

COUNCIL COMMITTEE OF THE WHOLE
Council Chambers
Monday, February 06, 2017
6:00 PM

AGENDA

TED ODELL, COUNCIL PRESIDENT

AGENDA ITEMS FOR DISCUSSION

- COU2017-09 Consider approval of an interlocal agreement with the City of Overland Park for installation of streetlights on 95th Street and on Nall Avenue
Keith Bredehoeft

- *COU2017-08 Consider approval of a contract with McConnell & Associates for the McCrum Park tennis court rehabilitation
Keith Bredehoeft

- *COU2017-10 Consider approval of Amendment 1 to the Construction Inspection Agreement with Olsson Associates for Meadowbrook Public Improvements
Keith Bredehoeft

- Staff update - Countryside East Overlay District
Chris Brewster and Wes Jordan

***Council Action Requested the same night**



PUBLIC WORKS DEPARTMENT

Council Committee Meeting: February 6, 2017
Council Meeting Date: February 20, 2017

CONSIDER INTERLOCAL AGREEMENT WITH THE CITY OF OVERLAND PARK FOR INSTALLATION OF STREETLIGHTS ON 95TH STREET AND ON NALL AVENUE.

RECOMMENDATION

Move to approve the interlocal agreement with the City Overland Park for the installation of streetlights on 95th Street and on Nall Avenue.

BACKGROUND

This streetlight project with Overland Park is part of our 2017 CIP. Overland Park approached us with this project in the last few years and we included in the CIP for 2017. Overland Park is upgrading many of their older arterial streetlight systems and 95th Street between Mission Road and Nall Avenue and Nall Avenue between 83rd Street and 95th Street are two of their desired locations. This project will install a completely new streetlight system including new LED lights, new poles, new wiring, and new streetlight controllers.

The agreement states that Prairie Village is responsible for 50% of the project costs, not to exceed \$100,000.

Overland Park is administering the design and construction of this project.

FUNDING SOURCE

\$100,000 in funding for this project is included in the 2017 CIP.

RELATION TO VILLAGE VISION

TR1a. *Ensure that infrastructure improvements meet the needs of all transportation users.*

ATTACHMENTS

1. Interlocal Agreement with the Overland Park.

PREPARED BY

Keith Bredehoeft, Public Works Director

February 2, 2016

AGREEMENT BETWEEN THE CITY OF OVERLAND PARK, KANSAS, AND THE CITY OF PRAIRIE VILLAGE, KANSAS, FOR THE INSTALLATION OF STREETLIGHTS ON 95TH STREET (NALL AVENUE TO MISSION ROAD) AND ON NALL AVENUE (83RD STREET TO 95TH STREET) (SL-1437)

THIS AGREEMENT, made and entered into this ____ day of _____, 2016, by and between the CITY OF OVERLAND PARK, KANSAS (hereinafter "OVERLAND PARK"), and the CITY OF PRAIRIE VILLAGE, KANSAS (hereinafter "PRAIRIE VILLAGE"), each party having been organized and now existing under the laws of the State of Kansas (hereinafter OVERLAND PARK and PRAIRIE VILLAGE may be referred to singularly as the "Party" and collectively as the "Parties").

WITNESSETH:

WHEREAS, the Parties hereto have determined it is in their best interest to make the installation of streetlights on 95th Street (Nall Avenue to Mission Road) and on Nall Avenue (83rd Street to 95th Street) as such improvement is hereinafter described; and

WHEREAS, K.S.A. 12-2908 and K.S.A. 68-169 authorize the Parties hereto to cooperate in making the public improvement; and

WHEREAS, the Governing Bodies of each of the Parties hereto have determined to enter into this Agreement for the aforesaid public improvement, as authorized and provided by K.S.A. 12-2908 and K.S.A. 68-169; and

WHEREAS, the Governing Body of PRAIRIE VILLAGE did approve and authorize its mayor to execute this Agreement by official vote of the Body on the ____ day of _____, 2016; and

WHEREAS, the Governing Body of OVERLAND PARK did approve and authorize its mayor to execute this Agreement by official vote of the Body on the ____ day of _____, 2016.

NOW, THEREFORE, in consideration of the above recitals, the mutual covenants and agreements herein contained, and for other good and valuable considerations, the Parties hereto agree as follows:

1. PURPOSE OF AGREEMENT. The Parties hereto enter into this Agreement for the purpose of constructing the installation of streetlights on 95th Street (Nall Avenue to Mission Road) and on Nall Avenue (83rd Street to 95th Street) as heretofore described by performing the following work:

- A. Design the System on 95th Street and on Nall Avenue, within the limits described, to replace the existing Kansas City Power and Light (KCP&L) installed streetlighting system. The design of the System will be performed by Overland Park;
- B. The System will consist of light emitting diodes (LEDs) luminaires with a gray finish;
- C. The poles will be 40 foot aluminum poles with a Natural Aluminum finish;
- D. The poles will be installed (1) in the median (2) three to five feet behind the curb;

- E. Poles will be installed on a screw-in foundations with HDPE conduit between appurtenances;
- F. The streetlight control centers (if needed) will be located based on coordination with KCP&L and available power locations. The control centers will have a Natural Aluminum finish;
- G. The System, consisting of poles, foundations, luminaires, arms, conduit, cable, junction boxes, control center, and miscellaneous materials will be installed by Overland Park to Overland Park standards;
- H. Repair concrete or brick paver medians as required to install conduit, junction boxes, and poles;
- I. Provide traffic control;
- J. Sod or seed all disturbed areas;
- K. Restore landscaping and irrigation systems; and
- L. Construct other incidental items associated and integral with the above referenced construction.

2. ESTIMATED COST OF PROJECT.

- A. The estimated cost of construction of the Improvement covered by this Agreement, exclusive of the cost of right-of-way or easement acquisition, is Two Hundred Thousand and 00/100 DOLLARS (\$200,000.00).
- B. The cost of making the Improvement shall include:
 - (1) Labor and material used in making the Improvement; and
 - (2) Such other expenses which are necessary in making the Improvement, exclusive of the cost of acquiring real property and any improvement thereon for the location of the Improvement. These expenses include but are not limited to design, project administration, construction inspection, material testing and utility relocations.
- C. The cost of making the said Improvement shall be distributed between the Parties as follows:
 - (1) PRAIRIE VILLAGE shall pay **50%** of the local share of said Improvement (estimated to be **\$100,000.00**).
 - (2) OVERLAND PARK shall pay **50%** of the local share of said Improvement (estimated to be **\$100,000.00**).
 - (3) Each Party shall acquire and pay all costs associated with the right-of-way or easement acquisition for that portion of the project located within its respective boundary. Additionally, each Party shall pay the cost of financing and/or bonding

its share of the project cost.

3. FINANCING. OVERLAND PARK and PRAIRIE VILLAGE shall each pay their portion of the cost with monies budgeted and appropriated funds.
4. OVERLAND PARK ADMINISTRATION OF PROJECT. It is acknowledged and understood between the Parties that since there are two separate entities included within the proposed Improvement, one of the entities should be designated as being “in charge” of the project to provide for its orderly design and construction. However, both entities shall have the right of review and comment on project decisions at any time throughout duration of this Agreement, and any subsequent agreements hereto. The Improvement shall be constructed and the job administered by OVERLAND PARK acting by and through the OVERLAND PARK Director of Public Works (hereinafter the “PW Director”), who shall be the principal public official designated to administer the Improvement; provided, the PW Director shall, among his several duties and responsibilities, assume and perform the following:
 - A. Make all contracts for the Improvement, including soliciting bids by publication in the official newspaper of OVERLAND PARK. In the solicitation of bids, the most favorable bid shall be determined by OVERLAND PARK administering the project and the Governing Body of OVERLAND PARK approving the lowest responsible bidder for the project, except that the Governing Body of PRAIRIE VILLAGE reserves the right to reject the successful bidder in the event that the bid price exceeds the engineer’s estimate. If all bids exceed the estimated cost of the Improvement, then either OVERLAND PARK or PRAIRIE VILLAGE shall have the right to reject the bid. In such case, the project shall rebid at a later date.
 - B. Submit to PRAIRIE VILLAGE on or before the 10th day of each month, or as received, estimates of accrued costs of constructing the Improvement for the month immediately preceding the month the statement of costs is received; provided that PRAIRIE VILLAGE shall within thirty (30) days after receipt of a statement of costs as aforesaid, remit their portion of the accrued costs to OVERLAND PARK as herein agreed.
 - C. Upon completion of the Improvement, the PW Director shall submit to PRAIRIE VILLAGE a final accounting of all costs incurred in making the Improvement for the purpose of apportioning the same among the Parties as provided herein.
 - D. PRAIRIE VILLAGE shall be named as additional insured on all applicable certificates of insurance issued by any contractor for this Improvement (the “Contractor(s)”).
 - E. OVERLAND PARK shall require performance and completion bonds for the Improvement from all Contractors and require that all Contractors discharge and satisfy any mechanics or materialman's liens that may be filed.

- F. OVERLAND PARK shall require that any Contractor provide a two-year performance and maintenance bond for the Improvement. As Administrator, OVERLAND PARK will, upon request of PRAIRIE VILLAGE, make any claim upon the maintenance bond or performance bond and require that the Contractor fully perform all obligations under the performance and maintenance bonds, and this obligation shall survive the termination of this Agreement and shall be in force and effect for the full term of the performance and maintenance bond.
- G. OVERLAND PARK shall include in contracts for construction a requirement that the Contractor defend, indemnify and save OVERLAND PARK and PRAIRIE VILLAGE harmless from and against all liability for damages, costs, and expenses arising out of any claim, suit or action for injuries or damages sustained to persons or property by reason of the acts or omissions of the Contractor and the performance of his or her contract.
5. DURATION AND TERMINATION OF AGREEMENT. The Parties hereto agree that except for the obligations of OVERLAND PARK which may arise after completion of the Improvement as set forth in Section 4, Paragraph F, above, this Agreement shall exist until the completion of the aforesaid Improvement, which shall be deemed completed upon certification to each of the Parties hereto by the PW Director advising that the Improvement has been accepted by him as constructed; provided that upon the occurrence of such certification by the PW Director, this Agreement shall be deemed terminated and of no further force or effect.
6. PLACING AGREEMENT IN FORCE. The administering body described in Section 4 hereof shall cause this Agreement to be executed in triplicate. Each Party hereto shall receive a duly executed copy of this Agreement for their official records.
7. AMENDMENTS. This Agreement cannot be modified or changed by any verbal statement, promise or agreement, and no modification, change nor amendment shall be binding on the Parties unless it shall have been agreed to in writing and signed by both Parties.
8. JURISDICTION. This Agreement shall be construed according to the laws of the State of Kansas and may be enforced in any court of competent jurisdiction.

(The remainder of this page has intentionally been left blank.)

IN WITNESS WHEREOF, the above and foregoing Agreement has been executed by each of the Parties hereto on the day and year first above written.

CITY OF OVERLAND PARK, KANSAS

By _____
CARL GERLACH, MAYOR

ATTEST:

MARIAN COOK, CITY CLERK

APPROVED AS TO FORM:

MICHAEL KOSS
ASSISTANT CITY ATTORNEY II

CITY OF PRAIRIE VILLAGE, KANSAS

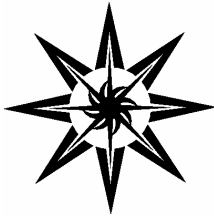
By _____
LAURA WASSMER, MAYOR

ATTEST:

JOYCE HAGEN MUNDY, CITY CLERK

APPROVED AS TO FORM:

CATHERINE P. LOGAN, CITY ATTORNEY



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: February 6, 2017

Council Meeting Date: February 6, 2017

CONSIDER APPROVAL OF A CONTRACT WITH McCONNELL & ASSOCIATES FOR THE MCCRUM PARK TENNIS COURT REHABILITATION.

RECOMMENDATION

Move to authorize the Mayor to sign the Construction Contract with McConnell & Associates for Project BG420001, McCrum Park Tennis Court Rehabilitation for \$76,032.50.

BACKGROUND

On December 2, 2016 the City Clerk opened bids for Project BG420001, McCrum Park Tennis Court Rehabilitation. Two bids were received.

Name of Bidder	Bid
Engineers Estimate	\$96,492.00
McConnell & Associates	\$76,032.50
Primetime Contractors	\$106,662.00

This contract consists of constructing a new court on top of the existing court at McCrum Park and using the existing fence. This construction is similar to the construction completed at Harmon Park.

City staff has reviewed the bid for accuracy and recommends award to the low bidder, McConnell & Associates.

Update to January 16, 2017 Council Memo-

This item was first discussed at the January 16, 2017 Council Meeting. During that meeting possible funding from the United States Tennis Association (USTA) was discussed. Public Works has researched these possible grants and below is what was determined.

- USTA National and USTA Missouri Valley were both contacted.
- USTA National and USTA MV Discussions- Their programs are designed to help communities with technical information to help communities build good tennis court projects. They provide design standards and strongly encourage utilizing contractors that specialize in tennis court construction. They also do provide some funding, up to \$20,000 to reconstruct tennis courts but the funding is designed to assist communities that can't fully fund these types of projects. In our case, with this project being included in our 2016 CIP and now that we are at the point of awarding to a contractor, we would not be able to show a funding need for this specific project. They suggested that for future projects that we submit for funding early on in the planning process.

Options at this point-

- 1- Continue as planned in the memo above.

- 2- Change the project to a less expensive rehabilitation costing less than \$20,000. Public Works chose not to pursue this option as we felt the cracks and subgrade issues on the south half of the court were significant enough that we did not feel it would be a good investment since, in our opinion, these cracks would reflect back through the new surface and we would have problems again in less than 5 years.
- 3- Do not make repairs. This option would cause the court to be closed and then removed.

FUNDING SOURCE

\$100,000 is identified in the 2016 CIP for this project.

ATTACHMENTS

1. Construction Agreement with McConnell & Associates

PREPARED BY

Keith Bredehoeft, Public Works Director

February 2, 2017

CONSTRUCTION AGREEMENT

For

**BG420001
McCrum Park
Tennis Court Rehabilitation**

BETWEEN

CITY OF PRAIRIE VILLAGE, KS

AND

McConnell and Associates Corp.

**CONSTRUCTION CONTRACT
FOR
MC CRUM PARK TENNIS COURT REHABILITATION**

**BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
MC CONNELL AND ASSOCIATES CORP.**

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 McConnell and Associates Corp, hereinafter termed in this agreement, “**Contractor**”, for the construction and completion of Project BG420001 McCrum Park Tennis Court Rehabilitation , (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 Project Manager stating that to the best of the project manager's knowledge, information and belief, and on the basis of the Project Manager's on-site visits and inspections, the Work described in an Application for Payment has been completed in accordance with the terms and conditions of the Contract Documents and that the amount requested in the Application for Payment is due and payable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PROJECT MANAGER shall mean the person appointed by the Public Works Director for this Contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. ENTIRE AGREEMENT:

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

3. INTENT AND INTERPRETATION

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

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

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

4. **CONTRACT COST**

The City shall pay the Contractor for the performance of the Work embraced in this Contract, and the Contractor will accept in full compensation therefore the sum (subject to adjustment as provided by the Contract) of Seventy-Six Thousand, Thirty-two **DOLLARS and 50 CENTS (\$76,032.50)** for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

5. **WORK SUPERINTENDENT**

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

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

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

6. PROJECT MANAGER

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

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

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

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

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

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

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

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

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

7. WORK SCHEDULE:

- 7.1 The Work is comprised of one large project (sometimes referred to as “**Total Project Work**”) and, in some cases, is partitioned into smaller subprojects referred to in this Agreement as “**Project Segments**.” A Contract Time shall be stated in the Contract Documents for both the Total Project Work and, when applicable, the Project Segments.
- 7.2 At the time of execution of this Contract, the Contractor shall furnish the Project Manager with a schedule (“**Work Schedule**”) setting forth in detail (in the critical path method) the sequences proposed to be followed, and giving the dates on which it is expected that Project Segments will be started and completed within the Contract Time. The Work Schedule is subject to approval by the City.
- 7.3 Monthly Work Schedule reports shall accompany the Contractor's pay request for Work completed. Where the Contractor is shown to be behind schedule, it shall provide an accompanying written summary, cause, and explanation of planned remedial action. Payments or portions of payments may be withheld by the City upon failure to maintain scheduled progress of the Work as shown on the approved Work Schedule.
- 7.4 At a minimum the Contractor shall update and submit the Work Schedule for review weekly, unless otherwise agreed upon by the City.
- 7.5 The Contractor, within ten (10) calendar days after being instructed to do so in a written notice from the City, shall commence the Work to be done under this Contract.
- 7.6 If at any time, in the opinion of the Project Manager or City, proper progress is not being maintained; changes shall be proposed in the Work Schedule and resubmitted for consideration and approval.
- 7.7 If the Contractor has not completed Project Segments and is within a non-performance penalty period, it shall not be allowed to undertake a new Project Segment until the Project Segment in dispute is completed, unless expressly permitted by the City.
- 7.8 The operation of any tool, equipment, vehicle, instrument, or other noise-producing device is prohibited to start before or continue after the hours of 7 AM and 10 PM, Monday through Friday (except Fridays which shall be until Midnight) and 8 AM and midnight on Weekends (except Sunday which shall be 10 PM). Violation of this requirement is Prima Facie Violation of City Municipal Code 11-202.
- 7.9 No work shall be undertaken on Saturdays, Sundays and Holidays (Christmas, New Years, Martin Luther King’s Birthday, President’s Day, Memorial Day, Independence Day, Labor Day and Thanksgiving) without the express written approval of the City Project Manager. If it is necessary to perform proper care, maintenance, or protection of work already completed or of equipment used, or in the case of an emergency verbal permission may be obtained through the Project Manager.
- 7.10 Night work may be established by the Contractor, as a regular procedure, with the written permission of the City; such permission, however, may be revoked at any time by the City if the Contractor fails to maintain adequate equipment for the proper prosecution and control of all operations performed as part of the Work.

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

8. DELAYS AND EXTENSIONS OF TIME

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

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

9. ADVERSE WEATHER:

9.1 Extensions of time for Adverse Weather shall be granted only under the conditions as hereinafter provided.

9.2 For conditions of weather or conditions at the site, so unusual as not to be reasonably anticipated, as determined by the Project Manager, an average or usual number of inclement days when work cannot proceed are to be anticipated during the construction period and are not to be considered as warranting extension of time.

9.3 “**Adverse Weather**” is defined as atmospheric conditions or the impact thereof at a definite time and place, which are unfavorable to construction activities such that they prevent work on critical activities for 50 percent or more of the Contractor's scheduled workday.

9.4 “**Unusually Severe Weather**” is defined as weather, which is more severe than the adverse weather anticipated for the season, location, or activity involved.

9.5 Time Extensions for Unusually Severe Weather: In order for any request for time extension due to Unusually Severe Weather to be valid, the Contractor must document all of the following conditions:

- The weather experienced at the Work site during the Contract period is more severe than the Adverse Weather anticipated for the Work location during any given month.

- The Unusually Severe Weather actually caused a delay to the completion of the Work.
- The delay must be beyond the control and without fault or negligence by the Contractor.

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

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

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

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

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

10. LIQUIDATED DAMAGES

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

11. PAYMENT PROCEDURE

- 11.1 Based upon Applications for Payment submitted to the Project Manager by the Contractor and Certificates for Payment issued by the Project Manager, the City shall make progress payments on account of the contract sum to the Contractor as provided below and elsewhere in the Contract Documents.
- 11.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month or on a mutually agreed date by City and Contractor.
- 11.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal on the first day of each month of an Application for Payment, all Work for which payments have been received from the City shall be free and clear of liens, claims,

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

- Evidence that the Work will not be completed in the time required for substantial or final completion;
 - Persistent failure to carry out the Work in accordance with the Contract;
 - Damage to the City or a third party to whom the City is, or may be, liable;
 - Evidence that the Work is not progressing according to agreed upon schedule by both parties.
- 11.11 In the event that the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in this subparagraph, the Contractor shall promptly comply with such demand and refund such monies to the City.
- 11.12 Neither the observation by the City or any of the City's officials, employees, or agents, nor any order by the City for payment of money, nor any payment for, or acceptance of, the whole or any part of the Work by the City or Project Manager, nor any extension of time, nor any possession taken by the City or its employees, shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the City, or any right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of any other or subsequent breach.

12. COMPLETION AND FINAL PAYMENT

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

13. CLAIMS BY THE CONTRACTOR

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

- 13.7 If a mutually agreeable adjustment cannot be obtained, the City reserves the right to terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the Work.
- 13.8 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall not include standby costs, indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties.
- 13.9 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving Final Acceptance of the Work shall be extended upon the written notice and claim of the Contractor to the City, for such reasonable time as the City may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven calendar days after the occurrence of the event or the first appearance of the condition-giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Work. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this subparagraph, any claim for an extension of time shall be waived.
- 13.10 The Contractor shall delay or suspend the progress of the work or any part thereof, whenever so required by written order of the City, and for such periods of time as required; provided, that in the event of such delay or delays or of such suspension or suspensions of the progress of the work, or any part thereof, the time for completion of work so suspended or of work so delayed by such suspension or suspensions shall be extended for a period equivalent to the time lost by reason of such suspension or suspensions; but such order of the City or Project Manager shall not otherwise modify or invalidate in any way, any of the provisions of this Contract. In the event that the work shall be stopped by written order of the City, any expense, which, in the sole opinion and judgment of the City, is caused by the City, shall be paid by the City to the Contractor.
- 13.11 In executing the Contract Documents, the Contractor expressly covenants and agrees that, in undertaking to complete the Work within the time herein fixed, it has taken into consideration and made allowances for all hindrances and delays incident to such work, whether growing out of delays in securing materials or workers or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the work, or any portion thereof, included in this Contract, except as provided herein.
- 13.12 In addition to the Project Manual particular to Mobilization found elsewhere in this document, additional mobilization shall not be compensable for work outside of the designated areas for work deemed essential by the City. A quantity of work equal to as much as 10% of the total Contract may be required to be performed beyond the boundaries of the designated work areas

14. CHANGES IN THE WORK

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

15. INSURANCE AND BONDS.

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

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

15.3 Minimum Requirements Commercial General Liability Policy Limits -

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

Policy MUST include the following conditions:

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

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

Limits (Same as Commercial General Liability) -

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

Policy MUST include the following condition:

NAME CITY OF PRAIRIE VILLAGE AS "ADDITIONAL INSURED"

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

Limits -

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

15.6 Workers' Compensation. This insurance shall protect the Contractor against all claims under applicable state workers' compensation laws. The Contractor shall also be protected

against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of workers' compensation law. The policy limits shall not be less than the following:

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

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

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

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

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

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

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

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

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

15.12 Bonds and Other Performance Security. Contractor shall provide a Performance Bond, Maintenance Bond and a Statutory Bond in the amount of one hundred percent (100%) of the Contract Price to cover the entire scope of Work and any other specific performance

security that may be indicated in this Contract. With each bond there shall be filed with the City one copy of "Power of Attorney" certified to include the date of the bonds.

