowest bid. The department typically rotates the motorcycle fleet every two years keeping the maintenance costs down and trade-in values high. He noted since the current cycles were received late in the year these units were kept for an additional year resulting in

lower trade-in value and a higher cost for the new model year cycle. The additional costs will be absorbed in the 2014 Public Safety Budget.

Laura Wassmer moved the City Council approve the purchase of two 2014 Harley Davidson Road King motorcycles for \$7,322.42 per unit from Worth Harley Davidson. The motion was seconded by Brooke Morehead and passed unanimously.

MAYOR'S REPORT

Mayor Shaffer reported he represented the City at several events during the past weeks including MARC Board meeting, Five year anniversary of the Research Triangle, Overland Park Mayors' Prayer Breakfast, Ribbon Cutting and dedication of the "Prairie Evolution" art sculpture at the Corinth Shopping Center, Granthurst Homes Association revitalization meeting, Johnson County Museum Foundation annual dinner, League of Women's voters legislative session on the status of the Kansas Budget and League of Women's presentation of the "Making Democracy Work" award to Johnson County Election Commissioner Brian Newby, UCS Board meeting and the Westwood Hills Homes Tour celebrating the recent designation as a National Historic District.

Update from Northeast Johnson County Chamber of Commerce

Mayor Shaffer called upon Deb Settles, President of the Northeast Johnson County Chamber of Commerce to update the Council on Chamber events. Ms Settles reviewed the purpose of the chamber and highlighted chamber activities and events. There are 51 Prairie Village businesses that participate in the chamber. She noted the new chamber website provides a direct link to each of the participating cities websites. The chamber is also a partner in the Kansas City Area Development Council (KCADC).

She invited and urged council members to participate in any of the Northeast Johnson County Chamber or KCADC events.

Mayor Shaffer reviewed the 2014 edition of the Kansas Tax Rate & Fiscal Data Book published in the March issue of the Kansas Government Journal. He pointed out that the City of Prairie Village has the second lowest indebtedness at \$7,200,000 and the second lowest mill levy at 19.49 of all first class cities in the state of Kansas. It is also one of very few cities with an Aaa bond rating.

COMMITTEE REPORTS

Council Committee of the Whole

COU2014-12 Consider Easement Acquisition Services Agreement with Skeen Consulting Services, Inc. for Project 75ST0001 - 75th Street from State Line Road to Mission Road

On behalf of the Council Committee of the Whole, Council President Ashley Weaver moved the City Council approve an agreement with Skeens Consulting Services, Inc. for Project 75ST0001: 75th Street Rehabilitation from State Line Road to Mission Road in the amount of \$28,975.00. The motion was seconded by Andrew Wang and passed unanimously.

COU2014-13 Consider authorizing the Public Works Director to acquire easements for Project 75ST0001: 75th Street from State Line Road to Mission Road

On behalf of the Council Committee of the Whole, Council President Ashley Weaver moved the City Council authorize the Public Works Director to acquire easements for 61 tracts of land valued at \$162,869 and the ability to negotiate 20% over this amount up to a total of \$196,000. The motion was seconded by Andrew Wang and passed unanimously.

STAFF REPORTS

Public Safety

- Chief Jordan noted his presentation and the tactical squad demonstration at the Northeast Leadership Program.
- Plans are being made for the 2014 Police Citizens Academy to be held this fall. Council members were encouraged to participate.
- Chief Jordan reviewed the 2014 first quarter crime statistics noting an exceptional first quarter compared to past years at the last meeting and confirmed that the statistics for the City of Mission Hills were exceptional as well.

Public Works

- Keith Bredehoeft reported the city received an Award of Merit from the Kansas City Area Historical Trails Association for its assistance with the trail designation at Weltner Park.
- The flashing crosswalk for Weltner Park is working well.
- Mr. Bredehoeft provided a brief update on infrastructure projects.

Administration

- Kate Gunja announced that an offer has been made for a new Court Administrator.
- The RV work group will meet this Wednesday. Jori Nelson stated she knew of residents that wanted to attend that meeting.
- Danielle Dulin announced that all pool management positions have been filled, lifeguards are in training and memberships are being sold.
- The Legislative session is over and Ms Dulin will be distributing a summary of the session to council members.
- Quinn Bennion announced that the third council orientation session will be later in the week.
- Staff continues to have dialog with Google but has not received any firm commitment to when they will be moving forward in Prairie Village.

OLD BUSINESS

Ted Odell moved to remove from the table consideration of the ratification of the Mayor's reappointment of the following individuals: James Dinesen, Richard Webber, Dick Kaufman, John Wilinski, Michael Arrandale-Arnold, Susan Giffin, Karin McAdams, Benjamin Claypool, Penny Mahon, Diane Mares, Lindsay Ridder, T. Truss Tyson, Robert Glywa, Peter Jarosewycz, Ivan Novikov, Greg VanBooven and Deborah Nixon.

The motion was seconded by Terrence Gallagher and past by a vote of 11 to 1 with Ruth Hopkins voting in opposition.

Mr. Odell stated he supports taking action on the reappointments of all the committee members except that of the Planning Commission/Board of Zoning Appeals.

Mayor Shaffer noted the discussion at the last meeting was regarding reappointments as a whole with the desire for term limits, getting new individuals on committees and the reappointment process. He questioned why he was wanting to move forward now with reappointments except for two individuals.

Mr. Odell responded that he felt the Planning Commission should be looked at individually. Ashley Weaver added that the Commission has the power to make decisions without oversight by the City Council and some Council members feel they should have more say in who is appointed to the Commission. Jori Nelson felt this should be looked at separately because of the number of individuals seeking to be on the Commission and that new members should be brought onto the Commission.

Mayor Shaffer asked if she wanted new members on all committees or just the Planning Commission. Ms. Nelson responded that there should be review of a different process for reappointment and how people are appointed to other boards as well. It should not be automatic. Mayor Shaffer responded it is not automatic.

Ruth Hopkins stated the Council has not determined what process it wants to follow and the committee members are still acting on their respective committees. She believes the Council needs to decide what it is doing before taking action.

Ted Odell noted the process will not happen overnight. These committee members may lose interest in volunteering if not reappointed. Ruth Hopkins responded

that is how she felt at the last meeting when the Council failed to act on the reappointments. The damage has been done.

Terrence Gallagher noted the committees with reappointments being proposed do not have the significant impact on the City that the Planning Commission has. The process needs to be reviewed and we do not know how long it will take. These committee members can be reappointed for a three year term and when their term is over the new process will be in place. It is about process not individuals.

Mayor Shaffer stated at the last meeting several council members stated that they wanted to "shake things up" that they wanted new blood on committees that changes need to be made.

Laura Wassmer agrees that the decisions made by the tree board and park & recreation committee are very different decisions than those made by the Planning Commission. She is bringing new people on the Park & Recreation committee. As Park Chair, she has reviewed and interviewed every volunteer wanting to serve on the parks committee. She noted because of ward restrictions many of them are not eligible. If the Planning Commission is the main committee that is causing the concern she does not see the need to hold up the other reappointments. She asked the committee on committees to consider removing the ward restrictions that are preventing people from serving on the park committee.

Mayor Shaffer asked if the Council was wanting to take action on all the reappointments except the two Planning Commission members.

Ted Odell stated the Council could vote on each committee reappointment individually.

Eric Mikkelson stated the committee on committees is in the process of looking at all committees, not just the Planning Commission. It is looking at consolidating committees, changing committee structure and other options. He feels no action should be taken on reappointments until decisions on committees has been made. He agrees that the Planning Commission has different power and character but believes that all committees should be treated the same. He does not see any harm in not taking action now as the committee members are still allowed to serve.

Andrew Wang would prefer to take action on the reappointments and then move forward on discussions of process and structure.

Jori Nelson stated the reappointment could be made with the understanding that committee structure may change and if the volunteers don't like it they can resign.

Ted Odell noted the discussion is about streamlining committees. He does not want to deter people from volunteering. He does not want people to be in limbo.

Eric Mikkelson noted that some of the reappointments have been on committees for more than 20 years and there are people seeking a position on that committee. This is causing inadequate consideration to be given to new applicants.

Mayor Shaffer asked what happens for future appointments or reappointments. Ted Odell responded until the process is changed the existing process if followed with the Mayor making appointment with the ratification of the Council.

Ted Odell moved the City Council ratify the following Mayor's reappointments:

Animal Control Board	James Dinesen	04/2016
Animal Control Board	Richard Webber	04/2016
Communications Committee	John Wilinski	04/2017
Communications Committee	Michael Arrandale-Arnold	04/2017
Communications Committee	Susan Giffin	04/2017
Environment/Recycle Committee	Karin McAdams	04/2017
Environment/Recycle Committee	Benjamin Claypool	04/2017

Environment/Recycle Committee	Penny Mahon	04/2017
Park & Recreation Committee	Diane Mares	04/2017
Prairie Village Arts Council	Lindsay Ridder	04/2017
Prairie Village Arts Council	T. Truss Tyson	04/2017
Sister City Committee	Robert Glywa	04/2017
Sister City Committee	Peter Jarosewycz	04/2017
Sister City Committee	Ivan Novikov	04/2017
Tree Board	Greg VanBooven	04/2017
Tree Board	Deborah Nixon	04/2017

The motion was seconded by Laura Wassmer.

Courtney McFadden asked why this can't wait. Eric Mikkelson stated he is uncomfortable treating the Planning Commission differently and does not feel action needs to be taken now.

Brooke Morehead stated the Committee on committees is looking at changing the process, if committee's are beneficial to the City and if the committees are involved.

Laura Wassmer questioned if she could move forward on appointments prior to changes being made. She was advised that appointments could be made following the process in place.

Steve Noll questioned ratifying reappointments if committees are going to be removed. Ted Odell stated the committee is looking at streamlining the process. It is not discussing terminating committees. Mayor Shaffer asked what he meant by "streamlining". Mr. Odell responded they are looking at ways to reduce staff time involved in committees and noted that no changes may come out of the discussion.

Eric Mikkelson stated by reappointing these individuals who have kept those committee positions occupied preventing individuals wanting to become involved and serve on the committees from doing so.

Andrew Wang confirmed that if no action is taken on the reappointments the members may continue to serve on the committees.

The motion was voted on and passed by a 9 to 3 vote with Noll, Mikkelson and McFadden voting in opposition.

NEW BUSINESS

Ward Meeting

Jori Nelson requested funds to hold a Ward 1 meetings. Quinn Bennion noted that there is funding in place in the 2014 budget for possibly two Ward meetings. However, he noted there is no process in place to determine how the funds are distributed.

Andrew Wang requested that if funds were distributed for a Ward meeting he would like to receive a report on how the funds were used, how many people attended the meeting, etc.

Laura Wassmer stated Ward 4 would also like to have funds for a ward meeting.

It was the consensus of the Council that Ward 1 and 4 receive funding to hold Ward meetings with a report on the use of funds and the meeting given to the City Council after the event.

