

**COUNCIL COMMITTEE OF THE WHOLE  
Council Chambers  
Monday, July 06, 2015  
6:00 PM**

**AGENDA**

**BROOKE MOREHEAD, COUNCIL PRESIDENT**

**AGENDA ITEMS FOR DISCUSSION**

Code enforcement protocols  
Wes Jordan

\*COU2015-28 Consider approval of communications remodel project bids  
Captain Schwartzkopf

\*COU2015-29 Consider approval of construction contract with Primetime Contracting  
Corp for 2015 park projects  
Keith Bredehoeft

Executive Session

Review presentation of recommended Capital Improvement Plan budget  
Keith Bredehoeft

2016 budget consideration - employee benefit substitute  
Quinn Bennion

**\*Council Action Requested the same night**





## POLICE DEPARTMENT

Council Meeting Date: July 6, 2015

### COU 2015-28: CONSIDER APPROVAL OF COMMUNICATIONS REMODEL PROJECT BIDS

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#### RECOMMENDATION

Staff recommends the approval of the bid from Xybix Systems and Commenco for the Communications Remodel project. (see attached quotes from Xybix Systems and Commenco).

COUNCIL ACTION REQUESTED ON:

July 6, 2015

#### SUGGESTED MOTION

I move approval of the bids from Xybix Systems for \$30,194.19, and Commenco for \$14,300.00, with a project cost not to exceed \$50,000.00.

#### BACKGROUND

The Police building is 19 years old and the Communications Center has the original consoles and configuration. Four vendors were called from the MARC Cooperative Bid List. Three responded:

Xybix - \$30,194.19

Evans - \$35,116.00

Watson - \$41,120.00

Xybix has done work locally at Johnson County, OPPD, Liberty, and Leavenworth. The conceptual design was reviewed and approved by Communications Staff. Commenco is the current vendor approved by MARC for work on 911 equipment.

\$30,000.00 was approved in the 2015 budget, and \$20,000 was encumbered from the same line item in 2014.

FUNDING SOURCE

01-02-20-8009-000

#### ATTACHMENTS

1. Xybix quote, and
2. Commenco quote.

#### PREPARED BY

Tim M. Schwartzkopf  
Chief of Police  
Date: June 29, 2015

**Xybix Systems, Inc.**  
 8207 SouthPark Circle  
 Littleton, CO 80120  
 Phone:303-683-5656  
 Fax:303-683-5454  
 JudiJ



**Quote Number: 16675**

**Quote Date: 4/28/2015**

**Revision: A**

**Orig Create Date: 4/28/2015**

**Expires: 7/27/2015**

**Opp #: 0012225**

**Page: 1 of 3**

**Quote**

**Terms: 25% DEP;65% INSTALL;10% PUNCH**

<p><b>Quote To:</b>          Acct: PRAVILPRKS           Prairie Village Police Department          7710 Mission Road          Prairie Village KS 66208</p>	<p><b>Ship To:</b> Prairie Village Police Department          7710 Mission Road           Prairie Village          KS 66208</p>
<p>Rep Phone: 574-329-0200          Email:  <b>Sales Person: NEVCO WIRELESS</b>          Rep Phone: 515-299-0736          Email: jeff@nevcousa.com</p>	

4.28.2015 Drawing R0 jejk/s

PLEASE NOTE: OPTIONAL ITEMS ARE NOT INCLUDED IN THE TOTAL PRICE.

PLEASE CONTACT XYBIX TO HAVE ANY OPTIONAL ITEMS INCLUDED IN THE FINAL PRICE.

FREIGHT & INSTALLATION CHARGES WILL BE ADJUSTED ACCORDINGLY.

Xybix is not registered to collect sales tax in the state of KS, and any sales tax due on your transaction will need to be paid directly by you to your State agency (this is commonly referred to as USE Tax).

Line	Part Number	Description	Qty	U/M	List Ea	Disc%	DiscPrice	Net Price
1.00	12343.	Panel System Priced by the Linear Foot: Grade 2Fabric 12343-1-SS - 42-48in - 15 LF @ 150 12343-1-DS - 42-48in - 19 LF @ 203 12344-1-SS - 65in - 0 LF @ 202 12344-1-DS - 65in - 0 LF @ 281  Upper Tiles Fabric Color: TBD Grade 2 G2 Lower Tiles Fabric Color: TBD Grade 2 G2 Panel Trim Color: Black	1	1.0 EA	\$6,107.00	36	\$3,908.48	\$3,908.48
2.00	14486.	Adj. Table Worksurface - Dual Surface - Corner - 72L x 72R 10 RV-Cable Management Included	2	2.0 EA	\$1,848.00	47	\$979.44	\$1,958.88
2.01	15203	Anti-Microbial Laminate Upgrade <b>OPTIONAL qty2</b>	3	2.0 EA	\$600.00	47	\$318.00	\$636.00
3.00	11064LRG	ErgoPower X4+ Table Base - Large	4	2.0 EA	\$5,324.00	47	\$2,821.72	\$5,643.44
4.00	12757.	Monitor Mount - Rollervision - - 1HI - Corner - Dual Surface - 72L x 72R 10 RV - 12076 - Std VESA Monitor Mount Qty = 5	5	2.0 EA	\$2,758.00	47	\$1,461.74	\$2,923.48
5.00	12904	DataDock - Keyboard Surface Cable Organizer Cables Sold Separately	6	2.0 EA	\$393.00	47	\$208.29	\$416.58

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5.01	15196	Charge Only USB Upgrade for Datadock - Cables Sold Separately	7	0.0 EA	\$50.00	47	\$26.50	\$0.00
		<b>OPTIONAL qty 2</b>						
5.02	11677	Ext Cable USB Type A to Type A Panel Mount for Datadock Male/Female 5M (16.4')	10	16.0 EA	\$34.00	47	\$18.02	\$288.32
5.03	13166	Datadock - Panel Mount RJ-45 CAT6 Coupler	11	4.0 EA	\$53.00	47	\$28.09	\$112.36
5.04	11778	Ext. Monitor Cable 15' VGA High Quality Male/Female	12	10.0 EA	\$114.00	47	\$60.42	\$604.20
6.00	11792.	Power Bar - 10 Outlet	13	4.0 EA	\$135.00	47	\$71.55	\$286.20
6.01	14976	6 Outlet Power Strip 25'	14	1.0 EA	\$144.00	47	\$76.32	\$76.32
7.00	13171	Task Light - Trillium LED Kit - Climate Control	15	0.0 EA	\$628.00	47	\$332.84	\$0.00
		<b>OPTIONAL qty 2</b>						
7.01	12604MCC	Light - LED Status Indicator 56MM 3 HI Red-Yellow-Green-24VAC/DC For MyClimate	18	0.0 EA	\$1,050.00	47	\$556.50	\$0.00
		<b>OPTIONAL qty 2</b>						
8.00	15462	Dual Shelf Under Surface 19W x 9D - Metal	19	2.0 EA	\$254.00	47	\$134.62	\$269.24
9.00	14462	MyClimate Personal Climate Control With Forced Air Heat 1000W	20	0.0 EA	\$2,867.00	47	\$1,519.51	\$0.00
		<b>OPTIONAL qty 2</b>						
10.00	12033.	Return Worksurface - 36Wx36D	21	3.0 EA	\$410.00	47	\$217.30	\$651.90
11.00	15488-FT.	CPU Cabinet - ERGO ACCESS Under Work Surface 36Wx33D With Flip Top Hinge	23	1.0 EA	\$1,667.00	47	\$883.51	\$883.51
12.00	13641.	Drawer Pedestal - Fixed - Bookcase Left - 36W - 12-12 Drawers 22D -	24	1.0 EA	\$1,050.00	47	\$556.50	\$556.50
12.01	13641.	Drawer Pedestal - Fixed - Bookcase Right - 36W - 12-12 Drawers 22D -	25	1.0 EA	\$1,050.00	47	\$556.50	\$556.50
13.00	11519.	Rotating Resource Guide - Freestanding 36 in	26	1.0 EA	\$2,472.00	47	\$1,310.16	\$1,310.16
15.00	11765.	Bookcase - 12W-28H-22D - UnderWS NO Toekick	27	2.0 EA	\$605.00	47	\$320.65	\$641.30
17.00	10908.	Storage Cabinet - Locker 2Hi - 18W, 84H, 17D	28	4.0 EA	\$1,901.00	47	\$1,007.53	\$4,030.12

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19.00	10176	Cup Holder - Blk	29	2.0 EA	\$95.00	47	\$50.35	\$100.70
90.00	12356	Installers Kit	30	2.0 EA	\$-		\$0.00	\$0.00
99.00	OTHER	Other Charges & Services	31	1.0 EA	\$-		\$0.00	\$0.00

<b>Line(31) - Miscellaneous Charge -</b>	
Freight - PartTruck NonTaxable	\$1,350.00
Installation - Non-Taxable	\$2,990.00

<b>List Price Total</b>	<b>\$47,514.00</b>	<b>Lines Total:</b>	<b>\$25,854.19</b>
		<b>Line Miscellaneous Charges Total:</b>	<b>\$4,340.00</b>
		<b>Quote Total:</b>	<b>\$30,194.19</b>

**Note 1:**

All quoted taxes are estimated. Any applicable taxes, fees, permits, etc. must be added to this quote.

**Note 2:**

Where installation is listed on quote it is based in non-union labor and on one trip for installation only. Client is responsible for coordination of Technicians and other Vendors/Contractors. Waiting time will be charged at the rate of \$75 per man hour straight time and \$115 per man hour for OT plus subsistence expenses. Additionally, this quote is based upon a remodel in an existing space and/or new building - completely finished with a Certificate of Occupancy. Any project where the General Contractor is still on the job is subject to additional charges.

We appreciate this opportunity to provide this quote. Our goal is to substantially improve working conditions for your valuable staff. We look forward to meeting with you to review this proposal in detail. In the meantime please don't hesitate to call us with any questions.

# Commenco

4901 Bristol Avenue., Kansas City, MO 64129  
(816) 753-2166 FAX (816) 753-3688

Date 25-Nov-14 Prep by Gary Gray Sales person \_\_\_\_\_

Customer Prairie Village

Address \_\_\_\_\_

Requested by Tim Kobe

Phone # \_\_\_\_\_ Fax # \_\_\_\_\_

### Work Description

Remove 911 equipment from one of the dispatch positions.  
Once new furniture is installed, re-install all 911 equipment in customer installed furniture positions.  
This quote does not include pulling of new cat 5 cables.  
This quote includes ALL misc extension cables

### Summary Totals

Travel	\$300.00
Misc	\$0.00
Parts	\$750.00
Labor	\$4,468.80
Tax rate	0.000%
Tax Total	\$0.00
Total	\$5,518.80

Sincerely,

*Gary Gray*

Quote valid for 30 days.

Approval Signature: \_\_\_\_\_

Printer Name: \_\_\_\_\_

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Date 25-Nov-14 Prep by Gary Gray Sales person \_\_\_\_\_

Customer Prairie Village

Address \_\_\_\_\_

Requested by Tim Kobe

Phone # \_\_\_\_\_ Fax # \_\_\_\_\_

### Work Description

Remove radio equipment from one of the dispatch positions.  
Once new furniture is installed, re-install all radio equipment in customer installed furniture positions.  
Assist in relocating video equipment and door control equipment.  
This quote includes All misc cables.

### Summary Totals

Travel	\$300.00
Misc	\$0.00
Parts	\$750.00
Labor	\$7,660.80
Tax rate	0.000%
Tax Total	\$0.00
Total	\$8,710.80

Sincerely,

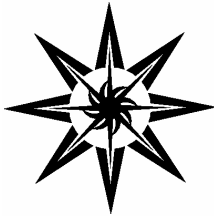
*Gary Gray*

Quote valid for 30 days.

Approval Signature: \_\_\_\_\_

Printer Name: \_\_\_\_\_





## PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: July 6, 2015

Council Meeting Date: July 6, 2015

### CONSIDER CONSTRUCTION CONTRACT FOR THE 2015 PARKS PROJECTS

#### RECOMMENDATION

Move to authorize the Mayor to sign the construction contract with Primetime Contracting Corp for the 2015 Parks Projects for \$205,200.

#### BACKGROUND

This project includes work in Taliaferro and Bennett Parks.

Taliaferro Park will have a new nature play and sand area added between the existing play area and existing shelter. There will also be practice field improvements along with a new surface and backstop for the t-ball field. Bennett Park will have a new nature play area with play mounds and a walking path and a tricycle path.

On July 24, 2014, the City Clerk opened bids for the project. Three acceptable bids were received. The base bids were:

Primetime Contracting Corp.	\$191,898.50
Gunter Construction Co.	\$252,510.10
Cobra Construction LLC	\$230,000.00
Landscape Architects Estimate	\$204,949.60

The Landscape Architect has reviewed all bids and has recommended award of the low bid with the provision that the contract will be awarded for \$205,200. This award amount is based on the budget established for the 2015 Parks Projects and includes bid alternates such as the backstop for the t-ball field at Taliaferro and the trike path at Bennett.

#### FUNDING SOURCES

The funding is available in the CIP in the 2015 Parks Projects.

#### RELATION 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

1. Construction Agreement with Primetime Contracting Corp.

#### PREPARED BY

Melissa Prenger, Senior Project Manager

June 26, 2015

**CONSTRUCTION CONTRACT  
FOR  
PRAIRIE VILLAGE PARKS - 2015 IMPROVEMENT PROJECT**

**BETWEEN  
THE CITY OF PRAIRIE VILLAGE, KANSAS  
AND**

**THIS AGREEMENT**, is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the City of Prairie Village, Kansas, hereinafter termed the "City", and PRIMETIME CONTRACTING, 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 TWO HUNDRED & FIVE THOUSAND, TWO HUNDRED **DOLLARS** (\$ 205,200.00 ) 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 Project Manager 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:

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

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

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

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

**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 Project Manager that orders minor changes in the work, but which does not involve a change in the contract price or contract time.

**FIELD SUPERINTENDENT** shall mean the Public Works Field Superintendent of the City of Prairie Village or designee.

**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 Project Manager.

**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.

**PROJECT MANAGER** shall mean the person appointed by the Public Works Director for this project as named in the Special Conditions.

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

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

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

**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.

**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.

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

- 1.2 Whenever any word or expression defined herein, or pronoun used instead, occurs in these Contract Documents; it shall have and is mutually understood to have the meaning commonly given. Work described in words, which so applied have a well-known technical or trade meaning shall be held to refer to such, recognized standards.
- 1.3 Whenever in these Contract Documents the words "as ordered," "as directed", "as required", "as permitted", "as allowed", or words or phrases of like import are used, it is understood that the order, direction, requirement, permission or allowance of the Project Manager is intended.
- 1.4 Whenever any statement is made in the Contract Documents containing the expression "it is understood and agreed", or an expression of like import, such expression means the mutual understanding and agreement of the parties hereto.
- 1.5 The words "approved", "reasonable", "suitable", "acceptable", "properly", "satisfactorily",

or words of like effect in import, unless otherwise particularly specified herein, shall mean approved, reasonable, suitable, acceptable, proper or satisfactory in the judgment of the Project Manager.

- 1.6 When a word, term or phrase is used in the Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and, third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.
- 1.7 All terms used herein shall have the meanings ascribed to them herein unless otherwise specified.

## 2. ENTIRE AGREEMENT:

- 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 Project Manager of any inconsistency, ambiguity, error or omission, which the Contractor may discover, or should have discovered, with respect to these documents before proceeding with the affected Work. The review, issuance, or the express or implied approval by the City or the Project

Manager of the Contract Documents shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such review be evidence of the Contractor's compliance with this Contract.

- 3.6 The City has prepared or caused to have prepared the Project Manual. **HOWEVER, THE CITY MAKES NO REPRESENTATION OR WARRANTY AS TO ACCURACY OR FITNESS FOR PARTICULAR PURPOSE INTENDED OR ANY OTHER WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the City concerning such documents as no such representation or warranties have been made or are hereby made.
- 3.7 As between numbers and scaled measurements in the Project Manual, the numbers shall govern; as between larger scale and smaller scale drawings, (e.g. 10:1 is larger than 100:1) the larger scale shall govern.
- 3.8 The organization of the Project Manual into divisions, sections, paragraphs, articles (or other categories), shall not control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.
- 3.9 The Contract Documents supersedes all previous agreements and understandings between the parties, and renders all previous agreements and understandings void relative to these Contract Documents.
- 3.10 Should anything be omitted from the Project Manual, which is necessary to a clear understanding of the Work, or should it appear various instructions are in conflict, the Contractor shall secure written instructions from the Project Manager before proceeding with the construction affected by such omissions or discrepancies.
- 3.11 It is understood and agreed that the work shall be performed and completed according to the true spirit, meaning, and intent of the Contract Documents.
- 3.12 The Contractor's responsibility for construction covered by conflicting requirements, not provided for by addendum prior to the time of opening Bids for the work represented thereby, shall not extend beyond the construction in conformity with the less expensive of the said conflicting requirements. Any increase in cost of work required to be done in excess of the less expensive work of the conflicting requirements will be paid for as extra work as provided for herein.
- 3.13 The apparent silence of the Project Manual as to any detail, or the apparent omission from them of a detailed description concerning any point, shall be regarded as meaning that only the best general practice is to be used. All interpretations of the Project Manual shall be made on the basis above stated.
- 3.14 The conditions set forth herein are general in scope and are intended to contain requirements and conditions generally required in the work, but may contain conditions or requirements which will not be required in the performance of the work under contract and which therefore are not applicable thereto. Where any stipulation or requirement set forth

herein applies to any such non-existing condition, and is not applicable to the work under contract, such stipulation or requirement will have no meaning relative to the performance of said work.

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

#### 5. PROJECT MANAGER

- 5.1 It is mutually agreed by and between the parties to this Contract Agreement that the Project Manager 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 Project Manager shall, in good faith and to the best of its ability, determine the amount and quantities of the several kinds of work which are to be paid for under this Contract; that the Project Manager shall determine, where applicable, questions in relation to said Work and the construction thereof; that Project Manager shall, where applicable decide questions which may arise relative to the execution of this Contract on the part of said Contractor; that the Project Manager's decisions and findings shall be the conditions precedent to the rights of the parties hereto, to any action on the Contract, and to any rights of the Contractor to receive any money under this Contract provided, however, that should the Project Manager render any decision or give any direction which, in the opinion of either party hereto, is not in accordance with the meaning and intent of this Contract, either party may file with the Project Manager and with the other party, within thirty (30) days a written objection to the decision or direction so rendered and, by such action, may reserve the right to submit the question to determination in the future.
- 5.3 The Project Manager, unless otherwise directed or agreed to by the City in writing, will perform those duties and discharge those responsibilities allocated to the Project Manager as set forth in this Contract. The Project Manager shall be the City's representative from the effective date of this Contract until final payment has been made. The Project Manager shall be authorized to act on behalf of the City only to the extent provided in this Contract.
- 5.4 The City and the Contractor shall communicate with each other in the first instance through the Project Manager.
- 5.5 The Project Manager shall be the initial interpreter of the requirements of the Project Manual and the judge of the performance by the Contractor. The Project Manager shall render written graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.
- 5.6 The Project Manager will review the Contractor's Applications for Payment and will certify to the City for payment to the Contractor those amounts then due the Contractor as provided in this Contract. The Project Manager's recommendation of any payment requested in an Application for Payment will constitute a representation by Project Manager to City, based on Project Manager's on-site observations of the Work in progress as an experienced and qualified design professional and on Project Manager's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of the Project Manager's knowledge, information and belief, the quality of the Work is in accordance with the Project Manual (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Project Manual, to a final determination of quantities and classifications for Unit Price Work if such is called for herein, and to any other qualifications stated in the recommendation); and that Contractor is entitled to payment of the amount recommended. However, by recommending any such payment Project Manager will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to Project Manager in the Project Manual or that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by the City or the City to withhold payment to Contractor.

- 5.7 The Project Manager may refuse to recommend the whole or any part of any payment if, in Project Manager's opinion, it would be incorrect to make such representations to City. Project Manager may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in the Project Manager's opinion to protect the City from loss because:
- The Work is defective, or completed Work has been damaged requiring correction or replacement,
  - The Contract Price has been reduced by Written Amendment or Change Order,
  - The City has been required to correct defective Work or complete Work in accordance with the Project Manual.
- 5.8 The City may refuse to make payment of the full amount recommended by the Project Manager because claims have been made against City on account of Contractor's performance or furnishing of the Work or liens have been filed in connection with the Work or there are other items entitling City to a set-off against the amount recommended, but City must give Contractor written notice (with a copy to Project Manager) stating the reasons for such action.
- 5.9 The Project Manager will have the authority to reject Work, which is defective or does not conform to the requirements of this Contract. If the Project Manager deems it necessary or advisable, the Project Manager shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.
- 5.10 The Project Manager will review, or take other appropriate action as necessary, concerning the Contractor's submittals, including Shop Drawings, Product Data and Samples. Such review, or other action, shall be for the sole purpose of determining general conformance with the design concept and information given through the Project Manual.
- 5.11 The Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 5.12 The Project Manager, upon written request from the Contractor shall conduct observations to determine the date of substantial completion and the date of final acceptance. The Project Manager will receive and forward to the City for the City's review and records, written warranties and related documents from the Contractor required by this Contract and will issue a final Certificate for Payment to the City upon compliance with the requirements of this Contract.
- 5.13 The Project Manager's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.
- 5.14 The Project Manager will **NOT** be responsible for Contractor's means, methods, techniques, sequences, or procedures or construction, or the safety precautions and programs incident thereto and will not be responsible for Contractor's failure to perform the

work in accordance with the Project Manual. The Project Manager will not be responsible for the acts or omissions of the Contractor or any Subcontractor or any of its or their agents or employees, or any other person at the site or otherwise performing any of the work except as may otherwise be provided.

- 5.15 Any plan or method of work suggested by the Project Manager, or other representatives of the City, to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor, and the Project Manager and the City will assume no responsibility therefore.
- 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 Project Manager, such City representatives or observers as the City may deem proper, to observe the materials furnished and the work performed under the Project Manual, and to see that the said materials are furnished, and the said work performed, in accordance with the Project Manual therefore. The Contractor shall furnish all reasonable aid and assistance required by the Project Manager, or by the resident representatives for proper observation and examination of the Work and all parts thereof.
- 5.17 The Contractor shall comply with any interpretation of the Project Manual by the Project Manager, or any resident representative or observer so appointed, when the same are consistent with the obligations of the Project Manual. However, should the Contractor object to any interpretation given by any subordinate Project Manager, resident representative or observer, the Contractor may appeal in writing to the City Director of Public Works for a decision.
- 5.18 Resident representatives, observers, and other properly authorized representatives of the City or Project Manager shall be free at all times to perform their duties, and intimidation or attempted intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the City so decides, to annul the Contract.
- 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 Project Manager 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 Project Manager or City, proper progress is not being maintained; such changes shall be made in the schedule and resubmitted for consideration.

