

CITY OF PRAIRIE VILLAGE

July 7, 2014

Council Committee Meeting 6:00 p.m.

City Council Meeting 7:30 p.m.



COUNCIL COMMITTEE OF THE WHOLE
Council Chambers
July 07, 2014
6:00 PM

AGENDA

ASHLEY WEAVER, COUNCIL PRESIDENT

AGENDA ITEMS FOR DISCUSSION

Exterior Grant Program Update
Kate Gunja

- *COU2014-22 Consider approval of a contract with Vance Brothers, Inc for the 2014 Crack Seal/Micro Surfacing Program
Keith Bredehoeft
 - *COU2014-23 Consider approval of a contract with McConnell & Associates for the Harmon Park Tennis Court Rehabilitation
Keith Bredehoeft
 - *COU2014-24 Consider Engineering Change Order #3 for Project 75ST0001: 75th Street from State Line Road to Mission Road
Keith Bredehoeft
 - COU2014-25 Consider increasing funding for Project BG4001: McCrum Park Improvements and the Transfer of \$25,000 from Taliaferro Park Project BG45001 to McCrum Park Project BG4001
Keith Bredehoeft
- Report on Committee Structure Review
Danielle Dulin

***Council Action Requested the same night**



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: July 7, 2014

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COU2014-22 - CONSIDER APPROVAL OF A CONTRACT WITH VANCE BROTHERS, INC. FOR THE 2014 CRACK SEAL/MICRO SURFACING PROGRAM.

RECOMMENDATION

Move to authorize the Mayor to sign the Construction Contract with Vance Brothers, Inc. for Project P5000, 2014 Crack Seal/Micro Surfacing Program for \$312,000.

BACKGROUND

On February 21, 2014 the City Clerk opened bids for Project P5000, 2014 Crack Seal/Micro Surfacing Program. One bid was received:

Vance Brothers, Inc.	\$234,286.00
Intermountain Slurry Seal	\$302,321.00
Engineer's Estimate	\$312,830.00

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

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

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

FUNDING SOURCE

Funding is available in the 2014 Capital Infrastructure Program Project P5000.

ATTACHMENTS

1. Construction Agreement with Vance Brothers, Inc.

PREPARED BY

Keith Bredehoeft, Public Works Director

June 19, 2014

**CONSTRUCTION AGREEMENT
BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
VANCE BROTHERS, INC.
FOR
PROJECT P5000 - 2014 CRACK SEAL/MICRO SURFACING 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 Vance Brothers Inc., hereinafter termed in this agreement, “Contractor”, for the construction and completion of Project , designated, described and required by the Project Manual and Bid proposal, to wit:

CONTRACT COST: The City shall pay the Contractor for the performance of the Work embraced in this Contract, and the Contractor will accept in full compensation therefore the sum (subject to adjustment as provided by the Contract) of **Three Hundred Twelve Thousand and 00/100 Dollars (\$312,000.00)** for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

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

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

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

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

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

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

1. DEFINITIONS:

1.1 Following words are given these definitions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. ENTIRE AGREEMENT:

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

3. INTENT AND INTERPRETATION

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

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

4. WORK SUPERINTENDENT

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

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

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

5. ENGINEER

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

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

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

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

6. WORK SCHEDULE:

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

7. DELAYS AND EXTENSIONS OF TIME

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

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

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

8. ADVERSE WEATHER:

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

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

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

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

requirements)

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

9. PAYMENT PROCEDURE:

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

loss because of:

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

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

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

10. COMPLETION AND FINAL PAYMENT

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

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

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

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

11. CLAIMS BY THE CONTRACTOR

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

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

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

12. CHANGES IN THE WORK

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

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

13. INSURANCE AND HOLD HARMLESS.

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

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

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

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

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

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

14. INDEMNITY

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

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

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

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

15. SUCCESSORS AND ASSIGNS

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

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

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

16. NON-DISCRIMINATION LAWS

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

17. RELATIONS WITH OTHER CONTRACTORS:

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

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

- 17.2 When two or more Contracts are being executed at one time in such manner that work on one Contract may interfere with that on another, the City shall decide which Contractor shall progress at which time.
- 17.3 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.
- 17.4 Upon execution of the Contract, the Contractor shall furnish the City, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Work. The City shall promptly reply to the Contractor, in writing, stating any objections the City may have to such proposed Subcontractor. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the City has made timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has objection.

18. RIGHT OF CITY TO TERMINATE

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

19. MISCELLANEOUS:

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

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

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

WITNESSETH:

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

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

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

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

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

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

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

CITY OF PRAIRIE VILLAGE

VANCE BROTHERS, 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

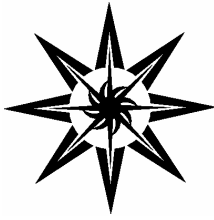
ATTEST:

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.)



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: July 7, 2014

Council Meeting Date: July 7, 2014

***COU2014-23 CONSIDER APPROVAL OF A CONTRACT WITH McCONNELL & ASSOCIATES FOR THE HARMON PARK TENNIS COURT REHABILITATION .**

RECOMMENDATION

Move to authorize the Mayor to sign the Construction Contract with McConnell & Associates for Project BG320001, Harmon Park Tennis Court Rehabilitation for \$541,650.66.

BACKGROUND

On June 20, 2014 the City Clerk opened bids for Project BG320001, Harmon Park Tennis Court Rehabilitation. Two bids were received.

Name of Bidder	Base Bid	Alternate #1 (Overlay Practice Courts)	Alternate #2 (New Fence)
Engineers Estimate	\$504,705.00	\$17,480.00	\$63,030.00
McConnell & Associates	\$515,512.64	\$26,138.02	\$114,722.58
Little Joe's Asphalt	\$700,536.00	\$34,910.00	\$125,860.00

This contract consists of constructing new courts on top of the existing courts at Harmon Park and using the existing fence. There is \$617,000 budgeted for this project, including design, and the recommendation is to award for the Base Bid plus Alternate #1 for a total contract amount of \$ 541,650.66.

The low bid is within 10% of the Engineer's Estimate and can be awarded based upon Charter Ordinance No. 19, Chapter 2.62. The discrepancy occurred in the engineer's estimate of the asphalt pricing.

City staff has reviewed the bid for accuracy and the bids above reflect minor corrections.

FUNDING SOURCE

Funding is available in the 2014 Capital Infrastructure Program Project BG320001.

ATTACHMENTS

1. Construction Agreement with McConnell & Associates

PREPARED BY

Keith Bredehoeft, Public Works Director

July 1, 2014

CONSTRUCTION AGREEMENT
BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
McCONNELL & ASSOCIATES
FOR
PROJECT BG320001: Harmon Tennis Court Rehabilitation

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 McConnell & Associates, hereinafter termed in this agreement, "Contractor", for the construction and completion of Project , designated, described and required by the Project Manual and Bid proposal, to wit:

CONTRACT COST: The City shall pay the Contractor for the performance of the Work embraced in this Contract, and the Contractor will accept in full compensation therefore the sum (subject to adjustment as provided by the Contract) of FIVE HUNDRED FORTY ONE THOUSAND, SIX HUNDRED FIFTY DOLLARS AND 66/100 (\$ 541,650.66) for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

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

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

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

in the Special Conditions for each calendar day beyond the applicable Total Completion date. Such amount shall be deducted from any amounts due Contractor under this agreement.

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

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

1. DEFINITIONS:

1.1 Following words are given these definitions:

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

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

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

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

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

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

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

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

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

Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. ENTIRE AGREEMENT:

- 2.1 The Contract Documents, together with the Contractor's Performance, Maintenance and Statutory bonds for the Work, constitute the entire and exclusive agreement between the City and the Contractor with reference to the Work. Specifically, but without limitation, this Contract supersedes all prior written or oral communications, representations and negotiations, if any, between the City and the Contractor. The Contract may not be amended or modified except by

a modification as hereinabove defined. These Contract Documents do not, nor shall they be construed to, create any contractual relationship of any kind between the City and any Subcontractor or remote tier Subcontractor.

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

3. INTENT AND INTERPRETATION

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

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

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

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

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

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

3.7 As between numbers and scaled measurements in the Project Manual, the numbers shall govern; as between larger scale and smaller scale drawings, (e.g. 10:1 is larger than 100:1) the larger scale shall govern.

3.8 The organization of the Project Manual into divisions, sections, paragraphs, articles (or other categories), shall not control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.

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

4. WORK SUPERINTENDENT

- 4.1 The Contractor shall provide and maintain, continually on the site of Work during its progress, an adequate and competent superintendent of all operations for and in connection with the work being performed under this Contract, either personally or by a duly authorized superintendent or other representative. This representative shall be designated in writing at the preconstruction meeting.
- 4.2 The superintendent, or other representative of the Contractor on the Work, who has charge thereof, shall be fully authorized to act for the Contractor, and to receive whatever orders as may be given for the proper prosecution of the work, or notices in connection therewith. Use of Subcontractors on portions of the work shall not relieve the Contractor of the obligation to have a

competent superintendent on the work at all times.

- 4.3 The City shall have the right to approve the person who will be the Superintendent based on skill, knowledge, experience and work performance. The City shall also have the right to request replacement of any superintendent.
- 4.4 The duly authorized representative shall be official liaison between the City and the Contractor regarding the signing of pay estimates, change orders, workday reports and other forms necessary for communication and Work status inquiries. Upon Work commencement, the City shall be notified, in writing, within five (5) working days of any changes in the Contractor's representative. In the absence of the Contractor or representative, suitable communication equipment, which will assure receipt of messages within one (1) hour during the course of the workday, will also be required.
- 4.5 The Contractor will be required to contact the Engineer daily to advise whether and/or where the Contractor and/or the Subcontractor's crews will be working that day, in order that the Engineer's representative is able to monitor properly the Work.

5. ENGINEER

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

- 5.6 The Engineer will review the Contractor's Applications for Payment and will certify to the City for payment to the Contractor those amounts then due the Contractor as provided in this Contract. The Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to City, based on Engineer's on-site observations of the Work in progress as an experienced and qualified design professional and on Engineer's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of the Engineer's knowledge, information and belief, the quality of the Work is in accordance with the Project Manual (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Project Manual, to a final determination of quantities and classifications for Unit Price Work if such is called for herein, and to any other qualifications stated in the recommendation); and that Contractor is entitled to payment of the amount recommended. However, by recommending any such payment Engineer will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to Engineer in the Project Manual or that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by the City or the City to withhold payment to Contractor.
- 5.7 The Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make such representations to City. Engineer may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in the Engineer's opinion to protect the City from loss because:
- The Work is defective, or completed Work has been damaged requiring correction or replacement,
 - The Contract Price has been reduced by Written Amendment or Change Order,
 - The City has been required to correct defective Work or complete Work in accordance with the Project Manual.
- 5.8 The City may refuse to make payment of the full amount recommended by the Engineer because claims have been made against City on account of Contractor's performance or furnishing of the Work or liens have been filed in connection with the Work or there are other items entitling City to a set-off against the amount recommended, but City must give Contractor written notice (with a copy to Engineer) stating the reasons for such action.
- 5.9 The Engineer will have the authority to reject Work, which is defective or does not conform to the requirements of this Contract. If the Engineer deems it necessary or advisable, the Engineer shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.
- 5.10 The Engineer will review, or take other appropriate action as necessary, concerning the Contractor's submittals, including Shop Drawings, Product Data and Samples. Such review, or other action, shall be for the sole purpose of determining general conformance with the design concept and information given through the Project Manual.
- 5.11 The Engineer shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.

- 5.12 The Engineer, upon written request from the Contractor shall conduct observations to determine the date of substantial completion and the date of final acceptance. The Engineer will receive and forward to the City for the City's review and records, written warranties and related documents from the Contractor required by this Contract and will issue a final Certificate for Payment to the City upon compliance with the requirements of this Contract.
- 5.13 The Engineer's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.
- 5.14 The Engineer will **NOT** be responsible for Contractor's means, methods, techniques, sequences, or procedures or construction, or the safety precautions and programs incident thereto and will not be responsible for Contractor's failure to perform the work in accordance with the Project Manual. The Engineer will not be responsible for the acts or omissions of the Contractor or any Subcontractor or any of its or their agents or employees, or any other person at the site or otherwise performing any of the work except as may otherwise be provided.
- 5.15 Any plan or method of work suggested by the Engineer, or other representatives of the City, to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor, and the Engineer and the City will assume no responsibility therefore.
- 5.16 It is agreed by the Contractor that the City shall be and is hereby authorized to appoint or employ, either directly or through the Engineer, such City representatives or observers as the City may deem proper, to observe the materials furnished and the work performed under the Project Manual, and to see that the said materials are furnished, and the said work performed, in accordance with the Project Manual therefore. The Contractor shall furnish all reasonable aid and assistance required by the Engineer, or by the resident representatives for proper observation and examination of the Work and all parts thereof.
- 5.17 The Contractor shall comply with any interpretation of the Project Manual by the Engineer, or any resident representative or observer so appointed, when the same are consistent with the obligations of the Project Manual. However, should the Contractor object to any interpretation given by any subordinate engineer, resident representative or observer, the Contractor may appeal in writing to the City Director of Public Works for a decision.
- 5.18 Resident representatives, observers, and other properly authorized representatives of the City or Engineer shall be free at all times to perform their duties, and intimidation or attempted intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the City so decides, to annul the Contract.
- 5.19 Such observation shall not relieve the Contractor from any obligation to perform said work strictly in accordance with the Project Manual.

6. WORK SCHEDULE:

- 6.1 The Contractor, within ten (10) calendar days after being instructed to do so in a written notice from the City, shall commence work to be done under this Contract.
- 6.2 The rate of progress shall be such that the Work shall have been completed in accordance with the terms of the Contract Documents on or before the completion date for the construction period named in the contract agreement, subject to any extension or extensions

of such time made as hereinafter provided.

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

7. DELAYS AND EXTENSIONS OF TIME

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

however, that claim for such extension of time is made by the Contractor to the City and the Engineer in writing within one (1) week from the time when any such alleged cause for delay shall occur.

8. ADVERSE WEATHER:

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

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

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

- 8.7 Upon receipt of the Notice to Proceed, and continuing throughout the Contract, the Contractor shall record on their daily construction report, the occurrence of adverse weather and resultant impact to normally scheduled work.
- 8.8 The number of actual adverse weather delay days shall include days affected by actual adverse weather (even if adverse weather occurred in the previous month), and shall be

calculated chronologically from the first to the last day of each month, and be recorded as full workdays.

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

9. PAYMENT PROCEDURE:

- 9.1 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal on the first day of each month of an Application for Payment, all Work for which payments have been received from the City shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.
- 9.2 Each application for payment must be submitted with Contractor's waiver for period of construction covered by application. Each progress payment will be submitted with executed

waivers from the subcontractors or sub-contractors and suppliers for the previous period of construction covered by the previous application. The final payment application must be submitted together with or preceded by final or complete waivers from every entity involved with performance of the work covered by the payment request.

- 9.3 The Contractor will submit waivers on forms, and executed in a manner, acceptable to City.
- 9.4 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor because of such Subcontractor's Work the amount to which such Subcontractor is entitled. In the event the City becomes informed that the Contractor has not paid a Subcontractor as herein provided, the City shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the City, shall be deemed payment to the Contractor but shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the City to repeat the procedure in the future.
- 9.5 The Engineer will, upon receipt of a written Application for Payment from the Contractor, review the amount of work performed during the preceding period and the value thereof at the unit prices contracted. From the amounts so ascertained, there shall be deducted ten percent (10%) to be retained until after final completion of the entire work to the satisfaction of the City. The Engineer will submit an estimate each month to the City for payment to the Contractor, except that no amount less than \$500.00 will be submitted unless the total amount of the Contract remaining unpaid is less than \$500.00.
- 9.6 Deductions will be made from progress payments if the Contract includes a provision for a lump sum or a percentage deduction. Lump sum deductions will be that portion of the stated lump sum computed as the ratio that the amount earned bears to the Contract amount. Percentage deductions will be computed at the stated percentage of the amount earned.
- 9.7 No progress payment, nor any use or occupancy of the Work by the City, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.
- 9.8 The City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the City from loss because of:
- Defective Work not remedied by the Contractor;
 - Claims of third parties against the City or the City's property;
 - Failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
 - Evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
 - Evidence that the Work will not be completed in the time required for substantial or final completion;
 - Persistent failure to carry out the Work in accordance with the Contract;
 - Damage to the City or a third party to whom the City is, or may be, liable;
 - Evidence that the work is not progressing according to agreed upon schedule by both parties.
- 9.9 In the event that the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in this subparagraph, the Contractor shall promptly comply

with such demand and refund such monies to the City.

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

10. COMPLETION AND FINAL PAYMENT

- 10.1 Work completion shall be defined as all elements of the Work or work segment, being complete including all subsidiary items and "punch-list" items.
- 10.2 When all of the Work is finally complete and the Contractor is ready for a final inspection, it shall notify the City and the Engineer thereof in writing. Thereupon, the Engineer will make final inspection of the Work and, if the Work is complete in accordance with this Contract, the Engineer will promptly issue a final Certificate for Payment certifying to the City that the Work is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Engineer is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s), which cost may be deducted by the City from the Contractor's full payment.
- 10.3 The Contractor shall not be entitled to any payment unless and until it submits to the Engineer its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the City, or the City's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors and Suppliers of the Contractor and of any and all other parties required by the City; and consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the City, the Contractor shall furnish a bond satisfactory to the City to discharge any such lien or indemnify the City from liability.
- 10.4 The City shall make final payment of all sums due the Contractor within thirty days of the later of the Engineer's execution of a final Certificate for Payment.
- 10.5 Acceptance of final payment shall constitute a waiver of all claims against the City by the Contractor except for those claims previously made in writing against the City by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final inspection.

11. CLAIMS BY THE CONTRACTOR

- 11.1 All Contractor claims shall be initiated by written notice and claim to the Engineer. Such written notice and claim must be furnished within seven calendar days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.
- 11.2 The Contractor shall diligently proceed with performance of this Contract whether or not there be such a claim pending and the City shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim shall be reflected by a Change Order executed by the City, the Engineer and the Contractor.

- 11.3 Should concealed and unknown conditions which could not, with reasonable diligence, have been discovered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure differ materially with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided by this Contract, be encountered, the Contract Price shall be equitably adjusted by the Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the City having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the City written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed or unknown condition.
- 11.4 If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the City therefore, the Contractor shall give the City written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.
- 11.5 The City reserves the right to increase or decrease quantities, and alter the details of construction including grade and alignment as the Engineer may consider necessary or desirable, by approved Change Order. Such modifications shall not invalidate the Contract nor release the surety. Unless such alterations and increases or decreases change the total cost of the Work, based on the originally estimated quantities and the unit prices bid, by more than 25 percent, or change the total cost of any major item, based on the originally estimated quantities and the unit price bid, by more than 25 percent, the Contractor shall perform the work altered, increased or decreased, at a negotiated price or prices. (A major item shall mean any bid item, the total cost of which exceeds 12-1/2 percent of the total Contract amount based on the proposed quantity and the contract unit price).
- 11.6 When the alterations cause an increase or decrease in excess of the 25 percent indicated above, either the Contractor or the Engineer may request an adjustment of the unit price to be paid for the item or items.
- 11.7 If a mutually agreeable adjustment cannot be obtained, the City reserves the right to terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the Work.
- 11.8 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall not include standby costs, indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties.
- 11.9 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in

transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving Final Acceptance of the Work shall be extended upon the written notice and claim of the Contractor to the City, for such reasonable time as the City may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven calendar days after the occurrence of the event or the first appearance of the condition-giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Work. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this subparagraph, any claim for an extension of time shall be waived.

- 11.10 The Contractor shall delay or suspend the progress of the work or any part thereof, whenever so required by written order of the City, and for such periods of time as required; provided, that in the event of such delay or delays or of such suspension or suspensions of the progress of the work, or any part thereof, the time for completion of work so suspended or of work so delayed by such suspension or suspensions shall be extended for a period equivalent to the time lost by reason of such suspension or suspensions; but such order of the City or Engineer shall not otherwise modify or invalidate in any way, any of the provisions of this Contract. In the event that the work shall be stopped by written order of the City, any expense, which, in the sole opinion and judgment of the City, is caused by the City, shall be paid by the City to the Contractor.
- 11.11 In executing the Contract Documents, the Contractor expressly covenants and agrees that, in undertaking to complete the Work within the time herein fixed, it has taken into consideration and made allowances for all hindrances and delays incident to such work, whether growing out of delays in securing materials or workers or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the work, or any portion thereof, included in this Contract, except as provided herein.
- 11.12 In addition to the Project Manual particular to Mobilization found elsewhere in this document, additional mobilization shall not be compensable for work outside of the designated areas for work deemed essential by the City. A quantity of work equal to as much as 10% of the total Contract may be required to be performed beyond the boundaries of the designated work areas

12. CHANGES IN THE WORK

- 12.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.
- 12.2 The Engineer shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 12.3 Any change in the Contract Price resulting from a Change Order shall be by mutual agreement between the City and the Contractor as evidenced by the change in the Contract Price being set forth in the Change Order, and, together with any conditions or requirements related thereto, being initialed by both parties.

- 12.4 If no mutual agreement occurs between the City and the Contractor relative to a change in the Work, the Contractor shall proceed with the work that is the subject of the Change Order, and the change in the Contract Price, if any, shall then be determined by the Engineer on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content to the City, as the Engineer requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies or equipment, including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools, whether rented from the Contractor or others, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and job site field office overhead directly attributable to the change. In no event shall any standby time or any expenditure or savings associated with the Contractor's home office or other non-job site overhead expense be included in any change in the Contract Price. Further, in no event shall the Contractor's overhead expense exceed ten (10%) percent of the reasonable expenditures. Pending final determination of reasonable expenditures or savings to the City, payments on account shall be made to the Contractor on the Engineer's Certificate for Payment.
- 12.5 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that the application of such unit prices to the quantities of Work proposed would cause substantial inequity to the City or to the Contractor, the applicable unit prices shall be equitably adjusted.
- 12.6 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim including impact against the City for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

13. INSURANCE AND HOLD HARMLESS.

- 13.1 The Contractor shall assume full responsibility for the protection of all public and private property, structures, sewers, and utilities, both above and below the ground, along, beneath, above, across or near the site or sites of the work being performed under this Contract, or which are in any manner affected by the prosecution of the Work or the transportation of men/women or materials in connection therewith. Barriers shall be kept placed at all times to protect persons other than those engaged on or about the Work from accident, and the Contractor will be held responsible for all accidents to persons or property resulting from the acts of Contractor or its employees.
- 13.2 To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the City, the Engineer, and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property (other than the Work itself) including the loss of use resulting there-from, and (2) is caused in

whole or in part by any intentional or negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity, which would otherwise exist.

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

obligation, including but not limited to, the indemnification obligation.

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

13.11 The liability limits shall be as stated:

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

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

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

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

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

14. INDEMNITY

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

"The Contractor" means and includes Contractor, all of his/her affiliates and subsidiaries, his/her Subcontractors and material men and their respective servants, agents and

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

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

15. SUCCESSORS AND ASSIGNS

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

Contract shall create any contractual relations between any Subcontractor and the City, nor shall anything contained in the Contract Documents create any obligation on the part of the City to pay or to see to the payment of any sums due any Subcontractor.

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

16. NON-DISCRIMINATION LAWS

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

Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency;

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

17. RELATIONS WITH OTHER CONTRACTORS:

- 17.1 The Contractor shall cooperate with all other contractors who may be performing work on behalf of the City, and workers who may be employed by the City, or any other entity on any work in the vicinity of the Work to be done under this Contract, and the Contractor shall so conduct his/her operations as to interfere to the least possible extent with the work of such contractors or workers. The Contractor shall be responsible for any injury or damage, that may be sustained by other contractors, workers, their work or employees of the City, because of any fault or negligence on the Contractor's part, and shall, at his/her own expense, repair or pay for such injury or damage. If the work of the Contractor is delayed because of any acts or omissions of any other Contractor or Contractors, the Contractor shall have no claim against the City on that account other than for an extension of time.
- 17.2 When two or more Contracts are being executed at one time in such manner that work on one Contract may interfere with that on another, the City shall decide which Contractor shall progress at which time.
- 17.3 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.
- 17.4 Upon execution of the Contract, the Contractor shall furnish the City, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Work. The City shall promptly reply to the Contractor, in writing, stating any objections the City may have to such proposed Subcontractor. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the City has made timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has objection.

18. RIGHT OF CITY TO TERMINATE

- 18.1 If the Contractor persistently or repeatedly refuses or fails to prosecute the Work in a timely

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

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

19. MISCELLANEOUS:

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

devices or equipment (as distinguished from processes) used in or furnished for the work shall be included in the Contract amount and the Contractor shall satisfy all demands that may be made at any time for such, and the Contractor shall at its cost and expense, defend any and all suits or proceedings that may be instituted at any time against the City for infringement or alleged infringement of any such patents involved in the work, and Contractor shall pay any award of damages.

