

CITY OF PRAIRIE VILLAGE

November 2, 2015

Council Committee Meeting 6:00 p.m.

City Council Meeting 7:30 p.m.



Back Row: Ashley Weaver, Eric Mikkelson, Sheila Myers, Dan Runion, Terrence Gallagher, David Morrison, Ted Odell
Front Row: Ruth Hopkins, Jori Nelson, Laura Wassmer, Brooke Morehead, Steve Noll (Not pictured: Andrew Wang)

**COUNCIL COMMITTEE OF THE WHOLE
Council Chambers
Monday, November 02, 2015
6:00 PM**

AGENDA

BROOKE MOREHEAD, COUNCIL PRESIDENT

AGENDA ITEMS FOR DISCUSSION

Update regarding Mission Road from 71st to 75th Street project
Keith Bredehoeft

*COU2015-40 Consider bid award for 2016 Tree Trimming Program
Keith Bredehoeft

COU2015-41 Consider approval of charter ordinance 27 creating a transient guest tax
Katie Logan

Presentation on Brush with Kindness program
Marcia Gradinger

Executive Session

***Council Action Requested the same night**

RECOMMENDED

OPTION

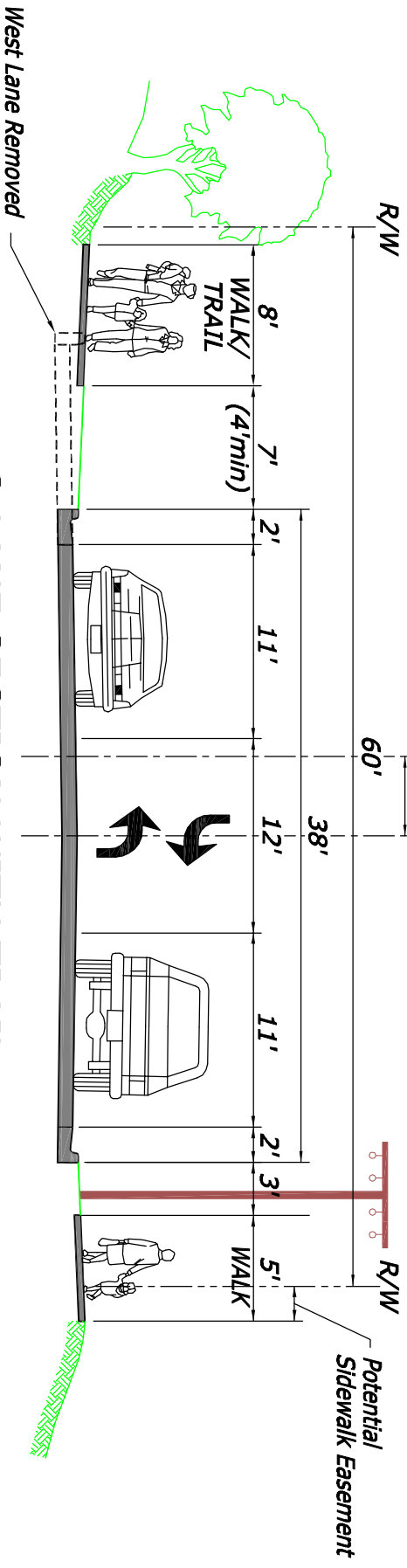
± 4.5' ±

60'

38'

R/W

Potential Sidewalk Easement



3-LANE SECTION WITH TRAIL

NOT TO SCALE

Mission Road Amenity Opportunities

Amenity Estimated Cost



Bench: \$750 ea. @ 3 qty. = \$2,250



Brick Paver Area: \$3500 ea. @ 3 qty. = \$10,500



Planting Bed: \$2500 ea. @ 3 qty. = \$7,500



Stone Seatwall (no lights): \$10,000 ea. @ 2 qty. = \$20,000



Pedestrian Pole Light + Banner: \$4500 ea. @ 17 qty. = \$76,500



Pedestrian Street Name Tiles: \$400 ea. area @ 14 qty. = \$5,600



Street Trees: \$425 ea. @ 43 qty. = \$18,275



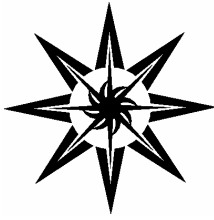
Ornamental Trees: \$300 ea. @ 32 qty. = \$9,200

POSSIBLE TOTAL: \$149,825

10/19/15

Mission Road Amenity Opportunities

gouldevans



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: November 2, 2015

DISCUSSION OF PRELIMINARY DESIGN FEATURES FOR THE MISSION ROAD PROJECT FROM 71ST STREET TO 75TH STREET

This meeting will provide the opportunity for Council to review the recommendations of the Mission Road Council Sub-Committee. Feedback from Council will be used in preparation for the next open house public meeting for this project. Following the open house public meeting the plan will then be brought back to Council for final approval.

Council will also discuss using Economic Development Funds to potentially fund aesthetic improvements for the project.

BACKGROUND

The Mission Road Project from 71st Street to 75th Street will be constructed in 2016 and is a CARS(County Assistance Road System) project which is funded at 50% by Johnson County. This project was moved up to 2016 given the concerns of the sidewalk at back of curb as many children routinely use these sidewalks given the proximity of Shawnee Mission East High School and St. Ann's School. Retaining walls at the back of the sidewalk add to the concerns in this area. This concern about safety molded the purpose of the project which was to create a safe pedestrian corridor which would be wider and be separated from vehicular traffic.

The Council Sub-Committee consisting of Mayor Wassmer, Council Members Wang, Mikkelson, Myers, Noll, and Odell who have met three times to discuss the project. One public meeting was held to discuss ideas for the corridor and options for the roadway. For discussion purposes the project can be divided into two parts, roadway section and aesthetic items. Recommendations by the Council Sub-Committee for these items are summarized below.

Roadway Section-

One of the early ideas presented for this section of Mission Road was to make the road a three lane section, two through lanes with a center turn lane. Public Works hired TranSystems to do a traffic analysis from 71st Street to 75th Street and it was determined that given the traffic volumes on Mission Road that from a traffic standpoint that a three lane section would function well. Other ideas discussed were to restripe the road to a three lane section as well as the idea of adding bike lanes to each side of the existing road.

These ideas were presented at the initial public meeting and there were supporters of all ideas. There was support for a three lane section but some were concerned if it would handle the traffic. Some wanted to have bike lanes. Overall we felt we received good feedback and felt that overall the residents favored the narrowing of the road since it created space for a wider sidewalk and buffer space to traffic. Bike lanes were considered but it was determined that the wide sidewalk with the buffer was a better use

of space along the corridor. The wide sidewalk can be used for children and families that want to ride bikes. The three lane section will still accommodate on street bicycles.

After the initial public meeting, at the second Council Sub-Committee, all comments and input was discussed by the committee and it was proposed to recommend the three lane section with the wide sidewalk and buffer space on the west side of the road. It is planned to improve the sidewalks on the east side of Mission Road as well. Sidewalk easement will be requested from property owners to allow for a continuous sidewalk behind the power poles. See attachment for details of the recommended typical section.

Aesthetic Items-

The third Council Sub-Committee meeting focused on aesthetic items that can be added to this corridor similar to the Main Street Concepts developed with the Village Vision Plan. Many items were discussed but several items are recommended by the committee to be included with this project. These items include benches, brick pavers, landscape beds, stone seat walls, pedestrian lights with banners, and street trees. See attachment for details on these items. Many of these items continue the theme created by the recent aesthetic improvements on Mission Lane at the Village Shops.

It is anticipated that the aesthetic items will cost approximately \$150,000. These costs would be in addition to the \$1,000,000 that is currently budgeted for the project, half of which is anticipated to come from CARS funds. CARS funds can't be used for the aesthetic items. It was discussed that the Economic Development Fund could possibly be used for these aesthetic items.

FUNDING SOURCE

Funding for the project is included in the 2016 CIP
Possible funding from the Economic Development Fund would be transferred at the time of awarding of the construction project.

RELATION TO VILLAGE VISION

CC1. Attractive Environment

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

TR1. Bike and Pedestrian Friendly

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

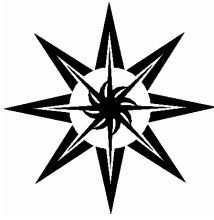
ATTACHMENTS

Roadway Section Detail
Aesthetic Item Details

PREPARED BY

Keith Bredehoeft, Public Works Director

October 29, 2015



PUBLIC WORKS DEPARTMENT

Council Meeting Date: November 2, 2015

Consider Bid Award for 2015 Tree Trimming Program

RECOMMENDATION

Staff recommends the City Council approve the award of a bid to The Davey Tree Expert Company for \$83,040.00 for trimming trees in City right-of-way.

BACKGROUND

This bid is the annual tree trimming of trees in the City right-of-way. There are 9 areas bid for trimming this year, a map is attached that delineate those areas. All the trees will be trimmed to remove any dead wood larger than 2-inches over the right-of-way, remove limbs interfering with sight line to traffic signals and street signs, and with a cone under the street lights.

Davey Tree Expert Company is a new contractor for the City. We have checked their references and also met with the contractor to review expectations of this project.

Five bids were received and opened on October 23, 2015, by the City Clerk. The bid tab is:

| Bidder | Total |
|---------------|--------------|
| Davey Tree | \$ 83,040.00 |
| Smith Bros. | \$212,520.00 |
| KC Tree | \$228,503.00 |
| VanBooven | \$250,425.00 |
| Arbor Masters | \$296,306.00 |

FUNDING SOURCE

\$125,000 was budgeted for tree trimming in the 2015 Public Works Operating Budget.

RELATION TO VILLAGE VISION

CC1; Make streetscape improvements to enhance pedestrian safety and attractiveness of the public realm

CFS2: Preserve and protect natural areas

ATTACHMENTS

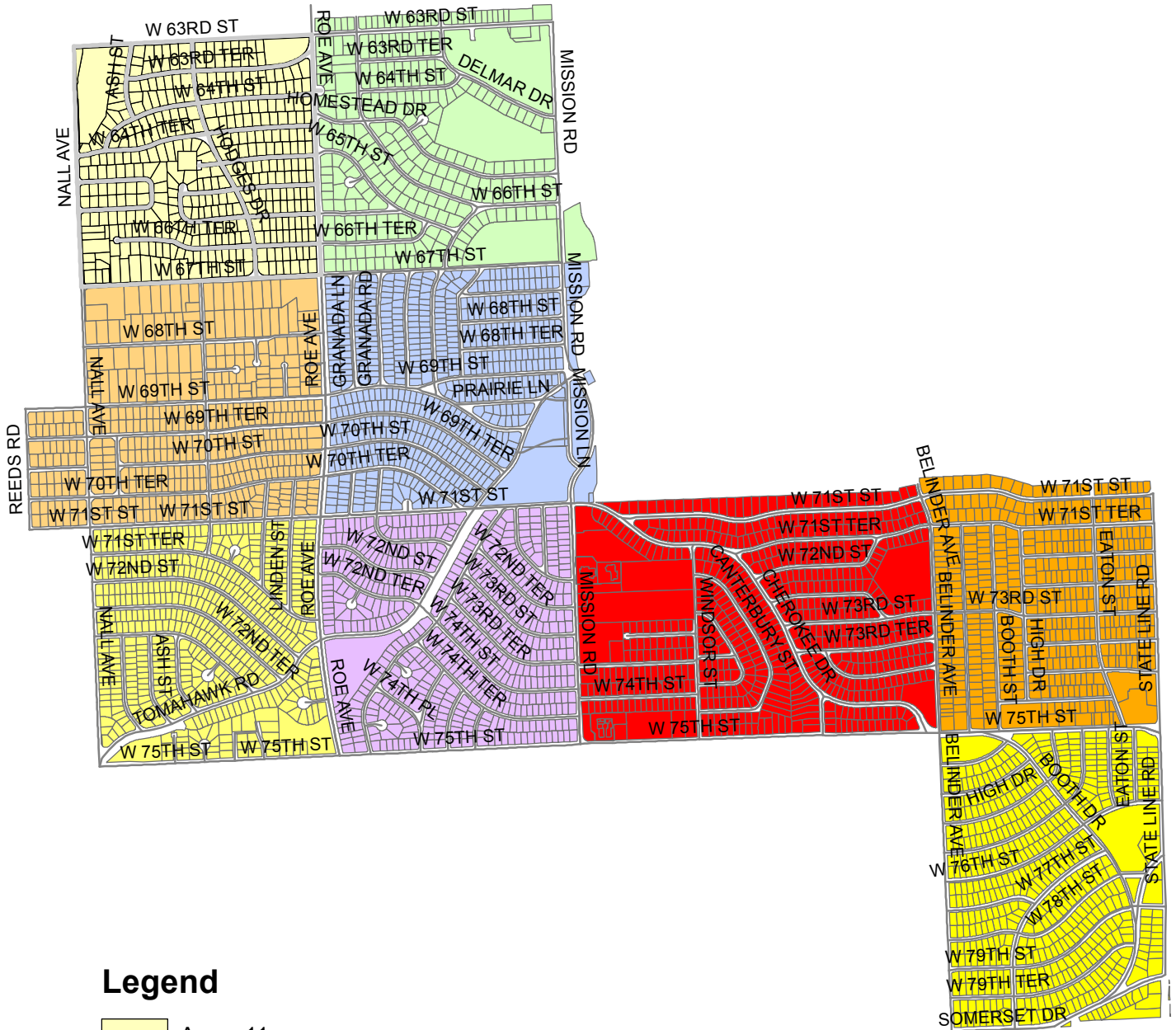
Construction Agreement for Tree Trimming
Tree Trimming Area

PREPARED BY

Keith Bredehoeft, Director of Public Works

October 28, 2015

2015 Tree Trimming Areas



Legend

- Area_11
- Area_12
- Area_13
- Area_21
- Area_22
- Area_23
- Area_31
- Area_32
- Area_33



**CONSTRUCTION CONTRACT
FOR
2015 TREE TRIMMING**

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

THIS AGREEMENT, is made and entered into this ____ day of _____, 20__, by and between the City of Prairie Village, Kansas, hereinafter termed the “**City**”, and The Davey Tree Expert Company, hereinafter termed in this agreement, “**Contractor**”, for the construction and completion of Project 2015 Tree Trimming , (the “**Project**”) designated, described and required by the Project Manual and Bid Proposal, to wit:

WITNESSETH:

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

WHEREAS, the Contractor, in response to the advertisement, has submitted to the City in the manner and at the time specified, a sealed Bid Proposal in accordance with the Bid Documents;

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

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

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

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

1. **DEFINITIONS:** Capitalized terms not defined herein shall have the meanings set forth in the General Conditions.

1.1 Following words are given these definitions:

ADVERSE WEATHER shall have the meaning set forth in Section 9.3 hereof.

APPLICATION FOR PAYMENT shall mean a written request for compensation for Work performed on forms approved by the City.

BID shall mean a complete and properly signed proposal to do the Work or designated portion thereof, for the price stipulated therein, submitted in accordance with the Bid Documents.

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

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

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

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

CERTIFICATE FOR PAYMENT shall mean written certification from the Field Superintendent stating that to the best of the Field Superintendent's knowledge, information and belief, and on the basis of the Field Superintendent's on-site visits and inspections, the Work described in an Application for Payment has been completed in accordance with the terms and conditions of the Contract Documents and that the amount requested in the Application for Payment is due and payable.

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

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

CONTRACT or **CONTRACT DOCUMENTS** shall consist of (but not necessarily be limited to) the Plans, the Specifications, all addenda issued prior to and all modifications issued after execution of this Agreement, (modifications consisting of written amendments to the Agreement signed by both parties, Change Orders, written orders for minor changes in the Work issued by the Field Superintendent) this Construction Contract between the City and Contractor (sometimes referred to herein as the "**Agreement**"), the accepted Bid Proposal, Contractor's Performance Bond, Contractor's Maintenance Bond, Statutory Bond, the Project Manual, the General Conditions, the Special Conditions and any other documents that have bearing the Work prescribed in the Project. It is understood that the Work shall be

carried out and the Project shall be constructed fully in accordance with the Contract Documents.

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

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

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

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

FIELD ORDER shall mean a written order issued by the Field Superintendent that orders minor changes in the Work, but which does not involve a change in the Contract Price or Contract Time.

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

GENERAL CONDITIONS shall mean the provisions in the document titled "General Conditions - General Construction Provisions" attached hereto and incorporation herein by reference.

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

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

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

PLANS shall mean and include all Shop Drawings which may have been prepared by or for the City as included in the Project Manual or submitted by the Contractor to the City during the progress of the Work, all of which show the character and scope of the work to be performed.

PROJECT shall mean the Project identified in the first paragraph hereof.

FIELD SUPERINTENDENT shall mean the person appointed by the Public Works Director for this Contract.

PROJECT MANUAL shall contain the General Conditions, Special Conditions, Specifications, Shop Drawings and Plans for accomplishing the work.

PROJECT SEGMENTS shall have the meaning set forth in Section 7.1 hereof.

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

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

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

SPECIAL CONDITIONS shall mean the provisions in the document titled "Special Conditions" attached hereto and incorporation herein by reference.

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

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

TOTAL COMPLETION shall mean all elements of a Project Segment or the Total Project Work is complete including all subsidiary items and "punch-list" items.

TOTAL PROJECT WORK shall have the meaning set forth in Section 7.1 hereof.

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

UNUSUALLY SEVERE WEATHER shall have the meaning set forth in Section 9.4 hereof.

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

WORK SCHEDULE shall have the meaning set forth in Section 7.2 hereof.

- 1.2 Whenever any word or expression defined herein, or pronoun used instead, occurs in these Contract Documents; it shall have and is mutually understood to have the meaning commonly given. Work described in words, which so applied have a well-known technical or trade meaning shall be held to refer to such, recognized standards.
- 1.3 Whenever in these Contract Documents the words “as ordered,” “as directed”, “as required”, “as permitted”, “as allowed”, or words or phrases of like import are used, it is understood that the order, direction, requirement, permission or allowance of the Field Superintendent 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 Field Superintendent.
- 1.6 When a word, term or phrase is used in the Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and, third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.
- 1.7 All terms used herein shall have the meanings ascribed to them herein unless otherwise specified.

2. ENTIRE AGREEMENT:

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

3. INTENT AND INTERPRETATION

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

- 3.2 All time limits stated in the Contract Documents are of the essence of the Contract.
- 3.3 The Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.
- 3.4 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.
- 3.5 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents and shall give written notice to the Field Superintendent 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 Field Superintendent 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 Field Superintendent before proceeding with the construction affected by such omissions or discrepancies.
- 3.11 It is understood and agreed that the Work shall be performed and completed according to the true spirit, meaning, and intent of the Contract Documents.

- 3.12 The Contractor's responsibility for construction covered by conflicting requirements, not provided for by addendum prior to the time of opening Bids for the Work represented thereby, shall not extend beyond the construction in conformity with the less expensive of the said conflicting requirements. Any increase in cost of Work required to be done in excess of the less expensive work of the conflicting requirements will be paid for as extra work as provided for herein.
- 3.13 The apparent silence of the Project Manual as to any detail, or the apparent omission from them of a detailed description concerning any point, shall be regarded as meaning that only the best general practice is to be used. All interpretations of the Project Manual shall be made on the basis above stated.
- 3.14 The conditions set forth herein are general in scope and are intended to contain requirements and conditions generally required in the Work, but may contain conditions or requirements which will not be required in the performance of the Work under contract and which therefore are not applicable thereto. Where any stipulation or requirement set forth herein applies to any such non-existing condition, and is not applicable to the Work under contract, such stipulation or requirement will have no meaning relative to the performance of said Work.
- 3.15 KSA 16-113 requires that non-resident contractors appoint an agent for the service of process in Kansas. The executed appointment must then be filed with the Secretary of State, Topeka, Kansas. Failure to comply with this requirement shall disqualify the Contractor for the awarding of this Contract.

4. CONTRACT COST

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

5. WORK SUPERINTENDENT

- 5.1 The Contractor shall provide and maintain, continually on the site of Work during its progress, an adequate and competent superintendent of all operations for and in connection with the Work being performed under this Contract, either personally or by a duly authorized superintendent or other representative. This representative shall be designated in writing at the preconstruction meeting.
- 5.2 The superintendent, or other representative of the Contractor on the Work, who has charge thereof, shall be fully authorized to act for the Contractor, and to receive whatever orders as may be given for the proper prosecution of the Work, or notices in connection therewith. Use of Subcontractors on portions of the Work shall not relieve the Contractor of the obligation to have a competent superintendent on the Work at all times.
- 5.3 The City shall have the right to approve the person who will be the Superintendent based on skill, knowledge, experience and work performance. The City shall also have the right to request replacement of any superintendent.

5.4 The duly authorized representative shall be official liaison between the City and the Contractor regarding the signing of pay estimates, change orders, workday reports and other forms necessary for communication and Work status inquiries. Upon Work commencement, the City shall be notified, in writing, within five (5) working days of any changes in the Contractor's representative. In the absence of the Contractor or representative, suitable communication equipment, which will assure receipt of messages within one (1) hour during the course of the workday, will also be required.

5.5 The Contractor will be required to contact the Field Superintendent daily to advise whether and/or where the Contractor and/or the Subcontractor's crews will be working that day, in order that the Field Superintendent's representative is able to monitor properly the Work.

6. FIELD SUPERINTENDENT

6.1 It is mutually agreed by and between the parties to this Agreement that the Field Superintendent shall act as the representative of the City and shall observe and inspect, as required, the Work included herein.

6.2 In order to prevent delays and disputes and to discourage litigation, it is further agreed by and between the parties to this Agreement that the Field Superintendent 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 Field Superintendent shall determine, where applicable, questions in relation to said Work and the construction thereof; that Field Superintendent shall, where applicable decide questions which may arise relative to the execution of this Contract on the part of said Contractor; that the Field Superintendent'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 Field Superintendent 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 Field Superintendent and with the other party, within thirty (30) days a written objection to the decision or direction so rendered and, by such action, may reserve the right to submit the question to determination in the future.

6.3 The Field Superintendent, unless otherwise directed or agreed to by the City in writing, will perform those duties and discharge those responsibilities allocated to the Field Superintendent as set forth in this Contract. The Field Superintendent shall be the City's representative from the effective date of this Contract until final payment has been made. The Field Superintendent shall be authorized to act on behalf of the City only to the extent provided in this Contract. The City and Field Superintendent may, from time to time, designate Inspectors to perform such functions.

6.4 The City and the Contractor shall communicate with each other in the first instance through the Field Superintendent.

6.5 The Field Superintendent shall be the initial interpreter of the requirements of the Project Manual and the judge of the performance by the Contractor. The Field Superintendent shall render written graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.

6.6 The Field Superintendent 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 Field Superintendent's recommendation of any payment requested in an Application for Payment will constitute a representation by Field Superintendent to City, based on Field Superintendent's on-site observations of the Work in progress as an experienced and qualified design professional and on Field Superintendent'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 Field Superintendent'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 Field Superintendent 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 Field Superintendent in the Project Manual or that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by the City or the City to withhold payment to Contractor.

- 6.7 The Field Superintendent may refuse to recommend the whole or any part of any payment if, in Field Superintendent's opinion, it would be incorrect to make such representations to City. Field Superintendent 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 Field Superintendent's opinion to protect the City from loss because:
- The Work is defective, or completed Work has been damaged requiring correction or replacement,
 - The Contract Price has been reduced by Written Amendment or Change Order,
 - The City has been required to correct Defective Work or complete Work in accordance with the Project Manual.
- 6.8 The City may refuse to make payment of the full amount recommended by the Field Superintendent 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 Field Superintendent) stating the reasons for such action.
- 6.9 The Field Superintendent will have the authority to reject Work which is defective or does not conform to the requirements of this Contract. If the Field Superintendent deems it necessary or advisable, the Field Superintendent shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.
- 6.10 The Field Superintendent will review, or take other appropriate action as necessary, concerning the Contractor's submittals, including Shop Drawings, Product Data and Samples. Such review, or other action, shall be for the sole purpose of determining general conformance with the design concept and information given through the Project Manual.

