

Members of the Governing Body will participate by video call-in only due to the COVID-19 pandemic. The public will be able to view the meeting at:

<https://www.facebook.com/CityofPrairieVillage>

**COUNCIL MEETING AGENDA
CITY OF PRAIRIE VILLAGE
Council Chambers
Monday, May 03, 2021
6:00 PM**

- I. **CALL TO ORDER**
- II. **ROLL CALL**
- III. **PLEDGE OF ALLEGIANCE**
- IV. **APPROVAL OF THE AGENDA**
- V. **PRESENTATIONS**

End of session update - Little Government Services

National Police Week proclamation

- VI. **PUBLIC PARTICIPATION**

If you would like to speak live during the public participation portion of the meeting, please notify City Clerk Adam Geffert at cityclerk@pvkansas.com, and provide your name, address, and email address prior to 3 p.m. on May 3. The City will provide you with a link to join the meeting and will call on those who signed up to speak for up to 3 minutes once public participation begins.

To submit written comment to Council, please email cityclerk@pvkansas.com prior to 3 p.m. on May 3 to be shared with Councilmembers prior to the meeting.

- VII. **CONSENT AGENDA**

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

By Staff

- 1. Approval of regular City Council meeting minutes - April 19, 2021
- 2. Consider appointment to the Insurance Committee
- 3. Purchase request for police vehicle

VIII. **COMMITTEE REPORTS**

Planning Commission

PC2021-106: Consider Ordinance 2448 to approve a revised Special Use Permit for a senior living facility at 7105 Mission Road
Jamie Robichaud

PC2021-107: Consider Ordinance 2449 to approve a Special Use Permit for an animal care and boarding facility at Suite 210 of 7600 State Line Road
Jamie Robichaud

IX. **MAYOR'S REPORT**

X. **STAFF REPORTS**

XI. **OLD BUSINESS**

XII. **NEW BUSINESS**

COU2021-39 Consider adopting amended animal ordinance
Tim Schwartzkopf

COU2021-40 Consider approval of a contract with Pavement Management, LLC for the 2021 crack seal/micro surfacing program
Keith Bredehoeft / Melissa Prenger

COU2020-41 Consider 2022-2026 County Assistance Road System (CARS) program
Keith Bredehoeft / Melissa Prenger

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

2022 Capital infrastructure program budget presentation
Keith Bredehoeft / Melissa Prenger

COU2021-42 Consider traffic calming on 82nd Street from Somerset Drive to Roe Avenue
Keith Bredehoeft

Update on marijuana ordinance research
Tim Schwartzkopf

XIV. **ANNOUNCEMENTS**

XV. **ADJOURNMENT**

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

CITY OF PRAIRIE VILLAGE

Proclamation

National Police Week

May 9 through May 15, 2021

WHEREAS, there are more than 800,000 law enforcement officers serving in communities across the United States, including the dedicated members of the Prairie Village Police Department; and

WHEREAS, since the first recorded death in 1786, more than 22,000 law enforcement officers in the United States have made the ultimate sacrifice and been killed in the line of duty; and

WHEREAS, the names of these dedicated public servants are engraved on the walls of the National Law Enforcement Officers Memorial in Washington, D.C.; and

WHEREAS, 394 new names of fallen heroes are being added to the National Law Enforcement Officers Memorial this spring, including 295 officers killed in 2020 and 99 officers killed in previous years; and

WHEREAS, the service and sacrifice of all officers killed in the line of duty will be honored during the National Law Enforcement Officers Memorial Fund's 33rd Annual Candlelight Vigil, happening virtually on the evening of May 13, 2021; and

WHEREAS, May 15th is designated as Peace Officers Memorial Day, in honor of all fallen officers and their families, and U.S. flags should be flown at half-staff;

Now, therefore, I, Eric Mikkelson, Mayor of the City of Prairie Village, formally designate the week of

May 9 through May 15, 2021 as “National Police Week”

in the City of Prairie Village, Kansas, and publicly salute the service of law enforcement officers in our community and in communities across the nation.

Mayor Eric Mikkelson

Adam Geffert, City Clerk



**CITY COUNCIL
CITY OF PRAIRIE VILLAGE
APRIL 19, 2021**

The City Council of Prairie Village, Kansas, met in regular session on Monday, April 19, 2021, at 6:00 p.m. Due to the COVID-19 pandemic, Councilmembers attended a virtual meeting via the Zoom software platform. Mayor Mikkelson presided.

ROLL CALL

Roll was called by the City Clerk with the following Councilmembers in attendance remotely via Zoom: Chad Herring, Jori Nelson, Inga Selders, Ron Nelson, Tucker Poling, Bonnie Limbird, Sheila Myers, Piper Reimer, Dan Runion, Courtney McFadden, Ian Graves and Terrence Gallagher. Staff present via Zoom: Byron Roberson, Chief of Police; Keith Bredehoeft, Public Works Director; City Attorney David Waters, attorney with Lathrop & Gage; Wes Jordan, City Administrator; Jamie Robichaud, Deputy City Administrator; Tim Schwartzkopf, Assistant City Administrator; Meghan Buum, Assistant City Administrator; Nickie Lee, Finance Director; Adam Geffert, City Clerk.

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

Mr. Nelson made a motion to approve the agenda for April 19, 2021. Mrs. McFadden seconded the motion, which passed unanimously.

PRESENTATIONS

- **Teen Council recognition** - Mayor Mikkelson recognized Teen Council members Macy Cherra and Sydney Newton, and presented them certificates of achievement.
- **Presentation of energy audit by Energy Solutions Professionals** - Jeff Flathman and Ron LaCombe from Energy Solutions Professionals shared results from the audit that identified investments the City could make to improve energy efficiency. Mr. Flathman documented steps the City had already taken, including the installation of geothermal heating and cooling and efficient pool pumps. He noted that additional opportunities existed, such as the installation of LED lighting, solar panels, and insulation. Projected costs and savings were also shared.

PUBLIC PARTICIPATION

No requests to address the Council were received.



CONSENT AGENDA

Mayor Mikkelson asked if there were any items to remove from the consent agenda for discussion.

1. Approval of regular City Council meeting minutes - April 5, 2021
2. Approval of Expenditure Ordinance #3001
3. Approval of short-term special use permit for Franklin Park event
4. Consider bid award for purchase of swimming pool chemicals
5. Consider bid award for highway rock salt
6. Consider approval of new residential sustainability grant program

Mrs. Myers asked to remove item #6 for further discussion.

Mrs. McFadden made a motion to approve consent agenda items #1 through #5. A roll call vote was taken with the following votes cast: “aye”: Herring, J. Nelson, Selders, R. Nelson, Poling, Limbird, Myers, Reimer, Runion, McFadden, Graves, Gallagher. The motion passed unanimously.

Mrs. Myers stated that she did not feel the proposed sustainability grant was appropriate at a time when many residents were struggling to pay increased property taxes.

Mr. Graves made a motion to approve item #6 on the consent agenda. Mrs. McFadden seconded the motion. A roll call vote was taken with the following votes cast: “aye”: Herring, J. Nelson, Selders, R. Nelson, Poling, Limbird, Reimer, McFadden, Graves, Gallagher; “nay”: Myers, Runion. The motion passed 10-2.

COMMITTEE REPORTS

- Ms. Reimer said that the United Community Services’ Drug and Alcohol Council met on April 15, and discussed updates to the grant application process. The Council also shared their appreciation for the City’s decision to increase funding to the program in 2022.
- Ms. Selders reported that the JazzFest Committee met on April 8 to discuss the prospect of holding a modified event in 2021. Proposed changes included a shorter schedule, fewer volunteers, and limited attendance.
- Mr. Runion said that Jeff White of Columbia Capital gave a presentation on pension obligation bonds at the Police Pension Committee meeting the prior week. During the meeting, a motion to have Mr. White deliver the presentation to City Council did not pass.
- Ms. Limbird noted that the winners of the Arts Council’s 2021 Art of Photography competition had been announced and could be viewed on the Council’s website: <https://www.artspv.org/aop2021.html>. Additionally, the first annual Prairie Village



Art Walk would be held on June 11 and include a ribbon cutting for the “Fifties Freedom in the Village” sculpture at 71st Street and Mission Road.

- Mr. Herring stated that the Finance Committee would meet on April 22.
- Mrs. Myers said that she was interested in having Jeff White give his Police Pension Committee report to Council at an upcoming meeting. Mayor Mikkelson stated that she could make a motion to have the presentation during New Business.
- Mr. Gallagher shared that the Prairie Village Foundation had met the prior week to discuss its budget and consider programs for the fall. He added that Foundation President Ann Lilak was stepping down after many years, and suggested that she should be recognized at a future Council meeting. Marianne Noll would become the new President, and former Mayor Laura Wassmer would become the new Vice-President.

MAYOR’S REPORT

- The Mayor provided an update on the COVID-19 pandemic, noting that approximately 400,000 vaccine doses had been administered in Johnson County. He stated that hospitalizations, the percent positive rate and deaths remained low.
- The Mayor said that there were positive signs of an economic rebound, sharing that the unemployment rate had dropped to 6% nationally.
- The Mayor reported that the new “Stretch Zone” fitness center in the Corinth Shops would hold a ribbon cutting ceremony on April 27.
- The Mayor stated that the City was still expected to receive funding from the American Rescue Fund, though details of how the money could be used were not yet available.
- The Mayor co-chaired a First Suburbs meeting on April 16, at which community land trusts were discussed.
- The Mayor attended the second Johnson County Charter Commission meeting, at which leaders were elected and a meeting schedule was set.
- The Mayor shared that the recent Meadowbrook classic auto show was a success.
- The Mayor noted that a proclamation for Earth Day 2021 was included in the meeting packet.
- The Mayor said he would be giving two presentations to residents at the Claridge Court senior living facility on April 27.
- The Mayor said that the “KC Rising” economic development group would be hosting a virtual event on May 6.

STAFF REPORTS

- Chief Roberson said that the Police Department was allowed to employ a total of 47 sworn officers, but had struggled to achieve full staffing. Currently, the Department had 42 officers, four of whom had not yet completed training. He added that several officers either retired or changed careers over the past year.



The Chief said that department salaries in Prairie Village were very competitive with other cities in the region, and that no officers had been lost to other agencies due to pay.

- Mr. Schwartzkopf reported that he was working on a plan to return to in-person Council meetings. He added that he was researching diversity and inclusion training per the recommendation of the Diversity Committee, and would share information with Council at an upcoming meeting.
- Ms. Buom said that a blood drive would be held at City Hall on April 20 and 21. She noted that the registration period for pool passes and summer aquatic programs had opened, and that 55 lifeguards had been hired for the pool season.

OLD BUSINESS

Ms. Reimer stated that she was disappointed to see photos of the Meadowbrook auto event that showed many attendees not wearing masks, indicating that mask-wearing was not being enforced by the event sponsors.

NEW BUSINESS

2022 Budget

- **2021 estimated revenue and 2022 preliminary general fund revenue assumptions**

Ms. Lee stated that COVID-19 had a negative impact on several specific 2020 revenues. She said that it was anticipated that revenues would rebound in 2022, and that there was a potential for the City to recover a portion of lost revenue through the American Rescue Plan funding.

The Preliminary General Fund Revenue Assumptions for the 2022 Budget included:

- A projected 4% increase in overall General Fund revenue over the 2021 budget, and 7% growth over 2020 actuals.
 - A projected total assessed value increase of 5.44% for 2021. If captured, it would result in a 5% increase in 2022 property tax revenue over the 2021 budget with the mill levy remaining at the 2021 rate of 19.321.
 - A decrease in franchise fee revenue, but a slight increase in sales tax collection due to new businesses and use tax collection.
- **2022 decision packages**

Ms. Lee said that the 2022 preliminary decision package list had been updated based on discussion at the April 5 Council meeting. She added that staff was seeking guidance to finalize the list before being reviewed by the Finance Committee on April 22.



The preliminary decision package list for the 2022 budget included:

- New Public Works Full-Time Employee
- Civic Center Feasibility Study
- Sustainability Grants
- Energy Efficiency Audit Implementations
- 5-Year Salary Survey
- Police Department Canine Unit
- Carbon Emissions Tracking Services
- Annual Diversity Training
- Building Permit Software
- Property Tax Relief Grant program

Mr. Gallagher asked if the annual diversity training would be funded through the budget approved for the Diversity Committee. Mr. Schwartzkopf stated that the \$10,000 requested in the decision package was separate from the Diversity Committee budget. Mr. Jordan added that each decision package item would be reviewed by the Finance Committee individually before being brought back to Council for final approval.

After discussion about whether the Finance Committee should consider a decision package providing increased funding to the police pension fund, Mrs. Myers made a motion to have Jeff White give a presentation about the use of obligation bonds to fund the pension to the City Council. Ms. Reimer seconded the motion. A roll call vote was taken with the following votes cast: “aye”: J. Nelson, Myers, Reimer, Runion, Gallagher; “nay”: Herring, Selders, R. Nelson, Poling, Limbird, McFadden, Graves. The motion failed 7-5.

Ms. Reimer made a motion that the City Council move to the Council Committee of the Whole portion of the meeting. The motion was seconded by Mr. Nelson and passed unanimously.

COUNCIL COMMITTEE OF THE WHOLE

COU2021-39 Consider amending animal ordinance

Ms. Selders stated that she and Mr. Poling requested that the following language be removed from subsection (a) of Section 2-123, “Cat and Dog Control” in the Municipal Code:

“If a neighbor complains orally or in writing to the person responsible for a cat, that the cat is entering upon the neighbor’s property, then the cat’s presence on the neighbor’s property at any time subsequent to the neighbor’s complaint shall constitute a violation of this section.”



Ms. Selders said that the change had been reviewed by the Police Department's Animal Control Officers, and that they had no objections.

Mr. Poling made a motion to recommend approval of the amended ordinance to the City Council as presented. Ms. Selders seconded the motion, which passed 9-3, with Mr. Runion, Mrs. McFadden and Mr. Gallagher in opposition.

Ms. Limbird moved that the City Council end the Council Committee of the Whole portion of the meeting. The motion was seconded by Mr. Nelson and passed unanimously.

At 8:53 p.m., Mrs. McFadden made a motion for the City Council to recess into executive session for a period of 20 minutes for a preliminary discussion of the acquisition of real property, pursuant to K.S.A. 75-4319(b)(6). Ms. Limbird seconded the motion, which passed unanimously.

At 9:13 p.m., the Council resumed the open meeting. Mrs. McFadden made a motion for the City Council to recess into executive session for a period of 10 minutes to continue a preliminary discussion of the acquisition of real property, pursuant to K.S.A. 75-4319(b)(6). Ms. Limbird seconded the motion, which passed unanimously.

The open meeting resumed at 9:23 p.m.

ANNOUNCEMENTS

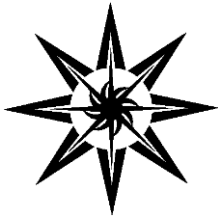
Announcements were included in the Council meeting packet.

ADJOURNMENT

Mrs. McFadden made a motion to adjourn the meeting. The motion was seconded by Mr. Nelson, and passed unanimously.

Mayor Mikkelson declared the meeting adjourned at 9:24 p.m.

Adam Geffert
City Clerk



MAYOR

**Council Meeting Date: May 3, 2021
CONSENT AGENDA**

Consider Appointment to the Insurance Committee

RECOMMENDATION

Mayor Mikkelson requests Council ratification of the appointment of Sabrina Conway to the Prairie Village Insurance Committee.

BACKGROUND

Sabrina works in the Commercial Insurance Department for Lockton Companies, with an emphasis on healthcare systems. She has worked in the insurance industry for 10 years.

ATTACHMENTS

Volunteer Application

PREPARED BY

Adam Geffert
City Clerk

Date: April 28, 2021

Submission # 817538
IP Address 68.89.236.143
Submission Recorded On 03/09/2021 10:58 AM
Time to Take Survey 3 minutes, 24 seconds

Page 1

Full Name

Sabrina Conway

Full Address

KS PRAIRIE VLG 66208-2172

***Email**

Phone

Select your City Ward ?

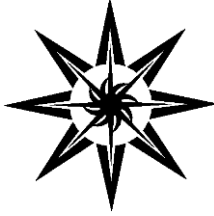
Ward 1

***Please select your FIRST committee choice** ?

Insurance Committee

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

I have been at Lockton Companies for 5 years in the commercial insurance department, with an emphasis on healthcare systems. Prior to that I worked for a small commercial agency for 3 years. I have worked in the industry for 10 years and would love the opportunity to assist the city in any way I could.



POLICE DEPARTMENT

Council Meeting Date: May 3rd, 2021

CONSENT AGENDA:

PURCHASE REQUEST FOR POLICE VEHICLE

RECOMMENDATION

Staff recommends the purchase of one (1) 2021 F-150 Crew Cab to replace the old community service officer truck.

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

COUNCIL ACTION REQUESTED ON May 3rd, 2021.

BACKGROUND

On an annual basis, the Police Department replaces older police units due to age, mileage, and/or maintenance problems. The purchase of this unit will allow the transfer of all current equipment from the old CSO truck into this new vehicle, reducing costs in building out the vehicle after purchase. The Department is seeking authorization to purchase this unit at a cost of \$26,349. The vehicle will be purchased from Shawnee Mission Ford, who was awarded the 2021 MACPP Metro Bid.

This purchase was previously approved by the City Council as part of the 2021 Public Safety Budget.

FUNDING SOURCE

01-03-23-8005-000 / \$27,364

PREPARED BY

Captain Eric McCullough

Patrol Commander

Date: April 16, 2021



PC2021-106: Consider Ordinance 2448 to approve a revised Special Use Permit for a senior living facility at 7105 Mission Road

RECOMMENDATION

Make a motion to accept the Planning Commission's recommendation and approve PC2021-106.

BACKGROUND

The applicant is Tutera Senior Living and Healthcare, doing business as The Village at Mission Property, LLC. They have a contract to purchase the existing Brighton Gardens facility located at 7105 Mission Road and renovate the property through an addition and interior remodeling to reconfigure spaces. The applicant is not planning to add capacity/additional beds to the facility - the goal of the planned renovations is to bring the amenities, care facilities, and living units more into compliance with typical industry offerings for care services. The existing facility was developed in 1997 through a special use permit granted by the City. Due to the planned renovations to the site, an amended special use permit approval is required.

The Planning Commission held a public hearing on April 6 remotely via Zoom. Nobody submitted comments beforehand and nobody was present in the meeting to speak in favor or against the application. The Planning Commission made findings of fact based on the required factors to consider when granting a special use permit and voted unanimously to recommend approval of this amended Special Use Permit to the City Council subject to the following conditions:

1. The changes are limited to those shown on the proposed site plan associated with the application, or any additional conditions implemented by Planning Commission.
2. The proposal assumes no increase in facility capacity, which was previously approved with 164 beds and approximately 30 staff members at maximum shift. Any change in interior operations that increase beyond this anticipated capacity, licensed bed count, or other unanticipated activity, may require additional parking improvements.
3. The application will need to demonstrate adequate on-site detention and have a drainage study approved by Public Works prior to issuing building permits.
4. The landscape plan should be revised to reflect the following:
 - a. The grouping of three new evergreen trees on the northwest edge be increased to seven.
 - b. The grouping of six new evergreen trees on the northeast edge be increased to between 11 and 15.
 - c. The species of these trees should be Green Giant Arborvitae, or similar species to be approved by staff based on availability.

- d. Prior to issuance of permits, final plans should include the species and size of plants.
5. The applicant acknowledges the City's interest in making a trail connection to the park at some point in the future, and should the City advance further than conceptual design or funding, the City and the applicant will work together to determine if a connection can be made in each party's mutual interests.
6. All other conditions of the original special use permit (#97-02, Ordinance 1917) remain in effect, primarily that the permit can be revoked for any violations of the permit, approved site plan, or other city ordinance.

An excerpt of the meeting minutes pertaining to the application are attached for the Council's review.

A special use permit application requires the City Council to act in its quasi-judicial role. When acting in this capacity, rather than a legislative capacity, the governing body must set aside personal opinions and, like a judge, apply the law to facts presented in the public record, taking into consideration the following criteria, outlined in [Section 19.28.035 of the Zoning Regulations](#):

1. The proposed special use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations, and use limitations.
2. The proposed special use at the specified location will not adversely affect the welfare or convenience of the public.
3. The proposed special use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.
4. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the special use will not dominate the immediate neighborhood so as to hinder development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the special use will so dominate the immediate neighborhood, consideration shall be given to:
 - a. The location, size, nature, and height of buildings, structures, walls, and fences on the site; and
 - b. The nature and extent of landscaping and screening on the site.
5. Off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations, and such areas will be screened from adjoining residential uses and located so as to protect such residential uses from injurious effect.
6. Adequate utility, drainage, and other such necessary facilities have been or will be provided.
7. Adequate access roads or entrance and exit drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.

8. Adjoining properties and the general public shall be adequately protected from any hazardous or toxic materials, hazardous manufacturing processes, obnoxious odors, or unnecessarily intrusive noises.
9. Architectural style and exterior materials are compatible with such style and materials used in the neighborhood in which the proposed building is to be built or located.

An analysis of all of these factors is provided in the attached Planning Commission staff report.

According to Section [19.52.040 of the Zoning Regulations](#), the Governing Body can take the following actions on a special use permit recommendation from the Planning Commission:

1. Adopt the Planning Commission's recommendation by a simple majority (7 votes including the Mayor)
2. Override the Planning Commission's recommendation by a 2/3 majority vote of the entire Governing Body (9 votes including the Mayor)
3. Return the recommendation to the Planning Commission with a statement specifying the basis for the Governing Body's failure to approve or disapprove by a simple majority. The Planning Commission can then submit the original recommendation or submit a new and amended recommendation. The Governing Body then can adopt or amend the recommendation by a simple majority (7 votes) or take no further action.

Graham Smith, the City's Planning Consultant, will be present at the meeting to provide a short presentation and answer any associated questions. The applicant will also be present in case there are any questions.

ATTACHMENTS

Ordinance 2448

Planning Commission Staff Report

Special Use Permit Application

Excerpt from April 6, 2021 Planning Commission Minutes

PREPARED BY

Jamie Robichaud

Deputy City Administrator

Date: April 27, 2021

ORDINANCE 2448

AN ORDINANCE APPROVING AN AMENDMENT TO THE SPECIAL USE PERMIT FOR A SENIOR LIVING FACILITY AT 7105 MISSION ROAD

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

Section I. **Planning Commission Recommendation.** That having received a recommendation from the Planning Commission; having found favorably on the findings of fact, proper notice having been given and hearing held as provided by law and under the authority of and subject to the provisions of the Zoning Regulations of the City of Prairie Village, Kansas, that the City Council approve an amendment to the Special Use Permit for a senior living facility at 7105 Mission Road, subject to the following conditions:

1. The changes are limited to those shown on the proposed site plan associated with the application, or any additional conditions implemented by Planning Commission.
2. The proposal assumes no increase in facility capacity, which was previously approved with 164 beds and approximately 30 staff members at maximum shift. Any change in interior operations that increase beyond this anticipated capacity, licensed bed count, or other unanticipated activity, may require additional parking improvements.
3. The application will need to demonstrate adequate on-site detention and have a drainage study approved by Public Works prior to issuing building permits.
4. The landscape plan should be revised to reflect the following:
 - a. The grouping of three new evergreen trees on the northwest edge be increased to seven.
 - b. The grouping of six new evergreen trees on the northeast edge be increased to between 11 and 15.
 - c. The species of these trees should be Green Giant Arborvitae, or similar species to be approved by staff based on availability.
 - d. Prior to issuance of permits, final plans should include the species and size of plants.
5. The applicant acknowledges the City's interest in making a trail connection to the park at some point in the future, and should the City advance further than conceptual design or funding, the City and the applicant will work together to determine if a connection can be made in each party's mutual interests.
All other conditions of the original special use permit (#97-02, Ordinance 1917) remain in effect, primarily that the permit can be revoked for any violations of the permit, approved site plan, or other city ordinance.

Section II. **Findings of the Governing Body.** That at its meeting on May 3, 2021 the Governing Body adopted by specific reference the findings of fact as contained in the Minutes of the Planning Commission meeting dated April 6, 2021 and the recommendations of the Planning Commission, including conditions, and approved the amendment to the Special Use Permit as docketed PC2021-106.

Section III. **Granting of Special Use Permit.** Be it therefore ordained that the City of Prairie Village grant an amendment to the Special Use Permit originally approved in 1997, which remains in effect for the operation of a senior living facility at 7105 Mission Road, Prairie Village, Kansas subject to the specific conditions listed above.

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

PASSED AND APPROVED THIS 3rd DAY OF MAY, 2021

CITY OF PRAIRIE VILLAGE, KANSAS

By: _____
Eric Mikkelson, Mayor

ATTEST:

APPROVED AS TO FORM:

Adam Geffert, City Clerk

David E. Waters, City Attorney

STAFF REPORT

TO: Prairie Village Planning Commission
FROM: Chris Brewster, Gould Evans, Planning Consultant
DATE: April 6, 2021 Planning Commission Meeting

Application: PC 2021-106

Request: Special Use Permit Amendment – Adult Senior Dwelling Addition

Action: *A Special Use Permit requires the Planning Commission to evaluate facts and weigh evidence, and based on balancing the factors and criteria in the zoning ordinance, make a recommendation to the City Council.*

Property Address: 7105 Mission Road, Prairie Village, KS

Applicant / Owner: The Village at Mission Property, LLC / HCP MA4 Kansas City KS, LP

Current Zoning and Land Use: R-1B Single Family Residential / Senior Care Facility

Surrounding Zoning and Land Use: North: R-1B Single-Family Residential; Parking and Single-family
East: R-1B Single-Family Residential; Single-family and Park
South: RP-3 and R-1B Single-Family Residential; Condominium apartments and Institution
West: R-1B Single-Family Residential; Single-Family

Legal Description: BRIGHTON GARDENS, LOT 1

Property Area: 4.42 acres (192,426.77 s.f.)

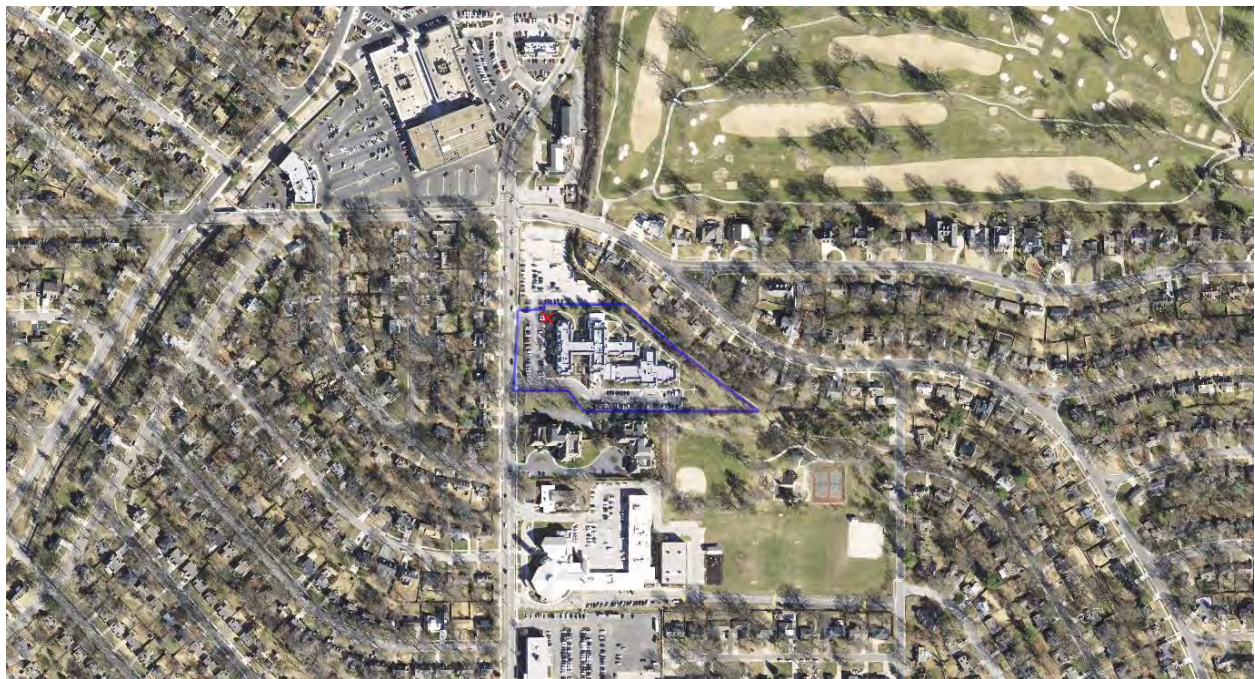
Related Case Files: PC 97-02 Special Use Permit for Adult Senior Dwelling

Attachments: Application, site plans, building elevations

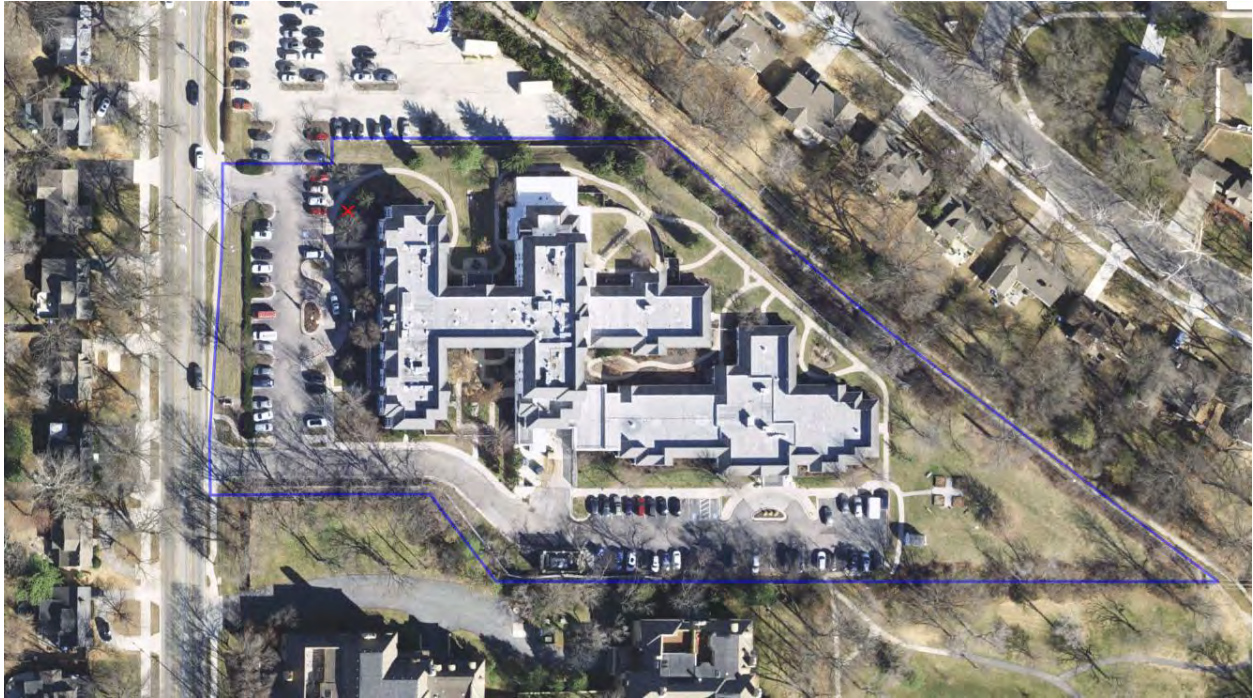
General Location Map



Aerial Map



Site



Street Views



Street view looking east from Mission Road



Birdseye



Birdseye

Background:

Brighton Gardens was developed in 1997 according to a special use permit approved by the City (PC 97-02; Ordinance 1917). It was originally approved and constructed with 164 beds and 134 living units. It includes a combination of assisted living and skilled nursing care. The structure is a combination of 1-story and 3-story, with a 3-story central mass addressing Mission Road.

The applicant is proposing an addition and interior remodeling to reconfigure spaces. These changes will not add capacity, but to bring the amenities, care facilities and living units more into compliance with typical industry offerings for care services. These changes will not bring the use beyond their current licensed bed count.

The addition includes an expansion of the building footprint in two locations – a one-story expansion to the rear (east) on the south wing, and a one-story expansion that connects the rear of the north wing to the side of the south wing. There is also a second story proposed on the central portion of the structure connecting to the three-story portion at the front of the structure.

The property is zoned R-1B. Senior care facilities or nursing homes require a Special Use Permit in the R-1B zoning district. [Prairie Village Zoning Ordinance, 19.27,010 Table 19.27, and 19.28.070.I].

The applicant held a neighborhood meeting on March 18, 2021, in accordance with the City's Citizen Participation Policy, and will provide background on the meeting to supplement the application.

Zoning Requirements:

The property is zoned R-1B, and the building and site meet the applicable standards in terms of height and setbacks. The zoning ordinance allows senior care facilities, but requires a Special Use Permit, reviewed by the Planning Commission. The permit application is accompanied by a site plan for the proposed building additions.

Special Use Permit Factors:

The Planning Commission shall make findings of fact to support its recommendation to approve, conditionally approve, or disapprove this Special Use Permit. It is not necessary that a finding of fact be made for each factor. However, there should be a conclusion that the request should be approved or denied based upon consideration of as many factors as are applicable. The factors to be considered in approving or disapproving a Special Use Permit include the following [19.28.035]:

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

Structures for senior dwellings or nursing care facilities, whether independent, assisted or congregate living are required to meet the standards for buildings in R-1 through R-4 zoning districts. The proposed building meets all R-1B setback standards. The height of both the existing building and the proposed addition is slightly above what is allowed in R-1B zoning due to recent amendments, but it is within height limits allowed in R-1A, R-2, R-3 and R-4 zoning districts.

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

The previous approval found this permit was appropriate due to this location being at a transition between different land uses: a park, condominium apartments, and institutional land uses to the south and east; single family homes to the north and east, buffered by a drainage area and landscape that is the back yards of the homes; a commercial parking area to the north, supporting a commercial center further to the south and west; and single family homes across the street to the west. The location near the intersection of two major streets also made the special use permit appropriate at this location. This was supported by the comprehensive plan at the time of the original approval (concentrating more dense or intense projects near centers and nodes on major roads), and that concept has been reinforced in the recent comprehensive plan updates, approved in 2021.

C. The proposed special use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.

This is an addition to an established use. The use has been in place for over 20 years and has not caused substantial injury to other property in the area. The expansion will not increase the intensity of the use significantly beyond the current activity. Provided the building additions can be done in a way that is compatible with the existing site and structure, and is sensitive to the adjacent uses, there will be no substantial injury caused by this application to amend the current special use permit.

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

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

This application would expand the building footprint towards the rear of the property in two locations, and add a second story to a portion of the central mass. Due to the grade there are two retaining walls proposed with these additions. While this can make the structures appear taller at this specific location, these areas are single-story additions, and are separated from the rear of the adjacent homes by the drainage ditch and a landscape buffer. The scale of the second story addition is larger than most of the outlying wings, but the mass is subordinate to the main portion of the building and reduces further from the central mass and closer to the residential border. The central portion that is expanding to a second story is below the height limits allowed in R-1B and create a transition between the 1-story portions of the building nearest the property lines and the 3-story portions closer to Mission Road. The ridge heights of the one-story portions are between 16.5 feet and 19.1 feet, and the ridge heights of the two-story addition is between 27.5 and 28.25 feet. The ridge height of the existing 3-story portion is approximately 37 feet.