- 6.5 If the Contractor has not completed Work segments and is within a non-performance penalty period, he/she shall not be allowed to undertake a new Work segment until the Work segment in dispute is completed, unless expressly permitted by the City.
- 6.6 The operation of any tool, equipment, vehicle, instrument, or other noise-producing device is prohibited to start before or continue after the hours of 7 AM and 10 PM, Monday through Friday (except Fridays which shall be until Midnight) and 8 AM and midnight on Weekends (except Sunday which shall be 10 PM). Violation of this requirement is Prima Facie Violation of City Municipal Code 11-202.
- 6.7 No work shall be undertaken on Saturdays, Sundays and Holidays (Christmas, New Years, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day and Thanksgiving) without the express written approval of the City Project Manager. If it is necessary to perform proper care, maintenance, or protection of work already completed or of equipment used, or in the case of an emergency verbal permission may be obtained through the Project Manager.
- 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 Project Manager. The Contractor shall communicate immediately any changes in the work schedule to the City Project Manager.

## 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 Project Manager shall award in writing on account of such delays, provided, however, that claim for such extension of time is made by the Contractor to the City and the Project Manager in writing within one (1) week from the time when any such alleged cause for delay shall occur.

**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 Project Manager, an average or usual number of inclement days when work cannot proceed are to be anticipated during the construction period and are not to be considered as warranting extension of time.
- 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 Project Manager 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 Project Manager within 7 days of the last day of the commencement of the event giving rise to the delay occurred. Resolution of any claim shall follow the procedures 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 Project Manager will, upon receipt of a written Application for Payment from the Contractor, review the amount of work performed during the preceding period and the value thereof at the unit prices contracted. From the amounts so ascertained, there shall be deducted ten percent (10%) to be retained until after final completion of the entire work to the satisfaction of the City. The Project Manager will submit an estimate each month to the City for payment to the Contractor, except that no amount less than \$500.00 will be submitted unless the total amount of the Contract remaining unpaid is less than \$500.00.
- 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 Project Manager, nor any extension of time, nor any possession taken by the City or its employees, shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the City, or any right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of any other or subsequent breach.

## 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 Project Manager thereof in writing. Thereupon, the Project Manager will make final inspection of the Work and, if the Work is complete in accordance with this Contract, the Project Manager will promptly issue a final Certificate for Payment certifying to the City that the Work is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Project Manager is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s), which cost may be deducted by the City from the Contractor's full payment.
- 10.3 The Contractor shall not be entitled to any payment unless and until it submits to the Project Manager its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the City, or the City's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors and Suppliers of the Contractor and of any and all other parties required by the City; and consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the City, the Contractor shall furnish a bond satisfactory to the City to discharge any such lien or indemnify the City from liability.
- 10.4 The City shall make final payment of all sums due the Contractor within thirty days of the later of the Project Manager'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 Project Manager. Such written notice and claim must be furnished within seven calendar days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.
- 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 Project Manager 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 Project Manager may consider necessary or desirable, by approved Change Order. Such modifications shall not invalidate the Contract nor release the surety. Unless such alterations and increases or decreases change the total cost of the Work, based on the originally estimated quantities and the unit prices bid, by more than 25 percent, or change the total cost of any major item, based on the originally estimated quantities and the unit price bid, by more than 25 percent, the Contractor shall perform the work altered, increased or decreased, at a negotiated price or prices. (A major item shall mean any bid item, the total cost of which exceeds 12-1/2 percent of the total Contract 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 Project Manager 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 Project Manager shall not otherwise modify or invalidate in any way, any of the provisions of this Contract. In the event that the work shall be stopped by written order of the City, any expense, which, in the sole opinion and judgment of the City, is caused by the City, shall be paid by the City to the Contractor.
- 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 Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 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 Project Manager on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content to the City, as the Project Manager requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies or equipment, including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools, whether rented from the Contractor or others, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and job site field office overhead directly attributable to the change. In no event shall any standby time or any expenditure or savings associated with the Contractor's home office or other non-job site overhead expense be included in any change in the Contract Price. Further, in no event shall the Contractor's overhead expense exceed ten (10%) percent of the reasonable expenditures. Pending final determination of reasonable expenditures or savings to the City, payments on account shall be made to the Contractor on the Project Manager's Certificate for Payment.
- 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 Project Manager, 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 Project Manager 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 Other projects the Contractor may have to coordinate shall be listed in the Special Conditions.
- 17.4 When the territory of one Contract is the necessary or convenient means of access for the transportation or movement of workers, materials, or appliances required for the execution of another Contract, such privileges of access or any other responsible privilege may be granted by the City to the Contractor so desiring, to the extent such may be reasonably necessary.
- 17.5 Upon execution of the Contract, the Contractor shall furnish the City, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Work. The City shall promptly reply to the Contractor, in writing, stating any objections the City may have to such proposed Subcontractor. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the City has made timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has objection.

## 18. RIGHT OF CITY TO TERMINATE

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

payment. In the event the Contractor is found in a court of law to have been wrongfully terminated for cause, then such termination shall be deemed a termination for convenience and the Contractor shall be compensated as provided herein.

- 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 Project Manager and to the City. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or communication upon the Contractor personally.
- 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, Project Manager or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval or acquiescence in a breach hereunder, except as may be specifically agreed in writing.
- 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

PRIMETIME CONTRACTING CORP.

By: \_\_\_\_\_  
(signed)

By Alan Lyell  
(signed)

Laura Wassmer

ALAN LYELL  
(typed name)

Mayor

PRESIDENT  
(typed title)

City of Prairie Village

PRIMETIME CONTRACTING CORP  
(typed company name)

7700 Mission Road

10224 W 61<sup>ST</sup>  
(typed address)

Prairie Village, Kansas, 66208

MERRIAM, KS 66203  
(typed city, state, zip)

816-394-3915  
(typed telephone number)

\_\_\_\_\_  
(date of execution)

6-17-15  
(date of execution)

SEAL

ATTEST:

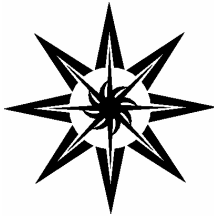
APPROVED BY:

\_\_\_\_\_  
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 6, 2015

### DISCUSSION OF 2016 CIP

#### Discussion

At the June 15, 2015 Council Committee Meeting the 2016 CIP was discussed in detail. Based on the Council Comments, the below three items require additional discussion.

1. Additional Funding for the Paving Program
2. Additional details on the City Hall and PD Entrance Project
3. Additional details about the Delmar/Fontana Drainage Project

1. **Additional Funding for the Paving Program-**

Public Works has made two presentations about the recommendation to increase funding for the Paving Program and has outlined a strategy to increase yearly funding for the Paving Program to approximately \$3 Million by the year 2022. The strategy included a possible mill increase in 2016 generating \$500,000 along with an additional \$500,000 in 2022 when current street bond payments are competed. Given the feedback during the June 15, 2015 meeting it was clear that increasing the mill levy in 2016 was not supported by a majority of the Council. Mayor Wassmer plans to establish a Task Force to further study this issue prior to the 2017 CIP discussions. Additional data and information will be gathered and analyzed by the task force.

2. **Additional details on the City Hall and PD Entrance Project-**

In 2009 a consultant selection process was started for the City Hall and PD entrance project. Interviews were conducted and Hollis and Miller Architects were selected for the project. No contract was executed and no work was completed because this project was removed from the CIP as part of the overall budget reduction strategy. This project was discussed in 2014 during the 2015 CIP budget discussions and was approved as part of the 2015 CIP. It included design funding in 2015 and construction funds in 2016.

This project is driven by several factors listed below-

- 1 The condition of the existing brick retaining walls and the concrete walk ways are deteriorating and have had many repairs in recent years.
- 2 ADA access to PD and City Hall- Current points of entry for both buildings are not at the main entrances to the building. The PD ADA access is located on the west side of the building and the City Hall access is on the north side of the building and while both are signed they can be difficult to locate.
- 3 By combining these entrance locations to one or possibly two it will increase overall safety for the building and, if desired, could make it possible to have a controlled entry point for the buildings.

During Monday's meeting, staff and Council will walk the patio area to view current conditions and discuss possible upgrades (weather permitting).

3. **Additional discussion on the Delmar/Fontana Project-**

There is a long history to this project. We have engaged the neighborhood and this

project has been in the CIP for the last couple of years. The study is nearing completion and further discussions with residents and council will take place in 2015. Two possible outcomes are to move forward and construct a major project or to just install a low water crossing warning system. If it is determined to not construct a major project then the funds for this project will go into the Drainage Repair Program. The drainage funds for this project are generated by the Stormwater Utility Fee and can only be used for drainage purposes. Staff recommends keeping the project funding in place and make a decision about moving forward with the project in Fall 2015 after the engineer's report.

**FUNDING SOURCES**

N/A

**ATTACHMENTS**

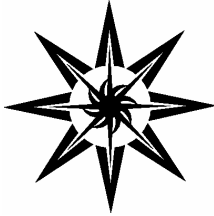
None

**PREPARED BY**

Keith Bredehoeft, Public Works Director

July 2, 2015





**2016 Budget Consideration - Employee benefit substitute to Lifelock protection**

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**Motion:**

Consider approval of substituting an employee benefit: Long-term Care to Lifelock ID protection.

**Background:**

The City currently provides a basic long-term care (LTC) benefit for full-time employees at an employer cost of \$5,760 per year. All full-time employees are enrolled and have the option of upgrading the benefit at their expense. After employment with the City, when the actual benefit is likely realized, the employee must continue to pay the LTC benefit to maintain coverage. Very few employees continue the benefit after employment which indicates the level of use and value of the benefit.

Starting in September 2015, the cost for LTC renewal will increase by 53.3%, with the City's participation costing an additional \$3,070 per year. The increase in cost and level of use of the LTC benefit resulted in exploring an alternate benefit option.

Identity theft is one of the fastest growing crimes in America. City officials, particularly elected officials, have personal information readily available to the public. Staff recommends exchange of the LTC benefit for the LifeLock Standard package. In discussions with department heads, the Lifelock benefit will be a more utilized and appreciated benefit.

The cost for a LifeLock standard package is \$8.49 per month per employee. This is a discount for employer based coverage versus the open market. It is proposed that a full-time staff member have the option of subscribing to Lifelock Basic protection by paying \$3.49 per month through a payroll deduction and the City subsidizing \$5 per month. Employees would have the option to upgrade the package or add family members at their own expense.

With the proposed substitution, the City will pay the full monthly cost for Councilmembers at the Standard level with the option of upgrading at their own expense. Staff estimates a 60% employee participation rate with a total for the City's cost of \$5,000 per year.

If approved by the Committee of the Whole, staff will approve and implement the modified benefit. The 2016 budget already includes the cost of the LTC benefit at the current rate. The Lifelock benefit would begin in January 2016.

**Attachments:**

- Summary of Employee package and buy-up cost
- Summary of Councilmember package and buy-up cost
- Summary of LifeLock and benefit

**Prepared By:**

Quinn Bennion  
City Administrator - July 2, 2015

**City of Prairie Village  
July 2015  
LifeLock Identity Theft Protection  
Employee Package**

	LifeLock® Standard			LifeLock Advantage™			LifeLock Ultimate Plus™		
	City Cost	Employee Cost	TOTAL	City Cost	Employee Cost	TOTAL	City Cost	Employee Cost	TOTAL
Employee [18 and over]	\$5.00	\$3.49	\$8.49	\$5.00	\$11.99	\$16.99	\$5.00	\$20.49	\$25.49
Employee + Spouse	\$5.00	\$11.98	\$16.98	\$5.00	\$28.98	\$33.98	\$5.00	\$45.98	\$50.98
Employee + Children	\$5.00	\$9.86	\$14.86	\$5.00	\$20.49	\$25.49	\$5.00	\$31.11	\$36.11
Employee + Family	\$5.00	\$18.36	\$23.36	\$5.00	\$37.48	\$42.48	\$5.00	\$56.61	\$61.61

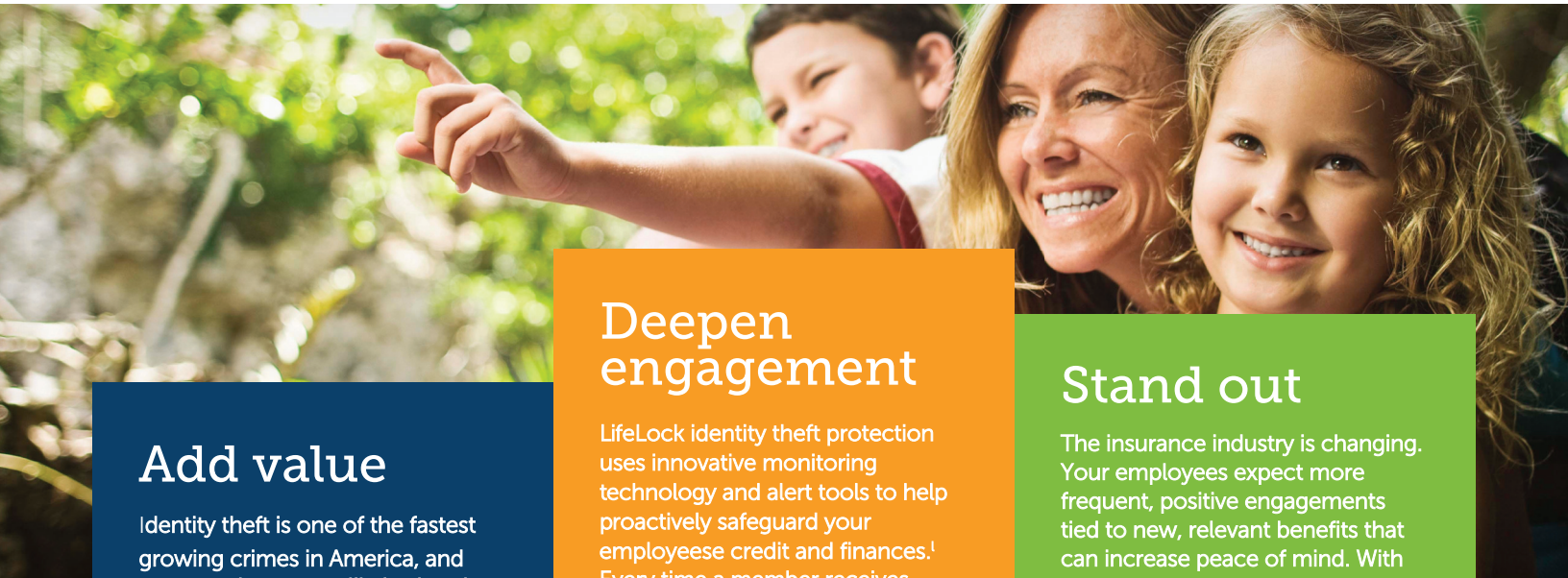
**City of Prairie Village  
July 2015  
LifeLock Identity Theft Protection  
Council Member Package**

	LifeLock® Standard			LifeLock Advantage™			LifeLock Ultimate Plus™		
	City Cost	Council-member Cost	TOTAL	City Cost	Council-member Cost	TOTAL	City Cost	Council-member Cost	TOTAL
Employee [18 and over]	\$8.49	\$0.00	\$8.49	\$8.49	\$8.50	\$16.99	\$8.49	\$17.00	\$25.49
Employee + Spouse	\$8.49	\$8.49	\$16.98	\$8.49	\$25.49	\$33.98	\$8.49	\$42.49	\$50.98
Employee + Children	\$8.49	\$6.37	\$14.86	\$8.49	\$17.00	\$25.49	\$8.49	\$27.62	\$36.11
Employee + Family	\$8.49	\$14.87	\$23.36	\$8.49	\$33.99	\$42.48	\$8.49	\$53.12	\$61.61

# Protecting your employees is what you do.

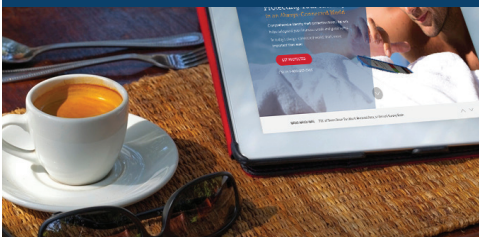
Take it to the next level and safeguard their good name with **LifeLock identity theft protection.**

Your employees already rely on you to protect their personal information today. As a forward-thinking company, take a comprehensive approach to employee well being and show them you understand new and emerging risks by offering LifeLock<sup>®</sup> identity theft protection. By adding this industry-leading service, you can drive engagement and offer value for your employees.



## Add value

Identity theft is one of the fastest growing crimes in America, and your employees are likely already concerned about it. With LifeLock identity theft protection, you can offer your employees a meaningful benefit they need and want.



LifeLock scans over **a trillion data points** every day and issues 20–30K alerts every week to our members.<sup>1</sup>

## Deepen engagement

LifeLock identity theft protection uses innovative monitoring technology and alert tools to help proactively safeguard your employees credit and finances.<sup>1</sup> Every time a member receives one of these alerts, they can see firsthand how you've helped strengthen their protections thereby strengthening your relationship with them.

With LifeLock protection, you can engage employees in ways other benefits can't. This benefit enables you to increase positive engagements and bolster retention.<sup>2</sup> In fact, LifeLock has an 87% member retention rate<sup>3</sup>.

**Every 2 seconds** someone is a victim of identity theft.<sup>3</sup> How many are your employees?

## Stand out

The insurance industry is changing. Your employees expect more frequent, positive engagements tied to new, relevant benefits that can increase peace of mind. With LifeLock protection, you have an opportunity to fulfill the latent demand that cannot be met by the traditional benefits, and to strengthen your relationship with your employees. LifeLock protection has the unique ability to enhance the value you provide to employees, and give them all one more reason to stay with you for years to come.

**Proposal for: City of Prairie Village**

**Lives: 100**  
**Effective Date: 12/1/2015**  
**Date: June 9, 2015**

# The benefit employees need.

Most employers provide employees with protection for healthcare, accident, illness, and perhaps even legal challenges, but as of right now, only some of the most forward-looking employers are offering protection from one of the most prevalent crimes in the United States: identity theft. Today, identity theft has become an ultra- sophisticated, multi-billion dollar enterprise. National media more regularly reports stories of data breaches on a major scale. Adding LifeLock® identity theft protection to your benefits portfolio can help you improve employee retention and engagement by introducing a unique, voluntary benefit that employees want. In fact, 39%\* of employees said they'd be extremely likely, or likely, to purchase identity theft protection through payroll deduction. More employers are turning to voluntary benefits to gain a competitive edge in recruitment. You can add value by introducing a brand new feature into your benefits package.

Many people believe their credit card company protects them. You can't always take their word for it, because a credit card company protects itself, but not all other accounts. If a fraudster opens up a new credit account, gets a payday loan, or starts a new wireless account in your name, one credit card company may not be able to help. And while your employee assistance program may offer legal services, that's not the same as identity theft protection because some legal services can only help after the problem has occurred.

**IT COULD BE JUST A MATTER OF TIME BEFORE  
YOUR EMPLOYEES EXPERIENCE IDENTITY THEFT.**



## FACTS

- Someone is a victim of identity theft every 2 seconds. <sup>2</sup>
- 28 million US adults have been victims of identity theft in the past 12 months <sup>3</sup>
- Concern about the risk of identity theft is at its highest level in recent times <sup>4</sup>
- Credit-monitoring services can sell their customer data legally <sup>5</sup>

1) Ponemon 2014 Cost of a Data Breach

2) "Identity Theft Tracking Study," a commissioned survey conducted by Forrester Consulting on behalf of LifeLock. April/May 2014.

3) "Identity Theft Tracking Study," a commissioned survey conducted by Forrester Consulting on behalf of LifeLock. April/May 2014.

4) Risk Based Security, An Executive's Guide to 2013 Data Breach Trends, Feb 2014

5) Risk Based Security, An Executive's Guide to 2013 Data Breach Trends, Feb 2014

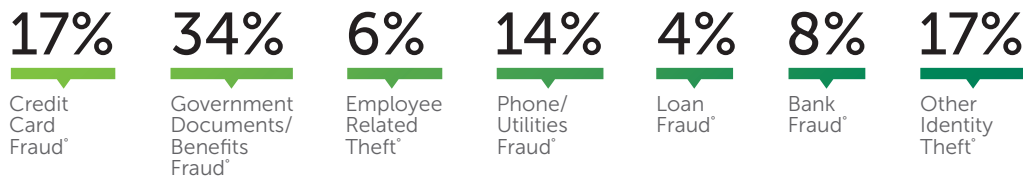
# The impact of identity theft in an always connected world.

Today, many of your employees conduct transactions online and through mobile devices more than ever before. Always connected lifestyles gives them the opportunity to work and play as they like, but may increase the risk of many different kinds of identity fraud. Offer your employees the ability to live free with LifeLock identity theft protection, because everyone has an identity to protect.

## WAYS IDENTITY THIEVES CAN WREAK HAVOC



## IDENTITY THEFT LEADS TO MORE THAN CREDIT CARD FRAUD



\* Federal Trade Commission: "Consumer Sentinal Network Data Book" for January-December 2013.



# Why Choose LifeLock?

Count on the industry leader to provide comprehensive protection.



## DETECT

Go ahead, live free knowing we're searching over a trillion data points every day looking for potential threats to your identity.



## ALERT

When we find something suspicious, we'll let you know through our patented LifeLock Identity Alert® system.



## RESTORE

If you do become a victim, our Member Services Agents are available 24/7 and a Certified Resolution Specialist will handle your case every step of the way.

### WHAT SETS US APART FROM EVERYONE ELSE?

#### LIFELock IDENTITY ALERT® SYSTEM†

Actionable alerts are sent in near real time as soon as LifeLock detects your Social Security number, name, address or date of birth in applications for credit and services within our extensive network. We monitor over a trillion data points, including those used for new credit cards, wireless services, retail credit, mortgages, auto and payday loans. You can choose alerts by text message, phone, email or mobile app and respond immediately to confirm if the activity is fraudulent with our proprietary Not Me® verification technology.\*\*

#### LEADERSHIP AND EXPERIENCE

LifeLock protects against a lot more than the credit fraud monitored by credit bureaus alone. We constantly scan over a trillion data points for our 3.2 million members, searching for potentially fraudulent activity.† Members receive alerts when we detect their information being used within our network to apply for wireless services, retail credit, mortgage loans and more. LifeLock identity theft protection is designed to detect identity theft before the damage can be done.

#### RECOGNIZED EXPERTISE

Law enforcement agencies and victim advocacy groups seek LifeLock expertise. Through our affiliation with the FBI Law Enforcement Executive Development Association, we've conducted extensive training on identity theft protection for over 1,000 law enforcement agencies from coast to coast. LifeLock has the capabilities you need to help with the impact of your data breach.