- 19.5 The right of general administration of the City shall not make the Contractor an agent of the City, and the liability of the Contractor for all damages to persons, firms, and corporations, arising from the Contractor's execution of the Work, shall not be lessened because of such general administration, but as to all such persons, firms, and corporations, and the damages, if any, to them or their property. The Contractor herein is an independent Contractor in respect to the work.
- 19.6 For a period of time, from the inception of the Contract to three (3) years from the date of final payment under the Contract, the Contractor and subcontractors shall maintain books, accounts, ledgers, invoices, drafts, pages and other records pertaining to the performance of this Contract. At all reasonable times during this period these records shall be available within the State of Kansas at a field or permanent business office for inspection by authorized representatives of the City or of any other agency, which has contributed funds in connection with the Contract or to which the City is obligated to make such inspections available. In addition, this requirement shall be included in all subcontracts entered into in connection with this Contract.
- 19.7 Titles, subheadings used herein, and other Contract Documents are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Contract Documents.
- 19.8 No waiver of any breach of this Contract shall be construed to be a waiver of any other subsequent breach.
- 19.9 Should any provision of this Agreement or other Contract Documents be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement and/or the other Contract Documents shall be unaffected thereby and shall continue to be valid and enforceable.
- 19.10 The Contractor shall keep fully informed of all existing and current regulations of the City, and County, State, and National Laws, which in any way limit or control the actions or operations of those engaged upon the work, or affecting materials supplied, to or by them. The Contractor shall at all times observe and comply with all ordinances, laws, and regulations, and shall protect and indemnify the City and the City's officers and agents against any claims or liability arising from or based on any violation of the same.
- 19.11 Nothing contained in these Project Manual shall create, or be interpreted to create, privity or any other contractual agreement between the City and any person or entity other than the Contractor.
- 19.12 Duties and obligations imposed by the Contract Documents, rights, and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

- 19.13 No action or failure to act by the City, Engineer or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval or acquiescence in a breach hereunder, except as may be specifically agreed in writing.
- 19.14 Contractor specifically acknowledges and confirms that: 1.) he/she has visited the site, made all inspections he deems appropriate and has read and fully understands the Contract Documents, including all obligations and responsibilities undertaken by he as specified herein and in other Contract Documents and knowingly accepts the same; 2.) he/she has furnished copies of all Contract Documents to his/her insurance carrier(s) and his/her surety(ies); and 3.) his/her insurance carrier(s) and surety(ies) agree to be bound as specified herein, in the Contract Documents and in the insurance policy(ies) and bonds as to liability and surety coverage.
- 19.15 It is specifically agreed between the parties executing this Agreement that the Contract Documents are not intended to create any third party beneficiary relationship nor authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.
- 19.16 This agreement is entered into, under and pursuant to, and is to be construed and enforceable in accordance with the laws of the State of Kansas.

WITNESSETH:

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

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

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

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

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

WHEREAS, in consideration of the compensation to be paid the Contractor, and of the mutual agreements herein contained, the parties hereto have agreed and hereby agree, the City for itself and

its successors, and the Contractor for itself, himself, herself or themselves, its, his/her, hers or their successors and assigns, or its, his/her, hers or their executors and administrators, as follows:

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

CITY OF PRAIRIE VILLAGE

McCONNELL & ASSOCIATES

By: _____
(signed)

By _____
(signed)

Ronald L. Shaffer _____

(typed name)

Mayor _____

(typed title)

City of Prairie Village _____

(typed company name)

7700 Mission Road _____

(typed address)

Prairie Village, Kansas, 66208 _____

(typed city, state, zip)

(typed telephone number)

(date of execution)

(date of execution)

SEAL

ATTEST:

APPROVED BY:

City Clerk, Joyce Hagen-Mundy

City Attorney, Catherine Logan

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



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: July 7, 2014
Council Meeting Date: July 7, 2014

COU2014-24 CONSIDER ENGINEERING CHANGE ORDER #3 FOR PROJECT 75ST0001- 75TH STREET FROM STATE LINE ROAD TO MISSION ROAD

RECOMMENDATION

Move to approve Change Order #3 with GBA for project 75ST0001: 75th Street Rehabilitation from State Line Road to Mission Road in the amount of \$58,198.00.

BACKGROUND

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. This 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 obligated in 2014. Construction will take place in 2015.

This project is a federally funded project and is fully administered by the Kansas Department of Transportation. Plans for the project are being prepared to fully meet all KDOT requirements.

Significant items included in this change order are shown below and are items considered outside of the original scope or were areas of design that the work effort was greater than expected.

- Modified Profile between Mission and Reinhardt
- 75th Street alignment Shift from Belinder to Eaton
- Additions design related to the easements needed for this project
- Manual cross sections required by KDOT
- Additional storm sewer design. Replaced more than originally planned.

FUNDING SOURCE

Funding is available under Project 75ST0001: 75th State Line Road to Mission Road in the amount of \$58,198.00.

RELATION TO VILLAGE VISION

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

CFS3a. Ensure streets and sidewalks are in good condition by conducting maintenance and repairs as needed.

TR1a. Provide sidewalks in new and existing areas to allow for continuous pedestrian movement around Prairie Village.

TR1b. Ensure that infrastructure improvements meet the needs of all transportation users.

ATTACHMENTS

1. Engineering Change Order #3 with George Butler Associates, Inc.

PREPARED BY

Keith Bredehoeft, Public Works Director

July 1, 2014



**CITY OF PRAIRIE VILLAGE
PUBLIC WORKS DEPARTMENT
ENGINEERING CHANGE ORDER NO. 3**

City's Project: 75ST0001- 75th Street, Staline Road to Mission Road

Date Requested: July 7, 2014

Contract Date: June 6, 2011

Consultant's Name: George Butler and Associates

Contractor's Name:

REQUIRED CHANGES TO PRESENT CONTRACT

Contract Quantity	Previous Amount	Unit	Item Description	Adj. Quant.	Unit Price	Adjusted Amount
1	\$400,709.00		Additional Engineering Services	1	\$58,198.00	\$458,907.00

TOTAL \$400,709.00

	TOTAL	\$458,907.00
NET	Increase	\$58,198.00

EXPLANATION OF CHANGE - This change order is to cover the following items:

- Significant items included in this change order are shown below and are significant items that are considered outside of the original scope or were areas of design that the work effort was greater than expected.
- 75th Street alignment Shift from Belinder to Eaton
 - Additions design related to the easements needed for this project
 - Manual cross sections required by KDOT
 - Additional storm sewer design. Replaced more than originally planned.
 - Modified Profile between Mission and Reinhardt

	Contract Value	Contract Days
Original Contract	\$124,760.00	
Current Contract including previous Change Orders	\$400,709.00	
NET This Change Order	\$58,198.00	
New Contract Price	\$458,907.00	

Engineer

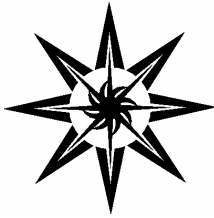
Date

Keith Bredehoeft, Public Works Director
City of Prairie Village, KS

Date

Ronald L. Shaffer, Mayor
City of Prairie Village, KS

Date



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: July 7, 2014

Council Meeting Date: July 7, 2014

CONSIDER INCREASING FUNDING FOR PROJECT BG40001- MCCRUM PARK IMPROVEMENTS AND TO TRANSFER \$25,000 FROM TALIAFERRO PARK PROJECT BG45001 TO MCCRUM PARK PROJECT BG40001

RECOMMENDATION

Move to approve increasing funding for Project BG40001- McCrum Park Improvements by \$55,000 and to transfer \$25,000 from Taliaferro Park Project BG45001 to McCrum Park Project BG40001.

BACKGROUND

In May 2013 Council approved 4 year funding of improvements to parks. These improvements totaled \$985,000.00 over the 4 years. The projects planned for 2014 are listed below.

2014- \$250,000 for improvements in McCrum, Prairie, Taliaferro, and Harmon Parks.

Plans have been developed and were presented at a public meeting this spring. Upon final design, costs for the improvements for McCrum Park and Taliaferro Park increased more than expected. This caused us to study further the order of work for the planned projects over the next 4 years and has led to changes to the order of work that will help reduce costs. The changes are summarized below.

Taliaferro Park- The park improvement plan called for the nature play area to be completed in 2014 and the ball field improvements to be completed in 2015. It is now proposed to do both of these improvements in 2015 as opposed to separate years. The \$25,000 in construction funding for this park will be moved to the construction of McCrum Park as its costs have increased.

McCrum Park- The improvements planned are basically a complete park upgrade. Work is still proposed in 2014 but with an increase of \$55,000 in funding. Costs to underground the power lines increased and KCPL was not willing to share in the cost of the equipment. Overall costs to make the park a "complete park" were also more than expected. Given the importance of this park and the significant work being done this increase in funding will allow the park to be completed at this time. With the added \$25,000 from Taliaferro Park and the \$55,000 in new funding this will result in a total of \$80,000 in additional funding and a total cost of \$229,000 for the construction of McCrum Park.

The overall budget for the 4 year park plan was \$985,000 and this increase of \$55,000 will increase the 4 year plan to \$1,040,000.00.

FINANCIAL IMPACT

Funding is available under the Parks Infrastructure Reserve.

RELATED TO VILLAGE VISION

2. I. Enhancing Parks and Open Space

CFS2.a. Preserve and protect natural areas.

CFS2.b. Enhance parks for active and passive recreation through capital improvements such as landscaping, tree and flower planting, shelters picnic facilities, athletic fields, etc.

ATTACHMENTS

NONE

PREPARED BY

Keith Bredehoeft, Public Works Director

July 2, 2014



Review recommendation from the Committee Structure Review Committee

BACKGROUND

During budget discussions at the May 6, 2013 City Council meeting, an ad hoc committee was established to review required resources and structure of all citizen committees in the City of Prairie Village. The ad hoc committee has met 8 times to discuss the roles and responsibilities, dedicated staff time, and financial resources for each of the committees. A survey was distributed to all committee members for their input regarding the possible elimination, consolidation, or reformation of their committee as well as other topics such as term limits, leadership selection, staff time, and funding. Additionally, staff representatives for the committees were consulted in regards to the roles and responsibilities of the committees and their value to the organization.

SUMMARY

During discussions, it was noted that all of the citizen committees add value to the organization, but a balance needs to be achieved between citizen involvement and efficiency. The Committee commented on the value volunteers add to a community and shared appreciation for the service. The Committee Structure Review (CSR) Committee is recommending that the responsibilities of 4 citizen committees be shifted to staff, another committee, or City Council; the combination of 5 citizen committees into a larger committee with subcommittees; and the elimination of 1 citizen committee. The details of these changes are attached in a written report and summarized chart.

The CSR Committee is recommending that the majority of these changes take effect January 1, 2015. In regards to the relationship of the Municipal Foundation with the Arts Council and VillageFest, JazzFest, and Sister City Committees, the CSR Committee has not established transition dates and is looking for feedback from City Council, Municipal Foundation, and committees.

There are other items to be considered in regards to citizen committees, but the Committee felt that it was important to get feedback from Council on the initial step of reassigning responsibilities and restructuring some of the existing citizen committees. Below is a list of other potential considerations for the CSR Committee:

- Standardized structure across all committees
- Leadership selection process
- Member selection process
- Term limits
- Residency requirements

Additionally, the Committee recognizes that it was specifically assigned to look at the selection process for Planning Commission/Board of Zoning Appeals, but the majority of members felt that particular discussion needed to be had at the City Council level.

ATTACHMENTS

Committee Structure Review Committee Recommendations—written report

Committee Structure Review Committee Recommendations—summary

Committee Survey

Committee Survey results (abbreviated)

PREPARED BY

Danielle Dulin

Assistant to the City Administrator

Date: 7/2/2014

RECOMMENDATIONS FOR CITIZEN COMMITTEES

Americans with Disabilities Act (ADA) Advisory Committee

Established by Council Policy CP001. V. A. 6.

The ADA Advisory Committee advises the City of issues related to the City's continued efforts to comply with Title II and the Americans with Disabilities Act in the City's sponsored services, programs, or activities.

Summary

The ADA Advisory Committee did not meet in 2011, 2012, or 2013. Two members of the committee responded to the survey, and while they felt the committee had an important responsibility, they recognized it had been several years since they had met. ADA accommodations and requirements are heavily regulated by laws and building code. Staff and other committees have assumed the role of ensuring that reasonable accommodations & necessary requirements have been met for individuals with disabilities.

Recommendation

The Committee Structure Review (CSR) Committee is recommending that the responsibilities of the Americans with Disabilities Act Advisory Committee be shifted to staff and other committees effective January 1, 2015. If a need arose to have a committee dedicated to ADA issues, an ad hoc committee could be established for a specific amount of time.

Animal Control Committee

Established by Municipal Code 2-127.

The functions of [the Animal Control Committee] shall include but not be limited to matters of animal welfare and control and to consider and make decisions as to whether appeals under section 2-125 should be granted or denied.

Summary

It has been the practice that the Animal Control Committee only meets when there is an appeal of the decision of the Animal Control Officer and/or the Chief of Police in regards to the declaration of a dangerous animal or the revocation of an animal permit. Appeals are very rare. The committee did not meet in 2011 or 2013, but it met once in 2012 and twice in 2014 for appeals.

Recommendation

The CSR Committee is recommending that the responsibility of hearing appeals should be shifted to the City Council effective January 1, 2015. If the need arose to have a committee focused on animal welfare and control, an ad hoc committee could be established for a specific amount of time.

Board of Code Appeals

Required by the Uniform Building Code

The Board of Code Appeals reviews and recommends the adoption of the building code. Additionally, the Board hears appeals of the determinations and decisions of the Building Official in regards to the application and interpretation of the Building Code.

Summary

The Board of Code Appeals hears appeals of decisions from the Building Official. Additionally, the Board reviews the most recent edition of the International Building Code and recommends revisions for adoption by the City Council. The Board of Code Appeals did not meet in 2011 or 2012, but they did meet once in 2013 to review and adopt the 2012 International Building Code. While a new edition of the International Building Code is issued approximately every three years, appeals are very rare. Similar experience and knowledge is required to understand the intricacies of the Building Code as is required for the Board of Zoning Appeals.

Recommendation

The CSR Committee is recommending that the responsibilities of the Board of Code Appeals be shifted to the Board of Zoning Appeals effective January 1, 2015.

Police Civil Service Commission

Established by Municipal Code 1-805

The Police Civil Service Commission shall assist in determining qualifications and fitness of applicants for the position of commissioned police officer, for promotions, and as an appeals board for commissioned police officers for suspensions, demotions, or terminations.

Summary

The Chief of Police has the final decision in regards to any hiring decision, but the Commission does provide a rank. For promotion purposes, the Commission's recommendation has 20% weight. There has only been one appeal in the last 15 years, and the Commission upheld the decision of the Chief of Police. In addition to the responsibilities outlined in the Municipal Code, the Police Civil Service Commission also serves as the city's Racial Diversity Advisory Board to ensure that the police department does adequate training/analysis to prevent any racial profiling.

Recommendation

The CSR Committee is recommending that there be no change to the Police Civil Service Commission.

Communications Committee

Established by Council Policy CP001. V. A. 1. & CP610

The Communications Committee recommends to the Governing Body policies and guidelines on matters pertaining to: television programming on Channel 13A, newsletter content, community relations and relations with the media.

Summary

The Communications Committee meets on an as needed basis. The Committee met 4 times in 2011, and once in both 2012 and 2013. In 2011, the Committee was instrumental in the development of the city website. However, the City no longer operates its own television station, and newsletter content and media relations are handled primarily by staff.

Recommendation

The CSR Committee is recommending that the responsibilities of the Communications Committee be shifted to staff as of January 1, 2015. If the need arose, an ad hoc committee could be appointed for a specific period of time.

Homes Association Committee

Established by Council Policy CP001.V.A.8.

The Homes Association Committee will recommend to the Governing Body policies and guidelines on matters pertaining to the Homes Association in Prairie Village.

Summary

The Homes Association Committee met once in 2011, and has not met since. In response to the survey that was distributed, many of the Homes Association presidents responded that they were not on a City Committee and did not understand why they received the survey.

Recommendation

The CSR Committee is recommending that the Homes Association Committee be eliminated as of January 1, 2015. If there is a need for a committee to focus on Homes Association issues, an ad hoc committee could be appointed for a specific period of time.

Environmental/Recycle Committee

Established by Council Policy CP001.V.A.4.

The Environmental/Recycle Committee recommends to the Governing Body policies, guidelines, or programs to enhance quality of life, increase awareness of the need to conserve natural resources, and educate the public on ways to protect the environment.

Summary

The Environmental/Recycle Committee has very unique responsibilities, meets monthly, and has several initiatives that it has developed and supported over the years.

Recommendation

The CSR Committee is recommending that there be no change to the Environmental/Recycle Committee.

Insurance Committee

Established by CP001.V.A.2.

The Insurance Committee monitors and discusses insurance issues related to the City and to recommend an insurer after a competitive bid process.

Summary

Most Kansas municipalities have eliminated their insurance committees, leaving the responsibility to staff and a consultant. The Insurance Committee is comprised of individuals who are very knowledgeable in regards to the insurance business and offer valuable insight to the selection of a provider.

Recommendation

The Committee Structure Review Committee is recommending that the Insurance Committee remain unchanged.

Park and Recreation Committee

Established by Municipal Code 1-803

The Park and Recreation Committee is responsible for recommending policies and guidelines to the Governing Body on matters pertaining to recreational activities, intergovernmental agreements pertaining to parks and recreation facilities, use of park system facilities, development of park system facilities, short and long-range plans for city parks, operations, and activities related to the park system.

Summary

The Park and Recreation Committee serves a unique function in the City and meets on a regular basis for the purpose described above.

Recommendation

The CSR Committee is not recommending any changes to the Park and Recreation Committee.

Planning Commission/Board of Zoning Appeals

Established by Kansas State Statutes & Municipal Code 16-112

The Planning Commission/Board of Zoning Appeals oversees the application and enforcement of the Zoning Regulations, planning and development process.

Summary

The Planning Commission and Board of Zoning Appeals are established by State law.

Recommendation

The CSR Committee is not recommending any changes to the Planning Commission/Board of Zoning Appeals except for the addition of the responsibilities of the Board of Code Appeals being added to the Board of Zoning Appeals effective January 1, 2015.

Police Pension Board

Established by Police Pension Plan

The Police Pension Board is responsible for overseeing the investments of the Police Pension.

Summary

As long as the City funds its police pension, the Police Pension Board is required. Its function is unique; therefore, it would be difficult to combined with any other committee.

Recommendation

The CSR Committee is not recommending any changes to the Police Pension Board.

Tree Board

Established by Municipal Code 13-301

The Tree Board is responsible for studying, investigating, assessing, counseling, and recommending to the Governing Body on policy related to trees and other plantings upon City-owned property.

Summary

The Tree Board performs a unique function in the City and including assistance with the recent Emerald Ash Borer issue.

Recommendation

The CSR Committee is not recommending any changes to the Tree Board.

Municipal Foundation (Arts Council and VillageFest, JazzFest, and Sister City Committees)

Municipal Foundation: Established by Articles of Incorporation

The Municipal Foundation is a 501(c)(3) organization, and funds that are raised or donated to the Municipal Foundation are used for utility assistance, supporting housing projects, recreation scholarships, and recreational, artistic, and cultural programs. Additionally, the Municipal Foundation is a 509(a)(3)(A) and can be used to benefit, perform, or carry out the purposes of the City of Prairie Village.

Arts Council: Established by Council Policy CP001. V.A.3.

The Prairie Village Arts Council recommends to the Governing Body policies and guidelines on matters pertaining to promotion and development of the arts in Prairie Village, acquisition of art for the city's identification graphics, landscaping of city facilities, and development of cultural activities for the city.

VillageFest: Established by Council Policy

Organizes, plans, and raises funds for the annual Fourth of July event, VillageFest.

JazzFest: Established by Council Policy

Organizes, plans, and raises funds for the annual JazzFest in September.

Sister City: Established by Council Policy CP001.V.A.5.

The Prairie Village Sister City Committee recommends to the Governing Body policies, guidelines or programs to promote cultural ties between the City of Prairie Village and its sister cities, cultural learning opportunities for children and adults, economic and business development opportunities between Prairie Village and its sister cities, and to promote exchanges of students and city leaders as appropriate cultural, educational, economic, and social ties.

Summary

The Prairie Village Municipal Foundation supports the arts and parks and provides financial assistance for persons in need as well as recreational scholarships. Additionally, part of the Municipal Foundation's mission is to make available cultural arts opportunities.

While the other four committees serve unique functions for the city, they are similar in that they promote the arts, cultural experiences, and community.

Recommendation

The CSR Committee is recommending to rename & restructure the Municipal Foundation to include a representative of the Arts Council, VillageFest, JazzFest, and Sister City Committees as the Arts and Community Foundation of Prairie Village. These committees would become subcommittees of the larger Arts and Community Foundation and with a relationship similar to that of the City and the current Municipal Foundation. The CSR Committee believes that these committees have similar goals and objectives—promoting the arts, cultural experiences, and community—and there are many benefits to restructuring. It is understood that this is a significant change, and the CSR Committee expects this to be done in phases.

The first phase would be the renaming and restructuring of the Municipal Foundation. The Committee Structure Review Committee is recommending that the membership of Arts and Community Foundation include the chair or a designee from the Arts Council, VillageFest, JazzFest, and Sister City Committees in addition to the current membership of the Municipal Foundation. This would allow each of the committees to have representation at the Foundation meetings and report to the Foundation on the progress and status of their respective committee's work. The second phase would be the hiring of a contractor to serve as a development coordinator that would help with fundraising for events, developing existing programming and creating new programming. (At this time, the CSR Committee has not put any dates on this transition and is looking for feedback from the City Council and Municipal Foundation before further developing this plan.)

Committee	Recommendation	Notes
ADA Advisory	Responsibilities shifted to staff & other committees; ad hoc committee, if needed	ADA accommodations & requirements are heavily regulated by laws and building code. Additionally, other committees (ie, Parks and Rec) and staff will absorb the responsibilities of the ADA Advisory Committee.
Animal Control Board	Responsibilities shifted to City Council; ad hoc committee, if needed	Appeals are very rare and could easily be heard by City Council.
Board of Code Appeals	Responsibilities shifted to the Board of Zoning Appeals; ad hoc committee, if needed	This board is required by the Uniform Building Code. It requires similar experience as the BZA. If the need arose, an ad hoc committee could be established with a beginning and end date.
Civil Service Commission	Status quo	
Communications	Responsibilities shifted to staff; ad hoc committee, if needed	
Environmental	Status quo	
HOA	Eliminate; ad hoc committee, if needed	
Insurance	Status quo	
JazzFest		Consider working more closely with the repurposed and renamed Municipal Foundation--The Arts and Community Foundation.
Municipal Foundation		Consider repurposing and renaming--The Arts and Community Foundation. This Committee would oversee other committees--Jazz Fest, Sister City, Village Fest, Arts Council.
Parks and Rec	Status quo	
Planning Commission/BZA	Status quo	
Police Pension Board	Status quo	Required as long as City funds Police Pension.
Arts Council		Consider working more closely with the repurposed and renamed Municipal Foundation--The Arts and Community Foundation.
Sister City		Consider working more closely with the repurposed and renamed Municipal Foundation--The Arts and Community Foundation.
Statuary/Island		Currently an ad hoc committee. After initial appraisal and maintenance plan, Arts Council will absorb responsibility.
Tree Board	Status quo	
VillageFest		Consider working more closely with the repurposed and renamed Municipal Foundation--The Arts and Community Foundation.



March 18, 2014

Dear Prairie Village Committee Member—

Thank you for volunteering on one or more of the City's committees; we greatly appreciate your willingness to serve your community.

The City of Prairie Village currently has 20 standing committees with volunteers, Council liaisons, and staff support. Many of these committees have been established by City Council policy, while others, such as the Planning Commission, are mandated by state law. The Council has appointed an ad hoc committee to review the current structure of our citizen committees. It is the goal of the ad hoc committee to increase committee efficiency and prioritize staff time spent supporting committees. We are asking for your assistance in helping us understand your committee's purpose, goals, and membership.

Please complete our online survey by **March 31, 2013** at

<https://www.surveymonkey.com/s/QRCP7ZS>.

If you do not want to complete the survey online, you can fill out the enclosed survey and return it to City Hall, 7700 Mission Rd, Prairie Village, KS 66208 ATTN: Danielle Dulin. Please fill out a separate survey for each committee that you serve. The Committee Structure Review Ad Hoc Committee is hoping for candid and honest feedback from committee members; therefore, only survey summaries and trends will be published in reports to the City Council or committees.

Do not hesitate to contact Danielle Dulin at 913/385-4635 or ddulin@pvkansas.com with questions or concerns.

Thank you in advance for your valuable insight.
Sincerely,

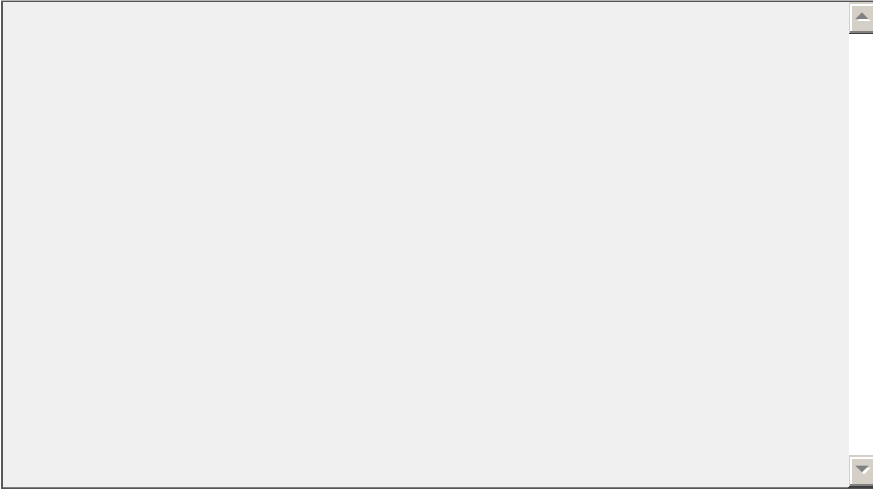
The Committee Structure Review Ad Hoc Committee

1. Which citizen committee do you serve on? (If you serve on more than one committee, please fill out a separate survey for each committee that you serve on.)