There is an existing landscape buffer associated with the drainage ditch that addresses some transition issues to the rear lots of adjacent residential property. The applicant has indicated trees to remain in this area. However there are some gaps in this buffer, and with the new additions in this area some greater attention to the buffer and transition is warranted. The applicant has proposed groupings of evergreen trees near these areas; however, staff recommends increasing the planting proposed in this area, per our recommended conditions.

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

The application is not proposing changes that would trigger an additional parking requirement. There are increased amenities and reconfiguration of rooms for administration, care and living quarters, but the applicant has expressed these are to align better with the market and industry practices rather than increase the capacity of the facility. The previous application applied the parking requirements based on a 164-bed facility, with approximately 30 staff on site at maximum shift. By ordinance, this resulted in a requirement of 63 spaces (5 per bed, plus one per employee maximum shift), and the site provided 75 spaces. Additional factors in the previous parking analysis which also apply to this application include: the majority of the residents in this type of facility do not drive or own cars, so the reduced rate accounts for visitors; the site design includes a landscape area to the east that could be used as deferred parking – and constructed should a parking problem arise; and the site has a shared access to a parking lot to the north used as off-site employee or overflow parking for the shopping center opposite the intersection of 71st and Mission Road. Considering these factors, the proposed site plan meets the parking standards, and there are options or contingencies should an unanticipated parking problem arise.

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

The application is an expansion of the existing building. It has adequate utility and other service access. There is a minor expansion of the building footprint, and Public Works is reviewing a revised drainage study. The application will need to demonstrate adequate on-site detention and have a drainage study approved by Public Works prior to issuing building permits.

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

Access to the site, service and loading, and general traffic patterns for the site and vicinity were addressed in the original plan, and this application does not propose any change that would impact these issues.

An issue that was brought up with the original permit, and again in the pre-development meetings is a potential trail connection between the park to the northeast of this site and Mission Road. This idea has been in play in concept for several years and through many planning efforts. The intent is that a trail could connect in association with the drainage ditch and drainage easements. One impediment to this is the topography and how it could be designed in association with the landscape buffer that also exists in this area. While this remains a goal of the City, there are no specific plans to accomplish this connection. The City will continue to seek funds and opportunities to make this connection and will continue to work with the applicant and other adjacent owners should a future opportunity for completing this improvement arise.

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

There are no hazardous or toxic materials anticipated with this use, and any noise or odor issues should be addressed by generally applicable city codes.

I. Architectural style and exterior materials are compatible with such style and materials used in the neighborhood in which the proposed building is to be built or located.

The overall design is appropriate. All of the materials, fenestration and detailing from the existing building are being reused with the additions. Reuse of the material pallet is essential to maintain the architectural integrity of the project. When completed, the additions will appear integrated into the design and will not be obvious additions, thus maintaining the architectural appearance of the site and neighborhood.

Recommendation:

Staff recommends approval of the proposed special use permit amendment based on the following considerations and conditions (Planning Commission recommendation to City Council):

1. The changes are limited to those shown on the proposed site plan associated with the application, or any additional conditions implemented by Planning Commission.
2. The proposal assumes no increase in facility capacity, which was previously approved with 164 beds and approximately 30 staff members at maximum shift. Any change in interior operations that increase beyond this anticipated capacity, licensed bed count, or other unanticipated activity, may require additional parking improvements.
3. The application will need to demonstrate adequate on-site detention and have a drainage study approved by Public Works prior to issuing building permits.
4. The landscape plan show should be revised to reflect the following:
 - a. The grouping of 3 new evergreen trees on the northwest edge be increased to 7
 - b. The grouping of 6 new evergreen trees on the northeast edge be increased to between 11 to 15
 - c. The species of these trees should be Green Giant Arborvitae, or similar species to be approved by staff based on availability.

- d. Prior to issuance of permits, final plans should include the species and size of plants.
 - 5. The applicant acknowledges the City's interest in making a trail connection to the park at some point in the future, and should the City advance further than conceptual design or funding, the City and the applicant will work together to determine if a connection can be made in each parties mutual interests.
 - 6. All other conditions of the original special use permit (97-02, Ordinance 1917) remain in effect, primarily that the permit can be revoked for any violations of the permit, approved site plan, or other city ordinance
-

App # 0625201
Cust # 012343

SPECIAL USE PERMIT APPLICATION

CITY OF PRAIRIE VILLAGE, KANSAS

For Office Use Only

Case No.: PC2021-106

Filing Fees: \$100.00

Deposit: \$500.00



Date Advertised: _____

Date Notices Sent: _____

Public Hearing Date: _____

The Village at Mission Property,
L.L.C.

APPLICANT: _____ PHONE: 816-444-0900

ADDRESS: 7611 State Line Rd STE 301, KCMO,
64114 E-MAIL: DFT@Tutera.com

OWNER: HCP MA4 Kansas City KS, LP PHONE: _____

ADDRESS: 1920 Main Street, STE 1200 Irvine CA ZIP: 92614

LOCATION OF PROPERTY: 7105 Mission Rd, Prairie Village, KS 66208

LEGAL DESCRIPTION: Lot 1, Brighton Gardens, A subdivision of Prairie Village, Johnson
County, Kansas, According to the recorded plat thereof dated
October, 27 1997 and recorded on January 20, 1998 filed under
Document no. 2783467, recorded in Plat Book 102, Page 47.

ADJACENT LAND USE AND ZONING:

	<u>Land Use</u>	<u>Zoning</u>
North	<u>Parking lot</u>	<u>R-1B</u>
South	<u>Residential</u>	<u>RP-3, R-1B</u>
East	<u>Residential</u>	<u>R-1B</u>
West	<u>Residential</u>	<u>R-1B</u>

Present Use of Property: Senior Living Community

Please complete both pages of the form and return to:
Planning Commission Secretary
City of Prairie Village
7700 Mission Road
Prairie Village, KS 66208

Does the proposed special use meet the following standards? If yes, attach a separate Sheet explaining why.

- | | <u>Yes</u> | <u>No</u> |
|---|-------------------------------------|--------------------------|
| 1. Is deemed necessary for the public convenience at that location. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. Is so designed, located and proposed to be operated that the public health, safety, and welfare will be protected. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 3. Is found to be generally compatible with the neighborhood in which it is proposed. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 4. Will comply with the height and area regulations of the district in which it is proposed. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 5. Off-street parking and loading areas will be provided in accordance with the standards set forth in the zoning regulations, and such areas will be screened from adjoining residential uses and located so as to protect such residential use from any injurious effect. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 6. Adequate utility, drainage, and other such necessary facilities have been or will be provided. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Should this special use be valid only for a specific time period? Yes No

If Yes, what length of time? _____

SIGNATURE:  _____

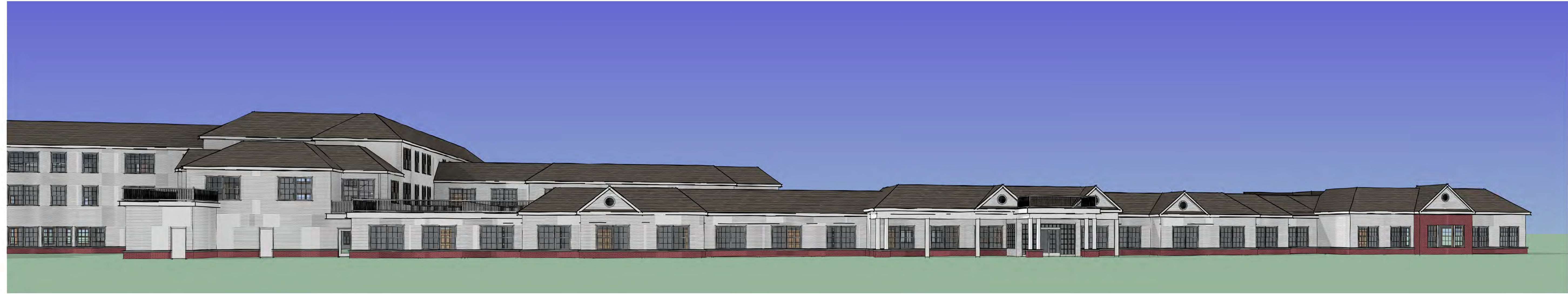
DATE: 3/4/21

BY: Dominic F Tutera

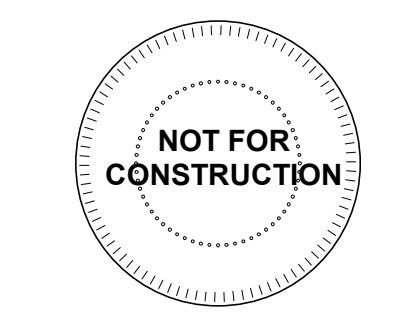
TITLE: Asset Manager

Attachments Required:

- Site plan showing existing and proposed structures on the property in questions, and adjacent property, off-street parking, driveways, and other information.
- Certified list of property owners



1 CONCEPTUAL 3D VIEW - COVER



PROJECT TEAM

DEVELOPER:
TUTERA SENIOR LIVING AND HEALTH CARE LLC
7611 STATE LINE RD., SUITE 301
KANSAS CITY, MO 64116
TEL: (816) 444-0900
EMAIL: DFT@TUTERA.COM
CONTACT: DOMINIC TUTERA

ARCHITECT:
NSPJ ARCHITECTS, P.A.
3515 W. 75TH ST., SUITE 201
PRAIRIE VILLAGE, KS 66208
TEL: (913)-831-1415
FAX: (913)-831-1563
EMAIL: JTOYE@NSPJARCH.COM
CONTACT: JASON TOYE

CIVIL ENGINEER:
CFS ENGINEERS, P.A.
1421 E 104TH ST., SUITE 100
KANSAS CITY, MO 64131
TEL: (816) 333-4477
EMAIL: L.WILLIAMS@CFSE.COM
CONTACT: LUCAS WILLIAMS

LANDSCAPE ARCHITECT:
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TEL: (913)-831-1415
FAX: (913)-831-1563
EMAIL: KMARTINOVIC@NSPJARCH.COM
CONTACT: KATIE MARTINOVIC

INDEX OF DRAWINGS

A0.00	COVERSHEET
C-100	SITE PLAN
C-200	GRADING PLAN
C-300	EROSION CONTROL PLAN
A3.00	BUILDING ELEVATIONS
A3.01	BUILDING ELEVATIONS
A3.02	BUILDING ELEVATIONS
L1.00	LANDSCAPE PLAN

EXISTING BUILDING RENOVATION AND ADDITION:
BRIGHTON GARDENS
7105 MISSION ROAD
PRAIRIE VILLAGE, KS 66208


DRAWING RELEASE LOG
• 03.05.2021 - SUP/SITE PLAN

REVISIONS:

DATE:
03/05/2021
JOB NO.

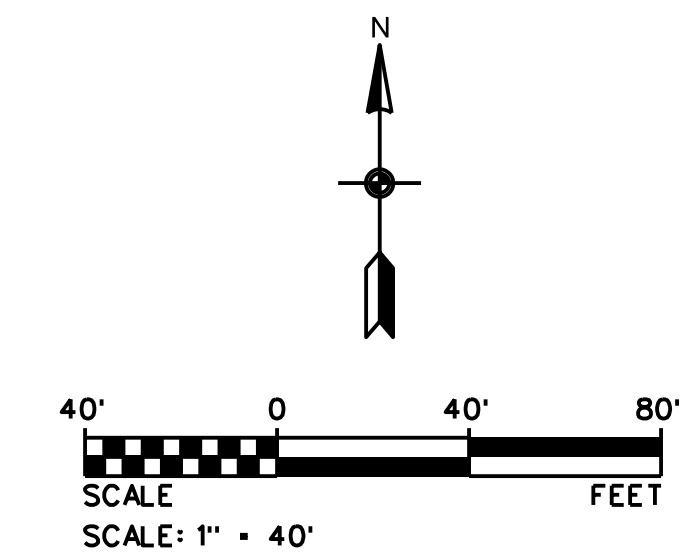
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Author
SHEET NO.

SUP/SITE PLAN

A0.00

BRIGHTON GARDENS-SITE PLAN AND SUP

**EXISTING BUILDING RENOVATION AND ADDITION
7105 MISSION ROAD PRAIRIE VILLAGE, KS
SECTION 22, TOWNSHIP 12 SOUTH RANGE 25 EAST
JOHNSON COUNTY, KS**



LEGEND:

- PROPOSED BUILDING ADDITION/RENOVATION
- PROPOSED SIDEWALK

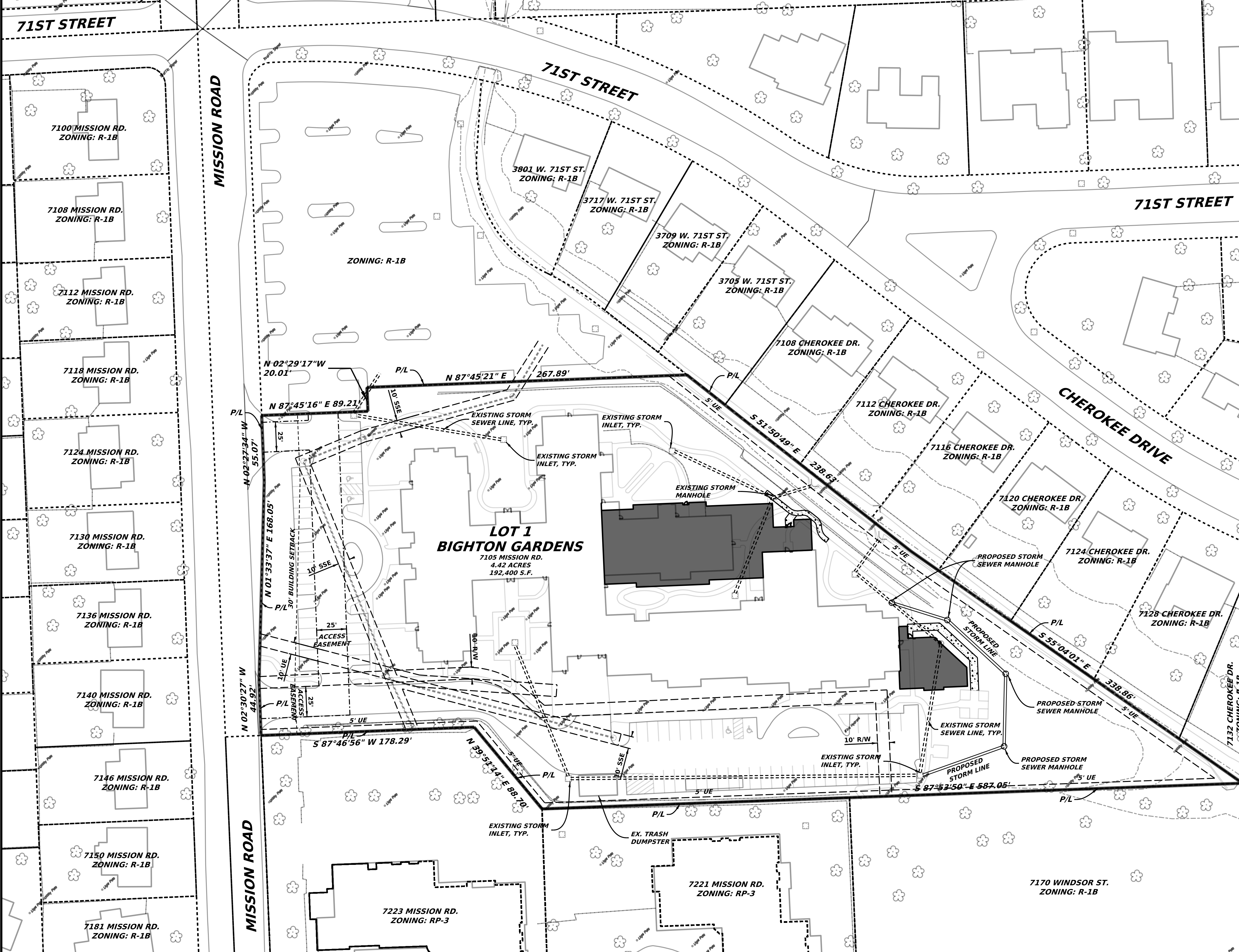
LEGAL DESCRIPTION:

LOT 1, BRIGHTON GARDENS, A SUBDIVISION IN THE CITY OF PRAIRIE VILLAGE, JOHNSON COUNTY, KANSAS, ACCORDING TO THE RECORDED PLAT THEREOF DATED OCTOBER 27, 1997 AND RECORDED ON JANUARY 20, 1998 FILED UNDER DOCUMENT NO. 2783467, RECORDED IN PLAT BOOK 102, PAGE 47.

SITE DATA TABLE

ADDRESS:	7105 MISSION ROAD PRAIRIE VILLAGE, KS
LOT AREA:	4.42 ACRES (192,400 S.F.)
CURRENT ZONING:	R-1B
PROPOSED ZONING:	R-1B
EXISTING FLOOR AREA RATIO	23.2%
PROPOSED FLOOR AREA RATIO	26.5%
MAX BUILDING HEIGHT	37'
PARKING PROVIDED	70 WITH 4 ACCESSIBLE SPACES

**LOT 1
BRIGHTON GARDENS**
7105 MISSION RD.
4.42 ACRES
192,400 S.F.



ARCHITECT:

NSPJ ARCHITECTS
3515 W. 75TH ST. SUITE 201
PRAIRIE VILLAGE, KS 66208
JASON A. TOYE
jtoye@nspjarch.com
P. 913.831.1415

ENGINEER:

CFS ENGINEERS, P.A.
1421 E. 104TH STREET, SUITE 100
KANSAS CITY, MO 64131
LUCAS W. WILLIAMS
lwilliams@cfs.com
P. 816.333.4477

OWNER:

HCP MA4 KANSAS CITY KS, LP
C/O HEALTHPEAK PROPERTIES, INC.
1920 MAIN STREET, SUITE 1200
IRVINE, CA 92614

DEVELOPER:

TUTERA SENIOR LIVING AND HEALTH CARE LLC
7611 STATE LINE ROAD, SUITE 301
KANSAS CITY, MO 64114

CFS ENGINEERS
cfs.com
1421 E. 104th Street, Suite 100, Kansas City, MO 64131
P: 816-333-4477 F: 816-333-6688
KANSAS CERTIFICATE OF AUTHORITY NUMBER 000282

LUCAS W. WILLIAMS
Professional Engineer
No. 00982
03/05/20
LUCAS W. WILLIAMS - ENGINEER
KS REG. 21032

Rev.	Date	By	Description

Prepared by:	Checked by:	Reviewed by:	Date:
JMS	AWP	TEI	
JMS	AWP	TEI	
JMS	AWP	TEI	

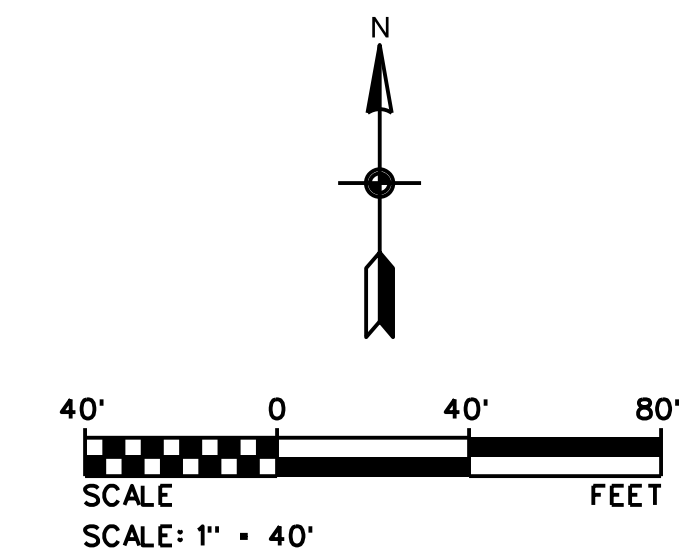
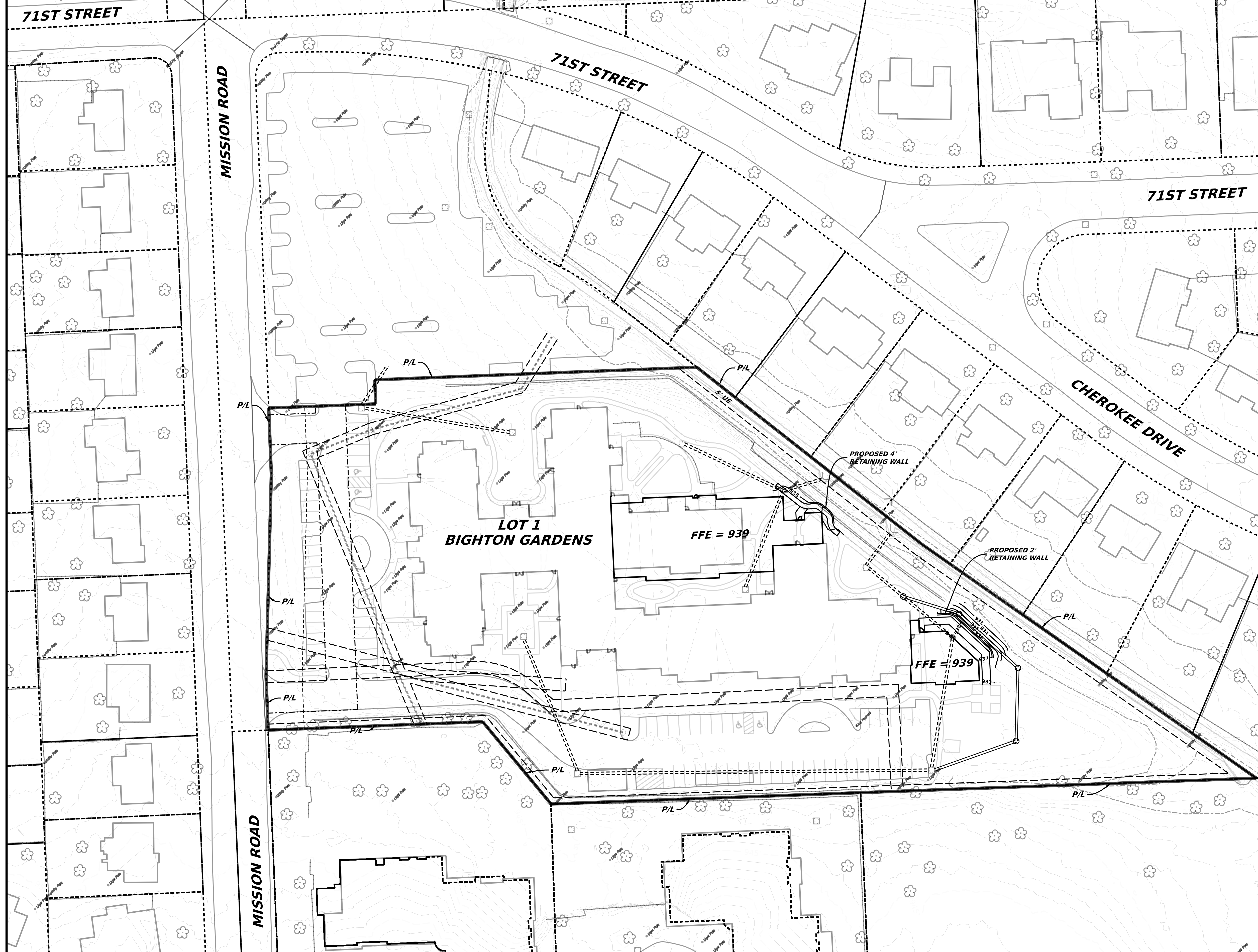
BRIGHTON GARDENS 7105 MISSION ROAD PRAIRIE VILLAGE, KS 66208	TUTERA 7611 STATE LINE ROAD KANSAS CITY, MO 64114
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SITE PLAN

Sheet reference number:
C-100

BRIGHTON GARDENS-SITE PLAN AND SUP

**EXISTING BUILD RENOVATION AND ADDITION
7105 MISSION ROAD PRAIRIE VILLAGE, KS
SECTION 22, TOWNSHIP 12 SOUTH RANGE 25 EAST
JOHNSON COUNTY, KS**



LEGEND:

	PROPOSED MAJOR CONTOUR LINE
	PROPOSED MINOR CONTOUR LINE

CFS ENGINEERS
cfe.com
1421 E. 104th Street, Suite 100, Overland Park, KS 66208
Tel: 913-333-4477 Fax: 913-333-6688
KANSAS CERTIFICATE OF AUTHORITY NUMBER 000382

LUCAS W. LUMS
Professional Engineer
03/05/20
KANSAS PROFESSIONAL ENGINEER
K.S. REG. # 21382

Rev.	Date	By	Description

Prepared by	Checked by	Date
WJS	WJS	
WMP	WMP	
WJS	WJS	

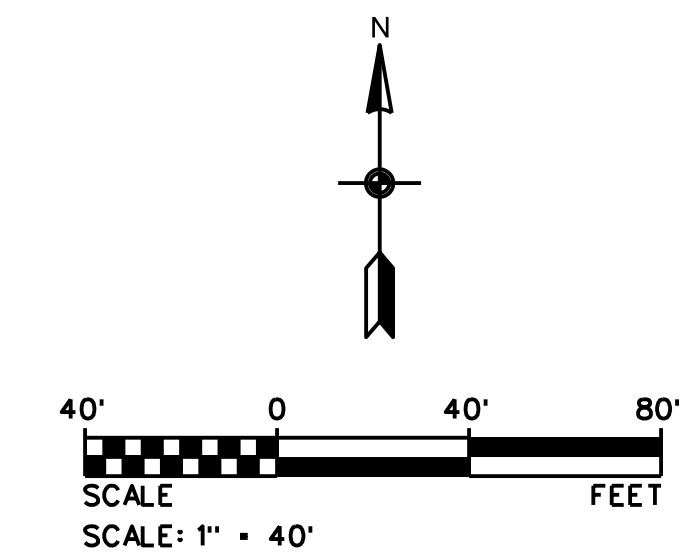
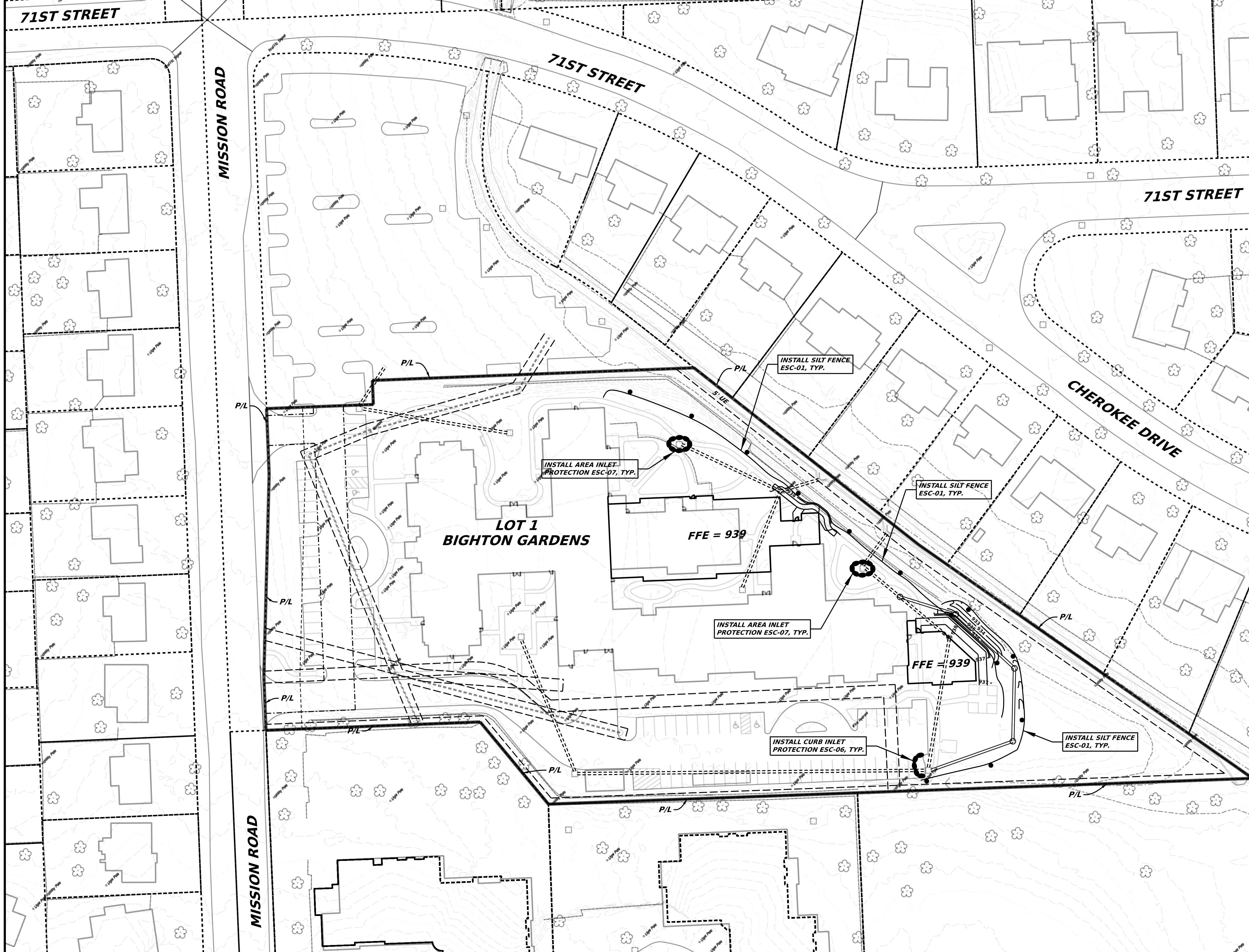
BRIGHTON GARDENS 7105 MISSION ROAD PRAIRIE VILLAGE, KS 66208	TUTERA 7611 STATE LINE ROAD KANSAS CITY, MO 64114
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GRADING PLAN

Sheet reference number:
C-200

BRIGHTON GARDENS-SITE PLAN AND SUP

**EXISTING BUILD RENOVATION AND ADDITION
7105 MISSION ROAD PRAIRIE VILLAGE, KS
SECTION 22, TOWNSHIP 12 SOUTH RANGE 25 EAST
JOHNSON COUNTY, KS**



LEGEND:

- 940 — PROPOSED MAJOR CONTOUR LINE
- 939 — PROPOSED MINOR CONTOUR LINE
- SILT FENCE, ESC-03
- CURB INLET PROTECTION, APWA ESC-06
- AREA INLET PROTECTION, APWA ESC-07

EROSION CONTROL SEQUENCE:

1. PLACE SILT FENCE IN LOCATIONS SHOWN.
2. INSTALL AREA INLET PROTECTION IN LOCATIONS SHOWN.
3. COMMENCE DEMOLITION OF SITE.
4. COMMENCE GRADING OF SITE.

AREA OF DISTURBANCE:

0.60 ACRES

EROSION CONTROL NOTES:

1. SOIL FOR FILLING SHOULD BE GRADED AS IT ARRIVES.
2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR MAINTENANCE OF ALL EROSION AND SEDIMENT CONTROL MEASURES AND PRACTICES. ANY AND ALL FINES ASSOCIATED WITH EROSION CONTROL VIOLATIONS WILL BE THE CONTRACTOR'S RESPONSIBILITY.
3. EROSION CONTROL IS THE CONTRACTOR'S RESPONSIBILITY AND THIS PLAN SHOULD BE USED AS A GUIDE AND REPRESENTS THE MINIMUM EROSION CONTROL DEVICES REQUIRED.
4. THE SITE SHALL BE SEEDED AFTER GRADING IS COMPLETED.
5. EROSION CONTROL MEASURES WILL BE MAINTAINED AT ALL TIMES. ADDITIONAL EROSION AND SEDIMENT CONTROL MEASURES WILL BE INSTALLED IF DEEMED NECESSARY BY THE ON-SITE INSPECTION.
6. THE CONTRACTOR IS RESPONSIBLE FOR REMOVING THE TEMPORARY EROSION AND SEDIMENT CONTROL DEVICES AFTER COMPLETION OF CONSTRUCTION AND ONLY WHEN AREAS HAVE BEEN STABILIZED.
7. THE CONTRACTOR SHALL PROVIDE AN INGRESS / EGRESS TRACKING PAD. (CONSTRUCTION ENTRANCE)
8. ALL EROSION CONTROL DEVICES SHALL CONFORM TO THE APPLICABLE SECTIONS OF THE CURRENT INDEPENDENCE, MISSOURI STANDARDS AND SPECIFICATIONS.
9. THE EROSION CONTROL FACILITIES SHALL BE INSPECTED WEEKLY AND AFTER EVERY RAINFALL EVENT.
10. THE CONTRACTOR SHALL CLEAN OUT ALL EXISTING AND PROPOSED INLETS, PIPES AND MANHOLES OF DEBRIS AND SEDIMENTATION AT COMPLETION OF SITEWORK. THIS WORK SHALL BE DONE TO THE SATISFACTION OF THE OWNER.

CFS ENGINEERS
cfs.com
1421 E. 104th Street, Suite 100, Overland Park, KS 66209
P: 913-333-4477 F: 913-333-6688
KANSAS CERTIFICATE OF AUTHORITY NUMBER 000382

LUIS W. WILSON
Professional Engineer
03/05/20
KANSAS PROFESSIONAL ENGINEER
K.S. REG. NO. 21382

Rev.	Date	By	Description

Drawn By	Checked By	Reviewed By	Date

BRIGHTON GARDENS
7105 MISSION ROAD
PRAIRIE VILLAGE, KS 66208

TUTERA
7611 STATE LINE ROAD
KANSAS CITY, MO 64114

EROSION CONTROL PLAN

Sheet reference number:
C-300

ARCH ID: 241735

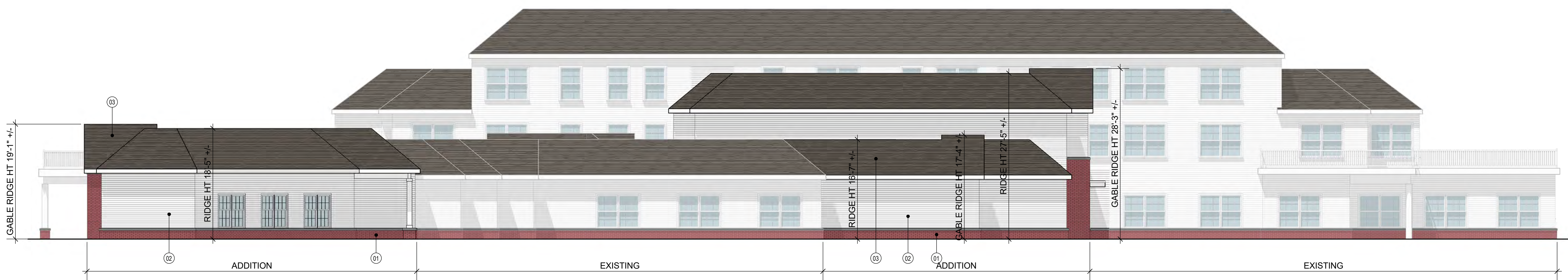
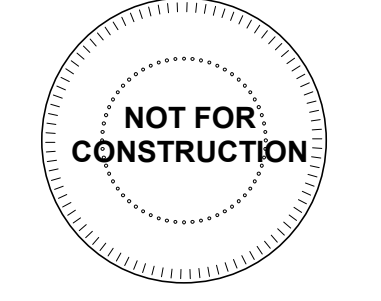
LEGEND - MATERIALS

01	RED BRICK BLEND WITH CAST STONE CAP TO MATCH EXISTING
02	WHITE VINYL LAP SIDING TO MATCH EXISTING
03	COMPOSITION ROOF TO MATCH EXISTING

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ENERGY SERVICES

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2 EAST ELEVATION OVERALL
1/8" = 1'-0"



1 WEST ELEVATION OVERALL
1/8" = 1'-0"

EXISTING BUILDING RENOVATION AND ADDITION:

BRIGHTON GARDENS
7105 MISSION ROAD
PRAIRIE VILLAGE, KS 66208

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• 03.05.2021 - SUP/SITE PLAN

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NSPJ
SHEET NO.

