

# CITY OF PRAIRIE VILLAGE

October 15, 2012

Council Committee Meeting 6:00 pm

City Council Meeting 7:30 pm



**COUNCIL COMMITTEE OF THE WHOLE  
Council Chambers  
October 15, 2012  
6:00 PM**

**AGENDA**

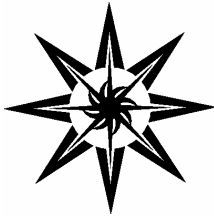
**DAVID MORRISON, COUNCIL PRESIDENT**

**AGENDA ITEMS FOR DISCUSSION**

- COU2012-46 Consider Supporting Organization Agreement with the Prairie Village Municipal Foundation  
Quinn Bennion
  
- COU2012-44 Consider Revised Right of Way Permit and Drainage Permit Application and Inspection Fee for 2013  
Bruce McNabb
  
- \*COU2012-47 Consider Bid Award for 2012 Tree Trimming Program  
Bruce McNabb

**EXECUTIVE SESSION**

**\*Council Action Requested the same night**



## MUNICIPAL FOUNDATION

Municipal Foundation Meeting Date: October 2, 2012

Council Committee Meeting Date: October 15, 2012

Council Meeting Date: November 5, 2012

### **COU2012-46: Consider Supporting Organization Agreement with Prairie Village Municipal Foundation**

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#### **RECOMMENDATION**

The Prairie Village Municipal Foundation has approved the Supporting Organization Agreement and recommends the City Council approve the Supporting Organization Agreement.

#### **BACKGROUND**

The Supporting Organization Agreement is an agreement between the City and the Municipal Foundation outlining the responsibilities of both parties in terms of the support that the Municipal Foundation will provide to the City of Prairie Village and its citizens and the services the City is to provide to the Municipal Foundation. This is a new document for the Foundation and the City and recommended by legal counsel to help establish the formal supporting organization status.

The Municipal Foundation will conduct certain charitable programs that are of interest to the City. The City asks the Municipal Foundation to facilitate the functions of certain City Committees such as holding monies raised by the City Committees. The agreement outlines how the City Committees are to request support from the Municipal Foundation.

Either party can cancel the agreement with 90 days notice.

#### **ATTACHMENTS**

- **Supporting Organization Agreement**
- **Excerpt of October 2, 2012 Municipal Foundation Minutes**

#### **PREPARED BY**

Jeanne Koontz, Deputy City Clerk

October 9, 2012

## Supporting Organization Agreement

The City of Prairie Village, a Kansas municipal corporation (“City”), and Prairie Village Municipal Foundation, a Kansas nonprofit corporation (“Supporting Organization”), acknowledge and agree as follows.

1. Acknowledgments and Intent. (a) Supporting Organization was formed and exists exclusively to benefit, to perform the charitable functions of, or to carry out the charitable purposes of City. In particular, but without limitation, Supporting Organization was formed and exists to benefit City both by directly carrying out charitable programs of interest to City and by facilitating the charitable functions of various citizens committees established by City for the betterment of City and its citizens. Because of Supporting Organization’s purposes and activities, Supporting Organization is a supporting organization with respect to City under section 509(a)(3) of the Internal Revenue Code of 1986 (collectively, with any successor law, the “Code”).

(b) City acknowledges that Supporting Organization exists to support City and that City controls Supporting Organization through the mechanism by which the members of Supporting Organization’s Board of Directors are appointed. Because of the close relationship between City and Supporting Organization, and in exchange for the support provided by Supporting Organization to City, City will provide certain services to Supporting Organization.

(c) The parties intend to set forth in this contract their agreement respecting the relationship between City and Supporting Organization with respect to Supporting Organization’s support of City and their agreement respecting City’s provision of services to Supporting Organization.

2. Term. City and Supporting Organization intend for this contract to be effective commencing on the effective date shown in the last paragraph below and terminating when, if ever, Supporting Organization ceases to be a supporting organization with respect to City under section 509(a)(3) of the Code. However, either party may terminate this contract by giving the other party written notice of termination at least 90 days prior to the effective date of such termination.

3. Direct Conduct of Charitable Programs. (a) From time to time City has asked Supporting Organization, and by entering into this contract City confirms its continuing request to Supporting Organization, to conduct certain charitable programs that are of interest to City. Such programs have included and in the future may include such things as providing utility assistance to needy individuals and providing scholarship and other assistance in connection with City recreational programs. The parties contemplate that Supporting Organization’s conduct of such programs may consist, among other things, of: (i) establishing funds in which are maintained monies donated by City or others for such programs; (ii) raising funds for the conduct of such programs; and (iii) expending funds for the conduct of such programs.

(b) Supporting Organization desires to support City by directly conducting charitable programs that are of interest to City. Supporting Organization will conduct such programs, upon request made by the City Administrator of City, subject to – with respect to each program that is to be conducted – the following limitations: (i) such conduct will be consistent with the charitable purpose and other provisions set forth in Supporting Organization’s Restated Articles of Incorporation and Restated Bylaws; (ii) such conduct will not require the expenditure of funds, other than funds that are in Supporting Organization’s possession and are earmarked for the program; and (iii) such conduct will not exceed Supporting Organization’s operational capacity, taking into account that Supporting Organization itself has no employees or contractors and that all of Supporting Organization’s functions are carried out by volunteers and by City personnel on Supporting Organization’s behalf as set forth below in this contract.

4. Citizens Committees Established by City. (a) From time to time City appoints citizens committees to perform charitable functions and activities for the betterment primarily of City and its citizens but also others. On the effective date of this contract shown in the last paragraph below these citizens committees include the following committees:

- Tree Board
- Parks and Recreation Committee
- Sister City Committee
- VillageFest Committee
- Arts Council
- JazzFest Committee

These committees, and other citizens committees established by City from time to time during the term of this contract, are collectively the “City Committees.”

(b) From time to time City has asked Supporting Organization, and by entering into this contract City confirms its continuing request to Supporting Organization, to facilitate the functions of each of the City Committees as requested by that City Committee from time to time. The parties contemplate that such facilitation by Supporting Organization may consist, among other things, of: (i) establishing and maintaining funds to hold monies raised by the City Committees or by others (including Supporting Organization) on behalf of the City Committees; (ii) raising funds for the City Committees; and (iii) expending funds at the request of the City Committees.

(c) Supporting Organization desires to support City by facilitating the functions of each of the City Committees as requested by that City Committee from time to time. Supporting Organization will provide such support, subject to – with respect to each City Committee activity that is to be facilitated – the following limitations: (i) such facilitation will be consistent with the charitable purpose and other provisions set forth in Supporting Organization’s Restated Articles of Incorporation and Restated Bylaws; (ii) such facilitation will not require the expenditure of funds, other than funds that are in Supporting Organization’s possession and are earmarked for the activity; and (iii) such facilitation will not exceed Supporting Organization’s operational capacity, taking into

account that Supporting Organization itself has no employees or contractors and that all of Supporting Organization's functions are carried out by volunteers and by City personnel on Supporting Organization's behalf as set forth below in this contract.

(d) In general the parties contemplate that City Committees will request support from Supporting Organization by giving oral or written notice of the desired support to the City personnel who are at that time conducting the affairs of Supporting Organization and that the City personnel will upon receipt of such notice, and without the need for further authorization, take the requested action. For example, if the JazzFest Committee of City were to request that Supporting Organization make an expenditure from the JazzFest fund maintained by Supporting Organization for such committee, then the request would be made to the City personnel who at that time are conducting the affairs of Supporting Organization and such personnel would make such expenditure, without the necessity of such expenditure being approved by Supporting Organization's Board of Directors or any committee of Supporting Organization's Board of Directors. However, if the City personnel who receive a request for assistance from a City Committee have any concern that such request should not be honored because of the limitations set forth in section 4(c), then the City personnel will not take the requested action until: (i) they determine that it is appropriate to do so; (ii) they and the President of Supporting Organization agree that it is appropriate to do so; or (iii) Supporting Organization's Board of Directors or a committee thereof determines that it is appropriate to do so.

5. Services Provided by City to Supporting Organization. (a) City will provide to Supporting Organization all of the facilities, equipment, supplies, and administrative services and resources, including without limitation all accounting, financial management, tax return preparation, payroll and employee benefits management and resources, and consulting and advisory services, and all insurance coverages, that are needed by or useful to Supporting Organization in carrying on its activities.

(b) In performing the services and providing the insurance coverages contemplated by the provisions of section 5(a), and without limiting such provisions in any way, the following additional provisions shall apply.

(i) Unless otherwise directed by Supporting Organization, City will manage and invest Supporting Organization's monies in generally the same manner as it invests its own funds from time to time, will write checks or otherwise draw upon Supporting Organization's monies at Supporting Organization's direction (including as provided in section 4(d)), and will account fully to Supporting Organization with respect to all of the foregoing.

(ii) City will prepare on a monthly or quarterly basis (in City's discretion), and on an annual basis, financial statements for Supporting Organization prepared, to the best of City's abilities, in accordance with generally accepted accounting principles consistently applied.

(iii) City will, if City believes doing so to be in the best interests of Supporting Organization, endeavor to cause Supporting Organization to comply with

all audit and other administrative requirements of each governmental entity and other organization that provides grants or other support to Supporting Organization. In this regard, City will cause City's independent auditors to make such examinations and issue such reports, all in proper form and on a timely basis, as may be required by any such governmental entity or other organization as a condition to the making or continuance of any such grants or other support.

(iv) City will obtain for Supporting Organization all insurance coverages that are needed by Supporting Organization. Such insurance coverages will include without limitation: (A) public liability; (B) general comprehensive liability insurance coverage that, among other things, covers Supporting Organization and its directors, officers, employees, and other representatives against any claim, loss, liability, or expense whatsoever from personal injury, bodily injury, death, property damage, tort claims, or other matters with a minimum combined single liability limit of \$1,000,000; (C) umbrella liability coverage (covering the same persons as are specified in the preceding clause (C)); and (D) directors and officers liability.

6. Consideration for Support and Services. City acknowledges that the support provided by Supporting Organization to City constitutes adequate contractual consideration for the services provided by City to Supporting Organization, and Supporting Organization acknowledges that the services provided by City to Supporting Organization constitute adequate contractual consideration for the support provided by Supporting Organization to City.

7. Miscellaneous. City and Supporting Organization will endeavor to resolve any disagreements arising under this contract by discussion between the parties. Neither party may assign its rights or obligations under this contract.

This contract is executed by City and Supporting Organization, effective as of October 2, 2012, to evidence their intent to be bound hereby.

CITY OF PRAIRIE VILLAGE

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

PRAIRIE VILLAGE MUNICIPAL FOUNDATION

By: \_\_\_\_\_  
Doris Wieggers  
President

## **Excerpt of October 2, 2012 Prairie Village Municipal Foundation Meeting Minutes**

### **Consider adoption of Supporting Organization Agreement**

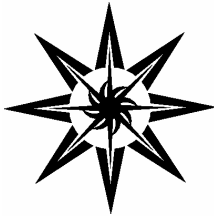
Doris Wieggers stated that the next business to come before the meeting was the consideration of the Supporting Organization Agreement. She asked Mr. Jones to explain the agreement.

Mr. Jones noted the City appoints committees to perform certain functions who in turn use the foundation to raise money, however, the foundation has no direct control over the committees. The relationship between the parties creates an unusual governance situation which the agreement tries to address. The agreement states the foundation supports the City by performing two kinds of functions: direct charitable functions and assisting city committees as they are appointed subject to the foundation's budget. If the foundation is unable to perform either of these functions than it is excused from performing the function. The agreement also outlines the support the City provides to the foundation which includes insurance coverage, financial management, record keeping and staff support.

Mr. Jones stated the agreement will be in existence as long as the foundation is in existence but either party can cancel the agreement with 90 days notice.

Dan Andersen moved to approve the Supporting Organization Agreement and recommended the agreement be presented to City Council for approval. Laura Wassmer seconded the motion which passed unanimously by the Board of Directors.





## PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: October 15, 2012

Council Meeting Date: November 5, 2012

### COU2012-44: CONSIDER REVISION TO CITY'S FEE SCHEDULE - DRAINAGE PERMIT APPLICATION AND INSPECTION FEE

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#### RECOMMENDATION

Staff recommends the City Council approve an increase in the Drainage Permit application and inspection fee to no more than \$ 250.00, effective January 1, 2013.

#### BACKGROUND

The City of Prairie Village established a drainage permit application and inspection program in 2001. The primary purposes of this program are to monitor and inspect proposed changes which impact the City's drainage system and to establish a fee to offset the City's expenses for this activity. Activities which are typically reviewed include redevelopment projects, significant changes to property grades and new swimming pools.

In 2011 the City reviewed 47 drainage permits. Each permit involves a series of inspections including pre-construction, construction in progress and post construction. The current fee is \$70.00 for each application and the fee was most recently revised in 2008.

Chapter 14, Article 2 (Stormwater Management) of the Municipal Code provides the official background for the City's interest in this area. Section 218 describes the requirements for drainage permits and Section 236 explains the inspection fee.

City Council Policy CP056 (Financial Management Policies), Section V. A. 2. C. User Fees describes the City's policy on this aspect of this subject. The Cost of service subsection states

*"The City will establish user charges and fees at a level which reflects the costs of providing the service, to the extent legally allowable. Operating, direct, indirect (where practical and available) and capital costs shall be considered in the charges. Full cost charges shall be imposed unless it is determined that policy and market factors require different fees."*

The attached sheet shows the results of an analysis of 2011 costs. The average total City cost for each permit that year was \$250.66. Most of the costs are for staff time, so small increases in this figure would be expected for 2012 and 2013. In 2011 this sub-program ran a "deficit" or was subsidized by other General Fund revenues by a little less than \$8500. It is estimated that the deficit or subsidy for 2012 will be almost \$9300.

In order to meet the goal of the City Council policy, I recommend an increase in the right of way permit application and inspection fee to no more than \$250.00, effective January 1, 2013. Market factors do not appear to be a significant factor in this type of fee. Council may wish to consider the public benefit and other policy factors relating to the underlying activity and its regulation.

### **FUNDING SOURCE**

If the fee is increased to \$250.00, effective January 1, 2013, it is estimated that City revenue for this sub-program would increase by approximately \$9,000 in 2013.

### **ATTACHMENTS**

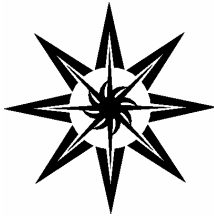
City Council Policy CP056 (Financial Management Policies), page 2 (Revenue Policies - User Fees)

2012 Analysis of Drainage Permits Costs and Fees

### **PREPARED BY**

Bruce McNabb, Director of Public Works

Date: October 9, 2012



## PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: October 15, 2012

Council Meeting Date: November 5, 2012

### COU2012-44: CONSIDER REVISION TO CITY'S FEE SCHEDULE - RIGHT OF WAY PERMIT APPLICATION AND INSPECTION FEE

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#### RECOMMENDATION

Staff recommends the City Council approve an increase in the Right of Way Permit application and inspection fee to no more than \$ 175.00, effective January 1, 2013.

#### BACKGROUND

The City of Prairie Village established a right of way permit application and inspection program in 2000. The primary purposes of this program are to regulate the number, type and quality of facilities that are installed in City rights of way (primarily City streets) and to establish a fee to offset the City's expenses for this activity.

In 2010 and 2011, 71% of the permit applications came from utility companies, with Water One having the most. The second largest group of applications (24%) came from changes in commercial and residential driveway approaches and aprons.

The City received an annual average of 865 permit applications during 2010 and 2011. The processing of each application includes a series of reviews and inspections. The current fee is \$70.00 for each application and the fee was most recently revised in 2008.

Chapter 13, Article 5 (Right of Way Management) of the Municipal Code describes the City's regulation of these activities. The permit requirements begin at Section 515. Section 518 states that the permit fee will be recommended by the Public Works Director and approved by the Governing Body.

City Council Policy CP056 (Financial Management Policies), Section V. A. 2. C. User Fees describes the City's policy on this aspect of this subject. The Cost of service subsection states

*"The City will establish user charges and fees at a level which reflects the costs of providing the service, to the extent legally allowable. Operating, direct, indirect (where practical and available) and capital costs shall be considered in the charges. Full cost charges shall be imposed unless it is determined that policy and market factors require different fees."*

The attached sheet shows the results of an analysis of 2011 costs. The average total City cost for each permit that year was \$171.74. Most of the costs are for staff time, so small increases in this figure would be expected for 2012 and 2013. In 2011 this sub-program ran a "deficit" or was subsidized by other General Fund revenues by \$26,955. It is estimated that the deficit or subsidy for 2012 will be approximately \$23,625, based on a smaller number of permits.

In order to meet the goal of the City Council policy, I recommend an increase in the right of way permit application and inspection fee to no more than \$175.00, effective January 1, 2013. Market factors do not appear to be a significant factor in this type of fee. Council may wish to consider the public benefit and other policy factors relating to the underlying activity and its regulation.

## **FUNDING SOURCE**

If the fee is increased to \$175.00 effective January 1, 2013, it is estimated that City revenue for this sub-program would increase by approximately \$26,000 in 2013.

## **RELATION TO VILLAGE VISION**

*CC1 Attractive Environment*

*CC1a Make streetscape improvements to enhance pedestrian safety and attractiveness of the public realm.*

## **ATTACHMENTS**

City Council Policy CP056 (Financial Management Policies), page 2 (Revenue Policies - User Fees)

2012 Analysis of Right of Way Permits Costs and Fees

## **PREPARED BY**

Bruce McNabb, Director of Public Works

Date: October 9, 2012

## CP056 - Financial Management Policies

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- The City Administrator and Finance Director will review monthly and quarterly expenditure reports to determine adherence to the approved budget. Department Managers shall have primary responsibility for insuring compliance with their approved departmental budget. If the City Administrator or Finance Director find an expenditure which constitutes a significant deviation (an unbudgeted impact of more than \$5,000 on a particular budget category) from the approved expenditure plan or approved budget, the department head will be asked to prepare an amended departmental budget an/or expenditure plan to accompany the appropriations ordinance for review by the Governing Body.
  - City Department Managers shall have primary responsibility for insuring compliance to approved departmental budget and expenditure plans.
- f.) Financial reports.
- Monthly expenditure reports will be prepared for Department Managers at the end of each month to enable them to meet their budget goals and to enable the City Administrator and Finance Director to monitor and control the budget.
  - Summary financial reports will be presented to the Governing Body quarterly.
- g.) Service levels. The City will attempt to maintain essential service levels. Changes in service levels will be governed by the following policies:
- h.1.) Budget process. The annual budget process is intended to weigh all competing requests for City resources within expected fiscal constraints. Requests for new ongoing programs made outside the annual process must substantiate the need for the new program.
  - h.2.) Personnel expenses. Requests for additional personnel should meet program initiatives and policy directives after service needs have been thoroughly documented or it is substantiated that the new employee will result in increased revenue or enhanced operating efficiencies.
2. Revenue Policies
- The objective of the revenue policies is to ensure that funding for public programs is derived from a fair, equitable and adequate resource base, while minimizing tax differential burdens. The City will keep the revenue system as simple as possible by avoiding nuisance taxes, fees or charges only as a revenue source.
- a.) Revenue structure. The City will maintain a diversified and stable revenue system to shelter programs from short-term fluctuations in any single revenue source.
- b.) Sources of services financing. Services which have a city-wide benefit will be financed with revenue sources which are generated from a broad base, such as property taxes and state aids. Services where the customer determines the use shall be financed with user fees, charges and assessments directly related to the level of service provided.
- c.) User fees. The City will maximize the utilization of user charges in lieu of general revenue sources for services that can be individually identified and where the costs are directly related to the level of service:
- Cost of service. The City will establish user charges and fees at a level which reflects the costs of providing the service, to the extent legally allowable. Operating, direct, indirect (where practical and available) and capital costs shall be considered in the charges. Full cost charges shall be imposed unless it is determined that policy and market factors require different fees.
  - Policy and market considerations. The City will also consider policy objectives and market rates and charges levied by other public and private organizations for similar services when fees and charges are established.
  - Annual review. The City will review fees and charges annually, and will make appropriate modifications to ensure that charges grow at a rate which keeps pace with the cost of efficiently providing the service.
  - Non-resident charges. Where practical or legally allowable, user fees and other appropriate charges shall be levied for activities or facilities in which non-residents participate in order to relieve the burden on City residents. Non-resident fees shall be structured at market levels.
  - Internal service fees. When interdepartmental charges are used to finance internal functions, charges shall reflect full costs; indirect expenses shall be included where practical.
- d.) License Fees. The City will establish license fees at levels which reflect full administrative costs, to the extent legally allowable.
- e.) Fines. Levels of fines shall be requested according to various considerations, including legal guidelines, deterrent effect, and administrative costs. Because the purpose of monetary penalties against those violating City ordinances is to deter continuing or future offenses, the City will not request any increase in fine amounts with the singular purpose of revenue enhancement.

Annual Public Works Permits Analysis -- 2012

Right of Way Permits

Current Fee: \$70 (2008)

Proposed 2013 Fee: \$ 175

Final Fee: \$ \_\_\_\_\_

Effective Date: January 1, 2013 (recommended)

2011 Costs (per permit):

Operating (1)	-
Direct (2)	\$107.98
Indirect (3)	63.76
Capital (4)	-
Total	\$ 171.74

	<u>2011</u> <u>Actual</u>	<u>2012</u> <u>Estimated</u>
Number of Permits	274	225
Total Costs	\$ 47,057	\$ 39,375
Annual Revenues	<u>\$ 20,102</u>	<u>\$ 15,750</u>
Annual Deficit/ Subsidy	\$ 26,955	\$ 23,625

(1) Not significant

(2) 2 year (2010/2011) average hours & 2011 average costs including fringe benefits and vehicle use

(3) Includes time for Inspector, supervision and office building maintenance

(4) None

5/23/2012

Annual Public Works Permits Analysis -- 2012

Drainage Permits

Current Fee: \$70

Proposed 2013 Fee: \$ 250

Final Fee: \$ \_\_\_\_\_

Effective Date: January 1, 2013 (recommended)

2011 Costs (per permit):

Operating (1)	-
Direct (2)	\$176.84
Indirect (3)	73.82
Capital (4)	-
Total	\$ 250.66

	<u>2011 Actual</u>	<u>2012 Estimated</u>
Number of Permits	47	50
Total Costs	\$ 11,781	\$ 12,784
Annual Revenues	<u>\$ 3,290</u>	<u>\$ 3,500</u>
Annual Deficit/ Subsidy	\$ 8,491	\$ 9,284

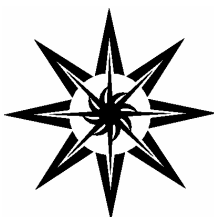
(1) Not significant

(2) 2 year (2010/2011) average hours & 2011 average costs including fringe benefits and vehicle use

(3) Includes time for Inspector, supervision and office building maintenance

(4) None

5/23/2012



## PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: October 15, 2012

Council Meeting Date: October 15, 2012

### \*COU2012-47: Consider Bid Award for 2012 Tree Trimming Program

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#### RECOMMENDATION

Staff recommends the City Council approve the award of a bid to Kansas City Tree Care, LLC for \$66,157.87 for trimming trees in City rights-of-way.

#### BACKGROUND

This bid is for the annual tree trimming of trees in the City rights-of-way. There are approximately 746 trees in Area 33 bounded by 75<sup>th</sup> Street, State Line Road, Somerset Drive and Belinder Avenue. There are approximately 863 trees in Area 43 bounded by 75<sup>th</sup> Street, Belinder Avenue, Somerset Drive and Mission Road. A map depicting these areas is attached. These trees will be trimmed to remove any dead wood larger than 2-inches, remove limbs interfering with sight line to traffic signals and street signs, and with a conical area under the street lights.

Three bids were received and opened on September 28, 2012, by the City Clerk. The bid tab is:

Bidder	Area 33	Area 43	Total
Kansas City Tree	\$ 32,078.00	\$ 34,079.87	\$ 66,157.87
VanBooven Tree	\$ 41,500.00	\$ 28,995.00	\$ 70,495.00
Arbor Masters	\$ 39,538.00	\$ 48,975.00	\$ 88,513.00

In past years when there were different low bidders in separate work areas, the City has awarded the overall contract to the contractor with the overall lowest bid. This maintains a consistency of work and coordination with City staff. If the bids were awarded separately for each area this year, the cost saving on the entire bid would be \$5,084.87 but would increase staff resources and time in overseeing two contractors.

Kansas City Tree was selected as last year's contractor for this work and did a satisfactory job on the project

#### FUNDING SOURCE

Funding is available in the 2012 Public Works Operating Budget.