Donation

Jori Nelson asked that the City support the Shawnee Mission East Graduation Night Alcohol Free Party with a donation of \$1000. She sees this as a culmination of the city's support of drug free/alcohol free programs such as DARE.

Laura Wassmer noted this was funded in the past and that she personally supports the event, but noted difficulties in determining who receives funding and who does not.

Jori Nelson noted that are only two high schools in the City. The city could start by supporting SME this year.

Ruth Hopkins noted the city in the past received several requests for support of school functions. Courtney McFadden noted the Shawnee Mission East Robotics team needs money.

Laura Wassmer stated that although she supports the event, should the city be using taxpayer money from her retired neighbors to support a high school party. Ms. Nelson asked then why is it used for private city parties.

Andrew Wang noted a number of Prairie Village families have students who do not attend Shawnee Mission East and he feels this is totally a parent responsibility and does not support public funding from the City.

Jori Nelson moved the City Council approve a donation of \$1,000 to the Shawnee Mission East Graduation Night Event. The motion was seconded by Ashley Weaver and failed by a vote of 3 to 9.

ANNOUNCEMENTS

Committee meetings scheduled for the next two weeks include:

Planning Commission	05/06/2014	7:00 p.m.
Tree Board	05/07/2014	6:00 p.m.
Sister City Committee	05/12/2014	7:00 p.m.
Parks & Recreation Committee	05/14/2014	7:00 p.m.
Council Committee of the Whole	05/19/2014	6:00 p.m.
City Council	05/19/2014	7:30 p.m.

=====

The Prairie Village Arts Council is pleased to present an oil and acrylic exhibit by Wayne Wilkes as the May exhibit in the R. G. Enders Gallery. The artist reception will be Friday, May 9th from 6:30 to 7:30 p.m.

Recreation memberships are on sale through the City Clerk's Office. The pool opens on Saturday, May 24th at 11 a.m.

City offices will be closed Monday, May 26th in observance of the Memorial Day holiday. Deffenbaugh also observes this holiday so trash pick-up will be delayed one day.

The Prairie Village Art Fair will be May 30th through June 1st.

Ted Odell noted KCDAC will be holding a meeting on May 8th at 7:30 a.m. at the Overland Park Convention Center and encouraged council members to attend if possible.

EXECUTIVE SESSION

Ashley Weaver moved pursuant to KSA 75-4319 (b) (1) that the Governing Body recess into Executive Session in the Multi-Purpose Room for a period not to exceed 15 minutes for the purpose of consulting with the City Attorney on matters of pending litigation. Present will be the Mayor, City Council, City Administrator, City Attorney and Chief of Police. The motion was seconded by Ruth Hopkins and passed unanimously.

Mayor Shaffer reconvened the meeting at 9:25 p.m.

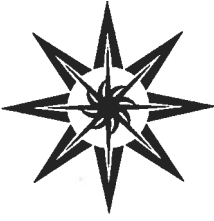
Ashley Weaver moved pursuant to KSA 75-4319 (b) (6) that the Governing Body, recess into Executive Session in the Multi-Purpose Room for a period not to exceed 40 minutes for the purpose of discussing possible acquisition of property. Present will be the Mayor, City Council, City Administrator, Assistant to the City Administrator and City Attorney. The motion was seconded by Courtney McFadden.

Mayor Shaffer reconvened the City Council meeting at 10:20 p.m.

ADJOURNMENT

With no further business to come before the City Council the meeting was adjourned at 10:21 p.m.

Joyce Hagen Mundy
City Clerk



MAYOR

**Council Meeting Date: May 19, 2014
CONSENT AGENDA**

Consider Appointments to Prairie Village Arts Council

RECOMMENDATION

Mayor Shaffer requests Council ratification of the appointment of Carolyn Wassmer as a Student Representative to the Prairie Village Arts Council with a term ending April, 2015

BACKGROUND

Carolyn is a junior at Shawnee Mission East and actively involved with the arts community at school. She is anxious to bring a youth's perspective to the Arts Council. Her volunteer application is attached.

PREPARED BY

Joyce Hagen Mundy
City Clerk

Date: May 12, 2014



RECEIVED	
4-11-14	JK

**City of Prairie Village
APPLICATION TO VOLUNTEER**

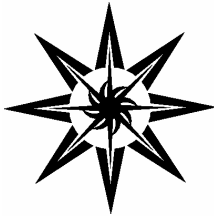
Please complete this form and return it to the City Clerk's Office, 7700 Mission Road, Prairie Village, Kansas 66208. If you have any questions, please contact the City Clerk's Office at 913-381-6464 or send an e-mail to cityclerk@pvkansas.com.

Name Carolyn Wassmer Spouse's Name _____
 Address 8005 Roe Avenue Zip 66208 Ward 4
 Telephone: Home [REDACTED] Work [REDACTED] Fax _____
 E-mail [REDACTED] Other Number(s): _____
 Business Affiliation NA
 Business Address NA
 What Committee(s) interests you? Arts Council

Please tell us about yourself, listing any special skills or experiences you have which would qualify you for a volunteer with the City of Prairie Village.

I am a Junior at Shawnee Mission East and am actively involved within the arts community ~~there~~ there. I especially enjoy photography and have completed Photo 3, and an independent study focusing on alternative printing processes. I would love to be able to offer a youth's perspective to the arts council and get more involved in the city.

Thank you for your interest in serving our community.



VILLAGEFEST COMMITTEE

Council Meeting Date: May 19, 2014

CONSENT AGENDA: Consider Approval of VillageFest Contracts

RECOMMENDATION

Staff recommends the City Council approve the following contracts for VillageFest 2014 for Food Service.

Rex Nolen	Food Vendor - funnel cakes, shaved ice, cotton candy
HyVee, Inc	Food Vendor - hot dogs, brats, burgers, chips, water, pop, gatorade
Del Sawyer	Food Vendor - shaved ice, fudge puppies, red velvet cake, smores, waffle dog
Del Sawyer	Food Vendor - roasted corn truck

Food Vendors pay a \$175 food vendor fee.

FUNDING SOURCE

N/A

ATTACHMENTS

1. Contracts

PREPARED BY

Jeanne Koontz, Deputy City Clerk/Public Information Officer
May 14, 2014

FOOD SERVICE AGREEMENT
VillageFest 2014

THIS FOOD SERVICE AGREEMENT is made and entered into by and between the City of Prairie Village, Kansas, a municipal corporation, hereinafter referred to as ("City") and Rex Nolen, hereinafter referred to as ("Vendor").

WHEREAS, City is sponsoring a 4th of July celebration within the City limits of Prairie Village, Kansas, for enjoyment of the general public, which event is entitled to "VillageFest 2014" (hereinafter "VillageFest") and

WHEREAS, the festivities of VillageFest shall include the sale to the general public of food items; and

WHEREAS, City is desirous of providing booth space to Vendor during VillageFest and further desires to ensure that services provided to the general public during VillageFest are of the appropriate quality.

NOW THEREFORE, in consideration of the mutual benefits to the parties, it is hereby agreed as follows:

ARTICLE 1

Scope, Duties and Hours of Operation

1.1 Vendor shall have the right to sell food items as supplied by Vendor from a food booth ("Vendor's Booth") located on the site of the VillageFest 2014, the location of which shall be determined by City.

1.2 The dates and hours of operation that Vendor may operate are as follows:
Date: July 4, 2014. Hours: Set up between 6:30 and 8:30 a.m.; Hours of Operation from 9:00 am until 1:00 pm; Breakdown after 1:00 p.m.

ARTICLE 2

Financial Risk

2.1 Vendor acknowledges and agrees that City's prime objective in entering into this Agreement is to ensure the availability of quality food items at a reasonable cost to VillageFest patrons. City has made no representation or warranty to Vendor to the effect that Vendor's participation in the VillageFest will be profitable for Vendor. Vendor acknowledges and agrees that its participation in VillageFest is a demanding business opportunity that involves risk and requires considerable manpower and organizational leadership and further acknowledges that there is the potential for substantial loss. Vendor further acknowledges and agrees to accept sole responsibility for protecting itself against any and all forms or types of loss.

ARTICLE 3
Rental Fee

3.1 Vendor shall pay to City on or before June 23, 2014, a non-refundable rental fee of \$175.00. Included with submission of the rental fee shall be an executed Food Service Agreement and a Proposal Sheet that shall set forth the food items and cost of said food items that Vendor desires to sell to the general public during VillageFest.

ARTICLE 4
Signage

4.1 Vendor shall provide signage for Vendor's Booth that shall legibly state organization or restaurant name, menu and prices. Signage is to be of professional quality and shall be subject to City's approval.

ARTICLE 5
Equipment Provided by Vendor

5.1 Vendor shall be responsible for providing all tables, chairs and equipment utilized by Vendor to serve food items to the general public. **Vendor shall also be responsible for providing its own power source, i.e. a power generator.**

ARTICLE 6
Sanitary Condition of Vendor's Booth

6.1 Vendor shall maintain Vendor's Booth and all surrounding operating area in a neat, clean and sanitary condition and in good order and repair, free and clear of all litter, debris and rubbish at all times. Vendor shall be responsible for the cleanup of Vendor's Booth on an ongoing basis during the VillageFest, at the conclusion of business and at the conclusion of VillageFest. Vendor's cleanliness responsibilities shall also include, but not be limited to, bagging and depositing Vendor's trash in designated containers. City reserves the right to terminate all of Vendor's rights under this Agreement, including the right to operate Vendor's Booth if Vendor fails to maintain clean and sanitary conditions in and around Vendor's Booth during the term of this Agreement.

ARTICLE 7
Security and Risk of Loss

7.1 Vendor is responsible for all items of personal property and/or inventory owned and/or utilized by Vendor throughout the term of this Agreement, including, but not limited to, those items left in and around Vendor's Booth during and after the hours of operation and at the conclusion of the VillageFest. Vendor shall be solely responsible for its own security at all times. Risk of loss of food items, equipment, cash and other items belonging to or in the possession of Vendor is Vendor's. City shall not be responsible for loss of or damage to Vendor's property or inventory whether attributable to theft, vandalism, spoilage, weather or any other cause.

7.2 Vendor is responsible for and agrees to reimburse City for any damage caused by Vendor to City's property or to property being used by the City during VillageFest.

ARTICLE 8 Access to Facilities

8.1 Vendor shall have access to Vendor's Booth on July 4, 2014 for set-up from 7:00 a.m. to 9:00 a.m. and for breakdown after 1:00 p.m. Vendor's vehicle(s) must be removed from the VillageFest grounds within one hour after the end of this time period or the vehicle(s) will be subject to tow. City shall not be responsible in the event of the towing of Vendor's vehicle(s).

ARTICLE 9 Items Sold and Prices

9.1 The items sold by Vendor and the prices charged for these items shall be consistent with the family-oriented spirit of the VillageFest. Vendors must prepare a Proposal Sheet which sets forth all items Vendor desires to sell to the general public during VillageFest and the cost of said items prior to execution of this Agreement. Such proposal sheet shall be attached to this Agreement as Exhibit A. Exhibit A is hereby incorporated into this Agreement. Any amendments to Exhibit A must be approved by City in writing.