SUP/SITE PLAN

A3.00

3/5/2021 9:50:09 AM

ARCH ID: 2417_357

LEGEND - MATERIALS

01	RED BRICK BLEND WITH CAST STONE CAP TO MATCH EXISTING
02	WHITE VINYL LAP SIDING TO MATCH EXISTING
03	COMPOSITION ROOF TO MATCH EXISTING

ARCHITECTURE
LANDSCAPE
ARCHITECTURE
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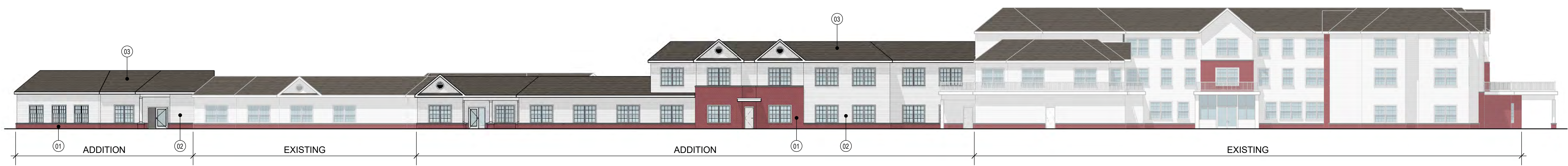
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PRAIRIE VILLAGE, KS 66208



② NORTH - NEW THERAPY ADDITION
1/8" = 1'-0"

③ NORTH - NEW 2-STORY + CONNECTOR ADDITION
1/8" = 1'-0"



① NORTH ELEVATION OVERALL
1/16" = 1'-0"

EXISTING BUILDING RENOVATION AND ADDITION:

BRIGHTON GARDENS
7105 MISSION ROAD
PRAIRIE VILLAGE, KS 66208

DRAWING RELEASE LOG
• 03.05.2021 - SUP/SITE PLAN

REVISIONS:

DATE:
03/05/2021
JOB NO.

DRAWN BY:
NSPJ
SHEET NO.

SUP/SITE PLAN

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3/5/2021 9:50:13 AM

ARCH ID: 2417_35F

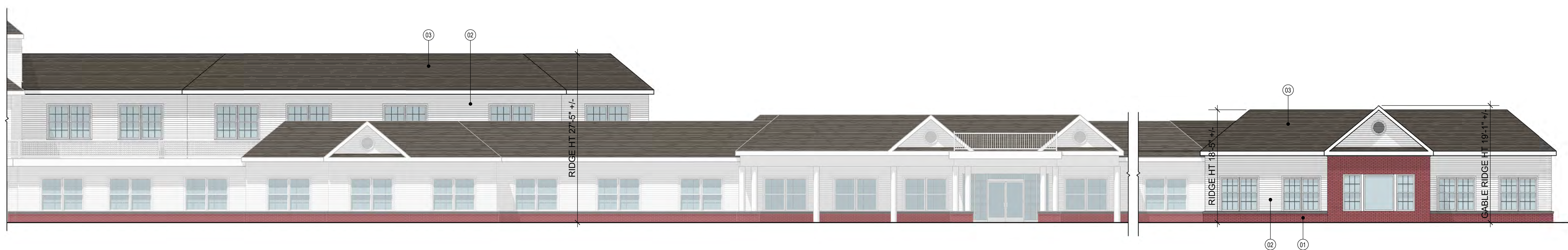
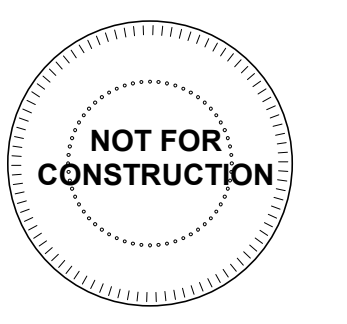
LEGEND - MATERIALS

01	RED BRICK BLEND WITH CAST STONE CAP TO MATCH EXISTING
02	WHITE VINYL LAP SIDING TO MATCH EXISTING
03	COMPOSITION ROOF TO MATCH EXISTING

ARCHITECTURE
LANDSCAPE
ARCHITECTURE
INTERIORS
ENERGY SERVICES

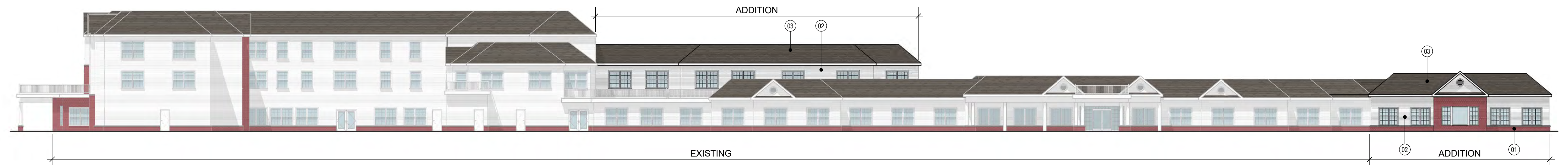
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PRAIRIE VILLAGE, KS 66208



② SOUTH - NEW 2-STORY + CONNECTOR ADDITION
1/8" = 1'-0"

③ SOUTH - NEW THERAPY ADDITION
1/8" = 1'-0"



① SOUTH ELEVATION OVERALL
1/16" = 1'-0"

EXISTING BUILDING RENOVATION AND ADDITION:

BRIGHTON GARDENS
7105 MISSION ROAD
PRAIRIE VILLAGE, KS 66208

DRAWING RELEASE LOG
• 03.05.2021 - SUP/SITE PLAN

REVISIONS:

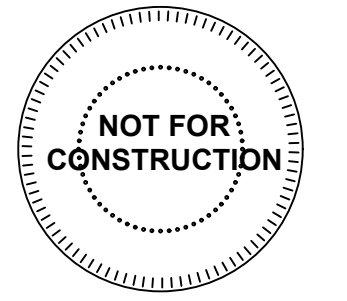
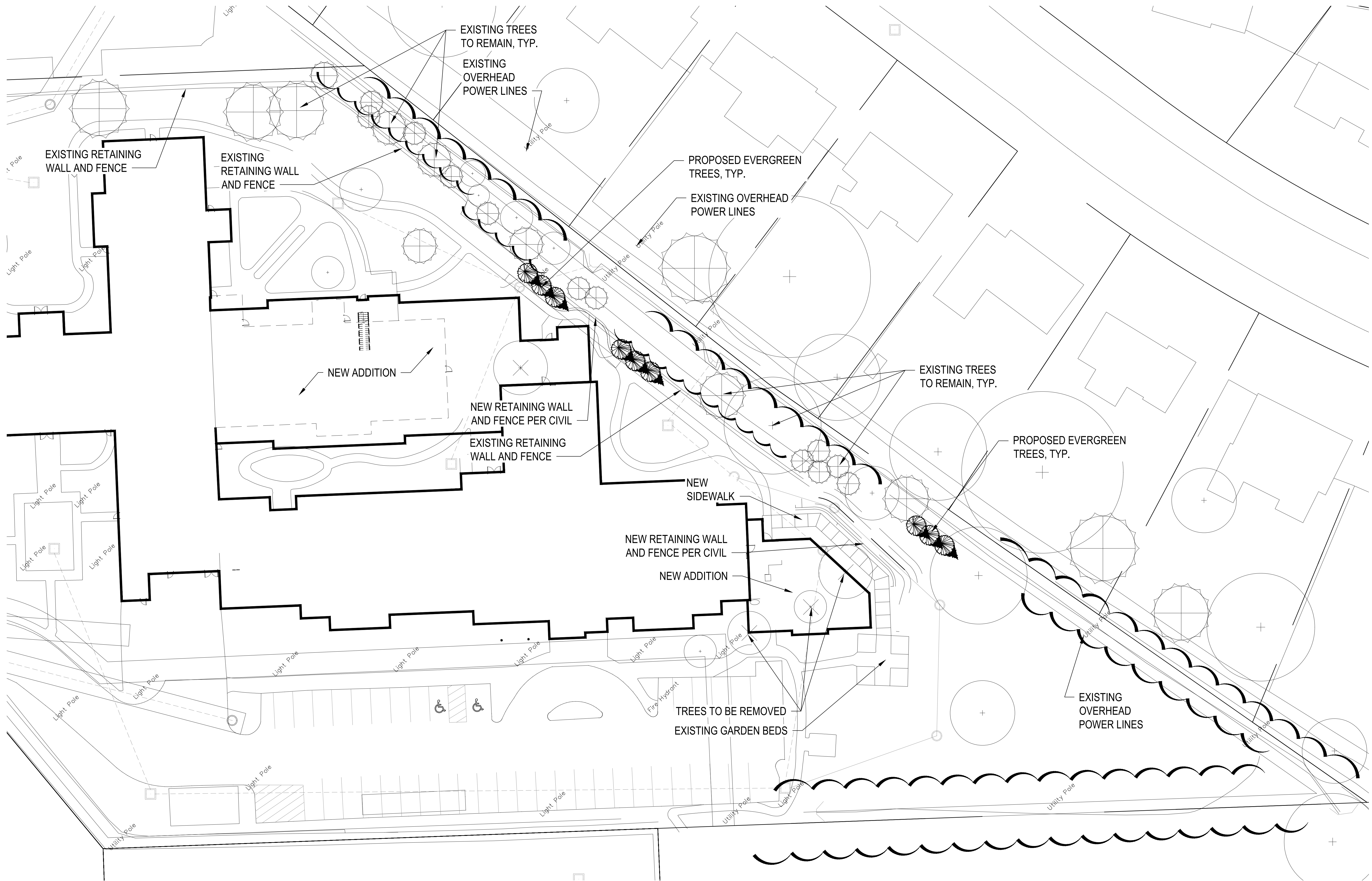
DATE:
03/05/2021
JOB NO.

DRAWN BY:
NSPJ
SHEET NO.

SUP/SITE PLAN

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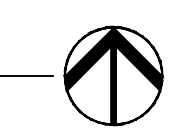
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REVISIONS

DATE
03/05/2021
JOB NO.
683621
DRAWN BY:

SHEET NO.
L1.00

LANDSCAPE PLAN
1" = 20'-0"



SUP/SITE PLAN



TUTERA

senior living & health care

Inspired by you

FLORENCE W COHEN TRUST
7223 MISSION RD #115
PRAIRIE VILLAGE, KS 66208

March 11, 2021

RE: Brighton Gardens of Prairie Village

Dear FLORENCE W COHEN TRUST,

Tutera Senior Living & Health Care is currently in the process of acquiring the Brighton Gardens Senior Living Community. As part of this transaction, we intend to renovate the community, particularly the health care center located on the east side of the property.

As part of our application process, we are hosting a neighborhood meeting for all property owners with 200ft of the site. This letter is to serve as your formal invitation to this meeting which will be held remotely via Zoom **on March 18th at 7:00pm CST**. Details for the Zoom meeting can be found below.

The intent of this meeting is to provide additional information regarding the application and proposed project as well as offer a forum for questions.

Additionally, in this letter packet, we have included the formal notice to owners for the Planning Commission hearing regarding this site and application.

Zoom Link:

<https://zoom.us/j/98570586332?pwd=R3YzL1lCV3ROdWxIWdVNM1l1bkVOdz09>

Zoom Password: BGardens

Sincerely,

Dominic F. Tutera
Tutera Senior Living & Health Care, L.L.C



T U T E R A

senior living & health care

Inspired by you

NOTICE TO OWNERS OF AFFECTED PROPERTY

PLANNING COMMISSION

PRAIRIE VILLAGE, KANSAS

MARCH 11, 2021

APPLICATION NO. PC2021-106

FLORENCE W COHEN TRUST
7223 MISSION RD #115
PRAIRIE VILLAGE, KS 66208

An Application for a Special Use Permit (SUP) as applied to the property at 7105 Mission Rd, Prairie Village, KS 66208 and would authorize the renovation of the existing senior living community with an addition to the existing skilled nursing facility.

The property is located in a R-1B Zoning District. A public hearing will be held by the Planning Commission on April 6th, 2021 at 7:00PM CST. This meeting will be held remotely over zoom. A link to join the zoom meeting can be found on the City's website at www.pvkansas.com. You may appear, if you so desire, either in person and/or by attorney.

The hearing of this application is not limited to those receiving copies of this notice, and if you know of any neighbor or affected property owner who, for any reason, has failed to receive a copy, it would be appreciated if you would inform them of this public hearing.

At the time of the scheduled public hearing persons interested may be present or may submit their comments in writing to the Planning Commission prior to the date of the scheduled hearing.

Signed:

Applicant: Dominic F. Tutera
Tutera Senior Living & Health Care, L.L.C

Brighton Gardens SUP

March 18, 2021 Neighborhood Meeting – held via Zoom

Development Team in Attendance:

Dominic Tutera, Asst Manager	Tutera Senior Living & Health Care
Randy Bloom, President/COO	Tutera Senior Living & Health Care
Jason Toye, Senior Project Manager	NSPJ Architects
Tim Homburg, Principal Architect	NSPJ Architects
Audrey Knight, Designer	NSPJ Architects

Neighbors in Attendance:

This is the list of those who provided their contact info. See Zoom participant screenshot attached.

- Scott Wenzel, 7140 Mission Road, scott.wenzel@gmail.com, 785-341-2241
- John Roney, 7223 Mission Road #120, jfroney@aol.com, 913-314-9426
- Marvin Newbill, hview3232@gmail.com
- Rita Rosano, ritarosano@kc.rr.com
- Nancy Cox, 7223 Mission Road #115, Nancy.cox@bairdwarner.com, 630-732-0829

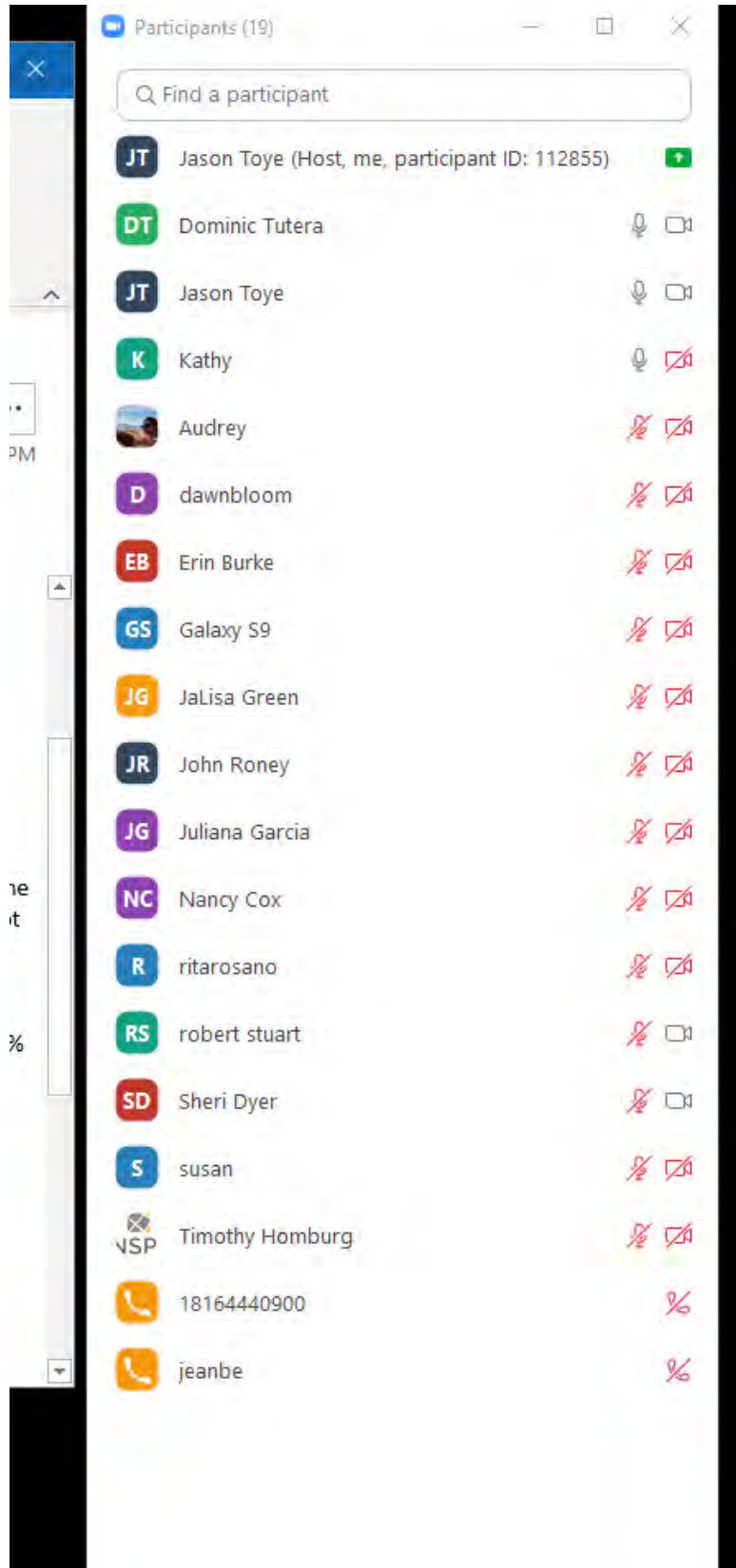
Summary of project presented:

- 71st & Mission built in the 90's
- Interior renovation of 1story building with addition of a 1 story wing for therapy (taller ceilings)
- Addition of 2 story building care with a 1 story connection. Memory care on 2nd floor
- Currently SNF 35 bed in semi-private rooms
- With the additions, it becomes provides ALL private rooms for SNF and as much private bathing.
- Matching existing building forms and materials for additions
- Will NOT be increasing the licenses bed count.

Meeting Notes:

- Sally Stewart: LOVES what she sees and is excited about the therapy.
 - Where would the room be?
 - We are working through the layout, but it will be located in the original building in the renovated area.
 - North side sidewalks and retaining walls – Will there be any leveling.
 - Yes, we will replace the sidewalk.
 - Retaining wall is in good shape will be fixed upgraded as required.
 - Area west to the circle drive was supposed to be a patio that was never completed. Will you finish this? This would be a nice element for the southern neighbors to see.
 - Yes, we will study that. Having additional outdoor seating is a great idea.
- Visual effect from the south?
 - Therapy will be 1-2 ft above existing building – WILL NOT IMPACT THE VIEW
 - 2-story building is further north and set back 100' or so from the Southern neighbors.

- Will there be any changes to the existing landscape or fences along the south border?
 - Upgrades to beautify the community – upgrading the fencing along the south as req – is part of the conversation.
- How long of a process is this? (Sheri)
 - Hoping to start Fall 2021. Should take about a year to complete.
- Will there be construction noise?
 - We will follow the city requirements during construction.
- Will current residents stay during construction?
 - We don't have a formal framing plan in place, but yes the residents will be able to stay during construction.
- Will there be crossing of the Normandy Court easement?
 - Aside from maintenance of fencing/retaining wall along the south, the main location of the work will be north of the parking lot/1-story building
- What is the SF of the addition therapy?
 - 2,100 SF
- Will additional beds be added?
 - No. We will have the same number of licensed beds. We are increasing the room size and allowing for more privacy and freedom.
- What properties will be comparable to in PV?
 - We have developed Mission Chateau and what we see for the quality care of residents.
- Have you acquired facility? And when will construction start
 - Need to get through closing. Should have it at the end of the month.
 - Would like to start in the fall and should last a year
- When construction begins, where will the equipment and materials be stored?
 - Anticipate it being located on the east of the therapy. Possibly in the north parking lot. Depends on how the phasing will go.
 - We want to be good neighbors, Your comments and inputs are very much appreciated and will be considered in our decision making.
- Will that be an out patient therapy rehab? Is that a possibility? Would be useful for my family.
 - Design wise, yes it is possible.
 - Will keep that in mind, when working through the operations of the project
- Who owns the parking to the north?
 - It was intended to be overflow for PV shops
 - Comment from Sally: The parking lot easement is on Brighton lot. They have a relationship with Marriott. We use it 99% of the time.
- Neighbor to the South. Personal preference to have staging in north parking lot.
 - Grading will be an issue when getting truck into the site.
 - We want to be good neighbors. Your comments and inputs are very much appreciated and will be considered in our decision making.
- Personal working parking on the north side would be a good start.
- Marvin – Any plans for the assisted living side of the building?
 - No plans as of now that requires city meetings. We are considering upgrading finishes of the unit.
 - Considered to be all cosmetic work in this area.



Participants (19)

Find a participant

Initials	Name	Audio	Video
JT	Jason Toye (Host, me, participant ID: 112855)	On	On
DT	Dominic Tutera	On	Off
JT	Jason Toye	On	Off
K	Kathy	Off	Off
	Audrey	Off	Off
D	dawnbloom	Off	Off
EB	Erin Burke	Off	Off
GS	Galaxy S9	Off	Off
JG	JaLisa Green	Off	Off
JR	John Roney	Off	Off
JG	Juliana Garcia	Off	Off
NC	Nancy Cox	Off	Off
R	ritarosano	Off	Off
RS	robert stuart	Off	Off
SD	Sheri Dyer	Off	Off
S	susan	Off	Off
VSP	Timothy Homburg	Off	Off
	18164440900	Off	Off
	jeanbe	Off	Off



1421 E. 104th Street
Ste 100
Kansas City, Missouri 64131
(816) 333-4477 Office

cfse.com

March 5th, 2021

City of Prairie Village
7700 Mission Road
Prairie Village KS, 66208

Other Offices:
Kansas City, Kansas
Lawrence, Kansas
Holton, Kansas
Topeka, Kansas
Wichita, Kansas
Hollister, Missouri
Springfield, Missouri
Jefferson City, Missouri

Re: Brighton Gardens Building Renovation and Addition
Request for a Waiver for Stormwater Detention & BMPs
7105 Mission Road Prairie Village, KS 66208
Section 22, Township 12 South, Range 25 West
Brush Creek Tributary
CFS Project No. 21-5128

To Whom It May Concern;

Brighton Gardens has planned a 4,340 sq. ft. building renovation and a 2,117 sq. ft. building expansion to the existing assisted living facility located on the 4.42 acre developed lot located at 7105 Mission Road Prairie Village, Kansas.

Under the pre-development conditions, the existing 4.42 acre site has impervious pavement, sidewalks, gravel, and existing buildings covering 51.65% of the property. Stormwater runoff from the site is collected into an existing onsite drainage system and discharges to a concrete lined channel on the northeast side of the property.

Board of Directors:
Kenneth M. Blair, P.E.
Kevin K. Holland, P.E.
Daniel W. Holloway, P.E.
Lance W. Scott, P.E.
Sabin A. Yañez, P.E.

For the post-development conditions, the owner has planned a 4,340 sq. ft. building renovation and a 2,117 sq. ft. building expansion to the existing assisted living facility. The total disturbed ground to make way for the new construction would cover approximately 0.50 acres. Increasing the impervious area from 2.28 acres to 2.48 acres. Resulting in a 4.46% increase in the on-site impervious area.

Based on the small net increase in total impervious area, the site improvements would not cause a significant increase in stormwater runoff from the site and would not cause any negative impacts to the existing downstream drainage system. Following is a table summarizing the impacts to the stormwater runoff:

Associates:
Aaron J. Gaspers, P.E.
Michelle L. Mahoney, P.E.
Michael J. Morrissey, P.E.
Gene E. Petersen, P.E.
Todd R. Polk, P.E.
William J. Stafford, P.E.
Richard A. Walker, P.E.
Lucas W. Williams, P.E.

Storm Frequency	Pre-Development	Post-Development	% Increase
1 Year	10.26 cfs	10.76 cfs	4.87%
10 Year	23.78 cfs	24.34 cfs	2.35%
100 Year	39.05 cfs	39.56 cfs	1.31%

On behalf of the Brighton Gardens development, CFS Engineers requests that the City waive the requirements for stormwater detention and BMPs based on the following:

1. The proposed site improvements are less than 2 acres and the increase in the impervious area is less than 10% in accordance with KCMO Storm Drainage Systems and Facilities Section 5601.3.A.3.
2. The proposed improvements are part of a larger development that has already provided stormwater management in accordance with KCMO Storm Drainage and Facilities Section 5601.3.B.2.

Cook, Flatt & Strobel Engineers, P.A.

Respectfully,



3-5-2021

Lucas W. Williams, P.E.
Associate

EXCERPT OF PLANNING COMMISSION MINUTES
April 6, 2021

PUBLIC HEARINGS

PC2021-106 Revised Special Use Permit - Brighton Gardens
7105 Mission Road
Zoning: R-1B
Applicant: Dominic Tutera, the Village at Mission Property, LLC

Mr. Brewster stated that the Brighton Gardens senior living facility was built in 1997 in accordance with a special use permit approved by the City. It was originally constructed with 164 beds and 134 living units for both assisted living and skilled nursing care. The existing structure is a combination of one-story and three-story construction, with a three-story central mass addressing Mission Road.

The applicant is proposing an addition and remodel to reconfigure interior spaces. The changes would not add capacity, but instead bring the amenities, care facilities and living units more into compliance with typical industry offerings for care services. Additionally, the changes would not bring the use beyond the current licensed bed count.

The addition would include an expansion of the building footprint in two locations: a one-story extension to the rear of the south wing, and a one-story expansion that would connect the rear of the north wing to the side of the south wing. There would also be a second story added to the central portion of the structure connecting to the three-story portion at the front of the structure.

The building and site meet both height and setback standards for the R-1B zoning district, which allows senior care facilities with a special use permit.

Dominic Tutera, Asset Manager for the Tutera Group, 7611 State Line Rd., Kansas City, MO, and Jason Toye, Senior Project Manager with NSPJ Architects, 3515 W. 75th Street, were present to discuss the project. Mr. Toye noted that a civil engineer at NSPJ was working with Public Works to address storm water management due to the building addition. He added that the primary reason for the addition was to update the facility to current standards and eliminate shared patient rooms in the skilled nursing area. The bed count and staff size would not change.

Mr. Wolf opened the public hearing at 7:17 p.m. With no one present to speak, Mr. Wolf closed the public hearing at 7:18 p.m.

Ms. Brown made a motion to recommend approval of the revised special use permit to the City Council, subject to the following conditions:

1. The changes are limited to those shown on the proposed site plan associated with the application, or any additional conditions implemented by Planning Commission.

2. The proposal assumes no increase in facility capacity, which was previously approved with 164 beds and approximately 30 staff members at maximum shift. Any change in interior operations that increase beyond this anticipated capacity, licensed bed count, or other unanticipated activity, may require additional parking improvements.
3. The application will need to demonstrate adequate on-site detention and have a drainage study approved by Public Works prior to issuing building permits.
4. The landscape plan should be revised to reflect the following:
 - a. The grouping of three new evergreen trees on the northwest edge be increased to seven.
 - b. The grouping of six new evergreen trees on the northeast edge be increased to between 11 and 15.
 - c. The species of these trees should be Green Giant Arborvitae, or similar species to be approved by staff based on availability.
 - d. Prior to issuance of permits, final plans should include the species and size of plants.
5. The applicant acknowledges the City's interest in making a trail connection to the park at some point in the future, and should the City advance further than conceptual design or funding, the City and the applicant will work together to determine if a connection can be made in each party's mutual interests.
6. All other conditions of the original special use permit (#97-02, Ordinance 1917) remain in effect, primarily that the permit can be revoked for any violations of the permit, approved site plan, or other city ordinance.

Mr. Lenahan seconded the motion, which passed 6-0.



PLANNING COMMISSION
Council Meeting Date: May 3, 2021

PC2021-107: Consider Ordinance 2449 to approve a Special Use Permit for an animal care and boarding facility at Suite 210 of 7600 State Line Road

RECOMMENDATION

Make a motion to accept the Planning Commission's recommendation and approve PC2021-107.

BACKGROUND

The applicant is Destination Pet and is requesting a special use permit for an animal care facility that will provide non-medical boarding services. The proposal is for a tenant finish of approximately 10,500 square feet in the State Line Shopping Center. The use would include veterinary care, pet daycare, and overnight boarding services. The City's zoning regulations allow for pet daycare, veterinary care, and animal hospitals without a special use permit; however, a special use permit is required in C-2 zoning districts for overnight boarding services.

The Planning Commission held a public hearing on April 6 remotely via Zoom. Nobody submitted comments beforehand and nobody was present in the meeting to speak in favor or against the application. The Planning Commission made findings of fact based on the required factors to consider when granting a special use permit and voted unanimously to recommend approval of this amended Special Use Permit to the City Council subject to the following conditions:

1. The applicant shall comply with the Prairie Village noise ordinance with regard to internal and external activities, and in particular limit the time and intensity of pets in the exterior yard to ensure compliance. In furtherance of this goal, the time of outdoor use for multiple animals shall be limited to between 7AM and 10PM (per Chapter 8-503 of the Prairie Village Municipal Code).
2. The K-9 turf application shall be installed and maintained according to manufacturers' specifications, and at all times function to permit appropriate drainage and cleaning of pet waste.
3. All signs shall first receive a sign permit from staff, and comply with the Prairie Village sign standards, and specific standards and guidelines applicable to the State Line Shopping Center.
4. No animals shall be taken off-site to relieve themselves.

An excerpt of the meeting minutes pertaining to the application are attached for the Council's review.

A special use permit application requires the City Council to act in its quasi-judicial role. When acting in this capacity, rather than a legislative capacity, the governing body must set aside personal opinions and, like a judge, apply the law to facts presented in the public

record, taking into consideration the following criteria, outlined in [Section 19.28.035 of the Zoning Regulations](#):

1. The proposed special use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations, and use limitations.
2. The proposed special use at the specified location will not adversely affect the welfare or convenience of the public.
3. The proposed special use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.
4. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the special use will not dominate the immediate neighborhood so as to hinder development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the special use will so dominate the immediate neighborhood, consideration shall be given to:
 - a. The location, size, nature, and height of buildings, structures, walls, and fences on the site; and
 - b. The nature and extent of landscaping and screening on the site.
5. Off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations, and such areas will be screened from adjoining residential uses and located so as to protect such residential uses from injurious effect.
6. Adequate utility, drainage, and other such necessary facilities have been or will be provided.
7. Adequate access roads or entrance and exit drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.
8. Adjoining properties and the general public shall be adequately protected from any hazardous or toxic materials, hazardous manufacturing processes, obnoxious odors, or unnecessarily intrusive noises.
9. Architectural style and exterior materials are compatible with such style and materials used in the neighborhood in which the proposed building is to be built or located.

An analysis of all of these factors is provided in the attached Planning Commission staff report.

According to [Section 19.52.040 of the Zoning Regulations](#), the Governing Body can take the following actions on a special use permit recommendation from the Planning Commission:

1. Adopt the Planning Commission's recommendation by a simple majority (7 votes including the Mayor)
2. Override the Planning Commission's recommendation by a 2/3 majority vote of the entire Governing Body (9 votes including the Mayor)

3. Return the recommendation to the Planning Commission with a statement specifying the basis for the Governing Body's failure to approve or disapprove by a simple majority. The Planning Commission can then submit the original recommendation or submit a new and amended recommendation. The Governing Body then can adopt or amend the recommendation by a simple majority (7 votes) or take no further action.

Graham Smith, the City's Planning Consultant, will be present at the meeting to provide a short presentation and answer any associated questions. The applicant will also be present in case there are any questions.

ATTACHMENTS

Ordinance 2449

Planning Commission Staff Report

Special Use Permit Application

Excerpt from April 6, 2021 Planning Commission Minutes

PREPARED BY

Jamie Robichaud

Deputy City Administrator

Date: April 27, 2021

ORDINANCE 2449

AN ORDINANCE GRANTING APPROVAL OF A SPECIAL USE PERMIT FOR AN ANIMAL CARE AND BOARDING FACILITY LOCATED IN SUITE 210 OF 7600 STATE LINE ROAD

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

Section I. Planning Commission Recommendation. That having received a recommendation from the Planning Commission; having found favorably on the findings of fact, proper notice having been given and hearing held as provided by law and under the authority of and subject to the provisions of the Zoning Regulations of the City of Prairie Village, Kansas, that the City Council approve a Special Use Permit for an animal care and boarding facility located in Suite 210 of 7600 State Line Road, subject to the following conditions:

1. The applicant shall comply with the Prairie Village noise ordinance with regard to internal and external activities, and in particular limit the time and intensity of pets in the exterior yard to ensure compliance. In furtherance of this goal, the time of outdoor use for multiple animals shall be limited to between 7AM and 10PM (per Chapter 8-503 of the Prairie Village Municipal Code).
2. The K-9 turf application shall be installed and maintained according to manufacturers' specifications, and at all times function to permit appropriate drainage and cleaning of pet waste.
3. All signs shall first receive a sign permit from staff, and comply with the Prairie Village sign standards, and specific standards and guidelines applicable to the State Line Shopping Center.
4. No animals shall be taken off-site to relieve themselves.

Section II. Findings of the Governing Body. That at its meeting on May 3, 2021 the Governing Body adopted by specific reference the findings of fact as contained in the Minutes of the Planning Commission meeting dated April 6, 2021 and the recommendations of the Planning Commission, including conditions, and approved the Special Use Permit as docketed PC2021-107.

Section III. Granting of Special Use Permit. Be it therefore ordained that the City of Prairie Village grant the Special Use Permit for the operation of an animal care and boarding facility in Suite 210 of 7600 State Line Road, Prairie Village, Kansas subject to the specific conditions listed above.

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

PASSED AND APPROVED THIS 3rd DAY OF MAY, 2021

CITY OF PRAIRIE VILLAGE, KANSAS

By: _____

Eric Mikkelson, Mayor

ATTEST:

APPROVED AS TO FORM:

Adam Geffert, City Clerk

David E. Waters, City Attorney

STAFF REPORT

TO: Prairie Village Planning Commission
FROM: Chris Brewster, Gould Evans, Planning Consultant
DATE: April 6, 2021 Planning Commission Meeting

Application: PC 2021-107

Request: Special Use Permit – Animal Care, Boarding

Action: *A Special Use Permit requires the Planning Commission to evaluate facts and weigh evidence, and based on balancing the factors and criteria in the zoning ordinance, make a recommendation to the City Council.*

Property Address: 7600 State Line Road, Suite 210, Prairie Village, KS

Applicant / Owner: Destination Pet, Buddy Lanham / State Line Opco LLC

Current Zoning and Land Use: C-2 General Business District – Retail

Surrounding Zoning and Land Use: North: R-1B Single-Family Residential; Single-family
East: B-3-2 (R.2.5) Kansas City, MO, office and residential
South: C-2 General Business District - Bank
West: C-2 General Business District– Shopping Center

Legal Description: SOUTHGATE FINANCIAL CENTER LOT 1 PVC 14000 1

Property Area: 8.3 acres (361,594.24 s.f.)

Related Case Files: N/a

Attachments: Application, building finish plans

General Location Map



Aerial Map



Site



Street Views



Street view looking west from State Line Road



Street view looking east on West 76th Street..



Bird's eye view

Background:

The applicant is requesting approval of a special use permit for an animal care facility that will provide non-medical boarding services. The proposal is for a tenant finish of approximately 10,500 square feet in the State Line Shopping Center on the northeast corner (formerly the Reece Nichols real estate offices). The use would include veterinary care, pet daycare and overnight boarding services. The application also includes a site plan to convert 5 existing parking spaces to a 720 square foot fenced to an outdoor play area for animals.

The applicant held a neighborhood meeting on March 25, 2021, in accordance with the City's Citizen Participation Policy, and will provide background on the meeting to supplement the application.

