

**COUNCIL MEETING AGENDA  
CITY OF PRAIRIE VILLAGE  
Council Chambers  
Monday, April 15, 2019  
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**

County Commissioner Becky Fast

Teen Council graduation  
Terrence Gallagher

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. Approval of the regular City Council meeting minutes - April 1, 2019
2. Approve Ordinances for Art Fair and Clocktower Series
3. Approve Expenditure Ordinance #2977

IX. **COMMITTEE REPORTS**

X. **MAYOR'S REPORT**

XI. **STAFF REPORTS**

XII. **OLD BUSINESS**

XIII. **NEW BUSINESS**

COU2019-24 Consider approval of proposed amendments to Chapter XI Ordinance governing Local Traffic Regulations.  
Chief Schwartzkopf

COU2019-25 Consider approval of the construction contract with VF Anderson Builders, LLC in the amount of \$4,735,847 along with change order authority up to \$100,000 for Project DELN0001.  
Keith Bredehoeft

COU2019-26 Consider purchase of storage area network  
Jake Gunter

XIV. **COUNCIL COMMITTEE OF THE WHOLE** (Council President presiding)

Discuss draft ordinance (Chapter 11, Article 16) regulating the use of Unmanned Aerial Vehicles (UAVs)  
David Waters

Council priority list  
Wes Jordan

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](mailto:cityclerk@pvkansas.com)**



**CITY COUNCIL  
CITY OF PRAIRIE VILLAGE  
April 1, 2019**

The City Council of Prairie Village, Kansas, met in regular session on Monday, April 1, 2019, at 6:00 p.m. in the Council Chambers at the Municipal Building, 7700 Mission Road, Prairie Village, Kansas. Mayor Mikkelson presided.

**ROLL CALL**

Roll was called by the City Clerk with the following Council Members in attendance: Chad Herring, Jori Nelson, Serena Schermoly, Ron Nelson, Tucker Poling, Andrew Wang, Sheila Myers, Brooke Morehead, Dan Runion, Courtney McFadden, Ted Odell and Terrence Gallagher. Staff present: Tim Schwartzkopf, Chief of Police; Keith Bredehoeft, Director of Public Works; City Attorney David Waters, attorney with Lathrop & Gage; Wes Jordan, City Administrator; Jamie Robichaud, Deputy City Administrator; Alley Porter, Assistant City Administrator; Lisa Santa Maria, Finance Director; Adam Geffert, City Clerk.

**PLEDGE OF ALLEGIANCE**

**APPROVAL OF AGENDA**

**Ron Nelson made a motion to approve the agenda for April 1, 2019 as presented, and Dan Runion seconded. The motion passed unanimously.**

**INTRODUCTION OF STUDENTS & SCOUTS**

A University of Kansas student was in attendance as a requirement of her News Reporting class.

**PRESENTATIONS**

**SevenDays Proclamation**

Brooke Morehead introduced Mindy Corporan, a Johnson County resident whose son and father were murdered in a religious hate crime on April 13, 2014. Mrs. Corporan spoke about the annual SevenDays program, which will take place the week of April 9<sup>th</sup> through 15<sup>th</sup>, 2019. Mrs. Corporan stated that SevenDays respects all faiths, and seeks to spread kindness and eliminate hatred and bigotry.

Mayor Mikkelson read a proclamation designating the week of April 9<sup>th</sup> through 15<sup>th</sup>, 2019, as “SevenDays 2019”.

**Tax Increment Financing (TIF) Update - Meadowbrook**

Justin Duff provided an update on the Meadowbrook project, stating that the 225-unit senior living facility has progressed more slowly than anticipated. Mr. Duff has been in



contact with the developer and they intend to begin construction in the next few months, with anticipated completion in 18-24 months.

Mr. Duff also noted that 25 of the 70 available units in the Twin Villas development have been sold. Of the 52 planned single-family homes, 17 have been sold. Additionally, 128 of the 282 units in the Kessler apartment building have been leased. The 54-room Inn under construction will include 5,000 square feet of retail space, which will contain a restaurant and coffee shop run by the same operator. Mr. Duff stated that over \$100 million of real estate has been constructed in the past 24 months.

Jeff White from Columbia Capital, the City's financial advisor, provided information about tax increment financing (TIF), the tool being used to finance the public improvements in the project. He stated that there is sufficient revenue being generated to make the debt service payments, and although development has been slower than anticipated, the value the County has given the projects is higher than expected.

Courtney McFadden asked about industrial revenue bonds (IRBs) and their use in relation to the construction of the park. Mr. White stated that IRBs were issued by the City for the park, a mechanism that provides an exemption from sales tax for the construction materials that are purchased for the project. The developer has agreed to return this money back to the project in the amount of sales tax that they would have paid. Mr. Duff stated that construction costs for the IRBs have increased, but revenue is higher than expected. He added that the park is anticipated to open in the early summer, and that delays were primarily due to poor weather.

### **Corinth South Update**

Gregg Zike of First Washington Realty spoke about updated plans for Corinth Square South. The process for updating the shopping center began five years ago. The newest plans call for a low-scale, single story retail project utilizing the same footprint of the existing building, the former Mission Road Antique Mall.

Kevin Burman, Partner with Hofer Wysocki Architecture, shared the current design plan. Materials and other features will be included in the new structure to pay homage to the historic nature of the site. Once the marketing and leasing research for the project is completed, plans will be brought back before the Council. Charlie Miller with Lewis Rice shared the process for the project going forward. A demolition permit application is now being pursued, which will be followed by a site plan application to the Planning Commission, then finally construction documentation and a building permit.

Jori Nelson asked if CID funds would be used for this project, and Mr. Zike stated that they would. Sheila Myers asked about the proposed location of charging stations within the shopping center. Mr. Zike stated that a location has been identified at the Prairie Village shops, and that once KCP&L approves the installation in Corinth Square, a specific location will be identified on the north side of the shopping center. Mr. Zike added that the existing building that contains Panera and Tide Cleaners may be updated





in a second phase of the project. Mr. Gallagher noted that the surface area of the parking lot would be increasing, and suggested that more green space would be desirable.

### **2018 Traffic Unit Summary**

Sergeant Eric McCullough gave a presentation, sharing that the Traffic Unit consisted of four officers who enforce traffic laws, perform crash investigations, provide free child car seat installations and deliver traffic safety education to the community.

### **PUBLIC PARTICIPATION**

Inga Selders, 4600 Tomahawk Rd., shared concerns from her neighbors regarding the location of the bathroom at Porter Park that is currently under construction.

Nathan Kovac, 4112 W. 75<sup>th</sup> Street, spoke about the need for electric vehicle chargers in the City. He added that shopping areas with charging stations could see additional revenue from consumers.

### **CONSENT AGENDA**

Mayor Mikkelson asked if there were any items to remove from the consent agenda for discussion. Tucker Poling asked that item #2, the consideration of an appointment to the Parks and Recreation Committee, be removed.

1. Approve the regular City Council meeting minutes - March 18, 2019
2. Consider appointment to the Parks and Recreation Committee

**Sheila Myers moved for the approval of the item #1, approving the regular City Council minutes from March 18th as presented. A roll call vote was taken with the following votes cast: "aye": Herring, J. Nelson, Schermoly, R. Nelson, Poling, Wang, Myers, Morehead, Runion, McFadden, Odell and Gallagher.**

Mr. Poling stated a resident from Ward 3 had asked him about the process for selecting committee members. He added that contacting all applicants was essential, and that residency within the City be a factor in making selections. Mr. Jordan noted that Council Policy CP-001 had been updated several times in previous years to address committee appointments, and shared current procedures. Applications are accepted in the fall through the first of the year, and are given to Committee Chairs and staff liaisons for review. Selections are then recommended to the Mayor and approved by Council. Those who are not selected are sent letters indicating that their applications will be retained for a year in case an opening occurs. Not all committees have a residency requirement.

Mr. Poling made a motion to approve the appointment to the Parks and Recreation Committee. The motion passed unanimously.



## **COMMITTEE REPORTS**

There were no committee reports.

## **MAYOR'S REPORT**

Mayor Mikkelson reported the following:

- The Officers of the Prairie Village Foundation met on Tuesday, March 5<sup>th</sup>, and agreed to formalize the Foundation's internal financial controls.
- The Mayor, Council representatives, and staff attended the State of the County presentation that was held on Tuesday, March 26<sup>th</sup>.
- A ribbon cutting for a new City business known as OsteoStrong took place on Monday, March 18<sup>th</sup>.
- On Thursday, April 4<sup>th</sup>, a delegation from the Ukraine will visit City Hall to discuss local government policies and best practices.
- A joint feasibility study with the YMCA will likely begin soon regarding a proposed community center and be brought to Council for consideration. Other community partners have expressed interest in working with the City and the YMCA on future projects.
- The Mayor and staff met with County Commissioner Becky Fast and Heather Rubesch, the new appointee to the County Parks and Recreation Department. A preview of the Meadowbrook Events Center will be given to City Councilmembers in the near future.
- Ed Weltner, husband of former Mayor Sue Weltner, passed away in March.
- The Mayor asked that Council preserve civility and decorum during meetings, especially those that run late. He also requested that Council be conscious of limited staff resources.

## **STAFF REPORTS**

### **Public Safety**

Chief Schwartzkopf noted that a "Coffee with a Cop" event will be held on Friday, April 5<sup>th</sup>, at Starbucks from 7:00 a.m. - 9:00 a.m. Additionally, police vehicles will be at the Kansas Speedway next week as part of National Child Abuse Prevention Month.

### **Public Works**

Keith Bredehoeft stated that crews will begin mowing and preparing parks and fields this month. Additionally, Public Works staff have attended several job fairs in an effort to fill open positions.

### **Administration**

Alley Porter reminded the Council that pool passes went on sale April 1<sup>st</sup>. 35 lifeguards have returned from 2018, and 15 new staff have been hired so far this year.

Jamie Robichaud reported that the annual large-item trash pickup will take place on April 13<sup>th</sup> and April 20<sup>th</sup>. Homes associations that don't use Republic for trash service can still participate, but must pay a fee to do so.



Wes Jordan stated that the April Plan of Action was included in the meeting packet.

**OLD BUSINESS**

Ted Odell noted that Council needs to ensure the Corinth South development ends up as a high-quality development.

**NEW BUSINESS**

**COU2019-20 Consider approval of 2019-2020 insurance renewals**

Lisa Santa Maria introduced Bob Frankovich and his team from Truss Insurance, the City's insurance broker for liability, property, and casualty coverages. Mr. Frankovich stated that insurance premiums will be reduced by 6.1% in 2019-2020, primarily due to reductions in workers' compensation costs. Workers' compensation claims from the City have declined for the past four years due to training initiatives implemented to mitigate injuries. Mr. Frankovich was asked about liability coverages and he verified that City staff, Councilmembers and volunteers are all covered under the City's insurance policy.

**Mr. Odell made a motion to approve COU2019-20 as presented. The motion was seconded by Mr. Nelson and passed unanimously.**

**COU2019-21 Consider approval of Ordinance 2399 amending Section 1-804 of the Code of the City of Prairie Village, Kansas**

David Waters stated that language had been added regarding the Mayor being a tiebreaking vote for the Council Committee of the Whole. This language was approved by Council in 2009 but was inadvertently left out of the City Code. Mr. Waters also noted that a quorum for the regular City Council is eight, whereas a quorum for Council Committee of the Whole is seven.

**Mr. Herring made a motion to approve COU2019-21 as presented. The motion was seconded by Mr. Poling. A roll call vote was taken with the following votes cast: "aye": Herring, J. Nelson, Schermoly, R. Nelson, Poling, Wang, Myers, Morehead, Runion, McFadden, Odell and Gallagher.**

**COU2019-22 Consider approval of contract with Vance Brothers, Inc., for the 2019 Crack Seal/Micro Surfacing Program**

Melissa Prenger provided the agreement with Vance Brothers for review. The bid came in higher than the budgeted amount of \$312,000, so the number of streets to be repaired will be reduced to meet the budgeted total. Mrs. Prenger added that often, streets don't need as much repair work as work as anticipated, and as a result, it may be possible to address all streets for the budgeted amount.

**Ted Odell made a motion to approve COU2019-22 as presented. The motion was seconded by Ron Nelson, and passed unanimously.**

**COU2019-23 Consider approval of construction contract for the 2019 Residential Street Rehabilitation Program**



Mrs. Prenger presented the agreement with O'Donnell and Sons, stating that 2019 was the second year of a three-year process of an extended contract approval. In May, 2018, Council authorized Public Works to move forward with this contract. Public Works is very satisfied the contactors work and interaction with residents, add that the contractor holds proactive on-street public meetings two weeks prior to a project beginning.

**Mr. Poling made a motion to approve COU2019-23 as presented. The motion was seconded by Ron Nelson and passed unanimously.**

**Ron Nelson moved the City Council move to the Council Committee of the Whole portion of the meeting. The motion was seconded by Mrs. Myers, and passed unanimously.**

### **COUNCIL COMMITTEE OF THE WHOLE**

#### **Discuss options for implementation of bike plan**

Keith Bredehoeft reported that the plan includes both signage and pavement markings for bikes. "Sharrows" will be marked on streets, and bike lanes will be added on certain roads, which will total approximately \$200,000. Implementation will begin in the 3rd quarter of 2019. Mr. Bredehoeft stated that \$60,000 had already been funded, and \$75,000 had been budgeted in 2019 for the plan. Mr. Bredehoeft stated two options were available to fund the remainder of the implementation:

1. Fund \$140,000 in 2020, which would allow for most, if not all, of the project to be completed in 2020.
2. Fund \$70,000 in 2020 and another \$70,000 in 2021. This would spread out funding, and the plan would be completed in 2021.