9.2 Vendor shall not serve free food to anyone at any time other than to volunteers, representatives, staff and employees of vendor.

9.3 All federal, state, and local laws governing retail sales tax must be followed. Vendor understands the rules and regulation of the event and will comply. Vendor realizes that failure to comply may result in expulsion from the event.

ARTICLE 10
Business Information

10.1 Notifications and any other notices under this Agreement shall be made as follows:

If to City:

City Clerk
7700 Mission Road
Prairie Village KS 66208
(913) 381-6464
(913) 381-7755

If to Vendor:

10.2 Vendor's Tax Identification Number is: _____.

ARTICLE 11
Compliance With Laws

11.1 Vendor, all of Vendor's volunteers, representatives, staff and employees shall at all times during VillageFest comply with the laws of the State of Kansas and with City's ordinances, rules, regulations, and guidelines and shall at all times comply with all requests of the City or the City's representatives.

11.2 Vendor shall obtain all necessary permits and licenses in order to operate a Vendor Booth at VillageFest and shall provide copies of such permits and licenses to the City prior to June 23, 2014.

ARTICLE 12
Insurance and Hold Harmless

12.1 Vendor shall furnish to City a valid certificate of broad form general liability insurance, completed operations and products insurance coverage for personal injuries and property damage with combined single limits of coverage of not less than \$1,000,000.00 with the City named as an additional insured on such policies. Copies of said certificate shall be provided to City on or before June 21, 2014.

12.2 Vendor agrees to assume all liability and responsibility for damages in any form or for costs associated with its activities. Specifically, Vendor agrees to indemnify and hold the City harmless from and against any claims for damages (including attorney's fees necessitated in defending such claims resulting from Vendor's actions, conduct or inaction, whether said claim is premised upon negligence or upon intentional misconduct. Vendor specifically agrees to indemnify and hold the City harmless from and against claims resulting from persons who suffer any sort of injury from the food ingested by such person and/or by virtue of the conditions of the premises located at Vendor's Booth.

ARTICLE 13

Staff

13.1 Vendor shall provide managers and sufficient staff to keep Vendor's Booth operational during the hours of operation of the VillageFest.

13.2 Vendor's volunteers, employees, representatives and staff shall be prohibited by Vendor from consuming alcoholic beverages when on duty at, in or near Vendor's Booth.

13.3 Vendor and its employees are independent contractors and are not employees, servants or agents of VillageFest or of the City. Vendor has the sole responsibility of providing workers' compensation coverage for its employees and City shall not be responsible for injuries or bodily damage done to Vendor, Vendor's volunteers, employees, representatives and/or staff.

ARTICLE 14

Cancellation

14.1 City shall retain the right to cancel this Agreement at any time and for any reason without penalty. In the event this Agreement is canceled, Vendor shall not be entitled to a refund of Vendor's Rental Fee as set forth in this Agreement.

ARTICLE 15

Entire Agreement

15.1 This Agreement evidences the entire agreement between the parties hereto and supersedes any and all prior agreements and understandings between the parties pertaining to VillageFest.

ARTICLE 16
Effective Date

16.1 This Agreement is effective upon City's acceptance as evidenced by execution of this Agreement by a City authorized representative in the space provided below.

CITY OF PRAIRIE VILLAGE:

VENDOR:

By: _____

By: Rex Nolen

Printed Name: _____

Printed Name: REX NOLEN

Title: _____

Title: Owner

Date: _____

Date: 5/9/14

EXHIBIT A

PROPOSED FOOD ITEMS

<u>FOOD</u>	<u>PRICE</u>
<u>FUNNEL CAKES</u>	<u>\$5.00</u>
<u>SHAVED ICE</u>	<u>\$2.00</u>
<u>Cotton Candy</u>	<u>\$2.00 \$5.00</u>
<u>Bottled Water</u>	<u>\$1.00</u>
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As a Vendor you are responsible for proper signage. This needs to be visible and also include prices. We will provide advertising, a map of the grounds, & signs throughout the grounds for direction.

There is also NO ALCOHOL to be sold at the event!!!!

FOOD SERVICE AGREEMENT
VillageFest 2014

THIS FOOD SERVICE AGREEMENT is made and entered into by and between the City of Prairie Village, Kansas, a municipal corporation, hereinafter referred to as ("City") and HyVee Inc, hereinafter referred to as ("Vendor").

WHEREAS, City is sponsoring a 4th of July celebration within the City limits of Prairie Village, Kansas, for enjoyment of the general public, which event is entitled to "VillageFest 2014" (hereinafter "VillageFest") and

WHEREAS, the festivities of VillageFest shall include the sale to the general public of food items; and

WHEREAS, City is desirous of providing booth space to Vendor during VillageFest and further desires to ensure that services provided to the general public during VillageFest are of the appropriate quality.

NOW THEREFORE, in consideration of the mutual benefits to the parties, it is hereby agreed as follows:

ARTICLE 1

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1.1 Vendor shall have the right to sell food items as supplied by Vendor from a food booth ("Vendor's Booth") located on the site of the VillageFest 2014, the location of which shall be determined by City.

1.2 The dates and hours of operation that Vendor may operate are as follows:
Date: July 4, 2014. Hours: Set up between 6:30 and 8:30 a.m.; Hours of Operation from 9 am until 1:00 pm; Breakdown after 1:00 p.m.

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Financial Risk

2.1 Vendor acknowledges and agrees that City's prime objective in entering into this Agreement is to ensure the availability of quality food items at a reasonable cost to VillageFest patrons. City has made no representation or warranty to Vendor to the effect that Vendor's participation in the VillageFest will be profitable for Vendor. Vendor acknowledges and agrees that its participation in VillageFest is a demanding business opportunity that involves risk and requires considerable manpower and organizational leadership and further acknowledges that there is the potential for substantial loss. Vendor further acknowledges and agrees to accept sole responsibility for protecting itself against any and all forms or types of loss.

ARTICLE 3
Rental Fee

3.1 Vendor shall pay to City on or before June 23, 2014, a non-refundable rental fee of \$175.00. Included with submission of the rental fee shall be an executed Food Service Agreement and a Proposal Sheet that shall set forth the food items and cost of said food items that Vendor desires to sell to the general public during VillageFest.

ARTICLE 4
Signage

4.1 Vendor shall provide signage for Vendor's Booth that shall legibly state organization or restaurant name, menu and prices. Signage is to be of professional quality and shall be subject to City's approval.

ARTICLE 5
Equipment Provided by Vendor

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ARTICLE 10
Business Information

10.1 Notifications and any other notices under this Agreement shall be made as follows:

If to City:

City Clerk
7700 Mission Road
Prairie Village KS 66208
(913) 381-6464
(913) 381-7755

If to Vendor:

10.2 Vendor's Tax Identification Number is: 420325638.

ARTICLE 11
Compliance With Laws

11.1 Vendor, all of Vendor's volunteers, representatives, staff and employees shall at all times during VillageFest comply with the laws of the State of Kansas and with City's ordinances, rules, regulations, and guidelines and shall at all times comply with all requests of the City or the City's representatives.

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12.1 Vendor shall furnish to City a valid certificate of broad form general liability insurance, completed operations and products insurance coverage for personal injuries and property damage with combined single limits of coverage of not less than \$1,000,000.00 with the City named as an additional insured on such policies. Copies of said certificate shall be provided to City on or before June 21, 2014.

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ARTICLE 14

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15.1 This Agreement evidences the entire agreement between the parties hereto and supersedes any and all prior agreements and understandings between the parties pertaining to VillageFest.

ARTICLE 16
Effective Date

16.1 This Agreement is effective upon City's acceptance as evidenced by execution of this Agreement by a City authorized representative in the space provided below.

CITY OF PRAIRIE VILLAGE:

VENDOR:

By: _____

By:  _____

Printed Name: _____

Printed Name: Brad Kleinschmidt

Title: _____

Title: Kitchen Mgr.

Date: _____

Date: 5-6-14

EXHIBIT A

PROPOSED FOOD ITEMS

<u>FOOD</u>	<u>PRICE</u>
Hot Dog	2. ⁰⁰
Brat	3. ⁰⁰
Burger	4. ⁰⁰
Veggie Burger	4. ⁰⁰
Chips	1. ⁰⁰
Bottled Water	1. ⁰⁰
Can Pop	1. ⁰⁰
Gatorade	1. ⁰⁰

As a Vendor you are responsible for proper signage. This needs to be visible and also include prices. We will provide advertising, a map of the grounds, & signs throughout the grounds for direction.

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If to Vendor:

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VENDOR:

By: _____

By: Delbert Sawyer

Printed Name: _____

Printed Name: Delbert Sawyer

Title: _____

Title: Pres

Date: _____

Date: 4/22/14

EXHIBIT A

PROPOSED FOOD ITEMS

<u>FOOD</u>	<u>PRICE</u>
Roasted Sweet Corn	2.00
Butter Corn	3.50
Eatce Mexican Corn	3.50
Italian Corn	3.50
_____	_____
_____	_____
_____	_____
_____	_____
Water	1.00

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(913) 381-7755

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VENDOR:

By: _____

By: Delbert Sawyer

Printed Name: _____

Printed Name: Delbert Sawyer

Title: _____

Title: Pres

Date: _____

Date: 4/22/14

Shawed ICE Amil

EXHIBIT A

PROPOSED FOOD ITEMS

<u>FOOD</u>	<u>PRICE</u>
Shawed Ice	2-3-4 ⁰⁰
Fudge Cupper	
Red Velvet Cake	550
Smores	
Communion Beer on A Steak	
Ice on A Steak	
Waffle Dog	3.50 - 4.00
Water	1.00

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\$175⁰⁰

There is also NO ALCOHOL to be sold at the event!!!!



JAZZ FESTIVAL COMMITTEE

**Council Meeting Date: May 19, 2014
CONSENT AGENDA**

Consider Agreement with Prairie Village Post for advertising services for the Jazz Festival

RECOMMENDATION

Recommend the City Council approve an advertising agreement with the Prairie Village Post for promotional and advertising services at a cost of \$1300.

BACKGROUND

The JazzFest Committee met with Dan Blom of the Prairie Village Post regarding providing advertising and promotional services for the 2014 Prairie Village Jazz Festival. The attached agreement provides for services from June 1, 2014 through the festival on September 6th.

FINANCIAL IMPACT

Execution of this contract will commit \$1300 from the JazzFest account which has a current balance of \$9,971.88.