Zoning Requirements:

The property is zoned C-2, General Business. Pet Daycare, Veterinary Care and Animal Hospitals are all permitted uses in the C-2 zoning district, including accessory medical related boarding. However, general commercial overnight boarding for non-medical purposes requires a Special Use Permit in both the C-1 and the C-2 zoning districts. [Prairie Village Zoning Ordinance, 19.27,010 Table 19.27]. The use will be located in an existing building that meets all C-2 zoning and site requirements.

Special Use Permit Factors:

The Planning Commission shall make findings of fact to support its recommendation to approve, conditionally approve, or disapprove this Special Use Permit. It is not necessary that a finding of fact be made for each factor. However, there should be a conclusion that the request should be approved or denied based upon consideration of as many factors as are applicable. The factors to be considered in approving or disapproving a Special Use Permit include the following [19.28.035:

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

The building and site meet all standards of the C-2 zoning district. There are no building improvements associated with this application other than the conversion of 5 parking areas to an enclosed pet play area, discussed below.

Some aspects of the proposed use (veterinary care and pet daycare) are permitted uses in the zoning district, but non-medical boarding services require a special use permit. The application and conceptual floor plan indicate potential pet boarding facilities for up to 58 dogs and 12 cats.

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

The proposed use is a tenant finish in an existing commercial building. It is zoned for the more intense commercial uses in the City's zoning ordinance, and is located on a major traffic thoroughfare in the City. However, the shopping center does share a sensitive border with residential property to the north, across 76th street. The homes nearest the proposed use have a side property boundary on 76th Street, but front on the side streets that connect with the center, or on State Line Road. Although the use is primarily enclosed, there is a 720 square feet enclosed play area proposed near the rear of the facilities. The homes closest to this use, and the outside play area specifically, are approximately 130 feet or more from the use, separated by their yards, a side street and a buffer and parking area.

C. The proposed special use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.

The Center has been zoned C-2 for many years, and the district allows many similarly intensive commercial uses. The adjacency of commercial uses to residential property is managed by a combination of zoning and development standards, property maintenance codes, and noise or other similar nuisance ordinances. Special Use Permits are used to analyze specific uses and circumstances for the likelihood of compliance with these protections, or if any limitations or additional protections are warranted prior to allowing a particular use. In this case, the greatest

concern would be the potential for noise from many animals boarding together (both to nearby residential uses or to other commercial uses), and the potential impact of the outside play area.

The majority of the operation is indoors where noise can be mitigated by the buildings insulation or other acoustic techniques. The limited size of the outside play area should mean that fewer animals than the applicants stated capacity (58 dogs and 12 cats) would be using this space at a single time. The hours of operation, – particularly the outside play area – may also be a concern since this is located on the boundary with the neighborhood to the north.

Other impacts from this proposed use, and particularly the non-medical boarding component of the use, are similar to those of comparable C-2 uses, and the Center is designed to accommodate this type of use.

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

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

There is no additional construction proposed with this application to accommodate the use, other than the 720 square foot outdoor play area. The site and location is designed to accommodate other similar scale and intensity of uses permitted in the C-2 zoning district, in a compatible manner with other adjacent property and zoning district. The parking area supporting the facility was developed prior to the adoption of the Prairie Village landscape standards [Prairie Village Zoning Ordinance, Section 19.47]. However, the parking buffer generally complies with the landscape standards that would otherwise apply, and has mature trees on the perimeter. The buffer is denser towards the western edge along 76th street, likely because the rear of the anchor tenant grocery store is closer to the residential uses at this location.

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

The application is not proposing any activities that would trigger application of the parking standards, and no new access and circulation is provided. The shopping center is adequately designed to accommodate this type and intensity of use. However, the proposal does include the removal of 5 spaces for the outside play area. These spaces are on a remote portion of the site relative to other businesses. This business also includes large areas of convenient and accessible parking (approximately 77 spaces for this and the adjacent use), and the conversion of 5 spaces is slightly over 1 percent of the centers approximately 450 spaces. The ordinance requirement for the shopping center is based on a blended parking rate, applied to mixed-use centers where the uses can share parking, and balance each uses peak parking demands. There is not a clear difference in the needs or peak demands of this particular use, from other allowed or existing uses in the center that would warrant a special parking concern with the proposed use

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

The application is reuse of an existing building and site, with little site development activity. There are adequate utilities in the area, and there have been no reports of drainage issues caused by the existing site layout. The proposed conversion of the parking area to outdoor play space will include a drained, artificial grass (“K-9 grass”). Manufacturers specification indicate this product can perform similarly or better than natural grass in handling pet waste, drainage and odors and is “drainable and cleanable.” Construction of this area requires further review of construction specification and drainage by the Building Official and Public Works at the permitting stage.

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

There is no proposed change to the existing access and circulation pattern. The site has adequate access to all surrounding streets by way of an internal parking lot street,

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

The site is the reuse of an existing commercial building. It will be operated within the parameters of all building and public health codes. No manufacturing, toxic materials or other hazardous activities are associated with the proposed use.

The outside pet area shall require management and maintenance to ensure compliance with the Prairie Village noise ordinance and to ensure that the K-9 grass is performing according to manufacturers' specifications

I. Architectural style and exterior materials are compatible with such style and materials used in the neighborhood in which the proposed building is to be built or located.

The applicant is reusing an existing building with no exterior modifications proposed. No signs are proposed with this application, and the applicant has indicated that all signs will comply with the Prairie Village Sign Standards and the guidelines applicable to this property at the time of sign permits.

Recommendation:

Staff recommends approval of the proposed special use permit based on the following considerations and conditions (Planning Commission recommendation to City Council):

1. The applicant shall comply with the Prairie Village noise ordinance with regard to internal and external activities, and in particular limit the time and intensity of pets in the exterior yard to ensure compliance. In furtherance of this goal the time of outdoor use for multiple animals shall be limited to between 7AM and 10PM (per Chapter 8-503 of the Prairie Village Municipal Code).
2. The K-9 turf application shall be installed and maintained according to manufacturers' specifications, and at all times function to permit appropriate drainage and cleaning of pet waste.
3. All signs shall first receive a sign permit from staff, and comply with the Prairie Village sign standards, and specific standards and guidelines applicable to the State Line Shopping Center.

**APPLICATION FOR REZONING
OR APPLICATION FOR SPECIAL USE PERMIT
WITH THE PRAIRIE VILLAGE PLANNING COMMISSION**

1. Submit application form accompanied by filing fee of \$100 (except for Special Use Permits for Adult Senior Dwellings or Day Care Centers, the filing fee is \$25.)
2. Application must be accompanied by a cost advance of \$500.
3. Application must be accompanied by an accurate sketch of the land in question, drawn to scale on a sheet of at least 8 ½ x 11 inches, showing adjacent tracts within 200 feet of the current ownership.
4. Notice must be published in a Johnson County Newspaper at least 20 days before the hearing date, exclusive of the days of publication and hearing. (This is done by City Staff.)
5. Applicant must place a sign, furnished by the City, on the property. This sign must be firmly attached to a wood or metal frame. It must be maintained until the conclusion of the Public Hearing and must be removed after final action is taken on the application. The applicant must file an affidavit with the City prior to the hearing that the sign was placed and maintained. The bottom of the sign shall be at least two feet above the ground. It shall be placed within five feet of the street right-of-way line, in a central position on the lot, tract or parcel. If the land has more than one street abutting thereto, the sign shall face the street with the greatest traffic flow. If the lot, tract or parcel of land is larger than five acres, signs shall be placed so as to face each of the streets abutting thereto.
6. At least 20 days before the public hearing, the applicant must service Notice of Hearing on property owners, not mere occupants, within 200 feet of the property. Shall notice shall be by certified mail, return receipt requested. The notice shall be in the form of a letter explaining the proposed change or a copy of the published notice of hearing.
7. At least one week prior to the hearing, the applicant must hold a neighborhood meeting as described in the Planning Commission's Citizen Participation Policy adopted June 6, 2000.
8. At least one week prior to the hearing, the applicant must file in the Office of the Secretary of the Planning Commission the following:
 - Affidavit that such notices were mailed
 - Proof of ownership/option to buy or authorization of property owner
 - A written summary report on the neighborhood meeting
9. The applicant is responsible for the following:
 1. Mailing of certified notices
 2. Cost of court reporter and 14 copies of transcript of hearing, if applicable.
 3. Any other miscellaneous costs incurred including fees charged the City by the City Architect/Engineer, City Attorney or City Planning Consultant, etc.
 4. Publishing fees and cost of newspaper clippings. Note: the above four items come out of the \$500 hearing cost advance. If additional costs are incurred, they will be billed. If costs do not total \$500, remaining funds will be returned to the applicant.
 5. Affidavit that the sign was posted and maintained properly.
 6. Placing and maintaining the sign. file

SPECIAL USE PERMIT APPLICATION

CITY OF PRAIRIE VILLAGE, KANSAS

For Office Use Only

Case No.: _____
Filing Fees: _____
Deposit: _____



Date Advertised: TBD
Date Notices Sent: TBD
Public Hearing Date: TBD

APPLICANT: Destination Pet, Buddy Lanham PHONE: 623-293-2336
ADDRESS: 8822 S Ridgeline Blvd, Suite 260, Highlands Ranch, CO 80129 E-MAIL: Buddy.Lanham@destpet.com
OWNER: Westwood Financial, Greg Dallal PHONE: 310-463-7822
ADDRESS: 11400 San Vicente Blvd, 2nd Flr, Los Angeles, CA ZIP: 90049
LOCATION OF PROPERTY: 7600 State Line Road, Suite 210, Prairie Village, KS 66208
LEGAL DESCRIPTION: SOUTHGATE FINANCIAL CENTER LT 1 PVC 14000 1.

ADJACENT LAND USE AND ZONING:

	<u>Land Use</u>	<u>Zoning</u>
North	<u>Single-Family Residential</u>	<u>Single-Family Residential</u>
South	<u>Wettner Park</u>	<u>Recreational</u>
East	<u>SFR / Business Office</u>	<u>State line (MO)</u>
West	<u>Single-Family Residential</u>	<u>Single-Family Residential</u>

Present Use of Property: Retail - Shopping Center

Please complete both pages of the form and return to:
Planning Commission Secretary
City of Prairie Village
7700 Mission Road
Prairie Village, KS 66208

Does the proposed special use meet the following standards? If yes, attach a separate Sheet explaining why.

	<u>Yes</u>	<u>No</u>
1. Is deemed necessary for the public convenience at that location.	<u>X</u>	<u> </u>
2. Is so designed, located and proposed to be operated that the public health, safety, and welfare will be protected.	<u>X</u>	<u> </u>
3. Is found to be generally compatible with the neighborhood in which it is proposed.	<u>X</u>	<u> </u>
4. Will comply with the height and area regulations of the district in which it is proposed.	<u>X</u>	<u> </u>
5. Off-street parking and loading areas will be provided in accordance with the standards set forth in the zoning regulations, and such areas will be screened from adjoining residential uses and located so as to protect such residential use from any injurious effect.	<u>X</u>	<u> </u>
6. Adequate utility, drainage, and other such necessary facilities have been or will be provided.	<u>X</u>	<u> </u>

Should this special use be valid only for a specific time period? Yes X No

If Yes, what length of time? We request that it be allowed for the duration of the lease agreement with the Landlord.

SIGNATURE: Buddy Lanham

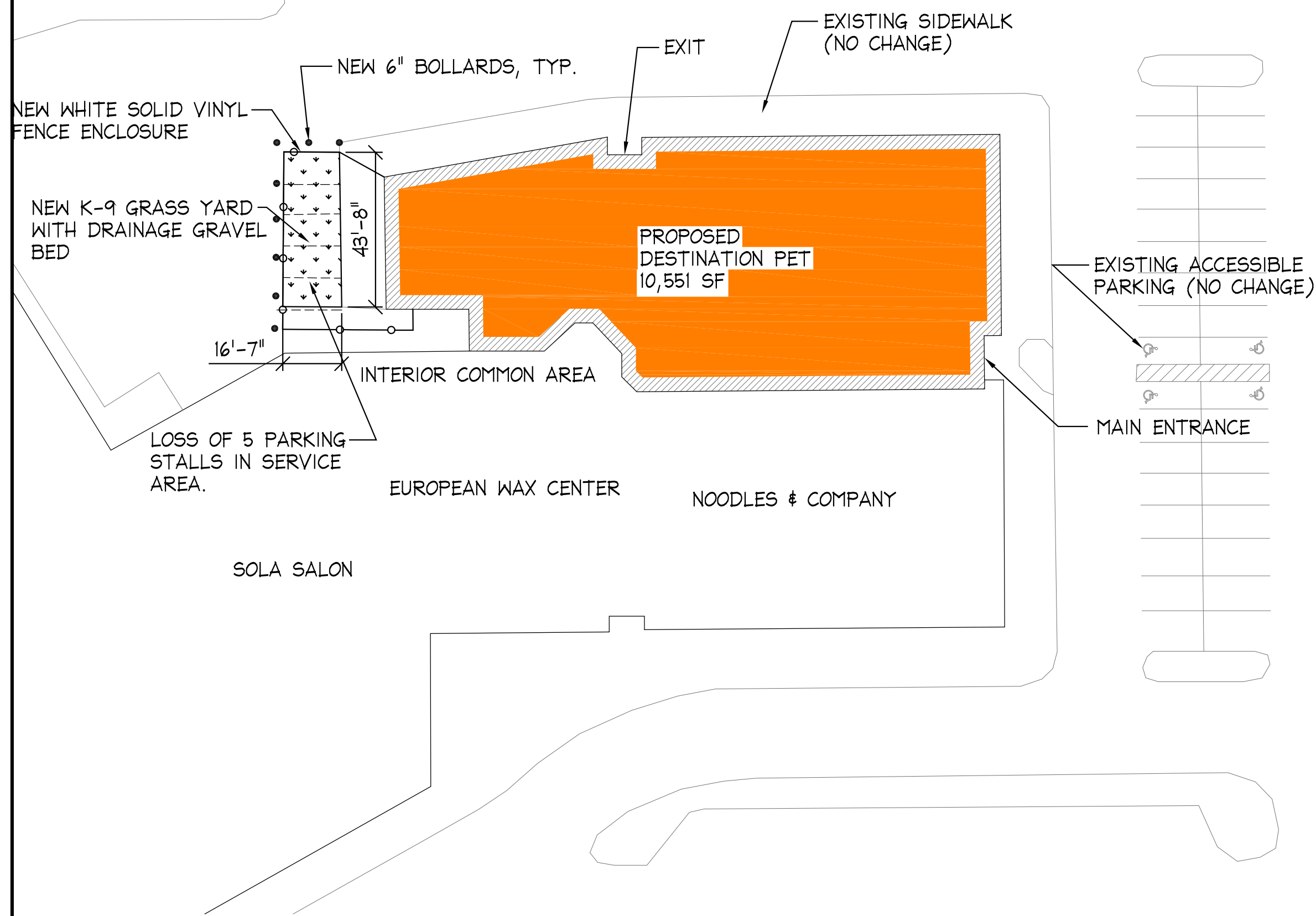
DATE: 03/04/2021

BY: Buddy Lanham

TITLE: Construction Manager

Attachments Required:

- Site plan showing existing and proposed structures on the property in questions, and adjacent property, off-street parking, driveways, and other information.
- Certified list of property owners



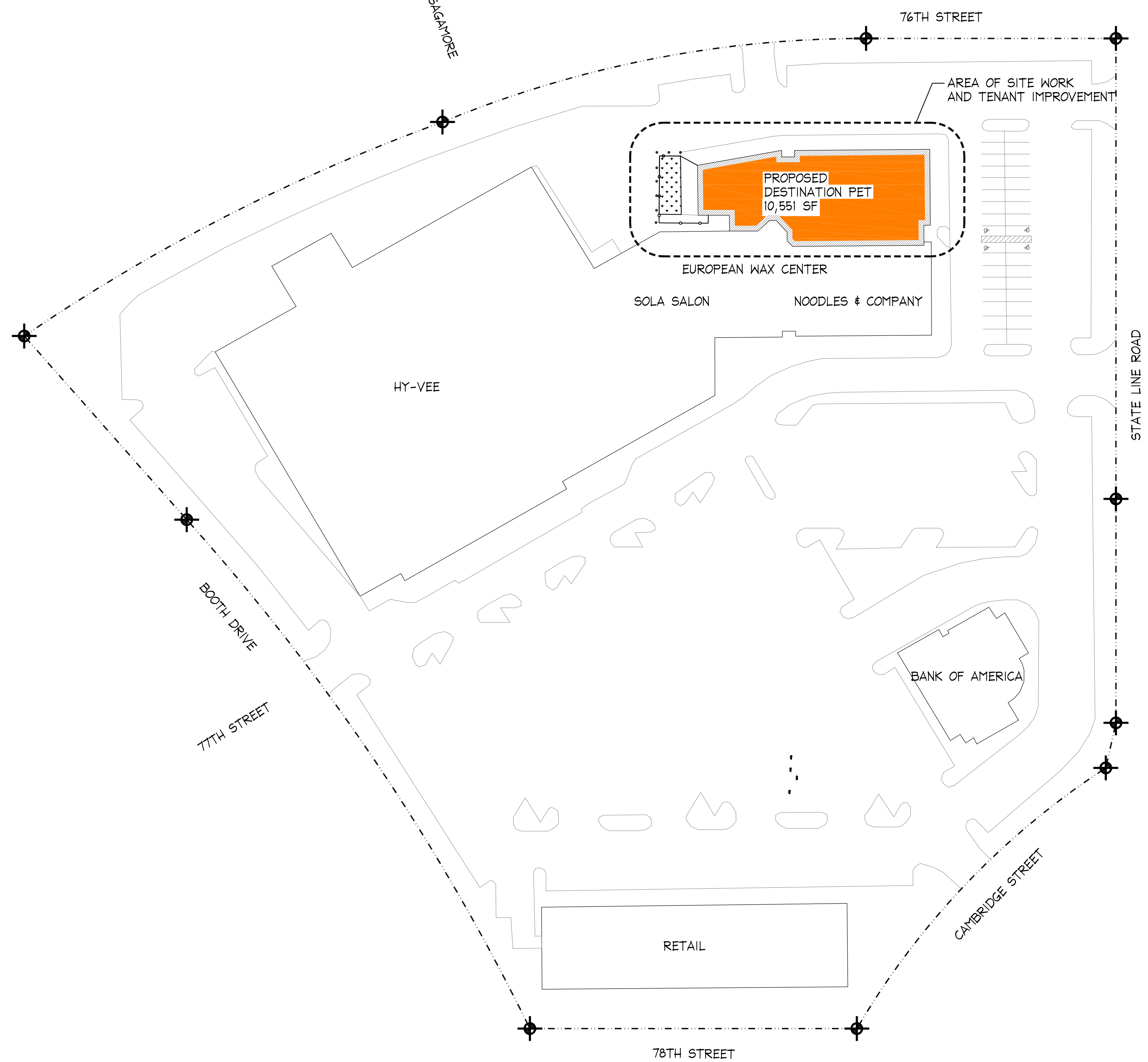
② ENLARGED SITE PLAN
SCALE: 1" = 30.0'

SITE PLAN LEGEND

- DETAIL INDICATOR
- INDICATOR FOR AREA / OBJECT DETAIL
- DETAIL # ON SHEET
- DETAIL SHEET DESIGNATION
- LANDSCAPED AREA
- 64.00' SPOT ELEVATION
- NEW CONTOUR

SITE PLAN GENERAL NOTES

A. SEE FLOOR PLAN FOR ADDITIONAL WORK & DIMENSIONS



① SITE PLAN
SCALE: 1" = 50.0'

SEAL:
PRELIMINARY
NOT FOR CONSTRUCTION



Destination Pet
State Line Center
7600 State Line Rd
Prairie Village, KS 66208

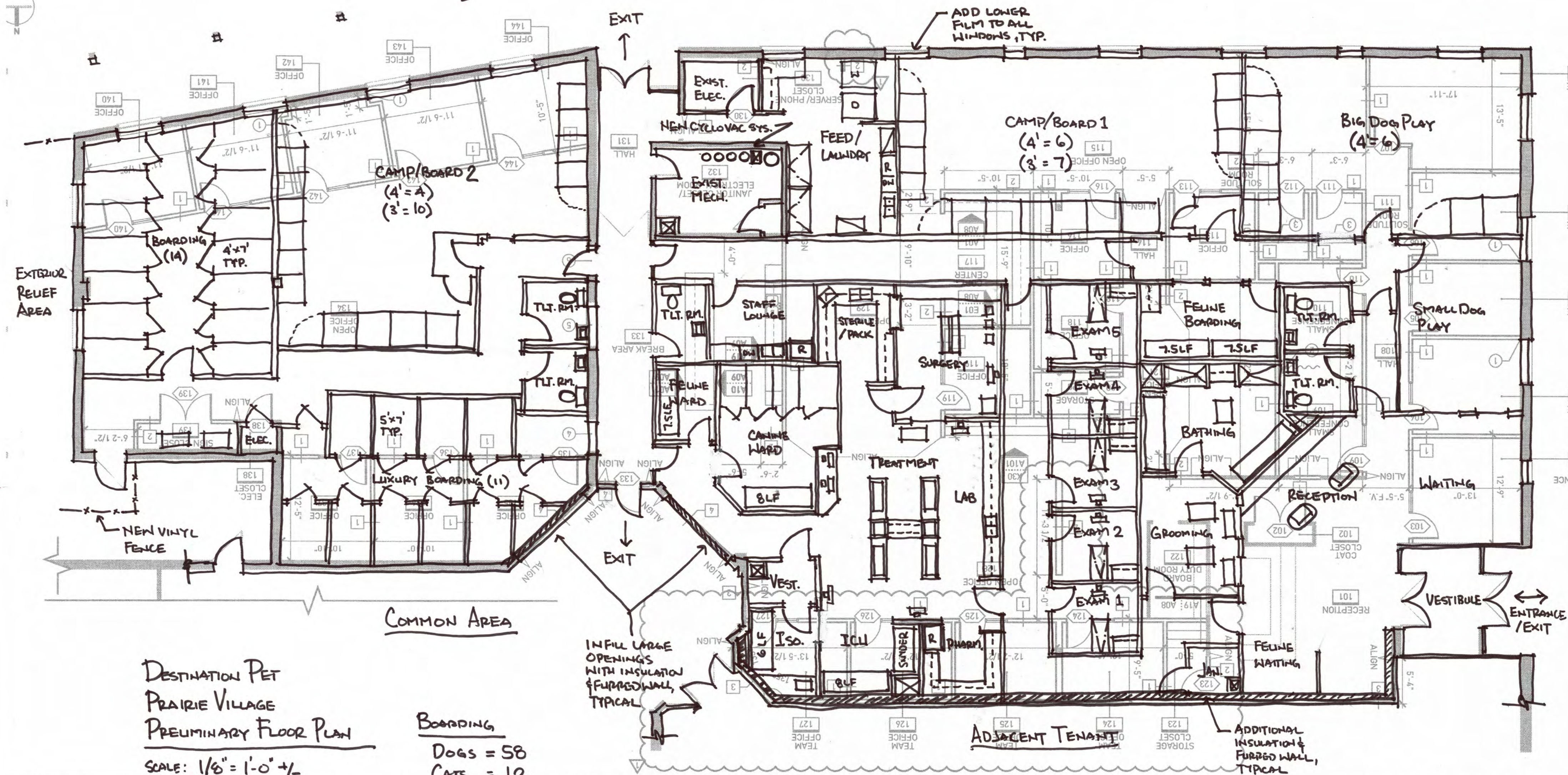
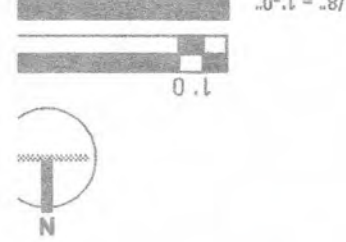
JOB NUMBER: 2110
DRAWN: FWHN
CHECKED:
DATE: March 5, 2021
REVISIONS:

SHEET TITLE:
PRELIMINARY SITE PLAN

PROGRESS SET
SHEET NUMBER:

SD-1

FLOOR PLAN K06



DESTINATION PET
 PRAIRIE VILLAGE
 PRELIMINARY FLOOR PLAN
 SCALE: 1/8" = 1'-0" +/-

BOARDING
 DOGS = 58
 CATS = 12
 TOTAL = 70



Application No. _____

AFFIDAVIT

STATE OF KANSAS)
COUNTY OF JOHNSON) ss.

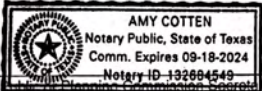
Doug Howell, being duly sworn upon his oath, disposes and states:

That he is the (owner) (attorney for) (agent of) the tract of land for which the application was filed. That in accordance with Section 19.28.025 of the Prairie Village Zoning Regulations, the applicant placed and maintained a sign, furnished by the City, on that tract of land. Said sign was a minimum of two feet above the ground line and within five feet of the street right-of-way line in a central position of the tract of land and had no visual obstruction thereto.

STATE LINE OPDO LLC
A DELAWARE LIMITED LIABILITY COMPANY
By: [Signature]
a Delaware corporation
Its: Manager
By: [Signature]
Name: Doug Howell
VP of Property Management

(Owner/Attorney for/Agent of)

Subscribed and sworn to before me this 8th day of March, 2021

Notary 

[Signature]



ARCHITECTURE
SPACE PLANNING
INTERIOR DESIGN

March 12, 2021

City of Prairie Village
7700 Mission Rd
Prairie Village, KS 66208

RE: Regarding Special Use Permit Application for new Veterinary Care/Daycare/Boarding facility at 7600 State Line Road, Suite 210

Dear City of Prairie Village,

Destination Pet has filed an application with Prairie Village Planning Commission for the construction of a new Veterinary Care / Daycare / Boarding facility at a vacant tenant space (formerly Reece Nichols office) located in State Line Center (near Hy-Vee) at 7600 State Line Road and managed by Westwood Financial.

The application will be heard by the Planning Commission on Tuesday, April 6th at 7:00pm at the council chambers of the municipal building. Note: **Members of the Planning Commission will participate by video call-in only due to the COVID19 pandemic. The public will be able to view the meeting at <https://www.facebook.com/CityofPrairieVillage>.** The application number associated with this proposed project is PC2021-107.

You are invited to attend an informal neighborhood meeting to be held virtually (via Zoom) at 6:30 to 7:00 pm on Thursday, March 25th, 2021. The meeting will be held to briefly share information about our project (drawings) and answer any questions you may have.

If you are not able to attend the meeting and have some questions, please contact:

Franklin Ng
Architectural Werks, Inc.
E: franklin@awerks.com
P: 425-823-2244

<https://zoom.us> or call 1-346-248-7799
Meeting ID: 898-4795-9800
Passcode: 537985

Sincerely,
Architectural Werks, Inc.

A handwritten signature in blue ink, appearing to read "Franklin Ng", is written over a light blue horizontal line.

Franklin Ng, AIA

Cc: Adam Geffert (City of Prairie Village, via email) & Buddy Lanham (via email)

2110 - DEPT. PET - PRIME VILLAGE
NEIGH. REL. HOOD MISSING

3/25/2021
4³⁰ pm (PET)
5⁰² pm (PET)

- NO APPEARANCES / NO QUESTIONS.
-

APPEARANCES:
FRANKLIN NO
BUNNY LAWSON



ALL CARE SERVICES, LLC

March 15, 2021

Buddy Lanham
Destination Pet
8822 S. Ridgeline Blvd., Ste. 260
Highlands Ranch, CO 80129

Mr. Lanham:

As we discussed, we hung the land use sign on the outside, east facing, window at the vacant space at 7600 State Line Road, Prairie Village, KS. I've included two pictures with this letter. The sign is approximately 4' off the ground and centered in the window. The sign was placed per the city requirements as are written in the memo and explained to me by Franklin Ng of Architectural Werks, Inc.

If you have any questions, I can be reached at 913-488-7794.

Thank you.

A handwritten signature in black ink, appearing to read 'Charles E. Joseph'.

Charles E. Joseph
All Care Services, LLC

EXCERPT OF PLANNING COMMISSION MINUTES
April 6, 2021

PUBLIC HEARINGS

PC2021-107 Special Use Permit - Destination Pet
7600 State Line Rd., Suite 210
Zoning: C-2
Applicant: Buddy Lanham, Destination Pet

Mr. Brewster said that the applicant was requesting approval of a special use permit for an animal care facility that would provide non-medical boarding services. The proposed facility would be located in an existing 10,500 square foot space in the State Line Shopping Center on the northeast corner (formerly the Reece Nichols real estate offices). The use would include veterinary care, pet daycare and overnight boarding services. The application also included a site plan to convert five existing parking spaces into a 720 square foot fenced outdoor area for animals.

Mr. Brewster added that the property was zoned C-2, and that pet daycare, veterinary care and animal hospitals were all permitted uses in the zoning district, including accessory medical-related boarding. However, general commercial overnight boarding for non-medical purposes requires a special use permit in both the C-1 and the C-2 zoning districts.

Mrs. Wallerstein asked that an additional condition prohibiting facility staff from taking animals off-site to relieve themselves be added.

Buddy Lanham, Construction Manager with Destination Pet, 8822 S. Ridgeline Blvd., Suite 260, Highlands Ranch, CO, and Franklin Ng, project architect with AWI Architectural Werks, Inc., 11416 98th Ave., NE, Suite 200, Kirkland, WA, were present to discuss the project. Mr. Ng addressed Mrs. Wallerstein's concerns, stating that no animals would be taken off-site at any time..

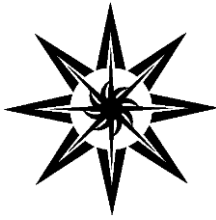
Mr. Wolf opened the public hearing at 7:38 p.m. With no one present to speak, Mr. Wolf closed the public hearing at 7:39 p.m.

Mr. Lenahan made a motion to recommend approval of the special use permit to the City Council subject to the following conditions:

1. The applicant shall comply with the Prairie Village noise ordinance with regard to internal and external activities, and in particular limit the time and intensity of pets in the exterior yard to ensure compliance. In furtherance of this goal, the time of outdoor use for multiple animals shall be limited to between 7AM and 10PM (per Chapter 8-503 of the Prairie Village Municipal Code).
2. The K-9 turf application shall be installed and maintained according to manufacturers' specifications, and at all times function to permit appropriate drainage and cleaning of pet waste.

3. All signs shall first receive a sign permit from staff, and comply with the Prairie Village sign standards, and specific standards and guidelines applicable to the State Line Shopping Center.
4. No animals shall be taken off-site to relieve themselves.

Mr. Breneman seconded the motion, which passed 6-0.



COU2021-39

Consider adopting amended animal ordinance

RECOMMENDATION

Staff recommends the Governing Body approve the amended animal ordinance.

BACKGROUND

At the April 19, 2021 Council Committee of the Whole meeting, the Council approved the removal of section 2-123 a) 1 from the animal ordinance.

2-123. CAT AND DOG CONTROL.

- (a) All cats must be under the control of the person responsible therefor at all times. For the purpose of this section, a cat shall be considered not under control and in violation of this section in the following situations:

~~(1) If a neighbor complains orally or in writing to the person responsible for a cat, that the cat is entering upon the neighbor's property, then the cat's presence on the neighbor's property at any time subsequent to the neighbor's complaint shall constitute a violation of this section;~~

~~(2)~~ (1) If a cat causes injury to persons or animals.

~~(3)~~ (2) If a cat causes damage to property off the property of the person responsible for such cat, to include, but not limited to, breaking, bruising, tearing up, digging up, crushing or injuring any lawn, garden, flowerbed, plant, shrub or tree in any manner or defecating or urinating upon any private property.

ATTACHMENTS

Ordinance 2450

PREPARED BY:

Tim Schwartzkopf
Assistant City Administrator
April 20, 2021

ORDINANCE NO. 2450

AN ORDINANCE REGARDING ANIMAL CONTROL AND REGULATION WITHIN THE CITY OF PRAIRIE VILLAGE, KANSAS, REGULATING THE CONTROL OF DOGS AND CATS; AMENDING SECTION 2-123 (CAT AND DOG CONTROL) OF CHAPTER II (ANIMAL CONTROL AND REGULATION) OF ARTICLE 1 (GENERAL PROVISIONS) OF THE PRAIRIE VILLAGE MUNICIPAL CODE.

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

Section 1. Existing Section 2-123 of the Prairie Village Municipal Code is hereby amended to read as follows (with underlined portions being added, and stricken-out portions being deleted):

2-123. CAT AND DOG CONTROL.

- (a) All cats must be under the control of the person responsible therefor at all times. For the purpose of this section, a cat shall be considered not under control and in violation of this section in the following situations:

~~(1) If a neighbor complains orally or in writing to the person responsible for a cat, that the cat is entering upon the neighbor's property, then the cat's presence on the neighbor's property at any time subsequent to the neighbor's complaint shall constitute a violation of this section;~~

~~(2)~~ (1) If a cat causes injury to persons or animals.

~~(3)~~ (2) If a cat causes damage to property off the property of the person responsible for such cat, to include, but not limited to, breaking, bruising, tearing up, digging up, crushing or injuring any lawn, garden, flowerbed, plant, shrub or tree in any manner or defecating or urinating upon any private property.

- (b) It is unlawful for the person responsible for any dog to permit such dog to run at large within the city. For the purpose of this section, a dog shall be considered running at large and in violation of this section in the following situations:

(1) If a dog is off the property of the person responsible for such dog, and is not firmly attached to a hand-held leash and under the physical control of the person responsible. Electronic collars may not be used to control a dog when off the property of the person responsible for such dog.

(2) If a dog is off the property of the person responsible for such dog, and is not prevented from making uninvited contact with humans or other animals. This includes a situation when a dog is secured on a leash.

Section 2. Section 2-123 of the Prairie Village Municipal Code, in existence as of and prior to the adoption of this ordinance, is 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 May 3, 2021.

APPROVED by the Mayor on May 3, 2021.

CITY OF PRAIRIE VILLAGE, KANSAS

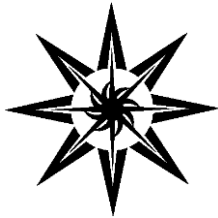
Eric Mikkelson, Mayor

ATTEST:

Adam Geffert, City Clerk

APPROVED AS TO LEGAL FORM:

David E. Waters, City Attorney



PUBLIC WORKS DEPARTMENT

Council Meeting Date: May 3, 2021

COU2021-40

CONSIDER APPROVAL OF A CONTRACT WITH PAVEMENT MANAGEMENT LLC FOR THE 2021 CRACK SEAL/MICRO SURFACING PROGRAM

RECOMMENDATION

Move to authorize the Mayor to sign the construction contract with Pavement Management LLC for Project P5000/P5038, 2021 Crack Seal/Micro Surfacing Program for \$312,000.

BACKGROUND

On April 9, 2021 the City Clerk opened bids for Project P5000/P5038, 2020 Crack Seal/Micro Surfacing Program. Two bids were received:

Pavement Management	\$304,500.00
Vance Brothers, Inc.	\$310,963.00
Engineer's Estimate	\$306,500.00

This contract consists of two separate maintenance programs at various locations throughout the City. A Micro Surfacing program which is a maintenance tool to assist in preserving the existing asphalt pavement, thus extending the pavements life cycle and a Crack Seal program which seals existing cracks in the asphalt pavement. Sealing cracks and joints helps to prevent water from entering the base of the pavement.

There is \$312,000 budgeted for these projects and the contract will be awarded for that amount. Locations of work will be adjusted during implementation to utilize the \$312,000 budget.

The Engineer has reviewed the bids, found no bidder errors, and recommends award to the low bidder.

FUNDING SOURCE

Funding is available in the 2021 Operations Projects P5000 and P5038.

