

**COUNCIL MEETING AGENDA
CITY OF PRAIRIE VILLAGE
Council Chambers
Monday, June 18, 2018
6:00 PM**

I. CALL TO ORDER

II. ROLL CALL

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF THE AGENDA

V. INTRODUCTION OF STUDENTS & SCOUTS

VI. PRESENTATIONS

New officer swearing in ceremony

VII. PUBLIC PARTICIPATION

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

VIII. CONSENT AGENDA

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

By Staff

1. Approve the regular City Council meeting minutes - June 4, 2018
2. Approve claims ordinance 2967
3. Ratify the appointment of Cindy Dunn to the Prairie Village Tree Board

By Committee

4. Approve amendments to lease agreements with Sprint, Verizon, and AT&T for City-owned cell tower

IX. COMMITTEE REPORTS

X. MAYOR'S REPORT

XI. STAFF REPORTS

XII. OLD BUSINESS

Neighborhood Design Public Forums Update
Jamie Robichaud

XIII. NEW BUSINESS

COU2018-31 Consider approval of a resolution to issue industrial revenue bonds for Dial Realty - Meadowbrook Senior Housing
Lisa Santa Maria/Gary Anderson

COU2018-32 Consider approval of a construction contract with Kansas Heavy Construction for the 2018 Concrete Repair Program
Melissa Prenger

COU2018-33 Consider approval of a construction contract with Advanced Asphalt Paving and Concrete LLC for the 2018 Street Repair Program
Melissa Prenger

XIV. COUNCIL COMMITTEE OF THE WHOLE (presided over by Council President)

CEDAW Follow Up
Gail James

2019 Budget Discussion - Decision Packages
Wes Jordan/Lisa Santa Maria

Noise Ordinance Discussion
Jamie Robichaud

XV. ANNOUNCEMENTS

XVI. ADJOURNMENT

If any individual requires special accommodations - for example, qualified interpreter, large print, reader, hearing assistance - in order to attend the meeting, please notify the City Clerk at 385-4616, no later than 48 hours prior to the beginning of the meeting. If you are unable to attend this meeting, comments may be received by e-mail at cityclerk@pvkansas.com





PRAIRIE VILLAGE POLICE DEPARTMENT

LOYALTY OATH

**I do solemnly swear that I will support the
Constitution of the United States of
America and the Constitution of the State
of Kansas, and faithfully discharge the
duties of an employee and police officer
for the Cities of Prairie Village
and Mission Hills, Kansas.**

So help me God.

**CITY COUNCIL
CITY OF PRAIRIE VILLAGE
June 4, 2018**

The City Council of Prairie Village, Kansas, met in regular session on Monday, June 4, 2018, at 6:00 p.m. in the Council Chambers at the Municipal Building, 7700 Mission Road, Prairie Village, Kansas. Mayor Laura Wassmer presided.

ROLL CALL

Roll was called by the City Clerk with the following Council Members in attendance: Chad Herring, Jori Nelson, Serena Schermoly, Ronald Nelson, Tucker Poling, Sheila Myers, Brooke Morehead, Dan Runion, Courtney McFadden and Terrence Gallagher.

Staff present: Tim Schwartzkopf, Chief of Police; Keith Bredehoeft, Public Works Director; Melissa Prenger, Senior Project Manager; David Waters, Interim City Attorney; Wes Jordan, City Administrator; Jamie Robichaud, Assistant City Administrator; Alley Porter, Assistant to the City Administrator, Lisa Santa Maria, Finance Director and Joyce Hagen Mundy, City Clerk. Also present was Chris Brewster, City Planning Consultant.

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

Chad Herring moved to amend the agenda by adding to the consent agenda approval of the contract for the JazzFest headliner. The motion was seconded by Tucker Poling and passed unanimously.

INTRODUCTION OF STUDENTS & SCOUTS

A boy scout from Troop 199 was in attendance for his communications badge.

PRESENTATIONS

Statuary Maintenance Update

Paul Benson presented an update on his work to clean and restore statues in Prairie Village. He completed work on 23 pieces in 2017 and shared before and after photographs. He expects to be able to complete work on 20 additional statues in 2018. It was noted that there are more than 200 statues in the City.

PUBLIC PARTICIPATION

Loring Leifer, 7301 Booth, Prairie Hills Homes Association President, addressed the Council with her concerns regarding the proposed changes to the island at 71st Street and Cherokee. She requested additional information and asked the City to consider other alternatives. She is opposed to the proposed changes.

With no one else present to address the City Council; public participation was closed at 6:25 p.m.

CONSENT AGENDA

Mayor Wassmer asked if there were any items to be removed from the consent agenda and discussed. Wes Jordan stated the contract added to the consent agenda was just received and stipulates that no marketing or promotion can be done until it is approved and executed; therefore, the committee is requesting approval this evening.

Dan Runion moved for the approval of the Consent Agenda of June 4, 2018:

- 1. Approval of the regular City Council meeting minutes for May 21, 2018**
- 2. Ratification of the Mayor's appointment of Braden Perry to the Civil Service Commission completing the unexpired term of David Evans**
- 3. Approval of performance contract for Logan Richardson Blues People as the headliner for the 2018 Prairie Village Jazz Festival**

A roll call vote was taken with the following votes cast: "aye" Herring, J. Nelson, Schermoly, R. Nelson, Poling, Myers, Morehead, Runion, McFadden and Gallagher.

COMMITTEE REPORTS

Environment/Recycle Committee

Sheila Myers noted the committee members are considering not participating in the fall community forum as they have done in the past, but to instead co-sponsor a panel forum for local candidates focused on environmental issues and sought input from the Council. Council members were generally supportive of the proposed forum for local candidates; however, cautioned the committee on the selection of the questions suggesting that the someone unaffiliated with the City or the Environmental Committee take on that responsibility.

Prairie Village Arts Council

Serena Schermoly reported on the successful Prairie Village Art Fair held the past weekend and announced the reception for the June exhibit at the R.G. Endres Gallery will be this Friday, June 8th.

MAYOR'S REPORT

Mayor Wassmer stated she had attended the Prairie Village Art Fair, which continues to be an excellent community event.; she and Chief Schwartzkopf interviewed Braden Perry to serve on the Civil Service Commission and she attended the very popular "Touch a Truck" event at Public Works. This was a great event for the community and she would like to see it continued, possibly at an alternate location with more parking. On June 6th she will be hosting the Wyandotte/Johnson County Mayors dinner and meeting.

STAFF REPORTS

Public Safety

- No Report



Public Works

- Keith Bredehoeft reported that Johnson County Waste Water has given its release for the demolition of the church at 69th & Roe Avenue.

Administration

- Alley Porter reported on updated pool hours. The pool will go to reduced hours on August 6th; however, the lap lanes and leisure pool will open at 2 o'clock with the remainder of the complex opening at 4:30 p.m.
- Wes Jordan noted the monthly action report was included in the council packet.
- Staff is working on scheduling the follow-up discussion on the citizen survey.

Serena Schermoly questioned the removal of the Meadowbrook Transit Stop and the Skate Park Usage Project.

OLD BUSINESS

COU2018-28 Consider approval of the proposed boundary for the Harmon Park Swale to be listed in the Register of Historic Kansas Places and the National Register of Historic Places by the Kansas State Historic Preservation Office

Alley Porter stated the Harmon Park Swale has been determined to be eligible for the Register of Historic Kansas Places and the National Register of Historic Places by the Kansas State Historic Preservation Office. The Public Works Department has created a boundary that protects the existing National Historic Trail monument without impeding any future projects for the park. This boundary has been sent to SHPO for approval. If approved, the City will send a letter consenting to the designation which would be considered by the Historic Sites Board of Review on August 4th.

Jori Nelson moved the City Council move forward with the nomination process of the Harmon Park Swale in the Register of Historic Kansas Places and the National Register of Historic Places with the proposed boundary. The motion was seconded by Terrence Gallagher and passed unanimously.

NEW BUSINESS

COU2018-29 Consider award of the construction contract for the 2018 Residential Street Rehabilitation Program

Melissa Prenger stated this project includes work on many streets throughout the City and includes new curb/gutter, sidewalk and asphalt mill and overlay with funding from the 2018 Paving Program. The contractor, O'Donnell & Sons, was selected on an evaluation of services, customer service and competitive pricing from 2015-2018. Their submitted bid was reviewed and confirmed to be reasonable based on unit price.

Mrs. Prenger noted their bid was \$2,487,514.45. The budgeted amount for this program is \$2,750,000. Additional streets will be added to the program and the contract will be awarded for the budgeted amount of \$2,750,000.

Terrence Gallagher moved the City Council authorize the Mayor to execute the construction contract with O'Donnell and Sons Construction Company for the 2018 Residential Street Program in the amount of \$2,750,000. The motion was seconded by Sheila Myers and passed unanimously.

Serena Schermoly moved the City Council go into the Council Committee of the Whole portion of the meeting. The motion was seconded by Brooke Morehead and passed unanimously.

COUNCIL COMMITTEE OF THE WHOLE

Council President Dan Runion presided over the Council Committee of the Whole.

COU2018-30 Consider approval of amendments to lease agreements with Sprint, Verizon and AT&T for City-owned cell tower

Jamie Robichaud stated leases on the City-owned cell tower expired in 2017 and staff have been negotiating new contracts with the three companies over the past several months. The agreements are the same for all providers with a lease amount of \$3,322.16 per month.

Dan Runion asked if the tower was at capacity. Mrs. Robichaud confirmed the latest structural analysis shows the tower at capacity.

Chad Herring moved to recommend the City Council approve the proposed lease amendments with Verizon, AT&T and Sprint with Council approval at the June 18th City Council meeting. The motion was seconded by Sheila Myers and passed by a vote of 9 to 0 with Courtney McFadden abstaining due to a professional conflict of interest.

Discussion of the proposed intersection of Cherokee and 71st Street Geometric Improvement

Melissa Prenger noted the intersection of Cherokee and 71st Street is currently a Y-intersection. This is a high volume intersection which lacks a protected pedestrian connection east to west. The intersection has generated 15 vehicular accidents in the past three years. The proposed change creates no significant change in traffic patterns while improving the overall safety of the intersection and sight-line visibility. The estimated cost is \$200,000 with funding available in the 2018 Paving Program.

It was suggested that the sidewalk remain to delineate between the island area and the adjacent residential properties. It would also provide a connection to the island/fountain.

Tucker Poling moved the City Council direct staff to move forward with the completion of the design of the proposed geometric improvement proposed for the intersection of Cherokee & 71st Street and conduct neighborhood meetings returning to Council with a final proposal for approval. The motion was seconded by Jori Nelson and passed unanimously.

Council President Dan Runion called for a five minute recess. The Council Committee of the Whole was reconvened at 7:30 p.m.

Neighborhood Design Phase II Standards Update

Jamie Robichaud stated the proposed standards are a follow-up to those adopted in 2016 to address concerns with overbuilding. The primary concerns noted in the Citizen Survey regarding building were the size of structures, not fitting the character of the neighborhood and rising housing costs/lack of affordable housing. The ad-hoc committee has been meeting since November 2017 and recommends adoption of additional standards that were presented by Chris Brewster and Melissa Prenger.

Among the concerns raised by Council were that the greenspace requirement on smaller lots should be increased, that the restrictions not be too restrictive, proposed changes to garage regulations, impact of street trees on bike/pedestrian paths, loss of mature trees and the opportunity for public input. It was noted that Fairway requires contractors get permission from the City for the removal of mature trees. Mayor Wassmer would be supportive of a similar restriction. Mayor Wassmer thanked the committee and staff for their work and stated she supports the recommendations of the committee and feels it is time to move this forward to residents for comments.

Chad Herring moved the City Council direct staff to move forward with the proposed design standards presentation to the public in community forums with emphasis on discussion on street trees and garage regulations. The motion was seconded by Tucker Poling.

Sheila Myers moved to amend the motion to increase the lot green space requirements from 60% to 65% for lots less than 10,000 square feet. The motion was seconded by Tucker Poling. The motion was voted on and passed by a vote of 7 to 3 with Mr. Herring, Mrs. Schermoly and Mrs. McFadden voting in opposition.

Chad Herring restated the amended motion to direct staff to move forward holding public information meetings on the proposed design standard highlight discussion on street trees and garage regulations with the green space requirement for lots less than 10,000 at 65%. The amended motion was discussed and voted on passing unanimously.

City Planning Consultant Contract Update

In early 2015, the City issued an RFP for city planning consultant services with Gould Evans being selected to provide those services. The agreement expires June 14, 2018 with the contract automatically renewing for successive one-year terms unless either party chooses to terminate. The contract hourly rate for planning services is \$104 with the City budgeting \$45,000 annually for planning services.

Sheila Myers moved to direct staff to allow the City Planning Contract to renew for a one-year term as permitted in the current contract. The motion was seconded by Tucker Poling and passed unanimously.

Budget Discussion/Decision Packages

Wes Jordan noted this discussion was continued from the previous meeting. Finance Director Lisa Santa Maria reviewed the status of each decision package.

Codes Specialist Position (FTE) Funding available in General Fund	\$75,000
Infrastructure - General Fund - option to increase funding beyond current	\$5.1M
PD Pension - General Fund - increased to \$750,000 option to increase further	\$800,000 or \$850,000
Funding of the Arts - General Fund - Dedicated funds for Arts	\$43,610

Funding of the following programs is recommended from the Economic Development Fund:

Exterior Grant Program - Funded in 2019; funding past 2019	\$50,000 to \$250,000
Comprehensive Plan Update - 2019 only	\$50,000 to \$80,000
Bike/Pedestrian Master Plan - For start-up of this program	\$50,000

Mrs. Santa Maria stated the anticipated 2019 ending balance should be \$276,575. She added the Codes Specialist position could be added to the 2019 budget without increasing the mill levy or reducing funding in another area. Any other changes would alter the proposed budget or reduce available funds in the Economic Development Fund.

Brooke Morehead stated she had heard concerns from several residents for greater public pedestrian safety particularly in school neighborhoods. She requested \$30,000 be added to the CIP budget for the purchase of five crosswalk flashing pedestrian signals with funding from the Economic Development Fund. After significant discussion action on this request was continued to a future meeting.

Noting the strong response from the citizen survey that improving bike-ability and walk ability was among the highest short term funding priority for residents and that bike-ability and walk ability is the second lowest area of resident satisfaction, **Tucker Poling moved to include \$150,000 in funding for the bike/pedestrian master plan to being signage, pavement markings and other aspects of the plan with funding from the Economic Development Plan. The motion was seconded by Courtney McFadden.**

Mayor Wassmer stated she would like to see \$50,000 from the Economic Development Fund designated for care of the statuaries based on the comments made by Mr. Benson.

Dan Runion confirmed the Council supported the existing level of funding included in the proposed 2019 budget for the Police Pension Fund and no further action was needed.

Serena Schermoly provided information on the impact of arts on the economy as demonstrated at the Prairie Village Art Fair and on communities and programs in place in

other areas. She agreed with Mayor Wassmer's request for funding for statues as a priority. She stressed this is not funding for the Arts Council. A process for accepting donations would be established and recommendations for use of these funds would be presented to the Governing Body by a committee consisting of the Mayor, Public Works, City Administrator, Arts Council, Statuary, and JazzFest representatives.

Mr. Poling restated his earlier motion for funding of the Master Bike/Pedestrian plan. Mr. Gallagher noted ongoing infrastructure needs and felt the proposed funding of the bike/pedestrian plan at \$50,000 was a more appropriate level allowing other needs to be addressed. The motion to fund the Master Bike/Pedestrian plan at \$150,000 was voted on and defeated by a vote of 4 to 6.

Chad Herring moved to include \$50,000 in funding for the bike/pedestrian master plan with funding from the Economic Development Fund. The motion was seconded by Sheila Myers.

Serena Schermoly moved to amend the motion to \$75,000 in funding for the bike/pedestrian master plan with funding from the Economic Development Fund. The motion was seconded by Tucker Poling and passed by a vote of 9 to 1.

The motion as amended to include \$75,000 in funding for the bike/pedestrian master plan with funding from the Economic Development Fund was voted on and passed by a vote of 9 to 1 with Mrs. Morehead voting in opposition.

Sheila Myers moved to designate \$50,000 from the Economic Development Fund for the preserving, maintaining, protecting and replacement of city statues. The motion was seconded by Ron Nelson.

Questions were raised how this was different than the funding for the Arts and concerns with the lack of a process in place for implementation which would be addressed if this were handled through the arts funding proposal. Questions were raised regarding the appropriateness of using Economic Development Funds.

Serena Schermoly moved to amend the motion by adding a committee made up of the Mayor, City Administrator, representatives from Public Works, the Arts Council and the Statuary Committee to oversee the funding. The motion was seconded by Brooke Morehead and failed by a vote of 1 to 9

The original motion was voted on and passed by a vote of 9 to 1 with Mr. Gallagher voting in opposition and Mr. Poling abstaining.

Wes Jordan stated staff was directed by Council to proceed with drafting the scope of services for the update of the city's 10 year old Comprehensive Plan. Mr. Herring asked for a specific cost. Mrs. Robichaud stated the cost would be determined by the amount of public engagement desired and she would recommend the motion be worded as up to \$80,000.

Chad Herring moved the City Council allocate up to \$80,000 for the update of the Comprehensive Plan. The motion was seconded by Ron Nelson.

Jori Nelson moved to amend the motion to allocate up to \$50,000.

Mayor Wassmer noted that would remove the public engagement and place more responsibility on staff. Jamie Robichaud stated this is an update and that a full comprehensive plan would cost up to \$200,000. **Ms. Nelson withdrew her motion to amend as it would remove the public input component. After significant discussion and clarification on the purpose and scope of the Comprehensive Plan, the motion was voted upon and passed by a vote of 8 to 2 with Mrs. Morehead and Mr. Gallagher voting in opposition.**

Chad Herring moved the City Council approve the inclusion of a full-time Code Specialist position as presented for \$75,000 with the cost absorbed in the proposed General Fund budget; approve infrastructure funding in the amount of \$5.1M as presented in the proposed General Fund budget; approve the annual contribution to the Police Pension fund of \$750,000 as presented in the proposed General Fund budget and delay taking action on the funding of the arts to the next meeting. The motion was seconded by Tucker Poling and passed unanimously.

Wes Jordan stated action needed to be taken on any funding impacting the General Fund for staff to be able to come back at the next meeting for authorization to publish the budget. It was confirmed that authorization to publish did not have to occur at the next meeting.

Jori Nelson moved the City Council earmark \$50,000 from the Economic Development Fund for the Exterior Grant Program to be funded in 2020 The motion was seconded by Brooke Morehead and passed by a vote of 9 to 1 with Tucker Poling voting in opposition.

Brooke Morehead moved to adjourn the Council Committee of the Whole portion of the meeting and return to the City Council meeting. The motion was seconded by Chad Herring and passed unanimously.

ANNOUNCEMENTS

ADJOURNMENT

With no further business to come before the City Council, Mayor Wassmer declared the meeting adjourned at 10:25 p.m.

Joyce Hagen Mundy
City Clerk

CITY TREASURER'S WARRANT REGISTER

DATE WARRANTS ISSUED:

Warrant Register Page No. 1

June 18, 2018

Copy of Ordinance
2967

Ordinance Page No. _____

An Ordinance Making Appropriate for the Payment of Certain Claims.

Be it ordained by the governing body of the City of Prairie Village, Kansas.

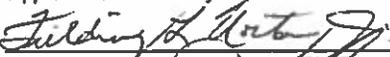
Section 1. That in order to pay the claims hereinafter stated which have been properly audited and approved, there is hereby appropriated out of funds in the City treasury the sum required for each claim.

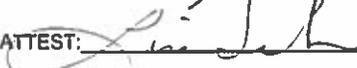
NAME	DATE	AMOUNT	TOTAL
EXPENDITURES:			
Accounts Payable			
17019-17098	5/4/2018	287,269.09	
17099-17106	5/11/2018	102,231.76	
17107-17196	5/18/2018	781,514.33	
17197-17198	5/22/2018	760.00	
17199	5/25/2018	891.67	
Payroll Expenditures			
5/11/2018		293,563.58	
5/25/2018		289,050.05	
Electronic Payments			
Electronic Pmnts			
	5/1/2018	475.90	
	5/7/2018	3,327.57	
	5/8/2018	23.37	
	5/10/2018	2,009.73	
	5/11/2018	11,450.23	
	5/15/2018	3,048.49	
	5/16/2018	8,964.83	
	5/18/2018	10.08	
	5/24/2018	182.92	
	5/30/2018	3,880.59	
TOTAL EXPENDITURES:			1,788,654.19
Voided Checks	Check #	(Amount)	
Public Safety Equipment	17073	(974.50)	
TOTAL VOIDED CHECKS:			(974.50)
GRAND TOTAL CLAIMS ORDINANCE			1,787,679.69

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

Passed this 18th day of June 2018.

Signed or Approved this 18th day of June 2018.

(SEAL)
ATTEST: 
City Treasurer

ATTEST:  6-8-18
Finance Director



MAYOR

**Council Meeting Date: June 18, 2018
CONSENT AGENDA**

Consider Appointment to Prairie Village Tree Board

RECOMMENDATION

Mayor Wassmer requests Council ratification of the appointment of Cindy Dunn to the Prairie Village Tree Board filing an unexpired term to expire in February, 2018.

BACKGROUND

Cindy Dunn has attended a Tree Board meeting and is excited to join the Board. Her volunteer application is attached. Ratification of her appointment will be included on the Consent Agenda.

RELATION TO VILLAGE VISION

CC3 Diversity

CC3a Cultivate an environment that celebrates diversity.

PREPARED BY

Joyce Hagen Mundy
City Clerk

Date: June 11, 2018

Suzanne Lownes

From: Joyce Hagen Mundy
Sent: Thursday, October 26, 2017 12:34 PM
To: Suzanne Lownes; Wes Jordan
Subject: FW: City of Prairie Village: Volunteer Application

Possible replacement for Devon?

From: Alley Williams
Sent: Thursday, October 26, 2017 12:00 PM
To: Joyce Hagen Mundy; Meghan Buom; Council Members
Subject: City of Prairie Village: Volunteer Application

A new entry to a form/survey has been submitted.

Form Name: Volunteer Application
Date & Time: 10/26/2017 11:59 AM
Response #: 61
Submitter ID: 10002
IP address: 136.32.255.117
Time to complete: 8 min. , 45 sec.

Survey Details

Page 1

Volunteer Information

Name

Cindy Dunn

Address

[REDACTED]

Zip

66208

Email

[REDACTED]

Home Phone

[REDACTED]

Work Phone

[REDACTED]

Other Phone

Not answered

Business Affilitaion

Small business owner

Business Address

██████████

Select Ward

Click for [map](#)

(o) 4

Which committee(s) would you like to serve on? (check all that apply)

- Arts Council
- Planning Commission/Board of Zoning Appeals
- Tree Board
- VillageFest

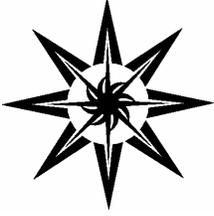
Background

Please tell us about yourself, listing any special skills or experiences you have.

My husband, Peter and I, have been Prairie Village residents for 17 of our 27 years of marriage. All 4 of our grown children have gone through Prairie Elementary. We love Prairie Village!
For me personally I am a small business owner and I have an extensive business and sales background. I have been involved/volunteered for many organizations and foundations, nonprofit as well as school.
I would love to volunteer in some capacity with the City of Prairie Village . I am especially interested in the Prairie Village Foundation, The Tree Board and the Planning Commission.

Thank you,
City of Prairie Village

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ADMINISTRATION

Council Meeting Date: June 18, 2018

Consider approval of amendments to lease agreements with Sprint, Verizon, and AT&T for City-owned cell tower

BACKGROUND

The City currently has lease agreements for the City Hall cell tower with three mobile service providers - Sprint, AT&T, and Verizon. All of the contracts with these service providers expired in April of 2017, and the City has been in discussions since 2016 to negotiate new agreements. When reviewing the existing agreements, staff found that the existing agreements were inconsistent and in need of updating to make our contracts equitable and consistent across the board for each service provider.