- 6.11 The Field Superintendent shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 6.12 The Field Superintendent, upon written request from the Contractor shall conduct observations to determine the dates of Substantial Completion, Total Completion and the date of Final Acceptance. The Field Superintendent will receive and forward to the City for the City's review and records, written warranties and related documents from the Contractor required by this Contract and will issue a final Certificate for Payment to the City upon compliance with the requirements of this Contract.
- 6.13 The Field Superintendent's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.
- 6.14 The Field Superintendent 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 Field Superintendent will not be responsible for the acts or omissions of the Contractor or any Subcontractor or any of its or their agents or employees, or any other person at the site or otherwise performing any of the Work except as may otherwise be provided.
- 6.15 Any plan or method of work suggested by the Field Superintendent, 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 Field Superintendent and the City will assume no responsibility therefore.
- 6.16 It is agreed by the Contractor that the City shall be and is hereby authorized to appoint or employ, either directly or through the Field Superintendent, 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 Field Superintendent, or by the resident representatives for proper observation and examination of the Work and all parts thereof.
- 6.17 The Contractor shall comply with any interpretation of the Project Manual by the Field Superintendent, 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 Field Superintendent, resident representative or observer, the Contractor may appeal in writing to the City Director of Public Works for a decision.
- 6.18 Resident representatives, observers, and other properly authorized representatives of the City or Field Superintendent shall be free at all times to perform their duties, and intimidation or attempted intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the City so decides, to annul the Contract.

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

7. WORK SCHEDULE:

7.1 The Work is comprised of one large project (sometimes referred to as “**Total Project Work**”) and, in some cases, is partitioned into smaller subprojects referred to in this Agreement as “**Project Segments**.” A Contract Time shall be stated in the Contract Documents for both the Total Project Work and, when applicable, the Project Segments.

7.2 At the time of execution of this Contract, the Contractor shall furnish the Field Superintendent with a schedule (“**Work Schedule**”) setting forth in detail (in the critical path method) the sequences proposed to be followed, and giving the dates on which it is expected that Project Segments will be started and completed within the Contract Time. The Work Schedule is subject to approval by the City.

7.3 Monthly Work Schedule reports shall accompany the Contractor's pay request for Work completed. Where the Contractor is shown to be behind schedule, it shall provide an accompanying written summary, cause, and explanation of planned remedial action. Payments or portions of payments may be withheld by the City upon failure to maintain scheduled progress of the Work as shown on the approved Work Schedule.

7.4 At a minimum the Contractor shall update and submit the Work Schedule for review weekly, unless otherwise agreed upon by the City.

7.5 The Contractor, within ten (10) calendar days after being instructed to do so in a written notice from the City, shall commence the Work to be done under this Contract.

7.6 If at any time, in the opinion of the Field Superintendent or City, proper progress is not being maintained; changes shall be proposed in the Work Schedule and resubmitted for consideration and approval.

7.7 If the Contractor has not completed Project Segments and is within a non-performance penalty period, it shall not be allowed to undertake a new Project Segment until the Project Segment in dispute is completed, unless expressly permitted by the City.

7.8 The operation of any tool, equipment, vehicle, instrument, or other noise-producing device is prohibited to start before or continue after the hours of 7 AM and 10 PM, Monday through Friday (except Fridays which shall be until Midnight) and 8 AM and midnight on Weekends (except Sunday which shall be 10 PM). Violation of this requirement is Prima Facie Violation of City Municipal Code 11-202.

7.9 No work shall be undertaken on Saturdays, Sundays and Holidays (Christmas, New Years, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day and Thanksgiving) without the express written approval of the City Field Superintendent. 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 Field Superintendent.

7.10 Night work may be established by the Contractor, as a regular procedure, with the written permission of the City; such permission, however, may be revoked at any time by the City if

the Contractor fails to maintain adequate equipment for the proper prosecution and control of all operations performed as part of the Work.

- 7.11 The Contractor shall provide 24 hours notice prior to commencing any work to the City Field Superintendent. The Contractor shall communicate immediately any changes in the Work Schedule to the Field Superintendent for approval by the City.

8. DELAYS AND EXTENSIONS OF TIME

- 8.1 In executing the Contract, the Contractor expressly covenants and agrees that, in undertaking the completion of the Work within the Contract Time, it has taken into consideration and made allowances for all of the ordinary delays and hindrances incident to such Work, whether growing out of delays in securing materials, workers, weather conditions or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the Work, or any portion thereof, included in this Contract.

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

9. ADVERSE WEATHER:

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

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

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

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

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

- 9.7 Upon receipt of the Notice to Proceed, and continuing throughout the Contract, the Contractor shall record on its daily construction report, the occurrence of Adverse Weather and resultant impact to the Work Schedule.
- 9.8 The number of actual Adverse Weather delay days shall include days affected by actual Adverse Weather (even if Adverse Weather occurred in the previous month), and shall be calculated chronologically from the first to the last day of each month, and be recorded as full workdays.
- 9.9 If the number of actual Adverse Weather delay days in a given month exceeds the number of days anticipated above, the difference shall be multiplied by 7/5 to convert any qualifying workday delays to calendar days. The resulting number of qualifying lost days shall be added to the Contract Time.
- 9.10 The determination that Unusually Severe Weather occurred does not automatically mean an extension of time will be granted. The Contractor must substantiate the Unusually Severe Weather delayed work activities on the critical path of the Work Schedule.
- 9.11 Full consideration for equivalent fair weather workdays shall be given. If the number of actual Adverse Weather delays in a given month is less than the number of days anticipated as indicated above, the difference shall be multiplied by 7/5 to convert any workday increases to calendar days. The resulting number of qualifying extra days will be accumulated and subtracted from any future month's days lost due to unusually severe weather.
- 9.12 The net cumulative total of extra days/lost days shall not result in a reduction of Contract Time and the date of Substantial Completion shall not be changed because of unusually favorable weather.
- 9.13 In converting workdays to calendar days, fractions 0.5 and greater shall be rounded up to the next whole number. Fractions less than 0.5 shall be dropped.
- 9.14 The Contractor shall summarize and report all actual Adverse Weather delay days for each month to the Field Superintendent by the tenth (10th) day of the following month. A

narrative indicating the impact of Adverse Weather conditions on the Work Schedule shall be included.

- 9.15 Any claim for extension of time due to Unusually Severe Weather shall be submitted to the Field Superintendent within 7 days of the last day of the commencement of the event giving rise to the delay occurred. Resolution of any claim shall follow the procedures described above.
- 9.16 The Contractor shall include and indicate the monthly-anticipated Adverse Weather days, listed above, in the Work Schedule. (Reference Section 7.1 for Work Schedule requirements)
- 9.17 The Contractor shall indicate the approved Adverse Weather days (whether less or more than the anticipated days) in its Work Schedule updates.

10. LIQUIDATED DAMAGES

- 10.1 Contractor agrees that time is of the essence and any term pertaining to Contractor timely performing so as to achieve Total Completion within the Contract Time is a material provision of this Contract. Further, the parties acknowledge that City's damages in the event of delay are difficult to ascertain and consequently agree that, in the event and to the extent that actual date of Total Completion is delayed beyond the Contract Time for the Total Project Work or Project Segments attributable solely or concurrently to (i) an act or omission of Contractor or any of its subcontractors or suppliers, or (ii) in whole or in part, to any other event or condition within the Contractor's reasonable control (and not for reasons solely attributable to City), the Contractor shall be assessed a liquidated damage, and not as a penalty, in the amount set forth in the Special Conditions for each calendar day beyond the applicable Contract Time. Such amount shall be deducted from any amounts due Contractor under this Agreement.
- 10.2 Further, the Contractor agrees that, in the event Contractor does not carry out such Work at such rates of progress as required by the Work Schedule approved by the City, the City may, at its option and without Contractor receiving any additional compensation therefore, require Contractor to increase the number of qualified supervisory personnel and/or workers and the amount of equipment employed in the performance of the Work to such extent as City may deem necessary or desirable. In addition, City, at its option, may supplement Contractor's manpower by entering into contracts with other contractors to perform the Work. All costs that are incurred by City, in this regard, including reasonable attorney's fees, shall be deducted from any sums due Contractor or City may make demand on Contractor for reimbursement of such costs.

11. PAYMENT PROCEDURE

- 11.1 Based upon Applications for Payment submitted to the Field Superintendent by the Contractor and Certificates for Payment issued by the Field Superintendent, the City shall make progress payments on account of the contract sum to the Contractor as provided below and elsewhere in the Contract Documents.
- 11.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month or on a mutually agreed date by City and Contractor.

- 11.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal on the first day of each month of an Application for Payment, all Work for which payments have been received from the City shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.
- 11.4 Each application for payment must be submitted with Contractor's waiver for period of construction covered by application. Each Application for Payment will be submitted with executed waivers from the subcontractors or sub-contractors and suppliers for the previous period of construction covered by the previous application. The final payment application must be submitted together with or preceded by final or complete waivers from every entity involved with performance of the Work covered by the payment request.
- 11.5 The Contractor will submit waivers on forms, and executed in a manner, acceptable to City.
- 11.6 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor because of such Subcontractor's Work the amount to which such Subcontractor is entitled. In the event the City becomes informed that the Contractor has not paid a Subcontractor as herein provided, the City shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the City, shall be deemed payment to the Contractor but shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the City to repeat the procedure in the future.
- 11.7 The Field Superintendent 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 Field Superintendent will submit an estimate each month to the City for payment to the Contractor, except that no amount less than \$500.00 will be submitted unless the total amount of the Contract remaining unpaid is less than \$500.00.
- 11.8 Deductions will be made from progress payments if the Contract includes a provision for a lump sum or a percentage deduction. Lump sum deductions will be that portion of the stated lump sum computed as the ratio that the amount earned bears to the Contract Price. Percentage deductions will be computed at the stated percentage of the amount earned.
- 11.9 No progress payment, nor any use or occupancy of the Work by the City, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.
- 11.10 The City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the City from loss because of:
- Defective Work not remedied by the Contractor;
 - Claims of third parties against the City or the City's property;
 - Failure by the Contractor to pay Subcontractors or others in a prompt and proper

fashion;

- Evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
- Evidence that the Work will not be completed in the time required for substantial or final completion;
- Persistent failure to carry out the Work in accordance with the Contract;
- Damage to the City or a third party to whom the City is, or may be, liable;
- Evidence that the Work is not progressing according to agreed upon schedule by both parties.

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

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

12. COMPLETION AND FINAL PAYMENT

12.1 Upon Total Completion, when the Contractor is ready for a final inspection of the Total Project Work, it shall notify the City and the Field Superintendent thereof in writing. Thereupon, the Field Superintendent will make final inspection of the Work and, if the Work is complete in accordance with this Contract, the Field Superintendent 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 Field Superintendent is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s), which cost may be deducted by the City from the Contractor's full payment.

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

12.3 The City shall make final payment of all sums due the Contractor within thirty days of the Field Superintendent's execution of a final Certificate for Payment.

12.4 Acceptance of final payment shall constitute a waiver of all claims against the City by the Contractor except for those claims previously made in writing against the City by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final inspection.

13. CLAIMS BY THE CONTRACTOR

13.1 All Contractor claims shall be initiated by written notice and claim to the Field Superintendent. Such written notice and claim must be furnished within seven calendar days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.

13.2 The Contractor shall diligently proceed with performance of this Contract whether or not there be such a claim pending and the City shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim shall be reflected by a Change Order executed by the City, the Field Superintendent and the Contractor.

13.3 Should concealed and unknown conditions which could not, with reasonable diligence, have been discovered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure differ materially with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided by this Contract, be encountered, the Contract Price shall be equitably adjusted by the Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the City having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the City written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed or unknown condition.

13.4 If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the City therefore, the Contractor shall give the City written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.

13.5 The City reserves the right to increase or decrease quantities, and alter the details of construction including grade and alignment as the Field Superintendent may consider necessary or desirable, by approved Change Order. Such modifications shall not invalidate the Contract nor release the surety. Unless such alterations and increases or decreases change the total cost of the Work, based on the originally estimated quantities and the unit prices bid, by more than 25 percent, or change the total cost of any major item, based on the originally estimated quantities and the unit price bid, by more than 25 percent, the Contractor shall perform the work altered, increased or decreased, at a negotiated price or prices. (A major item shall mean any bid item, the total cost of which exceeds 12-1/2 percent of the total Contract Price based on the proposed quantity and the contract unit price).

- 13.6 When the alterations cause an increase or decrease in excess of the 25 percent indicated above, either the Contractor or the Field Superintendent may request an adjustment of the unit price to be paid for the item or items.
- 13.7 If a mutually agreeable adjustment cannot be obtained, the City reserves the right to terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the Work.
- 13.8 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall not include standby costs, indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties.
- 13.9 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving Final Acceptance of the Work shall be extended upon the written notice and claim of the Contractor to the City, for such reasonable time as the City may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven calendar days after the occurrence of the event or the first appearance of the condition-giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Work. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this subparagraph, any claim for an extension of time shall be waived.
- 13.10 The Contractor shall delay or suspend the progress of the work or any part thereof, whenever so required by written order of the City, and for such periods of time as required; provided, that in the event of such delay or delays or of such suspension or suspensions of the progress of the work, or any part thereof, the time for completion of work so suspended or of work so delayed by such suspension or suspensions shall be extended for a period equivalent to the time lost by reason of such suspension or suspensions; but such order of the City or Field Superintendent shall not otherwise modify or invalidate in any way, any of the provisions of this Contract. In the event that the work shall be stopped by written order of the City, any expense, which, in the sole opinion and judgment of the City, is caused by the City, shall be paid by the City to the Contractor.
- 13.11 In executing the Contract Documents, the Contractor expressly covenants and agrees that, in undertaking to complete the Work within the time herein fixed, it has taken into consideration and made allowances for all hindrances and delays incident to such work, whether growing out of delays in securing materials or workers 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.
- 13.12 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

14. CHANGES IN THE WORK

- 14.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.
- 14.2 The Field Superintendent shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 14.3 Any change in the Contract Price resulting from a Change Order shall be by mutual agreement between the City and the Contractor as evidenced by the change in the Contract Price being set forth in the Change Order, and, together with any conditions or requirements related thereto, being initialed by both parties.
- 14.4 If no mutual agreement occurs between the City and the Contractor relative to a change in the Work, the Contractor shall proceed with the Work that is the subject of the Change Order, and the change in the Contract Price, if any, shall then be determined by the Field Superintendent 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 Field Superintendent 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 Field Superintendent's Certificate for Payment.
- 14.5 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that the application of such unit prices to the quantities of Work proposed would cause substantial inequity to the City or to the Contractor, the applicable unit prices shall be equitably adjusted.
- 14.6 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim including impact against the City for

additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

15. INSURANCE AND BONDS.

15.1 The Contractor shall secure and maintain, throughout the duration of the agreement, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Contractor shall provide certificates of insurance and renewals thereof on forms acceptable to the City. The City shall be notified by receipt of written notice from the insurer or the Contractor at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.

15.2 The Contractor, upon receipt of notice of any claim in connection with this Agreement, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability. The Contractor shall monitor and promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by the Contract Documents) if the Contractor's limits of protection shall have been impaired or reduced to such extent that the limits fall below the minimum amounts required herein. The Contractor shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

15.3 Minimum Requirements Commercial General Liability Policy Limits -

| | |
|--|-------------|
| General Aggregate: | \$2,000,000 |
| Products / Completed Operations Aggregate: | \$2,000,000 |
| Personal & Advertising Injury: | \$1,000,000 |
| Each Occurrence: | \$1,000,000 |

Policy MUST include the following conditions:

- A. Pollution Liability (Applicable only to contracts involving pollutants such as asbestos & lead abatement, sludge or other waste abatement, etc.)
- B. NAME CITY OF PRAIRIE VILLAGE AS "ADDITIONAL INSURED"

15.4 Automobile Liability Policy shall protect the Contractor against claims for bodily injury and/or property damage arising from the ownership or use of any owned, hired and/or non-owned vehicle.

Limits (Same as Commercial General Liability) -

Combined Single Limits, Bodily Injury and Property Damage - Each Accident:

Policy MUST include the following condition:

NAME CITY OF PRAIRIE VILLAGE AS "ADDITIONAL INSURED"

15.5 Umbrella Liability. The Umbrella / Excess Liability must be at least as broad as the underlying general liability and automobile liability policies.

Limits -

| | |
|-------------------|-------------|
| Each Occurrence | \$1,000,000 |
| General Aggregate | \$1,000,000 |

- 15.6 Workers' Compensation. This insurance shall protect the Contractor against all claims under applicable state workers' compensation laws. The Contractor shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of workers' compensation law. The policy limits shall not be less than the following:

| | |
|---------------------------|-------------------------|
| Workers' Compensation: | Statutory |
| Employer's Liability: | |
| Bodily Injury by Accident | \$100,000 each accident |
| Bodily Injury by Disease | \$500,000 policy limit |
| Bodily Injury by Disease | \$100,000 each employee |

- 15.7 The City will only accept coverage from an insurance carrier who offers proof that it:

Is authorized to do business in the State of Kansas;
 Carries a Best's policy holder rating of A- or better; and
 Carries at least a Class VIII financial rating, **or**
 Is a company mutually agreed upon by the City and Contractor.

- 15.8 Subcontractor's Insurance. If a part of the Agreement is to be sublet, the Contractor shall either:

- A. Cover all subcontractor's in its insurance policies, or
- B. Require each subcontractor not so covered to secure insurance which will protect subcontractor against all applicable hazards or risks of loss as and in the minimum amounts designated.

Whichever option is chosen, Contractor shall indemnify and hold harmless the City as to any and all damages, claims or losses, including attorney's fees, arising out of the acts or omissions of its Subcontractors.

- 15.9 Prior to commencing any work, Contractor shall provide City with certificates evidencing that (1) all Contractor's insurance obligations required by the contract documents are in full force and in effect and will remain in effect until Contractor has completed all of the work and has received final payment from City and (2) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to City. Contractor's property insurance shall not lapse or be canceled if City occupies a portion of the work. Contractor shall provide City with the necessary endorsements from the insurance company prior to occupying a portion of the work.

- 15.10 Waiver of Subrogation. All insurance coverage required herein shall contain a waiver of subrogation in favor of the City. Contractor's insurance policies shall be endorsed to indicate that Contractor's insurance coverage is primary and any other insurance maintained by City is non-contributing as respects the work of Contractor.

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

- 15.12 Bonds and Other Performance Security. Contractor shall provide a Performance Bond, Maintenance Bond and a Statutory Bond in the amount of one hundred percent (100%) of the Contract Price to cover the entire scope of Work and any other specific performance security that may be indicated in this Contract. With each bond there shall be filed with the City one copy of "Power of Attorney" certified to include the date of the bonds.

16. INDEMNITY

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

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

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

17. SUCCESSORS AND ASSIGNS

- 17.1 The City and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract.

- 17.2 The Contractor shall not assign or sublet the work, or any part thereof, without the previous written consent of the City, nor shall it assign, by power of attorney or otherwise, any of the money payable under this Contract unless by and with the like written consent of the City. In case the Contractor assigns all, or any part of any moneys due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to all prior liens of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.
- 17.3 Should any Subcontractor fail to perform in a satisfactory manner, the work undertaken, its subcontract shall be immediately terminated by the Contractor upon notice from the City. Performing in an unsatisfactory manner is defined as consistently having more than 10% of work unacceptable. The Contractor shall be as fully responsible to the City for the acts and omissions of the subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed. Nothing contained in this Contract shall create any contractual relations between any Subcontractor and the City, nor shall anything contained in the Contract Documents create any obligation on the part of the City to pay or to see to the payment of any sums due any Subcontractor.
- 17.4 The Contractor shall not award subcontracts which total more than forty-five (45%) of the Contract Price and shall perform within its own organization work amounting to not less than fifty-five percent (55%) of the total Contract Price. Approval by the City of any Subcontractor shall not constitute a waiver of any right of the City to reject Defective Work, material or equipment not in compliance with the requirements of the Contract Documents. The Contractor shall not make any substitution for any Subcontractor accepted by the City unless the City so agrees in writing.
- 17.5 The Contractor shall not subcontract, sell, transfer, assign or otherwise dispose of the Contract or any portion thereof without previous written consent from the City. In case such consent is given, the Contractor, shall be permitted to subcontract a portion thereof, but shall perform with his/her own organization work amounting to not less than fifty five (55%) of the total Contract Price. No subcontracts, or other transfer of Contract, shall release the Contractor of its liability under the Contract and bonds applicable thereto.
- 17.6 The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Contractor by the terms of the Contract Documents insofar as applicable to the work of the Subcontractor and to give the Contractor the same power to terminate any Subcontract as the City has to terminate the Contractor under any provisions of the Contract Documents.
- 17.7 Prior to the City's approval of the Contract bid, the successful bidder shall submit to the City for acceptance, a list of names of all Subcontractors proposed for portions of the work and shall designate which work each is to perform.
- 17.8 The City shall, prior to the City's approval of the Contract bid, notify the successful bidder, in writing, if the City, after due investigation, has reasonable objection to any Subcontractor on such list, and the Contractor shall substitute a Subcontractor acceptable to the City at no additional cost to the City or shall be allowed to withdraw his/her Bid, and the City shall either re-bid the Work or accept the next best lowest and responsible bidder. The failure of the City to make objection to a Subcontractor shall constitute an acceptance of such

Subcontractor but shall not constitute a waiver of any right of the City to reject Defective Work, material or equipment not in conformance with the requirements of the Project Manual.

18. NON-DISCRIMINATION LAWS

18.1 The Contractor agrees that:

- A. The Contractor shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of Work under the present contract because of race, religion, color, sex, disability, national origin, ancestry or age;
- B. In all solicitations or advertisements for employees, the Contractor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
- C. 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;
- D. 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
- E. The Contractor shall include the provisions of Subsections A through D in every subcontract or purchase order so that such provisions will be binding upon such Subcontractor or vendor.
- F. The provisions of this Section shall not apply to a contract entered into by a Contractor: (1) Who employs fewer than four employees during the term of such contract; or (2) Whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.

18.2 The Contractor further agrees that it shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all other federal, state and local laws.

19. FEDERAL LOBBYING ACTIVITIES [THIS PROVISION ONLY APPLIES IF THE CITY IS RECEIVING FEDERAL FUNDS]

19.1 31 USCS Section 1352 requires all subgrantees, Contractors, Subcontractors, and consultants/Architects who receive federal funds via the City to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the award of any federal contract, grant, loan, or cooperative agreements.

19.2 In addition, contract applicants, recipients, and subrecipients must file a form disclosing any expenditure they make for lobbying out of non-federal funds during the contract period.

19.3 Necessary forms are available from the City and must be returned to the City with other Contract Documents. It is the responsibility of the general contractor to obtain executed forms from any Subcontractors who fall within the provisions of the Code and to provide the City with the same.

20. RELATIONS WITH OTHER CONTRACTORS:

20.1 The Contractor shall cooperate with all other contractors who may be performing work on behalf of the City, and workers who may be employed by the City, or any other entity on any work in the vicinity of the Work to be done under this Contract, and the Contractor shall so conduct his/her operations as to interfere to the least possible extent with the work of such contractors or workers. The Contractor shall be responsible for any injury or damage, that may be sustained by other contractors, workers, their work or employees of the City, because of any fault or negligence on the Contractor's part, and shall, at his/her own expense, repair or pay for such injury or damage. If the work of the Contractor is delayed because of any acts or omissions of any other Contractor or Contractors, the Contractor shall have no claim against the City on that account other than for an extension of time.

20.2 When two or more Contracts are being executed at one time in such manner that work on one Contract may interfere with that on another, the City shall decide which Contractor shall progress at which time.

20.3 Other projects the Contractor may have to coordinate shall be listed in the Special Conditions.

20.4 When the territory of one Contract is the necessary or convenient means of access for the transportation or movement of workers, materials, or appliances required for the execution of another Contract, such privileges of access or any other responsible privilege may be granted by the City to the Contractor so desiring, to the extent such may be reasonably necessary.

20.5 Upon execution of the Contract, the Contractor shall furnish the City, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Work. The City shall promptly reply to the Contractor, in writing, stating any objections the City may have to such proposed Subcontractor. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the City has made timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has objection.

