

CITY OF PRAIRIE VILLAGE

October 3, 2016

Council Committee Meeting 6:00 p.m.

City Council Meeting 7:30 p.m.

COUNCIL COMMITTEE OF THE WHOLE
Council Chambers
Monday, October 03, 2016
6:00 PM

AGENDA

TED ODELL, COUNCIL PRESIDENT

AGENDA ITEMS FOR DISCUSSION

- COU2016-56 Consider approval of employee health, dental, and vision insurance providers as recommended by City Staff
CBIZ Representative

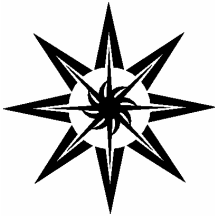
- *COU2016-55 Consider an amendment to the Right of Way Ordinance - Small Cell Facilities
David Waters

- COU2016-57 Consider changes to building permit fees
Mitch Dringman

- *COU2016-58 Consider approval of the preliminary engineering study contract with Water Resources Solutions, LLC for the Delmar and Fontana low water crossing removal and drainage project
Keith Bredehoeft

- *COU2016-59 Consider approval of the 2017 tree trimming contract with KC Tree
Keith Bredehoeft

***Council Action Requested the same night**



COUNCIL COMMITTEE

Council Committee Meeting Date: October 3, 2016

City Council Meeting Date: October 17, 2016

COU 2016-56

Consider approving the City's health, dental, and vision insurance providers, as recommended by City staff.

RECOMMENDATION

Staff is recommending the Governing Body approve United Health Care as the new provider for employee health insurance. CBIZ conducted a comprehensive bid process at the request of City Staff due to steep renewal rate projections from the current provider - Blue Cross Blue Shield of Kansas City. Staff is also recommending dental and vision insurance renewals with current providers.

SUGGESTED MOTION

Move that the Committee:

- 1) Approve moving from Blue Cross Blue Shield of Kansas City (BCBS) to United Health Care (UHC) as the City's health insurance provider for the 2017 plan year, with a 6.0% increase in premiums, shared between the City and employees.
- 2) Approve Delta Dental of Kansas as the City's dental insurance provider for the 2017 plan year, with a 0.0% increase in premiums.
- 3) Approve Superior Vision as the City's vision insurance provider for the 2017 plan year, with a 4.0% increase in premiums.

BACKGROUND

A CBIZ representative will be in attendance at Monday night's meeting.

The health insurance renewal is based on the claims incurred by plan participants over the twelve month period of June 2015 - May 2016; the City's loss ratio for this period was 103%. The initial renewal rates for 2017 were over 20% of an increase which exceeded the 2017 budget projection of a 10% maximum. As a result of the steep increase, CBIZ conducted a Request for Proposal that went to six medical carriers. There were four that responded; BCBS, UHC, Midwest Public Risk (MPR), and Humana.

Staff worked with CBIZ to develop a viable alternative within budget while striving to maintain similar benefits. The discussion and coverage reviews resulted in the recommendation of United Health Care. The City was with UHC prior to BCBS, from 2001 - 2008.

The City will offer two plans for employees to select from. The current Base PPO has been replaced with an HMO, with a few minor changes. The new Base HMO will have no annual deductible and the Out-Of-Pocket maximum will stay at \$5,500 for an individual and \$10,000 for a family. This will be the only HMO plan available. The Qualified High Deductible Health Plan (QHDHP) deductibles will remain at \$2,600 for an individual and \$5,200 for a family, however the coinsurance will change from 0% to 10%. The Out-Of-Pocket maximum will increase slightly from \$2,600 to \$3,000 for an individual and from \$5,200 to \$6,000 for a family.

The new HMO plan co-pays for office visits remains at \$35/70 and for Urgent Care will change from \$70 to \$75. Prescription co-pays for level 2 will change from \$40 to \$35 and level 3 from \$70 to \$60.

In addition, for 2017 the City will require all employees to enroll in the plan. For the past few years, employees could opt out of the health plan. This will ensure the City will have more leverage when negotiating rates at future renewals while minimizing exposure to being rated on an individual basis due to enrollment falling below the threshold of 100 employees.

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

The City recommends that the differential for tobacco users covered on the City's health insurance plan (employee or dependent) continue in 2017. Those individuals who do use tobacco products (cigarettes, pipes, chewing tobacco, cigars, etc.) more than once per week will be assessed \$20 in their monthly premium costs.

Delta Dental of Kansas, the City's dental insurance provider, has agreed to renew the dental plans for 2017 with 0% increase.

The City's vision insurance provider, Superior Vision, has a 4% increase in premium for 2017, with a four year guarantee on rates.

RENEWAL HISTORY

1/1/12: Blue KC agreed to a negotiate renewal of no increase in rates. CBIZ also negotiated the domestic partner benefit as well as a premium holiday for one month of savings of \$90,000.

1/1/13: Blue KC agreed to a negotiated renewal of no increase in rates. CBIZ also negotiated a change in the funding of the plan, from a non-participating fully insured contract, to a Maximum Refund contract. While still fully insured, the City will be able to receive any excess funds back in the form of a refund. (The City received a refund from Blue KC in the amount of \$28,165 in May 2014.)

- 1/1/14: Blue KC agreed to a negotiated renewal increase of 3.43%, a concession of 1.37%. Blue KC also agreed to keep the out of pocket at the current level (including medical expenses) with no rate impact.
- 1/1/15: The original renewal offering from Blue KC was an increase of 10.2% which increased the out of pocket maximum levels to accommodate the inclusion of the pharmacy co pays. Additionally the QHDHP deductible and out of pocket maximum were increased from \$2,500/\$5,000 to \$2,600/\$5,200. After negotiations, we were able to reduce the renewal to 8.2%. Then moving the QHDHP to a different network, the City was able to obtain a final 2.2% blended increase across all plans.
- 1/1/16: The agreed negotiated renewal increase of 9% included a deductible increase for the Base PPO from \$500/\$1,000 to \$750/\$1,500; co pays from \$30/\$60 to \$35/\$70; and pharmacy co pays from \$12/\$35/\$60 to \$12/\$40/\$70. The HMO out-of-pocket maximum increased from \$4,500/\$9,000 to \$5,500/\$10,000.

FUNDING SOURCE

Employee insurance premiums are funded with the General Fund. The 2017 budget anticipated an increase in City premium contributions of 10%. The renewal rates of 6.0%, 0%, and 4% for the health, dental, and vision plans, fit within the budgeted funds. The annual costs for health insurance coverage for 2017 is approximately \$903,278, which is within the budget.

ATTACHMENTS

- Medical Benefits Comparison
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Prepared By:

Amy Hunt

Human Resources Manager

Date: September 26, 2016

MEMORANDUM

To: Quinn Bennion
Wes Jordan
City of Prairie Village, Kansas

From: David E. Waters
Lathrop & Gage LLP

Date: September 28, 2016

Subject: **Revisions to Right-of-Way Ordinance**

As you know, this summer Governor Sam Brownback signed into law Senate Substitute for House Bill 2131, which contains what is now known as the Kansas New Wireless Deployment Act (the "Act"). As stated in the Act, the Legislature has determined that "wireless facilities are critical to ensuring that all citizens in the state have true access to broadband," that these facilities "have a significant economic benefit," and that "the permitting, construction, modification, maintenance and operation of these facilities ... are declared to be matters of statewide concern and interest" (rather than matters of local concern). The Act is uniformly applicable to all cities, and the City may not charter out of its provisions.

Definitions and Rights Under the Act.

Among the most important pieces of the Act is that a wireless services provider or wireless infrastructure provider "shall have the right to construct, maintain and operate wireless support structures, utility poles, small cell wireless facilities or distributed antenna systems along, across, upon, under or above the public right-of-way." (Earlier versions of the legislation were even broader, giving wireless providers the right to install facilities on other city property, including city buildings). The terms used in the above-cited section are defined in the Act as follows:

Wireless support structure means "a freestanding structure, such as a monopole, guyed or self-supporting tower or other suitable existing or alternative structure designed to support or capable of supporting wireless facilities." The term does not include "any telephone or electrical utility pole or any tower used for the distribution or transmission of electrical service" (but see other definitions below).

Utility pole means "a structure owned or operated by a public utility [as defined in Kansas statute], a municipality [also as defined in Kansas statute], or an electric cooperative [also as defined in Kansas statute] that is designed specifically for and used to carry lines, cables or wires for telecommunications, cable, electricity or to provide lighting.

Small cell facility means a wireless facility that meets both of the following qualifications:

"(A) Each antenna is located inside an enclosure of no more than six cubic feet in volume, or in the case of an antenna that has exposed elements could fit within an imaginary enclosure of no more than six cubic feet; and

(B) primary equipment enclosures that are no larger than 17 cubic feet in volume, or facilities comprised of such higher limits as the federal communications commission has excluded from review [pursuant to federal statute]. Associated equipment may be located outside the primary equipment, and if so located, is not to be included in the calculation of equipment volume. Associated equipment includes, but is not limited to, any electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, cut-off switch and vertical cable runs for the connection of power and other services."

(By definition, "primary equipment enclosures" would include very large metal cabinets plus outside associated equipment, and the Act would allow wireless services providers to install these in the City's right-of-way by right.)

Distributed antenna system means "a network that distributes radio frequency signals and consisting of:

(A) Remote communications or antenna nodes deployed throughout a desired coverage area, each including at least one antenna for transmission and reception;

(B) a high capacity signal transport medium that is connected to a central communication hub site; and

(C) radio receivers located at the hub's site to process or control the communications signals transmitted and received through the antennas to provide wireless or mobile service within a geographic structure."

Again, the starting position set forth in the Act is that wireless services providers now have the right to install these facilities in the City's right-of-way.

Zoning Issues.

Currently, Chapter 19.33 of the City's Zoning Regulations (at Section 19.33.020) states that, with certain exceptions, "wireless communication facilities, towers and antennae" shall be allowed only upon approval of a special use permit." (Under Section 19.33.060 of the Zoning Regulations, "small wireless communications antennae

installations"—antennae that may be attached to existing utility or street light poles—may be approved administratively).

The requirement for a special use permit is likely problematic, at least as to the right-of-way, because under the Act the City "must be competitively neutral with regard to other uses of the public right-of-way" and "may not be unreasonable or discriminatory" (and, the City does not require that all users of the right-of-way obtain special use permits). Therefore, and given the Act's focus on the right-of-way, it is recommended that the City first review and consider its right-of-way ordinance, to regulate the use of the right-of-way to the extent possible or desirable under the Act.

City Regulations and Reasonableness.

Indeed, wireless providers' rights to the right-of-way are not unlimited. Under the Act, the right to use and occupy the public right-of-way "shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the authority." Furthermore, the City "may exercise its home rule powers in its administration and regulation related to the management of the public right-of-way provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory."

The Act also states that the authority (the City) "shall have the right to prohibit the use or occupation of a specific portion of public right-of-way by a provider due to a reasonable public interest necessitated by public health, safety and welfare so long as such interest is exercised in a competitively neutral manner and is not unreasonable or discriminatory." The Act also states that a wireless services provider or wireless infrastructure provider "shall comply with all laws and rules and regulations governing the use of public right-of-way."

Furthermore, the Act provides that the City "may continue to exercise zoning, land use, planning and permitting authority within the [City's] territorial boundaries with regard to the siting of new or the modification of wireless support structures, wireless facilities, small cell facilities or utility poles," except as to systems located in an "interior structure" or "upon the site of any campus, stadium or athletic facility."

Recommendations as to Right-of-Way Ordinance.

As the Act only becomes effective October 1, 2016, there is no case law, attorney general guidance, or other legal authority defining or setting parameters for what are "reasonable public health, safety and welfare requirements and regulations." City staff has proposed that the revised right-of-way ordinance establish new, non-discriminatory practices to protect the health, safety and welfare by limiting the use of the right-of-way such that, to the extent possible, all facilities and lines are placed underground and, when

not possible, the height of above-ground facilities is limited. The key revisions recommended by City staff are as follows:

- Expand the definition of "facility" to include wireless communication facilities, wireless support structures, small cell facilities, base stations, transmission equipment, and distributed antenna systems.
- Add language establishing that regulations are in place for the public health, safety and welfare, and that they shall be competitively neutral and non-discriminatory.
- Establish, as a first principle, that all newly-constructed facilities—of whatever kind—shall be located underground. The Public Works Director would have authority to allow above-ground facilities for safety concerns or other appropriate reasons, provided such reasons are non-discriminatory. Provided a court would find that such a rule is "reasonable," this would offer the City a good amount of protection over the appearance of the right-of-way. A possible risk with this approach, however, may be that the City could preclude itself from approving above-ground facilities which it would prefer (becoming a victim of its own rule), or at least open itself to claims of discrimination if the City does approve other above-ground projects.
- Where above-ground facilities are permitted in the right-of-way, clarify that height may not exceed the lesser of (a) 35 feet for residential or collector streets, or 45 feet for arterial streets, or (b) 66 inches above the height of existing street light poles along that portion of the right-of-way (note: these height restrictions are the same as recently adopted by the City of Leawood).
- Provide that poles must be of a "breakaway" design and comply with established "clear zone" protocols.
- State that above-ground facilities (to the extent otherwise approved) may not be located in the front yard in front of single-family homes.
- Incorporate other revisions necessary to comply with the Act, such as costs of relocation, timelines for processing applications, and appeal rights.

We would note that the Prairie Village right-of-way ordinance was based on, and is nearly identical to, that adopted by the City of Overland Park. The City of Overland Park has adopted most of these same proposed revisions in its own right-of-way ordinance, except that the proposed revisions to the Prairie Village ordinance are more restrictive

than Overland Park's in limiting above-ground facilities. The revised City of Leawood right-of-way ordinance also includes a preference for underground facilities "[w]henver reasonably possible," but does not mandate it quite as strongly as Prairie Village's proposal.

Utility Boxes.

The revised right-of-way ordinance clarifies that all that above-ground facilities (again, only to the extent approved) must comply with all applicable zoning regulations regarding size, setbacks, screening, and landscaping. Where the City Zoning Regulations may be most applicable to the right-of-way is in the manner in which it governs utility boxes.

Under Section 19.34.020.K, utility boxes that have a footprint of twelve (12) square feet or less in area, a pad of not more than 2.5 times the area of the utility box footprint (but not larger than 32 square feet), and a height of not more than fifty-four (54) inches, are considered "accessory uses" and may be approved administratively. For any utility boxes that exceed these sizes, Section 19.30.055.G provides that the Planning Commission may approve them, but only under a conditional use permit.

Under Section 19.34.020.K, "if" landscaping or screening is required, a plan shall be submitted. The utility box may also not emit any "unnecessary intrusive noise." The utility is further directed to "work with the city staff" to determine a pad size and location that is most appropriate and compatible with adjacent uses. Applicants dissatisfied with staff approval (or lack thereof) may appeal the staff decision to the Planning Commission.

The Act may impact these processes. First, it is not known whether the size limitations would qualify as being "reasonable" public health, safety and welfare requirements or regulations under the Act. Second, the Act prohibits the City from imposing any "unreasonable" requirements as to arranging, screening, or landscaping, and prohibits the City from being "discriminatory" as to such requirements (and, with each utility box situation being unique, this may raise the risk of claims against the City). Finally, the Act gives applicants "aggrieved" by a final action of the City the right to directly appeal that decision to the district court (without first going through the Planning Commission).

As a result, additional revisions to portions of the City's Zoning Regulations will likely be required. We and City staff will bring suggested revisions to the Planning Commission and the City Council as and when they are ready for consideration.

Allowable Fees.

The Act limits the types and amounts of fees that the City may charge for the use of right-of-way and the review of applications. Under the Act, the City may not charge any fees associated with the submission, review, processing, or approval of an application that is not required for other types of providers. The City may also only assess charges for its "actual costs" relating to the processing of an application. Even so, the total charges may not exceed \$500 for a collocation application, one that is not a "substantial modification," a small cell facility application, or a distributed antenna system application, or \$2,000 for an application for a new wireless support structure or for a collocation application that is a substantial modification of a wireless support structure.

The City may not charge a wireless service provider or wireless infrastructure provider any rental, license or other fee to locate a wireless facility or wireless support structure on the right-of-way if the City does not charge other providers or utilities for the use of the right-of-way. Any charges assessed must be "competitively neutral" and may not be unreasonable or discriminatory.

Considerations During Application Process.

The Act also establishes eighteen (18) restrictions on what can or cannot be considered or required by the City during the application process. Among these:

- The City cannot require that a provider submit information as to its business needs (e.g., whether the facility is needed to close a service gap or improve quality).
- The City may not evaluate an application based on the availability of other potential locations, including the ability to collocate, rather than build new.
- As mentioned above, the City may not "impose any unreasonable requirements or regulations regarding the presentation, appearance or function of the wireless facilities and equipment including, but not limited to, those relating to any kinds of materials used and those relating to arranging, screening or landscaping of facilities." Again, it is unclear under this new law what requirements or regulations may be deemed "unreasonable." The Act does state that, in developing any requirements or obligations for wireless facilities located in the right-of-way, the City "shall consider input from property owners adjoining the affected public right-of-way."
- The City may not prohibit the use of emergency power systems that comply with state and federal environmental requirements and do not

violate local health and safety requirements and local noise control ordinances (e.g., generators). But, local regulations cannot have the effect of preventing the provision of emergency power during actual emergencies.

- The City may not require that a provider allow other wireless providers (or the City) to place or collocate their systems on the applicant's support structures. Meaning, each provider may have its own pole, and is not required to "share" it for purposes of keeping the number of poles or facilities to a minimum.
- Any approval given must last for at least ten (10) years.

As a result of these mandates, additional revisions will need to be made to the City's Zoning Regulations governing permitting of wireless facilities (including small wireless communications antennae installations). City staff will be working to bring to the Planning Commission and the City Council proposed amendments to the Zoning Regulations so as to comply with the Act.

Timing.

For small cell facilities and networks, the Act allows applicants to submit one combined application for up to twenty-five (25) individual small cell facilities of a substantially similar design, to be covered by a single permit. The City would be required to render a decision on the combined application within sixty (60) days after submission.

Within one hundred fifty (150) days after receiving an application for a new wireless support structure, and within ninety (90) days after receiving an application for a "substantial modification" to any existing wireless support structure or base station, the City must (A) review the application in light of current zoning regulations, (B) make a final decision to approve or disapprove the application, and (C) advise the applicant in writing of the final decision, which decision must be supported by "substantial evidence" contained in a written record and issued contemporaneously.

These time periods begin when the application is submitted, but may be tolled within the first thirty (30) days thereafter if the City notifies the applicant that the application is incomplete, identifies missing information, and "specifies the code provision, ordinance, application instruction or otherwise publicly stated procedures that require the information to be submitted."

Applications are deemed approved if not specifically approved or denied by the City within the applicable time periods, and such default approval becomes effective once an applicant has provided notice to the City that the applicable time period has

lapsed. The Act provides that the City may not issue any moratoria on the filing, consideration, or approval of any application, permitting, or construction of new wireless support structures, substantial modifications, or collocations.

If the City denies an application, there must be a "reasonable basis" for the denial. And, the City may not deny an application if such denial "discriminates against the applicant with respect to the placement of the facilities of other investor-owned utilities, wireless service providers, wireless infrastructure providers or wireless carriers." The Act allows providers to file suit to challenge any denial, or any City requirement it would deem unreasonable or discriminatory.

ORDINANCE NO. _____

AN ORDINANCE RELATING TO MANAGING THE USE AND OCCUPANCY OF PUBLIC RIGHT-OF-WAY FOR THE CITY OF PRAIRIE VILLAGE, KANSAS; AMENDING AND REPEALING EXISTING PRAIRIE VILLAGE MUNICIPAL CODE SECTIONS 13-503, 13-510, 13-511, 13-512, 13-514, 13-516, 13-518, 13-525, AND 13-528, AND PROVIDING SUBSTITUTE PROVISIONS THEREFOR.

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

SECTION 1. Prairie Village Municipal Code Section 13-503 is hereby amended to read:

13-503. DEFINITIONS. For purposes of this article, the following words and phrases shall have the meaning given herein:

- A. Abandoned Facilities means those facilities owned by the ROW-user that are not in use and will not be utilized by the owner in the future.
- B. Affiliate means any person controlling, controlled by or under the common control of a service provider.
- C. Applicant means any person requesting permission to occupy, lease or operate facilities using the right-of-way, or to excavate the right-of-way.
- D. Area of Influence means that area around a street excavation where the pavement and sub-grade is impacted by the excavation and is subject to more rapid deterioration.
- E. City means the City of Prairie Village, Kansas, a municipal corporation and any duly authorized representative.
- F. City Engineer means the City Engineer, Prairie Village, Kansas, or the authorized representative.
- G. Construct means and includes construct, install, erect, build, affix or otherwise place any fixed structure or object, in, on, under, through or above the right-of-way.
- H. Day means calendar day unless otherwise specified.
- I. Emergency means a condition that (1) poses a clear and immediate danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement in order to restore service to a user.
- J. Excavate means and includes any cutting, digging, excavating, tunneling, boring, grading or other alteration of the surface or subsurface material or earth in the right-of-way.
- K. Excavation Fee means the fee charged by the City for each street or pavement cut which is intended to recover the costs associated with construction and repair activities of the ROW-user and its contractors and/or subcontractors.
- L. FCC means Federal Communications Commission.
- M. Facility means lines, pipes, irrigation systems, wires, cables, conduit facilities, ducts, poles, towers, vaults, pedestals, boxes, appliances, antennas, transmitters, gates, meters, appurtenances, [wireless](#)

communication facilities (including but not limited to wireless support structures, small cell facilities, base stations, transmission equipment, distributed antenna systems, and primary equipment enclosures, all as may be defined or described in the Kansas New Wireless Deployment Act, as amended), or other equipment.

- N. Governing Body means the Mayor and the City Council of the City of Prairie Village, Kansas.
- O. Governmental Entity means any county, township, city, town, village, school district, library district, road district, drainage or levee district, sewer district, water district, fire district or other municipal corporation, quasi-municipal corporation or political subdivision of the State of Kansas or of any other state of the United States and any agency or instrumentality of the State of Kansas or of any other state of the United States.
- P. KCC means the Kansas Corporation Commission.
- Q. Parkway means the area between a property line and the street curb. Sometimes called boulevard, tree-shelf or snow-shelf.
- R. Pavement means and includes Portland cement concrete pavement, asphalt concrete pavement, asphalt treated road surfaces and any aggregate base material.
- S. Permit and Inspection Fee means the fee charged by the City to recover its cost incurred for right-of-way management; including, but not limited to, costs associated with registering applicants; issuing, processing and verifying right-of-right permit applications; inspecting job sites and restoration of improvements; determining the adequacy of right-of-way restoration; revoking right-of-way permits and, other costs the City may incur in managing the provisions of this Article.
- T. Permittee means any person to whom a right-of-way permit is issued to excavate a right-of-way.
- U. Person means any natural or corporate person, business association or business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.
- V. Public Improvement means any project undertaken by the city for the construction, reconstruction, maintenance, or repair of any public infrastructure, and including without limitation, streets, alleys, bridges, bikeways, parkways, sidewalks, sewers, drainage facilities, traffic control devices, street lights, public facilities, public buildings or public lands.
- W. Public Lands means any real property of the city that is not right-of-way.
- X. Public Works Director means the Director of the Public Works Department of the City of Prairie Village, Kansas, or the authorized representative.
- Y. Registration means the application process of a service provider, the approval of the application by the City, and the authorization of the

service provider to use any portion of the right-of-way within the city to provide service both within and beyond the city limits.

- Z. Repair means the temporary construction work necessary to make the right-of-way useable.
- AA. Repair and Restoration Costs means those costs associated with repairing and restoring the public right-of-way because of damage caused by the ROW-user and its contractors and/or subcontractors in the right-of-way.
- BB. Restoration means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition, or better, than existed before the commencement of the work.
- CC. Right-of-way means the area on, below, or above streets, alleys, bridges, and parkways in which the City has a dedicated or acquired right-of-way interest in the real property.
- DD. ~~CC~~ Right-of-Way Permit means the authorization to excavate for the construction, installation, repair or maintenance of any type of facility within the right-of-way.
- EE. ~~DD~~ Routine Service Operation means a work activity that makes no material change to the facilities and does not disrupt traffic.
- FF. ~~EE~~ ROW-user means a person, its successors and assigns, that uses the right-of-way for purposes of work, excavation, provision of services, or to install, construct, maintain, repair facilities thereon, including, but not limited to, landowners and service providers. A ROW-user shall not include ordinary vehicular or pedestrian traffic or any governmental entity that has entered into an interlocal agreement pursuant to K.S.A. 12-2901 et seq. with the City regarding the use and occupancy of the City's right-of-way.
- GG. ~~FF~~ Service means a commodity provided to a person by means of a delivery system that is comprised of facilities located or to be located in the right-of-way, including, but not limited to, gas, telephone, cable television, Internet services. Open video systems, wireless services, alarm systems, steam, electric, water, telegraph, data transmission, petroleum pipelines, or sanitary sewerage.
- HH. ~~GG~~ Service Provider means any person owning, possessing or having an interest in facilities in the right-of-way that are used for the provisions of a service for or without a fee; provided, that this definition shall also include persons owning, possessing or having an interest in facilities in the right-of-way that are used by, may be used by or are intended for use by another person, in whole or in part, to provide a service for or without a fee, regardless of whether the actual facility owner provides any service as defined herein.
- II. ~~HH~~ Street means the pavement and sub-grade of a City residential, collector or arterial roadway.

SECTION 2. Prairie Village Municipal Code Section 13-510 is hereby amended to read:

13-510. USE OF THE RIGHT-OF-WAY.

- A. The ROW-user's use of the right-of-way shall in all matters be subordinate to the City's use or occupation of the right-of-way. Without limitation of its rights, the City expressly reserves the right to exercise its governmental powers now and hereafter vested in or granted to the City.
- B. The ROW-user shall coordinate the placement of facilities in a manner ~~which minimizes adverse impact on any public improvement~~that does not interfere with a Public Improvement and does not compromise the public health, safety, or welfare, as reasonably determined by the City. Where placement is not regulated, the facilities shall be placed with adequate clearance from such public improvements so as not to impact or be impacted by such public improvement as defined in the City's "Manual of Infrastructure Standards" available in the office of the Public Works Director. Such Standards shall be competitively neutral and not unreasonable or discriminatory.
- C. The ROW-users shall consider any request made by the City concerning placement of facilities in private easements in order to limit or eliminate future street improvement relocation expenses.
- D. All facilities shall be located and laid so as not to disrupt or interfere with any pipes, drains, sewers, irrigation systems, or other structures or public improvements already installed. In addition, the ROW-user shall, in doing work in connection with its facilities, avoid, so far as may be practicable, disrupting or interfering with the lawful use of right-of-way or other public lands of the City.
- E. All facilities of the ROW-user shall be placed so that they do not interfere with the use of right-of-way and public lands. The City, through its Public Works Director, shall have the right to consult and review the location, design and nature of the facility prior to its being installed.
- F. ~~Whenever reasonably possible, all newly~~All newly-constructed facilities shall be located underground. The ROW-user shall comply with all requirements of the City relating to underground facilities. This requirement may be waived by the Public Works Director at his or her discretion for safety concerns, or some other good cause under the condition that does not cause discrimination among ROW-users. If this requirement is waived, the facilities shall be located as directed by the Public Works Director, including, but not limited to, requirements regarding location ~~and~~, height, breakaway design, and clear zones. Provided, however, the height of a facility will not exceed, or cause any existing facility to exceed, the lesser of:
 - (a) thirty-five (35) feet for residential or collector streets or forty-five (45) feet for arterial streets; and
 - (b) sixty-six (66) inches above the height of existing street light poles along the right-of-way surrounding the facility.Above ground facilities shall comply with the Manual of Infrastructure Standards and all applicable zoning regulations, including but not limited

to design, size, height, setbacks, screening and landscaping, and illumination, and be located in a manner that does not compromise the public health, safety, or welfare. No newly-constructed above ground facilities shall be located in any front yard, as determined by applicable zoning or subdivision regulations.

- G. The ROW-user shall not interfere with the facilities of the other ROW-users without their permission. If and when the City requires or negotiates to have a service provider cease using its existing poles and to relocate its facilities underground, all other service providers using the same poles shall also relocate their facilities underground at the same time, except transmission equipment, as defined in 47 CFR 1.40001. Provided, any such relocations shall be subject to the appeal process contained in Section 13-528, as amended.
- H. The Public Works Director may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of facility that is currently or, pursuant to current technology, the Public Works Director expects will someday be located within the right-of-way. All right-of-way permits issued by Public Works Director shall indicate the proper corridor for the ROW-user's facilities. Any ROW-user whose facilities are currently in the right-of-way in a position at a variance with the designated corridors shall, no later than at the time of next reconstruction or excavation of the area where its facilities are located, move the facilities to its assigned position within the right-of-way, unless this requirement is waived by Public Works Director for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public health, safety, or welfare, user service needs and hardship to the ROW-user.
- I. If, in the preparation and planning of a right-of-way project, the Public Works Director deems it appropriate for a conduit to be constructed along, across or under the right-of-way, the Public Works Director shall contact all appropriate ROW-users for their input on the planning and design of such conduit. If a ROW-user desires to construct, maintain or operate facilities along such right-of-way, the Public Works Director may require the ROW-user to use such conduit, and to contribute to the expense of such conduit, provided, however, the ROW-user's use of the conduit is reasonable and appropriate under the circumstances.
- J. All earth, materials, sidewalks, paving, crossings, utilities, other public improvements or improvements of any kind damaged or removed by the ROW-user shall be fully repaired or replaced promptly by the ROW-user at its sole expense and to the reasonable satisfaction of the City. Upon determination by the Public Works Director that such repair or replacement is a public safety matter, all such repair or replacement shall be commenced within twenty-four (24) hours of notice from the City, or the Public Works Director may direct the city to make such repair or replacement and bill the ROW-user for the City cost. The Public Works Director has the authority to inspect the repair or replacement of the

damage, and if necessary, to require the ROW-user to do any necessary additional work.

- K. All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of a ROW-user's facilities in the right-of-way shall be in accordance with [the Manual of Infrastructure standards and all](#) applicable federal, state and local law and regulations, including those promulgated by national trade associations commonly associated with the service provided by the ROW-user. It is understood that the standards established in this paragraph are minimum standards and the requirements established or referenced in this article may be in addition to or stricter than such minimum standards. A ROW-user shall not construct or reconstruct any of its facilities located upon, over, under or within the City right-of-way without first having submitted in writing a description of its planned improvement to the Public Works Director and having received a permit for such improvement. The Public Works Director may require that any drawings, plans and/or specifications submitted be certified by a Kansas registered professional engineer stating that such drawings, plans and/or specifications comply with all applicable technical codes, rules and regulations, unless such plans are based directly on nationally recognized codes, which are appropriately cited, and attested to on the plans by the signature of an authorized official of the organization applying for the permit.
- L. The ROW-user shall cooperate promptly and fully with the City and take all reasonable measures necessary to provide accurate and complete on-site information regarding the nature and horizontal and vertical location of its facilities located within the right-of-way, both underground and overhead, when requested by the City or its authorized agent for a public improvement. Such location and identification shall be at the sole expense of the ROW-user without any expense to the City, its employees, agents, or authorized contractors.

SECTION 3. Prairie Village Municipal Code Section 13-511 is hereby amended to read:

13-511. FACILITY RELOCATION.

- A. The ROW-user shall promptly remove, relocate or adjust any facilities located in the right-of-way as directed by the City for a public improvement or when reasonably required by the City by reason of public health, safety and welfare. Such removal, relocation, or adjustment shall be performed by the ROW-user at the ROW-user's sole expense without expense to the City, its employees, agents, or authorized contractors and shall be specifically subject to rules, regulations and schedules of the City pertaining to such. The ROW-user shall proceed with relocations at due diligence upon notice by the City to begin relocation.
- B. The ROW-user shall promptly remove, relocate or adjust any facilities located in private easement, as directed by the City, for a public improvement, at City expense, by moving such facilities to areas within

the expanded right-of-way or within remaining private easements or remaining portions of such easements not condemned by nor disclaimed to the City to avoid conflict with City construction and improvements. The ROW-user shall disclaim those parts of its easements which lie within the expanded right-of-way. Should the City, in the future, elect to require the ROW-user to again relocate its facilities to other areas within the expanded right-of-way, the cost of any such future relocation shall be borne by the City.

- C. As soon as working drawings are available for public improvements which will require the ROW-user to relocate its facilities, the city shall provide the ROW-user with written notice of relocations and the anticipated bid letting date of said improvement. The ROW-user shall respond with any conflicts and a proposed construction schedule within thirty (30) days.
- D. Following notice by the City in the form of the delivery of final design plans for such public improvements, the ROW-user shall remove, and relocate its facilities in accordance with the mutually agreed upon schedule, provided the project is not delayed by adverse weather conditions and other factors beyond the control of the ROW-user. The ROW-user shall certify to the City, in writing, that its facilities have been relocated or adjusted to clear construction in accordance with project plans provided by the City.
- E. Any damages suffered by the City, its agents or its contractors to the extent caused by ROW-user's failure to timely relocate or adjust its facilities, or failure to properly relocate or adjust such facilities, shall be borne by the ROW-user.
- F. In the event the ROW-user is required to move its facilities in accordance with this section, any ordinary right-of-way permit fee shall be waived.
- G. It is the intent of this section for both the City and the ROW-user to cooperate with one another so that the need for facility relocation is minimized and, when required and feasible, relocations may be completed prior to receipt of bids by the City for a public improvement.
- H. In the event that a ROW-user is required to move its facilities for a private benefit, the ROW-user shall not bear the cost of the relocation or adjustment to the extent of such private benefit, and the ROW-user shall not be obligated to commence the relocation or adjustment until receipt of funds for such relocation or adjustment.

SECTION 4. Prairie Village Municipal Code Section 13-512 is hereby amended to read:

13-512. PROTECTION OF THE PUBLIC.

- A. It shall be the responsibility of the ROW-user to take adequate measures to protect and defend its facilities in the right-of-way from harm and damage.
- B. The City shall not be liable for any damage to or loss of any of the ROW-user's facilities within the right-of-way as a result of or in connection with any construction, excavation, grading, filling or work of any kind, including public improvements by or on the behalf of the City, except to

the extent caused by the negligent, willful, intentional, or malicious acts or omissions of the City.

- C. The ROW-user shall be responsible to the City and its agents, representatives, and authorized contractors for all damages suffered by them including, but not limited to delay damages, repair costs, down time, construction delays, penalties or other expenses of any kind arising out of the failure of the ROW-user to timely perform any of its obligations under this article to the extent caused by the acts or omissions of the ROW-user.
- D. The City or its authorized contractors shall be responsible for taking reasonable precautionary measures including calling for facility locations when constructing its public improvements.
- E. Any ROW-user who for any purpose makes or causes to be made any excavation in, upon, under, through or adjoining any street, sidewalk, alley or other right-of-way, and shall leave any part or portion thereof open, or shall leave any part or portion thereof disrupted with rubbish, building or other material during construction and/or the night time, shall cause the same to be enclosed with good substantial and sufficient barricades or drums equipped with the appropriate type warning lights and orange safety fencing material which is properly secured around the excavation or the disruption.
- F. Whenever a ROW-user shall excavate the full width of any street, sidewalk, alley, driveway approach or other right-of-way, it shall be its duty to maintain an adequate passage for vehicles and pedestrians across or around the excavation until it is refilled as specified.
- G. Any excavation left open overnight on any thoroughfare or collector type street shall be securely covered. The ROW-user assumes the sole responsibility for maintaining proper barricades, plates, safety fencing and/or lights as required from the time of opening of the excavation until the excavation is surfaced and opened for travel.
- H. The Public Works Director, upon the review and approval of a plan and details for trimming trees in the right-of-way, may grant permission by permit to any ROW-user to trim trees upon and overhanging the right-of-way so as to prevent such trees from coming in contact with the facilities of the ROW-user.
- I. In the event the ROW-user severely disturbs or damages the root structure of any tree in the right-of-way to the detriment of the health and safety of the tree, the ROW-user will be required to remove and replace the tree at the ROW-user's cost. Further, in review of the ROW-user's plan, Public Works Director, in his or her discretion, may require the ROW-user to directionally bore around any tree in the right-of-way.
- J. Upon the appropriate request of any person having satisfied City procedure and ordinances, the ROW-user shall remove, raise, or lower its facilities temporarily to permit the moving of houses or other structures. The expense of such temporary removal, raising or lowering shall be paid by the person requesting the same, and the ROW-user may require such payment in advance. The ROW-user must be given not less than fifteen

(15) days written notice from the person detailing the time and location of the moving operations, and not less than twenty-four (24)-hours advance notice from the person advising of the actual operation.

K. [The Public Works Director may cause to be removed any encroachment in the Right-of-Way that creates a hazard to public health, safety, or welfare, and the cost of such removal and restoration of the right-of-way shall be borne by the ROW-user.](#)

SECTION 5. Prairie Village Municipal Code Section 13-514 is hereby amended to read:

13-514. ABANDONED AND UNUSABLE FACILITIES.

- A. A ROW-user owning abandoned facilities in the right-of-way must either:
1. Remove its facilities and replace or restore any damage or disturbance caused by the removal at its own expense. The Public Works Director may allow underground facilities or portions thereof remain in place if the public works director determines that it is in the best interest of public health, safety, or welfare to do so. At such time, the City may take ownership and responsibility of such vacated facilities left in place; or
 2. Provide information satisfactory to the city that the ROW-user's obligations for its facilities in the right-of-way have been lawfully assumed by another authorized ROW-user; or
 3. Submit to the City a proposal and instruments for transferring ownership of its facilities to the city. If the ROW-user proceeds under this section, the City may, at its option purchase the equipment, require the ROW-user, at its own expense, to remove it, or require the ROW-user to post a bond in an amount sufficient to reimburse the City for reasonable anticipated costs to be incurred to remove the facilities.
- B. Facilities of a ROW-user who fails to comply with this section, and whose facilities remain unused for two (2) years, shall be deemed to be abandoned after the City has made a good faith effort to contact the ROW-user, unless the City receives confirmation that the ROW-user intends to use the facilities. Abandoned facilities are deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to,
1. abating the nuisance,
 2. taking possession and ownership of the facility and restoring it to a useable function, or
 3. requiring the removal of the facility by the ROW-user.

SECTION 6. Prairie Village Municipal Code Section 13-516 is hereby amended to read:

13-516 PERMIT APPLICATIONS.

- A. Application for a right-of-way permit shall be submitted to the Public Works Director either by the ROW-user or by the person who will do the work and/or excavation in the right-of-way. Before an application may be

submitted, the applicant must attend a pre-application meeting with designated City staff, unless waived by the Public Works Director.

- B. Right-of-way applications shall contain and be considered complete only upon receipt of the following:
1. Compliance with verification of registration;
 2. Submission of a completed permit application form, including all required attachments and scaled drawings showing the location and area of the proposed project and the location of all existing and proposed facilities at such location;
 3. A traffic control plan;
 4. Payment of all money due to the city for permit fees and costs, for prior excavation costs, for any loss, damage or expense suffered by the City because of the applicant's prior excavations of the right-of-way or for any emergency actions taken by the City, unless the payment of such money is in dispute and timely appealed as provided hereafter.
- C. All applications shall be processed within the timeframes required by state and federal law.
- D. If an applicant has submitted an application for a permit for the installation, construction, maintenance, or repair of multiple facilities, that applicant may not submit another application for a permit for the installation, construction, maintenance, or repair of multiple facilities until the first application has been approved or denied. This provision may be waived by the Public Works Director.

SECTION 7. Prairie Village Municipal Code Section 13-518 is hereby amended to read:

13-518. RIGHT-OF-WAY PERMIT FEES.

- A. ~~B.~~The right-of-way permit fee and other appropriate fees, including but not limited to inspection fees, excavation fees, pole attachment fees, and franchise fees, shall be recommended by the Public Works Director, approved by the governing body and listed in the Schedule of Fees maintained in the City Clerk's office, as such Schedule may be amended from time to time. An application shall not be deemed submitted unless the right-of-way permit fee is paid. The right-of-way permit fee ~~may include a permit and inspection fee, and an excavation fee~~ shall be subject to all state and federal fee limitations.
- B. ~~C.~~Fees paid for a right-of-way permit, which is subsequently revoked by the Public Works Director, are not refundable.
- C. ~~D.~~Except as provided for in an emergency situation, when a ROW-user is found to have worked or is working in the right-of-way without having obtained a permit, the fee for the permit will be double the amount had the ROW-user obtained a permit prior to beginning work.
- D. ~~E.~~The City may also charge and collect any necessary repair and restoration costs.

SECTION 8. Prairie Village Municipal Code Section 13-525 is hereby amended to read:

13-525.

DENIAL OF PERMIT.

A. The Public Works Director may deny a permit or prohibit the use or occupancy of a specific portion of the right-of-way to protect the public health, safety and welfare, to prevent interference with the safety and convenience of ordinary travel over the right-of-way, or when necessary to protect the right-of-way and its users. The Public Works Director, at his or her discretion, may consider all relevant factors including but not limited to:

1. The extent to which the right-of-way space where the permit is sought is available;
2. The competing demands for the particular space in the right-of-way;
3. The availability of other locations in the right-of-way or in other right-of-way for the facilities of the applicant;
4. The applicability of any ordinance or other regulations, including City zoning regulations, that affect location ~~of~~ or other standards for facilities in the right-of-way;
5. The degree of compliance of the applicant with the terms and conditions of its franchise, this article, and other applicable ordinances and regulations;
6. The degree of disruption to surrounding communities and businesses that will result from the use of that part of the right-of-way;
7. The balancing of costs of disruption to the public and damage to the right-of-way, against the benefits to that part of the public served by the construction in the right-of-way;
8. Whether the applicant maintains a current registration with the City.
9. ~~8.~~ Whether the issuance of a right-of-way permit for the particular dates and/or time requested would cause a conflict or interferes with an exhibition, celebration, festival, or any other event. In exercising this discretion, the Public Works Director shall be guided by the safety and convenience of anticipated travel of the public over the right-of-way.
10. Whether the application complies with the Manual of Infrastructure Standards.
11. The adverse impact of the facilities or the facilities' proposed location on any reasonable public interest necessitated by public health, safety, or welfare.

B. Notwithstanding the above provisions, the Public Works Director may in his or her discretion issue a right-of-way permit in any case where the permit is necessary to:

1. Prevent substantial economic hardship to a user of the applicant's service;
2. Allow such user to materially improve the service provided by the applicant.

C. Any denial of a wireless communications antenna, tower, or related facilities shall, in accordance with federal and state law, be made in writing and supported by substantial evidence contained in a written record issued contemporaneously with said decision.

SECTION 9. Prairie Village Municipal Code Section 13-528 is hereby amended to read:

13-528. APPEALS PROCESS.

- A. Whenever a person shall deem themselves aggrieved by any decision or action taken by the Public Works Director, the person may file an appeal to the Governing Body within ten (10) calendar days of the date of notice of such decision or action. Provided, this section shall not apply to any person who is availing themselves of the appeal provisions set forth in K.S.A. 66-2019(h)(6), as amended.
- B. The persons shall be afforded a hearing on the matter before the Governing Body within thirty (30) days of filing the appeal.
- C. In cases of applicability or interpretation of the rules, the Governing Body may revoke such decision or action taken by the Public Works Director.
- D. In cases where compliance with such decision or action taken by the Public Works Director would cause undue hardship, the Governing Body may extend the time limit of such decision or action, or may grant exceptions to, or waive requirements of, or grant a variance from the specific provisions of rules. The Governing Body shall give due consideration to the purposes of the rules in preserving public safety and convenience, integrity of public infrastructure, and the operational safety and function of the public right-of-way.
- E. Pending a decision by the Governing Body, the order of the Public Works Director shall be stayed, unless the public works director determines that such action will pose a threat to public safety or the integrity of the public infrastructure.
- F. If a person still deem themselves aggrieved after the appeal to the Governing Body, such person shall have thirty (30) days after the effective date of the Governing Body's final decision to institute an action in the District Court of Johnson County, Kansas.

Section 10. All ordinances and parts thereof that are inconsistent with any provision of this Ordinance are hereby repealed.

Section 11. This Ordinance shall take effect and be in force from and after its passage, approval and publication as provided by law.

PASSED by the City Council of the City of Prairie Village, Kansas on October 3, 2016.

APPROVED:

Laura Wassmer, Mayor

ATTEST:

Joyce Hagen Mundy, City Clerk

APPROVED AS TO LEGAL FORM:

Catherine P. Logan, City Attorney

ORDINANCE NO. _____

AN ORDINANCE RELATING TO MANAGING THE USE AND OCCUPANCY OF PUBLIC RIGHT-OF-WAY FOR THE CITY OF PRAIRIE VILLAGE, KANSAS; AMENDING AND REPEALING EXISTING PRAIRIE VILLAGE MUNICIPAL CODE SECTIONS 13-503, 13-510, 13-511, 13-512, 13-514, 13-516, 13-518, 13-525, AND 13-528, AND PROVIDING SUBSTITUTE PROVISIONS THEREFOR.

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

SECTION 1. Prairie Village Municipal Code Section 13-503 is hereby amended to read:

13-503. DEFINITIONS. For purposes of this article, the following words and phrases shall have the meaning given herein:

- A. Abandoned Facilities means those facilities owned by the ROW-user that are not in use and will not be utilized by the owner in the future.
- B. Affiliate means any person controlling, controlled by or under the common control of a service provider.
- C. Applicant means any person requesting permission to occupy, lease or operate facilities using the right-of-way, or to excavate the right-of-way.
- D. Area of Influence means that area around a street excavation where the pavement and sub-grade is impacted by the excavation and is subject to more rapid deterioration.
- E. City means the City of Prairie Village, Kansas, a municipal corporation and any duly authorized representative.
- F. City Engineer means the City Engineer, Prairie Village, Kansas, or the authorized representative.
- G. Construct means and includes construct, install, erect, build, affix or otherwise place any fixed structure or object, in, on, under, through or above the right-of-way.
- H. Day means calendar day unless otherwise specified.
- I. Emergency means a condition that (1) poses a clear and immediate danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement in order to restore service to a user.
- J. Excavate means and includes any cutting, digging, excavating, tunneling, boring, grading or other alteration of the surface or subsurface material or earth in the right-of-way.
- K. Excavation Fee means the fee charged by the City for each street or pavement cut which is intended to recover the costs associated with construction and repair activities of the ROW-user and its contractors and/or subcontractors.
- L. FCC means Federal Communications Commission.
- M. Facility means lines, pipes, irrigation systems, wires, cables, conduit facilities, ducts, poles, towers, vaults, pedestals, boxes, appliances, antennas, transmitters, gates, meters, appurtenances, wireless

communication facilities (including but not limited to wireless support structures, small cell facilities, base stations, transmission equipment, distributed antenna systems, and primary equipment enclosures, all as may be defined or described in the Kansas New Wireless Deployment Act, as amended), or other equipment.

- N. Governing Body means the Mayor and the City Council of the City of Prairie Village, Kansas.
- O. Governmental Entity means any county, township, city, town, village, school district, library district, road district, drainage or levee district, sewer district, water district, fire district or other municipal corporation, quasi-municipal corporation or political subdivision of the State of Kansas or of any other state of the United States and any agency or instrumentality of the State of Kansas or of any other state of the United States.
- P. KCC means the Kansas Corporation Commission.
- Q. Parkway means the area between a property line and the street curb. Sometimes called boulevard, tree-shelf or snow-shelf.
- R. Pavement means and includes Portland cement concrete pavement, asphalt concrete pavement, asphalt treated road surfaces and any aggregate base material.
- S. Permit and Inspection Fee means the fee charged by the City to recover its cost incurred for right-of-way management; including, but not limited to, costs associated with registering applicants; issuing, processing and verifying right-of-right permit applications; inspecting job sites and restoration of improvements; determining the adequacy of right-of-way restoration; revoking right-of-way permits and, other costs the City may incur in managing the provisions of this Article.
- T. Permittee means any person to whom a right-of-way permit is issued to excavate a right-of-way.
- U. Person means any natural or corporate person, business association or business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.
- V. Public Improvement means any project undertaken by the city for the construction, reconstruction, maintenance, or repair of any public infrastructure, and including without limitation, streets, alleys, bridges, bikeways, parkways, sidewalks, sewers, drainage facilities, traffic control devices, street lights, public facilities, public buildings or public lands.
- W. Public Lands means any real property of the city that is not right-of-way.
- X. Public Works Director means the Director of the Public Works Department of the City of Prairie Village, Kansas, or the authorized representative.
- Y. Registration means the application process of a service provider, the approval of the application by the City, and the authorization of the

service provider to use any portion of the right-of-way within the city to provide service both within and beyond the city limits.

- Z. Repair means the temporary construction work necessary to make the right-of-way useable.
- AA. Repair and Restoration Costs means those costs associated with repairing and restoring the public right-of-way because of damage caused by the ROW-user and its contractors and/or subcontractors in the right-of-way.
- BB. Restoration means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition, or better, than existed before the commencement of the work.
- CC. Right-of-way means the area on, below, or above streets, alleys, bridges, and parkways in which the City has a dedicated or acquired right-of-way interest in the real property.
- DD. Right-of-Way Permit means the authorization to excavate for the construction, installation, repair or maintenance of any type of facility within the right-of-way.
- EE. Routine Service Operation means a work activity that makes no material change to the facilities and does not disrupt traffic.
- FF. ROW-user means a person, its successors and assigns, that uses the right-of-way for purposes of work, excavation, provision of services, or to install, construct, maintain, repair facilities thereon, including, but not limited to, landowners and service providers. A ROW-user shall not include ordinary vehicular or pedestrian traffic or any governmental entity that has entered into an interlocal agreement pursuant to K.S.A. 12-2901 et seq. with the City regarding the use and occupancy of the City's right-of-way.
- GG. Service means a commodity provided to a person by means of a delivery system that is comprised of facilities located or to be located in the right-of-way, including, but not limited to, gas, telephone, cable television, Internet services. Open video systems, wireless services, alarm systems, steam, electric, water, telegraph, data transmission, petroleum pipelines, or sanitary sewerage.
- HH. Service Provider means any person owning, possessing or having an interest in facilities in the right-of-way that are used for the provisions of a service for or without a fee; provided, that this definition shall also include persons owning, possessing or having an interest in facilities in the right-of-way that are used by, may be used by or are intended for use by another person, in whole or in part, to provide a service for or without a fee, regardless of whether the actual facility owner provides any service as defined herein.
- II. Street means the pavement and sub-grade of a City residential, collector or arterial roadway.

SECTION 2. Prairie Village Municipal Code Section 13-510 is hereby amended to read:

13-510. USE OF THE RIGHT-OF-WAY.

- A. The ROW-user's use of the right-of-way shall in all matters be subordinate to the City's use or occupation of the right-of-way. Without limitation of its rights, the City expressly reserves the right to exercise its governmental powers now and hereafter vested in or granted to the City.
- B. The ROW-user shall coordinate the placement of facilities in a manner that does not interfere with a Public Improvement and does not compromise the public health, safety, or welfare, as reasonably determined by the City. Where placement is not regulated, the facilities shall be placed with adequate clearance from such public improvements so as not to impact or be impacted by such public improvement as defined in the City's "Manual of Infrastructure Standards" available in the office of the Public Works Director. Such Standards shall be competitively neutral and not unreasonable or discriminatory.
- C. The ROW-users shall consider any request made by the City concerning placement of facilities in private easements in order to limit or eliminate future street improvement relocation expenses.
- D. All facilities shall be located and laid so as not to disrupt or interfere with any pipes, drains, sewers, irrigation systems, or other structures or public improvements already installed. In addition, the ROW-user shall, in doing work in connection with its facilities, avoid, so far as may be practicable, disrupting or interfering with the lawful use of right-of-way or other public lands of the City.
- E. All facilities of the ROW-user shall be placed so that they do not interfere with the use of right-of-way and public lands. The City, through its Public Works Director, shall have the right to consult and review the location, design and nature of the facility prior to its being installed.
- F. All newly-constructed facilities shall be located underground. The ROW-user shall comply with all requirements of the City relating to underground facilities. This requirement may be waived by the Public Works Director at his or her discretion for safety concerns, or some other good cause under the condition that does not cause discrimination among ROW-users. If this requirement is waived, the facilities shall be located as directed by the Public Works Director, including, but not limited to, requirements regarding location, height, breakaway design, and clear zones. Provided, however, the height of a facility will not exceed, or cause any existing facility to exceed, the lesser of:
 - (a) thirty-five (35) feet for residential or collector streets or forty-five (45) feet for arterial streets; and
 - (b) sixty-six (66) inches above the height of existing street light poles along the right-of-way surrounding the facility.

Above ground facilities shall comply with the Manual of Infrastructure Standards and all applicable zoning regulations, including but not limited to design, size, height, setbacks, screening and landscaping, and illumination, and be located in a manner that does not compromise the

public health, safety, or welfare. No newly-constructed above ground facilities shall be located directly in front of any single-family home (or in front of where a single-family home could be constructed, in the case of a vacant lot), provided that if the Public Works Director deems it necessary or appropriate, such facilities may be located in the front yard, at or along the property line between two adjacent properties.

- G. The ROW-user shall not interfere with the facilities of the other ROW-users without their permission. If and when the City requires or negotiates to have a service provider cease using its existing poles and to relocate its facilities underground, all other service providers using the same poles shall also relocate their facilities underground at the same time, except transmission equipment, as defined in 47 CFR 1.40001. Provided, any such relocations shall be subject to the appeal process contained in Section 13-528, as amended.
- H. The Public Works Director may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of facility that is currently or, pursuant to current technology, the Public Works Director expects will someday be located within the right-of-way. All right-of-way permits issued by Public Works Director shall indicate the proper corridor for the ROW-user's facilities. Any ROW-user whose facilities are currently in the right-of-way in a position at a variance with the designated corridors shall, no later than at the time of next reconstruction or excavation of the area where its facilities are located, move the facilities to its assigned position within the right-of-way, unless this requirement is waived by Public Works Director for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public health, safety, or welfare, user service needs and hardship to the ROW-user.
- I. If, in the preparation and planning of a right-of-way project, the Public Works Director deems it appropriate for a conduit to be constructed along, across or under the right-of-way, the Public Works Director shall contact all appropriate ROW-users for their input on the planning and design of such conduit. If a ROW-user desires to construct, maintain or operate facilities along such right-of-way, the Public Works Director may require the ROW-user to use such conduit, and to contribute to the expense of such conduit, provided, however, the ROW-user's use of the conduit is reasonable and appropriate under the circumstances.
- J. All earth, materials, sidewalks, paving, crossings, utilities, other public improvements or improvements of any kind damaged or removed by the ROW-user shall be fully repaired or replaced promptly by the ROW-user at its sole expense and to the reasonable satisfaction of the City. Upon determination by the Public Works Director that such repair or replacement is a public safety matter, all such repair or replacement shall be commenced within twenty-four (24) hours of notice from the City, or the Public Works Director may direct the city to make such repair or replacement and bill the ROW-user for the City cost. The Public Works

Director has the authority to inspect the repair or replacement of the damage, and if necessary, to require the ROW-user to do any necessary additional work.

- K. All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of a ROW-user's facilities in the right-of-way shall be in accordance with the Manual of Infrastructure standards and all applicable federal, state and local law and regulations, including those promulgated by national trade associations commonly associated with the service provided by the ROW-user. It is understood that the standards established in this paragraph are minimum standards and the requirements established or referenced in this article may be in addition to or stricter than such minimum standards. A ROW-user shall not construct or reconstruct any of its facilities located upon, over, under or within the City right-of-way without first having submitted in writing a description of its planned improvement to the Public Works Director and having received a permit for such improvement. The Public Works Director may require that any drawings, plans and/or specifications submitted be certified by a Kansas registered professional engineer stating that such drawings, plans and/or specifications comply with all applicable technical codes, rules and regulations, unless such plans are based directly on nationally recognized codes, which are appropriately cited, and attested to on the plans by the signature of an authorized official of the organization applying for the permit.
- L. The ROW-user shall cooperate promptly and fully with the City and take all reasonable measures necessary to provide accurate and complete on-site information regarding the nature and horizontal and vertical location of its facilities located within the right-of-way, both underground and overhead, when requested by the City or its authorized agent for a public improvement. Such location and identification shall be at the sole expense of the ROW-user without any expense to the City, its employees, agents, or authorized contractors.

SECTION 3. Prairie Village Municipal Code Section 13-511 is hereby amended to read:

13-511. FACILITY RELOCATION.

- A. The ROW-user shall promptly remove, relocate or adjust any facilities located in the right-of-way as directed by the City for a public improvement or when reasonably required by the City by reason of public health, safety and welfare. Such removal, relocation, or adjustment shall be performed by the ROW-user at the ROW-user's sole expense without expense to the City, its employees, agents, or authorized contractors and shall be specifically subject to rules, regulations and schedules of the City pertaining to such. The ROW-user shall proceed with relocations at due diligence upon notice by the City to begin relocation.
- B. The ROW-user shall promptly remove, relocate or adjust any facilities located in private easement, as directed by the City, for a public

improvement, at City expense, by moving such facilities to areas within the expanded right-of-way or within remaining private easements or remaining portions of such easements not condemned by nor disclaimed to the City to avoid conflict with City construction and improvements. The ROW-user shall disclaim those parts of its easements which lie within the expanded right-of-way. Should the City, in the future, elect to require the ROW-user to again relocate its facilities to other areas within the expanded right-of-way, the cost of any such future relocation shall be borne by the City.

- C. As soon as working drawings are available for public improvements which will require the ROW-user to relocate its facilities, the city shall provide the ROW-user with written notice of relocations and the anticipated bid letting date of said improvement. The ROW-user shall respond with any conflicts and a proposed construction schedule within thirty (30) days.
- D. Following notice by the City in the form of the delivery of final design plans for such public improvements, the ROW-user shall remove, and relocate its facilities in accordance with the mutually agreed upon schedule, provided the project is not delayed by adverse weather conditions and other factors beyond the control of the ROW-user. The ROW-user shall certify to the City, in writing, that its facilities have been relocated or adjusted to clear construction in accordance with project plans provided by the City.
- E. Any damages suffered by the City, its agents or its contractors to the extent caused by ROW-user's failure to timely relocate or adjust its facilities, or failure to properly relocate or adjust such facilities, shall be borne by the ROW-user.
- F. In the event the ROW-user is required to move its facilities in accordance with this section, any ordinary right-of-way permit fee shall be waived.
- G. It is the intent of this section for both the City and the ROW-user to cooperate with one another so that the need for facility relocation is minimized and, when required and feasible, relocations may be completed prior to receipt of bids by the City for a public improvement.
- H. In the event that a ROW-user is required to move its facilities for a private benefit, the ROW-user shall not bear the cost of the relocation or adjustment to the extent of such private benefit, and the ROW-user shall not be obligated to commence the relocation or adjustment until receipt of funds for such relocation or adjustment.

SECTION 4. Prairie Village Municipal Code Section 13-512 is hereby amended to read:

13-512. PROTECTION OF THE PUBLIC.

- A. It shall be the responsibility of the ROW-user to take adequate measures to protect and defend its facilities in the right-of-way from harm and damage.
- B. The City shall not be liable for any damage to or loss of any of the ROW-user's facilities within the right-of-way as a result of or in connection with any construction, excavation, grading, filling or work of any kind, including public improvements by or on the behalf of the City, except to

the extent caused by the negligent, willful, intentional, or malicious acts or omissions of the City.

- C. The ROW-user shall be responsible to the City and its agents, representatives, and authorized contractors for all damages suffered by them including, but not limited to delay damages, repair costs, down time, construction delays, penalties or other expenses of any kind arising out of the failure of the ROW-user to timely perform any of its obligations under this article to the extent caused by the acts or omissions of the ROW-user.
- D. The City or its authorized contractors shall be responsible for taking reasonable precautionary measures including calling for facility locations when constructing its public improvements.
- E. Any ROW-user who for any purpose makes or causes to be made any excavation in, upon, under, through or adjoining any street, sidewalk, alley or other right-of-way, and shall leave any part or portion thereof open, or shall leave any part or portion thereof disrupted with rubbish, building or other material during construction and/or the night time, shall cause the same to be enclosed with good substantial and sufficient barricades or drums equipped with the appropriate type warning lights and orange safety fencing material which is properly secured around the excavation or the disruption.
- F. Whenever a ROW-user shall excavate the full width of any street, sidewalk, alley, driveway approach or other right-of-way, it shall be its duty to maintain an adequate passage for vehicles and pedestrians across or around the excavation until it is refilled as specified.
- G. Any excavation left open overnight on any thoroughfare or collector type street shall be securely covered. The ROW-user assumes the sole responsibility for maintaining proper barricades, plates, safety fencing and/or lights as required from the time of opening of the excavation until the excavation is surfaced and opened for travel.
- H. The Public Works Director, upon the review and approval of a plan and details for trimming trees in the right-of-way, may grant permission by permit to any ROW-user to trim trees upon and overhanging the right-of-way so as to prevent such trees from coming in contact with the facilities of the ROW-user.
- I. In the event the ROW-user severely disturbs or damages the root structure of any tree in the right-of-way to the detriment of the health and safety of the tree, the ROW-user will be required to remove and replace the tree at the ROW-user's cost. Further, in review of the ROW-user's plan, Public Works Director, in his or her discretion, may require the ROW-user to directionally bore around any tree in the right-of-way.
- J. Upon the appropriate request of any person having satisfied City procedure and ordinances, the ROW-user shall remove, raise, or lower its facilities temporarily to permit the moving of houses or other structures. The expense of such temporary removal, raising or lowering shall be paid by the person requesting the same, and the ROW-user may require such payment in advance. The ROW-user must be given not less than fifteen

(15) days written notice from the person detailing the time and location of the moving operations, and not less than twenty-four (24)-hours advance notice from the person advising of the actual operation.

- K. The Public Works Director may cause to be removed any encroachment in the Right-of-Way that creates a hazard to public health, safety, or welfare, and the cost of such removal and restoration of the right-of-way shall be borne by the ROW-user.

SECTION 5. Prairie Village Municipal Code Section 13-514 is hereby amended to read:

13-514. ABANDONED AND UNUSABLE FACILITIES.

- A. A ROW-user owning abandoned facilities in the right-of-way must either:
1. Remove its facilities and replace or restore any damage or disturbance caused by the removal at its own expense. The Public Works Director may allow underground facilities or portions thereof remain in place if the public works director determines that it is in the best interest of public health, safety, or welfare to do so. At such time, the City may take ownership and responsibility of such vacated facilities left in place; or
 2. Provide information satisfactory to the city that the ROW-user's obligations for its facilities in the right-of-way have been lawfully assumed by another authorized ROW-user; or
 3. Submit to the City a proposal and instruments for transferring ownership of its facilities to the city. If the ROW-user proceeds under this section, the City may, at its option purchase the equipment, require the ROW-user, at its own expense, to remove it, or require the ROW-user to post a bond in an amount sufficient to reimburse the City for reasonable anticipated costs to be incurred to remove the facilities.
- B. Facilities of a ROW-user who fails to comply with this section, and whose facilities remain unused for two (2) years, shall be deemed to be abandoned after the City has made a good faith effort to contact the ROW-user, unless the City receives confirmation that the ROW-user intends to use the facilities. Abandoned facilities are deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to,
1. abating the nuisance,
 2. taking possession and ownership of the facility and restoring it to a useable function, or
 3. requiring the removal of the facility by the ROW-user.

SECTION 6. Prairie Village Municipal Code Section 13-516 is hereby amended to read:

13-516 PERMIT APPLICATIONS.

- A. Application for a right-of-way permit shall be submitted to the Public Works Director either by the ROW-user or by the person who will do the work and/or excavation in the right-of-way. Before an application may be

- submitted, the applicant must attend a pre-application meeting with designated City staff, unless waived by the Public Works Director.
- B. Right-of-way applications shall contain and be considered complete only upon receipt of the following:
 - 1. Compliance with verification of registration;
 - 2. Submission of a completed permit application form, including all required attachments and scaled drawings showing the location and area of the proposed project and the location of all existing and proposed facilities at such location;
 - 3. A traffic control plan;
 - 4. Payment of all money due to the city for permit fees and costs, for prior excavation costs, for any loss, damage or expense suffered by the City because of the applicant's prior excavations of the right-of-way or for any emergency actions taken by the City, unless the payment of such money is in dispute and timely appealed as provided hereafter.
 - C. All applications shall be processed within the timeframes required by state and federal law.
 - D. If an applicant has submitted an application for a permit for the installation, construction, maintenance, or repair of multiple facilities, that applicant may not submit another application for a permit for the installation, construction, maintenance, or repair of multiple facilities until the first application has been approved or denied. This provision may be waived by the Public Works Director.

SECTION 7. Prairie Village Municipal Code Section 13-518 is hereby amended to read:

13-518. RIGHT-OF-WAY PERMIT FEES.

- A. The right-of-way permit fee and other appropriate fees, including but not limited to inspection fees, excavation fees, pole attachment fees, and franchise fees, shall be recommended by the Public Works Director, approved by the governing body and listed in the Schedule of Fees maintained in the City Clerk's office, as such Schedule may be amended from time to time. An application shall not be deemed submitted unless the right-of-way permit fee is paid. The right-of-way permit fee shall be subject to all state and federal fee limitations.
- B. Fees paid for a right-of-way permit, which is subsequently revoked by the Public Works Director, are not refundable.
- C. Except as provided for in an emergency situation, when a ROW-user is found to have worked or is working in the right-of-way without having obtained a permit, the fee for the permit will be double the amount had the ROW-user obtained a permit prior to beginning work.
- D. The City may also charge and collect any necessary repair and restoration costs.

SECTION 8. Prairie Village Municipal Code Section 13-525 is hereby amended to read:

13-525.

DENIAL OF PERMIT.

- A. The Public Works Director may deny a permit or prohibit the use or occupancy of a specific portion of the right-of-way to protect the public health, safety and welfare, to prevent interference with the safety and convenience of ordinary travel over the right-of-way, or when necessary to protect the right-of-way and its users. The Public Works Director, at his or her discretion, may consider all relevant factors including but not limited to:
1. The extent to which the right-of-way space where the permit is sought is available;
 2. The competing demands for the particular space in the right-of-way;
 3. The availability of other locations in the right-of-way or in other right-of-way for the facilities of the applicant;
 4. The applicability of any ordinance or other regulations, including City zoning regulations, that affect location or other standards for facilities in the right-of-way;
 5. The degree of compliance of the applicant with the terms and conditions of its franchise, this article, and other applicable ordinances and regulations;
 6. The degree of disruption to surrounding communities and businesses that will result from the use of that part of the right-of-way;
 7. The balancing of costs of disruption to the public and damage to the right-of-way, against the benefits to that part of the public served by the construction in the right-of-way;
 8. Whether the applicant maintains a current registration with the City.
 9. Whether the issuance of a right-of-way permit for the particular dates and/or time requested would cause a conflict or interferes with an exhibition, celebration, festival, or any other event. In exercising this discretion, the Public Works Director shall be guided by the safety and convenience of anticipated travel of the public over the right-of-way.
 10. Whether the application complies with the Manual of Infrastructure Standards.
 11. The adverse impact of the facilities or the facilities' proposed location on any reasonable public interest necessitated by public health, safety, or welfare.
- B. Notwithstanding the above provisions, the Public Works Director may in his or her discretion issue a right-of-way permit in any case where the permit is necessary to:
1. Prevent substantial economic hardship to a user of the applicant's service;
 2. Allow such user to materially improve the service provided by the applicant.

- C. Any denial of a wireless communications antenna, tower, or related facilities shall, in accordance with federal and state law, be made in writing and supported by substantial evidence contained in a written record issued contemporaneously with said decision.

SECTION 9. Prairie Village Municipal Code Section 13-528 is hereby amended to read:

13-528. APPEALS PROCESS.

- A. Whenever a person shall deem themselves aggrieved by any decision or action taken by the Public Works Director, the person may file an appeal to the Governing Body within ten (10) calendar days of the date of notice of such decision or action. Provided, this section shall not apply to any person who is availing themselves of the appeal provisions set forth in K.S.A. 66-2019(h)(6), as amended.
- B. The persons shall be afforded a hearing on the matter before the Governing Body within thirty (30) days of filing the appeal.
- C. In cases of applicability or interpretation of the rules, the Governing Body may revoke such decision or action taken by the Public Works Director.
- D. In cases where compliance with such decision or action taken by the Public Works Director would cause undue hardship, the Governing Body may extend the time limit of such decision or action, or may grant exceptions to, or waive requirements of, or grant a variance from the specific provisions of rules. The Governing Body shall give due consideration to the purposes of the rules in preserving public safety and convenience, integrity of public infrastructure, and the operational safety and function of the public right-of-way.
- E. Pending a decision by the Governing Body, the order of the Public Works Director shall be stayed, unless the public works director determines that such action will pose a threat to public safety or the integrity of the public infrastructure.
- F. If a person still deem themselves aggrieved after the appeal to the Governing Body, such person shall have thirty (30) days after the effective date of the Governing Body's final decision to institute an action in the District Court of Johnson County, Kansas.