Mr. Runion asked where project funding would come from, and Mr. Bredehoeft stated that it would be drawn from the 2020 general fund.

**Mr. Odell made a motion to approve Option 1 to fund the project completely in 2020. The motion was seconded by Mr. Poling and passed 11-1, with Mrs. Morehead voting in opposition.**

#### **Discuss Snow Angel program**

Ms. Nelson gave a presentation, noting that the City of Olathe had been using the program for over 20 years, and felt that something similar would be valuable in Prairie Village. The program matches residents with volunteers in the area to shovel driveways within 24-48 hours after a snowfall of 2" or more. In 2019, Olathe had 82 residents signed up, and 33 on a waiting list.

Concerns about liability, background checks and the physical health of volunteers specific to workers' compensation exposure were raised during discussion. Mr. Jordan stated that costs need to be researched, and legal counsel needs to review the plan prior to staff bringing it back to Council. Additionally, determining which staff members will be responsible for the program has not been completed.



**Ms. Nelson made a motion to have staff continue to research the project and provide cost estimates to Council. The motion was seconded by Ron Nelson and passed 8-4, with Mr. Wang, Mrs. Myers, Mr. Runion and Mrs. McFadden opposed.**

**New Business**

There was no new business to come before the Council Committee of the Whole.

**Mrs. Nelson moved the City Council end the Council Committee of the Whole portion of the meeting. The motion passed unanimously.**

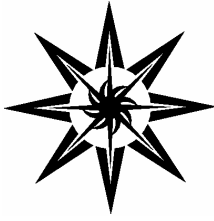
**ANNOUNCEMENTS**

Announcements were included in the Council packet.

**ADJOURNMENT**

With no further business to come before the City Council, Mayor Mikkelson declared the meeting adjourned at 9:20 p.m.

Adam Geffert  
City Clerk



## ADMINISTRATION

City Council Date: April 15, 2019  
CONSENT AGENDA

**Consider an Ordinance approving the Prairie Village Art Fair at the Prairie Village Shops as a Special Event and Authorizing the Sale, Consumption and Possession of Alcoholic Liquor and Cereal Malt Beverages within the Boundaries of a Barricaded Public Areas of the Event.**

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### **RECOMMENDATION:**

Staff recommends that the City Council approve an Ordinance approving the Prairie Village Art Fair as a special event and authorizing the sale, consumption and possession of alcoholic liquor and cereal malt beverages within the boundaries of a barricaded public areas of the event.

### **SUGGESTED MOTION:**

I move the City Council authorize the Mayor to execute Ordinance No. 2400 approving the Prairie Village Art Fair at the Prairie Village Shops as a special event and authorizing the sale, consumption and possession of alcoholic liquor and cereal malt beverages within the boundaries of a barricaded public areas of the event.

### **DISCUSSION:**

Pursuant to KSA 41-719(a)(2) and KSA 41-2645, the Governing Body may approve special events and exempt public streets and sidewalks from the prohibition concerning drinking or consuming alcoholic liquor and cereal malt beverages on public streets and sidewalks.

The Prairie Village Merchants Association has requested that the City approve an ordinance identifying the Prairie Village Art Fair at the Prairie Village Shopping Center on May 31 – June 2, 2019 as a special event and authorizing the sale, consumption and possession of alcoholic liquor and cereal malt beverages within the boundaries of barricaded public areas at the event. Vendors must be active business occupants in the Prairie Village Shopping Center at the time of the event, having the proper alcohol licenses.

### **ATTACHMENTS:**

Draft Ordinance No. 2400  
Map

### **PREPARED BY:**

Adam Geffert  
City Clerk

**Date:** April 10, 2019

**ORDINANCE NO. 2400**

**AN ORDINANCE APPROVING THE PRAIRIE VILLAGE ART FAIR AS A SPECIAL EVENT AND AUTHORIZING THE SALE, CONSUMPTION AND POSSESSION OF ALCOHOLIC LIQUOR AND CEREAL MALT BEVERAGES WITHIN THE BOUNDARIES OF A BARRICADED PUBLIC AREAS AT SUCHEVENT**

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

Section 1. Pursuant to KSA 41-719(a)(2) and KSA 41-2645, the Governing Body may approve special events and exempt public streets and sidewalks from the prohibitions concerning drinking or consuming alcoholic liquor and cereal malt beverages on public streets and sidewalks.

Section 2. In accordance with such authority, the City approves the Prairie Village Art Fair as a special event to be held at the Village Shopping Center on May 31 – June 2, 2019.

Section 3. Authorization is given to barricade the area outlined on the attached Exhibit A during such event. A smaller area may be selected based on the size of the event, but the event boundary may not be expanded

Section 4. Vendors holding the appropriate license from the State of Kansas to sell alcoholic liquor and cereal malt beverages may, in accordance with all applicable state laws and municipal ordinances, sell alcoholic liquor and cereal malt beverages in the area designated by the Division of Alcoholic Beverage Control within the barricaded area during the event.

Section 5. Vendors must be active business occupants in the Prairie Village Shopping Center at the time of the event and have the appropriate licenses from the City of Prairie Village.

Section 6. Event attendees may buy, possess and consume alcoholic liquor and cereal malt beverages within barricaded area on May 31 – June 2, 2019.

Section 7. This Ordinance shall take effect and be in force from and after its passage, approval, and publication in the official newspaper of the City of Prairie Village, Kansas as provided by law.

**PASSED AND ADOPTED BY THE GOVERNING BODY THIS 15th DAY OF APRIL, 2019.**

**CITY OF PRAIRIE VILLAGE, KANSAS**

By: \_\_\_\_\_  
**Eric Mikkelson, Mayor**

**ATTEST:**

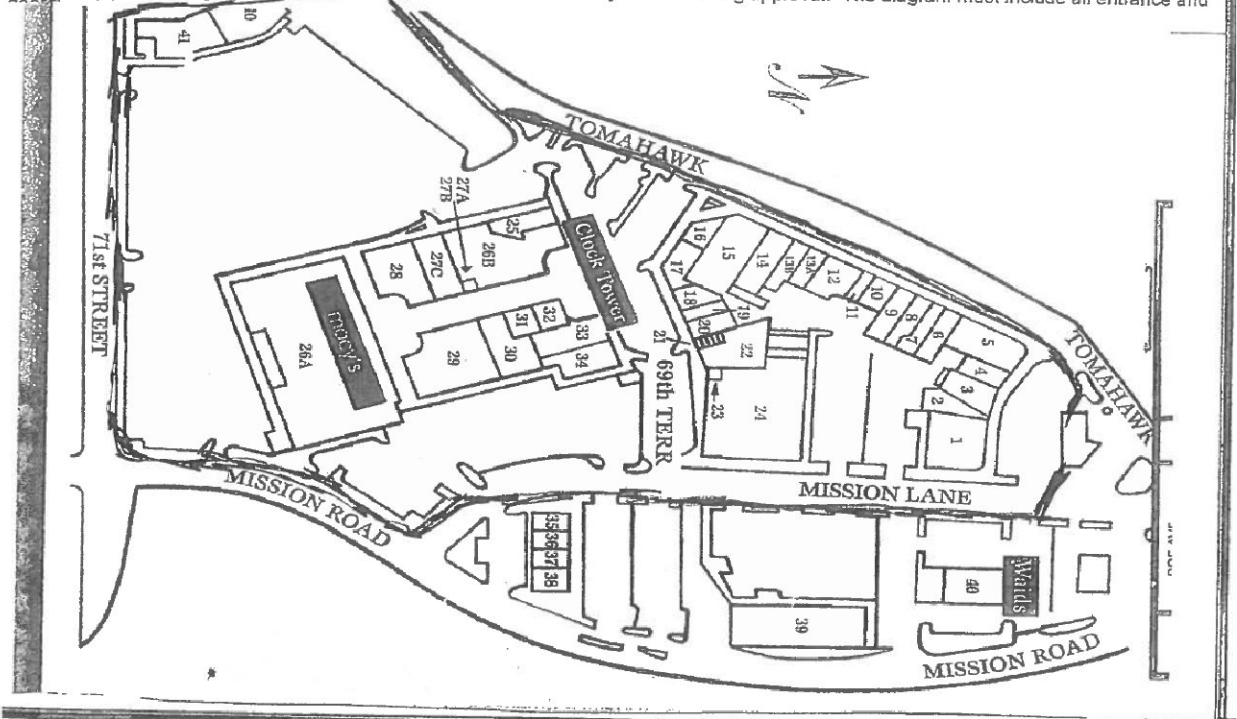
**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Adam Geffert, City Clerk**

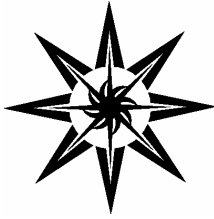
\_\_\_\_\_  
**David Waters, City Attorney**

**SECTION 6 – DIAGRAM:** Complete for On-Premise and Special Events only.

In the space below, in ink, a complete sketch of the premises which you are seeking approval. The diagram must include all entrance and







## ADMINISTRATION

City Council Date: April 15, 2019  
CONSENT AGENDA

**Consider an Ordinance approving the Clock Tower Concerts at the Shops of Prairie Village as a Special Event and Authorizing the Sale, Consumption and Possession of Alcoholic Liquor and Cereal Malt Beverages within the Boundaries of a Barricaded Public Areas of the Event.**

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### **RECOMMENDATION:**

Staff recommends that the City Council approve Ordinance No. 2401 approving the Clock Tower Concerts at the Shops of Prairie Village as special events and authorizing the sale, consumption and possession of alcoholic liquor and cereal malt beverages within the boundaries of a barricaded public areas of the event.

### **SUGGESTED MOTION:**

I move the City Council authorize the Mayor to execute Ordinance No. 2401 approving the Clock Tower Concerts at the Shops of Prairie Village as special events and authorizing the sale, consumption and possession of alcoholic liquor and cereal malt beverages within the boundaries of a barricaded public areas of the event.

### **DISCUSSION:**

Pursuant to KSA 41-719(a)(2) and KSA 41-2645, the Governing Body may approve special events and exempt public streets and sidewalks from the prohibition concerning drinking or consuming alcoholic liquor and cereal malt beverages on public streets and sidewalks.

The Prairie Village Merchants Association has requested that the City approve an ordinance identifying the Clock Tower Concerts at the Shops of Prairie Village on May 16, June 27 and August 8, 2019 as special events and authorizing the sale, consumption and possession of alcoholic liquor and cereal malt beverages within the boundaries of barricaded public areas at the event. Vendors must be active business occupants in the Prairie Village Shopping Center at the time of the event, having the proper alcohol licenses.

### **ATTACHMENTS:**

Draft Ordinance No. 2401  
Map

### **PREPARED BY:**

Adam Geffert  
City Clerk

**Date:** April 10, 2019

**ORDINANCE NO. 2401**

**AN ORDINANCE APPROVING THE CLOCK TOWER CONCERTS AT THE SHOPS OF PRAIRIE VILLAGE AS A SPECIAL EVENT AND AUTHORIZING THE SALE, CONSUMPTION AND POSSESSION OF ALCOHOLIC LIQUOR AND CEREAL MALT BEVERAGES WITHIN THE BOUNDARIES OF A BARRICADED PUBLIC AREAS AT SUCHEVENT**

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

Section 1. Pursuant to KSA 41-719(a)(2) and KSA 41-2645, the Governing Body may approve special events and exempt public streets and sidewalks from the prohibitions concerning drinking or consuming alcoholic liquor and cereal malt beverages on public streets and sidewalks.

Section 2. In accordance with such authority, the City approves the Clock Tower Concerts at the Shops of Prairie Village as a special event to be held at the Village Shopping Center on May 16, 2019, June 27, 2019 and August 8, 2019.

Section 3. Authorization is given to barricade the area outlined on the attached Exhibit A during such event. A smaller area may be selected based on the size of the event, but the event boundary may not be expanded.

Section 4. Vendors holding the appropriate license from the State of Kansas to sell alcoholic liquor and cereal malt beverages may, in accordance with all applicable state laws and municipal ordinances, sell alcoholic liquor and cereal malt beverages in the area designated by the Division of Alcoholic Beverage Control within the barricaded area during the event.

Section 5. Vendors must be active business occupants in the Prairie Village Shopping Center at the time of the event and have the appropriate licenses from the City of Prairie Village.

Section 6. Event attendees may buy, possess and consume alcoholic liquor and cereal malt beverages within barricaded area on May 16, June 27 and August 8, 2019.

Section 7. This Ordinance shall take effect and be in force from and after its passage, approval, and publication in the official newspaper of the City of Prairie Village, Kansas as provided by law.