16. INDEMNITY

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

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

16.2 For purposes of this Contract, and without in any way limiting indemnification obligations that may be set forth elsewhere in the Contract, the Contractor hereby agrees to indemnify, defend and hold harmless the City from any and all Loss where Loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Contractor, his/her employees, agents, Subcontractors and suppliers.

16.3 It is agreed as a specific element of consideration of this Contract that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the City or any third party and, further, notwithstanding any theory of law including, but not limited to, a characterization of the City's or any third party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature.

16.4 Nothing in this section shall be deemed to impose liability on the Contractor to indemnify the City for Loss when the negligence or other actionable fault the City is the sole cause of Loss.

16.5 With respect to the City's rights as set forth herein, the Contractor expressly waives all statutory defenses, including, but not limited to, those under workers compensation, contribution, comparative fault or similar statutes to the extent said defenses are inconsistent with or would defeat the purpose of this section.

17. SUCCESSORS AND ASSIGNS

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

17.2 The Contractor shall not assign or sublet the work, or any part thereof, without the previous written consent of the City, nor shall it assign, by power of attorney or otherwise, any of the money payable under this Contract unless by and with the like written consent of the City. In case the Contractor assigns all, or any part of any moneys due or to become due under

- this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to all prior liens of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.
- 17.3 Should any Subcontractor fail to perform in a satisfactory manner, the work undertaken, its subcontract shall be immediately terminated by the Contractor upon notice from the City. Performing in an unsatisfactory manner is defined as consistently having more than 10% of work unacceptable. The Contractor shall be as fully responsible to the City for the acts and omissions of the subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed. Nothing contained in this Contract shall create any contractual relations between any Subcontractor and the City, nor shall anything contained in the Contract Documents create any obligation on the part of the City to pay or to see to the payment of any sums due any Subcontractor.
- 17.4 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, Project Manager or bid-letting costs therefore. In such case, the Contractor shall not be entitled to receive further payment. In the event the Contractor is found in a court of law to have been wrongfully terminated for cause, then such termination shall be deemed a termination for convenience and the Contractor shall be compensated as provided herein. Any termination of the Agreement for alleged default by Contractor that is ultimately determined to be unjustified shall automatically be deemed a termination for convenience of the City.

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

22. MISCELLANEOUS:

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

- in any mailbox regularly maintained by the Post Office, of any notice, letter or other communication so addressed to the Contractor, and the date of said service shall be the date of such delivery or mailing. Such addresses may be changed at any time by an instrument in writing, executed by the Contractor, presented, and delivered to the Project Manager and to the City. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or communication upon the Contractor personally.
- 22.5 It is mutually agreed by and between the parties to this Contract that all royalties and fees for and in connection with patents, or patent infringement, claims for materials, articles, apparatus, devices or equipment (as distinguished from processes) used in or furnished for the work shall be included in the Contract Price and the Contractor shall satisfy all demands that may be made at any time for such, and the Contractor shall at its cost and expense, defend any and all suits or proceedings that may be instituted at any time against the City for infringement or alleged infringement of any such patents involved in the work, and Contractor shall pay any award of damages.
- 22.6 The right of general administration of the City shall not make the Contractor an agent of the City, and the liability of the Contractor for all damages to persons, firms, and corporations, arising from the Contractor's execution of the Work, shall not be lessened because of such general administration, but as to all such persons, firms, and corporations, and the damages, if any, to them or their property. The Contractor herein is an independent Contractor in respect to the work.
- 22.7 For a period of time, from the inception of the Contract to three (3) years from the date of final payment under the Contract, the Contractor and subcontractors shall maintain books, accounts, ledgers, invoices, drafts, pages and other records pertaining to the performance of this Contract. At all reasonable times during this period these records shall be available within the State of Kansas at a field or permanent business office for inspection by authorized representatives of the City or of any other agency, which has contributed funds in connection with the Contract or to which the City is obligated to make such inspections available. In addition, this requirement shall be included in all subcontracts entered into in connection with this Contract.
- 22.8 Titles, subheadings used herein, and other Contract Documents are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Contract Documents.
- 22.9 No waiver of any breach of this Contract shall be construed to be a waiver of any other subsequent breach.
- 22.10 Should any provision of this Agreement or other Contract Documents be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement and/or the other Contract Documents shall be unaffected thereby and shall continue to be valid and enforceable.
- 22.11 Without in any manner limiting Contractor's responsibilities as provided elsewhere in the Contract Documents, the Contractor shall assume full responsibility for the protection of all public and private property, structures, sewers, and utilities, for both above ground and underground facilities, along, beneath, above, across or near the site or sites of the Work

- being performed under this Agreement, or which are in any manner affected by the prosecution of the Work or the transportation of men/women or materials in connection therewith. Barriers shall be kept in place at all times to protect persons other than those engaged on or about the Work from accident, and the Contractor will be held responsible for all accidents to persons or property resulting from the acts of Contractor or its employees.
- 22.12 The Contractor shall keep fully informed of all existing and current regulations of the City, county, state, and federal laws, which in any way limit or control the actions or operations of those engaged upon the work, or affecting materials supplied, to or by them. The Contractor shall at all times observe and comply with all ordinances, laws, and regulations, and shall protect and indemnify the City and the City's officers and agents against any claims or liability arising from or based on any violation of the same.
- 22.13 Nothing contained in the Contract Documents shall create, or be interpreted to create, privity or any other contractual agreement between the City and any person or entity other than the Contractor.
- 22.14 Duties and obligations imposed by the Contract Documents, rights, and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.
- 22.15 No action or failure to act by the City, Project Manager or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval or acquiescence in a breach hereunder, except as may be specifically agreed in writing.
- 22.16 Contractor specifically acknowledges and confirms that: (i) it has visited the site, made all inspections it deems appropriate and has read and fully understands the Contract Documents, including all obligations and responsibilities undertaken by it as specified herein and in other Contract Documents and knowingly accepts the same; (ii) it has furnished copies of all Contract Documents to its insurance carrier(s) and its surety(ies); and (iii) its insurance carrier(s) and surety(ies) agree to be bound as specified herein, in the Contract Documents and in the insurance policy(ies) and bonds as to liability and surety coverage.
- 22.17 It is specifically agreed between the parties executing this Agreement that the Contract Documents are not intended to create any third party beneficiary relationship nor authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.
- 22.18 This Agreement is entered into, under and pursuant to, and is to be construed and enforceable in accordance with the laws of the State of Kansas. Venue of any litigation arising in connection with this Agreement shall be the State courts of Johnson County, Kansas.

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

CITY OF PRAIRIE VILLAGE

McConnell and Associates Corp.

(typed company name)

By: _____
(signed)

By: _____
(signed)

Laura Wassmer

(typed name)

Mayor

(typed title)

City of Prairie Village

McConnell and Associates Corp.

(typed company name)

7700 Mission Road

1225 Iron Street

(typed address)

Prairie Village, Kansas 66208

Kansas City, MO 64116

(typed city, state, zip)

816-842-6066

(typed telephone number)

(date of execution)

(date of execution)

SEAL

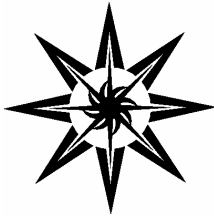
ATTEST:

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.)



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: February 6, 2017

Council Meeting Date: February 6, 2017

CONSIDER AMENDMENT 1 TO THE CONSTRUCTION INSPECTION AGREEMENT WITH OLSSON ASSOCIATES FOR MEADOWBROOK PUBLIC IMPROVEMENTS (MBSTREET & MBDRAINX)

RECOMMENDATION

Move to approve Amendment 1 to the Construction Inspection agreement with Olsson Associates for Meadowbrook Public Improvements.

BACKGROUND

The original construction inspection agreement with Olsson and Associated for the Meadowbrook construction project was approved in May of 2016. The Meadowbrook construction project has been proceeding well and significant work has been completed. In conjunction with VanTrust we have extended the completion date from December 31, 2016 to June of 2017. This Amendment to the construction inspection contract will cover inspection services for this additional construction time period. Contract fees are summarized below.

Original Contract-	\$179,995.50
Amendment 1-	<u>\$68,136.75</u>
New Contract Total-	\$248,132.25

FUNDING SOURCE

Funding for this work will come from TIF reimbursable or will come from County SMAC funds.

ATTACHMENTS

1. Amendment 1 to the Construction Inspection Agreement with Olsson Associates

PREPARED BY

Keith Bredehoeft, Public Works Director

February 2, 2017

LETTER AGREEMENT AMENDMENT #1

This AMENDMENT ("Amendment") shall amend and become a part of the Agreement for Professional Consultant Services for Construction Administration dated May 16, 2016 between the City of Prairie Village, Kansas 66208, ("City") and Olsson Associates, Inc. ("Consultant") providing civil engineering services for Construction Administration of Project Meadowbrook Redevelopment, Projects MBSTREET and MBDRAINx, located at 95th Street and Nall ("Project").

SCOPE OF SERVICES

City and Consultant hereby agree that Consultant's s Scope of Services under the Agreement is amended by adding the services specifically described below for the additional compensation set forth below:

Inspection Services

Olsson has provided construction administration services since May 2016. The Meadowbrook Redevelopment Street and SMAC projects have gone on longer than originally anticipated, at no fault of Olsson Associates. Olsson's original fee was based a project completion date of December 31, 2016. This Amendment No. 1 is based on a revised completion date of June 8, 2017. A breakout of this information and additional estimated fee is included as Attachment 1.

COMPENSATION

For the additional Scope of Services specifically set forth in this Amendment, the City shall pay the Consultant the following fee incurred, in addition to the fee(s) set forth in the Agreement:

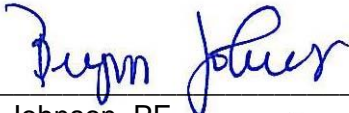
The Consultant's Scope of Services is hereby increased \$68,136.75 from the original contract amount of \$179,995.50, for a new maximum fee of \$248,132.25.


TERMS AND CONDITIONS OF SERVICE

All provisions of the original Agreement not specifically amended herein shall remain unchanged.

If this Contract Amendment satisfactorily sets forth your understanding of our agreement, please sign in the space provided below. Retain a copy for your files and return an executed original to the Consultant. This proposal will be open for acceptance for a period of 30 days from the date set forth above, unless changed by us in writing.

OLSSON ASSOCIATES, INC.

By 
Bryan Johnson, PE
Office Leader

By 
Curt H. Mader, PE
Senior Engineer

By signing below, you acknowledge that you have full authority to bind Client to the terms of this Amendment. If you accept this Amendment, please sign:

City of Prairie Village, Kansas

By _____
Signature

Printed Name _____

Title _____

Dated: _____

Meadowbrook Redevelopment - Amendment 1
Prairie Village, Kansas
Construction Administration & Inspection
Summary of Billings & Additional Fee Request



Olsson Project No.	Prairie Village Project No.	Billings as of 12/3/2016	Billings 12/3 to 12/31/16	Est. 2017 Billings 1/1 to 6/30/17	Total Estimated Billed
16-0735	MBSTREET	\$ 104,764.50	\$ 10,065.75	\$ 61,299.00	\$ 176,129.25
A16-0735	MBDRAINX	\$ 42,255.50	\$ 5,747.50	\$ 24,000.00	\$ 72,003.00
TOTALS		\$ 147,020.00	\$ 15,813.25	\$ 85,299.00	\$ 248,132.25
Less 2016 Billings					\$ 162,833.25
Less Est. Remaining Fee (@ 12/31/16)					\$ 17,162.25
Additional Fee Request					\$ 68,136.75
MBSTREET					\$ 29,795.58
MBDRAINX					\$ 19,170.00

Meadowbrook Redevelopment - Amendment 1

Prairie Village, KS

Estimate of Fee - January 1, 2017 to June 30, 2017

Construction Administration & Inspection

Public Roadway, Storm Sewer, Ponds (SMAC), Conspan & Stream Restoration



	Employee Type	Hourly Rate	Estimated Hours	Extension
Construction Phase				
Daily Observation/Documentation/Coordination/ Weekly Meetings/Testing Coordination	Inspector	\$ 95.00	715	\$ 67,925.00
Materials Testing - By others				
Insp. Mgmt, Mtgs., Wkly Reports, Utility Issues, Contractor Issues, Pay Estimates, Change Orders,	Project Manager	\$ 160.00	66	\$ 10,560.00
Phase Totals			781	\$ 78,485.00
Post-Construction Phase				
Punch List & Remedial Work Inspection	Inspector	\$ 95.00	30	\$ 2,850.00
Final Documentation	Project Manager	\$ 160.00	10	\$ 1,600.00
Phase Totals			40	\$ 4,450.00
TOTAL LABOR			821	\$ 82,935.00
DIRECT EXPENSES				
		Unit Price		
Mileage (@\$0.756/mi)	3,152	\$0.75		\$ 2,364.00
ESTIMATED DIRECT EXPENSES				\$ 2,364.00
2017 TOTAL ESTIMATED FEE				\$ 85,299.00

Meadowbrook Redevelopment - Amendment 1
Prairie Village, Kansas
Estimate of Construction Phase Hours and Vehicle Mileage
January 1, 2017 to June 8, 2017



Construction Phase		Start 1/1/2017					End 6/8/2017		PHASE TOTALS
		Jan	Feb	Mar	Apr	May	Jun		
	Cal Days	31	28	31	30	31	8	159	
	Week Days	22	20	23	20	23	6	114	
	Est. Working Days	20	16	16	20	22	6	100	
	Saturdays	4	4	4	5	4	1	22	
Inspector \$95.00	Est. Avg. Hrs/Day	4	4	6	9	10	8		
	Est. Saturdays Worked	0	0	0	1	1	1	3	
	Est. Hours	80	64	96	189	230	56	715	
Project Manager \$160.00	Calendar Year 2017 Project Manager - 22wks @ 3 hr/wk =							66	66

Estimate of Mileage		Jan	Feb	Mar	Apr	May	Jun	PHASE TOTALS
Construction Phases								
Sr. Inspector	Avg. Mi/Day	26	26	26	26	26	26	
	Est. Miles	520	416	416	546	598	182	2678
Project Manager	Est. Miles	25	50	85	74	85	25	344
Post-Construction Phase								130
5 trips								3152

**COUNCIL MEETING AGENDA
CITY OF PRAIRIE VILLAGE
Council Chambers
Monday, February 06, 2017
7:30 PM**

- I. **CALL TO ORDER**
- II. **ROLL CALL**
- III. **PLEDGE OF ALLEGIANCE**
- IV. **INTRODUCTION OF STUDENTS & SCOUTS**
- V. **PUBLIC PARTICIPATION**

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

VI. **CONSENT AGENDA**

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

By Staff

- 1. Approve the regular City Council meeting minutes - January 17, 2017
- 2. Consider approval of claims ordinance 2950
- 3. Approve the purchase of three 2017 Ford Police Interceptor Utilities

By Committee

- 4. Approve the bid for Public Works "G" building siding contact with Continental Siding Supply

VII. **COMMITTEE REPORTS**

Council Committee of the Whole

- COU2017-08 Consider approval of a contract with McConnell & Associates for the McCrum Park tennis court rehabilitation
- COU2017-10 Consider approval of Amendment 1 to the Construction Inspection Agreement with Olsson Associates for Meadowbrook Public Improvements

Planning Commission

- PC2016-07 Consider renewal of a Special Use Permit for the installation of wireless communications antenna at 7700 Mission road - AT&T

- VIII. **MAYOR'S REPORT**
- IX. **STAFF REPORTS**
- X. **OLD BUSINESS**
- XI. **NEW BUSINESS**
- XII. **ANNOUNCEMENTS**
- XIII. **ADJOURNMENT**

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

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

CITY COUNCIL
CITY OF PRAIRIE VILLAGE
January 17, 2017

The City Council of Prairie Village, Kansas, met in regular session on Tuesday, January 17, 2017 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, Sheila Myers, Brooke Morehead, Dan Runion, Courtney McFadden, Ted Odell and Terrence Gallagher.

Also present were Teen Council members Helen Sun, Luke Hafner and Zoe Nason.

Staff present: Tim Schwartzkopf, Chief of Police; Keith Bredehoeft, Director of Public Works; Melissa Prenger, Public Works Project Manager; David Waters for Katie Logan, City Attorney; Quinn Bennion, City Administrator; Wes Jordan, Assistant City Administrator; Lisa Santa Maria, Finance Director; Alley Williams, Assistant to the City Administrator and Joyce Hagen Mundy, City Clerk.

INTRODUCTION OF STUDENTS & SCOUTS

Mayor Wassmer welcomed a boy scout in attendance to earn his "Citizenship and Community" badge.

PUBLIC PARTICIPATION

No one addressed the City Council and public participation was closed at 7:36 p.m.

CONSENT AGENDA

Jori Nelson asked that item #1 be removed. She stated the motion for the purchase of the property at 67th and Roe was made by Eric Mikkelson and seconded by her; not by Serena Schermoly and Steve Noll as noted in the minutes. The City Clerk stated the minutes would be corrected.

Ted Odell moved the approval of the Consent Agenda items for January 17, 2017 as presented with the correction to the December 19, 2016 City Council minutes:

1. Approval of the regular City Council meeting minutes - December 19, 2016 as corrected
2. Approval of the purchase of a Ventrac 3400 Snow Removal Tractor at a cost of \$27,095
3. Approval of the 2017 SuperPass Interlocal Agreement and Swim Meet Letter of Understanding with the Cities of Merriam, Leawood, Mission, Fairway, Roeland Park and Johnson County Parks and Recreation District for the use of swimming facilities
4. Approval of the 2017 Learn to Swim, Pool Usage and Day Camp agreements with the Johnson County Parks and Recreation District
5. Approval of the 2017 agreement with Challenger Sports for the use of city facilities for a British Soccer Camp and Tiny Tyke Camp at Taliaferro Park

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

COMMITTEE REPORTS

Council Committee of the Whole

COU2017-01 Consider Agreement with Gallagher Benefit Services to conduct comprehensive compensation and benefit study

Sheila Myers moved the City Council approve Gallagher Benefit Services, Inc. as the firm to conduct the city's compensation and benefit study as specified in their proposal at a cost of \$17,150. The motion was seconded by Steve Noll and passed unanimously.

COU2017-02 Consider 2017 Recreation Fee Schedule

Sheila Myers moved the City Council approve the proposed 2017 Recreation Fee Schedule reflecting an increase in aquatic lessons from \$35 to \$40 and the reduction of membership costs to half price after July 15th. The motion was seconded by Ashley Weaver and passed unanimously.

COU2017-03 Consider 2017 Prairie Village Legislative Platform

Jori Nelson moved the City Council adopt the 2017 Prairie Village Legislative Platform as amended. The motion was seconded by Eric Mikkelson and passed unanimously.

COU2017-04 Consider submittal of the Preliminary Engineering Study to the Johnson County SMAC Program for the Delmar/Fontana Low Water Crossing Removal and Stormwater Improvements Project

Sheila Myers moved the City Council approve the submittal of the Preliminary Engineering Study (PES) to the Johnson County SMAC Program for the Delmar/Fontana low water crossing removal and stormwater improvements project. The motion was seconded by Brooke Morehead and passed unanimously.

COU2017-05 Consider submittal of the Preliminary Engineering Study to the Johnson County SMAC Program for the Reinhardt & 84th Terrace Drainage Project

Sheila Myers moved the City Council approve the submittal of the Preliminary Engineering Study (PES) to the Johnson County SMAC Program Project REIST0001:

Reinhardt & 84th Terrace Drainage Project. The motion was seconded by Eric Mikkelson and passed unanimously with Dan Runion abstaining.

COU2017-06 Consider Agreement with Affinis Corp for the Reinhardt & 84th Terrace drainage project Preliminary Engineering Study

Ted Odell moved the City Council approve an agreement with Affinis Corporation in the amount of \$11,802 for the preparation of a Preliminary Engineering Study for Project REIST0001: Reinhardt & 84th Terrace drainage project. The motion was seconded by Sheila Myers and passed unanimously with Dan Runion abstaining.

COU2017-07 Consider Construction Change Order #1 (Final) with O'Donnell & Sons Construction for the 2016 Paving Program

Sheila Myers moved the City Council approve Construction Change Order #1 (Final) with O'Donnell and Sons for the 2016 Paving Program in the amount of \$78,820.68 bringing the final contract amount to \$1,923,420.68. The motion was seconded by Ashley Weaver and passed unanimously

Planning Commission

PC2016-08 Consider renewal of a Special Use Permit for the installation of a wireless communication antenna at 7241 Mission Road

Wes Jordan stated this installation is an on-building wireless telecommunications installation, with the antenna facilities integrated into the architectural features of St. Ann's Church. It was initially approved in 1996 and most recently in 2014 when three new antennas were added. Clearwire, Sprint and Nextel have antenna panels on the church steeple painted to match the brick or stone on the steeple. The equipment compound is located in a brick walled area that matches the building and are not detectible. The original application was approved in 1996 for Sprint. This permit was renewed in 2001 and 2006. Since these approvals, the City's wireless

telecommunications ordinance has been amended and several site plan applications for upgrades and exchanges of equipment have been approved. The proposed application has no changes to the existing installation. Notice of this hearing was mailed to surrounding property owners and a sign was posted on the site.

The Planning Commission unanimously recommended the Governing Body grant the renewal of the Special Use Permit for the operation of a wireless communications facility at 7241 Mission Road subject to the thirteen conditions recommended by staff.