ATTACHMENTS

Contract

PREPARED BY

Joyce Hagen Mundy
City Clerk

Date: May 14, 2014

ADVERTISING AGREEMENT

PRAIRIE VILLAGE POST

This **AGREEMENT**, effective June 1, 2014, is for advertising services provided by the

Prairie Village Post to: Prairie Village Jazz Festival

Advertiser address: _____
(Street) (City, state, zip)

Contact information: Jack Shearer (913) 208-2299
(Contact name) (Phone)

jrsii43@gmail.com
(E-mail)

Length of ad run (please check):

Ad type (please check):

- Months 3
- 6 months
- 12 months
- TF
- Weeks _____
- Partial run (see notes)
- Insertions _____
- Editable Ad

- Marquee (300x250 pixel graphic)
- Impact (300x250 pixel graphic)
- Local Business (170x283 pixel graphic)
- Topline (728x90 pixel graphic)
- Calendar (300x250 pixel graphic)
- Sponsored Post
- Event Page (300x600 pixel graphic)
- Newsletter ((160x600 pixel graphic)

Rate: \$ Custom

Notes: Details provided on contract addendum

Ad creation fee: \$ 0

Ad creation fees of \$100 donated

Total cost: \$ 1300

Ad run dates:

Start: June 1, 2014

End: September 6, 2014

Signed:

Agent for advertiser: _____
(Name - please print) (Date)

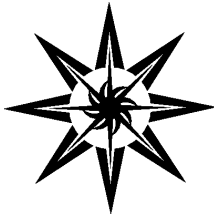
(Signature)

Agent for Prairie Village Post: Dan Blom Dan Blom May 12, 2014
(Name) (Signature) (Date)

Terms and Conditions

- Advertiser will be invoiced the first day of the month for ads to run during that calendar month or quarter. Payment is due within 30 days. Checks are payable to "Senter Communications LLC."
- Advertising promotion under this contract is limited to the named advertiser only unless explicitly noted in Advertising Agreement. These terms do not apply to political advertising.
- Monthly ads are reserved on a calendar-month basis. An ad can begin in mid-month depending on availability and will be pro-rated for the partial days (one month minimum on Local Business ads).
- Display advertiser will receive 50 percent of page views for Impact, Local Business and Calendar ads. Topline and Marquee receive one-third of page views. Newsletter ads receive 100 percent of page views.
- The advertiser is responsible for providing ad graphics to the Prairie Village Post two days in advance of the scheduled start of the ad run. Graphics should be emailed to jsenter@pvpost.com. Advertiser is responsible for notifying PVPost.com of any corrections.
- The advertiser is permitted (and encouraged) to change out the graphics and text in the ad. Changes will be made at no charge if updated graphics and text are e-mailed in ready to use format.
- The advertiser also can purchase access to an application that allows the client to change content on demand through a Facebook or Twitter account.
- Graphics and text for advertisements can be created for an advertiser by the Prairie Village Post for an additional fee of \$25 per ad creation.
- Graphics files for all ads should be delivered in .jpg or .gif format. Fifteen-second animations are permitted. Please see specifications for all ad sizes.
- For TF contracts, the ad will run until the advertiser cancels for the next full month.
- The Prairie Village Post reserves the right to refuse to run an ad or to stop running an ad for any reason at any time. In the event the Prairie Village Post refuses to run or stops running an ad provided by an advertiser, the advertising agreement will be considered null and void, and the Prairie Village Post will provide a pro-rated refund for any paid services outlined in the advertising agreement that it has not delivered. Prairie Village Post may suspend ad services for non-payment.
- If an ad run is interrupted for a significant period by disrupted Web site functionality (downed servers, etc...), the Prairie Village Post will extend the length of the ad run to compensate for lost time.

Prairie Village Post
P.O. Box 8005
Prairie Village, KS 66208
913-207-5192
dblom@pvpost.com



POLICE DEPARTMENT

Council Committee Meeting Date: May 19, 2014

CONSENT AGENDA: PURCHASE REQUEST OF POLICE VEHICLES

RECOMMENDATION

Staff recommends the purchase of three (3) 2014 Ford Police Interceptor Utilities.

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

COUNCIL ACTION REQUESTED ON MAY 19, 2014

BACKGROUND

On an annual basis, the Police Department replaces older police units due to age, mileage, and/or maintenance problems. The Department is seeking authorization to purchase these units from Shawnee Mission Ford, who was awarded the 2014 MACPP Metro Bid. The price per unit is \$25,607 and the approximate build time is approximately 120 days.

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

FUNDING SOURCE

01-03-25-8006 - \$76,821

PREPARED BY

Capt. Wes Lovett
Patrol Commander
Date: May 14, 2014

COUNCIL COMMITTEE OF THE WHOLE
May 5, 2014

The Council Committee of the Whole met on Monday, May 5, 2013 at 6:00 p.m. in the Council Chambers. The meeting was called to order by Council President Ashley Weaver with the following members present: Mayor Ron Shaffer, Ashley Weaver, Jori Nelson, Ruth Hopkins, Steve Noll (arrived late), Eric Mikkelson, Andrew Wang, Laura Wassmer, Brooke Morehead, Dan Runion, Courtney McFadden, Ted Odell and Terrence Gallagher. Staff Members present: Wes Jordan, Chief of Police; Keith Bredehoeft, Public Works Director; Katie Logan, 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, Human Resources Manager and Joyce Hagen Mundy, City Clerk.

***COU2014-12 Consider Easement Acquisition Services Agreement with Skeens Consulting Services, Inc. for Project 75ST0001: 75th Street from State Line Road to Mission Road**

Keith Bredehoeft noted the 75th Street project will improve the existing infrastructure and will also look to improve pedestrian accommodations and make 75th Street a more aesthetically pleasing corridor. The project is scheduled to receive \$1.6 Million in Federal Funds through the Mid America Regional Council(MARC) under the Bike/Pedestrian and Livable Communities category. The Federal Funds are to be used in 2014.

As a Federally Funded project any construction easements or permanent easements must follow all Federal guidelines. Most properties along this corridor will require a temporary construction easement so the contractor can construct the project improvements adjacent to the right of way. There are 61 tract that require easements.

This agreement with Skeens Consulting Services, Inc is for the acquisition and negotiation services needed to acquire the easements needed for the project. Mr. Bredehoeft noted, that as we typically do, the City will seek donations of the easements as the improvements are a benefit to property owners but we will have to offer and pay compensation if the property owners choose as required by Federal guidelines. The easement appraisal services were provided by Land Company Real Estate Services, Inc. and dollar amounts.

Three firms that are familiar with the Federal Guidelines were asked for costs to provide these services and is summarized below.

	Acquisition and Negotiation Services per Tract
Land Company Real Estate Services	\$495.00
Valbridge Property Advisors	\$500.00
Skeens Consulting Services, Inc.	\$475.00

Based on 61 Tracts, Skeens Consulting Services, Inc is the lowest cost at \$28,975.00. Funding is available under Project 75ST0001: 75th State Line Road to Mission Road.

Brooke Morehead asked what was the range of easement values. Mr. Bredehoeft responded the largest is \$9,000 and the lowest is under \$1000.

Jori Nelson stated that she viewed Skeens website to view their experience and asked if they had negotiating experience and if the property owners have to take the established valuation. Mr. Bredehoeft responded they are lawyers with experience and he is very comfortable that they will represent the City well.

Terrence Gallagher confirmed that the representative will make an offer, but he cannot deny or accept the offer - it must be accepted by the City.

Dan Runion asked when the consulting fee was payable. Mr. Bredehoeft responded it is payable when the acquisition is made.

Quinn Bennion asked if any property was being acquired. Mr. Bredehoeft responded only easement will be required, but noted that some of the easements acquired will be permanent easements.

Andrew Wang made the following motion, which was seconded by Brooke Morehead and passed unanimously:

MOVE THE CITY COUNCIL APPROVE THE AGREEMENT WITH SKEENS CONSULTING SERVICES, INC. FOR ACQUISITION SERVICES FOR PROJECT 75ST0001:75TH STREET REHABILITATION FROM STATE LINE ROAD TO MISSION ROAD IN THE AMOUNT OF \$28,975.00

**COUNCIL ACTION TAKEN
05/05/2014**

COU2014-13 Consider authorizing the Public Works Director to acquire easements for Project: 75ST0002 - 75th Street from State Line Road to Mission Road

Keith Bredehoeft stated this is related to the previous action. The Federal Guidelines require that authorization is given by the Governing Body to acquire easements and to approve the values that can be offered for the acquisitions.

Eric Mikkelson made the following motion, which was seconded by Andrew Wang and passed unanimously:

MOVE THE CITY COUNCIL AUTHORIZE THE PUBLIC WORKS DIRECTOR TO ACQUIRE EASEMENTS FOR 61 TRACTS OF OF LAND VALUED AT \$162,869 AND GRANT THE ABILITY TO NEGOTIATE 20% OVER THIS AMOUNT UP TO A TOTAL OF \$196,000.

**COUNCIL ACTION TAKEN
05/05/2014**

COU2014-14 Consider 2015-2019 CARS Application

Keith Bredehoeft stated that in order to receive CARS funds, the City must annually submit an application containing a list of streets and the estimated costs. The following streets are recommended for the five-year CARS program, 2015-2019. The Public Works Department compiled the list based on the pavement condition. The work will

include where necessary full depth pavement repair, curb and gutter replacement, sidewalk repair, new sidewalk and milling/overlaying the pavement.

Program Year	Street Segment	From	To	CARS Eligible Costs	County CARS Funds
2015	Roe Avenue	75 th Street	83 rd Street	\$1,163,000	\$581,500
2016	Roe Avenue	63 rd Street	67 th Street	\$882,000	\$441,000
2017	Roe Avenue	67 th Street	71 st Street	\$888,000	\$444,000
2018	Roe Avenue	71 st Street	75 th Street	\$664,000	\$332,000
2019	Mission Road	75 th Street	83 rd Street	\$1,320,000	\$660,000

He noted that the City submits an application annually and can revise future year requests. The costs include construction and construction administration. Design costs are not included, as the CARS program does not fund design. Funding is planned for the 2015 Project on Roe Avenue and is included in the CIP. Future year's projects will be funded with each year's budget.

Eric Mikkelson confirmed that only some roads are eligible for the program.

Terrence Gallagher why Somerset was not completed Lee Blvd to State Line Road and would it qualify for CARS funding. Mr. Bredehoeft responded it has been approved for CARS funding in 2014 and will be completed later this year.

Ashley Weaver made the following motion, which was seconded by Jori Nelson and passed unanimously:

MOVE THE CITY COUNCIL APPROVE THE SUBMITTAL OF THE 2015-2019 COUNTY ASSISTANCE ROADS SYSTEM (CARS) PROGRAM

**COUNCIL ACTION REQUIRED
CONSENT AGENDA**

Information Technology Initiatives Presentation

Quinn Bennion noted that over the past several months staff have been evaluating Information Technology, phone and internet services for both short term and long term solutions. Staff has investigated shifting away from services provided by the private

sector to collaborative shared system governmental services. The primary goals are 1) increase efficiency and services and 2) to save operating costs. The presentation by Nic Sanders, Human Resources Manager, will cover four areas. Mr. Bennion noted that no official action is being requested this evening, only Council direction.

Information Technology Consulting

Nic Sanders stated that current technology services are being provided by Alexander Open Systems (AOS). They have provided the city services for more than ten years and are very familiar with the city's needs and network. They provide 12 hours per week on-site service and offer desktop support and server support.