**PASSED AND ADOPTED BY THE GOVERNING BODY THIS 15th DAY OF APRIL, 2019.**

**CITY OF PRAIRIE VILLAGE, KANSAS**

By: \_\_\_\_\_  
Eric Mikkelson, Mayor

**ATTEST:**

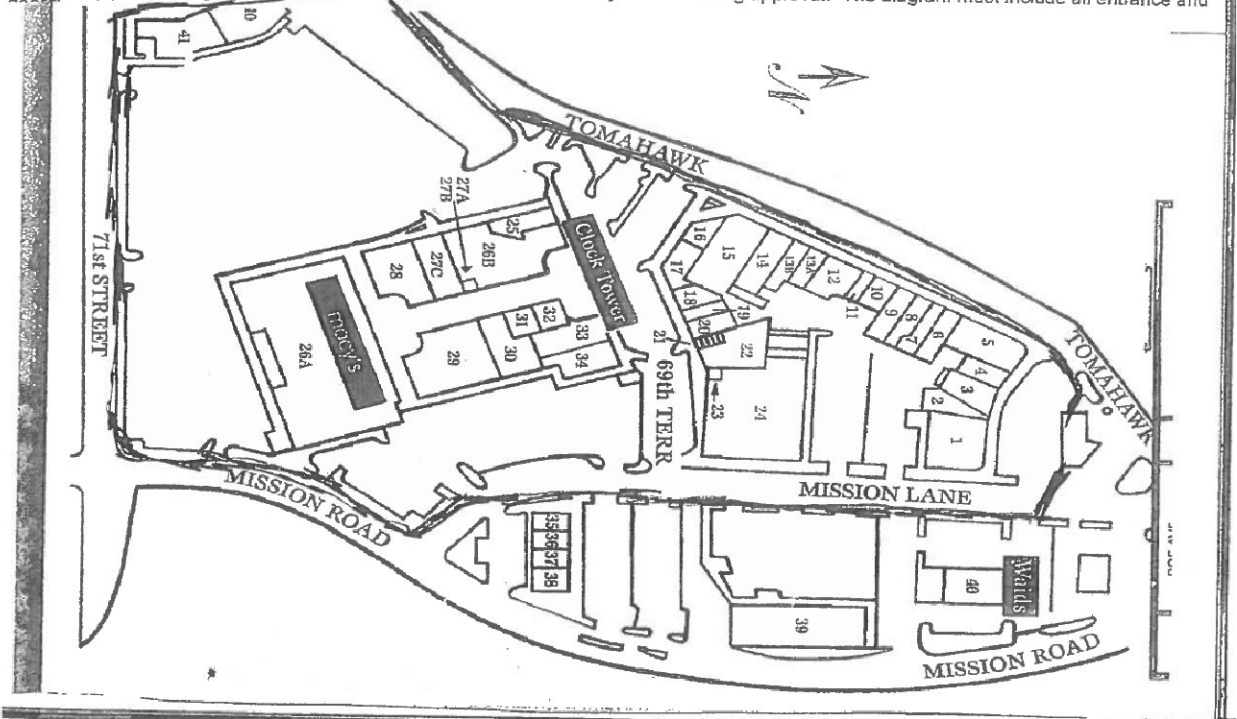
**APPROVED AS TO FORM:**

\_\_\_\_\_  
Adam Geffert, City Clerk

\_\_\_\_\_  
David Waters, City Attorney

**SECTION 6 – DIAGRAM:** Complete for On-Premise and Special Events only.

In the space below, in ink, a complete sketch of the premises which you are seeking approval. The diagram must include all entrance and



**CITY TREASURER'S WARRANT REGISTER**

DATE WARRANTS ISSUED:

Warrant Register Page No. 1

April 15, 2019

**Copy of Ordinance**  
2977

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
<b>EXPENDITURES:</b>			
Accounts Payable			
19042-19048	3/1/2019	39,670.06	
19049-19126	3/8/2019	210,509.48	
19127-19133	3/15/2019	43,418.49	
19134-19215	3/22/2019	348,646.56	
19216-19221	3/27/2019	109,980.96	
19222	3/29/2019	1,448.41	
Payroll Expenditures			
3/1/2019		301,071.05	
3/15/2019		306,519.75	
3/29/2019		304,599.40	
Electronic Payments			
Electronic Pmnts			
	3/1/2019	1,934.70	
	3/4/2019	6,375.90	
	3/7/2019	1,697.90	
	3/12/2019	9,515.52	
	3/13/2019	75.14	
	3/14/2019	527.76	
	3/18/2019	5,049.64	
	3/22/2019	433.14	
	3/26/2019	21,039.58	
	3/27/2019	3,235.64	
<b>TOTAL EXPENDITURES:</b>			1,715,749.08
Voided Checks	Check #	( Amount )	
MicroSurvey Software Inc	19049	(3,085.00)	
Mackenzie Clevenger	19063	(152.92)	
Joel Colletti	19158	(16.00)	
<b>TOTAL VOIDED CHECKS:</b>			(3,253.92)
<b>GRAND TOTAL CLAIMS ORDINANCE</b>			<b>1,712,495.16</b>

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

Passed this 15th day of April 2019.

Signed or Approved this 15th day of April 2019.

(SEAL)

ATTEST:

*Julie H. Korb - Jr.*

City Treasurer

ATTEST:

*[Signature]*

4.5.19  
Finance Director



## POLICE DEPARTMENT

Council Meeting Date: April 15, 2019

**COU2019-24**

**Consider Amendments to Chapter XI, Article 7. Local Traffic Regulations**

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### RECOMMENDATION

Staff recommends the City Council approve proposed amendments to Chapter XI Ordinance governing Local Traffic Regulations.

**COUNCIL ACTION REQUESTED ON:**

**April 15, 2019**

### SUGGESTED MOTION

Move to approve proposed amendments as specified to Chapter XI - Local Traffic Regulations, Article 7.

### BACKGROUND

As part of general ordinance clean up, we need to amend this Chapter after Council approval of traffic calming on Tomahawk and the addition of the school zone at 95<sup>th</sup> and Roe. The changes on Tomahawk reflect the new speed limit and the changes regarding the school zones just eliminates the wording of, "along Mission Road." These changes have been reviewed by Public Works and the Police Department, and our City Attorney has made the appropriate changes in ordinance.

### PREPARED BY

Tim M. Schwartzkopf  
Chief of Police  
Date: April 3, 2019

Attachment  
Ordinance 2402 (Comparison Result)  
Ordinance 2402 (Modified Document)

**ORDINANCE NO. 2402**

**AN ORDINANCE RELATED TO THE ESTABLISHMENT OF SPEED LIMITS AND SCHOOL ZONES, AMENDING SECTION 11-704 OF THE CODE OF THE CITY OF PRAIRIE VILLAGE, KANSAS.**

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

**Section 1.** Section 11-704 of Chapter XI, Article 7, of the Code of the City of Prairie Village, Kansas, is hereby amended to read as follows:

**11-704. SAME; SPEED LIMIT CHANGES.**

- A. It having been determined upon the basis of an engineering and traffic investigation that the speed limits permitted by state law and by Section 33 of the current Standard Traffic Ordinance for Kansas Cities adopted by the city from time to time pursuant to Article 6 of this Chapter, are greater or less than is reasonable or safe under the conditions found to exist upon the following streets and/or parts of streets, the following speed limits shall apply where indicated, except as provided in subsections (B) and (C) hereof:
- (1) 75th Street from State Line Road to Walmer Street -- 35 miles per hour.
  - (2) Mission Road, from 75th Street south to 95th Street, within the city -- 35 miles per hour.
  - (3) Mission Road, from northern City limit south to 75th Street -- 30 miles per hour.
  - (4) Nall Avenue from 63rd Street to 95th Street -- 35 miles per hour.
  - (5) Roe Avenue from northern City limit to 95th Street -- 35 miles per hour.
  - (6) 95th Street from Mission Road to Nall Avenue -- 35 miles per hour.
  - (7) 83rd Street from eastern City limit to Lamar Avenue -- 30 miles per hour.
  - (8) State Line Road from 71st Street south to 75th Street -- 30 miles per hour.
  - (9) State Line Road from 75th Street south to the southern city limits -- 35 miles per hour.
  - (10) Cambridge from State Line Road to Somerset Drive -- 30 miles per hour.
  - (11) Somerset Drive from State Line Road to Nall Avenue -- 30 miles per hour.
  - (12) 79th Street from State Line Road to Mission Road -- 25 miles per hour.
  - (13) 79th Street from Mission Road to Lamar Avenue -- 30 miles per hour.
  - (14) Tomahawk Road between Mission Road and ~~Nall~~-Roe Avenue -- 30 miles per hour.

- (15) Tomahawk Road between ~~Nall-Roe~~ Avenue and ~~79th-83rd~~ Street -- 25 miles per hour.
- (16) 71st Street between State Line Road and Reeds Drive -- 30 miles per hour.
- (17) 63rd Street between Mission Road and Nall Avenue, within the City -- 30 miles per hour.
- (18) All other residential streets not herein otherwise designated -- 25 miles per hour.

B. Except as provided in subsection (C) hereof, the maximum speed limit upon streets or portions of streets abutting school property or adjacent to school crosswalks in those areas designated as school zones shall be the speed limit posted on the appropriately erected signs giving notice of the speed limit in said school zones. The maximum speed to be posted within each school zone shall be determined by the traffic engineer retained by the City to consult on traffic matters, provided the speed limit shall not be less than 20 miles per hour. Maximum speed limits within school zones shall be effective and subject to enforcement by law enforcement officers during those time periods set forth on appropriately erected signs giving notice of the effective hours of enforcement or during those times a flashing yellow beacon is in operation with appropriately erected signs indicating the school zone speed limits are enforced during the times the flashing yellow beacon is in operation. Said traffic engineer shall determine the times of enforcement for school zones within the City, provided such speed limits shall apply only during the hours in which students are normally en route to or from school.

C. Notwithstanding subsection (B), it having been determined upon the basis of an engineering and traffic investigation that the speed limits currently posted for certain school zones ~~along Mission Road~~ are greater or less than is reasonable or safe under the conditions found to exist therein, a speed limit of 25 miles per hour shall apply at the following streets and/or parts of streets as shall be posted in accordance with subsection (B) hereof and during those time periods set forth on appropriately erected signs giving notice of the effective hours of enforcement or during those times a flashing yellow beacon is in operation:

- a. 94th Street & Mission Road (Cure of Ars School)
- b. 83rd Street & Mission Road (Corinth Elementary School)
- c. 73rd Street & Mission Road (St. Ann's School)
- d. 67th Street & Mission Road (Prairie Elementary School)
- e. 63rd Street & Mission Road (Indian Hills Middle School)
- f. 95th Street and Roe Avenue (Trailwood Elementary School)

**Section2Section 2.** Existing Section 11-704 of the Code of the City of Prairie Village, Kansas, and any provisions in conflict herewith are hereby repealed.

**Section 3.** This ordinance shall take effect and be enforced from and after its passage, approval, and publication as provided by law.

**PASSED** by the City Council of the City of Prairie Village, Kansas on \_\_\_\_\_,  
~~2018~~2019.

**APPROVED:**

\_\_\_\_\_  
~~Laura Wassmer~~Eric Mikkelson, Mayor

**ATTEST:**

\_\_\_\_\_  
~~Joyce Hagen Mundy~~Adam Geffert, City Clerk

**APPROVED AS TO LEGAL FORM:**

\_\_\_\_\_  
David E. Waters, ~~Interim~~ City Attorney



**ORDINANCE NO. 2402**

**AN ORDINANCE RELATED TO THE ESTABLISHMENT OF SPEED LIMITS AND SCHOOL ZONES, AMENDING SECTION 11-704 OF THE CODE OF THE CITY OF PRAIRIE VILLAGE, KANSAS.**

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

**Section 1.** Section 11-704 of Chapter XI, Article 7, of the Code of the City of Prairie Village, Kansas, is hereby amended to read as follows:

**11-704. SAME; SPEED LIMIT CHANGES.**

A. It having been determined upon the basis of an engineering and traffic investigation that the speed limits permitted by state law and by Section 33 of the current Standard Traffic Ordinance for Kansas Cities adopted by the city from time to time pursuant to Article 6 of this Chapter, are greater or less than is reasonable or safe under the conditions found to exist upon the following streets and/or parts of streets, the following speed limits shall apply where indicated, except as provided in subsections (B) and (C) hereof:

- (1) 75th Street from State Line Road to Walmer Street -- 35 miles per hour.
- (2) Mission Road, from 75th Street south to 95th Street, within the city -- 35 miles per hour.
- (3) Mission Road, from northern City limit south to 75th Street -- 30 miles per hour.
- (4) Nall Avenue from 63rd Street to 95th Street -- 35 miles per hour.
- (5) Roe Avenue from northern City limit to 95th Street -- 35 miles per hour.
- (6) 95th Street from Mission Road to Nall Avenue -- 35 miles per hour.
- (7) 83rd Street from eastern City limit to Lamar Avenue -- 30 miles per hour.
- (8) State Line Road from 71st Street south to 75th Street -- 30 miles per hour.
- (9) State Line Road from 75th Street south to the southern city limits -- 35 miles per hour.
- (10) Cambridge from State Line Road to Somerset Drive -- 30 miles per hour.
- (11) Somerset Drive from State Line Road to Nall Avenue -- 30 miles per hour.
- (12) 79th Street from State Line Road to Mission Road -- 25 miles per hour.
- (13) 79th Street from Mission Road to Lamar Avenue -- 30 miles per hour.
- (14) Tomahawk Road between Mission Road and Roe Avenue -- 30 miles per hour.
- (15) Tomahawk Road between Roe Avenue and 83rd Street -- 25 miles per hour.

