

CITY OF PRAIRIE VILLAGE

May 2, 2016

Council Committee Meeting 6:00 p.m.

City Council Meeting 7:30 p.m.

COUNCIL COMMITTEE OF THE WHOLE
Council Chambers
Monday, May 02, 2016
6:00 PM

AGENDA

BROOKE MOREHEAD, COUNCIL PRESIDENT

AGENDA ITEMS FOR DISCUSSION

- Presentation regarding Johnson County Courthouse plan and finance options
Hannes Zacharias, County Manager
- *COU2016-29 Consider approval of recommendation of hiring an additional Building Inspector
Wes Jordan
- *COU2016-30 Consider approval of services agreement to prepare the solid waste bid RFP
Wes Jordan
- *COU2016-31 Consider approval of contract with Olsson & Associates for Meadowbrook project inspections
Keith Bredehoeft
- *COU2016-32 Consider approval of contract with Superior Bowen for the Meadowbrook Park street and stormwater improvements
Keith Bredehoeft
- *COU2016-33 Consider approval of design agreement with Phelps Engineering for 2016 SMAC stormwater work for Meadowbrook Park
Keith Bredehoeft
- *COU2016-34 Consider approval of engineering services agreement with Phelps Engineering for public improvements at Meadowbrook Park
Keith Bredehoeft
- Expanded exterior grant discussion
Jori Nelson
- Budget 2017 - Revenue Forecast and Tax Lid
Lisa Santa Maria

***Council Action Requested the same night**



COU2016-29: Approve recommendation of hiring an additional Building Inspector.

RECOMMENDATION

Staff recommends approval of hiring an additional Building Inspector to maintain the ability to handle current and projected workloads due to anticipated construction in accordance with the following Department Objectives:

Mission: Provide quality, professional service, promote and preserve property values, ensure the safety and well-being of the residents and the community through diligent code administration practices.

Indicator	2011 Actual	2012 Actual	2013 Actual	2014 Actual	2015 Actual
Workload:					
Building Permits processed	1,157	1,313	1,390	1,315	1,613
Building inspections	2,477	2,622	3,602	2,931	3,234
Plan Reviews performed	241	272	297	284	560
Exterior Grants Paid	26	25	26	22	25
Residential "teardown"	6	4	9	16	24
New home construction	6	3	10	12	20
Efficiency					
Plan review turn-around time	6.5	6.57	6 days	6.34 days	3.98 days
Average wait time for building inspections	2.69 days	2.5 days	1 day	1 day	1 day

Significant Projects Approved and/or Underway

- Briarwood Elementary (120)
- Meadowbrook - 280 apartments (200), Inn with 50 rooms (90) & Restaurant (45), 70 attached homes (1050), 53 detached homes (795), Senior Living consisting of 120 units of Independent Living (100), 120 units Assisted Living (100), and 90 units of Skilled Nursing (70)
- Mission Chateau - 248 units of Senior Living (200), and 22 (330) Townhomes
- 7501 Mission Road Office Building (45 + tenant finishes)
- Homestead/Evan-Talan Homes - 11 single family homes (165)
- Chadwick Court - 6 single family homes (90)

*red highlights denote the approximate number of inspections during the course of each project

SUGGESTED MOTION

I move for approval of adding one FTE to Community Development authorized positions and for Staff to begin the process of hiring an additional Building Inspector to handle current and projected workloads as recommended.

BACKGROUND

During the 2016 Budget Planning Process, staff alerted Council that it would be likely an additional Building Inspector would need to be hired in order to efficiently handle the current inspection workload and factoring projected construction. It should be noted the codes department specific to building inspection services employees (1) Building Official, (1) Building Inspector, and (1) Administrative Codes Support Specialist. In 2010, an Administrator Codes Support Specialist position was eliminated due to budget constraints and was not replaced.

The uptick of construction since the 2016 Budget Planning Process has demonstrated sustained growth both in remodeling and new residential construction. The current workload is maximizing staff's ability to turn around building plans and complete inspections in an efficient manner to meet the expectations of the consumer(s) who will be paying permit fees with an expectation of timely inspections. And, without an inspection work cannot continue at the job site until approved by the inspector....the potential job loss cost to contractors will be realized without adequate staffing to complete services.

REDUCE INSPECTION TYPES

The anticipated workload is expected to increase significantly. It is difficult to forecast exact needs; however, we are not sure if the addition of one (1) Building Inspector will be enough to close the gap in demand. Therefore, we have also reassessed how we are doing business and whether or not we can streamline any current operational processes. The Building Official has suggested consideration of discontinuing the following types of inspections that are not routinely conducted in some cities - unless complaint driven:

- Decks less than 30 inches to grade (20 permits - 60 inspections)
- Fences (181 permits - 199 inspections)
- Replacement Roofs (346 permits - 450 inspections)
- Sheds (32 permits - 32 inspections)

The aforementioned types of inspections are not considered "life safety" and discontinuing this category of inspection would put the Codes Department in a better position to handle expected construction. It should be noted that this would not relieve an individual or contractor from legally performing work in accordance with the Municipal or adopted code. And, we could still issue a permit (likely reduced rate) and guideline(s) that illustrate desired outcomes.

PERMIT REVENUE - OFF-SETTING COSTS

Forecasting revenues from permitting is dependent on the value of each construction project; however, revenue from fees has steadily been increasing since 2012 and should off-set costs associated to hiring another person. [It should be noted that Staff is currently conducting an assessment of fees to see how they compare to other cities.]

- 2012 - \$167,155
- 2013 - \$197,252
- 2014 - \$213,054
- 2015 - \$317,054

EMPLOYEE COMPENSATION & OPERATIONAL COSTS

- Salary for experience and associated benefits - approximately \$76,000
- Vehicle - cost would be minimal since we plan to obtain a secondary patrol vehicle. An approximate cost for a one time set up would likely be less than \$2,000 (new decaling, warning lights, computer mount, etc.
- Overtime/Training - Likely less than \$2500 depending on date of hire and qualifications
- Other costs - we believe we can absorb some costs within the current budget such as fuel costs and a new computer, etc. Costs such as uniforms, cell phone stipend, etc. will be dependent on the actual date of hire, but should be less than \$2,000

LENGTH OF NEED

The need for personnel is continually evaluated and based on assessed needs. If the workload in the future would equal to/below averages from 2011-2012 it would be very likely this position would be suspended until the need dictated otherwise.

OTHER OPTION(S)

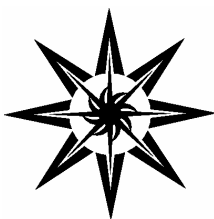
Staff did explore contracting this service with a 3rd party. This option would cost the City approximately twice as much as hiring an employee with the labor rate at about \$100.00 per hour. Staff did not pursue this idea any further since it was not deemed to be financially viable alternative over time.

FUNDING

In discussing funding with the Finance Director, we feel that costs occurred in 2016 can be used from the General Fund and the Contingency Fund would not be necessary.

PREPARED BY

Wes Jordan
Assistant City Administrator
Date: April 25, 2016



CODES ADMINISTRATION

Council Meeting Date: May 2, 2016

COU 2016-30: Approve Shockey Consultant Services, LLC, to prepare a Scope of Services and bidding process for the Solid Waste contract for services beginning in 2017.

RECOMMENDATION

Due to the scope of work required within a specific time frame and the current volume of staff workload, Staff believes the expertise of a consultant would be most prudent in order to ensure expectations of service delivery are realized through accurate bid specifications.

COUNCIL ACTION REQUESTED ON: May 2, 2016

SUGGESTED MOTION

I move for approval for Shockey Consultant Services, LLC, to prepare a Scope of Services and Solid Waste Request for Proposal for the Solid Waste contract for services beginning in 2017. The costs associated will be as specified in the attached fee schedule.

BACKGROUND

The following Request for Proposal was published with the deadline ending April 26, 2016. Mrs. Shockey's company was the only entity that responded with corresponding rates by category of expertise. Mrs. Shockey and Ron Norris (resumes attached) will be the primary project team.

Request for Proposal - Drafting Solid Waste RFP

The City of Prairie Village, Kansas, is seeking consulting expertise to draft a comprehensive request for proposal for Solid Waste services. The Governing Body has directed City Staff to seek competitive bids for solid waste services for trash, recycling, yard waste, and large item pickup for nearly 8,400 residential addresses. The contract with Waste Management (formerly Deffenbaugh) is set to expire December 31, 2016. The last time the contract was formerly bid was in 2002 with subsequent negotiated extensions. The proposal should contain expected rates for the following scope of services as part of this process:

- Meet with Staff to discuss scope of the project and expected outcomes
- Conduct research on best practices in drafting RFP language
- Communicate with vendors who have expressed interest

- Prepare a comprehensive RFP including service alternatives
- Provide in-person updates to Council/Staff as needed (anticipate 3 Council meeting visits)
- Be assessable to vendors and answer questions as needed
- Finalize selection by July 31, 2016
- Evaluate bids for completeness and accuracy
- Check references of the preferred bidder from similar services provided to other cities or entities
- Assist staff in making a recommendation to City Council

Mrs. Shockey's firm estimated the cost of this project would be approximately \$6,550.00. Staff asked Mrs. Shockey to provide an hourly rate for optional services that could be considered and/or needed as this project moves forward. Mrs. Shockey agreed to an hourly rate of \$125.00 for optional service items. Staff would only include operational service items on an *as needed* basis. The City Attorney is currently reviewing the attached agreement.

FUNDING

Funding is available through the Solid Waste Fund and will not have an impact on the current budget.

PREPARED BY

Wes Jordan
Assistant City Administrator
Date: April 26, 2016



Shockey
Consulting
Services, llc



FIRM PROFILE

Shockey Consulting Services, LLC, provides award-winning management, planning and public participation consulting services to federal, regional, state, and local governments and other public agencies. The firm was founded in 1998 and is headquartered in Lenexa, Kansas with an office in the St. Louis, Missouri region.

- A group of dedicated and talented professionals with diverse backgrounds makes up the Shockey team. We have former government managers, strategic planners, environmental scientists, urban planners and communications specialists.
- We enjoy working with people dedicated to making their communities a better place.
- We specialize in facilitating difficult conversations involving diverse stakeholder perspectives.

Shockey's core competencies include:

- Developing new programs
- Improving existing programs
- Defining community vision plans
- Educating and involving the public
- Planning quality places and communities
- Setting budget, capital, and organizational priorities
- Measuring program performance
- Securing new sources of revenue
- Complying with regulations

Solid Waste Expertise: Shockey staff has been on the forefront of solid waste management in the Kansas City area since the early 1990s by implementing curbside recycling while on city staff.

- Shockey provides strategic planning services for solid waste districts and agencies.
- We create public information campaigns and outreach programs to educate residents on waste reduction, recycling regulations and alternatives and household hazardous waste including:
 - Coordinating media relations
 - Producing public service announcements
 - Developing and implementing multi-media marketing plans
 - Managing social media
 - Reaching out directly to residents

Shockey is a certified small business, disadvantaged business and women-owned business.

Find out more at: <http://www.shockeyconsulting.com/expertise.html#soli>

RESUMES



Sheila Shockey

Shockey Consulting Services, LLC

Sheila Shockey is the founder and president of Shockey Consulting Services, LLC. Sheila worked in the Kansas City area as a staff member of local government, and since 1998, as a consultant with local governments and agencies in Kansas and Missouri. Sheila's solid waste experience includes:

- Prepared Prairie Village, Kansas Solid Waste collection RFP and managed selection of contractors.
- Managed outreach process resulting in city-wide solid waste collection service previously handled by home associations.
- Managed multi-million dollar solid waste collection contracts.
- Developed the first curbside recycling program in the Kansas City region in 1989.
- Coordinated household hazardous waste collection events.
- Organized bulky item pickup program.
- Conducts grass root outreach efforts for environmental issues.
- Developed backyard composting education materials and workshops.
- Facilitated solid waste and other sustainability workshops.
- Prepared MARC Solid Waste Management District's Strategic Plan.
- Developed a marketing plan for Johnson County, Ks. Environmental Solid Waste Division.
- Managed local government organizations, programs and nonprofit organizations.
- Served on Johnson County's Solid Waste Management Committee.

EDUCATION

Bachelor of Public Administration, Washburn University

Master of Public Administration, University of Missouri – Kansas City

PROFESSIONAL AFFILIATIONS

International Association of City/County Management

American Public Works Association

American Society of Civil Engineers

Society of American Military Engineers

American Planning Association

Water Environment Federation

International Association of Public Participation

Society for Marketing Professional Service

EXPERIENCE

Shockey Consulting Services llc, President

since 1998

Shafer Kline Warren, Government Services Director

1995-1998

City of Prairie Village, Kansas, Assistant City Administrator

1989-1995



Ron Norris, P.E.

Shockey Consulting Services

Ron Norris brings over 40 years working in city and regional government. As former Director of Public Works for Olathe, Kansas, one of the Divisions that reported to him was Solid Waste. He oversaw the following operations:

Solid Waste collection and transportation to the transfer station (business and residential)

- Collection, transportation, and sale of curbside recycling
- Collection of yard waste and transportation to the composting site
- Operation of the composting site, including receiving yard waste from private haulers and city collection vehicles
- Oversight of the Transfer Station (privately operated) this included operation of the scales, billing to private haulers bringing was to the transfer station

EDUCATION

Master of Public Administration, University of Kansas

Bachelor of Science, Civil Engineering, University of Missouri, Columbia

Professional Engineer, Kansas and Missouri

Public Works Leadership Fellow

LEADERSHIP

National President, American Public Works Association (APWA)

President, National Assn. of State Facility Administrators

APWA National Top Ten Public Works Leader

Mid-America Regional Council Regional Leadership Award

PROFESSIONAL AFFILIATIONS

American Public Works Association

American Society of Professional Engineers

Water Environment Federation

EXPERIENCE

City of Olathe, Kansas - Director of Public Works,	2009-2014
City of Lenexa, Kansas - Director of Public Works	1996-2009
Clark County, Nevada - Deputy Director of Public Works	1995-1996
Mid-America Regional Council - Director of Transportation Policy	1992-1994
State of Missouri-Office of Administration - Director of Design and Construction	1985-1992
City of Liberty, Missouri - Director of Community Development	1973-1985
State of Missouri-Department of Transportation - Division of Materials and Research	1968-1973

SOLID WASTE PROJECTS

SOLID WASTE MANAGEMENT STAKEHOLDER MEETINGS

Client: Johnson County, Kansas

Shockey Role: Facilitator

Result: Stakeholders suggested strategies for increasing waste diversion and recycling in the county that should be implemented over the next five to twenty years.

Johnson County solid waste management wanted input from stakeholders for a Solid Waste plan update. Stakeholder meetings were used to educate interested stakeholders about issues or projects then solicit their views and perspectives regarding it. Shockey Consulting facilitated three Stakeholder meetings, met with client to identify needs and objectives, identified stakeholders, prepared agendas, facilitated meetings, and prepared and distributed meeting summaries.

Julie Coon | Solid Waste Management Specialist | Johnson County, Kansas

Phone: (913) 715-6938 | Email: Julie.coon@jocogov.org

SOLID WASTE EDUCATION & OUTREACH

Client: City of Springfield

Shockey Role: Public Education Manager

Result: Client using materials

Shockey Consulting Services worked with the City of Springfield to build public understanding of their solid waste programs. Shockey assisted in designing and developing content for educational brochures for: Household Chemical Collection, Integrated Solid Waste Management Systems, Recycling Centers, Sanitary Landfill, Yard waste recycling, and disposal of Pharmaceutical and Sharps/needles. Shockey managed the development, layout and print preparation of a variety of documents and video production.

Barbara Lucks | Sustainability Officer | City of Springfield

Phone: (417) 864-2005 | Email: blucks@springfieldmo.gov

SOLID WASTE STRATEGIC PLAN

Client: Mid-America Regional Council

Shockey Role: Facilitator

Result: Vision and action plans were completed for the Solid Waste Management District.

Shockey worked with elected and local officials of the Kansas City metropolitan area at the Solid Waste Management District Retreat hosted by Mid-America Regional Council in August of 2008. Shockey developed and facilitated the SWMD retreat agenda in coordination with MARC staff to establish objectives from participants, which would shape a vision and action plan for the district.

Tom Jacobs | Environmental Program Director | Mid-America Regional Council

Phone: (816) 701-8352 | Email: tjacobs@marc.org

ELECTRONICS RECYCLING EVENT

Client: Johnson County, Kansas

Shockey Role: Public Education Manager

Result: A successful collection event was held

Shockey coordinated the development and distribution of news releases and newsletters for Public Information Offices and the media regarding Johnson County's Electronic Recycling Event. Shockey managed research of ad space requirements and submission of deliverables to local publications such as the Sun, the Kansas City Star and the Olathe Daily News.

Julie Davis | Solid Waste Management Specialist | Johnson County, Kansas

Phone: (913) 715-6938 | Email: julie.coon@jocogov.org

HOUSEHOLD HAZARDOUS WASTE COLLECTION EVENT

Client: Johnson County, Kansas

Shockey Role: Stakeholder Engagement Manager

Result: A successful collection event was held.

The Johnson County Department of Health and Environment hosts a household hazardous waste collection event twice a year. In 2007 and 2008, Shockey Consulting assisted in organizing and publicizing the event through stakeholder engagement at local businesses, festivals and print media.

Julie Davis | Solid Waste Management Specialist | Johnson County, Kansas

Phone: (913) 715-6938 | Email: julie.coon@jocogov.org

SOLID WASTE PUBLIC EDUCATION OUTREACH

Client: Johnson County, Kansas

Shockey Role: Facilitator, Public Education Manager

Result: Goals and guiding principles were developed into a Market Plan for future Solid Waste Education.

Shockey facilitated a 2 hour workshop with Johnson County, Kansas Environmental staff to prepare and develop a marketing plan. Workshop objectives for the market plan were to define goals for all markets, guiding principles, targeted audiences and a schedule for the public education campaign for a two year timeframe. Shockey evaluated the workshop results and developed the market plan and prepared materials for website development and content. www.jocorecycles.org

Julie Coon | Solid Waste Management Specialist | Johnson County, Kansas

Phone: (913) 715-6938 | Email: julie.coon@jocogov.org

COST BUDGET

PRAIRE VILLAGE, KS SOLID WASTE RFP

	Principal/ Consultant III	Project Manger /Consultant II	Consultant I	Hours	Fee	Expenses	Task Sub-Total (Fees + Expenses)
Hourly Rate	\$210	\$125	\$80				
Prepare Solid Waste RFP							
Meet with staff to obtain information & discuss desired outcomes	3.0	3.0	0.0	6.0		\$10	
Conduct research on scope of service modifications	0.5	2.0	0.0	2.5			
Contact vendors to determine whether they can provide new service options	0.5	1.0	2.0	3.5			
Prepare recommendations memo for staff/Council	4.0	6.0	0.0	10.0		\$10	
Prepare RFP (including service alternatives)	4.0	6.0	0.0	10.0			
Provide assistance with review of RFPs	4.0	6.0	0.0	10.0		\$10	
Hours	16.0	24.0	2.0	42			
Fee	\$3,360	\$3,000	\$160		\$6,520	\$30	\$6,550

Total Hours	42.0
Total Fees	\$6,520
Total Expenses	\$30
Grand Total Fees + Expenses	\$6,550

The following are optional services provided at an hourly rate of \$125.00 per hour:

- Be accessible to vendors
- Provide in-person updates to Council staff as needed (anticipate 3 council meeting visits) Provide in-person updates to Council staff as needed (anticipate 3 council meeting visits)
- Evaluate Bids
- Check References
- Assist staff in making recommendations

NOTE: Selection will be completed by July 31, 2016

City of Prairie Village, Kansas
Solid Waste Services – Proposal Assistance
CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is made in _____ by and between [redacted] [hereinafter "Client"], and Shockey Consulting Services, LLC, [hereinafter "Consultant"]. Client intends to contract with consultant Solid Waste Services – Proposal Assistance [hereinafter "Project"].

Client hereby contracts with Consultant for the furnishing of professional services in connection with said Project, for the furnishing of such consulting services more particularly described herein in consideration of these premises and of the mutual covenants herein set forth. By executing this Agreement, Consultant represents to Client that Consultant is professionally qualified to do this Project.

SECTION I - DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed herein unless otherwise stated or reasonably required by this Agreement, and other forms of any defined words shall have a meaning parallel thereto.

"Client" means City of Prairie Village, Kansas.

"Consultant" means Shockey Consulting Services, LLC.

"Consulting Documents" means all documents required or reasonably implied by the nature of the Project, including, but not limited to, plans, presentation materials, written materials.

"Consulting Services" means the professional services, labor, materials, supplies, and other acts or duties required of Consultant under this Agreement together with such other services as Client may require pursuant to the terms of this Agreement.

"Project" is as above described.

"Project Representative" means the person designated to represent Client in coordinating this Project with Consultant with authority to transmit instructions and define policies and decisions of Client.

SECTION II - PAYMENT

A. COMPENSATION.

- 1 Maximum Total Fee and Expense: Client agrees to pay Consultant a fee based on the actual hours expended on the project at the rates indicated in the attached Fee Schedule, Exhibit "A", not to exceed a maximum fee of \$6,550. This fee is based on the scope of services outlined in this Agreement and is projected to be completed on or before July 31, 2016.

2. Hourly Fee: Any additional services which are not set forth in this Agreement will be charged on the basis of the hourly rate schedule attached hereto as Exhibit "A". No additional service fees shall be incurred without prior written consent of Client.
3. Reimbursable Expenses: **Reimbursable expenses shall be considered as included in the total maximum fee.** The Client agrees to pay reimbursable expenses including expense of transportation in connection with the Project; expenses in connection with authorized travel; long-distance communications; expenses of printing and reproductions, postage; expenses of maps, renderings and models requested by Client and other costs as authorized by Client. Reimbursable expenses do not include overhead costs or additional insurance premiums. Expenses will be billed at cost and not marked up.
4. Billing: Consultant shall bill Client monthly for all services and reimbursable expenses. The bill submitted by Consultant shall itemize the services and reimbursable expenses for which payment is requested. Client agrees to pay Consultant within thirty (30) days of approval. Consultant agrees to submit herewith such financial information as shall be required by Client.
5. Client's Right to Withhold Payment: In the event Client becomes credibly informed that any representations of Consultant provided in its monthly billing, are wholly or partially inaccurate, Client may withhold payment of sums then or in the future otherwise due to Consultant until the inaccuracy and the cause thereof, is corrected to Client's reasonable satisfaction. In the event Client questions some element of an invoice, that fact shall be made known to Consultant immediately. Consultant will help effect resolution and transmit a revised invoice if necessary. Amounts not questioned by Client shall be paid to Consultant in accordance with the contract payment procedures. Failure of Client to make non-disputed payments to Consultant in accordance with this Agreement shall be considered substantial nonperformance and cause for termination.
6. Time is of the Essence: Consultant will perform the services in a timely manner; however, if during their performance, for reasons beyond the control of Consultant, protracted delays occur, the parties agree that they will renegotiate the schedule.
7. Change in Scope: For substantial modifications in authorized project scope, and/or substantial modifications of drawings and/or specifications previously accepted by Client, when requested by Client and through no fault of Consultant, Consultant shall be compensated for time and expense required to incorporate such modifications at Consultant's standard hourly rates per Exhibit "A". Provided, however, that any increase in Contract Price or Contract Time must be approved through a written Change Order. Consultant shall correct or revise any errors or deficiencies in the Project without additional compensation when due to Consultant's negligence.
8. Additional Services: Consultant shall provide with Client's concurrence services in addition to those listed in Section III when such services are requested or authorized in writing by Client. Prior to entering into any additional services, Consultant must

submit a proposal outlining the additional services to be provided, estimation of total hours and a maximum fee based upon the hourly fee schedule attached hereto as Exhibit "A". Reimbursable expenses incurred in conjunction with additional services shall be paid separately and those reimbursable expenses shall be paid at actual cost. Records of reimbursable expenses and expenses pertaining to additional services and services performed on an hourly basis shall be made available to Client if so requested in writing. Production of these records shall be made at Consultant's office during normal business hours within a reasonable time at a date and time mutually convenient to both parties.

9. Change Orders: This Agreement may be amended to provide for additions, deletions and revisions in the work or to modify the terms and conditions thereof by either written amendment or by change order. The Contract Price and Contract Time may only be changed by a written change order approved by Client, unless it is the result of an emergency situation in which case the Project Representative may give written approval to be followed by a written and approved change order. If notice of any change affecting the general scope of the work or provisions of this Agreement, including but not limited to, Contract Price or Contract Time, is a requirement of any insurance policy held by Consultant as a requirement of this Agreement, the giving of such notice shall be Consultant's responsibility.

SECTION III - RESPONSIBILITIES OF CONSULTANT

Consultant shall furnish and perform the various professional duties and services in all phases of the Project to which this Agreement applies as herein provided and which are required for the completion of the Project which services shall include:

A. SERVICES

The services to be provided are set out in Exhibit "B" attached hereto and incorporated by reference.

B. GENERAL DUTIES AND RESPONSIBILITIES

1. Personnel: Consultant shall assign only qualified personnel to perform any service concerning the Project. At the time of execution of the Agreement, the parties anticipate that the Sheila Shockey will perform as the principal on this project. As principal on this project, this person shall have authority to bind Consultant. The project manager for the project is: Sheila Shockey. They will have primary communication with client project representative. All billing and contracting issues should be discussed with the consultant principal.
2. Independent Contractor: Consultant is an independent contractor and as such is not an agent or employee of Client.
3. Special Services: Consultant may be called on to serve as a consultant or witness in any litigation, arbitration, legal or administrative proceeding arising out of this Project. Consultant shall not be paid extra by Client if its appearance is to defend its

professional services. If Consultant is requested in writing by Client to appear as a general witness, it will be paid its hourly fee as reflected on the hourly rate schedule attached hereto as Exhibit "A".

4. Subcontracting of Service: Consultant shall not subcontract or assign any of the consulting services to be performed under this Agreement without first obtaining the written approval of Client regarding the work to be subcontracted or assigned and the consulting firm or person proposed to accomplish the subcontracted/assigned portion of the project. Such approval shall not unreasonably be withheld by Client. Neither Client nor Consultant shall assign any rights or duties under this Agreement without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement.
5. Professional Responsibility: Consultant will exercise reasonable skill, care and diligence in the performance of its services as is ordinarily possessed and exercised by a professional consultant in the same community under similar circumstances. If Consultant fails to meet the foregoing standard, Consultant will perform at its own cost, and without reimbursement from Client the professional services necessary to correct errors and omissions which are caused by Consultant's failure to comply with the above standard.

SECTION IV. CLIENT RESPONSIBILITIES

A. GENERAL DUTIES AND RESPONSIBILITIES

1. Communication: Client shall provide to Consultant information and criteria regarding Client's requirements for the project; examine and timely respond to questions and submissions; and give written notice to Consultant if the Client observes or otherwise becomes aware of any defect in the work.
2. Program and Budget: Client shall provide full information, including a program which shall set forth Client's objectives, schedule, constraints, budget with reasonable contingencies, and other necessary information.
3. Access: If necessary, Client will provide access for Consultant to enter public and private property provided adequate notice of such need is provided to Client.
4. Duties: Client shall furnish and perform the various duties and services in all phases of the Project which are outlined and designated in Exhibit "B" as Client's responsibility.
5. Project Representative: Client shall designate Wes Jordan as the project representative to represent Client in coordinating this project with Consultant, with authority to transmit instructions and define policies and decisions of Client. Written consent shall be required to approve any increase in Project cost.

SECTION V - GENERAL PROVISIONS

A. TERMINATION

1. Notice: Client reserves the right to terminate this Agreement for either cause or for its convenience and without cause or default on the part of Consultant, by providing ten (10) days written notice of such termination to Consultant. Upon receipt of such notice from Client, Consultant shall, at Client's option as contained in the notice: (1) immediately cease all work; or (2) meet with Client and, subject to Client's approval, determine what work shall be required of Consultant in order to bring the Project to a reasonable termination in accordance with the request of Client. Consultant shall also provide to Client copies of all documents completed or partially completed at the date of termination.

If Client defaults on its obligation under this Agreement, Consultant is entitled to terminate this contract by providing ten (10) days written notice.

2. Compensation for Convenience Termination: If Client shall terminate for its convenience as herein provided, Client shall compensate Consultant for all work completed to date of its receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.
3. Compensation for Default Termination: If Client shall terminate for cause or default on the part of Consultant, Client shall compensate Consultant for the reasonable cost of work completed to date of its receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed. Client also retains all its rights and remedies against Consultant including but not limited to its rights to sue for damages, interest and attorney fees.
4. Incomplete Documents: Neither the Consultant nor its subcontractors shall be responsible for errors or omissions in documents which are incomplete as a result of an early termination under this Section, Consultant having been deprived of the opportunity to complete such documents and certify them.

B. DISPUTE RESOLUTION

Client and Consultant agree that from time to time, there may be conflicts, disputes and/or disagreements between them, arising out of or relating to the services of Consultant, the Project or this Agreement (hereinafter collectively referred to as "Disputes"). Therefore, Client and Consultant agree that all Disputes arising out of this Agreement or related to the services provided under this Agreement shall be resolved by mediation.

1. Any mediation shall take place in Johnson County, Kansas.
2. The prevailing party in any mediation relating to any Dispute shall be entitled to recover from the other party those reasonable attorney fees, costs and expenses incurred by the prevailing party in connection with the Dispute.

C. OWNERSHIP OF DOCUMENTS

All documents prepared in connection with this Project shall be the property of Consultant, whether the project for which they are made is executed or not, however, Consultant will provide Client a copy of all final documents, including but not limited to prints and reproductions. Reports, plans, written materials and related documents are Consultant's instruments. Provided that Consultant is paid in full for its services, then Client may subsequently reuse these final documents without any additional compensation or agreement of Consultant. The consultant may use the materials delivered for the purposes of marketing their services to other clients.

D. INSURANCE

The CONSULTANT shall maintain the following minimum insurance at CONSULTANTS sole cost to protect against claims arising out of the services performed under this AGREEMENT.

<u>Type of Coverage</u>	<u>Limits of Liability</u>
Workers' Compensation Employers' Liability	Statutory \$1,000,000 per Accident
Commercial General Liability Bodily Injury (including death) and Property Damage	\$1,000,000 Combined Single Limit \$2,000,000 annual aggregate

This policy shall be endorsed to include contractual liability coverage.

Commercial Automobile Liability Bodily Injury (including death) and Property Damage	\$1,000,000 Combined Single Limit
---	-----------------------------------

This policy shall include all vehicles used in connection with the AGREEMENT whether owned, unowned or hired.

Professional Liability \$1,000,000 per claim and annual aggregate
This insurance shall be maintained for a period of five (5) years after completion of all services by CONSULTANT.

Policies providing the insurance specified under subsection D shall be endorsed to include CLIENT as additional insured, and all policies shall include a provision restricting the right of the insurer to cancel or change such coverage except upon thirty (30) days' written notice to CLIENT. Certificates evidencing the coverage above shall be delivered to the CLIENT prior to performing any services under this AGREEMENT and CLIENT's receipt of proper certificates of insurance shall be a condition precedent to CONSULTANT'S right to receive payment hereunder.

Consultant shall purchase and maintain in a company or companies authorized to do business in the State of Kansas such insurance as required in the Prime Contract. Consultant agrees to maintain policies of insurance as required herein for as long as this Agreement is in force and effect, and as to the professional liability policy, if any, for a period of six (6) year(s) following the Date of Substantial Completion of the Project. Consultant's obligation to maintain the professional liability policy for six (6) years following the Date of Substantial Completion is subject to the general availability of such professional liability insurance policy in the marketplace, with no commercially unreasonable increase in premium therefore. With respect to all of the insurance required by this Agreement, Consultant shall deliver to Client, certificates of insurance, in a form and substance reasonably acceptable to Client within ten (10) days after execution of this Agreement.

With respect to the insurance coverages which are required to remain in force after the Date of Substantial Completion, a certificate of insurance evidencing continuation of such coverage shall be submitted along with the Consultant's invoice for its last payment under the terms of this Agreement, and at least annually thereafter where applicable. The certificates of insurance, as well as insurance policies required by this Agreement, shall contain a provision that coverage will not be materially changed, materially altered, cancelled, or allowed to expire until at least 30 days' prior written notice has been given to Client.

E. INDEMNIFICATION

For purposes of this Agreement, Consultant hereby agrees to indemnify and hold harmless Client, its employees and agents from any and all loss where loss is caused or incurred in whole or in part as a result of the negligence or other actionable fault of Consultant, its affiliates, subsidiaries, employees, agents and subcontractors/assignees and their respective servants, agents and employees. Consultant's obligation hereunder shall not include amounts attributable to the fault or negligence of Client or any third party for whom Consultant is not responsible.

F. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Agreement.

G. NO THIRD PARTY BENEFICIARIES

Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

H. COMPLIANCE WITH LAWS

Consultant shall abide by all applicable federal, state and local laws, ordinances and regulations applicable to the work. Consultant shall secure all occupational and professional licenses, permits, etc., from public and private sources necessary for the fulfillment of his obligations under this Agreement.

I. TITLES, SUBHEADS AND CAPITALIZATION

Title and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Agreement. Some terms are capitalized throughout the Contract but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

J. SEVERABILITY CLAUSE

Should any provision of this Contract 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 Contract shall be unaffected thereby and shall continue to be valid and enforceable.

K. EXECUTION OF CONTRACT

The parties hereto have caused this Agreement to be executed in quadruplicate this _____ day of _____, 20____.

CLIENT NAME

By: _____

APPROVED AS TO FORM

By: _____

CONSULTANT

Shockey Consulting Services, LLC

By: _____

Sheila Shockey, President

**EXHIBIT A
Fees for Service**

Shockey Consulting Services, LLC

Hourly Rate Schedule

Principal	\$210.00/hour
Senior Consultant	\$150.00/hour
Consultant & Graphic Designer	\$110.00/hour
Administrative Support	\$ 50.00/hour

MAXIMUM FEE

	Principal/ Consultant III	Project Manger /Consultant II	Consultant I	Hours	Fee	Expenses	Task Sub-Total (Fees + Expenses)
Hourly Rate	\$210	\$125	\$80				
Prepare Solid Waste RFP							
Meet with staff to obtain information & discuss desired outcomes	3.0	3.0	0.0	6.0		\$10	
Conduct research on scope of service modifications	0.5	2.0	0.0	2.5			
Contact vendors to determine whether they can provide new service options	0.5	1.0	2.0	3.5			
Prepare recommendations memo for staff/Council	4.0	6.0	0.0	10.0		\$10	
Prepare RFP (including service alternatives)	4.0	6.0	0.0	10.0			
Provide assistance with review of RFPs	4.0	6.0	0.0	10.0		\$10	
Hours	16.0	24.0	2.0	42			
Fee	\$3,360	\$3,000	\$160		\$6,520	\$30	\$6,550

Total Hours	42.0
Total Fees	\$6,520
Total Expenses	\$30
Grand Total Fees + Expenses	\$6,550

REIMBURSABLE EXPENSES

Reimbursable expenses shall be considered as included in the total maximum fee.

Reimbursable will be reimbursed per Section II, Sub-section A, Part 3 of this agreement.

EXHIBIT B
Scope of Services

Shockey Consulting shall provide the following services:

The following scope of services as part of this process:

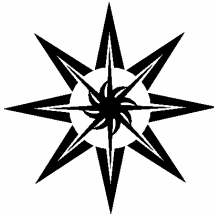
- Meet with Staff to discuss scope of the project and expected outcomes
- Conduct research on best practices in drafting RFP language
- Communicate with vendors who have expressed interest
- Prepare a comprehensive RFP including service alternatives

The following are optional services provided at the hourly rate:

- Provide in-person updates to Council/Staff as needed (anticipate 3 Council meeting visits)
- Evaluate bids for completeness and accuracy
- Check references of the preferred bidder from similar services provided to other cities or entities
- Assist staff in making a recommendation to City Council

- Be assessable to vendors and answer questions as needed (billed on an hourly basis)

Finalize selection by July 31, 2016



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: May 2, 2016

Council Meeting Date: May 2, 2016

CONSIDER CONSTRUCTION INSPECTION AGREEMENT WITH OLSSON ASSOCIATES FOR MEADOWBROOK PUBLIC IMPROVEMENTS (MBSTREET & MBDRAINX)

RECOMMENDATION

Move to approve the Construction Inspection agreement with Olsson Associates for Meadowbrook Public Improvements.

BACKGROUND

In 2015, Public Works requested proposals from firms to provide construction administration services for Prairie Village in the areas of Right of Way Inspection and Construction Inspection for the next three years. We had 11 firms submit proposals. Olsson Associates was selected as one of the three firms to be used for on-call construction inspection services during 2015, 2016, and 2017. The selection committee consisted of Terrence Gallagher, Ted Odell, Keith Bredehoeft, Melissa Prenger and Kenny Khongmaly.

We are proposing to utilize a consultant for the inspection service to supplement City staff inspection for a fee of \$179,995.50 for the construction of the Meadowbrook Public Improvements (MBSTREET and MBDRAINx) which includes the street improvements, conspan construction, the pond improvements and the stream restoration.

Execution of this agreement will take place on May 17, 2016, the date of Bond Closing.

FUNDING SOURCE

The inspection services are TIF reimbursable.

ATTACHMENTS

1. Construction Inspection Agreement with Olsson Associates

PREPARED BY

Melissa Prenger, Sr. Project Manager

April 18, 2016

AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES

For

CONSTRUCTION ADMINISTRATION

For

**MEADOWBROOK REDEVELOPMENT
PROJECTS: MBSTREET & MBDRAINx**

THIS AGREEMENT, made at the Prairie Village, Kansas, this _____ day of _____, 2016, by and between the City of Prairie Village, Kansas, a municipal corporation with offices at 7700 Mission Road, Prairie Village, Kansas, 66208, hereinafter called the “City”, and Olsson Associates, a Nebraska corporation with offices at 1802 E. 123rd Street, Olathe, Kansas 66061, hereinafter called the “Consultant”.

WITNESSED, THAT WHEREAS, City has determined a need to retain a professional engineering firm to provide civil engineering services for Construction Administration of Project: Meadowbrook Redevelopment hereinafter called the “Project”,

AND WHEREAS, the City is authorized and empowered to contract with the Consultant for the necessary consulting services for the Project,

AND WHEREAS, the City has the necessary funds for payment of such services,

NOW THEREFORE, the City hereby hires and employs the Consultant as set forth in this Agreement effective the date first written above.

ARTICLE I - RESPONSIBILITIES OF THE CITY

The CITY designates Melissa Prenger, Senior Project Manager as CITY representative with respect to this Agreement. Ms. Prenger shall have the authority to transmit instructions, receive information, interpret and define the policies of the CITY, make decisions relevant to the services of the CONSULTANT.

The CITY shall do the following in a timely manner:

1. Make available to the CONSULTANT all existing data and records relevant to the Project, including but not limited to, maps, plans, correspondence, data and previous reports and studies possessed by the CITY.
2. Approve all criteria and information as to the requirements of the CITY for the Project, including objectives and constraints, performance requirements, and budgetary limitations.
3. Review and approve all correspondence transmitted and forms used by the CONSULTANT relative to this Project.
4. Review for approval all submittals such as change orders and payment requests by the CONSULTANT.

ARTICLE II - RESPONSIBILITIES OF THE CONSULTANT

The CONSULTANT designates Curt Mader, PE as Construction Manager, who shall direct the related construction inspection and administration services in all phases of the Project to which this Agreement applies. The Construction Manager shall serve as the prime professional on this Project and shall be the prime contact with the Senior Project Manager.

The standard of care for all professional consulting services and related construction inspection and administration services either performed for or furnished by the CONSULTANT under this Agreement will be the care and skill ordinarily used by members of the CONSULTANT profession, practicing under similar conditions at the same time and in the same locality.

The Construction Manager shall act as CITY representative to the extent and limitations of the duties, responsibilities and authority as assigned herein and shall not be modified, except as CONSULTANT may otherwise agree in writing. All of CITY instructions to Contractor will be issued through Construction Manager, who shall have authority to act on behalf of CITY in dealings with Contractor to the extent provided in this Agreement, except as otherwise provided in writing.

The Construction Manager shall conduct a pre-construction meeting, which will include the Senior Project Manager, Contractor, utility companies and any appropriate government agency partied with the CITY prior to commencement of Work at the Site.

The Construction Manager shall coordinate with the Contractor on the taking of digital, pre-construction pictures.

The Construction Manager shall make visits to the site at intervals appropriate to the various stages of construction, as Construction Manager deems necessary, in order to observe as an experienced and qualified design professional the progress and quality of the Work. Such visits and observations by Construction Manager are not intended to be exhaustive or to extend to every aspect of the Work in progress or to involve detailed inspections of the Work in progress beyond the responsibilities specifically assigned to Construction Manager herein, but rather are to be limited to selective checking, selective sampling, and similar methods of observation of the Work based on Construction Manager's exercise of professional judgment. Based on information obtained during such visits and such observations, Construction Manager will determine if Contractor's work is proceeding in accordance with the Project Manual, and Construction Manager shall keep CITY informed of the progress of the Work.

The purpose of Construction Manager's visits to the Site of the Project will be to enable Construction Manager to carry out the duties and responsibilities assigned to and undertaken by CONSULTANT during the Construction Phase. By the exercise of Construction Manager's efforts as an experienced and qualified construction professional, the Construction Manager will provide for CITY a greater degree of confidence that the completed Work will conform in general to the Project Manual and that the integrity of the design concept of the completed project as a functioning whole as indicated in the Project Manual has been implemented and preserved by Contractor. Construction Manager shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over the Work, nor shall Construction Manager have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to the Work, or for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Construction Manager neither guarantees the performance of any Contractor nor

assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Project Manual.

The Construction Manager shall have authority to disapprove or reject Contractor's work while it is in progress if, on the basis of such observations, Construction Manager believes that such work will not produce a completed project that conforms generally to the Project Manual or that it will prejudice the integrity of the design concept of the completed project as a functioning whole as indicated in the Project Manual.

The Construction Manager shall issue necessary clarifications and interpretations of the Project Manual as appropriate to the orderly completion of the Work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Project Manual. Construction Manager may issue Field Orders authorizing minor variations of work that neither increase the Time for Completion nor have a value of more than \$1,000 from the requirements of the Project Manual.

The Construction Manager shall recommend Change Orders and Field Orders to Senior Project Manager, as appropriate, and prepare Change Orders and Field Orders as required.

The Construction Manager shall review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Project Manual and compatibility with the design concept of the completed project as a functioning whole as indicated in the Project Manual. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto. Construction Manager has an obligation to meet any Contractors submittal schedule that has earlier been acceptable to Construction Manager.

The Construction Manager and Senior Project Manager shall evaluate and determine the acceptability of substitute or "or equal" materials and equipment proposed by Contractor.

The Construction Manager shall require such special inspections or tests of the Work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Project Manual. The Construction Manager's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Project Manual and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Project Manual. The Construction Manager shall be entitled to rely on the results of such tests.

The Construction Manager shall render formal written recommendations on all claims of CITY and Contractor relating to the acceptability of the Work or the interpretation of the requirements of the Project Manual pertaining to the execution and progress of the Work.

The Construction Manager shall:

1. Review the Contractor's monthly Applications for Payment to determine it represents the work accepted and is mathematically correct. Construction Manager will provide recommendation for payment to the Senior Project Manager. Such recommendations of payment will be in writing and will constitute Construction Manager representation to the CITY, based on such observations and review, that, to the best of Construction Manager knowledge, information and belief, the Work has progressed to the point indicated, the quality of such is generally in

accordance with the Project Manual (subject to an evaluation of the Work as a functioning whole prior to or upon completion, to the results of any subsequent tests called for in the Project Manual and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Construction Manager responsibility to observe the Work. In the case of unit price work, the Construction Manager recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Project Manual). The responsibilities of Construction Manager are expressly subject to the limitations set forth herein.

2. By recommending any payment, it will also not impose responsibility on Construction Manager to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price. However, the Construction Manager shall obtain from the Contractor documentation in approved form with the payment request to determine that title to any portion of the work in progress, materials, or equipment has passed to CITY free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between CITY and Contractor that might affect the amount that should be paid.

The Construction Manager shall receive and review maintenance and operating instructions, schedules, and guarantees that will be given to the Senior Project Manager.

The Construction Manager shall receive and deliver to the Senior Project Manager bonds, certificates, or other evidence of insurance not previously submitted and required by the Project Manual, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided herein, and the annotated record documents which are to be assembled by Contractor in accordance with the Project Manual to obtain final payment.

Construction Manager shall transmit to Senior Project Manager promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use. In company with Senior Project Manager and Contractor, the Construction Manager shall conduct an inspection to determine if the Work is Complete. If after considering any objections, the Construction Manager shall deliver a certificate of Completion to Senior Project Manager and Contractor.