Staff is recommending that IT services be provided by Johnson County Information Technology Services (JoCo IT) in the future. JoCo IT is utilized by several other northeast Johnson County agencies. In doing so the city would realize a cost savings beginning the second year. With the added costs of setup the initial year cost would be slightly higher. JoCo IT would add a staff person to be located in Northeast Johnson County.

Mr. Sanders noted participation with JoCo IT would provide 24 x 7 support and better buying power for software, license and hardware. Potential future benefits are backup/disaster recovery services, spam e-mail filtering and internet content filtering.

Courtney McFadden asked how the quality of services compared between JoCo IT and AOS? Mr. Sanders responded that staff has met directly with them and looked at the level of services they are able to provide. They have the staffing and IT certifications to meet the city's needs. They would also work together with AOS during the transition. Quinn Bennion stated that he has talked with other agencies that are using JoCo IT and they have had positive experiences. He added this would not be a long-term agreement and if it didn't work out for the City, they could terminate the agreement and move back to private sector provided services.

Terrence Gallagher asked if this would present any opportunity for savings with our services to Mission Hills. Chief Jordan responded Mission Hills already pays for a portion of the technology costs and he does not anticipate any additional savings.

Jori Nelson confirmed that there would not be any gap between services.

Phone Services

Current phone services are being provided by AT&T at an annual cost of approximately \$35,000 for local, long distance services and a T1 phone connection to the Public Works facility. Staff recommends collaborating with the County to explore options with possible preferential pricing with a vendor or utilize the County as a "service provider" for phone services.

Ruth Hopkins asked how "Google" fit into this scenario. Quinn Bennion responded that he has made inquiries with Google and the changes will not be accommodated with their

system. Per the city's agreement with Google the city gets two line drops. Ruth Hopkins expressed her dissatisfaction with Google's response to the City. Jori Nelson asked when the City last bid out phone services. Mr. Sanders responded not for several years. The city had an automatic renewing agreement and will be looking at other options.

Internet Access

Current internet access is being provided by Windstream Communications at an annual cost of \$15,000. Staff would like to explore options of utilizing an internet connection through Johnson County or other vendors.

Jori Nelson asked if the city has considered bundled services and when these services were last bid. Mr. Sanders responded these services were bid three years ago and noted the commercial requirements and dedicated line requirement makes bundling difficult.

Fiber Optic Connection

The current connection between City Hall and Public Works is a limited wireless connection and subject to performance issues based on weather and explained the difficulties that currently exist. The current connection speed is 2 - 8 megabytes with the connection used for shared financial software, e-mail and internet.

Staff would like to connect City Hall and Public Works via a city-owned fiber optic connection. Mr. Sanders noted that \$40,000 is currently budgeted in the Equipment Reserve Fund for this fiber connection project. It may be possible to join with other agencies for assistance in development costs. Interest has been expressed by Johnson County Library and Johnson County.

Brooke Morehead asked about possible joint venture with the Shawnee Mission School District. The city has been told that the school district wants to run a standalone network and has not been open to joint ventures with other agencies. Mrs. Morehead suggested that position may have changed with the new Superintendent and suggested the city contact them.

Courtney McFadden asked what the benefit would be for the County. Nic Sanders responded that it is the long-term goal of the County to have all of its agencies connected. Mr. Bennion briefly reviewed the plans of the County.

Ted Odell stated he felt it was worthwhile investigating and expressed disappointment that Google would not be part of the solution. Mr. Bennion replied staff will ask them again.

Nic Sanders noted as stated by Mr. Bennion no formal action is being requested but the staff would like direction on whether to pursue the following options and if so, specific information will be present at the noted City Council meetings.

- 1) Work with JoCo It on an Interlocal Agreement for information technology consulting services (May 19)
- 2) Explore options for phone and internet service which may include further collaboration with Johnson County (2014)
- 3) Publish RFP for fiber optic installation between City Hall and Public Works (June 16)

Ms Wassmer expressed support for #1 and #2. Mrs. McFadden felt an RFP process was good and that #1 was great. Mr. Gallagher stated he supports all three and noted that many of his clients are taking similar action. Mr. Wang confirm that publishing an RFP did not commit the City to further action. Mrs. Morehead felt good information could be gathered through the RFP process.

Dan Runion asked if there would be a termination cost for separating from AOS. Mr. Sanders replied 30 day written notice is required and they bill on services provided.

Brooke Morehead moved the City Council direct staff to pursue all three items requested. The motion was seconded by Laura Wassmer and passed unanimously.

2015 Budget Overview and Significant Budget Considerations

Finance Director Lisa Santa Maria stated that staff anticipates a balanced 2015 budget with the current level of services and current mill levy. However, she noted any additions will require an offsetting revenue or a reduction in another service. Staff have prepared a listing of possible significant budget considerations based on council discussions over the past year. No additional items were received from the council. Any action on these items needs to be taken early in the budget process and therefore asked for Council direction on the following items:

A-1 Tree Trimming Services

The 2015 budget contains \$125,000 for tree trimming services. This allows for a five year rotation throughout the city. Laura Wassmer provided history on the tree trimming program for the new council members. Ms Wassmer stated she did not feel the comments from the budget simulator represent a very small portion of city residents and are not statistically valid and thus should be considered as information only and not used in budget discussion.

Jori Nelson confirmed that this line item is separate from funding for the Emerald Ash Bore issue and that it included streets on residential streets. Ms. Nelson agreed with Ms Wassmer's comments regarding the validity of the comments on the budget simulator.

Keith Bredehoeft reviewed the operation of the program which trims trees on residential right-of-ways for low limbs over sidewalks and dead limbs on the street side of the trees which represent a potential liability to the City for falling and damaging property or injury to individuals.

Eric Mikkelson expressed concern that residents who don't maintain their trees are being rewarded by the City trimming them. Ted Odell supports the program and noted it is not a complete trimming of trees that would be done by a hired arborist.

The Council directed staff to include the proposed \$125,000 in the 2015 budget for Tree Trimming Services.

A-4 Traffic Enforcement on Residential Streets

Concerns have been made periodically regarding traffic enforcement on residential streets. Possible options to address this are to hire two additional traffic officers at a cost of \$162,000 or to increase the use of speed deterrent devices such as digital speed limit signs at a cost of \$24,000 for three additional devices.

Eric Mikkelson noted the success of the former traffic calming program and suggested the city consider bringing this program back. There were several options presented in the traffic calming toolbox and there was a high level of citizen involvement in the process. It achieved results in his neighborhood. Ruth Hopkins stated the program was very effective in its early stages. However, she feels there are too many speed bumps and that they simply move the problem to another neighborhood.

Terrence Gallagher asked Chief Jordan for his recommendation. Chief stated the Police Department is not recommending an increase in traffic officers. The department is currently addressing all complaint areas. He is a proponent in exploring options and noted the impact of school zones.

The Council directed staff to not include any additional funds in the 2015 budget for increased traffic enforcement on residential streets.

Quinn Bennion noted that several items are left to be discussed and suggested that the Council Committee recess and continue its meeting after the conclusion of the city council meeting.

RECESS

Andrew Wang moved the Council Committee of the Whole be recessed until the completion of the City Council meeting. The motion was seconded by Eric Mikkelson and passed unanimously.

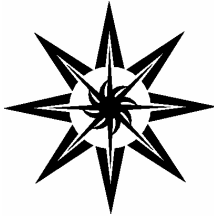
RECONVENE

Council President Ashley Weaver reconvened the Council Committee of the Whole meeting at 10:24 p.m.

ADJOURNMENT

Laura Wassmer moved to adjourn the Council Committee of the Whole meeting. The motion was seconded by Brooke Morehead and passed unanimously. The meeting was adjourned at 10:25 p.m.

Ashley Weaver
Council President



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: May 19, 2014

Council Meeting Date: May 19, 2014

***COU2014-16: CONSIDER APPROVAL OF A CONTRACT WITH METRO ASPHALT, INC. FOR THE 2014 STREET REPAIR PROGRAM.**

RECOMMENDATION

Move to authorize the Mayor to sign the Construction Contract with Metro Asphalt Inc. for Project P5001, 2014 Street Repair Program for \$150,000.00.

BACKGROUND

On April 18, 2014, the City Clerk opened bids for Project P5001, 2014 Street Repair Program. Four bids were received:

Metro Asphalt, Inc.	\$130,074.25
McConnell & Associates Corp.	\$150,500.00
Little Joe's Asphalt, Inc.	\$171,417.45
McAnany Construction Inc.	\$312,200.00
Engineers Estimate	\$149,385.00

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

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

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

FUNDING SOURCE

Funding is available in the 2014 Capital Infrastructure Program Project P5001.

ATTACHMENTS

1. Construction Agreement with Metro Asphalt, Inc.

PREPARED BY

Keith Bredehoeft, Public Works Director

May 15, 2014

**CONSTRUCTION AGREEMENT
BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
METRO ASPHALT, INC.
FOR
PROJECT P5001 - 2014 STREET 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 Contractor hereinafter termed in this agreement, Metro Asphalt, Inc. for the construction and completion of Project, designated, described and required by the Project Manual and Bid proposal, to wit:

CONTRACT COST: The City shall pay the Contractor for the performance of the Work embraced in this Contract, and the Contractor will accept in full compensation therefore the sum (subject to adjustment as provided by the Contract) of One Hundred Fifty thousand and 00/100 Dollars (\$150,000.00) for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

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

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

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

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

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

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

1. DEFINITIONS:

1.1 Following words are given these definitions:

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

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

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

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

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

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

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

CONTRACT PRICE shall be the amount identified in the Construction Agreement between the

City and the Contractor as the total amount due the Contractor for total completion of the Work as per the Contract Documents.

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

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

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

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

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

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

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

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

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

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

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

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

SPECIFICATIONS shall mean those portions of the Project Manual consisting of written technical descriptions of materials, equipment, construction methods, standards and workmanship as applied to the Work and certain administrative details applicable thereto. They

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

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

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

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

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

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

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

specified.

2. ENTIRE AGREEMENT:

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

3. INTENT AND INTERPRETATION

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

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

these requirements shall disqualify the Contractor for the awarding of this Contract.

4. WORK SUPERINTENDENT

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

5. ENGINEER

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

- thirty (30) days a written objection to the decision or direction so rendered and, by such action, may reserve the right to submit the question to determination in the future.
- 5.3 The Engineer, unless otherwise directed or agreed to by the City in writing, will perform those duties and discharge those responsibilities allocated to the Engineer as set forth in this Contract. The Engineer shall be the City's representative from the effective date of this Contract until final payment has been made. The Engineer shall be authorized to act on behalf of the City only to the extent provided in this Contract.
- 5.4 The City and the Contractor shall communicate with each other in the first instance through the Engineer.
- 5.5 The Engineer shall be the initial interpreter of the requirements of the Project Manual and the judge of the performance by the Contractor. The Engineer shall render written graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.
- 5.6 The Engineer will review the Contractor's Applications for Payment and will certify to the City for payment to the Contractor those amounts then due the Contractor as provided in this Contract. The Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to City, based on Engineer's on-site observations of the Work in progress as an experienced and qualified design professional and on Engineer's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of the Engineer's knowledge, information and belief, the quality of the Work is in accordance with the Project Manual (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Project Manual, to a final determination of quantities and classifications for Unit Price Work if such is called for herein, and to any other qualifications stated in the recommendation); and that Contractor is entitled to payment of the amount recommended. However, by recommending any such payment Engineer will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to Engineer in the Project Manual or that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by the City or the City to withhold payment to Contractor.
- 5.7 The Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make such representations to City. Engineer may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in the Engineer's opinion to protect the City from loss because:
- The Work is defective, or completed Work has been damaged requiring correction or replacement,
 - The Contract Price has been reduced by Written Amendment or Change Order,
 - The City has been required to correct defective Work or complete Work in accordance with the Project Manual.
- 5.8 The City may refuse to make payment of the full amount recommended by the Engineer because claims have been made against City on account of Contractor's performance or

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

any resident representative or observer so appointed, when the same are consistent with the obligations of the Project Manual. However, should the Contractor object to any interpretation given by any subordinate engineer, resident representative or observer, the Contractor may appeal in writing to the City Director of Public Works for a decision.