21. RIGHT OF CITY TO TERMINATE

21.1 If the Contractor persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, or supply enough properly skilled workers, supervisory personnel or proper equipment or materials, or if it fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or if this Contract is assigned by Contractor without authorization or if Contractor is adjudged as bankrupt, or if a general assignment of assets be made for the benefit of creditors; or if a receiver is appointed, or otherwise is guilty of a substantial violation of a provision of this Contract, then the City may by written

notice to the Contractor, without prejudice to any right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor and its surety shall be liable to the City for all excess cost sustained by the City because of such prosecution and completion including any additional legal, Field Superintendent or bid-letting costs therefore. In such case, the Contractor shall not be entitled to receive further payment. In the event the Contractor is found in a court of law to have been wrongfully terminated for cause, then such termination shall be deemed a termination for convenience and the Contractor shall be compensated as provided herein. Any termination of the Agreement for alleged default by Contractor that is ultimately determined to be unjustified shall automatically be deemed a termination for convenience of the City.

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

22. MISCELLANEOUS:

- 22.1 The Contractor warrants to the City that all labor furnished to progress the Work under the Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with the Project Manual. All Work not conforming to these requirements may be considered defective.
- 22.2 The Contractor shall obtain and pay for all permits, fees and licenses necessary or ordinary for the Work. The Contractor shall comply with all lawful requirements, including federal and state laws, City and County laws and ordinances and building codes, applicable to the Work and shall give and maintain copies of all notices required by applicable law pertaining to the Work.
- 22.3 Provision for Emergencies. Whenever, in the opinion of the City, the Contractor has not taken sufficient precaution for the safety of the public or the protection of the Work to be constructed under this Contract, or of adjacent structures or property which may be injured by process of construction, and whenever, in the opinion of the City, an emergency shall arise and immediate action shall be considered necessary in order to protect property interests and to avoid personal injury and/or death, then the City, with or without notice to the Contractor, shall provide suitable protection to the said interests by causing such Work to be done and materials to be furnished at places as the City may consider necessary and adequate. The cost and expense of such Work and material so furnished shall be borne by the Contractor and, if the same shall not be paid on presentation of the bills therefore, such costs shall be deducted from any amounts due or to become due the Contractor. The performance of such emergency Work shall in no way relieve the Contractor of responsibility for damages which may occur during or after such precaution has been duly taken.

- 22.4 Both the business address of the Contractor given in the Bid or proposal upon which this Contract is founded, and the Contractor's Office near the Work, is hereby designated as the places to which all notices, letters, and other communications to the Contractor may be mailed or delivered. The delivering at either of the above named addresses, or depositing in any mailbox regularly maintained by the Post Office, of any notice, letter or other communication so addressed to the Contractor, and the date of said service shall be the date of such delivery or mailing. Such addresses may be changed at any time by an instrument in writing, executed by the Contractor, presented, and delivered to the Field Superintendent and to the City. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or communication upon the Contractor personally.
- 22.5 It is mutually agreed by and between the parties to this Contract that all royalties and fees for and in connection with patents, or patent infringement, claims for materials, articles, apparatus, devices or equipment (as distinguished from processes) used in or furnished for the work shall be included in the Contract Price and the Contractor shall satisfy all demands that may be made at any time for such, and the Contractor shall at its cost and expense, defend any and all suits or proceedings that may be instituted at any time against the City for infringement or alleged infringement of any such patents involved in the work, and Contractor shall pay any award of damages.
- 22.6 The right of general administration of the City shall not make the Contractor an agent of the City, and the liability of the Contractor for all damages to persons, firms, and corporations, arising from the Contractor's execution of the Work, shall not be lessened because of such general administration, but as to all such persons, firms, and corporations, and the damages, if any, to them or their property. The Contractor herein is an independent Contractor in respect to the work.
- 22.7 For a period of time, from the inception of the Contract to three (3) years from the date of final payment under the Contract, the Contractor and subcontractors shall maintain books, accounts, ledgers, invoices, drafts, pages and other records pertaining to the performance of this Contract. At all reasonable times during this period these records shall be available within the State of Kansas at a field or permanent business office for inspection by authorized representatives of the City or of any other agency, which has contributed funds in connection with the Contract or to which the City is obligated to make such inspections available. In addition, this requirement shall be included in all subcontracts entered into in connection with this Contract.
- 22.8 Titles, subheadings used herein, and other Contract Documents are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Contract Documents.
- 22.9 No waiver of any breach of this Contract shall be construed to be a waiver of any other subsequent breach.
- 22.10 Should any provision of this Agreement or other Contract Documents be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement and/or the other Contract Documents shall be unaffected thereby and shall continue to be valid and enforceable.

- 22.11 Without in any manner limiting Contractor's responsibilities as provided elsewhere in the Contract Documents, the Contractor shall assume full responsibility for the protection of all public and private property, structures, sewers, and utilities, for both above ground and underground facilities, along, beneath, above, across or near the site or sites of the Work being performed under this Agreement, or which are in any manner affected by the prosecution of the Work or the transportation of men/women or materials in connection therewith. Barriers shall be kept in place at all times to protect persons other than those engaged on or about the Work from accident, and the Contractor will be held responsible for all accidents to persons or property resulting from the acts of Contractor or its employees.
- 22.12 The Contractor shall keep fully informed of all existing and current regulations of the City, county, state, and federal laws, which in any way limit or control the actions or operations of those engaged upon the work, or affecting materials supplied, to or by them. The Contractor shall at all times observe and comply with all ordinances, laws, and regulations, and shall protect and indemnify the City and the City's officers and agents against any claims or liability arising from or based on any violation of the same.
- 22.13 Nothing contained in the Contract Documents shall create, or be interpreted to create, privity or any other contractual agreement between the City and any person or entity other than the Contractor.
- 22.14 Duties and obligations imposed by the Contract Documents, rights, and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.
- 22.15 No action or failure to act by the City, Field Superintendent or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval or acquiescence in a breach hereunder, except as may be specifically agreed in writing.
- 22.16 Contractor specifically acknowledges and confirms that: (i) it has visited the site, made all inspections it deems appropriate and has read and fully understands the Contract Documents, including all obligations and responsibilities undertaken by it as specified herein and in other Contract Documents and knowingly accepts the same; (ii) it has furnished copies of all Contract Documents to its insurance carrier(s) and its surety(ies); and (iii) its insurance carrier(s) and surety(ies) agree to be bound as specified herein, in the Contract Documents and in the insurance policy(ies) and bonds as to liability and surety coverage.
- 22.17 It is specifically agreed between the parties executing this Agreement that the Contract Documents are not intended to create any third party beneficiary relationship nor authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.
- 22.18 This Agreement is entered into, under and pursuant to, and is to be construed and enforceable in accordance with the laws of the State of Kansas. Venue of any litigation arising in connection with this Agreement shall be the State courts of Johnson County, Kansas.

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

CITY OF PRAIRIE VILLAGE

The Davey Tree Expert Company
(typed company name)

By: _____
(signed)

By: _____
(signed)

Laura Wassmer

(typed name)

Mayor

(typed title)

City of Prairie Village

(typed company name)

7700 Mission Road

(typed address)

Prairie Village, Kansas 66208

(typed city, state, zip)

(typed telephone number)

(date of execution)

(date of execution)

SEAL

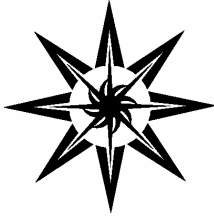
ATTEST:

APPROVED BY:

City Clerk, Joyce Hagen-Mundy

City Attorney, Catherine Logan

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



ADMINISTRATION

Committee of the Whole Meeting: November 2, 2015
City Council Meeting: November 16, 2015

Proposed Charter Ordinance No. 27 - Establishment of a Transient Guest Tax

Background:

Currently, the City of Prairie Village does not have a transient guest tax (TGT). In Kansas, a transient guest tax is a local tax set by a city or county and administered by the Kansas Department of Revenue. This tax, commonly called a hotel tax, is imposed on the gross receipts received for sleeping accommodations. A transient guest is a person who occupies a room in a hotel, motel, or tourist court for not more than 28 consecutive days.

The proposed Meadowbrook redevelopment includes a small boutique inn. Most of the additional revenue generated from the transient guest tax would be utilized to pay the debt service on the general obligation bonds and special obligation bonds for the Meadowbrook Park project.

Draft Charter Ordinance No. 27 would establish a transient guest tax in the City of Prairie Village at nine percent (9%). A charter ordinance requires a 60 day protest period and is required as the proposed rate exceeds the maximum rate in the Kansas statute. A charter ordinance also requires 2/3 approval of the Governing Body.

A separate fund will be established for transient guest tax revenues. Discussions regarding a City Council Policy for proper uses and the role of the City Council regarding transient guest tax revenues will occur at a later date.

Area Transient Guest Tax Rates:

| Location | Rate |
|---------------|------|
| Leawood | 8% |
| Lenexa | 8% |
| Merriam | 7% |
| Mission | 9% |
| Olathe | 6% |
| Overland Park | 9% |
| Shawnee | 6% |

Attachments:

1. Draft Charter Ordinance No. 27
2. Kansas Department of Revenue Transient Guest Tax Overview

Prepared By:

Nolan Sunderman
Assistant to the City Administrator
Date: October 29, 2015

CHARTER ORDINANCE NO. 27

A CHARTER ORDINANCE EXEMPTING THE CITY OF PRAIRIE VILLAGE, KANSAS, FROM THE PROVISIONS OF SUBPARAGRAPH (a) OF K.S.A. 12-1697 AND FROM THE PROVISIONS OF SUBPARAGRAPH (e) OF K.S.A. 12-1698, WHICH RELATE TO THE LEVY OF A TRANSIENT GUEST TAX, TO THE MAXIMUM RATE THEREOF, AND TO THE PURPOSES FOR WHICH TRANSIENT GUEST TAX REVENUES MAY BE SPENT; AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECTS.

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

Section 1. The City of Prairie Village, Kansas, is a city of the first class, and by the power vested in it by Article 12, Section 5, of the Constitution of the State of Kansas, hereby elects to exempt, and does hereby exempt, itself from, and makes inapplicable to it, the provisions of subparagraph (a) of K.S.A. 12-1697 and the provisions of subparagraph (e) of K.S.A. 12-1698, which relate to the levy of a transient guest tax, to the maximum rate thereof, and to the purposes for which transient guest tax revenues may be spent and hereby provides substitute and additional provisions on the same subjects as set forth herein. The referenced statutes are not uniformly applicable to all cities in Kansas.

Section 2. A transient guest tax of nine percent (9%) is hereby levied upon the gross receipts derived from or paid by transient guests for sleeping accommodations, exclusive of charges for incidental services or facilities, in any hotel, motel or tourist court located within the City of Prairie Village. The percentage of such transient guest tax may hereafter be determined by the Governing body by ordinary ordinance.

Section 3. Revenues received by the City from the transient guest tax shall be expended for all, or any portion of, community, economic development and cultural activities which encourage or which are deemed to result in increased economic development, visitors and tourism for the City, and to the payments of principal and interest on bonds issued by the City, including bonds issued pursuant to K.S.A. 12-1774.

Section 4. All other provisions of K.S.A. 12-1697 and K.S.A. 12-1698, not exempted hereby, shall remain the same.

Section 5. If for any reason any chapter, article, section, subsection, sentence, portion or part of this proposed Ordinance set out herein, or the application thereof to any person or circumstances is declared to be unconstitutional or invalid, such decision will not affect the validity of the remaining portions of this Ordinance.

Section 6. This ordinance shall be published once each week for two (2) consecutive weeks in the official city newspaper.

Section 7. THIS IS A CHARTER ORDINANCE AND SHALL TAKE EFFECT 61 DAYS AFTER FINAL PUBLICATION UNLESS WITHIN 60 DAYS OF ITS FINAL PUBLICATION A PETITION SIGNED BY A NUMBER OF ELECTORS OF THE CITY OF PRAIRIE VILLAGE EQUAL TO NOT LESS THAN TEN PERCENT OF THE NUMBER OF ELECTORS WHO VOTED AT THE LAST PRECEDING REGULAR CITY ELECTION SHALL BE FILED IN THE OFFICE OF THE CITY CLERK OF PRAIRIE VILLAGE, DEMANDING AN ELECTION ON THE CHARTER ORDINANCE, IN WHICH CASE THE CHARTER ORDINANCE SHALL BECOME EFFECTIVE ONLY IF AND WHEN APPROVED BY A MAJORITY OF THE ELECTORS VOTING THEREON.

PASSED BY THE GOVERNING BODY, NOT LESS THAN TWO-THIRDS OF THE MEMBERS ELECT VOTING IN FAVOR THEREOF, ON THIS NOVEMBER 16, 2015.

Laura Wassmer, Mayor

ATTEST:

Joyce Hagen Mundy
City Clerk

APPROVED AS TO FORM:

Catherine P. Logan
City Attorney



TRANSIENT GUEST TAX

Kansas law allows counties to impose a transient guest tax. The also allows cities to impose this tax if they are located within a county which has not already imposed such tax. This rule of law generally prohibits a county and a city within that county from both imposing a transient guest tax. See our web site for a complete list of the Kansas cities and counties imposing this tax and the rates thereof.

Although the transient guest tax is a **local** tax (imposed by cities or counties), it is by law administered by the Kansas Department of Revenue. Like sales tax, it is collected by hotels from their customers and remitted to the Kansas Department of Revenue on forms provided by the Kansas Department of Revenue. 98 percent of the transient guest tax is returned to the cities and counties for use in promoting tourism. The remaining 2 percent is kept by the Kansas Department of Revenue to offset the cost of administering the tax.

“HOTEL” DEFINED FOR TRANSIENT GUEST TAX

For transient guest tax purposes, a *hotel* (other than a hotel located within a Redevelopment District – see next page) is defined as an establishment having *more than two bedrooms*. Thus, a hotel, motel, tourist court or any other establishment renting out a minimum of three sleeping rooms within a city or county that has imposed a transient guest tax must collect and remit this tax on its room rentals.

Accommodation brokers (defined on page 3) must also collect any applicable transient guest tax on their sleeping room rentals, even though they may only have two or more rooms. [K.S.A. 12-1692(f)]

If you are located in an area that has levied a transient guest tax, you must collect it when the number of sleeping rooms available for guests is at least:

- 3 – local transient guest tax for hotels
- 2 – local transient guest tax for accommodation brokers
- 9 – state transient guest tax in a redevelopment district (discussion follows)



A bed and breakfast in Topeka, KS has a total of three sleeping rooms that it rents out to guests. It is required to collect, report and remit transient guest tax, but not retailers' sales tax, on its room rentals (four or more rooms required for sales tax – see pages 3 and 4).

TRANSIENT GUEST TAX IMPOSED ON ...

Transient guest tax is imposed on the gross receipts received for sleeping accommodations. The amount of money received for sleeping accommodations subject to this tax is the same amount subject to Kansas retailers' sales tax, including no show revenue and other taxable room

fees discussed on page 4. Like sales tax, transient guest tax does not apply to the rental of non-sleeping rooms (i.e., ballrooms, banquet, meeting, reception rooms or office space). See *Revenue Ruling 19-2010-04* herein.



A motel rents its sleeping rooms for \$67 per night – single occupancy. The retailers sales tax rate is 6.15% and the transient guest tax rate is 4 percent. The retailer sales tax due is \$4.12 ($\$67 \times .0615 = \4.12), and the transient guest tax due is \$2.68 ($\$67 \times .04 = \2.68).

NOTE: The transient guest and sales tax should be separately stated on the bill (see example on page 6). If the transient guest tax is not a separate line item, it is subject to sales tax because it becomes part of the sales tax base for calculation of sales tax on the room rental.

A *transient guest* is a person who occupies a room in a hotel, motel, or tourist court for not more than 28 consecutive days. Therefore, unlike sales tax, transient guest tax is not collected on the rental of sleeping rooms for more than 28 consecutive days to the same person or entity. So, a guest who occupies a room for 29 or more consecutive days is no longer a *transient* guest.



A hotel rents two of its sleeping rooms to American Life Inc. employees on a continuous basis (over 28 consecutive days). While sales tax is due on the gross receipts received, NO transient guest tax is due.

The tax exempt entities listed on page 4 may purchase (rent) a sleeping room exempt from Kansas sales tax. However, for transient guest tax purposes, only the U.S. government, its agencies and instrumentalities is exempt from paying transient guest tax — provided that it is a **direct** purchase. This exemption is by operation of federal law.



The state of Kansas purchases hotel sleeping rooms in Hutchinson for Highway Patrol troopers during the week of the state fair. Although the room rentals are exempt from sales tax as a direct purchase by a state agency, the room rentals are subject to transient guest tax.

In summary, there are only two exemptions to charging transient guest tax: 1) the sleeping room(s) are rented as a direct purchase by the federal government, its agencies or instrumentalities, **or** 2) the room(s) are rented to the same guest for more than 28 consecutive days.

On all other sales (rental) of sleeping rooms by a hotel located in a city or county that has imposed a transient guest tax, the transient guest tax must be collected and remitted to the Kansas Department of Revenue.



You rent a room to a guest for \$50 per night, billed on a weekly basis of \$350, plus 6.5% sales tax and 6 percent transient guest tax. On the 29th rental day (beginning of the 5th week), you will credit the guest's account for the previously paid transient guest tax of 6 percent.

**COUNCIL MEETING AGENDA
CITY OF PRAIRIE VILLAGE
Council Chambers
Monday, November 02, 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 regular City Council meeting minutes - October 19, 2015
2. Approve order of Animal Control truck - one 2016 Ford F150 from Shawnee Mission Ford for no more than \$22,000

VII. **COMMITTEE REPORTS**

Council Committee of the Whole

COU2015-36 Consider Charter Ordinance No. 26 repealing certain prior Charter Ordinances codified into the City Code and "ordinary" Ordinance 2338 enacting substitute provisions of the Code of the City of Prairie Village regarding elections and vacancies for office.

COU2015-40 Consider bid award for 2016 Tree Trimming Program

VIII. **MAYOR'S REPORT**

IX. **STAFF REPORTS**

X. **OLD BUSINESS**

XI. **NEW BUSINESS**

XII. EXECUTIVE SESSION

XIII. ANNOUNCEMENTS

XIV. ADJOURNMENT

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

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

CONSENT AGENDA
CITY OF PRAIRIE VILLAGE

November 2, 2015

**CITY COUNCIL
CITY OF PRAIRIE VILLAGE
October 19, 2015**

The City Council of Prairie Village, Kansas, met in regular session on Monday, October 19, 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, Brooke Morehead, Sheila Myers, Dan Runion, David Morrison, Ted Odell and Terrence Gallagher.

Staff present was: Tim Schwartzkopf, Chief of Police; Keith Bredehoeft, Public Works Director; Melissa Prenger, Project Manager; 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 were Teen Council members: Ben Wang, Kellie O'Toole and Dennis Rice.

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

INTRODUCTION OF STUDENTS & SCOUTS

No scouts or students were in attendance.

PRESENTATIONS

Update from First Washington regarding Village and Corinth Shops

Mayor Wassmer welcomed representatives from First Washington Realty: Alex Nyhan, Senior Vice President; Gregory Zike, Vice President and Monica Mallory, Regional Property Manager. Also present was Tom Proebstle with Generator Studio.

Mr. Nyhan reviewed the following \$ 0.5M in deferred maintenance/capital improvements made to the shopping centers since their purchase by First Washington earlier this year. These include parking lot rehabilitation, Hen House exterior building repair and Village Flower/TCBY exterior building repair (scheduled for 4th quarter of 2015) at the Village Shops. Corinth Square Shopping Center also had parking lot rehabilitation and has the roof replacement of the Johnny's/Subway building scheduled for the 4th quarter of 2015.

Alex Nyhan was pleased to announce 100% occupancy at both shopping centers.

Monica Mallory introduced herself and provided a tenant update highlighting new and existing tenants in the centers. She stated First Washington has been pleased to financially support the community events of VillageFest, JazzFest, State of the Arts and the Mayor's Holiday Tree Fund. They are equally excited to sponsor the following community events at their centers: Prairie Village Art Fair, Lancer Day Parade, SMMC Light the Town Pink, Trick or Treating in the Village and Holiday Open House Events at the Village Shops. Corinth Square Shopping Center is pleased to host the KU Kick Off event, Trick or Treating at Corinth Square and Holiday Open House Events.

Tom Proebstle with Generator Studio briefly reviewed the plans for Project C: Building D Façade Remodel. This is commonly referred to as the Hattie's Building.

Plans have been submitted for site plan approval by the Planning Commission at its November meeting. The proposed changes will provide more open space and more visibility for the tenants. The building materials will be carried over from those used in other parts of the center.

Jori Nelson confirmed this project will be completed with CID funds.

Terrence Gallagher asked if the tenants will be able to select their signage as they did for other parts of the center or if standardized signage will be required. Mr. Proebstle replied the tenants will be able to select.

Alex Nyhan closed the presentation with a discussion of the constraints faced by First Washington in further redevelopment of the centers noting there are three main large tenants in The Village with long term leases - Macy's, US Bank and Hen House. They continue to engage in discussions with them; however, until agreement is reached with them regarding redevelopment, they are unable to pursue significant changes. Mr. Nyhan noted that being the case, they do not plan to engage the community in public meetings until they are able to offer something. Mr. Nyhan stated he looked forward to returning in December with the formal annual CID Report.

Ted Odell thanked First Washington for its involvement in the community. He stated that he would like to see more engagement and better communication with the existing tenants. Mr. Nyhan responded that Monica Mallory interacts with the tenants more than fifty times per week.

Jori Nelson also thanked them for providing the update. She stated she has heard great things about Monica and that the tenants appreciate all that she does; however, they want to have communication from the owner. These formerly locally owned centers have had a history of direct communication with their owners

establishing good personal relationships. The merchants are fearful and have a lack of trust in the current ownership. They do not know what is planned for the centers. The renewal process is difficult and intimidating requiring input from attorneys. The tenants on the back side of the shopping center feel they have been neglected with no landscaping or fountains. These tenants have been in Prairie Village for 30+ years and want a partnership with the owners and want the owners to have a greater presence at the centers to address their concerns.

Mr. Nyhan replied that Monica represents First Washington and noted that the Prairie Village centers are the only centers they own that have an on-site property manager. Their strategy is to retain tenants and in the seven months they have owned the centers they have done that - no one has left. It is their goal to have local tenants prosper.

David Morrison stated the City wants to have a partnership with the First Washington Realty and asked how much financial support they gave to community events. Mr. Nyhan stated that information would be presented in their annual CID report in December.

Ashley Weaver stated that she was disappointed that the merchants felt intimidated and fearful by their aggressiveness.

Mayor Wassmer noted the recent issue of INK highlights Prairie Village local merchants in its centers. Based on what she is hearing, she stressed the need to take care of local tenants. There appears to be a disconnect between the tenants and the ownership, which she does not feel is intentional.

Eric Mikkelson stated he is seeing the type of partnership that he had hoped to have. He appreciated Mr. Nyhan's explanation why a community meeting has not been

held and confirmed that they will take place at the appropriate time. He asked what they were doing to attract and keep local tenants.

Mr. Nyhan responded there are zero vacancies at both centers. They see their job being to help tenants succeed.

Mr. Mikkelson noted the parking lot property owned by First Washington across the street next to Brighton Gardens needs to be better maintained. He asked if other than Project C: in Corinth Center if there were any other CID projects in the pipeline. Mr. Nyhan replied there were not. Quinn Bennion noted however, the Tomahawk Trail funded through the CID is scheduled for 2016.

Ashley Weaver asked why the rent increases have been so large. Ms. Nelson stated the increased rents requires the tenants to increase their prices making it difficult to retain their customers. She felt that the tenant rents should not be increased to offset the high price that was paid by First Washington for the centers.

Gregory Zike stated that he meets with tenants on specific issues when he is in town. Ruth Hopkins stated she is worried about the smaller tenants that have been in the centers for years. They're afraid. She asked them to work with them as they are part of this community and belong in the centers. Mr. Zike replied they are supportive of all their tenants, large or small.

Mayor Wassmer suggested that they schedule time to meet with each of their merchants - to spend time with them and not only when there are issues, but get to know them. Mr. Zike replied that Monica speaks for the company. Mayor Wassmer acknowledged that she does, but noted the tenants are wanting someone with a Vice President title. Ms. Nelson added that Ms. Mallory is a representative of the company, but not a decision maker.