#### RELATION TO VILLAGE VISION

*CC1; Make streetscape improvements to enhance pedestrian safety and attractiveness of the public realm*

*CFS2: Preserve and protect natural areas*

#### ATTACHMENTS

Construction Agreement for Tree Trimming  
Tree Trimming Area Map

#### PREPARED BY

Bruce McNabb, Director of Public Works

October 10, 2012



**CONSTRUCTION AGREEMENT**

**for**

**TREE TRIMMING**

**BETWEEN**

**CITY OF PRAIRIE VILLAGE, KS**

**AND**

**CONSTRUCTION AGREEMENT  
BETWEEN  
THE CITY OF PRAIRIE VILLAGE, KANSAS  
AND  
KANSAS CITY TREE CARE, LLC  
FOR  
TREE TRIMMING**

**THIS AGREEMENT**, is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between the City of Prairie Village, Kansas, hereinafter termed the "City", and Kansas City Tree Care, LLC, hereinafter termed in this agreement, "Contractor", for the construction and completion of Tree Trimming, designated, described and required by the Project Manual and Bid proposal, to wit:

**CONTRACT COST:** The City shall pay to 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 \$ 66,157.87 for all Work covered by and included in the Contract award and designated in the foregoing Article I; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

**CONTRACT TERM:** The Contractor will complete all work by this Contract within the Contract completion date of December 14, 2012.

**1. DEFINITIONS:**

1.1. Following words are given these definitions:

**BIDDER** shall mean any individual: partnership, corporation, association or other entity submitting a Bid for the work.

**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.

**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.

**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 mean the Construction Agreement, the accepted Bid Proposal, Contractor's Performance Bond, Contractor's Maintenance Bond, Statutory Bond, Project Manual and any other documents that have bearing the Work proscribed in the Project.

**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 date certain 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 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 City Public Works Field Superintendent 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.

**INSPECTOR** shall mean the engineering or technical inspector or inspectors duly authorized by the City to monitor the work and compliance tests under the direct supervision of the City Public Works Field Superintendent.

**NOTICE OF AWARD** shall mean the written notice by the City to the apparent successful Bidder stating that upon compliance with the conditions precedent enumerated therein, within the time specified, the City will sign and deliver the Agreement.

**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.

**OPERATIONS SUPERINTENDENT** shall mean the individual, firm or entity designated in the Contract Documents, which has been employed or contracted by the City for the performance of engineering services in connection with the Work.

**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 drawings which may have been prepared by or for the City as of 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.

**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.

**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.

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

**UNIT PRICE WORK** shall mean work quantities to be paid for on the basis of 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.

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 City and/or the City Public Works Field Superintendent 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 City and/or the City Public Works Field Superintendent.

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:**

2.1. 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.

2.2. The Contract shall be construed in accordance with the laws of the state of Kansas.

## **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 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 City Public Works Field Superintendent 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 City Public Works Field Superintendent 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 any 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, and then the Contractor shall secure written instructions from the City Public Works Field Superintendent 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. Pursuant to K.S.A. No. 16-133, if the Contractor to whom the Contract is awarded is not a resident firm of the State of Kansas, he shall execute and file "Certificate of Appointment of Process of Agent" with the Clerk of the District Court at the Johnson County Courthouse. These forms may be obtained at the Office of the Clerk of the District Court. After execution of the documents, they shall be filed with the Clerk of the District Court. A filing fee of Five Dollars (\$5.00) is required. These certificates are pursuant to the General Statutes of Kansas, and shall be filed prior to the formal execution of the Contract Documents. Failure to comply with these requirements shall disqualify the Contractor for the awarding of this Contract.

#### **4. WORK SUPERINTENDENT**

4.1. 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.

4.2. 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.

4.3. The City shall have the right to approve the person who will be the Superintendent on the basis of skill, knowledge, experience and work performance. The City shall also have the right to request replacement of any superintendent.

4.4. The duly authorized representative shall be official liaison between the Owner and Contractor regarding the signing of pay estimates, change orders, work day reports and other forms necessary for communication and Work status inquiries. Upon Work commencement the Owner 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.

4.5. The Contractor will be required to contact the City Public Works Field Superintendent daily to advise whether and/or where the Contractor and/or the Subcontractor's crews will be working that day, in order that the City Public Works Field Superintendent's representative is able to monitor properly the Work.

#### **5. CITY PUBLIC WORKS FIELD SUPERINTENDENT**

5.1. It is mutually agreed by and between the parties to this Contract Agreement that the City Public Works Field Superintendent shall act as the representative of the City and shall observe, as required, the work included herein.

5.2. In order to prevent delays and disputes and to discourage litigation, it is further agreed by and between the parties to this Contract that the City Public Works Field Superintendent 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 City Public Works Field Superintendent shall determine, where applicable,

questions in relation to said Work and the construction thereof; that City Public Works Field Superintendent shall, where applicable decide questions which may arise relative to the execution of this Contract on the part of said Contractor; that the City Public Works Field Superintendent'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 City Public Works Field Superintendent 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 City Public Works Field Superintendent 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.

5.3. The City Public Works Field Superintendent, unless otherwise directed or agreed to by the City in writing, will perform those duties and discharge those responsibilities allocated to the City Public Works Field Superintendent as set forth in this Contract. The City Public Works Field Superintendent shall be the City's representative from the effective date of this Contract until final payment has been made. The City Public Works Field Superintendent shall be authorized to act on behalf of the City only to the extent provided in this Contract.

5.4. The City and the Contractor shall communicate with each other in the first instance through the City Public Works Field Superintendent.

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

5.6. The City Public Works Field Superintendent 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 City Public Works Field Superintendent's recommendation of any payment requested in an Application for Payment will constitute a representation by City Public Works Field Superintendent to City, based on City Public Works Field Superintendent's on-site observations of the Work in progress as an experienced and qualified design professional and on City Public Works Field Superintendent'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 City Public Works Field Superintendent'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 City Public Works Field Superintendent 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 City Public Works Field Superintendent 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 City or City to withhold payment to Contractor.

5.7. City Public Works Field Superintendent may refuse to recommend the whole or any part of any payment if, in City Public Works Field Superintendent's opinion, it would be incorrect to make such



representations to City. City Public Works Field Superintendent 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 City Public Works Field Superintendent's opinion to protect 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,
- City has been required to correct defective Work or complete Work in accordance with the Project Manual,

5.8. City may refuse to make payment of the full amount recommended by City Public Works Field Superintendent 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 City Public Works Field Superintendent) stating the reasons for such action.

5.9. The City Public Works Field Superintendent will have the authority to reject Work, which is defective or does not conform to the requirements of this Contract. If the City Public Works Field Superintendent deems it necessary or advisable, the City Public Works Field Superintendent shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.

5.10. The City Public Works Field Superintendent 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.

5.11. The City Public Works Field Superintendent shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and not inconsistent 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.

5.12. The City Public Works Field Superintendent shall, upon written request from the Contractor, conduct observations to determine the date of substantial completion and the date of final acceptance. The City Public Works Field Superintendent 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.

5.13. The City Public Works Field Superintendent's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.

5.14. The City Public Works Field Superintendent 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 City Public Works Field Superintendent will not be responsible for the acts or omissions of 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.

5.15. Any plan or method of work suggested by the City Public Works Field Superintendent, 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 City Public Works Field Superintendent and the City will assume no responsibility therefore.

5.16. It is agreed by the Contractor that the City shall be and is hereby authorized to appoint or employ, either directly or through the City Public Works Field Superintendent, 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 City Public Works Field Superintendent, or by the resident representatives for proper observation and examination of the Work and all parts thereof.

5.17. The Contractor shall comply with any interpretation of the Project Manual by the City Public Works Field Superintendent, 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 City Public Works Field Superintendent, resident representative or observer, the Contractor may make written appeal to the City Director of Public Works for a decision.

5.18. Resident representatives, observers, and other properly authorized representatives of the City or City Public Works Field Superintendent 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.

5.19. Such observation shall not relieve the Contractor from any obligation to perform said work strictly in accordance with the Project Manual.

## **6. WORK SCHEDULE:**

6.1. The Contractor shall, within ten (10) calendar days after being instructed to do so in a written notice from the City, commence work to be done under this Contract.

6.2. The rate of progress shall be such that the Work shall have been completed in accordance with the terms of the Contract Documents on or before the completion date for the construction period named in the contract agreement, subject to any extension or extensions of such time made as hereinafter provided.

6.3. The Contractor shall be required to furnish the City Public Works Field Superintendent with a schedule, in the form of a tabulation, chart, or graph (or critical path diagram) must be in sufficient detail to show the chronological relationship of all activities of the project including the start and completion of various activities and procurement of materials. The construction schedule must reflect the completion of all work under contract within the specified time. If the Contractor wishes to make a major change in his/her operations after beginning construction, he/she must submit a revised construction schedule in advance of the revised operations.

6.4. If at any time, in the opinion of the City Public Works Field Superintendent, proper progress is not being maintained; such changes shall be made by the Contractor in the schedule and resubmitted for consideration.

6.5. If the Contractor has not completed Work segments and is within a non-performance penalty period, he/she shall not be allowed to undertake a new Work segment, until the Work segment in dispute is completed, unless expressly permitted by the City.

6.6. No work is to be conducted on Sundays or Holidays (Christmas, New Years, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day and Thanksgiving) without express written consent or approval from the City. Request for approval must be submitted a minimum of two weeks in advance. 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 City Public Works Field Superintendent.

6.7. 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 the Work.

## **7. DELAYS AND EXTENSIONS OF TIME**

7.1. In executing the Contract, the Contractor expressly covenants and agrees that, in undertaking the completion of the work within the time herein fixed, he 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.

7.2. 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 Owner, or by strikes or the abandonment of the work by the men 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 Owner, 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 he shall in such cases be entitled to such extension of the time specified for the completion of the work as the Owner and the City Public Works Field Superintendent 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 Owner and the City Public Works Field Superintendent in writing within one (1) week from the time when any such alleged cause for delay shall occur.

## **8. ADVERSE WEATHER:**

8.1. Extensions of time for adverse weather shall be granted only under the conditions as hereinafter provided.

8.2. For conditions of weather or conditions at the site, so unusual as not to be reasonably anticipated, as determined by the City Public Works Field Superintendent, 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.

8.3. 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 work day.

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

8.5. Time Extensions for Unusually Severe Weather:

8.5.1. In order for any request for time extension due to unusually severe weather to be valid, the Contractor must document both of the following conditions:

8.5.2. 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.

8.5.3. 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.

8.6. The following schedule of monthly anticipated adverse weather delays will constitute the baseline for monthly weather time evaluations. The Contractor's Progress 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

8.7. Upon receipt of the Notice to Proceed, and continuing throughout the Contract, the Contractor shall record on their daily construction report, the occurrence of adverse weather and resultant impact to normally scheduled work.

8.8. The number of actual adverse weather delay days shall include days impacted 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 work days.

8.9. 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 work day delays to calendar days. The resulting number of qualifying lost days shall be added to the Contract Time.

8.10. 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 Progress Schedule.

8.11. Full consideration for equivalent fair weather work days 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 work day 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.

8.12. 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 as a result of unusually favorable weather.

8.13. In converting work days 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.

8.14. The Contractor shall summarize and report all actual adverse weather delay days for each month to the City Public Works Field Superintendent by the tenth (10th) day of the following month. A narrative indicating the impact of adverse weather conditions on the scheduled critical activities shall be included.

8.15. Any claim for extension of time due to unusually severe weather shall be submitted to the City Public Works Field Superintendent 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 established by the Regulations of the Contract and Special Conditions and as described above.

8.16. The Contractor shall include and indicate the monthly anticipated adverse weather days, listed above, in their Progress Schedule. (Reference Section 3.1.1 for Progress Schedule requirements).

8.17. The Contractor shall indicate the approved adverse weather days (whether less or more than the anticipated days) in their monthly Progress Schedule update.

## **9. PAYMENT PROCEDURE:**

9.1. 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.

9.2. Each application for payment must be submitted with Contractor's waiver for period of construction covered by application. Each progress 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.

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

10. The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor on account 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.

10.1. The City Public Works Field Superintendent 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 City Public Works Field Superintendent 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.

10.2. 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 amount. Percentage deductions will be computed at the stated percentage of the amount earned.

10.3. 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.

10.4. 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.

10.5. 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.

10.6. 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 City Public Works Field Superintendent, 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.

## 11. COMPLETION AND FINAL PAYMENT

11.1. Work completion shall be defined as all elements of the Work or work segment, being complete including all subsidiary items and "punch-list" items.

11.2. When all of the Work is finally complete and the Contractor is ready for a final inspection, it shall notify the City and the City Public Works Field Superintendent thereof in writing. Thereupon, the City Public Works Field Superintendent will make final inspection of the Work and, if the Work is complete in accordance with this Contract, the City Public Works Field Superintendent 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 City Public Works Field Superintendent 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.

11.3. The Contractor shall not be entitled to any payment unless and until it submits to the City Public Works Field Superintendent 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.

11.4. The City shall make final payment of all sums due the Contractor within thirty (30) days of the later of the City Public Works Field Superintendent's execution of a final Certificate for Payment, or execution of the documents contemplated herein.

11.5. 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.

## 12. CLAIMS BY THE CONTRACTOR

12.1. All Contractor claims shall be initiated by written notice and claim to the City Public Works Field Superintendent. Such written notice and claim must be furnished within seven (7) calendar days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.

12.2. 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 City Public Works Field Superintendent and the Contractor.

12.3. 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.

12.4. 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.

12.5. The City reserves the right to increase or decrease quantities, and alter the details of construction including grade and alignment as the City Public Works Field Superintendent 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 amount based on the proposed quantity and the contract unit price).

12.6. When the alterations cause an increase or decrease in excess of the 25 percent indicated above, either the Contractor or the City Public Works Field Superintendent may request an adjustment of the unit price to be paid for the item or items.

12.7. 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.

12.8. 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 in no event 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.

12.9. If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving Final Acceptance of the Work shall be extended upon the written notice and claim of the Contractor to the City, for such reasonable time as the City may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven (7) 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.

12.10. 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 City Public Works Field Superintendent 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.

12.11. In executing the Contract Documents, the Contractor expressly covenants and agrees that, in undertaking to complete the Work within the time herein fixed, it has taken into consideration and made allowances for all hindrances and delays incident to such work, whether growing out of delays in securing materials or workers or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the work, or any portion thereof, included in this Contract, except as provided herein.

12.12. In addition to the Project Manual particular to Mobilization found elsewhere in this document, additional mobilization shall not be compensable for work outside of the designated areas for work deemed essential by the Owner. 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

### **13. CHANGES IN THE WORK.**

13.1. 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.

13.2. The City Public Works Field Superintendent shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and not inconsistent 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.

13.3. 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.

13.4. 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 City Public Works Field Superintendent 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 City Public Works Field Superintendent 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 City Public Works Field Superintendent's Certificate for Payment.

13.5. 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 will cause substantial inequity to the City or to the Contractor, the applicable unit prices shall be equitably adjusted.

13.6. 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.

#### **14. INSURANCE AND HOLD HARMLESS.**

14.1. The Contractor shall assume full responsibility for the protection of all public and private property, structures, sewers, and utilities, both above and below the ground, along, beneath, above, across or near the site or sites of the work being performed under this Contract, 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 placed 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.

14.2. To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the City, the City Public Works Field Superintendent, Johnson County, Kansas, and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property (other than the Work itself) including the loss of use resulting there-from, and (2) is caused in whole or in part by any intentional or negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such

obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity, which would otherwise exist.

14.3. All property damaged shall be repaired or replaced to a condition immediately prior to the time of damage, and to the satisfaction of the City.

14.4. All loss or damage arising out of the nature of the work to be done, or from the action of the elements, or from floods or overflows, or from ground water, or from unusual obstructions or difficulties, or any other natural or existing circumstances either known or unforeseen, which may be encountered in the prosecution of the said work shall be sustained and borne by the Contractor at its own cost and expense.

14.5. The Contractor shall give reasonable notice to the owner or owners of public or private property and utilities when such property is liable to injury or damage through the performance of the Work, and shall make all necessary arrangements with such owner or owners relative to the removal and replacement or protection of such property or utilities.

14.6. The Contractor shall satisfactorily shore, support, and protect any and all structures and all pipes, sewers, drains, conduits, and other utility facilities, and shall be responsible for any damage resulting thereto. The Contractor shall not be entitled to any damages or extra compensation on account of any postponement, interference, or delay caused by any such structures and facilities being on the line of the Work whether they are shown on the plans or not, specifically including, but not limited to, damages due to delay in utility relocation.

14.7. The Contractor shall secure and maintain throughout the duration of this Contract, insurance from a company authorized to do business in the State of Kansas. Such insurance shall be of such types and in such amounts as may be necessary to protect himself and the interests of the City and agents of the City against all hazards or risks of loss as hereinafter specified including an endorsement covering explosion, collapse, blasting and damage to underground property if applicable as specified in these Contract Documents. The form and limits of such insurance, together with the underwriter thereof in each case, shall be approved by the City, but regardless of such approval it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times. Failure of the Contractor to maintain adequate insurance coverage shall not relieve it of any contractual responsibility or obligation. The insurance shall be provided on an occurrence basis and, not claims made basis.

14.8. The City and the City Operations Superintendent shall be a named insured on such policies. Satisfactory certificates of insurance shall be filed with the City prior to starting any construction work on this Contract. The certificates shall state that thirty (30) days written notice will be given to the City before any policy coverage thereby is changed or canceled.

14.9. The Contractor shall secure and maintain through the duration of this Contract insurance on an occurrence basis of such types and in such amounts as may be necessary to protect the Contractor and the City and agents of the City against all hazards or risks of loss as hereinafter specified. The form and limits of such insurance, together with the underwriter thereof in each case, shall be approved by the City, but regardless of such approval it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times. Failure of the Contractor to maintain adequate coverage shall not relieve it of any contractual responsibility or obligation, including but not limited to, the indemnification obligation.

14.10. Satisfactory certificates of insurance shall be filled with the City prior to Contractor's starting any construction work on this Contract. The Certificates shall state that the thirty (30) days written notice will be given to the City before any policy covered thereby is changed or cancelled. Failure by the Contractor to furnish the required insurance within the time specified in the notice of award of the Contract by the City may, at the City's option, be the basis for the City's exercising its right to terminate the Contract.

14.11. The liability limits shall be as stated:

- Worker's Compensation and Employer's Liability: This insurance shall protect the Contractor against all claims under applicable state worker's 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 a worker's compensation law. This policy shall include an "all states" endorsement.
- Automobile Liability.: This insurance shall be written in comprehensive form and shall protect the Contractor against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, and shall cover operation on and off the site of all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired. Unless otherwise specified, Contractor's insurance shall include the following:

\$300,000 single limit (on contracts less than \$100,000)  
\$1,000,000 single limit (on contracts \$100,000 and more)

- Commercial General Liability. This insurance shall be written in comprehensive form including Products, completed operations and Personal and Advertising injury and shall protect the Contractor against all claims arising from injuries to members of the public or damage to property of others arising out of any act or omission of the Contractor or its agents, employees, or subcontractors. In addition, this policy shall specifically insure the contractual liability assumed by the Contractor under this Contract entitled "Insurance and Hold Harmless." The property damage liability coverage shall contain no exclusion relative to blasting, explosion, collapse of building, or damage to underground property. Unless otherwise specified, Contractor's insurance shall include the following:

\$2,000,000 combined single limit (on contracts in excess of \$100,000)  
\$300,000 combined single limit (on contracts in excess of \$10,000 to \$100,000)  
\$100,000 combined single limit (on contracts of \$10,000 and less)

- 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 Instructions to Bidders or Special Conditions.

## 15. INDEMNITY:

15.1. 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 affiliates and subsidiaries, his 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.

15.2. 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 and County 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 employees, agents, Subcontractors and suppliers.

15.3. 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 and County or any third party and, further, notwithstanding any theory of law including, but not limited to, a characterization of the City’s or County’s or any third party’s joint, concurring or contributory or comparative fault or negligence as either passive or active in nature.

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

15.5. With respect to the City’s or County’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.

## **16. SUCCESSORS AND ASSIGNS**

16.1. 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.

16.2. 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.

16.3. 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.

16.4. 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.

16.5. 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 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.

16.6. 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.

16.7. 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.

16.8. 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 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.

## 17. NON-DISCRIMINATION LAWS

17.1. The Contractor further agrees that the Contractor 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. 1201 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this Work and furnish any certification required by any federal, state or local governmental agency in connection therewith.

17.2. In all solicitations or advertisements for employees, the Contractor shall include the phrase, "equal opportunity employer", or similar phrase to be approved by the Kansas Human Rights Commission (Commission);

17.3. 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;

17.4. 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

17.5. The Contractor shall include the provisions of this section in every subcontract or purchase order so that such provisions will be binding upon such Subcontractor or vendor.

17.6. The provisions of this section shall not apply to a contract entered into by a Contractor who employs fewer than four employees during the terms of such contract; or whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.

## **18. RELATIONS WITH OTHER CONTRACTORS:**

18.1. 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 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 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.

18.1.1. 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.

18.1.2. 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.

18.2. 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

## **RIGHT OF CITY TO TERMINATE**

18.3. 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 any and all excess cost sustained by the City by reason of such prosecution and completion including any additional legal, engineering 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.

18.4. The City may, within its sole discretion, 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 immediately cease 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 of other costs other than direct costs of demobilization.

## **19. MISCELLANEOUS:**

19.1. 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.

19.2. 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 any and all notices required by applicable law pertaining to the Work.

19.3. Both the business address of the Contractor given in the Bid or proposal upon which this Contract is founded, and the Contractor's Office in the vicinity of 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 mail box 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 City Public Works Field Superintendent 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.

19.4. 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 amount 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.

19.5. 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.

19.6. 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 Owner or of any other agency, which has contributed funds in connection with the Contract or to which the Owner is obligated to make such inspections available. In addition, this requirement shall be included in all subcontracts entered into in connection with this Contract.

19.7. Titles and subheadings as 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.

19.8. No waiver of any breach of this Contract shall be construed to be a waiver of any other subsequent breach.

19.9. 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.

19.10. The Contractor shall keep fully informed of all existing and current regulations of the City, and County, State, and National 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.

19.11. Nothing contained in these Project Manual 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.

19.12. 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.

19.13. No action or failure to act by the City, City Public Works Field Superintendent 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.

19.14. Contractor specifically acknowledges and confirms that: 1.) he has visited the site, made all inspections he deems appropriate and has read and fully understands the Contract Documents, including all obligations and responsibilities undertaken by he as specified herein and in other Contract Documents and knowingly accepts the same; 2.) he has furnished copies of all Contract Documents to his insurance carrier(s) and his surety (ies); and 3.) his 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.

19.15. 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.

19.16. 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.

**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; and*

*WHEREAS, the Contractor, in response to the advertisement, has submitted to the City in the manner and at the time specified, a sealed Bid in accordance with the terms of this Agreement; and*

*WHEREAS, the City, in the manner prescribed by law, has publicly opened, examined and canvassed the Bids submitted, and as a result of such canvass has determined and declared the Contractor to be the lowest and best responsible bidder for the construct 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 named in the Bid attached to, and made a part of this Agreement;*

*And*

***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 Project Manual; 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; and*

***WHEREAS**, 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, hers or their successors and assigns, or its, his, hers or their executors and administrators, as follows: **IN WITNESS WHEREOF**, the City, has caused this Agreement to be executed in its behalf, thereunto duly authorized, and the said Contractor has executed three (3) counterparts of this Contract in the prescribed form and manner, the day and year first above written.*

**CITY OF PRAIRIE VILLAGE**

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

Ronald L. Shaffer \_\_\_\_\_

Mayor \_\_\_\_\_

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

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

Prairie Village, KS 66208 \_\_\_\_\_

(date of execution)

SEAL

ATTEST:

City Clerk, Joyce Hagen-Mundy

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

Zach Johnson \_\_\_\_\_  
(typed name)

President \_\_\_\_\_  
(typed title)

Kansas City Tree Care, LLC \_\_\_\_\_  
(typed company name)

5217 Walmer Street \_\_\_\_\_  
(typed address)

Mission, KS 66202 \_\_\_\_\_  
(typed city, state, zip)

(913) 894-4767 \_\_\_\_\_  
(typed telephone number)

(date of execution)

APPROVED BY:

City Attorney, Catherine P. Logan

(If the Contract is not executed by the President of the Corporation or general partner of the partnership, please provide documentation, which authorizes the signatory to bind the corporation or partnership. 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.)