The proposed terms of the new agreements are below. All three service providers have agreed to these terms:

1. Set a consistent lease amount for each service provider to \$3,322.16 per month

Currently, all three service providers pay different monthly rates. AT&T pays the City \$2,116 per month; Sprint pays the City \$3,421.83 per month, and Verizon is currently paying the City \$3,635.69 per month, which is 1.5 times their monthly rate. Their agreement requires them to pay a “holdover rate” of 150% of their normal rate if they occupy space on the tower once their agreement expires. Their actual monthly rate when not in holdover is \$2,423.80 per month. Staff researched what other nearby cities receive for cell tower lease rates, and we found that the new proposed monthly rate is competitive with nearby cities in Johnson County. The proposed new terms call for a 15% rate increase every 5 years.

2. Require service providers to use an engineer selected by the city to conduct and pay for a structural analysis any time equipment modifications are made to the tower

We currently require these structural analyses to be completed before modifications can be made, but service providers are currently permitted to use an engineer of their choosing. This has caused issues for the City in the past due to engineers for each service provider having conflicting findings in their actual load analysis. Staff is concerned about the accuracy of the findings since this is not an “on site” inspection process. Staff has proposed one engineer at the City’s direction perform the load assessment for consistent application, since the tower is at capacity. The estimated cost of this type of analysis is \$1,750.

3. The City will be responsible for the cost of maintenance on the cell tower - but providers will be responsible for repairing/replacing their equipment if causing issues on the tower

When we discussed this topic with the City Council back in January of this year, the original recommendation was that the cost of maintenance should be split amongst the three service providers. Since that time, staff has spoken with other cities and found that it was typical for the cities to use the revenue from the leases to cover the maintenance on the tower. We also conducted a conditional inspection of the tower and found that

there were no major deficiencies or maintenance needs currently on the tower. The enclosure around the tower is, however, in need of repair. Public Works is currently investigating the best way to repair this.

4. Set the lease term to five years, subject to renewal for three additional terms of 5 years, for a total of 20 years.

The most recent AT&T agreement had a term of 25 years, with a rate increase every 5 years. The most recent Verizon agreement had a term of 25 years, with a 3% annual rate increase. The most recent agreement with Sprint had a term of 5 years, with an option to renew until the expiration of the Special Use Permit on April 1, 2017.

5. City has option to terminate lease agreements

If the tower becomes terminally overloaded, the City has the ability to negotiate a reasonable time for termination of these lease agreements.

RECOMMENDATION

Approve the attached lease amendments with Verizon, AT&T, and Sprint and move forward as part of the June 18 consent agenda.

PREPARED BY

Jamie Robichaud
Assistant City Administrator
Date: June 13, 2018

AMENDMENT NO. 1 TO LEASE AGREEMENT

This Amendment No. 1 to Lease Agreement (this “**Amendment**”), effective as of the date last signed below (“**Effective Date**”), amends a certain Lease Agreement between Sprint Spectrum Realty Company, LLC, a Delaware limited liability company, successor in interest to Sprint Spectrum L.P., a Delaware limited partnership (“**Tenant**”), and The City of Prairie Village, Kansas, a municipal corporation (“**Landlord**”), dated November 1, 2004 (the “**Agreement**”).

BACKGROUND

The Agreement expired on April 1, 2017 but was extended by that certain letter agreement between Tenant and Landlord dated April 10, 2017.

Tenant and Landlord desire to amend and extend the term of the Agreement, as set forth herein.

AGREEMENT

For good and valuable consideration the receipt and sufficiency of which are acknowledged, Landlord and Tenant agree as follows:

1. **Tower**. The definition of “Tower” shall be amended to include the equipment compound with associated equipment shelters used by both Landlord and current tenants.
2. **Term**. Notwithstanding the provisions of Section 3 of the Agreement, the term of the Agreement will be extended for 3 additional renewal terms of 5 years each (each, an “**Additional Extension Term**”), commencing upon expiration of the last remaining Extension Term of the Agreement, under the same terms and conditions as are set forth therein, and as otherwise amended. The Agreement will automatically be extended for each successive Additional Extension Term unless Tenant notifies Landlord of its intention not to renew prior to commencement of the succeeding Additional Extension Term.
3. **Rent**. Notwithstanding the provisions of Section 4 (a) and (b) of the Lease, beginning upon the first Additional Extension Term, Tenant will pay Landlord as rent the sum of \$3,322.16 per month, plus any applicable tax to Landlord. Rent shall be payable in advance on the first day of the month. Rent will be prorated for any partial month. All payments due under this Agreement shall be sent to the attention of the City Administrator

at the Landlord's address indicated below. Beginning on each Additional Extension Term rent shall be subject to an increase of 15% of rent from the previous Additional Extension Term.

4. **Inspections and Analysis**

- a. **TIA Conditional Inspection.** As of the Effective Date, the parties acknowledge that Landlord has performed a baseline TIA Conditional Inspection of the Tower at its cost, the results of which has been provided to Tenant. Landlord may perform additional TIA Conditional Inspections (each, a "**Supplemental TIA Conditional Inspection**") of the Tower at its cost from time to time as Landlord's engineering consultant deems appropriate. Notwithstanding anything to the contrary contained herein, such Landlord's engineering consultant shall not be compensated in whole or in part on a contingency fee basis.
- b. If any Supplemental TIA Conditional Inspection recommends that modifications be made to the Tower to remedy issues with the Tower, Landlord shall cause the modifications to be performed by an engineering consultant of Landlord's choosing. If the need for any of the modifications are specifically caused by Tenant's facilities, Tenant shall be invoiced for its pro rata share of the costs along with a written report explaining the results and conclusions of Landlord's engineering consultant. If, based upon the written report of Landlord's engineering consultant the Tower is overloaded and the issues cannot be mitigated, Landlord reserves the right to negotiate a reasonable time for termination of this Agreement and the removal of Tenant's facilities located on the Tower in accordance with Section 13 of the Agreement. Notwithstanding anything to the contrary contained herein, Tenant will not be liable for any costs in connection with any structural issues discovered by Landlord's engineering consultant provided that at the time Tenant installed the equipment at issue it received the written approval of Landlord. Further notwithstanding anything to the contrary contained herein, in any situation involving a possible termination of the Agreement, Landlord will treat Tenant in a non-discriminatory manner in relation to any other carrier on the Tower.

5. **Structural Analysis.**

- a. Upon future application for modifications to Tenant's equipment and/or facilities, including the switching out of facilities, located on the Tower, Tenant agrees to pay in full the costs of a structural analysis. Such structural analysis will be performed by an engineering consultant of Landlord's choosing, and will include, but not be limited to the study of the Tower's structural integrity, whether the Tower's capacity has been reached, and what remaining useful life the Tower possesses.
- b. In the event that the structural analysis finds that the Tower's capacity has been reached, no new facilities may be added by any tenant to the Tower. All applications for the switching out of facilities which will not result in an overload of the Tower's capacity shall be considered by Landlord on a first-come, first-serve basis.

The parties have executed this Amendment as of the Effective Date.

Landlord:

The City of Prairie Village, Kansas

Tenant:

Sprint Spectrum Realty Company, LLC

By: _____
(please use blue ink)

Name: _____

Title: _____

Date: _____, 2018
(Date must be completed)

By: _____

Name: James R. Moore

Title: Site Development Manager

Date: _____, 2018
(Date must be completed)

Exhibit D

(Memorandum of Amendment)

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

Sprint Property Services
Mailstop KSOPHT0101-Z2650
6391 Sprint Parkway
Overland Park, Kansas 66251-2650

[space above this line for Recorder's use]

MEMORANDUM OF AMENDMENT

THIS MEMORANDUM OF AMEMDMENT ("Amended Memorandum"), by and between The City of Prairie Village, Kansas, a municipal corporation ("Landlord") and Sprint Spectrum Realty Company, LLC, a Delaware limited liability company, successor in interest to Sprint Spectrum L.P., a Delaware limited partnership ("Tenant"), evidences the LEASE AGREEMENT made and entered into between Landlord and Tenant dated November 1, 2004 (the "Agreement") has been amended by written agreement between the parties (the "Amendment"). The term Agreement hereinafter refers to and includes the Amendment. The parties caused to be recorded a Memorandum of Agreement with the Office of Johnson County Recorder, in the State of Kansas, as document number 20041116-0006041 on November 16, 2004.

The Agreement as amended provides in part that Landlord leases to Tenant certain real property owned by Landlord and located at 7700 Mission Road, City of Prairie Village, County of Johnson, State of Kansas ("Property") for the purpose of installing, operating and maintaining a communications facility and other improvements. The Property is legally described in Exhibit A attached hereto. The portion of the Property leased to Tenant together with non-exclusive utility and access easements (the "Site") is further described in the Agreement.

The Amendment grants Tenant the option to extend the Agreement for three (3) extension terms of five (5) years, each that may be exercised by Tenant.

**EXHIBIT A
TO MEMORANDUM OF AMENDMENT**

Property Description:

**DESCRIPTION OF PREMISES OF TOWER
AND ASSOCIATED EQUIPMENT COMPOUND**

Commencing at the N.E. corner of the N $\frac{1}{2}$ of the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 21, Township 12 South, Range 25 East, in the City of Prairie Village, Johnson County, Kansas; thence S 89° 57' 34" W along the North line of said N $\frac{1}{2}$, SE $\frac{1}{4}$, SE $\frac{1}{4}$, a distance of 299.62 feet; thence S 00° 02' 26" E, a distance of 7.95 feet to the Point of Beginning of Lease Boundary; thence S 30° 17' 51" W, a distance of 44.17 feet; thence S 59° 42' 09" E, a distance of 22.67 feet; thence N 30° 17' 51" E, a distance of 13.71 feet; thence S 59° 42' 09" E, a distance of 14.00 feet; thence N 30° 17' 51" E, a distance of 44.39 feet; thence N 59° 42' 09" W, a distance of 20.33 feet; thence S 30° 17' 51" W, a distance of 13.94 feet; thence N 59° 42' 09" W, a distance of 16.34 feet to the Point of Beginning. Containing 1,711 square feet more or less.

**SECOND AMENDMENT TO
TOWER CONSTRUCTION AND LEASE AGREEMENT**

This Second Amendment to Tower Construction and Lease Agreement (“**Amendment**”) is made and entered into this ____ day of _____ 20__, by and between **The City of Prairie Village Kansas** (“City” or “**Landlord**”) and **Verizon Wireless (VAW) LLC d/b/a Verizon Wireless** (“**Tenant**”). Landlord and Tenant are at times collectively referred to hereinafter as the “**Parties**” or individually as the “**Party**”.

WHEREAS, Landlord is the owner of the property located at 7700 Mission Road, Prairie Village, Johnson County, Kansas (the “**Property**”);

WHEREAS, Landlord and Midwest Cellular Telephone Company d/b/a Cellular One, Tenant's predecessor in interest, entered into the Tower Construction and Lease Agreement dated April 20, 1992, as amended by the September 20, 2004 First Amendment to Tower Construction and Lease Agreement (collectively, the “**Lease**”), pursuant to which Landlord leases to Tenant a portion of the Property, for the construction, installation, maintenance, improvement and operation of a communications facility and uses incidental thereto; and

WHEREAS, the Parties desire to amend the Lease to grant Tenant options for additional renewal terms, among other things.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Any capitalized terms used in this Amendment that are not defined herein have the meanings given those terms in the Lease.
2. The definition of “Tower” shall be amended to include the equipment compound with associated equipment shelters used by both Landlord and current tenants.
3. Section 4 of the Lease is hereby amended to grant Tenant the option to extend the Lease for three (3) additional five (5) year renewal terms (the “**Additional Renewal Term**”), which shall be automatically exercised unless Tenant gives Landlord written notice of its intent to terminate at least ninety (90) days prior to the end of the then-current term.
4. Upon the renewal date, Tenant will pay Landlord as rent the sum of \$3322.16 per month, plus any applicable tax to Landlord. Rent shall be payable in

advance on the first day of the month. Rent will be prorated for any partial month. All payments due under this Agreement shall be sent to the attention of the City Administrator at Landlords address. Rent shall be subject to an increase of 15% at the beginning of each term.

5. Section 8 of the Lease is hereby deleted in its entirety and replaced with the following:

8. Termination. . If: (i) any of the applications for governmental approvals is finally rejected; (ii) any governmental approval issued to Tenant is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; or (iii) Tenant determines that the Premises is no longer technically compatible for its use, Tenant shall have the right to terminate this Lease. Notice of Tenant's exercise of its right to terminate shall be given to Landlord in writing by certified mail, return receipt requested, and shall be effective upon the mailing of the notice by Tenant, or upon such later date as designated by Tenant. All rentals paid to said termination date shall be retained by Landlord. Upon such termination, this Lease shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each Party to the other in the Lease. Otherwise, the Tenant shall have no further obligations for the payment of rent to Landlord. If the lease is terminated, Tenant shall remove its equipment/facilities from the Tower within 120 days of the termination of this Agreement. Upon removal, Tenant shall return the Tower to substantially the condition existing on the commencement date of this Agreement, normal wear and tear excepted, or leave it in its improved condition, as reasonably appropriate under the circumstances.

6. Remove existing Section 10.

New Section 10a. Tower Maintenance. Tenant acknowledges that the rent paid under Section 4 anticipates the cost of regular maintenance of the tower, however, Tenant shall be fully responsible for the maintenance of its own equipment and service on the Tower and for any and all damage to the Tower and to persons or property caused by Tenant, its employees or agents. Such maintenance shall include structural repairs, lighting, marking of the Tower as required by applicable law, painting of the Tower, and maintaining the appearance of the Tower in a manner satisfactory to the Landlord.

7. New Section 10b. Inspections and Analysis

TIA Conditional Inspection. As of the date of execution of this Third Amendment, the Landlord has performed a baseline TIA Conditional Inspection of the Tower at its cost, the results of which have been provided to Tenant. The Landlord may perform additional TIA Conditional Inspections (“Supplemental TIA Conditional Inspection”) of the Tower at its cost from time to time as the Landlord’s engineering consultant deems appropriate. Notwithstanding anything to the contrary contained herein, such Landlord’s engineering consultant shall not be compensated in whole or in part on a contingency fee basis.

If any Supplemental TIA Conditional Inspection recommends that modifications be made to the Tower to remedy issues with the Tower, the Landlord shall cause the modifications to be performed by an engineering consultant of the Landlord’s choosing. If the need for any of the modifications are specifically caused by Tenant’s facilities, Tenant shall be invoiced for its pro rata share of the costs along with a written report explaining the results and conclusions of Landlord’s engineering consultant. If, based on the written report of Landlord’s engineering consultant the Tower is overloaded and the issues cannot be mitigated, Landlord reserves the right to negotiate a reasonable time for termination of this Agreement and the removal of Tenant’s facilities located on the Tower in accordance with this Agreement. Notwithstanding anything to the contrary contained herein, Tenant will not be liable for any costs in connection with any structural issues discovered by Landlord’s engineering consultant provided that at the time Tenant installed the equipment at issue it received the written approval of Landlord. Further notwithstanding anything to the contrary contained herein, in any situation involving a possible termination of the Agreement, Landlord will treat Tenant in a non-discriminatory manner in relation to any other carrier on the Tower.

Structural Analysis. Upon future application for modifications to Tenant’s equipment and/or facilities, including the switching out of facilities, located on the Tower, Tenant agrees to pay in full the costs of a Structural Analysis. Such Structural Analysis will be performed by an engineering consultant of the Landlord’s choosing, and will include, but not be limited to the study of the Tower’s structural integrity, whether the Tower’s capacity has been reached, and what remaining useful life the Tower possesses.

In the event that the Structural Analysis finds that the Tower’s capacity has been reached, no new facilities may be added by any tenant to the Tower. All applications for the switching out of facilities which will not result in an overload of the Tower’s capacity shall be considered by the Landlord on a first-com, first-serve basis.

8. Tenant may not assign or sublease this Agreement, in whole or in part, without Landlord’s prior written consent, which consent shall not unreasonably be withheld or delayed. The transfer of the rights and obligations of Tenant to a parent, subsidiary or other affiliate of Tenant, or to any successor in interest or entity acquiring 51% or more of Tenant’s stock or assets, shall not be deemed an assignment and shall not require Landlord’s consent. Tenant shall give Landlord at least 30 days prior written notice of any transfer for which Landlord’s consent is required hereunder. In the event of an assignment to which Landlord consents, Landlord shall release Tenant from further obligations hereunder, provided

that Tenant is then current on all payments owing under the terms and conditions of this Agreement. Any necessary Landlord approval for a sublease shall be in the form of a separate written agreement that provides at a minimum for: (i) Landlord's review and approval of any additional facilities or improvements; and (ii) additional rent for any such additional facilities or improvements. Any subtenant or assignee shall be subject to the appropriate provisions and obligations of Tenant under this Agreement.

9. Landlord and Tenant each hereby warrant to the other that the person executing this Amendment on behalf of the warranting Party has the full right, power and authority to enter into, and execute, this Amendment on that Party's behalf, and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Amendment.

10. Except as specifically provided in this Amendment, the Lease shall remain in full force and effect and shall continue to be binding upon, and enforceable against, Landlord and Tenant in accordance with its terms. All covenants, terms and obligations of the Lease not modified by this Amendment are hereby ratified and affirmed. The terms and provisions of this Amendment shall control in the event of any inconsistency or discrepancy between the Lease and this Amendment.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Amendment effective as of the day and year first above written.

LANDLORD:

The City of Prairie Village Kansas

By: _____

Printed Name: _____

Title: _____

Date: _____

TENANT:

**Verizon Wireless (VAW) LLC
d/b/a Verizon Wireless**

By: _____

Printed Name: _____

Title: _____

Date: _____

THIRD AMENDMENT TO PRAIRIE VILLAGE TOWER LEASE AGREEMENT

THIS THIRD AMENDMENT TO LEASE (“**Third Amendment**”), dated as of the latter of the signature dates below, is by and between the City of Prairie Village, Kansas, a Kansas municipal corporation, having a mailing address of 7700 Mission Road, Prairie Village, KS 66208 (“**City**” or “**Landlord**”) and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as successor in interest to Kansas City SMSA Limited Partnership, having a mailing address of 12555 Cingular Way, Suite 1300, Alpharetta, GA 30004 (“**Tenant**”), collectively referred to as “**Party**” or “**Parties**”.

WHEREAS, City and Tenant entered into the Prairie Village Tower Lease dated April 20, 1992, and a First Amendment to the Prairie Village Tower Lease (“**First Amendment**”) dated March 3, 2008, and a Second Amendment to the Prairie Village Tower Lease (“**Second Amendment**”) dated October 5, 2011, whereby the City leased to Tenant both ground space and equipment space at the 150’ level on the telecommunications tower located at 7700 Mission Road, Prairie Village, Johnson County, Kansas 66208 (collectively, the “**Lease**”); and

WHEREAS, City and Tenant desire to adjust the rent in conjunction with the modifications to the Lease contained herein; and

WHEREAS, City and Tenant desire to amend the Lease to clarify the scope of Tenant's permitted use of the Premises; and

WHEREAS, City and Tenant desire to amend the Lease to modify the notice section thereof; and

WHEREAS, City and Tenant, in their mutual interest, wish to amend the Lease as set forth below accordingly.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Tenant agree as follows:

The definition of “**Tower**” shall be amended to include the equipment compound with associated equipment shelters used by both Landlord and current tenants.

Section 3. Term. Upon the expiration of the initial term, the term of the Agreement will be extended for 3 renewal terms of 5 years (“**Renewal Term**”), commencing upon expiration of the Initial Term of the Agreement, under the same terms and conditions as are set forth therein, and

as otherwise amended. The Agreement will automatically be extended for such Renewal Term unless Tenant notifies City of its intention not to renew prior to commencement of the Renewal Term.

Section 4. Rental Upon the renewal date, Tenant will pay City as rent the sum of \$3322.16 per month, plus any applicable tax. Rent shall be payable in advance on the first day of each month. Rent will be prorated for any partial month. All payments due under this Agreement shall be sent to the attention of the City Administrator at City's address indicated below. The rent shall be subject to an increase of 15% at the beginning of each new term.

New Section 6a. Tower Maintenance. Tenant acknowledges that the rent paid under Section 4 anticipates the cost of regular maintenance of the tower, however, Tenant shall be fully responsible for the maintenance of its own equipment and service on the Tower and for any and all damage to the Tower and to persons or property caused by Tenant, its employees or agents.

New Section 6b. Inspections and Analysis.

TIA Conditional Inspection. As of the date of execution of this Third Amendment, the Landlord has performed a baseline TIA Conditional Inspection of the Tower at its cost., the results of which has been provided to Tenant. The Landlord may perform additional TIA Conditional Inspections (each, a "Supplemental TIA Conditional Inspection") of the Tower at its cost from time to time as the Landlord's engineering consultant deems appropriate. Notwithstanding anything to the contrary contained herein, such Landlord's engineering consultant shall not be compensated in whole or in part on a contingency fee basis.

If any TIA Conditional Inspection recommends that modifications be made to the Tower to remedy issues with the Tower, the Landlord shall cause the modifications to be performed by an engineering consultant of the Landlord's choosing. If the need for any of the modifications are specifically caused by Tenant's facilities, Tenant shall be invoiced for its pro rata share of the costs. If, based on the written report of Landlord's engineering consultant the Tower is overloaded and the issues cannot be mitigated, Landlord reserves the right to negotiate a reasonable time for termination of this Agreement and the removal of Tenant's facilities located on the Tower in accordance with this Agreement. Notwithstanding anything to the contrary contained herein, Tenant will not be liable for any costs in connection with any structural issues discovered by Landlord's engineering consultant provided that at the time Tenant installed the equipment at issue it received the written approval of Landlord. Further notwithstanding anything to the contrary contained herein, in any situation involving a possible termination of the Agreement, Landlord will treat Tenant in a non-discriminatory manner in relation to any other carrier on the Tower.

Structural Analysis. Upon future application for modifications to Tenant's equipment and/or facilities, including the switching out of facilities, located on the Tower, Tenant agrees to pay in full the costs of a Structural Analysis. Such Structural Analysis will be performed by an engineering consultant of Landlord's choosing, and will include, but not be limited to the study of the Tower's structural integrity, whether the Tower's capacity has been reached and what remaining useful life the Tower possesses.

In the event that the Structural Analysis finds that the Tower's capacity has been reached, no new facilities may be added by any tenant to the Tower. All applications for the switching out of facilities which will not result in an overload of the Tower's capacity shall be considered by the City on a first-come, first-serve basis.

Removal/Restoration. In addition to the terms set forth in the Lease, City agrees that the Communications Facility and any related equipment brought to the Premises by Tenant, its agents, contractors, predecessors-in-interest or subtenant, shall be and remain Tenant's personal property or the personal property of its subtenant(s), as the case may be. Tenant, in its sole discretion, may remove the Communications Facility or any portion of the Communications Facility at any time during the Term of the Lease, upon 30 days notice to the City. If the Agreement is terminated, Tenant shall remove its equipment/facilities from the Tower within 120 days of the termination of this Agreement. Upon removal, Tenant shall return the Tower to substantially the condition existing on the commencement date of this Agreement, normal wear and tear excepted, or leave it in its improved condition, as reasonably appropriate under the circumstances.

Sublease Rights. Existing language is hereby deleted in its entirety and replaced with the following:

Tenant may not assign or sublease this Agreement, in whole or in part, without Landlord's prior written consent, which consent shall not unreasonably be withheld or delayed. The transfer of the rights and obligations of Tenant to a parent, subsidiary or other affiliate of Tenant, or to any successor in interest or entity acquiring 51% or more of Tenant's stock or assets, shall not be deemed an assignment and shall not require Landlord's consent. Tenant shall give Landlord at least 30 days prior written notice of any transfer for which Landlord's consent is required hereunder. In the event of an assignment to which Landlord consents, Landlord shall release Tenant from further obligations hereunder, provided that Tenant is then current on all payments owing under the terms and conditions of this Agreement. Any necessary Landlord approval for a sublease shall be in the form of a separate written agreement that provides at a minimum for: (i) Landlord's review and approval of any additional facilities or improvements; and (ii) additional rent for any such additional facilities or improvements. Any subtenant or assignee shall be subject to the appropriate provisions and obligations of Tenant under this Agreement.

Notices. Paragraph 19 of the Lease is hereby deleted in its entirety and replaced with the following:

NOTICES. All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows.