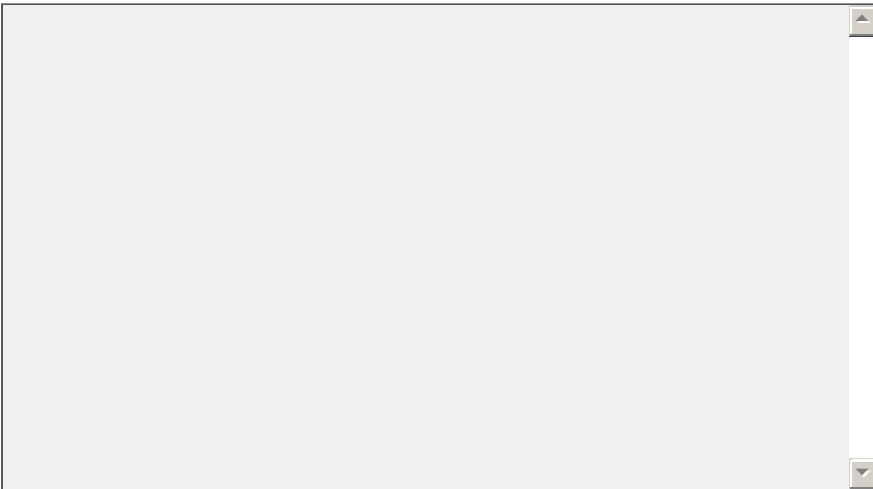
- Parks & Recreation Committee
- Planning Commission
- Board of Zoning Appeals
- Animal Control
- Civil Service Commission
- Prairie Village Arts Council
- Communications Committee
- Insurance Committee
- ADA Advisory Committee
- Board of Code Appeals
- Sister City Committee
- Tree Board
- Municipal Foundation
- Police Pension Board of Trustees
- Environmental/Recycle Committee
- VillageFest Committee
- Finance Committee
- Homes Association Committee
- Statuary/Island Committee
- JazzFest Committee

Purpose and Intent of Committee

2. How do you summarize your committee's purpose, goals, and objectives?



3. In your view, how does your committee benefit the residents of Prairie Village?



4. Do you feel like your committee meetings are productive?

Yes

No

Please explain.



5. How often does your committee meet?

- Monthly
- Bi-monthly
- Quarterly
- As needed

Other (please explain).

6. How often to you attend your committee meetings?

- Always (present at 90% of the meetings).
- Sometimes (present at 75% of the meetings).
- Rarely (present at less than 50% of the meetings).
- Never (present at less than 25% of the meetings).

If you miss more than 1/2 of your committee meetings, please explain why.

7. If your committee was combined with another committee, made independent of the city, or disbanded, what would be the benefits and/or consequences?

Funding and Staff Time

8. Do you feel your committee is adequately funded?

Yes

No

Please explain.

9. City staff...

spends an adequate amount of time supporting my committee.

does not have enough time to support my committee.

spends too much time supporting my committee.

Other (please explain).

Membership

10. My committee is:

- Too large.
- The ideal size.
- Too small.

11. Should there be a residency requirement to be a member of your committee?

- Yes
- No
- No opinion

12. Should there be a limit to the number of years an individual can serve on one committee?

- No limitation.
- Yes, 3 years (one term).
- Yes, 6 years (two terms).
- Yes, 9 years (three terms).

Other (please explain).

13. Do you feel the members of your committee are actively engaged?

- Yes
- No

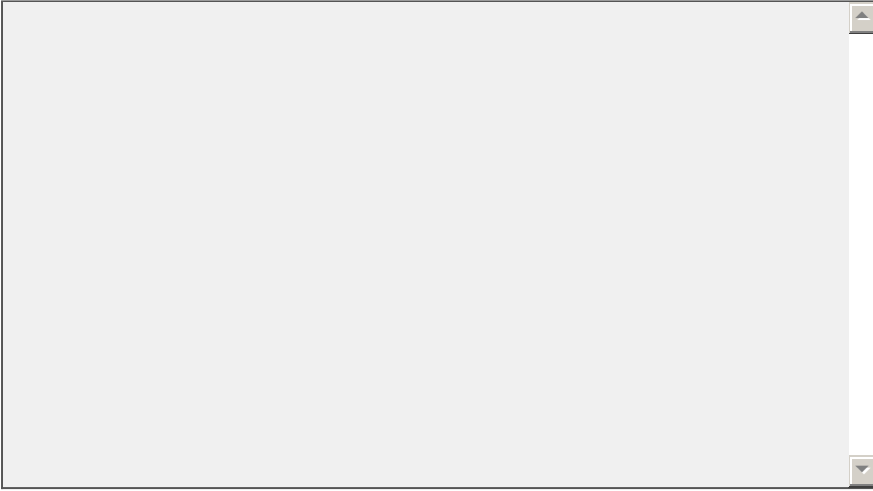
Please explain.

14. What is the best way to recruit new committee members?

- City website
- Governing Body recommendations
- Committee member recommendations
- Neighborhood leaders

Other (please specify)

15. How is your committee's leadership structured? How is the leadership selected?



16. Do you have ideas for improving the process of selecting committee leadership?

- Yes
- No

If yes, please explain.



17. Do you think there should be a limit to the number of years one individual can serve as the chair of the committee?

- No limitation.
- Yes, no more than one year.
- Yes, no more than three years (one term).
- Yes, no more than six years (two terms).

Other (please explain).



Other

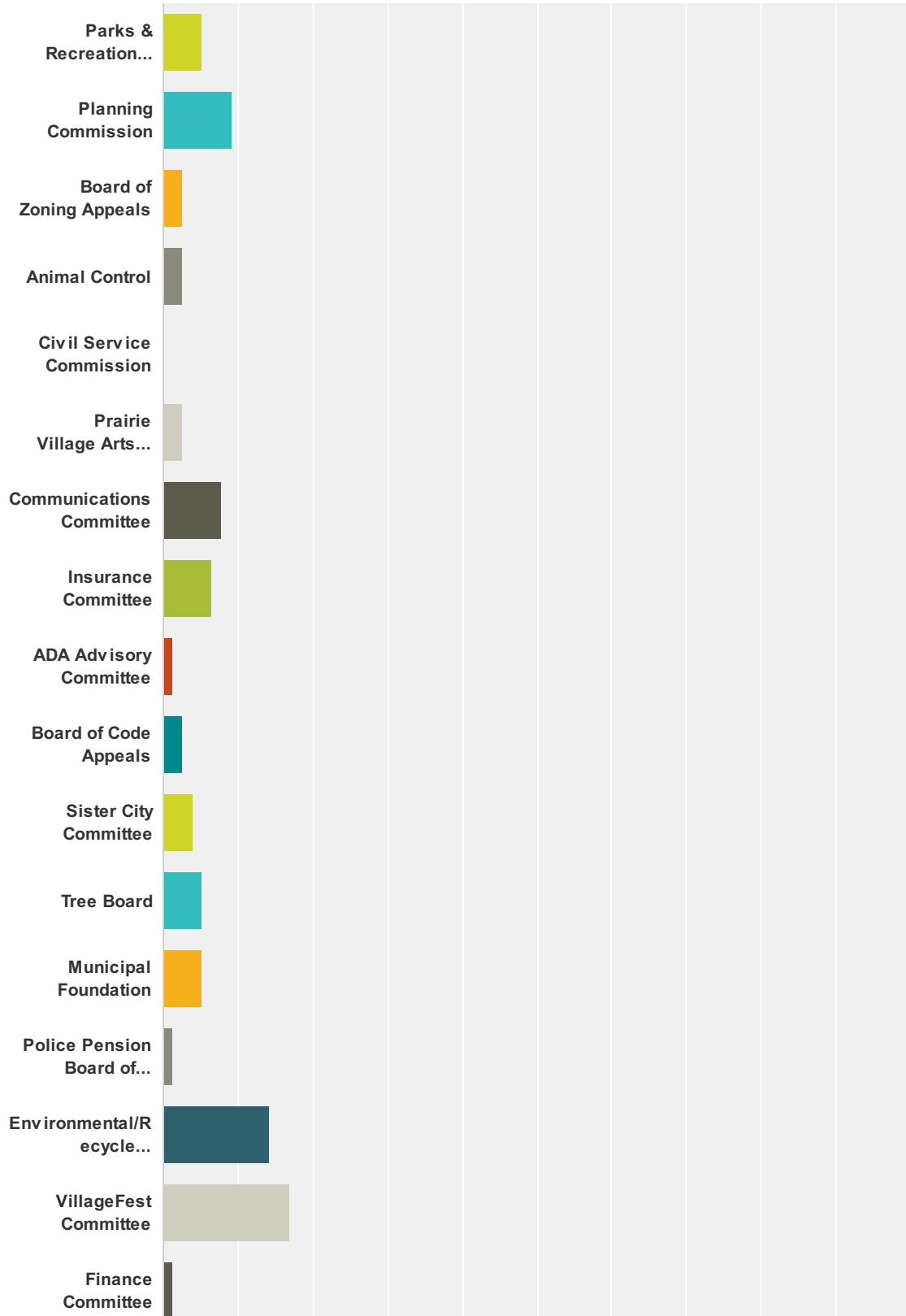
18. Please share any additional comments you may have regarding volunteer committees in Prairie Village.

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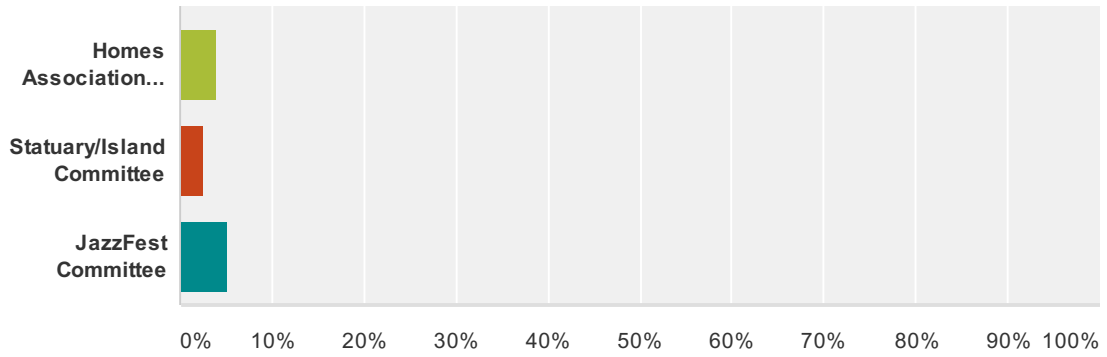
Prairie Village Committee Survey

Q1 Which citizen committee do you serve on? (If you serve on more than one committee, please fill out a separate survey for each committee that you serve on.)

Answered: 77 Skipped: 0



Prairie Village Committee Survey



Answer Choices	Responses	
Parks & Recreation Committee	5.19%	4
Planning Commission	9.09%	7
Board of Zoning Appeals	2.60%	2
Animal Control	2.60%	2
Civil Service Commission	0.00%	0
Prairie Village Arts Council	2.60%	2
Communications Committee	7.79%	6
Insurance Committee	6.49%	5
ADA Advisory Committee	1.30%	1
Board of Code Appeals	2.60%	2
Sister City Committee	3.90%	3
Tree Board	5.19%	4
Municipal Foundation	5.19%	4
Police Pension Board of Trustees	1.30%	1
Environmental/Recycle Committee	14.29%	11
VillageFest Committee	16.88%	13
Finance Committee	1.30%	1
Homes Association Committee	3.90%	3
Statuary/Island Committee	2.60%	2
JazzFest Committee	5.19%	4
Total		77

Q2 How do you summarize your committee's purpose, goals, and objectives?

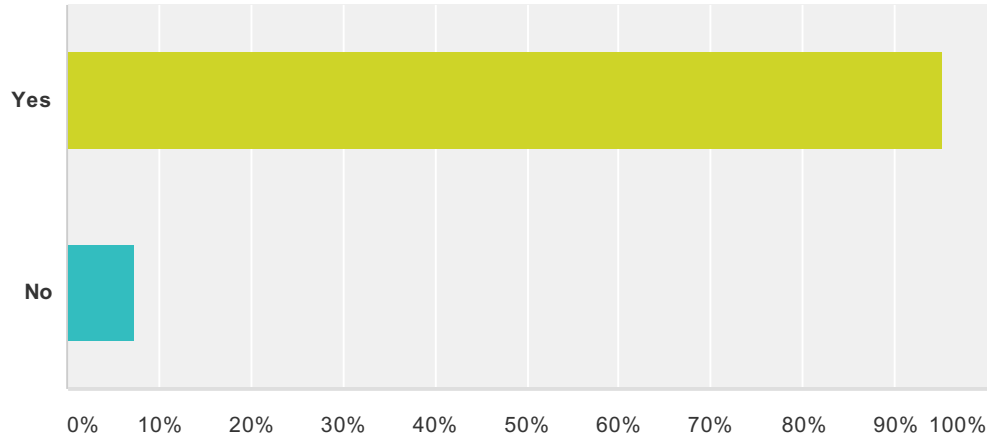
Answered: 40 Skipped: 37

Q3 In your view, how does your committee benefit the residents of Prairie Village?

Answered: 39 Skipped: 38

Q4 Do you feel like your committee meetings are productive?

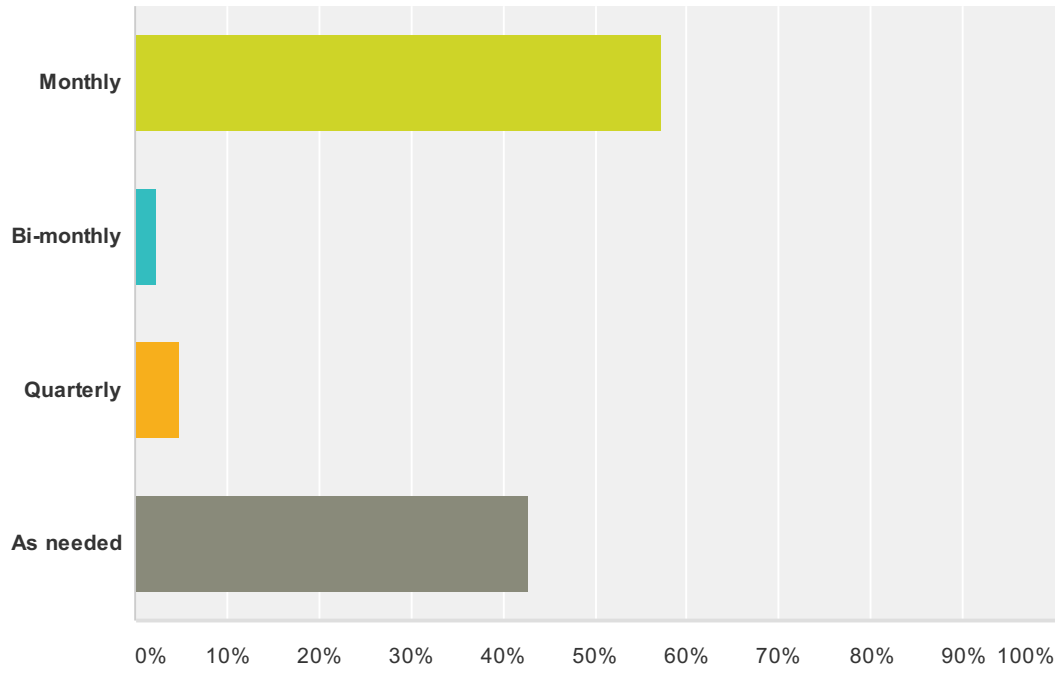
Answered: 41 Skipped: 36



Answer Choices	Responses
Yes	95.12% 39
No	7.32% 3
Total Respondents: 41	

Q5 How often does your committee meet?

Answered: 42 Skipped: 35

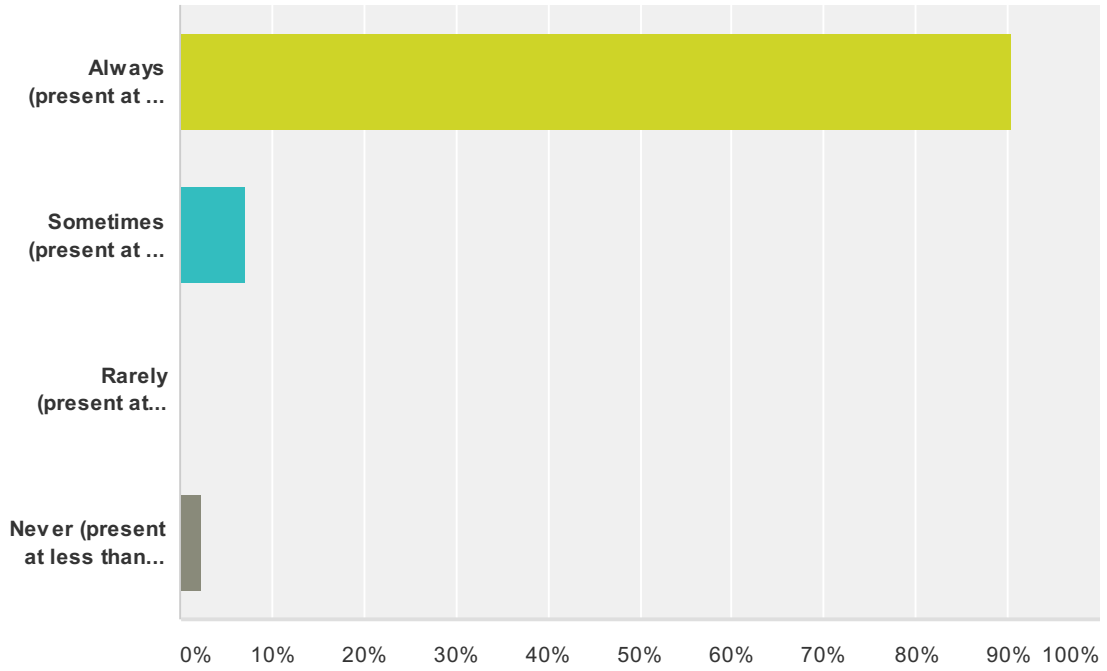


Answer Choices	Responses	Count
Monthly	57.14%	24
Bi-monthly	2.38%	1
Quarterly	4.76%	2
As needed	42.86%	18
Total Respondents: 42		

Prairie Village Committee Survey

Q6 How often to you attend your committee meetings?

Answered: 42 Skipped: 35



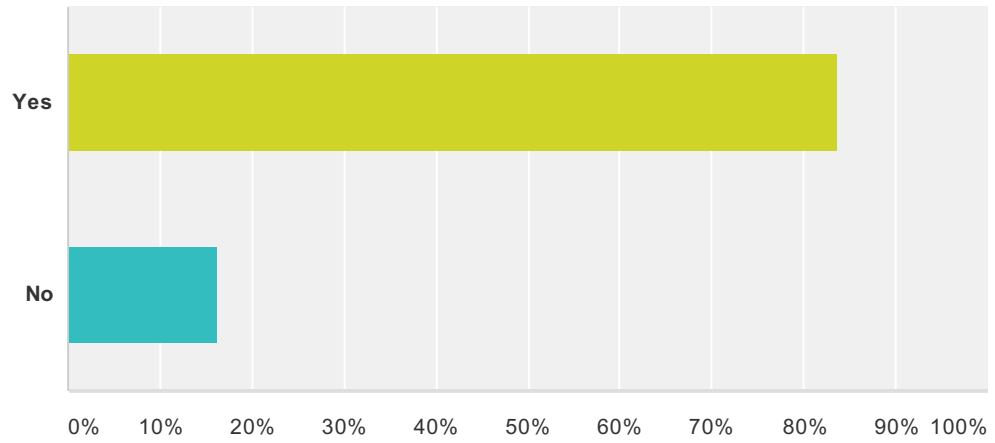
Answer Choices	Responses	
Always (present at 90% of the meetings).	90.48%	38
Sometimes (present at 75% of the meetings).	7.14%	3
Rarely (present at less than 50% of the meetings).	0.00%	0
Never (present at less than 25% of the meetings).	2.38%	1
Total		42

Q7 If your committee was combined with another committee, made independent of the city, or disbanded, what would be the benefits and/or consequences?

Answered: 39 Skipped: 38

Q8 Do you feel your committee is adequately funded?

Answered: 37 Skipped: 40

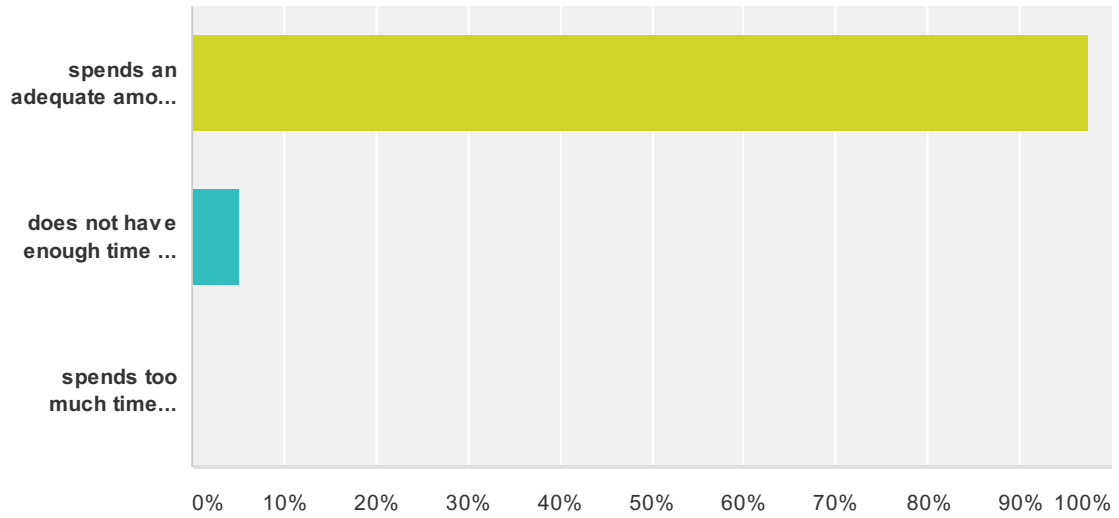


Answer Choices	Responses	
Yes	83.78%	31
No	16.22%	6
Total Respondents: 37		

Prairie Village Committee Survey

Q9 City staff...

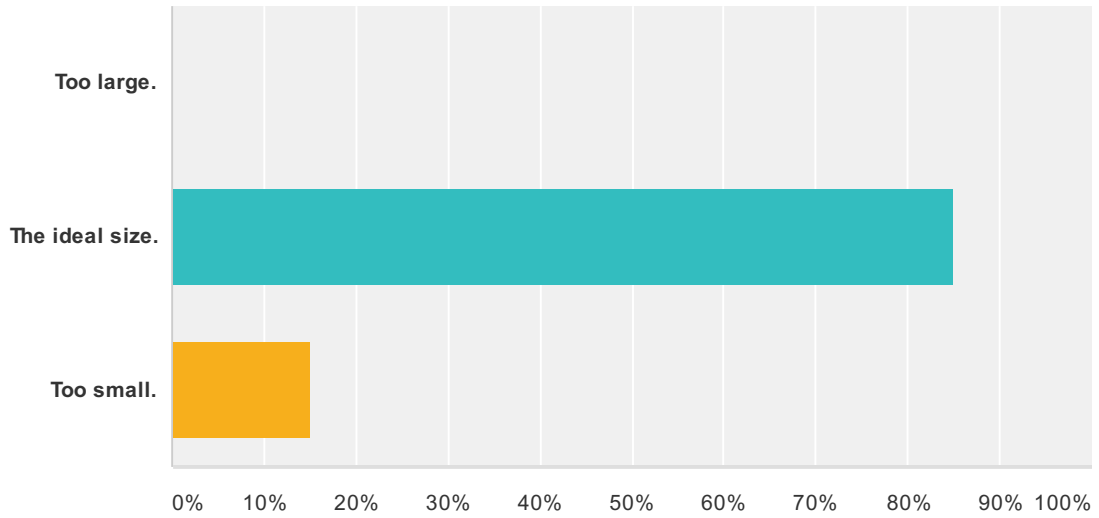
Answered: 39 Skipped: 38



Answer Choices	Responses
spends an adequate amount of time supporting my committee.	97.44% 38
does not have enough time to support my committee.	5.13% 2
spends too much time supporting my committee.	0.00% 0
Total Respondents: 39	

Q10 My committee is:

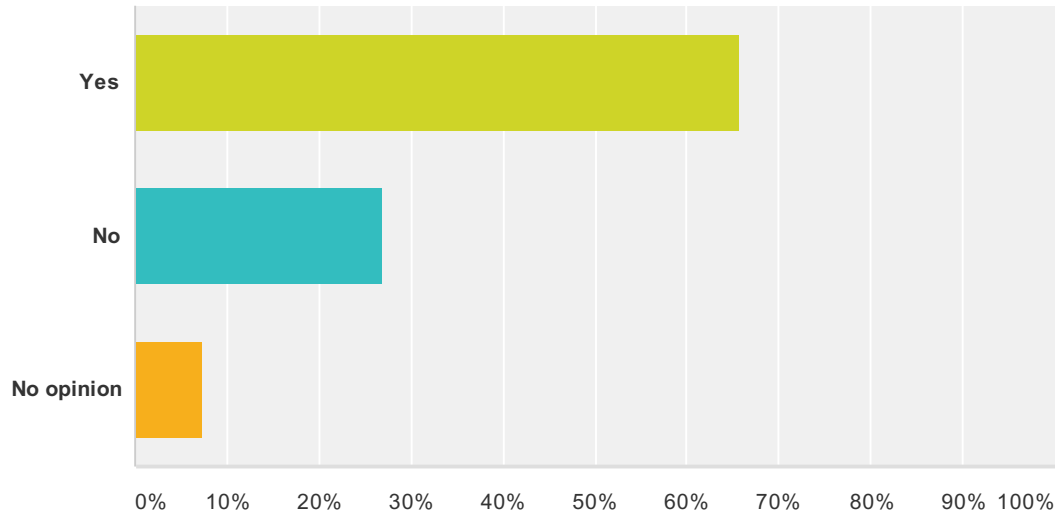
Answered: 40 Skipped: 37



Answer Choices	Responses
Too large.	0.00% 0
The ideal size.	85.00% 34
Too small.	15.00% 6
Total Respondents: 40	

Q11 Should there be a residency requirement to be a member of your committee?