- (16) 71st Street between State Line Road and Reeds Drive -- 30 miles per hour.
- (17) 63rd Street between Mission Road and Nall Avenue, within the City -- 30 miles per hour.
- (18) All other residential streets not herein otherwise designated -- 25 miles per hour.

B. Except as provided in subsection (C) hereof, the maximum speed limit upon streets or portions of streets abutting school property or adjacent to school crosswalks in those areas designated as school zones shall be the speed limit posted on the appropriately erected signs giving notice of the speed limit in said school zones. The maximum speed to be posted within each school zone shall be determined by the traffic engineer retained by the City to consult on traffic matters, provided the speed limit shall not be less than 20 miles per hour. Maximum speed limits within school zones shall be effective and subject to enforcement by law enforcement officers during those time periods set forth on appropriately erected signs giving notice of the effective hours of enforcement or during those times a flashing yellow beacon is in operation with appropriately erected signs indicating the school zone speed limits are enforced during the times the flashing yellow beacon is in operation. Said traffic engineer shall determine the times of enforcement for school zones within the City, provided such speed limits shall apply only during the hours in which students are normally en route to or from school.

C. Notwithstanding subsection (B), it having been determined upon the basis of an engineering and traffic investigation that the speed limits currently posted for certain school zones are greater or less than is reasonable or safe under the conditions found to exist therein, a speed limit of 25 miles per hour shall apply at the following streets and/or parts of streets as shall be posted in accordance with subsection (B) hereof and during those time periods set forth on appropriately erected signs giving notice of the effective hours of enforcement or during those times a flashing yellow beacon is in operation:

- a. 94th Street & Mission Road (Cure of Ars School)
- b. 83rd Street & Mission Road (Corinth Elementary School)
- c. 73rd Street & Mission Road (St. Ann's School)
- d. 67th Street & Mission Road (Prairie Elementary School)
- e. 63rd Street & Mission Road (Indian Hills Middle School)
- f. 95th Street and Roe Avenue (Trailwood Elementary School)

**Section 2.** Existing Section 11-704 of the Code of the City of Prairie Village, Kansas, and any provisions in conflict herewith are hereby repealed.

**Section 3.** This ordinance shall take effect and be enforced from and after its passage, approval, and publication as provided by law.

**PASSED** by the City Council of the City of Prairie Village, Kansas on \_\_\_\_\_,  
2019.

**APPROVED:**

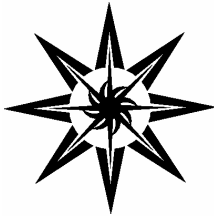
\_\_\_\_\_  
Eric Mikkelson, Mayor

**ATTEST:**

\_\_\_\_\_  
Adam Geffert, City Clerk

**APPROVED AS TO LEGAL FORM:**

\_\_\_\_\_  
David E. Waters, City Attorney



**PUBLIC WORKS DEPARTMENT**

**Council Committee Date: APRIL 15, 2019**

**COU2019-25 CONSIDER PROJECT DELN0001- DELMAR AND FONTANA LOW WATER CROSSING REMOVAL AND DRAINAGE PROJECT- CONSTRUCTION CONTRACT WITH VF ANDERSON BUILDERS, LLC.**

**RECOMMENDATION**

Move to approve the construction contract with VF Anderson Builders, LLC in the amount of \$4,735,847 along with change order authority up to \$100,000 for Project DELN0001.

**BACKGROUND**

This project has a long history, dating back to the mid 1980's. On September 6, 2016 council directed public works to move forward with the Delmar and Fontana low water crossing and drainage project. The project removes two dangerous low water street crossings and mitigates the 100-year flood risk for seven properties. On October 3, 2016 council approved the Preliminary Engineering Study (PES) for the County's SMAC Program. SMAC funding which pays for 75% of construction cost was approved in 2017.

Construction will begin in late spring 2019. Substantial completion is estimated for November 2019 with final restoration in spring 2020.

On April 5, 2019, 2019, the City Clerk Office opened bids for the project. Three bids were received with VF Anderson Builders LLC as the lowest responsible bidder.

VF Anderson Builders LLC.	\$4,735,847.00
Kissick Construcion	\$7,708,276.00
Pyramid Excavating	\$5,493,502.91
Engineer's Estimate	\$5,074,876.50

The Engineer has reviewed all bids and has recommended award of the low bid. The Pyramid Excavating was determined to be incomplete.

The contract will be awarded for \$4,735,847. Change order authorization up to \$100,000 additional dollars is part of this approval and will allow for quick approval of possible changes required to complete the project. The Public Works Director will authorize all necessary change orders.

As final design was completed the construction cost estimate increased. Additional Johnson County SMAC funds are available for these increased costs. Adequate City funds currently exists for the 25% match to the additional SMAC funds.

## **FUNDING SOURCE**

Funds are available in the CIP under Project DELN0001 & DELN0002

Summary of Total Project Funding- Includes design, construction, inspection and testing.

Total Past Project Funding- \$4,672,212

Additional SMAC Funds- \$400,000

New Total Project Funds- \$5,072,212

## **ATTACHMENTS**

1. Construction Agreement with VF Anderson Builders, LLC

## **PREPARED BY**

Keith Bredehoeft, Public Works Director

April 11, 2019

**CONSTRUCTION CONTRACT  
FOR  
DELN0001 - DELMAR FONTANA LOW WATER CROSSING REMOVAL AND  
DRAINAGE PROJECT**

**BETWEEN  
THE CITY OF PRAIRIE VILLAGE, KANSAS  
AND VF ANDERSON BUILDERS LLC**

**THIS AGREEMENT**, is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Prairie Village, Kansas, hereinafter termed the “**City**”, and VF Anderson Builders LLC, hereinafter termed in this agreement, “**Contractor**”, for the construction and completion of Project **DELN0001 DELMAR AND FONTANA LWC DESIGN**, (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 the 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 Four Million Seven Hundred Thirty-five Thousand Eight Hundred Forty-seven DOLLARS (\$4,735,847.00) 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 affect 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. The Contractor further agrees that it shall abide by the Prairie Village Non Discrimination Code (Section 5-801 et seq) and shall not discriminate against any person in the performance of Work under the present contract because of sexual orientation or gender identity. If the City determines that the Contractor has violated any applicable provision of any local, state or federal law, or has discriminated against any person because of race, religion, color, sex, sexual orientation, gender identity, disability, age, national origin, or ancestry, such violation and/or discrimination shall constitute a breach of contract and the City may cancel, terminate or suspend this agreement in whole or in part. The parties do not intend this provision to subject any party to liability under local, state or federal laws unless it applies.
- D. 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;
- E. 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
- F. 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.
- G. 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**

**VF Anderson Builders LLC**

(company name)

By: \_\_\_\_\_  
(signed)

By: \_\_\_\_\_  
(signed)

Eric Mikkelson \_\_\_\_\_

Vince Freemyer \_\_\_\_\_

(name)

Mayor \_\_\_\_\_

Owner \_\_\_\_\_

(title)

City of Prairie Village \_\_\_\_\_

VF Anderson Builders LLC \_\_\_\_\_

(company name)

7700 Mission Road \_\_\_\_\_

19209 East 231<sup>st</sup> Street \_\_\_\_\_

Prairie Village, Kansas 66208 \_\_\_\_\_

Harrisonville, MO, 64701 \_\_\_\_\_

816-884-3220 \_\_\_\_\_

(telephone number)

\_\_\_\_\_  
(date of execution)

\_\_\_\_\_  
(date of execution)

SEAL

ATTEST:

APPROVED BY:

\_\_\_\_\_  
City Clerk, Adam Geffert

\_\_\_\_\_  
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.)



**COU2019-26 Consider Purchase of Storage Area Network (SAN)**

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**RECOMMENDATION**

Staff recommends the City Council approve the purchase of the Storage Area Network for a total of \$76,218.97

**COUNCIL ACTION REQUESTED ON:**

**April 15, 2019**

**SUGGESTED MOTION**

Move to approve the purchase of the Storage Area Network (SAN) for \$76,218.97

**BACKGROUND**

A Storage Area Network (SAN) is a shared storage device. Utilizing a SAN is a best practice as it ensures redundancy and 99.9999% availability.

The SAN will allow us to scale with future data demands of all city departments.

The SAN purchase was previously approved by the City Council in the Equipment Reserve Fund as part of the 2019 Budget. It is being purchased through the Kansas State Contract #: KS-MNNVP-134 40399AB

**FUNDING SOURCE:**

22-53-53-8003-000 - \$80,000.00

**PREPARED BY**

Jake Gunter  
Senior IT Specialist  
Date: April 9, 2019

Attachment



## City of Prairie Village, Kansas Data Center Upgrade Solution

C1 believes the proposed solution will meet and exceeds the City of Prairie Village project requirements and will provide the tools for Prairie Village faculty productive and protected. C1 and HPE understand the substantial investment by the City of Prairie Village, as we have worked tirelessly to provide you with the most economical and comprehensive solution.

### Executive Summary

#### Data Center Components:

- **Required Network Upgrade- Cisco Cat 9300**.....\$16,141.70
- **Required Network Adaptor** .....\$1,377.27
- **Nimble- 42TB w/28 (Effective before compression and dedupe)**.....\$56,000.00
  - Includes 36 month warranty - 24x7, 4 hour parts delivery
- **Installation (Time & Materials)**.....\$2,700.00

#### Total Pricing

**Kansas State Contract #: KS-MNNVP-134 40399AB**

**Recommended Pricing.....\$126,143.15**

**ConvergeOne Special Discount to Prairie Village .....-\$49,924.18**

**City of Prairie Village, Kansas Total \$76,218.97**

This price includes all required components. The Time and Material Installation quote (attached) is an estimated total of required hours to complete install, if additional hours are required Prairie Village is responsible for additional charges. This was requested by the City of Prairie Village, a fixed fee option is available upon request.

Thank you for your time and the opportunity for us to build our relationship and make a commitment to always bring the utmost in service and solution.

Sincerely,

*Lori Boan*

Lori Boan  
SLED Account Manager  
AOS, a ConvergeOne Company  
CC: Josh Flyntz, AOS

## Statement of Work

### Installation Statement

This Statement of Work covers professional services work ConvergeOne will perform for City of Prairie Village. Beginning on a mutually agreed upon date, ConvergeOne will provide one or more qualified technical consultants and/or Project Management personnel on a Time and Materials basis to Install a Nimble SAN for City of Prairie Village at 7700 Mission Rd, Prairie Village, KS 66208.

ConvergeOne will consider additional work not explicitly stated in this Statement of Work as “out-of-scope” and will require a “change order”.

## Summary

City of Prairie Village has asked ConvergeOne to install a new Nimble HF series storage array at their primary location. A ConvergeOne engineer will rack the Nimble HF SAN into an existing 4 posts rack and cable. A ConvergeOne engineer will then configure the san, setup 10GB ISCSI connections, configure the VMWare environment and test the configuration. The engineer will demonstrate migrating up to three VMs. Any additional migrations will be considered out of scope and require a change order.

### Hardware Summary

(1) Nimble HF20 w/Dual 10Gb SFP+.

## Scope and Approach

Experienced ConvergeOne personnel, or authorized agents, will perform the following implementation tasks:



## Nimble M10 Array Implementation (To be completed at both sites)

Site preparation required for Nimble Array:

- Each Nimble component will require 2 C13 or NEMA 5-15 power outlets.
- Each Nimble component will require 4U of rack space.
- The Nimble will require 2 x 1Gbps Ethernet connections for management.
- The Nimble will require 3 IP address for management and 4 IP addresses for iSCSI traffic.
- The Nimble will require a dedicated VLAN for iSCSI traffic.
- The Nimble will require 4 x 10Gbps SFP+ connections for iSCSI traffic.

Nimble Storage Array configuration tasks.

- Install Nimble array into Customer supplied standard 4 post data center rack.
- Power on and perform hardware verification.
- Perform initial installation process.
- Configure iSCSI connectivity to dedicated iSCSI VLAN.
- Connect existing hosts to the Nimble array, install NCM, and configure MPIO (where applicable).
- Create Volumes based on customer requirements.
- Configure and verify Auto-Support.
- Demonstrate CLI, Snapshots and Data Protection, and Performance reporting.
- Install and demonstrate the vCenter plugin (where applicable).
- Validate the implementation using the ConvergeOne Test Plan.
- Complete “As Built” documentation with the current configuration of the solution at time of installation.
- Provide a minimum Functional Overview of all related hardware, software, and documentation used in any project. ConvergeOne does not consider such an overview a substitute for formal product education. Please talk to the account manager about professional training services and additional documentation services.

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**Note:** It is highly recommended that the customer dedicates multiple resources to work with ConvergeOne Engineers during the course of the entire project. This will greatly increase the customer’s proficiency with administration of the system.