If to Tenant: New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #: 5025; Cell Site Name: Prairie Village (KS)
Fixed Asset #: 10000419
575 Morosgo Drive NE, 13F, West Tower
Atlanta, Georgia 30324

With a copy to: New Cingular Wireless PCS, LLC
Attn.: Legal Dept – Network Operations
Re: Cell Site #: 5025; Cell Site Name: Prairie Village (KS)
Fixed Asset #: 10000419
208 S. Akard Street
Dallas, TX 75202-4206

A copy sent to the Legal Department is an administrative step which alone does not constitute legal notice.

If to City: City of Prairie Village, Kansas
7700 Mission Road
Prairie Village, KS 66208
Attn: City Administrator

Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein.

Termination. In addition to any rights that may exist in the Lease, Tenant may terminate the Lease at any time with thirty (30) days prior written notice to City for any or no reason. If the Agreement is terminated, Tenant shall remove its equipment/facilities from the Tower within 120 days of the termination of this Agreement. Upon removal, Tenant shall return the Tower to substantially the condition existing on the commencement date of this Agreement, normal wear and tear excepted, or leave it in its improved condition, as reasonably appropriate under the circumstances.

Other Terms and Conditions Remain. In the event of any inconsistencies between the Lease and this Third Amendment, the terms of this Third Amendment shall control. Except as expressly set forth in this Third Amendment, the Lease otherwise is unmodified and remains in full force and effect. Each reference in the Lease to itself shall be deemed also to refer to this Third Amendment.

Capitalized Terms. All capitalized terms used but not defined herein shall have the same meanings as defined in the Lease.

IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute and seal this Third Amendment on the dates set forth below.

“CITY”

By: City of Prairie Village, Kansas

Name: _____

Title: _____

Date: _____

“TENANT”

New Cingular Wireless PCS, LLC

By: AT&T Mobility Corporation

Its: Manager

By: _____

Name:

Title: Area Manager-Real Estate &
Construction

MOKS Mobility

Date: _____

TENANT ACKNOWLEDGEMENT

STATE OF _____)
)ss:
COUNTY OF _____)

On the ____ day of _____, 2013 before me personally appeared _____, and acknowledged under oath that he is the Area Manager-Real Estate & Construction MO/KS Mobility of AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC, the limited liability company named in the attached instrument, and as such was authorized to execute this instrument on behalf of the limited liability company.

Notary Public: _____
My Commission Expires: _____

CITY ACKNOWLEDGEMENT

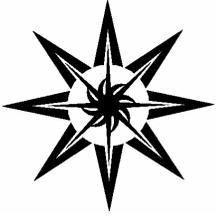
STATE OF _____)
)
COUNTY OF _____)

I CERTIFY that on _____, 2013, _____ [name of representative] personally came before me and acknowledged under oath that he or she:

- (a) is the _____ [title] of _____ [name of corporation], the corporation named in the attached instrument,
- (b) was authorized to execute this instrument on behalf of the corporation and
- (c) executed the instrument as the act of the corporation.

Notary Public
My Commission Expires: _____

EXHIBIT 1-A



Neighborhood Design Public Forums Update

BACKGROUND

The Council gave approval at the June 4 meeting to move forward with setting up public forums to discuss Phase II of the Neighborhood Design standards. The Council requested staff to come back at the June 18 meeting with an update on the format of the forums. The dates have been set as follows:

- Monday, July 9
- Wednesday, July 11
- Tuesday, July 17

The forums will be held in an open house format from 5:30 to 7:00 p.m. in the Council Chambers on each of these days. Attendees will be asked to sign in with their name, contact information, and address when they arrive and will be given a survey that we will ask them to fill out as they make their way through different stations. Gould Evans staff and city staff will work the stations to help explain each of the proposed regulations, and then attendees will be asked to provide feedback on each of the regulations in the survey that they are given. There will also be a part of the survey that allows them to share any additional thoughts or concerns with the City.

City staff will compile the survey data collected at each of the three public forums and will present those results and any recommended changes to the standards, based on resident feedback, at the August 6 council meeting. If the Council is comfortable moving forward towards formal adoption after the August 6 presentation, staff will publish notice of a public hearing for the September 4 Planning Commission meeting, and then the formal request for approval would come to the City Council at the October 1 meeting. Amending the zoning regulations requires a public hearing be held by the Planning Commission, and notice of that public hearing must be provided at least 20 days in advance. The Planning Commission must then vote to make a recommendation to the Council, and then the Council votes on final approval after a required 14-day protest period between the Planning Commission and City Council meetings.

We plan to get the word out about the public forums in several ways. We will notify all homes association contacts, the Shawnee Mission Post, and other local media contacts. We will also post notice on social media and the City's website. Unfortunately, we missed the deadline to include these dates in the next edition of the Village Voice, but we could send out a postcard to all residents notifying them of the public forums if the Council feels that is necessary. This would cost about \$3,500 to mail notice to all households in Prairie Village.

PREPARED BY

Jamie Robichaud
Assistant City Administrator
Date: June 13, 2018



ADMINISTRATION

Council Meeting Date: June 18, 2018

Consider approval of Resolution to issue Industrial Revenue Bonds (Dial-Meadowbrook Senior Housing)

Motions:

Approve a resolution determining the intent of the City of Prairie Village, Kansas, to issue its Industrial Revenue Bonds in one or more series in the aggregate amount not to exceed \$35,000,000 to finance the costs of acquiring, constructing and equipping multiple facilities for the benefit of Dial-Meadowbrook Senior Housing Land, LP, and its successor and assigns (sales tax exemption only).

BACKGROUND

The developer agreement for Meadowbrook Park development outlines the structure for the financing of the public improvements associated with the project. The financial structure includes the issuance of Industrial Revenue Bonds (IRB) and the sales tax savings being paid to the City to be used to finance a portion of the park improvements.

The developer expects to construct the senior living project in several phases.

The bonds will be purchased by developer and the City will have no liability with respect to the bonds. The developer will be obligated to make all payments on the bonds and to pay all costs related to the bonds. The developer will also indemnify the City related to the bonds.

The developer will pay the sales tax savings amount to the City for each phase to be used for park improvements.

Gary Anderson of Gilmore & Bell, bond counsel to the City, will attend the meeting on Monday, June 18th to present and discuss the resolution and financing structure.

ATTACHMENTS

- Resolution approving the intent of issuing Industrial Revenue Bonds
-

PREPARED BY:

Lisa Santa Maria, Finance Director

Date: June 5, 2018

RESOLUTION NO. _____

RESOLUTION DETERMINING THE INTENT OF THE CITY OF PRAIRIE VILLAGE, KANSAS, TO ISSUE ITS INDUSTRIAL REVENUE BONDS IN ONE OR MORE SERIES IN THE AGGREGATE AMOUNT NOT TO EXCEED \$35,000,000 TO FINANCE THE COSTS OF ACQUIRING, CONSTRUCTING AND EQUIPPING MULTIPLE FACILITIES FOR THE BENEFIT OF DIAL-MEADOWBROOK SENIOR HOUSING LAND, LP, AND ITS SUCCESSORS AND ASSIGNS (SALES TAX EXEMPTION ONLY)

WHEREAS, the City of Prairie Village, Kansas (the "City"), desires to promote, stimulate and develop the general welfare and economic prosperity of the City and its inhabitants and thereby to further promote, stimulate and develop the general welfare and economic prosperity of the State of Kansas; and

WHEREAS, the City is authorized and empowered under the provisions of K.S.A. 12-1740 to 12-1749d, inclusive (the "Act"), to issue industrial revenue bonds to pay the cost of certain facilities (as defined in the Act) for the purposes set forth in the Act, and to lease such facilities to private persons, firms or corporations; and

WHEREAS, Dial-Meadowbrook Senior Housing Land, LP, a Nebraska limited partnership limited partnership or its successors or assigns (collectively, the "Company"), has submitted to the City an Application for the Issuance of Industrial Revenue Bonds (the "Application") requesting that the City finance the cost of acquiring, constructing and equipping one or more commercial facilities as more fully described in the Application (each, a "Project" and collectively, the "Projects") through the issuance of its industrial revenue bonds in one or more series (collectively, the "Bonds"), the aggregate principal amount of all series of the Bonds not to exceed \$35,000,000, and to lease the Projects to the Company, in accordance with the Act; and

WHEREAS, it is hereby found and determined to be advisable and in the interest and for the welfare of the City and its inhabitants that the City finance the costs of each Project by the issuance of the Bonds in one or more series under the Act, the aggregate principal amount of all series of the Bonds not to exceed \$35,000,000, each series of the Bonds to be payable solely out of rentals, revenues and receipts derived from the lease of the applicable Project by the City to the Company.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF PRAIRIE VILLAGE, KANSAS, AS FOLLOWS:

Section 1. Approval of Projects. The Governing Body of the City hereby finds and determines that the acquiring, constructing and equipping of the Projects will promote the general welfare and economic prosperity of the City of Prairie Village, Kansas, and the issuance of the Bonds in one or more series to pay the costs of the Projects will be in furtherance of the public purposes set forth in the Act. The Projects shall be located on approximately 8.2 acres of land that is generally located at the former Meadowbrook Golf and Country Club in the City of Prairie Village, Kansas, as further described in the Application.

Section 2. Intent to Issue Bonds. The Governing Body of the City hereby determines and declares the intent of the City to acquire, construct and equip the Projects out of the proceeds of the Bonds of the City in one or more series, the aggregate principal amount of all series of the Bonds not to exceed

\$35,000,000 to be issued pursuant to the Act for the purpose of obtaining the sales tax exemption on labor, construction materials and other personal property acquired with the proceeds of each series of Bonds.

Section 3. Provision for the Bonds. Subject to the conditions of this Resolution, the City will (i) issue the Bonds in one or more series to pay the costs of acquiring, constructing and equipping each Project, with such maturities, interest rates, redemption terms and other provisions as may be determined by ordinance of the City; (ii) provide for the lease (with an option to purchase) of each Project to the Company; and (iii) to effect the foregoing, adopt such resolutions and ordinances and authorize the execution and delivery of such instruments and the taking of such action as may be necessary or advisable for the authorization and issuance of the Bonds by the City and take or cause to be taken such other action as may be required to implement the aforesaid.

Section 4. Conditions to Issuance. The issuance of the Bonds and the execution and delivery of any documents related to the Bonds are subject to: (i) obtaining any necessary governmental approvals; (ii) agreement by the City, the Company and the purchaser of each series of the Bonds upon (a) mutually acceptable terms for the Bonds and for the sale and delivery thereof, and (b) mutually acceptable terms and conditions of any documents related to the issuance of each series of the Bonds and each Project; (iii) the Company's compliance with the City's policy relating to the issuance of industrial revenue bonds; (iv) the receipt and approval by the City of appropriate applications for the issuance of each series of the Bonds, (v) each series of Bonds shall have a maturity limit of not to exceed three (3) years), and (vi) the passage and publication of an Ordinance authorizing the issuance of each series of the Bonds.

Section 5. Sale of the Bonds. The sale of each series of the Bonds shall be the responsibility of the Company; provided, however, arrangements for the sale of each series of the Bonds shall be acceptable to the City.

Section 6. Limited Obligations of the City. Each series of the Bonds and the interest thereon shall be special, limited obligations of the City payable solely out of the amounts derived by the City under a Lease Agreement with respect to such series of Bonds and as provided herein and are secured by a transfer, pledge and assignment of and a grant of a security interest in the trust estate to the bond trustee for such series of Bonds and in favor of the owners of such series of Bonds, all as provided in the applicable Bond Indenture. The Bonds shall not constitute a general obligation of the City, the State or of any other political subdivision thereof within the meaning of any State constitutional provision or statutory limitation and shall not constitute a pledge of the full faith and credit of the City, the State or of any other political subdivision thereof and shall not be payable in any manner by taxation, but shall be payable solely from the funds provided for as provided in the Bond Indenture. The issuance of the Bonds shall not, directly, indirectly or contingently, obligate the City, the State or any other political subdivision thereof to levy any form of taxation therefor or to make any appropriation for their payment.

Section 7. Required Disclosure. Any disclosure document prepared in connection with the placement or offering of any series of the Bonds shall contain substantially the following disclaimer:

NONE OF THE INFORMATION IN THIS OFFICIAL STATEMENT, OTHER THAN WITH RESPECT TO INFORMATION CONCERNING THE CITY CONTAINED UNDER THE CAPTIONS "THE CITY" AND "LITIGATION - THE CITY" HEREIN, HAS BEEN SUPPLIED OR VERIFIED BY THE CITY, AND THE CITY MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION.

Section 8. Authorization to Proceed. The Company is hereby authorized to proceed with the acquiring, constructing and equipping of the Projects, including the necessary planning and engineering for the Projects and entering into of contracts and purchase orders in connection therewith, and to advance such funds as may be necessary to accomplish such purposes, and, to the extent permitted by law and upon compliance with the other requirements of this Resolution, the City will reimburse the Company for all expenditures paid or incurred therefor out of the proceeds of the Bonds.

Section 9. No Reliance on Resolution. Kansas law provides that the City may only issue each series of the Bonds by adoption of an Ordinance. The City has not yet adopted an Ordinance for any series of the Bonds. This Resolution only evidences the intent of the current Governing Body to issue the Bonds for the Projects. The Company should not construe the adoption of this Resolution as a promise or guarantee that the Ordinance for any series of Bonds will be issued or that any Project will be approved.

Section 10. Benefit of Resolution. This Resolution will inure to the benefit of the City and the Company. The Company may, with the prior written approval of the City Council of the City, assign all or a portion of its interest in this Resolution to another entity, and such assignee will be entitled to the benefits of the portion of this Resolution assigned and the proceedings related hereto.

Section 11. Further Action. Counsel to the City and Gilmore & Bell, P.C., Bond Counsel for the City, together with the officers and employees of the City, are hereby authorized to work with the purchaser of each series of the bonds, the Company, their respective counsel and others, to prepare for submission to and final action by the City all documents necessary to effect the authorization, issuance and sale of the bonds and other actions contemplated hereunder.

Section 12. Effective Date. This Resolution shall take effect and be in full force immediately after its adoption by the Governing Body of the City.

ADOPTED this 18th day of June, 2018.

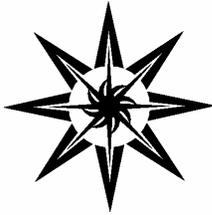
CITY OF PRAIRIE VILLAGE, KANSAS

By: _____
Mayor

[SEAL]

ATTEST:

City Clerk



PUBLIC WORKS DEPARTMENT

Council Meeting Date: June 18, 2018

CONSIDER APPROVAL OF A CONTRACT WITH KANSAS HEAVY CONSTRUCTION FOR THE 2018 CONCRETE REPAIR PROGRAM.

RECOMMENDATION

Move to authorize the Mayor to sign the Construction Contract with Kansas Heavy Construction for the 2018 Concrete Repair Program for \$695,000.

BACKGROUND

On June 6, 2018, the office of the City Clerk opened bids for the 2018 Concrete Repair Program. Two bids were received:

Phoenix Concrete	\$ 664,169.30
Kansas Heavy	\$ 592,000.00
Engineer's Estimate	\$ 699,460.00

There is \$700,000 budgeted for this project and the contract will be awarded for that amount. Locations of repairs will be adjusted (increased) to utilize the \$695,000 budget. The remaining \$5,000 will be used for testing. This program consists of repairs to deteriorated concrete sidewalk, curb and ADA ramps. The primary locations of work for 2018 are the City's Maintenance Districts #11 and 21.

City staff has reviewed the bids for accuracy, found no errors and recommends award to the lowest responsible bidder, Kansas Heavy Construction.

FUNDING SOURCE

Funding is available in the Capital Infrastructure Program Project CONC2018.

ATTACHMENTS

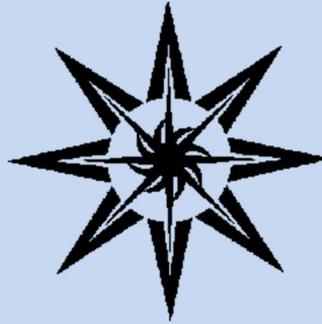
1. Construction Agreement with Kansas Heavy Construction.

PREPARED BY

Melissa Prenger, Senior Project Manager

June 13, 2018

CONSTRUCTION AGREEMENT



**CONC2018
2018 CONCRETE REPAIR PROGRAM**

BETWEEN

CITY OF PRAIRIE VILLAGE, KS

AND

KANSAS HEAVY CONSTRUCTION LLC

CONSTRUCTION CONTRACT
FOR
CONC2018: 2018 CONCRETE REPAIR PROGRAM

BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
KANSAS HEAVY CONSTRUCTION LLC

THIS AGREEMENT, is made and entered into this ____ day of _____, 2018, by and between the CITY OF PRAIRIE VILLAGE, KANSAS, hereinafter termed the “City”, and KANSAS HEAVY CONSTRUCTION LLC, hereinafter termed in this agreement, “Contractor”, for the construction and completion of Project 2018 CONCRETE REPAIR PROGRAM, (the “Project”) designated, described and required by the Project Manual and Bid Proposal, to wit:

WITNESSETH:

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

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

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

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

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

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

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

1.1 Following words are given these definitions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. ENTIRE AGREEMENT:

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

3. INTENT AND INTERPRETATION

- 3.1 The intent of the Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, including construction, labor, materials, tools, equipment and transportation, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result, shall be provided by the Contractor for the Contract Price.
- 3.2 All time limits stated in the Contract Documents are of the essence of the Contract.
- 3.3 The Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

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

- 3.13 The apparent silence of the Project Manual as to any detail, or the apparent omission from them of a detailed description concerning any point, shall be regarded as meaning that only the best general practice is to be used. All interpretations of the Project Manual shall be made on the basis above stated.
- 3.14 The conditions set forth herein are general in scope and are intended to contain requirements and conditions generally required in the Work, but may contain conditions or requirements which will not be required in the performance of the Work under contract and which therefore are not applicable thereto. Where any stipulation or requirement set forth herein applies to any such non-existing condition, and is not applicable to the Work under contract, such stipulation or requirement will have no meaning relative to the performance of said Work.
- 3.15 KSA 16-113 requires that non-resident contractors appoint an agent for the service of process in Kansas. The executed appointment must then be filed with the Secretary of State, Topeka, Kansas. Failure to comply with this requirement shall disqualify the Contractor for the awarding of this Contract.

4. CONTRACT COST

The City shall pay the Contractor for the performance of the Work embraced in this Contract, and the Contractor will accept in full compensation therefore the sum (subject to adjustment as provided by the Contract) of SIX HUNDRED NINETY FIVE THOUSAND AND 00/100 DOLLARS (\$695,000.00) for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

5. WORK SUPERINTENDENT

- 5.1 The Contractor shall provide and maintain, continually on the site of Work during its progress, an adequate and competent superintendent of all operations for and in connection with the Work being performed under this Contract, either personally or by a duly authorized superintendent or other representative. This representative shall be designated in writing at the preconstruction meeting.
- 5.2 The superintendent, or other representative of the Contractor on the Work, who has charge thereof, shall be fully authorized to act for the Contractor, and to receive whatever orders as may be given for the proper prosecution of the Work, or notices in connection therewith. Use of Subcontractors on portions of the Work shall not relieve the Contractor of the obligation to have a competent superintendent on the Work at all times.
- 5.3 The City shall have the right to approve the person who will be the Superintendent based on skill, knowledge, experience and work performance. The City shall also have the right to request replacement of any superintendent.
- 5.4 The duly authorized representative shall be official liaison between the City and the Contractor regarding the signing of pay estimates, change orders, workday reports and other forms necessary for communication and Work status inquiries. Upon Work commencement, the City shall be notified, in writing, within five (5) working days of any changes in the Contractor's representative. In the absence of the Contractor or representative, suitable communication equipment, which will assure receipt of messages within one (1) hour during the course of the workday, will also be required.

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

6. PROJECT MANAGER

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

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

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

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

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

6.6 The Project Manager will review the Contractor's Applications for Payment and will certify to the City for payment to the Contractor those amounts then due the Contractor as provided in this Contract. The Project Manager's recommendation of any payment requested in an Application for Payment will constitute a representation by Project Manager to City, based on Project Manager's on-site observations of the Work in progress as an experienced and qualified design professional and on Project Manager's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of the Project Manager's knowledge, information and belief, the quality of the Work is in accordance with the Project Manual (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of

any subsequent tests called for in the Project Manual, to a final determination of quantities and classifications for Unit Price Work if such is called for herein, and to any other qualifications stated in the recommendation); and that Contractor is entitled to payment of the amount recommended. However, by recommending any such payment Project Manager will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to Project Manager in the Project Manual or that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by the City or the City to withhold payment to Contractor.

- 6.7 The Project Manager may refuse to recommend the whole or any part of any payment if, in Project Manager's opinion, it would be incorrect to make such representations to City. Project Manager may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in the Project Manager's opinion to protect the City from loss because:
- The Work is defective, or completed Work has been damaged requiring correction or replacement,
 - The Contract Price has been reduced by Written Amendment or Change Order,
 - The City has been required to correct Defective Work or complete Work in accordance with the Project Manual.
- 6.8 The City may refuse to make payment of the full amount recommended by the Project Manager because claims have been made against City on account of Contractor's performance or furnishing of the Work or liens have been filed in connection with the Work or there are other items entitling City to a set-off against the amount recommended, but City must give Contractor written notice (with a copy to Project Manager) stating the reasons for such action.
- 6.9 The Project Manager will have the authority to reject Work which is defective or does not conform to the requirements of this Contract. If the Project Manager deems it necessary or advisable, the Project Manager shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.
- 6.10 The Project Manager will review, or take other appropriate action as necessary, concerning the Contractor's submittals, including Shop Drawings, Product Data and Samples. Such review, or other action, shall be for the sole purpose of determining general conformance with the design concept and information given through the Project Manual.
- 6.11 The Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 6.12 The Project Manager, upon written request from the Contractor shall conduct observations to determine the dates of Substantial Completion, Total Completion and the date of Final Acceptance. The Project Manager will receive and forward to the City for the City's review and records, written warranties and related documents from the Contractor required by this

- Contract and will issue a final Certificate for Payment to the City upon compliance with the requirements of this Contract.
- 6.13 The Project Manager's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.
- 6.14 The Project Manager will **NOT** be responsible for Contractor's means, methods, techniques, sequences, or procedures or construction, or the safety precautions and programs incident thereto and will not be responsible for Contractor's failure to perform the Work in accordance with the Project Manual. The Project Manager will not be responsible for the acts or omissions of the Contractor or any Subcontractor or any of its or their agents or employees, or any other person at the site or otherwise performing any of the Work except as may otherwise be provided.
- 6.15 Any plan or method of work suggested by the Project Manager, or other representatives of the City, to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor, and the Project Manager and the City will assume no responsibility therefore.
- 6.16 It is agreed by the Contractor that the City shall be and is hereby authorized to appoint or employ, either directly or through the Project Manager, such City representatives or observers as the City may deem proper, to observe the materials furnished and the work performed under the Project Manual, and to see that the said materials are furnished, and the said work performed, in accordance with the Project Manual therefore. The Contractor shall furnish all reasonable aid and assistance required by the Project Manager, or by the resident representatives for proper observation and examination of the Work and all parts thereof.
- 6.17 The Contractor shall comply with any interpretation of the Project Manual by the Project Manager, or any resident representative or observer so appointed, when the same are consistent with the obligations of the Project Manual. However, should the Contractor object to any interpretation given by any subordinate Project Manager, resident representative or observer, the Contractor may appeal in writing to the City Director of Public Works for a decision.
- 6.18 Resident representatives, observers, and other properly authorized representatives of the City or Project Manager shall be free at all times to perform their duties, and intimidation or attempted intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the City so decides, to annul the Contract.
- 6.19 Such observation shall not relieve the Contractor from any obligation to perform said Work strictly in accordance with the Project Manual.
- 7. WORK SCHEDULE:**
- 7.1 The Work is comprised of one large project (sometimes referred to as "**Total Project Work**") and, in some cases, is partitioned into smaller subprojects referred to in this Agreement as "**Project Segments**." A Contract Time shall be stated in the Contract Documents for both the Total Project Work and, when applicable, the Project Segments.
- 7.2 At the time of execution of this Contract, the Contractor shall furnish the Project Manager with a schedule ("**Work Schedule**") setting forth in detail (in the critical path method) the sequences proposed to be followed, and giving the dates on which it is expected that

Project Segments will be started and completed within the Contract Time. The Work Schedule is subject to approval by the City.