#### INFORMATION INTEGRITY

The average consumer doesn't realize just how much of their personal information is legally sold for profit. Even credit-monitoring services, while claiming to protect the identities of their customers, actually sell that very same information. LifeLock never sells member data and that means we keep their personal information—off the market and potentially away from criminals.

† Network does not cover all transactions.

\*\* Fastest alerts require member's current email address.

‡ The benefits under the Service Guarantee are provided under a Master Insurance Policy underwritten by State National Insurance Company. As this is only a summary please see the actual policy for applicable terms and restrictions at [LifeLock.com/legal](http://LifeLock.com/legal).



# How LifeLock Will Help.

Expert identity theft protection tailored to your needs.

## THE MOST COMPREHENSIVE IDENTITY THEFT PROTECTION



Today, LifeLock is the industry leader in identity theft protection and the only service that monitors credit, bank & file sharing, and protects your employees in ways mere credit monitoring simply alone cannot<sup>13</sup>. In fact, in the event a LifeLock members' identity is stolen, we'll spend up to \$1 million to hire the experts necessary to help restore their good name<sup>‡</sup>. That's the exclusive LifeLock \$1 Million Service Guarantee you won't find anywhere else.



## THE BENEFITS YOU OFFER SAYS A LOT ABOUT YOUR COMPANY. LET US HELP YOU SAY THE RIGHT THING.

Your organization is already taking the steps to protect employee data. Give your employees access to the voluntary benefit that helps safeguard their information outside of work – LifeLock identity theft protection. We will help make the offering simple.



### BEST IN CLASS ADMINISTRATION & SUPPORT

LifeLock partners with best-in-class administrators. Their expertise managing billing, enrollment and secure data exchange ensures a smooth, comprehensive and compliant experience.



### SPECIAL DISCOUNTED EMPLOYEE BENEFIT RATES

When offered as a payroll deduction, LifeLock provides employees with a special employee benefit rate available through employers. When you choose to offer LifeLock® service, you can offer a low maintenance, voluntary benefit with no hard costs to you. Plus, LifeLock service seamlessly integrates with your current enrollment process..



### EMPLOYEES CHOOSE THE PROTECTION THAT IS BEST FOR THEM

Your employees will have the flexibility to select the level of protection that best meets their needs. This includes protection for their family.

<sup>13</sup>) Most comprehensive protection requires LifeLock® Ultimate membership.

<sup>‡</sup> The benefits under the Service Guarantee are provided under a Master Insurance Policy. Underwritten by State National Insurance Company. Under the Service Guarantee LiveLock will spend up to \$1 million to hire experts to help your recovery. As this is only a summary please see the actual policy for applicable terms and restrictions at [LifeLock.com/legal](https://www.lifelock.com/legal).





# LifeLock Services & Benefit Pricing Details

Service Features	LifeLock Standard	LifeLock Advantage	LifeLock Ultimate Plus
LifeLock Identity Alert® System†	✓	✓	✓
Lost Wallet Protection	✓	✓	✓
Address Change Verification	✓	✓	✓
Black Market Website Surveillance	✓	✓	✓
Reduced Pre-Approved Credit Card Offers	✓	✓	✓
Live Member Support 24/7/365	✓	✓	✓
Certified Resolution Support	✓	✓	✓
\$1 Million Total Service Guarantee‡	✓	✓	✓
Fictitious Identity Monitoring		✓	✓
Court Records Scanning		✓	✓
Data Breach Notification		✓	✓
Credit Card, Checking & Savings Account Activity Alerts†		✓	✓
Online Annual Credit Report		1 Credit Bureau	3 Credit Bureau
Online Annual Credit Score		✓	✓
Checking & Savings Account Application Alerts†			✓
Bank Account Takeover Alerts†			✓
Investment Account Activity Alerts†			✓
Credit Inquiry Alerts			✓
Monthly Credit Score Tracking			✓
File-Sharing Network Searches			✓
Sex Offender Registry Reports			✓
Priority Live Member Support 24/7/365			✓



**LifeLock Standard™** identity theft protection uses innovative monitoring technology and alert tools to help proactively safeguard your credit and finances.†

**LifeLock Advantage™** service provides enhanced identity theft protection including important notifications beyond financial and credit fraud.‡

**LifeLock Ultimate Plus™** service provides peace of mind knowing you have the most comprehensive identity theft protection available. Enhanced services include bank account application and takeover alerts, online credit reports and credit scores.‡

**LifeLock Junior™** service is a proactive protection system rolled into family plans that helps keep your child's information safe.

\*As LifeLock Standard, LifeLock Advantage and LifeLock Ultimate Plus are available for adults 18 years of age and older, children under the age of 18 will be enrolled with LifeLock Junior.

Enrollment in LifeLock service is limited to employees and their eligible dependents.

† Network does not cover all transactions. †† Must be enrolled with an adult member.

‡ The benefits under the Service Guarantee are provided under a Master Insurance Policy underwritten by State National Insurance Company. Under the Service Guarantee LifeLock will spend up to \$1 million to hire experts to help your recovery. As this is only a summary please see the actual policy for applicable terms and restrictions at LifeLock.com.



**COUNCIL MEETING AGENDA  
CITY OF PRAIRIE VILLAGE  
Council Chambers  
Monday, July 06, 2015  
7:30 PM**

I. **CALL TO ORDER**

II. **ROLL CALL**

III. **PLEDGE OF ALLEGIANCE**

IV. **INTRODUCTION OF STUDENTS & SCOUTS**

V. **PUBLIC PARTICIPATION**

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

VI. **CONSENT AGENDA**

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

**By Staff**

1. Approve the regular City Council meeting minutes - June 15, 2015
2. Authorize the Mayor to execute a proclamation for Constitution Week
3. Approve JazzFest performance contracts

VII. **COMMITTEE REPORTS**

**Council Committee of the Whole**

- COU2015-27 Approve a Memorandum of Understanding for the development of Meadowbrook Park with Johnson County Park & Recreation District, Johnson County, and Van Trust
- COU2015-28 Consider approval of communications remodel project bids
- COU2015-29 Consider approval of construction contract with Primetime Contracting Corp for 2015 park projects

VIII. **MAYOR'S REPORT**

IX. **STAFF REPORTS**

X. **OLD BUSINESS**

XI. **NEW BUSINESS**

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](mailto:cityclerk@pvkansas.com)**

**CITY COUNCIL  
CITY OF PRAIRIE VILLAGE  
June 15, 2015**

The City Council of Prairie Village, Kansas, met in regular session on Monday, June 15, 2015 at 7:30 p.m. in the Council Chambers at the Municipal Building, 7700 Mission Road, Prairie Village, Kansas.

**ROLL CALL**

Mayor Laura Wassmer called the meeting to order and roll call was taken with the following Council members present: Ashley Weaver, Jori Nelson, Ruth Hopkins, Steve Noll, Eric Mikkelson, Andrew Wang, Sheila Myers, Brooke Morehead, Dan Runion, David Morrison, Ted Odell and Terrence Gallagher.

Staff present was: Tim Schwartzkopf, Chief of Police; Keith Bredehoeft, Director of Public Works; Katie Logan, City Attorney; Quinn Bennion, City Administrator; Wes Jordan, Assistant City Administrator; Nolan Sunderman, Assistant to the City Administrator, Lisa Santa Maria, Finance Director and Joyce Hagen Mundy, City Clerk.

Mayor Laura Wassmer led all present in the Pledge of Allegiance.

**INTRODUCTION OF STUDENTS & SCOUTS**

Mayor Wassmer welcomed eight students from Shawnee Mission East High School who were present for their online government course.

**PUBLIC PARTICIPATION**

No one was present to address the City Council.

Mayor Wassmer acknowledged the presence of the City Officials whose appointments were on the Consent Agenda for consideration by the City Council and invited them to address the Council.

Debra Vermillion, Jennie Clark and Steve Sakoulas each provided their professional background and experience for their appointments as City Prosecutor and Municipal Judges.

### **CONSENT AGENDA**

Council President Brooke Morehead moved for the approval of the Consent Agenda for June 15, 2015:

1. Approve regular City Council Minutes - June 1, 2015.
2. Approve Claims Ordinance #2930
3. Ratify the Mayor's appointments Frank Riott and Tucker Poling to the Prairie Village Tree Board with terms expiring in April, 2017.
4. Ratify the Mayor's appointment of the following city officials with terms expiring in 2017:

Katie Logan	City Attorney
Fielding Norton, Jr.	City Treasurer
Jennie Clark	Municipal Judge
Steve Sakoulas	Interim Municipal Judge
Debra A. Vermillion	City Prosecutor
5. Adopt Ordinance 2332 granting to Unite Private Networks, LLC a contract franchise to construct, operate and maintain a telecommunications system in the City of Prairie Village

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

### **COMMITTEE REPORTS**

#### **Council Committee of the Whole**

COU2015-26 Consider the recommendation of hiring Gould Evans to provide Planning Advisory Services to the City of Prairie Village

Steve Noll moved the City Council approve an agreement with Gould Evans to provide Planning Advisory Services for the City of Prairie Village. The motion was seconded by Ashley Weaver and passed unanimously.

### **JazzFest Committee**

Brooke Morehead announced that the line-up for the 2015 festival has been determined and contracts will be presented at the next City Council meeting. She also distributed a flyer promoting the festival on September 12<sup>th</sup> and a fund-raising event at Johnny's on July 10<sup>th</sup>.

### **NLC Steering Committee**

David Morrison reported on the recent NLC Steering Committee meeting he attended. The committee's actions focused on on-line sales taxes, transportation and municipal bonds. He encouraged other Council members to apply to serve on NLC committees and noted Kansas City will be hosting an NLC meeting next summer.

### **Mayor's Report**

Mayor Wassmer reported on her recent activities attended on behalf of the City including a "Walk Friendly Community" event in Grandview to encourage cities to apply for certification. She noted Prairie Village has already implemented many of the suggestions and encouraged Council members to visit the "Walk Friendly" website.

Mayor Wassmer also attended the Special Olympic Torch Run on June 2<sup>nd</sup> which many of Prairie Village's Police Department participated. She attended the Prairie Ridge Homes Association Block Party, participated in the City Planner interviews and the sub-committee meeting on the Mission Road, 71<sup>st</sup> to 75<sup>th</sup> Street Project. She noted the first public meeting on this project will be held on June 29<sup>th</sup> from 5 to 7 pm at City

Hall. Mayor Wassmer, Wes Jordan and Quinn Bennion met with Waste Management (Deffenbaugh) regarding collection services. They have offered to do a tour of their landfill and recycling operations for interested City Council members.

## **STAFF REPORTS**

### **Public Works**

- Keith Bredehoeft provided an update on the Mission Road project noting there would be 1 or 2 more meetings to gather information on the corridor.

### **Administration**

- Lisa Santa Maria distributed the printed copy of the final CAFR and Auditor's Findings Report and reported she is working on the popular annual financial report.
- Lisa Santa Maria reviewed the upcoming proposed budget schedule.
- Nolan Sunderman presented an update of Legislative actions taken and the potential impact. Currently, the property tax legislation becomes effective in July, 2018. The sales tax increase becomes effective on July 1<sup>st</sup>. However, he noted the effective date is still being discussed and may be changed.
- Nolan Sunderman provided an update on the Google & AT&T installations. Over 720 poles have been replaced and they are anticipating beginning conduit and cable work in August.

Sheila Myers asked if they were to notify residents before marking lines in their yards. Mr. Sunderman responded they are to place a door hanger prior to beginning and are using cardets to mark work.

- Wes Jordan reported that currently code violations are generally being handled on a case by case basis and that he will be bringing forward to the City Council for discussion some of the common violations for possible set responses to have more uniformity in enforcement actions taken.
- Mr. Jordan reviewed the upcoming Planning Commission agenda which includes the continuation of the rezoning and conditional use application at 7930 State Line Road; a special use permit and plat application for 8500 Mission Road and site plan approval for Briarwood Elementary School.

Mayor Wassmer stated she would like to review the process for following up on compliance with conditions of approval and requirements set by the Planning Commission.

Brooke Morehead noted the flower boxes at the Corinth Shopping Center are empty and the overall landscaping at the two shopping centers has decreased significantly from what was presented during the CID approvals for the centers.

- Katie Logan thanked the Council for their ratification of her reappointment as City Attorney.
- Quinn Bennion stated staff met with Team Thrift and they will begin picking up household items in July as part of the Textile Recycling program. Information on



what can be collected will be published on the city's website. Team Thrift will also be present at Villagefest.

## **OLD BUSINESS**

Jori Nelson stated she and Mr. Runion attended the Briarwood Orientation session at Broadmoor. Plans for the new school were displayed and students were given a tour of the school. She noted the proposed school is designed to accommodate 550 students while the current enrollment at Briarwood is over 600.

Dan Runion noted that comments he has heard from Briarwood parents indicated that they felt the Planning Commission would be able to address the gym issue. Quinn Bennion responded that the role of the commission is to evaluate the proposed plan in light of city codes and not specific design issues. It was suggested that the Village Voice contain an article educating the public on the role of the Commission with the high profile applications that will be coming before them.

Brooke Morehead confirmed the Planning Commission will be taking public comment at their meeting. Wes Jordan noted the City is focusing on traffic safety relative to the new site plan to address traffic issues.

## **New Business**

Mayor Wassmer congratulated Jay Senter on the 5<sup>th</sup> anniversary of the PV Post and thanked him for his active coverage of city events and actions.

### **Committee meetings scheduled for the next two weeks:**

VillageFest Committee	06/25/2015	5:30 p.m.
Council Committee of the Whole	07/06/2015	6:00 p.m.
City Council	07/06/2015	7:30 p.m.

=====

The Prairie Village Arts Council is pleased to present an exhibit by the Shawnee Mission East Co-Lab in the R. G. Endres Gallery during the month of June.

Recreation sales have begun. The swim complex will close at 5 p.m. on Friday June 18<sup>th</sup> and 25<sup>th</sup> for swim meets.

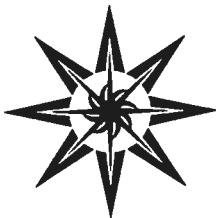
The city offices will be closed on Friday, July 3<sup>rd</sup> in observance of the Independence Day holiday.

VillageFest is Saturday, July 4<sup>th</sup> from 7:30 a.m. to 1 p.m. Volunteers are still being accepted. All Prairie Village residents swim free at the Prairie Village pool from 12:00 p.m. to 6:00 p.m.

**ADJOURNMENT**

With no further business to come before the City Council the meeting was adjourned at 8:35 p.m.

Joyce Hagen Mundy  
City Clerk



**MAYOR**

**Council Meeting Date: July 6, 2015  
CONSENT AGENDA**

**Consent Agenda: Consider Proclamation**

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**RECOMMENDATION**

Recommend the City Council authorize the Mayor to execute the following proclamation:

**Constitution Week - September 17 - 23, 2015**

**BACKGROUND**

Constitution Week is the commemoration of America's most important document and celebrated annually during the week of September 17-23. The celebration was started by a petition filed by the Daughters of the American Revolution in in 1955. The resolution was later adopted by the U.S. Congress and signed into public law in 1956 by President Dwight D. Eisenhower.

**ATTACHMENT**

Proclamation

**PREPARED BY**

Joyce Hagen Mundy, City Clerk

Date: July 1, 2015

# CITY OF PRAIRIE VILLAGE

## Constitution Week September 17 – 23, 2015

Whereas, September 17, 2015 marks the two hundred and twenty-eighth anniversary of the drafting of the Constitution of the United States of America by the Constitutional Convention; and

Whereas, it is fitting and proper to officially recognize this magnificent document and the anniversary of its creation; and

Whereas, it is fitting and proper to officially recognize the patriotic celebrations which will commemorate the occasion; and

Whereas, public law 915 guarantees the issuing of a proclamation each year by the President of the United States of America designating September 17 through 23 as constitution week;

NOW THEREFORE, I, Laura Wassmer, by virtue of the authority vested in me as Mayor of the City of Prairie Village in the State of Kansas do hereby proclaim the week of September 17 through 23 as

### CONSTITUTION WEEK

And ask our citizens to reaffirm the ideals the framers of the constitution had in 1787 by vigilantly protecting the freedoms guaranteed to us through this guardian of our liberties, remembering that lost rights may never be regained.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the City of Prairie Village, Kansas, to be affixed at my office in the City of Prairie Village, Kansas, the 6th day of July, 2015.

---

Mayor Laura Wassmer

---

City Clerk

---

Date



## JAZZFEST COMMITTEE

Council Meeting Date: July 6, 2015  
Consent Agenda

### Consider Jazzfest Performance Contracts

---

#### RECOMMENDED MOTION

Move the City Council approve performance contracts for the 2015 Jazz Festival with the following performers: Shawnee Mission East Blue Knights; Peter Schlamb Quartet; Tyrone Clark and True Dig; Horacescope; Matt Kane and the Kansas City Generations Sextet; Angela Hagenbauch and The McFadden Brothers with The Kansas City Jazz Orchestra at a cost of \$16,200.

#### BACKGROUND

The Sixth Annual Prairie Village Jazz Festival will be held on Saturday, September 12<sup>th</sup> beginning at 2:30 p.m. The Committee is pleased to have secured the following line-up:

2:30 - 3:00	Shawnee Mission East Blue Knights
3:20 - 4:10	Peter Schlamb Quartet
4:30 - 5:20	Tyrone Clark and True Dig
5:40 - 6:30	Horacescope
6:50 - 7:40	Matt Kane and the Kansas City Generations Sextet
8:00 - 8:55	Angela Hagenbach
9:15 - 10:30	The McFadden Brothers with The Kansas City Jazz Orchestra

The contracts have been reviewed by the City Attorney. The immediate financial commitment is \$6,000 with the remaining \$10,200 due the day of the festival. Funding is currently available in the Municipal Foundation account for JazzFest with a balance of \$24,869.18.

#### ATTACHMENTS

Artist Information

#### PREPARED BY

Joyce Hagen Mundy  
City Clerk

June 26, 2015

**2015 Prairie Village Jazz Festival Schedule and Cost**

2:30 – 3:00 p.m.	Shawnee Mission East Blue Knights	\$500.00
3:20 – 4:10 p.m.	Peter Schlamb Quartet	\$600.00
4:30 – 5:20 p.m.	Tyrone Clark and True Dig	\$750.00
5:40 – 6:30 p.m.	Horacescope	\$750.00
6:50 – 7:40 p.m.	Matt Kane and the Kansas City Generations Sextet	\$1600.00
8:00 – 8:55 p.m.	Angela Hagenbach	\$1500.00
9:15 – 10:30 p.m.	The McFadden Brothers with The Kansas City Jazz Orchestra (McFadden Brothers: \$4000.00, KCJO: \$6500.00)	\$10,500.00
TOTAL		\$16,200.00

**2015 Prairie Village Jazz Festival**  
**Saturday, September 12, 2015**  
**\$5 Admission (18 years of age and under, free)**

- 2:30 – 3:00 p.m.    **Shawnee Mission East Blue Knights**  
This band's rich tradition includes being named a finalist in the Essentially Ellington Jazz Band Competition, with an invitation to perform in Lincoln Center.
- 3:20 – 4:10 p.m.    **Peter Schlamb Quartet**  
*Peter Schlamb, vibraphone, Hermon Mehari, trumpet, Karl McComas-Reichl, bass, John Kizilarmut, drums*  
These young Kansas City musicians have toured the Midwest performing original compositions and be-bop standards behind the unique voicing of trumpet and vibes.
- 4:30 – 5:20 p.m.    **Tyrone Clark and True Dig**  
*Tyrone Clark, bass, Lisa Henry, vocals, Charles Williams, piano, Charles Gatschet, guitar, Michael Warren, drums*  
Tyrone played bass with both of last year's headline acts. This year he brings his own stellar ensemble, including vocalist Lisa Henry.
- 5:40 – 6:30 p.m.    **Horacescope**  
*Stan Kessler, trumpet, David Chael, saxophone, Roger Wilder, piano, James Albright, bass, Sam Wisman, drums*  
With a group of Kansas City jazz masters led by trumpeter Stan Kessler, Horacescope plays the music of noted pianist and composer Horace Silver.
- 6:50 – 7:40 p.m.    **Matt Kane and the Kansas City Generations Sextet**  
*Matt Kane, drums, Michael Shults, alto saxophone, Steve Lambert, tenor saxophone and flute, Hermon Mehari, trumpet, Andrew Ouellette, piano, Ben Leifer, bass*  
Matt Kane saw the incredible young talent dominating KC jazz today and gathered some of the best into his Generations Sextet. Their new CD presents their take on compositions by Pat Metheny, Bobby Watson and Ahmad Alaadeen. This show is their exclusive Kansas City engagement.
- 8:00 – 8:55 p.m.    **Angela Hagenbach**  
*Angela Hagenbach, vocals, Roger Wilder, piano, Danny Embrey, guitar, Zach Beeson, bass, Doug Auwarter, drums*  
Angela Hagenbach's magnificent voice has been a Kansas City favorite for over two decades. It's about time we showcase her in this festival!
- 9:15 – 10:30 p.m.    **The McFadden Brothers with The Kansas City Jazz Orchestra**  
*Lonnie and Ronnie McFadden, tap dancers, with The Kansas City Jazz Orchestra directed by Clint Ashlock*  
The tap dancing McFadden Brothers, a Kansas City treasure, have toured with the Count Basie Orchestra. The Kansas City Jazz Orchestra is KC's premiere big band, performing a subscription series at The Kauffman Center for the Performing Arts. We put the McFaddens and the Orchestra together for a festival finale that promises to be loaded with energy and wildly fun, no subscription necessary.

May 15, 2015

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 Prairie Village JazzFest Committee would like to invite the Shawnee Mission East Blue Knights Jazz Band to open the 2015 Prairie Village Jazz Festival on Saturday, September 12, 2015. Thirty minutes has been allotted for their performance and at this time we anticipate an opening time of 2:30 p.m..

In appreciation for the Blue Knights' participation, the JazzFest will make a \$500 donation to the SME Band Boosters to support your student musicians. If desired, we will also be glad to sell Blue Knight T-shirts during JazzFest in our merchandise tent with the total proceeds returned to you.

This shall serve as a Letter of Understanding for your participation in the 2015 Prairie Village Jazz Festival. Please sign and return a copy as confirmation of your agreement to perform. If you have any questions, please do not hesitate to contact Prairie Village City Clerk Joyce Hagen Mundy at [jhmundy@pvkansas.com](mailto:jhmundy@pvkansas.com) or 913-385-4616.

Sincerely,

A handwritten signature in black ink that reads "J.D. Kinney".