**PROVIDED, FURTHER**, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract, or the Work to be performed thereunder, or the specifications accompanying the same, shall in any way affect this obligation on this bond and it does hereby waive notice of any change, extension of time, alteration or addition to the terms of the Contract, or to the work, or to the Specifications.

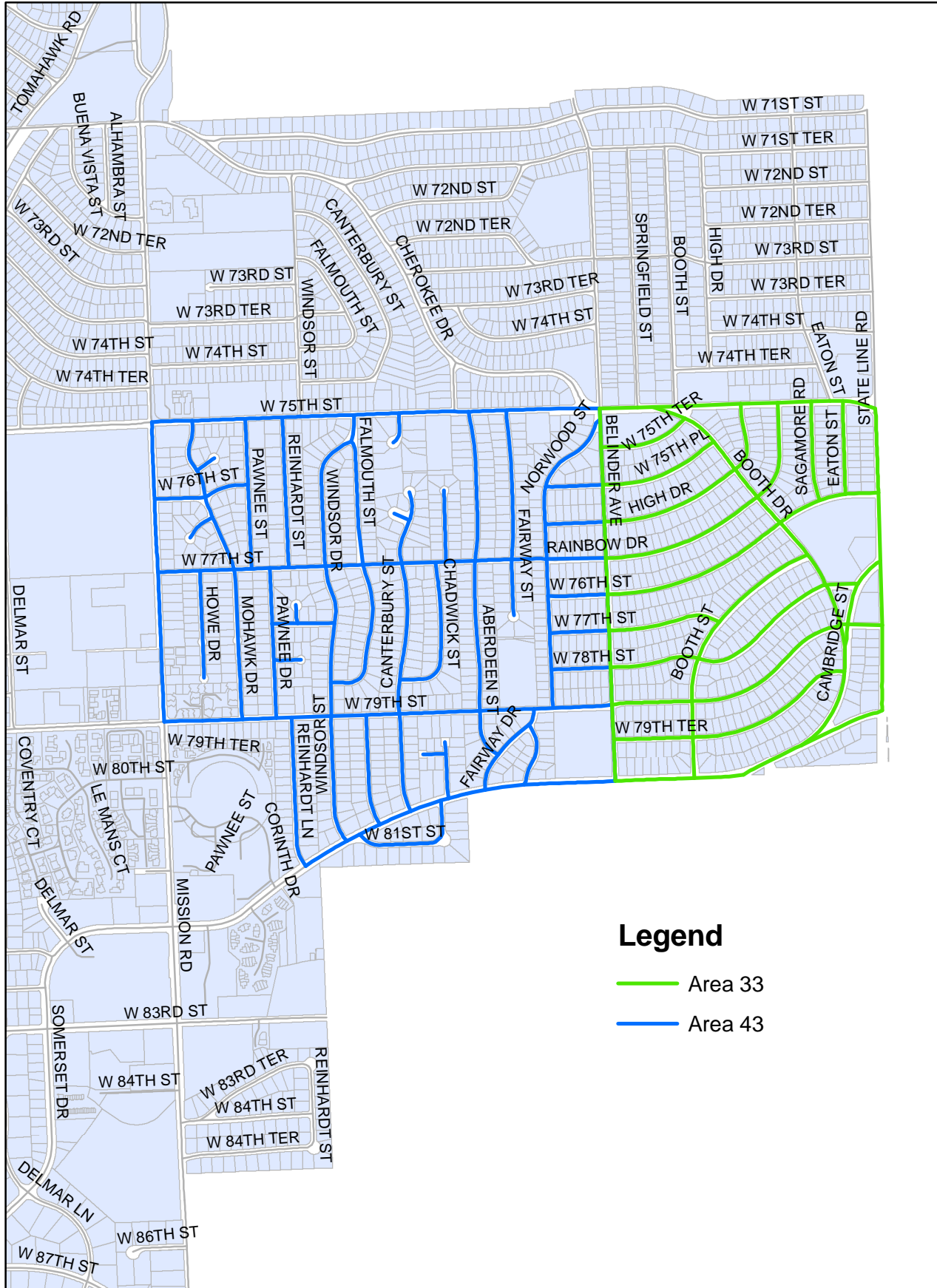
**IN TESTIMONY WHEREOF**, the said Contractor has hereunto set his hand, and the said Surety has caused these presents to be executed in its name, and its corporate seal to be hereunto affixed by its attorney-in-fact duly authorized thereunto so to do at \_\_\_\_\_ on this, the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CONTRACTOR**

BY: \_\_\_\_\_ (SEAL)

\_\_\_\_\_  
(Official Title)

# 2012 Tree Trimming Areas



**COUNCIL MEETING AGENDA  
CITY OF PRAIRIE VILLAGE  
Council Chambers  
October 15, 2012  
7:30 PM**

- I. **CALL TO ORDER**
- II. **ROLL CALL**
- III. **PLEDGE OF ALLEGIANCE**
- IV. **PRESENTATIONS**

**Annual Update from Johnson County Commissioner Ed Peterson**

- V. **PUBLIC PARTICIPATION**
- VI. **CONSENT AGENDA**

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

**By Staff**

- 1. Approve Council Meeting Minutes - October 1, 2012
- 2. Approve Claims Ordinance 2900
- 3. Approve a contract with Promail Services for six bi-monthly issues of the Village Voice
- 4. Approve the calendar designating 2013 City holidays
- 5. Authorize the Mayor to execute a proclamation proclaiming October 24, 2012 as Food Day

**By Committee**

- 1. Approve Blue Cross Blue Shield of Kansas City as the City's Health Insurance provider for the 2013 plan year with a 0% increase in premiums, Delta Dental of Kansas as the City's Dental Insurance provider for the 2013 plan year with a 0% increase in premiums, Superior Vision as the City's Vision Insurance provider for the 2013 plan year with a 0% increase in premiums and approve a change to the Section 125 Medical Expense Annual Maximum to \$2,500 annually, as required by the Affordable Care Act (ACA) (Council Committee of the Whole Minutes - October 1, 2012)

- VII. **MAYOR'S REPORT**
- VIII. **COMMITTEE REPORTS**



**Council Committee of the Whole**

COU2012-47 Consider Bid Award for 2012 Tree Trimming Program

**IX. STAFF REPORTS**

**X. OLD BUSINESS**

**XI. NEW BUSINESS**

**Consider Request from PV Retail Partners, LLC to amend the Village Community Improvement District Development Agreement (Prairie Village Shopping Center)**

**Consider Final Plat for "Prairie Village Shopping Center" - from the Planning Commission**

**XII. ANNOUNCEMENTS**

**XIII. ADJOURNMENT**

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

**If you are unable to attend this meeting, comments may be received by e-mail at [cityclerk@pvkansas.com](mailto:cityclerk@pvkansas.com)**

**CONSENT AGENDA**

**CITY OF PRAIRIE VILLAGE, KS**

**October 15, 2012**

**CITY COUNCIL  
CITY OF PRAIRIE VILLAGE  
October 1, 2012**

The City Council of Prairie Village, Kansas, met in regular session on Monday, October 1, 2012, at 7:30 p.m. in the Council Chambers of the Municipal Building.

**ROLL CALL**

Mayor Ron Shaffer called the meeting to order and roll call was taken with the following Council members present: Ashley Weaver, Dale Warman, Ruth Hopkins, Steve Noll, Michael Kelly, Laura Wassmer, Brooke Morehead, Charles Clark, David Morrison, Ted Odell and David Belz.

Also present were: Captain Wes Lovett; Bruce McNabb, Director of Public Works; Katie Logan, City Attorney; Quinn Bennion, City Administrator; Dennis Enslinger, Assistant City Administrator; Chris Engel, Assistant to the City Administrator; Lisa Santa Maria, Finance Director; Joyce Hagen Mundy, City Clerk.

Mayor Shaffer led all those present in the Pledge of Allegiance.

**PUBLIC PARTICIPATION**

Susan Patton, 7646 Falmouth, thanked the Council for their approval of the Special Events Ordinance at their last meeting.

With no one else to address the Council public participation was closed at 7:35.

**CONSENT AGENDA**

David Morrison moved the approval of the Consent Agenda for October 1, 2012:

1. Approve Regular Council Meeting Minutes - September 17, 2012
2. Approve following existing Purchasing Policy and seeking bids for all identified services and commodities

3. Approve Third Amendment to the City of Prairie Village, Kansas Supplemental Pension Benefit Plan

A roll call vote was taken with the following members voting “aye”: Weaver, Warman, Hopkins, Noll, Kelly, Wassmer, Morehead, Clark, Morrison, Odell and Belz.

### **MAYOR’S REPORT**

The Mayor’s report was given at the earlier Council Committee of the Whole meeting.

### **COMMITTEE REPORT**

#### **Council Committee of the Whole**

#### **COU2012-43 Consider Audit Services Contract**

On behalf of the Council Committee of the Whole, David Morrison moved the Governing Body approve the agreement with Berberich Trahan & Company, P.A. to audit the City’s 2012 financial statements. The motion was seconded by Ruth Hopkins and passed unanimously.

#### **COU2012-45 Consider adoption of 2012 Standard Traffic Ordinance for Kansas Cities and the 2012 Uniform Public Offense Code for Kansas Cities**

On behalf of the Council Committee of the Whole, David Morrison moved the Governing Body adopt Ordinance No. 2263 incorporating the Uniform Public Offense Code (UPOC) incorporating the Standard Traffic Ordinance (STO), 2012 edition, prepared and published by the League of Kansas Municipalities with certain sections deleted and with additional and supplemental sections. The motion was seconded by Dale Warman.

A roll call vote was taken with the following members voting “aye”: Weaver, Warman, Hopkins, Noll, Kelly, Wassmer, Morehead, Clark, Morrison, Odell, Belz and Shaffer.

On behalf of the Council Committee of the Whole, David Morrison moved the Governing Body adopt Ordinance No. 2264 incorporating the Standard Traffic Ordinance (STO), 2012 edition, prepared and published by the League of Kansas Municipalities with certain sections deleted and with additional and supplemental sections. The motion was seconded by Dale Warman.

A roll call vote was taken with the following members voting “aye”: Weaver, Warman, Hopkins, Noll, Kelly, Wassmer, Morehead, Clark, Morrison, Odell, Belz and Shaffer.

### **Environment/Recycle Committee**

Ruth Hopkins reported the committee discussed the failure of Public Works to recycle materials from Franklin Park at their last meeting. At that meeting the committee approved a resolution that Public Works staff receives training on recycling. She is not satisfied with the approach taken by Public Works and does not feel this issue is being taken seriously or given the priority it merits. Mrs. Hopkins is not willing to hold park employees responsible as she feels it is a “culture” issue within the department. The committee is baffled by the failure to recycle and is open to suggestions.

Brooke Morehead confirmed staff is working on this issue. Michael Kelly asked what action had been taken. Quinn Bennion responded he has met with Mr. McNabb and feels that recycling is now being done and noted that disciplinary actions were taken. Michael Kelly asked if it was willful failure to act. Bruce McNabb stated he did not believe that it was willful, previously the action was not given a priority.

Ruth Hopkins stated she doesn't see accountability throughout the City on recycling. Ted Odell noted this was an educational process. Mrs. Hopkins agreed and hoped that Public Works would agree to bring someone in to conduct that training.

**Tree Board**

Dale Warman announced the Tree Board's annual Fall Seminar is Wednesday, October 7<sup>th</sup> at 7 p.m. in the Council Chamber featuring Robert Whitman. The topic of discussion will be what are the best trees for Prairie Village.

**STAFF REPORTS**

Staff Reports were given at the Council Committee of the Whole meeting earlier in the evening.

**OLD BUSINESS**

There was no Old Business to come before the Governing Body.

**NEW BUSINESS**

Mayor Shaffer announced it was "Peanut Butter Week" in Prairie Village and encouraged all Council members to participate in this annual food drive.

**ANNOUNCEMENTS**

Board of Zoning Appeals	10/02/2012	6:30 p.m.
Planning Commission	10/02/2012	7:00 p.m.
Sister City Committee	10/08/2012	7:00 p.m.
JazzFest Committee	10/11/2012	7:00 p.m.
Park & Recreation Committee	10/12/2012	7:00 p.m.
Council Committee of the Whole	10/15/2012	6:00 p.m.
City Council	10/15/2012	7:30 p.m.

=====

The Prairie Village Arts Council is pleased to announce the annual State of the Arts exhibit in the R.G. Endres Gallery for the month of October. The reception will be held on October 12<sup>th</sup> from 6:00 to 8:00 p.m. Awards will be presented at 7:30 p.m.

**Prairie Village Peanut Butter Week is October 1<sup>st</sup> - 5<sup>th</sup>. Please bring some peanut butter to the October 1<sup>st</sup> Council Meeting!**

Flu shots will be offered for Council Members on September 28<sup>th</sup> from 7:30 a.m. - 9:00 a.m. at Public Works or October 5<sup>th</sup> from 3:00 p.m. - 4:30 p.m. at City Hall in the Multi-Purpose room. The fee for the shot will be \$25. Please notify Nic Sanders at 913-385-4664 if you plan to receive a shot. He will need to know which day you are coming.

Save the Date for the Northeast Johnson County Chamber of Commerce 2012 Annual Gala on November 17, 2012 at the Overland Park Marriott.

Mayor Shaffer highlighted the invitation for the Corinth Square celebration and ribbon cutting for its renovations on Thursday, October 18<sup>th</sup> from 5:00 p.m. to 7 p.m. Ribbon Cutting ceremonies will be at 5:45 p.m.

### **ADJOURNMENT**

With no further business to come before the City Council, the meeting was adjourned at 7:45 p.m.

Joyce Hagen Mundy  
City Clerk

## CITY TREASURER'S WARRANT REGISTER

DATE WARRANTS ISSUED:

Warrant Register Page No.   1  

October 15, 2012

**Copy of Ordinance**  
2900

Ordinance Page No.       

An Ordinance Making Appropriate for the Payment of Certain Claims.

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

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

NAME	WARRANT NUMBER	AMOUNT	TOTAL
<b>EXPENDITURES:</b>			
Accounts Payable			
3269-3272	9/7/2012	12,670.22	
3273-3349	9/14/2012	654,726.67	
3350	9/12/2012	317.01	
3351	9/20/2012	2,520.81	
3352-3354	9/21/2012	2,679.02	
3355-3461	9/28/2012	494,945.41	
Payroll Expenditures			
9/7/2012		250,490.47	
9/21/2012		252,796.45	
Electronic Payments			
Electronic Pmnts	9/11/2012		17,050.59
Electronic Pmnts	9/12/2012		4,701.36
Electronic Pmnts	9/14/2012		423.97
Electronic Pmnts	9/17/2012		242.92
Electronic Pmnts	9/19/2012		868.42
Electronic Pmnts	9/21/2012		3,685.46
Electronic Pmnts	9/24/2012		1,722.28
Electronic Pmnts	41180.00		11425.05
<b>TOTAL EXPENDITURES:</b>			<b>\$ 2,000,508.06</b>
Voided Checks			
KC Chapter American Public Works	# 3418	(383.00)	
<b>TOTAL VOIDED CHECKS:</b>			<b>(383.00)</b>
<b>GRAND TOTAL CLAIMS ORDINANCE</b>			<b>2,040,245.11</b>

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

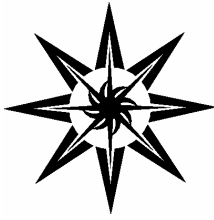
Passed this 15th day of October 2012.

Signed or Approved this 15th day of October 2012.

(SEAL)

ATTEST: \_\_\_\_\_  
*City Treasurer*
*Mayor*





## ADMINISTRATION

Council Meeting Date: October 15, 2012

**Consent Agenda:**     **Consider Renewal of *Village Voice* Agreement**

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### RECOMMENDATION

Staff recommends the City Council approve a contract with Promail Services for six bi-monthly issues of the *Village Voice*.

### BACKGROUND

Promail Services currently designs, prints and mails our newsletter. They have been providing these services for one year. Their contract will expire on December 31, 2012. The current contract includes provisions for renewing the contract. Staff is satisfied with the quality of the work and Promail is willing to continue the current pricing structure through 2013. Staff recommends continuing their contract through December 31, 2013.

### FUNDING SOURCE

01-01-01-6009-022

### RELATION TO VILLAGE VISION

LG1B            Enhance communication between government officials and the public.  
                    Enhance transparency of processes and financial accountability.

### ATTACHMENTS

Contract

### PREPARED BY

Jeanne Koontz  
Deputy City Clerk  
October 1, 2012

## AGREEMENT FOR PRODUCTION OF CITY NEWSLETTERS

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

BY AND BETWEEN the City of Prairie Village, Kansas, hereinafter called the "City", and **Promail Services**, hereinafter called the "Contractor".

NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS AND AGREEMENTS,

Herein contained, the parties agree as follows:

### ARTICLE I SCOPE OF SERVICES

The Contractor shall perform the following services as identified in the following and the attached Specifications:

- A. Provide design services for six (6) rotating templates for a full-color, eight (8) page, twelve (12) page or sixteen (16) page newsletter as dictated by content.
- B. Provide layout, design, and associated creative services necessary to ensure the publication of six (6) issues (February/March, April/May, June/July, August/September, October/November and December/January) of the *Prairie Village Voice*, to be distributed to each residence and business within the corporate limits of Prairie Village, Kansas within fourteen (14) days of the City's submission of all information pertaining to the newsletter to the Contractor beginning with the February/March, 2013 issue.
- C. Provide all paper and printing services necessary to ensure the production and distribution of all publications identified in B in accordance with the attached Specifications.
- D. Provide an ftp site for uploading digital pictures to be used in the newsletter.
- E. Provide an electronic version of each of the six (6) issues of the *Prairie Village Voice* and provide this electronic copy to the City at the time of publication of each issue. The electronic copy shall be in PDF format.
- F. Provide mailing services necessary to ensure certification, labeling and sorting of publications for delivery by the United States Postal Service, Prairie Village substation, for distribution.  
All postage costs shall be paid by the City.
- F. Provide the City with a minimum of one (1) and a maximum of four (4) drafts of each publication.
- G. Provide one final PDF copy of each publication prior to printing.
- H. Provide the City with 250 copies of each publication for internal distribution.

- I. All newsletter copies representing printing overages will be delivered to the City for additional distribution.

No publications shall be delivered for printing without the authorization of the City Administrator or his appointee.

## **ARTICLE II COMPENSATION**

**The City agrees to compensate the Contractor for performing the services described in Article I and the attached Specifications according to the following schedule:**

<i>Prairie Village Voice – 8 page</i>	\$2,730 per issue*
<i>Prairie Village Voice – 12 page</i>	\$3,900 per issue*
<i>Prairie Village Voice – 16 page</i>	\$4,290 per issue*

\*Based on 10,000 circulation

After delivery of all copies of a publication to the United States Postal Service for distribution, the Contractor shall submit a statement to the City indicating the amount due as described above. The City shall make payment within thirty (30) calendar days of the date said statement is received by the City. Payment to the Contractor will be made only for services approved by the City Administrator or his appointee.

### **ARTICLE III MISCELLANEOUS PROVISIONS**

#### Term of Contract

**This agreement shall be effective from the \_\_\_ day of \_\_\_\_\_, 2012 and shall continue until the 31<sup>st</sup> day of December, 2013.** The parties may renegotiate or decrease or increase unit quantities or unit prices if the City elects to renew the contract on an annual basis, and the renewal of such contract shall accordingly be contingent on the ability of the parties to reach a satisfactory agreement on unit quantities and unit prices for the new contract term. If the City intends to renew the Contract pursuant to this Section, it shall provide the Contractor with written notice of such intent no later than sixty (60) days prior to the date on which each contract term is to expire. All renewal periods will be subject to satisfactory performance by the contractor of his/her contract the previous year and appropriation of funds.

#### Termination

The City or the Contractor may terminate this Agreement at any time and for any reason by giving to the other party a notice in writing at least sixty (60) days prior to the effective date of such termination. In the event the Agreement is terminated as herein provided, the City agrees to pay to the Contractor any and all sums due and owing for services rendered in accordance with the terms of this Agreement as of the effective date of such termination.

#### Assigning or Subletting the Contract

The Contractor shall not assign or sublet the contract or any portion of the contract without approval by the City. Any assignment or sublease agreement entered into by the Contractor shall not be construed as making the City a party of such subcontract or subjecting the City to liability of any kind to any subcontractor. No subcontract shall under any circumstances relieve the Contractor of his liability and obligation under the contract. All transactions will be made through the Contractor. Subcontractors will be recognized and dealt with only as workers and representatives of the Contractor and as such shall be subject to the same requirements of Contractor.

#### Proprietary Rights

The Contractor acknowledges that any and all writings, documents, information, data, and other tangible or intangible materials (whether reduced to written form or otherwise) which are protectable under copyright or trademark law, and all associated intellectual property rights, that City creates, develops or delivers in connection with any printing and publication services contemplated by this Agreement, shall be the sole and exclusive property of City ("City Property"). The parties acknowledge and agree that any new graphics or artwork to be placed upon

any publications produced by Contractor for City under this Agreement which are protectable under copyright or trademark law, and all intellectual property rights associated therewith, that Contractor and City jointly create, develop or deliver, shall be the sole and exclusive property of City and are included in the definition of City Property as used herein. Upon request of City, Contractor hereby agrees to execute and deliver such documentation as may reasonably be requested to transfer any ownership rights which it has in such jointly created, developed or delivered graphics or artwork to City to permit City to perfect its intellectual property rights in such items. Contractor and its agents are not authorized to and may not use City Property for any purpose without the express written consent of City.

IN WITNESS WHEREOF, said parties have affixed their name, the day and year first written above.

**CONTRACTOR:**

**CITY:**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Ronald L. Shaffer, Mayor**

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

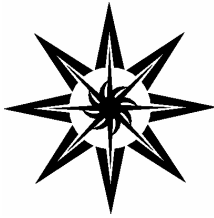
\_\_\_\_\_  
**Date**

**APPROVED AS TO FORM**

**ATTEST:**

\_\_\_\_\_  
**Catherine P. Logan, City Attorney**

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



## COUNCIL COMMITTEE

Council Meeting Date: October 15, 2012

**CONSENT AGENDA:** Consider approving the calendar designating 2013 City holidays.

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### SUGGESTED MOTION

Move that the Governing Body approve the following as designated City holidays pursuant to Personnel Policy 1006: *Holidays*:

New Year's Day	Tuesday, January 1
Martin Luther King, Jr. Day	Monday, January 21
President's Day	Monday, February 18
Memorial Day	Monday, May 27
Independence Day	Thursday, July 4
Labor Day	Monday, September 2
Thanksgiving Day	Thursday, November 28 and Friday, November 29
Christmas Day	Wednesday, December 25

### BACKGROUND

Pursuant to Personnel Policy 1006: *Holidays*, the City has designated days to be recognized as official City Holidays with City offices being closed for holiday observation.

### FUNDING SOURCE

Not applicable

### PUBLIC NOTICE

Not applicable.

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Prepared By:  
Nicholas Sanders, PHR, IPMA-CP  
Human Resources Specialist  
Date: September 5, 2012



**MAYOR**

**Council Meeting Date: August 20, 2012**

**Consent Agenda: Consider Proclamation proclaiming October 24, 2012 as Food Day**

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**RECOMMENDATION**

Recommend the City Council authorize the Mayor to execute the following proclamations:

Food Day - October 24, 2012

**BACKGROUND**

Leaders of the "food movement" around the country, including many public health, anti-hunger, and sustainable agriculture organizations, have joined the nonprofit Center for Science in the Public Interest (CSPI) to promote the second national Food Day on October 24. Aimed at promoting a healthy, sustainable, affordable food system, Food Day is a national grassroots campaign that seeks to change the way Americans eat and think about food.