Terrence Gallagher moved the Governing Body adopt Ordinance 2358 approving the renewal of a Special Use Permit for the installation, operation and maintenance of communication antenna and related equipment by Sprint/Nextel on the property described as 7241 Mission Road, Prairie Village, Kansas. The motion was seconded by Sheila Myers.

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

COU2017-08 Consider Contract with McConnell & Associates for the McCrum Park tennis court rehabilitation

The discussion about the tennis court rehabilitation project was continued from the committee meeting.

Melissa Prenger stated this is not a repair project but a replacement which was approved in August of 2016 as part of the city’s 2017 Capital Improvement Program.

Terrence Gallagher stated he supports the project; however, he feels the city should investigate the opportunities to secure grant funding. He is aware of several grant opportunities for the construction of new tennis courts. He believes that whenever there

is the opportunity to participate in grant programs, especially for park and recreation projects, they should be explored by the City.

Serena Schermoly asked if the city staff looked at resurfacing the courts instead of replacing them. Melissa Prenger replied that simply resurfacing the courts is not a viable option because of the drainage issues at this site. Mrs. Prenger acknowledged that this is a significant investment, but staff believes it is the appropriate long-term solution.

Mrs. Schermoly stated she visited the courts with a tennis court expert who felt that the cracks could be repaired with resurfacing of the courts. She questioned the amount of use this court receives.

Keith Bredehoeft replied that because of the drainage issue, staff believes that this is the best long-term solution that addresses both the court surface and drainage issues eliminating concerns going forward. These courts are the only courts available for use during team practices on other courts in the city. Mr. Mikkelson stated the courts are used regularly and noted the use of this process on the courts at Harmon Park was very successful with the courts being recognized as some of the best courts in the area. This process is more expensive; however, he feels it brings significant value to the city and he supports the project.

Mr. Mikkelson felt the city had a window of opportunity in which to investigate the possible acquisition of grant funds without putting the project in jeopardy. He would support continuing this item to the next city council meeting to allow for investigation of possible grant funding.

Ted Odell noted this project has already been approved as a CIP project and has already been bid for proposed rehabilitation. He does not want to delay the project.

Brooke Morehead noted another consideration should be the impact of the future development of the property at 67th & Roe as park land.

Terrence Gallagher moved the City Council continue COU2017-08 consideration of contract with McConnell & Associates for the McCrum Park tennis court rehabilitation to the February 6th City Council meeting. The motion was seconded by Courtney McFadden and passed unanimously.

MAYOR'S REPORT

Mayor Wassmer reported the State of the Cities address will be given by area mayors at the Northeast Johnson County Chamber luncheon on Thursday, January 19. She will be attending City Hall Day in Topeka on Wednesday, January 25th along with other council members and staff. Briarwood Elementary School will have the dedication of their new building on Thursday, January 19th. The Meadowbrook Golf Club has been demolished and progress continues at Meadowbrook. Ten pieces of city statuary have been professionally cleaned under contract with others yet to be cleaned.

STAFF REPORTS

Public Safety

- Chief Schwartzkopf had nothing new to report.

PUBLIC Works

- Keith Bredehoeft reported on the ice event coverage over the weekend. The city had ½" to ¾" accumulation with crews working around the clock.
- Staff is analyzing the LED Street Light bids looking at three companies.

Brooke Morehead asked about the cost to synchronize city traffic lights. Mr. Bredehoeft responded that the city does participate in Operation Green Light for the signals along 75th Street. Mrs. Morehead suggested the signals on Mission be considered to keep traffic flowing with the reduced traffic lanes. Mr. Bredehoeft stated

the city would be having a city-wide traffic study done and it will include possible signal analysis.

.Administration

- Wes Jordan reported that Channel 5 would be doing a story on “cart recovery” and provided an update on the cart recovery process. He thanked Public Works crews for their assistance in picking up Deffenbaugh carts. Deffenbaugh has been coming to the Public Works facility to reclaim their carts. The cart recovery will continue with the cost of the city doing so being subtracted from the final invoice from Deffenbaugh.

Terrence Gallagher questioned the social media reports that residents would be charged by Deffenbaugh for unreturned carts. Mr. Jordan replied that this has not been confirmed.

- Mr. Jordan reported that Republic has had 2500 requests for cart switch-out for both the 35 gallon and 95 gallon carts. They have order 400 more carts and continue working to complete the requests.

Ashley Weaver questioned the customer service being received by Republic. Mr. Jordan replied there are three call centers, all located out of state. The protocols for the call centers address trash misses, not cart switch-outs and this has been a massive cart switch-out. Both the city staff and Republic are working to address the service requests as quickly as possible.

Eric Mikkelson and Jori Nelson commended Mr. Jordan and all of the city staff on their efforts in communicating to and addressing residents’ questions and needs. Mr. Jordan commended everyone involved in the transition efforts for their cooperation, diligence and patience.

- Quinn Bennion reminded council of the council work session on Saturday, February 11th beginning at 8:30 a.m.

Ted Odell stated the work session will take a different format including team building and discussion of council priorities.

- Quinn Bennion reported that staff members continue to meet with residents regarding the Prairie Baptist Church hill slope issue and the Homestead development/drainage issues.

Brooke Morehead asked when the Consolidated Fire District #2 would be addressing the Council on their new location. Mr. Bennion reported that the Fire Board wants to have elevations of the proposed station completed prior to addressing the Council. Mrs. Morehead noted her primary interest was on how the project would impact the Village Square project, adding that the committee would be meeting tomorrow to review proposals.

OLD BUSINESS

Serena Schermoly expressed her appreciation to the owners of Bruce Smith Drug and Tiffany Town for their long service to the residents of Prairie Village.

NEW BUSINESS

Discussion of Layout Options for City Hall Driveway and Parking

As part of the discussions for the overall campus entrance project, the Governing Body requested staff to review the locations of accessible parking stalls. Melissa Prenger noted the 2017 Paving Program includes resurfacing of the City Hall parking lot and provides an opportunity to reconfigure the driveway and parking adjacent to City Hall. The following three options prepared by Affinis were presented for consideration:

- Option 1: Current driveway with new accessible parking
(drive on west, parking on east)
Cost: \$50,000
Stall count: 21 spaces (13 standard, 7 ADA)
- Option 2: New driveway
(drive on east, parking on west)
Cost: \$90,000
Stall count: 17 spaces (13 standard, 4 ADA)

Option 3: New driveway with double stack parking
(drive in middle with parking on east and west)
Cost: \$130,000 - \$150,000
Stall count: 34 spaces (30 standard, 4 ADA)

Melissa Prenger reviewed each of the options discussing the changes and related costs. Ted Odell noted that looking forward with the possible greater use of the municipal campus that this may be a good time to look at adding parking spaces and asked where the funding would come from. Mr. Bredehoeft replied that it would come from the 2017 Paving Program. Dan Runion asked if there was a current need for more parking, stating he was not convinced additional parking is needed. Quinn Bennion replied there are very few instances during a normal day when the entire parking lot is filled. He noted that Option #2 is more of a safety issue and ADA issue in that individuals do not have to cross the driveway for access to City Hall.

Terrence Gallagher stated that having the parking adjacent to the building is better. He felt that the ADA parking needs to be near the bottom of the ramp to provide opportunity for a wheel chair to have easy access. Option 2 is better from his perspective.

Eric Mikkelson expressed his desire to retain existing greenspace and trees if additional parking is not needed. He asked if seven ADA spaces were necessary. Melissa Prenger responded no and stated that the code requires 1 ADA space for every 25 parking spaces. Mr. Mikkelson asked if the ADA spaces on the north end were still needed. Mr. Bredehoeft replied that they would be moved, but noted that the north entrance is handicapped accessible.

Sheila Myers confirmed that Mr. Gallagher liked option #1 however, option #2 was preferred from the handicapped perspective.

Dan Runion moved the Council direct staff to move forward with Option #1 with the relocating the ADA spaces at the north end closer to the main entrance with the other proposed spaces. The motion was seconded by Ashley Weaver and passed by a vote of 10 to 1 with Mr. Odell voting in opposition.

Committee meetings scheduled for the next two weeks:

JazzFest Committee	01/23/2017	5:30 p.m.
Environment/Recycle Committee	01/25/2017	5:30 p.m.
VillageFest Committee	01/26/2017	5:30 p.m.
Council Committee of the Whole (Tuesday)	01/03/2016	6:00 p.m.
City Council (Tuesday)	01/03/2016	7:30 p.m.

=====

The Prairie Village Arts Council is pleased to feature art work owned by the City of Prairie Village in the R.G. Endres Gallery during the month of January

Save the Date - The Northeast Johnson County Chamber will host the State of the Cities addresses on Tuesday, January 19th from 11:30 to 1:30 p.m.

The 2017 City Hall Day will be held on Wednesday, January 25th in Topeka.

City offices will be closed on Monday, January 16th in observance of the Martin Luther King, Jr. holiday.

Republic will **NOT** observe the Martin Luther King, Jr. Holiday on January 16th. Regular pick-up days will be followed.

ADJOURNMENT

With no further business to come before the City Council the meeting was adjourned at 8:40 p.m.

Joyce Hagen Mundy
City Clerk

CITY TREASURER'S WARRANT REGISTER

DATE WARRANTS ISSUED:

Warrant Register Page No. 1

January 17, 2017

Copy of Ordinance
2950

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			
13622-13692	12/2/2016	661,723.43	
13693	12/5/2016	46,838.49	
13694-13707	12/12/2016	1,750.00	
13708-13711	12/13/2016	876.52	
13712-13807	12/16/2016	1,146,920.43	
13808	12/19/2016	12,819.70	
13809-13810	12/20/2016	550.00	
13811	12/23/2016	530.02	
13812-13869	12/30/2016	127,308.91	
Payroll Expenditures			
12/9/2016		269,236.92	
12/23/2016		288,130.84	
Electronic Payments			
Electronic Pmnts	12/1/2016	451.95	
Electronic Pmnts	12/8/2016	815.59	
Electronic Pmnts	12/9/2016	12,972.33	
Electronic Pmnts	12/12/2016	917.88	
Electronic Pmnts	12/13/2016	80.92	
Electronic Pmnts	12/16/2016	8,388.87	
Electronic Pmnts	12/21/2016	3,509.61	
Electronic Pmnts	12/22/2016	250,000.00	
Electronic Pmnts	12/26/2016	10,998.10	
Electronic Pmnts	12/29/2016	3,297.63	
TOTAL EXPENDITURES:			2,848,118.14
Voided Checks			
	Check #	(Amount)	
Suburban Lawn & Garden Inc	13794	(39.18)	
TOTAL VOIDED CHECKS:			(39.18)
GRAND TOTAL CLAIMS ORDINANCE			2,848,078.96

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

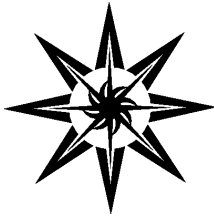
Passed this 17th day of January 2015.

Signed or Approved this 17th day of January 2015.

(SEAL)

ATTEST: Fielding L. Horton Jr. 1-9-17
City Treasurer

ATTEST: [Signature] 1-9-17
Finance Director



POLICE DEPARTMENT

Council Committee Meeting Date: February 6, 2017

CONSENT AGENDA:

PURCHASE REQUEST FOR POLICE VEHICLES

RECOMMENDATION

Staff recommends the purchase of three 2017 Ford Police Interceptor Utilities.

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

COUNCIL ACTION REQUESTED ON FEBRUARY 6, 2017

BACKGROUND

On an annual basis, the Police Department replaces older police units due to age, mileage, and/or maintenance problems. The Department is seeking authorization to purchase these units from Shawnee Mission Ford, who was awarded the 2017 MACPP Metro Bid. The approximate build time for these cars from Ford is 120 days.

This purchase was previously approved by the City Council as part of the 2017 Public Safety Budget.

FUNDING SOURCE

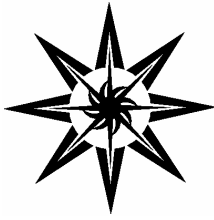
01-03-25-8006-000 -- \$82,818

PREPARED BY

Capt. Byron Roberson

Patrol Commander

Date: January 31, 2017



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: December 19, 2016

Council Meeting Date: January 3, 2017

CONSIDER BIDS FOR PUBLIC WORKS "G" BUILDING SIDING CONTRACT WITH CONTINENTAL SIDING SUPPLY.

RECOMMENDATION

Approve the bid for Public Works "G" building siding contract with Continental Siding Supply for \$36,643.00.

BACKGROUND

Three companies provided siding bids for the Public Works "G" building siding project. Bids are as follows:

Johnson County Siding and Window	\$28,449.00
Bordner Roofing Co.	\$29,977.00
Continental Siding Supply	\$36,643.00

All three companies made site visits and all made presentations on their siding products. While all siding products sound like they would be similar, there are differences in materials and methods of installation. We feel that while not the lowest price that the Continental Siding Supply product is the best product and utilized the best installation method. They utilize a form fit panel that attached to the building sheeting that allows for improved insulation and a better attachment method for the siding panels. The siding material Continental will use is a polymer material which resists cracking and fading better than standard vinyl siding. "G" Building is located at the very southwest corner of the Public Works Facility and investment in this structure is important. Given its location, even if other Public Works buildings were reconstructed in the future, it is anticipated that it would remain.

All bids have been reviewed and we recommend Continental Siding Supply for this project.

FUNDING SOURCE

Funding is available in the 2016 CIP project for Public Works "G" Building Siding Project

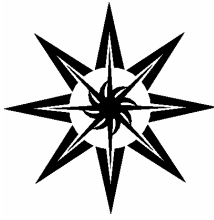
ATTACHMENTS

None

PREPARED BY

Keith Bredehoeft, Project Manager

December 15, 2016



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: February 6, 2017

Council Meeting Date: February 6, 2017

CONSIDER APPROVAL OF A CONTRACT WITH McCONNELL & ASSOCIATES FOR THE MCCRUM PARK TENNIS COURT REHABILITATION.

RECOMMENDATION

Move to authorize the Mayor to sign the Construction Contract with McConnell & Associates for Project BG420001, McCrum Park Tennis Court Rehabilitation for \$76,032.50.

BACKGROUND

On December 2, 2016 the City Clerk opened bids for Project BG420001, McCrum Park Tennis Court Rehabilitation. Two bids were received.

Name of Bidder	Bid
Engineers Estimate	\$96,492.00
McConnell & Associates	\$76,032.50
Primetime Contractors	\$106,662.00

This contract consists of constructing a new court on top of the existing court at McCrum Park and using the existing fence. This construction is similar to the construction completed at Harmon Park.

City staff has reviewed the bid for accuracy and recommends award to the low bidder, McConnell & Associates.

Update to January 16, 2017 Council Memo-

This item was first discussed at the January 16, 2017 Council Meeting. During that meeting possible funding from the United States Tennis Association (USTA) was discussed. Public Works has researched these possible grants and below is what was determined.

- USTA National and USTA Missouri Valley were both contacted.
- USTA National and USTA MV Discussions- Their programs are designed to help communities with technical information to help communities build good tennis court projects. They provide design standards and strongly encourage utilizing contractors that specialize in tennis court construction. They also do provide some funding, up to \$20,000 to reconstruct tennis courts but the funding is designed to assist communities that can't fully fund these types of projects. In our case, with this project being included in our 2016 CIP and now that we are at the point of awarding to a contractor, we would not be able to show a funding need for this specific project. They suggested that for future projects that we submit for funding early on in the planning process.

Options at this point-

- 1- Continue as planned in the memo above.

- 2- Change the project to a less expensive rehabilitation costing less than \$20,000. Public Works chose not to pursue this option as we felt the cracks and subgrade issues on the south half of the court were significant enough that we did not feel it would be a good investment since, in our opinion, these cracks would reflect back through the new surface and we would have problems again in less than 5 years.
- 3- Do not make repairs. This option would cause the court to be closed and then removed.

FUNDING SOURCE

\$100,000 is identified in the 2016 CIP for this project.

ATTACHMENTS

1. Construction Agreement with McConnell & Associates

PREPARED BY

Keith Bredehoeft, Public Works Director

February 2, 2017

CONSTRUCTION AGREEMENT

For

**BG420001
McCrum Park
Tennis Court Rehabilitation**

BETWEEN

CITY OF PRAIRIE VILLAGE, KS

AND

McConnell and Associates Corp.

**CONSTRUCTION CONTRACT
FOR
MC CRUM PARK TENNIS COURT REHABILITATION**

**BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
MC CONNELL AND ASSOCIATES CORP.**

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 McConnell and Associates Corp, hereinafter termed in this agreement, “**Contractor**”, for the construction and completion of Project BG420001 McCrum Park Tennis Court Rehabilitation , (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 Project Manager stating that to the best of the project manager's knowledge, information and belief, and on the basis of the Project Manager's on-site visits and inspections, the Work described in an Application for Payment has been completed in accordance with the terms and conditions of the Contract Documents and that the amount requested in the Application for Payment is due and payable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PROJECT MANAGER shall mean the person appointed by the Public Works Director for this Contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. ENTIRE AGREEMENT:

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

3. INTENT AND INTERPRETATION

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

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

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

4. **CONTRACT COST**

The City shall pay the Contractor for the performance of the Work embraced in this Contract, and the Contractor will accept in full compensation therefore the sum (subject to adjustment as provided by the Contract) of Seventy-Six Thousand, Thirty-two **DOLLARS and 50 CENTS (\$76,032.50)** for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

5. **WORK SUPERINTENDENT**

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

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

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

6. PROJECT MANAGER

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

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

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

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

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

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

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

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

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

7. WORK SCHEDULE:

- 7.1 The Work is comprised of one large project (sometimes referred to as “**Total Project Work**”) and, in some cases, is partitioned into smaller subprojects referred to in this Agreement as “**Project Segments**.” A Contract Time shall be stated in the Contract Documents for both the Total Project Work and, when applicable, the Project Segments.
- 7.2 At the time of execution of this Contract, the Contractor shall furnish the Project Manager with a schedule (“**Work Schedule**”) setting forth in detail (in the critical path method) the sequences proposed to be followed, and giving the dates on which it is expected that Project Segments will be started and completed within the Contract Time. The Work Schedule is subject to approval by the City.
- 7.3 Monthly Work Schedule reports shall accompany the Contractor's pay request for Work completed. Where the Contractor is shown to be behind schedule, it shall provide an accompanying written summary, cause, and explanation of planned remedial action. Payments or portions of payments may be withheld by the City upon failure to maintain scheduled progress of the Work as shown on the approved Work Schedule.
- 7.4 At a minimum the Contractor shall update and submit the Work Schedule for review weekly, unless otherwise agreed upon by the City.
- 7.5 The Contractor, within ten (10) calendar days after being instructed to do so in a written notice from the City, shall commence the Work to be done under this Contract.
- 7.6 If at any time, in the opinion of the Project Manager or City, proper progress is not being maintained; changes shall be proposed in the Work Schedule and resubmitted for consideration and approval.
- 7.7 If the Contractor has not completed Project Segments and is within a non-performance penalty period, it shall not be allowed to undertake a new Project Segment until the Project Segment in dispute is completed, unless expressly permitted by the City.
- 7.8 The operation of any tool, equipment, vehicle, instrument, or other noise-producing device is prohibited to start before or continue after the hours of 7 AM and 10 PM, Monday through Friday (except Fridays which shall be until Midnight) and 8 AM and midnight on Weekends (except Sunday which shall be 10 PM). Violation of this requirement is Prima Facia Violation of City Municipal Code 11-202.
- 7.9 No work shall be undertaken on Saturdays, Sundays and Holidays (Christmas, New Years, Martin Luther King’s Birthday, President’s Day, Memorial Day, Independence Day, Labor Day and Thanksgiving) without the express written approval of the City Project Manager. If it is necessary to perform proper care, maintenance, or protection of work already completed or of equipment used, or in the case of an emergency verbal permission may be obtained through the Project Manager.
- 7.10 Night work may be established by the Contractor, as a regular procedure, with the written permission of the City; such permission, however, may be revoked at any time by the City if the Contractor fails to maintain adequate equipment for the proper prosecution and control of all operations performed as part of the Work.

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

8. DELAYS AND EXTENSIONS OF TIME

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

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

9. ADVERSE WEATHER:

9.1 Extensions of time for Adverse Weather shall be granted only under the conditions as hereinafter provided.

9.2 For conditions of weather or conditions at the site, so unusual as not to be reasonably anticipated, as determined by the Project Manager, an average or usual number of inclement days when work cannot proceed are to be anticipated during the construction period and are not to be considered as warranting extension of time.

9.3 “**Adverse Weather**” is defined as atmospheric conditions or the impact thereof at a definite time and place, which are unfavorable to construction activities such that they prevent work on critical activities for 50 percent or more of the Contractor's scheduled workday.

9.4 “**Unusually Severe Weather**” is defined as weather, which is more severe than the adverse weather anticipated for the season, location, or activity involved.

9.5 Time Extensions for Unusually Severe Weather: In order for any request for time extension due to Unusually Severe Weather to be valid, the Contractor must document all of the following conditions:

- The weather experienced at the Work site during the Contract period is more severe than the Adverse Weather anticipated for the Work location during any given month.

- The Unusually Severe Weather actually caused a delay to the completion of the Work.
- The delay must be beyond the control and without fault or negligence by the Contractor.

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

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

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

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

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

10. LIQUIDATED DAMAGES

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

11. PAYMENT PROCEDURE

- 11.1 Based upon Applications for Payment submitted to the Project Manager by the Contractor and Certificates for Payment issued by the Project Manager, the City shall make progress payments on account of the contract sum to the Contractor as provided below and elsewhere in the Contract Documents.
- 11.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month or on a mutually agreed date by City and Contractor.
- 11.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal on the first day of each month of an Application for Payment, all Work for which payments have been received from the City shall be free and clear of liens, claims,

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

- Evidence that the Work will not be completed in the time required for substantial or final completion;
 - Persistent failure to carry out the Work in accordance with the Contract;
 - Damage to the City or a third party to whom the City is, or may be, liable;
 - Evidence that the Work is not progressing according to agreed upon schedule by both parties.
- 11.11 In the event that the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in this subparagraph, the Contractor shall promptly comply with such demand and refund such monies to the City.
- 11.12 Neither the observation by the City or any of the City's officials, employees, or agents, nor any order by the City for payment of money, nor any payment for, or acceptance of, the whole or any part of the Work by the City or Project Manager, nor any extension of time, nor any possession taken by the City or its employees, shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the City, or any right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of any other or subsequent breach.