Sheila Myers stated she lives near the Corinth Center and is excited about the proposed improvements to Hatties.

PUBLIC PARTICIPATION

No one was present to address the City Council.

CONSENT AGENDA

Council President Brooke Morehead moved for the approval of the Consent Agenda for October 19, 2015:

1. Approve Regular City Council Minutes - October 5, 2015
2. Approve Special City Council Minutes - October 12, 2015
3. Approve Claims Ordinance 2935.

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.

Update on Consolidated Fire District No. 2 Station Location

Mayor Wassmer amended the agenda calling upon Chief Lopez with Consolidated Fire District No. 2 to provide an update on the proposed fire station location.

Chief Lopez stated that at the September 8th Council Committee he was asked to report back on any possible alternate sites on city property considered for the location of the fire station. Chief Lopez distributed site maps reflecting six locations considered and reviewed each. Exhibit A depicted the proposed site presented to the Council. Exhibit B was similar to Exhibit A but located further to the south encroaching on the existing skate park. Exhibit C was located over the existing Community Center which would have good access to Mission Road; however, the community center, basketball court and

several mature trees and green space would be lost. Exhibit D was located to the south of the municipal campus exit. This has great access to Mission Road; however, it is located over the city's geothermal field and not possible. Exhibit E was actually located south of the city's property on and has very poor access to Mission Road. Exhibit F was south of the water tower providing good access to Delmar; however, they have to go around the block to access Mission Road. There would be significant loss of green space and trees and in close proximity to residential neighborhoods.

Brooke Morehead noted that since the skate park will need to be completely rebuilt, it could also be relocated making option B acceptable. Mrs. Hopkins noted that its use would require immediate rehabilitation of the skate park. Chief Lopez responded that the fire district would consider that option. Eric Mikkelson noted a downside to option B is the loss of more green space. The proposed location of Option A results in the least amount of lost green space and trees.

Ted Odell stated that Option A was the logical choice. Terrence Gallagher thanked the Fire District for presenting the information.

Sheila Myers asked if the station could be attached to the municipal building. Mayor Wassmer stated that would have a major impact on police operations. Chief Schwartzkopf noted the police department needs access to the PD bay. Mrs. Myers stated it did not have to be a direct connection. There could be a road between the buildings.

Dan Runion asked if the footprint could be orientated differently. Chief Lopez responded the proposed orientation results in the least loss of parking spaces.

Eric Mikkelson asked if the Fire District was still open to collaboration on the design and how that would take place.

Deputy Chief Jeff Scott stated the Fire District has put out an RFP for an architect for the project. Once they are selected the department's building committee will begin to meet and they would invite city representatives to join that committee. Mr. Mikkelson noted the city's Planning Commission has several experienced architects and encouraged them to capture the benefit of that expertise.

COMMITTEE REPORTS

Council Committee of the Whole

COU2015-35 Consider renewal of City's Employee health, dental and vision insurance providers

On behalf of the Council Committee of the Whole, Council President Brooke Morehead moved the City Council approve Blue Cross Blue Shield of Kansas City as the City's health insurance provider for the 2016 plan year with a 9.0% increase in premiums, Delta Dental of Kansas as the City's dental insurance provider for the 2016 plan year with no increase in premiums and Superior Vision as the City's vision insurance provider for 2016 with no increase in premiums. The motion was seconded by Sheila Myers and passed unanimously.

COU2015-37 Consider approval of agreement with Affinis Corporation for the design of the 2016 Paving and Drainage Programs

Melissa Prenger provided an update on projects and explained how the paving and drainage programs were developed. She shared with the Council a map designating the 2015 Worst of the Worst (WOW) Streets. These 12 to 13 streets together with the Tomahawk Trail CID Project make up the tentative list of streets in the proposed paving program. She noted the list will be evaluated in the coming months for prioritization based on street condition.

The drainage program is developed with known drainage issues and includes a failing rock wall just east of Roe and the addition of more storm drains on Booth. Dan Runion asked if Delmar/Fontana area was included. Keith Bredehoeft replied that this area is currently being reviewed to determine the best action. Melissa Prenger noted that due to the size of this project it will be treated as an individual project.

This agreement is for the design of the 2016 Paving and Drainage Programs with construction anticipated to begin in the summer of 2015. Capital Improvement Program funding available for the 2016 Paving Program is \$104,060 with \$81,834 in funding available for the 2016 Drainage Project for a total cost of \$185,894.00.

Ted Odell moved the City Council approve the Design Agreement with Affinis Corporation for the design of the 2015 Paving and 2015 Drainage Programs in the amount of \$185,894.00. The motion was seconded by Andrew Wang and passed unanimously.

Eric Mikkelson confirmed that sidewalk will be installed where there is none according to the city's sidewalk program unless a valid petition is filed against installing sidewalks.

COU2015-38 Consider approval of agreement with Hollis + Miller Architects for the design of the City Hall/Police Department entrance

Brooke Morehead stated that as this decision is based on 2010 information and therefore she moved the City Council direct staff to re-evaluate the selection of Hollis + Miller Architects. The motion was seconded by Jori Nelson.

Keith Bredehoeft replied the city did a RFQ in 2009 and Hollis + Miller was selected by committee in 2010 to begin a re-design of the City Hall entrance and ADA enhancements. The project was paused due to budget cuts and other priorities. Hollis

+ Miller were told they would be hired when the project proceeded. The City Hall/Police Department entrance project is included in the CIP plan as a 2016 construction project for \$430,000 with design fees budgeted at \$70,000.

Mayor Wassmer stated that if the Council wants to go back out and look at additional firms the project would be delayed from 2016 to 2017. Mrs. Morehead replied with the five year period since the RFQ was issued she feels there may be other firms interested in the project.

Terrence Gallagher stated he does not have a problem with moving forward with Hollis + Miller, but wanted to know if the cost is that which was quoted in 2010. If not, he supports reopening the process. Mr. Bredehoeft replied the RFQ considered qualifications only, no fees were negotiated.

Jori Nelson felt that since the cost of the project is over \$10,000, it should be bid. She questioned if staff's plate was full, why the city was adding more with this project. Quinn Bennion stated this project has been scheduled for the 2016 CIP; however, it could be done in 2017. Ruth Hopkins noted that to redo a process that has already been done is asking staff to do more. Mr. Gallagher agreed with Mrs. Hopkins and supports moving forward.

Eric Mikkelson questioned why no fees were established when Hollis + Miller was selected in 2010. Keith Bredehoeft replied on requests for qualification on three year contracts a fee rate is requested. A fee is later negotiated for one year individual projects.

Brooke Morehead stated this decision was made five years ago. There are different needs and concepts today. Mr. Gallagher noted with RFQ submittals only qualifications are reviewed, no design plan are created. Andrew Wang stated that

nothing is accomplished by asking staff to go back and redo something that has already been done. He supports moving forward. Eric Mikkelson stated that the firms interested in this project may have changed over the past five years with new firms presenting the necessary qualifications.

Keith Bredehoeft stated that Hollis + Miller understands the project and the scope of the work. He has no reason to think that they are not qualified to do the project and recommends moving forward. Mr. Mikkelson asked if the city has a good working relationship with this firm from recent projects and if the same individuals are still with the firm. Mr. Bredehoeft replied the project manager is still with the firm. Mayor Wassmer noted that Hollis + Miller are the architect for the Briarwood Elementary School project and other school district projects.

Mayor Wassmer called for a vote on the motion to direct staff to re-evaluate the selection of Hollis + Miller Architect. The motion was defeated by a 7 to 6 vote with Mayor Wassmer casting the deciding vote.

Andrew Wang moved the City Council approve the Design Agreement with Hollis + Miller Architects for the design of the City Hall Courtyard Conceptual Design Phase Project in the amount of \$18,000. The motion was seconded by Ruth Hopkins and passed by a vote of 7 to 5 with Nelson, Mikkelson, Morehead, Runion and Morrison voting in opposition.

COU2015-39 Consider 2015 Park Improvements Construction Change Order #1

Melissa Prenger stated the designed park projects in Bennett and Taliaferro included nature play areas, sand play, walking trails and play mounts. This Final Change Order reflects the final field measured quantities for all bid items.

Additional demolition and concrete quantities were included in the project to remove and/or replace deteriorated concrete in Bennett and Taliaferro Park that were not part of the designed park project.

Funds for this work will come from the 2015 Parks Program in the amount of \$9,189.40 with the final contract amount with Primetime Contracting Corporation for the project being \$214,389.40.

Ted Odell moved the City Council approve Construction Change Order #1 with Primetime Contracting Corporation for the 2015 Parks Improvements Project in the amount of \$9,189.40 bringing the new contract amount to \$214,389.40. The motion was seconded by Terrence Gallagher and passed unanimously.

Mayor's Report

Mayor Wassmer reported that again much of her time during the past two weeks has been involved with the Meadowbrook Redevelopment Project. However, she was also able to judge the Briarwood Elementary Chili contest; to meet with the visiting delegation from the Ukraine; attend the Mission Road Committee meeting and to attend the Northeast Johnson County Mayor's luncheon

STAFF REPORTS

Public Safety

- Chief Schwartzkopf reported that the remodel of the Dispatch area began and is expected to take approximately two weeks. Dispatchers are working out of the City of Leawood. Someone is on-site to assist walk-in traffic.
- The next "Coffee with a Cop" will be held on November 1st at Hy-Vee from 8:30 to 10:30 a.m.

Ruth Hopkins asked about the recent damage to Porter Park. Chief Schwartzkopf replied that he would e-mail an update to the Council.

Public Works

- Keith Bredehoeft provided an update on current street and concrete projects.

Administration

- Wes Jordan announced that the pilot program for glass recycling is currently on hold.
- Quinn Bennion announced two upcoming Meadowbrook Public Meetings - the first being October 20th from 3:30 to 7 p.m. on park development and the second being Wednesday, October 21st for the neighborhood meeting regarding the Planning Commission application for rezoning.
- There are modifications to the Municipal Court counter windows being made including ADA Accessible items. The work is being funded with ADSAP funds.

OLD BUSINESS

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

NEW BUSINESS

Ruth Hopkins announced that she will be running again the National League of Cities Board of Directors and stated that at the Kansas League of Municipalities Conference last week was given an endorsement by the state.

EXECUTIVE SESSION

Brooke Morehead moved pursuant to KSA 75-4319 (b) (1) that the Governing Body, recess into Executive Session in the Multi-Purpose Room for a period not to exceed 30 minutes for the purpose of consulting with the City Attorney on matters which are privileged in the attorney-client relationship. Present will be the Mayor, City Council, City Administrator, Assistant City Administrator and City Attorney. The motion was seconded by Sheila Myers and passed unanimously. The meeting was recessed at 9:10 p.m.

Mayor Wassmer reconvened the meeting at 9:40 p.m.

Committee meetings scheduled for the next two weeks include:

| | | |
|--------------------------------|------------|-----------|
| Environment/Recycle Committee | 10/28/2015 | 5:30 p.m. |
| Council Committee of the Whole | 11/02/2015 | 6:00 p.m. |
| City Council | 11/02/2015 | 7:30 p.m. |

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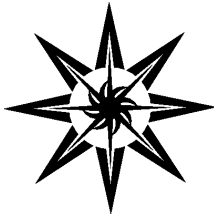
The Prairie Village Arts Council is pleased to present the 2015 State of the Arts Exhibit featuring selective artists using multi-media in the R. G. Endres Gallery during the month of October.

Save the Date - The Northeast Johnson County Chamber of Commerce Annual Gala will be held on Saturday, November 21st.

ADJOURNMENT

With no further business to come before the City Council the meeting was adjourned at 9:42 p.m.

Joyce Hagen Mundy
City Clerk



POLICE DEPARTMENT

Council Meeting Date: November 2nd, 2015

CONSENT AGENDA: ORDER REQUEST OF ANIMAL CONTROL TRUCK

RECOMMENDATION

Staff recommends the ordering of one (1) 2016 Ford F150 from Shawnee Mission Ford for no more than \$22,000.00.

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

COUNCIL ACTION REQUESTED ON November 2nd, 2015.

BACKGROUND

On an annual basis, the Police Department replaces older vehicles due to age, mileage, and/or maintenance problems. The Department is seeking authorization to purchase this truck from Shawnee Mission Ford, who was awarded the 2015 MACPP Metro Bid.

Generally these vehicles are ordered in January of the proposed budget year. In this case the Police Department was able to negotiate with Shawnee Mission Ford to obtain a model 2016 at this years' MACPP bid amount. By ordering the vehicle this year, it will save the Department an estimated \$2000 - \$3000. In order to obtain this price, the Department must place the order for the truck by November 6th 2015. The City will not have to expend the funds for this vehicle until January of 2016.

This purchase was previously approved by the City Council as part of the 2016 Public Safety Budget.

FUNDING SOURCE

22-53-53-8006-000: \$22,000

PREPARED BY

Capt. Byron Roberson
Patrol Commander
Date: October 19, 2015



OLD BUSINESS

Council Meeting Date: November 2, 2015

Consider Charter Ordinance No. 26 repealing certain prior Charter Ordinances codified into the City Code and “ordinary” Ordinance No. 2338 enacting substitute provisions of the Code of the City of Prairie Village regarding elections and vacancies for office

BACKGROUND

As previously reported, in the last session the Kansas Legislature enacted HB 2104 which amended certain statutes relating to city elections, including requiring city primary elections to take place on the first Tuesday in August and city general elections to take place on the Tuesday succeeding the first Monday in November, and requiring that elected officials take office on the second Monday in January following the city general election.

The current provisions in the City Code which govern the dates of city elections and terms of office are codified in Chapter VI. Elections, Article 1, City Elections, Sections 6-104, 6-105 and 6-106. Those sections were in turn enacted by Charter Ordinance Nos. 14 and 20. Those sections currently provide for April general city elections, for the mayor to be elected at large to a four year term in odd numbered years [the most recent Mayor election being in April, 2015], and for council members to be elected by ward, with two from each ward being elected to staggered four year terms [the most recent council member elections being in April 2012 – with terms currently expiring in April, 2016, and April, 2014 – with terms currently expiring in April, 2018].

Current Charter Ordinance No. 24 requires City primary elections to be on the Tuesday preceding by five weeks the first Tuesday in April of each year that the city has an April general election.

As previously reported, the Kansas Secretary of State and the local election office have opined that the statutory changes enacted by HB 2104 do not prevent cities from holding April, 2016 general elections (and if necessary spring 2016 primaries).

Section 71 of HB 2104, now codified as KSA 12-104a, also imposes certain requirements for filling governing body vacancies, including a requirement that cities must hold special elections to fill vacancies if not filled within 60 days. Although there is some disagreement among city attorneys, it is the position of the League of Kansas Municipalities that KSA 12-104a only requires a special election if a city does not have an ordinance in place for filling governing body vacancies.

The current provisions of the City Code which govern filling of governing body vacancies were originally enacted by provisions of Charter Ordinance Nos. 14 and 20, which are being repealed, and were codified in two places in the City Code: Section 1-208 Vacancies in Governing Body; How Filled; and Section 6-105 "Councilmembers Elections: Terms". Since the Charter Ordinances establishing the procedures for vacancies are being repealed, it is necessary to readopt the procedure for filling vacancies by ordinary ordinance. Since it is unnecessary and confusing having the same provisions in two separate places in the City Code, Ordinance No. 2338 readopts current Section 1-208, which is then cross referenced in the amended sections governing elections.

The attached Charter Ordinance No. 26 repeals Charter Ordinance Nos. 14, 20 and 24 and provides that the subject matters of those Charter Ordinances will be enacted by "ordinary" ordinance. Generally repeals of charter ordinances must be done by charter ordinance.

(Charter Ordinances are ordinances which may be enacted under certain circumstances to allow cities to adopt laws which are different from statutory laws affecting the city. Charter Ordinances require 2/3 approval and have a delayed effective date to allow for a referendum election if a protest petition is filed. Ordinary ordinances do not require 2/3 governing body approval, are not subject to referendum, and become effective upon publication.)

"Ordinary" Ordinance No. 2338 adds a provision to the City Code for a meeting of the governing body on the second Monday in January following November elections to seat the newly elected members of the governing body and readopts Section 1-208 providing for filling of governing body vacancies. Ordinance No. 2338 also provides for November elections after 2016, and shortens the expiration of the terms of office for members of the governing body elected in April, 2014 to the second Monday in January, 2018, shortens the expiration of the term of office for the mayor elected in April, 2015 to the second Monday in January, 2019, and shortens the expiration of the terms of office for members of the governing body elected in April, 2016 to the second Monday in January, 2020. Ordinance No. 2338 also changes council member elections to odd-numbered years and mayor elections to every fourth even numbered year. After the shortened terms specified in order to change to a November election cycle, the terms of office for mayor and council members remain four years, and commence on the second Monday in January following certification of the elections.

Copies of the repealed Sections 1-208, 6-104, 6-105 and 6-106 are attached to this Memo.

ATTACHMENTS

Ordinance 2338

Text of Sections to be Repealed

PREPARED BY

Katie Logan
City Attorney

October 29, 2015

CHARTER ORDINANCE NO. 26

A CHARTER ORDINANCE EXEMPTING THE CITY OF PRAIRIE VILLAGE, KANSAS, FROM THE PROVISIONS OF K.S.A. 13-513 AND K.S.A. 12-104a, WHICH RELATE TO VACANCIES IN THE OFFICE OF MAYOR OR COUNCIL MEMBER, AND FROM K.S.A. 25-2108a RELATING TO PRIMARY ELECTIONS, AND REPEALING CHARTER ORDINANCE NOS. 14, 20 AND 24.

WHEREAS, the City of Prairie Village adopted Charter Ordinance No. 14 on April 2, 1990, which became effective on June 2, 1990;

WHEREAS, Charter Ordinance Nos. 14 exempted the City from K.S.A. 13-304 and K.S.A. 25-2107 pertaining to elections, dates of city elections, terms of office and matters related thereto;

WHEREAS, the City of Prairie Village adopted Charter Ordinance No. 20 on June 18, 2001, which became effective on August 18, 2001;

WHEREAS, Charter Ordinance No. 20 exempted the City from K.S.A. 13-513 pertaining to vacancies in office of mayor and council member, and amended Charter Ordinance No. 13 which had exempted the City from K.S.A. 13-304 and K.S.A. 25-2107 pertaining to elections, dates of city elections, terms of office and matters related thereto;

WHEREAS, K.S.A. 13-304 has been repealed and K.S.A. 25-2107 has been amended;

WHEREAS, the City desires to exempt itself from the provisions of K.S.A. 13-513 and K.S.A. 12-104a, relating to the filling of governing body vacancies; and

WHEREAS, the City desires to repeal Charter Ordinance Nos. 14 and 20 and has or will address similar provisions by ordinary ordinance;

WHEREAS, the City of Prairie Village adopted Charter Ordinance No. 24 on June 15, 2009 which became effective on August 15, 2009;

WHEREAS, Charter Ordinance No. 24 exempted the City from K.S.A. 25-2108a pertaining to primary elections;

WHEREAS, K.S.A. 25-2108a has been amended; and

WHEREAS, the City desires to repeal Charter Ordinance No. 24 and has or will address similar provisions by ordinary ordinance.

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

Section 1. The City of Prairie Village, by the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas, hereby elects to and exempts itself from and makes inapplicable to it K.S.A. 13-513 and K.S.A. 12-104a relating to the filling of governing body vacancies, and K.S.A. 25-2108a relating to primary elections, which enactments apply to this City, but do not apply uniformly to all cities, and provides substitute and additional provisions as hereafter set forth.

Section 2. Substitute and additional provision on the subjects addressed by K.S.A. 13-513 and K.S.A. 12-104a relating to the filling of governing body vacancies, and K.S.A. 25-2108a relating to primary elections, are and will be contained in one or more ordinary ordinances.

Section 3. Charter Ordinance Nos. 14, 20 and 24 or other City ordinances, in conflict herewith are hereby repealed.

Section 4. If for any reason any chapter, article, section, subsection, sentence, portion or part of this proposed Ordinance set out herein, or the application thereof to any person or circumstances is declared to be unconstitutional or invalid, such decision will not affect the validity of the remaining portions of this Ordinance or other ordinances.

Section 5. This ordinance shall be published once each week for two consecutive weeks in the official City newspaper.

Section 6. THIS IS A CHARTER ORDINANCE AND SHALL TAKE EFFECT 61 DAYS AFTER FINAL PUBLICATION UNLESS WITHIN 60 DAYS OF ITS FINAL PUBLICATION A PETITION SIGNED BY A NUMBER OF ELECTORS OF THE CITY OF PRAIRIE VILLAGE EQUAL TO NOT LESS THAN TEN PERCENT OF THE NUMBER OF ELECTORS WHO VOTED AT THE LAST PRECEDING REGULAR CITY ELECTION SHALL BE FILED IN THE OFFICE OF THE CITY CLERK OF PRAIRIE VILLAGE, DEMANDING AN ELECTION ON THE CHARTER ORDINANCE, IN WHICH CASE THE CHARTER ORDINANCE SHALL BECOME EFFECTIVE ONLY IF AND WHEN APPROVED BY A MAJORITY OF THE ELECTORS VOTING THEREON.

PASSED by the Governing Body not less than two-thirds of the members elect voting in favor thereof on this 2nd day of November, 2015.

Laura Wassmer, Mayor

ATTEST:

Joyce Hagen Mundy, City Clerk

APPROVED AS TO FORM

Catherine P. Logan, City Attorney

ORDINANCE NO. 2338

AN ORDINANCE AMENDING SECTION 1-203 ENTITLED "SAME; MEETINGS" AND READOPTING SECTION 1-208 ENTITLED "VACANCIES IN GOVERNING BODY; HOW FILLED" OF ARTICLE 2 ENTITLED "GOVERNING BODY" OF CHAPTER I ENTITLED "ADMINISTRATION"; AND AMENDING SECTIONS 6-104 ENTITLED "CITY OFFICERS; GENERAL ELECTION", 6-105 ENTITLED "COUNCIL MEMBERS ELECTIONS; TERMS", AND 6-106 ENTITLED "COMMENCEMENT OF TERMS OF OFFICE; OATH OF OFFICE" OF ARTICLE 1 ENTITLED "CITY ELECTIONS", CHAPTER VI ENTITLED "ELECTIONS" OF THE CODE OF THE CITY OF PRAIRIE VILLAGE, KANSAS

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

SECTION ONE: Section 1-203 of Article 2, Chapter I of the Code of the City of Prairie Village, Kansas is hereby amended to read as follows:

1-203. SAME; MEETINGS. (a) On the second Monday in January following certification of the results of the City election held the previous November as provided by Section 6-104 of this Code, the governing body, as constituted before said election, shall meet and proceed to any unfinished business, and thereafter seat the new governing body, and the new governing body shall proceed to the order of business.

(b) Except as provided in subsection (a) regular meetings of the governing body shall be held on the 1st and 3rd Mondays of each month at 7:30 p.m. In the event the regular meeting day shall fall on any legal holiday or any day observed as a holiday by the city offices, the governing body shall fix the succeeding day not observed as a holiday as a meeting day.

(c) Special meetings may be called by the mayor or acting mayor, on the written request of any three members of the council, specifying the object and purpose of such meeting, which request shall be read at a meeting and entered at length on the hournal.

(d) Regular or special meetings of the governing body may be adjourned for the completion of its business at such subsequent time and place as the governing body shall determine in its motion to adjourn.

SECTION TWO: Section 1-208 of Article 2, Chapter I of the Code of the City of Prairie Village, Kansas is hereby adopted to read as follows:

1-208. VACANCIES IN GOVERNING BODY; HOW FILLED. (a) In case of a vacancy occurring by reason of resignation, death, removal from office or when the mayor no longer resides in the City, the President of the Council will fill the vacancy by serving as Mayor until the Council elects a new Mayor. The Council shall elect, by a majority of those Council Members present, a new Mayor from those Council Members serving at the time of the vacancy within thirty (30) days from the vacancy to serve until the next regularly scheduled

City election. The vacancy in the Council created by the Council electing a new Mayor will be filled in accordance with Section 1-208(b) of the Prairie Village Municipal Code.