- 7.3 Monthly Work Schedule reports shall accompany the Contractor's pay request for Work completed. Where the Contractor is shown to be behind schedule, it shall provide an accompanying written summary, cause, and explanation of planned remedial action. Payments or portions of payments may be withheld by the City upon failure to maintain scheduled progress of the Work as shown on the approved Work Schedule.
- 7.4 At a minimum the Contractor shall update and submit the Work Schedule for review weekly, unless otherwise agreed upon by the City.
- 7.5 The Contractor, within ten (10) calendar days after being instructed to do so in a written notice from the City, shall commence the Work to be done under this Contract.
- 7.6 If at any time, in the opinion of the Project Manager or City, proper progress is not being maintained; changes shall be proposed in the Work Schedule and resubmitted for consideration and approval.
- 7.7 If the Contractor has not completed Project Segments and is within a non-performance penalty period, it shall not be allowed to undertake a new Project Segment until the Project Segment in dispute is completed, unless expressly permitted by the City.
- 7.8 The operation of any tool, equipment, vehicle, instrument, or other noise-producing device is prohibited to start before or continue after the hours of 7 AM and 10 PM, Monday through Friday (except Fridays which shall be until Midnight) and 8 AM and midnight on Weekends (except Sunday which shall be 10 PM). Violation of this requirement is Prima Facie Violation of City Municipal Code 11-202.
- 7.9 No work shall be undertaken on Saturdays, Sundays and Holidays (Christmas, New Years, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day and Thanksgiving) without the express written approval of the City Project Manager. If it is necessary to perform proper care, maintenance, or protection of work already completed or of equipment used, or in the case of an emergency verbal permission may be obtained through the Project Manager.
- 7.10 Night work may be established by the Contractor, as a regular procedure, with the written permission of the City; such permission, however, may be revoked at any time by the City if the Contractor fails to maintain adequate equipment for the proper prosecution and control of all operations performed as part of the Work.
- 7.11 The Contractor shall provide 24 hours notice prior to commencing any work to the City Project Manager. The Contractor shall communicate immediately any changes in the Work Schedule to the Project Manager for approval by the City.

8. DELAYS AND EXTENSIONS OF TIME

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

delays from any cause during the progress of the Work, or any portion thereof, included in this Contract.

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

9. ADVERSE WEATHER:

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

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

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

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

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

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

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

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

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

- 9.7 Upon receipt of the Notice to Proceed, and continuing throughout the Contract, the Contractor shall record on its daily construction report, the occurrence of Adverse Weather and resultant impact to the Work Schedule.
- 9.8 The number of actual Adverse Weather delay days shall include days affected by actual Adverse Weather (even if Adverse Weather occurred in the previous month), and shall be calculated chronologically from the first to the last day of each month, and be recorded as full workdays.
- 9.9 If the number of actual Adverse Weather delay days in a given month exceeds the number of days anticipated above, the difference shall be multiplied by 7/5 to convert any qualifying workday delays to calendar days. The resulting number of qualifying lost days shall be added to the Contract Time.
- 9.10 The determination that Unusually Severe Weather occurred does not automatically mean an extension of time will be granted. The Contractor must substantiate the Unusually Severe Weather delayed work activities on the critical path of the Work Schedule.
- 9.11 Full consideration for equivalent fair weather workdays shall be given. If the number of actual Adverse Weather delays in a given month is less than the number of days anticipated as indicated above, the difference shall be multiplied by 7/5 to convert any workday increases to calendar days. The resulting number of qualifying extra days will be accumulated and subtracted from any future month's days lost due to unusually severe weather.
- 9.12 The net cumulative total of extra days/lost days shall not result in a reduction of Contract Time and the date of Substantial Completion shall not be changed because of unusually favorable weather.
- 9.13 In converting workdays to calendar days, fractions 0.5 and greater shall be rounded up to the next whole number. Fractions less than 0.5 shall be dropped.
- 9.14 The Contractor shall summarize and report all actual Adverse Weather delay days for each month to the Project Manager by the tenth (10th) day of the following month. A narrative indicating the impact of Adverse Weather conditions on the Work Schedule shall be included.
- 9.15 Any claim for extension of time due to Unusually Severe Weather shall be submitted to the Project Manager within 7 days of the last day of the commencement of the event giving rise to the delay occurred. Resolution of any claim shall follow the procedures described above.
- 9.16 The Contractor shall include and indicate the monthly-anticipated Adverse Weather days, listed above, in the Work Schedule. (Reference Section 7.1 for Work Schedule requirements)
- 9.17 The Contractor shall indicate the approved Adverse Weather days (whether less or more than the anticipated days) in its Work Schedule updates.

10. LIQUIDATED DAMAGES

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

11. PAYMENT PROCEDURE

- 11.1 Based upon Applications for Payment submitted to the Project Manager by the Contractor and Certificates for Payment issued by the Project Manager, the City shall make progress payments on account of the contract sum to the Contractor as provided below and elsewhere in the Contract Documents.
- 11.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month or on a mutually agreed date by City and Contractor.
- 11.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal on the first day of each month of an Application for Payment, all Work for which payments have been received from the City shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.
- 11.4 Each application for payment must be submitted with Contractor's waiver for period of construction covered by application. Each Application for Payment will be submitted with executed waivers from the subcontractors or sub-contractors and suppliers for the previous period of construction covered by the previous application. The final payment application must be submitted together with or preceded by final or complete waivers from every entity involved with performance of the Work covered by the payment request.
- 11.5 The Contractor will submit waivers on forms, and executed in a manner, acceptable to City.

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

- 11.11 In the event that the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in this subparagraph, the Contractor shall promptly comply with such demand and refund such monies to the City.
- 11.12 Neither the observation by the City or any of the City's officials, employees, or agents, nor any order by the City for payment of money, nor any payment for, or acceptance of, the whole or any part of the Work by the City or Project Manager, nor any extension of time, nor any possession taken by the City or its employees, shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the City, or any right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of any other or subsequent breach.

12. COMPLETION AND FINAL PAYMENT

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

13. CLAIMS BY THE CONTRACTOR

- 13.1 All Contractor claims shall be initiated by written notice and claim to the Project Manager. Such written notice and claim must be furnished within seven calendar days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.
- 13.2 The Contractor shall diligently proceed with performance of this Contract whether or not there be such a claim pending and the City shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim shall be reflected by a Change Order executed by the City, the Project Manager and the Contractor.

- 13.3 Should concealed and unknown conditions which could not, with reasonable diligence, have been discovered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure differ materially with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided by this Contract, be encountered, the Contract Price shall be equitably adjusted by the Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the City having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the City written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed or unknown condition.
- 13.4 If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the City therefore, the Contractor shall give the City written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.
- 13.5 The City reserves the right to increase or decrease quantities, and alter the details of construction including grade and alignment as the Project Manager may consider necessary or desirable, by approved Change Order. Such modifications shall not invalidate the Contract nor release the surety. Unless such alterations and increases or decreases change the total cost of the Work, based on the originally estimated quantities and the unit prices bid, by more than 25 percent, or change the total cost of any major item, based on the originally estimated quantities and the unit price bid, by more than 25 percent, the Contractor shall perform the work altered, increased or decreased, at a negotiated price or prices. (A major item shall mean any bid item, the total cost of which exceeds 12-1/2 percent of the total Contract Price based on the proposed quantity and the contract unit price).
- 13.6 When the alterations cause an increase or decrease in excess of the 25 percent indicated above, either the Contractor or the Project Manager may request an adjustment of the unit price to be paid for the item or items.
- 13.7 If a mutually agreeable adjustment cannot be obtained, the City reserves the right to terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the Work.
- 13.8 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall not include standby costs, indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties.
- 13.9 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably

anticipated, fire or any causes beyond the Contractor's control, then the date for achieving Final Acceptance of the Work shall be extended upon the written notice and claim of the Contractor to the City, for such reasonable time as the City may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven calendar days after the occurrence of the event or the first appearance of the condition-giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Work. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this subparagraph, any claim for an extension of time shall be waived.

- 13.10 The Contractor shall delay or suspend the progress of the work or any part thereof, whenever so required by written order of the City, and for such periods of time as required; provided, that in the event of such delay or delays or of such suspension or suspensions of the progress of the work, or any part thereof, the time for completion of work so suspended or of work so delayed by such suspension or suspensions shall be extended for a period equivalent to the time lost by reason of such suspension or suspensions; but such order of the City or Project Manager shall not otherwise modify or invalidate in any way, any of the provisions of this Contract. In the event that the work shall be stopped by written order of the City, any expense, which, in the sole opinion and judgment of the City, is caused by the City, shall be paid by the City to the Contractor.
- 13.11 In executing the Contract Documents, the Contractor expressly covenants and agrees that, in undertaking to complete the Work within the time herein fixed, it has taken into consideration and made allowances for all hindrances and delays incident to such work, whether growing out of delays in securing materials or workers or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the work, or any portion thereof, included in this Contract, except as provided herein.
- 13.12 In addition to the Project Manual particular to Mobilization found elsewhere in this document, additional mobilization shall not be compensable for work outside of the designated areas for work deemed essential by the City. A quantity of work equal to as much as 10% of the total Contract may be required to be performed beyond the boundaries of the designated work areas

14. CHANGES IN THE WORK

- 14.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.
- 14.2 The Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 14.3 Any change in the Contract Price resulting from a Change Order shall be by mutual agreement between the City and the Contractor as evidenced by the change in the Contract

Price being set forth in the Change Order, and, together with any conditions or requirements related thereto, being initialed by both parties.

- 14.4 If no mutual agreement occurs between the City and the Contractor relative to a change in the Work, the Contractor shall proceed with the Work that is the subject of the Change Order, and the change in the Contract Price, if any, shall then be determined by the Project Manager on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content to the City, as the Project Manager requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies or equipment, including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools, whether rented from the Contractor or others, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and job site field office overhead directly attributable to the change. In no event shall any standby time or any expenditure or savings associated with the Contractor's home office or other non-job site overhead expense be included in any change in the Contract Price. Further, in no event shall the Contractor's overhead expense exceed ten (10%) percent of the reasonable expenditures. Pending final determination of reasonable expenditures or savings to the City, payments on account shall be made to the Contractor on the Project Manager's Certificate for Payment.
- 14.5 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that the application of such unit prices to the quantities of Work proposed would cause substantial inequity to the City or to the Contractor, the applicable unit prices shall be equitably adjusted.
- 14.6 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim including impact against the City for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

15. INSURANCE AND BONDS.

- 15.1 The Contractor shall secure and maintain, throughout the duration of the agreement, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Contractor shall provide certificates of insurance and renewals thereof on forms acceptable to the City. The City shall be notified by receipt of written notice from the insurer or the Contractor at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.
- 15.2 The Contractor, upon receipt of notice of any claim in connection with this Agreement, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability. The Contractor shall monitor and promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by the Contract Documents) if the Contractor's limits of protection shall have been impaired

or reduced to such extent that the limits fall below the minimum amounts required herein. The Contractor shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

15.3 Minimum Requirements Commercial General Liability Policy Limits -

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

Policy MUST include the following conditions:

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

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

Limits (Same as Commercial General Liability) -
 Combined Single Limits, Bodily Injury and Property Damage - Each Accident:

Policy MUST include the following condition:
 NAME CITY OF PRAIRIE VILLAGE AS "ADDITIONAL INSURED"

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

Limits -

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

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

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

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

- Is authorized to do business in the State of Kansas;
- Carries a Best's policy holder rating of A- or better; and

Carries at least a Class VIII financial rating, **or**

Is a company mutually agreed upon by the City and Contractor.

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

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

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

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

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

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

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

16. INDEMNITY

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

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

connected with, or are claimed to arise out of or be connected with, the performance of this Contract whether arising before or after the completion of the work required hereunder.

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

17. SUCCESSORS AND ASSIGNS

- 17.1 The City and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract.
- 17.2 The Contractor shall not assign or sublet the work, or any part thereof, without the previous written consent of the City, nor shall it assign, by power of attorney or otherwise, any of the money payable under this Contract unless by and with the like written consent of the City. In case the Contractor assigns all, or any part of any moneys due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to all prior liens of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.
- 17.3 Should any Subcontractor fail to perform in a satisfactory manner, the work undertaken, its subcontract shall be immediately terminated by the Contractor upon notice from the City. Performing in an unsatisfactory manner is defined as consistently having more than 10% of work unacceptable. The Contractor shall be as fully responsible to the City for the acts and omissions of the subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed. Nothing contained in this Contract shall create any contractual relations between any Subcontractor and the City, nor shall anything contained in the Contract Documents create any obligation on the part of the City to pay or to see to the payment of any sums due any Subcontractor.

- 17.4 The Contractor shall not award subcontracts which total more than twenty-five (25%) of the Contract Price and shall perform within its own organization work amounting to not less than seventy-five percent (75%) of the total Contract Price. Approval by the City of any Subcontractor shall not constitute a waiver of any right of the City to reject Defective Work, material or equipment not in compliance with the requirements of the Contract Documents. The Contractor shall not make any substitution for any Subcontractor accepted by the City unless the City so agrees in writing.
- 17.5 The Contractor shall not subcontract, sell, transfer, assign or otherwise dispose of the Contract or any portion thereof without previous written consent from the City. In case such consent is given, the Contractor, shall be permitted to subcontract a portion thereof, but shall perform with his/her own organization work amounting to not less than fifty five (55%) of the total Contract Price. No subcontracts, or other transfer of Contract, shall release the Contractor of its liability under the Contract and bonds applicable thereto.
- 17.6 The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Contractor by the terms of the Contract Documents insofar as applicable to the work of the Subcontractor and to give the Contractor the same power to terminate any Subcontract as the City has to terminate the Contractor under any provisions of the Contract Documents.
- 17.7 Prior to the City's approval of the Contract bid, the successful bidder shall submit to the City for acceptance, a list of names of all Subcontractors proposed for portions of the work and shall designate which work each is to perform.
- 17.8 The City shall, prior to the City's approval of the Contract bid, notify the successful bidder, in writing, if the City, after due investigation, has reasonable objection to any Subcontractor on such list, and the Contractor shall substitute a Subcontractor acceptable to the City at no additional cost to the City or shall be allowed to withdraw his/her Bid, and the City shall either re-bid the Work or accept the next best lowest and responsible bidder. The failure of the City to make objection to a Subcontractor shall constitute an acceptance of such Subcontractor but shall not constitute a waiver of any right of the City to reject Defective Work, material or equipment not in conformance with the requirements of the Project Manual.

18. NON-DISCRIMINATION LAWS

- 18.1 The Contractor agrees that:
- A. The Contractor shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of Work under the present contract because of race, religion, color, sex, disability, national origin, ancestry or age;
 - B. In all solicitations or advertisements for employees, the Contractor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
 - C. If the Contractor fails to comply with the manner in which the Contractor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency;

- D. If the Contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency; and
 - E. The Contractor shall include the provisions of Subsections A through D in every subcontract or purchase order so that such provisions will be binding upon such Subcontractor or vendor.
 - F. The provisions of this Section shall not apply to a contract entered into by a Contractor: (1) Who employs fewer than four employees during the term of such contract; or (2) Whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.
- 18.2 The Contractor further agrees that it shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all other federal, state and local laws.

19. FEDERAL LOBBYING ACTIVITIES

[THIS PROVISION ONLY APPLIES IF THE CITY IS RECEIVING FEDERAL FUNDS]

- 19.1 31 USCS Section 1352 requires all subgrantees, Contractors, Subcontractors, and consultants/Architects who receive federal funds via the City to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the award of any federal contract, grant, loan, or cooperative agreements.
- 19.2 In addition, contract applicants, recipients, and subrecipients must file a form disclosing any expenditure they make for lobbying out of non-federal funds during the contract period.
- 19.3 Necessary forms are available from the City and must be returned to the City with other Contract Documents. It is the responsibility of the general contractor to obtain executed forms from any Subcontractors who fall within the provisions of the Code and to provide the City with the same.

20. RELATIONS WITH OTHER CONTRACTORS:

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

- 20.2 When two or more Contracts are being executed at one time in such manner that work on one Contract may interfere with that on another, the City shall decide which Contractor shall progress at which time.
- 20.3 Other projects the Contractor may have to coordinate shall be listed in the Special Conditions.
- 20.4 When the territory of one Contract is the necessary or convenient means of access for the transportation or movement of workers, materials, or appliances required for the execution of another Contract, such privileges of access or any other responsible privilege may be granted by the City to the Contractor so desiring, to the extent such may be reasonably necessary.
- 20.5 Upon execution of the Contract, the Contractor shall furnish the City, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Work. The City shall promptly reply to the Contractor, in writing, stating any objections the City may have to such proposed Subcontractor. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the City has made timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has objection.

21. RIGHT OF CITY TO TERMINATE

- 21.1 If the Contractor persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, or supply enough properly skilled workers, supervisory personnel or proper equipment or materials, or if it fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or if this Contract is assigned by Contractor without authorization or if Contractor is adjudged as bankrupt, or if a general assignment of assets be made for the benefit of creditors; or if a receiver is appointed, or otherwise is guilty of a substantial violation of a provision of this Contract, then the City may by written notice to the Contractor, without prejudice to any right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor and its surety shall be liable to the City for all excess cost sustained by the City because of such prosecution and completion including any additional legal, Project Manager or bid-letting costs therefore. In such case, the Contractor shall not be entitled to receive further payment. In the event the Contractor is found in a court of law to have been wrongfully terminated for cause, then such termination shall be deemed a termination for convenience and the Contractor shall be compensated as provided herein. Any termination of the Agreement for alleged default by Contractor that is ultimately determined to be unjustified shall automatically be deemed a termination for convenience of the City.
- 21.2 The City, within its sole discretion, may elect to terminate the Contract with the Contractor for convenience upon three (3) days written Notice to Contractor. In the event of such termination, Contractor shall cease immediately all operations and shall be compensated for all work performed as of the date of termination in accordance with the terms of payment in this contract. Contractor shall not be entitled to any anticipatory profits, consequential damages or other costs other than direct costs of demobilization.

22. MISCELLANEOUS:

- 22.1 The Contractor warrants to the City that all labor furnished to progress the Work under the Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with the Project Manual. All Work not conforming to these requirements may be considered defective.
- 22.2 The Contractor shall obtain and pay for all permits, fees and licenses necessary or ordinary for the Work. The Contractor shall comply with all lawful requirements, including federal and state laws, City and County laws and ordinances and building codes, applicable to the Work and shall give and maintain copies of all notices required by applicable law pertaining to the Work.
- 22.3 Provision for Emergencies. Whenever, in the opinion of the City, the Contractor has not taken sufficient precaution for the safety of the public or the protection of the Work to be constructed under this Contract, or of adjacent structures or property which may be injured by process of construction, and whenever, in the opinion of the City, an emergency shall arise and immediate action shall be considered necessary in order to protect property interests and to avoid personal injury and/or death, then the City, with or without notice to the Contractor, shall provide suitable protection to the said interests by causing such Work to be done and materials to be furnished at places as the City may consider necessary and adequate. The cost and expense of such Work and material so furnished shall be borne by the Contractor and, if the same shall not be paid on presentation of the bills therefore, such costs shall be deducted from any amounts due or to become due the Contractor. The performance of such emergency Work shall in no way relieve the Contractor of responsibility for damages which may occur during or after such precaution has been duly taken.
- 22.4 Both the business address of the Contractor given in the Bid or proposal upon which this Contract is founded, and the Contractor's Office near the Work, is hereby designated as the places to which all notices, letters, and other communications to the Contractor may be mailed or delivered. The delivering at either of the above named addresses, or depositing in any mailbox regularly maintained by the Post Office, of any notice, letter or other communication so addressed to the Contractor, and the date of said service shall be the date of such delivery or mailing. Such addresses may be changed at any time by an instrument in writing, executed by the Contractor, presented, and delivered to the Project Manager and to the City. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or communication upon the Contractor personally.
- 22.5 It is mutually agreed by and between the parties to this Contract that all royalties and fees for and in connection with patents, or patent infringement, claims for materials, articles, apparatus, devices or equipment (as distinguished from processes) used in or furnished for the work shall be included in the Contract Price and the Contractor shall satisfy all demands that may be made at any time for such, and the Contractor shall at its cost and expense, defend any and all suits or proceedings that may be instituted at any time against the City for infringement or alleged infringement of any such patents involved in the work, and Contractor shall pay any award of damages.
- 22.6 The right of general administration of the City shall not make the Contractor an agent of the City, and the liability of the Contractor for all damages to persons, firms, and corporations, arising from the Contractor's execution of the Work, shall not be lessened because of such

general administration, but as to all such persons, firms, and corporations, and the damages, if any, to them or their property. The Contractor herein is an independent Contractor in respect to the work.

- 22.7 For a period of time, from the inception of the Contract to three (3) years from the date of final payment under the Contract, the Contractor and subcontractors shall maintain books, accounts, ledgers, invoices, drafts, pages and other records pertaining to the performance of this Contract. At all reasonable times during this period these records shall be available within the State of Kansas at a field or permanent business office for inspection by authorized representatives of the City or of any other agency, which has contributed funds in connection with the Contract or to which the City is obligated to make such inspections available. In addition, this requirement shall be included in all subcontracts entered into in connection with this Contract.
- 22.8 Titles, subheadings used herein, and other Contract Documents are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Contract Documents.
- 22.9 No waiver of any breach of this Contract shall be construed to be a waiver of any other subsequent breach.
- 22.10 Should any provision of this Agreement or other Contract Documents be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement and/or the other Contract Documents shall be unaffected thereby and shall continue to be valid and enforceable.
- 22.11 Without in any manner limiting Contractor's responsibilities as provided elsewhere in the Contract Documents, the Contractor shall assume full responsibility for the protection of all public and private property, structures, sewers, and utilities, for both above ground and underground facilities, along, beneath, above, across or near the site or sites of the Work being performed under this Agreement, or which are in any manner affected by the prosecution of the Work or the transportation of men/women or materials in connection therewith. Barriers shall be kept in place at all times to protect persons other than those engaged on or about the Work from accident, and the Contractor will be held responsible for all accidents to persons or property resulting from the acts of Contractor or its employees.
- 22.12 The Contractor shall keep fully informed of all existing and current regulations of the City, county, state, and federal laws, which in any way limit or control the actions or operations of those engaged upon the work, or affecting materials supplied, to or by them. The Contractor shall at all times observe and comply with all ordinances, laws, and regulations, and shall protect and indemnify the City and the City's officers and agents against any claims or liability arising from or based on any violation of the same.
- 22.13 Nothing contained in the Contract Documents shall create, or be interpreted to create, privity or any other contractual agreement between the City and any person or entity other than the Contractor.
- 22.14 Duties and obligations imposed by the Contract Documents, rights, and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

- 22.15 No action or failure to act by the City, Project Manager or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval or acquiescence in a breach hereunder, except as may be specifically agreed in writing.
- 22.16 Contractor specifically acknowledges and confirms that: (i) it has visited the site, made all inspections it deems appropriate and has read and fully understands the Contract Documents, including all obligations and responsibilities undertaken by it as specified herein and in other Contract Documents and knowingly accepts the same; (ii) it has furnished copies of all Contract Documents to its insurance carrier(s) and its surety(ies); and (iii) its insurance carrier(s) and surety(ies) agree to be bound as specified herein, in the Contract Documents and in the insurance policy(ies) and bonds as to liability and surety coverage.
- 22.17 It is specifically agreed between the parties executing this Agreement that the Contract Documents are not intended to create any third party beneficiary relationship nor authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.
- 22.18 This Agreement is entered into, under and pursuant to, and is to be construed and enforceable in accordance with the laws of the State of Kansas. Venue of any litigation arising in connection with this Agreement shall be the State courts of Johnson County, Kansas.