- 5.18 Resident representatives, observers, and other properly authorized representatives of the City or Engineer shall be free at all times to perform their duties, and intimidation or attempted intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the City so decides, to annul the Contract.
- 5.19 Such observation shall not relieve the Contractor from any obligation to perform said work strictly in accordance with the Project Manual.

6. WORK SCHEDULE:

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

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

7. DELAYS AND EXTENSIONS OF TIME

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

8. ADVERSE WEATHER:

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

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

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

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

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

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

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

9. PAYMENT PROCEDURE:

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

that no amount less than \$500.00 will be submitted unless the total amount of the Contract remaining unpaid is less than \$500.00.

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

10. COMPLETION AND FINAL PAYMENT

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

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

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

11. CLAIMS BY THE CONTRACTOR

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

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

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

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

- 11.11 In executing the Contract Documents, the Contractor expressly covenants and agrees that, in undertaking to complete the Work within the time herein fixed, it has taken into consideration and made allowances for all hindrances and delays incident to such work, whether growing out of delays in securing materials or workers or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the work, or any portion thereof, included in this Contract, except as provided herein.
- 11.12 In addition to the Project Manual particular to Mobilization found elsewhere in this document, additional mobilization shall not be compensable for work outside of the designated areas for work deemed essential by the City. A quantity of work equal to as much as 10% of the total Contract may be required to be performed beyond the boundaries of the designated work areas

12. CHANGES IN THE WORK

- 12.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.
- 12.2 The Engineer shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 12.3 Any change in the Contract Price resulting from a Change Order shall be by mutual agreement between the City and the Contractor as evidenced by the change in the Contract Price being set forth in the Change Order, and, together with any conditions or requirements related thereto, being initialed by both parties.
- 12.4 If no mutual agreement occurs between the City and the Contractor relative to a change in the Work, the Contractor shall proceed with the work that is the subject of the Change Order, and the change in the Contract Price, if any, shall then be determined by the Engineer on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content to the City, as the Engineer requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies or equipment, including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools, whether rented from the

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

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

13. INSURANCE AND HOLD HARMLESS.

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

difficulties, or any other natural or existing circumstances either known or unforeseen, which may be encountered in the prosecution of the said work shall be sustained and borne by the Contractor at its own cost and expense.

- 13.5 The Contractor shall give reasonable notice to the City or owners of public or private property and utilities when such property is liable to injury or damage through the performance of the Work, and shall make all necessary arrangements with such City or owners relative to the removal and replacement or protection of such property or utilities.
- 13.6 The Contractor shall satisfactorily shore, support, and protect all structures and all pipes, sewers, drains, conduits, and other utility facilities, and shall be responsible for any damage resulting thereto. The Contractor shall not be entitled to any damages or extra compensation because of any postponement, interference, or delay caused by any such structures and facilities being on the line of the Work whether they are shown on the plans or not, specifically including, but not limited to, damages due to delay in utility relocation.
- 13.7 The Contractor shall secure and maintain, throughout the duration of this Contract, insurance from a company authorized to do business in the State of Kansas. Such insurance shall be of such types and in such amounts as may be necessary to protect himself and the interests of the City and agents of the City against all hazards or risks of loss as hereinafter specified including an endorsement covering explosion, collapse, blasting and damage to underground property if applicable as specified in these Contract Documents. The form and limits of such insurance, together with the underwriter thereof in each case, shall be approved by the City, but regardless of such approval, it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times. Failure of the Contractor to maintain adequate insurance coverage shall not relieve it of any contractual responsibility or obligation. The insurance shall be provided on an occurrence basis and, not claims made basis.
- 13.8 The City and the Engineer shall be a named insured on such policies. Satisfactory certificates of insurance shall be filed with the City prior to starting any construction work on this Contract. The certificates shall state that thirty (30) days written notice will be given to the City before any policy coverage thereby is changed or canceled.
- 13.9 The Contractor shall secure and maintain through the duration of this Contract insurance on an occurrence basis of such types and in such amounts as may be necessary to protect the Contractor and the City and agents of the City against all hazards or risks of loss as hereinafter specified. The form and limits of such insurance, together with the underwriter thereof in each case, shall be approved by the City, but regardless of such approval, it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times. Failure of the Contractor to maintain adequate coverage shall not relieve it of any contractual responsibility or obligation, including but not limited to, the indemnification obligation.
- 13.10 Satisfactory certificates of insurance shall be 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.
- 17.3 Other projects the Contractor may have to coordinate with may include, but are not limited to:
- Project # 191024 - 2010 Concrete Repair Program
Project # P5000 - 2010 Crack Seal/Slurry Seal Program
- 17.4 When the territory of one Contract is the necessary or convenient means of access for the transportation or movement of workers, materials, or appliances required for the execution of another Contract, such privileges of access or any other responsible privilege may be granted by the City to the Contractor so desiring, to the extent such may be reasonably necessary.
- 17.5 Upon execution of the Contract, the Contractor shall furnish the City, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Work. The City shall promptly reply to the Contractor, in writing, stating any objections the City may have to such proposed Subcontractor. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the City has made timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has objection.

18. RIGHT OF CITY TO TERMINATE

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

19. MISCELLANEOUS:

- 19.1 The Contractor warrants to the City that all labor furnished to progress the Work under the Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with the Project Manual. All Work not conforming to these requirements may be considered defective.
- 19.2 The Contractor shall obtain and pay for all permits, fees and licenses necessary or ordinary for the Work. The Contractor shall comply with all lawful requirements, including federal and state laws, City and County laws and ordinances and building codes, applicable to the Work and shall give and maintain copies of all notices required by applicable law pertaining to the Work.
- 19.3 Both the business address of the Contractor given in the Bid or proposal upon which this Contract is founded, and the Contractor's Office near the Work, is hereby designated as the places to which all notices, letters, and other communications to the Contractor may be mailed or delivered. The delivering at either of the above named addresses, or depositing in any mailbox regularly maintained by the Post Office, of any notice, letter or other communication so addressed to the Contractor, and the date of said service shall be the date of such delivery or mailing. Such addresses may be changed at any time by an instrument in writing, executed by the Contractor, presented, and delivered to the Engineer and to the City. Nothing herein

contained shall be deemed to preclude or render inoperative the service of any notice, letter, or communication upon the Contractor personally.

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

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

WITNESSETH:

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

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

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

WHEREAS, the Contractor has agreed to furnish at its own cost and expense all labor, tools,

equipment , materials and transportation required to construct and complete in good, first class and workmanlike manner, the Work in accordance with the Project Manual; and.

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

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

IN WITNESS WHEREOF, the City, has caused this Agreement to be executed in its behalf, thereunto duly authorized, and the said Contractor has executed three (3) counterparts of this Contract in the prescribed form and manner, the day and year first above written.

CITY OF PRAIRIE VILLAGE

METRO ASPHALT, INC.

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)

(date of execution)

(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.)



POLICE DEPARTMENT

Council Meeting Date: May 19, 2014

COU2014-17: Consider Purchase of Laptops for Police Department Vehicles

RECOMMENDATION

Staff recommends the City Council approve the quote from Turn-Key Mobile for the purchase of laptops for the Police Department vehicles.

SUGGESTED MOTION

I move that the Police Department purchase 20 Panasonic laptop computers from Turn-Key Mobile and installation hardware/labor as described for a total cost to not exceed \$65,176.

NOTE: The net purchase will be approximately \$52,176 after reimbursement of approximately \$13,000 from the City of Mission Hills.

BACKGROUND

The Department had budgeted laptop replacement in 2015; however, in late 2013 and early 2014, we were notified by REJIS (Regional Justice Information Services), which maintains the secured criminal database used by the Police Department, that Microsoft was ceasing support for the XP platform as of April 8, 2014. The current laptops were put into service in 2009 have the XP Platform and, based on the fact Microsoft is not providing security support and updates, the system is vulnerable to viruses and the potential compromise of sensitive information.

The Department has worked with the IT Committee to allocate the needed funds as part of the Equipment Reserve Fund to replace the laptops and docking stations in each marked patrol unit. The laptops are part the Intergraph Network, a multiagency initiative, which exclusively uses Panasonic brand laptops. The Department sought quotes (attached) from Turn-Key Mobile and CDW-G, the two most predominate Panasonic vendors, in order to get the best price possible. Aside from the low bid are costs for installation and an upgrade by our IT consultant for solid-state hard drives.

COU2014-17: Consider Purchase of Laptops for Police Department Vehicles
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Costs Estimates:

20 laptops (this includes two backup computers to mitigate downtime)	\$40,320
3-year warranty	3,900
memory upgrade	2,100
18 docking stations	10,368
DC adaptors	2,879
hard drives	2,300
installation costs (\$83 per vehicle)	1,411
3% contingency	1,898
TOTAL	\$65,176

Mission Hills Reimbursement: \$13,000 (approximately)

Funding Source: Equipment Reserve Fund 22-53-53-8001-000

ATTACHMENTS

- Turn-Key Quote
- CDW-G Quote
- Ka-Comm Installation

PREPARED BY

Tim Kobe
Staff Services Division Supervisor
Date: May 14, 2014



Turn-Key Mobile, Inc.