(b) In case of a vacancy occurring by reason of resignation, death, removal from office or when a councilmember no longer resides in the ward in which the council member has been elected, the mayor, by and with the consent of the remaining council members may appoint some suitable elector residing in such ward to fill the vacancy until the next election for that council position.

SECTION THREE Section 6-104 of Article 1, Chapter VI of the Code of the City of Prairie Village, Kansas is hereby amended to read as follows:

6-104 CITY OFFICERS; GENERAL ELECTION; PRIMARY ELECTION.

(a) **Nonpartisan.** City elections for mayor and council shall be non-partisan.

(b) **General Election.** The general election of city officers, when required, will be held on the first Tuesday of April through 2016, and commencing in 2017, the general election of city officers, when required, will be held on the Tuesday succeeding the first Monday in November.

(c) **Primary elections.**

(i) Except as otherwise provided in subsection (ii) of this section, there shall be a primary election of city officers, if needed, on the Tuesday preceding by five weeks the first Tuesday in April of every year that the City of Prairie Village has an April city general election, and on the first Tuesday in August in every year that the City of Prairie Village has a November city general election.

(ii) A primary election shall be held only if needed to reduce the number of candidates for each office in the general election to no more than two (2) candidates. No primary election for city officers shall be held unless by holding such primary one (1) or more persons will be eliminated as candidates for office. In the event there are not more than two (2) candidates for any one office, the names of the candidates for such office shall not appear on the primary election ballots, and there shall be no primary election for city officers, but the names of such candidates shall be placed on the general city election ballot.

SECTION FOUR: Section 6-105 of Article 1, Chapter IV the Code of the City of Prairie Village, Kansas is hereby amended to read as follows:

6-105. GENERAL CITY ELECTIONS; TERMS.

(a) **November Elections.** Commencing in 2017, the general election of city officers, when required, will be held on the Tuesday succeeding the first Monday in November.

(b) **Council Member Terms of Office Shortened.** The terms of council members elected in the April, 2014 election shall expire on the second Monday in January, 2018 when the council members elected in the November, 2017 general city election take office. The terms of council members elected in the April, 2016 election shall expire on the second

Monday in January, 2020, when the council members elected in the November, 2019 general city election take office.

- (c) **Mayor Term of Office Shortened.** The term of mayor elected in the April, 2015 election shall expire the second Monday in January, 2019, when the mayor elected in the November, 2018 general election takes office.
- (d) **Council Member Elections in Odd-Numbered Years.** Each ward of the city shall have two councilmembers with staggered terms so that one council member from each ward shall be elected at each odd-numbered year election by qualified voters within such ward. Commencing with the general election on the Tuesday succeeding the first Monday in November of 2017, there shall be a general election for the offices of all council members completing their current terms of office in January, 2018. All elected city officers not then completing their current terms, shall continue to hold their respective offices until said terms are completed or said offices are otherwise vacated. Thereafter, there shall be elected one council member from each ward at the general election on the Tuesday succeeding the first Monday in November of every odd-numbered year.
- (e) **Mayor Elections in Even-Numbered Years.** The office of mayor shall be elected in even-numbered years by qualified voters from the city at large. There shall be a general election on the Tuesday succeeding the first Monday in November of 2018 for the office of mayor completing the current term of office in January of 2019. Thereafter, the general election of mayor shall be held on the Tuesday succeeding the first Monday in November of every fourth even-numbered year.
- (f) **Vacancies.** Vacancies in the office of council member or mayor shall be filled in accordance with Section 1-208 of the Code of the City of Prairie Village.

SECTION FIVE: Section 6-106 of Article 1, Chapter VI the Code of the City of Prairie Village, Kansas is hereby amended to read as follows:

6-106 COMMENCEMENT OF TERMS OF OFFICE; OATH OF OFFICE.

- (a) The terms of office for all city officials elected after January 1, 2017 shall commence on the second Monday in January following certification of the election and shall be for four years and until a successor is elected and qualified. No person shall be eligible to the office of the council member who is not at the time of his or her election an actual resident of the ward for which he or she was elected. All elected officers shall be qualified electors of the City under the constitution of the State of Kansas.
- (b) Every person elected or appointed to city office, before entering upon the duties of such office, shall take and subscribe an oath or affirmation as specified in K.S.A. 54-106, and amendments thereto, and every such oath or affirmation shall be filed with the city clerk.

SECTION SIX: If for any reason any chapter, article, section, subsection, sentence, portion or part of this proposed Ordinance set out herein, or the application thereof to any person or circumstances is

declared to be unconstitutional or invalid, such decision will not affect the validity of the remaining portions of this Ordinance or other provisions of the Code of the City of Prarie Village.

SECTION SEVEN: Existing Sections 1-203, 1-208, 6-104, 6-105 and 6-106 of the Code of the City of Prarie Village and any provisions in conflict herewith are hereby repealed.

SECTION EIGHT: This ordinance shall take effect and be enforced from and after its passage, approval, and publication as provided by law, and with respect to all provisions of this ordinance which are inconsistent with the provisions of Charter Ordinance Nos. 14, 20 and 24, upon the effective date of Charter Ordinance No. 26 which repeals Charter Ordinance Nos. 14, 20 and 24.

PASSED AND APPROVED THIS 2ND DAY OF NOVEMBER, 2015.

Laura Wassmer, Mayor

ATTEST:

APPROVED AS TO FORM:

Joyce Hagen Mundy, City Clerk

Catherine P. Logan, City Attorney

ARTICLE 2. GOVERNING BODY

- 1-201. GOVERNING BODY. The governing body shall consist of a mayor and city council to be elected as set out in Chapter 6 of this code. (Code 1973, 2.04.010; Code 2003)
- 1-202. SAME; POWERS GENERALLY. All powers exercised by cities of the first class or which shall hereafter be conferred upon them shall be exercised by the governing body, subject to such limitations as prescribed by law. All executive and administrative authority granted or limited by law shall be vested in the mayor and city council as governing body of the city. (K.S.A. 12-103; Code 1973, 2.04.030; Code 2003)
- 1-203. SAME; MEETINGS. (a) Regular meetings of the governing body shall be held on the 1st and 3rd Mondays of each month at 7:30 p.m. In the event the regular meeting day shall fall on any legal holiday or any day observed as a holiday by the city offices, the governing body shall fix the succeeding day not observed as a holiday as a meeting day.
- (b) Special meetings may be called by the mayor or acting mayor, on the written request of any three members of the council, specifying the object and purpose of such meeting, which request shall be read at a meeting and entered at length on the journal.
- (c) Regular or special meetings of the governing body may be adjourned for the completion of its business at such subsequent time and place as the governing body shall determine in its motion to adjourn.
(K.S.A. 13-1410; Code 1973, 2.04.040; Code 2003)
- 1-204. SAME; QUORUM. Attendance by seven of the councilmembers elected shall constitute a quorum to do business, but a number fewer than seven may adjourn from day to day. (Ord. 2012, Sec. 1; Ord. 2191, 2009)
- 1-205. POWERS OF THE MAYOR. The Mayor shall preside at all meetings of the Governing Body. The Mayor shall have the tie-breaking vote on all questions when the members present are equally divided. The Mayor shall:
- (a) Have the superintending control of all officers and affairs of the City, which control may be delegated to the City Administrator as chief administrative assistant to the Mayor in accordance with Article 3 of this Chapter;
- (b) Monitor that the Ordinances of the City are complied with;
- (c) Sign the commissions and appointments of all officers elected and appointed;
- (d) Endorse the approval of the Governing Body on all official bonds;
- (e) From time to time communicate to the City Council such information and recommend such measures as he or she may deem advisable;
- (f) Have power to approve or veto any Ordinance in any manner as provided by state law;
- (g) Sign all orders and drafts drawn upon the City treasury for money; and
- (h) Cause all subordinate officers to be dealt with promptly for any neglect or violation of duty.
(K.S.A. 13-502, 13-506:515; Code 1973, 2.04.060; Code 2003; Ord. 2155, Sec. 1)

- 1-206. PRESIDENT OF THE COUNCIL. The city council shall elect one of its own body as president of the council. The president of the council shall preside at all meetings of the council in the absence of the mayor. In the absence of both the mayor and the president of the council, the council shall elect one of its members as "acting president of the council." The president and acting president, when occupying the place of mayor, shall have the same privileges as other councilmembers but shall exercise no veto. (K.S.A. 13-1411; Code 1973, 2.04.070; Code 2003)
- 1-207. ADMINISTRATIVE POWERS. The governing body may designate whether the administration of a policy or the carrying out of any order shall be performed by a committee, an appointive officer, or the mayor. If no administrative authority is designated it shall be vested in the mayor or his or her designee. (Code 2003)
- 1-208. VACANCIES IN GOVERNING BODY; HOW FILLED. (a) In case of a vacancy occurring by reason of resignation, death, removal from office or when the mayor no longer resides in the city, the president of the council will fill the vacancy by serving as Mayor until the Council elects a new Mayor. The Council shall elect, by a majority of those Council Members present, a new Mayor from those Council Members serving at the time of the vacancy within thirty (30) days from the vacancy to serve until the next regularly scheduled City election. The vacancy in the Council created by the Council electing a new Mayor will be filled in accordance with Section 1-208(b) of the Prairie Village Municipal Code.
(b) In case of a vacancy occurring by reason of resignation, death, removal from office or when a councilmember no longer resides in the ward in which the council member has been elected, the mayor, by and with the consent of the remaining council members may appoint some suitable elector residing in such ward to fill the vacancy until the next election for that council position.
(C.O. No. 13, Sec. 3; C.O. No. 14, Sec. 2; Ord. 2300, Sec. 2, 2013)
- 1-209. COMPENSATION. Members of the governing body shall receive as compensation such amounts as may be fixed by ordinance. (Code 2003)
- 1-210. EXPENSES. Each member of the governing body shall receive for his or her services and as reimbursement for his or her expenses, compensation as follows:
(a) Mileage at the same rate as is established by law by the state of Kansas for state employees for each mile traveled by the shortest route upon the performance of duties assigned by the mayor and/or city council.
(b) Reimbursement for costs incurred by the governing body member's attendance or participation at official city functions, including city council and committee meetings, conferences, seminars, etc. Such items shall include but not be limited to: food, lodging, telephone charges, child care expenses, tuition expenses, etc. All such requests for reimbursement shall be documented by proper receipts.
(Code 2003)
- 1-211. RULES AND ORDER OF BUSINESS. The following shall constitute guidelines for the rules and order of business of the city.

CHAPTER VI. ELECTIONS

- Article 1. City Elections
- Article 2. Wards

ARTICLE 1. CITY ELECTIONS

- 6-101. CONDUCT OF ELECTION. The election of city officials shall be conducted in all respects as provided by the laws of Kansas governing the holding of city elections. (K.S.A. 25-2101 *et seq.*; Code 2003)
- 6-102. HOURS OF VOTING. At all city elections the polls shall be open at 7:00 a.m. and close at 7:00 p.m., unless different hours are set and publicly announced by the county election officer. (K.S.A. 25-2111, 26-206; Code 2003)
- 6-103. QUALIFICATIONS OF ELECTIVE OFFICERS. All officers elected shall be qualified electors of the city, and the removal from the city of any officer shall occasion a vacancy in such office. No person shall be eligible to any elective office unless he or she shall have been a resident of the city at least six months prior to the time of his or her election. (Code 1973, 2.08.010)
- 6-104. CITY OFFICERS; GENERAL ELECTION. City elections for mayor and council shall be non-partisan. The general election of city officers, when required, will be held on the first Tuesday of April. (C.O. No. 15, Secs. 2:3)
- 6-105. COUNCILMEMBERS ELECTIONS; TERMS. In every other odd numbered year, a mayor shall be elected from the city at large, who shall hold office for four years and until a successor is elected and qualified. In cases of a vacancy occurring by reason of resignation, death, removal from office or when the mayor no longer resides in the city, the president of the council will fill the vacancy by serving as Mayor until the Council elects a new Mayor. The Council shall elect, by a majority of those Council Members present, a new Mayor from those Council Members serving at the time of the vacancy within thirty (30) days from the vacancy to serve until the next regularly scheduled City election. The vacancy in the Council created by the Council electing a new Mayor will be filled in accordance with Section 1-208(b) of the Prairie Village Municipal Code. The mayor of the city shall receive such compensation as may be fixed by ordinance.
- In each even numbered year commencing with the year 1992, there shall, in the city be elected one councilmember from each ward who shall hold office for four years and until a successor is elected and qualified. In case of a vacancy occurring by reason of resignation, death, removal from office or when a councilmember no longer resides in the ward in which the councilmember has been elected, the mayor, by and with the consent of the remaining councilmembers may appoint some suitable elector residing in such ward to fill the vacancy until the next election for that council position.
- The mayor may appoint such other officers as are created by statute and/or ordinance, who shall hold their offices for a period of four years, unless sooner removed by the mayor and council. All officers of the city shall receive such

compensation as may be fixed by ordinance. (C.O. No. 13, Sec. 3; C.O. No. 14, Sec. 2; Ord. 2300, Sec. 3, 2013)

- 6-106. **COMMENCEMENT OF TERMS OF OFFICE; OATH OF OFFICE.** (a) The term of office for newly elected city officials shall commence with and include the first regular meeting of the governing body following certification of the election by the county election officer.
(b) Every person elected or appointed to city office, before entering upon the duties of such office, shall take and subscribe an oath or affirmation as specified in K.S.A. 54-106, and amendments thereto, and every such oath or affirmation shall be filed with the city clerk.
(Code 2003)

ARTICLE 2. WARDS

- 6-201. **WARDS GENERALLY.** The city shall be divided into six wards, and the boundaries of the same are designated and described as follows in this article. (Code 1973, 1.32.010)

- 6-202. **WARD ONE.** Ward one shall be as follows:
That part of the city bounded on the east by the city limits to the northeast corner of the city limits on Mission Road; thence west along the back lot lines between 62nd Terrace and 63rd Street to its intersection with the centerline of Roe Avenue; thence south along the centerline of Roe Avenue to its intersection with the centerline of 63rd Street; thence west along the centerline of 63rd Street to its intersection with the centerline of Nall Avenue; thence south along the centerline of Nall Avenue to its intersection with the centerline of 69th Street; thence west along the centerline of 69th Street to its intersection with the centerline of Reeds Road; thence south along the centerline of Reeds Road to its intersection with the centerline of 71st Street; thence east along the centerline of 71st Street to a point which is the east city limit; thence north along the city limit to the point of beginning. (Code 1973, 1.32.020)

- 6-203. **WARD TWO.** Ward two shall be as follows:
That part of the city beginning at the intersection of Brush Creek and 71st Street, thence in a southwesterly direction along Brush Creek, including the property of Porter Park, to its intersection with the centerline of Roe Avenue; thence south along the centerline of Roe Avenue to its intersection with the centerline of 75th Street; thence west along the centerline of 75th Street to its intersection with the centerline of Juniper Avenue; thence south on Juniper Avenue to the centerline of 79th Street; thence west along the centerline of 79th street to its intersection with the centerline of Lamar Avenue; thence north along the centerline of Lamar Avenue to its intersection with the centerline of 78th Street; thence west along the centerline of 78th Street to its intersection with the centerline of Walmer Lane; thence north along the centerline of Walmer Lane to its intersect with the centerline of 77th Street; thence west along the centerline of 77th Street to its intersection with the centerline of Walmer Lane; thence north along the centerline of Walmer Lane to its intersection with the centerline of 75th Street; thence east along the centerline of 75th Street to its intersection with the centerline of Nall Avenue; thence north along the centerline of Nall Avenue; thence north along the centerline of Nall Avenue to its intersection with the centerline of 71st

Street; thence east along the centerline of 71st Street to the point of beginning. (Code 1973, 1.32.030)

- 6-204. WARD THREE. Ward three shall be as follows:
That part of the city beginning at the intersection of Brush Creek and 71st Street; thence southwesterly along Brush Creek excluding the property of Porter Park, to its intersection with the centerline of Roe Avenue; thence south along the centerline of Roe Avenue to its intersection with the centerline of 75th Street, thence east on the centerline of 75th Street to its intersection with the centerline of State Line Road; thence north on the centerline of State Line Road to its intersection with the northeast boundary of the city; thence west along the north boundary of the city to its intersection with the centerline of Mission Road; thence west along the centerline of 71st Street to the point of the beginning. (Code 1973, 1.32.040)
- 6-205. WARD FOUR. Ward four shall be as follows:
That part of the city beginning at the intersection of the centerline of 75th Street with the centerline of Mission Road; thence west along the centerline of 75th Street to its intersection with the centerline of Juniper Street; thence south along the centerline of Juniper Street to its intersection with the centerline of 79th Street; thence west along the centerline of 79th Street to its intersection with the centerline of Lamar Avenue; thence south along the centerline of Lamar Avenue to its intersection with the centerline of 83rd Street; thence east along the centerline of 83rd Street to its intersection with the centerline of Mission Road; thence north along the centerline of Mission Road to the centerline of 75th Street, the point of beginning. (Code 1973, 1.32.050)
- 6-206. WARD FIVE. Ward five shall be as follows:
That part of the city beginning at the intersection of 83rd and Nall Avenue, thence south along the centerline of Nall Avenue to its intersection with the centerline of 95th Street; thence east along the centerline of 95th Street to its intersection with the centerline of Mission Road; thence north along the centerline of Mission Road to a point being the back lot line of 84th Terrace; thence east along the back lot lines to a point being the back lot line of Reinhardt; thence north along the back lot line and its prolongation to the centerline of 83rd Street; thence west along the centerline of 83rd Street, including the property of Corinth School, to its intersection with the centerline of Nall Avenue, the point of beginning. (Code 1973, 1.32.060)
- 6-207. WARD SIX. Ward six shall be as follows:
That part of the city beginning at the intersection of the centerline of Mission Road with the centerline of 75th Street; thence east along the centerline of 75th Street to its intersection with the centerline of State Line Road; thence south along the eastern boundary of the city to its intersection with the northern city limits of the City of Leawood; thence generally westerly along the northerly city limits of the City of Leawood to its intersection with the centerline of 83rd Street; thence west along the centerline of 83rd Street to Mission Road; thence north along the centerline of Mission Road to the centerline of 75th Street, to the point of beginning. (Code 1973, 1.32.070)

COUNCIL COMMITTEE OF THE WHOLE
October 19, 2015

The Council Committee of the Whole met on Monday, October 19, 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, Dan Runion, David Morrison, Ted Odell and Terrence Gallagher. Also in attendance were Planning Commission members: Nancy Wallerstein, Jonathan Birkel, Melissa Brown, Patrick Lenahan, Gregory Wolf, James Breneman and Jeffrey Valentino.

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; Amy Hunt, Human Resources Director; Mitch Dringman, City Building Official and Joyce Hagen Mundy, City Clerk. Also present were Teen Council members: Ben Wang, Kellie O'Toole, and Dennis Rice. Also present were Dave Anderson with CBIZ, the city's insurance consultant and Chris Brewster, City Planning Consultant.

Introduction of 2015 Teen Council

Jori Nelson welcomed and introduced the 2015 Teen Council members Kellie O'Toole working with Ward 5; Dennis Rice working with Ward 1 and Ben Wang working with Ward 4.

Council President Brooke Morehead welcomed the Teen Council members and added her welcome to the Planning Commission members also in attendance.

Planning Commission/City Council Training

Wes Jordan noted that with four new Planning Commission members and new Council members, staff felt it would be appropriate to meet together to improve communication and to clarify the roles and responsibilities of both the Planning Commission and the City Council and how they interact. Both groups play a vital role in creating and maintaining the shared community vision for Prairie Village.

Chris Brewster began his presentation with discussion on what is a comprehensive plan. The Comprehensive Plan, which serves as the guide for the development of the City and required by KSA 12-747, addresses several items.

- Location, extent & relationship of uses of land
- Population & building intensity standards
- Public facilities including transportation
- Public improvement programming
- Sources & expenditures of revenue
- Utilization and conservation of natural resources
- Other elements deemed necessary

The Comprehensive Plan coordinates public and private development within the City and helps the City to prioritize public investments.

The role of the Planning Commission is clearly established in the Kansas Statutes as follows:

- Make the comprehensive plan
- Approve “location, extent and character” of ALL public improvements
- Review and recommend capital improvement program
- Adopt subdivision regulations
- Approve plats
- Review and recommend zoning changes
- Other decisions referred to it by the zoning ordinance
- Annual review of the Comprehensive Plan

Mr. Brewster reviewed the elements of a good comprehensive plan which establishes the long range vision of the City. The Plan is general in nature based on known and anticipated issues while providing the framework to react to the unanticipated. It is comprehensively looking at the city as a whole and integrated. The plan addresses good civic design, efficient municipal and public services, strong fiscal strategies and places value on resident input. The plan is conceptual; growth is coordinated through zoning districts, street designs and block/lot layout. The actual development is addressed by the subdivision and zoning regulations which address building types, use standards and site and building design. Mr. Brewster noted the Planning Commission and City Council’s biggest tool is the Comprehensive Plan and the City’s Parks Master Plan followed by the subdivision and zoning regulations.

Chris Brewster noted that the Governing Body is elected while the Planning Commission and Board of Zoning Appeals is appointed. This provides a checks and balances that somewhat insulates the Commission from the direct influence of the general public allowing them to make decisions based on evidence and findings. The Governing Body’s role is legislative in setting laws and focuses on the present. The Planning Commission’s role is to guide laws, make recommendations and plans with a focus on the long term. The Board of Zoning Appeals serves as a relief valve for land use laws under strict guidelines set by the Statutes they have the ability to grant variances or exceptions from the city’s code or hear administrative appeals.

Mr. Brewster noted that all three groups may find themselves talking legislative action, making administrative decisions or serving in a quasi-judicial position and reviewed how each action differs. For example, approval of a site plan is an administrative action where the Commission can only apply the facts to the established standards. There is no or very little discretion. In quasi-judicial actions, there is some discretion as evidence is weighed against policy; however, the basis for the decision is limited to the official record. In legislative actions policy is weighed with full discretion and open to wide considerations.

Mr. Brewster reviewed briefly the applications considered by the Planning Commission and where they serve in a legislative function or quasi-judicial function. The Board of

Zoning Appeals acts independent of the Planning Commission and the Governing Body. The zoning criteria upon which the Planning Commission and Governing Body generally follow three elements:

- Rational Basis Test - the action must be reasonable, fairly debatable and not arbitrary
- Consistent with the land use element of the Comprehensive Plan (KSA 12-757 (a))
- “Golden Factors”

The Variance criteria are established by Kansas Statutes and all five of the following criteria must be met:

- Condition unique to property; not ordinarily found in district nor created by owner
- Not adversely affect adjacent property
- Strict application of regulation is an unnecessary hardship
- Not adversely affect the public
- Not opposed to the general spirit and intent of regulations

Mr. Brewster closed his presentation reviewing specific issues encountered in Prairie Village. There is a distinct difference between a Public Hearing and a Public Meeting. A public hearing is about establishing a record upon which a decision is to be made. It is required for specific actions, such as rezoning and special use permit approvals. On the other hand, comments made at a public hearing are an opportunity for opinions to be voiced but are not part of the record and not what action should be based upon. It carries no weight in the decision process.

Findings of Fact are a means to document how a decision was made. They come from several sources: plans, policies, regulations, testimony and analysis. Planning Commission staff reports are prepared following the required findings of fact relating facts and criteria to the basis of a decision or recommendation. Mr. Brewster noted that some facts are more relevant and that opinions need a basis in fact.

When taking action in a quasi-judicial position, everything used for that decision must be based on the official record. This puts the Council in an awkward position when they have outside conversations or visitations to a site as the information obtained is not part of the official record and therefore cannot be used as a basis for decision. If you do have outside information, it has to be made part of the official record to be used as a basis for action.

Sheila Myers asked how a change to the zoning code is made. Mr. Brewster responded zoning changes can be made by the Governing Body; however, they must be presented through a public hearing before the planning commission and have a recommendation from the Commission. Changes can be initiated by the Planning Commission based on problems they see or concerns that have been raised.

Update to Building Design Guidelines in Zoning Codes

Wes Jordan stated that over the past several months citizens living within the Prairie Village Homes Association have been working towards the potential adoption of an Overlay District in an effort to maintain the characteristics of their neighborhoods while witnessing increased change and development. This contains a large portion of Prairie Village and has been identified by the Governing Body as a city priority. Building records confirm that the increase in tear downs and rebuilds is not limited to this area, but is occurring throughout Prairie Village. Mayor Wassmer has directed staff to address this issue as quickly as possible.