J.D. Kinney  
Chair, Prairie Village JazzFest Committee

Accepted by   
on behalf of the SME Blue Knights

Printed Name: John McKinney  
Date: 5/22/15

7700 Mission Road  
Prairie Village, KS 66208

[prairievillagejazz.org](http://prairievillagejazz.org)



# PERFORMANCE CONTRACT

The agreement made this 27 day of June, 2015, between PETER SCHLAMB (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 12, 2015
3. HOURS OF ENGAGEMENT: 3:20 p.m. TO 4:10 p.m.

4. \_\_\_\_\_  
Peter Schlamb, John Kizilarmut \_\_\_\_\_  
Hermon Mehari, Karl McComas-Reichl \_\_\_\_\_

5. 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 \_\_\_\_\_. 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: 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 12, 2015. Any deposit received for services is non-refundable.

Purchaser:

Artist:

\_\_\_\_\_  
City of Prairie Village  
Mayor Laura Wassmer

Peter Schlamb  
Peter Schlamb for  
Peter Schlamb Quartet

### PERFORMANCE CONTRACT

The agreement made this 12 day of Sept, 2015, between TYRONE CLARK AND TRUE DIG (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 12, 2015
- 3. HOURS OF ENGAGEMENT: 4:30 p.m. to 5:20 p.m.
- 4. PERSONNEL:

Lisa Henry, Charles Williams, Micheal Warren  
Charles Gatschet, Tyrone Clark

- 5. FULL PRICE AGREED UPON: \$750 (Seven Hundred 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 Tyrone Clark. 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: 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 12, 2015. Any deposit received for services is non-refundable.

Purchaser:

Artist:

\_\_\_\_\_  
City of Prairie Village  
Mayor Laura Wassmer

Tyrone Clark  
Tyrone Clark for  
Tyrone Clark and True Dig

Post-It® Fax Note	7671	Date	6/22/15	# of pages	1 of 2
To	Source Hagen Mundy	From	Tyrone Clark		
Co./Dept.		Co.			
Phone #		Phone #	816-942-3776		
Fax #	913-381-7755	Fax #	816-942-3776		

## PERFORMANCE CONTRACT

The agreement made this 20 day of June, 2015, between STAN KESSLER AND HORACESCOPE (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 12, 2015
3. HOURS OF ENGAGEMENT: 5:40 p.m. to 6:30 p.m.
4. PERSONNEL:  
Stanton Kessler, Roger Wilder, Dave Chael,  
James Albright, Sam Wisman
5. FULL PRICE AGREED UPON: \$750 (Seven Hundred 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 Stanton Kessler. 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: 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 12, 2015. Any deposit received for services is non-refundable.

Purchaser:

\_\_\_\_\_  
City of Prairie Village  
Mayor Laura Wassmer

Artist:

  
\_\_\_\_\_  
Stanton Kessler for  
Horacescope

## PERFORMANCE CONTRACT

The agreement made this 22 day of June, 2015, between MATT KANE. (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 12, 2015
3. HOURS OF ENGAGEMENT: 6:50 p.m. TO 7:40 p.m.
4. PERSONNEL:

Matt Kane, Ben Leifer, Michael Shults, Steve Lambert  
Hermon Mehari, Andrew Ouellette

5. FULL PRICE AGREED UPON: \$1,600 (One Thousand Six Hundred Dollars) for performance by the group Matt Kane and the Kansas City Generations Sextet. A deposit of \$800 to retain the musicians shall be paid to the ARTIST upon fully executed contract along with any tax documents. Deposit check shall be made out to Matt Kane and mailed to 112 Goodrich St., Iselin, N.J. 08830 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.
6. PURCHASER to provide ARTIST with the following space and equipment for engagement: 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 bass amp and guitar amp. Also, an acoustical piano tuned to A440 on the DAY OF THE SHOW AFTER IT HAS BEEN PLACED ON THE STAGE.
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 (\$1,600).
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: PURCHASER will allow ARTIST appropriate opportunity to perform a sound check before the concert.
10. Insurance: PURCHASER 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 ARTIST.


11. Execution of Contract: In order to retain musicians, PURCHASER agrees to sign and return this contract to Matt Kane, 112 Goodrich St., Iselin, N.J. 10030.

Purchaser:

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City of Prairie Village  
Mayor Laura Wassmer

Artist:



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Matt Kane for  
Matt Kane and the Kansas City Generations  
Sextet

**PERFORMANCE CONTRACT**

The agreement made this 17 day of June, 2015, between AH ENTERTAINMENT, INC. (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 12, 2015
3. HOURS OF ENGAGEMENT: 8:00 p.m. to 8:55 p.m.
4. PERSONNEL: Angela Hagenbach  
Roger Wilder, Danny Embrey, Zach  
Beeson and Doug Auwarter
5. FULL PRICE AGREED UPON: \$1,500 (One Thousand Five Hundred Dollars) for performance by the group Angela Hagenbach. A deposit of \$750 to retain the musicians shall be paid to the ARTIST upon fully executed contract along with any tax documents. Deposit check shall be made out to AH Entertainment, Inc. and mailed to P.O. Box 14211, Kansas City, MO. 64152 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.
6. PURCHASER to provide artist with the following space and equipment for engagement: 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 bass amp and guitar amp. Also, an acoustical piano tuned to A440 on the DAY OF THE SHOW AFTER IT HAS BEEN PLACED ON THE STAGE.
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 her full fee (\$1,500).
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: PURCHASER will allow ARTIST appropriate opportunity to perform a sound check before the concert.
10. Insurance: PURCHASER 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.

11. Execution of Contract: In order to retain musicians, PURCHASER agrees to sign and return this contract to AH Entertainment, Inc., P.O. Box 14211, Kansas City, MO. 64152.

Purchaser:

\_\_\_\_\_  
City of Prairie Village  
Mayor Laura Wassmer

Artist:

  
Angela Hagenbach

## PERFORMANCE CONTRACT

The agreement made this 19th day of June, 2015, between THE MCFADDEN BROTHERS (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 12, 2015
3. HOURS OF ENGAGEMENT: 9:15 p.m. to 10:30 p.m.
4. PERSONNEL:  
The McFadden Brothers with 3 piece rhythm section.  

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5. FULL PRICE AGREED UPON: \$4,000 (Four Thousand Dollars) for performance by The McFadden Brothers with The Kansas City Jazz Orchestra. The Kansas City Jazz Orchestra is contracted with and paid under a separate contract. A deposit of \$2000 to retain the musicians shall be paid to the ARTIST upon fully executed contract along with any tax documents. Deposit check shall be made out to Ronald McFadden and mailed to 5518 NW 81<sup>st</sup> St., Kansas City, MO. 64151 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.
6. ARTIST agrees to coordinate and work with The Kansas City Jazz Orchestra to develop the performance for the engagement.
7. PURCHASER to provide artist with the following space and equipment for engagement: 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 bass amp and guitar amp. Also, an acoustical piano tuned to A440 on the DAY OF THE SHOW AFTER IT HAS BEEN PLACED ON THE STAGE. Wood floor surface for tap dancing not smaller than 6 feet deep by 12 feet wide.
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 her full fee (\$4,000).
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: PURCHASER will allow ARTIST appropriate opportunity to perform a sound check before the concert.



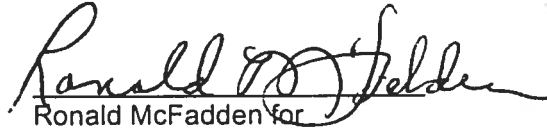
11. Insurance: PURCHASER shall carry all necessary liability insurance in connection to the event and, to the extent permitted by law, shall hold ARTIST harmless of any claims, liabilities or losses resulting from any accident, loss or injury in connection with the event, unless such claims, liabilities or losses result from the negligence or willful misconduct of the performer.
12. Execution of Contract: In order to retain musicians, PURCHASER agrees to sign and return this contract to Ronald McFadden, 5518 NW 81<sup>st</sup> St., Kansas City, MO. 64151.
13. Technical rider: Specific sound, lighting and stage requirements shall be described in a separate addendum to this contract.

Purchaser:

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City of Prairie Village  
Mayor Laura Wassmer

Artist:

  
Ronald McFadden for  
The McFadden Brothers

## PERFORMANCE CONTRACT

The agreement made this 22 day of JUNE, 2015, between THE KANSAS CITY JAZZ ORCHESTRA (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 12, 2015
3. HOURS OF ENGAGEMENT: 9:15 p.m. to 10:30 p.m.
4. FULL PRICE AGREED UPON: \$6,500 (Six Thousand Five Hundred Dollars) for performance by the group The Kansas City Jazz Orchestra with the McFadden Brothers. The McFadden Brothers are contracted with and paid under a separate contract. A deposit of \$3,250 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 The Kansas City Jazz Orchestra. and mailed to P.O. Box 12841, Shawnee Mission, KS. 66282 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. ARTIST agrees to coordinate and work with the McFadden Brothers to develop the show for the engagement.
6. PURCHASER to provide artist with the following space and equipment for engagement: 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 bass amp and guitar amp. Also, an acoustical piano tuned to A440 on the DAY OF THE SHOW AFTER IT HAS BEEN PLACED ON THE STAGE.
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 her full fee (\$6,500).
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: PURCHASER will allow ARTIST appropriate opportunity to perform a sound check before the concert.
10. Insurance: PURCHASER 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.

11. Execution of Contract: In order to retain musicians, PURCHASER agrees to sign and return this contract to The Kansas City Jazz Orchestra, P.O. Box 12841, Shawnee Mission, KS. 66282.

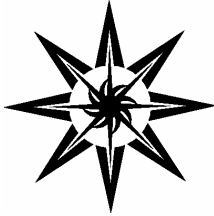
Purchaser:

Artist:

\_\_\_\_\_  
City of Prairie Village  
Mayor Laura Wassmer

  
\_\_\_\_\_  
Steve Irwin for  
The Kansas City Jazz Orchestra  
STEVE IRWIN  
EXECUTIVE DIRECTOR





## ADMINISTRATION

Council Committee Meeting Date: June 15, 2015  
City Council Meeting Date: July 6, 2015

**Consider approval of a Memorandum of Understanding with Van Trust Real Estate, Johnson County Park and Recreation District and Johnson County Wastewater for the redevelopment of Meadowbrook property**

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### **RECOMMENDED MOTION:**

Move that Council approve a Memorandum of Understanding (MOU) with Van Trust Real Estate, Johnson County Park & Recreation District and Johnson County **Wastewater** for the redevelopment of the Meadowbrook property.

### **BACKGROUND:**

#### **UPDATE (additions to the previous information form in bold):**

**The draft MOU was discussed at the Committee of the Whole meeting on June 15<sup>th</sup>. The agreement was forwarded to Council with amendment. The amendment related to the City's role in the park plan and use restrictions and are shown in the attached redline version. The amended MOU has received initial agreement by JCPRD staff and Van Trust.**

The Meadowbrook redevelopment project continues to advance in discussion and process. The MOU outlines the general structure of the redevelopment and identifies the general responsibilities for each of the four entities. The MOU is a good faith document that furthers the discussion and considerations of each of the entities involved in the redevelopment of the Meadowbrook property.

The MOU includes items and considerations shared during the public open houses in March and with the Council during public meetings. The Sources and Uses document includes a range of sources of revenue and proposed uses for the public funds. The estimates of the funding will be refined as part of the development agreement.

In summary, the City of Prairie Village agrees to pursue:

- 1) Drafting of a development agreement with Van Trust that further outlines the details of the commitments of both parties
- 2) Creating a Tax Increment Financing (TIF) district, district plan, project area and project plan
- 3) Issuing TIF bonds for identified public project uses (general obligation and special obligation)
- 4) Considering rezoning of the property to Mixed Used Development
- 5) Purchase the parkland property (approximately 88 acres)

- 6) Transfer the parkland property to JCPRD
- 7) Issue industrial revenue bonds (IRBs) with the sole purpose of providing a sales tax exemption for construction of the three largest components with the funds contributed to the public project
- 8) Consideration of implementing a transient guest tax, in part, to benefit the project

The next steps for the City include the drafting of the development agreement, establishing a TIF district & plan, and the planning / zoning process.

**JCPRD discussed the MOU at their June 17<sup>th</sup> meeting.**

Van Trust representatives will be in attendance at Monday's meeting to participate in the discussion.

**ATTACHMENTS:**

- Proposed Memorandum of Understanding with two exhibits attached

**PREPARED BY:**

Quinn Bennion, City Administrator

Date: **July 2, 2015**

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“**Memorandum**”) is entered into as of the Effective Date (as defined in paragraph 28-30 hereof) by and between **Van Trust Real Estate**, a Kansas limited liability company (the “**Property Owner**”), the **City of Prairie Village**, a municipal corporation organized and existing pursuant to the laws of the State of Kansas (the “**City**”), **Johnson County Park & Recreation District** (“**JCPRD**”) a body corporate and political subdivision organized and existing pursuant to the laws of the State of Kansas, and **Johnson County Wastewater** (“**JCW**”) a department of Johnson County, Kansas (the “**Parties**”).

### RECITALS

WHEREAS, Property Owner owns land previously used as Meadowbrook County Club generally depicted on Exhibit A hereto (the “**MCC Property**”) within the corporate limits of the City and, except for an exclusion agreement executed in 1954, would also be within the service area of JCW.

WHEREAS, JCPRD has a stated policy of established criteria for the acquisition and development of parkland in Johnson County, Kansas (the “**County**”), and the MCC Property meets this criteria.

WHEREAS, although all of the MCC Property is zoned for single family residential development, the recommendation of the City’s comprehensive plan known as Village Vision is that redevelopment of the site should include a mix of residential uses with a portion of the site being used as public open space.

WHEREAS, the Property Owner desires to partner with the Parties to see the MCC Property developed and used in a manner generally consistent with Village Vision and generally as depicted on Exhibit A (the “**MCC Project**”).

WHEREAS, such development is contingent upon and requires the cooperation and agreement of all of the Parties hereto, and ultimately approvals of formal agreements and other matters by the Parties.

WHEREAS, in order to facilitate such cooperation, the Parties desire to memorialize in this nonbinding Memorandum of Understanding their willingness to simultaneously consider the following actions as more fully described herein:

1. Formation by the City, with the support of the Parties, of a Tax Increment Financing (“**TIF**”) District and approval of a TIF redevelopment plan, the issuance by the City of General Obligation TIF Bonds (“**GO TIF Bonds**”) and Special Obligation TIF Bonds (“**SO TIF Bonds**”) (collectively the “**TIF Bonds**”), the net proceeds of which would be utilized as described on the “**Sources and Uses of Public Funds**” attached as Exhibit B to (a) fund acquisition for the benefit of JCPRD of an approximate 88 acre portion of the MCC Property depicted as a park on the attached Exhibit A (the “**Parkland Property**”) and (b) to fund certain park and other public improvements described on Exhibit B.

2. Rescission and/or termination of the 1954 Agreement between JCW and the then owner of the MCC Property which excluded the MCC Property from ever being included in the County's Sewer Districts; followed by creation of a JCW sewer district and enlargement of the Consolidated Main Sewer District to include the MCC Property and to provide sanitary sewer service for the private development proposed for the MCC Property. . Sewer improvements for the MCC Property would be designed and constructed to improve capacity and mitigate existing environmental concerns in the watershed.

3. Zoning, platting, plan approval, permitting and development of the portion of the MCC Property not included in the Parkland Property (the "**Retained Private Property**") as a mix of residential and senior living units, boutique inn style lodging and neighborhood restaurant/retail, generally as depicted on **Exhibit A**, which will be privately owned and financed ("**Private Mixed Uses**").

4. Commitment of the Property Owner to fund and construct the on-site sanitary sewer improvements (the portion within the Parkland Property to be funded by TIF proceeds) according to the design and specifications of JCW and commitment of the Property Owner to provide funding for off-site sewer improvements in an amount of +/- \$3,039,000 (or such other amount negotiated between Property Owner and JCW), which may use various funding mechanisms, including a buy-in fee, connection fees, and, if acceptable to JCW, a County benefit district.

5. Utilization of industrial revenue bonds, issued by the City in a manner which provides no repayment or credit risk to the City, to fund construction of Private Mixed Uses (except single family homes) in order to provide a state and local sales tax exemption for construction materials (the "**IRB Sales Tax Exemption**") and, as described on the Sources and Uses of Public Funds attached as **Exhibit B**, the corresponding payment by the Property Owner of funds equal to the IRB Sales Tax Exemption to contribute to the cost of the public uses described therein.

6. Consideration by the City of a transient guest tax ("**TGT**") which would be used in part for programming events on the Parkland Property and in part to pay debt service on the TIF Bonds.

7. Each of the approvals and processes described herein are generally contingent on one another, as well as required zoning approvals. Property transfers, commencement of sewer improvements, bond issuances, commencement of infrastructure and private development shall occur upon one Closing event (the "**Closing**") which will include final execution of all agreements referenced herein, issuance of the TIF Bonds, as defined herein, approval of a special benefit district petition by the County, the adoption of an IRB resolution and the transfer of the Parkland Property to the City and JCPRD. If a simultaneous Closing is not possible, the parties will work together so that the effectiveness of the actions, transfers and agreements contemplated herein will be contingent upon one another; provided however, it is understood by the Parties that the County will not act to rescind and/or terminate the 1954 Agreement until an irrevocable commitment is made from the Property Owner for the transfer of the Parkland Property to JCPRD.



8. By approving this Memorandum, each of the Parties expresses its intent to take the actions described herein applicable to such party between the Effective Date and the Closing (the “**Cooperation Period**”) to determine the feasibility of and consider approval of development agreements and other matters necessary to implement the MCC Project. As to the JCW and JCPRD, this means that the County Administrative Staff supports these actions and shall advance them in due course with an affirmative recommendation for consideration by the Board of County Commissioners and the Johnson County Park and Recreation District Board. No member of JCPRD, JCW, the County, the City or the Developer shall be bound by this document.

NOW THEREFORE, the Parties agree to enter into this Memorandum to declare their intent to prepare the legally necessary submittals and hold or pursue the various statutorily required public hearings and approval processes necessary to consider the development of the MCC Property as described herein and hereby state their general understanding concerning the following matters:

### **Parkland Property Provisions**

1. Contingent upon Closing, the Property Owner will convey the Parkland Property to the City for immediate transfer to JCPRD. The purchase price, to include closing costs, as estimated on the Sources and Uses of Public Funds attached as **Exhibit B**, will be paid by the City from the proceeds of the GO TIF Bonds. The purchase price will be subject to final agreement between the Property Owner and the City and shall not exceed the value determined by a third party appraisal obtained by the City. Title to the Parkland Property shall be subject to restrictions in such form and content as approved by the Property Owner, the ~~City-Governing Body~~ and JCPRD to insure the continuing use of the Parkland Property as a public park, to prohibit certain uses disruptive to the surrounding community, and requiring ongoing maintenance by JCPRD generally consistent with public parks owned and maintained by JCPRD of a similar size and purpose. The City’s obligation to implement the financing for and the acquisition and transfer the Parkland Property shall be contingent upon the approval of the foregoing restrictions, as well as the plan for final park design (“Park Plan”) described in paragraph 3 hereof, by the Governing Body of the City. The documents implementing the restrictions shall include provisions satisfactory to the Governing Body of the City relating to City approvals to be required for any future changes in the Park Plan or to use restrictions.

2. ~~Immediately-Subject to paragraph 1, immediately~~ upon receipt, the City will transfer the Parkland Property to JCPRD and JCPRD will accept such transfer subject to the restrictions referred to in paragraph 1.

3. JCPRD will develop the final park design in accordance with its standard procedures, including public input, and in consultation with the ~~City-Governing Body~~ and the Property Owner. Property Owner shall work with JCPRD to develop a park planning schedule that is coordinated with the private development schedule. If park planning is commenced before Closing at JCPRD expense, it shall be reimbursed from TIF Bond proceeds at Closing. At Closing the JCPRD will complete final park design and begin construction of Parkland Property improvements using the funding identified on the attached Sources and Uses of Public Funds.

4. The Parkland Property will be subject to construction and utility easements and temporary and permanent easements in favor of the Property Owner, City and JCW for the City public rights of way, City drainage improvements, JCW sewer improvements and other City or JCW public infrastructure improvements which will be located on the Parkland Property. To the extent not created prior to Closing, JCPRD will convey such easements without cost upon request. After initial development is complete, future easements will be negotiated as necessary on Parkland Property.

5. The Parkland Property shall have a Code of Regulations consistent with other JCPRD parks and enforced by the Johnson County Park & Recreation District Park Police.

### **City Provisions**

6. The City will consider, in accordance with its standard procedures, Property Owner's zoning and preliminary plan application for zoning, planning and preliminary platting of the Retained Private Property for the Private Mixed Uses.

7. In accordance with K.S.A. 12-1770 *et seq.*, as amended, (the "**TIF Act**"), the City will prepare or obtain a conservation study and a TIF district plan, and will thereafter consider creation of a TIF district which will contemplate multiple TIF project areas. The TIF district will include the MCC Property and, as separate future project area or areas, the commercial properties south of the MCC Property along 95th Street (the "**TIF District**"). Also provided the parties agree that the TIF Bonds will not be issued until the Closing events and conditions (which will further be delineated in the formal development agreement) have been met.

8. The City will prepare a TIF project plan (the "**TIF Project Plan**") for the MCC Property ("**Project Area 1**") in accordance with this Memorandum of Understanding which will call for full property tax increment financing as allowed by the TIF Act for a period of 20 years from the adoption of the TIF Project Plan (the "**TIF Revenue Calculation**"). To the extent permitted by the TIF Act, the incremental property taxes in Project Area 1 will be calculated exclusively with reference to the Project Area 1 base year property taxes. The Project Area 1 incremental property taxes will not be used for the payment of costs of any TIF project plan in any other project areas of the TIF District without the prior written consent of the City, and, as long as the SO Bonds are outstanding, the Property Owner. The Parties shall not have any liability or responsibility for the acts, omission or success of the owners of any other project areas within in the TIF District.

9. Prior to Closing, the City will consider a request from the Property Owner for a master resolution of intent authorizing the City to issue industrial revenue bonds, at Property Owner's cost, in a manner which has no repayment or credit risk to the City to provide for the IRB Sales Tax Exemption. The issuance of industrial revenue bonds would occur post-Closing and may be done in multiple phases. All costs of the issuance of the industrial revenue bonds shall be paid by the Property Owner or their assignee.

10. At Closing, subject to completion and satisfaction of all applicable proceedings and approvals required under the TIF Act, the City will issue GO TIF Bonds, the proceeds of

which will be used as described on the Sources and Uses of Public Funds attached as **Exhibit B**, and to pay capitalized interest and costs of issuance. The GO TIF Bonds shall be issued upon terms acceptable to the Governing Body of the City in its sole and absolute discretion. The Property Owner will have no liability for credit enhancement or payment of the GO TIF Bonds. The issuance of the GO TIF Bonds will be contingent upon the simultaneous issuance and sale of the SO TIF Bonds.