**ATTACHMENT**

Proclamation

**PREPARED BY**

Joyce Hagen Mundy, City Clerk

Date: October 12, 2012



# CITY OF PRAIRIE VILLAGE PROCLAMATION Food Day

- WHEREAS**, Food Day, October 24, 2012, connects us to *real food*, which is local, healthy, and sustainable; and
- WHEREAS**, Food Day, October 24, 2012, challenges members of our community to *eat real*, whether it is one ingredient, one meal, all day, or every day; and
- WHEREAS**, Food Day, October 24, 2012, educates and inspires the Greater Kansas City community to create a stronger, healthier, more accessible, more sustainable local food system; and
- WHEREAS**, the health and well-being of our citizens is of primary concern for the City of Prairie Village; and
- WHEREAS**, reducing obesity and diet-related diseases by promoting safe and healthy diets is a critical factor in improving citizens' overall health; and
- WHEREAS**, supporting sustainable family farms and local agriculture benefits the local economy; and
- WHEREAS**, obtaining fair pay and safe conditions for food and farm workers is beneficial for both the producer and consumer so that the food we produce and consume is safe and fair for all; and
- WHEREAS**, expanding access to real food to those who live in food deserts is critical to alleviating hunger; and
- WHEREAS**, curbing junk-food marketing aimed at children is vitally important in order to combat rising obesity rates and raise a generation of healthy children; and
- WHEREAS**, protecting the health of the environment and farm animals is necessary to sustain future generations;

**THEREFORE, I, Ronald L. Shaffer**, hereby proclaim October 24, 2012 to be

## **FOOD DAY**

in the City of Prairie Village, and I urge all citizens to participate in the activities planned here forth, and published at <http://www.fooddaykc.org>

---

**Mayor Ronald L. Shaffer**

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**City Clerk**

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**Date**



**COUNCIL COMMITTEE**  
**October 1, 2012**  
**6:00 P.M.**  
**Council Chambers**

**AGENDA**

**DAVID MORRISON, COUNCIL PRESIDENT**

**AGENDA ITEMS FOR DISCUSSION**

Presentation on Village Volunteer Project with Heartland Habitat for  
Humanity  
Marcia Gradinger

Presentation and Feedback on Phase 1: Mission Lane Improvements  
(CID Project) in the Prairie Village Shopping Center  
Dennis Enslinger

\*COU2012-43 Consider Audit Services Contract  
Lisa Santa Maria

\*COU2012-45 Consider adoption of the 2012 Standard Traffic Ordinance for Kansas  
Cities and the 2012 Uniform Public Offense Code for Kansas Cities  
Sgt. James Carney

COU2012-46 Consider renewing City's health, dental and vision insurance providers  
as recommended by City Staff  
Nicholas Sanders

**COUNCIL COMMITTEE OF THE WHOLE**  
**October 1, 2012**

The Council Committee of the Whole met on Monday, October 1, 2012 at 6:00 p.m. in the Council Chambers. The meeting was called to order by Mayor Ron Shaffer with the following members present: Ashley Weaver, Dale Warman, Ruth Hopkins, Steve Noll, Michael Kelly, Laura Wassmer, Brooke Morehead, Charles Clark, David Morrison, Ted Odell and David Belz. Staff Members present: Captain Wes Lovett; Bruce McNabb, Director of Public Works; Katie Logan, City Attorney; Quinn Bennion, City Administrator; Dennis Enslinger, Assistant City Administrator; Chris Engel, Assistant to the City Administrator; Lisa Santa Maria, Finance Director; Nicholas Sanders, Human Resource Specialist and Joyce Hagen Mundy, City Clerk.

**Presentation on Village Volunteer Project with Heartland Habitat for Humanity**

Marcia Gradinger presented an update on the Prairie Village volunteer project with Heartland Habitat for Humanity called "A Brush with Kindness". During the past year the following five homes received assistance through the program:

- 7204 Booth
- 5801 West 75<sup>th</sup> Street
- 2308 West 76<sup>th</sup> Street
- 4200 West 68<sup>th</sup> Terrace
- 2100 West 71<sup>st</sup> Terrace

Ms Gradinger presented before and after photographs of the properties reflecting the work completed under the program. Quinn Bennion stated the homes are identified by the Code Enforcement Officer, then go through a qualifying process with Heartland, who if approved coordinates the volunteers and the work to be done with funding received from the Prairie Village Municipal Foundation.

Kate Fields with Heartland Habitat for Humanity expressed their appreciation for the program. They cover a five county area and noted this program has been modeled in other communities such as Olathe, Gladstone and Raytown. She acknowledged Marcia's involvement as the point person making it happen.

Laura Wassmer asked what criteria were used for qualifying. Ms Fields responded several criteria are considered including need, financial constraints, income, etc. Quinn Bennion stated the foundation has provided \$9,200 in funding for the projects. Marcia Gradinger reported the average cost of the five projects completed was \$2,083. Several committee members expressed appreciation for the work being done under this program.

## **Presentation and Feedback on Phase 1: Mission Lane Improvements (CID Project) in the Prairie Village Shopping Center**

Dennis Enslinger stated under the terms of the CID agreement work needs to be started by November 1<sup>st</sup> on Mission Lane, Project A for the Prairie Village Shopping Center. The Planning Commission will consider approval of a portion of the site plan to allow them to be in compliance with the agreement. Sufficient documentation has not been submitted for action on the entire site plan.

Mr. Enslinger reviewed the areas to be considered for approval identified as Phase 1 and involve the intersections at Mission Lane & Mission Road and Tomahawk Road & Mission Road. It includes landscaping and concrete work at both ends of the street. The architects have attempted to introduce elements that are seen in the surrounding neighborhoods such as fountains, rock walls and plantings. Other elements include additional lighting and brick crosswalks. The amount of landscaping along Tomahawk is scaled back due to limited property owned by the developer.

The Commission will also be considering the replatting of the shopping center in order to vacate Mission Lane and Prairie Lane as required by the CID agreement. The Master Trail Plan shows a trail along Mission Road and staff has requested that the property owner provide an easement to be shown on the face of the plat. However, because the development will not be relocating the US Bank Building, there is not sufficient room to provide the necessary trail easement; therefore, staff has suggested an easement be provided along Mission Lane as an alternative to the Mission Road alignment. Mr. Enslinger noted this is the optimal opportunity for the City to secure such an easement as outlined in the Master Trail Plan and in the CID agreement.

Brooke Morehead confirmed the CID agreement covers enhancement and not maintenance. Mr. Enslinger responded the CID would pay for the initial work, but it will be the property owner's responsibility to maintain the site improvements.

Charles Clark asked what affect the city's decision to no longer construct trails has. Mr. Enslinger stated the Tomahawk Trail is a City project and funds are being put aside within the CID. Mr. Enslinger noted that while this Council has placed trail construction on hold, staff believes securing the easement at this time is important. Mr. Clark agreed that now is the time to ensure the possibility of the future construction of trails at this location as required by the agreement.

Laura Wassmer asked how a trail would work along Mission Lane. Mr. Enslinger noted that along the east side there is not as much parking or they could provide an easement along Mission Lane noting that a ten foot section of sidewalk already exists along the bank.

Ted Odell asked what size easement is being requested. Mr. Enslinger stated it would vary - it could be six to eight feet. Dale Warman asked if the crosswalk would experience the same problems as crosswalks installed by the city. Mr. Enslinger stated they are following the Plaza model and it would depend on the construction; however,

he added, these crosswalks would not have the heavy traffic experienced at the city's crosswalks.

Michael Kelly confirmed that Lane4 had a legal obligation to provide the easement. Laura Wassmer confirmed the pedestrian crosswalks would be going north/south Charles Clark asked if it would be a breach of contract not to provide the easement. Mr. Enslinger replied it does not have to be done now but this is the best time to do so.

Dale Warman stated that he and Mrs. Weaver have had several residents express their concerns with the amount of parking on this site.

Dennis Enslinger stated the plat would come back to the Governing Body for the acceptance of easements and vacation of rights-of-way. The site plan and proposed conditional use permit require only Planning Commission action. The general consensus of the Council was to secure the necessary trail easements at this time.

### **COU2012-43 Consider Audit Services Contract**

KSA 75-1124 requires the City to have an annual audit. In 2004, the City issued a Request for Proposals for auditing services and selected Mize Houser & Company, P.A. (formally Lowenthal, Singleton, Webb & Wilson). The firm performed the audits of 2004 - 2011 financial statements.

In August of this year, staff issued a Request for Proposals for the Profession Audit Services for the City. Although the Selection Committee found Mize Houser & Company services to be of high quality, they also felt that after seven years it was important to have a new audit firm. The Selection Committee evaluated five proposals and interviewed two firms. The committee felt that the Berberich Trahan & Company proposal best fit the needs and philosophy of the City. The contract is a three year contract with two one year options to renew. Renewal is subject to an annual review and concurrence of the City Council.

The proposed fee for the 2012 audit is \$21,975, a \$75.00 increase over the cost of the 2011 audit. Funding for the financial statement audit is included in the 2012 budget for the Financial Management Program.

Charles Clark made the following motion, which was seconded by Steve Noll and passed unanimously:

**RECOMMEND THE GOVERNING BODY APPROVE THE AUDIT SERVICES AGREEMENT WITH BERBERICH TRAHAN & COMPANY, P.A. FOR THE CITY'S 2012 FINANCIAL STATEMENTS  
COUNCIL ACTION TAKEN  
10/01/2012**

**COU2012-45 Consider adoption of the 2012 Standard Traffic Ordinance for Kansas Cities and the 2012 Uniform Public Offense Code for Kansas Cities  
Construction Contract from Project SARD0001: 2012 CDBG Project on Sagamore Drive from 75<sup>th</sup> street to 76<sup>th</sup> Street with Linaweaver Construction**

City Attorney Katie Logan noted that recently the City of Overland Park changed their code to allow for the open carry of weapons based on an opinion given by the Attorney General. She has reviewed the opinion and talked with others who disagree with the opinion. It is her professional opinion that Prairie Village can still prohibit the open carry of weapons. She does not believe the Attorney General's opinion is binding on cities based on the current state statutes.

Charles Clark noted there is division on the opinion with several cities sharing Ms Logan's opinion. He feels the only downside to remaining with our existing code is the possibility of a legal challenge.

Sgt. Carney stated the police department supports the proposed changes. New language was added requiring driver's license holders to notify the Kansas Department of Revenue - Motor Vehicles of a name or address change within 10 days of such change. Brooke Morehead questioned the short length of time. Sgt. Carney stated the 10 days is what is required by the state. He added he would expect officers to use this as an opportunity to educate and would use discretion in issuing any tickets. He stated this type of citation would be rarely used.

Charles Clark made the following motion, which was seconded by David Belz and passed unanimously:

**MOVE THE GOVERNING BODY ADOPT ORDINANCE NO. 2263  
INCORPORATING THE UNIFORM PUBLIC OFFENSE CODE, (UPOC),  
AND ORDINANCE NO. 2264 INCORPORATING THE STANDARD  
TRAFFIC ORDINANCE, (STO), 2012 EDITION, PREPARED  
AND PUBLISHED BY THE LEAGUE OF KANSAS MUNICIPALITIES  
WITH CERTAIN SECTIONS DELETED AND WITH ADDITIONAL  
AND SUPPLEMENTAL SECTIONS**

**COUNCIL ACTION TAKEN  
10/01/2012**

**COU2012-46 Consider renewing City's health, dental and vision insurance providers as recommended by City Staff**

Nic Sanders reported that for the second year in a row, the City received a 0% increase in its employee health, dental and vision insurance premiums. Staff attributes a portion of the plan's outstanding performance to the on-going wellness campaign and the health risk assessment. The City will continue to implement the premium differential for participation in the Health Risk Assessment (HRA) and for tobacco users.

As part of the Affordable Care Act (ACA), amendments were made to Internal Revenue Code (IRC) Section 125(i) which covers the City's Flexible Spending Account benefit. This amendment set a maximum of \$2,500 for medical expenses for these accounts; the City currently has a maximum of \$2,600 and will be required to reduce the maximum allowed to \$2,500.

The employee insurance premiums are funded with General Fund. The 2013 budget anticipated an increase in City premium contributions of 10%. The renewal rates with a 0% increase fit within the budgeted funds.

Mr. Sanders introduced Kristin Grace with CBIZ, the city's insurance broker. He noted CBIZ will go out for bid on the city's behalf for 2013 coverages.

Quinn Bennion noted the City's proactive approach to health care over the past few years setting a positive culture for with employees participating in several programs designed to improve their health.

Charles Clark made the following motion, which was seconded by Ted Odell and passed unanimously:

**MOVE THE GOVERNING BODY APPROVE 1) BLUE CROSS BLUE SHIELD OF KANSAS CITY AS THE CITY'S HEALTH INSURANCE PROVIDER FOR THE 2013 PLAN YEAR WITH A 0% INCREASE IN PREMIUMS; 2) DELTA DENTAL OF KANSAS AS THE CITY'S DENTAL INSURANCE PROVIDER FOR THE 2013 PLAN YEAR WITH A 0% INCREASE IN PREMIUMS; 3) SUPERIOR VISION AS THE CITY'S VISION INSURANCE PROVIDER FOR THE 2013 PLAN YEAR WITH A 0% INCREASE IN PREMIUMS; 4) APPROVE A CHANGE TO THE SECTION 125 MEDICAL EXPENSE ANNUAL MAXIMUM TO \$2,500 ANNUALLY, AS REQUIRED BY THE AFFORDABLE CARE ACT (ACA)**

**COUNCIL ACTION REQUIRED  
CONSENT AGENDA**

## **STAFF REPORTS**

### **Administration**

- Dennis Enslinger announced the annual Community Forum sponsored by the Environment/Recycle Committee will be Thursday, October 4<sup>th</sup> at City Hall
- The State of the Arts reception will be held on Friday, October 12<sup>th</sup> from 6 to 8 p.m. with the awards being announced at 7:30
- Corinth Square is hosting a kick-off event for the newly renovated center on Thursday, October 18<sup>th</sup> from 5 to 7 p.m. Ribbon Cutting ceremonies will take place at 5:45 p.m.
- Both interior and exterior renovations have begun at the Hen House at Corinth Square

- Standee dinner theatre representatives met with staff. They are expected on the Planning Commission agenda for November
- Staff also met with representatives of Tutera regarding the development of the Mission Valley site. They will be submitting to the Planning Commission by the end of the year with probable Council action at the second meeting in January. SME has been reserved for these meetings.

Brooke Morehead confirmed that Tutera was the sole applicant without RED. She asked if the application included any retail. Mr. Enslinger responded only those incidental to the Senior Living Center such as hair salon, etc.

Michael Kelly asked the size of the development. Mr. Enslinger responded it would be the largest senior living center in the City. He reminded the Council that the request for a Special Use Permit would come to the Council for approval.

- The City has received LED lights as part of the MARC grant, 33 of these lights are being replaced due to warranty problems.

### **Public Works**

- Bruce McNabb reported snow and ice control preparations are underway.
- The vote petition for 69<sup>th</sup> Terrace is complete and the sidewalk will be constructed based on a vote of 69 with 10 in support. However, he noted that due to subsequent work in the area by WaterOne the work will not be undertaken until next spring

### **Public Safety**

- Captain Lovett reported last Saturday the department participated in a very successful “Drug Drop-Off” program. Six large containers were filled with unused and expired medications.
- The Shawnee Mission East Fireworks on Friday evening went well.
- A physical agility test was conducted for 57 police officer candidates.
- The HyVee gas station had an armed robbery this afternoon. No money was taken and the police have received good surveillance tapes for review.

### **Administration**

- Quinn Bennion announced that he would be out next week at a national City Managers Conference
- Coldwell Banker conducted a rating of Kansas suburban areas and ranked Prairie Village #3 for the state behind Mission Hills and Leawood.

### **Mayor’s Report**

Mayor Shaffer reported he missed the last Council meeting to be with his youngest daughter on her 21<sup>st</sup> birthday. During the past weeks he represented the City at the following events: Culver’s ribbon cutting in Mission, Johnson/Wyandotte Mayors meeting (noting it was his final meeting as chair), Mission Art Show, First Suburbs Coalition meeting, Mission Hills police appreciation luncheon, Prairie Village Jazz

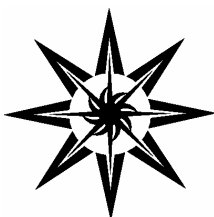
Festival, Shawnee Mission Educational Foundation breakfast, Meadowbrook golf charity event, KCADC breakfast, Kansas City Chamber Leadership Exchange in Austin, Texas, NARC Board meeting in Boise, Idaho.

**Adjournment**

With no further business to come before the Council Committee of the Whole, Council President David Morrison adjourned the meeting at 7:20 p.m.

David Morrison  
Council President





## PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: October 15, 2012

Council Meeting Date: October 15, 2012

### \*COU2012-47: Consider Bid Award for 2012 Tree Trimming Program

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#### RECOMMENDATION

Staff recommends the City Council approve the award of a bid to Kansas City Tree Care, LLC for \$66,157.87 for trimming trees in City rights-of-way.

#### BACKGROUND

This bid is for the annual tree trimming of trees in the City rights-of-way. There are approximately 746 trees in Area 33 bounded by 75<sup>th</sup> Street, State Line Road, Somerset Drive and Belinder Avenue. There are approximately 863 trees in Area 43 bounded by 75<sup>th</sup> Street, Belinder Avenue, Somerset Drive and Mission Road. A map depicting these areas is attached. These trees will be trimmed to remove any dead wood larger than 2-inches, remove limbs interfering with sight line to traffic signals and street signs, and with a conical area under the street lights.

Three bids were received and opened on September 28, 2012, by the City Clerk. The bid tab is:

Bidder	Area 33	Area 43	Total
Kansas City Tree	\$ 32,078.00	\$ 34,079.87	\$ 66,157.87
VanBooven Tree	\$ 41,500.00	\$ 28,995.00	\$ 70,495.00
Arbor Masters	\$ 39,538.00	\$ 48,975.00	\$ 88,513.00

In past years when there were different low bidders in separate work areas, the City has awarded the overall contract to the contractor with the overall lowest bid. This maintains a consistency of work and coordination with City staff. If the bids were awarded separately for each area this year, the cost saving on the entire bid would be \$5,084.87 but would increase staff resources and time in overseeing two contractors.

Kansas City Tree was selected as last year's contractor for this work and did a satisfactory job on the project

#### FUNDING SOURCE

Funding is available in the 2012 Public Works Operating Budget.

#### RELATION TO VILLAGE VISION

*CC1; Make streetscape improvements to enhance pedestrian safety and attractiveness of the public realm*

*CFS2: Preserve and protect natural areas*

#### ATTACHMENTS

Construction Agreement for Tree Trimming  
Tree Trimming Area Map

#### PREPARED BY

Bruce McNabb, Director of Public Works

October 10, 2012

**CONSTRUCTION AGREEMENT**

**for**

**TREE TRIMMING**

**BETWEEN**

**CITY OF PRAIRIE VILLAGE, KS**

**AND**

**CONSTRUCTION AGREEMENT  
BETWEEN  
THE CITY OF PRAIRIE VILLAGE, KANSAS  
AND  
KANSAS CITY TREE CARE, LLC  
FOR  
TREE TRIMMING**

**THIS AGREEMENT**, is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between the City of Prairie Village, Kansas, hereinafter termed the "City", and Kansas City Tree Care, LLC, hereinafter termed in this agreement, "Contractor", for the construction and completion of Tree Trimming, designated, described and required by the Project Manual and Bid proposal, to wit:

**CONTRACT COST:** The City shall pay to 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 \$ 66,157.87 for all Work covered by and included in the Contract award and designated in the foregoing Article I; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

**CONTRACT TERM:** The Contractor will complete all work by this Contract within the Contract completion date of December 14, 2012.

**1. DEFINITIONS:**

1.1. Following words are given these definitions:

**BIDDER** shall mean any individual: partnership, corporation, association or other entity submitting a Bid for the work.

**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.

**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.

**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 mean the Construction Agreement, the accepted Bid Proposal, Contractor's Performance Bond, Contractor's Maintenance Bond, Statutory Bond, Project Manual and any other documents that have bearing the Work proscribed in the Project.

**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 date certain 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 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 City Public Works Field Superintendent 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.

**INSPECTOR** shall mean the engineering or technical inspector or inspectors duly authorized by the City to monitor the work and compliance tests under the direct supervision of the City Public Works Field Superintendent.

**NOTICE OF AWARD** shall mean the written notice by the City to the apparent successful Bidder stating that upon compliance with the conditions precedent enumerated therein, within the time specified, the City will sign and deliver the Agreement.

**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.

**OPERATIONS SUPERINTENDENT** shall mean the individual, firm or entity designated in the Contract Documents, which has been employed or contracted by the City for the performance of engineering services in connection with the Work.

**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 drawings which may have been prepared by or for the City as of 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.

**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.

**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.

**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.

**UNIT PRICE WORK** shall mean work quantities to be paid for on the basis of 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.

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 City and/or the City Public Works Field Superintendent 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 City and/or the City Public Works Field Superintendent.

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:**

2.1. 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.

2.2. The Contract shall be construed in accordance with the laws of the state of Kansas.

## **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 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 City Public Works Field Superintendent 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 City Public Works Field Superintendent 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 any 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, and then the Contractor shall secure written instructions from the City Public Works Field Superintendent 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. Pursuant to K.S.A. No. 16-133, if the Contractor to whom the Contract is awarded is not a resident firm of the State of Kansas, he shall execute and file "Certificate of Appointment of Process of Agent" with the Clerk of the District Court at the Johnson County Courthouse. These forms may be obtained at the Office of the Clerk of the District Court. After execution of the documents, they shall be filed with the Clerk of the District Court. A filing fee of Five Dollars (\$5.00) is required. These certificates are pursuant to the General Statutes of Kansas, and shall be filed prior to the formal execution of the Contract Documents. Failure to comply with these requirements shall disqualify the Contractor for the awarding of this Contract.

#### 4. WORK SUPERINTENDENT

4.1. 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.

4.2. 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.

4.3. The City shall have the right to approve the person who will be the Superintendent on the basis of skill, knowledge, experience and work performance. The City shall also have the right to request replacement of any superintendent.

4.4. The duly authorized representative shall be official liaison between the Owner and Contractor regarding the signing of pay estimates, change orders, work day reports and other forms necessary for communication and Work status inquiries. Upon Work commencement the Owner 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.

4.5. The Contractor will be required to contact the City Public Works Field Superintendent daily to advise whether and/or where the Contractor and/or the Subcontractor's crews will be working that day, in order that the City Public Works Field Superintendent's representative is able to monitor properly the Work.

#### 5. CITY PUBLIC WORKS FIELD SUPERINTENDENT

5.1. It is mutually agreed by and between the parties to this Contract Agreement that the City Public Works Field Superintendent shall act as the representative of the City and shall observe, as required, the work included herein.

5.2. In order to prevent delays and disputes and to discourage litigation, it is further agreed by and between the parties to this Contract that the City Public Works Field Superintendent 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 City Public Works Field Superintendent shall determine, where applicable,



questions in relation to said Work and the construction thereof; that City Public Works Field Superintendent shall, where applicable decide questions which may arise relative to the execution of this Contract on the part of said Contractor; that the City Public Works Field Superintendent'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 City Public Works Field Superintendent 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 City Public Works Field Superintendent 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.

5.3. The City Public Works Field Superintendent, unless otherwise directed or agreed to by the City in writing, will perform those duties and discharge those responsibilities allocated to the City Public Works Field Superintendent as set forth in this Contract. The City Public Works Field Superintendent shall be the City's representative from the effective date of this Contract until final payment has been made. The City Public Works Field Superintendent shall be authorized to act on behalf of the City only to the extent provided in this Contract.

5.4. The City and the Contractor shall communicate with each other in the first instance through the City Public Works Field Superintendent.

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

5.6. The City Public Works Field Superintendent 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 City Public Works Field Superintendent's recommendation of any payment requested in an Application for Payment will constitute a representation by City Public Works Field Superintendent to City, based on City Public Works Field Superintendent's on-site observations of the Work in progress as an experienced and qualified design professional and on City Public Works Field Superintendent'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 City Public Works Field Superintendent'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 City Public Works Field Superintendent 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 City Public Works Field Superintendent 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 City or City to withhold payment to Contractor.

5.7. City Public Works Field Superintendent may refuse to recommend the whole or any part of any payment if, in City Public Works Field Superintendent's opinion, it would be incorrect to make such

representations to City. City Public Works Field Superintendent 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 City Public Works Field Superintendent's opinion to protect 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,
- City has been required to correct defective Work or complete Work in accordance with the Project Manual,

5.8. City may refuse to make payment of the full amount recommended by City Public Works Field Superintendent 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 City Public Works Field Superintendent) stating the reasons for such action.

5.9. The City Public Works Field Superintendent will have the authority to reject Work, which is defective or does not conform to the requirements of this Contract. If the City Public Works Field Superintendent deems it necessary or advisable, the City Public Works Field Superintendent shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.

5.10. The City Public Works Field Superintendent 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.

5.11. The City Public Works Field Superintendent shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and not inconsistent 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.

5.12. The City Public Works Field Superintendent shall, upon written request from the Contractor, conduct observations to determine the date of substantial completion and the date of final acceptance. The City Public Works Field Superintendent 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.