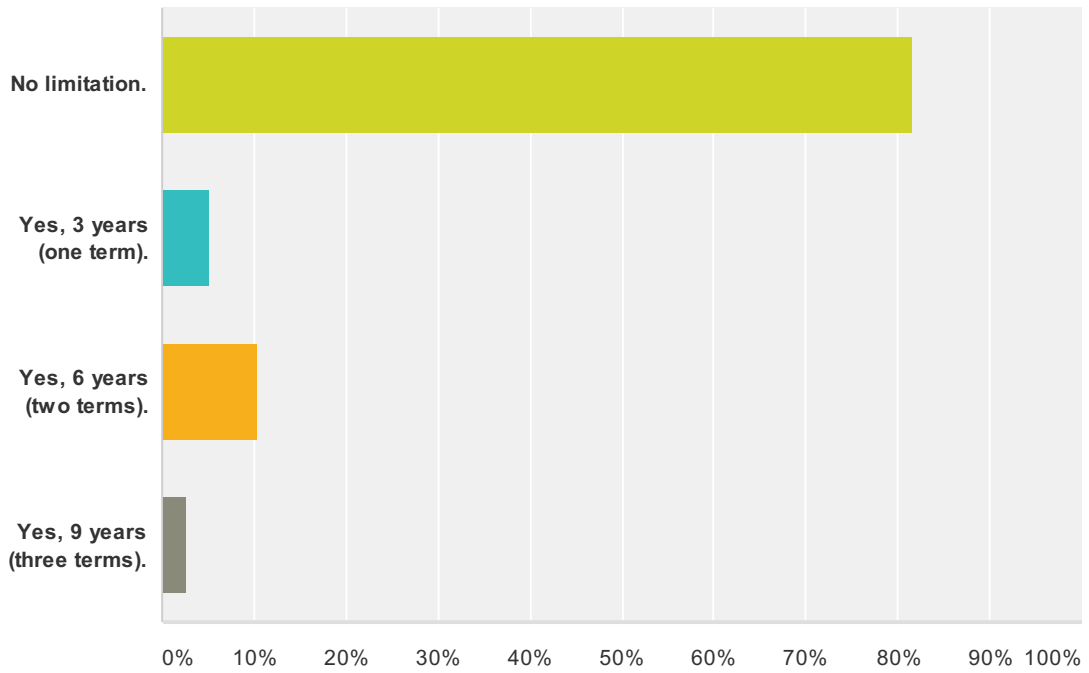
Answered: 41 Skipped: 36



Answer Choices	Responses
Yes	65.85% 27
No	26.83% 11
No opinion	7.32% 3
Total Respondents: 41	

Q12 Should there be a limit to the number of years an individual can serve on one committee?

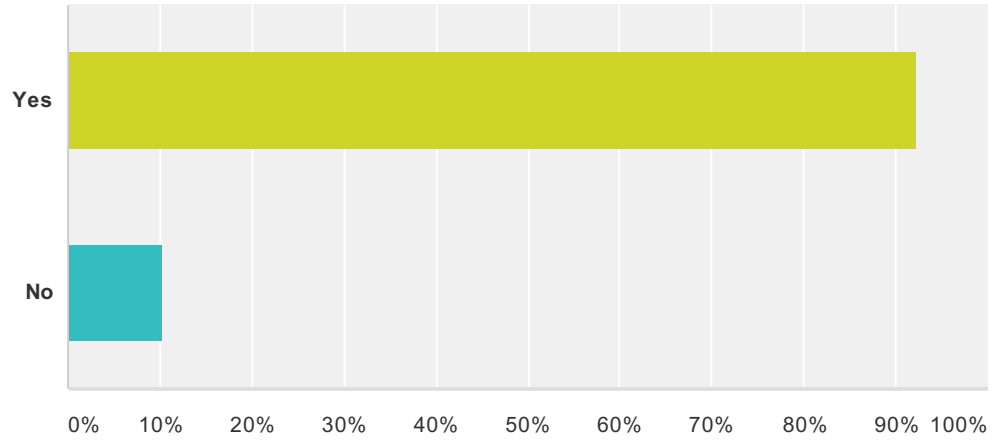
Answered: 38 Skipped: 39



Answer Choices	Responses
No limitation.	81.58% 31
Yes, 3 years (one term).	5.26% 2
Yes, 6 years (two terms).	10.53% 4
Yes, 9 years (three terms).	2.63% 1
Total Respondents: 38	

Q13 Do you feel the members of your committee are actively engaged?

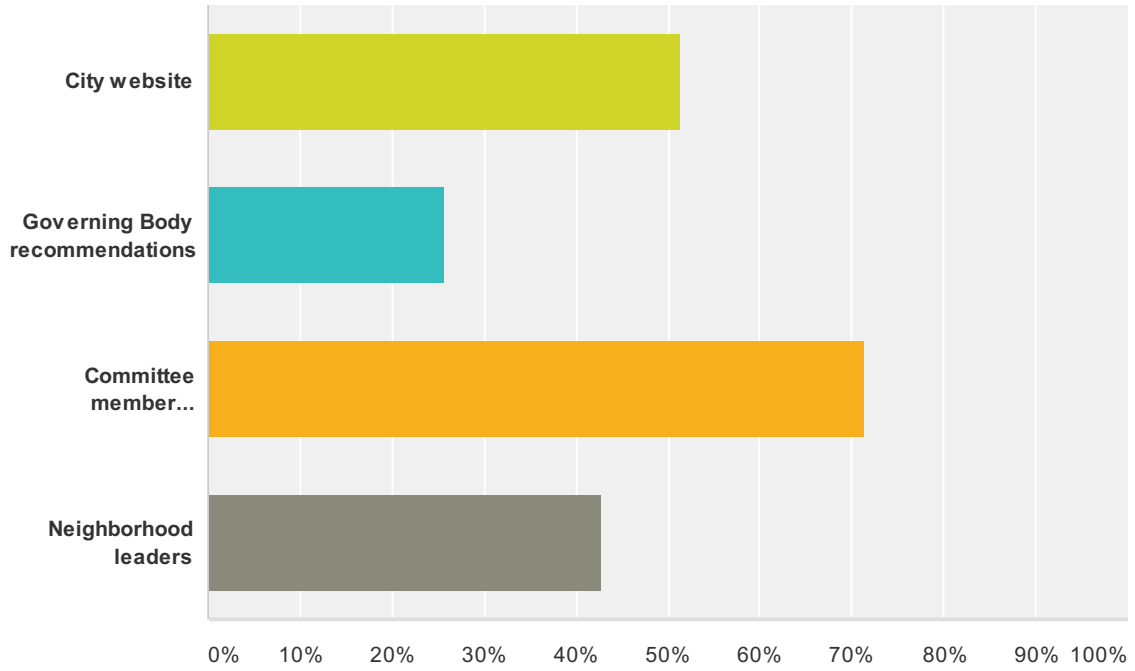
Answered: 39 Skipped: 38



Answer Choices	Responses
Yes	92.31% 36
No	10.26% 4
Total Respondents: 39	

Q14 What is the best way to recruit new committee members?

Answered: 35 Skipped: 42



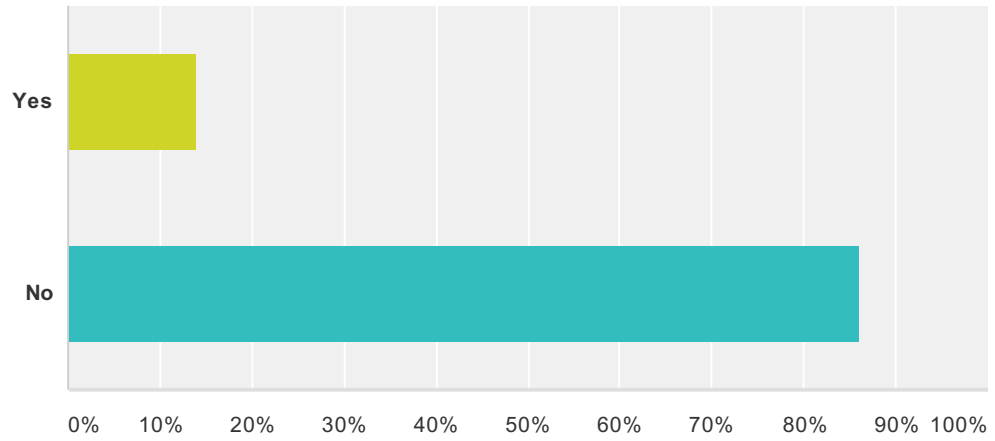
Answer Choices	Responses
City website	51.43% 18
Governing Body recommendations	25.71% 9
Committee member recommendations	71.43% 25
Neighborhood leaders	42.86% 15
Total Respondents: 35	

Q15 How is your committee's leadership structured? How is the leadership selected?

Answered: 36 Skipped: 41

Q16 Do you have ideas for improving the process of selecting committee leadership?

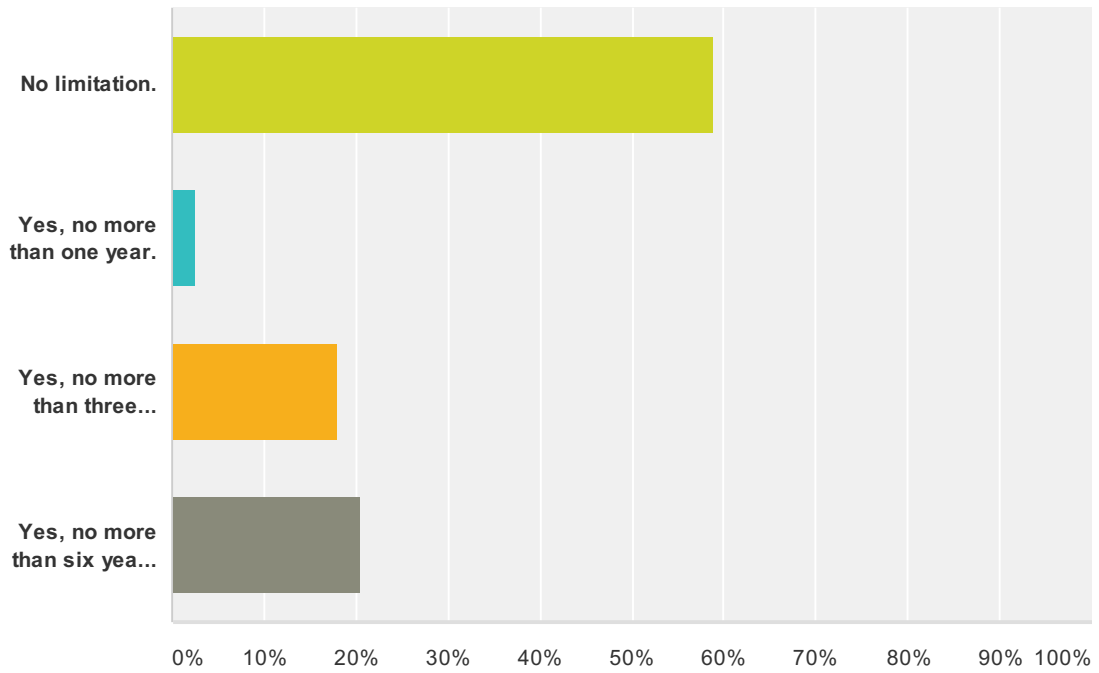
Answered: 36 Skipped: 41



Answer Choices	Responses
Yes	13.89% 5
No	86.11% 31
Total	36

Q17 Do you think there should be a limit to the number of years one individual can serve as the chair of the committee?

Answered: 39 Skipped: 38



Answer Choices	Responses
No limitation.	58.97% 23
Yes, no more than one year.	2.56% 1
Yes, no more than three years (one term).	17.95% 7
Yes, no more than six years (two terms).	20.51% 8
Total Respondents: 39	

**Q18 Please share any additional comments
you may have regarding volunteer
committees in Prairie Village.**

Answered: 20 Skipped: 57

**COUNCIL MEETING AGENDA
CITY OF PRAIRIE VILLAGE
Council Chambers
July 07, 2014
7:30 PM**

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

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

By Staff

- 1. Approve Regular Council Meeting Minutes - June 16, 2014
- 2. Approve Special City Council Meeting Minutes - June 30, 2014
- 3. Approve Claims Ordinance 2919
- 4. Approve performance contracts for the 2014 Jazz Festival
- 5. Approve Construction Change Order #1 (Final) with Metro Asphalt, Inc. for Project P5001:2014 Street Repair Program for \$4,858.23.
- 6. Authorize the Mayor to execute Ordinance 2312 approving the KU Kickoff Event at Corinth Square as a special event and authorizing the sale, consumption and possession of alcoholic liquor and cereal malt beverages within the boundaries of barricaded areas of the event

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

Council Committee of the Whole

- COU2014-22 Consider approval of a contract with Vance Brothers, Inc for the 2014 Crack Seal/Micro Surfacing Program
- COU2014-23 Consider approval of a contract with McConnell & Associates for the Harmon Park Tennis Court Rehabilitation
- COU2014-24 Consider Engineering Change Order #3 for Project 75ST0001: 75th Street from State Line Road to Mission Road
- COU2014-25 Consider increasing funding for Project BG4001: McCrum Park Improvements and the Transfer of \$25,000 from Taliaferro Park Project BG45001 to McCrum Park Project BG4001

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

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

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

CONSENT AGENDA

CITY OF PRAIRIE VILLAGE, KS

July 7, 2014

**CITY COUNCIL
CITY OF PRAIRIE VILLAGE
June 16, 2014**

The City Council of Prairie Village, Kansas, met in regular session on Monday, June 16, 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, Steve Noll, Eric Mikkelson, Andrew Wang, 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

Meggan Prosser-Gebhardt, 4637 West 70th Street, spoke in support of the possible purchase of parkland from Homestead Country Club. She believes parks improve the quality of life and promotes a healthy lifestyle. Parks form community. She felt Prairie Village had a unique balance of urbanism and small town community feel.

Jason Dippel, 4318 Homestead Circle, and Amy Moore, 6810 Linden Street expressed their support for the purchase of parkland from Homestead Country Club.

Dwain Crispell, 7528 Colonial, addressed the upcoming changes to open carry laws and urged the City to be proactive in informing residents and businesses of the changes. He believes in the right to bear arms, but does not believe it is necessary to carry firearms into private businesses.

Kristen Searle, 6624 El Monte, asked the City Council to consider the purchase of additional parkland and the Homestead County Club financial situation as separate issues. She stated the purchase of green space for parkland by the City is not a bailout of the Country Club. She feels this is the last opportunity for parkland in Ward 1. If the Homestead property changes ownership, she would like to see it retain openness and singled family residences.

Quinn Bennion responded that City officials are aware of Homestead's desires and plans to restructure the club and the property. When and if the City takes an active role in the property, a public announcement will be made.

CONSENT AGENDA

Ashley Weaver moved the approval of the Consent Agenda for Monday, June 16, 2014:

1. Approve Regular Council Meeting Minutes - June 2, 2014
2. Approve contract with Kansas City Crime Commission for the TIPS Hotline Crime Stoppers Program in the amount of \$3,000
3. Approve the issuance of a Cereal Malt Beverage License for the remainder of 2014 to Rimann Liquors of Prairie Village, LLC
4. Approve VillageFest Contract with Missouri Irish Brigade for a Civil War Living History Exhibit at a cost of \$300 and Ararat Shrine Clowns at a cost of \$600
5. Adopt Resolution 2014-01 amending the 2014 compensation ranges for the positions of Assistant to the City Administrator and Part-Time Management Intern.

6. Approve an Interlocal Agreement for Information Technology Services with the Johnson County Department of Technology and Innovation

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

MAYOR’S REPORT

Mayor Shaffer reported he represented the City at several events during the past weeks including several Northeast Johnson County Chamber functions, Brighton Gardens 15th Anniversary celebration, Johnson/Wyandotte Mayors meeting with Kansas Legislators, UCS Board Meeting and the MARC annual meeting also attended by several Council members. He recently participated in the National Area Regional Conference, where after three terms on the Board was elected to serve as Senior Vice President.

COMMITTEE REPORTS

Council Committee of the Whole

COU2014-20 HB2578 and Consider Ordinance 2311 repealing certain provisions of the Code of the City of Prairie Village

Mayor Shaffer noted this item was discussed in detail at the earlier meeting and is necessary to be in compliance with House Bill 2578 on July 1st. He expressed his disappointment in this reduction to Home Rule for the City.

City Attorney Katie Logan briefly reviewed the impact of the proposed ordinance which repeals certain provisions of the city Code regarding firearms and conceal carry effective July 1, 2014. She anticipates some of the provisions would be addressed again when the City considers and adopts the 2014 Uniform Public Offense Code. Until

that time certain provisions of the code would be not be addressed as municipal violations but as state violations with prosecution by the District Attorney.

On behalf of the Council Committee of the Whole, Ashley Weaver moved the Governing Body adopt Ordinance 2311 repealing certain provisions of the Code of the City of Prairie Village regulating firearms and knives by amending Article 1 of Chapter XI of the Code of the City of Prairie Village, 2003, entitled "Public Offenses & Traffic" by repealing Section 10.1 "Criminal Use of Weapons" and Section 10.1.1 "Conceal Carry Where Prohibited" and by Repealing Section 12-104, entitled "Dangerous Weapons not allow" of Article 1 "City Parks" of Chapter XII "Public Property". The motion was seconded by Ted Odell.

A roll call vote was taken with the following members voting "aye": Weaver, Noll, Wang, Odell, Gallagher, Shaffer; and "nay" Nelson, Mikkelson, Morehead, Runion, McFadden. The ordinance was declared adopted by a vote of 6 to 5.

VillageFest

Courtney McFadden encouraged everyone to attend the upcoming Villagefest Celebration on Friday, July 4th. Volunteers are still needed. VillageFest Co-Chairman Marianne Noll stated there will be a variety of events and exhibits. Brooke Morehead commented on the importance of the City offering community events for both children and for adults.

STAFF REPORTS

Public Safety

- Chief Jordan reported the Special Olympics Torch Run was successful and thanked Mayor Shaffer for welcoming the runners as they came through Prairie Village.

- Chief reported on the proposed upcoming balloon launch at a local business. He stated that balloon releases on private property are not regulated by the City; therefore there was no “approval” process.

Public Works

- Keith Bredehoeft provided an update on Taliaferro Park project with work continuing next week.
- WaterOne is still working on their water line break at Prairie Park.
- There has been a significant number of downed trees and tree limbs with the recent strong winds and saturated soils.

Administration

- Danielle Dulin announced that the City received a check for \$250 from a Macy's Grant for Franklin Park.
- The City Council pictures have been reframed and hung in the Multi-purpose Room.
- The Mission Lane project is on schedule to finish in August.
- Kate Gunja announced the City has two staff openings - Municipal Court Administrator and Human Resources Manager.

OLD BUSINESS

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

NEW BUSINESS

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

ANNOUNCEMENTS

Committee meetings scheduled for the next two weeks include:

Prairie Village Arts Council	06/18/2014	7:00 p.m.
Recreational Vehicle Work Group	06/19/2014	11:30 a.m.
Environment/Recycle Committee	06/25/2014	7:00 p.m.
VillageFest Committee	06/26/2014	7:00 p.m.
Planning Commission	07/01/2014	7:00 p.m.
Council Committee of the Whole	07/07/2014	6:00 p.m.
City Council	07/07/2014	7:30 p.m.

=====

The Prairie Village Arts Council is pleased to present a mixed media exhibit by Helen Benson as the June exhibit in the R. G. Enders Gallery

Recreation memberships are on sale through the City Clerk's Office.

The City offices will be closed Friday, July 4, in observance of the Independence Day holiday. Deffenbaugh also observes this holiday so Friday's trash pick-up will be delayed one day.

VillageFest is Friday, July 4th from 7:30 a.m. to 1:00 p.m. All Prairie Village residents swim free at the Prairie Village pool from 12:00 noon to 6:00 p.m.

ADJOURNMENT

With no further business to come before the City Council the meeting was adjourned at 8:02 p.m.

Joyce Hagen Mundy
City Clerk

**SPECIAL CITY COUNCIL
CITY OF PRAIRIE VILLAGE
June 30, 2014**

The City Council of Prairie Village, Kansas, met in special session on Monday, June 30, 2014 at 6:00 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, Andrew Wang, Brooke Morehead, Dan Runion, Courtney McFadden, Ted Odell and Terrence Gallagher.

Also present were: Melissa Prenger, Public Works Project Manager; Katie Logan, City Attorney; Quinn Bennion, City Administrator and Joyce Hagen Mundy, City Clerk.

NEW BUSINESS

Consider Agreement with Johnson County related to the use of CDBG Funds for Project RADR0001 - Rainbow Drive from 75th Street to Booth Drive

The City had been preliminarily approved to receive \$189,115 in federal funding for a 2014 CDBG proposed project, the reconstruction of Rainbow Drive - 75th Street to Booth. This area was eligible for funding at the time of application. The agreement covers the funding level and details related to the use of these funds. This project will be constructed in 2014. Any costs in excess of the \$189,115 will be covered by the City with funding from the 2014 CIP for Project RADR0001.

Steve Noll moved the City Council approve the Subrecipient Agreement with Johnson County for the use of CDBG funds for Project RADR0001: Rainbow Drive from 75th Street to Booth Drive. The motion was seconded by Laura Wassmer and passed unanimously.

ADJOURNMENT

With no further business to come before the City Council the special meeting was adjourned at 6:03 p.m.

Joyce Hagen Mundy
City Clerk

CITY TREASURER'S WARRANT REGISTER

DATE WARRANTS ISSUED:

Warrant Register Page No. 1

July 7, 2014

**Copy of Ordinance
2919**

Ordinance Page No. _____

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

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

NAME	WARRANT NUMBER	AMOUNT	TOTAL
EXPENDITURES:			
Accounts Payable			
7516-7603	6/6/2014	266,493.72	
7604-7611	6/13/2014	131,904.84	
7612-7715	6/20/2014	562,280.94	
7716	6/23/2014	200.00	
7717-7746	6/27/2014	121,481.34	
Payroll Expenditures			
6/13/2014		303,769.88	
6/27/2014		281,275.88	
Electronic Payments			
Electronic Pmnts	6/2/2014	4,639.65	
Electronic Pmnts	6/3/2014	12,332.27	
Electronic Pmnts	6/4/2014	13,984.27	
Electronic Pmnts	6/11/2014	2,340.63	
Electronic Pmnts	6/16/2014	3,830.39	
Electronic Pmnts	6/18/2014	1,754.23	
Electronic Pmnts	6/27/2014	872.37	
TOTAL EXPENDITURES:			1,707,160.41
Voided Checks	Check #	(Amount)	
TOTAL VOIDED CHECKS:			-
GRAND TOTAL CLAIMS ORDINANCE			1,707,160.41

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

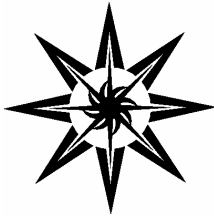
Passed this 7th day of July 2014.

Signed or Approved this 7th day of July 2014.

(SEAL)

ATTEST: _____
City Treasurer
Mayor

ATTEST: _____
Finance Director



JAZZFEST COMMITTEE

Council Meeting Date: June 12, 2013
Consent Agenda

Consider Jazzfest Performance Contracts

RECOMMENDED MOTION

Move the City Council approve performance contracts for the 2014 Jazz Festival with the following performers: Project H; Shay Estes with Rod Fleeman and Matt Otto; Bram Wijnands Swingtet; Kevin Mahogany with the Joe Cartwright Trio and Deborah Brown with Joe Lovano and Terell Stafford at a cost of \$.

BACKGROUND

The Fourth Annual Prairie Village Jazz Festival will be held on Saturday, September 6th beginning at 2 p.m. The Committee is pleased to have secured the following line-up:

2:00 - 2:10	Welcome
2:10 - 2:40	Shawnee Mission East High School Jazz Band
3:00 - 3:50	Project H
4:10 - 5:00	Shay Estes with Rod Fleeman and Matt Otto
5:20 - 6:10	Currently open
6:30 - 7:20	Bram Wijnands Swingtet
7:40 - 8:40	Kevin Mahogany with the Joe Cartwright Trio
9:00 - 10:30	Deborah Brown with Joe Lovano and Terell Stafford

The contracts have been reviewed by the City Attorney and all include a termination clause if funds are not available by August 6th. The immediately commit \$6,550 with the remaining \$9,300 due September 6. Funding is currently available in the Municipal Foundation account for JazzFest with a balance of \$14,643,43.

ATTACHMENTS

Artist Information
Contracts

PREPARED BY

Joyce Hagen Mundy
City Clerk

June 12, 2013

**Proposed
2014 Prairie Village Jazz Festival Schedule**

- 2:00 - 2:10 **Welcoming Remarks**
- 2:10 - 2:40 **Shawnee Mission East High School Jazz Band**
- 3:00 - 3:50 **Project H**
Ryan Heinlein, trombone, Brett Jackson, saxophones, Nate Nall, trumpet, Jeff Stocks, guitar, Andrew Ouellette, piano, Dominique Sanders, bass, Matt Leifer, drums.
This group, some of Kansas City's best young jazz musicians playing original compositions, has just recorded a new CD.
- 4:10 - 5:00 **Shay Estes with Rod Fleeman and Matt Otto**
Shay Estes, vocals, Matt Otto, tenor sax, Rod Fleeman, guitar, Mark Lowrey, piano, Karl McComas-Reichl, bass, John Kizilarmut, drums.
Shay is one of KC's most popular singers. Veteran guitarist Rod Fleeman and expert saxophonist Matt Otto bring a new dimension to her already exceptional show.
- 5:20 - 6:10 Currently open - probably a group from 18th and Vine
- 6:30 - 7:20 **Bram Wijnands Swingtet**
Bram Wijnands, piano, David Chael, clarinet, Carl Bender, tenor and baritone sax, Mike Herrera, alto sax, Phillip Wakefield, drums.
Bram Wijnands swings the piano boogie-woogie style, with a band that delivers all the exuberance of 1930s-style Kansas City jazz.
- 7:40 - 8:40 **Kevin Mahogany with the Joe Cartwright Trio**
Kevin Mahogany, vocals, Joe Cartwright, piano, Tyrone Clarke, bass, Michael Warren, drums.
Born and raised in Kansas City, Kevin Mahogany today is known around the world for his rich jazz vocals swung with a tinge of R&B. He is backed by the expert trio of pianist Joe Cartwright.
- 9:00 - 10:30 **Deborah Brown with Joe Lovano and Terell Stafford**
Deborah Brown, vocals, Joe Lovano, tenor sax, Terell Stafford, trumpet, Richard Johnson, piano, Tyrone Clarke, bass, Leon Anderson, drums.
Deborah Brown is recognized internationally as one of today's great jazz singers, but she rarely plays her hometown of KC. A couple years ago, saxophonist Joe Lovano was *Downbeat's* Jazz Musician of the Year. Terell Stafford's trumpet is acclaimed worldwide.