ATTACHMENTS

1. Construction Contract with Pavement Management LLC.
2. Micro Surfacing Map of Streets

PREPARED BY

Melissa Prenger, Senior Project Manager

April 28, 2021

CONSTRUCTION AGREEMENT



P5000|P5038

**2021
CRACK SEAL & MICRO SURFACE PROGRAM**

BETWEEN

CITY OF PRAIRIE VILLAGE, KS

AND

PAVEMENT MANAGEMENT LLC

CONSTRUCTION CONTRACT
FOR
P5000|P5038 2021 CRACK SEAL & MICRO SURFACE PROGRAM

BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
PAVEMENT MANAGEMENT LLC

THIS AGREEMENT, is made and entered into this ____ day of _____, 2021, by and between the City of Prairie Village, Kansas, hereinafter termed the “**City**”, and Pavement Management LLC, hereinafter termed in this agreement, “**Contractor**”, for the construction and completion of Project 2021 CRACK SEAL & MICRO SURFACE PROGRAM , (the “**Project**”) designated, described and required by the Project Manual and Bid Proposal, to wit:

WITNESSETH:

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

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

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

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

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

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

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

1.1 Following words are given these definitions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WORK shall 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 THREE HUNDRED TWELVE THOUSAND AND 00/100 DOLLARS (\$312,000.00) for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

5. WORK SUPERINTENDENT

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

6. PROJECT MANAGER

- 6.1 It is mutually agreed by and between the parties to this Agreement that the Project Manager shall act as the representative of the City and shall observe and inspect, as required, the Work included herein.
- 6.2 In order to prevent delays and disputes and to discourage litigation, it is further agreed by and between the parties to this Agreement that the Project Manager shall, in good faith and to the best of its ability, determine the amount and quantities of the several kinds of work which are to be paid for under this Contract; that the Project Manager shall determine, where applicable, questions in relation to said Work and the construction thereof; that Project Manager shall, where applicable decide questions which may arise relative to the execution of this Contract on the part of said Contractor; that the Project Manager's decisions and findings shall be the conditions precedent to the rights of the parties hereto, to any action on the Contract, and to any rights of the Contractor to receive any money under this Contract provided, however, that should the Project Manager render any decision or give any direction which, in the opinion of either party hereto, is not in accordance with the meaning and intent of this Contract, either party may file with the Project Manager and with the other party, within thirty (30) days a written objection to the decision or direction so rendered and, by such action, may reserve the right to submit the question to determination in the future.
- 6.3 The Project Manager, unless otherwise directed or agreed to by the City in writing, will perform those duties and discharge those responsibilities allocated to the Project Manager as set forth in this Contract. The Project Manager shall be the City's representative from the effective date of this Contract until final payment has been made. The Project Manager shall be authorized to act on behalf of the City only to the extent provided in this Contract. The City and Project Manager may, from time to time, designate Inspectors to perform such functions.
- 6.4 The City and the Contractor shall communicate with each other in the first instance through the Project Manager.
- 6.5 The Project Manager shall be the initial interpreter of the requirements of the Project Manual and the judge of the performance by the Contractor. The Project Manager shall render written graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.
- 6.6 The Project Manager will review the Contractor's Applications for Payment and will certify to the City for payment to the Contractor those amounts then due the Contractor as provided in this Contract. The Project Manager's recommendation of any payment requested in an Application for Payment will constitute a representation by Project Manager to City, based on Project Manager's on-site observations of the Work in progress as an experienced and qualified design professional and on Project Manager's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of the Project Manager's knowledge, information and belief, the quality of the Work is in accordance with the Project Manual (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Project Manual, to a final determination of quantities and classifications for Unit Price Work if such is called for herein, and to any other qualifications stated in the recommendation); and that Contractor is entitled to payment of the amount recommended. However, by recommending any such payment Project Manager will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities

specifically assigned to Project Manager in the Project Manual or that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by the City or the City to withhold payment to Contractor.

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

- 6.14 The Project Manager will **NOT** be responsible for Contractor's means, methods, techniques, sequences, or procedures or construction, or the safety precautions and programs incident thereto and will not be responsible for Contractor's failure to perform the Work in accordance with the Project Manual. The Project Manager will not be responsible for the acts or omissions of the Contractor or any Subcontractor or any of its or their agents or employees, or any other person at the site or otherwise performing any of the Work except as may otherwise be provided.
- 6.15 Any plan or method of work suggested by the Project Manager, or other representatives of the City, to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor, and the Project Manager and the City will assume no responsibility therefore.
- 6.16 It is agreed by the Contractor that the City shall be and is hereby authorized to appoint or employ, either directly or through the Project Manager, such City representatives or observers as the City may deem proper, to observe the materials furnished and the work performed under the Project Manual, and to see that the said materials are furnished, and the said work performed, in accordance with the Project Manual therefore. The Contractor shall furnish all reasonable aid and assistance required by the Project Manager, or by the resident representatives for proper observation and examination of the Work and all parts thereof.
- 6.17 The Contractor shall comply with any interpretation of the Project Manual by the Project Manager, or any resident representative or observer so appointed, when the same are consistent with the obligations of the Project Manual. However, should the Contractor object to any interpretation given by any subordinate Project Manager, resident representative or observer, the Contractor may appeal in writing to the City Director of Public Works for a decision.
- 6.18 Resident representatives, observers, and other properly authorized representatives of the City or Project Manager shall be free at all times to perform their duties, and intimidation or attempted intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the City so decides, to annul the Contract.
- 6.19 Such observation shall not relieve the Contractor from any obligation to perform said Work strictly in accordance with the Project Manual.

7. WORK SCHEDULE:

- 7.1 The Work is comprised of one large project (sometimes referred to as "**Total Project Work**") and, in some cases, is partitioned into smaller subprojects referred to in this Agreement as "**Project Segments.**" A Contract Time shall be stated in the Contract Documents for both the Total Project Work and, when applicable, the Project Segments.
- 7.2 At the time of execution of this Contract, the Contractor shall furnish the Project Manager with a schedule ("**Work Schedule**") setting forth in detail (in the critical path method) the sequences proposed to be followed, and giving the dates on which it is expected that Project Segments will be started and completed within the Contract Time. The Work Schedule is subject to approval by the City.
- 7.3 Monthly Work Schedule reports shall accompany the Contractor's pay request for Work completed. Where the Contractor is shown to be behind schedule, it shall provide an accompanying written summary, cause, and explanation of planned remedial action.

Payments or portions of payments may be withheld by the City upon failure to maintain scheduled progress of the Work as shown on the approved Work Schedule.

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

8. DELAYS AND EXTENSIONS OF TIME

- 8.1 In executing the Contract, the Contractor expressly covenants and agrees that, in undertaking the completion of the Work within the Contract Time, it has taken into consideration and made allowances for all of the ordinary delays and hindrances incident to such Work, whether growing out of delays in securing materials, workers, weather conditions or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the Work, or any portion thereof, included in this Contract.
- 8.2 Should the Contractor, however, be delayed in the prosecution and completion of the Work by reason of delayed shipment orders, or by any changes, additions, or omissions therein ordered in writing by the City, or by strikes or the abandonment of the Work by the persons engaged thereon through no fault of the Contractor, or by any act taken by the U.S. Government such as the commandeering of labor or materials, embargoes, etc., which would

affect the fabrication or delivery of materials and/or equipment to the Work; or by neglect, delay or default of any other contractor of the City, or delays caused by court proceedings; the Contractor shall have no claims for damages or additional compensation or costs for any such cause or delay; but it shall in such cases be entitled to such extension of the time specified for the completion of the Work as the City and the Project Manager shall award in writing on account of such delays, provided, however, that claim for such extension of time is made by the Contractor to the City and the Project Manager in writing within one (1) week from the time when any such alleged cause for delay shall occur.

9. ADVERSE WEATHER:

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

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

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

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

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

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

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

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

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

9.7 Upon receipt of the Notice to Proceed, and continuing throughout the Contract, the Contractor shall record on its daily construction report, the occurrence of Adverse Weather and resultant impact to the Work Schedule.

9.8 The number of actual Adverse Weather delay days shall include days affected by actual Adverse Weather (even if Adverse Weather occurred in the previous month), and shall be

- calculated chronologically from the first to the last day of each month, and be recorded as full workdays.
- 9.9 If the number of actual Adverse Weather delay days in a given month exceeds the number of days anticipated above, the difference shall be multiplied by 7/5 to convert any qualifying workday delays to calendar days. The resulting number of qualifying lost days shall be added to the Contract Time.
- 9.10 The determination that Unusually Severe Weather occurred does not automatically mean an extension of time will be granted. The Contractor must substantiate the Unusually Severe Weather delayed work activities on the critical path of the Work Schedule.
- 9.11 Full consideration for equivalent fair weather workdays shall be given. If the number of actual Adverse Weather delays in a given month is less than the number of days anticipated as indicated above, the difference shall be multiplied by 7/5 to convert any workday increases to calendar days. The resulting number of qualifying extra days will be accumulated and subtracted from any future month's days lost due to unusually severe weather.
- 9.12 The net cumulative total of extra days/lost days shall not result in a reduction of Contract Time and the date of Substantial Completion shall not be changed because of unusually favorable weather.
- 9.13 In converting workdays to calendar days, fractions 0.5 and greater shall be rounded up to the next whole number. Fractions less than 0.5 shall be dropped.
- 9.14 The Contractor shall summarize and report all actual Adverse Weather delay days for each month to the Project Manager by the tenth (10th) day of the following month. A narrative indicating the impact of Adverse Weather conditions on the Work Schedule shall be included.
- 9.15 Any claim for extension of time due to Unusually Severe Weather shall be submitted to the Project Manager within 7 days of the last day of the commencement of the event giving rise to the delay occurred. Resolution of any claim shall follow the procedures described above.
- 9.16 The Contractor shall include and indicate the monthly-anticipated Adverse Weather days, listed above, in the Work Schedule. (Reference Section 7.1 for Work Schedule requirements)
- 9.17 The Contractor shall indicate the approved Adverse Weather days (whether less or more than the anticipated days) in its Work Schedule updates.
- 10. LIQUIDATED DAMAGES**
- 10.1 Contractor agrees that time is of the essence and any term pertaining to Contractor timely performing so as to achieve Total Completion within the Contract Time is a material provision of this Contract. Further, the parties acknowledge that City's damages in the event of delay are difficult to ascertain and consequently agree that, in the event and to the extent that actual date of Total Completion is delayed beyond the Contract Time for the Total Project Work or Project Segments attributable solely or concurrently to (i) an act or omission of Contractor or any of its subcontractors or suppliers, or (ii) in whole or in part, to any other event or condition within the Contractor's reasonable control (and not for reasons solely attributable to City), the Contractor shall be assessed a liquidated damage, and not as a penalty, in the amount set forth in the Special Conditions for each calendar day beyond the applicable Contract Time. Such amount shall be deducted from any amounts due Contractor under this Agreement.

10.2 Further, the Contractor agrees that, in the event Contractor does not carry out such Work at such rates of progress as required by the Work Schedule approved by the City, the City may, at its option and without Contractor receiving any additional compensation therefore, require Contractor to increase the number of qualified supervisory personnel and/or workers and the amount of equipment employed in the performance of the Work to such extent as City may deem necessary or desirable. In addition, City, at its option, may supplement Contractor's manpower by entering into contracts with other contractors to perform the Work. All costs that are incurred by City, in this regard, including reasonable attorney's fees, shall be deducted from any sums due Contractor or City may make demand on Contractor for reimbursement of such costs.

11. PAYMENT PROCEDURE

11.1 Based upon Applications for Payment submitted to the Project Manager by the Contractor and Certificates for Payment issued by the Project Manager, the City shall make progress payments on account of the contract sum to the Contractor as provided below and elsewhere in the Contract Documents.

11.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month or on a mutually agreed date by City and Contractor.

11.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal on the first day of each month of an Application for Payment, all Work for which payments have been received from the City shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.

11.4 Each application for payment must be submitted with Contractor's waiver for period of construction covered by application. Each Application for Payment will be submitted with executed waivers from the subcontractors or sub-contractors and suppliers for the previous period of construction covered by the previous application. The final payment application must be submitted together with or preceded by final or complete waivers from every entity involved with performance of the Work covered by the payment request.

11.5 The Contractor will submit waivers on forms, and executed in a manner, acceptable to City.

11.6 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor because of such Subcontractor's Work the amount to which such Subcontractor is entitled. In the event the City becomes informed that the Contractor has not paid a Subcontractor as herein provided, the City shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the City, shall be deemed payment to the Contractor but shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the City to repeat the procedure in the future.

11.7 The Project Manager will, upon receipt of a written Application for Payment from the Contractor, review the amount of Work performed during the preceding period and the value thereof at the unit prices contracted. From the amounts so ascertained, there shall be deducted ten percent (10%) to be retained until after final completion of the entire Work to the satisfaction of the City. The Project Manager will submit an estimate each month to the

City for payment to the Contractor, except that no amount less than \$500.00 will be submitted unless the total amount of the Contract remaining unpaid is less than \$500.00.

- 11.8 Deductions will be made from progress payments if the Contract includes a provision for a lump sum or a percentage deduction. Lump sum deductions will be that portion of the stated lump sum computed as the ratio that the amount earned bears to the Contract Price. Percentage deductions will be computed at the stated percentage of the amount earned.
- 11.9 No progress payment, nor any use or occupancy of the Work by the City, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.
- 11.10 The City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the City from loss because of:
- Defective Work not remedied by the Contractor;
 - Claims of third parties against the City or the City's property;
 - Failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
 - Evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
 - Evidence that the Work will not be completed in the time required for substantial or final completion;
 - Persistent failure to carry out the Work in accordance with the Contract;
 - Damage to the City or a third party to whom the City is, or may be, liable;
 - Evidence that the Work is not progressing according to agreed upon schedule by both parties.
- 11.11 In the event that the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in this subparagraph, the Contractor shall promptly comply with such demand and refund such monies to the City.
- 11.12 Neither the observation by the City or any of the City's officials, employees, or agents, nor any order by the City for payment of money, nor any payment for, or acceptance of, the whole or any part of the Work by the City or Project Manager, nor any extension of time, nor any possession taken by the City or its employees, shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the City, or any right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of any other or subsequent breach.

12. COMPLETION AND FINAL PAYMENT

- 12.1 Upon Total Completion, when the Contractor is ready for a final inspection of the Total Project Work, it shall notify the City and the Project Manager thereof in writing. Thereupon, the Project Manager will make final inspection of the Work and, if the Work is complete in accordance with this Contract, the Project Manager will promptly issue a final Certificate for Payment certifying to the City that the Work is complete and the Contractor is entitled to the

remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Project Manager is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s), which cost may be deducted by the City from the Contractor's full payment.

- 12.2 The Contractor shall not be entitled to any payment unless and until it submits to the Project Manager its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the City, or the City's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors and Suppliers of the Contractor and of any and all other parties required by the City; and consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the City, the Contractor shall furnish a bond satisfactory to the City to discharge any such lien or indemnify the City from liability.
- 12.3 The City shall make final payment of all sums due the Contractor within thirty days of the Project Manager's execution of a final Certificate for Payment.
- 12.4 Acceptance of final payment shall constitute a waiver of all claims against the City by the Contractor except for those claims previously made in writing against the City by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final inspection.

13. CLAIMS BY THE CONTRACTOR

- 13.1 All Contractor claims shall be initiated by written notice and claim to the Project Manager. Such written notice and claim must be furnished within seven calendar days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.
- 13.2 The Contractor shall diligently proceed with performance of this Contract whether or not there be such a claim pending and the City shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim shall be reflected by a Change Order executed by the City, the Project Manager and the Contractor.
- 13.3 Should concealed and unknown conditions which could not, with reasonable diligence, have been discovered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure differ materially with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided by this Contract, be encountered, the Contract Price shall be equitably adjusted by the Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the City having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the City written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed or unknown condition.
- 13.4 If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the City therefore, the Contractor shall give the City written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give

- such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.
- 13.5 The City reserves the right to increase or decrease quantities, and alter the details of construction including grade and alignment as the Project Manager may consider necessary or desirable, by approved Change Order. Such modifications shall not invalidate the Contract nor release the surety. Unless such alterations and increases or decreases change the total cost of the Work, based on the originally estimated quantities and the unit prices bid, by more than 25 percent, or change the total cost of any major item, based on the originally estimated quantities and the unit price bid, by more than 25 percent, the Contractor shall perform the work altered, increased or decreased, at a negotiated price or prices. (A major item shall mean any bid item, the total cost of which exceeds 12-1/2 percent of the total Contract Price based on the proposed quantity and the contract unit price).
- 13.6 When the alterations cause an increase or decrease in excess of the 25 percent indicated above, either the Contractor or the Project Manager may request an adjustment of the unit price to be paid for the item or items.
- 13.7 If a mutually agreeable adjustment cannot be obtained, the City reserves the right to terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the Work.
- 13.8 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall not include standby costs, indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties.
- 13.9 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control including delays resulting from the COVID-19 pandemic or any similar event, 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, normal weather conditions, the COVID-19 pandemic or any similar event, or otherwise provided, however, such hindrances and delays could be anticipated by Contractor at the time of execution. 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 Notwithstanding the foregoing or anything in the Contract to the contrary, Contractor acknowledges and agrees that the work, and the performance thereof, may be subject to current and future governmental orders or directives regarding safety protocols related COVID-19 or similar event, and Contractor agrees that all Work shall be performed in accordance with the same, including but not limited to directives regarding social distancing, hygiene and other efforts to slow the spread of COVID-19 or similar event. Failure of Contractor to comply with such order or directive shall be deemed an event of default under this Contract, and City shall not be responsible for any increase in the Contract Sum or the Contract Time related to City's enforcement of such orders or directives, or Contractor's failure to comply with such orders or directives. If Work on the Critical Path is delayed due to COVID-19 or similar event reasons outside the control of the contractor, an equitable adjustment in the Contract Sum and/or the Contract Time shall be made to the Contract as the City may reasonably decide.
- 13.13 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

(typed company name)

By: _____
(signed)

By: _____
(signed)

Eric Mikkelson

(typed name)

Mayor

(typed title)

City of Prairie Village

(typed company name)

7700 Mission Road

(typed address)

Prairie Village, Kansas 66208

(typed city, state, zip)

(typed telephone number)

(date of execution)

(date of execution)

SEAL

ATTEST:

APPROVED BY:

City Clerk, 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.)

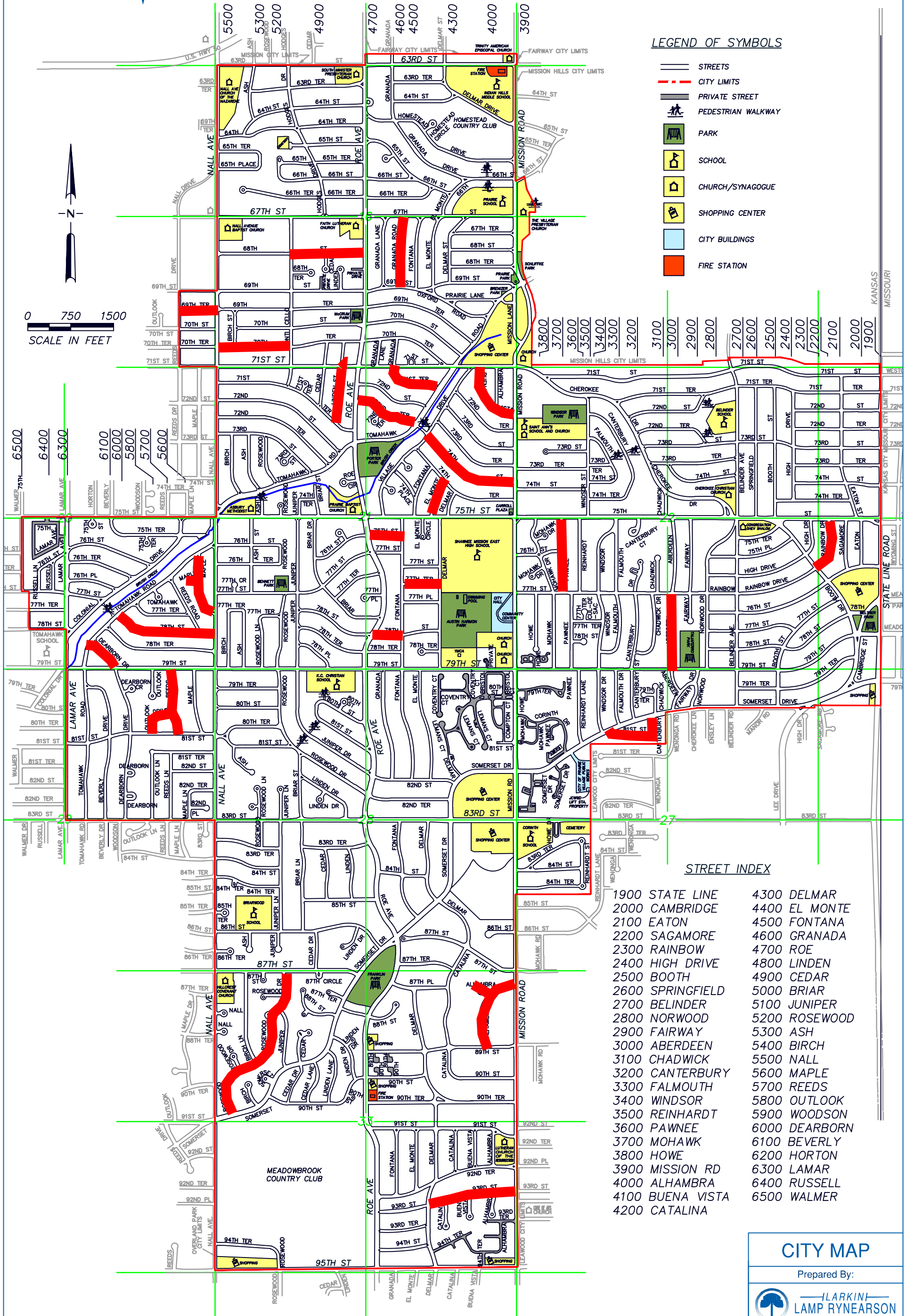
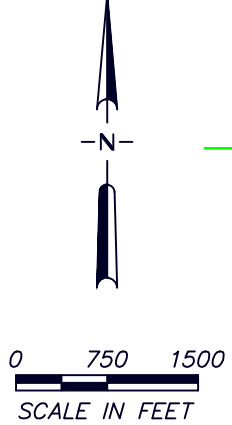


2021 MICRO SURFACING

CITY OF PRAIRIE VILLAGE *Star of Kansas*

LEGEND OF SYMBOLS

- STREETS
- CITY LIMITS
- PRIVATE STREET
- PEDESTRIAN WALKWAY
- PARK
- SCHOOL
- CHURCH/SYNOGOGUE
- SHOPPING CENTER
- CITY BUILDINGS
- FIRE STATION



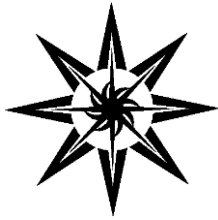
STREET INDEX

- | | |
|------------------|---------------|
| 1900 STATE LINE | 4300 DELMAR |
| 2000 CAMBRIDGE | 4400 EL MONTE |
| 2100 EATON | 4500 FONTANA |
| 2200 SAGAMORE | 4600 GRANADA |
| 2300 RAINBOW | 4700 ROE |
| 2400 HIGH DRIVE | 4800 LINDEN |
| 2500 BOOTH | 4900 CEDAR |
| 2600 SPRINGFIELD | 5000 BRIAR |
| 2700 BELINDER | 5100 JUNIPER |
| 2800 NORWOOD | 5200 ROSEWOOD |
| 2900 FAIRWAY | 5300 ASH |
| 3000 ABERDEEN | 5400 BIRCH |
| 3100 CHADWICK | 5500 NALL |
| 3200 CANTERBURY | 5600 MAPLE |
| 3300 FALMOUTH | 5700 REEDS |
| 3400 WINDSOR | 5800 OUTLOOK |
| 3500 REINHARDT | 5900 WOODSON |
| 3600 PAWNEE | 6000 DEARBORN |
| 3700 MOHAWK | 6100 BEVERLY |
| 3800 HOWE | 6200 HORTON |
| 3900 MISSION RD | 6300 LAMAR |
| 4000 ALHAMBRA | 6400 RUSSELL |
| 4100 BUENA VISTA | 6500 WALMER |
| 4200 CATALINA | |

CITY MAP

Prepared By:





PUBLIC WORKS DEPARTMENT

Council Meeting: May 3, 2021

COU2021-41 CONSIDER 2022-2026 COUNTY ASSISTANCE ROAD SYSTEM (CARS) PROGRAM

RECOMMENDATION

Staff recommends approval of the 2022-2026 County Assistance Road System (CARS) program.

BACKGROUND

In order to receive CARS funds, the City must annually submit an application containing a list of streets and the estimated costs. The following streets are recommended for the five-year CARS program, 2022-2026. The Public Works Department compiled the list of possible projects below. The work will include, where necessary, full depth pavement repair, curb and gutter replacement, sidewalk repair, new sidewalk, new ADA ramps, milling/overlaying the pavement or UBAS.

It should be noted that the City submits an application annually and can revise future year requests. The 2022 project is the only project that the City is committing to fund and construct. The costs include construction and construction administration. Design costs are not included in the summary above, as the CARS program does not fund design.

Cities are generally guaranteed to have their first priority project funded but can have multiple projects approved if funds allow.

Program Year		Street Segment	From	To	CARS Eligible Costs	PV Cost
2022	1	Nall Avenue	79 th Street	83 rd Street	\$1,410,000	\$705,000
2023	1	Nall Avenue	67 th Street	75 th Street	\$2,450,000 <i>w/ OP</i>	\$761,250
2024	1	Mission Road	63 rd Street	67 th Terrace	\$720,000 <i>w/ Mission Hills</i>	\$240,000
	2	Nall Avenue	75 th Steet	79 th Street	\$760,000	\$380,000
	3	Roe Avenue	N City Limit	63 rd Street	\$424,964 <i>w/ Fairway and Mission</i>	\$5,914
2025	1U	75 th Street	State Line	Mission	\$761,620	\$380,810
	2U	Somerset	State Line	Reinhardt	\$688,000 <i>w/ Leawood</i>	\$258,000
	3U	Nall Avenue	63 rd Street	67 th Street	\$295,000 <i>w/ Mission</i>	\$73,750
2026	1	83 rd Street	City Limit	Nall	\$1,630,000	\$815,000

FUNDING SOURCE

Funding will be programmed in the CIP.

ATTACHMENTS

Map of Project Locations

PREPARED BY

Melissa Prenger, Senior Project Manager

April 28, 2021

2024 Overlay
Roe Ave, Limits to 63

With Fairway

2022

2023

2024

2025

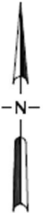
2026

2025 UBAS
Nall Ave, 63 to 67

With Mission

2024 Overlay
Mission Rd, 63 to 67

With Mission Hills



2023 Overlay and Signal
Nall Ave, 67 to 75

With OP

2025 UBAS
75th, State Line to Mission

2024 Overlay
Nall Ave, 75 to 79

2025 UBAS
Somerset, State Line to Reinhart

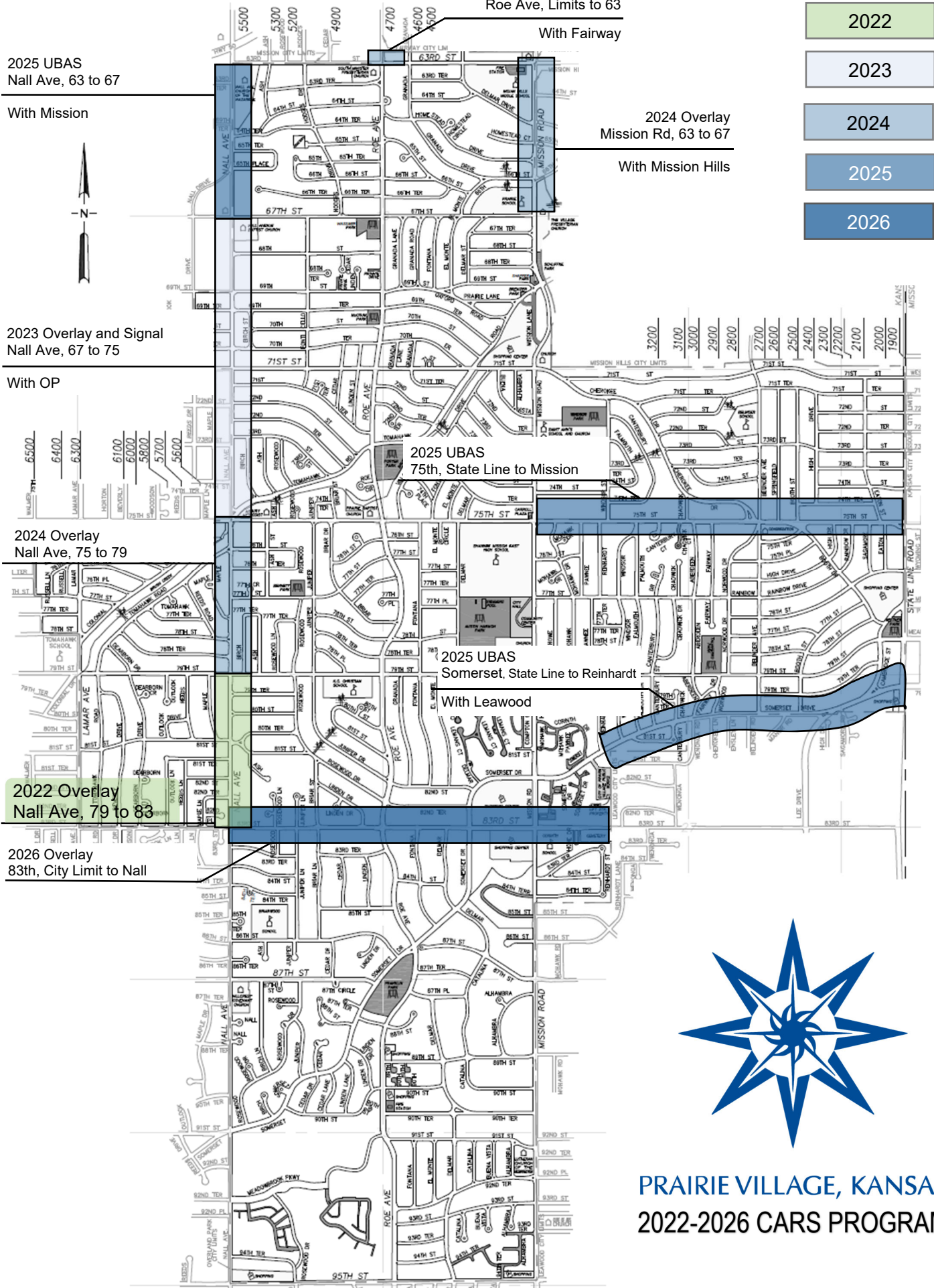
With Leawood

2022 Overlay
Nall Ave, 79 to 83

2026 Overlay
83th, City Limit to Nall



PRAIRIE VILLAGE, KANSAS
2022-2026 CARS PROGRAM





2022 Capital Infrastructure Program Budget Presentation

Attached please find the Capital Infrastructure Budget and Road Condition Report Presentation.