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

CITY OF PRAIRIE VILLAGE

KANSAS HEAVY CONSTRUCTION LLC

(typed company name)

By: _____
(signed)

By: _____
(signed)

Laura Wassmer _____

(typed name)

Mayor _____

(typed title)

City of Prairie Village _____

KANSAS HEAVY CONSTRUCTION LLC

(typed company name)

7700 Mission Road _____

PO BOX 860603

(typed address)

Prairie Village, Kansas 66208 _____

SHAWNEE MISSION KANSAS 66286

(typed city, state, zip)

913-381-6464 _____

913-845-2121

(typed telephone number)

(date of execution)

(date of execution)

SEAL

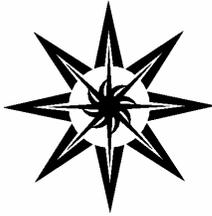
ATTEST:

APPROVED BY:

City Clerk, Joyce Hagen-Mundy

City Attorney, David Waters

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



PUBLIC WORKS DEPARTMENT

Council Meeting Date: June 18, 2018

CONSIDER APPROVAL OF A CONTRACT WITH ADVANCED ASPHALT PAVING AND CONCRETE FOR THE 2018 STREET REPAIR PROGRAM

RECOMMENDATION

Move to authorize the Mayor to sign the Construction Contract with Advanced Asphalt Paving and Concrete LLC for Project P5001 2018 Street Repair Program for \$150,000.

BACKGROUND

On May 23, 2018, the City Clerk opened bids for Project P5001, 2018 Street Repair Program. Four bids were received:

Advanced Asphalt Paving & Concrete	\$ 71,961.90
O'Donnell-Way Construction	\$122,111.93
Little Joe's Asphalt	\$158,678.40
McAnany Construction	\$220,284.00
Engineers Estimate	\$148,319.00

This program consists of asphalt street repairs at various locations throughout the City. The program allows us to address areas where settlement or deterioration has occurred, and make repairs to those areas.

There is \$150,000 budgeted for this project and the contract will be awarded for that amount. Locations of repairs will be adjusted (increased) to utilize the \$150,000 budget.

City staff has reviewed the bids for accuracy, found no errors and recommends award to the lowest responsible bidder, Advanced Asphalt Paving and Concrete.

FUNDING SOURCE

Funding is available for in the 2018 Operations Fund for P5001.

ATTACHMENTS

1. Construction Agreement with Advanced Asphalt Paving and Concrete LLC.

PREPARED BY

Melissa Prenger, Senior Project Manager

June 13, 2018

**CONSTRUCTION CONTRACT
FOR
P5001 2018 STREET REPAIR PROGRAM**

**BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS AND
ADVANCED ASPHALT PAVING & CONCRETE LLC**

THIS AGREEMENT, is made and entered into this ____ day of _____, 2018, by and between the City of Prairie Village, Kansas, hereinafter termed the "**City**", and Advanced Asphalt Paving & Concrete LLC, hereinafter termed in this agreement, "**Contractor**", for the construction and completion of Project 2018 STREET REPAIR PROGRAM, (the "**Project**") designated, described and required by the Project Manual and Bid Proposal, to wit:
WITNESSETH:

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

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

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

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

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

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

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

1.1 Following words are given these definitions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. ENTIRE AGREEMENT:

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

3. INTENT AND INTERPRETATION

- 3.1 The intent of the Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, including construction, labor, materials, tools, equipment and transportation, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result, shall be provided by the Contractor for the Contract Price.
- 3.2 All time limits stated in the Contract Documents are of the essence of the Contract.
- 3.3 The Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

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

- 3.13 The apparent silence of the Project Manual as to any detail, or the apparent omission from them of a detailed description concerning any point, shall be regarded as meaning that only the best general practice is to be used. All interpretations of the Project Manual shall be made on the basis above stated.
- 3.14 The conditions set forth herein are general in scope and are intended to contain requirements and conditions generally required in the Work, but may contain conditions or requirements which will not be required in the performance of the Work under contract and which therefore are not applicable thereto. Where any stipulation or requirement set forth herein applies to any such non-existing condition, and is not applicable to the Work under contract, such stipulation or requirement will have no meaning relative to the performance of said Work.
- 3.15 KSA 16-113 requires that non-resident contractors appoint an agent for the service of process in Kansas. The executed appointment must then be filed with the Secretary of State, Topeka, Kansas. Failure to comply with this requirement shall disqualify the Contractor for the awarding of this Contract.

4. CONTRACT COST

The City shall pay the Contractor for the performance of the Work embraced in this Contract, and the Contractor will accept in full compensation therefore the sum (subject to adjustment as provided by the Contract) of ONE HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$150,000.00) for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

5. WORK SUPERINTENDENT

- 5.1 The Contractor shall provide and maintain, continually on the site of Work during its progress, an adequate and competent superintendent of all operations for and in connection with the Work being performed under this Contract, either personally or by a duly authorized superintendent or other representative. This representative shall be designated in writing at the preconstruction meeting.
- 5.2 The superintendent, or other representative of the Contractor on the Work, who has charge thereof, shall be fully authorized to act for the Contractor, and to receive whatever orders as may be given for the proper prosecution of the Work, or notices in connection therewith. Use of Subcontractors on portions of the Work shall not relieve the Contractor of the obligation to have a competent superintendent on the Work at all times.
- 5.3 The City shall have the right to approve the person who will be the Superintendent based on skill, knowledge, experience and work performance. The City shall also have the right to request replacement of any superintendent.
- 5.4 The duly authorized representative shall be official liaison between the City and the Contractor regarding the signing of pay estimates, change orders, workday reports and other forms necessary for communication and Work status inquiries. Upon Work commencement, the City shall be notified, in writing, within five (5) working days of any changes in the Contractor's representative. In the absence of the Contractor or representative, suitable communication equipment, which will assure receipt of messages within one (1) hour during the course of the workday, will also be required.

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

6. PROJECT MANAGER

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

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

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

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

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

6.6 The Project Manager will review the Contractor's Applications for Payment and will certify to the City for payment to the Contractor those amounts then due the Contractor as provided in this Contract. The Project Manager's recommendation of any payment requested in an Application for Payment will constitute a representation by Project Manager to City, based on Project Manager's on-site observations of the Work in progress as an experienced and qualified design professional and on Project Manager's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of the Project Manager's knowledge, information and belief, the quality of the Work is in accordance with the Project Manual (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of

any subsequent tests called for in the Project Manual, to a final determination of quantities and classifications for Unit Price Work if such is called for herein, and to any other qualifications stated in the recommendation); and that Contractor is entitled to payment of the amount recommended. However, by recommending any such payment Project Manager will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to Project Manager in the Project Manual or that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by the City or the City to withhold payment to Contractor.

- 6.7 The Project Manager may refuse to recommend the whole or any part of any payment if, in Project Manager's opinion, it would be incorrect to make such representations to City. Project Manager may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in the Project Manager's opinion to protect the City from loss because:
- The Work is defective, or completed Work has been damaged requiring correction or replacement,
 - The Contract Price has been reduced by Written Amendment or Change Order,
 - The City has been required to correct Defective Work or complete Work in accordance with the Project Manual.
- 6.8 The City may refuse to make payment of the full amount recommended by the Project Manager because claims have been made against City on account of Contractor's performance or furnishing of the Work or liens have been filed in connection with the Work or there are other items entitling City to a set-off against the amount recommended, but City must give Contractor written notice (with a copy to Project Manager) stating the reasons for such action.
- 6.9 The Project Manager will have the authority to reject Work which is defective or does not conform to the requirements of this Contract. If the Project Manager deems it necessary or advisable, the Project Manager shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.
- 6.10 The Project Manager will review, or take other appropriate action as necessary, concerning the Contractor's submittals, including Shop Drawings, Product Data and Samples. Such review, or other action, shall be for the sole purpose of determining general conformance with the design concept and information given through the Project Manual.
- 6.11 The Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 6.12 The Project Manager, upon written request from the Contractor shall conduct observations to determine the dates of Substantial Completion, Total Completion and the date of Final Acceptance. The Project Manager will receive and forward to the City for the City's review and records, written warranties and related documents from the Contractor required by this

- Contract and will issue a final Certificate for Payment to the City upon compliance with the requirements of this Contract.
- 6.13 The Project Manager's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.
- 6.14 The Project Manager will **NOT** be responsible for Contractor's means, methods, techniques, sequences, or procedures or construction, or the safety precautions and programs incident thereto and will not be responsible for Contractor's failure to perform the Work in accordance with the Project Manual. The Project Manager will not be responsible for the acts or omissions of the Contractor or any Subcontractor or any of its or their agents or employees, or any other person at the site or otherwise performing any of the Work except as may otherwise be provided.
- 6.15 Any plan or method of work suggested by the Project Manager, or other representatives of the City, to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor, and the Project Manager and the City will assume no responsibility therefore.
- 6.16 It is agreed by the Contractor that the City shall be and is hereby authorized to appoint or employ, either directly or through the Project Manager, such City representatives or observers as the City may deem proper, to observe the materials furnished and the work performed under the Project Manual, and to see that the said materials are furnished, and the said work performed, in accordance with the Project Manual therefore. The Contractor shall furnish all reasonable aid and assistance required by the Project Manager, or by the resident representatives for proper observation and examination of the Work and all parts thereof.
- 6.17 The Contractor shall comply with any interpretation of the Project Manual by the Project Manager, or any resident representative or observer so appointed, when the same are consistent with the obligations of the Project Manual. However, should the Contractor object to any interpretation given by any subordinate Project Manager, resident representative or observer, the Contractor may appeal in writing to the City Director of Public Works for a decision.
- 6.18 Resident representatives, observers, and other properly authorized representatives of the City or Project Manager shall be free at all times to perform their duties, and intimidation or attempted intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the City so decides, to annul the Contract.
- 6.19 Such observation shall not relieve the Contractor from any obligation to perform said Work strictly in accordance with the Project Manual.
- 7. WORK SCHEDULE:**
- 7.1 The Work is comprised of one large project (sometimes referred to as "**Total Project Work**") and, in some cases, is partitioned into smaller subprojects referred to in this Agreement as "**Project Segments**." A Contract Time shall be stated in the Contract Documents for both the Total Project Work and, when applicable, the Project Segments.
- 7.2 At the time of execution of this Contract, the Contractor shall furnish the Project Manager with a schedule ("**Work Schedule**") setting forth in detail (in the critical path method) the sequences proposed to be followed, and giving the dates on which it is expected that

Project Segments will be started and completed within the Contract Time. The Work Schedule is subject to approval by the City.

- 7.3 Monthly Work Schedule reports shall accompany the Contractor's pay request for Work completed. Where the Contractor is shown to be behind schedule, it shall provide an accompanying written summary, cause, and explanation of planned remedial action. Payments or portions of payments may be withheld by the City upon failure to maintain scheduled progress of the Work as shown on the approved Work Schedule.
- 7.4 At a minimum the Contractor shall update and submit the Work Schedule for review weekly, unless otherwise agreed upon by the City.
- 7.5 The Contractor, within ten (10) calendar days after being instructed to do so in a written notice from the City, shall commence the Work to be done under this Contract.
- 7.6 If at any time, in the opinion of the Project Manager or City, proper progress is not being maintained; changes shall be proposed in the Work Schedule and resubmitted for consideration and approval.
- 7.7 If the Contractor has not completed Project Segments and is within a non-performance penalty period, it shall not be allowed to undertake a new Project Segment until the Project Segment in dispute is completed, unless expressly permitted by the City.
- 7.8 The operation of any tool, equipment, vehicle, instrument, or other noise-producing device is prohibited to start before or continue after the hours of 7 AM and 10 PM, Monday through Friday (except Fridays which shall be until Midnight) and 8 AM and midnight on Weekends (except Sunday which shall be 10 PM). Violation of this requirement is Prima Facia Violation of City Municipal Code 11-202.
- 7.9 No work shall be undertaken on Saturdays, Sundays and Holidays (Christmas, New Years, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day and Thanksgiving) without the express written approval of the City Project Manager. If it is necessary to perform proper care, maintenance, or protection of work already completed or of equipment used, or in the case of an emergency verbal permission may be obtained through the Project Manager.
- 7.10 Night work may be established by the Contractor, as a regular procedure, with the written permission of the City; such permission, however, may be revoked at any time by the City if the Contractor fails to maintain adequate equipment for the proper prosecution and control of all operations performed as part of the Work.
- 7.11 The Contractor shall provide 24 hours notice prior to commencing any work to the City Project Manager. The Contractor shall communicate immediately any changes in the Work Schedule to the Project Manager for approval by the City.

8. DELAYS AND EXTENSIONS OF TIME

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

delays from any cause during the progress of the Work, or any portion thereof, included in this Contract.

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

9. ADVERSE WEATHER:

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

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

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

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

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

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

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

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

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

- 9.7 Upon receipt of the Notice to Proceed, and continuing throughout the Contract, the Contractor shall record on its daily construction report, the occurrence of Adverse Weather and resultant impact to the Work Schedule.
- 9.8 The number of actual Adverse Weather delay days shall include days affected by actual Adverse Weather (even if Adverse Weather occurred in the previous month), and shall be calculated chronologically from the first to the last day of each month, and be recorded as full workdays.
- 9.9 If the number of actual Adverse Weather delay days in a given month exceeds the number of days anticipated above, the difference shall be multiplied by 7/5 to convert any qualifying workday delays to calendar days. The resulting number of qualifying lost days shall be added to the Contract Time.
- 9.10 The determination that Unusually Severe Weather occurred does not automatically mean an extension of time will be granted. The Contractor must substantiate the Unusually Severe Weather delayed work activities on the critical path of the Work Schedule.
- 9.11 Full consideration for equivalent fair weather workdays shall be given. If the number of actual Adverse Weather delays in a given month is less than the number of days anticipated as indicated above, the difference shall be multiplied by 7/5 to convert any workday increases to calendar days. The resulting number of qualifying extra days will be accumulated and subtracted from any future month's days lost due to unusually severe weather.
- 9.12 The net cumulative total of extra days/lost days shall not result in a reduction of Contract Time and the date of Substantial Completion shall not be changed because of unusually favorable weather.
- 9.13 In converting workdays to calendar days, fractions 0.5 and greater shall be rounded up to the next whole number. Fractions less than 0.5 shall be dropped.
- 9.14 The Contractor shall summarize and report all actual Adverse Weather delay days for each month to the Project Manager by the tenth (10th) day of the following month. A narrative indicating the impact of Adverse Weather conditions on the Work Schedule shall be included.
- 9.15 Any claim for extension of time due to Unusually Severe Weather shall be submitted to the Project Manager within 7 days of the last day of the commencement of the event giving rise to the delay occurred. Resolution of any claim shall follow the procedures described above.
- 9.16 The Contractor shall include and indicate the monthly-anticipated Adverse Weather days, listed above, in the Work Schedule. (Reference Section 7.1 for Work Schedule requirements)
- 9.17 The Contractor shall indicate the approved Adverse Weather days (whether less or more than the anticipated days) in its Work Schedule updates.

10. LIQUIDATED DAMAGES

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

11. PAYMENT PROCEDURE

- 11.1 Based upon Applications for Payment submitted to the Project Manager by the Contractor and Certificates for Payment issued by the Project Manager, the City shall make progress payments on account of the contract sum to the Contractor as provided below and elsewhere in the Contract Documents.
- 11.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month or on a mutually agreed date by City and Contractor.
- 11.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal on the first day of each month of an Application for Payment, all Work for which payments have been received from the City shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.
- 11.4 Each application for payment must be submitted with Contractor's waiver for period of construction covered by application. Each Application for Payment will be submitted with executed waivers from the subcontractors or sub-contractors and suppliers for the previous period of construction covered by the previous application. The final payment application must be submitted together with or preceded by final or complete waivers from every entity involved with performance of the Work covered by the payment request.
- 11.5 The Contractor will submit waivers on forms, and executed in a manner, acceptable to City.

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

- 11.11 In the event that the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in this subparagraph, the Contractor shall promptly comply with such demand and refund such monies to the City.
- 11.12 Neither the observation by the City or any of the City's officials, employees, or agents, nor any order by the City for payment of money, nor any payment for, or acceptance of, the whole or any part of the Work by the City or Project Manager, nor any extension of time, nor any possession taken by the City or its employees, shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the City, or any right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of any other or subsequent breach.

12. COMPLETION AND FINAL PAYMENT

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

13. CLAIMS BY THE CONTRACTOR

- 13.1 All Contractor claims shall be initiated by written notice and claim to the Project Manager. Such written notice and claim must be furnished within seven calendar days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.
- 13.2 The Contractor shall diligently proceed with performance of this Contract whether or not there be such a claim pending and the City shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim shall be reflected by a Change Order executed by the City, the Project Manager and the Contractor.

- 13.3 Should concealed and unknown conditions which could not, with reasonable diligence, have been discovered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure differ materially with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided by this Contract, be encountered, the Contract Price shall be equitably adjusted by the Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the City having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the City written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed or unknown condition.
- 13.4 If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the City therefore, the Contractor shall give the City written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.
- 13.5 The City reserves the right to increase or decrease quantities, and alter the details of construction including grade and alignment as the Project Manager may consider necessary or desirable, by approved Change Order. Such modifications shall not invalidate the Contract nor release the surety. Unless such alterations and increases or decreases change the total cost of the Work, based on the originally estimated quantities and the unit prices bid, by more than 25 percent, or change the total cost of any major item, based on the originally estimated quantities and the unit price bid, by more than 25 percent, the Contractor shall perform the work altered, increased or decreased, at a negotiated price or prices. (A major item shall mean any bid item, the total cost of which exceeds 12-1/2 percent of the total Contract Price based on the proposed quantity and the contract unit price).
- 13.6 When the alterations cause an increase or decrease in excess of the 25 percent indicated above, either the Contractor or the Project Manager may request an adjustment of the unit price to be paid for the item or items.
- 13.7 If a mutually agreeable adjustment cannot be obtained, the City reserves the right to terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the Work.
- 13.8 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall not include standby costs, indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties.
- 13.9 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably

anticipated, fire or any causes beyond the Contractor's control, then the date for achieving Final Acceptance of the Work shall be extended upon the written notice and claim of the Contractor to the City, for such reasonable time as the City may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven calendar days after the occurrence of the event or the first appearance of the condition-giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Work. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this subparagraph, any claim for an extension of time shall be waived.

- 13.10 The Contractor shall delay or suspend the progress of the work or any part thereof, whenever so required by written order of the City, and for such periods of time as required; provided, that in the event of such delay or delays or of such suspension or suspensions of the progress of the work, or any part thereof, the time for completion of work so suspended or of work so delayed by such suspension or suspensions shall be extended for a period equivalent to the time lost by reason of such suspension or suspensions; but such order of the City or Project Manager shall not otherwise modify or invalidate in any way, any of the provisions of this Contract. In the event that the work shall be stopped by written order of the City, any expense, which, in the sole opinion and judgment of the City, is caused by the City, shall be paid by the City to the Contractor.
- 13.11 In executing the Contract Documents, the Contractor expressly covenants and agrees that, in undertaking to complete the Work within the time herein fixed, it has taken into consideration and made allowances for all hindrances and delays incident to such work, whether growing out of delays in securing materials or workers or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the work, or any portion thereof, included in this Contract, except as provided herein.
- 13.12 In addition to the Project Manual particular to Mobilization found elsewhere in this document, additional mobilization shall not be compensable for work outside of the designated areas for work deemed essential by the City. A quantity of work equal to as much as 10% of the total Contract may be required to be performed beyond the boundaries of the designated work areas

14. CHANGES IN THE WORK

- 14.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.
- 14.2 The Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 14.3 Any change in the Contract Price resulting from a Change Order shall be by mutual agreement between the City and the Contractor as evidenced by the change in the Contract

Price being set forth in the Change Order, and, together with any conditions or requirements related thereto, being initialed by both parties.

- 14.4 If no mutual agreement occurs between the City and the Contractor relative to a change in the Work, the Contractor shall proceed with the Work that is the subject of the Change Order, and the change in the Contract Price, if any, shall then be determined by the Project Manager on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content to the City, as the Project Manager requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies or equipment, including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools, whether rented from the Contractor or others, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and job site field office overhead directly attributable to the change. In no event shall any standby time or any expenditure or savings associated with the Contractor's home office or other non-job site overhead expense be included in any change in the Contract Price. Further, in no event shall the Contractor's overhead expense exceed ten (10%) percent of the reasonable expenditures. Pending final determination of reasonable expenditures or savings to the City, payments on account shall be made to the Contractor on the Project Manager's Certificate for Payment.
- 14.5 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that the application of such unit prices to the quantities of Work proposed would cause substantial inequity to the City or to the Contractor, the applicable unit prices shall be equitably adjusted.
- 14.6 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim including impact against the City for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

15. INSURANCE AND BONDS.

- 15.1 The Contractor shall secure and maintain, throughout the duration of the agreement, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Contractor shall provide certificates of insurance and renewals thereof on forms acceptable to the City. The City shall be notified by receipt of written notice from the insurer or the Contractor at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.
- 15.2 The Contractor, upon receipt of notice of any claim in connection with this Agreement, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability. The Contractor shall monitor and promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by the Contract Documents) if the Contractor's limits of protection shall have been impaired

or reduced to such extent that the limits fall below the minimum amounts required herein. The Contractor shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

15.3 Minimum Requirements Commercial General Liability Policy Limits -

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

Policy MUST include the following conditions:

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

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

Limits (Same as Commercial General Liability) -
 Combined Single Limits, Bodily Injury and Property Damage - Each Accident:

Policy MUST include the following condition:
 NAME CITY OF PRAIRIE VILLAGE AS "ADDITIONAL INSURED"

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

Limits -

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

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

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

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

- Is authorized to do business in the State of Kansas;
- Carries a Best's policy holder rating of A- or better; and

Carries at least a Class VIII financial rating, **or**

Is a company mutually agreed upon by the City and Contractor.

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

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

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

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

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

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

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

16. INDEMNITY

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

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

connected with, or are claimed to arise out of or be connected with, the performance of this Contract whether arising before or after the completion of the work required hereunder.

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

17. SUCCESSORS AND ASSIGNS

- 17.1 The City and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract.
- 17.2 The Contractor shall not assign or sublet the work, or any part thereof, without the previous written consent of the City, nor shall it assign, by power of attorney or otherwise, any of the money payable under this Contract unless by and with the like written consent of the City. In case the Contractor assigns all, or any part of any moneys due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to all prior liens of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.
- 17.3 Should any Subcontractor fail to perform in a satisfactory manner, the work undertaken, its subcontract shall be immediately terminated by the Contractor upon notice from the City. Performing in an unsatisfactory manner is defined as consistently having more than 10% of work unacceptable. The Contractor shall be as fully responsible to the City for the acts and omissions of the subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed. Nothing contained in this Contract shall create any contractual relations between any Subcontractor and the City, nor shall anything contained in the Contract Documents create any obligation on the part of the City to pay or to see to the payment of any sums due any Subcontractor.

- 17.4 The Contractor shall not award subcontracts which total more than forty-five (45%) of the Contract Price and shall perform within its own organization work amounting to not less than fifty-five percent (55%) of the total Contract Price. Approval by the City of any Subcontractor shall not constitute a waiver of any right of the City to reject Defective Work, material or equipment not in compliance with the requirements of the Contract Documents. The Contractor shall not make any substitution for any Subcontractor accepted by the City unless the City so agrees in writing.
- 17.5 The Contractor shall not subcontract, sell, transfer, assign or otherwise dispose of the Contract or any portion thereof without previous written consent from the City. In case such consent is given, the Contractor, shall be permitted to subcontract a portion thereof, but shall perform with his/her own organization work amounting to not less than fifty five (55%) of the total Contract Price. No subcontracts, or other transfer of Contract, shall release the Contractor of its liability under the Contract and bonds applicable thereto.
- 17.6 The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Contractor by the terms of the Contract Documents insofar as applicable to the work of the Subcontractor and to give the Contractor the same power to terminate any Subcontract as the City has to terminate the Contractor under any provisions of the Contract Documents.
- 17.7 Prior to the City's approval of the Contract bid, the successful bidder shall submit to the City for acceptance, a list of names of all Subcontractors proposed for portions of the work and shall designate which work each is to perform.
- 17.8 The City shall, prior to the City's approval of the Contract bid, notify the successful bidder, in writing, if the City, after due investigation, has reasonable objection to any Subcontractor on such list, and the Contractor shall substitute a Subcontractor acceptable to the City at no additional cost to the City or shall be allowed to withdraw his/her Bid, and the City shall either re-bid the Work or accept the next best lowest and responsible bidder. The failure of the City to make objection to a Subcontractor shall constitute an acceptance of such Subcontractor but shall not constitute a waiver of any right of the City to reject Defective Work, material or equipment not in conformance with the requirements of the Project Manual.