This is a challenge for many communities, finding the balance between maintaining the existing character of Prairie Village while being mindful of changing needs and demographics of the community. The current zoning regulations offer the flexibility to allow “overbuilding” on small or large lots throughout the city.

Staff has been able to meld some of the concepts brought forth by the PV Overlay Committee into a sliding scale plan to regulate building size/mass based on lot size. Mr. Jordan stressed that this is not just the City endorsing the Overlay Plan. A potential framework has been devised to provide a balance of protecting neighborhood character while embracing acceptable changes that builds upon improving our community. He believes this methodology can be used for neighborhoods throughout Prairie Village and not just limited to one area. Staff has been working with architects and builders within Prairie Village to develop a solid draft product and believe that these solutions require buy in and the inclusion of more thoughts and ideas to ultimately improve draft versions of concepts.

Mr. Jordan noted that this is a good problem to have. Many cities would be thrilled to have this much reinvestment and interest occurring in their city.

The city has seen a significant increase in construction over the past two years.

Current number of plan reviews - 449 (this time last year - 245).

Current number of home improvement permits issued - 1334 (this time last year - 1058) and for all of 2014 were 1315).

Current number of new home builds - 21 (with knowledge of 7 more in the works)

In 2014 there were 16 and in 2013 there were 9 for the entire year

Mr. Jordan reviewed the timeline for consideration of these amendments

- Second Meeting with builders, architects, planning commissioners, and stakeholders for discussion and input within the next two weeks
- Public Education and Input (venues to be discussed) Oct 26-Nov 30, 2015.
- Planning Commission Public Hearing - December 2015
- City Council approval - January, 2016

Mayor Wassmer thanked Mr. Brewster, Mitch Dringman and Mr. Jordan for their work over the past three months to accomplish what she was initially advised would take a

year. She appreciates their efforts to fast track this effort to address this important issue.

Chris Brewster stated the proposed amendments address three areas of concern. The first being the definition of “story” and “half-story”, the second being the existing zoning setbacks and third creating basic forms, scale and mass standards that currently do not exist. He reviewed how the existing code addresses these issues. The current zoning regulations provide a box or building footprint but do not address what the structure within that box looks like or how it relates to other homes or the streetscape. Mr. Jordan noted that the existing side yard setbacks allow homes to be constructed with only a four or five foot side yard. Mr. Brewster noted there is no clear good mechanism to address streetscape, architectural style and size is difficult to regulate. Some cities have architectural review boards or a book of standards to address some of these issues; however, they are difficult to administer.

The proposed amendments will deal with three areas that can be addressed with changes to the city’s existing zoning regulations.

Basic Sale and Mass - Height/Setback with the revision of setbacks, first-floor elevation and second story limits and definition of story and half-story revised.

Basic Scale and Mass - Volume/Massing with limiting footprints, breaking up larger wall planes and roof forms

Basic Sale and Mass - Relationship to Streetscape with limitations on garage location and extent, entrance feature requirements and façade design including window requirements.

Mr. Brewster presented photos of typical Prairie Village homes and how the proposed amendments would impact them.

Ted Odell asked who is involved in the review process. Mr. Jordan responded the stakeholder review group includes six local developers that have done work in Prairie Village, the architect for the Prairie Village Overlay Committee, a Civil Engineer who is hesitant to support the proposal, two architects from the Planning Commission and the Planning Commission Chair. Staff has also reached out to other staff at Gould & Evans and to PJ Novick.

Mr. Odell stated his concern with the “one size fits all” for Prairie Village concept. He supports the concept, but urged caution on applying it throughout the entire city. The entire city does not reflect the same character.

Mr. Jordan responded it is not the intent of the changes to prohibit or restrict large homes. There may be different standards established for the R-1a District than the R-1b District and the use of a sliding scale. He noted he does not anticipate getting consensus from everyone.

Eric Mikkelson stated he shared Mr. Odell's concerns and urged the committee to take the time to get this right rather than fast tracking it. He stated that Prairie Hills Homes Association has been diligent in enforcing its deed restrictions and covenants; however, he noted it has three different sets of restrictions depending on the neighborhood. He expressed concern that the new regulations may be inconsistent with existing deed restrictions and doesn't want to see the homes associations' deed restrictions compromised or undermined by this action. He doesn't want this to complicate the homes association's enforcement of their covenants. He would like to see the city take the burden off the homes association for enforcement. Mr. Jordan replied that homes association deed restrictions and covenants will supersede the city's regulations.

Mayor Wassmer noted the proposed amendments address mass and scale. The regulations can be inconsistent as the Homes Association regulations take precedence.

COU2015-35 Consider renewal of the City's health, dental and vision insurance for 2016

Quinn Bennion stated the City Council considers insurance initially during the budget process and then a second time when the actual proposal is received from the insurance providers. During the budget process, the City Council approved a 10% increase for insurance costs. Mr. Bennion introduced Dave Anderson with CBIZ who coordinates its insurance benefit.

Dave Johnson stated the City currently contracts with Blue Cross Blue Shield of Kansas City (BCBS) for its employee health insurance plans. The plan year ends in December and consequently, renewals were sought from BCBS for the 2016 plan year. Mr. Anderson noted that the number of employees for the city dropped below 100 making them unable for them to see the city's claim history. The renewal is based on the claims incurred by plan participants over the twelve month period of July 2014 - June 2015; the City's loss ratio for this period was 220%. The initial renewal rate exceeded the budget so modifications to the existing plans are being proposed.

Mr. Johnson noted that because of the drop in the number of employees, CBIZ chose not to go out in the market for bids. Without the ability to secure claim results, each employee would have had to complete a detailed health history questionnaire to be submitted to firms for bid purposes. He stated that it is anticipated the employee count will be over 100 after the first of the year and that he plans to go out to bid for the 2017 renewal. Mr. Anderson noted this year's competitive market is seeing increases of 12-14%.

The City will continue to offer multiple plans for employees to select from. There are a few minor changes to the Base PPO and Buy-Up HMO Plans. The Base PPO will see the annual deductible increase from \$500 to \$750 for an individual and \$1,000 to \$1,500 for a family. While the Buy-Up HMO Maximum Out-Of-Pocket will increase from \$4,500 to \$5,500 for an individual and \$9,000 to \$10,000 for a family. The Qualified High Deductible Health Plan (QHDHP), for employees on the HSA plan, had increased out-of-pocket-maximum changes last year.

Both plans have increases in co-pays; office visits will move from \$30/60 to \$35/70 and for Urgent Care will change from \$60 to \$70. Prescription co-pays for level 2 will change from \$35 to \$40 and level 3 from \$60 to \$70.

The Health Risk Assessment (HRA) or biometric screenings will continue. Those that complete an HRA or screening will receive a discounted rate on the premium of \$20.00 per month.

The City recommends that the differential for tobacco users covered on the City's health insurance plan (employee or dependent) continue in 2016. Those individuals who use tobacco products (cigarettes, pipes, chewing tobacco, cigars, etc.) more than once per week will be assessed \$20 in their monthly premium costs.

The city's dental and vision insurance coverage for 2016 experienced a 0% increase in premium.

Andrew Wang asked about the impact of the Affordable Care Act on claim ratings. Mr. Anderson responded that the 9% increase includes a 5% increase to cover the ACA tax. The ACA primarily impacts organizations with less than 50 employees requiring them to use a community rating. Last month, the federal government ruled that states can the impact of ACA on organizations with 50-99 employees. Kansas has not yet made its ruling. Mr. Wang asked if a claims rating is better than a community rating. Mr. Anderson replied that generally it was. He noted that the city had two very large claims filed that significantly impacted its claims history.

Dan Runion asked about going out to bid. Mr. Anderson recommended go out to bid every two to five years and intends to go out to bid next year when he anticipates a claims history to be available; noting again, that he did not do so this year because of the drop in the number of employees. Mr. Runion asked if he would have expected to see an increase if he had gone out to bid. Mr. Anderson responded he would have due to the two significant claims.

Andrew Wang asked about doing a review of the city's benefit package through MARC noting that this is a significant budget expense. He stated he understood Mr. Anderson's reasons for not going out to bid, but felt the city should be prepared to go out regardless of the number of employees that the employees should understand that this could happen. He suggested getting the needed surveys completed in advance. Mr. Anderson replied that the surveys must be done within a 60 day time period of the bid.

Mr. Wang asked why the PPO was being used as the base plan instead of the HSA. Mr. Bennion replied there are restrictions on who can be covered by a HSA that prohibit some of the employees from selecting this option. Mr. Anderson noted that 40% of employees participating in an HSA is higher than usual.

Ashley Weaver made the following motion, which was seconded by Ruth Hopkins and passed unanimously:

RECOMMEND THE CITY COUNCIL APPROVE 1) BLUE CROSS SHIELD OF KANSAS CITY AS THE CITY'S HEALTH INSURANCE PROVIDER FOR THE 2016 PLAN YEAR WITH A 9.0% INCREASE IN PREMIUMS; 2) APPROVE DELTA DENTAL OF KANSAS AS THE CITY'S DENTAL INSURANCE PROVIDER FOR THE 2016 PLAN YEAR WITH A 0.0% INCREASE AND 3) APPROVE SUPERIOR VISION AS THE CITY'S VISION INSURANCE PROVIDER FOR THE 2016 PLAN YEAR WITH A 0.0% INCREASE IN PREMIUMS
COUNCIL ACTION TAKEN
10/19/2015

COU2015-36 Consider approval of Charter Ordinances 26 and 27 changing local elections and terms to comply with new state statues

City Attorney Katie Logan stated the City Council discussed various options to transition local elections at the September 21 and October 5 meetings. The consensus was to transition local elections to the fall of odd years for City Council members and the fall of even years for the Mayor by shortening all terms three months.

- Council members elected in April 2016 will be a 45 month term expiring January 2020.
- Council members whose terms currently expire in April 2018 will now expire in January 2018.
- Mayor Wassmer's term will now expire in January 2019 instead of April 2019.
- Even though elections will occur in November, the new term does not begin until the second Monday in January.

Mrs. Logan reviewed the two ordinances drafted based on the direction of the City Council and noted this would be considered the first reading of the ordinances.

She noted that Charter Ordinance #27 could be combined into a single ordinance as it only adds language regarding the handling of primaries in odd years. Mrs. Logan stated she did not choose to repeal the prior charter ordinances as they charter out of a previous ordinance. Charter Ordinance #26 contains the provisions for the commencement of terms of office after January 1, 2017. The ordinance has the City Council being elected in odd years and the Mayor elected in even years. The initial terms are shortened to 45 months returning to 4 years once on the required election cycle.

Mrs. Logan noted the change could be made through the adoption of a charter ordinance or the adoption of a regular ordinance. If adopted by a regular ordinance it becomes effective upon publication. If adopted by a charter ordinance a 60 day protest period is required. However, she added that a charter ordinance would have to be adopted amending or repealing the existing charter ordinance on elections.

Mayor Wassmer stated she supports adoption by an ordinary ordinance.

Ruth Hopkins noted the strong opposition expressed by the LKM attorney at the League of Kansas Municipalities Conference as to the authority to hold April elections. Mrs. Logan stated she attended the City Attorney Association at that conference and was advised that the Attorney General will be issuing a ruling permitting April elections.

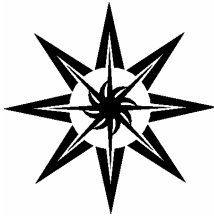
Mrs. Logan advised the Council that even if the change was made through adoption of a regular ordinance it still needs to be adopted in November as it would not become effective until after the adoption of the corresponding Charter Ordinance repealing the existing election regulations requiring the 60 day protest period.

The City Council directed the City Attorney to prepare an ordinance for adoption of the new regulations and the related charter ordinance to repeal the existing Charter.

ADJOURNMENT

With no further business to come before the Council Committee of the Whole, Council President Brooke Morehead adjourned the meeting at 7:20 p.m.

Brooke Morehead
Council President



PUBLIC WORKS DEPARTMENT

Council Meeting Date: November 2, 2015

Consider Bid Award for 2015 Tree Trimming Program

RECOMMENDATION

Staff recommends the City Council approve the award of a bid to The Davey Tree Expert Company for \$83,040.00 for trimming trees in City right-of-way.

BACKGROUND

This bid is the annual tree trimming of trees in the City right-of-way. There are 9 areas bid for trimming this year, a map is attached that delineate those areas. All the trees will be trimmed to remove any dead wood larger than 2-inches over the right-of-way, remove limbs interfering with sight line to traffic signals and street signs, and with a cone under the street lights.

Davey Tree Expert Company is a new contractor for the City. We have checked their references and also met with the contractor to review expectations of this project.

Five bids were received and opened on October 23, 2015, by the City Clerk. The bid tab is:

| Bidder | Total |
|---------------|--------------|
| Davey Tree | \$ 83,040.00 |
| Smith Bros. | \$212,520.00 |
| KC Tree | \$228,503.00 |
| VanBooven | \$250,425.00 |
| Arbor Masters | \$296,306.00 |

FUNDING SOURCE

\$125,000 was budgeted for tree trimming in the 2015 Public Works Operating Budget.

RELATION TO VILLAGE VISION

CC1; Make streetscape improvements to enhance pedestrian safety and attractiveness of the public realm

CFS2: Preserve and protect natural areas

ATTACHMENTS

Construction Agreement for Tree Trimming
Tree Trimming Area

PREPARED BY

Keith Bredehoeft, Director of Public Works

October 28, 2015

2015 Tree Trimming Areas



Legend

- Area_11
- Area_12
- Area_13
- Area_21
- Area_22
- Area_23
- Area_31
- Area_32
- Area_33



**CONSTRUCTION CONTRACT
FOR
2015 TREE TRIMMING**

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

THIS AGREEMENT, is made and entered into this ____ day of _____, 20__, by and between the City of Prairie Village, Kansas, hereinafter termed the “**City**”, and The Davey Tree Expert Company, hereinafter termed in this agreement, “**Contractor**”, for the construction and completion of Project 2015 Tree Trimming , (the “**Project**”) designated, described and required by the Project Manual and Bid Proposal, to wit:

WITNESSETH:

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

WHEREAS, the Contractor, in response to the advertisement, has submitted to the City in the manner and at the time specified, a sealed Bid Proposal in accordance with the Bid Documents;

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

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

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

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

1. **DEFINITIONS:** Capitalized terms not defined herein shall have the meanings set forth in the General Conditions.

1.1 Following words are given these definitions:

ADVERSE WEATHER shall have the meaning set forth in Section 9.3 hereof.

APPLICATION FOR PAYMENT shall mean a written request for compensation for Work performed on forms approved by the City.

BID shall mean a complete and properly signed proposal to do the Work or designated portion thereof, for the price stipulated therein, submitted in accordance with the Bid Documents.

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

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

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

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

CERTIFICATE FOR PAYMENT shall mean written certification from the Field Superintendent stating that to the best of the Field Superintendent's knowledge, information and belief, and on the basis of the Field Superintendent's on-site visits and inspections, the Work described in an Application for Payment has been completed in accordance with the terms and conditions of the Contract Documents and that the amount requested in the Application for Payment is due and payable.

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

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

CONTRACT or **CONTRACT DOCUMENTS** shall consist of (but not necessarily be limited to) the Plans, the Specifications, all addenda issued prior to and all modifications issued after execution of this Agreement, (modifications consisting of written amendments to the Agreement signed by both parties, Change Orders, written orders for minor changes in the Work issued by the Field Superintendent) this Construction Contract between the City and Contractor (sometimes referred to herein as the "**Agreement**"), the accepted Bid Proposal, Contractor's Performance Bond, Contractor's Maintenance Bond, Statutory Bond, the Project Manual, the General Conditions, the Special Conditions and any other documents that have bearing the Work prescribed in the Project. It is understood that the Work shall be

carried out and the Project shall be constructed fully in accordance with the Contract Documents.

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

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

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

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

FIELD ORDER shall mean a written order issued by the Field Superintendent that orders minor changes in the Work, but which does not involve a change in the Contract Price or Contract Time.

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

GENERAL CONDITIONS shall mean the provisions in the document titled "General Conditions - General Construction Provisions" attached hereto and incorporation herein by reference.

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

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

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

PLANS shall mean and include all Shop Drawings which may have been prepared by or for the City as included in the Project Manual or submitted by the Contractor to the City during the progress of the Work, all of which show the character and scope of the work to be performed.

PROJECT shall mean the Project identified in the first paragraph hereof.

FIELD SUPERINTENDENT shall mean the person appointed by the Public Works Director for this Contract.

PROJECT MANUAL shall contain the General Conditions, Special Conditions, Specifications, Shop Drawings and Plans for accomplishing the work.

PROJECT SEGMENTS shall have the meaning set forth in Section 7.1 hereof.

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

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

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

SPECIAL CONDITIONS shall mean the provisions in the document titled "Special Conditions" attached hereto and incorporation herein by reference.

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

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

TOTAL COMPLETION shall mean all elements of a Project Segment or the Total Project Work is complete including all subsidiary items and "punch-list" items.

TOTAL PROJECT WORK shall have the meaning set forth in Section 7.1 hereof.

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

UNUSUALLY SEVERE WEATHER shall have the meaning set forth in Section 9.4 hereof.

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

WORK SCHEDULE shall have the meaning set forth in Section 7.2 hereof.

- 1.2 Whenever any word or expression defined herein, or pronoun used instead, occurs in these Contract Documents; it shall have and is mutually understood to have the meaning commonly given. Work described in words, which so applied have a well-known technical or trade meaning shall be held to refer to such, recognized standards.
- 1.3 Whenever in these Contract Documents the words “as ordered,” “as directed”, “as required”, “as permitted”, “as allowed”, or words or phrases of like import are used, it is understood that the order, direction, requirement, permission or allowance of the Field Superintendent 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 Field Superintendent.
- 1.6 When a word, term or phrase is used in the Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and, third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.
- 1.7 All terms used herein shall have the meanings ascribed to them herein unless otherwise specified.

2. ENTIRE AGREEMENT:

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

3. INTENT AND INTERPRETATION

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

- 3.2 All time limits stated in the Contract Documents are of the essence of the Contract.
- 3.3 The Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.
- 3.4 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.
- 3.5 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents and shall give written notice to the Field Superintendent 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 Field Superintendent 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 Field Superintendent before proceeding with the construction affected by such omissions or discrepancies.
- 3.11 It is understood and agreed that the Work shall be performed and completed according to the true spirit, meaning, and intent of the Contract Documents.

- 3.12 The Contractor's responsibility for construction covered by conflicting requirements, not provided for by addendum prior to the time of opening Bids for the Work represented thereby, shall not extend beyond the construction in conformity with the less expensive of the said conflicting requirements. Any increase in cost of Work required to be done in excess of the less expensive work of the conflicting requirements will be paid for as extra work as provided for herein.
- 3.13 The apparent silence of the Project Manual as to any detail, or the apparent omission from them of a detailed description concerning any point, shall be regarded as meaning that only the best general practice is to be used. All interpretations of the Project Manual shall be made on the basis above stated.
- 3.14 The conditions set forth herein are general in scope and are intended to contain requirements and conditions generally required in the Work, but may contain conditions or requirements which will not be required in the performance of the Work under contract and which therefore are not applicable thereto. Where any stipulation or requirement set forth herein applies to any such non-existing condition, and is not applicable to the Work under contract, such stipulation or requirement will have no meaning relative to the performance of said Work.
- 3.15 KSA 16-113 requires that non-resident contractors appoint an agent for the service of process in Kansas. The executed appointment must then be filed with the Secretary of State, Topeka, Kansas. Failure to comply with this requirement shall disqualify the Contractor for the awarding of this Contract.

4. CONTRACT COST

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

5. WORK SUPERINTENDENT

- 5.1 The Contractor shall provide and maintain, continually on the site of Work during its progress, an adequate and competent superintendent of all operations for and in connection with the Work being performed under this Contract, either personally or by a duly authorized superintendent or other representative. This representative shall be designated in writing at the preconstruction meeting.
- 5.2 The superintendent, or other representative of the Contractor on the Work, who has charge thereof, shall be fully authorized to act for the Contractor, and to receive whatever orders as may be given for the proper prosecution of the Work, or notices in connection therewith. Use of Subcontractors on portions of the Work shall not relieve the Contractor of the obligation to have a competent superintendent on the Work at all times.
- 5.3 The City shall have the right to approve the person who will be the Superintendent based on skill, knowledge, experience and work performance. The City shall also have the right to request replacement of any superintendent.

5.4 The duly authorized representative shall be official liaison between the City and the Contractor regarding the signing of pay estimates, change orders, workday reports and other forms necessary for communication and Work status inquiries. Upon Work commencement, the City shall be notified, in writing, within five (5) working days of any changes in the Contractor's representative. In the absence of the Contractor or representative, suitable communication equipment, which will assure receipt of messages within one (1) hour during the course of the workday, will also be required.

5.5 The Contractor will be required to contact the Field Superintendent daily to advise whether and/or where the Contractor and/or the Subcontractor's crews will be working that day, in order that the Field Superintendent's representative is able to monitor properly the Work.

6. FIELD SUPERINTENDENT

6.1 It is mutually agreed by and between the parties to this Agreement that the Field Superintendent shall act as the representative of the City and shall observe and inspect, as required, the Work included herein.

6.2 In order to prevent delays and disputes and to discourage litigation, it is further agreed by and between the parties to this Agreement that the Field Superintendent 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 Field Superintendent shall determine, where applicable, questions in relation to said Work and the construction thereof; that Field Superintendent shall, where applicable decide questions which may arise relative to the execution of this Contract on the part of said Contractor; that the Field Superintendent'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 Field Superintendent 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 Field Superintendent and with the other party, within thirty (30) days a written objection to the decision or direction so rendered and, by such action, may reserve the right to submit the question to determination in the future.

6.3 The Field Superintendent, unless otherwise directed or agreed to by the City in writing, will perform those duties and discharge those responsibilities allocated to the Field Superintendent as set forth in this Contract. The Field Superintendent shall be the City's representative from the effective date of this Contract until final payment has been made. The Field Superintendent shall be authorized to act on behalf of the City only to the extent provided in this Contract. The City and Field Superintendent may, from time to time, designate Inspectors to perform such functions.

6.4 The City and the Contractor shall communicate with each other in the first instance through the Field Superintendent.

6.5 The Field Superintendent shall be the initial interpreter of the requirements of the Project Manual and the judge of the performance by the Contractor. The Field Superintendent shall render written graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.

6.6 The Field Superintendent 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 Field Superintendent's recommendation of any payment requested in an Application for Payment will constitute a representation by Field Superintendent to City, based on Field Superintendent's on-site observations of the Work in progress as an experienced and qualified design professional and on Field Superintendent'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 Field Superintendent'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 Field Superintendent 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 Field Superintendent in the Project Manual or that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by the City or the City to withhold payment to Contractor.

- 6.7 The Field Superintendent may refuse to recommend the whole or any part of any payment if, in Field Superintendent's opinion, it would be incorrect to make such representations to City. Field Superintendent 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 Field Superintendent's opinion to protect the City from loss because:
- The Work is defective, or completed Work has been damaged requiring correction or replacement,
 - The Contract Price has been reduced by Written Amendment or Change Order,
 - The City has been required to correct Defective Work or complete Work in accordance with the Project Manual.
- 6.8 The City may refuse to make payment of the full amount recommended by the Field Superintendent 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 Field Superintendent) stating the reasons for such action.
- 6.9 The Field Superintendent will have the authority to reject Work which is defective or does not conform to the requirements of this Contract. If the Field Superintendent deems it necessary or advisable, the Field Superintendent shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.
- 6.10 The Field Superintendent will review, or take other appropriate action as necessary, concerning the Contractor's submittals, including Shop Drawings, Product Data and Samples. Such review, or other action, shall be for the sole purpose of determining general conformance with the design concept and information given through the Project Manual.