501 Lakeview Heights, Suite 101
 Jefferson City, MO 65109

573-893-9888 Office 314-754-9794 Fax

Proposal

Date	Proposal #
5/1/2014	16454

Name / Address
Prairie Village Police Department 7710 Mission Rd. Prairie Village, KS 66208

Sales Rep	Prepared By	PO #	Accepted By
Kim	Lindsay		

Item	Description	Qty	Rate	Total
CF-53SULZYLM	Panasonic CF-53, Win7 (Win8 COA), Intel Core i5-3340M 2.70GHz, vPro, 14.0" HD Touch, 500GB(7200rpm), 4GB, Intel WiFi a/b/g/n, Bluetooth, Emissive Backlit Keyboard, Multi-drive, Toughbook Preferred	20	2,016.00	40,320.00
CF-SVCLTNF3Y	Panasonic Toughbook Protection Plus, 3 Year "No Fault" Warranty	20	195.00	3,900.00
MIG64KL110	Kingston 8GB Memory Upgrade for CF-53	20	105.00	2,100.00
7160-0393-00	GAMBER JOHNSON Panasonic Toughbook CF-53 No pass docking station	18	576.00	10,368.00
PA-1580T-3223	Lind Electronics Mountable DC adapter with 1 hr shut down timer, bare wire input - for Toughbook CF-31, CF-53	18	159.95	2,879.10
Options - CF-53	Optional: Fingerprint Scanner +\$200 Smartcard Reader +\$100 *Interface plates may be needed to match hole pattern to your existing computer mounts			

Proposals are good for 30 days. Please ask your rep for updated pricing and availability.	Total	\$59,567.10
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Signature _____



SALES QUOTATION

QUOTE NO.	ACCOUNT NO.	DATE
FFWR403	4211174	4/16/2014

BILL TO:
CITY OF PRAIRIE VILLAGE
7700 MISSION RD

SHIP TO:
CITY OF PRAIRIE VILLAGE
Attention To: NICHOLAS SANDERS
7700 MISSION RD

Accounts Payable
PRAIRIE VILLAGE , KS 66208-4281

PRAIRIE VILLAGE , KS 66208-4281
Contact: NIC SANDERS 913.385.4664

Customer Phone #913.385.4603

Customer P.O. # PANASONIC TB 53 FINAL

ACCOUNT MANAGER		SHIPPING METHOD	TERMS	EXEMPTION CERTIFICATE
JOHN BURNS 866.668.9498		UPS Ground	Request Terms	GOVT-EXEMPT
QTY	ITEM NO.	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
20	470719	PAN TOUGHBOOK WARRANTY PRO PLUS 3YR Mfg#: CF-SVCLTNF3Y Contract: MARKET	199.99	3,999.80
20	3158687	Electronic distribution - NO MEDIA BTO PAN CF 53 I5-3340M 500GB 8GB W7P Mfg#: CF-53SUMZYLM Contract: MARKET	2,134.99	42,699.80
20	2630666	GAMBER DOCK STATION INT POW NO-RF Mfg#: 7160-0393-04 Contract: MARKET	709.99	14,199.80
20	2809733	GAMBER SCREEN SUPPORT F/PAN 53 DOCK Mfg#: 7160-0428 Contract: MARKET	44.99	899.80
SUBTOTAL				61,799.20
FREIGHT				0.00
TAX				0.00
US Currency				

TOTAL 61,799.20

CDW Government
230 North Milwaukee Ave.
Vernon Hills, IL 60061

Fax: 312.752.3878

Please remit payment to:
CDW Government
75 Remittance Drive
Suite 1515
Chicago, IL 60675-1515

MAYOR'S ANNOUNCEMENTS

May 19, 2014

Committee meetings scheduled for the next two weeks:

Prairie Village Arts Council	05/21/2014	7:00 p.m.
Village Fest Committee	05/22/2014	7:00 p.m.
Environment/Recycle Committee	05/28/2014	7:00 p.m.
Council Committee of the Whole	06/02/2014	6:00 p.m.
City Council	06/02/2014	7:30 p.m.

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The Prairie Village Arts Council is pleased to present an oil and acrylic exhibit by Wayne Wilkes as the May exhibit in the R. G. Endres Gallery.

Recreation memberships are on sale through the City Clerk's Office. The pool opens on Saturday, May 24, at 11:00 am.

The City offices will be closed next Monday, May 26, in observance of the Memorial Day holiday. Deffenbaugh also observes this holiday so trash pick-up will be delayed one day.

INFORMATIONAL ITEMS

May 19, 2014

1. Jazz Fest Committee Minutes - March 25, 2014
2. Planning Commission Minutes - April 1, 2014
3. Tree Board Minutes - May 7, 2014
4. Mark Your Calendars

JAZZFEST COMMITTEE MINUTES
March 25, 2014

Present: Casey Symonds, JD Kinney, Jane Andrews, Diane Mares, Brooke Morehead, Donelea Hespe, Gloria Shearer, Jack Shearer, Mike Polich, Dan Andersen, Mark Naster, Larry Kopitnik and Joyce Hagen Mundy.

501(c) 3 Update

Jack reported committee members have investigated the option of PV Jazz Fest forming its own **501(c) 3**. There is an organization that will prepare the necessary filing paperwork at no cost for non-profit agencies. JD Kinney has contacted Kevin Yoder's office for assistance in moving the application through the back-logged process. Jack reviewed the pros and cons of the committee having its own **501(c)3** status instead of using that of the Prairie Village Municipal Foundation.

Dan Andersen moved the committee authorize committee members to begin to pursue the application process for **501(c) 3** designation with Casey Symonds and report the results to the committee at our next meeting. The motion was seconded by Donelea Hespe and passed unanimously.

Talent

Larry Kopitnik noted the committee spent \$8000 more on talent last year than in previous years with both Bobby Watson and Marilyn Maye. He stated he is looking at a talent budget of less than \$20,000. He is looking to bring in one "Blues" band to the festival and talked with "Trampled Under Foot". However, due to another commitment he does not feel they will be available. As a potential headliner, one of the considerations is Deborah Brown. Several local artists have expressed interest in being in the festival. Committee members gave artist suggestions to Larry. It was noted is a big band is signed on, the stage area will need to be larger. It was noted that the committee will take a 20% commission on the sale of artist's cd's.

Larry stated he will continue exploring options and would like to have a line-up for consideration by the committee at its next meeting with contracts going before the City Council in May.

Fundraising

Donations of \$2700 have been received from multiple "Friends of Jazz". LegaC Properties gave \$5000 on behalf of the two shopping centers. The Arts Council has donated \$1500. Jack has written to Kim Harrison with the SME Jazz Band regarding participation in the event or a joint fundraising event. He has not had any response or interest expressed.

Jack noted that last year vendors, acquired by Pelofsky Associates, paid \$1,750 to be a food vendor. Initial meetings after the event with the vendors were very positive; however, in recent discussions all of last year's vendors have indicated that they do not want to return as vendors.

Dan Andersen stated he views three levels of fundraising - Vendors (sell food for a fee), Donors (charitable donation) and Sponsors (advertising).

Diane Mares suggested that the committee contact Amy Hamm, marketing director, with the Theatre League for a possible donation to the festival. In exchange for their donation they could possibly have a table to promote the Theater League.

The committee discussed possible changes to the tent and vendor fees and whether or not the committee should be selling soft drinks and water. Jack indicated that Bevco39 is willing to sell us drinks at cost and return what is not sold. He noted "Jazz in the Woods" has their vendors selling water and soft drinks. The committee was open to do either. The committee also offered suggestions for possible vendors and discussed how many vendors to have. It was recommended to have vending trucks and other low maintenance, low power vendors.

It was suggested that the number/size of the VIP tents be smaller. It was noted that there was a lot of waste of food and extra expense with unused tables and tents. Options were discussed to better address this. One of the suggested options was giving the individuals in the tent tickets to be used at any of the vendors with the committee reimbursing the vendors for the costs after the event.

Dan Andersen moved the committee set a \$750 Merchandising Tent Fee and a \$500 Vendor Fee. The motion was seconded by Larry Kopitnik and passed.

Razmobile.com

Several committee members heard a presentation by Razmobile.com a mobile fundraising tool. Jack reviewed the possible application of this tool and noted that it will be used by "Jazz in the Woods" this year, but that "Heartland Habitat for Humanity" has chosen not to use the program. There is no long-term contract required. There is a monthly fee of \$29.95. RAZ receives 3.9 cents for every dollar raised, significantly lower than other fundraising methods. Jack noted there are several ways to use RAZmobile. He particularly likes the ability to hook up with local merchants, to raise funds through their clientele without costing them any money. The donated funds would be channeled into the existing Municipal Foundation account through an existing PayPal account received instantly. The committee would be able to get donor information.

Mark Naster explained Heartland's reasoning for not using Razmobile.com, noting this method would not reach their contributing clientele. They did a sample test and found it not to be substantially effective. He felt the required "opt in" process would further limit the potential viable contacts for them. Mark noted there are solicitation lists available for jazz enthusiasts and supporters that could be used. The incurred cost is not for the list, but for the actual mailing. He has found that corporations are looking for community service options and for "perks" received in conjunction with their donations.

Dan Andersen moved the committee proceed with the use of RAZmobile.com for fundraising efforts. The motion was seconded by Donelea Hespe and passed.

Budget

Chairman Jack Shearer reviewed his proposed budget for 2014. He noted a reduction in sponsorships without an identified fundraiser. The lower budget for talent is also reflected. To offset the lower revenue from sponsorships, he has added revenue from a possible cover charge for the event. Brooke Morehead stated that UMB has budgeted funds for a \$10,000 or greater sponsorship of JazzFest in 2014.

Committee members felt a cover charge could reduce participation by as much as one-third based on experiences with other events. Several committee members expressed opposition. Active pursuit at the gate of a suggested donation was preferred. Jack stated he has discussed a possible \$5 cover charge to colleagues and most indicated that they would not have a problem with it. Brooke Morehead stated she felt the cover charge sets a value on the festival that is merited based on the talent presented. Committee members agreed that it would set a value. Dan Andersen noted that concerns have been presented regarding the festival outgrowing the site and would like to see the cover, if approved, presented as a means to address overcrowding. The committee felt the suggested \$5 level for the fee was acceptable. It was felt that children could be allowed in without a charge. There was some discussion on possible implementation. No decision was made. Jack asked the committee to think about it until the next meeting.

Chairman Jack Shearer adjourned the meeting at 9:30 p.m.

PLANNING COMMISSION MINUTES
April 1, 2014

ROLL CALL

The Planning Commission of the City of Prairie Village met in regular session on Tuesday, April 1, 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: Nancy Wallerstein, 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; Jim Brown, Building Official and Joyce Hagen Mundy, City Clerk/Planning Commission Secretary.

APPROVAL OF MINUTES

Nancy Vennard moved the approval of the Planning Commission minutes of March 4, 2014. The motion was seconded by Nancy Wallerstein and passed unanimously.

PUBLIC HEARINGS

There were no public hearings.

NON PUBLIC HEARINGS

**PC2014-02 Request for Special Use Permit for Private School
7457 Cherokee**

Brian Gordon, Executive Director of Global Montessori Academy, reported that the requested traffic study was completed. He has been in communication with Mr. Williamson and is in agreement with the staff recommendation.

Mr. Williamson noted there are several schools in the area and traffic backs up on southbound Belinder Avenue. The applicant has prepared a Traffic Impact Study which concludes that trips generated by GMA will not significantly impact the intersection.

The trip generation for private schools was taken from the ITE Manual. Private schools generate a high volume of traffic and because this school is relocating from the Plaza, it may generate more trips than a typical private school. Therefore, Staff recommends that the Site Plan be approved with a condition that the operation will be evaluated during the school year and adjustments may be required to accommodate the traffic. This could include the dedication of right-of-way on Belinder Avenue to construct a turn lane. Also, GMA needs to work with the Police Department to prepare a traffic flow plan that will be communicated to the parents.