Accompanying the recommendation for final payment, Construction Manager shall provide proper notice that the Work is acceptable to the best of the Construction Manager knowledge, information, and belief and based on the extent of the services provided by CONSULTANT under this Agreement.

The Construction Phase will commence with the execution of the Construction Agreement for the Project or any part thereof and will terminate upon written recommendation by Construction Manager for final payment to Contractors.

The Construction Manager shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing any of the Work. Construction Manager shall not be responsible for failure of any Contractor to perform or furnish the Work in accordance with the Project Manual.

Construction Manager shall furnish assistants, and other field staff to assist Construction Manager to provide more extensive observation of Contractor's work by observing progress and quality of the Work. Through such additional observations of Contractor's work in progress and field checks of

materials and equipment by the assistants and other field staff, Construction Manager shall provide protection against defects and deficiencies in the Work.

The duties and responsibilities Construction Manager are as follows:

- 1 Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
- 2 Serve liaison with Contractor, working principally through Contractor's superintendent, assist in providing information regarding the intent of the Project Manual.
- 3 Obtaining from CITY additional details or information, when required for proper execution of the Work.
- 4 Report when clarifications and interpretations of the Project Manual are needed and transmit to Contractor clarifications and interpretations.
- 5 Record date of receipt of Samples and approved Shop Drawings.
- 6 Receive and examine Samples, which are furnished at the site by Contractor.
- 7 Review material test reports and inform Senior Project Manager and Contractor of results not meeting specifications. The Construction Manager shall make appropriate recommendations to address results not meeting specifications.
- 8 Advise the Contractor prior to the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal that the submittal has not been received or approved by Construction Manager.
- 9 Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions. Transmit to Contractor in writing decisions as issued by Construction Manager.
- 10 Conduct on-site observations of Contractor's work in progress to determine if the Work is in general proceeding in accordance with the Project Manual.
- 11 Report any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Project Manual or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Project Manual, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise of that part of work in progress that the Construction Manager believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
- 12 Consult with Contractor in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.

- 13 Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate CITY personnel, and that Contractor maintains adequate records thereof.
- 14 Observe, record, and report appropriate details relative to the test procedures and systems start-ups.
- 15 Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections.
- 16 Maintain orderly files for correspondence, reports of job conferences, reproductions of original Project Manual including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, clarifications and interpretations of the Project Manual, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.
- 17 Prepare a daily report recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Senior Project Manager.
- 18 Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.
- 19 Maintain records for use in preparing Project documentation.
- 20 Upon completion of the Work, furnish original set of all Project documentation to Senior Project Manager.
- 21 Furnish to Senior Project Manager periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- 22 Draft and recommend to Senior Project Manager proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- 23 Furnish copies of all inspection, test, and system start-up reports.
- 24 Immediately notify Senior Project Manager of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.
- 25 Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Senior Project Manager, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
- 26 During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the

Project Manual, and have these documents delivered to Senior Project Manager for review prior to payment for that part of the Work.

- 27 Participate in a Completion inspection, assist in the determination of Completion and the preparation of lists of items to be completed or corrected.
- 28 Participate in a final inspection in the company of Senior Project Manager, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.
- 29 Observe whether all items on the final list have been completed or corrected and make recommendations concerning acceptance and issuance of the Notice of Acceptability of the Work.

The Construction Manager shall not:

- 1 Exceed limitations of CONSULTANT authority as set forth in the Agreement or the Project Manual.
- 2 Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.
- 3 Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Project Manual.
- 4 Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of CITY or Contractor.
- 5 Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized.
- 6 Accept Shop Drawing or Sample submittals from anyone other than Contractor.
- 7 Authorize CITY to occupy the Project in whole or in part.

The Construction Manager is expected to conduct himself/herself at all times in such a manner as to reflect credit upon himself/herself and the CITY they represent. It is expected that the Construction Manager will be suitably dressed for the work, and he/she will be clean and neat enough to be a suitable representative of the CITY to the Contractor and the public. The Construction Manager will be pleasant, courteous and business-like in meeting the public. He/She is helpful and considerate to answer questions asked by the public. If the Construction Manager cannot clearly answer the question, the Construction Manager should refer the questioner to the Senior Project Manager.

The Construction Manager will not engage in controversial activities relative to the project in public, particularly if it involves public speaking, public debate, public media, etc. All written communications intended for publication that relate to the project must be approved by the Senior Project Manager.

Keeping accurate records and reports is a very important function of the Construction Manager. These records are necessary for a number of reasons. Some of the most common reasons for these records and their use as references are as follows:

1. Accounting for quantities for periodic progress payments and extra work under cost plus change order procedures
2. Verify actions and decisions of the Construction Manager
3. Report job status and site conditions of an accident or liability claim
4. Clarify the continuity of project contract time, such as working days, delays, and weather.
5. Responses to inquiries and complaints
6. Evidence in legal action

The basic reporting medium is the Daily Report. It is a continuing report of the job progress and provides an adequate record of each day's progress and activities. The record of activities should be reported in the sequence that they take place. Each report should be brief but at the same time be complete, clear and factual and include all work accomplished by the Contractor, as well as pertinent related information. The report should answer "who did what, when, where, how and how much". Abbreviations are acceptable as long as their meanings are not confusing and have a common acceptance.

A checklist of items contained in the Daily Report is as follows:

Typical entries for general information -

1. All reports shall show the CITY Project number and title and the CARS or SMAC project number
2. All entries shall be printed in black ink or computer generated
3. Detail the Construction Manager hours on the jobsite
4. Record weather conditions such as "sunny, temperature, precipitation type and amount (light, moderate, heavy)"
5. Complete the report the same day
6. Label the report using the consecutive numbers
7. Note any written or verbal instructions given to the Contractor
8. Note any non-compliance issued for the job
9. Record any unsatisfactory or non-compliant work and corrective actions taken
10. Report all job incidents involving the public such injuries, damages to property and equipment, safety conditions
11. Record the type, frequency and person providing testing
12. Detail job progress in terms of quantity, distances, stations, and weight as they are appropriate and applicable to project pay items
13. Record any factors adversely affecting progress of the work, such as utility conflict, material delivery, unforeseen conditions, plan changes, poor Contractor management, weather, etc.
14. Record any important visitors to the project and their nature of business
15. Sign and date the report
16. Send copy of report to Senior Project Manager

Typical entries for subgrade work -

1. Name of Contractor doing the work
2. Location and results of compaction tests completed and name of the testing laboratory
3. Limits of rough grade, cuts and fills
4. Thickness and type of material placed and compacted
5. Conformance with final grade specifications

Typical entries for curb, gutter, sidewalk and driveway work -

1. Name of Contractor doing the work

2. Station to station limits of forms placed when concrete is not placed the same day
3. Station to station limits of concrete placed, type of concrete and additives, number of cubic yards placed, source of concrete and copy of delivery ticket
4. Type and size of curb and gutter
5. Width and thickness of sidewalk
6. Width and thickness of driveways
7. Number and location of concrete tests for slump, cylinders taken, and name of testing laboratory

Typical entries for paving work -

1. Name of Contractor doing the work
2. Identification of milling, paving and roller equipment used
3. Source and type of material
4. Station to station and width limits of pavement placed, method of laying, material type,, thickness, and weight of material laid based on delivery tickets
5. Number and location of temperature of material at delivery tests, density tests and name of testing laboratory

Typical entries for storm drains -

1. Station to station limits of excavation, pipe laid (including size and type), bedding material, backfill material and compaction method
2. Number and location of structure by type, backfill material and compaction method
3. Location of utility conflicts and resolution
4. Method of restoration, , compaction method and density test
5. Method of restoration, sidewalks, lawns
6. Televised inspection, dates and results

A primary responsibility of the Construction Manager is to have a working knowledge of the controlling regulations, codes and directives dealing with the public convenience, public safety and construction safety. Though jobsite safety is contractually the Contractor's responsibility, the Construction Manager should immediately report all unsafe conditions or practices to the proper authority. However, if in the opinion of the Construction Manager, the precautions taken by the Contractor are found to be insufficient or inadequate in providing job or public safety at any time, the Construction Manager shall notify the Senior Project Manager.

The Construction Manager is expected to wear suitable clothing and protective gear on the jobsite. Hard hats must be worn at all times there is a danger of falling and flying material. Approved reflective vests must be worn for high visibility in close proximity to traffic and moving equipment. Clothing and protective gear should clearly identify the Construction Manager.

Good housekeeping and sanitary provisions are the responsibility of the Contractor. The Contractor is responsible for public and private property and shall take every reasonable precaution to avoid damage by the construction activities. Throughout all phases of construction, the rubbish and debris on a project shall be held to a minimum and confined to organized disposal and storage areas. Dust nuisance is to be held to a minimum. The Contractor's equipment and construction activities shall not contribute to air pollution by excessively discharging smoke, exhaust and other contaminants in such quantities to be a nuisance and violation of contract. The Construction Manager shall record such unacceptable conditions in the Daily Report.

The responsibility of safe and proper handling of traffic rests with the Contractor. The Construction Manager shall see that the Contractor provides proper handling of traffic as required by the contract and shall notify the Contractor to correct any potentially dangerous situation that exists. The section of the Manual of Uniform Traffic Control Devices (MUTCD) titled *Work Area Traffic Control Handbook* sets forth the principle and standards in order to provide safe and effective work areas and to warn, control, protect and expedite vehicular and pedestrian traffic through the construction project. The MUTCD by reference is part of the Contractor's construction documents. The Construction Manager shall refer to this document when monitoring and coordinating traffic handling with the Contractor. The Construction Manager shall record such unacceptable conditions in the Daily Report.

The Construction Manager are directed to avail themselves of the *Public Works Inspector' Manual*, latest edition published by the BNI Building News and available through the American Public Works Association. The manual is a complete operational and technical guidebook for inspecting all types of public works construction. The manual is the standard by which the CITY expects the Construction Manager to meet and is part of this Agreement.

ARTICLE III - COMPENSATION

The CITY agrees to pay the CONSULTANT, at Hourly Rates, to a Maximum Fee of \$ 179,995.50 for the scope of services as specified herein unless modified by Change Order. CONSULTANT current Hourly Rate Schedule is attached as Exhibit A.

The CONSULTANT may submit an invoice on a monthly basis from an estimate of Services or upon the completion of services. The CONSULTANT shall bill reimbursable expenses, which are beyond all fees for professional services, with a multiplier of 1.0. Reimbursable items shall be as follows:

- a. Final plots and printing for construction or as requested by the CITY except as outlined in the scope of services (printing and plotting for the CONSULTANT in-house use is not a reimbursable expense)
- b. Project Mileage
- c. Delivery Charges

All billings must be submitted by the fifteenth day of the month for all services rendered in the previous month. The CONSULTANT will invoice the CITY on forms approved by the CITY. All properly prepared invoices will include a documented breakdown of expenses incurred.

Both parties may submit an Engineering Change Order for major changes in scope, character, delays or complexity of Services. The Engineering Change Order may provide for changes in compensation and schedule, either upward or downward. The Engineering Change Order shall be signed by the CITY and the CONSULTANT prior to the CONSULTANT proceeding with any work covered by this Agreement.

ARTICLE IV - GENERAL PROVISIONS

Times for Rendering Services: The CONSULTANT services and compensation under this Agreement have been agreed to in anticipation of orderly and continuous progress of the Services through completion. Specific periods of time for rendering services are set forth in Article IV, Time Schedule, in this Agreement, by which time defined services are to be completed. If such periods of

time are changed through no fault of the CONSULTANT, the rates and amounts of compensation provided for therein shall be subject to equitable adjustment.

Opinions of Probable Cost: In providing opinions of probable cost, the CITY understands that the CONSULTANT has no control over costs or the price of labor, equipment or materials, or over the Contractor's method of pricing, and that the opinions of probable construction costs, if included herein, are to be made based on the CONSULTANT qualifications and experience. The CONSULTANT makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.

Change in Scope: The scope of work described in Article I Scope of Services, shall be subject to modification or supplement upon the signing of an Engineering Change Order by the CITY and the CONSULTANT. At the time of such modification of scope, equitable adjustments, agreeable to both parties, shall be made in the time of performance and the compensation to be paid for the services.

In event the CITY consents to, allows, authorizes or approves of changes to the construction documents prepared by the CONSULTANT, and these changes are not approved in writing by the CONSULTANT, the CITY recognizes that such changes and the results thereof are not the responsibility of the CONSULTANT. Therefore, the CITY agrees to release the CONSULTANT from any liability arising from the construction, use, or result of such changes. In addition, the CITY agrees to indemnify and hold the CONSULTANT harmless from any damage, liability or cost arising from such changes.

Reuse of Documents: All documents including the plans and specifications provided or furnished by the Consultant pursuant to this Agreement ("Plans") shall become the property of City. City agrees that if such Plans are ever used in connection with another project in which the Consultant is not providing civil engineering services or for completion of the Project by others, all references to the Consultant or any subconsultant, including seals, shall be removed from the Plans before use on said project. The City may make and retain copies for the use by the City and others; however, such documents are not intended or suitable for reuse by the City or others as an extension of the Project or on any other Project. Any such reuse without written approval or adaptation by the Consultant for the specific purpose intended will be at the CITY sole risk and without liability to the Consultant. To the extent permitted by law, the City shall indemnify and hold harmless the Consultant from all claims, damages, losses and expenses including attorney's fees arising out of or resulting reuse of the Plans. In a similar manner, the Consultant is prohibited from reuse or disclosing any information contained in any documents, plans or specifications relative to the Project without the expressed written permission of the City.

Insurance: The Consultant shall procure and maintain, at its expense, the following insurance coverage: (a) Workers' Compensation -- Statutory Limits, with Employer's Liability limits of \$100,000 each employee, \$500,000 policy limit; (b) Commercial General Liability for bodily injury and property damage liability claims with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; (c) Commercial Automobile Liability for bodily injury and property damage with limits of not less than \$1,000,000 each accident for all owned, non-owned and hired automobiles; (d) errors and omissions coverage of not less than \$1,000,000. Deductibles for any of the above coverage shall not exceed \$25,000 unless approved in writing by City. In addition, Consultant agrees to require all consultants and subconsultants to obtain and provide insurance in identical type and amounts of coverage together and to require satisfaction of all other insurance requirements provided in this Agreement.

CONSULTANT'S insurance shall be from an insurance carrier with an A.M. Best rating of A-IX or better, shall be on the GL 1986 ISO Occurrence form or such other form as may be approved by City, and shall name, by endorsement to be attached to the certificate of insurance, City, and its divisions, departments, officials, officers and employees, and other parties as specified by City as additional insureds as their interest may appear, except that the additional insured requirement shall not apply to Errors and Omissions coverage. Such endorsement shall be ISO CG2010 11/85 or equivalent. "Claims Made" and "Modified Occurrence" forms are not acceptable, except for Errors and Omissions coverage. Each certificate of insurance shall state that such insurance will not be canceled or coverage reduced until after thirty (30) days' unqualified written notice of cancellation or reduction has been given to the City, except in the event of nonpayment of premium, in which case there shall be ten (10) days' unqualified written notice. Subrogation against City and CITY Agent shall be waived. CONSULTANT insurance policies shall be endorsed to indicate that CONSULTANT insurance coverage is primary and any insurance maintained by City or CITY Agent is non-contributing.

Before Consultant performs any portion of the Work, it shall provide City with certificates and endorsements evidencing the insurance required by this Article. Consultant agrees to maintain the insurance required by this Article of a minimum of three (3) years following completion of the Project and, during such entire three (3) year period, to continue to name City, CITY agent, and other specified interests as additional insureds thereunder.

If due to the CONSULTANT'S negligent act, error or omission, any required item or component of the project is omitted from the Construction documents produced by the Consultant, the CONSULTANT liability shall be limited to the difference between the cost of adding the item at the time of discovery of the omission and the cost had the item or component been included in the construction documents. The Consultant will be responsible for any retrofit expense, waste, any intervening increase in the cost of the component, and a presumed premium of 10% of the cost of the component furnished through a change order from a contractor to the extent caused by the negligence or breach of contract of the Consultant or its subconsultants.

6.4 Termination: This Agreement may be terminated by either party upon seven days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party; provided, however, the nonperforming party shall have 14 calendar days from the receipt of the termination notice to cure the failure in a manner acceptable to the other party. In any such case, the Consultant shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the payment provisions of this Agreement. Copies of all completed or partially completed designs, plans and specifications prepared under this Agreement shall be delivered to the City when and if this Agreement is terminated, but it is mutually agreed by the parties that the City will use them solely in connection with this Project, except with the written consent of the Consultant (subject to the above provision regarding Reuse of Documents).

6.5 Termination for Convenience: The City, within its sole discretion, may elect to terminate the Agreement with the Consultant for convenience upon three (3) days written Notice to Consultant. In the event of such termination, Consultant 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. Consultant shall not be entitled to any anticipatory profits of other costs other than direct costs of demobilization

Controlling Law: This Agreement is to be governed by the laws of the State of Kansas.

Indemnity: To the fullest extent permitted by law, with respect to the performance of its obligations in this Agreement or implied by law, and whether performed by Consultant or any subconsultants hired by Consultant, the Consultant agrees to indemnify City, and its agents, servants, and employees from and against any and all claims, damages, and losses arising out of personal injury, death, or property damage, caused by the negligent acts, errors, or omissions of the Consultant or its subconsultants, to the extent and in proportion to the comparative degree of fault of the Consultant and its subconsultants. Consultant shall also pay for CITY reasonable attorneys' fees, expert fees, and costs incurred in the defense of such a claim to the extent and in proportion to the comparative degree of fault of the Consultant and its subconsultants.

Severability: Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Consultant, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

Notices: Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears on the signature page to this Agreement (as modified in writing from item to item by such party) and given personally, by registered or certified mail, return receipt requested, by facsimile or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

Successors and Assigns: The City and the Consultant each is hereby bound and the partners, successors, executors, administrators, legal representatives and assigns of the City and the Consultant are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, legal representatives and assigns of such other party in respect of all covenants and obligations of this Agreement.

Neither the City nor the Consultant may assign, sublet, or transfer any rights under the Agreement without the written consent of the other, which consent shall not be unreasonably withheld; provided, Consultant may assign its rights to payment without Owner's consent, and except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Agreement.

Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by the Consultant to any Contractor, subcontractor, supplier, other person or entity or to any surety for or employee of any of them, or give any rights or benefits under this Agreement to anyone other than the City and the Consultant.

IN WITNESS WHEREOF: the parties hereto have executed this Agreement to be effective as of the date first above written.

CITY:

CITY OF PRAIRIE VILLAGE, KS

By: _____

Mayor

CONSULTANT:

OLSSON ASSOCIATES

By: Curt H. Mader

Curt H. Mader

Team Leader

By: Bryan Johnson

Bryan Johnson

Office Leader

Address for giving notices:

CITY of Prairie Village
7700 Mission Road
Prairie Village, Kansas, 66208
913-381-6464

Address for giving notices:

Olsson Associates
1802 E. 123rd Street
Olathe, KS 66061
913-829-0078

ATTEST:

Joyce Hagen Mundy, City Clerk

APPROVED BY:

Catherine Logan, City Attorney

CONSTRUCTION CONTRACT
FOR
MEADOWBROOK PARK PUBLIC IMPROVEMENTS

ITEMS 1 - 21 OF BID PACKAGE A- STORMWATER IMPROVEMENTS PROJECT MBDRAINX

AND

BID PACKAGE C IN ITS ENTIRETY- STREET IMPROVEMENTS PROJECT MBSTREET

BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND

SUPERIOR BOWEN ASPHALT COMPANY

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 Superior Bowen Asphalt Company, hereinafter termed in this agreement, “Contractor”, for the construction and completion of Meadowbrook Park Public Improvements, (the “Project”) designated, described and required by the Project Manual and Bid Proposals, 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 Project Manager stating that to the best of the project manager's knowledge, information and belief, and on the basis of the Project Manager'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 Project Manager) 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 Project Manager 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 Project Manager.

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.

PROJECT MANAGER 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. The Work shall specifically include Items 1 - 21 of Bid Package A and Bid Package C in its entirety.

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 Project Manager is intended.
- 1.4 Whenever any statement is made in the Contract Documents containing the expression "it is understood and agreed", or an expression of like import, such expression means the mutual understanding and agreement of the parties hereto.
- 1.5 The words "approved", "reasonable", "suitable", "acceptable", "properly", "satisfactorily", or words of like effect in import, unless otherwise particularly specified herein, shall mean approved, reasonable, suitable, acceptable, proper or satisfactory in the judgment of the Project Manager.
- 1.6 When a word, term or phrase is used in the Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and, third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.
- 1.7 All terms used herein shall have the meanings ascribed to them herein unless otherwise specified.

2. ENTIRE AGREEMENT:

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 Project Manager of any inconsistency, ambiguity, error or omission, which the Contractor may discover, or should have discovered, with respect to these documents before proceeding with the affected Work. The review, issuance, or the express or implied approval by the City or the Project Manager of the Contract Documents shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such review be evidence of the Contractor's compliance with this Contract.
- 3.6 The City has prepared or caused to have prepared the Project Manual. **HOWEVER, THE CITY MAKES NO REPRESENTATION OR WARRANTY AS TO ACCURACY OR FITNESS FOR PARTICULAR PURPOSE INTENDED OR ANY OTHER WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the City concerning such documents as no such representation or warranties have been made or are hereby made.
- 3.7 As between numbers and scaled measurements in the Project Manual, the numbers shall govern; as between larger scale and smaller scale drawings, (e.g. 10:1 is larger than 100:1) the larger scale shall govern.

- 3.8 The organization of the Project Manual into divisions, sections, paragraphs, articles (or other categories), shall not control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.
- 3.9 The Contract Documents supersedes all previous agreements and understandings between the parties, and renders all previous agreements and understandings void relative to these Contract Documents.
- 3.10 Should anything be omitted from the Project Manual, which is necessary to a clear understanding of the Work, or should it appear various instructions are in conflict, the Contractor shall secure written instructions from the Project Manager before proceeding with the construction affected by such omissions or discrepancies.
- 3.11 It is understood and agreed that the Work shall be performed and completed according to the true spirit, meaning, and intent of the Contract Documents.
- 3.12 The Contractor's responsibility for construction covered by conflicting requirements, not provided for by addendum prior to the time of opening Bids for the Work represented thereby, shall not extend beyond the construction in conformity with the less expensive of the said conflicting requirements. Any increase in cost of Work required to be done in excess of the less expensive work of the conflicting requirements will be paid for as extra work as provided for herein.
- 3.13 The apparent silence of the Project Manual as to any detail, or the apparent omission from them of a detailed description concerning any point, shall be regarded as meaning that only the best general practice is to be used. All interpretations of the Project Manual shall be made on the basis above stated.
- 3.14 The conditions set forth herein are general in scope and are intended to contain requirements and conditions generally required in the Work, but may contain conditions or requirements which will not be required in the performance of the Work under contract and which therefore are not applicable thereto. Where any stipulation or requirement set forth herein applies to any such non-existing condition, and is not applicable to the Work under contract, such stipulation or requirement will have no meaning relative to the performance of said Work.
- 3.15 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 **FIVE MILLION EIGHT HUNDRED NINETY NINE THOUSAND SEVEN HUNDRED SEVENTY FOUR AND THIRTY FOUR HUNDREDTHS DOLLARS (\$5,899,774.34)** 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 Project Manager daily to advise whether and/or where the Contractor and/or the Subcontractor's crews will be working that day, in order that the Project Manager's representative is able to monitor properly the Work.

6. PROJECT MANAGER

- 6.1 It is mutually agreed by and between the parties to this Agreement that the Project Manager 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 Project Manager shall, in good faith and to the best of its ability, determine the amount and quantities of the several kinds of work which are to be paid for under this Contract; that the Project Manager shall determine, where applicable, questions in relation to said Work and the construction thereof; that Project Manager shall, where applicable decide questions which may arise relative to the execution of this Contract on the part of said Contractor; that the Project Manager's decisions and findings shall be the conditions precedent to the rights of the parties hereto, to any action on the Contract, and to any rights of the Contractor to receive any money under this Contract provided, however, that should the Project Manager render any decision or give any direction which, in the opinion of either party hereto, is not in accordance with the meaning and intent of this Contract, either party may file with the Project Manager and with the other party, within thirty (30) days a written objection to the decision or direction so rendered and, by such action, may reserve the right to submit the question to determination in the future.

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

- 6.8 The City may refuse to make payment of the full amount recommended by the Project Manager because claims have been made against City on account of Contractor's performance or furnishing of the Work or liens have been filed in connection with the Work or there are other items entitling City to a set-off against the amount recommended, but City must give Contractor written notice (with a copy to Project Manager) stating the reasons for such action.
- 6.9 The Project Manager will have the authority to reject Work which is defective or does not conform to the requirements of this Contract. If the Project Manager deems it necessary or advisable, the Project Manager shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.
- 6.10 The Project Manager will review, or take other appropriate action as necessary, concerning the Contractor's submittals, including Shop Drawings, Product Data and Samples. Such review, or other action, shall be for the sole purpose of determining general conformance with the design concept and information given through the Project Manual.
- 6.11 The Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 6.12 The Project Manager, 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 Project Manager will receive and forward to the City for the City's review and records, written warranties and related documents from the Contractor required by this Contract and will issue a final Certificate for Payment to the City upon compliance with the requirements of this Contract.
- 6.13 The Project Manager's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.
- 6.14 The Project Manager will **NOT** be responsible for Contractor's means, methods, techniques, sequences, or procedures or construction, or the safety precautions and programs incident thereto and will not be responsible for Contractor's failure to perform the Work in accordance with the Project Manual. The Project Manager will not be responsible for the acts or omissions of the Contractor or any Subcontractor or any of its or their agents or employees, or any other person at the site or otherwise performing any of the Work except as may otherwise be provided.
- 6.15 Any plan or method of work suggested by the Project Manager, or other representatives of the City, to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor, and the Project Manager and the City will assume no responsibility therefore.
- 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 Project Manager, such City representatives or observers as the City may deem proper, to observe the materials furnished and the work performed under the Project Manual, and to see that the said materials are furnished, and the said work performed, in accordance with the Project Manual therefore. The Contractor shall furnish all reasonable aid and assistance required by the Project Manager, or by the

resident representatives for proper observation and examination of the Work and all parts thereof.

- 6.17 The Contractor shall comply with any interpretation of the Project Manual by the Project Manager, or any resident representative or observer so appointed, when the same are consistent with the obligations of the Project Manual. However, should the Contractor object to any interpretation given by any subordinate Project Manager, resident representative or observer, the Contractor may appeal in writing to the City Director of Public Works for a decision.
- 6.18 Resident representatives, observers, and other properly authorized representatives of the City or Project Manager shall be free at all times to perform their duties, and intimidation or attempted intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the City so decides, to annul the Contract.
- 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 Project Manager 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 Project Manager 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 Facia 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 Project Manager. If it is necessary to perform proper care, maintenance, or protection of work already completed or of equipment used, or in the case of an emergency verbal permission may be obtained through the Project Manager.
- 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 Project Manager. The Contractor shall communicate immediately any changes in the Work Schedule to the Project Manager 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 Project Manager shall award in writing on account of such delays, provided, however, that claim for such extension of time is made by the Contractor to the City and the Project Manager in writing within one (1) week from the time when any such alleged cause for delay shall occur.

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 Project Manager, an average or usual number of

inclement days when work cannot proceed are to be anticipated during the construction period and are not to be considered as warranting extension of time.

- 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 Project Manager 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 Project Manager within 7 days of the last day of the commencement of the event giving rise to the delay occurred. Resolution of any claim shall follow the procedures 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 Project Manager by the Contractor and Certificates for Payment issued by the Project Manager, 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 Project Manager will, upon receipt of a written Application for Payment from the Contractor, review the amount of Work performed during the preceding period and the value thereof at the unit prices contracted. From the amounts so ascertained, there shall be deducted ten percent (10%) to be retained until after final completion of the entire Work to the satisfaction of the City. The Project Manager will submit an estimate each month to the City for payment to the Contractor, except that no amount less than \$500.00 will be submitted unless the total amount of the Contract remaining unpaid is less than \$500.00.
- 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 Project Manager, nor any extension of time, nor any possession taken by the City or its employees, shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the City, or any right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of any other or subsequent breach.

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

- 12.2 The Contractor shall not be entitled to any payment unless and until it submits to the Project Manager its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the City, or the City's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors and Suppliers of the Contractor and of any and all other parties required by the City; and consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the City, the Contractor shall furnish a bond satisfactory to the City to discharge any such lien or indemnify the City from liability.
- 12.3 The City shall make final payment of all sums due the Contractor within thirty days of the Project Manager'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 Project Manager. Such written notice and claim must be furnished within seven calendar days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.
- 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 Project Manager 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 Project Manager may consider necessary or desirable, by approved Change Order. Such modifications shall not invalidate the Contract nor release the surety. Unless such alterations and increases or decreases change the total cost of the Work, based on the originally estimated quantities and the unit prices bid, by more than 25 percent, or change the total cost of any major item, based on the originally estimated quantities and the unit price bid, by more than 25 percent, the Contractor shall perform the work altered, increased or decreased, at a negotiated price or prices. (A major item shall mean any bid item, the total cost of which exceeds 12-1/2 percent of the total Contract 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 Project Manager 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 Project Manager shall not otherwise modify or invalidate in any way, any of the provisions of this Contract. In the event that the work shall be stopped by written order of the City, any expense, which, in the sole opinion and judgment of the City, is caused by the City, shall be paid by the City to the Contractor.

- 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 Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 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 Project Manager on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content to the City, as the Project Manager requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies or equipment, including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools, whether rented from the Contractor or others, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and job site field office overhead directly attributable to the change. In no event shall any standby time or any expenditure or savings associated with the Contractor's home office or other non-job site overhead expense be included in any change in the Contract Price. Further, in no event shall the Contractor's overhead expense exceed ten (10%) percent of the reasonable expenditures. Pending final determination of

reasonable expenditures or savings to the City, payments on account shall be made to the Contractor on the Project Manager's Certificate for Payment.

- 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 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. 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, Project Manager or bid-letting costs therefore. In such case, the Contractor shall not be entitled to receive further payment. In the event the Contractor is found in a court of law to have been wrongfully terminated for cause, then such termination shall be deemed a termination for convenience and the Contractor shall be compensated as provided herein. 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 Project Manager and to the City. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or communication upon the Contractor personally.
- 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, Project Manager or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval or acquiescence in a breach hereunder, except as may be specifically agreed in writing.
- 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

SUPERIOR BOWEN ASPHALT COMPANY

By: _____
(signed)

By: _____
(signed)

Laura Wassmer

Matt Bowen
(typed name)

Mayor

President
(typed title)

City of Prairie Village

Superior Bowen Asphalt Company
(typed company name)

7700 Mission Road

2501 Manchester Trafficway
(typed address)

Prairie Village, Kansas 66208

Kansas City, MO 64129
(typed city, state, zip)

816-921-8200
(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.)

Addendum #1 to Contract for City of Prairie Village Street Improvement Project #MBSTREET and Stormwater Improvement Project #MBDRAINX

1. This Addendum to the contracts for the above Projects applies only if Contractor is awarded bids by the City for both the Street Improvement Project #MBSTREET and Stormwater Improvement Project #MBDRAINX and also by MB-18, LLC for simultaneous performance of infrastructure work on adjacent property (“Private Development Site Improvement Work”).

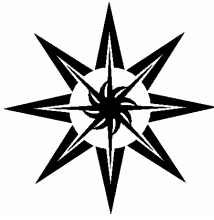
2. MB-18 LLC is authorized by the City to manage and coordinate construction activities of Contractor with respect to the Street Improvement Project #MBSTREET and the Stormwater Improvement Project #MBDRAINX, and the related aspects of the Private Development Site Improvement Work in the following manner:

A. MB-18, LLC has general authority and discretion to make decisions relating to the coordination, construction and supervision of the simultaneous work comprising the Street Improvement Project #MBSTREET, Stormwater Improvement Project #MBDRAINX and the Private Development Site Improvement Work and has the authority to take such actions as MB-18, LLC reasonably deems necessary, proper or desirable for the furtherance of the Street Improvement Project #MBSTREET and Stormwater Improvement Project #MBDRAINX.

B. MB-18, LLC does NOT have authority to take any of the following actions with respect to the Street Improvement Project #MBSTREET and the Stormwater Improvement Project #MBDRAINX:

- i. Make any changes to the design or completion milestones or deadlines in the City Contracts for the Street Improvement Project #MBSTREET and the Stormwater Improvement Project #MBDRAINX.
- ii. Approve change orders or any amendments to the City Contracts for the Street Improvement Project #MBSTREET and the Stormwater Improvement Project #MBDRAINX .
- iii. Approve any payments to the Contractor relating to the City Contracts the Street Improvement Project #MBSTREET and the Stormwater Improvement Project #MBDRAINX.
- iv. Enter into any agreements or waivers or releases relating to the City Contracts for the Street Improvement Project #MBSTREET and the Stormwater Improvement Project #MBDRAINX which will be binding upon City.

C. MB-18, LLC will schedule regular meetings with the City’s engineering firm and the Contractor, as applicable, and will advise the City Public Works Director, and other City staff and its inspectors as determined by the Public Works Director and the staff of Johnson County Parks and Recreation District (“JCPRD”) of such meetings so that they may attend. Contractor will cooperate with MB-18, LLC in order to facilitate MB-18, LLC’s obligation to City and JCPRD to provide periodic status updates on the progress of construction.



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: May 2, 2016
Council Meeting Date: May 2, 2016

CONSIDER CONSTRUCTION CONTRACT WITH SUPERIOR BOWEN ASPHALT COMPANY FOR THE 2016 MEADOWBROOK STREET IMPROVEMENTS (MBSTREET) AND STORMWATER IMPROVEMENTS (MBDRAINX)

RECOMMENDATION

Move to authorize the Mayor to sign the construction contract with Superior Bowen Asphalt Company for the 2016 Meadowbrook Street Improvements (MBSTREET) and for the Stormwater Improvements (MBDRAINX) for \$5,899,774.34

BACKGROUND

On April 21, 2016, bids were opened bids for the project. Van Trust and the City representative were present for the bid opening. This unique bidding process was followed for this project as per the Meadowbrook Public Infrastructure Improvement Agreement approved by City Council on April 18, 2016.

Below are the bids that were received for parts of the Meadowbrook project that are funded by TIF funds and will contract directly with the City of Prairie Village. The work includes all construction items for the public streets and stormwater improvements.

Superior Bowen	\$5,899,774.34
Kissick Construction	\$6,687,675.70
Emery Sapp & Son's	\$6,983,888.58
Engineer's Estimate	\$8,672,248.70

Cost breakdown for Streets and Stormwater-

Stormwater-	\$1,513,905.45
Streets-	\$4,385,868.89

It is anticipated that the County's SMAC(Stormwater Management Advisory Council) Program will provide funds for the stormwater improvements. The exact amount of funding has yet to be determined.

The Engineer and the City have reviewed all bids and recommend award of the low bid. Van Trust, Phelps, and the City did meet with Superior Bowen to discuss the project and confirmed that Superior Bowen understands the work and timelines that is expected of them.

The low bid by Superior Bowen is in line with the estimated costs shown in the developer agreement for the Meadowbrook project.

Execution of this contract will take place on May 17, 2016, the date of bond closing.

FUNDING SOURCES

Funding for this project will come from the Meadowbrook TIF

A portion of the stormwater improvements will possibly be funded by County SMAC funds.

RELATION TO VILLAGE VISION

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

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

ATTACHMENTS

1. Construction Agreement with Superior Bowen Asphalt Company

PREPARED BY

Keith Bredehoeft, Public Works Director

April 28, 2016

AGREEMENT FOR PROFESSIONAL ENGINEER

For

DESIGN SERVICES

Of

MEADOWBROOK STORMWATER IMPROVEMENTS
PROJECT (MBDRAINX)

THIS AGREEMENT, made at the Prairie Village, Kansas, this ___ day of _____, by and between the City of Prairie Village, Kansas, a municipal corporation with offices at 7700 Mission Road, Prairie Village, Kansas, 66208, hereinafter called the “City”, and **Phelps Engineering, Inc.**, a corporation with offices at 1270 N. Winchester, Olathe, KS 66061, hereinafter called the “**Consultant**”.

WITNESSED, THAT WHEREAS, City has determined a need to retain a professional engineering firm to provide services for the Meadowbrook SMAC Regional Detention Basins hereinafter called the “**Project**”,

AND WHEREAS, the City is authorized and empowered to contract with the Consultant for the necessary consulting services for the Project,

AND WHEREAS, the City has the necessary funds for payment of such services,

NOW THEREFORE, the City hereby hires and employs the Consultant as set forth in this Agreement effective the date first written above.

Article I City Responsibilities

- A. **Project Definition** The City, in coordination with the Johnson County Stormwater Management Program (SMP), is preparing to convert the existing ponds on the Meadowbrook Country Club to regional detention basins. The work will include dredging, excavation, installing outlet control structures, channel grading and pond edge treatments. The engineering services will include hydrologic and hydraulic modeling, preparing of construction documents, coordinating with SMP, Overland Park and Johnson County Park and Recreation District, preparing permit applications and coordinating with utility providers.
- B. **City Representative** The City shall in a timely manner designate, Keith Bredehoeft, Public Works Director, to act as the City’s representative with respect to the services to be performed or furnished by the Consultant under this Agreement. Such person shall have authority to transmit instructions, receive information, interpret and define the City’s policies and decisions with respect to the Consultant’s services for the Project.
- C. **Existing Data and Records** The City shall make available to the Consultant all existing data and records relevant to the Project such as, maps, plans, correspondence files and other information possessed by the City that is relevant to the Project. Consultant shall not be responsible for verifying or ensuring the accuracy of any information or content supplied by City or any other Project participant unless specifically defined by the scope of work, nor ensuring that such information or content does not violate or infringe any law or other third party rights. However, Consultant shall promptly advise the City, in writing, of any inaccuracies in the information provided or any other violation or infringement of any law or third party rights that

Consultant observes. City shall indemnify Consultant for any infringement claims resulting from Consultant's use of such content, materials or documents.

- D. **Review For Approval** The City shall review all criteria, design elements and documents as to the City requirements for the Project, including objectives, constraints, performance requirements and budget limitations.
- E. **Standard Details** The City shall provide copies of all existing standard details and documentation for use by the Consultant for the project.
- F. **Submittal Review** The City shall diligently review all submittals presented by the Consultant in a timely manner.
- G. **Correspondence to Property Owners** Obtain mailing list and approve all correspondence to property owners in the project area. Typical, but not all inclusive, correspondence is:
 - 1. Frequently Asked Questions (FAQ)
 - 2. Citizen Bill of Rights
 - 3. Information request about driveway, lawn sprinkler, pet fence
 - 4. Intent to construct sidewalk
 - 5. Intent to begin construction
 - 6. Public Information meeting
 - 7. Notification of FEMA Special Flood Hazard Area boundary modifications

Article II Consultant Responsibilities

- A. **Professional Engineering Services** The Consultant shall either perform for or furnish to the City professional engineering services and related services in all phases of the Project to which this Agreement applies as hereinafter provided.
- B. **Prime Consultant** The Consultant shall serve as the prime professional Consultant for the City on this Project
- C. **Standard Care** The standard of care for all professional consulting services and related services either performed for or furnished by the Consultant under this Agreement will be the care and skill ordinarily used by members of the Consultant's profession, practicing under similar conditions at the same time and in the same locality.
- D. **Consultant Representative** Designate a person to act as the Consultant's representative with respect to the services to be performed or furnished by the Consultant under this Agreement. Such person shall have authority to transmit instructions, receive information, and make decisions with respect to the Consultant's services for the Project.

Article III Scope of Services

- A. **Concept Study Phase** Upon receipt of notice to proceed from the City, the Consultant shall provide all consulting services related to this project including, but not limited, to these tasks. The scope is generally defined below and in more detail in Exhibit A.
 - 1. Schedule and attend one startup meeting with City to confirm project goals, schedule, budget and expectations
 - 2. Review any design criteria
 - 3. Identify all utilities that may be affected by the project

4. Prepare an engineers project schedule
5. Prepare a project title sheet
6. Prepare general site plan showing building outline, street, address and property owner including any features located between the right-of-way line and the building line
7. Prepare a general site plan identifying the property address and property owner name based on latest AIMS coverage data
8. Obtain a Ownership and Easement (O&E) on project properties to determine existing easements
9. Prepare plan and profiles detailing all structures for drainage, sanitary sewer, water, gas, electric, telephone, traffic signals, street lights, driveways, sidewalks, signage, trees, walls, signs and any other feature located within the right-of-way and between the edge of right-of-way and building lot line
10. Prepare typical sections for significant changes in final elevations or critical construction locations particularly where new sidewalk is to be constructed
11. Publish minutes of all progress meetings (held at least monthly) and disperse to City representative and all other attendees within five working days
12. Submit one paper copy and one electronic copy of documents in Microsoft Office, and plans in pdf format for review by the City.
13. Participate in a public meeting to present project specifics.

B. Preliminary Design Phase Upon receipt of notice to proceed from the City, the Consultant shall provide all consulting services related to this project including, but not limited, to these tasks.

1. Prepare an engineers project schedule
2. Identify test pit locations of potential utility conflicts with City review
3. Locate bench marks and section markers within the project area
4. Prepare and mail letters of survey crew work after review by the City
5. Prepare a project title sheet
6. Prepare general site plan showing building outline, street, elevations, trees, address, and owner name based on latest AIMS coverage data, boring locations
7. Prepare plan and profile for street and drainage showing best information for all utility conflicts and test pits for location identification including drainage, sanitary sewer, water, gas, electric, telephone, traffic signals, street lights
8. Prepare a cross section plan of typical sections for significant changes in final elevations or critical construction locations
9. Prepare a standard and special detail plan showing City detail drawings and other special details pertinent to the project
10. Prepare an easement plan of intended construction and required easements (both permanent and temporary) as well as right of entry
11. Prepare all project required easement documents and submit to City for review
12. Prepare a traffic control plan showing temporary and permanent traffic control measures per MUTCD for various phases of construction

13. Prepare an erosion and control plan showing all areas to be controlled during construction
14. Participate in a project field check with City staff
15. Present one set of preliminary plans (11x17) to appropriate governmental agencies and utility companies requesting comments and verification of potential conflicts
16. Present one set of preliminary plans (11x17) City review
17. Participate in a public meeting to present project intentions
18. Present draft of detail specifications (green pages) and special conditions (pink pages) for City review
19. Present a detailed opinion of probable construction cost including a compilation of typical and non-typical construction pay items with quantities and current unit costs plus a contingency of 15 percent
20. Suggest additions and deductions to adjust the total project cost
21. Publish minutes of all progress meetings (held at least monthly) and disperse to City representative and to all other attendees within five working days
22. Submit one paper copy and one electronic copy of documents in Microsoft Office, and plans in pdf format for review by the City.

C. Final Design Phase Upon receipt of notice to proceed from the City, the Consultant shall provide all consulting services related to this project including, but not limited, to these tasks.

1. Prepare final design documents base of preliminary plans and comments received from the City and other review agencies
2. Prepare final project manual
3. Present one set of final design plans and specifications for City review
4. Submit one set of final plans and specifications to other governmental agencies and utility companies with identification of significant changes to preliminary design plans
5. Request utility comments and construction schedule
6. Prepare a final opinion of probable construction cost including compilation of construction pay items with quantities and current unit cost
7. Prepare all bid documents using the City's standard bid and contract
8. Publish minutes of all progress meetings (held at least monthly) and disperse to City representative and to all other attendees within five working days
9. Submit one paper copy and one electronic copy of documents in Microsoft Office, and plans in pdf format for review by the City.

D. Bidding Phase Upon receipt of notice to proceed from the City, the Consultant shall provide all consulting services related to this project including, but not limited, to these tasks.

1. Mail notice of bid as prepared by the City to potential contractors
2. Provide plans, bid documents, and specifications for potential bidders to be purchased from electronic plan room

3. Provide all utilities with bid set of plans and request attendance at pre-bid meeting
4. Conduct a pre-bid meeting and prepare any addenda to the contract as necessary
5. Prepare and publish minutes of pre-bid meeting and disperse to City representative and to all other attendees within five working days
6. Attend bid opening
7. Evaluate the bids and make a recommendation of award to the City
8. Assemble five sets of construction contracts, including bonds, for execution by the Contractor and then by the City
9. Submit one paper copy and one electronic copy of documents in Microsoft Office, and plans in pdf format for review by the City.