- 6.11 The Field Superintendent shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 6.12 The Field Superintendent, upon written request from the Contractor shall conduct observations to determine the dates of Substantial Completion, Total Completion and the date of Final Acceptance. The Field Superintendent will receive and forward to the City for the City's review and records, written warranties and related documents from the Contractor required by this Contract and will issue a final Certificate for Payment to the City upon compliance with the requirements of this Contract.
- 6.13 The Field Superintendent's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.
- 6.14 The Field Superintendent 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 Field Superintendent will not be responsible for the acts or omissions of the Contractor or any Subcontractor or any of its or their agents or employees, or any other person at the site or otherwise performing any of the Work except as may otherwise be provided.
- 6.15 Any plan or method of work suggested by the Field Superintendent, 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 Field Superintendent and the City will assume no responsibility therefore.
- 6.16 It is agreed by the Contractor that the City shall be and is hereby authorized to appoint or employ, either directly or through the Field Superintendent, 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 Field Superintendent, or by the resident representatives for proper observation and examination of the Work and all parts thereof.
- 6.17 The Contractor shall comply with any interpretation of the Project Manual by the Field Superintendent, 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 Field Superintendent, resident representative or observer, the Contractor may appeal in writing to the City Director of Public Works for a decision.
- 6.18 Resident representatives, observers, and other properly authorized representatives of the City or Field Superintendent shall be free at all times to perform their duties, and intimidation or attempted intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the City so decides, to annul the Contract.

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

7. WORK SCHEDULE:

7.1 The Work is comprised of one large project (sometimes referred to as “**Total Project Work**”) and, in some cases, is partitioned into smaller subprojects referred to in this Agreement as “**Project Segments**.” A Contract Time shall be stated in the Contract Documents for both the Total Project Work and, when applicable, the Project Segments.

7.2 At the time of execution of this Contract, the Contractor shall furnish the Field Superintendent with a schedule (“**Work Schedule**”) setting forth in detail (in the critical path method) the sequences proposed to be followed, and giving the dates on which it is expected that Project Segments will be started and completed within the Contract Time. The Work Schedule is subject to approval by the City.

7.3 Monthly Work Schedule reports shall accompany the Contractor's pay request for Work completed. Where the Contractor is shown to be behind schedule, it shall provide an accompanying written summary, cause, and explanation of planned remedial action. Payments or portions of payments may be withheld by the City upon failure to maintain scheduled progress of the Work as shown on the approved Work Schedule.

7.4 At a minimum the Contractor shall update and submit the Work Schedule for review weekly, unless otherwise agreed upon by the City.

7.5 The Contractor, within ten (10) calendar days after being instructed to do so in a written notice from the City, shall commence the Work to be done under this Contract.

7.6 If at any time, in the opinion of the Field Superintendent or City, proper progress is not being maintained; changes shall be proposed in the Work Schedule and resubmitted for consideration and approval.

7.7 If the Contractor has not completed Project Segments and is within a non-performance penalty period, it shall not be allowed to undertake a new Project Segment until the Project Segment in dispute is completed, unless expressly permitted by the City.

7.8 The operation of any tool, equipment, vehicle, instrument, or other noise-producing device is prohibited to start before or continue after the hours of 7 AM and 10 PM, Monday through Friday (except Fridays which shall be until Midnight) and 8 AM and midnight on Weekends (except Sunday which shall be 10 PM). Violation of this requirement is Prima Facie Violation of City Municipal Code 11-202.

7.9 No work shall be undertaken on Saturdays, Sundays and Holidays (Christmas, New Years, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day and Thanksgiving) without the express written approval of the City Field Superintendent. 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 Field Superintendent.

7.10 Night work may be established by the Contractor, as a regular procedure, with the written permission of the City; such permission, however, may be revoked at any time by the City if

the Contractor fails to maintain adequate equipment for the proper prosecution and control of all operations performed as part of the Work.

- 7.11 The Contractor shall provide 24 hours notice prior to commencing any work to the City Field Superintendent. The Contractor shall communicate immediately any changes in the Work Schedule to the Field Superintendent for approval by the City.

8. DELAYS AND EXTENSIONS OF TIME

- 8.1 In executing the Contract, the Contractor expressly covenants and agrees that, in undertaking the completion of the Work within the Contract Time, it has taken into consideration and made allowances for all of the ordinary delays and hindrances incident to such Work, whether growing out of delays in securing materials, workers, weather conditions or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the Work, or any portion thereof, included in this Contract.

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

9. ADVERSE WEATHER:

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

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

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

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

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

- 9.7 Upon receipt of the Notice to Proceed, and continuing throughout the Contract, the Contractor shall record on its daily construction report, the occurrence of Adverse Weather and resultant impact to the Work Schedule.
- 9.8 The number of actual Adverse Weather delay days shall include days affected by actual Adverse Weather (even if Adverse Weather occurred in the previous month), and shall be calculated chronologically from the first to the last day of each month, and be recorded as full workdays.
- 9.9 If the number of actual Adverse Weather delay days in a given month exceeds the number of days anticipated above, the difference shall be multiplied by 7/5 to convert any qualifying workday delays to calendar days. The resulting number of qualifying lost days shall be added to the Contract Time.
- 9.10 The determination that Unusually Severe Weather occurred does not automatically mean an extension of time will be granted. The Contractor must substantiate the Unusually Severe Weather delayed work activities on the critical path of the Work Schedule.
- 9.11 Full consideration for equivalent fair weather workdays shall be given. If the number of actual Adverse Weather delays in a given month is less than the number of days anticipated as indicated above, the difference shall be multiplied by 7/5 to convert any workday increases to calendar days. The resulting number of qualifying extra days will be accumulated and subtracted from any future month's days lost due to unusually severe weather.
- 9.12 The net cumulative total of extra days/lost days shall not result in a reduction of Contract Time and the date of Substantial Completion shall not be changed because of unusually favorable weather.
- 9.13 In converting workdays to calendar days, fractions 0.5 and greater shall be rounded up to the next whole number. Fractions less than 0.5 shall be dropped.
- 9.14 The Contractor shall summarize and report all actual Adverse Weather delay days for each month to the Field Superintendent by the tenth (10th) day of the following month. A

narrative indicating the impact of Adverse Weather conditions on the Work Schedule shall be included.

- 9.15 Any claim for extension of time due to Unusually Severe Weather shall be submitted to the Field Superintendent within 7 days of the last day of the commencement of the event giving rise to the delay occurred. Resolution of any claim shall follow the procedures described above.
- 9.16 The Contractor shall include and indicate the monthly-anticipated Adverse Weather days, listed above, in the Work Schedule. (Reference Section 7.1 for Work Schedule requirements)
- 9.17 The Contractor shall indicate the approved Adverse Weather days (whether less or more than the anticipated days) in its Work Schedule updates.

10. LIQUIDATED DAMAGES

- 10.1 Contractor agrees that time is of the essence and any term pertaining to Contractor timely performing so as to achieve Total Completion within the Contract Time is a material provision of this Contract. Further, the parties acknowledge that City's damages in the event of delay are difficult to ascertain and consequently agree that, in the event and to the extent that actual date of Total Completion is delayed beyond the Contract Time for the Total Project Work or Project Segments attributable solely or concurrently to (i) an act or omission of Contractor or any of its subcontractors or suppliers, or (ii) in whole or in part, to any other event or condition within the Contractor's reasonable control (and not for reasons solely attributable to City), the Contractor shall be assessed a liquidated damage, and not as a penalty, in the amount set forth in the Special Conditions for each calendar day beyond the applicable Contract Time. Such amount shall be deducted from any amounts due Contractor under this Agreement.
- 10.2 Further, the Contractor agrees that, in the event Contractor does not carry out such Work at such rates of progress as required by the Work Schedule approved by the City, the City may, at its option and without Contractor receiving any additional compensation therefore, require Contractor to increase the number of qualified supervisory personnel and/or workers and the amount of equipment employed in the performance of the Work to such extent as City may deem necessary or desirable. In addition, City, at its option, may supplement Contractor's manpower by entering into contracts with other contractors to perform the Work. All costs that are incurred by City, in this regard, including reasonable attorney's fees, shall be deducted from any sums due Contractor or City may make demand on Contractor for reimbursement of such costs.

11. PAYMENT PROCEDURE

- 11.1 Based upon Applications for Payment submitted to the Field Superintendent by the Contractor and Certificates for Payment issued by the Field Superintendent, the City shall make progress payments on account of the contract sum to the Contractor as provided below and elsewhere in the Contract Documents.
- 11.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month or on a mutually agreed date by City and Contractor.

- 11.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal on the first day of each month of an Application for Payment, all Work for which payments have been received from the City shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.
- 11.4 Each application for payment must be submitted with Contractor's waiver for period of construction covered by application. Each Application for Payment will be submitted with executed waivers from the subcontractors or sub-contractors and suppliers for the previous period of construction covered by the previous application. The final payment application must be submitted together with or preceded by final or complete waivers from every entity involved with performance of the Work covered by the payment request.
- 11.5 The Contractor will submit waivers on forms, and executed in a manner, acceptable to City.
- 11.6 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor because of such Subcontractor's Work the amount to which such Subcontractor is entitled. In the event the City becomes informed that the Contractor has not paid a Subcontractor as herein provided, the City shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the City, shall be deemed payment to the Contractor but shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the City to repeat the procedure in the future.
- 11.7 The Field Superintendent 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 Field Superintendent will submit an estimate each month to the City for payment to the Contractor, except that no amount less than \$500.00 will be submitted unless the total amount of the Contract remaining unpaid is less than \$500.00.
- 11.8 Deductions will be made from progress payments if the Contract includes a provision for a lump sum or a percentage deduction. Lump sum deductions will be that portion of the stated lump sum computed as the ratio that the amount earned bears to the Contract Price. Percentage deductions will be computed at the stated percentage of the amount earned.
- 11.9 No progress payment, nor any use or occupancy of the Work by the City, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.
- 11.10 The City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the City from loss because of:
- Defective Work not remedied by the Contractor;
 - Claims of third parties against the City or the City's property;
 - Failure by the Contractor to pay Subcontractors or others in a prompt and proper

fashion;

- Evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
- Evidence that the Work will not be completed in the time required for substantial or final completion;
- Persistent failure to carry out the Work in accordance with the Contract;
- Damage to the City or a third party to whom the City is, or may be, liable;
- Evidence that the Work is not progressing according to agreed upon schedule by both parties.

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

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

12. COMPLETION AND FINAL PAYMENT

12.1 Upon Total Completion, when the Contractor is ready for a final inspection of the Total Project Work, it shall notify the City and the Field Superintendent thereof in writing. Thereupon, the Field Superintendent will make final inspection of the Work and, if the Work is complete in accordance with this Contract, the Field Superintendent 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 Field Superintendent is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s), which cost may be deducted by the City from the Contractor's full payment.

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

12.3 The City shall make final payment of all sums due the Contractor within thirty days of the Field Superintendent's execution of a final Certificate for Payment.

12.4 Acceptance of final payment shall constitute a waiver of all claims against the City by the Contractor except for those claims previously made in writing against the City by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final inspection.

13. CLAIMS BY THE CONTRACTOR

13.1 All Contractor claims shall be initiated by written notice and claim to the Field Superintendent. Such written notice and claim must be furnished within seven calendar days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.

13.2 The Contractor shall diligently proceed with performance of this Contract whether or not there be such a claim pending and the City shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim shall be reflected by a Change Order executed by the City, the Field Superintendent and the Contractor.

13.3 Should concealed and unknown conditions which could not, with reasonable diligence, have been discovered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure differ materially with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided by this Contract, be encountered, the Contract Price shall be equitably adjusted by the Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the City having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the City written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed or unknown condition.

13.4 If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the City therefore, the Contractor shall give the City written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.

13.5 The City reserves the right to increase or decrease quantities, and alter the details of construction including grade and alignment as the Field Superintendent may consider necessary or desirable, by approved Change Order. Such modifications shall not invalidate the Contract nor release the surety. Unless such alterations and increases or decreases change the total cost of the Work, based on the originally estimated quantities and the unit prices bid, by more than 25 percent, or change the total cost of any major item, based on the originally estimated quantities and the unit price bid, by more than 25 percent, the Contractor shall perform the work altered, increased or decreased, at a negotiated price or prices. (A major item shall mean any bid item, the total cost of which exceeds 12-1/2 percent of the total Contract Price based on the proposed quantity and the contract unit price).

- 13.6 When the alterations cause an increase or decrease in excess of the 25 percent indicated above, either the Contractor or the Field Superintendent may request an adjustment of the unit price to be paid for the item or items.
- 13.7 If a mutually agreeable adjustment cannot be obtained, the City reserves the right to terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the Work.
- 13.8 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall not include standby costs, indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties.
- 13.9 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving Final Acceptance of the Work shall be extended upon the written notice and claim of the Contractor to the City, for such reasonable time as the City may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven calendar days after the occurrence of the event or the first appearance of the condition-giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Work. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this subparagraph, any claim for an extension of time shall be waived.
- 13.10 The Contractor shall delay or suspend the progress of the work or any part thereof, whenever so required by written order of the City, and for such periods of time as required; provided, that in the event of such delay or delays or of such suspension or suspensions of the progress of the work, or any part thereof, the time for completion of work so suspended or of work so delayed by such suspension or suspensions shall be extended for a period equivalent to the time lost by reason of such suspension or suspensions; but such order of the City or Field Superintendent shall not otherwise modify or invalidate in any way, any of the provisions of this Contract. In the event that the work shall be stopped by written order of the City, any expense, which, in the sole opinion and judgment of the City, is caused by the City, shall be paid by the City to the Contractor.
- 13.11 In executing the Contract Documents, the Contractor expressly covenants and agrees that, in undertaking to complete the Work within the time herein fixed, it has taken into consideration and made allowances for all hindrances and delays incident to such work, whether growing out of delays in securing materials or workers 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.
- 13.12 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

14. CHANGES IN THE WORK

- 14.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.
- 14.2 The Field Superintendent shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 14.3 Any change in the Contract Price resulting from a Change Order shall be by mutual agreement between the City and the Contractor as evidenced by the change in the Contract Price being set forth in the Change Order, and, together with any conditions or requirements related thereto, being initialed by both parties.
- 14.4 If no mutual agreement occurs between the City and the Contractor relative to a change in the Work, the Contractor shall proceed with the Work that is the subject of the Change Order, and the change in the Contract Price, if any, shall then be determined by the Field Superintendent 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 Field Superintendent 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 Field Superintendent's Certificate for Payment.
- 14.5 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that the application of such unit prices to the quantities of Work proposed would cause substantial inequity to the City or to the Contractor, the applicable unit prices shall be equitably adjusted.
- 14.6 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim including impact against the City for

additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

15. INSURANCE AND BONDS.

15.1 The Contractor shall secure and maintain, throughout the duration of the agreement, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Contractor shall provide certificates of insurance and renewals thereof on forms acceptable to the City. The City shall be notified by receipt of written notice from the insurer or the Contractor at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.

15.2 The Contractor, upon receipt of notice of any claim in connection with this Agreement, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability. The Contractor shall monitor and promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by the Contract Documents) if the Contractor's limits of protection shall have been impaired or reduced to such extent that the limits fall below the minimum amounts required herein. The Contractor shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

15.3 Minimum Requirements Commercial General Liability Policy Limits -

| | |
|--|-------------|
| General Aggregate: | \$2,000,000 |
| Products / Completed Operations Aggregate: | \$2,000,000 |
| Personal & Advertising Injury: | \$1,000,000 |
| Each Occurrence: | \$1,000,000 |

Policy MUST include the following conditions:

- A. Pollution Liability (Applicable only to contracts involving pollutants such as asbestos & lead abatement, sludge or other waste abatement, etc.)
- B. NAME CITY OF PRAIRIE VILLAGE AS "ADDITIONAL INSURED"

15.4 Automobile Liability Policy shall protect the Contractor against claims for bodily injury and/or property damage arising from the ownership or use of any owned, hired and/or non-owned vehicle.

Limits (Same as Commercial General Liability) -

Combined Single Limits, Bodily Injury and Property Damage - Each Accident:

Policy MUST include the following condition:

NAME CITY OF PRAIRIE VILLAGE AS "ADDITIONAL INSURED"

15.5 Umbrella Liability. The Umbrella / Excess Liability must be at least as broad as the underlying general liability and automobile liability policies.

Limits -

| | |
|-------------------|-------------|
| Each Occurrence | \$1,000,000 |
| General Aggregate | \$1,000,000 |

- 15.6 Workers' Compensation. This insurance shall protect the Contractor against all claims under applicable state workers' compensation laws. The Contractor shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of workers' compensation law. The policy limits shall not be less than the following:

| | |
|---------------------------|-------------------------|
| Workers' Compensation: | Statutory |
| Employer's Liability: | |
| Bodily Injury by Accident | \$100,000 each accident |
| Bodily Injury by Disease | \$500,000 policy limit |
| Bodily Injury by Disease | \$100,000 each employee |

- 15.7 The City will only accept coverage from an insurance carrier who offers proof that it:

Is authorized to do business in the State of Kansas;
 Carries a Best's policy holder rating of A- or better; and
 Carries at least a Class VIII financial rating, **or**
 Is a company mutually agreed upon by the City and Contractor.

- 15.8 Subcontractor's Insurance. If a part of the Agreement is to be sublet, the Contractor shall either:

- A. Cover all subcontractor's in its insurance policies, or
- B. Require each subcontractor not so covered to secure insurance which will protect subcontractor against all applicable hazards or risks of loss as and in the minimum amounts designated.

Whichever option is chosen, Contractor shall indemnify and hold harmless the City as to any and all damages, claims or losses, including attorney's fees, arising out of the acts or omissions of its Subcontractors.

- 15.9 Prior to commencing any work, Contractor shall provide City with certificates evidencing that (1) all Contractor's insurance obligations required by the contract documents are in full force and in effect and will remain in effect until Contractor has completed all of the work and has received final payment from City and (2) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to City. Contractor's property insurance shall not lapse or be canceled if City occupies a portion of the work. Contractor shall provide City with the necessary endorsements from the insurance company prior to occupying a portion of the work.
- 15.10 Waiver of Subrogation. All insurance coverage required herein shall contain a waiver of subrogation in favor of the City. Contractor's insurance policies shall be endorsed to indicate that Contractor's insurance coverage is primary and any other insurance maintained by City is non-contributing as respects the work of Contractor.
- 15.11 Additional Insurance. Excess Liability coverage or additional insurance covering special hazards may be required on certain projects. Such additional insurance requirements shall be as specified in Special Conditions.

- 15.12 Bonds and Other Performance Security. Contractor shall provide a Performance Bond, Maintenance Bond and a Statutory Bond in the amount of one hundred percent (100%) of the Contract Price to cover the entire scope of Work and any other specific performance security that may be indicated in this Contract. With each bond there shall be filed with the City one copy of "Power of Attorney" certified to include the date of the bonds.

16. INDEMNITY

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

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

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

17. SUCCESSORS AND ASSIGNS

- 17.1 The City and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract.

- 17.2 The Contractor shall not assign or sublet the work, or any part thereof, without the previous written consent of the City, nor shall it assign, by power of attorney or otherwise, any of the money payable under this Contract unless by and with the like written consent of the City. In case the Contractor assigns all, or any part of any moneys due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to all prior liens of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.
- 17.3 Should any Subcontractor fail to perform in a satisfactory manner, the work undertaken, its subcontract shall be immediately terminated by the Contractor upon notice from the City. Performing in an unsatisfactory manner is defined as consistently having more than 10% of work unacceptable. The Contractor shall be as fully responsible to the City for the acts and omissions of the subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed. Nothing contained in this Contract shall create any contractual relations between any Subcontractor and the City, nor shall anything contained in the Contract Documents create any obligation on the part of the City to pay or to see to the payment of any sums due any Subcontractor.
- 17.4 The Contractor shall not award subcontracts which total more than forty-five (45%) of the Contract Price and shall perform within its own organization work amounting to not less than fifty-five percent (55%) of the total Contract Price. Approval by the City of any Subcontractor shall not constitute a waiver of any right of the City to reject Defective Work, material or equipment not in compliance with the requirements of the Contract Documents. The Contractor shall not make any substitution for any Subcontractor accepted by the City unless the City so agrees in writing.
- 17.5 The Contractor shall not subcontract, sell, transfer, assign or otherwise dispose of the Contract or any portion thereof without previous written consent from the City. In case such consent is given, the Contractor, shall be permitted to subcontract a portion thereof, but shall perform with his/her own organization work amounting to not less than fifty five (55%) of the total Contract Price. No subcontracts, or other transfer of Contract, shall release the Contractor of its liability under the Contract and bonds applicable thereto.
- 17.6 The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Contractor by the terms of the Contract Documents insofar as applicable to the work of the Subcontractor and to give the Contractor the same power to terminate any Subcontract as the City has to terminate the Contractor under any provisions of the Contract Documents.
- 17.7 Prior to the City's approval of the Contract bid, the successful bidder shall submit to the City for acceptance, a list of names of all Subcontractors proposed for portions of the work and shall designate which work each is to perform.
- 17.8 The City shall, prior to the City's approval of the Contract bid, notify the successful bidder, in writing, if the City, after due investigation, has reasonable objection to any Subcontractor on such list, and the Contractor shall substitute a Subcontractor acceptable to the City at no additional cost to the City or shall be allowed to withdraw his/her Bid, and the City shall either re-bid the Work or accept the next best lowest and responsible bidder. The failure of the City to make objection to a Subcontractor shall constitute an acceptance of such

Subcontractor but shall not constitute a waiver of any right of the City to reject Defective Work, material or equipment not in conformance with the requirements of the Project Manual.

18. NON-DISCRIMINATION LAWS

18.1 The Contractor agrees that:

- A. The Contractor shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of Work under the present contract because of race, religion, color, sex, disability, national origin, ancestry or age;
- B. In all solicitations or advertisements for employees, the Contractor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
- C. 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;
- D. 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
- E. The Contractor shall include the provisions of Subsections A through D in every subcontract or purchase order so that such provisions will be binding upon such Subcontractor or vendor.
- F. The provisions of this Section shall not apply to a contract entered into by a Contractor: (1) Who employs fewer than four employees during the term of such contract; or (2) Whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.

18.2 The Contractor further agrees that it shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all other federal, state and local laws.

19. FEDERAL LOBBYING ACTIVITIES [THIS PROVISION ONLY APPLIES IF THE CITY IS RECEIVING FEDERAL FUNDS]

19.1 31 USCS Section 1352 requires all subgrantees, Contractors, Subcontractors, and consultants/Architects who receive federal funds via the City to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the award of any federal contract, grant, loan, or cooperative agreements.

19.2 In addition, contract applicants, recipients, and subrecipients must file a form disclosing any expenditure they make for lobbying out of non-federal funds during the contract period.

19.3 Necessary forms are available from the City and must be returned to the City with other Contract Documents. It is the responsibility of the general contractor to obtain executed forms from any Subcontractors who fall within the provisions of the Code and to provide the City with the same.

20. RELATIONS WITH OTHER CONTRACTORS:

20.1 The Contractor shall cooperate with all other contractors who may be performing work on behalf of the City, and workers who may be employed by the City, or any other entity on any work in the vicinity of the Work to be done under this Contract, and the Contractor shall so conduct his/her operations as to interfere to the least possible extent with the work of such contractors or workers. The Contractor shall be responsible for any injury or damage, that may be sustained by other contractors, workers, their work or employees of the City, because of any fault or negligence on the Contractor's part, and shall, at his/her own expense, repair or pay for such injury or damage. If the work of the Contractor is delayed because of any acts or omissions of any other Contractor or Contractors, the Contractor shall have no claim against the City on that account other than for an extension of time.

20.2 When two or more Contracts are being executed at one time in such manner that work on one Contract may interfere with that on another, the City shall decide which Contractor shall progress at which time.

20.3 Other projects the Contractor may have to coordinate shall be listed in the Special Conditions.

20.4 When the territory of one Contract is the necessary or convenient means of access for the transportation or movement of workers, materials, or appliances required for the execution of another Contract, such privileges of access or any other responsible privilege may be granted by the City to the Contractor so desiring, to the extent such may be reasonably necessary.

20.5 Upon execution of the Contract, the Contractor shall furnish the City, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Work. The City shall promptly reply to the Contractor, in writing, stating any objections the City may have to such proposed Subcontractor. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the City has made timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has objection.