5.13. The City Public Works Field Superintendent's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.

5.14. The City Public Works Field Superintendent 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 City Public Works Field Superintendent will not be responsible for the acts or omissions of 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.

5.15. Any plan or method of work suggested by the City Public Works Field Superintendent, 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 City Public Works Field Superintendent and the City will assume no responsibility therefore.

5.16. It is agreed by the Contractor that the City shall be and is hereby authorized to appoint or employ, either directly or through the City Public Works Field Superintendent, 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 City Public Works Field Superintendent, or by the resident representatives for proper observation and examination of the Work and all parts thereof.

5.17. The Contractor shall comply with any interpretation of the Project Manual by the City Public Works Field Superintendent, 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 City Public Works Field Superintendent, resident representative or observer, the Contractor may make written appeal to the City Director of Public Works for a decision.

5.18. Resident representatives, observers, and other properly authorized representatives of the City or City Public Works Field Superintendent 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.

5.19. Such observation shall not relieve the Contractor from any obligation to perform said work strictly in accordance with the Project Manual.

## **6. WORK SCHEDULE:**

6.1. The Contractor shall, within ten (10) calendar days after being instructed to do so in a written notice from the City, commence work to be done under this Contract.

6.2. The rate of progress shall be such that the Work shall have been completed in accordance with the terms of the Contract Documents on or before the completion date for the construction period named in the contract agreement, subject to any extension or extensions of such time made as hereinafter provided.

6.3. The Contractor shall be required to furnish the City Public Works Field Superintendent with a schedule, in the form of a tabulation, chart, or graph (or critical path diagram) must be in sufficient detail to show the chronological relationship of all activities of the project including the start and completion of various activities and procurement of materials. The construction schedule must reflect the completion of all work under contract within the specified time. If the Contractor wishes to make a major change in his/her operations after beginning construction, he/she must submit a revised construction schedule in advance of the revised operations.

6.4. If at any time, in the opinion of the City Public Works Field Superintendent, proper progress is not being maintained; such changes shall be made by the Contractor in the schedule and resubmitted for consideration.

6.5. If the Contractor has not completed Work segments and is within a non-performance penalty period, he/she shall not be allowed to undertake a new Work segment, until the Work segment in dispute is completed, unless expressly permitted by the City.

6.6. No work is to be conducted on Sundays or Holidays (Christmas, New Years, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day and Thanksgiving) without express written consent or approval from the City. Request for approval must be submitted a minimum of two weeks in advance. 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 City Public Works Field Superintendent.

6.7. 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 the Work.

## **7. DELAYS AND EXTENSIONS OF TIME**

7.1. In executing the Contract, the Contractor expressly covenants and agrees that, in undertaking the completion of the work within the time herein fixed, he 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.

7.2. 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 Owner, or by strikes or the abandonment of the work by the men 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 Owner, 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 he shall in such cases be entitled to such extension of the time specified for the completion of the work as the Owner and the City Public Works Field Superintendent 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 Owner and the City Public Works Field Superintendent in writing within one (1) week from the time when any such alleged cause for delay shall occur.

## **8. ADVERSE WEATHER:**

8.1. Extensions of time for adverse weather shall be granted only under the conditions as hereinafter provided.

8.2. For conditions of weather or conditions at the site, so unusual as not to be reasonably anticipated, as determined by the City Public Works Field Superintendent, 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.

8.3. 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 work day.

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

8.5. Time Extensions for Unusually Severe Weather:

8.5.1. In order for any request for time extension due to unusually severe weather to be valid, the Contractor must document both of the following conditions:

8.5.2. 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.

8.5.3. 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.

8.6. The following schedule of monthly anticipated adverse weather delays will constitute the baseline for monthly weather time evaluations. The Contractor's Progress 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

8.7. Upon receipt of the Notice to Proceed, and continuing throughout the Contract, the Contractor shall record on their daily construction report, the occurrence of adverse weather and resultant impact to normally scheduled work.

8.8. The number of actual adverse weather delay days shall include days impacted 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 work days.

8.9. 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 work day delays to calendar days. The resulting number of qualifying lost days shall be added to the Contract Time.

8.10. 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 Progress Schedule.

8.11. Full consideration for equivalent fair weather work days 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 work day 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.

8.12. 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 as a result of unusually favorable weather.

8.13. In converting work days 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.

8.14. The Contractor shall summarize and report all actual adverse weather delay days for each month to the City Public Works Field Superintendent by the tenth (10th) day of the following month. A narrative indicating the impact of adverse weather conditions on the scheduled critical activities shall be included.

8.15. Any claim for extension of time due to unusually severe weather shall be submitted to the City Public Works Field Superintendent 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 established by the Regulations of the Contract and Special Conditions and as described above.

8.16. The Contractor shall include and indicate the monthly anticipated adverse weather days, listed above, in their Progress Schedule. (Reference Section 3.1.1 for Progress Schedule requirements).

8.17. The Contractor shall indicate the approved adverse weather days (whether less or more than the anticipated days) in their monthly Progress Schedule update.

## **9. PAYMENT PROCEDURE:**

9.1. 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.

9.2. Each application for payment must be submitted with Contractor's waiver for period of construction covered by application. Each progress 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.

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

10. The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor on account 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.

10.1. The City Public Works Field Superintendent 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 City Public Works Field Superintendent 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.

10.2. 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 amount. Percentage deductions will be computed at the stated percentage of the amount earned.

10.3. 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.

10.4. 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.

10.5. 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.

10.6. 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 City Public Works Field Superintendent, 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.

## 11. COMPLETION AND FINAL PAYMENT

11.1. Work completion shall be defined as all elements of the Work or work segment, being complete including all subsidiary items and "punch-list" items.

11.2. When all of the Work is finally complete and the Contractor is ready for a final inspection, it shall notify the City and the City Public Works Field Superintendent thereof in writing. Thereupon, the City Public Works Field Superintendent will make final inspection of the Work and, if the Work is complete in accordance with this Contract, the City Public Works Field Superintendent 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 City Public Works Field Superintendent 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.

11.3. The Contractor shall not be entitled to any payment unless and until it submits to the City Public Works Field Superintendent 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.

11.4. The City shall make final payment of all sums due the Contractor within thirty (30) days of the later of the City Public Works Field Superintendent's execution of a final Certificate for Payment, or execution of the documents contemplated herein.

11.5. 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.

## 12. CLAIMS BY THE CONTRACTOR

12.1. All Contractor claims shall be initiated by written notice and claim to the City Public Works Field Superintendent. Such written notice and claim must be furnished within seven (7) calendar days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.

12.2. 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 City Public Works Field Superintendent and the Contractor.

12.3. 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.

12.4. 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.

12.5. The City reserves the right to increase or decrease quantities, and alter the details of construction including grade and alignment as the City Public Works Field Superintendent 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 amount based on the proposed quantity and the contract unit price).

12.6. When the alterations cause an increase or decrease in excess of the 25 percent indicated above, either the Contractor or the City Public Works Field Superintendent may request an adjustment of the unit price to be paid for the item or items.

12.7. 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.

12.8. 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 in no event 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.

12.9. If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving Final Acceptance of the Work shall be extended upon the written notice and claim of the Contractor to the City, for such reasonable time as the City may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven (7) 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.

12.10. 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 City Public Works Field Superintendent 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.

12.11. In executing the Contract Documents, the Contractor expressly covenants and agrees that, in undertaking to complete the Work within the time herein fixed, it has taken into consideration and made allowances for all hindrances and delays incident to such work, whether growing out of delays in securing materials or workers or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the work, or any portion thereof, included in this Contract, except as provided herein.

12.12. In addition to the Project Manual particular to Mobilization found elsewhere in this document, additional mobilization shall not be compensable for work outside of the designated areas for work deemed essential by the Owner. 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

### **13. CHANGES IN THE WORK.**

13.1. 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.

13.2. The City Public Works Field Superintendent shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and not inconsistent 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.

13.3. 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.

13.4. 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 City Public Works Field Superintendent 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 City Public Works Field Superintendent 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 City Public Works Field Superintendent's Certificate for Payment.

13.5. 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 will cause substantial inequity to the City or to the Contractor, the applicable unit prices shall be equitably adjusted.

13.6. 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.

#### **14. INSURANCE AND HOLD HARMLESS.**

14.1. The Contractor shall assume full responsibility for the protection of all public and private property, structures, sewers, and utilities, both above and below the ground, along, beneath, above, across or near the site or sites of the work being performed under this Contract, 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 placed 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.

14.2. To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the City, the City Public Works Field Superintendent, Johnson County, Kansas, and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property (other than the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any intentional or negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such

obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity, which would otherwise exist.

14.3. All property damaged shall be repaired or replaced to a condition immediately prior to the time of damage, and to the satisfaction of the City.

14.4. All loss or damage arising out of the nature of the work to be done, or from the action of the elements, or from floods or overflows, or from ground water, or from unusual obstructions or difficulties, or any other natural or existing circumstances either known or unforeseen, which may be encountered in the prosecution of the said work shall be sustained and borne by the Contractor at its own cost and expense.

14.5. The Contractor shall give reasonable notice to the owner or owners of public or private property and utilities when such property is liable to injury or damage through the performance of the Work, and shall make all necessary arrangements with such owner or owners relative to the removal and replacement or protection of such property or utilities.

14.6. The Contractor shall satisfactorily shore, support, and protect any and all structures and all pipes, sewers, drains, conduits, and other utility facilities, and shall be responsible for any damage resulting thereto. The Contractor shall not be entitled to any damages or extra compensation on account of any postponement, interference, or delay caused by any such structures and facilities being on the line of the Work whether they are shown on the plans or not, specifically including, but not limited to, damages due to delay in utility relocation.

14.7. The Contractor shall secure and maintain throughout the duration of this Contract, insurance from a company authorized to do business in the State of Kansas. Such insurance shall be of such types and in such amounts as may be necessary to protect himself and the interests of the City and agents of the City against all hazards or risks of loss as hereinafter specified including an endorsement covering explosion, collapse, blasting and damage to underground property if applicable as specified in these Contract Documents. The form and limits of such insurance, together with the underwriter thereof in each case, shall be approved by the City, but regardless of such approval it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times. Failure of the Contractor to maintain adequate insurance coverage shall not relieve it of any contractual responsibility or obligation. The insurance shall be provided on an occurrence basis and, not claims made basis.

14.8. The City and the City Operations Superintendent shall be a named insured on such policies. Satisfactory certificates of insurance shall be filed with the City prior to starting any construction work on this Contract. The certificates shall state that thirty (30) days written notice will be given to the City before any policy coverage thereby is changed or canceled.

14.9. The Contractor shall secure and maintain through the duration of this Contract insurance on an occurrence basis of such types and in such amounts as may be necessary to protect the Contractor and the City and agents of the City against all hazards or risks of loss as hereinafter specified. The form and limits of such insurance, together with the underwriter thereof in each case, shall be approved by the City, but regardless of such approval it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times. Failure of the Contractor to maintain adequate coverage shall not relieve it of any contractual responsibility or obligation, including but not limited to, the indemnification obligation.

14.10. Satisfactory certificates of insurance shall be filled with the City prior to Contractor's starting any construction work on this Contract. The Certificates shall state that the thirty (30) days written notice will be given to the City before any policy covered thereby is changed or cancelled. Failure by the Contractor to furnish the required insurance within the time specified in the notice of award of the Contract by the City may, at the City's option, be the basis for the City's exercising its right to terminate the Contract.

14.11. The liability limits shall be as stated:

- Worker's Compensation and Employer's Liability: This insurance shall protect the Contractor against all claims under applicable state worker's 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 a worker's compensation law. This policy shall include an "all states" endorsement.
- Automobile Liability.: This insurance shall be written in comprehensive form and shall protect the Contractor against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, and shall cover operation on and off the site of all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired. Unless otherwise specified, Contractor's insurance shall include the following:

\$300,000 single limit (on contracts less than \$100,000)  
\$1,000,000 single limit (on contracts \$100,000 and more)

- Commercial General Liability. This insurance shall be written in comprehensive form including Products, completed operations and Personal and Advertising injury and shall protect the Contractor against all claims arising from injuries to members of the public or damage to property of others arising out of any act or omission of the Contractor or its agents, employees, or subcontractors. In addition, this policy shall specifically insure the contractual liability assumed by the Contractor under this Contract entitled "Insurance and Hold Harmless." The property damage liability coverage shall contain no exclusion relative to blasting, explosion, collapse of building, or damage to underground property. Unless otherwise specified, Contractor's insurance shall include the following:

\$2,000,000 combined single limit (on contracts in excess of \$100,000)  
\$300,000 combined single limit (on contracts in excess of \$10,000 to \$100,000)  
\$100,000 combined single limit (on contracts of \$10,000 and less)

- 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 Instructions to Bidders or Special Conditions.

## 15. INDEMNITY:

15.1. 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 affiliates and subsidiaries, his 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.

15.2. 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 and County 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 employees, agents, Subcontractors and suppliers.

15.3. 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 and County or any third party and, further, notwithstanding any theory of law including, but not limited to, a characterization of the City’s or County’s or any third party’s joint, concurring or contributory or comparative fault or negligence as either passive or active in nature.

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

15.5. With respect to the City’s or County’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.

## 16. SUCCESSORS AND ASSIGNS

16.1. 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.

16.2. 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.

16.3. 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.

16.4. 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.

16.5. 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 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.

16.6. 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.

16.7. 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.

16.8. 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 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.

## **17. NON-DISCRIMINATION LAWS**

17.1. The Contractor further agrees that the Contractor 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. 1201 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this Work and furnish any certification required by any federal, state or local governmental agency in connection therewith.

17.2. In all solicitations or advertisements for employees, the Contractor shall include the phrase, "equal opportunity employer", or similar phrase to be approved by the Kansas Human Rights Commission (Commission);

17.3. 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;

17.4. 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

17.5. The Contractor shall include the provisions of this section in every subcontract or purchase order so that such provisions will be binding upon such Subcontractor or vendor.

17.6. The provisions of this section shall not apply to a contract entered into by a Contractor who employs fewer than four employees during the terms of such contract; or whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.

## **18. RELATIONS WITH OTHER CONTRACTORS:**

18.1. 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 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 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.

18.1.1. 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.

18.1.2. 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.

18.2. 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

## **RIGHT OF CITY TO TERMINATE**

18.3. 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 any and all excess cost sustained by the City by reason of such prosecution and completion including any additional legal, engineering 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.

18.4. The City may, within its sole discretion, 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 immediately cease 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 of other costs other than direct costs of demobilization.

## **19. MISCELLANEOUS:**

19.1. 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.

19.2. 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 any and all notices required by applicable law pertaining to the Work.

19.3. Both the business address of the Contractor given in the Bid or proposal upon which this Contract is founded, and the Contractor's Office in the vicinity of 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 mail box 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 City Public Works Field Superintendent 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.

19.4. 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 amount 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.

19.5. 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.

19.6. 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 Owner or of any other agency, which has contributed funds in connection with the Contract or to which the Owner is obligated to make such inspections available. In addition, this requirement shall be included in all subcontracts entered into in connection with this Contract.

19.7. Titles and subheadings as 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.

19.8. No waiver of any breach of this Contract shall be construed to be a waiver of any other subsequent breach.

19.9. 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.

19.10. The Contractor shall keep fully informed of all existing and current regulations of the City, and County, State, and National 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.

19.11. Nothing contained in these Project Manual 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.

19.12. 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.

19.13. No action or failure to act by the City, City Public Works Field Superintendent 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.

19.14. Contractor specifically acknowledges and confirms that: 1.) he has visited the site, made all inspections he deems appropriate and has read and fully understands the Contract Documents, including all obligations and responsibilities undertaken by he as specified herein and in other Contract Documents and knowingly accepts the same; 2.) he has furnished copies of all Contract Documents to his insurance carrier(s) and his surety (ies); and 3.) his 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.

19.15. 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.

19.16. 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.

**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; and*

*WHEREAS, the Contractor, in response to the advertisement, has submitted to the City in the manner and at the time specified, a sealed Bid in accordance with the terms of this Agreement; and*

*WHEREAS, the City, in the manner prescribed by law, has publicly opened, examined and canvassed the Bids submitted, and as a result of such canvass has determined and declared the Contractor to be the lowest and best responsible bidder for the construct 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 named in the Bid attached to, and made a part of this Agreement;*

*And*

***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 Project Manual; 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; and*

***WHEREAS**, 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, hers or their successors and assigns, or its, his, hers or their executors and administrators, as follows: **IN WITNESS WHEREOF**, the City, has caused this Agreement to be executed in its behalf, thereunto duly authorized, and the said Contractor has executed three (3) counterparts of this Contract in the prescribed form and manner, the day and year first above written.*

**CITY OF PRAIRIE VILLAGE**

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

Ronald L. Shaffer \_\_\_\_\_

Mayor \_\_\_\_\_

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

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

Prairie Village, KS 66208 \_\_\_\_\_

(date of execution)

SEAL

ATTEST:

City Clerk, Joyce Hagen-Mundy

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

Zach Johnson \_\_\_\_\_  
(typed name)

President \_\_\_\_\_  
(typed title)

Kansas City Tree Care, LLC \_\_\_\_\_  
(typed company name)

5217 Walmer Street \_\_\_\_\_  
(typed address)

Mission, KS 66202 \_\_\_\_\_  
(typed city, state, zip)

(913) 894-4767 \_\_\_\_\_  
(typed telephone number)

(date of execution)

APPROVED BY:

City Attorney, Catherine P. Logan

(If the Contract is not executed by the President of the Corporation or general partner of the partnership, please provide documentation, which authorizes the signatory to bind the corporation or partnership. 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.)



**PROVIDED, FURTHER**, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract, or the Work to be performed thereunder, or the specifications accompanying the same, shall in any way affect this obligation on this bond and it does hereby waive notice of any change, extension of time, alteration or addition to the terms of the Contract, or to the work, or to the Specifications.

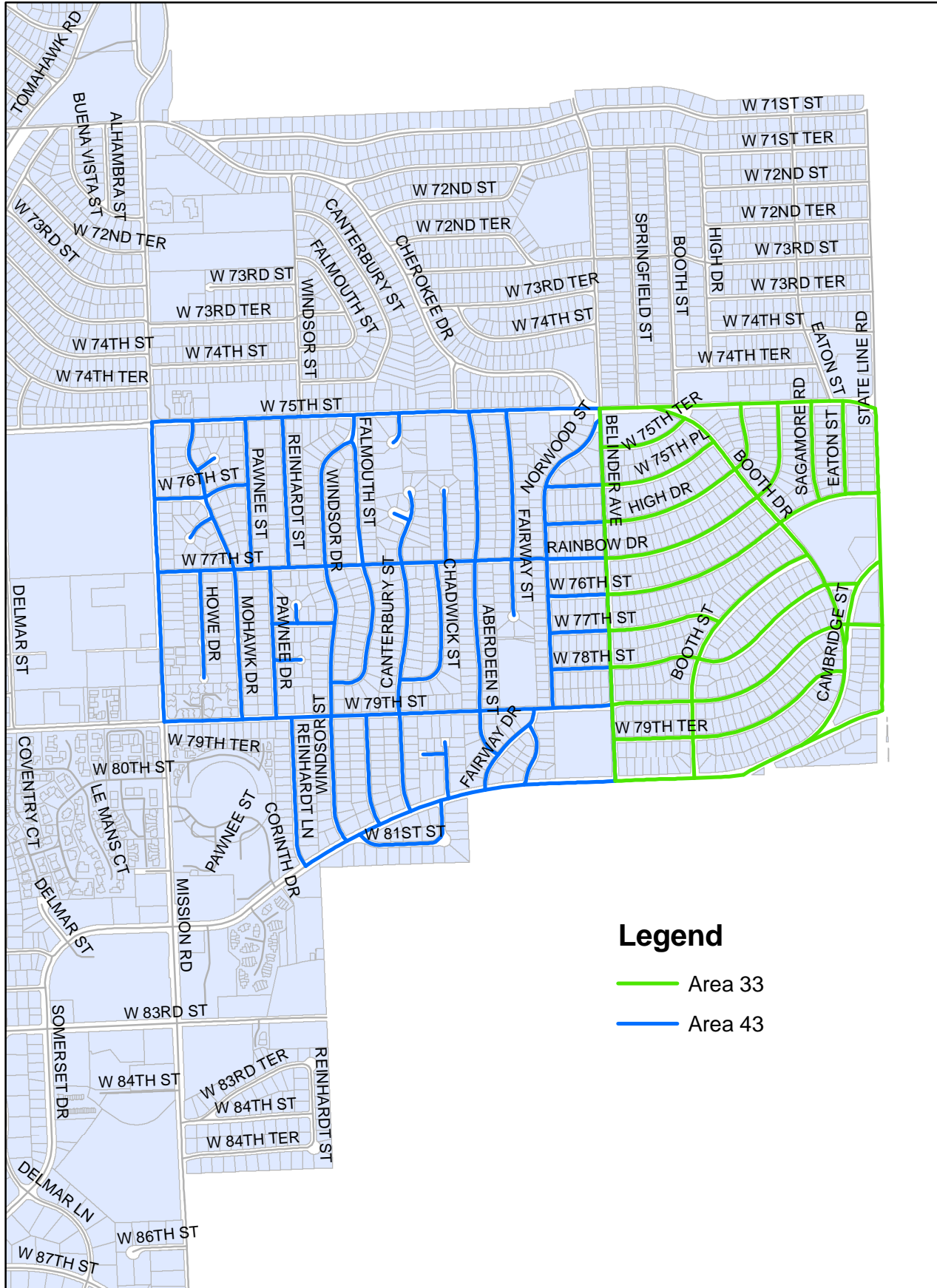
**IN TESTIMONY WHEREOF**, the said Contractor has hereunto set his hand, and the said Surety has caused these presents to be executed in its name, and its corporate seal to be hereunto affixed by its attorney-in-fact duly authorized thereunto so to do at \_\_\_\_\_ on this, the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CONTRACTOR**

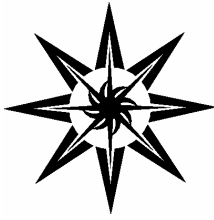
BY: \_\_\_\_\_ (SEAL)

\_\_\_\_\_  
(Official Title)

# 2012 Tree Trimming Areas







## ADMINISTRATION

Council Meeting Date: October 15, 2012

### Consideration of Request by PV Retail Partners, LLC. to Amend the Village Community Improvement District Development Agreement (Prairie Village Shops CID)

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#### RECOMMENDATION:

The City Council should review and discuss the request by PV Retail Partners, LLC. to amend the Village Community Improvement District Development Agreement.

Staff recommends the City Council approve extending the commencement date of Project A (Mission Lane Improvements) to May 2, 2013. The ownership group is requesting modifications to the Developer Agreement to benefit the project schedule. The amendment is a negotiated item and Council can include other considerations in exchange for the requested schedule change. Staff recommends using the opportunity to clarify the pedestrian trail location and funding.

Staff does not recommend amending Section 2.02(A) of the Development Agreement to remove the requirement of providing a pedestrian access along the east side of existing Mission Lane for trail purposes. If the City Council concurs with the Developer that a multi-use path is not feasible along the east side of Mission Lane, staff recommends that the Development Agreement be amended to set-aside CID funds to help pay for the preliminary design concept, the design and construction of this path in the future on Mission Road. This provision would be similar to provisions contained for the construction of Tomahawk Trail.

#### BACKGROUND/DISCUSSION:

The City of Prairie Village and PV Retail Partners, LLC. entered into a Development Agreement for the use of Community Improvement District Funds (CID) through a 1% CID sales tax established on September 20, 2010 (Ordinance 2228). The Development Agreement was approved with the adoption of Resolution No. R-2010-12 and formalized the implementation and financing of the CID projects contained within the Agreement.

The Developer, PV Retail Partners, LLC. is requesting amendments to the approved Development Agreement (see attached request). The request involves two specific issues:

- Modification of Exhibit F to move the commencement date for Project A (Mission Lane Improvement) from November 2, 2012 to May 2, 2013; and
- Modification of Section 2.02 (A) to remove the requirement that the developer provide a pedestrian access along the east side of existing Mission Lane for trail purposes.

#### Modification of Exhibit F to move the commencement date for Project A from November 2, 2012 to May 2, 2013

As noted in the attached request, the Developer is requesting an extension of the commencement date for Project A (Mission Lane Improvements) to provide for a more cost-

efficient use of CID funds and reduce the impact on merchants and patrons of the center. The Planning Commission has approved a small portion of Phase I Mission Lane improvements (intersection of Mission Lane and Tomahawk Road) which would allow the Developer to be in compliance with the existing provisions of the agreement.