12. COMPLETION AND FINAL PAYMENT

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

13. CLAIMS BY THE CONTRACTOR

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

- 13.7 If a mutually agreeable adjustment cannot be obtained, the City reserves the right to terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the Work.
- 13.8 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall not include standby costs, indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties.
- 13.9 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving Final Acceptance of the Work shall be extended upon the written notice and claim of the Contractor to the City, for such reasonable time as the City may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven calendar days after the occurrence of the event or the first appearance of the condition-giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Work. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this subparagraph, any claim for an extension of time shall be waived.
- 13.10 The Contractor shall delay or suspend the progress of the work or any part thereof, whenever so required by written order of the City, and for such periods of time as required; provided, that in the event of such delay or delays or of such suspension or suspensions of the progress of the work, or any part thereof, the time for completion of work so suspended or of work so delayed by such suspension or suspensions shall be extended for a period equivalent to the time lost by reason of such suspension or suspensions; but such order of the City or Project Manager shall not otherwise modify or invalidate in any way, any of the provisions of this Contract. In the event that the work shall be stopped by written order of the City, any expense, which, in the sole opinion and judgment of the City, is caused by the City, shall be paid by the City to the Contractor.
- 13.11 In executing the Contract Documents, the Contractor expressly covenants and agrees that, in undertaking to complete the Work within the time herein fixed, it has taken into consideration and made allowances for all hindrances and delays incident to such work, whether growing out of delays in securing materials or workers or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the work, or any portion thereof, included in this Contract, except as provided herein.
- 13.12 In addition to the Project Manual particular to Mobilization found elsewhere in this document, additional mobilization shall not be compensable for work outside of the designated areas for work deemed essential by the City. A quantity of work equal to as much as 10% of the total Contract may be required to be performed beyond the boundaries of the designated work areas

14. CHANGES IN THE WORK

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

15. INSURANCE AND BONDS.

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

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

15.3 Minimum Requirements Commercial General Liability Policy Limits -

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

Policy MUST include the following conditions:

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

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

Limits (Same as Commercial General Liability) -

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

Policy MUST include the following condition:

NAME CITY OF PRAIRIE VILLAGE AS "ADDITIONAL INSURED"

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

Limits -

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

15.6 Workers' Compensation. This insurance shall protect the Contractor against all claims under applicable state workers' compensation laws. The Contractor shall also be protected

against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of workers' compensation law. The policy limits shall not be less than the following:

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

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

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

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

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

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

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

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

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

15.12 Bonds and Other Performance Security. Contractor shall provide a Performance Bond, Maintenance Bond and a Statutory Bond in the amount of one hundred percent (100%) of the Contract Price to cover the entire scope of Work and any other specific performance

security that may be indicated in this Contract. With each bond there shall be filed with the City one copy of "Power of Attorney" certified to include the date of the bonds.

16. INDEMNITY

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

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

16.2 For purposes of this Contract, and without in any way limiting indemnification obligations that may be set forth elsewhere in the Contract, the Contractor hereby agrees to indemnify, defend and hold harmless the City from any and all Loss where Loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Contractor, his/her employees, agents, Subcontractors and suppliers.

16.3 It is agreed as a specific element of consideration of this Contract that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the City or any third party and, further, notwithstanding any theory of law including, but not limited to, a characterization of the City's or any third party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature.

16.4 Nothing in this section shall be deemed to impose liability on the Contractor to indemnify the City for Loss when the negligence or other actionable fault the City is the sole cause of Loss.

16.5 With respect to the City's rights as set forth herein, the Contractor expressly waives all statutory defenses, including, but not limited to, those under workers compensation, contribution, comparative fault or similar statutes to the extent said defenses are inconsistent with or would defeat the purpose of this section.

17. SUCCESSORS AND ASSIGNS

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

17.2 The Contractor shall not assign or sublet the work, or any part thereof, without the previous written consent of the City, nor shall it assign, by power of attorney or otherwise, any of the money payable under this Contract unless by and with the like written consent of the City. In case the Contractor assigns all, or any part of any moneys due or to become due under

- this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to all prior liens of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.
- 17.3 Should any Subcontractor fail to perform in a satisfactory manner, the work undertaken, its subcontract shall be immediately terminated by the Contractor upon notice from the City. Performing in an unsatisfactory manner is defined as consistently having more than 10% of work unacceptable. The Contractor shall be as fully responsible to the City for the acts and omissions of the subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed. Nothing contained in this Contract shall create any contractual relations between any Subcontractor and the City, nor shall anything contained in the Contract Documents create any obligation on the part of the City to pay or to see to the payment of any sums due any Subcontractor.
- 17.4 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, Project Manager or bid-letting costs therefore. In such case, the Contractor shall not be entitled to receive further payment. In the event the Contractor is found in a court of law to have been wrongfully terminated for cause, then such termination shall be deemed a termination for convenience and the Contractor shall be compensated as provided herein. Any termination of the Agreement for alleged default by Contractor that is ultimately determined to be unjustified shall automatically be deemed a termination for convenience of the City.

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

22. MISCELLANEOUS:

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

- in any mailbox regularly maintained by the Post Office, of any notice, letter or other communication so addressed to the Contractor, and the date of said service shall be the date of such delivery or mailing. Such addresses may be changed at any time by an instrument in writing, executed by the Contractor, presented, and delivered to the Project Manager and to the City. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or communication upon the Contractor personally.
- 22.5 It is mutually agreed by and between the parties to this Contract that all royalties and fees for and in connection with patents, or patent infringement, claims for materials, articles, apparatus, devices or equipment (as distinguished from processes) used in or furnished for the work shall be included in the Contract Price and the Contractor shall satisfy all demands that may be made at any time for such, and the Contractor shall at its cost and expense, defend any and all suits or proceedings that may be instituted at any time against the City for infringement or alleged infringement of any such patents involved in the work, and Contractor shall pay any award of damages.
- 22.6 The right of general administration of the City shall not make the Contractor an agent of the City, and the liability of the Contractor for all damages to persons, firms, and corporations, arising from the Contractor's execution of the Work, shall not be lessened because of such general administration, but as to all such persons, firms, and corporations, and the damages, if any, to them or their property. The Contractor herein is an independent Contractor in respect to the work.
- 22.7 For a period of time, from the inception of the Contract to three (3) years from the date of final payment under the Contract, the Contractor and subcontractors shall maintain books, accounts, ledgers, invoices, drafts, pages and other records pertaining to the performance of this Contract. At all reasonable times during this period these records shall be available within the State of Kansas at a field or permanent business office for inspection by authorized representatives of the City or of any other agency, which has contributed funds in connection with the Contract or to which the City is obligated to make such inspections available. In addition, this requirement shall be included in all subcontracts entered into in connection with this Contract.
- 22.8 Titles, subheadings used herein, and other Contract Documents are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Contract Documents.
- 22.9 No waiver of any breach of this Contract shall be construed to be a waiver of any other subsequent breach.
- 22.10 Should any provision of this Agreement or other Contract Documents be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement and/or the other Contract Documents shall be unaffected thereby and shall continue to be valid and enforceable.
- 22.11 Without in any manner limiting Contractor's responsibilities as provided elsewhere in the Contract Documents, the Contractor shall assume full responsibility for the protection of all public and private property, structures, sewers, and utilities, for both above ground and underground facilities, along, beneath, above, across or near the site or sites of the Work

- being performed under this Agreement, or which are in any manner affected by the prosecution of the Work or the transportation of men/women or materials in connection therewith. Barriers shall be kept in place at all times to protect persons other than those engaged on or about the Work from accident, and the Contractor will be held responsible for all accidents to persons or property resulting from the acts of Contractor or its employees.
- 22.12 The Contractor shall keep fully informed of all existing and current regulations of the City, county, state, and federal laws, which in any way limit or control the actions or operations of those engaged upon the work, or affecting materials supplied, to or by them. The Contractor shall at all times observe and comply with all ordinances, laws, and regulations, and shall protect and indemnify the City and the City's officers and agents against any claims or liability arising from or based on any violation of the same.
- 22.13 Nothing contained in the Contract Documents shall create, or be interpreted to create, privity or any other contractual agreement between the City and any person or entity other than the Contractor.
- 22.14 Duties and obligations imposed by the Contract Documents, rights, and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.
- 22.15 No action or failure to act by the City, Project Manager or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval or acquiescence in a breach hereunder, except as may be specifically agreed in writing.
- 22.16 Contractor specifically acknowledges and confirms that: (i) it has visited the site, made all inspections it deems appropriate and has read and fully understands the Contract Documents, including all obligations and responsibilities undertaken by it as specified herein and in other Contract Documents and knowingly accepts the same; (ii) it has furnished copies of all Contract Documents to its insurance carrier(s) and its surety(ies); and (iii) its insurance carrier(s) and surety(ies) agree to be bound as specified herein, in the Contract Documents and in the insurance policy(ies) and bonds as to liability and surety coverage.
- 22.17 It is specifically agreed between the parties executing this Agreement that the Contract Documents are not intended to create any third party beneficiary relationship nor authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.
- 22.18 This Agreement is entered into, under and pursuant to, and is to be construed and enforceable in accordance with the laws of the State of Kansas. Venue of any litigation arising in connection with this Agreement shall be the State courts of Johnson County, Kansas.

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

CITY OF PRAIRIE VILLAGE

McConnell and Associates Corp.

(typed company name)

By: _____
(signed)

By: _____
(signed)

Laura Wassmer

(typed name)

Mayor

(typed title)

City of Prairie Village

McConnell and Associates Corp.

(typed company name)

7700 Mission Road

1225 Iron Street

(typed address)

Prairie Village, Kansas 66208

Kansas City, MO 64116

(typed city, state, zip)

816-842-6066

(typed telephone number)

(date of execution)

(date of execution)

SEAL

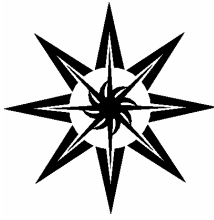
ATTEST:

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.)



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: February 6, 2017
Council Meeting Date: February 6, 2017

CONSIDER AMENDMENT 1 TO THE CONSTRUCTION INSPECTION AGREEMENT WITH OLSSON ASSOCIATES FOR MEADOWBROOK PUBLIC IMPROVEMENTS (MBSTREET & MBDRAINX)

RECOMMENDATION

Move to approve Amendment 1 to the Construction Inspection agreement with Olsson Associates for Meadowbrook Public Improvements.

BACKGROUND

The original construction inspection agreement with Olsson and Associated for the Meadowbrook construction project was approved in May of 2016. The Meadowbrook construction project has been proceeding well and significant work has been completed. In conjunction with VanTrust we have extended the completion date from December 31, 2016 to June of 2017. This Amendment to the construction inspection contract will cover inspection services for this additional construction time period. Contract fees are summarized below.

Original Contract-	\$179,995.50
Amendment 1-	<u>\$68,136.75</u>
New Contract Total-	\$248,132.25

FUNDING SOURCE

Funding for this work will come from TIF reimbursable or will come from County SMAC funds.

ATTACHMENTS

1. Amendment 1 to the Construction Inspection Agreement with Olsson Associates

PREPARED BY

Keith Bredehoeft, Public Works Director

February 2, 2017

LETTER AGREEMENT AMENDMENT #1

This AMENDMENT ("Amendment") shall amend and become a part of the Agreement for Professional Consultant Services for Construction Administration dated May 16, 2016 between the City of Prairie Village, Kansas 66208, ("City") and Olsson Associates, Inc. ("Consultant") providing civil engineering services for Construction Administration of Project Meadowbrook Redevelopment, Projects MBSTREET and MBDRAINx, located at 95th Street and Nall ("Project").

SCOPE OF SERVICES

City and Consultant hereby agree that Consultant's Scope of Services under the Agreement is amended by adding the services specifically described below for the additional compensation set forth below:

Inspection Services

Olsson has provided construction administration services since May 2016. The Meadowbrook Redevelopment Street and SMAC projects have gone on longer than originally anticipated, at no fault of Olsson Associates. Olsson's original fee was based a project completion date of December 31, 2016. This Amendment No. 1 is based on a revised completion date of June 8, 2017. A breakout of this information and additional estimated fee is included as Attachment 1.

COMPENSATION

For the additional Scope of Services specifically set forth in this Amendment, the City shall pay the Consultant the following fee incurred, in addition to the fee(s) set forth in the Agreement:

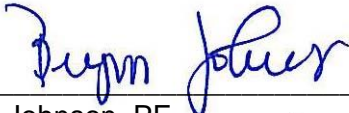
The Consultant's Scope of Services is hereby increased \$68,136.75 from the original contract amount of \$179,995.50, for a new maximum fee of \$248,132.25.


TERMS AND CONDITIONS OF SERVICE

All provisions of the original Agreement not specifically amended herein shall remain unchanged.

If this Contract Amendment satisfactorily sets forth your understanding of our agreement, please sign in the space provided below. Retain a copy for your files and return an executed original to the Consultant. This proposal will be open for acceptance for a period of 30 days from the date set forth above, unless changed by us in writing.

OLSSON ASSOCIATES, INC.

By 
Bryan Johnson, PE
Office Leader

By 
Curt H. Mader, PE
Senior Engineer

By signing below, you acknowledge that you have full authority to bind Client to the terms of this Amendment. If you accept this Amendment, please sign:

City of Prairie Village, Kansas

By _____
Signature

Printed Name _____

Title _____

Dated: _____

Meadowbrook Redevelopment - Amendment 1
Prairie Village, Kansas
Construction Administration & Inspection
Summary of Billings & Additional Fee Request



Olsson Project No.	Prairie Village Project No.	Billings as of 12/3/2016	Billings 12/3 to 12/31/16	Est. 2017 Billings 1/1 to 6/30/17	Total Estimated Billed
16-0735	MBSTREET	\$ 104,764.50	\$ 10,065.75	\$ 61,299.00	\$ 176,129.25
A16-0735	MBDRAINX	\$ 42,255.50	\$ 5,747.50	\$ 24,000.00	\$ 72,003.00
TOTALS		\$ 147,020.00	\$ 15,813.25	\$ 85,299.00	\$ 248,132.25
Less 2016 Billings					\$ 162,833.25
Less Est. Remaining Fee (@ 12/31/16)					\$ 17,162.25
Additional Fee Request					\$ 68,136.75
MBSTREET					\$ 29,795.58
MBDRAINX					\$ 19,170.00

Meadowbrook Redevelopment - Amendment 1

Prairie Village, KS

Estimate of Fee - January 1, 2017 to June 30, 2017

Construction Administration & Inspection

Public Roadway, Storm Sewer, Ponds (SMAC), Conspan & Stream Restoration



	Employee Type	Hourly Rate	Estimated Hours	Extension
Construction Phase				
Daily Observation/Documentation/Coordination/ Weekly Meetings/Testing Coordination	Inspector	\$ 95.00	715	\$ 67,925.00
Materials Testing - By others				
Insp. Mgmt, Mtgs., Wkly Reports, Utility Issues, Contractor Issues, Pay Estimates, Change Orders,	Project Manager	\$ 160.00	66	\$ 10,560.00
Phase Totals			781	\$ 78,485.00
Post-Construction Phase				
Punch List & Remedial Work Inspection	Inspector	\$ 95.00	30	\$ 2,850.00
Final Documentation	Project Manager	\$ 160.00	10	\$ 1,600.00
Phase Totals			40	\$ 4,450.00
TOTAL LABOR			821	\$ 82,935.00
DIRECT EXPENSES		Unit Price		
Mileage (@\$0.756/mi)	3,152	\$0.75		\$ 2,364.00
ESTIMATED DIRECT EXPENSES				\$ 2,364.00
2017 TOTAL ESTIMATED FEE				\$ 85,299.00

Meadowbrook Redevelopment - Amendment 1
Prairie Village, Kansas
Estimate of Construction Phase Hours and Vehicle Mileage
January 1, 2017 to June 8, 2017



Construction Phase		Start 1/1/2017					End 6/8/2017		PHASE TOTALS
		Jan	Feb	Mar	Apr	May	Jun		
	Cal Days	31	28	31	30	31	8	159	
	Week Days	22	20	23	20	23	6	114	
	Est. Working Days	20	16	16	20	22	6	100	
	Saturdays	4	4	4	5	4	1	22	
Inspector \$95.00	Est. Avg. Hrs/Day	4	4	6	9	10	8		
	Est. Saturdays Worked	0	0	0	1	1	1	3	
	Est. Hours	80	64	96	189	230	56	715	
Project Manager \$160.00	Calendar Year 2017 Project Manager - 22wks @ 3 hr/wk =							66	66

Estimate of Mileage		Jan	Feb	Mar	Apr	May	Jun	PHASE TOTALS
Construction Phases								
Sr. Inspector	Avg. Mi/Day	26	26	26	26	26	26	
	Est. Miles	520	416	416	546	598	182	2678
Project Manager	Est. Miles	25	50	85	74	85	25	344
Post-Construction Phase								130
5 trips								3152



PLANNING COMMISSION

Council Meeting Date: February 6, 2017

PC2016-07 Consider Renewal of a Special Use Permit for the installation of wireless communication antenna at 7700 Mission Road - AT&T

RECOMMENDATION:

Governing Body adopt Ordinance 2359 approving the renewal of a Special Use Permit for the installation, operation and maintenance of communication antenna and related equipment by AT&T on the property described as 7700 Mission Road, Prairie Village, Kansas.

BACKGROUND:

This is a request for renewal of the Special Use Permit for the AT&T Wireless Communication Antenna and equipment at 7700 Mission Road. The original application approved in 1997 for Sprint. Subsequent Special Use Permits for either renewal of the tower SUP or the addition of other carries were approved in 2000, 2001, 2004, 2006, and 2009. The SUP was reviewed by the Planning Commission in December 2006, and approved by ordinance by the City Council in September 2007, for a period of 10 years. AT&T is seeking renewal of the Special Use Permit for a period of 10 years. There are not any changes to the existing antennae or equipment.

Additionally, several lease amendments for operation of the site and communications equipment are on-going and on separate timeframes for renewal or expiration. Part of this application is to renew existing SUPs set to expire, as well as coordinate the SUPs with renewal of leases.

Notice of this hearing was mailed to surrounding property owners and a sign was posted on the site. A public hearing was held before the Planning Commission on January 10 with no one attending to speak on the application. The Planning Commission recommends approval of PC2016-07 to the Governing Body for the granting of a Special Use Permit for the operation of a wireless communications facility at 7700 Mission Road subject to the following conditions:

1. That the renewal of the special use permit shall be for a maximum of ten years. At the end of the ten-year period, the applicant shall resubmit the application and shall demonstrate to the satisfaction of the Planning Commission and City Council that a need still exists for the antennas and that all the conditions of approval have been met.
2. All equipment cabinets and wiring shall be contained within the existing walled area.
3. The antennas and the frame for mounting them shall be painted a color that blends with the other antennas and the tower so visibility is minimized.

4. If the applicant is found to be in non-compliance with the conditions of the special use permit, the permit will become null and void within 90 days of notification of non-compliance, unless the non-compliance is corrected. If a special use permit becomes null and void, the applicant shall remove the antennas, equipment cabinets and all other appurtenances and shall restore the site to its original condition.
5. The applicant shall comply with all state and federal regulations.
6. The applicant shall have a structural inspection of the antennas performed by a licensed professional engineer prior to every ten-year renewal and submit it as part of the renewal application.
7. The plans for any changes to the antenna connections shall be prepared and sealed by a structural engineer licensed in the State of Kansas with construction observation provided by a design engineer that is not an employee of the tower's owner.
8. The Compound Plan submitted as a part of the original application, and the Site Plan dated 06/03/14 documenting current conditions and submitted as part of this renewal application shall be incorporated as part of the approval of this application.
9. The coax line installed on the tower shall be either inside the monopole or enclosed in an encasement that is painted the same color as the tower.
10. The applicant shall comply with all terms of its lease agreement with the City. Termination of the lease agreement will be cause to terminate the Special Use Permit.
11. If the existing tower, or the overall SUP for the existing tower is amended in any way to accommodate structural changes for new equipment or a different capacity for this tower, or a new tower is constructed, the applicant shall comply with all design conditions of this new construction.

The Governing Body (which includes the Mayor and City Council) shall make its findings of fact based on the following "Golden Factors" and the criteria for approval of a Special Use Permit which are reflected in the January 10, 2017 minutes of the Planning Commission regarding this application.

ATTACHMENTS

PC2016-07 - Staff Report
Draft Planning Commission Minutes - January 10, 2017
Proposed Ordinance

PREPARED BY
Joyce Hagen Mundy
Planning Commission Secretary/City Clerk

DATE:
January 20, 2017

STAFF REPORT

TO: Prairie Village Planning Commission
FROM: Chris Brewster, AICP, Gould Evans, Planning Consultant
DATE: December 6, 2016, Planning Commission Meeting

Application: PC 2016-07

Request: Renewal of Special Use Permit for a Monopole Wireless Telecommunications Installation

Property Address: 7700 Mission Road

Applicant: Selective Site Consultants, Justin Anderson for AT&T

Current Zoning and Land Use: R1-A Single Family – Municipal Office Complex

Surrounding Zoning and Land Use: North: R-1A Single-Family District – SM East High School
East: R-1A Single-Family District – Single Family Dwellings
South: R-1A Single-Family District – Church
West: R-1A Single-Family District – Park & Single Family Dwellings

Legal Description: Prairie Village Municipal Office Complex Tract 1 LYG within (abbreviated) SD PVC 567D 1 BTAO 2935 0

Property Area: Cell Tower Compound – approximately 3,200 sq. ft., 0.07 acres
Municipal Office Complex – 16.75 acres

Related Case Files: PC 2016-111 Site Plan Approval for Black & Veatch (AT&T)
PC 2015-114 Site Plan Approval for Verizon Wireless
PC 2014-111 Site Plan Approval for Sprint
PC 2014-108 Site Plan Approval for Verizon Wireless
PC 2014-107 Site Plan Approval for AT&T
PC 2011-114 Site Plan Approval for AT&T
PC 2009-17 Special Use Permit Renewal for Sprint
PC 2006-19 Special Use Permit Renewal for Cingular Wireless
PC 2005-115 Final Plat Municipal Office Complex
PC 2004-09 Special Use Permit for Sprint
PC 2001-05 Special Use Permit for AT&T
PC 2000-05 Special Use Permit for General Dynamics for Metricom
PC 1997-04 Special Use Permit to Replace Tower

Attachments: Application, Drawings & Photos

General Location – Map



General Location – Aerial





Street View - Site



Street View - Tower

COMMENTS:

This is a request to renew the Special Use Permit for the installation of antennas and equipment on City Hall property at 7700 Mission Road for Selective Site Consultants. The original application approved in 1997 for Sprint. Subsequent Special Use Permits for either renewal of the tower SUP or the addition of other carries were approved in 2000, 2001, 2004, 2006, and 2009. Additionally, several lease amendments for operation of the site and communications equipment are on-going and on separate timeframes for renewal or expiration. Part of this application is to renew existing SUPs set to expire, as well as coordinate the SUPs with renewal of leases.