The applicant proposed to install moveable barriers on the east and south boundaries of the elementary school play area. It is important that the barriers remain moveable in the event traffic needs to use Cherokee Drive for access.

The applicant submitted a Site Plan for approval by the Planning Commission. Since the proposed use is within an existing building, a detailed Site Plan was not required; however, the applicant needs to submit more detail for the proposed outdoor classroom area on the east side of the building.

Chairman Ken Vaughn led the Commission in the following consideration of the Site Plan criteria:

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

The proposed Montessori School will be within an existing structure and parking and access will be accommodated within the existing north parking lot.

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

This site is currently served by utilities and they should be adequate to serve the proposed use.

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

No changes in the existing site are proposed and therefore stormwater runoff will not be affected.

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

The existing parking area on the north side will provide adequate ingress/egress for the proposed use. Currently the parents park and walk children in, at drop-off, and out, at pick-up. GMA plans to continue this procedure. Belinder Avenue currently backs up at 75th Street in the morning rush hour and this use will further aggravate that problem. A Traffic Impact Study has been prepared to address this issue.

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

The site is consistent with good land planning and design.

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

It is not proposed to change the external appearance of the building except for some minor items; however, some site changes are proposed.

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

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 proposed Montessori School is an amenity that sets Prairie Village apart from other competing communities in the metropolitan area. This application for approval of the Montessori School is

consistent with Village Vision in encouraging reinvestment; providing multiple uses in existing buildings and making better use of underutilized facilities.

Ken Vaughn noted the outdoor lighting condition. Mr. Williamson stated as there are no exterior changes being made to the existing building, this will address any existing lighting that may not be in compliance. The fire and building codes for this different use of the building are being addressed by the Fire Department and the Building Official. Mr. Vaughn stated this is a wonderful reuse of this building.

Nancy Wallerstein noted the close proximity of the operating hours for the proposed school and Belinder Elementary School and expressed some concern with traffic congestion. Mr. Gordon responded that the school caters to working families and that approximately half of its students arrive early and stay until after 4 o'clock.

Ron Williamson replied the main problem with stack generally occurs in the morning hours and if this occurs the school will need to work with the Police Department to address it.

Gregory Wolf moved the Planning Commission approve the Site Plan for the Global Montessori School at 7457 Cherokee Drive subject to the following conditions:

1. That any outdoor lighting installed shall be in accordance with the lighting ordinance.
2. That the applicant meet all requirements of the building and fire codes.
3. That the applicant submit a more detailed Site Plan for the proposed outdoor classroom to be reviewed and approved by Staff.
4. That any proposed modifications to the exterior of the building, including doors, etc., be subject to the review and approval of Staff for architectural compatibility.
5. That the conclusions and recommendations of the Traffic Impact Study be accepted at this time which states that the proposed school will not significantly impact the intersections. However, traffic will be monitored by the Police and Public Works Departments during the school year and if traffic does become an issue, the applicant will work with City Staff to implement a solution. One possibility may be the dedication of additional right-of-way for Belinder Avenue to construct a turn lane at the 75th Street intersection.
6. That the barriers for the elementary school play area be moveable in case access is needed from Cherokee Drive.
7. That the applicant work with the Police Department to prepare a traffic flow plan to be communicated to the people that will be dropping off and picking up students.

The motion was seconded by Randy Kronblad and passed unanimously.

**PC2014-109 Site Plan Approval for Exterior Seating
Einstein Brothers Bagels
6970 Mission Road**

Kylie Stock with Lega C Properties addressed the Commission on behalf of Einstein Bagel who is locating in the space previously occupied by Dolce Bakery and Starbucks,

and proposes to have an outdoor seating area. Einstein Bagel has reviewed the staff recommendation and is in agreement with the conditions of approval.

Ron Williamson stated the proposed outdoor seating area includes three four-top tables under the canopy and one four-top table on each end of the canopy. This is approximately 300 sq. ft. The distance between the columns and the curb is 60". In order to meet ADA accessibility through this area, an unobstructed walkway of 48" must be maintained and the distance between the face of the wall and the columns is 12'. Vehicle overhang could be 24" which reduces the accessible walkway to 36". The applicant proposes to place the tables closer to the building and maintain a 36" wide walkway adjacent to the columns. This would increase the outdoor space in the Center from 7,780 sq. ft. to 8,080 sq. ft. and would increase the Center sq. ft. from 301,886 to 302,186.

The square footage of Village Center has been agreed upon between the City and the owners. The off-street parking requirement for mixed office/commercial centers over 300,000 square feet is 3.5 spaces per 1,000 square feet. The addition of 300 sq. ft. for the outdoor seating area will increase the required parking from 1,057 spaces to 1,058 spaces. The Center provides 1,160 spaces and has an excess of 102 spaces. Based on the agreed upon parking calculation method, the applicant will need to submit a floor plan indicating the amount of area designated as storage and the Center will need to update the square footage chart, indicating the change in storage area and patio area. The Handicap Parking sign will need to be relocated because it is within the 36" walkway. It could easily be moved to the brick column. Also, the two existing planters will need to be located where they do not encroach into the 36" walkway on either side of the column.

Chairman Ken Vaughn led the Commission in review of the follow criteria:

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

The site is capable of accommodating the seating area provided an ADA accessible walkway is available. The walkway between the curb and the building columns is only 60" and with vehicle overhang it would be reduced to 36". The 48" width allows for a wheelchair and a pedestrian to pass. The applicant is proposing a minimum 36" walkway width on the north side of the columns and will meet the requirement.

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

Utilities are currently in place serving the Prairie Village Center and are adequate to serve this minor expansion for outdoor seating.

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 accessibility will need to be maintained between the columns and the parking lot, and the columns and the building façade.

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

The addition of outdoor seating will help create a more vibrant atmosphere for the Center and is consistent with good land planning practices. The primary site design issue is the need to maintain a minimum 36" walkway for ADA accessibility on both sides of the columns.

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

No changes are proposed to the building façade. The brick columns and other features will remain as they are now.

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 building that will generate additional revenues for the City.

Bob Lindeblad moved the Planning Commission approve the proposed site plan for Einstein Bagel's outdoor seating area, 6970 Mission Road, 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 and be in conjunction with the outdoor lighting regulations.
2. That a minimum 36" wide accessible walkway be maintained on both sides of the columns.
3. That the Handicap Parking sign be relocated and the planters be moved so that they do not encroach into the 36" walkway.
4. That the square footage chart and drawings for Prairie Village Center be updated and submitted to the City in order to determine the appropriate square footage for the parking requirement.

The motion was seconded by Nancy Wallerstein and passed unanimously.

OTHER BUSINESS

Information on permitted uses in R-1a

Ron Williamson briefly reviewed information that had been distributed to the City Council and discussed with them on March 3, 2014. The Council requested information on what was allowed in Prairie Village in Single Family Residential Districts compared to other Johnson County cities. The intent was to determine whether there are uses that

should be removed and/or moved to a different process. The MXD discussion was primarily a review to determine if it met the projected needs of the future.

Mr. Williamson noted that when the Conditional Use Permit was included in the State Statutes, it was envisioned to be a separate procedure from Special Use Permits. However, case law has determined over the years that Conditional Use Permits and Special Use Permits are used interchangeably and should follow the same procedures. Therefore, after further analysis, the Conditional Use Chapter should be eliminate and the list of uses whether transferred to Special Use Permits, Site Plan review or Staff review.

NEXT MEETING

The filing deadline for the May 6th meeting is Friday, April 4th. To date an application for renewal of the Special Use Permit for KCATC located in the Faith Lutheran Church facility has been submitted as well as a temporary use permit request for a summer camp program operating out the Kansas City Christian School. We anticipate taking action on the Preliminary and Final Plat for Chadwick Court at the May meeting and consideration of an application by Sprint for wireless antenna on the tower at 7700 Mission Road..

ADJOURNMENT

With no further business to come before the Commission, Chairman Ken Vaughn adjourned the meeting at 7:18 p.m.

Ken Vaughn
Chairman

TREE BOARD

City of Prairie Village, Kansas

MINUTES (DRAFT)

Wednesday May 7, 2014

Public Works Conference Room
3535 Somerset Drive

Board Members: Greg VanBooven, Deborah Nixon, Luci Mitchell, Rick Howell, Linda Marcusen, Jonathan Pruitt

Other Attendees: Eric Mikkelson, Suzanne Lownes

Deborah Nixon called the meeting to order at 6:00 p.m. with a quorum present.

1) Review and Approve Minutes of April 2, 2014- Motion by Deborah Nixon, second Linda Marcusen. **Approved unanimously.**

2) Sub-Committee Report

2.1) Arbor Day – The weather was not great with rain starting at the beginning and continuing throughout the event. Most of the Tree Board members attended and enjoyed looking at the new Ginkgo tree that was planted for the event. It was noted that the plaque was not up yet and Suzanne Lownes stated she would follow up with staff on getting that installed. Family Tree was recognized for donating the tree for the event. There was discussion that next year the Arbor Day event should be located at a different park. It was suggested that McCrum might be a good location for a arboretum tree.

3) Old Business

3.1) Ash Tree Inventory - Suzanne Lownes stated that copies of the park tree inventory maps have been printed for the Tree Board members to finalize the inventory of the park ash trees. Suzanne Lownes said she would re-print inventory sheets with park trees only for use with the maps and then send an email out to the group so they can coordinate the inventory efforts.

3.2) Earth Day - Luci Mitchell and Linda Marcusen said that the Earth Day event went well and it was a good turnout. They had lots of high school students stop at the booth as part of their extra credit assignments. Luci Mitchell stated that there was a particular interest on information concerning the Emerald Ash Borer and that the EAB box provided from Johnson County was very useful.

4) New Business

4.1) New Council Liaison, Eric Mikkelson - Eric Mikkelson introduced himself to the group and asked questions about the Tree Board functions. Eric Mikkelson also answered the Boards questions concerning the letters from the Mayor concerning their not being reappointed.

4.2) Fall Seminar - The Board discussed several options for the Fall Seminar in October. The date will be October 1st. Suzanne Lownes said she would make sure the Council Chamber was reserved for the event. The Board discussed maybe pulling together an informational panel of speakers to discuss several topics like: EAB, Rose Rosette, Robert Whitman's preferred KC evergreen list. The Board will continue to work on a final plan for the Fall Seminar.

5) Next Meeting

The next meeting will be August 6, 2014 at 6:00pm at the Public Works Facility.

The meeting adjourned at 7:20 p.m.

Minutes prepared by Suzanne Lownes.

Council Members
Mark Your Calendars
May 5, 2014

May 2014	Wayne Wilkes oil and acrylic exhibit in the R. G. Endres Gallery
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	Randy Kronblad pastel exhibit in the R. G. Endres Gallery
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	Gloria Hawkins and Christina Ellis 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 12 Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
December 13 Volunteer Appreciation Holiday Party - Meadowbrook Country Club
December 15 City Council Meeting
December 25 City offices closed in observance of Christmas