June 18, 2014

Mr. John McKinney, Principal
Shawnee Mission East High School
7500 Mission Road
Prairie Village, KS 66208



Dear Mr. McKinney:

I am pleased to inform you that the JazzFest Committee voted unanimously to have the Shawnee Mission East Blue Knights Jazz Band again be the opening act for the 2014 Prairie Village Jazz Festival on Saturday, September 6th at 2 p.m.

A \$500 donation will be made to the band boosters to further support student musicians in appreciation of your participation. If desired, we will also be glad to sell SME Jazz T-shirts in our merchandise tent with the total proceeds returned to you.

This shall serve as a Letter of Understanding for your participation in the 2014 Prairie Village Jazz Festival. I ask that you sign a return a copy of this notice as confirmation of your agreement to perform. If you have any questions, please do not hesitate to contact me at jhmundy@pvkansas.com or 913-385-4616.

Sincerely,

A handwritten signature in black ink, appearing to read "Joyce".

Joyce Hagen Mundy, City Clerk
on behalf of the JazzFest Committee

cc: Kim Harrison

Accepted by _____
on behalf of the SME Blue Knights

Printed Name: _____
Date: _____

PERFORMANCE CONTRACT

The agreement made this 13 day of June, 2014, between PROJECT H (hereinafter referred to as "artist") and The Prairie Village Jazz Festival (hereinafter referred to as "purchaser") is mutually agreed upon by both parties as follows:

1. PLACE OF ENGAGEMENT: Prairie Village, Kansas – Harmon Park
2. DATE OF ENGAGEMENT: September 6, 2014
3. HOURS OF ENGAGEMENT 3:00 pm TO 3:50 pm
- 4.

PERSONNEL:


Ryan Heinlein, Brett Jackson, Nate Nell, Jeff Stocks,
Andrew Ouellette, Dominique Sanders, Matt Leifer

5. FULL PRICE AGREED UPON: \$1,050 (One Thousand and Fifty Dollars), to be paid by the purchaser to artist no later than immediately prior to engagement. All payments shall be paid by cash or acceptable check. Checks shall be made out to Ryan Heinlein. If scheduled payments are not made on time, artist has the right to cancel this agreement and purchaser shall be liable to artist solely for the compensation provided herein.
6. PURCHASER to provide artist with the following space and equipment for engagement: 20' x 12' covered stage. Stage must be covered, shaded, level and dry. Two three pronged electrical outlets. Backline equipment including a 4 piece drum set with stands, a tuned acoustic piano, bass amp and guitar amp. In the event that this gear cannot be furnished, the artist will supply their own gear.
7. Other Considerations: The purchaser may cancel the contract any time prior to September 6, 2014. Any deposit received for services is non-refundable.

Purchaser:

Artist:

City of Prairie Village
Mayor Ron Shaffer



Ryan Heinlein for
Project H

PERFORMANCE CONTRACT

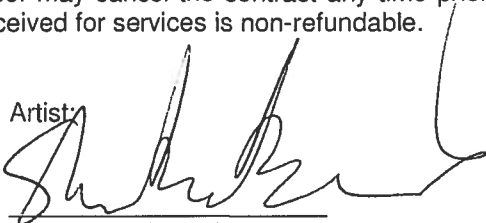
The agreement made this 30th day of June, 2014, between Shay Estes (hereinafter referred to as "artist") and The Prairie Village Jazz Festival (hereinafter referred to as "purchaser") is mutually agreed upon by both parties as follows:

1. PLACE OF ENGAGEMENT: Prairie Village, Kansas – Harmon Park
2. DATE OF ENGAGEMENT: September 6, 2014
3. HOURS OF ENGAGEMENT 4:10 pm TO 5:00 pm
4. PERSONNEL:
Shay Estes - voice, Rod Fleeman - guitar, Matt Otto - Tenor Sax,
Mark Lowrey - Keys, John Kizilarmut - drums, Karl
McLomas - Reichl - Bass
5. FULL PRICE AGREED UPON: \$900 (Nine Hundred Dollars), to be paid by the purchaser to artist no later than immediately prior to engagement. All payments shall be paid by cash or acceptable check. Checks shall be made out to Shay Estes LLC. If scheduled payments are not made on time, artist has the right to cancel this agreement and purchaser shall be liable to artist solely for the compensation provided herein.
6. PURCHASER to provide artist with the following space and equipment for engagement: 20' x 12' covered stage. Stage must be covered, shaded, level and dry. Two three pronged electrical outlets. Backline equipment including a 4 piece drum set with stands, a tuned acoustic piano, bass amp and guitar amp. In the event that this gear cannot be furnished, the artist will supply their own gear.
7. Other Considerations: The purchaser may cancel the contract any time prior to September 6, 2014. Any deposit received for services is non-refundable.

Purchaser:

City of Prairie Village
Mayor Ron Shaffer

Artist:



Shay Estes Broockerd for
Shay Estes with Rod Fleeman and Matt
Otto

PERFORMANCE CONTRACT

The agreement made this 24 day of June, 2014, between THE BRAM WIJNANDS SWINGTET (hereinafter referred to as "artist") and The Prairie Village Jazz Festival (hereinafter referred to as "purchaser") is mutually agreed upon by both parties as follows:

1. PLACE OF ENGAGEMENT: Prairie Village, Kansas – Harmon Park

2. DATE OF ENGAGEMENT: September 6, 2014

3. HOURS OF ENGAGEMENT 6:30 pm TO 7:20 pm

4. PERSONNEL:

*David Chael, Clarinet / Carl Bender Bari/Tenor sax
Mike Herrera, Alto sax / Philip Whitefield, Drums
Bram Wijnands, Piano - Vocals*

5. FULL PRICE AGREED UPON: \$750 (Seven Hundred and Fifty Dollars), to be paid by the purchaser to artist no later than immediately prior to engagement. All payments shall be paid by cash or acceptable check. Checks shall be made out to _____. If scheduled payments are not made on time, artist has the right to cancel this agreement and purchaser shall be liable to artist solely for the compensation provided herein.

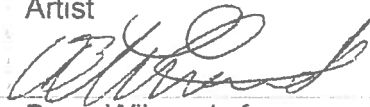
6. PURCHASER to provide artist with the following space and equipment for engagement: 20' x 12' covered stage. Stage must be covered, shaded, level and dry. Two three pronged electrical outlets. Backline equipment including a 4 piece drum set with stands, a tuned acoustic piano, bass amp and guitar amp. In the event that this gear cannot be furnished, the artist will supply their own gear.

7. Other Considerations: The purchaser may cancel the contract any time prior to September 6, 2014. Any deposit received for services is non-refundable.

Purchaser:

City of Prairie Village
Mayor Ron Shaffer

Artist



Bram Wijnands for
The Bram Wijnands Swingtet

PERFORMANCE CONTRACT

The agreement made this 30 day of JUNE, 2014, between DBL Rainbow Management LLC having an address at 16260 SW 113th Avenue, Miami Florida 33157 for the services of Kevin Mahogany (hereinafter collectively referred to as "artist") and The Prairie Village Jazz Festival (hereinafter referred to as "purchaser") is mutually agreed upon by both parties as follows:

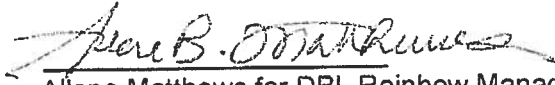
1. PLACE OF ENGAGEMENT: Prairie Village, Kansas – Harmon Park
2. DATE OF ENGAGEMENT: September 6, 2014
3. HOURS OF ENGAGEMENT: 7:40 pm to 8:40 pm
4. FULL PRICE AGREED UPON: \$3,500 (Three Thousand Five Hundred Dollars) for performance by Kevin Mahogany. In addition, hotel accommodations at the Fairfield Inn, 3001 Main Street, Kansas City, MO. for one person for up to three evenings to be provided by the purchaser to artist no later than immediately prior to engagement, or at a hotel agreed to by ARTIST and PURCHASER if a room at the Fairfield Inn is unavailable. In addition, PURCHASER shall reimburse ARTIST up to \$170 for a rental car for up to three days, inclusive of rental and taxes. ARTIST shall pay for gasoline for the rental car. A deposit of \$1,750 to retain the musician shall be paid to the ARTIST upon fully executed contract along with any tax documents. Deposit check shall be made out to DBL Rainbow LLC and mailed to 16260 SW 113th Avenue, Miami Florida 33157 with the remaining payment on the day of the performance. All payments shall be paid by cash or acceptable check. If scheduled payments are not made on time, ARTIST has the right to cancel this agreement and purchaser shall be liable to ARTIST solely for the compensation provided herein.
5. Kevin Mahogany shall perform with the Joe Cartwright Trio. The Joe Cartwright Trio shall be contracted with separately by the PURCHASER.
6. PURCHASER to provide artist with the following space and equipment for engagement: 20' x 12' covered stage. Stage must be covered, shaded, level and dry.
7. Other Considerations: The purchaser may cancel the contract any time prior to September 6, 2014. Artist shall retain the right to keep the guaranteed deposit in full and shall be reimbursed for airfare to this event already purchased.
8. Rain or Shine Event: Conditions. If event goes forward and Artist is prepared to perform but is hindered due to inclement weather conditions, Artist shall retain the rights and be fully entitled to receive his full fee (\$3,500).
9. Merchandise: Artist shall retain 80% of the proceeds from sale of his merchandise. If necessary Purchaser shall provide Artist with selling agent(s) at no cost to Artist.
10. Sound Check: PRESENTER will allow ARTIST appropriate opportunity to perform a sound check before the concert.

11. Insurance: PRESENTER shall carry all necessary liability insurance in connection to the event and, to the extent permitted by law, shall hold ARTIST harmless of any claims, liabilities or losses resulting from any accident, loss or injury in connection with the event, unless such claims, liabilities or losses result from the negligence or willful misconduct of the performer.
12. Execution of Contract: In order to retain musicians, PRESENTER agrees to sign and return this contract to DBL Rainbow LLC, 16260 SW 113th Avenue, Maimi, Florida 33157.
13. Technical rider: Specific sound, lighting and stage requirements shall be described in a separate addendum to this contract.

Purchaser:

Artist:

City of Prairie Village
Mayor Ron Shaffer



Aliene Matthews for DBL Rainbow Management
LLC f/s/o Kevin Mahogany

PERFORMANCE CONTRACT

The agreement made this 7th day of June, 2014, between Joe Cartwright Trio (hereinafter referred to as "artist") and The Prairie Village Jazz Festival (hereinafter referred to as "purchaser") is mutually agreed upon by both parties as follows:

1. PLACE OF ENGAGEMENT: Prairie Village, Kansas – Harmon Park
2. DATE OF ENGAGEMENT: September 6, 2014
3. HOURS OF ENGAGEMENT 7:40 pm TO 8:40 pm

4. PERSONNEL:
Joe Cartwright piano, Mike Warren drums, Tyrone Clark bass

5. The Joe Cartwright Trio will perform with Kevin Mahogany, who is contracted with separately.

6. FULL PRICE AGREED UPON: \$600 (Six Hundred Dollars), to be paid by the purchaser to artist no later than immediately prior to engagement. All payments shall be paid by cash or acceptable check. Checks shall be made out to Joseph L. Cartwright. If scheduled payments are not made on time, artist has the right to cancel this agreement and purchaser shall be liable to artist solely for the compensation provided herein.

7. PURCHASER to provide artist with the following space and equipment for engagement: 20' x 12' covered stage. Stage must be covered, shaded, level and dry. Two three pronged electrical outlets. Backline equipment including a 4 piece drum set with stands, a tuned acoustic piano, bass amp and guitar amp. In the event that this gear cannot be furnished, the artist will supply their own gear.

8. Other Considerations: The purchaser may cancel the contract any time prior to September 6, 2014. Any deposit received for services is non-refundable.

Purchaser:

City of Prairie Village
Mayor Ron Shaffer

Artist


Joe Cartwright for
Joe Cartwright Trio

PERFORMANCE CONTRACT

The agreement made this 12 day of June, 2014, between DEBORAH BROWN HANSEN (hereinafter referred to as "artist") and The Prairie Village Jazz Festival (hereinafter referred to as "purchaser") is mutually agreed upon by both parties as follows:

1. PLACE OF ENGAGEMENT: Prairie Village, Kansas – Harmon Park
2. DATE OF ENGAGEMENT: September 6, 2014
3. HOURS OF ENGAGEMENT 9:00 pm TO 10:30 pm
4. FULL PRICE AGREED UPON: \$6,600 (Six Thousand Six Hundred Dollars) for performance by the group Deborah Brown. In addition, round trip airfare for one person and hotel accommodations for three people for up to three evenings each to be provided by the purchaser to artist no later than immediately prior to engagement. A deposit of \$3,300 to retain the musicians shall be paid to the PERFORMER upon fully executed contract along with any tax documents. Deposit check shall be made out to Deborah Brown Hansen and mailed to 3306 Askew, Kansas City, MO 64128 with the remaining payment on the day of the performance. All payments shall be paid by cash or acceptable check. If scheduled payments are not made on time, artist has the right to cancel this agreement and purchaser shall be liable to artist solely for the compensation provided herein.
5. PURCHASER to provide artist with the following space and equipment for engagement: 20' x 12' covered stage. Stage must be covered, shaded, level and dry. Two three pronged electrical outlets. Backline equipment including a 4 piece drum set with stands, and a bass amp. Also, an acoustical piano tuned to A440 on the DAY OF THE SHOW AFTER IT HAS BEEN PLACED ON THE STAGE. Please confirm BEFORE the selection of the piano the manufacturer and size. In the event that this gear cannot be furnished, the artist will supply their own gear.
6. Other Considerations: The purchaser may cancel the contract any time prior to September 6, 2014. Artist shall retain the right to keep the guaranteed deposit in full.
7. Rain or Shine Event: Conditions. If event goes forward and Artist is prepared to perform but is hindered due to inclement weather conditions, Artist shall retain the rights and be fully entitled to receive his full fee (\$6,600).
8. Merchandise: Artist shall retain 80% of the proceeds from sale of his merchandise. If necessary Purchaser shall provide Artist with selling agent(s) at no cost to Artist.
9. Sound Check: PRESENTER will allow PERFORMER appropriate opportunity to perform a sound check before the concert.
10. Insurance: PRESENTER shall carry all necessary liability insurance in connection to the event and, to the extent permitted by law, shall hold PERFORMER harmless of any claims, liabilities or losses resulting from any accident, loss or injury in connection with the event, unless such claims, liabilities or losses result from the negligence or willful misconduct of the performer.


11. Execution of Contract: In order to retain musicians, PRESENTER agrees to sign and return this contract to Deborah Brown Hansen at 3306 Askew, Kansas City, MO 64128, jazzvoix@mindspring.com.

12. Technical rider: Specific sound, lighting and stage requirements shall be described in a separate addendum to this contract.

Purchaser:

City of Prairie Village
Mayor Ron Shaffer

Artist:


Deborah Brown Hansen 6/12/2014

PERFORMANCE CONTRACT

The agreement made this 6th day of June, 2014, between JOE LOVANO (hereinafter referred to as "artist") and The Prairie Village Jazz Festival (hereinafter referred to as "purchaser") is mutually agreed upon by both parties as follows:

1. PLACE OF ENGAGEMENT: Prairie Village, Kansas – Harmon Park
2. DATE OF ENGAGEMENT: September 6, 2014
3. HOURS OF ENGAGEMENT 9:00 p.m. TO 10:30 p.m.
4. FULL PRICE AGREED UPON: \$3,000 (Three Thousand Dollars) for Joe Lovano performing with Deborah Brown's group. In addition, round trip airfare for one person and hotel accommodations for one person for up to three evenings to be provided by the purchaser to artist no later than immediately prior to engagement. A deposit of \$1,500 to retain the musicians shall be paid to the PERFORMER upon fully executed contract along with any tax documents. Deposit check shall be made out to Joe Lovano and mailed to [please provide the address] with the remaining payment on the day of the performance. All payments shall be paid by cash or acceptable check. If scheduled payments are not made on time, artist has the right to cancel this agreement and purchaser shall be liable to artist solely for the compensation provided herein.
5. PURCHASER shall provide transportation, either by personal car or by a taxi or limousine service, for ARTIST from and to Kansas City International Airport and between hotel and performance site.
6. PURCHASER to provide artist with the following space and equipment for engagement: 20' x 12' covered stage. Stage must be covered, shaded, level and dry.
7. Other Considerations: The purchaser may cancel the contract any time prior to August 6, 2013. Artist shall retain the right to keep the guaranteed deposit in full.
8. Rain or Shine Event: Conditions. If event goes forward and Artist is prepared to perform but is hindered due to inclement weather conditions, Artist shall retain the rights and be fully entitled to receive his full fee (\$3,000).
9. Merchandise: Artist shall retain 80% of the proceeds from sale of his merchandise. If necessary Purchaser shall provide Artist with selling agent(s) at no cost to Artist.
10. Sound Check: PRESENTER will allow PERFORMER appropriate opportunity to perform a sound check before the concert.
11. Insurance: PRESENTER shall carry all necessary liability insurance in connection to the event and, to the extent permitted by law, shall hold PERFORMER harmless of any claims, liabilities or losses resulting from any accident, loss or injury in connection with the event, unless such claims, liabilities or losses result from the negligence or willful misconduct of the performer.

12. Execution of Contract: In order to retain musicians, PRESENTER agrees to sign and return this contract to International Music Network, Attn.: Rob Hughes, 278 Main Street, Gloucester, MA 01930, Phone: 978-283-2883, Fax: 978-283-2330, Email: rob@imnworld.com .

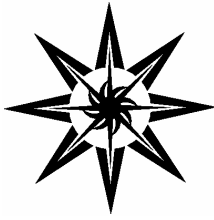
13. Technical rider: Specific sound, lighting and stage requirements shall be described in a separate addendum to this contract.

Purchaser:

Artist:

City of Prairie Village
Mayor Ron Shaffer


Joe Lovano



PUBLIC WORKS DEPARTMENT

Council Meeting Date: July 7, 2014
Consent Agenda: July 7, 2014

CONSIDER PROJECT P5001: 2014 STREET REPAIR PROGRAM CONSTRUCTION CHANGE ORDER #1 (FINAL)

RECOMMENDATION

Move to approve Construction Change Order #1 (Final) with Metro Asphalt, Inc. for Project P5001:2014 Street Repair Program for \$4,858.23.

BACKGROUND

This Final Change Order reflects the final field measured quantities for all bid items. This item includes repairs to deteriorated asphalt at various locations in the City.

Additional asphalt repairs were required to complete the project.

The final contract amount with Metro Asphalt, Inc. for the project will be \$154,858.23.

FUNDING SOURCE

Funds for this work will come from the Street Operating Budget in the amount of \$4,858.23.

RELATED TO VILLAGE VISION

TR1c. Ensure that infrastructure improvements meet the needs of all transportation users.

ATTACHMENTS

1. Construction Change Order #1 (FINAL) with Metro Asphalt, Inc.

PREPARED BY

Melissa Prenger, Senior Project Manager

June 27, 2014



**CITY OF PRAIRIE VILLAGE
PUBLIC WORKS DEPARTMENT
CONSTRUCTION CHANGE ORDER NO. 1**

City's Project: P5001 2014 Street Repair Program

Date Requested: June 27, 2014

Contract Date: May 19, 2014

Consultant's Name: N/A

Contractor's Name: Metro Asphalt, Inc.

REQUIRED CHANGES TO PRESENT CONTRACT

Contract Quantity	Previous Amount	Unit	Item Description	Adj. Quant.	Unit Price	Adjusted Amount
0	\$0.00	LS	Finalizing Quantities for the 2014 Street Repair Program	LS	\$4,858.23	\$4,858.23

TOTAL

NET TOTAL Increase

EXPLANATION OF CHANGE - This change order is to cover the following items:

Finalizing quantities for the 2014 Street Repair Program- Funding- Street Operating Budget \$4,858.23

The Consultant does **not** anticipate a related Engineering Change Order.

	Contract Value	Contract Days
Original Contract	\$150,000.00	
Current Contract including previous Change Orders	\$150,000.00	
NET This Change Order	\$4,858.23	
New Contract Price	\$154,858.23	

Contractor

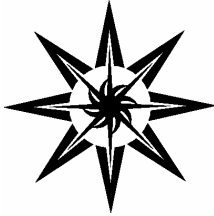
Date

Melissa Prenger, Senior Project Manager
City of Prairie Village, KS

Date

Ronald L. Shaffer, Mayor
City of Prairie Village, KS

Date



ADMINISTRATION

City Council Date: July 7, 2014

Consent Agenda: Consider Ordinance 2312 approving the KU Kickoff Event at Corinth Square as a Special Event and Authorizing the Sale, Consumption and Possession of Alcoholic Liquor and Cereal Malt Beverages within the Boundaries of Barricaded Public Areas of the Event.

RECOMMENDATION:

Staff recommends the City Council adopt Ordinance 2312 approving the KU Kickoff Event at Corinth Square as a special event and authorizing the sale, consumption and possession of alcoholic liquor and cereal malt beverages within the boundaries of barricaded areas of the event.

SUGGESTED MOTION:

I move the City Council authorize the Mayor to execute Ordinance 2312 approving the KU Kickoff Event at Corinth Square as a special event and authorizing the sale, consumption and possession of alcoholic liquor and cereal malt beverages within the boundaries of barricaded areas of the event.

DISCUSSION:

Pursuant to KSA 41-719(a)(2) and KSA 41-2645, the Governing Body may approve special events and exempt public streets and sidewalks from the prohibition concerning drinking or consuming alcoholic liquor and cereal malt beverages on public streets and sidewalks.

The Corinth Square Merchants Association has requested the City approve an ordinance identifying the KU Kickoff Event, August 22 from 5 p.m. -10 p.m., as a special event and authorizing the sale, consumption and possession of alcoholic liquor and cereal malt beverages within the boundaries of barricaded public areas at the event.

Vendors must be active business occupants in the Corinth Shopping Center at the time of the event, having the proper licenses. Currently, the following businesses qualify: Johnny's, BRGR, Urban Table, Spin Pizza and Salty Iguana.

ATTACHMENTS:

Draft Ordinance

PREPARED BY:

Jeanne Koontz, Deputy City Clerk/Public Information Officer
Date: June 24, 2014

ORDINANCE NO. 2312

AN ORDINANCE APPROVING THE KU KICKOFF EVENT AT CORINTH SQUARE SHOPPING CENTER AS A SPECIAL EVENT AND AUTHORIZING THE SALE, CONSUMPTION AND POSSESSION OF ALCOHOLIC LIQUOR AND CEREAL MALT BEVERAGES WITHIN THE BOUNDARIES OF A BARRICADED PUBLIC AREAS AT SUCH EVENT

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

Section 1. Pursuant to KSA 41-719(a)(2) and KSA 41-2645, the Governing Body may approve special events and exempt public streets and sidewalks from the prohibitions concerning drinking or consuming alcoholic liquor and cereal malt beverages on public streets and sidewalks.

Section 2. In accordance with such authority, the City approves the KU Kickoff Event as a special event to be held at the Corinth Square Shopping Center on August 22, 2014.

Section 3. Authorization is given to barricade the area outlined on the attached Exhibit A during such event. A smaller area may be selected based on the size of the event, but the event boundary may not be expanded

Section 4. Vendors holding the appropriate license from the State of Kansas to sell alcoholic liquor and cereal malt beverages may, in accordance with all applicable state laws and municipal ordinances, sell alcoholic liquor and cereal malt beverages in the area designated by the Division of Alcoholic Beverage Control within the barricaded area during the event.

Section 5. Vendors must be active business occupants in the Prairie Village Shopping Center at the time of the event and have the appropriate licenses from the City of Prairie Village.

Section 6. Event attendees may buy, possess and consume alcoholic liquor and cereal malt beverages within barricaded area on August 22, 2014.

Section 7. This Ordinance shall take effect and be in force from and after its passage, approval, and publication in the official newspaper of the City of Prairie Village, Kansas as provided by law.

PASSED AND ADOPTED BY THE GOVERNING BODY THIS 21st DAY OF JULY, 2014.

CITY OF PRAIRIE VILLAGE, KANSAS

By: _____
Ronald L. Shaffer, Mayor

ATTEST:

APPROVED AS TO FORM:

Joyce Hagen Mundy, City Clerk

Catherine P. Logan, City Attorney





PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: July 7, 2014

Council Meeting Date: July 7, 2014

COU2014-22 - CONSIDER APPROVAL OF A CONTRACT WITH VANCE BROTHERS, INC. FOR THE 2014 CRACK SEAL/MICRO SURFACING PROGRAM.

RECOMMENDATION

Move to authorize the Mayor to sign the Construction Contract with Vance Brothers, Inc. for Project P5000, 2014 Crack Seal/Micro Surfacing Program for \$312,000.

BACKGROUND

On February 21, 2014 the City Clerk opened bids for Project P5000, 2014 Crack Seal/Micro Surfacing Program. One bid was received:

Vance Brothers, Inc.	\$234,286.00
Intermountain Slurry Seal	\$302,321.00
Engineer's Estimate	\$312,830.00

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

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

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

FUNDING SOURCE

Funding is available in the 2014 Capital Infrastructure Program Project P5000.