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**Special Note: Anything not specifically included in this document is EXCLUDED.**

## Deliverables

- Documentation of Physical layout of Environment
- Documentation of Logical layout of Environment
- Operational Administration and Best Practices Manuals

## Customer Responsibilities

In addition to any work tasks assigned to the client above in this Statement of Work, the Client agrees to the following preparations for this project:

- Customer is responsible for all 1 GB Ethernet cables required
- Customer is responsible for ensuring that a full backup of systems and data is performed prior to upgrade process. Failure to do this can result in data loss and is not a part of the statement of work to restore data.
- Ensure that proper power is available, any necessary rack space has been allocated and proper environmental requirements are met for any new equipment installations prior to the consultant arriving on site. Failure to provide proper environmental conditions could void server/appliance factory warranties or, may result in a Change Management request and appropriate cost adjustments.
- Customer must designate a minimum of two (2) staff members to serve as primary and secondary contacts for the duration of this project. Please see “Contacts and Resources” section within this Statement of Work.
- Customer is responsible for allowing ConvergeOne to access facilities during normal business hours from 8 AM – 5 PM, Monday – Friday. Any scheduling outside of normal business hours must be coordinated through project’s designated contact(s) with one week advanced notice, (based upon availability) to allow for resource schedule coordination and procurement.
- Have any required existing server/host hardware and supported Operating Systems in good health with required service packs and/or patches applied prior to the consultant arriving on site. Systems requiring additional updates not specified in this Statement of Work will be out-of-scope and require a change form be completed.
- Provide an adequate workspace for ConvergeOne on site personnel with network connections to the Internet and customer’s network as required including parking, phone, necessary network connection information, IP addressing, proxy account information, etc. while satisfying customer Security Policy requirements. (Note: In preparation of conversion to virtual machines run defragmentation and disk clean up on target servers)
- Provide remote access connectivity as required to assist in the completion of this statement of work. (Assumes compliance with existing customer security policy.)
- Have customer personnel available during implementation window to provide any required assistance and/or facilitate necessary communications to accomplish the required work.

## Contacts and Resources

ConvergeOne will perform work at the following location(s):

Location	Contact
7700 Mission Rd, Prairie Village, KS 66208	Jake Gunter

## Project Contacts

Name	Position/Company	Project Role
Jake Gunter jgunter@pvkansas.com Ph: (816) 200-2637	IT Director City of Prairie Village	Project Primary Contact
Lori Boan lboan@convergeone.com Ph: (913) 744-3256	Account Manager Alexander Open Systems	Primary ConvergeOne Sales Contact
Josh Flyntz jflyntz@convergeone.com Ph: (913) 744-3224	Design Architect Alexander Open Systems	Technical ConvergeOne Sales Contact
ConvergeOne Scheduling scheduling-kc@aos5.com Ph: (913) 307-2330	Alexander Open Systems	ConvergeOne Engineer Scheduling

## Consulting Fees

The following table lists the costs for a Time and Materials engagement. Shipping and taxes are not included. All prices are in U.S. dollars. See *Pricing Assumptions* below for additional information.

Time and Materials	Description
<b>Engineering services</b>	<b>\$225</b>



### Pricing Assumptions

- Unless otherwise identified within the scope or service brief, ConvergeOne bills travel one way to the customer site from the nearest ConvergeOne Office within that region at the identified engineer hourly rates.
- Except for the cutover(s) specified in this SOW, ConvergeOne will perform work during normally scheduled working hours (8:00 A.M. to 5:00 P.M. local time Monday through Friday), excluding ConvergeOne \ customer observed holidays. ConvergeOne will charge any work performed outside of these normal business hours at the rates shown below:
  - Overtime & Weekends billed at Normal Business Hours (NBH) + 50%
  - Holidays billed at Normal Business Hours (NBH) + 100% w/ (2) hour minimum
  - Emergency support billed at Normal Business Hours (NBH) + 50% w/ (2) hour minimum
- ConvergeOne will assess a cancellation fee of \$200 for scheduled work customer cancellations with less than 24 hour advanced notification. Notification of cancellations can be made to any of the contacts listed in the Contacts and Resources section.
- ConvergeOne sales and services are subject to any applicable ConvergeOne Master Services Agreement.
- City of Prairie Village hereby assumes all costs associated with said requested services. Associated costs include, but are not limited to, those that are set by ConvergeOne under this Timeincurring any costs in addition to those already itemized on this Statement of Work and the purchase order provided to ConvergeOne prior to the services being done.
- Typically, ConvergeOne will use local resources that will not require any travel expenses, assuming the work site is within an ConvergeOne office's local work area. In the event ConvergeOne needs a non-local resource, ConvergeOne will obtain prior written approval before incurring any travel charges. City of Prairie Village will reimburse ConvergeOne for reasonable expenses incurred in connection with our performance of the Services, if any are required, including travel expenses, lodging, meals, parking fees, copying charges, delivery charges, postage, telephone charges and other related expenses.
- Payment of the net amount of an invoice is due 30 days from the date of ConvergeOne invoice, unless otherwise specified in this Statement of Work.
- All applicable state and local taxes, shipping charges (FOB customer dock), travel and associated expenses will be added to invoice.

## Other Terms and Conditions

- ConvergeOne is not responsible for configuration, compatibility, or products requested per customer-provided specifications. ConvergeOne has professional design consulting services available to quote upon request.
- ConvergeOne will coordinate the ordering, delivery, warranties, and maintenance agreements of all equipment and software components listed that are purchased through ConvergeOne.
- Customer is responsible for returning all trade-in merchandise to the designated parties or issue a certificate of destruction if that is required. ConvergeOne will charge for equipment not returned.
- ConvergeOne will subject additional delays or communication coordination with 3rd party providers, (Telco's, local ISP's, remote vendors, etc.) not reflected in this Statement of Work to a Change Management Form request.
- Customer must pay block contracts in full prior to receiving the discounted rate on work. ConvergeOne subjects Fixed Fee and Hourly services to progress billing at the end of each ConvergeOne monthly billing cycle.
- ConvergeOne will only process orders signed by an agent of the company. ConvergeOne will require a purchase order if required by Customer's organization.
- This Statement of Work does not imply or guarantee a specific date or time frame for services to begin. All project timelines will be mutually agreed to by and between Customer and ConvergeOne.



### Customer Acceptance

Due to the competitive confidentiality of information provided the accompanying materials, but except to the extent disclosure is required under law, including but not limited to the Kansas open records act. ConvergeOne and City of Prairie Village shall keep all such information in the strictest confidence and shall not be divulged to persons other than City of Prairie Village employees unless authorized by ConvergeOne. ConvergeOne bases the recommendations for equipment, programs and services on information customer has furnished to ConvergeOne and on observations by ConvergeOne. While ConvergeOne believes the price and materials list to be sound, the degrees of success with which equipment, applications and services are applied to information, processing is dependent on many factors, some of which are beyond the reasonable control of ConvergeOne.

Any ConvergeOne Professional Services time accrued due to manufacturer related cases, bugs, hardware failures or Telco related issues requiring 2 Hours or less in total are at no charge for Fixed Fee engagements. Any time beyond these 2 hours (which we will give as customer satisfaction in appreciation for your business) will be billable to the customer. Manufacturers do not reimburse ConvergeOne for resolving their bugs. These are all unforeseen issues that are out of ConvergeOne’s control and are the responsibility of the manufacturer or Telco provider.

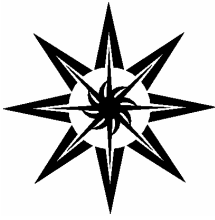
The signature below affirms and acknowledges that you have read the above contents in its entirety and agree to the terms and conditions of this proposal as outlined.

**Accepted City of Prairie Village by:**

<b>Name (Print):</b>	_____	<b>Title:</b>	_____
<b>Signature:</b>	_____	<b>Date:</b>	_____

**Accepted for ConvergeOne by:**

<b>Name (Print):</b>	_____	<b>Title:</b>	_____
<b>Signature:</b>	_____	<b>Date:</b>	_____



## COUNCIL COMMITTEE

Council Committee Meeting Date: April 15, 2019

Discuss draft ordinance (Chapter 11, Article 16) regulating the use of Unmanned Aerial Vehicles (UAV's)

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### BACKGROUND

As part of the Council Initiative List, the Governing Body asked the City Attorney and Staff to draft an ordinance regulating unmanned aerial vehicles (aka "drones") that may potentially pose a threat to the public safety as well as welfare concerns such as privacy, nuisance, and trespass concerns.

Draft 1 of the proposed ordinance was discussed at the January 22<sup>nd</sup>, 2019, City Council meeting. Council suggested continued review of definitions specific to hobby or recreational purposes and what qualifies as a commercial use.

The City Attorney and Police Chief will be prepared to discuss the latest draft changes and also update the Council on additional information including if charges could potentially be filed under existing Ordinance(s) or State Statutes.

### COUNCIL DIRECTION/OPTIONS

The City Attorney/Staff would like to discuss the draft ordinance and receive Council feedback. If the Council would like to move forward with adopting the proposed ordinance, the next step would be review by the City Prosecutor.

### ATTACHMENTS

- Draft 2 Ordinance (11-1601 through 11-1605)

Prepared By:

Wes Jordan  
City Administrator  
Date: April 10, 2019

ORDINANCE NO. 2403

**AN ORDINANCE RELATED TO THE REGULATION OF UNMANNED AERIAL VEHICLES (UAVs/DRONES), ESTABLISHING NEW ARTICLE 16 ENTITLED "UNMANNED AERIAL VEHICLES" TO CHAPTER XI, PUBLIC OFFENSES & TRAFFIC, TO THE CODE OF THE CITY OF PRAIRIE VILLAGE, KANSAS.**

**WHEREAS**, the Governing Body of and for the City of Prairie Village, Kansas, finds that unregulated use of unmanned aerial vehicles (UAVs) throughout the City has the potential to pose a threat to the public health, safety and welfare and may create public health, safety and welfare concerns, including, but not limited to, privacy, nuisance and trespass concerns.

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

**Section 1.** A new Article 16 entitled "Unmanned Aerial Vehicles" is hereby established in Chapter XI (Public Offenses & Traffic) of the Code of the City of Prairie Village, Kansas, as follows:

**ARTICLE 16. UNMANNED AERIAL VEHICLES**

**11-1601**

**DEFINITIONS.** For purposes of this Article, the following terms and phrases shall have the meaning set forth below:

- A. "City airspace" means the airspace above the land and waterways within the jurisdiction of the City.
- ~~B. "Hobby or recreational purposes" means a pursuit engaged in for relaxation, and not for business purposes and not for compensation or hire.~~
- B. "Recreational purposes" means any purposes governed or regulated pursuant to 49 U.S.C. 44809 (Section 349) of the FAA Reauthorization Act of 2018. "Recreational purposes" may include, but are not limited to, enjoyment, educational, or hobby purposes not otherwise governed or regulated as provided in Section 11-1603 of this Article.
- C. "Operate" means to pilot, steer, direct, fly or manage a UAV through the air ~~whether from within the UAV or remotely~~. The term "operate" includes managing or initiating a computer system that pilots, steers, directs, flies or manages a UAV.
- D. "Surveillance" means the gathering, without permission and in a manner that is offensive to a reasonable person expectation of privacy, of visual images, physical impressions, sound recordings, data, or other information involving the private, personal, business, or familial activities of another person, business or entity, or that otherwise intrudes upon the privacy, solitude, or seclusion of another person, business or entity, regardless of whether a physical trespass on to real property owned, leased, or otherwise lawfully occupied by such other person, business or entity, or into the city airspace above real property owned, leased, or otherwise lawfully occupied

by such other person, business or entity occurs in connection with such surveillance.

- E. "Unmanned aerial vehicle" or "UAV" means an aircraft that (1) is operated without the possibility of direct human intervention from within or on the aircraft, and (2) weighs less than 55 pounds at the time of operation, including the weight of any payload or fuel.
- F. "Weapon" means any instrument, article or substance that, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or serious physical injury.

11-1602

**OPERATING REGULATIONS.** All UAVs shall be operated in accordance with the Academy of Model Aeronautics Safety Code or such other community-based safety guidelines as the City may approve from time to time. Except as otherwise provided in Section 11-1603, and unless any of the following prohibitions are superseded by applicable state or Federal law, no person shall operate any UAV for recreational ~~or hobby~~ purposes in city airspace:

- A. intentionally or recklessly, directly over any person who is not involved in the operation of the UAV, without such person's consent;
- B. intentionally or recklessly, over an individual or over an open-air event venue wherein more than one hundred (100) individuals are gathered for such event, without the ~~venue owner's or operator's consent, and without the~~ consent of both the venue owner or operator and the event sponsor or organizer;
- C. intentionally or recklessly, over property that the operator does not own, without the consent of the property owner or such other person lawfully occupying the property; and subject to any restrictions that may be placed on the operation by the property owner or such other person lawfully occupying the property; provided, that the foregoing shall not prohibit operation of a UAV for recreational or hobby purposes in a city-owned park so long as the operator and UAV comply with all other requirements and restrictions of this Article;
- D. intentionally or recklessly, for the purposes of conducting surveillance;
- E. while under the influence of alcohol, or other drug or drugs, that renders the operator incapable of operating the UAV;
- F. that is equipped with a firearm or other weapon; or
- G. otherwise in a reckless or careless manner.