Section 10. All ordinances and parts thereof that are inconsistent with any provision of this Ordinance are hereby repealed.

Section 11. This Ordinance shall take effect and be in force from and after its passage, approval and publication as provided by law.

PASSED by the City Council of the City of Prairie Village, Kansas on October 3, 2016.

APPROVED:

Laura Wassmer, Mayor

ATTEST:

Joyce Hagen Mundy, City Clerk

APPROVED AS TO LEGAL FORM:

Catherine P. Logan, City Attorney

Senate Substitute for HOUSE BILL No. 2131

AN ACT concerning telecommunications; relating to local exchange carriers; concerning the Kansas universal service fund; concerning wireless communications, siting of equipment; relating to municipalities and state entities, public lands and public right-of-way; amending K.S.A. 17-1902 and 66-2004 and K.S.A. 2015 Supp. 66-2005, 66-2007, 66-2008 and 66-2017 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) The Kansas legislature finds and declares that:

(1) The permitting, construction, modification, maintenance and operation of wireless facilities are critical to ensuring that all citizens in the state have true access to broadband and other advanced technology and information;

(2) these facilities are critical to ensuring that businesses and schools throughout the state remain competitive in the global economy;

(3) wireless telecommunications facilities that enable broadband services have a significant economic benefit; and

(4) the permitting, construction, modification, maintenance and operation of these facilities, to the extent specifically addressed in this section, are declared to be matters of statewide concern and interest.

(b) As used in this section:

(1) "Accessory equipment" means any equipment serving or being used in conjunction with a wireless facility or wireless support structure including, but not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or similar structures.

(2) "Antenna" means communications equipment that transmits or receives electromagnetic radio signals used in the provision of wireless services.

(3) "Applicant" means any person or entity that is engaged in the business of providing wireless services or the wireless infrastructure required for wireless services and that submits an application.

(4) "Application" means a request submitted by an applicant to an authority for: (A) The construction of a new wireless support structure or new wireless facility;

(B) the substantial modification of a wireless support structure or wireless facility; or

(C) collocation of a wireless facility or replacement of a wireless facility.

(5) "Authority" means any governing body, board, agency, office or commission of a city, county or the state that is authorized by law to make legislative, quasi judicial or administrative decisions concerning an application. "Authority" shall not include any school district as defined in K.S.A. 72-8301, and amendments thereto, or any court having jurisdiction over land use, planning, zoning or other decisions made by an authority.

(6) "Base station" means a station that includes a structure that currently supports or houses an antenna, transceiver, coaxial cables, power cables or other associated equipment at a specific site that is authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies and other associated electronics. "Base station" does not mean a tower or equipment associated with a tower and does not include any structure that, at the time the relevant application is filed with the authority, does not support or house equipment described in this paragraph.

(7) "Collocation" means the mounting or installation of wireless facilities on a building, structure, wireless support structure, tower, utility pole, base station or existing structure for the purposes of transmitting or receiving radio frequency signals for communication purposes.

(8) "Distributed antenna system" means a network that distributes radio frequency signals and consisting of: (A) Remote communications or antenna nodes deployed throughout a desired coverage area, each including at least one antenna for transmission and reception;

(B) a high capacity signal transport medium that is connected to a central communications hub site; and

(C) radio transceivers located at the hub's site to process or control the communications signals transmitted and received through the antennas to provide wireless or mobile service within a geographic area or structure.

(9) "Existing structure" means a structure that exists at the time an application to collocate wireless facilities on a structure is filed with an

authority. The term includes any structure that is currently supporting or designed to support the attachment of wireless facilities, including, but not limited to, towers, buildings and water towers.

(10) “Public lands, buildings and facilities” does not include any real property, structures or facilities under the ownership, control or jurisdiction of the secretary of transportation.

(11) “Public right-of-way” means only the area of real property in which the authority has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. “Public right-of-way” does not include any state, federal or interstate highway right-of-way, which generally includes the area that runs contiguous to, parallel with, and is generally equidistant from the center of that portion of the highway improved, designed or ordinarily used for public travel.

(12) “Replacement” includes constructing a new wireless support structure of comparable proportions and of comparable height or such other height that would not constitute a substantial modification to an existing structure in order to support wireless facilities or to accommodate collocation and includes the associated removal of the pre-existing wireless facilities, if any, or wireless support structure.

(13) “Search ring” means a shape drawn on a map to indicate the general area within which a wireless services support structure should be located to meet radio frequency engineering requirements, taking into account other factors, including topography and the demographics of the service area.

(14) “Small cell facility” means a wireless facility that meets both of the following qualifications: (A) Each antenna is located inside an enclosure of no more than six cubic feet in volume, or in the case of an antenna that has exposed elements, the antenna and all of the antenna’s exposed elements could fit within an imaginary enclosure of no more than six cubic feet; and

(B) primary equipment enclosures that are no larger than 17 cubic feet in volume, or facilities comprised of such higher limits as the federal communications commission has excluded from review pursuant to 54 U.S.C. § 306108. Associated equipment may be located outside the primary equipment, and if so located, is not to be included in the calculation of equipment volume. Associated equipment includes, but is not limited to, any electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, cut-off switch and vertical cable runs for the connection of power and other services.

(15) “Small cell network” means a collection of interrelated small cell facilities designed to deliver wireless service.

(16) “Substantial modification” means a proposed modification to an existing wireless support structure or base station that will substantially change the physical dimensions of the wireless support structure or base station under the objective standard for substantial change, established by the federal communications commission pursuant to 47 C.F.R. 1.40001.

(17) “Transmission equipment” means equipment that facilitates transmission for a wireless service licensed or authorized by the federal communications commission including, but not limited to, radio transceivers, antennas, coaxial or fiber optic cable and regular and backup power supply. “Transmission equipment” includes equipment associated with wireless services including, but not limited to, private, broadcast and public safety services such as wireless local area network services, and services utilizing a set of specifications developed by the institute of electrical and electronics engineers for interface between a wireless client and a base station or between two wireless clients, as well as unlicensed wireless services and fixed wireless services, such as microwave backhaul.

(18) “Wireless facility” means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including, but not limited to: (A) Equipment associated with wireless services such as private, broadcast and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul; and

(B) radio transceivers, antennas, coaxial or fiber-optic cable, regular

and backup power supplies and comparable equipment, regardless of technological configuration.

“Wireless facility” does not mean any wired connections from a wireless support structure or base station to a hub or switching location.

(19) “Wireless services” means “personal wireless services” and “personal wireless service facilities” as defined in 47 U.S.C. § 332(c)(7)(C), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through wireless facilities or any fixed or mobile wireless services provided using wireless facilities.

(20) “Wireless infrastructure provider” means any person that builds or installs transmission equipment, wireless facilities or wireless support structures, but that is not a wireless services provider.

(21) “Wireless support structure” means a freestanding structure, such as a monopole, guyed or self-supporting tower or other suitable existing or alternative structure designed to support or capable of supporting wireless facilities. “Wireless support structure” shall not include any telephone or electrical utility pole or any tower used for the distribution or transmission of electrical service.

(22) “Utility pole” means a structure owned or operated by a public utility as defined in K.S.A. 66-104, and amendments thereto, a municipality as defined in K.S.A. 75-6102, and amendments thereto, or an electric cooperative as defined in K.S.A. 2015 Supp. 17-4652, and amendments thereto, that is designed specifically for and used to carry lines, cables or wires for telecommunications, cable, electricity or to provide lighting.

(23) “Water tower” means a water storage tank or a standpipe, or an elevated tank situated on a support structure that was originally constructed for use as a reservoir or facility to store or deliver water.

(24) “Wireless services provider” means a provider of wireless services.

(c) (1) An authority shall not charge an application fee, consulting fee or other fee associated with the submission, review, processing and approval of an application that is not required for other wireless infrastructure providers or wireline telecommunications or broadband providers within the authority’s jurisdiction.

(2) An authority shall only assess fees or charges for the actual costs relating to the granting or processing of an application that are directly incurred by the authority and the authority shall not charge any market-based or value-based fees for the processing of an application. Such fees and charges shall be reasonably related in time to the occurrence of such costs.

(3) An authority or any third-party entity shall not include any travel expenses incurred in the review of an application for more than one trip per application to the authority’s jurisdiction and an applicant shall not be required to pay or reimburse an authority for a consultant or other third-party fees based on a contingency-based or results-based arrangement. Any travel expenses included must be reasonable and directly related to the application.

(4) The total charges and fees assessed by the authority shall not exceed:

(A) \$500 for a collocation application, that is not a substantial modification, small cell facility application or distributed antenna system application; or

(B) \$2,000 for an application for a new wireless support structure or for a collocation application that is a substantial modification of a wireless support structure.

(d) (1) An authority may not charge a wireless services provider or wireless infrastructure provider any rental, license or other fee to locate a wireless facility or wireless support structure on any public right-of-way controlled by the authority, if the authority does not charge other telecommunications or video service providers, alternative infrastructure or wireless services providers or any investor-owned utilities or municipally-owned commercial broadband providers for the use of public right-of-way. If an authority does assess a charge, including a charge or rental fee for attachment to the facilities owned by the authority in the right-of-way, any such charge must be competitively neutral, with regard to other users of the public right-of-way, including investor-owned utilities or mu-

nicipally-owned commercial broadband providers, and may not be unreasonable or discriminatory or violate any applicable state or federal law, rule or regulation.

(2) (A) Subject to the provisions of this subsection, a wireless services provider or wireless infrastructure provider, subject to an application, shall have the right to construct, maintain and operate wireless support structures, utility poles, small cell wireless facilities or distributed antenna systems along, across, upon, under or above the public right-of-way. The authority must be competitively neutral with regard to other users of the public right-of-way, may not be unreasonable or discriminatory and may not violate any applicable state or federal law, rule or regulation.

(B) Nothing in this subsection (d) shall be interpreted as granting a wireless services provider or wireless infrastructure provider the right to construct, maintain or operate any facility or related appurtenance on property owned by the authority outside of the public right-of-way.

(C) The right of a wireless services provider or wireless infrastructure provider to use and occupy the public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the authority. An authority may exercise its home rule powers in its administration and regulation related to the management of the public right-of-way provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory.

(D) The authority shall have the right to prohibit the use or occupation of a specific portion of public right-of-way by a provider due to a reasonable public interest necessitated by public health, safety and welfare so long as such interest is exercised in a competitively neutral manner and is not unreasonable or discriminatory.

(E) A wireless services provider or wireless infrastructure provider shall comply with all laws and rules and regulations governing the use of public right-of-way.

(F) An authority may require a wireless services provider or wireless infrastructure provider to repair all damage to a public right-of-way caused by the activities of that provider, or of any agent, affiliate, employee or subcontractor of that provider, while occupying, installing, repairing or maintaining facilities in a public right-of-way and to return the right-of-way to the condition in which it existed prior to the damage. If a wireless services provider or wireless infrastructure provider fails to make the repairs required by an authority, the authority may effect those repairs and charge the provider the reasonable cost of those repairs. If an authority incurs damages as a result of a violation of this paragraph, then the authority shall have a cause of action against a wireless services provider or wireless infrastructure provider for violation of this paragraph, and may recover its damages, including reasonable attorney fees, if such provider is found liable by a court of competent jurisdiction.

(G) If requested by an authority, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety and welfare of the public, a wireless services provider or wireless infrastructure provider shall relocate or adjust its facilities within the public right-of-way at no cost to the authority, as long as such request similarly binds all users of such right-of-way. Such relocation or adjustment shall be completed as soon as reasonably possible within the time set forth in any written request by the authority for such relocation or adjustment, as long as the authority provides the wireless services provider or wireless infrastructure provider with a minimum of 180 days advance written notice to comply with such relocation or adjustment, unless circumstances beyond the authority's control require a shorter period of advance notice. If any such relocation or adjustment is for private benefit, the provider shall not bear the cost of the relocation or adjustment to the extent of such private benefit and the provider shall not be obligated to commence the relocation or adjustment until receipt of funds for such relocation or adjustment. The provider shall have no liability for any delays caused by a failure to receive funds for the cost of such relocation or adjustment and the authority shall have no obligation to collect such funds.

(H) Wireless services providers and wireless infrastructure providers shall indemnify and hold the authority and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens,

losses, expenses, fees to include reasonable attorney fees and costs of defense, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury or death, property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of the wireless services provider or wireless infrastructure provider, any agent, officer, director, representative, employee, affiliate or subcontractor of the provider, or their respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining facilities in a public right-of-way. The indemnity provided by this paragraph does not apply to any liability resulting from the negligence of an authority, its officers, employees, contractors or subcontractors. If a provider and the authority are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state, without waiving any governmental immunity available to the authority under state law and without waiving any defenses of the parties under state or federal law. This paragraph is solely for the benefit of the authority and the wireless services provider or wireless infrastructure provider and does not create or grant any rights, contractual or otherwise, to any other person or entity.

(I) A wireless services provider or wireless infrastructure provider or authority shall promptly advise the other in writing of any known claim or demand against the provider or the authority related to or arising out of the provider's activities in a public right-of-way.

(3) The provisions of this subsection shall not apply to or affect any authority's jurisdiction over the activities of wireless services providers or wireless infrastructure providers in public utility easements, private easements or on privately owned property.

(4) Nothing in this subsection shall be construed to prevent wireless structures and wireless facilities from being located on state, federal or interstate highway right-of-way in accordance with reasonable policies and procedures adopted by the manager of the state, federal and interstate highway right-of-way under applicable federal and state law.

(e) (1) An authority may enter into a lease with an applicant for the applicant's use of public lands, buildings and facilities. When entering into a lease for use of publicly owned lands, an authority shall offer leases or contracts for applicants to use publicly owned lands that are at least 10 years in duration, unless otherwise agreed to by both the applicant and the authority, and at market rates. Any lease renewals shall be negotiated in good faith. Due to the benefit of increased broadband and wireless services to the citizens of the authority, an authority may choose not to charge for the placement of wireless facilities on public lands. If an authority does charge, any such charges for use of publicly owned lands and facilities must be competitively neutral with regard to other users of the publicly owned lands and facilities, including any investor-owned utilities or municipally owned commercial broadband providers, may not be unreasonable or discriminatory and may not violate any applicable state or federal law, rule or regulation.

(2) If the applicant and the authority do not agree on the applicable market rate for the use or lease of public land and are unable to agree on a process to determine the applicable market rate for any such public land, then the market rate will be determined by a panel of three appraisers. The panel will consist of one appraiser appointed by each party and a third appraiser selected by the two appointed appraisers. Each appraiser will independently appraise the appropriate lease rate and the market rate shall be set at the mean between the highest and lowest market rates among all three independent appraisals, unless the mean between the highest and lowest appraisals is greater than or less than 10% of the appraisal of the third appraiser chosen by the parties' appointed appraisers, in which case the third appraisal will determine the rate for the lease. The appraisal process shall be concluded within 150 calendar days from the date the applicant first tenders a proposed lease rate to the authority. Each party will bear the cost of the party's own appointed appraiser, and the parties shall share equally the cost of the third appraiser chosen by the two appointed appraisers.

(3) Nothing in this subsection shall be construed to prevent wireless structures and wireless facilities from being located on real property, structures or facilities under the ownership, control or jurisdiction of the

secretary of transportation in accordance with reasonable policies and procedures adopted by the secretary of transportation under applicable federal and state law.

(4) This subsection (e) shall not apply to public rights-of-way governed by subsection (d).

(f) To ensure uniformity across the state with respect to consideration of every application, an authority shall not:

(1) Require an applicant to submit information about, or evaluate an applicant's business decisions with respect to, the applicant's designed service, customer demand for service or quality of the applicant's service to or from a particular area or site. An authority may require an applicant filing an application for a new wireless support structure to state in such application that the applicant conducted an analysis of available collocation opportunities on existing wireless support structures within the same search ring defined by the applicant, solely for the purpose of confirming that an applicant undertook such analysis;

(2) require information that concerns the specific need for the wireless support structure, including if the service to be provided from the wireless support structure is to add additional wireless coverage or additional wireless capacity. An authority may not require proprietary, confidential or other business information to justify the need for the new wireless support structure, including propagation maps and telecommunications traffic studies;

(3) evaluate an application based on the availability of other potential locations for the placement of wireless support structures or wireless facilities including, but not limited to, the option to collocate, instead of construct, a new wireless support structure or for substantial modifications of a support structure;

(4) dictate the type of transmission equipment or technology to be used by the applicant including, but not limited to, requiring an applicant to construct a distributed antenna system or small cell facility in lieu of constructing a new wireless support structure or discriminate between different types of infrastructure or technology;

(5) require the removal of existing wireless support structures or wireless facilities, wherever located, as a condition for approval of an application. This paragraph shall not preclude an authority from adopting reasonable rules with respect to the removal of abandoned wireless support structures or wireless facilities;

(6) impose any restrictions at or near civilian airports with respect to objects in navigable airspace height limitations, proximity to civilian airports or markings and lighting on wireless support structures or base stations that are greater than, or in conflict with, any restrictions imposed by the federal aviation administration, except that this paragraph shall not be construed so as to impact any existing height restrictions adopted by an authority as of the effective date of this section on wireless support structures or base stations located at or near civilian airports;

(7) establish or enforce regulations or procedures for radio frequency signal strength or the adequacy of service quality;

(8) impose surety requirements, including bonds, escrow deposits, letters of credit or any other type of financial surety to ensure that abandoned or unused facilities can be removed, unless the authority imposes similar requirements on other permits for other types of commercial development or land uses, and any such instrument cannot exceed a reasonable estimate of the direct cost of the removal of the facility. If surety requirements are imposed, any such requirements shall be competitively neutral, non-discriminatory, reasonable in amount and commensurate with the historical record for local facilities and structures that are abandoned;

(9) discriminate or create a preference on the basis of the ownership of any property, structure, base station or wireless support structure when promulgating rules or procedures for siting wireless facilities or for evaluating applications or require the placement of wireless support structures or wireless facilities on property owned or leased by the authority, but an authority may develop a process to encourage the placement of wireless support structures or wireless facilities on property owned or leased by the authority, including an expedited approval process. Nothing in this subsection shall be construed to hinder or restrict the siting of

public safety communications towers, including, but not limited to, police and fire;

(10) impose any unreasonable requirements or obligations regarding the presentation, appearance or function of the wireless facilities and equipment including, but not limited to, those relating to any kinds of materials used and those relating to arranging, screening or landscaping of facilities. In developing such a requirement or obligation for wireless facilities located on a public right-of-way, the authority shall consider input from property owners adjoining the affected public right-of-way;

(11) impose any requirements that an applicant purchase, subscribe to, use or employ facilities, networks or services owned, provided or operated by an authority, in whole or in part, or by any entity in which the authority has a competitive, economic, financial, governance or other interest;

(12) impose environmental testing, sampling or monitoring requirements that exceed federal law;

(13) impose any compliance measures for radio frequency emissions or exposure from wireless facilities that exceed the requirements of the federal communications commission rules for radio frequency;

(14) in conformance with 47 U.S.C. § 332(c)(7)(B)(iv), reject an application, in whole or in part, based on perceived or alleged environmental effects of radio frequency emissions or exposure;

(15) prohibit the use of emergency power systems that comply with federal and state environmental requirements and do not violate local health and safety requirements and local noise control ordinances, but no local regulations shall prevent the provision of emergency power during an actual emergency;

(16) condition or require the approval of an application based on the applicant's agreement to permit any wireless facilities provided or operated, in whole or in part, by an authority or by any other entity to be placed at, or collocated with, the applicant's wireless support structure;

(17) impose a greater setback or fall-zone requirement for a wireless support structure than for other types of commercial structure of a similar size; or

(18) limit, for less than 10 years, the duration of the approval of an application. Any renewals shall be negotiated in good faith. Construction of the approved structure or facilities shall commence within one year of final approval and shall be diligently pursued to completion.

(g) An applicant for a small cell network involving no greater than 25 individual small cell facilities of a substantially similar design within the jurisdiction of a single authority shall be permitted, upon request by the applicant, to file a consolidated application and receive a single permit for the installation, construction, maintenance and repair of a small cell network instead of filing separate applications for each individual small cell facility, except that the authority may require a separate application for any small cell facilities that are not of a substantially similar design. The authority shall render a decision no later than 60 days after the submission of an application regarding small cell facilities that satisfies the authority's requirements in a single administrative proceeding.

(h) (1) Within 150 calendar days of receiving an application for a new wireless support structure and within 90 calendar days of receiving an application for a substantial modification to an existing wireless support structure or base station, or any other application for placement, installation or construction of transmission equipment that does not constitute an eligible facilities request as defined by 47 U.S.C. § 1455(a), an authority shall: (A) Review the application in light of the application's conformity with applicable local zoning regulations;

(B) make a final decision to approve or disapprove the application; and

(C) advise the applicant in writing of the authority's final decision, supported by substantial evidence contained in a written record and issued contemporaneously. If an authority denies an application, there must be a reasonable basis for the denial. An authority may not deny an application if such denial discriminates against the applicant with respect to the placement of the facilities of other investor-owned utilities, wireless service providers, wireless infrastructure providers or wireless carriers.

(2) (A) The time period for approval of applications shall begin when the application is submitted and may be tolled within the first 30 days

after the submission of the application if the authority notifies the applicant that such application is incomplete, identifies all missing information and specifies the code provision, ordinance, application instruction or otherwise publicly stated procedures that require the information to be submitted.

(B) The time period for approval of applications shall begin running again when the applicant provides the necessary supplemental information. Additionally, the time period for approval of applications may be tolled by the express agreement in writing by both the applicant and the authority.

(3) An application shall be deemed approved if an authority fails to act on an application for a: (A) New wireless support structure within the 150-calendar day review period specified; or

(B) substantial modification to an existing wireless support structure or base station or any other applications for placement, installation or construction of transmission equipment that does not constitute an eligible facilities request as defined by 47 U.S.C. § 1455(a) within the 90 calendar days review period specified.

(4) An authority shall approve applications for eligible facilities requests, as defined by 47 U.S.C. § 1455(a), within 60 days according to the procedures established by federal law under 47 C.F.R. 1.40001.

(5) An application shall be deemed approved once an applicant has provided notice to the authority that the applicable time periods provided in this section have lapsed.

(6) Within 30 days of the notice provided pursuant to subsection (h)(5), a party aggrieved by the final action of an authority, either by the authority affirmatively denying an application or by the authority's inaction, may bring an action for review in any court of competent jurisdiction.

(i) An authority may not institute any moratorium on the filing, consideration or approval of applications, permitting or the construction of new wireless support structures, substantial modifications of wireless support structures or collocations.

(j) Subject to the provisions of this section and applicable federal law, an authority may continue to exercise zoning, land use, planning and permitting authority within the authority's territorial boundaries with regard to the siting of new or the modification of wireless support structures, wireless facilities, small cell facilities or utility poles, except that no authority shall have or exercise any zoning or siting jurisdiction, authority or control over the construction, installation or operation of any small cell facility or distributed antennae system located in an interior structure or upon the site of any campus, stadium or athletic facility.

(k) Nothing in this section shall be construed to apply to military installations.

(l) The provisions of this section shall take effect and be in force on and after October 1, 2016.

Sec. 2. On and after October 1, 2016, K.S.A. 17-1902 is hereby amended to read as follows: 17-1902. (a) (1) "Public right-of-way" means only the area of real property in which the city has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other nonwire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts.

(2) "Provider" means a local exchange carrier as defined in ~~subsection (h) of K.S.A. 66-1,187(h)~~, and amendments thereto, or a telecommunications carrier as defined in ~~subsection (m) of K.S.A. 66-1,187(m)~~, and amendments thereto, or a video service provider as defined in K.S.A. ~~2007~~ 2015 Supp. 12-2022, and amendments thereto, *but does not include an applicant as defined in section 1, and amendments thereto.*

(3) "Telecommunications services" means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(4) "Competitive infrastructure provider" means an entity which leases, sells or otherwise conveys facilities located in the right-of-way, or

the capacity or bandwidth of such facilities for use in the provision of telecommunications services, internet services or other intrastate and interstate traffic, but does not itself provide services directly to end users within the corporate limits of the city.

(b) Any provider shall have the right pursuant to this act to construct, maintain and operate poles, conduit, cable, switches and related appurtenances and facilities along, across, upon and under any public right-of-way in this state. Such appurtenances and facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.

(c) Nothing in this act shall be interpreted as granting a provider the authority to construct, maintain or operate any facility or related appurtenance on property owned by a city outside of the public right-of-way.

(d) The authority of a provider to use and occupy the public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the city. A city may exercise its home rule powers in its administration and regulation related to the management of the public right-of-way provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Nothing herein shall be construed to limit the authority of cities to require a competitive infrastructure provider to enter into a contract franchise ordinance.

(e) The city shall have the authority to prohibit the use or occupation of a specific portion of public right-of-way by a provider due to a reasonable public interest necessitated by public health, safety and welfare so long as the authority is exercised in a competitively neutral manner and is not unreasonable or discriminatory. A reasonable public interest shall include the following:

(1) The prohibition is based upon a recommendation of the city engineer, is related to public health, safety and welfare and is nondiscriminatory among providers, including incumbent providers;

(2) the provider has rejected a reasonable, competitively neutral and nondiscriminatory justification offered by the city for requiring an alternate method or alternate route that will result in neither unreasonable additional installation expense nor a diminution of service quality;

(3) the city reasonably determines, after affording the provider reasonable notice and an opportunity to be heard, that a denial is necessary to protect the public health and safety and is imposed on a competitively neutral and nondiscriminatory basis; or

(4) the specific portion of the public right-of-way for which the provider seeks use and occupancy is environmentally sensitive as defined by state or federal law or lies within a previously designated historic district as defined by local, state or federal law.

(f) A provider's request to use or occupy a specific portion of the public right-of-way shall not be denied without reasonable notice and an opportunity for a public hearing before the city governing body. A city governing body's denial of a provider's request to use or occupy a specific portion of the public right-of-way may be appealed to a district court.

(g) A provider shall comply with all laws and rules and regulations governing the use of public right-of-way.

(h) A city may not impose the following regulations on providers:

(1) Requirements that particular business offices or other telecommunications facilities be located in the city;

(2) requirements for filing applications, reports and documents that are not reasonably related to the use of a public right-of-way or this act;

(3) requirements for city approval of transfers of ownership or control of the business or assets of a provider's business, except that a city may require that such entity maintain current point of contact information and provide notice of a transfer within a reasonable time; and

(4) requirements concerning the provisioning of or quality of customer services, facilities, equipment or goods in-kind for use by the city, political subdivision or any other provider or public utility.

(i) Unless otherwise required by state law, in the exercise of its lawful regulatory authority, a city shall promptly, and in no event more than 30 days, with respect to facilities in the public right-of-way, process each valid and administratively complete application of a provider for any permit, license or consent to excavate, set poles, locate lines, construct facilities, make repairs, effect traffic flow, obtain zoning or subdivision reg-

ulation approvals, or for other similar approvals, and shall make reasonable effort not to unreasonably delay or burden that provider in the timely conduct of its business. The city shall use its best reasonable efforts to assist the provider in obtaining all such permits, licenses and other consents in an expeditious and timely manner.

(j) If there is an emergency necessitating response work or repair, a provider may begin that repair or emergency response work or take any action required under the circumstances, provided that the provider notifies the affected city promptly after beginning the work and timely thereafter meets any permit or other requirement had there not been such an emergency.

(k) A city may require a provider to repair all damage to a public right-of-way caused by the activities of that provider, or of any agent affiliate, employee, or subcontractor of that provider, while occupying, installing, repairing or maintaining facilities in a public right-of-way and to return the right-of-way, to its functional equivalence before the damage pursuant to the reasonable requirements and specifications of the city. If the provider fails to make the repairs required by the city, the city may effect those repairs and charge the provider the cost of those repairs. If a city incurs damages as a result of a violation of this subsection, then the city shall have a cause of action against a provider for violation of this subsection, and may recover its damages, including reasonable attorney fees, if the provider is found liable by a court of competent jurisdiction.

(l) If requested by a city, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety and welfare of the public, a provider shall promptly remove its facilities from the public right-of-way or shall relocate or adjust its facilities within the public right-of-way at no cost to the political subdivision. Such relocation or adjustment shall be completed as soon as reasonably possible within the time set forth in any request by the city for such relocation or adjustment. Any damages suffered by the city or its contractors as a result of such provider's failure to timely relocate or adjust its facilities shall be borne by such provider.

(m) No city shall create, enact or erect any unreasonable condition, requirement or barrier for entry into or use of the public rights-of-way by a provider.

(n) A city may assess any of the following fees against a provider, for use and occupancy of the public right-of-way, provided that such fees reimburse the city for its reasonable, actual and verifiable costs of managing the city right-of-way, and are imposed on all such providers in a nondiscriminatory and competitively neutral manner:

(1) A permit fee in connection with issuing each construction permit to set fixtures in the public right-of-way within that city as provided in K.S.A. 17-1901, and amendments thereto, to compensate the city for issuing, processing and verifying the permit application;

(2) an excavation fee for each street or pavement cut to recover the costs associated with construction and repair activity of the provider, their assigns, contractors ~~and/or~~ or subcontractors, *or both*, with the exception of construction and repair activity required pursuant to subsection (1) of this act related to construction and maintenance activities directly related to improvements for the health, safety and welfare of the public; provided, however, imposition of such excavation fee must be based upon a regional specific or other appropriate study establishing the basis for such costs which takes into account the life of the city street prior to the construction or repair activity and the remaining life of the city street. Such excavation fee is expressly limited to activity that results in an actual street or pavement cut;

(3) inspection fees to recover all reasonable costs associated with city inspection of the work of the provider in the right-of-way;

(4) repair and restoration costs associated with repairing and restoring the public right-of-way because of damage caused by the provider, its assigns, contractors, ~~and/or~~ or subcontractors, *or both*, in the right-of-way; and

(5) a performance bond, in a form acceptable to the city, from a surety licensed to conduct surety business in the state of Kansas, insuring appropriate and timely performance in the construction and maintenance of facilities located in the public right-of-way.

(o) A city may not assess any additional fees against providers for use

or occupancy of the public right-of-way other than those specified in subsection (n).

(p) This act may not be construed to affect any valid taxation of a provider's facilities or services.

(q) Providers shall indemnify and hold the city and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees ~~(including to include~~ reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury ~~(including or death)~~, property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of the provider, any agent, officer, director, representative, employee, affiliate or subcontractor of the provider, or their respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining facilities in a public right-of-way. The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the city, its officers, employees, contractors or subcontractors. If a provider and the city are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the city under state law and without waiving any defenses of the parties under state or federal law. This section is solely for the benefit of the city and provider and does not create or grant any rights, contractual or otherwise, to any other person or entity.

(r) A provider or city shall promptly advise the other in writing of any known claim or demand against the provider or the city related to or arising out of the provider's activities in a public right-of-way.

(s) Nothing contained in K.S.A. 17-1902, and amendments thereto, is intended to affect the validity of any franchise fees collected pursuant to state law or a city's home rule authority.

(t) Any ordinance enacted prior to the effective date of this act governing the use and occupancy of the public right-of-way by a provider shall not conflict with the provisions of this act.

Sec. 3. K.S.A. 66-2004 is hereby amended to read as follows: 66-2004.

(a) Pursuant to ~~subsection (f)(1) of section 251 of the federal act 47 U.S.C. § 251(f)(1)~~, the obligations of an incumbent local exchange carrier, which include the duty to negotiate interconnection, unbundled access, resale, notice of changes and collocation, shall not apply to a rural telephone company unless such company has received a bona fide request for interconnection, services or network elements and the commission determines that such request is not unduly economically burdensome, is technically feasible and preserves and enhances universal service.

(b) On July 1, 1996, the commission shall initiate a rulemaking procedure to adopt guidelines to ensure that all telecommunications carriers and local exchange carriers preserve and enhance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services and safeguard the rights of consumers. The preservation and advancement of universal service shall be a primary concern. The commission shall issue the guidelines no later than December 31, 1996.

(c) Pursuant to ~~subsection (f) of section 253 of the federal act 47 U.S.C. § 253(f)~~, any telecommunications carrier that seeks to provide telephone exchange service or local exchange access in a service area served by a rural telephone company shall meet the requirements of ~~subsection (e)(1) of section 214 of the federal act 47 U.S.C. § 214(e)(1)~~ for designation as an eligible telecommunications carrier for that area before being permitted by the commission to provide such service; however, the guidelines shall be consistent with the provisions of ~~subsection (f)(1) and (2) of section 253 of the federal act 47 U.S.C. § 253(f)(1) and (2)~~.

(d) The commission may grant a certificate to provide local exchange or exchange access service in the service area of a rural telephone company if, among other issues to be considered by the commission, the application for such certificate complies with commission guidelines issued pursuant to subsection (b).

(e) Any restrictions established by the commission for rural entry of

competitors or for resale and unbundling of services shall not apply to any service area of a rural telephone company if such company, or an entity in which such company directly or indirectly owns an equity interest of 10% or more, provides local exchange or exchange access service, as authorized under K.S.A. ~~2002 Supp.~~ 66-2003, and amendments thereto, and this section, in any area of the state outside of its local exchange areas, as approved by the commission on or before January 1, 1996, and outside of any area in which it is the successor to the local exchange carrier serving such area on or before January 1, 1996.

(f) (1) *Any local exchange carrier electing pursuant to K.S.A. 66-2005(b), and amendments thereto, to operate under traditional rate of return regulation, or an entity in which such carrier directly or indirectly owns an equity interest of 10% or more, shall not use KUSF funding, except for Kansas lifeline service program purposes pursuant to K.S.A. 66-2006, and amendments thereto, for the purposes of providing telecommunication services in an area outside of the carrier's authorized service area.*

(2) *The provisions of this subsection shall not be construed to affect a competitive eligible telecommunications carrier's eligibility for KUSF support pursuant to K.S.A. 66-2008(c)(4), and amendments thereto.*

Sec. 4. K.S.A. 2015 Supp. 66-2005 is hereby amended to read as follows: 66-2005. (a) Each local exchange carrier shall file a network infrastructure plan with the commission on or after January 1, 1997, and prior to January 1, 1998. Each plan, as a part of universal service protection, shall include schedules, which shall be approved by the commission, for deployment of universal service capabilities by July 1, 1998, and the deployment of enhanced universal service capabilities by July 1, 2003, as defined pursuant to ~~subsections (p) and (q) of~~ K.S.A. 66-1,187(p) and (q), and amendments thereto, respectively. With respect to enhanced universal service, such schedules shall provide for deployment of ISDN, or its technological equivalent, or broadband facilities, only upon a firm customer order for such service, or for deployment of other enhanced universal services by a local exchange carrier. After receipt of such an order and upon completion of a deployment plan designed to meet the firm order or otherwise provide for the deployment of enhanced universal service, a local exchange carrier shall notify the commission. The commission shall approve the plan unless the commission determines that the proposed deployment plan is unnecessary, inappropriate, or not cost effective, or would create an unreasonable or excessive demand on the KUSF. The commission shall take action within 90 days. If the commission fails to take action within 90 days, the deployment plan shall be deemed approved. This approval process shall continue until July 1, 2000. Each plan shall demonstrate the capability of the local exchange carrier to comply on an ongoing basis with quality of service standards to be adopted by the commission no later than January 1, 1997.

(b) In order to protect universal service, facilitate the transition to competitive markets and stimulate the construction of an advanced telecommunications infrastructure, each local exchange carrier shall file a regulatory reform plan at the same time as it files the network infrastructure plan required in subsection (a). As part of its regulatory reform plan, a local exchange carrier may elect traditional rate of return regulation or price cap regulation. Carriers that elect price cap regulation shall be exempt from rate base, rate of return and earnings regulation and shall not be subject to the provisions of K.S.A. 66-136 and 66-127, and amendments thereto, except as otherwise provided in such sections. However, the commission may resume such regulation upon finding, after a hearing, that a carrier that is subject to price cap regulation has: Violated minimum quality of service standards pursuant to ~~subsection (l) of~~ K.S.A. 66-2002(l), and amendments thereto; been given reasonable notice and an opportunity to correct the violation; and failed to do so. Regulatory reform plans also shall include:

(1) A commitment to provide existing and newly ordered point-to-point broadband services to: Any hospital as defined in K.S.A. 65-425, and amendments thereto; any school accredited pursuant to K.S.A. 72-1101 et seq., and amendments thereto; any public library; or other state and local government facilities at discounted prices close to, but not below, long-run incremental cost; and

(2) a commitment to provide basic rate ISDN service, or the technological equivalent, at prices which are uniform throughout the carrier's service area. Local exchange carriers shall not be required to allow retail customers purchasing the foregoing discounted services to resell those services to other categories of customers. Telecommunications carriers may purchase basic rate ISDN services, or the technological equivalent, for resale in accordance with K.S.A. 66-2003, and amendments thereto. The commission may reduce prices charged for services outlined in ~~provisions~~ paragraphs (1) and (2) of this subsection, if the commitments of the local exchange carrier set forth in those provisions are not being kept.

(c) Subject to the commission's approval, all local exchange carriers shall reduce intrastate access charges to interstate levels as provided herein. Rates for intrastate switched access, and the imputed access portion of toll, shall be reduced over a three-year period with the objective of equalizing interstate and intrastate rates in a revenue neutral, specific and predictable manner. The commission is authorized to rebalance local residential and business service rates to offset the intrastate access and toll charge reductions. Any remaining portion of the reduction in access and toll charges not recovered through local residential and business service rates shall be paid out from the KUSF pursuant to K.S.A. 66-2008, and amendments thereto. Each rural telephone company shall adjust its intrastate switched access rates on March 1 of each odd-numbered year to match its interstate switched access rates, subject to the following:

(1) Any reduction of a rural telephone company's cost recovery due to reduction of its intrastate access revenue, except such revenue recovered from another support mechanism, shall be recovered from the KUSF;

(2) any portion of rural telephone company reductions in intrastate switched access rates which would result in an increase in KUSF recovery in a single year which exceeds .75% of intrastate retail revenues used in determining sums which may be recovered from Kansas telecommunications customers pursuant to ~~subsection (a) of~~ K.S.A. 66-2008(a), and amendments thereto, shall be deferred until March 1 of the next following odd-numbered year; and

(3) no rural company shall be required at any time to reduce its intrastate switched access rates below the level of its interstate switched access rates.

(d) Beginning March 1, 1997, each rural telephone company shall have the authority to increase annually its monthly basic local residential and business service rates by an amount not to exceed \$1 in each 12-month period until such monthly rates reach an amount equal to the statewide rural telephone company average rates for such services. The statewide rural telephone company average rates shall be the arithmetic mean of the lowest flat rate as of March 1, 1996, for local residential service and for local business service offered by each rural telephone company within the state. In the case of a rural telephone company which increases its local residential service rate or its local business service rate, or both, to reach the statewide rural telephone company average rate for such services, the amount paid to the company from the KUSF shall be reduced by an amount equal to the additional revenue received by such company through such rate increase. In the case of a rural telephone company which elects to maintain a local residential service rate or a local business service rate, or both, below the statewide rural telephone company average, the amount paid to the company from the KUSF shall be reduced by an amount equal to the difference between the revenue the company could receive if it elected to increase such rate to the average rate and the revenue received by the company.

(e) For purposes of determining sufficient KUSF support, an affordable rate for local exchange service provided by a rural telephone company subject to traditional rate of return regulation shall be determined as follows:

(1) For residential service, an affordable rate shall be the arithmetic mean of residential local service rates charged in this state in all exchanges served by rural telephone companies and in all exchanges in rate groups 1 through 3 as of February 20, 2002, of all other local exchange carriers, but not including electing carriers, weighted by the number of residential access lines to which each such rate applies, and thereafter rounded to the nearest quarter-dollar, subject to the following provisions:

(A) If a rural telephone company's present residential rate, including any separate charge for tone dialing, is at or above such weighted mean, such rate shall be deemed affordable prior to March 1, 2007.

(B) If a rural telephone company's present residential rate, including any separate charge for tone dialing, is below such average: (i) Such rate shall be deemed affordable prior to March 1, 2003; (ii) as of March 1, 2003, and prior to March 1, 2004, a rate \$2 higher than the company's present residential monthly rate, but not exceeding such weighted mean, shall be deemed affordable; (iii) as of March 1, 2004, and prior to March 1, 2005, a rate \$4 higher than the company's present residential monthly rate, but not exceeding such weighted mean, shall be deemed affordable; and (iv) as of March 1, 2005, and prior to March 1, 2006, a rate \$6 higher than the company's present residential monthly rate, but not exceeding such weighted mean, shall be deemed affordable.

(C) As of March 1, 2007, and each two years thereafter, an affordable residential service rate shall be the weighted arithmetic mean of local service rates determined as of October 1 of the preceding year in the manner hereinbefore specified, except that any increase in such mean exceeding \$2 may be satisfied by increases in a rural telephone company's residential monthly service rate not exceeding \$2 per year, effective March 1 of the year when such mean is determined, with the remainder applied at the rate of \$2 per year, but not to exceed the affordable rate.

(2) For single line business service at any time, an affordable rate shall be the existing rate or an amount \$3 greater than the affordable rate for residential service as determined under ~~provision~~ *paragraph* (1) of this subsection, whichever is higher, except that any increase in the business service affordable rate exceeding \$2 may be satisfied by increases in a rural telephone company's business monthly service rate not exceeding \$2 per year, effective March 1 of the year when such rate is determined, with the remainder applied at the rate of \$2 per year, but not to exceed the affordable rate.

(3) Any flat fee or charge imposed per line on all residential service or single line business service, or both, other than a fee or charge for contribution to the KUSF or imposed by other governmental authority, shall be added to the basic service rate for purposes of determining an affordable rate pursuant to this subsection.

(4) Not later than March 1, 2003, tone dialing shall be made available to all local service customers of each rural telephone company at no charge additional to any increase in the local service rate to become effective on that date. The amount of revenue received as of March 1, 2002, by a rural telephone company from the provision of tone dialing service shall be excluded from reductions in the company's KUSF support otherwise resulting pursuant to this subsection.

(5) A rural telephone company which raises one or more local service rates on application made after February 20, 2002, and pursuant to ~~sub-section (b) of K.S.A. 66-2007(b)~~, and amendments thereto, shall have the level of its affordable rate increased by an amount equal to the amount of the increase in such rate.

(6) Upon motion by a rural telephone company, the commission may determine a higher affordable local residential or business rate for such company if such higher rate allows the company to provide additional or improved service to customers, but any increase in a rural telephone company's local rate attributable to the provision of increased calling scope shall not be included in any subsequent recalculation of affordable rates as otherwise provided in this subsection.

(7) A uniform rate for residential and single line business local service adopted by a rural telephone company shall be deemed an affordable rate for purposes of this subsection if application of such uniform rate generates revenue equal to that which would be generated by application of residential and business rates which are otherwise deemed affordable rates for such company under this subsection.

(8) The provisions of this subsection relating to the implementation of an affordable rate shall not apply to rural telephone companies which do not receive KUSF support. When recalculating affordable rates as provided in this subsection, the rates used shall include the actual rates charged by rural companies that do not receive KUSF support.

(f) For regulatory reform plans in which price cap regulation has been elected, price cap plans shall have three baskets: Residential and single-

line business, including touch-tone; switched access services; and miscellaneous services. The commission shall establish price caps at the prices existing when the regulatory plan is filed subject to rate rebalancing as provided in subsection (c) for residential services, including touch-tone services, and for single-line business services, including touch-tone services, within the residential and single-line business service basket. The commission shall establish a formula for adjustments to the price caps. The commission also shall establish price caps at the prices existing when the regulatory plan is filed for the miscellaneous services basket. The commission shall approve any adjustments to the price caps for the miscellaneous service basket, as provided in subsection (g).

(g) On or before January 1, 1997, the commission shall issue a final order in a proceeding to determine the price cap adjustment formula that shall apply to the price caps for the local residential and single-line business and the miscellaneous services baskets and for sub-categories, if any, within those baskets. In determining this formula, the commission shall balance the public policy goals of encouraging efficiency and promoting investment in a quality, advanced telecommunications network in the state. The commission also shall establish any informational filing requirements necessary for the review of any price cap tariff filings, including price increases or decreases within the caps, to verify such caps would not be exceeded by any proposed price change. The adjustment formula shall apply to the price caps for the local residential and single-line business basket after December 31, 1999, and to the miscellaneous services basket after December 31, 1997. The price cap formula, but not actual prices, shall be reviewed every five years.

(h) The price caps for the residential and single-line business service basket shall be capped at their initial level until January 1, 2000, except for any increases authorized as a part of the revenue neutral rate rebalancing under subsection (c). The price caps for this basket and for the categories in this basket, if any, shall be adjusted annually after December 31, 1999, based on the formula determined by the commission under subsection (g).

(i) The price cap for the switched access service basket shall be set based upon the local exchange carrier's intrastate access tariffs as of January 1, 1997, except for any revenue neutral rate rebalancing authorized in accordance with subsection (c). Thereafter, the cap for this basket shall not change except in connection with any subsequent revenue neutral rebalancing authorized by the commission under subsection (c).

(j) The price caps for the miscellaneous services basket shall be adjusted annually after December 31, 1997, based on the adjustment formula determined by the commission under subsection (g).

(k) A price cap is a maximum price for all services taken as a whole in a given basket. Prices for individual services may be changed within the service categories, if any, established by the commission within a basket. An entire service category, if any, within the residential and single-line business basket or miscellaneous services basket may be priced below the cap for such category. Unless otherwise approved by the commission, no service shall be priced below the price floor which will be long-run incremental cost and imputed access charges. Access charges equal to those paid by telecommunications carriers to local exchange carriers shall be imputed as part of the price floor for toll services offered by local exchange carriers on a toll service basis.

(l) A local exchange carrier may offer promotions within an exchange or group of exchanges. All promotions shall be approved by the commission and may not be unjust, unreasonably discriminatory or unduly preferential.

(m) Unless the commission authorizes price deregulation at an earlier date, intrastate toll services within the miscellaneous services basket shall continue to be regulated until the affected local exchange carrier begins to offer 1+ intraLATA dialing parity throughout its service territory, at which time intrastate toll will be price deregulated, except that prices cannot be set below the price floor.

(n) On or before July 1, 1997, the commission shall establish guidelines for reducing regulation prior to price deregulation of price cap regulated services in the miscellaneous services basket, the switched access services basket, and the residential and single-line business basket.

(o) Subsequent to the adoption of guidelines pursuant to subsection

(n), the commission shall initiate a petitioning procedure under which the local exchange carrier may request rate range pricing. The commission shall act upon a petition within 21 days, subject to a 30-day extension. The prices within a rate range shall be tariffed and shall apply to all customers in a nondiscriminatory manner in an exchange or group of exchanges.

(p) A local exchange carrier may petition the commission to designate an individual service or service category, if any, within the miscellaneous services basket, the switched access services basket or the residential and single-line business basket for reduced regulation. The commission shall act upon a petition for reduced regulation within 21 days, subject to an extension period of an additional 30 days, and upon a good cause showing of the commission in the extension order, or within such shorter time as the commission shall approve. The commission shall issue a final order within the 21-day period or within a 51-day period if an extension has been issued. Following an order granting reduced regulation of an individual service or service category, the commission shall act on any request for price reductions within seven days subject to a 30-day extension. The commission shall act on other requests for price cap adjustments, adjustments within price cap plans and on new service offerings within 21 days subject to a 30-day extension. Such a change will be presumed lawful unless it is determined the prices are below the price floor or that the price cap for a category, if any, within the entire basket has been exceeded.

(q) (1) Beginning July 1, 2006, price regulation of telecommunications services in the residential and single-line business service basket and the miscellaneous services basket for local exchange carriers subject to price cap regulation shall be as follows:

(A) Packages or bundles of services shall be price deregulated statewide, however the individual telecommunication service components of such packages or bundles shall remain available for purchase on an individual basis at prices subject to price cap regulation in any exchange in which the standards in subsection (q)(1)(B), (C) or (D) have not been met. If standards in subsection (q)(1)(B), (C) or (D) have been met, the individual telecommunication service components of such packages or bundles shall remain available for purchase on an individual basis and prices for packages or bundles shall not exceed the sum of the highest prices of the a la carte components of the package or bundle;

(B) in any exchange in which there are 75,000 or more local exchange access lines served by all providers, rates for all telecommunications services shall be price deregulated;

(C) in any exchange in which there are fewer than 75,000 local exchange access lines served by all providers, the commission shall price deregulate all business telecommunication services upon a demonstration by the requesting local telecommunications carrier that there are two or more nonaffiliated telecommunications carriers or other entities, that are nonaffiliated with the local exchange carrier, providing local telecommunications service to business customers, regardless of whether the entity provides local service in conjunction with other services in that exchange area. One of such nonaffiliated carriers or entities shall be required to be a facilities-based carrier or entity and not more than one of such nonaffiliated carriers or entities shall be a provider of commercial mobile radio services in that exchange;

(D) in any exchange in which there are fewer than 75,000 local exchange access lines served by all providers, the commission shall price deregulate all residential telecommunication services upon a demonstration by the requesting local telecommunications carrier that there are two or more nonaffiliated telecommunications carriers or other entities, that are nonaffiliated with the local exchange carrier, providing local telecommunications service to residential customers, regardless of whether the entity provides local service in conjunction with other services in that exchange area. One of such nonaffiliated carriers or entities shall be required to be a facilities-based carrier or entity and not more than one of such nonaffiliated carriers or entities shall be a provider of commercial mobile radio services in that exchange;

(E) rates for lifeline services shall remain subject to price cap regulation;

(F) up to and continuing until July 1, 2008, rates for the initial resi-

dential local exchange access line and up to four business local exchange access lines at one location shall remain subject to price cap regulation *and all other rates, except rates for switched access services, are deemed price deregulated.* On and after July 1, 2008, the local exchange carrier shall be authorized to adjust such rates without commission approval by not more than the *greater of the* percentage increase in the consumer price index for all urban consumers, as officially reported by the bureau of labor statistics of the United States department of labor, or its successor index, *or the amount necessary to maintain the local rate floor as determined by the federal communications commission or its successor,* in any one year period and such rates shall not be adjusted below the price floor established in subsection (k). Such rates shall not be affected by purchase of one or more of the following: Call management services; intraLATA long distance service or interLATA long distance service; and

(G) local exchange carriers shall offer a uniform price throughout each such exchange for services subject to price deregulation, under this subsection, including packages or bundles of services, except as provided in subsection (1) or as otherwise approved by the commission.

(2) For the purposes of this subsection:

(A) Any entity providing voice service shall be considered as a local telecommunications service provider regardless of whether such entity is subject to regulation by the commission;

(B) a provider of local telecommunications service that requires the use of a third party, unaffiliated broadband network or dial-up internet network for the origination of local voice service shall not be considered a local telecommunications service provider;

(C) telecommunications carriers offering only prepaid telecommunications service shall not be considered entities providing local telecommunications service.

(3) If the services of a local exchange carrier are classified as price deregulated under this subsection, the carrier may thereafter adjust its rates for such price deregulated services upward or downward as it determines appropriate in its competitive environment, with tariffs for such services deemed effective upon filing with the commission. Price deregulated services shall be subject to the price floor in subsection (k), and shall not be unreasonably discriminatory or unduly preferential within an exchange.

(4) The commission shall act upon a petition filed pursuant to subsection (q)(1)(C) or (D) within 21 days, subject to an extension period of an additional 30 days, and upon a good cause showing of the commission in the extension order, or within such shorter time as the commission shall approve. The commission shall issue a final order within the 21-day period or within a 51-day period if an extension order has been issued.

(5) The commission may resume price cap regulation of a local exchange carrier, deregulated under this subsection upon finding, after a hearing, that such carrier has: Violated minimum quality of service standards pursuant to ~~subsection (1) of K.S.A. 66-2002(l), and amendments thereto;~~ been given reasonable notice and an opportunity to correct the violation; and failed to do so.

(6) The commission on July 1, 2006, and on each date that any service is deregulated, shall record the rates of each service which has been price deregulated in each exchange.

~~(7) Prior to January 1, 2007, the commission shall determine the weighted, statewide average rate of nonwireless basic local telecommunications service as of July 1, 2006. Prior to January 1, 2007, and annually thereafter, the commission shall determine the weighted, average rate of nonwireless basic local telecommunications services in exchanges that have been price deregulated pursuant to subsection (q)(1)(B), (C) or (D). The commission shall report its findings on or before February 1, 2007, and annually thereafter to the governor, the legislature and each member of the standing committees of the house of representatives and the senate which are assigned telecommunications issues. The commission shall also provide in such annual report information on the current rates for services provided by all telecommunications carriers or other telecommunications service providers regardless of the technology used to provide service in price deregulated exchanges, service offerings provided by all telecommunications carriers or other telecommunications service providers regardless of the technology used and available in price deregulated ex-~~

~~changes and the number of competitors in price deregulated exchanges including, but not limited to, facilities based carriers, commercial mobile radio service or broadband based service providers.~~

~~(8)~~ For the purposes of this subsection:

(A) “Packages or bundles of services” means the offering of a local telecommunications service with one or more of the following, subscribed together, as one service option offered at one price, one or more call management services, intraLATA long distance service, interLATA long distance service, internet access, video services or wireless services. Packages or bundles of services shall not include only a single residential local exchange access line or up to four business local exchange access lines at one location and intraLATA long distance service or interLATA long distance service, or both;

(B) “local telecommunications service” means two-way voice service capable of being originated and terminated within the exchange of the local exchange telecommunications company seeking price deregulation of its services, regardless of the technology used to provision the voice service;

(C) “broadband network” means a connection that delivers services at speeds exceeding two hundred kilobits per second in both directions;

(D) “prepaid telecommunications service” means a local service for which payment is made in advance that excludes access to operator assistance and long distance service;

(E) “facilities based carrier” means a telecommunications carrier or entity providing local telecommunications service either wholly or partially over its own network. Facilities based carrier shall not include any radio communication services provider licensed by the federal communications commission to provide commercial mobile radio services; and

(F) “call management services” means optional telecommunications services that allow a customer to manage call flow generated over the customer’s local exchange access line.

(r) (1) Upon complaint or request, the commission may investigate a price deregulated service.

(2) The commission shall resume price cap regulation of a service provided in any exchange area by placing it in the appropriate service basket, as approved by the commission, upon a determination by the commission that the conditions in subsection (q)(1)(C) or (D) are no longer satisfied in that exchange area.

(3) The commission shall resume price cap regulation of business services in any exchange meeting the conditions of subsection (q)(1)(B) by placing it in the appropriate service basket, as approved by the commission, upon a determination by the commission that the following condition is not met: There are at least two nonaffiliated telecommunications carriers or other entities, that are nonaffiliated with the local exchange carrier, providing local telecommunications service to business customers, regardless of whether the entity provides local service in conjunction with other services in that exchange area. One of such nonaffiliated carriers or entities shall be required to be a facilities-based carrier or entity and not more than one such nonaffiliated carriers or entities shall be a provider of commercial mobile radio services in that exchange.

(4) The commission shall resume price cap regulation of residential services in any exchange meeting the conditions of subsection (q)(1)(B) by placing it in the appropriate service basket, as approved by the commission, upon a determination by the commission that the following condition is not met: There are at least two or more nonaffiliated telecommunications carriers or other entities, that are nonaffiliated with the local exchange carrier, providing local telecommunications service to residential customers, regardless of whether the entity provides local service in conjunction with other services in that exchange area. One of such nonaffiliated carriers or entities shall be required to be a facilities-based carrier or entity and not more than one such nonaffiliated carriers or entities shall be a provider of commercial mobile radio services in that exchange.

(s) The commission shall require that for all local exchange carriers all such price deregulated basic intraLATA toll services be geographically averaged statewide and not be priced below the price floor established in subsection (k).

(t) Cost studies to determine price floors shall be performed as required by the commission in response to complaints. In addition, not-

withstanding the exemption in subsection (b), the commission may request information necessary to execute any of its obligations under the act. In response to a complaint that a price deregulated service is priced below the price floor set forth in subsection (k), the commission shall issue an order within 60 days after the filing of the complaint unless the complainant agrees to an extension.

(u) A local exchange carrier may ~~petition for offer~~ individual customer pricing. ~~The commission shall respond expeditiously to the petition within a period of not more than 30 days subject to a 30-day extension without prior approval by the commission. In response to a complaint that an individual customer pricing agreement is priced below the price floor set forth in subsection (k), the commission shall issue an order within 60 days after the filing of the complaint, unless the complainant agrees to an extension.~~

(v) No audit, earnings review or rate case shall be performed with reference to the initial prices filed as required herein.

(w) As required under K.S.A. 66-131, and amendments thereto, and except as provided for in ~~subsection (e) of K.S.A. 66-2004(c)~~, and amendments thereto, telecommunications carriers that were not authorized to provide switched local exchange telecommunications services in this state as of July 1, 1996, including cable television operators who have not previously offered telecommunications services, must receive a certificate of convenience based upon a demonstration of technical, managerial and financial viability and the ability to meet quality of service standards established by the commission. Any telecommunications carrier or other entity seeking such certificate shall file a statement, which shall be subject to the commission's approval, specifying with particularity the areas in which it will offer service, the manner in which it will provide the service in such areas and whether it will serve both business customers and residential customers in such areas. Any structurally separate affiliate of a local exchange carrier that provides telecommunications services shall be subject to the same regulatory obligations and oversight as a telecommunications carrier, as long as the local exchange carrier's affiliate obtains access to any services or facilities from its affiliated local exchange carrier on the same terms and conditions as the local exchange carrier makes those services and facilities available to other telecommunications carriers.

(x) Any local exchange carrier with a majority of the carrier's local exchange access lines in the state price deregulated pursuant to subsection (q) may elect to no longer be regulated as a local exchange carrier and, notwithstanding any other provisions, upon such election shall instead be regulated as a telecommunications carrier, except as provided in this subsection. A local exchange carrier making such election shall be referred to as an "electing carrier." A local exchange carrier may make such election by providing the commission with at least 90 days' written notice of election. The notice of election shall include a verified statement that a majority of the carrier's local exchange access lines are price deregulated. Such notification shall include information regarding the number of access lines the carrier serves in each of the carrier's exchanges. Within 45 days of receipt of such a notification, the commission shall review the information concerning the carrier's local exchange access lines and upon failure of the commission, within 45 days of receipt of the notification, to determine that a majority of such lines of the carrier are not price deregulated the commission shall designate the carrier as an electing carrier.

(y) Notwithstanding the provisions of this act, and subject to any applicable exemption from interconnection generally, a telecommunications carrier is entitled to interconnection with a local exchange carrier or an electing carrier to transmit and route voice traffic between both the telecommunications carrier and the local exchange carrier or electing carrier regardless of the technology by which the voice traffic is originated by and terminated to a consumer. The commission shall afford such telecommunications carrier all substantive and procedural rights available to such carrier regarding interconnection pursuant to 47 U.S.C. §§ 251 and 252 as in effect on the effective date of this act. Nothing in this subsection shall be construed to confer jurisdiction upon the commission for services that are exempt from or otherwise not subject to commission jurisdiction.

(z) (1) Telecommunications carriers and electing carriers shall not be

subject to regulation by the commission for the provision of telecommunications services, except that the commission shall retain the authority and jurisdiction to authorize applications, suspension or cancellation of certificates of public convenience and necessity to provide local exchange or exchange access service in the state of Kansas, but the commission may not use this certification authority to regulate telecommunications carriers or electing carriers beyond the jurisdiction provided the commission in this subsection.

(2) Nothing in this section shall be construed to restrict the commission's authority and jurisdiction to:

(A) Carry out the commission's obligations established in 47 U.S.C. §§ 251 and 252;

(B) implement rules delegated to the state by the federal communications commission or federal law; or

(C) regulate intrastate switched access rates, terms and conditions, including the implementation of federal law concerning intercarrier compensation.

(3) The commission shall retain the authority and jurisdiction to:

(A) Carry out the commission's obligations pursuant to the underground utilities damage prevention act, K.S.A. 66-1801 et seq., and amendments thereto, and the overhead power line accident prevention act, K.S.A. 66-1709 et seq., and amendments thereto;

(B) require the reasonable resale of retail telecommunications services, as well as unbundling and interconnection obligations as required by K.S.A. 66-2003, and amendments thereto;

(C) administer the Kansas lifeline service program pursuant to K.S.A. 66-2006, and amendments thereto;

(D) administer contributions to the Kansas universal service fund pursuant to ~~subsection (a) of~~ K.S.A. 66-2008(a), and amendments thereto;

(E) assess costs and expenses pursuant to K.S.A. 66-1501 et seq., and amendments thereto, but the commission shall not use this authority to regulate telecommunications carriers or electing carriers beyond the jurisdiction provided the commission in this subsection;

(F) request information from telecommunications carriers and electing carriers pursuant to K.A.R. 82-1-234a(b) and subject to the provisions of K.A.R. 82-1-221a and K.S.A. 66-1220a, and amendments thereto, but the commission shall not use this authority to regulate telecommunications carriers or electing carriers beyond the jurisdiction provided the commission in this subsection; and

(G) administer consumer complaints against telecommunications carriers and electing carriers to investigate fraud, undue discrimination and other practices harmful to consumers, but the commission shall not use this authority to regulate telecommunications carriers or electing carriers beyond the jurisdiction provided the commission in this subsection.

Sec. 5. K.S.A. 2015 Supp. 66-2007 is hereby amended to read as follows: 66-2007. (a) All local exchange carriers, not including electing carriers, providing long distance service in Kansas shall reduce their statewide averaged basic long distance rates to reflect the net reductions in access charges; however, such carriers shall be allowed to increase long distance rates to reflect the KUSF funding requirements set forth in K.S.A. 66-2008, and amendments thereto.

(b) The commission shall approve, upon not more than 120 days' notice, any basic local exchange price increases that in the aggregate in any one year are \$1.50 or less per access line per month, that are proposed by any rural telephone company which is subject to traditional rate of return regulation and that comply with the requirements of this section. Any such proposed price increases shall be presumed reasonable and not subject to commission investigation and review if the rural telephone company has followed the notice requirements set forth below. However, the commission shall initiate an investigation if more than 15% of the subscribers subject to the rate increase request such an investigation within 60 days of the date of distribution of the notice of the proposed change. Upon filing such an application for a rate increase, any rural telephone company seeking expedited approval of the proposed rate under this section shall send a notice to its subscribers by regular mail, which may be included with regular subscriber mailings. Such mailings shall include the name, mailing address and telephone number of the com-

mission. The notice shall include a schedule of the proposed local exchange rates, the effective date of the rates and a description of the procedures by which the subscribers can petition the commission to determine the reasonableness of the proposed rates, including a provision specifically stating that protest by 15% or more of subscribers subject to the proposed rate increase would require the commission to initiate an investigation concerning the reasonableness of the proposed rate increase.

(c) The commission shall have the right to investigate and determine the reasonableness of an increase in local exchange rates and charges under subsection (b) by any rural telephone company within one year of the time local exchange rates or charges are increased. If the commission determines such rate or charge increases are unreasonable, the commission shall have the authority to order a rate hearing and, after such hearing, shall have the authority to rescind all or any portion of the increases found to be unreasonable.

(d) *The commission shall approve each application, within 45 days of such application, by a rural telephone company to increase the company's local service rates in an amount necessary for such company to maintain eligibility for full federal universal service support. If the commission does not order approval of such application within 45 days, the application shall be deemed approved.*

Sec. 6. K.S.A. 2015 Supp. 66-2008 is hereby amended to read as follows: 66-2008. On or before January 1, 1997, the commission shall establish the Kansas universal service fund, hereinafter referred to as the KUSF.

(a) The commission shall require every telecommunications carrier, telecommunications public utility and wireless telecommunications service provider that provides intrastate telecommunications services and, to the extent not prohibited by federal law, every provider of interconnected VoIP service, as defined by ~~47 C.F.R. § 9.3 (October 1, 2005)~~ 47 C.F.R. 9.3, to contribute to the KUSF *based upon the provider's intrastate telecommunications services net retail revenues* on an equitable and non-discriminatory basis. *The commission shall not require any provider to contribute to the KUSF under a different contribution methodology than such provider uses for purposes of the federal universal service fund, including for bundled offerings.* Any telecommunications carrier, telecommunications public utility, wireless telecommunications service provider or provider of interconnected VoIP service which contributes to the KUSF may collect from customers an amount equal to such carrier's, utility's or provider's contribution, but such carrier, provider or utility may collect a lesser amount from its customer.

Any contributions in excess of distributions collected in any reporting year shall be applied to reduce the estimated contribution that would otherwise be necessary for the following year.

(b) Pursuant to the federal act, distributions from the KUSF shall be made in a competitively neutral manner to qualified telecommunications public utilities, telecommunications carriers and wireless telecommunications providers, that are deemed eligible both under subsection (e)(1) of section 214 of the federal act and by the commission.

(c) Beginning January 1, 2014:

(1) Annual distributions from the KUSF for a local exchange carrier subject to price cap regulation pursuant to K.S.A. 66-2005, and amendments thereto, shall be capped at the lesser of:

(A) 90% of KUSF support the carrier received for the 12-month period ending February 28, 2013; or

(B) \$11,400,000.

The amounts prescribed in subparagraph (A) or (B) shall not include KUSF support for Kansas lifeline service program purposes, pursuant to K.S.A. 66-2006, and amendments thereto.

(2) Local exchange carriers subject to price cap regulation pursuant to K.S.A. 66-2005, and amendments thereto, shall not receive KUSF support for any residential or business lines within an exchange that the commission has granted price deregulation pursuant to ~~subsections (q)(1)(B), (C) or (D) of K.S.A. 66-2005~~ *(q)(1)(B), (C) or (D)*, and amendments thereto, except for areas within any census block in such an exchange in which there is no wireline carrier providing local exchange

access lines that does not receive KUSF support, not including KUSF support for Kansas lifeline service program purposes pursuant to K.S.A. 66-2006, and amendments thereto, for such access lines.

(3) Local exchange carriers subject to price cap regulation pursuant to K.S.A. 66-2005, and amendments thereto, shall receive the same per line, per month KUSF support as established in the April 13, 2000 notice in commission docket numbers 99-GIMT-326-GIT and 00-GIMT-236-GIT subject to the cap percentage in subsection (c)(1), not including KUSF support for Kansas lifeline service program purposes pursuant to K.S.A. 66-2006, and amendments thereto, except that the amount shall be reduced by any funding received by such carrier from the federal communication commission's connect America fund II for the same household, if feasible, or for the same census block.

(4) The commission shall discontinue the use of the "identical support" rule and shall cap all competitive eligible telecommunications carriers' KUSF high cost support as of March 1, 2013, and beginning March 1, 2014, over a period of four years in annual equal increments, reduce to zero, beginning March 1, 2018, the amount of KUSF high cost support received by competitive eligible telecommunications carriers. Nothing in this section shall be construed to affect competitive eligible telecommunications carriers' eligibility for Kansas lifeline service program purposes pursuant to K.S.A. 66-2006, and amendments thereto. For the purposes of this subsection, "competitive eligible telecommunications carrier" means a telecommunications carrier designated by the commission as an eligible telecommunications carrier after January 1, 1998. "Competitive eligible telecommunications carrier" shall not mean any local exchange carrier or any electing carrier designated by the commission as an eligible telecommunications carrier by order dated December 5, 1997, in docket No. 98-GIMT-241-GIT, or any such local exchange carrier's or electing carrier's successors or assigns.

(5) An electing carrier shall no longer be eligible to receive high cost support from the KUSF.

(d) (1) Subject to paragraph (2), the commission may periodically review the KUSF to determine if the costs of qualified telecommunications public utilities, telecommunications carriers and wireless telecommunications service providers to provide local service justify modification of the KUSF. If the commission determines that any changes are needed, the commission shall modify the KUSF accordingly and annually report such changes to the senate standing committee on utilities and the house standing committee on utilities and telecommunications.

(2) The commission shall undertake a review of the capped amount of KUSF support available for each local exchange carrier operating under price cap regulation that receives such support, not including Kansas lifeline service program purposes pursuant to K.S.A. 66-2006, and amendments thereto, and determine if a lesser amount is appropriate for KUSF distributions after March 1, 2019. Reviews of such carriers shall be based on the forward-looking costs of providing basic voice service, using inputs that reflect the actual geography being served and that reflect the scale and scope of the local exchange carrier providing basic local voice service within each exchange.