ATTACHMENTS

1. Construction Agreement with Vance Brothers, Inc.

PREPARED BY

Keith Bredehoeft, Public Works Director

June 19, 2014

**CONSTRUCTION AGREEMENT
BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
VANCE BROTHERS, INC.
FOR
PROJECT P5000 - 2014 CRACK SEAL/MICRO SURFACING 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 Vance Brothers Inc., hereinafter termed in this agreement, “Contractor”, for the construction and completion of Project , designated, described and required by the Project Manual and Bid proposal, to wit:

CONTRACT COST: The City shall pay the Contractor for the performance of the Work embraced in this Contract, and the Contractor will accept in full compensation therefore the sum (subject to adjustment as provided by the Contract) of **Three Hundred Twelve Thousand and 00/100 Dollars (\$312,000.00)** for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

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

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

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

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

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

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

1. DEFINITIONS:

1.1 Following words are given these definitions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. ENTIRE AGREEMENT:

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

3. INTENT AND INTERPRETATION

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

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

4. WORK SUPERINTENDENT

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

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

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

5. ENGINEER

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

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

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

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

6. WORK SCHEDULE:

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

7. DELAYS AND EXTENSIONS OF TIME

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

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

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

8. ADVERSE WEATHER:

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

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

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

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

requirements)

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

9. PAYMENT PROCEDURE:

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

loss because of:

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

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

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

10. COMPLETION AND FINAL PAYMENT

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

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

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

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

11. CLAIMS BY THE CONTRACTOR

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

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

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

12. CHANGES IN THE WORK

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

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

13. INSURANCE AND HOLD HARMLESS.

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

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

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

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

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

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

14. INDEMNITY

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

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

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

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

15. SUCCESSORS AND ASSIGNS

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

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

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

16. NON-DISCRIMINATION LAWS

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

17. RELATIONS WITH OTHER CONTRACTORS:

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

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

- 17.2 When two or more Contracts are being executed at one time in such manner that work on one Contract may interfere with that on another, the City shall decide which Contractor shall progress at which time.
- 17.3 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.
- 17.4 Upon execution of the Contract, the Contractor shall furnish the City, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Work. The City shall promptly reply to the Contractor, in writing, stating any objections the City may have to such proposed Subcontractor. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the City has made timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has objection.

18. RIGHT OF CITY TO TERMINATE

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

19. MISCELLANEOUS:

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

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

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

WITNESSETH:

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

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

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

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

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

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

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

CITY OF PRAIRIE VILLAGE

VANCE BROTHERS, 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)

(typed telephone number)

(date of execution)

(date of execution)

SEAL

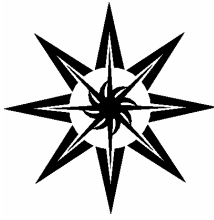
ATTEST:

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.)



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: July 7, 2014

Council Meeting Date: July 7, 2014

***COU2014-23 CONSIDER APPROVAL OF A CONTRACT WITH McCONNELL & ASSOCIATES FOR THE HARMON PARK TENNIS COURT REHABILITATION .**

RECOMMENDATION

Move to authorize the Mayor to sign the Construction Contract with McConnell & Associates for Project BG320001, Harmon Park Tennis Court Rehabilitation for \$541,650.66.

BACKGROUND

On June 20, 2014 the City Clerk opened bids for Project BG320001, Harmon Park Tennis Court Rehabilitation. Two bids were received.

Name of Bidder	Base Bid	Alternate #1 (Overlay Practice Courts)	Alternate #2 (New Fence)
Engineers Estimate	\$504,705.00	\$17,480.00	\$63,030.00
McConnell & Associates	\$515,512.64	\$26,138.02	\$114,722.58
Little Joe's Asphalt	\$700,536.00	\$34,910.00	\$125,860.00

This contract consists of constructing new courts on top of the existing courts at Harmon Park and using the existing fence. There is \$617,000 budgeted for this project, including design, and the recommendation is to award for the Base Bid plus Alternate #1 for a total contract amount of \$ 541,650.66.

The low bid is within 10% of the Engineer's Estimate and can be awarded based upon Charter Ordinance No. 19, Chapter 2.62. The discrepancy occurred in the engineer's estimate of the asphalt pricing.

City staff has reviewed the bid for accuracy and the bids above reflect minor corrections.

FUNDING SOURCE

Funding is available in the 2014 Capital Infrastructure Program Project BG320001.

ATTACHMENTS

1. Construction Agreement with McConnell & Associates

PREPARED BY

Keith Bredehoeft, Public Works Director

July 1, 2014

CONSTRUCTION AGREEMENT
BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
McCONNELL & ASSOCIATES
FOR
PROJECT BG320001: Harmon Tennis Court Rehabilitation

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 McConnell & Associates, hereinafter termed in this agreement, "Contractor", for the construction and completion of Project , designated, described and required by the Project Manual and Bid proposal, to wit:

CONTRACT COST: The City shall pay the Contractor for the performance of the Work embraced in this Contract, and the Contractor will accept in full compensation therefore the sum (subject to adjustment as provided by the Contract) of FIVE HUNDRED FORTY ONE THOUSAND, SIX HUNDRED FIFTY DOLLARS AND 66/100 (\$ 541,650.66) for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

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

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

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

in the Special Conditions for each calendar day beyond the applicable Total Completion date. Such amount shall be deducted from any amounts due Contractor under this agreement.

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

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

1. DEFINITIONS:

1.1 Following words are given these definitions:

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

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

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

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

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

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

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

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

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

Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. ENTIRE AGREEMENT:

- 2.1 The Contract Documents, together with the Contractor's Performance, Maintenance and Statutory bonds for the Work, constitute the entire and exclusive agreement between the City and the Contractor with reference to the Work. Specifically, but without limitation, this Contract supersedes all prior written or oral communications, representations and negotiations, if any, between the City and the Contractor. The Contract may not be amended or modified except by

a modification as hereinabove defined. These Contract Documents do not, nor shall they be construed to, create any contractual relationship of any kind between the City and any Subcontractor or remote tier Subcontractor.

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

3. INTENT AND INTERPRETATION

- 3.1 The intent of the Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, including construction, labor, materials, tools, equipment and transportation, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result, shall be provided by the Contractor for the Contract Price.
- 3.2 All limits stated in the Contract Documents are of the essence of the Contract.
- 3.3 The Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.
- 3.4 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.
- 3.5 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents and shall give written notice to the Engineer of any inconsistency, ambiguity, error or omission, which the Contractor may discover, or should have discovered, with respect to these documents before proceeding with the affected Work. The review, issuance, or the express or implied approval by the City or the Engineer of the Contract Documents shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such review be evidence of the Contractor's compliance with this Contract.
- 3.6 The City has prepared or caused to have prepared the Project Manual. **HOWEVER, THE CITY MAKES NO REPRESENTATION OR WARRANTY AS TO ACCURACY OR FITNESS FOR PARTICULAR PURPOSE INTENDED OR ANY OTHER WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the City concerning such documents as no such representation or warranties have been made or are hereby made.
- 3.7 As between numbers and scaled measurements in the Project Manual, the numbers shall govern; as between larger scale and smaller scale drawings, (e.g. 10:1 is larger than 100:1) the larger scale shall govern.
- 3.8 The organization of the Project Manual into divisions, sections, paragraphs, articles (or other categories), shall not control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.

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

4. WORK SUPERINTENDENT

- 4.1 The Contractor shall provide and maintain, continually on the site of Work during its progress, an adequate and competent superintendent of all operations for and in connection with the work being performed under this Contract, either personally or by a duly authorized superintendent or other representative. This representative shall be designated in writing at the preconstruction meeting.
- 4.2 The superintendent, or other representative of the Contractor on the Work, who has charge thereof, shall be fully authorized to act for the Contractor, and to receive whatever orders as may be given for the proper prosecution of the work, or notices in connection therewith. Use of Subcontractors on portions of the work shall not relieve the Contractor of the obligation to have a

competent superintendent on the work at all times.

- 4.3 The City shall have the right to approve the person who will be the Superintendent based on skill, knowledge, experience and work performance. The City shall also have the right to request replacement of any superintendent.
- 4.4 The duly authorized representative shall be official liaison between the City and the Contractor regarding the signing of pay estimates, change orders, workday reports and other forms necessary for communication and Work status inquiries. Upon Work commencement, the City shall be notified, in writing, within five (5) working days of any changes in the Contractor's representative. In the absence of the Contractor or representative, suitable communication equipment, which will assure receipt of messages within one (1) hour during the course of the workday, will also be required.
- 4.5 The Contractor will be required to contact the Engineer daily to advise whether and/or where the Contractor and/or the Subcontractor's crews will be working that day, in order that the Engineer's representative is able to monitor properly the Work.

5. ENGINEER

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

- 5.6 The Engineer will review the Contractor's Applications for Payment and will certify to the City for payment to the Contractor those amounts then due the Contractor as provided in this Contract. The Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to City, based on Engineer's on-site observations of the Work in progress as an experienced and qualified design professional and on Engineer's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of the Engineer's knowledge, information and belief, the quality of the Work is in accordance with the Project Manual (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Project Manual, to a final determination of quantities and classifications for Unit Price Work if such is called for herein, and to any other qualifications stated in the recommendation); and that Contractor is entitled to payment of the amount recommended. However, by recommending any such payment Engineer will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to Engineer in the Project Manual or that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by the City or the City to withhold payment to Contractor.
- 5.7 The Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make such representations to City. Engineer may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in the Engineer's opinion to protect the City from loss because:
- The Work is defective, or completed Work has been damaged requiring correction or replacement,
 - The Contract Price has been reduced by Written Amendment or Change Order,
 - The City has been required to correct defective Work or complete Work in accordance with the Project Manual.
- 5.8 The City may refuse to make payment of the full amount recommended by the Engineer because claims have been made against City on account of Contractor's performance or furnishing of the Work or liens have been filed in connection with the Work or there are other items entitling City to a set-off against the amount recommended, but City must give Contractor written notice (with a copy to Engineer) stating the reasons for such action.
- 5.9 The Engineer will have the authority to reject Work, which is defective or does not conform to the requirements of this Contract. If the Engineer deems it necessary or advisable, the Engineer shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.
- 5.10 The Engineer will review, or take other appropriate action as necessary, concerning the Contractor's submittals, including Shop Drawings, Product Data and Samples. Such review, or other action, shall be for the sole purpose of determining general conformance with the design concept and information given through the Project Manual.
- 5.11 The Engineer shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.

- 5.12 The Engineer, upon written request from the Contractor shall conduct observations to determine the date of substantial completion and the date of final acceptance. The Engineer will receive and forward to the City for the City's review and records, written warranties and related documents from the Contractor required by this Contract and will issue a final Certificate for Payment to the City upon compliance with the requirements of this Contract.
- 5.13 The Engineer's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.
- 5.14 The Engineer will **NOT** be responsible for Contractor's means, methods, techniques, sequences, or procedures or construction, or the safety precautions and programs incident thereto and will not be responsible for Contractor's failure to perform the work in accordance with the Project Manual. The Engineer will not be responsible for the acts or omissions of the Contractor or any Subcontractor or any of its or their agents or employees, or any other person at the site or otherwise performing any of the work except as may otherwise be provided.
- 5.15 Any plan or method of work suggested by the Engineer, or other representatives of the City, to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor, and the Engineer and the City will assume no responsibility therefore.
- 5.16 It is agreed by the Contractor that the City shall be and is hereby authorized to appoint or employ, either directly or through the Engineer, such City representatives or observers as the City may deem proper, to observe the materials furnished and the work performed under the Project Manual, and to see that the said materials are furnished, and the said work performed, in accordance with the Project Manual therefore. The Contractor shall furnish all reasonable aid and assistance required by the Engineer, or by the resident representatives for proper observation and examination of the Work and all parts thereof.
- 5.17 The Contractor shall comply with any interpretation of the Project Manual by the Engineer, or any resident representative or observer so appointed, when the same are consistent with the obligations of the Project Manual. However, should the Contractor object to any interpretation given by any subordinate engineer, resident representative or observer, the Contractor may appeal in writing to the City Director of Public Works for a decision.
- 5.18 Resident representatives, observers, and other properly authorized representatives of the City or Engineer shall be free at all times to perform their duties, and intimidation or attempted intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the City so decides, to annul the Contract.
- 5.19 Such observation shall not relieve the Contractor from any obligation to perform said work strictly in accordance with the Project Manual.

6. WORK SCHEDULE:

- 6.1 The Contractor, within ten (10) calendar days after being instructed to do so in a written notice from the City, shall commence work to be done under this Contract.
- 6.2 The rate of progress shall be such that the Work shall have been completed in accordance with the terms of the Contract Documents on or before the completion date for the construction period named in the contract agreement, subject to any extension or extensions

of such time made as hereinafter provided.

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

7. DELAYS AND EXTENSIONS OF TIME

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

however, that claim for such extension of time is made by the Contractor to the City and the Engineer in writing within one (1) week from the time when any such alleged cause for delay shall occur.

8. ADVERSE WEATHER:

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

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

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

- 8.7 Upon receipt of the Notice to Proceed, and continuing throughout the Contract, the Contractor shall record on their daily construction report, the occurrence of adverse weather and resultant impact to normally scheduled work.
- 8.8 The number of actual adverse weather delay days shall include days affected by actual adverse weather (even if adverse weather occurred in the previous month), and shall be

calculated chronologically from the first to the last day of each month, and be recorded as full workdays.

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

9. PAYMENT PROCEDURE:

- 9.1 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal on the first day of each month of an Application for Payment, all Work for which payments have been received from the City shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.
- 9.2 Each application for payment must be submitted with Contractor's waiver for period of construction covered by application. Each progress payment will be submitted with executed

waivers from the subcontractors or sub-contractors and suppliers for the previous period of construction covered by the previous application. The final payment application must be submitted together with or preceded by final or complete waivers from every entity involved with performance of the work covered by the payment request.

- 9.3 The Contractor will submit waivers on forms, and executed in a manner, acceptable to City.
- 9.4 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor because of such Subcontractor's Work the amount to which such Subcontractor is entitled. In the event the City becomes informed that the Contractor has not paid a Subcontractor as herein provided, the City shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the City, shall be deemed payment to the Contractor but shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the City to repeat the procedure in the future.
- 9.5 The Engineer will, upon receipt of a written Application for Payment from the Contractor, review the amount of work performed during the preceding period and the value thereof at the unit prices contracted. From the amounts so ascertained, there shall be deducted ten percent (10%) to be retained until after final completion of the entire work to the satisfaction of the City. The Engineer will submit an estimate each month to the City for payment to the Contractor, except that no amount less than \$500.00 will be submitted unless the total amount of the Contract remaining unpaid is less than \$500.00.
- 9.6 Deductions will be made from progress payments if the Contract includes a provision for a lump sum or a percentage deduction. Lump sum deductions will be that portion of the stated lump sum computed as the ratio that the amount earned bears to the Contract amount. Percentage deductions will be computed at the stated percentage of the amount earned.
- 9.7 No progress payment, nor any use or occupancy of the Work by the City, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.
- 9.8 The City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the City from loss because of:
- Defective Work not remedied by the Contractor;
 - Claims of third parties against the City or the City's property;
 - Failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
 - Evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
 - Evidence that the Work will not be completed in the time required for substantial or final completion;
 - Persistent failure to carry out the Work in accordance with the Contract;
 - Damage to the City or a third party to whom the City is, or may be, liable;
 - Evidence that the work is not progressing according to agreed upon schedule by both parties.
- 9.9 In the event that the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in this subparagraph, the Contractor shall promptly comply

with such demand and refund such monies to the City.

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

10. COMPLETION AND FINAL PAYMENT

- 10.1 Work completion shall be defined as all elements of the Work or work segment, being complete including all subsidiary items and "punch-list" items.
- 10.2 When all of the Work is finally complete and the Contractor is ready for a final inspection, it shall notify the City and the Engineer thereof in writing. Thereupon, the Engineer will make final inspection of the Work and, if the Work is complete in accordance with this Contract, the Engineer will promptly issue a final Certificate for Payment certifying to the City that the Work is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Engineer is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s), which cost may be deducted by the City from the Contractor's full payment.
- 10.3 The Contractor shall not be entitled to any payment unless and until it submits to the Engineer its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the City, or the City's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors and Suppliers of the Contractor and of any and all other parties required by the City; and consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the City, the Contractor shall furnish a bond satisfactory to the City to discharge any such lien or indemnify the City from liability.
- 10.4 The City shall make final payment of all sums due the Contractor within thirty days of the later of the Engineer's execution of a final Certificate for Payment.
- 10.5 Acceptance of final payment shall constitute a waiver of all claims against the City by the Contractor except for those claims previously made in writing against the City by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final inspection.

11. CLAIMS BY THE CONTRACTOR

- 11.1 All Contractor claims shall be initiated by written notice and claim to the Engineer. Such written notice and claim must be furnished within seven calendar days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.
- 11.2 The Contractor shall diligently proceed with performance of this Contract whether or not there be such a claim pending and the City shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim shall be reflected by a Change Order executed by the City, the Engineer and the Contractor.

- 11.3 Should concealed and unknown conditions which could not, with reasonable diligence, have been discovered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure differ materially with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided by this Contract, be encountered, the Contract Price shall be equitably adjusted by the Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the City having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the City written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed or unknown condition.
- 11.4 If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the City therefore, the Contractor shall give the City written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.
- 11.5 The City reserves the right to increase or decrease quantities, and alter the details of construction including grade and alignment as the Engineer may consider necessary or desirable, by approved Change Order. Such modifications shall not invalidate the Contract nor release the surety. Unless such alterations and increases or decreases change the total cost of the Work, based on the originally estimated quantities and the unit prices bid, by more than 25 percent, or change the total cost of any major item, based on the originally estimated quantities and the unit price bid, by more than 25 percent, the Contractor shall perform the work altered, increased or decreased, at a negotiated price or prices. (A major item shall mean any bid item, the total cost of which exceeds 12-1/2 percent of the total Contract amount based on the proposed quantity and the contract unit price).
- 11.6 When the alterations cause an increase or decrease in excess of the 25 percent indicated above, either the Contractor or the Engineer may request an adjustment of the unit price to be paid for the item or items.
- 11.7 If a mutually agreeable adjustment cannot be obtained, the City reserves the right to terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the Work.
- 11.8 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall not include standby costs, indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties.
- 11.9 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in

transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving Final Acceptance of the Work shall be extended upon the written notice and claim of the Contractor to the City, for such reasonable time as the City may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven calendar days after the occurrence of the event or the first appearance of the condition-giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Work. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this subparagraph, any claim for an extension of time shall be waived.

- 11.10 The Contractor shall delay or suspend the progress of the work or any part thereof, whenever so required by written order of the City, and for such periods of time as required; provided, that in the event of such delay or delays or of such suspension or suspensions of the progress of the work, or any part thereof, the time for completion of work so suspended or of work so delayed by such suspension or suspensions shall be extended for a period equivalent to the time lost by reason of such suspension or suspensions; but such order of the City or Engineer shall not otherwise modify or invalidate in any way, any of the provisions of this Contract. In the event that the work shall be stopped by written order of the City, any expense, which, in the sole opinion and judgment of the City, is caused by the City, shall be paid by the City to the Contractor.
- 11.11 In executing the Contract Documents, the Contractor expressly covenants and agrees that, in undertaking to complete the Work within the time herein fixed, it has taken into consideration and made allowances for all hindrances and delays incident to such work, whether growing out of delays in securing materials or workers or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the work, or any portion thereof, included in this Contract, except as provided herein.
- 11.12 In addition to the Project Manual particular to Mobilization found elsewhere in this document, additional mobilization shall not be compensable for work outside of the designated areas for work deemed essential by the City. A quantity of work equal to as much as 10% of the total Contract may be required to be performed beyond the boundaries of the designated work areas

12. CHANGES IN THE WORK

- 12.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.
- 12.2 The Engineer shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 12.3 Any change in the Contract Price resulting from a Change Order shall be by mutual agreement between the City and the Contractor as evidenced by the change in the Contract Price being set forth in the Change Order, and, together with any conditions or requirements related thereto, being initialed by both parties.

- 12.4 If no mutual agreement occurs between the City and the Contractor relative to a change in the Work, the Contractor shall proceed with the work that is the subject of the Change Order, and the change in the Contract Price, if any, shall then be determined by the Engineer on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content to the City, as the Engineer requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies or equipment, including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools, whether rented from the Contractor or others, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and job site field office overhead directly attributable to the change. In no event shall any standby time or any expenditure or savings associated with the Contractor's home office or other non-job site overhead expense be included in any change in the Contract Price. Further, in no event shall the Contractor's overhead expense exceed ten (10%) percent of the reasonable expenditures. Pending final determination of reasonable expenditures or savings to the City, payments on account shall be made to the Contractor on the Engineer's Certificate for Payment.
- 12.5 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that the application of such unit prices to the quantities of Work proposed would cause substantial inequity to the City or to the Contractor, the applicable unit prices shall be equitably adjusted.
- 12.6 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim including impact against the City for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

13. INSURANCE AND HOLD HARMLESS.

- 13.1 The Contractor shall assume full responsibility for the protection of all public and private property, structures, sewers, and utilities, both above and below the ground, along, beneath, above, across or near the site or sites of the work being performed under this Contract, or which are in any manner affected by the prosecution of the Work or the transportation of men/women or materials in connection therewith. Barriers shall be kept placed at all times to protect persons other than those engaged on or about the Work from accident, and the Contractor will be held responsible for all accidents to persons or property resulting from the acts of Contractor or its employees.
- 13.2 To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the City, the Engineer, and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property (other than the Work itself) including the loss of use resulting there-from, and (2) is caused in

whole or in part by any intentional or negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity, which would otherwise exist.

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

obligation, including but not limited to, the indemnification obligation.

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

13.11 The liability limits shall be as stated:

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

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

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

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

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

14. INDEMNITY

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

"The Contractor" means and includes Contractor, all of his/her affiliates and subsidiaries, his/her Subcontractors and material men and their respective servants, agents and

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

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

15. SUCCESSORS AND ASSIGNS

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

Contract shall create any contractual relations between any Subcontractor and the City, nor shall anything contained in the Contract Documents create any obligation on the part of the City to pay or to see to the payment of any sums due any Subcontractor.

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

16. NON-DISCRIMINATION LAWS

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

Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency;

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

17. RELATIONS WITH OTHER CONTRACTORS:

- 17.1 The Contractor shall cooperate with all other contractors who may be performing work on behalf of the City, and workers who may be employed by the City, or any other entity on any work in the vicinity of the Work to be done under this Contract, and the Contractor shall so conduct his/her operations as to interfere to the least possible extent with the work of such contractors or workers. The Contractor shall be responsible for any injury or damage, that may be sustained by other contractors, workers, their work or employees of the City, because of any fault or negligence on the Contractor's part, and shall, at his/her own expense, repair or pay for such injury or damage. If the work of the Contractor is delayed because of any acts or omissions of any other Contractor or Contractors, the Contractor shall have no claim against the City on that account other than for an extension of time.
- 17.2 When two or more Contracts are being executed at one time in such manner that work on one Contract may interfere with that on another, the City shall decide which Contractor shall progress at which time.
- 17.3 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.
- 17.4 Upon execution of the Contract, the Contractor shall furnish the City, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Work. The City shall promptly reply to the Contractor, in writing, stating any objections the City may have to such proposed Subcontractor. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the City has made timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has objection.

18. RIGHT OF CITY TO TERMINATE

- 18.1 If the Contractor persistently or repeatedly refuses or fails to prosecute the Work in a timely

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

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

19. MISCELLANEOUS:

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

devices or equipment (as distinguished from processes) used in or furnished for the work shall be included in the Contract amount and the Contractor shall satisfy all demands that may be made at any time for such, and the Contractor shall at its cost and expense, defend any and all suits or proceedings that may be instituted at any time against the City for infringement or alleged infringement of any such patents involved in the work, and Contractor shall pay any award of damages.

- 19.5 The right of general administration of the City shall not make the Contractor an agent of the City, and the liability of the Contractor for all damages to persons, firms, and corporations, arising from the Contractor's execution of the Work, shall not be lessened because of such general administration, but as to all such persons, firms, and corporations, and the damages, if any, to them or their property. The Contractor herein is an independent Contractor in respect to the work.
- 19.6 For a period of time, from the inception of the Contract to three (3) years from the date of final payment under the Contract, the Contractor and subcontractors shall maintain books, accounts, ledgers, invoices, drafts, pages and other records pertaining to the performance of this Contract. At all reasonable times during this period these records shall be available within the State of Kansas at a field or permanent business office for inspection by authorized representatives of the City or of any other agency, which has contributed funds in connection with the Contract or to which the City is obligated to make such inspections available. In addition, this requirement shall be included in all subcontracts entered into in connection with this Contract.
- 19.7 Titles, subheadings used herein, and other Contract Documents are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Contract Documents.
- 19.8 No waiver of any breach of this Contract shall be construed to be a waiver of any other subsequent breach.
- 19.9 Should any provision of this Agreement or other Contract Documents be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement and/or the other Contract Documents shall be unaffected thereby and shall continue to be valid and enforceable.
- 19.10 The Contractor shall keep fully informed of all existing and current regulations of the City, and County, State, and National Laws, which in any way limit or control the actions or operations of those engaged upon the work, or affecting materials supplied, to or by them. The Contractor shall at all times observe and comply with all ordinances, laws, and regulations, and shall protect and indemnify the City and the City's officers and agents against any claims or liability arising from or based on any violation of the same.
- 19.11 Nothing contained in these Project Manual shall create, or be interpreted to create, privity or any other contractual agreement between the City and any person or entity other than the Contractor.
- 19.12 Duties and obligations imposed by the Contract Documents, rights, and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

- 19.13 No action or failure to act by the City, Engineer or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval or acquiescence in a breach hereunder, except as may be specifically agreed in writing.
- 19.14 Contractor specifically acknowledges and confirms that: 1.) he/she has visited the site, made all inspections he deems appropriate and has read and fully understands the Contract Documents, including all obligations and responsibilities undertaken by he as specified herein and in other Contract Documents and knowingly accepts the same; 2.) he/she has furnished copies of all Contract Documents to his/her insurance carrier(s) and his/her surety(ies); and 3.) his/her insurance carrier(s) and surety(ies) agree to be bound as specified herein, in the Contract Documents and in the insurance policy(ies) and bonds as to liability and surety coverage.
- 19.15 It is specifically agreed between the parties executing this Agreement that the Contract Documents are not intended to create any third party beneficiary relationship nor authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.
- 19.16 This agreement is entered into, under and pursuant to, and is to be construed and enforceable in accordance with the laws of the State of Kansas.

