

# City Council Meeting

*Tuesday, February 20, 2007*

*Dinner provided by:*



Burritos and Enchiladas

Beans and Rice

Iguana dip

Chips and sauce

**COUNCIL COMMITTEE  
February 20, 2007**

**TUESDAY !!**

**COUNCIL CHAMBER  
6:00 P.M.**

**AGENDA**

**DAVID BELZ**

**CONSENT AGENDA**

- COU2007-18      Consider Increase to Animal Board Fees  
Joyce Mundy**
- COU2006-16      Consider Project 190862: 75<sup>th</sup> Street Resurfacing Program  
Construction Administration Services  
Bob Pryzby**
- COU2007-19      Consider Project 190860: 2007 Street Resurfacing Program  
Construction Administration Services  
Bob Pryzby**

**AGENDA ITEMS**

- COU2006-57      Consider Special Use Permit for Communications Antenna  
at 7700 Mission Road  
Charlie Wetzler**
- COU2007-15      Consider Payroll/HRIS System  
Doug Luther**
- COU2007-16      Consider Concealed Weapons Policy  
Doug Luther**
- COU2007-20      Consider Building Code adoption  
Doug Luther**
- COU2007-21      Update - status of property at 7618 Mohawk Drive  
Katie Logan**
- COU2005-19      Consider term limits for committees  
Barbara Vernon**

## COU2007-18 Consider Increase to Animal Board Fees

**Issue:** Whether the City should increase the animal board fee charged for impounded animals to the new fee charged by Animal Medical Center.

### **Background:**

The City of Prairie Village contracts with Animal Medical Center to board animals impounded by the City for running at large. City Council Policy 040 adopted June 17, 1991 sets the board fee at \$6 per calendar day for dogs and \$3 per calendar day for cats, birds and rabbits.

Animal Medical Center has notified the City that effective January 1, 2007, the fee charged to the City for the board of impounded animals will be \$10 per day for dogs and \$7.50 per day for other animals. Prior to the release of an animal, the owner pays to the City the leash law violation fee and the board fees incurred during the impoundment.

Over the past years, staff has been removing reference to fees in Council Policies and establishing them through the fee schedule maintained and on file with the City Clerk. Staff recommends the fee be increased to \$10 per day for dogs and \$7.50 per day for other animals established by the fee schedule on file with the City Clerk and that Council Policy 040 entitled "Animal Board Fees" be deleted.

### **Financial Impact:**

Adoption of the increased fee would offset the fees being charged to the City for the board of impounded animals.

### **Recommendation:**

**RECOMMEND THE CITY COUNCIL INCREASE THE ANIMAL BOARD FEE TO \$10 PER DAY FOR DOGS AND \$7.50 PER DAY FOR OTHER ANIMALS AND DELETE COUNCIL POLICY 040 ENTITLED "ANIMAL BOARD FEES".**



City Council Policy: CP040 - Animal Board Fees

Effective Date: June 17, 1991

Amends:

Approved By: City Council

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I. SCOPE

II. PURPOSE

A. To establish fees for animals found running at large and boarded by the City.

III. RESPONSIBILITY

A. City Clerk

IV. DEFINITIONS

V. POLICY

A. The City Clerk shall collect, along with any and all fines, daily board fees of \$6.00 per calendar day for dogs and \$3.00 per calendar day for cats, birds and rabbits.

VI. PROCEDURES



**COU2006-16 CONSIDER PROJECT: 190862 75<sup>TH</sup> STREET**  
**RESURFACING (NALL AVENUE TO ROE AVENUE),**  
**CONSTRUCTION ADMINISTRATION SERVICES**

**Background:**

Shafer Kline & Warren (SKW) provided construction administration services for the 2006 Street Resurfacing Program and the City Council has approved them for construction administration services through 2007.

Attached is the agreement for services for Project 190862. The cost was calculated based on a typical fifty-hour workweek and a contract length of two and one half months. From the experience in 2006 with other City projects, SKW has completed their contracts at less than the contract amount.

**Financial Impact:**

Funds are available in the Capital Infrastructure Program for construction administration services. The Shafer Kline & Warren fee is \$80,000.00. The Johnson County CARS program will be reimbursing the City for 50% or \$40,000. The City cost will be \$40,000.

**Suggested Motion:**

Move to approve the agreement with Shafer Kline & Warren for \$80,00.00 for construction administration services for Project 190862.

# AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES

For

## CONSTRUCTION ADMINISTRATION

For

### PROJECT 190862: 75<sup>TH</sup> STREET RESURFACING (NALL AVENUE TO MISSION ROAD)

*THIS AGREEMENT*, made at the Prairie Village, Kansas, this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between the City of Prairie Village, Kansas, a municipal corporation with offices at 7700 Mission Road, Prairie Village, Kansas, 66208, hereinafter called the “City”, and Shafer, Kline & Warren, Inc., a Kansas corporation with offices at 11100 W. 91<sup>st</sup> Street, Overland Park, Kansas 66214, hereinafter called the “Consultant”.

**WITNESSED, THAT WHEREAS,** City has determined a need to retain a professional engineering firm to provide civil engineering services for Construction Administration of Project 190862: 75<sup>th</sup> Street Resurfacing (Nall Avenue to Mission Road), hereinafter called the “Project”,

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

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

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

#### **ARTICLE I** **RESPONSIBILITIES OF THE CITY**

The CITY designates Thomas Trienens, Manager of Engineering Services as representative of the CITY with respect to the services to be performed or furnished by the CONSULTANT under this Agreement. Mr. Trienens shall have the authority to transmit instructions, receive information, interpret and define the policies of the CITY, make decisions relevant to the services of the CONSULTANT.

The CITY shall do the following in a timely manner:

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

**ARTICLE II**  
**RESPONSIBILITIES OF THE CONSULTANT**

The CONSULTANT designates William M. (Mike) Asbury, Director of Construction, who shall direct the professional civil engineering and related construction inspection and administration services in all phases of the Project to which this Agreement applies as hereinafter provided. The CONSULTANT shall serve as the prime professional on this Project and shall work with of the Manager of Engineering Services.

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

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

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

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

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

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

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

The CONSULTANT shall issue necessary clarifications and interpretations of the Project Manual as appropriate to the orderly completion of the Work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Project Manual. CONSULTANT may issue Field Orders authorizing minor variations from the requirements of the Project Manual.

The CONSULTANT shall recommend Change Orders and Field Orders to CITY, as appropriate, and prepare Change Orders and Field Orders as required.

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

The CONSULTANT shall evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor.

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

The CONSULTANT shall render formal written decisions on all claims of CITY and Contractor relating to the acceptability of the Work or the interpretation of the requirements of the Project Manual pertaining to the execution and progress of the Work. In rendering such decisions, CONSULTANT shall be fair and not show partiality to CITY or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

The CONSULTANT shall based on CONSULTANT's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

1. Review the Contractor's monthly Applications for Payment to determine it represents the work accepted and is mathematically correct. CONSULTANT will provide recommendation for payment to the CITY. Such recommendations of payment will be in writing and will constitute CONSULTANT's representation to CITY, based on such observations and review, that, to the best of CONSULTANT's knowledge, information and belief, the Work has progressed to the point indicated, the quality of such is generally in accordance with the Project Manual (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Project Manual and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is CONSULTANT's responsibility to observe the Work. In the case of unit price work, CONSULTANT's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Project Manual). The responsibilities of CONSULTANT are expressly subject to the limitations set forth herein.

2. By recommending any payment, CONSULTANT shall not thereby be deemed to have represented that observations made by CONSULTANT to check the quality or quantity of the Work as it is performed and furnished have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to CONSULTANT in this Agreement and the Project Manual. Neither CONSULTANT's review of the Work for the purposes of recommending payments nor CONSULTANT's recommendation of any payment including final payment will impose on CONSULTANT responsibility to supervise, direct, or control the Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to the Work. It will also not impose responsibility on CONSULTANT to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the work in progress, materials, or equipment has passed to CITY free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between CITY and Contractor that might affect the amount that should be paid.

The CONSULTANT shall receive and review maintenance and operating instructions, schedules, and guarantees.

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

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

CONSULTANT shall conduct a final payment inspection to determine if the completed Work of Contractor is acceptable so that CONSULTANT may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, CONSULTANT shall also provide proper notice that the Work is acceptable to the best of CONSULTANT's knowledge, information, and belief and based on the extent of the services provided by CONSULTANT under this Agreement.

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

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

CONSULTANT shall furnish a Resident Project Representative (RPR), assistants, and other field staff to assist CONSULTANT to provide more extensive observation of Contractor's work by observing progress and quality of the Work. The RPR, assistants, and other field staff may provide full time representation or may provide representation to a lesser degree.

Through such additional observations of Contractor's work in progress and field checks of materials and equipment by the RPR and assistants, CONSULTANT shall endeavor to provide further protection for CITY against defects and deficiencies in the Work.

The duties and responsibilities of the RPR are as follows:

- 1 Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
- 2 Serve as CONSULTANT's liaison with Contractor, working principally through Contractor's superintendent, assist in providing information regarding the intent of the Project Manual.
- 3 Assist CONSULTANT in serving as CITY's liaison with Contractor when Contractor's operations affect CITY's on-Site operations.
- 4 Assist in obtaining from CITY additional details or information, when required for proper execution of the Work.
- 5 Report to CONSULTANT when clarifications and interpretations of the Project Manual are needed and transmit to Contractor clarifications and interpretations as issued by CONSULTANT.
- 6 Record date of receipt of Samples and approved Shop Drawings.
- 7 Receive Samples, which are furnished at the Site by Contractor, and notify CONSULTANT of availability of Samples for examination.
- 8 Advise CONSULTANT and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by CONSULTANT.
- 9 Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to CONSULTANT. Transmit to Contractor in writing decisions as issued by CONSULTANT.
- 10 Conduct on-Site observations of Contractor's work in progress to assist CONSULTANT in determining if the Work is in general proceeding in accordance with the Project Manual.
- 11 Report to CONSULTANT whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Project Manual or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Project Manual, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise CONSULTANT of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
- 12 Consult with CONSULTANT in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.
- 13 Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate CITY's personnel, and that Contractor maintains adequate records thereof.
- 14 Observe, record, and report to CONSULTANT appropriate details relative to the test procedures and systems start-ups.
- 15 Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to CONSULTANT.
- 16 Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Project Manual including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, CONSULTANT's clarifications and

interpretations of the Project Manual, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.

- 17 Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to CONSULTANT.
- 18 Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.
- 19 Maintain records for use in preparing Project documentation.
- 20 Upon completion of the Work, furnish original set of all RPR Project documentation to CONSULTANT.
- 21 Furnish to CONSULTANT periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- 22 Draft and recommend to CONSULTANT proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- 23 Furnish to CONSULTANT and CITY copies of all inspection, test, and system start-up reports.
- 24 Immediately notify CONSULTANT of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.
- 25 Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to CONSULTANT, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
- 26 During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Project Manual, and have these documents delivered to CONSULTANT for review and forwarding to CITY prior to payment for that part of the Work.
- 27 Participate in a Substantial Completion inspection, assist in the determination of Completion and the preparation of lists of items to be completed or corrected.
- 28 Participate in a final inspection in the company of CONSULTANT, CITY, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.
- 29 Observe whether all items on the final list have been completed or corrected and make recommendations to CONSULTANT concerning acceptance and issuance of the Notice of Acceptability of the Work.

Resident Project Representative shall not:

- 1 Exceed limitations of CONSULTANT's authority as set forth in the Agreement or the Project Manual.
- 2 Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.

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

The CONSULTANT and RPR are expected to conduct themselves at all times in such a manner as to reflect credit upon themselves and the CITY they represent. It is expected that the CONSULTANT and RPR will be suitably dressed for the work, and they will be clean and neat enough to be a suitable representative of the CITY to the Contractor and the public. The CONSULTANT and RPR will be pleasant, courteous and business-like in meeting the public. It is helpful and considerate to answer questions asked by the public. If the CONSULTANT and RPR cannot clearly answer the question, the CONSULTANT should refer the questioner to the Manager of Engineering Services.

The CONSULTANT and RPR will not engage in controversial activities relative to the project in public, particularly if it involves public speaking, public debate, public media, etc. All written communications intended for publication that relate to the project must be approved by the Manager of Engineering Services.

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

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

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

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

Typical entries for general information -

1. All reports shall show the CITY Project number and title and the CARS or SMAC project number
2. All entries shall be printed in black ink or computer generated
3. Detail the CONSULTANT hours on the jobsite
4. Record weather conditions such as "sunny, temperature, precipitation type and amount (light, moderate, heavy)"



5. Complete the report the same day
6. Label the report using the consecutive numbers
7. Note any written or verbal instructions given to the Contractor
8. Note any non-compliance issued for the job
9. Record any unsatisfactory or non-compliant work and corrective actions taken
10. Report all job incidents involving the public such injuries, damages to property and equipment, safety conditions
11. Record the type, frequency and person providing testing
12. Detail job progress in terms of quantity, distances, stations, and weight as they are appropriate and applicable to project pay items
13. Record any factors adversely affecting progress of the work, such as utility conflict, material delivery, unforeseen conditions, plan changes, poor Contractor management, weather, etc.
14. Record any important visitors to the project and their nature of business
15. Sign and date the report
16. Send copy of report to Manager of Engineering Services

Typical entries for subgrade work –

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

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

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

Typical entries for paving work –

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

Typical entries for storm drains –

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

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

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

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

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

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

### ARTICLE III COMPENSATION

The CITY agrees to pay the CONSULTANT, at Hourly Rates, to a Maximum Fee of \$80,000.00 for the scope of services as specified herein unless modified by Change Order. CONSULTANT'S current Hourly Rate Schedule is attached as Exhibit A.

The CONSULTANT may submit an invoice on a monthly basis from an estimate of Services or upon the completion of services. The CONSULTANT shall bill reimbursable expenses, which are beyond all fees for professional services, with a multiplier of 1.05. Reimbursable items shall be as follows:

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

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

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

#### **ARTICLE IV** **GENERAL PROVISIONS**

**Times for Rendering Services:** The CONSULTANT's services and compensation under this Agreement have been agreed to in anticipation of orderly and continuous progress of the Services through completion. Specific periods of time for rendering services are set forth in Article IV, Time Schedule, in this Agreement, by which time defined services are to be completed. If such periods of time are changed through no fault of the CONSULTANT, the rates and amounts of compensation provided for therein shall be subject to equitable adjustment.

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

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

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

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

In a similar manner, the Consultant is prohibited from reuse or disclosing any information contained in any documents, plans or specifications relative to the Project without the expressed written permission of the City.

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

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

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

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

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

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

**Indemnity:** To the fullest extent permitted by law, with respect to the performance of its obligations in this Agreement or implied by law, and whether performed by Consultant or any subconsultants hired by Consultant,

the Consultant agrees to indemnify City, and its agents, servants, and employees from and against any and all claims, damages, and losses arising out of personal injury, death, or property damage, caused by the negligent acts, errors, or omissions of the Consultant or its subconsultants, to the extent and in proportion to the comparative degree of fault of the Consultant and its subconsultants. Consultant shall also pay for City's reasonable attorneys' fees, expert fees, and costs incurred in the defense of such a claim to the extent and in proportion to the comparative degree of fault of the Consultant and its subconsultants.

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

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

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

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

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

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

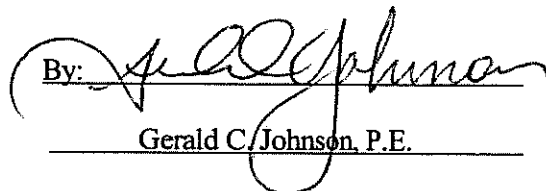
**CITY:**

**CONSULTANT:**

CITY OF PRAIRIE VILLAGE, KS

SHAFER, KLINE & WARREN, INC.

By: \_\_\_\_\_

By:  \_\_\_\_\_

Ronald L. Shaffer

Gerald C. Johnson, P.E.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Principal

Address for giving notices:

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

ATTEST:

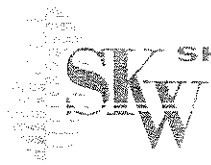
\_\_\_\_\_  
Joyce Hagen Mundy, CITY Clerk

Address for giving notices:

Shafer, Kline & Warren, Inc.  
11100 W. 91<sup>st</sup> Street  
Overland Park, Kansas 66214  
913-888-7800

APPROVED BY:

\_\_\_\_\_  
Charles E. Wetzler, CITY Attorney



**HOURLY RATE SCHEDULE**

<u>CLASSIFICATION</u>	<u>HOURLY RATE</u>	<u>CLASSIFICATION</u>	<u>HOURLY RATE</u>
Principal	\$155	Secretarial/Clerical	\$55
Associate	140	Engineering Technician V	100
Engineer V	130	Engineering Technician IV	90
Engineer IV	120	Engineering Technician III	80
Engineer III	110	Engineering Technician II	70
Engineer II	100	Engineering Technician I	60
Engineer I	90	Drafter	45
Landscape Architect IV	120	Construction Observer IV	90
Landscape Architect III	110	Construction Observer III	85
Landscape Architect II	100	Construction Observer II	75
Landscape Architect I	85	Construction Observer I	65
Landscape Design	70	Registered Land Surveyor II	110
Planner IV	120	Registered Land Surveyor I	95
Planner III	110	Survey Crew	150
Planner II	100	Survey Rodperson	45
Planner I	85	Survey Technician V	100
GIS Consultant IV	115	Survey Technician IV	90
GIS Consultant III	100	Survey Technician III	80
GIS Consultant II	85	Survey Technician II	70
GIS Consultant I	70	Survey Technician I	60
Controls Technician II	80	GPS Survey Technician	95
Controls Technician I	60		
Photogrammetrist III	90		
Photogrammetrist II	80		
Photogrammetrist I	70		

**Equipment Costs**

GPS Survey Receiver	\$20
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**Note #1**

*The hourly rate shown for GPS Personnel and Survey Crews includes stakes, flagging, iron bars and other miscellaneous materials.*

**Note #2**

*All reimbursable expenses incurred on a project will be charged at a rate of direct cost plus 10% to cover administrative overhead. Direct cost of passenger car mileage will be at the standard rate established by the Internal Revenue Service and in effect at the time the expense is incurred. Direct cost of survey vehicle mileage will be at the IRS standard passenger car rate, plus 20%. Plotting and reproduction will be charged at \$0.50 per square foot for all media except photographic glossy, which will be charged at \$1.00 per square foot. Color copies will be charged at \$0.80 per 8.5 x 11 sheet and \$1.60 per 11 x 17 sheet. Subcontract expenses will be charged at quoted prices with no markup.*

Effective January 1, 2007

# ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID BE  
SHAPE-1

DATE (MM/DD/YYYY)  
02/09/07

**PRODUCER**  
  
Haake Companies  
4650 College Blvd., Suite 300  
Overland Park KS 66211  
Phone: 913-491-1999 Fax: 913-906-0088

**INSURED**  
Shafer, Kline & Warren, Inc.;  
SKW Technical Service Group  
Inc., Shetlar, Griffith,  
Shetlar, P.A.  
Hamilton & Associates, Inc.  
2940 Main Street  
Kansas City MO 64108

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.**

INSURERS AFFORDING COVERAGE		NAIC #
INSURER A	Amerisure Mutual Insurance	
INSURER B		
INSURER C		
INSURER D		
INSURER E		

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

POLICY LTR	ADDL INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	X	<b>GENERAL LIABILITY</b>	CPP1386817	05/01/06	05/01/07	EACH OCCURRENCE	\$ 1,000,000
		<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000
		<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person)	\$ 5,000
		<input checked="" type="checkbox"/> <b>BLANKET CONT. LIAB</b>				PERSONAL & ADV INJURY	\$ 1,000,000
		<input checked="" type="checkbox"/> <b>X.C.U. INCLUDED</b>				GENERAL AGGREGATE	\$ 2,000,000
		GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				PRODUCTS - COMP/OP AGG	\$ 2,000,000
A		<b>AUTOMOBILE LIABILITY</b>	CA1386816	05/01/06	05/01/07	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
		<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$
		<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
		<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
		<input checked="" type="checkbox"/> HIRED AUTOS				AUTO ONLY - EA ACCIDENT	\$
		<input checked="" type="checkbox"/> NON-OWNED AUTOS				OTHER THAN AUTO ONLY: EA ACC AGG	\$
A		<b>EXCESS/UMBRELLA LIABILITY</b>	CU1386818 (UMBRELLA)	05/01/06	05/01/07	EACH OCCURRENCE	\$ 6,000,000
		<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$ 6,000,000
A		<b>WORKERS COMPENSATION AND EMPLOYER'S LIABILITY</b>	C43685533	05/01/06	05/01/07	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER	
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				E.L. EACH ACCIDENT	\$ 1,000,000
		OTHER				E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
A		<b>LEASED OR RENTED CONTRS. EQUIPMENT.</b>	CPP1386817 INCL THEFT	05/01/06	05/01/07	PER ITEM	\$100,000.
						PER OCC	\$1000.DED

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS**  
Project: 190862 75th Street Resurfacing (Wall Avenue to Mission Road). City of Prairie Village, Kansas. City of Prairie Village, Kansas is Named as Additional Insured on General Liability but only as their interest appears with respects to work performed by or on behalf of Named Insured.

**CERTIFICATE HOLDER**

CITY OF P  
  
City of Prairie Village,  
Kansas  
7700 Mission Road  
Prairie Village KS 66208

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE  
20  
*Herald C. Haake*



# ACORD. CERTIFICATE OF LIABILITY INSURANCE

09/06/2007

DATE (MM/DD/YY)  
02/09/2007

**PRODUCER**  
LOCKTON COMPANES, LLC-1 KANSAS CITY  
444 W. 47th Street, Suite 900  
Kansas City Mo 64112-1906  
(816) 960-9000

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.**

**INSURERS AFFORDING COVERAGE**

**INSURED**  
1058114 SHAFER, KLINE & WARREN, INC.  
11100 W. 91ST  
OVERLAND PARK KS 66214

INSURER A: CNA  
INSURER B: (Victor O Schinnerer)  
INSURER C:  
INSURER D:  
INSURER E:

**COVERAGES SHAKLO1 PC** **THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER AND THE CERTIFICATE HOLDER.**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR TR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR  GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJ <input type="checkbox"/> LOC	NOT APPLICABLE			EACH OCCURRENCE \$ XXXXXXXX FIRE DAMAGE (Any one fire) \$ XXXXXXXX MED EXP (Any one person) \$ XXXXXXXX PERSONAL & ADV INJURY \$ XXXXXXXX GENERAL AGGREGATE \$ XXXXXXXX PRODUCTS - COMP/OP AGG \$ XXXXXXXX
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	NOT APPLICABLE			COMBINED SINGLE LIMIT (Ea accident) \$ XXXXXXXX BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX
	<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO	NOT APPLICABLE			AUTO ONLY - EA ACCIDENT \$ XXXXXXXX OTHER THAN AUTO ONLY: EA ACC \$ XXXXXXXX AGG \$ XXXXXXXX
	<b>EXCESS LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> UMBRELLA FORM RETENTION \$	NOT APPLICABLE			EACH OCCURRENCE \$ XXXXXXXX AGGREGATE \$ XXXXXXXX \$ XXXXXXXX \$ XXXXXXXX
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>	NOT APPLICABLE			W/C STATUTORY LIMITS   OTHER EL. EACH ACCIDENT \$ XXXXXXXX EL. DISEASE - EA EMPLOYEE \$ XXXXXXXX EL. DISEASE - POLICY LIMIT \$ XXXXXXXX
A	<b>OTHER PROFESSIONAL LIABILITY</b>	AEH 27 615 57 88	09/06/2006	09/06/2007	\$1,000,000 PER CLAIM AND AGGREGATE

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENTS/SPECIAL PROVISIONS  
 PROJECT: 190862: 75TH STREET RESURFACING (NALL AVENUE TO MISSION ROAD).

**CERTIFICATE HOLDER**  
2784116  
CITY OF PRAIRIE VILLAGE, KANSAS  
7700 MISSION ROAD  
PRAIRIE VILLAGE, KS 66208

**ADDITIONAL INSURED: INSURER LETTER:** \_\_\_\_\_ **CANCELLATION**  
 SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.  
 AUTHORIZED REPRESENTATIVE

*Victor O Schinnerer*

**COU2007-19 CONSIDER PROJECT: 190860 2007 STREET  
RESURFACING PROGRAM, CONSTRUCTION  
ADMINISTRATION SERVICES**

**Background:**

Shafer Kline & Warren (SKW) provided construction administration services for the 2006 Street Resurfacing Program and the City Council has approved them for construction administration services through 2007.

Attached is the agreement for services for Project 190860. The cost was calculated based on a typical fifty-hour workweek and a contract length of five and a half months. From the experience in 2006 with other City projects, SKW has completed their contracts at less than the contract amount.

**Financial Impact:**

Funds are available in the Capital Infrastructure Program for construction administration services. The Shafer Kline & Warren fee is \$180,000.00.

**Suggested Motion:**

Move to approve the agreement with Shafer Kline & Warren for \$180,000.00 for construction administration services for Project 190860.

# AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES

For

## CONSTRUCTION ADMINISTRATION

For

### PROJECT 190860: 2007 STREET RESURFACING PROGRAM

***THIS AGREEMENT***, made at the Prairie Village, Kansas, this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between the City of Prairie Village, Kansas, a municipal corporation with offices at 7700 Mission Road, Prairie Village, Kansas, 66208, hereinafter called the “City”, and Shafer, Kline & Warren, Inc., a Kansas corporation with offices at 11100 W. 91<sup>st</sup> Street, Overland Park, Kansas 66214, hereinafter called the “Consultant”.

***WITNESSED, THAT WHEREAS***, City has determined a need to retain a professional engineering firm to provide civil engineering services for Construction Administration of Project 190860: 2007 Street Resurfacing Program hereinafter called the “Project”,

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

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

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

#### **ARTICLE I** **RESPONSIBILITIES OF THE CITY**

The CITY designates Thomas Trienens, Manager of Engineering Services as representative of the CITY with respect to the services to be performed or furnished by the CONSULTANT under this Agreement. Mr. Trienens shall have the authority to transmit instructions, receive information, interpret and define the policies of the CITY, make decisions relevant to the services of the CONSULTANT.

The CITY shall do the following in a timely manner:

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

**ARTICLE II**  
**RESPONSIBILITIES OF THE CONSULTANT**

The CONSULTANT designates William M. (Mike) Asbury, Director of Construction, who shall direct the professional civil engineering and related construction inspection and administration services in all phases of the Project to which this Agreement applies as hereinafter provided. The CONSULTANT shall serve as the prime professional on this Project and shall work with of the Manager of Engineering Services.

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

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

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

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

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

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

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

The CONSULTANT shall issue necessary clarifications and interpretations of the Project Manual as appropriate to the orderly completion of the Work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Project Manual. CONSULTANT may issue Field Orders authorizing minor variations from the requirements of the Project Manual.

The CONSULTANT shall recommend Change Orders and Field Orders to CITY, as appropriate, and prepare Change Orders and Field Orders as required.

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

The CONSULTANT shall evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor.

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

The CONSULTANT shall render formal written decisions on all claims of CITY and Contractor relating to the acceptability of the Work or the interpretation of the requirements of the Project Manual pertaining to the execution and progress of the Work. In rendering such decisions, CONSULTANT shall be fair and not show partiality to CITY or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

The CONSULTANT shall based on CONSULTANT's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

1. Review the Contractor's monthly Applications for Payment to determine it represents the work accepted and is mathematically correct. CONSULTANT will provide recommendation for payment to the CITY. Such recommendations of payment will be in writing and will constitute CONSULTANT's representation to CITY, based on such observations and review, that, to the best of CONSULTANT's knowledge, information and belief, the Work has progressed to the point indicated, the quality of such is generally in accordance with the Project Manual (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Project Manual and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is CONSULTANT's responsibility to observe the Work. In the case of unit price work, CONSULTANT's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Project Manual). The responsibilities of CONSULTANT are expressly subject to the limitations set forth herein.

2. By recommending any payment, CONSULTANT shall not thereby be deemed to have represented that observations made by CONSULTANT to check the quality or quantity of the Work as it is performed and furnished have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to CONSULTANT in this Agreement and the Project Manual. Neither CONSULTANT's review of the Work for the purposes of recommending payments nor CONSULTANT's recommendation of any payment including final payment will impose on CONSULTANT responsibility to supervise, direct, or control the Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to the Work. It will also not impose responsibility on CONSULTANT to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the work in progress, materials, or equipment has passed to CITY free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between CITY and Contractor that might affect the amount that should be paid.

The CONSULTANT shall receive and review maintenance and operating instructions, schedules, and guarantees.

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

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

CONSULTANT shall conduct a final payment inspection to determine if the completed Work of Contractor is acceptable so that CONSULTANT may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, CONSULTANT shall also provide proper notice that the Work is acceptable to the best of CONSULTANT's knowledge, information, and belief and based on the extent of the services provided by CONSULTANT under this Agreement.

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

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

CONSULTANT shall furnish a Resident Project Representative (RPR), assistants, and other field staff to assist CONSULTANT to provide more extensive observation of Contractor's work by observing progress and quality of the Work. The RPR, assistants, and other field staff may provide full time representation or may provide representation to a lesser degree.

Through such additional observations of Contractor's work in progress and field checks of materials and equipment by the RPR and assistants, CONSULTANT shall endeavor to provide further protection for CITY against defects and deficiencies in the Work.

The duties and responsibilities of the RPR are as follows:

- 1 Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
- 2 Serve as CONSULTANT's liaison with Contractor, working principally through Contractor's superintendent, assist in providing information regarding the intent of the Project Manual.
- 3 Assist CONSULTANT in serving as CITY's liaison with Contractor when Contractor's operations affect CITY's on-Site operations.
- 4 Assist in obtaining from CITY additional details or information, when required for proper execution of the Work.
- 5 Report to CONSULTANT when clarifications and interpretations of the Project Manual are needed and transmit to Contractor clarifications and interpretations as issued by CONSULTANT.
- 6 Record date of receipt of Samples and approved Shop Drawings.
- 7 Receive Samples, which are furnished at the Site by Contractor, and notify CONSULTANT of availability of Samples for examination.
- 8 Advise CONSULTANT and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by CONSULTANT.
- 9 Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to CONSULTANT. Transmit to Contractor in writing decisions as issued by CONSULTANT.
- 10 Conduct on-Site observations of Contractor's work in progress to assist CONSULTANT in determining if the Work is in general proceeding in accordance with the Project Manual.
- 11 Report to CONSULTANT whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Project Manual or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Project Manual, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise CONSULTANT of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
- 12 Consult with CONSULTANT in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.
- 13 Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate CITY's personnel, and that Contractor maintains adequate records thereof.
- 14 Observe, record, and report to CONSULTANT appropriate details relative to the test procedures and systems start-ups.
- 15 Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to CONSULTANT.
- 16 Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Project Manual including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, CONSULTANT's clarifications and

interpretations of the Project Manual, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.

- 17 Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to CONSULTANT.
- 18 Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.
- 19 Maintain records for use in preparing Project documentation.
- 20 Upon completion of the Work, furnish original set of all RPR Project documentation to CONSULTANT.
- 21 Furnish to CONSULTANT periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- 22 Draft and recommend to CONSULTANT proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- 23 Furnish to CONSULTANT and CITY copies of all inspection, test, and system start-up reports.
- 24 Immediately notify CONSULTANT of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.
- 25 Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to CONSULTANT, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
- 26 During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Project Manual, and have these documents delivered to CONSULTANT for review and forwarding to CITY prior to payment for that part of the Work.
- 27 Participate in a Substantial Completion inspection, assist in the determination of Completion and the preparation of lists of items to be completed or corrected.
- 28 Participate in a final inspection in the company of CONSULTANT, CITY, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.
- 29 Observe whether all items on the final list have been completed or corrected and make recommendations to CONSULTANT concerning acceptance and issuance of the Notice of Acceptability of the Work.

Resident Project Representative shall not:

- 1 Exceed limitations of CONSULTANT's authority as set forth in the Agreement or the Project Manual.
- 2 Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.



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

The CONSULTANT and RPR are expected to conduct themselves at all times in such a manner as to reflect credit upon themselves and the CITY they represent. It is expected that the CONSULTANT and RPR will be suitably dressed for the work, and they will be clean and neat enough to be a suitable representative of the CITY to the Contractor and the public. The CONSULTANT and RPR will be pleasant, courteous and business-like in meeting the public. It is helpful and considerate to answer questions asked by the public. If the CONSULTANT and RPR cannot clearly answer the question, the CONSULTANT should refer the questioner to the Manager of Engineering Services.

The CONSULTANT and RPR will not engage in controversial activities relative to the project in public, particularly if it involves public speaking, public debate, public media, etc. All written communications intended for publication that relate to the project must be approved by the Manager of Engineering Services.

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

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

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

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

Typical entries for general information -

1. All reports shall show the CITY Project number and title and the CARS or SMAC project number
2. All entries shall be printed in black ink or computer generated
3. Detail the CONSULTANT hours on the jobsite
4. Record weather conditions such as "sunny, temperature, precipitation type and amount (light, moderate, heavy)"

5. Complete the report the same day
6. Label the report using the consecutive numbers
7. Note any written or verbal instructions given to the Contractor
8. Note any non-compliance issued for the job
9. Record any unsatisfactory or non-compliant work and corrective actions taken
10. Report all job incidents involving the public such injuries, damages to property and equipment, safety conditions
11. Record the type, frequency and person providing testing
12. Detail job progress in terms of quantity, distances, stations, and weight as they are appropriate and applicable to project pay items
13. Record any factors adversely affecting progress of the work, such as utility conflict, material delivery, unforeseen conditions, plan changes, poor Contractor management, weather, etc.
14. Record any important visitors to the project and their nature of business
15. Sign and date the report
16. Send copy of report to Manager of Engineering Services

Typical entries for subgrade work –

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

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

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

Typical entries for paving work –

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

Typical entries for storm drains –

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

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

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

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

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

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

### ARTICLE III COMPENSATION

The CITY agrees to pay the CONSULTANT, at Hourly Rates, to a Maximum Fee of \$180,000.00 for the scope of services as specified herein unless modified by Change Order. CONSULTANT'S current Hourly Rate Schedule is attached as Exhibit A.

The CONSULTANT may submit an invoice on a monthly basis from an estimate of Services or upon the completion of services. The CONSULTANT shall bill reimbursable expenses, which are beyond all fees for professional services, with a multiplier of 1.05. Reimbursable items shall be as follows:

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

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

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

#### **ARTICLE IV** **GENERAL PROVISIONS**

**Times for Rendering Services:** The CONSULTANT's services and compensation under this Agreement have been agreed to in anticipation of orderly and continuous progress of the Services through completion. Specific periods of time for rendering services are set forth in Article IV, Time Schedule, in this Agreement, by which time defined services are to be completed. If such periods of time are changed through no fault of the CONSULTANT, the rates and amounts of compensation provided for therein shall be subject to equitable adjustment.

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

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

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

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

In a similar manner, the Consultant is prohibited from reuse or disclosing any information contained in any documents, plans or specifications relative to the Project without the expressed written permission of the City.

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

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

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

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

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

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

**Indemnity:** To the fullest extent permitted by law, with respect to the performance of its obligations in this Agreement or implied by law, and whether performed by Consultant or any subconsultants hired by Consultant,

the Consultant agrees to indemnify City, and its agents, servants, and employees from and against any and all claims, damages, and losses arising out of personal injury, death, or property damage, caused by the negligent acts, errors, or omissions of the Consultant or its subconsultants, to the extent and in proportion to the comparative degree of fault of the Consultant and its subconsultants. Consultant shall also pay for City's reasonable attorneys' fees, expert fees, and costs incurred in the defense of such a claim to the extent and in proportion to the comparative degree of fault of the Consultant and its subconsultants.

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

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

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

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

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

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

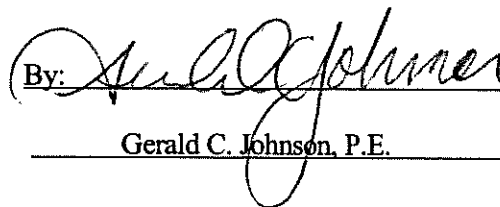
**CITY:**

**CONSULTANT:**

CITY OF PRAIRIE VILLAGE, KS

SHAFER, KLINE & WARREN, INC.

By: \_\_\_\_\_

By:  \_\_\_\_\_

Ronald L. Shaffer

Gerald C. Johnson, P.E.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Principal

Address for giving notices:

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

ATTEST:

\_\_\_\_\_  
Joyce Hagen Mundy, CITY Clerk

Address for giving notices:

Shafer, Kline & Warren, Inc.  
11100 W. 91<sup>st</sup> Street  
Overland Park, Kansas 66214  
913-888-7800

APPROVED BY:

\_\_\_\_\_  
Charles E. Wetzler, CITY Attorney

### HOURLY RATE SCHEDULE

<u>CLASSIFICATION</u>	<u>HOURLY RATE</u>	<u>CLASSIFICATION</u>	<u>HOURLY RATE</u>
Principal	\$155	Secretarial/Clerical	\$55
Associate	140	Engineering Technician V	100
Engineer V	130	Engineering Technician IV	90
Engineer IV	120	Engineering Technician III	80
Engineer III	110	Engineering Technician II	70
Engineer II	100	Engineering Technician I	60
Engineer I	90	Drafter	45
Landscape Architect IV	120	Construction Observer IV	90
Landscape Architect III	110	Construction Observer III	85
Landscape Architect II	100	Construction Observer II	75
Landscape Architect I	85	Construction Observer I	65
Landscape Design	70	Registered Land Surveyor II	110
Planner IV	120	Registered Land Surveyor I	95
Planner III	110	Survey Crew	150
Planner II	100	Survey Rodperson	45
Planner I	85	Survey Technician V	100
GIS Consultant IV	115	Survey Technician IV	90
GIS Consultant III	100	Survey Technician III	80
GIS Consultant II	85	Survey Technician II	70
GIS Consultant I	70	Survey Technician I	60
Controls Technician II	80	GPS Survey Technician	95
Controls Technician I	60		
Photogrammetrist III	90		
Photogrammetrist II	80		
Photogrammetrist I	70		

**Equipment Costs**

GPS Survey Receiver	\$20
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**Note #1**

*The hourly rate shown for GPS Personnel and Survey Crews includes stakes, flagging, iron bars and other miscellaneous materials.*

**Note #2**

*All reimbursable expenses incurred on a project will be charged at a rate of direct cost plus 10% to cover administrative overhead. Direct cost of passenger car mileage will be at the standard rate established by the Internal Revenue Service and in effect at the time the expense is incurred. Direct cost of survey vehicle mileage will be at the IRS standard passenger car rate, plus 20%. Plotting and reproduction will be charged at \$0.50 per square foot for all media except photographic glossy, which will be charged at \$1.00 per square foot. Color copies will be charged at \$0.80 per 8.5 x 11 sheet and \$1.60 per 11 x 17 sheet. Subcontract expenses will be charged at quoted prices with no markup.*

Effective January 1, 2007



# ACORD CERTIFICATE OF LIABILITY INSURANCE

09/06/2007

DATE (MM/DD/YY)  
02/09/2007

**PRODUCER**  
LOCKTON COMPANIES, LLC-1 KANSAS CITY  
444 W. 47th Street, Suite 900  
Kansas City Mo 64112-1906  
(816) 960-9000

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

### INSURERS AFFORDING COVERAGE

**INSURED**  
058114 SHAFER, KLINE & WARREN, INC.  
11100 W. 91ST  
OVERLAND PARK KS 66214

INSURER A: CNA  
INSURER B: (Victor O Schinnerer)  
INSURER C:  
INSURER D:  
INSURER E:

**COVERAGES** SHAKL01 PC **THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER AND THE CERTIFICATE HOLDER.**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
PROJECT: 190860: 2007 STREET RESURFACING PROGRAM.	<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	NOT APPLICABLE			EACH OCCURRENCE \$ XXXXXXXX FIRE DAMAGE (Any one fire) \$ XXXXXXXX MED EXP (Any one person) \$ XXXXXXXX PERSONAL & ADV INJURY \$ XXXXXXXX GENERAL AGGREGATE \$ XXXXXXXX PRODUCTS - COMP/OP AGG \$ XXXXXXXX
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	NOT APPLICABLE			COMBINED SINGLE LIMIT (Ea accident) \$ XXXXXXXX BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX
	<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO	NOT APPLICABLE			AUTO ONLY - EA ACCIDENT \$ XXXXXXXX OTHER THAN EA ACC \$ XXXXXXXX AUTO ONLY: AGG \$ XXXXXXXX
	<b>EXCESS LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> UMBRELLA FORM RETENTION \$	NOT APPLICABLE			EACH OCCURRENCE \$ XXXXXXXX AGGREGATE \$ XXXXXXXX \$ XXXXXXXX \$ XXXXXXXX
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>	NOT APPLICABLE			WC STATU-TORY LIMITS   OTH-ER EL. EACH ACCIDENT \$ XXXXXXXX EL. DISEASE - EA EMPLOYEE \$ XXXXXXXX EL. DISEASE - POLICY LIMIT \$ XXXXXXXX
	<b>OTHER PROFESSIONAL LIABILITY</b>	AEH 27 615 57 88	09/06/2006	09/06/2007	\$1,000,000 PER CLAIM AND AGGREGATE

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS  
PROJECT: 190860: 2007 STREET RESURFACING PROGRAM.

**CERTIFICATE HOLDER**  
2784111  
CITY OF PRAIRIE VILLAGE, KANSAS  
7700 MISSION ROAD  
PRAIRIE VILLAGE, KS 66208

ADDITIONAL INSURED: INSURER LETTER:

### CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

*Paul J. Foster*

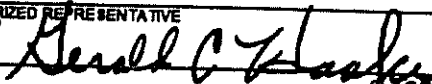
<b>ACORD. CERTIFICATE OF LIABILITY INSURANCE</b>		OPID BB SHAPE-1	DATE (MM/DD/YYYY) 02/09/07												
<b>PRODUCER</b> Haake Companies 4650 College Blvd., Suite 300 Overland Park KS 66211 Phone: 913-491-1999 Fax: 913-906-0088		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.													
<b>INSURED</b> Shafer, Kline & Warren, Inc.; SKW Technical Service Group Inc., Shetlar, Griffith, Shetlar, P.A. Hamilton & Associates, Inc. 2940 Main Street Kansas City MO 64108		<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th style="width: 80%;">INSURERS AFFORDING COVERAGE</th> <th style="width: 20%;">NAIC #</th> </tr> <tr> <td>INSURER A: <b>Amerisure Mutual Insurance</b></td> <td></td> </tr> <tr> <td>INSURER B:</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> </table>		INSURERS AFFORDING COVERAGE	NAIC #	INSURER A: <b>Amerisure Mutual Insurance</b>		INSURER B:		INSURER C:		INSURER D:		INSURER E:	
INSURERS AFFORDING COVERAGE	NAIC #														
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INSURER C:															
INSURER D:															
INSURER E:															

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

POLICY LTR	ADDITIONAL INSURED	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> BLANKET CONT. LIAB <input checked="" type="checkbox"/> X.C.U. INCLUDED GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	CPP1386817	05/01/06	05/01/07	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A		AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS <input checked="" type="checkbox"/> \$500 Comp Ded <input checked="" type="checkbox"/> \$500 Coll Ded	CA1386816	05/01/06	05/01/07	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY EA ACC \$ AGG \$
A		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				
A		EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$10,000	CU1386818 (UMBRELLA)	05/01/06	05/01/07	EACH OCCURRENCE \$ 6,000,000 AGGREGATE \$ 6,000,000 \$ \$ \$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER	C43685533	05/01/06	05/01/07	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A		LEASED OR RENTED CONTRS. EQUIPMENT.	CPP1386817 INCL THEFT	05/01/06	05/01/07	PER ITEM \$100,000. PER OCC \$1000.DED

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS**  
 Project: 190860 2007 Street Resurfacing Program. City of prairie Village  
 Kansas is Named as Additional Insured on General Liability but only as their interest appears with respects to work performed by or on behalf of Named Insured.

<b>CERTIFICATE HOLDER</b>  City of Prairie Village Kansas 7700 Mission Road Prairie Village KS 66208	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 
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## COU2007-15 Consider Payroll/Human Resources Information System

### Issue:

Should the City Council approve an agreement with ADP, Inc. for payroll processing services and a human resources information system (HRIS)?

### Background:

The City currently utilizes Checkdate Solutions for its payroll and HRIS, and has done so since December 1999. Checkdate Solutions has been acquired by Paycor, a payroll processing firm in Cincinnati, Ohio. Staff was notified that the City would be required to convert to the Paycor system in 2007. However, Paycor was unable to provide an estimate of when the conversion would need to occur or the costs required to convert to the Paycor system. However, Paycor did indicate that there would be a cost increase. Given that a change in payroll / HRIS systems was imminent, Staff took this as an opportunity to explore solutions provided by other companies in an effort to keep up with changing technology and improve efficiencies.

The HRIS is a module that enables the City to keep track of non-payroll items such as: job titles, benefits, salary history, date of birth, etc. and aids in the preparation of government-required reports. A HRIS system helps bridge the human resources and payroll processes, and reduces duplicate work performed by the City's accounting and human resources staff. The current system provided by Checkdate provides a limited HRIS function.

The City distributed a Request for Proposal (RFP) for Payroll Services, Human Resources Management Information Systems, and Time & Attendance Management in December 2006. The RFP was published in the newspaper and directly submitted to the following companies:

- Automated Data Processing, Inc (ADP)
- Ceridian Corporation
- Checkdate Solutions (Current Provider)
- Kronos
- Paychex

Responses to the RFP were received from ADP, Kronos, and Paychex. Checkdate/Paycor, the current provider, did not respond to the RFP. The solution proposed by Kronos was not considered due to the cost (\$91,000+). Staff interviewed the remaining two candidates and viewed demonstrations of their products.

After examining both the Paychex and ADP systems, staff determined that the solution proposed by ADP would best meet the City's needs. The ADP system will be an improvement over the current system in the following ways:

- Improved reporting options, including EEO reporting and benefits summaries.
- Improved security
  - The web-based ADP system is hosted by ADP on its computer network, which is backed up at multiple locations and meets strict security standards.
- Historical recordkeeping
  - The current system only provides most recent information, whereas the ADP solution retains historical information such as pay rates, job titles, benefit costs, etc.
- Web-based, hosted solution
  - The ADP solution is web-based. City staff will not be required to store payroll information on the City's computer network or perform software updates to the ADP system.

The Paychex solution was less than the cost of the ADP solution, however the Paychex system is PC based which would require server space and staff time to maintain. The Paychex solution also includes software that the City utilized five years ago. At that time, the City's accounting staff was not satisfied with the system, as it was difficult to use and did not provide the necessary tools for Staff to operate efficiently.

The Paychex solution also did not offer the some of the reporting functions provided by ADP, and appeared to be behind of ADP in providing software upgrades and capabilities.

The solution proposed by ADP also includes a Time and Attendance Management solution. The Time and Attendance Management solution is a web-based timekeeping system featuring equipment such as biometric time clocks and punching in and out via the PC. Approval of times sheets also occurs on-line. In addition, managers would have the ability to manage schedules and leave requests on-line. Because this module is integrated with payroll, the information is downloaded to payroll, eliminating manual entry of time sheets by Finance staff. The proposed cost of the Time and Attendance Management solution is \$7,836.13 which includes the cost for biometric time clocks.

**Financial Impact:**

The 2007 budget contains \$8,900.00 for payroll/HRIS services provided by Checkdate Solutions. The complete solution proposed by ADP (Payroll, HRIS, and Time & Attendance) would cost \$1,904.40 per month, or \$22,852.80 annually. This is significantly more than the 2007 budget can accommodate. Implementation of all three modules would be the preferred solution; however the most immediate need is to replace the current payroll and HRIS systems. Therefore, Staff proposes implementing the payroll and HRIS features of the ADP system immediately, and plans to ask the City Council to consider expanding the system to include Time & Attendance Management in the 2008 budget.

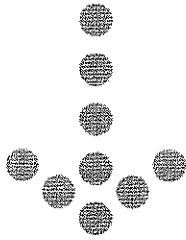
The Payroll / HRIS solution proposed by ADP will cost \$1,251.38 month or \$15,016.56 annually. The costs are outlined below:

	ADP	Paychex
Payroll	\$655.07	\$600.41
Human Resources Information System	596.31	384.15
<b>Total Estimated Monthly Cost</b>	<b>1,251.38</b>	<b>984.56</b>
<b>Estimated Annual Cost</b>	<b>15,016.56</b>	<b>11,814.72</b>
<b>Implementation / Training Cost</b>	<b>3,500.00</b>	<b>1,100.00</b>
<b>Estimated Annual Cost - Year 1</b>	<b>18,516.56</b>	<b>12,914.72</b>
<b>2007 Amount Budgeted for Payroll/HRIS Services</b>	<b>8,900.00</b>	<b>8,900.00</b>
<b>2007 Additional Cost</b>	<b>\$9,616.56</b>	<b>\$4,014.72</b>
<b>Estimated Annual Cost - Year 2</b>	<b>\$15,016.56</b>	<b>\$11,814.72</b>

**Recommendation:**

**RECOMMEND THE CITY COUNCIL APPROVE ENTERING INTO AN AGREEMENT WITH ADP, INC. FOR PAYROLL AND HUMAN RESOURCES INFORMATION SYSTEMS SERVICES WITH FUNDS PROVIDED FROM THE 2007 OPERATING BUDGET AND A TRANSFER OF \$9,616.56 FROM THE 2007 GENERAL FUND CONTINGENCY SUBJECT TO THE APPROVAL OF THE CITY ATTORNEY.**

# Productivity



Put the power of  
information in your  
employees' hands.

Give your employees secure online access to the HR information they want most. It's all at their fingertips with ADP's Pay eXpert® Employee Self Service.

As part of Pay eXpert, our Internet payroll service, Self Service provides employees with answers to everyday questions about their pay history, contact information and career. And, it allows employees to access this vital information whenever and wherever they choose – even at home – using a standard Web browser. It's the kind of information that can come in handy when employees are applying for a mortgage, preparing tax returns, planning vacation time, or creating a household budget.

As a result, Pay eXpert Self Service reduces inquiries to your HR staff enabling them to focus on more productive tasks.

## The Details They Want—When They Want Them

With Pay eXpert Self Service, employees can get immediate information on critical aspects of their employment:

### My Pay

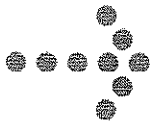
Includes:

- **Pay Rates** – Complete details on pay rate and salary history
- **Accumulators** – Cumulative totals for any time period
- **Deductions** – Current and historical deductions and deposit
- **Taxes** – Current and historical withholding figures for Federal, State, Local taxes — including Social Security and Medicare
- **CheckView** – Full details on each employee paycheck, including gross pay, deductions and more
- **Paycheck Calculator** – “What-if” calculations based on such variables as pay rate, exemptions and tax rates. Allows an employee, for example, to determine how a new dependent or other exemption will affect his/her take-home pay

### My Info

Allows employees to review their personal information, including name/address, emergency contact information, marital status, number of exemptions, tax status, vacation time, current position, title and grade.

# Pay eXpert Self Service



# Pay eXpert® Self Service

## My Career

### Includes:

- **Employee Development** – Information on education, skills, licenses and certifications, and memberships
- **Previous Employer** – Details on previous employers, including salary, start/end dates, and reason for leaving

## Easy to Use

With its simple, menu-driven format, Pay eXpert Self Service makes it easy for employees to locate exactly the information they want – and to drill down for greater detail.

Pay eXpert puts you in full control of when, where, and how you perform key payroll and HR functions, giving you unprecedented freedom. And, it gives you immediate online access to up-to-date payroll information, payroll-related tax, and HR data.

## Fully Secure

ADP's Pay eXpert Self Service is secure and password-protected. In addition, it allows your company to assign security rights based on your own criteria, giving you control over how much information is accessible to each employee.

Hosting for ADP's Pay eXpert service takes place in a secure ADP data center. ADP acts as your IT resource to maintain your database and protect your information.

## System Requirements:

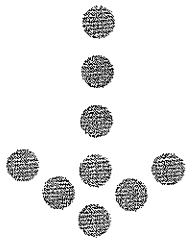
- Microsoft® Windows® Internet Explorer 5.5 or 6.0
- High-speed connection such as T1 or DSL, 128kb min. for administrators
- 56k for employees

The ADP Logo is a registered trademark of ADP of North America, Inc.

The business behind business is a registered trademark of Automatic Data Processing, Inc.

Pay eXpert is a registered trademark of Automatic Data Processing, Inc.

All other products are the property of their respective owners.



## Flexible, Hosted HRMS and Benefits Administration.

# Capability

Employers are feeling the pain from: unrelenting budget pressures, profit leaks, increased HR rule complexities and the need to compete for skilled workers from a talent pool that continues to diminish.

**Introducing ADP's HR/Benefit Solution** from the company more than 500,000 employers around the world trust for value-added business solutions. It combines a full-featured Human Resource Management System and Benefits Administration into an integrated, robust solution that complies with applicable government regulations, reduces benefits costs and adds to employee satisfaction. It also interfaces seamlessly to your payroll application.

### Control Benefits Costs

One of the biggest expenses faced by employers is the cost of benefits administration. ADP's HR/Benefit Solution helps many employers to actually reduce the costs of providing benefits:

- No more premium overpayments – ADP's solution connects you directly to insurance carriers to help easily identify discrepancies
- Elimination of costly paper-based transactions
- Streamlined and pain-free open enrollments all year long that no longer divert your HR staff from more profitable initiatives
- Reduced dependency on costly IT resources
- Synchronization of benefits administration with payroll

With the ongoing expense of IT support, maintenance and upgrades built into the cost of ADP's HR/Benefit Solution, employers typically realize rapid ROI — both hard and soft-dollar savings — almost immediately!

### Improve Employee Retention and Communications

Employee turnover comes with a hidden expense — recruiting costs, training costs and the loss in employee productivity.

Building employee satisfaction helps you to avoid or minimize these costs because satisfied employees are likely to stay with you longer. One of the best ways to enhance employee longevity is to provide your employees with convenient, Web-based, self service access and visibility to benefits information and the ability to manage their own benefits, 24/7.

# ADP's HR/Benefit Solution





# ADP's HR/Benefit Solution

ADP's HR/Benefit Solution enables your employees to:

- Make online inquiries and receive instant responses concerning their benefits, company policies and other employment-related information
- Select and change benefit elections whether they're at work or at home
- Access benefit plan comparisons
- Initiate life event changes and update other personal information
- Generate a comprehensive benefits enrollment summary that reflects their current benefit elections — and their value
- Participate with greater convenience in benefit program open enrollments

When employees are more informed about their benefits and other company information, the more satisfied they'll be with the value of those benefits and their role within the organization. Consequently, as employee satisfaction goes up, turnover rates go down.