(e) (1) For each local exchange carrier electing pursuant to ~~subsection (b) of~~ K.S.A. 66-2005(b), and amendments thereto, to operate under traditional rate of return regulation, all KUSF support, including any adjustment thereto pursuant to this section, shall ~~be based on~~ *ensure the reasonable opportunity for recovery of* such carrier's *intrastate* embedded costs, revenue requirements, investments and expenses, *subject to the annual cap established pursuant to subsection (e)(3).* ~~Until at least March 1, 2017,~~ Any modification of such support shall be made only as a direct result of changes in those factors enumerated in this subsection. Nothing in this subsection shall prohibit the commission from conducting a general investigation regarding effects of federal universal service reform on KUSF support and the telecommunications public policy of the state of Kansas as expressed in K.S.A. 66-2001, and amendments thereto. The commission may present any findings and recommendations to the telecommunications study committee established in K.S.A. 2015 Supp. 66-2018, and amendments thereto.

(2) Notwithstanding any other provision of law, no KUSF support received by a local exchange carrier electing pursuant to ~~subsection (b)~~

~~of K.S.A. 66-2005(b), and amendments thereto, to operate under traditional rate of return regulation shall be used to offset any loss reduction of federal universal service fund support for recovery of such carrier, except that such limitation on KUSF support shall not preclude recovery of reductions in intrastate access revenue pursuant to subsection (c) of K.S.A. 66-2005, and amendments thereto carrier's interstate costs and investments.~~

(3) Notwithstanding any other provision of law, the total KUSF distributions, *not to include KUSF support for Kansas lifeline service program purposes, pursuant to K.S.A. 66-2006, and amendments thereto*, made to all local exchange carriers operating under traditional rate of return regulation pursuant to ~~subsection (b) of K.S.A. 66-2005(b)~~, and amendments thereto, shall not exceed an annual \$30,000,000 cap. *In any year that the total KUSF support for such carriers would exceed the annual cap, each carrier's KUSF support shall be proportionately based on the amount of support each such carrier would have received absent the cap.* A waiver of the cap shall be granted based on a demonstration by a carrier that such carrier would experience significant hardship due to force majeure or natural disaster as determined by the commission.

(f) Additional supplemental funding from the KUSF, other than as provided in subsection (e), may be authorized at the discretion of the commission. However, the commission may require approval of such funding to be based upon a general rate case filing. With respect to any request for additional supplemental funding from the KUSF and to any audit of a rural telephone company's KUSF support, the commission shall act expeditiously, and shall be subject to the 240-day deadline for rate case applications pursuant to K.S.A. 66-117, and amendments thereto.

Sec. 7. K.S.A. 2015 Supp. 66-2017 is hereby amended to read as follows: 66-2017. (a) Except as otherwise provided in this section, no VoIP service, IP-enabled service, or any combination thereof, shall be subject to the jurisdiction of, regulation by, supervision of or control by any state agency or political subdivision of the state.

(b) VoIP services shall be subject to:

(1) The requirements of K.S.A. 66-2008, and amendments thereto, pertaining to the Kansas universal service fund (KUSF). The provisions of subsection (a) shall not affect or restrict eligibility for KUSF support; and

(2) the requirements of the Kansas 911 act, K.S.A. 2015 Supp. 12-5362 et seq., and amendments thereto.

(c) No provision of this section shall be construed to modify:

(1) The requirements of the video competition act, K.S.A. 2015 Supp. 12-2021 et seq., and amendments thereto;

(2) the state corporation commission's authority under 47 U.S.C. §§ 251 and 252, as in effect on the effective date of this act. For the purposes of this paragraph, the term "state commission" used in 47 U.S.C. §§ 251 and 252 shall mean the state corporation commission established pursuant to K.S.A. 74-601, and amendments thereto;

(3) the authority of the state of Kansas or a political subdivision thereof to manage the use of public rights-of-way pursuant to K.S.A. 17-1902, and amendments thereto; ~~or~~

(4) the rights and obligations of ~~subsection (y) of K.S.A. 66-2005(y)~~, and amendments thereto; *or*

(5) *the regulation of any rural telephone company.*

(d) For the purposes of this section:

(1) "Internet protocol enabled service" or "IP-enabled service" means any service, capability, functionality, or application using an internet protocol (IP) that enables an end user to send or receive a voice, data or video communication in an IP format.

(2) "Political subdivision" shall have the meaning ascribed to such term in K.S.A. 28-137b, and amendments thereto.

(3) "State agency" shall have the meaning ascribed to such term in K.S.A. 75-3701, and amendments thereto.

(4) "Voice over Internet Protocol" or "VoIP" is any service that:

(A) Uses an internet protocol (IP) to enable real-time, two-way voice communication that originates from, or terminates at, the user's location in an IP;

(B) utilizes a broadband connection from the user's location; and

(C) permits a user to receive a call that originates on the public switched telephone network (PSTN) and to terminate a call to the PSTN.

Sec. 8. K.S.A. 66-2004 and K.S.A. 2015 Supp. 66-2005, 66-2007, 66-2008 and 66-2017 are hereby repealed.

Sec. 9. On and after October 1, 2016, K.S.A. 17-1902 is hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

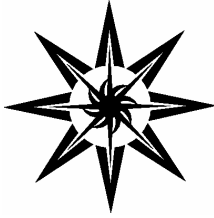
Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.



CODES ADMINISTRATION

Council Committee Meeting Date: October 3, 2016
City Council Meeting Date: October 17, 2016

COU2016-57: Consider adopting the International Code Council Building Valuation Data Table for assessing permit fees.

RECOMMENDATION

Staff recommends adopting the International Code Council Building Valuation Data Table and amended fee schedule for assessing permit fees.

SUGGESTED MOTION

I move that Council approve the International Code Council Building Valuation Data Table current publication, the attached fee schedule as presented for assessing permit fees, and proposed ordinance changes to Chapter 4 as submitted.

BACKGROUND

The current procedure to assess permit fees is confusing and outdated. Currently, the value to be used in computing the building permit and plan review fee is broken down into four costs (1) General cost to construct including materials and labor (2) Cost of electrical materials and labor (3) Cost of plumbing materials and labor (4) Cost of HVAC material and Labor. Each of the four units of cost are then individually calculated by the permit fee schedule and then a plan review fee is assessed. The values are based on what the applicant submits. The determination of value or valuation under any provision of these codes shall be made by the Building Official.

Total Valuation:

Fees:

\$1-\$500	\$25
\$501 - \$2000	\$25 for first \$500 plus \$1.5 for each additional \$100 up to and including \$2000
\$2,001 - \$25,000	\$47.5 for first \$2,000 plus \$5 for each additional \$1,000
\$25,001 - \$50,000	\$162.5 for first \$25,000 plus \$3.5 for each additional \$1,000
\$50,001 - \$100,000	\$250 for first \$50,000 plus \$2.5 for each additional \$1,000
\$100,001 - \$500,000	\$385 for first \$100,000 plus \$2.25 for each additional \$1,000
\$500,001 - \$1,000,000	\$1,285 for first \$500,000 plus \$2 for each additional \$1,000
\$1,000,001 and up	\$2,281 for first \$1,000,000 plus \$2 for additional each \$1,000

INTERNATIONAL CODE COUNCIL

The majority of cities in the surrounding area have adopted the International Code Council Building Valuation Data (ICCBVD) Table as a standard base for charging applicable permit fees. From this base, a modifier/multiplier is applied as an adjustment +/- for each municipality and that percentage varies somewhat between the cities. The ICCBVD is an international recognized cost valuation table for the average construction cost per square foot which can be used for determining permit fees for a jurisdiction. The table specifies the average costs to include foundation work, structural and nonstructural building components, electrical, plumbing, mechanical, and interior finish material. The “modifier” is used to take into account regional cost differences. However, Staff does not believe a “modifier” is necessarily applicable in this area. The net difference between the ICCBVD and the current process will likely be a net increase in fees in the range of 12%-15%.

ATTACHMENTS:

- City of Prairie Village Building Permit/Plan Review Fees
- International Code Council Building Valuation Data Table

PREPARED BY

Wes Jordan
Assistant City Administrator
Date: September 28, 2016

City of Prairie Village, KS
 Building Permit/Plan Review Fees
 Effective ~~January 1, 2009~~ **Effective November 30th 2016**

Residential (to include additions/alterations) and Commercial:

\$1-\$500

~~\$25.00~~ **\$31.25**

\$501-\$2,000

~~\$25~~ **\$31.25** for first \$500, plus ~~\$1.50~~ **\$1.88** for each additional \$100 or fraction thereof.

\$2,001-\$25,000

~~\$47.50~~ **\$59.38** for first \$2,000 plus ~~\$5.00~~ **\$6.25** for each additional \$1,000 or fraction thereof.

\$25,001-\$50,000

~~\$162.50~~ **\$203.13** for first \$25,000 plus ~~\$3.50~~ **\$4.38** for each additional \$1,000 or fraction thereof.

\$50,001-\$100,000

~~\$250~~ **\$312.50** for first \$50,000 plus ~~\$2.50~~ **\$3.13** for each additional \$1,000 or fraction thereof.

\$100,001-\$500,000

~~\$385~~ **\$481.25** for first \$100,000 plus ~~\$2.25~~ **\$2.81** for each additional \$1,000 or fraction thereof.

\$500,001-\$1,000,000

~~\$1,285~~ **\$1,606.25** for first \$500,000 plus ~~\$2.00~~ **\$2.50** for each additional \$1,000 or fraction thereof.

\$1,000,000 and up

~~\$2,281~~ **\$2,851.25** for first \$1,000,000 plus ~~\$2.00~~ **\$2.50** for each additional \$1,000 or fraction thereof.

FIXED FEES:

Signs – Based on valuation table

Residential decks \$40.00
fee

Retaining wall \$45.00

New Footing/Foundation \$55.00

Foundation Repair \$30.00

Lawn Irrigation \$30.00

Residential Re-roof \$45.00

1 & 2 Family

Commercial Re-roof – Based on valuation table

Pool Demolition \$50.00

Interior Demo Residential \$50.00

Demolition/Residential ~~\$50.00~~ **\$100.00**

Demolition/Commercial ~~\$100.00~~ **\$200.00**

Commercial Tennis Bubble \$50.00

Shed \$25.00

Fence \$45.00

Spas/Hot tub \$40.00

Temporary CO \$100.00

Certificate of Occupancy \$20.00

PLAN REVIEW:

Residential

~~10%~~ **15%** of total building permit

\$25.00 minimum

Commercial

65% of total building permit fee

\$30.00 minimum

MISCELLANEOUS FEES:

Moving Structure \$100.00

plus City costs, if applicable

After hours inspection fee

\$50.00 per hour, minimum 2 hours

Re-inspection fee ~~\$50~~ **\$75** each

Commercial Building Permit addendum plan review fee \$200.00 each (Proposed new fee)

Residential Building Permit addendum plan review fee \$35.00 each (Proposed new fee)

International Code Council Building Valuation Table

Group (2015 International Building Code)	IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
A-1 Assembly, theaters, with stage	226.92	219.10	213.80	205.04	192.95	187.36	198.56	176.18	169.73
A-1 Assembly, theaters, without stage	207.97	200.15	194.85	186.09	174.15	168.55	179.61	157.38	150.92
A-2 Assembly, nightclubs	177.89	172.85	168.07	161.49	151.98	147.78	155.80	137.68	132.99
A-2 Assembly, restaurants, bars, banquet halls	176.89	171.85	166.07	160.49	149.98	146.78	154.80	135.68	131.99
A-3 Assembly, churches	209.94	202.13	196.83	188.07	176.32	170.72	181.59	159.54	153.09
A-3 Assembly, general, community halls, libraries, museums	175.12	167.31	161.01	153.25	140.50	135.90	146.77	123.72	118.27
A-4 Assembly, arenas	206.97	199.15	192.85	185.09	172.15	167.55	178.61	155.38	149.92
B Business	181.12	174.43	168.67	160.26	146.18	140.70	153.97	128.34	122.72
E Educational	192.29	185.47	180.15	172.12	160.72	152.55	166.18	140.46	136.18
F-1 Factory and industrial, moderate hazard	108.98	103.99	97.83	94.17	84.37	80.56	90.16	69.50	65.44
F-2 Factory and industrial, low hazard	107.98	102.99	97.83	93.17	84.37	79.56	89.16	69.50	64.44
H-1 High Hazard, explosives	102.01	97.02	91.86	87.20	78.60	73.79	83.19	63.73	N.P.
H234 High Hazard	102.01	97.02	91.86	87.20	78.60	73.79	83.19	63.73	58.67
H-5 HPM	181.12	174.43	168.67	160.26	146.18	140.70	153.97	128.34	122.72
I-1 Institutional, supervised environment	180.72	174.14	169.28	161.12	149.06	145.04	161.12	133.69	129.43
I-2 Institutional, hospitals	304.80	298.11	292.36	283.95	268.92	N.P.	277.65	251.09	N.P.
I-2 Institutional, nursing homes	211.20	204.51	198.75	190.34	177.26	N.P.	184.05	159.42	N.P.
I-3 Institutional, restrained	206.08	199.38	193.63	185.22	172.62	166.14	178.93	154.78	147.16
I-4 Institutional, day care facilities	180.72	174.14	169.28	161.12	149.06	145.04	161.12	133.69	129.43
M Mercantile	132.61	127.57	121.79	116.21	106.35	103.15	110.52	92.05	88.36
R-1 Residential, hotels	182.28	175.70	170.83	162.68	150.87	146.84	162.68	135.49	131.23
R-2 Residential, multiple family	152.86	146.27	141.41	133.25	122.04	118.01	133.25	106.66	102.41
R-3 Residential, one- and two-family	143.93	139.97	136.51	132.83	127.95	124.61	130.57	119.73	112.65
R-4 Residential, care/assisted living facilities	180.72	174.14	169.28	161.12	149.06	145.04	161.12	133.69	129.43
S-1 Storage, moderate hazard	101.01	96.02	89.86	86.20	76.60	72.79	82.19	61.73	57.67
S-2 Storage, low hazard	100.01	95.02	89.86	85.20	76.60	71.79	81.19	61.73	56.67
U Utility, miscellaneous	77.82	73.48	69.04	65.52	59.23	55.31	62.58	46.83	44.63

• Private garages use utility, miscellaneous

• Remodel work (R-3) deduct 50% from BVD

• Finished basements (R-3) = deduct 50% from BVD

• For shell only buildings deduct 40% from BVD

• For tenant finishes deduct 25% from BVD

*NP – not permitted



Building Valuation Data – AUGUST 2016

The International Code Council is pleased to provide the following Building Valuation Data (BVD) for its members. The BVD will be updated at six-month intervals, with the next update in February 2017. ICC strongly recommends that all jurisdictions and other interested parties actively evaluate and assess the impact of this BVD table before utilizing it in their current code enforcement related activities.

The BVD table provides the “average” construction costs per square foot, which can be used in determining permit fees for a jurisdiction. Permit fee schedules are addressed in Section 109.2 of the 2015 *International Building Code* (IBC) whereas Section 109.3 addresses building permit valuations. The permit fees can be established by using the BVD table and a Permit Fee Multiplier, which is based on the total construction value within the jurisdiction for the past year. The Square Foot Construction Cost table presents factors that reflect relative value of one construction classification/occupancy group to another so that more expensive construction is assessed greater permit fees than less expensive construction.

ICC has developed this data to aid jurisdictions in determining permit fees. It is important to note that while this BVD table does determine an estimated value of a building (i.e., Gross Area x Square Foot Construction Cost), this data is only intended to assist jurisdictions in determining their permit fees. This data table is not intended to be used as an estimating guide because the data only reflects average costs and is not representative of specific construction.

This degree of precision is sufficient for the intended purpose, which is to help establish permit fees so as to fund code compliance activities. This BVD table provides jurisdictions with a simplified way to determine the estimated value of a building that does not rely on the permit applicant to determine the cost of construction. Therefore, the bidding process for a particular job and other associated factors do not affect the value of a building for determining the permit fee. Whether a specific project is bid at a cost above or below the computed value of construction does not affect the permit fee because the cost of related code enforcement activities is not directly affected by the bid process and results.

Building Valuation

The following building valuation data represents average valuations for most buildings. In conjunction with IBC Section 109.3, this data is offered as an aid for the building official to determine if the permit valuation is underestimated. Again it should be noted that, when using this data, these are “average” costs based on typical construction methods for each occupancy group and type of construction. The average costs include foundation work, structural and nonstructural

building components, electrical, plumbing, mechanical and interior finish material. The data is a national average and does not take into account any regional cost differences. As such, the use of Regional Cost Modifiers is subject to the authority having jurisdiction.

Permit Fee Multiplier

Determine the Permit Fee Multiplier:

1. Based on historical records, determine the total annual construction value which has occurred within the jurisdiction for the past year.
2. Determine the percentage (%) of the building department budget expected to be provided by building permit revenue.
- 3.

$$\text{Permit Fee Multiplier} = \frac{\text{Bldg. Dept. Budget x (\%)}}{\text{Total Annual Construction Value}}$$

Example

The building department operates on a \$300,000 budget, and it expects to cover 75 percent of that from building permit fees. The total annual construction value which occurred within the jurisdiction in the previous year is \$30,000,000.

$$\text{Permit Fee Multiplier} = \frac{\$300,000 \times 75\%}{\$30,000,000} = 0.0075$$

Permit Fee

The permit fee is determined using the building gross area, the Square Foot Construction Cost and the Permit Fee Multiplier.

$$\text{Permit Fee} = \text{Gross Area} \times \text{Square Foot Construction Cost} \times \text{Permit Fee Multiplier}$$

Example

Type of Construction: IIB
 Area: 1st story = 8,000 sq. ft.
 2nd story = 8,000 sq. ft.
 Height: 2 stories
 Permit Fee Multiplier = 0.0075
 Use Group: B

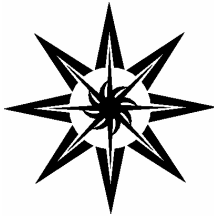
1. Gross area:
Business = 2 stories x 8,000 sq. ft. = 16,000 sq. ft.
2. Square Foot Construction Cost:
B/IIB = \$160.26/sq. ft. Permit Fee:
Business = 16,000 sq. ft. x \$160.26/sq. ft x 0.0075
= \$19,231

Important Points

- The BVD is not intended to apply to alterations or repairs to existing buildings. Because the scope of alterations or repairs to an existing building varies so greatly, the Square Foot Construction Costs table does not reflect accurate values for that purpose. However, the Square Foot Construction Costs table can be used to determine the cost of an addition that is basically a stand-alone building which happens to be attached to an existing building. In the case of such additions, the only alterations to the existing building would involve the attachment of the addition to the existing building and the openings between the addition and the existing building.
- For purposes of establishing the Permit Fee Multiplier, the estimated total annual construction value for a given time period (1 year) is the sum of each building's value (Gross Area x Square Foot Construction Cost) for that time period (e.g., 1 year).
- The Square Foot Construction Cost does not include the price of the land on which the building is built. The Square Foot Construction Cost takes into account everything from foundation work to the roof structure and coverings but does not include the price of the land. The cost of the land does not affect the cost of related code enforcement activities and is not included in the Square Foot Construction Cost.

Square Foot Construction Costs ^{a, b, c, d}

Group (2015 International Building Code)	IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
A-1 Assembly, theaters, with stage	226.92	219.10	213.80	205.04	192.95	187.36	198.56	176.18	169.73
A-1 Assembly, theaters, without stage	207.97	200.15	194.85	186.09	174.15	168.55	179.61	157.38	150.92
A-2 Assembly, nightclubs	177.49	172.34	167.98	161.18	151.95	147.76	155.52	137.58	132.93
A-2 Assembly, restaurants, bars, banquet halls	176.49	171.34	165.98	160.18	149.95	146.76	154.52	135.58	131.93
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E Educational	192.29	185.47	180.15	172.12	160.72	152.55	166.18	140.46	136.18
F-1 Factory and industrial, moderate hazard	108.53	103.54	97.56	93.81	84.17	80.36	89.86	70.57	66.08
F-2 Factory and industrial, low hazard	107.53	102.54	97.56	92.81	84.17	79.36	88.86	70.57	65.08
H-1 High Hazard, explosives	101.60	96.60	91.63	86.88	78.44	73.62	82.93	64.84	N.P.
H234 High Hazard	101.60	96.60	91.63	86.88	78.44	73.62	82.93	64.84	59.35
H-5 HPM	181.12	174.43	168.67	160.26	146.18	140.70	153.97	128.34	122.72
I-1 Institutional, supervised environment	180.72	174.14	169.28	161.12	149.06	145.04	161.12	133.69	129.43
I-2 Institutional, hospitals	304.80	298.11	292.36	283.95	268.92	N.P.	277.65	251.09	N.P.
I-2 Institutional, nursing homes	211.20	204.51	198.75	190.34	177.26	N.P.	184.05	159.42	N.P.
I-3 Institutional, restrained	206.08	199.38	193.63	185.22	172.62	166.14	178.93	154.78	147.16
I-4 Institutional, day care facilities	180.72	174.14	169.28	161.12	149.06	145.04	161.12	133.69	129.43
M Mercantile	132.23	127.09	121.73	115.92	106.18	102.99	110.26	91.82	88.16
R-1 Residential, hotels	182.28	175.70	170.83	162.68	150.87	146.84	162.68	135.49	131.23
R-2 Residential, multiple family	152.86	146.27	141.41	133.25	122.04	118.01	133.25	106.66	102.41
R-3 Residential, one- and two-family	143.93	139.97	136.51	132.83	127.95	124.61	130.57	119.73	112.65
R-4 Residential, care/assisted living facilities	180.72	174.14	169.28	161.12	149.06	145.04	161.12	133.69	129.43
S-1 Storage, moderate hazard	100.60	95.60	89.63	85.88	76.44	72.62	81.93	62.84	58.35
S-2 Storage, low hazard	99.60	94.60	89.63	84.88	76.44	71.62	80.93	62.84	57.35
U Utility, miscellaneous	77.82	73.48	69.04	65.52	59.23	55.31	62.58	46.83	44.63



PUBLIC WORKS DEPARTMENT

Council Committee Date: October 3, 2016

Council Meeting Date: October 3, 2016

CONSIDER PROJECT DELN0001- DELMAR AND FONTANA LOW WATER CROSSING REMOVAL AND DRAINAGE PROJECT- SMAC PRELIMINARY ENGINEERING STUDY CONTRACT WITH WATER RESOURCES SOLUTIONS, LLC

RECOMMENDATION

Move to approve the preliminary engineering study contract with Water Resources Solutions, LLC in the amount of \$26,540 for Project DELN0001 for the Delmar and Fontana low water crossing removal and drainage project.

BACKGROUND

On September 6, 2016 council directed public works to move forward with the Delmar and Fontana low water crossing and drainage project. Significant construction funding is potentially available from the County's SMAC program. Applications for 2018 and later funding are due by December 31, 2016. It is proposed to use Don Baker with Water Resources Solutions, LLC to help prepare a Preliminary Engineering Study(PES) for the SMAC funding application. Don Baker helped the City do the peer review of the work Larkin had recently performed for the City and he also was one of the final three firms selected for interviews when we last selected our Street and Drainage design engineering consultant. This contract is only for the PES and they will not necessarily be utilized for full design if the City decides to move forward with a construction project. Mr. Baker is already familiar with the project after performing the peer review and he has prepared in excess of 35 PES for the SMAC program so he is very familiar with their processes.

We anticipate having two resident meetings related to the project this Fall as part of the PES process. This project will remove the two low water crossings and will lower the 100 year water surface elevation as much as possible to eliminate home flooding.

FUNDING SOURCE

Funds are available in the CIP under Project DELN0001 for this study.

RELATED TO VILLAGE VISION

TR3a. *Ensure that infrastructure improvements meet the needs of all transportation users.*

ATTACHMENTS

1. Design Agreement with Water Resources Solutions, LLC

PREPARED BY

Keith Bredehoeft, Public Works Director

September 29, 2016

**SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of September 13, 2016 (“Effective Date”) between

City of Prairie Village, Kansas (“Owner”)

and Water Resources Solutions, LLC (“Engineer”)

Engineer agrees to provide the services described below to Owner for Delmar & Fontana PES (“Project”).

Description of Engineer’s Services: See attached scope of services.

Owner and Engineer further agree as follows:

1.01 Basic Agreement

A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement, and Owner shall pay Engineer for such Services as set forth in Paragraph 9.01.

2.01 Payment Procedures

A. *Preparation of Invoices.* Engineer will prepare a monthly invoice in accordance with Engineer’s standard invoicing practices and submit the invoice to Owner.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer’s invoice, the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, without liability, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

3.01 Additional Services

A. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above.

B. Owner shall pay Engineer for such additional services as follows: For additional services of Engineer’s employees engaged directly on the Project an amount equal to the cumulative hours charged to the Project by each class of Engineer’s employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer’s consultants’ charges, if any.

4.01 Termination

A. The obligation to provide further services under this Agreement may be terminated:

1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement’s terms through no fault of the terminating party.
 - b. By Engineer:
 - 1) upon seven days written notice if Engineer believes that Engineer is being requested by Owner to furnish or perform services contrary to Engineer’s responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer’s services for the Project

are delayed or suspended for more than 90 days for reasons beyond Engineer's control.

3) Engineer shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under paragraph 4.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon the receipt of notice by Engineer.

B. The terminating party under paragraphs 4.01.A.1 or 4.01.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Project site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

5.01 Controlling Law

A. This Agreement is to be governed by the law of the state in which the Project is located.

6.01 Successors, Assigns, and Beneficiaries

A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by paragraph 6.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or 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 this Agreement.

7.01 General Considerations

A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Engineer and its consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.

B. Engineer shall not at any time supervise, direct, or have control over any contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.

C. Engineer 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 contract between Owner and such contractor.

D. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any of construction work; or for any decision made on interpretations or clarifications of the construction contract given by Owner without consultation and advice of Engineer.

E. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2002 Edition).

F. All design documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed.

G. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages

arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.

H. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (i) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

8.01 Total Agreement

A. This Agreement (consisting of pages 1 to 4 inclusive together with any expressly incorporated appendix), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

9.01 Payment (Lump Sum Basis)

A. Using the procedures set forth in paragraph 2.01, Owner shall pay Engineer as follows:

1. A Lump Sum amount of \$ 26,540.00

B. Not Used

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER: Somerset Lake Association

ENGINEER: Water Resources Solutions, LLC

By: _____

By: Donald W. Baker

Donald W. Baker, P.E. D.WRE, CPESC

Title: _____

Title: Owner

Date Signed: _____

Date Signed: September 13, 2016

License or Certificate No. and State KS 14258

Address for giving notices:

Address for giving notices:
Water Resources Solutions, LLC
8800 Linden Drive
Prairie Village, Kansas 66207

Delmar & Fontana Low-Water Crossing Preliminary Engineering Study

Scope of Services Prairie Village, Kansas

Project Understanding

This scope of services outlines the tasks that will be completed by the Engineer as part of the Delmar & Fontana Low-Water Crossing Preliminary Engineering Study (PES). The PES will result in a report that can be submitted to Johnson County SMAC as required to initiate a funding request for SMAC participation in a stormwater project with the City of Prairie Village.

Upon receiving the notice-to-proceed, the Engineer will provide the services identified in this Scope of Services. Other requested services not described in this scope of services will be negotiated in an amendment to this contract.

1.0 Background Data Collection

The work performed under this task will result in obtaining information that will be used for the PES.

- 1.1 The Engineer will collect from the City available background data including but not limited to design calculations, design plans, surveys, soils data, electronic mapping files, and hydrologic & hydraulic studies not already in possession of the Engineer. In addition, topographic survey shots will be collected to update low-opening elevations, house corners and stormwater structure inverts.
- 1.2 The Engineer will review and analyze the collected background data to assist in developing alternatives and writing the report.

2.0 Public Meetings

The Engineer will facilitate public meetings for the project as outlined in the following tasks.

- 2.1 The Engineer will facilitate a public meeting with property owners and project stakeholders. It is assumed that the City will invite the property owners and stakeholders and provide the meeting space. The intent of the meeting is to discuss the updated project approach and to gather information regarding property owner and stakeholder concerns, observations and ideas. The Engineer will prepare a summary of this meeting.

2.2 The Engineer will facilitate a second public meeting once the alternatives for the project have been evaluated. The meeting will be used to communicate the preferred option to the property owners and stakeholders. As summary of the meeting will be prepared and provided to the City electronically.

3.0 Preliminary Engineering Study

The Engineer will complete a preliminary engineering study to evaluate alternatives to address the Delmar and Fontana low-water crossing flooding. The study will culminate in a report that can be submitted to Johnson County as part of a project funding request.

3.1 The Engineer will create a new hydraulic model using Johnson County AIMS lidar data and referenced information from the Johnson County flood model previously used to evaluate the previous project at this location. This model will be used to evaluate the alternative designs for the project.

3.2 The Engineer will complete an alternatives analysis to develop up to four alternatives that address the flooding issues for the project and that will meet the Johnson County SMAC criteria. One alternative will be a buyout alternative as required by Johnson County. As second alternative will include culverts crossings at Delmar & Fontana, along with a new culvert across Somerset to the old Mission Valley Middle School property. Up to two additional alternatives will be studied based on communications with Prairie Village Public Works. Opinions of probable construction cost will be completed for each of the alternatives,

3.3 The Engineer will complete a Preliminary Engineering Study Report that will contain the following main topics per Johnson County requirements:

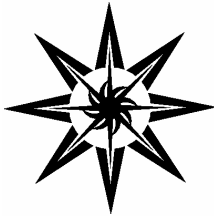
- Executive Summary
- General to include Background, Existing Conditions, Standards, Utility Contacts and Permits
- Summary of Findings to include Project Limits, Hydrology and Hydraulics, Field Investigations and Description of Alternatives. Description of alternatives will include Proposed Improvements, Utilities, Rights-of-Way and Easements, Effects on Other Cities, and Opinions of Probable Costs
- Recommendations to include Evaluation of Alternatives and Recommended Alternative
- Flood Problem Rating Forms

The Engineer will provide three hardcopies and one electronic copy of the report to the City for their use and submission to Johnson County SMAC.

Additional Services

Services not covered under this scope of services will be considered Additional Services and will be negotiated as an amendment to this scope of services and contract.

Delmar & Fontana Preliminary Engineering Study												
09/13/16	Project Personnel	Principal Engineer	QA/QC Engineer	Civil Engineer	Intern Engineer	Survey Crew	Administrative	Total Hours	Estimated Labor	Total Expenses	Total Subconsultant Costs	Total Cost
	Project Billing Rate	\$200	\$155	\$120	\$75	\$125	\$65					
	Base Bid											
	Task Group 1 - Background Data Collection											
1.1	Data Collection	2		2	2	8	2	16	\$1,920	\$0	\$0	\$1,920
1.2	Data Review	2		4	2			8	\$1,030	\$0	\$0	\$1,030
	Task Group 1 Subtotals	4	0	6	4	8	2	24	\$2,950	\$0	\$0	\$2,950
	Task Group 2 - Public Meetings											
2.1	Public Meeting 1	4		1	8			13	\$1,520	\$17	\$0	\$1,537
2.2	Public Meeting 2	4		1	8			13	\$1,520	\$17	\$0	\$1,537
	Task Group 2 Subtotals	8	0	2	16	0	0	26	\$3,040	\$33	\$0	\$3,073
	Preliminary Engineering Study											
3.1	Hydraulic Model	4		16	2			22	\$2,870	\$0	\$0	\$2,870
3.2	Alternatives Analysis	12	16	32	16			76	\$9,920	\$17	\$0	\$9,937
3.3	Preliminary Engineering Study Report	8	8	32	8		4	60	\$7,540	\$171	\$0	\$7,711
	Task Group 3 Subtotals	24	24	80	26	0	4	158	\$20,330	\$187	\$0	\$20,517
	Totals	36	24	88	46	8	6	208	\$26,320	\$220	\$0	\$26,540



PUBLIC WORKS DEPARTMENT

Council Meeting Date: October 3, 2016

Consider Bid Award for 2016 Tree Trimming Program

RECOMMENDATION

Staff recommends the City Council approve the award of a bid to Kansas City Tree Company for \$114,450 for trimming trees in City right-of-way.

BACKGROUND

This bid is the annual tree trimming of trees in the City right-of-way. There are 3 areas bid for trimming this year, a map is attached that delineate those areas. Pricing for Park tree trimming was also part of the bid. The Parks to be trimmed this year will be: Bennett Park, Brenizer Park, Harmon-Santa Fe Parks, City Hall Campus, McCrum Park, Prairie Park, Wetner Park and Windsor Park. The remaining Parks will be bid in next year's trimming program. All the trees will be trimmed to remove any dead wood larger than 2-inches over the right-of-way, remove limbs interfering with sight line to traffic signals and street signs, and with a cone under the street lights. .

Kansas City Tree has completed this contract for the City in previous years with good results.

Four bids were received and opened on September 16, 2016, by the City Clerk. The bid tab is:

Area 41, Area 42 & Area 43	
Bidder	Total
KC Tree	\$ 64,500.00
Arbor Masters	\$108,534.00
VanBooven	\$114,975.00
Custom Tree	\$198,585.00

Parks	
Bidder	Total
KC Tree	\$49,950.00
Arbor Masters	\$57,045.00
Custom Tree	\$139,968.00
VanBooven	No Bid

FUNDING SOURCE

Funds are available and were budgeted for tree trimming in the 2016 Public Works Operating Budget.

RELATION TO VILLAGE VISION

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

CFS2: Preserve and protect natural areas

ATTACHMENTS

Construction Agreement for Tree Trimming
Tree Trimming Area Map

PREPARED BY

Keith Bredehoeft, Director of Public Works

September 22, 2016

CONSTRUCTION AGREEMENT

for

2016 TREE TRIMMING

BETWEEN

CITY OF PRAIRIE VILLAGE, KS

AND

KANSAS CITY TREE CARE LLC

**CONSTRUCTION CONTRACT
FOR
2016 TREE TRIMMING**

**BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
KANSAS CITY TREE CARE LLC**

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 KC Tree Care LLC, hereinafter termed in this agreement, "**Contractor**", for the construction and completion of Project 2016 Tree Trimming, (the "**Project**") designated, described and required by the Project Manual and Bid Proposal, to wit:

WITNESSETH:

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

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

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

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

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

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

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

1.1 Following words are given these definitions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. ENTIRE AGREEMENT:

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

3. INTENT AND INTERPRETATION

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

- 3.2 All time limits stated in the Contract Documents are of the essence of the Contract.
- 3.3 The Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.
- 3.4 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.
- 3.5 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents and shall give written notice to the Field Superintendent of any inconsistency, ambiguity, error or omission, which the Contractor may discover, or should have discovered, with respect to these documents before proceeding with the affected Work. The review, issuance, or the express or implied approval by the City or the Field Superintendent of the Contract Documents shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such review be evidence of the Contractor's compliance with this Contract.
- 3.6 The City has prepared or caused to have prepared the Project Manual. **HOWEVER, THE CITY MAKES NO REPRESENTATION OR WARRANTY AS TO ACCURACY OR FITNESS FOR PARTICULAR PURPOSE INTENDED OR ANY OTHER WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the City concerning such documents as no such representation or warranties have been made or are hereby made.
- 3.7 As between numbers and scaled measurements in the Project Manual, the numbers shall govern; as between larger scale and smaller scale drawings, (e.g. 10:1 is larger than 100:1) the larger scale shall govern.
- 3.8 The organization of the Project Manual into divisions, sections, paragraphs, articles (or other categories), shall not control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.
- 3.9 The Contract Documents supersedes all previous agreements and understandings between the parties, and renders all previous agreements and understandings void relative to these Contract Documents.
- 3.10 Should anything be omitted from the Project Manual, which is necessary to a clear understanding of the Work, or should it appear various instructions are in conflict, the Contractor shall secure written instructions from the Field Superintendent before proceeding with the construction affected by such omissions or discrepancies.
- 3.11 It is understood and agreed that the Work shall be performed and completed according to the true spirit, meaning, and intent of the Contract Documents.

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

4. CONTRACT COST

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

5. WORK SUPERINTENDENT

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

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

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

6. FIELD SUPERINTENDENT

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

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

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

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

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

6.6 The Field Superintendent will review the Contractor's Applications for Payment and will certify to the City for payment to the Contractor those amounts then due the Contractor as

provided in this Contract. The Field Superintendent's recommendation of any payment requested in an Application for Payment will constitute a representation by Field Superintendent to City, based on Field Superintendent's on-site observations of the Work in progress as an experienced and qualified design professional and on Field Superintendent's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of the Field Superintendent's knowledge, information and belief, the quality of the Work is in accordance with the Project Manual (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Project Manual, to a final determination of quantities and classifications for Unit Price Work if such is called for herein, and to any other qualifications stated in the recommendation); and that Contractor is entitled to payment of the amount recommended. However, by recommending any such payment Field Superintendent will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to Field Superintendent in the Project Manual or that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by the City or the City to withhold payment to Contractor.

- 6.7 The Field Superintendent may refuse to recommend the whole or any part of any payment if, in Field Superintendent's opinion, it would be incorrect to make such representations to City. Field Superintendent may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in the Field Superintendent's opinion to protect the City from loss because:
- The Work is defective, or completed Work has been damaged requiring correction or replacement,
 - The Contract Price has been reduced by Written Amendment or Change Order,
 - The City has been required to correct Defective Work or complete Work in accordance with the Project Manual.
- 6.8 The City may refuse to make payment of the full amount recommended by the Field Superintendent because claims have been made against City on account of Contractor's performance or furnishing of the Work or liens have been filed in connection with the Work or there are other items entitling City to a set-off against the amount recommended, but City must give Contractor written notice (with a copy to Field Superintendent) stating the reasons for such action.
- 6.9 The Field Superintendent will have the authority to reject Work which is defective or does not conform to the requirements of this Contract. If the Field Superintendent deems it necessary or advisable, the Field Superintendent shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.
- 6.10 The Field Superintendent will review, or take other appropriate action as necessary, concerning the Contractor's submittals, including Shop Drawings, Product Data and Samples. Such review, or other action, shall be for the sole purpose of determining general conformance with the design concept and information given through the Project Manual.

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

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

7. WORK SCHEDULE:

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

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

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

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

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

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

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

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

7.9 No work shall be undertaken on Saturdays, Sundays and Holidays (Christmas, New Years, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day and Thanksgiving) without the express written approval of the City Field Superintendent. If it is necessary to perform proper care, maintenance, or protection of work already completed or of equipment used, or in the case of an emergency verbal permission may be obtained through the Field Superintendent.

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

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

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

8. DELAYS AND EXTENSIONS OF TIME

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

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

9. ADVERSE WEATHER:

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

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

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

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

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

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

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

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

10. LIQUIDATED DAMAGES

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

11. PAYMENT PROCEDURE

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

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

fashion;

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

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

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

12. COMPLETION AND FINAL PAYMENT

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

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

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

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

13. CLAIMS BY THE CONTRACTOR

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

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

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

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

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

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

much as 10% of the total Contract may be required to be performed beyond the boundaries of the designated work areas

14. CHANGES IN THE WORK

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

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

15. INSURANCE AND BONDS.

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

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

15.3 Minimum Requirements Commercial General Liability Policy Limits -

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

Policy MUST include the following conditions:

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

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

Limits (Same as Commercial General Liability) -

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

Policy MUST include the following condition:

NAME CITY OF PRAIRIE VILLAGE AS "ADDITIONAL INSURED"

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

Limits -

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

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

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

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

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

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

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

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

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

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

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

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

16. INDEMNITY

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

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

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

17. SUCCESSORS AND ASSIGNS

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

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

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

18. NON-DISCRIMINATION LAWS

18.1 The Contractor agrees that:

- A. The Contractor shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of Work under the present contract because of race, religion, color, sex, disability, national origin, ancestry or age;
- B. In all solicitations or advertisements for employees, the Contractor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
- C. If the Contractor fails to comply with the manner in which the Contractor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency;
- D. If the Contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency; and
- E. The Contractor shall include the provisions of Subsections A through D in every subcontract or purchase order so that such provisions will be binding upon such Subcontractor or vendor.
- F. The provisions of this Section shall not apply to a contract entered into by a Contractor: (1) Who employs fewer than four employees during the term of such contract; or (2) Whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.

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

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

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

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

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

20. RELATIONS WITH OTHER CONTRACTORS:

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

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

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

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

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

21. RIGHT OF CITY TO TERMINATE

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

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

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

22. MISCELLANEOUS:

22.1 The Contractor warrants to the City that all labor furnished to progress the Work under the Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with the Project Manual. All Work not conforming to these requirements may be considered defective.

22.2 The Contractor shall obtain and pay for all permits, fees and licenses necessary or ordinary for the Work. The Contractor shall comply with all lawful requirements, including federal and state laws, City and County laws and ordinances and building codes, applicable to the Work and shall give and maintain copies of all notices required by applicable law pertaining to the Work.

22.3 Provision for Emergencies. Whenever, in the opinion of the City, the Contractor has not taken sufficient precaution for the safety of the public or the protection of the Work to be constructed under this Contract, or of adjacent structures or property which may be injured by process of construction, and whenever, in the opinion of the City, an emergency shall arise and immediate action shall be considered necessary in order to protect property interests and to avoid personal injury and/or death, then the City, with or without notice to the Contractor, shall provide suitable protection to the said interests by causing such Work to be done and materials to be furnished at places as the City may consider necessary and adequate. The cost and expense of such Work and material so furnished shall be borne by the Contractor and, if the same shall not be paid on presentation of the bills therefore, such costs shall be deducted from any amounts due or to become due the Contractor. The performance of such emergency Work shall in no way relieve the Contractor of responsibility for damages which may occur during or after such precaution has been duly taken.

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

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

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

CITY OF PRAIRIE VILLAGE

KC TREE CARE LLC

(typed company name)

By: _____
(signed)

By: _____
(signed)

Laura Wassmer _____

Zach Johnson _____
(typed name)

Mayor _____

President _____
(typed title)

City of Prairie Village _____

KC TREE CARE LLC _____
(typed company name)

7700 Mission Road _____

5217 Walmer Street _____
(typed address)

Prairie Village, Kansas 66208 _____

Mission, KS 66202 _____
(typed city, state, zip)

(913) 894-4767 _____
(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.)

City of Prairie Village, Kansas

PROJECT MANUAL

For

2016 TREE TRIMMING

City of Prairie Village
Department of Public Works
3535 Somerset Drive
Prairie Village, Kansas
publicworks@pykansas.com
913-385-4640

GENERAL CONSTRUCTION PROVISIONS

1. DEFINITIONS:

1.1. Following words are given these definitions:

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

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

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

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

CONCRETE shall mean Portland cement concrete.

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

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

CONTRACT TIME shall be the number of calendar days stated in the Contract Documents for the completion of the work or shall be a date certain 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 City Public Works Field Superintendent that orders minor changes in the work, but which does not involve a change in the contract price or contract time.

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

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

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

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

PAVEMENT shall be a rigid or flexible type riding surface placed upon a previously prepared sub-grade or base.

PLANS shall mean and include all drawings which may have been prepared by or for the City as of 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.

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

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.

STREET shall mean the whole area of any roadway within the right-of-way limits.

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.

SUB-GRADE shall be that portion of the construction area which has been prepared, as specified, and upon which a layer of specified material, base, sub-base course, pavement or other improvement is to be placed

TEMPORARY CONSTRUCTION EASEMENT shall mean the land provided by the City for temporary use by the Contractor during the construction of the work.

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

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

1.2. Whenever any word or expression defined herein, or pronoun used instead, occurs in these Contract Documents; it shall have and is mutually understood to have the meaning commonly given. Work described in words, which so applied have a well-known technical or trade meaning shall be held to refer to such, recognized standards.

1.3. Whenever in these Contract Documents the words "as ordered," "as directed", "as required", "as permitted", "as allowed", or words or phrases of like import are used, it is understood that the order, direction, requirement, permission or allowance of the City Public Works Field Superintendent is intended.

1.4. Whenever any statement is made in the Contract Documents containing the expression "it is understood and agreed", or an expression of like import, such expression means the mutual understanding and agreement of the parties hereto

1.5. The words "approved", "reasonable", "suitable", "acceptable", "properly", "satisfactorily", or words of like effect in import, unless otherwise particularly specified herein, shall mean approved, reasonable, suitable, acceptable, proper or satisfactory in the judgment of the City Public Works Field Superintendent.

1.6. When a word, term or phrase is used in the Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and, third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

1.7. All terms used herein shall have the meanings ascribed to them herein unless otherwise specified.

2. ABBREVIATIONS

2.1. Wherever in this Project Manual the following abbreviations are used, they shall be understood to mean as follows. The serial designation of each reference shall be the latest year of adoption or revision, unless otherwise specified. See the plan sheet for the material abbreviation's legend.

AASHTO	-	American Association of State Highway & Transportation Officials
ABA	-	American Arborist Association
ACI	-	American Concrete Institute

AGC	-	Associated General Contractors of America
AIA	-	American Institute of Architects
AISC	-	American Institute of Steel Construction
ANLA	-	American Nursery and Landscape Association
ANSI	-	American National Standards Institute
APWA	-	Kansas City Metropolitan Chapter of the American Public Works Association
ASCE	-	American Society of Civil Engineers
ASLA	-	American Society of Landscape Architects
ASME	-	American Society of Mechanical Engineers
ASTM	-	American Society for Testing Materials
ATSSA	-	American Traffic Safety Services Association
AWPA	-	American Wood Preservers' Association
AWS	-	American Welding Society
AWWA	-	American Water Works Association
CARS	-	County Assistance Road System
CRSI	-	Concrete Reinforcing Steel Institute
FHWA	-	Federal Highway Administration - Department of Transportation
ISSA	-	International Slurry Seal Association
ITE	-	Institute of Traffic Engineers
KCMMB	-	Kansas City Metropolitan Materials Board
KDOT	-	Kansas Department of Transportation
MCIB	-	Mid-West Concrete Industry Board, Inc.
MUTCD	-	Manual on Uniform Traffic Control Devices
NEC	-	National Electrical Code, National Fire Protection Association
NEMA	-	National Electrical Manufacturers Association
NRMCA	-	National Ready Mixed Concrete Association

3. Standard Detailed Specifications

3.1. The first level of reference for standard detailed specifications shall be those promulgated by the City of Prairie Village, KS, Public Works Department.

3.2. The second level of reference will be the current edition of the standard detailed specifications of the American Public Works Association (APWA) Kansas City Metro Chapter.

3.3. The third level of reference will be the latest edition of the Kansas Department of Transportation “Standard Specifications for Road and Bridge Construction”.

3.4. For traffic specifications, the latest edition of the Manual On Uniform Traffic Control Devices as published the Federal Highway Administration.

3.5. All reference material shall be the latest edition for this project as though fully set forth herein, except as modified or superseded by these construction specifications.

4. Responsibility Of Contractor

- 4.1. The Contractor shall furnish all transportation, tools, equipment, machinery, and plant, and all suitable appliances, requisite for the execution of the Project Manual and shall be solely answerable for the same and for the safe, proper, and lawful construction, maintenance, and use thereof including responsibility for hazardous materials.
- 4.2. The Contractor will use equipment and tools suitable for the work. All equipment and tools will be in near-original working condition.
- 4.3. The Contractor shall cover and protect his/her/her Work from damage and all injury to the same from any source.
- 4.4. The Contractor shall be solely answerable for all damage to the City or the property of the City, to other contractors or other employees of the City, to the neighboring premises, to any person or to any private or personal property, due to improper, illegal, or negligent conduct of Contractor or his/her subcontractors, employees, or agents in and about said work, or in the execution of the work covered by this Contract, or any extra work undertaken as herein provided.
- 4.5. The Contractor shall be responsible to the City for defect in, or the improper use of, any scaffolding, shoring, apparatus, ways, works, machinery, or plant.
- 4.6. The Contractor shall notify all affected utilities of the work and coordinate with the utilities to avoid interruption of utility service and damage to utility lines and property. This notice requirement shall also apply as to the City/operator of any affected underground facility. Any project delay, damages or increase in construction costs dues to utility relocation delays shall be at the Contractor's risk.
- 4.7. The project site shall be kept clean, neat, and orderly as possible at all times. Stockpiling of debris and unsuitable materials beyond normal working demands shall not be allowed. Immediately after construction operations are complete, all equipment, debris and unsuitable materials shall be completely removed from the site in order to minimize the damage to finished work and inconvenience to the public and adjoining property owners. The work site shall be left "broom clean" at the end of each workday and in case of dispute the City may clean the site and charge the Contractor.
- 4.8. Precaution shall be taken to ensure that excessive dust does not become airborne during construction. The Contractor shall comply with all State and Federal regulations, which apply to this matter in the geographical area of the Work. When directed by the City Public Works Field Superintendent, the Contractor shall take appropriate dust control measures satisfactory to the City Public Works Field Superintendent.
- 4.9. The Contractor shall not allow the site of the work or neighboring properties to become littered with trash and waste material, but shall maintain the same in a neat and orderly condition on a daily basis throughout the construction period. The City, or the City Public Works Field Superintendent on the City's behalf, shall have the right to determine what is or is not trash or waste material.

4.10. On or before the completion of the work the Contractor shall, without charge therefore, carefully clean out all pits, pipes, chambers, or conduits, and shall tear down and remove all temporary structures built by Contractor, and shall remove all rubbish of every kind from the tracts or grounds which it has occupied and shall leave them in first-class condition. Any trash receptacles on the site shall be covered.

4.11. The Contractor shall take whatever steps necessary to provide access for the City and the City Public Works Field Superintendent to the Work at all times from commencement of the Work through final completion.

4.12. The Contractor alone shall be responsible for the safety, adequacy and efficiency of its plant, equipment, and methods, and for the means, methods, techniques, sequences and procedures of construction.

4.13. The review of the City Public Works Field Superintendent of any plan or method of work proposed by the Contractor shall not relieve the Contractor of any responsibility therefore, and such review shall not be considered as an assumption by the City, City Public Works Field Superintendent, or any officer, agent, or employee thereof, of any risk or liability.

4.14. The Contractor is admonished that the crews will be properly attired, refrain from abusive language, refrain from improper behavior, and be aware that they are representing the City.

4.15. All operations of the Contractor shall be conducted within the right-of-way of the roadway or established easements and the limits of the earthwork and grading, as shown on the plans. While working under this contract, no agreement shall be made between Contractor and resident, as it pertains to any additional work on private property not paid for by the City.

5. Safety Rules

5.1. The Contractor shall be responsible for enforcing safety rules to assure protection of the employees and property of the City, to assure uninterrupted production and to assure safe working conditions for the Contractor and Subcontractors and their employees and to assure the safety of the general public.

5.2. In addition to any other rights the City might exercise, the Contractor and/or and Subcontractor failing to follow safety rules shall be subject to eviction from the job site and may be refused reentry.

5.3. The Contractor is expected to establish and enforce a comprehensive safety program on this project for the protection of its personnel, its Subcontractor's personnel. City's employees and all other, persons exposed to hazards resulting from the Contractor's operations. As a minimum requirement, the Contractor shall review and discuss the details of its program with the City at the first project meeting. The items to be covered shall include, but not necessarily be limited to:

- Personal protective equipment;
- First aid-personnel and facilities;
- Arrangements for medical attention;

- Sanitary facilities;
- Fire protection;
- Signs, signals, and barricades;
- Security regulations;
- Safety inspections;
- Designation of persons responsible for the program;
- Reporting forms and procedures;
- Material handling and storage;
- Lines of communication;
- Determination of potential hazards;
- Personnel safety meetings and education;
- Access to work areas;
- Subcontractors involvement in the program;
- Inspections and corrective action

5.4. The Contractor shall maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of life, the Work, supplies, materials and equipment on the project site not yet incorporated in the Work, City's property and adjacent property.

5.5. The Contractor shall comply with any and all instructions from the City regarding prevention of accidents, fires or for the elimination of any unsafe practice and shall observe all the applicable recommendations of the National Fire Protection Association Standard No. 241 (or other, later revision) "Standards For Safeguarding Building Construction and Demolition Operations".

5.6. The Contractor shall post danger signs warning against the hazards created by such features of construction as protruding nails, hod hoists, well holes, elevator hatchways, scaffolding, window openings, stairways, falling materials, open trenches, other excavations, obstructions and similar conditions. It shall designate a responsible member of its organization on the project whose duty shall be the prevention of accidents. The name and position of the person so designated shall be reported to the City by the Contractor.

5.7. In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, Contractor, without special instruction or authorization from City Public Works Field Superintendent or City, is obligated to act, at its discretion, to prevent threatened damage, injury, or loss.

5.8. The Contractor shall give prompt written notice of any significant changes in the Work or deviations from the Project Manual caused or necessitated by the emergency. A Change Order shall thereupon be issued covering the changes and deviations involved in such bona fide emergency. If Contractor believes that additional work done in an emergency, which arose from causes, beyond its control entitles it to an increase in the Contract Price or an extension of the Contract Time, the Contractor may make a claim therefore as provided herein.

5.9. The Contractor shall develop and maintain an up-to-date emergency action plan, taking into account fires, hazardous materials, explosions, adverse weather, floods, etc., which shall be in compliance with all

federal, state and local laws and ordinances. The procedures should outline specific action to be taken to protect life and to secure and protect the building materials, constructed work, buildings, equipment, and the position of cranes. The Contractor shall be fully responsible for the contents of and procedures outlined in said plan, including deficiencies therein, whether or not the City shall have reviewed said plan.

5.10. 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 thereof, such costs shall be deducted from any amounts due or to become due the Contractor.

5.11. 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.

6. Temporary Facilities/Utilities

6.1. Except where special permission has been granted by the City to use existing toilet facilities belonging to the City, the Contractor shall provide and maintain sanitary temporary toilet facilities located where directed by the City for accommodation of all persons engaged on the work. Temporary toilets shall be enclosed and weatherproof, kept in sanitary, and in an approved condition at all times. After use for same has ceased, the Contractor shall remove the temporary toilet facilities from the City's premises and disinfect and fill any vaults.

6.2. The Contractor shall provide and maintain any necessary temporary offices, storerooms, roadways, etc, as may be required for its work. Same shall be located and constructed in an approved manner acceptable to the City. Upon completion of work or when requested by the City, the Contractor shall remove same from City's premises and leave the area in a clean and orderly condition.

6.3. The Contractor shall provide and maintain temporary heat as required to protect all work and material against injury from dampness and/or cold to the satisfaction of the City.

6.4. Unless otherwise specified in the Project Manual, the Contractor shall provide, at his/her/his/hers cost and expense, temporary power, wiring, water and lights from City's provided source as may be required for its operations.

6.5. The operations of the Contractor shall be in full conformity with all of the rules and regulations of boards and bodies having jurisdiction with respect to sanitation. The Contractor shall supply safe and sufficient drinking water to all employees. The Contractor shall obey and enforce all sanitary regulations and orders, and shall take precautions against infectious disease and the spread of the same.

6.6. All water used in the course of the Work shall be hauled in or purchased from the local Water Company's distribution system at the Contractor's own cost and expense.

7. Right-Of-Way Limits

7.1. The Contractor shall confine construction operations to the construction limits and easements provided for and labeled in the Project Manual. Equipment or materials shall not be stored beyond these limits without the express written approval of the City of such property.

7.2. No person, firm or corporation shall park or store for any period of time any construction vehicles, equipment or materials while constructing or improving any street or while working on any public works project of any kind within the city, on behalf of the city, or any other governmental agency, or any utility, public or private, unless a permit has been previously issued by the Director of Public Works. The person, firm or corporation who parks, or allows the parking or storing of any construction vehicles, equipment, or materials without first obtaining said permit or who parks or stores or allows said parking or storage contrary to the terms and conditions of any permit issued by the city, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished as provided in the Prairie Village Municipal Code. Each day such violation is committed or permitted to continue constitutes a separate offense and shall be punishable as such hereunder

7.3. The contractor is required to obtain a staging permit prior to commencing work. All staging area locations are to be approved by the City prior to construction. A list of possible staging areas known to the City may be obtained from the Public Works Director. A staging permit is required.

7.4. The Director of Public Works is authorized to issue a permit to authorize and allow the temporary parking, staging and storage of construction vehicles, equipment, and materials on public streets of the City or on public property, church property or property zoned C-0 through C-2 and CPO through CP-2 during periods of construction of public works projects of the city, any other governmental agency, or public or private utility projects within the City of Prairie Village, Kansas.

7.5. No permit shall be allowed on property that is residential in nature, provided, however, that property zoned "residential" that is being used as a church, school, or country club may be used with the written permission of the City.

7.6. The only designated haul routes in Prairie Village are: Nall Avenue, 95th Street, Mission Road, and 75th Street. The Contractor must have written approval prior to using any other street or haul route.

8. Completed Work

8.1. Before final acceptance of the Work, all mechanical and electrical equipment and devices shall be tested and each part shall be in good condition and working order, or shall be placed in such condition and order at the expense of the Contractor.

8.2. All tests of such completed work required under this Contract shall be made in the presence of the City Public Works Field Superintendent or its authorized representatives.

8.3. All unsatisfactory, faulty or defective work and all work not conforming to the requirements to the Project Manual at the time of acceptance thereof, or of such inspections, tests, or approvals shall be considered defective. Prompt notice of all defects shall be given to the Contractor.

8.4. All defective work, whether or not in place, may be rejected pending correction thereof. Should Contractor not correct said Work, the City may do so at Contractor's expense.

8.5. The Contractor shall remove from the site of the work, without delay, all rejected and condemned material or structures of any kind brought to or incorporated in the work, or if the Contractor fails to make satisfactory progress in so doing, within forty-eight (48) hours, after the service of a written notice from the City Public Works Field Superintendent ordering such removal, the rejected material or structures may be removed by the City at the Contractor's expense.

8.6. At the City's discretion, payment for all related items of work may be withheld until all rejected and condemned materials or structures are satisfactorily removed.

9. Public Complaints

9.1. All complaints to the Contractor or any of the Subcontractors or to the City Public Works Field Superintendent are to be reported in writing immediately to the City Public Works Field Superintendent. This written report will include the name, address and telephone number of the complainant, a detailed description of the complaint, a detailed description of the actions taken, and by whom to resolve the complaint.

9.2. The Contractor shall endeavor, with the cooperation and concurrence of the City Public Works Field Superintendent and City, to communicate with abutting property owners and tenants affected by the work.

9.3. The City Public Works Field Superintendent/Contractor shall respond to citizen complaints, concerns or inquiries within 48 hours. City to be copied with results of City Public Works Field Superintendent/Contractor's response and resolution of same in a timely manner utilizing forms provided by the City.

10. Notification

10.1. As part of this project the Contractor will notify residents by door hanger, which will be provided by the City, of the upcoming work. The Contractor must distribute the door hangers no less than 48 hours and no more than 5 working days prior to doing **any** work on a street.

10.2. Delays created by failure of the Contractor to notify the City in the above-specified time will be counted against the contract time. The Contractor will not be entitled to an extension of the contract time based on notification delays.

10.3. In the event, work does not begin on the designated street within the designated time, the

Contractor will re-notify the residents with an explanation of why work did not begin as scheduled and a statement of when work will begin. Work may not begin until 48 hours after distributing the re-notifications.

11. Progress Meetings

11.1. Periodic Progress meetings shall be held at a predetermined location on the site. These meetings will be held once every two weeks or sooner as events dictate. These meetings will be organized by the City or City Public Works Field Superintendent. Participation in this meeting by representatives of the prime contractor and each of the subcontractors is required. These representatives must be empowered to make decisions affecting the prosecution of the work and shall be the City of the construction firm and/or his/her/her/her superintendent. The Project Manager will conduct the meetings and the discussion will include, but is not limited to the following:

- Proposed construction schedule for duration of contract for both Prime and Subcontractors
- Identification of any known utility/contractor conflicts and proposed resolution of same
- Coordination of other trades
- Specialty items (Fences, shrubs, monuments, sprinkler systems, etc.)
- Completion date requirements.
- Review of traffic control plan as it pertains to area of work.
- Problems and/or complaints and remedial measures taken or proposed

12. Correcting Work

12.1. The Contractor shall, within two weeks of written notification, proceed to correct Work rejected by the City Public Works Field Superintendent as defective or failing to conform to this Contract.

12.2. Nothing contained in this Article shall establish any period of limitation with respect to other obligations, which the Contractor has under this Contract.

13. City May Accept Defective or Non-conforming Work

13.1. If the City chooses to accept defective or non-conforming Work, the City may do so. In such event, the Contract Price shall be reduced by the greater of (a) the reasonable cost of removing and correcting the defective or non-conforming Work, and (b) the difference between the fair market value of the Work as constructed and the fair market value of the Work had it not been constructed in such a manner as to include defective or non-conforming Work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the City for its acceptance of defective or non-conforming Work, the Contractor shall, upon written demand from the City, pay the City such remaining compensation for accepting defective or non-conforming Work.

SPECIAL CONDITIONS

1. The APWA Section 1100 General Conditions is negated and not to be applied as part of this Project Manual.
2. The trimming work will be completed by **December 31, 2016**.
3. The City will provide an inventory of the trees in each Area, please note that the City's initial inventory might not represent all of the trees in the area but is a tool in submitting the required final inventory information back to the City.
4. A map showing each Area is provided.
5. The City will accept, in lieu of but subject to the conditions of the Performance Bond, Maintenance Bond and Statutory Bond, a certified check or bank cashier's check made payable to the City of Prairie Village in the amount of the total bid cost and will be held by the City in a non-interest bearing depository. The Contractor agrees that the check is subject to being forfeited to and becoming the property of the City of Prairie Village as liquidated damages and not as penalty, together with other legal remedies the City may choose to invoke for non-performance as provided in the Contract. Said check, less any liquidated damages, will be returned to the Contractor upon completion of the Contract.
6. The City has a budget limit for this tree trimming program. Therefore, the bids will be awarded separately for each area until the budget limit is reached. For example, if the sum of all the area bids exceeds the budget limit, then one of the areas will not be awarded or the list of trees will be reduced.
7. The Contractor is to notify the Public Works Field Superintendent each morning after 7AM, but before beginning work, as to which streets the Contractor will be working.
8. The contractor will follow all Local, State and Federal regulations including but not limited to all quarantine regulations.

101 MOBILIZATION

Description

This work shall include furnishing of all labor, equipment, tools and materials for preparatory work and operations, including, but not limited to, those necessary for the movement of personnel, equipment, supplies and incidentals to the project site. It shall also include those costs for the establishment of all offices, buildings, temporary utilities and other facilities necessary for work on the project. Bond and insurance costs incurred to begin the work at the project site are included in this item.

Bid items are:

MOBILIZATION

Reference Standard Specification

Primary Reference Standard Specification is KDOT Standard Specifications for State Road and Bridge Construction Section 820, as amended

The above Reference Standard Specification may contain modifications in the form of additions, deletions, and substitutions. Where any part of the Reference Standard Specification is so modified, the unaltered provisions shall remain in effect.

Construction Requirements

None

Method of Measurement

The measurement of payment will be the percentage of work completed.

Basis of Payment

Partial payments will be made as follows:

1. When the work amounting to 5 percent of the original contract amount has been completed, 25 percent of the Contract amount for the item of mobilization or 2.5 percent of the original Contract amount whichever is lesser, will be paid.
2. When the work amounting to 10 percent of the original contract amount has been completed, 50 percent of the Contract amount for the item of mobilization or 5.0 percent of the original Contract amount whichever is lesser, will be paid.
3. When the work amounting to 25 percent of the original contract amount has been completed, 60 percent of the Contract amount for the item of mobilization or 7.5 percent of the original Contract amount whichever is lesser, will be paid.
4. When the work amounting to 50 percent of the original Contract amount has been completed, 100 percent of the Contract amount for the item of mobilization or 10 percent of the original contract amount whichever is lesser, will be paid.
5. Upon acceptance of the Contract, payment of any amount in excess of 10 percent of the original Contract amount will be paid.

The term "Original Contract Amount" used shall be construed to mean the total dollar value of the Original Contract, including all bid items shown in the Contract.

When computing the percentage of the original Contract amount completed, do not include monies earned for Mobilization, materials stored, Traffic Control (when bid as a lump sum) and Contractor Construction Staking.

END OF SECTION

682 Tree Trimming

Description

This work consists of trimming City trees to the satisfaction of the City Public Works Field Superintendent, and in accordance with the details shown on the plans. It shall include using all means necessary to protect existing structures, equipment, piping and facilities not designated for removal within the limits of the work, as defined in these specifications, in the Special Conditions, as shown on the Plans or established by the City Public Works Field Superintendent.

Bid items are:

TREE TRIMMING

Reference Standard Specification

The Kansas Arborist at Kansas State University, Kansas Forest Service shall determine interpret proper trimming techniques and practices.

Primary Reference Standard Specification is ANSI A300 Part 1 Pruning, as amended and Z133.1-2000 Safety Requirements for Pruning, Trimming, Repairing, Maintaining, Removing Trees and Cutting Brush.

The above Reference Standard Specification may contain modifications in the form of additions, deletions, and substitutions. Where any part of the Reference Standard Specification is so modified, the unaltered provisions shall remain in effect.

Tree Trimming Requirements

Trees to be trimmed along the City streets will be located either wholly or partially within 10 feet from the face of the street curb. Trimming of trees located on private property will not be permitted except to meet item c. in the next paragraph.

Trees will be trimmed:

- a. To remove dead wood two inches in diameter and larger over the City right-of-way,
- b. To remove hangers over the City right-of-way,
- c. To remove limbs lower than nine feet over sidewalks and fourteen feet over street pavement,
- d. To remove limbs that obstruct the view of a street light as viewed from a distance equal to the height of the street light from the street pavement,
- e. To remove tree limbs obstructing the view of street signs and traffic signals from a distance of 500 feet as viewed from a person standing in the vehicle travel lane.
- f. Park Trees will be trimmed with the same criteria but the entire tree will be trimmed. The trimming criteria should also be applied to any trees on abutting properties with limbs hanging over City Park property.

The Contractor will be responsible for the removal of all trimmings and other trimming debris. The debris removal will be in accordance with all Local, State and Federal regulations including but not limited to all quarantine regulations. The street and resident property will be cleaned to equal or better condition as existed before the work activity. The Contractor shall use no gafts in the tree trimming process.

The Contractor may leave wood for the resident at the resident's request, but the wood will be placed on private property and not on City right-of-way.

The Contractor will provide each residence with a notice 48 hours before beginning work. The City will provide the notices to the Contractor.

Tree Inventory Requirements

The contractor will verify the inventory list as to species, house number, condition and date trimmed. The City will provide a list of condition terminology to be used. The type of tree will be the common name for generic-species, i.e., Maple-sugar. The generic - Maple - is not acceptable as it must have the species.

The inventory list will be modified by lining out the tree not in existence, adding trees found in the City right-of-way, but not on the list, and placing a check mark for those trees trimmed.

Method of Measurement

The measurement of payment for Trimming Trees is submittal of the modified inventory list for each area and approval of satisfactory work for each area by Field Superintendent.

Basis of Payment

The amount of completed and accepted work, measured as provided above, shall be paid for at the Contract lump sum price for "TREE TRIMMING". The price shall be full compensation for furnishing and for all labor, tools, equipment and incidentals necessary to complete the work.

END OF SECTION

701 TRAFFIC CONTROL

Description

This work shall consist of furnishing, erecting, moving, cleaning, replacing, maintaining and removing signs, barricades, lights and other traffic control devices as shown on the Plans, the Traffic Control Plan, or as required by the Engineer or as proposed by the Contractor and approved by the Engineer.

Bid items are:

TRAFFIC CONTROL

Reference Standard Specification

Primary Reference Standard Specification is KDOT Standard Specifications for State Road and Bridge Construction Section 805, as amended.

The above Reference Standard Specification may contain modifications in the form of additions, deletions, and substitutions. Where any part of the Reference Standard Specification is so modified, the unaltered provisions shall remain in effect.

Construction Requirements

ADD:

No work shall be conducted between the hours of 10 PM and 7 AM, Monday through Friday. No work shall be undertaken on Saturdays, Sundays and Holidays without the express approval or permission of the City.

No work may be performed on non-residential streets between 7:00 a.m. to 8:30 a.m. and 4:00 p.m. to 6:00 p.m. on weekdays.

Non-residential streets may not be closed to all traffic unless permitted by the City.