Staff does not have any issues with extending the commencement date of Project A (Mission Lane Improvements) to May 2, 2013.

Modification of Section 2.02 (A) to remove the requirement that the developer provide a pedestrian access along the east side of existing Mission Lane for trail purposes.

During the development agreement negotiations, staff and City Council spent a considerable amount of time discussing how future trail sections would be funded and accommodated for in the CID area.

There are three trail segments discussed in the development agreement: Tomahawk, Mission Lane, and 71<sup>st</sup> Street. The Tomahawk Trail segment is clearly defined in the agreement and is funded through CID funds. The Mission Lane segment was to be funded as part of the streetscape improvements under Project A in the development agreement.

The concept of a pedestrian access along the east side of Mission Lane was to provide a “wide sidewalk” to accommodate a multi-use path not a bike trail, as noted by the Developer in their request. This concept was actually implemented with the construction of the new UMB Bank facility in 2011. As part of the site plan approval process, the bank was required to construct a ten (10) foot section of sidewalk along Mission Lane, Mission Road and Tomahawk.

As the streetscape plans for Mission Lane were being developed, the Developer indicated that they did not believe they could accommodate a multi-use path with a pedestrian focus on the east side of Mission Lane. Again the intent of the multi-use path is not a bike trail, but a “wide sidewalk.” The Developer has not shown why they cannot construct a wider sidewalk, such as the one provided by UMB Bank along the east side of Mission Lane.

As a compromise, the Developer initially indicated they would be willing to consider providing an easement along Mission Road as an alternative to the Mission Lane segment. Because of a number of issues related to exiting building placement (US Bank) and potential loss of parking, the Developer has indicated they are not willing to provide a complete easement along Mission Road. The Developer has offered to provide an easement from the existing UMB Bank building to the US Bank Building. It is understandable that the Developer cannot provide an easement at the US Bank Building location. However, they could provide an easement on the southern section from the US Bank Building to the intersection of 71<sup>st</sup> Street.

While staff still believes that a “wide sidewalk” multi-use path could be provided along Mission Lane, staff is open to considering alternatives along Mission Road. Additional study would need to be completed at the Developer’s expense or with CID funds to determine if modifications could be made to Mission Road to accommodate a trail in this location.

In addition, are the future costs associated with the construction of a multi-use path along Mission Road. Under the current Development Agreement, Mission Lane Improvements were to include a pedestrian access/multi-use path which was to be paid for through CID funds. Under the proposal by the Developer with a multi-use path along Mission Road, the City would be directly responsible for all the costs of the project.

If the City Council concurs with the Developer that a multi-use path is not feasible along the east side of Mission Lane, staff recommends that the Development Agreement be amended to set-aside CID funds to help pay for the construction of a future path along Mission Road. This provision would be similar to provisions contained for the construction of Tomahawk Trail.

**ATTACHMENTS:**

Letter from Polsineli Shughart, PC dated October 10, 2012

**PREPARED BY:**

Dennis J. Enslinger  
Assistant City Administrator  
October 11, 2012



Curtis J. Petersen  
(913) 234-7458  
(816) 572-5313 Direct Fax  
cpetersen@polsinelli.com

6201 College Boulevard, Suite 500  
Overland Park, KS 66211  
(913) 451-8788  
Fax: (913) 451-6205  
www.polsinelli.com

October 10, 2012

**UNITED STATES MAIL**

The Honorable Ron Shaffer, Mayor  
City of Prairie Village, Kansas  
7700 Mission Road  
Prairie Village, KS 66208

**Re: Amendment of Village Community Improvement District Development Agreement**

Dear Mayor:

Consistent with our report to the City Council in early August, the owners of Prairie Village Shopping Center (the "Shopping Center") are in the final stages of planning and securing City approval for some exciting improvements to the Shopping Center. Under the Village Community Improvement District (the "CID") Development Agreement (the "Development Agreement"), improvements to Mission Lane and Prairie Lane (deemed "Project A" in the Development Agreement) must commence by November 2, 2012 (i.e., within 24 months of full execution of the Development Agreement). While we are prepared to commence work by such date if necessary, it would be a more cost-efficient use of CID revenues and less disruptive to the Shopping Center's merchants and patrons if such work was deferred until Spring 2013 and completed in conjunction with the grocery store improvements and the remainder of the Mission Lane / Prairie Lane improvements.

Additionally, as part of the vacation of Mission Lane and Prairie Lane, the Development Agreement anticipated dedication of a bike trail easement along the east side of Mission Lane. As we explained to the Planning Commission last week in relation to the Commission's consideration of the preliminary and final plats for the Shopping Center, the owners of the Shopping Center, as well as the project's design consultants, have serious safety concerns about constructing a bike trail through the new, intensely pedestrian-focused Mission Lane. Cyclists will have other options to travel from one end of the Shopping Center to the other, including the bike trail along Tomahawk to be constructed in part with CID revenues, the sidewalk along Mission Road, and the existing street network along the boundary of the Shopping Center. After

Chicago | Dallas | Denver | Edwardsville | Jefferson City | Kansas City | Los Angeles | New York  
Overland Park | Phoenix | St. Joseph | St. Louis | Springfield | Topeka | Washington, DC | Wilmington

*In California, Polsinelli Shughart LLP.*

The Honorable Ron Shaffer, Mayor  
October 10, 2012  
Page 2

considering this issue, the Planning Commission unanimously approved the plats without the inclusion of a bike trail along Mission Lane.

With these two issues in mind, we respectfully request that the City Council, at its October 15th public meeting, consider the attached amendment to the Development Agreement, which would:

1. Move the commencement date for Project A to May 2, 2013; and
2. Remove the requirement that the Shopping Center's plats show a bike trail easement along Mission Lane.

Thank you for your consideration.

Sincerely,



Curtis J. Petersen

CJP:jlh

cc: Quinn Bennion  
Dennis Enslinger  
Katie Logan, Esq.  
Owen Buckley

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT**  
**FOR THE**  
**VILLAGE COMMUNITY IMPROVEMENT DISTRICT**

**THIS FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR THE VILLAGE COMMUNITY IMPROVEMENT DISTRICT**, executed as of the date of the last execution by the parties hereto, by and between the **CITY OF PRAIRIE VILLAGE, KANSAS**, a municipal corporation duly organized under the laws of the State of Kansas (“**City**”), and **PV RETAIL PARTNERS, LLC**, a Kansas limited liability companies (“**Developer**”), amends and, to the extent inconsistent herewith, supersedes that certain “Development Agreement for the Village Community Improvement District dated September 20, 2010 (“**Agreement**”). All capitalized terms herein are as defined in the Agreement.

WITNESSETH:

WHEREAS, the parties have heretofore executed the Agreement; and

WHEREAS, the parties wish to modify the Agreement to amend the date by which “Project A” (as defined in the Agreement) shall be commenced; and

WHEREAS, the parties also wish to revise the language in the Agreement pertaining to the vacation of Mission Lane.

NOW THEREFORE, in consideration of the mutual promises set forth below, it is agreed:

1. Exhibit F of the Agreement is hereby amended to require commencement of Project A within 30 months of full execution of the Agreement.
2. Section 2.02(A) of the Agreement is hereby amended and restated as follows:

Mission Lane and Prairie Lane. As part of Project A, Developer will make numerous streetscape improvements in an around the public street known as “Mission Lane” at Developer’s sole cost (which cost will be included in CID Costs and eligible for reimbursement from CID Sales Tax). The parties agree that as soon as practicable after the execution of this Agreement, Mission Lane and Prairie Lane will be vacated as public streets, subject to any existing utility rights of way, and access easements for existing access for vehicular traffic to and from the two adjacent parcels currently being used as gasoline service stations, ~~and pedestrian access along the east side of existing Mission Lane for trail purposes~~, and Developer will assume all future repair and maintenance of Mission Lane and Prairie Lane, including snow removal, which future repair and maintenance, except for any item set forth on Exhibit C, shall not be included in CID Costs or eligible for reimbursement from CID Sales Tax.

3. That to the extent inconsistent with the Agreement, this Amendment shall supersede same and control the contractual relationship by and between the parties. In all other respects, the Agreement is hereby ratified.

3. That this Amendment shall become effective upon the last party to the Amendment executing the same. In the interest of timely amending the Agreement, the parties may separately execute the Amendment.

IN WITNESS WHEREOF, the City and the Developer have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

**CITY OF PRAIRIE VILLAGE, KANSAS**

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

**ATTEST:**

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

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Catherine P. Logan, City Attorney

STATE OF KANSAS            )  
  ) ss.  
COUNTY OF JOHNSON        )

This instrument was acknowledged before me on \_\_\_\_\_, 2012 by Ronald L. Shaffer and Joyce Hagen Mundy as Mayor and City Clerk, respectively, of the City of Prairie Village, Kansas.

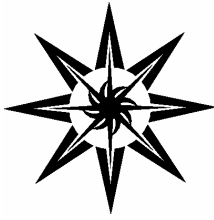
In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:







## PLANNING COMMISSION

Council Meeting Date: October 15, 2012

### PC2012-114 Consider Final Plat for "Prairie Village Shopping Center"

---

#### **RECOMMENDATION:**

The City Council should review the proposed Final Plat and discuss the following conditions which were placed on the approval of the final plat by the Planning Commission:

1. That the trail easement for Tomahawk Road be noted as Section 7.04 of the CID Agreement, a trail easement for Mission Road from UMB to the US Bank Building. and;
3. That text be added to the Property Owner Maintained Drainage Area to be worked out between the staff and the applicant prior to the Council meeting.

Upon resolution of these two items, the City Council should authorize the Mayor to execute the Final Plat for "Prairie Village Shopping Center" for its acceptance of rights-of-way and easements and the vacation of the Mission Lane and Prairie Lane.

If the City Council approves an extension of the required commencement date for Mission Lane Improvements (Project A), staff recommends the City Council table this item until an adequate resolution can be found regarding the Mission Road trail easement.

#### **BACKGROUND:**

Prairie Village Shopping Center is an unplatted tract of land that is bordered by Mission Road on the east, 71<sup>st</sup> Street on the south and Tomahawk Road on the west and north. The applicant is proposing to vacate Mission Lane and Prairie Lane which the City has been encouraging for several years and is a requirement of the CID Development Agreement. The applicant proposes to change the parking configuration and implement a major streetscape plan for Mission Lane. Vacating the streets will provide the applicant more flexibility in design. In order to vacate Mission Lane and still provide access to Tomahawk Road, the service station and bank have agreed to the street vacation and will sign the plat.

The plat was approved by the Planning Commission at its meeting on October 2, 2012, with the Commission recommending the Governing Body's acceptance of the rights-of-way and easements subject to the following conditions:

1. That the trail easement for Tomahawk Road be noted as Section 7.04 of the CID Agreement, a trail easement for Mission Road from UMB to the US Bank Building.
2. That the "60' Storm Drainage Easement" be changed to "Property Owner Maintained Drainage Area".
3. That text be added to the Property Owner Maintained Drainage Area to be worked out between the staff and the applicant prior to the Council meeting.
4. That the KCP&L line running across Lot 2 be installed underground.
5. That the signature block for the Governing Body be revised as follows:

The Governing Body of the City of Prairie Village, Kansas does hereby accept all public easements, ways of land and approves the public street vacations contained herein, this \_\_\_\_ day of \_\_\_\_\_, 2012.

6. That letters of subordination from lenders be submitted.
7. That the applicant submit the Final Plat to the Johnson County surveyor for a review.
8. That the applicant submit a certificate showing that all taxes and special assessments due and payable have been paid.
9. That the Final Plat as approved be revised and three copies submitted to the City for their records.

#### **DISCUSSION:**

The City Council should review the proposed Final Plat and discuss the following conditions which were placed on the approval of the final plat by the Planning Commission:

1. *That the trail easement for Tomahawk Road be noted as Section 7.04 of the CID Agreement, a trail easement for Mission Road from UMB to the US Bank Building.*

This condition is related to the request from PV Retail Partners, LLC. to modify section 2.02(A) of the Village Community Improvement District Development Agreement (see Letter from Polsinelli Shughart dated October 10, 2012).

At the October 2<sup>nd</sup> Planning Commission meeting, the Planning Commission concurred that construction of a trail along Mission Lane may not be the best location given the Developer's proposed design for Mission Lane. The Planning Commission held a discussion about relocating the trail along Mission Road.

There are some conflicts with dedicating the trail along Mission Road, including there is not sufficient space to construct a minimum eight (8) foot multi-use path on the west side of the roadway. Conflicts include the existence of the US Bank building and exiting parking areas. While there may sufficient space with the modifications to Mission Road, a detailed engineering study has not been completed to determine its feasibility.

The Developer has agreed to dedicate a portion of the trail segment (from UMB Bank to the US Bank) as a compromise. The developer was not willing to dedicate the southern section of a trail from the US Bank Building to 71<sup>st</sup> Street because of parking lot conflicts.

If the City Council approves an extension of the required commencement date for Mission Lane Improvements (Project A), staff recommends the City Council table this item until an adequate resolution can be found regarding the trail easement (see request from Developer to remove the Mission Lane trail easement).

3. That text be added to the Property Owner Maintained Drainage Area to be worked out between the staff and the applicant prior to the Council meeting.

Staff has been working with the Developer on proposed language for the Drainage Area. Staff recommends that the following language be placed on the face of the plat.

#### ***STORMWATER DRAINAGE AREA: (ENCLOSED)***

*A 60-foot wide storm water drainage area (the "Enclosed Channel"), as depicted on page 2 of this plat, which consists of a portion of enclosed storm water culvert, is hereby granted to the City of Prairie Village for the purpose of storm water drainage; provided that the owners of Lots 1 and 2 and Tract A shall maintain the Enclosed Channel in good repair and in a fully functional condition. Biannually on or before May 1, such owner shall submit a certification from a*

*professional engineer licensed in the State of Kansas to the Director of Public Works indicating that the Enclosed Channel is in good repair and fully functional.*

*If the City reasonably determines that the Enclosed Channel requires repair or maintenance, including removal of debris, the City shall provide written notice to such owners indicating the necessary repair or maintenance. If such owners do not repair or perform such maintenance within a reasonable period of time, the City may perform the required maintenance or repair and such owners shall reimburse the City for the reasonable cost of such work. In undertaking any such repairs or maintenance, the City shall not disturb any improvements on Lots 1 and 2 or Tract A unless reasonably necessary to perform such work.*

*The City shall have no liability associated with the Stormwater Drainage Area.*

The Developer concurs with the recommend language.

#### **ATTACHMENTS**

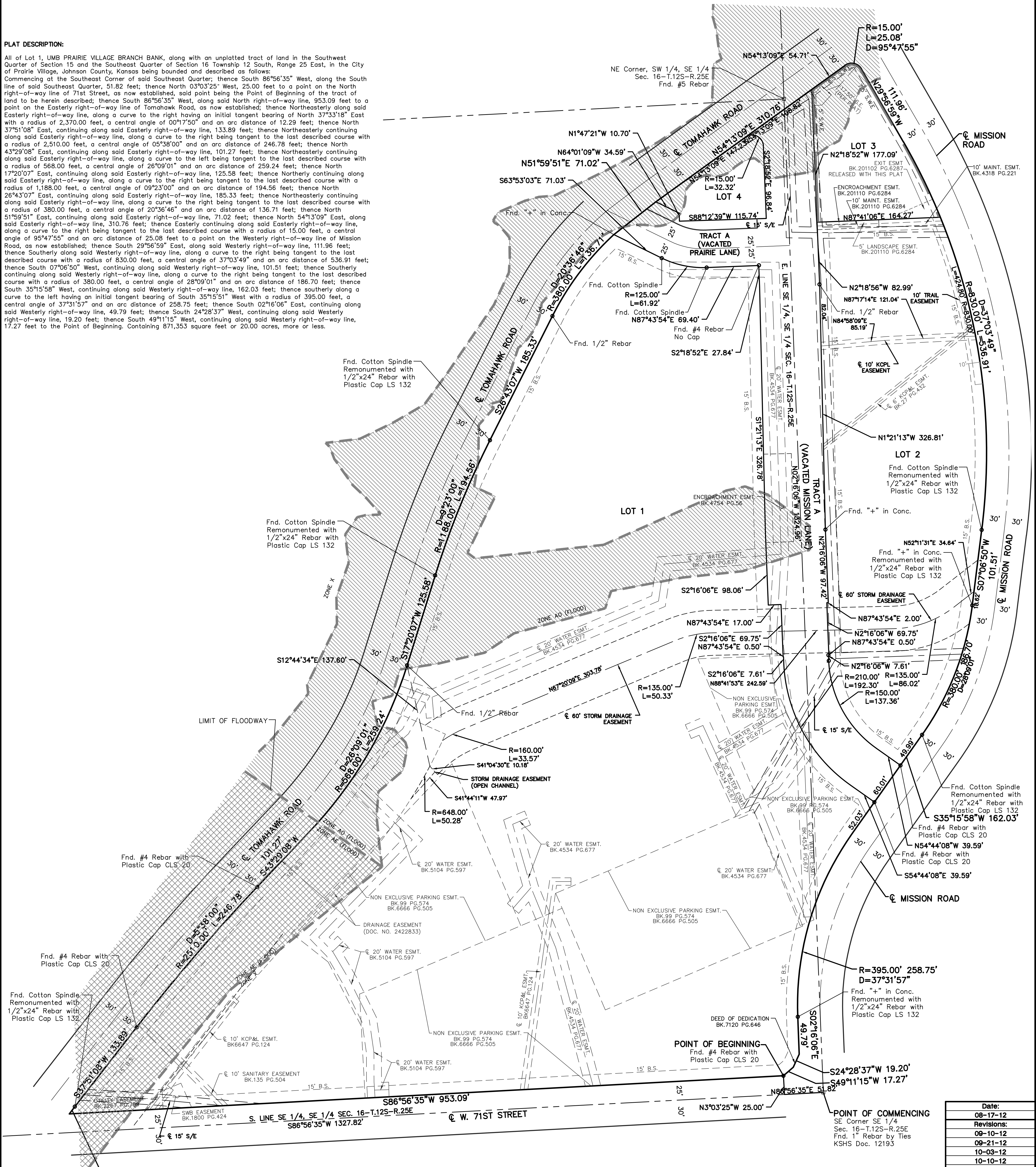
Related Planning Commission Minutes of October 2, 2012 (Draft)  
Proposed Plat

# PRELIMINARY PLAT OF PRAIRIE VILLAGE SHOPPING CENTER

## A REPLAT OF LOT 1, UMB PRAIRIE VILLAGE BRANCH BANK, AND AN UNPLATTED PORTION OF THE SW 1/4, SEC. 15 & SE 1/4, SEC. 16 - Twp. 12 S. - Rge. 25 E. PRAIRIE VILLAGE, JOHNSON COUNTY, KANSAS

**PLAT DESCRIPTION:**

All of Lot 1, UMB PRAIRIE VILLAGE BRANCH BANK, along with an unplatted tract of land in the Southwest Quarter of Section 15 and the Southeast Quarter of Section 16 Township 12 South, Range 25 East, in the City of Prairie Village, Johnson County, Kansas being bounded and described as follows:  
Commencing at the Southeast Corner of said Southeast Quarter; thence South 86°56'35" West, along the South line of said Southeast Quarter, 51.82 feet; thence North 03°03'25" West, 25.00 feet to a point on the North right-of-way line of 71st Street, as now established, said point being the Point of Beginning of the tract of land to be herein described; thence South 86°56'35" West, along said North right-of-way line, 953.09 feet to a point on the Easterly right-of-way line of Tomahawk Road, as now established; thence Northeasterly along said Easterly right-of-way line, along a curve to the right having an initial tangent bearing of North 37°33'18" East with a radius of 2,370.00 feet, a central angle of 00°17'50" and an arc distance of 12.29 feet; thence North 37°51'08" East, continuing along said Easterly right-of-way line, 133.89 feet; thence Northeasterly continuing along said Easterly right-of-way line, along a curve to the right being tangent to the last described course with a radius of 2,510.00 feet, a central angle of 05°38'00" and an arc distance of 246.78 feet; thence North 43°29'08" East, continuing along said Easterly right-of-way line, 101.27 feet; thence Northeasterly continuing along said Easterly right-of-way line, along a curve to the left being tangent to the last described course with a radius of 568.00 feet, a central angle of 26°09'01" and an arc distance of 259.24 feet; thence North 17°20'07" East, continuing along said Easterly right-of-way line, 125.58 feet; thence Northerly continuing along said Easterly right-of-way line, along a curve to the right being tangent to the last described course with a radius of 1,188.00 feet, a central angle of 09°23'00" and an arc distance of 194.56 feet; thence North 28°43'07" East, continuing along said Easterly right-of-way line, 185.33 feet; thence Northeasterly continuing along said Easterly right-of-way line, along a curve to the right being tangent to the last described course with a radius of 380.00 feet, a central angle of 20°36'46" and an arc distance of 136.71 feet; thence North 51°59'51" East, continuing along said Easterly right-of-way line, 71.02 feet; thence North 54°13'09" East, along said Easterly right-of-way line, 310.76 feet; thence Easterly continuing along said Easterly right-of-way line, along a curve to the right being tangent to the last described course with a radius of 15.00 feet, a central angle of 95°47'55" and an arc distance of 25.08 feet to a point on the Westerly right-of-way line of Mission Road, as now established; thence Southerly along said Westerly right-of-way line, along a curve to the right being tangent to the last described course with a radius of 830.00 feet, a central angle of 37°03'49" and an arc distance of 536.91 feet; thence South 07°06'50" West, continuing along said Westerly right-of-way line, 101.51 feet; thence Southerly continuing along said Westerly right-of-way line, along a curve to the right being tangent to the last described course with a radius of 380.00 feet, a central angle of 28°09'01" and an arc distance of 186.70 feet; thence South 35°15'58" West, continuing along said Westerly right-of-way line, 162.03 feet; thence southerly along a curve to the left having an initial tangent bearing of South 35°15'51" West with a radius of 395.00 feet, a central angle of 37°31'57" and an arc distance of 258.75 feet; thence South 02°16'06" East, continuing along said Westerly right-of-way line, 49.79 feet; thence South 24°28'37" West, continuing along said Westerly right-of-way line, 19.20 feet; thence South 49°11'15" West, continuing along said Westerly right-of-way line, 17.27 feet to the Point of Beginning. Containing 871,353 square feet or 20.00 acres, more or less.



R=2370.00'  
L=12.29'  
D=0°17'50"

AREA TABLE		
LOT NUMBER	SQUARE FEET	ACRES ±
LOT 1	624,811	14.34
LOT 2	133,628	3.07
LOT 3	23,610	0.54
LOT 4	10,323	0.24
TRACT A	78,981	1.81
TOTAL	871,353	20.00

**SURVEYORS NOTES:**

- Title and Easement Information furnished by Chicago Title Insurance Company, Commitment Number 20121953, with an effective date of July 9, 2012 at 8:00 a.m.
- All easements referenced in the above referenced title commitment that affect the Subject Property have been shown and noted hereon.
- Bearings used hereon are based on the Kansas State Plane Coordinate System, North Zone (NAD 83 Datum).
- The Subject Property lies partially within Zone AO (Flood depths of 1 to 3 feet, average depths determined. For areas of alluvial fan flooding, velocities also determined), Zone AE (Base flood elevations determined), and Zone X (Areas determined to be outside of the 0.2% annual chance floodplain), as determined by Flood Insurance Rate Map number 20091C0024G with an effective date of August 3, 2009.
- Area of Subject Property = 871,353 square feet or 20.00 acres, more or less.