WITNESSETH:

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

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

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

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

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

WHEREAS, in consideration of the compensation to be paid the Contractor, and of the mutual agreements herein contained, the parties hereto have agreed and hereby agree, the City for itself and

its successors, and the Contractor for itself, himself, herself or themselves, its, his/her, hers or their successors and assigns, or its, his/her, hers or their executors and administrators, as follows:

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

CITY OF PRAIRIE VILLAGE

McCONNELL & ASSOCIATES

By: _____
(signed)

By _____
(signed)

Ronald L. Shaffer _____

(typed name)

Mayor _____

(typed title)

City of Prairie Village _____

(typed company name)

7700 Mission Road _____

(typed address)

Prairie Village, Kansas, 66208 _____

(typed city, state, zip)

(typed telephone number)

(date of execution)

(date of execution)

SEAL

ATTEST:

APPROVED BY:

City Clerk, Joyce Hagen-Mundy

City Attorney, Catherine Logan

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



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: July 7, 2014
Council Meeting Date: July 7, 2014

COU2014-24 CONSIDER ENGINEERING CHANGE ORDER #3 FOR PROJECT 75ST0001- 75TH STREET FROM STATE LINE ROAD TO MISSION ROAD

RECOMMENDATION

Move to approve Change Order #3 with GBA for project 75ST0001: 75th Street Rehabilitation from State Line Road to Mission Road in the amount of \$58,198.00.

BACKGROUND

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. This 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 obligated in 2014. Construction will take place in 2015.

This project is a federally funded project and is fully administered by the Kansas Department of Transportation. Plans for the project are being prepared to fully meet all KDOT requirements.

Significant items included in this change order are shown below and are items considered outside of the original scope or were areas of design that the work effort was greater than expected.

- Modified Profile between Mission and Reinhardt
- 75th Street alignment Shift from Belinder to Eaton
- Additions design related to the easements needed for this project
- Manual cross sections required by KDOT
- Additional storm sewer design. Replaced more than originally planned.

FUNDING SOURCE

Funding is available under Project 75ST0001: 75th State Line Road to Mission Road in the amount of \$58,198.00.

RELATION TO VILLAGE VISION

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

CFS3a. Ensure streets and sidewalks are in good condition by conducting maintenance and repairs as needed.

TR1a. Provide sidewalks in new and existing areas to allow for continuous pedestrian movement around Prairie Village.

TR1b. Ensure that infrastructure improvements meet the needs of all transportation users.

ATTACHMENTS

1. Engineering Change Order #3 with George Butler Associates, Inc.

PREPARED BY

Keith Bredehoeft, Public Works Director

July 1, 2014



**CITY OF PRAIRIE VILLAGE
PUBLIC WORKS DEPARTMENT
ENGINEERING CHANGE ORDER NO. 3**

City's Project: 75ST0001- 75th Street, Staline Road to Mission Road

Date Requested: July 7, 2014

Contract Date: June 6, 2011

Consultant's Name: George Butler and Associates

Contractor's Name:

REQUIRED CHANGES TO PRESENT CONTRACT

Contract Quantity	Previous Amount	Unit	Item Description	Adj. Quant.	Unit Price	Adjusted Amount
1	\$400,709.00		Additional Engineering Services	1	\$58,198.00	\$458,907.00

TOTAL \$400,709.00

	TOTAL	\$458,907.00
NET	Increase	\$58,198.00

EXPLANATION OF CHANGE - This change order is to cover the following items:

- Significant items included in this change order are shown below and are significant items that are considered outside of the original scope or were areas of design that the work effort was greater than expected.
- 75th Street alignment Shift from Belinder to Eaton
 - Additions design related to the easements needed for this project
 - Manual cross sections required by KDOT
 - Additional storm sewer design. Replaced more than originally planned.
 - Modified Profile between Mission and Reinhardt

	Contract Value	Contract Days
Original Contract	\$124,760.00	
Current Contract including previous Change Orders	\$400,709.00	
NET This Change Order	\$58,198.00	
New Contract Price	\$458,907.00	

Engineer

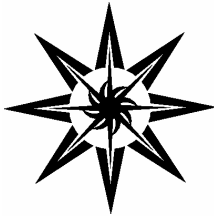
Date

Keith Bredehoeft, Public Works Director
City of Prairie Village, KS

Date

Ronald L. Shaffer, Mayor
City of Prairie Village, KS

Date



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: July 7, 2014

Council Meeting Date: July 7, 2014

CONSIDER INCREASING FUNDING FOR PROJECT BG40001- MCCRUM PARK IMPROVEMENTS AND TO TRANSFER \$25,000 FROM TALIAFERRO PARK PROJECT BG45001 TO MCCRUM PARK PROJECT BG40001

RECOMMENDATION

Move to approve increasing funding for Project BG40001- McCrum Park Improvements by \$55,000 and to transfer \$25,000 from Taliaferro Park Project BG45001 to McCrum Park Project BG40001.

BACKGROUND

In May 2013 Council approved 4 year funding of improvements to parks. These improvements totaled \$985,000.00 over the 4 years. The projects planned for 2014 are listed below.

2014- \$250,000 for improvements in McCrum, Prairie, Taliaferro, and Harmon Parks.

Plans have been developed and were presented at a public meeting this spring. Upon final design, costs for the improvements for McCrum Park and Taliaferro Park increased more than expected. This caused us to study further the order of work for the planned projects over the next 4 years and has led to changes to the order of work that will help reduce costs. The changes are summarized below.

Taliaferro Park- The park improvement plan called for the nature play area to be completed in 2014 and the ball field improvements to be completed in 2015. It is now proposed to do both of these improvements in 2015 as opposed to separate years. The \$25,000 in construction funding for this park will be moved to the construction of McCrum Park as its costs have increased.

McCrum Park- The improvements planned are basically a complete park upgrade. Work is still proposed in 2014 but with an increase of \$55,000 in funding. Costs to underground the power lines increased and KCPL was not willing to share in the cost of the equipment. Overall costs to make the park a "complete park" were also more than expected. Given the importance of this park and the significant work being done this increase in funding will allow the park to be completed at this time. With the added \$25,000 from Taliaferro Park and the \$55,000 in new funding this will result in a total of \$80,000 in additional funding and a total cost of \$229,000 for the construction of McCrum Park.

The overall budget for the 4 year park plan was \$985,000 and this increase of \$55,000 will increase the 4 year plan to \$1,040,000.00.

FINANCIAL IMPACT

Funding is available under the Parks Infrastructure Reserve.

RELATED TO VILLAGE VISION

2. I. Enhancing Parks and Open Space

CFS2.a. Preserve and protect natural areas.

CFS2.b. Enhance parks for active and passive recreation through capital improvements such as landscaping, tree and flower planting, shelters picnic facilities, athletic fields, etc.

ATTACHMENTS

NONE

PREPARED BY

Keith Bredehoeft, Public Works Director

July 2, 2014

MAYOR'S ANNOUNCEMENTS

July 7, 2014

Committee meetings scheduled for the next two weeks include:

JazzFest Committee	07/10/2014	7:00 p.m.
Sister City Committee	07/14/2014	7:00 p.m.
Prairie Village Arts Council	07/16/2014	7:00 p.m.
Council Committee of the Whole	07/21/2014	6:00 p.m.
City Council	07/21/2014	7:30 p.m.

=====

The Prairie Village Arts Council is pleased to a mixed media exhibit by the Senior Arts Council as the July exhibit in the R. G. Endres Gallery. The artist reception will be Friday, July 11, from 6:30 - 7:30 p.m.

Recreation memberships are on sale through the City Clerk's Office.

INFORMATIONAL ITEMS

July 7, 2014

1. Council Committee of the Whole Minutes - June 16, 2014
2. Planning Commission Minutes - June 3, 2014
3. VillageFest Committee Minutes - May 22, 2014
4. Prairie Village Arts Council Minutes - May 21, 2014
5. Environment/Recycle Committee Minutes - May 28, 2014
6. Mark Your Calendars

COUNCIL COMMITTEE OF THE WHOLE
June 16, 2014

The Council Committee of the Whole met on Monday, June 16, 2014 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, Steve Noll, Eric Mikkelson, Andrew Wang, 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.

COU2014-20 HB2578 and Consider Ordinance 2311 repealing certain provisions of the Code of the City of Prairie Village

City Attorney Katie Logan noted that HB2578 was enacted during the 2014 session of the Kansas Legislature and becomes effective July 1, 2014. Section 12-104 of the Prairie Village City Code and Sections 10.1 and 10.1 of the 2012 UPOC, as adopted and amended by the City of Prairie, include provisions prohibiting certain activities involving knives and firearms which the City may not enforce under the provisions of HB2578.

The Uniform Public Offense Code (UPOC), which is published annually by the League of Kansas Municipalities, includes about 100 public offenses which may be prosecuted in municipal courts. Some UPOC provisions have parallel provisions under state law and processed by the District Attorney in state court and some are local violations only. Prairie Village and Mission Hills have historically adopted the current annual version of the UPOC, with amendments. In 2013, both cities retained the 2012 version of the UPOC in order to retain certain provisions regulating knives.

Sections 12-104 of the Prairie Village City Code, and Section 10.1 and 10.1.1. of the 2012 UPOC, as adopted and amended by the City of Prairie Village and by Mission Hills, include provisions prohibiting certain activities involving knives and firearms which the City may not enforce as long as the provisions of HB2578 are effective and enforceable.

Mrs. Logan reviewed the differences between state statutes, UPOC and the City Code and reviewed the items proposed to be repealed. The proposed ordinance repeals Sections in their entirety. She noted that on June 9th, the City of Mission Hills adopted similar provisions.

Andrew Wang 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 Courtney McFadden and passed unanimously.

Council President Ashley Weaver reconvened the committee meeting at 6:30 p.m.

Katie Logan explained in detail the proposed sections to be repealed

- Section 10.1 - Criminal Use of Weapons
- Section 10.1.1 - Concealed Carry' Where Prohibited
- Section 12-104 - Dangerous Weapons Not Allowed

These violations are still addressed by State Statutes.

Chief Jordan noted he expects these changes to be temporary until the 2014 UPOC is adopted later this summer.

Eric Mikkelson noted the proposed ordinance is repealing more than is required or in conflict with HB2578. Mrs. Logan stated she has also prepared an alternate ordinance, which she distributing, repealing only those items required under HB2578.

Chief Jordan stated his officers serve both Prairie Village and the City of Mission Hills and he would prefer that the regulations be the same in both cities. Mission Hills has adopted the full repeal. Mr. Mikkelson asked how difficult it would be to have different regulations. Chief responded it would increase the officer learning curve and could be confusing, but it could be done.

Ted Odell stated he felt the repeal as proposed is a clearer decision moving forward.

Mr. Mikkelson stated the State of Kansas has clearly stated that cities are no longer able to regulate firearms and weapons; however, he has safety concerns with removing items that are not specifically address that still poses a potential safety issue. He supports the alternate ordinance. Chief Jordan responded the items being repealed that are not specifically required have not been used in the City in several years and noted this change of language is temporary.

Jori Nelson stated there was a large amount of information to be considered and she felt pressured to take action without a clear understanding. Katie Logan replied tonight's City Council meeting is the last meeting prior to the July 1, 2014 effective date for the new legislation. She stated many Kansas cities have already taken similar action.

Dan Runion confirmed the new regulations would not become effective until July 1, 2014, even if approved this evening.

Ted Odell expressed his disappointment in the state legislature's decision to strip cities of their ability to regulate firearms.

Ted Odell made the following motion, which was seconded by Steve Noll and passed by a vote of 6 to 5 with Mayor Shaffer breaking the tie:

**RECOMMEND THE GOVERNING BODY ADOPT ORDINANCE
2311 REPEALING CERTAIN PROVISIONS OF THE CODE OF
THE CITY OF PRAIRIE VILLAGE REGULATING FIREARMS AND
KNIVES BY AMENDING ARTICLE 1 OF CHAPTER X1 7 OF THE
CODE OF THE CITY OF PRAIRIE VILLAGE, 2003, ENTITLED
"PUBLIC OFFENSES * TRAFFIC" BY REPEALING SECTION 10.1
"CRIMINAL USE OF WEAPONS" AND SECTION 10.1.1 "CONCEAL
CARRY WHERE PROHIBITED" AND REPEALING SECTION
12-104, ENTITLED "DANGEROUS WEAPONS NOT ALLOWED OF
ARTICLE I "CITY PARKS" OF CHAPTER XII "PUBLIC PROPERTY"
ACTION TAKEN
06/16/2014**

COU2014-19 Consider 2015 Budget - CIP and Economic Development Fund

Keith Bredehoeft, Public Works Director, began with a brief review of the current 2014 CIP Projects including work on 20 streets, 1 drainage project, concrete repair project and crack seal/microsurface project. Mr. Bredehoeft explained the infrastructure rating process done by the City on an annual basis covering 10% of the city streets and noted the change in the condition ratings over the past year. He was pleased to report that 84% of the city's arterial and collector streets have received a good to excellent rating.

He noted that only 81% of the residential streets have this rating. In 2013, 5% of residential streets had a rating of poor with the 2014 rating increasing to 10% rated poor with 9% rated fair. A map of the city reflecting the locations of the poor and fair rated streets was presented. Mr. Bredehoeft stressed the importance of making street repairs prior to these rating levels to prevent having to do a significantly more costly rebuild of the street as opposed to a repair. He would like to see a projected working scenario in place for planned street repairs. Ted Odell confirmed the city contracts repairs and questioned if more in-house maintenance had been considered. Mr. Bredehoeft responded it was an option.

The proposed General Fund Transfer to CIP is \$3.1M an increase of \$0.6M over 2013.

The proposed 2015 CIP funding is from the following sources:

- | | |
|---|--------------------|
| • Transfer from General Fund | \$3,144,425 |
| • Transfer from Special Highway Fund | \$ 555,000 |
| • Transfer from Stormwater Utility Fund | \$1,000,000 |
| • Transfer from Special Park & Rec Fund | <u>\$ 180,000</u> |
| Total | \$4,879,425 |
| • Prior Year CIP funding | \$ 880,661 |
| • Funding from CARS and Federal Funds | <u>\$2,198,300</u> |

CIP TOTAL

\$7,958,386

Recommended Parks Program - \$470,000

Mr. Bredehoeft stated based on the pool analysis done recently, he does not see significant pool projects in the near future allowing the city to continue building a reserve for these. However, the Skate Park is showing signs of significant concrete problems that will need to be addressed.

The 2015 Parks Program includes the following projects:

• Park Infrastructure Reserve	\$ 120,000
• Taliaferro Park	\$ 61,000
• Harmon Park	\$ 125,000
• Bennett Park	<u>\$ 180,000</u>
Total	\$ 470,000

Recommended Drainage Program - \$1,120,000

Mr. Bredehoeft reviewed the history of the Delmar & Fontana Drainage Channel and shared photos and analysis of the problems. He noted that due to the previous work being done plans for the work are 90% completed. Brooke Morehead confirmed the recent expenditure of \$40,000 for the City Engineer to re-evaluate the design. She noted the huge cost of this project and asked how many properties were affected. Mr. Bredehoeft replied three or four houses have experienced flooding and reviewed other erosion concerns.

At 7:25 p.m., Jori Nelson moved to recess the Council Committee of the Whole meeting until after the conclusion of the regularly scheduled City Council meeting. The motion was seconded by Steve Noll and passed unanimously.

Council President Ashley Weaver reconvened the Council Committee of the Whole meeting at 8:05 p.m.

Recommended Drainage Program - \$1,120,000

Public Works Director Keith Bredehoeft continued his explanation of the proposed Delmar/Fontana Drainage Project. Jori Nelson asked what impact the proposed development of the Mission Valley School site would have on this project. Mr. Bredehoeft responded there would be none as the site is downstream and the proposed drainage plan for that project carries all the water to a detention area where it is released at acceptable rates.

The 2015 Drainage Program includes the following projects:

• Water Discharge Program	\$ 10,000
• Delmar & Fontana Drainage Channel	\$ 440,000
• Drainage Repair Program	<u>\$ 670,000</u>
Total	\$1,120,000

Erosion problem by Corinth Elementary School.

Recommended Streets Program - \$5,573,386

Mr. Bredehoeft noted the 2015 budget did not include any additional funding of the traffic calming program or for CDBG projects. The paving program fluctuates from year to year.

The 2015 Streets Program includes the following projects:

• 75th Street - State Line Rd to Mission Rd	\$3,021,265
• Paving Program	1,314,121
• Roe Avenue - 75th St to 83rd (CARS)	1,163,000
• Roe Avenue - 63rd St. to 67th (CARS)	<u>75,000</u>
Total	\$5,573,386

Eric Mikkelson asked if there would be a bike lane added with the 2014 work on Somerset. Mr. Bredehoeft that there are no plans for such, but noted the width of the street would be adequate for a bike lane. Mr. Mikkelson noted that a different section of Somerset was shown on the map of area bike routes. Terrence Gallagher noted bikers he has spoken with avoid Somerset due to high traffic volume. Mr. Mikkelson stated he would like to see a north/south and east/west route available through the City. Mr. Bredehoeft expressed his concern that proposed routes connect to other routes. Chief Jordan stated the city would need to work with bikers in the creation of any routes.

Andrew Wang questioned the reserve in the traffic calming fund. Mr. Bredehoeft responded that some of the funding for these projects was taken from other funds as they were done in conjunction with other work. Funding was added in 2014. Mr. Wang thought the program was discontinued due to a disagreement amongst council members on its effectiveness. Mr. Bredehoeft responded the program is being restructured and he will bring that forward to the Council at a later date in anticipation of doing additional work in 2014. Mr. Wang responded he was not comfortable going forward with the program without a re-evaluation and expressed concern with neighborhood expectations of the program.

Recommended Buildings Program - \$70,000

Mr. Bredehoeft noted the City Hall/PD Entrance was removed from an earlier budget and is in need of significant brick and concrete maintenance. The work also needs to be done to better meet ADA accessibility requirements. The funds in the 2015 budget are for design with construction costs reflected in the proposed 2016 CIP.

The 2015 Buildings Program includes the following project:

• City Hall/PD Entrance	\$ <u>70,000</u>
Total	\$ 70,000

Recommended Other Programs - \$725,000

The 2015 Other Program includes the following projects:

• ADA Compliance Program	\$ 25,000
• Concrete Repair Program	<u>\$ 700,000</u>

Total \$ 725,000

Dan Runion noted variations in the amount of the CIP budgets over the past years. Keith Bredehoeft responded how the budgets were impacted by the approval of bonds in 2009 for infrastructure improvements, which allow the city to fund more work through 2011 with the refunding of the bonds. He also noted the receipt of \$1.6 in federal funds through a grant. The debt payment for those bonds also has impacted available funding and future funding.

Keith Bredehoeft added that the CID Project at the Prairie Village Shops included a trail along 71st Street from Tomahawk to Mission and noted that design funding is included in the 2015 budget with construction in the 2016 budget.

Eric Mikkelson asked to what extent the City supporting more walk ability throughout the City. Mr. Bredehoeft responded that it was part of the review process when city infrastructure work is proposed. The City does not have a plan for signing bike routes. The sidewalk policy has been revised and is being followed. There are still differences in what is considered a sidewalk versus a trail. Mr. Mikkelson urged the City to continue moving forward toward more walk ability.

Courtney McFadden asked if Mr. Bredehoeft had looked into the possibility of sidewalks on Roe as discussed at a previous meeting. He responded that the time to do that would be when Roe comes up for CARS funding. Terrence Gallagher reminded the committee that they agreed to discuss this issue further after the completion of the budget process. Mr. Mikkelson stated, however, that he would like to see some funding in the 2015 budget and not wait until the 2016 budget. He wants the city to do more than talk about it.

Jori Nelson noted that the City of Leawood paid a consultant to develop a walk ability plan for the City.

Economic Development Fund

Quinn Bennion reviewed the history of the Economic Development Fund which was funded initially from the city's share of a county special sales tax for schools. In the creation of the fund an ordinance was adopted by the Governing Body which designates how the funds can be used. The projected Fund Balance as of 1/1/2015 is \$1,931,853. The only revenue is interest on investments.

Andrew Wang questioned the low projection of interest. Lisa Santa Maria noted that new legislation approved this year will allow the city more options for the investment of idle funds.

The 2015 proposed budget of \$73,000 includes the following projects:

- Exterior Grant Program \$50,000
 - Johnson County Home Repair Program \$20,000
 - KCADC Joint Membership w/Chamber \$ 3,000
- Total **\$73,000**

Mr. Bennion noted that if the Governing Body chose to use the economic development funds for a different project, the current programs would stop or an additional funding source would need to be identified. Ted Odell stated he would like to see the Exterior Grant Program continue to be funded.

Andrew Wang referenced the presentation by the Brookings Institute at the MARC annual meeting noting that there are a lot of options for the city to consider.

Eric Mikkelson stated he felt there was no greater long term return on investment than the acquisition of greenspace. He noted that this is a very conservative budget and that he felt even if these funds were used for another project, funding could be found within the budget to continue the Exterior Grant Program.

ADJOURNMENT

With no further business to come before the Council Committee of the Whole, Council President Ashley Weaver adjourned the meeting at 9:05 p.m.

Ashley Weaver
Council President

PLANNING COMMISSION MINUTES
June 3 , 2014

ROLL CALL

The Planning Commission of the City of Prairie Village met in regular session on Tuesday, June 3 2014, in the Municipal Building Council Chambers at 7700 Mission Road. Chairman Bob Lindeblad called the meeting to order at 7:00 p.m. with the following members present: Nancy Wallerstein, Jim Breneman, Larry Levy, Randy Kronblad and Gregory Wolf.

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

APPROVAL OF MINUTES

Nancy Wallerstein moved the approval of the Planning Commission minutes of May 6, 2014, as written. The motion was seconded by Randy Kronblad and passed by a vote of 5 to 0 with Wolf abstaining.

PUBLIC HEARINGS

There were no Public Hearings scheduled.

NON PUBLIC HEARINGS

**PC2014-114 Approval of Sign Standards
5300 West 94th Terrace**

Brad Miller with Fast Signs Overland Park, 8844 West 95th Street, stated his client would like to place two signs on the south facade of the building at 5300 West 94th Terrace. When submitting for a sign permit, he was advised that as a multi-tenant building, the office building needs sign standards. He has submitted draft sign standards and the proposed facade signage. Mr. Miller stated that he has reviewed the staff report and recommendations and is in agreement with them.

Ron Williamson noted that currently the only sign on the building is for NOWA Technology at the west end of the south facade. NOWA occupies the second floor and Wolfgang Trost Architects occupies the first floor. Normally only one sign is permitted on a building façade, but the Planning Commission may approve more than one sign through approval of sign standards that address all the signage for a specific project or building.

The applicant has submitted sign standards and graphics for the proposed Wolfgang Trost Architects and the logo. The lettering is the same as NOWA and this drawing will

be a part of the sign standards approved for this building. Staff finds the design and the materials for the signage to be acceptable and has recommended some minor changes to the proposed sign standards.

Under the Introduction section the words at the end of the paragraph, “to the Prairie Village Planning Commission” should be deleted and replaced with “for a sign permit”. The word “construction” at the end should be deleted or text added as appropriate. In the event the applicant desires to construct a monument sign in the future, a section should be added, “Monument Sign”. The text should be “Monument sign design shall be approved by the Planning Commission prior to obtaining a sign permit.” Adding this section will eliminate the need to amend the sign standards in the future.

Nancy Wallerstein moved the Planning Commission approve the proposed sign standards for 5300 West 94th Terrace permitting two signs on the south facade of the building, based on the graphics submitted with the applicant revising the text of the sign standards as recommended and resubmitting the revised sign standards for staff review and approval. The motion was seconded by Randy Kronblad and passed unanimously.

PC2013-120 Preliminary Plat Approval Chadwick Court

Commissioner Larry Levy recused himself due to a conflict of interest and left the room.

Bob Royer, 7805 Mission Road, stated that he had received the staff report and recommended conditions for approval and addressed each condition.

1. He agrees with this condition.
2. He stated that WaterOne will maintain and service the water line and fire hydrant located on the east side of the private road.
3. The trees to be removed were identified in an earlier submittal.
4. Covenants have been submitted and will be filed.
5. Gas, water and sewer easements will be provided to Lot 7.
6. He has submitted final drawings to Public Works and will resolve any issues regarding stormwater management and submit construction drawings.
7. The design of the private drive will comply with city standards and plans and specifications will be submitted to Public Works for review and approval.
8. He does not want to construct a sidewalk on one side of the private street. He noted in an earlier meeting that there is no connectivity. This private street does not go anywhere or connect to any other streets. With the limited setback he feels the placement of a five foot sidewalk would serious impact greenspace and is totally unnecessary as well as costly to construct.
9. The requested information will be included on the Final Plat.

Ron Williamson noted the proposed Preliminary Plat is a seven lot plat of an unplatted parcel of land that is occupied by one large dwelling at the south end of the tract. The property was recently rezoned to RP-1B Single-Family Dwelling District and the minimum lot size is 6,000 square feet with a minimum lot width of 60 feet. The area of the parcel is approximately 2.7 acres and the smallest lot, #1, is 8,030.3 sq. ft. which is larger than the minimum lot size.

STREETS

The applicant is proposing to serve the seven lots with a 26' wide curb and guttered private street. The street will be located within Tract A as shown in the plat. The private drive will be constructed to City standards.