18. NON-DISCRIMINATION LAWS

- 18.1 The Contractor agrees that:
- A. The Contractor shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of Work under the present contract because of race, religion, color, sex, disability, national origin, ancestry or age;
 - B. In all solicitations or advertisements for employees, the Contractor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
 - C. If the Contractor fails to comply with the manner in which the Contractor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency;

- D. If the Contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency; and
 - E. The Contractor shall include the provisions of Subsections A through D in every subcontract or purchase order so that such provisions will be binding upon such Subcontractor or vendor.
 - F. The provisions of this Section shall not apply to a contract entered into by a Contractor: (1) Who employs fewer than four employees during the term of such contract; or (2) Whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.
- 18.2 The Contractor further agrees that it shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all other federal, state and local laws.

19. FEDERAL LOBBYING ACTIVITIES

[THIS PROVISION ONLY APPLIES IF THE CITY IS RECEIVING FEDERAL FUNDS]

- 19.1 31 USCS Section 1352 requires all subgrantees, Contractors, Subcontractors, and consultants/Architects who receive federal funds via the City to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the award of any federal contract, grant, loan, or cooperative agreements.
- 19.2 In addition, contract applicants, recipients, and subrecipients must file a form disclosing any expenditure they make for lobbying out of non-federal funds during the contract period.
- 19.3 Necessary forms are available from the City and must be returned to the City with other Contract Documents. It is the responsibility of the general contractor to obtain executed forms from any Subcontractors who fall within the provisions of the Code and to provide the City with the same.

20. RELATIONS WITH OTHER CONTRACTORS

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

- 20.2 When two or more Contracts are being executed at one time in such manner that work on one Contract may interfere with that on another, the City shall decide which Contractor shall progress at which time.
- 20.3 Other projects the Contractor may have to coordinate shall be listed in the Special Conditions.
- 20.4 When the territory of one Contract is the necessary or convenient means of access for the transportation or movement of workers, materials, or appliances required for the execution of another Contract, such privileges of access or any other responsible privilege may be granted by the City to the Contractor so desiring, to the extent such may be reasonably necessary.
- 20.5 Upon execution of the Contract, the Contractor shall furnish the City, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Work. The City shall promptly reply to the Contractor, in writing, stating any objections the City may have to such proposed Subcontractor. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the City has made timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has objection.

21. RIGHT OF CITY TO TERMINATE

- 21.1 If the Contractor persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, or supply enough properly skilled workers, supervisory personnel or proper equipment or materials, or if it fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or if this Contract is assigned by Contractor without authorization or if Contractor is adjudged as bankrupt, or if a general assignment of assets be made for the benefit of creditors; or if a receiver is appointed, or otherwise is guilty of a substantial violation of a provision of this Contract, then the City may by written notice to the Contractor, without prejudice to any right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor and its surety shall be liable to the City for all excess cost sustained by the City because of such prosecution and completion including any additional legal, Project Manager or bid-letting costs therefore. In such case, the Contractor shall not be entitled to receive further payment. In the event the Contractor is found in a court of law to have been wrongfully terminated for cause, then such termination shall be deemed a termination for convenience and the Contractor shall be compensated as provided herein. Any termination of the Agreement for alleged default by Contractor that is ultimately determined to be unjustified shall automatically be deemed a termination for convenience of the City.
- 21.2 The City, within its sole discretion, may elect to terminate the Contract with the Contractor for convenience upon three (3) days written Notice to Contractor. In the event of such termination, Contractor shall cease immediately all operations and shall be compensated for all work performed as of the date of termination in accordance with the terms of payment in this contract. Contractor shall not be entitled to any anticipatory profits, consequential damages or other costs other than direct costs of demobilization.

22. MISCELLANEOUS

- 22.1 The Contractor warrants to the City that all labor furnished to progress the Work under the Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with the Project Manual. All Work not conforming to these requirements may be considered defective.
- 22.2 The Contractor shall obtain and pay for all permits, fees and licenses necessary or ordinary for the Work. The Contractor shall comply with all lawful requirements, including federal and state laws, City and County laws and ordinances and building codes, applicable to the Work and shall give and maintain copies of all notices required by applicable law pertaining to the Work.
- 22.3 Provision for Emergencies. Whenever, in the opinion of the City, the Contractor has not taken sufficient precaution for the safety of the public or the protection of the Work to be constructed under this Contract, or of adjacent structures or property which may be injured by process of construction, and whenever, in the opinion of the City, an emergency shall arise and immediate action shall be considered necessary in order to protect property interests and to avoid personal injury and/or death, then the City, with or without notice to the Contractor, shall provide suitable protection to the said interests by causing such Work to be done and materials to be furnished at places as the City may consider necessary and adequate. The cost and expense of such Work and material so furnished shall be borne by the Contractor and, if the same shall not be paid on presentation of the bills therefore, such costs shall be deducted from any amounts due or to become due the Contractor. The performance of such emergency Work shall in no way relieve the Contractor of responsibility for damages which may occur during or after such precaution has been duly taken.
- 22.4 Both the business address of the Contractor given in the Bid or proposal upon which this Contract is founded, and the Contractor's Office near the Work, is hereby designated as the places to which all notices, letters, and other communications to the Contractor may be mailed or delivered. The delivering at either of the above named addresses, or depositing in any mailbox regularly maintained by the Post Office, of any notice, letter or other communication so addressed to the Contractor, and the date of said service shall be the date of such delivery or mailing. Such addresses may be changed at any time by an instrument in writing, executed by the Contractor, presented, and delivered to the Project Manager and to the City. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or communication upon the Contractor personally.
- 22.5 It is mutually agreed by and between the parties to this Contract that all royalties and fees for and in connection with patents, or patent infringement, claims for materials, articles, apparatus, devices or equipment (as distinguished from processes) used in or furnished for the work shall be included in the Contract Price and the Contractor shall satisfy all demands that may be made at any time for such, and the Contractor shall at its cost and expense, defend any and all suits or proceedings that may be instituted at any time against the City for infringement or alleged infringement of any such patents involved in the work, and Contractor shall pay any award of damages.
- 22.6 The right of general administration of the City shall not make the Contractor an agent of the City, and the liability of the Contractor for all damages to persons, firms, and corporations, arising from the Contractor's execution of the Work, shall not be lessened because of such

general administration, but as to all such persons, firms, and corporations, and the damages, if any, to them or their property. The Contractor herein is an independent Contractor in respect to the work.

- 22.7 For a period of time, from the inception of the Contract to three (3) years from the date of final payment under the Contract, the Contractor and subcontractors shall maintain books, accounts, ledgers, invoices, drafts, pages and other records pertaining to the performance of this Contract. At all reasonable times during this period these records shall be available within the State of Kansas at a field or permanent business office for inspection by authorized representatives of the City or of any other agency, which has contributed funds in connection with the Contract or to which the City is obligated to make such inspections available. In addition, this requirement shall be included in all subcontracts entered into in connection with this Contract.
- 22.8 Titles, subheadings used herein, and other Contract Documents are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Contract Documents.
- 22.9 No waiver of any breach of this Contract shall be construed to be a waiver of any other subsequent breach.
- 22.10 Should any provision of this Agreement or other Contract Documents be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement and/or the other Contract Documents shall be unaffected thereby and shall continue to be valid and enforceable.
- 22.11 Without in any manner limiting Contractor's responsibilities as provided elsewhere in the Contract Documents, the Contractor shall assume full responsibility for the protection of all public and private property, structures, sewers, and utilities, for both above ground and underground facilities, along, beneath, above, across or near the site or sites of the Work being performed under this Agreement, or which are in any manner affected by the prosecution of the Work or the transportation of men/women or materials in connection therewith. Barriers shall be kept in place at all times to protect persons other than those engaged on or about the Work from accident, and the Contractor will be held responsible for all accidents to persons or property resulting from the acts of Contractor or its employees.
- 22.12 The Contractor shall keep fully informed of all existing and current regulations of the City, county, state, and federal laws, which in any way limit or control the actions or operations of those engaged upon the work, or affecting materials supplied, to or by them. The Contractor shall at all times observe and comply with all ordinances, laws, and regulations, and shall protect and indemnify the City and the City's officers and agents against any claims or liability arising from or based on any violation of the same.
- 22.13 Nothing contained in the Contract Documents shall create, or be interpreted to create, privity or any other contractual agreement between the City and any person or entity other than the Contractor.
- 22.14 Duties and obligations imposed by the Contract Documents, rights, and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

- 22.15 No action or failure to act by the City, Project Manager or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval or acquiescence in a breach hereunder, except as may be specifically agreed in writing.
- 22.16 Contractor specifically acknowledges and confirms that: (i) it has visited the site, made all inspections it deems appropriate and has read and fully understands the Contract Documents, including all obligations and responsibilities undertaken by it as specified herein and in other Contract Documents and knowingly accepts the same; (ii) it has furnished copies of all Contract Documents to its insurance carrier(s) and its surety(ies); and (iii) its insurance carrier(s) and surety(ies) agree to be bound as specified herein, in the Contract Documents and in the insurance policy(ies) and bonds as to liability and surety coverage.
- 22.17 It is specifically agreed between the parties executing this Agreement that the Contract Documents are not intended to create any third party beneficiary relationship nor authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.
- 22.18 This Agreement is entered into, under and pursuant to, and is to be construed and enforceable in accordance with the laws of the State of Kansas. Venue of any litigation arising in connection with this Agreement shall be the State courts of Johnson County, Kansas.

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

CITY OF PRAIRIE VILLAGE

(typed company name)

By: _____
(signed)

By: _____
(signed)

Laura Wassmer

(typed name)

Mayor

(typed title)

City of Prairie Village

(typed company name)

7700 Mission Road

(typed address)

Prairie Village, Kansas 66208

(typed city, state, zip)

(typed telephone number)

(date of execution)

(date of execution)

SEAL

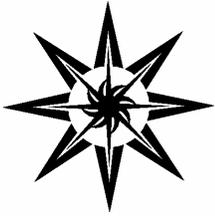
ATTEST:

APPROVED BY:

City Clerk, Joyce Hagen-Mundy

City Attorney, David Waters

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



ADMINISTRATION

Council Meeting Date: May 7, 2018
Council Committee Date: June 18, 2018

The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) Next Steps

BACKGROUND

At the May 7 City Council meeting, Gail James gave a presentation on the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). At that time, Council asked Ms. James to come back at a future meeting to discuss next steps. Ms. James will be proposing a resolution in support at this time, with the possibility for further discussion on additional steps the City could take. Staff is supportive of creating and adopting a resolution to affirm the City of Prairie Village's commitment and support to eliminate forms of discrimination against women.

FUNDING

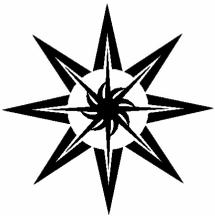
N/A

ATTACHMENTS

May 7 Agenda Cover
May 7 PowerPoint Presentation
Example Resolutions

PREPARED BY

Alley Porter
Assistant to the City Administrator
Date: June 14, 2018



The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) Presentation

BACKGROUND

The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) is an international treaty adopted by the United Nations General Assembly in 1979. A number of municipalities in the country have chosen to affirm the importance of the principles contained in the treaty by taking formal actions. In general, there are two options that cities can utilize to recognize CEDAW namely, the ordinance OR the resolution.

The **ordinances** are quite long and thorough, and tend to be the product of a large City or County. Nearly all of the ordinances outline the creation of some form of a “Gender Equity Commission” with the task of monitoring City departments, recommending policy, and formulating a “Gender Analysis Action Plan”. The CEDAW organization has a city ordinance template that cities can use to draft their own ordinance.

- Examples include: Pittsburg, PA; San Francisco, CA; Miami Dade, FL

The **resolutions** serve a much more symbolic and ceremonial role - more of a formal way for the City to recognize the importance of women’s issues and the CEDAW treaty. A few main points:

- Some resolutions act as a “first step” towards adopting a future ordinance similar to the ones discussed below.
 - Examples include: Boulder, CO; Mount Vernon, NY; West Hollywood, CA
- Other resolutions simply affirm their commitments to local women’s advocacy groups and/or women’s rights, in general
 - Examples include: Kansas City, MO; Tampa, FL; New Orleans, LA
- Resolutions can also serve as an opportunity to highlight the progress a city has made in the area

Examples of CEDAW actions in the local area are limited. There are currently no cities in Kansas that have passed a CEDAW resolution or ordinance. Kansas City, MO and University City, MO both have enacted resolutions and are the closest geographically to Prairie Village.

In sum, if the City of Prairie Village would like to pursue formal action on the CEDAW, there are two options. (1) Ordinances which are much more involved and require more dedicated resources to take concrete steps on the issue. (2) Resolutions which affirm a city’s commitment to women’s issues in more of a symbolic way that does not require budgetary expenditures.

FUNDING

N/A

ATTACHMENTS

N/A

PREPARED BY

Alley Porter

Assistant to the City Administrator

Date: May 3, 2018

Prairie Village, KS City Council

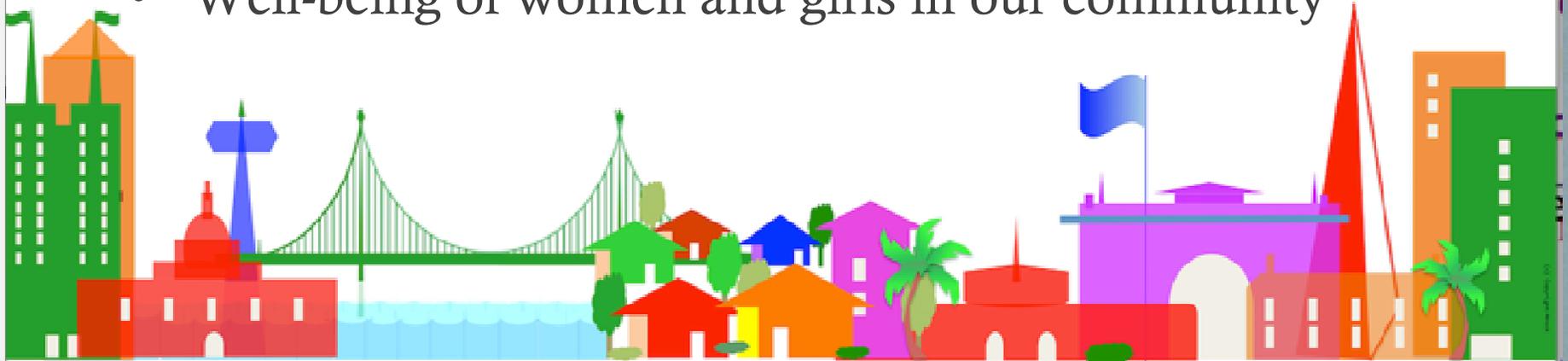
Cities for CEDAW 101



Why are we here?

We are focused on the areas that impact women most:

- Employment
- Health
- Safety
- Well-being of women and girls in our community



Why are we here?

Economic Issues:

- The economic gap between men and women continues, with women earning only 79¢ for every dollar a white man makes. (Columbia University Law School Human Rights Institute)
- Over a 40 year career, an average woman will earn \$434,000 less than her male counterpart and in retirement receive a proportionately smaller pension or social security check. (National Women's Law Center)



Why are we here?

Health Issues

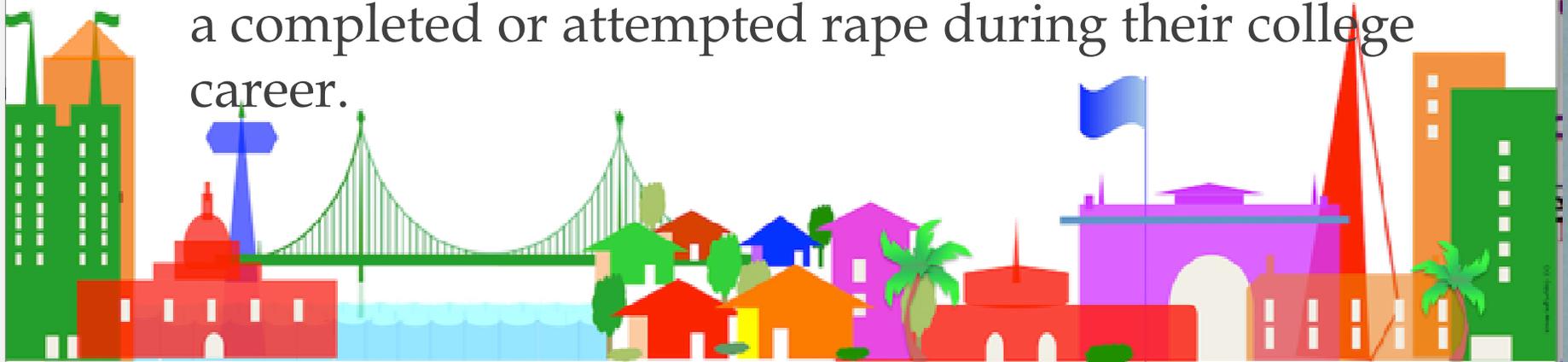
- Unlike all other developed nations, the maternal death rate in the U.S. is rising. (NPR, CDC Foundation)
- 80% of soon-to-be new mothers in U.S. are not eligible for unpaid maternity leave under Family and Medical Leave Act. (National Partnership for Families)



Why are we here?

Safety:

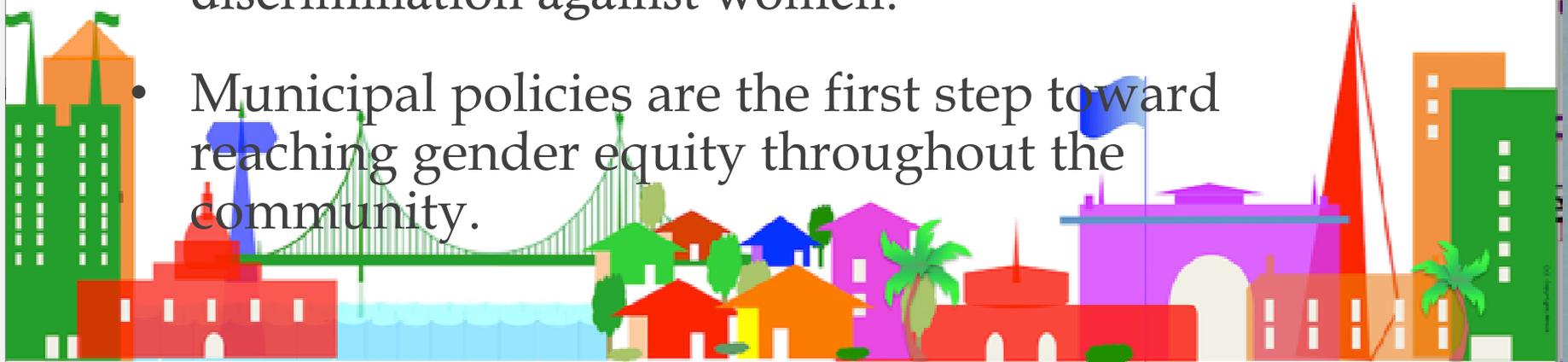
- 1 in 3 women have been victims of some form of physical violence by an intimate partner within their lifetime. (National Coalition Against Domestic Violence)
- More than 20% of women students will experience a completed or attempted rape during their college career.



Responses to Discrimination

Cities and Mayors across the country are coming together to address at the grassroots level.

- All these inequities indicate that discrimination is rampant, and we need to look for a solution.
- City Councils have the role, the responsibility and the power to take appropriate measures to confront discrimination against women.
- Municipal policies are the first step toward reaching gender equity throughout the community.



Local Action

The purpose of the **Cities for CEDAW** campaign is to "make the global local" by harnessing the power of cities and promoting the adoption of CEDAW as a municipal ordinance in cities large and small in order to create a framework for improving the status of women and girls.



What Is CEDAW?

- **CEDAW** is the acronym for the United Nations' Convention on the Elimination of All Forms of Discrimination Against Women.
- **CEDAW** is an international human rights treaty that went into effect as international law in 1981.
- By ratifying the treaty, U.N. Member States (countries) commit to taking "appropriate measures" to end discrimination against women.



Cities are committing to “appropriate measures” to end discrimination against women.

- Resolutions: Over **40 cities** and towns and **20 state legislatures** have passed resolutions endorsing CEDAW.
- Ordinances: Cities and Counties are adopting CEDAW ordinances as municipal law, including San Francisco, Los Angeles, Portland (OR), Pittsburgh, Berkeley (CA), Cincinnati, Durham County (NC), Miami-Dade County and Orange County (CA).



Over 200 National Organizations Support CEDAW

- AAUW
- American Bar Association
- American Jewish Committee
- Business and Professional Women USA
- Church World Service
- Delta Sigma Theta Sorority
- The Episcopal Church USA
- Human Rights Watch
- League of Women Voters of the United States
- NAACP
- National Congress of American Indians
- National Council of La Raza
- National Women's Political Caucus
- Presbyterian Church USA
- United Methodist Church
- United Nations Association
- Zonta International



What Are the Goals of Cities for CEDAW?

- Pay equity and opportunity for career advancement
- Safety and Health: Elimination of all forms of violence against women and girls and improved health and safety
- Empowerment: Educational access and equity, representation of women in governmental/public, corporate, and non-profit sectors



What are the requirements of Cities for **CEDAW**?

A Resolution in support of CEDAW leading to an ordinance in order to:

- Develop a **gender analysis** of city operations (workforce, programs, budget)
- Create an **oversight body** to monitor the implementation of the local CEDAW Ordinance
- **Fund** the implementation of the principles of CEDAW



Goals of Midwest Coalition 4 CEDAW

- Coalition of local organizations to raise awareness and support for the Cities for CEDAW campaign
- Work for implementation of Cities for CEDAW in other municipalities in the area, including Prairie Village, Overland Park, and Parkville.
- Continue working for an ordinance in Kansas City, Missouri
- Organize workshops for local organizers to start campaigns in their towns



Questions?

Contact: Midwest4CEDAW@gmail.com

www.facebook.com/Midwest4CEDAW/



SOURCES

CitiesforCEDAW.org

“Gender Equity Through Human Rights: Local Efforts to Advance the Status of Women and Girls in the U.S.” Human Rights Institute, Columbia University, 2016

“Making Rights Real” SFDSW, 1998

San Francisco Department on the Status of Women

“Update on Cincinnati4CEDAW Coalition.” Zonta Area 2 Meeting, March 12, 2016, Connie Roesch, Zonta Club of Cincinnati

“Welcome to the Movement to End Discrimination in Your City.” 2014, Nancy Rock and Laura Roskos.



RESOLUTION SUPPORTING CITIES FOR CEDAW INITIATIVE BY THE UNITED STATES CONFERENCE OF MAYORS AND SUPPORT OF INDIVIDUAL CITIES PASSING RESOLUTIONS AND ORDINANCES TO IMPLEMENT THE PRINCIPLES OF THE UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN AT THE LOCAL LEVEL.