The original SUP for the tower is held by Sprint and was renewed in 2009 for a period of 10 years. However, AT&T also has a SUP for its equipment on the tower. This SUP was reviewed by the Planning Commission in December 2006, and approved by ordinance by the City Council in September 2007, for a period of 10 years. The renewal of this SUP is the subject of this specific application. It is also being coordinated with a lease requirement to have all SUPs in place as part of renewal of leases. These amendments are being worked on by City staff in coordination with this particular application.

Notice of this hearing was mailed to surrounding property owners and a sign was posted on the site.

APPLICATION INFORMATION:

The Staff has reviewed the renewal application based on the City's ordinance for Wireless Communication Facilities and has the following comments regarding the information submitted. It should be noted that since this is only an application for renewal of an antenna installation and not a tower, and no new equipment is proposed in association with this application. A number of items in the ordinance may not be applicable. The required application information is shown in bold type.

- A. A study comparing potential sites within an approximate one mile radius of the proposed application area. The study shall include the location and capacity of existing towers, alternative tower sites, a discussion of the ability or inability of each site to host the proposed communications facility and reasons why certain of these sites were excluded from consideration. The study must show what other sites are available and why the proposed location was selected over the others. It must also establish the need for the proposed facility and include a map showing the service area of the proposed facility as well as other alternative tower site and antennas.**

If the use of exiting towers, alternative tower structures, and sites are unavailable, a reason or reasons specifying why they are unavailable needs to be set out and may include one or more of the following: refusal by current tower or site owner; topographical limitations; adjacent impediments blocking transmission; site limitations to tower or facility or tower; no space on existing facility or tower; other limiting factors rendering existing facilities or towers unusable. The documentation submitted must use technological and written evidence, that these sites are inadequate to fulfill the grid needs of the wireless service provider, or that a reasonable co-location lease agreement could not be reached with the owners of said alternative sites.

The applicant shall submit an overall plan that shows the coverage gaps in service or lack of network capacity throughout the entire City and provide an indication of future needed/proposed wireless communication facilities, towers, and/or antenna.

The applicant shall demonstrate how the proposed communication facility, will impact its overall network within the City of Prairie Village and adjacent cities on both sides of the state line.

The study shall demonstrate how the proposed communication facility, will impact its overall network within the City of Prairie Village and adjacent cities on both sides of the state line.

The study shall also provide documentation establishing the minimum height necessary to provide the applicant's services and the height required to provide for co-location. The study shall include coverage maps for the proposed monopole at the requested height and at ten feet descending intervals to 50 feet.

The Planning Commission or Governing Body at its discretion may require a third party analysis, at the applicant's expense, to confirm the need for the facility.

The applicant shall be responsible to provide timely updates of the above described study and information during the Special Use Permit process.

Since this is the renewal of an existing installation, the City has not required a study of alternative locations within a one-mile radius. The applicant has indicated that this installation is an important location in servicing their customers and has modified it throughout previous renewal periods to provide better services.

- B. Multiple photo simulations of the proposed facility as viewed from the adjacent residential properties and public rights of way as directed by City Staff.**

Since the antennas are installed, Staff has submitted photos of the actual installation.

- C. When possible, all wireless communication towers and alternative tower structures must be designed to accommodate multiple providers (co-location), unless after consideration of the recommendation of the Planning Commission, the City Council finds that the height or other factors required to make such an accommodation will have a more detrimental effect on the community than having multiple sites. Failure of a permit holder to negotiate in good faith to provide fairly priced co-location opportunities, based on industry standards may be grounds for denial or revocation of the Special Use Permit. A signed statement shall be submitted indicating the applicant's intention to share space on the tower with other providers.**

This is an existing tower that has multiple service providers already located on the tower. The current leases and the overall SUP for the tower ensures that the tower is reserved for multiple providers. In an unrelated application it was determined that the tower is at capacity, and although all current providers will remain on the tower, no new equipment may be put on the tower without a detailed structural analysis.

- D. Any application for construction of a new wireless communication facility, tower, antenna or equipment compound must provide a detailed site plan of the proposed project. This properly scaled site plan will include one page (including ground contours) that portrays the layout of the site, including the proposed facility, the fall radius of any proposed monopole, as well as proposed and existing structures within 200 feet of the tower base and the identification of the specific trees, structures, improvements, facilities and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate. Access to and from the site, as well as dimensioned proposed and existing drives, must be included on this plan. Detailed exterior elevations (from all views) of the tower, screening wall, and all proposed buildings must also be submitted. Finally, a landscape plan detailing location, size, number and species of plant materials must be included for review and approval by the Planning Commission.**

Not applicable, however this information has been provided for the current site conditions.

- E. Description of the transmission medium that will be used by the applicant to offer or to provide services and a statement that applicant will meet all federal, state and city regulations and law, including but not limited to FCC regulations.**

The applicant shall provide an engineer's statement that anticipated levels of electromagnetic radiation to be generated by facilities on the site, including the effective

radiated power (ERP) of the antenna, shall be within the guidelines established by the FCC. The cumulative effect of all antennas and related facilities on a site will also comply with the radio frequency radiation emission guidelines established by the FCC. An antenna radiation pattern shall be included for each antenna.

Not applicable.

F. Preliminary construction schedule including completion dates.

Not applicable.

G. The applicant shall provide a copy of its FCC license

Submitted with previous renewal.

H. Copies of letters sent to other wireless communication providers and their response regarding their interest to co-locate.

Not applicable since this is an existing tower that has multiple providers and is at capacity.

I. Any other relevant information requested by City Staff.

None requested.

FACTORS FOR CONSIDERATION:

The Planning Commission shall make findings of fact to support its recommendation to approve, conditionally approve, or disapprove this Special Use Permit. It is not necessary that a finding of fact be made for each factor. However, there should be a conclusion that the request should be approved or denied based upon consideration of as many factors as are applicable. The factors to be considered in approving or disapproving a Special Use Permit for a wireless facility shall include the following:

A. The character of the neighborhood.

The site is located on the west side of Mission Road within the municipal complex and behind City Hall. The complex is surrounded by other institutional uses including Shawnee Mission High School, Harmon Park and Prairie Village Pool, a and a church. There are residences across Mission Road to the east. These locations are appropriate for wireless communication facilities and the scale of the area in relation to the surroundings were previously determined to be appropriate for a monopole.

B. The zoning and uses of property nearby.

North: R-1A Single-Family District – SM East High School
East: R-1A Single-Family District – Single Family Dwellings
South: R-1A Single-Family District – Church
West: R-1A Single-Family District – Park & Single Family Dwellings

C. The extent that a change will detrimentally affect neighboring property

This is the renewal of an existing Special Use Permit that will not have a detrimental effect on neighboring property. The installation has been in place since 1997, and the City has not received any complaints.

D. The relative gain to public health, safety and welfare by destruction of value of the applicant's property as compared to the hardship on other individual landowners.

This is a renewal of an existing installation with no changes proposed, and therefore it will not create any hardship on adjacent landowners.

- E. The proposed special use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations and use limitations.**

The proposed antenna installation meets all the setback, height and area regulations contained in the Zoning Ordinance.

- F. The proposed special use at the specified location will not adversely affect the welfare or convenience of the public.**

This application will have no adverse effect on the welfare or convenience of the public. The City has not received any complaints regarding this installation.

- G. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such as the special use will not cause substantial injury to the value of the property in the immediate neighborhood so as to hinder development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the special use will cause substantial injury to the value of property in the immediate neighborhood, consideration shall be given to:**

- 1. The location, size, nature and height of buildings, structures, walls, and fences on the site; and**
- 2. The nature and extent of landscaping and screening on the site.**

The installation of the antennas on this tower has had relatively little impact and has not dominated the immediate neighborhood as to hinder development. The tower and compound are integrated into the internal portion of the City Hall building and no landscaping or screening on the site is necessary.

- H. Off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations and such areas will be screened from adjoining residential uses and located so as to protect such residential uses from any injurious effect.**

Off street parking will not be necessary for this particular use other than a parking space currently available for service people entering the building to maintain equipment. The parking that is provided on the site will be adequate for this need.

- I. Adequate utility, drainage, and other such necessary facilities have been or will be provided.**

Since there are not external improvements on the site, existing utility, drainage, and other facilities should be adequate.

- J. Adequate access roads or entrance and exist drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.**

The site and the equipment should require only service vehicles for periodic maintenance. The traffic generated by the use is so minimal that it will not create any additional congestion on the streets.

- K. Adjoining properties and the general public shall be adequately protected from any hazardous or toxic materials, hazardous manufacturing processes, obnoxious odors or unnecessarily intrusive noises.**
-

The antennas and equipment do not have any hazardous or toxic materials, obnoxious odors, or intrusive noises that would affect the general public.

L. Architectural design and building materials are compatible with such design and materials used in the neighborhood in which the proposed facility is to be built or located.

This is an existing monopole design with multiple providers, and the SUP renewal is only for the AT&T equipment. The design and location of the pole was previously determined appropriate though the existing tower SUP. However this tower is at capacity. Should any new facilities be determined to be necessary in the future, a new design or a new tower structure be required for any reason, this SUP should be amended to reflect compliance with any changes to the overall facility.

M. City Staff recommendations.

It is the opinion of Staff that the proposed renewal of the Special Use Permit meets the Factors for Consideration and recommends that it be approved subject to the conditions on the site that made the original application and subsequent renewals appropriate.

RECOMMENDATION:

After a review of the proposed application and making its findings in relation to the thirteen Factors for Consideration previously outlined, the Planning Commission may either recommend approval of the Special Use Permit with or without conditions, recommend denial, or continue it to another meeting. If the Planning Commission recommends approval to the Governing Body, it is recommended that the conditions of the previous 2007 special use be included with the renewal, specifically 1 – 10 below, with the addition of a new condition 11.

1. That the renewal of the special use permit shall be for a maximum of ten years. At the end of the ten-year period, the applicant shall resubmit the application and shall demonstrate to the satisfaction of the Planning Commission and City Council that a need still exists for the antennas and that all the conditions of approval have been met.
2. All equipment cabinets and wiring shall be contained within the existing walled area.
3. The antennas and the frame for mounting them shall be painted a color that blends with the other antennas and the tower so visibility is minimized.
4. If the applicant is found to be in non-compliance with the conditions of the special use permit, the permit will become null and void within 90 days of notification of non-compliance, unless the non-compliance is corrected. If a special use permit becomes null and void, the applicant shall remove the antennas, equipment cabinets and all other appurtenances and shall restore the site to its original condition.
5. The applicant shall comply with all state and federal regulations.
6. The applicant shall have a structural inspection of the antennas performed by a licensed professional engineer prior to every ten-year renewal and submit it as part of the renewal application.
7. The plans for any changes to the antenna connections shall be prepared and sealed by a structural engineer licensed in the State of Kansas with construction observation provided by a design engineer that is not an employee of the tower's owner.
8. The Compound Plan submitted as a part of the original application, and the Site Plan dated 06/03/14 documenting current conditions and submitted as part of this renewal application shall be incorporated as part of the approval of this application.
9. The coax line installed on the tower shall be either inside the monopole or enclosed in an encasement that is painted the same color as the tower.
10. The applicant shall comply with all terms of its lease agreement with the City. Termination of the lease agreement will be cause to terminate the Special Use Permit.
11. If the existing tower, or the overall SUP for the existing tower is amended in any way to accommodate structural changes for new equipment or a different capacity for this tower, or a new tower is constructed, the applicant shall comply with all design conditions of this new construction.

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PLANNING COMMISSION MINUTES
January 10, 2017

ROLL CALL

The Planning Commission of the City of Prairie Village met in regular session on Tuesday, January 10, 2017 in the Municipal Building Multi-Purpose Room at 7700 Mission Road. Chairman Nancy Wallerstein called the meeting to order at 7:00 p.m. with the following members present: James Breneman, Gregory Wolf, Melissa Brown and Jeffrey Valentino.

The following persons were present in their advisory capacity to the Planning Commission: Chris Brewster, City Planning Consultant; Wes Jordan, Assistant City Administrator, Serena Schermoly, Council Liaison and Joyce Hagen Mundy, Commission Secretary.

APPROVAL OF MINUTES

James Breneman moved for the approval of the minutes of the Special Planning Commission meeting of November 30, 2016 and the minutes of the December 6, 2016 regular Planning Commission meeting as submitted. The motion was seconded by Gregory Wolf and passed by a vote of 5 to 0.

PUBLIC HEARINGS

**PC2016-07 Request for Renewal of Special Use Permit for Wireless Antenna by AT&T
7700 Mission Road**

Justin Anderson, 9900 West 109th Street, Suite 300, Overland Park, with Selective Site Consultants presented the request for renewal of the Special Use Permit for the AT&T Wireless Communication Antenna and equipment at 7700 Mission Road. The SUP was reviewed by the Planning Commission in December 2006, and approved by ordinance by the City Council in September 2007, for a period of 10 years. Mr. Anderson stated AT&T is seeking renewal of the Special Use Permit for a period of 10 years and that the renewal does not include any changes to the existing antennae or existing equipment.

James Breneman noted the plans show Sprint, Verizon and AT&T are all located on his tower. Mr. Anderson replied that each of the three carriers have their own special use permit to locate on the tower. Mr. Breneman asked if they could all be renewed at the same time.

Wes Jordan stated that the Assistant City Attorney and David Waters of Lathrop and Gage are currently reviewing the city's wireless communications ordinance for compliance with new FCC regulations and new legislation passed by the State of Kansas. He noted that all current providers will be coming before the Planning Commission within the next four months for renewal. Mr. Jordan also noted that the City wants to coordinate the renewal of the special use permits and any applicable leases

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with the city having the same term and expiration. Chris Brewster noted that the recent state statute may require that all permits be for a period of at least ten years.

Mr. Breneman would like to see them all be renewed at the same time. Nancy Wallerstein confirmed that each carrier has to apply for a special use permit. Chris Brewster replied that is what is required in the current ordinance and the Assistant City Attorney recommends that requirement continue rather than having one special use for the entire tower.

Chairman Nancy Wallerstein noted that this was a public hearing and opened the meeting for public comment. With no one present to speak, the public hearing was closed at 7:06 p.m.

Chris Brewster briefly reviewed the application as it addresses the City's ordinance for Wireless Communication Facilities and has the following comments regarding the information submitted, noting that it is only an application for renewal of an antenna installation and not a tower, and no new equipment is proposed in association with this application therefore a number of items in the ordinance are not applicable. The required application information is shown in bold type.

- A. **A study comparing potential sites within an approximate one mile radius of the proposed application area. The study shall include the location and capacity of existing towers, alternative tower sites, a discussion of the ability or inability of each site to host the proposed communications facility and reasons why certain of these sites were excluded from consideration. The study must show what other sites are available and why the proposed location was selected over the others. It must also establish the need for the proposed facility and include a map showing the service area of the proposed facility as well as other alternative tower site and antennas.**

If the use of exiting towers, alternative tower structures, and sites are unavailable, a reason or reasons specifying why they are unavailable needs to be set out and may include one or more of the following: refusal by current tower or site owner; topographical limitations; adjacent impediments blocking transmission; site limitations to tower or facility or tower; no space on existing facility or tower; other limiting factors rendering existing facilities or towers unusable. The documentation submitted must use technological and written evidence, that these sites are inadequate to fulfill the grid needs of the wireless service provider, or that a reasonable co-location lease agreement could not be reached with the owners of said alternative sites.

The applicant shall submit an overall plan that shows the coverage gaps in service or lack of network capacity throughout the entire City and provide an indication of future needed/proposed wireless communication facilities, towers, and/or antenna.

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The applicant shall demonstrate how the proposed communication facility, will impact its overall network within the City of Prairie Village and adjacent cities on both sides of the state line.

The study shall demonstrate how the proposed communication facility, will impact its overall network within the City of Prairie Village and adjacent cities on both sides of the state line.

The study shall also provide documentation establishing the minimum height necessary to provide the applicant's services and the height required to provide for co-location. The study shall include coverage maps for the proposed monopole at the requested height and at ten feet descending intervals to 50 feet.

The Planning Commission or Governing Body at its discretion may require a third party analysis, at the applicant's expense, to confirm the need for the facility.

The applicant shall be responsible to provide timely updates of the above described study and information during the Special Use Permit process.

Since this is the renewal of an existing installation, the City has not required a study of alternative locations within a one-mile radius. The applicant has indicated that this installation is an important location in servicing their customers and has modified it throughout previous renewal periods to provide better services.

B. Multiple photo simulations of the proposed facility as viewed from the adjacent residential properties and public rights of way as directed by City Staff.

Since the antennas are installed, Staff has submitted photos of the actual installation.

C. When possible, all wireless communication towers and alternative tower structures must be designed to accommodate multiple providers (co-location), unless after consideration of the recommendation of the Planning Commission, the City Council finds that the height or other factors required to make such an accommodation will have a more detrimental effect on the community than having multiple sites. Failure of a permit holder to negotiate in good faith to provide fairly priced co-location opportunities, based on industry standards may be grounds for denial or revocation of the Special Use Permit. A signed statement shall be submitted indicating the applicant's intention to share space on the tower with other providers.

This is an existing tower that has multiple service providers already located on the tower. The current leases and the overall SUP for the tower ensure that the tower is reserved for multiple providers. In an unrelated application it was determined that the tower is at capacity, and although all current providers will remain on the tower, no new equipment may be put on the tower without a detailed structural analysis.

D. Any application for construction of a new wireless communication facility, tower, and antenna or equipment compound must provide a detailed site plan of the proposed project. This properly scaled site plan will include one page (including

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ground contours) that portrays the layout of the site, including the proposed facility, the fall radius of any proposed monopole, as well as proposed and existing structures within 200 feet of the tower base and the identification of the specific trees, structures, improvements, facilities and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate. Access to and from the site, as well as dimensioned proposed and existing drives, must be included on this plan. Detailed exterior elevations (from all views) of the tower, screening wall, and all proposed buildings must also be submitted. Finally, a landscape plan detailing location, size, number and species of plant materials must be included for review and approval by the Planning Commission.

Not applicable, however this information has been provided for the current site conditions.

- E. Description of the transmission medium that will be used by the applicant to offer or to provide services and a statement that applicant will meet all federal, state and city regulations and law, including but not limited to FCC regulations.

The applicant shall provide an engineer's statement that anticipated levels of electromagnetic radiation to be generated by facilities on the site, including the effective radiated power (ERP) of the antenna, shall be within the guidelines established by the FCC. The cumulative effect of all antennas and related facilities on a site will also comply with the radio frequency radiation emission guidelines established by the FCC. An antenna radiation pattern shall be included for each antenna.

Not applicable.

- F. Preliminary construction schedule including completion dates.

Not applicable.

- G. The applicant shall provide a copy of its FCC license
Submitted with previous renewal.

- H. Copies of letters sent to other wireless communication providers and their response regarding their interest to co-locate.

Not applicable since this is an existing tower that has multiple providers and is at capacity.

- I. Any other relevant information requested by City Staff.

None requested.

FACTORS FOR CONSIDERATION:

The Planning Commission shall make findings of fact to support its recommendation to approve, conditionally approve, or disapprove this Special Use Permit. It is not necessary that a finding of fact be made for each factor. However, there should be a conclusion that the request should be approved or denied based upon consideration of

as many factors as are applicable. The factors to be considered in approving or disapproving a Special Use Permit for a wireless facility shall include the following:

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A. The character of the neighborhood.

The site is located on the west side of Mission Road within the municipal complex and behind City Hall. The complex is surrounded by other institutional uses including Shawnee Mission East High School, Harmon Park with Prairie Village Pool and a church. There are residences across Mission Road to the east. These locations are appropriate for wireless communication facilities and the scale of the area in relation to the surroundings was previously determined to be appropriate for a monopole.

B. The zoning and uses of property nearby.

North: R-1A Single-Family District - SM East High School
East: R-1A Single-Family District - Single Family Dwellings
South: R-1A Single-Family District - Church
West: R-1A Single-Family District - Park & Single Family Dwellings

C. The extent that a change will detrimentally affect neighboring property

This is the renewal of an existing Special Use Permit that will not have a detrimental effect on neighboring property. The installation has been in place since 1997, and the City has not received any complaints.

D. The relative gain to public health, safety and welfare by destruction of value of the applicant's property as compared to the hardship on other individual landowners.

This is a renewal of an existing installation with no changes proposed, and therefore it will not create any hardship on adjacent landowners.

E. The proposed special use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations and use limitations.

The proposed antenna installation meets all the setback, height and area regulations contained in the Zoning Ordinance.

F. The proposed special use at the specified location will not adversely affect the welfare or convenience of the public.

This application will have no adverse effect on the welfare or convenience of the public. The City has not received any complaints regarding this installation.

G. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such as the special use will not cause substantial injury to the value of the property in the immediate neighborhood so as to hinder development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the special use will cause substantial injury to the value of property in the immediate neighborhood, consideration shall be given to:

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1. The location, size, nature and height of buildings, structures, walls, and fences on the site; and
2. The nature and extent of landscaping and screening on the site.

The installation of the antennas on this tower has had relatively little impact and has not dominated the immediate neighborhood as to hinder development. The tower and compound are integrated into the internal portion of the City Hall building and no landscaping or screening on the site is necessary.