The Capital Infrastructure Program Budget includes:

- Infrastructure Condition
- Park Funding
- Drainage Funding
- Street Funding
- Building Funding
- Sidewalk & Curb Funding

ATTACHMENTS:

- 2022 Capital Improvement Program Budget Presentation
-

Prepared by:

Nickie Lee

Finance Director

Date: April 27, 2021



2022 BUDGET DISCUSSION

Public Works CIP



Agenda

- 2021 Projects
- Infrastructure Condition
- Recommended 2022 CIP
- Discussion



Agenda

- 2021 Projects
- Infrastructure Condition
- Recommended 2022 CIP
- Discussion



2021 Current and Planned Work

□ Street Projects

- Granada, Homestead to 66th Tomahawk, 79th to 81st Chadwick, 77th to Canterbury El Monte, 91st to 92nd Delmar, Somerset to 87th 71st Street, State Line to Belinder 82nd, Somerset to Roe 87th, Delmar to Roe 91st, Delmar to Roe Delmar, 90th to 92nd

□ CARS Project: 79th Street | Roe to Lamar

□ Drainage Projects

- Brush Creek PES (Mission and 68th)

□ Other Projects

- 2021 Concrete Repair, 2021 Asphalt Repairs, 2021 Crack Seal and Micro Surface, 2021 UBAS
- Taliaferro Park Shelter/Restroom, Harmon Skate Park Construction, Police Department Parking Structures/Fence



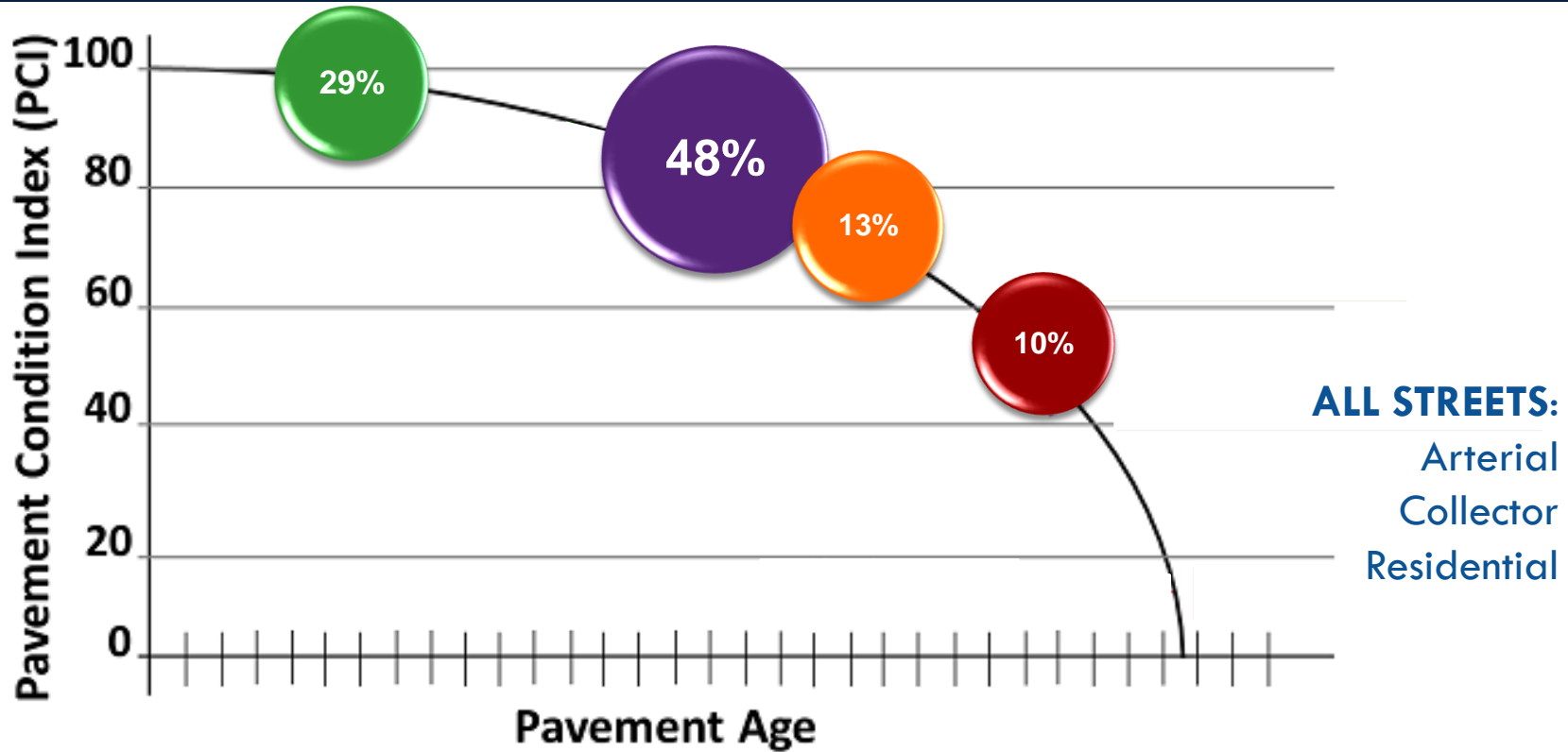
Agenda

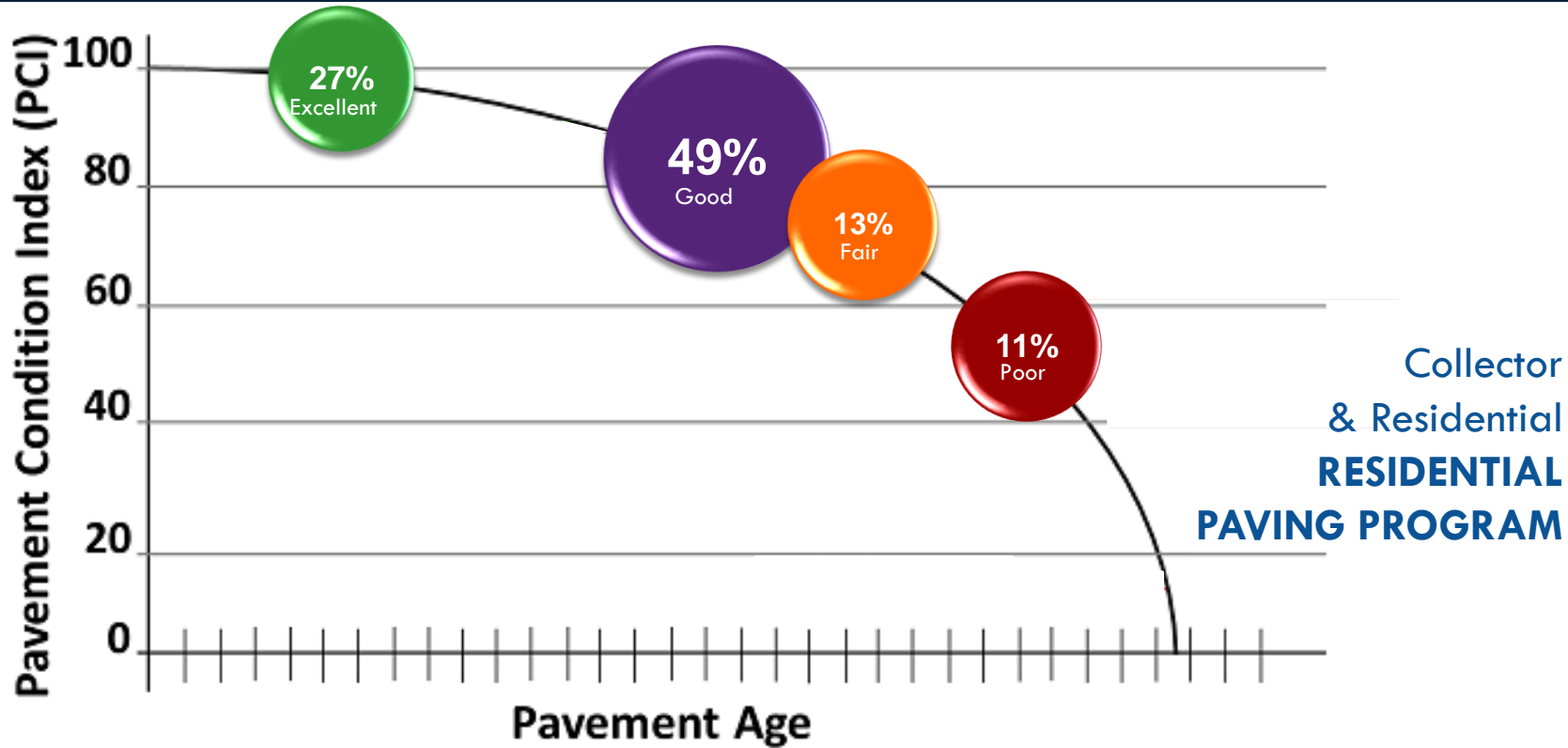
- 2021 Projects
- **Infrastructure Condition**
- Recommended 2022 CIP
- Discussion

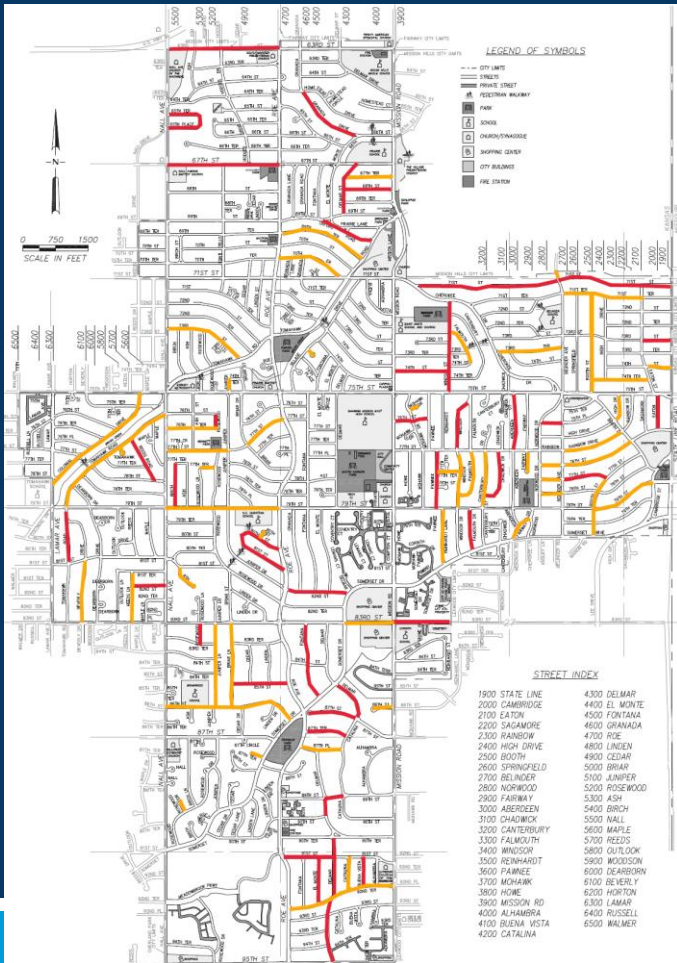


2020 Condition Summary

Infrastructure Type	Poor	Fair	Good	Excellent
Drainage - Pipes	2%	4%	20%	74%
Drainage - Channels	3%	8%	36%	53%
Drainage - Structures	1%	3%	66%	30%
Streets - Arterial & Collector	9%(2020= 14%)	12%(2020 = 13%)	37%(2020= 42%)	42%(2020 =31%)
Streets - Residential	10%(2020=12%)	14%(2020= 16%)	54%(2020= 52%)	22%(2020= 20%)
Curbs	0%	2%	28%	70%
Ramps	1%	5%	8%	86%



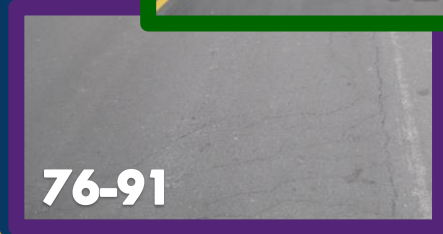




EXCELLENT



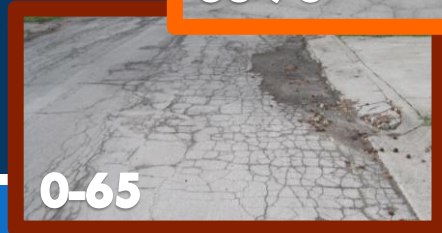
GOOD



FAIR



POOR



Crack seal

Micro

\$56k per mile

UBAS

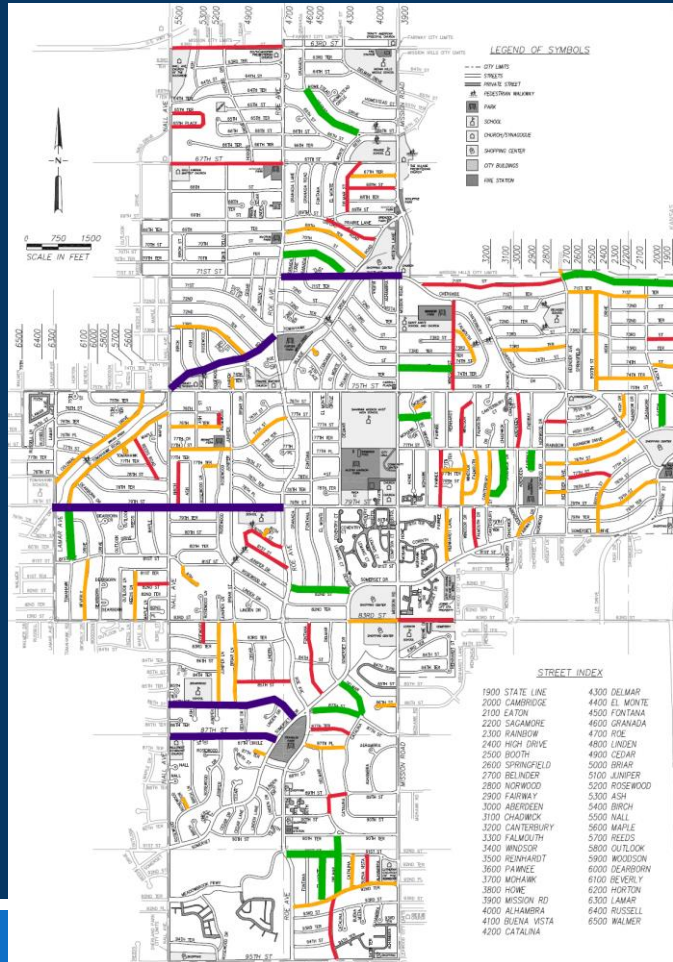
\$170K per mile

Mill/Overlay
with curb and
gutter repair

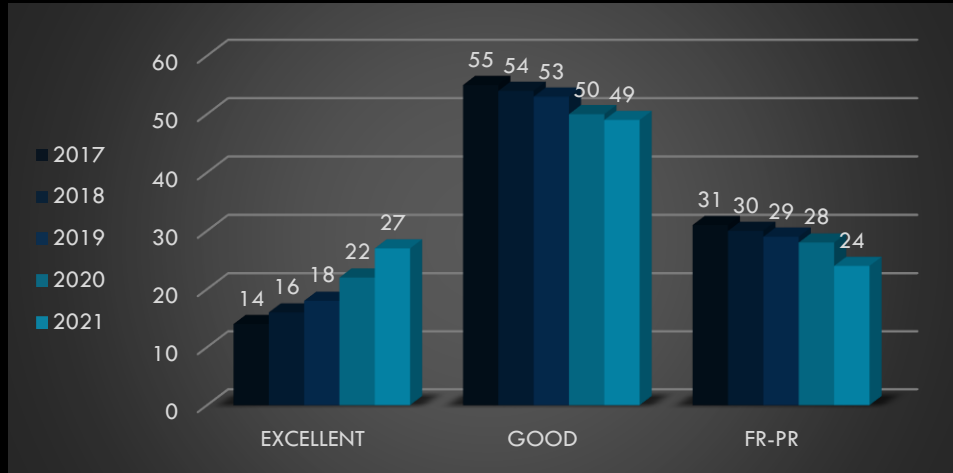
\$1M per mile

Reconstruction

\$1.8M per mile

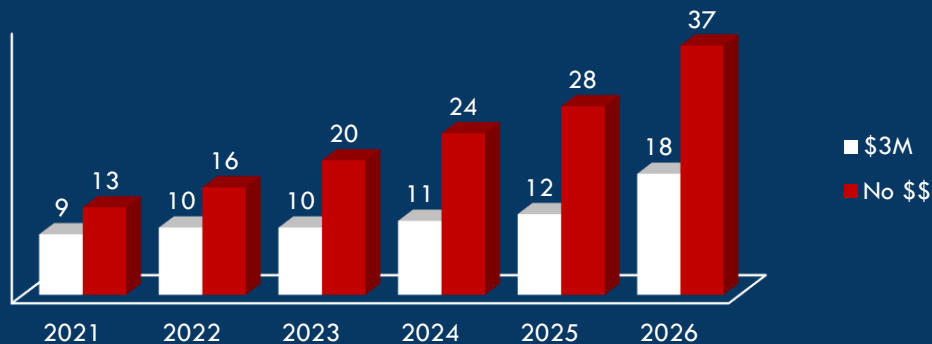


History of Residential & Collector Streets



Excellent streets are trending up.
Fair Poor streets are trending down.

Good category 50-54%



Management of POOR Streets With \$3 Million Residential Street Program



Agenda

- 2021 Projects
- Infrastructure Condition
- **Recommended 2022 CIP**
- Discussion



2022 CIP Budget - PARK

PROJECT #	PROJECT DESCRIPTION	PREVIOUS BUDGET	2022 BUDGET	2023 BUDGET	2024 BUDGET	2025 BUDGET	PROJECT TOTAL
PARK							
POOLRESV	Park Infrastructure Reserve	\$ 206,613.19	\$ 120,000.00	\$ 132,000.00	\$ 132,000.00	\$ 132,000.00	722,613.19
	Harmon Play Set + Park Updates	\$ 575,000.00	\$ 500,000.00				\$ 1,075,000.00
	Taliaferro Tennis Court Resurface		\$ 20,000.00				\$ 20,000.00
	Windsor Park Restrooms		\$ 450,000.00				\$ 450,000.00
	2023 Park Project		\$ 50,000.00	\$ 250,000.00			\$ 300,000.00
	2024 Park Project			\$ 50,000.00	\$ 250,000.00		\$ 300,000.00
	2025 Park Project				\$ 50,000.00	\$ 250,000.00	\$ 300,000.00
	2026 Park Project					\$ 50,000.00	\$ 50,000.00
PARK TOTAL PER YEAR		\$ 781,613.19	\$ 1,140,000.00	\$ 432,000.00	\$ 432,000.00	\$ 432,000.00	3,217,613.19



2022 CIP Budget - DRAIN

PROJECT #	PROJECT DESCRIPTION	PREVIOUS BUDGET	2022 BUDGET	2023 BUDGET	2024 BUDGET	2025 BUDGET	PROJECT TOTAL
DRAINAGE							
WDPRRESV	Water Discharge Program Reserve	\$ 1,639.13	\$ 30,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	91,639.13
DRAIN22x	Drainage Repair Program		\$ 900,000.00	\$ 900,000.00	\$ 900,000.00	\$ 900,000.00	3,600,000.00
DRAINAGE TOTAL PER YEAR		\$ 1,639.13	\$ 930,000.00	\$ 920,000.00	\$ 920,000.00	\$ 920,000.00	3,691,639.13



2022 CIP Budget - STREETS

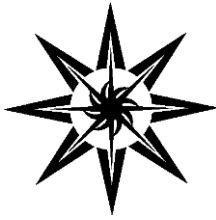
PROJECT #	PROJECT DESCRIPTION	PREVIOUS BUDGET	2022 BUDGET	2023 BUDGET	2024 BUDGET	2025 BUDGET	PROJECT TOTAL
STREETS							
TRAFRESV	Traffic Calming Program Reserve	\$ 18,279.95	\$ 20,000.00		\$ 20,000.00		\$ 58,279.95
PAVP2022	Residential Street Rehabilitation Program		\$ 3,000,000.00	\$ 3,000,000.00	\$ 3,000,000.00	\$ 3,000,000.00	\$ 12,000,000.00
UBAS2022	UBAS Overlay Program		\$ 400,000.00	\$ 400,000.00	\$ 400,000.00	\$ 400,000.00	\$ 1,600,000.00
NAAV0004	Nall Ave - 79th St to 83rd St (CARS)	\$ 100,000.00	\$ 1,500,000.00				\$ 1,600,000.00
NAAV0005	Nall Ave - 67th St to 75th St (CARS & OP)	\$ 50,000.00	\$ 200,000.00	\$ 2,485,000.00			\$ 2,735,000.00
MIRD0009	Mission Rd - 63rd St to 67th Ter (CARS)			\$ 85,000.00	\$ 720,000.00		\$ 805,000.00
NAAV0007	Nall Ave - 75th St to 79th St (CARS)			\$ 110,000.00	\$ 760,000.00		\$ 870,000.00
ROAV0007	Roe Ave - N City Limit to 63rd St			\$ 5,000.00	\$ 16,000.00		\$ 21,000.00
SODR0005	Somerset Dr - State Line to Reinhardt UBAS (CARS)				\$ 20,000.00	\$ 688,000.00	\$ 708,000.00
NAAV0006	Nall Ave - 63rd St to 67th St UBAS (CARS)				\$ 20,000.00	\$ 295,000.00	\$ 315,000.00
75ST0002	75th St - State Line to Mission Rd (CARS)				\$ 20,000.00	\$ 762,000.00	\$ 782,000.00
83ST0003	83rd St - E City Limit to Nall Ave (CARS)					\$ 160,000.00	\$ 160,000.00
STREET TOTAL PER YEAR		\$ 168,279.95	\$ 5,120,000.00	\$ 6,085,000.00	\$ 4,976,000.00	\$ 5,305,000.00	\$ 21,654,279.95



2022 CIP Budget - BUILDING/OTHER

PROJECT #	PROJECT DESCRIPTION	PREVIOUS BUDGET	2022 BUDGET	2023 BUDGET	2024 BUDGET	2025 BUDGET	PROJECT TOTAL
BUILDING							
BLDGResv	Building Reserve	\$ 165,431.24	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	365,431.24
	City Hall Remodel Preliminary Design		\$ 100,000.00				\$ 100,000.00
BUILDING TOTAL PER YEAR		\$ 165,431.24	\$ 150,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	465,431.24

PROJECT #	PROJECT DESCRIPTION	PREVIOUS BUDGET	2022 BUDGET	2023 BUDGET	2024 BUDGET	2025 BUDGET	PROJECT TOTAL
OTHER							
ADARESvX	ADA Compliance Program Reserve	\$ 66,275.91	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	166,275.91
CONC2022	Concrete Repair Program		\$ 600,000.00	\$ 600,000.00	\$ 600,000.00	\$ 600,000.00	2,400,000.00
	Ped Bridge @ Prairie School & Mission Hills		\$ 150,000.00				\$ 150,000.00
SIDEWALK & CURB TOTAL PER YEAR		\$ 66,275.91	\$ 775,000.00	\$ 625,000.00	\$ 625,000.00	\$ 625,000.00	2,716,275.91



PUBLIC WORKS DEPARTMENT

Council Committee Meeting: May 3, 2021

Council Meeting: May 17, 2021

COU2021-42

CONSIDER TRAFFIC CALMING ON 82nd STREET FROM SOMERSET DRIVE TO ROE AVENUE

RECOMMENDATION

Staff recommends City Council approve the installation of traffic calming measures on 82nd Street from Somerset Drive to Roe Avenue

BACKGROUND

Residents along 82nd Street desire traffic calming measures and have met the requirements of the traffic calming program. The final petition exceeded 60% approval of the residents to install these measures. These measures include two speed tables. It is anticipated that these improvements will be built in late spring or early summer 2021 utilizing our street rehabilitation contractor. The approximate cost of the two speed table installations is about \$10,000 with funds coming from the traffic calming CIP project.

FUNDING SOURCE

Funding is available under project TRAFRESV.

ATTACHMENTS

1. Traffic Calming Layout
2. TranSystems Study

PREPARED BY

Keith Bredehoeft, Director of Public Works

April 28, 2021

**82nd Street Traffic Calming Eligibility Study
Roe Avenue to Somerset Drive**

**Prepared for
CITY OF PRAIRIE VILLAGE**

By



November 2020

Introduction

In accordance with your request, TranSystems Corporation has prepared the following traffic calming eligibility study for the roughly one-quarter mile segment of 82nd Street between Roe Avenue and Somerset Drive in Prairie Village, Kansas. The criteria used to determine eligibility for traffic calming measures are defined in the Prairie Village Traffic Calming Program. This section of 82nd Street is classified as a Local Street Traffic Calming Project with respect to the application of eligibility criteria. The street was evaluated using average daily traffic volumes, the 85th percentile speed of vehicles, and the percentage of cut-through traffic. A local street segment must receive a minimum score of 40 points in order to be eligible for a Local Street Traffic Calming Project.

Data Collection

Road Segment Inventory

As part of the data collection, we reviewed the study segments and documented various existing features which may affect vehicle speed. These included characteristics such as road width, horizontal and vertical alignment, parking practices, and roadside development. A summary of our findings is listed below:

- ▶ The segment of 82nd Street is a two-lane street with curbs and gutters along both sides of the street. The street is generally 26 feet wide, measured between the backs of curb for the entire length. A sidewalk runs along the south side of the street, and it is adjacent to the curb.
- ▶ The posted speed limit is 25 m.p.h.
- ▶ There are three local streets that intersect the study segment. Granada Street, Fontana Street, and El Monte Street are tee-intersections with stop sign control on the side streets.
- ▶ There is some horizontal curvature in the alignment of 82nd Street. There is a horizontal curve between Roe Avenue and Granada Street, and on the eastern portion when connecting to Somerset Drive. The segment is straight aside from these two curves.
- ▶ The vertical alignment of the roadway is generally at a slight downhill grade as drivers travel eastbound from Roe Avenue. The roadway levels out between Granada and El Monte Streets. There is another slight downhill eastbound grade near the horizontal curve on the east end of the segment.
- ▶ The study segment of 82nd Street is located in a predominately residential area. Single-family homes are set back 35 to 60 feet from the street along the study segment. Most of these homes have at least one driveway onto 82nd Street, however some driveways connect to a neighborhood side street instead. The Corinth Square shopping center is at the east edge of the study segment.
- ▶ On-street parallel parking is allowed. Some parked vehicles were observed on the street.

Average Daily Traffic Volumes

TranSystems placed machine traffic volume counters at two locations along the study segment. The counters were in place from Tuesday, October 20, 2020 through Thursday, October 22, 2020. The results of the studies are shown on the following page in Table 1. See the Appendix (Figure A-1) for the average daily traffic volume at each location. The average daily traffic volume was based on the three weekdays included in the count period. Detailed tabulations of the counts are included in the Appendix (Pages A-2 to A-3).

**Table 1
Vehicle Volume Data**

Location	Total Daily Traffic Volume (vehicles)
82nd Street, east of Granada Street	1,278
82nd Street, east of El Monte Street	1,535

The average daily traffic volume falls in the “Over 1001 vehicles per day” range, per the Traffic Calming Program, corresponding to a score of 30 points. These volumes are higher than what would typically be expected for a local street.

Vehicle Speeds

Spot speed studies were conducted using the vehicle speed-measuring feature of the traffic counters. The results of the studies are shown below in Table 2. Relative frequency distributions for the data have also been prepared and are included in the Appendix (Pages A-4 to A-5).

**Table 2
Vehicle Speed Data**

Location	85th Percentile Speed (m.p.h.)	Average Speed (m.p.h.)
82nd Street, east of Granada Street	28.3	24.9
82nd Street, east of El Monte Street	23.7	21.1

Table 2 shows that the average measured 85th percentile speeds for the study segment is 26 m.p.h. These speeds indicate good compliance with the posted speed limit. These 85th percentile speeds fall in the “0-5 m.p.h. over the posted speed limit” range, per the Traffic Calming Program, corresponding to a score of 0 points.

Cut-Through Traffic

Origin and destination surveys were conducted on Thursday, October 15, 2020 between 5:00 p.m. and 6:00 p.m. to determine the percentage of cut-through traffic. From combining the recorded license plates at both the Somerset Drive and Roe Avenue intersections, it was found that 67% of vehicles were determined to be cut-through vehicles. This percentage corresponds to a score of 15 points, per the Traffic Calming Program.

Total Eligibility

The study segment of 82nd Street between Roe Avenue and Somerset Drive meets the eligibility requirements as outlined in the Traffic Calming Program. According to the criteria, a street must receive a minimum score of 40 points in order to be eligible for traffic calming measures. Table 3 indicates that the study segment is assessed with **45** points.

**Table 3
Total Eligibility
82nd Street between Roe Avenue and Somerset Drive**

Eligibility Criteria	Measurement	Point Assessment
Average Daily Traffic Volumes	1,407 Vehicles	30
85th Percentile Speeds	1 mph above limit	0
Cut-through Traffic	67%	15
Total Points:		45

We trust that the enclosed information proves beneficial to the City of Prairie Village.

We appreciate the opportunity to be of service to you and will be available to review this study at your convenience.

Sincerely,
TranSystems



By: _____

Emma Martin, EIT



By: _____

Jeffrey J. Wilke, PE, PTOE

Appendix

Daily Traffic Volume and Travel Speed Summary..... Figure A-1

Daily Traffic Volume Counts A-2 to A-3

Spot Speed Studies..... A-4 to A-5



ADT: 1,278 Vehicles
85th Percentile: 28.3 MPH
Posted Speed: 25 MPH

Origin-Destination Survey
Total Vehicles : 124
Number Local : 38 (31%)
Number Thru : 86 (69%)

Origin-Destination Survey
Total Vehicles : 134
Number Local : 48(36%)
Number Thru : 86 (64%)

ADT: 1,535 Vehicles
85th Percentile: 23.7 MPH
Posted Speed: 25 MPH

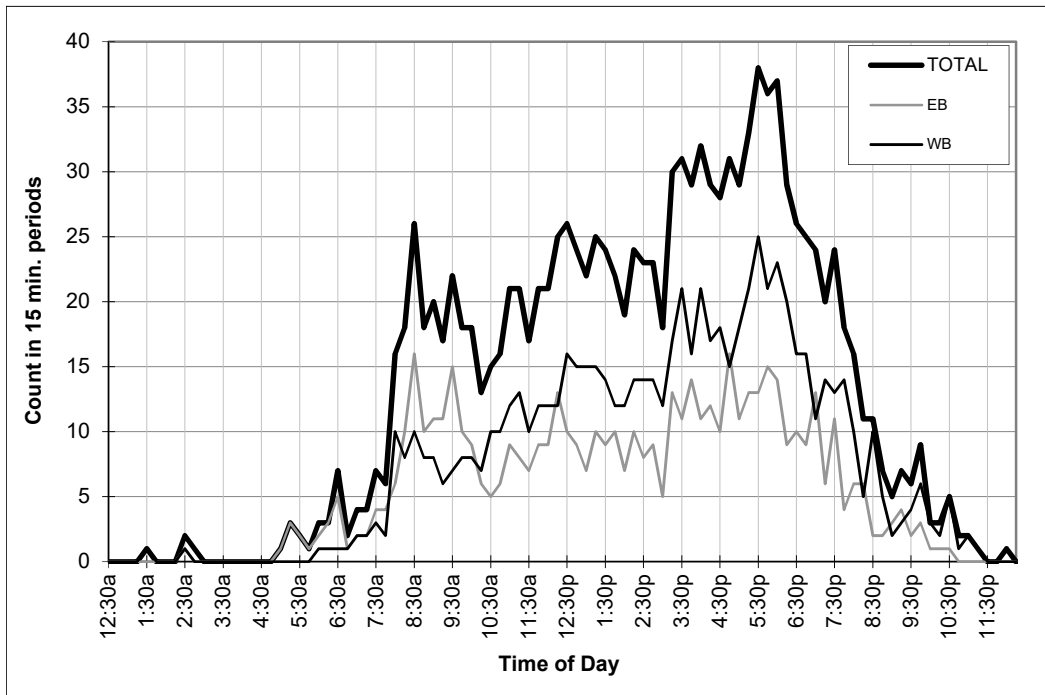
Daily Traffic Count

Praire Village Traffic Calming Study

Praire Village

Location: **82nd St East of Granada St**

Period Start	EB	WB	TOTAL	Period Start	EB	WB	TOTAL	Period Start	EB	WB	TOTAL	Period Start	EB	WB	TOTAL
12:00a	0	0	0	6:00a	5	1	7	12:00p	10	16	26	6:00p	10	16	26
12:15a	0	0	0	6:15a	1	1	2	12:15p	9	15	24	6:15p	9	16	25
12:30a	0	0	0	6:30a	2	2	4	12:30p	7	15	22	6:30p	13	11	24
12:45a	0	0	0	6:45a	2	2	4	12:45p	10	15	25	6:45p	6	14	20
1:00a	0	1	1	7:00a	4	3	7	1:00p	9	14	24	7:00p	11	13	24
1:15a	0	0	0	7:15a	4	2	6	1:15p	10	12	22	7:15p	4	14	18
1:30a	0	0	0	7:30a	6	10	16	1:30p	7	12	19	7:30p	6	10	16
1:45a	0	0	0	7:45a	10	8	18	1:45p	10	14	24	7:45p	6	5	11
2:00a	1	1	2	8:00a	16	10	26	2:00p	8	14	23	8:00p	2	10	11
2:15a	0	0	1	8:15a	10	8	18	2:15p	9	14	23	8:15p	2	5	7
2:30a	0	0	0	8:30a	11	8	20	2:30p	5	12	18	8:30p	3	2	5
2:45a	0	0	0	8:45a	11	6	17	2:45p	13	17	30	8:45p	4	3	7
3:00a	0	0	0	9:00a	15	7	22	3:00p	11	21	31	9:00p	2	4	6
3:15a	0	0	0	9:15a	10	8	18	3:15p	14	16	29	9:15p	3	6	9
3:30a	0	0	0	9:30a	9	8	18	3:30p	11	21	32	9:30p	1	3	3
3:45a	0	0	0	9:45a	6	7	13	3:45p	12	17	29	9:45p	1	2	3
4:00a	0	0	0	10:00a	5	10	15	4:00p	10	18	28	10:00p	1	5	5
4:15a	0	0	0	10:15a	6	10	16	4:15p	16	15	31	10:15p	0	1	2
4:30a	1	0	1	10:30a	9	12	21	4:30p	11	18	29	10:30p	0	2	2
4:45a	3	0	3	10:45a	8	13	21	4:45p	13	21	33	10:45p	0	1	1
5:00a	2	0	2	11:00a	7	10	17	5:00p	13	25	38	11:00p	0	0	0
5:15a	1	0	1	11:15a	9	12	21	5:15p	15	21	36	11:15p	0	0	0
5:30a	2	1	3	11:30a	9	12	21	5:30p	14	23	37	11:30p	0	0	1
5:45a	3	1	3	11:45a	13	12	25	5:45p	9	20	29	11:45p	0	0	0



HOURLY TOTALS

Period Start	EB	WB	TOTAL
12:00a	0	0	0
1:00a	0	1	1
2:00a	1	1	3
3:00a	0	0	0
4:00a	4	0	4
5:00a	8	2	9
6:00a	10	6	17
7:00a	24	23	47
8:00a	48	32	81
9:00a	40	30	71
10:00a	28	45	73
11:00a	38	46	84
12:00p	36	61	97
1:00p	36	52	89
2:00p	35	57	94
3:00p	48	75	121
4:00p	50	72	121
5:00p	51	89	140
6:00p	38	57	95
7:00p	27	42	69
8:00p	11	20	30
9:00p	7	15	21
10:00p	1	9	10
11:00p	0	0	1

Approach	3-Day Average	AM Peak 10:45a - 11:45a	Noon Peak 11:00a - 12:00p	PM Peak 4:45p - 5:45p	Totals
Eastbound		47	39	55	541
Westbound		34	58	90	735
TOTAL		82	97	144	1,278



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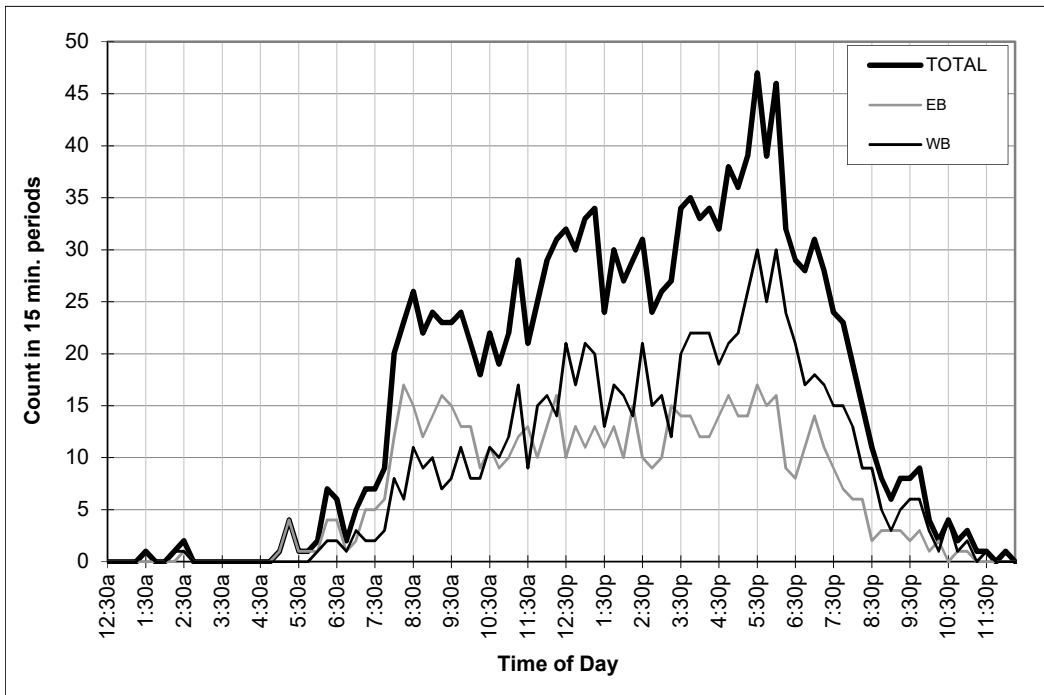
Daily Traffic Count

Praire Village Traffic Calming Study

Praire Village

Location: **82nd St East of El Monte St**

Period Start	EB	WB	TOTAL	Period Start	EB	WB	TOTAL	Period Start	EB	WB	TOTAL	Period Start	EB	WB	TOTAL
12:00a	0	0	0	6:00a	4	2	6	12:00p	10	21	32	6:00p	8	21	29
12:15a	0	0	0	6:15a	1	1	2	12:15p	13	17	30	6:15p	11	17	28
12:30a	0	0	0	6:30a	2	3	5	12:30p	11	21	33	6:30p	14	18	31
12:45a	0	0	0	6:45a	5	2	7	12:45p	13	20	34	6:45p	11	17	28
1:00a	0	1	1	7:00a	5	2	7	1:00p	11	13	24	7:00p	9	15	24
1:15a	0	0	0	7:15a	6	3	9	1:15p	13	17	30	7:15p	7	15	23
1:30a	0	0	0	7:30a	12	8	20	1:30p	10	16	27	7:30p	6	13	19
1:45a	0	1	1	7:45a	17	6	23	1:45p	15	14	29	7:45p	6	9	15
2:00a	1	1	2	8:00a	15	11	26	2:00p	10	21	31	8:00p	2	9	11
2:15a	0	0	0	8:15a	12	9	22	2:15p	9	15	24	8:15p	3	5	8
2:30a	0	0	0	8:30a	14	10	24	2:30p	10	16	26	8:30p	3	3	6
2:45a	0	0	0	8:45a	16	7	23	2:45p	15	12	27	8:45p	3	5	8
3:00a	0	0	0	9:00a	15	8	23	3:00p	14	20	34	9:00p	2	6	8
3:15a	0	0	0	9:15a	13	11	24	3:15p	14	22	35	9:15p	3	6	9
3:30a	0	0	0	9:30a	13	8	21	3:30p	12	22	33	9:30p	1	3	4
3:45a	0	0	0	9:45a	9	8	18	3:45p	12	22	34	9:45p	2	1	2
4:00a	0	0	0	10:00a	11	11	22	4:00p	14	19	32	10:00p	0	4	4
4:15a	0	0	0	10:15a	9	10	19	4:15p	16	21	38	10:15p	1	1	2
4:30a	1	0	1	10:30a	10	12	22	4:30p	14	22	36	10:30p	1	2	3
4:45a	4	0	4	10:45a	12	17	29	4:45p	14	26	39	10:45p	0	0	1
5:00a	1	0	1	11:00a	13	9	21	5:00p	17	30	47	11:00p	0	1	1
5:15a	1	0	1	11:15a	10	15	25	5:15p	15	25	39	11:15p	0	0	0
5:30a	1	1	2	11:30a	13	16	29	5:30p	16	30	46	11:30p	0	0	1
5:45a	4	2	7	11:45a	16	14	31	5:45p	9	24	32	11:45p	0	0	0