11. Additionally at Closing, subject to completion and satisfaction of all applicable proceedings and approvals required under the TIF Act, the City will issue the SO TIF Bonds, which will be a special obligation (non-City backed) bond, the proceeds of which will be used as described on the Sources and Uses of Public Funds attached as **Exhibit B**, and to pay capitalized interest and costs of issuance. The SO TIF Bonds shall be issued upon market based terms acceptable to the Governing Body of the City and the Property Owner, in their reasonable discretion. The SO TIF Bonds will be payable solely from the portion of tax increment revenues from Project Area 1 set forth in paragraph ~~11-8~~ hereof, and the portion of the MCC TGT Revenues set forth in paragraph ~~13-14~~ hereof, and shall not be backed by the full faith and credit of the City, the County, JCPRD or any other taxing jurisdiction. The SO TIF Bonds shall be purchased by the Property Owner, a related entity, or sold on a private placement basis to qualified institutional buyers, subject to criteria required by the City in its sole and absolute discretion. The issuance of the SO TIF Bonds will be contingent upon the simultaneous issuance and sale of the GO TIF Bonds.

12. Annual tax increment revenues from Project Area 1 shall be split on a 50-50 basis between the GO TIF Bonds and the SO TIF Bonds to pay principal and interest debt service.

13. Based on the structure of the bond issuances and use of the funds anticipated herein, the City has confirmed with its bond counsel that the TIF Bonds are anticipated to be tax exempt issuances.

14. Concurrently with the TIF process described herein, the City shall advance for consideration and approval by its Governing Body a transient guest tax (“TGT”). The TGT rate is anticipated to be 9% of room rentals and proceeds from the TGT attributable to the Private Mixed Uses (the “MCC TGT Revenues”). The first \$25,000 per annum of the MCC TGT Revenues shall be retained by the City and used in its discretion for public events and activities at the Parkland Property, subject to written approval of JCPRD. The balance of the per annum MCC TGT Revenues shall be split on a 50-50 basis between the GO TIF Bonds and the SO TIF Bonds to pay principal and interest debt service.

### **Johnson County Wastewater Provisions**

15. In consideration of the public benefit of the Parkland Property as well as the financial contribution of the Property Owner which also benefits the public sanitary sewer system, JCW administrative staff and County staff agree to support and affirmatively recommend to the Board that the 1954 Agreement, which excluded the MCC Property forever from the JCW Districts, be rescinded and/or terminated, and, upon receipt of a proper petition, to support and affirmatively recommend to the Board the creation of a sewer district and enlargement of the Consolidated Main Sewer District to include the entire property and sizing all

facilities (onsite and off-site) in a manner which will support the private development proposed for the property (the "JCW Expansion").

16. County Staff agree to cooperate with the Property Owner on scheduling for construction of sewer improvements needed to provide service to the MCC Property and will support terms in an agreement, contingent upon Closing, that contain general timelines for completion of the design and construction of the off-site improvements subject to the best, reasonable efforts of JCW and its contractors. Further, JCW, upon request from the City, will consider and make its best reasonable efforts to implement with the City a process under which the City may proceed to issue the Property Owner building permits for its commercial and residential structures on the property during construction of the off-site downstream improvements; provided that, the Property Owner agrees to accept all risk at its cost for any reconstruction, repair or replacement that is required due to alignment or other irregularities arising from the early permit issuance.

17. County Staff will support and affirmatively recommend terms in an agreement, whereby the Property Owner will agree to construct at no cost to JCW all on-site sewer improvements, in accordance with design and specifications approved by JCW, necessary to provide sewer service to the entire property and, in addition, will pay to JCW the total amount of \$3,038,869 (or such other amount as is finally determined by JCW and the Property Owner), which payment may be made in the following:

- (a) A cash payment of \$248,573 by the Developer, or, if acceptable to JCW, the principle sum of \$248,573, together with interest and costs, financed by Special Benefit District Bonds for Single Family, which shall have no repayment or credit risk to the City or JCPRD.
- (b) A cash payment of \$1,123,982.
- (c) A cash payment for the Property Owner Sewer Buy In Cash Contribution in the amount of \$764,914.
- (d) Connection Fees paid for development on the property as and when due, which are estimated to be \$901,400, based on the fee schedule currently in place.

### **Property Owner Provisions**

18. Property Owner will use its best efforts to secure the necessary zoning and other regulatory approvals and financing to complete and market the Private Mixed Uses for lease and occupancy on or before the dates to be agreed upon by the City, provided that the Parties acknowledge sale and leasing is subject to market forces.

19. Property Owner recognizes that the projections of the TIF Revenue Calculation are dependent upon its ability to complete, or cause to be completed, the Private Mixed Uses for the Retained Private Property and agrees that it will not make material changes to the mix of uses or timing of development of the Private Mixed Uses contemplated herein without the prior written consent of the Governing Body of the City.

20. Property Owner and any assignees of Property Owner will report the IRB Sales Tax Exemption to the City and will pay or cause to be paid from time to time amounts equal to the IRB Sales Tax Exemption to the City or to JCPRD to be used to fund improvements to the Parkland Property as provided in a final development agreement.

## **Miscellaneous**

21. Final development agreements will establish the improvements, off site requirements, impacts fees and standard building permit fees and connection fees to be imposed and required for the matters contemplated herein.

22. The City, JCW and JCPRD (the “**Public Parties**”) acknowledge that the Property Owner will use private financing to fund the Private Mixed Uses and that the Public Parties will not impose restrictions on such private financing or the pledge of the Retained Private Property to secure such private financing; except any charges, assessments, or liens arising from public improvements or services provided to or for the property.

23. The City and the Property Owner will negotiate by separate development agreement restrictions on transfer by Property Owner of any of the Retained Private Property prior to completion of the Private Mixed Uses, provided that no part of the Retained Private Property may be transferred to public, tax-exempt or non-profit entities without prior City approval unless a payment in lieu of taxes covenant is negotiated between the City and Property Owner that provides no *ad valorem* tax exemption benefit to such entities and the City receives an opinion from bond counsel that such arrangement does not impact the exclusion of interest on the TIF Bonds for federal income tax purposes.

24. The Parties agree that all incentive revenues set forth herein shall be authorized for use in funding eligible project costs or fees not otherwise prohibited by state law.

25. The Parties agree that the development agreements, land purchase agreements and deeds referenced herein will contain standard title, engineering and environmental due diligence provisions for all parcels set forth herein; the parties further agree to consider and negotiate in good faith modifications to this Memorandum which are in the best interest of the MCC Project and in keeping with the original scope and vision thereof. The foregoing notwithstanding, the Parties acknowledge and agree that the Governing Bodies of the Public Parties have final authority, in their sole and absolute discretion, to approve all agreements referred to herein to which each is a party.

26. The Parties will work in good faith to coordinate construction management and contracting for improvements herein that may overlap or conflict.

27. The Parties agree that the Parkland Property will require normal maintenance operations and will host special events that may produce some noise and/or inconvenience to

residents. The Property Owner will make residents aware of such possibilities in marketing literature, HOA documents, etc.

28. This Memorandum is intended as a basis for the negotiation and approval during the Cooperation Period of multiple development agreements and other final agreements between and among two or more of the Parties, subject to all applicable public proceedings and approvals. This Memorandum is not a binding agreement and is presented and executed merely to signal the intent of the Parties hereto to consider the matters outlined herein in good faith, to schedule necessary public hearings and hold public meetings as required by law, and to perform such other due diligence as is desirable. The Parties understand and agree that all of the matters provided for in this Memorandum are subject to and conditional upon multiple additional corporate and public procedures, hearings and approvals as required by law.

29. This Memorandum shall remain in effect until December 31, 2015 (the “**Termination Date**”) and shall terminate upon the earlier of the Closing or the Termination Date.

30. This Memorandum shall not become effective until the date upon which it is approved and executed by all of the Parties (the “**Effective Date**”).

***[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]***

**VANTRUST REAL ESTATE, LLC,**

a Kansas limited liability company

By: \_\_\_\_\_  
Print Name and Title  
Date Executed:

**THE CITY OF PRAIRIE VILLAGE, KANSAS**

a municipal corporation organized and existing  
pursuant to the laws of the State of Kansas

By: \_\_\_\_\_  
Laura Wassmer, Mayor  
Date Executed:

Attest:

\_\_\_\_\_  
Joyce Hagen Mundy  
City Clerk

Approved as to Form:

\_\_\_\_\_  
Catherine P. Logan City Attorney

**JOHNSON COUNTY PARK & RECREATION  
DISTRICT**

a body corporate organized and existing pursuant to  
the laws of the State of Kansas

By: \_\_\_\_\_  
Print Name and Title  
Date Executed:

Attest:

\_\_\_\_\_  
Print Name and Title

Approved as to Form:

---

JCPRD Attorney

**JOHNSON COUNTY WASTEWATER**  
a department of Johnson County Kansas

By: George Schlagel, Chair  
Johnson County Park & Recreation District Board  
of Commissioners  
Date Executed:

Attest:

---

Print Name and Title

Approved as to Form:

---

JCW Attorney



## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“**Memorandum**”) is entered into as of the Effective Date (as defined in paragraph 30 hereof) by and between **Van Trust Real Estate**, a Kansas limited liability company (the “**Property Owner**”), the **City of Prairie Village**, a municipal corporation organized and existing pursuant to the laws of the State of Kansas (the “**City**”), **Johnson County Park & Recreation District (“JCPRD”)** a body corporate and political subdivision organized and existing pursuant to the laws of the State of Kansas, and **Johnson County Wastewater (“JCW”)** a department of Johnson County, Kansas (the “**Parties**”).

### RECITALS

WHEREAS, Property Owner owns land previously used as Meadowbrook County Club generally depicted on **Exhibit A** hereto (the “**MCC Property**”) within the corporate limits of the City and, except for an exclusion agreement executed in 1954, would also be within the service area of JCW.

WHEREAS, JCPRD has a stated policy of established criteria for the acquisition and development of parkland in Johnson County, Kansas (the “**County**”), and the MCC Property meets this criteria.

WHEREAS, although all of the MCC Property is zoned for single family residential development, the recommendation of the City’s comprehensive plan known as Village Vision is that redevelopment of the site should include a mix of residential uses with a portion of the site being used as public open space.

WHEREAS, the Property Owner desires to partner with the Parties to see the MCC Property developed and used in a manner generally consistent with Village Vision and generally as depicted on **Exhibit A** (the “**MCC Project**”).

WHEREAS, such development is contingent upon and requires the cooperation and agreement of all of the Parties hereto, and ultimately approvals of formal agreements and other matters by the Parties.

WHEREAS, in order to facilitate such cooperation, the Parties desire to memorialize in this nonbinding Memorandum of Understanding their willingness to simultaneously consider the following actions as more fully described herein:

1. Formation by the City, with the support of the Parties, of a Tax Increment Financing (“**TIF**”) District and approval of a TIF redevelopment plan, the issuance by the City of General Obligation TIF Bonds (“**GO TIF Bonds**”) and Special Obligation TIF Bonds (“**SO TIF Bonds**”) (collectively the “**TIF Bonds**”), the net proceeds of which would be utilized as described on the “**Sources and Uses of Public Funds**” attached as **Exhibit B** to (a) fund acquisition for the benefit of JCPRD of an approximate 88 acre portion of the MCC Property depicted as a park on the attached **Exhibit A** (the “**Parkland Property**”) and (b) to fund certain park and other public improvements described on **Exhibit B**.

2. Rescission and/or termination of the 1954 Agreement between JCW and the then owner of the MCC Property which excluded the MCC Property from ever being included in the County's Sewer Districts; followed by creation of a JCW sewer district and enlargement of the Consolidated Main Sewer District to include the MCC Property and to provide sanitary sewer service for the private development proposed for the MCC Property. . Sewer improvements for the MCC Property would be designed and constructed to improve capacity and mitigate existing environmental concerns in the watershed.

3. Zoning, platting, plan approval, permitting and development of the portion of the MCC Property not included in the Parkland Property (the "**Retained Private Property**") as a mix of residential and senior living units, boutique inn style lodging and neighborhood restaurant/retail, generally as depicted on **Exhibit A**, which will be privately owned and financed ("**Private Mixed Uses**").

4. Commitment of the Property Owner to fund and construct the on-site sanitary sewer improvements (the portion within the Parkland Property to be funded by TIF proceeds) according to the design and specifications of JCW and commitment of the Property Owner to provide funding for off-site sewer improvements in an amount of +/- \$3,039,000 (or such other amount negotiated between Property Owner and JCW), which may use various funding mechanisms, including a buy-in fee, connection fees, and, if acceptable to JCW, a County benefit district.

5. Utilization of industrial revenue bonds, issued by the City in a manner which provides no repayment or credit risk to the City, to fund construction of Private Mixed Uses (except single family homes) in order to provide a state and local sales tax exemption for construction materials (the "**IRB Sales Tax Exemption**") and, as described on the Sources and Uses of Public Funds attached as **Exhibit B**, the corresponding payment by the Property Owner of funds equal to the IRB Sales Tax Exemption to contribute to the cost of the public uses described therein.

6. Consideration by the City of a transient guest tax ("**TGT**") which would be used in part for programming events on the Parkland Property and in part to pay debt service on the TIF Bonds.

7. Each of the approvals and processes described herein are generally contingent on one another, as well as required zoning approvals. Property transfers, commencement of sewer improvements, bond issuances, commencement of infrastructure and private development shall occur upon one Closing event (the "**Closing**") which will include final execution of all agreements referenced herein, issuance of the TIF Bonds, as defined herein, approval of a special benefit district petition by the County, the adoption of an IRB resolution and the transfer of the Parkland Property to the City and JCPRD. If a simultaneous Closing is not possible, the parties will work together so that the effectiveness of the actions, transfers and agreements contemplated herein will be contingent upon one another; provided however, it is understood by the Parties that the County will not act to rescind and/or terminate the 1954 Agreement until an irrevocable commitment is made from the Property Owner for the transfer of the Parkland Property to JCPRD.

8. By approving this Memorandum, each of the Parties expresses its intent to take the actions described herein applicable to such party between the Effective Date and the Closing (the “**Cooperation Period**”) to determine the feasibility of and consider approval of development agreements and other matters necessary to implement the MCC Project. As to the JCW and JCPRD, this means that the County Administrative Staff supports these actions and shall advance them in due course with an affirmative recommendation for consideration by the Board of County Commissioners and the Johnson County Park and Recreation District Board. No member of JCPRD, JCW, the County, the City or the Developer shall be bound by this document.

NOW THEREFORE, the Parties agree to enter into this Memorandum to declare their intent to prepare the legally necessary submittals and hold or pursue the various statutorily required public hearings and approval processes necessary to consider the development of the MCC Property as described herein and hereby state their general understanding concerning the following matters:

### **Parkland Property Provisions**

1. Contingent upon Closing, the Property Owner will convey the Parkland Property to the City for immediate transfer to JCPRD. The purchase price, to include closing costs, as estimated on the Sources and Uses of Public Funds attached as **Exhibit B**, will be paid by the City from the proceeds of the GO TIF Bonds. The purchase price will be subject to final agreement between the Property Owner and the City and shall not exceed the value determined by a third party appraisal obtained by the City. Title to the Parkland Property shall be subject to restrictions in such form and content as approved by the Property Owner, the Governing Body and JCPRD to insure the continuing use of the Parkland Property as a public park, to prohibit certain uses disruptive to the surrounding community, and requiring ongoing maintenance by JCPRD generally consistent with public parks owned and maintained by JCPRD of a similar size and purpose. The City’s obligation to implement the financing for and the acquisition and transfer the Parkland Property shall be contingent upon the approval of the foregoing restrictions, as well as the plan for final park design (“Park Plan”) described in paragraph 3 hereof, by the Governing Body of the City. The documents implementing the restrictions shall include provisions satisfactory to the Governing Body of the City relating to City approvals to be required for any future changes in the Park Plan or to use restrictions.

2. Subject to paragraph 1, immediately upon receipt, the City will transfer the Parkland Property to JCPRD and JCPRD will accept such transfer subject to the restrictions referred to in paragraph 1.

3. JCPRD will develop the final park design in accordance with its standard procedures, including public input, and in consultation with the Governing Body and the Property Owner. Property Owner shall work with JCPRD to develop a park planning schedule that is coordinated with the private development schedule. If park planning is commenced before Closing at JCPRD expense, it shall be reimbursed from TIF Bond proceeds at Closing. At Closing the JCPRD will complete final park design and begin construction of Parkland Property improvements using the funding identified on the attached Sources and Uses of Public Funds.

4. The Parkland Property will be subject to construction and utility easements and temporary and permanent easements in favor of the Property Owner, City and JCW for the City public rights of way, City drainage improvements, JCW sewer improvements and other City or JCW public infrastructure improvements which will be located on the Parkland Property. To the extent not created prior to Closing, JCPRD will convey such easements without cost upon request. After initial development is complete, future easements will be negotiated as necessary on Parkland Property.

5. The Parkland Property shall have a Code of Regulations consistent with other JCPRD parks and enforced by the Johnson County Park & Recreation District Park Police.

### **City Provisions**

6. The City will consider, in accordance with its standard procedures, Property Owner's zoning and preliminary plan application for zoning, planning and preliminary platting of the Retained Private Property for the Private Mixed Uses.

7. In accordance with K.S.A. 12-1770 *et seq.*, as amended, (the "**TIF Act**"), the City will prepare or obtain a conservation study and a TIF district plan, and will thereafter consider creation of a TIF district which will contemplate multiple TIF project areas. The TIF district will include the MCC Property and, as separate future project area or areas, the commercial properties south of the MCC Property along 95th Street (the "**TIF District**"). Also provided the parties agree that the TIF Bonds will not be issued until the Closing events and conditions (which will further be delineated in the formal development agreement) have been met.

8. The City will prepare a TIF project plan (the "**TIF Project Plan**") for the MCC Property ("**Project Area 1**") in accordance with this Memorandum of Understanding which will call for full property tax increment financing as allowed by the TIF Act for a period of 20 years from the adoption of the TIF Project Plan (the "**TIF Revenue Calculation**"). To the extent permitted by the TIF Act, the incremental property taxes in Project Area 1 will be calculated exclusively with reference to the Project Area 1 base year property taxes. The Project Area 1 incremental property taxes will not be used for the payment of costs of any TIF project plan in any other project areas of the TIF District without the prior written consent of the City, and, as long as the SO Bonds are outstanding, the Property Owner. The Parties shall not have any liability or responsibility for the acts, omission or success of the owners of any other project areas within in the TIF District.

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14. Concurrently with the TIF process described herein, the City shall advance for consideration and approval by its Governing Body a transient guest tax (“TGT”). The TGT rate is anticipated to be 9% of room rentals and proceeds from the TGT attributable to the Private Mixed Uses (the “MCC TGT Revenues”). The first \$25,000 per annum of the MCC TGT Revenues shall be retained by the City and used in its discretion for public events and activities at the Parkland Property, subject to written approval of JCPRD. The balance of the per annum MCC TGT Revenues shall be split on a 50-50 basis between the GO TIF Bonds and the SO TIF Bonds to pay principal and interest debt service.

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- (a) A cash payment of \$248,573 by the Developer, or, if acceptable to JCW, the principle sum of \$248,573, together with interest and costs, financed by Special Benefit District Bonds for Single Family, which shall have no repayment or credit risk to the City or JCPRD.
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## **Miscellaneous**

21. Final development agreements will establish the improvements, off site requirements, impacts fees and standard building permit fees and connection fees to be imposed and required for the matters contemplated herein.

22. The City, JCW and JCPRD (the “**Public Parties**”) acknowledge that the Property Owner will use private financing to fund the Private Mixed Uses and that the Public Parties will not impose restrictions on such private financing or the pledge of the Retained Private Property to secure such private financing; except any charges, assessments, or liens arising from public improvements or services provided to or for the property.

23. The City and the Property Owner will negotiate by separate development agreement restrictions on transfer by Property Owner of any of the Retained Private Property prior to completion of the Private Mixed Uses, provided that no part of the Retained Private Property may be transferred to public, tax-exempt or non-profit entities without prior City approval unless a payment in lieu of taxes covenant is negotiated between the City and Property Owner that provides no *ad valorem* tax exemption benefit to such entities and the City receives an opinion from bond counsel that such arrangement does not impact the exclusion of interest on the TIF Bonds for federal income tax purposes.

24. The Parties agree that all incentive revenues set forth herein shall be authorized for use in funding eligible project costs or fees not otherwise prohibited by state law.

25. The Parties agree that the development agreements, land purchase agreements and deeds referenced herein will contain standard title, engineering and environmental due diligence provisions for all parcels set forth herein; the parties further agree to consider and negotiate in good faith modifications to this Memorandum which are in the best interest of the MCC Project and in keeping with the original scope and vision thereof. The foregoing notwithstanding, the Parties acknowledge and agree that the Governing Bodies of the Public Parties have final authority, in their sole and absolute discretion, to approve all agreements referred to herein to which each is a party.

26. The Parties will work in good faith to coordinate construction management and contracting for improvements herein that may overlap or conflict.

27. The Parties agree that the Parkland Property will require normal maintenance operations and will host special events that may produce some noise and/or inconvenience to

residents. The Property Owner will make residents aware of such possibilities in marketing literature, HOA documents, etc.

28. This Memorandum is intended as a basis for the negotiation and approval during the Cooperation Period of multiple development agreements and other final agreements between and among two or more of the Parties, subject to all applicable public proceedings and approvals. This Memorandum is not a binding agreement and is presented and executed merely to signal the intent of the Parties hereto to consider the matters outlined herein in good faith, to schedule necessary public hearings and hold public meetings as required by law, and to perform such other due diligence as is desirable. The Parties understand and agree that all of the matters provided for in this Memorandum are subject to and conditional upon multiple additional corporate and public procedures, hearings and approvals as required by law.

29. This Memorandum shall remain in effect until December 31, 2015 (the “**Termination Date**”) and shall terminate upon the earlier of the Closing or the Termination Date.

30. This Memorandum shall not become effective until the date upon which it is approved and executed by all of the Parties (the “**Effective Date**”).

***[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]***



**VANTRUST REAL ESTATE, LLC,**

a Kansas limited liability company

By: \_\_\_\_\_  
Print Name and Title  
Date Executed:

**THE CITY OF PRAIRIE VILLAGE, KANSAS**  
a municipal corporation organized and existing  
pursuant to the laws of the State of Kansas

By: \_\_\_\_\_  
Laura Wassmer, Mayor  
Date Executed:

Attest:

\_\_\_\_\_  
Joyce Hagen Mundy  
City Clerk

Approved as to Form:

\_\_\_\_\_  
Catherine P. Logan City Attorney

**JOHNSON COUNTY PARK & RECREATION  
DISTRICT**

a body corporate organized and existing pursuant to  
the laws of the State of Kansas

By: \_\_\_\_\_  
Print Name and Title  
Date Executed:

Attest:

\_\_\_\_\_  
Print Name and Title

Approved as to Form:

---

JCPRD Attorney

**JOHNSON COUNTY WASTEWATER**  
a department of Johnson County Kansas

By: George Schlagel, Chair  
Johnson County Park & Recreation District Board  
of Commissioners  
Date Executed:

Attest:

---

Print Name and Title

Approved as to Form:

---

JCW Attorney



# Meadowbrook Park Neighborhoods

Legend	
Meadowbrook Park:	94.18 Ac
Trails:	3+ Miles
Neighborhood Area:	42.19 Ac.