Managers who use automated processes to manage tasks and increase productivity spend more time helping you build your business.

ADP's HR/Benefit Solution empowers your managers to:

- Conduct performance reviews, approve employee vacation requests and disseminate other vital information with more speed and less paper
- Offload repetitive tasks — such as data re-keying — freeing time to perform more vital tasks that support your core business mission

## Ensure Compliance

Complying with regulatory guidelines is a challenge for every business. Utilizing compliant business solutions is the best way to reduce risk and exposure.

ADP's HR/Benefit Solution helps employers respond with:

- Fair and consistent application of employment rules — from performance reviews and FMLA leave management... to EEO and VETS requirements
- Real-time access to accurate data to shape well-focused management reports
- Secure storage of HR records — employees' personal information is protected by a high level of system-wide security

## Flexibility and Seamless Integration

ADP's HR/Benefit Solution adapts to the changes in your organization with robust, single-point functionality driven by a dynamic rules engine — allowing you to control the data you share within your organization, or manage all or some HR functions at a centralized office or remote locations.

Flexibility is the norm with ADP's HR/Benefit Solution. You retain control through real-time, hosted, Internet access — and ADP's HR/Benefit Solution includes a seamless interface with payroll to ensure timely and accurate deductions.

## Flexible, Hosted HRMS and Benefits Administration

Full-featured HRMS including:

- Core HR Capabilities
- Performance and Leave Management
- Recruitment
- Manager and Employee Self Service

Robust Benefits Administration including:

- Open Enrollment
- Insurance Carrier Connectivity
- Dynamic Rules Engine

Seamless Connection to Payroll:

- Web and XML Services

The ADP Logo is a registered trademark of ADP of North America, Inc.

The business behind business is a registered trademark of Automatic Data Processing, Inc.

## MAJOR ACCOUNTS AGREEMENT

This Major Accounts Agreement ("Agreement") dated \_\_\_\_\_ is by and between \_\_\_\_\_ with offices at \_\_\_\_\_ ("Client") and ADP, Inc. with its principal office at One ADP Boulevard, Roseland, New Jersey 07068 ("ADP") for the procurement of payroll, tax filing, benefits administration and other data processing services, including related web hosting services (the "Services"), equipment, computer programs, software (other than pre-packaged third-party software), and documentation ("ADP Products") from ADP in accordance with this Agreement. All references herein to "Client" shall refer to Client and its affiliates that are receiving the Services and ADP Products pursuant hereto.

### 1. GENERAL TERMS

- A. **Performance Standard.** ADP will perform the Services in a professional manner, using personnel having a level of skill in the area commensurate with the requirements of the Services to be performed. If ADP employees are located on Client's property, ADP will advise such employees to observe the reasonable security and safety policies of Client as such are communicated to ADP sufficiently in advance from time to time.
- B. **Payment Services.**
- i. **Funds.** If Client is receiving any of the Services that require ADP, as part of such Services, to impound funds from Client's bank account to pay Client's third party payment obligations (e.g., Tax Filing Services, WGPS, TotalPay Card, FSDD Services and/or ADPCheck Services) ("Payment Services"), Client shall have sufficient, collected funds in Client's account within the deadline established by ADP to satisfy such third-party payment obligations in their entirety. Client agrees to cooperate with ADP and any other parties involved in processing any transactions hereunder to recover funds credited to any employee as a result of an error made by ADP or another party processing a transaction on behalf of ADP. ADP may commingle Client's impounded funds with other clients', ADP's or ADP-administered funds of a similar type. ALL AMOUNTS EARNED ON SUCH FUNDS WHILE HELD BY ADP WILL BE FOR THE SOLE ACCOUNT OF ADP.
  - ii. **NACHA.** Payment Services are subject to the operating rules of the National Automated Clearing House Association ("NACHA"). ADP and Client each agree to comply with the NACHA rules applicable to it with respect to Payment Services.
  - iii. **Termination.** Payment Services may be immediately terminated by ADP without prior notice if (i) any of the events in Section 8.B. occur with respect to Client, (ii) any unauthorized credits or debits are initiated in Client's name, (iii) the Originating Bank (as defined by NACHA) notifies ADP that it is no longer willing to originate debits and credits for any reason, (iv) the authorization to debit Client's account is terminated, (v) Client terminates or is terminated from the Tax Filing Services, or (vi) ADP reasonably determines that Client no longer meets ADP's credit/financial eligibility requirements for such Services.
- C. **Accuracy of Client Information, Review of Data.** All Services provided hereunder will be based upon information provided to ADP by Client (including proof of federal, state and local tax identification numbers). Upon receipt from ADP, whether electronically or otherwise, Client will promptly review all disbursement records and other reports prepared by ADP for validity and accuracy according to Client's records and Client agrees that it will promptly notify ADP of any discrepancies (but in any case before distributing any paychecks or relying on any such disbursement records or reports). To help prevent employee fraud, ADP recommends that Client have someone other than its designated payroll contact review its disbursement reports; a prompt and thorough review allows Client to spot and correct errors and inconsistencies.
- D. **Protection of Client Files.** ADP will employ commercially reasonable storage (including backup, archive and redundant data storage, on-site and off-site) and reasonable precautions to prevent the loss of or alteration to Client's data files and/or Client Content (as defined in Section 1.1.) in ADP's possession, but ADP does not undertake to guarantee against any such loss or alteration. ADP is not, and will not be, Client's official record keeper. Accordingly, Client will, to the extent it deems necessary, keep copies of all source documents of the information delivered to ADP (including maintaining printouts of Client Content (as defined below) input into any ADP Internet Services (as defined in Section 1.1)).
- E. **Use of ADP Products and Services.** Client shall use the ADP Products and Services in accordance with the instructions and reasonable policies established by ADP from time to time and communicated to Client. Client shall use the ADP Products and Services only for the internal business purposes of Client. Client shall not provide, directly or indirectly, any of the ADP Products or Services or any portion thereof to any party other than the Client. Client shall not provide service bureau or other data processing services that make use of the ADP Products or Services or any part thereof without the express written consent of ADP. Client represents that it has verified the identity of each of its employees to whom it will make payments using ADP Products or Services through appropriate documentation provided by such employee (e.g., I-9 documentation). Client will maintain such documentation during such time the employee receives such payments, and if requested by ADP, Client shall furnish copies of such documentation to ADP. Client shall be responsible for ensuring that its employees and plan participants who use any ADP Products or Services also comply with all the terms of this Agreement and any online or shrink-wrap terms or other accompanying documentation

("Additional Terms"). ADP may suspend access to the ADP Products or Services by any employee or plan participant of Client if ADP has reason to believe that such employee or plan participant has violated such terms or is otherwise using any ADP Product or Service in an inappropriate manner.

- F. Compliance with Laws. Client acknowledges that the ADP Products and Services are designed to assist Client in complying with applicable laws and governmental regulations, but that Client, and not ADP, shall be solely responsible for (i) compliance with all laws, governmental regulations and manufacturers' requirements affecting its business and (ii) any use Client may make of the ADP Products and/or Services (including any reports and worksheets produced in connection therewith) to assist it in complying with such laws, governmental regulations and manufacturers' requirements. Client will not rely solely on its use of the ADP Products and/or Services in complying with any laws, governmental regulations (including but not limited to any applicable OFAC screening requirement) and manufacturers' requirements. ADP shall be responsible for compliance with all laws or governmental regulations affecting its business generally.
- G. License Rights. The right to use the ADP Products is granted to Client for the sole purpose of utilizing the Services as provided herein and is set forth more fully in Additional Terms accompanying the ADP Products licensed by the Client. Any license to ADP Products shall automatically terminate upon ADP ceasing to provide Client with related Services; provided, however, that Client shall be entitled to retain any time collection equipment that has been purchased and paid for in full by Client.
- H. Online Access. Certain ADP Products or Services may be accessed by Client and its authorized employees and plan participants through the Internet at a website provided by ADP or on behalf of ADP, including those hosted by ADP on behalf of Client (a "Site"). Client acknowledges that ADP does not review the accuracy or completeness of any information submitted by Client or its employee or plan participants through the Site. Client agrees to take commercially reasonable precautions to maintain the privacy of usernames and passwords for any ADP Internet Services, including those contained in any Additional Terms. In addition, Client acknowledges that security of transmissions over the Internet cannot be guaranteed. ADP is not responsible for (i) Client's access to the Internet, (ii) interception or interruptions of communications through the Internet, or (iii) changes or losses of data through the Internet. In order to protect Client's data, ADP may suspend Client's or Client's employee(s) or plan participant(s) use of the ADP Products or Services via the Internet immediately, without notice, pending an investigation, if any breach of security is suspected.
- I. Client Content. "Client Content" shall mean (i) payroll, benefits, human resources and similar information provided by Client or its employees or plan participants, including transactional information, (ii) Client's trademarks, trade names, service marks, logos and designs and (iii) any other information or materials provided by Client, regardless of form (e.g., images, graphics, text, etc.), to be included in Benefits eXpert<sup>SM</sup>, the ADP Portal Solution Service, or any other web-based ADP Product (collectively, "ADP Internet Services"), whether included therein by ADP on behalf of Client as part of its setup services or directly by Client or any of its employees or plan participants. The following provisions shall apply with respect to Client Content:
- i. Client shall be solely responsible for updating and maintaining the completeness and accuracy of all Client Content.
  - ii. Client shall be responsible for obtaining all required rights and licenses to use and display all Client Content in connection with ADP Internet Services. Client hereby grants to ADP a non-exclusive, non-transferable license to use, edit, modify, adapt, translate, exhibit, publish, reproduce, copy (including back up copies) and display the Client Content as reasonably necessary to provide ADP Products or perform the Services covered under this Agreement.
  - iii. Client and its employees and plan participants shall not include or provide to ADP for inclusion in any ADP Internet Services any Client Content which is obscene, offensive, inappropriate, threatening, malicious, which violates any applicable law or regulation or any contract, privacy or other third party right or which otherwise exposes ADP to civil or criminal liability. ADP reserves the right to exclude or immediately remove from any ADP Internet Services any Client Content which it determines in its sole discretion violates the previous sentence, provided that ADP has no obligation to review or monitor the Client Content.
  - iv. Client acknowledges that, in making ADP Internet Services available, ADP is not acting as an investment advisor, broker-dealer, insurance agent or intermediary or a financial or benefit planner. ADP is not providing any benefits or information related thereto.
- J. Links to Third Party Sites. The Site(s) may contain links to other Internet sites. Links to and from a Site to other third party sites do not constitute an endorsement by ADP or any of its subsidiaries or affiliates of such third party sites or the acceptance of responsibility for the content on such sites.
- K. Transmission of Data. In the event that Client requests that ADP provide any Client Content or employee or plan participant information to any third party or to any non-U.S. Client location, Client represents that it has acquired any consents or provided any notices required to transfer such content or information and that such transfer does not violate any applicable international, federal, state or local laws and/or regulations.
- L. Enhancements. ADP will make available improvements, enhancements, modifications and/or updates to ADP Products,

as required, to Client at no additional cost (i.e., no charge in addition to the monthly fees paid by Client) if and as they are made available generally by ADP at no additional cost to ADP's Clients licensing the same products as Client.

**2. ADP PRODUCTS AND SERVICES** To the extent any of the ADP Products or Services on the following **Product Schedule** are selected by Client, the additional terms related to such ADP Products and Services set forth on such **Product Schedule** shall apply.

### **3. FEES, TAXES & PAYMENTS**

A. **Fees.** Client shall pay ADP for the ADP Products and Services indicated on the Sales Order or Pricing Proposal at the rates set forth thereon for the first six months after the date this Agreement is accepted by Client (assuming no changes in requirements, specifications, volumes or quantities) (the "Initial Period"). Client shall pay ADP for the ADP Products and Services added by Client after the date hereof at ADP's then prevailing prices for such ADP Products and Services. ADP may increase prices for the ADP Products and Services at any time after the Initial Period upon at least 30 days prior written notice to Client if such change is part of a general price change by ADP to its clients for affected items. These prices do not include the amounts referred to in Section 1.B.i. or monthly communication charges or communication installation charges, which will be paid by Client. Client will pay all invoices in full within 30 thirty days of invoice date. If Client fails to pay any amount due hereunder (whether by acceleration or otherwise) that is not under good faith dispute, Client, after written notice, shall pay interest at the rate of 1.5% per month (or the maximum allowed by law if less) on such past due amount from the due date thereof until the payment date. Client shall reimburse ADP for any expenses incurred, including interest and reasonable attorney fees, in collecting amounts due ADP hereunder that are not under good faith dispute by Client.

B. **Taxes.** There shall be added to all payments hereunder amounts equal to any applicable taxes levied or based on this Agreement, exclusive of taxes based on ADP's net income.

**4. DISCLAIMER OF WARRANTIES.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, ALL EQUIPMENT PROVIDED BY ADP OR ITS SUPPLIERS IS PROVIDED "AS IS" AND ADP AND ITS LICENSORS EXPRESSLY DISCLAIM ANY WARRANTY, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, NON-INTERRUPTION OF USE, AND FREEDOM FROM PROGRAM ERRORS, VIRUSES OR ANY OTHER MALICIOUS CODE WITH RESPECT TO THE SERVICES, THE ADP PRODUCTS, ANY CUSTOM PROGRAMS CREATED BY ADP OR ANY THIRD-PARTY SOFTWARE DELIVERED BY ADP. ADP AND ITS LICENSORS FURTHER DISCLAIM ANY WARRANTY THAT THE RESULTS OBTAINED THROUGH THE USE OF THE SERVICES, THE ADP PRODUCTS, ANY CUSTOM PROGRAMS CREATED BY ADP OR ANY THIRD-PARTY SOFTWARE DELIVERED BY ADP WILL MEET CLIENT'S NEEDS.

### **5. INTELLECTUAL PROPERTY**

A. **Ownership and Proprietary Rights.** All ADP Products licensed to Client hereunder are the licensed and/or owned property of and embody the proprietary trade secret technology of ADP and/or its licensor(s) and are protected by copyright laws, international copyright treaties, as well as other intellectual property laws, that among other things, prohibit the unauthorized use and copying of any ADP Products. Client receives no rights to any ADP Products or any intellectual property of ADP or its licensors, except as expressly stated herein or in any Additional Terms.

B. **ADP Infringement Indemnity.** ADP will defend Client in any suit or cause of action alleging that the ADP Products, as provided by ADP and used in accordance with the terms of this Agreement, infringe upon any United States patent, copyright, trade secret, or other proprietary right of a third party. ADP will pay damages assessed, including reasonable attorneys' fees, against Client in any such suit or cause of action, provided that, (i) ADP is promptly notified in writing of such suit or cause of action, (ii) ADP controls any negotiations or defense and Client assists ADP, at ADP's expense, as reasonably requested by ADP, and (iii) Client takes all reasonable steps to mitigate any potential damages. The foregoing infringement indemnity will not apply and ADP will not be liable for any damages assessed in any suit or cause of action resulting from a Client Infringement Event (as defined below). If any ADP Product is held or believed to infringe on any third-party's intellectual property rights, ADP may, in its sole discretion, (a) modify the ADP Product to be non-infringing, (b) obtain for Client a license to continue using such ADP Product, or (c) if neither (a) nor (b) are practical, terminate this Agreement as to the infringing ADP Product and return to Client any unearned fees paid by Client to ADP in advance. This Section 5.B. states ADP's entire liability and Client's exclusive remedies for infringement of intellectual property rights of any kind relating to ADP Products.

C. **Client Infringement Indemnity.** Client will defend ADP against, and pay damages assessed in, any suit or cause of action alleging that the ADP Products infringe upon any United States patent copyright, trade secret, or other proprietary right of a third party, only to the extent that any such suit or cause of action results from a Client Infringement Event, provided that, (i) ADP promptly notifies Client in writing of such suit or cause of action, (ii) ADP assists Client, at Client's expense, as reasonably requested by Client, and (iii) takes all reasonable steps to mitigate any potential damages that may result; provided however, in no case, shall ADP be required to provide any assistance or mitigation efforts that would affect the ADP Products, ADP's marketing, distribution or sale thereof or the terms of any current or future license of the ADP Products. "Client Infringement Event" means (i) any alteration, change, modification and/or enhancement of the ADP Products made by Client or any third party on behalf of Client without ADP's express permission; (ii) Client's use of the ADP Products in combination with any hardware, software or other materials not expressly authorized by ADP; (iii) use of other than the most current release of the ADP Products made

available to Client by ADP that results in a claim or action for infringement that could have been avoided by use of the current release; (iv) use by Client of unmodified ADP Products after Client has been informed of and given access to modifications that would avoid claims of infringement; or (v) Client Content or any Authorized Mark (as defined in 5.D. below) that infringes a third party's rights. Clauses (i), (iii) and (iv) shall not apply to ADP Products hosted by ADP. This Section 5.C. states Client's entire liability and ADP's exclusive remedies for infringement of intellectual property rights of any kind relating to Client Infringement Events.

- D. Use of Client's Authorized Marks. In the event that ADP makes available branding of any materials, Cards and/or websites associated with the ADP Products or Services and Client requests such branding, Client grants to ADP, to the card issuers and any third party service providers designated by ADP (collectively, "Authorized Users") the right to display Client's trademarks, trade names, service marks, logos and designs designated by Client (the "Authorized Marks"), subject to Client's right to review and approve the copy prior to the use of such Authorized Marks. This authorization shall cover the term of this Agreement and, if Client is receiving TotalPay Card Services, any period of ongoing use of the Cards by employees after termination of this Agreement.

6. **NONDISCLOSURE** All Confidential Information disclosed hereunder will remain the exclusive and confidential property of the disclosing party. The receiving party will not disclose the Confidential Information of the disclosing party and will use at least the same degree of care, discretion and diligence in protecting the Confidential Information of the disclosing party as it uses with respect to its own confidential information. The receiving party will limit access to Confidential Information to its employees and authorized representatives with a need to know and will instruct them to keep such information confidential. Notwithstanding the foregoing, the receiving party may disclose Confidential Information of the disclosing party (a) to the extent necessary to provide the services covered by this Agreement, provided that any disclosure to a third party is made in confidence if such disclosure was not requested by the disclosing party, (b) to the extent necessary to comply with any law, rule, regulation or ruling applicable to it, (c) as appropriate to respond to any summons or subpoena or in connection with any litigation, (d) relating to a specific employee, to the extent such employee has consented to its release, (e) to any affiliate of the disclosing party covered by this Agreement and (f) to the extent necessary to enforce its rights under this Agreement. Upon the request of the disclosing party, the receiving party will return or destroy all Confidential Information of the disclosing party that is in its possession. Notwithstanding the foregoing, ADP may retain information for regulatory purposes or in back-up files, provided that ADP's confidentiality obligations hereunder continue to apply. For purposes of this Section, "Confidential Information" shall mean: all information of a confidential or proprietary nature provided by the disclosing party to the receiving party for use in connection with ADP Products or Services, or both, but does not include (i) information that is already known by the receiving party, (ii) information that becomes generally available to the public other than as a result of disclosure by the receiving party in violation of this Agreement, and (iii) information that becomes known to the receiving party from a source other than the disclosing party on a non-confidential basis. Confidential Information of ADP also includes all ADP trade secrets, processes, proprietary data, information or documentation related thereto, or any pricing or product information furnished to Client by ADP. Confidential Information of Client also includes all personally identifiable payroll and employee-level data.

#### 7. LIMITATION OF LIABILITY

- A. Client Responsibility. Client will be responsible for (i) the consequences of any instructions Client may give to ADP, (ii) Client's failure to use the Services and the ADP Products in the manner prescribed by ADP, and (iii) Client's failure to supply accurate input information or Client Content.
- B. Errors and Omissions. ADP's sole liability to Client or any third party for claims of any type or character arising from errors or omissions in the Services that are caused by ADP shall be to correct the affected Client report, data or tax agency filings, as the case may be, at no charge to Client.
- C. Limit on Monetary Damages. Notwithstanding anything to the contrary contained in this Agreement (other than and subject to Section 5.B. above and the last sentence of this Section 7.C.), ADP's aggregate liability under this Agreement during any calendar year for damages (monetary or otherwise) under any circumstances for claims of any type or character made by Client or any third party arising from or related to ADP Products or Services, will be limited to the lesser of (i) the amount of actual damages incurred by Client or (ii) the average monthly charges for one month for the affected ADP Products or Services during such calendar year. ADP will issue Client a credit(s) equal to the applicable amount and any such credit(s) will be applied against subsequent fees owed by Client. The foregoing limitation shall not apply to (i) actual damages incurred by Client as a direct result of the criminal or fraudulent acts or willful misconduct of ADP or any of its employees, (ii) any penalty imposed against Client as a result of an error or omission made by ADP in performing the Tax Filing Services or (iii) any interest assessed against Client as a result of ADP holding Client tax funds past the applicable due date due as a result of an error or omission made by ADP in performing the Tax Filing Services.
- D. QBC/ADPChecks/FSDD/Cards. Neither ADP nor the Originating Bank shall be liable for any damages to Client arising from any decision to refrain from or delay originating debit/credit entries, crediting amounts to any ADP TotalPay Card or issuing ADPChecks in connection with Client's payroll (i) after reasonable efforts to verify such debit/credit entries by the required security procedure have failed, (ii) due to Client's creditworthiness or (iii) because ADP has not received timely funds from Client as required by Section 1.B. Client agrees that ADP will not be liable for any damages to Client arising from any bank decision to withhold the release of a Client payroll that is processed on Official Bank Checks.
- E. No Consequential Damages. NEITHER ADP NOR CLIENT WILL BE RESPONSIBLE FOR SPECIAL, INDIRECT,

INCIDENTAL, CONSEQUENTIAL OR OTHER SIMILAR DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY LOST PROFITS OR DAMAGES FOR BUSINESS INTERRUPTION OR, LOSS OF INFORMATION) THAT THE OTHER PARTY MAY INCUR OR EXPERIENCE IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES OR ADP PRODUCTS, HOWEVER CAUSED AND UNDER WHATEVER THEORY OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

#### 8. TERM AND TERMINATION; DEFAULT BY CLIENT; REMEDIES UPON DEFAULT

- A. Termination. Either ADP or Client may terminate this Agreement upon at least 90 or 30 days, respectively, prior written notice.
- B. Client Defaults. Notwithstanding anything contained herein, if Client (i) defaults in the payment of any sum of money hereunder, (ii) defaults in the performance of any of its other obligations hereunder, (iii) commits an act of bankruptcy or becomes the subject of any Bankruptcy Act proceeding or becomes insolvent, or if any substantial part of Client's property becomes subject to any levy/seizure, assignment, application or sale for or by any creditor or governmental agency, or (iv) has any material adverse change (in ADP's sole opinion) in its financial condition, then, in any such event, ADP may, upon written notice thereof, (a) terminate this Agreement and/or Client's receipt of any of the ADP Products or Services, (b) declare all amounts due and to become due immediately due and payable, (c) take immediate possession of any Timeclock Equipment not purchased and paid for in full by Client and/or (d) require Client to deposit an amount equal to its average per processing charges or to prepay for future processing and may invoke any and all other remedies permitted by law. Client agrees to reimburse ADP for any and all expenses ADP may incur, including interest costs and reasonable attorney fees, in taking any of the foregoing actions.
- C. Post-Termination. If use of any ADP Products or Services are or may be terminated by ADP pursuant to Sections 8.A. or 8.B., ADP shall be entitled to allocate any funds remitted or otherwise made available by Client to ADP in such priorities as ADP (in its sole discretion) may determine appropriate (including reimbursing ADP for payments made by ADP hereunder on Client's behalf to a third party) and if any such ADP Products or Services are terminated, Client will immediately; (i) become solely responsible for all of its third-party payment obligations covered by such ADP Products or Services then or thereafter due (including, for Tax Filing Services, all related penalties and interest); (ii) reimburse ADP for all payments made by ADP hereunder on Client's behalf to any third party; and (iii) pay any and all fees and charges invoiced by ADP to Client relating to the ADP Products or Services. If ADP elects not to terminate any or all of the ADP Products or Services as permitted hereunder, ADP may require Client to pay its outstanding and all future third-party payment amounts covered by the ADP Products or Services and/or ADP's fees and charges for the ADP Products or Services to ADP by bank or certified check or by wire transfer as a condition to receiving further ADP Products or Services.
- D. Remedies Cumulative. The remedies contained in this Section 8 are cumulative and in addition to all other rights and remedies available to ADP hereunder, by operation of law or otherwise.

#### 9. FUNDING INDEMNIFICATION

- A. Funding. Client shall indemnify and hold harmless ADP from and against any loss, liability, claim, damage or exposure (each a "Loss") arising from or in connection with any action, proceeding or claim made or brought against ADP by any bank with whom Client maintains an account for any incorrect debit ADP may make to such account as a result of an error or omission by ADP in performing the Service, to the extent that the Loss would have been avoided if (i) Client had not directed ADP to return the funds to an account or person other than the account which was originally debited and ADP was permitted to return the funds to the affected account or (ii) ADP's return of the funds was not rejected by the bank (e.g., due to account closure).
- B. Debits. Client shall be liable for debits properly initiated by ADP hereunder. Client unconditionally promises to pay to ADP the amount of any unfunded payroll file (including any debit that is returned to ADP because of insufficient or uncollected funds or for any other reason), upon demand and interest thereon at the rate set forth in Section 3.A. Also, if any debit to an employee or other payee's account reversing or correcting a previously submitted credit(s) is returned for any reason, Client unconditionally promises to pay the amount of such debit upon demand and interest thereon at the rate set forth in Section 3.A. Client shall be liable for, and shall indemnify ADP against, any loss, liability, claim, damage or exposure arising from or in connection with any fraudulent or criminal acts of Client's employees or payees.

#### 10. MISCELLANEOUS

- A. Assignment. Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party.
- B. Inducement. Client has not been induced to enter into this Agreement by any representation or warranty not set forth in this Agreement. This Agreement contains the entire agreement of the parties with respect to its subject matter. This Agreement shall not be modified except by a writing signed by ADP and Client.
- C. Third-Party Beneficiaries. With respect to the Services and ADP Products covered hereby, ADP suppliers, vendors and referral partners shall receive the same indemnification and defense rights from Client as set forth in Section 5.C. of this Agreement and may enforce the same disclaimers and limitations against Client as ADP may under Sections 4 and 7 of this Agreement. Other than ADP suppliers, vendors, and referral partners who are intended third party beneficiaries with respect to Sections 4, 5C and 7 of this Agreement, nothing in this Agreement creates, or will be deemed to create, third party beneficiaries of or under this Agreement. ADP has no obligation to any third party

- (including, without limitation, client's employees and/or any taxing authority) by virtue of this Agreement.
- D. **Force Majeure.** Excluding any payment obligations to ADP as provided hereunder, any party hereto will be excused from performance under this Agreement for any period of time that the party is prevented from performing its obligations hereunder as a result of an act of God, war, utility or communication failures, or other cause beyond the party's reasonable control. Both parties will use reasonable efforts to mitigate the effect of a force majeure event.
  - E. **Non-Hire.** Neither Client nor the ADP regions providing the Services, shall knowingly solicit or hire for employment or as a consultant, any employee or former employee of the other party who has been actively involved in the subject matter of this Agreement.
  - F. **Waiver.** The failure of either party at any time to enforce any right or remedy available to it under this Agreement or otherwise with respect to any breach of failure by the other party shall not be construed to be a waiver of such right or remedy with respect to any other breach or failure by the other party.
  - G. **Severability.** If any of the provisions of this Agreement shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of Client and ADP shall be construed and enforced accordingly.
  - H. **Relationship of the Parties.** The parties hereto expressly understand and agree that each party is an independent contractor in the performance of each and every part of this Agreement, is solely responsible for all of its employees and agents and its labor costs and expenses arising in connection therewith.
  - I. **Governing Law.** This Agreement is governed by the laws of the State of New York without giving effect to its conflict of law provisions.
  - J. **Conflicts Clause.** The terms of this Agreement are subject to any Additional Terms. In the event of a conflict between the terms of this Agreement and such Additional Terms, the terms of this Agreement shall control.
  - K. **Regulatory Notice.** No state or federal agency monitors or assumes any responsibility for the financial solvency of third-party tax filers.
  - L. **Use of Agents.** ADP may designate any agent or subcontractor, without notice to, or the consent of, Client, to perform such tasks and functions to complete any services covered under this Agreement. However, nothing in the preceding sentence shall relieve ADP from responsibility for performance of its duties under the terms of this Agreement.

**ADP, Inc.**  
 ADP  
 Sales \_\_\_\_\_  
 Associate

**CLIENT**  
 Client \_\_\_\_\_  
 Authorization

**Name**  
 \_\_\_\_\_  
 (type or print)

**Name**  
 \_\_\_\_\_  
 (type or print)

**Title** \_\_\_\_\_ **Date** \_\_\_\_\_

**Title** \_\_\_\_\_ **Date** \_\_\_\_\_

## PRODUCT SCHEDULE

To the extent that Client receives any of the following ADP Products or Services, the specified provisions relating to such ADP Products or Services received by Client shall apply.

### FULL SERVICE DIRECT DEPOSIT

Prior to the first credit to the account of any employee or other individual (a "Payee"), Client shall obtain and retain a signed authorization from such Payee in accordance with NACHA Rules, which shall be in a form approved by ADP and shall authorize the initiation of credits to such Payee's account and debits of such account to recover funds credited to such account in error.

### ADPCHECK™

Client agrees not to distribute any ADPChecks to Payees prior to 4:00 PM local time on the banking day immediately before pay date. If Client desires to stop payment on any ADPCheck, Client shall provide ADP with a stop payment request in a form provided by ADP. ADP shall then place a stop payment order with ADP's bank within twenty-four (24) hours of ADP's receipt of such stop payment request. Client shall not request ADP to stop payment on any ADPCheck that represents funds to which the applicable Payee is rightfully entitled. Client agrees to indemnify, defend and hold harmless ADP and its affiliates and their successors and assigns from and against any liability whatsoever for stopping payment on any ADPCheck requested by Client and from and against all actions, suits, losses, claims, damages, charges, and expenses of every nature and character, including attorneys fees, in any claims or suits arising by reason of stopping payment on said check, including claims made by a "holder in due course" of such check.

### TOTALPAY CARD™

- A. *Cardholder Services.* ADP will make cardholder services ("TotalPay Card Services") available to certain of Client's payees (each a "Payee") for payments of wages, commissions, consulting fees or similar compensation or work-related expenses owed to such Payees through a TotalPay Card ("TotalPay Card"). The TotalPay Cards issued to Payees of Client may be referred to herein collectively as the "Cards" or each a "Card" and Payees of Client who receive a Card may be referred to herein collectively as "Cardholders" or each a "Cardholder". Client agrees that it will only direct legal payments to the Cards for wages, benefits, commissions, consulting fees, similar compensation or work-related expenses or such other types of payments as ADP may approve in writing. In addition, unless approved by ADP in writing, Client agrees that it may not make Cards available to residents of countries other than the United States. ADP shall not be obligated to provide the TotalPay Card Services unless Client has met and continues to meet ADP's eligibility requirements therefore and has executed and delivered to ADP the applicable documents, forms or instruments necessary for ADP to render to Client the TotalPay Card Services (including the Trust Agreement and any other agreements required by the Issuing Bank (as defined below)).
- B. *Cardholder Set-Up.* Client will set-up (or cause ADP to set-up) each Payee as a Cardholder using data and/or procedures required by Issuing Bank. Client represents and warrants that it has all necessary consents and authorizations of each Payee included in submitted set-up data that is required under applicable law and rules, including NACHA, for Payee to (a) receive payments from Client on its Card and (b) participate in the TotalPay Card Services. Client agrees to promptly provide documentation or records related to the set-up of Cardholders and participation of Cardholders in the TotalPay Card Services to ADP and/or Issuing Bank upon request and agrees that such information may be provided to any regulatory authority having jurisdiction over the Issuing Bank. Client, and not ADP nor any of its subcontractors, is responsible for reviewing all enrollment information supplied by such Payees and confirming that it is accurate and complete. In addition to the identity verification requirements set forth in Section 1.E, prior to set-up of any Payee on the Cardholder database and distribution of a Card to such Payee, Client will: (i) inspect identification documents that meet the requirements of Form I-9 (e.g. a (1) passport or (2) a U.S. issued driver's license and social security card or (3) U.S. driver's license and birth certificate) to verify such Payee's identity ("Identity Verification Documents"); and (ii) obtain from such Payee the following: (a) name; (b) street address; (c) date of birth and (d) social security number (or other government issued ID number acceptable to ADP and Issuing Bank). Client agrees that Issuing Bank (directly or through a subcontractor) may request and obtain identity information and legal documentation directly from the Payee to verify the identity of any Payee set up on the Cardholder database or participating in the TotalPay Card Services. Client also covenants to ADP and Issuing Bank that, with respect to each Cardholder, it will: (i) make and preserve (during the period required by law or requested by Money Network Financial, LLC or Issuing Bank) either of the following: (i) at least one (1) copy of all Identity Verification Documents; or (ii) a description of the Identity Verification Documents that were relied on by the Client noting the type of document (e.g., driver's license,



passport, alien registration card), any identification number contained in the document, the place of issuance (e.g., state or country) and, if any, the date of issuance and expiration date. Client agrees to retain such documentation during the time that such Payee is a Cardholder until the earlier of (a) three years from termination of Client's obligation to make payments to such Payee or (b) three years from termination of such Payee's Card account; provided, however, that in the event a longer retention period is required for the Issuing Bank to meet its legal obligations, as a result of a change in applicable law or official interpretations thereof, the parties will use their commercially reasonable efforts to agree on a process that permits the Issuing Bank to comply with its legal obligations.

- C. *Issuance of TotalPay Cards; Cardholder Fees.* Client will be issued an inventory of instant issue Cards. Client is responsible for issuing Cards to its Payees from its inventory of Cards. Prior to or in conjunction with issuing a Card to any Payee, Client shall (i) provide each Payee with a copy of the Issuing Bank's Terms and Conditions and other enrollment-related materials; and (ii) provide each Payee with the notice required under the USA Patriot Act as provided by either ADP or the Issuing Bank. Client will provide Cardholders with any other information and materials regarding the TotalPay Card Services provided by Issuing Bank from time to time that is necessary for Issuing Bank to comply with applicable laws or regulations. Client will be responsible for the safekeeping of the inventory of Cards received by Client and for any theft or misappropriation of any such Cards prior to a valid and authorized issuance and distribution of such Card to a Payee of Client. The amounts to be loaded to each Cardholder's TotalPay Card will be provided to ADP by Client through one of ADP's standard payroll transmission methods available to Client or another means agreed to by ADP and Client. Client acknowledges that separate agreed upon fees and charges will be applied to Cardholders' Cards. Such Cardholder fees and charges are subject to change upon agreement of the parties and in accordance with the Cardholder Terms and Conditions applicable to the Cards. Current Card fees and charges are available upon request by Client.
- D. *Card Status; Card Service; Cardholder Communications.* Client is responsible for ensuring that Cardholders are paid via an alternate pay method in such instances where a Cardholder's Card has been terminated, cancelled or is in inactive status. Client understands that ADP may contact its employees directly to notify them of the availability and benefits of the Cards and that Cardholders may receive additional notices, mailings and other communications directly from ADP or the Issuing Bank. Client will direct Cardholders to resolve all disputes regarding Card fees and charges and disputed charges on a Card with, and to report any lost or stolen Cards to, cardholder services. Contact information for cardholder services is located on the terms and conditions of use provided with each Card. Notwithstanding the foregoing, Client will be responsible for resolving all disputes by Cardholders regarding payroll and payroll-related amounts credited to the Cards. Additionally, Client agrees to treat all Cardholder personal and transaction information as confidential in accordance with the terms of Section 6 of the Agreement to which this Product Schedule applies. Notwithstanding the provisions of Section 6, Client agrees that ADP and its subcontractors providing TotalPay Card Services may disclose information related to loads by the Client to a particular Cardholder's Card and Card enrollment information provided by Client regarding a particular Cardholder to that Cardholder in providing Cardholder services and may otherwise use or disclose information regarding a particular Cardholder with the consent of that Cardholder or consistent with the privacy policy applicable to that Cardholder.
- E. *Issuing Bank; Cardholder Information.* All Cards issued to Cardholders are the property of the issuing bank (the "Issuing Bank") and are subject to cancellation by the Issuing Bank at any time in accordance with Issuing Bank's Cardholder Terms and Conditions. Client agrees that it will not use the name or marks of Money Network Financial, LLC or the Issuing Bank in any materials it distributes or makes available to its Payees without Money Network's or the Issuing Bank's prior written consent, as applicable. In the event of cancellation of a Card such Payee will be required to resume another means of payment made available by Client. Subject to applicable law, Client will provide Issuing Bank with all information and documents related to the TotalPay Card Services in its control or possession requested by or on behalf of Issuing Bank that are necessary or proper in the reasonable discretion of the Issuing Bank for the Issuing Bank to comply with applicable law or regulatory requirements. Client agrees that upon prior notice from Issuing Bank, Issuing Bank and any regulatory authorities which have jurisdiction over the Issuing Bank shall have the right to audit and inspect Client's books and records related to the TotalPay Card Services and Client's performance of its obligations with respect thereto, including, without limitation, the following: (i) Client's records pertaining to the set-up of Payees on the Cardholder database and participation of Cardholders in the TotalPay Card Services; and (ii) the Identity Verification Documents. Client understands that it is not entitled to access or review any Cardholder transaction information. Notwithstanding the foregoing, in limited circumstances (e.g., where necessary to prevent fraud) and consistent with the applicable Cardholder privacy policy, ADP may provide certain Cardholder transaction information to Client. Client agrees to treat all Cardholder account information, including Card transaction records, and all other information related to the Issuing Bank's provision of TotalPay Card Services to Cardholders, whether provided or made available to it by ADP, Money Network Financial, LLC, or Issuing Bank (or their respective agents and subcontractors), as confidential in accordance with the terms of Section 6.
- F. *Client Responsible for Compliance with Laws.* Regarding the TotalPay Card Services, Section 1F above shall not apply. The following provision shall apply in place of Section 1F with respect to laws and governmental regulations affecting the TotalPay Card Services. ADP shall be responsible for compliance with all requirements of the Federal Reserve Board, Regulation E (12 CFR 205) applicable to financial institutions with respect to payroll card accounts. Except as stated in the previous sentence, Client (and not ADP, the Issuing Bank, Money Network Financial, LLC or

their agents and subcontractors) is solely responsible for (i) compliance with all laws and governmental regulations affecting Client's business, including state labor and payroll laws and the permissibility of the TotalPay Card Services under such laws, and (ii) any use Client may make of the TotalPay Card Services to assist it in complying with such laws and governmental regulations. Client also represents and warrants that any payments that it requests ADP to make hereunder will not violate any laws of the United States. Client will not rely solely on its use of the TotalPay Card Services in complying with any laws and governmental regulations. In addition, Client also agrees to comply with the financial industry rules and compliance standards imposed by VISA, Star, Plus, Interlink and applicable automated teller machine and point of sale processors (collectively, the "Network Rules") designated by the Issuing Bank from time-to-time related to such things as Card security and fraudulent or impermissible use of Cards.

- G. *Indemnification.* In addition to Client's obligations set forth in the Agreement, Client shall be liable for, and shall defend, indemnify and hold harmless, ADP, its agents and subcontractors, Money Network Financial, LLC and the Issuing Bank, from and against any and all loss, liability, claim, damage or exposure arising from, or in connection with, any breach of Client's TotalPay Card compliance obligations hereunder, any fraudulent or criminal acts of Client's employees, including as a result of the theft or misappropriation of any Cards by Client's employees (e.g., the issuance of unauthorized Cards) or the loading of unauthorized value onto Cards. Client also agrees to defend, indemnify and hold harmless the Issuing Bank from and against any and all loss, liability, claim, damage or exposure arising from, or in connection with Client's negligence in connection with its use and/or provision of the TotalPay Card Services or otherwise in connection with its performance or obligations under this Agreement.
- H. *Additional Termination Right.* In addition to the termination rights set forth in Section 8, Client agrees that the TotalPay Card Services (or any feature thereof) in any designated jurisdiction may be terminated on 60 days notice to Client if ADP or the Issuing Bank believe that any changes in any Network Rules or NACHA rules, or changes to, or interpretations of, applicable law by any federal, state or local governmental authority, or any formal or informal order, instruction or directive communicated to ADP or the Issuing Bank by such authority make it commercially impractical to continue to provide the TotalPay Card Services (or any feature thereof) in such jurisdiction.
- I. *Sole Remedy Against ADP.* CLIENT AGREES THAT ITS SOLE REMEDY FOR CLAIMS OF ANY TYPE OR NATURE WITH RESPECT THE TOTALPAY CARD SERVICES HEREUNDER SHALL BE AGAINST ADP AND NOT AGAINST MONEY NETWORK FINANCIAL, LLC OR THE ISSUING BANK.
- J. *No Consequential Damages.* IN NO EVENT WILL THE ORIGINATING BANK, THE ISSUING BANK, MONEY NETWORK FINANCIAL, LLC OR ANY OF ADP'S AGENTS OR SUBCONTRACTORS BE RESPONSIBLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHICH CLIENT MAY INCUR OR EXPERIENCE ON ACCOUNT OF ENTERING INTO OR RELYING ON THIS AGREEMENT OR USING THE TOTALPAY CARD SERVICES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- K. *Third Party Beneficiaries.* Client acknowledges and agrees that Issuing Bank and Money Network Financial, LLC (and their respective successors and assigns) are each third party beneficiaries of this Agreement (only as it relates to TotalPay Card Services) entitled to enforce each of the provisions of this Schedule against Client as well as the provisions included in Sections 4, 5C and 7 of this Agreement, including in equity and in law, as if it or they were a party hereto.
- L. *Survival.* Client acknowledges and agrees that for purposes of Client's use of the TotalPay Card Services, Sections E (Cardholder Information) and G (Indemnification) of this Schedule and Section 7 of the Agreement (Limitation of Liability) shall survive termination or expiration of the Agreement and/or this Schedule.

**TIME AND LABOR MANAGEMENT (INCLUDING EZLABORMANAGER, ENTERPRISE eTIME AND ETIMER)**

- A. Client shall provide and install all power, wiring and cabling required for the installation of any data or time collection devices (e.g., HandPunch, Timeclock) (the "Timeclock Equipment") Client shall also pay an installation and set-up fee for each unit of Timeclock Equipment if such equipment is installed on Client's premises by ADP.
- B. Client shall not make any alterations or attach any device not provided by ADP to the Timeclock Equipment. Title to the Timeclock Equipment shall at all times remain in ADP unless Client has chosen the purchase option and has paid ADP in full the purchase price. Except if so purchased and paid for by Client, the Timeclock Equipment is and at all times shall remain, a separate item of personal property notwithstanding its attachment to other Timeclock Equipment or real property and Client shall not remove the Timeclock Equipment from the site of original installation without ADP's prior consent.
- C. Immediately upon termination or cancellation of this Agreement, Client shall, at its expense, return the Timeclock Equipment to ADP in accordance with ADP's instructions. The Timeclock Equipment shall be returned in as good condition as received by Client, normal wear and tear excepted. In the event the Timeclock Equipment is not returned, Client agrees to purchase it at the prevailing manufacturer's suggested retail price. The terms of this Section C. shall not apply if prior to the time of such termination or cancellation Client has already purchased and paid for the Timeclock Equipment in full.
- D. ADP warrants to Client that the Timeclock Equipment shall be free from defects in material and workmanship at the

date such Timeclock Equipment is shipped and for 90 days thereafter. ADP's sole obligation in case of any breach of any warranty contained herein shall be to repair or replace, at ADP's option, any defective items. The foregoing is the extent of ADP's liability with respect to all claims related to Timeclock Equipment, including without limitation, contract and negligence claims and shall constitute Client's sole remedy.

- E. Maintenance services for the Timeclock Equipment (set forth below in Section F.) apply automatically to Timeclock Equipment obtained under the subscription option (and any charges therefore are already included in the monthly time and labor management subscription fees). The costs for maintenance services for Timeclock Equipment under the purchase option are not included in the purchase price for such equipment; a separate annual maintenance fee applies. A Client under the purchase option may terminate its receipt of maintenance services by providing written notice to ADP no less than 30 days prior to the end of the then current annual coverage period. ADP is not required to rebate to Client any maintenance fees relating to a current or prior coverage period. (NOTE: If a Client selects the purchase option but opts not to receive (or terminates) maintenance services hereunder by executing a waiver of maintenance services, any such services provided by ADP at Client's request will be subject to ADP's then current charges for such services.) No Timeclock Equipment maintenance is done at the Client site. Client shall bear all delivery/shipping costs and all risk of loss during shipment/delivery of Timeclock Equipment relating to maintenance services.
- F. ADP will maintain the Timeclock Equipment to be free from defects in material and workmanship as follows:
- ii. Any parts found to be defective (except as specifically excluded below) shall be replaced or repaired, at ADP's or its designee's option, without charge for parts or labor, provided that the Timeclock Equipment has been properly installed and maintained by Client and provided that such equipment has been used in accordance with any documentation or Additional Terms (as defined in the Agreement to which this Product Schedule applies) provided by ADP or its designee and has not been subject to abuse or tampering.
  - iii. The foregoing repairs and replacements may be made only by ADP or its designee, and will be made only after ADP or its designee is notified of a problem, receives delivery from Client of the Timeclock Equipment at issue and determines that it results from defective materials or workmanship. Notwithstanding the foregoing, ADP may deliver a temporary replacement item for Client's use while such determination is being made with respect to the Timeclock Equipment in question.
  - iv. Repairs and replacements required as a result of any of the following shall not be included in the foregoing maintenance services and shall be charged at ADP's then current rates: a) Damage, defects or malfunctions resulting from misuse, accident, neglect, tampering, unusual physical or electrical stress, or causes other than normal or intended use; b) Failure of the Client to provide and maintain a suitable installation environment; c) Any alterations made to or any devices not provided by ADP attached to the Timeclock Equipment; and d) Malfunctions resulting from use of badges or supplies not approved by ADP.
- G. In order to keep the products current, ADP may from time to time perform maintenance fixes and other upgrades to the TLM products Client is then receiving. ADP will perform these upgrades on Client's behalf for all hosted products. For non-hosted products, Client will be required to install the upgrade provided by ADP in accordance with the written notice provided to Client.

**ADP BENEFITS EXPERT<sup>SM</sup> /ADP HR/BENEFITS SOLUTION**

- A. Client shall promptly deliver to ADP the Client Content (as defined in Section 1.1. of the Agreement to which this Product Schedule applies) required by ADP to perform initial setup services for the Benefits eXpert Application ("Benefits eXpert") or ADP HR/Benefits Solution application (together with Benefits eXpert, the "HR/Benefits Application"). Such information and materials shall be in an electronic file format specified by ADP.
- B. Client shall begin paying the per employee fees for the ADP HR/Benefits Solution application on the earlier of the date that Client first begins to use such application in a production environment OR 60 days after the Client's company profile has been set up on the HRB network, which date ADP shall confirm in writing to Client. \_\_\_\_\_  
(Client Initial Here)
- C. After completion of initial setup services, ADP will make any subsequent changes to the configuration of the Client Content at Client's request, in HR/Benefits Application at ADP's then current benefits maintenance fees.
- D. Upon completion of any setup services or services referenced in Section B. above, Client shall review the Client Content included in the HR/Benefits Application by ADP. ADP shall have no liability to Client for any errors or inaccuracies in Client Content included in HR/Benefits Application by ADP that has been reviewed by Client.
- E. If Client elects the ADP carrier connection service, ADP, or its authorized agent(s), will electronically transmit employee data, including employee benefits enrollment data, to Client's carriers or other third parties authorized by Client, and Client authorizes ADP and its authorized agent(s), to provide such transmission on Client's behalf. In addition: (i) Commencement of the carrier connection service is subject to completion by Client of setup of the configuration of the Client Content and the format of such transmission to the designated carriers. The terms for setup

services and subsequent setup services set forth in Sections A. and B. above will apply to setup for the carrier connection service. (ii) ADP's ability to transmit Client's employee benefits enrollment data is subject to the provision by the designated carriers of a current functional interface between HR/Benefits Application and the designated carriers' systems. ADP will not be obligated to transmit Client's data to the designated carriers if at any time Client's designated carriers fail to provide the proper interface as described above. If Client requires the development of any special interfaces in order to transmit such data to the designated carriers, all work performed by ADP to create such interfaces will be at ADP's then current fees for such services. (iii) Client is responsible for promptly reviewing all records of carrier transmissions and other reports prepared by ADP for validity and accuracy according to Client's records, and Client will notify ADP of any discrepancies promptly after receipt thereof. In the event of an error or omission in the carrier connection services caused by ADP, ADP will correct such error or omission, provided that Client promptly advises ADP of such error or omission.

#### **ADP PORTAL SOLUTION WEB SERVICES.**

These services permit Client and/or its employees to access certain ADP Products and Services via single-sign on and may accommodate Client customizations.

- A. Client understands that ADP may include informational content, forms and tools, as well as banner advertisements for ADP and/or third party products and services, on the Client self administration portion of the ADP Portal Solution Service as well as the employee self-service portion of the ADP Portal Solution Service.
- B. ADP shall have no liability to Client hereunder for any software and/or applications or other services (other than ADP Products covered by this Agreement to which this Product Schedule relates) that may be accessed by the ADP Portal Solution Service.

#### **WEB HOSTING SERVICES.**

The following provisions shall apply to Hosted ADP PC/Payroll for Windows; Hosted HR/Perspective; PayExpert; Benefits eXpert, ADP HR/Benefits Solution, Total Choice Solutions; Hosted eTIMEeTIME, Enterprise eTIME and ezLabor Manger (collectively, the "Hosted Products"). ADP shall:

- A. Provide the hosting environment(s), including hardware and software, required to host the site(s) for the applicable Hosted Product (the "Systems") and the operation and required maintenance of such Systems. Client acknowledges that the Systems may be used to provide similar services to other clients and that Client acquires no rights therein.
- B. ADP shall deploy the Hosted Product(s) licensed by the Client at Uniform Resource Locators (URLs) to be selected, registered and owned by ADP.
- C. In the event that ADP discovers and/or Client reports to ADP through its support line that a System for a Hosted Product licensed by Client is experiencing an outage or that a Hosted Product licensed by Client is experiencing operational issues, work diligently to resolve such issues as soon as possible, giving priority to outages and significant operational issues.
- D. Use commercially reasonable efforts to make the System for each Hosted Product licensed by Client available 99.5% of the time, for the specified Hours of Availability, except for any loss or interruption of the System due to causes beyond the control of ADP or which are not reasonably foreseeable by ADP, including, but not limited to, interruption or failure of telecommunication or digital transmission links, Internet slow downs or failures or unauthorized intrusions. In order to perform required System maintenance, the System will not be available for hours excluded from the Hours of Availability and (b) upon notice to the Client, for one 6-hour period on an occasional weekend as required by any infrastructure change. In addition, the System may experience unscheduled downtime. During Prime Time Hours, ADP will notify the Client of unscheduled System downtime as soon as practicable. If the System experiences unscheduled downtime, ADP will work diligently to correct the problem until it is resolved and the System is made available. "Prime Time Hours" shall mean from 8:00 AM through 8:00 PM Eastern Time, Monday through Saturday, excluding ADP holidays ("Business Days").
- E. ADP shall be responsible for establishing and maintaining a secure environment for the Site and the System for each Hosted Product licensed by Client, which shall include physical security, logical security (including firewalls, encryption and password access control), and intrusion detection. Hours of Availability for Hosted Products are as follows: (1) Hosted ADP PC/Payroll for Windows; HR Perspective and eTIMEeTIME: Monday 4AM to Midnight eastern time and Tuesday-Saturday 6 AM to 10PM eastern time; (2) Pay eXpert; Benefits eXpert and TotalChoice: Monday to Sunday 5 AM to 1 AM eastern time; (3) ADP HR/Benefits Solution Monday through Friday 6 AM to 9 PM

eastern time; (4) ezLabor Manager: 24 x 7 except Sunday 12 AM to 6AM eastern time; (5) Hosted eTIMEeTIME 1:am to 11PM, central time, Monday through Sunday and (6) Enterprise eTIME 3 AM to 1 AM eastern time Monday through Saturday; 4Am to 1 AM Sunday, eastern time (excluding ADP Holidays and on the second and fourth Wednesdays of each month from 11 PM to 5 AM eastern .

- F. The Hosted Products are intended to permit the transmission of data from within or between the United States and Canada. The Hosted Products may not be used or accessed from outside the United States or Canada or in any way that violates any applicable international, federal, state or local laws and /or regulations.