Non-residential streets are defined as 75th Street, 95th Street, Mission Road, Nall Avenue, State Line Road, 63rd Street, 71st Street, 79th Street, 83rd Street, Lamar Avenue, Roe Avenue, Somerset Drive, Tomahawk Road, 67th Street, 69th Street, 87th Street (Nall Avenue to Somerset Drive), Booth Drive, Belinder Avenue, Cambridge Street (State Line Road to Somerset Drive), Cherokee Drive, Colonial Drive and Windsor Street (Cherokee to 75th Street).

Residential street closure may occur only from 8:00 a.m. until 5:00 p.m.

Evening 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.

Ensure minimum interference with roads, streets, driveways, sidewalks, and adjacent facilities.

Do not close or obstruct streets, sidewalks, alleys or passageways without permission from authorities having jurisdiction.

If required by governing authorities, provide alternate routes around closed or obstructed traffic ways.

The Contractor shall conduct his/her work to interfere as little as possible with public travel, whether vehicular or pedestrian. Whenever it is necessary to cross, obstruct, or close roads, driveways and walks, whether public or private, the Contractor shall, at his/her own expense, provide and maintain suitable and safe bridges, detours, or other temporary expedients for the accommodation of public and private travel, and shall give reasonable notice to owners of private drives before interfering with them provided that maintenance of traffic will not be required where the Contractor has obtained permission from the City and tenant of private property, or from the authority having jurisdiction over public property involved, to obstruct traffic for the duration of time as may be agreed upon.

The Contractor shall, at the time of the preconstruction conference or 72 hours prior to the proposed implementation, submit a detailed plan for handling traffic during construction and non-working hours for review and approval by the Engineer and City before commencing with any work. The traffic control plan shall be certified by an ATSSA Certified Worksite Traffic Supervisor. The logic for this traffic control plan is to be included in the Contractor's construction control schedule.

The Worksite shall be cleaned up at the end of each working day and temporary surfacing shall be placed such that access will be had to all driveways during the night, weekends, holidays and other days when Work is not in progress and when the stage of the Work does not directly interfere with the drive. The Engineer, at his/her discretion, may grant short-term exceptions to this requirement in connection with preparing sub-grade and paving.

The Contractor shall assign a specific person to be responsible for the installation and maintenance of traffic control devices. This information shall be provided to the Engineer. The Contractor may, at his/her option, establish a maintenance agreement, approved by the Engineer, with one of the area sign companies to supply, install, and maintain required traffic control devices throughout the duration of this project. When the traffic control devices are no longer needed, immediate removal of said devices shall be included in this agreement.

Driveway entrances, sidewalks, steps and finish grading shall be completed as soon as practicable behind construction of curb and gutter so that access may be had from the street adjacent property as soon as possible. Temporary grading shall be provided where required to negotiate the difference in elevation from the graded roadbed to the finished curb at driveway entrances. The Contractor shall provide as many barricades with appropriate warning lights as needed to protect effectively pedestrians or traffic from exposed objects or excavations.

In addition to traffic control devices shown on the Plans, the Contractor shall provide and maintain all barricades, cones, construction warning signs, flagmen, temporary pavement marking, and incidental devices to protect the traveling public and the Contractor's personnel or equipment on the job site. During all phases of construction, the Contractor shall display the required signs. Any traffic control device not in use shall be covered, removed, or turned away from the view of on-coming traffic. Whenever the Work area changes, all construction warning signs and traffic channelization devices shall be made current, in both legend and function.

Local traffic on all streets shall be carried through construction whenever possible. Detours of traffic will be permitted, with prior permission from the City, when necessary and in accordance with the traffic control plan. Streets may be closed for short periods of time under authority of proper permit issued by the City or authority having jurisdiction. However, the Contractor shall conduct his/her work to interfere as little as possible with public travel, whether vehicular or pedestrian, on such streets.

Proper notification to City Police and County Paramedic units, Fire Districts, School Districts and City refuse collector shall be given by the Contractor before closing any street.

It will be the responsibility of the Contractor to perform the necessary maintenance or provide additional traffic control devices as requested by the Engineer.

The Contractor shall maintain access for refuse collection. If refuse cannot be picked up because of construction activities, the Contractor will be required to collect the reuse and to coordinate with the refuse collector to designate an alternate pick-up site.

The Contractor shall only work on one side of the road at a time and no more than two streets at one time unless permitted to do so by the City.

Left turn movements shall not be restricted at any intersection controlled by a traffic signal.

The Contractor must use proper flagging procedures when limiting traffic to one lane during working hours.

The Contractor will supply, install, and maintain the necessary traffic control devices required to maintain traffic as outlined herein. These devices include, but are not limited to, advance construction warning signs, barricades, flagmen, and other traffic control devices. All such devices shall be fabricated and installed in accordance with the M.U.T.C.D. and N.C.H.R.P. 350, latest editions. Any request for changes in the required devices or methods of maintaining traffic should be submitted in writing to the Engineer a minimum of 72 hours prior to the time the Contractor wishes to make the change.

Temporary striping shall be tape and this work shall conform to Section 821 of the KDOT Standard Specification. In addition to the placement of lane lines and centerline stripes, the Contractor shall also be responsible for the proper placement of required turn arrows.

The Inspector may review the Work area at various times to determine if any additional traffic control devices are necessary or if any maintenance is required to the traffic control devices in place. Any traffic control device, which requires maintenance or any additional traffic control needs found during these reviews, will be reported to the Contractor. It will be the responsibility of the Contractor to perform the necessary maintenance or provide additional traffic control devices as requested by the Engineer. Failure to comply with this request will result in one of the following:

1. Employ another agency to correct deficiencies in signing or warning devices and deduct the cost from the contractor's pay estimate.
2. Suspend all pay estimates until deficiencies are corrected.
3. Stop the work until deficiencies are corrected.
4. Place the contractor in default.

All existing traffic signs, stop signs, and street signs in the way of the Work shall be carefully removed by the Contractor and shall be returned to the City. The required function of stop signs and other signs affecting driver safety shall be preserved by the Contractor whenever a street is open to traffic. Upon completion of the Project, all street signs shall be reset by the Contractor as approved by the Engineer.

All stop, yield and street name signs removed shall be temporarily erected in the appropriate locations (no less than 7 feet vertical from grade) until permanent signing can be installed.

Method of Measurement

The measurement of payment will be the percentage of work completed.

Basis of Payment

Partial payments will be made as follows:

1. When work amounting to 10 percent of the original Contract amount is completed, 50 percent of the amount bid for traffic control or five percent of the original Contract amount, whichever is lesser, may be paid.
2. When work amounting to 80 percent of the original Contract amount is completed, 100 percent of the amount bid for traffic control or ten percent of the original Contract amount, whichever is lesser, may be paid.
3. Upon completion of all work on the project, 100 percent of the amount bid for traffic control will be paid.

When computing the percentage of the original Contract amount completed, do not include monies earned for mobilization, materials stored, traffic control (when bid as Lump Sum) and contractor construction staking.

The term "Original Contract Amount" used shall be construed to mean the total dollar value of the Original Contract, including all bid items shown in the Contract.

END OF SECTION

Bid submitted by Kansas City Tree Care LLC

BID PROPOSAL FORM

TREE TRIMMING

To the City of Prairie Village, Kansas:

The **undersigned Bidder**, having examined the Project Manual and other proposed Contract Documents, and all Addenda thereto; and being acquainted with and fully understanding (a) the extent and character of the work covered by this Proposal; (b) the location, arrangement, and specified requirements for the proposed work; (c) the location, character, and condition of existing buildings, streets, roads, sidewalks, driveways, curbs, gutters, trees, sewers, utilities, drainage, and other installations both surface and underground that may affect or be affected by the proposed work; (d) the nature and extent of the excavations to be made, and the type, character and general condition of materials to be excavated; (e) the necessary handling and re-handling of excavated materials; (f) the location and extent of necessary or probable dewatering requirements; (g) the difficulties and hazards to the work that might be caused by storm and flood water; (h) local conditions relative to labor, transportation, and hauling facilities; and (l) all other factors and conditions affecting or that may be affected by the work,

HEREBY PROPOSES to furnish all required material, supplies, equipment, tools, and plant; to perform all necessary labor and supervision; and to construct, install, erect, and complete all work stipulated in, required by, and in accordance with, the proposed Contract Documents, and Project Manual referred to therein (as altered, amended, or modified by addenda), in the manner and time prescribed, and that the Bidder will accept in full payment sums determined by applying to the quantities of the following items, the following unit prices and/or any lump sum payments provided, plus or minus any special payments and adjustments provided in the Specifications, and the Bidder understands that the estimated quantities herein given are not guaranteed to be exact or total quantities required for the completion of the work, and that increases or decreases may be made over or under the estimated quantities to provide for needs that are determined during the progress of the Work and that prices bid shall apply to such increased or decreased quantities as follows:

ITEMIZED PROPOSAL

Item No.	Description	Unit	Quantities	Unit Price	Total
1	101 Mobilization	L.S.	N/A	None	
2	682 Tree Trimming Area 11	L.S.	N/A	None	\$13,860.00
3	701 Traffic Maintenance	None	N/A	None	-----
Total Area - 41					

Bid submitted by Kansas City Tree Care LLC

Item No.	Description	Unit	Quantities	Unit Price	Total
1	101 Mobilization	L.S.	N/A	None	
2	682 Tree Trimming Area 12	L.S.	N/A	None	14,340.00
3	701 Traffic Maintenance	None	N/A	None	-----
Total Area - 42					

Item No.	Description	Unit	Quantities	Unit Price	Total
1	101 Mobilization	L.S.	N/A	None	
2	682 Tree Trimming Area - 13	L.S.	N/A	None	36,300.00
3	701 Traffic Maintenance	None	N/A	None	-----
Total Area - 43					

Item No.	Description	Unit	Quantities	Unit Price	Total
1	101 Mobilization	L.S.	N/A	None	
2	682 Tree Trimming Area - 21	L.S.	N/A	None	2175.00
3	701 Traffic Maintenance	None	N/A	None	-----
Total Area - Bennett Park					

Item No.	Description	Unit	Quantities	Unit Price	Total
1	101 Mobilization	L.S.	N/A	None	
2	682 Tree Trimming Area - 22	L.S.	N/A	None	1800.00
3	701 Traffic Maintenance	None	N/A	None	-----
Total Area - Brenizer Park					

Bid submitted by Kansas City Tree Care LLC

Item No.	Description	Unit	Quantities	Unit Price	Total
1	101 Mobilization	L.S.	N/A	None	
2	682 Tree Trimming Area - 23	L.S.	N/A	None	20,850.00
3	701 Traffic Maintenance	None	N/A	None	-----
Total Area - Franklin Park					

Item No.	Description	Unit	Quantities	Unit Price	Total
1	101 Mobilization	L.S.	N/A	None	
2	682 Tree Trimming Area - 31	L.S.	N/A	None	29,700.00
3	701 Traffic Maintenance	None	N/A	None	-----
Total Area - Harmon/Santa Fe Parks					

Item No.	Description	Unit	Quantities	Unit Price	Total
1	101 Mobilization	L.S.	N/A	None	
2	682 Tree Trimming Area - 32	L.S.	N/A	None	6375.00
3	701 Traffic Maintenance	None	N/A	None	-----
Total Area - City Hall Campus					

Item No.	Description	Unit	Quantities	Unit Price	Total
1	101 Mobilization	L.S.	N/A	None	
2	682 Tree Trimming Area - 33	L.S.	N/A	None	1800.00
3	701 Traffic Maintenance	None	N/A	None	-----
Total Area - McCrum Park					

Bid submitted by Kansas City Tree Care LLC

Item No.	Description	Unit	Quantities	Unit Price	Total
1	101 Mobilization	L.S.	N/A	None	
2	682 Tree Trimming Area - 33	L.S.	N/A	None	10,050.00
3	701 Traffic Maintenance	None	N/A	None	-----
Total Area - Porter Park					

Item No.	Description	Unit	Quantities	Unit Price	Total
1	101 Mobilization	L.S.	N/A	None	
2	682 Tree Trimming Area - 33	L.S.	N/A	None	2100.00
3	701 Traffic Maintenance	None	N/A	None	-----
Total Area - Prairie Park					

Item No.	Description	Unit	Quantities	Unit Price	Total
1	101 Mobilization	L.S.	N/A	None	
2	682 Tree Trimming Area - 33	L.S.	N/A	None	13,875.00
3	701 Traffic Maintenance	None	N/A	None	-----
Total Area - Taliaferro Park					

Item No.	Description	Unit	Quantities	Unit Price	Total
1	101 Mobilization	L.S.	N/A	None	
2	682 Tree Trimming Area - 33	L.S.	N/A	None	4650.00
3	701 Traffic Maintenance	None	N/A	None	-----
Total Area - Weltner Park					

Bid submitted by KANSAS CITY Tree Care LLC

Item No.	Description	Unit	Quantities	Unit Price	Total
1	101 Mobilization	L.S.	N/A	None	
2	682 Tree Trimming Area - 33	L.S.	N/A	None	1350.00
3	701 Traffic Maintenance	None	N/A	None	-----
Total Area - Windsor Park					

PROPOSAL QUANTITIES

The unit price bid for each item shall include all of the Contractor's cost and profit including equipment, labor, supervision, material and all incidentals necessary to furnish the work complete and ready for use.

PROPOSAL ABBREVIATIONS

LS - LUMP SUM EA - EACH

The **undersigned Bidder** declares:

That, if this proposal is accepted, to complete the work by the **December 31, 2016** completion date.

That he/she has been regularly engaged in contract work of the class required by the specifications for five years, and respectfully invites your attention to the following work that has been completed under his/her direction:

Project Number	Location	Contact & Telephone

That he/she has personally examined the location of the proposed work and determined the amount and character of the proposed work, and the material and equipment necessary to complete the same in compliance with the accompanying contract documents and project manual.

The undersigned proposes and agrees, if this proposal is accepted, to provide all necessary machinery, tools, equipment and other means of construction, and to do all the work specified in the documents of the contract in the manner therein prescribed and according to the requirements of the City as therein set forth.

Bid submitted by Kansas City Tree Care LLC

Addendum receipt:

The undersigned Bidder acknowledges receipt of the following addenda to the Contract Documents:

Addendum NO. _____,	Date _____
Addendum NO. _____,	Date _____
Addendum NO. _____,	Date _____
Addendum NO. _____,	Date _____
Addendum NO. _____,	Date _____

The undersigned Bidder hereby declares that the only persons or firms interested in the Proposal as principal or principals is or are named herein and that no other persons or firms than herein mentioned have any interest in this Proposal on in the Contract to be entered into; and this Proposal is made without connection with any other person, company or parties making a bid or proposal; and that it is in all respects fair and in good faith, without collusion or fraud.

The undersigned Bidder agrees and assures the City that if awarded this Contract, the Bidder will fully abide by the requirements of these Contract Documents.

In submitting this bid, the undersigned declares that he/she is of lawful age and executed the accompanying bid on behalf of this bidder therein named, and that he/she had lawful authority to do so. The undersigned further declares that he/she has not directly or indirectly entered into any agreement, expressed or implied, with and bidder or bidders, having for his/her object the controlling of the price or amount of such bid or any bids, the limiting of the bids or bidders, the parceling or farming out to any bidder or bidders, or other persons, of any part of the subject matter of the bid or bids or of the profits thereof, and that he/she has not and will not divulge the sealed bid to any person whomsoever, except those having a partnership or other financial interest with bidder in said bid or bids, until after sealed bid or bids are opened.

The undersigned further declares that he/she has carefully examined the Notice to Bidders, Instructions to Bidders and other Contract Documents, and he/she has inspected the actual location of the work, together with the local sources of supply, and has satisfied himself as to all conditions and quantities, and understands that in signing this Bid he/she waives all right to plead any misunderstanding regarding the same. The undersigned Bidder agrees that the accompanying bid deposit shall become the property of the City, should the Bidder fail or refuse to execute the Contract or furnish Bond as called for in the Contract Documents within the time provided.

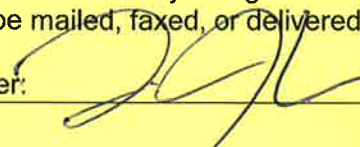
If written notice of the acceptance of this bid is mailed, faxed, or delivered to the undersigned Bidder within thirty (30) calendar days after the date of opening of the bids, or any time thereafter before this bid is withdrawn, the undersigned Bidder will, within ten (10) calendar days after the date of such mailing, faxing, or delivery of such notice, execute and deliver a Contract in the form of Contract attached.

Enclosed is a certified check, cashier's check or bid bond in the amount of 159,225.00 DOLLARS (\$ 159,225.00), made payable to the City of Prairie Village, which the undersigned agrees is subject to being forfeited to and becoming the property of the City of Prairie Village as liquidated damages and

Bid submitted by Kansas City Tree Care, LLC

not as penalty, together with other legal remedies the Cities may choose to invoke, all set forth in the Instruction to Bidders Section, should this Bid be accepted and the Contract be awarded to this Bidder and he/she should fail to enter into an Agreement in the form prescribed and to furnish the required insurance, bonds and other required documents within ten (10) calendar days as above stipulated, otherwise the bid security shall be returned to the undersigned upon signing of the Agreement and delivery of the approved bonds and other required documents to the City of Prairie Village, Kansas.

The undersigned Bidder hereby designates as the office of the Bidder to which such notice of acceptance may be mailed, faxed, or delivered:

Signature of Bidder: 

If an individual: _____

Doing business as: _____

If a Partnership: _____

By _____, member of firm

If a Corporation: _____

By _____

Title _____

DATED: _____

Kansas City Tree Care, LLC
Typed name of Bidder (Company)

913.894.4767
Telephone Number

Zach Johnson or Jackie Melchor
Typed name of Contact

866 923 4311
Fax Number

1505 Merriam Lane
Street Address

kansascitytreecare@yahoo.com
Email Address

Kansas City KS 66103
City, State, Zip

Bid submitted by Kansas City Tree Care LLC

If the Bidder is a corporation, supply the following information:

State in which incorporated: _____

Name and business address of its:

President: _____

Secretary: _____

SEAL

Date _____

Attached hereto is a Bid Bond for the sum of \$ _____ or

Cashier's Check for \$ _____ made payable to the City of Prairie Village, Kansas.

PROJECT CONTACTS

Prairie Village Public Works

James Carney, Field Superintendent
3535 Somerset Drive
Prairie Village, KS 66208
E-mail jcarney@pvkansas.com
Office - (913) 385-4644

Prairie Village Police Dept.

7710 Mission Road
Prairie Village, KS 66208
(913) 381-6464

Fire/Med-Act Communications

(913) 432-1717

Utilities

Time Warner Cable
8221 West 119th Street
Overland Park, KS 66213
(913) 927-3402
Gary Dixon

AT&T
9444 Nall Avenue
Overland Park, KS 66207
(913) 383-6948
Rich Pearl

KCP&L
16215 W. 108th St.
Lenexa, KS 66219
(913) 810-7623
Gary Price

Johnson County Wastewater
18111 Sunset Drive, Suite 2500
Overland Park, KS 66213
(913) 715-8501
Charles McAllister

Kansas Gas Service
11401 West 89th Street
Overland Park, Kansas 66214
(913) 599-8978
Becca Orr
(913) 492-8555

KCP&L
Traffic Signals
8730 Nieman Rd.
Overland Park, KS 66214-1793
(913) 894-3074
John Wienstroer

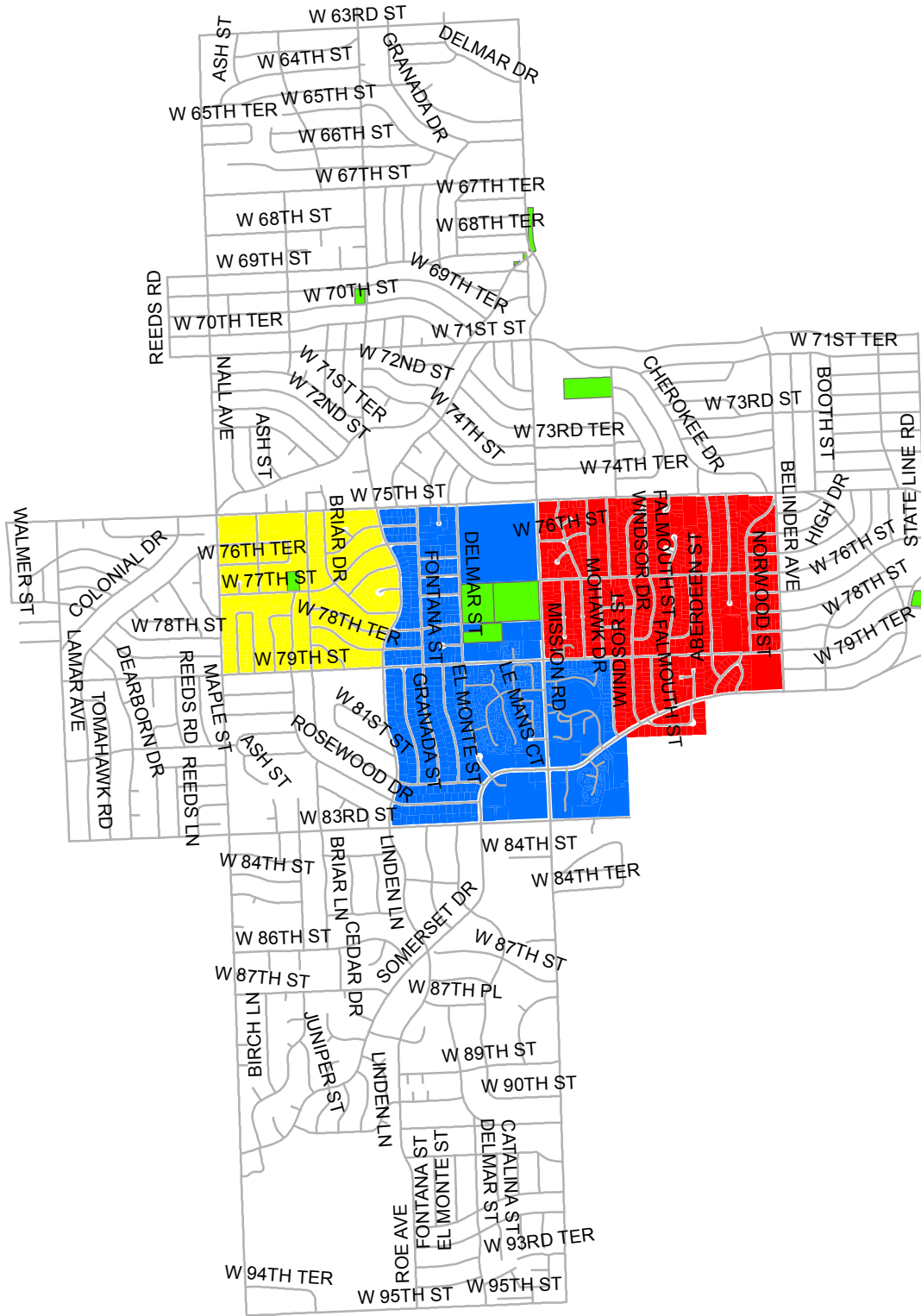
Southern Star Central Gas Pipeline
13430 W. 98th Street
Lenexa, KS 66215
(913) 310-7612
Kevin Hoover

Google Fiber
(870) 219-5630
Craig Young

Water One
10747 Renner Road
Lenexa, KS 66219-9624
(913) 895-5732
Dana Hudson

Contractor:
Contact:
Address:
Project Supervisor:
Email:
Office :Phone
Mobile:
Pager:

2016 Tree Trimming



2016 Tree Trimming Program

- 2016 Park Trimming
- Area_41
- Area_42
- Area_43



**COUNCIL MEETING AGENDA
CITY OF PRAIRIE VILLAGE
Council Chambers
Monday, October 03, 2016
7:30 PM**

- I. **CALL TO ORDER**
- II. **ROLL CALL**
- III. **PLEDGE OF ALLEGIANCE**
- IV. **INTRODUCTION OF STUDENTS & SCOUTS**
- V. **INTRODUCTION OF NEW POLICE OFFICERS**
- 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 - September 19, 2016
- 2. Approve claims ordinance 2946
- 3. Approve revised Council Policy #527 entitled "Tennis Court Reservation" and establish a tennis court maintenance and tournament fee
- 4. Ratify the Mayor's appointment of Annette Hadley to the Arts Council
- 5. Approve the agreement with MARC for funding operations of Operation Green Light Traffic Control Systems (OGL) in Prairie Village for 2017 and 2018
- 6. Approve the purchase of a Falcon Hot Asphalt Trailer and approve \$27,633 from the 2016 Equipment Reserve Funds for this purchase

VIII. **COMMITTEE REPORTS**

Council Committee of the Whole

- COU2016-53 Consider approval of amendment to police pension plan related to time of service
- COU2016-54 Consider approval of amendment to the Employee Handbook related to vacation accrual for employees with 20+ years of service
- COU2016-55 Consider an amendment to the Right of Way Ordinance - Small

- Cell Facilities
- COU2016-58 Consider approval of the preliminary engineering study contract with Water Resources Solutions, LLC for the Delmar and Fontana low water crossing removal and drainage project
- COU2016-59 Consider approval of the 2017 tree trimming contract with KC Tree

IX. MAYOR'S REPORT

X. STAFF REPORTS

XI. OLD BUSINESS

XII. NEW BUSINESS

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**

September 19, 2016

The City Council of Prairie Village, Kansas, met in regular session on Tuesday, September 19, 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, Serena Schermoly, Steve Noll, Eric Mikkelson, Andrew Wang, Sheila Myers, Brooke Morehead, Dan Runion, Courtney McFadden, Ted Odell and Terrence Gallagher.

Teen Council members present: Zoe Renee Nason, Ainsley Scout Rice, Tyler Ruzich, Helen Sun, and Luke Hafner.

Staff present was: Tim Schwartzkopf, Chief of Police; Melissa Prenger, Project Manager; Katie Logan, City Attorney; Quinn Bennion, City Administrator; Wes Jordan, Assistant City Administrator; Alley Williams, Assistant to the City Administrator, and Meghan Boom, Deputy City Clerk.

INTRODUCTION OF STUDENTS & SCOUTS

No scouts or students were present.

INTRODUCTION OF TEEN COUNCIL

Members of the 2016-2017 Teen Council introduced themselves to the City Council: Zoe Renee Nason (home school), Helen Sun (Kansas City Christian School), Luke Hafner (St. James Academy), Scout Rice (Shawnee Mission East), and Tyler Ruzich (Shawnee Mission North).

PUBLIC PARTICIPATION

Nancy Davis, 4800 W. 65th Street - She has been a member of Prairie Baptist church for 16 years, on staff at the church for 11 years, and a Prairie Village resident for 18 years. Prairie Baptist Church has been located in Prairie Village for over 60 years and the congregation includes 18 Prairie Village families. They serve many residents in Prairie Village and Johnson County, including food drives, helping the homeless, Easter egg hunts, Halloween events, etc. The parking lot is used by many groups including the Prairie Village Police as they enforce traffic laws, neighbors for additional parking, construction trucks as a staging area, and charities for special events. They strive to be a good neighbor. The erosion of the parking lot and hillside have become a safety concern over the years and the church is seeking to partner with the city to make improvements.

Beverly Cosby, Overland Park - She has been a member of Prairie Baptist for 32 years and is a staff member. Since 1999, the church has had concerns about the deterioration of their parking lot following the reconstruction of the adjacent creek bed. Church staff has attempted to work with the City to rectify the situation. The church has sealed and resurfaced the lot, added additional curbing, and removed a storage shed in hopes of stopping the erosion. The hill collapsed in 2013 causing the parking lot to slide. Church staff attempted to meet with city staff following that, but city staff did not attend

the meeting. The church desires to work in partnership with the city to solve drainage issues.

Brian Smith, 4409 W. 93rd Street - He has lived in Prairie Village and been a member at Prairie Baptist for 11 years. He spends a significant amount of time at the church and as witnessed the deterioration of the parking lot. Upon his own investigation, he determined the cause to be from tree roots and erosion from water flow running off 75th Street. There are no storm drains on 75th Street and the related runoff is eroding the hillside. The church placed rock on the hill to eliminate erosion but the City required the removal of the rock. Fencing has been secured to provide additional safety. The church has unsuccessfully tried to meet with the City.

Kathy Pickett, Kansas City, MO - She has been the senior pastor at Prairie Baptist since 2013. Since she started at the church, she has been working to rectify the erosion issues. She is both the spiritual leader of the congregation and the operational business leader. She wanted to share her response to accusations that Prairie Baptist threatened to file a lawsuit against the committee. After meeting with the city, they were given suggestions to improve the hillside and the city offered assistance with the 75th Street driveway. She wanted the City to recognize their responsibility in the drainage issues. The church did have a lawyer present at the meetings, her father and a member of the congregation. She was upfront that he was a lawyer at the initial meeting. When the City offered no acceptable measures for improvement, he asked "short of litigation" what the church's next steps were. The City representatives interpreted the comment as the church of threatening a lawsuit, and withdrew their offer to help rectify the issues. Serena Schermoly, the representative for their area, recommended they come before the governing body to share information and to ask them to reconsider assisting the church.

Mark Zacharias, Leawood, KS - He is actively involved in the church and has participated in several meetings related to the erosion of the church's parking lot. The Church has worked with Phelps Engineering, George Baum and Associates, and TerraCon for professional recommendations to remediate the issues which were then provided to the City for review. It is estimated that the site improvements will cost between \$100,000 - \$150,000. He asked that the city join with the church to rectify this ongoing issue. The city has not worked in good faith on this shared responsibility.

Quinn Bennion shared his appreciation to the congregation for sharing their viewpoints. He has participated in several conversations related to this item, and has been involved in many circumstances where it must be determined if responsibility for an item falls to the private property owner or the City of Prairie Village. He identified that the driveway on 75th Street would have been completed by a private developer, not the City. The driveway would not be allowed today and the church could have added curbing at any point in time since the drainage issues began. The City did offer to do that at the City's expense however that offer was withdrawn when the topic of litigation was mentioned by the church. Only 20% of water runoff comes from 75th Street with the remaining amount coming from the church property. Staff recommended securing a drainage permit to make improvements to the hillside. To this point, staff has treated this as a private property issue and has moved forward accordingly. Staff will seek the direction of the governing body.

Mayor Wassmer thanked the congregation for attending and stated that the request would be addressed at a future meeting. Serena Schermoly stated that she would bring the item forward during New Business.

CONSENT AGENDA

Ted Odell moved to removed item three from the consent agenda to recuse himself from voting.

Serena Schermoly noted corrections to the minutes of September 6, 2016 related to the breed specific ban discussion. She referenced eight veterinarians rather than five. She clarified that discussion and comments were made about the members of the public were her priority, not referring to the majority.

Eric Mikkelson noted corrections to the minutes in reference to comments he made during Old Business. The correct statement should read: "Eric Mikkelson stated that the Mission Road reconfiguration is both beautiful and safe, and was an evidence-based change. Given our City's limited resources, he thinks breed specific bans make our City less safe. If the Police Department isn't out chasing down well-behaved dogs that may look like pit bulls, we can instead allocate those resources to reducing risk from dangerous dogs of any breed."

Dan Runion specified that he did not vote in favor for the sale of liquor at the State of the Arts event.

Ted Odell moved the approval of the Consent Agenda items for September 19, 2016 with the noted corrections:

1. Approve the regular City Council meeting minutes of September 6, 2016
2. Approve the inter-local agreement with Johnson County for the final construction of the 2016 Stormwater Management Advisory Council (SMAC) Meadowbrook Regional Detention Project

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

Steve Noll moved the approval of Consent Agenda item number 3:

3. Approve a bond sale resolution for streetlight purchases

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

MAYOR’S REPORT

Mayor Wassmer thanked the Jazz Fest Committee, city staff, volunteers, and the Arts Council for their contributions to the 2016 Jazz Festival. It was another hugely successful event. She shared that she and Council Member McFadden visited Corinth and Briarwood Elementary Schools to read to the students and share information about local government. She attended the Mission Hills Public Safety luncheon. She and Quinn Bennion met with the Johnson County Library related to future improvements to Corinth Library. She hosted the North East Johnson County Mayors for their monthly luncheon. The luncheon was at Posh Party, a new business in Prairie Village located at 89th and Roe. During the luncheon, the Shawnee Mission School District filmed a segment to air at their annual breakfast later in the week. Mayor reported that the Village Square committee will be comprised of Shelia Myers and Terrence Gallagher as chairs of the Parks and Recreation Committee, Courtney McFadden, a representative from Public Works, and citizen representatives. The committee will begin meeting soon.

STAFF REPORTS

Public Safety

- Chief Schwartzkopf reported that more than a dozen officers attended the services for the Johnson County Deputy who was killed in service last week.

- The Department, at the direction of Captain Lovett, has started a new “Lunch with Law Enforcement” program at local elementary schools. Officers visited Belinder Elementary at lunch time, and will continue to visit all the area schools.

Public Works

- Melissa Prenger reported that many construction projects are wrapping up. Sod will be placed on Mission Road and in the parks next week when the heat breaks.
- The 82nd Street drainage project will be complete soon. There were delays due to the recent rainfall.
- The courtyard project demolition is finished with grading and filling to start this week.

Administration

- Wes Jordan reported that he and Quinn Bennion attended a session on the new law related to small cell towers in the right of way. The law takes effect on October 1. Staff is working with David Waters to develop an ordinance related to this item. It will be considered at the October 3 Council meeting.
- Quinn Bennion reported that a bond rating call with Moody’s will take place next week.
- Quinn Bennion will be at a conference in Kansas City at the beginning of next week but will be available via phone and email.

OLD BUSINESS

Jori Nelson addressed the recent report of a pit bill bite that took place in Prairie Village prior to the last City Council meeting. She was displeased by the week delay in notification to council that the incident happened. She stated that it was imperative to know who gave this information to the media. She had been denied access to the report 12 hours prior to the media publication.

She stated this was the perfect example of the current ordinance not working. The dog was under-socialized due to being hidden away because of the City ordinance. On the same day the media reported the Prairie Village incident, there were several dog bites in surrounding cities by a Labrador, Yorkie, and other dog breeds. Because the pit

bull did not maim or significantly harm the victim, it proves that they bite like any other dog.

Nelson asked if Police Officers are sent to training specifically related to interacting dangerous animals, similar to the training they receive on interacting with the mentally ill. Chief Schwartzkopf stated Police Officers do not receive special training to deal with dangerous animals. Nelson shared several future opportunities that she would like for Officers to attend including one in Salina.

Nelson stated that she would like to be on the committee tasked with updating the dangerous dog ordinance. Quinn Bennion stated that this is not a Council committee; it will be led by staff. Nelson stated that she would like Council and veterinarian presence on the committee. Mayor Wassmer stated that would be up to Chief Schwartzkopf. Chief Schwartzkopf stated that he was confident that staff could present an acceptable ordinance to City Council for review. He has received a significant amount of input that staff will take into consideration as they draft the ordinance. Mayor Wassmer believes that it is best if this issue comes to the entire City Council at the same time. Terrence Gallagher suggested sending additional input to Chief directly.

NEW BUSINESS

Serena Schermoly asked Council to consider directing Public Works to resume conversations with Prairie Baptist and to make a recommendation for additional action to City Council.

Quinn Bennion reviewed the TerraCon report provided to Council. He made note that the photos included in the report are from similar cases, not specifically from the Prairie Baptist location. The report has very limited reference to 75th Street related

issues. Ultimately, the decision will be whether the private property owner or the city is responsible for private driveway repairs. Historically, the City only makes repairs to private driveway aprons as part of larger street improvements. Similar items where public versus private responsibility need to be determined, such as tree trimming, come forward almost daily.

Eric Mikkelson believes the issue is slightly more complicated than just a private driveway issue if the work on 75th Street was not done as it should have been. He is troubled that the City withdrew from a proposed partnership when the conversation was perceived to be litigious, when it was likely unintentional or a misunderstanding. He would like to see the City reengage with the church. He would also like to hear Keith Bredehoeft's perspective. Mikkelson asked that if it were as simple as a private property issue, why the City offered to shoulder a portion of the cost. Quinn Bennion responded that they offered to assist due to the small percentage of run-off from 75th Street and because eventually the City will reconstruct 75th Street's concrete work and the church entrance will be reconfigured at that time.

Serena Schermoly asked why the curb and gutter improvements weren't made during recent improvements to that portion of 75th Street. Melissa Prenger stated that only a fine mill was completed on 75th Street with only spot curb and gutter repair. The project didn't include driveway aprons like a full mill and overlay would require.

Dan Runion asked if only a small portion of runoff is coming off 75th Street, where is the remaining water coming from. Quinn Bennion stated that the majority is coming from the Prairie Baptist parking lot.

Terrence Gallagher asked why the City didn't allow the church to make improvements to the drainage themselves. Quinn Bennion stated that the City would

have allowed improvements with the proper drainage permit. The church attempted to rectify issues by dumping concrete over the edge of the parking lot which was not a workable solution.

Mayor Wassmer entertained a motion. Serena Schermoly moved to have Public Works work with Prairie Baptist church, review provided information, and make a recommendation to City Council. Jori Nelson seconded the motion.

Andrew Wang commented that while he is generally supportive of the motion, he would like to determine City responsibility prior to agreeing to work with Prairie Baptist church to find a solution. After reviewing the facts from Public Works, if the city is deemed responsible, he would be comfortable working with the church.

Serena Schermoly made a motion to direct Public Works to evaluate all information provided by Prairie Baptist and come back to the Council with a recommendation. Jori Nelson seconded the motion and it passed unanimously.

Committee meetings scheduled for the next two weeks include:

Environment/Recycle	09/28/2016	5:30 p.m.
Council Committee of the Whole	10/03/2016	6:00 p.m.
City Council	10/03/2016	7:30 p.m.

=====

The Prairie Village Arts Council is pleased to present the works of Gary Cadwallader & Jodi Harsch in the R.G. Endres Gallery during the month of September.

The League of Kansas Municipalities Conference will be held Saturday, October 8th through Monday, October 10th at the Overland Park Convention Center. If you are interested in attending, please contact Meghan Buom by September 23rd.

EXECUTIVE SESSION

Ted Odell moved pursuant to KSA 75-4319 (b) (2) that the Governing Body recess into Executive Session in the Multi-Purpose Room for a period not to exceed 15 minutes

for the purpose of consulting with the City Attorney on matters of pending litigation. Present will be the Mayor, City Council, City Administrator, Chief of Police, City Attorney and outside counsel. The motion was seconded by Ashley Weaver and passed unanimously.

Mayor Wassmer reconvened the meeting at 9:00 p.m.

Ted Odell moved pursuant to KSA 75-4319 (b) (2) that the Governing Body recess into Executive Session in the Multi-Purpose Room for a period not to exceed 20 minutes for the purpose of consulting with the City Attorney on matters of pending litigation. Present will be the Mayor, City Council, City Administrator, Chief of Police, City Attorney and outside counsel. The motion was seconded by Steve Noll and passed unanimously.

Mayor Wassmer reconvened the meeting at 9:20 p.m.

ADJOURNMENT

With no further business to come before the City Council the meeting was adjourned at 9:20 p.m.

Meghan Buom
Deputy City Clerk

CITY TREASURER'S WARRANT REGISTER

DATE WARRANTS ISSUED:

Warrant Register Page No. 1

September 19, 2016

Copy of Ordinance
2946

Ordinance Page No. _____

An Ordinance Making Appropriate for the Payment of Certain Claims.

Be it ordained by the governing body of the City of Prairie Village, Kansas.

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


NAME	DATE	AMOUNT	TOTAL
EXPENDITURES:			
Accounts Payable			
12912-12917	8/5/2016	10,694.51	
12918	8/10/2016	436.22	
12919-13023	8/12/2016	295,280.95	
13024	8/19/2016	994.76	
13025-13105	8/26/2016	264,268.24	
Payroll Expenditures			
8/5/2016		297,364.76	
8/19/2016		284,539.03	
Electronic Payments			
Electronic Pmnts	8/1/2016	6,183.21	
Electronic Pmnts	8/2/2016	11,014.70	
Electronic Pmnts	8/10/2016	3,466.80	
Electronic Pmnts	8/11/2016	3,121.27	
Electronic Pmnts	8/12/2016	22,884.60	
Electronic Pmnts	8/17/2016	3,810.77	
Electronic Pmnts	8/23/2016	592.71	
Electronic Pmnts	8/30/2016	774,984.19	
TOTAL EXPENDITURES:			1,979,636.72
VOIDED CHECKS			
	Check #	(Amount)	
Swim Coaches	12947-12951	(720.00)	
Ka-Comm Inc	12975	(2,994.08)	
Wesley Lovett	13048	(30.00)	
TOTAL VOIDED CHECKS:			(3,744.08)
GRAND TOTAL CLAIMS ORDINANCE			1,975,892.64

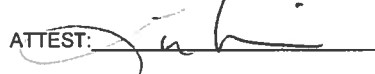
Section 2. That this ordinance shall take effect and be in force from and after its passage.

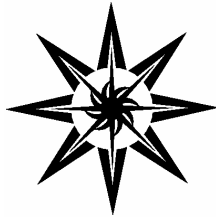
Passed this 19th day of September 2015.

Signed or Approved this 19th day of September 2015.

(SEAL)

ATTEST: 
City Treasurer

ATTEST:  9.9.16
Finance Director



Consider change in CP527 - Tennis Court Reservation & related fees

RECOMMENDATION

Approved revised Council Policy #527 entitled "Tennis Court Reservation" and establish a maintenance fee of \$50 per court to the schools for each team practice reservation and a Tennis Tournament fee of \$300 with a \$250 refundable deposit.

BACKGROUND

Last spring I provided background on the procedures followed for the reservation of the city's tennis courts by school athletic teams. During the summer, city staff met with the Shawnee Mission East Athletic Director and tennis coach to discuss possible changes and our concerns particularly as it related to tournaments.

As one of the best tennis complexes in the area, the Harmon Park tennis courts have consistently been used for Kansas State and Regional High School Tennis Tournaments. With this use comes extra accommodations requested of city staff.

Staff is proposing the implementation of a Tennis Tournament Fee. The attached revised application for a tennis tournament identifies special accommodations such as additional portable toilets, access to the tennis shack and use of the park and parking area. Staff recommends the creation of a \$300 tournament fee. This fee would cover the cost (under the city contract) for portable toilets that would be secured and coordinated by staff, access to the Tennis Shack and the reservation of Santa Fe Park Pavilion. Staff is also recommending a \$250 refundable deposit for privately reserved tournaments to cover potential damage to the tennis shack and extra trash services. Based on our long-going experience with the schools, this would not be charged for competitive school tournaments. The sponsor responsibilities and city responsibilities are enumerated on the application.

With the required reservation of tennis courts for the fall season staff has implemented this change administratively. Formal action by the Park & Recreation Committee and City Council is necessary for the approval of new fees.

Relative to the practice issue I discussed with the Committee last Spring, it appeared to be the desire of the committee to continue providing courts to Shawnee Mission East and work with KCC and Bishop Miege coaches to accommodate their needs as possible. However, I also heard comments regarding the city covering its costs. During our meeting with SME representatives, their Athletic Director noted that the District pays a maintenance for the use of the 3 & 2 ball fields and was open to the city establishing a maintenance fee of \$50 per court to the schools for each reservation. This would have SME paying \$300 for the six courts they use and KCCC and Miege paying \$200 for the four courts they use. This would be assessed to both fall and spring reservations and would provide annual revenue of \$1400 for their extensive use of the courts over a six month period.

The proposal was approved at the September 14, 2016 Parks & Recreation meeting.

FINANCIAL IMPACT - PROPOSED FEE CHANGES

Fee	Current Fees	Proposed Fees
Private Court Reservation	\$7per hour/per court	\$7 per hour/per court
Team Maintenance Fee	None	\$50 per court
School Tennis Tournament Fee	None	\$300
Private Tennis Tournament fee	\$7 per hour/per court	\$300 w/\$250 refundable deposit

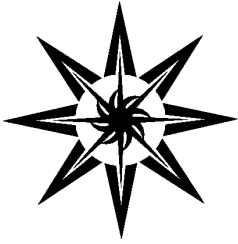
ATTACHMENTS

Revised CP527– Tennis Court Reservation
Tennis Court Reservation Form
Tennis Tournament Reservation Form

PREPARED BY

Joyce Hagen Mundy
City Clerk

Date: August 31, 2016



City Council Policy: CP527 - Tennis Court Rental/Reservation Policy

Effective Date:

Amends: October 6, 2008

Approved By: City Council

I. SCOPE

II. PURPOSE

A. To establish the procedures for the rental/reservation of Prairie Village Tennis Courts.

III. RESPONSIBILITY

A. City Clerk

IV. DEFINITIONS

V. POLICY

A. Private Use

The Prairie Village Tennis Courts may be reserved for private use by making a written request to the City Clerk.

1. The request shall include:
 - a.) The name of the sponsoring organization;
 - b.) The reason for the reservation;
 - c.) The dates and times to be reserved; and
 - d.) The number of courts to be reserved;
2. There shall be a fee per tennis court per hour as established in the city fee schedule.

B. School Use

The Prairie Village Tennis Courts may be reserved for team practice by city affiliated schools by making a written request to the City Clerk.

1. The request shall include:
 - a.) The name of the sponsoring organization;
 - b.) The reason for the reservation;
 - c.) The dates and times to be reserved;
 - d.) Number of courts to be reserved
2. There shall be a court maintenance fee based on the number of courts used as established in the city fee schedule.

C. Tournament Use

The Prairie Village Tennis Courts may be reserved for tournaments by making a written request to the City Clerk.

1. The request shall include:
 - a.) The name of the sponsoring organization;
 - b.) The reason for the reservation;
 - c.) The dates and times to be reserved;
 - d.) The number of courts to be reserved;
 - e.) Special accommodations required for the event
 - Access to Tennis Shack
 - Access to additional toilet facilities
 - Reservation of park shelter facilities
2. There shall be a tournament fee as established in the city fee schedule.

VI. PROCEDURES

Application for Tennis Court Reservation Permit

IMPORTANT: This reservation form must be completed and signed on *BOTH PAGES* and returned to the City Clerk's office. A signed application must be on file *BEFORE* the tennis courts can be reserved and permit issued. PLEASE CAREFULLY REVIEW RESERVATION REGULATIONS AND PARK RULES ON SECOND PAGE OF APPLICATION.

Prairie Village Resident/Sponsor (responsible party) Phone No.s: (H) _____
Name _____ (W) _____
Address _____ (Cell) _____
City/ST/Zip _____ KS D/L No: _____
Group or organization: _____ E-Mail _____
If different from above: Address _____ Phone _____
Purpose of reservation: _____ No. of people: _____
Tennis Courts requested: _____
Date(s) of use: _____ Time(s) of use: _____

- Reservation fee established by Council Policy 632
 - Private Tennis Court Rental Fee \$7 per hour per court
 - Seasonal Tennis Court Maintenance Fee \$50 per court
 - Tennis Tournament Fee \$300
 - Deposit if required \$250

Assurance Statement

I have reviewed the Reservation Regulations and Rules outlined on Page 2 of this Application. In making the above reservation, I fully understand that I will be held responsible for any violations of State laws and rules and regulations of the City of Prairie Village, Kansas at the location and time specified on this Permit. I assume responsibility and will pay for any damage or loss that may occur to the facility, equipment and grounds. In addition, the organization will be required to sign a hold-harmless Affidavit. I further understand that if a violation occurs, the activity can be canceled by the Prairie Village Police Department without prior notice and the parties and organization named herein may be subject to prosecution for such violation.

Signature of Prairie Village Sponsor

COMPLETE & SIGN *BOTH PAGES* OF APPLICATION AND RETURN TO:

The City of Prairie Village · 7700 Mission Road · Prairie Village KS 66208
381-6464 / FAX 381-7755

PROCESSED BY: _____ DATE: _____ D/L VERIFIED _____ PERMIT ISSUED ON: _____

Affidavit

(Group, Organization or Sponsor) _____ shall indemnify and hold the City of Prairie Village harmless from and against any loss, cost or damage of any nature arising out of any action or claim against Prairie Village, or its agents or employees, in connection with or relating to any alleged injury or damage occurring in or around _____ Tennis Courts immediately prior to, immediately after, and during the period for which the facility is reserved by the above named group or organization.

Date Signature of Prairie Village Sponsor

NON-DISCRIMINATION CLAUSE

(Individual, Group, or Organization) _____ shall comply with all applicable state and federal laws in carrying out this reservation.

In connection with the performance of this reservation, the reserving party agrees to comply with the applicable provisions of all state and federal non-discrimination laws.

(Individual, Group or Organization) _____ further agrees to not discriminate against any person because of race, religion, color, sex, disability, age, national origin or ancestry in the admission or access to, or participation or employment in, its programs, services and activities.

If the City determines that the reserving party has violated any applicable provision of any state or federal law, or has discriminated against any person because of race, religion, color, sex, disability, age, national origin or ancestry in the admission or access to, or participation or employment in, its programs, services and activities, such violation and/or discrimination shall constitute a breach of contract and the City may cancel, terminate or suspend this agreement in whole or in part.

The parties do not intend this provision to subject any party to liability under state or federal law unless it applies.

Individual, Group or Organization

Date: _____
By: Name, Title

RESERVATION REGULATIONS

- All reservations for use of Prairie Village Tennis Courts must be made by completing an Application for Permit. A Permit number will be assigned and recognized by a copy of the Application. Applications can be requested either in person at the Municipal Building, by mail or fax.
- The sponsor is responsible for the actions of the group members.
- Cleanup after use shall be done by the group using the courts.

PRAIRIE VILLAGE PUBLIC PARK AND PAVILION RULES

- Amplified sound is prohibited except by issuance of a Permit from the City Clerk's office.
- Alcoholic liquor is prohibited.
- Littering is prohibited.
- Parking or driving on the grass is prohibited.

Reservation Appl Faxed To _____ Fax # _____ Date _____

Application for Tennis Court Tournament Reservation Permit

Sponsor/Coordinator (responsible party)

Name _____

Address _____

City/State/Zip _____

Email address _____

Daytime Phone _____ Other phone _____

Group/organization using the tennis courts _____

Address (if different from above) _____

Purpose of reservation _____

Tennis courts requested _____

Special Accommodations Portable Toilet Facilities _____ Number Needed _____
Access to Tennis Shack _____
Coordinating Reservation of Park Shelter _____

Date(s) requested _____

Time(s) of use _____

Assurance Statement

I have reviewed the Reservation Regulations and Rules outlined on page 2 of this application. In making the above reservation, I fully understand that I will be held responsible for any violations of State laws and rules and regulations of the City of Prairie Village, Kansas, at the location and time specified on this Permit. I assume responsibility and will pay for any damage or loss that may occur to the facility, equipment and grounds. In addition, the organization will be required to sign a hold-harmless Affidavit. I further understand that if a violation occurs, the activity can be canceled by the Prairie Village Police Department without prior notice and the parties and organization named herein may be subject to prosecution for such violation.

Signature of Prairie Village Sponsor _____

COMPLETE AND SIGN BOTH SIDES OF THIS APPLICATION. RETURN APPLICATION TO:

The City of Prairie Village • 7700 Mission Road • Prairie Village, KS 66208
381-6464/FAX 381-7755

IMPORTANT: This reservation form must be completed and signed on BOTH PAGES and returned to the City Clerk's office. A signed application must be on file BEFORE the tennis courts can be reserved and permit issued. Please carefully review the reservation regulations and park rules on the second page of this application.

Application for Tennis Court Tournament Reservation Permit

Affidavit

(Group, Organization or Sponsor) _____ shall indemnify and hold the City of Prairie Village harmless from and against any loss, cost or damage of any nature arising out of any action or claim against Prairie Village, or its agents or employees, in connection with or relating to any alleged injury or damage occurring in or around _____ Tennis Courts immediately prior to, immediately after, and during the period for which the facility is reserved by the above named group or organization.

Date

Signature of Prairie Village Sponsor

Non-Discrimination Clause

(Individual, Group, or Organization) _____ shall comply with all applicable state and federal laws in carrying out this reservation.

In connection with the performance of this reservation, the reserving party agrees to comply with the applicable provisions of all state and federal non-discrimination laws.

(Individual, Group or Organization) _____ further agrees to not discriminate against any person because of race, religion, color, sex, disability, age, national origin or ancestry in the admission or access to, or participation or employment in, its programs, services and activities.

If the City determines that the reserving party has violated any applicable provision of any state or federal law, or has discriminated against any person because of race, religion, color, sex, disability, age, national origin or ancestry in the admission or access to, or participation or employment in, its programs, services and activities, such violation and/or discrimination shall constitute a breach of contract and the City may cancel, terminate or suspend this agreement in whole or in part.

The parties do not intend this provision to subject any party to liability under state or federal law unless it applies.

Individual, Group or Organization

Date

By Name, Title

PRAIRIE VILLAGE PUBLIC PARK AND PAVILION RULES

- Amplified sound is prohibited except by issuance of a Permit from the City Clerk's office.
- **Alcoholic liquor is prohibited.**
- Littering is prohibited.
- Parking or driving on the grass is prohibited.

Processed by: _____ Date: _____ D/L Verified _____ Permit issued on: _____

Application for Tennis Court Tournament Reservation Permit

RESERVATION REGULATIONS

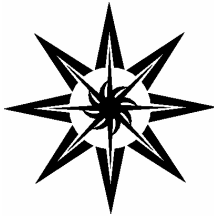
- All reservations for use of Prairie Village Tennis Courts must be made by completing an Application for Permit. A Permit number will be assigned and recognized by a copy of the Application. Applications can be requested either in person at the Municipal Building, by e-mail, mail or fax.
- **Reservation fee established by Council Policy 632**
- **Tennis Court Private Reservation Fee: \$7 per hour per court**
- **Tennis Tournament fee of \$300 shall be charged for the special accommodations required for a tournament; an additional refundable deposit of \$250 is required for private non-school/team sponsored tournaments.**

Sponsor Responsibilities

- **The sponsor is responsible for the actions of the group members.**
- **The sponsor shall be on site during the entire reservation.**
- **Cleanup after use shall be done by the sponsor and trash materials deposited in the city dumpsters on site. Failure to do so shall result non-return for your deposit.**
- **A park reservation application shall be completed for the coordinating reservation of Santa Fe Park Shelter.**

City Responsibilities

- **The City shall be responsible for the coordination of special accommodations needed including the securing and placement of requested additional on-site portable toilets.**
- **The City shall provide access to the Tennis Shack and related supplies.**



MAYOR

**Council Meeting Date: October 3, 2016
Consent Agenda**

CONSENT AGENDA: CONSIDER APPOINTMENT TO THE ARTS COUNCIL

RECOMMENDATION

Ratify the Mayor's appointment of Annette Hadley to the Arts Council with her term expiring in April 2017.

BACKGROUND

Annette Hadley has expressed interest in serving on the Arts Council. Committee Chair Dan Andersen has interviewed the applicant and desire to have her appointed to the Committee with the Mayor's approval. Her volunteer application is attached.

ATTACHMENTS

1. Volunteer Application

PREPARED BY

Meghan Buum
Deputy City Clerk/Public Information Officer
September 29, 2016

Meghan Boom

From: Alley Williams
Sent: Friday, August 12, 2016 12:33 PM
To: Joyce Hagen Mundy; Meghan Boom
Subject: City of Prairie Village Volunteer Application

A new entry to a form/survey has been submitted.

Form Name: Volunteer Application
Date & Time: 08/12/2016 12:32 PM
Response #: 31
Submitter ID: 4488
IP address: 68.89.236.54
Time to complete: 20 min. , 22 sec.

Survey Details

Page 1

Volunteer Information

Name

Annette M Hadley

Address**Zip**

66208

Email**Home Phone**

Not answered

Work Phone

Not answered

Other Phone**Business Affilitaion**

Abundance Art LLC

Business Address

Same as home

Select Ward

Click for [map](#)

(o) 2

Which committee(s) would you like to serve on? (check all that apply)

Arts Council

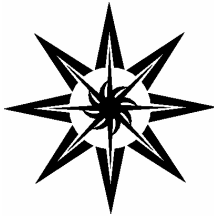
Background

Please tell us about yourself, listing any special skills or experiences you have.

Raised in Prairie Village, registered nurse for 20 years (operating room), clinical healthcare informatics consultant (for Cerner and Cerner clients) for 15 years, I've spent more than 5 of the last 10 years living, working, traveling, volunteering and trekking abroad. During these recent years I began writing poetry and my memoir, and began drawing mandalas as part of a personal healing journey. In 2011 I began painting as a hobby, moving from tempera on paper to acrylic on canvas. My style is called process painting, otherwise known as painting from the source. No judgment, no rules, just painting from my heart. I started my own creative business Abundance Art LLC in 2014, launched my website www.abundanceart.com in April 2015, held my first exhibit at the KC Arts Crossroads First Friday in June 2015. I then joined Images Art Gallery, where I exhibit regularly, and was a featured artist this summer. My website online store launched June 1st, and I also have an Etsy account. I am proficient with Windows and Mac applications, a collaborative team worker, and also possess excellent communication skills.

Thank you,
City of Prairie Village

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PUBLIC WORKS DEPARTMENT

Council Meeting Date: October 3, 2016

CONSIDER AGREEMENT WITH THE MID-AMERICA REGIONAL COUNCIL FOR FUNDING OPERATIONS OF OPERATION GREEN LIGHT TRAFFIC CONTROL SYSTEMS IN PRAIRIE VILLAGE FOR 2017 AND 2018

RECOMMENDATION

Move to approve the agreement with the Mid-America Regional Council (MARC) for funding operations of Operation Green Light Traffic Control Systems (OGL) in Prairie Village for 2017 and 2018 in the amount of \$10,800.00.

BACKGROUND

Since early 2002, we have been part of a project with the Mid-America Regional Council (MARC) to construct a regional arterial traffic signal coordination system. This coordinating system is intended to alleviate traffic congestion caused by weather, accidents or construction to improve the traffic operational efficiency, air quality and monetary savings through consolidated and coordinated operation of traffic signals along the arterial corridors. The system includes five signals on 75th Street that are Prairie Village Signals, two signals on 75th Street that are shared with Overland Park, and four signals on 95th Street that are shared with Overland Park. The attached agreement is the fifth agreement to date related to OGL. These agreements are summarized below.

OGL Agreement 1 (2003)-	For initial design and committed \$14,585 in City Funds
OGL Agreement 2 (2006)-	For final design and construction and committed \$20,849 in City Funds.
OGL Agreement 3 (2010)-	For operational costs and commits \$24,860.06 in City funds.
OGL Agreement 4 (2014)-	For operational costs for 2015 and 2016 and commits \$10,800 in City Funds
OGL Agreement 5 (2016)-	For operational costs for 2017 and 2018 and commits \$10,800 in City Funds. This agreement is essentially the same agreement executed in 2014.

This agreement is for 2 years.

The \$10,800 in City Funds for operation is only 50% of the actual operations and maintenance costs; the other 50% is paid for by Surface Transportation Project (STP) Federal funds that are coordinated through MARC.

FUNDING SOURCE

Funding is available in the Streets Operating Account.

RELATION TO VILLAGE VISION

TR1a. *Ensure that infrastructure improvements meet the needs of all transportation users.*

ATTACHMENTS

1. Agreement with MARC for funding of OGL's operational costs.

PREPARED BY

Keith Bredehoeft, Public Works Director

September 28, 2016

**COOPERATIVE AGREEMENT
FOR FUNDING OPERATIONS OF OPERATION GREEN LIGHT
TRAFFIC CONTROL SYSTEM**

THIS COOPERATIVE AGREEMENT FOR FUNDING OPERATIONS OF OPERATION GREEN LIGHT TRAFFIC CONTROLS SYSTEM (this "Agreement") is made and entered into this ____ day of _____, 2016 by and between Mid-America Regional Council (MARC) and the City of _____, Kansas, a Constitutionally Chartered Municipal Corporation (City).

WHEREAS, the Mid-America Regional Council performed a feasibility study “*Operation Green Light Feasibility Report, June 2000*” (hereafter, the "Feasibility Report"), which created a regional arterial traffic signal coordination system known as “Operation Green Light”, for the Kansas City Urban Area including facilities under the jurisdiction of the Missouri Department of Transportation, the Cities of Belton, Gladstone, Independence, Kansas City, Lee’s Summit, Liberty, North Kansas City, Raymore in Missouri and the jurisdiction of the Kansas Department of Transportation, the Cities of Bonner Springs, Fairway, Lansing, Leavenworth, Leawood, Lenexa, Merriam, Mission, Mission Woods, Olathe, Overland Park, Prairie Village, Shawnee, Westwood and the Unified Government of Wyandotte County/Kansas City in Kansas (collectively, the Member Agencies); and

WHEREAS, the Strategic Plan 2013-2016 established the vision, mission, objectives and goals of the program; and

WHEREAS, improvement in traffic operational efficiency, air quality and monetary savings to the Member Agencies and the public can be realized from a consolidated management approach of coordinated traffic signal control along arterial corridors in the roadway systems of each Member Agency; and

WHEREAS, the Member Agencies in Kansas are authorized pursuant to the provisions of Section 12-2908 of the Kansas Statutes Annotated, and the Member Agencies in Missouri are authorized pursuant to the provisions of Article VI, Section 9 of the Missouri Constitution and Sections 70.210 et. seq. of the Revised Statutes of Missouri to enter into cooperative agreements for the purpose of coordinating traffic signals between and within the Jurisdictional Boundaries of the Member Agencies; and

WHEREAS, each Member Agency has agreed to enter into an agreement to fund the cost of operating such a Regional Traffic Control System; and

NOW, THEREFORE, in consideration of the covenants and conditions herein set forth, MARC and the City (collectively, the "Parties") mutually agree as follows:

Sec. 1. STATUTORY AUTHORITY. Pursuant to the authority set forth in K.S.A. Section 12-2908, the parties enter into this Agreement for the funding of the operations of the Regional Traffic Control System, hereinafter defined, for the purpose of coordinating traffic signals within the Jurisdictional Boundaries of the Member Agencies from a regional perspective. Pursuant to such authority, the City will file for recording an executed copy of this Agreement in the appropriate county in the state of Kansas and file a copy with the Kansas Secretary of State.

Sec. 2. DEFINITIONS. As used in this Agreement, and Exhibit 1 through Exhibit 6, attached hereto and incorporated herein, the following words shall have the meanings set forth herein:

Exhibit 1 – Steering Committee Document

Exhibit 2 – Scope of Services

Exhibit 3 – Compensation

Exhibit 4 – Insurance Requirements

Exhibit 5 – Ownership Matrix

Exhibit 6 – Concept of Operations

Communications Network – All telecommunication infrastructure between Regional Traffic Management Centers, and Traffic Signal Controllers which are a part of the Regional Traffic Control System.

Jurisdictional Boundaries – the geographical boundaries of the governmental entities acting as political subdivisions of the states of Kansas and Missouri.

Jurisdictional Control Center – the site or location designated by the Member Agency containing various equipment, computer hardware and computer software capable of controlling and coordinating all Traffic Signal Controllers located within the Jurisdictional Boundaries of the Member Agency.

Member Agencies – Agencies that have entered into an agreement with MARC to participate in funding the cost of design, construction and operations of the Regional Traffic Control System.

Private Firms – any private firm or firms engaged by MARC to perform or provide any services, directly or indirectly, related to the operations of the Regional Traffic Control System (including, without limitation, design services provided for on-going operations), as more particularly set forth in Exhibit 2, attached hereto and incorporated herein by this reference.

Regional Traffic Control System - an array of components including Traffic Signal Controllers, wireless and wireline telecommunications equipment, interface units, computer hardware and software, digital storage media, operator's console, peripherals, and other related devices designed to monitor, control, and coordinate traffic movements at signalized intersections according to a given or developed plan.

Regional Traffic Management Center – the site or location designated by the Steering Committee containing various equipment, computer hardware and computer software capable of controlling and coordinating the Regional Traffic Control System. The Regional Traffic Management Center is sometimes referred to herein and in the Exhibits as the "TOC".

Steering Committee – that committee created for the purpose of assisting and advising MARC with respect to the plans, specifications, construction, installation and operation of the Regional Traffic Control System and consisting of voting representatives from the

Member Agencies. The membership structure and policy are set forth in Exhibit 1, attached hereto and incorporated herein by this reference.

Traffic Signal Controller – a complete electrical mechanism responsible for traffic signal control and operation at an individual intersection.

Sec. 3. RESPONSIBILITIES OF PARTIES.

(a) MARC. MARC shall perform or cause to be performed the services set forth in Exhibit 2, which is attached hereto and incorporated herein by this reference.

(b) City. In addition to the obligations set forth in this Agreement, City, in its capacity as a Member Agency, shall also perform all the obligations set forth in the document entitled "OGL Concept of Operations: Roles and Responsibilities", which is attached hereto as Exhibit 6 and incorporated herein by this reference. Furthermore, City shall not interfere with MARC's exercise of its obligations under this Agreement, including, but not limited to MARC's deployment of the regional signal timing and on-going operations of the Regional Traffic Control System.

Sec. 4. SHARE OF COSTS. Subject to the conditions set forth in this Agreement, the City will pay MARC an amount not to exceed **Ten Thousand, Eight Hundred and 00/100 Dollars (\$10,800.00)** representing the City's share of the cost for the maintenance and operation of the Regional Traffic Control System, as set forth in Exhibit 3, attached and incorporated herein by this reference. The "Operation Green Light Location/ Ownership Matrix" set forth in Exhibit 5 attached hereto and incorporated into this Agreement, identifies the location and ownership of the software, hardware and other components comprising the Regional Traffic Control System.

Sec. 5. SHARING INFORMATION. MARC shall share information related to the maintenance and operation of the Regional Traffic Control System with the City, and the City shall share information with MARC and the Member Agencies necessary for the on-going maintenance and operation of the Regional Traffic Control System.

Sec. 6. SEVERABILITY. Should any provision hereof for any reason be deemed or ruled illegal, invalid or unconstitutional by any court of competent jurisdiction, no other provision of this Agreement shall be affected; and this Agreement shall then be construed and enforced as if such illegal or invalid or unconstitutional provision had not been contained herein.

Sec. 7. AUTONOMY. No provision of this Agreement shall be constructed to create any type of joint ownership of any property, any partnership or joint venture, or create any other rights or liabilities except as may be otherwise expressly set forth herein.

Sec. 8. EFFECTIVE DATE. The effective date of this Agreement shall be upon complete execution by the Parties.

Sec. 9. TERMINATION FOR CONVENIENCE. Either party to this Agreement may terminate this Agreement by giving 180 days' notice to the other Party. Financial obligations will be honored up to the effective date of termination. An agency that terminates this agreement may no longer be granted access to the Regional Traffic Control System. Costs may be incurred

by the agency terminating the agreement for MARC to uninstall or transfer ownership of network equipment owned by MARC.

Sec. 10. MERGER. This Agreement constitutes the entire agreement between City and MARC with respect to this subject matter.

Sec. 11. INDEPENDENT CONTRACTOR. MARC is an independent contractor and is not City's agent. MARC has no authority to take any action or execute any documents on behalf of City.

Sec. 12. COMPLIANCE WITH LAWS. MARC shall comply with and shall require its Private Firms to comply with all federal, state and local laws, ordinances and regulations applicable to the work and this Agreement.

Sec. 13. DEFAULT AND REMEDIES. If MARC shall be in default or breach of any provision of this Agreement, City may terminate this Agreement, suspend City's performance, withhold payment or invoke any other legal or equitable remedy after giving MARC written notice and opportunity to correct such default or breach within thirty (30) days of receipt of such notice; provided, however, if such default or breach cannot be cured within thirty (30) days, then MARC shall commence to cure within thirty (30) days.

Sec. 14. WAIVER. Waiver by City of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any other term, covenant or condition. No term, covenant, or condition of this Agreement can be waived except by written consent of City, and forbearance or indulgence by City in any regard whatsoever shall not constitute a waiver of same to be performed by MARC to which the same may apply and, until complete performance by MARC of the term, covenant or condition, City shall be entitled to invoke any remedy available to it under this Agreement or by law despite any such forbearance or indulgence.

Sec. 15. MODIFICATION. Unless stated otherwise in this Agreement, no provision of this Agreement may be waived, modified or amended except in writing signed by City and MARC.

Sec. 16. HEADINGS; CONSTRUCTION OF AGREEMENT. The headings of each section of this Agreement are for reference only. Unless the context of this Agreement clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender.

Sec. 17. AUDIT. The City shall have the right to audit this Agreement and all books, documents and records relating thereto. MARC shall maintain all its books, documents and records relating to this Agreement and any contract during the period of this Agreement and for three (3) years after the date of final payment of the contract or this Agreement, which ever expires last. The books, documents and records shall be made available for the City's review within fifteen (15) business days after the written request is made.