The existing half street right-of-way for 75th Street is 30' at this location. Immediately to the east, the half street right-of-way is 40', while to the west it is 30'. Based on the Village Vision Concept plan for 75th Street, it is recommended that an additional 10' of half street right-of-way be dedicated to the City.

SIDEWALKS

The City is in the process of rebuilding sidewalks on all of 75th Street and filling in where sidewalks do not exist. So the sidewalk on 75th Street will be provided as part of the City project. It is the opinion of Staff, however, that sidewalks should be provided on all streets and recommend that sidewalks be installed on one side of the private street.

UTILITIES

There is an existing sewer line and easement in proposed Lot 1. The line will need to be relocated and the easement vacated. A 15 foot wide sewer easement is proposed on the east side of the private drive, but it does not reach Lot 7. An email has been received from Johnson County Wastewater approving the proposed easement and line relocation.

An existing 4" private water main crosses the property diagonally; however, the applicant indicates it has been relocated and abandoned. The proposed plat shows an easement running along the west side of the private drive. A letter will need to be obtained from Water One approving the easement. The proposed easement does not reach Lot 7.

STORM DRAINAGE

A stormwater management plan has been prepared and submitted to Public Works for review and approval. Obviously, this will be a significant increase in stormwater run-off from what exists now. The applicant has proposed a typical open-air dry detention pond adjacent to 75th Street. The applicant has submitted a stormwater management plan which has been reviewed and approved by the City's Stormwater Consultant and Public Works. There will be a detention basin on each side of the proposed private street. The west basin is approximately 76 ft. long and 27 ft. wide and the east basin is approximately 82 ft. long and 27 ft. wide. At the deepest point the west basin is about 9 ft. and the east basin is about 8 ft. in depth. The basins will be fenced.

GAS LINE

The plan shows a gas line in the private drive that dead ends on the property but no easement is indicated.

TREES

Preserving the vegetation is extremely important environmentally and particularly since many of the trees on this site are mature. The applicant has identified major trees on the site. Every effort needs to be made to preserve the trees on the east and west property lines.

SITE DISTANCE

The visibility exiting from the site appears to be adequate. The drive is being relocated to the west and the visibility will be improved.

The applicant held a public information meeting on August 26, 2013 for the neighbors and three households attended. Questions were asked, but none of them pertained to issues of platting.

Chairman Bob Lindeblad led the Commission in consideration of the factors and conditions for subdivision approval:

1. The size of the lots which currently abut the proposed subdivision:

The lots on the west side average 0.59 acres; however, there is one lot that is 0.89 acres which raises the average. The lots to the south average 0.26 acres. The lots north of 75th Street average 0.37 acres. The lots to the east average 0.32 acres. The average area of the proposed six lots is 0.19 acres. If Lot 7, which is large, is added in, the average is 0.33 acres. The lot sizes shall be as approved on the Preliminary Development Plan.

2. The average size of lots which are within 300 feet of the proposed subdivision:

The average size of the lots within 300' of the boundaries of the proposed subdivision is 0.32 acres.

3. The fact that the width of the lot is more perceptible and impacts privacy more than the depth or the area of the lot:

The lot widths and depths shall be as approved on the Preliminary Development Plan for the RP-1B zoning. The proposed lot widths of 81 ft., 91 ft. and 96 ft. exceed the requirements of the R-1B district which is 60 ft.

4. The likelihood that the style and cost of homes to be built today may be quite different from those which prevailed when nearby development took place:

The trend in Prairie Village is to build larger homes on infill lots. It therefore can be assumed that their new homes will be larger and higher priced than other existing homes in the area.

5. The general character of the neighborhood relative to house sizes, aging condition of structures, street and traffic conditions, terrain, and quality of necessary utilities:

This neighborhood is quite diverse in the size and age of its housing. The houses on the east and south are moderate in size and were built in the late 1950s. The houses to the west are larger and built on larger lots. They were, for the most part, built in the early 1970s. The existing house on this lot was built in 1928. There are only seven lots proposed so the volume of traffic will be insignificant. Utilities are either on the site or readily available. The tract slopes from Lot 7 north to 75th Street through the proposed six lots. The elevation change is approximately 20 ft. Lot 7 slopes to the south property line.

6. The zoning and uses of nearby property:

The property to the east, west and south is zoned R-1A and to the north is zoned R-1B. All the surrounding land use is single-family dwellings.

7. The extent to which the proposed subdivision will, when fully developed, adversely or favorably affect nearby property:

The development of this subdivision should favorably impact the neighborhood because the homes will be newer and therefore more expensive. The higher priced homes will have a positive effect on the values of the other homes in the neighborhood. A detention facility will be constructed adjacent to 75th Street which should help control stormwater runoff for the homes to the north.

8. The relative gain to the public health, safety, and general welfare if the subdivision is denied as compared to the hardship imposed on the applicant:

If the subdivision is not approved, the land will remain idle and undeveloped which will not benefit the public. This is a large tract of land that can support a more intense or higher density development with homes that provide the types of amenities that are desired by today's home buyers.

9. Recommendations of the City's professional staff:

After performing a detailed review of the proposed plat, it is the opinion of Staff that this is a good proposed use of this land and that the subdivision fits well and will be compatible with the existing neighborhood. It is the opinion of Staff that it should be approved subject to the resolution of several technical issues. The plat is generally in accordance with the approved final development plan.

9. The conformance of the proposed subdivision to the policies and other findings and recommendation of the City's Comprehensive Plan:

One of the primary goals of the Village Vision is to increase the density and intensity of development and to develop infill areas with housing products that meet the needs and desires of today's market.

Jim Breneman asked if approval of the plat included approval of the landscape plan. Mr. Williamson responded that the landscape plan is still being worked on. The applicant is proposing planting trees in the detention basin, which has to be approved by Public Works and the general landscape plan needs to be approved by the City's Tree Board. Mr. Royer responded that he felt the trees in the detention basis would serve to soften the appearance of the nine foot basin.

Bob Lindeblad asked for the height of the detention basin. Mr. Royer responded the detention basin has 9 foot walls on the east going towards the houses, along 75th Street the height is 4 feet. It is constructed from a concrete block material and has a fence/guard rail on top.

Mr. Lindeblad confirmed the fence/rail will be on all four sides where the wall height is more than 30 inches.

Mr. Lindeblad asked for clarification on the appearance along 75th Street. Keith Bredehoeft responded there will be a five foot city sidewalk with a ten-foot right-of-way to the south in which Mr. Royer has proposed to plant trees adjacent to the fence/wall of the detention basin.

Jim Breneman expressed concern with the proposed steepness reflective on the gravity wall presented.

Randy Kronblad expressed concern with the grading plan particularly between the residences. He does not feel there is adequate drainage to get the water from the front to the back. Bob Royer explained how the proposed drainage would flow. Mr. Kronblad noted it will be a tight fit between the finished contours. He noted minimal contour to foundation changes on lot 4 with a five foot drop coming off from lot 5. Ron Williamson advised that Public Works will have to approve the proposed drainage for each lot prior to the issuance of any building permits.

It was noted that the plans show an eight inch water line in some locations and a six inch water line in others, Commissioners asked which was accurate. Mr. Royer stated that he was not certain, but that is the responsibility of WaterOne.

Bob Lindeblad stated he thought the Commission waived the sidewalk requirement during the earlier approval of the site plan. Mr. Royer noted that most of the sidewalk would be on actual driveway space.

Nancy Wallerstein moved the Planning Commission approve the Preliminary Plat and authorize the preparation of the Final Plat, subject to the following conditions:

1. Dedicate an additional 10' of right-of-way for the south side of 75th Street.
2. Indicate who will maintain the water line and fire hydrant located on the west side of the private road.
3. Identify those trees that will be removed and protect the trees on the east and west property lines.
4. Revise the covenants that will be filed to guarantee the maintenance of the private roadway, the stormwater detention area, and any other private improvements on the property as requested by Staff. The applicant has submitted preliminary covenants that are being reviewed by Staff.
5. Provide gas, water, and sewer easements to Lot 7.
6. Resolve any issues with Public Works regarding stormwater management and submit construction drawings.

7. Design the private drive to City standards and submit the plans and specifications to Public Works for review and approval.
 8. Pickets on the guard rail shall be 4" not 6" on center.
 9. Submit the following information with the Final Plat:
 - a. A copy of the revised covenants.
 - b. A title opinion or attorney's opinion stating the name of the owner and the names of all other persons or institutions that have an interest or encumbrance on the property.
 - c. A receipt showing all taxes due and payable have been paid.
 - d. Construction documents for all proposed improvements.
 - e. An engineer's estimate of construction cost in order to determine the amount of the bond or other surety required to guarantee the improvements.
 10. Clarify the size of the water line - 6 inch or 8 inch.
- The motion was seconded by Gregory Wolf

Keith Bredehoeft noted the city's storm drainage engineer, in his evaluation of the stormwater concept plan, expressed concerns with the practicality of all vegetated areas of the development being native vegetation. The landscape plan that was submitted does not show all vegetated areas being native vegetation. The planting of turf vs. native vegetation does alter the stormwater calculations.

Bob Lindeblad asked if there was any monitoring to ensure the native grasses were growing. Mr. Bredehoeft stated residential properties are not generally monitored.

Bob Lindeblad confirmed that individual property owners are responsible for the maintenance of their properties with the common areas maintained by the association. Mr. Royer stated he is not concerned with long-term possible changes. He is very familiar with native vegetation and feels it will meet the requirements.

Nancy Wallerstein asked if the homes association could be required to monitor compliance with the BMP for natural vegetation. Mr. Williamson responded that requirement could be added to the covenants.

Bob Lindeblad expressed his continuing frustration with this application being considered in piecemeal with items changing after their presentation to the Commission and information given too late in the approval process. Ron Williamson stated the Commission could require that a revised final landscape plan be submitted for staff review and approval. Mr. Royer stated if the city would waive the requirement and allow turf grasses all of the problems would go away. He will comply but he does not feel it will provide the outcome the City wants. Mr. Lindeblad responded that the City needs to uphold the ordinances and code that it has adopted.

Nancy Wallerstein moved to amend her initial motion by adding the following conditions: 11) that the covenants be revised to reflect that the Homes Association is responsible for compliance with BMP for natural vegetation as set forth in the drainage study. and 12) that the applicant resubmit an updated final landscape plan showing compliance with the BMP requirements. Gregory Wolf seconded the amendment

The motion as amended was voted on and passed unanimously.

Larry Levy returned to his seat for the remainder of the Commission meeting.

OTHER BUSINESS

Ron Williamson noted that recently there have been several minor facility changes to wireless communications installations as they upgrade to meet the level of competitors. Most of these have been very minor; however, current code requires they be handled by the Planning Commission through site plan approval. It is the opinion of staff that the majority of these improvements could be handled administratively by Staff review.

Last month the city had four antenna changes. He has been advised by applicants for AT&T that 4 more changes are forthcoming for the fire district monopole; 1 change on the 9011 Roe installation, 2 changes to the 7700 Mission Road tower and one change to the 63rd & Mission Road monopole.

Mr. Williamson stated this could be done formally through an ordinance revision or could be done temporarily as a directive to staff from the Commission.

Gregory Wolf asked what would be considered "minor"? He would be more comfortable if the Planning Commission was somehow involved in the interpretation and suggested that the determination be made by staff with the approval of the Planning Commission Chair. Randy Kronblad noted that he had suggested several months ago that these be dealt with administratively.

Gregory Wolf moved the Planning Commission direct staff, upon authorization of the Planning Commission Chair, to administratively approve minor facility changes to wireless communications installations. The motion was seconded by Randy Kronblad and passed unanimously.

Nancy Wallerstein requested that staff submit to the Commission reports on changes that have been handled administratively.

Mr. Royer was advised that in order to have final plat consideration at the July 1st Planning Commission meeting, his documents had to be submitted to the City Clerk by the end of the day on Friday, June 6th.

The Planning Commission Secretary reported the other items on the July 1st agenda are two applications for variances to the Board of Zoning Appeals. One is for a residential front yard setback and the other for a residential side yard setback.

ADJOURNMENT

With no further business to come before the Commission, Chairman Bob Lindeblad adjourned the meeting at 8:00 p.m.

Bob Lindeblad
Chairman

VILLAGEFEST COMMITTEE

May 22, 2014

The VillageFest Committee met May 22, 2014 at 7:00 pm. Present and presiding, Co-Chairs Marianne Noll and Cindy Clark. Members present: Deke Rohrbach, Dale Warman, Toby Fritz, Barb Shaw, Ed Roberts, Tracy Landing, Patty Jordan, Ted Fritz, Tony Lopez, Ashley Dooley Wohlgemuth, Courtney McFadden, Bill Billings, Byron Roberson and Jeanne Koontz.

Cindy Clark welcomed Courtney McFadden as the new Council Representative for the committee.

Minutes

Toby moved to approve the minutes from April 24, 2014. Marianne seconded the motion and it passed unanimously.

Staff Reports

A. Administration

Jeanne reported that the Johnson County League of Women Voters will have a booth space. Jeanne stated she is waiting on two contracts but everything else is in order.

B. Public Works

Bill reported the green fence has arrived and the grill area at Harmon Park Pavilion is almost finished.

C. Police Department

Byron reported he will let Bill know what the Police Department needs for their display.

Planning Group Assignments

A. Community Spirit Award - Toby Fritz

Toby presented the proposed Spirit Award design. The committee likes the new award. Five nominations were received. Toby suggested extending the deadline by one or two weeks. Marianne suggested extending the deadline until the next meeting and voting at the June meeting. The committee agreed to postpone the vote until June and extend the deadline. The committee also decided to create a ballot for the voting process.

B. Child Craft Center - Patty Jordan

Patty stated the crafts are in and she still needs to purchase the photo printer. Home Depot is scheduled to come.

C. Decorations - Patty Jordan

The balloons have been ordered.

D. Crafts - Barb Shaw

Barb stated she has received 8 applications. She will continue to work on getting more craft vendors.

E. Pie Baking Contest - Theresa Gibbons and Danielle Dulin

Cindy reported on behalf of Theresa. They are working with HyVee and Hen House on ice tubs for the dairy pies. Five submissions have been received so far.

F. History Display - Ted Fritz

Ted reported he is finalizing his exhibit in City Hall and he will be attending of the meeting of the Missouri Irish Brigade next week to ensure everything is in order. They will be given a \$300 donation

for the Living History Exhibit. Marianne stated they will be showing the kids how to do military style drills with dowels.

G. Food Vendors - Susan Forrest
No Report.

H. Entertainment - Deke Rohrbach
All the contracts are signed. Deke requested a tent for the sound system and DJ.

I. Information Booth - Deke Rohrbach
Deke said she needs two volunteers for the Info Booth. The Info Booth will need a 10x10 tent this year. The Photo Bus will go where the Info Booth has been in the past.

J. Volunteers - Tracy Landing
Tracy said she has ten volunteers plus Dale's grandchildren. She needs more volunteers for the afternoon shifts. Ted said he needs one volunteer.

K. Fire Department - Tony Lopez
Tony said they will bring the bucket truck for the Mayor to go up in. The Fire Department will also bring the water prop and pumper truck for demonstration.

L. Sponsorships - Marianne Noll & Jeanne Koontz
Marianne reported that she is following up on a few more sponsorships. The committee suggested contacting new businesses: Pinot Palace and Gregory's Floral.

M. Marketing - Marianne Noll & Jeanne Koontz
Marianne reported the Facebook posts have been scheduled and we will ask Jay to run more stories on the pvpost.

N. Patriotic Service - Marianne Noll
Marianne reported that she has requested that Stephanie Ramos with Channel 9 sing at the Patriotic Service. Deke stated that Kaylee Dionne with Channel 41 also sings. The Boy Scouts will be presenting the colors.

Other Business

The YMCA plans on being there with tumbling mats for toddlers and tattoos.

Dale Warman said he is willing to talk with KCPL regarding hanging the banner over Mission Rd for a few days.

The next meeting is June 26, 2014 at 7:00 pm. The meeting adjourned at 7:47 pm.

Marianne Noll & Cindy Clark
Co-Chairs

Prairie Village Arts Council
Wednesday, May 21, 2014
7:00 p.m.
City Hall Multi-Purpose Room

Minutes

The Prairie Village Arts Council met at 7:00 p.m. in the City Council Chambers at City Hall. Members present: Shelly Trewolla, Chair, Art Weeks, Truss Tyson, Julie Flanagan, Kim Horgan, Jack Shearer, Shervin Razavian and Carolyn Wassmer. Staff: Kate Gunja

Introduction of new member

Shelly introduced Carolyn Wassmer as the new student representative to the Arts Council.

Minutes

The minutes from the February 19, 2014, March 19, 2014 and April 16 meetings were approved.

Financial Reports

Assistant City Administrator Kate Gunja reviewed the budget information with the Committee. The Committee requested that staff verify how 30% of the sale of art is retained.

City Council Report

Councilmember Ted Odell reported that at the 2015 Budget was the major topic of discussion at the last Committee of the Whole meeting. On the regular Council Meeting Agenda, appointment of Carolyn Wassmer to the Arts Council, computers for the police department and a paving contract was approved. Councilmember Odell also provided an update on the reappointment of committee members.

Exhibit/Receptions

May Exhibit/Reception – Wayne Wilkes, May 9th, 6:30-7:30 pm

Shelly said that it was a very nice exhibit.

June Exhibit/Reception – Helen Benson, June 13th, 6:30-7:30 pm

Shelly, Art and Julie said that they would be able to attend.

Old Business

Discuss Marketing (including possible guidelines for promotions of events)

Kim reported that she had met with Wayne and Lindsay awhile back to discuss marketing; however they need to meet again before they provide another report.

Discuss Children's Show

The Committee discussed the idea of a juried Children's Art Show during the next (2015) State of the Arts event.

Carolyn reported that Creative Co-Lab at East High School has partnered with Healthy Rivers to create an art response based on the River. She thought this would be a good way to display some children's art if we could get the exhibit for the City gallery. She thought it was currently being displayed in the Healthy Rivers partnership building. Carolyn said that she would visit with the teacher that is responsible for the group at Shawnee Mission East High School.

Carolyn added that there is a Teen Advisory group at the Nelson and that they hold a one night, juried event.

Ted said that he was approached about involving kids in State of the Arts and that it may bring more families into the event if a children's component was added.

Julie and Shelly said they would work together on adding a children's art component to State of the Arts.

Discuss ways for Arts Council to expand

Shelly asked if anyone had any ideas for expanding the activities of the Arts Council. Shelly said that we had advertized in the newsletter asking if there are people interested in performing during the art receptions but that we had not received any response.

There was discussion about how to expand musical performances.

Discuss volunteers for Prairie Village Art Fair

Shelly asked if anyone else was able to volunteer for the Art Fair and the sign-up sheet was circulated.

New Business

Discuss request from Senior Arts Council to extend July 2014 Art Reception time by 30 minutes (to 8:00 pm). Request submitted by Bryce Moore on behalf of the Senior Arts Council.

The Arts Council discussed and approved the request.

Discuss 2014 State of the Arts

Shelly said that the Call for Artists typically goes out in June and we request submission of 3 images. The juror reviews and selects the Artists. Shelly said that the Council meets to decide where to hang the Art for the event. A committee needs to be assembled to work on the reception. Shelly said that the committee meets 2-3 times and does the shopping and cooking. Set-up starts around noon the day of the event. Things that need to be done soon are:

- Getting out Call for the Artist. Shelly asked if Kate could contact Merriam, Leawood and Lenexa Arts Council to ask them to send out the Call for Artists.
- Subcommittee for State of the Arts. Shelly, Julie, Truss, Shervin and Art volunteered. Julie would like to be in charge of the centerpieces.
- Getting sponsors. Kate will look to see if there is a promotional piece that is available to provide to prospective sponsors and history of the donations. Art

asked if the Foundation could be used as an umbrella for fundraising for the event. Councilmember Odell responded that there is some synergy for this idea; however, there is a lot of work that needs to be done before this can occur.

There was discussion about what businesses to ask for sponsorships and how to do this. Jack brought up the idea of using the group RAZE for fundraising. PV Jazz Fest is going to use RAZE. Jack thought this would be a way to fund the sponsorships.

Carolyn thought another idea would be to get merchants to donate gift cards to do a gift card.

There was discussion regarding selection of the Juror for the Show. Shelly noted that we typically do not know who the Juror is before the Call for Artists goes out.

There was discussion about having high school students who are interested in art help/work at the State of the Arts event. Shelly is going to call the Broadmoor Culinary Center regarding food for the event.

Jack stated that there was a good musician that would be reasonable that played at an event for JazzFest who would be good to play at State of the Arts. He asked Kate to get their contact information from Joyce.

Discuss VillageFest – Is a booth needed?

It was decided that a booth is not needed at VillageFest.

The meeting was adjourned at 8:40 p.m. The next meeting will be May 21, 2014.

PRAIRIE VILLAGE ENVIRONMENT AND RECYCLE COMMITTEE

Minutes, May 28, 2014

Pete Jarchow, for the Steering Committee, opened the meeting at 7:00 p.m. Attending were Pete, Thomas O'Brien, Barbara Brown, Margaret Goldstein, Karin McAdams, Ben Claypool, Penny Mahon, Al Pugsley, Ruth Hopkins and Jori Nelson, new City Council representative to our committee. Visiting speaker was former PVERC member Kristin Riott, representing Bridging the Gap.

The minutes from April 23 were approved as written.

Speaker: Kristin Riott, Executive Director, Bridging the Gap. Kristin spoke about current BTG programs and possible PVERC projects.

- Current at Bridging the Gap:
 - As a part of Energy Works KC, a federal program, BTG led Waterworks, a conservation effort that helped low-income people reduce their water bills by using an \$11.00 kit with items like low-flow showerheads that cut down on water use and paid for themselves within a month.
 - Their anniversary event at the KCMO pump house underscored the high quality of Kansas City water and the needlessness of the popular bottled water. She commented that water bottle use is exceptionally high among African Americans – historically understandable, given typical conditions in African American communities.
 - The Department of Energy funded a “house warming” project in which they offered to insulate homes for low-income people. This can be a pretty cheap effort, and even filling in sill plates with foam can make a big difference.
 - Heartland Tree Alliance, a subset of BTG, was originally created to plant trees after the 2002 ice storm. Their Tree Fund gives matching grants to donors and plants trees.
- Things that the PVERC could do:
 - Encourage home insulation. A talking point is that this form of energy efficiency brings a better return than the stock market.
 - We could sell water conservation kits; cost is \$11.00. Selling items is tricky for us budget-wise but might be possible. If it is possible, monarch butterfly kits are available for about \$20.00.
 - Educate people on planting rain gardens.
 - Encourage the kinds of plantings that encourage bees and monarch butterflies.
 - Water use in yards can be reduced by using native plants and more efficient irrigation; we could publicize this.
 - Prepare for the onslaught of the Emerald Ash Borer.

- KCMO is considering a ballot measure on banning plastic bags. We are already looking into this issue, and BTG is willing to help.
- Some places to encourage the use of native plants would be as borders for the community gardens, as this can help prevent runoff and erosion. Also, we could inform Prairie Village island committees on how to use native plants in the islands. Missouri Wildflowers Nursery is a good source of native plants.
- What resources does BTG have that could help us?
 - Volunteers, especially those from Prairie Village.
 - Trees – the Heartland Tree Alliance could help homeowners acquire and plant more trees, especially homeowners who have been affected by the Ash Borer. The city needs more tree diversity.
 - BTG could help us put on honeysuckle removal workshops for either citizens or Public Works. We could also offer irrigation workshops.

Reports and business:

- **Earth Fair –**
 - We need to choose a date for next year’s fair. It was agreed to ask for April 18th if possible, with the 11th as a second choice.
 - There was a lot of interest in making possible for the Book Fair to offer reusable bags. We could ask the library to offer an incentive to those who brought their own bags and/or look for donations of reusable bags.
- **Community Gardens:**
 - Users of the Harmon garden will be inviting our committee and others to a garden party marking the Summer Solstice. It will be on Friday, June 20, a potluck.
 - The Global Montessori School will soon be moving into the Cherokee Christian Church building. They are interested in adopting the garden, but there are state regulations that could make that difficult. Ben is involved with the school and will keep us informed.
- **Village Fest – Thomas O’Brien**
 - The bike project is moving along well.
 - It would be good to have a new PVERC sign, which the education committee is working on, but it won’t be ready this July.
- **Education Committee**
 - The committee will meet on April 3 at 7:00.

- They will discuss the new banner, the possible plastic bag project (banning or charging for one-use plastic bags).
- They will create a questionnaire on plastic bags that can be used at the Earth Fair.
- **Community Forum**
 - The committee is looking into hosting Kimberly and Josh Svaty, who will do a guided conversation on the subject of water.
 - KNRC, as usual, will offer a legislative update.

Old business:

- The 2015 budget will be much like that of 2014: \$10,000 total. There will be more funding for Earth Fair and the Community Forum.
- The Overland Park recycling event was highly popular.
- We can continue our efforts on banning plastic bags, especially given the high level of approval we received from the survey at the Earth Fair. Having the information and guidelines from Roeland Park should be very helpful. We need to contact our City Council members to prepare them for this effort.
- We need to continue our efforts to get curbside recycling of food scraps. Right now we can continue to contact homes associations to find more that will be willing to run pilot projects.
- We can also use our space in the *Village Voice* for informing the public on this topic.

The meeting adjourned at 9:00 pm.

The next meeting will be held on June 25 at 7:00 p.m.

Respectfully submitted,

Karin McAdams

Council Members
Mark Your Calendars
July 7, 2014

July 2014	Senior Arts Council mixed media exhibit in the R. G. Endres Gallery
July 11	Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
July 11	Moonlight Swim at Pool Complex - pool open until 10 p.m.
July 18	Moonlight Swim at Pool Complex - pool open until 10 p.m.
July 21	City Council Meeting
August 2014	Randy Kronblad pastel exhibit in the R. G. Endres Gallery
August 1	Moonlight Swim at Pool Complex - pool open until 10 p.m.
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