**CITY OF PRAIRIE VILLAGE, KANSAS**  
**7700 Mission Road**  
**Shawnee Mission, KS 66208**

Today's Date: **2/1/2007**  
 Order ID: **41060**  
 Order Type: **New Client**

Executive

ADP Sales Associate  
**Angela Noonan**  
**angela\_noonan@adp.com**  
**913-541-4313**

Number of Employees for Payroll processing : 143

<b>Processing Fees - Bi-Weekly</b>	<b>Units</b>	<b>Totals</b>
Pay eXpert Paperless Package with TotalPay*	143	\$12,451.40
Check Mate Inquiry	Packaged MR	
Check Signing	Pay eXpert Report Writer	
Check Stuffing	Payroll Quickview	
CheckView Monthly Fee	Payroll Quickview (PQV) Net	
CheckView Processing Fee	Pays - Pay eXpert	
External Paydata Interface	Pays - Pay eXpert	
IPay Statements	PC PR Connection	
IReports on Demand	Personnel Reporting Sys Base Charge	
Labor Distribution	Total Tax Plus w/Full Tax Svc & UCM	
New Hire Reporting Service	TotalPay Card	
New Hires	TotalPay Service	
Packaged MR	WGPS Payments	
Packaged MR	WGPS Service	
Packaged MR	YTD Download	
Packaged MR		

Delivery - Payroll 1 \$338.00

Delivery prices vary by courier and delivery location

Sub Total **\$12,789.40**

Discount (40%)\* **-( \$4,980.56 )**

**Sub Total Less Discount \$7,808.84**

<b>Monthly Fees</b>	<b>Units</b>	
HR Benefit Advanced Solution for Pay eXpert*	143	\$11,926.20
HR Benefit Advanced Solution for Pay eXpert	HR Benefits Solution 60 Day Billing	
HR Benefit Archived EE's \$.45 per ee/mon	Promo 9316 HR Benefit Advanced 10% dist 1st 2m	
HR Benefit Connect to Pay eXpert		

HR Benefit Archived EE's 1 \$5.40

Sub Total **\$11,931.60**

Discount (40%)\* **-( \$4,770.48 )**

**Sub Total Less Discount \$7,161.12**

<b>Quarterly Fees</b>	<b>Qty</b>	
Quarterly Report Delivery	1	\$52.00

**Sub Total \$52.00**



CITY OF PRAIRIE VILLAGE, KANSAS

Today's Date: 2/1/2007

Order ID: 41060

**One Time Fees**

**Implementation Fees**

HR Benefit Advanced Solution for Pay eXpert	\$2,000.00
Pay eXpert Paperless Package with TotalPay	\$500.00

**Sub Total** **\$2,500.00**

**Sub Total** **\$2,500.00**

**Year-End Fees**

	<b>Per Pay</b>	<b>Min</b>
Year End W2's	1 and higher \$4.95 Each	\$75.00

**Sub Total** **\$707.85**

**Summary**

<b>Per Check Fees</b>	\$4.04
<b>Per Processing Fees</b>	\$577.77
<b>Total Annual Fees</b> (Total of all annual fees)	\$15,021.96
<b>Total One Time Fees</b> (Total of all one time fees)	\$2,500.00

**Invoice Detail**

	<b>Unit Fee</b>	<b>Units</b>	<b>Min</b>
HR Benefit Advanced Solution for Pay eXpert*	1 - 249 \$6.95 Each 250 - 499 \$6.45 Each 500 - 999 \$5.85 Each	143	\$695.00
HR Benefit Archived EE's	1 and higher \$0.45 Each	1	
Pay eXpert Paperless Package with TotalPay*	1 - 50 \$5.30 Each 51 and higher \$2.30 Each	143	\$35.00
Delivery - Payroll	1 and higher \$13.00 Each	1	

Delivery prices vary by courier and delivery location

THE ADP SERVICES COVERED BY THIS AGREEMENT ARE PROVIDED IN ACCORDANCE WITH ADP'S STANDARD TERMS AND CONDITIONS APPLICABLE TO SUCH SERVICES AND ATTACHED TO THIS SALES ORDER. SUCH TERMS AND CONDITIONS ARE IN ADDITION TO THE TERMS AND CONDITIONS CURRENTLY GOVERNING ADP'S PROVISION OF SERVICE TO YOU, WHICH REMAIN IN FULL FORCE AND EFFECT.

Client Signature: \_\_\_\_\_

Date

Sales Associate: \_\_\_\_\_

Date

Items with an "\*" have been discounted



**AUTOMATIC DATA PROCESSING, INC  
GUARANTEED THREE YEAR PRICE AGREEMENT**

Client Name: \_\_\_\_\_ Effective Date: \_\_\_\_\_

Parent Company Code: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Related Company Codes: \_\_\_\_\_

ADP, Inc. ("ADP") is pleased to provide **Company Name** ("Client") with a Guaranteed Price Agreement covering your ADP services for the next three years, subject to the terms and conditions set forth in this Agreement. Accordingly, in consideration of the mutual agreements set forth below, ADP and Client agree as follows:

1. Price Increase. For the next three year period commencing with the effective date set forth above, ADP will increase prices 4% per year on processing services provided to Client ("Services"). Items specifically excluded from this agreement are delivery, reverse wire, and W-2's. In the month following the completion of the guaranteed price period, Client's prices will be subject to the same annual price increase as ADP applies to its other clients of similar size and product utilization.

2. Guaranteed Term. As consideration for the three year guaranteed price period, Client agrees to purchase the Services for a minimum guaranteed term of three years commencing with the effective date, and thereafter Client's agreement to purchase the Services shall remain in effect until cancelled by Client or ADP with 90 days prior written notice.

3. Termination Penalty. If Client terminates this agreement to purchase Services prior to the end of the minimum guaranteed term of three years, Client agrees to pay ADP a termination penalty of 3 months of average monthly processing fees for the Services (based on an average of the last 3 full months of processing prior to the date of termination). Following the three year guaranteed price period, if Client terminates this agreement to purchase Service on less than 90 days' written notice, Client agrees to pay ADP for the Services through the end of the 90 day notice period (based on the average monthly processing fees for the Services described in the preceding sentence).

THE ADP SERVICES COVERED BY THIS AGREEMENT ARE PROVIDED IN ACCORDANCE WITH THE TERMS AND CONDITIONS SET FORTH IN THE AGREEMENT(S) BETWEEN YOU AND ADP COVERING THE SPECIFIC SERVICES. THIS AGREEMENT SUPPLEMENTS AND DOES NOT SUPERSEDE ANY OF THOSE TERMS AND CONDITIONS.

<b>ADP</b>	<b>Company Name</b>
By: _____	By: _____
Name: Lori Burchfield	Name: _____
Title: Branch Manager – Kansas City Service Center	Title: _____
Date: _____	Date: _____



**ADP HR/BENEFITS SOLUTION ADDENDUM  
TO  
MAJOR ACCOUNT SERVICE AGREEMENT**

The following additional terms and conditions shall apply to the ADP HR/Benefits Solution service. This Addendum supplements the terms and conditions of the ADP Major Accounts Agreement between the undersigned ("Client") and ADP, Inc. ("ADP").

**ADP HR/BENEFITS SOLUTION**

- A. Client shall promptly deliver to ADP the Client Content as defined in Section F. below required by ADP to perform initial setup services for the ADP HR/Benefits Solution application. Such information and materials shall be in an electronic file format specified by ADP.
- B. Client shall begin paying the per employee fees for the ADP HR/Benefits Solution application on the earlier of the date that Client first begins to use such application in a production environment OR 60 days after the Client's company profile has been set up on the HRB network, which date ADP shall confirm in writing to Client. \_\_\_\_\_(Client Initial Here)
- C. After completion of initial setup services, ADP will make any subsequent changes to the configuration of the Client Content at Client's request, in HR/Benefits Application at ADP's then current benefits maintenance fees.
- D. Upon completion of any setup services or services referenced in Section B. above, Client shall review the Client Content included in the HR/Benefits Application by ADP. ADP shall have no liability to Client for any errors or inaccuracies in Client Content included in HR/Benefits Application by ADP that has been reviewed by Client.
- E. If Client elects the ADP carrier connection service, ADP, or its authorized agent(s), will electronically transmit employee data, including employee benefits enrollment data, to Client's carriers or other third parties authorized by Client, and Client authorizes ADP and its authorized agent(s), to provide such transmission on Client's behalf. In addition: (i) Commencement of the carrier connection service is subject to completion by Client of setup of the configuration of the Client Content and the format of such transmission to the designated carriers. The terms for setup services and subsequent setup services set forth in Sections A. and B. above will apply to setup for the carrier connection service. (ii) ADP's ability to transmit Client's employee benefits enrollment data is subject to the provision by the designated carriers of a current functional interface between HR/Benefits Application and the designated carriers' systems. ADP will not be obligated to transmit Client's data to the designated carriers if at any time Client's designated carriers fail to provide the proper interface as described above. If Client requires the development of any special interfaces in order to transmit such data to the designated carriers, all work performed by ADP to create such interfaces will be at ADP's then current fees for such services. (iii) Client is responsible for promptly reviewing all records of carrier transmissions and other reports prepared by ADP for validity and accuracy according to Client's records, and Client will notify ADP of any discrepancies promptly after receipt thereof. In the event of an error or omission in the carrier connection services caused by ADP, ADP will correct such error or omission, provided that Client promptly advises ADP of such error or omission.
- F. "Client Content" shall mean (i) payroll, benefits, human resources and similar information provided by Client or its employees or plan participants, including transactional information, (ii) Client's trademarks, trade names, service marks, logos and designs and (iii) any other information or materials provided by Client, regardless of form (e.g., images, graphics, text, etc.), to be included in ADP HR/Benefits Solution or any other web-based ADP Product (collectively, "ADP Internet Services"), whether included therein by ADP on behalf of Client as part of its setup services or directly by Client or any of its employees or plan participants. The following provisions shall apply with respect to Client Content:

- i. Client shall be solely responsible for updating and maintaining the completeness and accuracy of all Client Content.
- ii. Client shall be responsible for obtaining all required rights and licenses to use and display all Client Content in connection with ADP Internet Services. Client hereby grants to ADP a non-exclusive, non-transferable license to use, edit, modify, adapt, translate, exhibit, publish, reproduce, copy (including back up copies) and display the Client Content as reasonably necessary to provide ADP Products or perform the Services covered under this Agreement.
- iii. Client and its employees and plan participants shall not include or provide to ADP for inclusion in any ADP Internet Services any Client Content which is obscene, offensive, inappropriate, threatening, malicious, which violates any applicable law or regulation or any contract, privacy or other third party right or which otherwise exposes ADP to civil or criminal liability. ADP reserves the right to exclude or immediately remove from any ADP Internet Services any Client Content which it determines in its sole discretion violates the previous sentence, provided that ADP has no obligation to review or monitor the Client Content.
- iv. Client acknowledges that, in making ADP Internet Services available, ADP is not acting as an investment advisor, broker-dealer, insurance agent or intermediary or a financial or benefit planner. ADP is not providing any benefits or information related thereto.

G. The Site(s) may contain links to other Internet sites. Links to and from a Site to other third party sites do not constitute an endorsement by ADP or any of its subsidiaries or affiliates of such third party sites or the acceptance of responsibility for the content on such sites.

H. In the event that Client requests that ADP provide any Client Content or employee or plan participant information to any third party or to any non-U.S. Client location, Client represents that it has acquired any consents or provided any notices required to transfer such content or information and that such transfer does not violate any applicable international, federal, state or local laws and/or regulations.

ALL MATTERS COVERED IN THIS ADDENDUM, INCLUDING CLIENT'S USE OF THE APPLICATION, SYSTEM, SITE AND ADP'S PROVISIONS OF HR/BENEFITS SOLUTION ARE SUBJECT TO THE ADDITIONAL TERMS AND CONDITIONS SET FORTH IN CLIENT'S MAJOR ACCOUNTS AGREEMENT WITH ADP. IN THE EVENT OF CONFLICT BETWEEN THE TERMS AND CONDITIONS OF THIS ADDENDUM AND THE MAJOR ACCOUNTS AGREEMENT, THE TERMS AND CONDITIONS OF THIS ADDENDUM SHALL CONTROL. ALL OTHER TERMS AND CONDITIONS OF THE CLIENT'S MAJOR ACCOUNTS AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT. The terms defined in the Major Accounts Agreement and used in this Addendum shall have the same respective meanings as set forth in the Major Accounts Agreement, unless clearly otherwise defined in this Addendum.

**IN WITNESS WHEREOF**, this Addendum to the Major Accounts Agreement is hereby executed by an authorized representative of each party hereto as of the date first above written.

**ADP AND CLIENT ACKNOWLEDGE AND AGREE TO THE FOREGOING. EACH PARTY REPRESENTS THAT IT IS DULY AUTHORIZED TO EXECUTE THIS ADDENDUM.**

**ADP, INC.**

**Client**

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

# CLIENT ACCOUNT AGREEMENT AND AUTHORIZATION TO DEBIT/CREDIT

CLIENT NAME \_\_\_\_\_ BRANCH \_\_\_\_\_ CO. CODE \_\_\_\_\_

ADDITIONAL APPLICABLE COMPANY CODES \_\_\_\_\_

CLIENT agrees to one of the debit methods listed below for collection of (1) payroll tax obligations related to ADP's Tax Filing Services, (2) payroll obligations related to ADP's TotalPay, TotalPay Plus, FSDD, ADPCheck, PayCard and/or Instant Pay Services, (3) wage garnishment deduction amounts related to ADP's WGPS Services, (4) business tax deposit obligations related to ADP's Electronic Business Tax Services, and/or (5) the applicable fees for ADP's Services. Such debits will be initiated by ADP, Inc. ("ADP") out of CLIENT's applicable account specified below (the "DDA Account") at the financial institution specified below ("BANK").

**DEBIT METHOD (Check Applicable Box):**

**Note: (ACH method will be used to collect all service fees)**

ACH or PRE-AUTHORIZED DRAFT

BANK is authorized to charge the DDA ACCOUNT in accordance with the ACH provisions on the back of this Agreement. **Note: CLIENT electing ACH or PRE-AUTHORIZED DRAFT may be contacted by an ADP representative to make arrangements for a wire transfer of funds for impounds exceeding the established dollar limit for processing by ACH or PRE-AUTHORIZED DRAFT. Such dollar limit shall be determined by ADP in its sole discretion.**

REVERSE WIRE (All Payrolls)

ADP will initiate a request for a wire transfer of funds from the DDA ACCOUNT in accordance with the Reverse Wire provisions on the back of this Agreement.

REVERSE WIRE (Over ACH Dollar Limit)

In the event a single impound exceeds the established threshold for ACH processing, CLIENT agrees that ADP may initiate a request for a wire transfer of funds from the DDA ACCOUNT in accordance with the Reverse Wire instructions on the back of this Agreement.

**BANK INFORMATION:**

<input type="checkbox"/> Payroll Taxes <input type="checkbox"/> Fees for Services <input type="checkbox"/> TotalPay <input type="checkbox"/> FSDD <input type="checkbox"/> ADPCheck <input type="checkbox"/> TotalPay Plus <input type="checkbox"/> PayCard <input type="checkbox"/> Instant Pay <input type="checkbox"/> WGPS <input type="checkbox"/> EBTS <input type="checkbox"/> Other	
BANK Transit/ABA #	BANK Account #
BANK Name	BANK Contact
BANK Address	BANK Phone

<input type="checkbox"/> Payroll Taxes <input type="checkbox"/> Fees for Services <input type="checkbox"/> TotalPay <input type="checkbox"/> FSDD <input type="checkbox"/> ADPCheck <input type="checkbox"/> TotalPay Plus <input type="checkbox"/> PayCard <input type="checkbox"/> Instant Pay <input type="checkbox"/> WGPS <input type="checkbox"/> EBTS <input type="checkbox"/> Other	
BANK Transit/ABA #	BANK Account #
BANK Name	BANK Contact
BANK Address	BANK Phone

<input type="checkbox"/> Payroll Taxes <input type="checkbox"/> Fees for Services <input type="checkbox"/> TotalPay <input type="checkbox"/> FSDD <input type="checkbox"/> ADPCheck <input type="checkbox"/> TotalPay Plus <input type="checkbox"/> PayCard <input type="checkbox"/> Instant Pay <input type="checkbox"/> WGPS <input type="checkbox"/> EBTS <input type="checkbox"/> Other	
BANK Transit/ABA #	BANK Account #
BANK Name	BANK Contact
BANK Address	BANK Phone

**COMPLETE THIS SECTION ONLY IF FSDD, ADPCHECK, PAYCARD, INSTANT PAY OR TOTALPAY/TOTALPAY PLUS IS INDICATED ABOVE:**

Est. No. of Employees:	FSDD Start Date:	ADPCheck Start Date:	PayCard Start Date:	Instant Pay Start Date:	Federal ID #
Bank Disbursement State (if applicable)					

In consideration of BANK's compliance with this authorization, CLIENT agrees that BANK's treatment of any charge, and BANK's rights with respect thereto, shall be the same as if the charge were initiated personally by CLIENT, and that if any charge is dishonored, whether with or without cause, BANK shall be under no liability whatsoever. In addition, CLIENT authorizes ADP to credit the DDA ACCOUNT when necessary, at ADP's sole discretion, for any refund or credit amount due CLIENT.

In the event of any conflict between the terms and conditions of this Agreement and the terms and conditions of any Price Quotation, Sales Order, National Account Agreement, or ADP Terms and Conditions attached to any proposal given to CLIENT, this Agreement shall control.

This authorization shall remain in effect unless and until revoked in writing by an authorized representative of CLIENT and until BANK and ADP have each received such notice and have had reasonable time to act upon such notice.

CLIENT Signature \_\_\_\_\_ Date \_\_\_\_\_

CLIENT Representative Name & Title \_\_\_\_\_

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*(Must be an authorized signatory on the accounts listed above)*

### **ACH or PRE-AUTHORIZED DRAFT**

CLIENT understands that funds representing the total of (i) CLIENT's payroll tax obligations for the applicable payroll (if CLIENT receives ADP's Tax Filing Service), (ii) CLIENT's wage payment obligations for the applicable payroll (if CLIENT receives ADP's TotalPay, TotalPay Plus, FSDD, ADPCheck, PayCard and/or Instant Pay Services), (iii) CLIENT's wage garnishment deduction obligations with respect to CLIENT's employees for the applicable payroll (if CLIENT receives ADP's WGPS Services), (iv) CLIENT's electronic business tax deposit obligations (if CLIENT receives ADP's Electronic Business Tax Services) and (v) ADP's fees for such Services must be on deposit in the applicable DDA Account no later than (a) one banking day prior to the pay date for the applicable payroll (in the case of the Tax Filing Services, WGPS Services, TotalPay Services, TotalPay Plus Services, FSDD Services, ADPCheck Services, PayCard Services and/or Instant Pay Services), (b) one banking day prior to the due date of the applicable electronic business tax deposits (in the case of the Electronic Business Tax Services) or (c) the date specified in the "Advice of Debit" or "Advice of Charge" periodically delivered to CLIENT after such services are rendered (in the case of ADP's Services Fees). ADP will initiate a transfer of such funds out of such DDA Account on such date.

### **REVERSE WIRE**

CLIENT understands that funds representing the total of (i) CLIENT's payroll tax obligations for the applicable payroll (if CLIENT receives ADP's Tax Filing Service), (ii) CLIENT's wage payment obligations for the applicable payroll (if CLIENT receives ADP's TotalPay, TotalPay Plus, FSDD, ADPCheck, PayCard and/or Instant Pay Services), (iii) CLIENT's wage garnishment deduction obligations with respect to CLIENT's employees for the applicable payroll (if CLIENT receives ADP's WGPS Services), and (iv) CLIENT's electronic business tax deposit obligations (if CLIENT receives ADP's Electronic Business Tax Services) must be on deposit in the applicable DDA Account no later than (a) one banking day prior to the pay date for the applicable payroll (in the case of the Tax Filing Services), (b) two banking days prior to the pay date for the applicable payroll (in the case of WGPS Services, TotalPay Services, TotalPay Plus Services, FSDD Services, ADPCheck Services, PayCard Services and/or Instant Pay Services) or (c) two banking days prior to the due date of the applicable electronic business tax deposits (in the case of the Electronic Business Tax Services). ADP will cause such funds to be wire transferred from the DDA Account to one of the following accounts (unless and until changed by notice from ADP): Deutsche Bank, ABA No. 021001033, Account No. 00153170 or Account No. 00416217, or JP Morgan Chase Bank, ABA No. 021000021, Account No. 910-2-628675 or Account No. 323269036, on such specified deposit date.

In consideration for the additional costs incurred by ADP in providing wire transfer service, CLIENT agrees to pay a reasonable fee (currently \$10.00) for each wire transfer.

### **DIRECT WIRE FOR EXCEPTION PROCESSING**

**(Under certain conditions, CLIENT may be required to wire transfer funds to ADP prior to ADP disbursing funds to a third party).**

CLIENT agrees to wire transfer to ADP funds representing the total of (i) CLIENT's payroll tax obligations for the applicable payroll (if CLIENT receives ADP's Tax Filing Service), (ii) CLIENT's wage payment obligations for the applicable payroll (if CLIENT receives ADP's TotalPay, TotalPay Plus, FSDD, ADPCheck, PayCard and/or Instant Pay Services), (iii) CLIENT's wage garnishment deduction obligations with respect to CLIENT's employees for the applicable payroll (if CLIENT receives ADP's WGPS Services), (iv) CLIENT's electronic business tax deposit obligations (if CLIENT receives ADP's Electronic Business Tax Services) and (v) ADP's fees for such Services. Such wire transfers must be completed no later than (a) one banking date prior to the pay date for the applicable payroll (in the case of the Tax Filing Services), (b) two banking days prior to the pay date for the applicable payroll (in the case of the WGPS Services, TotalPay Services, TotalPay Plus Services, FSDD Services, ADPCheck Services, PayCard Services and/or Instant Pay Services), (c) two banking days prior to the due date of the applicable electronic business tax deposits (in the case of the Electronic Business Tax Services) or (d) the date specified in the "Advice of Debit" or "Advice of Charge" periodically delivered to CLIENT after such Services are rendered (in the case of ADP's Services Fees). All funds are to be wire transferred by CLIENT as instructed by ADP to one of the accounts located at the banks listed (unless and until changed by notice from ADP): Deutsche Bank, ABA No. 021001033, Account No. 00153170 or Account 00412283, or JP Morgan Chase Bank, ABA No. 021000021, Account No. 910-2-628675 or Account No. 323375847.

In consideration for the additional costs incurred by ADP in providing wire transfer service, CLIENT agrees to pay a reasonable fee (currently \$10.00) for each wire transfer.

### **NOTICE**

CLIENT acknowledges that if sufficient funds are not available by the date required pursuant to the foregoing provisions of this Agreement, (1) CLIENT will immediately become solely responsible for all tax deposits and filings, all employee wages, all wage garnishments, and all related penalties and interest due then and thereafter, (2) any and all ADP Services may, at ADP's option, be immediately terminated, (3) neither BANK nor ADP will have any further obligation to CLIENT or any third party with respect to any such Services and (4) ADP may take such action as it deems appropriate to collect ADP's Services Fees.



Reporting Agent Authorization (State Limited Power of Attorney & Tax Information Authorization)
(In accordance with Internal Revenue Service Revenue Procedures)

Table with 3 columns: 1 Co/Code, 2 Branch, 3 Federal ID Number. Includes a checkbox for seasonal employer.

5 TAXPAYER LEGAL NAME (Use all capital letters. Include spaces, ampersands, and hyphens. Do not enter any other punctuation.)

Grid for entering taxpayer legal name.

6 DBA NAME (Use all capital letters. Include spaces, ampersands, and hyphens. Do not enter any other punctuation.)

Grid for entering DBA name.

7 Address (number, street, and room or suite no.)

Line for entering address.

City or town, state, and ZIP code

Line for entering city or town, state, and ZIP code.

REPORTING AGENT: ADP Tax Services, 400 Covina Boulevard, San Dimas, CA 91773, ID # 22-3006057, 800/235-7212

ADP is hereby appointed Reporting Agent with the authority to sign and file employment tax returns and make deposits electronically, on magnetic media, or on paper for the above stated taxpayer to federal, state, and local jurisdictions.

This authorization shall include the appropriate state and local forms and the following federal forms, beginning with the tax period indicated and remaining in effect through subsequent periods until the taxpayer or designee notifies the IRS that this authorization is terminated or revoked.

Authorization of Reporting Agent to Sign and File Returns

8 Use the entry lines below to indicate the tax return(s) to be filed by the Reporting Agent. Enter the beginning year for annual tax returns or beginning quarter for quarterly tax returns.

Form for entering tax return information: 940, 941, 940-PR, 941-PR, 941-SS, 943, 943-PR, 944, 944-PR, 945.

Authorization of Reporting Agent to Make Deposits and Payments

9 Use the entry lines below to enter the starting date (the first month and year) for any tax return(s) for which the Reporting Agent is authorized to make deposits or payments.

Form for entering starting dates: 940, 941, 943, 944, 945.

Disclosure of Information to Reporting Agent

- 10a Check here to authorize the Reporting Agent to receive or request duplicate copies of tax information, notices, and other communications from the IRS related to the authorization granted on Line 8 and/or Line 9.
10b Check here if the reporting agent also wants to receive copies of notices from the IRS.

Form W-2 Series or Form 1099 Series Disclosure Authorization

11 The Reporting Agent is authorized to exchange otherwise confidential taxpayer information with the IRS, including responding to certain IRS notices relating to the Form W-2/1099 series information returns. This authority is effective for calendar years beginning:

W-2 1099
Tax Year Tax Year

Authorization Agreement

I understand that this agreement does not relieve me, as the taxpayer, of the responsibility to ensure that all tax returns are filed and that all deposits and payments are made.

12 Signature of Taxpayer or Authorized Representative

I certify that I have the authority to execute this form and authorize disclosure of otherwise confidential information on behalf of the taxpayer.

Form for signature: Name (Required), Title, Signature (Required), Date (Required).

**COU2007-16 Consider Concealed Weapons Policy**

**Issue:**

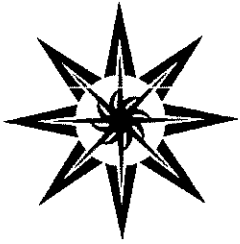
Should the City Council approve a Conceal and Carry of Weapons policy for employees?

**Background:**

*Kansas State Statute 75-7b17* - Conceal and Carry of Firearms took effect on January 1, 2007, giving individuals the ability to carry concealed firearms, City staff has drafted a personnel policy which would prohibit any employee from carrying a weapon while working for the City, whether or not the employee has a permit to carry a concealed firearm. Employees must also have the approval of their Manager to carry a weapon (i.e. knife, gun, etc.). This strengthens the message that the safety of all employees while working is important.

**Recommendation:**

**RECOMMEND THE CITY COUNCIL APPROVE AMENDMENTS TO COUNCIL POLICY PP1160 - CONCEAL AND CARRY OF WEAPONS.**



## City Council Policy: PP1160- CONCEAL AND CARRY OF WEAPONS

Effective Date:

Amends:

Approved By: Governing Body

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I. SCOPE

A. This policy applies to all **employees**.

II. PURPOSE

A. The City is committed to increasing the safety of its **employees** while at work.

III. RESPONSIBILITY

A. The **Manager** is responsible for the enforcement of this policy.

IV. DEFINITIONS

A. "**Manager**" is defined as one of the following:

1. City Administrator;
2. Assistant City Administrator;
3. Chief of Police;
4. Public Works Director;
5. Or the designee of the positions listed.

B. "**Employee**" includes anyone classified as such in *Personnel Policy #720 - Definitions of Employment Status*.

C. "**Object**" includes, for purposes of this policy, items used in the course and scope of employment by **employees**, for example, the use of tools by Maintenance Workers, subject to the approval of the Manager.

V. POLICY

A. The city prohibits any **employee** from carrying a weapon while working for the City, whether or not the **employee** has a permit to carry a weapon under *Kansas State Statute §§ 75-7b01 et seq. or 75-7c01 et seq.*

B. This policy does not apply to **employees'** use of **objects** in the course and scope of their employment.

## Memorandum

**To:** Council Committee of the Whole  
**CC:** Doug Luther, Assistant City Administrator  
**From:** Jim Brown, Building Official  
**Date:** 5 February 2006  
**Re:** Building Codes Adoption

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The City of Prairie Village requests adoption of the following codes by reference, with applicable amendments, as noted on the ordinances:

2006 IBC (International Building Code)  
2005 NEC (National Electrical Code)  
2006 IPC (International Plumbing Code)  
2006 IMC (International Mechanical Code)  
2006 IRC (International Residential Code)  
2006 IFGC (International Fuel Gas Code)  
2006 IFC (International Fire Code)

Significant changes which apply to this jurisdiction are as follows:

- A. Section 104 – Duties and Powers of the Building Official – 2006 IBC and 2006 IRC is amended as follows:

The Building Official is hereby authorized and directed to enforce all the provisions of this code. For such purposes, the Building Official shall have the powers of a law enforcement officer in order to issue complaints with the Municipal Court, when or if necessary. The Building Official shall have the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this code. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this code.

- B. Section 108 – Fees and Refunds – 2006 IBC and 2006 IRC is amended as follows:

This section shall remain as currently enforced by this jurisdiction.



- C. Section 503 – General Height and Area Limitations – 2006 IBC is amended as follows:

This jurisdiction shall continue to use the ordinance amending Chapter 4 of the Prairie Village Municipal Code dated 12/20/04, which establishes both, lot coverage and height/area exceptions.

- D. Chapter 11 – "Accessibility"-2006 IBC is deleted in its entirety and replaced with "Americans with Disabilities Act Accessibility Guidelines", Department of Justice, Title III, American National Standard ANSI A117.1-2003 and by Kansas Statute, K.S.A. 58-1301, et seq.
- E. Section 307 – "Open Burning" – 2006 IFC is deleted and replaced with Sections 8-717:722 of the Prairie Village Municipal Code which provides the requirements for open burning in this jurisdiction.
- F. Sections 308.3.1. "Open-flame Cooking Devices" and 308.3.1.1 – "Liquefied-Petroleum- Gas-Fueled Cooking Devices "-2006 IFC are amended as follows:
- The use of fuels of any type or quantity and cooking on combustible balconies is prohibited. The use of grills or other outdoor cooking/heating devices shall be allowed only at the ground floor, at least ten (10) feet away from any structure. This section applies to multi-family dwellings, e.g., apartments, condominiums, etc and not single-family dwellings.
- G. Section R310.1- "Emergency escape and rescue required."

This section has been revised and will now require at least one emergency escape and rescue opening in all basements. The only exception is basements used to house mechanical equipment and not exceeding total floor area of 200 square feet.

- H. Section 806.1 – "Natural Cut Trees" – 2006 IFC is amended by deleting the exceptions, thereby prohibiting naturally cut (Christmas) trees in commercial structures and schools whether protected by an automatic sprinkler system or not.
- I. Section R905.2.7.1- "Ice barrier"- This section has been revised and now provides the jurisdiction having authority to establish as to whether an ice barrier is required or not. This section now addresses "areas where there has been a history of ice forming along the eaves". Due to the history of occasional ice storms within this area the Board voted unanimously to henceforth require an "ice barrier" on all roofing or re-roofing projects.

Every 3 years the building codes are reviewed and re- written so as to address newer technology and building materials to assure the minimum life safety and construction practices. With the adoption of the 2006 International Codes we may continue to assure the safest structures possible for the residents and patrons of the City of Prairie Village.

Any additional costs to implement and enforce the 2006 International Codes, as well as any increase in construction costs due to the code change will be minimal for the residents and business owners within Prairie Village.

The Board of Code Appeal meeting minutes, and the Ordinance drafts, are enclosed.

2006 Code Adoption Survey  
Neighboring Jurisdictions

Jurisdiction	Current Code Edition	Proposed Code Edition
Overland Park	2003	2006 ( 1 <sup>st</sup> quarter 2007)
Olathe	2000	2006 ( 1 <sup>st</sup> quarter 2007)
Shawnee	2003	2006 ( 1 <sup>st</sup> quarter 2007)
Leawood	2000	2006 (1 <sup>st</sup> quarter 2007)
Lenexa	2003	2006 (1 <sup>st</sup> quarter 2007)
Gardner	2003	unknown
Fairway	2000	unknown

**CONSIDER ORDINANCES FOR ADOPTION OF:**

**2006 International Building Code  
2005 National Electrical Code  
2006 International Plumbing Code  
2006 International Mechanical Code  
2006 International Residential Code  
2006 International Fuel Gas Code  
2006 International Fire Code**

**ISSUE:** Should the City adopt an ordinance to update our Model Construction Codes to the most recent published editions.

**BACKGROUND:** Construction Codes are revised and re-published on three-year cycles. In keeping with this sequence, our last Code update proposal to the City Council was in May of 2003.

Codes Administration staff reviewed hundreds of technical and administrative changes contained in the proposed seven Model Codes listed above. We selected the most prominent of these Code changes and presented those to the City Board of Code Appeals. Staff and the Board of Code Appeals spent numerous hours reviewing, researching and considering the impact of the code changes being proposed. The final product being presented here is a synopsis of the high impact code changes.

The culmination of the meetings and work of the Board of Code Appeals and City staff is summarized in the attached meeting minutes. In these minutes, the Board of Code Appeals unanimously voted to recommend City Council adoption of the codes presented herein.

**RECOMMENDATION:**

- City Council adopt Ordinance \_\_\_\_\_ to update to the 2006 International Building Code
- City Council adopt Ordinance \_\_\_\_\_ to update to the 2005 National Electrical Code
- City Council adopt Ordinance \_\_\_\_\_ to update to the 2006 International Plumbing Code
- City Council adopt Ordinance \_\_\_\_\_ to update to the 2006 International Mechanical Code
- City Council adopt Ordinance \_\_\_\_\_ to update to the 2006 International Residential Code
- City Council adopt Ordinance \_\_\_\_\_ to update to the 2006 International Fuel Gas Code
- City Council adopt Ordinance \_\_\_\_\_ to update to the 2006 International Fire Code

City of Prairie Village  
Board of Code Appeals  
Meeting Minutes  
January 16, 2007

Board Present: Joe Zimmerman, Gene Bockelman, Robert Hutton, Tom Brown, Dick Kaufman

Board Absent: Kenneth Poe

Staff Present: Jim Brown, David McAuliffe

Jim Brown Called the meeting to order at 6:00

New Business:

Topics Covered: IBC, IRC

Jim Brown asks board members if they have any questions about the information packets handed out, explains these are just the provisions that will directly affect Prairie Village.

Gene Bockelman asks if the Board of Code Appeals time is going to be wasted again this year, by not getting the code change approved.

Jim Brown states that he has received a verbal commitment that the code change will be brought to the council this time.

Board members Bockelman, Brown, and Kaufman ask if there are significant changes from the 2003 code that they approved last year.

Jim Brown states changes are mostly to terminology and definitions as technology has changed. Some sections have been tweaked to clarify the intent of the code.

Jim Brown asks if there are any questions about the IBC.

Robert Hutton asked for clarification of section 1109.5.1 and 1109.5.2. He is concerned this would weaken the rules for accessibility.

Jim Brown states that the wording of the section has changed so that where water fountains are provided both people in wheelchairs and those standing must have water fountains that accommodate them.

Gene Bockelman has questions about section 1803.3. He wants to know if the code specifies the height which piers have to extend above finish grade.

Jim states he would have to research that as the code book does not provide a figure in the text. Research has shown the top of the pier is to be 6" above grade.

Gene Bockelman asked about the new definitions in section 702.1. He wanted clarification on Horizontal Assemblies, if there is any restriction in the vertical height difference between the floor/ceiling assembly and a roof/ceiling assembly.

Jim Brown said no.

Jim asked if there were any other questions on the IBC, if not we will move to the IRC.

All favored moving to the IRC

Jim Brown said one of the biggest changes is section 310.1 requiring an egress window for all new foundations poured, regardless if it is going to be finished immediately. There is one exception for mechanical rooms not exceeding 200sq. feet. Section 310.5 allows egress windows to open under decks provided that they are able to open fully and that there is a path at least 36" in height to the yard.

Gene Bockelman wanted clarification on section 405.1.4.1 (1) Frost Protection

Jim Brown Any deck that is free standing and not supported by the house is exempt from having piers or footings below the frost line. Currently in Prairie Village only sheds are able to waive this requirement.

Tom Brown questioned section 613.2. Jim Brown stated that this is done to protect little kids from falling out of windows. This section only applies to operable windows that are 72" above grade measured from the lowest operable point of the window.

Jim Brown asks the board to consider Section R905.2.7.1 Ice Barrier as being required for Prairie Village. All members present vote yes.

Jim Brown went over section 907.3 Recovering vs. Replacement  
All board members present were in favor of this section.

Robert Hutton did not like section 1101.8, he feels it is unnecessary and will give people a false sense of the R-value of their home. All other board members feel it puts responsibility on the builder to ensure that it is built as designed and are in favor of it.

Jim Brown asks if there are any other questions about the 2006 IRC.

Tom Brown motions to approve the 2006 IBC and the 2006 IRC as is. Dick Kaufman seconds. All members present approve.

Jim Brown asks them to reaffirm making Section R905.2.7.1 Ice Barrier mandatory for the city of Prairie Village. All board members approve.

Tom Brown motions to adjourn the meeting, all second, and approve.

Meeting adjourned at 7:55 pm

City of Prairie Village  
Board of Code Appeals  
Meeting Minutes  
January 22, 2007

Board Present: Joe Zimmerman, Gene Bockelman, Robert Hutton, Kenneth Poe

Board Absent: Tom Brown, Dick Kaufman

Staff Present: Jim Brown, David McAuliffe, Gary Lamons, Todd Kerkhoff  
CFD2

Jim Brown Called the meeting to order at 6:00

Jim Brown asked the board to consider the January 16, 2007 meeting minutes for approval.

Old Business: 2006 IBC, IRC

No one has any comments or questions about the previously adopted 2006 IBC and IRC

Robert Hutton motions to approve the minutes from the January 16, 2007 meeting. Gene Bockelman Seconded. All approve

New Business:

Topics Covered: Adoption of the 2006 International Fire Code, 2006 International Plumbing Code, 2006 International Fuel Gas Code, 2006 International Mechanical Code.

2006 International Fire Code.

Gary Lamons. No major changes from the 2000 code to the 2006 code. Provisions that have changed mostly give more power to enforce safety violations. For instance, venue overcrowding. In the 2000 code we could block entrance into a venue that is overcrowded and allow people to enter

only when a sufficient amount of people have left to bring it to an appropriate capacity. In the 2006 the language has changed to allow us to shut it down and fix the capacity problem, and then let it start back up.

Robert Hutton asked about section 901.6.2 Records.

Todd Kerkhoff answered that when he performs an inspection he checks to see if these records exist to show that they check their system. Having the documentation does not guarantee that they perform tests but it is a better indicator than an organization that has no records. The current standard is to keep these records for one year, the new standard requires they keep the last 3 years.

Gene Bockelman asks about 1004.2 Increased Occupant Load.

Gary Lamons responded that the ratio to calculate occupant load has changed from 1 person for every 5sq ft. to 1 person every 7sq ft. This will decrease the maximum occupancy load.

Robert Hutton asked if you could go back and change the occupancy for buildings that already have a Certificate of Occupancy.

Jim Brown stated that unless the Use Group of the building changed or if remodeling occurred then the load would remain at the previous calculation.

Gene Bockelman asked if this would impact the occupancy of any restaurant or bar & grill in Prairie Village.

Gary Lamons said that the restaurants in Prairie Village use a fixed seating calculation of one seat one person. Most of the restaurants have a capacity less than what would be allowed due to their ability to serve people.

Robert Hutton asks if any hydrogen storage facilities are in Prairie Village or in the fire district, and if they have had any training on it.

Gary Lamons stated that no such facilities exist in the City of Prairie Village nor in the district and that they have not trained for such facilities. There are some LP facilities in the district which are similar in nature to the hydrogen facilities, and we are seeing some Water District #2 vehicles that are natural gas powered as well as KGS. He does expect to start seeing E-85 blended



fuel in the next couple of years. Due to the alcohol content you have to fight it differently than just a standard gasoline fire. He stated the firefighters have received the proper training to handle it.

Jim Brown asks if there are anymore questions about the fire code, and if not if they would like to vote to approve it.

Gene makes a motion to vote to approve the fire code. Kenneth Poe seconds the motion. All approve adopting the 2006 Fire Code.

Jim Brown asks if anybody has questions about the 2006 International Plumbing Code (IPC).

Joe Zimmerman asks about section 416.5 Tempered water for public hand-washing facilities. He wants to know if there is a minimum temperature for the water as he is tired of washing his hands in cold water.

Jim Brown says that ASSE 1070 governs 416.5 and it sets a hot temp range of 105-110 degrees Fahrenheit.

Robert Hutton motions to approve the Plumbing Code. Joe Zimmerman seconds, all approve.

Jim Brown states that we will now look at the 2006 IFGC, changes in this section deal more with changes in technology than anything else.

Robert Hutton says that the use of Hydrogen should be banned in Prairie Village. He does not want to see a filling station or generation of hydrogen in the city.

There are no other questions on the 2006 IFGC. Jim asks if they would like to approve the 2006 IFGC. Gene Bockelman motions to approve the 2006 IFGC. Kenneth Poe seconds. All Approve.

Jim Brown says we will now look at the 2006 International Mechanical Code. There are not a lot of changes, just consolidation and simplification to be in line with the other International Codes.

The Board members review the 2006 International Mechanical Code and state they don't have any questions. Robert Hutton motions to approve the 2006 International Mechanical Code. Gene Bockelman seconds the motion and all approve.

Jim Brown says we have covered all of the material scheduled for tonight and notes that all the topics covered were approved.

Robert Hutton motions to adjourn the meeting. Gene Bockelman seconds. All approve.

Meeting ends 7:42pm

City of Prairie Village  
Board of Code Appeals  
Meeting Minutes  
January 29, 2007

Board Present: Joe Zimmerman, Gene Bockelman, Robert Hutton, Dick Kaufman, Kenneth Poe

Board Absent: Tom Brown

Staff Present: Jim Brown, David McAuliffe

David McAuliffe called the meeting to order at 6:15

David McAuliffe asked the board to consider the January 22, 2007 meeting minutes for approval.

The board reviewed and approved the minutes.

Old Business: 2006 IFC, IPC, IFGC, IMC

No Board Members had any follow up questions regarding the above codes.

Robert Hutton motions to approve the minutes from the January 22, 2006 meeting. Gene Bockelman Seconded. All approve

New Business:

Topic Covered: 2005 National Electrical Code (NEC)

David McAuliffe asks the Board if they have any questions about the 2005 NEC. There are no major changes or additions, just tweaks to keep up with new and upcoming technology. If you like we can go section by section or you can review it and ask any questions.

Robert Hutton asked about Article 210.12 (B) Arc-Fault Circuit Interrupter Protection.

David McAuliffe says starting Jan. 1, 2008 the code has mandated that only combination type devices be used to provide Arc-Fault protection as mandated in section 210.12 (B). The device needs to be located within 6ft of the electrical panel, or can be located in the room where the protection is to be provided so long as it is protected by metal conduit or a metal raceway. This new device will offer better protection against electrical arc's that are not naturally occurring in normal use of the electrical system. It will also now provide protection to corded appliances in the room that the current style of protection, the branch/feeder type doesn't protect against very effectively. This change will offer a significant amount of safety to the homes of Prairie Village.

Gene Bockelman asked about section 210.52 (D) Bathroom Receptacle

David McAuliffe says that with the popularity of having full mirrors behind the vanity, this change give some flexibility in terms of locating the outlet. You can now locate the outlet on the vanity as long as it is no more than 12in. below the sink top.

Robert Hutton says that section 250.119 makes no sense to him.

David McAuliffe says that as a matter of safety you can no longer use conductors with green insulation or green insulation with yellow stripes as grounded or ungrounded conductors. It is common to mark the different phases with either white tape to identify the neutral wire or red, blue, or black to identify the hot phase. Green insulated wire has always been associated as a ground, and this now mandates that.

David McAuliffe says that article 408.4 Circuit Directory will be very helpful for homeowners. This new section requires specific identification of circuits in the electrical panel. You no longer can provide generic locations for circuits such as, lights or outlets. You now have to provide locations such as master bedroom east and north wall outlets or kitchen outlets left of the sink.

Dick Kaufman thinks this is a great requirement, but wonders if we shouldn't require a wire schematic for new homes to provide even more detailed information on the design. In his house he has had difficulty identifying circuits and usually finds out the hard way if the circuit is off or not.

Robert Hutton had a question about 620.22 (A) Elevators, Car Light Source This requires that the car and pit lights not be located on the load side of the GFCI receptacle that is used as a service outlet for technicians. He does not like that the technician is not afforded the protection that the GFCI offers. He doesn't understand why the lights just don't have a battery backup in case the GFCI were to trip and switch off the car service light.

David McAuliffe asked if there were any more questions, and if not if the board would like to vote on approving the 2005 NEC as is.

Gene Bockelman motioned to approve the 2005 National Electrical Code as submitted. Joe Zimmerman seconded. All members approved.

Robert Hutton motioned to adjourn the meeting. Gene Bockelman seconded. All approved

Meeting ended 7:15

**International Building Code  
(IBC)**

ORDINANCE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER IV OF THE PRAIRIE VILLAGE MUNICIPAL CODE, 2003, ENTITLED "BUILDINGS AND CONSTRUCTION" BY AMENDING ARTICLE 1 ENTITLED "*BUILDING CODES*" TO INCORPORATE BY REFERENCE THE "*INTERNATIONAL BUILDING CODE*", 2006 EDITION AND ADOPTING A NEW ARTICLE OF LIKE NAME AND NUMBER"

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

Section I.

Article 1 of Chapter IV of the Prairie Village Municipal Code, 2003, is hereby amended to read as follows:

**ARTICLE 1. BUILDING CODE**

4-101. DEFINITIONS. As used in this article, the words and phrases herein defined shall have the following meanings unless the context otherwise requires:

(a) Whenever the word municipality is used in the building code, it shall be held to mean the City of Prairie Village, Kansas;

(b) Whenever the term corporation counsel is used in the building code, it shall be held to mean the city attorney of the City of Prairie Village;

(c) Whenever the term building official is used in the building code, it shall be held to mean the building official or his or her authorized designee. (Code 2003)

4-102. INTERNATIONAL BUILDING CODE ADOPTED. In addition to the other provisions set forth in this chapter there is hereby adopted and incorporated by reference that certain building code known as the "International Building Code," 2006 edition, copyrighted in 2006 by the International Code Council, (hereinafter referred to as the "Building Code") except for the amendments provided in this chapter. Not less than three copies of the building code shall be marked or stamped "Official Copy as Adopted by Ordinance No. \_\_\_\_." A copy of this ordinance shall be attached to each International Building Code copy and shall be filed with city hall to be open for inspection and available to the public at all reasonable business hours. The police department, municipal judges, and all administrative departments of the city charged with the enforcement of the building code shall be supplied, at the cost of the city, with such numbers of official copies similarly marked as deemed expedient. (Ord. \_\_\_\_, Sec. 1)

4-103. ADDITIONAL OR AMENDED PROVISIONS. The following sections of this article are in addition to or amendments of the provisions of the standard code incorporated by reference in section 4-102. (Code 2003)

4-104. DUTIES AND POWERS OF THE BUILDING OFFICIAL. The building official is hereby authorized and directed to enforce all the provisions of this code. For such purposes, the building official shall have the power of a law enforcement officer in order to issue complaints with the municipal court, when

or if necessary. The building official shall have the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies, and procedures shall be in compliance with the intent and purpose of this code. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this code. (Ord. \_\_\_\_\_, Sec. 2)

4-105. AMENDMENTS TO SECTION 105.3. Section 105.3 of the Building Code is hereby amended by adding a new requirement to read as follows:

105.3(8) – Issuance of Permits to Licensed or Registered Craftsmen. Permits for mechanical, plumbing, and electrical work shall be issued only to individuals or persons responsible to a company or organization who is the legal possessor of a valid and current certificate of competency issued by the state. The certificates of competency received by any person who successfully passed an examination designation by K.S.A. 1998 Supp. 12-1508 or 12-1525, (Block/Experior) and amendments thereto, shall be valid proof of competency for licensing, without additional examination, in any other county or city of the state which requires licenses for plumbers, electricians and mechanical heating and ventilating contractors practicing in such city. Permits may be issued to homeowners doing plumbing, mechanical or electrical work on their own residence who do not possess a valid license or certificate. (Ord. \_\_\_\_\_, Sec. 3)

4-106 AMENDMENTS TO SECTION 105.5. Section 105.5 of the Building Code is hereby amended to read as follows:

105.5 Expiration: Every permit issued shall become invalid unless the work authorized by such permit is commenced within 180 days after its issuance, or if the work authorized by such permit is suspended or abandoned for a period of 90 days after the time the work is commenced. All work shall be documented by an inspection as described in Section 109 of this code. Failure to request an inspection of newly-completed work for any period of 90 days or more shall constitute suspension or abandonment of work, at which time said permit shall become invalid. It shall be unlawful for any person, firm, or corporation to allow a permit to become invalid. The Building Official may grant, in writing, one or more extensions of time, for periods of not more than 180 days each. The extension shall be requested in writing and reasonable cause demonstrated. The Building Official may place reasonable conditions on the issuance of extensions. (Ord. \_\_\_\_\_, Sec. 1)

4-107. AMENDMENTS TO SECTION 108.2; SCHEDULE OF PERMIT FEES. Section 108.2 of the Building Code is hereby amended as follows: The fee for each permit shall be set forth in section 4-117.

108.2(1) – Plan Review Fees. When Section 108 requires a plan or other data to be submitted, a plan review fee may be required at the time of submitting plans and specifications for review. The plan review fee shall be 65% of the building permit fees as shown in section 4-117; provided, however, that for plans sent to the International Code Council for review, the plan review fee shall be 100% of the costs incurred from the plan review; and for plans delegated to a third party plans examiner or consultant, the plan review fee shall be 100% of the costs incurred from the plan review. Further provided,



single-family residential plan review fees shall be calculated in accordance with section 4-117,

The plan review fees specified in this subsection are separate fees from the permit fees specified in Section 108.2 and are in addition to the permit fees. A plan review fee may be charged for each permit issued, including plans associated with electrical, plumbing, mechanical and any other applicable work which is regulated by federal, state, county, or local jurisdiction and associated by permit to the project for which the review is conducted.

Plan review fees may also be charged when one of the following conditions exist:

- (1) When the building official sends the project plans out of the office for plan review, or if sent to consultants for review; or
- (2) When an application is submitted for permit and a plan review is conducted and the project building permit is not to be constructed, the applicant will be responsible for a plan review fee.

108.6 Fee Refunds. The building official may authorize the refund of any fee paid, which was erroneously paid or collected.

- (1) The building official may authorize a refund of not more than 80% of the permit fee paid when no work has commenced for a permit issued in accordance with this code.
- (2) No permit fee may be refunded if work has commenced on a project.  
(Ord. \_\_\_\_\_, Sec. 4)

#### 4-108. AMENDMENTS TO SECTION 501.2; ADDRESS NUMBERS.

General – All buildings fronting on streets shall be numbered and the number installed on the building in conformity with this section.

501.2(1) Numbering Plan. Odd numbers shall be given to buildings on the east and south side of streets, even numbers on the north and west side of streets. Streets on a tangent to the true north-south or east-west direction shall be numbered accordingly.

501.2(2) Assignment of Numbers. The building official or his or her representative shall assign at least one full number for every platted lot, vacant ground, building, house, or structure. There shall be an assignment full number to an entrance leading directly from the street to occupancies. All numbers shall be assigned to meet the front door openings as nearly as possible.

501.2(3) Numbers Displayed. (1) Except for one and two-family residences, the numbers shall be placed at the front and rear doors.

(2) On the one and two family residences, the numbers shall be displayed on the front of the home.

(3) All building numbers shall be of a suitable weather resistant material, at least three inches in height at residential structures, five inches in height at commercial structures and seven inches in height at industrial structures, of contrasting color and shall be legible from the street, even in darkness.

(Ord. \_\_\_\_\_, Sec. 5)

#### 4-109. AMENDMENTS; PERFORMANCE BOND. An additional section regarding fees entitled Performance Bond is enacted to read as follows:

The building official may require from the contractor a good and sufficient surety performance bond in the form as prescribed by the building official in

the amount of \$5,000 at the time of issuance of the building permit for significant construction projects. The performance bond shall be issued by a surety company licensed and qualified to operate in the State of Kansas and approved by the city with a duly appointed agent.

Significant Construction Projects are defined as construction projects, which will exceed \$100,000. Also, the building official will determine whether a bond will be required and the amount not to exceed \$5,000 for those situations involving individual homeowners filing permit applications for minor buildings, structures, or additions. The building official will establish a policy approved by the city council which delineates the criteria when a bond is necessary.

The performance bond will be approved by the building official predicated and guaranteed upon the fact that the permit applicant shall be and is, in fact, a guarantor that the streets and sidewalks in the area that he, she or they are working in, shall remain free and clear of dirt, mud, gravel and other debris. Upon area free and clear of the mud or debris, then the building official shall provide notice of same to the permittee.

Upon receipt of such notification, the permittee shall be allowed a period of two hours in which to remedy any and all defects caused by the acts of the contractor. If action has not been taken within the two hour period, or if such action fails to adequately remedy all defects within the affected area, then the building official or his her authorized representative may direct the city to perform such duties and assess all "cleanup" charges against the performance bond. The cleanup charge will be based upon the cost to the city for actual cleanup, as determined by the building official.

(Ord. \_\_\_\_, Sec. 6)

4-110. AMENDMENTS TO CHAPTER 11. Chapter 11 of the building code is hereby deleted in its entirety and replaced with the Americans with Disability Act Accessibility Guidelines, Department of Justice Title III, American National Standard- Accessible and Usable Buildings and Facilities ICC/ANSI A117.1-2003 and by Kansas Statute 58-131 *et seq.* which are hereby incorporated by reference. (Ord. \_\_\_\_, Sec. 7)

4-111. BUILDING OFFICIAL; POWERS; DUTIES. (a) This and other articles of the city relating generally to building and structures shall be administered and enforced by the building official. The building official shall act as chief building official and may assume the responsibilities of or with the consent and approval of the governing body appoint such other assistants as may be advisable for the issuance of building permits and the inspection of building work.

(b) The building official shall prepare such application, permit, inspection and record forms as may be required for the purposes of the article. The building official may make and promulgate the necessary rules and regulations to obtain conformity with this article pertaining to the making of applications for building permits, issuing of building permits and inspecting of buildings and building works.