Sec. 18. AFFIRMATIVE ACTION; NON-DISCRIMINATION.

(a) MARC shall require Private Firms to establish and maintain for the term of this Agreement an Affirmative Action Program in accordance with the provisions the Title VI of the Civil Rights Act of 1964, as amended. More specifically, any third party firm will comply with the applicable regulations of the U. S. Department of Transportation (USDOT) relative to non-discrimination in federally assisted programs of the USDOT, as contained in 49 CFR 21 through Appendix H and 23 CFR 710.405 which are herein incorporated by reference and made a part of this Agreement.

(b) During the performance of this Agreement or any subcontract resulting thereof, MARC, Private Firms and all subcontractors and vendors (the Private Firms, together with all subcontractors and vendors, shall for purposes of this Section 18 be collectively referred to as the "Other Contractor Parties") shall observe the provisions of the Kansas Acts Against Discrimination (K.S.A. 44-1001, et seq.) and Title VII of the Civil Rights Act of 1964 as amended and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, national origin, age, disability, ancestry, veteran status, or low income. In all solicitations or advertisements for employees, the MARC and the Other Contractor Parties shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission ("Commission"). If MARC fails to comply with the manner in which MARC reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, or if MARC is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, MARC shall be deemed to have breached this Agreement, and this Agreement may be canceled, terminated or suspended, in whole or in part, by the City.

(c) MARC 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, ordinances and regulations applicable to this project, and shall furnish any certification required by any federal, state or local laws, ordinances and regulations applicable to this project and shall furnish any certification required by any federal, state or local governmental agency in connection therewith.

(d) MARC shall include the provisions of paragraphs (b) through (c) above in every subcontract so that such provisions will be binding upon such subcontractor or vendor.

Sec. 19. ASSIGNABILITY OR SUBCONTRACTING. MARC shall not subcontract, assign or transfer any part or all of MARC's obligations or interests without City's prior approval which shall not be unreasonably delayed or withheld. If MARC shall subcontract, assign, or transfer any part or all of MARC's interests or obligations under this Agreement without the prior approval of City, it shall constitute a material breach of this Agreement.

Sec. 20. CONFLICTS OF INTEREST. MARC shall require its Private Firms to certify that no officer or employee of City, or no spouse of such officer or employee, has or will have a direct or indirect financial or personal interest in this Agreement or any other related agreement, and that no officer or employee of City, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to

perform services on behalf of MARC or its Private Firms in this Agreement or any other related agreement.

Sec. 21. RULES OF CONSTRUCTION. The judicial rule of construction requiring or allowing an instrument to be construed to the detriment of or against the interests of the maker thereof shall not apply to this Agreement.

Sec. 22. NOTICE: Any notice to a party in connection with this Agreement shall be made in writing at the following address or such other address, as the party shall designate in writing:

City of Prairie Village
Attention: Keith Bredehoeft, Public Works Director
7700 Mission Road
Prairie Village, Kansas 66208

Mid-America Regional Council
Attention: Director of Transportation and Environment
600 Broadway, Suite 200
Kansas City, Missouri 64105

Sec. 23. GOVERNING LAW. This Agreement shall be construed and governed in accordance with the law of the State of Kansas. Any action in regard to this Agreement or arising out of its terms and conditions must be instituted and litigated in the courts of the State of Kansas within Johnson County, Kansas, and in no other. The parties submit to the jurisdiction of the courts of the State of Kansas and waive venue.

Sec. 24. INDEMNIFICATION BY PRIVATE FIRMS. MARC shall require its Private Firms (including, without limitation, any design professionals) to defend, indemnify, and hold harmless the City and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including reasonable attorney fees, arising out of any negligent acts or omissions in connection with the services performed pursuant to this Agreement (including, without limitation, professional negligence), caused by a Private Firm, its employees, agents, contractors, or caused by others for whom the Private Firm is liable. Notwithstanding the foregoing, the Private Firm is not required under this section to indemnify the City for the negligent acts of the City or any of its agencies, officials, officers, or employees.

Sec. 25. INSURANCE. MARC and any Private Firms retained by MARC shall maintain the types and amounts of insurance set forth in Exhibit 4, which is incorporated herein by this reference; provided, however, the limits set forth in Exhibit 4 are the minimum limits and MARC may carry higher limits as it may deem necessary, in its discretion, or as may be required by other Member Agencies.

Sec. 26. INITIAL TERM; RENEWAL OF TERM. The initial term of this Agreement shall be two (2) years ("Term") unless sooner terminated in accordance with Section 9 of this Agreement. The Term of this Agreement shall automatically renew for one additional two (2) year period (the "Renewal Term") on the same terms and conditions as set forth herein; provided, the Term shall not automatically renew if City provides written notice to MARC of its intention not to renew within 180 days prior to the expiration of the Term.

Sec. 27. NON-APPROPRIATIONS. Notwithstanding anything to the contrary in this Agreement, in accordance with the Kansas Cash-Basis Law, specifically K.S.A. Section 10-1116b, the City is obligated only to pay the OGL Operating Costs required under this Agreement as may lawfully be made from (a) funds budgeted and appropriated for that purpose during the City's current budget year, calendar fiscal year, or (b) funds made available from any lawfully operated revenue-producing source. City represents and warrants that each year during the term of this Agreement, its chief administration office will submit to and advocate for approval by its governing body a budget that includes amounts sufficient to pay the City's share of the OGL Operating Costs required under this Agreement. City also represents and warrants that its governing body, each fiscal year during the term of this Agreement, will fully consider and make all good faith and reasonable efforts to adopt a budget, for each successive fiscal period during the term of this Agreement, that specifically identifies amounts sufficient to permit City to discharge all of its obligations under this Agreement.

EXHIBIT 1

OPERATION GREEN LIGHT COMMITTEE

Role, Responsibility, and Organizational Structure

- 1.1.1 *Responsibilities: The Operation Green Light Steering Committee shall serve to approve budgets, procurement and staffing recommendations to the Mid-America Regional Council Board of Directors and to make other technical and policy decisions concerning the development, deployment and operation of the Operation Green Light regional traffic signal coordination program, including:* approve the program's upcoming annual budget during the final meeting of the calendar year. Purchases and contracts shall follow MARC's established threshold guidelines as well as the following: amounts of \$15,000-\$25,000 shall be reported to the committee; amounts of \$25,001 or more shall be voted on and approved by the Steering Committee before purchase or contract is sent to MARC's Board of Directors for approval.
- 1.1.2 Participate in program decision-making at key points by reviewing and providing comments on project deliverables and by approving or rejecting technical and policy recommendations;
- 1.1.3 Participate in the development of inter-jurisdictional agreements for the construction, operation, maintenance and other activities of the regional traffic signal coordination system; and
- 1.2 Call upon committee members to participate in Task Force work groups as technical issues arise requiring additional effort than time allows during a Steering Committee meeting. The Task Force shall submit to the Steering Committee recommendations based on its discussions.
- 1.3 Membership and Meetings: The Steering Committee shall be composed of representatives from participating agencies in the following manner:

(The following table is a current list as of May 2016)

Participating Agency Non-Funding Agency in Bold	Membership (voting)
Belton	1
Bonner Springs	1
Fairway	1
FHWA – MO & KS	Ex Officio
Gladstone	1
Independence	1
Kansas City, MO	1
KCScout	Ex Officio
KDOT	1
Lansing	1
Leavenworth	1
Leawood	1
Lee's Summit	1
Lenexa	1
Liberty	1
MARC	1
Merriam	1
Mission	1
Mission Woods	1
MoDOT	1
North Kansas City	1

Olathe	1
Overland Park	1
Prairie Village	1
Raymore	1
Shawnee	1
Unified Government/KCK	1
Westwood	1

Each representative shall have a designated alternate with full authority to act in the absence of the representative. The Steering Committee may be expanded to include other additional members as approved by majority vote of the members of the existing Steering Committee.

The Steering Committee shall meet minimally on a quarterly basis but may meet more frequently if the business of the Steering Committee necessitates. The final meeting of the calendar year shall be designed to report on the State of the Operation Green Light Program including Budget reporting and approval of the future budget and election of the next vice-chairperson.

The chairperson of the Steering Committee shall have the authority to call a meeting of the Committee with a minimum of seven (7) calendar days' notice to all the members. Notice is deemed to have occurred from the date that it is deposited with the United States Postal Service, postage prepaid; distributed via Facsimile; OR distributed via E-mail addressed to the members of the Steering Committee. The chairperson and vice-chairperson shall help develop meeting agendas prior to meeting notices and shall preside over the meetings.

1.4 Chairperson and Vice-Chairperson: The Steering Committee members shall elect by majority vote of all of the voting members of the Committee, from amongst the members of the Committee, a vice-chairperson who will serve a one-year term. Said election will occur at the final regularly scheduled meeting of the calendar year of the Steering Committee prior to the expiration of the chairperson's one-year term. The vice-chairperson shall assume the responsibilities of the chairperson at the end of the chairperson's term and any time the chairperson is unable to attend committee meetings. Kansas and Missouri shall be represented in these positions in alternating years.

1.5 Quorum and Voting: All members of the Steering Committee shall be entitled to one vote on all matters submitted to the Committee for vote.

Any **six** of the voting members of the Steering Committee, including at least **one** member from Kansas City, Missouri, the Missouri Department of Transportation, Unified Government/Kansas City, Kansas, or Overland Park, Kansas, (based on the four largest agencies by signal count at the beginning of the current Operations contract term) shall constitute the quorum necessary to convene the meeting of the Committee. All official actions by the Steering Committee shall require a majority vote of the members present at the meeting.

All votes shall be taken and recorded in the minutes by roll call. Each member shall have the ability to recall any matter voted upon during his or her absence providing said member notifies in writing the committee chairperson or co-chairperson within 7 calendar days of when the meeting minutes are posted to the MARC website and/or delivered to committee members via email. Within 3 business days of being notified, the chairperson or co-chairperson shall collaborate with OGL staff to present the issue for a reconsideration of the vote via email to all committee members who will be asked to respond within 10 calendar days. If a response is not received by close of business on the 10th day, the member's previously cast vote shall be counted in the same manner.

EXHIBIT 2

SCOPE OF WORK

1. Project Management

The Mid-America Regional Council (MARC) will provide staff time, equipment and materials, and contract services necessary to accomplish the following project management services:

- Arrange and conduct regular Steering Committee meetings to discuss and develop policies and procedures governing the development, implementation and on-going operation of the program;
- Arrange and conduct Technical Committee meetings as needed to discuss and develop recommendations concerning technical issues associated with the development, implementation and on-going operation of the project;
- Arrange and conduct other meetings with project participants as necessary to develop, implement and operate the project;
- Negotiate, execute and administer agreements with state and local governments to provide federal, state and local funding for the development, implementation and ongoing operation of the program;
- Develop and publish requests for proposals, consultant agreements and other procurement documents necessary to select and hire contractors to provide system integration services, telecommunications and traffic engineering design services, computer software, computer hardware, communications network, traffic signal equipment and other items necessary for the development, implementation and ongoing operation of the program;
- Negotiate, execute and administer agreements with private firms to provide system integration services, telecommunications and traffic engineering design services, computer software, computer hardware, communications network, traffic signal equipment and other items necessary for the development, implementation and ongoing operation of the program;
- Develop and maintain project budgets and schedules;
- Develop and maintain project databases;
- Publish and distribute project documents and other deliverables to participating state and local governments; and
- Perform other tasks necessary to manage and administer the program.

2. Traffic Signal Timing

MARC shall coordinate with agency staff or their delegates to develop and implement, with agency approval, the requisite signal timing plans for OGL intersections

3. Operations and Maintenance

3.1. Computer Software and Databases

MARC will procure all required software and may engage a private firm or firms selected by the project Steering Committee to provide technical support and maintain computer software and databases at the Operation Green Light Traffic Operations Center. MARC staff shall be responsible for providing day-to-day maintenance of the computer software and databases including but not limited to data entry, backups, upgrades, etc., at the Operation Green Light Traffic Operations Center.

3.2. Computer Network

MARC will procure all required hardware and software. Any equipment (e.g. switches, routers, hubs, etc.) that is used for the field communication back bone will be considered part of the computer network. MARC may engage a private firm or firms selected by the Steering Committee to provide technical support and maintain the Operation Green Light computer network.

3.3. Field Communications System

All field communications equipment purchased by MARC will be maintained by MARC. The city will maintain any pre-existing, city-owned equipment that is utilized as part of the OGL field communication system. MARC staff will monitor the field communication system through monitoring software which is purchased by MARC. MARC may engage a private firm or firms selected by the project Steering Committee to maintain the regional field communications system. The scope of services for this work will be developed with and approved by the Steering Committee.

3.4. Traffic Signal Controllers

Each member agency shall be responsible for all maintenance to the traffic signal controllers. MARC responsibility will be limited to maintaining the regional field communication system and will terminate at the traffic controller unless otherwise specified. Traffic signal controllers and cabinets that have been purchased and/or installed as part of the OGL controller upgrade project will also be owned and maintained by the local jurisdiction once they have been received and/or accepted, and the local jurisdiction will be responsible for purchasing and installing replacement controllers that are compatible with the OGL system should the MARC-purchased controller fail.

EXHIBIT 3
COMPENSATION

- A. The amount the City will pay MARC under this contract will not exceed **Ten Thousand, Eight Hundred and 00/100 Dollars (\$10,800.00)**. This amount represents the City share of the total project cost as shown in Table 1 of this Exhibit. City shall pay MARC, upon invoice, for the actual costs incurred for MARC on a yearly basis.

Table 1			
Operation Green Light Program			
Annual Operations Costs			
Annual Operating Cost per Signal			\$1,600
Total Agency Signals in OGL			6.75
Total Agency Unsubsidized Annual cost			\$10,800.00
Cost per Year Subsidized			
Year	Federal Percentage	Annual Cost	Local Agency Cost
2017	50%	\$10,800.00	\$5,400.00
2018	50%	\$10,800.00	\$5,400.00
Total			\$10,800.00

- B. It shall be a condition precedent to payment of any invoice from MARC that MARC is in compliance with, and not in breach or default of, all terms, covenants and conditions of this Contract. If damages are sustained by City as a result of breach or default by MARC, City may withhold payment(s) to MARC for the purpose of set off until such time as the exact amount of damages due City from MARC may be determined.
- C. No request for payment will be processed unless the request is in proper form, correctly computed, and is approved as payable under the terms of this Contract.
- D. City is not liable for any obligation incurred by MARC except as approved under the provisions of this Contract.

Exhibit 4

INSURANCE REQUIREMENTS

A. MARC shall procure and maintain and shall cause any Private Firm it engages to perform services under this Agreement to procure and maintain in effect throughout the duration of this Agreement, and for a period of two (2) years thereafter, insurance coverage not less than the types and amounts specified below. MARC shall not accept insurance policies from any Private Firm containing a Self-Insured Retention.

1. Commercial General Liability Insurance: with limits of \$500,000 per occurrence and \$2,000,000 aggregate, written on an “occurrence” basis. The policy shall be written or endorsed to include the following provisions:

- a. Severability of Interests Coverage applying to Additional Insureds
- b. Contractual Liability
- c. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$2,000,000
- d. No Contractual Liability Limitation Endorsement
- e. Additional Insured Endorsement, ISO form CG20 10, current edition, or its equivalent

2. Workers’ Compensation Insurance: as required by statute, including Employers Liability with limits of:

Workers Compensation Statutory
Employers Liability
\$100,000 accident with limits of:
\$500,000 disease-policy limit
\$100,000 disease-each employee

3. Commercial Automobile Liability Insurance: with \$500,000 per claim up to \$2,000,000 per occurrence, covering owned, hired, and non-owned automobiles. Coverage provided shall be on an “any auto” basis and written on an “occurrence” basis. The insurance will be written on a Commercial Business Auto form, or an acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the Agreement, by Design Professional.

4. Professional Liability Insurance (only applicable for Private Firms that are design professionals or other types of professionals that can carry professional liability insurance): with limits Per Claim/Annual Aggregate according to the following schedule:

<u>Fee Minimum Limits</u>	<u>Professional Liability Minimum</u>
Less than \$25,000	\$100,000
\$25,000 or more, but less than \$50,000	\$500,000
\$50,000 or more	\$1,000,000

B. The policies listed above may not be canceled until after thirty (30) days written notice of cancellation to MARC and the City, ten (10) days in the event of nonpayment of premium. The Commercial General and Automobile Liability Insurance specified above shall provide that MARC and the City and their agencies, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds for the services performed under this Agreement. Private Firms engaged by MARC shall provide to MARC and the City at execution of this Agreement a certificate of insurance showing all required endorsements and additional insureds.

C. All insurance coverage must be written by companies that have an A.M. Best’s rating of “B+V” or better, and are licensed or approved by the State of Kansas to do business in Kansas and by the State of Missouri to do business in Missouri.

D. Regardless of any approval by MARC or the City, it is the responsibility of the Private Firms to maintain the required insurance coverage in force at all times; its failure to do so will not relieve it of any contractual obligation or responsibility. In the event of a Private Firm’s failure to maintain the required insurance in effect, MARC may order the Private Firm to immediately stop work, and upon ten (10) days notice and an opportunity to cure, may pursue its remedies for breach of this Agreement as provided for herein and by law.

EXHIBIT 5

Operation Green Light Location / Ownership Matrix

Component	Location	Purchased By	Owned By	Maintained By	Comments
Software/Firmware					
TransSuite & Associated Software	OGL TOC	MARC	MARC	MARC*	
Genetec Video System	OGL TOC	MARC	MARC	MARC*	Available for use by local agencies
Other software used by MARC staff	OGL TOC	MARC	MARC	MARC*	
Computer Hardware					
OGL TOC Servers	OGL TOC	MARC	MARC	MARC*	
OGL TOC Workstations	OGL TOC	MARC	MARC	MARC*	
Agency TOC Servers	Local Agency	Local Agency	Local Agency	Local Agency	
Agency TOC Workstations	Local Agency	Local Agency	Local Agency	Local Agency	
Field Hardware					
OGL Field Network Equipment	Field	MARC	MARC	MARC*	
Local Agency Field Network Equipment	Field	Local Agency	Local Agency	Local Agency	Extention of City network
Existing Closed-Loop fiber re-tasked to OGL Network	Field	Local Agency	Local Agency	Local Agency	OGL owns switches to manage
Traffic Signal Controllers	Field	MARC/Local Agency	Local Agency	Local Agency	OGL purchased controllers only for original build-out
OGL-purchased Closed Circuit Camera	Field	MARC	Local Agency	Local Agency	
Miscellaneous					
OGL TOC Office	MoDOT KC District	MoDOT	MoDOT	MoDOT	
OGL TOC Phone System	OGL TOC	MoDOT	MoDOT	MoDOT	
OGL TOC Office Furniture & Equipment	OGL TOC	MARC	MARC	MARC*	
OGL Vehicles & Mobile Equipment	OGL TOC	MARC	MARC	MARC*	

* MARC maintained components to be maintained by joint-funded agreement

Exhibit 6

OGL Concept of Operations: Roles and Responsibilities

Introduction

Operation Green Light (OGL) is a regional initiative to improve traffic flow and reduce vehicle emissions by coordinating traffic signals on major roadways in the Kansas City metropolitan area. OGL is a cooperative effort of the Mid-America Regional Council (MARC), state departments of transportation and local agencies working together to coordinate traffic signal timing plans and communication between traffic signal equipment across jurisdictional boundaries.

The concept of operations provides a high-level overview of the roles and responsibilities of the agencies participating in the operation and management of OGL. The concept of operations is intended to balance the need for standardization and uniformity of operations on OGL routes with the need to be responsive to the unique needs and circumstances of the agencies participating in OGL.

Signal Timing

Initial Deployment of Regional Timing Plans

The member agencies will partner with MARC and each other in developing regional traffic signal timing plans. In order to facilitate this work each member agency will provide MARC traffic counts and other relevant, available data for traffic signals that are part of regionally significant traffic corridors that pass through adjacent cities. This information may include;

- Existing timing plans and data in the existing traffic controller (controller data sheets)
- Intersection geometry via aerial mapping
- Signal phasing information (or policy)
- Historical traffic count information available
- Approved yellow and all-red clearance intervals (or policy)
- Pedestrian timing (or policy)
- Signal phasing policy (lead only/lead-lag/vary lead-lag by time-of-day)
- Historical citizen complaints on the intersection operation as needed

After providing data to MARC, each member agency will then work with MARC to cooperatively develop regionally optimized timing plans. The member agency will continue to be responsible for maintenance of timing plans for traffic signals that lie wholly within the member agency's jurisdictional boundaries and are not on OGL corridors unless the member agency decides to contract this work to MARC. The steps involved in the development of regional timing plans are:

- The member agency will either collect traffic counts on the arterials for signals maintained by the member agency and provide this information to MARC OR will contract with MARC to collect traffic counts as needed.
- In conjunction with member agency staff, MARC will conduct travel-time studies and speed profile studies on the arterial prior to implementation of the timing plans
- MARC may hold design meetings with representatives from the member agencies and other impacted agencies. At the first of these meetings the following items will be established
 - Number of timing plans and time of use (i.e., am, noon, pm, off-peaks, etc.)
 - Critical intersections of a corridor
 - An initial common corridor cycle length for each of the plans identified (i.e. am,



pm, etc.) [Note: this cycle length may need to be revisited after developing the regional timing plan.]

- The member agency will then develop the following initial parameters for individual signals maintained by the member agency for each of the timing plans to be developed, and submit them to MARC for review and incorporation into regional plans for the OGL corridor;
 - phase sequencing
 - splits
 - offsets
- MARC will develop initial splits and offsets for any remaining signals and incorporate member agency developed timing plans into regional plans for the OGL corridor.
- MARC may then incorporate the regional plans into mutually agreed upon software as needed for review by the member agencies.
- At the second meeting, MARC and the member agencies will;
 - Review the regional timing plans developed
 - Review any software models developed
 - Determine if any changes to initial timings need to be made to optimize the operation of the corridor
- Once the member agencies have agreed on the different timing plans developed, they will download the timing plans into signal controllers maintained by each member agency OR will request MARC to provide signal timing plans and download to local controllers.
- In conjunction with member agency staff, MARC will field-monitor each arterial after a timing plan has been downloaded and will work with the member agency to make any additional changes to further optimize the flow of traffic if necessary.
- In conjunction with member agency staff, MARC will conduct travel-time and speed profile studies on arterials after implementation of the optimized signal timing plans

Providing Maintenance Timing Plans

As part of a regional effort, MARC will on a regular basis, or as requested, examine the operations of signals that are part of regionally significant traffic corridors that pass through the member agency and adjacent cities and determine if optimization is necessary. If minor changes to splits and offsets are to be made to individual signals along an OGL corridor the following steps will be followed:

- In conjunction with MARC, member agency staff will field-monitor the affected corridor or intersection(s)
- MARC will meet with affected member agencies if needed
- MARC will collect traffic counts as necessary OR the member agency will collect traffic counts at member agency maintained traffic signals
- The member agency will develop timing plans for member agency maintained signals and download them to controllers as necessary in coordination with MARC OR MARC will develop and provide revised arterial timing plans as needed
- In conjunction with member agency staff, MARC will field-monitor each arterial after timing plan download and provide further optimization if necessary by submitting updated timing plans for agency consideration and download

If major changes, such as changes to cycle lengths, phase sequencing and major changes to splits, are to be made along an OGL corridor, the process described above for initial deployment of regional timing plans may be used.

Incident Management



The member agency will work with MARC and other member agencies to identify locations along the regionally significant arterials and interstate highways where incidents are prone to happen and have major impact on traffic flow. These locations may be manually forced to run special plans when an incident is observed at the TOC. The following steps shall be followed for planned, recurring, and anticipated incident response:

- MARC and member agencies will identify incident-prone locations
- MARC will meet with affected member agencies to discuss solutions
- MARC will develop signal timing plans for the incident
- MARC will submit such plans for review by member agencies
- MARC and member agencies will jointly determine the parameters required for invoking such a plan by the TOC
- Once the plan has been invoked (when the required parameters are met) MARC will inform the affected agencies immediately
- After the incident has been cleared, MARC will put signals back on their regular plans and inform member agencies

The member agency will inform MARC about construction and roadway closures and may request signal timing plan adjustments. MARC will provide special timing plans when requested to optimize traffic flow for agency consideration and download.

Citizen Complaints

Member agencies will route/report citizen complaints/requests on OGL signals to the TOC and MARC, in cooperation with the member agency, will respond to the complaint/request in a timely manner. MARC will also route/report received citizen complaints to the member agencies and maintain a response log.

Dispute Resolution

In the event that satisfactory agreement cannot be reached between member agencies on timing plans or incident plans developed for OGL, the dispute will be referred to the OGL Steering Committee, which will provide recommendations for resolution. Unless the responsible engineer for a member agency determines that such plans will create an unsafe condition within their jurisdiction, the member agency will implement the plans recommended by the Committee

Emergency Provisions

In the event of an emergency not already covered under a pre-arranged incident-management plan, the member agency will take any steps it considers necessary to manage traffic signals within its jurisdiction to ensure the safety of the traveling public. The member agency will notify MARC of any emergency changes made to OGL traffic signal timing plans in a timely manner and will work expeditiously with MARC to restore all OGL corridors within its jurisdiction to normal operation when the emergency subsides.

Field Communication Operation and Maintenance

MARC will be responsible for maintenance and replacement of all wireless communication infrastructure that is installed as a result of OGL initiated construction projects. Member agencies that have the capability to maintain their own communication infrastructure may do by separate agreement with MARC.



Controller Upgrades and Work inside the Traffic Controller Cabinet

MARC will, with the applicable member agencies, upgrade traffic controllers that are incapable of communicating with the central system software. When work is performed that involves the opening of a traffic controller cabinet, the member agency will coordinate with the contractor and have a representative in the field. The member agency will test and approve/disapprove the work performed by the contractor and inform MARC of the fact. MARC will be responsible for administration and final approval of all OGL initiated construction projects. Member agencies are responsible for notifying and coordinating with OGL when undertaking traffic signal system construction projects on OGL corridors.

Technical Support for OGL Computer Network

MARC will provide technical support for the central system software and the laptop version of the central system software. MARC will also maintain the computer network hardware along with all network components such as network switches, routers, licensed and unlicensed radios, modems etc.

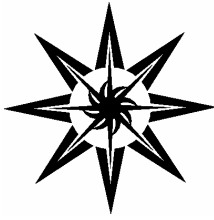
The Traffic Operations Center

MARC will staff OGL operations at the Traffic Operations Center (TOC). The TOC is currently co-located with the KC Scout program and offices in the MoDOT KC District offices.

The TOC will be staffed as determined by MARC. MARC expects to coordinate with Kansas City Scout and use the video monitoring capabilities available at the KC Scout TOC to alleviate congestion along arterials. It is recommended that member agencies with traffic management centers, at a minimum, staff their centers to operate on a schedule concurrent with OGL.

The staff will interact with citizens and the media and provide answers to traffic signal timing questions on OGL signals.





PUBLIC WORKS DEPARTMENT

Council Meeting Date: October 3, 2016

CONSIDER PURCHASE OF A FALCON HOT ASPHALT TRAILER AND APPROVE \$27,633.00 FROM THE 2016 EQUIPMENT RESERVE FUNDS FOR THIS PURCHASE.

RECOMMENDATION

Staff recommends the City Council approve the purchase of a Falcon Hot Asphalt Trailer and approve \$27,633 from the 2016 Equipment Reserve Funds for this purchase.

BACKGROUND

The 2017 Budget includes Equipment Reserve Funds for the purchase of a Hot Asphalt Trailer. An opportunity became available to purchase a demo unit at this time in 2016 at a reduced cost. The demo unit for sale is a 4 ton trailer and is less expensive than the 2 ton unit we were considering purchasing in 2017. Bids for the 2 ton units we were considering for purchase in 2017 ranged from \$33,193 to \$35,965. This larger 4 ton unit is \$27,633.00 if we purchase it now.

The Hot Asphalt Trailer will be used in our pot hole patching operation. The trailer allows crews to purchase bulk hot patch material and the trailer warms the asphalt throughout the day and can even be kept warm overnight for use the next day. This unit will reduce our usage of cold patch mix that is purchased in bags or buckets. This will not only make this operation easier and more efficient but will reduce our exposure to lifting injuries.

FUNDING SOURCE

The Equipment Reserve Fund for 2017 includes \$40,000 for the purchase of a Hot Asphalt Trailer. We are proposing to use \$27,633 in 2016 Equipment Reserve Funds for this purchase. The funds budgeted for this item in 2017 will not be used and will be available in future year budgets.

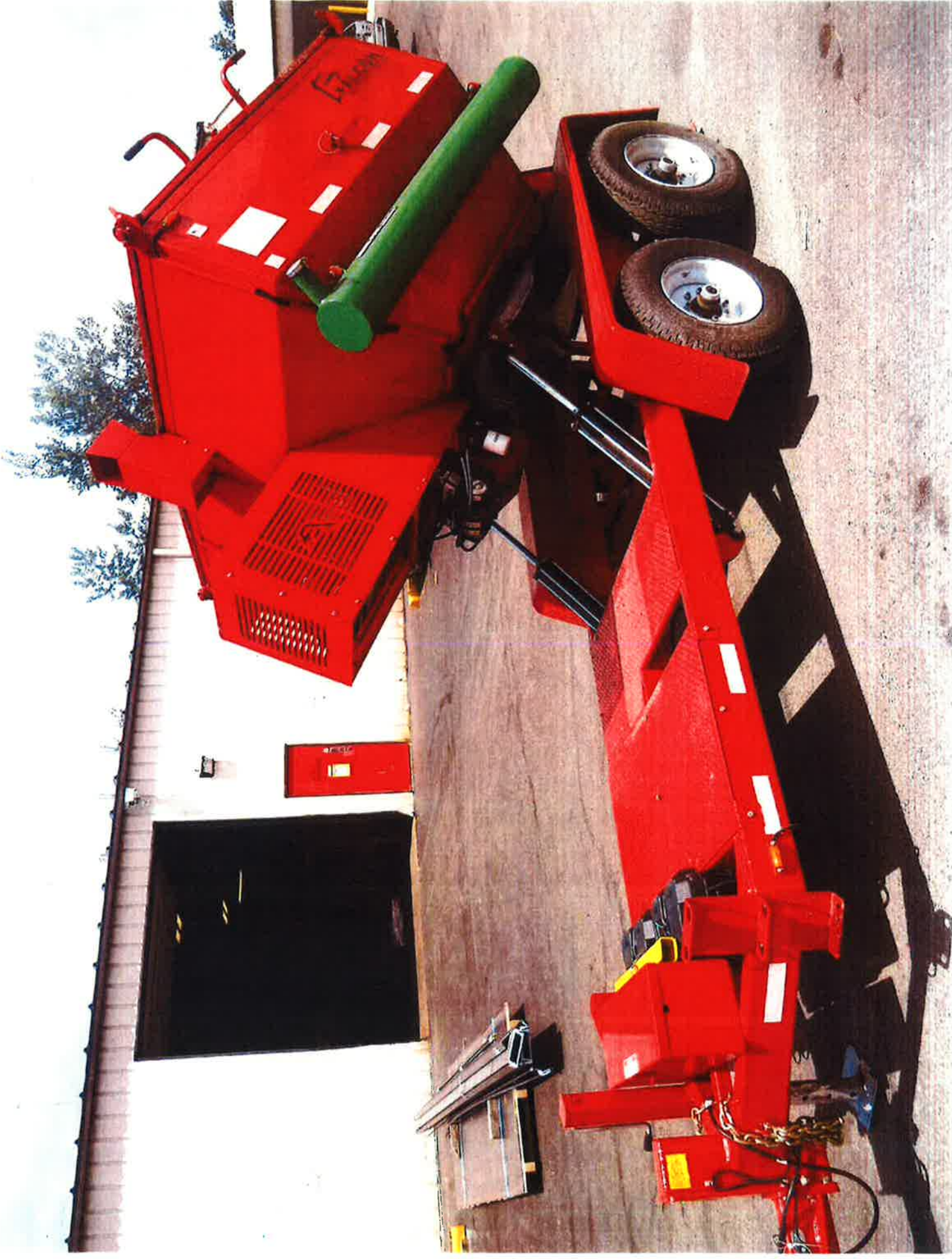
ATTACHMENTS

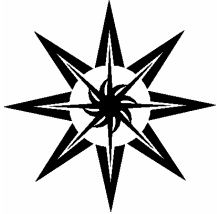
Photo of Hot Asphalt Trailer

PREPARED BY

Keith Bredehoeft, Public Works Director

September 29, 2016





POLICE PENSION BOARD

Committee Meeting Date: September 19, 2016

COU 2016-: CONSIDER MODIFYING THE EXISTING POLICE PENSION PLAN TO INCREASE THE SERVICE CAP FROM 25 YEARS TO 30 YEARS.

RECOMMENDATION

The Police Pension Board recommends increasing the service cap to a maximum of 30 years. Eligible officers would elect this alternative beginning in their 26 year of service and the employee's contribution would increase from 4% to 8% of salary.

COUNCIL ACTION REQUESTED ON: **October 3, 2016**

SUGGESTED MOTION

Motion to approve increasing the service cap in the Police Pension Plan to a maximum of 30 years with officers increasing their contribution rate to 8.0% beginning in their 26th year.

BACKGROUND

The retention of senior supervisory officers within the Police Department has been a concern for a number of years. The current Pension Plan allows for separation of service after 20 years with a service cap of 25 years. This results in senior level officers leaving the PD during that window of time and creates a gap in experience and institutional knowledge. While turnover, separation, and retirements are expected within any organization, it takes between 10 - 12 months to backfill a police officer position. The costs for hiring and training a new officer range from \$27,000 (with experience) to \$48,000 (for officers who attend the Police Academy). These costs do not take into account the loss of institutional knowledge and valued operational experience which is essential in public safety organizations.

The option discussed by the Pension Board and Department Staff is an investment by both the employee and the City. This is an optional plan and the officer would opt in starting at year 26. The officer's contribution would double from 4% to 8% of their salary. According to the Plan's actuary, the individual officer's contribution would double from 4% to 8% of their base salary. The City's investment cost would be a total of \$12,500.00 on an annual basis which has already been built into the 2017 Budget. This option would give officers the ability to accrue pension benefits through 30 years of service. The City would gain from the potential retention of experienced senior level supervisors and officers, as well as improved continuity of service.

FUNDING SOURCE

01-03-XX-5019

PREPARED BY

Steve Noll
Council Member / Police Pension Board Member
Date: June 10, 2016



COU2016-54

CONSIDER INCREASE OF VACATION ACCRUAL FOR EMPLOYEES WITH 20 YEARS OF SERVICE.

RECOMMENDATION

Staff recommends increasing the vacation accrual for employees with twenty years of continuous service from twenty (20) days per year to twenty-five (25) days per year. This is a strategy option to promote retaining long-term employees while remaining competitively aligned with surrounding cities.

COUNCIL ACTION REQUESTED ON:

October 3, 2016

SUGGESTED MOTION

Move to approve proposed increase for employees with twenty years of continuous service from twenty days to twenty five days per years.

BACKGROUND

Staff has been weighing strategies to improve the retention of tenured employees. Part of that research included what benefit changes could incentivize an employee to remain with the organization. Currently, when employees reach 10 years of continuous service they reach the cap in vacation accrual of 6.15 hours per pay period. One specific comparison that stood out where Prairie Village seemed to be falling behind was vacation accrual differences after an employee completes 20 years of service as indicated in the following chart. If approved, this would impact 12 employees (4 - Public Works, 6-Police Department, and 2-City Hall)

City	20 year accrual rate
Overland Park	25 days
Shawnee	29 days
Leawood	20 days
Roeland Park	24 days
Mission	25 days
Olathe	20 days
Merriam	25 days
Lenexa	20 days
Westwood	21 days
Lawrence	25 days
KCK Police	30 days
KCMO Police	25 days

24.08 average

Attachment - Employee Handbook Amendments

PREPARED BY

Amy Hunt

Human Resources

Date: September 13, 2016

EMPLOYEE BENEFITS AND SERVICES

4.1 VACATION

Full-time **employees** earn and accrue vacation leave in any pay period in which the **employee** is compensated for forty (40) hours or more. Part-time **employees** are not eligible to earn vacation leave. A full-time **employee's** vacation leave accrual is based on the **employee's** length of continuous employment, as follows:

First five years of service. During the first five years of continuous service full-time **employees** earn vacation leave at the rate of 3.39 hours per pay period, or 88 hours or 11 days per year. The **employee's** vacation leave balance may not exceed 176 hours.

Six through ten years of service. During the sixth through tenth years of continuous service full-time **employees** earn vacation leave at the rate of 4.62 hours per pay period, or 120 hours or 15 days per year. The **employee's** vacation leave balance may not exceed 240 hours.

Eleven or more years of service, through 19 years of service. After ten years of continuous service, full-time **employees** earn vacation leave at the rate of 6.15 hours per pay period, or 160 hours or 20 days per year. The **employee's** vacation leave balance may not exceed 320 hours.

Twenty or more years of service. After twenty years of continuous service, full-time **employees** earn vacation leave at the rate of 7.69 hours per pay period, or 200 hours or 25 days per year. The **employee's** vacation leave balance may not exceed ~~400 hours~~. 320 hours.

An **employee** may utilize any accumulated vacation leave benefit immediately after his or her date of hire. Vacation leave may be taken in a minimum of fifteen (15) minute increments for non-exempt **employees**. Exempt **employees** are not subject to salary reductions. Exempt **employees** may use vacation leave in four (4) or eight (8) hour increments.

Vacation leave must be requested as far in advance as possible, and can only be taken if approved by the **Department Manager**. Vacation leave requests may be denied due to inadequate notice or staffing requirements. If more than one **employee** in a Department has requested vacation leave at the same time, the **Department Manager** will determine which **employees** will be allowed the time off based upon fair and impartial factors.

If an **employee** has scheduled or is on vacation leave when an illness occurs, the **employee** may request that the leave be charged as sick leave rather than vacation leave. The **Department Manager** in his or her sole discretion has the authority to change the leave classification for the period of the illness and/or recovery. Documentation from a health care provider may be required when an **employee** wishes to re-classify scheduled vacation leave to sick leave. That documentation should include:

- name of the **employee**; and
- name of the **employee** or **immediate family member** attended to; and
- date(s) the **employee** or **immediate family member** was hospitalized or under the health care provider's care; and
- signature of the health care provider.

Unused vacation leave will be paid to **employees** upon separation, retirement, or termination. Vacation leave may not be used after providing resignation notice, unless requested by the **employee** and approved by the **Department Manager**. If a City paid holiday falls during an **employee's** vacation, the **employee** will not be charged that day as vacation leave.

MEMORANDUM

To: Quinn Bennion
Wes Jordan
City of Prairie Village, Kansas

From: David E. Waters
Lathrop & Gage LLP

Date: September 28, 2016

Subject: **Revisions to Right-of-Way Ordinance**

As you know, this summer Governor Sam Brownback signed into law Senate Substitute for House Bill 2131, which contains what is now known as the Kansas New Wireless Deployment Act (the "Act"). As stated in the Act, the Legislature has determined that "wireless facilities are critical to ensuring that all citizens in the state have true access to broadband," that these facilities "have a significant economic benefit," and that "the permitting, construction, modification, maintenance and operation of these facilities ... are declared to be matters of statewide concern and interest" (rather than matters of local concern). The Act is uniformly applicable to all cities, and the City may not charter out of its provisions.

Definitions and Rights Under the Act.

Among the most important pieces of the Act is that a wireless services provider or wireless infrastructure provider "shall have the right to construct, maintain and operate wireless support structures, utility poles, small cell wireless facilities or distributed antenna systems along, across, upon, under or above the public right-of-way." (Earlier versions of the legislation were even broader, giving wireless providers the right to install facilities on other city property, including city buildings). The terms used in the above-cited section are defined in the Act as follows:

Wireless support structure means "a freestanding structure, such as a monopole, guyed or self-supporting tower or other suitable existing or alternative structure designed to support or capable of supporting wireless facilities." The term does not include "any telephone or electrical utility pole or any tower used for the distribution or transmission of electrical service" (but see other definitions below).

Utility pole means "a structure owned or operated by a public utility [as defined in Kansas statute], a municipality [also as defined in Kansas statute], or an electric cooperative [also as defined in Kansas statute] that is designed specifically for and used to carry lines, cables or wires for telecommunications, cable, electricity or to provide lighting.

Small cell facility means a wireless facility that meets both of the following qualifications:

"(A) Each antenna is located inside an enclosure of no more than six cubic feet in volume, or in the case of an antenna that has exposed elements could fit within an imaginary enclosure of no more than six cubic feet; and

(B) primary equipment enclosures that are no larger than 17 cubic feet in volume, or facilities comprised of such higher limits as the federal communications commission has excluded from review [pursuant to federal statute]. Associated equipment may be located outside the primary equipment, and if so located, is not to be included in the calculation of equipment volume. Associated equipment includes, but is not limited to, any electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, cut-off switch and vertical cable runs for the connection of power and other services."

(By definition, "primary equipment enclosures" would include very large metal cabinets plus outside associated equipment, and the Act would allow wireless services providers to install these in the City's right-of-way by right.)

Distributed antenna system means "a network that distributes radio frequency signals and consisting of:

(A) Remote communications or antenna nodes deployed throughout a desired coverage area, each including at least one antenna for transmission and reception;

(B) a high capacity signal transport medium that is connected to a central communication hub site; and

(C) radio receivers located at the hub's site to process or control the communications signals transmitted and received through the antennas to provide wireless or mobile service within a geographic structure."

Again, the starting position set forth in the Act is that wireless services providers now have the right to install these facilities in the City's right-of-way.

Zoning Issues.

Currently, Chapter 19.33 of the City's Zoning Regulations (at Section 19.33.020) states that, with certain exceptions, "wireless communication facilities, towers and antennae" shall be allowed only upon approval of a special use permit." (Under Section 19.33.060 of the Zoning Regulations, "small wireless communications antennae

installations"—antennae that may be attached to existing utility or street light poles—may be approved administratively).

The requirement for a special use permit is likely problematic, at least as to the right-of-way, because under the Act the City "must be competitively neutral with regard to other uses of the public right-of-way" and "may not be unreasonable or discriminatory" (and, the City does not require that all users of the right-of-way obtain special use permits). Therefore, and given the Act's focus on the right-of-way, it is recommended that the City first review and consider its right-of-way ordinance, to regulate the use of the right-of-way to the extent possible or desirable under the Act.

City Regulations and Reasonableness.

Indeed, wireless providers' rights to the right-of-way are not unlimited. Under the Act, the right to use and occupy the public right-of-way "shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the authority." Furthermore, the City "may exercise its home rule powers in its administration and regulation related to the management of the public right-of-way provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory."

The Act also states that the authority (the City) "shall have the right to prohibit the use or occupation of a specific portion of public right-of-way by a provider due to a reasonable public interest necessitated by public health, safety and welfare so long as such interest is exercised in a competitively neutral manner and is not unreasonable or discriminatory." The Act also states that a wireless services provider or wireless infrastructure provider "shall comply with all laws and rules and regulations governing the use of public right-of-way."

Furthermore, the Act provides that the City "may continue to exercise zoning, land use, planning and permitting authority within the [City's] territorial boundaries with regard to the siting of new or the modification of wireless support structures, wireless facilities, small cell facilities or utility poles," except as to systems located in an "interior structure" or "upon the site of any campus, stadium or athletic facility."

Recommendations as to Right-of-Way Ordinance.

As the Act only becomes effective October 1, 2016, there is no case law, attorney general guidance, or other legal authority defining or setting parameters for what are "reasonable public health, safety and welfare requirements and regulations." City staff has proposed that the revised right-of-way ordinance establish new, non-discriminatory practices to protect the health, safety and welfare by limiting the use of the right-of-way such that, to the extent possible, all facilities and lines are placed underground and, when

not possible, the height of above-ground facilities is limited. The key revisions recommended by City staff are as follows:

- Expand the definition of "facility" to include wireless communication facilities, wireless support structures, small cell facilities, base stations, transmission equipment, and distributed antenna systems.
- Add language establishing that regulations are in place for the public health, safety and welfare, and that they shall be competitively neutral and non-discriminatory.
- Establish, as a first principle, that all newly-constructed facilities—of whatever kind—shall be located underground. The Public Works Director would have authority to allow above-ground facilities for safety concerns or other appropriate reasons, provided such reasons are non-discriminatory. Provided a court would find that such a rule is "reasonable," this would offer the City a good amount of protection over the appearance of the right-of-way. A possible risk with this approach, however, may be that the City could preclude itself from approving above-ground facilities which it would prefer (becoming a victim of its own rule), or at least open itself to claims of discrimination if the City does approve other above-ground projects.
- Where above-ground facilities are permitted in the right-of-way, clarify that height may not exceed the lesser of (a) 35 feet for residential or collector streets, or 45 feet for arterial streets, or (b) 66 inches above the height of existing street light poles along that portion of the right-of-way (note: these height restrictions are the same as recently adopted by the City of Leawood).
- Provide that poles must be of a "breakaway" design and comply with established "clear zone" protocols.
- State that above-ground facilities (to the extent otherwise approved) may not be located in the front yard in front of single-family homes.
- Incorporate other revisions necessary to comply with the Act, such as costs of relocation, timelines for processing applications, and appeal rights.

We would note that the Prairie Village right-of-way ordinance was based on, and is nearly identical to, that adopted by the City of Overland Park. The City of Overland Park has adopted most of these same proposed revisions in its own right-of-way ordinance, except that the proposed revisions to the Prairie Village ordinance are more restrictive

than Overland Park's in limiting above-ground facilities. The revised City of Leawood right-of-way ordinance also includes a preference for underground facilities "[w]henver reasonably possible," but does not mandate it quite as strongly as Prairie Village's proposal.

Utility Boxes.

The revised right-of-way ordinance clarifies that all that above-ground facilities (again, only to the extent approved) must comply with all applicable zoning regulations regarding size, setbacks, screening, and landscaping. Where the City Zoning Regulations may be most applicable to the right-of-way is in the manner in which it governs utility boxes.

Under Section 19.34.020.K, utility boxes that have a footprint of twelve (12) square feet or less in area, a pad of not more than 2.5 times the area of the utility box footprint (but not larger than 32 square feet), and a height of not more than fifty-four (54) inches, are considered "accessory uses" and may be approved administratively. For any utility boxes that exceed these sizes, Section 19.30.055.G provides that the Planning Commission may approve them, but only under a conditional use permit.

Under Section 19.34.020.K, "if" landscaping or screening is required, a plan shall be submitted. The utility box may also not emit any "unnecessary intrusive noise." The utility is further directed to "work with the city staff" to determine a pad size and location that is most appropriate and compatible with adjacent uses. Applicants dissatisfied with staff approval (or lack thereof) may appeal the staff decision to the Planning Commission.

The Act may impact these processes. First, it is not known whether the size limitations would qualify as being "reasonable" public health, safety and welfare requirements or regulations under the Act. Second, the Act prohibits the City from imposing any "unreasonable" requirements as to arranging, screening, or landscaping, and prohibits the City from being "discriminatory" as to such requirements (and, with each utility box situation being unique, this may raise the risk of claims against the City). Finally, the Act gives applicants "aggrieved" by a final action of the City the right to directly appeal that decision to the district court (without first going through the Planning Commission).

As a result, additional revisions to portions of the City's Zoning Regulations will likely be required. We and City staff will bring suggested revisions to the Planning Commission and the City Council as and when they are ready for consideration.

Allowable Fees.

The Act limits the types and amounts of fees that the City may charge for the use of right-of-way and the review of applications. Under the Act, the City may not charge any fees associated with the submission, review, processing, or approval of an application that is not required for other types of providers. The City may also only assess charges for its "actual costs" relating to the processing of an application. Even so, the total charges may not exceed \$500 for a collocation application, one that is not a "substantial modification," a small cell facility application, or a distributed antenna system application, or \$2,000 for an application for a new wireless support structure or for a collocation application that is a substantial modification of a wireless support structure.

The City may not charge a wireless service provider or wireless infrastructure provider any rental, license or other fee to locate a wireless facility or wireless support structure on the right-of-way if the City does not charge other providers or utilities for the use of the right-of-way. Any charges assessed must be "competitively neutral" and may not be unreasonable or discriminatory.

Considerations During Application Process.

The Act also establishes eighteen (18) restrictions on what can or cannot be considered or required by the City during the application process. Among these:

- The City cannot require that a provider submit information as to its business needs (e.g., whether the facility is needed to close a service gap or improve quality).
- The City may not evaluate an application based on the availability of other potential locations, including the ability to collocate, rather than build new.
- As mentioned above, the City may not "impose any unreasonable requirements or regulations regarding the presentation, appearance or function of the wireless facilities and equipment including, but not limited to, those relating to any kinds of materials used and those relating to arranging, screening or landscaping of facilities." Again, it is unclear under this new law what requirements or regulations may be deemed "unreasonable." The Act does state that, in developing any requirements or obligations for wireless facilities located in the right-of-way, the City "shall consider input from property owners adjoining the affected public right-of-way."
- The City may not prohibit the use of emergency power systems that comply with state and federal environmental requirements and do not

violate local health and safety requirements and local noise control ordinances (e.g., generators). But, local regulations cannot have the effect of preventing the provision of emergency power during actual emergencies.

- The City may not require that a provider allow other wireless providers (or the City) to place or collocate their systems on the applicant's support structures. Meaning, each provider may have its own pole, and is not required to "share" it for purposes of keeping the number of poles or facilities to a minimum.
- Any approval given must last for at least ten (10) years.

As a result of these mandates, additional revisions will need to be made to the City's Zoning Regulations governing permitting of wireless facilities (including small wireless communications antennae installations). City staff will be working to bring to the Planning Commission and the City Council proposed amendments to the Zoning Regulations so as to comply with the Act.

Timing.

For small cell facilities and networks, the Act allows applicants to submit one combined application for up to twenty-five (25) individual small cell facilities of a substantially similar design, to be covered by a single permit. The City would be required to render a decision on the combined application within sixty (60) days after submission.

Within one hundred fifty (150) days after receiving an application for a new wireless support structure, and within ninety (90) days after receiving an application for a "substantial modification" to any existing wireless support structure or base station, the City must (A) review the application in light of current zoning regulations, (B) make a final decision to approve or disapprove the application, and (C) advise the applicant in writing of the final decision, which decision must be supported by "substantial evidence" contained in a written record and issued contemporaneously.

These time periods begin when the application is submitted, but may be tolled within the first thirty (30) days thereafter if the City notifies the applicant that the application is incomplete, identifies missing information, and "specifies the code provision, ordinance, application instruction or otherwise publicly stated procedures that require the information to be submitted."

Applications are deemed approved if not specifically approved or denied by the City within the applicable time periods, and such default approval becomes effective once an applicant has provided notice to the City that the applicable time period has

lapsed. The Act provides that the City may not issue any moratoria on the filing, consideration, or approval of any application, permitting, or construction of new wireless support structures, substantial modifications, or collocations.

If the City denies an application, there must be a "reasonable basis" for the denial. And, the City may not deny an application if such denial "discriminates against the applicant with respect to the placement of the facilities of other investor-owned utilities, wireless service providers, wireless infrastructure providers or wireless carriers." The Act allows providers to file suit to challenge any denial, or any City requirement it would deem unreasonable or discriminatory.

ORDINANCE NO. _____

AN ORDINANCE RELATING TO MANAGING THE USE AND OCCUPANCY OF PUBLIC RIGHT-OF-WAY FOR THE CITY OF PRAIRIE VILLAGE, KANSAS; AMENDING AND REPEALING EXISTING PRAIRIE VILLAGE MUNICIPAL CODE SECTIONS 13-503, 13-510, 13-511, 13-512, 13-514, 13-516, 13-518, 13-525, AND 13-528, AND PROVIDING SUBSTITUTE PROVISIONS THEREFOR.

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

SECTION 1. Prairie Village Municipal Code Section 13-503 is hereby amended to read:

13-503. DEFINITIONS. For purposes of this article, the following words and phrases shall have the meaning given herein:

- A. Abandoned Facilities means those facilities owned by the ROW-user that are not in use and will not be utilized by the owner in the future.
- B. Affiliate means any person controlling, controlled by or under the common control of a service provider.
- C. Applicant means any person requesting permission to occupy, lease or operate facilities using the right-of-way, or to excavate the right-of-way.
- D. Area of Influence means that area around a street excavation where the pavement and sub-grade is impacted by the excavation and is subject to more rapid deterioration.
- E. City means the City of Prairie Village, Kansas, a municipal corporation and any duly authorized representative.
- F. City Engineer means the City Engineer, Prairie Village, Kansas, or the authorized representative.
- G. Construct means and includes construct, install, erect, build, affix or otherwise place any fixed structure or object, in, on, under, through or above the right-of-way.
- H. Day means calendar day unless otherwise specified.
- I. Emergency means a condition that (1) poses a clear and immediate danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement in order to restore service to a user.
- J. Excavate means and includes any cutting, digging, excavating, tunneling, boring, grading or other alteration of the surface or subsurface material or earth in the right-of-way.
- K. Excavation Fee means the fee charged by the City for each street or pavement cut which is intended to recover the costs associated with construction and repair activities of the ROW-user and its contractors and/or subcontractors.
- L. FCC means Federal Communications Commission.
- M. Facility means lines, pipes, irrigation systems, wires, cables, conduit facilities, ducts, poles, towers, vaults, pedestals, boxes, appliances, antennas, transmitters, gates, meters, appurtenances, [wireless](#)

communication facilities (including but not limited to wireless support structures, small cell facilities, base stations, transmission equipment, distributed antenna systems, and primary equipment enclosures, all as may be defined or described in the Kansas New Wireless Deployment Act, as amended), or other equipment.

- N. Governing Body means the Mayor and the City Council of the City of Prairie Village, Kansas.
- O. Governmental Entity means any county, township, city, town, village, school district, library district, road district, drainage or levee district, sewer district, water district, fire district or other municipal corporation, quasi-municipal corporation or political subdivision of the State of Kansas or of any other state of the United States and any agency or instrumentality of the State of Kansas or of any other state of the United States.
- P. KCC means the Kansas Corporation Commission.
- Q. Parkway means the area between a property line and the street curb. Sometimes called boulevard, tree-shelf or snow-shelf.
- R. Pavement means and includes Portland cement concrete pavement, asphalt concrete pavement, asphalt treated road surfaces and any aggregate base material.
- S. Permit and Inspection Fee means the fee charged by the City to recover its cost incurred for right-of-way management; including, but not limited to, costs associated with registering applicants; issuing, processing and verifying right-of-right permit applications; inspecting job sites and restoration of improvements; determining the adequacy of right-of-way restoration; revoking right-of-way permits and, other costs the City may incur in managing the provisions of this Article.
- T. Permittee means any person to whom a right-of-way permit is issued to excavate a right-of-way.
- U. Person means any natural or corporate person, business association or business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.
- V. Public Improvement means any project undertaken by the city for the construction, reconstruction, maintenance, or repair of any public infrastructure, and including without limitation, streets, alleys, bridges, bikeways, parkways, sidewalks, sewers, drainage facilities, traffic control devices, street lights, public facilities, public buildings or public lands.
- W. Public Lands means any real property of the city that is not right-of-way.
- X. Public Works Director means the Director of the Public Works Department of the City of Prairie Village, Kansas, or the authorized representative.
- Y. Registration means the application process of a service provider, the approval of the application by the City, and the authorization of the

service provider to use any portion of the right-of-way within the city to provide service both within and beyond the city limits.

- Z. Repair means the temporary construction work necessary to make the right-of-way useable.
- AA. Repair and Restoration Costs means those costs associated with repairing and restoring the public right-of-way because of damage caused by the ROW-user and its contractors and/or subcontractors in the right-of-way.
- BB. Restoration means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition, or better, than existed before the commencement of the work.
- CC. Right-of-way means the area on, below, or above streets, alleys, bridges, and parkways in which the City has a dedicated or acquired right-of-way interest in the real property.
- DD. ~~CC~~ Right-of-Way Permit means the authorization to excavate for the construction, installation, repair or maintenance of any type of facility within the right-of-way.
- EE. ~~DD~~ Routine Service Operation means a work activity that makes no material change to the facilities and does not disrupt traffic.
- FF. ~~EE~~ ROW-user means a person, its successors and assigns, that uses the right-of-way for purposes of work, excavation, provision of services, or to install, construct, maintain, repair facilities thereon, including, but not limited to, landowners and service providers. A ROW-user shall not include ordinary vehicular or pedestrian traffic or any governmental entity that has entered into an interlocal agreement pursuant to K.S.A. 12-2901 et seq. with the City regarding the use and occupancy of the City's right-of-way.
- GG. ~~FF~~ Service means a commodity provided to a person by means of a delivery system that is comprised of facilities located or to be located in the right-of-way, including, but not limited to, gas, telephone, cable television, Internet services. Open video systems, wireless services, alarm systems, steam, electric, water, telegraph, data transmission, petroleum pipelines, or sanitary sewerage.
- HH. ~~GG~~ Service Provider means any person owning, possessing or having an interest in facilities in the right-of-way that are used for the provisions of a service for or without a fee; provided, that this definition shall also include persons owning, possessing or having an interest in facilities in the right-of-way that are used by, may be used by or are intended for use by another person, in whole or in part, to provide a service for or without a fee, regardless of whether the actual facility owner provides any service as defined herein.
- II. ~~HH~~ Street means the pavement and sub-grade of a City residential, collector or arterial roadway.

SECTION 2. Prairie Village Municipal Code Section 13-510 is hereby amended to read:

13-510. USE OF THE RIGHT-OF-WAY.

- A. The ROW-user's use of the right-of-way shall in all matters be subordinate to the City's use or occupation of the right-of-way. Without limitation of its rights, the City expressly reserves the right to exercise its governmental powers now and hereafter vested in or granted to the City.
- B. The ROW-user shall coordinate the placement of facilities in a manner ~~which minimizes adverse impact on any public improvement~~ that does not interfere with a Public Improvement and does not compromise the public health, safety, or welfare, as reasonably determined by the City. Where placement is not regulated, the facilities shall be placed with adequate clearance from such public improvements so as not to impact or be impacted by such public improvement as defined in the City's "Manual of Infrastructure Standards" available in the office of the Public Works Director. Such Standards shall be competitively neutral and not unreasonable or discriminatory.
- C. The ROW-users shall consider any request made by the City concerning placement of facilities in private easements in order to limit or eliminate future street improvement relocation expenses.
- D. All facilities shall be located and laid so as not to disrupt or interfere with any pipes, drains, sewers, irrigation systems, or other structures or public improvements already installed. In addition, the ROW-user shall, in doing work in connection with its facilities, avoid, so far as may be practicable, disrupting or interfering with the lawful use of right-of-way or other public lands of the City.
- E. All facilities of the ROW-user shall be placed so that they do not interfere with the use of right-of-way and public lands. The City, through its Public Works Director, shall have the right to consult and review the location, design and nature of the facility prior to its being installed.
- F. ~~Whenever reasonably possible, all newly~~ All newly-constructed facilities shall be located underground. The ROW-user shall comply with all requirements of the City relating to underground facilities. This requirement may be waived by the Public Works Director at his or her discretion for safety concerns, or some other good cause under the condition that does not cause discrimination among ROW-users. If this requirement is waived, the facilities shall be located as directed by the Public Works Director, including, but not limited to, requirements regarding location ~~and~~ height, breakaway design, and clear zones. Provided, however, the height of a facility will not exceed, or cause any existing facility to exceed, the lesser of:
 - (a) thirty-five (35) feet for residential or collector streets or forty-five (45) feet for arterial streets; and
 - (b) sixty-six (66) inches above the height of existing street light poles along the right-of-way surrounding the facility.Above ground facilities shall comply with the Manual of Infrastructure Standards and all applicable zoning regulations, including but not limited

to design, size, height, setbacks, screening and landscaping, and illumination, and be located in a manner that does not compromise the public health, safety, or welfare. No newly-constructed above ground facilities shall be located in any front yard, as determined by applicable zoning or subdivision regulations.

- G. The ROW-user shall not interfere with the facilities of the other ROW-users without their permission. If and when the City requires or negotiates to have a service provider cease using its existing poles and to relocate its facilities underground, all other service providers using the same poles shall also relocate their facilities underground at the same time, except transmission equipment, as defined in 47 CFR 1.40001. Provided, any such relocations shall be subject to the appeal process contained in Section 13-528, as amended.
- H. The Public Works Director may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of facility that is currently or, pursuant to current technology, the Public Works Director expects will someday be located within the right-of-way. All right-of-way permits issued by Public Works Director shall indicate the proper corridor for the ROW-user's facilities. Any ROW-user whose facilities are currently in the right-of-way in a position at a variance with the designated corridors shall, no later than at the time of next reconstruction or excavation of the area where its facilities are located, move the facilities to its assigned position within the right-of-way, unless this requirement is waived by Public Works Director for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public health, safety, or welfare, user service needs and hardship to the ROW-user.
- I. If, in the preparation and planning of a right-of-way project, the Public Works Director deems it appropriate for a conduit to be constructed along, across or under the right-of-way, the Public Works Director shall contact all appropriate ROW-users for their input on the planning and design of such conduit. If a ROW-user desires to construct, maintain or operate facilities along such right-of-way, the Public Works Director may require the ROW-user to use such conduit, and to contribute to the expense of such conduit, provided, however, the ROW-user's use of the conduit is reasonable and appropriate under the circumstances.
- J. All earth, materials, sidewalks, paving, crossings, utilities, other public improvements or improvements of any kind damaged or removed by the ROW-user shall be fully repaired or replaced promptly by the ROW-user at its sole expense and to the reasonable satisfaction of the City. Upon determination by the Public Works Director that such repair or replacement is a public safety matter, all such repair or replacement shall be commenced within twenty-four (24) hours of notice from the City, or the Public Works Director may direct the city to make such repair or replacement and bill the ROW-user for the City cost. The Public Works Director has the authority to inspect the repair or replacement of the

damage, and if necessary, to require the ROW-user to do any necessary additional work.

- K. All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of a ROW-user's facilities in the right-of-way shall be in accordance with [the Manual of Infrastructure standards and all](#) applicable federal, state and local law and regulations, including those promulgated by national trade associations commonly associated with the service provided by the ROW-user. It is understood that the standards established in this paragraph are minimum standards and the requirements established or referenced in this article may be in addition to or stricter than such minimum standards. A ROW-user shall not construct or reconstruct any of its facilities located upon, over, under or within the City right-of-way without first having submitted in writing a description of its planned improvement to the Public Works Director and having received a permit for such improvement. The Public Works Director may require that any drawings, plans and/or specifications submitted be certified by a Kansas registered professional engineer stating that such drawings, plans and/or specifications comply with all applicable technical codes, rules and regulations, unless such plans are based directly on nationally recognized codes, which are appropriately cited, and attested to on the plans by the signature of an authorized official of the organization applying for the permit.
- L. The ROW-user shall cooperate promptly and fully with the City and take all reasonable measures necessary to provide accurate and complete on-site information regarding the nature and horizontal and vertical location of its facilities located within the right-of-way, both underground and overhead, when requested by the City or its authorized agent for a public improvement. Such location and identification shall be at the sole expense of the ROW-user without any expense to the City, its employees, agents, or authorized contractors.

SECTION 3. Prairie Village Municipal Code Section 13-511 is hereby amended to read:

13-511. FACILITY RELOCATION.

- A. The ROW-user shall promptly remove, relocate or adjust any facilities located in the right-of-way as directed by the City for a public improvement or when reasonably required by the City by reason of public health, safety and welfare. Such removal, relocation, or adjustment shall be performed by the ROW-user at the ROW-user's sole expense without expense to the City, its employees, agents, or authorized contractors and shall be specifically subject to rules, regulations and schedules of the City pertaining to such. The ROW-user shall proceed with relocations at due diligence upon notice by the City to begin relocation.
- B. The ROW-user shall promptly remove, relocate or adjust any facilities located in private easement, as directed by the City, for a public improvement, at City expense, by moving such facilities to areas within

the expanded right-of-way or within remaining private easements or remaining portions of such easements not condemned by nor disclaimed to the City to avoid conflict with City construction and improvements. The ROW-user shall disclaim those parts of its easements which lie within the expanded right-of-way. Should the City, in the future, elect to require the ROW-user to again relocate its facilities to other areas within the expanded right-of-way, the cost of any such future relocation shall be borne by the City.

- C. As soon as working drawings are available for public improvements which will require the ROW-user to relocate its facilities, the city shall provide the ROW-user with written notice of relocations and the anticipated bid letting date of said improvement. The ROW-user shall respond with any conflicts and a proposed construction schedule within thirty (30) days.
- D. Following notice by the City in the form of the delivery of final design plans for such public improvements, the ROW-user shall remove, and relocate its facilities in accordance with the mutually agreed upon schedule, provided the project is not delayed by adverse weather conditions and other factors beyond the control of the ROW-user. The ROW-user shall certify to the City, in writing, that its facilities have been relocated or adjusted to clear construction in accordance with project plans provided by the City.
- E. Any damages suffered by the City, its agents or its contractors to the extent caused by ROW-user's failure to timely relocate or adjust its facilities, or failure to properly relocate or adjust such facilities, shall be borne by the ROW-user.
- F. In the event the ROW-user is required to move its facilities in accordance with this section, any ordinary right-of-way permit fee shall be waived.
- G. It is the intent of this section for both the City and the ROW-user to cooperate with one another so that the need for facility relocation is minimized and, when required and feasible, relocations may be completed prior to receipt of bids by the City for a public improvement.
- H. In the event that a ROW-user is required to move its facilities for a private benefit, the ROW-user shall not bear the cost of the relocation or adjustment to the extent of such private benefit, and the ROW-user shall not be obligated to commence the relocation or adjustment until receipt of funds for such relocation or adjustment.

SECTION 4. Prairie Village Municipal Code Section 13-512 is hereby amended to read:

13-512. PROTECTION OF THE PUBLIC.

- A. It shall be the responsibility of the ROW-user to take adequate measures to protect and defend its facilities in the right-of-way from harm and damage.
- B. The City shall not be liable for any damage to or loss of any of the ROW-user's facilities within the right-of-way as a result of or in connection with any construction, excavation, grading, filling or work of any kind, including public improvements by or on the behalf of the City, except to

the extent caused by the negligent, willful, intentional, or malicious acts or omissions of the City.

- C. The ROW-user shall be responsible to the City and its agents, representatives, and authorized contractors for all damages suffered by them including, but not limited to delay damages, repair costs, down time, construction delays, penalties or other expenses of any kind arising out of the failure of the ROW-user to timely perform any of its obligations under this article to the extent caused by the acts or omissions of the ROW-user.
- D. The City or its authorized contractors shall be responsible for taking reasonable precautionary measures including calling for facility locations when constructing its public improvements.
- E. Any ROW-user who for any purpose makes or causes to be made any excavation in, upon, under, through or adjoining any street, sidewalk, alley or other right-of-way, and shall leave any part or portion thereof open, or shall leave any part or portion thereof disrupted with rubbish, building or other material during construction and/or the night time, shall cause the same to be enclosed with good substantial and sufficient barricades or drums equipped with the appropriate type warning lights and orange safety fencing material which is properly secured around the excavation or the disruption.
- F. Whenever a ROW-user shall excavate the full width of any street, sidewalk, alley, driveway approach or other right-of-way, it shall be its duty to maintain an adequate passage for vehicles and pedestrians across or around the excavation until it is refilled as specified.
- G. Any excavation left open overnight on any thoroughfare or collector type street shall be securely covered. The ROW-user assumes the sole responsibility for maintaining proper barricades, plates, safety fencing and/or lights as required from the time of opening of the excavation until the excavation is surfaced and opened for travel.
- H. The Public Works Director, upon the review and approval of a plan and details for trimming trees in the right-of-way, may grant permission by permit to any ROW-user to trim trees upon and overhanging the right-of-way so as to prevent such trees from coming in contact with the facilities of the ROW-user.
- I. In the event the ROW-user severely disturbs or damages the root structure of any tree in the right-of-way to the detriment of the health and safety of the tree, the ROW-user will be required to remove and replace the tree at the ROW-user's cost. Further, in review of the ROW-user's plan, Public Works Director, in his or her discretion, may require the ROW-user to directionally bore around any tree in the right-of-way.
- J. Upon the appropriate request of any person having satisfied City procedure and ordinances, the ROW-user shall remove, raise, or lower its facilities temporarily to permit the moving of houses or other structures. The expense of such temporary removal, raising or lowering shall be paid by the person requesting the same, and the ROW-user may require such payment in advance. The ROW-user must be given not less than fifteen

(15) days written notice from the person detailing the time and location of the moving operations, and not less than twenty-four (24)-hours advance notice from the person advising of the actual operation.