- H. Off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations and such areas will be screened from adjoining residential uses and located so as to protect such residential uses from any injurious effect.

Off street parking will not be necessary for this particular use other than a parking space currently available for service people entering the building to maintain equipment. The parking that is provided on the site will be adequate for this need.

- I. Adequate utility, drainage, and other such necessary facilities have been or will be provided.

Since there are not external improvements on the site, existing utility, drainage, and other facilities should be adequate.

- J. Adequate access roads or entrance and exist drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.

The site and the equipment should require only service vehicles for periodic maintenance. The traffic generated by the use is so minimal that it will not create any additional congestion on the streets.

- K. Adjoining properties and the general public shall be adequately protected from any hazardous or toxic materials, hazardous manufacturing processes, obnoxious odors or unnecessarily intrusive noises.

The antennas and equipment do not have any hazardous or toxic materials, obnoxious odors, or intrusive noises that would affect the general public.

- L. Architectural design and building materials are compatible with such design and materials used in the neighborhood in which the proposed facility is to be built or located.

This is an existing monopole design with multiple providers, and the SUP renewal is only for the AT&T equipment. The design and location of the pole was previously determined appropriate though the existing tower SUP. However this tower is at capacity. Should any new facilities be determined to be necessary in the future, a new design or a new tower structure be required for any reason, this SUP should be amended to reflect compliance with any changes to the overall facility.

- M. City Staff recommendations.

It is the opinion of Staff that the proposed renewal of the Special Use Permit meets the Factors for Consideration and recommends that it be approved subject to the conditions on the site that made the original application and subsequent renewals appropriate.

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Gregory Wolf moved the Planning Commission find that the application meets the Factors for Consideration as outlined by City Code and recommend that the Governing Body approve the renewal of the Special Use Permit for wireless communication facility at 7700 Mission Road to AT&T subject to the following conditions recommended by staff:

1. That the renewal of the special use permit shall be for a maximum of ten years. At the end of the ten-year period, the applicant shall resubmit the application and shall demonstrate to the satisfaction of the Planning Commission and City Council that a need still exists for the antennas and that all the conditions of approval have been met.
2. All equipment cabinets and wiring shall be contained within the existing walled area.
3. The antennas and the frame for mounting them shall be painted a color that blends with the other antennas and the tower so visibility is minimized.
4. If the applicant is found to be in non-compliance with the conditions of the special use permit, the permit will become null and void within 90 days of notification of non-compliance, unless the non-compliance is corrected. If a special use permit becomes null and void, the applicant shall remove the antennas, equipment cabinets and all other appurtenances and shall restore the site to its original condition.
5. The applicant shall comply with all state and federal regulations.
6. The applicant shall have a structural inspection of the antennas performed by a licensed professional engineer prior to every ten-year renewal and submit it as part of the renewal application.
7. The plans for any changes to the antenna connections shall be prepared and sealed by a structural engineer licensed in the State of Kansas with construction observation provided by a design engineer that is not an employee of the tower's owner.
8. The Compound Plan submitted as a part of the original application, and the Site Plan dated 06/03/14 documenting current conditions and submitted as part of this renewal application shall be incorporated as part of the approval of this application.
9. The coax line installed on the tower shall be either inside the monopole or enclosed in an encasement that is painted the same color as the tower.
10. The applicant shall comply with all terms of its lease agreement with the City. Termination of the lease agreement will be cause to terminate the Special Use Permit.
11. If the existing tower, or the overall SUP for the existing tower is amended in any way to accommodate structural changes for new equipment or a different capacity for this tower, or a new tower is constructed, the applicant shall comply with all design conditions of this new construction.

PC2016-06 Request for Rezoning of Homestead Estates from R-1a (Single Family Residential) to RP-1a (Planned Single Family Residential)

Current Zoning: R-1a

Applicant: Cory Childress, Evan-Talan Homes

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Wes Jordan advised the Commission that the City had received written communication from the applicant that they are withdrawing their application. No further action is needed by the Planning Commission.

NON PUBLIC HEARINGS

There were no Non Public Hearings scheduled before the Planning Commission.

OTHER BUSINESS

Countryside East Overlay District Update

Wes Jordan reported the Countryside East Homes Association was meeting this evening (January 10th) to discuss the status of the existing overlay district. He will advise the Commission as to their decision.

Nancy Wallerstein noted that the Meadowbrook Country Club building has been demolished. Melissa Brown noted the construction on the office building at 7501 Mission Road. James Breneman asked for the status of the Chadwick Court development and noted that two homes are under construction at Homestead Estates. Mr. Jordan replied that Chadwick Court is ready for development and waiting on the sale of the lots.

NEXT MEETING

One application has been filed for the February 7th meeting for a new monument sign at 7301 Mission Road. Wes Jordan noted that the office building has been sold. The new owner is not planning any exterior changes, only interior changes.

ADJOURNMENT

With no further business to come before the Commission, Chairman Nancy Wallerstein adjourned the meeting at 7:12 p.m.

Nancy Wallerstein
Chairman

ORDINANCE 2359

AN ORDINANCE RENEWING A SPECIAL USE PERMIT FOR THE INSTALLATION, OPERATION AND MAINTENANCE OF COMMUNICATION ANTENNAE AND RELATED EQUIPMENT BY SPRINT/NEXTEL ON THE PROPERTY DESCRIBED AS 7700 MISSION ROAD, PRAIRIE VILLAGE, KANSAS

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

Section I. Planning Commission Recommendation. At its regular meeting on January 10, 2017, the Prairie Village Planning Commission held a public hearing on PC2016-07 found the findings of fact to be favorable and recommended that the Governing Body approve the renewal of a Special Use Permit for the installation, operation and maintenance of antennae by AT&T at 7700 Mission Road subject to the following conditions:

1. That the renewal of the special use permit shall be for a maximum of ten years. At the end of the ten-year period, the applicant shall resubmit the application and shall demonstrate to the satisfaction of the Planning Commission and City Council that a need still exists for the antennas and that all the conditions of approval have been met.
2. All equipment cabinets and wiring shall be contained within the existing walled area.
3. The antennas and the frame for mounting them shall be painted a color that blends with the other antennas and the tower so visibility is minimized.
4. If the applicant is found to be in non-compliance with the conditions of the special use permit, the permit will become null and void within 90 days of notification of non-compliance, unless the non-compliance is corrected. If a special use permit becomes null and void, the applicant shall remove the antennas, equipment cabinets and all other appurtenances and shall restore the site to its original condition.
5. The applicant shall comply with all state and federal regulations.
6. The applicant shall have a structural inspection of the antennas performed by a licensed professional engineer prior to every ten-year renewal and submit it as part of the renewal application.
7. The plans for any changes to the antenna connections shall be prepared and sealed by a structural engineer licensed in the State of Kansas with construction observation provided by a design engineer that is not an employee of the tower's owner.
8. The Compound Plan submitted as a part of the original application, and the Site Plan dated 06/03/14 documenting current conditions and submitted as part of this renewal application shall be incorporated as part of the approval of this application.
9. The coax line installed on the tower shall be either inside the monopole or enclosed in an encasement that is painted the same color as the tower.
10. The applicant shall comply with all terms of its lease agreement with the City. Termination of the lease agreement will be cause to terminate the Special Use Permit.

11. If the existing tower, or the overall SUP for the existing tower is amended in any way to accommodate structural changes for new equipment or a different capacity for this tower, or a new tower is constructed, the applicant shall comply with all design conditions of this new construction..

Section II. Findings of the Governing Body. At its meeting on February 6, 2017, the Governing Body adopted by specific reference the findings as contained in the minutes of the Planning Commission meeting of January 10, 2017, and the recommendations of the Planning Commission and approved the Special Use Permit as docketed PC2016-07.

Section III. Granting of the Special Use Permit. Be it therefore ordained that the City of Prairie Village grant a Special Use Permit for the operation of a wireless communications facility at 7700 Mission Road, Prairie Village, Kansas subject to the 11 specific conditions listed above.

Section IV. Take Effect. That this ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper as provided by law.

PASSED AND ADOPTED THIS 6th DAY OF FEBRUARY, 2017.

CITY OF PRAIRIE VILLAGE, KANSAS

By: _____
Laura Wassmer, Mayor

ATTEST:

APPROVED AS TO FORM:

Joyce Hagen Mundy, City Clerk

Catherine P. Logan, City Attorney

MAYOR'S ANNOUNCEMENTS

Monday, February 6, 2017

Committee meetings scheduled for the next two weeks include:

Planning Commission	02/07/2017	7:00 p.m.
Prairie Village Arts Council	02/08/2017	5:30 p.m.
Park & Recreation Committee	02/08/2017	6:30 p.m.
Council Committee of the Whole (Tuesday)	02/20/2017	6:00 p.m.
City Council (Tuesday)	02/20/2017	7:30 p.m.

The Prairie Village Arts Council is pleased to feature a mixed media exhibit of the art work of James Kilmer, R. Gregory Summers & Carl Damico in the R.G. Endres Gallery during the month of January. The artist reception will be held on Friday, February 10th.

City offices will be closed on Monday, February 19th in observance of the Presidents' Day Holiday. Republic **does not** recognize this holiday and **trash services will be as regularly scheduled.**

Save the Date for the Annual National League of Cities Congressional Conference in Washington, D.C. March 11th through March 15th.

The 2017 annual Large Item Pick up has been scheduled for Saturday April 22nd for homes on 75th Street and north or 75th street; homes south of 75th Street will be collected on Saturday, April 29th.

INFORMATIONAL ITEMS
February 6, 2017

1. 2016 Final Crime Reports for Prairie Village & Mission Hills
2. 2016 Forfeiture Trust Fund Annual Report
3. Council Committee of the Whole - January 17, 2017
4. Planning Commission Agenda - February 7, 2017
5. JazzFest Committee Minutes - October 11, 2016
6. VillageFest Committee Minutes - July 28, 2016
7. Tree Board Minutes - November 2, 2016
8. Environment/Recycle Committee - December 5, 2016
9. Mark Your Calendar

**PRAIRIE VILLAGE - MISSION HILLS
FINAL CRIME REPORT - 2016**

CRIME	2012	2013	2014	2015	2016	AVERAGE	2016 +/- AVG
Homicide	0	1	0	0	1	0.40	0.60
Rape	6	1	2	4	1	2.80	-1.80
Robbery	4	2	4	2	1	2.60	-1.60
Assault	76	87	71	71	65	74.00	-9.00
Burglary	58	60	52	51	58	55.80	2.20
Residence	51	53	42	44	53	48.60	4.40
Business/ Miscellaneous	7	7	10	7	5	7.20	-2.20
Theft	241	210	226	205	209	218.20	-9.20
Auto Theft	14	30	20	32	37	26.60	10.40
Arson	2	1	1	2	0	1.20	-1.20
Forgery	8	8	14	17	12	11.80	0.20
Fraud	23	24	42	118	84	58.20	25.80
Criminal Damage	134	107	71	121	123	111.20	11.80
Sexual Offenses	10	11	10	8	13	10.40	2.60
TOTAL	576	542	513	631	604	573.20	30.80

ACCIDENTS	2012	2013	2014	2015	2016	AVERAGE	2016 +/- AVG
Fatal	0	2	0	0	1	0.60	0.40
Street - Injury	26	30	35	35	49	35.00	14.00
Street - Property + \$1,000*	309	254	247	284	360	290.80	69.20
Street - Property - \$1,000*	68	61	46	64	54	58.60	-4.60
Private - Injury	1	2	2	2	4	2.20	1.80
Private - Property	80	66	65	70	59	68.00	-9.00
Walk-In - Property	39	40	41	34	22	35.20	-13.20
TOTAL	523	455	436	489	549	490.40	58.60

MENTAL HEALTH	2012	2013	2014	2015	2016	AVERAGE	2016 +/- AVG
Suicide	1	3	2	2	6	2.80	3.20
Attempted Suicide	11	9	7	8	14	9.80	4.20
Involuntary Committal	16	13	12	3	9	10.60	-1.60
Voluntary Committal	28	24	11	7	23	18.60	4.40
All Other Mental Health	83	116	79	102	120	100.00	20.00
TOTAL	139	165	111	122	172	141.80	30.20

TOTAL CALLS	7,745	7,478	8,024	8,935	8,587	8,153.80	433.20
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PRAIRIE VILLAGE FINAL CRIME REPORT - 2016

CRIME	2012	2013	2014	2015	2016	AVERAGE	2016 +/- AVG
Homicide	0	1	0	0	1	0.40	0.60
Rape	6	1	2	4	1	2.80	-1.80
Robbery	3	2	4	2	1	2.40	-1.40
Assault	68	84	67	67	63	69.80	-6.80
Burglary	52	52	35	42	40	44.20	-4.20
Residence	45	45	26	36	35	37.40	-2.40
Business/Miscellaneous	7	7	9	6	5	6.80	-1.80
Theft	215	184	192	175	180	189.20	-9.20
Auto Theft	13	23	14	27	28	21.00	7.00
Arson	2	0	0	1	0	0.60	-0.60
Forgery	8	8	13	17	12	11.60	0.40
Fraud	20	24	40	91	75	50.00	25.00
Criminal Damage	111	96	51	95	102	91.00	11.00
Sexual Offenses	9	11	10	8	13	10.20	2.80
TOTAL	507	486	428	529	516	493.20	22.80

ACCIDENTS	2012	2013	2014	2015	2016	AVERAGE	2016 +/- AVG
Fatal	0	2	0	0	1	0.60	0.40
Street - Injury	25	30	35	31	45	33.20	11.80
Street - Property + \$1,000*	277	222	228	260	319	261.20	57.80
Street - Property - \$1,000*	59	57	42	55	49	52.40	-3.40
Private - Injury	1	1	2	2	4	2.00	2.00
Private - Property	78	62	61	64	52	63.40	-11.40
Walk-In Property	37	39	37	34	17	32.80	-15.80
TOTAL	477	413	405	446	487	445.60	41.40

MENTAL HEALTH	2012	2013	2014	2015	2016	AVERAGE	2016 +/- AVG
Suicide	1	3	2	2	5	2.60	2.40
Attempted Suicide	10	8	7	8	14	9.40	4.60
Involuntary Committal	16	8	12	2	9	9.40	-0.40
Voluntary Committal	27	22	11	7	21	17.60	3.40
All Other Mental Health	74	110	74	90	108	91.20	16.80
TOTAL	128	151	106	109	157	130.20	26.80

TOTAL CALLS	6,386	6,137	6,587	7,197	7,014	6,664.20	349.80
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MISSION HILLS FINAL CRIME REPORT - 2016

CRIME	2012	2013	2014	2015	2016	AVERAGE	2016 +/- AVG
Homicide	0	0	0	0	0	0.00	0.00
Rape	0	0	0	0	0	0.00	0.00
Robbery	1	0	0	0	0	0.20	-0.20
Assault	8	3	4	4	2	4.20	-2.20
Burglary	6	8	17	9	18	11.60	6.40
Residence	6	8	16	8	18	11.20	6.80
Business/Miscellaneous	0	0	1	1	0	0.40	-0.40
Theft	26	26	34	30	29	29.00	0.00
Auto Theft	1	7	6	5	9	5.60	3.40
Arson	0	1	1	1	0	0.60	-0.60
Forgery	0	0	1	0	0	0.20	-0.20
Fraud	3	0	2	27	9	8.20	0.80
Criminal Damage	23	11	20	26	21	20.20	0.80
Sexual Offenses	1	0	0	0	0	0.20	-0.20
TOTAL	69	56	85	102	88	80.00	8.00

ACCIDENTS	2012	2013	2014	2015	2016	AVERAGE	2016 +/- AVG
Fatal	0	0	0	0	0	0.00	0.00
Street - Injury	1	0	0	4	4	1.80	2.20
Street - Property + \$1,000*	32	32	19	24	41	29.60	11.40
Street - Property - \$1,000*	9	4	4	9	5	6.20	-1.20
Private - Injury	0	1	0	0	0	0.20	-0.20
Private - Property	2	4	4	6	7	4.60	2.40
Walk-In - Property	2	1	4	0	5	2.40	2.60
TOTAL	46	42	31	43	62	44.80	17.20

MENTAL HEALTH	2012	2013	2014	2015	2016	AVERAGE	2016 +/- AVG
Suicide	0	0	0	0	1	0.20	0.80
Attempted Suicide	1	1	0	0	0	0.40	-0.40
Involuntary Committal	0	5	0	1	0	1.20	-1.20
Voluntary Committal	1	2	0	0	2	1.00	1.00
All Other Mental Health	9	6	5	12	12	8.80	3.20
TOTAL	11	14	5	13	15	11.60	3.40

TOTAL CALLS	1,359	1,341	1,437	1,738	1,573	1,489.60	83.40
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PRAIRIE VILLAGE POLICE DEPARTMENT

"A Tradition of Service"

Tim M. Schwartzkopf
Chief of Police



DATE: January 13, 2017
TO: Mayor Laura Wassmer and City Council Members
FROM: Chief Tim M. Schwartzkopf *TMS*
SUBJECT: FORFEITURE TRUST FUND 2016 ANNUAL REPORT

As per Council Policy, I am submitting the following annual report for the time period of January 1 through December 31, 2016.

SIU – 01-00-00-2117-000

FUND TOTAL - January 1, 2016: \$32,609.06

Expenditures – (\$11,113.52)

Buy Fund – replenish (1 x \$4,300.00)	- 4,300.00
Optical Rifle Sights for CIRT team	- 4,320.00
Vermillion Morrison – cash and vehicle forfeitures (4)	- 2,493.52

Revenue - \$

Interest	87.54
Restitution (39)	4,325.50
currency – taken from buy busts (2)	2,315.00
currency – seized vehicle sale	15,000.00
Drug Tax Distribution from State	10,805.14
sale of vehicles (1)	5,700.00

FUND BALANCE - December 31, 2016: \$59,728.72

FORFEITURE TRUST FUND 2015 ANNUAL REPORT

January 13, 2017

Page No. 2

Department – 01-00-00-2118-000

FUND TOTAL - January 1, 2016: \$15,178.63

Revenue

Interest 36.61

FUND BALANCE - December 31, 2016: \$15,215.24

Federal Equitable Sharing Reserve – 01-00-00-2119-000

FUND TOTAL - January 1, 2016: \$472.89

Revenue

Interest 1.15

FUND BALANCE - December 31, 2016: \$474.04

FORFEITURE TRUST FUND BALANCE: \$75,418.00

TMS:jlw

cc: Accounting

General Ledger

Detailed Trial Balance

THE CITY OF PRAIRIE VILLAGE
STAR OF KANSAS



User: jwright
Printed: 01/13/2017 - 11:47AM
Period: 01 to 13, 2016

Account Number	Description	Budget	Beginning Balance	Debit This Period	Credit This Period	Ending Balance
01	General Fund					
LIABILITIES						
01-00-00-2117-000	Seized Assets - SIU	0.00				
1/7/2016 AP 1 40	1339 - EE Reimbursement			4,300.00	0.00	0.00
1/19/2016 CR 1 102	Cash Receipts Batch 10039.01.2016			0.00	5.00	5.00
1/31/2016 GL 1 199	January 2016 Int Allocation - Drug Forfeiture Acct			0.00	2.74	2.74
2/1/2016 CR 2 12	Cash Receipts Batch 10083.01.2016			0.00	2,477.36	2,477.36
2/4/2016 CR 2 36	Cash Receipts Batch 10024.02.2016			0.00	1,505.00	1,505.00
2/9/2016 AP 2 92	33 - Vermillion Law Offices LLC			617.74	0.00	0.00
2/29/2016 GL 2 200	February 2016 Interest Allocation - Drug Forfeiture			0.00	5.67	5.67
3/21/2016 CR 3 137	Cash Receipts Batch 10064.03.2016			0.00	10.00	10.00
3/31/2016 GL 3 216	March 2016 Int Allocation - Drug Forfeiture Acct			0.00	11.39	11.39
4/4/2016 CR 4 19	Cash Receipts Batch 10108.03.2016			0.00	50.00	50.00
4/7/2016 CR 4 47	Cash Receipts Batch 10018.04.2016			0.00	500.00	500.00
4/12/2016 CR 4 67	Cash Receipts Batch 10032.04.2016			0.00	200.00	200.00
4/26/2016 CR 4 162	Cash Receipts Batch 10082.04.2016			0.00	10.00	10.00
4/28/2016 CR 4 177	Cash Receipts Batch 10088.04.2016			0.00	617.45	617.45
4/30/2016 GL 4 201	April 2016 Int Allocation - Drug Forfeiture Account			0.00	5.18	5.18
5/2/2016 CR 5 9	Cash Receipts Batch 10077.04.2016			0.00	460.50	460.50
5/16/2016 CR 5 103	Cash Receipts Batch 10034.05.2016			0.00	30.00	30.00
5/17/2016 AP 5 122	1093 - Alamar Uniforms Of Kansas City LLC			0.00	0.00	0.00
5/31/2016 CR 5 199	Cash Receipts Batch 10077.05.2016			4,320.00	0.00	0.00
5/31/2016 GL 5 220	May 2016 Int Alloc - Drug Forfeiture Accounts			0.00	35.50	35.50
6/21/2016 CR 6 177	Cash Receipts Batch 10095.06.2016			0.00	1.38	1.38
6/30/2016 GL 6 247	June 2016 Int Alloc - Drug Forfeiture Accounts			0.00	100.00	100.00
7/6/2016 CR 7 28	Cash Receipts Batch 10006.07.2016			0.00	5.30	5.30
7/11/2016 CR 7 64	Cash Receipts Batch 10122.06.2016			0.00	24.50	24.50
7/18/2016 CR 7 128	Cash Receipts Batch 10041.07.2016			0.00	70.00	70.00
7/31/2016 GL 7 236	July 2016 Int Allocation - Drug Forfeiture Accounts			0.00	40.00	40.00
8/1/2016 CR 8 7	Cash Receipts Batch 10100.07.2016			0.00	11.67	11.67
8/2/2016 GL 8 28	Acct Coding Correction-Purple Wave Auction PD			0.00	5,793.61	5,793.61
8/8/2016 CR 8 55	Cash Receipts Batch 10007.08.2016			0.00	5,700.00	5,700.00
				0.00	300.00	300.00