Article IV Time Schedule

- A. **Timely Progress** The Consultant's services under this Agreement have been agreed to in anticipation of timely, orderly and continuous progress of the Project.
- B. **Authorization to Proceed** If the City fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, the Consultant shall be entitled to equitable adjustment of rates and amounts of compensations to reflect reasonable costs incurred by the Consultant as a result of the delay or changes in the various elements that comprise such rates of compensation.
- C. **Default Neither** City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and delay in or inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either City or Consultant under this Agreement. Should such circumstances occur, the consultant shall within a reasonable time of being prevented from performing, give written notice to the City describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.
- D. **Completion Schedule** Recognizing that time is of the essence, the Consultant proposes to complete the scope of services as specified in the Scope of Services:

Design Completion- June 15, 2016

Project Completion- December 31, 2016

Article V Compensation

- A. **Maximum Compensation** The City agrees to pay the Consultant as maximum compensation as defined in Exhibit B for the scope of services the following fees:

Total Maximum Fee \$ 198,275.00

- B. **Invoices** The compensation will be invoiced by phase, detailing the position, hours and appropriate hourly rates (which include overhead and profit) for Consultant's personnel classifications and the Direct Non-Salary Costs.

- C. **Direct Non-Salary Costs** The term “Direct Non-Salary Costs” shall include the Consultant payments in connection with the Project to other consultants, transportation, and reproduction costs. Payments will be billed to the City at actual cost. Transportation, including use of survey vehicle or automobile will be charged at the IRS rate in effect during the billing period. Reproduction work and materials will be charged at actual cost for copies submitted to the City.
- D. **Monthly Invoices** All invoices must be submitted monthly for all services rendered in the previous month. The Consultant will invoice the City on forms approved by the City. All properly prepared invoices shall be accompanied by a documented breakdown of expenses incurred and description of work accomplished.
- E. **Fee Change** The maximum fee shall not be changed unless adjusted by Change Order mutually agreed upon by the City and the Consultant prior to incurrence of any expense. The Change Order will be for major changes in scope, time or complexity of Project.

Article VI General Provisions

- A. **Opinion of Probable Cost and Schedule:** Since the Consultant has no control over the cost of labor, materials or equipment furnished by Contractors, or over competitive bidding or market conditions, the opinion of probable Project cost, construction cost or project schedules are based on the experience and best judgment of the Consultant, but the Consultant cannot and does not guarantee the costs or that actual schedules will not vary from the Consultant's projected schedules.
- B. **Quantity Errors:** Negligent quantity miscalculations or omissions because of the Consultant's error shall be brought immediately to the City's attention. The Consultant shall not charge the City for the time and effort of checking and correcting the errors to the City's satisfaction.
- C. **Reuse of Consultant Documents:** All documents including the plans and specifications provided or furnished by the Consultant pursuant to this Agreement are instruments of service in respect of the Project. The Consultant shall retain an ownership and property interest upon payment therefore whether or not the Project is completed. The City may make and retain copies for the use by the City and others; however, such documents are not intended or suitable for reuse by the City or others as an extension of the Project or on any other Project. Any such reuse without written approval or adaptation by the Consultant for the specific purpose intended will be at the City's sole risk and without liability to the Consultant. The City shall indemnify and hold harmless the Consultant from all claims, damages, losses and expenses including attorney's fees arising out of or resulting reuse of the documents.
- D. **Reuse of City Documents** In a similar manner, the Consultant is prohibited from reuse or disclosing any information contained in any documents, plans or specifications relative to the Project without the expressed written permission of the City.
- E. **Insurance** The Consultant shall procure and maintain, at its expense, the following insurance coverage:
 - 1. Workers' Compensation -- Statutory Limits, with Employer's Liability limits of \$100,000 each employee, \$500,000 policy limit;
 - 2. Commercial General Liability for bodily injury and property damage liability claims with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate;
 - 3. Commercial Automobile Liability for bodily injury and property damage with limits of not less than \$1,000,000 each accident for all owned, non-owned and hired automobiles;
 - 4. Errors and omissions coverage of not less than \$1,000,000. Deductibles for any of the above coverage shall not exceed \$25,000 unless approved in writing by City.

5. In addition, Consultant agrees to require all consultants and sub-consultants to obtain and provide insurance in identical type and amounts of coverage together and to require satisfaction of all other insurance requirements provided in this Agreement.
- F. Insurance Carrier Rating** Consultant's insurance shall be from an insurance carrier with an A.M. Best rating of A-IX or better, shall be on the GL 1986 ISO Occurrence form or such other form as may be approved by City, and shall name, by endorsement to be attached to the certificate of insurance, City, and its divisions, departments, officials, officers and employees, and other parties as specified by City as additional insureds as their interest may appear, except that the additional insured requirement shall not apply to Errors and Omissions coverage. Such endorsement shall be ISO CG2010 11/85 or equivalent. "Claims Made" and "Modified Occurrence" forms are not acceptable, except for Errors and Omissions coverage. Each certificate of insurance shall state that such insurance will not be canceled until after thirty (30) days' unqualified written notice of cancellation or reduction has been given to the City, except in the event of nonpayment of premium, in which case there shall be ten (10) days' unqualified written notice. Subrogation against City and City's Agent shall be waived. Consultant's insurance policies shall be endorsed to indicate that Consultant's insurance coverage is primary and any insurance maintained by City or City's Agent is non-contributing as respects the work of Consultant.
- G. Insurance Certificates** Before Consultant performs any portion of the Work, it shall provide City with certificates and endorsements evidencing the insurance required by this Article. Consultant agrees to maintain the insurance required by this Article of a minimum of three (3) years following completion of the Project and, during such entire three (3) year period, to continue to name City, City's agent, and other specified interests as additional insureds thereunder.
- H. Waiver of Subrogation** Coverage shall contain a waiver of subrogation in favor of the City, and its subdivisions, departments, officials, officers and employees.
- I. Consultant Negligent Act** If due to the Consultant's negligent act, error or omission, any required item or component of the project is omitted from the Construction documents produced by the Consultant, the Consultant's liability shall be limited to the difference between the cost of adding the item at the time of discovery of the omission and the cost had the item or component been included in the construction documents. The Consultant will be responsible for any retrofit expense, waste, any intervening increase in the cost of the component, and a presumed premium of 10% of the cost of the component furnished through a change order from a contractor to the extent caused by the negligence or breach of contract of the Consultant or its subconsultants.
- J. Termination** This Agreement may be terminated by either party upon seven days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party; provided, however, the nonperforming party shall have 14 calendar days from the receipt of the termination notice to cure the failure in a manner acceptable to the other party. In any such case, the Consultant shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the payment provisions of this Agreement. Copies of all completed or partially completed designs, plans and specifications prepared under this Agreement shall be delivered to the City when and if this Agreement is terminated, but it is mutually agreed by the parties that the City will use them solely in connection with this Project, except with the written consent of the Consultant (subject to the above provision regarding Reuse of Documents).
- K. Controlling Law** This Agreement is to be governed by the laws of the State of Kansas.
- L. Indemnity** To the fullest extent permitted by law, with respect to the performance of its obligations in this Agreement or implied by law, and whether performed by Consultant or any sub-consultants hired by Consultant, the Consultant agrees to indemnify City, and its agents, servants, and employees from and against any and all claims, damages, and losses arising out of personal injury, death, or property damage, caused by the negligent acts, errors, or omissions of the Consultant or its sub-consultants, to the extent and in proportion to the comparative degree of fault of the

Consultant and its sub-consultants. Consultant shall also pay for City's reasonable attorneys' fees, expert fees, and costs incurred in the defense of such a claim to the extent and in proportion to the comparative degree of fault of the Consultant and its sub-consultants.

- M. Severability** Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Consultant, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.
- N. Notices** Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears on the signature page to this Agreement (as modified in writing from item to time by such party) and given personally, by registered or certified mail, return receipt requested, by facsimile or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.
- O. Successors and Assigns** The City and the Consultant each is hereby bound and the partners, successors, executors, administrators, legal representatives and assigns of the City and the Consultant are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, legal representatives and assigns of such other party in respect of all covenants and obligations of this Agreement.
- P. Written Consent to Assign** Neither the City nor the Consultant may assign, sublet, or transfer any rights under the Agreement without the written consent of the other, which consent shall not be unreasonably withheld; provided, Consultant may assign its rights to payment without Owner's consent, and except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Agreement.
- Q. Duty Owed by the Consultant** Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by the Consultant to any Contractor, subcontractor, supplier, other person or entity or to any surety for or employee of any of them, or give any rights or benefits under this Agreement to anyone other than the City and the Consultant.

IN WITNESS WHEREOF: the parties hereto have executed this Agreement to be effective as of the date first above written.

City:

City of Prairie Village, Kansas

By:

Laura Wassmer, Mayor

Address for giving notices:

City of Prairie Village
Department of Public Works
3535 Somerset Drive
Prairie Village, Kansas 66208

Telephone: 913-385-4640

Email: publicworks@pvkansas.com

ATTEST:

Joyce Hagen Mundy, City Clerk

Consultant:

Phelps Engineering, Inc.

By

Judd Claussen, P.E., Principal

Address for giving notices:

Phelps Engineering, Inc,
1270 N. Winchester
Olathe, KS 66061

Telephone: 913-393-1155

email: jclaussen@phelpsengineering.com

APPROVED AS TO FORM BY:

Catherine P. Logan, City Attorney

Exhibit A Detailed Scope of Services

In an effort to minimize the coordination during plan preparation, bidding and construction, the construction documents provided for under this contract will be incorporated into the site development construction documents for the Meadowbrook Development prepared by Phelps Engineering, Inc. The SMP eligible quantities will be tracked separately, and the following items being included in the construction documents prepared under this contract:

- Grading below the 2-year water surface elevation for each pond. Mass grading outside this limit will be included in the Site Development plans and fine grading for the park property will be included in the plans prepared by the Johnson County Park and Recreation Department.
- Dredging the existing ponds
- Grading associate with dam repairs or relocation
- All stream reshaping and restoration
- All outlet structures from the ponds
- Spillways
- Shoreline treatments
- Erosion and sediment control for pond reconstruction
- Coordination of regional detention pond improvements with the DEVELOPER and Johnson County Park and Recreation District.
- Coordination with the City of Overland Park for FEMA floodplain revisions

Task Series 1.0 - Project Management

1.1 - Project Definition and Goals (Schedule, Scope, Budget, etc.)-

One (1) meeting will be held at the onset of the project, prior to plan preparation, to discuss the scope, budget, schedule and overall goals of the project. The CONSULTANT will prepare a summary of the meeting.

1.2 - Progress Meetings and Project updates

One (1) Project Kick-off meeting and fifteen (15) progress meetings will be coordinated with the CITY, SMP, DEVELOPER and Johnson County Park and Recreation District by the CONSULTANT as needed to coordinate project goals and review design documents.

1.3 - Project Coordination

The CONSULTANT will field questions from CITY, utility companies, permitting entities, engineering sub-contractors, property owners and other entities associated with the project as directed by the CITY.

Task Series 2.0 - Data Collection

2.1- Boundary and alignment definition - By Others

2.2- Geotechnical Investigation

The CONSULTANT will complete up to ten (10) borings to determine the condition of the dams and depth to rock. The borings will be summarized in a bound geotechnical report, which includes boring logs, boring locations, methodologies, stability analysis and other pertinent data required to construct the project.

2.3- Topographic Survey - By Others

2.4 - Utility Coordination

The CONSULTANT will provide impacted utility companies with the topographic survey to verify the accuracy of the field location of their facilities. The CONSULTANT will coordinate and meet the utility locating services in the field to mark the location of the utilities. The utility companies will also be provided a preliminary construction schedule for the project.

2.5- Obtain Parcel Ownership Data - By Others

Task Series 3.0 - Public Involvement

3.1 - Initial Contact (before plans)

The CONSULTANT will prepare letters of notification for distribution to the land owners directly impacted by the project. The CITY will mail the letters via US Mail. The CITY will provide Johnson County AIMS data to obtain property owner names and addresses. The CONSULTANT will collect and log the responses in a GIS shapefile.

3.2 - Public Meetings (3)

The CITY will prepare and mail notifications and the CONSULTANT will coordinate exhibits and handouts for the meeting. The CITY is responsible for providing a location for the meeting, and for all fees associated with using the facility. The refreshments will be coordinated by the CONSULTANT as required and the costs plus 10% will be paid by CITY. The CONSULTANT will document attendance, property owner feedback and action items for follow up.

3.3 - Involvement during plan preparation

The CONSULTANT will address questions raised from property owners during the course of the project.

3.4 - Individual Property Owner Meetings

The CONSULTANT shall meet with property owners throughout the project as requested with a maximum of ten (10) meetings.

3.5 - Log of Public Contact and Comments

The CONSULTANT will maintain a record of all contact with property owners and provide CITY with weekly updates. The records shall be a matrix format containing property owner name, address, phone number, concern and resolution.

Task Series 4.0 - Preparation of Preliminary Plans

4.1 - Quality Control and Assurance

The CONSULTANT will provide full time quality assurance through its senior team members. Once the conceptual design is complete, an internal project review meeting will be held to ensure that the proposed design is efficient and meets the CITY's goals for the project. At the completion of the plans a senior team member will review the plans for correct project notes, design elements and grammatical and drafting errors. This shall be completed prior to plan submittal to the CITY. The plans shall meet the requirements of a preliminary submittal to the Johnson County SMAC program.

4.2 - Preliminary Plan Deliverables

The preliminary plans shall include the items defined in Article III and will be drawn at a scale of Horizontal 1:20, Vertical 1:5 unless otherwise noted.

4.3 - Utility Coordination

The CONSULTANT will provide impacted utility companies with the preliminary plans to begin relocation design. The utility companies will also be provided an updated construction schedule for the project.

4.4 - Modeling and Summary Report

The CONSULTANT will obtain the effective FEMA HEC-1 and HEC-RAS files and shall be reimbursed for data acquisition costs by the CITY. The CONSULTANT will complete hydrologic and hydraulic analyses using HEC-1 and HEC-RAS to determine the size of all hydraulic structures and geometry for the regional detention ponds. The Indian Creek Watershed Study Low Adjacent Grade survey data will be used to determine the depth of building and roadway flooding.

Task Series 5.0 - Preparation of Field Check Plans

5.1 - Quality Control and Assurance

The CONSULTANT will provide full time quality assurance through its senior team members. Once the field check design is complete, an internal project review meeting will be held to ensure that the proposed design is efficient and meets the CITY's goals for

the project. At the completion of the plans a senior team member will review the plans for correct project notes, design elements and grammatical and drafting errors. This shall be completed prior to plan submittal to the CITY.

5.2 - Field Check Plan Deliverables

The field check plans shall include the following item outlined in Article III and will be drawn at a scale of Horizontal 1:20, Vertical 1:5 unless otherwise noted.

5.3 - Utility Coordination

The CONSULTANT will provide impacted utility companies with the field check plans to finalize utility relocation design and to schedule relocations. The utility companies will also be provided an updated construction schedule for the project. The CONSULTANT will coordinate the utility meeting.

Task Series 6.0 - Preparation of Office Check Plans

6.1 - Quality Control and Assurance

The CONSULTANT will provide full time quality assurance through its senior team members. Once the office design is complete, an internal project review meeting will be held to ensure that the proposed design is efficient and meets the CITY's goals for the project. At the completion of the plans a senior team member will review the plans for correct project notes, design elements and grammatical and drafting errors. This shall be completed prior to plan submittal to the CITY.

6.2 - Office Check Plan Deliverables

The preliminary plans shall include the items identified in Article III and will be drawn at a scale of Horizontal 1:20, Vertical 1:5 unless otherwise noted.

6.3 - Utility Coordination

The CONSULTANT will provide impacted utility companies with the office check plans to finalize utility relocation design and schedule relocations. The utility companies will also be provided an updated construction schedule for the project. The CONSULTANT will coordinate a second utility meeting.

Task Series 7.0 - Easements and Land Acquisition - Not Required

Task Series 8.0 - Permitting

8.1 - Permit Determination

The CONSULTANT will, on the CITY's behalf, determine the necessity and prepare applications for permits required to complete the project including, NPDES, DWR, COE and FEMA. If the permitting agencies require additional plans, exhibits, or effort beyond securing a standard permit, the CONSULTANT will notify CITY and an additional fee will be negotiated.

8.2 - KDHE Land Disturbance Permit (NPDES)

The CONSULTANT will, on the CITY's behalf, prepare an application for an NPDES permit. The application will include preparation of a Storm Water Pollution Plan (SWPPP). The CITY will reimburse the CONSULTANT for all application and permit fees.

8.3 - US Army Corps of Engineers

The CONSULTANT will, on the CITY's behalf, prepare an application for a Nationwide 404 permit for the construction of the pond enlargements and the stream improvements. The COE does not collect application fees, and no mitigation fees are anticipated.

8.4 - Kansas Department of Agriculture, Division of Water Resources

The CONSULTANT will, on the CITY's behalf, prepare a determination of permits confirming that structure and stream obstruction permits are not required because the drainage area is less than 640 acres and the ponds do not qualify as regulated structures. If DWR requires any additional permit applications, the CITY and

CONSULTANT will negotiate a separate fee. The CITY will reimburse the CONSULTANT for all application and permit fees.

8.5 - City of Prairie Village

The CONSULTANT will, on the CITY's behalf, prepare applications for City of Prairie Village Land Disturbance, Floodplain Development and Right-of-Way work permits. The CITY will be responsible for all application and permit fees.

8.6 - FEMA

The CONSULTANT will, on the CITY's behalf, prepare applications for a FEMA LOMR prior to construction after the project is complete. The CITY will be responsible for all application and review fees.

Task Series 9.0 - Bidding and Award of Contract

9.1 - Distribute Plans

The CONSULTANT will provide the CITY with digital copies of the plans and specifications for distribution using Public Purchase. The CITY will coordinate with Public Purchase to advertise the project. The CITY shall be responsible for fees directly related to plan distribution and hardcopies as requested.

9.2 - Assist with Project Inquiries and Addenda

The CONSULTANT will provide clarifications to inquiries from the plan holders regarding the contract documents and plans. The CONSULTANT will prepare addenda to clarify or modify the contract documents as necessary.

9.3 - Attend Bid and Recommend Contractor

The CONSULTANT will attend the project letting and provide a letter of recommendation to CITY. Additionally, the CONSULTANT will prepare an opinion of probable cost for the letting.

Task Series 10.0 - Construction Services

10.1 - Construction Services

After the construction contract has been awarded, the CONSULTANT will prepare contract documents for the contractor, coordinate a pre-construction conference, review shop drawings and respond to Requests for Information (RFI) during construction.

Task Series 11.0 - Project Completion

11.1 - Final Inspection with City Inspector

The CONSULTANT will assist the CITY with completion of a final inspection of the project, and one (1) follow up visit to the site to verify the work was satisfactorily completed.

11.2 - Record Documents

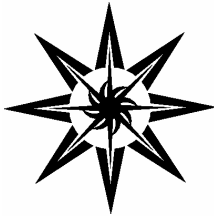
The CONSULTANT will prepare record drawing of the project, which will be provided in hardcopy and pdf format. The record documents will include geometric changes documented by the CITY's inspector.

11.3 - Recommend Final Payment

The CONSULTANT will recommend final payment to the contractor at the completion of task 11.1.

11.4 - Permit closeout

At the completion of the project the CONSULTANT will notify the permitting agencies identified in Task 8.1 that the project is complete and request that the permit be cancelled. The CONSULTANT will provide up to ten (10) LOMA surveys and applications for homes removed from the floodplain.



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: May 2, 2016

Council Meeting Date: May 2, 2016

CONSIDER DESIGN AGREEMENT WITH PHELPS ENGINEERING FOR THE 2016 SMAC STORMWATER DESIGN WORK FOR THE MEADOWBROOK PROJECT(MBDRAINX)

RECOMMENDATION

Move to approve the Design agreement with Phelps Engineering for the 2016 SMAC Stormwater Design work for the Meadowbrook Project(MBDRAINX) for \$ 198,275.

BACKGROUND

Phelps Engineering is the engineering firm that was selected by Van Trust for the Meadowbrook Development project and they have done significant work related to the ponds on the site. The SMAC project includes grading the existing ponds to make them larger to create a regional detention benefit for downstream roads and homes that currently flood. Given Phelps' involvement with the project we selected them to do the design work for the SMAC project. This design fee includes all the work necessary to develop the SMAC project which includes the regional detention ponds as well channel restoration work on the project site. The design will meet all County SMAC requirements. The fees have been reviewed, compared and are found to be reasonable in the market.

SMAC approval of this project is anticipated prior to execution of this agreement and will fund 75% of the design fee.

Execution of this agreement will take place on May 17, 2016, the date of Bond Closing.

FUNDING SOURCE

75% of the fee will be funded by the County SMAC program.

The remaining 25% of the fee will utilize TIF funds.

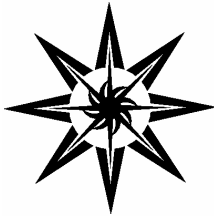
ATTACHMENTS

1. Design Agreement for the SMAC project with Phelps Engineering

PREPARED BY

Keith Bredehoeft, Public Works Director

April 27, 2016



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: May 2, 2016

Council Meeting Date: May 2, 2016

CONSIDER DESIGN AGREEMENT WITH PHELPS ENGINEERING FOR 2016 MEADOWBROOK PUBLIC STREET IMPROVEMENTS (MBSTREET)

RECOMMENDATION

Move to approve the Design agreement with Phelps Engineering for the 2016 Meadowbrook Public Street Improvements(MBSTREET) for \$ 49,995.00.

BACKGROUND

Phelps Engineering is the engineering firm that was selected by Van Trust for the Meadowbrook Development project. Work to date, including all work to develop the plans through final completion, will be paid by VanTrust and will be reimbursed by TIF funds after Bond closing. This agreement with Phelps and the City of Prairie Village includes all work necessary for the public street improvements going forward including the acceptance of the final plans for the public street work that have been developed to date. This contract includes the work to make plan adjustments, attend field meetings, and to support the construction process. The fees have been reviewed, compared and are found to be reasonable in the market.

Execution of this agreement will take place on May 17, 2016, the date of Bond Closing.

FUNDING SOURCE

The Meadowbrook TIF will fund this contract.

ATTACHMENTS

1. Design Agreement with Phelps Engineering

PREPARED BY

Keith Bredehoeft, Public Works Director

April 27, 2016

AGREEMENT FOR PROFESSIONAL ENGINEER

For

DESIGN, PERMITTING, AND CONSTRUCTION SERVICES

Of

**MEADOWBROOK PARK PUBLIC STREET IMPROVEMENTS
PROJECT NO. MBSTREET**

THIS AGREEMENT, made at the Prairie Village, Kansas, this ___ day of _____, by and between the City of Prairie Village, Kansas, a municipal corporation with offices at 7700 Mission Road, Prairie Village, Kansas, 66208, hereinafter called the “**City**”, and **Phelps Engineering, Inc.**, a corporation with offices at 1270 N. Winchester, Olathe, KS 66061, hereinafter called the “**Consultant**”.

WITNESSED, THAT WHEREAS, City has determined a need to retain a professional engineering firm to provide services for the Meadowbrook Public Street Improvements hereinafter called the “**Project**”,

AND WHEREAS, the City is authorized and empowered to contract with the Consultant for the necessary consulting services for the Project,

AND WHEREAS, the City has the necessary funds for payment of such services,

NOW THEREFORE, the City hereby hires and employs the Consultant as set forth in this Agreement effective the date first written above.

Article I City Responsibilities

- A. Project Definition** The City, in coordination with MB-18, LLC (the “Developer”) is preparing to redevelop the existing golf course. The work in this contract is for the public street design of Meadowbrook Parkway, Rosewood, and intersection improvements on Nall Avenue and Roe where each intersects Meadowbrook Parkway (the “Project”). The construction work will include grading, storm sewers, paving, lighting, and restoration. The engineering services will include preparing of construction documents, coordination and permitting with City / Developer / utilities, preparing permit applications, coordinating with utility providers, and administrative services during construction.
- B. City Representative** The City shall in a timely manner designate, Keith Bredehoeft, Public Works Director, to act as the City’s representative with respect to the services to be performed or furnished by the Consultant under this Agreement. Such person shall have authority to transmit instructions, receive information, interpret and define the City’s policies and decisions with respect to the Consultant’s services for the Project.
- C. Existing Data and Records** The City shall make available to the Consultant all existing data and records relevant to the Project such as, maps, plans, correspondence files and other information possessed by the City that is relevant to the Project. Consultant shall not be responsible for

verifying or ensuring the accuracy of any information or content supplied by City or any other Project participant unless specifically defined by the scope of work, nor ensuring that such information or content does not violate or infringe any law or other third party rights. However, Consultant shall promptly advise the City, in writing, of any inaccuracies in the information provided or any other violation or infringement of any law or third party rights that Consultant observes. City shall indemnify Consultant for any infringement claims resulting from Consultant's use of such content, materials or documents.

- D. **Review For Approval** The City shall review all criteria, design elements and documents as to the City requirements for the Project, including objectives, constraints, performance requirements and budget limitations.
- E. **Standard Details** The City shall provide copies of all existing standard details and documentation for use by the Consultant for the project.
- F. **Submittal Review** The City shall diligently review all submittals presented by the Consultant in a timely manner.
- G. **Correspondence to Property Owners** Obtain mailing list and approve all correspondence to property owners in the project area. Typical, but not all inclusive, correspondence is:
 - 1. *This item is not applicable.*

Article II Consultant Responsibilities

- A. **Professional Engineering Services** The Consultant shall either perform for or furnish to the City professional engineering services and related services in all phases of the Project to which this Agreement applies as hereinafter provided.
- B. **Prime Consultant** The Consultant shall serve as the prime professional Consultant for the City on this Project
- C. **Standard Care** The standard of care for all professional consulting services and related services either performed for or furnished by the Consultant under this Agreement will be the care and skill ordinarily used by members of the Consultant's profession, practicing under similar conditions at the same time and in the same locality.
- D. **Consultant Representative** Designate a person to act as the Consultant's representative with respect to the services to be performed or furnished by the Consultant under this Agreement. Such person shall have authority to transmit instructions, receive information, and make decisions with respect to the Consultant's services for the Project.

Article III Scope of Services

- 1. See Exhibit A

Article IV Time Schedule

- A. **Timely Progress** The Consultant's services under this Agreement have been agreed to in anticipation of timely, orderly and continuous progress of the Project.

- B. Authorization to Proceed** If the City fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, the Consultant shall be entitled to equitable adjustment of rates and amounts of compensations to reflect reasonable costs incurred by the Consultant as a result of the delay or changes in the various elements that comprise such rates of compensation.
- C. Default** Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and delay in or inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either City or Consultant under this Agreement. Should such circumstances occur, the consultant shall within a reasonable time of being prevented from performing, give written notice to the City describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.
- D. Completion Schedule** Recognizing that time is of the essence, the Consultant proposes to complete the scope of services as specified in the Scope of Services:

CONSULTANT Scope is Construction Services and is dependent on contractor's schedule with the owner. It is expected that contractor's substantial completion will be by End of November 2016, with final completion by End of December 2016. All work is expected to be done by December 31, 2016.

Article V Compensation

- A. Maximum Compensation** The City agrees to pay the Consultant as maximum compensation for the scope of services as described in Exhibit A, but solely from the proceeds of TIF Bonds, the following fees:

Task Series 1.0 - 8.0 has been completed under a separate contractor with Developer

Task Series 9.0 and 10.0	Total Maximum Fee \$ 49,995
--------------------------	-----------------------------

- B. Invoices** The compensation will be invoiced by phase, detailing the position, hours and appropriate hourly rates (which include overhead and profit) for Consultant's personnel classifications and the Direct Non-Salary Costs.
- C. Direct Non-Salary Costs** The term "Direct Non-Salary Costs" shall include the Consultant payments in connection with the Project to other consultants, transportation, and reproduction costs. Payments will be billed to the City at actual cost. Transportation, including use of survey vehicle or automobile will be charged at the IRS rate in effect during the billing period. Reproduction work and materials will be charged at actual cost for copies submitted to the City.
- D. Monthly Invoices** All invoices must be submitted monthly for all services rendered in the previous month. The Consultant will invoice the City on forms approved by the City. All properly prepared invoices shall be accompanied by a documented breakdown of expenses incurred and description of work accomplished.

- E. Fee Change** The maximum fee shall not be changed unless adjusted by Change Order mutually agreed upon by the City and the Consultant prior to incurrence of any expense. The Change Order will be for major changes in scope, time or complexity of Project.

Article VI General Provisions

- A. Opinion of Probable Cost and Schedule:** Since the Consultant has no control over the cost of labor, materials or equipment furnished by Contractors, or over competitive bidding or market conditions, the opinion of probable Project cost, construction cost or project schedules are based on the experience and best judgment of the Consultant, but the Consultant cannot and does not guarantee the costs or that actual schedules will not vary from the Consultant's projected schedules.
- B. Quantity Errors:** Negligent quantity miscalculations or omissions because of the Consultant's error shall be brought immediately to the City's attention. The Consultant shall not charge the City for the time and effort of checking and correcting the errors to the City's satisfaction.
- C. Reuse of Consultant Documents:** All documents including the plans and specifications provided or furnished by the Consultant pursuant to this Agreement are instruments of service in respect of the Project. The Consultant shall retain an ownership and property interest upon payment therefore whether or not the Project is completed. The City may make and retain copies for the use by the City and others; however, such documents are not intended or suitable for reuse by the City or others as an extension of the Project or on any other Project. Any such reuse without written approval or adaptation by the Consultant for the specific purpose intended will be at the City's sole risk and without liability to the Consultant. The City shall indemnify and hold harmless the Consultant from all claims, damages, losses and expenses including attorney's fees arising out of or resulting reuse of the documents.
- D. Reuse of City Documents** In a similar manner, the Consultant is prohibited from reuse or disclosing any information contained in any documents, plans or specifications relative to the Project without the expressed written permission of the City.
- E. Insurance** The Consultant shall procure and maintain, at its expense, the following insurance coverage:
1. Workers' Compensation -- Statutory Limits, with Employer's Liability limits of \$100,000 each employee, \$500,000 policy limit;
 2. Commercial General Liability for bodily injury and property damage liability claims with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate;
 3. Commercial Automobile Liability for bodily injury and property damage with limits of not less than \$1,000,000 each accident for all owned, non-owned and hired automobiles;
 4. Errors and omissions coverage of not less than \$1,000,000. Deductibles for any of the above coverage shall not exceed \$25,000 unless approved in writing by City.
 5. In addition, Consultant agrees to require all consultants and sub-consultants to obtain and provide insurance in identical type and amounts of coverage together and to require satisfaction of all other insurance requirements provided in this Agreement.
- F. Insurance Carrier Rating** Consultant's insurance shall be from an insurance carrier with an A.M. Best rating of A-IX or better, shall be on the GL 1986 ISO Occurrence form or such other form as may be approved by City, and shall name, by endorsement to be attached to the certificate of insurance, City, and its divisions, departments, officials, officers and employees, and other parties

as specified by City as additional insureds as their interest may appear, except that the additional insured requirement shall not apply to Errors and Omissions coverage. Such endorsement shall be ISO CG2010 11/85 or equivalent. "Claims Made" and "Modified Occurrence" forms are not acceptable, except for Errors and Omissions coverage. Each certificate of insurance shall state that such insurance will not be canceled until after thirty (30) days' unqualified written notice of cancellation or reduction has been given to the City, except in the event of nonpayment of premium, in which case there shall be ten (10) days' unqualified written notice. Subrogation against City and City's Agent shall be waived. Consultant's insurance policies shall be endorsed to indicate that Consultant's insurance coverage is primary and any insurance maintained by City or City's Agent is non-contributing as respects the work of Consultant.

- G. Insurance Certificates** Before Consultant performs any portion of the Work, it shall provide City with certificates and endorsements evidencing the insurance required by this Article. Consultant agrees to maintain the insurance required by this Article of a minimum of three (3) years following completion of the Project and, during such entire three (3) year period, to continue to name City, City's agent, and other specified interests as additional insureds thereunder.
- H. Waiver of Subrogation** Coverage shall contain a waiver of subrogation in favor of the City, and its subdivisions, departments, officials, officers and employees.
- I. Consultant Negligent Act** If due to the Consultant's negligent act, error or omission, any required item or component of the project is omitted from the Construction documents produced by the Consultant, the Consultant's liability shall be limited to the difference between the cost of adding the item at the time of discovery of the omission and the cost had the item or component been included in the construction documents. The Consultant will be responsible for any retrofit expense, waste, any intervening increase in the cost of the component, and a presumed premium of 10% of the cost of the component furnished through a change order from a contractor to the extent caused by the negligence or breach of contract of the Consultant or its subconsultants.
- J. Termination** This Agreement may be terminated by either party upon seven days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party; provided, however, the nonperforming party shall have 14 calendar days from the receipt of the termination notice to cure the failure in a manner acceptable to the other party. In any such case, the Consultant shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the payment provisions of this Agreement. Copies of all completed or partially completed designs, plans and specifications prepared under this Agreement shall be delivered to the City when and if this Agreement is terminated, but it is mutually agreed by the parties that the City will use them solely in connection with this Project, except with the written consent of the Consultant (subject to the above provision regarding Reuse of Documents).
- K. Controlling Law** This Agreement is to be governed by the laws of the State of Kansas.
- L. Indemnity** To the fullest extent permitted by law, with respect to the performance of its obligations in this Agreement or implied by law, and whether performed by Consultant or any sub-consultants hired by Consultant, the Consultant agrees to indemnify City, and its agents, servants, and employees from and against any and all claims, damages, and losses arising out of personal injury, death, or property damage, caused by the negligent acts, errors, or omissions of the Consultant or its sub-consultants, to the extent and in proportion to the comparative degree of fault of the Consultant and its sub-consultants. Consultant shall also pay for City's reasonable attorneys' fees, expert fees, and costs incurred in the defense of such a claim to the extent and in proportion to the comparative degree of fault of the Consultant and its sub-consultants.

- M. Severability** Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Consultant, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.
- N. Notices** Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears on the signature page to this Agreement (as modified in writing from item to item by such party) and given personally, by registered or certified mail, return receipt requested, by facsimile or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.
- O. Successors and Assigns** The City and the Consultant each is hereby bound and the partners, successors, executors, administrators, legal representatives and assigns of the City and the Consultant are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, legal representatives and assigns of such other party in respect of all covenants and obligations of this Agreement.
- P. Written Consent to Assign** Neither the City nor the Consultant may assign, sublet, or transfer any rights under the Agreement without the written consent of the other, which consent shall not be unreasonably withheld; provided, Consultant may assign its rights to payment without Owner's consent, and except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Agreement.
- Q. Duty Owed by the Consultant** Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by the Consultant to any Contractor, subcontractor, supplier, other person or entity or to any surety for or employee of any of them, or give any rights or benefits under this Agreement to anyone other than the City and the Consultant.

IN WITNESS WHEREOF: the parties hereto have executed this Agreement to be effective as of the date first above written.

City:

City of Prairie Village, Kansas

By:

Laura Wassmer, Mayor

Address for giving notices:

City of Prairie Village
Department of Public Works
3535 Somerset Drive
Prairie Village, Kansas 66208

Telephone: 913-385-4640

Email: publicworks@pvkansas.com

ATTEST:

Joyce Hagen Mundy, City Clerk

Consultant:

Phelps Engineering, Inc.

By

Judd Claussen, P.E., Principal

Address for giving notices:

Phelps Engineering, Inc,
1270 N. Winchester
Olathe, KS 66061

Telephone: 913-393-1155

email: jclaussen@phelpsengineering.com

APPROVED AS TO FORM BY:

Catherine P. Logan, City Attorney

Exhibit A Detailed Scope of Services

Task Series 1.0-8.0 - Design & Permitting

City and CONSULTANT acknowledge and agree that the aspects of the Project consisting of design and construction document preparation and some permitting with authorities having jurisdiction (the "Completed Services") was completed by CONSULTANT under a separate contract with the Developer. The Completed Services have been reviewed and approved by the City Public Works Director for bid letting. Consultant hereby assigns the Completed Services to City, and Consultant covenants and agrees that the provisions of this Agreement, to the extent applicable, and including, but not limited to, Article II "Consultant Responsibilities", Section C. "Standard of Care", and Article IV "General Provisions", Section I. "Consultant Negligent Act", and Section L. "Indemnity", shall apply to the Completed Services for the benefit of the City, and that the City is the beneficiary of and may exercise remedies under this Agreement if there is a failure or breach relating to CONSULTANT'S obligations, including but not limited to standard of care, relating to the Completed Services.

Task Series 9.0 - Permitting

9.1 - Permit Determination

The CONSULTANT will, on the CITY's behalf, determine the necessity and prepare applications for permits required to complete the project including, NPDES, DWR, COE and FEMA. If the permitting agencies require additional plans, exhibits, or effort beyond securing a standard permit, the CONSULTANT will notify CITY and an additional fee will be negotiated.

9.2 - KDHE Land Disturbance Permit (NPDES)

The CONSULTANT will, on the CITY's behalf, prepare an application for an NPDES permit. The application will include preparation of a Storm Water Pollution Plan (SWPPP). The CITY will reimburse the CONSULTANT for all application and permit fees.

9.3 - US Army Corps of Engineers

(By Others - Burns and McDonnell is providing this service directly for the Developer)

9.4 - Kansas Department of Agriculture, Division of Water Resources

Not applicable - drainage area less than 1 sq. mile.

9.5 - City of Prairie Village

The CONSULTANT will, on the CITY's behalf, prepare applications for City of Prairie Village Land Disturbance, Floodplain Development and Right-of-Way work permits. The CITY will be responsible for all application and permit fees.

9.6 - FEMA

Not applicable

Task Series 10.0 - Construction Services

10.1 - Pre-construction meeting

After the construction contract has been awarded, the CONSULTANT will attend a pre-construction conference

10.2 - Questions during construction

PEI shall assist the City's inspector in answering any technical questions relating to the intent of the design drawings. PEI shall issue addenda or change directives as may be necessary.

10.3 - Submittals

Review shop drawings and material submittals.

10.4 - Site visits during construction

Site visits during construction as may be needed or requested by City. Allowance provided.

10.5 - Final Observation with City Inspector

The CONSULTANT will assist the CITY with completion of a final observation of the project, develop punch list and one (1) follow up visit to the site to verify the work was satisfactorily completed.

10.6 - Record Documents

The CONSULTANT will prepare record drawing of the project, which will be provided in hardcopy and pdf format. The record documents will include field construction changes documented by the CITY's inspector.

10.7 - Recommend Final Payment

The CONSULTANT will recommend final payment to the contractor at the completion of task 11.1.

10.8 - Permit closeout

At the completion of the project the CONSULTANT will notify the permitting agencies identified in Task 8.1 that the project is complete and request that the permit be closed.



\$406,800 Appraised Value 2015
Ward 3



PRAIRIE VILLAGE

2015 Exterior Grant Program

Exterior Grant Program Brochure

- Maintaining a positive image is important to the City. The appearance of our **neighborhoods** plays a vital role in the perception of the quality of the community. The City wants to encourage homeowners to invest in their properties by making improvements on their building exteriors. The improved appearance of homes will make **our neighborhoods** more attractive and contribute to the enhanced **viability of the area** and the **community**.

Origin of Exterior Grant

- Background: Homes are well built and facing maintenance problems that come with age.
- Eligibility: located within grant improvement area, taxes current, property insurance in effect, and conform to City Code.
- Areas were chosen using map of **codes violations** from 2003-2005.
- Awareness and promotion of program: codes inspectors give out to homes with violations within designated areas, press release, and Village Voice.

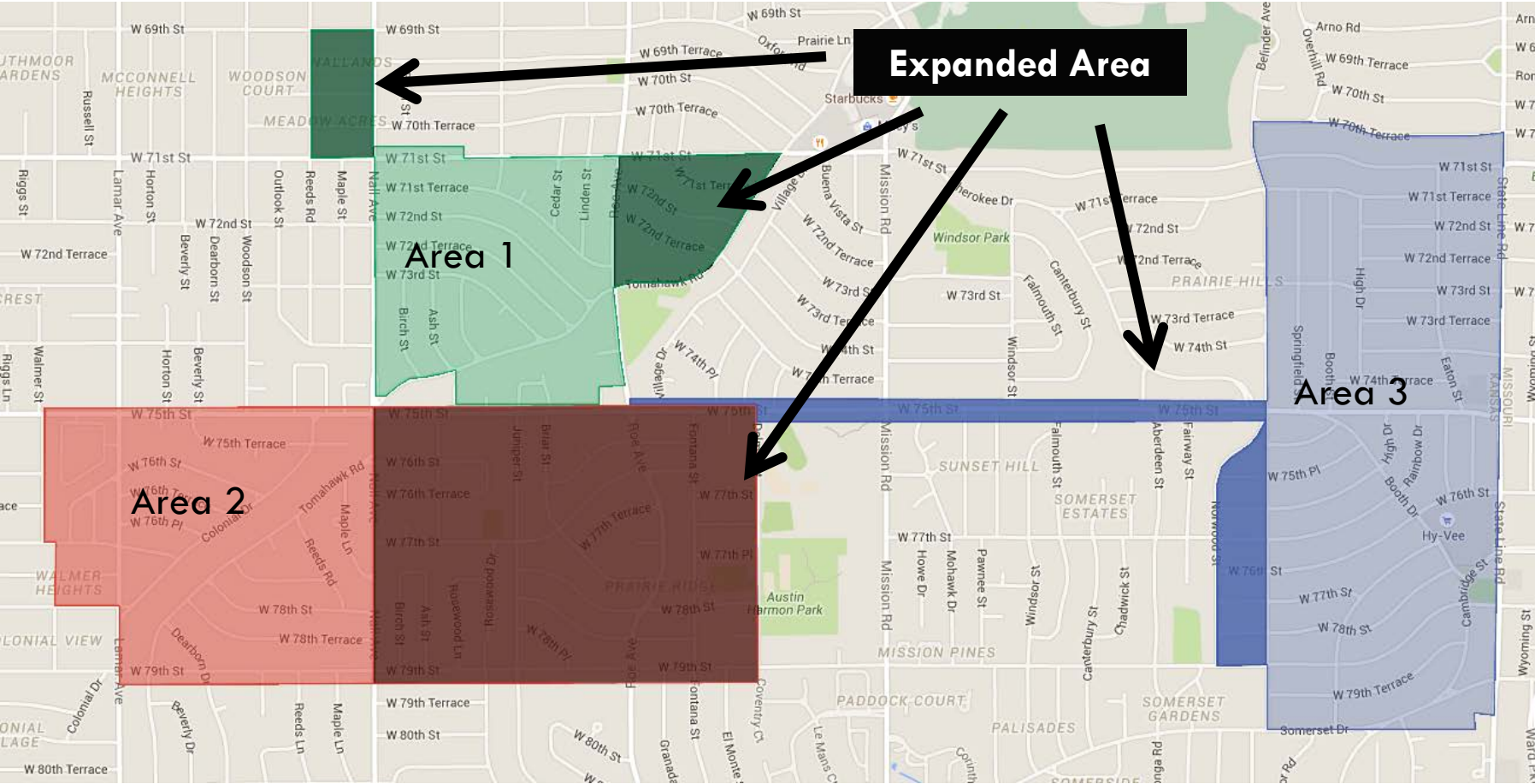
Timeline of Exterior Grant

- December 3, 2007 Under old business, at request of Councilmember Michael Kelly, staff did preliminary research into an exterior grant program. A vote was taken to pursue additional research. (9-1)
- February 19, 2008 Final presentation to Council by Michael Kelly. No discussion noted.
- March 3, 2008 Passed Council #13 on Consent Agenda with no Council discussion.

2010 Exterior Grant Changed

- “Staff recommended minor boundary changes **noting code issues** west of Tomahawk but to the east is generally well maintained.”
- Charles Clark “...assist property owners with **code issues** to improve their property.”
- Staff stated “...property does not have to have **code violations**...although that was the **impetus for establishing the program**.”
- Staff “**did not believe that the boundary changes would incur more applications** because of the scope of the projects.”

2010 Map



Darker areas represent expansion since 2008

Original Map vs. 2015 Map

- 2008 Map – 1.1 square miles
- 2015 Map – 1.69 square miles
- Since 2008, 0.59 square mile increase (approx.)
 - ▣ Area 1: .08 sq. mile increase (33%) – Ward 2
 - ▣ Area 2: .41 sq. mile increase (124%) – Wards 2 and 4
 - ▣ Area 3: .10 sq. mile increase (20%) – Wards 3 and 6
 - ▣ OVERALL 53% increase since 2008
- ▣ **75%** of Prairie Village is **NOT** eligible for a grant

Issues with Current Program

- We are **subsidizing homes** with appraised values over \$200,000 (24%), including one recipient's (2015) **appraisal value of \$406,000**.
- The program is not being used in the manner which was intended and approved.
- In the last three years, **only 2 of 73** recipients were directly related to a documented **codes violation**.
- The March 1 application date doesn't serve code violations in a timely way if violations occur March 2 through January.
- Those receiving code violations often can't afford the \$5,000 minimum required expenditure.
- It includes new construction.
- Excludes 75% of the tax paying residents.
- Designated "areas" are arbitrary.