21. RIGHT OF CITY TO TERMINATE

21.1 If the Contractor persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, or supply enough properly skilled workers, supervisory personnel or proper equipment or materials, or if it fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or if this Contract is assigned by Contractor without authorization or if Contractor is adjudged as bankrupt, or if a general assignment of assets be made for the benefit of creditors; or if a receiver is appointed, or otherwise is guilty of a substantial violation of a provision of this Contract, then the City may by written

notice to the Contractor, without prejudice to any right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor and its surety shall be liable to the City for all excess cost sustained by the City because of such prosecution and completion including any additional legal, Field Superintendent or bid-letting costs therefore. In such case, the Contractor shall not be entitled to receive further payment. In the event the Contractor is found in a court of law to have been wrongfully terminated for cause, then such termination shall be deemed a termination for convenience and the Contractor shall be compensated as provided herein. Any termination of the Agreement for alleged default by Contractor that is ultimately determined to be unjustified shall automatically be deemed a termination for convenience of the City.

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

22. MISCELLANEOUS:

- 22.1 The Contractor warrants to the City that all labor furnished to progress the Work under the Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with the Project Manual. All Work not conforming to these requirements may be considered defective.
- 22.2 The Contractor shall obtain and pay for all permits, fees and licenses necessary or ordinary for the Work. The Contractor shall comply with all lawful requirements, including federal and state laws, City and County laws and ordinances and building codes, applicable to the Work and shall give and maintain copies of all notices required by applicable law pertaining to the Work.
- 22.3 Provision for Emergencies. Whenever, in the opinion of the City, the Contractor has not taken sufficient precaution for the safety of the public or the protection of the Work to be constructed under this Contract, or of adjacent structures or property which may be injured by process of construction, and whenever, in the opinion of the City, an emergency shall arise and immediate action shall be considered necessary in order to protect property interests and to avoid personal injury and/or death, then the City, with or without notice to the Contractor, shall provide suitable protection to the said interests by causing such Work to be done and materials to be furnished at places as the City may consider necessary and adequate. The cost and expense of such Work and material so furnished shall be borne by the Contractor and, if the same shall not be paid on presentation of the bills therefore, such costs shall be deducted from any amounts due or to become due the Contractor. The performance of such emergency Work shall in no way relieve the Contractor of responsibility for damages which may occur during or after such precaution has been duly taken.

- 22.4 Both the business address of the Contractor given in the Bid or proposal upon which this Contract is founded, and the Contractor's Office near the Work, is hereby designated as the places to which all notices, letters, and other communications to the Contractor may be mailed or delivered. The delivering at either of the above named addresses, or depositing in any mailbox regularly maintained by the Post Office, of any notice, letter or other communication so addressed to the Contractor, and the date of said service shall be the date of such delivery or mailing. Such addresses may be changed at any time by an instrument in writing, executed by the Contractor, presented, and delivered to the Field Superintendent and to the City. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or communication upon the Contractor personally.
- 22.5 It is mutually agreed by and between the parties to this Contract that all royalties and fees for and in connection with patents, or patent infringement, claims for materials, articles, apparatus, devices or equipment (as distinguished from processes) used in or furnished for the work shall be included in the Contract Price and the Contractor shall satisfy all demands that may be made at any time for such, and the Contractor shall at its cost and expense, defend any and all suits or proceedings that may be instituted at any time against the City for infringement or alleged infringement of any such patents involved in the work, and Contractor shall pay any award of damages.
- 22.6 The right of general administration of the City shall not make the Contractor an agent of the City, and the liability of the Contractor for all damages to persons, firms, and corporations, arising from the Contractor's execution of the Work, shall not be lessened because of such general administration, but as to all such persons, firms, and corporations, and the damages, if any, to them or their property. The Contractor herein is an independent Contractor in respect to the work.
- 22.7 For a period of time, from the inception of the Contract to three (3) years from the date of final payment under the Contract, the Contractor and subcontractors shall maintain books, accounts, ledgers, invoices, drafts, pages and other records pertaining to the performance of this Contract. At all reasonable times during this period these records shall be available within the State of Kansas at a field or permanent business office for inspection by authorized representatives of the City or of any other agency, which has contributed funds in connection with the Contract or to which the City is obligated to make such inspections available. In addition, this requirement shall be included in all subcontracts entered into in connection with this Contract.
- 22.8 Titles, subheadings used herein, and other Contract Documents are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Contract Documents.
- 22.9 No waiver of any breach of this Contract shall be construed to be a waiver of any other subsequent breach.
- 22.10 Should any provision of this Agreement or other Contract Documents be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement and/or the other Contract Documents shall be unaffected thereby and shall continue to be valid and enforceable.

- 22.11 Without in any manner limiting Contractor's responsibilities as provided elsewhere in the Contract Documents, the Contractor shall assume full responsibility for the protection of all public and private property, structures, sewers, and utilities, for both above ground and underground facilities, along, beneath, above, across or near the site or sites of the Work being performed under this Agreement, or which are in any manner affected by the prosecution of the Work or the transportation of men/women or materials in connection therewith. Barriers shall be kept in place at all times to protect persons other than those engaged on or about the Work from accident, and the Contractor will be held responsible for all accidents to persons or property resulting from the acts of Contractor or its employees.
- 22.12 The Contractor shall keep fully informed of all existing and current regulations of the City, county, state, and federal laws, which in any way limit or control the actions or operations of those engaged upon the work, or affecting materials supplied, to or by them. The Contractor shall at all times observe and comply with all ordinances, laws, and regulations, and shall protect and indemnify the City and the City's officers and agents against any claims or liability arising from or based on any violation of the same.
- 22.13 Nothing contained in the Contract Documents shall create, or be interpreted to create, privity or any other contractual agreement between the City and any person or entity other than the Contractor.
- 22.14 Duties and obligations imposed by the Contract Documents, rights, and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.
- 22.15 No action or failure to act by the City, Field Superintendent or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval or acquiescence in a breach hereunder, except as may be specifically agreed in writing.
- 22.16 Contractor specifically acknowledges and confirms that: (i) it has visited the site, made all inspections it deems appropriate and has read and fully understands the Contract Documents, including all obligations and responsibilities undertaken by it as specified herein and in other Contract Documents and knowingly accepts the same; (ii) it has furnished copies of all Contract Documents to its insurance carrier(s) and its surety(ies); and (iii) its insurance carrier(s) and surety(ies) agree to be bound as specified herein, in the Contract Documents and in the insurance policy(ies) and bonds as to liability and surety coverage.
- 22.17 It is specifically agreed between the parties executing this Agreement that the Contract Documents are not intended to create any third party beneficiary relationship nor authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.
- 22.18 This Agreement is entered into, under and pursuant to, and is to be construed and enforceable in accordance with the laws of the State of Kansas. Venue of any litigation arising in connection with this Agreement shall be the State courts of Johnson County, Kansas.

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

CITY OF PRAIRIE VILLAGE

The Davey Tree Expert Company
(typed company name)

By: _____
(signed)

By: _____
(signed)

Laura Wassmer

(typed name)

Mayor

(typed title)

City of Prairie Village

(typed company name)

7700 Mission Road

(typed address)

Prairie Village, Kansas 66208

(typed city, state, zip)

(typed telephone number)

(date of execution)

(date of execution)

SEAL

ATTEST:

APPROVED BY:

City Clerk, Joyce Hagen-Mundy

City Attorney, Catherine Logan

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

MAYOR'S ANNOUNCEMENTS

Monday, November 2, 2015

Committee meetings scheduled for the next two weeks include:

| | | |
|---|------------|-----------|
| Board of Zoning Appeals | 11/03/2015 | 6:30 p.m. |
| Planning Commission | 11/03/2015 | 7:00 p.m. |
| Tree Board | 11/04/2015 | 6:00 p.m. |
| Sister City Committee | 11/09/2015 | 5:30 p.m. |
| Prairie Village Arts Council | 11/11/2015 | 5:30 p.m. |
| Park & Recreation Committee | 11/11/2015 | 6:30 p.m. |
| Jazz Fest Committee | 11/12/2015 | 5:30 p.m. |
| Planning Commission Meeting @ Meadowbrook | 11/12/2015 | 6:00 p.m. |
| Council Committee of the Whole | 11/16/2015 | 6:00 p.m. |
| City Council | 11/16/2015 | 7:30 p.m. |

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The Prairie Village Arts Council is pleased to present the paintings of Chun Wang in the R. G. Endres Gallery during the month of November. The artist reception will be Friday, November 13th, from 6:30- 7:30 p.m.

Save the Date - The Northeast Johnson County Chamber of Commerce Annual Gala will be held on Saturday, November 21st at Overland Park Convention Center at 5:30 p.m.

Save the Date - Johnson & Wyandotte Counties Council of Mayors Holiday Social on Wednesday, December 2nd at 5:30 p.m. at Sporting KC Stadium.

Save the Date for the Mayor's Holiday Tree Lighting on Thursday, December 3rd from 6 p.m. to 7 p.m.

Save the Date for the Annual Volunteer Appreciation Event on Friday, December 4th at 6:30 p.m. at Milburn Country Club.

Save the Date for the annual Gingerbread House decorating parties on Sunday, December 6th at 1:30 p.m. or 3:00 p.m. at Brighton Gardens.

INFORMATIONAL ITEMS
November 2, 2015

1. Planning Commission Agenda - November 3, 2015
2. Board of Zoning Appeals Agenda - November 3, 2015
3. 3rd Quarter Crime Report
4. Mark Your Calendar

**PLANNING COMMISSION AGENDA
CITY OF PRAIRIE VILLAGE
TUESDAY, NOVEMBER 3, 2015
7700 MISSION ROAD
7:00 P.M.**

- I. CALL TO ORDER**
- II. ROLL CALL**
- III. APPROVAL OF REGULAR PC MEETING MINUTES - OCTOBER 6, 2015 & SPECIAL PC MEETING MINUTES - OCTOBER 12, 2015**
- IV. PUBLIC HEARINGS**
 - PC2015-09 Request for Rezoning from R-1a (Single Family Residential) to MXD (Mixed Use District) and CP-2 (Planned General Business District) and**
 - PC2015-118 Approval of Preliminary Development Plan
9101 Nall Avenue
Current Zoning: R-1a
Proposed Zoning: MXD & CP-2
Applicant: Justin Duff, VanTrust Real Estate**
 - PC2015-119 Request for Preliminary Plat Approval
9101 Nall Avenue
Applicant: Justin Duff, VanTrust Real Estate**
(To Be Continued to Thursday, November 12, 2015 at 6 p.m.)
 - PC2015-10 Request for Special Use Permit for Wireless Communications Facility
3921 West 63rd Street
Applicant: Justin Anderson, Selective Site Consultants for Fire District #2 and Sprint**
- V. NON-PUBLIC HEARINGS**
 - PC2015-115 Request for Site Plan Approval
7501 Mission Road
Current Zoning: C-0
Applicant: Chris Hafner, Davidson Architecture
(Applicant has requested continuance to December)**
 - PC2015-116 Request for Building Line Modification
8440 Roe Avenue
Current Zoning: R-1a
Applicant: Dana Blay
(Applicant has not submitted revised plans)**

**PC2015-120 Request for Site Plan Approval
4195 Somerset
Applicant: Generator Studio**

VI. OTHER BUSINESS

**Adoption of 2016 Planning Commission/Board of Zoning Appeals
Meeting and Submittal Schedule**

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

***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**

**BOARD OF ZONING APPEALS
CITY OF PRAIRIE VILLAGE, KANSAS
AGENDA
November 3, 2015
6:30 P.M.**

I. ROLL CALL

II. APPROVAL OF MINUTES - August 4, 2015

III. ACTION ITEM

**BZA2015-05 Request for an Exception from PVMC 19.44.035 to increase lot coverage by 1.1% by enclosing an existing porch
8400 Somerset
Zoning: R-1a Single Family Residential District
Applicant: David Cooley**

IV. OTHER BUSINESS

V. OLD BUSINESS

VI. ADJOURNMENT

If you cannot be present, comments can be made by e-mail to
Cityclerk@Pvkansas.com

PRAIRIE VILLAGE - MISSION HILLS

THIRD QUARTER CRIME REPORT - 2015

| CRIME | 2011 | 2012 | 2013 | 2014 | 2015 | AVERAGE | 2015 +/- AVG |
|------------------------|------------|------------|------------|------------|------------|---------------|--------------|
| Homicide | 0 | 0 | 0 | 0 | 0 | 0.00 | 0.00 |
| Rape | 4 | 5 | 1 | 2 | 4 | 3.20 | 0.80 |
| Robbery | 3 | 3 | 2 | 3 | 1 | 2.40 | -1.40 |
| Assault | 65 | 61 | 72 | 47 | 56 | 60.20 | -4.20 |
| Burglary | 57 | 38 | 48 | 37 | 38 | 43.60 | -5.60 |
| Residence | 53 | 33 | 43 | 29 | 35 | 38.60 | -3.60 |
| Business/Miscellaneous | 4 | 5 | 5 | 8 | 3 | 5.00 | -2.00 |
| Theft | 196 | 179 | 149 | 163 | 141 | 165.60 | -24.60 |
| Auto Theft | 13 | 10 | 23 | 13 | 26 | 17.00 | 9.00 |
| Arson | 3 | 2 | 1 | 1 | 2 | 1.80 | 0.20 |
| Forgery | 7 | 5 | 6 | 11 | 13 | 8.40 | 4.60 |
| Fraud | 11 | 21 | 18 | 30 | 101 | 36.20 | 64.80 |
| Criminal Damage | 132 | 108 | 94 | 51 | 84 | 93.80 | -9.80 |
| Sexual Offenses | 9 | 9 | 10 | 9 | 7 | 8.80 | -1.80 |
| TOTAL | 500 | 441 | 424 | 367 | 473 | 441.00 | 32.00 |

| ACCIDENTS | 2011 | 2012 | 2013 | 2014 | 2015 | AVERAGE | 2015 +/- AVG |
|------------------------------|------------|------------|------------|------------|------------|---------------|--------------|
| Fatal | 1 | 0 | 1 | 0 | 0 | 0.40 | -0.40 |
| Street - Injury | 19 | 18 | 18 | 26 | 25 | 21.20 | 3.80 |
| Street - Property + \$1,000* | 223 | 240 | 150 | 191 | 207 | 202.20 | 4.80 |
| Street - Property - \$1,000* | 48 | 54 | 50 | 31 | 45 | 45.60 | -0.60 |
| Private - Injury | 0 | 0 | 1 | 1 | 1 | 0.60 | 0.40 |
| Private - Property | 65 | 58 | 52 | 49 | 53 | 55.40 | -2.40 |
| Walk-In - Property | 42 | 29 | 33 | 26 | 19 | 29.80 | -10.80 |
| TOTAL | 398 | 399 | 305 | 324 | 350 | 355.20 | -5.20 |

| MENTAL HEALTH | 2011 | 2012 | 2013 | 2014 | 2015 | AVERAGE | 2015 +/- AVG |
|-------------------------|-----------|------------|------------|-----------|-----------|---------------|---------------|
| Suicide | 2 | 1 | 3 | 1 | 2 | 1.80 | 0.20 |
| Attempted Suicide | 11 | 9 | 7 | 5 | 5 | 7.40 | -2.40 |
| Involuntary Committal | 20 | 14 | 12 | 12 | 2 | 12.00 | -10.00 |
| Voluntary Committal | 11 | 23 | 18 | 11 | 4 | 13.40 | -9.40 |
| All Other Mental Health | 51 | 64 | 99 | 60 | 70 | 68.80 | 1.20 |
| TOTAL | 95 | 111 | 139 | 89 | 83 | 103.40 | -20.40 |

| | | | | | | | |
|--------------------|--------------|--------------|--------------|--------------|--------------|-----------------|---------------|
| TOTAL CALLS | 6,189 | 5,995 | 5,759 | 5,902 | 6,653 | 6,099.60 | 553.40 |
|--------------------|--------------|--------------|--------------|--------------|--------------|-----------------|---------------|

PRAIRIE VILLAGE

THIRD QUARTER CRIME REPORT - 2015

| CRIME | 2011 | 2012 | 2013 | 2014 | 2015 | AVERAGE | 2015 +/- AVG |
|------------------------|------------|------------|------------|------------|------------|---------------|--------------|
| Homicide | 0 | 0 | 0 | 0 | 0 | 0.00 | 0.00 |
| Rape | 4 | 5 | 1 | 2 | 4 | 3.20 | 0.80 |
| Robbery | 3 | 2 | 2 | 3 | 1 | 2.20 | -1.20 |
| Assault | 64 | 55 | 69 | 45 | 52 | 57.00 | -5.00 |
| Burglary | 55 | 33 | 43 | 25 | 31 | 37.40 | -6.40 |
| Residence | 51 | 28 | 38 | 18 | 29 | 32.80 | -3.80 |
| Business/Miscellaneous | 4 | 5 | 5 | 7 | 2 | 4.60 | -2.60 |
| Theft | 163 | 156 | 134 | 144 | 128 | 145.00 | -17.00 |
| Auto Theft | 12 | 9 | 18 | 10 | 24 | 14.60 | 9.40 |
| Arson | 3 | 2 | 0 | 0 | 1 | 1.20 | -0.20 |
| Forgery | 7 | 5 | 6 | 10 | 13 | 8.20 | 4.80 |
| Fraud | 11 | 18 | 18 | 30 | 76 | 30.60 | 45.40 |
| Criminal Damage | 109 | 90 | 86 | 40 | 72 | 79.40 | -7.40 |
| Sexual Offenses | 9 | 8 | 10 | 9 | 7 | 8.60 | -1.60 |
| TOTAL | 440 | 383 | 387 | 318 | 409 | 387.40 | 21.60 |

| ACCIDENTS | 2011 | 2012 | 2013 | 2014 | 2015 | AVERAGE | 2015 +/- AVG |
|------------------------------|------------|------------|------------|------------|------------|---------------|--------------|
| Fatal | 1 | 0 | 1 | 0 | 0 | 0.40 | -0.40 |
| Street - Injury | 18 | 18 | 18 | 26 | 22 | 20.40 | 1.60 |
| Street - Property + \$1,000* | 204 | 218 | 134 | 177 | 192 | 185.00 | 7.00 |
| Street - Property - \$1,000* | 41 | 45 | 47 | 27 | 38 | 39.60 | -1.60 |
| Private - Injury | 0 | 0 | 0 | 1 | 1 | 0.40 | 0.60 |
| Private - Property | 63 | 56 | 49 | 46 | 48 | 52.40 | -4.40 |
| Walk-In Property | 42 | 27 | 33 | 22 | 19 | 28.60 | -9.60 |
| TOTAL | 369 | 364 | 282 | 299 | 320 | 326.80 | -6.80 |

| MENTAL HEALTH | 2011 | 2012 | 2013 | 2014 | 2015 | AVERAGE | 2015 +/- AVG |
|-------------------------|-----------|------------|------------|-----------|-----------|--------------|---------------|
| Suicide | 2 | 1 | 3 | 1 | 2 | 1.80 | 0.20 |
| Attempted Suicide | 11 | 9 | 6 | 5 | 5 | 7.20 | -2.20 |
| Involuntary Committal | 17 | 14 | 7 | 12 | 1 | 10.20 | -9.20 |
| Voluntary Committal | 11 | 22 | 16 | 11 | 4 | 12.80 | -8.80 |
| All Other Mental Health | 48 | 59 | 96 | 57 | 64 | 64.80 | -0.80 |
| TOTAL | 89 | 105 | 128 | 86 | 76 | 96.80 | -20.80 |

| TOTAL CALLS | 2011 | 2012 | 2013 | 2014 | 2015 | AVERAGE | 2015 +/- AVG |
|-------------|-------|-------|-------|-------|-------|----------|--------------|
| | 5,076 | 4,947 | 4,753 | 4,864 | 5,342 | 4,996.40 | 345.60 |

MISSION HILLS

THIRD QUARTER CRIME REPORT - 2015

| CRIME | 2011 | 2012 | 2013 | 2014 | 2015 | AVERAGE | 2015 +/- AVG |
|------------------------|-----------|-----------|-----------|-----------|-----------|--------------|--------------|
| Homicide | 0 | 0 | 0 | 0 | 0 | 0.00 | 0.00 |
| Rape | 0 | 0 | 0 | 0 | 0 | 0.00 | 0.00 |
| Robbery | 0 | 1 | 0 | 0 | 0 | 0.20 | -0.20 |
| Assault | 1 | 6 | 3 | 2 | 4 | 3.20 | 0.80 |
| Burglary | 2 | 5 | 5 | 12 | 7 | 6.20 | 0.80 |
| Residence | 2 | 5 | 5 | 11 | 6 | 5.80 | 0.20 |
| Business/Miscellaneous | 0 | 0 | 0 | 1 | 1 | 0.40 | 0.60 |
| Theft | 33 | 23 | 15 | 19 | 13 | 20.60 | -7.60 |
| Auto Theft | 1 | 1 | 5 | 3 | 2 | 2.40 | -0.40 |
| Arson | 0 | 0 | 1 | 1 | 1 | 0.60 | 0.40 |
| Forgery | 0 | 0 | 0 | 1 | 0 | 0.20 | -0.20 |
| Fraud | 0 | 3 | 0 | 0 | 25 | 5.60 | 19.40 |
| Criminal Damage | 23 | 18 | 8 | 11 | 12 | 14.40 | -2.40 |
| Sexual Offenses | 0 | 1 | 0 | 0 | 0 | 0.20 | -0.20 |
| TOTAL | 60 | 58 | 37 | 49 | 64 | 53.60 | 10.40 |

| ACCIDENTS | 2011 | 2012 | 2013 | 2014 | 2015 | AVERAGE | 2015 +/- AVG |
|------------------------------|-----------|-----------|-----------|-----------|-----------|--------------|--------------|
| Fatal | 0 | 0 | 0 | 0 | 0 | 0.00 | 0.00 |
| Street - Injury | 1 | 0 | 0 | 0 | 3 | 0.80 | 2.20 |
| Street - Property + \$1,000* | 19 | 22 | 16 | 14 | 15 | 17.20 | -2.20 |
| Street - Property - \$1,000* | 7 | 9 | 3 | 4 | 7 | 6.00 | 1.00 |
| Private - Injury | 0 | 0 | 1 | 0 | 0 | 0.20 | -0.20 |
| Private - Property | 2 | 2 | 3 | 3 | 5 | 3.00 | 2.00 |
| Walk-In - Property | 0 | 2 | 0 | 4 | 0 | 1.20 | -1.20 |
| TOTAL | 29 | 35 | 23 | 25 | 30 | 28.40 | 1.60 |

| MENTAL HEALTH | 2011 | 2012 | 2013 | 2014 | 2015 | AVERAGE | 2014 +/- AVG |
|-------------------------|----------|----------|-----------|----------|----------|-------------|--------------|
| Suicide | 0 | 0 | 0 | 0 | 0 | 0.00 | 0.00 |
| Attempted Suicide | 0 | 0 | 1 | 0 | 0 | 0.20 | -0.20 |
| Involuntary Committal | 3 | 0 | 5 | 0 | 1 | 1.80 | -0.80 |
| Voluntary Committal | 0 | 1 | 2 | 0 | 0 | 0.60 | -0.60 |
| All Other Mental Health | 3 | 5 | 3 | 3 | 6 | 4.00 | 2.00 |
| TOTAL | 6 | 6 | 11 | 3 | 7 | 6.60 | 0.40 |

| | | | | | | | |
|--------------------|--------------|--------------|--------------|--------------|--------------|-----------------|---------------|
| TOTAL CALLS | 1,113 | 1,048 | 1,006 | 1,038 | 1,311 | 1,103.20 | 207.80 |
|--------------------|--------------|--------------|--------------|--------------|--------------|-----------------|---------------|

Council Members
Mark Your Calendars
November 2, 2015

November 2015 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 21 Northeast Johnson County Chamber of Commerce Annual Gala
November 26/27 City Offices Closed for Thanksgiving Holiday

December 2015 Peter Smokorowski exhibit in the R.G. Endres Gallery
December 2 Johnson & Wyandotte Counties Council of Mayors Holiday Social
December 3 Mayor's Holiday Tree Lighting at Corinth Square
December 4 Volunteer Appreciation Holiday Party
December 6 Gingerbread House Event at Brighton Gardens
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