11-1603

**LIMITATIONS ON OPERATING REGULATIONS.**

- A. ~~Operations-Commercial operations~~ Authorized by the FAA. Notwithstanding the provisions of Section 11-1602, nothing

in this Article shall be construed to prohibit, limit or otherwise restrict any person who is authorized ~~by the Federal Aviation Administration to operate a UAV in city airspace, pursuant to Section 333 of the FAA Modernization and Reform Act of 2012 or a certificate of waiver, certificate of authorization or airworthiness certificate under Section 44704 of Title 49 of the United States Code of to fly a UAV as a commercial pilot pursuant to 14 CFR Part 107 (drones under 55 pounds) or under the Special Authority for Certain Unmanned Aircraft Systems at 49 USC § 44807 (drones over 55 pounds) by or~~ other Federal Aviation Administration grant of authority for a specific flight operation(s), from conducting such operations(s) in accordance with authority granted by the Federal Aviation Administration.

- B. Operations Prohibited by FAA—Clarification. Nothing in this Article shall be construed to authorize the operation of UAVs in city airspace in violation of any Federal statute or rules promulgated thereunder, including, but not limited to, any temporary flight restrictions or notices to airmen issued by the Federal Aviation Administration.
- C. Operations by City for Law Enforcement Purposes. Notwithstanding the provisions of Section 11-1602, nothing in this Article shall be construed to prohibit or restrict the use of a UAV by a law enforcement agency or for emergency response operations in accordance with applicable law.

**11-1604 SEVERABILITY.** Severability is intended throughout and within the provisions of this Article. If any section, subsection, sentence, clause, phrase, or portion of this Article is held to be invalid, illegal, or unconstitutional by any court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Article.

**11-1605** [NOTE TO DRAFT: Discuss adding provision on enforcement, or what class of violation it should be, should this ordinance be breached. Mission Hills ordinance is silent. Violation of Peeping Tom Ordinance is a Class A violation.]

**Section 2.** This ordinance shall take effect and be enforced from and after its passage, approval, and publication as provided by law.

**PASSED** by the City Council of the City of Prairie Village, Kansas on \_\_\_\_\_, 2019.

**APPROVED:**

Eric Mikkelson, Mayor

**ATTEST:**

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Adam Geffert, City Clerk

**APPROVED AS TO LEGAL FORM:**

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David E. Waters, City Attorney



**ORDINANCE NO. 2403**

**AN ORDINANCE RELATED TO THE REGULATION OF UNMANNED AERIAL VEHICLES (UAVs/DRONES), ESTABLISHING NEW ARTICLE 16 ENTITLED "UNMANNED AERIAL VEHICLES" TO CHAPTER XI, PUBLIC OFFENSES & TRAFFIC, TO THE CODE OF THE CITY OF PRAIRIE VILLAGE, KANSAS.**

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**11-1601**

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- B. "Recreational purposes" means any purposes governed or regulated pursuant to 49 U.S.C. 44809 (Section 349) of the FAA Reauthorization Act of 2018. "Recreational purposes" may include, but are not limited to, enjoyment, educational, or hobby purposes not otherwise governed or regulated as provided in Section 11-1603 of this Article.
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- D. "Surveillance" means the gathering, without permission and in a manner that is offensive to a reasonable expectation of privacy, of visual images, physical impressions, sound recordings, data, or other information involving the private, personal, business, or familial activities of another person, business or entity, or that otherwise intrudes upon the privacy, solitude, or seclusion of another person, business or entity, regardless of whether a physical trespass on to real property owned, leased, or otherwise lawfully occupied by such other person, business or entity, or into the city airspace above real property owned, leased, or otherwise lawfully occupied by such other person, business or entity occurs in connection with such surveillance.
- E. "Unmanned aerial vehicle" or "UAV" means an aircraft that (1) is operated without the possibility of direct human

intervention from within or on the aircraft, and (2) weighs less than 55 pounds at the time of operation, including the weight of any payload or fuel.

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- A. intentionally or recklessly, directly over any person who is not involved in the operation of the UAV, without such person's consent;
- B. intentionally or recklessly, over an individual or over an open-air event venue wherein more than one hundred (100) individuals are gathered for such event, without the consent of both the venue owner or operator and the event sponsor or organizer;
- C. intentionally or recklessly, over property that the operator does not own, without the consent of the property owner or such other person lawfully occupying the property; and subject to any restrictions that may be placed on the operation by the property owner or such other person lawfully occupying the property; provided, that the foregoing shall not prohibit operation of a UAV for recreational or hobby purposes in a city-owned park so long as the operator and UAV comply with all other requirements and restrictions of this Article;
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#### 11-1603

#### **LIMITATIONS ON OPERATING REGULATIONS.**

- A. Commercial operations Authorized by the FAA. Notwithstanding the provisions of Section 11-1602, nothing in this Article shall be construed to prohibit, limit or otherwise restrict any person who is authorized to fly a UAV as a commercial pilot pursuant to 14 CFR Part 107 (drones under 55 pounds) or under the *Special Authority for Certain Unmanned Aircraft Systems* at 49 USC § 44807 (drones over 55 pounds) by or other Federal Aviation

Administration grant of authority for a specific flight operation(s), from conducting such operations(s) in accordance with authority granted by the Federal Aviation Administration.

B. Operations Prohibited by FAA—Clarification. Nothing in this Article shall be construed to authorize the operation of UAVs in city airspace in violation of any Federal statute or rules promulgated thereunder, including, but not limited to, any temporary flight restrictions or notices to airmen issued by the Federal Aviation Administration.

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**11-1604 SEVERABILITY.** Severability is intended throughout and within the provisions of this Article. If any section, subsection, sentence, clause, phrase, or portion of this Article is held to be invalid, illegal, or unconstitutional by any court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Article.

**11-1605** [NOTE TO DRAFT: Discuss adding provision on enforcement, or what class of violation it should be, should this ordinance be breached. Mission Hills ordinance is silent. Violation of Peeping Tom Ordinance is a Class A violation.]

**Section 2.** This ordinance shall take effect and be enforced from and after its passage, approval, and publication as provided by law.

**PASSED** by the City Council of the City of Prairie Village, Kansas on \_\_\_\_\_, 2019.

**APPROVED:**

\_\_\_\_\_  
Eric Mikkelson, Mayor

**ATTEST:**

\_\_\_\_\_  
Adam Geffert, City Clerk

**APPROVED AS TO LEGAL FORM:**

\_\_\_\_\_  
David E. Waters, City Attorney

## COUNCIL INITIATIVE LIST - 1<sup>st</sup> Quarter 2019

INITIATIVE	PROJECT STATUS	STAFF
Review & update zoning code	<i>In progress - Staff plans to update the City Council in March regarding commercial landscaping, signage, SUP's, and wireless facilities with information coming before Planning Commission shortly thereafter.</i>	Brewster/Jamie
Comp Plan Amendments - Village Vision II	<i>In progress - Council appropriated up to \$80,000 to fund amendments. Phase 1 draft was presented to the Council in February.</i>	Brewster/Jamie
Drone Ordinance	<i>Council directed staff (6-4 vote) to proceed with the development of the ordinance with suggested changes and present it to the CCOW at a future meeting. Council also inquired if other existing laws could apply.</i>	Legal/Chief/Wes
PENDING INITIATIVES		
Review & update the City Code/Ordinances		
Review & update City Policies		
Review of Smoking Ordinance/e cigs		
TABLED		
Restructure of the Prairie Village Foundation	<i>Staff recommends this item remain tabled and evaluate the part time position of special event planner who is assigned as a staff liaison and how that impacts the structure/organization of the committee.</i>	
COMPLETED		
Phase 2 Building Code Guidelines	<i>Completed. Enacted by Council and effective Feb 1, 2019</i>	
Pedestrian crossing signage, education, enforcement, & evaluation	<i>New flashing beacons have now been added at 67<sup>th</sup> &amp; Delmar, 87<sup>th</sup> &amp; Somerset, and at 83<sup>d</sup> &amp; Juniper. Moved to completed by staff on Jan 1, 2019</i>	
Bike/Ped Master Plan	<i>Moved to completed by Council on July 16, 2018. Initial \$75,000 in funding approved by Council for 2019. Council also gave tentative approval for funding full implementation of pavement markings/signage in the 2020 Budget - \$140k.</i>	
Citizen Survey	<i>Moved to completed by Council on July 16, 2018.</i>	
Nondiscrimination Ordinance	<i>Completed. Although this item was not "officially" placed on the initiative list, it was brought forward by Councilmember(s) and staff/legal were directed to work on this initiative by Council vote within a specified time frame.</i>	

Removed by Council vote on July 16, 2018:

- Determine and develop economic strategies & incentives (Village Vision)
- Consider developing small business program: business incubator, look in JCC programs (Village Vision)
- Establish or reenergize dormant homes associations where they do not currently exist (Village Vision)
- Research the possibility of initiating a transportation program for seniors/special needs (Village Vision)
- Proactive approach for regional transit related topics (Village Vision)
- Explore a more proactive approach to location and size of wireless tower/facilities - *Guidelines will be updated in the zoning code project - largely controlled by FCC & Statutory Language*
- Review of Code of Ethics
- Initiate a residence welcome packet
- Change zoning code for public facilities such as city, county, and CFD2 owned property
- Research and review KP&F plan for new hires in PD
- Political sign regulations - *Guidelines will be updated in the zoning code project*
- Revisit use of Consent Agenda
- Explore use of alternative fuel vehicles - *Staff will be evaluating alternatives as part of their annual purchases*
- Determine level of involvement in Community of All Ages/residents aging in place (Village Vision)
- Program to encourage block parties (Village Vision)
- Cultivate an environment to celebrate diversity (Village Vision)
- MARC Solar Initiative - *Guidelines will be considered in the zoning code project*
- Explore the addition of a parks manager/programmer as part of City Staff to increase park programming (Village Vision)
- Explore the addition of a grant writer/researcher on City Staff
- Research policy for 1% of budget or CIP for Arts Council Projects

## MAYOR'S ANNOUNCEMENTS

Monday, April 15

### Committee meetings scheduled for the next two weeks:

Finance Committee Meeting	04/17/2019	4:00 p.m.
Environmental Committee Meeting	04/24/2019	5:30 p.m.
PV Foundation Meeting	04/23/2019	5:30 p.m.
VillageFest Committee Meeting	04/25/2019	5:30 p.m.
Finance Committee Meeting	05/01/2019	4:00 p.m.
Tree Board Meeting	05/01/2019	6:00 p.m.

=====

The Prairie Village Arts Council is pleased to feature artist Beth Grillo, Gary Johnson and James Kilmer during month of May. The artist reception will be held from 6:00 p.m. to 7:00 p.m. on Friday, May 10.

**INFORMATIONAL ITEMS**  
**April 15, 2019**

1. Tree Board Meeting Minutes - 3/03/19
2. Planning Commission Minutes - 3/05/19
3. Arts Council Minutes - 3/06/19
4. JazzFest Meeting Minutes - 3/09/19
5. Mark Your Calendar

**TREE BOARD**  
**City of Prairie Village, Kansas**

**Minutes**

**Wednesday – March 6th, 2019 6:00PM Meeting**  
**Public Works – Conference Room**  
**3535 Somerset Drive**

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

Other Attendees: Bridget Tolle, Sheila Myers, James Carney

**1) Review and Approve minutes from November 7th, 2018 meeting**

City Council member Sheila Myers asked to make one correction to the minutes. Under line item Arboretum and Tree Diversity, it stated, “Another committee had a link on the City website in the past, but it died off because it was no longer being maintained.” Ms. Myers said that committee actually wanted a link from the City website to a blog, but that it was not posted. Gavin motioned to approve the corrected minutes. Seconded by Mark Morgan. Approved unanimously.

**2) Arbor Day Event**

The Tree Board started the discussion on the Arbor Day Honoree Nominations. Deborah Nixon would like to nominate Suzanne Lownes, the Office Manager for Prairie Village Public Works, as an Arbor Day Honoree. Deborah Nixon stated that the Tree Board wanted to nominate Suzanne Lownes last year as well. Ms. Nixon then gave some background on Ms. Lownes, that she played a huge role as the City liaison for the Tree Board in the past by ensuring coordination and organization of events and Tree Board projects. This brought up the question Ms. Nixon had, if a City employee could be recognized as an Arbor Day Honoree. Then James Carney, Public Works Field Superintendent, passed out hard copies of the City Council Policy: CP217 – Arbor Day Honoree Nomination. It was stated that a City employee does not currently meet the criteria for Arbor Day Honoree. City Council member Sheila Myers said that she could try to bring it up and get in on the agenda for the next council meeting on March 18<sup>th</sup>.

The City received two official Arbor Day nomination applications; the first one was Marylin Uppman, who was nominated by Kathi Cook. The Tree Board discussed her volunteer contributions to the City, in which she served on committees and was a City Council member for six years. Sheila Myers asked if she had already been an honoree in the past, and after reading her contributions, found that she received the Community Spirit award in 2010. Deborah Nixon said that if a tree were planted in honor of Ms. Uppman, it would be designated as a memorial tree since she is deceased. The last honoree nomination was Kristin Riott, nominated by Laura Curry Sloan. Deborah Nixon discussed Ms. Riott’s environmental contributions to Prairie Village, how she currently works for Bridging the Gap, and her passion for the environment.