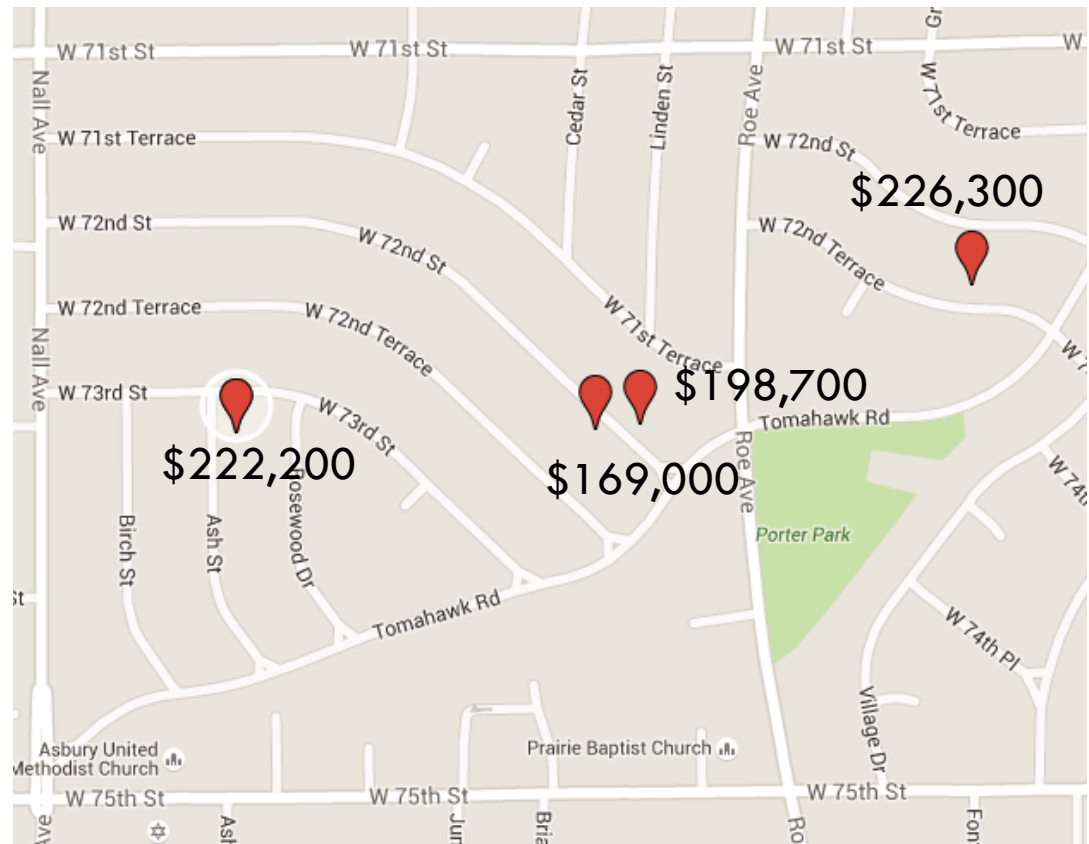
Area 1 - Grants Awarded 2015

Average Home Value: \$204,275

□ 4 Grants Awarded

- 4821 W 72nd St
- 4808 W 72nd St
- 4500 W 72nd Ter
- 7305 Ash St

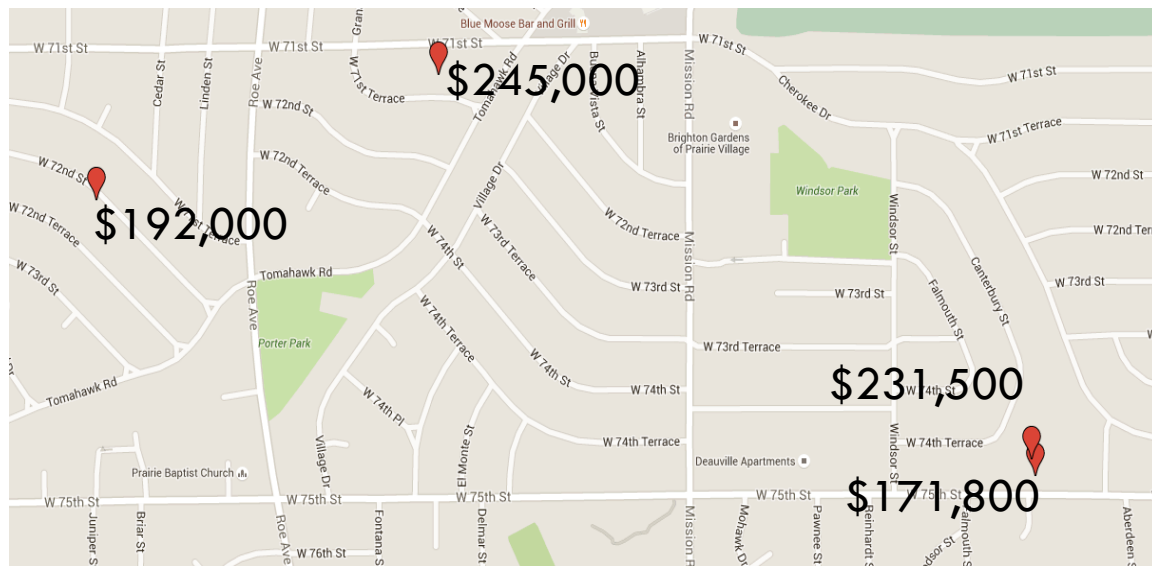
□ WARD 2



Area 1 - Grants Awarded 2016

Average Home Value: \$210,075

- Ward 2
- 3218 W. 75th Street
- 4320 W. 71st Terrace
- 5009 W. 72nd Street
- 3214 W. 75th Street



Area 2 – 8 Grants Awarded 2015

Average Home Value \$150,737

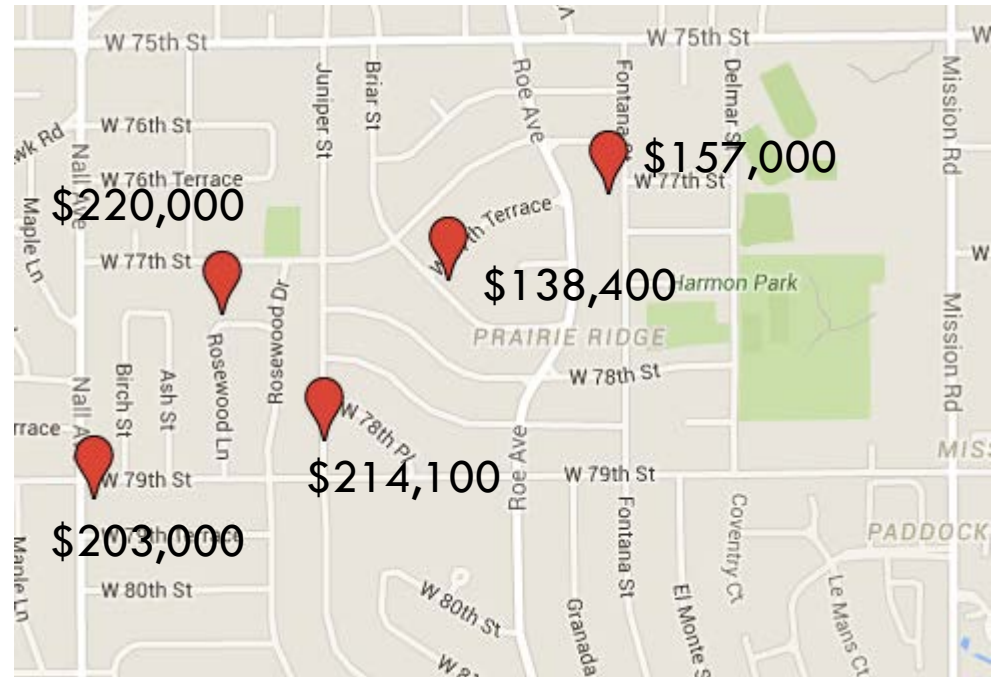
- 7738 Ash St
- 6007 W 75th Ter
- 7701 Tomahawk Rd
- 7535 Fontana St
- 7521 Colonial Dr
- 5501 W 79th St
- 4504 W 78th St
- 7732 Maple St
- WARD 2: \$139,000
- WARD 4: \$185,600



Area 2 – Grants Awarded 2016

Average Home Value: \$178,125

- Ward 4
- 7717 Briar Drive
- 7704 Rosewood
- 7712 Fontana
- 7848 Juniper Street
- 5417 W. 79th Street

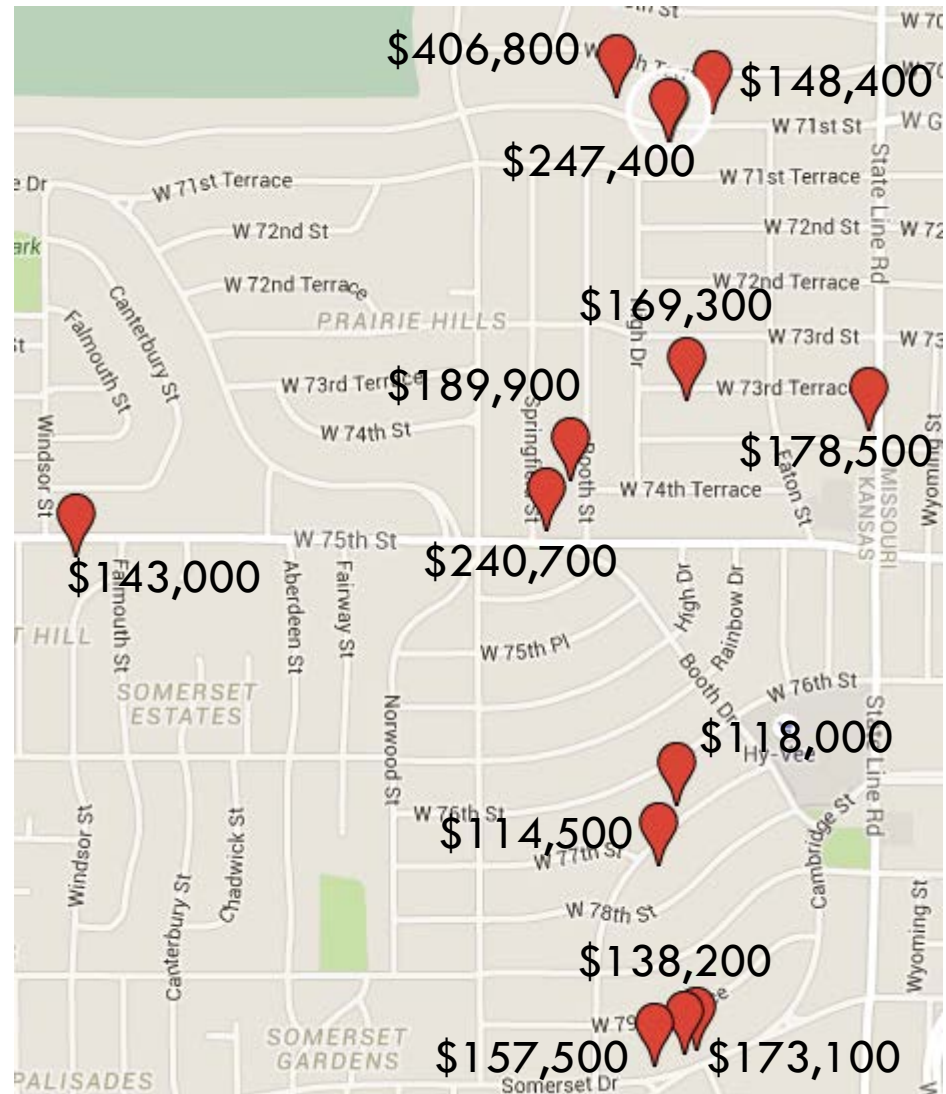


Area 3 - Grants Awarded 2015

WARD 3: Average \$216,328

WARD 6: Average \$140,716

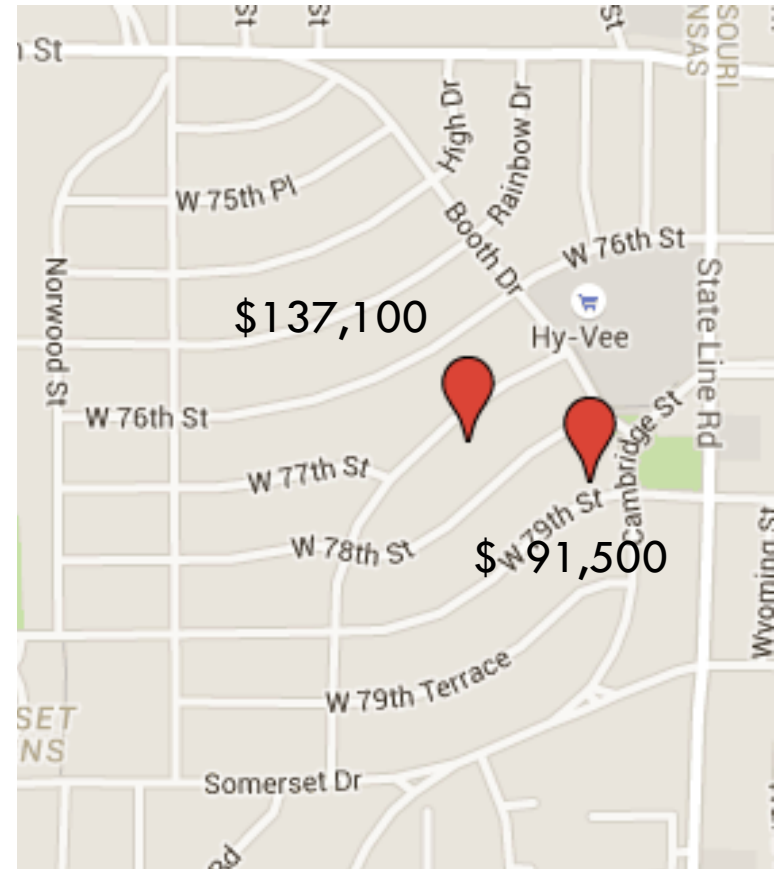
- 13 Grants Awarded
 - ▣ 2324 Somerset Dr
 - ▣ 2301 W 73rd Ter
 - ▣ 2226 W 71st St
 - ▣ 1900 W 74th St
 - ▣ 2408 W 71st St
 - ▣ 2300 Somerset Dr
 - ▣ 7420 Booth St
 - ▣ 7447 Springfield St
 - ▣ 2306 Somerset Dr
 - ▣ 3405 W 75th St
 - ▣ 2333 W 77th St
 - ▣ 2310 W 77th St
 - ▣ 2311 W 71st St
 - ▣ **AVERAGE: \$181,484**



Area 3 – Grants Awarded 2016

Average Home Value \$114,300

- Ward 6
- 2108 W. 79th Street
- 2307 W. 77th Street



Recipient's of Exterior Grant

Johnson County Appraisal Averages

	2010	2011	2012	2013	2014	2015
Area 1	\$144k	\$162k	\$177k	\$167k	\$177k	\$204k
WARD 2						
Area 2	\$191k	\$139k	\$148k	\$188k	\$133k	\$151k
WARD 2 and 4						
Area 3	\$124k	\$154k	\$158k	\$129k	\$161k	\$181k
WARD 3 and 6						

Area 3

Before



After



Area 3

Before

- ❑ New windows (front and back), driveway, and front fence
- ❑ Improvements made to landscaping in front of home

After



2016 Exterior Grant Information

- As of today...
- 11 grant requests
- Average appraisal value: \$182,000
- * Highest being \$245,000 (front windows, paint, gutters, and siding repair)
- Total allocated money: \$21,000

Proposed Changes

- **All** Prairie Village residents are eligible for grant money as long as they meet the agreed upon criteria.
- A Johnson County Appraisal accompanies the application and would not exceed \$175k appraised value.
 - This would include 3,769 homes that would now qualify.
- Offer the program on a twice a year (March 15 and June 15) with \$25,000 for each application deadline in order to address codes violations in a more timely manner not to exceed \$50k.
- ~~Improvements would be to the front of the house with the exception being exterior painting of the house.~~
- Includes only existing homes and structures.
- Reduce the resident's minimum cost from \$5,000 to \$2,500 so that code violations are more likely to be addressed.
- Increased home value is increased home value...it should not be limited to arbitrary boundaries set in 2011.

**COUNCIL MEETING AGENDA
CITY OF PRAIRIE VILLAGE
Council Chambers
Monday, May 02, 2016
7:30 PM**

I. **CALL TO ORDER**

II. **ROLL CALL**

III. **PLEDGE OF ALLEGIANCE**

IV. **INTRODUCTION OF STUDENTS & SCOUTS**

V. **PRESENTATIONS**

Recognition of Teen Council

VI. **PUBLIC PARTICIPATION**

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

VII. **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 - April 18, 2016
2. Approve special City Council meeting minutes - April 25, 2016
3. Approve the bid award for highway rock salt
4. Approve the bid award for swimming pool chemicals
5. Authorize the Mayor to execute proclamations for Municipal Clerks Week, National Police Week, and National Public Works Week

VIII. **COMMITTEE REPORTS**

Council Committee of the Whole

- COU2016-29 Consider approval of recommendation of hiring an additional Building Inspector
- COU2016-30 Consider approval of services agreement to prepare the solid waste bid RFP
- COU2016-31 Consider approval of contract with Olsson & Associates for Meadowbrook project inspections
- COU2016-32 Consider approval of contract with Superior Bowen for the Meadowbrook Park street and stormwater improvements

- COU2016-33 Consider approval of design agreement with Phelps Engineering for 2016 SMAC stormwater work for Meadowbrook Park
- COU2016-34 Consider approval of engineering services agreement with Phelps Engineering for public improvements at Meadowbrook Park

IX. **MAYOR'S REPORT**

X. **STAFF REPORTS**

XI. **OLD BUSINESS**

Approve acceptance of best bid on 2016A GO TIF Bond

Approve GO and SO Bond Ordinance

Approve IRB Bond Ordinance

XII. **NEW BUSINESS**

Election of Council President

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

**CITY COUNCIL
CITY OF PRAIRIE VILLAGE
April 18, 2016**

The City Council of Prairie Village, Kansas, met in regular session on Monday, April 18, 2016 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; Captains Byron Roberson and Myron Ward; 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, P.J. Novick with Confluence, Planning Consultant and Joyce Hagen Mundy, City Clerk. Also present were teen council members Dennis Rice and Kellie O'Toole.

INTRODUCTION OF STUDENTS & SCOUTS

Mayor Wassmer welcomed 15 boy scouts attending for their "Communications" and "Citizenship in the Community" badges.

PRESENTATIONS

Mayor Wassmer presented each Council member with their Council Check in the amount of one dollar for their service over the past year. Council President Brooke Morehead presented Mayor Wassmer with her check for service as Mayor over the past year.

Mayor Wassmer presented outgoing Councilman David Scott Morrison with a gift and proclamation recognizing his service over the past eight years.

Mayor Wassmer presented outgoing Council member Ruth Hopkins with a gift and proclamation recognizing her service over the past 24 years.

Oath of Office

City Clerk Joyce Hagen Mundy administered the oath of office to newly elected and re-elected Council Representatives Ashley Weaver, Ward 1; Serena Schermoly, Ward 2; Andrew Wang, Ward 3; Brooke Morehead, Ward 4; Courtney McFadden, Ward 5 and Ted Odell, Ward 6.

PUBLIC PARTICIPATION

Mayor Wassmer introduced David Evans whose appointment to the Civil Service Commission was on the Consent Agenda for approval by the City Council.

CONSENT AGENDA

Ashley Weaver moved the approval of the Consent Agenda for April 18, 2016:

1. Approve Regular City Council Minutes - April 4, 2016
2. Approve Claims Ordinance #2941
3. Approve Ordinance 2347 approving the Prairie Village Art Fair as a special event and authorizing the sale, consumption and possession of alcoholic liquor and cereal malt beverages within the boundaries of a barricaded public area at such event
4. Ratify the appointment of David Evans to the Prairie Village Civil Service Commission completing an unexpired term ending January, 2017

5. Authorize the Mayor to execute proclamations recognizing April 29th as Arbor Day and April 22nd as Earth Day

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

COMMITTEE REPORTS

Council Committee of the Whole

COU2016-16 Consider 2016-2017 Insurance Renewals

Ashley Weaver moved the City Council approve the renewal of the following insurance policies for the coverage year May 1, 2016 to May 1, 2017 at a renewal rate not to exceed \$371,553: Property, GL/Auto/Public Official/employment practices, Employee Benefits liability, Law Enforcement liability, Cyber liability, Crime liability, Fiduciary liability, Treasurer Bond, Umbrella and Workers Compensation with Travelers and Inland Marine with RLI. The motion was seconded by Sheila Myers and passed unanimously.

COU2016-17 Consider approval of interlocal agreement with the City of Overland Park for public improvements to 75th Street and 95th Street

COU2016-14 Consider approval of Scope of Pond Work (Stormwater Improvements) for Meadowbrook Park; approval of Scope of Initial Trail Work for Meadowbrook Park and approval of Title Commitment and Survey for Meadowbrook Park

COU2016-27 Consider approval of Escrow Agreement for Meadowbrook Park

COU2016-18 Consider approval of an Assignment Agreement related to the Park Gift Site Agreement

COU2016-20 Consider approval of Project Easement Agreement for Meadowbrook Park

COU2016-21 Consider approval of Right-of-Way Maintenance Declaration for Meadowbrook Park

COU2016 Consider approval of Consent Letter regarding Planned Neighborhood Units for Meadowbrook Park

Ted Odell moved the City Council moved the following approvals:

- Approval of an Interlocal Agreement with the City of Overland Park for public improvements to 75th Street, Mission Road and Walmer Street and 95th Street, Mission Road to Nall;
- Approval of Scope of Pond Work, now known as Stormwater Improvements between the City of Prairie Village, MB-18, LLC and Johnson County Park and Recreation District for Meadowbrook Park;
- Approval of Scope of Initial Trail Work between the City of Prairie Village, MB-18, LLC and Johnson County Park and Recreation District for Meadowbrook Park;
- Approval of Title Commitment and Survey for Meadowbrook Park;
- Approval of an Escrow Agreement between the City of Prairie Village, MB-18, LLC, Johnson County Park and Recreation District, Johnson County Wastewater and First American Title Insurance Company;
- Approval of Conditional Assignment Agreement between the City of Prairie Village and Johnson County Park and Recreation District related to the Park Gift Site Agreement;
- Approval of Project Easement Agreement between the City of Prairie Village, MB-18, LLC, Johnson County Park and Recreation District for Meadowbrook Park;
- Approval of Memorandum of Agreement between the City of Prairie Village, MB-18, LLC, Johnson County Park and Recreation District for Meadowbrook Park;
- Approval of Right-of-Way Maintenance Declaration as made by MB-18, LLC
- Approval of the Consent Letter regarding Planned Neighborhood Units for Meadowbrook Park between the City of Prairie Village and MB-18, LLC.

The motion was seconded by Steve Noll and passed unanimously.

Mayor Wassmer noted that all of these items had been previously discussed by the City Council in earlier Council Committee of the Whole meetings.

Planning Commission

PC2016-114 Consider Final Plat for Meadowbrook Park

P.J. Novick with Confluence serving as the City Planning Consultant for the Meadowbrook Project presented the Final Plat for Meadowbrook Park noting that on November 12, 2015, the Planning Commission approved the Preliminary Development Plan and Preliminary Plat for Meadowbrook Park. On April 5, 2016, the Planning

Commission approved the Final Development Plan and Final Plat for Meadowbrook Park noting the conditions of approval stipulated with the approval of the Preliminary Development Plan and Preliminary Plat had been met.

Eric Mikkelson moved the City Council authorize the Mayor to execute the Final Plat for Meadowbrook Park at 9101 Nall Avenue accepting all easements and rights-of-way subject to the following condition: that prior to filing the Final Plat with the County, the applicant provide all necessary legal documents and easements for dedication. The motion was seconded by Terrance Gallagher and passed unanimously.

Mayor's Report

Mayor Wassmer noted attendance at a recent Police Pension Board meeting noting that proposed revisions to the plan would be coming to the City Council for consideration in the future. Council committee requests should be returned as soon as possible for 2016-2017. These assignments will take place the second meeting in May. Mayor Wassmer urged the Council and public to attend the City's Arbor Day celebration with her this Saturday, April 23rd at 10 a.m. in McCrum Park and noted two upcoming ribbon cutting ceremonies for new businesses in May.

STAFF REPORTS

City Staff Reports were presented at the earlier Council Committee of the Whole meeting.

OLD BUSINESS

Ted Odell asked staff for an update on property maintenance issues at the Corinth Square and Prairie Village Shopping Centers. Wes Jordan reported that the

Code Enforcements Officers recently conducted a walk around inspection of both properties with Monica Mallory, Regional Property Manager for First Washington. A working plan has been created to address identified property maintenance issues at the centers.

NEW BUSINESS

Mayor Wassmer invited newly elected Council members to introduce supporters in attendance at the meeting. Serena Schermoly thanked her supporters for their support and attendance and recognized family members also in attendance.

ANNOUNCEMENTS

Committee meetings scheduled for the next two weeks:

Environment/Recycle Committee	04/27/2016	5:30 p.m.
VillageFest Committee	04/28/2016	5:30 p.m.
Council Committee of the Whole	05/03/2016	6:00 p.m.
City Council	05/03/2016	7:30 p.m.

=====

The Prairie Village Arts Council is pleased to present the Future of the Arts exhibit in the R. G. Endres Gallery during the month of April. Also presenting the 2016 Congressional Art Competition entries with the Congressional Art Reception, April 25, 4:30 - 6 p.m.

Recreation sales have begun. Pool memberships purchased in April will be discounted by \$5 for each pass.

The Tree Board will be celebrating Arbor Day with a tree planting at McCrum Park on Saturday, April 23rd at 10 o'clock.

The 15th annual Earth Fair will be Saturday, April 30 from 10:00 a.m. to 3:00 p.m. at Shawnee Mission East High School, 7500 Mission Rd. Free admission. Open to the public. Sponsored by the City of Prairie Village & Shawnee Mission East High School the theme for 2016 Earth Fair is "May the Earth be with You—Come to the Green Side." Enjoy special presentations, music, fun and educational activities for the entire family. Shop the Used Book Sale, for other "green" products and good food

ADJOURNMENT

With no further business to come before the City Council the meeting was adjourned
at 7:58 p.m.

Joyce Hagen Mundy
City Clerk

**SPECIAL CITY COUNCIL
CITY OF PRAIRIE VILLAGE
APRIL 25, 2015**

The City Council of Prairie Village, Kansas, met in special session on Monday, April 25, 2016 at 6:00 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, Serena Schermoly, Steve Noll (arrived late), Eric Mikkelson, Sheila Myers, Brooke Morehead, Dan Runion, Courtney McFadden, Ted Odell and Terrence Gallagher.

Also present were: Katie Logan, City Attorney; Quinn Bennion, City Administrator; Wes Jordan, Assistant City Administrator and Joyce Hagen Mundy, City Clerk.

Also present in their advisory capacity were Financial Advisor Jeff White with Columbia Capital Management and Bond Counsel Gary Anderson with Gilmore & Bell.

Mayor Wassmer stated this is a duly called Special Meeting of the Governing Body for the purpose of taking action on several items discussed previously related to the Meadowbrook Park TIF Project. These will be the only items considered.

COMMITTEE REPORTS

Council Committee of the Whole

- COU2016-19 Consider approval of Lighting Plan for Meadowbrook Park

- COU2016-24 Consider approval of Bond Sale Resolution (Meadowbrook Park)
- COU2016-25 Consider approval of Bond Purchase Agreement Special Obligation TIF Bonds (Meadowbrook Park)
- COU2016-26 Consider approval of Resolution 2016-03 to issue Industrial Revenue Bonds (Meadowbrook Park)
- COU2016-28 Consider approval of Environmental Escrow Agreement (Meadowbrook Park)

Ted Odell moved the City Council approve the Lighting Plan for the Meadowbrook Park Site as submitted (COU2016-19); the City Council approve Resolution 2016-02 authorizing (1) offering for sale of General Obligation Bonds (Meadowbrook TIF Project), Series 2016A, and (2) approving the private placement of Special Obligation Revenue Bonds (Meadowbrook TIF Project) Series 2016B, of the City of Prairie Village (COU2016-24); the City Council approve the Bond Purchase agreement between the City of Prairie Village and Van Tuyl Family 2012 Irrevocable Trust for the purchase of Special Obligation Revenue Bonds for the Meadowbrook TIF Project (COU2016-25); the City Council approve Resolution 2016-03 determining the intent of the City of Prairie Village, Kansas, to issue its Industrial Revenue Bonds in one or more series in the aggregate amount not to exceed \$56,500,000 to finance the cost of acquiring, constructing and equipping multiple facilities for the benefit of MB-18, LLC, and its successors and assigns for the Meadowbrook Park Project (COU2016-26) and the City Council approve the Environmental Escrow for the remediation of the Meadowbrook Park Site between the City of Prairie Village, Johnson County Park and Recreation District, MB-18, LLC and First American Title Insurance Company (COU2016-28). The motion was seconded by Terrence Gallagher.

Eric Mikkelson confirmed with the city attorney that no changes had been made to the documents being approved since they were reviewed by the City Council. Mrs. Logan also advised the Council that the Johnson County Park & Recreation District Board at their meeting on April 20, 2016 approved the lighting plan and environmental escrow agreement before the City Council this evening.

Dan Runion noted the e-mail distributed to the City Council earlier in the day by City Administrator Quinn Bennion regarding consultant costs incurred by the Meadowbrook Project and asked that the e-mail be attached as Exhibit A to the minutes of the Special City Council Meeting of April 25, 2016.

Jori Nelson suggested that information be added to the city's website similar to that done for the CIDs on Meadowbrook expenses to make them transparent to the public. Mayor Wassmer stated she would discuss that with staff and bring it back at a future council meeting for discussion.

The motion was voted on and passed unanimously.

ADJOURNMENT

With no further business on the agenda for the Special City Council Meeting of April 25, 2016, Mayor Wassmer adjourned the meeting at 6:10 p.m.

Joyce Hagen Mundy
City Clerk

Joyce Hagen Mundy

From: Quinn Bennion
Sent: Monday, April 25, 2016 2:51 PM
To: Council Members; Serena Schermoly
Cc: Katie Logan
Subject: request for consultant costs - MB

Council,

We received a Councilmember request for all vendor (consultant) costs associated with Meadowbrook project. The costs are split into two categories: consultant costs paid to date and bond issuance cost (estimate). The first category is billed to the developer under the reimbursement agreement. These costs are TIF eligible and reimbursable. There will be additional invoices submitted in May and the next several months.

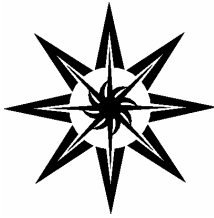
Consultant Costs paid to date (from May 2014 to April 2016) – charged to developer & TIF reimbursable:

Lochner	\$1,677.25
Columbia Capital	\$49,937.50
Gilmore & Bell	\$26,760.24
Lathrop & Gage	\$167,083.00
Bliss Associates, LLC (appraisal)	\$9,450.00
Phelps Engineering, Inc (prelim pond design)	\$2,321.50
Confluence (TIF study & gen. planning)	\$15,047.50
TranSystems (traffic study)	\$11,470.00

GO & SO Bond consulting/issuance fees – paid with bond proceeds:

Gilmore & Bell (Bond Counsel Fee)	\$95,000
Columbia Capital (City Financial Advisor)	\$67,375

Note: There are other costs (not consultant fees) associated with the bond issuance including the rating agency, auction site, bond trustee and other minor items such as securing CUSIP numbers.



PUBLIC WORKS DEPARTMENT

Council Meeting Date: May 2, 2016
Consent Agenda

CONSIDER BID AWARD FOR HIGHWAY ROCK SALT

RECOMMENDATION

Staff recommends the City Council approve the bid from Central Salt for Enhanced Salt at \$75.71 per ton delivered.

BACKGROUND

Advertised bids were opened on April 22, 2016 by the City Clerk. This is an annual bid for highway rock salt used for snow/ice control. Three bids were received:

<u>Company</u>	<u>Rock Salt</u>	<u>Enhanced Salt</u>
Central Salt	\$61.48 per ton	\$75.71 per ton
Independent Salt	\$56.85 per ton	No Bid
Compass Minerals	\$111.91 per ton	No Bid
Cargill	No Bid	No Bid
Morton Salt	No Bid	No Bid

The bid price for 2015 was \$74.59 per ton for Enhanced Salt.

Since 2013 we have exclusively used the Enhanced Salt product and plan to do the same for 2016. It has shown to be effective and it has many additional benefits as listed in the attached brochure.

It is anticipated that **only** Enhanced Salt will be purchased under this bid. The 2016 Budget includes \$90,000 for salt.

FUNDING SOURCE

Funding is available in the 2016 Public Works Operating Budget

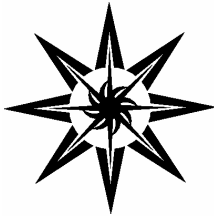
RELATION TO VILLAGE VISION

TR3c Ensure the quality of the transportation network with regular maintenance as well as efficient responses to seasonal issues such as snow removal.

PREPARED BY

Keith Bredehoeft, Director of Public Works

Date: April 27, 2016



PUBLIC WORKS DEPARTMENT

Council Meeting Date: May 2, 2016
Consent Agenda

CONSIDER BID AWARD TO PURCHASE SWIMMING POOL CHEMICALS

RECOMMENDATION

Staff recommends the City Council approve the bid award to Hawkins Inc. for swimming pool chemicals.

BACKGROUND

On April 22, 2016 the City Clerk opened bids for swimming pool chemicals. Two bids were received. Hawkins Inc. is a new supplier for the City of Prairie Village but provides pool chemicals to other municipalities and has been in business for 78 years. The 2016 budget includes \$30,000 for swimming pool chemicals. Following is the Bid unit pricing:

Description	Units	Hawkins Inc	Edwards Chemical
Calcium Chloride (50 pound bags)	Pounds	\$ 0.2900	\$ 0.2962
Chlorine	Gallons	\$ 1.4000	\$ 1.4200
Soda Ash (50 pound bags)	Pounds	\$ 0.2700	\$ 0.2718
Sodium Bicarbonate (50 lb. bags)	Pounds	\$ 0.2500	\$ 0.2584
Sulfuric Acid (55 gallon drums)	Gallons	\$ 3.1600	\$ 3.1640
Sodium Thiosulfate (50 lb. bags)	Pounds	\$ 0.7000	\$ 0.7100
Delivery Charge	Each	\$ 25.0000	\$ 33.7500
Fuel Charge	Each	\$ 0.0000	\$ 6.0000

FUNDING SOURCE

Funds are available in the Public Works Swimming Pool Operating Budget.

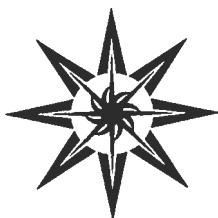
RELATION TO VILLAGE VISION

None

PREPARED BY

Keith Bredehoeft, Director of Public Works

Date April 27, 2016



MAYOR

Council Meeting Date: May 2, 2016

Consent Agenda: Consider Proclamations

RECOMMENDATION

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

May 1 - 7, 2016 - Municipal Clerks Week

May 15 - 21, 2016 - National Police Week

May 15 - 21, 2016 - National Public Works Week

BACKGROUND

In support and recognition of the professional municipal employees who serve the residents of Prairie Village, it is my pleasure to issue these proclamations recognizing their service, dedication and professionalism.

ATTACHMENT

Proclamations

PREPARED BY

Joyce Hagen Mundy, City Clerk

DATE

May 27, 2016

CITY OF PRAIRIE VILLAGE

PROCLAMATION

MUNICIPAL CLERKS WEEK
MAY 1 THROUGH MAY 7, 2016

Whereas, The Office of the Municipal Clerk, a time honored and vital part of local government exists throughout the world, and

Whereas, The Office of the Municipal Clerk is the oldest among public servants, and

Whereas, The Office of the Municipal Clerk provides the professional link between the citizens, the local governing bodies and agencies of government at other levels, and

Whereas, Municipal Clerks have pledged to be ever mindful of their neutrality and impartiality, rendering equal service to all.

Whereas, The Municipal Clerk serves as the information center on functions of local government and community.

Whereas, Municipal Clerks continually strive to improve the administration of the affairs of the Office of the Municipal Clerk through participation in education programs, seminars, workshops and the annual meetings of their state, province, county and international professional organizations.

Whereas, It is most appropriate that we recognize the accomplishments of the Office of the Municipal Clerk.

Now, Therefore, I, Laura Wassmer, Mayor of the City of Prairie Village, do recognize the week of:

May 1 through May 7, 2016, as Municipal Clerks Week,

and further extend appreciation to our Municipal Clerk staff: Joyce Hagen Mundy, Meghan Buom, Kathy Randle, and Donna Blake and to all Municipal Clerks for the vital services they perform and their exemplary dedication to the communities they represent.

Mayor Laura Wassmer

City Clerk

Date



CITY OF PRAIRIE VILLAGE

Proclamation

**Police Week
May 15 through May 21, 2016**

WHEREAS, there are approximately 900,000 law enforcement officers serving in communities across the United States, including the dedicated members of the Prairie Village Police Department; and

WHEREAS, nearly 60,000 assaults against law enforcement officers are reported each year, resulting in approximately 16,000 injuries; and

WHEREAS, since the first recorded death in 1791, almost 20,000 law enforcement officers in the United States have made the ultimate sacrifice and been killed in the line of duty; and

WHEREAS, the names of these dedicated public servants are engraved on the walls of the National Law Enforcement Officers Memorial in Washington, D.C.; and

WHEREAS, 252 new names of fallen heroes are being added to the National Law Enforcement Officers Memorial this spring, including 123 officers killed in 2012 and 129 officers killed in previous years; and

WHEREAS, the service and sacrifice of all officers killed in the line of duty will be honored during the National Law Enforcement Officers Memorial Fund's 28th Annual Candlelight Vigil, on the evening of May 15, 2016; and

WHEREAS, the Candlelight Vigil is part of National Police Week, which will take place this year on May 15-21; and

WHEREAS, May 15 is designated as Peace Officers Memorial Day, in honor of all fallen officers and their families and U.S. flags should be flown at half staff;

Now, therefore, I, Laura Wassmer, Mayor of the City of Prairie Village, do hereby proclaim

May 15 through 21, 2016 as "Police Week"

and publicly salute the service of law enforcement officers in our community and in communities across the nation.



Mayor Laura Wassmer

City Clerk

Date

CITY OF PRAIRIE VILLAGE

Proclamation

**National Public Works Week
May 15 through May 21, 2016**

Whereas, public works services provided in our community are an integral part of our citizens' everyday lives; and

Whereas, the support of an understanding and informed citizenry is vital to the efficient operation of public works systems and programs such as water, sewers, streets and highways, public buildings, and solid waste collection; and

Whereas, the health, safety and comfort of this community greatly depends on these facilities and services; and

Whereas, the quality and effectiveness of these facilities, as well as their planning, design, and construction, is vitally dependent upon the efforts and skill of public works officials; and

Whereas, the efficiency of the qualified and dedicated personnel who staff public works departments is materially influenced by the people's attitude and understanding of the importance of the work they perform,

Now, therefore, I, Laura Wassmer, Mayor of the City of Prairie Village, do hereby proclaim the week of

May 15 through 21, 2016 as "National Public Works Week"

in The City of Prairie Village, and I call upon all citizens and civic organizations to acquaint themselves with the issues involved in providing our public works and to recognize the contributions which public works officials make every day to our health, safety, comfort, and quality of life.



Mayor Laura Wassmer

City Clerk

Date



COU2016-29: Approve recommendation of hiring an additional Building Inspector.

RECOMMENDATION

Staff recommends approval of hiring an additional Building Inspector to maintain the ability to handle current and projected workloads due to anticipated construction in accordance with the following Department Objectives:

Mission: Provide quality, professional service, promote and preserve property values, ensure the safety and well-being of the residents and the community through diligent code administration practices.

Indicator	2011 Actual	2012 Actual	2013 Actual	2014 Actual	2015 Actual
Workload:					
Building Permits processed	1,157	1,313	1,390	1,315	1,613
Building inspections	2,477	2,622	3,602	2,931	3,234
Plan Reviews performed	241	272	297	284	560
Exterior Grants Paid	26	25	26	22	25
Residential "teardown"	6	4	9	16	24
New home construction	6	3	10	12	20
Efficiency					
Plan review turn-around time	6.5	6.57	6 days	6.34 days	3.98 days
Average wait time for building inspections	2.69 days	2.5 days	1 day	1 day	1 day

Significant Projects Approved and/or Underway

- Briarwood Elementary (120)
- Meadowbrook - 280 apartments (200), Inn with 50 rooms (90) & Restaurant (45), 70 attached homes (1050), 53 detached homes (795), Senior Living consisting of 120 units of Independent Living (100), 120 units Assisted Living (100), and 90 units of Skilled Nursing (70)
- Mission Chateau - 248 units of Senior Living (200), and 22 (330) Townhomes
- 7501 Mission Road Office Building (45 + tenant finishes)
- Homestead/Evan-Talan Homes - 11 single family homes (165)
- Chadwick Court - 6 single family homes (90)

*red highlights denote the approximate number of inspections during the course of each project

SUGGESTED MOTION

I move for approval of adding one FTE to Community Development authorized positions and for Staff to begin the process of hiring an additional Building Inspector to handle current and projected workloads as recommended.

BACKGROUND

During the 2016 Budget Planning Process, staff alerted Council that it would be likely an additional Building Inspector would need to be hired in order to efficiently handle the current inspection workload and factoring projected construction. It should be noted the codes department specific to building inspection services employees (1) Building Official, (1) Building Inspector, and (1) Administrative Codes Support Specialist. In 2010, an Administrator Codes Support Specialist position was eliminated due to budget constraints and was not replaced.

The uptick of construction since the 2016 Budget Planning Process has demonstrated sustained growth both in remodeling and new residential construction. The current workload is maximizing staff's ability to turn around building plans and complete inspections in an efficient manner to meet the expectations of the consumer(s) who will be paying permit fees with an expectation of timely inspections. And, without an inspection work cannot continue at the job site until approved by the inspector....the potential job loss cost to contractors will be realized without adequate staffing to complete services.

REDUCE INSPECTION TYPES

The anticipated workload is expected to increase significantly. It is difficult to forecast exact needs; however, we are not sure if the addition of one (1) Building Inspector will be enough to close the gap in demand. Therefore, we have also reassessed how we are doing business and whether or not we can streamline any current operational processes. The Building Official has suggested consideration of discontinuing the following types of inspections that are not routinely conducted in some cities - unless complaint driven:

- Decks less than 30 inches to grade (20 permits - 60 inspections)
- Fences (181 permits - 199 inspections)
- Replacement Roofs (346 permits - 450 inspections)
- Sheds (32 permits - 32 inspections)

The aforementioned types of inspections are not considered "life safety" and discontinuing this category of inspection would put the Codes Department in a better position to handle expected construction. It should be noted that this would not relieve an individual or contractor from legally performing work in accordance with the Municipal or adopted code. And, we could still issue a permit (likely reduced rate) and guideline(s) that illustrate desired outcomes.

PERMIT REVENUE - OFF-SETTING COSTS

Forecasting revenues from permitting is dependent on the value of each construction project; however, revenue from fees has steadily been increasing since 2012 and should off-set costs associated to hiring another person. [It should be noted that Staff is currently conducting an assessment of fees to see how they compare to other cities.]

- 2012 - \$167,155
- 2013 - \$197,252
- 2014 - \$213,054
- 2015 - \$317,054

EMPLOYEE COMPENSATION & OPERATIONAL COSTS

- Salary for experience and associated benefits - approximately \$76,000
- Vehicle - cost would be minimal since we plan to obtain a secondary patrol vehicle. An approximate cost for a one time set up would likely be less than \$2,000 (new decaling, warning lights, computer mount, etc.
- Overtime/Training - Likely less than \$2500 depending on date of hire and qualifications
- Other costs - we believe we can absorb some costs within the current budget such as fuel costs and a new computer, etc. Costs such as uniforms, cell phone stipend, etc. will be dependent on the actual date of hire, but should be less than \$2,000

LENGTH OF NEED

The need for personnel is continually evaluated and based on assessed needs. If the workload in the future would equal to/below averages from 2011-2012 it would be very likely this position would be suspended until the need dictated otherwise.

OTHER OPTION(S)

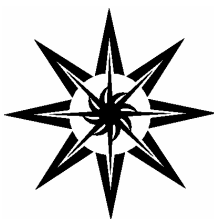
Staff did explore contracting this service with a 3rd party. This option would cost the City approximately twice as much as hiring an employee with the labor rate at about \$100.00 per hour. Staff did not pursue this idea any further since it was not deemed to be financially viable alternative over time.

FUNDING

In discussing funding with the Finance Director, we feel that costs occurred in 2016 can be used from the General Fund and the Contingency Fund would not be necessary.

PREPARED BY

Wes Jordan
Assistant City Administrator
Date: April 25, 2016



CODES ADMINISTRATION

Council Meeting Date: May 2, 2016

COU 2016-30: Approve Shockey Consultant Services, LLC, to prepare a Scope of Services and bidding process for the Solid Waste contract for services beginning in 2017.