# Sources and Uses of Public Funds

	Estimated Low	Estimated High
<b>SOURCES</b>		
Net GO TIF Bond Proceeds (Property Tax/TGT)	\$8,500,000	\$9,500,000
Net SO TIF Bond Proceeds (Property Tax/TGT)	\$5,800,000	\$7,000,000
IRB Sales Tax Exemption Value/Developer Contribution	\$1,000,000	\$1,700,000
<b>Total Sources</b>	<b>\$15,300,000</b>	<b>\$18,200,000</b>
<b>USES</b>		
Parkland Acquisition	\$5,500,000	\$7,000,000
Park Improvements (lakes, landscaping, trails, club house, design)	\$5,000,000	\$6,000,000
Public Streets	\$1,400,000	\$1,800,000
Public Infrastructure (sewer, storm water, utilities, street lighting, contingency)	\$2,000,000	\$4,000,000
Allowance to balance estimated low*	\$1,500,000	
<b>Total Uses</b>	<b>\$15,300,000</b>	<b>\$18,800,000</b>

\*This amount recognizes that not all uses will be at their estimated lows.

**COUNCIL COMMITTEE OF THE WHOLE**  
**June 15, 2015**

The Council Committee of the Whole met on Monday, June 15, 2015 at 6:00 p.m. in the Council Chambers. The meeting was called to order by Council President Brooke Morehead with the following members present: Mayor Laura Wassmer, Ashley Weaver, Jori Nelson, Ruth Hopkins, Steve Noll, Eric Mikkelson, Andrew Wang, Sheila Myers, Brooke Morehead, Dan Runion, David Morrison, Ted Odell and Terrence Gallagher. Staff Members present: Tim Schwartzkopf, Chief of Police; Keith Bredehoeft, Public Works Director; Katie Logan, City Attorney; Quinn Bennion, City Administrator; Wes Jordan, Assistant City Administrator; Nolan Sunderman, Assistant to the City Administrator; Lisa Santa Maria, Finance Director and Joyce Hagen Mundy, City Clerk. Also present was Jeff White with Columbia Capital, the city's financial advisor.

**COU2015-26 Consider recommendation of hiring Gould Evans to provide Planning Advisory Services for the City of Prairie Village**

Wes Jordan stated the City's current City Planning Consultant is retiring effective July 10<sup>th</sup>. The City of Prairie Village prepared and issued a Request for Qualifications on April 23, 2015, to elicit responses from interested parties with demonstrated experience in providing Planning Advisory Services to Municipalities. A Selection Committee was appointed by Mayor Wassmer to represent the Governing Body, the Planning Commission, and City Staff. Those members included Mayor Wassmer, Councilman Mikkelson, Ron Williamson (current City Planning Advisor who is retiring), Quinn Bennion (City Administrator), and Wes Jordan (Assistant City Administrator).

The Selection Committee interviewed the following respondents who had submitted documentation substantiating their qualifications to perform the services as identified in the Scope of Services: Gould Evans, Vireo, and Confluence. After completing the interviews and review of qualifications, the Selection Committee agreed that Gould Evans' proposed work team, municipal experience, and fee structure best suits the needs of our community and recommends approval by the Governing Body.

The Scope of Services includes, but not limited to, the following variety of planning issues that may need to be addressed on a day-to-day basis:

- Provide a general planning advisory service consisting of the review of applications and the preparation of staff reports and the provision of advice regarding planning, zoning/appeals, and subdivision matters.
- Prepare special studies, surveys, designs and reports which may include zoning, subdivision, parks, redevelopment, utilities and other matters in the field of planning.
- Attend regular monthly meetings of the Prairie Village Planning Commission and Board of Zoning Appeals. Also attend Council Committee and City Council meetings as needed.
- Provide GIS/AIMS mapping as needed.

Chris Brewster and Graham Smith from Gould Evans were present and introduced themselves reviewing their experience and background. Mr. Brewster will be the primary contact. Mr. Jordan noted that Mr. Brewster had worked with Dennis Enslinger on previous city issues and was familiar with the city's zoning code and comprehensive plan as well as having a law degree. Mr. Evans is the head of the planning group for Gould Evans working more with long range planning and comprehensive plans.

The City also agrees to compensate Gould Evans for performing services as outlined for a compensation rate not to exceed \$115.00 per hour. [It should be noted the primary project manager assigned to Prairie Village will bill at a lower rate (\$104.00) per hour and other primaries with a higher billing rate agreed to a lower blended rate of \$115.00 per hour as needed.] It is also understood that City Staff can establish other rates for special projects. The agreement is negotiated to a 3-year renewable contract with a rate increase cap to not exceed 3% on an annual basis.

Ted Odell made the following motion, which was seconded by Ashley Weaver and passed unanimously:

**RECOMMEND THE CITY COUNCIL APPROVES AN AGREEMENT  
BETWEEN THE CITY OF PRAIRIE VILLAGE AND GOULD EVANS  
TO PROVIDE PLANNING ADVISORY SERVICES AS SPECIFIED.  
COUNCIL ACTION TAKEN  
6/15/2015**

**COU2015-27 Consider Approval of a Memorandum of Understanding with Van Trust Real Estate, Johnson County Park & Recreation District and Johnson County Government for the redevelopment of Meadowbrook property.**

Quinn Bennion noted the Meadowbrook redevelopment project continues to advance in discussion and process. This is a unique opportunity for Prairie Village that will require the commitment of significant time and resources. The proposed Memorandum of Understanding outlines the general structure of the redevelopment and identifies the general responsibilities for each of the four entities. The MOU is a good faith document that furthers the discussion and considerations of each of the entities involved in the redevelopment of the Meadowbrook property, providing guidance as the project moves forward.

Present at the meeting were representatives of participating bodies; Jill Geller with Johnson County Park & Recreation District, Justin Duff and Rich Muller with Van Trust Realty and Jeff White with Columbia Capital, the city's financial advisor.

The Memorandum of Understanding includes items and considerations shared during the public open houses in March and with the Council during public meetings. The Sources and Uses document includes a range of sources of revenue and proposed uses for the public funds. The estimates of the funding will be refined as part of the development agreement.

In summary, the City of Prairie Village agrees to pursue:

- 1) Drafting of a development agreement with Van Trust that further outlines the details of the commitments of both parties
- 2) Creating a Tax Increment Financing (TIF) district, district plan, project area and project plan
- 3) Issuing TIF bonds for identified public project uses (general obligation and special obligation)
- 4) Considering rezoning of the property to Mixed Used Development
- 5) Purchase the parkland property (approximately 88 acres)
- 6) Transfer the parkland property to JCPRD
- 7) Issue industrial revenue bonds (IRBs) with the sole purpose of providing a sales tax exemption for construction of the three largest components with the funds contributed to the public project
- 8) Consideration of implementing a transient guest tax, in part, to benefit the project

Dan Runion asked for further clarification on #12 in the MOU which states that annual tax increment revenues from Project Area 1 shall be split on a 50-50 basis between the GO TIF Bonds and the SO TIF Bonds to pay principal and interest debt service.

Jeff White, with Columbia Capital, responded the concept is to have as much of a 50-50 split as possible. The City is issuing the bonds because of the benefits of its excellent Aaa bond rating. He noted the TIF needs to project for a 20 year revenue stream. The city is supportive of the purchase of additional parkland and would have had to issue bonds to do so. The developer has agreed to purchase the bonds. The 50-50 split is not an industry standard but a negotiated agreement between the city and the developer.

Dan Runion asked if the cost of issuance and closing costs for the bonds were known at this time. Mr. White responded that they were not; however, the General Obligation Bonds will have lower costs than the Special Obligation TIF bonds. The typical range is 2 - 3%.

Mr. Runion noted that in #8 it references written consent of the City whereas in #19 the reference is to the Governing Body. Katie Logan stated both instances call for "Governing Body" approval.

Eric Mikkelson noted that the City is purchasing the property and giving it to the County and asked who would ultimately determine what features are placed in the park. He questioned if as a City it was desirable to have oversight on the park usage and development. He noted the city's view of the park's identity may differ from that of the County. Mr. Mikkelson suggested that attached to the agreement are conceptual perimeters for the development of the Park land.

Jill Geller, with Johnson County Park & Recreation District, noted that any planning for the park will be a public process. The District would agree to present to the City their ideas for development for city comments.

Mr. Mikkelson would like to see agreement on the general concepts and any additional changes require mutual consent of the city. Quinn Bennion stated he would anticipate that the city would have restrictions.

Rich Muller, with Van Trust Realty, noted the developer also has significant interest in how the park land is developed as it impacts their project. This could be specifically addressed in the development agreement.

Sheila Myers noted this project is new to her and that she had several questions. She asked why the City was issuing the TIF and not the County. Mr. Bennion responded that only the city has the ability to establish a TIF District. Mrs. Myers questioned why the city is going into debt for the purchase of the park land and subsequently giving it away to the County. Mr. Bennion responded the Park District operates and maintains other parks of this size and scope. This is beyond what the city is capable of maintaining. Mrs. Myers asked why the land couldn't be donated to the city by the developer. Mr. Bennion responded the developer has not agreed to a donation and the developer will donate right of way and land to the city for the necessary roadway. Mrs. Myers questioned how a property that had no improvements made to it in five years increase in value to the degree this property has.

Mrs. Myers asked about the exclusion agreement with Johnson County Wastewater. Mr. Bennion noted this is between the developer and Johnson County Wastewater and does not involve the city.

Rich Muller clarified the agreement with Johnson County Wastewater and noted that there has been significant investment made to this property. He noted that both the city and the developer are stepping up to make the development of this property possible with both assuming some risk.

Mrs. Myers confirmed that the multi-family structure and the hotel will be built by Van Trust. She questioned the use of a sales tax exemption. Mr. Muller replied the value of the sales tax exemption would be contributed to the park project at the completion of the project. Mrs. Myers asked why Industrial Revenue Bonds were being issued. Katie Logan responded that they are required by the state of Kansas to use the tax exemption. The transient tax was discussed and it was noted the first \$25,000 would go to the city with the balance being used to pay off bonds.

Mrs. Myers asked why the city was entering into a non-binding agreement. Mr. Muller stated it is desired to set the ground rules for the development of formal agreements to follow.

Ted Odell made the following motion, which was seconded by Ashley Weaver:

**MOVE THE CITY COUNCIL APPROVE A MEMORANDUM  
OF UNDERSTANDING (MOU) WITH VAN TRUST REAL  
ESTATE, JOHNSON COUNTY PARK & RECREATION**



**DISTRICT AND JOHNSON COUNTY GOVERNMENT FOR  
THE REDEVELOPMENT OF THE MEADOWBROOK PROPERTY**

Dan Runion asked for further clarification on the special obligation bonds. Jeff White stated the special obligation bonds do not have any backing from the city.

Eric Mikkelson asked Mr. Odell to consider an amendment to make the language in #8 and #19 consistent in its reference to the consent of the Governing Body and that a park plan would be attached to the agreement with any deviation from that plan requiring the approval of the City. He also noted a few typographical errors.

Ted Odell made the following amended motion with Ashley Weaver agreeing to the amendment and seconding the motion:

**MOVE THE CITY COUNCIL APPROVE A MEMORANDUM  
OF UNDERSTANDING (MOU) WITH VAN TRUST REAL  
ESTATE, JOHNSON COUNTY PARK & RECREATION  
DISTRICT AND JOHNSON COUNTY GOVERNMENT FOR  
THE REDEVELOPMENT OF THE MEADOWBROOK PROPERTY  
WITH THE LANGUAGE IN #8 AND #19 BE CONSISTENT IN ITS  
REFERENCE TO THE CONSENT OF THE GOVERNING BODY AND  
THAT A PARK PLAN BE ATTACHED TO THE AGREEMENT WITH  
DEVIATIONS FROM THAT PLAN REQUIRING THE APPROVAL OF  
THE CITY.**

**COUNCIL ACTION REQUIRED**

The motion passed by a vote of 11 to 1 with Sheila Myers voting in opposition.

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

Keith Bredehoeft, Public Works Director, began with a brief review of the current 2015 CIP Projects including work on 8 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 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 2014, 10% of residential streets had a rating of poor with the 2015 rating having 10% of residential streets rated poor with 12% rated fair (an increase of 3% over 2014).

Jori Nelson asked what streets would be added to the program based on the low bid for the Paving Program. Mr. Bredehoeft responded that until they actually begin construction they are not able to know the level of repair needed and if additional funding would be available to add streets to the program.

Terrence Gallagher asked how sidewalk work was prioritized. Mr. Bredehoeft responded that sidewalks are reviewed annually based on established criteria with the work done through the concrete repair program. Mr. Gallagher asked if the school routes were taken into account on the determination. Mr. Bredehoeft responded that if the city is made aware of a problem area it can be moved up into the program.

Melissa Prenger, Project Manager reviewed a map of the city reflecting the locations of the poor and fair rated streets was presented as well as a chart reflecting typical pavement deterioration curve. She 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. The average cost to rehabilitate one mile of street is \$1 million.

**Recommended Parks Program - \$1,003,000**

The 2016 Parks Program includes the following projects:

• Park Infrastructure Reserve	\$ 120,000
• Taliaferro Park	\$ 60,000
• Bennett Park	\$ 60,000
• Porter Park	\$ 145,000
• Windsor Park	\$ 118,000
• Pool Pipe Repair	\$ 100,000
• McCrum Park Tennis Courts	\$ 100,000
• Tomahawk Trail	<u>\$ 300,000</u>
Total	\$1,003,000

Brooke Morehead confirmed that the Tomahawk Trail would be constructed with CID funds. Ashley Weaver asked when this was projected to be done. Mr. Bredehoeft responded it would be done with next summer and could be constructed with the 2016 Street projects.

David Morrison stated he would like the city to look at alternative surface options for the construction of the Tomahawk Trail that are more user- friendly.

Ruth Hopkins asked if the skate park was still well used. Mr. Bredehoeft replied it is used regularly. Terrence Gallagher asked what the problems were with the skate park. Mr. Bredehoeft stated the concrete used for construction of the skate park used a limestone that has not held up well, similar problems were experienced with streets using that aggregate throughout the metro area. Mr. Gallagher asked if the work would involve repairing or replacing the facility. Mr. Bredehoeft replied he is looking at a removal and total reconstruction. The facility has been examined by concrete representatives who felt that it could not be satisfactorily repaired.

David Morrison suggested that the city look at getting compensation from the contractor for the failure of the concrete. Mr. Bredehoeft the problem was not caused by the contractor who built the facility, but with the composition of the concrete containing

limestone that was being used at that time. Quinn Bennion noted the required performance bonds for the project are only valid for a two year period.

**Recommended Drainage Program - \$1,120,000**

Public Works Director Keith Bredehoeft noted this program is totally funded by the stormwater utility fee. No new funds have been added to the water discharge program. The city has received the draft report from Larkin on the proposed Delmar/Fontana Drainage Project. The 2016 budget includes funds for design with construction budgeted in 2017.

Council President Brooke Morehead recessed the Council Committee of the Whole meeting until after the conclusion of the regularly scheduled City Council meeting.

Council President Brooke Morehead reconvened the Council Committee of the Whole meeting at 8:45 p.m.

The 2016 Drainage Program includes the following projects:

- Delmar & Fontana Drainage Channel \$ 580,000
- Delmar & Fontana Warning System \$ 150,000
- Drainage Repair Program \$ 390,000
- Total \$1,120,000

Keith Bredehoeft noted the Reinhardt project discussed previously will be included with the Drainage Repair Program and will be done with drainage funds.

**Recommended Streets Program - \$3,694,521**

Mr. Bredehoeft noted the 2016 budget does not include any additional funding of the traffic calming program. There are funds remaining to handle any possible requests

The 2016 Streets Program includes the following projects:

- Paving Program 2,099,521
- Overland Park UBAS Overlay 520,000
- Mission Road - 71<sup>st</sup> to 75<sup>th</sup> (CARS) 1,000,000
- Mission Road - 75<sup>th</sup> St. to 83<sup>rd</sup> (CARS) 75,000
- Total \$3,790,425

**Recommended Buildings Program - \$630,000**

The City Hall roof project has already bid and it has been determined that this needs to be a larger project and has been included in the 2016 CIP. Ruth Hopkins asked if solar installations were being considered. Mr. Bredehoeft replied not at this time. Jori Nelson stated that she would like to city to consider solar panels. Eric Mikkelson felt the city needed to at least investigate the option.

Keith Bredehoeft noted the City Hall/PD Entrance was removed from an earlier budget and is in need of significant brick and concrete maintenance. This project was place back in the CIP in 2015. The work also needs to be done to better meet ADA

accessibility requirements. In 2009 an RFP was done for the replacement of stone and for better ADA access to City Hall and the police facility.

The 2016 Buildings Program includes the following project:



Mayor Wassmer asked if the City had received complaints about the entrances. Mr. Gallagher stated he had more concern with the number of ADA parking spaces. Quinn Bennion noted that the current ADA accessible entrances the north door into City Hall and a rear entrance door located behind the building for access to the police department. These are inconvenient and difficult to find.

Ruth Hopkins asked about the condition of the entrance. Mr. Bredehoeft responded the brick is deteriorating significantly .

Ted Odell asked if it would be possible to continue this to the next meeting. He did not feel he had sufficient information to prioritize the proposed work to the skate park or city hall entrance project.

Keith Bredehoeft also noted the proposed budget includes for the siding and windows for Public Works Building G. The city has received complaints from the adjacent property owners.

**Recommended Other Programs - \$725,000**

The 2016 Other Program includes the following projects:



One half of the ADA funds go towards construction of ADA ramps. Some of the concrete repair funds will be used for concrete repair of the fuel island at Public Works. The concrete repair funds will also be used for new sidewalk on Roe connecting Franklin Park to Meadowbrook. This will be an 8' sidewalk.

Ted Odell recommended that in the reconstruction of the skate park consideration is given to a permanent stage area.

David Morrison questioned the construction of 8' sidewalks noting previous discussion opposing them. Mr. Bredehoeft noted that was for sidewalks along Somerset. Jori Nelson did not feel this was a busy area for sidewalk travel. Mayor Wassmer stated this is an important segment of sidewalk to complete trail access from the Prairie Village Shops all the way to 95<sup>th</sup> Street. Mr. Mikkelson agreed with Mayor Wassmer in that this is an important step for the future and suggested the possibility of using TIF funds for this as they fringe the Meadowbrook development area as a source of alternative

funding. Mayor Wassmer asked how likely it would be to extend the TIF area. Katie Logan replied that is a modification that allows for this to be done; however, the bigger issue is how much can be funded out of the TIF and how it would affect the available financing.

Mr. Gallagher asked if Meadowbrook was not yet developed if it made sense to construct the sidewalk in 2016. Sheila Myers suggested that if this project was not done if the funds could be used for the Mission Road 71<sup>st</sup> to 75<sup>th</sup> project. Mayor Wassmer asked if there was any benefit in moving these funds to 71<sup>st</sup> & Mission Road project. Mr. Bredehoeft these funds could be transferred if needed.

Jori Nelson asked when the park was expected to be completed. Quinn Bennion stated the bonds are being issued in 2016. It is the Park District's intention to construct the park in 2016. It is fairly likely that it will be constructed by the fall of 2016.

David Morrison stated he didn't remember the City Council voting to approve 8' sidewalks on Mission Road. Ruth Hopkins stated if walkability is an issue, she felt it would be a mistake to pull out. Eric Mikkelson stated he would like to see the sidewalk constructed. However, he would like to get more information on the TIF options or the possible donation of the sidewalk. David Morrison suggested completing grant walk ability applications.

Mr. Bredehoeft stated would like to see a projected working scenario in place for planned street repairs. At the current funding level, a street that falls in the worst category in 2015 could not be addressed for six years.

Mr. Bredehoeft stated \$3 million per year in the paving program is needed to maintain 100 miles of residential and collector streets in the City. He noted an increase in 2016 of 1.75 mills would result in an additional \$500k and that with the expiration of bond payments in 2022 an additional \$500k would become available. With the recommended step funding, streets falling into the poor & fair category have the potential to be addressed in two to three years.

The proposed General Fund Transfer to CIP is \$4.09M due to no transfer being made to the Equipment Reserve Fund.

The proposed 2016 CIP funding is from the following sources:

• Transfer from General Fund	\$4,091,021
• Transfer from Special Highway Fund	\$ 570,000
• Transfer from Stormwater Utility Fund	\$1,000,000
• Transfer from Special Park & Rec Fund	<u>\$ 160,000</u>
Total	\$4,879,425
• Prior Year CIP funding	\$ 551,500
• Funding from CARS and Federal Funds	<u>\$ 800,000</u>

**CIP TOTAL**

**\$7,172,521**

Ruth Hopkins confirmed the 2016 CIP include the Fontana/Delmar Project at the same funding level as previously proposed.

Ted Odell stated that he is not supportive of a mill levy increase without more information, particularly regarding the skate park and municipal building entrance.

Jori Nelson stated it would be wrong to increase the mill levy with other governmental entities increasing their mill levies. She felt the city should focus on the 53 poor streets and not the entire 119 fair/poor rated streets.

Eric Mikkelson stated that he does not support a tax increase. He is not convinced that 20 miles of fair to poor roads is a bad thing and feels the city needs only to focus on roads rated poor.

Mayor Wassmer noted that once roads reach the fair/poor rating they are significantly more costly to repair. She believes that increasing funding to get to the point where the city is able to keep most streets at a level that does not require costly total rehabilitation.

Mr. Mikkelson stated he is skeptical that the cost of multiple minor treatments would not be the same as waiting and doing rehabilitation. Andrew Wang agreed and stated he needed to see the math to rationalize the increase.

Mayor Wassmer asked to see a scenario of new road costs to maintain if kept in the good category vs. a new street that is allowed to fall into the poor rating and require rehabilitation. She would like to see the cost of delay quantified.

Keith Bredehoeft noted that the city is not dealing with new streets. Its' streets are 40 to 50 years old. We are at a point in time when streets are old and their condition is dropping off more quickly. He wants to be able to respond to these drops in a reasonable time, not the current six to eight years. Until you actually begin construction, the depth of pavement rehabilitation and cost of rehabilitation cannot be determined. He views the biggest indication of a street condition is how the residents feel about the streets in their neighborhood.