**PLAT LEGEND**

<p><b>EASEMENTS</b></p> <ul style="list-style-type: none"> <li>U.E. Utility Easement</li> <li>S.E. Sanitary Sewer Easement</li> <li>B.S. Building Setback</li> <li>S.W.E. Sidewalk Easement</li> </ul>	<p><b>SURVEY MARKERS</b></p> <ul style="list-style-type: none"> <li>□ Found Section Corner (Monumentation as noted)</li> <li>○ Found Property Corner (Monumentation as noted)</li> <li>● Set #4 Rebar with plastic ID Cap in Concrete</li> </ul>
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**LOCATION MAP**

W. 1/2, Sec. 15 & E. 1/2, Sec. 16,  
Twp. 12 S., Rge. 25 E.  
Scale: 1"=2000'

**SCALE**

0' 60' 120'

1"=60'

Date:	08-17-12
Revisions:	09-10-12
	09-21-12
	10-03-12
	10-10-12

Surveyed By:	JS
Reviewed By:	JSR
Drafted By:	JAMB
Lutjen Project No.:	12078

**LUTJEN**

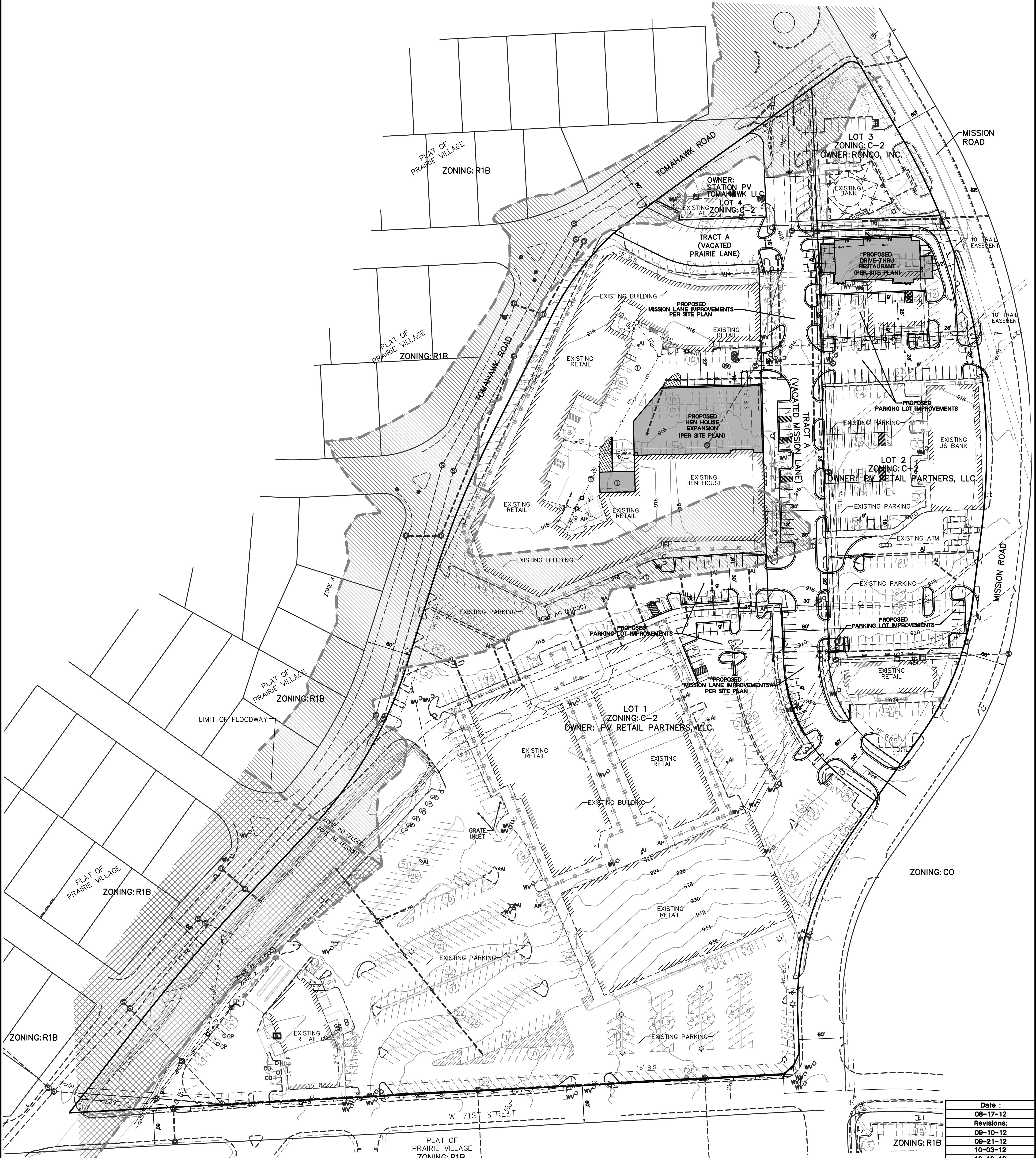
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816.587.4320  
816.587.1993 fax  
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**Sheet No.:**  
**1 of 2**

Location: L:\Projects\12077-01\Plans\Plat\12078-Prairie Village Shopping Center Prelim Plat-1.dwg

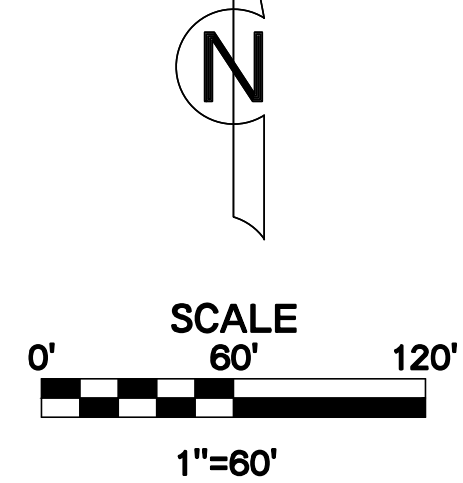
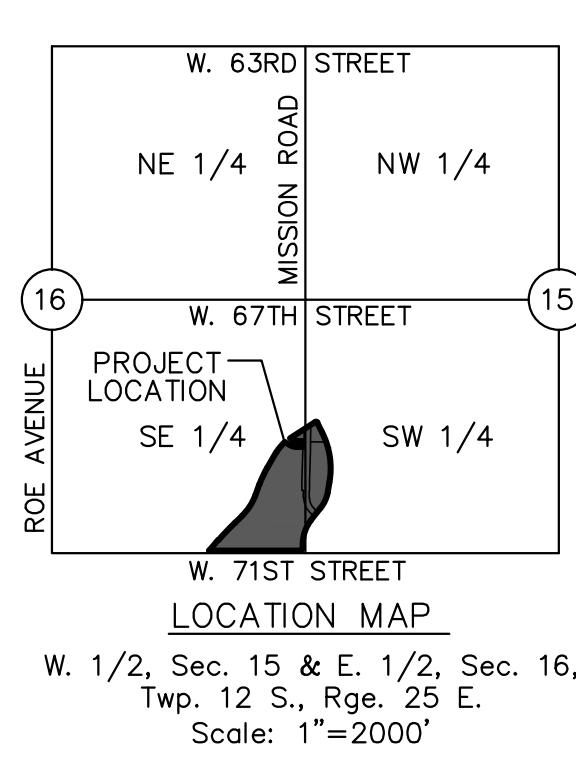
**PRELIMINARY PLAT OF  
PRAIRIE VILLAGE SHOPPING CENTER**  
A REPLAT OF LOT 1, UMB PRAIRIE VILLAGE BRANCH BANK,  
AND AN UNPLATTED PORTION OF THE SW 1/4, SEC. 15  
& SE 1/4, SEC. 16 - Twp. 12 S. - Rge. 25 E.  
PRAIRIE VILLAGE, JOHNSON COUNTY, KANSAS



- LEGEND:**
- OHP - OVERHEAD POWER
  - OHT - OVERHEAD TELEPHONE
  - LP - LIGHT POLE
  - TMH - TELEPHONE MANHOLE
  - EM - ELECTRIC METER
  - SM - SEWER MANHOLE
  - EB - ELECTRIC BOX
  - TS - TRAFFIC SIGNAL
  - TSB - TRAFFIC SIGNAL BOX
  - TSM - TRAFFIC SIGNAL MANHOLE
  - KMH - KCPL MANHOLE
  - TP - TELEPHONE PEDESTAL
  - TB - TELEPHONE BOX
  - PP - POWER POLE
  - GM - GAS METER
  - FI - FIELD INLET
  - MB - MAILBOX
  - CI - CURB INLET
  - DI - DROP INLET
  - FI - FIELD INLET
  - GP - GUARD POST
  - LS - LANDSCAPING
  - ⊗ - TREE

- UTILITY LINES**
- OP— EXISTING OVERHEAD POWER
  - G— EXISTING GAS
  - SS— EXISTING SANITARY SEWER
  - STM— EXISTING STORM SEWER
  - W— EXISTING WATER LINE
- CONTOURS**
- 100— EXISTING INDEX CONTOURS
  - 100— EXISTING INTERMEDIATE CONTOURS
- EASEMENTS**
- D.E. STORM DRAINAGE EASEMENT
  - M.E. MONUMENT EASEMENT
  - S.E. SANITARY SEWER EASEMENT
  - U.E. UTILITY EASEMENT
  - W.E. WATER EASEMENT

AREA TABLE		
LOT NUMBER	SQUARE FEET	ACRES ±
LOT 1	624,811	14.34
LOT 2	133,628	3.07
LOT 3	23,610	0.54
LOT 4	10,323	0.24
TRACT A	78,981	1.81
<b>TOTAL</b>	<b>871,353</b>	<b>20.00</b>



Date :	08-17-12
Revisions:	09-10-12
	09-21-12
	10-03-12
	10-10-12

Surveyed By:	N/A
Reviewed By:	JFE
Drafted By:	JAMB

Lutjen Project No.: 12078

**LUTJEN**

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North Kansas City, MO 64116  
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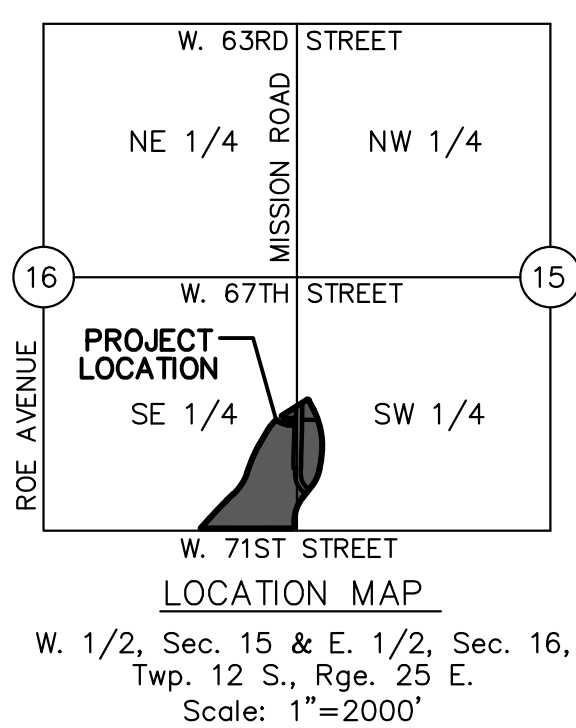
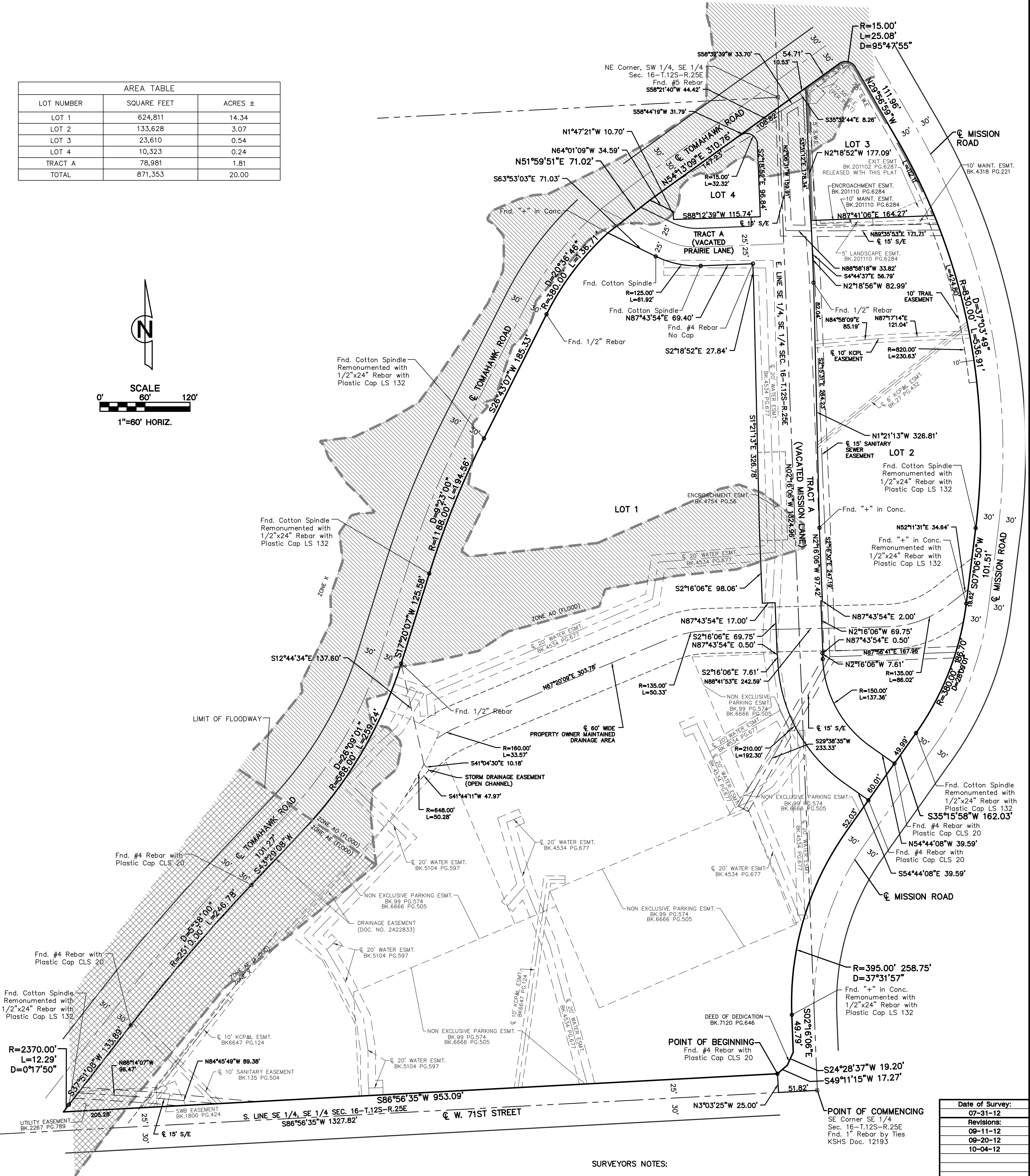
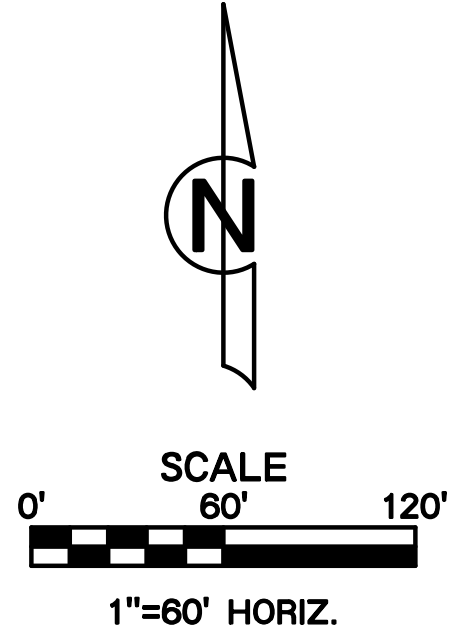
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landscape architecture

**Sheet No.:**  
**2 of 2**



**FINAL PLAT OF  
PRAIRIE VILLAGE SHOPPING CENTER**  
A REPLAT OF LOT 1, UMB PRAIRIE VILLAGE BRANCH BANK,  
AND AN UNPLATTED PORTION OF THE SW 1/4, SEC. 15  
& SE 1/4, SEC. 16 - Twp. 12 S. - Rge. 25 E.  
PRAIRIE VILLAGE, JOHNSON COUNTY, KANSAS

AREA TABLE		
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TRACT A	78,981	1.81
TOTAL	871,353	20.00



**PLAT LEGEND**

- |                              |  |
|------------------------------|--|
| <b>EASEMENTS</b>             | <b>SURVEY MARKERS</b>                            |
| U.E. Utility Easement        | □ Found Section Corner (Monumentation as noted)  |
| S.E. Sanitary Sewer Easement | ○ Found Property Corner (Monumentation as noted) |
| B.S. Building Setback        | ● Set #4 Rebar with plastic ID Cap in Concrete   |
| S.W.E. Sidewalk Easement     |  |

**SURVEYORS NOTES:**

- Title and Easement Information furnished by Chicago Title Insurance Company, Commitment Number 20121953, with an effective date of July 9, 2012 at 8:00 a.m.
- All easements referenced in the above referenced title commitment that affect the Subject Property have been shown and noted hereon.
- Bearings used hereon are based on the Kansas State Plane Coordinate System, North Zone (NAD 83 Datum).
- The Subject Property lies partially within Zone AO (Flood depths of 1 to 3 feet, average depths determined. For areas of alluvial fan flooding, velocities also determined), Zone AE (Base flood elevations determined), and Zone X (Areas determined to be outside of the 0.2% annual chance floodplain), as determined by Flood Insurance Rate Map number 20091C0024G with an effective date of August 3, 2009.
- Area of Subject Property = 871,353 square feet or 20.00 acres, more or less.

**CERTIFICATION:**

This plat and survey of "PRAIRIE VILLAGE SHOPPING CENTER" was executed by Lutjen, Inc., 1301 Burlington, #100, North Kansas City, Missouri 64116.

I HEREBY CERTIFY: that the Plat of "PRAIRIE VILLAGE SHOPPING CENTER" subdivision is based on an actual survey made by me or under my direct supervision on July 31, 2012.

Date of Survey:	07-31-12
Revisions:	08-11-12
	09-20-12
	10-04-12

Surveyed By:	JS
Reviewed By:	JSR
Drafted By:	JAMB
Lutjen Project No.:	12078

1301 Burlington, #100  
North Kansas City, MO 64116  
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# LUTJEN

October 10, 2012

Mr. Dennis J. Enslinger, AICP  
Assistant City Administrator  
City of Prairie Village  
7700 Mission Road  
Prairie Village, KS 66208

RE: Prairie Village Shopping Center  
Lutjen No. 12078

Dear Dennis:

I am in receipt of the Staff Report dated October 2, 2012. The comments have been addressed as follows:

**Application: PC 2012-114**

1. *That the trail easement for Tomahawk Road be noted as Section 7.04 of the CID Agreement and easements for Mission Road or Mission Lane be shown on the plat.*

**Acknowledged and Revised.**

2. *That the "60' Storm Drainage Easement" be changed to "Property Owner Maintained Drainage Area".*

**Acknowledged and Revised.**

3. *That text be added to the Property Owner Maintained Drainage Area as follows: The Property Owner Maintained Drainage Area shall remain free of any obstruction which would restrict the flow of storm water and said Drainage area shall be maintained by the property owner. On or before May 15 of each year, the property owner shall submit a certification from a professional engineer licensed in the State of Kansas to the Director of Public Works that said Drainage area is in good repair and is fully functional. If it is determined that repair is needed, the property owner shall be given a reasonable opportunity to perform the required maintenance or repair. If the City is required to perform maintenance or repair for any reason including debris removal, it shall have the right to assess said costs to the property owner. The City shall be absolved from all liability for the Property Owner Maintained Drainage Area.*

**Acknowledged, Plat revised to reflect new Drainage Area dedication language furnished.**

Lutjen, Inc.

1301 Burlington, #100, North Kansas City, MO 64116

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4. *That the KCP&L line running across Lot 2 be installed underground.*  
**Acknowledged, easements shown in accordance.**
  
5. *That the signature block for the Governing Body be revised as follows: The Governing Body of the City of Prairie Village, Kansas does hereby accept all public easements, ways of land and approves the public street vacations contained herein, this      day of      , 2012.*  
**Acknowledged and Revised.**
  
6. *That letters of subordination from lenders be submitted.*  
**Acknowledged, letters to be furnished by legal counsel.**
  
7. *That the applicant submit the Final Plat to the Johnson County surveyor for a review.*  
**Acknowledged, Final Plat pdf sent to Sean Cahalan 10-01-12.**
  
8. *That the applicant submit a certificate showing that all taxes and special assessments due and payable have been paid.*  
**Acknowledged, tax receipts submitted with revised Final Plat.**
  
9. *That the Final Plat as approved be revised and three copies submitted to the City for their records.*  
**Acknowledged, Plat revised and three copies submitted.**

Thank you for your assistance. Should you have questions or need additional information please call our office.

Sincerely,

LUTJEN, INC.



Jed A.M. Baughman, PLS  
Senior Land Surveyor I

Enclosures

## MAYOR'S ANNOUNCEMENTS

October 15, 2012

**Committee meetings scheduled for the next two weeks include:**

Arts Council	10/17/2012	7:00 p.m.
Environmental/Recycle Committee	10/24/2012	7:00 p.m.
Council Committee of the Whole	11/05/2012	6:00 p.m.
City Council	11/05/2012	7:30 p.m.

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The Prairie Village Arts Council is pleased to announce the annual State of the Arts exhibit in the R. G. Endres Gallery for the month of October.

Save the Date for the Northeast Johnson County Chamber of Commerce 2012 Annual Gala on November 17, 2012 at the Overland Park Marriott.

The Mayor's Holiday Tree lighting will be November 29<sup>th</sup> from 6:00 - 7:00 p.m. at Corinth Square.

**INFORMATIONAL ITEMS**  
**October 15, 2012**

1. Planning Commission Minutes - September 11, 2012
2. Board of Zoning Appeals Minutes - June 5, 2012
3. Mark Your Calendars

**PLANNING COMMISSION MINUTES**  
**September 11, 2012**

**ROLL CALL**

The Planning Commission of the City of Prairie Village met in regular session on Tuesday, September 11, 2012, in the Council Chamber, 7700 Mission Road. Chairman Ken Vaughn called the meeting to order at 7:05 p.m., due to conflicting meeting in Council Chambers, with the following members present: Randy Kronblad, Bob Lindeblad, Dirk Schafer, Nancy Wallerstein, Gregory Wolf and Nancy Vennard.

The following persons were present in their advisory capacity to the Planning Commission: Ron Williamson, City Planning Consultant; Dennis Enslinger, Assistant City Administrator; Ted Odell, Council Liaison and Joyce Hagen Mundy, City Clerk/Planning Commission Secretary.

**APPROVAL OF MINUTES**

Randy Kronblad moved the approval of the minutes of August 8, 2012 with the following change on page 4 "Randy Kronblad noted there is currently a sign on the playground fence. Mr. Enslinger confirmed the sign was a temporary fence sign that would be allowed for 90 days." The motion was seconded by Gregory Wolf and passed by a vote of 5 to 0 with Nancy Wallerstein and Dirk Schafer abstaining.

**PUBLIC HEARINGS**

**PC2012-08 Request for Conditional Use Permit for Drive-Thru Service Window  
6920 Mission Road**

**PC2012-113 Request for Site Plan Approval - PV Shopping Center NW corner of 71<sup>st</sup>  
Street & Mission Road**

**PC2012-114 Request for Preliminary & Final Plat Approval - PV Shopping Center**

Curtis Petersen, with Polsinelli, Shughart, PC, representing the PV Retail Shops addressed the Commission on behalf of Owen Buckley. He restated the ownership group's commitment to the enhancement of both the Corinth and Prairie Village Shopping Centers. He stated that he would be speaking on all three applications before the Commission.

The first project is the vacation of Mission Lane and related streetscape improvements. This is the project identified in the CID agreement with the City. The second project is the removal of the "Waid's" building and the construction of an approximately 6,000 square foot retail center replacing the Waid's facility. This will simulate the existing retail strip that includes Starbucks, TCBY & Village Flower. It will be a multi-tenant facility with two patios and two to three tenants with a maximum of four. They are exploring the moving Starbucks to the new location with the drive-thru service capability. The

third project is the expansion of Hen House by approximately 14,000 square feet to the north.

The required Planning Commission action will include overall site plan approval, a conditional use permit for the drive-thru and a platting of the property reflecting the vacation of Mission Lane. It is their desire to begin on the streetscape improvements to Mission Lane the first week in November; then move on to the "Waids" project with the expansion of Hen House tentatively scheduled for mid to late spring 2013. Mr. Petersen noted the ownership group has been working on these projects over the past several months meeting with tenants, neighbors and others. The purpose of tonight's meeting is to gather information both from the Commission and the residents.

Mr. Petersen acknowledged the changes will require coordination among the tenants on delivery schedules, etc. A study has been conducted by GBA of the parking needs for the center and found that there will be substantial parking available for the needs of the center.

Mr. Petersen stated it is not an option of the ownership group to not move forward with the CID project.

Ed Alexander, with Hollis + Miller Architects reviewed the concept drawings for the Mission Lane Project. The focus of this project will be to create a pedestrian friendly "Norman Rockwell" looking streetscape. There will be fountains at the entrances, by Hen House and two other possible locations. There will be islands featuring stone retaining walls, sculptures, bike racks, places for sitting with tables and street lights with hanging flower baskets. The pedestrian walkways will be clearly identified by pavers. The sidewalks will be wider. The center will have an urban appearance while being a neighborhood center.