RECOMMENDATION

Due to the scope of work required within a specific time frame and the current volume of staff workload, Staff believes the expertise of a consultant would be most prudent in order to ensure expectations of service delivery are realized through accurate bid specifications.

COUNCIL ACTION REQUESTED ON: May 2, 2016

SUGGESTED MOTION

I move for approval for Shockey Consultant Services, LLC, to prepare a Scope of Services and Solid Waste Request for Proposal for the Solid Waste contract for services beginning in 2017. The costs associated will be as specified in the attached fee schedule.

BACKGROUND

The following Request for Proposal was published with the deadline ending April 26, 2016. Mrs. Shockey's company was the only entity that responded with corresponding rates by category of expertise. Mrs. Shockey and Ron Norris (resumes attached) will be the primary project team.

Request for Proposal - Drafting Solid Waste RFP

The City of Prairie Village, Kansas, is seeking consulting expertise to draft a comprehensive request for proposal for Solid Waste services. The Governing Body has directed City Staff to seek competitive bids for solid waste services for trash, recycling, yard waste, and large item pickup for nearly 8,400 residential addresses. The contract with Waste Management (formerly Deffenbaugh) is set to expire December 31, 2016. The last time the contract was formerly bid was in 2002 with subsequent negotiated extensions. The proposal should contain expected rates for the following scope of services as part of this process:

- Meet with Staff to discuss scope of the project and expected outcomes
- Conduct research on best practices in drafting RFP language
- Communicate with vendors who have expressed interest

- Prepare a comprehensive RFP including service alternatives
- Provide in-person updates to Council/Staff as needed (anticipate 3 Council meeting visits)
- Be assessable to vendors and answer questions as needed
- Finalize selection by July 31, 2016
- Evaluate bids for completeness and accuracy
- Check references of the preferred bidder from similar services provided to other cities or entities
- Assist staff in making a recommendation to City Council

Mrs. Shockey's firm estimated the cost of this project would be approximately \$6,550.00. Staff asked Mrs. Shockey to provide an hourly rate for optional services that could be considered and/or needed as this project moves forward. Mrs. Shockey agreed to an hourly rate of \$125.00 for optional service items. Staff would only include operational service items on an *as needed* basis. The City Attorney is currently reviewing the attached agreement.

FUNDING

Funding is available through the Solid Waste Fund and will not have an impact on the current budget.

PREPARED BY

Wes Jordan
Assistant City Administrator
Date: April 26, 2016



Shockey
Consulting
Services, llc



FIRM PROFILE

Shockey Consulting Services, LLC, provides award-winning management, planning and public participation consulting services to federal, regional, state, and local governments and other public agencies. The firm was founded in 1998 and is headquartered in Lenexa, Kansas with an office in the St. Louis, Missouri region.

- A group of dedicated and talented professionals with diverse backgrounds makes up the Shockey team. We have former government managers, strategic planners, environmental scientists, urban planners and communications specialists.
- We enjoy working with people dedicated to making their communities a better place.
- We specialize in facilitating difficult conversations involving diverse stakeholder perspectives.

Shockey's core competencies include:

- Developing new programs
- Improving existing programs
- Defining community vision plans
- Educating and involving the public
- Planning quality places and communities
- Setting budget, capital, and organizational priorities
- Measuring program performance
- Securing new sources of revenue
- Complying with regulations

Solid Waste Expertise: Shockey staff has been on the forefront of solid waste management in the Kansas City area since the early 1990s by implementing curbside recycling while on city staff.

- Shockey provides strategic planning services for solid waste districts and agencies.
- We create public information campaigns and outreach programs to educate residents on waste reduction, recycling regulations and alternatives and household hazardous waste including:
 - Coordinating media relations
 - Producing public service announcements
 - Developing and implementing multi-media marketing plans
 - Managing social media
 - Reaching out directly to residents

Shockey is a certified small business, disadvantaged business and women-owned business.

Find out more at: <http://www.shockeyconsulting.com/expertise.html#soli>

RESUMES



Sheila Shockey

Shockey Consulting Services, LLC

Sheila Shockey is the founder and president of Shockey Consulting Services, LLC. Sheila worked in the Kansas City area as a staff member of local government, and since 1998, as a consultant with local governments and agencies in Kansas and Missouri. Sheila's solid waste experience includes:

- Prepared Prairie Village, Kansas Solid Waste collection RFP and managed selection of contractors.
- Managed outreach process resulting in city-wide solid waste collection service previously handled by home associations.
- Managed multi-million dollar solid waste collection contracts.
- Developed the first curbside recycling program in the Kansas City region in 1989.
- Coordinated household hazardous waste collection events.
- Organized bulky item pickup program.
- Conducts grass root outreach efforts for environmental issues.
- Developed backyard composting education materials and workshops.
- Facilitated solid waste and other sustainability workshops.
- Prepared MARC Solid Waste Management District's Strategic Plan.
- Developed a marketing plan for Johnson County, Ks. Environmental Solid Waste Division.
- Managed local government organizations, programs and nonprofit organizations.
- Served on Johnson County's Solid Waste Management Committee.

EDUCATION

Bachelor of Public Administration, Washburn University

Master of Public Administration, University of Missouri – Kansas City

PROFESSIONAL AFFILIATIONS

International Association of City/County Management

American Public Works Association

American Society of Civil Engineers

Society of American Military Engineers

American Planning Association

Water Environment Federation

International Association of Public Participation

Society for Marketing Professional Service

EXPERIENCE

Shockey Consulting Services llc, President

since 1998

Shafer Kline Warren, Government Services Director

1995-1998

City of Prairie Village, Kansas, Assistant City Administrator

1989-1995



Ron Norris, P.E.

Shockey Consulting Services

Ron Norris brings over 40 years working in city and regional government. As former Director of Public Works for Olathe, Kansas, one of the Divisions that reported to him was Solid Waste. He oversaw the following operations:

Solid Waste collection and transportation to the transfer station (business and residential)

- Collection, transportation, and sale of curbside recycling
- Collection of yard waste and transportation to the composting site
- Operation of the composting site, including receiving yard waste from private haulers and city collection vehicles
- Oversight of the Transfer Station (privately operated) this included operation of the scales, billing to private haulers bringing was to the transfer station

EDUCATION

Master of Public Administration, University of Kansas

Bachelor of Science, Civil Engineering, University of Missouri, Columbia

Professional Engineer, Kansas and Missouri

Public Works Leadership Fellow

LEADERSHIP

National President, American Public Works Association (APWA)

President, National Assn. of State Facility Administrators

APWA National Top Ten Public Works Leader

Mid-America Regional Council Regional Leadership Award

PROFESSIONAL AFFILIATIONS

American Public Works Association

American Society of Professional Engineers

Water Environment Federation

EXPERIENCE

City of Olathe, Kansas - Director of Public Works,	2009-2014
City of Lenexa, Kansas - Director of Public Works	1996-2009
Clark County, Nevada - Deputy Director of Public Works	1995-1996
Mid-America Regional Council - Director of Transportation Policy	1992-1994
State of Missouri-Office of Administration - Director of Design and Construction	1985-1992
City of Liberty, Missouri - Director of Community Development	1973-1985
State of Missouri-Department of Transportation - Division of Materials and Research	1968-1973

SOLID WASTE PROJECTS

SOLID WASTE MANAGEMENT STAKEHOLDER MEETINGS

Client: Johnson County, Kansas

Shockey Role: Facilitator

Result: Stakeholders suggested strategies for increasing waste diversion and recycling in the county that should be implemented over the next five to twenty years.

Johnson County solid waste management wanted input from stakeholders for a Solid Waste plan update. Stakeholder meetings were used to educate interested stakeholders about issues or projects then solicit their views and perspectives regarding it. Shockey Consulting facilitated three Stakeholder meetings, met with client to identify needs and objectives, identified stakeholders, prepared agendas, facilitated meetings, and prepared and distributed meeting summaries.

Julie Coon | Solid Waste Management Specialist | Johnson County, Kansas

Phone: (913) 715-6938 | Email: Julie.coon@jocogov.org

SOLID WASTE EDUCATION & OUTREACH

Client: City of Springfield

Shockey Role: Public Education Manager

Result: Client using materials

Shockey Consulting Services worked with the City of Springfield to build public understanding of their solid waste programs. Shockey assisted in designing and developing content for educational brochures for: Household Chemical Collection, Integrated Solid Waste Management Systems, Recycling Centers, Sanitary Landfill, Yard waste recycling, and disposal of Pharmaceutical and Sharps/needles. Shockey managed the development, layout and print preparation of a variety of documents and video production.

Barbara Lucks | Sustainability Officer | City of Springfield

Phone: (417) 864-2005 | Email: blucks@springfieldmo.gov

SOLID WASTE STRATEGIC PLAN

Client: Mid-America Regional Council

Shockey Role: Facilitator

Result: Vision and action plans were completed for the Solid Waste Management District.

Shockey worked with elected and local officials of the Kansas City metropolitan area at the Solid Waste Management District Retreat hosted by Mid-America Regional Council in August of 2008. Shockey developed and facilitated the SWMD retreat agenda in coordination with MARC staff to establish objectives from participants, which would shape a vision and action plan for the district.

Tom Jacobs | Environmental Program Director | Mid-America Regional Council

Phone: (816) 701-8352 | Email: tjacobs@marc.org

ELECTRONICS RECYCLING EVENT

Client: Johnson County, Kansas

Shockey Role: Public Education Manager

Result: A successful collection event was held

Shockey coordinated the development and distribution of news releases and newsletters for Public Information Offices and the media regarding Johnson County's Electronic Recycling Event. Shockey managed research of ad space requirements and submission of deliverables to local publications such as the Sun, the Kansas City Star and the Olathe Daily News.

Julie Davis | Solid Waste Management Specialist | Johnson County, Kansas

Phone: (913) 715-6938 | Email: julie.coon@jocogov.org

HOUSEHOLD HAZARDOUS WASTE COLLECTION EVENT

Client: Johnson County, Kansas

Shockey Role: Stakeholder Engagement Manager

Result: A successful collection event was held.

The Johnson County Department of Health and Environment hosts a household hazardous waste collection event twice a year. In 2007 and 2008, Shockey Consulting assisted in organizing and publicizing the event through stakeholder engagement at local businesses, festivals and print media.

Julie Davis | Solid Waste Management Specialist | Johnson County, Kansas

Phone: (913) 715-6938 | Email: julie.coon@jocogov.org

SOLID WASTE PUBLIC EDUCATION OUTREACH

Client: Johnson County, Kansas

Shockey Role: Facilitator, Public Education Manager

Result: Goals and guiding principles were developed into a Market Plan for future Solid Waste Education.

Shockey facilitated a 2 hour workshop with Johnson County, Kansas Environmental staff to prepare and develop a marketing plan. Workshop objectives for the market plan were to define goals for all markets, guiding principles, targeted audiences and a schedule for the public education campaign for a two year timeframe. Shockey evaluated the workshop results and developed the market plan and prepared materials for website development and content. www.jocorecycles.org

Julie Coon | Solid Waste Management Specialist | Johnson County, Kansas

Phone: (913) 715-6938 | Email: julie.coon@jocogov.org

COST BUDGET

PRAIRE VILLAGE, KS SOLID WASTE RFP

	Principal/ Consultant III	Project Manger /Consultant II	Consultant I	Hours	Fee	Expenses	Task Sub-Total (Fees + Expenses)
Hourly Rate	\$210	\$125	\$80				
Prepare Solid Waste RFP							
Meet with staff to obtain information & discuss desired outcomes	3.0	3.0	0.0	6.0		\$10	
Conduct research on scope of service modifications	0.5	2.0	0.0	2.5			
Contact vendors to determine whether they can provide new service options	0.5	1.0	2.0	3.5			
Prepare recommendations memo for staff/Council	4.0	6.0	0.0	10.0		\$10	
Prepare RFP (including service alternatives)	4.0	6.0	0.0	10.0			
Provide assistance with review of RFPs	4.0	6.0	0.0	10.0		\$10	
Hours	16.0	24.0	2.0	42			
Fee	\$3,360	\$3,000	\$160		\$6,520	\$30	\$6,550

Total Hours	42.0
Total Fees	\$6,520
Total Expenses	\$30
Grand Total Fees + Expenses	\$6,550

The following are optional services provided at an hourly rate of \$125.00 per hour:

- Be accessible to vendors
- Provide in-person updates to Council staff as needed (anticipate 3 council meeting visits) Provide in-person updates to Council staff as needed (anticipate 3 council meeting visits)
- Evaluate Bids
- Check References
- Assist staff in making recommendations

NOTE: Selection will be completed by July 31, 2016

City of Prairie Village, Kansas
Solid Waste Services – Proposal Assistance
CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is made in _____ by and between [redacted] [hereinafter "Client"], and Shockey Consulting Services, LLC, [hereinafter "Consultant"]. Client intends to contract with consultant Solid Waste Services – Proposal Assistance [hereinafter "Project"].

Client hereby contracts with Consultant for the furnishing of professional services in connection with said Project, for the furnishing of such consulting services more particularly described herein in consideration of these premises and of the mutual covenants herein set forth. By executing this Agreement, Consultant represents to Client that Consultant is professionally qualified to do this Project.

SECTION I - DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed herein unless otherwise stated or reasonably required by this Agreement, and other forms of any defined words shall have a meaning parallel thereto.

"Client" means City of Prairie Village, Kansas.

"Consultant" means Shockey Consulting Services, LLC.

"Consulting Documents" means all documents required or reasonably implied by the nature of the Project, including, but not limited to, plans, presentation materials, written materials.

"Consulting Services" means the professional services, labor, materials, supplies, and other acts or duties required of Consultant under this Agreement together with such other services as Client may require pursuant to the terms of this Agreement.

"Project" is as above described.

"Project Representative" means the person designated to represent Client in coordinating this Project with Consultant with authority to transmit instructions and define policies and decisions of Client.

SECTION II - PAYMENT

A. COMPENSATION.

- 1 Maximum Total Fee and Expense: Client agrees to pay Consultant a fee based on the actual hours expended on the project at the rates indicated in the attached Fee Schedule, Exhibit "A", not to exceed a maximum fee of \$6,550. This fee is based on the scope of services outlined in this Agreement and is projected to be completed on or before July 31, 2016.

2. Hourly Fee: Any additional services which are not set forth in this Agreement will be charged on the basis of the hourly rate schedule attached hereto as Exhibit "A". No additional service fees shall be incurred without prior written consent of Client.
3. Reimbursable Expenses: **Reimbursable expenses shall be considered as included in the total maximum fee.** The Client agrees to pay reimbursable expenses including expense of transportation in connection with the Project; expenses in connection with authorized travel; long-distance communications; expenses of printing and reproductions, postage; expenses of maps, renderings and models requested by Client and other costs as authorized by Client. Reimbursable expenses do not include overhead costs or additional insurance premiums. Expenses will be billed at cost and not marked up.
4. Billing: Consultant shall bill Client monthly for all services and reimbursable expenses. The bill submitted by Consultant shall itemize the services and reimbursable expenses for which payment is requested. Client agrees to pay Consultant within thirty (30) days of approval. Consultant agrees to submit herewith such financial information as shall be required by Client.
5. Client's Right to Withhold Payment: In the event Client becomes credibly informed that any representations of Consultant provided in its monthly billing, are wholly or partially inaccurate, Client may withhold payment of sums then or in the future otherwise due to Consultant until the inaccuracy and the cause thereof, is corrected to Client's reasonable satisfaction. In the event Client questions some element of an invoice, that fact shall be made known to Consultant immediately. Consultant will help effect resolution and transmit a revised invoice if necessary. Amounts not questioned by Client shall be paid to Consultant in accordance with the contract payment procedures. Failure of Client to make non-disputed payments to Consultant in accordance with this Agreement shall be considered substantial nonperformance and cause for termination.
6. Time is of the Essence: Consultant will perform the services in a timely manner; however, if during their performance, for reasons beyond the control of Consultant, protracted delays occur, the parties agree that they will renegotiate the schedule.
7. Change in Scope: For substantial modifications in authorized project scope, and/or substantial modifications of drawings and/or specifications previously accepted by Client, when requested by Client and through no fault of Consultant, Consultant shall be compensated for time and expense required to incorporate such modifications at Consultant's standard hourly rates per Exhibit "A". Provided, however, that any increase in Contract Price or Contract Time must be approved through a written Change Order. Consultant shall correct or revise any errors or deficiencies in the Project without additional compensation when due to Consultant's negligence.
8. Additional Services: Consultant shall provide with Client's concurrence services in addition to those listed in Section III when such services are requested or authorized in writing by Client. Prior to entering into any additional services, Consultant must

submit a proposal outlining the additional services to be provided, estimation of total hours and a maximum fee based upon the hourly fee schedule attached hereto as Exhibit "A". Reimbursable expenses incurred in conjunction with additional services shall be paid separately and those reimbursable expenses shall be paid at actual cost. Records of reimbursable expenses and expenses pertaining to additional services and services performed on an hourly basis shall be made available to Client if so requested in writing. Production of these records shall be made at Consultant's office during normal business hours within a reasonable time at a date and time mutually convenient to both parties.

9. Change Orders: This Agreement may be amended to provide for additions, deletions and revisions in the work or to modify the terms and conditions thereof by either written amendment or by change order. The Contract Price and Contract Time may only be changed by a written change order approved by Client, unless it is the result of an emergency situation in which case the Project Representative may give written approval to be followed by a written and approved change order. If notice of any change affecting the general scope of the work or provisions of this Agreement, including but not limited to, Contract Price or Contract Time, is a requirement of any insurance policy held by Consultant as a requirement of this Agreement, the giving of such notice shall be Consultant's responsibility.

SECTION III - RESPONSIBILITIES OF CONSULTANT

Consultant shall furnish and perform the various professional duties and services in all phases of the Project to which this Agreement applies as herein provided and which are required for the completion of the Project which services shall include:

A. SERVICES

The services to be provided are set out in Exhibit "B" attached hereto and incorporated by reference.

B. GENERAL DUTIES AND RESPONSIBILITIES

1. Personnel: Consultant shall assign only qualified personnel to perform any service concerning the Project. At the time of execution of the Agreement, the parties anticipate that the Sheila Shockey will perform as the principal on this project. As principal on this project, this person shall have authority to bind Consultant. The project manager for the project is: Sheila Shockey. They will have primary communication with client project representative. All billing and contracting issues should be discussed with the consultant principal.
2. Independent Contractor: Consultant is an independent contractor and as such is not an agent or employee of Client.
3. Special Services: Consultant may be called on to serve as a consultant or witness in any litigation, arbitration, legal or administrative proceeding arising out of this Project. Consultant shall not be paid extra by Client if its appearance is to defend its

professional services. If Consultant is requested in writing by Client to appear as a general witness, it will be paid its hourly fee as reflected on the hourly rate schedule attached hereto as Exhibit "A".

4. Subcontracting of Service: Consultant shall not subcontract or assign any of the consulting services to be performed under this Agreement without first obtaining the written approval of Client regarding the work to be subcontracted or assigned and the consulting firm or person proposed to accomplish the subcontracted/assigned portion of the project. Such approval shall not unreasonably be withheld by Client. Neither Client nor Consultant shall assign any rights or duties under this Agreement without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement.
5. Professional Responsibility: Consultant will exercise reasonable skill, care and diligence in the performance of its services as is ordinarily possessed and exercised by a professional consultant in the same community under similar circumstances. If Consultant fails to meet the foregoing standard, Consultant will perform at its own cost, and without reimbursement from Client the professional services necessary to correct errors and omissions which are caused by Consultant's failure to comply with the above standard.

SECTION IV. CLIENT RESPONSIBILITIES

A. GENERAL DUTIES AND RESPONSIBILITIES

1. Communication: Client shall provide to Consultant information and criteria regarding Client's requirements for the project; examine and timely respond to questions and submissions; and give written notice to Consultant if the Client observes or otherwise becomes aware of any defect in the work.
2. Program and Budget: Client shall provide full information, including a program which shall set forth Client's objectives, schedule, constraints, budget with reasonable contingencies, and other necessary information.
3. Access: If necessary, Client will provide access for Consultant to enter public and private property provided adequate notice of such need is provided to Client.
4. Duties: Client shall furnish and perform the various duties and services in all phases of the Project which are outlined and designated in Exhibit "B" as Client's responsibility.
5. Project Representative: Client shall designate Wes Jordan as the project representative to represent Client in coordinating this project with Consultant, with authority to transmit instructions and define policies and decisions of Client. Written consent shall be required to approve any increase in Project cost.

SECTION V - GENERAL PROVISIONS

A. TERMINATION

1. Notice: Client reserves the right to terminate this Agreement for either cause or for its convenience and without cause or default on the part of Consultant, by providing ten (10) days written notice of such termination to Consultant. Upon receipt of such notice from Client, Consultant shall, at Client's option as contained in the notice: (1) immediately cease all work; or (2) meet with Client and, subject to Client's approval, determine what work shall be required of Consultant in order to bring the Project to a reasonable termination in accordance with the request of Client. Consultant shall also provide to Client copies of all documents completed or partially completed at the date of termination.

If Client defaults on its obligation under this Agreement, Consultant is entitled to terminate this contract by providing ten (10) days written notice.

2. Compensation for Convenience Termination: If Client shall terminate for its convenience as herein provided, Client shall compensate Consultant for all work completed to date of its receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.
3. Compensation for Default Termination: If Client shall terminate for cause or default on the part of Consultant, Client shall compensate Consultant for the reasonable cost of work completed to date of its receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed. Client also retains all its rights and remedies against Consultant including but not limited to its rights to sue for damages, interest and attorney fees.
4. Incomplete Documents: Neither the Consultant nor its subcontractors shall be responsible for errors or omissions in documents which are incomplete as a result of an early termination under this Section, Consultant having been deprived of the opportunity to complete such documents and certify them.

B. DISPUTE RESOLUTION

Client and Consultant agree that from time to time, there may be conflicts, disputes and/or disagreements between them, arising out of or relating to the services of Consultant, the Project or this Agreement (hereinafter collectively referred to as "Disputes"). Therefore, Client and Consultant agree that all Disputes arising out of this Agreement or related to the services provided under this Agreement shall be resolved by mediation.

1. Any mediation shall take place in Johnson County, Kansas.
2. The prevailing party in any mediation relating to any Dispute shall be entitled to recover from the other party those reasonable attorney fees, costs and expenses incurred by the prevailing party in connection with the Dispute.

C. OWNERSHIP OF DOCUMENTS

All documents prepared in connection with this Project shall be the property of Consultant, whether the project for which they are made is executed or not, however, Consultant will provide Client a copy of all final documents, including but not limited to prints and reproductions. Reports, plans, written materials and related documents are Consultant's instruments. Provided that Consultant is paid in full for its services, then Client may subsequently reuse these final documents without any additional compensation or agreement of Consultant. The consultant may use the materials delivered for the purposes of marketing their services to other clients.

D. INSURANCE

The CONSULTANT shall maintain the following minimum insurance at CONSULTANTS sole cost to protect against claims arising out of the services performed under this AGREEMENT.

<u>Type of Coverage</u>	<u>Limits of Liability</u>
Workers' Compensation Employers' Liability	Statutory \$1,000,000 per Accident
Commercial General Liability Bodily Injury (including death) and Property Damage	\$1,000,000 Combined Single Limit \$2,000,000 annual aggregate

This policy shall be endorsed to include contractual liability coverage.

Commercial Automobile Liability Bodily Injury (including death) and Property Damage	\$1,000,000 Combined Single Limit
---	-----------------------------------

This policy shall include all vehicles used in connection with the AGREEMENT whether owned, unowned or hired.

Professional Liability \$1,000,000 per claim and annual aggregate
This insurance shall be maintained for a period of five (5) years after completion of all services by CONSULTANT.

Policies providing the insurance specified under subsection D shall be endorsed to include CLIENT as additional insured, and all policies shall include a provision restricting the right of the insurer to cancel or change such coverage except upon thirty (30) days' written notice to CLIENT. Certificates evidencing the coverage above shall be delivered to the CLIENT prior to performing any services under this AGREEMENT and CLIENT's receipt of proper certificates of insurance shall be a condition precedent to CONSULTANT'S right to receive payment hereunder.

Consultant shall purchase and maintain in a company or companies authorized to do business in the State of Kansas such insurance as required in the Prime Contract. Consultant agrees to maintain policies of insurance as required herein for as long as this Agreement is in force and effect, and as to the professional liability policy, if any, for a period of six (6) year(s) following the Date of Substantial Completion of the Project. Consultant's obligation to maintain the professional liability policy for six (6) years following the Date of Substantial Completion is subject to the general availability of such professional liability insurance policy in the marketplace, with no commercially unreasonable increase in premium therefore. With respect to all of the insurance required by this Agreement, Consultant shall deliver to Client, certificates of insurance, in a form and substance reasonably acceptable to Client within ten (10) days after execution of this Agreement.

With respect to the insurance coverages which are required to remain in force after the Date of Substantial Completion, a certificate of insurance evidencing continuation of such coverage shall be submitted along with the Consultant's invoice for its last payment under the terms of this Agreement, and at least annually thereafter where applicable. The certificates of insurance, as well as insurance policies required by this Agreement, shall contain a provision that coverage will not be materially changed, materially altered, cancelled, or allowed to expire until at least 30 days' prior written notice has been given to Client.

E. INDEMNIFICATION

For purposes of this Agreement, Consultant hereby agrees to indemnify and hold harmless Client, its employees and agents from any and all loss where loss is caused or incurred in whole or in part as a result of the negligence or other actionable fault of Consultant, its affiliates, subsidiaries, employees, agents and subcontractors/assignees and their respective servants, agents and employees. Consultant's obligation hereunder shall not include amounts attributable to the fault or negligence of Client or any third party for whom Consultant is not responsible.

F. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Agreement.

G. NO THIRD PARTY BENEFICIARIES

Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

H. COMPLIANCE WITH LAWS

Consultant shall abide by all applicable federal, state and local laws, ordinances and regulations applicable to the work. Consultant shall secure all occupational and professional licenses, permits, etc., from public and private sources necessary for the fulfillment of his obligations under this Agreement.

I. TITLES, SUBHEADS AND CAPITALIZATION

Title and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Agreement. Some terms are capitalized throughout the Contract but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

J. SEVERABILITY CLAUSE

Should any provision of this Contract 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 Contract shall be unaffected thereby and shall continue to be valid and enforceable.

K. EXECUTION OF CONTRACT

The parties hereto have caused this Agreement to be executed in quadruplicate this _____ day of _____, 20____.

CLIENT NAME

By: _____

APPROVED AS TO FORM

By: _____

CONSULTANT

Shockey Consulting Services, LLC

By: _____

Sheila Shockey, President

**EXHIBIT A
Fees for Service**

Shockey Consulting Services, LLC

Hourly Rate Schedule

Principal	\$210.00/hour
Senior Consultant	\$150.00/hour
Consultant & Graphic Designer	\$110.00/hour
Administrative Support	\$ 50.00/hour

MAXIMUM FEE

	Principal/ Consultant III	Project Manger /Consultant II	Consultant I	Hours	Fee	Expenses	Task Sub-Total (Fees + Expenses)
Hourly Rate	\$210	\$125	\$80				
Prepare Solid Waste RFP							
Meet with staff to obtain information & discuss desired outcomes	3.0	3.0	0.0	6.0		\$10	
Conduct research on scope of service modifications	0.5	2.0	0.0	2.5			
Contact vendors to determine whether they can provide new service options	0.5	1.0	2.0	3.5			
Prepare recommendations memo for staff/Council	4.0	6.0	0.0	10.0		\$10	
Prepare RFP (including service alternatives)	4.0	6.0	0.0	10.0			
Provide assistance with review of RFPs	4.0	6.0	0.0	10.0		\$10	
Hours	16.0	24.0	2.0	42			
Fee	\$3,360	\$3,000	\$160		\$6,520	\$30	\$6,550

Total Hours	42.0
Total Fees	\$6,520
Total Expenses	\$30
Grand Total Fees + Expenses	\$6,550

REIMBURSABLE EXPENSES

Reimbursable expenses shall be considered as included in the total maximum fee.

Reimbursable will be reimbursed per Section II, Sub-section A, Part 3 of this agreement.

EXHIBIT B
Scope of Services

Shockey Consulting shall provide the following services:

The following scope of services as part of this process:

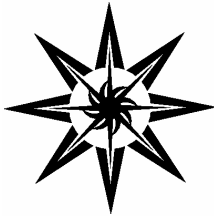
- Meet with Staff to discuss scope of the project and expected outcomes
- Conduct research on best practices in drafting RFP language
- Communicate with vendors who have expressed interest
- Prepare a comprehensive RFP including service alternatives

The following are optional services provided at the hourly rate:

- Provide in-person updates to Council/Staff as needed (anticipate 3 Council meeting visits)
- Evaluate bids for completeness and accuracy
- Check references of the preferred bidder from similar services provided to other cities or entities
- Assist staff in making a recommendation to City Council

- Be assessable to vendors and answer questions as needed (billed on an hourly basis)

Finalize selection by July 31, 2016



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: May 2, 2016

Council Meeting Date: May 2, 2016

CONSIDER CONSTRUCTION INSPECTION AGREEMENT WITH OLSSON ASSOCIATES FOR MEADOWBROOK PUBLIC IMPROVEMENTS (MBSTREET & MBDRAINX)

RECOMMENDATION

Move to approve the Construction Inspection agreement with Olsson Associates for Meadowbrook Public Improvements.

BACKGROUND

In 2015, Public Works requested proposals from firms to provide construction administration services for Prairie Village in the areas of Right of Way Inspection and Construction Inspection for the next three years. We had 11 firms submit proposals. Olsson Associates was selected as one of the three firms to be used for on-call construction inspection services during 2015, 2016, and 2017. The selection committee consisted of Terrence Gallagher, Ted Odell, Keith Bredehoeft, Melissa Prenger and Kenny Khongmaly.

We are proposing to utilize a consultant for the inspection service to supplement City staff inspection for a fee of \$179,995.50 for the construction of the Meadowbrook Public Improvements (MBSTREET and MBDRAINx) which includes the street improvements, conspan construction, the pond improvements and the stream restoration.

Execution of this agreement will take place on May 17, 2016, the date of Bond Closing.

FUNDING SOURCE

The inspection services are TIF reimbursable.

ATTACHMENTS

1. Construction Inspection Agreement with Olsson Associates

PREPARED BY

Melissa Prenger, Sr. Project Manager

April 18, 2016

AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES

For

CONSTRUCTION ADMINISTRATION

For

**MEADOWBROOK REDEVELOPMENT
PROJECTS: MBSTREET & MBDRAINx**

THIS AGREEMENT, made at the Prairie Village, Kansas, this _____ day of _____, 2016, by and between the City of Prairie Village, Kansas, a municipal corporation with offices at 7700 Mission Road, Prairie Village, Kansas, 66208, hereinafter called the “City”, and Olsson Associates, a Nebraska corporation with offices at 1802 E. 123rd Street, Olathe, Kansas 66061, hereinafter called the “Consultant”.

WITNESSED, THAT WHEREAS, City has determined a need to retain a professional engineering firm to provide civil engineering services for Construction Administration of Project: Meadowbrook Redevelopment hereinafter called the “Project”,

AND WHEREAS, the City is authorized and empowered to contract with the Consultant for the necessary consulting services for the Project,

AND WHEREAS, the City has the necessary funds for payment of such services,

NOW THEREFORE, the City hereby hires and employs the Consultant as set forth in this Agreement effective the date first written above.

ARTICLE I - RESPONSIBILITIES OF THE CITY

The CITY designates Melissa Prenger, Senior Project Manager as CITY representative with respect to this Agreement. Ms. Prenger shall have the authority to transmit instructions, receive information, interpret and define the policies of the CITY, make decisions relevant to the services of the CONSULTANT.

The CITY shall do the following in a timely manner:

1. Make available to the CONSULTANT all existing data and records relevant to the Project, including but not limited to, maps, plans, correspondence, data and previous reports and studies possessed by the CITY.
2. Approve all criteria and information as to the requirements of the CITY for the Project, including objectives and constraints, performance requirements, and budgetary limitations.
3. Review and approve all correspondence transmitted and forms used by the CONSULTANT relative to this Project.
4. Review for approval all submittals such as change orders and payment requests by the CONSULTANT.

ARTICLE II - RESPONSIBILITIES OF THE CONSULTANT

The CONSULTANT designates Curt Mader, PE as Construction Manager, who shall direct the related construction inspection and administration services in all phases of the Project to which this Agreement applies. The Construction Manager shall serve as the prime professional on this Project and shall be the prime contact with the Senior Project Manager.

The standard of care for all professional consulting services and related construction inspection and administration services either performed for or furnished by the CONSULTANT under this Agreement will be the care and skill ordinarily used by members of the CONSULTANT profession, practicing under similar conditions at the same time and in the same locality.

The Construction Manager shall act as CITY representative to the extent and limitations of the duties, responsibilities and authority as assigned herein and shall not be modified, except as CONSULTANT may otherwise agree in writing. All of CITY instructions to Contractor will be issued through Construction Manager, who shall have authority to act on behalf of CITY in dealings with Contractor to the extent provided in this Agreement, except as otherwise provided in writing.

The Construction Manager shall conduct a pre-construction meeting, which will include the Senior Project Manager, Contractor, utility companies and any appropriate government agency partied with the CITY prior to commencement of Work at the Site.

The Construction Manager shall coordinate with the Contractor on the taking of digital, pre-construction pictures.

The Construction Manager shall make visits to the site at intervals appropriate to the various stages of construction, as Construction Manager deems necessary, in order to observe as an experienced and qualified design professional the progress and quality of the Work. Such visits and observations by Construction Manager are not intended to be exhaustive or to extend to every aspect of the Work in progress or to involve detailed inspections of the Work in progress beyond the responsibilities specifically assigned to Construction Manager herein, but rather are to be limited to selective checking, selective sampling, and similar methods of observation of the Work based on Construction Manager's exercise of professional judgment. Based on information obtained during such visits and such observations, Construction Manager will determine if Contractor's work is proceeding in accordance with the Project Manual, and Construction Manager shall keep CITY informed of the progress of the Work.

The purpose of Construction Manager's visits to the Site of the Project will be to enable Construction Manager to carry out the duties and responsibilities assigned to and undertaken by CONSULTANT during the Construction Phase. By the exercise of Construction Manager's efforts as an experienced and qualified construction professional, the Construction Manager will provide for CITY a greater degree of confidence that the completed Work will conform in general to the Project Manual and that the integrity of the design concept of the completed project as a functioning whole as indicated in the Project Manual has been implemented and preserved by Contractor. Construction Manager shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over the Work, nor shall Construction Manager have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to the Work, or for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Construction Manager neither guarantees the performance of any Contractor nor

assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Project Manual.

The Construction Manager shall have authority to disapprove or reject Contractor's work while it is in progress if, on the basis of such observations, Construction Manager believes that such work will not produce a completed project that conforms generally to the Project Manual or that it will prejudice the integrity of the design concept of the completed project as a functioning whole as indicated in the Project Manual.

The Construction Manager shall issue necessary clarifications and interpretations of the Project Manual as appropriate to the orderly completion of the Work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Project Manual. Construction Manager may issue Field Orders authorizing minor variations of work that neither increase the Time for Completion nor have a value of more than \$1,000 from the requirements of the Project Manual.

The Construction Manager shall recommend Change Orders and Field Orders to Senior Project Manager, as appropriate, and prepare Change Orders and Field Orders as required.

The Construction Manager shall review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Project Manual and compatibility with the design concept of the completed project as a functioning whole as indicated in the Project Manual. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto. Construction Manager has an obligation to meet any Contractors submittal schedule that has earlier been acceptable to Construction Manager.

The Construction Manager and Senior Project Manager shall evaluate and determine the acceptability of substitute or "or equal" materials and equipment proposed by Contractor.

The Construction Manager shall require such special inspections or tests of the Work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Project Manual. The Construction Manager's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Project Manual and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Project Manual. The Construction Manager shall be entitled to rely on the results of such tests.

The Construction Manager shall render formal written recommendations on all claims of CITY and Contractor relating to the acceptability of the Work or the interpretation of the requirements of the Project Manual pertaining to the execution and progress of the Work.

The Construction Manager shall:

1. Review the Contractor's monthly Applications for Payment to determine it represents the work accepted and is mathematically correct. Construction Manager will provide recommendation for payment to the Senior Project Manager. Such recommendations of payment will be in writing and will constitute Construction Manager representation to the CITY, based on such observations and review, that, to the best of Construction Manager knowledge, information and belief, the Work has progressed to the point indicated, the quality of such is generally in

accordance with the Project Manual (subject to an evaluation of the Work as a functioning whole prior to or upon completion, to the results of any subsequent tests called for in the Project Manual and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Construction Manager responsibility to observe the Work. In the case of unit price work, the Construction Manager recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Project Manual). The responsibilities of Construction Manager are expressly subject to the limitations set forth herein.

2. By recommending any payment, it will also not impose responsibility on Construction Manager to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price. However, the Construction Manager shall obtain from the Contractor documentation in approved form with the payment request to determine that title to any portion of the work in progress, materials, or equipment has passed to CITY free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between CITY and Contractor that might affect the amount that should be paid.

The Construction Manager shall receive and review maintenance and operating instructions, schedules, and guarantees that will be given to the Senior Project Manager.

The Construction Manager shall receive and deliver to the Senior Project Manager bonds, certificates, or other evidence of insurance not previously submitted and required by the Project Manual, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided herein, and the annotated record documents which are to be assembled by Contractor in accordance with the Project Manual to obtain final payment.

Construction Manager shall transmit to Senior Project Manager promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use. In company with Senior Project Manager and Contractor, the Construction Manager shall conduct an inspection to determine if the Work is Complete. If after considering any objections, the Construction Manager shall deliver a certificate of Completion to Senior Project Manager and Contractor.

Accompanying the recommendation for final payment, Construction Manager shall provide proper notice that the Work is acceptable to the best of the Construction Manager knowledge, information, and belief and based on the extent of the services provided by CONSULTANT under this Agreement.

The Construction Phase will commence with the execution of the Construction Agreement for the Project or any part thereof and will terminate upon written recommendation by Construction Manager for final payment to Contractors.

The Construction Manager shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing any of the Work. Construction Manager shall not be responsible for failure of any Contractor to perform or furnish the Work in accordance with the Project Manual.

Construction Manager shall furnish assistants, and other field staff to assist Construction Manager to provide more extensive observation of Contractor's work by observing progress and quality of the Work. Through such additional observations of Contractor's work in progress and field checks of

materials and equipment by the assistants and other field staff, Construction Manager shall provide protection against defects and deficiencies in the Work.

The duties and responsibilities Construction Manager are as follows:

- 1 Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
- 2 Serve liaison with Contractor, working principally through Contractor's superintendent, assist in providing information regarding the intent of the Project Manual.
- 3 Obtaining from CITY additional details or information, when required for proper execution of the Work.
- 4 Report when clarifications and interpretations of the Project Manual are needed and transmit to Contractor clarifications and interpretations.
- 5 Record date of receipt of Samples and approved Shop Drawings.
- 6 Receive and examine Samples, which are furnished at the site by Contractor.
- 7 Review material test reports and inform Senior Project Manager and Contractor of results not meeting specifications. The Construction Manager shall make appropriate recommendations to address results not meeting specifications.
- 8 Advise the Contractor prior to the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal that the submittal has not been received or approved by Construction Manager.
- 9 Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions. Transmit to Contractor in writing decisions as issued by Construction Manager.
- 10 Conduct on-site observations of Contractor's work in progress to determine if the Work is in general proceeding in accordance with the Project Manual.
- 11 Report any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Project Manual or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Project Manual, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise of that part of work in progress that the Construction Manager believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
- 12 Consult with Contractor in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.

- 13 Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate CITY personnel, and that Contractor maintains adequate records thereof.
- 14 Observe, record, and report appropriate details relative to the test procedures and systems start-ups.
- 15 Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections.
- 16 Maintain orderly files for correspondence, reports of job conferences, reproductions of original Project Manual including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, clarifications and interpretations of the Project Manual, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.
- 17 Prepare a daily report recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Senior Project Manager.
- 18 Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.
- 19 Maintain records for use in preparing Project documentation.
- 20 Upon completion of the Work, furnish original set of all Project documentation to Senior Project Manager.
- 21 Furnish to Senior Project Manager periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- 22 Draft and recommend to Senior Project Manager proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- 23 Furnish copies of all inspection, test, and system start-up reports.
- 24 Immediately notify Senior Project Manager of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.
- 25 Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Senior Project Manager, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
- 26 During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the

Project Manual, and have these documents delivered to Senior Project Manager for review prior to payment for that part of the Work.

- 27 Participate in a Completion inspection, assist in the determination of Completion and the preparation of lists of items to be completed or corrected.
- 28 Participate in a final inspection in the company of Senior Project Manager, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.
- 29 Observe whether all items on the final list have been completed or corrected and make recommendations concerning acceptance and issuance of the Notice of Acceptability of the Work.

The Construction Manager shall not:

- 1 Exceed limitations of CONSULTANT authority as set forth in the Agreement or the Project Manual.
- 2 Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.
- 3 Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Project Manual.
- 4 Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of CITY or Contractor.
- 5 Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized.
- 6 Accept Shop Drawing or Sample submittals from anyone other than Contractor.
- 7 Authorize CITY to occupy the Project in whole or in part.

The Construction Manager is expected to conduct himself/herself at all times in such a manner as to reflect credit upon himself/herself and the CITY they represent. It is expected that the Construction Manager will be suitably dressed for the work, and he/she will be clean and neat enough to be a suitable representative of the CITY to the Contractor and the public. The Construction Manager will be pleasant, courteous and business-like in meeting the public. He/She is helpful and considerate to answer questions asked by the public. If the Construction Manager cannot clearly answer the question, the Construction Manager should refer the questioner to the Senior Project Manager.

The Construction Manager will not engage in controversial activities relative to the project in public, particularly if it involves public speaking, public debate, public media, etc. All written communications intended for publication that relate to the project must be approved by the Senior Project Manager.

Keeping accurate records and reports is a very important function of the Construction Manager. These records are necessary for a number of reasons. Some of the most common reasons for these records and their use as references are as follows:

1. Accounting for quantities for periodic progress payments and extra work under cost plus change order procedures
2. Verify actions and decisions of the Construction Manager
3. Report job status and site conditions of an accident or liability claim
4. Clarify the continuity of project contract time, such as working days, delays, and weather.
5. Responses to inquiries and complaints
6. Evidence in legal action

The basic reporting medium is the Daily Report. It is a continuing report of the job progress and provides an adequate record of each day's progress and activities. The record of activities should be reported in the sequence that they take place. Each report should be brief but at the same time be complete, clear and factual and include all work accomplished by the Contractor, as well as pertinent related information. The report should answer "who did what, when, where, how and how much". Abbreviations are acceptable as long as their meanings are not confusing and have a common acceptance.

A checklist of items contained in the Daily Report is as follows:

Typical entries for general information -

1. All reports shall show the CITY Project number and title and the CARS or SMAC project number
2. All entries shall be printed in black ink or computer generated
3. Detail the Construction Manager hours on the jobsite
4. Record weather conditions such as "sunny, temperature, precipitation type and amount (light, moderate, heavy)"
5. Complete the report the same day
6. Label the report using the consecutive numbers
7. Note any written or verbal instructions given to the Contractor
8. Note any non-compliance issued for the job
9. Record any unsatisfactory or non-compliant work and corrective actions taken
10. Report all job incidents involving the public such injuries, damages to property and equipment, safety conditions
11. Record the type, frequency and person providing testing
12. Detail job progress in terms of quantity, distances, stations, and weight as they are appropriate and applicable to project pay items
13. Record any factors adversely affecting progress of the work, such as utility conflict, material delivery, unforeseen conditions, plan changes, poor Contractor management, weather, etc.
14. Record any important visitors to the project and their nature of business
15. Sign and date the report
16. Send copy of report to Senior Project Manager

Typical entries for subgrade work -

1. Name of Contractor doing the work
2. Location and results of compaction tests completed and name of the testing laboratory
3. Limits of rough grade, cuts and fills
4. Thickness and type of material placed and compacted
5. Conformance with final grade specifications

Typical entries for curb, gutter, sidewalk and driveway work -

1. Name of Contractor doing the work

2. Station to station limits of forms placed when concrete is not placed the same day
3. Station to station limits of concrete placed, type of concrete and additives, number of cubic yards placed, source of concrete and copy of delivery ticket
4. Type and size of curb and gutter
5. Width and thickness of sidewalk
6. Width and thickness of driveways
7. Number and location of concrete tests for slump, cylinders taken, and name of testing laboratory

Typical entries for paving work -

1. Name of Contractor doing the work
2. Identification of milling, paving and roller equipment used
3. Source and type of material
4. Station to station and width limits of pavement placed, method of laying, material type,, thickness, and weight of material laid based on delivery tickets
5. Number and location of temperature of material at delivery tests, density tests and name of testing laboratory

Typical entries for storm drains -

1. Station to station limits of excavation, pipe laid (including size and type), bedding material, backfill material and compaction method
2. Number and location of structure by type, backfill material and compaction method
3. Location of utility conflicts and resolution
4. Method of restoration, , compaction method and density test
5. Method of restoration, sidewalks, lawns
6. Televised inspection, dates and results

A primary responsibility of the Construction Manager is to have a working knowledge of the controlling regulations, codes and directives dealing with the public convenience, public safety and construction safety. Though jobsite safety is contractually the Contractor's responsibility, the Construction Manager should immediately report all unsafe conditions or practices to the proper authority. However, if in the opinion of the Construction Manager, the precautions taken by the Contractor are found to be insufficient or inadequate in providing job or public safety at any time, the Construction Manager shall notify the Senior Project Manager.