Mayor Wassmer stated residents do care about streets. The city has raised taxes for safety and infrastructure in the past without complaints from residents. She does not view funding for streets as frivolous. She does not want to do nothing now and later be required to do a major tax increase to cover greater repair costs. Residents can better handle a few small increases than to adjust to a major tax increase caused by not addressing problems in a timely manner.

Dan Runion asked if the city was getting more for its expenditure of funds on rehabilitation than on repair/maintenance. Mr. Bredehoeft responded there is not an exact number. Improvements done are only going to be as good as the street being serviced. . On older streets generally more significant repairs are needed; however, it

is difficult to determine the exact need until the work has begun. Mr. Runion asked where dollars spent are most effective. Mr. Bredehoeft replied it depends on the condition of the street.

Sheila Myers asked what the cost per household would be for the proposed increase. Mr. Bredehoeft responded a little over \$40 per year per household.

David Morrison asked staff for an estimate of how much more revenue would be brought in because of raised property values. Lisa Santa Maria stated without the mill levy the increase in revenue is estimated to be \$89,000.

### **Economic Development Fund**

Lisa Santa Maria stated this fund was funded initially from the city's share of a county special sales tax for schools. There is no source of revenue for this fund other than investment income on the balance. The projected Fund Balance as of 1/1/2016 is \$1,879,029. The only revenue is interest on investments which is projected to be \$12,000 for 2016.

The 2016 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**

Jori Nelson stated that she wants to see the Exterior Grant Program opened up to all Prairie Village residents with the application based on financial need.

Ruth Hopkins noted the program was established to encourage identified areas of the city to make improvements to their property. Mr. Odell stated he would be happy to take any Council member on a field trip of the identified areas where there is a very high need. There is not enough funding available to expand the program areas. Dan Runion stated there is a high correlation between the geographic area and qualifiers.

Eric Mikkelson stated he would concede that Ward 6 has the most properties in need of repair; however, he feels a cap on the income and property value qualifier would provide opportunity for others to benefit.

Laura Wassmer reminded Council to be mindful of the amount of time that would be taken from staff in the administration of this program with verifying established qualifiers. The program was set up to happen with minimal staff time for administration. Jori Nelson felt that if the qualifiers were clearly identified, unqualified individuals would not apply.

Andrew Wang stated that when you start talking about home values and income you are dealing with very arbitrary factors that would require significant staff time. The code violations are a solid indicator of need.

David Morrison does not support income qualifiers but does support the opportunity for everyone to participate in the program noting there are homes in Ward 5 with repeat code violations.

Quinn Bennion stated the focus tonight is on the budgeted amount for the program. Potential changes in the program can be discussed at a later date if necessary.

Terrence Gallagher stated the program has been validated over the past years and it is not isolated in one ward. It covers areas where there is need for improvement to match the requirements of Prairie Village. This is a situation where something needs to be done and he would like to see the amount budgeted for the program increased.

Jori Nelson stated homes in each ward should be able to participate.

Ted Odell stated that this program has demonstrated its success as established and should be continued as such.

Eric Mikkelson stated the program as setup rewards chronic violators of property maintenance codes.

Eric Mikkelson moved to approve the expenditure of \$50,000 for the Exterior Home Grant Program. The motion was seconded by Steve Noll and passed by a majority vote.

## **ADJOURNMENT**

With no further business to come before the Council Committee of the Whole, Council President Brooke Morehead adjourned the meeting at 10:30 p.m.

Brooke Morehead  
Council President





## POLICE DEPARTMENT

Council Meeting Date: July 6, 2015

### COU 2015-28: CONSIDER APPROVAL OF COMMUNICATIONS REMODEL PROJECT BIDS

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#### RECOMMENDATION

Staff recommends the approval of the bid from Xybix Systems and Commenco for the Communications Remodel project. (see attached quotes from Xybix Systems and Commenco).

COUNCIL ACTION REQUESTED ON:

July 6, 2015

#### SUGGESTED MOTION

I move approval of the bids from Xybix Systems for \$30,194.19, and Commenco for \$14,300.00, with a project cost not to exceed \$50,000.00.

#### BACKGROUND

The Police building is 19 years old and the Communications Center has the original consoles and configuration. Four vendors were called from the MARC Cooperative Bid List. Three responded:

Xybix - \$30,194.19

Evans - \$35,116.00

Watson - \$41,120.00

Xybix has done work locally at Johnson County, OPPD, Liberty, and Leavenworth. The conceptual design was reviewed and approved by Communications Staff. Commenco is the current vendor approved by MARC for work on 911 equipment.

\$30,000.00 was approved in the 2015 budget, and \$20,000 was encumbered from the same line item in 2014.

FUNDING SOURCE

01-02-20-8009-000

#### ATTACHMENTS

1. Xybix quote, and
2. Commenco quote.

#### PREPARED BY

Tim M. Schwartzkopf  
Chief of Police  
Date: June 29, 2015

**Xybix Systems, Inc.**  
 8207 SouthPark Circle  
 Littleton, CO 80120  
 Phone:303-683-5656  
 Fax:303-683-5454  
 JudiJ



**Quote Number: 16675**

**Quote Date: 4/28/2015**

**Revision: A**

**Orig Create Date: 4/28/2015**

**Expires: 7/27/2015**

**Opp #: 0012225**

**Page: 1 of 3**

**Quote**

**Terms: 25% DEP;65% INSTALL;10% PUNCH**

<p><b>Quote To:</b>          Acct: PRAVILPRKS           Prairie Village Police Department          7710 Mission Road          Prairie Village KS 66208</p>	<p><b>Ship To:</b> Prairie Village Police Department          7710 Mission Road           Prairie Village          KS 66208</p>
<p>Rep Phone: 574-329-0200          Email:  <b>Sales Person: NEVCO WIRELESS</b>          Rep Phone: 515-299-0736          Email: jeff@nevcousa.com</p>	

4.28.2015 Drawing R0 jejk/s

PLEASE NOTE: OPTIONAL ITEMS ARE NOT INCLUDED IN THE TOTAL PRICE.

PLEASE CONTACT XYBIX TO HAVE ANY OPTIONAL ITEMS INCLUDED IN THE FINAL PRICE.

FREIGHT & INSTALLATION CHARGES WILL BE ADJUSTED ACCORDINGLY.

Xybix is not registered to collect sales tax in the state of KS, and any sales tax due on your transaction will need to be paid directly by you to your State agency (this is commonly referred to as USE Tax).

Line	Part Number	Description	Qty	U/M	List Ea	Disc%	DiscPrice	Net Price
1.00	12343.	Panel System Priced by the Linear Foot: Grade 2Fabric 12343-1-SS - 42-48in - 15 LF @ 150 12343-1-DS - 42-48in - 19 LF @ 203 12344-1-SS - 65in - 0 LF @ 202 12344-1-DS - 65in - 0 LF @ 281  Upper Tiles Fabric Color: TBD Grade 2 G2 Lower Tiles Fabric Color: TBD Grade 2 G2 Panel Trim Color: Black	1	1.0 EA	\$6,107.00	36	\$3,908.48	\$3,908.48
2.00	14486.	Adj. Table Worksurface - Dual Surface - Corner - 72L x 72R 10 RV-Cable Management Included	2	2.0 EA	\$1,848.00	47	\$979.44	\$1,958.88
2.01	15203	Anti-Microbial Laminate Upgrade <b>OPTIONAL qty2</b>	3	2.0 EA	\$600.00	47	\$318.00	\$636.00
3.00	11064LRG	ErgoPower X4+ Table Base - Large	4	2.0 EA	\$5,324.00	47	\$2,821.72	\$5,643.44
4.00	12757.	Monitor Mount - Rollervision - - 1HI - Corner - Dual Surface - 72L x 72R 10 RV - 12076 - Std VESA Monitor Mount Qty = 5	5	2.0 EA	\$2,758.00	47	\$1,461.74	\$2,923.48
5.00	12904	DataDock - Keyboard Surface Cable Organizer Cables Sold Separately	6	2.0 EA	\$393.00	47	\$208.29	\$416.58

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5.01	15196	Charge Only USB Upgrade for Datadock - Cables Sold Separately	7	0.0 EA	\$50.00	47	\$26.50	\$0.00
		<b>OPTIONAL qty 2</b>						
5.02	11677	Ext Cable USB Type A to Type A Panel Mount for Datadock Male/Female 5M (16.4')	10	16.0 EA	\$34.00	47	\$18.02	\$288.32
5.03	13166	Datadock - Panel Mount RJ-45 CAT6 Coupler	11	4.0 EA	\$53.00	47	\$28.09	\$112.36
5.04	11778	Ext. Monitor Cable 15' VGA High Quality Male/Female	12	10.0 EA	\$114.00	47	\$60.42	\$604.20
6.00	11792.	Power Bar - 10 Outlet	13	4.0 EA	\$135.00	47	\$71.55	\$286.20
6.01	14976	6 Outlet Power Strip 25'	14	1.0 EA	\$144.00	47	\$76.32	\$76.32
7.00	13171	Task Light - Trillium LED Kit - Climate Control	15	0.0 EA	\$628.00	47	\$332.84	\$0.00
		<b>OPTIONAL qty 2</b>						
7.01	12604MCC	Light - LED Status Indicator 56MM 3 HI Red-Yellow-Green-24VAC/DC For MyClimate	18	0.0 EA	\$1,050.00	47	\$556.50	\$0.00
		<b>OPTIONAL qty 2</b>						
8.00	15462	Dual Shelf Under Surface 19W x 9D - Metal	19	2.0 EA	\$254.00	47	\$134.62	\$269.24
9.00	14462	MyClimate Personal Climate Control With Forced Air Heat 1000W	20	0.0 EA	\$2,867.00	47	\$1,519.51	\$0.00
		<b>OPTIONAL qty 2</b>						
10.00	12033.	Return Worksurface - 36Wx36D	21	3.0 EA	\$410.00	47	\$217.30	\$651.90
11.00	15488-FT.	CPU Cabinet - ERGO ACCESS Under Work Surface 36Wx33D With Flip Top Hinge	23	1.0 EA	\$1,667.00	47	\$883.51	\$883.51
12.00	13641.	Drawer Pedestal - Fixed - Bookcase Left - 36W - 12-12 Drawers 22D -	24	1.0 EA	\$1,050.00	47	\$556.50	\$556.50
12.01	13641.	Drawer Pedestal - Fixed - Bookcase Right - 36W - 12-12 Drawers 22D -	25	1.0 EA	\$1,050.00	47	\$556.50	\$556.50
13.00	11519.	Rotating Resource Guide - Freestanding 36 in	26	1.0 EA	\$2,472.00	47	\$1,310.16	\$1,310.16
15.00	11765.	Bookcase - 12W-28H-22D - UnderWS NO Toekick	27	2.0 EA	\$605.00	47	\$320.65	\$641.30
17.00	10908.	Storage Cabinet - Locker 2Hi - 18W, 84H, 17D	28	4.0 EA	\$1,901.00	47	\$1,007.53	\$4,030.12



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19.00	10176	Cup Holder - Blk	29	2.0 EA	\$95.00	47	\$50.35	\$100.70
90.00	12356	Installers Kit	30	2.0 EA	\$-		\$0.00	\$0.00
99.00	OTHER	Other Charges & Services	31	1.0 EA	\$-		\$0.00	\$0.00

<b>Line(31) - Miscellaneous Charge -</b>	
Freight - PartTruck NonTaxable	\$1,350.00
Installation - Non-Taxable	\$2,990.00

<b>List Price Total</b>	<b>\$47,514.00</b>	<b>Lines Total:</b>	<b>\$25,854.19</b>
		<b>Line Miscellaneous Charges Total:</b>	<b>\$4,340.00</b>
		<b>Quote Total:</b>	<b>\$30,194.19</b>

**Note 1:**

All quoted taxes are estimated. Any applicable taxes, fees, permits, etc. must be added to this quote.

**Note 2:**

Where installation is listed on quote it is based in non-union labor and on one trip for installation only. Client is responsible for coordination of Technicians and other Vendors/Contractors. Waiting time will be charged at the rate of \$75 per man hour straight time and \$115 per man hour for OT plus subsistence expenses. Additionally, this quote is based upon a remodel in an existing space and/or new building - completely finished with a Certificate of Occupancy. Any project where the General Contractor is still on the job is subject to additional charges.

We appreciate this opportunity to provide this quote. Our goal is to substantially improve working conditions for your valuable staff. We look forward to meeting with you to review this proposal in detail. In the meantime please don't hesitate to call us with any questions.

# Commenco

4901 Bristol Avenue., Kansas City, MO 64129  
(816) 753-2166 FAX (816) 753-3688

Date 25-Nov-14 Prep by Gary Gray Sales person \_\_\_\_\_

Customer Prairie Village

Address \_\_\_\_\_

Requested by Tim Kobe

Phone # \_\_\_\_\_ Fax # \_\_\_\_\_

### Work Description

Remove 911 equipment from one of the dispatch positions.  
Once new furniture is installed, re-install all 911 equipment in customer installed furniture positions.  
This quote does not include pulling of new cat 5 cables.  
This quote includes ALL misc extension cables

### Summary Totals

Travel	\$300.00
Misc	\$0.00
Parts	\$750.00
Labor	\$4,468.80
Tax rate	0.000%
Tax Total	\$0.00
Total	\$5,518.80

Sincerely,

*Gary Gray*

Quote valid for 30 days.

Approval Signature: \_\_\_\_\_

Printer Name: \_\_\_\_\_

# Commenco

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(816) 753-2166 FAX (816) 753-3688

Date 25-Nov-14 Prep by Gary Gray Sales person \_\_\_\_\_

Customer Prairie Village

Address \_\_\_\_\_

Requested by Tim Kobe

Phone # \_\_\_\_\_ Fax # \_\_\_\_\_

## Work Description

Remove radio equipment from one of the dispatch positions.  
Once new furniture is installed, re-install all radio equipment in customer installed furniture positions.  
Assist in relocating video equipment and door control equipment.  
This quote includes All misc cables.

## Summary Totals

Travel	\$300.00
Misc	\$0.00
Parts	\$750.00
Labor	\$7,660.80
Tax rate	0.000%
Tax Total	\$0.00
Total	\$8,710.80

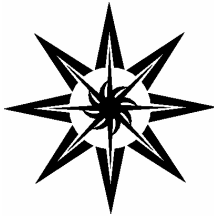
Sincerely,

*Gary Gray*

Quote valid for 30 days.

Approval Signature: \_\_\_\_\_

Printer Name: \_\_\_\_\_



## PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: July 6, 2015

Council Meeting Date: July 6, 2015

### CONSIDER CONSTRUCTION CONTRACT FOR THE 2015 PARKS PROJECTS

#### RECOMMENDATION

Move to authorize the Mayor to sign the construction contract with Primetime Contracting Corp for the 2015 Parks Projects for \$205,200.

#### BACKGROUND

This project includes work in Taliaferro and Bennett Parks.

Taliaferro Park will have a new nature play and sand area added between the existing play area and existing shelter. There will also be practice field improvements along with a new surface and backstop for the t-ball field. Bennett Park will have a new nature play area with play mounds and a walking path and a tricycle path.

On July 24, 2014, the City Clerk opened bids for the project. Three acceptable bids were received. The base bids were:

Primetime Contracting Corp.	\$191,898.50
Gunter Construction Co.	\$252,510.10
Cobra Construction LLC	\$230,000.00
Landscape Architects Estimate	\$204,949.60

The Landscape Architect has reviewed all bids and has recommended award of the low bid with the provision that the contract will be awarded for \$205,200. This award amount is based on the budget established for the 2015 Parks Projects and includes bid alternates such as the backstop for the t-ball field at Taliaferro and the trike path at Bennett.

#### FUNDING SOURCES

The funding is available in the CIP in the 2015 Parks Projects.

#### RELATION 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

1. Construction Agreement with Primetime Contracting Corp.

#### PREPARED BY

Melissa Prenger, Senior Project Manager

June 26, 2015

**CONSTRUCTION CONTRACT  
FOR  
PRAIRIE VILLAGE PARKS - 2015 IMPROVEMENT PROJECT**

**BETWEEN  
THE CITY OF PRAIRIE VILLAGE, KANSAS  
AND**

**THIS AGREEMENT**, is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the City of Prairie Village, Kansas, hereinafter termed the "City", and PRIMETIME CONTRACTING, 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 TWO HUNDRED & FIVE THOUSAND, TWO HUNDRED **DOLLARS** (\$ 205,200.00 ) 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 Project Manager 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:

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

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

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

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

**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 Project Manager that orders minor changes in the work, but which does not involve a change in the contract price or contract time.

**FIELD SUPERINTENDENT** shall mean the Public Works Field Superintendent of the City of Prairie Village or designee.

**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 Project Manager.

**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.

**PROJECT MANAGER** shall mean the person appointed by the Public Works Director for this project as named in the Special Conditions.

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

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

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

**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.

**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.

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

- 1.2 Whenever any word or expression defined herein, or pronoun used instead, occurs in these Contract Documents; it shall have and is mutually understood to have the meaning commonly given. Work described in words, which so applied have a well-known technical or trade meaning shall be held to refer to such, recognized standards.
- 1.3 Whenever in these Contract Documents the words "as ordered," "as directed", "as required", "as permitted", "as allowed", or words or phrases of like import are used, it is understood that the order, direction, requirement, permission or allowance of the Project Manager is intended.
- 1.4 Whenever any statement is made in the Contract Documents containing the expression "it is understood and agreed", or an expression of like import, such expression means the mutual understanding and agreement of the parties hereto.
- 1.5 The words "approved", "reasonable", "suitable", "acceptable", "properly", "satisfactorily",

or words of like effect in import, unless otherwise particularly specified herein, shall mean approved, reasonable, suitable, acceptable, proper or satisfactory in the judgment of the Project Manager.

- 1.6 When a word, term or phrase is used in the Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and, third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.
- 1.7 All terms used herein shall have the meanings ascribed to them herein unless otherwise specified.

## 2. ENTIRE AGREEMENT:

- 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 Project Manager of any inconsistency, ambiguity, error or omission, which the Contractor may discover, or should have discovered, with respect to these documents before proceeding with the affected Work. The review, issuance, or the express or implied approval by the City or the Project

Manager of the Contract Documents shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such review be evidence of the Contractor's compliance with this Contract.

- 3.6 The City has prepared or caused to have prepared the Project Manual. **HOWEVER, THE CITY MAKES NO REPRESENTATION OR WARRANTY AS TO ACCURACY OR FITNESS FOR PARTICULAR PURPOSE INTENDED OR ANY OTHER WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the City concerning such documents as no such representation or warranties have been made or are hereby made.
- 3.7 As between numbers and scaled measurements in the Project Manual, the numbers shall govern; as between larger scale and smaller scale drawings, (e.g. 10:1 is larger than 100:1) the larger scale shall govern.
- 3.8 The organization of the Project Manual into divisions, sections, paragraphs, articles (or other categories), shall not control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.
- 3.9 The Contract Documents supersedes all previous agreements and understandings between the parties, and renders all previous agreements and understandings void relative to these Contract Documents.
- 3.10 Should anything be omitted from the Project Manual, which is necessary to a clear understanding of the Work, or should it appear various instructions are in conflict, the Contractor shall secure written instructions from the Project Manager before proceeding with the construction affected by such omissions or discrepancies.
- 3.11 It is understood and agreed that the work shall be performed and completed according to the true spirit, meaning, and intent of the Contract Documents.
- 3.12 The Contractor's responsibility for construction covered by conflicting requirements, not provided for by addendum prior to the time of opening Bids for the work represented thereby, shall not extend beyond the construction in conformity with the less expensive of the said conflicting requirements. Any increase in cost of work required to be done in excess of the less expensive work of the conflicting requirements will be paid for as extra work as provided for herein.
- 3.13 The apparent silence of the Project Manual as to any detail, or the apparent omission from them of a detailed description concerning any point, shall be regarded as meaning that only the best general practice is to be used. All interpretations of the Project Manual shall be made on the basis above stated.
- 3.14 The conditions set forth herein are general in scope and are intended to contain requirements and conditions generally required in the work, but may contain conditions or requirements which will not be required in the performance of the work under contract and which therefore are not applicable thereto. Where any stipulation or requirement set forth

herein applies to any such non-existing condition, and is not applicable to the work under contract, such stipulation or requirement will have no meaning relative to the performance of said work.

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

#### 5. PROJECT MANAGER

- 5.1 It is mutually agreed by and between the parties to this Contract Agreement that the Project Manager 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 Project Manager shall, in good faith and to the best of its ability, determine the amount and quantities of the several kinds of work which are to be paid for under this Contract; that the Project Manager shall determine, where applicable, questions in relation to said Work and the construction thereof; that Project Manager shall, where applicable decide questions which may arise relative to the execution of this Contract on the part of said Contractor; that the Project Manager's decisions and findings shall be the conditions precedent to the rights of the parties hereto, to any action on the Contract, and to any rights of the Contractor to receive any money under this Contract provided, however, that should the Project Manager render any decision or give any direction which, in the opinion of either party hereto, is not in accordance with the meaning and intent of this Contract, either party may file with the Project Manager and with the other party, within thirty (30) days a written objection to the decision or direction so rendered and, by such action, may reserve the right to submit the question to determination in the future.
- 5.3 The Project Manager, unless otherwise directed or agreed to by the City in writing, will perform those duties and discharge those responsibilities allocated to the Project Manager as set forth in this Contract. The Project Manager shall be the City's representative from the effective date of this Contract until final payment has been made. The Project Manager shall be authorized to act on behalf of the City only to the extent provided in this Contract.
- 5.4 The City and the Contractor shall communicate with each other in the first instance through the Project Manager.
- 5.5 The Project Manager shall be the initial interpreter of the requirements of the Project Manual and the judge of the performance by the Contractor. The Project Manager shall render written graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.
- 5.6 The Project Manager will review the Contractor's Applications for Payment and will certify to the City for payment to the Contractor those amounts then due the Contractor as provided in this Contract. The Project Manager's recommendation of any payment requested in an Application for Payment will constitute a representation by Project Manager to City, based on Project Manager's on-site observations of the Work in progress as an experienced and qualified design professional and on Project Manager's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of the Project Manager's knowledge, information and belief, the quality of the Work is in accordance with the Project Manual (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Project Manual, to a final determination of quantities and classifications for Unit Price Work if such is called for herein, and to any other qualifications stated in the recommendation); and that Contractor is entitled to payment of the amount recommended. However, by recommending any such payment Project Manager will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to Project Manager in the Project Manual or that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by the City or the City to withhold payment to Contractor.