(Code 2003)

4-112. BUILDING OFFICIAL; APPOINTMENT. The city administrator may assume the responsibilities of or appoint some qualified officer or employee of

the city to be and perform the duties of building official as may be required.  
(Code 2003)

- 4-113. SAME; DUTIES. The building official shall have the following duties:
- (a) To enforce all regulations relating to construction, alteration, repair, removal and demolition of building and structures;
  - (b) May permit, with the approval of the governing body, on the basis of duly authenticated reports from recognized sources, the use of new materials or modes of construction, not provided for in this article, and may, for the purpose of carrying out the intent of this article adopt an accepted standard of material or workmanlike practices of federal or state bureaus, national, technical organizations or fire underwriters;
  - (c) To examine all buildings in the process of erection, construction, alteration or relocation in the city for the purpose of determining whether the work is in compliance with the permit given and in compliance with the regulations of the city pertaining to such work, including zoning regulations; and;
  - (d) To keep comprehensive records of applications, of permits or certificates issued, of inspections made, of reports rendered, and of notices or orders issued. All such records shall be open to public inspection during stated office hours, but shall not be removed from the office of the building official.
- (Code 2003)

- 4-114. SAME; POWERS. The building official shall have the following powers:
- (a) To enter any building or structure or premises at any reasonable hour, whether complete or in the process of erection, to perform the duties contained in this chapter;
  - (b) To adopt and enforce all such prudent emergency measures as he or she may deem necessary and expedient for the public safety under the laws of the city;
  - (c) May cause any work done in violation of this chapter to be discontinued until he or she shall have satisfactory evidence that the work will be done in accordance with the building regulations of the city, subject to the right of any builder or owner to appeal to the governing body. (Code 2003)

- 4-115. SAME; RIGHT OF ENTRY. The building official or his or her agent, upon proper identification, shall have authority to enter any building, structure or premises at any reasonable hour to perform his or her duties as set out in this chapter. (Code 2003)

- 4-116. BUILDING PERMIT REQUIRED; APPLICATION; APPROVAL. It shall be unlawful for any person to hereafter erect or cause to be erected within the city any building or structure of any kind or enlarge or add to the outside dimension thereof, or relocate any building or structure already erected or which may hereafter be erected or remodel any building or structure within the city without a building permit being first obtained upon approval by the chief building official or his or her duly authorized assistant. The application for such permit shall be made and the permit obtained before work is commenced upon any building or structure or the foundation thereof, or before the removal of any building begins. (Code 2003)

- 4-117. ADOPTION OF BUILDING PERMIT FEES. Building permit fees, which are on file in the office of the city clerk, being marked and designated as the Building Permit Fees, are adopted by reference. (Ord. 1849, Sec. 2)
- 4-118. SAME; POSTING. A copy of the building permit shall be kept on the premises for public inspection during the performance of the work and until the completion of the same. The building official may require a certified copy of the approved plans to be kept on the premises at all times from the commencement of the work to the completion thereof. (Code 2003)
- 4-119. INSPECTIONS OF BUILDING; LAYOUT OF BUILDING; FOUNDATIONS AND FOOTINGS; NOTICE TO INSPECTOR. (a) The contractor or builder having a permit for new construction, or additions to existing buildings, shall notify the building official immediately upon the marking or laying out of the site and foundation for such work. The official shall inspect the layout for conformity with this article and with respect to lot lines, setbacks and location of the proposed buildings to determine conformity with the city zoning regulations. In case of doubt respecting the required location, the chief building official may require an official survey of the lot lines to determine conformity, at the expense of the permit holder.
- (b) Upon completion of the excavation for the building foundation and footings and the construction of the necessary forms thereof and before the foundation and footings are poured or laid, the official shall be notified as in the first case, and it shall be his or her duty to inspect all such work for conformity with laws respecting location of the building foundations and footings.
- (c) The building official shall during the course of all construction make such other inspections as may be necessary during any successive stage of the construction or other work covered by a permit in order to secure compliance with laws pertaining thereto.  
(Code 2003)
- 4-120. BUILDER OR BUILDING CONTRACTOR DEFINED. (a) A builder or building contractor for purposes of this article shall be any person, firm, co-partnership, corporation, association, or any combination thereof, whether a resident or not of the city which meets any of the criteria identified in this section or is otherwise required to obtain a city business license pursuant to section 5-106(d) of this code;
- (1) Who or which undertakes with or for another, for a fixed sum, price, fee or any compensation other than wages, to build, construct, alter, repair, add to, wreck or move any building or structure (or any portion thereof), or any sidewalk, driveway entrance or structure in any street, or any advertising sign, panel poster or billboard, or any other structure, in the city, for which a building or construction permit may now or hereafter be required by the laws of the city; or
- (2) Who or which advertises or represents himself, herself, or itself to the public to have the capacity or ability to undertake, or submit a bid or offer to build, construct, alter, repair, add to or wreck, remove, restore or replace any building, structure or construction work or any portion thereof; or

(3) Who or which builds, constructs, alters, adds to or wrecks any buildings or structures either on his or her own or other property for purposes of sale or speculation.

(b) A builder or building contractor as defined shall not mean or include:

(1) Any subcontractor working under the supervision of a general contractor; or

(2) Any plumbers, gas fitters, electricians, or other specialized occupation for which special licenses or bonds are required by other city laws; or

(3) Any owner or his or her authorized agents or employees making ordinary repairs to his, her or its own building or structure not involving the structural parts of the building for which a permit is not required or on which a contractor, as defined, is not required, employed or engaged to perform; or

(4) Any property owner personally performing any improvements, alterations or building construction within or upon his or her own residence and intended for his or her own personal use and permanent occupancy; provided, the owner shall satisfy the building official as to his or her ability to perform such work secure a permit, pay required fees, do work in accordance with this article, and apply for an inspection and receive approval. Personal building construction by an owner under this section shall be by himself, herself, for himself or herself on his or her own residence, without compensation and no person shall be employed to assist him or her in any way on such work except a builder or building contractor licensed by the city.

(Code 2003)

4-121. BUILDER'S OR BUILDING CONTRACTOR'S LICENSE REQUIRED; BUILDING PERMITS; UNLAWFUL ACTS. (a) Each builder or building contractor shall before entering upon any building or construction work subject to regulation by city laws, apply to the city clerk for a builder's or building contractor's license and receive the same as hereinafter provided and have in his or her possession a valid license authorizing him, her or it to engage in the trade or occupation of a builder or building contractor in the city.

(b) No permit for any building or construction work shall be issued for any such work to be performed by a builder or building contractor, as defined, who has not first obtained a license upon making a proper application and payment of the license fee as required.

(c) It shall be unlawful for any person, firm, company, association or corporation to enter into a contract or agreement with another so as to bring himself, herself, or itself under the definition of builder or building contractor herein, or to perform any work as a builder or building contractor or any work under a contract for any work involving the construction, wrecking or moving of any building, without first having obtained a builder's or building contractor's license issued by the city.

(Code 2003)

4-122. SAME; APPLICATION; GRANTING. Application for a builder's or building contractor's license shall be made upon a form to be supplied by the city which shall disclose the name of the applicant, his or her place of business in the city (and home office if a nonresident), the kind of contracting work engaged in (as general contracting, roofing, siding, masonry, plastering,

lathing, excavating, waterproofing, metal work, foundation work, sign hanging, cement work and painting and paper hanging, house wrecking or moving and the like). The application shall be signed by the builder or building contractor or his or her authorized agent. The applications shall be, by the building official, referred to the city clerk who shall issue the license upon payment of the fees. (Code 2003)

4-123. WORK BY PROPERTY OWNERS. Nothing herein contained shall prohibit any property owner from personally performing any building or construction work within and upon his or her own residence and intended for his or her personal use and occupancy. Personal building or construction performed by an owner under this section shall be by himself, herself, for himself or herself on his or her own residence, without compensation and no person shall be employed to assist him or her in any way on such work except a builder or building contractor licensed by the city. (Code 2003)

4-124. LIABILITY. This article shall not be construed to relieve from any liability or lessen the liability of any person performing any activity connected herewith, nor shall the city be held as assuming any liability by reason of any inspection authorized herein, by reason of any certificate of inspection issued by it or by reason of any permit or license granted herein. (Code 2003)

4-125. LICENSE SUSPENSION; REVOCATION; APPEAL; UNLAWFUL ACTS. (a) The license of any builder or building contractor may be suspended temporarily, for a period of not to exceed 30 days at any one time by the building official upon his or her own motion or upon a complaint of the official. Notice shall be given in writing to such building or building contractor giving reasonable notice of a time of hearing of the complaint or the matter alleged against such builder or building contractor involving any one or more of the following:

- (1) Misrepresentation of a material fact by applicant in obtaining a license;
  - (2) Use of license to obtain a building permit for another;
  - (3) Failure or neglect to observe conditions of permit authorizing encumbering of streets or sidewalks for safety of public;
  - (4) Performance of any building construction work without a permit where one is required by law; or
  - (5) Willful disregard of any violation of the building construction laws, or failure to comply with any lawful order of the city building official;
- Such hearing shall be held within 10 days of presentation of the notice to the builder or building contractor.

(b) Any licensee may within 10 days appeal in writing to the Board of Code Appeals from any order of the building official suspending his or her license for its final decision thereon. The Board of Code Appeals may upon such hearing terminate such suspension within not more than 30 days thereafter, or may revoke such license. If any license shall be revoked, the builder or building contractor shall not be eligible for a new license during a period of six months thereafter. No fee shall be refunded in event of the suspension or revocation of any builders or building contractor's license.

(c) Any licensee may appeal the board of code appeals' decision to the governing body within 10 days of the board of code appeals rendering its decision.

(d) It shall be unlawful to engage in the occupation or trade of builder or building contractor during the time any license of such builder or building contractor has been suspended or revoked.  
(Code 2002)

4-126. SEVERABILITY. If any section of the International Building Code or of this article shall be held unconstitutional or otherwise invalid by any court of competent jurisdiction, then such section shall be considered separate and apart from the remaining sections, the section to be completely severable from the remaining provisions which shall continue in full force and effect. (Code 2003)

Section II. 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 \_\_\_\_ DAY OF \_\_\_\_\_, 2007.

CITY OF PRAIRIE VILLAGE, KANSAS

By: \_\_\_\_\_  
Ronald L. Shaffer., Mayor

ATTEST:

APPROVED AS TO FORM:

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

\_\_\_\_\_  
Charles E. Wetzler, City Attorney

**National Electrical Code NFPA-70  
(NEC)**



ORDINANCE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER IV OF THE PRAIRIE VILLAGE MUNICIPAL CODE, 2003, ENTITLED "BUILDINGS AND CONSTRUCTION" BY AMENDING ARTICLE 2 ENTITLED "ELECTRICAL CODES" TO INCORPORATE BY REFERENCE THE "NATIONAL ELECTRICAL CODE NFPA-70", 2005 EDITION AND ADOPTING A NEW ARTICLE OF LIKE NAME AND NUMBER"

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

Section I.

Article 2 of Chapter IV of the Prairie Village Municipal Code, 2003, is hereby amended to read as follows:

**ARTICLE 2. ELECTRICAL CODE**

4-201. DEFINITIONS. For the purpose of this article, the words and phrases used herein shall have the meanings ascribed to them in this section, unless the context clearly indicates to the contrary.

(a) Approved shall mean approved by the building official, the electrical inspector or his or her designee.

(b) Authorized person shall mean any individual, firm or corporation who or which is licensed under the provisions of this article to do the work as permitted under the specified provisions of this article.

(c) City shall mean the territory within the corporate limits of this city.

(d) Conductor shall mean a wire or cable or other form of metal suitable for carrying the electric current or potential.

(e) Electrical construction or installation shall mean and include all work and materials used in installing, maintaining or extending a system of electrical wiring and all appurtenances, apparatus or equipment used in connection therewith, inside or attached to any building, structure, lot or premises, except industrial plants where fulltime maintenance is provided and other agencies providing inspections of installations and facilities. Electrical construction shall not be held to mean or include any of the following:

(1) The replacement of lamps, fuses, bulbs or the connection of portable electrical equipment to suitable permanently installed receptacles and replacement of receptacles and switches, lighting fixtures and apparatus where no changes or alterations are made to the wiring;

(2) Any work involved in the manufacturing, repair or testing of any electrical equipment or apparatus, but not including any permanent wiring; or

(3) Any work in industrial establishments where inspections come under the scope of other inspection agencies.

(f) Equipment shall mean conductors, materials, fittings, devices, appliances, fixtures, apparatus, motors and the like, used as a part of or in connection with an electrical installation.

(g) Inspector shall mean the building official or any individual who has been appointed by the city as electrical inspector.

(h) Person shall mean a natural person, his or her heirs, executors, administrators or assigns, and also includes a firm, partnership or corporation, its or their successors, assigns, or the agent of any of the aforesaid.

(i) Special permission shall mean the written consent of the building official or the electrical inspector.

(j) Special ruling shall mean a written ruling filed in the office of the building official or the electrical inspector.

(Code 2003)

4-202. ADOPTION OF NATIONAL ELECTRICAL CODE. There is hereby adopted and incorporated by reference that certain Electrical Code known as the "National Electrical Code, 2005 Edition" copyrighted in 2004 by the National Fire Protection Association, (hereinafter collectively referred to as the "Electrical Code"), except for the amendments provided in section 4-202a of this chapter. Not less than three copies of the Electrical Code shall be marked or stamped "Official Copy as Adopted by Ordinance No. \_\_\_\_." A copy of this ordinance shall be attached to each "Electrical Code" copy and shall be filed with city hall to be open for inspection and available to the public at all reasonable business hours. The police department, municipal judges, and all administrative departments of the city charged with the enforcement of the electrical code shall be supplied, at the cost of the city, with such numbers of official copies similarly marked as deemed expedient. (Ord. \_\_\_\_, Sec. 1)

4-202a AMENDMENTS TO NATIONAL ELECTRICAL CODE, 2005 EDITION.

(a) 230-40, EXC. 3 is hereby deleted in its entirety.

(b) Electrical permit fees is hereby established to read as follows: The fee for each permit shall be as set forth in section 4-117 of the city code.

(c) 110-5 Conductors. Conductors normally used to carry current within all structures within the city shall be of copper material, unless the American Wire Gauge (AWG) is number four AWG, or larger.

Conductors sized number four AWG, or larger, may be of any materials specified in this code, and shall be subject to all applicable code provisions for the conductor type of material.

(d) Section 230-70(a). Service entrance conductors are to be protected with a fused service disconnect outside the building, when the conductors length between a metering device and panel exceeds 12 feet.

(Ord. \_\_\_\_, Sec. 2)

4-203. ADMINISTRATION. (a) Application and Scope. The provisions of the electrical code shall apply to all new construction, to relocated buildings, to any alterations, repairs or reconstruction of existing installations, and to all persons doing electrical work, within the city except as provided for otherwise in this article.

(b) Department Having Authority. The office of the administrative authority shall be the Codes Administration Department of the city and shall be referred as the department in this article.

(c) Duties of the Building Official. The building official or his or her designee shall maintain public office hours necessary to efficiently administer and enforce the provisions of this article and all other articles governing the placing and installation of electrical wiring and appliances in the city and for that purpose shall hereby be granted special police powers necessary thereof.

(d) Right of Entry. The building official shall carry proper credentials and shall have the right of entry into any building or structure, or upon any premises, at all reasonable time, whenever necessary to make an inspection

to enforce any provision of the electrical code, or whenever there is reasonable cause to believe that there exists an unsafe condition defined by section 4-203(e); provided that, if at the time of inspection the owner, occupant, or any other person having charge, care, control of the building or premises is present, proper credentials must first be presented and consent obtained; or if such building or premises is unoccupied at the time of inspection, a reasonable effort must first be made to locate the owner or occupant or any other person having charge, care or control of the building or premises and consent obtained. If entry is refused, recourse may be made to every remedy provided by law to secure entry, including but not limited to: obtaining a proper warrant or filing a complaint in municipal court for violation of this subsection.

(e) Reasonable Cause. As used herein, reasonable cause shall exist under, but is not limited to the following circumstances:

(1) When a complaint, made in writing, executed under oath and based upon the personal knowledge of the one making the complaint, is filed with the building official, stating in the building or premises to be inspected, there exists an unsafe condition stating particularly the conditions of the building premises upon which the complainant bases his or her assertion, and such conditions, if in fact exists, would be in violation of the code.

(2) When there is known to the building inspector, after reasonable inquiry, and a viewing of reasonable attempts to view the premises or building by him or her, an apparent state of facts which would induce, in a reasonably intelligent and prudent person having expertise of the building inspector, a belief that there exists an unsafe condition in the building premises, which is dangerous or hazardous to the life, limb, property or safety of the public or of the occupants.

(Ord. \_\_\_\_\_, Sec. 3)

4-204. **INSPECTIONS.** The building official may inspect all electrical systems and may order changes in workmanship and materials to ensure compliance with all the requirements of the electrical code and shall inspect any work covered by a permit issued pursuant to this article. The building official may issue orders to cease work and all utilities to be disconnected when violations of the Electrical Code or hazards exist.

(a) Notification. It shall be the duty of the person doing the work authorized by the permit to notify the building official, verbally or in writing, that the work is ready for inspection.

(b) Visibility for Inspection. The building official shall have authority to remove or cause to be removed any insulation, sheetrock, or other materials, which may interfere with the proper inspection thereof. Any loss incurred by such action shall not be the responsibility of the city.

(Ord. \_\_\_\_\_, Sec. 4)

4-205. **DISCONTINUING SERVICE.** When any portion of any electrical system which the building official is required to inspect by the provisions of the electrical code (or any other ordinance of the city) is found to be in violation of the requirements thereof or there is a finding based on reasonable cause that an unsafe condition exists as provided under section 4-203(e), and the condition thereby related is dangerous or hazardous to life, limb, property or safety of the public or of the occupants, the building official may immediately direct the power company to discontinue electrical service to such premises

until the appropriate repairs have been made and such work has been inspected and approved. Cost of disconnecting shall be assessed against the property. A written notice shall be addressed to the owner, agent or person responsible for the premises in which the conditions exist and shall specify the date and time for compliance with such order. Refusal, failure or neglect to comply with any notice or order shall be considered a violation of the electrical code.

(Ord. \_\_\_\_\_, Sec. 5)

4-206. PERMITS AND LICENSES. (a) Permits. Every person before engaging upon construction of any electrical, remote-control, signaling, power limited circuits, wiring devices or equipment in or on any new building, or any original installation or any alteration in or on any existing building shall make application to and pay fees to the city for a construction permit describing the proposed work, and prior to commencement of the work, the applicant shall receive authorization to proceed therewith from the building official.

(1) A separate permit shall be obtained for each building or structure.

(2) No person shall allow any other person to do or cause to be done any work under a permit except persons in his or her employ who are properly licensed or supervised as provided by the electrical code.

(3) The issuance or granting of a permit or approval of plans and specifications shall not be deemed or construed to be a permit for, or any approval of, any violation of any of the provisions of the electrical code. No permit presuming to give authority to violate or cancel the provisions of the electrical code shall be valid, except insofar as the work or use which it authorizes is legal.

(4) The issuance or granting of a permit or approval of plans shall not prevent the building official from thereafter requiring corrections of errors in the plans and specifications, or from preventing construction operations when in violation of the electrical code or of any other ordinance, or from revoking any certificate of approval when issued in error.

(Ord. \_\_\_\_\_, Sec. 6)

4-207. UNLAWFUL ACTS. It shall be unlawful for any person to do any of the following:

(a) To perform or caused to be performed any electrical work in the city, which requires a permit without having first secured the appropriate permit from the city.

(b) For any person to conduct, carry on or engage in the business of electrical contracting without having first obtained a valid, current contractor's license for the city, provided however, that any person who owns and resides within a single-family dwelling in the city may physically and personally perform electrical work upon that same dwelling without having obtained a license or the required licensing, however this does not exempt such person from obtaining a permit pursuant to section 4-206.

(c) For a person or person through negligence or indifference to knowingly create an electrical hazard and/or allow an electrical hazard to exist.

(d) To violate any other provisions of this article.

(Ord. \_\_\_\_\_, Sec. 7)

4-208. ELECTRICIAN OR ELECTRICAL CONTRACTORS DEFINED. (a) An electrician or electrical contractor for purposes of this article shall be any person, firm, co-partnership, corporation, association, or any combination thereof, whether a resident or not of the city:

(1) Who or which undertakes with or for another, for a fixed sum, price, fee or any other compensation to install, construct, alter, repair, add to, or move any electrical installation or performs any electrical construction work in the city, for which an electrical construction permit may now or hereafter be required by the laws of the city; or

(2) Who or which advertises or represents himself, herself, or itself to the public to have the capacity or ability to undertake, or submit a bid or offer to install, construct, alter, repair, add to, remove, restore or replace any electrical installation or perform any electrical construction work; or

(3) Who or which installs, constructs, alters, adds to or removes any electrical installation or performs any electrical construction work either on his or her own or other property for purposes of sale or speculation.

(b) An electrician or electrical contractor as defined shall not mean or include:

(1) Any owner or his or her authorized agents or employees making ordinary repairs to his, her or its own building or structure not involving electrical construction and for which a permit is not required or on which an electrician or electrical contractor, as defined, is not required, employed or engaged to perform; or

(2) Any property owner personally performing any improvements, alterations or electrical construction within or upon his or her own residence and intended for his or her own personal use and permanent occupancy; provided, the owner shall satisfy the electrical inspector as to his or her ability to perform such work, secure a permit, pay required fees, do work in accordance with this article, and apply for an inspection and receive approval. Personal electrical construction by an owner under this section shall be by himself, herself, for himself or herself on his or her own residence, without compensation and no person shall be employed to assist him or her in any way on such work except an electrician or electrical contractor licensed by the city.

(Code 2003)

4-209. ELECTRICIAN'S OR ELECTRICAL CONTRACTOR'S LICENSE REQUIRED; ELECTRICAL PERMITS; UNLAWFUL ACTS. (a) Each electrician or electrical contractor shall before entering upon any electrical construction work subject to regulation by city laws, apply to the city clerk for an electrician's or electrical contractor's license and receive the same as hereinafter provided and have in his or her possession a valid license authorizing him, her or it to engage in the trade or occupation of electrician or electrical contractor in the city.

(b) No permit for any electrical construction work shall be issued for any such work to be performed by an electrician or electrical contractor, as defined, who has not first obtained a license upon making a proper application and payment of the license fee as required.

(c) It shall be unlawful for any person, firm, company, association or corporation to enter into a contract or agreement with another so as to bring himself, herself, or itself under the definition of an electrician or electrical

contractor herein, or to perform any work as an electrician or electrical contractor or any work under a contract for any work involving electrical construction, without first having obtained an electrician's or electrical contractor's license issued by the city.  
(Code 2003)

4-210. SAME; APPLICATION; GRANTING. Application for an electrician's or electrical contractor's license shall be made upon a form to be supplied by the city which shall disclose the name of the applicant, his or her place of business in the city (and home office if a nonresident) and the kind of contracting work engaged in. The application shall be signed by the electrician or electrical contractor or his or her authorized agent. Such license shall be issued by the city clerk, upon payment of the fees hereinafter provided after approval of the governing body. The applications shall be, by the chief building official, referred to the city clerk who shall issue the license upon payment of the fees.  
(Code 2003)

4-211. LICENSE SUSPENSION; REVOCATION; APPEAL; UNLAWFUL ACTS.  
(a) The license of any electrician or electrical contractor may be suspended temporarily, for a period of not to exceed 30 days at any one time, by the chief building official upon his or her own motion or upon a complaint of the city electrical inspector. Notice shall be given in writing to such electrician or electrical contractor giving reasonable notice of a time of hearing of the complaint or the matter alleged against such electrician or electrical contractor involving any one or more of the following:  
(1) Misrepresentation of a material fact by applicant in obtaining a license;  
(2) Use of license to obtain an electrical permit for another;  
(3) Failure or neglect to observe conditions of permit authorizing encumbering of streets or sidewalks for safety of public;  
(4) Performance of any electrical construction work without a permit where one is required by law; or  
(5) Willful disregard of any violation of the electrical construction laws, or failure to comply with any lawful order of the city electrical inspector.  
Such hearing shall be held within 10 days of presentation of said notice to the builder or building contractor.  
(b) Any licensee may within 10 days appeal in writing to the board of code appeals from any order of the chief building official suspending his or her license for its final decision thereon. The board of code appeals may upon such hearing terminate such suspension within not more than 30 days thereafter, or may revoke such license. If any license shall be revoked, the electrician or electrical contractor shall not be eligible for a new license during a period of six months thereafter. No fee shall be refunded in event of the suspension or revocation of any electricians or electrical contractor's license.  
(c) Any licensee may appeal the board of code appeals' decision to the governing body within 10 days of the board of code appeals rendering its decision.  
(d) It shall be unlawful to engage in the occupation or trade of electrician or electrical contractor during the time any license of such electrician or electrical contractor has been suspended or revoked. (Code 2003)

- 4-212. **WORK BY PROPERTY OWNERS.** Nothing herein contained shall prohibit any property owner from personally performing any electrical construction or installing electrical wiring or equipment within and upon his or her own residence and intended for his or her personal use and occupancy; provided, the owner shall satisfy the electrical inspector as to his or her ability to perform such work or install such electrical wiring, secure a permit, pay required fees, do work in accordance with this article, and apply for an inspection and receive a certificate of approval. Personal electrical construction or installation performed by an owner under this section shall be by himself, herself, for himself or herself on his or her own residence, without compensation and no person shall be employed to assist him or her in any way on such work except an electrician or electrical contractor licensed by the city. (Code 2003)
- 4-213. **APPROVED MATERIALS.** No electric materials for wiring of appliances or equipment shall be installed in the city unless they are in conformity with the provisions of this article and with the approved standards of construction for safety to life and property. Conformity of materials for wiring appliances and equipment to the standards of the Underwriters Laboratories, Inc. shall be prima facie evidence that the materials, devices, appliances and equipment comply with the requirements of this article. (Code 2003)
- 4-214. **LIABILITY.** This article shall not be construed to relieve from or lessen the responsibility or liability of any party owning, operating, controlling or installing any electrical equipment for damages to persons or property caused by any defect therein, nor shall the city be held as assuming any such liability, by reason of the inspection or re-inspection authorized herein, or the certificate of approval of any work or equipment authorized herein or by reason of any permit or license granted herein. (Code 2003)
- 4-215. **SEVERABILITY.** If any section of the National Electrical Code or of this article shall be held unconstitutional or otherwise invalid by any court of competent jurisdiction, then such section shall be considered separate and apart from the remaining provisions of the National Electrical Code or of this article, the section is to be completely severable from the remaining provisions which shall continue in full force and effect. (Code 2003)
- 4-216. **UNLAWFUL ACTS.** It shall be unlawful for any person to do any of the following:
- (a) To perform or cause to be performed any electrical work in the city which requires a permit without having first secured the appropriate permit from the city.
  - (b) For any person to conduct, carry on or engage in the business of electrical contracting without having first obtained a valid, current contractor's license for the city.
  - (c) For a person or persons through negligence or indifference to knowingly create an electrical hazard and/or allow an electrical hazard to exist.
  - (d) To violate any other provisions of this article.
  - (e) Any person who owns and resides within a single family structure may perform electrical work upon that same structure without having obtained an

electrical licensing or the required licensing, however, this does not exempt the requirement for a permit to perform the work.  
(Ord. \_\_\_\_\_, Sec. 7)

**SECTION II.**

This Ordinance shall take effect and be enforced from and after its passage, approval, and publication as provided by law.

PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2007.

/s/ Ronald L. Shaffer  
Ronald L. Shaffer, Mayor

ATTEST:

APPROVED AS TO FORM:

/s/ Joyce Hagen Mundy  
Joyce Hagen Mundy, City Clerk

/s/ Charles E. Wetzler  
Charles E. Wetzler, City Attorney



**International Plumbing Code  
(IPC)**

ORDINANCE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER IV OF THE PRAIRIE VILLAGE MUNICIPAL CODE, 2003, ENTITLED "BUILDINGS AND CONSTRUCTION" BY AMENDING ARTICLE 3 ENTITLED "*PLUMBING AND GAS-FITTING CODE*" TO INCORPORATE BY REFERENCE THE "*INTERNATIONAL PLUMBING CODE*", 2006 EDITION AND ADOPTING A NEW ARTICLE OF LIKE NAME AND NUMBER"

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

Section I.

Article 3 of Chapter IV of the Prairie Village Municipal Code, 2003, is hereby amended to read as follows:

**ARTICLE 3. PLUMBING CODE**

- 4-301. DEFINITION OF PLUMBING. The term plumbing as used in this article shall be construed to mean the installation of gas lines, water pipes, fixtures, apparatus and the necessary connections either for supplying gas or water to premises or for the removing of liquid and water-borne wastes from premises in the city, or both such purposes, and shall also denote installed fixtures, drainage and vent systems and gas or water distribution systems as the case may be. (Code 2003)
- 4-302. ADOPTION OF THE INTERNATIONAL PLUMBING CODE, 2006 EDITION. There is hereby adopted and incorporated by reference that certain plumbing code, known as the "International Plumbing Code," 2006 Edition, and copyrighted 2006 by the International Code Council, Inc., including Appendices B, D, E and G (hereinafter referred to as the plumbing code) except for the amendments provided in section 4-303 of this article. Not less than three copies of said plumbing code shall be marked or stamped "Official Copy as Adopted by Ordinance No. 2054." A copy of this ordinance shall be on file at city hall, open for inspection and available to the public at all reasonable business hours. The police department, municipal judges, and all administrative departments of the city charged with the enforcement of the International Plumbing Code shall be supplied, at the cost of the city, with such numbers of official copies similarly marked as deemed expedient. (Ord. \_\_\_\_\_, Sec. 1)
- 4-303. AMENDMENTS TO THE INTERNATIONAL PLUMBING CODE.
- (a) Section 101.1 entitled Title, is hereby amended to read as follows: Title. These regulations shall be known as the international plumbing code of the City of Prairie Village, hereinafter referred as the plumbing code.
- (b) Section 106.6.1, entitled Work Commencing Before Permit Issuance, is hereby amended to read as follows:
- Any person who commences any work on a plumbing system before obtaining the necessary permits may be subject to 100% of the usual permit fee, in addition to the required permit fees, provided, however, that this provision shall not apply to emergency work when it shall be proved to the satisfaction of the building official that such work was urgently necessary and that it was not

practical to obtain a permit thereof before commencement of the work. In all such cases, a permit must be obtained as soon as it is practical to do so, and if there be an unreasonable delay in obtaining such permit, a double fee as herein provided may be charged.

(c) Section 106.6.2, entitled Fee Schedule is hereby amended to read as follows:

The fees for all plumbing work shall be indicated in the following: Cost of Permit. Every applicant for a permit to do work regulated by this code shall state in writing, on the application form provided for that purpose, the scope of the plumbing work, together with such information, pertinent thereto, as may be required.

Such applicant shall pay for each permit, at the time of issuance, a fee in accordance with the fee schedule as adopted by the city.

(d) Section 108.4 entitled Violation Penalties is hereby amended to read: Violation penalties of this code shall be declared a nuisance and shall be subject to the provisions of the city code entitled Nuisances and Unsafe Structures.

(e) Section 109.2.1 entitled "Qualifications," is hereby deleted in its entirety.

(f) Section 109.2, entitled "Membership of Board," is hereby deleted in its entirety.

(g) Section 305.6.1 entitled "Sewer Depth," shall be amended to include the following:

The burial depth for exterior sewer and lateral lines shall be in conformance with standards established and enforced by the wastewater division of the County of Johnson County, Kansas.

(h) Section 404, entitled "Accessible Plumbing Facilities," shall be deleted in its entirety, and replaced with "Americans With Disability Act Accessibility Guidelines," Department of Justice, Title III, American National Standard-Accessible and Usable Buildings and Facilities ICC/ANSI 117.1-2003 and by Kansas Statute K.S.A. 58-1301 *et seq.*, hereby incorporated by reference.

(i) Section 904.1, entitled "Roof Extension," shall be amended to include the following:

All open vent pipes that extend through a roof shall be terminated at least six inches above the roof, except where a roof is to be used for any purpose other than weather protection, the vent extensions shall be run at least seven feet above the roof.

(Ord. \_\_\_\_\_, Sec. 2)

4-304. BUILDING OFFICIAL; AUTHORITY. The building official or his or her authorized designee shall be responsible for the administration and enforcement of this article and appointment of a building official or his or her authorized designee in accordance with section 4-104 of this chapter, which apply in a like manner to this article. (Code 2003)

4-305. BUILDING OFFICIAL; APPOINTMENT. The building official may assume the responsibilities of or appoint some qualified officer or employee of the city to be and perform the duties of building official or his or her designee as may be required, subject to the consent and approval of the governing body. (Code 2003)

4-306. SAME; DUTIES. The building official or his or her designee shall have the following duties:

(a) To enforce all regulations relating to plumbing construction, alteration, repair or removal;

(b) May permit, with the approval of the governing body, on the basis of duly authenticated reports from recognized sources, the use of new materials or modes of construction, not provided for in this article, and may, for the purpose of carrying out the intent of this article adopt an accepted standard of material or workmanlike practices of federal or state bureaus, national, technical organizations or fire underwriters;

(c) To examine all buildings in the process of erection, construction, alteration or relocation in the city for the purpose of determining whether the work is in compliance with the plumbing permit given and in compliance with the regulations of the city pertaining to such work, including zoning regulations; and

(d) To keep comprehensive records of applications, of permits or certificates issued, of inspections made, of reports rendered, and of notices or orders issued. All such records shall be open to public inspection during stated office hours, but shall not be removed from the office of the building official or his or her designee without his or her written consent.

(Code 2003)

4-307. SAME; POWERS. The building official or his or her designee shall have the following powers:

(a) To enter any building or structure or premises at any reasonable hour, whether complete or in the process of erection, to perform the duties contained in this chapter;

(b) To adopt and enforce all such prudent emergency measures as he or she may deem necessary and expedient for the public safety under the laws of the city;

(c) May cause any work done in violation of this chapter to be discontinued until he or she shall have satisfactory evidence that the work will be done in accordance with the plumbing regulations of the city, subject to the right of any plumber, plumbing contractor or owner to appeal to the governing body.

(Code 2003)

4-308. SAME; RIGHT OF ENTRY. The building official or his or her designee, upon proper identification, shall have authority to enter any building, structure or premises at any reasonable hour to perform his or her duties as set out in this chapter. (Code 2003)

4-309. CLARIFICATION; MODIFICATION. (a) The board of code appeals shall be the final determiner of the scope and meaning of all provisions of the plumbing code which may be unclear, ambiguous, or requiring interpretation.

(b) The building official or his or her designee shall have power to modify any of the provisions of the plumbing code upon application in writing by the owner or lessee or his or her authorized agent, when there are practical difficulties in the way of carrying out the strict letter of the code. In approving modifications, the building official or his or her designee shall see that the spirit of the code is observed, public safety secured and substantial justice done.

The particulars of a modification when granted or allowed and the decision of the building official or his or her designee thereon shall be entered upon the records of the building official and a signed copy shall be furnished to the applicant. (Code 2003)

4-310. PLUMBING PERMIT REQUIRED; EXCEPTION. (a) It shall be unlawful to install, alter or reconstruct any plumbing or plumbing system, as defined by the plumbing code and section 4-301, in any building in the city without first making application to and receiving a permit from the building official or his or her authorized assistant. The application for such permit shall be made and the permit obtained before any plumbing work is commenced.

(b) No permit shall be required for making minor repairs of any plumbing including repair of leaks in water pipes, traps or cocks, opening up stoppage in waste or supply pipes, traps or drains, replacing fixtures when waste pipes are not disturbed, or replacing frozen pipes inside the building, and like repair work not involving original installation or reconstruction. (Code 2003)

4-311. SAME; FEES. Every applicant for a permit to do work regulated by this code shall pay for each permit, at the time of issuance, a fee in accordance with the fee schedule as adopted by the city which may be amended from time to time. When required by the building official, a plan review fee may be charged in addition to a permit fee. (Code 2003)

4-312. REQUEST FOR INSPECTION. Upon the completion of any plumbing work covered by this article, it shall be the duty of the person doing such work to notify the plumbing inspector and request that it be inspected; after which such work shall be inspected promptly as hereinafter provided. Upon completion of the inspection, the building official will provide approval with a written report of the results of the inspection indicating whether the work complies with codes or further inspection is required. (Code 2003)

4-313. INSPECTION; CONCEALMENT OF PRIOR WORK. (a) When any plumbing is to be hidden from view by the permanent placement of parts of the building, the person, firm or corporation installing the plumbing shall notify the building official or his or her designee and such equipment shall not be concealed until it has been inspected, approved or authorized by the building official or his or her designee. On large installations, where the concealment of plumbing proceeds continuously, the person, firm or corporation installing the plumbing shall give the building official or his or her designee due notice and inspections shall be made periodically during the progress of the work.

(b) The building official or his or her designee shall have the authority to require owners or contractors to open such work which, in any manner, conceals plumbing that has been closed without his or her knowledge or permission, and in no case shall the inspector issue a certificate of approval until satisfied that the work is in accordance with the provisions of this article. The inspector shall also have the right to refuse to issue a certificate of approval on any plumbing, that is concealed in such manner that it cannot be fully determined that it has been done in accordance with this article. (Code 2003)

4-314. CONNECTION TO GAS OR WATER SUPPLY. It shall be unlawful for any person, firm, or corporation to make connection to a supply of gas or water for which an inspection is required, or which has been disconnected by the order of the building official or his or her designee, until authority for such connection has been issued by the building official or his or her designee authorizing the connection and use of such plumbing or plumbing system. The plumbing inspector may, at his or her discretion, authorize a temporary connection. (Code 2003)

4-315. PLUMBER OR PLUMBING CONTRACTOR; DEFINED. (a) A plumber or plumbing contractor shall mean:

(1) Any person engaged in the business of installing, altering, maintaining, or repairing plumbing, which shall include all materials and plumbing fixtures, water pipes, portable water treatment equipment, traps, drainage and vent piping, and building drains, including their respective points, connections, devices, receptacles and appurtenances located within the property lines of any premises or in any building.

(2) Any gasfitter or person engaged in the business of installing, altering, or repairing fuel gas piping, gas systems or fixtures.

(b) A plumber or plumbing contractor as defined in subsection (a) of this section shall not mean or include the owner of a residence who personally installs plumbing piping or equipment within and upon his or her own residence and intended for his or her own personal use and permanent occupancy; provided, the owner shall satisfy the plumbing inspector as to his or her ability to install such piping or equipment, secure a permit, pay required fees, do work in accordance with this article, and apply for an inspection and receive approval. Personal installation by an owner under this section shall be himself, herself, for himself or herself on his or her own residence, without compensation and no person shall be employed to assist him or her in any way on such work except a plumber or plumbing contractor licensed by the city.

(Code 2003)

4-316. PLUMBER'S OR PLUMBING CONTRACTOR'S LICENSE REQUIRED; PLUMBING PERMITS; UNLAWFUL ACTS. (a) Each plumber or plumbing contractor shall before entering upon any plumbing work subject to regulation by city laws, apply to the building official for a plumber's or plumbing contractor's license and receive the same as hereinafter provided and have in his or her possession a valid license authorizing him, her or it to engage in the trade or occupation of a plumber or plumbing contractor in the city. He or she from time to time shall establish standards which shall be kept on file in the building official's office and which shall apply to all applicants.

(b) No permit for any plumbing work shall be issued for any such work to be performed by a plumber or plumbing contractor, as defined, who has not first obtained a license upon making a proper application and payment of the license fee as required.

(c) It shall be unlawful for any person, firm, company, association or corporation to enter into a contract or agreement with another so as to bring himself, herself, or itself under the definition of a plumber or plumbing contractor herein, or to perform any work as a plumber or plumbing contractor or any work under a contract for any work involving plumbing construction,

without first having obtained a plumber's or plumbing contractor's license issued by the city.  
(Code 2003)

- 4-317. LICENSE SUSPENSION; REVOCATION; APPEAL; UNLAWFUL ACTS.
- (a) The license of any plumber or plumbing contractor may be suspended temporarily, for a period of not to exceed 30 days at any one time, by the chief building official upon his or her own motion or upon a complaint of the city plumbing inspector. Notice shall be given in writing to such plumber or plumbing contractor giving reasonable notice of a time of hearing of the complaint or the matter alleged against such plumber or plumbing contractor involving any one or more of the following:
- (1) Misrepresentation of a material fact by applicant in obtaining a license;
  - (2) Use of license to obtain a plumbing permit for another;
  - (3) Failure or neglect to observe conditions of a permit authorizing encumbering of streets or sidewalks for safety of public;
  - (4) Performance of any plumbing work without a permit where one is required by law; or
  - (5) Willful disregard of any violation of the plumbing laws, or failure to comply with any lawful order of the city plumbing inspector.
- (b) Any licensee may within 15 days appeal in writing to the Board of Code Appeals from any order of the building official suspending his or her license for its final decision thereon. The Board of Code Appeals may upon such hearing terminate such suspension within not more than 30 days thereafter, or may revoke such license. If any license shall be revoked, the plumber or plumbing contractor shall not be eligible for a new license during a period of six months thereafter. No fee shall be refunded in event of the suspension or revocation of any plumber's or plumbing contractor's license.
- (c) It shall be unlawful to engage in the occupation or trade of plumber or plumbing contractor during the time any license of such plumber or plumbing contractor has been suspended or revoked.  
(Code 2003)

- 4-318. EXCAVATIONS. When it appears that the laying or repairing of any water or sewer pipes or the making of any connection therewith shall require excavation in any street, alley or public way of the city or the cutting or removal of any pavement, curb or gutter or any sidewalk, during the course of such work. The applicant for a permit shall apply for the proper permit from the department of public works. Before the public works director shall issue any permit for such work, the applicant shall pay any fee required by this code. Every person who for any purpose makes or causes to be made any excavation in, upon, under, through or adjoining any street, sidewalk, alley or other right-of-way and leaves any part or portion thereof open or leaves any part or portion thereof obstructed with rubbish, building or other material during the night time, shall cause the same to be enclosed with good, substantial and sufficient barriers not less than three feet in height and cause sufficient amber lights to be securely attached to barriers and conspicuously posted in or near such excavation, building material or obstruction, providing such obstruction does not extend more than 10 feet in length and if over 10 feet and less than 50 feet in length, two amber lights, one at each end plus sufficient mid-length

amber lights, shall be so placed and one additional amber light for each additional 50 feet or part thereof and shall keep such lights burning from sunset to sunrise.

Whenever a person excavates the full width of any street, alley, sidewalk or other right-of-way, it shall be his or her duty to maintain a substantial walkway or driveway across the excavation until it is backfilled.

If an excavation in the street cannot be immediately backfilled, a temporary steel plate may be used to maintain traffic flow. All temporary steel plates shall be set flush with the existing roadway and shall be secured to prevent any movement horizontally or vertically with asphalt around the edges of the plate to provide a smooth transition from street surface to plate surface. No plate shall be left in place for more than 48 hours. (Code 1973, 13.16.120; Ord. 1828, Sec. 1; Code 2003)

- 4-319. **WORK BY PROPERTY OWNERS.** Nothing herein contained shall prohibit any property owner from personally installing plumbing piping or equipment within and upon his or her own residence and intended for his or her personal use and permanent occupancy; provided, the owner shall satisfy the plumbing inspector as to his or her ability to install such piping or equipment, secure a permit, pay required fees, do work in accordance with this article, and apply for an inspection and receive approval. Personal installation by an owner under this section shall be by himself, herself, for himself or herself on his or her own residence, without compensation and no person shall be employed to assist him or her in any way on such work except a plumber or plumbing contractor licensed by the city. (Code 2003)
- 4-320. **APPROVED MATERIALS.** No plumbing materials, appliances or equipment shall be installed in the city unless they are in conformity with the provisions of this article and with the approved standards of construction for safety to life and property. Conformity of materials for plumbing materials, appliances and equipment to the standards of the Underwriters Laboratories, Inc. shall be prima facie evidence that the materials, devices, appliances and equipment comply with the requirements of this article. (Code 2003)
- 4-321. **LIABILITY.** This article shall not be construed to relieve from or lessen the responsibility or liability of any party owning, operating, controlling or performing any plumbing construction for damages to persons or property caused by any defect therein, nor shall the city be held as assuming any such liability, by reason of the inspection or re-inspection authorized herein, or the certificate of approval of any work or equipment authorized herein or by reason of any permit or license granted herein. (Code 2003)
- 4-322. **SEVERABILITY.** If any section of the International Plumbing Code or of this article shall be held unconstitutional or otherwise invalid by any court of competent jurisdiction, then such section shall be considered separate and apart from the remaining provisions of the International Plumbing Code or of this article, the section is to be completely severable from the remaining provisions which shall continue in full force and effect. (Code 2003)



**Section II. 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 \_\_\_\_ DAY OF \_\_\_\_\_, 2007.

CITY OF PRAIRIE VILLAGE, KANSAS

By: \_\_\_\_\_  
Ronald L. Shaffer., Mayor

ATTEST:

APPROVED AS TO FORM:

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

\_\_\_\_\_  
Charles E. Wetzler, City Attorney

**International Mechanical Code  
(IMC)**

ORDINANCE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER IV OF THE PRAIRIE VILLAGE MUNICIPAL CODE, 2003, ENTITLED "BUILDINGS AND CONSTRUCTION" BY AMENDING ARTICLE 6 ENTITLED "*INTERNATIONAL MECHANICAL CODE*" TO INCORPORATE BY REFERENCE THE "*INTERNATIONAL MECHANICAL CODE*", 2006 EDITION AND ADOPTING A NEW ARTICLE OF LIKE NAME AND NUMBER"

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

Section I.

Article 6 of Chapter IV of the Prairie Village Municipal Code, 2003, is hereby amended to read as follows:

**ARTICLE 6. INTERNATIONAL MECHANICAL CODE**

4-601. ADOPTION OF INTERNATIONAL MECHANICAL CODE. There is hereby adopted and incorporated by reference that certain International Mechanical Code, 2006 edition and copyrighted in 2006 by the International Code Congress, including Appendix A thereof (hereinafter referred to as the Mechanical Code), except for the amendments provided in section 4-602 of this article. Not less than three copies of the Mechanical Code shall be marked or stamped "Official Copy as Adopted by Ordinance No. \_\_\_\_." A copy of this ordinance shall be attached to each mechanical code copy and shall be filed with city hall to be open for inspection and available to the public at all reasonable business hours. The police department, municipal judges, and all administrative departments of the city charged with the enforcement of such mechanical code shall be supplied, at the cost of the city, which such numbers of official copies similarly marked as deemed expedient. (Ord. \_\_\_\_, Sec. 1)

4-602. AMENDMENTS TO INTERNATIONAL MECHANICAL CODE. (a) Section 106.5.2 of the Mechanical Code, entitled Fee Schedule is hereby amended to read as follows:

(b) Cost of Permit. Every applicant for a permit to do work regulated by this code shall state in writing, on the application form provided for that purpose, the character of work proposed to be done and the amount and kind in connection therewith, together with such information, pertinent thereto, as may be required.

Such applicant shall pay for each permit, at the time of issuance, a fee in accordance with the fee schedule as adopted by the city and set forth in section 4-117.

Any person who shall commence any work for which a permit is required by this code without first having obtained a permit thereof shall pay double the permit fee. Provided, however, that this provision shall not apply to emergency work when it shall be provided to the satisfaction of the building official that such work was urgently necessary and that it was not practical to obtain a permit thereof before commencement of the work. In all such cases, a permit must be obtained as soon as it is practical to do so, and if there be an

unreasonable delay in obtaining such permit, a double fee as herein provided shall be charged.

(b) Section 106.5.3(2) of the Mechanical Code, entitled "Fee Refunds," is hereby amended to include: The building official may authorize a refund of not more than 80% of the permit fee when no work has been done under a permit issued in accordance with this code.

(2) No permit fee may be refunded if work has commenced on a project.  
(Ord. \_\_\_\_\_, Sec. 3)

**Section II. 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 \_\_\_\_\_ DAY OF \_\_\_\_\_, 2007.

CITY OF PRAIRIE VILLAGE, KANSAS

By: \_\_\_\_\_  
Ronald L. Shaffer., Mayor

ATTEST:

APPROVED AS TO FORM:

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

\_\_\_\_\_  
Charles E. Wetzler, City Attorney

**International Residential Code  
(IRC)**

ORDINANCE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER IV OF THE PRAIRIE VILLAGE MUNICIPAL CODE, 2003, ENTITLED "BUILDINGS AND CONSTRUCTION" BY AMENDING ARTICLE 7 ENTITLED "*INTERNATIONAL RESIDENTIAL CODE*" TO INCORPORATE BY REFERENCE THE "*INTERNATIONAL RESIDENTIAL CODE*", 2006 EDITION AND ADOPTING A NEW ARTICLE OF LIKE NAME AND NUMBER"

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

Section I.

Article 7 of Chapter IV of the Prairie Village Municipal Code, 2003, is hereby amended to read as follows:

**ARTICLE 7. INTERNATIONAL RESIDENTIAL CODE**

- 4-701. ADOPTION OF THE INTERNATIONAL RESIDENTIAL CODE, 2006 EDITION. In addition to the other provisions set forth in this chapter, there is hereby adopted and incorporated by reference that certain building code known as the "International Residential Code", 2006 edition, copyrighted in 2006 by the International Code Council, (hereinafter referred to as the "Building Code") except for the amendments provided in this chapter. Not less than three copies of the building code shall be marked or stamped "Official Copy as Adopted by Ordinance No. \_\_\_\_." A copy of this ordinance shall be attached to each of the three copies of the International Residential Code and shall be filed with city hall to be open for inspection and available to the public at all reasonable business hours. The police department, municipal judges and all administrative departments of the city charged with the enforcement of the building code shall be supplied, at cost to the city, with such numbers of official copies similarly marked as deemed expedient. (Ord. \_\_\_\_, Sec. 1)
- 4-702. DUTIES AND POWERS OF THE BUILDING OFFICIAL. Section 104.1 of the Building Code is hereby amended to read as follows: The building official is hereby authorized and directed to enforce all the provisions of this code. For such purposes, the building official shall have the power of a law enforcement officer in order to issue complaints with the municipal court, when or if necessary. The building official shall have the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this code. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this code. (Ord. \_\_\_\_, Sec. 2)
- 4-703. ISSUANCE OF PERMITS TO LICENSED OR REGISTERED CRAFTSMEN. Section 105.3 of the Building Code is hereby amended by adding a new requirement 105.3(8) to read as follows: Permits for mechanical, plumbing and electrical work shall be issued only to individuals or persons responsible to a company or organization that is the legal possessor of a valid and current certificate of competency issued by the state. The certificates of competency received by any person who successfully passed an

examination designated by K.S.A. 12-1508 or 12-1525, and amendments thereto, shall be valid proof of competency for licensing, without additional examination, in any other county or city of the state which requires licenses for plumbers, electricians and mechanical heating and ventilating contractors practicing in such city. Permits may be issued to homeowners doing plumbing, mechanical or electrical work in their own residence who do not possess a valid license or certificate. (Ord. \_\_\_\_\_, Sec. 3)

4-704. AMENDMENTS TO SECTION 105.5, EXPIRATION. Section 105.5 of the Building Code is hereby amended to read as follows:

105.5 Expiration: Every permit issued shall become invalid unless the work authorized by such permit is commenced within 180 days after its issuance, or if the work authorized by such permit is suspended or abandoned for a period of 90 days after the time the work is commenced. All work shall be documented by an inspection as described in Section 109 of this code. Failure to request an inspection of newly-completed work for any period of 90 days or more shall constitute suspension or abandonment of work, at which time said permit shall become invalid. It shall be unlawful for any person, firm, or corporation to allow a permit to become invalid. The Building Official may grant, in writing, one or more extensions of time, for periods of not more than 180 days each. The extension shall be requested in writing and reasonable cause demonstrated. The Building Official may place reasonable conditions of the issuance of extensions. (Ord. \_\_\_\_\_, Sec. 1)

4-705. AMENDMENTS TO SECTION 108 – FEES. Section 108 of the Building Code is hereby amended to read as follows:

108.2 – Schedule of Permit Fees. The fee for each permit shall be set forth in section 4-117.

108.2(1) – Plan Review Fees. When a plan or other data is required to be submitted by Section 108, a plan review fee may be required at the time of submitting plans and specifications for review. The plan review fee shall be 65% of the building permit fees as shown in section 4-117; provided, however, that for plans sent to the International Code Council for review, the plan review fee shall be 100% of the costs incurred from the plan review; and for plans delegated to a third party plans examiner or consultant, the plan review fee shall be 100% of the costs incurred from the plan review. Further provided, that single-family residential plan review fees shall be calculated in accordance with section 4-117.

The plan review fees specified in this subsection are separate fees from the permit fees specified in Section 108.2 and are in addition to the permit fees. A plan review fee may be charged for each permit issued, including plans associated with electrical, plumbing, mechanical and any other applicable work which is regulated by federal, state, county or local jurisdiction and associated by permit to the project for which the review is conducted.

Plan review fees may also be charged when one of the following conditions exist:

- (1) When the building official sends the project out of the office for plan review, or if sent to consultants for review; or
- (2) When an application is submitted for permit and a plan review is conducted by the jurisdiction staff, or a consultant, and the project building

permit is not to be constructed, the applicant will be responsible for a plan review fee.

108.5 - Refunds. The building official may authorize the refund of any fee paid, which was erroneously paid or collected.

(1) The building official may authorize the refunding of not more than 80% of the permit fee paid when no work has been done under a permit issued in accordance with this code.

(2) No permit fee collected shall be refunded when the work has begun.

(3) Plan review fees may be refunded in accordance with subsection (1) above, when no review of the plans has been performed.

(Ord. \_\_\_\_\_, Sec. 4)

4-706. **PERFORMANCE BOND.** An additional section regarding fees entitled Performance Bond is enacted to read as follows:

**Performance Bond** - The building official may require from the contractor a good and sufficient surety performance bond in the form as prescribed by the building official in the amount of \$5,000 at the time of issuance of the building permit for significant construction projects. The performance bond shall be issued by a surety company licensed and qualified to operate in the State of Kansas and approved by the city with a duly appointed agent.

Significant Construction Projects are defined for the purposes of this paragraph as construction projects, which will exceed \$100,000. Also, the building official will determine whether a bond will be required and the amount not to exceed \$5,000 for those situations involving individual homeowners filing permit applications for minor buildings, structures or additions. The building official will establish a policy approved by the city council, which delineates the criteria when a bond is necessary.

The performance bond will be approved by the building official predicated and guaranteed upon the fact that the permit applicant shall be and is, in fact, a guarantor that the streets and sidewalks in the area that he, she or they are working in, shall remain free and clear of dirt, mud, gravel and other debris. When the area is free and clear of the mud or debris, then the building official shall provide notice of same to the permittee.

Upon receipt of such notification, the permittee shall be allowed a period of two hours in which to remedy any and all defects caused by the acts of the contractor. If action has not been taken within the two hour period, or if such action fails to adequately remedy all defects within the affected area, then the building official or his or her authorized representative may direct the city to perform such duties and assess all cleanup charges against the performance bond. The cleanup charge will be based upon the cost to the city for actual cleanup, as determined by the building official. (Ord. \_\_\_\_\_, Sec. 5)

**Section II. 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 \_\_\_\_\_ DAY OF \_\_\_\_\_, 2007.

CITY OF PRAIRIE VILLAGE, KANSAS



By: \_\_\_\_\_  
Ronald L. Shaffer., Mayor

ATTEST:

APPROVED AS TO FORM:

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

\_\_\_\_\_  
Charles E. Wetzler, City Attorney

**International Fuel Gas Code  
(IFGC)**

ORDINANCE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER IV OF THE PRAIRIE VILLAGE MUNICIPAL CODE, 2003, ENTITLED "BUILDINGS AND CONSTRUCTION" BY AMENDING ARTICLE 8 ENTITLED "*INTERNATIONAL FUEL GAS CODE*" TO INCORPORATE BY REFERENCE THE "*INTERNATIONAL BUILDING CODE*", 2006 EDITION AND ADOPTING A NEW ARTICLE OF LIKE NAME AND NUMBER"

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

Section I.