HOURLY TOTALS			
Period Start	EB	WB	TOTAL
12:00a	0	0	0
1:00a	0	2	2
2:00a	1	1	2
3:00a	0	0	0
4:00a	5	0	5
5:00a	7	3	11
6:00a	12	8	20
7:00a	40	19	59
8:00a	57	37	95
9:00a	50	35	86
10:00a	42	50	92
11:00a	52	54	106
12:00p	47	79	129
1:00p	49	60	110
2:00p	44	64	108
3:00p	52	86	136
4:00p	58	88	145
5:00p	57	109	164
6:00p	44	73	116
7:00p	28	52	81
8:00p	11	22	33
9:00p	8	16	23
10:00p	2	7	10
11:00p	0	1	2

Approach	3-Day Average	AM Peak 10:45a - 11:45a	Noon Peak 11:15a - 12:15p	PM Peak 4:45p - 5:45p	Totals
Eastbound		48	47	62	666
Westbound		57	79	111	866
TOTAL		104	129	171	1,535



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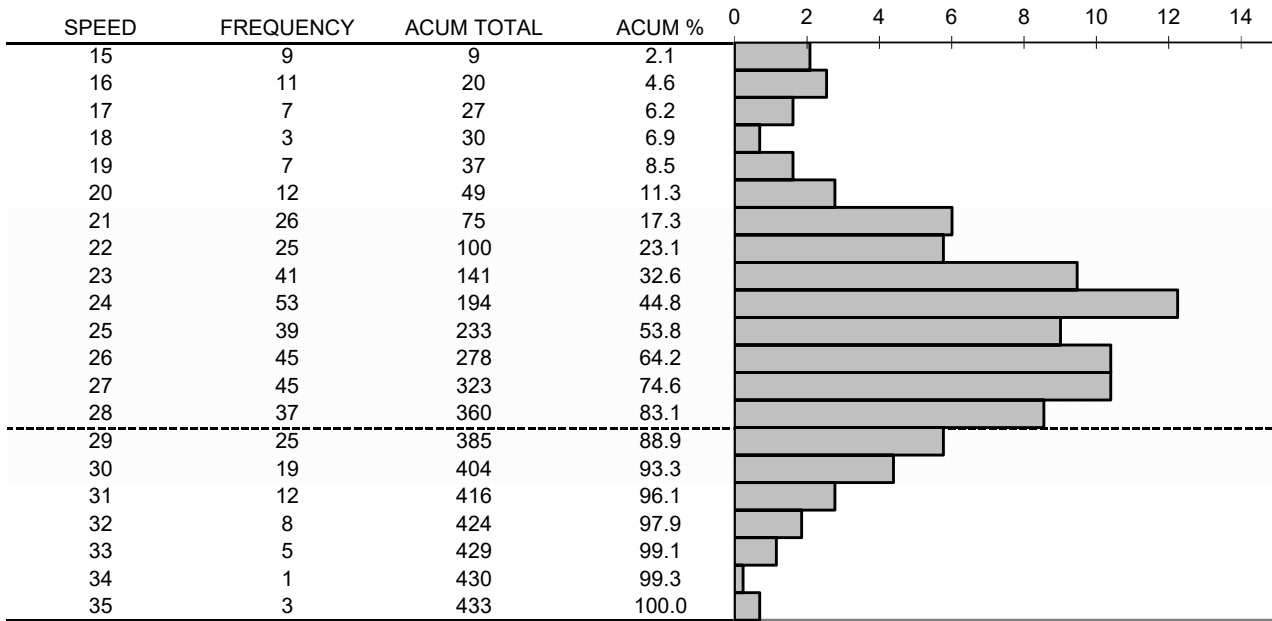
SPOT SPEED STUDY RESULTS RELATIVE FREQUENCY DISTRIBUTION

CITY: Prairie Village
OBSERVER: EHM
DATE: 10/21/2020

COUNTY: Johnson
SPEED LIMIT: 25 mph
DIRECTION: EB+WB

LOCATION: 82nd St East of Granada St
TIME START: 9:00 AM
TIME END: 3:00 PM

PERCENTAGE BREAKDOWN



AVERAGE SPEED = 24.9
50th PERCENTILE = 24.6
85th PERCENTILE = 28.3
90th PERCENTILE = 29.2
95th PERCENTILE = 30.6

PACE = 21 - 30
VEHICLES IN PACE = 355
% IN PACE = 82.
% BELOW PACE = 11.3
% ABOVE PACE = 6.7

SAMPLE VARIANCE = 15.6280793
STANDARD DEVIATION = 3.9532366
RANGE 1*S = 71.82448
RANGE 2*S = 93.30254
RANGE 3*S = 100.

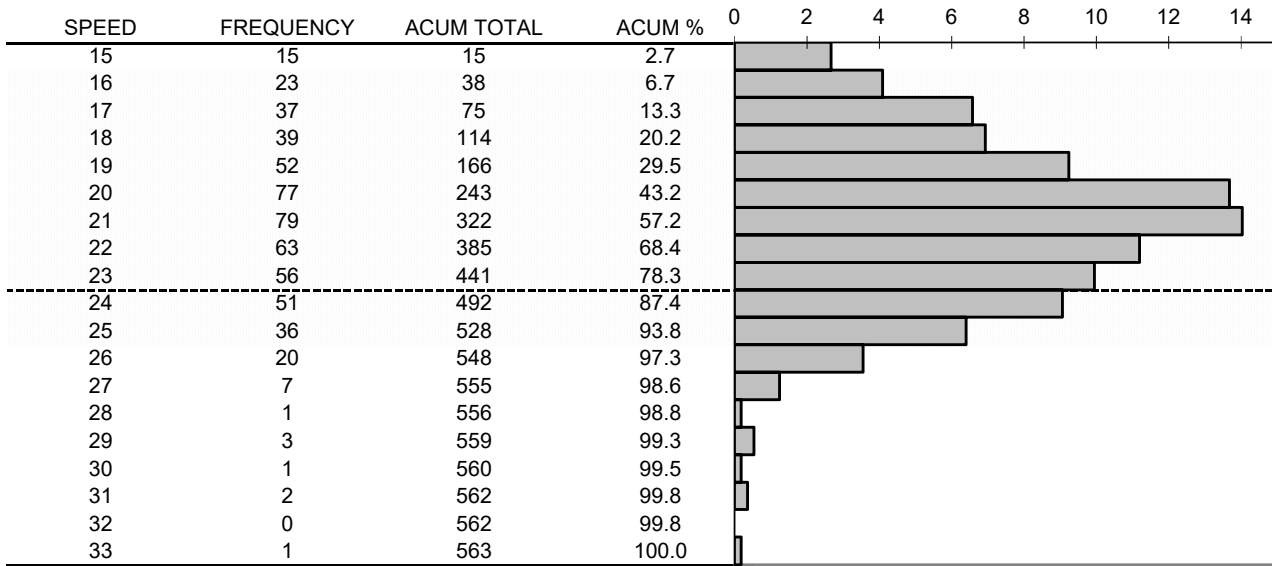
SPOT SPEED STUDY RESULTS RELATIVE FREQUENCY DISTRIBUTION

CITY: Prairie Village
OBSERVER: EHM
DATE: 10/21/2020

COUNTY: Johnson
SPEED LIMIT: 25 mph
DIRECTION: EB+WB

LOCATION: 82nd St E of El Monte St
TIME START: 9:00 AM
TIME END: 3:00 PM

PERCENTAGE BREAKDOWN



AVERAGE SPEED = 21.1
50th PERCENTILE = 20.5
85th PERCENTILE = 23.7
90th PERCENTILE = 24.4
95th PERCENTILE = 25.3

PACE = 16 - 25
VEHICLES IN PACE = 513
% IN PACE = 91.1
% BELOW PACE = 2.7
% ABOVE PACE = 6.2

SAMPLE VARIANCE = 9.0406124
STANDARD DEVIATION = 3.0067611
RANGE 1*S = 74.0675
RANGE 2*S = 98.57904
RANGE 3*S = 99.46714



Update on Marijuana Ordinance Research

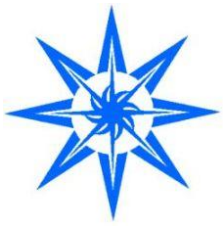
BACKGROUND

On January 19th, 2021, the Council authorized Staff to review the three items. One is removing municipal violations from Prairie Village ordinance and exempting out of the Uniform Public Offense Code regarding the same misdemeanor violations, two is modeling our ordinance after Lawrence, Kansas where the penalties for possession of small amounts of marijuana is very minor, and three to look at any other similar solutions that present themselves. In addition, other positive or negative consequences was briefly reviewed.

ATTACHMENTS: Presentation
Kansas Attorney General Opinion 2015-4
Ordinance from Columbia MO (per Inga Selders)

PREPARED BY

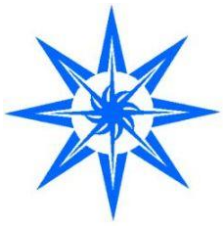
Tim Schwartzkopf
Assistant City Administrator
Date: April 27, 2021



Cannabis Policy Discussion

The City Council requested Staff to research three options as it relates to our cannabis policy in Prairie Village.

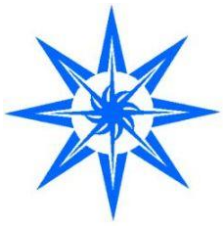
1. Striking Marijuana-related language from municipal enforcement code and our use of the Uniform Public Offense Code.
2. Reducing municipal penalties related to cannabis infractions, including transitioning to citations in lieu of municipal court.
3. Similar solutions that present themselves during investigation of (1) and (2).



Decriminalize versus Legalization

Legalization of cannabis is the means of removing any legal prohibitions against the possession or use of marijuana. This step would also allow taxation by the government.

Decriminalization means it would remain illegal, but the rules are loosened for possession of personal use amounts. Essentially asking the legal system to look the other way for small amounts.

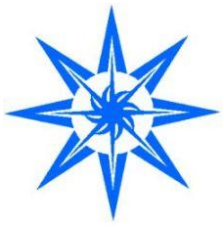


Removing cannabis or marijuana from our ordinance and exempt from the UPOC

If approved by the City Council, we could remove this language from our ordinance and exempt out of that section in the UPOC. This action does not legalize marijuana in PV.

Since marijuana possession is still illegal in the State, officers could continue to make arrests and send cases to District Court. This option would likely have a greater negative impact on defendants as they would have to appear in District Court in Olathe.

Based on a 2015 Kansas Attorney General opinion (attached), any local ordinance that asks law enforcement to abandon their statutory duty is in conflict with State law and void.



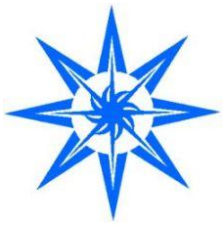
Reducing municipal penalties related to cannabis infractions

Lawrence, Kansas model – “decriminalize”

The presumption is that fines are reduced to \$1.00 for first and second time possession for amounts less than 32 grams. (28 grams = ounce)

Defendants are still charged with possession of marijuana and have to pay applicable court costs and laboratory fees.

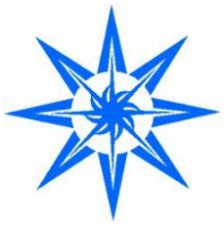
Douglas County District Attorney’s Office is not prosecuting low level marijuana offenses.



How much is an ounce / 28 grams

*This is what
an ounce
looks like.*

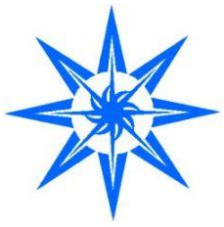




Feedback from Judges and City Prosecutor

In regards to removing from marijuana violations from our ordinance or opting out of UPOC.

Our Judges and Prosecutor also felt the impact to a defendant would be greater in District Court. Municipal Court has much more flexibility when handling a case.



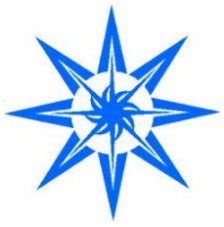
Feedback from Judges and City Prosecutor

The “Lawrence model”

If fines were lowered, it might dissuade people from taking diversion because the fine is low, when diversion would much better serve a first time offender.

This may negatively impact people in lower socioeconomic situations. For instance, a person who can afford an attorney, will likely do so to manage the Court process. Likely this scenario would result in diversion for the defendant. If someone only sees the lower fine, they may opt for paying a small fine without realizing the full consequences of this decision. Paying a small fine still results in a conviction for marijuana possession.

Gives defendants a false sense of security as to the significance of a marijuana conviction.



Feedback from Judges and City Prosecutor

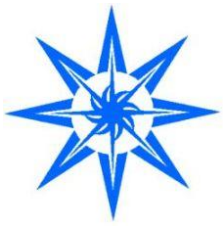
The “Lawrence model” continued

Info from court personnel in Kansas City.

If a person pays a fine for first time offense, it may actually cost them more in the long run. If that person ever wants their record expunged for any number of reasons, the person would have to hire an attorney for this process.

Info from court personnel Lawrence.

Judges are having to take additional time, five to eight minutes, with each defendant to discuss what paying the \$1.00 fine actually means. Judges are not supposed to give legal advice which could get tricky when having this discussion.

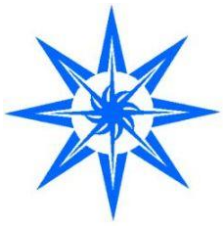


Feedback from Judges and City Prosecutor

In our judges and prosecutor's professional opinion, the municipal court in Prairie Village is very defendant friendly.

Current practice for first time offenders charged with possession of marijuana is generally as follows:

- Defendant can apply for diversion with or without an attorney.
- Must attend drug and alcohol education class (\$100.00)
- Diversion is for six months (cost of diversion is approx. \$300 which includes court costs)
- Upon successful completion of the diversion agreement, the charge is dismissed.
- In PV, diversion is unmonitored. The defendant does not have to provide periodic urine analysis. This eliminates a defendant from having a positive UA and having their diversion revoked.



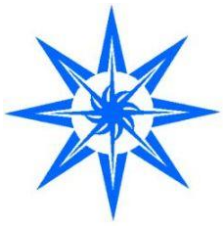
Summary of diversion cases in PV Court

From 2018 – 2020, 173 cases were filed for possession of a controlled substance.

Of those, 52 are in warrant status. Six of these are on diversion.

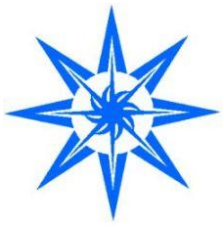
Of the 41 cases on diversion, 23 defendants were white and 18 were black.

Three of the defendants on diversion had PV as their last known address.



Other solutions

Absent waiting for this initiative to be implemented state-wide, we did not find any other solutions for this policy decision.

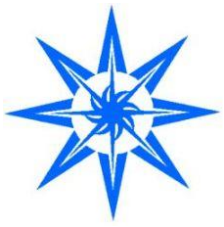


Police perspective

We reached out to Lawrence, Wichita PD for their perspective and they did not provide any formal data.

We reached out to Castle Rock, Colorado, and they provided the most recent High Intensity Drug Trafficking Area (HIDTA) report in regards to Colorado's experience with recreational and medical marijuana.

The report can be found here, <https://www.rmhidta.org/strategic?pgid=khxvk038-1128117f-fab1-430c-bbe0-de1333814e2a>



Outcomes - KCMO

Recently, KCPD provided information to the Board of Police Commissioners in regards to their experiences with impaired drivers.

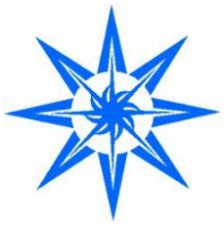
The KCPD DUI Section has noticed a recurring issues with impairment cases involving marijuana and people not knowing it is a crime or even illegal for driving while high. There is a lot of emphasis on alcohol impairment and not much on drug impairment.

KCPD Stats for 2018, 2019 and 2020

2018 approximately 25% of fatal crashes involved marijuana impairment or combination
2019 approximately 31% of fatal crashes involved marijuana impairment or combination
2020 approximately 53% of fatal crashes involve marijuana impairment or combination

*2017 – KCMO decriminalized marijuana. (\$25.00/fine)

*2020 (July) – KCMO removed possession of marijuana from their ordinance



Marijuana impairment

It should be recognized that developing a consistent method of testing for and assessing a person's level of impairment has been difficult.

From a current study by AAA for Washington State:

In general, the presence of detectable THC in blood suggests, but does not conclusively prove, that a person has recently used cannabis. THC blood levels and impairment are not well-correlated. THC levels in blood peak shortly after cannabis is smoked, and then they decline substantially by the time of peak impairment, which generally occurs approximately 90 minutes after consumption.

Relatedly, while testing positive for THC in blood is suggestive of recent cannabis use, it is possible for a person to have a detectable concentration of THC in their blood days after having last used cannabis, particularly among frequent cannabis users. Furthermore, drivers that tested positive were not necessarily impaired; depending on a variety of factors, they may or may not have been experiencing acute or residual impairment. THC-positive drivers were not necessarily at fault for their crashes;

https://aaafoundation.org/wp-content/uploads/2020/01/19-0637_AAAFTS-WA-State-Cannabis-Use-Among-Drivers-in-Fatal-Crashes_r4.pdf



Cannabis Policy

Discussions and questions



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

DEREK SCHMIDT
ATTORNEY GENERAL

MEMORIAL HALL
120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
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WWW.AG.KS.GOV

March 5, 2015

ATTORNEY GENERAL OPINION NO. 2015- 4

The Honorable Mark Kahrs
State Representative, 87th District
State Capitol, Room 286-N
300 S.W. 10th Avenue
Topeka, Kansas 66612

The Honorable Steven R. Brunk
State Representative, 85th District
State Capitol, Room 285-N
300 S.W. 10th Avenue
Topeka, Kansas 66612

Re: Constitution of the State of Kansas—Corporations—Cities' Powers of Home Rule.

Cities and Municipalities—Ordinances of Cities—Initiative and Referendum Ordinances—Petition for Proposed Ordinances; Requirements; Passage or Election; Form of Ballot Approval, effect; Amendment or Repeal; Publication

Synopsis: A city would exceed the city's home rule powers by adopting an ordinance that is preempted because it conflicts with a uniform state criminal statute. Thus, the ordinance would be void. Cited herein: K.S.A. 12-3013; K.S.A. 2014 Supp. 12-4106; K.S.A. 12-4111; 21-2501a; K.S.A. 2014 Supp. 21-5102; 21-5705; 21-5706; 21-5709; 21-6602; 21-6611; 21-6810; K.S.A. 22-2202; K.S.A. 2014 Supp. 65-4105; Kan. Const. Art. 2, § 17 and Kan. Const. Art 12 § 5; 18 U.S.C. § 922; 27 C.F.R. § 478.11.

* * *

Dear Representatives Kahrs and Brunk:

As State Representatives for the 87th and 85th Districts, respectively, you ask our opinion whether the proposed amendments to Section 5.26.040 of the Code of the City of Wichita, Kansas, would be preempted by state law because the amendments would conflict with uniform state statutes. In our opinion, the answer is yes.

Background

K.S.A. 12-3013 prescribes the procedure that city electors may, by petition, initiate to directly propose and enact local legislation independent of the local governing body. If the petition is signed by the requisite number of qualified electors, the governing body must either enact the ordinance without alteration or hold an election. If an election is held and the majority of the electorate votes in favor of the proposed ordinance, the ordinance becomes valid and binding without alteration.¹ Such ordinance shall not be repealed or amended except by a vote of the electors at a subsequent election or by the governing body after passage of 10 years from the effective date.² The initiative and referendum process is not available for proposed ordinances that are administrative ordinances, ordinances relating to a public improvement to be paid wholly or in part by the levy of special assessments, or ordinances subject to referendum or election under another statute.³

Attorney General opinions rely on the facts presented in the opinion request or obtained from interested parties.⁴ You provided us a copy of a blank petition that included what appears to be a copy of amendments proposed by the Marijuana Reform Initiative to Section 5.26.040 of the Code of the City of Wichita, Kansas (hereafter, "proposed ordinance"), which is file-stamped October 15, 2014. The petition was filed with the City Clerk on January 7, 2015.⁵ The proposed ordinance was not included in or attached to the petition filed with the City Clerk.⁶ On January 27, 2015, the City Council adopted

¹ K.S.A. 12-3013(b) and (c).

² K.S.A. 12-3013(c).

³ K.S.A. 12-3013(e)(1), (2), and (3).

⁴ We do not opine on whether the petition and proposed ordinance comply with the requirements of K.S.A. 12-3013 and thus, whether the question may properly be placed on the ballot. However, because the proposed ordinance was not filed with the petition, as required by K.S.A. 12-3013, we are unable to confirm what ordinance language, if any, would be on the ballot. This filing deficiency suggests a threshold procedural infirmity from the facts that are known to us. It also is unclear to us whether the subject matter within the proposed ordinance is a legislative matter that may be proposed by initiative or whether the process used was legally impermissible for the ordinance proposed. If the proposed ordinance is determined to be administrative, it is not subject to initiative and referendum pursuant to K.S.A. 12-3013(e)(1). We note that the proposed ordinance contains elements that appear to be administrative in nature, such as the provisions regarding the reporting and handling of criminal justice information.

⁵ *Minutes*, City of Wichita City Council Meeting, January 27, 2015.

⁶ *Id.*

Ordinance No. 49-936 to submit the ballot question to a vote of the citizens of the City of Wichita.⁷

The language presented to us from the petition circulated by the Marijuana Reform Initiative and from Ordinance No. 49-936 adopted by the City is as follows:

SHALL THE FOLLOWING BE ADOPTED?

An ordinance reducing the penalty for first offense conviction for possession of thirty-two (32) grams or less of criminal sativa I, otherwise known as marijuana, and/or drug paraphernalia related thereto, by persons twenty-one (21) years of age or older, to an infraction with a fine not to exceed fifty dollars (\$50.00).

YES _____ NO _____

The language from the proposed ordinance is as follows:⁸

SECTION 5.26.040 OF THE MUNICIPAL CODE OF THE CITY OF WICHITA, KANSAS, SHALL BE REPEALED IN ITS ENTIRETY AND THE SUBSTITUTE PROVISIONS SET FORTH BELOW SHALL BE ADOPTED.

(a) Except as provided at Subsections (b) and (c) herein, a violation of the provisions of this Chapter is a misdemeanor and, upon conviction, the sentence shall be a fine not to exceed two thousand five hundred dollars (\$2,500.00), and/or imprisonment of up to twelve (12) months in the Sedgwick County Jail.

(b) A conviction of any person twenty-one (21) years of age or older of Section 5.26.010 for possession of one [*sic*] (32) grams or less of cannabis sativa L., or otherwise known as marijuana, as defined by Section 5.25.005(i) [*sic*], for the first offense, is an infraction and the sentence shall be a fine not to exceed fifty dollars (\$50.00) and no incarceration, probation, nor any other punitive or rehabilitative measure shall be imposed. For convictions under this Subsection for offenses in the Old Town Entertainment District, as defined by Section 5.05.020, the sentence shall be the mandatory minimum fine set forth at Section 5.05.030 and no incarceration, probation, nor any other punitive or

⁷ *Id.*

⁸ This language was provided to us with the opinion request, and we have compared it with language provided to us at our request by the City of Wichita and also with language posted on the website for the Marijuana Reform Initiative. All three versions appear to be identical; thus, we presume this is the language that is in fact proposed for adoption by Wichita electors. However, we cannot confirm that as a matter of law because no ordinance was filed with the petition as required by K.S.A. 12-3013.

rehabilitative measure, shall be imposed; however, pursuant [sic] Section 5.05.030(b), the Court may order community service in lieu of mandatory minimum fine in accordance with the provisions thereof. Nothing in this Subsection shall be construed to restrict eligibility for diversion in lieu of further proceeding or deferred judgment pursuant [sic] Section 1.06.010 *et seq.*

(c) A conviction of any person twenty-one (21) years of age or older of Section 5.26.030 for possession of drug paraphernalia, as defined by Section 5.25.005(f), for the first offense, involving cannabis sativa L., or otherwise known as marijuana, as defined by Section 5.25.005(i) [sic], is an infraction and the sentence shall be a fine not to exceed fifty dollars (\$50.00) and no incarceration, probation, nor any other punitive or rehabilitative measure. For convictions under this Subsection for offenses in the Old Town Entertainment District, as defined by Section 5.05.020, the sentence shall be the mandatory minimum fine set forth at Section 5.05.030 and no incarceration, probation, nor any other punitive or rehabilitative measure shall be imposed; however, pursuant [sic] Section 5.05.030(b), the Court may order community service in lieu of mandatory minimum fine in accordance with the provisions thereof. Nothing in this Subsection shall be construed to restrict eligibility for diversion in lieu of further proceeding or deferred judgment pursuant [sic] Section 1.06.010 *et seq.*

(d) The intent of Subsections (b) and (c) of this Chapter is to reduce first offense convictions pursuant [sic] Sections 5.26.010 and 5.26.030 for cannabis sativa L., or otherwise known as marijuana, as defined by Section 5.25.005(i) [sic], to be an infraction, and not a misdemeanor. For the purpose of determining whether a conviction is a first or subsequent offense under Subsections (b) and/or (c), any conviction or convictions resulting from the same incident occurring after July 1, 2015, shall constitute a first offense and any subsequent conviction or convictions occurring within one (1) year thereafter shall constitute a subsequent offense. Nothing herein shall be construed to restrict law enforcement officers of the City of Wichita, Kansas, to complain of violations of offenses other than Subsections (b) and (c) of this Chapter. No law enforcement officer of the City of Wichita, Kansas, or his or her agent, shall complain of violations of these Subsections to any other authority except the City Attorney of the City of Wichita, Kansas; and, furthermore, the City Attorney of the City of Wichita, Kansas, or any of his or her authorized assistants, shall not refer any said complaint to any other authority for prosecution. No convictions pursuant [sic] Subsections (b) and/or (c) of this Chapter shall be recorded as a misdemeanor to the Kansas Bureau of Investigation Central Repository or any other state or federal law enforcement reporting agency.

(e) Should the State of Kansas enact lesser penalties than that set forth in Subsections (b) and (c) of this Chapter for possession of cannabis sativa L., or otherwise known as marijuana, as described therein, or possession of drug paraphernalia, as further described therein, then these Subsections, or relevant portions thereof, shall be null and void. The invalidity or unenforceability of any provisions of Subsections (b) and (c) shall not affect the validity or enforceability of other provisions thereof, which shall remain in full force and effect.

(f) In addition to any other sentence authorized by this Chapter, any person convicted of having violated the terms of this Chapter, while under twenty-one (21) years of age, shall be ordered to submit to and complete a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008 and amendments thereto and to pay a fee for such evaluation. If the judge finds that the person is indigent, the fee may be waived.

Currently, Section 5.26.040 of the Code of the City of Wichita, Kansas, provides that a conviction for possession of marijuana or of drug paraphernalia related to marijuana is a misdemeanor punishable by a fine not to exceed \$2,500 and/or imprisonment in the county jail for up to 12 months. These crimes and penalties are parallel to those crimes and penalties provided for in state statute.⁹

Preemption

The principle that cities cannot enact laws that contradict state law is found in the Home Rule Amendment to the Kansas Constitution.¹⁰ The Home Rule Amendment grants cities the power to enact legislation to govern local affairs, “subject only to enactments of the legislature of statewide concern applicable uniformly to all cities [and] to other enactments of the legislature applicable uniformly to all cities”¹¹ In addition, the Home Rule Amendment states that city home rule powers “shall be liberally construed for the purpose of giving to cities the largest measure of self-government.”¹²

Cities’ home rule power is not unlimited. “[H]ome rule power does not authorize cities to act where the state legislature has precluded municipal action by clearly preempting the field with a uniformly applicable enactment.”¹³ Kansas courts have identified two means by which a state statute may overrule a city’s home rule power: (1) if there is a conflict

⁹ K.S.A. 2014 Supp. 21-5706 and 21-5709.

¹⁰ Kan. Const. Art. 12, § 5.

¹¹ Kan. Const. Art. 12, § 5(b).

¹² Kan. Const. Art. 12, § 5(d).

¹³ *Kansas City Renaissance Festival Corp. v. City of Bonner Springs*, 269 Kan. 670, 673 (2000).

between the local regulation and a state statute; or (2) if the state legislature has preempted the field of regulation.¹⁴

An “[e]nabling act is uniformly applicable to all cities or counties if it authorizes all cities or counties to perform certain acts. Such statutes are state law and preempt the field of their application without use of preemptive language, unless there are express exceptions in the statutes or unless the statutes pertain to police power regulations.”¹⁵ By court-imposed exception to constitutional and statutory home rule, a “[m]unicipality has the right to legislate by ordinary ordinance or resolution *nonconflicting* local police power laws even though there are state laws on the subject uniformly applicable to all municipalities.”¹⁶ The issue at the core of your question, therefore, is whether the proposed ordinance, which relates to the city’s exercise of its police power, would conflict with state law. If the proposed ordinance would be in conflict with state law, then it is preempted and the city lacks power or authority to enact it.

A local ordinance is conflict preempted where it permits what the state statute forbids or prohibits what the statute authorizes.¹⁷ The Kansas Supreme Court has found there is no conflict between the provisions of a local ordinance and state law when the ordinance is parallel or identical to the state law,¹⁸ the ordinance supplements or adds to the state law,¹⁹ or the ordinance provides for standards of performance that are higher than those set by state law.²⁰ In contrast, the Supreme Court has held that a city cannot classify a crime as a misdemeanor in an ordinance when the Kansas Legislature has classified the crime in state statute as a felony.²¹

What is apparent from these cases is that uniform state law establishes a *minimum standard* that must be met by the local ordinance if the city intends to use its police power to exercise concurrent jurisdiction with the state. Where a city ordinance provides a standard below the minimum standard set by the state, the ordinance is in conflict with the state law and is invalid.

Drug laws, statutory powers and duties of law enforcement officers and criminal information reporting statutes are plainly enactments of the legislature that are of

¹⁴ *State ex rel. Kline v. Bd. of Comm’rs of Unified Gov’t of Wyandotte County/Kansas City*, 277 Kan. 516, 526-27 (2004), citing *City of Junction City v. Lee*, 216 Kan. 495, 498-499 (1975) (superseded by statute as stated in *Blevins v. Hiebert*, 247 Kan. 1 (1990)).

¹⁵ *Blevins v. Hiebert*, 247 Kan. 1, 11 (1990).

¹⁶ 247 Kan. at 8 (emphasis added).

¹⁷ 216 Kan. at Syl. ¶ 6.

¹⁸ *City of Garden City v. Miller*, 181 Kan. 360 (1957).

¹⁹ *Hutchinson Human Relations Commission v. Midland Credit Management, Inc.*, 213 Kan. 308 (1973).

²⁰ *Leavenworth Club Owners Association v. Atchison*, 208 Kan. 318 (1971).

²¹ See *State v. Jenkins*, 295 Kan. 431, 442 (2012) (a city cannot classify third and subsequent offenses for theft as a misdemeanor where a state statute classifies such offenses as a felony) and *City of Junction City v. Cadoret*, 263 Kan. 164, 170 (1997) (a city cannot classify third and subsequent offenses for driving under the influence as a misdemeanor where a state statute classifies such offenses as a felony).

statewide concern and that apply uniformly to all cities.²² In our view, the proposed ordinance would impermissibly conflict with uniform state law as discussed below.

I. Possession of Marijuana

K.S.A. 2014 Supp. 21-5706(b)(3) provides that it is unlawful for any person to possess a controlled substance, including “any hallucinogenic drug designated in subsection (d) of K.S.A. 65-4105.” Marijuana is such a controlled substance.²³ The first conviction for possession of marijuana is a class A nonperson misdemeanor offense.²⁴ A class A nonperson misdemeanor is punishable by a fine not to exceed \$2,500²⁵ and/or imprisonment in the county jail for up to 12 months.²⁶

In its current form, Section 5.26.040(a) is parallel to K.S.A. 2014 Supp. 21-5706 and thus is valid. However, Section (b) of the proposed ordinance would eliminate the parallel between state law and the city ordinance by decreasing the penalty for the first offense conviction for possession of 32 grams or less of Cannabis sativa L. by any person 21 years or older and by changing the penalty from a misdemeanor to “an infraction” punishable only by “a fine not to exceed fifty dollars (\$50.00),” an amount less than what is authorized by state statute. Section (b) of the proposed ordinance would conflict with state law in at least four ways.

First, the proposed ordinance impermissibly attempts to lower the penalty established by state law for certain illegal conduct. The Kansas Supreme Court in *State v. Jenkins*²⁷ held that cities can adopt an ordinance relating to a local police power, even though there is a state law on the subject uniformly applicable to all municipalities, as long as the ordinance does not conflict with the state statute. In *Jenkins*, the Court found a conflict when a city ordinance classified the offense as a misdemeanor, but the legislature had classified the crime as a felony.²⁸

The permissible classifications of crimes are established by state law. Under the Kansas Criminal Code, a crime is defined as:

An act or omission defined by law and for which, upon conviction, a sentence of death, imprisonment or fine, or both imprisonment and fine, is

²² See Kan. Const. Art. 2, § 17 which provides that all laws of a general nature shall have a uniform operation throughout the state; *Blevins v. Hiebert*, 247 Kan. 1, 11 (1990).

²³ K.S.A. 2014 Supp. 65-4105(d)(16).

²⁴ K.S.A. 2014 Supp. 21-5706(c)(2)(A).

²⁵ K.S.A. 2014 Supp. 21-6611(b)(1).

²⁶ K.S.A. 2014 Supp. 21-6602(a)(1).

²⁷ 295 Kan. 432, 442 (2012).

²⁸ Whether the *Jenkins* opinion relied on the fact that the city did not have jurisdiction over the felony offense is irrelevant here. The municipal court has jurisdiction to hear and determine cases involving violations of ordinances of a city, including concurrent jurisdiction over felony possession of marijuana. See K.S.A. 2014 Supp. 12-4104.

authorized or, in the case of a traffic infraction or a cigarette or tobacco infraction, a fine is authorized. Crimes are classified as felonies, misdemeanors, traffic infractions and cigarette or tobacco infractions.²⁹

The criminal code does not recognize the general term “infraction” as a classification, only “traffic infraction” and “tobacco infraction.” Thus, the conflict between the proposed ordinance and state law is even more acute than the conflict found impermissible by the Supreme Court in *Jenkins*. In *Jenkins*, the Supreme Court rejected a city’s attempt to reclassify certain criminal conduct from one category recognized by state law, a felony, to a lesser category recognized by state law, a misdemeanor. But here, not only would the proposed ordinance recategorize certain criminal conduct to a lesser category, but the lesser category it proposes – “an infraction” – is not recognized by state law. Because Kansas does not authorize the classification of “an infraction” generally, nor specifically for the crime of possession of marijuana, the proposed amendment to Section 5.26.040 would conflict with Kansas law.