- 5.7 The Project Manager may refuse to recommend the whole or any part of any payment if, in Project Manager's opinion, it would be incorrect to make such representations to City. Project Manager may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in the Project Manager's opinion to protect the City from loss because:
- The Work is defective, or completed Work has been damaged requiring correction or replacement,
  - The Contract Price has been reduced by Written Amendment or Change Order,
  - The City has been required to correct defective Work or complete Work in accordance with the Project Manual.
- 5.8 The City may refuse to make payment of the full amount recommended by the Project Manager because claims have been made against City on account of Contractor's performance or furnishing of the Work or liens have been filed in connection with the Work or there are other items entitling City to a set-off against the amount recommended, but City must give Contractor written notice (with a copy to Project Manager) stating the reasons for such action.
- 5.9 The Project Manager will have the authority to reject Work, which is defective or does not conform to the requirements of this Contract. If the Project Manager deems it necessary or advisable, the Project Manager shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.
- 5.10 The Project Manager will review, or take other appropriate action as necessary, concerning the Contractor's submittals, including Shop Drawings, Product Data and Samples. Such review, or other action, shall be for the sole purpose of determining general conformance with the design concept and information given through the Project Manual.
- 5.11 The Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 5.12 The Project Manager, upon written request from the Contractor shall conduct observations to determine the date of substantial completion and the date of final acceptance. The Project Manager will receive and forward to the City for the City's review and records, written warranties and related documents from the Contractor required by this Contract and will issue a final Certificate for Payment to the City upon compliance with the requirements of this Contract.
- 5.13 The Project Manager's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.
- 5.14 The Project Manager will **NOT** be responsible for Contractor's means, methods, techniques, sequences, or procedures or construction, or the safety precautions and programs incident thereto and will not be responsible for Contractor's failure to perform the



work in accordance with the Project Manual. The Project Manager will not be responsible for the acts or omissions of the Contractor or any Subcontractor or any of its or their agents or employees, or any other person at the site or otherwise performing any of the work except as may otherwise be provided.

- 5.15 Any plan or method of work suggested by the Project Manager, or other representatives of the City, to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor, and the Project Manager and the City will assume no responsibility therefore.
- 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 Project Manager, such City representatives or observers as the City may deem proper, to observe the materials furnished and the work performed under the Project Manual, and to see that the said materials are furnished, and the said work performed, in accordance with the Project Manual therefore. The Contractor shall furnish all reasonable aid and assistance required by the Project Manager, or by the resident representatives for proper observation and examination of the Work and all parts thereof.
- 5.17 The Contractor shall comply with any interpretation of the Project Manual by the Project Manager, or any resident representative or observer so appointed, when the same are consistent with the obligations of the Project Manual. However, should the Contractor object to any interpretation given by any subordinate Project Manager, resident representative or observer, the Contractor may appeal in writing to the City Director of Public Works for a decision.
- 5.18 Resident representatives, observers, and other properly authorized representatives of the City or Project Manager shall be free at all times to perform their duties, and intimidation or attempted intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the City so decides, to annul the Contract.
- 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 Project Manager 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 Project Manager or City, proper progress is not being maintained; such changes shall be made in the schedule and resubmitted for consideration.

- 6.5 If the Contractor has not completed Work segments and is within a non-performance penalty period, he/she shall not be allowed to undertake a new Work segment until the Work segment in dispute is completed, unless expressly permitted by the City.
- 6.6 The operation of any tool, equipment, vehicle, instrument, or other noise-producing device is prohibited to start before or continue after the hours of 7 AM and 10 PM, Monday through Friday (except Fridays which shall be until Midnight) and 8 AM and midnight on Weekends (except Sunday which shall be 10 PM). Violation of this requirement is Prima Facie Violation of City Municipal Code 11-202.
- 6.7 No work shall be undertaken on Saturdays, Sundays and Holidays (Christmas, New Years, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day and Thanksgiving) without the express written approval of the City Project Manager. If it is necessary to perform proper care, maintenance, or protection of work already completed or of equipment used, or in the case of an emergency verbal permission may be obtained through the Project Manager.
- 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 Project Manager. The Contractor shall communicate immediately any changes in the work schedule to the City Project Manager.

## 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 Project Manager shall award in writing on account of such delays, provided, however, that claim for such extension of time is made by the Contractor to the City and the Project Manager in writing within one (1) week from the time when any such alleged cause for delay shall occur.

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 Project Manager, an average or usual number of inclement days when work cannot proceed are to be anticipated during the construction period and are not to be considered as warranting extension of time.
- 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 Project Manager 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 Project Manager within 7 days of the last day of the commencement of the event giving rise to the delay occurred. Resolution of any claim shall follow the procedures 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 Project Manager will, upon receipt of a written Application for Payment from the Contractor, review the amount of work performed during the preceding period and the value thereof at the unit prices contracted. From the amounts so ascertained, there shall be deducted ten percent (10%) to be retained until after final completion of the entire work to the satisfaction of the City. The Project Manager will submit an estimate each month to the City for payment to the Contractor, except that no amount less than \$500.00 will be submitted unless the total amount of the Contract remaining unpaid is less than \$500.00.
- 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 Project Manager, nor any extension of time, nor any possession taken by the City or its employees, shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the City, or any right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of any other or subsequent breach.

## 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 Project Manager thereof in writing. Thereupon, the Project Manager will make final inspection of the Work and, if the Work is complete in accordance with this Contract, the Project Manager will promptly issue a final Certificate for Payment certifying to the City that the Work is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Project Manager is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s), which cost may be deducted by the City from the Contractor's full payment.
- 10.3 The Contractor shall not be entitled to any payment unless and until it submits to the Project Manager its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the City, or the City's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors and Suppliers of the Contractor and of any and all other parties required by the City; and consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the City, the Contractor shall furnish a bond satisfactory to the City to discharge any such lien or indemnify the City from liability.
- 10.4 The City shall make final payment of all sums due the Contractor within thirty days of the later of the Project Manager'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 Project Manager. Such written notice and claim must be furnished within seven calendar days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.
- 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 Project Manager 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 Project Manager may consider necessary or desirable, by approved Change Order. Such modifications shall not invalidate the Contract nor release the surety. Unless such alterations and increases or decreases change the total cost of the Work, based on the originally estimated quantities and the unit prices bid, by more than 25 percent, or change the total cost of any major item, based on the originally estimated quantities and the unit price bid, by more than 25 percent, the Contractor shall perform the work altered, increased or decreased, at a negotiated price or prices. (A major item shall mean any bid item, the total cost of which exceeds 12-1/2 percent of the total Contract 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 Project Manager 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 Project Manager shall not otherwise modify or invalidate in any way, any of the provisions of this Contract. In the event that the work shall be stopped by written order of the City, any expense, which, in the sole opinion and judgment of the City, is caused by the City, shall be paid by the City to the Contractor.
- 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 Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 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 Project Manager on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content to the City, as the Project Manager requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies or equipment, including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools, whether rented from the Contractor or others, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and job site field office overhead directly attributable to the change. In no event shall any standby time or any expenditure or savings associated with the Contractor's home office or other non-job site overhead expense be included in any change in the Contract Price. Further, in no event shall the Contractor's overhead expense exceed ten (10%) percent of the reasonable expenditures. Pending final determination of reasonable expenditures or savings to the City, payments on account shall be made to the Contractor on the Project Manager's Certificate for Payment.
- 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 Project Manager, 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 Project Manager 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 Other projects the Contractor may have to coordinate shall be listed in the Special Conditions.
- 17.4 When the territory of one Contract is the necessary or convenient means of access for the transportation or movement of workers, materials, or appliances required for the execution of another Contract, such privileges of access or any other responsible privilege may be granted by the City to the Contractor so desiring, to the extent such may be reasonably necessary.
- 17.5 Upon execution of the Contract, the Contractor shall furnish the City, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Work. The City shall promptly reply to the Contractor, in writing, stating any objections the City may have to such proposed Subcontractor. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the City has made timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has objection.

## 18. RIGHT OF CITY TO TERMINATE

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

payment. In the event the Contractor is found in a court of law to have been wrongfully terminated for cause, then such termination shall be deemed a termination for convenience and the Contractor shall be compensated as provided herein.

- 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 Project Manager and to the City. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or communication upon the Contractor personally.
- 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, Project Manager or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval or acquiescence in a breach hereunder, except as may be specifically agreed in writing.
- 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

PRIMETIME CONTRACTING CORP.

By: \_\_\_\_\_  
(signed)

By Alan Lyell  
(signed)

Laura Wassmer

ALAN LYELL  
(typed name)

Mayor

PRESIDENT  
(typed title)

City of Prairie Village

PRIMETIME CONTRACTING CORP  
(typed company name)

7700 Mission Road

10224 W 61<sup>ST</sup>  
(typed address)

Prairie Village, Kansas, 66208

MERRIAM, KS 66203  
(typed city, state, zip)

816-394-3915  
(typed telephone number)

\_\_\_\_\_  
(date of execution)

6-17-15  
(date of execution)

SEAL

ATTEST:

APPROVED BY:

\_\_\_\_\_  
City Clerk, Joyce Hagen-Mundy

\_\_\_\_\_  
City Attorney, Catherine Logan

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



**MAYOR'S ANNOUNCEMENTS**

**July 6, 2015**

**Committee meetings scheduled for the next two weeks include:**

Board of Zoning Appeals	07/06/2015	6:30 p.m.
Planning Commission	07/06/2015	7:00 p.m.
Prairie Village Arts Council	07/08/2015	5:30 p.m.
Council Committee of the Whole	07/20/2015	6:00 p.m.
City Council	07/20/2015	7:30 p.m.

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The Prairie Village Arts Council is pleased to present a mixed media exhibit by the Senior Arts Council in the R. G. Endres Gallery during the month of July. The artist reception will be Friday, July 10th, from 6:30 - 8:00 p.m.

Prairie Village will host a Dive Meeting on Tuesday, July 7<sup>th</sup> with the Slide and Diving Well closing at 5 p.m. and host a Swim meet on Thursday, July 9<sup>th</sup> with the pool closing at 5 p.m.

Moonlight Swims will be held on Friday, July 10<sup>th</sup> and Friday, July 17<sup>th</sup> with the pool remaining open until 10 p.m.

The JazzFest Committee will hold a Beer-Tasting Fund Raiser at Johnny's on Friday, July 10<sup>th</sup> from 5 p.m. to 9 p.m. for the 2015 Prairie Village Jazz Festival.



**INFORMATIONAL ITEMS**  
**July 6, 2015**

1. Board of Zoning Appeals Agenda - July 7, 2015
2. Planning Commission Agenda - July 7, 2015
3. VillageFest Minutes - May 28, 2015
4. Tree Board Minutes - June 3, 2015
5. Mark Your Calendar

**BOARD OF ZONING APPEALS  
CITY OF PRAIRIE VILLAGE, KANSAS  
AGENDA  
July 7, 2015  
6:30 P.M.**

**I. ROLL CALL**

**II. APPROVAL OF MINUTES - May 5, 2015**

**III. ACTION ITEM**

**BZA2015-04 Request for a Variance from Section 19.44.020C(4) to allow for an unenclosed canopy to project 21' into the rear yard  
3704 West 71<sup>st</sup> Street  
Zoning: R-1b Single Family Residential District  
Applicant: James A. Lichy**

**IV. OLD BUSINESS  
Election of Officers**

**V. ADJOURNMENT**

If you cannot be present, comments can be made by e-mail to  
[Cityclerk@Pvkansas.com](mailto:Cityclerk@Pvkansas.com)



**PLANNING COMMISSION AGENDA  
CITY OF PRAIRIE VILLAGE  
TUESDAY, JULY 7, 2015  
7700 MISSION ROAD  
7:00 P.M.**

- I. CALL TO ORDER**
- II. ROLL CALL**
- III. APPROVAL OF PC MINUTES - JUNE 6, 2015**
- IV. PUBLIC HEARINGS**

**PC2015-06 Request for Rezoning from C-O (Office Building District ) & R-1b (Single Family Residential) to CP-1 (Planned Restricted Business District) and Development Plan  
7930 State Line Road  
Current Zoning: C-0 & R-1b  
Proposed Zoning: CP-1  
Applicant: Mitch DiCarlo with Block & Company**

**PC2015-07 Request for Conditional Use Permit for Drive-Thru Service Window  
7930 State Line Road  
Current Zoning: C-0 & R-1b  
Applicant: Mitch DiCarlo with Block & Company**

**PC2015-08 Request for Special Use Permit for Adult Senior Dwelling & Site Plan Approval  
8500 Mission Road  
Current Zoning: R-1a  
Applicant: MVS, LLC**

**V. NON-PUBLIC HEARINGS**

**PC2015-110 Request for Preliminary Plat Approval - Mission Chateau  
8500 Mission Road  
Current Zoning: R-1a  
Applicant: MVS, LLC**

**PC2015-111 Request for Site Plan Approval for Fence  
3104 West 71<sup>st</sup> Street  
Current Zoning: R-1a  
Applicant: James Lichty**

**PC2015-108 Request for Site Plan Approval - Briarwood Elementary  
5300 West 86<sup>th</sup> Street  
Current Zoning: R-1a  
Applicant: Justin Durham, Hollis + Miller Architects for the  
Shawnee Mission School District**

**PC2015-109 Request for Preliminary & Final Plat - Briarwood Elementary  
5300 West 86<sup>th</sup> Street  
Current Zoning: R-1a  
Applicant: MKEC, Engineering on behalf of Shawnee  
Mission School District**

**VI. OTHER BUSINESS  
Election of Vice-Chairman**

**VII. ADJOURNMENT**

Plans available at City Hall if applicable  
If you cannot be present, comments can be made by e-mail to  
[Cityclerk@Pvkansas.com](mailto:Cityclerk@Pvkansas.com)

**\*Any Commission members having a conflict of interest, shall acknowledge that conflict prior to the hearing of an application, shall not participate in the hearing or discussion, shall not vote on the issue and shall vacate their position at the table until the conclusion of the hearing**

**VillageFest Planning Committee**  
**May 28, 2015 | 5:30 p.m.**

**In attendance:** Quinn Bennion, Bill Billings, Meghan Boom, Cindy Clark, Ted Fritz, Toby Fritz, Teresa Gibbons, Sheila Myers, Corbin Trimble, Ivan Washington,

**I. Open Meeting**

Cindy Clark opened the meeting at 5:30 p.m. The committee introduced themselves.

**II. Review of Minutes**

Toby Fritz moved to approve the April 23, 2015 meeting minutes. Ted Fritz seconded the motion and it passed unanimously.

**Staff Reports**

- III. Administration**—Meghan Boom reported that the majority of the contracts are in place. Several more sponsors have come on board and the budget is on track. The tent for the snow area will be delivered on Thursday to accommodate the holiday.

**Public Works**—Bill Billings reported that he has accepted a new job at the City of Leawood and a new representative will be at the next meeting. Everything is on track. Cindy thanked Bill for his hard work for the committee.

**Police Department**—Sgt. Washington had nothing new to report.

**Fire Department**—Cindy reported that the Fire Department should be at the next meeting.

**IV. Subcommittees**

**Spirit Award**—Cindy stated that several last minute nominations were received over the last 24 hours. They did not meet the deadline requirement. In order for the committee to have the proper opportunity to review applications and vote, she feels that they should be considered next year. Toby stated that this doesn't mean the applicants aren't deserving, but they want to be as fair as possible. The winners this year are Tom O'Brien, Dale Warman, and Spanglers. All are overwhelmingly deserving. Toby will purchase the awards. Mayor Wassmer will make the presentation at 8:30 on event day.

**Pancake Breakfast**—Cindy reported on behalf of Dale that Chris Cakes and everything is set for the day. Courtney McFadden has arranged the volunteers including a Boy Scout troop and several others.

**Children's Crafts**—Cindy reported on Patty Jordan's behalf, that the craft materials have arrived. Everything is in order for the crafts.

**Craft Vendors**—Cindy reported for Barb Shaw that she has received ten applications back. Cindy also reminded the committee that last year the craft vendors also came in very late.

Live Entertainment—Corbin Trimble reported that the adult band will be Boogie Wonderland. Mr. StinkyFeet, Funky Mama, and Janie Next Door will round out the children’s entertainment. Kristy Lambert, a PV resident and Symphony Chorus member will be singing the National Anthem. He will contact all entertainers in advance of the next meeting to ensure they are a “go.”

Food Vendors—Susan Forrest reported that all the food vendor contracts have been sent out. Several new food vendors have committed; Dolce and an ice cream truck. Del Sawyer will only have his cold wagon due to another commitment. She will follow up with the vendors who still need to return contracts.

Pie Baking Contest—Theresa's reported that Megan Garrelts, Carter Holton, Julia Westhoff, Charles Ferruzza and Julie Hansen, and Joe Cristofani have been secured as judges. An email has been sent to all past participants. She stated that she will post flyers around the City in the coming month.

Information Booth— no report

YMCA—no report

Marketing—Cindy reported on behalf of Kathleen Murray. The VillageFest flyer for the Village Voice is being finalized. She is following a social media schedule and encouraged members to follow the Facebook page.

Volunteers—Cindy verified needed volunteer numbers to report to Courtney.

Water Sales— Cindy reported that SME Orchestra Booster Club is still on track to sell water as a fundraiser

Historic Exhibit— Ted reported that Mr. Bones had questions regarding the insurance. Meghan Buum made several suggestions and stated that she would follow up with him.

WOW event—Cindy reported that “Frozen in the Village” planning is underway. The tent and supplies have been ordered. The area will be divided into two separate play spaces – one for older children, and one for younger. Public Works will build a platform and put fencing around it to help contain the snow.

**V. Reminders to committee members**

Cindy Clark reminded committee members to encourage “Friends of VillageFest” and volunteer recruitment.

**VI. Next Meeting**

The next meeting will be held on June 25, 2015 at 5:30 p.m.

## TREE BOARD

City of Prairie Village, Kansas

### MINUTES (draft)

Wednesday June 3, 2015

Public Works Conference Room  
3535 Somerset Drive

Board Members: Deborah Nixon, Rick Howell, Linda Marcusen, Jonathan Pruitt  
Other Attendees: David Morrison, Suzanne Lownes

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

- 1) **Review and Approve Minutes of May 6, 2015** - Motion by Linda Marcusen to accept the minutes, seconded by Deborah Nixon. **Approved unanimously.**
- 2) **EAB Update** - Suzanne Lownes updated the board that the EAB treatment letters were sent out to seven streets and there have been some questions from the residents that Bill Billings has been answering and reviewing the choices made and he will be making some changes after his final reviews. The information is out on the City's website. The treatment is starting this week, weather permitting.
- 3) **Discuss new member recommendations** - Suzanne Lownes updated the board that currently there are two general openings and two student openings. The board members discussed the applicants that responded that they were still interested in joining the Tree Board and Deborah Nixon moved to recommend to Mayor Wassmer, Frank Riott, Tucker Poling and David Wise as an alternate, it was seconded by Jonathan Pruitt and **approved unanimously.**
- 4) **Prairie Village Approved Tree List** - Deborah Nixon continued reviewing with the board members the list of potential approved right-of-way trees comparing it to the Overland Park list. The following trees the board members discussed doing more research on before making a final decision: Golden Rain Tree, Turkish Filbert, Dawn Redwood, Shingle Oak, Prospector Elm. The board will try and complete the list at the next meeting. Deborah Nixon discussed how she thought that the Overland Park brochure was a nice format to look at using. She said that she would contact them to make sure they did not have any problems with that.
- 5) **Old Business**
  - a) Deborah Nixon updated the board on the Meadowbrook project. She spoke with Bill Mason with Johnson County Parks and Rec and currently the entities involved are working on a Memo of Understanding and then plans will begin to start moving forward. Deborah Nixon said that she has also spoken with Nolan Sunderman, Assistant to the City Administrator and will also be following up with Ted O'Dell as the new Park & Rec Board Chairperson. Suzanne Lownes stated that she would follow up with Nolan about receiving any information about Meadowbrook on the upcoming Park & Rec agendas.
  - b) Suzanne Lownes reviewed the wording on the plaque for the honorary tree for Jack Lewis.

c) Suzanne Lownes updated the board on reviewing the information for educating the Tree Board. She found two new publications put out by the Arbor Day Foundation. "How to Grow a Tree Board" and "Urban & Community Forestry". Suzanne Lownes will get those ordered for Tree Board's use.

**6) New Business**

a) Suzanne Lownes updated the group and re-introduced Councilman David Morrison as the new Council liaison to the Tree Board.

b) Suzanne Lownes informed the group that Field Superintendent, Bill Billings would be leaving Prairie Village for a new job at Leawood.

c) Jonathan Pruitt brought up interest in a study on the value of trees to the community. The group told him that the Tree Board had done a Fall Seminar on that, put on by the Kansas Forestry Service Forester, Kim Bomberger.

**7) Next Meeting - July 1, 2015 at 6:00pm**

The meeting adjourned at 7:20 p.m.

Minutes prepared by Suzanne Lownes.

**Council Members**  
**Mark Your Calendars**  
**July 6, 2015**

<b>July 2015</b>	Senior Arts Council exhibit in the R.G. Endres Gallery
July 3	City Offices closed in observance of July 4 <sup>th</sup> Holiday
July 4	VillageFest Celebration
July 6	City Council Meeting
July 10	Artist reception in the R. G. Endres Gallery 6:30 - 8:00 p.m.
July 10	Moonlight Swim - Pool complex remains open until 10:00 p.m.
July 17	Moonlight Swim - Pool complex remains open until 10:00 p.m.
July 20	City Council Meeting
<b>August 2015</b>	Wayne Wilkes oil and acrylic exhibit in the R.G. Endres Gallery
August 3	City Council Meeting
August 7	Moonlight Swim - Pool complex remains open until 10:00 p.m.
August 14	Artist reception in the R. G. Endres Gallery 6:30 - 8:00 p.m.
August 17	City Council Meeting
<b>September 2015</b>	Sister City Art exhibit in the R.G. Endres Gallery
September 7	City Offices closed in observance of Labor Day Holiday
September 7	Pool Closes 6 p.m.
September 8	City Council Meeting
September 11	Artist reception in the R. G. Endres Gallery 6:30 - 8:00 p.m.
September 12	Prairie Village Jazz Festival
September 21	City Council Meeting
<b>October 2015</b>	State of the Arts exhibit in the R.G. Endres Gallery
October 5	City Council Meeting
October 9	State of the Arts Reception in the R. G. Endres Gallery 6:30 - 8:00 p.m.
October 19	City Council Meeting
<b>November 2015</b>	Chun Wang exhibit in the R.G. Endres Gallery
November 2	City Council Meeting
November 13	Artist reception in the R. G. Endres Gallery 6:30 - 8:00 p.m.
November 16	City Council Meeting
November 26/27	City Offices Closed for Thanksgiving Holiday
<b>December 2015</b>	Peter Smokorowski exhibit in the R.G. Endres Gallery
December 4	Volunteer Appreciation Holiday Party
December 7	City Council Meeting
December 11	Artist reception in the R. G. Endres Gallery 6:30 - 8:00 p.m.
December 21	City Council Meeting
December 25	City Offices Closed for Christmas Holiday