Account Number	Description	Budget	Beginning Balance	Debit This Period	Credit This Period	Ending Balance
8/25/2016 CR	188 Cash Receipts Batch 10119.08.2016			0.00	810.00	
8/29/2016 CR	227 Cash Receipts Batch 10107.08.2016			0.00	10.00	
8/31/2016 GL	271 August 2016 Int Allocation - Drug Forfeiture Account			0.00	17.58	
9/6/2016 CR	26 Cash Receipts Batch 10139.08.2016			0.00	311.50	
9/6/2016 AP	50 33 - Vermillion Law Offices LLC Ck# 13183			710.45	0.00	
9/12/2016 CR	74 Cash Receipts Batch 10019.09.2016			0.00	213.00	
9/26/2016 CR	187 Cash Receipts Batch 10069.09.2016			0.00	30.00	
9/30/2016 GL	229 September 2016 Int Alloc - Drug Forfeiture Account			0.00	9.24	
10/4/2016 CR	15 Cash Receipts Batch 10095.09.2016			0.00	425.00	
10/4/2016 AP	37 213 - Legal Record Ck# 13314			53.86	0.00	
10/11/2016 CR	72 Cash Receipts Batch 10008.10.2016			0.00	250.50	
10/17/2016 CR	108 Cash Receipts Batch 10046.10.2016			0.00	150.00	
10/31/2016 CR	199 Cash Receipts Batch 10083.10.2016			0.00	2,731.72	
10/31/2016 GL	229 October 2016 Int Alloc - Drug Forfeiture Accounts			0.00	6.58	
11/7/2016 CR	62 Cash Receipts Batch 10117.10.2016			0.00	75.00	
11/30/2016 GL	221 November 2016 Int Alloc - Drug Forfeiture Account			0.00	6.33	
12/5/2016 CR	31 Cash Receipts Batch 10088.11.2016			0.00	50.00	
12/16/2016 CR	122 Cash Receipts Batch 10059.12.2016			0.00	15,000.00	
12/20/2016 GL	141 Acct Coding Corrections-PD			0.00	10.00	
12/27/2016 CR	170 Cash Receipts Batch 10065.12.2016			0.00	150.00	
12/27/2016 AP	199 33 - Vermillion Law Offices LLC Ck# 13868			1,111.47	0.00	
12/31/2016 GL	218 December 2016 Int Allocation-Drug Forfeiture Acct			0.00	4.48	
01-00-00-2117-000 Totals:		0.00	-32,609.06	11,113.52	38,233.18	-59,728.72
01-00 LIABILITIES Totals:		0.00	-32,609.06	11,113.52	38,233.18	-59,728.72
LIABILITIES Totals:		0.00	-32,609.06	11,113.52	38,233.18	-59,728.72
01 Totals:		0.00	-32,609.06	11,113.52	38,233.18	-59,728.72
Report Totals:		0.00	-32,609.06	11,113.52	38,233.18	-59,728.72

General Ledger

Detailed Trial Balance

User: jwright
 Printed: 01/13/2017 - 11:46AM
 Period: 01 to 13, 2016

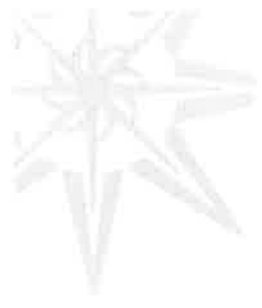


Account Number	Description	Budget	Beginning Balance	Debit This Period	Credit This Period	Ending Balance
01	General Fund					
LIABILITIES						
01-00-00-2118-000	Seized Assets - Other	0.00				
1/31/2016 GL 1	199 January 2016 Int Allocation - Drug Forfeiture Accot			0.00	1.47	
2/29/2016 GL 2	200 February 2016 Interest Allocation - Drug Forfeiture			0.00	2.72	
3/31/2016 GL 3	216 March 2016 Int Allocation - Drug Forfeiture Account			0.00	5.46	
4/30/2016 GL 4	201 April 2016 Int Allocation - Drug Forfeiture Account			0.00	2.38	
5/31/2016 GL 5	220 May 2016 Int Alloc - Drug Forfeiture Accounts			0.00	0.71	
6/30/2016 GL 6	247 June 2016 Int Alloc - Drug Forfeiture Accounts			0.00	2.74	
7/31/2016 GL 7	236 July 2016 Int Allocation - Drug Forfeiture Accounts			0.00	6.00	
8/31/2016 GL 8	271 August 2016 Int Allocation - Drug Forfeiture Accou			0.00	6.34	
9/30/2016 GL 9	229 September 2016 Int Alloc - Drug Forfeiture Account			0.00	3.34	
10/31/2016 GL 10	229 October 2016 Int Alloc - Drug Forfeiture Accounts			0.00	2.20	
11/30/2016 GL 11	221 November 2016 Int Alloc - Drug Forfeiture Account			0.00	2.11	
12/31/2016 GL 12	218 December 2016 Int Allocation-Drug Forfeiture Accc			0.00	1.14	
01-00-00-2118-000 Totals:						
		0.00	-15,178.63	0.00	36.61	-15,215.24
01-00 LIABILITIES Totals:						
		0.00	-15,178.63	0.00	36.61	-15,215.24
LIABILITIES Totals:						
		0.00	-15,178.63	0.00	36.61	-15,215.24
01 Totals:						
		0.00	-15,178.63	0.00	36.61	-15,215.24
Report Totals:						
		0.00	-15,178.63	0.00	36.61	-15,215.24

General Ledger

Detailed Trial Balance

User: jwright
 Printed: 01/13/2017 - 11:41AM
 Period: 01 to 13, 2016



Account Number	Description	Budget	Beginning Balance	Debit This Period	Credit This Period	Ending Balance
01	General Fund					
LIABILITIES						
01-00-00-2119-000	Federal Equitable Sharing Rese	0.00				
1/31/2016 GL 1	199 January 2016 Int Allocation - Drug Forfeiture Accot			0.00	0.05	
2/29/2016 GL 2	200 February 2016 Interest Allocation - Drug Forfeiture			0.00	0.08	
3/31/2016 GL 3	216 March 2016 Int Allocation - Drug Forfeiture Accou			0.00	0.17	
4/30/2016 GL 4	201 April 2016 Int Allocation - Drug Forfeiture Account			0.00	0.07	
5/31/2016 GL 5	220 May 2016 Int Alloc - Drug Forfeiture Accounts			0.00	0.02	
6/30/2016 GL 6	247 June 2016 Int Alloc - Drug Forfeiture Accounts			0.00	0.09	
7/31/2016 GL 7	236 July 2016 Int Allocation - Drug Forfeiture Accounts			0.00	0.19	
8/31/2016 GL 8	271 August 2016 Int Allocation - Drug Forfeiture Accou			0.00	0.20	
9/30/2016 GL 9	229 September 2016 Int Alloc - Drug Forfeiture Account			0.00	0.10	
10/31/2016 GL 10	229 October 2016 Int Alloc - Drug Forfeiture Accounts			0.00	0.07	
11/30/2016 GL 11	221 November 2016 Int Alloc - Drug Forfeiture Account			0.00	0.07	
12/31/2016 GL 12	218 December 2016 Int Allocation-Drug Forfeiture Accc			0.00	0.04	
01-00-00-2119-000 Totals:						
		0.00	-472.89	0.00	1.15	-474.04
01-00 LIABILITIES Totals:						
		0.00	-472.89	0.00	1.15	-474.04
LIABILITIES Totals:						
		0.00	-472.89	0.00	1.15	-474.04
01 Totals:						
		0.00	-472.89	0.00	1.15	-474.04
Report Totals:						
		0.00	-472.89	0.00	1.15	-474.04

COUNCIL COMMITTEE OF THE WHOLE
January 17, 2017

The Council Committee of the Whole met on Tuesday, January 17, 2017 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, Sheila Myers, Brooke Morehead, Dan Runion, Courtney McFadden, Ted Odell and Terrence Gallagher.

Staff Members present: Tim Schwartzkopf, Chief of Police; Keith Bredehoeft, Director of Public Works; Melissa Prenger, Public Works Project Manager; David Waters for Katie Logan, City Attorney; Quinn Bennion, City Administrator; Wes Jordan, Assistant City Administrator; Lisa Santa Maria, Finance Director; Alley Williams, Assistant to the City Administrator; Amy Hunt, Human Resources Manager and Joyce Hagen Mundy, City Clerk. Also present was Teen Council member Helen Sun, Luke Hafner and Zoe Nason.

COU2017-01 Consider approval of an agreement with Gallagher Benefit Services for a comprehensive Compensation and Benefits Study

Amy Hunt noted the most current compensation and benefits study was completed in 2006. During the 2017 Budget process, the Council allocated \$20,000 for a new study to be completed to review compensation, benefits, market competitiveness in comparison to both the private and municipal sector.

A Request for Proposal for employee compensation consulting services was published in November 2016 with seven firms responding with base costs ranging from \$10,000 to \$47,250. The Finance Committee and Department Managers reviewed each proposal and narrowed the field to three firms (Springsted Inc., Gallagher Benefit Services, and the Austin Peters Group) for interviews. The Finance Committee and Department Heads met and interviewed the three firms before determining that Gallagher's experience, local location, process of review, scope of services, and base cost of \$17,150 would be recommended for approval by the City Council.

Mrs. Hunt introduced Gail Meriweather with Gallagher Benefit Services. Ms. Meriweather provided a brief background on herself and Gallagher Benefit Services and reviewed the process that will be followed for the comprehensive compensation and benefits study.

Ashley Weaver made the following motion, which was seconded by Sheila Myers and passed unanimously:

**RECOMMEND THE CITY COUNCIL APPROVE GALLAGHER
BENEFIT SERVICES, INC. AS THE FIRM TO CONDUCT
THE CITY'S COMPENSATION AND BENEFITS STUDY AS
SPECIFIED IN THEIR PROPOSAL AT A COST OF \$17,150
COUNCIL ACTION TAKEN
12/19/2016**

COU2017-02 Consider approval of 2017 Recreation Fee Schedule

Alley Williams stated that staff annually reviews recreation fees to ensure they are reasonable and keep pace with any operational increases. On Wednesday, January 11th, the Park & Recreation committee reviewed the proposed fees for 2017. In 2016, Council approved modifying the structure of the pool memberships to include resident/non-resident rates for individuals, seniors, and a 5 swim card. This was a significant change to the 2015 structure, which included household/family, two-person family, individual, child, senior, babysitter, and a 10 swim card. The only change proposed to the 2017 fee schedule is an increase in the fee for aquatic lessons from \$36 to \$40. These are private lessons with 80% of the fee going to the instructor.

The change in 2016 to the individual pass, alleviated many issues caused by the family pass and introduced a more equitable system. Staff at both the pool and City Clerk's Office have reported it is a much easier process. As a result of the change, Council and staff received positive and negative comments about the new individual structure. About four out of five comments received by staff were positive. The most significant complaints were received from families with three or more children.

The Parks & Recreation Committee voted unanimously to make no changes to the current pool membership structure for the 2017 season as reflected below:

2017 Proposed Rates	RESIDENT	NON-RESIDENT
Individual	\$45	\$75
Sr. Citizen (60+)	\$40	\$65
Swim Card with 5 Admissions	\$30	\$35
Daily Admission Fee	\$8	\$8
Twilight Fee after 5:30 pm	\$5	\$5
Lost ID Card	\$3	\$3

The average General Fund subsidy for the past three seasons has been \$194,385. This does not include personnel costs for Public Works, Information Technology, or Administration. However, overall recovery cost increased in 2016, placing pool subsidy at 30% compared to 37% in 2015.

Brooke Morehead expressed concern with the impact on families with five or six family members with the fee structure resulting in higher fees. She asked about a mid season reduction in fees. Ms. Williams responded that has been offered in the past and could be reinstated if desired. Formerly the membership cost went to half price after July 15th.

Ted Odell confirmed that a discounted fee is offered for individuals purchasing their memberships prior to May 1st. Serena Schermoly stated she supports offering half price memberships at mid season. Eric Mikkelson confirmed that this discount would only apply to memberships and not to the purchase of swim cards or daily admission.

Brooke Morehead made the following motion, which was seconded by Serena Schermoly and passed by a vote of 10 to 1 with Mr. Gallagher voting in opposition.

RECOMMEND THE CITY COUNCIL APPROVE RETAINING THE 2016 RECREATION MEMBERSHIP FEE SCHEDULE FOR 2017 EXCEPT FOR AN INCREASE IN AQUATIC LESSONS FROM \$35 TO \$40 AND A REDUCTION TO MEMBERSHIP FEES TO HALF PRICE AFTER JULY 15TH.

**COUNCIL ACTION TAKEN
01/17/2017**

COU2017-03 Consider approval of the 2017 Prairie Village Legislative Platform

Quinn Bennion stated that each year the City Council discusses and adopts a legislative program which establishes the City's legislative priorities for the upcoming session. Over the last few years, the Council has adopted a joint City/County platform to assert our common positions to f our state legislators. The County is requesting this practice continue and hosted a meeting in November with area managers. The proposed 2017 platform is substantially the same as the 2016 Legislative Platform. Edits were made to each section based on the 2016 legislative session and discussions with area city officials. The following topics have been added to the Joint Platform:

Repeal of the Property Tax Lid: The platform added that, absent repeal, the state-imposed tax lid should be modified to require a public vote based on a protest petition provision. The Legislature should consider including exemptions that existed largely under the prior tax lid, but were not included in the current law.

K-12 Education Financing: The platform expresses support for Johnson County schools in their efforts to craft a new school finance formula to adequately and equitably fund primary and second education.

Local Control of Right of Way: 2016 legislation granted the placement of cell towers in city and county owned right of way with little oversight by local jurisdictions. This should be repealed and the regulations of the placement of cell towers should be subject to reasonable local control.

The following items have been continued from the 2016 platform:

- Non-Partisan Elections
- Limits on Appraised Valuation Growth
- Oppose Unfunded Mandates
- Kansas Open Records and Open Meetings Act
- Legislative Participation

Mr. Bennion noted that the proposed City's Platform does not include the Joint Platform's additions of Statewide Expansion of Medicaid or Development of a Comprehensive Economic Development Plan for the State of Kansas as these topics have not been discussed by City Council.

Ted Odell asked if returning city elections to April would be discussed or not. Mr. Bennion replied that he does not see this issue as one that will be coming forward in the

2017 session. Eric Mikkelson stated he would like to see the city have the flexibility to go back to Spring elections.

Mr. Mikkelson also made the following suggestions:

- Include in the city's platform the Statewide Expansion of Medicaid noting that this is one of the priorities of Senator Bollier and has the support of the local chamber of commerce.
- Strengthen the language regarding school funding changing "adequate" funding to "significant" increase in funding noting that no other issue more directly impacts Prairie Village.
- Add request to "repeal the tax exemption for LLC's" which increases the tax burden on the city. He noted that this has the support of our legislative representatives.

Courtney McFadden urged the Council to use its political capital where it would have the greatest opportunity for success. With that in mind, she would like to see "local control of right-of-way" removed from the platform. Ms. McFadden stated that the current legislation was supported by all area representatives. It is essential that cities work to upgrade infrastructure and work with technology companies for alternatives to do so stressing the need for increased internet access and proactivity.

Dan Runion expressed concern with proposed legislative actions that are selling off and borrowing against the future and asked if that was addressed in the proposed platform. Mr. Bennion responded that there is some dialog under tax policy and KPERS, but nothing specifically. Mr. Runion stated he would like to address actions that mortgage the future such as borrowing from KPERS and transfers of highway funds.

Ted Odell noting the number of suggested changes asked if this needed to be approved at this meeting or if it could be continued. Mr. Bennion stated that legislative representatives are asking for this information and have returned to Topeka. It would be better if this information could be given to them on January 25th and the next Council meeting is not until February 5th.

Mayor Wassmer asked if a consensus could be reached on the items discussed to provide the requested information to our legislators. Council President Ted Odell led discussion of each of the suggested changes.

Local control of elections

Brooke Morehead moved that local control of elections be added to the city's legislative platform. The motion was seconded by Sheila Myers and passed unanimously.

Statewide Expansion of Medicaid

Sheila Myers noted that the impact of new congressional action on this is unknown. Mr. Mikkelson said Senator Bollier stated she is moving forward with this. Mrs. Myers confirmed this is related to the federal contributions received by the state.

Eric Mikkelson moved that the city add statewide expansion of Medicaid as proposed in the county platform to the city's legislative platform. The motion was seconded by Jori Nelson and passed unanimously.

School funding

Eric Mikkelson moved to strengthen the language proposed to read: "Public Schools in Kansas are underfunded and the City supports a significant increase in the funding of public education." The motion was seconded by Jori Nelson and passed unanimously.

Brooke Morehead added that there also needs to be wise use of that funding on the local level and accountability. Jori Nelson stated that this was another issue and noted that the cuts in funding have directly impacted her classroom and her ability to service and educate children. Mayor Wassmer noted the use of funding is not a legislative issue but one that needs to be addressed locally through the school board.

LLC Tax Exemption

Eric Mikkelson moved add to the City's 2017 Legislative Platform direction to close the budget gap by repealing the 2012 income tax exemption for LLC's. The motion was seconded by Jori Nelson and passed unanimously.

Local Control of Right-of-Way

Courtney McFadden moved to remove "Local control of Right-of-Way" from the City's 2017 Legislative Platform. The motion was seconded by Brooke Morehead.

Jori Nelson stated she does not want to give away local control of right-of-way. Mrs. McFadden replied the city does not have control of right-of-way. Public right-of-ways are routinely used for public benefit with the location of utilities and communication lines.

Eric Mikkelson noted that HB2131 reduces local control over right-of-way. He agrees with the need and value of expanded technology; however, he is not sure this bill sets the right balance of partnerships between technology and cities. He would support language to "revise" rather than "remove" this item.

Mrs. McFadden stated it is not and never has been the intent of HB2131 to construct cell towers in the right-of-way, but to allow for alternative small cell antenna that are necessary for improved coverage. She noted that Verizon has talked with the city about these applications and she feels that it is important for the city to work with them. When cities put up barriers, technology companies do not invest in municipalities. What the city says and does, has an impact on companies investing in our city.

Ted Odell agreed with Mr. Mikkelson's suggestion to change "remove" to "revise". He believes the city is interested in new technology; but it wants to make sure the applications are balanced and is willing to work with carriers. Mrs. Myers agreed with the proposed change to "revise".

Mrs. McFadden noted that all of the northeast legislative representatives voted in support of this bill. None have stated that they want to reconsider it. Mayor Wassmer

stated the legislators are aware of the feelings of the city and area mayors regarding this legislation. Mrs. McFadden felt that from the “risk vs. reward” perspective, this was unlikely to happen. Mayor Wassmer noted this needs to be a joint effort.

Jori Nelson stated this is not about not working with cell companies, but the desire to be good stewards and to protect our residents.

Courtney McFadden amended her motion to read “Revise” local control of right-of-way instead of “remove”. The motion was seconded by Eric Mikkelson and passed.

Courtney McFadden directed staff to draft language to be added to the 2017 Legislative Platform addressing local control of weapons in public buildings and city owned property. The motion was seconded by Jori Nelson and passed unanimously.

Financial concerns

Eric Mikkelson moved the city add to its Legislative Platform the objection to a budget based on borrowing from KPERS and transfer from highway funds. The motion was seconded by Terrence Gallagher and passed by a vote of 10 to 1 with Ted Odell voting in opposition.

Eric Mikkelson made the following motion, which was seconded by Steve Noll and passed unanimously:

**RECOMMEND THE CITY COUNCIL ADOPT THE 2017
PRAIRIE VILLAGE LEGISLATIVE PLATFORM WITH THE
AMENDMENTS ENUMERATED ABOVE
COUNCIL ACTION TAKEN
12/19/2016**

COU2017-04 Consider approval of the Preliminary Engineering Study (PES) for submittal to the Johnson County SMAC Program for the Delmar/Fontana Low Water Crossing Removal and Stormwater Improvements Project

Keith Bredehoeft stated in the Fall of 2016 council directed public works to move forward with the Delmar and Fontana low water crossing removal and drainage project. He added that significant construction funding is potentially available from the County’s SMAC program. In October, the Council approved a contract with Don Baker with Water Resources Solutions, LLC to prepare a PES for submittal to the County.

The proposed project will cause the removal of existing trees along the channel and will require additional drainage easement along both sides of the channel. City staff will work with individual residents on landscaping etc. to help minimize impacts of the project. Mr. Bredehoeft stated that the impacts of the project were discussed at the resident meetings held in November and December and that meetings with residents will continue through the final design process.

Don Baker presented the following three options presented in the Preliminary Engineering Study:

- Option 1 - Home buyout with cul-de-sacs at Delmar and Fontana (without a new culvert under Somerset). The estimated construction cost is \$5,659,829 with an estimated total project cost of \$5,904,370. The home buyout costs were computed from current appraised values and recent comparable market sales data.
- Option 2 - Cul-de-sacs at Delmar and Fontana (with new culvert under Somerset). The estimated construction cost is \$3,809,080 with an estimated total project cost of \$4,272,110. This option would include the construction of a multi-stage channel to accommodate the 100 year flood.
- Option 3 - Construction of culverts under Delmar and Fontana (with new culvert under Somerset). This option is similar to option 2 with the addition of culverts at the cul-de-sacs. The project would have three 9 x 7 culverts and the same multi-stage channel. The estimated construction cost is \$3,972,240 with an estimated total project cost of \$4,465,720.

Mr. Bredehoeft stated that possible funding from the SMAC program will be determined in the spring of 2017. It is anticipated that construction of the project would not take place until 2019 as the project will take significant time to design, obtain drainage easements, and to obtain permits.

Terrence Gallagher stated he was not comfortable making a decision at this meeting. Ted Odell confirmed the action is only authorizing the submittal of the project for SMAC funding with the three options presented. Keith Bredehoeft added the submittal for SMAC funding, does not commit the City to do the project. SMAC funding will cover 75% of the construction costs.

Mr. Bredehoeft noted the next step would be to do more detailed designs which would be presented to both the residents and to the City Council. He noted the residents were fairly receptive to the concepts presented to them in the report. Don Baker stated that in addition to the group meetings with the residents, he had three or four on site meetings with individual residents.