That conclusion is buttressed because the proposed reclassification would reduce the available penalty by eliminating the potential for jail time and lowering the amount of the fine to less than what is established by state law. The elimination of jail time as a sentencing option and the reduction in the potential fine would not supplement or add to the state law but instead would lower the standard established by state law. Thus, we believe that where the legislature classified certain criminal acts as felonies or misdemeanors, a city ordinance conflicts with state law when it attempts to reclassify the same acts to be infractions subject to lesser penalties.

Further, because the proposed ordinance does not treat a first offense conviction as a misdemeanor, it would have the effect in many cases of indirectly reclassifying conduct that currently is a felony under state law – subsequent convictions for possession of marijuana – as a lesser offense. This effect results from the requirement in the proposed ordinance that a first conviction for marijuana possession may be counted as a prior conviction in fewer circumstances than under state law. The effect is that at least one additional conviction, beyond the requirements of state law, would be necessary before an individual could be convicted of felony possession of marijuana. In this manner, the reclassification in the proposed ordinance undermines the state felony statute by causing certain repeat conduct that currently is punishable as a felony to instead be punishable only as a lesser offense, even under state law. This provision is not parallel to but instead is below the standard set by the state, and thus there is a conflict that precludes municipal action.

Second, to the extent subsection (d) of the proposed ordinance attempts to create a one-year decay period that would redefine a second conviction one year or more after the first offense conviction so that it is counted only as another first conviction, such attempt would be impermissible as conflicting with K.S.A. 2014 Supp. 21-6810(d)(3)(A). State law recognizes no such decay factor for prior convictions. Because the provision

²⁹ K.S.A. 2014 Supp. 21-5102.

would make it possible to have numerous “first convictions” for possession of marijuana, as long as each conviction is spaced more than one year apart from the prior conviction, an individual’s criminal history potentially would never accumulate. This would undermine the provisions of state law that provide for increasing penalties for repeat offenses for the crime of possession of marijuana, and ultimately would undermine felony provisions of state law that would attach (without the decay period) to subsequent convictions for possession of marijuana, regardless of the timing.

Third, the ordinance proposes to establish an amount of marijuana as the demarcation for classification as an “infraction” rather than a misdemeanor, effectively adding an additional factual element the prosecution must prove. Currently, possession of a specific amount of marijuana is not required to be alleged or proven by the prosecution because it is not an element of the crime in either the current ordinance or in state law. Whereas possession of a small amount of marijuana is a misdemeanor under state law and must be considered and scored in criminal history pursuant to K.S.A. 2014 Supp. 21-6810(d)(5), the proposed ordinance would reclassify the possession of that same amount of marijuana, up to 32 grams, as an infraction.

The statute and the ordinance would no longer be parallel, and the ordinance would conflict with state law since the ordinance is seeking to remove a crime that must be considered and scored for criminal history purposes. It would undermine the city’s jurisdiction over the prosecution of felony possession of marijuana under K.S.A. 2015 Supp. 12-4104(a)(5) or the state’s prosecution for the same under K.S.A. 2014 Supp. 21-5706(b)(3) because the criminal history score would be inaccurate in the event of any subsequent convictions for possession of marijuana.

Fourth, the ordinance proposes to impose an age restriction by allowing persons 21 years or older to receive a more lenient sentence. Under state law, adult convictions do not require a specific age to be alleged or proven in a prosecution for possession of marijuana. The addition of this age factor appears to be another way to prevent the attachment of criminal history as stated above. Again, the statute and ordinance would no longer be parallel, and the ordinance would allow conduct that state law prohibits and undermine the state system of collecting accurate criminal history in order to enhance the penalties for recidivist marijuana possession convictions accordingly.

In our opinion, any one or more of the above conflicts between the proposed ordinance and state law would result in conflict preemption of the proposed ordinance, rendering it void.

II. Possession of Drug Paraphernalia related to Marijuana

K.S.A. 2014 Supp. 21-5709(b)(2) makes it unlawful for any person to use or possess with intent to use any drug paraphernalia to “store, contain, conceal, inject, ingest, inhale or otherwise introduce a controlled substance into the human body.” The first

and subsequent convictions of possession of paraphernalia are class A nonperson misdemeanor offenses.³⁰

In its current form, Section 5.26.040(a) of the Code of the City of Wichita, Kansas, is parallel to K.S.A. 2014 Supp. 21-5709 and thus is valid. However, Section (c) of the proposed ordinance would eliminate the parallel between state law and the city ordinance by decreasing the penalty for the first offense conviction for possession of drug paraphernalia involving Cannabis sativa L. by any person 21 years or older. If the proposed ordinance were adopted by the electors in Wichita, Section 5.26.040 would be amended so that a first conviction of the offense as redefined by the proposed ordinance would be “an infraction” punishable by “a fine not to exceed fifty dollars (\$50.00).” Section (c) of the ordinance would conflict with state law in at least two ways.

First, the proposed ordinance impermissibly attempts to lower the penalty established by state law from a class A misdemeanor to an infraction. In accord with the analysis above, the Kansas Criminal Code does not recognize the term “infraction” as a classification in this context. An ordinance that purports to lower the classification of a crime below that set by the state law is in conflict with state law and is void.

Additionally, such classification conflicts with state law because it lessens the potential penalty from the standard that is provided for by state law.

Second, the proposed ordinance singles out persons 21 years or older to receive a lesser penalty for a conviction, which would render the ordinance no longer parallel to state law. As stated above, a city ordinance cannot classify the same acts to be a lesser offense than provided for in state law without causing a conflict. This proposed reclassification appears to be another way to prevent attachment of criminal history which is required to be considered and scored pursuant to K.S.A. 2014 Supp. 21-6810(d)(5).

Either one of the above conflicts between the proposed ordinance and state law would result in conflict preemption of the proposed ordinance, rendering it void.

III. Duties of Law Enforcement Officers to Enforce State Law

Section (d) of the proposed ordinance proposes to prohibit City of Wichita law enforcement officers from complaining “of violations of these Subsections to any other authority except the City Attorney of the City of Wichita, Kansas.” That *de facto* gag rule for Wichita police officers, if enacted, would directly conflict with the duties of all Kansas law enforcement officers, including those employed by the City of Wichita, as set forth in state statute.

³⁰ K.S.A. 2014 Supp. 21-5709(e)(3).

K.S.A. 12-4111 provides:

The governing body [of a city] may employ law enforcement officers who shall have power to execute all process issued by any municipal judge within the state and delivered to him or her for that purpose, to detain persons, to place them in custody, and to arrest them, pursuant to the terms of this act.

*The powers of law enforcement officers with respect to the code of criminal procedure shall not be reduced by this code.*³¹

The very definition of a "law enforcement officer" under Kansas law is, *inter alia*, a person who "make[s] arrests for violation of the laws of the state of Kansas" A city ordinance that purports to prohibit a "law enforcement officer" from enforcing state law would be in clear conflict with the K.S.A. 22-2202(13), which defines "law enforcement officer" as follows:

"Law enforcement officer" means any person who by virtue of office or public employment is *vested by law with a duty* to maintain public order or *to make arrests for violation of the laws of the state of Kansas* or ordinances of any municipality thereof or with a duty to maintain or assert custody or supervision over persons accused or convicted of crime, and includes court services officers, parole officers and directors, security personnel and keepers of correctional institutions, jails or other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority.³²

Kansas law enforcement officers, including those employed by the City of Wichita, have a legal duty to enforce state law, which necessarily includes the authority to present cases for prosecution when appropriate to state authorities. A local ordinance, such as the proposed ordinance, that proposes to direct law enforcement officers to abandon that statutory duty is in conflict with state law and void.

IV. Offense Recording and Reporting by City Police

Section (d) of the proposed ordinance also would prohibit City of Wichita law enforcement officers from recording a misdemeanor for a conviction of section (b) or (c) with any state or federal law enforcement reporting agency.

An ordinance which purports to prohibit a law enforcement officer from recording or reporting a misdemeanor for a conviction of section (b) or (c) of the proposed ordinance

³¹ Emphasis added.

³² Emphasis added.

to any state or federal law enforcement reporting agency would be in clear conflict with K.S.A 21-2501a which provides:

(a) All law enforcement agencies having responsibility for law enforcement in any political subdivision of this state, on forms approved by the attorney general, shall maintain a permanent record of all felony and misdemeanor offenses reported or known to have been committed within their respective jurisdictions.

(b) All law enforcement agencies having the responsibility of maintaining a permanent record of offenses shall file with the Kansas bureau of investigation, on a form approved by the attorney general, a report on each offense for which a permanent record is required within 72 hours after such offense is reported or known to have been committed.

By prohibiting City of Wichita law enforcement officers, and/or the Wichita Police Department, from fulfilling statutory obligations to report crimes committed in the city, the proposed ordinance would undermine the purpose of the state statute described above, which is to ensure the accurate compilation of criminal justice information in Kansas. The resulting inaccuracy injected into criminal history record information because of the reporting ban would cause other significant problems in addition to future sentencing inaccuracies. We do not attempt to discern them all here, but one example would be the effect on prosecutions under 18 U.S.C. § 922(g)(3), the federal law prohibiting certain marijuana users from possession of any firearms or ammunition.³³

The proposed ordinance would conflict with and undermine state law and, thus, would be void.

V. Reporting of Offenses by Municipal Judge

Additionally, the municipal judge is under a separate duty, pursuant to K.S.A. 12-4106(e), to ensure that “information concerning dispositions of city ordinance violations that result in convictions comparable to convictions for offenses under Kansas criminal statutes is forwarded to the Kansas bureau of investigation central repository. This information shall be transmitted, on a form or in a format approved by the attorney general, within 30 days of final disposition.”

³³ 18 U.S.C. § 922(g)(3) provides, “It shall be unlawful for any person who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802) to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.” See also 27 C.F.R. § 478.11, which describes the meaning of “unlawful user of or addicted to any controlled substance.”

Subsection (d) of the proposed ordinance states, in pertinent part:

No convictions pursuant [*sic*] Subsections (b) and/or (c) of this Chapter shall be recorded as a misdemeanor to the Kansas Bureau of Investigation Central Repository or any other state or federal law enforcement reporting agency.

The proposed ordinance would improperly redefine conduct made criminal by state law so that it is no longer “comparable to convictions for offenses under Kansas criminal statutes.” In so doing, it would undermine the purpose of the state statutory system of reporting, which is to ensure the accurate compilation of criminal justice information in Kansas. A city ordinance that purports to prohibit, either directly or by such redefinition, a municipal judge from making a report as required by K.S.A. 2014 Supp. 12-4106(e) would be in clear conflict with the state law and would be void.

Conclusion

Based upon the above analysis, we conclude that a court would find the proposed ordinance void because it would conflict with uniform state laws in numerous ways. In our opinion, even if the ordinance has been properly placed upon the April ballot – and we are unsure that it has been³⁴ – a public vote to adopt it would have no legal force or effect.

Sincerely,

Derek Schmidt
Kansas Attorney General

Athena E. Andaya
Deputy Attorney General

DS:AA:sb

³⁴ See footnote 4 above.

Sec. 16-255.2. Policies for enforcing marijuana offenses.

- (a) The purpose of this section is to ensure that adults as defined by state criminal statutes, other than those excluded herein, are not arrested and suffer only a fine and/or community service or counseling and no other punishment or penalty, for the possession of a misdemeanor amount of marijuana and/or marijuana paraphernalia. This section shall be liberally construed for the accomplishment of these purposes.
- (b) When any law enforcement officer suspects any adult as defined by state criminal statutes, other than those excluded herein, of possession of a misdemeanor amount of marijuana and/or possession of marijuana paraphernalia, that person shall not be required to post bond, suffer arrest, be taken into custody for any purpose nor detained for any reason other than the issuance of a summons, suffer incarceration, suffer loss of driver's license, or any other punishment or penalty other than the issuance of a summons and, if found guilty, a fine of up to two hundred fifty dollars (\$250.00). There shall be a strong presumption that the proper disposition of any such case is to suspend the imposition of sentence and/or require community service work and/or drug counseling and education. All such matters shall only be referred to the municipal prosecuting attorney, and no other prosecuting attorney, and the municipal prosecuting attorney shall not refer the matter to any other prosecutor, agency, or office, unless provisions of subsection (c) are applicable.
- (c) Subsection (b) shall not apply to persons:
 - (1) Who have been found guilty of a felony within the preceding ten (10) years; or
 - (2) Who have been found guilty in a state court of a Class A misdemeanor, other than misdemeanor marijuana possession or misdemeanor possession of marijuana paraphernalia, within the preceding five (5) years; or
 - (3) Who have been found guilty in a state or municipal court of misdemeanor marijuana possession on two or more prior occasions within the preceding five (5) years; or
 - (4) Who are arrested on suspicion of any felony or misdemeanor offense chargeable only under state law, arising from the same set of facts and circumstances as the alleged marijuana offense.
- (d) The provisions of this section are severable. If any provision of this section is declared invalid, that invalidity shall not affect other provisions of the section which can be given effect without the invalid provision.
- (e) Any city ordinance or regulation that is inconsistent with this section shall be null and void and is hereby repealed effective immediately.
- (f) The message of this section is that people should not use marijuana, but should also not lose opportunities for education and employment because of such use. The limited resources of law enforcement should be directed primarily toward crimes of violence or property loss. The enforcement of laws against marijuana shall be among the lower priorities of law enforcement.

(Ord. No. 18188, § 1, 8-2-04; Ord. No. 18916, § 1, 2-20-06)

Editor's note(s)—Ord. No. 18188, passed by city council on Aug. 2, 2004, called for election; said ordinance was passed by the voters on Nov. 2, 2004.

Barry R. Grissom

Former U.S. Attorney, District of Kansas

Council Members

January 15, 2021

RE: Proposed Cannabis/Marijuana Ordinance

Dear Members:

As the former United States Attorney for the District of Kansas, I am writing you to urge you to support efforts to de-penalize or de-criminalize cannabis ("marijuana") at the municipal level in the city of Prairie Village.

Having had the honor to serve as the District's Chief Federal Prosecutor from 2010 to 2016, I believe I have a unique perspective on the enforcement of drug laws and the effect it has on individuals, families, law enforcement, and communities.

Cannabis, as I am sure you are aware, was placed as a Schedule 1 drug (next to heroin) on the federal Controlled Substance Act in 1970 by President Richard Nixon as part of the "War on Drugs". The Gallup poll in 1969 said only 16 percent of individuals supported some form of decriminalization. Today, that same poll taken last fall demonstrated that 68 percent of adults approved of cannabis/marijuana legalization. Indeed, the last election clearly showed a change of attitude by the public. Voters in these states -- Arizona, Montana, New Jersey, and South Dakota -- authorized the legal use of recreational marijuana in the Nov. 3 election. They join 11 other states and the District of Columbia in legalizing cannabis for recreational purposes. Additionally, voters in Mississippi and South Dakota join 33 states and the District of Columbia in passing laws legalizing or decriminalizing the use of marijuana for medicinal purposes. Sadly, in Kansas we do not have the ability to change legislation through referendum. It is worth noting that these changes occurred in "Red & Blue" states indicating that this is something that crosses the political divide.

Continued investigation, interdiction, arrest, prosecution, and incarceration of individuals who possess small quantities of cannabis is a *waste of taxpayer money* as well as an *unnecessary drain* on law enforcement resources. I witnessed this firsthand as the US Attorney. Law enforcement needs to be supported in keeping our families and communities safe. Focusing on cannabis users take away from that effort.

I am not a user of cannabis. I have no desire to use it but if I should choose to do so, as a responsible adult in my home, I should not have to fear the loss of my liberty or seizure of my property by the government.

Prairie Village has a history of being in the forefront on different social issues. It is my hope the Council will continue to be in the forefront on issues related to cannabis by reviewing what has been done in Lawrence, Kansas and Kansas City, Missouri and adopting measures that will provide for a thoughtful approach to this matter.

Most Respectfully,



Barry R. Grissom

Due to COVID-19 restrictions, most meetings will be held virtually. Please continue to check <http://pvkansas.com> for access details.

MAYOR'S ANNOUNCEMENTS
Monday, May 3, 2021

Finance Committee	05/04/2021	4:00 p.m.
Planning Commission	05/04/2021	7:00 p.m.
Tree Board	05/05/2021	6:00 p.m.
Parks and Recreation Committee	05/12/2021	5:30 p.m.
Arts Council	05/12/2021	5:30 p.m.
City Council	05/17/2021	6:00 p.m.
Environmental Committee	05/26/2021	5:30 p.m.
VillageFest Committee	05/27/2021	5:30 p.m.
Memorial Day – City offices closed	05/31/2021	

INFORMATIONAL ITEMS
May 3, 2021

1. Pension Board minutes - March 18, 2021
2. CFD#2 - 1st quarter activity report
3. May plan of action

Pension Board Minutes
Thursday, March 18, 2021 – Zoom Meeting

The Pension Board met on March 18, 2021 at 2:00 p.m. via zoom. Members present were Jim Whittier (Mission Hills representative), Dan Runion (City Council representative), and Capt. Ivan Washington (Police Department representative). The following people were also present in their advisory role to the Committee: Jamie Robichaud, Deputy City Administrator, Cindy Volanti, HR Manager, Mayor Eric Mikkelson, Derek Campbell and Brande Anderson with UMB Investment Services, John O'Brien, Jennifer Collins and Cindy Delfelder with Voya Retirement, and Glen Gahan with Silverstone.

UMB Investment Update

Derek Campbell presented the performance review through February 28, 2021. Mr. Campbell explained that the fund's total performance had investment gains of 4.91% over the past 3 months; 1.41% year-to-date, and 21.14% over the past year. The annualized rate of return over the last 3 years is 9.34%, and the annualized rate of return over the last 5 years and 10 years is 11.02% and 7.95%, respectively. Mr. Campbell added that 2021 may not see as positive gains as we did in 2020.

Captain Washington asked Mr. Campbell if he anticipates that the fund will continue to see unprecedented gains or if we will hit a wall at some point in the foreseeable future. Mr. Campbell says that more and more will reopen, likely resulting in gains, but it is unclear what that will look like. There are certain pockets of the economy that are still in a recession and it is yet to be seen when or if these pockets will normalize.

Mr. Runion asked for clarification on the annualized rate of return for the past 10 years and inquired what that annualized rate of return looked like since plan inception. UMB explained that the annualized rate of return since plan inception is 7.96%. The inception date was listed as December 31, 1989.

Voya Retirement Plans Review

John O'Brien with Voya presented the fund performance for the employee 457 and 401a plans by reviewing the Voya Fund Evaluation Scorecards. Voya explained that any funds that scored 4.0 or less on a 10 point scale are added to a watch list. Mr. O'Brien explained that there are several funds that are currently offered to employees that are approaching or have been added to the watch list that the Pension Board may want to consider an alternative option for. These funds included the Allianz Small-Cap Value, Columbia Acorn Mid-Cap Growth, and AllianzGI Dividend Large Value. Mr. O'Brien added that Voya provided city staff with an updated investment policy to review and consider bringing to the Pension Board for consideration. Ms. Robichaud added that staff is currently working on reviewing this and will plan to bring it to the July Pension Board meeting.

Mr. O'Brien asked for feedback from the Board as to whether any changes needed to be made on low-performing funds and added that this did not need to be a decision made today if the Board wanted more time to consider the recommendations. Mr. Whittier inquired about how the plan participants are notified if their enrolled plans are discontinued, and Mr. O'Brien explained that Voya will communicate these changes directly to the employee through Marissa and would also work with HR on messaging to employees.

Mr. Whittier suggested to wait until the Investment Policy Statement is in place after the July 2021 meeting before making any fund decisions.

Mr. Whittier moved to place the fund consideration on hold until July meeting until the investment policy statement is brought forward for consideration. Mr. Runion seconded. The motion was approved unanimously.

Silverstone Review

Glen Gahan with Silverstone provided the Police Pension Actuarial Valuation Report as of January 1, 2021.

Mr. Gahan demonstrated how the Entry Age Normal Accrued Liability (security ratio) has increased over the last couple of years due to the City's increased employer contribution above and beyond the minimum required: 2019 – 63%, 2020 – 72% and 2021 – 77%.

Jim Whittier asked what percentage of funding for the security ratio should the Board be striving for and asked if there were any concerns with the funding of the plan. Mr. Gahan stated that the ideal goal is to fund the plan at 100%; however, he stated it is very common for public pensions to be funded less than that and a public pension that is funded at least 70% to 80% is considered to be healthy. Mr. Gahan elaborated on his explanation and said that the actuarial assumptions to determine the employer's minimum contribution assume that the City will be 100% funded in 20 years through the amortization method that was established on January 1, 2019.

Mr. Runion added comments regarding the unfunded liability of the plan. He asked the Board to consider a more aggressive approach to the City's annual employer contribution to reduce the unfunded liability of the plan. Mr. Runion then moved to:

- 1) Add \$400,000 to the City's annual contribution to the plan, increasing the contribution from \$850,000 to \$1,250,000 beginning in 2022.
- 2) The board should recommend to the City Council to consider issuance of pension bonds to refund the unfunded liability at a lower interest rate.

Comments were provided on the motion by Captain Washington and Mr. Whittier as well as Mayor Mikkelsen. Capt. Washington and Mr. Whittier indicated that they did not feel prepared or informed on pension obligation bonds to make a recommendation on their issuance to the City Council at this time. Capt. Washington added that this action

could also impact Mission Hills and he recommended that Mr. Whittier reach out to them to get their feedback prior to any decisions being made. The members requested placing the bond issuance consideration on hold until more information is gathered and everyone has a better understanding on what effect this would have on the City.

Mr. Runion offered clarification on his motion and said that he, at this point, was only requesting that staff research the legality of issuance of pension bonds. Mr. Whittier then seconded the motion and the motion was approved unanimously.

Mr. Runion reiterated his motion to increase the City's annual contribution from \$850,000 to \$1,250,000 beginning January 1, 2022. The motion died for lack of a second.

Mr. Runion then moved to recommend maintaining the City's annual contribution at \$850,000 for the 2022 budget. Mr. Whittier seconded the motion, which was approved unanimously.

Captain Washington asked Mr. Gahan if most pension plans are funded at 100%. Mr. Gahan said that most are at 70 – 80% funding and very few are funded at the 100% level.

Mr. Whittier asked Mr. Gahan if it was common for pension plans to issue bonds to pay for the unfunded accrued liability. Mr. Gahan stated that this practice was not terribly common.

Approval of Minutes from January 14, 2021 Meeting

Jim Whittier moved to approve the minutes from the January 14, 2021 meeting. Dan Runion seconded. The motion was approved unanimously.

Confirmation of PD retirement and separation payments

Cindy Volanti, HR Manager, stated all voting board members confirmed their approval of the retirement and separation payments as presented.

Adjournment

Dan Runion moved to adjourn. Capt. Ivan Washington seconded the motion. The motion was approved unanimously and the meeting was adjourned at 4:25 p.m.

Activity Report | 1st Qtr 2021



PROUDLY SERVING

MISSION • PRAIRIE VILLAGE • ROELAND PARK
FAIRWAY • WESTWOOD • WESTWOOD HILLS
MISSION WOODS • MISSION HILLS



SERVICE CALLS

1st Quarter 2021

Calls for Service	503
Emergency Medical Calls	672
Training Hours	2867
PR/Educational Activities	n/a*
*Suspended due to Covid-19	



NEW HIRE ACADEMY



Our five newest members recently completed their New Hire Academy training. This is an intensive 3 week academy for the FF/EMTs with an additional 4th week for the FF/paramedics to cover ALS protocols, skills, and Johnson County EMS credentialing. For their first year on the job, newly hired (probationary) firefighters are put through

OUR CFD2 TEAM

There has been a lot of change at CFD2 beginning with the retirement of four of our valued members. These retirements resulted in promotional and hiring opportunities for others. We are quite pleased with celebrating the careers of those who retired, as well as the outcome of the promotions to fill those roles, and the quality of new members we are able to attract. These processes always remind us that we are fortunate to continue to employ some of the best fire and EMS providers around.

Retirements

Congratulations to the following members who have recently retired after many years of service to the District and northeast Johnson County. We wish them each a long and healthy retirement!

- Chief Tony Lopez - 30 Years
- Captain Kelly Bradley - 30 Years
- Apparatus Operator Shaun Crossland - 18 Years
- Apparatus Operator Brian O'Leary - 32 Years

Promotions

Congratulations to the following members who have recently been promoted.

- Chief Steve Chick - promoted from Deputy Chief
- Deputy Chief Mike Morse - promoted from Battalion Chief
- Battalion Chief Wes Sanders - promoted from Captain
- Captains Seth Katzer and Brian Montgomery - promoted from Lieutenant
- Lieutenants Bob Shaffer and Jason Waller - promoted from Apparatus Operator
- Apparatus Operators Dustin Patton and Rocky Rosales - promoted from Firefighter

New Members

Welcome to the five new members of our CFD2 family!

- Brett Braun - Firefighter/Paramedic
- Rich Dupin - Firefighter Paramedic
- Jonathan Fetters - Firefighter/EMT
- Collin Fischer - Firefighter/EMT
- Cody Wallace - Firefighter/Paramedic

Service Anniversaries

Congratulations to the following CFD2 members who recently reached service milestones.

- 25 Years: CPT Travis Thompson, CPT Brian Montgomery, A/O Rich Hart, FF Kyle Kuttler
- 20 Years: CPT Mark Adwell
- 15 Years: CPT James Lamb
- 5 Years: FF Luis Plascencia






THE CITY OF PRAIRIE VILLAGE

STAR OF KANSAS

DATE: April 26, 2021

TO: Mayor Mikkelson
City Council

FROM: Wes Jordan 

SUBJECT: MAY PLAN OF ACTION

The following projects will be initiated during the month of May:

- 2022 Budget Process
 - 2nd Finance Committee Budget Review - Staff (05/01)
 - CIP Discussion and Road Assessment - PW (05/01)
 - SB 13 Implementation - Nickie (05/01)
 - Establish Solid Waste Fees - Jamie/Nickie/Adam (05/01)
 - Budget Presentation to Council - Staff (05/01)
- Plan for In Person Council/Committee Meetings - Tim (05/01)
- Investment Policy for Voya 457/401a Plans - Cindy/Jamie (05/01)
- Legislative End of Session Update - Jamie (05/01)
- Codes Support Specialist Process - Jamie (05/01)

In Progress

- Internal Accounting Policy/Vendor Process Changes - Nickie (04/21)
- Regional Benchmarking Initiative - Meghan (04/21)
- American Rescue Plan Act Fund Uses & Expiration - Staff (04/21)
- Summer Tennis Programs & Registration - Meghan (04/21)
- Pool Mural Project - Meghan (04/21)
- Special Use Permit/Brighton Gardens - Jamie/Chris/Adam (04/21)
- Special Use Permit/Destination Pet - Jamie/Chris/Adam (04/21)
- Meadowbrook Phase II Park Planning - Jamie/Meghan (04/21)
- 2022 Budget Process - Staff (04/21)
- Review Alternative Changes to the Marijuana Ordinance - Tim (02/21)
- City Hall Conceptual Review - Staff (03/01)
- 2021 International Energy Conservation Code - Jamie/Mitch (03/21)
- Special Event Coordinator Hiring Process - Meghan (01/21)
- Implementation of Smoking Ban in Parks - Meghan (03/21)
- VillageFest Feasibility and Planning - Meghan (03/21)
- JazzFest Feasibility and Planning - Meghan (03/21)

- Pool Opening Plan - Meghan (01/21)
- 2021 Pool Staffing/Hiring - Meghan/Suzanne (01/21)
- Orientation Process for New Volunteer Committee Members - Staff (12/20)
- Geothermal Software Upgrade - PW (10/20)
- E/V Charging Station Installation - PW (10/20)
- Dynamhex Implementation - Ashley (10/20)
- Historic Trail Signage - Keith (09/20)
- Bias Training - Tim/Byron (07/20)
- PW New Facility Planning - Keith (09/19)
- Memorial Plaques in Parks Criteria Review - Staff (08/19)
- JOCO Municipalities Housing Study Task Force - Jamie (07/19)
- Research Viability of Interior Rental Inspections - Jamie (06/19)
- Statuary Maintenance Plan - Meghan (05/19)
- Personnel Policy Updates - Cindy/Jamie (07/18)
- Sculpture Unveiling - Meghan/Bonnie/Keith (11/19)

Completed

- 2022 Budget Process - Staff (03/21)
 - Decision Packages (Draft)
 - Insurance Cost Assumptions
 - Personnel Assumptions
 - Committee Budgets to PV Foundation
 - Reappraisal Projections
 - Preliminary Revenue Estimates Report
 - Department Budget Reviews by Line Item
 - Equipment Reserve Fund
 - Healthcare/Benefit Costs
 - Merit Pool
- PV Foundation Meeting - Meghan (03/21)
- Insurance Renewal Presentation - Nickie/Wes (04/21)
- Village Voice Articles - Staff (04/21)
- Insurance Committee Vacancy - Nickie (04/21)
- "SevenDays" Project Support - Meghan (03/21)
- Energy Efficiency Audit Public Buildings - David McAuliffe (04/20)
- Large Item Pickup Coordination/Promotion - Adam/Ashley (03/21)
- Organization of City Records/Contracts - Adam (05/19)
- Teen Council Graduation - Meghan (04/21)


Tabled Initiatives

- 20/20 Fitness Business Introduction to Council - Wes (04/20) [delayed]
- Civic Center Action Plan - Staff (03/20) [on hold]
 - Bond Capacity Discussion w/Council - Jeff White [completed]
 - Framework of Partnership Agreements with YMCA & Library

- MOU - Public Engagement & Site Design
- Review & update the City Code/Ordinances
- Review & Update City Policies
- Review of Smoking Ordinance/e-cigs
- Single Use Plastic Bag Discussion - Staff (02/20) [pending Council direction]



THE CITY OF PRAIRIE VILLAGE
STAR OF KANSAS

DATE: April 28, 2021
TO: Mayor Mikkelson
City Council
FROM: Wes Jordan 
SUBJECT: PLAN OF ACTION PROJECT UPDATE

Plan for In Person Council/Committee Meetings - Tim (05/01)

Tim is working on a plan to return to in person meetings at City Hall in coordination with IT improvements that are in progress.

Investment Policy for 457 Plan - Cindy/Jamie (05/01)

The Pension Board of Trustees has requested a more detailed Investment Policy specific to the City's supplemental pension plan. Staff is in the process of working with Voya on a draft policy.

Legislative End of Session - Jamie (05/01)

Jamie will coordinate a briefing to Council with Stuart Little & Mallory Lutz at the end of the current legislative session.

Codes Support Specialist Process - Jamie (05/01)

Penny Mann is retiring and Jamie has started a replacement process.

Internal Accounting Policy/Vendor Process Changes - Nickie (04/21)

The Auditors recently recommended that we institute this type of policy and Nickie will be handling that as time allows.

Regional Benchmarking Initiative - Meghan (04/21)

This is a project being coordinated by MARC in a regional effort to collect data in a variety of areas ranging from Human Resources to Public Work statistics. Once the data is collected, PV will benefit from having access to all contributed & shared information.

American Rescue Plan Act Fund Uses & Expiration - Staff (04/21)

The State of Kansas expects to receive Treasury Funds no later than May 10, 2021 as part of the American Rescue Plan. The City of PV does not yet know the total of expected funds - the original publication specified about 3 million dollars will be distributed in two separate payments in 2021 and 2022. The funds have many restrictions on how they can be spent. Staff will continue to research in order to have a better understanding of the requirements.

Pool Mural Project - Meghan (04/21)

Meghan has applied for a grant to help offset the cost of the mural installation at the Pool Complex. We hope to begin the process in July 2021 to select the artist and proposed mural for completion in advance of the 2022 pool season.

City Hall Conceptual Review - Staff (03/01)

Melissa provided Council with an update to the City Hall Conceptual Study on March 15, 2021 as well as other key factors affecting this study. The process may be modified due to new possibilities of future expansion alternatives. This item will be brought back to Council before any formal action is taken.

SPECIAL EVENT COORDINATOR POSITION

The Council previously approved a recommendation to approve a part time Special Event Coordinator Position with discontinuing the intern position in May 2019. This position was postponed due to COVID-19 and Meghan is in the process of hiring for the position responsible for the majority of Special Events such as JazzFest, VillageFest, etc.

Implementation of Smoking Ban in Parks - Meghan (03/21)

Park and Rec approved a new park rule that would prohibit smoking at all Parks in Prairie Village. Meghan and Ashley are working on a public relations campaign to make the community aware of the new park rule while coordinating applicable signage with PW. The new rule will go into effect Summer 2021.

Orientation Process for New Volunteer Committee Members - Staff (12/20)

Staff has been working on introducing KOMA requirements to Committees through a video partnership with the Kansas League as well as a Mayor's video of the new Code of Ethics. Both videos will hopefully be pushed to Committees in the next week or so. Staff is also working with MARC to have a Roberts Rules of Order presentation in the near future at Council that will also be made available by video to applicable Committees.

Geothermal Software Upgrade - PW (10/20)

The geothermal system for City Hall/PP is due for a software upgrade and was included in the Energy Efficiency Audit that was recently completed. Staff would hope to be able to begin making those changes in the near future.

EV Charging Station Installation - PW (10/20)

The tentative plan is for the Electric Vehicle charging station to be placed in the vicinity of the Skate Park while under construction. PW will bring the item forward to Council for approval and/or further discussion.

Dynamhex Implementation - Ashley (10/20)

Dynamhex is nearing completion of a beta test that will circulate to the E/C for testing. Once testing is completed a presentation will be brought to Council before launching city wide.

Historic Trail Signage - Keith (09/20)

The Council has approved the placement of additional Historic Trail Signage thanks to the concerted work of Mark Morgan. The Signage will also have a QR code available that will link interested persons to other platforms in order to learn a narrative of additional information.

Memorial Plaques in Parks Criteria Review - Staff (08/19)

This item has been temporarily tabled by staff due to prioritization of other projects. When this matter is brought forward, we want to make sure the PV Foundation, Park & Rec, and Council are on the same page about the criteria and cost of memorial plaques in parks.

JOCO Municipalities Housing Study Task Force - Jamie (07/19)

The UCS housing task force wraps up this month and we will be working on getting a presentation scheduled for the Council on the committee's results in the next month or two and then would hope to discuss next steps on what the City wants to start working on regarding housing attainability. The annual UCS Human Service Summit on June 16, 2021 will also present the results of the housing study and registration information will be sent to the City Council when it becomes available.

Research Viability of Interior Rental Inspections - Jamie (06/19)

Jamie hopes to revisit this item this summer after evaluating the workload and changes that have been brought forward as a result of the new building code, tree protection ordinance, sustainability grant, construction site screening requirements, new codes

software implementation, and moving to the new public works building. We will also have to revisit KSA restrictions on interior inspections.

Statuary Maintenance Plan - Meghan (05/19)

The Committee will be meeting in early summer and the annual maintenance agreement with Paul Benson is already in place.

Personnel Policy Updates - Cindy/Jamie (07/18)

We have been working on updating Personnel Policies in the Employee Handbook and we believe that we are close to completing the first draft of changes/amendments. We plan to review those updates with Department Managers by July 2021.

Sculpture Unveiling - Meghan/Bonnie/Keith (11/19)

The boy on the bicycle sculpture at 71st & Mission Road will be unveiled in coordination with an Arts Council event on June 11, 2021.