Since there are three nominations for the Tree Board, Kevin Dunn inquired if there can be more than one Arbor Day honoree. The Tree Board then discussed the Arbor Day Honoree criteria and



asked if changes can be made. Sheila Myers and the Tree Board made hand written edits to the policy, and Sheila said she could run this by the City Council. The changes includes editing some of the wording; changing individual to individual(s) under the criteria, adding organizations, including city employees, and for nominees to be considered for more than 3 years.

In case the criteria cannot be changed, and the Tree Board can only chose one nominee, they ranked the individuals on first, second, and third choice. Deborah Nixon led the voting process and Bridget Tolle tallied the nominees. The board ranked Kristin Riott as their first choice, Suzanne Lownes as their second choice, and Marylin Uppman as the third choice.

The Tree Board then discussed where and when the Arbor Day event will take place. Bridget Tolle suggested Weltner Park and the board agreed on that. The board decided to have the event on Saturday April 27<sup>th</sup> at 10am at Weltner Park. Pamela Jorgensen said that she could pick up coffee and donuts. Kevin Dunn asked if he could meet up with Bridget Tolle to pick a location in the park, and Bridget Tolle sad she could do that. Deborah Nixon asked Kevin Dunn if he could check with nurseries for tree donations, and Kevin Dunn said yes. Bridget Tolle said that the Tree Board has an annual budget of \$500 dollars, if they need to use some of that money to purchase a tree. Bridget Tolle also said that money could be used from the Municipal Foundation to purchase a tree. Deborah Nixon also suggested that a tree or trees could be purchased through the Arboretum Fund. Bridget Tolle said that she would ask the Public Information Officer to advertise the Arbor Day Event on the City website and social media.

Deborah Nixon asked who contacts the honoree's families and sends out the invitations. Bridget Tolle said that she believes that Suzanne Lownes has done that in the past, but she will check to make sure. Deborah Nixon also stated that there is usually an annual after-the-fact article on the Arbor Day event in the Village Voice. Bridget Tolle said that she would dig up those deadlines and follow up with the Tree Board. Sheila Myers stated that this article probably would not be in the Village Voice until July.

### **3) New Board Position**

Bridget Tolle explained that she has not yet received official Tree Board applications from City Hall yet. She stated that she was hoping to have them for the Tree Board to review, but that process has been delayed. Ms. Tolle said that she would get the applicants out as soon as she receives them.

### **4) American Elm Stump**

Bridget Tolle stated that she discussed options on recognizing the historical tree stump at Bennet Park with the James Carney. She said the most feasible option would probably be for the Tree Board to design a sign with pictures if they would like to, and the city could have it made and installed. James Carney said that this would have to be approved by the Parks and Recreation Committee. Mark Morgan explained all the previous options discussed to recognize the stump. These included preserving the stump with a sealant, making and displaying a sign with pictures and facts, labeling the rings of the tree with historical events, creating a plaque for the tree, or adding stools around the stump to further incorporate it into the nature play area. He also suggested taking picture of the stump, since it will not last forever, displaying that picture, and labeling those rings. Another idea would be to install a small plaque and have a link

or code displayed so that information on the tree could be accessed virtually. Kevin Dunn said that there is signage along the Indian Creek Trail that is a great example of how a ton of history summarized into one sign. Mark Morgan said he would look into finding some leads for pictures of the historical Elm in the past.

**5) Arboretum & Tree Diversity**

Deborah Nixon stated that she is currently filling out the application with ArbNet for the City's arboreta to potentially receive accreditation as a Level I Arboretum. That way, the City's arboreta could be on the Morton register, and be virtually viewed by the global community. Deborah Nixon explained the goals of the Prairie Village Arboretum, which will be added to this application. Nixon said that the Tree Board would need to have 25 tree species identified and labeled for accreditation, but that the goal would be to have 100 labeled arboretum trees. Bridget Tolle stated that she will count the current Arboretum trees that have been identified, and follow up with Deborah Nixon. Bridget Tolle also said that she will obtain the current acreage of the City's combined parks and let Deborah Nixon know. Sheila Myers said that she could also have this information obtained.

Bridget Tolle stated that she received a list of trees suggested by Kevin Dunn to be planted in the City parks to increase tree diversity. This list included many native species and evergreens. Bridget Tolle said that she would like to contact the City's current tree planting contractor, Rosehill Gardens, to see what they had available first. Ms. Tolle also said that this is a good year for Kevin's suggested list because several park Ash trees were removed last year, and new trees will be planted in their place this Fall. Kevin Dunn said that Rosehill would most likely not have certain species available, such as Sassafras and Persimmon trees. Mr. Dunn then said that Forest Keeling Nursery in eastern Missouri may have 5 gallon tree species from his list available. James Carney stated that Bridget Tolle could potentially begin a relationship with this nursery to obtain these types of trees. Deborah Nixon said that native species are being highly promoted to add to the landscape.

Gavin Jeter then started the discussion on the Arboretum Maps he is working on. He passed around sheets. He said that he has Brenizer, Franklin, Porter, Weltner, and Wassmer Parks left to collect data on. James Carney suggested doing Shliffke Park last because there will be some major construction there in the future. Mr. Carney also said that City staff will have their second meeting soon about updates to city website. Then a link to the arboretum map can be posted on the city website for the Tree Board to maintain. Sheila Myers said that another committee had a link on the City website in the past, but it died off because it was no longer being maintained. There would have to be someone to hand it down to in the future to keep the link going. Bridget Tolle said that she would also coordinate tree removals and new plantings with the Tree Board so that the maps can be updated. A QR code or link to the website could be potentially be displayed on Arboretum and/or park signs so the public can gain access to the information.

**6) Old Business**

Pamela Jorgensen discussed her work on promoting the Kansas Arbor Day Poster Contest for 5<sup>th</sup> Grade students to local schools. She said that she tried Belinder Elementary and did not hear back from the art teacher there. Deborah Nixon stated that the art teacher and vice principal at Corinth Elementary was also contacted, but was not interested. Ms. Nixon suggested reaching out to Boy Scout and Girl Scout troops. Gavin Jeter also suggested reaching out to a 4H club. Ms. Jorgensen said that she would like to get an early start this year on reaching out to schools for

the next annual poster day contest. Bridget Tolle said that she could reach out to Kim Bomberger, the Kansas State Forester for this region for information.

**7) New Business**

Sheila Myers discussed the Solar Ordinance and updates to the plan. Ms. Myers stated that only 37% of Prairie Village is suitable for solar panels because of all the trees, however trees act as carbon sinks themselves. Therefore, trees have immense environmental and sustainable benefits and they make Prairie Village unique. Wind turbines were also discussed as sustainable energy sources. Ms. Myers also said that the City could plant trees to benefit the environment. Myers stated that there is a huge residential push to have environmentally friendly energy sources. Ms. Myers asked if some trees capture carbon than others. Ms. Nixon then passed out sheets from the Mid America Regional Council from the past, which had a ton of information on the trees in Prairie Village.

Then, Deborah Nixon brought up the idea of planting specific species of evergreens as street trees. One in particular would be the Vanderwolf Pine aka *Pinus flexilis*. One benefit of evergreen trees is to have year round carbon sequestration. Bridget Tolle stated that she understands the environmental and aesthetic values of evergreens. However, Ms. Tolle did express one major concern. Because of their growth habit, these trees would cause sightline issues along city streets.

Deborah Nixon brought up Will Roth Gibson as then next potential speaker for the Fall Seminar. He promotes growing natives and rain gardens. Ms. Nixon then said that the Environmental Committee was looking for projects to work on with the Tree Board and that they could be involved with the Fall Seminar. It could be a big event. Ms. Nixon said that she would contact the Environmental Committee and talk to Will Roth Gibson as well. Sheila Myers said that Jori Nelson is the council chair for the Environmental Committee.

**8) The next meeting agenda**

The next meeting will be on April 3<sup>rd</sup>, 2019 at 6:00pm to discuss Arbor Day, the open board position, the arboretum, the Bennett stump, and the annual street tree planting project.

The meeting adjourned at 7:50pm. Minutes prepared by Bridget Tolle.

**PLANNING COMMISSION MINUTES**  
**March 5, 2019**

**ROLL CALL**

The Planning Commission of the City of Prairie Village met in regular session on Tuesday, March 5, 2019 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, James Breneman, Patrick Lenahan, Melissa Brown and Jeffrey Valentino.

The following individuals were present in their advisory capacity to the Planning Commission: Chris Brewster, City Planning Consultant; Jamie Robichaud, Deputy City Administrator; Ron Nelson, Council Liaison; and Adam Geffert, City Clerk/Planning Commission Secretary.

**APPROVAL OF MINUTES**

James Breneman noted that edits needed to be made to the minutes from the February 5, 2019 meeting, referencing the downspout discussion on page one. The third sentence of the second paragraph from the bottom should read: "Mr. Green stated that all downspouts are buried and extend ten feet from the building, and that all storm regulations and drainage requirements are being met, as stated in the master plan."

Jonathan Birkel said that paragraph five on page five should be changed to read: "Mr. Birkel asked if there was a way to show a significant trend in the reduction of retail in the next decade, and if projections can be made to determine how that will affect the city."

Patrick Lenahan moved for the approval of the minutes of the February 5<sup>th</sup> regular Planning Commission meeting with the suggested amendments. James Breneman seconded the motion, which passed unanimously.

**PUBLIC HEARINGS**

**PC2019-105 Conditional Use Permit**  
**Great Southern Bank**  
**5206 W. 95<sup>th</sup> Street**

Joel Marquardt of Archetexture Works was present to discuss the project, stating that the Great Southern Bank, located at 5206 W. 95<sup>th</sup> Street, is seeking approval to add a second drive-through window. The project will remove 14' from the west side of the building, and infill the area between the canopy and where the building is removed. The interior of the bank will be reduced in size. This change will also help ingress to and egress from the drive-through lanes. Marquardt noted that a supplier had been located to provide the same external surface material that is currently present on the building.

Mrs. Wallerstein asked if Mr. Marquardt had any concerns with the staff recommendations. He stated that he believed the measurements referenced in the sign recommendation are accurate and the site plan was scaled correctly.

Chris Brewster said that all drive-through facilities, whether existing or expanded, require a conditional use permit and public hearing. This drive-through was originally approved in 1993 as part of a final development plan. The Fire Department and Public Works Department have approved the plan. Mr. Brewster noted that a recommendation was made in the staff report regarding improvements to landscaping and developing a landscape plan, which is a condition of approval.

Mr. Breneman asked about a note on the drawing referencing an existing light pole. Mr. Marquardt stated that the pole had to be moved approximately five feet to the north in order to accommodate the new drive-through lane. Mr. Breneman also asked whether landscaping was a requirement for approval. Mr. Brewster stated that Gould Evans' Landscape Architect would need to sign off on the landscape plan. The recommendation is primarily focused on the existing island, which is currently empty. Mrs. Wallerstein stated that she would like to make landscaping the island a requirement which is included in the landscape plan. Mr. Marquardt felt that the bank owners would be amenable to the changes. Mr. Lenahan noted that all three locations cited during discussion are already identified and addressed in the Staff Report.

Mrs. Wallerstein opened the meeting for public comments at 7:18. Seeing none, the public comment portion of the meeting was closed at 7:18.

**Mr. Breneman made a motion to approve the conditional use permit with the four staff recommendations listed below:**

1. A drainage permit will be required from Public Works prior to construction.
2. The applicant shall verify the scale of the existing sign relocated on the South elevation. If a new sign is necessary, it should be smaller or reconfigured to be centered on that facade, and shall otherwise meet all sign standards.
3. A landscape plan be proposed and approved by staff in association with permit approvals, and in particular planting be specified for the existing island in front of the drive-up ATM, the buffer at the entry to the drive through, and the landscape peninsula near the handicapped parking area and building entrance. (All plantings shall ensure easy access to cars using the handicapped parking spaces.)
4. The conditional use permit shall expire if the use of the property is changed to a use other than a bank, and a new permit shall be required for drive through facilities supporting a different use.

**Melissa Brown seconded the motion, which passed unanimously.**

## NON-PUBLIC HEARINGS

No non-public hearings were scheduled.

## OTHER BUSINESS

### **Presentation and discussion of proposed zoning regulation changes**

Mr. Brewster stated that there were three working drafts of zoning ordinances provided in the meeting packet which included recommended changes by staff. The ordinances address solar energy standards, landscape standards and sign standards. He added that the solar ordinance was brought before the Planning Commission in March, 2017, to clarify how solar facilities can be integrated into a roof structure. Fully integrating panels into the roof can be less efficient, so there is generally a small gap between the roof and panels. The draft included in the meeting packet shows new recommended changes as well as the updates made in 2017.

### Alternative Systems

Mrs. Robichaud reported that a City Councilmember developed an alternate version of the solar guidelines, which differs from the updated version prepared by staff. The Council advised against presenting the Councilmember's document, and asked Mrs. Robichaud to provide a summary of the Council's discussion instead.