Article 8 of Chapter IV of the Prairie Village Municipal Code, 2003, is hereby amended to read as follows:

**ARTICLE 8. INTERNATIONAL FUEL GAS CODE**

4-801. ADOPTION OF THE INTERNATIONAL FUEL GAS CODE, 2006 EDITION. In addition to the other provisions set forth in this chapter, there is hereby adopted and incorporated by reference that certain fuel gas code known as the "International Fuel Gas Code", 2006 edition, copyright 2006 by the International Code Council (hereinafter referred to as the "Fuel Gas Code"), except for the amendments provided in this chapter. Not less than three copies of the Fuel Gas Code shall be marked or stamped Official Copy as adopted by Ordinance No. \_\_\_\_\_. A copy of this ordinance shall be attached to each Fuel Gas Code copy and shall be filed with city hall to be open for inspection and available to the public at all reasonable business hours. The police department, municipal judges, and all administrative departments of the city charged with the enforcement of the building code shall be supplied, at the cost of the city, with such numbers of official copies similarly marked as deemed expedient. (Ord. \_\_\_\_\_, Sec. 1)

4-802. AMENDMENTS TO THE INTERNATIONAL FUEL GAS CODE.

(a) Section 101.1 — Title is hereby amended to read as follows:

These regulations shall be known as the Fuel Gas Code of the city hereinafter referred to as this code.

(b) Section 106.5.2 — Fee Schedule is hereby amended to read as follows: The fees for this work shall be as indicated:

Cost of Permit — Every applicant for a permit to do work regulated by this code shall state in writing, on the application form provided for that purpose, the scope of the work to be performed, together with such information, pertinent thereto, as may be required.

Such applicant shall pay for each permit, at the time of issuance, a fee in accordance with the fee schedule adopted by the city and set forth in section 4-117.

(c) Section 106.5.3 — Fee Refunds is hereby amended to read as follows: Not more than 80% of the permit fee paid will be refunded when no work has been done under a permit issued in accordance with this code. Not more than 80% of the plan review fee paid, when an application for a permit for which a plan review has been paid, is withdrawn or canceled before any plan review effort has been expended.

**Section II. 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 \_\_\_\_ DAY OF \_\_\_\_\_, 2007.

CITY OF PRAIRIE VILLAGE, KANSAS

By: \_\_\_\_\_  
Ronald L. Shaffer., Mayor

ATTEST:

APPROVED AS TO FORM:

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

\_\_\_\_\_  
Charles E. Wetzler, City Attorney

**International Fire Code  
(IFC)**

ORDINANCE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER VII OF THE PRAIRIE VILLAGE MUNICIPAL CODE, 2003, ENTITLED "FIRE" BY AMENDING ARTICLE 2 ENTITLED "*FIRE PREVENTION*" TO INCORPORATE BY REFERENCE THE "*INTERNATIONAL FIRE CODE*", 2006 EDITION AND ADOPTING A NEW ARTICLE OF LIKE NAME AND NUMBER"

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

Section 1.

Article 2, of Chapter VII of the Prairie Village Municipal Code, 2003, is hereby amended to read as follows:

**ARTICLE 2. FIRE PREVENTION**

7-201. INTERNATIONAL FIRE CODE INCORPORATED. (a) There is hereby adopted and incorporated by reference that certain fire code, known as the "International Fire Code," 2006 edition and appendices B, C, D, E and F copyrighted in 2006 by the International Code Council (hereinafter referred to as the Fire Code except for the amendments provided in subsection (b)). Not less than three copies of the fire code shall be marked or stamped "Official Copy as Adopted by Ordinance No. \_\_\_\_." A copy of this ordinance shall be attached to each fire code copy and shall be on file with city hall to be open for inspection and available to the public at all reasonable business hours. The police department, municipal judges, and all administrative departments of the city charged with the enforcement of the fire code shall be supplied, at the cost of the city, with such numbers of official copies similarly marked as deemed expedient.

(b) Section 103-Department of Fire Prevention is hereby amended as follows:

(1) The Chief of the Consolidated Fire District #2 of Northeast Johnson County and the City of Prairie Village Building Official or his or her authorized representative, are jointly authorized to administer and enforce this code.

(2) Whenever requested to do so by the fire chief, or his or her authorized representative, the chief of police shall assign such available officers as in his or her discretion may be necessary to assist the fire department in enforcing the provisions of this code. The fire chief and the chief of police shall have joint authority in enforcing this code as it relates to grills on combustible balconies in multi-family complexes.

(c) Section 308.3.1 – Open Flame Cooking Devices and Section 308.3.1.1 – Liquefied Petroleum/Gas-Fueled Cooking Devices of the Fire Code is hereby amended as follows:

The use of fuel containers (of any size or type) or cooking on combustible balconies in multi-story, multi-family complexes is prohibited.

(d) Section 307 Open Burning and Recreational Fires of the Fire Code is hereby amended as follows:

Replace the Open Burning Sections 307.1 - 307.4 with Prairie Village Municipal Code sections 8-717:722.

(e) Section 806.1 Natural Cut Trees of the Fire Code is hereby amended as follows:

Naturally cut trees are prohibited in all commercial structures and schools, whether protected by fire sprinkler systems or not.

(Ord. \_\_\_\_\_, Secs. 1:2)

- 7-202. SAME; ENFORCEMENT. The code hereby adopted shall be enforced by the chief of the fire department. (Code 2003)
- 7-203. SAME; AMENDMENTS. (a) Wherever the word municipality is used in the code hereby adopted, it shall be held to mean the City of Prairie Village.  
(b) All sections of the International Fire Code relating to fireworks are hereby deleted in their entirety and replaced with Article 3 of the Prairie Village Municipal Code.  
(Code 2003)
- 7-204. OPEN BURNING. (Reserved)
- 7-205. STACKING OF HAY OR STRAW. It shall be unlawful for any person to deposit, stack or store any hay or straw in the entrance area of any building.  
(Code 2003)
- 7-206. PREPARATION OF FOOD ON WOODEN DECKS IN APARTMENT COMPLEXES. It is unlawful for any person within the city to use a charcoal grill, gas grill, smoker or similar device to cook or prepare food on wooden decks or wooden balconies in multi-family dwellings containing two or more units. (Ord. 1878, Sec. 1)
- 7-207. KEEPING OF PACKING MATERIALS. It shall be unlawful to keep excelsior or other packing material in any other than wood or metal lined boxes or bins having self-closing or automatic covers. All refuse and trash from rooms where packing or unpacking is done shall be removed daily. (Code 2003)
- 7-208. STORAGE OF ASHES. It shall be unlawful to store ashes inside of any nonfireproof building unless they are stored in a noncombustible container or receptacle, and a clearance of at least five feet shall be maintained between such container or receptacle and any combustible materials not placed therein. Ashes shall not be stored outside of any building in wooden, plastic, or paper product receptacles or dumped in contact with or in close proximity to any combustible materials. (Code 2003)
- 7-209. FILLING GASOLINE TANKS OF MOTOR VEHICLES. The engines of motor vehicles shall be stopped when the gasoline tanks of such vehicles are being filled with gasoline at service stations or other places where gasoline is supplied to motor vehicles. The driver or person in control of such vehicle when the gasoline tank of same is being filled who refuses, neglects or fails to stop the engine of such vehicle shall likewise be guilty of a violation of this code. (Code 2003)

- 7-210. FIRE HAZARDS GENERALLY. It is unlawful for any person to cause or create anywhere within the city, or to permit on any premises under his or her control, any situation or condition that is conducive to or likely to cause or permit the outbreak of fire or the spreading of fire. Any situation or condition conducive to the outbreak of or spreading of fire, is declared to be a fire hazard. The violation of or failure to comply with any law pertaining to the storage, handling or use of flammable oils, explosives, liquefied petroleum gases, or fertilizers and all wires and other conductors charged with electricity, is declared to be a fire hazard. The placing of stools, chairs or any other obstruction in the aisles, hallways, doorway, or exit of any theater, public hall, auditorium, church or other place of indoor public assemblage, or the failure to provide any such place of public assemblage with sufficient, accessible and unobstructed fire exits and escapes is also declared to be a fire hazard. The obstruction of any street, avenue, alley, fire hydrant or any other condition that might delay the fire department in fighting fire is declared to be unlawful. (Code 2003)
- 7-211. SAME; INSPECTIONS TO DISCOVER. It shall be the duty of the fire chief to inspect or cause to be inspected by fire department officers or members, as often as may be necessary all buildings, particularly all mercantile buildings, manufacturing plants, warehouses, garages, hotels, boarding houses, rooming houses, theaters, auditoriums and all places of public assemblage, for the purpose of discovering the violation of any fire preventive law or any fire hazard and ascertaining and causing to be corrected any conditions liable to cause fires and to see that all places of public assemblage, hotels and rooming houses have sufficient and unobstructed facilities for escape there from in case of fire. (Code 2003)
- 7-212. ABATEMENT OF FIRE HAZARDS; ISSUING ORDER. Whenever any officer or member of the fire department shall find or discover any fire hazard or shall find in any building or upon any premises combustible or explosive material or dangerous accumulation of rubbish or unnecessary accumulation of paper, boxes, shavings or any other flammable material, so situated as to endanger property by the probability of fire, or shall find or discover any violation of this chapter or any other law hazardous to public safety from fires, the fire chief shall order the fire hazard or danger from the fire forthwith abated and remedied and such order shall be complied with immediately by the owner or occupant of such buildings or premises. If the hazard or condition ordered abated and remedied is a violation of, or a failure to comply with any law, the fire chief shall report the matter to the city attorney and he or she shall, if he or she deems it advisable, prosecute the offender. (Code 2003)
- 7-213. SAME; SERVICE OF ORDER; RECORDS. Any order made under section 7-213 shall be in writing and may be served personally upon the owner or occupant of the premises or by leaving it with any person in charge of the premises or if the premises are unoccupied and the owner is a nonresident of the city, then by mailing a copy to the owner's last known post-office address. One notice to either the occupant or owner shall be sufficient. The fire chief shall keep a record of and copies of all such orders and notices and shall follow up such notices at the expiration of the time for compliance therewith and when complied with make proper entry, and if not complied with, file



complaint with the municipal court against the property owner and/or occupant.  
(Code 2003)

**Section II. 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 \_\_\_\_ DAY OF \_\_\_\_\_, 2007.

CITY OF PRAIRIE VILLAGE, KANSAS

By: \_\_\_\_\_  
Ronald L. Shaffer., Mayor

ATTEST:

APPROVED AS TO FORM:

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

\_\_\_\_\_  
Charles E. Wetzler, City Attorney

**COUNCIL MEETING AGENDA  
CITY OF PRAIRIE VILLAGE  
Tuesday, February 20, 2007  
7:30 p.m.**

- I. CALL TO ORDER**
- II. ROLL CALL**
- III. PLEDGE OF ALLEGIANCE**
- IV. PRESENTATION OF PUBLIC SAFETY EMPLOYEE RECOGNITION AWARDS**
- V. PUBLIC PARTICIPATION**
- VI. CONSENT AGENDA**

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

**By Staff:**

- 1. Approve Regular Council Meeting Minutes – February 5, 2007
- 2. Claims Ordinance 2635
- 3. Ratify the Mayor's appointment of Carole Mosher to the Prairie Village Sister City Committee to complete the unexpired term of Alyce Grover ending in April, 2009.
- 4. Adopt 2007 Legislative Program.
- 5. Approve the purchase of two 2007 Harley-Davidson motorcycles (including trade-in) from Gail's Harley-Davidson for \$5,990.00.

**By Committee:**

- 6. Approve the Interlocal Agreement with the City of Leawood for Project SP105: Mission Road-83<sup>rd</sup> Street to 95<sup>th</sup> Street microsurfacing.
- 7. Approve the agreement with Shafer, Kline & Warren in the amount of \$187,000 for Construction Administration Services on Project 190708: Tomahawk Storm Drainage Improvements (Nall Avenue to Roe)
- 8. Approve the construction contract with Linaweaver Construction for Project 190708: Tomahawk Storm Drainage (Nall Avenue to Roe) in the amount of \$2,178,915.25.
- 9. Approve the construction contract with Musselman & Hall Contractors, Inc. for Project SP107: 2007 Street Repair Program in the amount of \$78,890 with funding from the Public Works Operating Budget.
- 10. Adopt Resolution 2007-01 designating the West lane on Somerset Drive approaching 83<sup>rd</sup> Street as a "Right Turn Only" lane and approve installation of "Right Turn Only" signage.

**VII. COMMITTEE REPORTS**

**Supplemental Retirement Plan Advisory Committee – Charles Clark**

**Park and Recreation Committee – Diana Ewy Sharp**  
**Consider 2<sup>nd</sup> Annual Skateboard Contest**

**Environment/Recycle Committee – Wayne Vennard**  
**Consider Brush Creek Signage**

- VIII. OLD BUSINESS**
- IX. NEW BUSINESS**
- X. ANNOUNCEMENTS**
- XI. ADJOURNMENT**

**if you are unable to attend this meeting, comments may be received by e-mail at  
[cityclerk@PVKANSAS.COM](mailto:cityclerk@PVKANSAS.COM)**

# **CONSENT AGENDA**

**CITY OF PRAIRIE VILLAGE, KS**

**Tuesday, February 20, 2007**

CITY COUNCIL  
CITY OF PRAIRIE VILLAGE  
FEBRUARY 5, 2007

The City Council of Prairie Village, Kansas, met in regular session on Monday, February 5, 2007, at 7:30 p.m. in the Council Chambers of the Municipal Building.

**ROLL CALL**

Council President David Belz called the meeting to order and roll call was taken with the following Council members present: Al Herrera, Bill Griffith, Ruth Hopkins, David Voysey, Michael Kelly, Andrew Wang, Pat Daniels, Charles Clark, Wayne Vennard and Diana Ewy Sharp.

Also present were: Barbara Vernon, City Administrator; Charles Wetzler, City Attorney; Captain John Walter, Acting Chief of Police; Bob Pryzby, Public Works Director; Doug Luther, Assistant City Administrator; and Joyce Hagen Mundy, City Clerk.

Boy Scout Troop 381, sponsored by Church of the Resurrection in Prairie Village, presented the colors and led those present in the Pledge of Allegiance.

**PUBLIC PARTICIPATION**

Boy Scouts from Troop 381 introduced themselves. Scouts from Troop 395 attending to earn their "Citizenship and Community" merit badge were acknowledged.

A new Prairie Village business was acknowledged. Dr. Erin Flood, P.A. opened a dental office at 7301 Mission Rd Ste 203 approximately one month ago after moving from Kirksville, Missouri.

**CONSENT AGENDA**

Al Herrera removed item #3 from the Consent Agenda and moved the approval of the Consent Agenda for Monday, February 5, 2007 as amended:

1. Approve Regular Council Meeting Minutes - January 19, 2007
2. Approve the purchase from Shwnee Mission Ford one Ford F250 ¾ ton pickup truck for \$22,117 and approve the disposal of Truck #1464 by auction upon receipt of the replacement truck.
3. Removed
4. Approve the agreement with participating agencies for the establishment and maintenance of an ALERT/ETAC system/
5. Rescind City Council Policy #340 entitled "Police Reserve Unit"

6. Amend the City fee schedule establishing a fee of \$1 per document for each document provided on CD or disk.
7. Approve the City covering the entire cost of registration for Council participation in the Johnson County Leadership Northeast Program.

A roll call vote was taken with the following members voting "aye": Herrera, Griffith, Hopkins, Voysey, Kelly, Wang, Daniels, Clark, Vennard and Sharp.

Council member Al Herrera asked Captain Walter to make a brief explanation of why item #3 was removed from the consent agenda.

Captain John Walter stated a review of the 2006 off-duty contractual report raised concerns with the proposed change to the charge for off-duty contractual services that was presented at the January 16<sup>th</sup> committee meeting. Staff would like to have this item continued to allow for further investigation into the fee. Captain Walter explained for the scouts present the operation of the City's off-duty contractual services.

Charles Clark moved to table action on the proposed rate change for off-duty contractual services performed by public safety officers to a future meeting to allow for further investigation by staff. The motion was seconded by Ruth Hopkins and passed unanimously.

## COMMITTEE REPORTS

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

#### COU2007-12 Consider Drainage Consultant Selection

Ruth Hopkins reported the Committee for selecting a Drainage Consultant for the 2008 Drainage Repair Program completed the process. Initially, nine consultants submitted proposals. The committee selected three firms for oral interview and HNTB and GBA were chosen to submit a cost estimate for typical drainage work.

After review and discussion with Bob Pryzby, the firm of George Butler & Associates (GBA) was selected. Ruth Hopkins moved the City Council accept the recommendation of the selection committee to retain George Butler & Associates (GBA) to provide drainage design services for the 2008 Drainage Repair Program. The motion was seconded by Al Herrera and passed unanimously.

COU2007-13 Consider 2008-2012 CARS Application

In order to receive CARS funds, the City must annually submit an application containing a list of streets and estimated costs for proposed projects. The following streets are recommended for the five-year CARS program, 2008-2012 based on pavement condition ratings:

Program Year	Street Segment	Limits	Total Estimated Construction Cost	Prairie Village Cost
2008	75 <sup>th</sup> Street	Belinder Avenue to Stateline Road	\$780,000	\$390,000
2008	Roe Avenue	91 <sup>st</sup> Street to Somerset Drive	\$788,000	\$394,000
		<b>Total</b>	<b>\$1,568,000</b>	<b>\$784,000</b>
2009	Roe Avenue	83 <sup>rd</sup> Street to Somerset Drive	\$694,000	\$347,000
2009	Roe Avenue	North City Limit to 67 <sup>th</sup> Street	\$694,000	\$347,000
		<b>Total</b>	<b>1,388,000</b>	<b>\$694,000</b>
2010	Somerset Drive	Roe Avenue to Nail Avenue	\$934,000	\$467,000
2010	Somerset Drive	83 <sup>rd</sup> Street to Delmar	\$380,000	\$190,000
		<b>Total</b>	<b>\$1,314,000</b>	<b>\$657,000</b>
2011	75 <sup>th</sup> Street	Belinder Avenue to Mission Road	\$1,336,000	\$668,000
		<b>Total</b>	<b>\$1,336,000</b>	<b>\$668,000</b>
2012	Somerset Drive	83 <sup>rd</sup> Street to Mission Road	\$481,000	\$240,500
2012	83 <sup>rd</sup> Street	Roe Avenue to Somerset Drive	\$281,000	\$140,500
2012	Mission Road	63 <sup>rd</sup> Street to 67 <sup>th</sup> Street *	\$702,000	\$175,500
		<b>Total</b>	<b>\$1,464,000</b>	<b>\$556,500</b>

Mr. Pryzby stated these streets can be revised during subsequent annual reviews and funding has been included in the 2008 budget for the projects listed for 2008.

Ruth Hopkins moved the City Council approve the 2008-2012 CARS application for the City of Prairie Village, the motion was seconded by Al Herrera and passed unanimously.

**Prairie Village Arts Council**

As Council Liaison for the Prairie Village Arts Council, David Belz recused himself from the Chair so he could speak and called upon Al Herrera, former Council President, to take over the chair.

David Belz reported the Prairie Village Arts Council is seeking to sponsor a signature event in October, 2007 entitled "State of the Arts". This event would be a juried exhibition sponsored by the Arts Council and would occur throughout the month of October. The exhibition would include approximately 40 pieces of work.

The Arts Council is seeking Council approval on the following items related to the show: 1) Additional financial support for the show; 2) Authorization to charge a non-refundable entry; 3) Authorization of a Gallery Commission to be applied to the purchase price of any piece sold while on display at this event and 4) Authorization for the Arts Council to solicit corporate sponsorship of the event.

Randy Kronblad, chairman of the Arts Council, stated it is the Arts Council's desire to continue to bring cultural opportunities to the City with the sponsorship of a signature event, that he would like to see turn into an annual event. Mr. Kronblad felt the requested funding of \$4500, would ultimately become a loan for initial costs until entry fees are received and corporate sponsorships attained.

Bob Endres noted Prairie Village was the first city in the area to establish a gallery approximately ten years ago. He sees this event as a celebration of the gallery.

Michael Kelly expressed his support of the event and asked what the corporate sponsors would receive in return for their sponsorship. Mr. Kronblad stated they would be recognized on all advertisements with their company logo.

Ruth Hopkins asked what financial risk the City would be taking in granting the requested funds. Mr. Kronblad stated he believes the funding will be a loan with the necessary funding being raised through entry fees and corporate sponsorships. He noted the recent Johnson County Showcase had 200 artists applying for 40 spots. There is currently a waiting list to show in the City Gallery, all of 2008 is already booked.

Wayne Vennard confirmed that one corporate sponsor has already committed. Andrew Wang asked if more than four corporate sponsors were acquired if additional awards would be granted.

Bill Griffith stated it is not the Council's responsibility to micro-manage the event, but to address their requests for funding and authorization of fees then let them take care of the details.



Bill Griffith moved the City Council approve financial support in the amount of \$4500 to the Arts Council for the proposed signature show; authorize the charge of a non-refundable entry; authorize a Gallery Commission to be applied to the purchase price of any piece sold while on display at this event and authorize the Arts Council to solicit corporate sponsorship of the event. The motion was seconded by Diana Ewy Sharp and passed unanimously.

Mrs. Ewy Sharp commended the Arts Council on their research and initiative to sponsor this event. David Belz stated he was pleased to be part of the Arts Council and feels this show will reflect positively on the City. He noted Council approval was the first step and the Arts Council will now go forward and work out the details for the event.

Al Herrera asked if there would only be corporate sponsors or would individual sponsors be sought also. Bob Endres responded the initial focus is on corporate sponsors, but they would be open to individual sponsors as well.

## OLD BUSINESS

Charles Clark moved the "No Smoking" ordinance being reviewed by the City Attorney be considered by the Council at the first meeting in October, 2007. The motion was seconded by Pat Daniels.

Mr. Clark explained to the audience the City has adopted a "No Smoking" ordinance prohibiting smoking in restaurants and bars that becomes effective upon the adoption of similar ordinances by the six contiguous cities to Prairie Village. The proposed ordinance being reviewed by the City Attorney has an effective date of January 1, 2008. To date the cities of Overland Park, Leawood and Fairway have adopted "no smoking" ordinances. With Prairie Village's close proximity to Kansas City, Missouri, there is a strong concern among area establishments that they will lose business to Kansas City, Missouri establishments if "no smoking" regulations are adopted for Prairie Village but not for Kansas City. It is important to members of the Council to protect the competitive equivalency of Prairie Village establishments. With many unanswered questions regarding the actions of other municipalities, Mr. Clark does not feel the Council is ready to move forward. He is proposing consideration of the ordinance in October as he feels by that time many of the current

uncertainties will have been addressed based on information he has received from Clean Air, Kansas City and new mayoral leadership will be in place in Kansas City.

David Belz expressed his agreement with Mr. Clark's statements. He noted ,as chairman of the task force which addressed the no smoking issue, he felt the proposed ordinance was coming forward with the support of the restaurants and was surprised at the reaction of local business owners. He does not see the need for immediate action by the City, noting even if adopted, the ordinance would not go into effect until January, 2008.

Michael Kelly stated he has a procedural objection to the action. He does not feel it is appropriate to continue an item because a councilman feels it will not be approved at this time. He feels action should be taken and noted the issue could be readdressed at any time as the situation merits.

David Belz stated the action is to set a date for consideration and that does not prohibit someone from bringing the issue before the Council at an earlier date or the date could even be delayed.

Michael Kelly agreed the position taken by the City of Kansas City, Missouri will have a key impact on Prairie Village businesses, but would like to see the date for consideration left open.

Ruth Hopkins stated she supports the establishment of a specific date for consideration. It provides a time frame in which to gather information and talk with constituents. She would, however, like to see the task force reconvened before that date as things progress. David Belz stated he doesn't feel it is necessary to bring them together until something happens. Mr. Herrera said he would help to get the word out and bring the task force together.

Wayne Vennard stated he spoke with Brian Schorgel, owner of O'Neil's, after the meeting and his opposition is that O'Neil's does not have an outside serving area where smoking would be allowed under the proposed ordinance, as the other businesses have, making it more difficult for him to compete. Mr. Vennard stated he planned to work with him toward securing a variance to allow the construction of such an area. Mr. Vennard noted he would like to see the City Council vote on this as soon as possible.

David Voysey stated it seemed undemocratic to say the Council is not going to deal with this until October. Mr. Clark responded with his reasons for choosing the October date and noted it could be considered at an earlier date.

Question was called on the Motion for the City Council to consider the "No Smoking" ordinance being reviewed by the City Attorney at the first meeting in October, 2007. The following votes were cast: "aye" Hopkins, Voysey, Wang, Daniels, Clark, Ewy Sharp and Belz and "nay" Griffith, Kelly and Vennard. Acting Chair Al Herrera declared the motion passed.

Council President David Belz resumed to the Chair.

### **NEW BUSINESS**

Al Herrera asked Captain John Walter to respond to the recent ruling on the "Wilson case". Capt. Walter stated the findings of the Supreme Court overturning the conviction of John Henry Horton was disturbing. The judge found the testimony on a key witness to be disconnected and dissimilar to the Liz Wilson case and therefore, it should not have been heard by the jury and having been heard by the jury was prejudicial and thus, the ruling was thrown out.

Captain Walter noted however, there were 6 or 7 points challenged in the appeal and all except the testimony were ruled on positively. The ruling had nothing to do with the quality of the investigation or efforts of the detectives and the District Attorney's Office. A meeting is schedule with the District Attorney's Office to determine what action to take. Captain Walter stated he will commit staff to do whatever is requested to assist the District Attorney's office. He noted the two detectives who spent three years on this case were disappointed with the ruling. The police department was able to meet with family members prior to the release of the information to advise them of the situation.

Diana Ewy Sharp asked about the Debra Green challenge. Captain Walter responded this is a yearly occurrence. This is the 4<sup>th</sup> appeal. Her attorney's witness is stating fire science technology has changed and therefore a new trial should be granted. The last appeal, which was very similar, was upheld and he expects this one to be upheld also.

**ANNOUNCEMENTS**

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

Board of Zoning Appeals	02/06/2007	6:30 p.m.
Planning Commission	02/06/2007	7:00 p.m.
Municipal Foundation	02/12/2007	5:45 p.m.
Sister City	02/12/2007	7:00 p.m.
Police Pension Board of Trustees	02/13/2007	4:00 p.m.
Park and Recreation Committee	02/14/2007	7:00 p.m.
Council Committee of the Whole (Tuesday)	02/20/2007	6:00 p.m.
City Council (Tuesday)	02/20/2007	7:30 p.m.

=====

The Prairie Village Arts Council is pleased to feature a watercolor on cloth exhibit by Rebecca Darrah in the R.G. Endres Gallery during the month of February.

The State of the County Address will be Tuesday, March 27, 2007 at the Ritz Charles, 9000 W 137<sup>th</sup> Street, Overland Park from 11:30 a.m. to 1:15 p.m. If 8 people attend the City will purchase a table. Please RSVP to Jeanne.

The annual large item pick-up has been scheduled with Deffenbaugh for April 28<sup>th</sup>.

The City offices will be closed February 19<sup>th</sup> in observance of President's Day.

Donations to the Holiday Tree Fund are still being accepted. The funds will be used to assist Prairie Village families and Senior Citizens needing help to pay their heating and electric bills during the cold winter months, as well as with home maintenance throughout the year. Your tax-deductible contributions are appreciated.

**Prairie Village Gift Cards are on sale at the Municipal Building.** This is a great way to encourage others to "Shop Prairie Village."

The 50<sup>th</sup> Anniversary books, Prairie Village Our Story, are being sold to the public.

**ADJOURNMENT**

With no further business to come before the Council, the meeting was adjourned at

8:25 p.m.

Joyce Hagen Mundy  
City Clerk

## CITY TREASURER'S WARRANT REGISTER

DATE WARRANTS ISSUED:

Warrant Register Page No.   1  

February 12, 2007

**Copy of Ordinance**  
2635

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	WARRANT NUMBER	AMOUNT	TOTAL
<b><u>EXPENDITURES:</u></b>			
Accounts Payable			
85566-85576	1/5/2007	8,362.67	
85578-85706	1/12/2007	177,646.12	
85707-85715	1/18/2007	106,197.96	
85716-85818	1/26/2007	150,570.19	
85819-85820	1/27/2007	1,469.05	
85821-85827	1/31/2007	14,534.24	
Payroll Expenditures			
1/5/2007		201,185.57	
1/19/2007		246,903.54	
Electronic Payments			
Intrust Bank -credit card fees (General Oper)		311.79	
State of Kansas - sales tax remittance		12.14	
Marshall & Ilsley - Police Pension remittance		6,648.23	
Intrust Bank - fee		356.99	
KCP&L		6,912.55	
MHM - Section 125 admin fees			
Intrust Bank - purchasing card transactions		10,160.08	
United Health Care		69,329.85	
Kansas Gas		4,514.43	
<b>TOTAL EXPENDITURES:</b>			<b>\$ 1,005,115.40</b>
Voided Checks			
NE Johnson County Chan      85790		(1,469.05)	
Bob Allen Ford                85591		(84.07)	
Bill Griffith                  85515		(47.48)	
Ron Shaffer                    85677		(1,838.80)	
<b>TOTAL VOIDED CHECKS:</b>			<b>(3,439.40)</b>
<b>GRAND TOTAL CLAIMS ORDINANCE</b>			<b>1,001,676.00</b>

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

Passed this 19th day of February 2007.

Signed or Approved this 19th day of February 2007.

(SEAL)

ATTEST: \_\_\_\_\_  
*City Treasurer*
*Mayor*

**Issue:**

**Consider appointment to the Sister City Committee**

**Background:**

Mayor Shaffer is pleased to place before you the appointment of Carole Mosher to the Prairie Village Sister City Committee to complete the unexpired term of Alyce Grover expiring in April, 2009. Carole was a former member of the Sister City Committee for several years and actively involved in the foreign exchange student program at Shawnee Mission East. Her volunteer application is attached.

**Recommendation:**

**Ratify the Mayor's appointment of Carole Mosher to the Prairie Village Sister City Committee to complete the unexpired term of Alyce Grover ending in April, 2009.**

**CONSENT AGENDA**



**City of Prairie Village  
APPLICATION TO VOLUNTEER**

Please complete this form and return it to the City Clerk's Office, 7700 Mission Road, Prairie Village, Kansas 66208. If you have any questions, please contact the City Clerk's Office at 913-381-6464 or send an e-mail to [cityclerk@pvkansas.com](mailto:cityclerk@pvkansas.com).

Name Carole Mosher Spouse's Name \_\_\_\_\_  
Address 8036 Pawnee St #162 Zip 66208 Ward \_\_\_\_\_  
Telephone: Home 385-0447 Work 816-931-8746 Fax \_\_\_\_\_  
E-mail CMosher@kc.rr.com Other Number(s): \_\_\_\_\_  
Business Affiliation Wells Fargo  
Business Address One Ward Parkway KC Mo 64112  
What Committee(s) interests you? Sister Cities

Please tell us about yourself, listing any special skills or experiences you have which would qualify you for a volunteer with the City of Prairie Village.

Before moving to Phoenix two years ago I was a member  
of Sister Cities and now that I have returned would like  
to rejoin. Previously I lived in Prairie Village for  
approximately 17 years. Since 1995, I have hosted seven  
foreign exchange students, five of whom a Hendel  
Shawnee Mission East. French was my major in college  
and I also have studied Spanish, Italian and Japanese

Thank you for your interest in serving our community.

**SISTER CITY COMMITTEE**

City of Prairie Village, KS

12 members-including 1 Council member, 2 youth representatives (1 year term)

Chair & Vice-chair selected from general membership (3 year terms)

Meets the 2<sup>nd</sup> Monday of each month

Established by Council Policy 020 in September, 1997

Michael	Kelly	Council Liaison	2231 West 72nd Terrace Prairie Village, KS 66208	913-461-7644 <a href="mailto:mansfieldkelly@mac.com">mansfieldkelly@mac.com</a>	
Carole	Mosher		8036 Pawnee Street #102 Prairie Village, KS 66208	913-385-0447 816-931-5746 <a href="mailto:cmosher@kc.rr.com">cmosher@kc.rr.com</a>	4/2009
James	Hohensee		7311 Falmouth Prairie Village, KS 66208	913-632-0677 816-235-1716 (w) <a href="mailto:hohensee@umkc.edu">hohensee@umkc.edu</a>	4/2007
Cleo	Simmonds		2902 West 71 <sup>st</sup> Terrace Prairie Village, KS 66208	913-831-1934 <a href="mailto:csimmonds@kc.rr.com">csimmonds@kc.rr.com</a>	4/2008
Bob	McGowan		4805 West 81 <sup>st</sup> Street Prairie Village, KS 66208	913-341-1152 <a href="mailto:mamac@planetkc.com">mamac@planetkc.com</a>	4/2007
Cindy	Dwigans	Chair	7900 Fontana Prairie Village, KS 22608	913-381-9165 <a href="mailto:cdwigans@kc.rr.com">cdwigans@kc.rr.com</a>	4/2009
Alexandra	Thompson		4227 W. 94 <sup>th</sup> Terrace #211 Prairie Village, KS 66207	913-488-1505 <a href="mailto:Alt9B8@yahoo.com">Alt9B8@yahoo.com</a>	4/2008
Robert	Moffat		8221 Juniper Lane Prairie Village, KS 66208	913-648-6959 913-676-2460 <a href="mailto:remoffat@aol.com">remoffat@aol.com</a>	4/2007
Allan	Beshore		8221 Roe Avenue Prairie Village, KS 66208	913-383-1220 <a href="mailto:abeshore@sbcglobal.net">abeshore@sbcglobal.net</a>	4/2009
Richard (Dick)	Bills		3530 West 83 <sup>rd</sup> Street Prairie Village, KS 66208	913-381-4242 (f) 913-636-0400 (c)	4/2008
Vacancy		Student Member			4/2007
Vacancy		Student Member			
Ron	Shaffer	Mayor Ex-Officio	4011 Homestead Drive Prairie Village, KS 66208	913-985-4600 <a href="mailto:Mayor@pvkansas.com">Mayor@pvkansas.com</a>	
STAFF: Barbara	Vernon	City Administrator		913-385-4601 <a href="mailto:bvernon@pvkansas.com">bvernon@pvkansas.com</a>	
Doug	Luther	Staff			



**CONSIDER 2007 Legislative Program**

**Issue: Prairie Village Legislative Priorities**

**Background:**

At the February 5<sup>th</sup> meeting, the Council Committee of the Whole directed staff to prepare the 2007 Legislative Priorities per the direction given by the Council.

The 2007 Legislative Program is attached.

**Recommendation:**

**APPROVE THE 2007 LEGISLATIVE PROGRAM.**

**COUNCIL ACTION REQUIRED  
CONSENT AGENDA**

## **CONSENT AGENDA**

### **APPROVE THE PURCHASE OF TRAFFIC UNIT MOTORCYCLES**

**Issue:**

Approve the purchase of two new traffic unit motorcycles.

**Background:**

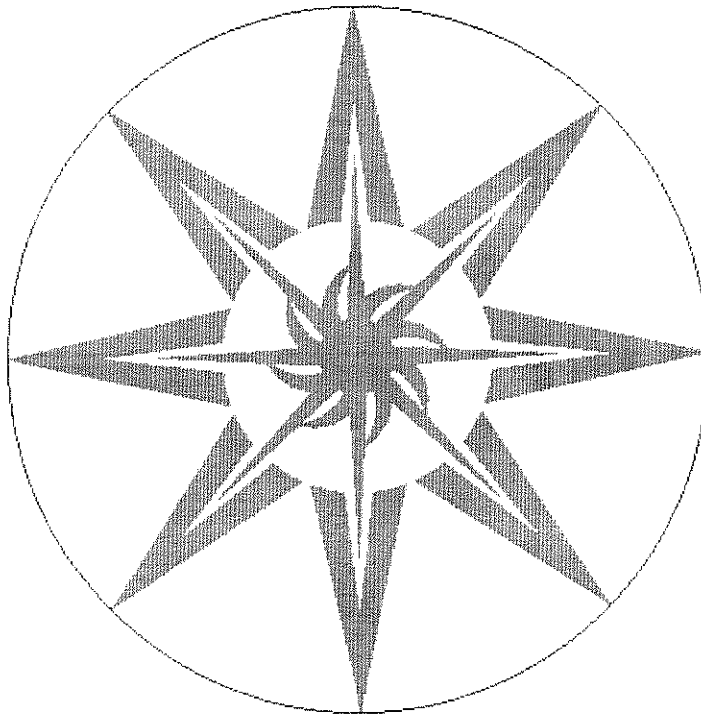
At the time of the purchase of the two traffic unit motorcycles in 2005, Gail's Harley-Davidson extended a guaranteed trade-in value if the motorcycles were traded within a 2-year period. The motorcycles were purchased for \$12,445 each and Gail's Harley-Davidson has allowed a trade-in of \$11,800 per unit. In addition, by agreeing to a two-year rotation, the units remain under full warranty as well.

The City Council approved \$6000.00 (including trade-in) for the purchase of two traffic unit motorcycles in the 2007 Budget. The cost for the purchase, including new options (ABS brakes) will be \$2995.00 per unit for a total cost of \$5990.00.

**Recommendation:**

Staff recommends the purchase of two 2007 Harley-Davidson motorcycles (including trade-in) from Gail's Harley-Davidson for \$5990.00.

# **CITY OF PRAIRIE VILLAGE**



## **LEGISLATIVE PROGRAM 2007**

## 2007 Legislative Priorities

### EDUCATION

**State Funding of Public Education** – The City of Prairie Village supports legislation that would remove or raise school districts' local option budget cap – the limit on money a district can raise through taxes above its basic state aid. The City does not oppose a state tax increase to fund public education.

### REVENUE AND TAXATION

**Municipal Revenue** – The City of Prairie Village supports legislation that preserves existing municipal revenue sources, including state aid, or provides authority for local option municipal revenue enhancement.

**Unfunded State Mandates** – The City of Prairie Village opposes legislation that imposes additional state mandated functions, activities, or practices on units of local government.

**Spending Limitations and Tax Lids** – The City of Prairie Village opposes legislation imposing limits to either taxing or spending by local governments. Consistent with the concept of Home Rule authority, local governing bodies most appropriately make local taxing and spending decisions.

**Franchises and Franchise Fees** – The City of Prairie Village encourages the Kansas Congressional Delegation and the Kansas Legislature to protect the ability of cities to manage their rights-of-way and impose franchise fees regarding telecommunications and cable companies.

### LEGISLATIVE ITEMS

**Eminent Domain** – The City of Prairie Village supports legislation which continues to allow for the use of eminent domain for economic and community development purposes, including blight remediation, without seeking legislative approval.

**Tax Reduction for Senior Citizens** – The City of Prairie Village is concerned that property tax reduction for senior citizens will limit the ability of cities with a high percentage of senior citizens to meet the needs of constituents without increasing the tax rate.

## Listing of Elected City Officials

All public officials and appointed staff can be reached at the Prairie Village Municipal Building by calling 913-381-6464 or by sending an e-mail to their respective addresses.

### Mayor

4/2007 Ron SHAFFER  
mayor@pvkansas.com

### City Council

#### WARD I

4/2010 Bill GRIFFITH  
bgriffith@pvkansas.com  
4/2008 Al HERRERA  
aherrera@pvkansas.com

#### WARD II

4/2010 David VOYSEY  
dvoysey@pvkansas.com  
4/2008 Ruth HOPKINS  
rhopkins@pvkansas.com

#### WARD III

4/2010 Michael KELLY  
mkelly@pvkansas.com  
4/2008 Andrew WANG  
awang@pvkansas.com

#### WARD IV

4/2010 Laura WASSMER  
lwassmer@pvkansas.com  
4/2008 Pat DANIELS  
pdaniels@pvkansas.com

#### WARD V

4/2010 Charles CLARK  
cclark@pvkansas.com  
4/2008 Wayne VENNARD  
wvennard@pvkansas.com

#### WARD VI

4/2010 David BELZ  
dbelz@pvkansas.com  
4/2008 Diana Ewy SHARP  
desharp@pvkansas.com

**COUNCIL COMMITTEE OF THE WHOLE  
FEBRUARY 5, 2007**

The Council Committee of the Whole met on Monday, February 5, 2007 at 6:00 p.m. The meeting was called to order by Council President David Belz with the following members present: Al Herrera, Bill Griffith, Ruth Hopkins, David Voysey, Michael Kelly, Andrew Wang, Pat Daniels, Charles Clark, Wayne Vennard and Diana Ewy Sharp. Staff members present: Barbara Vernon, City Administrator; John Walter, Acting Chief of Police; Bob Pryzby, Director of Public Works; Doug Luther, Assistant City Administrator and Joyce Hagen Mundy, City Clerk.

Al Herrera moved the approval of the Consent Agenda for Monday, February 5, 2007:

- Approve the Interlocal Agreement with the City of Leawood for Project SP105: Mission Road-83<sup>rd</sup> Street to 95<sup>th</sup> Street microsurfacing
- Approve the agreement with Shafer, Kline & Warren in the amount of \$187,000 for Construction Administration Services on Project 190708: Tomahawk Storm Drainage Improvements (Nall Avenue to Roe)
- Approve the construction contract with Linaweaver Construction for Project 190708: Tomahawk Storm Drainage (Nall Avenue to Roe) in the amount of \$2,178,915.25
- Approve the construction contract with Musselman & Hall Contractors, Inc. for Project SP107: 2007 Street Repair Program in the amount of \$78,890 with funding from the Public Works Operating Budget

**COUNCIL ACTION NEEDED  
CONSENT AGENDA**

The motion was voted on and passed unanimously.

**COU2007-07 Consider Prairie Village Legislative Program for 2007**

Barbara Vernon reported the City was unable to arrange a meeting with the City's legislative delegation. Representative Kay Wolf suggested the priorities be mailed to the delegation this year and the City investigate joining with other cities and the chamber to sponsor a joint meeting next year. There is a lunch meeting scheduled every Wednesday for the Johnson County Delegation where cities and/or organizations speak about issues important to them. It was suggested that perhaps the northeast Johnson County cities could go together to sponsor a lunch meeting. Ruth Hopkins confirmed this would be held in Topeka on a Wednesday.

Barbara Vernon reviewed the existing legislative priorities with the Council for inclusion in the 2007 priorities as listed below:

**State Funding of Public Education** - *The City of Prairie Village supports legislation that would remove or raise school districts' local option budget cap - the limit on money a district can raise through taxes above its basic state aid. The City does not oppose a state tax increase to fund public education.*

Mrs. Vernon asked the Council if they wanted to retain the last sentence. Ruth Hopkins stated she would support an increase for education and felt the residents of the City would agree.

**Municipal Revenue** - *The City of Prairie Village supports legislation that preserves existing municipal revenue sources, including state aid or provides authority for local option municipal revenue enhancement.*

Diana Ewy Sharp asked if there was a threat to municipal revenue. Mrs. Vernon responded not as long as the city is very specific in its language proposing a revenue enhancement. Mrs. Ewy Sharp stated she supports the statement, but questioned if it was a priority if there is no threat of losing it.

**Unfunded Mandates** - *The City of Prairie Village opposes legislation that imposes additional state mandated functions, activities, or practices on units of local government.*

Mrs. Vernon noted the costs for NIMS training were being calculated as an example of the lost labor cost for the implementation of this recent mandate.

**Spending Limitations and Tax Lids** - *The City of Prairie Village opposes legislation imposing limits to either taxing or spending by local governments. Consistent with the concept of Home Rule authority, local governing bodies most appropriately make local taxing and spending decisions.*

Mrs. Vernon explained the difficulties experienced when the city was under a tax lid.

**Franchises and Franchise Fees** - *The City of Prairie Village encourages the Kansas Congressional Delegation and the Kansas Legislature to protect the ability of cities to manage their rights-of-way and impose franchise fees regarding telecommunications and cable companies.*

Mrs. Vernon noted the state has been chipping away at these funds over the past years and utilities such as AT&T are proposing legislation to further limit the city's powers. Prairie Village received \$1.6 million in franchise revenue. Last year the City received \$300 more than in 2005. This fund source is not growing but is an important revenue source.

**Eminent Domain** - *The City of Prairie Village supports legislation which continues to allow for the use of eminent domain for economic and community development purposes, including blight remediation, without seeking legislative approval.*

Mrs. Vernon noted the City has only used this in right-of-way acquisition and she does not see it being used in the future. The statement is more supportive of leaving it alone.

Charles Clark commented on reaction to the Supreme Court ruling on this.

The Council agreed to go forward with the 2006 Legislative Priorities.

Barbara Vernon reviewed items contained in other cities' legislative priorities for consideration by the Council.

**Public Infrastructure Systems.** Mission, Olathe, MARC & LKM support legislation for regional public infrastructure systems including mass transportation and security needs. **Initial consensus - Yes, later removed.**

David Belz stated he feels eventually there will be a mass transit system in the area and he does not want Prairie Village excluded from opportunities for its use. He wants to make sure, when developed, it comes through Prairie Village. Mrs. Vernon responded MARC has a plan for the entire region which would include some Prairie Village connections.

Michael Kelly supported the statement, but noted he does not necessarily support the MARC plan

**Public Notices.** The City of Olathe supports legislation that gives cities the right to publish public notices and records electronically on their websites as opposed to a commercial print media. Mrs. Vernon stated the City spent \$2,500 on public notices and she does not see this as an issue for the City. **Council consensus - No**

David Voysey asked if the priorities are ranked in order of importance. Bill Griffith responded, a few years ago, the City only submitted one item in support of schools, so that item remains at the top of the list. He does not see them as ranked by importance. Ruth Hopkins stated she does not feel they are perceived as ranked by the legislators.

Michael Kelly confirmed the legislative delegation does look at these.

**Ballot Taxing Authority.** The City of Olathe supports legislation that limits non-elected bodies from placing tax issues on a ballot for public approval. **Council consensus - No**

**Homeland Security.** The Cities of Shawnee, Mission, LKM and JoCo support giving local governments maximum flexibility over use of monies and resources for Homeland Security. This addresses how homeland security money is

handled. Mrs. Vernon stated the funds are currently channeled through MARC.  
**council Consensus - No**

David Belz feels the cities should have the ability to determine how the money is spent.

Bill Griffith stated "priority" means "priority" and he feels adding several items to the list diminishes its value. Ruth Hopkins stated she agreed and stated she does not feel the transportation issue should be listed as a Prairie Village priority. She feels it is a regional priority.

David Belz repeated his concern that Prairie Village be included whatever transportation system is developed.

Michael Kelly stated he does not want to see the impact of the priorities watered down. Diana Ewy Sharp stated she agreed with Mrs. Hopkins' view of a priority as an issue you would take the time to travel to Topeka to fight for. She recommended choosing only three items.

David Belz stated he does not have a problem removing the transportation issue this year, but as discussion progresses he feels it is important for the City to be part of those discussions to ensure that Prairie Village is included in the plan. Bill Griffith felt that by going through MARC, the city was covered. It was agreed to remove Transportation from the city's priorities.

**Veterans Preference.** *This priority for MARC supports changing KSA 73-201 regarding Veteran's preference in hiring and promotion to be revised to apply only to initial employment, and that all promotions thereafter should be based on merit.* **Council consensus - No**

Mrs. Vernon stated she and Chief Grover discussed this earlier with the City Attorney's office who feels the City needs to do something internally. Chief Grover felt it would not be difficult to do in the initial hiring process but would be more difficult in the promotional process.

Wayne Vennard stated his opposition stating veterans receive very few benefits for the service they give and he feels such action is merited.

Bill Griffith agreed it needs to be addressed internally, but it is not a legislative priority.

Pat Daniels asked how these would be presented. Barbara Vernon replied in the past, when meetings were not held, they were mailed with a cover letter from the Mayor. She noted that cover letter could address the City's priorities and provide emphasis.



Diana Ewy Sharp confirmed the City would be addressing this issue through an internal policy.

Diana Ewy Sharp raised concerns with the proposed lid on senior citizen taxes and its potential impact on Prairie Village which relies heavily on property tax revenue and has an aging population. The Kansas League of Municipalities sees this as an area of concern. Mrs. Ewy Sharp stated she spoke with David Wysong earlier and he does not see the legislation getting out of committee.

Charles Clark noted not all senior citizens are created equal - some are in need of such a benefit and others are not. Mrs. Vernon replied she felt there was a lid tied to the value of the home. Mrs. Ewy Sharp stated she felt this could have a significant impact on Prairie Village and although it may not be a priority, Council members should keep it on their radar.

Michael Kelly noted the specifics of the legislation are not known.

Bill Griffith stated similar legislation in others parts of the country are attached to limits on the growth of the reappraisal values limiting the amount of increase allowed. It noted this is generally not significant initially, however, over the course of several years, the amount can become very significant especially in a community such as Prairie Village.

David Belz agreed with Mrs. Ewy Sharp that this legislation could have a substantial impact on city revenues.

It was agreed that this was an area of concern for the City and that more information was needed. Mr. Griffith recommended the City Administrator include a sentence with the priorities expressing this concern.

Staff was instructed to prepare the 2007 Legislative Priorities per the direction given by the Council for approval at the next Council Meeting.

#### **COUNCIL ACTION REQUIRED**

Bill Griffith asked what happened with the concealed weapons legislation.

John Walter responded that several counties have added additional restrictions to the language passed by the state including such restrictions as not being allowed in City Halls or in any public facility or property. The Legislature is not happy with the additional restrictions added by cities and is proposing legislation to restrict the ability of cities to add restrictions. Barbara Vernon stated the City staff is addressing this issue in a Council Policy regarding weapons in the workplace which will be brought to the Council soon.

David Belz explained to the Council it was Chief Grover's recommendation that Captain John Walter and Captain Wes Jordan serve as the Acting Chief of Police covering alternating months until the appointment of a new chief. Both

individuals have served as acting chief in Chief Grover's absence and have the experience and ability to fill the position in the interim period.

**COU2007-12 Consider Drainage Consultant Selection**

The Selection Committee of Ruth Hopkins, David Belz and Tom Trienens has completed the solicitation process for selecting a Drainage Consultant for the 2008 Drainage Repair Program.

Initially, nine consultants submitted proposals. The committee selected three firms for oral interviews. Two firms, HNTB and GBA, were chosen to submit a cost estimate for typical drainage work.

After review and discussion with Bob Pryzby, GBA was selected and is recommended for approval. Upon City Council acceptance of the committee selection, a specific design agreement will be prepared and submitted for City Council approval.

Ruth Hopkins made the following motion, which was seconded Al Herrera and passed unanimously:

**ACCEPT THE RECOMMENDATION OF THE SELECTION  
COMMITTEE TO RETAIN GEORGE BUTLER & ASSOCIATES  
(GBA) TO PROVIDE DRAINAGE DESIGN SERVICES FOR  
THE 2008 DRAINAGE REPAIR PROGRAM  
COUNCIL ACTION TAKEN  
02/05/2007**

**COU2007-13 Consider 2008-2012 CARS Application**

In order to receive CARS funds, the City must annually submit an application containing a list of streets and the estimated costs. The following streets are recommended for the five-year CARS program, 2008-2012. The Public Works Department compiled the list based on the pavement condition. The work will include, where necessary, full depth pavement repair, curb and gutter replacement, sidewalk repair, and milling/overlaying the pavement.

Program Year	Street Segment	Limits	Total Estimated Construction Cost	Prairie Village Cost
2008	75 <sup>th</sup> Street	Belinder Avenue to Stateline Road	\$780,000	\$390,000
2008	Roe Avenue	91 <sup>st</sup> Street to Somerset Drive	\$788,000	\$394,000
		<b>Total</b>	<b>\$1,568,000</b>	<b>\$784,000</b>
2009	Roe Avenue	83 <sup>rd</sup> Street to Somerset Drive	\$694,000	\$347,000

2009	Roe Avenue	North City Limit to 67th Street	\$694,000	\$347,000
		<b>Total</b>	<b>1,388,000</b>	<b>\$694,000</b>
2010	Somerset Drive	Roe Avenue to Nall Avenue	\$934,000	\$467,000
2010	Somerset Drive	83 <sup>rd</sup> Street to Delmar	\$380,000	\$190,000
		<b>Total</b>	<b>\$1,314,000</b>	<b>\$657,000</b>
2011	75 <sup>th</sup> Street	Belinder Avenue to Mission Road	\$1,336,000	\$668,000
		<b>Total</b>	<b>\$1,336,000</b>	<b>\$668,000</b>
2012	Somerset Drive	83 <sup>rd</sup> Street to Mission Road	\$481,000	\$240,500
2012	83 <sup>rd</sup> Street	Roe Avenue to Somerset Drive	\$281,000	\$140,500
2012	Mission Road	63 <sup>rd</sup> Street to 67 <sup>th</sup> Street *	\$702,000	\$175,500
		<b>Total</b>	<b>\$1,464,000</b>	<b>\$556,500</b>

Mr. Pryzby noted the City submits an application annually and can revise future year requests. Design costs are not shown. Funding for the 2008 Program will be presented in the 2008 Budget Request.

\*City of Mission Hills to participate 50%.

David Voysey asked Mr. Pryzby how he saw the availability of CARS funding. Mr. Pryzby responded his personal opinion is it is shaky. He doesn't know from year to year where the funding will come from. The size of the program has not been increased in several years.

Ruth Hopkins felt some of the County Commissioners would like to see the entire funding go to the County and she feels the City should fight to continue city funding. Mr. Pryzby responded he is notified in advance of any hearings where the issue is discussed.

Mr. Voysey asked what was included under the CARS program. Mr. Pryzby stated CARS began as an intra-city program and initially provided for maintenance, but it has expanded over the years. One of his concerns is the distribution formula for the award of funds is based on population and gas tax revenue, neither of which favors Prairie Village. His first year with the City, Prairie Village received \$900,000 in CARS funding. The current funding is \$600,000.

Wayne Vennard made the following motion, which was seconded by Ruth Hopkins and passed unanimously:

**RECOMMEND THE CITY COUNCIL APPROVE THE 2008-2012  
CARS APPLICATION FOR THE CITY OF PRAIRIE VILLAGE  
COUNCIL ACTION TAKEN  
02/05/2007**

**COU2007-14 Consider Right Turn only on Somerset Drive at 83<sup>rd</sup> Street**

Bob Pryzby noted later this spring, Project 190708 will provide for construction on the storm drain project on 83<sup>rd</sup> Street from Delmar Street to Somerset Drive and then south on Somerset Drive to the culvert under the office parking lot. There is a west lane on Somerset Drive running south from 83<sup>rd</sup> Street that terminates at about 400 feet from the intersection. The construction will be in this lane.

He has discussed with the Police Department the idea of removing this lane after construction and creating more lawn area. This lane is used by vehicles that are proceeding south on Somerset Drive crossing 83<sup>rd</sup> Street who then have to squeeze into the left lane on Somerset Drive that continues south. By removing the lane, the west lane on Somerset Drive approaching 83<sup>rd</sup> Street will become a Right Turn Lane Only, which is what the majority of vehicles do.