The Construction Manager is expected to wear suitable clothing and protective gear on the jobsite. Hard hats must be worn at all times there is a danger of falling and flying material. Approved reflective vests must be worn for high visibility in close proximity to traffic and moving equipment. Clothing and protective gear should clearly identify the Construction Manager.

Good housekeeping and sanitary provisions are the responsibility of the Contractor. The Contractor is responsible for public and private property and shall take every reasonable precaution to avoid damage by the construction activities. Throughout all phases of construction, the rubbish and debris on a project shall be held to a minimum and confined to organized disposal and storage areas. Dust nuisance is to be held to a minimum. The Contractor's equipment and construction activities shall not contribute to air pollution by excessively discharging smoke, exhaust and other contaminants in such quantities to be a nuisance and violation of contract. The Construction Manager shall record such unacceptable conditions in the Daily Report.

The responsibility of safe and proper handling of traffic rests with the Contractor. The Construction Manager shall see that the Contractor provides proper handling of traffic as required by the contract and shall notify the Contractor to correct any potentially dangerous situation that exists. The section of the Manual of Uniform Traffic Control Devices (MUTCD) titled *Work Area Traffic Control Handbook* sets forth the principle and standards in order to provide safe and effective work areas and to warn, control, protect and expedite vehicular and pedestrian traffic through the construction project. The MUTCD by reference is part of the Contractor's construction documents. The Construction Manager shall refer to this document when monitoring and coordinating traffic handling with the Contractor. The Construction Manager shall record such unacceptable conditions in the Daily Report.

The Construction Manager are directed to avail themselves of the *Public Works Inspector' Manual*, latest edition published by the BNI Building News and available through the American Public Works Association. The manual is a complete operational and technical guidebook for inspecting all types of public works construction. The manual is the standard by which the CITY expects the Construction Manager to meet and is part of this Agreement.

ARTICLE III - COMPENSATION

The CITY agrees to pay the CONSULTANT, at Hourly Rates, to a Maximum Fee of \$ 179,995.50 for the scope of services as specified herein unless modified by Change Order. CONSULTANT current Hourly Rate Schedule is attached as Exhibit A.

The CONSULTANT may submit an invoice on a monthly basis from an estimate of Services or upon the completion of services. The CONSULTANT shall bill reimbursable expenses, which are beyond all fees for professional services, with a multiplier of 1.0. Reimbursable items shall be as follows:

- a. Final plots and printing for construction or as requested by the CITY except as outlined in the scope of services (printing and plotting for the CONSULTANT in-house use is not a reimbursable expense)
- b. Project Mileage
- c. Delivery Charges

All billings must be submitted by the fifteenth day of the month for all services rendered in the previous month. The CONSULTANT will invoice the CITY on forms approved by the CITY. All properly prepared invoices will include a documented breakdown of expenses incurred.

Both parties may submit an Engineering Change Order for major changes in scope, character, delays or complexity of Services. The Engineering Change Order may provide for changes in compensation and schedule, either upward or downward. The Engineering Change Order shall be signed by the CITY and the CONSULTANT prior to the CONSULTANT proceeding with any work covered by this Agreement.

ARTICLE IV - GENERAL PROVISIONS

Times for Rendering Services: The CONSULTANT services and compensation under this Agreement have been agreed to in anticipation of orderly and continuous progress of the Services through completion. Specific periods of time for rendering services are set forth in Article IV, Time Schedule, in this Agreement, by which time defined services are to be completed. If such periods of

time are changed through no fault of the CONSULTANT, the rates and amounts of compensation provided for therein shall be subject to equitable adjustment.

Opinions of Probable Cost: In providing opinions of probable cost, the CITY understands that the CONSULTANT has no control over costs or the price of labor, equipment or materials, or over the Contractor's method of pricing, and that the opinions of probable construction costs, if included herein, are to be made based on the CONSULTANT qualifications and experience. The CONSULTANT makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.

Change in Scope: The scope of work described in Article I Scope of Services, shall be subject to modification or supplement upon the signing of an Engineering Change Order by the CITY and the CONSULTANT. At the time of such modification of scope, equitable adjustments, agreeable to both parties, shall be made in the time of performance and the compensation to be paid for the services.

In event the CITY consents to, allows, authorizes or approves of changes to the construction documents prepared by the CONSULTANT, and these changes are not approved in writing by the CONSULTANT, the CITY recognizes that such changes and the results thereof are not the responsibility of the CONSULTANT. Therefore, the CITY agrees to release the CONSULTANT from any liability arising from the construction, use, or result of such changes. In addition, the CITY agrees to indemnify and hold the CONSULTANT harmless from any damage, liability or cost arising from such changes.

Reuse of Documents: All documents including the plans and specifications provided or furnished by the Consultant pursuant to this Agreement ("Plans") shall become the property of City. City agrees that if such Plans are ever used in connection with another project in which the Consultant is not providing civil engineering services or for completion of the Project by others, all references to the Consultant or any subconsultant, including seals, shall be removed from the Plans before use on said project. The City may make and retain copies for the use by the City and others; however, such documents are not intended or suitable for reuse by the City or others as an extension of the Project or on any other Project. Any such reuse without written approval or adaptation by the Consultant for the specific purpose intended will be at the CITY sole risk and without liability to the Consultant. To the extent permitted by law, the City shall indemnify and hold harmless the Consultant from all claims, damages, losses and expenses including attorney's fees arising out of or resulting reuse of the Plans. In a similar manner, the Consultant is prohibited from reuse or disclosing any information contained in any documents, plans or specifications relative to the Project without the expressed written permission of the City.

Insurance: The Consultant shall procure and maintain, at its expense, the following insurance coverage: (a) Workers' Compensation -- Statutory Limits, with Employer's Liability limits of \$100,000 each employee, \$500,000 policy limit; (b) Commercial General Liability for bodily injury and property damage liability claims with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; (c) Commercial Automobile Liability for bodily injury and property damage with limits of not less than \$1,000,000 each accident for all owned, non-owned and hired automobiles; (d) errors and omissions coverage of not less than \$1,000,000. Deductibles for any of the above coverage shall not exceed \$25,000 unless approved in writing by City. In addition, Consultant agrees to require all consultants and subconsultants to obtain and provide insurance in identical type and amounts of coverage together and to require satisfaction of all other insurance requirements provided in this Agreement.

CONSULTANT'S insurance shall be from an insurance carrier with an A.M. Best rating of A-IX or better, shall be on the GL 1986 ISO Occurrence form or such other form as may be approved by City, and shall name, by endorsement to be attached to the certificate of insurance, City, and its divisions, departments, officials, officers and employees, and other parties as specified by City as additional insureds as their interest may appear, except that the additional insured requirement shall not apply to Errors and Omissions coverage. Such endorsement shall be ISO CG2010 11/85 or equivalent. "Claims Made" and "Modified Occurrence" forms are not acceptable, except for Errors and Omissions coverage. Each certificate of insurance shall state that such insurance will not be canceled or coverage reduced until after thirty (30) days' unqualified written notice of cancellation or reduction has been given to the City, except in the event of nonpayment of premium, in which case there shall be ten (10) days' unqualified written notice. Subrogation against City and CITY Agent shall be waived. CONSULTANT insurance policies shall be endorsed to indicate that CONSULTANT insurance coverage is primary and any insurance maintained by City or CITY Agent is non-contributing.

Before Consultant performs any portion of the Work, it shall provide City with certificates and endorsements evidencing the insurance required by this Article. Consultant agrees to maintain the insurance required by this Article of a minimum of three (3) years following completion of the Project and, during such entire three (3) year period, to continue to name City, CITY agent, and other specified interests as additional insureds thereunder.

If due to the CONSULTANT'S negligent act, error or omission, any required item or component of the project is omitted from the Construction documents produced by the Consultant, the CONSULTANT liability shall be limited to the difference between the cost of adding the item at the time of discovery of the omission and the cost had the item or component been included in the construction documents. The Consultant will be responsible for any retrofit expense, waste, any intervening increase in the cost of the component, and a presumed premium of 10% of the cost of the component furnished through a change order from a contractor to the extent caused by the negligence or breach of contract of the Consultant or its subconsultants.

6.4 Termination: This Agreement may be terminated by either party upon seven days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party; provided, however, the nonperforming party shall have 14 calendar days from the receipt of the termination notice to cure the failure in a manner acceptable to the other party. In any such case, the Consultant shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the payment provisions of this Agreement. Copies of all completed or partially completed designs, plans and specifications prepared under this Agreement shall be delivered to the City when and if this Agreement is terminated, but it is mutually agreed by the parties that the City will use them solely in connection with this Project, except with the written consent of the Consultant (subject to the above provision regarding Reuse of Documents).

6.5 Termination for Convenience: The City, within its sole discretion, may elect to terminate the Agreement with the Consultant for convenience upon three (3) days written Notice to Consultant. In the event of such termination, Consultant 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. Consultant shall not be entitled to any anticipatory profits of other costs other than direct costs of demobilization

Controlling Law: This Agreement is to be governed by the laws of the State of Kansas.

Indemnity: To the fullest extent permitted by law, with respect to the performance of its obligations in this Agreement or implied by law, and whether performed by Consultant or any subconsultants hired by Consultant, the Consultant agrees to indemnify City, and its agents, servants, and employees from and against any and all claims, damages, and losses arising out of personal injury, death, or property damage, caused by the negligent acts, errors, or omissions of the Consultant or its subconsultants, to the extent and in proportion to the comparative degree of fault of the Consultant and its subconsultants. Consultant shall also pay for CITY reasonable attorneys' fees, expert fees, and costs incurred in the defense of such a claim to the extent and in proportion to the comparative degree of fault of the Consultant and its subconsultants.

Severability: Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Consultant, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

Notices: Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears on the signature page to this Agreement (as modified in writing from item to item by such party) and given personally, by registered or certified mail, return receipt requested, by facsimile or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

Successors and Assigns: The City and the Consultant each is hereby bound and the partners, successors, executors, administrators, legal representatives and assigns of the City and the Consultant are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, legal representatives and assigns of such other party in respect of all covenants and obligations of this Agreement.

Neither the City nor the Consultant may assign, sublet, or transfer any rights under the Agreement without the written consent of the other, which consent shall not be unreasonably withheld; provided, Consultant may assign its rights to payment without Owner's consent, and except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Agreement.

Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by the Consultant to any Contractor, subcontractor, supplier, other person or entity or to any surety for or employee of any of them, or give any rights or benefits under this Agreement to anyone other than the City and the Consultant.

IN WITNESS WHEREOF: the parties hereto have executed this Agreement to be effective as of the date first above written.

CITY:

CITY OF PRAIRIE VILLAGE, KS

By: _____

Mayor

CONSULTANT:

OLSSON ASSOCIATES

By: Curt H. Mader

Curt H. Mader

Team Leader

By: Bryan Johnson

Bryan Johnson

Office Leader

Address for giving notices:

CITY of Prairie Village
7700 Mission Road
Prairie Village, Kansas, 66208
913-381-6464

Address for giving notices:

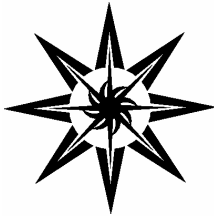
Olsson Associates
1802 E. 123rd Street
Olathe, KS 66061
913-829-0078

ATTEST:

Joyce Hagen Mundy, City Clerk

APPROVED BY:

Catherine Logan, City Attorney



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: May 2, 2016
Council Meeting Date: May 2, 2016

CONSIDER CONSTRUCTION CONTRACT WITH SUPERIOR BOWEN ASPHALT COMPANY FOR THE 2016 MEADOWBROOK STREET IMPROVEMENTS (MBSTREET) AND STORMWATER IMPROVEMENTS (MBDRAINX)

RECOMMENDATION

Move to authorize the Mayor to sign the construction contract with Superior Bowen Asphalt Company for the 2016 Meadowbrook Street Improvements (MBSTREET) and for the Stormwater Improvements (MBDRAINX) for \$5,899,774.34

BACKGROUND

On April 21, 2016, bids were opened bids for the project. Van Trust and the City representative were present for the bid opening. This unique bidding process was followed for this project as per the Meadowbrook Public Infrastructure Improvement Agreement approved by City Council on April 18, 2016.

Below are the bids that were received for parts of the Meadowbrook project that are funded by TIF funds and will contract directly with the City of Prairie Village. The work includes all construction items for the public streets and stormwater improvements.

Superior Bowen	\$5,899,774.34
Kissick Construction	\$6,687,675.70
Emery Sapp & Son's	\$6,983,888.58
Engineer's Estimate	\$8,672,248.70

Cost breakdown for Streets and Stormwater-

Stormwater-	\$1,513,905.45
Streets-	\$4,385,868.89

It is anticipated that the County's SMAC(Stormwater Management Advisory Council) Program will provide funds for the stormwater improvements. The exact amount of funding has yet to be determined.

The Engineer and the City have reviewed all bids and recommend award of the low bid. Van Trust, Phelps, and the City did meet with Superior Bowen to discuss the project and confirmed that Superior Bowen understands the work and timelines that is expected of them.

The low bid by Superior Bowen is in line with the estimated costs shown in the developer agreement for the Meadowbrook project.

Execution of this contract will take place on May 17, 2016, the date of bond closing.

FUNDING SOURCES

Funding for this project will come from the Meadowbrook TIF

A portion of the stormwater improvements will possibly be funded by County SMAC funds.

RELATION TO VILLAGE VISION

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

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

ATTACHMENTS

1. Construction Agreement with Superior Bowen Asphalt Company

PREPARED BY

Keith Bredehoeft, Public Works Director

April 28, 2016

CONSTRUCTION CONTRACT
FOR
MEADOWBROOK PARK PUBLIC IMPROVEMENTS

ITEMS 1 - 21 OF BID PACKAGE A- STORMWATER IMPROVEMENTS PROJECT MBDRAINX

AND

BID PACKAGE C IN ITS ENTIRETY- STREET IMPROVEMENTS PROJECT MBSTREET

BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND

SUPERIOR BOWEN ASPHALT COMPANY

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 Superior Bowen Asphalt Company, hereinafter termed in this agreement, “Contractor”, for the construction and completion of Meadowbrook Park Public Improvements, (the “Project”) designated, described and required by the Project Manual and Bid Proposals, 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 Project Manager stating that to the best of the project manager's knowledge, information and belief, and on the basis of the Project Manager'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 Project Manager) 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 Project Manager 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 Project Manager.

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.

PROJECT MANAGER 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. The Work shall specifically include Items 1 - 21 of Bid Package A and Bid Package C in its entirety.

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 Project Manager is intended.
- 1.4 Whenever any statement is made in the Contract Documents containing the expression "it is understood and agreed", or an expression of like import, such expression means the mutual understanding and agreement of the parties hereto.
- 1.5 The words "approved", "reasonable", "suitable", "acceptable", "properly", "satisfactorily", or words of like effect in import, unless otherwise particularly specified herein, shall mean approved, reasonable, suitable, acceptable, proper or satisfactory in the judgment of the Project Manager.
- 1.6 When a word, term or phrase is used in the Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and, third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.
- 1.7 All terms used herein shall have the meanings ascribed to them herein unless otherwise specified.

2. ENTIRE AGREEMENT:

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 Project Manager of any inconsistency, ambiguity, error or omission, which the Contractor may discover, or should have discovered, with respect to these documents before proceeding with the affected Work. The review, issuance, or the express or implied approval by the City or the Project Manager of the Contract Documents shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such review be evidence of the Contractor's compliance with this Contract.
- 3.6 The City has prepared or caused to have prepared the Project Manual. **HOWEVER, THE CITY MAKES NO REPRESENTATION OR WARRANTY AS TO ACCURACY OR FITNESS FOR PARTICULAR PURPOSE INTENDED OR ANY OTHER WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the City concerning such documents as no such representation or warranties have been made or are hereby made.
- 3.7 As between numbers and scaled measurements in the Project Manual, the numbers shall govern; as between larger scale and smaller scale drawings, (e.g. 10:1 is larger than 100:1) the larger scale shall govern.

- 3.8 The organization of the Project Manual into divisions, sections, paragraphs, articles (or other categories), shall not control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.
- 3.9 The Contract Documents supersedes all previous agreements and understandings between the parties, and renders all previous agreements and understandings void relative to these Contract Documents.
- 3.10 Should anything be omitted from the Project Manual, which is necessary to a clear understanding of the Work, or should it appear various instructions are in conflict, the Contractor shall secure written instructions from the Project Manager before proceeding with the construction affected by such omissions or discrepancies.
- 3.11 It is understood and agreed that the Work shall be performed and completed according to the true spirit, meaning, and intent of the Contract Documents.
- 3.12 The Contractor's responsibility for construction covered by conflicting requirements, not provided for by addendum prior to the time of opening Bids for the Work represented thereby, shall not extend beyond the construction in conformity with the less expensive of the said conflicting requirements. Any increase in cost of Work required to be done in excess of the less expensive work of the conflicting requirements will be paid for as extra work as provided for herein.
- 3.13 The apparent silence of the Project Manual as to any detail, or the apparent omission from them of a detailed description concerning any point, shall be regarded as meaning that only the best general practice is to be used. All interpretations of the Project Manual shall be made on the basis above stated.
- 3.14 The conditions set forth herein are general in scope and are intended to contain requirements and conditions generally required in the Work, but may contain conditions or requirements which will not be required in the performance of the Work under contract and which therefore are not applicable thereto. Where any stipulation or requirement set forth herein applies to any such non-existing condition, and is not applicable to the Work under contract, such stipulation or requirement will have no meaning relative to the performance of said Work.
- 3.15 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 **FIVE MILLION EIGHT HUNDRED NINETY NINE THOUSAND SEVEN HUNDRED SEVENTY FOUR AND THIRTY FOUR HUNDREDTHS DOLLARS (\$5,899,774.34)** 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 Project Manager daily to advise whether and/or where the Contractor and/or the Subcontractor's crews will be working that day, in order that the Project Manager's representative is able to monitor properly the Work.

6. PROJECT MANAGER

- 6.1 It is mutually agreed by and between the parties to this Agreement that the Project Manager 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 Project Manager shall, in good faith and to the best of its ability, determine the amount and quantities of the several kinds of work which are to be paid for under this Contract; that the Project Manager shall determine, where applicable, questions in relation to said Work and the construction thereof; that Project Manager shall, where applicable decide questions which may arise relative to the execution of this Contract on the part of said Contractor; that the Project Manager's decisions and findings shall be the conditions precedent to the rights of the parties hereto, to any action on the Contract, and to any rights of the Contractor to receive any money under this Contract provided, however, that should the Project Manager render any decision or give any direction which, in the opinion of either party hereto, is not in accordance with the meaning and intent of this Contract, either party may file with the Project Manager and with the other party, within thirty (30) days a written objection to the decision or direction so rendered and, by such action, may reserve the right to submit the question to determination in the future.

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

- 6.8 The City may refuse to make payment of the full amount recommended by the Project Manager because claims have been made against City on account of Contractor's performance or furnishing of the Work or liens have been filed in connection with the Work or there are other items entitling City to a set-off against the amount recommended, but City must give Contractor written notice (with a copy to Project Manager) stating the reasons for such action.
- 6.9 The Project Manager will have the authority to reject Work which is defective or does not conform to the requirements of this Contract. If the Project Manager deems it necessary or advisable, the Project Manager shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.
- 6.10 The Project Manager will review, or take other appropriate action as necessary, concerning the Contractor's submittals, including Shop Drawings, Product Data and Samples. Such review, or other action, shall be for the sole purpose of determining general conformance with the design concept and information given through the Project Manual.
- 6.11 The Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 6.12 The Project Manager, 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 Project Manager will receive and forward to the City for the City's review and records, written warranties and related documents from the Contractor required by this Contract and will issue a final Certificate for Payment to the City upon compliance with the requirements of this Contract.
- 6.13 The Project Manager's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.
- 6.14 The Project Manager will **NOT** be responsible for Contractor's means, methods, techniques, sequences, or procedures or construction, or the safety precautions and programs incident thereto and will not be responsible for Contractor's failure to perform the Work in accordance with the Project Manual. The Project Manager will not be responsible for the acts or omissions of the Contractor or any Subcontractor or any of its or their agents or employees, or any other person at the site or otherwise performing any of the Work except as may otherwise be provided.
- 6.15 Any plan or method of work suggested by the Project Manager, or other representatives of the City, to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor, and the Project Manager and the City will assume no responsibility therefore.
- 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 Project Manager, such City representatives or observers as the City may deem proper, to observe the materials furnished and the work performed under the Project Manual, and to see that the said materials are furnished, and the said work performed, in accordance with the Project Manual therefore. The Contractor shall furnish all reasonable aid and assistance required by the Project Manager, or by the

resident representatives for proper observation and examination of the Work and all parts thereof.

- 6.17 The Contractor shall comply with any interpretation of the Project Manual by the Project Manager, or any resident representative or observer so appointed, when the same are consistent with the obligations of the Project Manual. However, should the Contractor object to any interpretation given by any subordinate Project Manager, resident representative or observer, the Contractor may appeal in writing to the City Director of Public Works for a decision.
- 6.18 Resident representatives, observers, and other properly authorized representatives of the City or Project Manager shall be free at all times to perform their duties, and intimidation or attempted intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the City so decides, to annul the Contract.
- 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 Project Manager 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 Project Manager 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 Project Manager. If it is necessary to perform proper care, maintenance, or protection of work already completed or of equipment used, or in the case of an emergency verbal permission may be obtained through the Project Manager.
- 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 Project Manager. The Contractor shall communicate immediately any changes in the Work Schedule to the Project Manager 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 Project Manager shall award in writing on account of such delays, provided, however, that claim for such extension of time is made by the Contractor to the City and the Project Manager in writing within one (1) week from the time when any such alleged cause for delay shall occur.

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 Project Manager, an average or usual number of

inclement days when work cannot proceed are to be anticipated during the construction period and are not to be considered as warranting extension of time.

- 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 Project Manager 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 Project Manager within 7 days of the last day of the commencement of the event giving rise to the delay occurred. Resolution of any claim shall follow the procedures 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 Project Manager by the Contractor and Certificates for Payment issued by the Project Manager, 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 Project Manager will, upon receipt of a written Application for Payment from the Contractor, review the amount of Work performed during the preceding period and the value thereof at the unit prices contracted. From the amounts so ascertained, there shall be deducted ten percent (10%) to be retained until after final completion of the entire Work to the satisfaction of the City. The Project Manager will submit an estimate each month to the City for payment to the Contractor, except that no amount less than \$500.00 will be submitted unless the total amount of the Contract remaining unpaid is less than \$500.00.
- 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 Project Manager, nor any extension of time, nor any possession taken by the City or its employees, shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the City, or any right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of any other or subsequent breach.

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

- 12.2 The Contractor shall not be entitled to any payment unless and until it submits to the Project Manager its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the City, or the City's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors and Suppliers of the Contractor and of any and all other parties required by the City; and consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the City, the Contractor shall furnish a bond satisfactory to the City to discharge any such lien or indemnify the City from liability.
- 12.3 The City shall make final payment of all sums due the Contractor within thirty days of the Project Manager'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 Project Manager. Such written notice and claim must be furnished within seven calendar days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.
- 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 Project Manager 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 Project Manager may consider necessary or desirable, by approved Change Order. Such modifications shall not invalidate the Contract nor release the surety. Unless such alterations and increases or decreases change the total cost of the Work, based on the originally estimated quantities and the unit prices bid, by more than 25 percent, or change the total cost of any major item, based on the originally estimated quantities and the unit price bid, by more than 25 percent, the Contractor shall perform the work altered, increased or decreased, at a negotiated price or prices. (A major item shall mean any bid item, the total cost of which exceeds 12-1/2 percent of the total Contract 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 Project Manager 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 Project Manager shall not otherwise modify or invalidate in any way, any of the provisions of this Contract. In the event that the work shall be stopped by written order of the City, any expense, which, in the sole opinion and judgment of the City, is caused by the City, shall be paid by the City to the Contractor.

- 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 Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 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 Project Manager on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content to the City, as the Project Manager requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies or equipment, including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools, whether rented from the Contractor or others, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and job site field office overhead directly attributable to the change. In no event shall any standby time or any expenditure or savings associated with the Contractor's home office or other non-job site overhead expense be included in any change in the Contract Price. Further, in no event shall the Contractor's overhead expense exceed ten (10%) percent of the reasonable expenditures. Pending final determination of

reasonable expenditures or savings to the City, payments on account shall be made to the Contractor on the Project Manager's Certificate for Payment.

- 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 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. 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, Project Manager or bid-letting costs therefore. In such case, the Contractor shall not be entitled to receive further payment. In the event the Contractor is found in a court of law to have been wrongfully terminated for cause, then such termination shall be deemed a termination for convenience and the Contractor shall be compensated as provided herein. 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 Project Manager and to the City. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or communication upon the Contractor personally.
- 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, Project Manager or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval or acquiescence in a breach hereunder, except as may be specifically agreed in writing.
- 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

SUPERIOR BOWEN ASPHALT COMPANY

By: _____
(signed)

By: _____
(signed)

Laura Wassmer

Matt Bowen
(typed name)

Mayor

President
(typed title)

City of Prairie Village

Superior Bowen Asphalt Company
(typed company name)

7700 Mission Road

2501 Manchester Trafficway
(typed address)

Prairie Village, Kansas 66208

Kansas City, MO 64129
(typed city, state, zip)

816-921-8200
(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.)

Addendum #1 to Contract for City of Prairie Village Street Improvement Project #MBSTREET and Stormwater Improvement Project #MBDRAINX

1. This Addendum to the contracts for the above Projects applies only if Contractor is awarded bids by the City for both the Street Improvement Project #MBSTREET and Stormwater Improvement Project #MBDRAINX and also by MB-18, LLC for simultaneous performance of infrastructure work on adjacent property (“Private Development Site Improvement Work”).

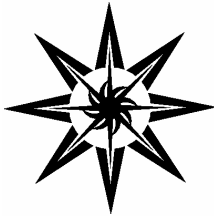
2. MB-18 LLC is authorized by the City to manage and coordinate construction activities of Contractor with respect to the Street Improvement Project #MBSTREET and the Stormwater Improvement Project #MBDRAINX, and the related aspects of the Private Development Site Improvement Work in the following manner:

A. MB-18, LLC has general authority and discretion to make decisions relating to the coordination, construction and supervision of the simultaneous work comprising the Street Improvement Project #MBSTREET, Stormwater Improvement Project #MBDRAINX and the Private Development Site Improvement Work and has the authority to take such actions as MB-18, LLC reasonably deems necessary, proper or desirable for the furtherance of the Street Improvement Project #MBSTREET and Stormwater Improvement Project #MBDRAINX.

B. MB-18, LLC does NOT have authority to take any of the following actions with respect to the Street Improvement Project #MBSTREET and the Stormwater Improvement Project #MBDRAINX:

- i. Make any changes to the design or completion milestones or deadlines in the City Contracts for the Street Improvement Project #MBSTREET and the Stormwater Improvement Project #MBDRAINX.
- ii. Approve change orders or any amendments to the City Contracts for the Street Improvement Project #MBSTREET and the Stormwater Improvement Project #MBDRAINX .
- iii. Approve any payments to the Contractor relating to the City Contracts the Street Improvement Project #MBSTREET and the Stormwater Improvement Project #MBDRAINX.
- iv. Enter into any agreements or waivers or releases relating to the City Contracts for the Street Improvement Project #MBSTREET and the Stormwater Improvement Project #MBDRAINX which will be binding upon City.

C. MB-18, LLC will schedule regular meetings with the City’s engineering firm and the Contractor, as applicable, and will advise the City Public Works Director, and other City staff and its inspectors as determined by the Public Works Director and the staff of Johnson County Parks and Recreation District (“JCPRD”) of such meetings so that they may attend. Contractor will cooperate with MB-18, LLC in order to facilitate MB-18, LLC’s obligation to City and JCPRD to provide periodic status updates on the progress of construction.



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: May 2, 2016

Council Meeting Date: May 2, 2016

CONSIDER DESIGN AGREEMENT WITH PHELPS ENGINEERING FOR THE 2016 SMAC STORMWATER DESIGN WORK FOR THE MEADOWBROOK PROJECT(MBDRAINX)

RECOMMENDATION

Move to approve the Design agreement with Phelps Engineering for the 2016 SMAC Stormwater Design work for the Meadowbrook Project(MBDRAINX) for \$ 198,275.

BACKGROUND

Phelps Engineering is the engineering firm that was selected by Van Trust for the Meadowbrook Development project and they have done significant work related to the ponds on the site. The SMAC project includes grading the existing ponds to make them larger to create a regional detention benefit for downstream roads and homes that currently flood. Given Phelps' involvement with the project we selected them to do the design work for the SMAC project. This design fee includes all the work necessary to develop the SMAC project which includes the regional detention ponds as well channel restoration work on the project site. The design will meet all County SMAC requirements. The fees have been reviewed, compared and are found to be reasonable in the market.

SMAC approval of this project is anticipated prior to execution of this agreement and will fund 75% of the design fee.

Execution of this agreement will take place on May 17, 2016, the date of Bond Closing.

FUNDING SOURCE

75% of the fee will be funded by the County SMAC program.

The remaining 25% of the fee will utilize TIF funds.

ATTACHMENTS

1. Design Agreement for the SMAC project with Phelps Engineering

PREPARED BY

Keith Bredehoeft, Public Works Director

April 27, 2016

AGREEMENT FOR PROFESSIONAL ENGINEER

For

DESIGN SERVICES

Of

MEADOWBROOK STORMWATER IMPROVEMENTS
PROJECT (MBDRAINX)

THIS AGREEMENT, made at the Prairie Village, Kansas, this ___ day of _____, by and between the City of Prairie Village, Kansas, a municipal corporation with offices at 7700 Mission Road, Prairie Village, Kansas, 66208, hereinafter called the “**City**”, and **Phelps Engineering, Inc.**, a corporation with offices at 1270 N. Winchester, Olathe, KS 66061, hereinafter called the “**Consultant**”.

WITNESSED, THAT WHEREAS, City has determined a need to retain a professional engineering firm to provide services for the Meadowbrook SMAC Regional Detention Basins hereinafter called the “**Project**”,

AND WHEREAS, the City is authorized and empowered to contract with the Consultant for the necessary consulting services for the Project,

AND WHEREAS, the City has the necessary funds for payment of such services,

NOW THEREFORE, the City hereby hires and employs the Consultant as set forth in this Agreement effective the date first written above.

Article I City Responsibilities

- A. **Project Definition** The City, in coordination with the Johnson County Stormwater Management Program (SMP), is preparing to convert the existing ponds on the Meadowbrook Country Club to regional detention basins. The work will include dredging, excavation, installing outlet control structures, channel grading and pond edge treatments. The engineering services will include hydrologic and hydraulic modeling, preparing of construction documents, coordinating with SMP, Overland Park and Johnson County Park and Recreation District, preparing permit applications and coordinating with utility providers.
- B. **City Representative** The City shall in a timely manner designate, Keith Bredehoeft, Public Works Director, to act as the City’s representative with respect to the services to be performed or furnished by the Consultant under this Agreement. Such person shall have authority to transmit instructions, receive information, interpret and define the City’s policies and decisions with respect to the Consultant’s services for the Project.
- C. **Existing Data and Records** The City shall make available to the Consultant all existing data and records relevant to the Project such as, maps, plans, correspondence files and other information possessed by the City that is relevant to the Project. Consultant shall not be responsible for verifying or ensuring the accuracy of any information or content supplied by City or any other Project participant unless specifically defined by the scope of work, nor ensuring that such information or content does not violate or infringe any law or other third party rights. However, Consultant shall promptly advise the City, in writing, of any inaccuracies in the information provided or any other violation or infringement of any law or third party rights that

Consultant observes. City shall indemnify Consultant for any infringement claims resulting from Consultant's use of such content, materials or documents.

- D. **Review For Approval** The City shall review all criteria, design elements and documents as to the City requirements for the Project, including objectives, constraints, performance requirements and budget limitations.
- E. **Standard Details** The City shall provide copies of all existing standard details and documentation for use by the Consultant for the project.
- F. **Submittal Review** The City shall diligently review all submittals presented by the Consultant in a timely manner.
- G. **Correspondence to Property Owners** Obtain mailing list and approve all correspondence to property owners in the project area. Typical, but not all inclusive, correspondence is:
 - 1. Frequently Asked Questions (FAQ)
 - 2. Citizen Bill of Rights
 - 3. Information request about driveway, lawn sprinkler, pet fence
 - 4. Intent to construct sidewalk
 - 5. Intent to begin construction
 - 6. Public Information meeting
 - 7. Notification of FEMA Special Flood Hazard Area boundary modifications

Article II Consultant Responsibilities

- A. **Professional Engineering Services** The Consultant shall either perform for or furnish to the City professional engineering services and related services in all phases of the Project to which this Agreement applies as hereinafter provided.
- B. **Prime Consultant** The Consultant shall serve as the prime professional Consultant for the City on this Project
- C. **Standard Care** The standard of care for all professional consulting services and related services either performed for or furnished by the Consultant under this Agreement will be the care and skill ordinarily used by members of the Consultant's profession, practicing under similar conditions at the same time and in the same locality.
- D. **Consultant Representative** Designate a person to act as the Consultant's representative with respect to the services to be performed or furnished by the Consultant under this Agreement. Such person shall have authority to transmit instructions, receive information, and make decisions with respect to the Consultant's services for the Project.

Article III Scope of Services

- A. **Concept Study Phase** Upon receipt of notice to proceed from the City, the Consultant shall provide all consulting services related to this project including, but not limited, to these tasks. The scope is generally defined below and in more detail in Exhibit A.
 - 1. Schedule and attend one startup meeting with City to confirm project goals, schedule, budget and expectations
 - 2. Review any design criteria
 - 3. Identify all utilities that may be affected by the project

4. Prepare an engineers project schedule
5. Prepare a project title sheet
6. Prepare general site plan showing building outline, street, address and property owner including any features located between the right-of-way line and the building line
7. Prepare a general site plan identifying the property address and property owner name based on latest AIMS coverage data
8. Obtain a Ownership and Easement (O&E) on project properties to determine existing easements
9. Prepare plan and profiles detailing all structures for drainage, sanitary sewer, water, gas, electric, telephone, traffic signals, street lights, driveways, sidewalks, signage, trees, walls, signs and any other feature located within the right-of-way and between the edge of right-of-way and building lot line
10. Prepare typical sections for significant changes in final elevations or critical construction locations particularly where new sidewalk is to be constructed
11. Publish minutes of all progress meetings (held at least monthly) and disperse to City representative and all other attendees within five working days
12. Submit one paper copy and one electronic copy of documents in Microsoft Office, and plans in pdf format for review by the City.
13. Participate in a public meeting to present project specifics.

B. Preliminary Design Phase Upon receipt of notice to proceed from the City, the Consultant shall provide all consulting services related to this project including, but not limited, to these tasks.

1. Prepare an engineers project schedule
2. Identify test pit locations of potential utility conflicts with City review
3. Locate bench marks and section markers within the project area
4. Prepare and mail letters of survey crew work after review by the City
5. Prepare a project title sheet
6. Prepare general site plan showing building outline, street, elevations, trees, address, and owner name based on latest AIMS coverage data, boring locations
7. Prepare plan and profile for street and drainage showing best information for all utility conflicts and test pits for location identification including drainage, sanitary sewer, water, gas, electric, telephone, traffic signals, street lights
8. Prepare a cross section plan of typical sections for significant changes in final elevations or critical construction locations
9. Prepare a standard and special detail plan showing City detail drawings and other special details pertinent to the project
10. Prepare an easement plan of intended construction and required easements (both permanent and temporary) as well as right of entry
11. Prepare all project required easement documents and submit to City for review
12. Prepare a traffic control plan showing temporary and permanent traffic control measures per MUTCD for various phases of construction

13. Prepare an erosion and control plan showing all areas to be controlled during construction
14. Participate in a project field check with City staff
15. Present one set of preliminary plans (11x17) to appropriate governmental agencies and utility companies requesting comments and verification of potential conflicts
16. Present one set of preliminary plans (11x17) City review
17. Participate in a public meeting to present project intentions
18. Present draft of detail specifications (green pages) and special conditions (pink pages) for City review
19. Present a detailed opinion of probable construction cost including a compilation of typical and non-typical construction pay items with quantities and current unit costs plus a contingency of 15 percent
20. Suggest additions and deductions to adjust the total project cost
21. Publish minutes of all progress meetings (held at least monthly) and disperse to City representative and to all other attendees within five working days
22. Submit one paper copy and one electronic copy of documents in Microsoft Office, and plans in pdf format for review by the City.

C. Final Design Phase Upon receipt of notice to proceed from the City, the Consultant shall provide all consulting services related to this project including, but not limited, to these tasks.

1. Prepare final design documents base of preliminary plans and comments received from the City and other review agencies
2. Prepare final project manual
3. Present one set of final design plans and specifications for City review
4. Submit one set of final plans and specifications to other governmental agencies and utility companies with identification of significant changes to preliminary design plans
5. Request utility comments and construction schedule
6. Prepare a final opinion of probable construction cost including compilation of construction pay items with quantities and current unit cost
7. Prepare all bid documents using the City's standard bid and contract
8. Publish minutes of all progress meetings (held at least monthly) and disperse to City representative and to all other attendees within five working days
9. Submit one paper copy and one electronic copy of documents in Microsoft Office, and plans in pdf format for review by the City.

D. Bidding Phase Upon receipt of notice to proceed from the City, the Consultant shall provide all consulting services related to this project including, but not limited, to these tasks.

1. Mail notice of bid as prepared by the City to potential contractors
2. Provide plans, bid documents, and specifications for potential bidders to be purchased from electronic plan room

3. Provide all utilities with bid set of plans and request attendance at pre-bid meeting
4. Conduct a pre-bid meeting and prepare any addenda to the contract as necessary
5. Prepare and publish minutes of pre-bid meeting and disperse to City representative and to all other attendees within five working days
6. Attend bid opening
7. Evaluate the bids and make a recommendation of award to the City
8. Assemble five sets of construction contracts, including bonds, for execution by the Contractor and then by the City
9. Submit one paper copy and one electronic copy of documents in Microsoft Office, and plans in pdf format for review by the City.

Article IV Time Schedule

- A. **Timely Progress** The Consultant's services under this Agreement have been agreed to in anticipation of timely, orderly and continuous progress of the Project.
- B. **Authorization to Proceed** If the City fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, the Consultant shall be entitled to equitable adjustment of rates and amounts of compensations to reflect reasonable costs incurred by the Consultant as a result of the delay or changes in the various elements that comprise such rates of compensation.
- C. **Default Neither** City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and delay in or inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either City or Consultant under this Agreement. Should such circumstances occur, the consultant shall within a reasonable time of being prevented from performing, give written notice to the City describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.
- D. **Completion Schedule** Recognizing that time is of the essence, the Consultant proposes to complete the scope of services as specified in the Scope of Services:

Design Completion- June 15, 2016

Project Completion- December 31, 2016

Article V Compensation

- A. **Maximum Compensation** The City agrees to pay the Consultant as maximum compensation as defined in Exhibit B for the scope of services the following fees:

Total Maximum Fee \$ 198,275.00

- B. **Invoices** The compensation will be invoiced by phase, detailing the position, hours and appropriate hourly rates (which include overhead and profit) for Consultant's personnel classifications and the Direct Non-Salary Costs.

- C. **Direct Non-Salary Costs** The term “Direct Non-Salary Costs” shall include the Consultant payments in connection with the Project to other consultants, transportation, and reproduction costs. Payments will be billed to the City at actual cost. Transportation, including use of survey vehicle or automobile will be charged at the IRS rate in effect during the billing period. Reproduction work and materials will be charged at actual cost for copies submitted to the City.
- D. **Monthly Invoices** All invoices must be submitted monthly for all services rendered in the previous month. The Consultant will invoice the City on forms approved by the City. All properly prepared invoices shall be accompanied by a documented breakdown of expenses incurred and description of work accomplished.
- E. **Fee Change** The maximum fee shall not be changed unless adjusted by Change Order mutually agreed upon by the City and the Consultant prior to incurrence of any expense. The Change Order will be for major changes in scope, time or complexity of Project.

Article VI General Provisions

- A. **Opinion of Probable Cost and Schedule:** Since the Consultant has no control over the cost of labor, materials or equipment furnished by Contractors, or over competitive bidding or market conditions, the opinion of probable Project cost, construction cost or project schedules are based on the experience and best judgment of the Consultant, but the Consultant cannot and does not guarantee the costs or that actual schedules will not vary from the Consultant's projected schedules.
- B. **Quantity Errors:** Negligent quantity miscalculations or omissions because of the Consultant's error shall be brought immediately to the City's attention. The Consultant shall not charge the City for the time and effort of checking and correcting the errors to the City's satisfaction.
- C. **Reuse of Consultant Documents:** All documents including the plans and specifications provided or furnished by the Consultant pursuant to this Agreement are instruments of service in respect of the Project. The Consultant shall retain an ownership and property interest upon payment therefore whether or not the Project is completed. The City may make and retain copies for the use by the City and others; however, such documents are not intended or suitable for reuse by the City or others as an extension of the Project or on any other Project. Any such reuse without written approval or adaptation by the Consultant for the specific purpose intended will be at the City's sole risk and without liability to the Consultant. The City shall indemnify and hold harmless the Consultant from all claims, damages, losses and expenses including attorney's fees arising out of or resulting reuse of the documents.
- D. **Reuse of City Documents** In a similar manner, the Consultant is prohibited from reuse or disclosing any information contained in any documents, plans or specifications relative to the Project without the expressed written permission of the City.
- E. **Insurance** The Consultant shall procure and maintain, at its expense, the following insurance coverage:
 - 1. Workers' Compensation -- Statutory Limits, with Employer's Liability limits of \$100,000 each employee, \$500,000 policy limit;
 - 2. Commercial General Liability for bodily injury and property damage liability claims with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate;
 - 3. Commercial Automobile Liability for bodily injury and property damage with limits of not less than \$1,000,000 each accident for all owned, non-owned and hired automobiles;
 - 4. Errors and omissions coverage of not less than \$1,000,000. Deductibles for any of the above coverage shall not exceed \$25,000 unless approved in writing by City.

5. In addition, Consultant agrees to require all consultants and sub-consultants to obtain and provide insurance in identical type and amounts of coverage together and to require satisfaction of all other insurance requirements provided in this Agreement.
- F. Insurance Carrier Rating** Consultant's insurance shall be from an insurance carrier with an A.M. Best rating of A-IX or better, shall be on the GL 1986 ISO Occurrence form or such other form as may be approved by City, and shall name, by endorsement to be attached to the certificate of insurance, City, and its divisions, departments, officials, officers and employees, and other parties as specified by City as additional insureds as their interest may appear, except that the additional insured requirement shall not apply to Errors and Omissions coverage. Such endorsement shall be ISO CG2010 11/85 or equivalent. "Claims Made" and "Modified Occurrence" forms are not acceptable, except for Errors and Omissions coverage. Each certificate of insurance shall state that such insurance will not be canceled until after thirty (30) days' unqualified written notice of cancellation or reduction has been given to the City, except in the event of nonpayment of premium, in which case there shall be ten (10) days' unqualified written notice. Subrogation against City and City's Agent shall be waived. Consultant's insurance policies shall be endorsed to indicate that Consultant's insurance coverage is primary and any insurance maintained by City or City's Agent is non-contributing as respects the work of Consultant.
- G. Insurance Certificates** Before Consultant performs any portion of the Work, it shall provide City with certificates and endorsements evidencing the insurance required by this Article. Consultant agrees to maintain the insurance required by this Article of a minimum of three (3) years following completion of the Project and, during such entire three (3) year period, to continue to name City, City's agent, and other specified interests as additional insureds thereunder.
- H. Waiver of Subrogation** Coverage shall contain a waiver of subrogation in favor of the City, and its subdivisions, departments, officials, officers and employees.
- I. Consultant Negligent Act** If due to the Consultant's negligent act, error or omission, any required item or component of the project is omitted from the Construction documents produced by the Consultant, the Consultant's liability shall be limited to the difference between the cost of adding the item at the time of discovery of the omission and the cost had the item or component been included in the construction documents. The Consultant will be responsible for any retrofit expense, waste, any intervening increase in the cost of the component, and a presumed premium of 10% of the cost of the component furnished through a change order from a contractor to the extent caused by the negligence or breach of contract of the Consultant or its subconsultants.
- J. Termination** This Agreement may be terminated by either party upon seven days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party; provided, however, the nonperforming party shall have 14 calendar days from the receipt of the termination notice to cure the failure in a manner acceptable to the other party. In any such case, the Consultant shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the payment provisions of this Agreement. Copies of all completed or partially completed designs, plans and specifications prepared under this Agreement shall be delivered to the City when and if this Agreement is terminated, but it is mutually agreed by the parties that the City will use them solely in connection with this Project, except with the written consent of the Consultant (subject to the above provision regarding Reuse of Documents).
- K. Controlling Law** This Agreement is to be governed by the laws of the State of Kansas.
- L. Indemnity** To the fullest extent permitted by law, with respect to the performance of its obligations in this Agreement or implied by law, and whether performed by Consultant or any sub-consultants hired by Consultant, the Consultant agrees to indemnify City, and its agents, servants, and employees from and against any and all claims, damages, and losses arising out of personal injury, death, or property damage, caused by the negligent acts, errors, or omissions of the Consultant or its sub-consultants, to the extent and in proportion to the comparative degree of fault of the

Consultant and its sub-consultants. Consultant shall also pay for City's reasonable attorneys' fees, expert fees, and costs incurred in the defense of such a claim to the extent and in proportion to the comparative degree of fault of the Consultant and its sub-consultants.