Mr. Breneman stated that in Paragraph D-1a, the phrase "collector panels integrated into the roof" should be struck. He also asked for an explanation of a passive solar energy system. Mr. Brewster stated that a passive system is something that isn't specifically designed for solar collection, such as a greenhouse, but that there may be some additional technical differences as well. Mrs. Wallerstein asked if the words "active" and/or "passive" should be struck from the "Compatibility" language in Section D. Mr. Brewster stated that he was not certain that existing code captured the difference between active and passive clearly. Mrs. Wallerstein recommended changing the first phrase of Compatibility to "The design of any solar system shall generally be compatible...". Ms. Brown asked that these systems should be identified as "solar *energy* systems" going forward.

Jeffrey Valentino noted that Section 2 addresses screening on non-residential buildings, stating that systems shall be "screened in a manner to other mechanical or rooftop equipment", and if used on a flat roof, mounting equipment should be "concealed from view at street level." Mr. Valentino added that the language is unclear as to whether screening is always required or not, and asked whether the ordinance will need to be revisited every time a new product that doesn't meet existing standards becomes available. Mrs. Robichaud stated that rooftop units typically have to be screened, and that there is language in the ordinance that states all solar energy systems that don't meet the guidelines can be approved by the Planning Commission through site plan approval. Ground-mounted systems and panel racks always require site plan approval.

Mrs. Robichaud gave a summary of the alternate energy system discussion at the March 4<sup>th</sup> City Council meeting. Many Councilmembers would like to make it easier for residents to utilize these systems. One Councilmember brought his own proposal to the meeting to generate discussion about systems that require Planning Commission approval. The Council asked if this was overly cumbersome for residents, and whether it was even necessary. Additionally, wind turbines are currently not allowed in residential areas, and some Councilmembers would like this changed as well. Mrs. Robichaud asked whether there were ways to allow alternative energy systems to be installed more easily by residents while maintaining the intent of regulations and the character of neighborhoods. Residential site plan approvals cost \$100. Ms. Brown suggested that the Council waive the fee.

Mrs. Wallerstein stated that the cumbersome element for residents was not the requirements of the ordinance, but rather the cost and the time required to come before the Planning Commission. Mrs. Robichaud stated that current zoning regulations allow for most solar panels to be installed without going to Planning Commission for site plan approval, but solar panels that project off the roof, are ground-mounted, or are unique in design would need to come to Planning Commission for approval.

Mr. Lenehan asked if there was a count of the types of solar energy systems have been installed in the City. Mrs. Robichaud stated that she could provide the number of permits, but would need to research the types that were installed. She added that she was unaware of any applications that have been denied. There was debate at the March 4<sup>th</sup> Council meeting about whether the requirement that mounting brackets be concealed is necessary. Mrs. Wallerstein stated that it would be interesting to find out how many panels installed in the City meet current regulations. She added that a white roof was recently approved for the Homestead tennis shed, and that Section 5 of the Zoning Ordinance requires panels to be black or earth-tone in color. As a result, panels will be much more noticeable due to the difference in color. She suggested that the language in Section 5 reflect the color of the roof.

Mr. Valentino suggested that a broader discussion about all alternative energy options would be more appropriate. Mr. Lenehan stated that ground-mounted and angled solar panels along with wind turbines draw attention to themselves in a way that can impact a neighborhood, so approval of these items should include the Planning Commission; reduced or waived fees would streamline that process. He added that in paragraph two, the phrase “and screened in a manner to other mechanical or roof-top equipment” is redundant, and makes the requirements stated in the paragraph less clear.

Mrs. Wallerstein asked the Commission if a recommendation should be made to the City Council that consideration of waiving or lowering fees would help incentivize solar installation. She also suggested further discussion at a joint meeting with the Council would be worthwhile. Ms. Brown asked if different examples of wind turbines could be presented at a future meeting.

## Landscape Standards

Mr. Brewster stated that some additions were added to the previous comments made by the Commission. The primary focus of this version is the consideration of exceptions, and to clarify criteria for site plan reviews, and when flexibility is available. Section 19.47.050 is just a placeholder at this time, and will need additional input to define rules for exceptions. Mrs. Wallerstein said that the Tree Board had made a recommendation of plantings and types of trees. Mr. Brewster stated that in Section 19.47.030-B, there is a reference made to coordination with the Tree Board to develop a list, or to combine its existing list with one created by the Landscape Architect. Mr. Valentino asked that the landscaping standards have as much flexibility as possible. Mrs. Robichaud stated that there is currently no commercial landscape standard, which provides the Landscape Architect the ability to be more flexible with the applicant. Mr. Brewster added that this standard would only provide a base set of enforceable rules for the Planning Commission to use for site plan applications.

Mr. Lenahan noted that some other cities use a points-based system for landscape requirements, in which applicants are given scores for different aspects of a project. He added that this draft version contains simple standards that are clear, concise and achievable for most projects. Further, the language about exceptions gives staff and the Commission some discretion in unique conditions. Mr. Birkel stated that it is important that these regulations be reasonable and not exceedingly onerous. Ms. Brown suggested a landscape review plan would be effective. Mr. Valentino noted that the current recommendations don't encourage anything unique or creative.

Mr. Breneman asked who would be responsible for determining whether the landscape material referenced in section 19.47.020-B is of exceptional quality. Mr. Brewster stated some of those determinations are already being made informally by the Landscape Architect, but the standard would allow for more consistency. Mrs. Wallerstein asked if there was a way to specifically call out projects with significant changes to a property in section 19.47.010-B (Applicability). Mrs. Robichaud stated that the language "any application that requires a site plan" would cover projects that make substantial changes. Mrs. Wallerstein asked that the Landscape Architect attend a future meeting so that the Commission can speak with him directly. Mr. Breneman asked if surrounding cities had landscape standards; Mr. Brewster responded that many do, and that some are quite cumbersome.

## Sign Standards

Mr. Brewster stated that it was very difficult to create sign design guidelines for section 19.48.080. The goal was to set the direction of what the Planning Commission would or would not approve, and how staff would address applications. What the standards allow will not change substantially; the intent was not to make changes, but to reorganize and clarify. The two biggest challenges are design quality aesthetics and balancing the owner and tenant needs in multi-tenant buildings. Mr. Brewster asked Commission members to review each section and ensure there is enough flexibility, particularly in sections 19.48.090-C and 19.48.100.



Mr. Lenahan stated that the Exceptions section in 19.48.090-C section is immediately followed by the Alternative Sign Plans in section 19.48.100. He asked what exceptions could not be addressed just by an alternative sign plan. Mr. Brewster said that the alternative sign plans were generally meant for larger-scale projects, whereas the exceptions process would generally be used on a site-by-site basis.

With no further input about the presentation, discussion was closed.

### **Planning Commission annual training**

The Planning Commission annual training presentation will be provided at the April 2<sup>nd</sup> meeting.

### **NEXT MEETING**

Adam Geffert stated that only one application had been received for the April meeting, which is a site plan application for antenna and radio replacement at the water tower located at 7801 Delmar.

### **ADJOURNMENT**

With no further business to come before the Commission, Chairman Nancy Wallerstein adjourned the meeting at 9:07 p.m.

Nancy Wallerstein  
Chair

Prairie Village Arts Council  
Wednesday, March 6<sup>th</sup>, 2019  
5:30 p.m.  
Prairie Village City Hall – 7700 Mission Road  
Multi-Purpose Room

At 5:30 Brooke Morehead, Chair, called the meeting to order. Arts Council members present were Vice Chair, Ted Odell, Dan Andersen, Shelly Trewolla, Art Weeks, Betsy Holliday, and Sheila Evans. Al Guarino and Julie Flanagan were on speaker. Also present at 5:30 was Jamie Robichaud, Deputy City Administrator.

After the **Call to Order**, the meeting proceeded to **Roll Call**, **Approval of Agenda**, and on motion by Dan and seconded by Shelly, all ten items under **Consent Agenda** were unanimously approved. Brooke then gave a **City Council Report**, stating that at the meeting nothing specifically pertained to the Arts Council. Jamie then directed the group's attention to the **Financial Report** in this meeting's packet of documents. Dan remarked that in the 2019 actual column there would be an additional \$2,844.45 of revenue under entry fees from the upcoming photography show's call for entry.

Under **Ongoing and New Business** Dan directed the group's attention to a **profit and loss statement** in the meeting packet showing consecutive columns from "2016 actual" to "2020 requested." The "2019 revised" column contained several amounts added to the "2019 budgeted" column, some referring to a chamber music series.

Sheila Evans then made her presentation for the "**Chamber Music in the Chamber**" **series**. The goal of this new venture for the Arts Council is to take its function beyond the visual arts. The program would be the third Friday in May, September and November of 2019, and then six third Friday in 2020. The setting would be in the city hall conference chamber in cabaret style with musicians mingling with guests. Tickets \$20...and cash bar. All arts council members were very enthusiastic about this new idea. Jamie cautioned about possible additional pressure on city hall staff, and Brooke suggested perhaps a trade-off such as discontinuing receptions/openings for the monthly events might take pressure off the staff. On motion by Shelly and seconded by Dan, the council approved the concept of "Chamber Music in Chamber." Returning the discussion to the "2019 revised" column of the profit and loss statement, the committee agreed to reduce the amount in the Merchandise Expense row to \$500 from \$1,500, and in the Marketing row to \$8,200 from \$10,200. **Sheila will present her proposal to the city council on Monday the 18<sup>th</sup>, when the 2020 budget request will also be presented.** She and Dan will meet together to discuss this.

Continuing with new business, Brooke would like to see the meeting date for the arts council moved from Wednesday to the first Tuesday of the month. If this comes to pass, Dan would like to see the date defined as the Tuesday before the second Friday of the month to match his travel with reception dates. Further discussion of this will be on next month's agenda. Dan will speak to Paul Tosh about darkening the logo for

Future of the Arts. There being no further financial business, the meeting adjourned at 7:00 and Brooke, Ted, Jamie, Al and Julie departed.

### **Planning Committee as a Whole**

David Tai, software architect, gave a twenty minute power point presentation of his concept of Improvements to our web design. Shelly will send him some pictures to work with and Dan will continue to communicate by email. Shelly asked members how many categories there should be for awards in the upcoming juried show the Art of Photography. The group came up with five categories. \$500 for first prize \$100 for second prize for a total of \$3,000 in awards. Betsy asked for help in setting up for this Friday's opening reception. Dan and Ricardo will lend a hand.

**JazzFest Committee**  
**Meeting Minutes – March 19, 2019**

**Attendance**

JD Kinney, Joyce Hagen Mundy, John Wilinski, Mike Polich, Alex Toepfer, Elissa Andre, Ed Lastname, Jim Barnes, Meghan Buum

**Budget**

JD Kinney informed the committee that he presented the budget to the City Council on March 18 and they approved a \$10,000 contribution for the 2020 festival. The 2019 festival contribution was approved last year.

**Talent**

Alex Toepfer discussed options for the 2019 lineup. He is envisioning a locally oriented lineup focused on the identity of KC Jazz – mostly big bands that would be both accessible to the audience and creative. He mentioned options such as the Vine Street Rumble, Brass and Boujee, Peoples' Liberation, the KC Jazz Orchestra, or the American Jazz Orchestra. He would like to see a vocal component as well. The committee agreed with the direction, and Alex will work to finalize arrangements.

**Marketing**

Elissa and JD reviewed the marketing strategy. New options for advertising were discussed. Elissa will look into KKFI as a potential new location for ads. Elissa said she wanted to make an effort to distribute press releases marking the 10<sup>th</sup> anniversary to generate news stories.

The committee discussed getting the fans printed as soon as the lineup is finalized so that they could be used as a promotional item at VillageFest this year.

New banners need to be purchased to display at the parks. Meghan will get the sizes from Public Works to start getting quotes.

**Infrastructure**

Jim has gotten estimates from SECT for lighting, sound, and a smaller stage of 24 x 20 rather than the previous 22 x 24. Alex stated that the committee could borrow risers from SM East in addition to the chairs and stands.

JD will follow up with EJ and Josh to see if they could take over the tent, table, and miscellaneous infrastructure component. The Environmental Committee and Arts Council will display at the event, and Meghan will work to see what both committees will need to set up.

**Food**

No update

**Sponsorships**

Joyce and JD will work on updating the sponsorship levels to start distributing.

**Volunteers**

No update

**Other**

Ed presented the committee with the idea of collaborating with a local swing performance group to offer lessons during the festival. The committee was interested in pursuing the idea further.

Alex volunteered to the SME Band Boosters to collect trash and recycling in exchange for a donation.

Next meeting: April 9, 2019 at 5:30 p.m.

**Council Members  
Mark Your Calendars  
April 15, 2019**

**May, 2019**

May 6

May 10

May 20

**Featured Artists: Beth Grillo, Gary Johnson, James Kilmer**

City Council Meeting

Artist Reception in the R.G. Endres Gallery

City Council Meeting

**June, 2019**

June 3

June 14

June 17

**Featured Artists: Ted Denton, Hank Hall, P. Ebel, Maegan Kirschner**

City Council Meeting

Artist Reception in the R.G. Endres Gallery

City Council Meeting

**July, 2019**

July 1

July 12

July 15

**The Seniors Art 2019**

City Council Meeting

Artist Reception in the R.G. Endres Gallery

City Council Meeting