K. [The Public Works Director may cause to be removed any encroachment in the Right-of-Way that creates a hazard to public health, safety, or welfare, and the cost of such removal and restoration of the right-of-way shall be borne by the ROW-user.](#)

SECTION 5. Prairie Village Municipal Code Section 13-514 is hereby amended to read:

13-514. ABANDONED AND UNUSABLE FACILITIES.

- A. A ROW-user owning abandoned facilities in the right-of-way must either:
1. Remove its facilities and replace or restore any damage or disturbance caused by the removal at its own expense. The Public Works Director may allow underground facilities or portions thereof remain in place if the public works director determines that it is in the best interest of public health, safety, or welfare to do so. At such time, the City may take ownership and responsibility of such vacated facilities left in place; or
 2. Provide information satisfactory to the city that the ROW-user's obligations for its facilities in the right-of-way have been lawfully assumed by another authorized ROW-user; or
 3. Submit to the City a proposal and instruments for transferring ownership of its facilities to the city. If the ROW-user proceeds under this section, the City may, at its option purchase the equipment, require the ROW-user, at its own expense, to remove it, or require the ROW-user to post a bond in an amount sufficient to reimburse the City for reasonable anticipated costs to be incurred to remove the facilities.
- B. Facilities of a ROW-user who fails to comply with this section, and whose facilities remain unused for two (2) years, shall be deemed to be abandoned after the City has made a good faith effort to contact the ROW-user, unless the City receives confirmation that the ROW-user intends to use the facilities. Abandoned facilities are deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to,
1. abating the nuisance,
 2. taking possession and ownership of the facility and restoring it to a useable function, or
 3. requiring the removal of the facility by the ROW-user.

SECTION 6. Prairie Village Municipal Code Section 13-516 is hereby amended to read:

13-516 PERMIT APPLICATIONS.

- A. Application for a right-of-way permit shall be submitted to the Public Works Director either by the ROW-user or by the person who will do the work and/or excavation in the right-of-way. Before an application may be

submitted, the applicant must attend a pre-application meeting with designated City staff, unless waived by the Public Works Director.

- B. Right-of-way applications shall contain and be considered complete only upon receipt of the following:
1. Compliance with verification of registration;
 2. Submission of a completed permit application form, including all required attachments and scaled drawings showing the location and area of the proposed project and the location of all existing and proposed facilities at such location;
 3. A traffic control plan;
 4. Payment of all money due to the city for permit fees and costs, for prior excavation costs, for any loss, damage or expense suffered by the City because of the applicant's prior excavations of the right-of-way or for any emergency actions taken by the City, unless the payment of such money is in dispute and timely appealed as provided hereafter.
- C. All applications shall be processed within the timeframes required by state and federal law.
- D. If an applicant has submitted an application for a permit for the installation, construction, maintenance, or repair of multiple facilities, that applicant may not submit another application for a permit for the installation, construction, maintenance, or repair of multiple facilities until the first application has been approved or denied. This provision may be waived by the Public Works Director.

SECTION 7. Prairie Village Municipal Code Section 13-518 is hereby amended to read:

13-518. RIGHT-OF-WAY PERMIT FEES.

- A. ~~B.~~The right-of-way permit fee and other appropriate fees, including but not limited to inspection fees, excavation fees, pole attachment fees, and franchise fees, shall be recommended by the Public Works Director, approved by the governing body and listed in the Schedule of Fees maintained in the City Clerk's office, as such Schedule may be amended from time to time. An application shall not be deemed submitted unless the right-of-way permit fee is paid. The right-of-way permit fee ~~may include a permit and inspection fee, and an excavation fee~~ shall be subject to all state and federal fee limitations.
- B. ~~C.~~Fees paid for a right-of-way permit, which is subsequently revoked by the Public Works Director, are not refundable.
- C. ~~D.~~Except as provided for in an emergency situation, when a ROW-user is found to have worked or is working in the right-of-way without having obtained a permit, the fee for the permit will be double the amount had the ROW-user obtained a permit prior to beginning work.
- D. ~~E.~~The City may also charge and collect any necessary repair and restoration costs.

SECTION 8. Prairie Village Municipal Code Section 13-525 is hereby amended to read:

13-525.

DENIAL OF PERMIT.

A. The Public Works Director may deny a permit or prohibit the use or occupancy of a specific portion of the right-of-way to protect the public health, safety and welfare, to prevent interference with the safety and convenience of ordinary travel over the right-of-way, or when necessary to protect the right-of-way and its users. The Public Works Director, at his or her discretion, may consider all relevant factors including but not limited to:

1. The extent to which the right-of-way space where the permit is sought is available;
2. The competing demands for the particular space in the right-of-way;
3. The availability of other locations in the right-of-way or in other right-of-way for the facilities of the applicant;
4. The applicability of any ordinance or other regulations, including City zoning regulations, that affect location ~~of~~ or other standards for facilities in the right-of-way;
5. The degree of compliance of the applicant with the terms and conditions of its franchise, this article, and other applicable ordinances and regulations;
6. The degree of disruption to surrounding communities and businesses that will result from the use of that part of the right-of-way;
7. The balancing of costs of disruption to the public and damage to the right-of-way, against the benefits to that part of the public served by the construction in the right-of-way;
8. Whether the applicant maintains a current registration with the City.
9. ~~8.~~ Whether the issuance of a right-of-way permit for the particular dates and/or time requested would cause a conflict or interferes with an exhibition, celebration, festival, or any other event. In exercising this discretion, the Public Works Director shall be guided by the safety and convenience of anticipated travel of the public over the right-of-way.
10. Whether the application complies with the Manual of Infrastructure Standards.
11. The adverse impact of the facilities or the facilities' proposed location on any reasonable public interest necessitated by public health, safety, or welfare.

B. Notwithstanding the above provisions, the Public Works Director may in his or her discretion issue a right-of-way permit in any case where the permit is necessary to:

1. Prevent substantial economic hardship to a user of the applicant's service;
2. Allow such user to materially improve the service provided by the applicant.

C. Any denial of a wireless communications antenna, tower, or related facilities shall, in accordance with federal and state law, be made in writing and supported by substantial evidence contained in a written record issued contemporaneously with said decision.

SECTION 9. Prairie Village Municipal Code Section 13-528 is hereby amended to read:

13-528. APPEALS PROCESS.

- A. Whenever a person shall deem themselves aggrieved by any decision or action taken by the Public Works Director, the person may file an appeal to the Governing Body within ten (10) calendar days of the date of notice of such decision or action. Provided, this section shall not apply to any person who is availing themselves of the appeal provisions set forth in K.S.A. 66-2019(h)(6), as amended.
- B. The persons shall be afforded a hearing on the matter before the Governing Body within thirty (30) days of filing the appeal.
- C. In cases of applicability or interpretation of the rules, the Governing Body may revoke such decision or action taken by the Public Works Director.
- D. In cases where compliance with such decision or action taken by the Public Works Director would cause undue hardship, the Governing Body may extend the time limit of such decision or action, or may grant exceptions to, or waive requirements of, or grant a variance from the specific provisions of rules. The Governing Body shall give due consideration to the purposes of the rules in preserving public safety and convenience, integrity of public infrastructure, and the operational safety and function of the public right-of-way.
- E. Pending a decision by the Governing Body, the order of the Public Works Director shall be stayed, unless the public works director determines that such action will pose a threat to public safety or the integrity of the public infrastructure.
- F. If a person still deem themselves aggrieved after the appeal to the Governing Body, such person shall have thirty (30) days after the effective date of the Governing Body's final decision to institute an action in the District Court of Johnson County, Kansas.

Section 10. All ordinances and parts thereof that are inconsistent with any provision of this Ordinance are hereby repealed.

Section 11. This Ordinance shall take effect and be in force from and after its passage, approval and publication as provided by law.

PASSED by the City Council of the City of Prairie Village, Kansas on October 3, 2016.

APPROVED:

Laura Wassmer, Mayor

ATTEST:

Joyce Hagen Mundy, City Clerk

APPROVED AS TO LEGAL FORM:

Catherine P. Logan, City Attorney

ORDINANCE NO. _____

AN ORDINANCE RELATING TO MANAGING THE USE AND OCCUPANCY OF PUBLIC RIGHT-OF-WAY FOR THE CITY OF PRAIRIE VILLAGE, KANSAS; AMENDING AND REPEALING EXISTING PRAIRIE VILLAGE MUNICIPAL CODE SECTIONS 13-503, 13-510, 13-511, 13-512, 13-514, 13-516, 13-518, 13-525, AND 13-528, AND PROVIDING SUBSTITUTE PROVISIONS THEREFOR.

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

SECTION 1. Prairie Village Municipal Code Section 13-503 is hereby amended to read:

13-503. DEFINITIONS. For purposes of this article, the following words and phrases shall have the meaning given herein:

- A. Abandoned Facilities means those facilities owned by the ROW-user that are not in use and will not be utilized by the owner in the future.
- B. Affiliate means any person controlling, controlled by or under the common control of a service provider.
- C. Applicant means any person requesting permission to occupy, lease or operate facilities using the right-of-way, or to excavate the right-of-way.
- D. Area of Influence means that area around a street excavation where the pavement and sub-grade is impacted by the excavation and is subject to more rapid deterioration.
- E. City means the City of Prairie Village, Kansas, a municipal corporation and any duly authorized representative.
- F. City Engineer means the City Engineer, Prairie Village, Kansas, or the authorized representative.
- G. Construct means and includes construct, install, erect, build, affix or otherwise place any fixed structure or object, in, on, under, through or above the right-of-way.
- H. Day means calendar day unless otherwise specified.
- I. Emergency means a condition that (1) poses a clear and immediate danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement in order to restore service to a user.
- J. Excavate means and includes any cutting, digging, excavating, tunneling, boring, grading or other alteration of the surface or subsurface material or earth in the right-of-way.
- K. Excavation Fee means the fee charged by the City for each street or pavement cut which is intended to recover the costs associated with construction and repair activities of the ROW-user and its contractors and/or subcontractors.
- L. FCC means Federal Communications Commission.
- M. Facility means lines, pipes, irrigation systems, wires, cables, conduit facilities, ducts, poles, towers, vaults, pedestals, boxes, appliances, antennas, transmitters, gates, meters, appurtenances, wireless

communication facilities (including but not limited to wireless support structures, small cell facilities, base stations, transmission equipment, distributed antenna systems, and primary equipment enclosures, all as may be defined or described in the Kansas New Wireless Deployment Act, as amended), or other equipment.

- N. Governing Body means the Mayor and the City Council of the City of Prairie Village, Kansas.
- O. Governmental Entity means any county, township, city, town, village, school district, library district, road district, drainage or levee district, sewer district, water district, fire district or other municipal corporation, quasi-municipal corporation or political subdivision of the State of Kansas or of any other state of the United States and any agency or instrumentality of the State of Kansas or of any other state of the United States.
- P. KCC means the Kansas Corporation Commission.
- Q. Parkway means the area between a property line and the street curb. Sometimes called boulevard, tree-shelf or snow-shelf.
- R. Pavement means and includes Portland cement concrete pavement, asphalt concrete pavement, asphalt treated road surfaces and any aggregate base material.
- S. Permit and Inspection Fee means the fee charged by the City to recover its cost incurred for right-of-way management; including, but not limited to, costs associated with registering applicants; issuing, processing and verifying right-of-right permit applications; inspecting job sites and restoration of improvements; determining the adequacy of right-of-way restoration; revoking right-of-way permits and, other costs the City may incur in managing the provisions of this Article.
- T. Permittee means any person to whom a right-of-way permit is issued to excavate a right-of-way.
- U. Person means any natural or corporate person, business association or business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.
- V. Public Improvement means any project undertaken by the city for the construction, reconstruction, maintenance, or repair of any public infrastructure, and including without limitation, streets, alleys, bridges, bikeways, parkways, sidewalks, sewers, drainage facilities, traffic control devices, street lights, public facilities, public buildings or public lands.
- W. Public Lands means any real property of the city that is not right-of-way.
- X. Public Works Director means the Director of the Public Works Department of the City of Prairie Village, Kansas, or the authorized representative.
- Y. Registration means the application process of a service provider, the approval of the application by the City, and the authorization of the

service provider to use any portion of the right-of-way within the city to provide service both within and beyond the city limits.

- Z. Repair means the temporary construction work necessary to make the right-of-way useable.
- AA. Repair and Restoration Costs means those costs associated with repairing and restoring the public right-of-way because of damage caused by the ROW-user and its contractors and/or subcontractors in the right-of-way.
- BB. Restoration means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition, or better, than existed before the commencement of the work.
- CC. Right-of-way means the area on, below, or above streets, alleys, bridges, and parkways in which the City has a dedicated or acquired right-of-way interest in the real property.
- DD. Right-of-Way Permit means the authorization to excavate for the construction, installation, repair or maintenance of any type of facility within the right-of-way.
- EE. Routine Service Operation means a work activity that makes no material change to the facilities and does not disrupt traffic.
- FF. ROW-user means a person, its successors and assigns, that uses the right-of-way for purposes of work, excavation, provision of services, or to install, construct, maintain, repair facilities thereon, including, but not limited to, landowners and service providers. A ROW-user shall not include ordinary vehicular or pedestrian traffic or any governmental entity that has entered into an interlocal agreement pursuant to K.S.A. 12-2901 et seq. with the City regarding the use and occupancy of the City's right-of-way.
- GG. Service means a commodity provided to a person by means of a delivery system that is comprised of facilities located or to be located in the right-of-way, including, but not limited to, gas, telephone, cable television, Internet services. Open video systems, wireless services, alarm systems, steam, electric, water, telegraph, data transmission, petroleum pipelines, or sanitary sewerage.
- HH. Service Provider means any person owning, possessing or having an interest in facilities in the right-of-way that are used for the provisions of a service for or without a fee; provided, that this definition shall also include persons owning, possessing or having an interest in facilities in the right-of-way that are used by, may be used by or are intended for use by another person, in whole or in part, to provide a service for or without a fee, regardless of whether the actual facility owner provides any service as defined herein.
- II. Street means the pavement and sub-grade of a City residential, collector or arterial roadway.

SECTION 2. Prairie Village Municipal Code Section 13-510 is hereby amended to read:

13-510. USE OF THE RIGHT-OF-WAY.

- A. The ROW-user's use of the right-of-way shall in all matters be subordinate to the City's use or occupation of the right-of-way. Without limitation of its rights, the City expressly reserves the right to exercise its governmental powers now and hereafter vested in or granted to the City.
- B. The ROW-user shall coordinate the placement of facilities in a manner that does not interfere with a Public Improvement and does not compromise the public health, safety, or welfare, as reasonably determined by the City. Where placement is not regulated, the facilities shall be placed with adequate clearance from such public improvements so as not to impact or be impacted by such public improvement as defined in the City's "Manual of Infrastructure Standards" available in the office of the Public Works Director. Such Standards shall be competitively neutral and not unreasonable or discriminatory.
- C. The ROW-users shall consider any request made by the City concerning placement of facilities in private easements in order to limit or eliminate future street improvement relocation expenses.
- D. All facilities shall be located and laid so as not to disrupt or interfere with any pipes, drains, sewers, irrigation systems, or other structures or public improvements already installed. In addition, the ROW-user shall, in doing work in connection with its facilities, avoid, so far as may be practicable, disrupting or interfering with the lawful use of right-of-way or other public lands of the City.
- E. All facilities of the ROW-user shall be placed so that they do not interfere with the use of right-of-way and public lands. The City, through its Public Works Director, shall have the right to consult and review the location, design and nature of the facility prior to its being installed.
- F. All newly-constructed facilities shall be located underground. The ROW-user shall comply with all requirements of the City relating to underground facilities. This requirement may be waived by the Public Works Director at his or her discretion for safety concerns, or some other good cause under the condition that does not cause discrimination among ROW-users. If this requirement is waived, the facilities shall be located as directed by the Public Works Director, including, but not limited to, requirements regarding location, height, breakaway design, and clear zones. Provided, however, the height of a facility will not exceed, or cause any existing facility to exceed, the lesser of:
 - (a) thirty-five (35) feet for residential or collector streets or forty-five (45) feet for arterial streets; and
 - (b) sixty-six (66) inches above the height of existing street light poles along the right-of-way surrounding the facility.

Above ground facilities shall comply with the Manual of Infrastructure Standards and all applicable zoning regulations, including but not limited to design, size, height, setbacks, screening and landscaping, and illumination, and be located in a manner that does not compromise the

public health, safety, or welfare. No newly-constructed above ground facilities shall be located directly in front of any single-family home (or in front of where a single-family home could be constructed, in the case of a vacant lot), provided that if the Public Works Director deems it necessary or appropriate, such facilities may be located in the front yard, at or along the property line between two adjacent properties.

- G. The ROW-user shall not interfere with the facilities of the other ROW-users without their permission. If and when the City requires or negotiates to have a service provider cease using its existing poles and to relocate its facilities underground, all other service providers using the same poles shall also relocate their facilities underground at the same time, except transmission equipment, as defined in 47 CFR 1.40001. Provided, any such relocations shall be subject to the appeal process contained in Section 13-528, as amended.
- H. The Public Works Director may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of facility that is currently or, pursuant to current technology, the Public Works Director expects will someday be located within the right-of-way. All right-of-way permits issued by Public Works Director shall indicate the proper corridor for the ROW-user's facilities. Any ROW-user whose facilities are currently in the right-of-way in a position at a variance with the designated corridors shall, no later than at the time of next reconstruction or excavation of the area where its facilities are located, move the facilities to its assigned position within the right-of-way, unless this requirement is waived by Public Works Director for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public health, safety, or welfare, user service needs and hardship to the ROW-user.
- I. If, in the preparation and planning of a right-of-way project, the Public Works Director deems it appropriate for a conduit to be constructed along, across or under the right-of-way, the Public Works Director shall contact all appropriate ROW-users for their input on the planning and design of such conduit. If a ROW-user desires to construct, maintain or operate facilities along such right-of-way, the Public Works Director may require the ROW-user to use such conduit, and to contribute to the expense of such conduit, provided, however, the ROW-user's use of the conduit is reasonable and appropriate under the circumstances.
- J. All earth, materials, sidewalks, paving, crossings, utilities, other public improvements or improvements of any kind damaged or removed by the ROW-user shall be fully repaired or replaced promptly by the ROW-user at its sole expense and to the reasonable satisfaction of the City. Upon determination by the Public Works Director that such repair or replacement is a public safety matter, all such repair or replacement shall be commenced within twenty-four (24) hours of notice from the City, or the Public Works Director may direct the city to make such repair or replacement and bill the ROW-user for the City cost. The Public Works

Director has the authority to inspect the repair or replacement of the damage, and if necessary, to require the ROW-user to do any necessary additional work.

- K. All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of a ROW-user's facilities in the right-of-way shall be in accordance with the Manual of Infrastructure standards and all applicable federal, state and local law and regulations, including those promulgated by national trade associations commonly associated with the service provided by the ROW-user. It is understood that the standards established in this paragraph are minimum standards and the requirements established or referenced in this article may be in addition to or stricter than such minimum standards. A ROW-user shall not construct or reconstruct any of its facilities located upon, over, under or within the City right-of-way without first having submitted in writing a description of its planned improvement to the Public Works Director and having received a permit for such improvement. The Public Works Director may require that any drawings, plans and/or specifications submitted be certified by a Kansas registered professional engineer stating that such drawings, plans and/or specifications comply with all applicable technical codes, rules and regulations, unless such plans are based directly on nationally recognized codes, which are appropriately cited, and attested to on the plans by the signature of an authorized official of the organization applying for the permit.
- L. The ROW-user shall cooperate promptly and fully with the City and take all reasonable measures necessary to provide accurate and complete on-site information regarding the nature and horizontal and vertical location of its facilities located within the right-of-way, both underground and overhead, when requested by the City or its authorized agent for a public improvement. Such location and identification shall be at the sole expense of the ROW-user without any expense to the City, its employees, agents, or authorized contractors.

SECTION 3. Prairie Village Municipal Code Section 13-511 is hereby amended to read:

13-511. FACILITY RELOCATION.

- A. The ROW-user shall promptly remove, relocate or adjust any facilities located in the right-of-way as directed by the City for a public improvement or when reasonably required by the City by reason of public health, safety and welfare. Such removal, relocation, or adjustment shall be performed by the ROW-user at the ROW-user's sole expense without expense to the City, its employees, agents, or authorized contractors and shall be specifically subject to rules, regulations and schedules of the City pertaining to such. The ROW-user shall proceed with relocations at due diligence upon notice by the City to begin relocation.
- B. The ROW-user shall promptly remove, relocate or adjust any facilities located in private easement, as directed by the City, for a public

improvement, at City expense, by moving such facilities to areas within the expanded right-of-way or within remaining private easements or remaining portions of such easements not condemned by nor disclaimed to the City to avoid conflict with City construction and improvements. The ROW-user shall disclaim those parts of its easements which lie within the expanded right-of-way. Should the City, in the future, elect to require the ROW-user to again relocate its facilities to other areas within the expanded right-of-way, the cost of any such future relocation shall be borne by the City.

- C. As soon as working drawings are available for public improvements which will require the ROW-user to relocate its facilities, the city shall provide the ROW-user with written notice of relocations and the anticipated bid letting date of said improvement. The ROW-user shall respond with any conflicts and a proposed construction schedule within thirty (30) days.
- D. Following notice by the City in the form of the delivery of final design plans for such public improvements, the ROW-user shall remove, and relocate its facilities in accordance with the mutually agreed upon schedule, provided the project is not delayed by adverse weather conditions and other factors beyond the control of the ROW-user. The ROW-user shall certify to the City, in writing, that its facilities have been relocated or adjusted to clear construction in accordance with project plans provided by the City.
- E. Any damages suffered by the City, its agents or its contractors to the extent caused by ROW-user's failure to timely relocate or adjust its facilities, or failure to properly relocate or adjust such facilities, shall be borne by the ROW-user.
- F. In the event the ROW-user is required to move its facilities in accordance with this section, any ordinary right-of-way permit fee shall be waived.
- G. It is the intent of this section for both the City and the ROW-user to cooperate with one another so that the need for facility relocation is minimized and, when required and feasible, relocations may be completed prior to receipt of bids by the City for a public improvement.
- H. In the event that a ROW-user is required to move its facilities for a private benefit, the ROW-user shall not bear the cost of the relocation or adjustment to the extent of such private benefit, and the ROW-user shall not be obligated to commence the relocation or adjustment until receipt of funds for such relocation or adjustment.

SECTION 4. Prairie Village Municipal Code Section 13-512 is hereby amended to read:

13-512. PROTECTION OF THE PUBLIC.

- A. It shall be the responsibility of the ROW-user to take adequate measures to protect and defend its facilities in the right-of-way from harm and damage.
- B. The City shall not be liable for any damage to or loss of any of the ROW-user's facilities within the right-of-way as a result of or in connection with any construction, excavation, grading, filling or work of any kind, including public improvements by or on the behalf of the City, except to

the extent caused by the negligent, willful, intentional, or malicious acts or omissions of the City.

- C. The ROW-user shall be responsible to the City and its agents, representatives, and authorized contractors for all damages suffered by them including, but not limited to delay damages, repair costs, down time, construction delays, penalties or other expenses of any kind arising out of the failure of the ROW-user to timely perform any of its obligations under this article to the extent caused by the acts or omissions of the ROW-user.
- D. The City or its authorized contractors shall be responsible for taking reasonable precautionary measures including calling for facility locations when constructing its public improvements.
- E. Any ROW-user who for any purpose makes or causes to be made any excavation in, upon, under, through or adjoining any street, sidewalk, alley or other right-of-way, and shall leave any part or portion thereof open, or shall leave any part or portion thereof disrupted with rubbish, building or other material during construction and/or the night time, shall cause the same to be enclosed with good substantial and sufficient barricades or drums equipped with the appropriate type warning lights and orange safety fencing material which is properly secured around the excavation or the disruption.
- F. Whenever a ROW-user shall excavate the full width of any street, sidewalk, alley, driveway approach or other right-of-way, it shall be its duty to maintain an adequate passage for vehicles and pedestrians across or around the excavation until it is refilled as specified.
- G. Any excavation left open overnight on any thoroughfare or collector type street shall be securely covered. The ROW-user assumes the sole responsibility for maintaining proper barricades, plates, safety fencing and/or lights as required from the time of opening of the excavation until the excavation is surfaced and opened for travel.
- H. The Public Works Director, upon the review and approval of a plan and details for trimming trees in the right-of-way, may grant permission by permit to any ROW-user to trim trees upon and overhanging the right-of-way so as to prevent such trees from coming in contact with the facilities of the ROW-user.
- I. In the event the ROW-user severely disturbs or damages the root structure of any tree in the right-of-way to the detriment of the health and safety of the tree, the ROW-user will be required to remove and replace the tree at the ROW-user's cost. Further, in review of the ROW-user's plan, Public Works Director, in his or her discretion, may require the ROW-user to directionally bore around any tree in the right-of-way.
- J. Upon the appropriate request of any person having satisfied City procedure and ordinances, the ROW-user shall remove, raise, or lower its facilities temporarily to permit the moving of houses or other structures. The expense of such temporary removal, raising or lowering shall be paid by the person requesting the same, and the ROW-user may require such payment in advance. The ROW-user must be given not less than fifteen

(15) days written notice from the person detailing the time and location of the moving operations, and not less than twenty-four (24)-hours advance notice from the person advising of the actual operation.

- K. The Public Works Director may cause to be removed any encroachment in the Right-of-Way that creates a hazard to public health, safety, or welfare, and the cost of such removal and restoration of the right-of-way shall be borne by the ROW-user.

SECTION 5. Prairie Village Municipal Code Section 13-514 is hereby amended to read:

13-514. ABANDONED AND UNUSABLE FACILITIES.

- A. A ROW-user owning abandoned facilities in the right-of-way must either:
 - 1. Remove its facilities and replace or restore any damage or disturbance caused by the removal at its own expense. The Public Works Director may allow underground facilities or portions thereof remain in place if the public works director determines that it is in the best interest of public health, safety, or welfare to do so. At such time, the City may take ownership and responsibility of such vacated facilities left in place; or
 - 2. Provide information satisfactory to the city that the ROW-user's obligations for its facilities in the right-of-way have been lawfully assumed by another authorized ROW-user; or
 - 3. Submit to the City a proposal and instruments for transferring ownership of its facilities to the city. If the ROW-user proceeds under this section, the City may, at its option purchase the equipment, require the ROW-user, at its own expense, to remove it, or require the ROW-user to post a bond in an amount sufficient to reimburse the City for reasonable anticipated costs to be incurred to remove the facilities.
- B. Facilities of a ROW-user who fails to comply with this section, and whose facilities remain unused for two (2) years, shall be deemed to be abandoned after the City has made a good faith effort to contact the ROW-user, unless the City receives confirmation that the ROW-user intends to use the facilities. Abandoned facilities are deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to,
 - 1. abating the nuisance,
 - 2. taking possession and ownership of the facility and restoring it to a useable function, or
 - 3. requiring the removal of the facility by the ROW-user.

SECTION 6. Prairie Village Municipal Code Section 13-516 is hereby amended to read:

13-516 PERMIT APPLICATIONS.

- A. Application for a right-of-way permit shall be submitted to the Public Works Director either by the ROW-user or by the person who will do the work and/or excavation in the right-of-way. Before an application may be

- submitted, the applicant must attend a pre-application meeting with designated City staff, unless waived by the Public Works Director.
- B. Right-of-way applications shall contain and be considered complete only upon receipt of the following:
 - 1. Compliance with verification of registration;
 - 2. Submission of a completed permit application form, including all required attachments and scaled drawings showing the location and area of the proposed project and the location of all existing and proposed facilities at such location;
 - 3. A traffic control plan;
 - 4. Payment of all money due to the city for permit fees and costs, for prior excavation costs, for any loss, damage or expense suffered by the City because of the applicant's prior excavations of the right-of-way or for any emergency actions taken by the City, unless the payment of such money is in dispute and timely appealed as provided hereafter.
 - C. All applications shall be processed within the timeframes required by state and federal law.
 - D. If an applicant has submitted an application for a permit for the installation, construction, maintenance, or repair of multiple facilities, that applicant may not submit another application for a permit for the installation, construction, maintenance, or repair of multiple facilities until the first application has been approved or denied. This provision may be waived by the Public Works Director.

SECTION 7. Prairie Village Municipal Code Section 13-518 is hereby amended to read:

13-518. RIGHT-OF-WAY PERMIT FEES.

- A. The right-of-way permit fee and other appropriate fees, including but not limited to inspection fees, excavation fees, pole attachment fees, and franchise fees, shall be recommended by the Public Works Director, approved by the governing body and listed in the Schedule of Fees maintained in the City Clerk's office, as such Schedule may be amended from time to time. An application shall not be deemed submitted unless the right-of-way permit fee is paid. The right-of-way permit fee shall be subject to all state and federal fee limitations.
- B. Fees paid for a right-of-way permit, which is subsequently revoked by the Public Works Director, are not refundable.
- C. Except as provided for in an emergency situation, when a ROW-user is found to have worked or is working in the right-of-way without having obtained a permit, the fee for the permit will be double the amount had the ROW-user obtained a permit prior to beginning work.
- D. The City may also charge and collect any necessary repair and restoration costs.

SECTION 8. Prairie Village Municipal Code Section 13-525 is hereby amended to read:

13-525.

DENIAL OF PERMIT.

- A. The Public Works Director may deny a permit or prohibit the use or occupancy of a specific portion of the right-of-way to protect the public health, safety and welfare, to prevent interference with the safety and convenience of ordinary travel over the right-of-way, or when necessary to protect the right-of-way and its users. The Public Works Director, at his or her discretion, may consider all relevant factors including but not limited to:
1. The extent to which the right-of-way space where the permit is sought is available;
 2. The competing demands for the particular space in the right-of-way;
 3. The availability of other locations in the right-of-way or in other right-of-way for the facilities of the applicant;
 4. The applicability of any ordinance or other regulations, including City zoning regulations, that affect location or other standards for facilities in the right-of-way;
 5. The degree of compliance of the applicant with the terms and conditions of its franchise, this article, and other applicable ordinances and regulations;
 6. The degree of disruption to surrounding communities and businesses that will result from the use of that part of the right-of-way;
 7. The balancing of costs of disruption to the public and damage to the right-of-way, against the benefits to that part of the public served by the construction in the right-of-way;
 8. Whether the applicant maintains a current registration with the City.
 9. Whether the issuance of a right-of-way permit for the particular dates and/or time requested would cause a conflict or interferes with an exhibition, celebration, festival, or any other event. In exercising this discretion, the Public Works Director shall be guided by the safety and convenience of anticipated travel of the public over the right-of-way.
 10. Whether the application complies with the Manual of Infrastructure Standards.
 11. The adverse impact of the facilities or the facilities' proposed location on any reasonable public interest necessitated by public health, safety, or welfare.
- B. Notwithstanding the above provisions, the Public Works Director may in his or her discretion issue a right-of-way permit in any case where the permit is necessary to:
1. Prevent substantial economic hardship to a user of the applicant's service;
 2. Allow such user to materially improve the service provided by the applicant.

- C. Any denial of a wireless communications antenna, tower, or related facilities shall, in accordance with federal and state law, be made in writing and supported by substantial evidence contained in a written record issued contemporaneously with said decision.

SECTION 9. Prairie Village Municipal Code Section 13-528 is hereby amended to read:

13-528. APPEALS PROCESS.

- A. Whenever a person shall deem themselves aggrieved by any decision or action taken by the Public Works Director, the person may file an appeal to the Governing Body within ten (10) calendar days of the date of notice of such decision or action. Provided, this section shall not apply to any person who is availing themselves of the appeal provisions set forth in K.S.A. 66-2019(h)(6), as amended.
- B. The persons shall be afforded a hearing on the matter before the Governing Body within thirty (30) days of filing the appeal.
- C. In cases of applicability or interpretation of the rules, the Governing Body may revoke such decision or action taken by the Public Works Director.
- D. In cases where compliance with such decision or action taken by the Public Works Director would cause undue hardship, the Governing Body may extend the time limit of such decision or action, or may grant exceptions to, or waive requirements of, or grant a variance from the specific provisions of rules. The Governing Body shall give due consideration to the purposes of the rules in preserving public safety and convenience, integrity of public infrastructure, and the operational safety and function of the public right-of-way.
- E. Pending a decision by the Governing Body, the order of the Public Works Director shall be stayed, unless the public works director determines that such action will pose a threat to public safety or the integrity of the public infrastructure.
- F. If a person still deem themselves aggrieved after the appeal to the Governing Body, such person shall have thirty (30) days after the effective date of the Governing Body's final decision to institute an action in the District Court of Johnson County, Kansas.

Section 10. All ordinances and parts thereof that are inconsistent with any provision of this Ordinance are hereby repealed.

Section 11. This Ordinance shall take effect and be in force from and after its passage, approval and publication as provided by law.

PASSED by the City Council of the City of Prairie Village, Kansas on October 3, 2016.

APPROVED:

Laura Wassmer, Mayor

ATTEST:

Joyce Hagen Mundy, City Clerk

APPROVED AS TO LEGAL FORM:

Catherine P. Logan, City Attorney

Senate Substitute for HOUSE BILL No. 2131

AN ACT concerning telecommunications; relating to local exchange carriers; concerning the Kansas universal service fund; concerning wireless communications, siting of equipment; relating to municipalities and state entities, public lands and public right-of-way; amending K.S.A. 17-1902 and 66-2004 and K.S.A. 2015 Supp. 66-2005, 66-2007, 66-2008 and 66-2017 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) The Kansas legislature finds and declares that:

(1) The permitting, construction, modification, maintenance and operation of wireless facilities are critical to ensuring that all citizens in the state have true access to broadband and other advanced technology and information;

(2) these facilities are critical to ensuring that businesses and schools throughout the state remain competitive in the global economy;

(3) wireless telecommunications facilities that enable broadband services have a significant economic benefit; and

(4) the permitting, construction, modification, maintenance and operation of these facilities, to the extent specifically addressed in this section, are declared to be matters of statewide concern and interest.

(b) As used in this section:

(1) "Accessory equipment" means any equipment serving or being used in conjunction with a wireless facility or wireless support structure including, but not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or similar structures.

(2) "Antenna" means communications equipment that transmits or receives electromagnetic radio signals used in the provision of wireless services.

(3) "Applicant" means any person or entity that is engaged in the business of providing wireless services or the wireless infrastructure required for wireless services and that submits an application.

(4) "Application" means a request submitted by an applicant to an authority for: (A) The construction of a new wireless support structure or new wireless facility;

(B) the substantial modification of a wireless support structure or wireless facility; or

(C) collocation of a wireless facility or replacement of a wireless facility.

(5) "Authority" means any governing body, board, agency, office or commission of a city, county or the state that is authorized by law to make legislative, quasi judicial or administrative decisions concerning an application. "Authority" shall not include any school district as defined in K.S.A. 72-8301, and amendments thereto, or any court having jurisdiction over land use, planning, zoning or other decisions made by an authority.

(6) "Base station" means a station that includes a structure that currently supports or houses an antenna, transceiver, coaxial cables, power cables or other associated equipment at a specific site that is authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies and other associated electronics. "Base station" does not mean a tower or equipment associated with a tower and does not include any structure that, at the time the relevant application is filed with the authority, does not support or house equipment described in this paragraph.

(7) "Collocation" means the mounting or installation of wireless facilities on a building, structure, wireless support structure, tower, utility pole, base station or existing structure for the purposes of transmitting or receiving radio frequency signals for communication purposes.

(8) "Distributed antenna system" means a network that distributes radio frequency signals and consisting of: (A) Remote communications or antenna nodes deployed throughout a desired coverage area, each including at least one antenna for transmission and reception;

(B) a high capacity signal transport medium that is connected to a central communications hub site; and

(C) radio transceivers located at the hub's site to process or control the communications signals transmitted and received through the antennas to provide wireless or mobile service within a geographic area or structure.

(9) "Existing structure" means a structure that exists at the time an application to collocate wireless facilities on a structure is filed with an

authority. The term includes any structure that is currently supporting or designed to support the attachment of wireless facilities, including, but not limited to, towers, buildings and water towers.

(10) “Public lands, buildings and facilities” does not include any real property, structures or facilities under the ownership, control or jurisdiction of the secretary of transportation.

(11) “Public right-of-way” means only the area of real property in which the authority has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. “Public right-of-way” does not include any state, federal or interstate highway right-of-way, which generally includes the area that runs contiguous to, parallel with, and is generally equidistant from the center of that portion of the highway improved, designed or ordinarily used for public travel.

(12) “Replacement” includes constructing a new wireless support structure of comparable proportions and of comparable height or such other height that would not constitute a substantial modification to an existing structure in order to support wireless facilities or to accommodate collocation and includes the associated removal of the pre-existing wireless facilities, if any, or wireless support structure.

(13) “Search ring” means a shape drawn on a map to indicate the general area within which a wireless services support structure should be located to meet radio frequency engineering requirements, taking into account other factors, including topography and the demographics of the service area.

(14) “Small cell facility” means a wireless facility that meets both of the following qualifications: (A) Each antenna is located inside an enclosure of no more than six cubic feet in volume, or in the case of an antenna that has exposed elements, the antenna and all of the antenna’s exposed elements could fit within an imaginary enclosure of no more than six cubic feet; and

(B) primary equipment enclosures that are no larger than 17 cubic feet in volume, or facilities comprised of such higher limits as the federal communications commission has excluded from review pursuant to 54 U.S.C. § 306108. Associated equipment may be located outside the primary equipment, and if so located, is not to be included in the calculation of equipment volume. Associated equipment includes, but is not limited to, any electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, cut-off switch and vertical cable runs for the connection of power and other services.

(15) “Small cell network” means a collection of interrelated small cell facilities designed to deliver wireless service.

(16) “Substantial modification” means a proposed modification to an existing wireless support structure or base station that will substantially change the physical dimensions of the wireless support structure or base station under the objective standard for substantial change, established by the federal communications commission pursuant to 47 C.F.R. 1.40001.

(17) “Transmission equipment” means equipment that facilitates transmission for a wireless service licensed or authorized by the federal communications commission including, but not limited to, radio transceivers, antennas, coaxial or fiber optic cable and regular and backup power supply. “Transmission equipment” includes equipment associated with wireless services including, but not limited to, private, broadcast and public safety services such as wireless local area network services, and services utilizing a set of specifications developed by the institute of electrical and electronics engineers for interface between a wireless client and a base station or between two wireless clients, as well as unlicensed wireless services and fixed wireless services, such as microwave backhaul.

(18) “Wireless facility” means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including, but not limited to: (A) Equipment associated with wireless services such as private, broadcast and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul; and

(B) radio transceivers, antennas, coaxial or fiber-optic cable, regular

and backup power supplies and comparable equipment, regardless of technological configuration.

“Wireless facility” does not mean any wired connections from a wireless support structure or base station to a hub or switching location.

(19) “Wireless services” means “personal wireless services” and “personal wireless service facilities” as defined in 47 U.S.C. § 332(c)(7)(C), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through wireless facilities or any fixed or mobile wireless services provided using wireless facilities.

(20) “Wireless infrastructure provider” means any person that builds or installs transmission equipment, wireless facilities or wireless support structures, but that is not a wireless services provider.

(21) “Wireless support structure” means a freestanding structure, such as a monopole, guyed or self-supporting tower or other suitable existing or alternative structure designed to support or capable of supporting wireless facilities. “Wireless support structure” shall not include any telephone or electrical utility pole or any tower used for the distribution or transmission of electrical service.

(22) “Utility pole” means a structure owned or operated by a public utility as defined in K.S.A. 66-104, and amendments thereto, a municipality as defined in K.S.A. 75-6102, and amendments thereto, or an electric cooperative as defined in K.S.A. 2015 Supp. 17-4652, and amendments thereto, that is designed specifically for and used to carry lines, cables or wires for telecommunications, cable, electricity or to provide lighting.

(23) “Water tower” means a water storage tank or a standpipe, or an elevated tank situated on a support structure that was originally constructed for use as a reservoir or facility to store or deliver water.

(24) “Wireless services provider” means a provider of wireless services.

(c) (1) An authority shall not charge an application fee, consulting fee or other fee associated with the submission, review, processing and approval of an application that is not required for other wireless infrastructure providers or wireline telecommunications or broadband providers within the authority’s jurisdiction.

(2) An authority shall only assess fees or charges for the actual costs relating to the granting or processing of an application that are directly incurred by the authority and the authority shall not charge any market-based or value-based fees for the processing of an application. Such fees and charges shall be reasonably related in time to the occurrence of such costs.

(3) An authority or any third-party entity shall not include any travel expenses incurred in the review of an application for more than one trip per application to the authority’s jurisdiction and an applicant shall not be required to pay or reimburse an authority for a consultant or other third-party fees based on a contingency-based or results-based arrangement. Any travel expenses included must be reasonable and directly related to the application.

(4) The total charges and fees assessed by the authority shall not exceed:

(A) \$500 for a collocation application, that is not a substantial modification, small cell facility application or distributed antenna system application; or

(B) \$2,000 for an application for a new wireless support structure or for a collocation application that is a substantial modification of a wireless support structure.

(d) (1) An authority may not charge a wireless services provider or wireless infrastructure provider any rental, license or other fee to locate a wireless facility or wireless support structure on any public right-of-way controlled by the authority, if the authority does not charge other telecommunications or video service providers, alternative infrastructure or wireless services providers or any investor-owned utilities or municipally-owned commercial broadband providers for the use of public right-of-way. If an authority does assess a charge, including a charge or rental fee for attachment to the facilities owned by the authority in the right-of-way, any such charge must be competitively neutral, with regard to other users of the public right-of-way, including investor-owned utilities or mu-

municipally-owned commercial broadband providers, and may not be unreasonable or discriminatory or violate any applicable state or federal law, rule or regulation.

(2) (A) Subject to the provisions of this subsection, a wireless services provider or wireless infrastructure provider, subject to an application, shall have the right to construct, maintain and operate wireless support structures, utility poles, small cell wireless facilities or distributed antenna systems along, across, upon, under or above the public right-of-way. The authority must be competitively neutral with regard to other users of the public right-of-way, may not be unreasonable or discriminatory and may not violate any applicable state or federal law, rule or regulation.

(B) Nothing in this subsection (d) shall be interpreted as granting a wireless services provider or wireless infrastructure provider the right to construct, maintain or operate any facility or related appurtenance on property owned by the authority outside of the public right-of-way.

(C) The right of a wireless services provider or wireless infrastructure provider to use and occupy the public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the authority. An authority may exercise its home rule powers in its administration and regulation related to the management of the public right-of-way provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory.

(D) The authority shall have the right to prohibit the use or occupation of a specific portion of public right-of-way by a provider due to a reasonable public interest necessitated by public health, safety and welfare so long as such interest is exercised in a competitively neutral manner and is not unreasonable or discriminatory.

(E) A wireless services provider or wireless infrastructure provider shall comply with all laws and rules and regulations governing the use of public right-of-way.

(F) An authority may require a wireless services provider or wireless infrastructure provider to repair all damage to a public right-of-way caused by the activities of that provider, or of any agent, affiliate, employee or subcontractor of that provider, while occupying, installing, repairing or maintaining facilities in a public right-of-way and to return the right-of-way to the condition in which it existed prior to the damage. If a wireless services provider or wireless infrastructure provider fails to make the repairs required by an authority, the authority may effect those repairs and charge the provider the reasonable cost of those repairs. If an authority incurs damages as a result of a violation of this paragraph, then the authority shall have a cause of action against a wireless services provider or wireless infrastructure provider for violation of this paragraph, and may recover its damages, including reasonable attorney fees, if such provider is found liable by a court of competent jurisdiction.

(G) If requested by an authority, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety and welfare of the public, a wireless services provider or wireless infrastructure provider shall relocate or adjust its facilities within the public right-of-way at no cost to the authority, as long as such request similarly binds all users of such right-of-way. Such relocation or adjustment shall be completed as soon as reasonably possible within the time set forth in any written request by the authority for such relocation or adjustment, as long as the authority provides the wireless services provider or wireless infrastructure provider with a minimum of 180 days advance written notice to comply with such relocation or adjustment, unless circumstances beyond the authority's control require a shorter period of advance notice. If any such relocation or adjustment is for private benefit, the provider shall not bear the cost of the relocation or adjustment to the extent of such private benefit and the provider shall not be obligated to commence the relocation or adjustment until receipt of funds for such relocation or adjustment. The provider shall have no liability for any delays caused by a failure to receive funds for the cost of such relocation or adjustment and the authority shall have no obligation to collect such funds.

(H) Wireless services providers and wireless infrastructure providers shall indemnify and hold the authority and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens,

losses, expenses, fees to include reasonable attorney fees and costs of defense, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury or death, property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of the wireless services provider or wireless infrastructure provider, any agent, officer, director, representative, employee, affiliate or subcontractor of the provider, or their respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining facilities in a public right-of-way. The indemnity provided by this paragraph does not apply to any liability resulting from the negligence of an authority, its officers, employees, contractors or subcontractors. If a provider and the authority are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state, without waiving any governmental immunity available to the authority under state law and without waiving any defenses of the parties under state or federal law. This paragraph is solely for the benefit of the authority and the wireless services provider or wireless infrastructure provider and does not create or grant any rights, contractual or otherwise, to any other person or entity.

(I) A wireless services provider or wireless infrastructure provider or authority shall promptly advise the other in writing of any known claim or demand against the provider or the authority related to or arising out of the provider's activities in a public right-of-way.

(3) The provisions of this subsection shall not apply to or affect any authority's jurisdiction over the activities of wireless services providers or wireless infrastructure providers in public utility easements, private easements or on privately owned property.

(4) Nothing in this subsection shall be construed to prevent wireless structures and wireless facilities from being located on state, federal or interstate highway right-of-way in accordance with reasonable policies and procedures adopted by the manager of the state, federal and interstate highway right-of-way under applicable federal and state law.

(e) (1) An authority may enter into a lease with an applicant for the applicant's use of public lands, buildings and facilities. When entering into a lease for use of publicly owned lands, an authority shall offer leases or contracts for applicants to use publicly owned lands that are at least 10 years in duration, unless otherwise agreed to by both the applicant and the authority, and at market rates. Any lease renewals shall be negotiated in good faith. Due to the benefit of increased broadband and wireless services to the citizens of the authority, an authority may choose not to charge for the placement of wireless facilities on public lands. If an authority does charge, any such charges for use of publicly owned lands and facilities must be competitively neutral with regard to other users of the publicly owned lands and facilities, including any investor-owned utilities or municipally owned commercial broadband providers, may not be unreasonable or discriminatory and may not violate any applicable state or federal law, rule or regulation.

(2) If the applicant and the authority do not agree on the applicable market rate for the use or lease of public land and are unable to agree on a process to determine the applicable market rate for any such public land, then the market rate will be determined by a panel of three appraisers. The panel will consist of one appraiser appointed by each party and a third appraiser selected by the two appointed appraisers. Each appraiser will independently appraise the appropriate lease rate and the market rate shall be set at the mean between the highest and lowest market rates among all three independent appraisals, unless the mean between the highest and lowest appraisals is greater than or less than 10% of the appraisal of the third appraiser chosen by the parties' appointed appraisers, in which case the third appraisal will determine the rate for the lease. The appraisal process shall be concluded within 150 calendar days from the date the applicant first tenders a proposed lease rate to the authority. Each party will bear the cost of the party's own appointed appraiser, and the parties shall share equally the cost of the third appraiser chosen by the two appointed appraisers.

(3) Nothing in this subsection shall be construed to prevent wireless structures and wireless facilities from being located on real property, structures or facilities under the ownership, control or jurisdiction of the

secretary of transportation in accordance with reasonable policies and procedures adopted by the secretary of transportation under applicable federal and state law.

(4) This subsection (e) shall not apply to public rights-of-way governed by subsection (d).

(f) To ensure uniformity across the state with respect to consideration of every application, an authority shall not:

(1) Require an applicant to submit information about, or evaluate an applicant's business decisions with respect to, the applicant's designed service, customer demand for service or quality of the applicant's service to or from a particular area or site. An authority may require an applicant filing an application for a new wireless support structure to state in such application that the applicant conducted an analysis of available collocation opportunities on existing wireless support structures within the same search ring defined by the applicant, solely for the purpose of confirming that an applicant undertook such analysis;

(2) require information that concerns the specific need for the wireless support structure, including if the service to be provided from the wireless support structure is to add additional wireless coverage or additional wireless capacity. An authority may not require proprietary, confidential or other business information to justify the need for the new wireless support structure, including propagation maps and telecommunications traffic studies;

(3) evaluate an application based on the availability of other potential locations for the placement of wireless support structures or wireless facilities including, but not limited to, the option to collocate, instead of construct, a new wireless support structure or for substantial modifications of a support structure;

(4) dictate the type of transmission equipment or technology to be used by the applicant including, but not limited to, requiring an applicant to construct a distributed antenna system or small cell facility in lieu of constructing a new wireless support structure or discriminate between different types of infrastructure or technology;

(5) require the removal of existing wireless support structures or wireless facilities, wherever located, as a condition for approval of an application. This paragraph shall not preclude an authority from adopting reasonable rules with respect to the removal of abandoned wireless support structures or wireless facilities;

(6) impose any restrictions at or near civilian airports with respect to objects in navigable airspace height limitations, proximity to civilian airports or markings and lighting on wireless support structures or base stations that are greater than, or in conflict with, any restrictions imposed by the federal aviation administration, except that this paragraph shall not be construed so as to impact any existing height restrictions adopted by an authority as of the effective date of this section on wireless support structures or base stations located at or near civilian airports;

(7) establish or enforce regulations or procedures for radio frequency signal strength or the adequacy of service quality;

(8) impose surety requirements, including bonds, escrow deposits, letters of credit or any other type of financial surety to ensure that abandoned or unused facilities can be removed, unless the authority imposes similar requirements on other permits for other types of commercial development or land uses, and any such instrument cannot exceed a reasonable estimate of the direct cost of the removal of the facility. If surety requirements are imposed, any such requirements shall be competitively neutral, non-discriminatory, reasonable in amount and commensurate with the historical record for local facilities and structures that are abandoned;

(9) discriminate or create a preference on the basis of the ownership of any property, structure, base station or wireless support structure when promulgating rules or procedures for siting wireless facilities or for evaluating applications or require the placement of wireless support structures or wireless facilities on property owned or leased by the authority, but an authority may develop a process to encourage the placement of wireless support structures or wireless facilities on property owned or leased by the authority, including an expedited approval process. Nothing in this subsection shall be construed to hinder or restrict the siting of

public safety communications towers, including, but not limited to, police and fire;

(10) impose any unreasonable requirements or obligations regarding the presentation, appearance or function of the wireless facilities and equipment including, but not limited to, those relating to any kinds of materials used and those relating to arranging, screening or landscaping of facilities. In developing such a requirement or obligation for wireless facilities located on a public right-of-way, the authority shall consider input from property owners adjoining the affected public right-of-way;

(11) impose any requirements that an applicant purchase, subscribe to, use or employ facilities, networks or services owned, provided or operated by an authority, in whole or in part, or by any entity in which the authority has a competitive, economic, financial, governance or other interest;

(12) impose environmental testing, sampling or monitoring requirements that exceed federal law;

(13) impose any compliance measures for radio frequency emissions or exposure from wireless facilities that exceed the requirements of the federal communications commission rules for radio frequency;

(14) in conformance with 47 U.S.C. § 332(c)(7)(B)(iv), reject an application, in whole or in part, based on perceived or alleged environmental effects of radio frequency emissions or exposure;

(15) prohibit the use of emergency power systems that comply with federal and state environmental requirements and do not violate local health and safety requirements and local noise control ordinances, but no local regulations shall prevent the provision of emergency power during an actual emergency;

(16) condition or require the approval of an application based on the applicant's agreement to permit any wireless facilities provided or operated, in whole or in part, by an authority or by any other entity to be placed at, or collocated with, the applicant's wireless support structure;

(17) impose a greater setback or fall-zone requirement for a wireless support structure than for other types of commercial structure of a similar size; or

(18) limit, for less than 10 years, the duration of the approval of an application. Any renewals shall be negotiated in good faith. Construction of the approved structure or facilities shall commence within one year of final approval and shall be diligently pursued to completion.

(g) An applicant for a small cell network involving no greater than 25 individual small cell facilities of a substantially similar design within the jurisdiction of a single authority shall be permitted, upon request by the applicant, to file a consolidated application and receive a single permit for the installation, construction, maintenance and repair of a small cell network instead of filing separate applications for each individual small cell facility, except that the authority may require a separate application for any small cell facilities that are not of a substantially similar design. The authority shall render a decision no later than 60 days after the submission of an application regarding small cell facilities that satisfies the authority's requirements in a single administrative proceeding.

(h) (1) Within 150 calendar days of receiving an application for a new wireless support structure and within 90 calendar days of receiving an application for a substantial modification to an existing wireless support structure or base station, or any other application for placement, installation or construction of transmission equipment that does not constitute an eligible facilities request as defined by 47 U.S.C. § 1455(a), an authority shall: (A) Review the application in light of the application's conformity with applicable local zoning regulations;

(B) make a final decision to approve or disapprove the application; and

(C) advise the applicant in writing of the authority's final decision, supported by substantial evidence contained in a written record and issued contemporaneously. If an authority denies an application, there must be a reasonable basis for the denial. An authority may not deny an application if such denial discriminates against the applicant with respect to the placement of the facilities of other investor-owned utilities, wireless service providers, wireless infrastructure providers or wireless carriers.

(2) (A) The time period for approval of applications shall begin when the application is submitted and may be tolled within the first 30 days

after the submission of the application if the authority notifies the applicant that such application is incomplete, identifies all missing information and specifies the code provision, ordinance, application instruction or otherwise publicly stated procedures that require the information to be submitted.

(B) The time period for approval of applications shall begin running again when the applicant provides the necessary supplemental information. Additionally, the time period for approval of applications may be tolled by the express agreement in writing by both the applicant and the authority.

(3) An application shall be deemed approved if an authority fails to act on an application for a: (A) New wireless support structure within the 150-calendar day review period specified; or

(B) substantial modification to an existing wireless support structure or base station or any other applications for placement, installation or construction of transmission equipment that does not constitute an eligible facilities request as defined by 47 U.S.C. § 1455(a) within the 90 calendar days review period specified.

(4) An authority shall approve applications for eligible facilities requests, as defined by 47 U.S.C. § 1455(a), within 60 days according to the procedures established by federal law under 47 C.F.R. 1.40001.

(5) An application shall be deemed approved once an applicant has provided notice to the authority that the applicable time periods provided in this section have lapsed.

(6) Within 30 days of the notice provided pursuant to subsection (h)(5), a party aggrieved by the final action of an authority, either by the authority affirmatively denying an application or by the authority's inaction, may bring an action for review in any court of competent jurisdiction.

(i) An authority may not institute any moratorium on the filing, consideration or approval of applications, permitting or the construction of new wireless support structures, substantial modifications of wireless support structures or collocations.

(j) Subject to the provisions of this section and applicable federal law, an authority may continue to exercise zoning, land use, planning and permitting authority within the authority's territorial boundaries with regard to the siting of new or the modification of wireless support structures, wireless facilities, small cell facilities or utility poles, except that no authority shall have or exercise any zoning or siting jurisdiction, authority or control over the construction, installation or operation of any small cell facility or distributed antennae system located in an interior structure or upon the site of any campus, stadium or athletic facility.

(k) Nothing in this section shall be construed to apply to military installations.

(l) The provisions of this section shall take effect and be in force on and after October 1, 2016.

Sec. 2. On and after October 1, 2016, K.S.A. 17-1902 is hereby amended to read as follows: 17-1902. (a) (1) "Public right-of-way" means only the area of real property in which the city has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other nonwire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts.

(2) "Provider" means a local exchange carrier as defined in ~~subsection (h) of K.S.A. 66-1,187(h)~~, and amendments thereto, or a telecommunications carrier as defined in ~~subsection (m) of K.S.A. 66-1,187(m)~~, and amendments thereto, or a video service provider as defined in K.S.A. ~~2007~~ 2015 Supp. 12-2022, and amendments thereto, *but does not include an applicant as defined in section 1, and amendments thereto.*

(3) "Telecommunications services" means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(4) "Competitive infrastructure provider" means an entity which leases, sells or otherwise conveys facilities located in the right-of-way, or

the capacity or bandwidth of such facilities for use in the provision of telecommunications services, internet services or other intrastate and interstate traffic, but does not itself provide services directly to end users within the corporate limits of the city.

(b) Any provider shall have the right pursuant to this act to construct, maintain and operate poles, conduit, cable, switches and related appurtenances and facilities along, across, upon and under any public right-of-way in this state. Such appurtenances and facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.

(c) Nothing in this act shall be interpreted as granting a provider the authority to construct, maintain or operate any facility or related appurtenance on property owned by a city outside of the public right-of-way.

(d) The authority of a provider to use and occupy the public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the city. A city may exercise its home rule powers in its administration and regulation related to the management of the public right-of-way provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Nothing herein shall be construed to limit the authority of cities to require a competitive infrastructure provider to enter into a contract franchise ordinance.

(e) The city shall have the authority to prohibit the use or occupation of a specific portion of public right-of-way by a provider due to a reasonable public interest necessitated by public health, safety and welfare so long as the authority is exercised in a competitively neutral manner and is not unreasonable or discriminatory. A reasonable public interest shall include the following:

(1) The prohibition is based upon a recommendation of the city engineer, is related to public health, safety and welfare and is nondiscriminatory among providers, including incumbent providers;

(2) the provider has rejected a reasonable, competitively neutral and nondiscriminatory justification offered by the city for requiring an alternate method or alternate route that will result in neither unreasonable additional installation expense nor a diminution of service quality;

(3) the city reasonably determines, after affording the provider reasonable notice and an opportunity to be heard, that a denial is necessary to protect the public health and safety and is imposed on a competitively neutral and nondiscriminatory basis; or

(4) the specific portion of the public right-of-way for which the provider seeks use and occupancy is environmentally sensitive as defined by state or federal law or lies within a previously designated historic district as defined by local, state or federal law.

(f) A provider's request to use or occupy a specific portion of the public right-of-way shall not be denied without reasonable notice and an opportunity for a public hearing before the city governing body. A city governing body's denial of a provider's request to use or occupy a specific portion of the public right-of-way may be appealed to a district court.

(g) A provider shall comply with all laws and rules and regulations governing the use of public right-of-way.

(h) A city may not impose the following regulations on providers:

(1) Requirements that particular business offices or other telecommunications facilities be located in the city;

(2) requirements for filing applications, reports and documents that are not reasonably related to the use of a public right-of-way or this act;

(3) requirements for city approval of transfers of ownership or control of the business or assets of a provider's business, except that a city may require that such entity maintain current point of contact information and provide notice of a transfer within a reasonable time; and

(4) requirements concerning the provisioning of or quality of customer services, facilities, equipment or goods in-kind for use by the city, political subdivision or any other provider or public utility.

(i) Unless otherwise required by state law, in the exercise of its lawful regulatory authority, a city shall promptly, and in no event more than 30 days, with respect to facilities in the public right-of-way, process each valid and administratively complete application of a provider for any permit, license or consent to excavate, set poles, locate lines, construct facilities, make repairs, effect traffic flow, obtain zoning or subdivision reg-

ulation approvals, or for other similar approvals, and shall make reasonable effort not to unreasonably delay or burden that provider in the timely conduct of its business. The city shall use its best reasonable efforts to assist the provider in obtaining all such permits, licenses and other consents in an expeditious and timely manner.

(j) If there is an emergency necessitating response work or repair, a provider may begin that repair or emergency response work or take any action required under the circumstances, provided that the provider notifies the affected city promptly after beginning the work and timely thereafter meets any permit or other requirement had there not been such an emergency.

(k) A city may require a provider to repair all damage to a public right-of-way caused by the activities of that provider, or of any agent affiliate, employee, or subcontractor of that provider, while occupying, installing, repairing or maintaining facilities in a public right-of-way and to return the right-of-way, to its functional equivalence before the damage pursuant to the reasonable requirements and specifications of the city. If the provider fails to make the repairs required by the city, the city may effect those repairs and charge the provider the cost of those repairs. If a city incurs damages as a result of a violation of this subsection, then the city shall have a cause of action against a provider for violation of this subsection, and may recover its damages, including reasonable attorney fees, if the provider is found liable by a court of competent jurisdiction.

(l) If requested by a city, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety and welfare of the public, a provider shall promptly remove its facilities from the public right-of-way or shall relocate or adjust its facilities within the public right-of-way at no cost to the political subdivision. Such relocation or adjustment shall be completed as soon as reasonably possible within the time set forth in any request by the city for such relocation or adjustment. Any damages suffered by the city or its contractors as a result of such provider's failure to timely relocate or adjust its facilities shall be borne by such provider.

(m) No city shall create, enact or erect any unreasonable condition, requirement or barrier for entry into or use of the public rights-of-way by a provider.

(n) A city may assess any of the following fees against a provider, for use and occupancy of the public right-of-way, provided that such fees reimburse the city for its reasonable, actual and verifiable costs of managing the city right-of-way, and are imposed on all such providers in a nondiscriminatory and competitively neutral manner:

(1) A permit fee in connection with issuing each construction permit to set fixtures in the public right-of-way within that city as provided in K.S.A. 17-1901, and amendments thereto, to compensate the city for issuing, processing and verifying the permit application;

(2) an excavation fee for each street or pavement cut to recover the costs associated with construction and repair activity of the provider, their assigns, contractors ~~and/or~~ or subcontractors, *or both*, with the exception of construction and repair activity required pursuant to subsection (l) of this act related to construction and maintenance activities directly related to improvements for the health, safety and welfare of the public; provided, however, imposition of such excavation fee must be based upon a regional specific or other appropriate study establishing the basis for such costs which takes into account the life of the city street prior to the construction or repair activity and the remaining life of the city street. Such excavation fee is expressly limited to activity that results in an actual street or pavement cut;

(3) inspection fees to recover all reasonable costs associated with city inspection of the work of the provider in the right-of-way;

(4) repair and restoration costs associated with repairing and restoring the public right-of-way because of damage caused by the provider, its assigns, contractors, ~~and/or~~ or subcontractors, *or both*, in the right-of-way; and

(5) a performance bond, in a form acceptable to the city, from a surety licensed to conduct surety business in the state of Kansas, insuring appropriate and timely performance in the construction and maintenance of facilities located in the public right-of-way.

(o) A city may not assess any additional fees against providers for use

or occupancy of the public right-of-way other than those specified in subsection (n).

(p) This act may not be construed to affect any valid taxation of a provider's facilities or services.

(q) Providers shall indemnify and hold the city and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees ~~(including to include~~ reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury ~~(including or death)~~, property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of the provider, any agent, officer, director, representative, employee, affiliate or subcontractor of the provider, or their respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining facilities in a public right-of-way. The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the city, its officers, employees, contractors or subcontractors. If a provider and the city are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the city under state law and without waiving any defenses of the parties under state or federal law. This section is solely for the benefit of the city and provider and does not create or grant any rights, contractual or otherwise, to any other person or entity.

(r) A provider or city shall promptly advise the other in writing of any known claim or demand against the provider or the city related to or arising out of the provider's activities in a public right-of-way.

(s) Nothing contained in K.S.A. 17-1902, and amendments thereto, is intended to affect the validity of any franchise fees collected pursuant to state law or a city's home rule authority.

(t) Any ordinance enacted prior to the effective date of this act governing the use and occupancy of the public right-of-way by a provider shall not conflict with the provisions of this act.

Sec. 3. K.S.A. 66-2004 is hereby amended to read as follows: 66-2004.

(a) Pursuant to ~~subsection (f)(1) of section 251 of the federal act 47 U.S.C. § 251(f)(1)~~, the obligations of an incumbent local exchange carrier, which include the duty to negotiate interconnection, unbundled access, resale, notice of changes and collocation, shall not apply to a rural telephone company unless such company has received a bona fide request for interconnection, services or network elements and the commission determines that such request is not unduly economically burdensome, is technically feasible and preserves and enhances universal service.

(b) On July 1, 1996, the commission shall initiate a rulemaking procedure to adopt guidelines to ensure that all telecommunications carriers and local exchange carriers preserve and enhance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services and safeguard the rights of consumers. The preservation and advancement of universal service shall be a primary concern. The commission shall issue the guidelines no later than December 31, 1996.

(c) Pursuant to ~~subsection (f) of section 253 of the federal act 47 U.S.C. § 253(f)~~, any telecommunications carrier that seeks to provide telephone exchange service or local exchange access in a service area served by a rural telephone company shall meet the requirements of ~~subsection (e)(1) of section 214 of the federal act 47 U.S.C. § 214(e)(1)~~ for designation as an eligible telecommunications carrier for that area before being permitted by the commission to provide such service; however, the guidelines shall be consistent with the provisions of ~~subsection (f)(1) and (2) of section 253 of the federal act 47 U.S.C. § 253(f)(1) and (2)~~.

(d) The commission may grant a certificate to provide local exchange or exchange access service in the service area of a rural telephone company if, among other issues to be considered by the commission, the application for such certificate complies with commission guidelines issued pursuant to subsection (b).

(e) Any restrictions established by the commission for rural entry of

competitors or for resale and unbundling of services shall not apply to any service area of a rural telephone company if such company, or an entity in which such company directly or indirectly owns an equity interest of 10% or more, provides local exchange or exchange access service, as authorized under K.S.A. ~~2002 Supp.~~ 66-2003, and amendments thereto, and this section, in any area of the state outside of its local exchange areas, as approved by the commission on or before January 1, 1996, and outside of any area in which it is the successor to the local exchange carrier serving such area on or before January 1, 1996.

(f) (1) *Any local exchange carrier electing pursuant to K.S.A. 66-2005(b), and amendments thereto, to operate under traditional rate of return regulation, or an entity in which such carrier directly or indirectly owns an equity interest of 10% or more, shall not use KUSF funding, except for Kansas lifeline service program purposes pursuant to K.S.A. 66-2006, and amendments thereto, for the purposes of providing telecommunication services in an area outside of the carrier's authorized service area.*

(2) *The provisions of this subsection shall not be construed to affect a competitive eligible telecommunications carrier's eligibility for KUSF support pursuant to K.S.A. 66-2008(c)(4), and amendments thereto.*

Sec. 4. K.S.A. 2015 Supp. 66-2005 is hereby amended to read as follows: 66-2005. (a) Each local exchange carrier shall file a network infrastructure plan with the commission on or after January 1, 1997, and prior to January 1, 1998. Each plan, as a part of universal service protection, shall include schedules, which shall be approved by the commission, for deployment of universal service capabilities by July 1, 1998, and the deployment of enhanced universal service capabilities by July 1, 2003, as defined pursuant to ~~subsections (p) and (q) of~~ K.S.A. 66-1,187(p) and (q), and amendments thereto, respectively. With respect to enhanced universal service, such schedules shall provide for deployment of ISDN, or its technological equivalent, or broadband facilities, only upon a firm customer order for such service, or for deployment of other enhanced universal services by a local exchange carrier. After receipt of such an order and upon completion of a deployment plan designed to meet the firm order or otherwise provide for the deployment of enhanced universal service, a local exchange carrier shall notify the commission. The commission shall approve the plan unless the commission determines that the proposed deployment plan is unnecessary, inappropriate, or not cost effective, or would create an unreasonable or excessive demand on the KUSF. The commission shall take action within 90 days. If the commission fails to take action within 90 days, the deployment plan shall be deemed approved. This approval process shall continue until July 1, 2000. Each plan shall demonstrate the capability of the local exchange carrier to comply on an ongoing basis with quality of service standards to be adopted by the commission no later than January 1, 1997.