- M. Severability** Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Consultant, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.
- N. Notices** Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears on the signature page to this Agreement (as modified in writing from item to time by such party) and given personally, by registered or certified mail, return receipt requested, by facsimile or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.
- O. Successors and Assigns** The City and the Consultant each is hereby bound and the partners, successors, executors, administrators, legal representatives and assigns of the City and the Consultant are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, legal representatives and assigns of such other party in respect of all covenants and obligations of this Agreement.
- P. Written Consent to Assign** Neither the City nor the Consultant may assign, sublet, or transfer any rights under the Agreement without the written consent of the other, which consent shall not be unreasonably withheld; provided, Consultant may assign its rights to payment without Owner's consent, and except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Agreement.
- Q. Duty Owed by the Consultant** Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by the Consultant to any Contractor, subcontractor, supplier, other person or entity or to any surety for or employee of any of them, or give any rights or benefits under this Agreement to anyone other than the City and the Consultant.

IN WITNESS WHEREOF: the parties hereto have executed this Agreement to be effective as of the date first above written.

City:

City of Prairie Village, Kansas

By:

Laura Wassmer, Mayor

Address for giving notices:

City of Prairie Village
Department of Public Works
3535 Somerset Drive
Prairie Village, Kansas 66208

Telephone: 913-385-4640

Email: publicworks@pvkansas.com

ATTEST:

Joyce Hagen Mundy, City Clerk

Consultant:

Phelps Engineering, Inc.

By

Judd Claussen, P.E., Principal

Address for giving notices:

Phelps Engineering, Inc,
1270 N. Winchester
Olathe, KS 66061

Telephone: 913-393-1155

email: jclaussen@phelpsengineering.com

APPROVED AS TO FORM BY:

Catherine P. Logan, City Attorney

Exhibit A Detailed Scope of Services

In an effort to minimize the coordination during plan preparation, bidding and construction, the construction documents provided for under this contract will be incorporated into the site development construction documents for the Meadowbrook Development prepared by Phelps Engineering, Inc. The SMP eligible quantities will be tracked separately, and the following items being included in the construction documents prepared under this contract:

- Grading below the 2-year water surface elevation for each pond. Mass grading outside this limit will be included in the Site Development plans and fine grading for the park property will be included in the plans prepared by the Johnson County Park and Recreation Department.
- Dredging the existing ponds
- Grading associate with dam repairs or relocation
- All stream reshaping and restoration
- All outlet structures from the ponds
- Spillways
- Shoreline treatments
- Erosion and sediment control for pond reconstruction
- Coordination of regional detention pond improvements with the DEVELOPER and Johnson County Park and Recreation District.
- Coordination with the City of Overland Park for FEMA floodplain revisions

Task Series 1.0 - Project Management

1.1 - Project Definition and Goals (Schedule, Scope, Budget, etc.)-

One (1) meeting will be held at the onset of the project, prior to plan preparation, to discuss the scope, budget, schedule and overall goals of the project. The CONSULTANT will prepare a summary of the meeting.

1.2 - Progress Meetings and Project updates

One (1) Project Kick-off meeting and fifteen (15) progress meetings will be coordinated with the CITY, SMP, DEVELOPER and Johnson County Park and Recreation District by the CONSULTANT as needed to coordinate project goals and review design documents.

1.3 - Project Coordination

The CONSULTANT will field questions from CITY, utility companies, permitting entities, engineering sub-contractors, property owners and other entities associated with the project as directed by the CITY.

Task Series 2.0 - Data Collection

2.1- Boundary and alignment definition - By Others

2.2- Geotechnical Investigation

The CONSULTANT will complete up to ten (10) borings to determine the condition of the dams and depth to rock. The borings will be summarized in a bound geotechnical report, which includes boring logs, boring locations, methodologies, stability analysis and other pertinent data required to construct the project.

2.3- Topographic Survey - By Others

2.4 - Utility Coordination

The CONSULTANT will provide impacted utility companies with the topographic survey to verify the accuracy of the field location of their facilities. The CONSULTANT will coordinate and meet the utility locating services in the field to mark the location of the utilities. The utility companies will also be provided a preliminary construction schedule for the project.

2.5- Obtain Parcel Ownership Data - By Others

Task Series 3.0 - Public Involvement

3.1 - Initial Contact (before plans)

The CONSULTANT will prepare letters of notification for distribution to the land owners directly impacted by the project. The CITY will mail the letters via US Mail. The CITY will provide Johnson County AIMS data to obtain property owner names and addresses. The CONSULTANT will collect and log the responses in a GIS shapefile.

3.2 - Public Meetings (3)

The CITY will prepare and mail notifications and the CONSULTANT will coordinate exhibits and handouts for the meeting. The CITY is responsible for providing a location for the meeting, and for all fees associated with using the facility. The refreshments will be coordinated by the CONSULTANT as required and the costs plus 10% will be paid by CITY. The CONSULTANT will document attendance, property owner feedback and action items for follow up.

3.3 - Involvement during plan preparation

The CONSULTANT will address questions raised from property owners during the course of the project.

3.4 - Individual Property Owner Meetings

The CONSULTANT shall meet with property owners throughout the project as requested with a maximum of ten (10) meetings.

3.5 - Log of Public Contact and Comments

The CONSULTANT will maintain a record of all contact with property owners and provide CITY with weekly updates. The records shall be a matrix format containing property owner name, address, phone number, concern and resolution.

Task Series 4.0 - Preparation of Preliminary Plans

4.1 - Quality Control and Assurance

The CONSULTANT will provide full time quality assurance through its senior team members. Once the conceptual design is complete, an internal project review meeting will be held to ensure that the proposed design is efficient and meets the CITY's goals for the project. At the completion of the plans a senior team member will review the plans for correct project notes, design elements and grammatical and drafting errors. This shall be completed prior to plan submittal to the CITY. The plans shall meet the requirements of a preliminary submittal to the Johnson County SMAC program.

4.2 - Preliminary Plan Deliverables

The preliminary plans shall include the items defined in Article III and will be drawn at a scale of Horizontal 1:20, Vertical 1:5 unless otherwise noted.

4.3 - Utility Coordination

The CONSULTANT will provide impacted utility companies with the preliminary plans to begin relocation design. The utility companies will also be provided an updated construction schedule for the project.

4.4 - Modeling and Summary Report

The CONSULTANT will obtain the effective FEMA HEC-1 and HEC-RAS files and shall be reimbursed for data acquisition costs by the CITY. The CONSULTANT will complete hydrologic and hydraulic analyses using HEC-1 and HEC-RAS to determine the size of all hydraulic structures and geometry for the regional detention ponds. The Indian Creek Watershed Study Low Adjacent Grade survey data will be used to determine the depth of building and roadway flooding.

Task Series 5.0 - Preparation of Field Check Plans

5.1 - Quality Control and Assurance

The CONSULTANT will provide full time quality assurance through its senior team members. Once the field check design is complete, an internal project review meeting will be held to ensure that the proposed design is efficient and meets the CITY's goals for

the project. At the completion of the plans a senior team member will review the plans for correct project notes, design elements and grammatical and drafting errors. This shall be completed prior to plan submittal to the CITY.

5.2 - Field Check Plan Deliverables

The field check plans shall include the following item outlined in Article III and will be drawn at a scale of Horizontal 1:20, Vertical 1:5 unless otherwise noted.

5.3 - Utility Coordination

The CONSULTANT will provide impacted utility companies with the field check plans to finalize utility relocation design and to schedule relocations. The utility companies will also be provided an updated construction schedule for the project. The CONSULTANT will coordinate the utility meeting.

Task Series 6.0 - Preparation of Office Check Plans

6.1 - Quality Control and Assurance

The CONSULTANT will provide full time quality assurance through its senior team members. Once the office design is complete, an internal project review meeting will be held to ensure that the proposed design is efficient and meets the CITY's goals for the project. At the completion of the plans a senior team member will review the plans for correct project notes, design elements and grammatical and drafting errors. This shall be completed prior to plan submittal to the CITY.

6.2 - Office Check Plan Deliverables

The preliminary plans shall include the items identified in Article III and will be drawn at a scale of Horizontal 1:20, Vertical 1:5 unless otherwise noted.

6.3 - Utility Coordination

The CONSULTANT will provide impacted utility companies with the office check plans to finalize utility relocation design and schedule relocations. The utility companies will also be provided an updated construction schedule for the project. The CONSULTANT will coordinate a second utility meeting.

Task Series 7.0 - Easements and Land Acquisition - Not Required

Task Series 8.0 - Permitting

8.1 - Permit Determination

The CONSULTANT will, on the CITY's behalf, determine the necessity and prepare applications for permits required to complete the project including, NPDES, DWR, COE and FEMA. If the permitting agencies require additional plans, exhibits, or effort beyond securing a standard permit, the CONSULTANT will notify CITY and an additional fee will be negotiated.

8.2 - KDHE Land Disturbance Permit (NPDES)

The CONSULTANT will, on the CITY's behalf, prepare an application for an NPDES permit. The application will include preparation of a Storm Water Pollution Plan (SWPPP). The CITY will reimburse the CONSULTANT for all application and permit fees.

8.3 - US Army Corps of Engineers

The CONSULTANT will, on the CITY's behalf, prepare an application for a Nationwide 404 permit for the construction of the pond enlargements and the stream improvements. The COE does not collect application fees, and no mitigation fees are anticipated.

8.4 - Kansas Department of Agriculture, Division of Water Resources

The CONSULTANT will, on the CITY's behalf, prepare a determination of permits confirming that structure and stream obstruction permits are not required because the drainage area is less than 640 acres and the ponds do not qualify as regulated structures. If DWR requires any additional permit applications, the CITY and

CONSULTANT will negotiate a separate fee. The CITY will reimburse the CONSULTANT for all application and permit fees.

8.5 - City of Prairie Village

The CONSULTANT will, on the CITY's behalf, prepare applications for City of Prairie Village Land Disturbance, Floodplain Development and Right-of-Way work permits. The CITY will be responsible for all application and permit fees.

8.6 - FEMA

The CONSULTANT will, on the CITY's behalf, prepare applications for a FEMA LOMR prior to construction after the project is complete. The CITY will be responsible for all application and review fees.

Task Series 9.0 - Bidding and Award of Contract

9.1 - Distribute Plans

The CONSULTANT will provide the CITY with digital copies of the plans and specifications for distribution using Public Purchase. The CITY will coordinate with Public Purchase to advertise the project. The CITY shall be responsible for fees directly related to plan distribution and hardcopies as requested.

9.2 - Assist with Project Inquiries and Addenda

The CONSULTANT will provide clarifications to inquiries from the plan holders regarding the contract documents and plans. The CONSULTANT will prepare addenda to clarify or modify the contract documents as necessary.

9.3 - Attend Bid and Recommend Contractor

The CONSULTANT will attend the project letting and provide a letter of recommendation to CITY. Additionally, the CONSULTANT will prepare an opinion of probable cost for the letting.

Task Series 10.0 - Construction Services

10.1 - Construction Services

After the construction contract has been awarded, the CONSULTANT will prepare contract documents for the contractor, coordinate a pre-construction conference, review shop drawings and respond to Requests for Information (RFI) during construction.

Task Series 11.0 - Project Completion

11.1 - Final Inspection with City Inspector

The CONSULTANT will assist the CITY with completion of a final inspection of the project, and one (1) follow up visit to the site to verify the work was satisfactorily completed.

11.2 - Record Documents

The CONSULTANT will prepare record drawing of the project, which will be provided in hardcopy and pdf format. The record documents will include geometric changes documented by the CITY's inspector.

11.3 - Recommend Final Payment

The CONSULTANT will recommend final payment to the contractor at the completion of task 11.1.

11.4 - Permit closeout

At the completion of the project the CONSULTANT will notify the permitting agencies identified in Task 8.1 that the project is complete and request that the permit be cancelled. The CONSULTANT will provide up to ten (10) LOMA surveys and applications for homes removed from the floodplain.

AGREEMENT FOR PROFESSIONAL ENGINEER

For

DESIGN, PERMITTING, AND CONSTRUCTION SERVICES

Of

**MEADOWBROOK PARK PUBLIC STREET IMPROVEMENTS
PROJECT NO. MBSTREET**

THIS AGREEMENT, made at the Prairie Village, Kansas, this ___ day of _____, by and between the City of Prairie Village, Kansas, a municipal corporation with offices at 7700 Mission Road, Prairie Village, Kansas, 66208, hereinafter called the “**City**”, and **Phelps Engineering, Inc.**, a corporation with offices at 1270 N. Winchester, Olathe, KS 66061, hereinafter called the “**Consultant**”.

WITNESSED, THAT WHEREAS, City has determined a need to retain a professional engineering firm to provide services for the Meadowbrook Public Street Improvements hereinafter called the “**Project**”,

AND WHEREAS, the City is authorized and empowered to contract with the Consultant for the necessary consulting services for the Project,

AND WHEREAS, the City has the necessary funds for payment of such services,

NOW THEREFORE, the City hereby hires and employs the Consultant as set forth in this Agreement effective the date first written above.

Article I City Responsibilities

- A. Project Definition** The City, in coordination with MB-18, LLC (the “Developer”) is preparing to redevelop the existing golf course. The work in this contract is for the public street design of Meadowbrook Parkway, Rosewood, and intersection improvements on Nall Avenue and Roe where each intersects Meadowbrook Parkway (the “Project”). The construction work will include grading, storm sewers, paving, lighting, and restoration. The engineering services will include preparing of construction documents, coordination and permitting with City / Developer / utilities, preparing permit applications, coordinating with utility providers, and administrative services during construction.
- B. City Representative** The City shall in a timely manner designate, Keith Bredehoeft, Public Works Director, to act as the City’s representative with respect to the services to be performed or furnished by the Consultant under this Agreement. Such person shall have authority to transmit instructions, receive information, interpret and define the City’s policies and decisions with respect to the Consultant’s services for the Project.
- C. Existing Data and Records** The City shall make available to the Consultant all existing data and records relevant to the Project such as, maps, plans, correspondence files and other information possessed by the City that is relevant to the Project. Consultant shall not be responsible for

verifying or ensuring the accuracy of any information or content supplied by City or any other Project participant unless specifically defined by the scope of work, nor ensuring that such information or content does not violate or infringe any law or other third party rights. However, Consultant shall promptly advise the City, in writing, of any inaccuracies in the information provided or any other violation or infringement of any law or third party rights that Consultant observes. City shall indemnify Consultant for any infringement claims resulting from Consultant's use of such content, materials or documents.

- D. **Review For Approval** The City shall review all criteria, design elements and documents as to the City requirements for the Project, including objectives, constraints, performance requirements and budget limitations.
- E. **Standard Details** The City shall provide copies of all existing standard details and documentation for use by the Consultant for the project.
- F. **Submittal Review** The City shall diligently review all submittals presented by the Consultant in a timely manner.
- G. **Correspondence to Property Owners** Obtain mailing list and approve all correspondence to property owners in the project area. Typical, but not all inclusive, correspondence is:
 - 1. *This item is not applicable.*

Article II Consultant Responsibilities

- A. **Professional Engineering Services** The Consultant shall either perform for or furnish to the City professional engineering services and related services in all phases of the Project to which this Agreement applies as hereinafter provided.
- B. **Prime Consultant** The Consultant shall serve as the prime professional Consultant for the City on this Project
- C. **Standard Care** The standard of care for all professional consulting services and related services either performed for or furnished by the Consultant under this Agreement will be the care and skill ordinarily used by members of the Consultant's profession, practicing under similar conditions at the same time and in the same locality.
- D. **Consultant Representative** Designate a person to act as the Consultant's representative with respect to the services to be performed or furnished by the Consultant under this Agreement. Such person shall have authority to transmit instructions, receive information, and make decisions with respect to the Consultant's services for the Project.

Article III Scope of Services

- 1. See Exhibit A

Article IV Time Schedule

- A. **Timely Progress** The Consultant's services under this Agreement have been agreed to in anticipation of timely, orderly and continuous progress of the Project.

- B. Authorization to Proceed** If the City fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, the Consultant shall be entitled to equitable adjustment of rates and amounts of compensations to reflect reasonable costs incurred by the Consultant as a result of the delay or changes in the various elements that comprise such rates of compensation.
- C. Default** Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and delay in or inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either City or Consultant under this Agreement. Should such circumstances occur, the consultant shall within a reasonable time of being prevented from performing, give written notice to the City describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.
- D. Completion Schedule** Recognizing that time is of the essence, the Consultant proposes to complete the scope of services as specified in the Scope of Services:

CONSULTANT Scope is Construction Services and is dependent on contractor's schedule with the owner. It is expected that contractor's substantial completion will be by End of November 2016, with final completion by End of December 2016. All work is expected to be done by December 31, 2016.

Article V Compensation

- A. Maximum Compensation** The City agrees to pay the Consultant as maximum compensation for the scope of services as described in Exhibit A, but solely from the proceeds of TIF Bonds, the following fees:

Task Series 1.0 - 8.0 has been completed under a separate contractor with Developer

Task Series 9.0 and 10.0	Total Maximum Fee \$ 49,995
--------------------------	-----------------------------

- B. Invoices** The compensation will be invoiced by phase, detailing the position, hours and appropriate hourly rates (which include overhead and profit) for Consultant's personnel classifications and the Direct Non-Salary Costs.
- C. Direct Non-Salary Costs** The term "Direct Non-Salary Costs" shall include the Consultant payments in connection with the Project to other consultants, transportation, and reproduction costs. Payments will be billed to the City at actual cost. Transportation, including use of survey vehicle or automobile will be charged at the IRS rate in effect during the billing period. Reproduction work and materials will be charged at actual cost for copies submitted to the City.
- D. Monthly Invoices** All invoices must be submitted monthly for all services rendered in the previous month. The Consultant will invoice the City on forms approved by the City. All properly prepared invoices shall be accompanied by a documented breakdown of expenses incurred and description of work accomplished.

- E. Fee Change** The maximum fee shall not be changed unless adjusted by Change Order mutually agreed upon by the City and the Consultant prior to incurrence of any expense. The Change Order will be for major changes in scope, time or complexity of Project.

Article VI General Provisions

- A. Opinion of Probable Cost and Schedule:** Since the Consultant has no control over the cost of labor, materials or equipment furnished by Contractors, or over competitive bidding or market conditions, the opinion of probable Project cost, construction cost or project schedules are based on the experience and best judgment of the Consultant, but the Consultant cannot and does not guarantee the costs or that actual schedules will not vary from the Consultant's projected schedules.
- B. Quantity Errors:** Negligent quantity miscalculations or omissions because of the Consultant's error shall be brought immediately to the City's attention. The Consultant shall not charge the City for the time and effort of checking and correcting the errors to the City's satisfaction.
- C. Reuse of Consultant Documents:** All documents including the plans and specifications provided or furnished by the Consultant pursuant to this Agreement are instruments of service in respect of the Project. The Consultant shall retain an ownership and property interest upon payment therefore whether or not the Project is completed. The City may make and retain copies for the use by the City and others; however, such documents are not intended or suitable for reuse by the City or others as an extension of the Project or on any other Project. Any such reuse without written approval or adaptation by the Consultant for the specific purpose intended will be at the City's sole risk and without liability to the Consultant. The City shall indemnify and hold harmless the Consultant from all claims, damages, losses and expenses including attorney's fees arising out of or resulting reuse of the documents.
- D. Reuse of City Documents** In a similar manner, the Consultant is prohibited from reuse or disclosing any information contained in any documents, plans or specifications relative to the Project without the expressed written permission of the City.
- E. Insurance** The Consultant shall procure and maintain, at its expense, the following insurance coverage:
1. Workers' Compensation -- Statutory Limits, with Employer's Liability limits of \$100,000 each employee, \$500,000 policy limit;
 2. Commercial General Liability for bodily injury and property damage liability claims with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate;
 3. Commercial Automobile Liability for bodily injury and property damage with limits of not less than \$1,000,000 each accident for all owned, non-owned and hired automobiles;
 4. Errors and omissions coverage of not less than \$1,000,000. Deductibles for any of the above coverage shall not exceed \$25,000 unless approved in writing by City.
 5. In addition, Consultant agrees to require all consultants and sub-consultants to obtain and provide insurance in identical type and amounts of coverage together and to require satisfaction of all other insurance requirements provided in this Agreement.
- F. Insurance Carrier Rating** Consultant's insurance shall be from an insurance carrier with an A.M. Best rating of A-IX or better, shall be on the GL 1986 ISO Occurrence form or such other form as may be approved by City, and shall name, by endorsement to be attached to the certificate of insurance, City, and its divisions, departments, officials, officers and employees, and other parties

as specified by City as additional insureds as their interest may appear, except that the additional insured requirement shall not apply to Errors and Omissions coverage. Such endorsement shall be ISO CG2010 11/85 or equivalent. "Claims Made" and "Modified Occurrence" forms are not acceptable, except for Errors and Omissions coverage. Each certificate of insurance shall state that such insurance will not be canceled until after thirty (30) days' unqualified written notice of cancellation or reduction has been given to the City, except in the event of nonpayment of premium, in which case there shall be ten (10) days' unqualified written notice. Subrogation against City and City's Agent shall be waived. Consultant's insurance policies shall be endorsed to indicate that Consultant's insurance coverage is primary and any insurance maintained by City or City's Agent is non-contributing as respects the work of Consultant.

- G. Insurance Certificates** Before Consultant performs any portion of the Work, it shall provide City with certificates and endorsements evidencing the insurance required by this Article. Consultant agrees to maintain the insurance required by this Article of a minimum of three (3) years following completion of the Project and, during such entire three (3) year period, to continue to name City, City's agent, and other specified interests as additional insureds thereunder.
- H. Waiver of Subrogation** Coverage shall contain a waiver of subrogation in favor of the City, and its subdivisions, departments, officials, officers and employees.
- I. Consultant Negligent Act** If due to the Consultant's negligent act, error or omission, any required item or component of the project is omitted from the Construction documents produced by the Consultant, the Consultant's liability shall be limited to the difference between the cost of adding the item at the time of discovery of the omission and the cost had the item or component been included in the construction documents. The Consultant will be responsible for any retrofit expense, waste, any intervening increase in the cost of the component, and a presumed premium of 10% of the cost of the component furnished through a change order from a contractor to the extent caused by the negligence or breach of contract of the Consultant or its subconsultants.
- J. Termination** This Agreement may be terminated by either party upon seven days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party; provided, however, the nonperforming party shall have 14 calendar days from the receipt of the termination notice to cure the failure in a manner acceptable to the other party. In any such case, the Consultant shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the payment provisions of this Agreement. Copies of all completed or partially completed designs, plans and specifications prepared under this Agreement shall be delivered to the City when and if this Agreement is terminated, but it is mutually agreed by the parties that the City will use them solely in connection with this Project, except with the written consent of the Consultant (subject to the above provision regarding Reuse of Documents).
- K. Controlling Law** This Agreement is to be governed by the laws of the State of Kansas.
- L. Indemnity** To the fullest extent permitted by law, with respect to the performance of its obligations in this Agreement or implied by law, and whether performed by Consultant or any sub-consultants hired by Consultant, the Consultant agrees to indemnify City, and its agents, servants, and employees from and against any and all claims, damages, and losses arising out of personal injury, death, or property damage, caused by the negligent acts, errors, or omissions of the Consultant or its sub-consultants, to the extent and in proportion to the comparative degree of fault of the Consultant and its sub-consultants. Consultant shall also pay for City's reasonable attorneys' fees, expert fees, and costs incurred in the defense of such a claim to the extent and in proportion to the comparative degree of fault of the Consultant and its sub-consultants.

- M. Severability** Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Consultant, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.
- N. Notices** Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears on the signature page to this Agreement (as modified in writing from item to item by such party) and given personally, by registered or certified mail, return receipt requested, by facsimile or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.
- O. Successors and Assigns** The City and the Consultant each is hereby bound and the partners, successors, executors, administrators, legal representatives and assigns of the City and the Consultant are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, legal representatives and assigns of such other party in respect of all covenants and obligations of this Agreement.
- P. Written Consent to Assign** Neither the City nor the Consultant may assign, sublet, or transfer any rights under the Agreement without the written consent of the other, which consent shall not be unreasonably withheld; provided, Consultant may assign its rights to payment without Owner's consent, and except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Agreement.
- Q. Duty Owed by the Consultant** Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by the Consultant to any Contractor, subcontractor, supplier, other person or entity or to any surety for or employee of any of them, or give any rights or benefits under this Agreement to anyone other than the City and the Consultant.

IN WITNESS WHEREOF: the parties hereto have executed this Agreement to be effective as of the date first above written.

City:

City of Prairie Village, Kansas

By: _____

Laura Wassmer, Mayor

Address for giving notices:

City of Prairie Village
Department of Public Works
3535 Somerset Drive
Prairie Village, Kansas 66208

Telephone: 913-385-4640

Email: publicworks@pvkansas.com

ATTEST:

Joyce Hagen Mundy, City Clerk

Consultant:

Phelps Engineering, Inc.

By _____

Judd Claussen, P.E., Principal

Address for giving notices:

Phelps Engineering, Inc,
1270 N. Winchester
Olathe, KS 66061

Telephone: 913-393-1155

email: jclaussen@phelpsengineering.com

APPROVED AS TO FORM BY:

Catherine P. Logan, City Attorney

Exhibit A Detailed Scope of Services

Task Series 1.0-8.0 - Design & Permitting

City and CONSULTANT acknowledge and agree that the aspects of the Project consisting of design and construction document preparation and some permitting with authorities having jurisdiction (the "Completed Services") was completed by CONSULTANT under a separate contract with the Developer. The Completed Services have been reviewed and approved by the City Public Works Director for bid letting. Consultant hereby assigns the Completed Services to City, and Consultant covenants and agrees that the provisions of this Agreement, to the extent applicable, and including, but not limited to, Article II "Consultant Responsibilities", Section C. "Standard of Care", and Article IV "General Provisions", Section I. "Consultant Negligent Act", and Section L. "Indemnity", shall apply to the Completed Services for the benefit of the City, and that the City is the beneficiary of and may exercise remedies under this Agreement if there is a failure or breach relating to CONSULTANT'S obligations, including but not limited to standard of care, relating to the Completed Services.

Task Series 9.0 - Permitting

9.1 - Permit Determination

The CONSULTANT will, on the CITY's behalf, determine the necessity and prepare applications for permits required to complete the project including, NPDES, DWR, COE and FEMA. If the permitting agencies require additional plans, exhibits, or effort beyond securing a standard permit, the CONSULTANT will notify CITY and an additional fee will be negotiated.

9.2 - KDHE Land Disturbance Permit (NPDES)

The CONSULTANT will, on the CITY's behalf, prepare an application for an NPDES permit. The application will include preparation of a Storm Water Pollution Plan (SWPPP). The CITY will reimburse the CONSULTANT for all application and permit fees.

9.3 - US Army Corps of Engineers

(By Others - Burns and McDonnell is providing this service directly for the Developer)

9.4 - Kansas Department of Agriculture, Division of Water Resources

Not applicable - drainage area less than 1 sq. mile.

9.5 - City of Prairie Village

The CONSULTANT will, on the CITY's behalf, prepare applications for City of Prairie Village Land Disturbance, Floodplain Development and Right-of-Way work permits. The CITY will be responsible for all application and permit fees.

9.6 - FEMA

Not applicable

Task Series 10.0 - Construction Services

10.1 - Pre-construction meeting

After the construction contract has been awarded, the CONSULTANT will attend a pre-construction conference

10.2 - Questions during construction

PEI shall assist the City's inspector in answering any technical questions relating to the intent of the design drawings. PEI shall issue addenda or change directives as may be necessary.

10.3 - Submittals

Review shop drawings and material submittals.

10.4 - Site visits during construction

Site visits during construction as may be needed or requested by City. Allowance provided.

10.5 - Final Observation with City Inspector

The CONSULTANT will assist the CITY with completion of a final observation of the project, develop punch list and one (1) follow up visit to the site to verify the work was satisfactorily completed.

10.6 - Record Documents

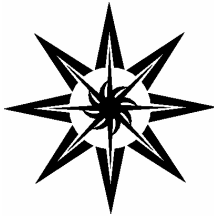
The CONSULTANT will prepare record drawing of the project, which will be provided in hardcopy and pdf format. The record documents will include field construction changes documented by the CITY's inspector.

10.7 - Recommend Final Payment

The CONSULTANT will recommend final payment to the contractor at the completion of task 11.1.

10.8 - Permit closeout

At the completion of the project the CONSULTANT will notify the permitting agencies identified in Task 8.1 that the project is complete and request that the permit be closed.



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: May 2, 2016

Council Meeting Date: May 2, 2016

CONSIDER DESIGN AGREEMENT WITH PHELPS ENGINEERING FOR 2016 MEADOWBROOK PUBLIC STREET IMPROVEMENTS (MBSTREET)

RECOMMENDATION

Move to approve the Design agreement with Phelps Engineering for the 2016 Meadowbrook Public Street Improvements(MBSTREET) for \$ 49,995.00.

BACKGROUND

Phelps Engineering is the engineering firm that was selected by Van Trust for the Meadowbrook Development project. Work to date, including all work to develop the plans through final completion, will be paid by VanTrust and will be reimbursed by TIF funds after Bond closing. This agreement with Phelps and the City of Prairie Village includes all work necessary for the public street improvements going forward including the acceptance of the final plans for the public street work that have been developed to date. This contract includes the work to make plan adjustments, attend field meetings, and to support the construction process. The fees have been reviewed, compared and are found to be reasonable in the market.

Execution of this agreement will take place on May 17, 2016, the date of Bond Closing.

FUNDING SOURCE

The Meadowbrook TIF will fund this contract.

ATTACHMENTS

1. Design Agreement with Phelps Engineering

PREPARED BY

Keith Bredehoeft, Public Works Director

April 27, 2016

The GO bond sale is scheduled for Monday, May 2.

Further information will be shared with
Council after the bond sale.

(Published in *The Legal Record* on May ____, 2016)

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS (MEADOWBROOK TIF PROJECT), SERIES 2016A, IN THE MAXIMUM PRINCIPAL AMOUNT OF \$[PRINCIPAL AMOUNT A], AND SPECIAL OBLIGATION REVENUE BONDS (MEADOWBROOK TIF PROJECT), SERIES 2016B, IN THE MAXIMUM PRINCIPAL AMOUNT OF \$[PRINCIPAL AMOUNT B], OF THE CITY OF PRAIRIE VILLAGE, KANSAS, FOR THE PURPOSE OF PAYING CERTAIN REDEVELOPMENT PROJECT COSTS IN CONNECTION WITH THE PROJECT PLAN; AND MAKING CERTAIN COVENANTS WITH RESPECT THERETO.

WHEREAS, the City of Prairie Village, Kansas (the “City”), is a first class city organized and existing under the constitution and laws of the State of Kansas; and

WHEREAS, the City has the authority to adopt tax increment financing pursuant to the Kansas Tax Increment Redevelopment Act, constituting sections K.S.A. 12-1770 *et seq.*, as amended (the “Act”); and

WHEREAS, the City created a redevelopment district (the “Redevelopment District”) by the adoption of Ordinance No. 2337 on September 8, 2015 and publication on September 15, 2015, which Redevelopment District consists of two Project Areas (the “Park and Village Area” and the “Commercial Area”); and

WHEREAS, the City adopted the redevelopment project plan for the Park and Village Area (the “Project Plan”) by the adoption of Ordinance No. 2343 on December 21, 2015 and publication on April 12, 2016; and

WHEREAS, the City has determined that it is necessary and desirable to issue its General Obligation Bonds (Meadowbrook TIF Project), Series 2016A, in the maximum aggregate principal amount of **\$[PRINCIPAL AMOUNT A]** (the “Series 2016A Bonds”), and its Special Obligation Revenue Bonds (Meadowbrook TIF Project), Series 2016B, in the maximum aggregate principal amount of \$8,135,000 (the “Series 2016B Bonds,” and, together with the Series 2016A Bonds, the “Bonds”), to pay a portion of the Redevelopment Project Costs, fund capitalized interest on the Bonds, and pay the costs of issuing the Bonds; and

WHEREAS, any capitalized terms used herein not otherwise defined shall have their respective meaning as set forth in the Indenture, as defined herein.

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

Section 1. Authorization of the Bonds. The City is hereby authorized to issue and sell the Bonds in the original principal amounts of not to exceed \$[PRINCIPAL AMOUNT A] for the Series 2016A Bonds, and \$[PRINCIPAL AMOUNT B] for the Series 2016B Bonds. The proceeds of the Bonds

will be used to pay the Redevelopment Project Costs, fund capitalized interest on the Bonds and pay certain issuance costs related to the Bonds. The Bonds shall be issued and secured pursuant to the herein authorized Indenture.

The Series 2016A Bonds shall be sold to [REDACTED] (the "Series 2016A Bond Purchaser") pursuant to the official bid form submitted by the Series 2016A Bond Purchaser. The Series 2016B Bonds (i) shall bear interest at various rates not to exceed 6.00%, (ii) shall have a final maturity not later than 2036, (iii) shall be sold in a private placement to Van Tuyl Family 2012 Irrevocable Trust fbo Larry Van Tuyl, Kansas City, Missouri (the "Series 2016B Bond Purchaser," and, together with the Series 2016A Bond Purchaser, the "Purchasers"), and (iv) shall be subject to optional prepayment as further set forth in the Indenture.

The Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such forms, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued and delivered in the manner prescribed in and shall be subject to such provisions, covenants and agreements, as are set forth in the Indenture upon the execution thereof. The signatures of the Mayor when executing such Indenture, the official bid form for the Series 2016A Bonds, and the Purchase Contract for the Series 2016B Bonds, shall constitute conclusive evidence of the Mayor's approval and the City's approval thereof.

The Series 2016B Bonds, together with interest thereon and premium, if any, are not general obligations of the City but are limited obligations payable solely from the trust estate pledged to the payment thereof under the Indenture and shall be a valid claim of the respective holders thereof only against the trust estate and other moneys held by the Trustee and the revenues so pledged as aforesaid. In no event shall the Series 2016B Bonds be payable out of any funds or properties other than those pledged or acquired under the Indenture, and the Series 2016B Bonds shall not be deemed to constitute a debt or liability of the City, the State of Kansas, or of any political subdivision thereof and the issuance of the Series 2016B Bonds shall not, directly, indirectly or contingently, obligate the City, the State of Kansas or any political subdivision thereof to levy any form of taxation therefor or to budget or make any appropriation for their payment. Nothing in the Series 2016B Bonds, the Indenture, the proceedings of the City authorizing the Series 2016B Bonds or the Act shall be construed to be a debt or loan of credit of the City, the State or any political subdivision thereof within the meaning of any constitutional or statutory debt limitation or restriction.

Section 2. Security for the Bonds.

Incremental Tax Revenues. The City shall deposit the Incremental Tax Revenues into the Tax Increment Fund. The moneys and securities now or hereafter held in, and moneys and securities to be deposited in the Tax Increment Fund and all interest and earnings thereon and proceeds thereof are hereby pledged to secure the payment of the Bonds. The moneys in the Tax Increment Fund shall be applied on an equal basis for the payment of the Series 2016A Bonds and Series 2016B Bonds, as further described in the Indenture. The moneys in the Tax Increment Fund shall be administered and applied solely for the purposes and in the manner provided in this Ordinance and the Indenture. The Incremental Tax Revenues shall be determined and collected in the manner provided by law and as provided in the Indenture.

Series 2016A Bonds. The Series 2016A Bonds shall be general obligations of the City payable as to both principal and interest from a portion of the Incremental Tax Revenues and, if not so paid, from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible

property, real and personal, within the territorial limits of the City. The full faith, credit and resources of the City are hereby irrevocably pledged for the prompt payment of the principal of and interest on the Series 2016A Bonds as the same become due.

Series 2016B Bonds. The Series 2016B Bonds shall be payable solely from Incremental Tax Revenues and other funds available under the Indenture.

Section 3. Levy and Collection of Tax—Series 2016A Bonds. To the extent that the City is required to make any payments of principal of, redemption premium, if any, or interest on the Series 2016A Bonds, the governing body of the City shall annually make provision for the payment of principal of, premium, if any, and interest on the Series 2016A Bonds as the same become due by, to the extent necessary, levying and collecting the necessary taxes upon all of the taxable tangible property within the City in the manner provided by law.

The taxes referred to above shall be extended upon the tax rolls in each of the several years, respectively, and shall be levied and collected at the same time and in the same manner as the other ad valorem taxes of the City are levied and collected. The proceeds derived from said taxes shall be deposited in the Bond and Interest Fund, shall be kept separate and apart from all other funds of the City shall thereafter be transferred to the Trustee for deposit in the Revenue Fund and shall be used solely for the payment of the principal of and interest on the Series 2016A Bonds as and when the same become due, taking into account any scheduled mandatory redemptions, and the fees and expenses of the Paying Agent.

If at any time said taxes are not collected in time to pay the principal of or interest on the Series 2016A Bonds when due, the Treasurer is hereby authorized and directed to pay said principal or interest out of the general funds of the City and to reimburse said general funds for money so expended when said taxes are collected.

Section 4. Authorization and Approval of Documents. The following documents are hereby approved in substantially the forms presented to and reviewed by the City at this meeting (copies of which documents shall be filed in the records of the City), and the City is hereby authorized to execute and deliver each of such documents to which the City is a party (the “City Documents”) with such changes therein as shall be approved by the officer or officers of the City executing such documents, such officers’ signatures thereon being conclusive evidence of their approval and the City’s approval thereof:

(a) Bond Trust Indenture dated as of the date set forth therein (the “Indenture”), between the City and Commerce Bank, Kansas City, Missouri, as trustee (the “Trustee”);

(b) Purchase Contract dated as of the date set forth therein (the “Purchase Contract”), between the City and the Series 2016B Bond Purchaser;

(c) Continuing Disclosure Agreement for the Series 2016A Bonds, dated as of the date set forth therein (the “Continuing Disclosure Agreement”), between the City and the Trustee, as dissemination agent; and

(d) Tax Compliance Agreement dated as of the date set forth therein (the “Tax Compliance Agreement”) between the City and the Trustee.

Section 5. Preliminary and Final Official Statement. For the purpose of enabling the Series 2016A Bond Purchaser to comply with the requirements of Rule 15c2-12(b)(1) of the Securities and Exchange Commission, the City hereby deems the information regarding the City contained in the Preliminary Official Statement to be “final” as of its date, except for the omission of such information as is permitted by Rule 15c2-12(b)(1), and the appropriate officers of the City are hereby authorized, if requested, to provide the Series 2016A Bond Purchaser a letter or certification to such effect and to take such other actions or execute such other documents as such officers in their reasonable judgment deem necessary to enable the Series 2016A Bond Purchaser to comply with the requirement of such Rule.

The final Official Statement is hereby authorized to be prepared by supplementing, amending and completing the Preliminary Official Statement, with such changes and additions thereto as are necessary to conform to and describe the transaction. The Mayor, City Administrator, City Clerk, or Finance Director is hereby authorized to execute the final Official Statement as so supplemented, amended and completed, and the use and public distribution of the final Official Statement by the Series 2016A Bond Purchaser in connection with the reoffering of the Series 2016A Bonds is hereby authorized. The proper officials of the City are hereby authorized to execute and deliver a certificate pertaining to such Official Statement as prescribed therein.

The City agrees to provide to the Series 2016A Bond Purchaser within seven business days of the date of the sale of the Series 2016A Bonds sufficient copies of the final Official Statement to enable the Series 2016A Bond Purchaser to comply with the requirements of Rule 15c2-12(b)(4) of the Securities and Exchange Commission and with the requirements of Rule G-32 of the Municipal Securities Rulemaking Board.

Section 6. Sale of the Bonds. The sale of the Bonds to the Purchasers is hereby ratified and confirmed. The Mayor and Clerk are hereby authorized to execute the official bid form submitted by the Series 2016A Bond Purchaser and the Purchase Contract between the City and the Series 2016B Bond Purchaser.

Section 7. Execution of Bonds and Documents. The Mayor of the City is hereby authorized and directed to execute the Bonds and to deliver the Bonds to the Trustee for authentication for and on behalf of and as the act and deed of the City in the manner provided in the Indenture. The Mayor of the City is hereby authorized and directed to execute the City Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance, for and on behalf of and as the act and deed of the City. The City Clerk is hereby authorized and directed to attest to and affix the seal of the City to the Bonds, the City Documents and such other documents, certificates and instruments as may be necessary.

Section 8. Tax Covenants. The City covenants and agrees that (a) it will comply with all applicable provisions of the Code, including *Sections 103 and 141 through 150*, necessary to maintain the exclusion from federal gross income of the interest on the Bonds; and (b) it will not use or permit the use of any proceeds of Bonds or any other funds of the City, nor take or permit any other action, or fail to take any action, which would adversely affect the exclusion from federal gross income of the interest on the Bonds. The City will also adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with other applicable future law, in order to ensure that the interest on the Bonds will remain excluded from federal gross income, to the extent any such actions can be taken by the City.

Section 9. Further Authority. The City shall, and the officers, employees and agents of the City are hereby authorized and directed to, take such action, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance, and to carry out, comply with and perform the duties of the City with respect to the Bonds and the City Documents, including, but not limited to, agreements with respect to the investment of funds held under the Indenture.

Section 10. Governing Law. This Ordinance and the Bonds shall be governed by and construed in accordance with the applicable laws of the State.

Section 11. Effective Date. This Ordinance shall take effect and be in full force from and after its passage by the city council of the City and publication of this ordinance or a summary thereof in the official City newspaper.

PASSED by the governing body of the City on May 2, 2016, and **APPROVED AND SIGNED** by the Mayor.

(SEAL)

ATTEST:

Mayor

City Clerk

(Published in *The Legal Record* on May ___, 2016)

ORDINANCE NO. ____

AN ORDINANCE AUTHORIZING THE ISSUANCE BY THE CITY OF PRAIRIE VILLAGE, KANSAS OF NOT TO EXCEED \$22,500,000 AGGREGATE PRINCIPAL AMOUNT OF TAXABLE INDUSTRIAL REVENUE BONDS (MB-18, LLC PROJECT), SERIES 2016, TO PROVIDE FUNDS TO ACQUIRE, CONSTRUCT AND EQUIP A PROJECT FOR MB-18, LLC AND AUTHORIZING AND APPROVING CERTAIN DOCUMENTS AND ACTIONS IN CONNECTION WITH THE ISSUANCE OF SAID BONDS.