Jori Nelson asked what a 100-year flood was. Mr. Baker replied that based on statistics from rainfall events, a 100-year flood has a 1% chance of occurring every year. Ms. Nelson asked how much funding SMAC would provide. Mr. Baker responded that SMAC normally provides 75% funding for design and construction costs; however, since previous submittal for this area had already received funding for design, only construction costs will be funded. Mr. Bredehoeft stated the exact amount of funding would not be known until actual design is determined.

Eric Mikkelson made the following motion, which was seconded by Sheila Myers and passed unanimously:

**RECOMMEND THE CITY COUNCIL APPROVE THE SUBMITTAL
OF THE PRELIMINARY ENGINEERING STUDY (PES) TO THE
JOHNSON COUNTY SMAC PROGRAM FOR THE DELMAR/
FONTANA LOW WATER CROSSING REMOVAL AND
STORMWATER IMPROVEMENTS PROJECT
COUNCIL ACTION TAKEN
01/17/2017**

COU2017-05 Consider approval of the Preliminary Engineering Study (PES) for submittal to the Johnson County SMAC Program for the Reinhardt & 84th Terrace Drainage Project

Melissa Prenger stated Public Works received feedback from residents in the Corinth Meadows neighborhood near 84th Terrace and Reinhardt Street that rainfall runoff ponds in the street and on properties. Affinis was hired to review the area to determine the extent of the problem and potential solutions.

Cliff Speegle, with Affinis Corp, reviewed the process and preliminary findings. The area was surveyed and resident questionnaires were sent to residents to better understand the issues with more than half of the surveys being returned. Modeling of stormsewer system and resident questionnaires confirmed street flooding and the potential for homes to flood during significant rainfall events exists. This flooding potential allows for the opportunity for the City to apply for Johnson County Stormwater Management Program (SMAC) funding to improve the stormsewer system. Mr. Speegle noted the project area includes parts of the City of Leawood and they have agreed to participate in the project. He reviewed the proposed solution which recommends enlarging the existing pipes in their current location and making modifications to the cul-de-sac at 84th Terrace.

To receive funding a formal Preliminary Engineering Study (PES) must be completed and submitted to the county which evaluates three different options for reducing the flood risk. The PES is being completed to allow for the improvement project to be eligible for funding in 2018. If funding is received for 2018, detailed design would begin in 2017. The estimated cost of construction is \$1.6M. If SMAC funding is awarded it would cover 75% of costs with the rest split with the City of Leawood.

Ted Odell asked if the City submitted two applications for SMAC funding if there would be a negative impact. Melissa Prenger responded the Fontana project is seeking 2019 funding and the Reinhardt project is seeking 2018 funding and each will be scored separately. Mrs. Prenger noted that as with the Fontana project, submittal for SMAC funding does not obligate the City to construct the Reinhardt project.

Eric Mikkelson noted the Preliminary Engineering Study was not included in the packet information. Mrs. Prenger replied the study has not been completed. Affinis did a preliminary review to determine if the project met SMAC qualifications. If Council authorizes submittal for SMAC funding, the City will need to approve an agreement with Affinis to complete the Preliminary Engineering Study for submittal.

Dan Runion stated that his home is located on the 84th Terrace cul-de-sac and he therefore, would be recusing himself from voting on this project.

Quinn Bennion asked what the anticipated split would be on the project with the City of Leawood. Mrs. Prenger replied it would be a 50/50 split based on the scope of the project and length of pipe to be installed within each city.

Terrence Gallagher made the following motion, which was seconded by Steve Noll and

passed by a vote of 10 to 0 with Mr. Runion abstaining:

**RECOMMEND THE CITY COUNCIL APPROVE THE SUBMITTAL
OF THE PRELIMINARY ENGINEERING STUDY (PES) TO THE
JOHNSON COUNTY SMAC PROGRAM FOR PROJECT
REIST001: REINHARDT & 84TH TERRACE DRAINAGE PROJECT
COUNCIL ACTION TAKEN
01/17/2017**

COU2017-06 Consider REIST0001: Reinhardt & 84th Terrace Drainage Project SMAC Preliminary Engineering Study agreement with Affinis Corp

Melissa Prenger stated the proposed agreement will allow for Affinis to complete the Preliminary Engineering Study required for the City to submit for SMAC eligible funds for design and construction. She stated funds are available in the Capital Improvement Program under Project DRAIN17x for this study.

Eric Mikkelson made the following motion, which was seconded by Steve Noll and passed by a vote of 10 to 0 with Mr. Runion abstaining:

**RECOMMEND THE CITY COUNCIL APPROVE THE CONTRACT
FOR PREPARATION OF A PRELIMINARY ENGINEERING STUDY
BY AFFINIS CORP IN THE AMOUNT OF \$11,802 FOR PROJECT
REIST0001: REINHARDT & 84TH TERRACE DRAINAGE PROJECT
COUNCIL ACTION TAKEN
01/17/2017**

COU2017-07 Consider approval of Construction Change Order #1 and Final with O'Donnell and Sons Construction for the 2016 Paving Program

Melissa Prenger presented the Final Change Order for the 2016 Paving Program which reflects the final field measured quantities for all bid items. These items substantially include two items: 1) the replacement of the subgrade on three blocks of Belinder Avenue and 2) the replacement of the curb/gutter and sidewalk on 82nd Terrace, from Somerset Drive to Roe Avenue.

Upon milling Belinder, the subgrade from 76th Street to 79th Street failed and was replaced. Additional work was required on the section from 78th to 79th to achieve subgrade stability to support traffic.

The initial plan for 82nd Terrace was spot removal and replacement for both the curb/gutter and the sidewalk. However, upon inspection prior to demolition, City Staff noted that removals were significantly greater than 50% of curb/gutter and sidewalk. The complete removal and replacement of both items was beneficial at this point.

The final contract amount with O'Donnell and Sons for the project will be \$1,923,420.68 with funding available as follows: PAVP2016 - \$1,844,600 and Streets (unallocated) - \$78,820.68.

Terrence Gallagher confirmed the additional costs were not due to an error by the

contractor or the city.

Sheila Myers made the following motion, which was seconded by Ashley Weaver and passed unanimously:

**RECOMMEND THE CITY COUNCIL APPROVE CONSTRUCTION
CHANGE ORDER #1 (FINAL) WITH O'DONNELL AND SONS
FOR THE 2016 PAVING PROGRAM IN THE AMOUNT OF
\$78,820.68 BRINGING THE FINAL CONTRACT AMOUNT TO
\$1,923,420.68**

**COUNCIL ACTION TAKEN
01/17/2017**

COU2017-08 Consider approval of a contract with McConnell & Associates for the McCrum Park tennis court rehabilitation

On December 2, 2016, the City Clerk opened bids for Project BG420001, McCrum Park Tennis Court Rehabilitation. The following two bids were received: McConnell & Associates for \$76,032.50 and Primetime Contractors for \$106,662. The engineer's estimate for the project was \$96,492. The contract consists of constructing a new court on top of the existing court at McCrum Park and using the existing fence. This construction is similar to the construction completed at Harmon Park.

City staff has reviewed the bid for accuracy and recommends award to the low bidder, McConnell & Associates with funding available in the 2016 Capital Infrastructure Program Project BG420001.

Jori Nelson asked if this was just resurfacing. Mrs. Prenger replied it is not, it is a total rebuild on top of the existing court with a drainable base. Terrence Gallagher asked why the existing court wasn't being removed. Mrs. Prenger responded that this is a very flat area with existing drainage issues that would remain if the current court was removed and a new court constructed in the same location. The proposed rebuild on top of the existing court provides for a drainable base that will address the drainage issues currently experienced. Mr. Gallagher noted the price is very high. Mrs. Prenger replied the 10 courts at Harmon were done for \$60,000 per court with a discount for the multiple courts. An analysis of the cost breakdown and quantities is reasonable. Mr. Gallagher asked if other alternatives were researched and suggested the item be tabled to allow for further research and information to be gathered.

Jori Nelson asked what kind of maintenance was anticipated and what would be the lifespan of the court. Mrs. Prenger replied that this court was inherited by the city in 1962. It was resurfaced in 1998 and a crack repaired in 2007. This project was approved by the Council as part of the 2016 Capital Improvement Program for 2016. Keith Bredehoeft added the proposed project is a good solution for this tennis court.

Mr. Mikkelson asked if the project was approved could grant funds still be sought. Mr. Bredehoeft replied they could.

Quinn Bennion asked how long the bid numbers would be valid. Melissa Prenger replied the bid was opened December 2nd with the bid valid for 60 days. Mr. Bennion noted the next council meeting would be in three weeks and risking having to rebid the project if we wait until grants are researched and submitted.

Eric Mikkelson suggested that this item be continued to the City Council agenda.

ADJOURNMENT

With no more business to come before the Committee, Council President Ted Odell adjourned the meeting at 7:26 p.m.

Ted Odell
Council President

**PLANNING COMMISSION AGENDA
CITY OF PRAIRIE VILLAGE
TUESDAY, February 7, 2017
7700 MISSION ROAD
7:00 P.M.**

I. ROLL CALL

II. APPROVAL OF PLANNING COMMISSION MEETING MINUTES - JANUARY 10, 2017

III. PUBLIC HEARINGS

IV. NON-PUBLIC HEARINGS

PC2016-132 Request for Monument Sign Approval
6301 Nall
Current Zoning: R-1a
Applicant: LTD Signs, for Nall Avenue Church of the Nazarene

PC2017-101 Request for Monument Sign Approval
7301 Mission Road
Current Zoning: C-0
Applicant: Zack Arndt, Hufft Projects

V. OTHER BUSINESS

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 Committee Minutes October 11, 2016

Present: JD Kinney, Mike Schermoly, John Wilinski, Dave Hassett, Amanda Hassett, Dan Andersen, Brooke Morehead and Joyce Hagen Mundy.

Budget

Revenue

JD reviewed the status of the 2016 budget vs. actual. Sponsorships were down significantly with part of that being the dropping of the Arts Council previous donation to the festival and lack of participation by Claridge Court along with the dropping off of some previous larger sponsors.

Budgeted revenue prior to the festival was \$54,316 with actual revenue prior to the festival \$51,550. Revenue from the festival was approximately \$2,000 less than budgeted with admission fees slightly less than budget and 2015. Merchandise sales and raffle tickets were 50% less than budgeted and 2016. Fewer artist cd's were sold and fewer T-shirts. Volunteers were not available to go out into the crowd selling raffle tickets as they did in 2015. Tip revenue was up; however, it was suggested that a tip container be placed at the water/soda booth also. Adult beverage sales were greater than budget, but less than 2015. It was noted that the weather was cooler. Total budgeted revenue was \$77,466 with 2016 actual revenue \$72,236 (almost the same as 2015 actual revenue of \$72,234).

Expenses

- Talent - \$14,304 was approximately \$2000 less than 2015.
- Stage/Backline - \$12,755 was \$533 over 2015 expenses.
- Tent Rental - \$4,016 was approximately \$700 under budget and under 2015 expenses.
- Advertising/Marketing - \$4,070 just under budget and more than \$2,000 less than 2015.
- Banners/Yard Signs - \$1,140 slightly under budget and less than 2015. Committee members were reminded that they need to pick up yard signs they place. This enables the committee to not have to continue to purchase stakes each year and prevents complaints. It was suggested that a volunteer assignment be added to be responsible to pick up parking and event signs, particularly around the municipal campus, schools and churches.
- Catering & Food - \$1,973 was under budget and approximately the same as 2015. Event Expenses - \$3,980 were under budget and significantly less than 2015.
- Merchandise Expenses - \$4,082 were slightly over budget, but less than 2015.
- Wine/Sangria ingredients - \$733 was less than budget and less than 2015.

Total Expenses - \$46,675 approximately \$2,200 under budget before the payment of taxes.

Event Review

- JD reported that he spoke with the vendors and they were all pleased with the event.
- Dave reported that the food trucks were happy. He noted the PIPs had sold out by 8:15. Approximately the same amount of beer was sold than last year with

- slight less sangria sold. The Chardonnay sold out and he has two cases of red wine to return. 385 remaining 10 oz. cups and approximately 100 7 oz. cups.
- Dave and the committee felt that there probably needed to be a change made on the VIP and volunteer caterer. He stated he would continue to coordinate with the current truck group. He will be looking for a vendor to replace Polar Express. The popcorn guy will be invited back.
 - Use of coolers saved a ton of ice and should be continued.
 - JD would like to see statistics on the ATM use. It appeared to be well used and the ATM vendor seemed pleased.
 - John reported that the artists were pleased with the accommodations. However, he would like to see a designated area for the crew food so it is not eaten by the artists. He also had an artist ask for alcohol. The committee agreed that no alcohol would be served in the artist tent and that artist's would be invited when they complete their set and go up to the meet and greet to go into the VIP tent if they would like alcohol.
 - Alex noted that some of the artists expressed interest in getting an event shirt. JD would follow-up with Alex on who they were and suggested that since there are shirts available that perhaps one could be sent with a thank you to the artists.
 - General operation of the VIP tent and volunteer eating area worked well. Some concern was expressed with the lack of people in the VIP area. This will be discussed more in a future meeting. Joyce made individual contact with those companies eligible for a corporate table and with those qualifying for VIP tickets.
 - There needs to be at least one portable toilet at the bottom of the hill, possibly two.
 - Brooke noted that she had spoken with Larry regarding the talent line-up who felt the line-up needed to be more diverse. The need for a stronger headliner was discussed. Concern was raised with the "all-white" line-up and the perception it gives. JD would have liked a stronger, more energetic lead-in act to Marilyn.
 - It was noted that the hill was generally full throughout the entire festival.
 - The question was raised as to the need of the "greenroom" in the community center. It was used minimally during the festival, generally for changing clothes or use of the toilet facilities.
 - Joyce stated the photographer has sent a link to the pictures taken at the festival. She will forward the link to committee members and will plan to post pictures regularly on the committee's face book page to retain interest.
 - Concern was expressed with the number of volunteers, particularly for the 3rd shift.
 - Concern was also expressed with the lack of trash pick-up during the event by the boy scouts. It was noted that they arrived, set up and left to return at the end of the event.
 - Thanks were expressed to Republic for stepping up and providing trash and portable toilet facilities.
 - Joyce noted staff was having difficulty separating out the funds received through PayPal for Arts Council and JazzFest.

JD asked committee members to advise him think about their status for next year and noted that he would be doing the same. The committee decided not to meet again until January at this time. Joyce reminded the committee of the Mayor's Volunteer Appreciation Holiday event to be held on Friday, December 9th.

VillageFest Wrap Up Meeting

July 28, 2016

Successes

- Craft show is growing – more than 25 crafters this year
- Music/DJ by the crafters worked really well
- Addition of the classic cars
- Pie contest
- Great volunteers – and lots of them!
- Banner over Mission Road
- Spirit Awards
- Pancake breakfast and the Masons
- Great food vendors
- Pinball machines
- Mr. Bones
- History exhibit
- Slip & slide
- Marching Falcons

Improvements

- Add portable toilets – accident in the community center
- Try to get Headstrong for Jake back at the event
- More coffee – start with 5 carafes
- Something besides Frisbees and shirts for Mayor's toss – Nerf balls or candy?
- Hang the one sided banner on SME fence along 75th Street
- Sell water at the pancake breakfast or have water coolers
- Move the podium closer to the seating area
- Simplify pie contest criteria
- Let the info booth know who won the pie contest – lots of questions
- Try to get the Child ID service back in the council chambers
- Home Depot no-showed despite confirming with them prior
- Long lines – more bounce houses, face painters, and rides? Space issue
- Move parade earlier in the day?
- Start slip & slide on time

TREE BOARD
City of Prairie Village, Kansas

Minutes (Draft)

Wednesday – November 2, 2016 6:00PM Meeting
Public Works – Conference Room
3535 Somerset Drive

Board Members: Deborah Nixon, Frank Riott, Devon Murray, Tom Brown.

Other Attendees: Suzanne Lownes

- 1) **Review and Approve minutes from September 7, 2016 meeting - Motion by Frank Riott to accept the minutes, seconded by Tom Brown. Approved unanimously.**

- 2) **Fall Seminar - Wrap up**
Deborah Nixon said it seemed to be a good turnout and the speaker was well received. She received a message from Kevin Dunn and he stated that he thought that it was a good event as well. Everyone agreed about the event. Deborah Nixon wished that there was more time for Sarah Crowder to speak.

- 3) **Tree Board Priorities**
 - a) **Landscape Recommendation Update -** Deborah Nixon stated that her and Rick Howell were still trying to coordinate getting together to review the information.
 - b) **Street Tree Planting -** Deborah Nixon said that she thought that sending a letter to the homes associations to ask for submission for potential streets to consider would be a good idea. The board agreed. Frank Riott volunteered to put together a draft letter for review by the board. Suzanne Lownes said that there was a contact list of Homes Association Presidents that could be used to contact the Homes Associations.

- 4) **Old Business**
Deborah Nixon asked if the Arboretum signs had been located. Suzanne Lownes stated that they had. Deborah Nixon said she would contact Terrence Gallagher concerning a potential project with the Boy Scouts. Starting first with replacing the plaques that were missing.

- 5) **New Business**
Deborah Nixon stated that she was thinking of ideas on how to spread the word about trees and using more social media. There was discussion on seeing if the Shawnee Mission Post would allow them to put in tree articles and information. It was suggested about placing Tree Signs in yards to advertise species of trees. It was discussed that the Kansas Tree Service has lots of information and articles that could be used to get valuable information to the public about trees.

- 6) **The next meeting agenda -** The next meeting will not be until **Wednesday, February 1, 2017.** Please have a safe and joyous holiday season.

The meeting adjourned at 6:55 p.m.
Minutes prepared by Suzanne Lownes

Earth Fair Meeting Minutes Dec 5th 5.30pm-6.30pm

Attendees: Karin, Chad, Devin, Pete, Catherine, Al, Tom, Polly, Alley

Vendors:

- To date have not heard back from any of the plant sales so **Margaret** will follow up.
- Coffee cart has been confirmed and Chad will proceed with looking at Cajun Cabin and Pizza place, mention was made of the Pie Hole so that will be investigated, Discussed the EF committee providing Coffee etc for Vendors but would need a Runner to do this.
- Currently have the Native Indian group locked in for 1 hr , Eco Elvis for 30 mins and looking for 2 more half hour slots. Discussed school choirs and agreed that given Dr Brogan's retirement we could reach out to SME to get the school band or choir to participate.
- Chad to follow up with Urban Farming groups to include local farmers and producers as vendors.
- Chad will also reach out to contacts from the Ethic Festival to see if any of these groups have strong environmental messages that could be relevant and maybe perform or participate. **Devin** will follow up with the music groups at the school.
- The committee agreed that the Green Swing Band will be invited back again to play in the foyer.
- Stone lion Puppets were voted down due to cost.
- The Used book Sale is going ahead and currently collecting books for the day.

Theme:

- Due to resident feedback via the Mayor, the theme was agreed upon to be changed from "Make the Earth Great Again" to "**Unite for the Earth**", in keeping with the thoughts about increasing diversity and inclusion as well as learning from traditional natural practises. Sub title to remain the same " A call to heal and conserve our natural home"
- Chad will begin a new mock up poster to use to get some early advertising out. Discussed the importance of getting some key attractions/ vendors locked in so we can begin advertising in early Jan before putting a full advert in the Village Voice (due by 1st Feb), He will pass this on to **Polly** who will oversee the PR and Media.
- **Devin** is still to speak to the school about running an Art competition for the students instead of using one of the student's posters for the Earth Fair. We discussed having a competition where the students must use recycled or sustainable materials to produce some type of display or creative art that reflects the theme of healing and conserving. The art can then go on display at the fair. Still discussing how this will take place through donations for the winner or some type of prize money and who will be eligible to participate.

Logistics:

- 24 display boards have been reserved for the use of Earth Fair
- There is currently no student that will be a point of contact for the school so volunteers could be an issue. Need to reach out to the school to see if there are many students who can help with set up, kids activities and pack down on the day to earn points. **Devin** will look into this and follow up with Chrissy Wiggins at SME. If not, we need to investigate other groups such as scouts etc.

- **Margaret** will follow up with decorations for the Gym on the day and whether posters will be used.
- **Margaret** will follow up with dates for 2018 with SME, the committee decided on the latest date in April if available
- **Karin** suggested a flyer with different levels of participation and involvement that we can make available to attendees for this and future events. Everyone is encouraged to email ideas and ways to reduce waste to Karin to compile this information flyer/ poster.
- **Catherine** will send info to Karin on zero waste lunches and send an email to Chad about potential groups/vendors to invite.

Next Meeting and Follow Up:

Next Meetings:

- **Additional meeting added to schedule:**

Monday February 6th, 5.15pm – 6.15pm, City Hall Multi Purpose Room

Tuesday February 21st 5.30pm, City Hall Multi Purpose Room

Monday 6th March, 5.30pm. City Hall Multi Purpose Room

Monday 27th March, 5.30pm, City Hall Multi Purpose Room

Monday 10th April, 5.30p, City Hall, Multi Purpose Room

Email list:

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Polly Swafford	pswafford1@kc.rr.com

**Council Members
Mark Your Calendars
February 6, 2017**

February 2017 James Kilmer, R. Gregory Summers & Carl Damico in the R.G. Endres Gallery

February 6 City Council Meeting
February 10 Artist reception in the R.G. Endres Gallery 6:30 to 8:00 p.m.
February 20 Presidents Day Holiday - City Offices Closed
February 21 City Council Meeting

March 2017 EunKyung Jeong, Chris Kim & PJ Mills in the R.G. Endres Gallery

March 6 City Council Meeting
March 10 Artist reception in the R.G. Endres Gallery 6:30 to 8:00 p.m.
March 11-15 National League of Cities Conference - Washington D.C.
March 20 City Council Meeting

April 2017 Future of the Arts in the R.G. Endres Gallery

April 3 City Council Meeting
April 14 Artist reception in the R.G. Endres Gallery 6:30 to 8:00 p.m.
April 17 City Council Meeting

May 2017 Jackie Keiman-Hale and Sean Ward in the R.G. Endres Gallery

May 1 City Council Meeting
May 12 Artist reception in the R.G. Endres Gallery 6:30 to 8:00 p.m.
May 15 City Council Meeting