Mr. Pryzby stated he would like to make the change before construction by installing the "Right Turn Only" signage required by MUTCD. Since this is an enforceable traffic regulation, Council action needs to be taken by resolution the City Clerk has prepared. The resolution needs to be approved by the City Attorney and will be attached to the committee minutes in the next packet.

Bill Griffith made the following motion, which was seconded by Al Herrera and passed unanimously:

**AUTHORIZE STAFF TO PREPARE A RESOLUTION DESIGNATING  
THE WEST LANE ON SOMERSET DRIVE APPROACHING  
83<sup>RD</sup> STREET AS A "RIGHT TURN ONLY" LANE AND APPROVE  
INSTALLATION OF "RIGHT TURN ONLY" SIGNAGE  
COUNCIL ACTION REQUIRED  
CONSENT AGENDA**

**Report on City Infrastructure Rating**

Bob Pryzby reported over the past several years, the public works staff has prepared condition ratings on City infrastructure. The condition ratings range from 100 for the best to 50 as the lowest rating. The City has been segmented into 19 work districts and each year approximately four districts are reviewed to verify inventory and obtain new condition ratings, resulting in approximately 20% of the City being done annually.

**Tree Inventory Condition Rating = 97**

The City inventory lists 9,469 trees on City right-of-way, parks or other City property. All have been rated. The rating looks at the condition of the canopy, limbs and root system.

David Belz confirmed the ratings reported are the average. Mr. Pryzby noted the ratings are high because bad trees once identified are removed and replaced with new trees, therefore, there are no bad ratings included in the average.

**Sign Inventory Condition Rating = 96**

The inventory lists 3,851 signs. The signs are traffic control, street ID, specialty signs (Military Trail) and general information (Post Office) that are City right-of-way, parks or other City property. All the signs have a rating based on the condition of the sign, i.e. is it fading, pole damaged? Again this is a high rating because almost immediate action is taken to remove and replace damaged signs.

Pat Daniels asked if the City should be considering illuminated signs. Mr. Pryzby replied he didn't have any reasons to make the change, noting the current signs use large lettering and are placed on reflective backgrounds and the added operating costs for the illuminated signs.

David Belz asked what the status was on the installation of the new City Entrance signs. Mr. Pryzby replied a pre-construction meeting was held a few weeks ago and the contractor is ready to begin installation, but waiting for a break in the cold weather.

**Curb/Gutter Inventory Condition Rating = 91**

The inventory lists 1,730 segments totaling 40,037 linear feet (7.6 miles). All segments have been rated. This rating is impacted by the ongoing curb and gutter program as well as work done in conjunction with street paving and the concrete repair program.

**Drain Pipe Inventory Condition Rating = 90**

The inventory lists 3,107 segments totaling 234,995 feet (44.5 miles). The inventory is complete, but only 259 segments have been rated. About three years ago, the City purchased a camera that allows the City to determine the condition of the inside of pipes. The high rating is suspect because of the small number of pipe segments that have been evaluated.

**Drain Structure Inventory Condition Rating = 90**

The inventory lists 3,720 structures. The types of structures are drain inlets, manholes, junction boxes, headwalls and pipe outlets. The inventory is complete, but only 243 segments have been rated, again making the rating accuracy questionable.

**Sidewalk Inventory Condition Rating = 89**

The inventory lists 2,080 segments totaling 487,358 linear feet (92.3 miles). All segments have a rating; however, Mr. Pryzby pointed out that 20% of those ratings are five years old. Again, this rating remains high because of the immediate repair of sidewalks as they are identified.

**Pavement Inventory Condition Rating = 83**

The inventory lists 506 segments totaling 604,466 feet (114.5 miles). Parking lot pavement is not included at this time. All segments have been rated. Mr. Pryzby noted the additional funds spent on this program should be reflected in next year's rating. The amount of work that can be done on this program has been limited by rising oil prices recently. The bids for upcoming projects have not been as impacted by oil prices.

**ADA Ramp Inventory Condition Rating = 83**

The inventory lists 1,279 ramps. All ramps have been rated. The 83 rating is primarily because several of the ramps do not have a tactical surface, currently required, but which the City does not have to replace those ramps until they become part of a scheduled project. The condition of the ramps is good.

**Traffic Street Marking Condition Rating = 82**

The inventory lists 709 segments. All segments have been rated. Mr. Pryzby questioned this rating as many of the segments were evaluated several years ago. He is going to change the evaluation rotation period from 20% annually to 33% annually.

Pat Daniels asked if other cities used condition ratings. Mr. Pryzby replied the City of Kansas City, Missouri uses the same program for their pavement and sidewalks.

Mr. Daniels stated the program is excellent and commended Mr. Pryzby and his staff for the development of this objective evaluation program. He asked if at this point the system was could run itself. Mr. Pryzby noted the rotation of the evaluations and the gathering of the data are established; however, the data attained by the evaluations is contained in an access data base for reporting which he does. None of his current staff are proficient in access at this time; however, he feels his office manager could determine how to develop the necessary reports from the data.

With no further business to come before the committee, the meeting was adjourned at 7:15 p.m.

David Belz  
Council President

**RESOLUTION NO. 2007-01**  
**City of Prairie Village, Kansas**

**WHEREAS**, Section 14-200 of the Code of the City of Prairie Village, Kansas, 2003, entitled "Traffic Control Devices and Markings" provides that the Governing Body may, by resolution, establish and fix the location of traffic control devices as may be deemed necessary to guide and warn traffic; and

**WHEREAS**, it has been determined by City Staff that merging traffic from the west lane of Somerset Drive running south from 83<sup>rd</sup> Street is hazardous; and

**WHEREAS**, City Staff has recommended that the Governing Body of the City of Prairie Village, Kansas designate the west lane on Somerset Drive approaching 83<sup>rd</sup> Street as a "Right Turn Lane Only";

**NOW THEREFORE, BE IT RESOLVED**, by the Governing Body of the City of Prairie Village, Kansas, as follows:

The west lane on Somerset Drive approaching 83<sup>rd</sup> Street is hereby designated as a "Right Turn Lane Only" and shall be so marked in accordance with the MUTCD.

**ADOPTED BY THE GOVERNING BODY ON THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2007**

**APPROVED AND SIGNED BY MAYOR RONALD L. SHAFFER ON THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2007.**

\_\_\_\_\_  
Ronald L. Shaffer, Mayor

**ATTEST:**

\_\_\_\_\_

**PRAIRIE VILLAGE SUPPLEMENTAL RETIREMENT PLAN  
ADVISORY BOARD**

**January 29, 2007**

**Minutes**

The Supplemental Retirement Plan Advisory Board met January 29, 2007. Present and presiding: Chairman Charles Clark. Members present: Wayne Vennard and Bob Pryzby. Staff and consultants present: Tim Duncan and Lance Zimmerman representing M&I, Brian Johnston with Lathrop and Gage, Barbara Vernon, Doug Luther and Jeanne Koontz.

The Committee approved the minutes of the meetings held on July 18, 2006 and December 18, 2006.

**Investment Report for 2006**

Tim Duncan said the market was up for 2006; the plan made money. He said during 2006 all balances were moved into the Growth Balance MAAP. He reviewed the cash flow summary. The beginning market value in 2006 was \$2,234,137. The ending market value in 2006 was \$2,552,756. Mr. Duncan reported on the performance summary of the plan. Total portfolio YE 2006 was 10.62. The M& I Growth Balanced MAAP was 11.39. Fourth Quarter 2006 was 4.83. The annualized yield (2 years, 9 months) was 8.03. Mr. Duncan said the growth balanced fund is managed by an allocation committee. 65% was invested in equity and 35% in bonds; this has benefited the plan. There are no manager changes on this committee. Mr. Duncan reported on the performance analysis of each fund. The bond markets are doing well. The equity markets had excellent performance. He said he would keep an eye on Davis NY Venture Y which are not doing as well as expected. The Harbor Capital and T Rowe Stock did not do well which probably had to do with their heavy interest in healthcare stocks. The Marshall Mid Cap Value did not do well because of oil stocks. Mr. Duncan said he is not concerned about this fund long-term. The Calamos Growth Fund was behind for the year. This was related to tech and health care stocks. He said this fund has had a nice track record. The international funds have all done well and are above category average. Mr. Duncan said he will be watching the Marshall Mid-Cap Value, Marshall Large-Cap Value and Calamos, because they are not performing as well as projected.

Charles Clark asked if the distribution is equal among the funds. Tim Duncan the break down is pretty equal.

Tim Duncan gave a market review. Inflation and interest growths have slowed down. He expects unemployment numbers to creep up. The housing market is not imploding as some projected and mortgage equity withdrawal is not as attractive as it has been. He is concerned about the effects of the "interest only" mortgages when the principal comes due. Bob Pryzby asked if this would prevent the big fallout with mortgages that happened four or five years ago. Mr. Duncan said the fallout should not be as bad this



time. Mr. Duncan said the International markets out-performed the Domestic markets and value markets out-performed growth markets. Emerging markets are up 17.6%.

Charles Clark asked if M&I was considering changes in the allocations to the three funds they are watching. Tim Duncan said the allocation process is more philosophical. Markets are typically cyclical. They will give the funds some leash to do well and if they are not doing well then they will make a change to another fund. He stated M&I has to be careful with allocations to their own fund. Charles Clark said he thinks the employees will be happy with the final number.

### **Consider Supplemental Retirement Plan 2007 Contribution**

Charles Clark stated at the last meeting Wayne Vennard had brought up the idea of increasing contributions. Mr. Clark said since then the City has had a survey of wages and benefits that says the City is already competitive in this area. Barbara Vernon said her only concern is that the Committee and Council said they agree to Police Pensions changes to keep up with the City of Overland Park's Plan. She said the Overland Park's contribution to the Supplemental Plan is 10% which would be hard for Prairie Village to match. Charles Clark said if the contribution amount is increased, it will eventually come out of wages because the City will not be able to give raises. Wayne Vennard said the contribution amount should remain the same since the City is already competitive. Charles Clark asked if employees can contribute. Barbara Vernon said the City has a 457 plan they can contribute to. Charles Clark stated the only other issue is the cap at \$50,000. He mentioned this was increased some years ago. Doug Luther said the committee should keep an eye on this issue. Wayne Vennard asked if the committee wanted to consider raising the cap to \$60,000. Charles Clark said he would need to know more about the full picture of someone who makes over \$50,000. Barbara Vernon said her concern is the civilian employees are not as organized as police officers but need to be treated fairly when police receive increased benefits. Doug Luther said most civilian employees do not understand the plan and will not really look at it until they are vested. He said as the cap starts getting closer to the average base salary this issue should be looked at. Bob Pryzby made a motion to authorize contribution of \$118,493 to the Supplemental Retirement Plan account with M&I for 2007. Wayne Vennard seconded the motion which was approved by a unanimous vote.

### **Review Amended and Restated Supplemental Pension Benefit Plan**

Lance Zimmerman said he thinks the allocation of forfeiture section should be changed. He said generally forfeitures are allocated at the same time as the contribution. He said he does not want to give forfeitures to terminated people. Doug Luther stated if someone is terminated under the plan they will get forfeiture credit during the last year they were in the plan. Barbara Vernon said the plan balance is determined at the EOY based on points then the balances and forfeitures are allocated. Brian Johnston asked if that is what the committee wants it to say. Charles Clark said a person should get the benefit or loss if they are still on the plan. Doug Luther stated there is not a distinction between active and inactive participants. Lance Zimmerman said he just wanted a clarification and does not have a problem continuing the way it has been done.

Brian Johnston passed out the plan and went through the changes made. He reordered and pulled forward most plan definition items. He suggested dropping the second sentence under the definition of accounting date. Charles Clark agreed. Brian Johnston said he tried to reduce the language in 1.07 and limitations on compensation. Bob Pryzby asked if 1.26 is a definition and should be moved up. He also asked if 1.25 should be in Article 2. Brian Johnston said he was willing to move those two items. Brian Johnston also made the following changes to the plan:

- modified the definition of an employee
- added a paragraph in “Hours of Service” for salary based employees
- broke out a separate definition of “leased employee”
- cleaned up second sentence in 3.06
- moved up date someone could get distribution in Article 5
- cleaned up 6.01
- made 6.03 consistent with changes in 5.01
- changed terminology in 6.06 to be consistent with the rest of the document
- fixed typo in 6.06
- eliminated unnecessary language in 6.07
- cleaned up 7.01
- left minor annuity language in 8.01
- modified 9.05

Brian Johnston requested the committee edit the payment options. Lance Zimmerman said employees can choose one of three options or a combination.

Lance Zimmerman said he would like to delete section 9.09 – Individual Accounts because technically M&I does not have separate accounts for participants. He stated that even if a participant has a break in service, they will still be under the same account when they come back. Brian Johnston asked what happens to the old account balance if a distribution was not taken by the participant who had a break in service. Lance Zimmerman said it can be tracked in separate sources. Brian Johnston said that is why he would like to keep the section. Lance Zimmerman said maybe the terminology needs to be changed. Charles Clark said the paragraph needs to be in there in some form. Brian Johnston said he would revise it.

Bob Pryzby asked if the document will need to be sent to the Feds. Brian Johnston said it will eventually need to be sent by the next filing date. He said the changes need to be formally adopted. Charles Clark asked the committee if they were comfortable with doing that.

Wayne Vennard made a motion to adopt the Restated Supplemental Pension Benefit Plan effective January 1, 2006 pending revisions agreed upon by the committee. The motion was seconded by Bob Pryzby and passed by a unanimous vote.

Charles Clark said he would prepare an executive summary for the Council which would include: substantive changes – allowing monthly payments, allocations of gains and losses on a daily basis; reordering, cleaning up, and rearranging; regulatory compliance updates; and incorporation of prior amendments through restated documents.

The meeting was adjourned at 5:15 pm.

Charles Clark  
Chairman

**The City of Prairie Village, Kansas  
Supplemental Pension Benefit Plan**

**Restated Effective Date: January 1, 2006**

*final*  
*2/12/2007*

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**THE CITY OF PRAIRIE VILLAGE, KANSAS**  
**SUPPLEMENTAL PENSION BENEFIT PLAN**

The City of Prairie Village, Kansas, a municipal corporation organized under the laws of the State of Kansas, hereby adopts this restatement of its Supplemental Pension Benefit Plan and Trust Agreement.

The City of Prairie Village, Kansas continues its Plan for the administration and distribution of contributions made by it or the purpose of providing retirement benefits for eligible employees. The provisions of this plan shall apply solely to an Employee whose employment with the City terminates on or after the effective date. If an Employee's employment with the City terminates prior to the effective date, that Employee shall not be entitled to any benefit under the Plan.

## ARTICLE I

### DEFINITIONS

Whenever used herein, the following words and phrases shall have the meanings ascribed to them in this Section, unless otherwise specifically defined or unless the context clearly otherwise requires. However, certain other words and phrases used in the Plan may be defined in other portions of the Plan, in the context of the provisions affected, and shall have such meaning and purposes ascribed therein:

1.01 "Account" shall mean the separate accounts that the Advisory Committee or the Trustee shall maintain for a Participant under the Plan.

1.02 "Accounting Date" shall be the last day of the Plan Year, December 31.

1.03 "Accrued Benefit" shall mean the amount standing in a Participant's Account as of any date derived from both Employer contributions and net earnings therefrom.

1.04 "Advisory Committee" shall mean the Employer's Advisory Committee as from time to time constituted.

1.05 "Beneficiary" is a person designated by a Participant who is or may become entitled to a benefit under the Plan. A Beneficiary who becomes entitled to a benefit under the Plan shall remain a Beneficiary under the Plan until the Trustee has fully distributed his benefit to him. A Beneficiary's right to (and the Plan Administrator's, the Advisory Committee's or a Trustee's duty to provide to the Beneficiary) information or data concerning the Plan shall not arise until he first becomes entitled to receive a benefit under the Plan.

1.06 "Code" means the Internal Revenue Code of 1986, as amended.

1.07 "Compensation" shall mean the total amount of all wages, salary or other similar amounts paid to an Employee, including the calculated annual base wage established as of January 1, or other applicable month, of the Plan Year by the Employer for services rendered by the Employee to the Employer. However, Compensation shall not include overtime wages, Employee expense reimbursement, contributions made by the Employer under the Plan, payments made by the Employer for group insurance, hospitalization and like benefits, nor contributions made by the Employer under any other Employer benefit plan it maintains.

#### **Limitations on Compensation.**

- (1) Compensation Dollar Limitation. The annual Compensation of each Participant taken into account in determining allocations for any Plan Year beginning after December 31, 2001, shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. Annual Compensation means compensation during the Plan Year (also known as the "determination period"). The cost-of-living adjustment in effect for a calendar

year applies to annual compensation for the determination period that begins with or within such calendar year.

For any Plan Year beginning after December 31, 1988, and before January 1, 1994, the Board of Trustees must take into account only the first \$200,000 (or beginning January 1, 1990, such larger amount as the Commissioner of Internal Revenue may prescribe) of any Participant Compensation. For any Plan Year beginning after December 31, 1993, and before January 1, 2002, the Board of Trustees must take into account only the first \$150,000 (as indexed for inflation) of any Participant's Compensation. For any years prior to 1988, Compensation shall include those amounts as otherwise set forth above, but without the Compensation limitation standards set forth herein. To the extent applicable, the Compensation limitation applies to any 12 month period for which the Plan measures a Participant's Compensation and on a prorated basis to any measuring period less than 12 months.

- (2) Family Aggregation. For Plan Years beginning after December 31, 1988, and before January 1, 1997, the Compensation dollar limitation applies to the combined Compensation of the Employee and of any family member who is either (i) the Employee's spouse; or (ii) the Employee's lineal descendant under the age of 19. If, for a Plan Year, the combined Compensation of the Employee and such family members exceeds the Compensation dollar limitation, for benefit accrual purposes, "Compensation" for each such Participant shall mean the amount that bears the same ratio to the Compensation dollar limitation as the affected Participant's Compensation (without regard to the limitation) bears to the combined Compensation of all the affected Participants in the family unit.

1.08 "Effective Date" of this Plan is January 1, 1981. The effective date of this restatement of the Plan is January 1, 2006.

1.09 "Employee" shall mean any Employee of the Employer, with the exception of a commissioned police officer or a Leased Employee. A person who is not considered by the Employer on its payroll records to be an employee of the Employer, but who is later determined by a court of competent jurisdiction or an agency of the federal or an applicable state government to be an employee under legal standards set forth by them, shall not be considered an Employee for purposes of this Plan for periods prior to the date on which such determination is made.

However, nothing contained in this Plan, or with respect to the establishment of the Trustee, or any modification or amendment to the Plan or Trust, or in the creation of any Account, or the payment of any benefit, shall give any Employee, Employee-Participant, or any Beneficiary any right to continue employment, any legal or equitable right against the Employer or any officer, or Employee of the Employer, or against the Trustee, or against the Plan Administrator, except as expressly provided by the Plan, the Trust, or by a separate agreement.

1.10 "Employer" shall mean the City of Prairie Village, Kansas, which is also sometimes herein referred to as The City.



1.11 "Hour of Service" means:

(a) Each Hour of Service for which the Employer pays an Employee, or for which the Employee is entitled to payment, for the performance of duties during the Plan Year, but excluding overtime hours. The Advisory Committee shall credit Hours of Service under this paragraph (a) to the Employee for the Plan Year in which the Employee performs the duties, irrespective of when paid,

(b) Each Hour of Service for back pay, except overtime hours, irrespective of mitigation of wages, to which the Employer has agreed or for which the Employee has received an award. The Advisory Committee shall credit Hours of Service under this paragraph (b) to the Employee for the Plan Years to which the award or the agreement pertains rather than for the Plan Year in which the award, agreement, or payment is made, and

(c) Each Hour of Service for which the employer pays an Employee, or for which the Employee is entitled to payment (irrespective of whether the employment relationship is terminated), for reasons other than for the performance of duties during a Plan Year, such as leave of absence, vacation, holiday, sick leave or other allowable leave period with pay, illness, incapacity "(including disability), layoff, jury duty or military duty. The Advisory Committee shall credit Hours of Service under this paragraph (c) in accordance with the rules of paragraphs (b) and (c) of Labor Reg., Section 2530.200b-2, which the Plan, by this reference, specifically incorporates in full within this paragraph (c). Notwithstanding the preceding provisions of this paragraph (c), the Advisory Committee shall not credit:

(1) More than five hundred one (501) Hours of Service under this paragraph (c) to an Employee on account of any single continuous period during which the Employee does not perform any duties single Plan Year); (whether or not such period occurs during a single Plan Year);

(2) An Hour of Service to an Employee on account of a period during which the Employee does not perform any duties if the payment the Employer makes (or the payment due) is under a plan maintained solely for the purpose of complying with the applicable workman's compensation law, unemployment compensation law or disability insurance law; and

(3) An Hour of Service for a payment to an Employee;, which solely reimburses the Employee for medical or medically related expenses incurred by the Employee.

The Advisory Committee shall not credit an Hour of Service under more than one (1) of the above paragraphs. The Advisory Committee shall resolve any ambiguity with respect to the crediting of an Hour of Service in favor of the Employee.

The Advisory Committee shall credit every Employee with Hours of Service on the basis of the "actual" method. For purposes of the Plan, "actual" method means the determination of

Hours of Service from records of hours worked and hours for which the Employer makes payment or for which payment is due from the Employer.

For purposes of each of these provisions and standards set forth above, any Employee who is paid on an other-than hourly basis shall be considered to have completed the equivalent of eight (8) Hours of Service for each full day of work completed based on a five-day, forty hour work week, and after consideration of applicable leave conditions set forth under subsection (c) above.

In any event, the Plan shall at all times comply with the requirements of Section 414(u) of the Code.

1.12 "Leased Employee" shall mean an individual (who otherwise is not an Employee) who, pursuant to a leasing agreement between the Employer and any other person, has performed services for the Employer (or for the Employer and any persons related to the Employer within the meaning of Section 414(n)(6) of the Code) on a substantially full time basis for at least one year and who performs services under the primary direction and control of the Employer.

1.13 "Nonforfeitable" shall mean a Participant's or Beneficiary's unconditional claim, legally enforceable against the Plan, to the Participant's Accrued Benefit.

1.14 "Participant" is an Employee who is eligible to be and becomes a Participant in accordance with the provisions of Section 2.01. An Employee who becomes a Participant shall remain a Participant under the Plan until the Trustee has fully distributed his nonforfeitable Accrued Benefit to him.

1.15 "Nontransferable Annuity" means an annuity that by its terms provides that it may not be sold, assigned, discounted, pledged as collateral for a loan or security for the performance of an obligation or for any purpose to any person other than the insurance company.

1.16 "Overtime" shall mean any hours of service by the Employee in excess of (i) those prescribed for that Employee in the personnel policies of the Employer as the "regular working hours" for that Employee's position; or (ii) forty (40) hours per week, whichever is less.

1.17 "Plan" shall mean the retirement plan established by the Employer in the form of this document, designated as **The City of Prairie Village, Kansas Supplemental Pension Benefit Plan**.

1.18 "Plan Administrator" shall be the Employer, unless the Employer designates another person to hold the position of Plan Administrator. In addition to his other duties, the Plan Administrator shall have full responsibility for compliance with the reporting and disclosure rules under the Plan.

1.19 "Plan Entry Date" shall mean the Effective Date and every January 1 after the Effective Date.

1.20 "Plan Year" shall mean the fiscal year of the Plan, a 12-consecutive month period ending every December 31st.

1.21 "Service" means any period of time the Employee is in the employ of the Employer, including any period the Employee is on leave of absence authorized by the Employer under a uniform, nondiscriminatory policy applicable to all Employees.

1.22 "Trust" shall mean the Trust created under the Plan.

1.23 "Trustee" shall mean Marshall & Ilsley Trust Company, N.A., or any successor in office who in writing accepts the position of Trustee.

1.24 "Trust Fund" shall mean all property of every kind held or acquired by the Trustee under this Agreement.

1.25 SERVICE FOR THE EMPLOYER PRIOR TO THE ORIGINAL EFFECTIVE DATE. Employees of the Employer prior to January 1, 1981, shall not receive credit under the vesting schedule for service with the Employer prior to January 1, 1981.

## ARTICLE II

### EMPLOYEE PARTICIPANTS

2.01 ELIGIBILITY. Each full-time Employee shall become a Participant in the Plan on the Plan entry date (if employed on that date) coincident with or immediately following the date of his employment with his Employer. Any Employees who are full time Employees of the Employer as of the effective date of this Plan shall become Participants in the Plan on the effective date of the Plan.

2.02 FULL-TIME EMPLOYEE. For purposes of participation under Section 2.01 of the Plan, a full-time Employee shall be an Employee who works not less than 1,040 hours of service a year excluding overtime hours.

2.03 BREAK IN SERVICE - PARTICIPATION. For purposes of participation in the Plan, the Plan shall not apply any break in service rule.

2.04 PARTICIPATION UPON RE-EMPLOYMENT. A Participant whose employment terminates shall re-enter the Plan as a Participant on the January 1st following his re-employment. Any other Employee whose employment terminates and who is subsequently reemployed shall become a Participant in accordance with the provisions of Section 2.01.

2.05 COMMENCEMENT OF FULL TIME EMPLOYMENT. For purposes of this Plan, the determination of the commencement of an Employee's full-time employment shall be consistent with the date used under the Kansas Public Employees Retirement System and as it has been determined by the Employer for purposes of that plan.

## ARTICLE III

### EMPLOYER CONTRIBUTIONS AND FORFEITURES

3.01 AMOUNT. The first Plan Year of the Plan (the Plan Year beginning January 1, 1981), the Employer shall make a contribution to the Trust in an amount equal to ten percent (10%) of the annualized monthly base wage established for each Participant in January of the first Plan Year up to a maximum amount of \$2,000 per Participant. For each subsequent Plan Year prior to the year beginning January 1, 1991, the Employer shall make a contribution to the Trust in an amount equal to five percent (5%) of the annualized monthly base wage established for each Participant in January of that Plan Year up to a maximum amount of \$1,000 per Participant. For the Plan Year beginning January 1, 1991, and for each subsequent Plan Year, the Employer shall make a contribution to the Trust in an amount equal to five percent (5%) of the Participant's Compensation for that Plan Year up to a maximum amount of \$2,500 per Participant; or such contribution amount that the Employer may from time to time deem advisable for that Plan Year. Although the Employer may contribute to this Plan irrespective of whether it has net profits, the Employer intend the Plan to be a profit sharing plan for all purposes of the Code.

The Employer may not make a contribution to the Trust for any Participant for any Plan Year to the extent the contribution would exceed the limitations imposed under section 415 of the Code. The applicable provisions of Section 415 of the Code, and regulations thereunder, are hereby incorporated herein by reference.

The Trustee, upon written request from the Employer, must return to the Employer the amount of the Employer's contribution made by the Employer by mistake of fact or the amount of the Employer's contribution disallowed as a deduction under section 404 of the Code. The Trustee will not return any portion of the Employer's contribution under the provisions of this paragraph more than one year after:

- (a) The Employer made the contribution by mistake of fact; or
- (b) The disallowance of the contribution as a deduction, and then only to the extent of the disallowance.

The Trustee will not increase the amount of the Employer contribution returnable under this Section 3.01 for any earnings attributable to the contribution, but the Trustee will decrease the Employer contribution returnable for any losses attributable to it. The Trustee may require the Employer to furnish it whatever evidence the Trustee deems necessary to enable the Trustee to confirm the amount the Employer has requested be returned is properly returnable under this Section.

3.02 DETERMINATION OF CONTRIBUTION. The Employer, from its records, shall determine the amount of any contributions to be made by it to the trust under the terms of the Plan.

3.03 TIME OF PAYMENT OF CONTRIBUTIONS. The Employer may pay its contribution for each Plan Year in one or more installments without interest. If the Employer makes contribution for a particular Plan Year after the close of the Plan Year, the Employer must make its contribution to the Trustee prior to March 15th of the next Plan Year.

3.04 CONTRIBUTION ALLOCATION. Subject to the conditions of Section 3.06, the Advisory Committee shall allocate and credit to each Participant's account each Employer contribution to this Trust on the basis of credit points. The Advisory Committee shall credit each Participant's account with that portion of the Employer's contribution that is allocated by taking the proportion that each Participant's total credit points with respect to such year bears to the total points awarded to all Participants with respect to such year. In order to calculate a Participant's credit points with respect to any year, one credit point shall be allocated to a Participant for each one thousand dollars (\$1,000.00) of his Compensation for such year and for any remaining fractional part thereof equal to one-half (1/2) or more of such amount, and in addition thereto, each Participant shall be assigned one point for each year said Employee has been an Employee eligible for participation under the Plan.

3.05 FORFEITURE ALLOCATION. The Employer shall allocate the amount of a Participant's accrued benefit forfeited under Section 5.05 among the remaining Participants' accounts in proportion to their respective interests in the Trust as of the last day of the Plan Year in which the forfeiture occurs. The Advisory Committee shall continue to hold the undistributed, non-vested portion of a terminated Participant's accrued benefit in his account solely for his benefit until forfeiture occurs at the time specified in Section 5.09.

3.06 ACCRUAL OF BENEFIT. The Advisory Committee shall determine all or a portion of Participant's accrued benefit on the basis of the Plan Year. Furthermore, the Advisory Committee shall not allocate any portion of an Employer contribution for a Plan Year to any Participant's account if the Participant does not complete a minimum of one thousand (1,000) hours of service during the Plan Year excluding overtime, provided however, the Advisory Committee shall not apply any minimum "Hour of Service" requirement for purposes of allocating any portion of an Employer contribution to a Participant's account for a particular Plan Year if a Participant terminates employment during the plan year because of death, disability, or attaining normal retirement age.

3.07 DEFINITIONS - ARTICLE III. For purposes of Article III, the annual addition shall mean:

"ANNUAL ADDITION" - The sum of the following amounts allocated on behalf of a Participant for a Limitation Year, of (i) all Employer contributions; and (ii) all forfeitures. For the purposes of this Article III, Annual Additions also shall include any amounts re-applied to reduce Employer contributions under this Article.

## **ARTICLE IV**

### **PARTICIPANT CONTRIBUTIONS**

4.01 PARTICIPANT VOLUNTARY CONTRIBUTIONS. The Plan does not permit nor require Participant contributions.

4.02 PARTICIPANT ROLLOVER CONTRIBUTIONS. The Plan does not permit Participant rollover contributions.

## ARTICLE V

### TERMINATION OF SERVICE, PARTICIPANT VESTING

5.01 NORMAL RETIREMENT AGE. A Participant's normal retirement age is fifty-five (55) years of age. A Participant who remains in the employ of the Employer after attaining normal retirement age shall continue to participate in Employer contributions and net earnings allocated to the Participant's account for each applicable Plan Year during which the Participant satisfies any other Hour of Service conditions and other continued employment on or after attainment of Normal Retirement Age. Upon termination of a Participant's employment for any reason after attaining normal retirement age, the Advisory Committee shall direct the Trustee to commence payment of the Participant's nonforfeitable accrued benefit to him (or to his beneficiary if the Participant is deceased), in accordance with the provisions of Article VI, as soon as administratively feasible after receipt of the Participant's (or other beneficiary, if applicable) request for distribution, but in no event later than the date set forth under Section 6.01.

5.02 PARTICIPANT DISABILITY. The Plan shall consider a Participant disabled on the date the Advisory Committee determines the Participant, because of a physical or mental disability, will be unable to perform the duties of his customary position of employment for an indefinite period that the Advisory Committee considers will be of long continued duration. In such circumstances, the Participant shall be credited with the applicable Hours of Service completed at the time of such disability determination after consideration of Section 1.11 of the Plan. The Advisory Committee may require a Participant to submit to a physical examination by an employer-designated physician in order to confirm disability. The Advisory Committee shall apply the provisions of this Section 5.02 in a nondiscriminatory, consistent, and uniform manner.

5.03 TERMINATION OF SERVICE PRIOR TO NORMAL RETIREMENT AGE. Upon termination of a Participant's employment prior to attaining normal retirement age (for any reason other than death or disability), the Advisory Committee, in its sole discretion, may direct the Trustee to commence payment to the Participant of his nonforfeitable accrued benefit prior to the Participant's attaining normal retirement age. The Advisory Committee may give its direction to the Trustee on or at any time before the last day of the Plan Year in which the Participant first incurs a break in service as a result of the termination of his employment. If the Advisory Committee gives the Trustee a direction to distribute, the Trustee shall commence payment to the Participant, in accordance with the provisions of Section 6.02, within ninety (90) days after the close of the Plan Year in which the Participant first incurs a break in service as a result of the termination of his employment. If the terminating Participant is 100 percent vested in his accrued benefit by the close of the Plan Year in which his employment terminates, the Advisory Committee, in its sole discretion, may direct the Trustee to commence payment to the Participant of his accrued benefit within ninety (90) days after the close of the Plan Year in which the Participant's employment terminates without regard to the Participant's incurring a break in service.

If the Advisory Committee does not give the Trustee a direction to commence payment prior to the Participant's incurring a break in service as a result of this termination of



employment, the Trustee shall continue to hold the Participant's nonforfeitable accrued benefit in trust until the close of the Plan Year in which the Participant attains normal retirement age.

At that time, the Trustee shall commence payment of the Participant's nonforfeitable accrued benefit in accordance with the provisions of Article VI; provided however, if the Participant dies or becomes disabled after terminating employment but prior to attaining normal retirement age, the Advisory Committee, upon confirmation of the death or disability, shall direct the Trustee to commence payment of the Participant's nonforfeitable accrued benefit to him (or to his beneficiary if the Participant is deceased) in accordance with the provisions of Section 6.02 not later than ninety (90) days after the close of the Plan Year in which the Participant's death occurs; or in the case of disability, not later than ninety (90) days after the later of the close of the Plan Year in which the Participant first incurs a break in service as a result of the termination of his employment or after the close of the Plan Year in which the Participant's disability occurs.

If the Participant terminates employment prior to attaining normal retirement age because of death or disability the Advisory Committee shall direct the Trustee to commence payment of the Participant's nonforfeitable accrued benefit to him (or to his beneficiary if the Participant is deceased), in accordance with the provisions of Section 6.02, not later than ninety (90) days after the close of the Plan Year in which the Participant's employment terminates.

In no event shall the Trustee commence payment under this Section 5.03 later than the time prescribed by Section 6.01. Furthermore, the Advisory Committee shall make its determinations under this Section 5.03 in a nondiscriminatory, consistent and uniform manner. The Advisory Committee shall furnish a terminated Participant a true copy of its distribution to the Trustee.

5.04 NO RESTORATION OF FORFEITED ACCRUED BENEFIT. Notwithstanding any repayment, the Advisory Committee shall not recompute nor restore any amount of the re-employed Participant's accrued benefit that he previously forfeited.

5.05 VESTING SCHEDULE. A Participant's accrued benefit derived from Employer contributions shall be 100 percent nonforfeitable upon and after his attaining normal retirement age or if his employment terminates as a result of death or disability. If a Participant's employment terminates prior to normal retirement age for any reason other than death or disability, then for each year of service he shall receive a nonforfeitable percentage of his accrued benefit (forfeiting the balance) derived from employment contributions and net earnings equal to the following.

<b>Years Of Service With The Employer</b>	<b>Percent Of Nonforfeitable Accrued Benefit</b>
Less than 4 years	0%
4 years	40%
5 years	45%
6 years	50%

7 years	60%
8 years	70%
9 years	80%
10 years	90%
11 years or more	100%

5.06 YEAR OF SERVICE -VESTING. For purposes of vesting under Section 5.05, Year of Service shall mean any Plan Year during which an Employee completes not less than one thousand forty (1,040) Hours of Service with the Employer, excluding overtime.

5.07 BREAK IN SERVICE - VESTING. For purposes of this Article V, a Participant shall incur a "Break in Service" if during any Plan Year he does not complete more than 500 hours of Service with the Employer.

5.08 INCLUDED YEARS OF SERVICE - VESTING. For purposes of determining "Years of Service" under Section 5.05, the Plan shall take into account all years of service an Employee completes with the Employer except any year of service after the Participant first incurs a break in service as a result of the termination of his employment. This exception shall apply for the sole purpose of determining a Participant's nonforfeitable percentage of his accrued benefit derived from Employer contributions that accrued for his benefit prior to the break.

5.09 FORFEITURE OCCURS. A Participant's forfeiture, if any, of his accrued benefit derived from Employer contributions shall occur under the Plan as of the last day of the Plan Year in which the Participant first incurs a break in service as a result of the termination of his employment. The Advisory Committee shall determine a Participant's accrued benefit forfeiture, if any, solely by reference to the vesting schedule of Section 5.05, and a Participant shall not forfeit any portion of his accrued benefit for any other reason or cause.

## ARTICLE VI

### TIME AND METHOD OF PAYMENT OF BENEFITS

6.01 TIME OF PAYMENT OF ACCRUED BENEFIT. The Trustee shall commence distribution of a Participant's nonforfeitable accrued benefit not later than sixty (60) days after the close of the Plan Year in which the latest of the following events occurs:

- (a) The date the Participant attains normal retirement age; or
- (b) The date the Participant terminates service (employment) with the Employer;
- (c) The date the Participant reaches age 70;

Notwithstanding any provision of the Plan to the contrary, in no event shall distribution of a Participant's nonforfeitable accrued benefit commence later than his "Required Beginning Date." "Required Beginning Date" means April 1 of the calendar year following the later of the calendar year in which the Participant attains age 70½, or the calendar year in which he ceases to be an Employee.

All distributions required under this article shall be determined and made in accordance with applicable regulations under section 401(a)(9), including but not limited to the minimum distribution incidental benefit requirement of section 1.401(a)(9)-2, as amended.

6.02 METHOD OF PAYMENT OF ACCRUED BENEFIT. After all required accounting adjustments, the Trustee, in accordance with the direction of the Advisory Committee, shall make payment of the Participant's nonforfeitable accrued benefit under one, or any combination, of the following methods:

- (a) By payment in a lump sum, through either total or partial distribution;
- (b) By payment in substantially equal monthly installments over a fixed reasonable period of time, not exceeding 10 years. Furthermore, upon the Participant's or beneficiary's written request, the Advisory Committee, in its sole discretion, may accelerate the payment of all, or any portion, of the Participant's unpaid accrued benefit; or
- (c) By payment in substantially equal annual installments over a fixed reasonable period of time, not exceeding 10 years. Furthermore, upon the Participant's or beneficiary's written request, the Advisory Committee, in its sole discretion, may accelerate the payment of all, or any portion, of the Participant's unpaid accrued benefit.

To facilitate installment payments either under paragraphs (b) or (c) of this Section 6.02, the Advisory Committee, in its sole discretion, may direct the Trustee to segregate all or any part of the Participant's accrued benefit in a separate account. The Advisory Committee may direct the Trustee to invest the Participant's segregated account in federally insured interest bearing savings account(s) or time deposit(s) (or a combination of both), or in other fixed income

investments. A segregated account shall remain a part of the Trust, but it alone shall share in any income it earns, and it alone shall bear any expense or loss it incurs.

6.03 PARTICIPANT BENEFIT PAYMENT ELECTION. The Advisory Committee may permit a Participant who terminates employment after attaining normal retirement age to elect either or any combination of the three forms of payment of retirement benefits prescribed by Section 6.02. Upon the Participant's request, the Advisory Committee shall furnish the Participant an appropriate form for the making of the election. The Participant shall make an election under this Section 6.03 by filing the election form with the Plan Administrator.

6.04. DISTRIBUTIONS UNDER DOMESTIC RELATIONS ORDERS. Nothing contained in this Plan will prevent the Trustee, in accordance with the direction of the Advisory Committee, from complying with the provisions of a qualified domestic relations order (as defined in Code Section 414(p)). The Advisory Committee may adopt any written procedures relating to a qualified domestic relations order which the Advisory Committee deems necessary for proper administration of the Plan. This Plan specifically permits distribution to an alternate payee under a qualified domestic relations order at any time, irrespective of whether the Participant has attained his earliest retirement age (as defined under Code Section 414(p)) under the Plan. A distribution to an alternate payee prior to the Participant's attainment of earliest retirement age is available only if: (1) the order specifies distribution at that time or permits an agreement between the Plan and the alternate payee to authorize an earlier distribution; and (2) if the present value of the alternate payee's benefits under the Plan exceeds \$3,500, and the order requires, the alternate payee consents to any distribution occurring prior to the Participant's attainment of earliest retirement age. Nothing in this Section permits a Participant a right to receive distribution at a time otherwise not permitted under the Plan nor does it permit the alternate payee to receive a form of payment not permitted under the Plan.

6.05 ROLLOVERS. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this provision, a distributee may elect, at the time and in the manner prescribed by the Advisory Committee, to have any portion of an eligible rollover distribution that is at least equal to two hundred dollars (\$200) paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(a) Eligible rollover distribution - An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated Beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; any hardship distribution described in Code Section 401(k)(2)(B)(i)(IV); and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

(b) Eligible retirement plan - An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, or a

qualified trust described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving Spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. Notwithstanding the foregoing, for distributions commencing on or after January 1, 2002, however, an eligible retirement plan shall also mean an annuity contract described in section 403(b) of the Code and an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan; and the definition of eligible retirement plan shall also apply in the case of a distribution to a surviving Spouse, or to a Spouse or former Spouse who is the alternate payee under a qualified domestic relation order, as defined in section 414(p) of the Code.

(c) Distributee - A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving Spouse and the Employee's or former Employee's Spouse or former Spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the Spouse or former Spouse.

(d) Direct rollover - A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

#### 6.06 DEATH BENEFIT DISTRIBUTIONS.

Distribution beginning before death. If the Participant dies after distribution of his or her Accrued Benefit has begun, the remaining portion of such Accrued Benefit will continue to be distributed at least as rapidly as under the method of distribution being used prior to the Participant's death.

Distribution beginning after death. If the Participant dies before distribution of his or her Accrued Benefit begins, distribution of the Participant's entire Accrued Benefit shall be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death except to the extent that an election is made to receive distributions in accordance with (a) or (b) below:

(a) If any portion of the Participant's Accrued Benefit is payable to a designated beneficiary, distributions may be made over the life or over a period certain not greater than the life expectancy of the designated beneficiary commencing on or before December 31 of the calendar year immediately following the calendar year in which the Participant died; or

(b) If the designated beneficiary is the Participant's surviving spouse, the date distributions are required to begin in accordance with (a) above shall not be earlier than the later of (1) December 31 of the calendar year immediately following the calendar year in which the Participant died and (2) December 31 of the calendar year in which the Participant would have attained age 70½.

If the Participant has not made an election pursuant to this Section by the time of his or her death, the Participant's designated beneficiary must elect the method of distribution no later than the earlier of (1) December 31 of the calendar year in which distributions would be required to begin under this section, or (2) December 31 of the calendar year which contains the fifth anniversary of the date of death of the Participant. If the Participant has no designated beneficiary, or if the designated beneficiary does not elect a method of distribution, distribution of the Participant's entire Accrued Benefit must be made to either the designated beneficiary or the Participant's estate, as applicable, by December 31 of the calendar year containing the fifth anniversary of the Participant's death. If the surviving spouse dies after the Participant, but before payments to such spouse begin, the provisions of this Section, with the exception of paragraph (b), shall be applied as if the surviving spouse were the Participant.

#### 6.07 REQUIRED MINIMUM DISTRIBUTIONS.

General Rule. The requirements of these requirement minimum distribution provisions will take precedence over any inconsistent provisions of the Plan and any prior amendments thereto. All distributions required under this amendment will be determined and made in accordance with the Internal Revenue Service regulations under Code §401(a)(9). Notwithstanding the other provisions of this amendment, distributions may be made under a designation made before January 1, 1984, in accordance with §242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to §242(b)(2) of TEFRA.

The Participant's entire Accrued Benefit will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.

If the Participant dies before distributions begin, his or her entire Accrued Benefit will be distributed, or begin to be distributed, no later than as follows:

(a) If the Participant's surviving spouse is the Participant's sole designated beneficiary, then (subject to subsection (e) below) distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.

(b) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, then subject to subsection (e) below distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(c) If there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire Accrued Benefit will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(d) If the Participant's surviving spouse is the Participant's sole designated beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this section, other than subsection (a), will apply as if the surviving spouse were the Participant.

(e) If the Participant dies before distributions begin and there is no surviving spouse at the time of the Participant's death, distribution to the designated beneficiary or the Participant's estate, as applicable, is not required to begin by the date specified in subsections (a) or (b) above if the Participant's entire Accrued Benefit is distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death. In addition, a designated beneficiary who is receiving payments under this 5-year rule may make a new election to receive payments under the life expectancy rule until December 31, 2003, provided that all amounts that would have been required to be distributed under the life expectancy rule for all distribution calendar years before 2004 are distributed by the earlier of December 31, 2003 or the end of the 5-year period.

For purposes of this section, unless subsection (d) applies, distributions are considered to begin on the Participant's Required Beginning Date. If subsection (d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under subsection (a). If applicable, distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under subsection (a)), the date distributions are considered to begin is the date distributions actually commence.

Amount of Required Minimum Distribution for Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed each distribution calendar year is the lesser of (a) the quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table in §1.401(a)(9)-9 of the IRS regulations using the Participant's age as of his or her birthday in the distribution calendar year; or (b) if the Participant's sole designated beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table in §1.401(a)(9)-9 of the IRS regulations using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

Required minimum distributions will be determined beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

Required Minimum Distributions After Participant's Death -- Death On or After Date Distributions Begin. If the Participant dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated beneficiary, determined as follows:

(1) the Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year; (2) if the Participant's surviving spouse is the sole designated beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year; and (3) if the Participant's surviving spouse is not the Participant's sole designated beneficiary, the designated beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

If the Participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one each subsequent year.

Required Minimum Distributions After Participant's Death -- Death Before Distributions Begin. If the Participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's designated beneficiary, as determined above in the discussion concerning death on or after the date distributions begin.

If the Participant dies before distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire Accrued Benefit will be completed by December 31 of the calendar year containing the 5th anniversary of the Participant's death.

If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under subsection (a) above, these provisions (concerning death prior to date distributions begin) will apply as if the surviving spouse were the Participant.

#### Definitions.

The beneficiary designated by the Participant is the designated beneficiary under Code §401(a)(9) and §1.401(a)(9)-1, Q&A-4 of the IRS regulations.

"Distribution calendar year" means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar



year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin. The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's Required Beginning Date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that distribution calendar year.

“Life expectancy” means life expectancy as computed by use of the Single Life Table in §1.401(a)(9)-9 of the IRS regulations.

“Participant's account balance” means, for purposes of determining minimum distributions the account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

## ARTICLE VII

### EMPLOYER ADMINISTRATIVE PROVISIONS

7.01 INFORMATION TO COMMITTEE. The Employer shall supply current information to the Advisory Committee as to the name date of birth, date of employment, calculated Compensation, applicable leaves of absence, Years of service, and Date of termination of employment of each Employee who is, or who will be eligible to become, a Participant under the Plan, together with any other information which the Advisory Committee considers necessary. The Employer's records as to the current information the Employer furnishes to the Advisory Committee shall be conclusive as to all persons.

7.02 NO LIABILITY. The Employer assumes no obligation or responsibility to any of its Employees, Participants or beneficiaries for any act of, or failure to act, on the part of its Advisory Committee or the Trustee.

7.03 INDEMNITY OF COMMITTEE. The Employer indemnifies and saves harmless the members of the Advisory Committee, and each of them, from and against any and all loss resulting from liability to which the Advisory Committee, or the members of the Advisory Committee, may be subjected by reason of any act or conduct (except willful misconduct or gross negligence) in their official capacities in the administration of this Trust or Plan or both, including all expenses reasonably incurred in their defense, in case the Employer fails to provide such defense. Furthermore, the Advisory Committee members and the Employer may execute a letter agreement further delineating the indemnification agreement of this Section 7.03. The indemnification provisions of this Section 7.03 shall extend to the Trustee solely to the extent provided by a letter agreement executed by the Trustee and the Employer.

7.04 EMPLOYER DIRECTION OF INVESTMENT. The Employer shall have the right to direct the Trustee with respect to the investment and re-investment of assets constituting the trust fund only if the Trustee consents in writing to permit such direction.

If the Trustee does consent to Employer direction of investment, the Trustee and the Employer shall execute a letter agreement as a part of this Plan containing such conditions, limitations, and other provisions they deem appropriate before the Trustee shall follow any Employer direction as respects the investment or re-investment of any part of the trust fund.

7.05 AMENDMENT TO VESTING SCHEDULE. Though the Employer reserves the right to amend the vesting schedule at any time, the Employer shall not amend the vesting schedule (and no amendment shall be effective) if the amendment would reduce the nonforfeitable percentage of any Participant's accrued benefit derived from Employer contributions (determined as of the latter of the date the Employer adopts the amendment, or the date the amendment becomes effective) to a percentage less than the nonforfeitable percentage computed under the plan without regard to the amendment.

If the Employer makes a permissible amendment to the vesting schedule, each Participant having at least five (5) years of service with the Employer may elect to have the percentage of his nonforfeitable accrued benefit computed under the Plan without regard to the amendment. The Participant must file his election with the Plan Administrator within sixty (60) days of the latest of (a) the Employer's adoption of the amendment; (b) the effective date of the amendment; or (c) his receipt of a copy of the amendment. The Plan Administrator, as soon as practicable, shall forward a true copy of any amendment to the vesting schedule to each affected Participant, together with an explanation of the effect of the amendment, the appropriate form upon which the Participant may make an election to remain under the vesting schedule provided under the Plan prior to the amendment and notice of the time within which the Participant must make an election to remain under the prior vesting schedule.

For purpose of this Section 7.05, an amendment to the vesting schedule includes any Plan amendment that directly or indirectly affects the computation of the nonforfeitable percentage of an Employee's rights to his Employer derived accrued benefit.

## ARTICLE VIII

### PARTICIPANT ADMINISTRATIVE PROVISIONS

8.01 BENEFICIARY DESIGNATION. Any Participant may from time to time designate in writing, any person or persons, contingently or successively, to whom the Trustee shall pay his accrued benefit on event of his death. The Advisory Committee shall prescribe the form for the written designation of beneficiary and, upon the Participant's filing the form with the Advisory Committee, it effectively shall revoke all designations filed prior to that date by the same Participant.

Notwithstanding the foregoing, and notwithstanding anything in the Plan to the contrary, in the event a Participant is divorced or legally separated from his spouse prior to any annuity starting date, if applicable, any then existing designation of such spouse as the Participant's Beneficiary under the annuity contract shall automatically be null and void as of the date of such divorce or legal separation, and such spouse (or former spouse) shall be considered the Participant's Beneficiary only if the Participant thereafter affirmatively designates the spouse (or former spouse) as such in accordance with the procedures described in this Plan.

8.02 NO BENEFICIARY DESIGNATION. If a Participant fails to name a beneficiary in accord with Section 8.01, or if the beneficiary named by a Participant predeceases him or dies before complete distribution of the Participant's accrued benefit, then the Trustee shall pay the Participant's accrued benefit in lump sum(s) in the following order of priority to:

- (a) The surviving spouse;
- (b) Surviving children, including adopted children, in equal shares;
- (c) Surviving parents, in equal shares; or
- (d) The legal representative of the estate of the last to die of the Participant and his beneficiary.

The Advisory Committee shall direct the Trustee as to whom the Trustee shall make payment under this Section 8.02.

8.03 PERSONAL DATA TO COMMITTEE. Each Participant and each beneficiary of a deceased Participant must furnish to the Advisory Committee such evidence, data, or information as the Advisory Committee considers necessary or desirable for the purpose of administering the Plan. The provisions of this Plan are effective for the benefit of each Participant upon the condition precedent that each Participant will furnish promptly full, true and complete evidence, data and information when requested by the Advisory Committee shall advise each Participant of the effect of his failure to comply with its request.

8.04 ADDRESS FOR NOTIFICATION. Each Participant and each beneficiary of a deceased Participant shall file with the Advisory Committee from time to time, in writing, his post office address and any change of post office address. Any communication, statement or notice addressed to a Participant, or beneficiary, at his last post office address filed with the advisory Committee, or as shown on the records of the Employer, shall bind the Participant, or beneficiary, for all purposes of his Plan.

8.05 ASSIGNMENT OR ALIENATION. Subject to Code Section 414(p) relating to qualified domestic relations orders, or except as otherwise permitted by section 401(a)(13) of the Code, neither a Participant nor a beneficiary shall assign or alienate any benefit provided under the Plan, and the Trustee shall not recognize any such assignment or alienation.

8.06 NOTICE OF CHANGE IN TERMS. The Plan Administrator shall furnish all Participants and beneficiaries a summary description of any material amendment to the Plan or notice of discontinuance of the Plan.

8.07 LITIGATION AGAINST THE TRUST. If any legal action filed against the Trustee, the Plan Administrator or the Advisory Committee, or against any member or members of the Advisory Committee, by or on behalf of any Participant or beneficiary, results adversely to the Participant or to the beneficiary, the Trustee shall reimburse itself, the Plan Administrator or the Advisory Committee, or any member or members of the Advisory Committee all costs and fees expended by it or them by surcharging all costs and fees against the sums payable under the Plan to the Participant or to the beneficiary, but only to the extent a court of competent jurisdiction specifically authorizes and directs any such surcharges .

8.08 INFORMATION AVAILABLE. Any Participant in the Plan or any beneficiary may examine copies of the Plan description, latest annual report, any bargaining agreement, this Plan and Trust, contract or any other instrument under which the Plan was established or is operated. The Plan Administrator will maintain all of the items listed in this Section 8.08 in his office, or in such other place or places as he may designate from time to time, for examination during reasonable business hours. Upon the written request of a Participant or beneficiary the Plan Administrator shall furnish him with a copy of any item listed in this Section 8.08. The Plan Administrator may make a reasonable charge to the requesting person for the copy so furnished.

8.09 APPEAL PROCEDURE FOR DENIAL OF BENEFITS. The Plan Administrator shall provide adequate notice in writing to any Participant or to any beneficiary ("Claimant") whose claim for benefits under the Plan the Advisory Committee has denied. The Plan Administrator's notice to the claimant shall set forth:

- (a) The specific reason for the denial;
- (b) Specific references to pertinent Plan provisions on which the Advisory Committee based its denial;

(c) A description of any additional material and information needed for the claimant to perfect his claim and an explanation of why the material or information is needed; and

(d) That any appeal the claimant wishes to make of the adverse determination must be in writing to the Advisory Committee within seventy-five (75) days after receipt of the Plan Administrator's notice of denial of benefits. The Plan Administrator's notice must further advise the claimant that his failure to appeal the action to the Advisory Committee in writing within the seventy-five (75) day period will render the Advisory Committee's determination final, binding and conclusive.