WHEREAS, The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted by the United Nations General Assembly on December 18, 1979, became an international treaty as of September 3, 1981, and 186 UN member nations, have agreed to be bound by CEDAW's provisions; and

WHEREAS, CEDAW provides a comprehensive framework for governments to examine their policies and practices in relation to women and girls and to rectify discrimination based on sex against half the world's population; and

WHEREAS, Although women have made major gains in the struggle for equality in most fields, much more needs to be accomplished to fully eradicate discrimination based on sex and to achieve one of the most basic human rights, equality; and

WHEREAS, The United States is the only industrialized nation to not yet ratify CEDAW; and

WHEREAS, It has been almost 40 years since the first UN World Conference on Women and almost 20 years since the historic Beijing Platform for Action at the fourth UN World Conference on Women; and

WHEREAS, CEDAW has proven effective in many nations as a mechanism to advance gender equality, and

WHEREAS, many Communities and States have called for the ratification by the United States Congress, and

WHEREAS, San Francisco became the first city in the world to adopt an ordinance reflecting the principles of CEDAW in 1998; and Los Angeles followed in 2006 and

WHEREAS, Cities for CEDAW was launched at the United Nations Commission on the Status of Women in March 2014; and

WHEREAS, A local CEDAW ordinance seeks three standards; a gender analysis of city departments and commissions, an oversight body to ensure that appropriate and timely actions are taken, funding to support the implementation of the principles of CEDAW; and

WHEREAS, City and County governments have an appropriate and legitimate role in affirming the importance of international law in communities as universal norms and to serve as guides for public policy;

NOW, THEREFORE, BE IT RESOLVED, the United States Conference of Mayors urges cities across the United States to join San Francisco and Los Angeles and participate in the Cities for CEDAW initiative and pass local ordinances reflecting the principles of CEDAW

RESOLUTION NO. 141045

Supporting the Convention on the Elimination of All Forms of Discrimination Against Women and working at the local level with the Women's Foundation to accomplish CEDAW's goals.

WHEREAS, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted by the United Nations General Assembly on December 18, 1979, and became an international treaty as of September 3, 1981, with 187 United Nations member nations having agreed to be bound by CEDAW's provisions; and

WHEREAS, although women have made gains in the struggle for equality in many fields, much more needs to be accomplished to fully eradicate discrimination based on gender and to achieve one of the most basic human rights, equality; and

WHEREAS, in Missouri, women who work full-time earn 29 percent less than male workers and women earn 71 cents for every 1 dollar earned by men; and

WHEREAS, in Missouri, 27% of counties lack any accredited child care center, including three counties with the highest number of children aged 0-4; and

WHEREAS, in Missouri, just over nine percent of seniors are in poverty, two-thirds of whom are women, and overall the gap between elderly men and women in poverty is 3.7 percent, but in some counties this increases to 8.0 percent; and

WHEREAS, in Missouri, women in public leadership positions are very much in the minority, comprising about 25% of the seats in the General Assembly even though women comprise 51% of the state's population; and

WHEREAS, with knowledge that women and girls make up 51% of Missouri's population, with a desire to ensure these women and girls who live in Kansas City enjoy all the rights and privileges and remedies that are bestowed on all people in the United States, no matter race, national origin, gender or religious belief, and with a purpose to claim worldwide that Kansas City, Missouri is a city within which women can thrive, Kansas City that will not tolerate discrimination against women and girls; and

WHEREAS, CEDAW provides a comprehensive framework for governments to examine their policies and practices in relation to women and girls and to rectify discrimination based on gender; and

WHEREAS, City and County governments have an appropriate and legitimate role affirming the importance of eliminating all forms of discrimination against women in communities as universal norms and to serve as guides for public policy; NOW THEREFORE,

RESOLUTION NO. 141045

BE IT RESOLVED BY THE COUNCIL OF KANSAS CITY:

Section 1. That the City of Kansas City, Missouri is committed to eliminating all forms of discrimination against women and girls, and to affording them equal academic, economic and business opportunities in Kansas City, Missouri.

Section 2. That the City will work with The Women's Foundation of Greater Kansas City to support its research on gender equality and promote the advancement of women in public service.

A RESOLUTION SUPPORTING CITIES FOR CEDAW INITIATIVE BY THE LOUISVILLE METRO COUNCIL AND SUPPORT OF INDIVIDUAL CITIES PASSING RESOLUTIONS AND ORDINANCES TO IMPLEMENT THE PRINCIPLES OF THE UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN AT THE LOCAL LEVEL.

SPONSORS: Councilwoman Tina Ward-Pugh

WHEREAS, The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted by the United Nations General Assembly on December 18 1979, became an international treaty as of September 3, 1981, and 187 UN member nations, have agreed to be bound by CEDAW's provisions; and

WHEREAS, Although women have made gains in the struggle for equality in many fields, much more needs to be accomplished to fully eradicate discrimination based on gender and to achieve one of the most basic human rights, equality; and

WHEREAS, Louisville, Kentucky, is the largest International Compassionate City in the USA, and with knowledge that girls and women make up 52% of Louisville Metro's population, and with a desire to ensure these women and girls who live in Louisville Metro enjoy all the rights and privileges and remedies that are bestowed on all people in the US, no matter race, national origin, gender or religious belief, and with a purpose to claim worldwide that Louisville, Kentucky is a city within which women can thrive and a city that will not tolerate discrimination against women and girls or violence perpetrated against them in any form, by any hand; and

WHEREAS, CEDAW provides a comprehensive framework for governments to examine their policies and practices in relation to women and girls and to rectify discrimination based on gender; and

WHEREAS, City and County governments have an appropriate and legitimate role affirming the importance of eliminating all forms of discrimination against women in communities as universal norms and to serve as guides for public policy; and

BE IT RESOLVED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:

SECTION I. Louisville Metro Government is committed to eliminating all forms of violence against women and girls, to promoting the health and safety of women and girls, and to affording them equal academic, economic and business opportunities in Louisville, Kentucky.

SECTION II. A resolution is the first step toward adopting a future ordinance that would call for: a gender analysis of all Louisville Metro departments and commissions; the designation of an oversight body; and resources to support these actions.

SECTION III: This Resolution shall take effect upon passage and approval.



2019 Decision Packages

Attached please find the 2019 Preliminary Economic Development Fund budget sheet.

The Economic Development Fund Allocation includes the Decision Packages approved at the June 4th Council meeting:

Fiscal year 2020 projected ending balance of the Economic Development Fund after expenditures as approved by Council is \$18,075.

Items that need Council direction:

ATTACHMENTS: 2019 Preliminary Economic Development Fund

Prepared By:
Lisa Santa Maria
Finance Director
Date: June 12, 2018

Economic Development Fund

	2016 Actual	2017 Actual	2018 Budget	2018 Estimate	2019 Budget
Fund Balance 1/1	\$ 1,887,943	\$ 1,603,200	\$ 94,000	\$ 620,075	\$ 322,075
Revenues:					
Interest on Investments	8,559	1,283	6,000	2,000	500
Total Revenue	8,559	1,283	6,000	2,000	500
Total Sources	8,559	1,283	6,000	2,000	500
Expenditures:					
Contract Services	293,302	984,408	50,000	300,000	255,000
Contingency	-				
Total Expenditures	293,302	984,408	50,000	300,000	255,000
Total Uses	293,302	984,408	50,000	300,000	255,000
Sources Over(Under) Uses	(284,743)	(983,125)	(44,000)	(298,000)	(254,500)
Fund Balance @ 12/31	\$ 1,603,200	\$ 620,075	\$ 50,000	\$ 322,075	\$ 67,575

Economic Development Fund Allocation	2018 Est	2019 Bud	2020
Beginning balance	\$620,075	\$322,075	\$67,575
Interest	2,000	500	500
North Park Demolition	(250,000)		
Exterior Grant Program (2 years - 2019 - 2020) @ \$50,000 year	(50,000)	(50,000)	(50,000)
City Owned Art Restoration (clean, repair, place & restore)		(50,000)	
Bike / Pedestrian Master Plan		(75,000)	
Comprehensive Master Plan		(80,000)	
Total	\$322,075	\$67,575	\$18,075

PRAIRIE VILLAGE ARTS FUNDING

May 21, 2018

Serena Schermoly

THE POWER OF ARTS TO DRIVE ECONOMIC GROWTH

Advantages and Ideas



Economic Development

Offering Something for Everyone

Diverse Programs

Collaboration with as many Types of Arts

Be Unique

Local Artist to International Artist

Change people's perception of Art and their Arts

Increase Sales, Restaurants and Shopping



ART



The arts refers to the theory and physical expression of creativity found in human societies and cultures.

Major constituents of the arts include literature – including poetry, prose and drama, performing arts – among them music, dance, and theatre; and visual arts – including drawing, painting, photography, ceramics, sculpting, and architecture – the art of designing and constructing buildings.



THE PRAIRIE VILLAGE February / March 2015

The Star of Kansas

VOICE

2 PRAIRIE VILLAGE TEXTILE RECYCLING

WEEKLY TEXTILE RECYCLING PICK-UP BEGINS APRIL 1

Beginning April 1, the City of Prairie Village, in cooperation with Team Thrift, will offer weekly home pick-up for clothing and textiles. Acceptable materials include clothing of any type, towels, sheets, blankets, shoes, rags, bedding, curtains, sewing scraps, and more. Items can be in any condition.

Donating is easy! Items should be bagged or boxed, marked "PV," and placed by the front door, porch, or garage by 7:00 a.m. on your regular trash and recycling collection day. The donation container will not be returned. Your donated items are tax deductible. Team Thrift will collect the items and leave a tax receipt on the front door.

Donated items will be delivered to area thrift stores, shipped to developing countries, or repurposed into other products, like wood benches or insulation. While physical items may end up in a variety of locations, proceeds from the sale of donated items will remain local.

The Prairie Village Foundation will be the charitable recipient of the funds, which helps Prairie Village residents in need with utility assistance, minor home repairs, food assistance, and other vital needs. The Prairie Village Foundation also provides support to local school children, arts programming, park development, and community events like VillageFest and JazzFest. The more pounds of textiles donated, the more Prairie Village benefits!

While this program offers a convenient way to help the community and the environment, donating through this weekly collection is not the only way. There are many worthwhile charitable organizations that will accept donated items.

Please see pages 14 and 15 of the Village Voice for more information.

FEATURES:

3 Earth Day March 2015 Programs

5 Parks & Recreation Programs

14 Textile Recycling Programs

From Wikipedia



WE ARE NOT A SMALL CITY OUR POPULATION 21,447 – WITH ART - 2.5 MILLION

People want to be where People *are* and ARTS bring People together to build a stronger community “Village”.



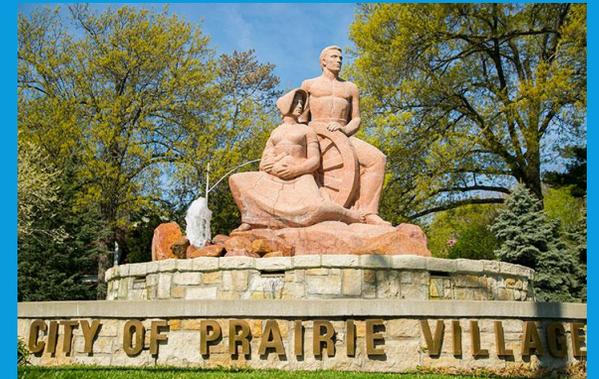
PROPOSAL

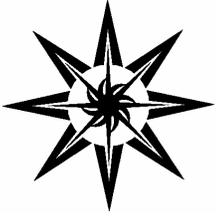
- Enhancing our Arts Community
- Better coordination of Public Arts
- Preserve our current Statuary
- Looking for New Opportunities
- Grant Funding
- Create Donation Process
- Installation Procedures

Proposal

Mayor, Public Works, City Administrator, Arts Council, Statuary, Jazz Fest representatives make recommendation to the governing body for approval of appropriations.

\$2.00 per resident





Noise Ordinance Discussion

BACKGROUND

There have been some complaints recently about the City’s noise ordinance, so the Mayor requested that the noise ordinance be placed on the City Council agenda for discussion. Our current noise ordinance permits loud noises from 7 a.m. to 10 p.m. on weekdays (except Fridays, which permits noise until midnight), and 8 a.m. to midnight on weekends (except Sundays, which permits noise until 10 p.m.).

We looked at the noise ordinances in other cities, the majority of which permit noise beginning between 7 a.m. and 8 a.m. and usually ending by 10 p.m. The exact hours for each of the cities we looked at are as follows:

City	Permitted Hours for Construction Noise
Fairway	7 a.m. - 9 p.m. weekdays and 9 a.m. to 9 p.m. weekends and holidays
Leawood	7 a.m. - 9 p.m.
Lenexa	7 a.m. - 7 p.m.
Mission	7 a.m. - 10 p.m. weekdays; 8 a.m. – 10 p.m. on Sundays
Mission Hills	8 a.m. - 8 p.m. weekdays, 8 a.m. - 6 p.m. Saturday; Not permitted on Sunday
Mission Woods	7 a.m. - 8 p.m. weekdays, 7 a.m. to 5 p.m. Fri & Sat; 12 p.m. - 5 p.m. Sundays and holidays
Olathe	7 a.m. - 11 p.m.
Overland Park	7 a.m. – 10 p.m.
Prairie Village	7 a.m. - 10 p.m. weekdays; 8 a.m. - midnight on weekends
Roeland Park	7 a.m. - 9 p.m.
Shawnee	7 a.m. - 10 p.m. weekdays; 8 a.m. – 9 p.m. weekends
Westwood	7 a.m. to 9 p.m. on weekdays, 8 a.m. to 10 p.m. on weekends
Westwood Hills	8 a.m. - 8 p.m. Monday - Friday, 8 a.m. to 6 p.m. Saturdays, 10 a.m. to 5 p.m. Sundays

The majority of complaints city staff receives regarding the noise ordinance are regarding contractors starting work before 7 a.m. When this happens, the resident needs to contact the police department at the non-emergency number to report the issue, as we cannot issue a citation or warning without witnessing the ordinance being violated. Usually these complaints come in after the fact or through a third party, and there isn’t much the City can do at that point. The Council discussed this issue a couple months ago, and city staff added the permitted construction hours directly to building permit at that time. We also communicate to all contractors when they receive their building permit that they must abide by the permitted construction hours.

RECOMMENDATION

Provide direction to staff on what, if any, changes the Council would like to make to the City’s noise ordinance.

PREPARED BY

Jamie Robichaud
Assistant City Administrator
Date: June 13, 2018

MAYOR'S ANNOUNCEMENTS

Monday, June 18, 2018

Committee meetings scheduled for the next two weeks:

JazzFest Committee	06/19/2018	5:30 p.m.
VillageFest Committee	06/21/2018	5:30 p.m.
City Council	06/04/2018	6:00 p.m.

=====

The Prairie Village Arts Council is pleased to feature a mixed media exhibit of the works of Joe Bussell, Tanya Lueck and Judy Crissey in the R.G. Endres Gallery during the month of June.

The police department will be hosting "Coffee with a Cop" on Friday, June 22nd at Hattie's Fine Coffee from 8 a.m. to 10 a.m.

Mark your calendar for the second moonlight swim on Friday, June 22 from 8 p.m. to 10 p.m.

The Community will host their annual Solstice Party on Friday, June 22 from 6:00 to 8:00 p.m. at the Harmon Park garden.

Plan to attend the 22nd Annual Prairie Village Fourth of July Celebration 7:30 a.m. to 1 p.m.

National League of Cities Conference will take place November 7 - 10 in Los Angeles. RSVP to Meghan before July 15 for early bird rates.

INFORMATIONAL ITEMS
June 18, 2018

1. Board of Zoning Appeals Minutes - March 6, 2018
2. Planning Commission Minutes - May 1, 2018
3. Tree Board Minutes - May 2, 2018
4. Arts Council Minutes - May 9, 2018
5. Mark Your Calendar

**BOARD OF ZONING APPEALS
CITY OF PRAIRIE VILLAGE, KANSAS
MINUTES
TUESDAY, MARCH 6, 2018**

ROLL CALL

The meeting of the Board of Zoning Appeals of the City of Prairie Village, Kansas was held on Tuesday, March 6, 2018 in the Council Chambers of the Municipal Building at 7700 Mission Road. Vice Chairman James Breneman called the meeting to order at 6:30 p.m. with the following members present: Jonathan Birkel, Melissa Brown, Jeffrey Valentino, Patrick Lenahan and Nancy Wallerstein. Also present in their advisory capacity to the Board of Zoning Appeals were: Chris Brewster, Planning Consultant; Jamie Robichaud, Assistant City Administrator and Joyce Hagen Mundy, Board Secretary. Ron Nelson, City Council Liaison, was also present.

APPROVAL OF MINUTES

Nancy Wallerstein moved for the approval of the minutes of the February 6, 2018 meeting as presented. The motion was seconded by Jonathan Birkel and passed 5 to 0 with Mr. Breneman and Mr. Lenahan abstaining.

**BZA2018-01 Variance from Section 19.08.025(a) "Side Yard" of the Zoning Ordinances to reduce the west side yard setback from 6 feet to 4 feet
4111 West 73rd Terrace**

John Schutt, 6600 West 95th Street, architect for the owners, returned before the Board with new drawings for the requested side yard variance from 6 feet to 4 feet for the property at 4111 West 73rd Terrace. Mr. Schutt reviewed the plans for the proposed garage addition. The front, west corner of the expanded garage would be 4 feet from the side lot line. The addition extends approximately 52 feet to the rear along this line, but is skewed slightly more from the side lot line the further it gets to the rear due to the orientation of the existing house and angle of the lot. Their goal was not to tear-down the existing home but to make additions within the scale and character of the neighborhood with a typical A frame with a two car garage.

Brooke Jenkins, owner of the property, noted they have been searching for a larger home in Prairie Village to accommodate their growing family. After talking with the previous owner and others about the potential to expand the home, they purchased it. They sent out the required notices and met with neighbors regarding their plans, receiving their full support.

Vice Chairman James Breneman opened the public hearing on the application:

Michael Fowler, 4001 West 73rd Terrace, spoke on behalf of the neighborhood in support of the requested variance. He noted that he had earlier received a similar

variance from the City for his property. The neighborhood feels that their request is appropriate and justified and urged the Board to approve the requested variance.

With no further comments, the public hearing was closed at 6:35 p.m.

Mr. Lenahan asked if they were adding to the existing garage or building a new garage. Mr. Schutt replied that at this point in time they are planning to tear down the existing garage and build a new garage.

Jeffrey Valentino noted that construction of a double car garage would require less space than the proposed two single garages. Mr. Schutt replied the additional space is needed for bikes, etc. Jonathan Birkel questioned the new dimensions showed on the plans as 24'1". His calculations indicated that a variance of only 1 foot was necessary. He also suggested that if the garage had a 16' door it could be moved to the west providing a greater setback. Mr. Schutt responded the garage could not be moved to the west because of the laundry room located on the other side.

Patrick Lenahan stated that he does not see anything unique about this lot. He also added that if the variance were granted, the owner of the adjacent lot would be restricted in the allowed setback he could have while maintaining the required 12 foot separation between structures. Mrs. Jenkins replied that they had spoken with the adjacent neighbors and they do not object. Mr. Lenahan noted his concern is for future owners of that lot.

Mrs. Wallerstein stated she does not believe the variance request meets the uniqueness or hardship criteria, and it would negatively impact the adjacent property owner's ability to build on their lot.

Melissa Brown noted a recent variance approved for Village Drive. The applicant is trying to stay in Prairie Village and trying to maintain the existing character of the neighborhood. The Board has approved greater variances.

Patrick Lenahan said he felt an inside clearance of 19' was workable and that this project could be designed in compliance with code. He does not see the site as unique or a hardship to be present, and it negatively impacts the adjacent property.

John Schutt responded the goal is not to tear down the existing home. The 19 foot inside clearance may work, but he does not feel it makes sense for what his clients are trying to do.

Vice-Chairman James Breneman led the Board through the following conditions required for the granting of a variance:

A. Uniqueness

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 is not created by an action or actions of the property owner or the applicant.

In order for the property to meet the condition of uniqueness, it must have some peculiar physical surroundings, shape, or topographical condition that would result in a practical difficulty as distinguished from a mere inconvenience to utilize the property without granting the variance.

This lot is slightly skewed as it sets on the exterior curve of 73rd Terrace. It is larger than required by the R-1B zoning district (70 feet wide, rather than 60 feet minimum; and 9,405 square feet, rather than the 6,000 square feet minimum). This is comparable to other lots on the block, as most have a width between 60 feet and 75 feet. The 60 feet wide lots are on the north half, as are the 75 feet wide lots corresponding with the interior curve of the block. Most lots on the south side are 65 feet wide.

Patrick Lenahan moved the Board find Criteria A “Uniqueness” has not been met. The motion was seconded by Nancy Wallerstein and passed unanimously.

Based on the first criteria being found not to be met, Patrick Lenahan moved the Board deny the requested variance to the side yard setback at 4111 West 73rd Terrace. The motion was seconded by Nancy Wallerstein.

John Schutt asked the Board if they would accept a one foot variance to 5 feet. Mr. Valentino replied the issue is not the size of the variance. The variance itself does not meet the criteria for approval. This is not a unique property. Denial does not create an unnecessary hardship, as the plans can be altered to come into compliance with the code. He is extremely supportive of renovation, but maximum effort must be made to do that renovation within the City’s code.

The motion to deny the variance was voted on and passed by a vote of 5 to 1 with Melissa Brown voting in opposition.

OLD BUSINESS

There was no Old Business to come before the Board.

NEXT MEETING

Board Secretary Joyce Hagen Mundy reported no application has been filed for the April meeting.

ADJOURNMENT

Vice Chairman James Breneman adjourned the meeting of the Board of Zoning Appeals at 7:10 p.m.

James Breneman
Vice Chairman

**PLANNING COMMISSION MINUTES
MAY 1, 2018**

ROLL CALL

The Planning Commission of the City of Prairie Village met in regular session on Tuesday, May 1, 2018 in the Council Chambers at 7700 Mission Road. Chairman Nancy Wallerstein called the meeting to order at 7:00 p.m. with the following members present: Jonathan Birkel, Melissa Brown, Patrick Lenahan, Gregory Wolf and James Breneman.

The following persons were present in their advisory capacity to the Planning Commission: Chris Brewster, City Planning Consultant; Jamie Robichaud, Assistant City Administrator; Ron Nelson, Council Liaison; Mitch Dringman, City Building Official; and Keith Bredehoeft, Public Works Director.

APPROVAL OF MINUTES

Mr. Wolf noted a correction to his name in the first paragraph of the minutes and Mr. Lenahan requested the word “impervious: be changed to “pervious” in paragraph 3, page 11. James Breneman moved for the approval of the minutes of the April 3, 2018 regular Planning Commission meeting as amended. The motion was seconded by Gregory Wolf and passed unanimously.

PUBLIC HEARINGS

**PC2018-01 Request for Special Use Permit - Homestead Country Club
4100 Homestead Court**

Chris Brewster noted this is a continuation of the public hearing that was first advertised for the March 6th meeting and continued twice since then to look at a more detailed analysis of the drainage on the site. The application is for a renewal of their Special Use Permit with a new structure and addition to the club house.

The original concept presented for the tennis structure enclosure had a canopy and opening. That feature is no longer present, but it doesn't change the building substantially. The existing building being renovated is approximately 57.89 feet from the property line.

The largest new structure proposed is the enclosed tennis structure to replace the current tennis bubble that, under the current SUP, is a temporary structure that is taken up and down every year. This would be a permanent structure and meets all the requirements for R-la zoning.

Based on concerns expressed at the neighborhood meetings, staff looked at the landscape plan and have made recommendations for perimeter landscaping. The applicant has since submitted an updated landscape plan. Mr. Brewster stated the parking count on the original submittal was 105 spaces, there are actually 103. Calculations indicated that there should be five ADA spaces rather than the two shown.

This is something that can be worked through before final construction plans are approved.

The application meets all the criteria for a Special Use Permit and staff recommends approval with conditions. The conditions would include some of the conditions they're currently operating under as well as new conditions specific to this request. Some conditions would no longer be applicable, such as the seasonal enclosure bubble and updates associated with that.

Dennis Hulsing, 5669 West 68th Street, stated he is a resident and will have his office at the club. The proposed renovation and minor expansion with the construction of a permanent tennis building to replace the seasonal bubble structure will provide an amenity that currently doesn't exist in Prairie Village. Parking has been expanded to meet code requirements.

Mr. Hulsing introduced the following development team members in attendance: Rob Zerni, general manager of the country club; Brandon Boatwright, lead architect with BRR Architecture; Tyler Holloman, Lead on construction and Jeff Hancock, civil engineer, with SMH Consultants.

Mr. Holloman reviewed the proposed plan noting they will keep the existing two roof lines and add a roof pitch at the entrance to make it more aesthetically pleasing. They are proposing to expand the seating area for the restaurant. The proposed addition on the south side of the clubhouse will expand the fitness facilities adding a yoga studio and offices. Mr. Holloman reviewed the elevations noting no changes will be made to the siding other than repainting. The new roofline will give the building a more modern look. The windows will remain unchanged. The back addition will be masked into the clubhouse to appear to be one building rather than two buildings pieced together.