(b) In order to protect universal service, facilitate the transition to competitive markets and stimulate the construction of an advanced telecommunications infrastructure, each local exchange carrier shall file a regulatory reform plan at the same time as it files the network infrastructure plan required in subsection (a). As part of its regulatory reform plan, a local exchange carrier may elect traditional rate of return regulation or price cap regulation. Carriers that elect price cap regulation shall be exempt from rate base, rate of return and earnings regulation and shall not be subject to the provisions of K.S.A. 66-136 and 66-127, and amendments thereto, except as otherwise provided in such sections. However, the commission may resume such regulation upon finding, after a hearing, that a carrier that is subject to price cap regulation has: Violated minimum quality of service standards pursuant to ~~subsection (l) of~~ K.S.A. 66-2002(l), and amendments thereto; been given reasonable notice and an opportunity to correct the violation; and failed to do so. Regulatory reform plans also shall include:

(1) A commitment to provide existing and newly ordered point-to-point broadband services to: Any hospital as defined in K.S.A. 65-425, and amendments thereto; any school accredited pursuant to K.S.A. 72-1101 et seq., and amendments thereto; any public library; or other state and local government facilities at discounted prices close to, but not below, long-run incremental cost; and

(2) a commitment to provide basic rate ISDN service, or the technological equivalent, at prices which are uniform throughout the carrier's service area. Local exchange carriers shall not be required to allow retail customers purchasing the foregoing discounted services to resell those services to other categories of customers. Telecommunications carriers may purchase basic rate ISDN services, or the technological equivalent, for resale in accordance with K.S.A. 66-2003, and amendments thereto. The commission may reduce prices charged for services outlined in ~~provisions~~ paragraphs (1) and (2) of this subsection, if the commitments of the local exchange carrier set forth in those provisions are not being kept.

(c) Subject to the commission's approval, all local exchange carriers shall reduce intrastate access charges to interstate levels as provided herein. Rates for intrastate switched access, and the imputed access portion of toll, shall be reduced over a three-year period with the objective of equalizing interstate and intrastate rates in a revenue neutral, specific and predictable manner. The commission is authorized to rebalance local residential and business service rates to offset the intrastate access and toll charge reductions. Any remaining portion of the reduction in access and toll charges not recovered through local residential and business service rates shall be paid out from the KUSF pursuant to K.S.A. 66-2008, and amendments thereto. Each rural telephone company shall adjust its intrastate switched access rates on March 1 of each odd-numbered year to match its interstate switched access rates, subject to the following:

(1) Any reduction of a rural telephone company's cost recovery due to reduction of its intrastate access revenue, except such revenue recovered from another support mechanism, shall be recovered from the KUSF;

(2) any portion of rural telephone company reductions in intrastate switched access rates which would result in an increase in KUSF recovery in a single year which exceeds .75% of intrastate retail revenues used in determining sums which may be recovered from Kansas telecommunications customers pursuant to ~~subsection (a)~~ of K.S.A. 66-2008(a), and amendments thereto, shall be deferred until March 1 of the next following odd-numbered year; and

(3) no rural company shall be required at any time to reduce its intrastate switched access rates below the level of its interstate switched access rates.

(d) Beginning March 1, 1997, each rural telephone company shall have the authority to increase annually its monthly basic local residential and business service rates by an amount not to exceed \$1 in each 12-month period until such monthly rates reach an amount equal to the statewide rural telephone company average rates for such services. The statewide rural telephone company average rates shall be the arithmetic mean of the lowest flat rate as of March 1, 1996, for local residential service and for local business service offered by each rural telephone company within the state. In the case of a rural telephone company which increases its local residential service rate or its local business service rate, or both, to reach the statewide rural telephone company average rate for such services, the amount paid to the company from the KUSF shall be reduced by an amount equal to the additional revenue received by such company through such rate increase. In the case of a rural telephone company which elects to maintain a local residential service rate or a local business service rate, or both, below the statewide rural telephone company average, the amount paid to the company from the KUSF shall be reduced by an amount equal to the difference between the revenue the company could receive if it elected to increase such rate to the average rate and the revenue received by the company.

(e) For purposes of determining sufficient KUSF support, an affordable rate for local exchange service provided by a rural telephone company subject to traditional rate of return regulation shall be determined as follows:

(1) For residential service, an affordable rate shall be the arithmetic mean of residential local service rates charged in this state in all exchanges served by rural telephone companies and in all exchanges in rate groups 1 through 3 as of February 20, 2002, of all other local exchange carriers, but not including electing carriers, weighted by the number of residential access lines to which each such rate applies, and thereafter rounded to the nearest quarter-dollar, subject to the following provisions:

(A) If a rural telephone company's present residential rate, including any separate charge for tone dialing, is at or above such weighted mean, such rate shall be deemed affordable prior to March 1, 2007.

(B) If a rural telephone company's present residential rate, including any separate charge for tone dialing, is below such average: (i) Such rate shall be deemed affordable prior to March 1, 2003; (ii) as of March 1, 2003, and prior to March 1, 2004, a rate \$2 higher than the company's present residential monthly rate, but not exceeding such weighted mean, shall be deemed affordable; (iii) as of March 1, 2004, and prior to March 1, 2005, a rate \$4 higher than the company's present residential monthly rate, but not exceeding such weighted mean, shall be deemed affordable; and (iv) as of March 1, 2005, and prior to March 1, 2006, a rate \$6 higher than the company's present residential monthly rate, but not exceeding such weighted mean, shall be deemed affordable.

(C) As of March 1, 2007, and each two years thereafter, an affordable residential service rate shall be the weighted arithmetic mean of local service rates determined as of October 1 of the preceding year in the manner hereinbefore specified, except that any increase in such mean exceeding \$2 may be satisfied by increases in a rural telephone company's residential monthly service rate not exceeding \$2 per year, effective March 1 of the year when such mean is determined, with the remainder applied at the rate of \$2 per year, but not to exceed the affordable rate.

(2) For single line business service at any time, an affordable rate shall be the existing rate or an amount \$3 greater than the affordable rate for residential service as determined under ~~provision~~ *paragraph* (1) of this subsection, whichever is higher, except that any increase in the business service affordable rate exceeding \$2 may be satisfied by increases in a rural telephone company's business monthly service rate not exceeding \$2 per year, effective March 1 of the year when such rate is determined, with the remainder applied at the rate of \$2 per year, but not to exceed the affordable rate.

(3) Any flat fee or charge imposed per line on all residential service or single line business service, or both, other than a fee or charge for contribution to the KUSF or imposed by other governmental authority, shall be added to the basic service rate for purposes of determining an affordable rate pursuant to this subsection.

(4) Not later than March 1, 2003, tone dialing shall be made available to all local service customers of each rural telephone company at no charge additional to any increase in the local service rate to become effective on that date. The amount of revenue received as of March 1, 2002, by a rural telephone company from the provision of tone dialing service shall be excluded from reductions in the company's KUSF support otherwise resulting pursuant to this subsection.

(5) A rural telephone company which raises one or more local service rates on application made after February 20, 2002, and pursuant to ~~sub-section (b) of K.S.A. 66-2007(b)~~, and amendments thereto, shall have the level of its affordable rate increased by an amount equal to the amount of the increase in such rate.

(6) Upon motion by a rural telephone company, the commission may determine a higher affordable local residential or business rate for such company if such higher rate allows the company to provide additional or improved service to customers, but any increase in a rural telephone company's local rate attributable to the provision of increased calling scope shall not be included in any subsequent recalculation of affordable rates as otherwise provided in this subsection.

(7) A uniform rate for residential and single line business local service adopted by a rural telephone company shall be deemed an affordable rate for purposes of this subsection if application of such uniform rate generates revenue equal to that which would be generated by application of residential and business rates which are otherwise deemed affordable rates for such company under this subsection.

(8) The provisions of this subsection relating to the implementation of an affordable rate shall not apply to rural telephone companies which do not receive KUSF support. When recalculating affordable rates as provided in this subsection, the rates used shall include the actual rates charged by rural companies that do not receive KUSF support.

(f) For regulatory reform plans in which price cap regulation has been elected, price cap plans shall have three baskets: Residential and single-

line business, including touch-tone; switched access services; and miscellaneous services. The commission shall establish price caps at the prices existing when the regulatory plan is filed subject to rate rebalancing as provided in subsection (c) for residential services, including touch-tone services, and for single-line business services, including touch-tone services, within the residential and single-line business service basket. The commission shall establish a formula for adjustments to the price caps. The commission also shall establish price caps at the prices existing when the regulatory plan is filed for the miscellaneous services basket. The commission shall approve any adjustments to the price caps for the miscellaneous service basket, as provided in subsection (g).

(g) On or before January 1, 1997, the commission shall issue a final order in a proceeding to determine the price cap adjustment formula that shall apply to the price caps for the local residential and single-line business and the miscellaneous services baskets and for sub-categories, if any, within those baskets. In determining this formula, the commission shall balance the public policy goals of encouraging efficiency and promoting investment in a quality, advanced telecommunications network in the state. The commission also shall establish any informational filing requirements necessary for the review of any price cap tariff filings, including price increases or decreases within the caps, to verify such caps would not be exceeded by any proposed price change. The adjustment formula shall apply to the price caps for the local residential and single-line business basket after December 31, 1999, and to the miscellaneous services basket after December 31, 1997. The price cap formula, but not actual prices, shall be reviewed every five years.

(h) The price caps for the residential and single-line business service basket shall be capped at their initial level until January 1, 2000, except for any increases authorized as a part of the revenue neutral rate rebalancing under subsection (c). The price caps for this basket and for the categories in this basket, if any, shall be adjusted annually after December 31, 1999, based on the formula determined by the commission under subsection (g).

(i) The price cap for the switched access service basket shall be set based upon the local exchange carrier's intrastate access tariffs as of January 1, 1997, except for any revenue neutral rate rebalancing authorized in accordance with subsection (c). Thereafter, the cap for this basket shall not change except in connection with any subsequent revenue neutral rebalancing authorized by the commission under subsection (c).

(j) The price caps for the miscellaneous services basket shall be adjusted annually after December 31, 1997, based on the adjustment formula determined by the commission under subsection (g).

(k) A price cap is a maximum price for all services taken as a whole in a given basket. Prices for individual services may be changed within the service categories, if any, established by the commission within a basket. An entire service category, if any, within the residential and single-line business basket or miscellaneous services basket may be priced below the cap for such category. Unless otherwise approved by the commission, no service shall be priced below the price floor which will be long-run incremental cost and imputed access charges. Access charges equal to those paid by telecommunications carriers to local exchange carriers shall be imputed as part of the price floor for toll services offered by local exchange carriers on a toll service basis.

(l) A local exchange carrier may offer promotions within an exchange or group of exchanges. All promotions shall be approved by the commission and may not be unjust, unreasonably discriminatory or unduly preferential.

(m) Unless the commission authorizes price deregulation at an earlier date, intrastate toll services within the miscellaneous services basket shall continue to be regulated until the affected local exchange carrier begins to offer 1+ intraLATA dialing parity throughout its service territory, at which time intrastate toll will be price deregulated, except that prices cannot be set below the price floor.

(n) On or before July 1, 1997, the commission shall establish guidelines for reducing regulation prior to price deregulation of price cap regulated services in the miscellaneous services basket, the switched access services basket, and the residential and single-line business basket.

(o) Subsequent to the adoption of guidelines pursuant to subsection

(n), the commission shall initiate a petitioning procedure under which the local exchange carrier may request rate range pricing. The commission shall act upon a petition within 21 days, subject to a 30-day extension. The prices within a rate range shall be tariffed and shall apply to all customers in a nondiscriminatory manner in an exchange or group of exchanges.

(p) A local exchange carrier may petition the commission to designate an individual service or service category, if any, within the miscellaneous services basket, the switched access services basket or the residential and single-line business basket for reduced regulation. The commission shall act upon a petition for reduced regulation within 21 days, subject to an extension period of an additional 30 days, and upon a good cause showing of the commission in the extension order, or within such shorter time as the commission shall approve. The commission shall issue a final order within the 21-day period or within a 51-day period if an extension has been issued. Following an order granting reduced regulation of an individual service or service category, the commission shall act on any request for price reductions within seven days subject to a 30-day extension. The commission shall act on other requests for price cap adjustments, adjustments within price cap plans and on new service offerings within 21 days subject to a 30-day extension. Such a change will be presumed lawful unless it is determined the prices are below the price floor or that the price cap for a category, if any, within the entire basket has been exceeded.

(q) (1) Beginning July 1, 2006, price regulation of telecommunications services in the residential and single-line business service basket and the miscellaneous services basket for local exchange carriers subject to price cap regulation shall be as follows:

(A) Packages or bundles of services shall be price deregulated statewide, however the individual telecommunication service components of such packages or bundles shall remain available for purchase on an individual basis at prices subject to price cap regulation in any exchange in which the standards in subsection (q)(1)(B), (C) or (D) have not been met. If standards in subsection (q)(1)(B), (C) or (D) have been met, the individual telecommunication service components of such packages or bundles shall remain available for purchase on an individual basis and prices for packages or bundles shall not exceed the sum of the highest prices of the a la carte components of the package or bundle;

(B) in any exchange in which there are 75,000 or more local exchange access lines served by all providers, rates for all telecommunications services shall be price deregulated;

(C) in any exchange in which there are fewer than 75,000 local exchange access lines served by all providers, the commission shall price deregulate all business telecommunication services upon a demonstration by the requesting local telecommunications carrier that there are two or more nonaffiliated telecommunications carriers or other entities, that are nonaffiliated with the local exchange carrier, providing local telecommunications service to business customers, regardless of whether the entity provides local service in conjunction with other services in that exchange area. One of such nonaffiliated carriers or entities shall be required to be a facilities-based carrier or entity and not more than one of such nonaffiliated carriers or entities shall be a provider of commercial mobile radio services in that exchange;

(D) in any exchange in which there are fewer than 75,000 local exchange access lines served by all providers, the commission shall price deregulate all residential telecommunication services upon a demonstration by the requesting local telecommunications carrier that there are two or more nonaffiliated telecommunications carriers or other entities, that are nonaffiliated with the local exchange carrier, providing local telecommunications service to residential customers, regardless of whether the entity provides local service in conjunction with other services in that exchange area. One of such nonaffiliated carriers or entities shall be required to be a facilities-based carrier or entity and not more than one of such nonaffiliated carriers or entities shall be a provider of commercial mobile radio services in that exchange;

(E) rates for lifeline services shall remain subject to price cap regulation;

(F) up to and continuing until July 1, 2008, rates for the initial resi-

dential local exchange access line and up to four business local exchange access lines at one location shall remain subject to price cap regulation *and all other rates, except rates for switched access services, are deemed price deregulated.* On and after July 1, 2008, the local exchange carrier shall be authorized to adjust such rates without commission approval by not more than the *greater of the* percentage increase in the consumer price index for all urban consumers, as officially reported by the bureau of labor statistics of the United States department of labor, or its successor index, *or the amount necessary to maintain the local rate floor as determined by the federal communications commission or its successor,* in any one year period and such rates shall not be adjusted below the price floor established in subsection (k). Such rates shall not be affected by purchase of one or more of the following: Call management services; intraLATA long distance service or interLATA long distance service; and

(G) local exchange carriers shall offer a uniform price throughout each such exchange for services subject to price deregulation, under this subsection, including packages or bundles of services, except as provided in subsection (1) or as otherwise approved by the commission.

(2) For the purposes of this subsection:

(A) Any entity providing voice service shall be considered as a local telecommunications service provider regardless of whether such entity is subject to regulation by the commission;

(B) a provider of local telecommunications service that requires the use of a third party, unaffiliated broadband network or dial-up internet network for the origination of local voice service shall not be considered a local telecommunications service provider;

(C) telecommunications carriers offering only prepaid telecommunications service shall not be considered entities providing local telecommunications service.

(3) If the services of a local exchange carrier are classified as price deregulated under this subsection, the carrier may thereafter adjust its rates for such price deregulated services upward or downward as it determines appropriate in its competitive environment, with tariffs for such services deemed effective upon filing with the commission. Price deregulated services shall be subject to the price floor in subsection (k), and shall not be unreasonably discriminatory or unduly preferential within an exchange.

(4) The commission shall act upon a petition filed pursuant to subsection (q)(1)(C) or (D) within 21 days, subject to an extension period of an additional 30 days, and upon a good cause showing of the commission in the extension order, or within such shorter time as the commission shall approve. The commission shall issue a final order within the 21-day period or within a 51-day period if an extension order has been issued.

(5) The commission may resume price cap regulation of a local exchange carrier, deregulated under this subsection upon finding, after a hearing, that such carrier has: Violated minimum quality of service standards pursuant to ~~subsection (1) of K.S.A. 66-2002(l)~~, and amendments thereto; been given reasonable notice and an opportunity to correct the violation; and failed to do so.

(6) The commission on July 1, 2006, and on each date that any service is deregulated, shall record the rates of each service which has been price deregulated in each exchange.

~~(7) Prior to January 1, 2007, the commission shall determine the weighted, statewide average rate of nonwireless basic local telecommunications service as of July 1, 2006. Prior to January 1, 2007, and annually thereafter, the commission shall determine the weighted, average rate of nonwireless basic local telecommunications services in exchanges that have been price deregulated pursuant to subsection (q)(1)(B), (C) or (D). The commission shall report its findings on or before February 1, 2007, and annually thereafter to the governor, the legislature and each member of the standing committees of the house of representatives and the senate which are assigned telecommunications issues. The commission shall also provide in such annual report information on the current rates for services provided by all telecommunications carriers or other telecommunications service providers regardless of the technology used to provide service in price deregulated exchanges, service offerings provided by all telecommunications carriers or other telecommunications service providers regardless of the technology used and available in price deregulated ex-~~

~~changes and the number of competitors in price deregulated exchanges including, but not limited to, facilities based carriers, commercial mobile radio service or broadband based service providers.~~

~~(8)~~ For the purposes of this subsection:

(A) “Packages or bundles of services” means the offering of a local telecommunications service with one or more of the following, subscribed together, as one service option offered at one price, one or more call management services, intraLATA long distance service, interLATA long distance service, internet access, video services or wireless services. Packages or bundles of services shall not include only a single residential local exchange access line or up to four business local exchange access lines at one location and intraLATA long distance service or interLATA long distance service, or both;

(B) “local telecommunications service” means two-way voice service capable of being originated and terminated within the exchange of the local exchange telecommunications company seeking price deregulation of its services, regardless of the technology used to provision the voice service;

(C) “broadband network” means a connection that delivers services at speeds exceeding two hundred kilobits per second in both directions;

(D) “prepaid telecommunications service” means a local service for which payment is made in advance that excludes access to operator assistance and long distance service;

(E) “facilities based carrier” means a telecommunications carrier or entity providing local telecommunications service either wholly or partially over its own network. Facilities based carrier shall not include any radio communication services provider licensed by the federal communications commission to provide commercial mobile radio services; and

(F) “call management services” means optional telecommunications services that allow a customer to manage call flow generated over the customer’s local exchange access line.

(r) (1) Upon complaint or request, the commission may investigate a price deregulated service.

(2) The commission shall resume price cap regulation of a service provided in any exchange area by placing it in the appropriate service basket, as approved by the commission, upon a determination by the commission that the conditions in subsection (q)(1)(C) or (D) are no longer satisfied in that exchange area.

(3) The commission shall resume price cap regulation of business services in any exchange meeting the conditions of subsection (q)(1)(B) by placing it in the appropriate service basket, as approved by the commission, upon a determination by the commission that the following condition is not met: There are at least two nonaffiliated telecommunications carriers or other entities, that are nonaffiliated with the local exchange carrier, providing local telecommunications service to business customers, regardless of whether the entity provides local service in conjunction with other services in that exchange area. One of such nonaffiliated carriers or entities shall be required to be a facilities-based carrier or entity and not more than one such nonaffiliated carriers or entities shall be a provider of commercial mobile radio services in that exchange.

(4) The commission shall resume price cap regulation of residential services in any exchange meeting the conditions of subsection (q)(1)(B) by placing it in the appropriate service basket, as approved by the commission, upon a determination by the commission that the following condition is not met: There are at least two or more nonaffiliated telecommunications carriers or other entities, that are nonaffiliated with the local exchange carrier, providing local telecommunications service to residential customers, regardless of whether the entity provides local service in conjunction with other services in that exchange area. One of such nonaffiliated carriers or entities shall be required to be a facilities-based carrier or entity and not more than one such nonaffiliated carriers or entities shall be a provider of commercial mobile radio services in that exchange.

(s) The commission shall require that for all local exchange carriers all such price deregulated basic intraLATA toll services be geographically averaged statewide and not be priced below the price floor established in subsection (k).

(t) Cost studies to determine price floors shall be performed as required by the commission in response to complaints. In addition, not-

withstanding the exemption in subsection (b), the commission may request information necessary to execute any of its obligations under the act. In response to a complaint that a price deregulated service is priced below the price floor set forth in subsection (k), the commission shall issue an order within 60 days after the filing of the complaint unless the complainant agrees to an extension.

(u) A local exchange carrier may ~~petition for offer~~ individual customer pricing. ~~The commission shall respond expeditiously to the petition within a period of not more than 30 days subject to a 30-day extension without prior approval by the commission. In response to a complaint that an individual customer pricing agreement is priced below the price floor set forth in subsection (k), the commission shall issue an order within 60 days after the filing of the complaint, unless the complainant agrees to an extension.~~

(v) No audit, earnings review or rate case shall be performed with reference to the initial prices filed as required herein.

(w) As required under K.S.A. 66-131, and amendments thereto, and except as provided for in ~~subsection (e) of K.S.A. 66-2004(c)~~, and amendments thereto, telecommunications carriers that were not authorized to provide switched local exchange telecommunications services in this state as of July 1, 1996, including cable television operators who have not previously offered telecommunications services, must receive a certificate of convenience based upon a demonstration of technical, managerial and financial viability and the ability to meet quality of service standards established by the commission. Any telecommunications carrier or other entity seeking such certificate shall file a statement, which shall be subject to the commission's approval, specifying with particularity the areas in which it will offer service, the manner in which it will provide the service in such areas and whether it will serve both business customers and residential customers in such areas. Any structurally separate affiliate of a local exchange carrier that provides telecommunications services shall be subject to the same regulatory obligations and oversight as a telecommunications carrier, as long as the local exchange carrier's affiliate obtains access to any services or facilities from its affiliated local exchange carrier on the same terms and conditions as the local exchange carrier makes those services and facilities available to other telecommunications carriers.

(x) Any local exchange carrier with a majority of the carrier's local exchange access lines in the state price deregulated pursuant to subsection (q) may elect to no longer be regulated as a local exchange carrier and, notwithstanding any other provisions, upon such election shall instead be regulated as a telecommunications carrier, except as provided in this subsection. A local exchange carrier making such election shall be referred to as an "electing carrier." A local exchange carrier may make such election by providing the commission with at least 90 days' written notice of election. The notice of election shall include a verified statement that a majority of the carrier's local exchange access lines are price deregulated. Such notification shall include information regarding the number of access lines the carrier serves in each of the carrier's exchanges. Within 45 days of receipt of such a notification, the commission shall review the information concerning the carrier's local exchange access lines and upon failure of the commission, within 45 days of receipt of the notification, to determine that a majority of such lines of the carrier are not price deregulated the commission shall designate the carrier as an electing carrier.

(y) Notwithstanding the provisions of this act, and subject to any applicable exemption from interconnection generally, a telecommunications carrier is entitled to interconnection with a local exchange carrier or an electing carrier to transmit and route voice traffic between both the telecommunications carrier and the local exchange carrier or electing carrier regardless of the technology by which the voice traffic is originated by and terminated to a consumer. The commission shall afford such telecommunications carrier all substantive and procedural rights available to such carrier regarding interconnection pursuant to 47 U.S.C. §§ 251 and 252 as in effect on the effective date of this act. Nothing in this subsection shall be construed to confer jurisdiction upon the commission for services that are exempt from or otherwise not subject to commission jurisdiction.

(z) (1) Telecommunications carriers and electing carriers shall not be

subject to regulation by the commission for the provision of telecommunications services, except that the commission shall retain the authority and jurisdiction to authorize applications, suspension or cancellation of certificates of public convenience and necessity to provide local exchange or exchange access service in the state of Kansas, but the commission may not use this certification authority to regulate telecommunications carriers or electing carriers beyond the jurisdiction provided the commission in this subsection.

(2) Nothing in this section shall be construed to restrict the commission's authority and jurisdiction to:

(A) Carry out the commission's obligations established in 47 U.S.C. §§ 251 and 252;

(B) implement rules delegated to the state by the federal communications commission or federal law; or

(C) regulate intrastate switched access rates, terms and conditions, including the implementation of federal law concerning intercarrier compensation.

(3) The commission shall retain the authority and jurisdiction to:

(A) Carry out the commission's obligations pursuant to the underground utilities damage prevention act, K.S.A. 66-1801 et seq., and amendments thereto, and the overhead power line accident prevention act, K.S.A. 66-1709 et seq., and amendments thereto;

(B) require the reasonable resale of retail telecommunications services, as well as unbundling and interconnection obligations as required by K.S.A. 66-2003, and amendments thereto;

(C) administer the Kansas lifeline service program pursuant to K.S.A. 66-2006, and amendments thereto;

(D) administer contributions to the Kansas universal service fund pursuant to ~~subsection (a) of~~ K.S.A. 66-2008(a), and amendments thereto;

(E) assess costs and expenses pursuant to K.S.A. 66-1501 et seq., and amendments thereto, but the commission shall not use this authority to regulate telecommunications carriers or electing carriers beyond the jurisdiction provided the commission in this subsection;

(F) request information from telecommunications carriers and electing carriers pursuant to K.A.R. 82-1-234a(b) and subject to the provisions of K.A.R. 82-1-221a and K.S.A. 66-1220a, and amendments thereto, but the commission shall not use this authority to regulate telecommunications carriers or electing carriers beyond the jurisdiction provided the commission in this subsection; and

(G) administer consumer complaints against telecommunications carriers and electing carriers to investigate fraud, undue discrimination and other practices harmful to consumers, but the commission shall not use this authority to regulate telecommunications carriers or electing carriers beyond the jurisdiction provided the commission in this subsection.

Sec. 5. K.S.A. 2015 Supp. 66-2007 is hereby amended to read as follows: 66-2007. (a) All local exchange carriers, not including electing carriers, providing long distance service in Kansas shall reduce their statewide averaged basic long distance rates to reflect the net reductions in access charges; however, such carriers shall be allowed to increase long distance rates to reflect the KUSF funding requirements set forth in K.S.A. 66-2008, and amendments thereto.

(b) The commission shall approve, upon not more than 120 days' notice, any basic local exchange price increases that in the aggregate in any one year are \$1.50 or less per access line per month, that are proposed by any rural telephone company which is subject to traditional rate of return regulation and that comply with the requirements of this section. Any such proposed price increases shall be presumed reasonable and not subject to commission investigation and review if the rural telephone company has followed the notice requirements set forth below. However, the commission shall initiate an investigation if more than 15% of the subscribers subject to the rate increase request such an investigation within 60 days of the date of distribution of the notice of the proposed change. Upon filing such an application for a rate increase, any rural telephone company seeking expedited approval of the proposed rate under this section shall send a notice to its subscribers by regular mail, which may be included with regular subscriber mailings. Such mailings shall include the name, mailing address and telephone number of the com-

mission. The notice shall include a schedule of the proposed local exchange rates, the effective date of the rates and a description of the procedures by which the subscribers can petition the commission to determine the reasonableness of the proposed rates, including a provision specifically stating that protest by 15% or more of subscribers subject to the proposed rate increase would require the commission to initiate an investigation concerning the reasonableness of the proposed rate increase.

(c) The commission shall have the right to investigate and determine the reasonableness of an increase in local exchange rates and charges under subsection (b) by any rural telephone company within one year of the time local exchange rates or charges are increased. If the commission determines such rate or charge increases are unreasonable, the commission shall have the authority to order a rate hearing and, after such hearing, shall have the authority to rescind all or any portion of the increases found to be unreasonable.

(d) *The commission shall approve each application, within 45 days of such application, by a rural telephone company to increase the company's local service rates in an amount necessary for such company to maintain eligibility for full federal universal service support. If the commission does not order approval of such application within 45 days, the application shall be deemed approved.*

Sec. 6. K.S.A. 2015 Supp. 66-2008 is hereby amended to read as follows: 66-2008. On or before January 1, 1997, the commission shall establish the Kansas universal service fund, hereinafter referred to as the KUSF.

(a) The commission shall require every telecommunications carrier, telecommunications public utility and wireless telecommunications service provider that provides intrastate telecommunications services and, to the extent not prohibited by federal law, every provider of interconnected VoIP service, as defined by ~~47 C.F.R. § 9.3 (October 1, 2005)~~ 47 C.F.R. 9.3, to contribute to the KUSF *based upon the provider's intrastate telecommunications services net retail revenues* on an equitable and non-discriminatory basis. *The commission shall not require any provider to contribute to the KUSF under a different contribution methodology than such provider uses for purposes of the federal universal service fund, including for bundled offerings.* Any telecommunications carrier, telecommunications public utility, wireless telecommunications service provider or provider of interconnected VoIP service which contributes to the KUSF may collect from customers an amount equal to such carrier's, utility's or provider's contribution, but such carrier, provider or utility may collect a lesser amount from its customer.

Any contributions in excess of distributions collected in any reporting year shall be applied to reduce the estimated contribution that would otherwise be necessary for the following year.

(b) Pursuant to the federal act, distributions from the KUSF shall be made in a competitively neutral manner to qualified telecommunications public utilities, telecommunications carriers and wireless telecommunications providers, that are deemed eligible both under subsection (e)(1) of section 214 of the federal act and by the commission.

(c) Beginning January 1, 2014:

(1) Annual distributions from the KUSF for a local exchange carrier subject to price cap regulation pursuant to K.S.A. 66-2005, and amendments thereto, shall be capped at the lesser of:

(A) 90% of KUSF support the carrier received for the 12-month period ending February 28, 2013; or

(B) \$11,400,000.

The amounts prescribed in subparagraph (A) or (B) shall not include KUSF support for Kansas lifeline service program purposes, pursuant to K.S.A. 66-2006, and amendments thereto.

(2) Local exchange carriers subject to price cap regulation pursuant to K.S.A. 66-2005, and amendments thereto, shall not receive KUSF support for any residential or business lines within an exchange that the commission has granted price deregulation pursuant to ~~subsections (q)(1)(B), (C) or (D) of K.S.A. 66-2005~~ *(q)(1)(B), (C) or (D)*, and amendments thereto, except for areas within any census block in such an exchange in which there is no wireline carrier providing local exchange

access lines that does not receive KUSF support, not including KUSF support for Kansas lifeline service program purposes pursuant to K.S.A. 66-2006, and amendments thereto, for such access lines.

(3) Local exchange carriers subject to price cap regulation pursuant to K.S.A. 66-2005, and amendments thereto, shall receive the same per line, per month KUSF support as established in the April 13, 2000 notice in commission docket numbers 99-GIMT-326-GIT and 00-GIMT-236-GIT subject to the cap percentage in subsection (c)(1), not including KUSF support for Kansas lifeline service program purposes pursuant to K.S.A. 66-2006, and amendments thereto, except that the amount shall be reduced by any funding received by such carrier from the federal communication commission's connect America fund II for the same household, if feasible, or for the same census block.

(4) The commission shall discontinue the use of the "identical support" rule and shall cap all competitive eligible telecommunications carriers' KUSF high cost support as of March 1, 2013, and beginning March 1, 2014, over a period of four years in annual equal increments, reduce to zero, beginning March 1, 2018, the amount of KUSF high cost support received by competitive eligible telecommunications carriers. Nothing in this section shall be construed to affect competitive eligible telecommunications carriers' eligibility for Kansas lifeline service program purposes pursuant to K.S.A. 66-2006, and amendments thereto. For the purposes of this subsection, "competitive eligible telecommunications carrier" means a telecommunications carrier designated by the commission as an eligible telecommunications carrier after January 1, 1998. "Competitive eligible telecommunications carrier" shall not mean any local exchange carrier or any electing carrier designated by the commission as an eligible telecommunications carrier by order dated December 5, 1997, in docket No. 98-GIMT-241-GIT, or any such local exchange carrier's or electing carrier's successors or assigns.

(5) An electing carrier shall no longer be eligible to receive high cost support from the KUSF.

(d) (1) Subject to paragraph (2), the commission may periodically review the KUSF to determine if the costs of qualified telecommunications public utilities, telecommunications carriers and wireless telecommunications service providers to provide local service justify modification of the KUSF. If the commission determines that any changes are needed, the commission shall modify the KUSF accordingly and annually report such changes to the senate standing committee on utilities and the house standing committee on utilities and telecommunications.

(2) The commission shall undertake a review of the capped amount of KUSF support available for each local exchange carrier operating under price cap regulation that receives such support, not including Kansas lifeline service program purposes pursuant to K.S.A. 66-2006, and amendments thereto, and determine if a lesser amount is appropriate for KUSF distributions after March 1, 2019. Reviews of such carriers shall be based on the forward-looking costs of providing basic voice service, using inputs that reflect the actual geography being served and that reflect the scale and scope of the local exchange carrier providing basic local voice service within each exchange.

(e) (1) For each local exchange carrier electing pursuant to ~~subsection (b) of K.S.A. 66-2005(b)~~, and amendments thereto, to operate under traditional rate of return regulation, all KUSF support, including any adjustment thereto pursuant to this section, shall ~~be based on~~ *ensure the reasonable opportunity for recovery of* such carrier's *intrastate* embedded costs, revenue requirements, investments and expenses, *subject to the annual cap established pursuant to subsection (e)(3).* ~~Until at least March 1, 2017,~~ Any modification of such support shall be made only as a direct result of changes in those factors enumerated in this subsection. Nothing in this subsection shall prohibit the commission from conducting a general investigation regarding effects of federal universal service reform on KUSF support and the telecommunications public policy of the state of Kansas as expressed in K.S.A. 66-2001, and amendments thereto. The commission may present any findings and recommendations to the telecommunications study committee established in K.S.A. 2015 Supp. 66-2018, and amendments thereto.

(2) Notwithstanding any other provision of law, no KUSF support received by a local exchange carrier electing pursuant to ~~subsection (b)~~

~~of K.S.A. 66-2005(b), and amendments thereto, to operate under traditional rate of return regulation shall be used to offset any loss reduction of federal universal service fund support for recovery of such carrier, except that such limitation on KUSF support shall not preclude recovery of reductions in intrastate access revenue pursuant to subsection (c) of K.S.A. 66-2005, and amendments thereto carrier's interstate costs and investments.~~

(3) Notwithstanding any other provision of law, the total KUSF distributions, *not to include KUSF support for Kansas lifeline service program purposes, pursuant to K.S.A. 66-2006, and amendments thereto*, made to all local exchange carriers operating under traditional rate of return regulation pursuant to ~~subsection (b) of K.S.A. 66-2005(b)~~, and amendments thereto, shall not exceed an annual \$30,000,000 cap. *In any year that the total KUSF support for such carriers would exceed the annual cap, each carrier's KUSF support shall be proportionately based on the amount of support each such carrier would have received absent the cap.* A waiver of the cap shall be granted based on a demonstration by a carrier that such carrier would experience significant hardship due to force majeure or natural disaster as determined by the commission.

(f) Additional supplemental funding from the KUSF, other than as provided in subsection (e), may be authorized at the discretion of the commission. However, the commission may require approval of such funding to be based upon a general rate case filing. With respect to any request for additional supplemental funding from the KUSF and to any audit of a rural telephone company's KUSF support, the commission shall act expeditiously, and shall be subject to the 240-day deadline for rate case applications pursuant to K.S.A. 66-117, and amendments thereto.

Sec. 7. K.S.A. 2015 Supp. 66-2017 is hereby amended to read as follows: 66-2017. (a) Except as otherwise provided in this section, no VoIP service, IP-enabled service, or any combination thereof, shall be subject to the jurisdiction of, regulation by, supervision of or control by any state agency or political subdivision of the state.

(b) VoIP services shall be subject to:

(1) The requirements of K.S.A. 66-2008, and amendments thereto, pertaining to the Kansas universal service fund (KUSF). The provisions of subsection (a) shall not affect or restrict eligibility for KUSF support; and

(2) the requirements of the Kansas 911 act, K.S.A. 2015 Supp. 12-5362 et seq., and amendments thereto.

(c) No provision of this section shall be construed to modify:

(1) The requirements of the video competition act, K.S.A. 2015 Supp. 12-2021 et seq., and amendments thereto;

(2) the state corporation commission's authority under 47 U.S.C. §§ 251 and 252, as in effect on the effective date of this act. For the purposes of this paragraph, the term "state commission" used in 47 U.S.C. §§ 251 and 252 shall mean the state corporation commission established pursuant to K.S.A. 74-601, and amendments thereto;

(3) the authority of the state of Kansas or a political subdivision thereof to manage the use of public rights-of-way pursuant to K.S.A. 17-1902, and amendments thereto; ~~or~~

(4) the rights and obligations of ~~subsection (y) of K.S.A. 66-2005(y)~~, and amendments thereto; *or*

(5) *the regulation of any rural telephone company.*

(d) For the purposes of this section:

(1) "Internet protocol enabled service" or "IP-enabled service" means any service, capability, functionality, or application using an internet protocol (IP) that enables an end user to send or receive a voice, data or video communication in an IP format.

(2) "Political subdivision" shall have the meaning ascribed to such term in K.S.A. 28-137b, and amendments thereto.

(3) "State agency" shall have the meaning ascribed to such term in K.S.A. 75-3701, and amendments thereto.

(4) "Voice over Internet Protocol" or "VoIP" is any service that:

(A) Uses an internet protocol (IP) to enable real-time, two-way voice communication that originates from, or terminates at, the user's location in an IP;

(B) utilizes a broadband connection from the user's location; and

(C) permits a user to receive a call that originates on the public switched telephone network (PSTN) and to terminate a call to the PSTN.

Sec. 8. K.S.A. 66-2004 and K.S.A. 2015 Supp. 66-2005, 66-2007, 66-2008 and 66-2017 are hereby repealed.

Sec. 9. On and after October 1, 2016, K.S.A. 17-1902 is hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

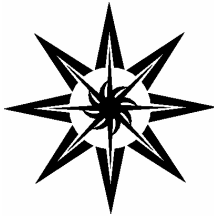
Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.



PUBLIC WORKS DEPARTMENT

Council Committee Date: October 3, 2016

Council Meeting Date: October 3, 2016

CONSIDER PROJECT DELN0001- DELMAR AND FONTANA LOW WATER CROSSING REMOVAL AND DRAINAGE PROJECT- SMAC PRELIMINARY ENGINEERING STUDY CONTRACT WITH WATER RESOURCES SOLUTIONS, LLC

RECOMMENDATION

Move to approve the preliminary engineering study contract with Water Resources Solutions, LLC in the amount of \$26,540 for Project DELN0001 for the Delmar and Fontana low water crossing removal and drainage project.

BACKGROUND

On September 6, 2016 council directed public works to move forward with the Delmar and Fontana low water crossing and drainage project. Significant construction funding is potentially available from the County's SMAC program. Applications for 2018 and later funding are due by December 31, 2016. It is proposed to use Don Baker with Water Resources Solutions, LLC to help prepare a Preliminary Engineering Study(PES) for the SMAC funding application. Don Baker helped the City do the peer review of the work Larkin had recently performed for the City and he also was one of the final three firms selected for interviews when we last selected our Street and Drainage design engineering consultant. This contract is only for the PES and they will not necessarily be utilized for full design if the City decides to move forward with a construction project. Mr. Baker is already familiar with the project after performing the peer review and he has prepared in excess of 35 PES for the SMAC program so he is very familiar with their processes.

We anticipate having two resident meetings related to the project this Fall as part of the PES process. This project will remove the two low water crossings and will lower the 100 year water surface elevation as much as possible to eliminate home flooding.

FUNDING SOURCE

Funds are available in the CIP under Project DELN0001 for this study.

RELATED TO VILLAGE VISION

TR3a. *Ensure that infrastructure improvements meet the needs of all transportation users.*

ATTACHMENTS

1. Design Agreement with Water Resources Solutions, LLC

PREPARED BY

Keith Bredehoeft, Public Works Director

September 29, 2016

**SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of September 13, 2016 (“Effective Date”) between

City of Prairie Village, Kansas (“Owner”)

and Water Resources Solutions, LLC (“Engineer”)

Engineer agrees to provide the services described below to Owner for Delmar & Fontana PES (“Project”).

Description of Engineer’s Services: See attached scope of services.

Owner and Engineer further agree as follows:

1.01 Basic Agreement

A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement, and Owner shall pay Engineer for such Services as set forth in Paragraph 9.01.

2.01 Payment Procedures

A. *Preparation of Invoices.* Engineer will prepare a monthly invoice in accordance with Engineer’s standard invoicing practices and submit the invoice to Owner.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer’s invoice, the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, without liability, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

3.01 Additional Services

A. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above.

B. Owner shall pay Engineer for such additional services as follows: For additional services of Engineer’s employees engaged directly on the Project an amount equal to the cumulative hours charged to the Project by each class of Engineer’s employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer’s consultants’ charges, if any.

4.01 Termination

A. The obligation to provide further services under this Agreement may be terminated:

1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement’s terms through no fault of the terminating party.
 - b. By Engineer:
 - 1) upon seven days written notice if Engineer believes that Engineer is being requested by Owner to furnish or perform services contrary to Engineer’s responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer’s services for the Project

are delayed or suspended for more than 90 days for reasons beyond Engineer's control.

3) Engineer shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under paragraph 4.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon the receipt of notice by Engineer.

B. The terminating party under paragraphs 4.01.A.1 or 4.01.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Project site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

5.01 Controlling Law

A. This Agreement is to be governed by the law of the state in which the Project is located.

6.01 Successors, Assigns, and Beneficiaries

A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by paragraph 6.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or 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 this Agreement.

7.01 General Considerations

A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Engineer and its consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.

B. Engineer shall not at any time supervise, direct, or have control over any contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.

C. Engineer 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 contract between Owner and such contractor.

D. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any of construction work; or for any decision made on interpretations or clarifications of the construction contract given by Owner without consultation and advice of Engineer.

E. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2002 Edition).

F. All design documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed.

G. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages

arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.

H. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (i) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

8.01 Total Agreement

A. This Agreement (consisting of pages 1 to 4 inclusive together with any expressly incorporated appendix), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

9.01 Payment (Lump Sum Basis)

A. Using the procedures set forth in paragraph 2.01, Owner shall pay Engineer as follows:

1. A Lump Sum amount of \$ 26,540.00

B. Not Used

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER: Somerset Lake Association

ENGINEER: Water Resources Solutions, LLC

By: _____

By: *Donald W Baker*

Donald W. Baker, P.E. D.WRE, CPESC

Title: _____

Title: Owner

Date Signed: _____

Date Signed: September 13, 2016

License or Certificate No. and State KS 14258

Address for giving notices:

Address for giving notices:
Water Resources Solutions, LLC
8800 Linden Drive
Prairie Village, Kansas 66207

Delmar & Fontana Low-Water Crossing Preliminary Engineering Study

Scope of Services Prairie Village, Kansas

Project Understanding

This scope of services outlines the tasks that will be completed by the Engineer as part of the Delmar & Fontana Low-Water Crossing Preliminary Engineering Study (PES). The PES will result in a report that can be submitted to Johnson County SMAC as required to initiate a funding request for SMAC participation in a stormwater project with the City of Prairie Village.

Upon receiving the notice-to-proceed, the Engineer will provide the services identified in this Scope of Services. Other requested services not described in this scope of services will be negotiated in an amendment to this contract.

1.0 Background Data Collection

The work performed under this task will result in obtaining information that will be used for the PES.

- 1.1 The Engineer will collect from the City available background data including but not limited to design calculations, design plans, surveys, soils data, electronic mapping files, and hydrologic & hydraulic studies not already in possession of the Engineer. In addition, topographic survey shots will be collected to update low-opening elevations, house corners and stormwater structure inverts.
- 1.2 The Engineer will review and analyze the collected background data to assist in developing alternatives and writing the report.

2.0 Public Meetings

The Engineer will facilitate public meetings for the project as outlined in the following tasks.

- 2.1 The Engineer will facilitate a public meeting with property owners and project stakeholders. It is assumed that the City will invite the property owners and stakeholders and provide the meeting space. The intent of the meeting is to discuss the updated project approach and to gather information regarding property owner and stakeholder concerns, observations and ideas. The Engineer will prepare a summary of this meeting.

2.2 The Engineer will facilitate a second public meeting once the alternatives for the project have been evaluated. The meeting will be used to communicate the preferred option to the property owners and stakeholders. As summary of the meeting will be prepared and provided to the City electronically.

3.0 Preliminary Engineering Study

The Engineer will complete a preliminary engineering study to evaluate alternatives to address the Delmar and Fontana low-water crossing flooding. The study will culminate in a report that can be submitted to Johnson County as part of a project funding request.

3.1 The Engineer will create a new hydraulic model using Johnson County AIMS lidar data and referenced information from the Johnson County flood model previously used to evaluate the previous project at this location. This model will be used to evaluate the alternative designs for the project.

3.2 The Engineer will complete an alternatives analysis to develop up to four alternatives that address the flooding issues for the project and that will meet the Johnson County SMAC criteria. One alternative will be a buyout alternative as required by Johnson County. As second alternative will include culverts crossings at Delmar & Fontana, along with a new culvert across Somerset to the old Mission Valley Middle School property. Up to two additional alternatives will be studied based on communications with Prairie Village Public Works. Opinions of probable construction cost will be completed for each of the alternatives,

3.3 The Engineer will complete a Preliminary Engineering Study Report that will contain the following main topics per Johnson County requirements:

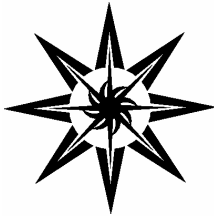
- Executive Summary
- General to include Background, Existing Conditions, Standards, Utility Contacts and Permits
- Summary of Findings to include Project Limits, Hydrology and Hydraulics, Field Investigations and Description of Alternatives. Description of alternatives will include Proposed Improvements, Utilities, Rights-of-Way and Easements, Effects on Other Cities, and Opinions of Probable Costs
- Recommendations to include Evaluation of Alternatives and Recommended Alternative
- Flood Problem Rating Forms

The Engineer will provide three hardcopies and one electronic copy of the report to the City for their use and submission to Johnson County SMAC.

Additional Services

Services not covered under this scope of services will be considered Additional Services and will be negotiated as an amendment to this scope of services and contract.

Delmar & Fontana Preliminary Engineering Study												
09/13/16	Project Personnel	Prinicpal Engineer	QA/QC Engineer	Civil Engineer	Intern Engineer	Survey Crew	Administrative	Total Hours	Estimated Labor	Total Expenses	Total Subconsultant Costs	Total Cost
	Project Billing Rate	\$200	\$155	\$120	\$75	\$125	\$65					
	Base Bid											
	Task Group 1 - Background Data Collection											
1.1	Data Collection	2		2	2	8	2	16	\$1,920	\$0	\$0	\$1,920
1.2	Data Review	2		4	2			8	\$1,030	\$0	\$0	\$1,030
	Task Group 1 Subtotals	4	0	6	4	8	2	24	\$2,950	\$0	\$0	\$2,950
	Task Group 2 - Public Meetings											
2.1	Public Meeting 1	4		1	8			13	\$1,520	\$17	\$0	\$1,537
2.2	Public Meeting 2	4		1	8			13	\$1,520	\$17	\$0	\$1,537
	Task Group 2 Subtotals	8	0	2	16	0	0	26	\$3,040	\$33	\$0	\$3,073
	Preliminary Engineering Study											
3.1	Hydraulic Model	4		16	2			22	\$2,870	\$0	\$0	\$2,870
3.2	Alternatives Analysis	12	16	32	16			76	\$9,920	\$17	\$0	\$9,937
3.3	Preliminary Engineering Study Report	8	8	32	8		4	60	\$7,540	\$171	\$0	\$7,711
	Task Group 3 Subtotals	24	24	80	26	0	4	158	\$20,330	\$187	\$0	\$20,517
	Totals	36	24	88	46	8	6	208	\$26,320	\$220	\$0	\$26,540



PUBLIC WORKS DEPARTMENT

Council Meeting Date: October 3, 2016

Consider Bid Award for 2016 Tree Trimming Program

RECOMMENDATION

Staff recommends the City Council approve the award of a bid to Kansas City Tree Company for \$114,450 for trimming trees in City right-of-way.

BACKGROUND

This bid is the annual tree trimming of trees in the City right-of-way. There are 3 areas bid for trimming this year, a map is attached that delineate those areas. Pricing for Park tree trimming was also part of the bid. The Parks to be trimmed this year will be: Bennett Park, Brenizer Park, Harmon-Santa Fe Parks, City Hall Campus, McCrum Park, Prairie Park, Wetner Park and Windsor Park. The remaining Parks will be bid in next year's trimming program. All the trees will be trimmed to remove any dead wood larger than 2-inches over the right-of-way, remove limbs interfering with sight line to traffic signals and street signs, and with a cone under the street lights. .

Kansas City Tree has completed this contract for the City in previous years with good results.

Four bids were received and opened on September 16, 2016, by the City Clerk. The bid tab is:

Area 41, Area 42 & Area 43	
Bidder	Total
KC Tree	\$ 64,500.00
Arbor Masters	\$108,534.00
VanBooven	\$114,975.00
Custom Tree	\$198,585.00

Parks	
Bidder	Total
KC Tree	\$49,950.00
Arbor Masters	\$57,045.00
Custom Tree	\$139,968.00
VanBooven	No Bid

FUNDING SOURCE

Funds are available and were budgeted for tree trimming in the 2016 Public Works Operating Budget.

RELATION TO VILLAGE VISION

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

CFS2: Preserve and protect natural areas

ATTACHMENTS

Construction Agreement for Tree Trimming
Tree Trimming Area Map

PREPARED BY

Keith Bredehoeft, Director of Public Works

September 22, 2016

CONSTRUCTION AGREEMENT

for

2016 TREE TRIMMING

BETWEEN

CITY OF PRAIRIE VILLAGE, KS

AND

KANSAS CITY TREE CARE LLC

**CONSTRUCTION CONTRACT
FOR
2016 TREE TRIMMING**

**BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
KANSAS CITY TREE CARE LLC**

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 KC Tree Care LLC, hereinafter termed in this agreement, "**Contractor**", for the construction and completion of Project 2016 Tree Trimming, (the "**Project**") designated, described and required by the Project Manual and Bid Proposal, to wit:

WITNESSETH:

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

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

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

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

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

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

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

1.1 Following words are given these definitions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. ENTIRE AGREEMENT:

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

3. INTENT AND INTERPRETATION

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

- 3.2 All time limits stated in the Contract Documents are of the essence of the Contract.
- 3.3 The Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.
- 3.4 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.
- 3.5 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents and shall give written notice to the Field Superintendent of any inconsistency, ambiguity, error or omission, which the Contractor may discover, or should have discovered, with respect to these documents before proceeding with the affected Work. The review, issuance, or the express or implied approval by the City or the Field Superintendent of the Contract Documents shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such review be evidence of the Contractor's compliance with this Contract.
- 3.6 The City has prepared or caused to have prepared the Project Manual. **HOWEVER, THE CITY MAKES NO REPRESENTATION OR WARRANTY AS TO ACCURACY OR FITNESS FOR PARTICULAR PURPOSE INTENDED OR ANY OTHER WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the City concerning such documents as no such representation or warranties have been made or are hereby made.
- 3.7 As between numbers and scaled measurements in the Project Manual, the numbers shall govern; as between larger scale and smaller scale drawings, (e.g. 10:1 is larger than 100:1) the larger scale shall govern.
- 3.8 The organization of the Project Manual into divisions, sections, paragraphs, articles (or other categories), shall not control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.
- 3.9 The Contract Documents supersedes all previous agreements and understandings between the parties, and renders all previous agreements and understandings void relative to these Contract Documents.
- 3.10 Should anything be omitted from the Project Manual, which is necessary to a clear understanding of the Work, or should it appear various instructions are in conflict, the Contractor shall secure written instructions from the Field Superintendent before proceeding with the construction affected by such omissions or discrepancies.
- 3.11 It is understood and agreed that the Work shall be performed and completed according to the true spirit, meaning, and intent of the Contract Documents.

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

4. CONTRACT COST

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

5. WORK SUPERINTENDENT

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

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

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

6. FIELD SUPERINTENDENT

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

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

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

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

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

6.6 The Field Superintendent will review the Contractor's Applications for Payment and will certify to the City for payment to the Contractor those amounts then due the Contractor as

provided in this Contract. The Field Superintendent's recommendation of any payment requested in an Application for Payment will constitute a representation by Field Superintendent to City, based on Field Superintendent's on-site observations of the Work in progress as an experienced and qualified design professional and on Field Superintendent's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of the Field Superintendent's knowledge, information and belief, the quality of the Work is in accordance with the Project Manual (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Project Manual, to a final determination of quantities and classifications for Unit Price Work if such is called for herein, and to any other qualifications stated in the recommendation); and that Contractor is entitled to payment of the amount recommended. However, by recommending any such payment Field Superintendent will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to Field Superintendent in the Project Manual or that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by the City or the City to withhold payment to Contractor.

- 6.7 The Field Superintendent may refuse to recommend the whole or any part of any payment if, in Field Superintendent's opinion, it would be incorrect to make such representations to City. Field Superintendent may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in the Field Superintendent's opinion to protect the City from loss because:
- The Work is defective, or completed Work has been damaged requiring correction or replacement,
 - The Contract Price has been reduced by Written Amendment or Change Order,
 - The City has been required to correct Defective Work or complete Work in accordance with the Project Manual.
- 6.8 The City may refuse to make payment of the full amount recommended by the Field Superintendent because claims have been made against City on account of Contractor's performance or furnishing of the Work or liens have been filed in connection with the Work or there are other items entitling City to a set-off against the amount recommended, but City must give Contractor written notice (with a copy to Field Superintendent) stating the reasons for such action.
- 6.9 The Field Superintendent will have the authority to reject Work which is defective or does not conform to the requirements of this Contract. If the Field Superintendent deems it necessary or advisable, the Field Superintendent shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.
- 6.10 The Field Superintendent will review, or take other appropriate action as necessary, concerning the Contractor's submittals, including Shop Drawings, Product Data and Samples. Such review, or other action, shall be for the sole purpose of determining general conformance with the design concept and information given through the Project Manual.

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

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

7. WORK SCHEDULE:

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

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

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

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

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

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

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

7.8 The operation of any tool, equipment, vehicle, instrument, or other noise-producing device is prohibited to start before or continue after the hours of 7 AM and 10 PM, Monday through Friday (except Fridays which shall be until Midnight) and 8 AM and midnight on Weekends (except Sunday which shall be 10 PM). Violation of this requirement is Prima 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 Field Superintendent. If it is necessary to perform proper care, maintenance, or protection of work already completed or of equipment used, or in the case of an emergency verbal permission may be obtained through the Field Superintendent.

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

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

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

8. DELAYS AND EXTENSIONS OF TIME

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

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

9. ADVERSE WEATHER:

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

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

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

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

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

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

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

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

10. LIQUIDATED DAMAGES

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

11. PAYMENT PROCEDURE

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

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

fashion;

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

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

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

12. COMPLETION AND FINAL PAYMENT

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

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

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

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

13. CLAIMS BY THE CONTRACTOR

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

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

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

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

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

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

much as 10% of the total Contract may be required to be performed beyond the boundaries of the designated work areas

14. CHANGES IN THE WORK

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

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

15. INSURANCE AND BONDS.

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

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

15.3 Minimum Requirements Commercial General Liability Policy Limits -

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

Policy MUST include the following conditions:

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

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

Limits (Same as Commercial General Liability) -

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

Policy MUST include the following condition:

NAME CITY OF PRAIRIE VILLAGE AS "ADDITIONAL INSURED"

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

Limits -

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

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

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

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

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

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

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

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

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

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

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

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

16. INDEMNITY

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

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

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

17. SUCCESSORS AND ASSIGNS

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

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

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

18. NON-DISCRIMINATION LAWS

18.1 The Contractor agrees that:

- A. The Contractor shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of Work under the present contract because of race, religion, color, sex, disability, national origin, ancestry or age;
- B. In all solicitations or advertisements for employees, the Contractor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
- C. If the Contractor fails to comply with the manner in which the Contractor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency;
- D. If the Contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency; and
- E. The Contractor shall include the provisions of Subsections A through D in every subcontract or purchase order so that such provisions will be binding upon such Subcontractor or vendor.
- F. The provisions of this Section shall not apply to a contract entered into by a Contractor: (1) Who employs fewer than four employees during the term of such contract; or (2) Whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.

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

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

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

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

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

20. RELATIONS WITH OTHER CONTRACTORS:

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

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

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

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

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

21. RIGHT OF CITY TO TERMINATE

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

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

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

22. MISCELLANEOUS:

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

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

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

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

CITY OF PRAIRIE VILLAGE

KC TREE CARE LLC

(typed company name)

By: _____
(signed)

By: _____
(signed)

Laura Wassmer _____

Zach Johnson _____
(typed name)

Mayor _____

President _____
(typed title)

City of Prairie Village _____

KC TREE CARE LLC _____
(typed company name)

7700 Mission Road _____

5217 Walmer Street _____
(typed address)

Prairie Village, Kansas 66208 _____

Mission, KS 66202 _____
(typed city, state, zip)

(913) 894-4767 _____
(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.)

City of Prairie Village, Kansas

PROJECT MANUAL

For

2016 TREE TRIMMING

City of Prairie Village
Department of Public Works
3535 Somerset Drive
Prairie Village, Kansas
publicworks@pykansas.com
913-385-4640

GENERAL CONSTRUCTION PROVISIONS

1. DEFINITIONS:

1.1. Following words are given these definitions:

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

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

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

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

CONCRETE shall mean Portland cement concrete.

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

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

CONTRACT TIME shall be the number of calendar days stated in the Contract Documents for the completion of the work or shall be a date certain 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 City Public Works Field Superintendent that orders minor changes in the work, but which does not involve a change in the contract price or contract time.

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

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

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

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

PAVEMENT shall be a rigid or flexible type riding surface placed upon a previously prepared sub-grade or base.

PLANS shall mean and include all drawings which may have been prepared by or for the City as of 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.

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

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.

STREET shall mean the whole area of any roadway within the right-of-way limits.

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.

SUB-GRADE shall be that portion of the construction area which has been prepared, as specified, and upon which a layer of specified material, base, sub-base course, pavement or other improvement is to be placed

TEMPORARY CONSTRUCTION EASEMENT shall mean the land provided by the City for temporary use by the Contractor during the construction of the work.

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

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

1.2. Whenever any word or expression defined herein, or pronoun used instead, occurs in these Contract Documents; it shall have and is mutually understood to have the meaning commonly given. Work described in words, which so applied have a well-known technical or trade meaning shall be held to refer to such, recognized standards.

1.3. Whenever in these Contract Documents the words "as ordered," "as directed", "as required", "as permitted", "as allowed", or words or phrases of like import are used, it is understood that the order, direction, requirement, permission or allowance of the City Public Works Field Superintendent is intended.

1.4. Whenever any statement is made in the Contract Documents containing the expression "it is understood and agreed", or an expression of like import, such expression means the mutual understanding and agreement of the parties hereto

1.5. The words "approved", "reasonable", "suitable", "acceptable", "properly", "satisfactorily", or words of like effect in import, unless otherwise particularly specified herein, shall mean approved, reasonable, suitable, acceptable, proper or satisfactory in the judgment of the City Public Works Field Superintendent.

1.6. When a word, term or phrase is used in the Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and, third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

1.7. All terms used herein shall have the meanings ascribed to them herein unless otherwise specified.

2. ABBREVIATIONS

2.1. Wherever in this Project Manual the following abbreviations are used, they shall be understood to mean as follows. The serial designation of each reference shall be the latest year of adoption or revision, unless otherwise specified. See the plan sheet for the material abbreviation's legend.

AASHTO	-	American Association of State Highway & Transportation Officials
ABA	-	American Arborist Association
ACI	-	American Concrete Institute

AGC	-	Associated General Contractors of America
AIA	-	American Institute of Architects
AISC	-	American Institute of Steel Construction
ANLA	-	American Nursery and Landscape Association
ANSI	-	American National Standards Institute
APWA	-	Kansas City Metropolitan Chapter of the American Public Works Association
ASCE	-	American Society of Civil Engineers
ASLA	-	American Society of Landscape Architects
ASME	-	American Society of Mechanical Engineers
ASTM	-	American Society for Testing Materials
ATSSA	-	American Traffic Safety Services Association
AWPA	-	American Wood Preservers' Association
AWS	-	American Welding Society
AWWA	-	American Water Works Association
CARS	-	County Assistance Road System
CRSI	-	Concrete Reinforcing Steel Institute
FHWA	-	Federal Highway Administration - Department of Transportation
ISSA	-	International Slurry Seal Association
ITE	-	Institute of Traffic Engineers
KCMMB	-	Kansas City Metropolitan Materials Board
KDOT	-	Kansas Department of Transportation
MCIB	-	Mid-West Concrete Industry Board, Inc.
MUTCD	-	Manual on Uniform Traffic Control Devices
NEC	-	National Electrical Code, National Fire Protection Association
NEMA	-	National Electrical Manufacturers Association
NRMCA	-	National Ready Mixed Concrete Association

3. Standard Detailed Specifications

3.1. The first level of reference for standard detailed specifications shall be those promulgated by the City of Prairie Village, KS, Public Works Department.

3.2. The second level of reference will be the current edition of the standard detailed specifications of the American Public Works Association (APWA) Kansas City Metro Chapter.

3.3. The third level of reference will be the latest edition of the Kansas Department of Transportation “Standard Specifications for Road and Bridge Construction”.

3.4. For traffic specifications, the latest edition of the Manual On Uniform Traffic Control Devices as published the Federal Highway Administration.

3.5. All reference material shall be the latest edition for this project as though fully set forth herein, except as modified or superseded by these construction specifications.

4. Responsibility Of Contractor

- 4.1. The Contractor shall furnish all transportation, tools, equipment, machinery, and plant, and all suitable appliances, requisite for the execution of the Project Manual and shall be solely answerable for the same and for the safe, proper, and lawful construction, maintenance, and use thereof including responsibility for hazardous materials.
- 4.2. The Contractor will use equipment and tools suitable for the work. All equipment and tools will be in near-original working condition.
- 4.3. The Contractor shall cover and protect his/her/her Work from damage and all injury to the same from any source.
- 4.4. The Contractor shall be solely answerable for all damage to the City or the property of the City, to other contractors or other employees of the City, to the neighboring premises, to any person or to any private or personal property, due to improper, illegal, or negligent conduct of Contractor or his/her subcontractors, employees, or agents in and about said work, or in the execution of the work covered by this Contract, or any extra work undertaken as herein provided.
- 4.5. The Contractor shall be responsible to the City for defect in, or the improper use of, any scaffolding, shoring, apparatus, ways, works, machinery, or plant.
- 4.6. The Contractor shall notify all affected utilities of the work and coordinate with the utilities to avoid interruption of utility service and damage to utility lines and property. This notice requirement shall also apply as to the City/operator of any affected underground facility. Any project delay, damages or increase in construction costs dues to utility relocation delays shall be at the Contractor's risk.
- 4.7. The project site shall be kept clean, neat, and orderly as possible at all times. Stockpiling of debris and unsuitable materials beyond normal working demands shall not be allowed. Immediately after construction operations are complete, all equipment, debris and unsuitable materials shall be completely removed from the site in order to minimize the damage to finished work and inconvenience to the public and adjoining property owners. The work site shall be left "broom clean" at the end of each workday and in case of dispute the City may clean the site and charge the Contractor.
- 4.8. Precaution shall be taken to ensure that excessive dust does not become airborne during construction. The Contractor shall comply with all State and Federal regulations, which apply to this matter in the geographical area of the Work. When directed by the City Public Works Field Superintendent, the Contractor shall take appropriate dust control measures satisfactory to the City Public Works Field Superintendent.
- 4.9. The Contractor shall not allow the site of the work or neighboring properties to become littered with trash and waste material, but shall maintain the same in a neat and orderly condition on a daily basis throughout the construction period. The City, or the City Public Works Field Superintendent on the City's behalf, shall have the right to determine what is or is not trash or waste material.

4.10. On or before the completion of the work the Contractor shall, without charge therefore, carefully clean out all pits, pipes, chambers, or conduits, and shall tear down and remove all temporary structures built by Contractor, and shall remove all rubbish of every kind from the tracts or grounds which it has occupied and shall leave them in first-class condition. Any trash receptacles on the site shall be covered.

4.11. The Contractor shall take whatever steps necessary to provide access for the City and the City Public Works Field Superintendent to the Work at all times from commencement of the Work through final completion.

4.12. The Contractor alone shall be responsible for the safety, adequacy and efficiency of its plant, equipment, and methods, and for the means, methods, techniques, sequences and procedures of construction.

4.13. The review of the City Public Works Field Superintendent of any plan or method of work proposed by the Contractor shall not relieve the Contractor of any responsibility therefore, and such review shall not be considered as an assumption by the City, City Public Works Field Superintendent, or any officer, agent, or employee thereof, of any risk or liability.

4.14. The Contractor is admonished that the crews will be properly attired, refrain from abusive language, refrain from improper behavior, and be aware that they are representing the City.

4.15. All operations of the Contractor shall be conducted within the right-of-way of the roadway or established easements and the limits of the earthwork and grading, as shown on the plans. While working under this contract, no agreement shall be made between Contractor and resident, as it pertains to any additional work on private property not paid for by the City.

5. Safety Rules

5.1. The Contractor shall be responsible for enforcing safety rules to assure protection of the employees and property of the City, to assure uninterrupted production and to assure safe working conditions for the Contractor and Subcontractors and their employees and to assure the safety of the general public.

5.2. In addition to any other rights the City might exercise, the Contractor and/or and Subcontractor failing to follow safety rules shall be subject to eviction from the job site and may be refused reentry.

5.3. The Contractor is expected to establish and enforce a comprehensive safety program on this project for the protection of its personnel, its Subcontractor's personnel. City's employees and all other, persons exposed to hazards resulting from the Contractor's operations. As a minimum requirement, the Contractor shall review and discuss the details of its program with the City at the first project meeting. The items to be covered shall include, but not necessarily be limited to:

- Personal protective equipment;
- First aid-personnel and facilities;
- Arrangements for medical attention;

- Sanitary facilities;
- Fire protection;
- Signs, signals, and barricades;
- Security regulations;
- Safety inspections;
- Designation of persons responsible for the program;
- Reporting forms and procedures;
- Material handling and storage;
- Lines of communication;
- Determination of potential hazards;
- Personnel safety meetings and education;
- Access to work areas;
- Subcontractors involvement in the program;
- Inspections and corrective action

5.4. The Contractor shall maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of life, the Work, supplies, materials and equipment on the project site not yet incorporated in the Work, City's property and adjacent property.

5.5. The Contractor shall comply with any and all instructions from the City regarding prevention of accidents, fires or for the elimination of any unsafe practice and shall observe all the applicable recommendations of the National Fire Protection Association Standard No. 241 (or other, later revision) "Standards For Safeguarding Building Construction and Demolition Operations".

5.6. The Contractor shall post danger signs warning against the hazards created by such features of construction as protruding nails, hod hoists, well holes, elevator hatchways, scaffolding, window openings, stairways, falling materials, open trenches, other excavations, obstructions and similar conditions. It shall designate a responsible member of its organization on the project whose duty shall be the prevention of accidents. The name and position of the person so designated shall be reported to the City by the Contractor.

5.7. In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, Contractor, without special instruction or authorization from City Public Works Field Superintendent or City, is obligated to act, at its discretion, to prevent threatened damage, injury, or loss.

5.8. The Contractor shall give prompt written notice of any significant changes in the Work or deviations from the Project Manual caused or necessitated by the emergency. A Change Order shall thereupon be issued covering the changes and deviations involved in such bona fide emergency. If Contractor believes that additional work done in an emergency, which arose from causes, beyond its control entitles it to an increase in the Contract Price or an extension of the Contract Time, the Contractor may make a claim therefore as provided herein.

5.9. The Contractor shall develop and maintain an up-to-date emergency action plan, taking into account fires, hazardous materials, explosions, adverse weather, floods, etc., which shall be in compliance with all

federal, state and local laws and ordinances. The procedures should outline specific action to be taken to protect life and to secure and protect the building materials, constructed work, buildings, equipment, and the position of cranes. The Contractor shall be fully responsible for the contents of and procedures outlined in said plan, including deficiencies therein, whether or not the City shall have reviewed said plan.

5.10. 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 thereof, such costs shall be deducted from any amounts due or to become due the Contractor.

5.11. 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.

6. Temporary Facilities/Utilities

6.1. Except where special permission has been granted by the City to use existing toilet facilities belonging to the City, the Contractor shall provide and maintain sanitary temporary toilet facilities located where directed by the City for accommodation of all persons engaged on the work. Temporary toilets shall be enclosed and weatherproof, kept in sanitary, and in an approved condition at all times. After use for same has ceased, the Contractor shall remove the temporary toilet facilities from the City's premises and disinfect and fill any vaults.