If the claimant should appeal to the Advisory Committee, he, or his duly authorized representative, may submit, in writing, whatever issues and comments he, or his duly authorized representative, feels are pertinent. The claimant, or his duly authorized representative, may review pertinent Plan documents. The Advisory Committee shall re-examine all facts related to the appeal and make a final determination as to whether the denial of benefits is justified under the circumstances. The Advisory Committee shall advise the claimant of its decision within sixty (60) days of the claimant's written request for review, unless special circumstances (such as a hearing) would make the rendering of a decision within the sixty (60) day limit unfeasible, but in no event shall the Advisory Committee render a decision respecting a denial for a claim for benefits later than one hundred twenty (120) days after its receipt of a request for review.

The Plan Administrator's notice of denial of benefits shall identify the name of each name of each member of the Advisory Committee and the name and address of the Advisory Committee member to whom the Claimant may forward his appeal.

## ARTICLE IX

### ADVISORY COMMITTEE, DUTIES WITH RESPECT TO PARTICIPANTS' ACCOUNTS

9.01 MEMBERS' COMPENSATION, EXPENSES. The Mayor of the City shall appoint an Advisory Committee to administer the Plan, the members of which may or may not be Participants in the Plan, or which may be the Plan Administrator acting alone. The members of the Advisory Committee shall serve without compensation for services as such, but the Employer shall pay all expenses of the Advisory Committee.

9.02 TERM. Each member of the Advisory Committee shall serve until his successor is appointed.

9.03 POWERS. In case of a vacancy in the membership of the Advisory Committee, the remaining members of the Advisory Committee may exercise any and all of the powers, authority, duties and discretion conferred upon the Advisory Committee pending the filling of the vacancy.

9.04 GENERAL. The Advisory Committee shall have the following powers and duties:

- (a) To select a Secretary, who need not be a member of the Advisory Committee;
- (b) To determine the rights of eligibility of an Employee to participate in the Plan, the value of a Participant's accrued benefit and the nonforfeitable percentage of each Participant's accrued benefit;
- (c) To adopt rules of procedure and regulations necessary for the proper and efficient administration of the Plan provided the rules are not inconsistent with the terms of this Agreement.
- (d) To enforce the terms of the Plan and the rules and, regulations it adopts;
- (e) To direct the Trustee as respects the crediting and distribution of the Trust;
- (f) To review and render decisions respecting a claim for (or denial of a claim for) a benefit under the Plan;
- (g) To furnish the Employer with information which the Employer may require for tax or other purposes;
- (h) To engage the services of an Investment Manager or Managers, each of whom shall have full power and authority to manage, acquire or dispose (or direct the Trustee with respect to acquisition or disposition) of any Plan asset under its control;

(i) To establish and maintain a funding standard account and to make credits and charges to the account to the extent required by and in accordance with the provisions of the Code. The Advisory Committee shall exercise all of its powers, duties and discretion under the Plan in a uniform and nondiscriminatory manner.

(j) The decisions of the Advisory Committee upon all matters within the scope of its authority shall be final and binding upon all interested parties, and is subject to the most deferential standard of judicial review; in the exercise of its powers hereunder, the Advisory Committee shall, however, pursue uniform and consistent policies with respect to all employees in similar circumstances.

9.05 FUNDING POLICY. The Advisory Committee shall review, on an as needed basis, all pertinent Employee information and Plan data in order to establish the funding policy of the Plan and to determine the appropriate methods of carrying out the Plan's objectives. The Advisory Committee shall communicate annually to the Trustee and to any Plan Investment Manager the Plan's short-term and long-term financial needs so investment policy can be coordinated with Plan financial requirements.

9.06 MANNER OF ACTION. The decision of a majority of the members appointed and qualified shall control.

9.07 AUTHORIZED REPRESENTATIVE. The Advisory Committee may authorize any one (1) of its members, or its Secretary, to sign on its behalf any notices, directions, applications, certificates, consents, approvals, waivers, letters or other documents. The Advisory Committee must evidence this authority by an instrument signed by all members and filed with to Trustee.

9.08 INTERESTED MEMBER. No member of the Advisory Committee may decide or determine any matter concerning the distribution, nature or method of settlement of his own benefits under the Plan unless the Plan Administrator is acting alone in the capacity of the Advisory Committee.

9.09 INDIVIDUAL ACCOUNTS. The Advisory Committee shall maintain a separate account in the name of each Participant to reflect the Participant's accrued benefit under each Plan Employer contribution formula. Furthermore, if a Participant re-enters the Plan subsequent to his having a break in service where the individual does not otherwise return to service during the current Plan Year, the Advisory Committee, shall maintain a separate account for the Participant's pre-break in service accrued benefit and a separate account for his post-break in service accrued benefit unless the Participant's entire accrued benefit under the Plan for the pre and post break in service period is one hundred percent (100%) nonforfeitable. The Advisory Committee shall maintain records of its activities.

9.10 VALUE OF PARTICIPANT'S ACCRUED BENEFIT. The value of each Participant's accrued benefit shall consist of that proportion of the net worth (at fair market value) of the Employer's Trust Fund which the net credit balance in his account bears to the total



net credit balance in the accounts of all Participants. For purposes of a distribution under the Plan, the value of a Participant's accrued benefit shall be its value as of the end of the prior month of the period immediately preceding distribution after consideration of applicable asset gains and losses under Section 9.11 below. Any distribution (other than a distribution from a segregated account) made to a Participant (or to his beneficiary) more than thirty (30) days after the end of the month immediately preceding the distribution shall include interest on the amount of the distribution as an expense of the trust fund. The interest shall accrue at the rate of five percent (5%) per annum from such accounting date to the date of the distribution.

9.11 ALLOCATION AND DISTRIBUTION OF GAIN OR LOSS. As of the end of each day of each Plan Year, as applicable, the Advisory Committee first shall reduce, or cause to be reduced, accounts for any forfeitures-arising under Section 5.09 and then, shall allocate the net income (or net loss) from the Trust and the increase or decrease in the fair market value of the assets of the Trust for that portion of the Plan Year pro rata to accounts of the Participants under the Plan as the accounts stood at the beginning of the prior day of the current Plan Year but, for this purpose, excluding from the accounts amounts charged during the Plan Year to the accounts in accordance with Section 9.13, the amount of any account which the Trustee has fully distributed since the immediately preceding date.

9.12 INDIVIDUAL STATEMENT. As soon as practicable after the accounting date of each Plan Year, the Plan Administrator will deliver to each Participant a statement reflecting the condition of his accrued benefit in the Trust as of that date and such other information the Plan Administrator desires be furnished the Participant or beneficiary. No Participant, except a member of the Advisory Committee, shall have the right to inspect the records reflecting the account of any other Participant.

9.13 ACCOUNT CHARGED. The Advisory Committee shall charge all distributions made to a Participant or to his beneficiary from his account against the account of the Participant when made.

9.14 UNCLAIMED ACCOUNT PROCEDURE. Neither the Trustee nor the Advisory Committee shall be obliged to search for, or ascertain the whereabouts of, any Participant or beneficiary. The Advisory Committee, by certified or registered mail addressed to his last known address of record with the Advisory Committee or the Employer, shall notify any Participant, or beneficiary, that he is entitled to a distribution under this Plan, and the notice shall quote the provisions of this section. If the Participant, or beneficiary, fails to claim his distributive share or make his whereabouts known in writing to the Advisory Committee within six (6) months from the date of mailing of the notice, or before this Plan is terminated or discontinued, whichever should first occur, the Advisory Committee shall direct the Trustee to segregate the Participant's unclaimed accrue benefit in a segregated interest bearing account' in the name of the Participant or beneficiary. The Advisory Committee shall then direct the Plan Administrator to notify the Social Security Administration of the Participant's (or beneficiary's) failure to claim the distribution to which he is entitled. The Plan Administrator shall request the Social Security Administration to notify the Participant (or beneficiary) in accordance with the procedures it has established for this purpose. The segregated account shall be entitled to all income it earns and shall bear all expense or loss it incurs.

## ARTICLE X

### TRUSTEE, POWERS AND DUTIES

10.01 ACCEPTANCE. The Trustee accepts the Trust created under the Plan and agrees to perform the obligations imposed. The Trustee shall provide bond for the faithful performance of its duties under the Trust to the extent required by the Employer.

10.02 RECEIPT OF CONTRIBUTIONS. The Trustee shall be accountable to the Employer for the funds contributed to it by the Employer, but shall have no duty to see that the contributions received comply with the provisions of the Plan. The Trustee shall not be obliged to collect any contributions from the Employer, nor be obliged to see that funds deposited with it are deposited according to the provisions of the Plan.

10.03 FULL INVESTMENT POWERS. The Trustee shall have full discretion and authority with regard to the investment of the Trust Fund, except with respect to a Plan asset under the control or direction of a properly appointed investment Manager or with respect to a Plan asset subject to Employer, Participant, or Advisory Committee direction of investment. The Trustee shall coordinate its investment policy with Plan financial needs as communicated to it by the Advisory Committee. The Trustee is authorized and empowered, but not by way of limitation, with the following powers, rights and duties:

(a) To invest and reinvest any part or all of the trust fund in any common or preferred stocks, open-end or closed-end mutual funds, any common or collective trust fund collectively with other trusts participating in such fund (including any fund maintained by the Trustee), United States retirement plan bonds, corporate bonds, debentures, convertible debentures, commercial paper, U.S. Treasury bills, improved or unimproved real estate situated in the United States, Limited partnerships, insurance contracts, mortgages, notes or other property of any kind, real or personal, as a prudent man would do under like circumstances with due regard for the purposes of this Plan. During the period when any part of all of the assets held hereunder comprise part of any collective or common trust fund, such assets shall be subject to all of the provisions of the Declaration of Trusts of such collective or common trust funds, as amended from time to time, which are hereby made a part of this Agreement and incorporated by reference thereto as though the same were set forth in full herein. Any investment made or retained by the Trustee in good faith shall be proper, but must be of a kind constituting a diversification considered by law suitable for trust investments;

(b) To retain in cash so much of the trust fund as it may deem advisable to satisfy liquidity needs of the Plan and to deposit any cash held in the trust fund in a bank account without liability for the highest rate of interest available, including, if a bank is acting as Trustee, specific authority to invest in deposits of the Trustee;

(c) To manage, sell, contract to sell, grant options to purchase, convey, exchange, transfer, abandon, improve, repair, insure, lease for any term even though commencing in the future or extending beyond the term of the Trust, and otherwise deal with all property, real or

personal, in such manner, for such considerations and on such terms and conditions as the Trustee shall decide;

(d) To credit and distribute the trust as directed by the Advisory Committee. The Trustee shall not be obliged to as to whether any payee or distributee is entitled to any payment or whether the distribution is proper or within the terms of the Plan, or as to the manner of making any payment or distribution. The Trustee shall be accountable only to the Advisory Committee for any payment or distribution made by it in good faith on the order or direction of the Advisory Committee;

(e) To borrow money, to assume indebtedness, extend mortgages and encumber by mortgage or pledge;

(f) To compromise, contest, arbitrate, or abandon claims and demands, in its discretion;

(g) To have with respect to the Trust all of the rights of an individual owner, including the power to give proxies, to participate in any voting trusts, mergers, consolidations or, liquidations, and to exercise or sell stock subscriptions or conversion rights;

(h) To, hold any securities or other property in the name of the Trustee or its nominee, or in another form as it may deem best, with or without disclosing the trust relationship;

(i) To perform any and all other acts in its judgment necessary or appropriate for the proper and advantageous management, investment and distribution of the Trust;

(j) To retain any funds or property subject to any dispute without liability for the payment of interest, and to decline to make payment or delivery of the funds or property until final adjudication is made by a court of competent jurisdiction;

(k) To file all tax returns required of the Trustee;

(l) To furnish to the Employer, the Plan Administrator, and the Advisory Committee an annual or more frequent statement of account showing the condition of the Trust Fund and all investment, receipts, disbursements and other transactions effected by the Trustee during the Plan Year covered by the statement and also stating the assets of the Trust held at the end of the Plan Year, which accounts shall be conclusive on all persons, including the Employer, the Plan Administrator and the Advisory Committee, except as to any act or transaction concerning which the Employer, the Plan Administrator or the Advisory Committee files with the Trustee written exceptions or objections within ninety (90) days after the receipt of the accounts, and

(m) To begin, maintain or defend any litigation necessary in connection with the administration of the Plan, except that the Trustee shall not be obliged or required to do so unless indemnified to its satisfactions.

10.04 RECORDS AND STATEMENTS. The records of the Trustee pertain to the Plan shall be open to the inspection of the Plan Administrator, the Advisory Committee, and the Employer at all reasonable times and may be audited from time to time by any person or persons as the Employer or Advisory Committee may specify in writing. The Trustee shall furnish the Advisory Committee or the Plan Administrator with whatever information relating to the trust fund the Advisory Committee or Plan Administrator considers necessary.

10.05 FEES AND EXPENSES FROM FUND. The Trustee shall receive reasonable annual compensation as may be agreed upon from time to time between the Employer and the Trustee. The Trustee shall pay all expenses reasonably incurred by it in its administration of the Plan from the Trust Fund unless the Employer pays the expenses. No person who is receiving full pay from the Employer shall receive compensation for services as Trustee from the trust fund.

10.06 PARTIES TO LITIGATION. Only the Employer, the Plan Administrator, the Advisory Committee, and the Trustee shall be necessary parties to any court proceeding involving the Trustee or the trust fund. No Participant, or beneficiary, shall be entitled to any notice of process. Any final judgment entered in any proceeding shall be conclusive upon the Employer, the Plan Administrator, the Advisory Committee, the Trustee, Participants and beneficiaries.

10.07 PROFESSIONAL AGENTS. The Trustee may retain at its expense, agents, attorneys, accountants and other persons to advise the Trustee as in its opinion may be necessary. The Trustee may delegate to any agent, attorney, accountant or other person selected by it any non-Trustee power or duty vested in it by the Plan, and the Trustee may act or refrain from acting on the advice or opinion of any agent, attorney, accountant or other person so selected.

10.08 DISTRIBUTION OF CASH. The Trustee shall make distributions under the Plan in cash.

10.09 DISTRIBUTION DIRECTIONS. If no one claims a payment or distribution made from the Trust, the Trustee shall promptly notify the Advisory Committee and shall dispose of the payment in accordance with the subsequent direction of the Advisory Committee.

10.10 THIRD PARTY. No person dealing with the Trustee shall be obligated to see to the proper application of any money paid to the Trustee, or to inquire whether the Trustee has acted pursuant to any of the terms of the Plan. Each person dealing with the Trustee may act upon any notice, request or representation in writing by the Trustee, or by the Trustee's duly authorized agent, and shall not be liable to any person whomsoever in so doing. The certificate of the Trustee that it is acting in accordance with the Plan shall be conclusive in favor of any person relying on the certificate.

10.11 RESIGNATION. The Trustee may resign at any time as Trustee of the Plan by giving thirty (30)-days written notice in advance to the Employer and to the Advisory Committee.

10.12 REMOVAL. The Employer, by giving thirty (30) days' written notice in advance to the Trustee, may remove any Trustee.

In the event of the resignation or removal of a Trustee, the Employer shall appoint a successor Trustee if it intends to continue the Plan. During any period a Trustee is unable to serve for any reason, the remaining Trustee or Trustee(s) shall act as the sole Trustee or as the only Trustee(s) of the Trust created under this Agreement.

10.13 INTERIM DUTIES AND SUCCESSOR TRUSTEE. Each successor Trustee shall succeed to the title to the Trust vested in his predecessor by accepting in writing his appointment as successor Trustee and filing the acceptance with the former Trustee and the Advisory Committee without the signing or filing of any further statement. The resigning or removed Trustee, upon receipt of acceptance in writing of the Trust by the successor Trustee, shall execute all documents and do all acts necessary to vest the title of record in any successor Trustee. Each successor Trustee shall have and enjoy all of the powers, both discretionary and ministerial, conferred under this Agreement upon his predecessor.

No successor Trustee shall be personally liable for any act or failure to act of any predecessor Trustee. With the approval of the Employer and the Advisory Committee, a successor Trustee, with respect to the Plan, may accept the account rendered and the property delivered to it by a predecessor Trustee without incurring any liability or responsibility for so doing.

10.14 VALUATION OF TRUST. The Trustee shall value the Trust Fund as of each account date to determine the fair market value of each Participant's accrued benefit in the trust, and the Trustee shall value the trust fund on such other dates) as may be necessary for such purpose.

10.15 LIMITATION ON LIABILITY - IF INVESTMENT MANAGER APPOINTED. The Trustee shall not be liable for the acts or omissions of any Investment Manager or Managers the Advisory Committee may appoint, nor shall the Trustee be under any obligation to invest or otherwise manage any asset of the Plan which is subject to the management of a properly appointed investment manager. The Advisory Committee, the Trustee and any properly appointed investment manager may execute a letter agreement as a part of this Plan delineating the duties, responsibilities and liabilities of the investment manager with respect to any part of the trust fund under the control of the investment manager.

## ARTICLE XI

### MISCELLANEOUS

11.01 EVIDENCE. Anyone required to give evidence under the terms of the Plan may do so by certificate, affidavit, document or other information which the person to act in reliance may consider pertinent, reliable and genuine, and to have been signed, made or presented by the proper party or parties. Any action required of the Employer shall be by resolution of its Governing Body. Both the Advisory Committee and the Trustee shall be fully protected in acting and relying upon any evidence described under this Section 12.01.

11.02 NO RESPONSIBILITY FOR EMPLOYER ACTION. The Trustee, the Advisory Committee, and the Plan Administrator shall not have any obligation nor responsibility with respect to any action required by the Plan to be taken by the Employer, any Participant or eligible Employee, nor for the failure of any of the above persons to act or make any payment or contribution, or to otherwise provide any benefit contemplated under this Plan, nor shall the Trustee, the Advisory Committee or the Plan Administrator be required to collect any contribution required under the Plan, or determine the correctness of the amount of any Employer contribution. The Trustee, the Advisory Committee and the Plan Administrator shall not have any obligation to inquire into or be responsible for any action or failure to act on the part of the others.

11.02 FIDUCIARIES NOT INSURERS. The Trustee, the Advisory Committee, the Plan Administrator, and the Employer in no way guarantee the Trust Fund from loss or depreciation. The Employer does not guarantee the payment of any money which may be or becomes due to any person from the Trust Fund. The liability of the Advisory Committee and the Trustee to make any payment from the Trust Fund at any time and all times is limited to the then available assets of the Trust.

11.04 WAIVER OF NOTICE. Any person entitled to notice j under the Plan may waive the notice.

11.05 SUCCESSORS. The Plan shall be binding upon all persons entitled to benefits under the Plan, their respective heirs and legal representatives, upon the Employer, its Committee, the Plan Administrator and their successors.

11.06 NUMBER AND GENDER. Words used in the masculine, wherever used herein, shall refer to and apply to the either the masculine, neuter or feminine where applicable, and wherever the context of the Plan dictates, the plural shall be read as the singular and the singular as the plural.

11.07 STATE LAW. Kansas law shall determine all questions arising with respect to the provisions of this Agreement except to the extent Federal statute supersedes Kansas law.

## ARTICLE XII

### EXCLUSIVE BENEFIT, AMENDMENT, TERMINATION

12.01 EXCLUSIVE BENEFIT. Except as provided under ARTICLE III, the Employer shall have no beneficial interest in any asset of the Trust and no part of any asset in the trust shall ever revert to or be repaid to an Employer, either directly or indirectly; nor prior to the satisfaction of all liabilities with respect to the Participants and their beneficiaries under the Plan, shall any part of the corpus or income of the Trust Fund, or any asset of the Trust, be (at any time) used for, or diverted to, purposes other than the exclusive benefit of the Participant or their beneficiaries.

12.02 AMENDMENT BY EMPLOYER. The Employer shall have the right at any time and from time to time:

(a) To amend this Agreement in any manner it deems necessary or advisable in order to qualify (or maintain qualification of) this Plan and the Trust created under it under the appropriate provisions of the Code; and

(b) To amend this Agreement in any other manner. However, no amendment shall authorize or permit any of the trust fund (other than the part which is required to pay taxes and administration expenses) to be used for or diverted to purposes other than for the exclusive benefit of the Participants or their beneficiaries or estates. No amendment shall cause or permit any portion of the trust fund to revert to or become a property of the Employer, and no amendment which affects the rights, duties or responsibilities of the Trustee, the Plan Administrator or the Advisory Committee may be made without the written consent of the affected Trustee, the Plan Administrator or the affected member of the Advisory Committee.

The Employer shall make all amendments in writing. Each amendment shall state the date to which it is either retroactively or prospectively effective.

12.03 DISCONTINUANCE. The Employer shall have the right, at any time, to suspend or discontinue its contributions under the Plan, and to terminate, at any time, this Plan and the Trust created under this Agreement. The Plan shall terminate upon the first to occur of the following:

(a) The date terminated by action of the Governing Body of the Employer, provided the Governing Body gives the Trustee thirty (30) days' prior notice of termination;

(b) The date the Employer shall be judicially declared bankrupt or insolvent;

12.04 FULL VESTING ON TERMINATION. Notwithstanding any other provision of this Plan to the contrary, upon termination of the Plan, or, if applicable, upon the date of complete discontinuance contributions to the Plan, an affected Participant's right to his accrued benefit shall be one hundred percent (100%) nonforfeitable.

12.05 MERGER. The Trustee shall not consent to, or be a party to, any merger or consolidation with another plan, or to a transfer of assets or liabilities to another plan, unless immediately after the merger, consolidation or transfer, the surviving plan provides each Participant a benefit equal to or greater than the benefit each Participant would have received had the plan terminated immediately before the merger or consolidation or transfer.

12.06 TERMINATION. Upon termination of the Plan, the provisions of Section 5.03 and of Article VI shall remain operative, and the Trust shall continue until the Trustee has distributed all of the benefits under the Plan. On each accounting date, the Advisory Committee shall credit any part of, a Participant's accrued benefit retained in the Trust with its proportionate share of the Trust's income, expenses, gains and losses, both realized and unrealized.



**EXECUTION BY EMPLOYER**

IN WITNESS WHEREOF, the City of Prairie Village, Kansas has caused this Supplemental Pension Benefit Plan to be executed this \_\_\_\_ day of \_\_\_\_\_, 2007.

**THE CITY OF PRAIRIE VILLAGE, KANSAS**

By: \_\_\_\_\_

Ronald L. Shaffer, Mayor

**CONSENT BY TRUSTEE**

IN WITNESS WHEREOF, the Trustee acknowledges its consent to the adoption of this amendment and restatement of the Plan, agrees to its terms, and agrees to continue in its capacity under the Plan and related Trust.

**MARSHALL & ILSLEY TRUST COMPANY,  
N.A., Trustee**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

# **School Resource Officer's 2<sup>nd</sup> Annual Skateboard Contest**

(Sponsored by the Prairie Village Police Department)

Contest will be held at the Prairie Village Skate Park  
after school on **April 20, 2007.**

Rainout Date: 05/04/2007

## **Mission Valley VS Indian Hills**

(Not a school sponsored event)

Come join in the fun at the **Prairie Village Skate Park** with your **School Resource Officer**. We will have a contest among students from **Mission Valley Middle School** and **Indian Hills Middle School**. There will be judges there to score each student. Each individual score will be added to the overall team school's score. The school with the most points at the end wins. The school that wins the contest will be able to take the traveling trophy back to their school and place it in a display case. During the contest we will have give-a-ways from local business venues and after the contest; we will be serving refreshments for all that are in attendance. I have reserved the Skate Park on **April 20, 2007 from 3:00 p.m to 8:00 p.m.** The contest portion will begin at 5:00 p.m. Therefore, **AFTER SCHOOL** you can go to the park and practice before the contest. This event is only open to students who currently attend Mission Valley or Indian Hills. **All students participating in the contest must wear helmets during the contest and have your parent sign the required wavier.** You can find waivers in the main office or contact Detective Washington.

**HAVE FUN AND GOOD LUCK!!!** Detective Washington, SRO

**2007 CITY OF PRAIRIE VILLAGE  
Skateboard Contest Application and Waiver**

Name of Participant: \_\_\_\_\_

Parents/Guardians' Names: \_\_\_\_\_

Home Address/City/Zip: \_\_\_\_\_

Home Phone: (\_\_\_\_) \_\_\_\_\_

Daytime Phone: (\_\_\_\_) \_\_\_\_\_ (Mother) (\_\_\_\_) \_\_\_\_\_ (Father)

Emergency Contact/Relationship: \_\_\_\_\_

Emergency Contact Phone: (\_\_\_\_) \_\_\_\_\_

**ATTENTION PARENT/GUARDIAN:  
Read and sign the Waiver below.**

**Waiver:** *I am aware of the rules and regulations which apply to the Skate Park and agree that my child will abide by all such rules and regulations. I further acknowledge that my child is required to wear a helmet at all times during his or her participation in the Skateboard Contest and hereby agree that my child will do so. I fully comprehend the risk of personal injury and damage that may result from my child's participation in the Skateboard Contest and hereby agree to assume such risk.*

*I further waive any and all claims for personal injury and property damage of any kind or character whatsoever against the City of Prairie Village, its agents or its employees. I hereby release the City of Prairie Village, its agents or its employees from any loss, cost, damage or liability of any nature in connection with or around the Skate Park immediately prior to, immediately after and during the period of the Skateboard Contest.*

*By signing this form, I acknowledge that I have read and fully understand my own liability and do accept the restrictions.*

\_\_\_\_\_  
Printed Name of Parent/Guardian

\_\_\_\_\_  
Signature of Parent/Guardian

\_\_\_\_\_  
Date

## MAYOR'S ANNOUNCEMENTS

Tuesday, February 20, 2007

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

Board of Code Appeals	02/21/2007	6:00 p.m.
Prairie Village Arts Council	02/21/2007	7:00 p.m.
VillageFest Committee	02/22/2007	7:00 p.m.
Environmental Recycle Committee	02/28/2007	7:00 p.m.
Council Committee of the Whole	03/05/2007	6:00 p.m.
Council	03/05/2007	7:30 p.m.

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The Prairie Village Arts Council is pleased to feature a watercolor on cloth exhibit by Rebecca Darrah in the R.G. Endres Gallery during the month of February.

The annual large item pick-up has been scheduled with Deffenbaugh for April 28<sup>th</sup>.

Donations to the Holiday Tree Fund are still being accepted. As of February 9th the Holiday Tree Fund has received \$8,641.12. The funds will be used to assist Prairie Village families and Senior Citizens needing help to pay their heating and electric bills during the cold winter months, as well as with home maintenance throughout the year. Your tax-deductible contributions are appreciated.

The 50<sup>th</sup> Anniversary books, **Prairie Village Our Story**, and Prairie Village Gift Cards continue to be sold to the public.

The Sister City Committee is hosting a Dessert Reception for SM East International Students on February 26<sup>th</sup> from 7 - 8:30 pm in Council Chambers. Council members are invited to attend.

**INFORMATIONAL ITEMS**  
**February 20, 2007**

1. City Administrator's Report - February 14, 2007
2. Planning Commission Minutes - January 2, 2007
3. Board of Zoning Appeals/Planning Commission Actions - February 6, 2007
4. Board of Zoning Minutes - October 3, 2006
5. Prairie Village Municipal Foundation Minutes - January 8, 2007
6. Village Vision Worksession Minutes - January 27, 2007
7. Tree Board Minutes - February 7, 2007
8. Mark Your Calendars
9. Committee Agenda

**CITY ADMINISTRATOR'S REPORT**  
**February 14, 2007**

**Legal Issues:**

Recently the City was sued for legal fees incurred by the Plaintiff in the sign ordinance case. The City's insurance carrier agreed to defend the City and they were able to significantly reduce the fee. The company will pay the costs of defense as well as the negotiated legal fee of the Plaintiff. The City will be required to pay only the amount of the deductible, \$5,000.

Charles Wetzler was recently informed the City of Leawood continues to believe a fifty year lease is not long enough to justify the cost of the art piece they had planned for the island on Somerset. The Leawood Arts Council is considering other locations.

**MARC / Community America loan program:**

According to the last report, eleven cities agreed to participate in the loan program. MARC staff and Community America are working on marketing material and were instrumental in getting an article in the Star explaining the program. The Prairie Village page on the web site explaining the loan program has received 67 hits so far.

This Council asked the MARC committee to consider increasing the \$200,000 home value limit for participation by \$25,000 to \$50,000. The committee rejected the idea.

**Government Finance Officer's Association (GFOA) Awards:**

Each year the City submits the Annual Audit and Annual Budget to GFOA for review.

A Panel for GFOA awarded the Comprehensive Annual Financial Report (CAFR) for the fiscal year ended December 31, 2005 a Certificate of Achievement for Excellence in Financial Reporting. This Certificate is the highest form of recognition in governmental accounting and financial reporting. The effort required to attain this Certificate represents significant accomplishment by a government and its management. This prestigious award has become an important factor in bond rating analysis. The City's CAFR has received this Award since 1986.

A panel of independent reviewers for GFOA also awarded the Prairie Village 2007 Budget their Distinguished Budget Presentation Award. This award is the highest form of recognition in governmental budgeting. It reflects the commitment of the governing body and staff to meeting the highest principles of governmental budgeting. In order to receive the budget award, the entity had to satisfy nationally recognized guidelines for effective budget presentation. These guidelines are designed to assess how well an entity's budget serves as a policy document, a financial plan, an operations guide and a communications device. This City's budgets have received this annual award since 1989.

**State Legislative Issues:**

**LAVTR** The Senate Ways and Means Committee conducted a hearing concerning reinstatement of the Local Ad Valorem Tax Reduction Fund (LAVTR). Officials of the Kansas League of Municipalities and Mayors of several cities testified on behalf of reinstatement of this important revenue source. They testified that this is a matter of great importance to local governments and that by reinstating LAVTR Demand Transfers, legislators will help curb the growth in local property tax.

Those in attendance said it was a very positive hearing, committee members seemed receptive to working with cities to find some way to reinstate at least a part of the Demand Transfers. They urged all city officials who will be meeting with their State legislators in the coming weeks to discuss this issue with them and to provide concrete examples of how a return of the LAVTR money will help mitigate property tax increases in the community.

For the benefit of newer Council members, I have attached excerpts from the 2003 Annual Budget that describe the source of these Demand Transfers.

Prairie Village concrete examples:

In mid-year 2002, Governor Graves announced that cities would not receive the second half of their annual Demand Transfer revenue. This City lost \$96,932 of the revenue budgeted and anticipated for that year.

The following year, shortly after she took office, Governor Sebelius and the legislature approved total elimination of Demand transfers to cities and counties. Prairie Village sustained a total loss of \$255,390 budgeted and anticipated revenue in that one year. Since that money has never been restored, every annual budget since that time has been difficult to balance.. This also resulted in a tightening of CARS funds which relied in part on Demand Transfers from the State.

In 2007 Prairie Village has budgeted reserve funds in order to increase the Infrastructure Improvement Program to the required level. If reserves continue to be necessary, tax increases will be inevitable.

**Proposed Cap to limit increases in Property Tax Valuation:**

This issue was added to the Prairie Village Legislative Program for 2007. A house Bill to limit real property appraised valuation increases from one tax period to another to the percentage increase of the consumer price index for all urban consumers (HCR 5006) is being heard in the Senate Assessment and Taxation Committee. The League testified this Bill provides tax relief to long term property holders by shifting that burden to the owners of new properties and to owners of newly acquired properties. The League's position is this type of legislation further erodes the tax base available to local governments.

Senator Barbara Allen, who chairs the Senate Assessment and Taxation Committee, created a sub-committee to tackle these major tax issues: Franchise fee cuts, corporate income taxes and property tax breaks.



**Excerpt from 2003 Budget:**

**LAVTR** is an acronym for the Local Ad Valorem Tax Reduction Fund. All local taxing subdivisions receive money from this state fund. The fund receives revenue equal to 4 1/2% of total state sales and compensating use tax collections. The money is distributed among taxing subdivisions based on relative property taxes levied the prior year, thereby creating some additional revenue source for those cities with higher ad valorem tax revenue. Estimated revenue for 2003 will be less than the previous year because the amount to be transferred can be decreased by the State Legislature during the 2002 or 2003 session. The County's projection for revenue in 2003 is:

111,880

**City/County Revenue Sharing** is financed by 2.823% of the 4.9% state sales and use tax collections apportioned to cities within each county based 50% on population with 50% apportioned to County government. Because the amount paid to cities is based on population, which is declining slightly in Prairie Village, this decline and the tremendous population growth in other cities in the County reduces this City's portion of funds available from this source. The State Legislature imposed a 6.5% decrease on this revenue source for 2001 because of a State revenue shortfall. Since the state is experiencing this again, the county estimate is even less than the 2002 estimate:

\$ 170,850

**Special Highway** revenue is a direct payment from the state equal to 40.5% of the motor fuel tax revenue. Since this is a "per gallon tax", gasoline price increases do not increase the City's revenue. It also includes some property tax revenue. The revenue from this source is distributed to cities based on population. Increasing gas cost, which decreases use, and the population decrease in Prairie Village, make it necessary to use a conservative revenue estimate for 2003.

\$ 740,000\*

*\*The tax paid per gallon of gas goes directly into the State's Special Highway Fund. This State fund also receives money from property tax collected on "over-the-road motor vehicles, trailers, buses and trucks owned and operated in the State for local pickup and delivery or transportation for hire. Only the property tax portion of this transfer was eliminated.*

\$ 42,900\*

**PLANNING COMMISSION MINUTES  
MEETING OF JANUARY 2, 2007**

**ROLL CALL**

The Planning Commission of the City of Prairie Village met in regular session on Tuesday, January 2, 2007 in the Multi-Purpose Room, 7700 Mission Road. Chairman Ken Vaughn called the meeting to order at 7:00 p.m. with the following members present: Randy Kronblad, Marlene Nagel, Robb McKim, Marc Russell, Nancy Vennard and Bob Lindeblad.

The following persons were present in their advisory capacity to the Planning Commission: Ron Williamson, Planning Consultant; Bob Pryzby, Director of Public Works; Laura Wassmer, Council Liaison and Joyce Hagen Mundy, Planning Commission Secretary.

**APPROVAL OF MINUTES**

Randy Kronblad noted a typographical error on page 5, paragraph 7, the word "award" should be "aware". Robb McKim noted he was absent from the November meeting and abstained on the approval of the minutes for that meeting.

Randy Kronblad moved the approval of the minutes of December 5, 2006 with the changes noted. The motion was seconded by Marlene Nagel and passed unanimously..

**PUBLIC HEARINGS**

Chairman Ken Vaughn noted the agenda included several public hearings for conditional use permits for communication utility boxes. One of the applications was on his property, so he recused himself and left the table. Vice-Chairman Bob Lindeblad assumed the chair for the consideration of PC2006-18.

**PC2007-18 - Request for Conditional Use Permit**

Bob Lindeblad opened the public hearing on PC2006-18 a request for a Conditional Use Permit for a Communication Utility Box at 5600 West 78<sup>th</sup> Street and reviewed the public hearing procedures.

Chris Carroll, representing AT&T at 8700 Indian Creek Parkway, Overland Park, presented the application.

AT&T is requesting the approval of a conditional use permit for the installation of a VRAD utility box that has a footprint of 38" x 47" (12.4 sq. ft.) a height of 63" and sets on a 6' x 6' (36 sq. ft.) pad. The proposed VRAD utility box will be paired with an existing SAI utility box that is located in the right-of-way on the west side of Reeds Road between 77<sup>th</sup> Terrace and 78<sup>th</sup> Street. The proposed utility box will be located in a utility easement behind the existing SAI and will be approximately 10 feet back of the street right-of-way line. The new boxes are being installed to help AT&T keep up with the increased demand for services. This is another facility being installed to implement AT&T's new plan which is called "Project Light Speed" to enable AT&T to broadcast high quality images and video programming over telephone lines.

In accordance with the Planning Commission's Citizens' Participation policy, the applicant held a meeting on December 19, 2006, at City Hall. Two people appeared on this application and expressed their disappointment with the lack of communication prior to any construction work beginning on the site and the amount of work that has been done prior to CUP approval. Concern was expressed regarding the landscaping and a meeting was set up with the

landscape architect. A revised landscape plan has been submitted based on that meeting that increases the number of plantings from 22 to 42.

Bob Lindeblad asked if the revised plan has been accepted by the neighboring property owners. Mr. Carroll responded the resident at 5306 West 78<sup>th</sup> Street has approved the plan. The new plan was developed with the input of the residents and he assumes they are satisfied with the plan although they have not received any comments on the plan.

Ron Williamson noted a significant amount of construction has occurred on this site prior to the approval of the Conditional Use Permit. Pads have been poured; a hand hole has been installed; a part of the new utility box has been installed and it appears that a new SAI box has been installed. The SAI box is 65" tall which exceeds the maximum height permitted by staff and, therefore, also needs CUP approval.

Chris Carroll stated he was notified at the December 19<sup>th</sup> meeting that the SAI boxes also needed conditional use permits. He was unaware of this as the other Johnson County cities where they are working do not require any approvals for retrofits. Mr. Carroll stated he met with Assistant City Administrator Doug Luther on December 20<sup>th</sup> and was given a copy of the ordinance requiring these units to also be approved. He supports the staff recommendation that both boxes be approved and agrees with the conditions for approval recommended by staff.

Mr. Carroll apologized to the Commission for the oversight on their behalf in not seeking approval for the retrofit cabinets and the work done prior to receiving approval from the Commission.

Bob Lindeblad stated he remembered this being discussed at the December Commission meeting. Mr. McKim asked if the applicant was not given a copy of the city's ordinances at the beginning of the process.

Mr. Carroll stated they were not and that at that time they felt some of the cabinets would be smaller than 48 inches in height. They are now clearly aware of the city's requirements and have met with their design, planning and construction engineers and have made them aware of the city's requirements.

Mr. Carroll stated they had received permits for preparatory work such as the placement of cabling and will continue to request this, but they have clearly instructed their contractors that no cabinets are to be placed without authorization from the Planning Commission. They have hired a construction coordinator to oversee the work by the various contractors at the multiple locations within the City.

Mr. Williamson noted construction is well underway at some locations with pads in place. Bob Lindeblad questioned if pads were considered to be part of the cabinet. Mr. Williamson responded he felt the pad should not be installed until the unit has been approved.

Chris Carroll assured the Commission members that communication will be improved from this point forward with staff and internally with their contractors as to what is allowed.

Bob Lindeblad opened the hearing to public comment. No one addressed the Commission on this application and the public hearing was closed at 7:15 p.m.

Nancy Vennard questioned the need for the second staff condition recommended as the applicant has met with the neighbors and revised the landscape plan. Mr. Lindeblad felt the intent of that condition was that the neighbors approve the revised plan and this has not been confirmed. Nancy Vennard noted neighborhood input is not the same as neighborhood approval. Mr. Lindeblad stated he would like staff to communicate with the neighbors to confirm their approval of the revised plans.

Mr. McKim asked Mr. Pryzby to review the permitting process followed for these applications.

Mr. Pryzby stated at the very beginning he met with Eric Stong and reviewed what was required for a right-of-way permit and later when Mr. Stong submitted the applications for the permits, they both met with the subcontractors on the requirements. Mr. Pryzby stated he allowed for the pads to be poured as they were within the requirements of the City.

As time went on, the city's inspectors in the field discovered new cabinets being installed for which there no permits were issued. On December 18<sup>th</sup>, he stopped all operations. Some of the SAI cabinets being installed appeared to be over 54" in height. Public Works staff measured all the cabinets and Mr. Pryzby and Eric Stong met to determine which SAI units would require conditional use permits from the City. Mr. Pryzby stated he did allow for the pouring of the pads as they were within the parameters established in the City's Code. He noted his permits clearly stated what work could be done.

Bob Lindeblad stated it makes sense to him to allow the pads to be constructed if they are within the City's regulations.

Chris Carroll stated the City staff at all levels has been very good to work with. AT&T allowed their contractors to get ahead of themselves. He stated steps have been taken that were not previously in place that will prevent it from happening in the future.

Bob Lindeblad asked if this is the end of this phase. Chris Carroll stated for now, but noted they still have the northern part of the City to cover and he has been told there will be six or seven more units in 2007 and some in 2008. The entire project is to be completed in 2008.

Robb McKim requested future submittals include a site plan covering a larger area showing to scale the relationship between the existing units and new units. Nancy Vennard stated she would like to see an area site plan that would show the location in relation to the neighborhood. The current plans have zoomed in too far making it very difficult to determine the relative box locations. Mr. Carroll responded they have access to AIMS and showed a printout of the application being discussed. Commission members agreed they would like to have that information with future submittals. Bob Lindeblad reminded the applicant the Commission includes lay members who are not trained in reading construction plans.

The Planning Commission reviewed the findings for the requested conditional use permit for a communications utility box at 5600 West 78<sup>th</sup> Street as follows:

1. **The proposed conditional use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations, and use limitations.**  
The proposed utility box is larger than what is permitted by Staff approval and therefore is required to obtain a conditional use permit.
2. **The proposed conditional use at the specified location will not adversely affect the welfare or convenience of the public.**  
The proposed utility equipment box will not adversely affect the welfare or convenience of the public, but will actually benefit the public because it will improve electronic communications to households in Prairie Village.
3. **The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.**  
The proposed utility box will be located in a utility easement on the west side of Reeds Road between 77<sup>th</sup> Terrace and 78<sup>th</sup> Street where it will be adequately screened. The proposed VRAD utility box and SAI box are located in a relatively open area that has no screening and extensive landscaping will be needed to screen them.

4. **The location and size of the conditional 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 given access to it, are such that the conditional use will not dominate 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 conditional use will so dominate the immediate neighborhood, consideration should be given to:**

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

The proposed utility box itself is approximately 47" wide x 38" deep x 63" high. The pad is 6' x 6' and it will be surrounded by landscaping. The SAI box has a smaller footprint but is 65" tall. The hand hole has been installed and is flush with the ground and is not part of the pad. The hand hole is located in the street right-of-way behind the curb while the proposed utility box will be located in a utility easement approximately 25' behind the curb.

A revised landscape plan was submitted including both deciduous plants and evergreens. The number of plants proposed was increased from 22 to 42 and will provide some screening year-round.

The size of this use is not such that it would dominate the neighborhood or hinder development. The neighborhood is totally developed residentially to the east, west, south and north and this use is being installed in an easement that should be able to accommodate it compatibly without it being a problem for the other properties in the neighborhood.

5. **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 use and located so as to protect such residential uses from any injurious affect.**

The only parking required for this use is what will be needed while construction and installation are occurring, and then periodic maintenance. There is no need to provide permanent off-street parking for this use as it can easily be accommodated in the street.

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

Since this is a very small installation and a companion to an existing utility box, there is not a need for additional utilities, drainage, or other facilities.

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

There is not a need for access roads or entrance and exit drives because all the parking will be adequately handled in Reeds Road.

8. **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 proposed use does not utilize any hazardous or toxic materials and does not generate any obnoxious odors or unnecessarily intrusive noises.

Marlene Nagel moved the Planning Commission find the findings of fact favorable for the proposed Conditional Use Permit to allow installation of the VRAD utility box in a utility

easement and the replacement of the SAI box on the west side of Reeds Road between 77<sup>th</sup> Terrace and 78<sup>th</sup> Street and grant a Conditional Use Permit subject to the following conditions:

1. That the applicant maintains the landscaping and replaces any plant materials that die so that the integrity of the landscape screening is maintained throughout the life of the project.
2. That the applicant shall meet with the neighbors and revise the landscape plan to include some evergreens and more ornamental trees, and resubmit it to staff for review and approval.
3. That the applicant installs the landscaping immediately after installation of the utility box.
4. That the Conditional Use be approved for an indefinite period of time.
5. That should the utility boxes become obsolete and not functional they shall be removed from the site within six months.

The motion was seconded by Randy Kronblad and passed by a vote of 5 to 1 with Marc Russell voting "nay".

Chairman Ken Vaughn resumed the Chair and opened the Public Hearings on the following applications:

**PC2007-01 Request for Conditional Use Permit for Communication Utility Box at 9100 Roe Avenue**

**PC2007--02 Request for Conditional Use Permit for Communication Utility Box at 7718 Mission Road**

**PC2007-03 Request for Conditional Use Permit for Communication Utility Box at 7554 Booth Drive**

**PC2007-04 Request for Conditional Use Permit for Communication Utility Box at 5402 West 77<sup>th</sup> Street**

**PC2007-05 Request for Conditional Use Permit for Communication Utility Box at 5620 West 81<sup>st</sup> Street**

**PC2007-06 Request for Conditional Use Permit for Communication Utility Box at 3500 West 79<sup>th</sup> Street**

Chris Carroll stated the proposed boxes are being requested to help AT&T keep up with the increased demand for services. The new utility boxes are being installed to implement AT&T's new plan which is called "Project Light Speed." This will enable AT&T to broadcast high quality images and video programming over telephone lines. Mr. Carroll stated he had received and was in agreement with the staff review and recommendations for these applications.

#### **Application PC2007-01**

Mr. Carroll noted Jim McGinley, 4512 West 91<sup>st</sup> Street, was present at the informational meeting held on December 19, 2006. Mr. McGinley lives directly across the street to the east of the unit being placed at 9100 Roe and was concerned with the proposed screening. After reviewing the proposed landscape plans, he expressed his support for the permit.

#### **Application 2007-03**

Staff recommended the relocating the existing SAI box from the intersection of 76<sup>th</sup> Street and Booth Drive to the rear property line easement adjacent to the proposed VRAD box. The applicant met with the AT&T Engineering Department and has agreed to that relocation.

#### **Application 2007-06**

Mr. Carroll stated Rick Melton, 7850 Windsor, attended the informational meeting and was interested in the proposed landscaping for 3500 West 79<sup>th</sup> Street as his driveway is adjacent to

the proposed cabinet. He was pleased with the landscape plan, but requested AT&T provide some buffalo grass seed for the area between the sidewalk and street for him to plant in the spring and requested that AT&T Technicians be directed not to park their trucks on the curb. AT&T has agreed to both requests. Bob Lindeblad suggested they offer sod instead of seed due the difficulty of growing seed. Mr. Carroll replied they had offered sod, but Mr. Melton stated he wanted the seed.

No persons were present to address these applications and Chairman Ken Vaughn closed the public hearings at 7:30 p.m.

#### PC2007-01

Ron Williamson noted a significant amount of construction has occurred on this site prior to the approval of the Conditional Use Permit. Pads have been poured; a hand hole has been installed; a part of the new utility box has been installed and a new SAI box has been installed. The SAI box is 65" tall which exceeds the maximum height permitted by staff and, therefore, also needs CUP approval.

Nancy Vennard noted there was another accident at this location the past weekend and stressed the need to ensure that the proposed landscaping for this unit does not interfere with the sight triangle distance or negatively impact the view for vehicular traffic. Robb McKim confirmed the unit was not located in the power line easement. Ken Vaughn noted screening materials do not have to be tall and cover the box, that small plantings can be used to mitigate the impact of the unit. Bob Lindeblad noted a darker color cabinet would soften the appearance of the unit.

Robb McKim questioned if the unit could be set further back. Mr. Williamson responded the unit is back as far as possible. Randy Kronblad noted as close as the pads are to the sidewalk limits the amount of landscaping that can be done at this location. Mr. Carroll responded the landscape plan includes 17 plants and noted Mr. McGinley was satisfied with the proposed landscaping.

Ron Williamson stated he would like to see something in the parkway between the sidewalk and the curb to help screen the unit and suggested three to five plants preferably evergreens.

The Planning Commission reviewed the findings for the requested conditional use permit for a communications utility box at 9100 Roe Avenue as follows:

1. **The proposed conditional use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations, and use limitations.**  
The proposed utility box is larger than what is permitted by Staff approval and therefore is required to obtain a conditional use permit.
2. **The proposed conditional use at the specified location will not adversely affect the welfare or convenience of the public.**  
The proposed utility equipment box will not adversely affect the welfare or convenience of the public, but will actually benefit the public because it will improve electronic communications to households in the Prairie Village.
3. **The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.**  
The proposed utility box will be located in the Roe Avenue right-of-way adjacent to the golf course where it can be adequately screened from the view of the residences on the east side of Roe Avenue. The proposed utility box is relatively small in size and is not an intense use that generates a lot of people activity; therefore, it should not have an adverse affect on the value of the property immediately in the neighborhood.

4. The location and size of the conditional 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 given access to it, are such that the conditional use will not dominate 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 conditional use will so dominate the immediate neighborhood, consideration should be given to:
  - a. The location, size, nature and height of buildings, structures, walls, and fences on the site; and
  - b. The nature and extent of landscaping and screening on the site.

The proposed utility box itself is approximately 47" wide x 38" deep x 63" high. The pad is 6' x 6' and it will be surrounded by landscaping. The hand hole has already been installed between the curb and the sidewalk.

The landscape plan provides screening for the golf course, and it should blend well with the other landscaping in the area. The choice of plant materials is good in that year around screening will be provided through the use of evergreens. There is a wide parkway between the curb and sidewalk along Roe and consideration should be given to adding some plant material that will provide better screening for the residences to the east.

The size of this use is not such that it would dominate the neighborhood or hinder development. The neighborhood is totally developed residentially to the east, north and south, and the golf course is to the west. This use is being installed on right-of-way next to the golf course that should be able to accommodate it compatibly without it being a problem for the other properties in the neighborhood.

5. 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 use and located so as to protect such residential uses from any injurious affect.

The only parking that will be required for this use is what is needed while construction and installation are occurring, and then periodic maintenance. There is no need to provide permanent off-street parking for this use as it can easily be accommodated in the street.
6. Adequate utility, drainage, and other such necessary facilities have been or will be provided.

Since this is a very small installation and a companion to an existing utility box, there is not a need for additional utilities, drainage, or other facilities.
7. Adequate access roads or entrance and exit drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.

There will not be a need for access roads or entrance and exit drives because all the parking will be adequately handled in the street.
8. 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 proposed use does not utilize any hazardous or toxic materials and does not generate any obnoxious odors or unnecessarily intrusive noises.

Bob Lindeblad moved the Planning Commission find the findings of fact favorable for the proposed Conditional Use Permit to allow installation of the VRAD utility box and replacement of



the SAI box at 9100 Roe Avenue and grant a Conditional Use Permit subject to the following conditions:

1. That the applicant maintain the landscaping and replace any plant materials that die so that the integrity of the landscape screening is maintained throughout the life of the project; and parkway between the curb and sidewalk along Roe
2. That the applicant revises the landscape plan to address screening from the east and submit it to staff for review and approval.
3. That the applicant installs the landscaping immediately after installation of the utility box.
4. That the Conditional Use be approved for an indefinite period of time.
5. That should the equipment boxes become obsolete and not functional they shall be removed from the site within six months.

The motion was seconded by Nancy Vennard and passed by a vote of 6 to 1 with Marc Russell voting "nay".

#### **PC2007-02**

Ron Williamson stated AT&T is requesting the approval of a conditional use permit for the installation of a VRAD utility box that has a footprint of 38" x 47" (12.4 sq. ft.) a height of 63" and is set on a 6' x 6' (36 sq. ft.) pad. The proposed VRAD utility box will be paired with an existing SAI utility box that is also located in the easement. The SAI box has been replaced and the new box is 65" tall which exceeds the maximum height that can be permitted by staff. Therefore, the SAI box also needs CUP approval.

In accordance with the Planning Commission's Citizens' Participation policy, the applicant held a meeting on December 19, 2006, at City Hall. No one appeared on this application.

The Planning Commission reviewed the findings for the requested conditional use permit for a communications utility box at 7718 Mission Road as follows:

1. **The proposed conditional use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations, and use limitations.**  
The proposed utility box is larger than what is permitted by Staff approval and, therefore, is required to obtain a conditional use permit.
2. **The proposed conditional use at the specified location will not adversely affect the welfare or convenience of the public.**  
The proposed utility equipment box will not adversely affect the welfare or convenience of the public, but will actually benefit the public as it will improve electronic communications to households in Prairie Village.
3. **The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.**  
The proposed utility box will be located in a private utility easement on the Municipal Center campus. It is relatively small in size, is not an intense use that generates a lot of people activity, and is located within the Municipal Center campus; therefore, it should not have an adverse affect on the value of the property immediately in the neighborhood.
4. **The location and size of the conditional 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 given access to it, are such that the conditional use will not dominate 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 conditional use will so dominate the immediate neighborhood, consideration should be given to:**
  - a. **The location, size, nature and height of buildings, structures, walls, and fences on the site; and**

**b. The nature and extent of landscaping and screening on the site.**

The proposed utility box is approximately 47" wide x 38" deep x 63" high. No hand hole is shown on the plan. This is one of many utility boxes in this area and is somewhat screened by tall evergreens. More intense planting is needed at the ground level in order to more adequately screen the boxes. Extreme care must be taken to not damage the existing trees on this site.

The size and location of this use is not such that it would dominate the neighborhood or hinder development. This use is being installed in an easement with the Municipal Center campus that can accommodate it compatibly without it being a problem for the other properties in the neighborhood. Since this utility box is on City property, the landscape plan will need to be approved by the Tree Board.

- 5. 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 use and located so as to protect such residential uses from any injurious affect.**

The only parking required for this use is what will be needed while construction and installation are occurring, and then periodic maintenance. There is no need to provide permanent off-street parking for this use because it can easily be accommodated in the adjacent parking lot and driveway.

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

Since this is a very small installation and a companion to an existing utility box, there is not a need for additional utilities, drainage, or other facilities.

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

There will not be a need for access roads or entrance and exit drives because all the parking will be adequately handled in the adjacent parking lot and driveway.

- 8. 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 proposed use does not utilize any hazardous or toxic materials and does not generate any obnoxious odors or unnecessarily intrusive noises.

Ken Vaughn stated a resident in this area had contacted him regarding damage done to his irrigation system during construction and asked who he should contact. Chris Carroll responded that he would be the point of contact for any questions, concerns or problems and gave Mr. Vaughn his business card with contact information.

Robb McKim stated he prefers to see the sites such as this one where the installation can be integrated into the existing landscape rather than needing to mitigate the installations with additional landscaping and screening.

Robb McKim moved the Planning Commission find the findings of fact favorable for the proposed Conditional Use Permit to allow installation of the VRAD utility box and replacement of the SAI box in the easement at 7718 Mission Road (the Municipal Complex) and grant a Conditional Use Permit subject to the following conditions:

1. That the applicant maintains the landscaping and replaces any plant materials that die so that the integrity of the landscape screening is maintained throughout the life of the project.