WHEREAS, the City of Prairie Village, Kansas (the “Issuer”) is a municipal corporation and political subdivision duly organized and validly as a city of the first class; and

WHEREAS, the Issuer is authorized by K.S.A. 12-1740 to 12-1749d, inclusive, as amended (collectively, the “Act”), to issue revenue bonds, the proceeds of which shall be used for the purpose of paying all or part of the cost of purchasing, acquiring, constructing, reconstructing, improving, equipping, furnishing, repairing, enlarging or remodeling facilities for agricultural, commercial, hospital, industrial, natural resources, recreational development and manufacturing purposes; and

WHEREAS, pursuant to the Act, the Issuer proposes to issue its Taxable Industrial Revenue Bonds (MB-18, LLC Project), Series 2016 (the “Bonds”), in an aggregate principal amount not to exceed \$22,500,000, for the purpose of (a) acquiring, constructing and equipping a commercial apartment project for MB-18, LLC, a Kansas limited liability company (the “Company”), and (b) paying certain costs of issuance, all as further described in the hereinafter referred to Bond Indenture and Lease Agreement; and

WHEREAS, the Bonds will be issued under a Bond Trust Indenture dated as of the date set forth therein (the “Bond Indenture”), by and between the Issuer and Commerce Bank, as Bond Trustee (the “Bond Trustee”); and

WHEREAS, the Company will lease the Project to the Issuer pursuant to the Base Lease Agreement of even date herewith (the “Base Lease”) between the Company and the Issuer; and

WHEREAS, simultaneously with the execution and delivery of the Bond Indenture, the Issuer will enter into a Lease Agreement dated as of the date set forth therein (the “Lease Agreement”), by and between the Issuer, as lessor, and the Company, as lessee, pursuant to which the Project (as defined in the Bond Indenture) will be acquired, constructed and equipped and pursuant to which the Issuer will lease the Project to the Company, and the Company will agree to pay Lease Payments (as defined in the Bond Indenture) sufficient to pay the principal of and premium, if any, and interest on, the Bonds; and

WHEREAS, the Issuer further finds and determines that it is necessary and desirable in connection with the issuance of the Bonds that the Issuer execute and deliver certain documents and that the Issuer take certain other actions as herein provided;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PRAIRIE VILLAGE, KANSAS, AS FOLLOWS:

Section 1. Findings and Determinations. The Issuer hereby makes the following findings and determinations with respect to the Company and the Bonds to be issued by the Issuer, based upon representations made to the Issuer:

(a) The Company has properly requested the Issuer's assistance in financing the costs of the Project;

(b) The issuance of the Bonds for the purpose of providing funds to finance the costs of the Project is in furtherance of the public purposes set forth in the Act; and

(c) The Bonds are being issued for a valid purpose under and in accordance with the provisions of the Act.

Section 2. Authorization of the Bonds. The Issuer is hereby authorized to issue the Bonds in the aggregate principal amount of not to exceed \$22,500,000, which shall be issued under and secured by and shall have the terms and provisions set forth in the Bond Indenture. The Bonds shall bear interest at an interest rate not to exceed 2.00% per annum, and shall mature not later than the year 2019, and shall have such redemption provisions, including premiums, and other terms as set forth in the Bond Indenture. The final terms of the Bonds shall be specified in the Bond Indenture, and the signatures of the officers of the Issuer executing such Bond Indenture shall constitute conclusive evidence of their approval and the Issuer's approval thereof.

Section 3. Limited Obligations. The Bonds shall be limited obligations of the Issuer, payable solely from the sources and in the manner as provided in the Bond Indenture, and shall be secured by a transfer, pledge and assignment of and a grant of a security interest in the Trust Estate (as defined in the Bond Indenture) to the Bond Trustee and in favor of the owners of the Bonds, as provided in the Bond Indenture. The Bonds and interest thereon shall not be deemed to constitute a debt or liability of the Issuer, the State of Kansas (the "State") or of any political subdivision thereof within the meaning of any State constitutional provision or statutory limitation and shall not constitute a pledge of the full faith and credit of the Issuer, the State or of any political subdivision thereof, but shall be payable solely from the funds provided for in the Lease Agreement and the Bond Indenture. The issuance of the Bonds shall not, directly, indirectly or contingently, obligate the Issuer, the State or any political subdivision thereof to levy any form of taxation therefor or to make any appropriation for their payment. No breach by the Issuer of any such pledge, mortgage, obligation or agreement may impose any liability, pecuniary or otherwise, upon the Issuer or any charge upon its general credit or against its taxing power.

Section 4. Authorization and Approval of Documents. The following documents are hereby approved in substantially the forms presented to and reviewed by the Issuer (copies of which documents, upon execution thereof, shall be filed in the office of the City Clerk), and the Issuer is hereby authorized to execute and deliver each of such documents (the "Issuer Documents") with such changes therein (including the dated date thereof) as shall be approved by the officials of the Issuer executing such documents, such officials' signatures thereon being conclusive evidence of their approval and the Issuer's approval thereof:

(a) Bond Indenture providing for the issuance thereunder of the Bonds and setting forth the terms and provisions applicable to the Bonds, including a pledge and assignment by the Issuer of the Trust Estate to the Bond Trustee for the benefit and security of the owners of the Bonds upon the terms and conditions as set forth in the Bond Indenture;

(b) Base Lease Agreement under which the Company will lease to the Issuer the property financed and refinanced with the proceeds of the Bonds in consideration of the Issuer's deposit of the proceeds of the Bonds into the funds described in the Bond Indenture; and

(c) Lease Agreement under which the Issuer will make the proceeds of the Bonds available to the Company for the purposes herein described in consideration of payments that will be sufficient to pay the principal of, redemption premium, if any, and interest on the Bonds.

Section 5. Execution of Bonds and Documents. The Mayor of the Issuer is hereby authorized and directed to execute the Bonds by manual or facsimile signature and to deliver the Bonds to the Bond Trustee for authentication for and on behalf of and as the act and deed of the Issuer in the manner provided in the Bond Indenture. The Mayor of the Issuer is hereby authorized and directed to execute and deliver the Issuer Documents for and on behalf of and as the act and deed of the Issuer. The City Clerk of the Issuer is hereby authorized and directed to attest, by manual or facsimile signature, to the Bonds, the Issuer Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

Section 6. Further Authority. The Issuer shall, and the officials, agents and employees of the Issuer are hereby authorized and directed to, take such further action, and execute such other documents, certificates and instruments, including, without limitation, any credit enhancement and security documents, arbitrage certificate, redemption notices, closing certificates and tax forms, as may be necessary or desirable to carry out and comply with the intent of this Ordinance, and to carry out, comply with and perform the duties of the Issuer with respect to the Bonds and the Issuer Documents.

Section 7. Effective Date. This Ordinance shall take effect and be in full force immediately after its adoption by the Governing Body of the Issuer and publication in the official newspaper of the Issuer.

PASSED by the governing body of the City of Prairie Village, Kansas on May 2, 2016 and **APPROVED AND SIGNED** by the Mayor.

(Seal)
ATTEST:

Mayor

City Clerk

MAYOR'S ANNOUNCEMENTS

Monday, May 2, 2016

Committee meetings scheduled for the next two weeks include:

Planning Commission Meeting	05/03/2016	7:00 p.m.
Tree Board Committee Meeting	05/04/2016	6:00 p.m.
JazzFest Committee	05/11/2016	5:30 p.m.
PV Arts Council Meeting	05/11/2016	5:30 p.m.
Park & Recreation Committee	05/12/2016	5:30 p.m.
Council Committee of the Whole	05/17/2016	6:00 p.m.
City Council	05/17/2016	7:30 p.m.

=====

The Prairie Village Arts Council is pleased to present the works of "The Saturday Group" in the R. G. Endres Gallery during the month of May. The artists' reception will be Friday, May 13th, from 6:30 to 7:30 p.m.

Recreation sales have begun. Pool memberships purchased in April will be discounted by \$5 for each pass.

INFORMATIONAL ITEMS
May 2, 2016

1. Council Committee of the Whole Minutes - April 18, 2016
2. Planning Commission Agenda - May 3, 2016
3. Tree Board Minutes - March 2, 2016
4. Tree Board Minutes - April 6, 2016
5. First Quarter Crime Report
6. Mark Your Calendar

COUNCIL COMMITTEE OF THE WHOLE
April 18, 2016

The Council Committee of the Whole met on Monday, April 18, 2016 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, Sheila Myers, Dan Runion, David Morrison (arrived late), Ted Odell and Terrence Gallagher.

Staff Members present: Tim Schwartzkopf, Chief of Police; Keith Bredehoeft, Public Works Director; Katie Logan, City Attorney; Quinn Bennion, City Administrator; Wes Jordan, Assistant City Administrator; Nolan Sunderman, Assistant to the City Administrator and Joyce Hagen Mundy, City Clerk. Also present were teen council members Dennis Rice and Kellie O'Toole. The City's Bond Counsel Gary Anderson with Gilmore & Bell and Financial Advisor Jeff White with Columbia were also present.

COU2016-16 Consider 2016-2017 Insurance Renewals

Steve Noll noted the city's insurance year runs from May to May. The city's insurance committee discussed renewal options at their March 22nd meeting and worker's compensation claims with its insurance broker, Truss (formerly Cretcher-Heartland). Truss's Safety and Loss Control Company along with Traveler's Insurance safety department continue to meet with city staff and plan safety training opportunities for employees. Worker's Compensation is covered on a first dollar basis. Prior to May, 2014, the City had a \$10,000 deductible per incident. The City was averaging approximately \$15,000 a year in Worker's Compensation deductibles.

The overall renewal represents an increase of \$25,879 or 7.5%. The plan coverage is very similar to current coverage and includes an increase in statutory insurance to reflect the recent appraised value of city statues. The most significant change in premium is the Inland Marine coverage rate with an increase of \$3,172 and Worker's Compensation with an increase of \$22,726. All other policy rates are similar or less than the current year.

Steve Noll made the following motion, which was seconded by Ted Odell and passed unanimously:

**MOVE THE CITY COUNCIL APPROVE THE PROPOSED INSURANCE
POLICY RENEWALS AND RATES WITH TRAVELERS AND RLI AT A
RENEWAL RATE NOT TO EXCEED \$371,553 FOR THE UPCOMING
COVERAGE YEAR.**

**COUNCIL ACTION TAKEN
04/18/2016**

COU2016-17 Consider Interlocal Agreement with the City of Overland Park

Keith Bredehoeft noted that this is the second interlocal agreement with Overland Park for this type of work on shared streets. The initial agreement was for work on Nall.

Ultra-thin bonded asphalt surface (UBAS) is a preventative maintenance tool used to help extend the life of a road by placing a thin overlay onto a prepared asphalt surface. The overlay can disperse water quickly off the surface, which reduces roadway spray from vehicles and provides greater visibility in wet weather.

The City of Overland Park has planned for a UBAS project on 75th Street and 95th Street in the summer of 2016. Both roadways are the city limit boundary between Overland Park and Prairie Village. The estimated cost for this project is \$877,000 and includes surface treatment to the shared roadways and to 75th Street, between Mission Road and Nall Avenue. This agreement will limit the City of Prairie Village share to \$460,000. The City's funding for this project comes from the 2016 Street Program.

Jori Nelson asked why the financial split was not 50/50 between the cities. Mr. Bredehoeft responded the cost breakdown is based on the portion of each city's roadway with Prairie Village paying for roadway located within the city boundaries.

Ted Odell made the following motion, which was seconded by Terrance Gallagher and passed unanimously:

MOVE THE CITY COUNCIL APPROVE AN INTERLOCAL AGREEMENT WITH THE CITY OF OVERLAND PARK FOR PUBLIC IMPROVEMENTS TO 75TH STREET, MISSION ROAD AND WALMER STREET AND 95TH STREET, MISSION ROAD TO NALL AVENUE

**COUNCIL ACTION TAKEN
04/18/2016**

Quinn Bennion noted there are eleven agreements on the committee agenda for consideration related to the Meadowbrook Park redevelopment. Action is needed on these prior to the issuance of bonds and closing on the purchase of the property. Hours of time have been invested in this project by the City, the city's bond counsel, financial advisor and legal counsel as well as by the Park District and the developer MB-18, LLC over the past 18 months. All of the items being considered are addressed in the Memorandum of Understanding and Developer Agreement approved by all parties. There will be a Special City Council meeting on Monday, April 25th at 6 p.m. for action on the items being presented to the City Council for the first time this evening. One of these items is the environmental escrow agreement which was e-mailed to council members earlier this evening and has been distributed at the council dais.

City Attorney Katie Logan provided the following history on this project. The Meadowbrook TIF District was established in September, 2015. The Park and Village Project Area within the TIF District is the site of the former Meadowbrook Country Club. MB-18, LLC (the Developer), JCPRD, JCW and the City of PV have worked together since early 2015 to develop a Redevelopment Project Plan for the Park and Village Project Area which will use the proceeds of TIF Bonds to acquire 82 acres for a park site

to be owned and operated by JCPRD, construct a public parkway across the site; complete stormwater improvements on the park site in and around the existing ponds utilizing SMAC Funds as well as bond proceeds; and improving the park site, with trails being part of the initial park improvements. The private development of residential homes and townhomes, apartments, an inn and senior living facility will be completed with private funds and the improvements will generate incremental tax revenues to repay the bonds.

The implementation of a public-private project of this nature requires numerous agreements. In December, 2015, the City approved the TIF Plan and the City and Developer entered into a Development Agreement and the City and JCPRD entered into a Park Gift Site Agreement which generally describe the process of implementing the Park and Village Project TIF Plan, and in turn describe additional agreements to be finalized with the closing of the bonds and purchase of the park site.

Mrs. Logan noted the staff and professional consultants to all of the entities, Developer, City, JCPRD and JCW have spent substantial time and effort in negotiating, drafting and finalizing the agreements which are before Council this evening. These agreements have all been approved by staff, legal counsel, financial consultants and the environmental consultants to the various parties and are being presented to Council with the recommendation for approval, and will be presented to JCPRD and the Board of County Commissioners for their approval as well.

Mrs. Logan advised the Council that this is the time for Council to ask any questions regarding the proposed agreements as she reviewed the new timeline for this project.

April 4, 2016 - Council Committee of the Whole

- Considered and approved advancing to next council meeting: Easement Plan, title commitment and survey, scope of initial trail work and scope of pond work (stormwater improvements)
- Was presented a summary of Phase II environmental and information regarding an environmental condition which will require remediation - and informed that an agreement among the Developer, JCPRD and the City providing for the remediation was in progress.
- Governing Body approved the Public Infrastructure Improvement Agreement

April 11, 2016 - JCPRD Board met and approved:

- Project Easement Agreement; Memorandum of Agreement; Approval of Scope of Initial Trail Work; Approval of Scope of Pond Work (Stormwater Improvements);
- [Lighting Plan, Escrow Agreement; Assignment Agreement and the Environmental Escrow Agreement were not complete and so were moved to the April 20 JCPRD meeting]

April 18, 2016 - City Governing Body considers & staff recommends approval of:

- Project Easement Agreement; Memorandum of Agreement; Approval of Scope of Initial Trail Work; Approval of Scope of Pond Work (Stormwater Improvements); Lighting Plan, Escrow Agreement; Assignment Agreement; and Right of Way Maintenance Declaration, Consent Letter regarding Planned Neighborhood Units, Title Commitment and Survey the Environmental Escrow Agreement and Survey
- Council Committee of the Whole considers for advancement and approval at Special City Council meeting on April 25th the following: Park Lighting Plan; Bond Sale Resolution, SO Bond Purchase Agreement; IRB Resolution and Environmental Escrow Agreement

April 20, 2016 - JCPRD Board approve:

- Park Lighting Plan; Escrow Agreement; Assignment Agreement; Environmental Escrow Agreement
- Park staff and legal counsel have approved the title commitment and survey

April 21, 2016 - Bids due from 3 contractors identified in Public Infrastructure Improvement Agreement

County staff and BOCC satisfied with Environmental Escrow Agreement approved by JCPRD, and authorize escrow of the release of 1954 agreement excluding the property from the sewer district and the Order allowing the property into the sewer district.

April 25, 2016 - Special meeting of Governing Body to approve:

- Park Lighting Plan; Environmental Escrow Agreement
- Bond Sale Resolution; SO Bond Purchase Agreement
- IRB Resolution

By April 29, 2016 All Documents have been Deposited into Escrow

May 2, 2016

- 10: 00 a.m. Columbia Capital conducts a public sale of the GO TIF Bonds
- Regular Council Meeting - Governing Body approves Bond Sale and related documents and Considers bids

May 17, 2016 - TIF Bonds Issued and Closing of Real Estate

Katie Logan provided the following brief summary of the agreements before the City Council for approval:

Approval of Lighting Plan. The Development Agreement and Park Gift Site Agreement contemplates that as part of the Park Master Plan, there will be a Park Lighting Plan which is approved by MB-18; City and JCPRD.

Escrow Agreement: The purpose of this Agreement is to require that all of the parties have deposited the agreements, deed, releases - various documents required to implement the TIF Plan BEFORE the bond pricing on May 2. Those agreements will not be released back to the parties unless there is NOT a bond closing by May 17. If there is a bond closing, they are released for recording (if applicable) and delivery to the parties.

Assignment Agreement: Since the City will not have title to the Park Site, it cannot be insured until the title insurance policy is issued to JCPRD. This agreement provides that in the highly unlikely event of a claim under the title insurance policy because of a failure of title, City will share in proceeds to extent there has been any shortfall of TIF revenues to pay the GO TIF Bonds.

Project Easement Agreement: This has been approved by JCPRD and reviewed and approved by Public Works and provides temporary and permanent cross easements for work on the site.

Memorandum of Agreement: document which is recorded to put persons who acquire any part of the private site on notice of the Development Agreement.

Right of Way Maintenance Declaration: A document to be recorded which confirms the obligation of MB-18 and its successor homes association to maintain the medians located on the Parkway ROW at its expense, including costs of mowing and irrigation.

Consent Letter Regarding Planned Neighborhood Units: The Development Agreement and bond documents provide that a portion of the 50% of incremental taxes allocated to payment of the SO TIF Bonds may be reallocated to the GO TIF Bonds if there is a shortfall and if MB-18 does not complete certain private work. This confirms the unit numbers - and is unchanged from the Development Agreement.

Environmental Escrow Agreement.

- Identifies Environmental Condition requiring remediation
- MB-18 is responsible, at its sole cost, for the remediation and obtaining a KDHE “No Further Action” Letter
- Minimum scope of remediation - subject to additional requirements by KDHE in order for KDHE to issue a “No Further Action” letter which will confirm that area has been remediated to a level approved for use of the area as a public park.
- \$400,000 of Park Purchase Price remains in escrow to fund the remediation cost (this is 2x estimate)
- MB-18, LLC will indemnify, defend and hold harmless City and JCPRD from costs relating to the remediation, and third party claims relating to the Environmental Condition, until the later of the KDHE No Further Action letter and the date that \$1,000,000 of coverage is available under a 10 year Pollution Legal Liability insurance policy insuring JCPRD and City against such claims.

Summary of the Condition and Remediation:

Condition: petroleum hydrocarbon, possibly from spillage of fuels

Remediation: In area in which there is contamination in the 5 feet below ground surface (bgs), the soil will be removed from the site to a landfill, and replaced with clean soil. Subsequent environmental use controls required by KDHE will be (a) restrict excavation activities to depth of 5 feet without notifying KDHE and properly managing soils, and (b) groundwater sampling and monitoring, if KDHE requires.

Mrs. Logan stated the EUCs will not restrict proposed park uses.

Jori Nelson asked when the Phase II Report would be available. Mrs. Logan replied it would not be available prior to the closing. However, Tom Buchanan, attorney for the Park District, added the results of the testing are in and the data analysis is favorable. There is no pending exploration on the 82 acres and the report will not contain any new information.

Eric Mikkelson stated he is pleased with the \$400,000 placed in escrow for the cleanup, but asked if MB-18, LLC would be willing to pay for costs in excess of that amount.

Tom Buchanan, attorney for the Park District, replied that two independent engineering firms have evaluated the required remediation and estimated the cost to be between \$160,000 and \$200,000. The terms of the Environmental Escrow Agreement require escrow of twice the estimated costs.

David Morrison asked if the contractor has been determined. Mrs. Logan replied the City has the option to use the same contractor as Van Trust and three contractors were identified and approved. These firms have received the bid documents and are expected to submit bids. No contracts have been awarded yet.

Mr. Mikkelson noted the Project Easement Agreement references an exhibit of an easement plan that was not included in the packet information. Mrs. Logan responded the easement plan was presented to the Council at the last meeting.

Mr. Mikkelson confirmed that legal staff have reviewed and confirmed that none of the easements would interfere with any of the proposed park usage. Mrs. Logan replied both Lathrop & Gage attorneys and those of the Johnson County Park & Recreation District have reviewed the easements. Mr. Mikkelson commended Mrs. Logan and others for their thorough work on a very complete and strong set of agreements. However, in the assignment agreement the city is covered only in the case of a shortfall, not a total failure. Mrs. Logan replied that this is paid from the proceeds of the TIF bonds and the city's only risk is on the General Obligation TIF bonds. If there is no shortfall, the city's obligation will be made whole and no funds will be taken from general revenue. The Park District counsel asked for it to be part of the agreement because it is in the Park Site Agreement.

Ted Odell made the following motion, which was seconded by Dan Runion:

MOVE THE CITY COUNCIL APPROVE THE FOLLOWING AGREEMENTS:

- **Approval of an Interlocal Agreement with the City of Overland Park for public improvements to 75th Street, Mission Road and Walmer Street and 95th Street, Mission Road to Nall;**
- **Approval of Scope of Pond Work, now known as Stormwater Improvements between the City of Prairie Village, MB-18, LLC and Johnson County Park and Recreation District for Meadowbrook Park;**
- **Approval of Scope of Initial Trail Work between the City of Prairie Village, MB-18, LLC and Johnson County Park and Recreation District for Meadowbrook Park;**
- **Approval of Title Commitment and Survey for Meadowbrook Park;**
- **Approval of an Escrow Agreement between the City of Prairie Village, MB-18, LLC, Johnson County Park and Recreation District, Johnson County Wastewater and First American Title Insurance Company;**
- **Approval of Conditional Assignment Agreement between the City of Prairie Village and Johnson County Park and Recreation District related to the Park Gift Site Agreement;**
- **Approval of Project Easement Agreement between the City of Prairie Village, MB-18, LLC, Johnson County Park and Recreation District for Meadowbrook Park;**
- **Approval of Memorandum of Agreement between the City of Prairie Village, MB-18, LLC, Johnson County Park and Recreation District for Meadowbrook Park;**
- **Approval of Right-of-Way Maintenance Declaration as made by MB-18, LLC**
- **Approval of the Consent Letter regarding Planned Neighborhood Units for Meadowbrook Park between the City of Prairie Village and MB-18, LLC.**

**COUNCIL ACTION TAKEN
04/18/2016**

Jori Nelson noted that the Senior Living component was not included on the Planned Neighborhood Unit Agreement. Katie Logan responded that the completion of the senior living component was not addressed in the Development Agreement. This agreement addresses those units that are required by the Development Agreement to be completed within a specified timeframe. Those components addressed in the Development Agreement are a specific number of apartment units, Inn units, the retail space, a specific number of single-family and townhomes.

Dan Runion asked what percentage of the funds would be expended for the construction of the items in the Planned Neighborhood units. Jeff White with Columbia Capital responded that construction would represent approximately a quarter of the funds.

The motion was voted on and passed unanimously.

Eric Mikkelson moved the City Council continue to the Special City Council meeting on Monday, April 25th the approval of the lighting plan for Meadowbrook Park and the Environmental Escrow Agreement. The motion was seconded by Ted Odell and passed unanimously.

COU2016-24 Consider approval Bond Sale Resolution

Jeff White with Columbia Capital, the City's financial advisor, reviewed the financing plan for the project through the use of Tax Increment Financing which locks in the current value of this property with continued tax funds being issued to the respective taxing bodies at that rate while improvements are being made to the property. The current assessed value of this property is \$1.1M and at the completion of this project the value is anticipated to increase by twentyfold. The financing plan also captures the Transient Sales Tax with the net proceeds from those funds being used to pay for the park and public infrastructure. This TIF revenue will be collected over the next 20 years. Through negotiation with the developer, the City will split the TIF revenue in half with 50% going toward the repayment of General Obligation TIF Bonds and 50% going towards Special Obligation TIF Bonds. The size and structure of the bonds has been established assuring that there is more than a dollar in revenue for each dollar of tax service. The General Obligation Bonds will be sold by the City with an expected Aaa rating through competitive sale and purchased by general public for a 20 year term with the bid to be awarded May 2nd. The Special Obligations Bonds are not rated and will be purchased by the developer for a 20 year term.

General Obligation Bonds in the amount of \$11M will be backed by the City. The Special Obligation Bonds in the amount of \$8M are secured only by TIF revenue with no backing by the City. If the proceeds of the bonds exceed expectations it has been agreed that the bonds will be retired early.

Council President Brooke Morehead thanked Mr. White for his presentation and work on this project.

Eric Mikkelson asked with a competitive sale if the city could expect more than the face value of the bonds and if so, what is anticipated. Mr. White replied that different investors approach the purchase of bonds differently. There are generally three bond structures. The first being a par structure with the investor matching the value of the bonds dollar for dollar. The bond sale can also be structured where the investor pays more than a dollar for dollar rate earning more in interest over the life of the bond. Other investors will choose to pay less than a dollar per dollar rate earning less over the life of the bond. He would expect to see bids for the bonds using all three structures. Ideally a structure close to the par is desired, but he cannot predict the outcome. Mr. White added that his firm uses bond software which will calculate the "True Interest Cost" regardless of the bid structure on which they will make their recommendation the value for the bonds profiles.

Ted Odell moved that COU2016-24 approval of the Bond Sale Resolution be placed on the April 25, 2016 Special City Council Meeting agenda. The motion was seconded by Eric Mikkelson and passed unanimously.

COU2016-25 Consider approval of Bond Purchase Agreement for Special Obligation TIF Bonds for Meadowbrook Park

Gary Anderson, bond counsel with Gilmore and Bell, noted this project has two TIF Bonds, the General Obligation Bonds to be sold to the general public on May 2nd and the Special Obligation Bonds that will be purchased by the a subsidiary of the developer. The proposed Bond Purchase Agreement addresses the requirements and structure for the purchase of the Special Obligation Bonds.

Ted Odell moved the City Council consider the approval of a bond purchase agreement between the City of Prairie Village and Van Tuyl Family 2012 Irrevocable Trust for the purchase of Special Obligation Revenue Bonds for the Meadowbrook TIF Project at the Special City Council Meeting on April 25, 2016. The motion was seconded by Terrence Gallagher and passed unanimously.

COU2016-26 Consider approval of Master IRB Resolution for Meadowbrook Park

Gary Anderson reviewed the proposed IRB Resolution of intent for the City to issue IRB's in a maximum amount of \$56,500,000 for the redevelopment of Meadowbrook Park to be used solely to be able to secure a project exemption from sales tax. The construction costs of the apartments, inn and senior living are subject to sales taxes and the IRB mechanism to make a sales tax exemption available to the park project. As part of the Development Agreement with the City IRB's were requested to allow for this project exemption with the cost saved, estimated to be \$1.7 to \$1.8M, to contributed back to the Park project.

Brooke Morehead asked what the time period was. Mr. Anderson responded there is not time period in the resolution. He would expect that on May 2nd, after the approval of the General Obligation and Special Obligation Bonds, the City would adopt an IRB Ordinance.

Eric Mikkelson asked for confirmation that the full faith and credit of the city is not at risk with the issuance of the IRB. Mr. Anderson replied the \$56.5M amount is the approximate cost of construction materials for the inn, apartment and senior living. The IRB will be purchased by the developer. There will be a simultaneously issued lease agreement during construction. There is no liability of the City with the finance structure. The sole source of payment is the lease payment from the developer to the developer. Mr. Anderson added that the City will be named under their insurance policy and will be indemnified from any claims. This is a very common vehicle currently used in economic development and will not impact the city's credit or bond rating. The sole risk lies with the developer.

Dan Runion asked why this was being considered. Mr. Anderson replied the use of the project exemption on sales tax for construction materials significantly lowers the cost of the project and these savings, which are estimated to be \$1.7 to \$1.8M will be contributed to the development of the Park. Sheila Myers confirmed the value is based on the cost of the construction materials purchased and that the estimated value could increase based on actual construction material costs.

Eric Mikkelson moved the committee approve the Master IRB Resolution for Meadowbrook Park and move its recommendation forward to the Governing Body at the Special City Council meeting on April 25, 2016. The motion was seconded by Steve Noll and passed unanimously.

STAFF REPORTS

Public Safety

- Chief Schwartzkopf reported that the Johnson County Mental Health Co-Responder Agreement discussed at an earlier meeting is moving forward and currently under review by the city attorney.
- Chief, Captain Ward and three dispatchers recently attended Telecommunicators Association Dinner last Friday recognizing the work of dispatchers.
- Captain Byron Roberson has been accepted into the FBI Academy class for the summer of 2017.

Public Works

- Mr. Bredehoeft announced that John Decker with Water Resources will be reviewing the work completed on the Fontana/Delmar project.
- The City has again received the “Tree City USA” designation. The annual Arbor Day celebration hosted by the Tree Board will be held this Saturday, April 23rd at McCrum Park beginning at 10 a.m. honoring Luci Mitchell
- Mr. Bredehoeft stated that he will be submitting for the “Sustainable Places Grant” updating the grant submitted last year. He noted that available funding is double the amount available last year.

Mayor Wassmer thanked Mr. Bredehoeft for the removal of the old Prairie Village marker and planted flowers at 75th & Stateline Road. He noted that the sign was not able to be salvaged and relocated. It was noted that the 75th Street Project has been well received by the public. Brooke Morehead asked if the resident with issues on the drainage culvert east of Roe had been addressed. Mr. Bredehoeft replied staff is talking with him. Sheila Myers commended Sr. Project Manager Melissa Prenger on the recent presentation to residents. Erick Mikkelson asked about the cones along Mission Road south of 71st Street. Mr. Bredehoeft responded they are related to WaterOne work being done. The city’s work in that area will not begin until after the conclusion of the school year.

Administration

- Wes Jordan reported that the city’s relationship with the curbside textile recycling program will end on May 1st. The expectations of the project were not met. He noted that Team Thrift will continue to operate independently within Prairie Village.

- Quinn Bennion noted that staff is meeting with the newly elected Council members.
- The missing easement plan exhibit for the earlier item has been copied and distributed to the Council.
- Significant staff time over the past two weeks has been spent on the finalization of the several Meadowbrook agreements considered by the Council this evening and at the Special City Council meeting on April 25th.

ADJOURNMENT

With no further action to come before the Council Committee of the Whole, Council President Brooke Morehead adjourned the meeting at 7:15 p.m.

Brooke Morehead
Council President

**PLANNING COMMISSION AGENDA
CITY OF PRAIRIE VILLAGE
TUESDAY, MAY 3, 2016
7700 MISSION ROAD
7:00 P.M.**

I. ROLL CALL

II. APPROVAL OF PC MINUTES - APRIL 5, 2016

III. PUBLIC HEARINGS

IV. NON-PUBLIC HEARINGS

- PC2015-115 Request for Site Plan Approval
7501 Mission Road
Current Zoning: C-0
Applicant: Chris Hafner, Davidson Architecture**
- PC2016-115 Request for Site Plan Approval for Fence
7457 Cherokee Drive
Current Zoning: R-1a
Applicant: Global Montessori Academy**
- PC2016-116 Request for Site Plan Approval for Fence
4205 West 64th Street
Current Zoning: R-1a
Applicant: Joseph Jimenez**
- PC2016-117 Request for Site Plan Approval for wireless antenna
9011 Roe Avenue
Current Zoning: R-1a
Applicant: Anja Baldock, Network Real Estate, LLC for AT&T**

V. OTHER BUSINESS

- PC2015-08 Final Development Plan - Mission Chateau
8500 Mission Road
Current Zoning: R-1a
Applicant: MVS, LLC**

VI. 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**

TREE BOARD

City of Prairie Village, Kansas

MINUTES (draft)

Wednesday March 2, 2016
Public Works Conference Room
3535 Somerset Drive

Board Members: Deborah Nixon, Rick Howell, Linda Marcusen, Frank Riott

Other Attendees: Suzanne Lownes

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

- 1) **Review and Approve Minutes of February 3, 2016** - Motion by Linda Marcusen to accept the minutes, seconded by Deborah Nixon. **Approved unanimously.**
- 2) **Arbor Day Event** -
 - a) **Event Plans** - Rick Howell showed a map of McCrum Park and the two options that he suggested for the Arbor Day Event. The group decided that getting 3 White Bud trees for the area on the North side of the pavilion would be a good idea. Rick Howell stated he would try and get one donated and then the Arboretum funds could purchase the other two. The Group reminded everyone that the event will be Saturday, April 23rd at 10am at McCrum Park. It was suggested that the Park and Recreation Committee and the Community Garden groups be added to the invitation list for the Arbor Day event.
 - b) **Arbor Day Honoree** - The Tree Board reviewed the one Honoree Application and decided to put it in the holding file to review again next year. Rick Howell nominated Luci Mitchell as the 2016 Honoree, Deborah Nixon seconded. It was approved unanimously. Deborah Nixon said that she would contact Luci Mitchell and let her know and get a list of people she would like contacted about the event.
- 3) **Earth Day Event** - The Earth Day event is Saturday, April 30th at Shawnee Mission East. Linda Marcusen said she would setup the table and work until Noon and Frank Riott stated that he could work the table from Noon until the end of the event at 3pm. Deborah Nixon said she could fill in off and on as needed. Linda Marcusen brought in a list of Kansas Champion Trees and Suzanne Lownes said she would copy it for a handout at the event.
- 4) **Tree Board Priorities Outline** -
 - a) **Collaboration/Project Software** - Jonathan Pruitt was unable to attend the meeting and the topic was moved to the April meeting.
 - b) **Landscape Recommendation Update** - Deborah Nixon brought in some examples of landscape criteria from Carrollton, TX and City of New York. Rick Howell brought in Overland Park's landscape criteria.
- 5) **Old Business** - The Board reviewed the two applicants for the open Tree Board position. The board agreed to move forward on recommendations to the Mayor, and that both candidates looked good. Deborah Nixon talked about the propagation of pine trees and that the Powell Garden News Letter discussed some good options that she thinks should be added to the Arboretum list.

6) **New Business** - The Board requested that updated rosters be sent out to the members. Suzanne Lownes stated that she would send one out before the next meeting.

7) **Next Meeting** - April 6, 2016 at 6:00pm

The meeting adjourned at 7:25 p.m.
Minutes prepared by Suzanne Lownes

TREE BOARD

City of Prairie Village, Kansas

MINUTES (draft)

Wednesday April 6, 2016
Public Works Conference Room
3535 Somerset Drive

Board Members: Deborah Nixon, Rick Howell, Linda Marcusen, Jonathan Pruitt, Tucker Poling

Other Attendees: Suzanne Lownes, Connie & Gordon Dunlap (8915 Rosewood Dr)

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

- 1) **Review and Approve Minutes of March 2, 2016** - Motion by Linda Marcusen to accept the minutes, seconded by Deborah Nixon. **Approved unanimously.**
- 2) **Arbor Day Event** -
 - a) **Event Plans** - The event will be Saturday, April 23rd at 10am at McCrum Park. Rick Howell updated that he had talked with Suburban about donating one of the trees to be planted for Arbor Day and then the board would use the Arboretum Fund to pay for the other two White Bud trees. Suzanne Lownes will follow up with Suburban on our crews picking up the trees and the tree for Earth Day. Deborah Nixon said that she had talked with Luci and will talk about why she is being honored as the Arbor Day honoree. Suzanne Lownes said that she was sending out email invites to Luci's guest list as well as Council, Park & Rec Committee and the Community Garden group.
- 3) **Earth Day Event** - The Earth Day event is Saturday, April 30th at Shawnee Mission East. Linda Marcusen said she would setup the table and work until Noon and Frank Riott stated that he could work the table from Noon until the end of the event at 3pm. Jonathan Pruitt stated that he will stop by and help. Deborah Nixon said she could fill in off and on as needed. Linda Marcusen said she would coordinate with Suzanne on picking up the pine tree prior to the event. Suzanne Lownes stated she would pull out the raffle tickets to use in raffling off the tree.
- 4) **Tree Board Priorities Outline** -
 - a) **Collaboration/Project Software** - Jonathan Pruitt demonstrated the slack software to use as a tool for communicating and working on projects for the Tree Board. He said he would send out invites to join the group to the Tree Board members and they could test it out and see if might work for their needs.
 - b) **Landscape Recommendation Update** - Suzanne Lownes reminded the group that they are not creating a landscaping document or detailed policies. The Board should just be making suggestions and recommendations about landscaping topics that they feel are important as part of the review process. The Board is reviewing the recommendations brought to the March meeting and will discuss at the next meeting in May.
- 5) **Old Business** - Suzanne Lownes, there is no update on new members for the Tree Board opening.
- 6) **New Business** -

a) 8915 Rosewood - Gordon & Connie Dunlap requested permission of the board to remove a Sweet Gum tree in the right-of-way at their property. Deborah Nixon explained to them that requests to remove City trees because of pods or balls inherent to the tree were typically not approved, that there would have to be extenuating circumstances to approve a resident to remove the tree. Gordon Dunlap discussed the damage to the storm inlet below the tree and Deborah Nixon said that the Tree Board members would review the area as well as the Public Works crew to determine if there were extenuating circumstances.

b) General Updates - Suzanne Lownes updated the group that the City had qualified for the 2015 Tree City USA designation and that they were 1 of only 100 cities in Kansas to qualify. She also updated them that there was a new Tree Board Handbook and showed them a copy that was received from Kim Bomberger for their review. Suzanne Lownes said that she would order more for all the members.

- 7) Arbor Day Observance** - April 23, 2016 at 10:00am at McCrum Park
Next Meeting - May 4, 2016 at 6:00pm

The meeting adjourned at 7:25 p.m.
Minutes prepared by Suzanne Lownes

**PRAIRIE VILLAGE - MISSION HILLS
FIRST QUARTER CRIME REPORT - 2016**

CRIME	2012	2013	2014	2015	2016	AVERAGE	2016 +/- AVG
Homicide	0	0	0	0	0	0.00	0.00
Rape	3	0	0	1	0	0.80	-0.80
Robbery	2	1	1	0	0	0.80	-0.80
Assault	19	25	15	19	18	19.20	-1.20
Burglary	13	22	5	10	6	11.20	-5.20
Residence	13	20	4	10	4	10.20	-6.20
Business/ Miscellaneous	0	2	1	0	2	1.00	1.00
Theft	56	58	39	46	41	48.00	-7.00
Auto Theft	2	8	4	9	5	5.60	-0.60
Arson	1	0	0	0	0	0.20	-0.20
Forgery	3	3	2	4	3	3.00	0.00
Fraud	9	8	5	24	28	14.80	13.20
Criminal Damage	36	34	11	25	15	24.20	-9.20
Sexual Offenses	4	0	2	1	5	2.40	2.60
TOTAL	148	159	84	139	121	130.20	-9.20

ACCIDENTS	2012	2013	2014	2015	2016	AVERAGE	2016 +/- AVG
Fatal	0	1	0	0	0	0.20	-0.20
On-Street - injury	3	7	9	10	10	7.80	2.20
On-Street +\$1,000 - no injury	65	48	44	58	67	56.40	10.60
On-Street -\$1,000 - no injury	21	11	14	9	9	12.80	-3.80
Private Property - injury	0	1	0	0	3	0.80	2.20
Private Property - no injury	15	13	12	13	12	13.00	-1.00
Walk-In - no injury	11	8	8	7	5	7.80	-2.80
TOTAL	115	89	87	97	106	98.80	7.20

MENTAL HEALTH	2012	2013	2014	2015	2016	AVERAGE	2016 +/- AVG
Suicide	1	1	0	0	1	0.60	0.40
Attempted Suicide	5	3	1	1	5	3.00	2.00
Involuntary Committal	4	2	3	0	3	2.40	0.60
Voluntary Committal	3	3	4	0	3	2.60	0.40
All Other Mental Health	13	31	22	24	30	24.00	6.00
TOTAL	26	40	30	25	42	32.60	9.40

TOTALCALLS	1,862	1,819	1,732	2,052	2,089	1,910.80	178.20
-------------------	--------------	--------------	--------------	--------------	--------------	-----------------	---------------

PRAIRIE VILLAGE FIRST QUARTER CRIME REPORT - 2016

CRIME	2012	2013	2014	2015	2016	AVERAGE	2016 +/- AVG
Homicide	0	0	0	0	0	0.00	0.00
Rape	3	0	0	1	0	0.80	-0.80
Robbery	2	1	1	0	0	0.80	-0.80
Assault	17	24	15	19	16	18.20	-2.20
Burglary	12	19	4	8	6	9.80	-3.80
Residence	12	17	3	8	4	8.80	-4.80
Business/ Miscellaneous	0	2	1	0	2	1.00	1.00
Theft	49	52	37	42	38	43.60	-5.60
Auto Theft	1	6	3	9	4	4.60	-0.60
Arson	1	0	0	0	0	0.20	-0.20
Forgery	3	3	2	4	3	3.00	0.00
Fraud	7	8	5	21	26	13.40	12.60
Criminal Damage	33	32	11	21	11	21.60	-10.60
Sexual Offenses	3	0	2	1	5	2.20	2.80
TOTAL	131	145	80	126	109	118.20	-9.20

ACCIDENTS	2012	2013	2014	2015	2016	AVERAGE	2016 +/- AVG
Fatal	0	1	0	0	0	0.20	-0.20
On-Street - injury	3	7	9	8	9	7.20	1.80
On-Street +\$1,000 - no injury	60	41	43	53	64	52.20	11.80
On-Street -\$1,000 - no injury	18	10	13	8	7	11.20	-4.20
Private Property - injury	0	0	0	0	3	0.60	2.40
Private Property - no injury	14	13	11	11	11	12.00	-1.00
Walk-In - no injury	11	8	5	7	4	7.00	-3.00
TOTAL	106	80	81	87	98	90.40	7.60

MENTAL HEALTH	2012	2013	2014	2015	2016	AVERAGE	2016 +/- AVG
Suicide	1	1	0	0	1	0.60	0.40
Attempted Suicide	5	3	1	1	5	3.00	2.00
Involuntary Committal	4	1	3	0	3	2.20	0.80
Voluntary Committal	3	3	4	0	2	2.40	-0.40
All Other Mental Health	12	30	21	21	25	21.80	3.20
TOTAL	25	38	29	22	36	30.00	6.00

TOTALCALLS	1,540	1,455	1,422	1,633	1,739	1,557.80	181.20
-------------------	--------------	--------------	--------------	--------------	--------------	-----------------	---------------

MISSION HILLS FIRST QUARTER CRIME REPORT - 2016

CRIME	2012	2013	2014	2015	2016	AVERAGE	2016 +/- AVG
Homicide	0	0	0	0	0	0.00	0.00
Rape	0	0	0	0	0	0.00	0.00
Robbery	0	0	0	0	0	0.00	0.00
Assault	2	1	0	0	2	1.00	1.00
Burglary	1	3	1	2	0	1.40	-1.40
Residence	1	3	1	2	0	1.40	-1.40
Business	0	0	0	0	0	0.00	0.00
Theft	7	6	2	4	3	4.40	-1.40
Auto Theft	1	2	1	0	1	1.00	0.00
Arson	0	0	0	0	0	0.00	0.00
Forgery	0	0	0	0	0	0.00	0.00
Fraud	2	0	0	3	2	1.40	0.60
Criminal Damage	3	2	0	4	4	2.60	1.40
Sexual Offenses	1	0	0	0	0	0.20	-0.20
TOTAL	17	14	4	13	12	12.00	0.00

ACCIDENTS	2012	2013	2014	2015	2016	AVERAGE	2016 +/- AVG
Fatal	0	0	0	0	0	0.00	0.00
On-Street - injury	0	0	0	2	1	0.60	0.40
On-Street +\$1,000 - no injury	5	7	1	5	13	6.20	6.80
On-Street -\$1,000 - no injury	3	1	1	1	2	1.60	0.40
Private Property - injury	0	1	0	0	0	0.20	-0.20
Private Property - no injury	1	0	1	2	1	1.00	0.00
Walk-In - no injury	0	0	3	0	1	0.80	0.20
TOTAL	9	9	6	10	18	10.40	7.60

MENTAL HEALTH	2012	2013	2014	2015	2016	AVERAGE	2016 +/- AVG
Suicide	0	0	0	0	0	0.00	0.00
Attempted Suicide	0	0	0	0	0	0.00	0.00
Involuntary Committal	0	1	0	0	0	0.20	-0.20
Voluntary Committal	0	0	0	0	1	0.20	0.80
All Other Mental Health	1	1	1	3	5	2.20	2.80
TOTAL	1	2	1	3	6	2.60	3.40

TOTALCALLS	322	364	310	419	350	353.00	-3.00
-------------------	------------	------------	------------	------------	------------	---------------	--------------

**Council Members
Mark Your Calendars
May 2, 2016**

May 2016

	The Saturday Group in the R.G. Endres Gallery
May 13	Deadline to register for ALL Aquatics Teams
May 13	Artist reception in the R.G. Endres Gallery 6:30-7:30 p.m.
May 16	City Council Meeting
May 19	2016 Leadership Northeast Program Graduation
May 28	Pool Opens
May 30	City offices closed in observance of Memorial Day

June 2016

	Jean Cook, Luke Severson and Sara Nguyen exhibit in the R.G. Endres Gallery
June 3 - 5	Prairie Village Art Fair - Prairie Village Shopping Center
June 6	City Council Meeting
June 10	Artist reception in the R.G. Endres Gallery 6:30-7:30 p.m.
June 20	City Council Meeting