6.2. The Contractor shall provide and maintain any necessary temporary offices, storerooms, roadways, etc, as may be required for its work. Same shall be located and constructed in an approved manner acceptable to the City. Upon completion of work or when requested by the City, the Contractor shall remove same from City's premises and leave the area in a clean and orderly condition.

6.3. The Contractor shall provide and maintain temporary heat as required to protect all work and material against injury from dampness and/or cold to the satisfaction of the City.

6.4. Unless otherwise specified in the Project Manual, the Contractor shall provide, at his/her/hers/hers cost and expense, temporary power, wiring, water and lights from City's provided source as may be required for its operations.

6.5. The operations of the Contractor shall be in full conformity with all of the rules and regulations of boards and bodies having jurisdiction with respect to sanitation. The Contractor shall supply safe and sufficient drinking water to all employees. The Contractor shall obey and enforce all sanitary regulations and orders, and shall take precautions against infectious disease and the spread of the same.

6.6. All water used in the course of the Work shall be hauled in or purchased from the local Water Company's distribution system at the Contractor's own cost and expense.

7. Right-Of-Way Limits

7.1. The Contractor shall confine construction operations to the construction limits and easements provided for and labeled in the Project Manual. Equipment or materials shall not be stored beyond these limits without the express written approval of the City of such property.

7.2. No person, firm or corporation shall park or store for any period of time any construction vehicles, equipment or materials while constructing or improving any street or while working on any public works project of any kind within the city, on behalf of the city, or any other governmental agency, or any utility, public or private, unless a permit has been previously issued by the Director of Public Works. The person, firm or corporation who parks, or allows the parking or storing of any construction vehicles, equipment, or materials without first obtaining said permit or who parks or stores or allows said parking or storage contrary to the terms and conditions of any permit issued by the city, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished as provided in the Prairie Village Municipal Code. Each day such violation is committed or permitted to continue constitutes a separate offense and shall be punishable as such hereunder

7.3. The contractor is required to obtain a staging permit prior to commencing work. All staging area locations are to be approved by the City prior to construction. A list of possible staging areas known to the City may be obtained from the Public Works Director. A staging permit is required.

7.4. The Director of Public Works is authorized to issue a permit to authorize and allow the temporary parking, staging and storage of construction vehicles, equipment, and materials on public streets of the City or on public property, church property or property zoned C-0 through C-2 and CPO through CP-2 during periods of construction of public works projects of the city, any other governmental agency, or public or private utility projects within the City of Prairie Village, Kansas.

7.5. No permit shall be allowed on property that is residential in nature, provided, however, that property zoned "residential" that is being used as a church, school, or country club may be used with the written permission of the City.

7.6. The only designated haul routes in Prairie Village are: Nall Avenue, 95th Street, Mission Road, and 75th Street. The Contractor must have written approval prior to using any other street or haul route.

8. Completed Work

8.1. Before final acceptance of the Work, all mechanical and electrical equipment and devices shall be tested and each part shall be in good condition and working order, or shall be placed in such condition and order at the expense of the Contractor.

8.2. All tests of such completed work required under this Contract shall be made in the presence of the City Public Works Field Superintendent or its authorized representatives.

8.3. All unsatisfactory, faulty or defective work and all work not conforming to the requirements to the Project Manual at the time of acceptance thereof, or of such inspections, tests, or approvals shall be considered defective. Prompt notice of all defects shall be given to the Contractor.

8.4. All defective work, whether or not in place, may be rejected pending correction thereof. Should Contractor not correct said Work, the City may do so at Contractor's expense.

8.5. The Contractor shall remove from the site of the work, without delay, all rejected and condemned material or structures of any kind brought to or incorporated in the work, or if the Contractor fails to make satisfactory progress in so doing, within forty-eight (48) hours, after the service of a written notice from the City Public Works Field Superintendent ordering such removal, the rejected material or structures may be removed by the City at the Contractor's expense.

8.6. At the City's discretion, payment for all related items of work may be withheld until all rejected and condemned materials or structures are satisfactorily removed.

9. Public Complaints

9.1. All complaints to the Contractor or any of the Subcontractors or to the City Public Works Field Superintendent are to be reported in writing immediately to the City Public Works Field Superintendent. This written report will include the name, address and telephone number of the complainant, a detailed description of the complaint, a detailed description of the actions taken, and by whom to resolve the complaint.

9.2. The Contractor shall endeavor, with the cooperation and concurrence of the City Public Works Field Superintendent and City, to communicate with abutting property owners and tenants affected by the work.

9.3. The City Public Works Field Superintendent/Contractor shall respond to citizen complaints, concerns or inquiries within 48 hours. City to be copied with results of City Public Works Field Superintendent/Contractor's response and resolution of same in a timely manner utilizing forms provided by the City.

10. Notification

10.1. As part of this project the Contractor will notify residents by door hanger, which will be provided by the City, of the upcoming work. The Contractor must distribute the door hangers no less than 48 hours and no more than 5 working days prior to doing **any** work on a street.

10.2. Delays created by failure of the Contractor to notify the City in the above-specified time will be counted against the contract time. The Contractor will not be entitled to an extension of the contract time based on notification delays.

10.3. In the event, work does not begin on the designated street within the designated time, the

Contractor will re-notify the residents with an explanation of why work did not begin as scheduled and a statement of when work will begin. Work may not begin until 48 hours after distributing the re-notifications.

11. Progress Meetings

11.1. Periodic Progress meetings shall be held at a predetermined location on the site. These meetings will be held once every two weeks or sooner as events dictate. These meetings will be organized by the City or City Public Works Field Superintendent. Participation in this meeting by representatives of the prime contractor and each of the subcontractors is required. These representatives must be empowered to make decisions affecting the prosecution of the work and shall be the City of the construction firm and/or his/her/her/her superintendent. The Project Manager will conduct the meetings and the discussion will include, but is not limited to the following:

- Proposed construction schedule for duration of contract for both Prime and Subcontractors
- Identification of any known utility/contractor conflicts and proposed resolution of same
- Coordination of other trades
- Specialty items (Fences, shrubs, monuments, sprinkler systems, etc.)
- Completion date requirements.
- Review of traffic control plan as it pertains to area of work.
- Problems and/or complaints and remedial measures taken or proposed

12. Correcting Work

12.1. The Contractor shall, within two weeks of written notification, proceed to correct Work rejected by the City Public Works Field Superintendent as defective or failing to conform to this Contract.

12.2. Nothing contained in this Article shall establish any period of limitation with respect to other obligations, which the Contractor has under this Contract.

13. City May Accept Defective or Non-conforming Work

13.1. If the City chooses to accept defective or non-conforming Work, the City may do so. In such event, the Contract Price shall be reduced by the greater of (a) the reasonable cost of removing and correcting the defective or non-conforming Work, and (b) the difference between the fair market value of the Work as constructed and the fair market value of the Work had it not been constructed in such a manner as to include defective or non-conforming Work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the City for its acceptance of defective or non-conforming Work, the Contractor shall, upon written demand from the City, pay the City such remaining compensation for accepting defective or non-conforming Work.

SPECIAL CONDITIONS

1. The APWA Section 1100 General Conditions is negated and not to be applied as part of this Project Manual.
2. The trimming work will be completed by **December 31, 2016**.
3. The City will provide an inventory of the trees in each Area, please note that the City's initial inventory might not represent all of the trees in the area but is a tool in submitting the required final inventory information back to the City.
4. A map showing each Area is provided.
5. The City will accept, in lieu of but subject to the conditions of the Performance Bond, Maintenance Bond and Statutory Bond, a certified check or bank cashier's check made payable to the City of Prairie Village in the amount of the total bid cost and will be held by the City in a non-interest bearing depository. The Contractor agrees that the check is subject to being forfeited to and becoming the property of the City of Prairie Village as liquidated damages and not as penalty, together with other legal remedies the City may choose to invoke for non-performance as provided in the Contract. Said check, less any liquidated damages, will be returned to the Contractor upon completion of the Contract.
6. The City has a budget limit for this tree trimming program. Therefore, the bids will be awarded separately for each area until the budget limit is reached. For example, if the sum of all the area bids exceeds the budget limit, then one of the areas will not be awarded or the list of trees will be reduced.
7. The Contractor is to notify the Public Works Field Superintendent each morning after 7AM, but before beginning work, as to which streets the Contractor will be working.
8. The contractor will follow all Local, State and Federal regulations including but not limited to all quarantine regulations.

101 MOBILIZATION

Description

This work shall include furnishing of all labor, equipment, tools and materials for preparatory work and operations, including, but not limited to, those necessary for the movement of personnel, equipment, supplies and incidentals to the project site. It shall also include those costs for the establishment of all offices, buildings, temporary utilities and other facilities necessary for work on the project. Bond and insurance costs incurred to begin the work at the project site are included in this item.

Bid items are:

MOBILIZATION

Reference Standard Specification

Primary Reference Standard Specification is KDOT Standard Specifications for State Road and Bridge Construction Section 820, as amended

The above Reference Standard Specification may contain modifications in the form of additions, deletions, and substitutions. Where any part of the Reference Standard Specification is so modified, the unaltered provisions shall remain in effect.

Construction Requirements

None

Method of Measurement

The measurement of payment will be the percentage of work completed.

Basis of Payment

Partial payments will be made as follows:

1. When the work amounting to 5 percent of the original contract amount has been completed, 25 percent of the Contract amount for the item of mobilization or 2.5 percent of the original Contract amount whichever is lesser, will be paid.
2. When the work amounting to 10 percent of the original contract amount has been completed, 50 percent of the Contract amount for the item of mobilization or 5.0 percent of the original Contract amount whichever is lesser, will be paid.
3. When the work amounting to 25 percent of the original contract amount has been completed, 60 percent of the Contract amount for the item of mobilization or 7.5 percent of the original Contract amount whichever is lesser, will be paid.
4. When the work amounting to 50 percent of the original Contract amount has been completed, 100 percent of the Contract amount for the item of mobilization or 10 percent of the original contract amount whichever is lesser, will be paid.
5. Upon acceptance of the Contract, payment of any amount in excess of 10 percent of the original Contract amount will be paid.

The term "Original Contract Amount" used shall be construed to mean the total dollar value of the Original Contract, including all bid items shown in the Contract.

When computing the percentage of the original Contract amount completed, do not include monies earned for Mobilization, materials stored, Traffic Control (when bid as a lump sum) and Contractor Construction Staking.

END OF SECTION

682 Tree Trimming

Description

This work consists of trimming City trees to the satisfaction of the City Public Works Field Superintendent, and in accordance with the details shown on the plans. It shall include using all means necessary to protect existing structures, equipment, piping and facilities not designated for removal within the limits of the work, as defined in these specifications, in the Special Conditions, as shown on the Plans or established by the City Public Works Field Superintendent.

Bid items are:

TREE TRIMMING

Reference Standard Specification

The Kansas Arborist at Kansas State University, Kansas Forest Service shall determine interpret proper trimming techniques and practices.

Primary Reference Standard Specification is ANSI A300 Part 1 Pruning, as amended and Z133.1-2000 Safety Requirements for Pruning, Trimming, Repairing, Maintaining, Removing Trees and Cutting Brush.

The above Reference Standard Specification may contain modifications in the form of additions, deletions, and substitutions. Where any part of the Reference Standard Specification is so modified, the unaltered provisions shall remain in effect.

Tree Trimming Requirements

Trees to be trimmed along the City streets will be located either wholly or partially within 10 feet from the face of the street curb. Trimming of trees located on private property will not be permitted except to meet item c. in the next paragraph.

Trees will be trimmed:

- a. To remove dead wood two inches in diameter and larger over the City right-of-way,
- b. To remove hangers over the City right-of-way,
- c. To remove limbs lower than nine feet over sidewalks and fourteen feet over street pavement,
- d. To remove limbs that obstruct the view of a street light as viewed from a distance equal to the height of the street light from the street pavement,
- e. To remove tree limbs obstructing the view of street signs and traffic signals from a distance of 500 feet as viewed from a person standing in the vehicle travel lane.
- f. Park Trees will be trimmed with the same criteria but the entire tree will be trimmed. The trimming criteria should also be applied to any trees on abutting properties with limbs hanging over City Park property.

The Contractor will be responsible for the removal of all trimmings and other trimming debris. The debris removal will be in accordance with all Local, State and Federal regulations including but not limited to all quarantine regulations. The street and resident property will be cleaned to equal or better condition as existed before the work activity. The Contractor shall use no gafts in the tree trimming process.

The Contractor may leave wood for the resident at the resident's request, but the wood will be placed on private property and not on City right-of-way.

The Contractor will provide each residence with a notice 48 hours before beginning work. The City will provide the notices to the Contractor.

Tree Inventory Requirements

The contractor will verify the inventory list as to species, house number, condition and date trimmed. The City will provide a list of condition terminology to be used. The type of tree will be the common name for generic-species, i.e., Maple-sugar. The generic - Maple - is not acceptable as it must have the species.

The inventory list will be modified by lining out the tree not in existence, adding trees found in the City right-of-way, but not on the list, and placing a check mark for those trees trimmed.

Method of Measurement

The measurement of payment for Trimming Trees is submittal of the modified inventory list for each area and approval of satisfactory work for each area by Field Superintendent.

Basis of Payment

The amount of completed and accepted work, measured as provided above, shall be paid for at the Contract lump sum price for "TREE TRIMMING". The price shall be full compensation for furnishing and for all labor, tools, equipment and incidentals necessary to complete the work.

END OF SECTION

701 TRAFFIC CONTROL

Description

This work shall consist of furnishing, erecting, moving, cleaning, replacing, maintaining and removing signs, barricades, lights and other traffic control devices as shown on the Plans, the Traffic Control Plan, or as required by the Engineer or as proposed by the Contractor and approved by the Engineer.

Bid items are:

TRAFFIC CONTROL

Reference Standard Specification

Primary Reference Standard Specification is KDOT Standard Specifications for State Road and Bridge Construction Section 805, as amended.

The above Reference Standard Specification may contain modifications in the form of additions, deletions, and substitutions. Where any part of the Reference Standard Specification is so modified, the unaltered provisions shall remain in effect.

Construction Requirements

ADD:

No work shall be conducted between the hours of 10 PM and 7 AM, Monday through Friday. No work shall be undertaken on Saturdays, Sundays and Holidays without the express approval or permission of the City.

No work may be performed on non-residential streets between 7:00 a.m. to 8:30 a.m. and 4:00 p.m. to 6:00 p.m. on weekdays.

Non-residential streets may not be closed to all traffic unless permitted by the City.

Non-residential streets are defined as 75th Street, 95th Street, Mission Road, Nall Avenue, State Line Road, 63rd Street, 71st Street, 79th Street, 83rd Street, Lamar Avenue, Roe Avenue, Somerset Drive, Tomahawk Road, 67th Street, 69th Street, 87th Street (Nall Avenue to Somerset Drive), Booth Drive, Belinder Avenue, Cambridge Street (State Line Road to Somerset Drive), Cherokee Drive, Colonial Drive and Windsor Street (Cherokee to 75th Street).

Residential street closure may occur only from 8:00 a.m. until 5:00 p.m.

Evening 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.

Ensure minimum interference with roads, streets, driveways, sidewalks, and adjacent facilities.

Do not close or obstruct streets, sidewalks, alleys or passageways without permission from authorities having jurisdiction.

If required by governing authorities, provide alternate routes around closed or obstructed traffic ways.

The Contractor shall conduct his/her work to interfere as little as possible with public travel, whether vehicular or pedestrian. Whenever it is necessary to cross, obstruct, or close roads, driveways and walks, whether public or private, the Contractor shall, at his/her own expense, provide and maintain suitable and safe bridges, detours, or other temporary expedients for the accommodation of public and private travel, and shall give reasonable notice to owners of private drives before interfering with them provided that maintenance of traffic will not be required where the Contractor has obtained permission from the City and tenant of private property, or from the authority having jurisdiction over public property involved, to obstruct traffic for the duration of time as may be agreed upon.

The Contractor shall, at the time of the preconstruction conference or 72 hours prior to the proposed implementation, submit a detailed plan for handling traffic during construction and non-working hours for review and approval by the Engineer and City before commencing with any work. The traffic control plan shall be certified by an ATSSA Certified Worksite Traffic Supervisor. The logic for this traffic control plan is to be included in the Contractor's construction control schedule.

The Worksite shall be cleaned up at the end of each working day and temporary surfacing shall be placed such that access will be had to all driveways during the night, weekends, holidays and other days when Work is not in progress and when the stage of the Work does not directly interfere with the drive. The Engineer, at his/her discretion, may grant short-term exceptions to this requirement in connection with preparing sub-grade and paving.

The Contractor shall assign a specific person to be responsible for the installation and maintenance of traffic control devices. This information shall be provided to the Engineer. The Contractor may, at his/her option, establish a maintenance agreement, approved by the Engineer, with one of the area sign companies to supply, install, and maintain required traffic control devices throughout the duration of this project. When the traffic control devices are no longer needed, immediate removal of said devices shall be included in this agreement.

Driveway entrances, sidewalks, steps and finish grading shall be completed as soon as practicable behind construction of curb and gutter so that access may be had from the street adjacent property as soon as possible. Temporary grading shall be provided where required to negotiate the difference in elevation from the graded roadbed to the finished curb at driveway entrances. The Contractor shall provide as many barricades with appropriate warning lights as needed to protect effectively pedestrians or traffic from exposed objects or excavations.

In addition to traffic control devices shown on the Plans, the Contractor shall provide and maintain all barricades, cones, construction warning signs, flagmen, temporary pavement marking, and incidental devices to protect the traveling public and the Contractor's personnel or equipment on the job site. During all phases of construction, the Contractor shall display the required signs. Any traffic control device not in use shall be covered, removed, or turned away from the view of on-coming traffic. Whenever the Work area changes, all construction warning signs and traffic channelization devices shall be made current, in both legend and function.

Local traffic on all streets shall be carried through construction whenever possible. Detours of traffic will be permitted, with prior permission from the City, when necessary and in accordance with the traffic control plan. Streets may be closed for short periods of time under authority of proper permit issued by the City or authority having jurisdiction. However, the Contractor shall conduct his/her work to interfere as little as possible with public travel, whether vehicular or pedestrian, on such streets.

Proper notification to City Police and County Paramedic units, Fire Districts, School Districts and City refuse collector shall be given by the Contractor before closing any street.

It will be the responsibility of the Contractor to perform the necessary maintenance or provide additional traffic control devices as requested by the Engineer.

The Contractor shall maintain access for refuse collection. If refuse cannot be picked up because of construction activities, the Contractor will be required to collect the reuse and to coordinate with the refuse collector to designate an alternate pick-up site.

The Contractor shall only work on one side of the road at a time and no more than two streets at one time unless permitted to do so by the City.

Left turn movements shall not be restricted at any intersection controlled by a traffic signal.

The Contractor must use proper flagging procedures when limiting traffic to one lane during working hours.

The Contractor will supply, install, and maintain the necessary traffic control devices required to maintain traffic as outlined herein. These devices include, but are not limited to, advance construction warning signs, barricades, flagmen, and other traffic control devices. All such devices shall be fabricated and installed in accordance with the M.U.T.C.D. and N.C.H.R.P. 350, latest editions. Any request for changes in the required devices or methods of maintaining traffic should be submitted in writing to the Engineer a minimum of 72 hours prior to the time the Contractor wishes to make the change.

Temporary striping shall be tape and this work shall conform to Section 821 of the KDOT Standard Specification. In addition to the placement of lane lines and centerline stripes, the Contractor shall also be responsible for the proper placement of required turn arrows.

The Inspector may review the Work area at various times to determine if any additional traffic control devices are necessary or if any maintenance is required to the traffic control devices in place. Any traffic control device, which requires maintenance or any additional traffic control needs found during these reviews, will be reported to the Contractor. It will be the responsibility of the Contractor to perform the necessary maintenance or provide additional traffic control devices as requested by the Engineer. Failure to comply with this request will result in one of the following:

1. Employ another agency to correct deficiencies in signing or warning devices and deduct the cost from the contractor's pay estimate.
2. Suspend all pay estimates until deficiencies are corrected.
3. Stop the work until deficiencies are corrected.
4. Place the contractor in default.

All existing traffic signs, stop signs, and street signs in the way of the Work shall be carefully removed by the Contractor and shall be returned to the City. The required function of stop signs and other signs affecting driver safety shall be preserved by the Contractor whenever a street is open to traffic. Upon completion of the Project, all street signs shall be reset by the Contractor as approved by the Engineer.

All stop, yield and street name signs removed shall be temporarily erected in the appropriate locations (no less than 7 feet vertical from grade) until permanent signing can be installed.

Method of Measurement

The measurement of payment will be the percentage of work completed.

Basis of Payment

Partial payments will be made as follows:

1. When work amounting to 10 percent of the original Contract amount is completed, 50 percent of the amount bid for traffic control or five percent of the original Contract amount, whichever is lesser, may be paid.
2. When work amounting to 80 percent of the original Contract amount is completed, 100 percent of the amount bid for traffic control or ten percent of the original Contract amount, whichever is lesser, may be paid.
3. Upon completion of all work on the project, 100 percent of the amount bid for traffic control will be paid.

When computing the percentage of the original Contract amount completed, do not include monies earned for mobilization, materials stored, traffic control (when bid as Lump Sum) and contractor construction staking.

The term "Original Contract Amount" used shall be construed to mean the total dollar value of the Original Contract, including all bid items shown in the Contract.

END OF SECTION

Bid submitted by Kansas City Tree Care LLC

BID PROPOSAL FORM

TREE TRIMMING

To the City of Prairie Village, Kansas:

The **undersigned Bidder**, having examined the Project Manual and other proposed Contract Documents, and all Addenda thereto; and being acquainted with and fully understanding (a) the extent and character of the work covered by this Proposal; (b) the location, arrangement, and specified requirements for the proposed work; (c) the location, character, and condition of existing buildings, streets, roads, sidewalks, driveways, curbs, gutters, trees, sewers, utilities, drainage, and other installations both surface and underground that may affect or be affected by the proposed work; (d) the nature and extent of the excavations to be made, and the type, character and general condition of materials to be excavated; (e) the necessary handling and re-handling of excavated materials; (f) the location and extent of necessary or probable dewatering requirements; (g) the difficulties and hazards to the work that might be caused by storm and flood water; (h) local conditions relative to labor, transportation, and hauling facilities; and (l) all other factors and conditions affecting or that may be affected by the work,

HEREBY PROPOSES to furnish all required material, supplies, equipment, tools, and plant; to perform all necessary labor and supervision; and to construct, install, erect, and complete all work stipulated in, required by, and in accordance with, the proposed Contract Documents, and Project Manual referred to therein (as altered, amended, or modified by addenda), in the manner and time prescribed, and that the Bidder will accept in full payment sums determined by applying to the quantities of the following items, the following unit prices and/or any lump sum payments provided, plus or minus any special payments and adjustments provided in the Specifications, and the Bidder understands that the estimated quantities herein given are not guaranteed to be exact or total quantities required for the completion of the work, and that increases or decreases may be made over or under the estimated quantities to provide for needs that are determined during the progress of the Work and that prices bid shall apply to such increased or decreased quantities as follows:

ITEMIZED PROPOSAL

Item No.	Description	Unit	Quantities	Unit Price	Total
1	101 Mobilization	L.S.	N/A	None	
2	682 Tree Trimming Area 11	L.S.	N/A	None	\$13,860.00
3	701 Traffic Maintenance	None	N/A	None	-----
Total Area - 41					

Bid submitted by Kansas City Tree Care LLC

Item No.	Description	Unit	Quantities	Unit Price	Total
1	101 Mobilization	L.S.	N/A	None	
2	682 Tree Trimming Area 12	L.S.	N/A	None	14,340.00
3	701 Traffic Maintenance	None	N/A	None	-----
Total Area - 42					

Item No.	Description	Unit	Quantities	Unit Price	Total
1	101 Mobilization	L.S.	N/A	None	
2	682 Tree Trimming Area - 13	L.S.	N/A	None	36,300.00
3	701 Traffic Maintenance	None	N/A	None	-----
Total Area - 43					

Item No.	Description	Unit	Quantities	Unit Price	Total
1	101 Mobilization	L.S.	N/A	None	
2	682 Tree Trimming Area - 21	L.S.	N/A	None	2175.00
3	701 Traffic Maintenance	None	N/A	None	-----
Total Area - Bennett Park					

Item No.	Description	Unit	Quantities	Unit Price	Total
1	101 Mobilization	L.S.	N/A	None	
2	682 Tree Trimming Area - 22	L.S.	N/A	None	1,800.00
3	701 Traffic Maintenance	None	N/A	None	-----
Total Area - Brenizer Park					

Bid submitted by Kansas City Tree Care LLC

Item No.	Description	Unit	Quantities	Unit Price	Total
1	101 Mobilization	L.S.	N/A	None	
2	682 Tree Trimming Area - 23	L.S.	N/A	None	20,850.00
3	701 Traffic Maintenance	None	N/A	None	-----
Total Area - Franklin Park					

Item No.	Description	Unit	Quantities	Unit Price	Total
1	101 Mobilization	L.S.	N/A	None	
2	682 Tree Trimming Area - 31	L.S.	N/A	None	29,700.00
3	701 Traffic Maintenance	None	N/A	None	-----
Total Area - Harmon/Santa Fe Parks					

Item No.	Description	Unit	Quantities	Unit Price	Total
1	101 Mobilization	L.S.	N/A	None	
2	682 Tree Trimming Area - 32	L.S.	N/A	None	6375.00
3	701 Traffic Maintenance	None	N/A	None	-----
Total Area - City Hall Campus					

Item No.	Description	Unit	Quantities	Unit Price	Total
1	101 Mobilization	L.S.	N/A	None	
2	682 Tree Trimming Area - 33	L.S.	N/A	None	1800.00
3	701 Traffic Maintenance	None	N/A	None	-----
Total Area - McCrum Park					

Bid submitted by Kansas City Tree Care LLC

Item No.	Description	Unit	Quantities	Unit Price	Total
1	101 Mobilization	L.S.	N/A	None	
2	682 Tree Trimming Area - 33	L.S.	N/A	None	10,050.00
3	701 Traffic Maintenance	None	N/A	None	-----
Total Area - Porter Park					

Item No.	Description	Unit	Quantities	Unit Price	Total
1	101 Mobilization	L.S.	N/A	None	
2	682 Tree Trimming Area - 33	L.S.	N/A	None	2100.00
3	701 Traffic Maintenance	None	N/A	None	-----
Total Area - Prairie Park					

Item No.	Description	Unit	Quantities	Unit Price	Total
1	101 Mobilization	L.S.	N/A	None	
2	682 Tree Trimming Area - 33	L.S.	N/A	None	13,875.00
3	701 Traffic Maintenance	None	N/A	None	-----
Total Area - Taliaferro Park					

Item No.	Description	Unit	Quantities	Unit Price	Total
1	101 Mobilization	L.S.	N/A	None	
2	682 Tree Trimming Area - 33	L.S.	N/A	None	4650.00
3	701 Traffic Maintenance	None	N/A	None	-----
Total Area - Weltner Park					

Bid submitted by KANSAS CITY Tree Care LLC

Item No.	Description	Unit	Quantities	Unit Price	Total
1	101 Mobilization	L.S.	N/A	None	
2	682 Tree Trimming Area - 33	L.S.	N/A	None	1350.00
3	701 Traffic Maintenance	None	N/A	None	-----
Total Area - Windsor Park					

PROPOSAL QUANTITIES

The unit price bid for each item shall include all of the Contractor's cost and profit including equipment, labor, supervision, material and all incidentals necessary to furnish the work complete and ready for use.

PROPOSAL ABBREVIATIONS

LS - LUMP SUM EA - EACH

The **undersigned Bidder** declares:

That, if this proposal is accepted, to complete the work by the **December 31, 2016** completion date.

That he/she has been regularly engaged in contract work of the class required by the specifications for five years, and respectfully invites your attention to the following work that has been completed under his/her direction:

Project Number	Location	Contact & Telephone

That he/she has personally examined the location of the proposed work and determined the amount and character of the proposed work, and the material and equipment necessary to complete the same in compliance with the accompanying contract documents and project manual.

The undersigned proposes and agrees, if this proposal is accepted, to provide all necessary machinery, tools, equipment and other means of construction, and to do all the work specified in the documents of the contract in the manner therein prescribed and according to the requirements of the City as therein set forth.

Bid submitted by Kansas City Tree Care LLC

Addendum receipt:

The undersigned Bidder acknowledges receipt of the following addenda to the Contract Documents:

Addendum NO. _____,	Date _____
Addendum NO. _____,	Date _____
Addendum NO. _____,	Date _____
Addendum NO. _____,	Date _____
Addendum NO. _____,	Date _____

The undersigned Bidder hereby declares that the only persons or firms interested in the Proposal as principal or principals is or are named herein and that no other persons or firms than herein mentioned have any interest in this Proposal on in the Contract to be entered into; and this Proposal is made without connection with any other person, company or parties making a bid or proposal; and that it is in all respects fair and in good faith, without collusion or fraud.

The undersigned Bidder agrees and assures the City that if awarded this Contract, the Bidder will fully abide by the requirements of these Contract Documents.

In submitting this bid, the undersigned declares that he/she is of lawful age and executed the accompanying bid on behalf of this bidder therein named, and that he/she had lawful authority to do so. The undersigned further declares that he/she has not directly or indirectly entered into any agreement, expressed or implied, with and bidder or bidders, having for his/her object the controlling of the price or amount of such bid or any bids, the limiting of the bids or bidders, the parceling or farming out to any bidder or bidders, or other persons, of any part of the subject matter of the bid or bids or of the profits thereof, and that he/she has not and will not divulge the sealed bid to any person whomsoever, except those having a partnership or other financial interest with bidder in said bid or bids, until after sealed bid or bids are opened.

The undersigned further declares that he/she has carefully examined the Notice to Bidders, Instructions to Bidders and other Contract Documents, and he/she has inspected the actual location of the work, together with the local sources of supply, and has satisfied himself as to all conditions and quantities, and understands that in signing this Bid he/she waives all right to plead any misunderstanding regarding the same. The undersigned Bidder agrees that the accompanying bid deposit shall become the property of the City, should the Bidder fail or refuse to execute the Contract or furnish Bond as called for in the Contract Documents within the time provided.

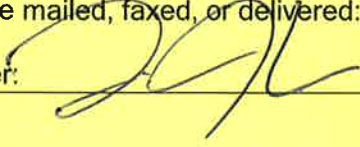
If written notice of the acceptance of this bid is mailed, faxed, or delivered to the undersigned Bidder within thirty (30) calendar days after the date of opening of the bids, or any time thereafter before this bid is withdrawn, the undersigned Bidder will, within ten (10) calendar days after the date of such mailing, faxing, or delivery of such notice, execute and deliver a Contract in the form of Contract attached.

Enclosed is a certified check, cashier's check or bid bond in the amount of 159,225.00 DOLLARS (\$ 159,225.00), made payable to the City of Prairie Village, which the undersigned agrees is subject to being forfeited to and becoming the property of the City of Prairie Village as liquidated damages and

Bid submitted by Kansas City Tree Care, LLC

not as penalty, together with other legal remedies the Cities may choose to invoke, all set forth in the Instruction to Bidders Section, should this Bid be accepted and the Contract be awarded to this Bidder and he/she should fail to enter into an Agreement in the form prescribed and to furnish the required insurance, bonds and other required documents within ten (10) calendar days as above stipulated, otherwise the bid security shall be returned to the undersigned upon signing of the Agreement and delivery of the approved bonds and other required documents to the City of Prairie Village, Kansas.

The undersigned Bidder hereby designates as the office of the Bidder to which such notice of acceptance may be mailed, faxed, or delivered:

Signature of Bidder: 

If an individual: _____

Doing business as: _____

If a Partnership: _____

By _____, member of firm

If a Corporation: _____

By _____

Title _____

DATED: _____

Kansas City Tree Care, LLC
Typed name of Bidder (Company)

913.894.4767
Telephone Number

Zach Johnson or Jackie Melchor
Typed name of Contact

866 923 4311
Fax Number

1505 Merriam Lane
Street Address

Kansascitytreecare@yahoo.com
Email Address

Kansas City KS 66103
City, State, Zip

Bid submitted by Kansas City Tree Care LLC

If the Bidder is a corporation, supply the following information:

State in which incorporated: _____

Name and business address of its: _____

President: _____

Secretary: _____

SEAL

Date _____

Attached hereto is a Bid Bond for the sum of \$ _____ or

Cashier's Check for \$ _____ made payable to the City of Prairie Village, Kansas.

PROJECT CONTACTS

Prairie Village Public Works

James Carney, Field Superintendent
3535 Somerset Drive
Prairie Village, KS 66208
E-mail jcarney@pvkansas.com
Office - (913) 385-4644

Prairie Village Police Dept.

7710 Mission Road
Prairie Village, KS 66208
(913) 381-6464

Fire/Med-Act Communications

(913) 432-1717

Utilities

Time Warner Cable
8221 West 119th Street
Overland Park, KS 66213
(913) 927-3402
Gary Dixon

AT&T
9444 Nall Avenue
Overland Park, KS 66207
(913) 383-6948
Rich Pearl

KCP&L
16215 W. 108th St.
Lenexa, KS 66219
(913) 810-7623
Gary Price

Johnson County Wastewater
18111 Sunset Drive, Suite 2500
Overland Park, KS 66213
(913) 715-8501
Charles McAllister

Kansas Gas Service
11401 West 89th Street
Overland Park, Kansas 66214
(913) 599-8978
Becca Orr
(913) 492-8555

KCP&L
Traffic Signals
8730 Nieman Rd.
Overland Park, KS 66214-1793
(913) 894-3074
John Wienstroer

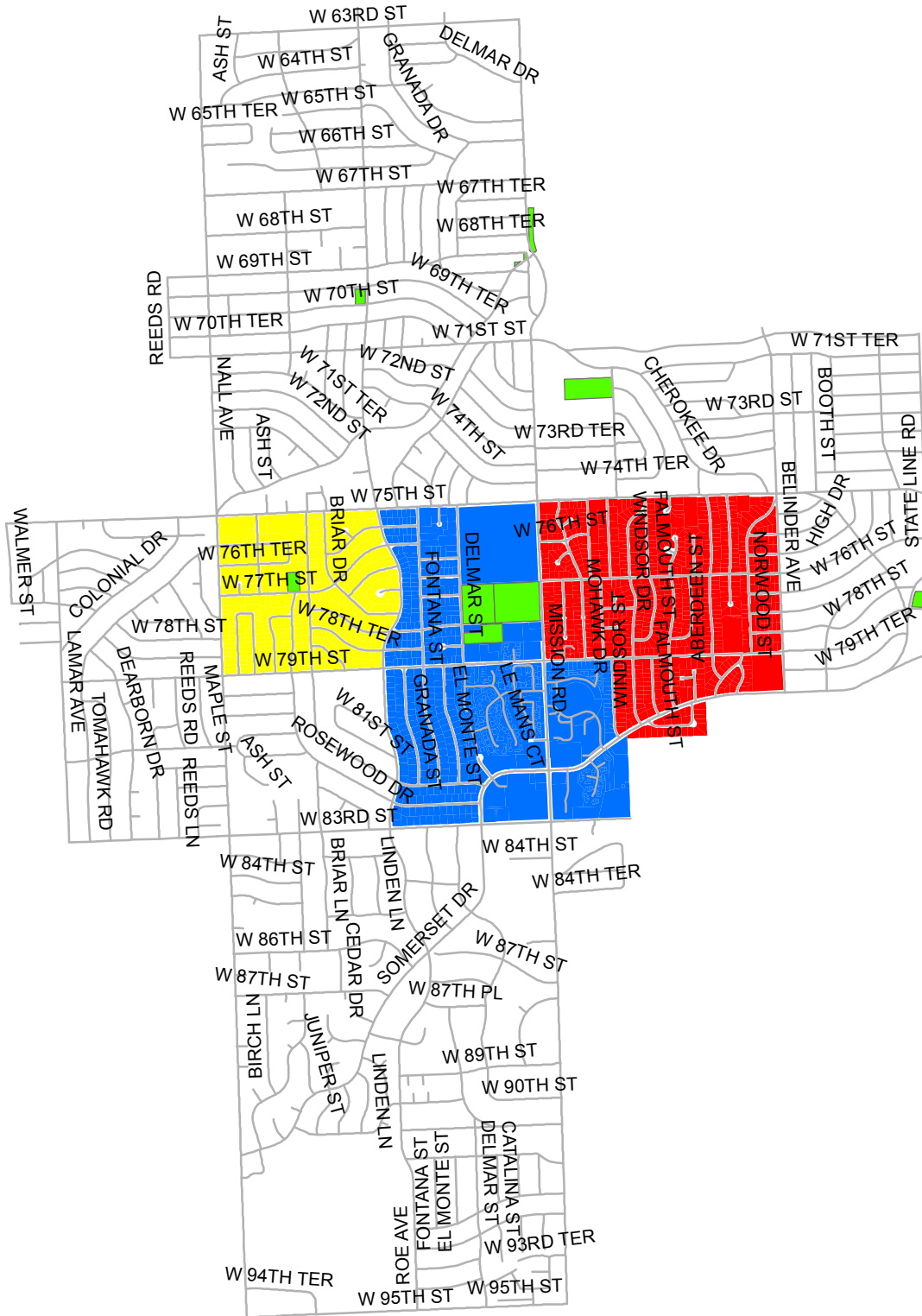
Southern Star Central Gas Pipeline
13430 W. 98th Street
Lenexa, KS 66215
(913) 310-7612
Kevin Hoover

Google Fiber
(870) 219-5630
Craig Young

Water One
10747 Renner Road
Lenexa, KS 66219-9624
(913) 895-5732
Dana Hudson

Contractor:
Contact:
Address:
Project Supervisor:
Email:
Office :Phone
Mobile:
Pager:

2016 Tree Trimming



2016 Tree Trimming Program

- 2016 Park Trimming
- Area_41
- Area_42
- Area_43



MAYOR'S ANNOUNCEMENTS

Monday, October 3, 2016

Committee meetings scheduled for the next two weeks include:

Planning Commission	10/04/2016	7:00 p.m.
Tree Board Seminar	10/05/2016	6:00 p.m.
JazzFest Committee Meeting	10/11/2016	5:30 p.m.
PV Arts Council	10/12/2016	5:30 p.m.
Park & Recreation Committee	10/12/2016	6:30 p.m.
Council Committee of the Whole	10/17/2016	6:00 p.m.
City Council	10/17/2016	7:30 p.m.

=====

The Prairie Village Arts Council is pleased to present the 10th annual State of the Arts Exhibit in the R.G. Endres Gallery during the month of October. The artist reception will be from 6 to 8 p.m. on Friday, October 14th.

The League of Kansas Municipalities Conference will be held Saturday, October 8th through Monday, October 10th at the Overland Park Convention Center. If you are interested in attending, please contact Meghan Buom by September 23rd.

The 32nd Annual Prairie Village Peanut Butter Week in support of Harvesters Food Bank will be held October 10 - 16, 2016. Support the drive through donations at City Hall or at your local church or school.

Save the Date - The Northeast Johnson County Chamber of Commerce Annual Gala will be held on Saturday, November 19th.

INFORMATIONAL ITEMS
October 3, 2016

1. Council Committee of the Whole Minutes - September 19, 2016
2. Planning Commission Agenda - October 4, 2016
3. JazzFest Committee Minutes - August 11, 2016
4. JazzFest Committee Minutes - August 24, 2016
5. Environmental Committee Minutes - August 24, 2016
6. Environmental Committee Minutes - May 25, 2016
7. Peanut Butter Week Proclamation
8. Mark Your Calendar

COUNCIL COMMITTEE OF THE WHOLE
September 19, 2016

The Council Committee of the Whole met on Tuesday, September 19, 2016 at 6:00 p.m. in the Council Chambers. The meeting was called to order by Council President Ted Odell with the following members present: Mayor Laura Wassmer, Ashley Weaver, Jori Nelson, Serena Schermoly, Steve Noll, Eric Mikkelson, Andrew Wang, Sheila Myers, Brooke Morehead, Dan Runion, Courtney McFadden, Ted Odell and Terrence Gallagher.

Staff Members present: Tim Schwartzkopf, Chief of Police; Melissa Prenger, Senior Project Manager; Katie Logan, City Attorney; Quinn Bennion, City Administrator; Wes Jordan, Assistant City Administrator; Alley Williams, Assistant to the City Administrator; Meghan Boom, Deputy City Clerk.

COU2016-53 Consider modifying the existing police pension plan to increase the service cap from 25 years to 30 years.

Steve Noll reported that the retention of senior supervisory officers within the Police Department has been a concern for a number of years. The current Pension Plan allows for separation of service after 20 years with a service cap of 25 years. This results in senior level officers leaving the PD during that window of time and creates a gap in experience and institutional knowledge. While turnover, separation, and retirements are expected within any organization, it takes between 10 - 12 months to backfill a police officer position. The costs for hiring and training a new officer range from \$27,000 (with experience) to \$48,000 (for officers who attend the Police Academy). These costs do not take into account the loss of institutional knowledge and valued operational experience which is essential in public safety organizations.

The option discussed by the Pension Board and Department Staff is an investment by both the employee and the City. This is an optional plan and the officer would opt in starting at year 26. According to the Plan's actuary, the individual officer's contribution would double from 4% to 8% of their base salary. The City's investment cost would be a total of \$12,500.00 on an annual basis which has already been built into the 2017 Budget. This option would give officers the ability to accrue pension benefits through 30 years of service. The City would gain from the potential retention of experienced senior level supervisors and officers, as well as improved continuity of service.

Steve Noll made the following motion, which was seconded by Ashley Weaver.

MOTION THE CITY COUNCIL APPROVE INCREASING THE SERVICE CAP IN THE POLICE PENSION PLAN TO A MAXIMUM OF 30 YEARS WITH OFFICERS INCREASING THEIR CONTRIBUTION RATE TO 8.0% BEGINNING IN THEIR 26TH YEAR.

COUNCIL ACTION REQUIRED

CONSENT AGENDA

Further discussion took place.

Dan Runion asked what the City's cost would be. Chief Schwartzkopf said that they have projected \$12,500 total for 2017. Runion asked how many officers that would include. Schwartzkopf responded that it is assuming 50% of retiring officers will take advantage of the increased service cap but it will take several years to know with certainty.

Terrence Gallagher asked if officers were permitted to buy time. Chief Schwartzkopf stated that they are not able to do so. Gallagher asked if the patrol officers had been informed of this plan and what their feedback was. Chief stated that this plan has been shared with all officers with positive feedback, a desire to retain senior officers, and to include all ranks in the plan.

Eric Mikkelson asked how this plan compares to Prairie Village's peer cities. Chief Schwartzkopf stated that currently, only Prairie Village and Wichita, KS have private pension plans. All other cities have joined the Kansas Police and Fireman's Retirement System which has a service cap at 36 years. Mikkelson asked how this impacted the assumed rate of return previously discussed earlier in the year. Steve Noll replied that it is completely separate and the rate of return has been accounted for in the budget.

Shelia Myers asked how many officers had 20-25 years of service. Chief Schwartzkopf stated that there are four: the three captains and himself. In 2020, 60% of the current supervisory level staff will be eligible to retire.

The motion to increase the service cap in the police pension plan was voted on and passed unanimously.

COU2016-54 Consider increase of vacation accrual for employees with 20 years of service

Amy Hunt shared that City Staff has been weighing strategies to improve the retention of tenured employees. Part of that research included what benefit changes could incentivize an employee to remain with the organization. Currently, when employees reach 10 years of continuous service they reach the cap in vacation accrual of 6.15 hours per pay period (20 days a year). One specific comparison that stood out where Prairie Village seemed to be falling behind was vacation accrual differences after an employee completes 20 years of service. If approved, this would currently impact 12 employees (4 - Public Works, 6 - Police Department, and 2 - City Hall).

Shelia Myers asked if this would create staffing issues when employees were taking vacation days. Amy Hunt replied that the time off would be subject to the same approval process, and would be at the discretion of the supervisor. If the time off were to negatively impact fellow staff, the supervisor could deny the request.

Andrew Wang asked if the City was losing staff members due to the benefits package. Chief Schwartzkopf shared, from a Police Department perspective, this is another tool that will help retain senior staff. While vacation time may not be a reason employees are leaving, with other incentives, increasing time off might encourage them to stay.

Jori Nelson asked if people are leaving to seek better benefits or if this would just prolong retirement. Amy Hunt stated that this would be in line with what other cities offer, and would hopefully delay retirements.

Eric Mikkelson asked about payout of time off upon retirement. Amy Hunt stated that the vacation accrual balance is paid out upon retirement. Quinn Bennion clarified that there was a maximum amount of hours that could be accrued.

Mayor Wassmer asked if there were employees that didn't use their accrued time off. Amy Hunt replied that certain employees are maxed out and must use the time or they stop accruing additional time.

Eric Mikkelson stated he would like to see more numbers showing the financial impact of this change. Quinn Bennion asked what assumptions he would like to see the figures based on. Maximum exposure would be if all eight eligible employees cashed out 400 accrued hours simultaneously, but that was very unlikely. Mikkelson stated he would like to know the average value per hour of the employees if they were to be paid out instead of using the time. Amy Hunt offered to run a few figures and provide more information to the Council. Mikkelson reiterated that even if they were estimates, he would like to see more information.

Wes Jordan clarified that this proposal was at the direction from Council to explore options to retain senior level employees at a minimal cost. While all retention efforts do come at some expense, this is a relatively small impact to the budget. There is no deadline on this decision; it was brought forward tonight in conjunction with the service time increase for the Police Department.

Serena Schermoly shared her gratitude to the City's long time staff and recognized their contributions. She believes this is a good creative solution. She clarified that the maximum accrual time is 400 hours. Amy Hunt confirmed.

Shelia Myers stated that this effort seems to be the opposite of what takes place in the private sector, where employers are trying to force out any employee over the age of fifty. Amy Hunt replied that we have many employees who are eligible to retire that have many good years of service left. The Police Department is especially impacted by this because officers are eligible to retire at a younger age. Wes Jordan stated that several policies have created an unintended perception that people need to retire after 20 years and this is another effort to change that perception.

Brooke Morehead stated that in her experience as an employer, it is incredibly costly to search and train replacement personnel. The institutional knowledge can be impossible to replace. She believes efforts to retain senior level staff is worth every penny.

Terrence stated that he believes that the extra cost is a wash because vacancies are often not filled immediately and at the same pay level therefore recovering the extra expense. Quinn Bennion confirmed that there is frequently a gap in rehiring staff.

Eric Mikkelson restated his desire to see more budget information. Ted Odell asked the Council to indicate their need for more information prior to voting on this item. By show of hands, a majority had sufficient information to go ahead and vote.

Ashley Weaver made the following motion, which was seconded by Brooke Morehead and passed 7 to 5.

MOVE THE CITY COUNCIL APPROVE PROPOSED INCREASE FOR EMPLOYEES WITH TWENTY YEARS OF CONTINUOUS SERVICE FROM TWENTY DAYS TO TWENTY FIVE DAYS PER YEARS.

**COUNCIL ACTION REQUIRED
CONSENT AGENDA**

DISCUSSION ABOUT SPECIAL USE PERMITS AND CONDITIONAL USE PERMITS IN RESIDENTIALLY ZONED PROPERTY

Chris Brewster introduced the review of Special Use Permits (SUP) and Conditional Use Permits (CUP) as a project initiative identified by City Council to be addressed in 2016. This item has been on the radar for clarification for several years, including under the previous City Planner. Staff will be seeking direction on what Council envisions as permitted uses that needs further review or consideration of changes, additions, or amendments.

Chris Brewster provided background information on how the City has typically used SUP and CUP. The two processes exist to provide the City maximum discretion when considering specific projects. They were originally intended to be completely separate processes but have become confused over time.

SUP and CUP are tools to allow uses that are not ideal for the long-range planning goals of a particular area or district, but are an appropriate interim use on a particular site that will not undermine other surrounding investments that are consistent with plans or goals for the area. Or, to allow uses that are not universally appropriate for a particular zoning district under generally applicable standards, but based on specific site conditions, uniqueness of a particular location, or design or operation criteria for that particular application, it may be appropriate.

In Prairie Village, SUP are intended for things that are more significant, where the analysis required in association with each application is more in depth, and where the City reserves more discretion in the review process. CUP are intended for things that

are more routine, smaller scale, or with some pre-approved conditions or performance criteria for each conditional use are listed in the ordinance.

Jori Nelson stated her desire to see SUP and CUP allowances changed so they don't negatively impact Prairie Village neighborhoods. Certain uses do not belong in residential areas. Residential areas should remain residential. Council needs to act in the interest of those residents who have chosen to live in Prairie Village.

Ted Odell stated that there have been some allowances that have certainly pushed the limit on what is appropriate in certain areas. While he doesn't want to impede future development, some items could be tightened up. He asked for clarification on what the Council needs to do to move forward on this item. Chris Brewster stated that with Council direction, Planning Commission would begin to discuss this item and make recommended changes that would clearly distinguish between SUP and CUP, set clearer expectations for developers, and set new standards based on district. He provided an example of micro-hospitals and emergency rooms. Both are eligible for an SUP as a "hospital" but there is a vast difference in the impact they have on the neighborhood in which they are located.

Sheila Myers asked for an example of temporary land use. Mayor Wassmer provided Kansas City Christian School as an example. They are permitted to use the land as a school, but if they were to move, a new tenant would not be grandfathered in to that use. The land would return to the original residential zoning. Myers stated her desire to ensure residents have ample opportunity to protest uses. She provided Slim Chickens as an example. Myers asked if accessory uses, such as a restaurant in the inn at the Meadowbrook development, would be allowed. Chris Brewster stated that would be allowed under the mixed use zoning.

Eric Mikkelson asked if the two items could be combined. Chris Brewster stated that rather than combine the two, the differences should be accentuated. Satellite dishes should not need to be approved under the same standards as a drive-thru restaurant. The procedures should be more specific and codify standards. Mikkelson asked if the standards should dovetail with the Village Vision. Brewster replied that the any standards set would need to comply with the City's master plan.

Mayor Wassmer stated her belief that the way the ordinance is written gives the assumption that the City will always allow certain items when that is not the case. Clarifying this process will benefit both the developers and neighborhoods. It is a proactive approach so a developer doesn't get too far into the process only to be denied an SUP. Mayor shared her desire that City Council is granted right of refusal on all drive-thru restaurants.

Shelia Myers asked how specific other cities ordinances are. Chris Brewster replied that Prairie Village's is unique as it is a list, rather than a matrix or spectrum dependent on zoning district.

Chris Brewster stated that the City has a range of options, including creating a district based matrix. The Planning Commission will create a new document with the help of the City Planner and city staff.

Eric Mikkelson asked if there should be a list of uses that are never allowed. Chris Brewster replied that ordinances are enabling documents and all uses that are not listed are assumed to be not allowed. Listing them creates a grey area.

Ted Odell directed Chris Brewster and city staff to work with the Planning Commission to recommend changes to the ordinances addressing Special Use Permits and Conditional Use Permits, and present those recommendations to Council at a future meeting.

INITIATIVE/PROJECT LIST UPDATE

Quinn Bennion shared an updated project/initiative list with City Council. City Council and city staff are currently involved with a number of significant initiatives. The projects are beyond the day to day operations. The format has changed from the previous version to highlight current projects receiving attention and projects that are “next up” or coming soon. The list previously assigned projects to be completed in a specific year; however, due to the nature of the projects it was challenging to limit them to a calendar year.

Terrence Gallagher asked about the inclusion of the upcoming five year park improvement plan. Quinn Bennion stated that the list only includes the CIP projects that involve a special committee, such as Mission Road and Village Square. The parks plan would be an ongoing initiative under the existing Parks and Recreation Committee.

Eric Mikkelson asked why the KCP&L electric charging stations were not being pursued. Quinn Bennion stated that KCP&L had considered doing a second round of stations but no further information has been received from them at this time which is why they were placed in the “not being pursued” category.

Brooke Morehead noted that the initiatives were refined during a Council work session in February. She would like to see the date of the work session standardized so that Council Members can plan accordingly and the initiatives can be set with the direction of the entire group.

Jori stated that she will be addressing the initiative related to the dangerous dog ordinance during the City Council meeting.

ADJOURNMENT

The Council Committee of the Whole meeting was adjourned at 7:20 p.m.

Ted Odell
Council President

**PLANNING COMMISSION AGENDA
CITY OF PRAIRIE VILLAGE
TUESDAY, OCTOBER 4, 2016
7700 MISSION ROAD
7:00 P.M.**

I. ROLL CALL

II. APPROVAL OF PC MINUTES - SEPTEMBER 13, 2016

III. PUBLIC HEARINGS

IV. NON-PUBLIC HEARINGS

PC2016-123 Request for Monument Sign Approval
6510 Mission Road
Current Zoning: R-1a
Applicant: Evan-Talon Homes

PC2016-126 Request for Monument Sign Approval
5300 West 86th Street
Current Zoning: R-1a
Applicant: Robin Norman with STAR Signs

PC2016-127 Request for Vacation of Easement
5012 West 70th Street
Current Zoning: R-1a
Applicant: Joe Elder

V. OTHER BUSINESS

Discussion - Countryside East Overlay District

Discussion - Changes to SUP and CUP regulations

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**

JazzFest Meeting Minutes August 11, 2016

Present:

JD Kinney, Donelea Hesse, Brooke Morehead, Amanda and Dave Hassett, Brian Peters, Mike Polich, Mike Schermoly, Lee Duong, Alex Toepfer and Meghan Buom
The minutes of the July 7 meeting were approved unanimously.

Budget:

JD reviewed the financial statement with the committee and all projected expenses are in line with the budget. Due to the impending change with trash services for the City, Deffenbaugh will likely not donate porta potties and trash cans, an estimated \$1,000 expense. He announced a new \$5,000 sponsorship from AT&T Giga Power. Brooke announced that the City would be contributing \$10,000 again for the 2017 event.

Talent:

Alex clarified artist start times based on contractual agreements. Mic checks have been arranged. Backline items need to be confirmed with Dan and Dave. Meghan will provide copies of the contracts to them. Shawnee Mission East will provide chairs and music stands as in the past.

Volunteers:

Lee has emailed all previous volunteers. With existing sign ups, volunteers from several area churches, and from Shawnee Mission East, volunteer shifts are in good shape. 75-85 volunteer shirts will be needed. A volunteer meeting will be held on the Thursday prior to event day at 6:00 p.m.

Marketing:

Mike is finalizing all promotional materials, including the Village Voice insert, stage banners, line up fan, yard sign, and volunteer t-shirt.

Food and Beverage:

Dave will finalize power requirements for each vendor and inform Dan of the needs. All contracts, COI, and payments have been received. Due to changes in the alcohol laws, beverages will need to be purchased from Rimann. Crawford will still make a donation in the amount of the purchase. Dave has confirmed that the ice vendor will be at the event. JD will confirm that he has enough cups. Joyce and Meghan will confirm that there are enough wristbands. HyVee will provide food for the stage set up crew.

Other:

Brooke Morehead suggested having a promotional booth at the upcoming KU Kickoff event at Corinth Square. Meghan will contact Donna Potts.
Brian will coordinate an ATM. The City will provide two credit card portals, one for the main gate and one for the merchandise tent.

Next Meeting:

Wednesday, August 24, 2016 in the Council Chambers.
The meeting was adjourned.

JazzFest Meeting Minutes August 24, 2016

Present:

JD Kinney, Donelea Hesper, Brooke Morehead, Amanda and Dave Hassett, Brian Peters, Dan Andersen, Lee Duong, Jane Andrews, Meghan Buom and Joyce Hagen Mundy.

Operations Report:

Dan Andersen distributed the setup schedule for the event and asked committee members to review and advise him of any changes. Public Works will begin setup on Tuesday. Stage and tents will go up on Thursday. Friday will have the delivery of the portable toilets, ice, beer, backline and piano with work on the lighting and sound. Saturday schedule includes the artist sound checks and arrival of the food trucks. Dan reported that the four large banners have been updated and would be hung later this week.

Brooke Morehead stated she had spoken with a company regarding the possibility of a video feed. Dan stated he had been told this would cost \$5,000. Brooke would follow-up with the thought of an in-kind donation.

Ricardo and Mike Polich will operate the spotlights. Dan requested Saturday lunch for the stage crew of 7 at 11:30.

Budget:

JD reviewed the financial statement with the committee and noted projected expenses are in line with the budget; however, he noted there are several marketing costs that he does not have actual amounts on yet. He was pleased to report that the city's new trash service provider will be donating the items that were previously donated by Deffenbaugh so those costs have been removed from the budget. The estimated cost for the festival is \$52,500 with \$50,000 in revenue available. No new donations have been received. Everything after the first \$2,500 in ticket sales should be profit for the event.

Talent:

The artist performance times listed in the Village Voice are correct and vary slightly from that printed on the line-up card. JD reported that he received an e-mail from Dan Thomas asking if it would be possible to provide hotel accommodations for Wayne Hawkins. He noted the contract only included airfare for Mr. Hawkins. Committee members discussed the request and agreed to offer accommodations for Saturday night only if necessary. It was noted that Wayne is from the KC area and has family in the area. JD asked Alex to confirm if Mr. Hawkins was expecting transportation to and from the airport.

Amanda confirmed that Marilyn Maye would have the community center and asked that Jane confirm what was anticipated for food. Dave noted no food requirements were listed in the contract. John Wilinski confirmed by e-mail that the hotel rooms for Marilyn's two artists for two nights have been secured.

Marketing

J.D. distributed a printout of the fans that have been ordered. They include the schedule on one side with sponsor logos on the back. Delivery is expected the middle of next week. The yard signs have been ordered, but due to a printing backlog, they will not be available until next Wednesday. Joyce will notify members when the signs are available. The September issue of the Pitch will include a quarter page ad that will be the same as the fan cover. The Pitch notified

was that the PV Jazz fest has been nominated in their Best of KC readers poll for Best Jazz event! You can vote through September 8th on pitch.com

90 volunteer T-shirts have been ordered and are scheduled to be delivered on September 5th. The event t-shirt design was distributed. Michael ordered two different colors (grey shirts and teal shirts). JD reported new banners have been ordered for the sides of the stage reflecting our sponsors.

Food/Beverages

Dave reported that the liquor license has been applied for and should be received this week. According to Kansas liquor laws, the beer and wine will need to be purchased through Mary Rimann. The City will make payment and Crawford's will make a check to the City in the same amount. Joyce indicated that payment could be made on her city credit card.

Dave has made arrangements with Hy-Vee for the necessary food and drink. They will deliver the day of the festival and any unused/unsold product can be returned. Joyce will give Kevin at Hy-Vee and Mary Rimann credentials to get into the festival. The food trucks have been scheduled, payment and insurance certificates received and power information supplied.

Brian Peters reported that he can secure an ATM for the event at a cost of \$100 if the ATM could be secured. JD advised him to work with Dan on location for the ATM. The committee agreed to go forward with this.

Volunteers:

Lee has emailed all previous volunteers. She has approximately 55 volunteers current not including committee members. JD reported from Alex that he had 15 to 20 student volunteers that would be contacting Lee. JD asked for student volunteer help on Friday to move the music chairs and stands from Shawnee Mission East to the festival site. Dave will get Lee and Joyce his volunteer names. There will be three primary shifts on Saturday and volunteers are needed for take down on Sunday morning. The first shift will be 1 p.m. to 4 p.m. and will include set-up responsibilities. The second shift will be 4 p.m. to 7 p.m. and the final shift will be 7 p.m. to 10 p.m. Volunteer locations will include three entry points (3 volunteers at the main and pool entrance and 2 at the back entrance). Dave has volunteers for the beer tent. Donelea has volunteers for the merchandise tent. Amanda would like a student volunteer that could serve as a "runner" for her. Parking and driveway volunteers are necessary. It was recommended that specific set-up assignments be given out such as posting of parking signs, hanging of banners, etc. It was recommended to try to get 4 volunteers for the second shift at the main and pool as this tends to be a peak time. Volunteers should be advised to go eat at the conclusion of their shift, Amanda will have additional pizzas ready at those times. Student volunteers will be used to sell raffle tickets and water/soda.

Other:

Donna Potts has stated the city can have a booth at the KU kickoff this Friday evening. After discussion, it was determined that staffing was not available for the event. Joyce will take line-up cards down to the restaurants and ask them to make them available.

Next Meeting:

The next meeting will be Thursday, September 8th at 5:30 p.m. prior to the volunteer training at 6 p.m.

Prairie Village Environment and Recycling Committee

August 24, 2016

Pete Jarchow, for the Steering Committee, called the meeting to order at 5:30 p.m.

Members attending were Pete, Karin McAdams, Maurine Kierl, Devin Scrogum, Thomas O'Brien, Robert Roberge, Al Pugsley, Catherine Sinclair, Polly Swafford and Deborah English. Linda Marcusen is a new member. Wes Jordan, Jori Nelson and Alley Williams, the Prairie Village staff's new representative to the committee, were there from the city.

The May minutes were approved.

Al Pugsley announced an electric car show to take place on September 14.

Committee reports:

Community Forum:

- The forum will be held at Village Church on October 6. Our partners in sponsoring the event are the Sierra Club and KNRC (Kansas Natural Resources Council).
- A description of the event will be published in the *Village Voice*, and the *Shawnee Mission Post* (previously the *PV Post*).
- Four speakers are scheduled to speak on different aspects of the effect of budget cuts on Kansas environmental issues.
- The price of the event is \$15; this is lower than before because the menu will consist of a variety of appetizers rather than a full meal. They should arrive about 5:00.
- PCERC needs to provide lots of volunteers for setting up and serving food.

[At this point Pete summarized our committee system for the benefit of new members: Village Fest, Education, Earth Fair, Community Gardens and the Steering Committee are the permanent sub-committees.]

Education:

- Maurine asked that we "like" the Facebook page called JoCo Environmental Advocates, which is really a Prairie Village page.
- Please let Maurine know about local environmental events.
- Regarding signage for educational events, it seems that Public Works has a storage building with a loft, but our banner and two posters did not turn up there. Margaret Goldstein may have the banner.

Earth Fair:

- The sub-committee agrees that it would be appropriate to invite Chad Cooper to head up the fair again next year.
- The fair is scheduled for April 15, 2017.
- Karin would prefer not to be the committee chair for this coming fair-planning season.

Community Gardens:

- A church at 63rd St. and Nall has offered space for another garden site, but there are reasons to think this over. It's a lot of work to prepare another site, and it's not clear that the waiting list is long enough to justify it at this time.
- New fencing has reduced the problems with unauthorized 2- and 4-leggeds using the garden.

City news: Wes Jordan, helping Alley Williams to prepare for future reports.

- Waste collection issues:
 - The contract with Deffenbaugh, in effect since 2002, has not been renewed, due to many complaints.
 - The best bid came from Republic, a nationwide company that services Liberty, MO. They seem to provide good customer service. Since starting with them at the New Year, right after Christmas, the transition could be challenging. 17,000 bins need to be switched out by then.
 - Mission Chateau and the Meadowbrook development plan to use city recycling services.
- Meadowbrook:
 - Many were distressed to see so many trees cut down and ponds drained, but this is necessary, as the grade will be changed. The old trees would die if left alone.
 - The park plan is out to bid, and a developer is being sought for the senior facility. The old clubhouse will be replaced; it is not in good enough shape to save.
- The city no longer has a contract with the textile service, which never met expectations.
- The city council discussed economic incentive for electric car charging stations, but nothing more has happened. They could take it up again if someone brought it up.

Coming up...

- Joan Leavens will be speaking at our September meeting.
- Tom Jacobs from MARC is willing to address a future meeting.
- The E-recycling event will take place on October 8 at Black and Veatch from 8 am to 2pm. As we partner with Overland Park on this, our committee needs to supply its share of volunteers.
- At the September meeting, members will be invited to sign up for committee slots.

The meeting was adjourned at 7:00 p.m. The next meeting will be held at 5:30 on Wednesday, September 28, at 5:30 p.m.

Respectfully submitted,

Karin McAdams

PRAIRIE VILLAGE ENVIRONMENT AND RECYCLE COMMITTEE

May 25, 2016

Pete Jarchow, for the Steering Committee, opened the meeting at 5:32 p.m.

Members attending were Pete, Karin McAdams, Penny Mahon, Maurine Kierl, Devin Scrogun, Thomas O'Brien, Robert Roberge and Margaret Goldstein. Caitlin Dix and Tim Schwartzkopf, Prairie Village Chief of Police, were visiting. Jori Nelson represented the city council.

Members approved the minutes from April.

Special request: Tim Schwartzkopf, Prairie Village Chief of Police on recycling or reusing wire clothes hangers.

- Police uniforms require frequent dry cleaning, and the designated local cleaners, like most others, return them on wire hangers. Those with jackets are paper-covered, and the cleaners will take those back, but they won't take back the pants hangers with cardboard tubes.
- Metal recyclers may not want them because of the twist in the metal and/or because of a presumed plastic coating on the wire. A great many of these hangers go to the landfill. Is there another way to deal with them?
- Someone at MARC (Mid-America Regional Council) is likely to know, and Penny Mahon offered to contact them.

Featured discussion: Penny Mahon leading a discussion on the points raised by Kristin Riott of Bridging the Gap in a recent presentation.

- Pollinators:
 - Mayor Laura Wassmer has signed the Mayor's Monarch Pledge and is enthusiastic about local efforts to support pollinators.
 - Keith Bredehoeft, Prairie Village Public Works Director, is managing the planting of a pollinator garden in Bennett Park.
 - Jori noted that the city is planning to redo the planting in front of City Hall, and feels that this is a good opportunity for input. Perhaps the grassy area in front could be made into a butterfly garden.
 - Finding or creating a tool for mapping pollinator gardens in Prairie Village could increase the effectiveness of the gardens.
- Ideas for encouraging tree planting and other useful initiatives:
 - Work with schools to engage in tree plantings, with student participation.
 - Partner with the Heartland Tree Alliance on tree-related activities. We should contact the Tree Board and then the Tree Alliance.
 - We could invite the Blue River Watershed Association to share our booth at the Village Fest.
 - A native garden tour in Prairie Village could help increase awareness and acceptance. The Kansas City Native Plant initiative could help.
- New business

- Maurine Kierl has arranged for the PVERC to have a booth at the Prairie Village Art Fair on June 3-5. She passed around a sheet for volunteer sign-up.
- Pete can pick up Monarch Watch pamphlets in Lawrence to be handed out at the art fair.

The meeting was adjourned at 7:00 p.m. The next meeting will be held at 5:30 on Wednesday, July 27 at 5:30 p.m.

Respectfully submitted,

Karin McAdams



CITY OF PRAIRIE VILLAGE PROCLAMATION

WHEREAS, the citizens of Prairie Village take great civic pride in their community and the good deeds performed therein; and

WHEREAS, the citizens of Prairie Village strive to maintain the high quality of life now enjoyed by most citizens and also recognize there are less fortunate in the Greater Kansas City area; and

WHEREAS, Prairie Village has a unique opportunity to lend its support to Harvesters in their efforts to lessen some of the hunger of the people in the Greater Kansas City area (including Johnson and Wyandotte Counties) by supporting them in their goal of distributing the high protein food, peanut butter, to social and charitable agencies, serving over 22,000 households; and

NOW, THEREFORE, BE IT RESOLVED, that I, Laura Wassmer, Mayor of the City of Prairie Village, do hereby designate October 10 – 14, 2016 as

PEANUT BUTTER WEEK

in the City of Prairie Village, Kansas, and call upon all citizens to support this worthwhile cause by donating jars of peanut butter or by providing a cash donation for the purchase of peanut butter.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City to be affixed this 3rd day of October, 2016

Mayor Laura Wassmer

City Clerk

Date

**Council Members
Mark Your Calendars
October 3, 2016**

October 2016	State of Arts in the R.G. Endres Gallery
October 8 - 10	League of Kansas Municipalities Conference, Overland Park
October 10 - 16	Prairie Village Peanut Butter Week
October 14	State of the Arts Reception in the R.G. Endres Gallery
October 17	City Council Meeting
November 2016	Jeff Foster, Jonathan Crabtree & Louanne Hein in the R.G. Endres Gallery
November 7	City Council Meeting
November 19	Northeast Johnson County Chamber Gala
November 21	City Council Meeting
November 24-25	City Offices Closed for Thanksgiving Holiday
December 2016	Chris Willey in the R.G. Endres Gallery
December 5	City Council Meeting
December 9	Mayor's Holiday Volunteer Party
December 19	City Council Meeting
December 26	City offices closed for the Christmas Holiday