2. That the applicant revise the landscape plan and add more ground level plants to screen the utility boxes and submit the plan to staff and the Tree Board for review and approval.
3. That the applicant installs the landscaping immediately after installation of the utility boxes.
4. That the Conditional Use be approved for an indefinite period of time.
5. That should the equipment boxes become obsolete and not functional they shall be removed from the site within six months.
6. That the existing Scotch Pine trees are protected during construction, and any plants that are damaged be replaced by the applicant.

The motion was seconded Bob Lindeblad and passed by a vote of 6 to 1 with Marc Russell voting "nay".

**PC2007-03**

Ron Williamson stated AT&T is requesting approval of a conditional use permit for the installation of a VRAD utility box that has a footprint of 38" x 47" (12.4 sq. ft.) a height of 63" and sets on a 6' x 6' (36 sq. ft.) pad. The proposed utility box will be paired with an existing SAI utility box that is located in the right-of-way on the northwest corner of 76<sup>th</sup> and Booth Drive. The proposed VRAD utility box will be located in a rear yard utility easement on the west side of Booth Drive between Rainbow Drive and 76<sup>th</sup> Street.

Mr. Williamson noted locating the new VRAD box in the rear yard easement rather than at the intersection will be easier to screen and will be much better than having another box at the corner. The VRAD box will be connected to the SAI box by underground cable. The existing SAI box is not well located and consideration should be given to relocating it to the same area as the proposed VRAD box so that it can be adequately screened. Mr. Carroll responded they would relocate the box as suggested.

This SAI box has not been replaced. The bollards that have been installed to protect it and not well maintained and provide a poor appearance.

In accordance with the Planning Commission's Citizens' Participation policy, the applicant held a meeting on December 19, 2006, at City Hall. No one appeared on this application.

Chris Carroll clarified the new location of the proposed box on an AIMS map of the area for the Commission members and confirmed its location in front of the existing SAI box which will not be changed.

Bob Lindeblad confirmed the change in location would not change the notification requirements for the application as the new location is still on the same property.

The Planning Commission reviewed the findings for the requested conditional use permit for a communications utility box at 7554 Booth as follows:

1. The proposed conditional use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations, and use limitations. The proposed utility box is larger than what is permitted by Staff approval and therefore is required to obtain a conditional use permit.
2. The proposed conditional use at the specified location will not adversely affect the welfare or convenience of the public. The proposed utility equipment box will not adversely affect the welfare or convenience of the public, but will actually benefit the public as it will improve electronic communications to households in Prairie Village.

3. **The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.**

The proposed VRAD utility box will be located on private property in a utility easement along the rear property line at 7554 Booth Drive where it will be adequately screened. The existing SAI box will be relocated to the same area as the proposed VRAD box so that it can be adequately screened. The proposed utility box is relatively small in size and is not an intense use that generates a lot of people activity; therefore, it should not have an adverse affect on the value of the property immediately in the neighborhood. It should also be noted that no one appeared at the public information meeting.

4. **The location and size of the conditional 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 given access to it, are such that the conditional use will not dominate 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 conditional use will so dominate the immediate neighborhood, consideration should be given to:**

- a. **The location, size, nature and height of buildings, structures, walls, and fences on the site; and**

- b. **The nature and extent of landscaping and screening on the site.**

The proposed VRAD utility box is approximately 47" wide x 38" deep x 63" high. The pad is 6' x 6' and it will be surrounded by landscaping. The applicant has also indicated that there will be a 2' x 3' hand hole that will be flush with the ground and not be a part of the pad. The hand hole will be located in the street right-of-way behind the curb while the proposed utility box will be located in a utility easement approximately 16' behind the curb.

The VRAD utility box is actually being placed within an existing landscaped area with only a few new plants being added. There are several small trees and shrubs in the area that need to be protected during the installation. If any existing plants are damaged, the applicant will need to replace them. The existing SAI box will be relocated next to the proposed VRAD box. Some evergreens need to be added in order to provide year-round screening.

The size of this use is not such that it would dominate the neighborhood or hinder development. The neighborhood is residentially developed to the east, west, south and north and this use is being installed in an easement that should be able to accommodate it compatibly without it being a problem for the other properties in the neighborhood.

5. **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 use and located so as to protect such residential uses from any injurious affect.**

The only parking required for this use is what will be needed while construction and installation are occurring, and then periodic maintenance. There is no need to provide permanent off-street parking for this use because it can easily be accommodated in the street.

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

Since this is a very small installation and a companion to an existing utility box, there is not a need for additional utilities, drainage, or other facilities.

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

There will not be a need for access roads or entrance and exit drives because all the parking will be adequately handled in the street.

8. **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 proposed use does not utilize any hazardous or toxic materials and does not generate any obnoxious odors or unnecessarily intrusive noises.

Robb McKim suggested that restoring the existing location of the SAI box that will be moved to its original condition be made as a condition of approval.

Randy Kronblad moved the Planning Commission find the findings of fact favorable for the proposed Conditional Use Permit to allow installation of the VRAD utility box and relocation of the existing SAI box in a rear yard utility easement at 7554 Booth Drive and grant a Conditional Use Permit subject to the following conditions:

1. That the applicant relocate the SAI box from the intersection of 76<sup>th</sup> Street and Booth Drive to the rear property line easement adjacent to the VRAD box and restore the current site of the SAI box to its original condition.
2. That the applicant maintains the landscaping and replaces any plant materials that die so that the integrity of the landscape screening is maintained throughout the life of the project.
3. That the applicant revises the site plan to reflect the relocated SAI box and then to screen both the VRAD and SAI boxes. The revised landscape plan will be submitted to staff for review and approval.
4. That the applicant installs the landscaping immediately after installation of the utility box.
5. That the Conditional Use be approved for an indefinite period of time.
6. That should the equipment boxes become obsolete and not functional they shall be removed from the site within six months.
7. That the applicant protects the existing plants during construction and replace any that are damaged.

The motion was seconded by Robb McKim and passed by a vote of 6 to 1 with Marc Russell voting "nay".

#### **PC2007-04**

Ron Williamson stated AT&T is requesting approval of a conditional use permit for the installation of a VRAD utility box that has a footprint of 38" x 47" (12.4 sq. ft.) a height of 63" and sets on a 6' x 6' (36 sq. ft.) pad. The proposed VRAD utility box will be paired with an existing SAI utility box that is located on the north side of 77<sup>th</sup> Street just east of the intersection with Nall Avenue. Both boxes will be located in public right-of-way.

Ken Vaughn noted the proposed boxes will not be in front of anyone's home. Mr. Williamson stated there is not much that can be added to this site in terms of screening.

In accordance with the Planning Commission's Citizens' Participation policy, the applicant held a meeting on December 19, 2006, at City Hall. No one appeared on this application.

The Planning Commission reviewed the findings for the requested conditional use permit for a communications utility box at 5402 West 77<sup>th</sup> as follows:

1. **The proposed conditional use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations, and use limitations.**  
The proposed utility box is larger than what is permitted by Staff approval and therefore is required to obtain a conditional use permit.

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

The proposed utility equipment box will not adversely affect the welfare or convenience of the public, but will actually benefit the public as it will improve electronic communications to households in Prairie Village.

3. The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.

The proposed VRAD utility box will be located in the right-of-way on the north side of 77th Street just west of Nall Avenue. The proposed utility box is relatively small in size and is not an intense use that generates a lot of people activity; therefore, it should not have an adverse affect on the value of the property immediately in the neighborhood. The proposed utility box as well as the existing SAI Box will be screened with landscaping.

4. The location and size of the conditional 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 given access to it, are such that the conditional use will not dominate 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 conditional use will so dominate the immediate neighborhood, consideration should be given to:

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

The proposed VRAD utility box is approximately 47" wide x 38" deep x 63" high. The pad is 6' x 6' and it will be surrounded by landscaping. The applicant has also indicated that there will be a 2' x 3' hand hole that will be flush with the ground and not be a part of the pad.

The landscape plan is well thought out and the choice of plant materials is good in that year around screening will be provided through the use of evergreens. The right-of-way between the property line and the curb is approximately 10' which does not provide a lot of room for landscaping and screening.

The size of this use is not such that it would dominate the neighborhood or hinder development. The neighborhood is residentially developed to the east, west, north and south and this use is being installed on right-of-way that should be able to accommodate it compatibly without it being a problem for the other properties in the neighborhood.

5. 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 use and located so as to protect such residential uses from any injurious affect.

The only parking required for this use is what will be needed while construction and installation are occurring, and then periodic maintenance. There is no need to provide permanent off-street parking for this use because it can easily be accommodated in the street.

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

Since this is a very small installation and a companion to an existing utility box, there is not a need for additional utilities, drainage, or other facilities.

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

There will not be a need for access roads or entrance and exit drives because all the parking will be adequately handled in the street.

8. 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 proposed use does not utilize any hazardous or toxic materials and does not generate any obnoxious odors or unnecessarily intrusive noises.

Marlene Nagel moved the Planning Commission find the findings of fact favorable for the proposed Conditional Use Permit to allow installation of the VRAD utility box in the right-of-way at 5402 West 77<sup>th</sup> Street and grant a Conditional Use Permit subject to the following conditions:

1. That the applicant maintains the landscaping and replaces any plant materials that die so that the integrity of the landscape screening is maintained throughout the life of the project.
2. That the applicant installs the landscaping as shown on the plan immediately after installation of the utility box.
3. That the Conditional Use be approved for an indefinite period of time.
4. That should the equipment boxes become obsolete and not functional they shall be removed from the site within six months.

The motion was seconded by Nancy Vennard and passed by a vote of 6 to 1 with Marc Russell voting "nay".

#### **PC2006-05**

Ron Williamson stated AT&T is requesting the approval of a conditional use permit for the installation of a VRAD utility box that has a footprint of 38" x 47" (12.4 sq. ft.) a height of 63" and sets on a 6' x 6' (36 sq. ft.) pad. The proposed utility box will be paired with an existing SAI utility box that is located in the right-of-way on the north side of 81<sup>st</sup> Street between Reeds Road and Maple Street. The proposed VRAD utility box will be located in a utility easement, while the existing SAI box is located in the street right-of-way. The plan indicates that the proposed VRAD box will be placed inside the fenced area where a DSL box is located. The SAI box has been replaced and the new box is 65' tall which exceeds the maximum height that can be permitted by staff. Therefore, the SAI box also needs CUP approval.

Mr. Williamson noted the DSL box was approved by the City several years ago.

In accordance with the Planning Commission's Citizens' Participation policy, the applicant held a meeting on December 19, 2006, at City Hall. No one appeared on this application.

Nancy Vennard confirmed the applicant would provide the additional evergreens recommended by staff to provide year-round screening. Ken Vaughn requested a new landscape plan be submitted for review by staff indicating the additional trees.

Ken Vaughn noted this installation has already been completed.

The Planning Commission reviewed the findings for the requested conditional use permit for a communications utility box at 5620 West 81<sup>st</sup> Street as follows:

1. The proposed conditional use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations, and use limitations. The proposed utility box is larger than what is permitted by Staff approval and therefore is required to obtain a conditional use permit.
2. The proposed conditional use at the specified location will not adversely affect the welfare or convenience of the public.

The proposed utility equipment box will not adversely affect the welfare or convenience of the public, but will actually benefit the public as it will improve electronic communications to households in Prairie Village.

3. **The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.**

The proposed VRAD utility box will be located in an easement that is fenced and also contains a DSL box. The proposed utility box is relatively small in size and is not an intense use that generates a lot of people activity; therefore, it should not have an adverse affect on the value of the property immediately in the neighborhood.

4. **The location and size of the conditional 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 given access to it, are such that the conditional use will not dominate 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 conditional use will so dominate the immediate neighborhood, consideration should be given to:**

- a. **The location, size, nature and height of buildings, structures, walls, and fences on the site; and**

- b. **The nature and extent of landscaping and screening on the site.**

The proposed VRAD utility box is approximately 47" wide x 38" deep x 63" high. The pad is 6' x 6' and it will be placed within an existing formed area. The plan also indicates that there will be a 2' x 3' hand hole that will be flush with the ground and not be a part of the pad. The hand hole appears to have already been installed. The SAI box has been upgraded and is 11" taller than is permitted without a conditional use permit.

The landscape plan is well thought out and it should blend well with the other landscaping in the area; however, it does not include any evergreens. Year-round screening should be provided through the use of evergreens in combination with deciduous shrubs.

The size of this use is not such that it would dominate the neighborhood or hinder development. The neighborhood is residentially developed to the east, west, south and north and this use is being installed in an easement that should be able to accommodate it compatibly without it being a problem for the other properties in the neighborhood.

5. **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 use and located so as to protect such residential uses from any injurious affect.**

The only parking required for this use is what will be needed while construction and installation are occurring, and then periodic maintenance. There is no need to provide permanent off-street parking for this use because it can easily be accommodated in the street.

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

Since this is a very small installation and a companion to an existing utility box, there is not a need for additional utilities, drainage, or other facilities.

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

There will not be a need for access roads or entrance and exit drives because all the parking will be adequately handled in the street.



8. 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 proposed use does not utilize any hazardous or toxic materials and does not generate any obnoxious odors or unnecessarily intrusive noises.

Robb McKim asked about the newly poured pad located between the SAI and proposed 52E (VRAD) unit. Chris Carroll responded the location of the 52E will be closer than shown on the plans submitted. It will be located on the pad that has been poured and not within the fenced area as previously indicated. Mr. McKim confirmed the existing DSL unit is behind the fence.

Bob Lindeblad stated a new site plan needs to be submitted showing the new location of the VRAD box as well as a revised landscape plan. Mr. Lindeblad expressed frustration that the Commission is being asked to approve a location and landscaping different than what had been submitted.

Chris Carroll apologized for the changes and promised new plans will be submitted and future applications will include more accurate and complete information prior to any work being completed.

Marc Russell confirmed the DSL cabinet will not be going away.

Bob Lindeblad moved the Planning Commission find the findings of fact favorable for the installation of the VRAD utility box in an easement and replacement of the SAI box in the right-of-way at 5620 West 81<sup>st</sup> Street and grant a Conditional Use Permit subject to the following conditions:

1. That the applicant maintains the landscaping and replaces any plant materials that die so that the integrity of the landscape screening is maintained throughout the life of the project.
2. That the applicant incorporates some evergreens into the landscape plan and submit a revised plan to staff for review and approval.
3. That the applicant installs the landscaping immediately after installation of the utility box.
4. That the Conditional Use be approved for an indefinite period of time.
5. That should the equipment boxes become obsolete and not functional they shall be removed from the site within six months.
6. The applicant resubmit site and landscape plans for this location reflecting the actual site of the proposed VRAD box for approval by staff.

The motion was seconded by Randy Kronblad and passed by a 5 to 2 vote with Marc Russell and Ken Vaughn voting "nay".

## PC2007-06

Ron Williamson stated AT&T is requesting approval of a conditional use permit for the installation of a VRAD utility box that has a footprint of 38" x 47" (12.4 sq. ft.) a height of 63" and sets on a 6' x 6' (36 sq. ft.) pad. The proposed VRAD utility box will be paired with an existing SAI utility box that is located on the north side of 79<sup>th</sup> Street west of Windsor Street. Both boxes will be located in public right-of-way. The SAI box at this location has not been replaced.

In accordance with the Planning Commission's Citizens' Participation policy, the applicant held a meeting on December 19, 2006, at City Hall. One resident appeared on this application and was interested in the landscape plan. He reviewed it and was satisfied.

Bob Lindeblad asked the size of the SAI unit at this location. Eric Stong responded it is the same size as the unit on Roe.

Mr. Williamson noted because of the tightness of this location the landscaping options are limited, but the property owner is satisfied with what has been proposed. Mr. McKim agreed the space between the parkway and the curb is minimal.

Randy Kronblad confirmed the cabinet on the photograph distributed is the existing cabinet that has not yet been changed out.

The Planning Commission reviewed the findings for the requested conditional use permit for a communications utility box at 3500 West 79<sup>th</sup> Street as follows:

1. **The proposed conditional use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations, and use limitations.**  
The proposed utility box is larger than what is permitted by Staff approval and therefore is required to obtain a conditional use permit.
2. **The proposed conditional use at the specified location will not adversely affect the welfare or convenience of the public.**  
The proposed utility equipment box will not adversely affect the welfare or convenience of the public, but will actually benefit the public as it will improve electronic communications to households in Prairie Village.
3. **The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.**  
The proposed VRAD utility box will be located in the right-of-way on the north side of 79<sup>th</sup> Street west of the intersection with Windsor Street. The proposed utility box is relatively small in size and is not an intense use that generates a lot of people activity; therefore, it should not have an adverse affect on the value of the property immediately in the neighborhood. The proposed utility box as well as the existing SAI Box will be screened with landscaping.
4. **The location and size of the conditional 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 given access to it, are such that the conditional use will not dominate 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 conditional use will so dominate the immediate neighborhood, consideration should be given to:**
  - a. **The location, size, nature and height of buildings, structures, walls, and fences on the site; and**
  - b. **The nature and extent of landscaping and screening on the site.**

The proposed VRAD utility box is approximately 47" wide x 38" deep x 63" high. The pad is 6' x 6' and it will be surrounded by landscaping. The applicant has also indicated that there will be a 2' x 3' hand hole that will be flush with the ground and not be a part of the pad.

This site is very tight; however, the landscape plan is well thought out and it should blend well with the other landscaping in the area. The landscaping is minimal but there is very little room to provide plants.

The size of this use is not such that it would dominate the neighborhood or hinder development. The neighborhood is residentially developed to the east, west, north and south and this use is being installed on right-of-way that should be able to accommodate it compatibly without it being a problem for the other properties in the neighborhood.

5. **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 use and located so as to protect such residential uses from any injurious affect.**  
The only parking required for this use is what will be needed while construction and installation are occurring, and then periodic maintenance. There is no need to provide permanent off-street parking for this use because it can easily be accommodated in the street.
6. **Adequate utility, drainage, and other such necessary facilities have been or will be provided.**  
Since this is a very small installation and a companion to an existing utility box, there is not a need for additional utilities, drainage, or other facilities.
7. **Adequate access roads or entrance and exit drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.**  
There will not be a need for access roads or entrance and exit drives because all the parking will be adequately handled in the street.
8. **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 proposed use does not utilize any hazardous or toxic materials and does not generate any obnoxious odors or unnecessarily intrusive noises.

Bob Lindeblad moved the Planning Commission find the findings of fact favorable for the installation of the VRAD utility box the right-of-way at 3500 West 79<sup>th</sup> Street in an easement and replacement of the SAI box not to exceed 65" in height and grant a Conditional Use Permit subject to the following conditions:

1. That the applicant maintains the landscaping and replaces any plant materials that die so that the integrity of the landscape screening is maintained throughout the life of the project.
2. That the applicant installs the landscaping as shown on the plan immediately after installation of the utility box.
3. That the Conditional Use be approved for an indefinite period of time.
4. That should the equipment boxes become obsolete and not functional they shall be removed from the site within six months.

The motion was seconded by Marlene Nagel and passed by a vote of 6 to 1 with Marc Russell voting "nay".

Christ Carroll thanked the Commission for their consideration of the applications and apologized for the work that had occurred in error in the field prior to their approval of the applications. He promised the oversights that occurred with these applicants will not occur with future applications and submittals will contain more accurate and complete information, including an aerial AIMS map indicating the location of the units as requested.

Ken Vaughn stated he strongly supports making improvements in technology more available to the residents of Prairie Village. However, he noted the City is committed to public participation and meetings should have been held with the impacted residents by AT&T earlier in this process to provide more opportunity for residents to have input.

Mr. Vaughn stated he is confident AT&T now has more definitive procedures in place and future submittals will be much better prepared. However, he expressed frustration with the number of areas in the city disrupted by construction with mud in the streets and on sidewalks. The contractors have been good at communicating with residents, but feels AT&T should have been

better at communicating their plans to the residents. Chris Carroll acknowledged and agreed with Mr. Vaughn's comments.

## OLD BUSINESS

Ron Williamson reported on his review of the lit awnings at Kokopelli's. The City does not have any regulations on backlit awnings, only that signs can not be placed on awnings. He noted a previous application for Blockbuster/Einstein Bagel where the awnings were permitted, but no signage.

Randy Kronblad asked about the uncovered duct work on the Mission Road Bible Church. Mr. Williamson responded plans have been submitted and he will check on their status and advise the Commission at the next meeting.

### Procedures

Ken Vaughn stated the Commission needs to come to an agreement on how these applications will be handled in the future, especially related to communication with impacted residents. He noted all Public Works Projects have informational meetings with residents in the planning stages of projects to allow for their input.

Mr. Vaughn noted he does not have a problem with the Public Works Department issuing right-of-way permits, unless they involve work that requires approval by the City of a Conditional and/or Special Use Permit. He feels this has to be done to protect citizen's rights.

Bob Lindeblad stated a pre-application meeting should be required with Mr. Williamson prior to the submittal of any application to the Commission with applicants advised if the plans submitted are not correct, the application will be continued by the Commission.

Mr. Williamson noted he generally only visits the application sites once, prior to preparing his staff report and if construction or changes occur after the site visits it is difficult to be aware of them.

Mr. Vaughn stated he felt the public should become involved in the planning stages, not when the project is ready for construction. He does not want right-of-way permits issued until the Planning Commission has approved the application. Mr. Williamson noted that may require a change in the right-of-way ordinance. Mr. Vaughn stated there should not be any pouring of concrete without plans. Mr. Lindeblad stated he did not object to pads being poured if they were within the size stipulated by the City's regulations.

Ken Vaughn also stressed the need to coordinate with other utilities when locating these units to prevent them from being constructed over other utilities. This would also provide the opportunity to consider the relocation of boxes. Mr. Williamson stated he felt this was done in conjunction with the issuance of right-of-way permits.

Mr. Lindeblad stated he does not want to decide where in the right-of-way a unit is placed.

Nancy Vennard asked if the City had any say on the color of the units, possibly limiting them to stainless steel of a specific color. Mr. Williamson thought the new units would be a light tan color. Mr. Lindeblad noted these are pre-manufactured units with an established color. He stated he does not want to see these units being painted. Mrs. Vennard stated she knows of other cities that specified colors allowed.

Marc Russell asked if logos could be placed on the units. Mr. Williamson stated the companies typically do not want their boxes to be identified.

Ken Vaughn directed Mr. Williamson to review the current procedures for possible changes. Mr. Williamson noted the public participation policy was written as a policy so it could be revised without requiring a public hearing and publication.

Bob Lindeblad restated the need for a pre-application meeting and suggested possibly increasing the number of days prior to the hearing that the public information meetings be held to 30 days. Mr. Williamson stated the current policy calls for 14 days. Mr. Vaughn feels it needs to be even earlier than 30 days. Mr. Lindeblad stated the key is the initial meeting with the Planner.

The Planning Commission Secretary announced an application has been filed for a front yard variance at 2002 West 71<sup>st</sup> Terrace for consideration by the Board of Zoning Appeals on February 6<sup>th</sup>. The filing deadline is Friday, January 5<sup>th</sup> for submittals to the Planning Commission. Currently there are no new applications filed, however, consideration of the SUP for communication antenna at McCrum Park was continued to the February meeting.

#### **ADJOURNMENT**

With no further business to come before the Commission, Chairman Ken Vaughn adjourned the meeting at 8:50 p.m.

Ken Vaughn  
Chairman

**BOARD OF ZONING APPEALS ACTIONS**  
**Tuesday, February 6, 2007**

**BZA2007-01 Request for Variance from PVMC 19.08.020 Front Yard Setback at  
2002 West 71<sup>st</sup> Terrace**

The Board of Zoning Appeals granted a variance to the front yard setback from 30 feet to 10 feet for the garage only as shown on the site plan submitted contingent upon the applicant receiving a waiver from the Board of Code Appeals to reduce the 30 foot setback requirement between the top of the bank and any buildings.

**PLANNING COMMISSION ACTIONS**  
**Tuesday, February 6, 2007**

**PC2005-05 Request for a Special Use Permit for Wireless Communication  
Antenna & related equipment at 69<sup>th</sup> Terrace and Roe (McCrum  
Park)**

This item had been tabled to the February meeting of the Commission; however, the applicant has subsequently withdrawn the application.

**Discussion**

The Commission discussed Multi-family Housing/Mixed Use Development Districts and directed staff to submit for their review prior to the next meeting ordinances in place from area cities.

**BOARD OF ZONING APPEALS  
CITY OF PRAIRIE VILLAGE, KANSAS  
MINUTES  
TUESDAY, OCTOBER 3, 2006**

**ROLL CALL**

The meeting of the Board of Zoning Appeals of the City of Prairie Village, Kansas was held on Tuesday, October 3, 2006, in the Council Chambers of the Municipal Building. Chairman Robert McKim called the meeting to order at 6:35 p.m. with the following members present: Randy Kronblad, Nancy Vennard, Marc Russell and Ken Vaughn. Also present in their advisory capacity to the Board of Zoning Appeals were: Ron Williamson, Planning Consultant and Joyce Hagen Mundy, Board Secretary.

**APPROVAL OF MINUTES**

Ken Vaughn moved to approve minutes of September 5, 2006 as written. The motion was seconded by Randy Kronblad and passed unanimously.

**BZA2006-03 Request for a Variance from P.V.M.C. 19.06.030  
Side Yard Setback reduction from 5 feet to 3 feet  
7922 Reeds Road  
Zoning: R-1a  
Applicant: B.J. Fevold**

Chairman Robert McKim reviewed the procedures for the public hearing. The Board Secretary confirmed that the Notice of Public Hearing was published in the Johnson County Legal Record on Tuesday, September 12, 2006 and all property owners within 200' were notified of the hearing.

B.J. Fevold, 7922 Reeds Road, stated he is requesting the variance to enable the addition of a two-car garage on the side and expansion of his home to the rear. Mr. Fevold noted that without renovating/moving all of the garage walls and foundations, the only way to construct a two-car garage on his property is to build it on the north side of his house to within three feet of his property line.

The garage will be constructed with a one-hour fire rated wall. Mr. Fevold stated his neighbor to the north has reviewed the plans and supports his request for a variance.

Ron Williamson asked if the garage roof would be guttered and how water runoff would be handled. Mr. Fevold responded the roof would be guttered with the

water going through an underground pipe to the rear yard. He noted he has submitted storm drainage plans to the Public Works Department for review.

Mr. Williamson advised the Board that the proposed expansion will require three different approvals - approval of the requested variance by the Board, release of utility easements and approval of a front building line modification by the Commission.

Mr. Fevold informed the Board that he has written authorizations from all the utilities allowing him to encroach on the easement by two feet. The easement does not contain any utilities, but is an access easement and the utility companies are satisfied that the remaining 8 feet would allow them sufficient access.

Ken Vaughn asked about the slope of the roof to the front and how drainage would be handled. Mr. Fevold replied the slope will be a continuation of the existing slope and water will flow into an underground pipe and released at the rear of his property.

Chairman Robb McKim noting no one was present to give testimony on his application closed the public hearing.

Robb McKim asked what the impact of this variance would be on the adjacent neighbor. Mr. Williamson responded they would not be allowed any expansion on the side of their home as this construction will bring the distance between the two structures to the required 14 feet. However, he noted because of the way the land is terraced it would be very difficult for them to expand on the side of their property.

Ron Williamson reviewed the proposed request noting the floor area is proposed to increase from 912 sq. ft. to approximately 1930 sq. ft. The lot area coverage will be approximately 2580 sq. ft. or 18.6% which is far below the maximum allowable of 30%. These are the types of amenities that are desired by families that want to live in Prairie Village and this is the type of reinvestment the City is encouraging.

Reeds Road slopes from north to south and each lot is terraced or stepped down at the south end of the dwelling creating a relatively flat grade to the next house to the south. Staff has measured the distance between the proposed expansion and the house to the north and there will be 14 between the two structures which meets the zoning ordinance.

The Board reviewed the criteria required for the granting of a variance.

- A. That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone



or district; and it was not created by an action or actions of the property owner or the applicant.

This house was built in 1955 and at the time all the lots were graded uniformly and the homes were also uniformly placed on the lots. The south wall of the home was used to help drop the grade of the down hill slope to the west lot. The side yard setback on the south side of the house is approximately 10.5 feet. If the house would have been placed on the lot a little further south, it would have met the setback requirements and still have accommodated the garage. The slope of Reeds Road and the grading of the site are a condition that could be considered as unique.

Ken Vaughn stated he feels the property is unique as it relates to the properties surrounding it as noted above meeting the first criteria and moved that the Board find favorably on Condition A relative to Uniqueness. The motion was seconded by Randy Kronblad and passed unanimously.

**B. That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.**

The dwelling with the proposed addition will still be 14' from the dwelling to the north which meets the grade separation requirements of the ordinance. The north wall on the expanded area also will have no windows so the privacy of the house to the north will be protected. No property owners have expressed opposition to the proposed variance.

Ken Vaughn moved that the Board finds favorably on Condition B relative to Adjacent Properties. The motion was seconded by Nancy Vennard and passed unanimously.

**C. That the strict application of the provisions of these regulations of which a variance is requested will constitute an unnecessary hardship upon the property owner represented in the application.**

The applicant is proposing major renovation to this property in order to bring it up to current market standards, which includes an open kitchen, master bedroom suite and at least a two car garage. The proposed upgrade cannot be accomplished without encroaching into the side yard setback and therefore the variance is needed in order for the owner to get a reasonable use of the property.

Ken Vaughn said he sees the inability of the property owner to have the full opportunity to develop and use his property as a hardship on the property owner.

Randy Kronblad stated the denial of the variance would constitute an unnecessary hardship on the development of the property and moved that the Board find favorably on Condition C relative to Hardship. The motion was seconded by Nancy Vennard and passed unanimously.

- D. That the variance desired would not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

The primary concern in this group is whether the proposed variance would have an adverse affect on safety. The safety concern relates to fire protection and there are two issues; one is the distance between the buildings for fire safety, and the second is whether there is adequate room between the two structures so that the fire fighters have room to operate. Consolidated Fire District No. 2 has reviewed the plan and has no problem with either concern. A review of the building code determined that single family residences can be as close as three feet before fire wall protection is required.

Ken Vaughn noted the applicant is providing a one-hour fire rated wall and that the proposed variance will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare and moved that the Board find favorably on Condition D relative to Public Interest. The motion was seconded by Nancy Vennard and passed unanimously.

- E. That granting of the variance desired will not be opposed to the general spirit and intent of these regulations.

The general spirit and intent of the zoning regulations is to provide an adequate side yard setback so that there is open space between dwelling units and there is proper access for fire fighting equipment and fire protection for adjacent buildings. These goals are still being attained since there is 14 feet between the proposed expansion and the house to the north; therefore, the granting of the variance would not be opposed to the general spirit and intent of the regulations.

Ken Vaughn stated the proposed variance does not oppose the general spirit and intent of these regulations and moved that the Board find favorably on Condition E relative to General Spirit & Intent. The motion was seconded by Randy Kronblad and passed unanimously.

Mr. Williamson noting the concern expressed by the Board regarding drainage stated the Board could address drainage in its approval of the variance

Ken Vaughn moved that the Board having found favorably on all five conditions approve BZA Application 2006-03 for the requested variance from PVMC 19.06.030 to reduce the side yard setback from 5 feet to 3 feet for only the proposed kitchen/garage expansion as shown on the plans subject to the vacation of the platted utility easement or written authorization for the two foot encroachment and that the drainage from the expansion to ~~be~~ channeled in underground pipes and released in the rear of the property. The motion was seconded by Randy Kronblad and passed unanimously.

## NEW BUSINESS

There was no New Business to come before the Board.

## **OLD BUSINESS**

There was no Old Business to come before the Board.

## **ADJOURNMENT**

Ken Vaughn moved to adjourn the meeting of the Board of Zoning Appeals. The motion was seconded by Randy Kronblad and passed unanimously with the meeting being adjourned at 6:55 p.m.

Robert McKim, Jr.  
Chairman

# PRAIRIE VILLAGE MUNICIPAL FOUNDATION

January 8, 2007

## Minutes

The Prairie Village Municipal Foundation met January 8, 2007. Present and presiding: President Bill Nulton. Members present: Mayor Ron Shaffer, Charles Clark, Diana Ewy Sharp, A.J. LoScalzo, Mary Engelken, Marcia Jacobs, Bill Rose, Doris Wieggers and Barbara Vernon.

Bill Nulton thanked all members who helped make the Holiday Tree lighting at Corinth Shopping Center a success.

### **Approval of October 30, 2006 minutes**

A motion to approve minutes of the October 30 meeting as amended (adding the names of Bill Nulton and Diana Ewy Sharp to the list of those volunteering to help with the tree lighting event) made by Marcia Jacobs and seconded by Mary Engelken passed with a unanimous vote.

### **Future Direction of the Foundation**

Committee members agreed the first step is to adopt a logo to be used on all information published about the Foundation. Ron Shaffer said he will contact Austin Harmon to see if he will accept that project.

The logo should present visually some ideas from the City logo but not be similar to the Prairie Village star. The committee is striving for a new direction with more professional material to solicit funding and generally increase visibility of the Foundation. The Foundation has been helping Prairie Village residents since 1981.

If Austin cannot take on the project, Sara Harken (73rd Terrace) will be asked to consider doing it. A.J. LoScalzo said she could talk to Randy Knight about it also. Doris suggested only one person at a time be approached about the project.

Committee members discussed preparing a professional brochure or advertising piece. They agreed it is important to have something to distribute, with names of the Board members and mission of the organization. A card that can be carried in a shirt pocket was also suggested.

There was also general agreement that a web page be part of the City's home page. This could emphasize that individuals can make private donations to the Foundation for projects, art work and other items the City cannot afford. Bill Rose volunteered to develop a draft for a web page. Charles Clark said the purposes of the Foundation are

broad enough to cover a variety of requests and, before a gift is accepted, it must be approved by the Foundation Board.

It was suggested that the City's web page include information about applying for assistance through Johnson County Utility Assistance and Home Repair Programs. Every issue of Village Voice should have a section about the Foundation with frequently asked questions about this type of assistance.

Members would like to develop a photo board of previous projects sponsored by the Foundation – "Your Municipal Foundation Funds at Work". Suggestions included the Tex Mount rock at Porter Park, the Skatepark, two rose gardens, benches in Franklin Park, Municipal Building art gallery and the lighted Holiday trees. Staff will prepare a list of projects and pictures for committee review at the next meeting.

Cost of a logo, photo board and some advertising pieces can be financed by the undesignated funds of \$3,200.

### **Franklin Park Gazebo**

A.J. LoScalzo said Bob Pryzby told her he would have to have architectural drawings of the gazebo before he can estimate a cost of construction. Ron Shaffer volunteered to work with Bob to develop dimensions.

### **Holiday Tree Program**

Suggestions for improving the event included:

- Start earlier next year

- More cookies

- Work with Santa to be there on time

- Schedule to coincide with date of the Center's open house.

### **Next meeting**

The next meeting will be February 12, 2007 at 5:45pm. Subject matter will be planning for Foundation involvement with VillageFest and the Holiday Tree programs as well as a continuing discussion on further direction of the Foundation.

Bill Nulton  
President

**VILLAGE VISION MEETING  
27 JANUARY, 2007  
MINUTES**

The Village Vision Steering Committee met with Planning Commissioners and City Council members at 9:00 am at Homestead Country Club. Members present: Chairman, Ken Vaughn, Mayor Shaffer, Ruth Hopkins, David Voysey, Andrew Wang, Michael Kelly, Pat Daniels, Charles Clark, Wayne Vennard, Diana Ewy Sharp, David Belz, Marlene Nagel, Robb McKim, Randy Kronblad, Bob Lindeblad, Marc Russell, Nancy Vennard, Dale Warman, Terrance Gallagher, Marilyn Uppman, Susan Bruce, and Gary Anderson. Also present: Barbara Vernon, Doug Luther, Bob Pryzby, Ron Williamson, and Jamie Greene.

Mr. Vaughn welcomed all to the meeting and thanked everyone for attending. He briefly reviewed the process to date toward developing the Village Vision Strategic Investment Plan. After today's meeting, the next steps would be to host an open house event to present the plan to the community, conduct a public hearing at the Planning Commission, and, finally, present the plan to the City Council for formal adoption. He said the draft plan represents a great amount of work performed by Prairie Village residents, committee members, city staff, and the planning consultants.

Mr. Greene, representing ACP Visioning & Planning stated that the goal of this meeting is to review the survey responses regarding the draft plan action items and, hopefully, develop a comfort level among council members and planning commissioners that would allow the plan to be presented to the public. He noted that the survey results indicate a strong level of agreement with the majority of the action items. However, there are some areas of disagreement. He noted that the Village Vision Plan is a long and complex document, and that it is not realistic for everyone to agree on every aspect of the plan. However, there should be a sufficient level of agreement established before the plan is presented for formal approval.

#### **Short Term Action Items**

Members reviewed the survey results for the short term action items. Mr. Greene noted that there are a significant number of "neutral" responses. He asked those who responded neutral what they meant by their response. The consensus of the group was that a neutral response meant that it is an item that the City is already doing adequately, or an item that should remain on the action list, but was not a high priority.

#### **Economic Development Director**

Members discussed the action item regarding retaining a Director of Economic Development, noting that a majority of the responses were either neutral or negative. Mrs. Hopkins said this is not a high priority at this time and is not a necessity. Mr. Vennard said an economic development position is only needed if

the City decides to aggressively pursue developers. Mrs. Vennard said this function could possibly be provided by a consultant rather than a city employee, and that, if successful, could generate additional revenue for the City. Mr. Daniels said that economic development is for commercial and industrial properties, and that Prairie Village's commercial properties can stand on their own.

After discussion, members agreed that this item was not an immediate priority.

Members agreed that the two short-term items regarding open space planning and traffic calming be moved to the "Ongoing" section.

#### **Park & Recreation Department / Director**

Again, this action item had a significant number of neutrals and negative responses. Mrs. Ewy Sharp said the title is not as important as the function. She said the City needs to focus its efforts on providing more recreation programs to residents through the parks system. Mr. Anderson added that the issue is one of coordination of programs both within the City and with other agencies. Mrs. Hopkins said this item should not be a top priority at this time, as it ranked low by survey respondents.

#### **Mid-Term Action Items**

##### **Small Business Development**

Several committee members questioned whether the City needs to develop programs to encourage small businesses. Mr. Lindeblad said there are other organizations that specialize in this rather than the City.

Committee members discussed the statement regarding discouraging chains and big box stores. They noted that not all chain stores are big boxes, and have been well received in the City, such as Starbucks. Members agreed that this item should be phrased in a positive light, and that encouraging small businesses should be an ongoing activity for the City.

Members agreed to rephrase this action item to: "Encourage the development of small independent businesses" and move this item to the Ongoing section.

#### **Long Term Action Items**

Members discussed the item regarding public transportation and conducting a transportation assessment for the community. Members agreed that transportation is a region-wide issue and not limited to Prairie Village.

Mrs. Hopkins noted that Johnson County is looking into this issue on a county level, and it is important that Prairie Village be represented in these discussions.

Members agreed to move the transportation item to the "Short Term" category and re-phrase to recognize that Prairie Village should participate in region-wide initiatives regarding public transportation.

#### Burying power-lines

Members expressed concern with this action item, noting that burying power lines is very costly and would not likely occur, except for possibly in conjunction with new development. No changes in wording were recommended.

#### Ongoing Action Items

Members discussed the education action item, noting that education policy is made by the School Board rather than the City Council.

Members also discussed the "lifelong learning" aspect of this action item, and noted that, again, these programs are already offered by other organizations. A more appropriate role for the City would be to help promote these opportunities as being available to Prairie Village residents.

Members agreed to rephrase this item to state that the City should promote the school system and encourage educational institutions to increase their programming offerings in Prairie Village.

#### Redevelopment Concepts

Mr. Greene stated that the four redevelopment concepts included in the Plan are conceptual and meant for illustrative purposes of what might be possible in Prairie Village. He noted that respondents were generally supportive of the design concepts. Concerns that were raised typically revolve around the mechanics of redevelopment and design issues.

Mr. Kelly asked why other commercial areas were not included in the plan. Mr. Vaughn said that the Steering Committee had limited time and resources, and decided to focus on these areas.

Mr. McKim said he is concerned with the small scale redevelopment concept. He said this is similar to spot-zoning, which the City has tried to prevent in the past. He is also concerned about the conversion of land uses and the affect increased land devoted to commercial uses would have on existing commercial and retail areas.

#### Top Ten List



Members agreed that it would be helpful to develop an Action Agenda based on the entire list of action items included in the Plan. These items would necessarily be short-term items, but would help emphasize their importance within the overall context of the plan.

Members agreed to move the action items regarding home renovation and revising building codes to the short term list and make these part of the priority list. They noted that these items complement the action item regarding revising the City's zoning regulations. Therefore, all three items should be on the action agenda.

Members agreed to keep arts programming on the short term list, but not to feature it in the Action Agenda.

Mr. Gallagher noted that there are no items on the priority list regarding parks or green space. He said this was a common theme expressed by the public during the public meetings, and would like to see it included on the action agenda.

Members agreed to place the following items on the Village Vision Action Agenda:

#### **Improving the Development / Redevelopment Process**

- Update the zoning ordinance to reflect contemporary land use issues while preserving the identity and character of Prairie Village.
- Consider revising the zoning ordinance to allow for more residential, commercial, and office development, particularly in walkable, mixed-use areas of greater intensity.
- Consider updating building codes to facilitate renovation and rehabilitation activities.

#### **Encourage Appropriate Redevelopment**

- Permit higher residential densities and mixed uses near existing commercial areas and along arterial roadways
- Consider developing a redevelopment plan for Meadowbrook Country Club

#### **Keeping Prairie Village Neighborhoods Vibrant**

- Examine incentive programs to encourage home renovation
- Allow for a greater variety of housing types throughout Prairie Village
- Develop and promote the use of a design style guide for renovation to create housing that meets the preferences of today's homebuyers and is sensitive to the character of existing neighborhoods
- Offer workshops to educate and inform about issues related to zoning, building codes, and home maintenance in residential neighborhoods.

### Improving Communication

- Enhance communication between government officials and the public. Enhance transparency of processes and financial accountability.
- Consider more aggressively marketing Prairie Village to attract new business establishments and expand the tax base.

### Next Steps

The next step will be to host a public event to present the draft plan to the public. This would be an open house type event with displays and a short presentation. Comments received during the open house would be shared with the Planning Commission and City Council for their consideration during the plan adoption process.

Mr. Daniels said that the presentation portion during the open house would need to be a strong one and remind residents of why the City is developing the plan. He said that this plan has been a very long time in the making, and that momentum will need to be re-established.

Members added that the open house should be a celebratory event.

The open house should be scheduled for late February.

There being no further business, the meeting adjourned.

Ken Vaughn

Chairman

**TREE BOARD**  
**City of Prairie Village, Kansas**

**MINUTES**

**Wednesday – February 7, 2006, 6:00PM Meeting**  
**Public Works – Conference Room**  
**3535 Somerset Drive**

Board Members: Cliff Wormcke, Jack Lewis, Jim Hansen, Gregory VanBooven, Art Kennedy,

Other Attendees: Bob Pryzby, Eric Strong and Larry Green from AT&T

- 1) **Review and Approve minutes from December 6, 2006 meeting.** Minutes approved on a motion by Jim Hansen and seconded by Cliff Wormcke
- 2) **Sub-Committee Report**
  - 2.1) **Arbor Day:**
    - a) **Planning** – The Board after a brief discussion delayed further discussion until the March meeting.
- 3) **Park Tree Inventory** – Bob Pryzby reported that there are 9,469 trees on City owned property. 1,512 of these trees are in the parks. The overall average condition is 97, which Bob explained was due to the prompt removal of hazardous trees. Bob then reviewed the inventory of trees in each park. The Board will at a future meeting select specimen trees for arboretum designation.
- 4) **Old Business** - none
- 5) **New Business** – Reviewed and approved a planting plan prepared for AT&T by Richard Barrett at the City Hall exit driveway.
- 6) **The next meeting** – March 7 at 6PM at Public Works.

**Council Members**  
**Mark Your Calendars**  
**February 20, 2007**

- February 2007** Rebecca Darrah watercolor on cloth exhibit in the R.G. Endres Gallery
- March 2007**  
March 5 A. J. Weber mixed media exhibit in the R. G. Endres Gallery  
City Council Meeting  
March 9 Artist reception in R. G. Endres Gallery 6:30 to 7:30 p.m.  
March 10-14 NLC Congressional Conference in Washington D.C.  
March 19 City Council Meeting  
March 27 State of the County Address at the Ritz Charles 11:30 am – 1:15 pm
- April 2007**  
April 2 Kay Trieb photography exhibit in the R. G. Endres Gallery  
City Council Meeting  
April 13 Artist reception in R. G. Endres Gallery 6:30 to 7:30 p.m.  
April 16 City Council Meeting  
April 19 Shawnee Mission Education Foundation “Celebrate Success! 2007” 11:30 a.m.  
(Overland Park Convention Center)
- May 2007**  
May 7 David Payne oils exhibit in the R. G. Endres Gallery  
City Council Meeting  
May 11 Artist reception in R. G. Endres Gallery 6:30 to 7:30 p.m.  
May 21 City Council Meeting  
May 28 City offices closed in observance of Memorial Day
- June 2007**  
June 4 Jack O’Hara watercolors exhibit in the R. G. Endres Gallery  
City Council Meeting  
June 8 Artist reception in R. G. Endres Gallery 6:30 to 7:30 p.m.  
June 18 City Council Meeting
- July 2007**  
July 2 Senior Arts Council mixed media exhibit in the R. G. Endres Gallery  
City Council Meeting  
July 4 City offices closed in observance of Independence Day  
July 13 Artist reception in R. G. Endres Gallery 6:30 to 7:30 p.m.  
July 16 City Council Meeting
- August 2007**  
August 6 Shawn Bohs photography exhibit in the R. G. Endres Gallery  
City Council Meeting  
August 10 Artist reception in R. G. Endres Gallery 6:30 to 7:30 p.m.  
August 20 City Council Meeting  
August 23 Shawnee Mission Education Foundation 15<sup>th</sup> Annual Fall Breakfast
- September 2007**  
September 3 Barney Newcom oils exhibit in the R. G. Endres Gallery  
City offices closed in observance of Labor Day  
September 4(Tuesday)City Council Meeting  
September 14 Artist reception in R. G. Endres Gallery 6:30 to 7:30 p.m.  
September 17 City Council Meeting
- October 2007** No exhibit scheduled yet in the R. G. Endres Gallery

October 1	City Council Meeting
October 15	City Council Meeting
<b>November 2007</b>	Mid-America Pastel Society exhibit in the R. G. Endres Gallery
November 5	City Council Meeting
November 9	Artist reception in R. G. Endres Gallery 6:30 to 7:30 p.m.
November 19	City Council Meeting
November 22-23	City offices closed in observance of Thanksgiving
<b>December 2007</b>	Christi Roberts-Bony mixed media R. G. Endres Gallery
December 3	City Council Meeting
December 7	Mayor's Holiday Gala
December 14	Artist reception in R. G. Endres Gallery 6:30 to 7:20 p.m.
December 17	City Council Meeting
December 25	City offices closed in observance of Christmas

**ANIMAL CONTROL COMMITTEE**

AC96-04 Consider ban the dogs from parks ordinance (assigned 7/15/96)

**COMMUNICATIONS COMMITTEE**

COM2000-01 Consider redesign of City flag (assigned 7/25/2000)  
COM2000-02 Consider a brochure to promote permanent local art and history (assigned Strategic Plan for 1<sup>st</sup> Quarter 2001)  
COM2000-04 Consider the installation of marquees banners at City Hall to announce upcoming civic events (assigned Strategic Plan for 1<sup>st</sup> Quarter of 2001)

**COUNCIL COMMITTEE**

COU99-13 Consider Property Audits (assigned 4/12/99)  
COU2000-42 Consider a proactive plan to address the reuse of school sites that may become available (assigned Strategic Plan for 4<sup>th</sup> Quarter 2001)  
COU2000-44 Provide direction to PVDC regarding its function / duties (2000 Strategic Plan)  
COU2000-45 Review current City definition for blight and redefine it where appropriate (assigned 2000 Strategic Plan)  
COU2004-10 Develop programs to promote and encourage owner occupied housing (transferred from PVDC on 3/15/2004)  
COU2004-11 Identify potential redevelopment areas and encourage redevelopment proposals (transferred from PVDC on 3/15/2004)  
COU2004-12 Pursue development of higher value single-family housing (transferred from PVDC on 3/15/2004)  
COU2004-13 Proactively encourage redevelopment to increase property values (transferred from PVDC on 3/15/2004)  
COU2004-14 Meet with the Homes Association of the Country Club District (HACCD) to obtain their input regarding deed restrictions (transferred from PVDC on 3/15/2004)  
COU2005-17 Consider how to expand leadership opportunities for Council (assigned 9/6/2005)  
COU2005-19 Consider term limits for elected officials and committees (assigned 9/6/2005)  
COU2005-21 Develop a policy for use of Fund Balance (assigned 9/6/2005)  
COU2005-27 Consider concept of Outcomes Measurement or Quantifying Objectives (assigned 9/6/2005)  
COU2005-44 Consider YMCA Partnership (assigned 12/14/2005)  
COU2006-05 Consider Committee Structure (assigned 4/25/2006)  
COU2006-20 Consider Project 191020: Colonial Pedestrian Bridge Replacement (assigned 8/1/2006)  
COU2006-26 Consider Project 190862: 75<sup>th</sup> Street from Nall Avenue to Mission Road (CARS) (assigned 8/28/2006)  
COU2006-27 Consider Project 190855: Tomahawk Road Bridge Replacement (assigned 8/28/2006)  
COU2006-33 Consider Lease of Public Works from Highwoods Properties, Inc. (assigned 8/29/2006)  
COU2006-38 Consider Park & Recreation Committee Report (assigned 09/27/2006)  
COU2006-43 Consider 2005 Traffic Safety Report (10/12/2006)  
COU2006-44 Consider 2007-2008 Consultant Selection ( assigned 11/2/2006)  
COU2006-45 Consider Infrastructure Manual: Driveway - Requirements, Standards, Practices (assigned 11/2/2006)  
COU2006-55 Consider Project SP105: 2007 Crack Seal/Slurry Seal/Microsurfacing Program (assigned 12/27/2006)  
COU2006-56 Consider Project 191019: Canterbury Street Sidewalk Improvements (assigned 12/21/2006)  
COU2006-57 Consider Renewal of Special Use Permit at 7700 Mission Road (assigned 12/7/2006)  
COU2007-01 Consider Home Improvement Loan Program (assigned 12/28/2006)  
COU2007-02 Consider Reducing the size of the Council (assigned 1/8/2007)

## COMMITTEE AGENDA

February 20, 2007

- COU2007-05 Consider Decrease in Rate charged for Off-Duty Contractual Employment of Police Officers (assigned 1/11/2007)
- COU2007-07 Consider Prairie Village Legislative Program for 2007 (assigned 1/11/2007)
- COU2007-08 Consider 2008 Budget (assigned 1/11/2007)
- COU2007-10 Consider Recognition of Prairie Village families with service personnel in Iraq, Afghanistan or other dangerous areas (assigned 1/11/2007)
- COU2007-11 Consider SP107: 2007 Street Repair Program (1/31/2007)
- COU2007-14 Consider Right Turn Only on Somerset Drive at 83<sup>rd</sup> Street (1/31/2007)
- COU2007-15 Consider Payroll / HRIS System (assigned 2/1/07)
- COU2007-16 Consider Concealed Weapons Policy (assigned 2/8/2007)**
- COU2007-17 Consider Educational Reimbursement Policy (assigned 2/8/2007)**
- COU2007-18 Consider Increase to Animal Board Fees (assigned 2/13/2007)
- COU2007-19 Consider Project 190860: 2007 Street Resurfacing Program (assigned 2/14/2007)
- COU2007-20 Consider Building Code Adoption (assigned 2/14/2007)
- COU2007-21 Consider 7618 Mohawk Drive (assigned 2/14/2007)

### LEGISLATIVE/FINANCE COMMITTEE

- LEG2000-25 Review fee schedules to determine if they are comparable to other communities and where appropriate (assigned Strategic Plan for 1<sup>st</sup> Quarter of 2001)
- LEG2003-12 Consider Resident survey - choices in services and service levels, redevelopment (assigned 8/7/2003)
- LEG2004-31 Consider Lease of Park Land to Cingular Wireless (assigned 8/31/2004)**
- LEG2005-49 Consider Building Permit and Plan Review Fees (assigned 12/21/2005)

### PARKS AND RECREATION COMMITTEE

- PK97-26 Consider Gazebo for Franklin Park (assigned 12/1/97)

### PLANNING COMMISSION

- PC2000-01 Consider the inclusion of mixed-use developments in the City and create guidelines criteria and zoning regulations for their location and development (assigned Strategic Plan)
- PC2000-02 Consider Meadowbrook Country Club as a golf course or public open space - Do not permit redevelopment for non-recreational uses (assigned Strategic Plan 2<sup>nd</sup> Qtr 2001)

### POLICY/SERVICES

- POL2004-15 Consider Project 190709: Somerset, Delmar to Fontana (assigned 8/26/2004)
- POL2004-16 Consider Project 190708: Tomahawk Road Nall to Roe (assigned 8/26/2004)
- POL2005-03 Consider Project 190850: Reeds Street - 69<sup>th</sup> to 71<sup>st</sup> St. (assigned 1/31/2005)
- POL2005-04 Consider Project 190809: 75<sup>th</sup> Street and State Line Road (assigned 2/1/2005)
- POL2005-21 Consider Project 190851: 2006 Paving Program Sidewalks (assigned 8/30/05)
- POL2005-30 Consider Project 190855: Tomahawk Road Bridge (assigned 11/1/2005)
- POL2005-34 Consider Project 190717: 2006 Storm Drainage Repair Program
- POL2006-09 Consider Project 190849: Roe Avenue - 91<sup>st</sup> to 95<sup>th</sup> (assigned 4/25/2006)
- POL2006-10 Consider Project 190858: 2006 Crack/Slurry/Microsurfacing Program (assigned 3/2/2006)
- POL2006-11 Consider Project 191014: 2006 Concrete Repair Program (assigned 3/2/2006)
- POL2006-12 Consider Project 190856: 95<sup>th</sup> Street - Mission to Nall (assigned 4/25/2006)
- POL2006-13 Consider Project 190851: 2006 Paving Program ( assigned 4/25/2006)

### PRAIRIE VILLAGE ARTS COUNCIL

- PVAC2000-01 Consider a brochure to promote permanent local art and history (assigned Strategic Plan for the 1<sup>st</sup> Quarter of 2001)