Mr. Holloman stated the proposed tennis building will go over the existing tennis courts with the area covered not changing. They will be built to match the exterior of the club house. Roofing materials will match the club house and insulated wall panels will be added. They are proposing roll up garage doors on front and rear of tennis building. There is no change to the raised tennis platforms.

Mr. Holloman stated their civil team worked through concerns on the drainage plan with the intent of saving as many of the existing trees on the property as possible. The existing parking lot will remain and three large trees at the front of the building will remain. The plan exceeds the required parking spaces. Mr. Holloman noted that currently some of the tennis courts are being used for parking and that will no longer be needed when the project is completed.

Proposed landscaping has been designed to save as many trees as possible, with additional screening added behind the tennis platform, around the expanded country club, the north end of the parking lot, and the permanent tennis enclosure.

The drainage study was reviewed showing the proposed underground detention facility. The location and size of this has not changed from the original submittal. In addition, the plans show the addition of two rain gardens that meet BMP/water quality requirements. City staff has determined the proposed plan sufficiently addresses potential drainage issues on this site in conjunction with the proposed buildings and site work.

Jonathan Birkel asked how much drainage was going into the detention area under the parking lot. Jeff Hancock with SMH Consultants replied the system that is proposed is a manifold system with three 36 inch pipes and 200 feet of 36 inch pipe underground that will accomplish the detaining of the stormwater. Part of the water is coming off the parking lot, and part of it is coming off the east side of the building and grass area, pickle ball courts, etc.

Mr. Birkel questioned how the rain garden would be maintained and allow water to infiltrate. He asked if they are amended soils. Mr. Hancock replied they are. Keith Bredehoeft, Public Works Director, added that the city requires the property owners to have an engineer certify the function on a yearly basis on all stormwater detention systems.

James Breneman noted the original presentation had three phases and he only sees discussion on two phases. Mr. Holloman confirmed this plan combines all three phases. Phase 1 is work on the back addition of the country club and begins process of erecting tennis enclosure. Phase 2 will be finishing out the tennis enclosure and back addition. Phase 3 will expand the parking lot, redo the exterior of the building and button everything up.

Mrs. Wallerstein asked how long all three phases would take. Mr. Holloman replied they are working to have all three phases finished by November of this year.

Mr. Birkel asked whether the lights for the pickle ball courts would bleed out to the south or the north. Mr. Holloman replied that the screening will help with light pollution also the light specifications will require that the lights project downward and not outward and have specialized lighting to keep the light pollution down.

Chairman Nancy Wallerstein opened the public hearing for comments on the proposed application.

Mary Anne Murray Simons, 4110 Homestead Drive, noted her home of 22 years is located directly behind the south extension of the clubhouse building. She thanked the city for overseeing a thorough review of this application regarding concerns with drainage, light pollution, and landscaping/screening. She noted many residents have attended public meetings hosted by Homestead. She asked residents from Indian Fields attending the meeting to stand and be recognized, noting they would not all be speaking individually.

Mrs. Murray Simons noted that Mr. Hulsing has stated he wants to be a good neighbor. The residents appreciate that he's followed through with a drainage plan that will retain water on their property. She asked that the City assure the planned drainage provides a system that will retain runoff on the country club grounds and will continue to monitor outward stormwater runoff. She noted the residents have requested a berm on the south, north and west perimeters to prevent runoff. She was pleased to hear the developer will be working to have customized lighting on the pickle ball courts. On the south side of the clubhouse, a 30 foot extension is being proposed. Neighboring residents would like significant screening added on the south side as the existing trees do not provide adequate screening. The residents want the City to apply the new neighborhood design regulations it's proposing for R-1a and R-1b properties to maintain the character of their neighborhoods. Screening the perimeter of the entire club was mentioned previously and Mrs. Murray Simons is supportive of this. She looks forward to Homestead Country Club continuing in its new life, and asks the City to ensure enforcement of the regulations and conditions of approval.

Larry Goldstein, at 4101 Delmar Drive for the past 50 years, thanked Mr. Bredehoeft for providing current information on the expansion plans. He expressed concerns based on his history with flooding over the past years with water in their home on two occasions and on seven occasions having water within 16 inches of their house. He added Homestead in the past has allowed loud music until 2 a.m. and does not keep the grounds clear of leaves, debris, tree limbs, etc. Mr. Goldstein stated the piles of dirt during construction should have tarps over the dirt at all times. The stormwater drainage plan doesn't require berms around the entire property. He asked where the trash containers would be stored and questioned the need for pickle ball courts, noting that they just add more impervious surface. The residents are still waiting for Evan Talon homes to address drainage issues with the adjacent homes receiving the rain downpours.

Drew Keller, 5201 West 68th Street, spoke as a Homestead member providing historical background on the club. The club has thrived for many, many decades, and it was thriving in the 80s when he grew up there. For the past decade, it has been struggling. There are dozens of families in Prairie Village who have put in a lot of effort to keep the club alive. He believes they have found the right owner with Dennis Hulsing, who has the resources, skill set and background to fix the club and make it what it can be. The club is only expanding a few additional feet and is 50 feet from the property line. This is mostly a remodel. He believes the club has done a good job of addressing the drainage concerns through the engineering study and revised plans. There are lots of people in Prairie Village who have been working hard to keep this place alive.

Marty Levy, 6521 Granada Drive, president of Indian Fields Homes Association, supports the comments of Ms. Simons and Mr. Goldstein. The Indian Fields Homes Association wants to be good neighbors and they expect Homestead to be a good neighbor as well. With everyone working together, this can become an incredible area that everyone can be proud of. We want to maintain their property values and just ask that everyone does what they say they're going to do and we can make it a success.

Chuck Searle, 6624 El Monte, stated he appreciates the comments that have been made on behalf of Indian Fields; however, he added that there are several members of Indian Fields who live on the north, south, and west side of these lots that are supportive of these plans.

Michael Lisson, 4102 Homestead Drive, has been a member of Homestead for six years. The Club members pooled their resources, time, and energy to make the club thrive. He has not heard loud music, the lights don't bother him, and he supports the expansion because it will be great for the club. He add he has heard a lot of support for the project and positive feedback. As someone who backs to the Homestead property, he is 100% supportive.

Sue Ann Heim, 4009 Delmar Drive, noted unfortunately, this application is riding in on the back end of residents having a sour taste in our mouth from past experiences. She has been a member of Homestead for 11 years and really wants Homestead to survive. She noted what happened with Evan Talon and wants to make sure that doesn't happen again. She wants all the promises followed up on. The residents want the club to succeed; but not to the point of seeing their yards flood again. There is light and sound pollution and cars parking in our backyards. Mr. Hulsing has said that won't happen again, and she hopes that is true. She wants structures in place that say what's okay and what's not. If the City will do their part, we'll all be happy.

With no one else wanting to address the Commission, Chairman Nancy Wallerstein closed the public hearing at 7:47 p.m.

Mr. Birkel noted the storm drainage plan has been designed to accommodate the 100 year flood. Are there additional things that can be done to verify there won't be future flooding and to prevent water from affecting the neighbors? Keith Bredehoeft responded the pipe stipulated in the plan is significantly larger than the pipe that was in there before, and the condition that exists now is better than it has ever been in that area. There can always be additional flooding there and anywhere throughout Prairie Village when a storm exceed the 100-year measurement.

Mr. Wolf asked the applicant if they were willing to commit to the residents to, as one of the requirements, install directional lighting for pickle ball courts. Mrs. Wallerstein noted directional lighting has been a topic for several of the speakers. The new lighting needs to be directed and not create light pollution in the neighborhood. The current lights should be replaced with heads that will not pollute the neighborhood.

Mr. Hulsing replied they are adding the lighting to the fourth bank of courts. As for changing the lighting on the other courts, he would commit at a minimum that the lights will be shut off by 10 p.m. If they can be adapted, they will change the heads, but that is unknown at this time.

Mrs. Wallerstein asked if the finish of the new buildings was pre-fabricated panels that were pre-painted or would the paint peel? Mr. Holloman replied all of the panels for the new tennis enclosure will be pre-fabricated panels. The existing finish on the country

club will be repainted. They are not adding any new siding. Existing siding will be repainted and the brick on the existing building will remain. The addition to the existing building will have siding to match the existing building and will be painted.

Mrs. Wallerstein noted tennis courts create a lot of sound and asked what the insulation would be like. Dennis Hulsing replied that around the inside of the tennis courts there will be tarping.. There will be banded insulation on the walls.

Mrs. Wallerstein asked about berming on the south, west, and north perimeters of the property. Does the landscaping plan include berming? Does the drainage study require any berming? Mr. Hancock responded there is some berming on the south and north sides. The drainage plan doesn't require any additional berming. Mrs. Wallerstein noted landscape maintenance has been an issue with the previous ownership. If you're going to remove dead vegetation and add new, wouldn't this be time to add a little berming to hold the water on the Homestead property? Mr. Holloman replied if it was required by the civil engineer, then they would definitely do it.

Mr. Hulsing noted as shown in the landscaping plan there is significant landscaping being added. Landscaping is extremely important and it will be maintained. There were decades of trees that were dead and had to be removed.

Mr. Bredehoeft stated from a drainage standpoint, staff doesn't see the need to berm. Mrs. Wallerstein confirmed with Mr. Bredehoeft that the berm would not help with drainage.

James Breneman noted on the club building itself, it appears that the landscaping stops about halfway towards the east side of the building and asked if it could be extended further, perhaps to the southeast corner.

Mrs. Wallerstein confirmed the applicant had read and was in agreement with the recommendation of staff.

Mrs. Wallerstein noted the recommendation has an indefinite period of time and questioned if a five year period may be more appropriate with the concerns expressed. She was a little uncomfortable with the indefinite period of time even with oversight. She felt it would be cautionary on the Commission's part to set a limitation and have the applicant come back and renew the special use permit after a period of time or after staff has agreed that there are no issues.

Mr. Brewster replied a definite period of time is often stipulated with special use permits, particularly new ones. This is a current SUP with an indefinite period of time an existing condition on the existing SUP. He noted that if there are property maintenance issues, the City has the ability to revoke the permit. With that, what is typically done is an initial five year permit is issued with the applicant returning for renewal. This is an existing condition. Staff did not see a problem continuing with the indefinite period. However, the permit could be limited to five years to make sure they do everything they said they would do.

Mr. Hulsing responded it would not be possible to get financing on a building if you do not have at least a 30 year land lease. To have a limited permit would prohibit him from making a long term plan. Mr. Wolf asked if a time limit could be imposed on the maintenance. Mr. Brewster acknowledged the suggested limitation can create financing issues. The Commission recently addressed this concern for a limited time permit with the renewal to be based solely on if the conditions of approval and promises were being met. The renewal would be simply revisiting if they met the promises for landscaping and design. It was suggested that Item H be amended with the special use permit granted for a period of five years due to new ownership and new investments in the property. At the end of the five year period, the permit would be re-evaluated to ensure that all conditions continued to be met. Mr. Wolf suggested that language be added stating the SUP shall be renewed if the applicant is in compliance with all of the requirements.

Mrs. Wallerstein asked about the discrepancy in the required parking. Mr. Brewster replied staff counted 103 on the latest submittal and 105 on the original. Based on the components on the site, previous planning staff required 98 parking spaces. Mr. Hulsing stated membership would be capped at 1,000 members which is close to what it was at its peak. He doesn't see it reaching that level, but if it did they would cap it.

Mrs. Wallerstein asked if alternate parking would be provided when large tournaments were held. Becky Ludovissie, 4100 Homestead Court, marketing coordinator for the Club responded they have a good standing relationship with Indian Hills Middle School to use overflow parking at their school. They also have a good relationship with Village Church as well, so overflow parking is available on both sides.

James Breneman asked if they were planning to provide more handicap parking spaces as the plan only showed two and five are needed. Mr. Hulsing replied they would provide whatever is required. Mr. Brewster noted there are 103 total stalls, including two accessible stalls with 98 spaces required. The ADA guidance is based on a pure count. There is some interpretation of what makes sense for this use - we didn't want to predetermine a specific number of spaces

Mrs. Wallerstein felt items 6F and 6H needed to be combined and she asked that item F be eliminated. Mrs. Brown agreed. Mr. Wolf confirmed the SUP runs with the land.

Mrs. Wallerstein stated she would like the landscape condition to include language regarding the landscaping being maintained and/or replaced if it doesn't survive. It was noted that in #3 under "parking area" stated "all landscaping shall be maintained and/or replaced". The commissioners agreed that would cover it.

James Breneman noted that under number 4, specification materials and colors - supposed to provide materials and colors prior to approval by the Planning Commission. Mr. Brewster replied the information was already provided and it was decided to leave condition #4 in place.

Mrs. Wallerstein asked if the Commission wanted to make any additional recommendation for the directional lighting. Mr. Wolf recommended the following: “that any new lighting needs to be directional, cut-off lighting. The applicant should make a good faith effort to replace the existing lighting with directional lighting if it’s cost effective.

Mitch Dringman stated through the normal plan review process staff would require a lighting diagram that would show 0 foot-candles at the property line.

Mrs. Wallerstein summarized the recommended amendments to #3 “all landscape will be maintained or replaced; #6G -“permit granted five years with the reevaluation of all conditions and shall be renewed and approved if all conditions have been met and #7 “any new lighting will be directional and applicant will provide a good faith effort to replace existing lighting with directional lighting if it’s cost effective.”

Gregory Wolf moved based on the staff analysis presented and with the amendments made by the Commission that the Planning Commission recommend the Governing Body approve the amendment to the Special Use Permit for Homestead Country Club subject to the following conditions:.

1. All storm water recommendations of the study submitted to Public Works demonstrating that all site concerns and potential impacts are addressed through underground detention, rain gardens and other BMPs be reviewed at the time of construction and approved by public works as compliant with the drainage study prior to approval.
2. A dimensioned site plan, to scale, be submitted confirming that proposed buildings are in compliance with all zoning and development standards and the dimensions shown in the conceptual site plan.
3. A dimensioned landscape plan be submitted for the entire site, in addition to the detailed plan for the parking area and building plan, and that particular attention to the perimeter areas including new structures, outdoor activities and the parking area. All landscape will be maintained or replaced. This landscape plan shall be approved by staff, based on the following recommendations:
 - Evergreen trees be added on the north side, with a particular focus on the parking area;
 - The perimeter plantings on the west and south boundaries be specified considering a combination of evergreen, deciduous and ornamental trees to complement the existing healthy trees to remain.
4. Specification of materials and colors consistent with the conceptual elevations, and/or provide material samples prior to the final approval by the Planning Commission.
5. A specific parking count be listed on the site plan, including compliance with ADA guidance on the number of accessible and van accessible spaces.
6. In the event that the Planning Commission recommends approval of the amended special use permit, all conditions of the previous approval (PC 2014-09) remain in

effect, and that the seasonal permit for the air bubble be eliminated upon the proposed permanent tennis structure being approved for occupancy. Specifically those are as follows:

- a. That the required parking of 98 spaces be approved for the project, including compliance with ADA guidance on the number of accessible and van accessible spaces
 - b. The hours of operation be approved from 6:00 a.m. to 10:00 p.m., Monday through Friday, and 8:00 a.m. to 10:00 p.m., Saturday and Sunday. All lighting to be reduced to only security levels after 10:00 p.m.
 - c. That the Special Use Permit be approved for a Country Club/Private Club which includes swimming, physical fitness, tennis, other similar recreational facilities and dining activities including the sales of beer, wine and alcoholic beverages, all of which will be available only to members and their guests.
 - d. That the Club shall comply with all statutes of the State of Kansas and all ordinances of the City of Prairie Village relating to alcoholic liquor and/or cereal malt beverage and the sale or dispensing thereof.
 - e. That the Special Use Permit shall run with the land.
 - f. That any significant change to the exterior of any existing buildings, the replacement of buildings, the expansion of buildings, the construction of new buildings or changes to the site such as entrances and parking and major grading changes shall be submitted to the Planning Commission for Site Plan review and approval.
 - g. That the Special Use Permit be approved for a period of five years with the reevaluation of the conditions and shall be renewed and approved if all conditions have been met, if however, it is discontinued or abandoned the Special Use Permit will expire in accordance with Section 19.20.055. Expiration of Special Use Permits.
 - h. If the applicant is found to be in non-compliance with the conditions of the Special Use Permit, the permit will become null and void within 90 days of notification of non-compliance, unless the non-compliance is corrected.
 - i. That the applicant obtain an easement of access to serve this property until Homestead Court is constructed.
 - j. That parking lots shall be 15 feet from the street and 8 feet from other property lines.
7. Any new lighting will be directional and applicant will provide a good faith effort to replace existing lighting with directional lighting if it's cost effective.

The motion was seconded by James Breneman and passed unanimously.

OTHER BUSINESS

Mrs. Robichaud and Mr. Brewster provided an update on applications for June and the status of the neighborhood design regulations.

ADJOURNMENT

With no further business to come before the Planning Commission, the meeting was adjourned by Chairman Nancy Wallerstein at 8:34 p.m.

Nancy Wallerstein
Chairman

TREE BOARD
City of Prairie Village, Kansas

Minutes

Wednesday – May 2nd, 2018 6:00PM Meeting
Public Works – Conference Room
3535 Somerset Drive

Board Members: Deborah Nixon, Gavin Jeter, Kevin Dunn, Frank Riott, Tom Brown, and Pamela Jorgenson.

Other Attendees: Geoffrey Green, and Bridget Tolle

- 1) Review and Approve minutes from April 4, 2018 meeting**
Motion to approve minutes by Frank Riott, seconded by Pamela Jorgenson. Approved unanimously.
- 2) Arbor Day Review**
Deborah Nixon said that the event went well and was a great turnout. She received nice feedback from the family of the honoree and other committees. Two ward councilmen and mayor candidate were present for the event, along with staff representing Public Works.
- 3) Honoree Criteria**
Deborah Nixon explained that she talked to the City Administrator, Wes Jordan, about Arbor Day honoree criteria. He told her that the honoree criterion is not a law, but more of an administrative guideline. Deborah said she will ask Tucker Poling to take honoree criteria changes to Wes Jordan. Deborah Nixon said that she would like to see people being honored during other celebrations throughout the year than just Arbor Day, such as an Arboretum event. Kevin Dunn asked if there is room in the budget to plant an honoree tree in the Fall. Bridget Tolle will look into that.
- 4) Board Position**
Deborah Nixon explained that Catharine Weber did not show up or call her back, so that is not a good sign. Deborah Nixon will contact Cindy Dunn, who has had a lot of volunteer experience, about the tree board position opening.
- 5) Street Tree Planting Project**
Bridget Tolle said that she spoke with the City Project Manager about sidewalk installation processes, and she suggested we plant new trees near the edge of the Right of Way. This way the newly planted trees shouldn't be in the way of potential new sidewalks. This would be the case for the area near 89th and Alhambra. Kevin Dunn said that the area between Mission Rd and Buena Vista along 95th St may not be a good area to plant trees because the property owner there will not water them. Kevin Dunn said that this property owner had a landscape plan and

he may call them in the Fall. Frank Riott drew a sketch of the area along Mission Rd between 63rd Street and 71st Street. The board discussed who would contact the schools and churches along Mission Road. Bridget Tolle will look into any underground or overhead utility issues.

6) Arboretum

Gavin Jeter asked about how many people are interested in locating and identifying arboretum trees. Gavin suggested that he could take pictures of the trees with the locations and the board could help him identify them. Deborah Nixon said that having an arboretum is beneficial to the city as well as having an inventory of all park trees. She explained the different levels of Arboreta criteria with ArbNet through The Morton Arboretum, and that the City already qualifies for a Level I and maybe a Level II Arboretum.

7) Old Business

The board did not discuss any old business.

8) New Business

Geoff Green discussed a science research project that Ellie Green had done about solar panels. He concluded that the shade from trees can make solar panels less productive.

9) The next meeting agenda

The next meeting will be held Wednesday June 6th, 2018 to discuss the board position, street tree planting project, and the arboretum.

The meeting adjourned at 7:00pm. Minutes prepared by Bridget Tolle.

Wednesday, May 9, 2018
5:30 P.M.
Prairie Village City Hall – 7700 Mission Road
Multi-Purpose Room

At 5:35 p.m., Serena Schermoly called the meeting to order. In attendance were Dan Andersen, Ada Koch, Julie Flanagan, Jori Nelson, Shelly Trewolla, Kelsey Potts, Serena Schermoly, Stephen LeCerf, Cecilia Vigliaturo, Julie Hassel, Al Guarino, Art Weeks, Paul Tosh, and Jamie Robichaud. Betsy Holliday and Annette Hadley were absent.

Approval of the Agenda – Dan moved to approve the agenda. Julie Flanagan seconded. All ayes. Motion carried.

Expense Report – Jamie Robichaud provided an updated expense report to the council and advised that she would provide this same report in the new format every other month, as it usually doesn't change very much from month to month.

Consent Agenda – Dan moved to approve the consent agenda. Shelly seconded. All ayes. Motion carried. Consent agenda included approval of April 2018 meeting minutes and Ada's \$19.99 expense for FOTA flowers.

City Council Report – Serena and Jori provided a city council update and reported that the bike/pedestrian plan passed 7-5 and explained why they did not vote in favor of the plan. Serena also asked that the council provided her with some ideas on what additional funding for the arts should go to, as she is working on a presentation to give to the City Council at their next meeting regarding a request to dedicate 1% of the total funding of the capital improvement plan to the arts.

Ongoing Business – Al provided a marketing and social media group updated, stating that they are working on updating the email list in MailChimp and currently have 808 email subscribers. Julie Hassel requested approval of an amount not to exceed \$390 in a 3-month period for social media boosting of upcoming events. Paul moved to approve the request. Art seconded. All ayes. Motion carried. This would be paid out of the marketing budget.

Dan moved to approve an expenditure not to exceed \$300 for the upcoming Village Shop events (to come out of the marketing budget. Shelly seconded. Serena, Jori, and Art voted against the motion, but the motion was approved.

Julie H. moved to approve an expenditure to purchase new hooks out of the gallery budget not to exceed \$500. Dan seconded. All ayes. Motion carried.

Dan moved to approve a marketing budget for the upcoming PV Art fair to purchase promotional items at a cost not to exceed \$500. Ada seconded. All ayes. Motion carried.

Dan moved to approve an expense of \$100 to pay the juror a stipend for SOTA to come out of the SOTA budget. Julie F seconded. All ayes. Motion carried.

New Business – Shelly mentioned a possibility of extending the artist receptions until 7:30. The council thought it was a good idea but would be pending city staff approval.

The meeting was adjourned at 7:15 p.m.

**Council Members
Mark Your Calendars
June 18, 2018**

June, 2018	Mixed Media Exhibit in the R.G. Endres Gallery featuring Joe Bussell, Tanya Lueck and Judy Crissey
June 22	Coffee with a Cop - Hattie's Fine Coffee, 8 a.m. to 10 a.m.
June 22	Second Moonlight Swim - Pool Complex remains open until 10 p.m.
June 22	Community Gardeners annual Solstice Party from 6 p.m. to 8 p.m. at the Harmon Park garden
July, 2018	Mixed Media Exhibit in the R.G. Endres Gallery featuring the Seniors Group
July 2	City Council Meeting
July 4	VillageFest - 7:30 to 1 p.m.
July 6	Moonlight Swim - Pool Complex remains open until 10 p.m.
July 11	All City Swim Meet - Pool Complex closed until 5 p.m.
July 16	City Council Meeting
July 20	Moonlight Swim - Pool Complex remains open until 10 p.m.
August, 2018	Mixed Media Exhibit in the R.G. Endres Gallery featuring Polly McCann, Jennifer Janesko and Cheryl moran
August 6	City Council Meeting
August 6	Reduced Pool Hours begin
August 20	City Council Meeting
September, 2018	Mixed Media Exhibit in the R.G. Endres Gallery featuring Scott Randol, David Alston and Anthony High
September 3	Pool closes for the season at 6 p.m.
September 4	Puppy Pool-ooza (Dog Swim) 5 - 7 p.m.
September 4	City Council Meeting
September 8	JazzFest - 3:00 p.m. to 10:30 p.m.
September 17	City Council Meeting