The proposed building to replace Waids will be in keeping with the existing shopping architecture with stone and brick including patios, pavers and landscaping. Mr. Alexander reviewed the exterior Hen House expansion concept drawings. He noted that Hen House officials have not finalized their interior changes.

Nancy Vennard asked if there would be improvements to other areas of the Mall and the west side of the shopping center. She noted the current parking area on the west is a free-for-all and needs to be addressed. Mr. Alexander responded their traffic consultants have confirmed there are an adequate number of parking spaces. There are no specific plans for these areas at this time other than to continue the concepts being introduced.

Bob Lindeblad asked where the front door would be for Hen House. Mr. Alexander stated that is contingent on the interior store plans which have not been finalized by Hen House. Mr. Lindeblad stated he felt that information was important for the big picture in the development of the site. Curtis Petersen responded they are almost certain the exterior location of the door is an accurate approximation. It is the inside circulation patterns that are still being finalized. There will be a door along Mission Lane and

possibly another. The site plan has been designed to make it pedestrian friendly to get to one door or the other. Mr. Alexander noted the structural element is in place for the door as proposed. They are encouraging Hen House to have two doors.

Dirk Schafer noted the parking between the Hen House and US Bank appear to be separate lots with the same situation to the south of Hen House and US Bank. It appears to be three separate lots and he felt it would be easier to navigate if there was connectivity between the lots. Mr. Alexander responded that has been discussed and will be reflected in the revised plans.

Mr. Schafer felt it was a wise decision to open up the parking lot in front of Bruce Smith Drugs. Mr. Alexander noted the parking stalls are not changing; they are only making the sidewalks wider.

Nancy Wallerstein pointed out that if there was only one entrance to Hen House most of the patrons will need to cross Mission Lane to get to their cars. Mr. Alexander stated they are more clearly indentifying the crossing areas with pavers that will alert traffic to slow down. Mrs. Wallerstein stressed the importance of taking into consideration the demographics of the city with a high population of elderly and a growing population of young families. She feels there would be less traffic conflict if there was a corner entrance.

Nancy Vennard asked where Macy's fit into this plan. Curtis Petersen stated nothing new has been proposed for Macy's. They have been made aware of the plans. Mr. Alexander added that they have meet with them to discuss possible elements being used could be carried over to their property down the road.

Ron Williamson confirmed the relocation of Starbucks to the new building has not been finalized. Mr. Petersen noted their current lease will be expiring soon and their corporate plan is to move away from facilities that do not have drive-thru service windows. The ownership group would like to keep them as tenants and the new location would be able to meet that accommodation. Mr. Enslinger noted that typically the city has not approved drive-thru windows without knowing what type of service will be using the facility. He stated different uses of drive-thru facilities create different volumes of traffic and traffic at different time of the day.

Ted Odell asked with the almost doubling of its size if Hen House would add any new elements. Mr. Petersen responded he does not know, but noted there has been discussion with other merchants.

Mr. Odell asked if it wouldn't make more sense to drop the traffic from the drive-thru onto Mission Road rather than Mission Lane. Mr. Alexander responded with the building location and shape it makes more sense to go out on Mission Lane with less traffic and slower traffic speeds and fewer vehicles.

Ken Vaughn noted that regardless of Mission Lane becoming a private street, to the public it will remain a major street.

Nancy Wallerstein asked if the applicant has met with the merchants and addressed the concerns that were included in the information given to the Planning Commission. Mr. Petersen stated there have been multiple meetings with the tenants both formally and informally with on-going dialogue. Mrs. Wallerstein stated she hoped the new plans will reflect changes to address their concerns.

Randy Kronblad expressed concern with the doubling the size of Hen House and its impact on taking away nearby parking for patrons. Mr. Alexander stated that Hen House has reviewed the parking and will be doing a better job of directing where their employees can park.

Ken Vaughn asked about lighting, especially if employees will be asked to park in more distant parking spaces. Mr. Alexander responded safety is paramount and noted they will be meeting with the police department also on any locations they feel should have additional lighting.

Nancy Wallerstein asked if there would be grocery cart parking areas. Mr. Petersen stated there would not be. Hen House will continue to provide carryout services.

Nancy Vennard asked if there had been any discussion on moving Mission Lane to create more parking close to Hen House. Mr. Alexander stated they want to keep the feel of a neighborhood street and also noted difficulties with utilities and easements. Mrs. Vennard stated this is a suburban community with people driving their cars to grocery shop. They do not walk to the center to get groceries. She stated she counted 18 parking spaces on the plan and noted with van and ADA parking that number will be reduced to 14 while you are doubling the size of the store. Mr. Petersen stated he is confident that Hen House will look out for its patrons.

Nancy Wallerstein noted that with the Corinth Hen House expansion, the Commission was advised that the trend for grocery store design was going with only one entrance. She would be surprised if Hen House did not go with only one entrance at this location also. She suggested if that was the case that they look at possibly using the space proposed for the second entry as a drive up area.

Dirk Schafer advised the applicant to strong encourage Hen House to have their plans for the entry finalized before they appear before the Commission in October for approval.

Chairman Ken Vaughn opened the meeting to comments from the public.

Charles Schollenberger, 3718 West 79h Terrace, noted the two centers appear to have different architectural styles of the centers with one being "colonial" and the other "French chateau" and he felt they needed to be the same. He feels the proposed tower entrance for the Hen House is too tall; it creates the window vs. no window issue for the CVS building.

He asked if the building replacing Waids and the Hen House expansion were being paid for with CID funds and stated if so he felt that was a misuse of CID funds. A new building or building expansion for a private developer should not be funded with taxpayers' dollars. Bob Lindeblad replied the Planning Commission has no authority on funding - that is an issue between the city council and the developer.

Joel Crown, 4200 West 69<sup>th</sup> Street, stated that neither he nor any of his neighbors had been contacted regarding the proposed projects. He is concerned that the reduced parking will force employees and others onto the street. He expressed concern with the proposed drive-thru and noted he would rather use a cart than tip the carryout person a dollar every time he goes shopping.

Suzanne Allen, 6501 Roe Avenue, addressed the Commission as a Prairie Village shopper and noted that she had sent comments to the Commission earlier with some of her concerns. She stressed the need to keep in mind the aging population and stated that any development needs to be elderly friendly. She opposes the limited parking proposed. She wants easy access into and out of Hen House quickly. She prefers smaller stores that allow her to get to what she needs without having to walk the entire store. Ms Allen noted that at noon today half of the parking lot by US Bank was full. The limited parking will push Hen House patrons further out requiring them to cross a busy street that has been narrowed to two lanes. If there is a drive-thru for Starbucks it should be a right-turn only - not crossing traffic. If Hen House wants to make improvements, she suggested a better deli and salad bar. Ms Allen does not feel the narrower loading dock area is going to be sufficient to allow trucks to turn around.

Chuck Dehner, 4201 West 68<sup>th</sup> Terrace, questioned who was responsible for posting the notice of hearing sign which was inaccurate and noted he was not able to find information on the city's website. Mr. Dehner also expressed concern with the outdoor patios for restaurants blocks the sidewalks and forces people to walk in the street. This needs to be addressed. He is opposed to the drive-thru exiting on Mission Lane. He would like to see them work with Starbucks to keep it in the Village and to wrap around the drive-thru to exit onto Mission Road. He feels the proposed outdoor patio on the west side would be better placed on the south side.

Chairman Ken Vaughn closed public comment at 8:30 p.m.

Mr. Vaughn stated all the applications would be continued to the October 2<sup>nd</sup> meeting of the Planning Commission when new plans will be considered and the questions that have been raised would be addressed.

Dennis Enslinger stated the information on this project and other CID projects is posed on the City's website under Government - Projects - CID - Drawings. If you click the red line you will be taken to the drawings and information. The Planning Commission packet is not posted until the Friday prior to the Commission meeting. Individuals can sign up for "E-Notification" and will be notified whenever anything is posted. The PV Shopping Center Drawings have been posted since they were received two weeks ago.



Randy Kronblad expressed concern that the issues raised by the tenants be resolved prior to the next meeting. It will be difficult for the Commission to grant approval with unresolved issues and without knowing where things stand on other issues. There are serious issues that need to be addressed.

Bob Lindeblad thanked the applicant for their efforts noting one of the primary objectives of Village Vision is to have improvements made to the shopping centers. Change and growth are often difficult in older neighborhoods. He wants to see how to make these improvements work. Prairie Village is more suburban and urban and parking is important. He also acknowledged the importance of successful grocery stores to successful shopping centers.

Bob Lindeblad moved that the Planning Commission continue PC2012-08 Request for Conditional Use Permit for Drive Thru at 6920 Mission Road; PC 2012-113 Site Plan approval for the northwest corner of 71<sup>st</sup> Street and Mission Road and PC2012 Preliminary & Final Plat Approval for the Prairie Village shopping Center. The motion was seconded by Dirk Schafer and passed unanimously.

## **OTHER BUSINESS**

Dennis Enslinger announced the agenda for the October 2<sup>nd</sup> meeting will include these three items as well as a residential retaining wall, site plan approval for "Spin Pizza" and a BZA application for the drive-thru at CVS.

Dennis stated that over the past year he has been working with Countryside East Homes Association at their request on the development of overlay district criteria. They are addressing big ticket items. He will make a presentation on their ideas to the City Council at the September 17<sup>th</sup> meeting. He can bring it forward to the Commission in October or November. The Planning Commission will need to approve additional regulations to allow for the establishment of an appeal board. The Homes Association would like to have the Planning Commission serve as the appeal board or a subcommittee of the Commission with two homes association board members. The presentation needs to be made for the Commission to initiate the required public hearing in December. Countryside East wants to present it to their board at their annual meeting in January.

Ken Vaughn asked how early the Commission could get the information to review. Mr. Enslinger invited the commission members to attend the presentation before the Council Committee of the Whole at 6:30 Monday evening, September 17<sup>th</sup>. Mr. Enslinger stated the overlay district would be regulated by the City at staff level with appeals coming before the Commission.

The Planning Commission directed staff to add it to the October agenda.

Nancy Wallerstein asked about a recent article in the business section regarding Meadowbrook Country Club. Mr. Enslinger stated he was aware of the article but had no further information. Any action will need to come before the Planning Commission.

**ADJOURNMENT**

With no further business to come before the Planning Commission, Chairman Ken Vaughn adjourned the meeting at 8:40 p.m.

Ken Vaughn  
Chairman

**BOARD OF ZONING APPEALS  
CITY OF PRAIRIE VILLAGE, KANSAS  
AGENDA  
TUESDAY, JUNE 5, 2012  
6:30 P.M.**

**Council Chamber**

- I. ROLL CALL**
  
- II. APPROVAL OF MINUTES - March 1, 2011**
  
- III. ACTION ITEM**  
BZA2012-01 Request for a Variance from P.V.M.C. 19.16.035  
reducing the rear yard setback from 25' to approximately 16' at  
3704 West 71<sup>st</sup> Street  
Zoning: R-1a  
Applicant: Lauren Hickman
  
- IV. NEW BUSINESS**
  
- V. OLD BUSINESS**
  
- VI. ADJOURNMENT**

If you cannot be present, comments can be made by e-mail to  
[Cityclerk@Pvkansas.com](mailto:Cityclerk@Pvkansas.com)

**BOARD OF ZONING APPEALS  
CITY OF PRAIRIE VILLAGE, KANSAS  
MINUTES  
TUESDAY, JUNE 5, 2012**

**ROLL CALL**

The meeting of the Board of Zoning Appeals of the City of Prairie Village, Kansas was held on Tuesday, June 5, 2012 in the Council Chambers. Chairman Randy Kronblad called the meeting to order at 6:30 p.m. with the following members present: Bob Lindeblad, Dirk Schafer (arrived late), Gregory Wolf, Nancy Vennard, Nancy Wallerstein and Ken Vaughn. Also present in their advisory capacity to the Board of Zoning Appeals were: Ron Williamson, Planning Consultant, Dennis Enslinger, Assistant City Administrator; Ted Odell, Council liaison; Jim Brown, Building Official and Joyce Hagen Mundy, Board Secretary.

**APPROVAL OF MINUTES**

Nancy Vennard noted on page 2 of the minutes Jim Breneman felt that the proposed patio was out of scale for the area. The secretary noted an additional correction at the bottom of page 2 that should read the "variance does **not** arise". Ken Vaughn moved the minutes of March 1, 2011 be approved as corrected. The motion was seconded by Nancy Vennard and passed 5 to 0 with Gregory Wolf abstaining due to absence.

**BZA2012-01 Request for a Variance from P.V.M.C. 19.16.035 to construct a Covered patio reducing the rear yard setback from 25' to Approximately 15' at 3704 West 71<sup>st</sup> Street**

Chairman Randy Kronblad reviewed the procedures for the public hearing. The Secretary confirmed that the Notice of Public Hearing was published in the Johnson County Legal Record on Tuesday, May 15, 2012 and all property owners within 200' were mailed notices of the hearing.

Randy Kronblad called upon the applicant to present the application.

Lauren Hickman, with Archetype Design Group, 8010 State Line Road, stated the owner is proposing to tear down the existing dwelling and replace it. Ms Hickman presented drawings of the proposed structure showing the front and rear elevations as well as the site plan depicting the existing and proposed rear yard setback. The existing dwelling was built in 1951 with the rear of the dwelling at its closest point approximately 14'2" from the rear property line. The proposed structure would have a rear yard setback of 15 feet. The dwelling was constructed at an angle across the lot with the east end of the dwelling 40 feet from the rear property line.

The proposed dwelling will have an irregular rear building line and the building will vary from 15 feet to 19 feet from its closest points to the rear property line.

The lot is approximately one third of an acre but is triangular in shape. The west 75 feet of the lot apparently was sold to the Indian Hills Country Club for access to the golf course. So the lot now is 200 feet wide at the rear property line while the east lot line is 129 feet and the west lot line is 23 feet.

Ms Hickman stated the rear setback variance request is due to the uniqueness of the property. The originally platted triangular shaped property is 200 feet wide at the rear property line while the east lot line is 129 feet and the west lot line is 23 feet in combination with the city's required 30 foot front yard and 25 foot rear yard setbacks yield an unreasonably small building area. She noted the original construction in 1951 allowed a 14.2" rear yard setback.

Ms Hickman stated no adjacent property owner's rights are adversely affected as the requested setback is greater than the original setback. She also noted that immediately adjacent to the property line of the nearest contiguous property, the 25' rear setback is maintained.

Ms Hickman feels the strict application of a 25' rear setback constitutes an unnecessary hardship on the current and future property owners that is not prevalent on other properties in the subdivision.

Ms Hickman stated if granted, the requested 15' setback variance will in no way negatively impact the public safety, health, morals, order convenience, prosperity or general welfare but rather have a positive impact on many of these. The proposed variance and related construction of a new structure on this property supports the general spirit and intent of these regulations. It was noted the proposed structure would cover 23.5% of the property well within the 30% maximum lot coverage allowed by ordinance.

Nancy Vennard asked how close the deck came to the property line. Ms Hickman responded it is 2 feet from the property line.

Mr. Williamson noted a neighborhood meeting was held on May 21, 2012, with six neighbors attending. The entire project including the proposed rear yard variance, the floor variation change and the design of the residence was explained. The neighbors were not concerned with the variance or the floor elevation change, but one was concerned that although the design was good, it did not fit this area.

Chairman Randy Kronblad opened the hearing to public comment from those wishing to address the Board regarding this application.

Rita Rosano, 3801 West 71<sup>st</sup> Street, noted she lives across from this property and approximately 100' to the west. Ms. Rosano reminded the board of the vision of JCNichols in the development of this area and his desire to restrict alterations through the establishment of homes associations and covenants. She wants to keep Prairie Village as it was envisioned by Mr. Nichols. Mrs. Rosano expressed concern with the potential of increased drainage issues with the proposed development of this property,

noting past flooding in the area. She also expressed concern with construction vehicles in the area. Ms Rosano stated she supports the retention of homes that are compatible with the existing area.

Shannon Marcano, attorney representing the Indian Hills Country Club, referenced a letter submitted to the Board which it states the Indian Hills Country Club's opposition to the requested variance. The club does not feel the requested variance meets the criteria established for the granting of a variance. Ms Marcano stated the hardship is being created by the property owner in that the proposed structure could be designed to meet the required city setbacks. The placement of a structure as close to their property line abutting a golf course green and tee complex will create numerous problems for both the homeowner and the club. They feel the lot is buildable without the requested variance and the variance should be denied.

With no one else to address the Board, the public hearing was closed at 6:54 p.m.

Ron Williamson noted the drainage issues raised by Ms Rosano will be addressed by the Public Works Department as a drainage plan will need to be submitted and approved prior to any permits being issued and is not related to the requested setback variance.

Mr. Williamson noted the neighborhood will continue to evolve from JC Nichols' vision for the area in 1950 in response to the need and desire for different types of housing. Neither the Board of Zoning Appeals or the Planning Commission controls the design of buildings. Mr. Williamson stated this lot in itself is far different from the other lots in this area.

Ms Vennard asked if a deck was allowed within 2 feet of the property line. Mr. Williamson responded the code would allow construction of a deck up to the property line. The two foot setback is required due to the retaining wall.

The Board considered the following findings required for the granting of a variance:

**A. Uniqueness**

**That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant.**

The configuration of this lot is unique in its shape and is not like other lots in the area. The triangular shape reduces the usefulness of a large part of the western portion of the lot. This condition is unique and was not created by the property owner.

Bob Lindeblad noted the shape and slope of this lot from the front to the back severely limits the buildable area. Mr. Lindeblad moved the Board find that the variance does arise from a condition unique to this property. The motion was seconded by Gregory Wolf and passed by a vote of 6 to 0.

**B. Adjacent Property**

**That the granting of the permit for the variance would not adversely affect the rights of adjacent property owners or residences.**

The residence to the east is approximately 22 feet from the side property line. The proposed residence will be approximately 5 feet from the side property line. With the extensive tear down rebuild occurring on the north side of 71<sup>st</sup> Street, it is likely that the house to the east will be expanded or torn down and replaced with a large home at some point in the future. In order to maintain the required 14 feet between dwellings, the lot to the east will have a 9 foot side yard setback adjacent to the west property line. There is no residence to the west and the Indian Hills Country Club is to the north. The proposed variance should not adversely affect the rights of adjacent property owners.

Bob Lindeblad noted the concerns mentioned by Mrs. Rosano do not address the requested setback variance and moved the Board find that the variance does not adversely affect the rights of adjacent property owners or residences. The motion was seconded by Nancy Vennard and passed by a vote of 6 to 0.

**C. Hardship**

**That the strict application of the provisions of these regulations from which a variance is requested will constitute an unnecessary hardship upon the property owner represented in the application.**

The footprint of the existing residence is 2,121 square feet while the proposed footprint of the new residence is 3,472 square feet which is approximately a 64% increase. The proposed size of the residence is typical of the rebuilds occurring in this area and the variance would allow the owners to build a residence that has all the amenities that are desired in today's market. It also should be noted that the existing residence was permitted to be built 14'2" from the rear property line so the proposed request will be slightly less in distance but more of the residence will be closer to the rear property line. In today's market it is highly desirable to have the living area on one floor, especially for seniors. Approval of the variance would permit that to occur.

Nancy Vennard noted the features desired in today's housing market and features found in other homes in this area it would be very difficult to design a home to meet those demands within the required setbacks on this property and therefore, moved the Board find that the denial of the variance would constitute an unnecessary hardship upon the property owner. The motion was seconded by Gregory Wolf

Nancy Wallerstein asked if the homes association has reviewed these plans. Dennis Enslinger stated the homes association was notified of the requested permit when the application was made. The City has not heard anything from the home association regarding the proposed structure. Nancy Vennard confirmed there is an active homes association for this area.

The motion was voted on and passed by a vote of 5 to 0 with Bob Lindeblad abstaining.

Dirk Schafer arrived.

**D. Public Interest**

**That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.**

The granting of the proposed variance would not adversely affect the public health, morals, prosperity or general welfare.

Bob Lindeblad moved the Board find that the variance will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. The motion was seconded by Ken Vaughn and passed by a vote of 6 to 0 with Dirk Schaffer abstaining.

**E. Spirit and Intent of the Regulation**

**That the granting of the variance desired would not be opposed to the general spirit and intent of these regulations.**

The purpose of the rear yard setback is to ensure that there is adequate distance between the rear of abutting dwellings so that adequate open space is available and the living areas of individuals would not encroach on the living areas of their neighbors. The setbacks are also established so that the lots are not overdeveloped. The lot coverage of the proposed residence would increase to approximately 23.5%, still within the maximum lot coverage regulation. The Indian Hills golf course abuts the property to the north and therefore the proposed variance would not adversely impact any other residential properties. It was also noted that the existing dwelling is only 14'2" from the rear property line and the proposed residence will be 15 feet from the rear property line. Therefore the granting of the variance will not be opposed to the general spirit and intent of the zoning ordinance.

Nancy Vennard noted the existing structure has a rear yard setback less than that requested by the applicant and moved the Board find that the variance is not opposed to the general spirit and intent of these regulations. The motion was seconded by Gregory Wolf and passed by a vote of 6 to 0 with Dirk Schaffer abstaining.

Gregory Wolf moved that the Board having found all five of the conditions have been met approve BZA Application 2012-01 for the requested variance from PVMC 19.16.035 to construct a new residence reducing the rear yard setback from 25' to approximately 15 feet as shown on the plans presented for 3704 West 71<sup>st</sup> Street. The motion was seconded by Nancy Vennard and passed by a vote of 6 to 0 with Dirk Schaffer abstaining.

**OTHER BUSINESS**

There was no Other Business to come before the Board.

**ADJOURNMENT**

Chairman Randy Kronblad adjourned the meeting of the Board of Zoning Appeals at 7:15 p.m.

Randy Kronblad  
Chairman



**Council Members  
Mark Your Calendars  
October 15, 2012**

<b>October 2012</b>	State of the Arts Exhibit in the R. G. Endres Gallery
<b>November 2012</b>	Greater Kansas City Art Association
November 5	City Council Meeting
November 9	Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
November 17	Northeast Johnson County Chamber of Commerce Annual Gala
November 19	City Council Meeting
November 22	City offices closed in observance of Thanksgiving
November 23	City offices closed in observance of Thanksgiving
November 28-Dec 1	National League of Cities Conference
November 29	Mayor's Holiday Tree Lighting
<b>December 2012</b>	Eileen McCoy oils exhibit in the R. G. Endres Gallery
December 3	City Council Meeting
December 14	Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
December 14	Volunteer Appreciation Holiday Party
December 17	City Council Meeting
December 25	City offices closed in observance of Christmas
<b>January 2013</b>	
January 1	City offices closed in observance of New Year's Day
January 7	City Council Meeting
January 11	Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
January 21	City offices closed in observance of Martin Luther King Jr Day
January 22	City Council Meeting
<b>February 2013</b>	
February 4	City Council Meeting
February 8	Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
February 18	City offices closed in observance of Presidents' Day
February 19	City Council Meeting
<b>March 2013</b>	
March 4	City Council Meeting
March 8	Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
March 18	City Council Meeting
<b>April 2013</b>	
April 1	City Council Meeting
April 12	Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
April 15	City Council Meeting
<b>May 2013</b>	
May 6	City Council Meeting
May 10	Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
May 20	City Council Meeting
May 27	City offices closed in observance of Memorial Day
<b>June 2013</b>	

June 3 City Council Meeting  
June 14 Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.  
June 17 City Council Meeting

**July 2013**

July 1 City Council Meeting  
July 4 City offices closed in observance of Independence Day  
July 4 VillageFest  
July 12 Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.  
July 15 City Council Meeting

**August 2013**

August 5 City Council Meeting  
August 9 Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.  
August 19 City Council Meeting

**September 2013**

September 2 City offices closed in observance of Labor Day  
September 3 City Council Meeting  
September 13 Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.  
September 16 City Council Meeting

**October 2013**

October 7 State of the Arts Exhibit in the R. G. Endres Gallery  
October 7 City Council Meeting  
October 11 Artist reception in the R. G. Endres Gallery 6:00 - 8:00 p.m.  
October 21 City Council Meeting

**November 2013**

November 4 City Council Meeting  
November 8 Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.  
November 18 City Council Meeting  
November 25 City offices closed in observance of Thanksgiving  
November 26 City offices closed in observance of Thanksgiving

**December 2013**

December 2 City Council Meeting  
December 13 Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.  
December 16 City Council Meeting  
December 25 City offices closed in observance of Christmas